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NO. 4-15-0312

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June 2, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ADVOCATE HEALTH AND HOSPITALS CORPORATION, d/b/a ADVOCATE BROMENN MEDICAL CENTER, an Illinois Not-For-Profit Corporation, Plaintiff and Counterdefendant-Appellee, v. MICHAEL S. CARDWELL, M.D., Defendant and Counterplaintiff-Appellant.	))))))))	Appeal from Circuit Court of McLean County No. 12L78 Honorable Rebecca Simmons Foley, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court committed no error in granting summary judgment in favor of plaintiff.

¶ 2 Plaintiff, Advocate Health and Hospitals Corporation, d/b/a Advocate BroMenn Medical Center (Hospital), an Illinois not-for-profit corporation, filed a complaint against defendant, Dr. Michael S. Cardwell, alleging breach of contract. Ultimately, the trial court granted summary judgment in favor of the Hospital. Dr. Cardwell appeals, arguing the court erred because a genuine issue of material fact existed as to (1) his affirmative defense and counterclaim of fraud in the inducement and (2) the Hospital's affirmative defense of ratification to his fraud in the inducement counterclaim. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The Hospital, located in Normal, Illinois, is the surviving entity of a January 2010 merger between Advocate Health and Hospitals Corporation and BroMenn Healthcare Hospitals (BroMenn). Dr. Cardwell is a specialist in the field of perinatology. On December 18, 2007, BroMenn (the Hospital's predecessor in interest) and Dr. Cardwell entered into a recruitment assistance agreement (Agreement). In the Agreement, BroMenn acknowledged that it had "determined a need for a physician in the specialty of perinatology in Normal" and that "the community at large would benefit from the recruitment of a perinatologist."

¶ 5 Pursuant to the Agreement, Dr. Cardwell was deemed to have relocated his practice to Normal effective December 3, 2007, and he agreed to "practice as a perinatologist on a full-time basis." He further agreed to "obtain active staff membership and appropriate clinical privileges on [BroMenn's] Medical Staff" but was to remain an independent contractor. Dr. Cardwell's obligations under the Agreement also included the following:

> "2.3 Development of Perinatology Program. Physician shall be responsible for leading the effort to develop a perinatology program (the 'Program') at [BroMenn]. Physician's services in relation to the development of the Program may include working with [BroMenn] to start-up the Program and providing administrative and/or professional services to the Program. Physician hereby acknowledges that Physician's services specifically in relation to the development of the Program shall be provided exclusively to [BroMenn] and Physician shall not assist any other facility in the development of a similar perinatology program."

¶ 6 In consideration of Dr. Cardwell establishing a practice in Normal, BroMenn agreed to advance him an "Income Guarantee Loan" not to exceed $450,000, during a specified "Guarantee Period," which was defined in the Agreement as the 12-month period following Dr. Cardwell's December 3, 2007, start date. Immediately following the "Guarantee Period" was the "Repayment Period," defined as a five-year period during which Dr. Cardwell was required to repay the "Income Guarantee Loan." However, for each 12-month period that Dr. Cardwell maintained a full-time practice in Normal, BroMenn agreed to forgive one-fifth of the total loan amount and corresponding interest. Under the Agreement, BroMenn could terminate the parties' agreement if Dr. Cardwell failed to maintain a practice in Normal during both the one-year "Guarantee Period" and the five-year "Repayment Period." The parties agreed that, upon such termination, all unpaid principal and accrued interest on the loan, which had not been forgiven, would become immediately due and payable.

¶ 7 In May 2012, the Hospital filed a complaint against Dr. Cardwell, alleging it had assumed "all rights and obligations" of BroMenn under the Agreement as a result of the January 2010 merger and that Dr. Cardwell "was in default of his obligations under" the Agreement. Specifically, the Hospital asserted it had loaned Dr. Cardwell a total of $450,000 pursuant to the parties' agreement but Dr. Cardwell did not maintain a full-time practice in Normal for the entire five-year "Repayment Period." It maintained Dr. Cardwell closed his Normal practice in September 2011, and, therefore, "maintained a full-time practice in the Normal community for less than 36 months from the last day of the Guarantee Period."

