2016 IL App (1st) 14-1793-U

FIRST DIVISION
MAY 16, 2016

Nos. 1-14-1793, 1-14-2668 & 1-14-3087 Consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MERDELIN JOHNSON, Plaintiff-Appellant/Cross-Appellee, v. GENERAL BOARD OF PENSION AND HEALTH BENEFITS OF THE UNITED METHODIST CHURCH, a Not-for-Profit Company, Defendant-Appellee/Cross-Appellant, and AVAYA, INC., a New Jersey Corporation; NICE SYSTEMS, INC., a New Jersey Corporation; BARBARA BOIGEGRAIN; TOM CALANDRIELLO; HELEN EXARHAKOS; KIMBERLY EVANS-VANTREASE; SARAH HIRSEN; ALEXANDRA JUNG; GERTRUDE LIVERNOIS; SHARON MAGGI; DEBBIE REID; MICHELLE BUSH; LARRY LOEPKE; MARLENE IGEL; MARK BUSBIA, as Individuals, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 10 L 62043 Honorable Roger G. Fein, Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: On plaintiff's consolidated appeal, trial court did not err in dismissing with prejudice all but one count of plaintiff's 21-count complaint against defendants;

trial court did not abuse its discretion in denying plaintiff's requests to further amend her complaint; trial court's entry of a directed verdict at the close of plaintiff's case-in-chief at trial was warranted; the trial court did not err in making various evidentiary and discovery-related rulings; imposition of Rule 137 sanctions against plaintiff was not an abuse of discretion but cause remanded to trial court to impose an appropriate level of sanctions. On defendant's cross-appeal, trial court properly found the existence of a valid and enforceable contract.

¶ 2 Plaintiff Merdelin Johnson filed a *pro se* 21-count complaint against defendants General Board of Pension and Health Benefits of the United Methodist Church (General Board), Avaya, Inc. (Avaya), Nice Systems, Inc. (Nice Systems), and 13 current and former employees of the General Board: Barbara Boigegrain; Tom Calandriello; Helen Exarhakos; Kimberly Evans-Vantrease; Sarah Hirsen; Alexandra Jung; Gertrude Livernois; Sharon Maggi; Debbie Reid; Michelle Bush; Larry Loepke; Marlene Igel; and Mark Busbia (collectively, the individual employee defendants). The trial court dismissed with prejudice all but one count of the lawsuit, and the surviving count against the General Board proceeded to a jury trial at which the court entered a directed verdict in favor of the General Board. Subsequently, the trial court granted $16,147.49 in court costs in favor of the General Board and against the plaintiff; and imposed Supreme Court Rule 137 sanctions against the plaintiff in the amount of $197,909.50 in attorney's fees and expenses, to be paid in monthly installments of $150. On appeal, the plaintiff, *pro se*, challenges: (1) the trial court's dismissal with prejudice of all counts against Avaya; (2) the trial court's dismissal with prejudice of all counts against Nice Systems; (3) the trial court's dismissal with prejudice of all but one count against the General Board; (4) the trial court's denial of leave to further amend her complaint; (5) the trial court's entry of a directed verdict in favor of the General Board at the close of the plaintiff's case-in-chief at trial; (6)

various pretrial and trial evidentiary rulings by the trial court; (7) various discovery-related rulings made by the trial court; (8) the trial court's imposition of attorney's fees as Rule 137 sanctions against the plaintiff; and (9) the trial court's order requiring the plaintiff to pay $150 monthly installments to the General Board. On cross-appeal, the General Board argues only that the trial court should have dismissed the plaintiff's breach of contract claim (count 1) against the General Board at the motion to dismiss stage, rather than allowing the claim to proceed to the jury trial. For the following reasons, we affirm in part and vacate in part the judgment of the circuit court of Cook County, and remand this matter for further proceedings.

¶ 3 BACKGROUND

¶ 4 This consolidated appeal and cross-appeal involve a complex procedural and factual background and only a summary of the most pertinent facts are included here. The General Board is a not-for-profit administrative agency of the United Methodist Church and is responsible for managing and administering the retirement, health, and welfare plans for clergy and lay employees of the Church. The plaintiff was employed by the General Board as a customer service representative from June 1999 until her termination in March 2004. Her job involved fielding telephone calls from employees about their pension and health benefits. As part of her job, the plaintiff utilized three telephone extension lines for business calls. A fourth extension line was designated for personal and non-business emergency phone calls. Starting in September or October 1999, the General Board installed a telephone recording system for quality control and training purposes. On September 18, 2000, in connection with the installation and roll-out of the recording system, the plaintiff signed a "telephone monitoring consent form" (consent form) stating that she understood that "as a condition of [her] employment," customer

service calls may be monitored or recorded, and that she consented to such monitoring and recording of her calls on the business phone lines. The plaintiff added the following handwritten note on the consent form: "*Private line is not being monitored or recorded." The consent form was signed by both the plaintiff and her supervisor, Margie Fontanez. According to the plaintiff, based on her belief that her personal calls were not being monitored or recorded, she "made and received personal private telephone calls from her doctors, family, personal friends, other co-workers, and counsel."

¶ 5 In October 2000, the General Board discovered that, due to a glitch, the call recording system was inadvertently recording calls from employees' non-business lines. The plaintiff acknowledges that as early as November 10, 2000, the General Board informed her and other employees that "all personal calls and/or lines were [being] recorded." Upon learning this, the plaintiff immediately stopped making calls on her personal line. On November 16, 2000, the General Board informed the plaintiff and other employees that the glitch had been corrected and that their personal lines were no longer being recorded. It was only then that the plaintiff resumed making calls on her personal line.

¶ 6 During the weekend of May 18 to May 19, 2002, the General Board upgraded its call recording system from an analog to a digital system and, as a result of the upgrades, the General Board discovered that the system was again recording both the customer service employees' business and personal phone lines. On Monday, May 20, 2002, the General Board e-mailed to inform the employees, including the plaintiff, that due to the system upgrades, the General Board discovered that their personal lines were again potentially being recorded and advised them to use public pay phones or other means for making personal calls. The plaintiff again stopped

using her personal line upon learning about this second alleged system glitch. On May 22, 2002, the General Board again e-mailed its employees, including the plaintiff, to remind them that all of the phone lines were being recorded as a result of the upgrade glitch, and advised them to set their personal lines to a "busy out" status so that no outgoing calls could be placed using the personal lines and incoming calls on the personal lines would go directly to voicemail which could be retrieved on an unrecorded phone.

¶ 7 According to the General Board, during May and June 2002, it was unable to satisfactorily remedy the call recording system glitch that resulted from the upgrades. On June 24, 2002, the General Board informed its employees that it would be installing a second, non-recorded analog telephone handset on their desks to replace the existing personal phone lines for emergency use. Calls made on the second telephone handsets would not be recorded. By early July 2002, the second telephone handsets were installed, after which the plaintiff resumed making personal calls at work using the new telephone. However, according to the plaintiff, despite the installation of the separate and secondary telephone, the General Board "continue[d] to secretly record and monitor employees, including [the plaintiff's] personal telephone calls without consent."

¶ 8 In March 2004, the plaintiff's employment was terminated by the General Board. However, she claimed that even after her termination, the General Board continued to record her calls through September 2010 whenever she called her friends and relatives who worked at the General Board.

¶ 9 On September 17, 2010, the plaintiff filed a *pro se* complaint against the General Board and several of its representatives, alleging breach of contract; negligence; negligent infliction of

emotional distress; and invasion of privacy.[1] The basis of the complaint alleged that the General Board and its representatives unlawfully monitored, intercepted, recorded, stored, and disseminated her personal conversations without her knowledge or consent between 1999 and 2010. Thereafter, the plaintiff filed several amended complaints, including the second amended complaint which she filed on June 24, 2011. The second amended complaint, which added Avaya and Nice Systems as defendants for the first time, consisted of 21 counts, including breach of contract; negligence; negligent infliction of emotional distress; invasion of privacy; fraud; and violations of state and federal eavesdropping statutes. Avaya is in the business of providing unified communications, contact centers, data solutions, and related services to businesses and organizations worldwide, while Nice Systems is in the business of supplying and maintaining telephone equipment for customer service call centers. The second amended complaint alleged that in 1999, Avaya and Nice Systems installed the telephone recording system at the General Board and performed the upgrades on the system in 2000 and 2002.

