

2012 IL App (2d) 110429-U
No. 2-11-0429
Order filed June 29, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

GUS LIATOS,)	Appeal from the Circuit Court
)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 10-L-97
)	
THE FOREST PRESERVE DISTRICT OF)	
KANE COUNTY and CENTRUM EAST-)	
WEST ARENAS VENTURE, LLC,)	Honorable
)	Robert B. Spence,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not err in granting summary judgment for defendants on claims relating to plaintiff's employment contract, as there was no genuine issue of material fact that defendants did not assume, ratify, or tortiously interfere with the contract. The trial court also did not err in granting summary judgment for defendants on claims of tortious interference with prospective advantage, as one claim was time-barred, one lacked a genuine issue of material fact, and one was forfeited.

¶ 1 Plaintiff, Gus Liatos, appeals from the trial court's grant of summary judgment in favor of defendants, the Forest Preserve District of Kane County (Forest Preserve) and Centrum East-West Arenas Venture, LLC (Centrum). We affirm.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff brought suit against defendants on February 23, 2010. He alleged as follows. On June 1, 2006, he entered into a letter of agreement with Fox Valley Ice Arena, LLC (Fox Valley LLC). Under the agreement, he would act as the in-house hockey director for the Fox Valley Ice Arena, with exclusive control over ice hockey programs and clinics at the arena, for a five-year period. The agreement provided him compensation, health insurance, and other benefits and entitlements. Fox Valley went into receivership on June 27, 2007, but its daily operations continued, and plaintiff's role did not change. On October 1, 2008, Fox Valley LLC entered into a series of agreements with defendants, whereby the Forest Preserve acquired ownership of the ice arena and Centrum took over its operations and management. From October 1 through October 21, 2008, defendants continued to honor the terms of plaintiff's letter of agreement with Fox Valley LLC. Plaintiff continued to operate and exclusively cultivate the hockey programs at the arena, and he continued to receive economic benefits and health insurance. Defendants also profited based on the number of students plaintiff enrolled in the hockey programs at the arena. However, on about October 21, 2008, plaintiff was terminated from his position without cause or provocation. Upon information and belief, Centrum thereafter continued the services, hockey programs, and students that plaintiff had cultivated.

¶ 4 Regarding the Forest Preserve, plaintiff claimed that its actions constituted breach of contract (count I) or, alternatively, tortious interference with contract (count II); and interference with

prospective advantage (count VI). Against Centrum, plaintiff claimed tortious interference with a contract (count III) or, alternatively, interference with prospective advantage (count IV); and a second count of interference with prospective advantage (count V).

¶ 5 Plaintiff's deposition was taken on September 27, 2010, and he testified in relevant part as follows. In 2006, he was an employee of Fox Valley LLC. Under his contract with Fox Valley LLC, he received half of the proceeds from certain hockey classes and also received ice time, at no cost, to have private lessons. He further received health insurance, an office, and a telephone. In 2007, Fox Valley LLC entered into receivership. During that time, plaintiff received payments from customers. The receiver did not pay him money but funded his health insurance. The receiver "breached [plaintiff's] contract" by providing classes he was supposed to have exclusive rights to and scheduling other classes during his ice time. The receiver also did not pay plaintiff money that was owed to him.

¶ 6 Plaintiff testified that prior to October 1, 2008, he knew that the Forest Preserve would be buying the building. He learned from the rink's old owner that Centrum was the front runner as far as leasing the ice arena from the Forest Preserve. The owner hoped that another company besides Centrum could run the rink so that plaintiff could "stay there." The week of October 1, 2008, the Forest Preserve took over the facility, and Centrum took over operations. Plaintiff tried calling the Forest Preserve's president regarding his contract, but he never received a reply. Plaintiff agreed that he never talked to anyone from the Forest Preserve who said that they would honor his employment agreement. No one from Centrum had any discussions with him; plaintiff testified that "they totally ignored" him and "didn't even know [he] existed the whole 27 days they were there." Plaintiff kept going about his business. During the week of October 20, plaintiff had seen a man in the stands

watching his programs, and some of the Zamboni guys had told plaintiff that they thought the man worked with Centrum and was going to replace him. That same week, Centrum had passed out forms to plaintiff's customers, which it said was necessary for insurance purposes. The forms included spaces for addresses and e-mails. On Friday, October 25,¹ a Centrum manager said that he would like to meet with plaintiff the following Tuesday at 9 a.m. On that day, the Centrum manager told plaintiff that they no longer needed his services.

