2012 IL App (1st) 111675-U

THIRD DIVISION
February 15, 2012

No. 1-11-1675

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HURON CONSULTING SERVICES LLC, a Delaware Limited Liability Company, Plaintiff,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
v.	)	
F. LISA MURTHA, an Individual; KEVIN ESKEW, an Individual; NANCY FREEMAN, an Individual; JUDY RINGHOLZ, an Individual; LINDA ROBINSON, an Individual; and SNR DENTON US LLP, f/k/a SONNENSCHEIN NATH & ROSENTHAL LLP, a Delaware Limited Liability Partnership, Defendants	)	No. 09 CH 18173
(F. Lisa Murtha, an Individual, and SNR Denton US LLP, a Delaware Limited Liability Partnership, Counterplaintiffs-Appellants;	)	
Huron Consulting Services LLC, a Delaware Limited Liability Company, and Matthew Lester, an Individual, Counterdefendants-Appellees).	)	HONORABLE LEROY K. MARTIN, JR. JUDGE PRESIDING.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

O R D E R

¶ 1 *Held*: The circuit court erred in dismissing counterplaintiffs' claims of defamation and tortious interference with contract and prospective economic advantage. The alleged defamatory statement was alleged with particularity, was not substantially true as a matter of law, was not reasonably subject to an innocent construction, and was not subject to the fair report privilege. The dismissal of the remaining counterclaims, premised on the dismissal of the defamation counterclaims, is also reversed. The case is remanded for further proceedings.

¶ 2 Defendants and counterplaintiffs F. Lisa Murtha and SNR Denton US LLP (SNR) appeal orders of the circuit court of Cook County dismissing their counterclaims of defamation and tortious interference with contract and prospective economic advantage against plaintiffs and counterdefendants Huron Consulting Services LLC (Huron) and Matthew Lester. On appeal, Murtha argues the circuit court erred in ruling Lester's alleged defamatory statement was substantially true and was reasonably subject to an innocent construction, while SNR argues the circuit court erred in dismissing its counterclaims of tortious interference based on the dismissal of Murtha's defamation counterclaims. For the following reasons, we agree with Murtha and SNR, reverse the judgment of the circuit court, and remand the case for further proceedings.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. Huron is a provider of independent financial and operational consulting services. SNR is a law firm based in Chicago, Illinois.

¶ 5 On June 5, 2009, Huron filed a verified complaint against SNR, Murtha and four other former Huron employees who joined SNR. Huron's complaint alleges breach of contract; breach

of fiduciary duty; tortious interference with contract and prospective economic advantage; aiding and abetting breach of fiduciary duty; violation of the Illinois Trade Secrets Act (765 ILCS 1065/1 *et seq.* (West 2008)); and violation of the federal Computer Fraud and Abuse Act (18 U.S.C. §1030 *et seq.* (2008)). The complaint claims in part that Murtha and other former Huron employees breached non-disclosure and non-solicitation agreements (noncompete agreements) they had entered into with Huron. This suit is currently pending in the circuit court.

¶ 6 On July 7, 2009, all defendants filed their verified answer and defenses. Murtha also filed a verified counterclaim. Subsequently, further answers and counterclaims were filed by various parties to the litigation. On December 7, 2010, the circuit court granted leave for SNR and Murtha to file additional verified counterclaims, which are at the heart of this appeal.

¶ 7 The additional verified counterclaims allege defamation and tortious interference with contract and prospective economic advantage by Huron and its managing director, Matthew Lester. Murtha alleges that from 2004 to 2005, Murtha was a principal at the firm of Parente Randolph, LLP (Parente). At that time, Huntington Memorial Hospital (Huntington) was one of Murtha's clients. However, Murtha did not retain Huntington as a client when she joined Huron, due to a noncompetition agreement between Murtha and Parente.