¶ 10 On October 6, 2011 and November 30, 2011, the trial court dismissed with prejudice all counts against Avaya and Nice Systems (counts 9 to 13). In a separate October 6, 2011 order, the trial court dismissed with prejudice most of the counts against the General Board (counts 2, 3, 4, 6, 7, 8, 14, 15, 16, 17, 19, 20 and 21), denied the General Board's motion to dismiss the breach of contract claim (count 1), but granted the plaintiff leave to file a third amended

[1] Between 2002 and 2004, the plaintiff also brought lawsuits in federal court against the General Board and several of its employees, including some of the named defendants in the instant case, alleging various claims of employment discrimination and retaliation. In 2011, the General Board obtained a jury verdict in its favor on those claims.

complaint to amend her claims for "invasion of privacy—public disclosure of private facts" (counts 5 and 18) "to plead those facts, provided that such date is not later than one year prior to September 17, 2010, the date on which the original complaint was filed." The trial court, however, warned the plaintiff that "[i]f the facts do not warrant amending the [c]omplaint, then [p]laintiff should of course not amend the [c]omplaint as to these claims. After studying this Order, [p]laintiff should understand how to properly plead these claims. Therefore, to make a claim if clearly not warranted under the actual facts (*i.e.*, being barred by the one year statute of limitations) could cause, and likely justify, another motion for sanctions to be filed against her. Hopefully, there will be no cause therefor."[2] The trial court further noted that if the plaintiff should choose to replead counts 5 and 18 in a third amended complaint, the General Board and the individual employee defendants would be allowed, if warranted, to renew and amend their motion to dismiss counts 5 and 18. In denying the motion to dismiss as to count 1, the trial court specifically ordered that the claim must be "limited to events and damages occurring up to March 2004, when [p]laintiff's employment by the [General] Board was terminated."

¶ 11 On November 7, 2011, the plaintiff filed a third amended complaint in an attempt to replead counts 5 and 18. In response, on December 1, 2011, the General Board and the individual employee defendants moved to dismiss the third amended complaint and renewed their motion for sanctions against the plaintiff. On February 23, 2012, the trial court dismissed with prejudice counts 5 and 18 of the third amended complaint; thus, the only surviving count

[2] The General Board and the individual defendants had filed a motion for sanctions in connection with their motion to dismiss the plaintiff's second amended complaint. In a separate October 6, 2011 ruling, the court had denied without prejudice the motion for sanctions but stated that it was "not permanently closing the door on the possibility of sanctions being ordered" in the future.

against the General Board was the breach of contract claim (count 1).[3] The trial court further reserved ruling on the request for sanctions "until such time as the trier of fact renders a verdict on the Count 1 breach of contract claim."

¶ 12 On November 5, 2013, the trial court denied the General Board's motion for summary judgment on the sole surviving count (count 1). The trial court then outlined the essential elements of the plaintiff's breach of contract claim:

> "There is a difference between what must be proven to establish a breach of contract and what must be proven to establish a right to certain damages. In order to prove a breach of the 'contract,' [p]laintiff only needs to prove that her personal or private line was 'monitored' or 'recorded.' However, to prove a right to certain damages, [p]laintiff must prove not only that her personal line was recorded and monitored, but also that those calls were listened to."

¶ 13 Count 1 then proceeded for adjudication at a jury trial, which commenced in January 2014.[4] At trial, the plaintiff presented the testimony of Tom Calandriello, Sharon Maggi, Dr. Richenel Ellecom (Dr. Ellecom), Barbara Boigegrain, and Debbie Reid. The plaintiff also testified at trial. Following the plaintiff's case-in-chief, the trial court granted the General Board's motion for a directed verdict, finding that the plaintiff failed to introduce evidence satisfying the elements of her breach of contract claim:

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[3] As noted, count 1 survived dismissal from the second amended complaint. The plaintiff did replead this count in the third amended complaint.

[4] Although the plaintiff proceeded largely *pro se* at trial, the court allowed Attorney DeMills, who had previously entered a special appearance to help the plaintiff during her deposition, to also assist her at trial.

> "There's no question that there was a contract. *** As to whether there's been a breach or not, the plaintiff has acknowledged that the only way there can be a breach is if her private line was recorded or listened to. *** [T]he testimony that the Court has heard is that during the so-called glitch periods, that private lines may have been recorded. There's no evidence that [the plaintiff's] line specifically was recorded. It may have been, but there's no evidence that it was. But, more importantly, there's absolutely no evidence that her private line was ever listened to at any time, not only during the so-called glitch periods of 2000 and 2002, but at any time. She has not presented any witness that says anything to the contrary. And, to the contrary, the witnesses that she has called have each acknowledged that, one, they have not ever listened to her – any recordings or her private lines, nor do they know of anybody that listened to her private lines, nor had they directed any employee that they supervised to do the same. So, basically, there's no evidence whatsoever that her private line, if it was recorded, was ever listened to. So even if there was a breach, there is no basis for damages."

¶ 14 In February 2014, the General Board moved for Rule 137 sanctions for costs and fees against the plaintiff. In a March 12, 2014 order, the trial court assessed $16,147.49 in costs against the plaintiff. In three separate orders dated May 8, 2014, the trial court denied the

plaintiff's motion to reconsider the entry of a directed verdict against her; denied the plaintiff's motion for a new trial; denied the plaintiff's motion to vacate the March 12, 2014 order assessing costs against her; and granted the General Board's Rule 137 motion for sanctions against the plaintiff. After the General Board submitted a verified fee petition, on July 22, 2014, the trial court imposed Rule 137 sanctions against the plaintiff in the amount of $197,909.50 in attorney's fees and expenses. On September 17, 2014, the trial court ordered the plaintiff to pay the monetary judgments against her in monthly installments of $150.

¶ 15 The plaintiff has filed three timely notices of appeal, appealing from the trial court's May 8, 2014 order denying her motion to vacate the directed verdict against her and denying her motion for a new trial (No. 1-14-1793); the July 22, 2014 order imposing $197,909.50 in attorney's fees and expenses against her (No. 1-14-2668); and the September 17, 2014 order requiring her to pay $150 in monthly installments to the General Board (1-14-3087). On November 7, 2014, this court consolidated the three appeals. The General Board also filed a timely notice of cross-appeal, appealing the trial court's October 6, 2011 and November 5, 2013 orders in which it ruled that the consent form was a valid and enforceable contract. Accordingly, we have jurisdiction over this consolidated appeal and cross-appeal.

¶ 16 ANALYSIS

¶ 17 This consolidated appeal by the plaintiff, as well as the cross-appeal filed by the General Board, involves multiple issues. We address each issue in turn. The plaintiff's consolidated appeal presents the following issue: (1) whether the trial court erred in dismissing with prejudice all counts against Avaya; (2) whether the trial court erred in dismissing with prejudice all counts against Nice Systems; (3) whether the trial court erred in dismissing with prejudice all but count

1 (breach of contract) against the General Board; (4) whether the trial court erred in denying the plaintiff leave to further amend her complaint; (5) whether the trial court erred in entering a directed verdict in favor of the General Board at the close of the plaintiff's case-in-chief at trial; (6) whether the trial court erred in making various pretrial and trial evidentiary rulings; (7) whether the trial court erred in making various discovery-related rulings; (8) whether the trial court erred in imposing Rule 137 sanctions against the plaintiff in the amount of $197,909.50 in attorney's fees and expenses; and (9) whether the trial court erred in ordering the plaintiff to pay $150 in monthly installments to the General Board.

¶ 18 We first choose to resolve issues (1) and (2) together, as they pertain to the same counts alleged by the plaintiff against both Avaya and Nice Systems. Thus, we determine whether the trial court erred in dismissing with prejudice all counts against Avaya and Nice Systems, which we review *de novo*. See *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶ 14.

¶ 19 In the June 24, 2011 second amended complaint, the plaintiff named Avaya and Nice Systems as defendants for the first time and alleged identical counts against them (counts 9 to 13): eavesdropping claim under Illinois law (720 ILCS 5/14-1 *et. seq.* (West 2010)) (count 9); interception of wire and electronic communication claim under federal law (18 U.S.C. § 2510 *et. seq.* (West 2010)) (count 10); negligence (count 11); negligent infliction of emotional distress (count 12); and invasion of privacy (count 13). The second amended complaint alleged that in 1999, Avaya and Nice Systems installed the telephone recording system at the General Board and performed upgrades on the system in 2000 and 2002. On October 6, 2011 and November

30, 2011, the trial court dismissed with prejudice all counts against Avaya and Nice Systems, respectively, finding those claims to be barred as untimely and deficiently pled.

¶ 20 At the outset, we find that the plaintiff has procedurally forfeited any challenge to the dismissal of her claims against Avaya and Nice System (counts 9 to 13). See *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713 (2010). In order to avoid forfeiture on appeal, "a party wishing to preserve a challenge to an order dismissing with prejudice fewer than all of the counts in his complaint has several options." *Id.* at 719. "First, the plaintiff may stand on the dismissed counts and argue the matter at the appellate level." *Id.* Second, the plaintiff may file an amended complaint realleging, incorporating by reference, or referring to the claims set forth in the prior complaint." *Id.* Under this second option, a simple paragraph or footnote in the amended pleadings notifying the defendant and the court of the plaintiff's intention to preserve the dismissed portions of his former complaints for appeal is sufficient. *Id.*, citing *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 114 (1996). "Third, a party may perfect an appeal from the order dismissing fewer than all of the counts of his or her complaint prior to filing an amended pleading that does not include reference to the dismissed counts." *Vilardo*, 406 Ill. App. 3d at 719. In the case at bar, we find that the plaintiff had not pursued any one of these options. Indeed, the plaintiff's final amended pleading (the third amended complaint) repled only counts 1, 5, and 18, but made no mention of any other previously dismissed counts in order to preserve them for review. Thus, the plaintiff has forfeited for review on appeal counts 9 to 13 that were previously dismissed in the second amended complaint. See *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 28 (plaintiff forfeited his right to seek review of the trial court's dismissed claims, where the second and third amended

complaints did not "incorporate, reallege or otherwise refer to those counts, and no appeal was taken before the filing of the second and third amended complaints"); *Duffy*, 2012 IL App (1st) 113577, ¶ 30 ("[w]here there is a completed amendment that does not refer to or adopt a prior pleading, the earlier pleading ceases to be part of the record and is abandoned and withdrawn for most purposes"). Therefore, we hold that counts 9 to 13 are not properly before this court on appeal.

