2012 IL App (2d) 111175-U
No. 2-11-1175
Order filed August 29, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GALLAGHER BASSETT SERVICES, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-CH-1033
	)	
MIKE VACALA, LISA POLANCICH, and	)	
YORK RISK SERVICES GROUP, INC.,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice McLaren and Justice Burke concurred in the judgment.

ORDER

Held: The trial court did not err in dismissing plaintiff's complaint pursuant to section 2-619.1 of the Code. Plaintiff's employment agreement with defendants Vacala and Polancich were unenforceable due to insufficient consideration. Plaintiff's claim that defendant York tortiously interfered with a contract was defeated by an affirmative matter because a valid agreement between plaintiff and defendants Vacala and Polancich, respectively, did not exist. Finally, plaintiff failed to sufficiently allege misappropriation of trade secrets and tortuous interference of prospective economic advantage.

¶ 1 In April 2011, plaintiff, Gallagher Bassett Services, Inc., brought the current action against defendants, Mike Vacala, Lisa Polancich, and York Risk Services Group, Inc. (York) (collectively,

defendants). Plaintiff alleged that Vacala and Polancich, who were former employees of plaintiff and current employees of York, breached their respective employment agreements with plaintiff. Both agreements contained a restrictive covenant provision. Plaintiff further alleged that defendants misappropriated plaintiff's trade secrets; York tortiously interfered with plaintiff's contracts with Vacala and Polancich, respectively; and defendants tortiously interfered with plaintiff's prospective business advantage. Thereafter, the trial court granted defendants' motion to dismiss plaintiff's second amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619.1 (West 2010)). Contending that the trial court erred in granting defendants' motion, plaintiff now appeals. We affirm.

¶ 2 I. Background

¶ 3 The pleadings reflect that plaintiff is a corporation engaged in insurance third-party administration. On October 1, 2010, plaintiff acquired assets from its competitor, GAB Robins North America, Inc. (GAB). Vacala and Polancich were employed by GAB. After acquiring assets from GAB, plaintiff hired Vacala as a branch manager and Polancich as a senior claims adjuster. Both Vacala and Polancich were at-will employees at plaintiff's Westmont office.

¶ 4 Soon after hiring Vacala and Polancich, plaintiff asked them to electronically acknowledge a document entitled "Employment Agreement." Paragraph 15(A) of the document provided:

> "[T]he Employee understands and agrees that for a period of two (2) years following the termination of his employment for any reason whatsoever, he will not, directly or indirectly, solicit, place, accept, aid, counsel or consult in the renewal, discontinuance or replacement of any insurance (including self-insurance) by, or handle self-insurance programs, insurance claims, risk management services or other insurance administrative or service functions for,

> any existing [c]ompany account or any actively solicited prospective account of the [c]ompany for which he performed any of the foregoing functions during the two-year period immediately preceding such termination."

The document also placed restrictions on the use and disclosure of confidential information. Pursuant to the document, confidential information included, but was not limited to:

> "[D]ata relating to [plaintiff]'s unique programs, procedure and techniques; the criteria and formulae used by [plaintiff] in pricing its products and claims management, loss control and information management services, the structure and pricing of special products or services that [plaintiff] has negotiated with various clients, lists of prospective clients ***."

The document provided that the employee agreed "not to divulge any [c]onfidential [i]nformation that constitutes a trade secret of [plaintiff] or make use of it for [their] own purpose or the purpose of another." The document further provided that this restriction would be in place for a two-year period following the termination of employment "for any reason whatsoever."

¶ 5 On October 11, 2010, Polancich attended a meeting held by plaintiff. During the meeting, Chris Neigal, a representative from plaintiff's human resources department, explained that the restrictive covenant in the "Employment Agreement" was intended to apply only to sales people. Neigal explained that the language was "not a non-compete" agreement but a "non-solicit" agreement. Thereafter, Polancich electronically acknowledged the document.

¶ 6 On October 14, 2010, Vacala met with John Zitko, plaintiff's zone vice president. During the meeting, Vacala expressed concern about the language contained in section 15(A) of the document. Zitko advised Vacala to speak with Zitko's superiors, Mike Repoli and Carl Mussenden. Later that day, Vacala emailed Repoli and Mussenden stating that he had "trouble with the non-

compete clause in the Employee Agreement," and asked if there was "any possibility of a compromise on this paragraph, [i.e.,] if the termination, or change in position/salary is by [plaintiff], this paragraph is void." Repoli responded to Vacala's email a few days later, stating that he was "working with [plaintiff] to revise. Will be back to you asap[.]" A few days later, Vacala responded to Repoli's email by asking, "Any news on this? Our deadline is this Friday."

