SJC-13755

MARIO NICOSIA[1] & another[2] vs. BURN, LLC, & others.[3]

Suffolk. October 10, 2025. - December 16, 2025.

Present: Budd, C.J., Gaziano, Kafker, Georges, Dewar, & Wolohojian, JJ.

Alcoholic Liquors, License, Alcoholic Beverages Control Commission. Boston Licensing Board. Municipal Corporations, Licensing board. Real Property, Lease. Contract, Performance and breach, Lease of real estate, Waiver. Waiver. Public Policy. Consumer Protection Act, Unfair or deceptive act. Practice, Civil, Summary judgment, Attorney's fees, Costs. Conversion.

Civil action commenced in the Superior Court Department on January 24, 2020.

Motions for summary judgment were heard by Peter B. Krupp, J., and the case was heard by Hélène Kazanjian, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

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[1] Individually and as trustee of the N&M Trust VII.

[2] N.I.C. Limited Partnership.

[3] BL Note Holding Tremont Street, LLC; Brian Lesser; Andrew Husbands; Timothy Maslow; and Joseph Matzkin, interested party.

Kevin M. Considine (Alexander Furey also present) for Burn, LLC, & others.

David Kelston (Noah Rosmarin also present) for the plaintiffs.

The following submitted briefs for amici curiae:

Albert L. Farrah for Suzanne Iannella.

Ben Robbins & Frank J. Bailey for Pioneer New England Legal Foundation.

Joshua M. Bowman, Richard Heller, & Scott McConchie for Spark Business Consulting, Inc.

KAFKER, J. The primary issue presented in this case is whether a contractual provision prohibiting the pledge of a license to serve alcoholic beverages (liquor license or license) as collateral for a loan violates public policy. N&M Trust VII (N&M) leased a commercial property to Burn, LLC (Burn).[4] As part of the lease, N&M sold its liquor license for the property to Burn for one dollar. The lease also prohibited Burn from pledging the liquor license as collateral for a loan (anti-pledge provision), and provided that any pledge constituted a default under the lease. The lease further required Burn to transfer the license back to N&M for one dollar at the end of the lease term. Prior to the termination of the lease, however, Burn pledged the license to its principal, Brian Lesser, as collateral for a loan. When N&M discovered that the license had

[4] Burn is the successor entity to Burn, Inc., the original signatory of the lease.

been pledged to Lesser, N&M terminated the lease and demanded return of the license.

The plaintiffs, Mario Nicosia, individually and as trustee of N&M, and N.I.C. Limited Partnership,[5] initiated the present suit against the defendants, Lesser, BL Note Holding Tremont Street, LLC,[6] and Burn. Following a grant of partial summary judgment and a jury-waived trial on the remaining claims, a judgment awarding damages, attorney's fees, and costs entered for the plaintiffs, and the defendants appealed. The defendants make four primary arguments on appeal. First, the defendants argue that the motion judge erred in granting summary judgment in favor of the plaintiffs on their breach of contract claim because the anti-pledge provision is unenforceable as against public policy. Second, the defendants argue that the trial judge erred in finding for the plaintiffs on their G. L. c. 93A, § 11, claim, because Burn pledged the license to Lesser on the good faith belief that the anti-pledge provision was unenforceable. Third, the defendants argue that the trial judge erred as a matter of law in finding the defendants liable to the

[5] N.I.C. Limited Partnership is the sole beneficiary of N&M and the record owner of the leased premises. Mario Nicosia is the sole owner and manager of both N.I.C. Limited Partnership and N&M.

[6] Lesser is the sole manager of BL Note Holding Tremont Street, LLC.

plaintiffs for conversion of the liquor license when Burn refused to cooperate with N&M to sell the license back. Fourth, the defendants argue that the trial judge abused her discretion in awarding the plaintiffs attorney's fees and costs.