¶ 8 The Hospital further alleged that only two-fifths of the "Income Guarantee Loan" advanced to Dr. Cardwell had been forgiven—one-fifth for each of the two full years that he

maintained a full-time practice in Normal. It asserted that, "[a]fter applying all credits due, the amount of principal and interest due and owing to the Hospital as of April 30, 2012[,] [was] $288,573.59" with interest continuing to accrue. The Hospital asked the trial court to enter a judgment in its favor in the amount of $288,573.59, "plus costs, interest, and attorneys' fees, which continue to accrue." It attached a copy of the Agreement and related documents to its complaint, along with a letter to Dr. Cardwell, dated September 14, 2011. In the letter, the Hospital's vice president of finance, Aron Klein, noted it had come to the Hospital's attention that Dr. Cardwell was relocating his medical practice from Normal to Texas and informed Dr. Cardwell that he would be required to repay amounts owed in connection with the "Income Guarantee Loan."

¶ 9 In December 2012, Dr. Cardwell filed a first amended answer, affirmative defenses, and counterclaim. He denied that he was in default under the terms of the Agreement and, relevant to this appeal, asserted fraud in the inducement as an affirmative defense and counterclaim. In his pleading, Dr. Cardwell alleged that, in or around June 2007, he entered into negotiations with BroMenn regarding the relocation of his medical practice. He asserted that, during negotiations, BroMenn, through its chief medical officer, Dr. Gary Hagens, represented that if he agreed to relocate his practice "he would be appointed Director of Maternal Fetal Medicine at BroMenn, and would be allowed to facilitate the development of the [perinatology] [p]rogram." Dr. Cardwell asserted such statements were false and "BroMenn knew they were false at the time they were made." He further alleged as follows:

> "14. At the time BroMenn made these statements to [Dr.] Cardwell, he had opportunities to establish his practice in other cit-

ies in Central Illinois.

15. BroMenn represented to [Dr.] Cardwell that he would be appointed Director of Maternal Fetal Medicine, and would be allowed to facilitate the [perinatology] [p]rogram with the intent to induce [Dr.] Cardwell into signing the [Agreement] and establish *** his practice exclusively at BroMenn.

16. [Dr.] Cardwell had no knowledge of the falsity of these statements, and reasonably believed these statements to be true.

17. In reliance on the truth of these statements, [Dr.] Cardwell signed the [Agreement] and relocated his practice to BroMenn.

18. After [Dr.] Cardwell signed the [Agreement] and relocated his practice to BroMenn, BroMenn continuously created obstacles to [Dr.] Cardwell's development of his practice and ability to establish the [perinatology] [p]rogram ***.

19. [Dr.] Cardwell would not have entered into the [Agreement], and would not have relocated his practice to BroMenn if he had known BroMenn's representations to be false."

Dr. Cardwell alleged he was damaged by BroMenn's misrepresentations, in that he relocated his practice to BroMenn, foreclosing other opportunities available to him.

¶ 10 In May 2013, the Hospital filed its reply to Dr. Cardwell's affirmative defense and counterclaim. It admitted that, in June 2007, BroMenn entered into negotiations with Dr. Card-

well after recognizing its need for a perinatal specialist. However, the Hospital denied that any promises were made to Dr. Cardwell other than those contained within the Agreement. It also alleged ratification as an affirmative defense to Dr. Cardwell's counterclaim of fraud in the inducement. Specifically, the Hospital asserted Dr. Cardwell accepted the benefits of the Agreement for almost four years and, prior to the filing of the Hospital's complaint "never notified the Hospital or BroMenn of any alleged misrepresentations made by [the] Hospital or BroMenn *** at or near the time the [Agreement] was signed." It further alleged that prior to the commencement of litigation by the Hospital, Dr. Cardwell never announced an intention to rescind or terminate the Agreement, or a belief that he was not bound by the terms of the Agreement. Finally, the Hospital asserted Dr. Cardwell's "delay in notifying and/or failure to notify the Hospital or BroMenn of the alleged misrepresentations was unreasonable."