¶ 7 It was plaintiff's understanding that the licensing agreement gave Centrum the authority to replace vendors in the facility, like himself. Plaintiff subsequently contacted representatives of the Forest Preserve. Plaintiff agreed that no one from the Forest Preserve terminated him or excluded him from the ice arena. He never talked to either defendant about his contract. Plaintiff later learned that Centrum had contacted his customers to enroll in its programs. With respect to certain programs, plaintiff considered Centrum to be a competitor.

¶ 8 Plaintiff testified that he believed that the Forest Preserve received an economic benefit from the students in his hockey programs because about 65% of students paid by credit card to the ice arena. Students who paid by checks would pay plaintiff's personal company directly. Plaintiff would then calculate the amount that was generated from the programs under his contract, and he would reconcile his percentage versus the rink's percentage, which was a 50%-50% split.² Plaintiff agreed that Centrum was running the rink and received the credit card payments; he did not know what would then happen to the money, and he did not know whether the Forest Preserve made any

¹We note that October 25, 2008, was a Saturday.

²Plaintiff also testified that, under the contract, he received 100% of the revenue from his private lessons.

money off of his employment agreement. He also agreed that he never had a direct agreement with the Forest Preserve to provide ice hockey instruction. However, Forest Preserve employees would go to the third floor, where their offices were going to be built, and would see that he was there, teaching classes. Plaintiff never received compensation from either defendant, nor did he pay them any money. Centrum had to be aware of his contract because it hired the prior assistant manager to be its manager, and she knew everything that was going on at the rink. Plaintiff believed that he had a contract with the facility, and because the Forest Preserve now owned the facility, it was obligated under the contract.

¶ 9 On October 18, 2010, the Forest Preserve filed a motion for summary judgment. It argued that: there was no genuine issue of material fact that plaintiff had no written agreement with it; the Forest Preserve never ratified or was otherwise obligated under plaintiff's contract with Fox Valley LLC; plaintiff testified that no Forest Preserve employee orally promised him that the Forest Preserve would honor his prior contract, and even otherwise, the Forest Preserve would be statutorily immune from liability based on such a promise; and plaintiff's complaint was time-barred.

¶ 10 The Forest Preserve attached to its motion an affidavit from Monica Meyers, its Executive Director. Meyers averred as follows. The Forest Preserve never employed plaintiff, hired him as a contractor, or had an agreement with plaintiff to pay him money; no one from the Forest Preserve ever indicated that it would honor any agreement plaintiff had with a third party; the Forest Preserve never received any money or economic benefit from plaintiff's employment agreement with Fox Valley LLC; "[p]rior to, and as of October 1, 2008," the Forest Preserve had no knowledge of that employment agreement; and the Forest Preserve never knew anything about the number of students plaintiff enrolled.

¶ 11 On January 18, 2011, Centrum moved for summary judgment on the counts against it. Centrum argued that there was no genuine issue of material fact in regards to the absence of a contract between plaintiff and the Forest Preserve and that the Forest Preserve never assumed or ratified the contract between plaintiff and Fox Valley LLC. Centrum further argued that there was no genuine issue of material fact regarding the unreasonableness of plaintiff's expectancy of entering into a business relationship with the Forest Preserve, because: plaintiff never spoke to anyone from the Forest Preserve before his termination; neither defendant indicated that it would honor plaintiff's prior contract; and plaintiff had been warned that if Centrum assumed management, his position would be in jeopardy. Centrum argued that it therefore could not have possibly interfered with plaintiff's prospective economic advantage based on a business relationship with the Forest Preserve. Centrum also argued that its actions in contacting plaintiff's students and continuing the ice hockey and skating programs could not be the basis of an action for interference with prospective economic advantage, because Centrum was a commercial competitor, and there were legitimate business motives behind its interactions with plaintiff's clientele base.

¶ 12 In March 2011, the Forest Preserve filed a cross-claim against Centrum. It alleged that Centrum had breached the license agreement by failing to indemnify and pay the attorney fees the Forest Preserve had incurred in the litigation.