¶ 8 Murtha left Huron and began working for SNR on March 31, 2009. On September 7, 2010, James Passey, Huntington's director of compliance and internal audit services, sent Murtha two requests for proposals for SNR to provide certain auditing services, including an audit of Huntington's Institutional Review Board (IRB) functions. SNR submitted proposals to

Huntington later on September 24, 2010. Huntington accepted the proposals on October 20, 2010.

¶ 9 At this time, Huron was working with Huntington's IRB and performing certain IRB functions. Huron learned that SNR and Murtha were scheduled to interview and audit the work of at least one Huron employee, who was serving as Huntington's IRB functions coordinator. On or about November 1, 2010, Lester telephoned Passey. SNR and Murtha allege that during this telephone call, Lester told Passey that Huron, SNR and Murtha were engaged in litigation because Murtha violated her noncompete agreement with Huron when she left Huron to work for SNR. On November 3, 2010, Huntington terminated its engagement of SNR and Murtha to perform the auditing services. Murtha alleges Lester's statement was false and defamatory; SNR's claims of tortious interference allege the statement resulted in the loss of current and future business with Huntington.

¶ 10 On January 25, 2011, Huron filed a motion to dismiss the additional verified counterclaims for failure to state a claim pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)). Huron argued: (1) Murtha failed to describe the allegedly defamatory statement with sufficient particularity; (2) the statement was reasonably capable of an innocent construction; (3) the statement was substantially true; and (4) SNR does not adequately allege the existence of a valid and enforceable written or verbal contract with Huntington. On March 4, 2011, SNR and Murtha filed their memorandum in opposition to the motion to dismiss, disputing each of Huron's arguments. On March 25, 2011, Huron filed its reply in support of the motion to dismiss.

¶ 11 On April 18, 2011, following a hearing, the circuit court granted Huron's motion. The circuit court dismissed the defamation counterclaims against Huron and Lester with prejudice, ruling the alleged statement: (1) was substantially true because the "gist" of the statement was to inform Huntington of the pending litigation; and (2) should be innocently construed as merely informing Huntington of the pending litigation. The circuit court also dismissed the counterclaims of tortious interference with contract and prospective economic advantage without prejudice. On April 25, 2011, SNR and Murtha filed a motion with the circuit court to reconsider its decision or certify its rulings for immediate appeal. On May 12, 2011, the circuit court entered an order denying reconsideration, but deeming all of the dismissals to be with prejudice and finding no just reason to delay enforcement or appeal of the order pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). On June 13, 2011, SNR and Murtha filed a timely notice of appeal to this court.

¶ 12 DISCUSSION

¶ 13 I. Jurisdiction

¶ 14 We initially address the question of this court's jurisdiction. On July 6, 2011, Huron filed a motion in this court to dismiss the appeal for lack of jurisdiction, arguing the circuit court abused its discretion in finding no just reason to delay enforcement or appeal of its order. On September 2, 2011, this court entered an order taking the motion to dismiss with the case.

¶ 15 "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying

either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Here, SNR and Murtha seek to appeal an order that dismissed certain counts of their counterclaim against Huron, while Huron's complaint remains pending. Thus, the orders appealed from unquestionably resolved fewer than all of the claims between the parties.

¶ 16 The decision to enter a Rule 304(a) finding is within the trial court's discretion. *Fremont Compensation Insurance Co. v. Ace-Chicago Great Dane Corp.*, 304 Ill. App. 3d 734, 740 (1999). Indeed, "in the context of Rule 304(a), a trial court's finding that no just reason exists to delay an appeal is nothing more than a discretionary determination that permitting an immediate appeal, under the circumstances, would be desirable." *Id.* An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004); *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 17 In determining whether there is any just reason for delaying the appeal, courts consider: (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might be mooted by future developments in the circuit court; (3) the possibility that reviewing courts may be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final; and (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, and expense. *In re Estate of Stark*, 374 Ill. App. 3d 516, 524 (2007). Depending on the facts of the case at hand, some or all of these factors may come into play. *Id.* In addition to these factors, a paramount

consideration is efficient judicial administration. *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 557 (2009).