¶ 21 Further, the plaintiff's challenge to the dismissal of counts 9 to 13 is forfeited for review on appeal for the additional reason that, using less than 10 sentences of her 50-page opening brief, the plaintiff argues in a conclusory manner that counts 9 to 13 were not time-barred. She also fails to cite to the relevant pages of the record, and presents little relevant authority which she cites without further discussion. In her reply brief to Nice Systems' arguments, the plaintiff acknowledges that her arguments may be inadequate, but blames this court for those deficiencies as a result of this court's denial of her request to file extra pages to her brief. We find the plaintiff's undeveloped arguments to be forfeited and in violation of Supreme Court Rule 341(h)(7) (eff. July 8, 2008) (appellant's brief must contain contentions along with citations to the authorities and pages in the record relied upon; "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing"). See *Block 418, LLC v. Uni-Tel Communications Group, Inc.*, 398 Ill. App. 3d 586, 590 (2010) (party forfeited issue due to undeveloped contentions; a party's failure to comply with our supreme court rules is grounds for forfeiture on appeal). Accordingly, the plaintiff's has forfeited her appellate challenge to the trial court's dismissal with prejudice of counts 9 to 13 against Avaya and Nice Systems.

¶ 22 We next determine whether the trial court erred in dismissing with prejudice all but count 1 (breach of contract) against the General Board (issue (3)), which we review *de novo*.

¶ 23 The basis of the plaintiff's September 17, 2010 original complaint against the General Board and the individual employee defendants was that they unlawfully monitored, intercepted, recorded, stored, and disseminated her personal conversations without her knowledge or consent between 1999 and 2010. After amending the complaint several times, the plaintiff filed a second amended complaint on June 24, 2011, which alleged the following claims against the General Board: breach of contract (count 1); negligence (count 2), negligent infliction of emotional distress (count 3); invasion of privacy (count 4); invasion of privacy—public disclosure of private facts (count 5); fraud (count 6); a violation under the Illinois Eavesdropping Act (720 ILCS 5/14-1 *et. seq.* (West 2010)) (count 7); and a violation of the Electronic Communications Privacy Act (18 U.S.C. § 2510 *et. seq.* (West 2010)) (count 8). Counts 14 to 21, which were identical and directly corresponded to counts 1 to 8, respectively, were asserted against the 13 individual employee defendants. On October 6, 2011, the trial court dismissed with prejudice most of the counts against the General Board and the individual employee defendants (counts 2, 3, 4, 6, 7, 8, 14, 15, 16, 17, 19, 20, and 21). The trial court denied dismissal as to count 1, but specifically ordered that the claim must be "limited to events and damages occurring up to March 2004, when [p]laintiff's employment by the [General] Board was terminated." The trial court also declined to dismiss counts 5 and 18 with prejudice and instead granted the plaintiff leave to amend counts 5 and 18 to cure any deficiencies. Thereafter, the plaintiff's third amended complaint amended counts 5 and 18, and realleged count 1 (breach of contract claim).

¶ 24 With respect to counts 2, 3, 4, 6, 7, 8, 14, 15, 16, 17, 19, 20, and 21 against the General Board and the individual employee defendants, which were dismissed with prejudice from the second amended complaint by the trial court, we find the plaintiff's appellate challenge to be forfeited for the same reason that counts 9 to 13 against Avaya and Nice Systems are forfeited for review on appeal. Nowhere in the final amended complaint (the third amended complaint) did the plaintiff reallege, incorporate by reference, or refer to those previously dismissed claims so as to "[notify] the defendant and the court of the plaintiff's intention to preserve the dismissed portions of [her] former complaints for appeal." *Vilardo*, 406 Ill. App. 3d at 719. Nor did the plaintiff perfect an appeal from the trial court's order dismissing those counts from the second amended complaint prior to filing the third amended complaint that did not reference those dismissed counts. See *id.* As noted, the third amended complaint repled only counts 1, 5, and 18, but made no mention of any other previously dismissed counts in order to preserve them for review. Thus, the plaintiff has forfeited for review counts 2, 3, 4, 6, 7, 8, 14, 15, 16, 17, 19, 20, and 21 that were previously dismissed in the second amended complaint. See *Tunca*, 2012 IL App (1st) 093384, ¶ 28; *Duffy*, 2012 IL App (1st) 113577, ¶ 30. Accordingly, we hold that counts 2, 3, 4, 6, 7, 8, 14, 15, 16, 17, 19, 20, and 21 are not properly before this court on appeal.

¶ 25 With respect to counts 5 and 18, which the plaintiff repled in the third—and final—amended complaint, we find that the trial court properly dismissed those claims pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615; 5/2-619 (West 2010)).

¶ 26 A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint based on defects apparent on its face. 735 ILCS 5/2-615 (West 2010). "In reviewing a section 2-615

dismissal motion, the relevant question is whether, taking all well-pleaded facts as true, the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Duffy*, 2012 IL App (1st) 113577, ¶ 14. A section 2-615 motion to dismiss is granted where "no set of facts can be proved entitling the plaintiff to recovery." *Id.* However, a plaintiff "may not rely on factual or legal conclusions that are not supported by factual allegations." *Id.* Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action asserted. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009).

¶ 27 On the other hand, a section 2-619 motion to dismiss admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim. *Barber v. American Airlines, Inc.*, 241 Ill. 2d 450, 455 (2011). A section 2-619 motion admits as true all well-pleaded facts, as well as all reasonable inferences that may arise from those facts. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. Further, in ruling on a section 2-619 motion, a court must interpret all pleadings and supporting documents in favor of the nonmoving party. *Id.* We may affirm the trial court's decision on any basis supported by the record. *In re Huron Consulting Group, Inc.*, 2012 IL App (1st) 103519, ¶ 33.

¶ 28 Counts 5 and 18 of the third amended complaint alleged "invasion of privacy—public disclosure of private facts" against the General Board and the individual employee defendants, respectively. The crux of the allegations in counts 5 and 18 is that the General Board and the individual employee defendants wrongfully recorded the plaintiff's telephone conversations from her private line and divulged and disseminated that information to other employees.

¶ 29 The plaintiff makes no meaningful or developed argument regarding her challenge to the trial court's dismissal of counts 5 and 18 of the third amended complaint. See *Block 418, LLC*, 398 Ill. App. 3d at 590 (party forfeited issue due to undeveloped contentions; a party's failure to comply with our supreme court rules is grounds for forfeiture on appeal). Rather, she argues in a cursory manner that the "continuing tort rule" should apply to extend the statute of limitations period to September 2010—the time at which she claims the last wrongful act occurred.[5]

¶ 30 The General Board and the individual employee defendants counter that the trial court properly dismissed with prejudice counts 5 and 18 of the third amended complaint as time-barred under section 2-619(a)(5) and as deficiently pled under section 2-615 of the Code.

¶ 31 "Actions for slander, libel or for publication of matter violating the right of privacy, shall be commenced *within one year* next after the cause of action accrued." (Emphasis added.) 735 ILCS 5/13-201 (West 2010). In the third amended complaint, the plaintiff admitted that she was aware of the recording of her private phone line as early as November 2000 when a glitch occurred, and again in May 2002 when a second glitch occurred due to upgrades to the recording system. Exhibits attached to the General Board and the individual employee defendants' motion to dismiss the third amended complaint, reveal that as of July 13, 2007, the plaintiff alleged in a

[5] It is important to note that on April 1, 2015, this court denied the plaintiff's motion to file an additional 15 pages to her opening brief on her consolidated appeal. We also note that the plaintiff's reply brief to the General Board and the individual employee defendants' response totaled 40 pages, instead of the usual 20 pages, because it responds to both issues raised in the General Board's cross-appeal and in the plaintiff's own consolidated appeal. However, out of the 40 pages, the plaintiff devotes only 5 pages to her response to the General Board's cross-appeal, while using the remaining pages to address issues in her consolidated appeal. We reiterate that "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. Rule 341(h)(7) (eff. July 8, 2008). Thus, anything not raised in the plaintiff's opening brief should not be raised in the 40-page reply brief.

separate federal lawsuit against the General Board that "team leaders and managers [had] full access to all her calls" and "used them to monitor and humiliate the plaintiff," and that as of December 22, 2008, the plaintiff alleged that "on January 19, 2001, [she] notifie[d] [an employee of the General Board] that her personal calls in her voice audix were [being] rerouted to someone else." Any one of the dates mentioned herein could have triggered the running of the one-year statute of limitations period under section 13-201 of the Code. Because the plaintiff did not file her original complaint against the General Board and the individual employee defendants until September 17, 2010, counts 5 and 18 were untimely under the applicable one-year statute of limitations.