¶ 13 Centrum filed an answer to the cross-claim on April 7, 2011, requesting that the trial court dismiss the cross-claim with prejudice. The same day, the trial court granted defendants' motions for summary judgment and dismissed plaintiff's complaint with prejudice. The trial court's ruling stated that the grant of summary judgment was based on the lack of ratification by either defendant

of plaintiff's employment agreement with Fox Valley LLC. The ruling also stated that the trial court was retaining jurisdiction over the cross-claim. Plaintiff filed a notice of appeal on April 29, 2011.

¶ 14 In a Rule 23 order issued on January 5, 2012, this court initially dismissed the appeal for lack of jurisdiction. We agreed with the Forest Preserve that we did not have jurisdiction because the Forest Preserve's cross-claim against Centrum for fees was still pending at the time plaintiff filed his notice of appeal, and the trial court's order did not contain a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). We further stated:

“We note that under Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008), a premature notice of appeal filed ‘before the final disposition of any separate claim’ will become effective when the trial court enters an order disposing of the separate claim. Thus, respondent's notice of appeal will become effective when the trial court rules on the cross-claim, assuming that no other claims remain pending. However, because the record does not indicate that the trial court has ruled on the cross-claim, we may not at this juncture rely on Rule 303(a)(2) for jurisdiction over this case. Still, if the cross-claim and any other pending claims have been resolved and the time to file a new notice of appeal has expired, respondent may file a petition for rehearing and to supplement the record in order to establish our jurisdiction to address the merits of the case. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007).”

¶ 15 Plaintiff timely filed a petition for rehearing and to supplement the record on January 20, 2012. He included a copy of the trial court's order from July 28, 2011, stating, “The crossclaim of the Kane County Forest Preserve is dismissed without prejudice.” We ordered defendants to file a

response to the petition for rehearing³ and allowed plaintiff to file a reply to the response. The Forest Preserve argued that we lacked jurisdiction because plaintiff did not file a notice of appeal within 30 days of the July 28, 2011, order. In plaintiff's reply, he argued that the July 28 order was the result of the Forest Preserve's request that its cross-claim against Centrum be dismissed, and he was not notified that the order had been entered. Plaintiff further argued he followed our order as a basis for his petition, and he was not required to file another notice of appeal within 30 days of the July 28 order. On June 5, 2012, we granted plaintiff's petition for rehearing and ordered that he supplement the record with original or official copies of the July 2011 pleadings and order, which he did.

¶ 16

II. ANALYSIS

¶ 17 To begin, we briefly address the issue of jurisdiction. Contrary to the Forest Preserve's argument, plaintiff was not required to appeal from the July 28 order to establish jurisdiction in this court. As we discussed in our prior order, under Rule 303(a)(2), a premature notice of appeal becomes timely when the trial court enters an order disposing of the last pending postjudgment motion or any separate claim. See *McMackin v. Weberpal Roofing, Inc.*, 2011 IL App (2d) 100461, ¶ 15-16; see also *People ex rel. Madigan v. Illinois Commerce Comm'n*, 407 Ill. App. 3d 207, 212 (2010) (under Rule 303(a)(2), "prematurely filed appeals become automatically effective at the time when the appeal may properly be filed").

¶ 18 Still, the July 28 order states on its face that the cross-claim was dismissed "without prejudice." In some circumstances, such language has been interpreted to indicate that the trial court intended that the order not be considered final and appealable. See *Austin's Rack Inc. v. Gordon &*

³Centrum did not file a response.

Glickson, P.C., 145 Ill. App. 3d 500, 502 (1986). However, the July 28 dismissal was also in response to the Forest Preserve's motion to dismiss its own cross-complaint. We can thus conclude that it is akin to a voluntary dismissal. See also *Piagentini v. Ford Motor Co.*, 387 Ill. App. 3d 887, 895 (2009) (a voluntary dismissal is a dismissal without prejudice). "A voluntary dismissal terminates an action in its entirety and renders all final orders appealable." *Curtis v. Lofy*, 394 Ill. App. 3d 170, 183 (2009). Accordingly, the July 28 order was a final order disposing of the final claim in the case, and it reactivated plaintiff's premature notice of appeal, providing us with jurisdiction in this case.