¶ 18 Huron argues the adjudicated and unadjudicated claims here are intertwined and there is a substantial likelihood the counterclaims will be mooted by future developments in the circuit court. Huron notes the premise of the dismissed counterclaims is that Lester's statement that Murtha violated her noncompete agreement with Huron is false. Huron argues that if it prevails on its pending claim that Murtha violated her noncompete agreement, the dismissed counterclaims would be mooted. Huron also argues that the practical factors, including judicial efficiency, support dismissing this appeal.

¶ 19 However, in this case, the circuit court ruled the alleged statement: (1) was substantially true because the "gist" of the statement was to inform Huntington of the pending litigation; and (2) should be innocently construed as merely informing Huntington of the pending litigation. As Huron concedes it its brief, the defense of substantial truth is not the same as actual truth. The defense of substantial truth normally is a jury question and is a question of law only where no reasonable jury could find the defense has not been established. *Parker v. House O'Lite Corp.*, 324 Ill. App. 3d 1014, 1026 (2001). Assuming for the sake of arguing the jurisdictional question Lester's statement was substantially true *because* the "gist" of the statement was to inform Huntington of the pending litigation, the issue is logically and legally distinct from whether Murtha actually violated the noncompete agreement. Given that Huron's breach of contract claim is unadjudicated, the circuit court could not have based its ruling on the notion that Murtha actually violated the noncompete agreement.

¶ 20 As for the circuit court's other rationale, even if a statement would ordinarily be considered defamatory *per se*, it will not be deemed such if it is reasonably capable of an "innocent construction." *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 90 (1996). The preliminary determination of whether the innocent construction rule applies is a question of law for the court. *Tuite v. Corbitt*, 224 Ill. 2d 490, 503 (2006). Thus, this issue is also logically and legally distinct from whether Murtha actually violated the noncompete agreement. The adjudicated and unadjudicated claims here are related, but not inextricably intertwined. Allowing this court to review the dismissal of these counterclaims now avoids the potential situation in which a jury finds Murtha did not breach the contract and this court reverses the dismissal of the counterclaims, resulting in further costs and protracted litigation. Accordingly, we conclude the circuit court did not abuse its discretion in entering a Rule 304(a) finding in this case.

¶ 21 II. Standard of Review

¶ 22 On appeal, Murtha and SNR argue the circuit court erred in dismissing their counterclaims under section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). A motion to dismiss under section 2–615 of the Code challenges the legal sufficiency of the complaint by alleging defects on its face. *Young v. Bryco Arms*, 213 Ill. 2d 433, 440 (2004); *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003). We review *de novo* an order granting a section 2–615 motion to dismiss. *Young*, 213 Ill. 2d at 440; *Wakulich*, 203 Ill. 2d at 228. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Kahn v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). The critical inquiry is whether the allegations in the complaint are

sufficient to state a cause of action upon which relief may be granted. *Wakulich*, 203 Ill. 2d at 228. In making this determination, all well-pleaded facts in the complaint and all reasonable inferences that may be drawn from those facts are taken as true. *Young*, 213 Ill. 2d at 441. In addition, we construe the allegations in the complaint in the light most favorable to the plaintiff. *Id.*

¶ 23 In this case, Huron and Lester asserted the alleged defamatory statement: lacked particularity; was substantially true; was reasonably subject to an innocent construction; and was subject to the fair report privilege. Aside from the particularity issue, Huron and Lester's arguments assert affirmative matter properly raised in a motion to dismiss under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2010)), not under section 2-615 of the Code. See *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 642 (2010) (Freeman, J., specially concurring) (citing 4 R. Michael, Illinois Practice §41.7, at 331–32 (1989) (collecting cases)). The Illinois Supreme Court, when faced with a similar situation, considered the innocent construction defense as having been filed and decided under section 2-619 of the Code. *Bryson*, 174 Ill. 2d at 92. Thus, we will follow a similar approach in this case.