We hold that (1) the anti-pledge provision is enforceable because it does not violate G. L. c. 138, § 23, or public policy; (2) the record supports a determination that Lesser, acting individually and on the behalf of all the defendants, willfully and knowingly engaged in unfair and deceptive conduct when he falsely affirmed under oath to the Boston licensing board (licensing board) and Alcoholic Beverages Control Commission (ABCC) that the pledge agreement did not violate or constitute a default of any other agreement; (3) Burn is liable for breach of contract but not conversion of the license because N&M neither possessed nor was entitled to immediate possession of the license at the time Burn refused to cooperate with N&M to sell the license back; and (4) the trial judge did not abuse her discretion in awarding the plaintiffs attorney's fees and costs.[7]

1. Background. a. Facts. On August 2, 1996, N&M and Burn executed a written lease by which N&M agreed to rent a commercial property in downtown Boston to Burn, a prospective

[7] We acknowledge the amicus briefs submitted by Suzanne Iannella, Pioneer New England Legal Foundation, and Spark Business Consulting, Inc.

restaurant operator. In § 11.24 of the lease, N&M agreed to sell its liquor license for the property to Burn for one dollar, and Burn agreed to seek regulatory approval for the sale from the licensing board and ABCC. Section 11.24 also contained the anti-pledge provision, which expressly prohibited Burn from pledging or transferring the license without N&M's prior written consent. Burn further agreed in § 11.24 that it would "for one dollar . . . sell the [license] to [N&M] upon expiration or earlier termination" of the lease term, "obtain the approval of [the licensing board] and ABCC of the resale of the [license] to [N&M]," and "execute all documents and attend all hearings necessary to effectuate such sale." Section 11.24 expressly recognized that the license was "subject to the jurisdiction of the [licensing board] and the [ABCC]," and Burn agreed to "comply with [G. L. c. 138]" and "all rules, regulations, orders and requirements of [the licensing board] and ABCC relative to the sale of alcoholic beverages." The lease stated that Burn's violation of the anti-pledge provision would constitute an event of default, permitting N&M to terminate the lease and to seek specific performance and damages.[8]

[8] The parties simultaneously entered into a "negative pledge agreement," in which Burn similarly covenanted not to pledge the license.

As contemplated by the lease, N&M transferred the license to Burn, and Burn submitted an application for the transfer to the licensing board and ABCC. The application, which included a copy of the lease, was signed by both parties and noted that Burn would hold all direct beneficial or financial interests in the license posttransfer. After licensing board approval, the ABCC approved the transfer on October 1, 1996. The parties renewed the lease on substantially the same terms three times in the ensuing years, with the last renewal extending the lease's term through 2022.

In 2018, Burn hired Lesser to manage its business operations. Lesser thereafter loaned Burn $445,000, and Lesser and Burn entered into a pledge agreement by which Burn pledged the liquor license to Lesser as collateral for the loan. In the pledge agreement, Burn represented that the pledge would not "violate or constitute a default under the terms of any agreement, indenture, or other instrument . . . applicable to [Burn] or any of its property," despite the anti-pledge provision in the lease. In July 2019, Lesser caused Burn to apply to the licensing board and ABCC for approval of the license pledge, which they granted. In this application, Lesser falsely affirmed under oath that the pledge agreement, including the representation that the pledge did not violate or constitute a default under any agreement, was truthful.

Nicosia and Lesser subsequently met to discuss the lease on December 31, 2019. The parties dispute what was said at the meeting, but according to Nicosia, Lesser claimed that Burn owned the liquor license and then offered to pay Nicosia $100,000 in a brown paper bag. On January 7 and 8, 2020, the plaintiffs demanded by letter that the defendants terminate the pledge on the license and gave notice of default and termination of the lease. The plaintiffs then initiated the present suit.

b. Procedural history. The plaintiffs' amended complaint alleged, among other things, that Burn committed a breach of the lease, the defendants knowingly and willfully violated G. L. c. 93A, and the defendants converted the license. The defendants counterclaimed for breach of contract, conversion, and c. 93A damages.

On the parties' cross motions for summary judgment, the motion judge granted the plaintiffs summary judgment on the contract claims. In sum, the motion judge concluded that the lease, including the anti-pledge provision, was enforceable; Burn's pledge of the license to Lesser constituted a default under the lease; and Burn was required to effectuate the sale of the license back to N&M. The parties waived their rights to a jury trial and detailed findings of fact on the remaining c. 93A and conversion claims. After a bench trial, the trial judge found for the plaintiffs on those claims and awarded treble

damages on the c. 93A claim. The plaintiffs then requested $394,427 in attorney's fees and $14,192.64 in costs, which the trial judge granted. The defendants appealed, and we transferred the case to this court on our own motion.

2. Discussion. a. Enforceability of the anti-pledge provision. i. Standard of review. We review the motion judge's grant of summary judgment on the breach of contract claims, including his finding that the anti-pledge provision is enforceable, de novo. Federal Nat'l Mtge. Ass'n v. Hendricks, 463 Mass. 635, 637 (2012). "The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). "When both parties have moved for summary judgment, as they did here, we view the evidence in the light most favorable to the party against whom judgment was entered." Wortis v. Trustees of Tufts College, 493 Mass. 648, 662 (2024).

ii. Freedom of contract and public policy. "[T]he general rule of our law is freedom of contract," which "rests on the premise that it is in the public interest to accord individuals broad powers to order their affairs through legally enforceable agreements" (citations omitted). Beacon Hill Civic Ass'n v.