¶ 11 In August 2014, the Hospital filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)) and an accompanying memorandum of law in support of its motion. It asserted Dr. Cardwell's fraud in the inducement affirmative defense and counterclaim could not survive a motion for summary judgment because:

> "(1) statements regarding future conduct or intent are not actionable as fraud under Illinois law; (2) Dr. Cardwell [could not] satisfy the requirements of a fraud in the inducement claim (that he relied on the purported promise of a Directorship when executing the [Agreement], that any reliance on such a promise was reasonable, or that he suffered any damages as a result of his alleged reliance);

> and (3) even if Dr. Cardwell could show that the agreement was the result of fraudulent inducement, he ratified the agreement with his conduct, as he retained the financial benefits of the agreement and then remained at [the Hospital] for nearly three years after learning that he would not immediately be appointed Director."

The Hospital further asserted that no genuine issues of material fact existed with respect to either the formation of the Agreement or Dr. Cardwell's breach of that agreement. It requested the trial court grant summary judgment in its favor as to its complaint, Dr. Cardwell's fraud in the inducement affirmative defense and counterclaim, and its affirmative defense of ratification.

¶ 12 The Hospital attached various documents to its motion, including Dr. Cardwell's response to a request to admit facts prepared by the Hospital. In his response, Dr. Cardwell admitted that, in January 2007, he "resigned" medical staff privileges at a medical center in Missouri. Prior to June 18, 2007, he moved his residence to Bloomington, Illinois, and had done so for personal reasons. He admitted that, prior to December 2007, there was no maternal fetal medicine program at BroMenn. Dr. Cardwell further admitted that, "on or about October 13, 2008[,] [he knew he] would not be appointed as the Director of Maternal Fetal Medicine at BroMenn." Finally, he also admitted that he accepted "Income Guarantee Loan" payments from BroMenn of $450,000 between December 2007 and December 2008.

¶ 13 Also attached to the Hospital's motion for summary judgment was the affidavit of Roger Hunt, who served as BroMenn's president and chief executive officer from June 2002 until January 2010, and the Hospital's president (following the merger that occurred in January 2010) from January to October 2010. Hunt averred he also remained at the Hospital as a consultant

until the fall of 2011. He further stated that, in June 2007, BroMenn entered into negotiations with Dr. Cardwell "regarding Dr. Cardwell's establishment of a medical practice in Normal." At that time, Dr. Cardwell informed Hunt that he had already relocated to Bloomington, Illinois. According to Hunt, both he and Dr. Hagens—BroMenn's chief operating officer and vice president of medical affairs—participated in the negotiations with Dr. Cardwell "concerning the contemplated [Agreement]." Hunt signed the Agreement on BroMenn's behalf.

¶ 14 Hunt stated the Agreement "provided that Dr. Cardwell would be responsible for leading the efforts to develop a perinatology program at BroMenn, as BroMenn did not have a perinatology program at that time." He averred that, on or about September 30, 2008, Dr. Cardwell sent a letter to him and Dr. Hagens entitled " 'Director of Maternal Fetal Medicine Proposal' " suggesting "that [Dr. Cardwell] be named Director of Maternal Fetal Medicine at BroMenn and receive $300,000 a year, for five years, beginning on December 1, 2008." Hunt stated he responded to Dr. Cardwell's proposal with a letter dated October 13, 2008, and informed Dr. Cardwell "that although BroMenn was working to develop such a program, [its] timetable for finalizing the logistics did not coincide with [Dr. Cardwell's] proposed timetable." Hunt "expressed appreciation for [Dr. Cardwell's] input regarding the development of [BroMenn's] Maternal Fetal Medicine program and told him that once [its] plans were fully developed, [BroMenn] would be in a position to consider his application for Director."