¶ 24 A section 2-619 motion to dismiss admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts. *Wackrow v. Niemi*, 231 Ill. 2d 418, 422 (2008). However, the moving party asserts that the claim is barred by some affirmative matter avoiding the legal effect of or defeating the claim. *Id.*; see also 735 ILCS 5/2-619(a)(9) (West 2010). When a court rules on a section 2-619 motion to dismiss, it must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party.

Wackrow, 231 Ill. 2d at 422. We review *de novo* a trial court's grant of a motion to dismiss under section 2–619 of the Code. *Id.* Even if the trial court dismissed the complaint on an improper ground, a reviewing court may affirm the dismissal if the record supports a proper ground for dismissal. *Janda v. U.S. Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 84.

¶ 25 With these standards in mind, we turn to the bases argued by Huron and Lester as grounds for dismissing the counterclaims of defamation and tortious interference with contract and prospective economic advantage.

¶ 26 III. Defamation

¶ 27 Huron and Lester argue Murtha's defamation counterclaim was properly dismissed because the alleged defamatory statement lacked particularity, was substantially true, was reasonably subject to an innocent construction, and was subject to the fair report privilege. We address each basis in turn.

¶ 28 A. Particularity

¶ 29 A statement is defamatory if it "tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with her." *Bryson*, 174 Ill. 2d at 87. "To state a defamation claim, a plaintiff must present facts that a defendant made a false statement about a plaintiff, the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages." *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124, 134 (2007). If a plaintiff alleges that a statement is defamatory *per se*, he or she need not plead or prove actual damages to his or her reputation; statements that are defamatory *per se* "are thought to be so obviously and materially harmful to

the plaintiff that injury to her reputation may be presumed." *Bryson*, 174 Ill. 2d at 87. Illinois recognizes five categories of statements that are defamatory *per se*: (1) those imputing the commission of a criminal offense; (2) those imputing infection with a communicable disease; (3) those imputing an inability to perform or want of integrity in the discharge of duties of office or employment; (4) those that prejudice a party or impute lack of ability in the party's trade, profession, or business; and (5) those imputing adultery or fornication. *Id.* at 88-89. Here, Murtha and SNR allege that Lester's statements fall within the third and fourth categories of defamation *per se.*

¶ 30 Although a complaint for defamation *per se* need not set forth the allegedly defamatory words *in haec verba*, the substance of the statement must be pled with sufficient precision and particularity to permit initial judicial review of its defamatory content. *Green v. Rogers*, 234 Ill. 2d 478, 492 (2009). Precision and particularity are also necessary so that the defendant may properly formulate an answer and identify any potential affirmative defenses. *Id.*

¶ 31 In this case, SNR and Murtha alleged that during a telephone call on or about November 1, 2010, Lester told Passey that Huron, SNR and Murtha were engaged in litigation because Murtha violated her noncompete agreement with Huron when she left Huron to work for SNR. Huron and Lester identify nothing about the alleged statement that renders it so vague or ambiguous to preclude judicial review of whether it is defamatory. Huron and Lester give no explanation of how the allegation as stated prejudiced their ability to answer the complaint or prepare affirmative defenses. To the contrary, the record shows that Huron and Lester interposed several defenses. Accordingly, the particularity argument fails.

¶ 32 B. Substantial Truth

¶ 33 An allegedly defamatory statement is not actionable if it is substantially true, even though it is not technically accurate in every detail. *Parker*, 324 Ill. App. 3d at 1026. A defendant raising this defense bears the burden of establishing the "substantial truth" of his or her assertions, which he or she can demonstrate by showing that the "gist" or "sting" of the defamatory material is true. *Id.* When determining the "gist" or "sting" of allegedly defamatory material, a trial court must " 'look at the highlight of the article, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement.' " *Id.* (quoting *Gist v. Macon County Sheriff's Department*, 284 Ill. App. 3d 367, 370 (1996)). As noted earlier, the defense of substantial truth normally is a jury question and is a question of law only where no reasonable jury could find the defense has not been established. *Id.*