¶ 32 Citing the "continuing tort rule," the plaintiff claims in a cursory manner, without explaining how the rule applies in the instant case, that the claims did not accrue until September 2010, when she claims that the last wrongful act allegedly occurred. Under the "continuing tort rule" or "continuing violation rule," "where a tort involves a continuing or repeated injury, the limitations period does not begin to run until the date of the last injury or the date the tortious acts cease." *Belleville Toyata Inc. v. Toyola Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 345 (2002). "A continuing violation or tort is occasioned by continuing unlawful acts and conduct, not by continual ill effects from an initial violation." *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003). However, the continuing violation rule does not apply to a series of discrete acts, each of which is independently actionable, even if those acts form an overall pattern of wrongdoing. *Kidney Cancer Ass'n v. North Shore Community Bank & Trust Co.*, 373 Ill. App. 3d 396, 404 (2007). Here, the continuing violation rule does not apply to toll the statute of limitations. Each alleged incidence of recording and publication, of which the plaintiff had full knowledge, was

independently actionable. See *Moskowitz v. Trustees of Purdue University*, 5 F.3d 279, 282 (7th Cir. 1993) (if plaintiff "knows or with the exercise of reasonable diligence would have known after each act that it was discriminatory and had harmed him, he may not sit back and accumulate all the discriminatory acts and sue on all within the statutory period applicable to the last one); see *Blair v. Nevada Landing Partnership*, 369 Ill. App. 3d 318, 324-25 (2006) (defamation and privacy actions are complete at the time of the first publication, and any subsequent publication are of no consequence to the creation or existence of a cause of action, but are only relevant in computing damages). Further, the plaintiff has not pled any facts to support her allegation that any of her personal calls were recorded or published to other individuals within the one-year period prior to the filing of her original complaint in the instant action. Thus, we find that the plaintiff's attempt to circumvent the expiration of the statute of limitations period to be without merit. Therefore, we hold that the trial court properly dismissed with prejudice counts 5 and 18 in the third amended complaint, as untimely under section 2-619(a)(5) of the Code.

¶ 33 Although the plaintiff makes no arguments in her opening brief regarding the trial court's dismissal of counts 5 and 18 pursuant to section 2-615 of the Code, we also find dismissal to be proper on this basis. Construing the third amended complaint in a light most favorable to the plaintiff, we find that the allegations for counts 5 and 18 failed to sufficiently plead facts to state a cause of action for "invasion of privacy—public disclosure of private facts" against the General Board and the individual employee defendants. The public disclosure of private facts is one branch of the tort of invasion of privacy. *Kapotas v. Better Government Ass'n*, 2015 IL App (1st) 140534, ¶ 83. To state a cause of action for the public disclosure of private facts, a plaintiff must plead: "(1) the defendant gave publicity; (2) to her private, not public, life; (3) the matter

publicized was highly offensive to a reasonable person; and (4) the matter publicized was not of legitimate public concern." *Id.* Based on our review of the third amended complaint, we find that the plaintiff has failed to plead any facts establishing what she learned concerning the alleged publication, what facts were allegedly published, when the facts were published, who published the facts, and to whom such facts were published. Moreover, the plaintiff has baldly stated the conclusion that publication of the contents of her personal calls would be highly offensive to a reasonable person, but has failed to plead specific facts in support of this conclusion. Without knowing precisely what was published, it was not possible to know whether the publication would be highly offensive to a reasonable person. See *Duffy*, 2012 IL App (1st) 113577, ¶ 14 (a plaintiff "may not rely on factual or legal conclusions that are not supported by factual allegations"); *Turner*, 233 Ill. 2d at 499 (a plaintiff must allege facts sufficient to bring her claim within the scope of the cause of action asserted). Thus, even viewing the allegations in the light most favorable to the plaintiff, the third amended complaint failed to plead sufficient facts to state a cause of action for the public disclosure of private facts. Therefore, counts 5 and 18 were properly dismissed under section 2-615 of the Code. Accordingly, the trial court properly dismissed with prejudice all but count 1 (breach of contract) against the General Board and the individual employee defendants.

¶ 34 We next determine whether the trial court erred in denying the plaintiff leave to further amend her complaint (issue (4)), which we review under an abuse of discretion standard. See *1515 North Wells, L.P. v. 1513 North Wells, L.L.C.*, 392 Ill. App. 3d 863, 870 (2009).

¶ 35 The right to amend pleadings is not unlimited. *Id.* The decision as to whether to allow amendments to pleadings rests within the discretion of the trial court. *Id.* The factors used in

determining whether to allow the plaintiff to amend her complaint include: (1) whether the amendment would cure a defect in the pleading; (2) whether the proposed amendment was timely; (3) whether the opposition would be prejudiced or surprised by the amendment; and (4) whether there were earlier opportunities to amend the pleading. *Id.*

¶ 36 The trial court, in dismissing with prejudice all but counts 1, 5 and 18 in the second amended complaint, allowed the plaintiff leave to replead only counts 5 and 18 in a third amended complaint for the sole purpose of alleging dates on which she learned of the alleged public disclosure of private facts,[6] but denied the plaintiff leave to amend the rest of those dismissed counts (counts 2 to 4, 6 to 17, and 19 to 21).[7] Later, in dismissing with prejudice counts 5 and 18 of the third amended complaint, the trial court denied the plaintiff leave to file a fourth amended complaint. We find that the trial court did not abuse its discretion in denying the plaintiff leave to further amend her pleadings. It is important to first note that one of the bases for the trial court's dismissal of those counts (with the exception of count 14), was that the claims were time-barred by the relevant statute of limitations periods. Thus, no amount of repleading could have overcome the expiration of the applicable statute of limitations periods on those claims. Second, all of the dismissed counts, including count 14 (breach of contract claim against the individual employee defendants), were also dismissed with prejudice as deficiently pled under section 2-615 of the Code. Since the filing of her original complaint on September 17, 2010, the plaintiff has had three opportunities to amend her claims to cure any deficiencies

[6] The circuit court found that, "[w]ithout that information, the [c]ourt cannot conclude with certainty when the limitations period started and expired."

[7] As discussed, count 1 survived dismissal of the second amended complaint but was nonetheless realleged by the plaintiff in the third amended complaint.

therein, which she was unable to do successfully. Hence, giving the plaintiff yet another opportunity to replead her claims would have been futile, and would have prejudiced the General Board and the individual employee defendants by requiring them to respond to yet another complaint which had only a remote chance of surviving dismissal. Accordingly, we cannot conclude that the trial court abused its discretion in denying the plaintiff's requests to further amend the complaint.

¶ 37 We next determine whether the trial court erred in entering a directed verdict in favor of the General Board at the close of the plaintiff's case-in-chief at trial (issue (5)), which we review *de novo*. See *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 112 (2004).

¶ 38 Because count 1 (breach of contract claim) against the General Board was the sole surviving count from the dismissal of the plaintiff's pleadings, it alone proceeded to a jury trial. Following the plaintiff's case-in-chief, however, the trial court granted the General Board's motion for a directed verdict, finding that the plaintiff failed to introduce evidence satisfying the elements of her breach of contract claim. Count 1 alleged that by signing the September 18, 2000 consent form as a condition of her employment, the plaintiff consented to the monitoring and recording of her customer service calls on her business lines; that the General Board breached that agreement by secretly recording her private telephone calls without her knowledge and by storing, retaining, and failing to delete the recordings so as to allow managers and team leaders unlimited access to them; and that the plaintiff has suffered damages as a result of this breach.

¶ 39 At this junction in our analysis, before we can resolve this issue, we must address the subject of the General Board's cross-appeal as it pertains exclusively to count 1. On cross-

appeal, the General Board solely argues that the trial court erred in concluding during pretrial proceedings, that the consent form was an enforceable contract, and that count 1 should have been dismissed at the dismissal stage of the proceedings. The General Board asserts that the consent form was nothing more than the plaintiff's acknowledgement that the General Board was permitted to monitor and record her telephone calls at work; that it did not reflect any consideration received by the plaintiff in exchange for signing the document; nor did it impose any obligation on the General Board or "contain any method of measuring or even approximating damages." Although the consent form was also signed by the plaintiff's supervisor, Margie Fontanez, the General Board characterizes Fontanez as a "witness" whose signature was insufficient to form a binding contract.

¶ 40 The plaintiff counters that the trial court correctly found that the consent form was a valid and enforceable contract, arguing that she gave consent to the General Board to record her business calls in exchange for her continued employment there.

¶ 41 It is well settled that a contract is "an agreement between competent parties, upon a consideration sufficient in law, to do or not to do a particular thing." (Internal quotation marks omitted.) *La Salle Nat'l Bank v. Vega*, 167 Ill. App. 3d 154, 159 (1988) (quoting *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 329 (1977)). The formation of a contract requires an offer, an acceptance, and consideration. *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 151 (2006). Under Illinois law, continued employment is sufficient consideration for the enforcement of employment agreements. *Id.* at 152.

