2012 IL App (1st) 10326 - U, 100647 - U

THIRD DIVISION
February 8, 2012

Nos. 1-10-0326, 1-10-0647 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO BRICK & STONE, LTD. f/k/a CHICAGO ARCHITECTURAL BRICK, LTD.	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
	)	No. 04 L 006200
v.	)	
	)	
JAMES S. FERENC,	)	Honorable Ronald Bartkowicz,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

HELD: Where defendant properly pleaded the affirmative defense of "lawful competition" but the trial court's order after a bench trial failed to address or discuss that defense, the judgment that defendant was liable for tortious interference with prospective business advantage was reversed.

¶ 1 Plaintiff Chicago Brick & Stone (Chicago Brick), formerly Chicago Architectural Brick,

brought a complaint for breach of fiduciary duty and other relief against defendants James Ferenc; James's wife, Melanie; and Robert Skogh. Also named as a defendant was Metropolitan Architectural Brick (MAB), a company formed by James and Melanie following James's departure from Chicago Brick. After a bench trial, the circuit court entered judgment against defendant James Ferenc only, on a claim of tortious interference with business expectancy. Damages of more than $367,000 were awarded. The court denied plaintiff's remaining claims for breach of fiduciary duty and tortious interference with contract. The court also denied defendants' counterclaim for breach of contract and breach of fiduciary duty.[1] On appeal, James Ferenc, the only remaining defendant, argues the circuit court erred: (1) in finding defendant tortiously interfered with plaintiff's business expectancy, and (2) in calculating damages based on plaintiff's estimated gross profit rather than net profit. Plaintiff filed a counter-appeal claiming the court erred, *inter alia*: (1) in finding defendant did not breach a fiduciary duty to plaintiff, (2) in failing to award additional damages, and (3) in dismissing Melanie Ferenc and Robert Skogh as defendants in this case. The two appeals were consolidated for review. For the reasons set forth below, we affirm in part and reverse in part the judgment of the circuit court.

¶ 2 BACKGROUND

¶ 3 In January 2000 defendant James Ferenc approached Frank Murphy, Joseph Meno and Michael Meno to discuss their interest in forming a business to distribute (*i.e.*, sell) architectural brick in the Chicago area. Defendant, an experienced brick salesman, had contacts and relationships with various brick manufacturers, but needed financial backers in order to start a

[1]The denial of defendants' counterclaim is not at issue here.

business. In February 2000 Chicago Architectural Brick (CAB), a brick distributorship, was incorporated. The four shareholders–Murphy, the Menos, and Craig Westberg–contributed start-up capital for the business. Defendant, who was named president, was to run the business and receive an annual salary of $100,000. He also was to receive a pro-rata share (20%) of the net profits. Defendant contributed no capital to the project.

¶ 4 The first employee defendant hired was Robert Skogh, an architectural brick salesman. Defendant and Skogh began pursuing sales for CAB. As a necessary step, they sought "job protections" from brick manufacturers such as Sioux City Brick & Tile (Sioux City).[2] In the first eleven months of business in 2000, CAB had sales of more than $1.4 million. In 2001, sales totaled $3.6 million.

¶ 5 In March 2002 defendant was invited to attend a CAB board meeting. One reason for the invitation was concern on the part of the board about the way defendant had been representing CAB to brick manufacturers. In his testimony at trial, Murphy stated defendant was giving manufacturers the impression it was solely because of defendant that CAB's sales were good. Defendant was giving insufficient credit to CAB itself, which Murphy stated had resources of its

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[2]A job protection authorizes a brick distributor to attempt to sell a manufacturer's brick on a particular job. A central issue in this case is the meaning of the term "job protection." In plaintiff's view, it is a promise by the manufacturer that if the architect or other prospective customer at the job in question (*e.g.*, a school or an office building) selects the manufacturer's brick, the distributor with the job protection will have the exclusive right to sell the manufacturer's brick on that job.

Defendant disagrees, asserting a job protection is not a binding promise that the distributor will have the exclusive right to sell the manufacturer's brick on a particular job. Rather, it provides the distributor with an *opportunity* to attempt to sell the manufacturer's brick on that job.

own, including a computer system which did "great things to keep track of not only the accounting part of it but also sales."