¶ 19 We now turn to the merits of the case, wherein plaintiff challenges the trial court's grant of summary judgment for defendants. Summary judgment is appropriate only where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Zekman v. Direct American Marketers, Inc.*, 182 Ill. 2d 359, 374 (1998). The purpose of summary judgment is to determine whether a question of fact exists, not to make factual findings, and summary judgment should be granted only where the movant's right to it is clear. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). We review *de novo* a grant of summary judgment. *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, ¶ 22.

¶ 20 Plaintiff first argues that genuine issues of material fact exist as to count I, alleging breach of contract, such that the trial court improperly granted the Forest Preserve summary judgment on that count. Plaintiff argues as follows. Although he did not directly enter into a contract with the Forest Preserve, the facts show that the Forest Preserve, through its actions, ratified plaintiff's employment agreement with Fox Valley LLC, thereby binding the Forest Preserve to the agreement's

terms. Plaintiff continued to abide by the agreement's provisions, recruiting and enrolling students for the specified hockey classes, using the facility during the specified hours, and paying the Forest Preserve in the method established through the agreement. He also continued to receive the health insurance provided for in the agreement. The Forest Preserve continued to receive and accept an economic benefit through the profits derived from his work, providing glaring proof that it knew of and accepted the agreement's terms. The Forest Preserve's assertion that it did not know about the employment agreement, or its details, provides yet another illustration of a genuine issue of material fact. It is impossible to believe that the Forest Preserve would allow him to use the ice rink to teach minors, without any knowledge and specifics as to his relationship and affiliation with the facility; such ignorance would expose the Forest Preserve to liabilities that it would never allow. Plaintiff argues that genuine issues of material fact exist as to the ratification of the agreement, so the trial court improperly dismissed count I.

¶ 21 The Forest Preserve argues that from plaintiff's deposition, the following facts are uncontroverted: plaintiff was employed by Fox Valley LLC; plaintiff never had a contract with the Forest Preserve; the Forest Preserve never guaranteed any agreement he had; plaintiff could not identify anyone with the Forest Preserve who knew about his agreement with Fox Valley LLC; the Forest Preserve did not terminate his employment; plaintiff never tendered any money to the Forest Preserve for providing services to students; the Forest Preserve did not derive any economic benefit from plaintiff; the Forest Preserve never excluded him from the ice rink; and plaintiff never called Fox Valley LLC after he was terminated by Centrum.

¶ 22 The Forest Preserve argues that there is no counter-affidavit, document or other writing which shows that it ever did anything with respect to the agreement that plaintiff claims it breached.

The Forest Preserve argues it could not have ratified the agreement or any actions undertaken by Centrum as to that agreement because it would have to have had complete knowledge of the facts and thereafter accept or reject the benefits of the transactions. The Forest Preserve maintains that plaintiff admitted that he had no agreement with the Forest Preserve, so he could not prevail on his contract claims.

¶ 23 Centrum argues that plaintiff's allegations raise the issue of assumption of a contract, rather than ratification of a contract, because the question is whether the Forest Preserve was impliedly bound by Fox Valley LLC's liabilities under the employment agreement, and not whether the Forest Preserve's actions served to validate an otherwise invalid employment agreement. Centrum argues that plaintiff never had a contractual relationship with the Forest Preserve. Centrum points to Myers' statements in her affidavit and argues that her affirmations are buttressed by plaintiff's admissions that he never entered into an agreement with the Forest Preserve, spoke to a member of the Forest Preserve regarding his employment, or forwarded to the Forest Preserve any payments he received from his students. Centrum states that it is uncontested that plaintiff essentially continued to act as the in-house hockey director for the three weeks, but it argues that that does not bear on the question of whether the Forest Preserve, by its own actions, impliedly assumed the employment agreement. Centrum argues that the Forest Preserve took no action in regards to plaintiff or the employment agreement and in no way benefitted from the agreement, and the Forest Preserve owned the ice arena for just three short weeks when plaintiff was terminated. Centrum argues that these circumstances clearly demonstrate that the Forest Preserve never assumed the employment agreement, impliedly or otherwise.