¶ 7 On October 21, 2010, Repoli called Vacala and informed him that he would not be held to the restrictive covenant language in the document. During this conversation, Vacala told Repoli that he would need the ability to bring business with him to get another job at the same salary if his employment with plaintiff were to end. Repoli did not respond to these comments, but sent Vacala an email later that day, stating:

> "confirming our confidential discussion of today[.] you may feel comfortable in signing the agreement as presented to you in the on[-]boarding process[.] [Y]ou will not be bound by the restrictive language of the non compete[.] I will provide you with alternative language in the near future[.]"

Vacala electronically acknowledged the document the following day by entering the last four digits of his social security number into a computer.

¶ 8 On November 1, 2010, Repoli sent Vacala an email explaining that the "non[-]compete provision in your employment agreement with [plaintiff] is an important provision." Repoli set forth the alternative language that would apply to Vacala's employment:

> "In the event that our employment relationship with you is terminated, [plaintiff] agrees to waive the provisions of paragraph [15(A)] of your agreement with [plaintiff], but only to the extent those provisions relate to the following specific activities: 'accept, aid,

counsel or consult in the renewal, discontinuance or replacement of any insurance (including self-insurance) by, or handle self-insurance programs, insurance claims, risk management services or other insurance administrative or service functions' as set forth [15(A)] (for the avoidance of doubt, this waiver does not apply to the obligations not to solicit or place).

Because this provision is important to us, this waiver is dependent on your agreement to keep this waiver confidential. This waiver will not affect your obligations in any other respect, including but not limited to those applicable to confidential information.

Please respond confirming your agreement regarding this (1) contractual addendum, and (2) the confidentiality of this waiver."

On November 2, 2010, Vacala responded to Repoli:

"My objection to the clause was the restriction to place existing business I developed over my years with [GAB], with another [third-party administrator] if I was terminated. Looks like the revision does not waive that. Am I reading that correctly?"

Repoli responded to Vacala's email that day, stating:

"Yes I think you are. The intent is to implement and enforce non[-]solicitation provisions which prevent an employee from competing with [plaintiff] for customers of [plaintiff] after the employee is disengaged from [plaintiff]. This is an element I am not in a position to remove. NOTE – The actual language of the agreement and the amendment prevail over this e mail."

Vacala replied later that day, stating, "[I] understand, thanks for the effort."

¶ 9 On January 26, 2011, Vacala resigned from his position with plaintiff, with his last day being February 7, 2011. Before his last day of employment, Vacala told other employees at the Westmont

office that he planned on "taking" a client with him. This client's claims had been processed out of plaintiff's Westmont office and represented approximately $500,000 in annual revenue. Subsequently, York hired Vacala in a similar position and the client moved its business to York.

¶ 10 On March 3, 2011, Polancich resigned from her position with plaintiff. That same day, Polancich accepted an offer of employment from York. One of Polancich's clients, worth approximately $200,000 in annual revenue, subsequently split its third-party administration services between plaintiff and York.

¶ 11 On April 1, 2011, plaintiff filed its second amended complaint. Count I alleged breach of contract against Vacala; count II alleged breach of contract against Polancich; count III alleged actual and threatened misappropriation of trade secrets against defendants pursuant to the Illinois Trade Secrets Act (the Trade Secrets Act) (765 ILCS 1065/1 *et seq.* (West 2010)); count IV alleged tortious interference with contract against York, in that York tortiously interfered with plaintiff's employment agreements with Vacala and Polancich; and count V alleged tortious interference with prospective economic advantage against defendants. Plaintiff attached to its second amended complaint copies of the "Employment Agreement" that Vacala and Polancich had acknowledged.

¶ 12 On April 28, 2011, defendants filed a motion to dismiss plaintiff's second amended complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)). In support of their motion, defendants argued that there was not a "meeting of the minds" between either plaintiff and Vacala or plaintiff and Polancich, and the agreements lacked sufficient consideration. Defendants further argued that plaintiff could not sustain its tortious interference claim against York because there was no enforceable agreement between either plaintiff and Vacala or plaintiff and Polancich. Finally, defendants argued that plaintiff failed to allege sufficient facts to support counts

III and V. Defendants attached to their motion a declaration from Vacala outlining his email correspondence with plaintiff's supervisors, including Repoli, and further attached copies of the email correspondence. Defendants also attached a declaration from Polancich. Polancich claimed in her declaration that Neigal told her at the October 11, 2010, meeting that the restrictive covenant language in the document only applied to sales people.