¶ 6 During the board meeting, it was proposed that defendant's role in the company be reduced to that of a salesman, and that Murphy become president. However, it was decided that defendant would retain the title of president. According to defendant's trial testimony, Murphy was concerned that if *he* were named president, there might be a negative reaction from the manufacturers, who had ongoing relationships with defendant. Defendant testified the board thus voted to make him president "in name only" and to have Murphy "be the person to have and develop relationships with the [manufacturers]."

¶ 7 In September 2002 Murphy fired Skogh, the salesman who had been working with defendant. Defendant testified he had no advance knowledge that Skogh would be fired. Skogh testified that, following his termination, he did not communicate again with defendant until mid-December 2002, when defendant told Skogh he was thinking of forming his own company and asked Skogh if he was interested in "getting back in the brick business."

¶ 8 On the morning of January 13, 2003, defendant resigned from CAB. Defendant and his wife, Melanie, went to the Secretary of State's office in Chicago and incorporated Metropolitan Architectural Brick (MAB), and then returned to their home. Skogh went to defendant's home the same day, January 13, and he and defendant began identifying potential jobs they could pursue for MAB, including jobs they had worked on while they were at CAB. They sent job protection forms to Sioux City requesting authorization to solicit the customers on those projects. Skogh testified that some of their requests were accepted, and others were rejected.

¶ 9 In June 2004 plaintiff filed its initial complaint for breach of fiduciary duty and other

relief against James and Melanie Ferenc, Skogh, and MAB. Ultimately, plaintiff's second amended complaint alleged claims for breach of fiduciary duty (count I), unfair competition (count II), tortious interference with plaintiff's business expectancies (count III), conspiracy to interfere with plaintiff's business expectancies and with economic advantage (count IV), and tortious interference with a contractual relationship (count V).

¶ 10 The second amended complaint alleged, *inter alia*, that on January 13, 2003, the date MAB was incorporated, defendant submitted to Sioux City job protection requests for approximately 88 jobs which had already been protected with Sioux City for CAB. The complaint further alleged that MAB secured protection for those 88 jobs, and CAB (now Chicago Brick) "was stripped of its status as the exclusive provider of Sioux City products for the approximately eighty-eight (88) jobs and accordingly was denied all ability to sell Sioux City product for those eighty-eight (88) jobs." The complaint sought "actual damages" of at least $660,000, as well as punitive damages of at least $1 million.

¶ 11 The parties filed cross-motions for summary judgment. In an order dated May 27, 2008, the circuit court granted defendants' motion with respect to the conspiracy count of plaintiff's complaint (count IV), which was dismissed. The court also granted defendants' motion as to Melanie and Skogh, who were dismissed with prejudice. The court denied the remainder of defendants' motion, as well as plaintiff's motion.

¶ 12 Plaintiff filed a motion to reconsider the court's order dismissing the conspiracy count and dismissing Melanie and Skogh with prejudice. Plaintiff also filed a motion for leave to file a third amended complaint adding a claim for "aiding and abetting" against Melanie and Skogh (count VI), and a claim for an accounting to facilitate the calculation of damages (count VII).

The circuit court entered and continued the motions, which were denied after trial.

¶ 13 At trial, testimony was offered regarding job protections, under which a distributor is authorized to attempt to sell a manufacturer's brick on a particular job. Murphy, of CAB, testified that as brick manufacturers grew larger, they began to realize that no single distributor could cover the entire market and get the market share the manufacturer needed. As a result, instead of giving a distributor a simple "exclusive," the manufacturer "gave an exclusive on a per-job basis." Murphy continued: "[T]hat's exactly what the [job] protection means[. I]t's a promise by the manufacturer [that] if you follow the rules and do the work for us, that you will *** sell that brick *** on that job."

¶ 14 Kent Ramm of Ramm Brick, a brick distributorship, testified similarly to Murphy. Ramm, who stated he was familiar with Sioux City's job protection program, asserted that once a manufacturer accepts a distributor's request for protection on a particular job, that job protection blocks other distributors from pursuing the job with that manufacturer's brick. Ramm stated: "It basically covers you to sell the job."

¶ 15 On cross-examination, Ramm acknowledged that even where a distributor has a valid job protection, the manufacturer has discretion to allow another distributor to sell that job.

¶ 16 Also testifying regarding job protections was Norman Mahoney, co-CEO of Sioux City. Mahoney acknowledged that once Sioux City accepts a distributor's request for job protection, there is "a high probability" the distributor will be "the [lone] representative of our product" on that job. Mahoney added, however: "The probability of its actually becoming an order is another question." For example, the architect or other prospective customer might choose a competing manufacturer's brick for the job.