¶ 24 Centrum additionally argues that, under the licensing agreement, only it, and not the Forest Preserve, had the power to assume the employment agreement. Centrum argues that the license agreement gave it the right to use the ice arena for ice skating activities and the only rights retained by the Forest Preserve included the use of office space on the third floor, minor rights such as using the third floor lobby, and the rights of ingress and egress. Centrum argues that only it had the sole right to either assume or reject plaintiff's employment agreement, so even if the Forest Preserve had attempted to do so, the assumption would not have been valid or enforceable. Therefore, argues Centrum, plaintiff also cannot rely on the three-week delay in his termination to establish the existence of a contractual relationship with the Forest Preserve.

¶ 25 Centrum also argues that even if plaintiff received health insurance during this time, Centrum would have been the party providing it because Centrum was in control of the ice arena, and it does not create a genuine issue of material fact as to whether the Forest Preserve assumed plaintiff's employment agreement. Centrum further argues that although the Forest Preserve did not deny that it learned of the employment agreement after October, 1, 2008, its awareness was irrelevant, because the Forest Preserve was without authority to take any action towards plaintiff.

¶ 26 We conclude that the trial court properly granted summary judgment for the Forest Preserve on count I. This is true whether we apply the doctrine of ratification, as the trial court cited in its order, or the doctrine of assumption, which Centrum argues is proper under the allegations. The elements of breach of contract are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) injury to the plaintiff. *Asset Exchange II, LLC v. First Choice Bank*, 2011 IL App (1st) 103718, ¶ 37. Thus, to survive summary

judgment, plaintiff was required to make a showing that he either had a contract with the Forest Preserve, or there was a genuine issue of material fact regarding the existence of such a contract.

¶ 27 It is undisputed that the Forest Preserve never directly entered into a written or oral contract with plaintiff. The issue is therefore whether the Forest Preserve assumed or ratified plaintiff's employment contract with Fox Valley LLC. We look first at assumption. In general, a corporation that purchases the assets of another corporation is not liable for the transferor's debts or liabilities. *Vernon v. Schuster*, 179 Ill. 2d 338, 344-45 (1997). This rule of successor corporate nonliability was “ ‘developed as a response to the need to protect bonafide purchasers from unassumed liability.’ ” *Id.* at 345, quoting *Tucker v. Paxson Machine Co.*, 645 F.2d 620, 623 (8th Cir. 1981). It protects against both contractual obligations and tort liability. *Oxford Clothes XX, Inc. v. Expeditors International of Washington, Inc.*, 127 F.3d 574, 578-79 (7th Cir. 1997) (applying Illinois law). However, there are four exceptions to such nonliability: (1) where there is an express or implied agreement of assumption; (2) where the transaction amounts to a consolidation or merger; (3) where the purchaser is merely a continuation of the seller; or (4) where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Vernon*, 179 Ill. 2d at 345. Here, only the first exception could arguably apply. It is undisputed that there was no express agreement of assumption, leaving the question of whether there was an implied agreement of assumption.

¶ 28 Illinois appellate courts have looked to the contract provisions between the selling and purchasing companies to determine whether the first exception applies. See *Myers v. Putzmeister, Inc.*, 232 Ill. App. 3d 419, 423-24 (1992); *Green v. Firestone Tire & Rubber Co.*, 122 Ill. App. 3d 204, 209-10 (1984); see also *Joseph Huber Brewing Co. v. Pamado, Inc.*, No. 5-C-2783 (N. D. Ill. 2006), slip op. at 9 (“first exception of express or implied assumption of liability focuses in great if

not exclusive part on contractual terms between the purchasing company and the selling company”). Here, plaintiff has identified no terms, nor do we observe any, in the contracts between the Forest Preserve and Fox Valley LLC that would indicate an assumption of plaintiff’s employment contract.

¶ 29 That being said, we recognize that an implied assumption of liability, by its very name, would seem to indicate something that was not explicitly expressed, such as in a contract. See *Fararo v. Sink LLC*, Nos. 01-C-6956, 01-C-6957, slip op. at 3 (N.D. Ill. 2002). The party asserting liability must present evidence sufficient to indicate an intent by the buyer to pay the debts of the seller. *Ryan Beck & Co., Inc. v. Campbell*, No. 02-C-7016, slip op. at 3 (N.D. Ill. 2002). Here, it is undisputed that plaintiff continued to essentially act as the in-house hockey director for three weeks after the Forest Preserve purchased the ice arena. However, plaintiff’s actions alone do not show that the Forest Preserve intended to assume the employment contract. Cf. *Fararo*, Nos. 01-C-6956, 01-C-6957, slip op. at 4 (although the plaintiffs continued to place company products in catalogs for up to six weeks after the company was sold, it was not relevant to the question of whether the company’s buyer assumed the obligation to pay the plaintiffs’ commissions when the buyer purchased the company’s assets).