¶ 15 In his affidavit, Hunt further stated that, prior to the commencement of the Hospital's litigation, Dr. Cardwell "never apprised [him] of any purported misrepresentations that BroMenn allegedly made during the negotiation of the [Agreement]." He also averred that, while practicing medicine in Normal, Dr. Cardwell "never told [him] that he had been promised

that he would become the Director of the Maternal Fetal Medicine program." Finally, Hunt asserted that prior to the underlying litigation, Dr. Cardwell "neither informed [him] that he intended to rescind or terminate the [Agreement] nor communicated a belief that he was not bound by the [Agreement's] terms." Both Dr. Cardwell's September 2008 letter and Hunt's October 2008 letter were attached as exhibits to Hunt's affidavit.

¶ 16 The Hospital further attached the affidavit of Aron Klein to its motion for summary judgment. Klein, averred he had been the Hospital's vice president of finance since September 2010. Following the January 2010 merger, the Hospital received BroMenn's financial records. Klein asserted that between 2007 and 2008, BroMenn loaned Dr. Cardwell $450,000 pursuant to the Agreement and forgave two-fifths of the loan. In September 2011, Dr. Cardwell ceased practicing medicine in Normal. Klein stated Dr. Cardwell owed the Hospital the repayment of the remaining three-fifths of the loan, plus interest and legal costs and fees. He asserted that, as of April 30, 2014, the principal and interest owed by Dr. Cardwell to the Hospital was $401,000, with interest and legal fees and costs continuing to accrue. Klein averred that Dr. Cardwell had not repaid any of the money owed to the Hospital.

¶ 17 Finally, the Hospital attached Dr. Cardwell's answers to interrogatories to its motion for summary judgment. In his answers to interrogatories, Dr. Cardwell asserted he communicated with Dr. Hagens and Hunt regarding the Agreement. Further he stated as follows:

> "In these conversations[,] Dr. Cardwell was reassured that there would be [two] contracts, (1) a recruiting assistance contract and (2) a contract for Director of Maternal Fetal Medicine. Dr. Cardwell was informed that the recruiting assistance contract would be

executed before his practice started, and then the contract for Director of Maternal Fetal Medicine would shortly follow."

When asked to describe any and all opportunities he forewent by signing the Agreement, Dr. Cardwell responded as follows: "None at this time. Investigation is ongoing and Dr. Cardwell reserves the right to supplement this response."

¶ 18 In October 2014, Dr. Cardwell filed a response to the Hospital's motion for summary judgment. He maintained genuine issues of material fact existed in the case, precluding summary judgment. Specifically, Dr. Cardwell asserted BroMenn induced him to sign the Agreement with a false promise that it would pursue the development of a perinatology program and obtain certification as a "Level II Enhanced Center."

¶ 19 Dr. Cardwell's affidavit was attached to his response. He asserted he was a medical doctor licensed to practice medicine in Illinois and "practicing in the fields of Obstetrics and Gynecology and specializing in the field of Maternal Fetal Medicine (Perinatology)." In June 2007, he engaged in negotiations with Dr. Hagens "to establish and administer a Perinatology Program" at BroMenn. Further, he averred as follows:

> "3. [Dr.] Hagens informed me of BroMenn Hospital's goal of pursuing certification as a Level II Enhanced Status center at the hospital but [that it] did not have a perinatology specialist on staff and indicated to me their need for such a specialist in order to achieve Level II enhanced status.
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> * * *
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> 7. In November of 2007, [Dr.] Hagens indicated to me that

BroMenn['s] *** attorney was in the process of modifying a proposed contract from a standard recruitment contract to one that would include services for the establishment and administration of the Perinatology Program.

8. [Dr.] Hagens eventually provided only one contract *** which required me to relocate my practice to Normal, Illinois[,] on or about December 3, 2007. The agreement was entered into between the parties on December 18, 2007.

9. Before and at the time of signing the December 18, 2007[,] agreement, [Dr.] Hagens repeatedly stated that a second agreement was being prepared to cover the separate services to be provided by me as the Director of the Perinatology Program.