¶ 17 Mahoney testified further that, under its job protection policy, Sioux City reserves the right to grant or deny job protection for any reason. That includes refusing to honor a job protection already granted and giving the job to someone else. Mahoney pointed to an instance where Sioux City had granted a job protection to MAB, defendant's company, and the mason on the job had selected Sioux City's brick. However, the mason chose to purchase the brick from a different distributor, and MAB did not get the sale. Mahoney explained: "[I]f you want to be represented on a job, you're going to go with the flow, so you're going to have to go where the customer's going to buy the product."

¶ 18 The bench trial took place over several months in 2008 and 2009. On January 12, 2010, the court entered a written order finding in favor of defendants on plaintiff's claims for (1) breach of fiduciary duty and (2) tortious interference with contract. With regard to the contract claim, the court expressly found that a "job protection does not create a contractual relationship, but a mere reasonable expectation of an economic gain by the holder of the job protection."

¶ 19 With regard to plaintiff's claim for tortious interference with prospective business advantage, the court found in favor of plaintiff as to defendant James Ferenc only. This finding was limited to "jobs protected for CAB prior to January [ ] 2003 and for which job protections were sought by Ferenc in January 2003."[3] It did not include any jobs protected in January 2003 for MAB which were not previously protected for CAB.[4] Damages awarded totaled $367,565.38, plus costs.

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[3]The court's order listed 17 such jobs which were "protected for CAB prior to [defendant's] departure," and for which damages were allowed.

[4]The order listed nine jobs for which recovery was denied "based on the evidence that they were not protected for CAB prior to [defendant's] departure."

¶ 20 With regard to the remaining defendants–Melanie, Skogh, and MAB–the court concluded the evidence at trial was insufficient to support findings against them on any count.

¶ 21 Defendant James Ferenc timely filed a notice of appeal pursuant to Supreme Court Rule 303 (eff. June 4, 2008), as did plaintiff.

¶ 22 ANALYSIS

¶ 23 *Defendant's Motion to Strike*

¶ *24* Initially we consider defendant's motion to strike, which was taken with the case. In its reply brief in support of its cross-appeal, plaintiff argues defendant failed to plead "lawful competition" as an affirmative defense to plaintiff's claim for tortious interference with business expectancy, and defendant thus forfeited this defense on appeal. Plaintiff therefore "need not address the merits of this argument."

¶ 25 In his motion to strike, defendant asserts plaintiff's argument is "patently false," and he asks that it be "stricken and/or disregarded." Defendant states: "[C]ontrary to plaintiff's argument, defendant did plead the affirmative defense of lawful competition *** in his Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint."

¶ 26 Defendant is correct. His answer to plaintiff"s second amended complaint pleaded lawful competition as an affirmative defense.[5] Specifically, the "Fifth Affirmative Defense" stated: "Following James' resignation from [plaintiff], he was entitled, under Illinois law, to engage in business and compete with [plaintiff], as his competitor, in furtherance of his own business

[5]Plaintiff concedes as much in its response to defendant's motion to strike, where plaintiff acknowledges its "apparent misstatement": "[A] review of the record *** does disclose that Defendant's pleadings arguably raise his right to compete ***."

interests." In addition, the "lawful competition" privilege was argued in other pleadings before the circuit court, including defendants' cross-motion for summary judgment, their reply in support of that motion, defendants' motion for directed verdict, and defendants' proposed findings of fact and conclusions of law.

¶ 27 Defendant properly pleaded the affirmative defense of law ful competition. Accordingly, we grant defendant's motion, and disregard plaintiff's argument that defendant failed to plead lawful competition as an affirmative defense to plaintiff's claim for tortious interference with business expectancy.

¶ 28 *Tortious Interference with Business Expectancy*

¶ *29* Before this court, defendant argues the circuit court erred in finding he tortiously interfered with plaintiff's prospective business advantage. Defendant states: "Illinois law is clear that absent any non-competition agreement, a salesperson is free to compete with his or her former employer upon resignation."[6] Defendant contends that here, any alleged "interference" with plaintiff's business expectancy on his part constituted privileged, lawful competition and was not subject to liability under Illinois law.