¶ 13 On May 16, 2011, plaintiff filed its response. Plaintiff argued that, because the language contained in the Employment Agreement was clear and unambiguous, parol evidence could not be used to alter its terms. Plaintiff further argued that, because it had a valid contract with Vacala and Polancich, an affirmative matter did not defeat count IV and that counts III and V sufficiently alleged a valid cause of action.

¶ 14 On June 10, 2011, following a hearing, the trial court granted defendants' motion to dismiss. The trial court concluded that plaintiff's "Employment Agreement" did not constitute a valid agreement because there was no meeting of the minds between plaintiff and Vacala or plaintiff and Polancich. The trial court found that the parol evidence rule was not applicable because an enforceable agreement did not exist. The trial court also found that there was insufficient consideration to support plaintiff's "Employment Agreement" because both Vacala and Polancich ended their employment with plaintiff within months after allegedly entering into the agreements. With respect to the other counts, the trial court found that, because there was no valid agreement, defendants were not "prohibited from practicing their usual and normal occupation," and that their "exercise of competition in the form that's been set out here [did not] constitute tortious interference."

¶ 15 Plaintiff timely appealed.

¶ 16 II. Discussion

¶ 17 The only issue in this appeal is whether the trial court erred in dismissing plaintiff's second amended complaint pursuant to section 2-619.1 of the Code. Plaintiff argues that its breach of contract claims were sufficiently pleaded and not defeated by an affirmative matter raised by defendants. In support of this argument, plaintiff asserts that Vacala and Polancich were bound by the clear and unambiguous terms of the employment agreements; parol evidence was improperly admitted; and Vacala and Polancich's employment agreements were supported by adequate consideration. Plaintiff further argues that its claims for actual and threatened misappropriation of trade secrets and tortious interference with prospective economic advantage were sufficiently pleaded. Finally, plaintiff argues that its claim for tortious interference with a contract was not defeated by an affirmative matter raised by defendants.

¶ 18 Section 2-619.1 of the Code provides that a motion with respect to pleadings pursuant to sections 2-615 and 2-619 of the Code may be filed together as a single motion. 735 ILCS 5/2-619.1 (West 2010). A motion to dismiss pursuant to section 2-615 of the Code tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2–619 admits the legal sufficiency of the complaint but asserts an affirmative defense that defeats the claim. *Solaia Technology LLS v. Specialty Publishing Co.*, 221 Ill. 2d 558, 578-79 (2006). In considering a combined motion to dismiss pursuant to section 2-619.1, we accept all well-pleaded facts in the complaint as true, drawing all reasonable inferences from those facts in favor of the nonmoving party. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 402 (2009). When reviewing a decision to grant a motion pursuant to section 2-615, our inquiry is whether the allegations of the complaint, construed in the light most favorable to the nonmoving party, are sufficient to establish a cause of action upon

which relief may be granted. *Weidner v. Karlin*, 402 Ill. App. 3d 1084, 1086 (2010). Under section 2-619(a)(9), our inquiry is whether an affirmative matter, *i.e.*, "some kind of defense 'other than a negation of the essential elements of the plaintiff's cause of cation' " defeats the claim. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 120-21 (2008) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993)). Our review under either section is *de novo* (*King v. First Capital Financial Services Corp.* 215 Ill. 2d 1, 12 (2005)), and we can affirm on any basis present in the record (*Raintree Homes, Inc. v. The Village of Long Grove*, 209 Ill. 2d 248, 261 (2004)).

¶ 19 Guided by these principles, we will address each count of plaintiff's second amended complaint.