¶ 34 In *Parker*, the plaintiff sued Larson for defamation *per se*, individually and in her capacity as president of House O'Lite Corporation d/b/a Holcor (collectively Larson), alleging Larson published false and defamatory statements when she wrote two letters questioning his specifications for lighting fixtures to be used in a multi-million dollar project to build a new Cook County Hospital. *Parker*, 324 Ill. App. 3d at 1017. The letters at issue asserted "the specification of the lighting is rigged," "[i]t appears that [Parker] has rigged the specifications so that only his relative can bid and win the job," and "Parker has violated his own specifications in rigging this bid." *Id.* at 1024.

¶ 35 Larson asserted the statements were substantially true, contending the essence of her letters was that Parker's lighting specifications failed in various ways to meet statutory guidelines and contractually mandated quality assurance and bid guidelines, thereby threatening the taxpayers' right to obtain quality products at the most competitive price available. *Id.* at 1026. Parker responded that Larson's contentions were not pertinent to the "angle" of her letter and were of secondary importance, focusing on inoffensive details immaterial to the truth of the allegedly defamatory statement. *Id.* The *Parker* court could not say as a matter of law Larson's statements in her two letters were either substantially true or false, given the "obvious factual dispute" as to whether Parker "rigged" the lighting specification of a public project. *Id.* at 1027. This court found "the answer to that question is a triable issue of material fact, allowing a jury to decide whether the 'gist' or 'sting' of Larson's statements was substantially true." *Id.*

¶ 36 Similarly, in this case, Huron and the circuit court relied on the nondefamatory part of the alleged statement--that Huron was suing SNR and Murtha–as the gist of the statement, when the case law requires us to examine the gist or sting of the *defamatory* material--the flat assertion that Murtha violated her noncompete agreement with Huron. See *id.* at 1026. In contrast, the cases cited by Huron involve defendants sued for repeating allegations clearly identified as allegations. In *Harrison v. Addington*, 2011 IL App (3d) 100810, ¶¶ 12, 39-40, this court concluded the evidence did not establish that one of the defendants merely made a truthful statement that a third party defendant had alleged the plaintiff raped his daughter. In *Sivulich v. Howard Publications, Inc.*, 126 Ill. App. 3d 129, 131-32 (1984), this court ruled a report that "[c]harges of aggravated battery have been filed" was broad enough to include civil as well as criminal charges, especially

where the report as a whole made clear the report referred to civil charges. In *Global Relief Foundation, Inc. v. New York Times Co.*, 390 F.3d 973, 987 (2004), the gist or sting of the media accounts at issue was that the President of the United States had issued a blocking order on September 24, 2001, against a number of organizations suspected of providing financial assistance to terrorist groups. The government was now contemplating adding other charities and nongovernmental organizations (including the plaintiff) to the list of blocked entities. However, none of the articles concluded that the plaintiff was actually guilty of the conduct for which it was being investigated. Notably, in each case, the court affirmed a summary judgment, not a dismissal as Huron suggests in its brief.

¶ 37 Here, Huron's managing director republished the defamatory claim in Huron's own complaint as a factual statement. This alleged statement does not involve a third-party republication of allegations clearly identified as such. We cannot say as a matter of law Lester's alleged statement is either substantially true or false given the obvious factual dispute as to whether Murtha violated her noncompete agreement with Huron. Accordingly, we conclude the circuit court erred in concluding this was a proper basis for dismissing Murtha's counterclaim for failure to state a claim under section 2-615 of the Code.