Ristorante Toscano, Inc., 422 Mass. 318, 320 (1996). Nonetheless, "public policy sometimes outweighs the interest in freedom of contract, and in such cases the contract will not be enforced." Gattineri v. Wynn MA, LLC, 493 Mass. 13, 19-20 (2023), quoting Feeney v. Dell Inc., 454 Mass. 192, 199-200 (2009). For a contract to violate public policy, "[t]he grounds for a public policy exception must be clear in the acts of the Legislature or the decisions of this court." Trustees of the Cambridge Point Condominium Trust v. Cambridge Point, LLC, 478 Mass. 697, 705 (2018), quoting Miller v. Cotter, 448 Mass. 671, 683 (2007). This requires a "court's conviction, grounded in legislation and precedent, that denying enforcement of a contractual term is necessary to protect some aspect of the public welfare." Rawan v. Continental Cas. Co., 483 Mass. 654, 666 (2019), quoting Beacon Hill Civic Ass'n, supra at 321.

These general principles apply to contractual waivers of statutory rights. "A statutory right or remedy may be waived when the waiver would not frustrate the public policies of the statute" but may not be waived "if the waiver could 'do violence to the public policy underlying the legislative enactment.'" Canal Elec. Co. v. Westinghouse Elec. Corp., 406 Mass. 369, 377-378 (1990), quoting Spence v. Reeder, 382 Mass. 398, 413 (1981). "[T]he critical consideration in deciding if a particular statute is reasonably interpreted to permit a waiver is whether

doing so would frustrate the purposes and policies that statute is designed to advance." Garrity v. Conservation Comm'n of Hingham, 462 Mass. 779, 787 (2012).

iii. General Laws c. 138, § 23, and the anti-pledge provision. General Laws c. 138 sets forth the comprehensive licensing scheme that governs the issuance of licenses to serve alcoholic beverages. The overarching purpose of the statute is to ensure that the ABCC and the local licensing authority review and approve each license application, such that no license is granted without their review and approval. See Coyne v. Alcoholic Beverages Control Comm'n, 312 Mass. 224, 227 (1942). Indeed, "[t]he general policy is perhaps best indicated by the first paragraph of § 23," Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956):

> "The terms licenses and permits . . . are . . . transferable only as provided in this chapter, and revocable by the granting authority, the commonwealth, acting through the same officers or agents and under the same delegated authority for any violation of this chapter or any regulation adopted by the commission or local licensing authority consistent with the terms of this chapter after opportunity for a hearing. The provisions for the issue of licenses and permits hereunder imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made."

G. L. c. 138, § 23, first par.

As part of this licensing scheme, the statute expressly permits pledging a license as collateral for a loan with the approval of the local licensing authority and ABCC. The final paragraph of § 23 states: "Any license granted under the provisions of this chapter may be pledged by the licensee for a loan, provided approval of such loan and pledge is given by the local licensing authority and the commission." G. L. c. 138, § 23, thirteenth par. This provision grants license holders some financial flexibility but ensures that the core purpose of the statute -- oversight by the local licensing authority and ABCC -- is preserved.

The statute is silent on anti-pledge provisions; they are neither expressly permitted nor expressly prohibited. Unlike provisions permitting pledges, however, anti-pledge provisions do not result in the potential transfer of the license to another party. Rather, they do the opposite; they preclude pledges and thus foreclose the possibility of a license transfer that has not been approved by the local licensing authority and ABCC.

For these reasons, we can discern no clear public policy implicated by the anti-pledge provision. The statute's core purpose is to establish regulatory oversight, not to promote license pledges. Contractual arrangements, including financing

restrictions "among 'commercially sophisticated' parties do[] not generally raise public policy concerns." H1 Lincoln, Inc. v. South Wash. St., LLC, 489 Mass. 1, 24 (2022), S.C., 495 Mass. 484 (2025), quoting Canal Elec. Co., 406 Mass. at 374. The terms of the lease here -- including the anti-pledge provision -- were fully disclosed to the licensing board and the ABCC, and the anti-pledge provision affects only the ability of the licensee to use the license as collateral to secure a private loan.