¶ 30 While plaintiff argues that he continued to receive health insurance, there is no evidence that the Forest Preserve was providing that insurance, as opposed to Centrum, the party that was running the rink. It is undisputed that plaintiff never spoke to anyone from the Forest Preserve about his employment contract before he was terminated and never paid the Forest Preserve revenue from his hockey program. Although plaintiff seems to infer that the Forest Preserve could have benefitted from the money collected for his programs from credit cards processed by Centrum, he admitted that did not know whether the Forest Preserve made any money off of his employment agreement. Myers

averred in her deposition that the Forest Preserve never received any money or economic benefit from plaintiff's employment agreement with Fox Valley LLC and knew nothing about the number of students plaintiff enrolled. Based on the lack of a counteraffidavit, these facts must be taken as true. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 14 (if not contradicted by counteraffidavit, facts in an affidavit supporting a motion for summary judgment are admitted and must be taken as true for purposes of the motion). Given the complete lack of communication or interaction on any level between plaintiff and the Forest Preserve, along with the lack of any benefit to the Forest Preserve from plaintiff's employment agreement, we conclude that there was no question of material fact that the Forest Preserve did not show an intent to assume plaintiff's employment contract.

¶ 31 We now turn to the doctrine of ratification. Defendant cites *Harris Trust & Savings Bank v. Joanna-Western Mills Co.*, 53 Ill. App. 3d 542 (1977), for the proposition that ratification is a question of fact not appropriately decided upon summary judgment. There, the court stated that the "question of implied ratification *in the instant case* is one of fact, deserving of a full trial on its merits." (Emphasis added.) *Id.* at 552. Thus, the case does not say that the question of ratification may never be resolved by summary judgment. Indeed, our supreme court has held that summary judgment can be granted on a question of ratification where there is no question of material fact. See *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 15 (2004).

¶ 32 In the context of contracts, ratification is defined as a "person's binding adoption of an act already completed but either not done in a way that originally produced a legal obligation or done by a third party having at the time no authority to act as the person's agent." Black's Law Dictionary 1268-69 (7th ed. 1999). In the area of agency, ratification takes place when the principal learns of

an unauthorized transaction but then retains benefits of the transaction or takes a position inconsistent with nonaffirmation. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 56 (2009). The principle must have full knowledge of the act and manifest an intent to abide and be bound by the transaction. *Id.* Ratification may be inferred from the circumstances, including long term acquiescence to the benefits of an allegedly unauthorized transaction, even after notice. *Id.* Municipalities may ratify contracts that are not expressly prohibited by law. *Ryan v. Warren Township High School District No. 121*, 155 Ill. App. 3d 203, 206 (1987).

¶ 33 Here, regardless of whether the Forest Preserve knew of plaintiff's employment contract after it purchased the ice arena, plaintiff's ratification argument fails because "[i]f there is no benefit [to the party alleged to have ratified], ratification will not be implied." *Horwitz*, 212 Ill. 2d at 15. As discussed, we must take as true Myers's statement that the Forest Preserve never received any money or economic benefit from plaintiff's employment agreement, because plaintiff did not provide a counteraffidavit or evidence to the contrary. See also *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004) ("If the party moving for summary judgment supplies facts that, if not contradicted, would warrant judgment in its favor as a matter of law, the opposing party cannot rest on its pleadings to create a genuine issue of material fact."). Given the absence of any benefit to the Forest Preserve from the employment contract, especially when considered along with the absence of any interaction or communication between the Forest Preserve and plaintiff about the contract, there is no genuine issue of material fact regarding ratification.

¶ 34 Plaintiff next argues that the trial court erred in dismissing counts II and III, alleging tortious interference of contract. Count II was against the Forest Preserve and alleged, as an alternative to count I, that the Forest Preserve tortiously interfered with plaintiff's contract with Fox Valley LLC.

Count III was against Centrum and alleged that it tortiously interfered with plaintiff's contract, as ratified by the Forest Preserve.