¶ 38 C. Innocent Construction

¶ 39 Furthermore, if a statement falls into one or more of the categories of defamation *per se*, the statement will not be deemed such if it is reasonably capable of an "innocent construction." *Bryson*, 174 Ill. 2d at 90. Under the "innocent construction rule," a court must consider the statement in context and give the words of the statement, and any implications arising from them,

their natural and obvious meaning. *Green*, 234 Ill. 2d at 499-500. The context of the statement is critical in determining its meaning, as a given statement may convey entirely different meanings when presented in different contexts. *Id.* A court must interpret the words of the statement as they appear to have been used and according to the idea they were intended to convey to the reasonable reader. *Bryson*, 174 Ill. 2d at 93. When the defendant clearly intended and unmistakably conveyed a defamatory meaning, a court should not strain to see an inoffensive gloss on the statement. *Id*. The preliminary determination of whether the innocent construction rule applies is a question of law for the court, and whether the statement was understood to be defamatory or to refer to the plaintiff is a question for the jury if the innocent construction issue is resolved in the plaintiff's favor. *Tuite*, 224 Ill. 2d at 503.

¶ 40 In the case before us, Huron and Lester argue the context of Lester's statement to Passey merits an innocent construction. However, the primary authority they cite does not support their argument. In *Green*, the plaintiff, a former little league coach, manager and director sued the league's president after being refused a coaching position for stating Green "exhibited a long pattern of misconduct with children which was not acceptable," "abused players, coaches, and umpires," and "was guilty of inappropriate behavior with children and others." *Green*, 234 Ill. 2d at 485. The Illinois Supreme Court found these comments capable of innocent construction because the primary definition of "abuse" is to "reproach coarsely," not "violate sexually." *Id.* at 500. Moreover, the league president's full statements showed an obvious openness to Green's continued, albeit informal, participation in league activities, confirming the league president was

saying only that Green was not suited for little league coaching, not that the children needed to be protected from Green. *Id.* at 502.

¶ 41 Huron and Lester also cite *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 64 (2010), in which Moore and Doggie Do Right-911, Inc., alleged defendants People for the Ethical Treatment of Animals, Inc., Diane Opresnik, John Keene, and Mary DePaolo defamed them with statements imputing the commission of a crime, *i.e.*, animal cruelty and a lack of ability or otherwise prejudiced plaintiffs in their profession of dog training. This court found the statements regarding Moore's placement of an electric collar on a dog's genitals could be innocently construed, noting in part the statements were consistent with how Moore herself described the placement of the collars. *Id.* at 69-71. Also, this court noted that "in determining the context of the defamatory statements, we must read the writing containing the defamatory statement as a whole." *Id.* at 70 (citing *Tuite*, 224 Ill. 2d at 504).

¶ 42 In this case, Lester allegedly told Passey that Huron, SNR and Murtha were engaged in litigation, because Murtha violated her noncompete agreement with Huron when she left Huron to work for SNR. Huron thinks the first half of the statement, notifying Passey of the litigation, negates the second half of the statement, which flatly states Murtha violated a noncompete agreement. However, we are required to consider the statement as a whole, which includes both parts of the statement. This is unlike *Green*, where a word was subject to more than one definition. This is not a case like *Moore*, where the plaintiff's own statements were consistent with the allegedly defamatory statements at issue.

¶ 43 Huron and Lester suggest Lester had an ethical obligation to disclose a potential conflict of interest to Passey and that such disclosures do not constitute defamation *per se*. We note that Lester could have informed Passey of the litigation without blatantly accusing Murtha of violating her noncompete agreement. Moreover, Huron and Lester cite no legal authority in support of the assertion that such disclosures cannot constitute defamation *per se*. It is well settled that a contention supported by some argument, but not citing any authority, does not satisfy the requirements of Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Thus, bare contentions that fail to cite any authority do not merit consideration on appeal. *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 25.

¶ 44 In short, regardless of motive, Lester's alleged statement to Passey is not reasonably capable of an innocent construction, as its plain meaning flatly accused Murtha of violating her noncompete agreement with Huron. Accordingly, we conclude the circuit court erred in concluding this was a proper basis for dismissing Murtha's counterclaim for failure to state a claim under section 2-615 of the Code.