Moreover, nothing about the anti-pledge provision in this particular lease interferes with the licensing board and ABCC's oversight. To the contrary, § 11.24 of the lease repeatedly emphasized the need for regulatory approval: the license was "subject to the jurisdiction of the [licensing board] and the [ABCC]," Burn's sale of the license back to N&M required "the approval of [the licensing board] and ABCC," and Burn agreed to "comply with [G. L. c. 138]" and "all rules, regulations, orders and requirements of [the licensing board] and ABCC relative to the sale of alcoholic beverages."

The defendants reason that this case is controlled by Beacon Hill Civic Ass'n, 422 Mass. at 323, where this court found that a private agreement not to apply for a liquor license was unenforceable as against public policy. But Beacon Hill Civic Ass'n is inapposite because the agreement at issue there

thwarted public participation, another public policy of G. L. c. 138. In that case, a neighborhood civic association agreed not to oppose a restaurant's application for a beer and wine license in exchange for the restaurant's promise not to apply for an all-alcohol license in the future. Id. at 319. We emphasized that "a public policy of open public participation is implicit in the statutory scheme," which requires published notice of license applications and a hearing, and permits taxpayers to petition to modify, suspend, revoke, or cancel a license. Id. at 321-322. Accordingly, we held that because "the right to participate in licensing proceedings is created by statute," and "the application review provisions of c. 138 are grounded in general policy concerns rather than protection of private property rights," the parties' waivers "would destroy the very purpose of the statute" and were therefore unenforceable (citation omitted). Id. at 322-323. Here, by contrast, the anti-pledge provision does not interfere in any way with public participation in the licensing process and is only a limitation on the licensee's ability to use the license as collateral to secure a private loan from a potential lender.

In sum, a contract provision prohibiting the pledge of a liquor license as collateral for a loan is neither prohibited by G. L. c. 138, § 23, nor "manifestly injurious to the public interest and welfare" in violation of public policy (citation

omitted). Beacon Hill Civic Ass'n, 422 Mass. at 321. We therefore affirm the motion judge's determination that the anti-pledge provision is enforceable.

b. General Laws c. 93A claims. We next consider whether the trial judge properly concluded that the defendants' conduct constituted "unfair or deceptive" conduct prohibited by G. L. c. 93A, § 11, and whether any unlawful conduct was "willful or knowing." The defendants argue that the trial judge erred in finding the defendants liable under c. 93A because Lesser believed, in good faith, that the anti-pledge provision was unenforceable.

"Where a judge makes findings of fact in a bench trial, we review them for clear error." H1 Lincoln, Inc., 489 Mass. at 13. By contrast, we review the trial judge's legal conclusions de novo. Id. "[W]hether a particular set of acts, in their factual setting, is unfair or deceptive is a question of fact. But whether conduct found to be unfair or deceptive rises to the level of a chapter 93A violation is a question of law." (Quotations and citations omitted.) Id. at 13-14. Where, as here, the parties waived detailed findings of fact under Rule 20(2)(h) of the Rules of the Superior Court (2018), we review the judgment "according to the standard of review that would apply to a verdict by a jury in a case tried to a jury and to the judgment entered thereon." Rule 20(8)(b) of the Rules of

the Superior Court (2018). That is, construing the evidence in the light most favorable to the judgment, the question is whether "anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the [parties that are not challenging the judgment]." Motsis v. Ming's Supermkt., Inc., 96 Mass. App. Ct. 371, 379-380 (2019), quoting Dobos v. Driscoll, 404 Mass. 634, 656, cert. denied, 493 U.S. 850 (1989) (applying standard in c. 93A case in which parties waived formal findings of fact and rulings of law).

General Laws c. 93A, § 11, makes unlawful an "unfair or deceptive act or practice" in the course of dealings between those "engage[d] in the conduct of any trade or commerce." Section 11 also permits double or triple "actual" damages if the court concludes that the conduct was willful or knowing. G. L. c. 93A, § 11. As we have repeatedly stated, "a breach of contract alone does not amount to an unfair act or practice" for G. L. c. 93A, § 11, purposes (citation omitted). H1 Lincoln, Inc., 489 Mass. at 17 n.12, 25. Rather, we look to whether the conduct "is within at least the penumbra of some common-law, statutory, or other established concept of unfairness . . . [or] is immoral, unethical, oppressive, or unscrupulous" (quotations and citation omitted). Massachusetts Farm Bur. Fed'n, Inc. v. Blue Cross of Mass., Inc., 403 Mass. 722, 729 (1989). Further,

we have "repeatedly affirmed that fraudulent misrepresentation is sufficient to establish deception under G. L. c. 93A, § 11." H1 Lincoln, Inc., supra at 18, citing McEvoy Travel Bur., Inc., v. Norton Co., 408 Mass. 704, 714 (1990).