¶ 20 A. Count I: Breach of Contract Against Vacala

¶ 21 Count I of plaintiff's second amended complaint alleged that Vacala breached his restrictive covenant with plaintiff. A post-employment restrictive covenant is generally held to be enforceable if it is reasonable and necessary to protect a legitimate business interest of the employer. *Abel v. Fox,* 274 Ill. App. 3d 811, 813 (1995). Before determining the reasonableness of such a restrictive covenant, however, a court must first find that the covenant was ancillary to a valid contract and determine whether the covenant was supported by adequate consideration. *Brown & Brown, Inc. v. Mudron*, 379 Ill. App. 3d 724, 728 (2008). With respect to consideration, " '[c]ontinued employment for a substantial period is sufficient consideration to support an employment agreement.' " *Diederich Insurance Agency, LLC v. Smith*, 2011 IL App (5th) 100048, ¶ 14 (quoting *Corroon & Black of Illinois, Inc. v. Magner*, 145 Ill. App. 3d 151, 163 (1986)). In general, there must be at least two years or more of continued employment to constitute adequate consideration.

Diederich Insurance Agency, ¶ 15 (citing *Lawrence v. Allen, Inc. v. Cambridge Human Resource Group, Inc.*, 292 Ill. App. 3d 131, 181 (1997)). Absent adequate consideration, an otherwise reasonable restrictive covenant will not be enforceable. *Millard Maintenance Service Co. v. Bernero*, 207 Ill. App. 3d 736, 744 (1990).

¶ 22 In this case, even if we deemed the restrictive covenant reasonable, it would not be enforceable with respect to Vacala because it lacked sufficient consideration. Vacala acknowledged plaintiff's "Employee Agreement" on October 22, 2010. He resigned from his position, however, on January 26, 2011, less than four months later. See *Diederich Insurance Agency*, 2011 IL App (5th) 100048, ¶ 15 (holding that three months of continued employment did not constitute sufficient consideration for a post-employment restrictive covenant). We are cognizant that Vacala resigned from his position, but that circumstance does not change the analysis or outcome. See *id.* ("The fact that defendant quit does not change the analysis.").

¶ 23 Plaintiff argues in passing that sufficient consideration existed to support Vacala's restrictive covenant because Vacala had access to confidential information while employed with plaintiff. Plaintiff cites no Illinois case law to support this proposition, but instead relies on case law from other jurisdictions. We decline to extend Illinois law to provide that access to confidential information can constitute adequate consideration for a restrictive agreement in lieu of continued employment for a substantial period.

¶ 24 Accordingly, although we recognize that whether sufficient consideration to support a post-employment restrictive covenant exists should not be reduced to a numeric formula (see *Woodfield Group, Inc. v. DeLisle*, 295 Ill. App. 3d 935, 943 (1998)), we believe that the brief duration of Vacala's employment with plaintiff was not sufficient consideration to enforce the restrictive

agreement. Therefore, the trial court properly dismissed count I of plaintiff's second amended complaint pursuant to section 2-619(a)(9).

¶ 25 B. Count II: Breach of Contract Against Polancich

¶ 26 Count II of plaintiff's second amended complaint alleged that Polancich breached her restrictive covenant with plaintiff. As previously discussed, such an agreement will not be enforceable absent sufficient consideration (*Bernero*, 207 Ill. App. 3d at 744), and generally, two years of continued employment is considered sufficient consideration (*Diederich Insurance Agency*, 2011 IL App (5th) 100048, ¶ 15). Here, Polancich electronically acknowledged plaintiff's "Employment Agreement" on October 11, 2010 and resigned approximately five months later. That brief period of continued employment is not sufficient consideration to uphold the restrictive covenant in plaintiff's employment agreement. See *Mudron*, 379 Ill. App. 3d at 729 (holding that approximately seven months of continued employment was not sufficient consideration under Illinois law to support a restrictive covenant even though the defendant resigned from her position). Accordingly, the trial court properly dismissed count II of plaintiff's second amended complaint pursuant to section 2-619(a)(9) of the Code.

¶ 27 C. Count III: Violation of the Trade Secrets Act

¶ 28 Count III of plaintiff's second amended complaint alleged actual and threatened misappropriations of trade secrets against defendants in violation of the Trade Secrets Act. Plaintiff argues that it sufficiently alleged that its confidential information constitutes a trade secret, including information regarding its unique claim management program, criteria and formulae used by plaintiff to price its services, the structure and pricing of products plaintiff has negotiated with clients, lists of prospective clients, the identity of key individuals with plaintiff's clients, the composition and

organization of plaintiff's clients, and peculiar risks inherent in plaintiff's operations. Plaintiff further maintains that it sufficiently alleged that defendants misappropriated its trade secrets by alleging examples of how defendants purportedly used those secrets and that defendants improperly misappropriated its trade secrets in violation of their respective employment agreements.