¶ 35 Tortious interference with a contract contains the following elements: (1) the existence of a valid and enforceable contract between the plaintiff and another party; (2) the defendant's awareness of the contract; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by the other, caused by the defendant's conduct; and (5) damages. *Seip v. Rogers Raw Material Fund, L.P.*, 408 Ill. App. 3d 434, 444 (2011). Plaintiff's sole argument on this issue is as follows. The trial court improperly dismissed count I because there are genuine issues of material fact as to the ratification of the employment agreement, and "[t]hese same facts are in dispute prohibiting summary judgment as to Counts II and III."

¶ 36 We have already determined that the trial court did not err in dismissing count I, so plaintiff may not rely on that count to support count III. That is, because we have concluded that there is no question of material fact that the Forest Preserve did not ratify the employment agreement, there was no contract between plaintiff and the Forest Preserve with which Centrum could have tortiously interfered. Accordingly, the trial court correctly granted summary judgment for Centrum on count III.

¶ 37 Plaintiff has not articulated any additional argument on count II regarding how the Forest Preserve caused Fox Valley LLC to breach the employment agreement, thereby forfeiting any such argument for review. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (points not argued in the appellant's brief are forfeited and may not be raised in the reply brief); *People v. Jacobs*, 405 Ill. App. 3d 210, 218 (2010) (the appellant must clearly define issues, cite pertinent authority, and present cohesive arguments; the appellant may not impose the burden of argument and research on

the appellate court, nor is it the court's role to act as advocate or search the record for error). Therefore, we affirm the trial court's grant of summary judgment for the Forest Preserve on count II.

¶ 38 Last, plaintiff argues that the trial court improperly dismissed counts IV, V, and VI, because there are genuine issues of material fact to establish tortious interference with prospective economic advantage. The elements of this tort are: (1) the plaintiff's reasonable expectancy of entering into a valid business relationship; (2) the defendant's knowledge of the expectancy; (3) the defendant's intentional and unjustified interference that caused a breach or termination of the expectancy; and (5) resulting damages to the plaintiff. *Jim Mullen Charitable Foundation v. World Ability Federation, NFP*, 395 Ill. App. 3d 746, 761 (2009).

¶ 39 The Forest Preserve argues that plaintiff has not shown that it had any knowledge of any expectancy or future business he had in his agreement with Fox Valley LLC. The Forest Preserve also argues that this claim is barred by the limitation period set forth in the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act). 745 ILCS 10/8-101 (West 2008).

¶ 40 We agree with the Forest Preserve that count VI is barred by the limitations period in the Tort Immunity Act. Section 8-101(a) states:

“No civil action other than an action [arising out of patient care] may be commenced in any court against a local entity or any of its employees for an injury unless it is commenced within one year from the date the injury was received or the cause of action accrued.” 745 ILCS 10/8-101(a) (West 2008).

Forest preserve districts are included in the definition of local public entity. 745 ILCS 10/1-206 (West 2008). The purpose of the one-year limitation is to encourage early investigation of claims against local public entities, allowing prompt settlement for meritorious claims and for governmental entities to consider potential liabilities when planning budgets. *Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan District*, 238 Ill. 2d 262, 279 (2010). The limitations period does not apply to claims seeking restitution, but it does apply to claims of damages from tort. See *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 258 (2004). Here, plaintiff alleged that he was terminated in October 2008, but he did not file suit until February 2010, more than one year later. Therefore, his claim of tortious interference with prospective economic advantage against the Forest Preserve is time-barred by section 8-101(a).

¶ 41 We now look at counts IV and V, alleging tortious interference with prospective economic advantage against Centrum. In count IV, plaintiff alleged in relevant part as follows. He had a reasonable expectation that he was entering into a valid business relationship with the Forest Preserve with respect to the hockey programs offered at the ice arena. Centrum was aware of plaintiff's prospective advantage, and by purposely excluding plaintiff from the use and control of the programs and students at the ice arena, prevented plaintiff's legitimate expectancy from ripening into a valid business relationship.

¶ 42 On appeal, plaintiff argues that he had a reasonable expectancy of entering into a valid relationship with the Forest Preserve. Similar to the other counts, plaintiff argues that after the Forest Preserve purchased the ice arena, it honored the terms and conditions of his employment agreement, and plaintiff continued to operate the hockey programs, recruit and enroll students, and receive health insurance. Plaintiff maintains that the Forest Preserve received an economic benefit.