The evidence at trial was more than sufficient to support the judge's determination that the defendants knowingly and willfully engaged in unfair or deceptive acts. In particular, the record supported a determination that Lesser knowingly lied under oath to the licensing board and the ABCC when he swore in his application for approval of the license pledge that the pledge did not "violate or constitute a default under the terms of any agreement . . . applicable to [Burn] or any of its property." Lesser never told the regulators about his purported belief that the anti-pledge provision was unenforceable. Instead, he falsely affirmed that the pledge did not violate any other agreement, notwithstanding that his attorney had told him that the license could not be pledged and that to do so would be a default of the lease. Other evidence, including his attempt to pay Nicosia $100,000 in cash in a brown paper bag for the license, provides further support for the judge's factual

determinations and legal conclusions. For these reasons, we affirm the trial judge's G. L. c. 93A judgment.[9]

c. Conversion of the liquor license. We next consider whether the trial judge erred as a matter of law in finding the defendants liable to the plaintiffs for conversion of the liquor license when Burn refused to cooperate with N&M to sell the license back. The judge found that the plaintiffs' damages for the conversion of the license were duplicative of those awarded for Burn's breach of the lease and under G. L. c. 93A, and thus our holding on this issue does not affect the total amount of damages under the judgment.

In denying the defendants' motion for summary judgment, the motion judge ruled that the defendants' failure "to execute all

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[9] We likewise discern no merit to the defendants' argument that the denial of their motion pursuant to Mass. R. Civ. P. 15 (b), 365 Mass. 761 (1974), to amend their pleading to assert an affirmative defense based on c. 93A's safe harbor provision was reversible error. The defendants were allowed to present the defense at trial, despite the denial of the rule 15 (b) motion to amend the answer, and the trial judge correctly rejected the defense. More specifically, the safe harbor provision exempts from c. 93A liability "transactions or actions otherwise permitted under laws as administered by any regulatory board or officer." G. L. c. 93A, § 3. But the record supports a determination that the regulators' approval of the pledge was premised on Lesser's false statement that the pledge did not violate or constitute a default under any agreement, which vitiates the significance of the regulators' approval as a safe harbor; where the defendants hid their unfair and deceptive conduct from the regulators, the regulators did not by their approval give "affirmative permission" to engage in that conduct. Aspinall v. Philip Morris, Inc., 453 Mass. 431, 437 (2009).

documents and attend all hearings necessary to effectuate the sale of the [l]icense to [N&M]" plausibly constituted conversion. Because the motion judge appears to have found that § 11.24 of the lease provided a basis for the plaintiffs' conversion claim, and this was the basis of the claim at trial, we turn to that provision to evaluate the claim. We conclude, as a matter of law, that Burn's refusal to cooperate with N&M according to the terms of this provision constituted a breach of contract, but not conversion.

"To state a plausible claim of conversion, a plaintiff must allege that the defendant wrongfully exercised dominion or control over the personal property of the plaintiff." Hornibrook v. Richard, 488 Mass. 74, 83 (2021), citing Weiler v. PortfolioScope, Inc., 469 Mass. 75, 87 (2014). Under Massachusetts law, a plaintiff generally must either have actual possession of the converted property, Shaw v. Kaler, 106 Mass. 448, 449-450 (1871), or be entitled to its immediate possession, Robinson v. Bird, 158 Mass. 357, 360 (1893) (Holmes, J.), at the time of the defendant's wrongful act. See J.R. Nolan & L.J. Sartorio, Tort Law § 4.5, at 83 (3d ed. 2005) ("The key to the plaintiff's [conversion] claim is his possession or right to possession. . . . A person who exercises serious dominion or control over personal property is liable to one who had actual possession at the time of the act as well as to one who was

entitled to immediate possession at that time" [footnote omitted]).

Here, the plaintiffs cannot state a claim for conversion because when Burn refused to sell the license back to N&M, N&M neither actually possessed nor was entitled to immediate possession of the license. There were numerous contractual and regulatory steps required before N&M could reacquire possession of the license. In these circumstances, the proper claim was for breach of contract, not conversion.