¶ 29 "To set forth a cause of action for violation of the [Trade Secrets] Act, a plaintiff must allege facts that the information at issue was: (1) a trade secret; (2) misappropriated; and (3) used in the defendant's business." *Strata Marketing, Inc. v. Murphy*, 317 Ill. App. 3d 1054, 1068 (2001). Affording protection to trade secrets reflects a balance of conflicting societal and economic interests. *Delta Medical Systems v. Mid-America Medical Systems, Inc.*, 331 Ill. App. 3d 777, 791 (2002). Where an employer has invested substantial resources, such as time, money, and effort, to obtain a secret advantage, the secret should be protected from an employee who obtains it through improper means. *Id.* (citing *ILG Industries, Inc. v. Scott*, 49 Ill. 2d 88, 93 (1971)). However, in a competitive market, an employee must be entitled to utilize the general knowledge and skills acquired through experience in pursuing a chosen profession. *Delta Medical Systems*, 331 Ill. App. 3d at 791. Whether the information sought to be protected constitutes a trade secret "focuses fundamentally" on the secrecy of the information. *System Development Services, Inc. v. Haarmann*, 389 Ill. App. 3d 561, 572 (2009). Thus, to show that information is a trade secret, a plaintiff must show that the information was sufficiently secret to give it a competitive advantage and that it took affirmative measures to prevent others from acquiring or using the information. *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1090 (2007). Courts consider the following facts as significant in determining whether a trade secret exists:

> " '(1) [T]he extent to which the information is known outside of [the plaintiff's] business; (2) the extent to which it is known by employees and others involved in [the plaintiff's] business; (3) the extent of measures taken by [the plaintiff] to guard the secrecy of the information; (4) the value of the information to [the plaintiff] and to [the plaintiff's] competitors; (5) the amount of effort or money expended by [the plaintiff] in developing the information; [and] (6) the ease or difficulty in which the information could be properly acquired or duplicated by others.' " *Strata Marketing*, 317 Ill. App. 3d at 1068 (quoting *ILG Industries*, 49 Ill. 2d at 93).

¶ 30 In addition, Illinois courts recognize the inevitable disclosure doctrine. *Strata Marketing*, 317 Ill. App. 3d at 1069-70. In determining whether the disclosure of trade secrets is inevitable, courts consider the level of competition between the former employer and the new employer; whether the employee's position with the new employer was comparable to the position he held with the former employer, and the actions that the new employer took to prevent the former employer from using or disclosing trade secrets. *Triumph Packaging Group v. Ward*, 834 F. Supp. 2d 796, 809 (N.D. Ill. 2011). Recognizing that broad application of the inevitable disclosure doctrine would constitute an effective bar against employees taking similar positions with competitive entities, courts do not often employ the doctrine. *Id.*

¶ 31 In the current matter, plaintiff failed to sufficiently plead a violation of the Trade Secrets Act. Even if plaintiff's confidential information constituted a trade secret, its second amended complaint contains only general and conclusory allegations that defendants misappropriated that information. Paragraph 111 of plaintiff's second amended complaint alleges that "on information and belief, [d]efendants have actually misappropriated and/or threaten to misappropriate [plaintiff's] trade

secrets in violation of the [Trade Secrets Act]." This is a conclusory allegation, which should be rejected when deciding a motion to dismiss. See *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 743 (2009) (noting that a conclusory allegation should be rejected when deciding a motion to dismiss). Our remaining inquiry, therefore, becomes whether, after disregarding this conclusory statement, plaintiff's second amended complaint alleges sufficient facts of misappropriation. See *Neurosurgery & Spine Surgery, S.C. v. Goldman*, 339 Ill. App. 3d 177, 182 (2003) ("If, after disregarding any legal and factual conclusions, the complaint does not allege sufficient facts to state a cause of action, the trial court must grant the motion to dismiss.").

¶ 32 Plaintiff refers us to its allegations that Vacala and Polancich "had complete and total access to [plaintiff's] confidential information," and that by working with York, both Vacala and Polancich "[are] using and/or inevitably will use [plaintiff's] confidential information for and on behalf of York." Plaintiff further directs us to its allegations contained in paragraphs 70 through 80 of its second amended complaint. Those paragraphs allege that, two days after Vacala left plaintiff employ, a group of restaurant franchises advised plaintiff that it would be using York for its third-party insurance administration. Plaintiff alleged that Vacala "was privy to a significant amount of confidential information" with respect to the restaurant franchises, including "pricing, claim and loss history and the structure of their insurance programs." Therefore, plaintiff alleges that "[t]he only logical conclusion to be drawn *** is not only that this group of restaurant franchises moved to York as a result of Vacala's solicitation, but that the move had been contemplated for some time prior to Vacala's resignation from [plaintiff]." Paragraphs 90 through 93 of plaintiff's second amended complaint make similar allegations against Polancich.