¶ 42 In denying dismissal of count 1 in its October 6, 2011 order, the trial court specifically found that the consent form was a valid and enforceable contract. Likewise, in denying the

General Board's motion for summary judgment on November 5, 2013, the trial court again found that the consent form was a valid and enforceable contract as a matter of law, noting the existence of an offer, an acceptance, and consideration.

¶ 43 We find that the trial court properly found that the consent form was a valid and enforceable contract. The plain language of the consent form specified that "as a condition of [the plaintiff's] employment," she must consent to having her customer service calls recorded or monitored by the General Board. Thus, the General Board made an offer of continuing employment if the consent form was signed; the plaintiff accepted the offer by signing and returning the consent form; the plaintiff received consideration by keeping her job; and the General Board received consideration by retaining the services of the plaintiff and being able to record her business calls for quality control and training purposes. In arguing against the existence of a valid and enforceable contract, the General Board cites cases from other jurisdictions which pertain to *medical* consent forms. See *Kovacs v. Freeman*, 957 S.W.2d 251 (Ky. 1997); *Moonsammy v. Mercy Hospital*, 773 N.W.2d 562 (Iowa App. 2009); and *Herman v. Lennon*, 776 N.Y.S..2d 778 (Sup. Ct. NY 2004). However, the General Board's attempt to analogize medical consent forms to the consent form at bar is misplaced and unavailing, where consent given in a medical setting differs from consent forms signed within an employment situation. Here, in exchange for signing the consent form, the plaintiff was allowed to continue working at the General Board, which would then be able to record and monitor the plaintiff's business phone calls. The General Board has not convincingly established how the signing of medical consent forms results in the same type of bargained-for exchange. Further, we note that case law from other jurisdictions is not binding upon this court. See *Kostal v. Pinkus*

Dermatopathology Laboratory, P.C., 357 Ill. App. 3d 381, 395 (2005). Accordingly, we hold that the trial court properly found that the consent form was a valid and enforceable contract, and we reject the General Board's argument that count 1 should have been dismissed during pretrial proceedings on the basis that the consent form was not an enforceable contract.

¶ 44 Having found that the consent form was a valid and enforceable contract, we now return our attention to the issue of whether the trial court erred in entering a directed verdict in favor of the General Board on the breach of contract claim (count 1) at the close of the plaintiff's case-in-chief at trial, which we review *de novo*. See *Susnis v. Radfar*, 317 Ill. App. 3d 817, 825 (2000).

¶ 45 A directed verdict is proper where all of the evidence, when viewed most favorably to the nonmoving party, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992). In ruling on a directed verdict, "a court does not weigh the evidence, nor is it concerned with the credibility of the witnesses; rather it may only consider the evidence, and any inference therefrom, in the light most favorable to the party resisting the motion." *Id.*

¶ 46 In order to prove a claim for breach of contract, a plaintiff must prove by a preponderance of the evidence: (1) the existence of a valid contract; (2) that plaintiff performed all conditions precedent; (3) that the defendant breached the contract, and; (4) that damages resulted from the defendant's breach. *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 69 (2004). Preponderance of the evidence means that the proposition must be "more probably true than not true." *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

¶ 47 The plaintiff argues that the trial court erred in granting a directed verdict on count 1 at the close of her case-in-chief. Without citing any legal authority, the plaintiff argues that the directed verdict should not have been entered because the General Board raised its motion for a directed verdict orally rather than in writing. The plaintiff also argues that the General Board breached the terms of the consent form by recording her private calls and retaining those tape recordings, and that the evidence was sufficient from which a jury could have found in her favor.

¶ 48 The General Board counters that the trial court did not err by entering a directed verdict in its favor as to count 1, where the plaintiff failed to introduce evidence satisfying the essential elements of her breach of contract claim. The General Board further challenges the plaintiff's assertion that the General Board's motion for a directed verdict should have been brought in writing rather than orally.

¶ 49 Viewing the trial evidence in favor of the plaintiff, we find that the trial court properly entered a directed verdict in the General Board's favor on count 1 at the close of the plaintiff's case-in-chief, where the evidence so overwhelmingly favored the General Board that no contrary verdict based on that evidence could ever stand. As noted, in denying the General Board's motion for summary judgment on count 1 prior to trial, the court outlined the essential elements of the plaintiff's breach of contract claim. The court specifically noted that in order to prove a breach of the contract (consent form), the plaintiff must prove that her private line was "monitored" or "recorded," and that in order to prove damages, the plaintiff must also prove that "those calls were listened to." Our review of the record shows that aside from her own testimony, the plaintiff presented the testimony of five witnesses at trial (Calandriello, Maggi,

Dr. Ellecom, Boigegrain, and Reid),[8] none of whom testified to having any personal knowledge as to whether the General Board actually recorded calls from the plaintiff's specific private line. None of the witnesses testified to listening to any of the plaintiff's calls from her private line, nor did they know of anyone else employed by the General Board who had personally listened to the plaintiff's calls from her private line. While the plaintiff argues on appeal that the act of listening to her personal calls is not essential to her breach of contract claim against the General Board, we disagree. Even assuming, *arguendo*, that the plaintiff's personal calls were actually recorded by the General Board's recording system, the plaintiff's failure to present any evidence that anyone specifically listened to *her* personal calls means that she is unable to establish how she was damaged by the General Board's alleged breach of contract. Thus, we find that the plaintiff failed to present a *prima facie* case for breach of contract against the General Board. We further reject the plaintiff's conclusory argument that the General Board's oral motion for a directed verdict at trial was improper, as the plaintiff has cited no legal authority, and this court is not aware of any, requiring motions for directed verdict to be presented in writing. Further, the plaintiff argues that the entry of a directed verdict was improper because the trial court erroneously allowed the General Board to "exceed the scope of cross-examination" by somehow barring her from eliciting testimony from Boigegrain about the "issue of lawsuits," but allowing the General Board "unlimited lead way to conduct its case within [the plaintiff's] case." We reject this contention. Not only is this argument undeveloped and confusing, but it is unclear how allowing the plaintiff to question the witnesses about this or her federal lawsuits would have

[8] Maggi and Boigegrain were presented as adverse witnesses under section 2-1102 of the Code of Civil Procedure (735 ILCS 5/2-1102 (West 2012)). All witnesses except Dr. Ellecom were either then currently or formerly employed by the General Board.

helped her establish any of the elements of her claim. Accordingly, we hold that the trial court did not err in entering a directed verdict at trial in favor of the General Board on count 1.

¶ 50 Next, we determine whether the plaintiff's challenges to the trial court's various pretrial and trial evidentiary rulings have merit (issue (6)), which we review under an abuse of discretion standard. See *Baley v. Federal Signal Corp.*, 2012 IL App (1st) 093312, ¶¶ 89, 105 (evidentiary rulings are reviewed under an abuse of discretion standard). We address each of her arguments in turn.

¶ 51 First, the plaintiff argues that the trial court abused its discretion in denying her request for a trial continuance, claiming that it was biased and prejudiced against her because her counsel of record "had emergencies that made him unavailable" at trial and that had he been there on the first day of trial she would have been more effective in conducting her direct examination of witness Calandriello. The plaintiff points out that the court had previously granted the General Board's two requests for a trial continuance, but improperly denied her single request for a trial continuance.

¶ 52 The General Board counters that this court lacks jurisdiction to consider the plaintiff's challenge to the trial court's denial of her requests for a trial continuance, arguing that none of the three notices of appeal filed by the plaintiff referenced the trial court's denial of a trial continuance. The General Board argues that, jurisdictional issues aside, the trial court did not abuse its discretion in denying the plaintiff's eleventh-hour requests to continue the trial date, where she was primarily proceeding to trial on a *pro se* basis and only wanted Attorney DeMills to serve as a "backup" in case she fell ill and could not finish the trial herself. The General Board also points out that the plaintiff had three years leading up to trial to retain counsel, but

instead, chose to represent herself throughout the litigation, and waited until the eve of trial to advise the court and opposing counsel that she wished to involve Attorney DeMills.

¶ 53 Supreme Court Rule 303(b)(2) (eff. May 30, 2008) provides that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from." Generally, the denial of a request for a continuance of trial is not a final and appealable order. *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999). However, an appeal from a final judgment draws into issue all previous interlocutory orders that produced the final judgment. *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009). We construe notices of appeal liberally. *Id.* Here, the trial court's ruling denying continuance of trial was not appealable under any supreme court rule as an interlocutory order. *In re M.R.*, 305 Ill. App. 3d at 1086. However, we note that the plaintiff's notice of appeal seeking to appeal from the trial court's May 8, 2014 order denying her motion to vacate the directed verdict in favor of the General Board, *does* request this court to "reverse and remand the trial court's orders regarding certain evidentiary rulings before and during trial." We construe this language liberally to encompass the trial court's ruling denying the plaintiff's requests for a trial continuance. Accordingly, we have jurisdiction to review this issue.