More specifically, in § 11.24 of the lease, the parties agreed that "[N&M] has transferred its [license] to [Burn] for one dollar and other good and valuable consideration." Thus Burn, and not N&M, was in possession of the license when Burn refused to cooperate with N&M to sell the license back. The cooperation required of Burn was also delineated in the contract. Burn would, "for one dollar . . . sell the [license] to [N&M] upon expiration or earlier termination" of the lease term. Burn further agreed to "obtain the approval of [the licensing board] and ABCC of the resale of the [license] to [N&M]" and "attend all hearings necessary to effectuate such sale." Such regulatory approval, however, was beyond the control of Burn to grant. General Laws c. 138, § 23, second par., also expressly states that "[n]o holder of [a liquor license] shall have any property right in any document or paper

evidencing the granting of such [liquor license]."[10] As a result, any transfer of the license between N&M and Burn could only have an effect to the extent the licensing board and ABCC approved of the transaction. At the time of the alleged conversion, N&M was neither an approved licensee nor pledgee of the license.

Such contractual rights leading to future possession of property are insufficient to state a claim for conversion. See Laurin v. DeCarolis Constr. Co., 372 Mass. 688, 690-691 (1977) (where plaintiff had signed purchase and sale agreement for real property, but title and possession of parcel had not yet transferred to plaintiff, action for removal of trees, gravel, and loam on parcel "must be decided, not as a tort action for . . . conversion . . . , but as a claim for a deliberate and wilful breach of contract"). For these reasons, the plaintiffs' conversion claim fails as a matter of law.[11]

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[10] As we conclude that the plaintiffs did not possess the license at the time of the alleged conversion, we need not address the defendants' argument that there was no property right in the license that could be converted.

[11] In Laurin, 372 Mass. at 690, we suggested in dictum that even when a plaintiff lacks actual possession or the right to immediate possession of converted property, recovery for conversion may nevertheless be warranted if the plaintiff has a "property interest in the converted property." See id. (regardless of plaintiff's possessory right, "[w]e should uphold . . . recovery [for conversion] if it would have been proper in an action of trespass on the case or in a suit in equity"). See

d. Attorney's fees. The defendants also appeal from the trial judge's award of $394,427 in attorney's fees and $14,192.64 in costs,[12] on the grounds that the award is excessive and not adequately documented. We disagree and conclude that the trial judge's award was not an abuse of discretion. See Sutton v. Jordan's Furniture, Inc., 493 Mass. 728, 742 (2024), citing LaChance v. Commissioner of Correction, 475 Mass. 757, 772 (2016) ("We review a judge's award of attorney's fees for an abuse of discretion"). This case took over four years to litigate and proceeded through summary judgment to a jury-waived trial. The trial judge assessed the plaintiffs' affidavits and verified billing records and determined, based on the factors outlined in Linthicum v. Archambault, 379 Mass. 381, 388-389 (1979), that the time expended by the plaintiffs' counsel was reasonable and supported by the record. As we discern no abuse

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also Restatement (Second) of Torts § 243 comment b, at 476 (1965) ("Under the common law action of trover [a] plaintiff . . . entitled only to future possession, as in the case of a bailor for a term, could not maintain the action. . . . With the disappearance of the forms of action, it is normally of little consequence, except as a matter of pleading in a few jurisdictions, whether this action is now to be called one for conversion or merely for damage to the future interest . . ."). We nonetheless conclude that contract and not conversion is the appropriate cause of action here, given the multiple contractual and regulatory contingencies that must be satisfied prior to N&M reacquiring possession of the license.

[12] An additional $540 in filing fees included in the costs awarded is uncontested.

of discretion in that award, we affirm the trial judge's award of $394,427 in attorney's fees and $14,732.64 in costs.[13]

3. Conclusion. We hold that the anti-pledge provision is enforceable and therefore affirm summary judgment in favor of the plaintiffs on that ground. We likewise affirm the G. L. c. 93A judgment and the award of attorney's fees and costs in favor of the plaintiffs. We reverse the judgment against the defendants for conversion of the liquor license.

So ordered.

[13] The plaintiffs have requested an award of appellate attorney's fees and costs in their brief. As the prevailing party on appeal in a c. 93A, § 11, action, the plaintiffs are entitled to recover reasonable attorney's fees and costs. See H1 Lincoln, Inc., 489 Mass. at 27 n.18 (citing cases). The plaintiffs may file an appropriate application for appellate fees and costs in this court, pursuant to the procedure established by Fabre v. Walton, 441 Mass. 9, 10-11 (2004).