Plaintiff argues that, given the Forest Preserve's actions, he clearly expected that his continued efforts and the benefits they created for defendants would ripen into a valid business relationship, and a genuine issue of material fact exists regarding this issue.

¶ 43 Centrum argues that plaintiff had no reasonable business expectancy with the Forest Preserve. Centrum argues that Myers' affidavit shows that the Forest Preserve never contemplated entering into a business relationship with plaintiff, but even otherwise, the Forest Preserve would have lacked authority to do so because, pursuant to the license agreement, Centrum was the only entity with the authority to hire or retain plaintiff as a hockey instructor. Centrum also argues that because plaintiff never discussed employment with the Forest Preserve and was previously warned that his job would be in jeopardy if Centrum were to take over, he cannot establish that he reasonably expected to enter into an agreement with the Forest Preserve.

¶ 44 We agree with Centrum that there was no genuine issue of material fact regarding whether plaintiff had a *reasonable* expectancy of entering into a business relationship with the Forest Preserve. The license agreement and the parties' actions show that Centrum was in charge of running the ice arena, so plaintiff could not have reasonably expected to enter an agreement with the Forest Preserve, which was not involved in the arena's daily operations and with which he had never communicated despite his presence at the arena for several weeks after the arena's purchase. Even otherwise, a plaintiff states a cause of action of tortious interference with prospective economic advantage only if he alleges a business expectancy with a specific third party along with an action by the defendant *directed towards that third party*. *Associated Underwriters of America Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1020 (2005). Here, the third party at issue is the Forest Preserve. Although there was evidence that Centrum took actions directed at plaintiff, plaintiff did

not allege any interference by Centrum directed at the Forest Preserve, nor was there any evidence of any such actions. As such, the trial court did not err by granting Centrum summary judgment on IV. *Cf. Douglas Theater Corp. v. Chicago Title & Trust Co.*, 288 Ill. App. 3d 880, 888 (1997) (the trial court correctly dismissed count of tortious interference with prospective advantage, where the plaintiff failed to alleged any conduct by the defendant directed at third parties); *Schuler v. Abbott Laboratories*, 265 Ill. App. 3d 991, 995 (1993) (where the defendant told the plaintiff that it would seek enforcement of a non-competition agreement if the plaintiff went to another company, the defendant did not take any action directed at a third party; “the interfering action [must] be directed in the first instance at the third party”); *Zakutansky v. Bionetics Corp.*, 806 F.Supp. 1362, 1366 (N.D. Ill. 1992) (the defendant’s activities must center on the third party).

¶ 45 In count V, plaintiff alleged that he had a reasonable expectation that he was entering into a valid relationship with each individual hockey student that he recruited and enrolled for the hockey programs at the ice arena. As with the prior count, plaintiff alleged that Centrum was aware of his prospective advantage but prevented his legitimate expectancy from ripening into a valid business relationship by excluding him from the use and control of the programs and students at the ice arena.

¶ 46 Centrum argues that plaintiff has forfeited any argument on count V by failing to discuss it in his brief. We agree, as plaintiff’s argument on tortious interference with prospective economic advantage does not even mention an expectation of a business relationship with his hockey students. Plaintiff argues in his reply brief that he appealed the entirety of the trial court’s ruling, which did not address the business expectancy associated with his students, leaving the issue “ripe” for this court to determine. Plaintiff also argues that he may respond to the issue in his reply brief because Centrum raised it in its appellee’s brief.

¶ 47 Although the trial court did not explicitly mention its rationale for granting summary judgment on the counts alleging tortious interference with prospective economic advantage, this does not excuse plaintiff from adequately briefing the issue in his appellant's brief. Plaintiff's failure to do so for count V results in forfeiture of the issue of whether the trial court erred in granting summary judgment on this count. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (points not argued in the appellant's brief are forfeited and may not be raised in the reply brief); *Jacobs*, 405 Ill. App. 3d at 218.

¶ 48

III. CONCLUSION

¶ 49 For the foregoing reasons, we affirm the judgment of the Kane County circuit court.

¶ 50 Affirmed.