10. As of September 30, 2008, [Dr.] Hagens continually failed to produce the second contract as promised.

11. On September 30, 2008[,] I sent [a] letter *** to [Dr.] Hagens and Roger Hunt to memorialize the agreement [Dr.] Hagens had made to me prior to and following the signing of the December 18, 2007[,] document.

12. On October 13, 2008, *** Hunt[] responded to my letter indicating that the Perinatology Program and the Level II Enhanced Center were as of yet, still undeveloped. ***

13. BroMenn *** never developed the Perinatology Pro-

gram or the Level II Enhanced Center.

14. I would not have entered into the December 18, 2007[,] agreement without the clear understanding that the Perinatology Program and the Level II Enhanced Center would be developed and that I would be appointed as the Director of Perinatology.

15. I would not have signed the December 18, 2007[,] agreement without the promise that the second agreement regarding the Perinatology Program and the Level II Enhanced Center were being prepared as per the statements of [Dr.] Hagens."

¶ 20 In January 2015, the trial court entered an order, granting the Hospital's motion for summary judgment and entering judgment in the Hospital's favor with respect to its complaint, Dr. Cardwell's fraud in the inducement affirmative defense and counterclaim, and the Hospital's affirmative defense of ratification. In February 2015, Dr. Cardwell filed a motion to reconsider, which the court ultimately denied.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, Dr. Cardwell argues the trial court erred in granting the Hospital's motion for summary judgment. Specifically, he maintains genuine issues of material fact exist with respect to his affirmative defense and counterclaim of fraud in the inducement of a contract and the Hospital's affirmative defense of ratification.

¶ 24 "[S]ummary judgment may be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party,

show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law." *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 10, 40 N.E.3d 1. "The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of material fact exists." *Illinois State Bar Ass'n Mutual Insurance Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 14, 27 N.E.3d 67. A trial court's decision to grant a motion for summary judgment is subject to *de novo* review. *Wade v. Wal-Mart Stores, Inc.*, 2015 IL App (4th) 141067, ¶ 12, 39 N.E.3d 1141.

¶ 25 A. Fraud in the Inducement

¶ 26 "A contract may contain all of the elements necessary for enforceability, but may nonetheless be unenforceable as a result of the imposition of an affirmative defense." *Jordan v. Knafel*, 378 Ill. App. 3d 219, 228, 880 N.E.2d 1061, 1069 (2007). "Fraud in the inducement of a contract is a defense that renders the contract voidable at the election of the injured party." *Jordan*, 378 Ill. App. 3d at 229, 880 N.E.2d at 1069. To establish fraud in the inducement, a party must show "(1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent to induce plaintiff's reliance on the statement; (4) plaintiff's reasonable reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement." *Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 30, 998 N.E.2d 147; see also *Enterprise Recovery Systems, Inc. v. Salmeron*, 401 Ill. App. 3d 65, 72, 927 N.E.2d 852, 858 (2010) ("The elements of [fraud in the inducement] are: a false representation of material fact, made with knowledge or belief of that representation's falsity, and made with the purpose of inducing another party to act or to refrain from acting, where the other party reasonably relies upon the representation to its detriment.").

¶ 27 Initially, the parties in this case dispute whether the fraud alleged by Dr. Cardwell involved a matter of existing fact or concerned only a matter of future intent or conduct. "Fraud in the inducement must, ordinarily, be founded upon a misrepresentation of fact, and the mere breaking of a promise or an act contrary to an expression of intention does not constitute fraud or warrant the rescission of a contract." *McDonald v. McDonald*, 408 Ill. 388, 394-95, 97 N.E.2d 336, 339 (1951); see also *Illinois Non-Profit Risk Management Ass'n v. Human Service Center of Southern Metro-East*, 378 Ill. App. 3d 713, 723, 884 N.E.2d 700, 710 (2008) ("Statements concerning future intent or conduct are not actionable as fraud."); *Power v. Smith*, 337 Ill. App. 3d 827, 832, 786 N.E.2d 1113, 1119 (2003) ("[M]isrepresentations as to something to be done in the future generally do not constitute fraud.").