¶ 54 It is well settled that a litigant does not have an absolute right to a continuance. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22. The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court, which will not be disturbed on appeal absent an abuse of discretion. *Id.* An abuse of discretion occurs when the court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Id.* Section 2-1007 of the Code generally states that the court has discretion to grant additional time for "the doing of any act or the taking of any step or proceeding prior to

judgment" on good cause shown. 735 ILCS 5/2-1007 (West 2012). It further provides that the "circumstances, terms and conditions under which continuances may be granted, the time and manner in which application therefor shall be made, and the effect thereof, shall be according to rules." *Id.* According to Supreme Court Rule 231(f), "[n]o motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay." Ill. S. Ct. R. 231(f) (eff. Jan. 1, 1970). Once the case reaches the trial stage, the party seeking a continuance must provide the court with "especially grave reasons" for the continuance because of the potential inconvenience to the witnesses, the parties, and the court. *K&K Ironworks, Inc.*, 2014 IL App (1st) 133688, ¶ 23.

¶ 55 In the case at bar, during a pretrial conference on January 17, 2014,[9] one business day prior to the start of trial on January 21, 2014, the plaintiff orally requested a continuance of trial on the grounds that she wished to secure Attorney DeMills[10] as counsel for trial. The plaintiff informed the trial court that Attorney DeMills was not present at the pretrial conference because his wife was required to have emergency surgery on that day, and that Attorney DeMills would also be unavailable on the first day of trial (January 21) due to a family funeral. The plaintiff acknowledged that Attorney DeMills had yet to file an appearance before the court for trial, but stated that she wanted him to help "at [a] certain stage of the trial" and to serve as a "backup" in case she became ill and could not finish the trial herself. The trial court allowed the plaintiff to be represented by counsel at trial, but denied her request for a continuance, finding that the trial

[9] January 17, 2014 was a Friday; Monday, January 20, 2014 was a court holiday (Martin Luther King Day); and the first day of trial commenced on Tuesday, January 21, 2014.

[10] As noted, Attorney DeMills had only previously entered a special appearance for the limited purpose of representing the plaintiff at her deposition.

date had been set for a long time; that the plaintiff had submitted various *pro se* documents in preparation for trial and had never once mentioned wanting to retain counsel or being ill; that the court had other cases on its docket and the administration of its courtroom was important; and that both parties had previously assured the court that trial could be completed within four days during the specific week for which trial was set. On January 21, 2014, the first day of trial, the plaintiff filed a written emergency motion for a new trial date, rehashing what she told the court at the pretrial conference. The court denied the emergency motion for a new trial date. Based on our review of the record, we cannot conclude that the court abused its discretion in denying the plaintiff's last-minute requests for a trial continuance. It is important to note that the plaintiff did not get sick and was present for the entirety of the trial, and that Attorney DeMills, after filing a limited appearance, was present at the second day of trial (January 22) and took turns alongside the plaintiff in questioning the witnesses on the stand. Attorney DeMills also represented to the court at trial that the plaintiff was "primarily acting as her own attorney" and that he was there only to serve "as a conduit." The record also shows, as the trial court found, that the plaintiff chose to proceed *pro se* for several years of litigation leading up to trial, and only waited until the eve of trial to advise the court of her desire to retain Attorney DeMills to assist her at trial. Thus, we find that the trial court's decisions to deny the plaintiff's requests to continue the trial was not arbitrary, fanciful, or unreasonable, and we cannot conclude that no reasonable person would take the same view. Therefore, we hold that the trial court did not abuse its discretion in denying the plaintiff's last-minute requests for a trial continuance.

¶ 56 Second, the plaintiff argues in a brief conclusory manner and without legal citation, that the trial court erred in barring her from introducing trial testimony by witnesses Boigegrain and

Maggi, purportedly showing that recording glitches existed—and therefore, her personal calls may have been recorded—prior to September 18, 2000 when she signed the consent form.

¶ 57 The General Board argues as a threshold matter that the plaintiff's challenges to the trial court's evidentiary rulings are forfeited where she failed to make any offers of proof at trial as to what the excluded evidence would have been. The General Board argues that, even if not forfeited, the trial court did not abuse its discretion in barring evidence purportedly showing that the recording glitches existed prior to the date that the plaintiff signed the consent form.

¶ 58 We agree with the General Board that the plaintiff's challenges to the trial's evidentiary rulings are forfeited on appeal, where she failed to make an offer of proof as to the excluded testimony. See *Cummings v. Jha*, 394 Ill. App. 3d 439, 456 (2009) (where a party fails to make an offer of proof as to excluded testimony, that party forfeits any claim that the testimony was improperly excluded). Forfeiture aside, we find that the trial court did not abuse its discretion in excluding as irrelevant testimony regarding any purported recordings of employees' private lines *prior* to the date the plaintiff signed the consent form on September 18, 2000. We note that this evidentiary issue was the subject of the General Board's motion *in limine* No. 4, which the court granted prior to trial. At trial, the court, consistent with its prior ruling on the motion *in limine* No. 4, excluded testimony relating to the occurrence of any recording glitches that predated the consent form. Because the sole surviving count for adjudication at trial was a breach of contract claim against the General Board (count 1), and the basis for the claim was the consent form, the plaintiff cannot establish how a breach of contract could have occurred *prior* to the effective date of the executed consent form. Accordingly, the trial court did not abuse its discretion in barring

evidence relating to any recordings of employees' private lines that may have occurred before the signing of the consent form on September 18, 2000.

¶ 59 Third, the plaintiff argues that the trial court abused its discretion in barring her from presenting the testimony of "[Sarah] Hirsen, [Magdaline] Derosena, [Gloria] Taylor and [Yolanda] Lewis and [Carla] Rozycki" which affected her "ability to effectively litigate her case," and in denying her "complete documents regarding Lewis as it was relevant to show that the [General] Board engaged in recording personal calls after June 2002."

¶ 60 The General Board counters that not only does the plaintiff mischaracterize the trial court's rulings, but the court did not abuse its discretion in barring her from presenting the testimony of Hirsen, Derosena, Taylor, Lewis, and Rozycki.

¶ 61 We note that, yet again, the plaintiff's arguments are undeveloped such that this issue is forfeited for review. See Ill. S. Ct. R. 341(h)(7) (eff. July 8, 2008); *Block 418, LLC*, 398 Ill. App. 3d at 590 (party forfeited issue due to undeveloped contentions). It is difficult to speculate, without making an offer of proof at trial or including fully developed contentions on appeal, as to what exactly affected the plaintiff's "ability to effectively litigate her case" at trial. In violation of Rule 341(h)(7), the plaintiff also fails to properly cite to the 40-volume record in support of her arguments on this issue. See Ill. S. Ct. R. 341(h)(7) (eff. July 8, 2008) (appellant's brief must contain contentions along with citations to the authorities and pages in the record relied upon). Notwithstanding forfeiture, however, the plaintiff's arguments must fail. The record shows that the trial court correctly barred the plaintiff from presenting Rozyscki as a trial witness on the basis that she served as outside counsel for the General Board during *federal* litigation brought by the plaintiff and, thus, would have no independent knowledge of the General Board's call

recording system apart from her capacity as outside counsel. With respect to Hirsen, Derosena, Taylor, and Lewis, they were the subjects of the General Board's pretrial motions *in limine* (Nos. 2 and 3), which the trial court granted. The trial court had previously barred the plaintiff from deposing Hirsen, the General Board's General Counsel, on the bases that the subject matter of her potential testimony was protected by the attorney-client privilege and was irrelevant. Consistent with this prior ruling, the trial court correctly barred the plaintiff from calling Hirsen as a witness at trial. Derosena, Taylor, and Lewis were former employees of the General Board who had various disciplinary actions against them by the General Board that the trial court found to be irrelevant to the issues at bar during discovery. The plaintiff has failed to show how the trial court's barring of Derosena, Taylor, and Lewis' testimony at trial, which was consistent with its prior discovery ruling, amounted to an abuse of discretion. Accordingly, the plaintiff's arguments must fail.

¶ 62 Fourth, the plaintiff also argues, in one sentence, that the trial court's "jury instructions" to the jury did not properly state the law and "would have prejudiced" her. In the statement of facts of her brief, she highlights and takes issue with comments made by the trial court to the prospective jurors during *voir dire*. We reject this contention. Not only is this argument forfeited for review on appeal for being grossly undeveloped, but the premise of this argument is puzzling. To the extent that the plaintiff argues that certain proposed jury instructions somehow prejudiced her, this should be rejected as the case was disposed of by directed verdict and no jury instructions were ever provided to the jury and the jury was never given the opportunity to render a verdict. Thus, any alleged error in proposed jury instructions had no impact on the outcome of the case. To the extent that the plaintiff argues that the trial court's comments to the venire

during *voir dire* prejudiced her, we also reject this argument. Our examination of the record shows that the comments complained-of pertained to the trial court's giving of a "statement of the case" to the venire during jury selection, and the trial court specifically informed the prospective jurors that these statements were not facts, but simply the parties' allegations that must be proven at trial. Accordingly, we reject the plaintiff's arguments regarding jury instructions as meritless.

¶ 63 We next determine whether the trial court erred in making various discovery-related rulings (issue (7)), which we review under an abuse of discretion standard. See *Bangaly v. Baggiani*, 2014 IL App (1st) 123760, ¶ 126.