¶ 33 On our review, plaintiff's allegations fail to sufficiently allege misappropriation under the Trade Secrets Act. The Trade Secrets Act defines "[m]isappropriation" through disclosure of a trade secret when a person:

> "(A) used improper means to acquire knowledge of the trade secret, or
>
> (B) at the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was:
>
> (I) derived from or through a person who utilized improper means to acquire it;
>
> (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
>
> (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limits its use; or
>
> (C) before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake. 765 ILCS 1065/2(b) (West 2010).

Thus, "[a] trade secret misappropriation involves the acquisition of a trade secret through improper means, which requires the breach of a confidential relationship or other duty to maintain secrecy." *Seng-Tiong Ho v. Taflove*, 648 F.3d 489, 503 (7th Cir. 2011) (citing 765 ILCS 1065/2(a), (b) (West 2010)).

¶ 34 Here, plaintiff failed to allege that defendants misappropriated its confidential information through improper means. Plaintiff's allegation of misappropriation through improper means was only that Vacala and Polancich violated their respective post-employment contractual obligations. However, as previously discussed, those agreements are unenforceable due to insufficient

consideration. Plaintiff did not allege that defendants were under any additional duty to maintain secrecy. Therefore, because plaintiff failed to sufficiently allege that defendants misappropriated its trade secrets according to the definition of "misappropriated" provided in the Trade Secrets Act, plaintiff did not plead, as a matter of law, a misappropriation of a trade secret.

¶ 35 Finally, we note that plaintiff's allegations that Vacala and Polancich will inevitably disclose its trade secrets constitute conclusory statements, and are thus insufficient. Moreover, plaintiff clarified at oral argument that its claim under the Trade Secrets Act was not predicated on the inevitable disclosure doctrine. Accordingly, the inevitable disclosure doctrine does not save plaintiff's allegations and the trial court properly dismissed count III of plaintiff's second amended complaint.

¶ 36 D. Count IV: Tortious Interference with a Contract Against York

¶ 37 Count IV of plaintiff's second amended complaint alleged that York tortiously interfered with plaintiff's employment agreements with Vacala and Polancich. Specifically, plaintiff alleges that York intentionally and maliciously interfered with plaintiff's respective employment agreements with Vacala and Polancich by inducing them to violate their contractual obligations to plaintiff in an effort to employ them.

¶ 38 The trial court did not err when it dismissed this count pursuant to section 2-619(a)(9) of the Code. To succeed on a claim alleging tortious interference with a contractual relationship, a plaintiff must establish: "(1) the existence of a valid and enforceable contract between the plaintiff and another; (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." *Dopkeen v. Whitaker*, 399 Ill. App. 3d 682, 684 (2010).

Here, even construing the allegations contained in count IV in the light most favorable to plaintiff, plaintiff is unable to establish the existence of a valid and enforceable contract with Vacala and with Polancich. As we previously held, the documents electronically acknowledged by Vacala and Polancich did not contain sufficient consideration to be enforceable. Therefore, because no enforceable agreements between plaintiff and Vacala and plaintiff and Polancich existed, the trial court's dismissal of count IV was proper. See *id.* at 686-88 (dismissing a single-count complaint alleging tortious interference with a contractual relationship because the plaintiff could not establish the existence of a valid contract between itself and another).

¶ 39 E. Count V: Tortious Interference with Prospective Economic Advantage

¶ 40 Finally, plaintiff alleges that defendants tortiously interfered with its prospective economic advantage. Specifically, plaintiff alleges that two days after Vacala's last day of employment, an insurance carrier for a group of restaurant franchises advised plaintiff that it would be using York as its third-party insurance administrator. Plaintiff alleged that "[t]he only logical conclusion to be drawn *** is not only that this group of restaurant franchises moved to York as a result of Vacala's solicitation, but that the move had been contemplated for some time prior to Vacala's resignation from [plaintiff]." Plaintiff further alleged that Vacala solicited another client, was currently soliciting additional clients, and that Polancich improperly solicited a client that nationally sold pontoon boats to split its third-party administration services between plaintiff and York. Plaintiff concludes that defendants:

> "intentionally and unjustifiably interfered with plaintiff's valid business expectancies by, among other things, attempting to induce [plaintiff's] clients and prospective business clients

> to not do business with plaintiff, and by unfairly and improperly diverting business from [plaintiff] to York.
>
> ***
>
> On information and belief, [d]efendants' intentional interference was malicious, unjustified and not privileged because it was accomplished through wrongful means, including but not limited to York inducing Vacala and Polancich to breach their respective [e]mployment [a]greements with [plaintiff]."