¶ 45 D. Fair Report Privilege

¶ 46 The fair report privilege is a qualified privilege, which promotes our system of self-governance by serving the public's interest in official proceedings, including judicial proceedings. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 585 (2006). Under this rule, " '[t]he publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the

occurrence reported.' " *Id.* (quoting Restatement (Second) of Torts § 611 (1977)). Both media and nonmedia reporters may claim protection under the privilege. *Missner v. Clifford*, 393 Ill. App. 3d 751, 761 (2009). The availability of the privilege depends on the fairness and accuracy of the report. *Id.* For example, a reporter abuses the privilege when he or she mischaracterizes an allegation in a pleading as a fact or adds information to the report that was not part of the official proceeding. *Id.*

¶ 47 Here, Lester mischaracterized an allegation in Huron's complaint, *i.e.*, Murtha violated her noncompete agreement, as a fact. Lester's description was neither accurate nor complete. In no sense could the description be considered a fair abridgement of the underlying dispute. Hence, this argument also fails.

¶ 48 Accordingly, we conclude the circuit court erred in dismissing Murtha's defamation counterclaims.

¶ 49 III. Tortious Interference

¶ 50 Lastly, we consider the circuit court's dismissal of SNR's counterclaims of tortious interference with contract and prospective economic advantage because they were linked to the dismissal of Murtha's defamation counterclaims. The circuit court's ruling was logical, insofar as the transmission of truthful information will not support a claim for tortious interference with contract (*Vajda v. Arthur Andersen & Co.*, 253 Ill. App. 3d 345, 359 (1993)) or prospective economic advantage (*Atanus v. American Airlines, Inc.*, 403 Ill. App. 3d 549, 555 (2010)). However, given that the circuit court erred in dismissing Murtha's defamation counterclaims, in

part because Lester's alleged statement is neither substantially true nor false as a matter of law, it logically follows the circuit court's rationale for dismissing SNR's counterclaims is also flawed.

¶ 51 Huron and Lester argue that SNR's tortious interference counterclaims nevertheless were properly dismissed because SNR defectively alleged the existence of a valid and enforceable written or oral agreement with Huntington. Huron and Lester note SNR did not attach a copy of its alleged contract with Huntington to its counterclaim. The Code provides:

> "If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her." 735 ILCS 5/2-606 (West 2010).

However, in this case, where the circuit court noted SNR should have attached the contract, but did not dismiss on this ground, and the court on remand would have the discretion to grant plaintiff leave to amend, we believe it is premature for us, as a court of review, to affirm the dismissal on this basis. *Barber v. American Airlines, Inc.,* 398 Ill. App. 3d 868, 886 (2010), *rev'd on other grounds*, 241 Ill. 2d 450 (2011).

¶ 52 Additionally, Huron and Lester argue SNR's counterclaims should be dismissed, because: SNR's contract with Huntington "must have" been at-will; SNR failed to plead a reasonable expectancy of entering into a valid business relationship with Huntington; and they enjoy the privilege of lawful competition. However, Huron and Lester failed to raise these arguments in

the circuit court, and thus have forfeited the arguments on appeal. *E.g.*, *Lake County Trust Co. v. Two Bar B, Inc.*, 182 Ill. App. 3d 186, 193 (1989); 735 ILCS 5/2-612(c) (West 2010).

¶ 53 Therefore, we find the circuit court erred in dismissing SNR's counterclaims on this basis.

¶ 54 CONCLUSION

¶ 55 In sum, we conclude the circuit court erred in dismissing Murtha and SNR's counterclaims. Murtha's counterclaims were stated with sufficient particularity. We cannot say as a matter of law that Lester's alleged defamatory statement was substantially true. We find the statement was not reasonably subject to an innocent construction and was not accurate, complete, or a fair abridgement of the underlying contractual dispute between the parties. SNR's counterclaims could not be dismissed as involving solely truthful information. Finally, it would be premature to dismiss SNR's counterclaims for failure to attach its contract with Huntington to its counterclaim. Accordingly, we reverse the judgment of the circuit court of Cook County and remand the case for further proceedings consistent with this order.

¶ 56 Reversed and remanded.