¶ 28 In *Ault v. C.C. Services, Inc.*, 232 Ill. App. 3d 269, 270, 597 N.E.2d 720, 721 (1992), a case relied upon by the Hospital, the plaintiff filed a complaint alleging she was fraudulently induced into entering into an agreement with the defendant based on representations made by agents of the defendant "that another employee *** would be terminated and that the plaintiff would be assigned his accounts." Ultimately, the other employee was not terminated and his accounts were not reassigned. *Ault*, 232 Ill. App. 3d at 270, 597 N.E.2d at 721. The trial court dismissed the plaintiff's complaint, finding "the alleged statements made by agents of the defendant were statements of future intent rather than statements of present or preexisting facts, and, therefore, were insufficient to state a cause of action in fraud." *Ault*, 232 Ill. App. 3d at 270, 597 N.E.2d at 721. In finding the plaintiff's complaint was properly dismissed, the Third District initially noted that, "[g]enerally, under Illinois law there is no action for promissory fraud; meaning that the alleged misrepresentations must be statements of present or preexisting facts, and not

statements of future intent or conduct." *Ault*, 232 Ill. App. 3d at 271, 597 N.E.2d at 722. It then stated as follows:

> "In the instant case, the complaint claimed agents of the defendant allegedly told the plaintiff another employee was to be terminated and his accounts reassigned to her. We find the alleged misrepresentations in the instant case concern future intentions or conduct on the part of the defendant. Because [the] plaintiff has alleged broken promises by the defendant rather than material misstatements of fact, we find the original complaint failed to allege material misrepresentation of preexisting or present facts. Therefore, the original complaint failed to state a cause of action for fraud, and the trial court properly granted the defendant's motion to dismiss and properly denied the plaintiff's motion to vacate." *Ault*, 232 Ill. App. 3d at 271-72, 597 N.E.2d at 722.

¶ 29 The Hospital also relies on *Kusiciel v. LaSalle National Bank*, 106 Ill. App. 3d 333, 435 N.E.2d 1217 (1982). In that case, the plaintiffs alleged that fraudulent misrepresentations made by the defendants induced them to enter into a commercial lease in a shopping center. *Kusiciel*, 106 Ill. App. 3d at 334, 435 N.E.2d at 1218-19. They alleged the defendants made false representations during lease negotiations, including that (1) the shopping center would be fully rented and open for business by a certain date, (2) certain entities would be tenants of the shopping center, and (3) reconstruction work on a primary access point would be completed by a certain date. *Kusiciel*, 106 Ill. App. 3d at 334-35, 435 N.E.2d at 1219.

¶ 30 Ultimately, the trial court granted the defendants' motion for summary judgment, finding such representations "all related to events that were to occur in the future and which were not within the control of [the] defendants." *Kusiciel*, 106 Ill. App. 3d at 338, 435 N.E.2d at 1222. The court also determined the "representations were not promises made without any intention of performing them but instead were predictions of events that depended in essential part on the conduct of others, and were not a proper basis for a charge of fraud." *Kusiciel*, 106 Ill. App. 3d at 338, 435 N.E.2d at 1222. The First District agreed with the trial court, finding it committed no error in entering summary judgment in the defendant's favor. *Kusiciel*, 106 Ill. App. 3d at 339, 435 N.E.2d at 1222.

¶ 31 In this case, Dr. Cardwell argues he asserted fraud which concerned a representation of an existing fact. Specifically, he contends his "counter-affidavit establishes that Dr. Hagens represented that the second agreement for services covering the Directorship was being prepared at the time [Dr. Cardwell] executed the [Agreement]." Thus, Dr. Cardwell maintains the asserted misrepresentation was already happening, *i.e.*, a matter of present fact, and did not concern a matter of future intent or conduct. He also argues the misrepresentation was a matter completely within the Hospital's control. Dr. Cardwell contends that, as a result, this case is distinguishable from the case authority relied upon by the Hospital.