¶ 64 The plaintiff makes multiple challenges to the trial court's discovery-related rulings, which she claims prejudiced her ability to litigate her case at trial. First, she argues that the trial court erred in denying her request to inspect the General Board's premises where she believed copies of recordings pertaining to her personal calls may have been stored. The record shows that, after all discovery had closed in August 2013, the plaintiff filed a motion to reopen discovery, asking that she be allowed to obtain additional information including the opportunity to inspect the General Board's premises for copies of recordings relating to her personal calls. In denying her request to reopen discovery, the trial court found that no recordings of the plaintiff's phone calls existed other than the two tapes that the General Board had already produced to her during the federal court litigation and again in the case at bar, and that the plaintiff had already acknowledged receipt of those tapes and that they relate to business and personal calls from the years 2000, 2003, and 2004. The trial court further noted that additional discovery would be an unnecessary and wasteful use of financial resources of time, and that inspection of the General Board's premises would be inappropriate and unnecessary because "it has been established that

only irrelevant material from the year 2007 and subsequent years is stored there. Plaintiff's employment at the [General] Board terminated in 2004." The plaintiff has not established, and we cannot conclude, that the trial court abused its discretion in denying her request to reopen discovery and inspect the General Board's premises for copies of recordings relating to her personal calls when such recordings had already been produced to her.

¶ 65 Second, the plaintiff argues that the trial court erred in barring the records of "certain employees who may have [*sic*] written up for overuse on the supposedly non-recorded line." Though unclear, it appears that the plaintiff takes issue with the trial court's denial of her 2012 discovery requests for documents relating to certain former and current employees of the General Board, including Lewis, who may have been reprimanded by the General Board for overusing their personal telephone lines. The General Board objected to these discovery requests as irrelevant, and the trial court agreed in denying the requests. See *In re All Asbestos Litigation*, 385 Ill. App. 3d 386, 390 (2008) (court should deny discovery requests when there is insufficient evidence that the requested discovery is relevant or will lead to such evidence). The plaintiff seems to now suggest that this information was important to show that that the General Board had the means for identifying each employee's personal calls; however, we find that she fails to establish how the documents are relevant to whether the General Board recorded *her* personal calls during the relevant period, much less whether anyone actually listened to her personal calls, so as to support her claim for breach of contract (count 1) at trial. Thus, we cannot conclude that the trial court abused its discretion in denying her discovery requests for these documents.

¶ 66 Third, the plaintiff again argues that the trial court erred in denying her motion to reopen discovery, arguing that the General Board's delayed timing in producing its internal written

record retention policies in response to her discovery requests, as well as the General Board's destruction of recordings of business and personal calls, suggested the unlawful spoliation of evidence and warranted the trial court reopening discovery in order for her to inspect "the storage tapes." We reject this contention. The record shows that the plaintiff sought to add a spoliation claim in a proposed fourth amended complaint, which the trial court denied by expressly finding the following: "[t]his suit was filed on September 17, 2010. The subject tapes were destroyed in either March or the summer of 2010. Therefore, the destruction occurred prior to the filing of this lawsuit, and, as a consequence thereof, there is no spoliation claim." Because the plaintiff could not maintain a claim for spoliation, any request for the General Board's internal record retention policies was irrelevant. The plaintiff fails to provide any support for her contention that the trial court's rulings constituted an abuse of discretion.

¶ 67 Fourth, the plaintiff argues that the trial court abused its discretion in ordering her to obtain copies of medical records from her treating therapist, Naomi Bayer, to be produced to the General Board. The General Board counters that because the plaintiff seeks damages for emotional distress, it was entitled to probe into her medical history and, thus, the trial court's ruling with regard to these medical records was not an abuse of discretion. The record reveals that in July 2013, the General Board filed a motion to compel the plaintiff to execute a medical release form allowing her treating therapist, Bayer, to release updated medical records of whatever treatment she has rendered to the plaintiff from 2000 to 2013, as well as any findings, diagnosis, prognosis and opinions regarding her medical or psychological condition. Bayer had been identified by the plaintiff as a key treating witness and the plaintiff sought damages in the lawsuit relating to expenses she had incurred in receiving Bayer's therapy treatment. The

plaintiff refused to sign the form allowing Bayer to release the medical records to the General Board so as to allow the General Board to depose Bayer prior to the close of discovery. On August 7, 2013, in granting the General Board's motion to compel, the trial court directed the plaintiff to sign the release form, noting that failure to comply with the directive would result in the plaintiff being barred from calling Bayer as a witness at trial and from claiming as damages any expenses relating Bayer's treatment. The plaintiff now cites to section 10(d) of the Mental Health and Developmental Disabilities Confidentiality Act (Mental Health Act) (740 ILCS 110/10(d) (West 2012)), in support of her arguments on appeal. However, section 10(d) of the Mental Health Act pertains to the use of *subpoenas* to obtain an individual's mental health records, which is inapplicable to the situation at hand. Accordingly, the plaintiff has not established that the trial court's ruling was an abuse of discretion.

¶ 68 Fifth, the plaintiff argues that the trial court erred in granting the General Board's "oral motion to quash subpoenas for the trial testimony of [Hirsen] [and] [Rozycki]"; in "the barring of [Taylor], [Derosena], [Lewis] and the records of other employees" who were being reprimanded for overusing their personal lines while employed by the General Board, as well as in the barring of "deposition transcripts of the Chapman case"[11] and the exclusion of "trial exhibits of Dr. Marmor's testimony." Again, in violation of Rule 341(h)(7), the plaintiff fails to cite to any specific place in the 40-volume record in support of her arguments on this issue. See Ill. S. Ct. R. 341(h)(7) (eff. July 8, 2008) (appellant's brief must contain contentions along with citations to the authorities and pages in the record relied upon). Thus, this issue is forfeited for review on

[11] The *Amber Chapman* case was a federal case initiated by former employee Chapman against the General Board alleging violations of the Americans with Disabilities Act, which did not appear to have anything to do with the recording of employees' telephone calls.

appeal. Also, to the extent that these arguments relate to the testimony of Hirsen, Rozycki, Taylor, Derosena and Lewis, as well as the records of employees who had been reprimanded by the General Board, we have already determined that these arguments lack merit. See *supra*, ¶¶ 59-61, 65. Further, the plaintiff's remaining arguments on the "Chapman case" and "Dr. Marmor" are confusing, conclusory, and unaccompanied by any citations to the record or legal authorities. Therefore, the plaintiff is not entitled to relief on this basis.

¶ 69 Sixth, the plaintiff further argues that the trial court erred in "barring documents of [Lewis], [Taylor], [Derosena] and the transcripts of the Amber Chapman case involving to [*sic*] the retention issues as they were relevant or could lead to relevant information to determine the [General] Board's retention policies." In making this argument, the plaintiff gives only a general reference to over 100 pages in the appendix of her brief (A189-294), which does not help us in locating the relevant documents supporting her argument. Again, without properly citing to the record on appeal or properly identifying which documents she claims are relevant, the plaintiff seems to expect this court to inexplicably arrive at a conclusion favorable to her. We will not do so, as these arguments are likewise forfeited for review on appeal. As the General Board correctly points out, even if the trial court committed errors in making its evidentiary and discovery rulings, the plaintiff has not established how these alleged errors were not harmless or how the outcome of her case would have been different had the trial court's rulings been different. See *Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.*, 372 Ill. App. 3d 461, 469 (2007) ("[n]ot every error committed by the trial court in a civil case leads to reversal. *** If the outcome of a case would not have been different absent the error, a judgment or decree will not be disturbed"). Accordingly, the trial court did not abuse its discretion in making its

various discovery-related rulings. In light of this holding, we reject the plaintiff's arguments that the cumulative effect of the trial court's errors in making various discovery rulings deprived her of a fair trial, particularly where she again makes conclusory arguments, novel arguments that were never raised in her challenges to the court's evidentiary and discovery rulings, and other single-sentence arguments with little to no legal support regarding those alleged errors.

¶ 70 Next, we determine whether the trial court erred in imposing Rule 137 sanctions against the plaintiff in the amount of $197,909.50 in attorney's fees and expenses (issue (8)), which we review under an abuse of discretion standard. See *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 67 (2011).

¶ 71 Rule 137 provides in pertinent part the following:

> "Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause

> unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. July. 1, 2013).

The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits. *Nelson*, 408 Ill. App. 3d at 68. However, the rule is not intended to penalize litigants and their attorneys because they were zealous but unsuccessful in pursuing an action. *Id.* The party seeking to impose sanctions bears the burden of establishing a violation of the rule. *Gershak v. Feign*, 317 Ill. App. 3d 14, 22 (2000).