¶ 41 To state a cause of action for tortious interference with prospective economic advantage, a plaintiff must allege (1) a reasonable expectancy of entering into a valid business relationship; (2) the defendant's knowledge of that expectancy; (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy; and (4) damage to the plaintiff resulting from the defendant's interference. *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847, 858 (2004) (citing *Voyles v. Sandia Mortgage Corp*., 195 Ill. 2d 288, 300-01 (2001)). The tort recognizes that a person's business relationships constitute a property interest, and therefore, are entitled to protection from unjustified tampering by another. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 373 (2007). Thus, such a claim implies a balancing of societal values, *i.e.*, an individual has a duty not to interfere with the business affairs of another, but the individual may be privileged to interfere, depending on the purpose or methods used or when the interference takes a socially sanctioned form, such as lawful competition. *Id.*

¶ 42 In *Downers Grove Volkswagen, Inc. v. Wigglesworth Imports, Inc.*, 190 Ill. App. 3d 524 (1989), this court discussed the sufficiency of a claim involving tortious interference with prospective business expectancies. In *Downers Grove Volkswagen*, the plaintiff alleged that the

defendant interfered with its business expectancies by sending owners of vehicles, including plaintiff's customers, a brochure that falsely reported the prices plaintiff charged for service inspections. *Id.* at 526. The plaintiff alleged that the defendant should have known that the prices listed in the brochure were false and that the defendant's actions were motivated by malice "with the express intention of maliciously hindering plaintiff's business." *Id.* The trial court dismissed the count after concluding that the plaintiff failed to allege a reasonable business expectancy. *Id.* at 527.

¶ 43 We reversed the trial court's judgment on appeal. *Id.* In doing so, we noted that "one may not simply sue any competitor who lures away customers; however, the privilege of competition is not available to those who use wrongful means to interfere." *Id.* at. 527-28. We concluded that the plaintiff sufficiently alleged wrongful conduct because the alleged nature of the defendant's conduct was a reckless disregard for the truth. *Id.* at. 528. We noted that, while the defendant's motive and interests might have been to compete with the plaintiff's business, there were no societal interests in protecting the defendant's right to publish pricing information about a competitor when it did not know whether that information was true. *Id.*

¶ 44 Although we reached a different conclusion in *Downers Grove Volkswagen*, the same reasoning is instructive here. Unlike *Downers Grove Volkswagen*, in which the plaintiff alleged that the defendant engaged in a reckless disregard for the truth by allegedly distributing false information about the plaintiff's business, the only wrongdoing here plaintiff specifically alleged was that York induced Vacala and Polancich to breach their respective employment agreements. As we discussed above, however, those agreements are unenforceable due to insufficient consideration. Plaintiff's remaining allegations consist of conclusory statements, for example, that, after Vacala and Polancich stopped working for plaintiff, some of plaintiff's clients began using York as a third-party insurance

administrator and that defendants' conduct amounted to an intentional interference that was "malicious, unjustified, and not privileged." Because Illinois is a fact-pleading jurisdiction, conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007). As a result, because plaintiff failed to allege specific facts to support its conclusory allegation that defendants' interference with plaintiff's clients was malicious and unjustified, count V failed to sufficiently allege a cause of action for tortious interference with prospective economic advantage. See generally *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 735 (2009) (noting that a pleading that merely paraphrases the elements of a cause of action in conclusory terms is insufficient, and further, absent the necessary allegations, the general policy favoring the liberal construction of pleadings will not satisfy the requirement that a complaint set forth the facts necessary to recover under the theory of relief asserted). Therefore, the trial court properly dismissed count V of plaintiff's second amended complaint.

¶ 45 III. Conclusion

¶ 46 For the foregoing reasons, we affirm the judgment of circuit court of Du Page County.

¶ 47 Affirmed.