¶ 32 Here, we find Dr. Cardwell's fraudulent inducement claim is based on allegations that the Hospital made false promises regarding future conduct and, therefore, his claim must fail. In connection with his fraud in the inducement affirmative defense and counterclaim, Dr. Cardwell alleged he agreed to practice medicine in Normal and sign the Agreement based on the Hospital's representations that it would develop a perinatology program and appoint him as the

program's director. It is undisputed that, at the time Dr. Cardwell began practicing in Normal and signed the Agreement, no such program or directorship position existed. Clearly, such representations concern promises of actions to occur in the future and not preexisting or present facts.

¶ 33 Further, Dr. Cardwell's statement in his affidavit that "Dr. Hagens represented that the second agreement for services covering the Directorship was being prepared at the time [Dr. Cardwell] executed the [Agreement]" does not warrant a different result. Taking this statement as true, the asserted misrepresentation still relates to something to be done in the future as neither the directorship nor the perinatology program was in existence at the time the Agreement was executed. The availability of a directorship position was contingent on the development and existence of a perinatology program at the Hospital and, as discussed, Dr. Cardwell does not dispute that he was aware when he signed the Agreement that a perinatology program at BroMenn had yet to be developed.

¶ 34 Additionally, when viewing the record in the light most favorable to Dr. Cardwell, it fails to establish that the parties had reached an agreement with respect to contract terms for the directorship, lending further support to the Hospital's position that the misrepresentations he alleged concerned matters of future conduct. Even if Dr. Hagens asserted a directorship contract was being drafted at the time of the Agreement, the parties would have had to agree on the contract's terms in order to finalize the contract. Dr. Cardwell failed to allege in his pleading that the parties had reached a meeting of the minds with respect to any specific contract terms. Further, his letter, dated September 30, 2008, which he sent to Hunt and Dr. Hagens, indicates the parties had not agreed on any specific terms regarding the directorship position as it was express-

ly identified as Dr. Cardwell's "proposal" and failed to reference any prior agreement between the parties.

¶ 35 Finally, we find persuasive the Hospital's contention that, like in *Kusiciel*, the representations at issue depended upon the conduct of others. In particular, to establish its perinatology program, which included designation as a "Level II with Extended Neonatal Capabilities," the Hospital was required to submit an application to the Illinois Department of Public Health (Department) and obtain approval. 77 Ill. Adm. Code 640.42(h) (eff. Jan. 31, 2011). While the Hospital would no doubt be the driving force behind developing and obtaining approval for its perinatology program, approval was not guaranteed and the Hospital's application remained subject to evaluation by the Department.

¶ 36 Here, we find Dr. Cardwell's claim of fraud in the inducement concerned promises of future conduct or intention by the Hospital and not matters of present or preexisting fact. As a result, the Hospital was entitled to judgment in its favor as a matter of law as to both the affirmative defense and counterclaim by Dr. Cardwell claiming fraud in the inducement of a contract. We note the trial court also granted summary judgment in the Hospital's favor in connection with its original complaint alleging a breach of contract. On appeal, Dr. Cardwell does not raise any claim of error with respect to that action by the court and, as a result, he has forfeited any challenge to that portion of the court's order. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in an appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Thus, we find the court committed no error in granting summary judgment in the Hospital's favor as to both its breach of contract claim and Dr. Cardwell's fraud in the inducement affirmative defense and counterclaim.

¶ 37 B. Ratification

¶ 38 On appeal, the parties additionally dispute whether a genuine issue of material fact existed as to the Hospital's affirmative defense of ratification, raised in response to Dr. Cardwell's counterclaim for damages. However, the Hospital's ratification defense—raised as an alternative argument by the Hospital—presupposes a finding of fraud in the inducement. Given the trial court's finding that the Hospital was entitled to summary judgment with respect to Dr. Cardwell's fraud in the inducement counterclaim, it needlessly entered summary judgment on the Hospital's ratification affirmative defense. Similarly, given our holding as to Dr. Cardwell's counterclaim, it is unnecessary for us to address the parties' arguments as to ratification.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.