¶ 72 In a May 8, 2014 order, the trial court granted the General Board's Rule 137 motion for sanctions against the plaintiff, finding that the filing of the plaintiff's complaint was vexatious and harassing. The trial court's order set forth in detail all the ways the plaintiff's lawsuit was frivolous, not well grounded in fact, nor warranted by existing law. Specifically, the trial court found that, over the three-and-a-half years of litigation, the court had entered many more orders, and devoted substantially more time to studying thousands of pages and hundreds of citations, than any other case over which it has presided. It found that throughout the course of this lawsuit, the plaintiff has filed a motion to reconsider for practically all, if not all, substantive

detailed rulings made by the court, and that these motions to reconsider "merely rehashed arguments that [p]laintiff had previously made, that the [c]ourt had fully considered after ample time was given to the parties in a proper briefing schedule to set forth their arguments, and which the [c]ourt rejected by ruling against [p]laintiff." These motions, the court found, "were generally unnecessary, because they did not provide a legal basis for reconsideration, were not needed to protect appeal rights, and caused [the General Board] and the [c]ourt to spend substantial amounts of time and effort to respond to and rule upon." The trial court also found that the plaintiff filed multiple motions to compel the General Board to comply with her extensive discovery requests, most of which were inappropriate and substantially denied by the court, caused the General Board to incur substantial attorney's fees to defend against, and necessitated the court to expend an enormous amount of time to rule upon. The trial court found that it had "bent over backwards" to give the plaintiff her day in court for a jury trial, despite her "objectable and detestable tactics and multiple baseless assertions"; that on multiple occasions, the court had warned the plaintiff of the possibility and probability of sanctions being imposed if she could not put forth evidence of the recording of, and listening to, her personal calls; that the court believed that she might be able to present such claimed and alleged evidence; but that the court was "blindsided and deceived" by the plaintiff as she failed to put forth such evidence at trial "because she obviously did not have such evidence." Further, the trial court found that the plaintiff's conduct throughout the litigation included maligning "the integrity, character, honesty and professionalism" of the court and defense counsel, which was "extremely offensive and likely contemptuous"; that many of these assertions were "factually baseless and intellectually noxious"; that when a ruling is made against the plaintiff it had become her custom "to resort to

her classic and baseless assertions of due process being denied to her and the ruling being prejudicial to her interests," which was "especially distasteful because this [c]ourt has given [her] the benefit of the doubt on way too many occasions." Noting that the court had never been biased against the plaintiff, that any ruling made against her was fully warranted, and that the court had given the plaintiff more than a fair opportunity to present all of her arguments throughout the litigation and at trial, the trial court found the litigation to be frivolous, vexatious, and harassing, in violation of Rule 137. The trial court found that, at the close of discovery, the plaintiff "had to know that she could not satisfy an indispensable element of her meritless claim, namely that her personal calls were listened to," and that the plaintiff's conduct needlessly increased the cost of this litigation and caused unnecessary delays. On July 22, 2014, after the General Board submitted a verified fee petition, the trial court imposed sanctions against the plaintiff in the amount of $197,909.50 in attorney's fees and expenses. In its July 22, 2014 order, the trial court granted in large part the fees requested by the General Board in its verified fee petition, with the exception of reducing the requested amount by $3,008 on the basis that those fees were not supported by the invoices attached as exhibits to the fee petition. The court found that all of the General Board's legal expenses were incurred as a result of the plaintiff's "untrue and frivolous complaint, because but for the complaint, [the General Board] would not have been involved in this litigation."

¶ 73 On appeal, the plaintiff challenges, in a cursory manner, the imposition of Rule 137 sanctions upon her. She argues that her lawsuit was not frivolous, accuses the court of "punishing" her and siding with the General Board, and attacks the court for various "demean[ing]" statements it directed at her during trial. The General Board counters with

examples of the plaintiff's conduct during the litigation that unnecessarily expanded the proceedings. Based on our review of the record, in this case, it is apparent that the trial court had ample basis for the imposition of some level of Rule 137 sanctions. However, while the plaintiff's conduct certainly was outside the ordinary in litigation, it is apparent from her numerous procedural and substantive blunders that the plaintiff's *pro se* representation did not serve her well and may have accounted for some of these missteps. Further, we cannot say that a large part of the plaintiff's seemingly defiant and sometimes obnoxious conduct was not in large part due to her *pro se* status and the challenge of litigation without knowing the procedural rules. It is true that while the plaintiff has the right to represent herself, she does not have the right to do so in a manner which runs afoul of established procedural rules and case law. However, we believe it is worth revisiting the trial court's imposition of sanctions in the amount of $214,056.99 ($16,147.49 in costs + $197,909.50 in attorney's fees and expenses), to be paid by the plaintiff at the rate of $150 per month until satisfied, given her *pro se* status and her lack of legal knowledge. While we can understand the trial court's exasperation with the plaintiff, which is well documented in the record, we believe the imposition of the *level* of sanctions imposed by the trial court under the facts of this case, must be vacated and the cause remanded for imposition of a different amount of sanctions. The new sanctions should satisfy the purpose of addressing the plaintiff's sanctionable conduct as occasioned by the imposition of the current sanctions, but should not be so onerous as to have a chilling effect on *pro se* litigants. See generally *Toland v. Davis*, 295 Ill. App. 3d 652, 657-58 (1998) ("[l]itigation is inherently uncertain, and it would be unjust to punish litigants for exercising their right to file or defend a lawsuit. The poor would be discouraged from vindicating their rights, not based on the merits of their cases, but for fear of

being penalized with their opponents' attorney fees"). We note also that the court commented on the plaintiff's abhorrent behavior in pursuing *what turned out to be* a frivolous lawsuit. This underscores the need for the trial court to revisit its level of sanctions in this case. While it is true that the plaintiff was not able to prove her case at trial, it cannot be said that she knew or should have known that fact *ab initio*. This is especially so in light of her lack of knowledge of the law. It is noteworthy that the plaintiff's conduct in prosecuting this appeal has also bordered on aberrant. Her briefs and pleadings demonstrate a lack of procedural and substantive knowledge of appellate practice. Nevertheless, we have endeavored to give the plaintiff a fair airing of her appeal. Further, the record bears out the conclusion that the plaintiff's behavior and conduct which likely resulted in the high level of sanctions, became progressively worse as the litigation wore on. Yet, it is unclear from the record, the point at which the trial court determined that the plaintiff's conduct was subject to sanctions. We do not assume, nor would it be appropriate, that the sanctions imposed by the trial court were intended to cover the litigation from its inception. It cannot be said under these facts that the plaintiff should be sanctioned for bringing the lawsuit in the first place and it appears that may be what the trial court did given the magnitude of the sanctions imposed. Accordingly, while we do not dispute that *some* level of sanctions is appropriate under these facts, the trial court must carefully *reconsider* all facts, circumstances, and criteria necessary for imposing a new order for sanctions consistent with our ruling. While we are reluctant to return this never-ending litigation to the trial court, we find that the trial court is in the best position to address a new, appropriate, level of sanctions different from that previously imposed, in accordance with our directive.

¶ 74 In light of our ruling vacating the $214,056.99 in sanctions and remanding the case for a new order regarding sanctions, we need not address the final issue of the plaintiff's consolidated appeal—which is whether the trial court erred in ordering the plaintiff to pay the monetary sanctions judgment[12] against her in monthly installments of $150 (issue (9)). We note, however, that in the imposition of new sanctions, the trial court is entirely within its discretion in ordering monthly installment payments by the plaintiff as appropriately determined by the court in order to satisfy the judgment.

¶ 75 The General Board next requests this court to issue a rule to show cause as to why the plaintiff should not be sanctioned under Supreme Court Rule 375(b) (eff. Feb. 1, 1994), arguing that the plaintiff filed a frivolous appeal and that it would have been apparent to a reasonable person that no factual or legal basis existed to challenge any of the trial court's rulings. The plaintiff counters that Rule 375 sanctions are unwarranted because, when viewed as a whole, her appeal is neither frivolous, taken for an improper purpose, nor filed specifically to harass or to cause unnecessary delays and needless increase of litigation costs.

¶ 76 Rule 375(b) provides that, "[i]f, after consideration of an appeal or other action pursued in the reviewing court, it is determined that that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate

[12] As discussed, the circuit court's March 12, 2014 order assessed $16,147.49 in costs against the plaintiff, and its July 22, 2014 order imposed sanctions against her in the amount of $197,909.50 in attorney's fees and expenses, for a combined total of $214,056.99 in monetary judgments.

sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

¶ 77 We decline the General Board's request to issue a rule to show cause as to why sanctions are not warranted under Rule 375(b). While the plaintiff's briefs include defects that resulted in forfeiture of some of the challenged issues on appeal, we find that the appeal was not frivolous as it contained arguments that, though unsuccessful, arguably could be considered warranted by existing law—such as whether the "continuing tort rule" applied to toll the statute of limitations on some of the dismissed claims against the plaintiff; whether the trial court abused its discretion in denying the plaintiff's requests to further amend the complaint and in denying her request for a trial continuance; and whether the trial court erred in imposing over $200,000 in sanctions against her. Therefore, we decline the General Board's invitation to issue a rule to show cause as to why the plaintiff should not be sanctioned under Rule 375.

¶ 78 For the foregoing reasons, we vacate the order for sanctions but affirm the judgment of the circuit court of Cook County in all other respects. The matter is remanded to the circuit court for a new determination of appropriate sanctions consistent with this order.

¶ 79 Affirmed in part; vacated in part; cause remanded with directions.