¶ 30 Generally, when a challenge is made to a trial court's ruling after a bench trial, the proper standard of review is whether the trial court's judgment is against the manifest weight of the evidence. *Fox v. Heimann*, 375 Ill. App. 3d 35, 46 (2007). Where the issue presented is a question of law, the standard of review is *de novo*. *Caparos v. Morton*, 364 Ill. App. 3d 159,

[6]In the case at bar, it is undisputed that defendant did not enter into any type of restrictive covenant with CAB which would have precluded him from competing with CAB after his resignation.

166, 172 (2006), citing *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 284 (2004).

¶ 31 The elements of the tort of interference with prospective business advantage include: (1) plaintiff's reasonable expectation of entering a valid business relationship; (2) the defendant's knowledge of the plaintiff's expectancy; (3) purposeful or intentional interference by the defendant that prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to the plaintiff resulting from such interference. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 374 (2007); *Soderlund Brothers, Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606, 615 (1995).

¶ 32 This tort "recognizes that a person's business relationships constitute a property interest and as such are entitled to protection from unjustified tampering by another." *Miller*, 377 Ill. App. 3d at 373, citing *Belden Corp. v. Interforth, Inc.*, 90 Ill. App. 3d 547, 551 (1980). "The cause of action implies a balancing of societal values: an individual has a general duty not to interfere with the business affairs of another, but he may be privileged to interfere, depending on his purpose and methods, when the interference takes a socially sanctioned form, such as *lawful competition*." (Emphasis added.) *Miller*, 377 Ill. App. 3d at 373.

¶ 33 The privilege of lawful competition is thus an affirmative defense to the tort of intentional interference with prospective business advantage. *General Motors Corp. v. State Motor Vehicle Review Board*, 224 Ill. 2d 1, 15 (2007). This privilege to engage in business and to compete '"allows one to divert business from one's competitors generally as well as from one's particular competitors provided one's intent is, at lease in part, to further one's business and is not solely motivated by spite or ill will.'" *Id.*, quoting *Soderlund Brothers*, 278 Ill. App. 3d at 615.

¶ 34 Section 768 of the Restatement (Second) of Torts sets forth the elements of the "lawful competition" privilege:

> "(1) One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor *** does not interfere improperly with the other's relation if
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> (a) the relation concerns a matter involved in the competition between the actor and the other and
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> (b) the actor does not employ wrongful means and
>
> © his action does not create or continue an unlawful restraint of trade and
>
> (d) his purpose is at least in part to advance his interest in competing with the other."
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> Restatement (Second) of Torts §768, at 39 (1979).

¶ 35 In the case at bar, there is no evidence, and plaintiff does not argue, that defendant's conduct was "solely motivated by spite or ill will" (*General Motors Corp.*, 224 Ill. 2d at 15), or indeed that such feelings formed any part of his intent. The circuit court also made no such findings in its January 12, 2010 order. It seems clear, on the contrary, that defendant's purpose, at least in part if not entirely, was "to advance his interest in competing with" plaintiff, which meets

the requirement stated in clause (1)(d) of section 768.

¶ 36 Moreover, the requirement stated in clause (1)(d) overlaps that stated in clause (1)(a), which requires that the prospective relation in question concern a matter involved in the competition between the actor and his competitor. The Restatement explains: "If the business diverted by the actor relates to his competition with his competitor [as required by clause (1)(a)], his conduct will ordinarily be directed, at least in part, to the improvement of his position in the competition [as required by clause (1)(d)]." Restatement (Second) of Torts §768, Comment *g*, at 43 (1979). Here, it is undisputed that any business diverted by defendant *was* related to his competition with plaintiff.

¶ 37 The requirements of clauses (1)(a) and (1)(d) of section 768 thus are satisfied. Clause (1)©, which deals with unlawful restraint of trade, is not at issue here. That leaves clause (1)(b), which requires that the actor "not employ wrongful means."

¶ 38 The circuit court below, in finding defendant tortiously interfered with plaintiff's prospective business advantage, focused on the issuance of job protections to defendant where these same protections had already been issued to plaintiff. The court stated: "[T]he issuance of a job protection to [defendant] when one already existed in favor of [plaintiff] was induced by [defendant] with the cooperation of [Sioux City regional sales manager] Bill Cole and was issued contrary to the purpose testified to by [Sioux City co-CEO Norman] Mahoney."[7] The court clearly found defendant's conduct here to be improper.

¶ 39 In determining the propriety of an actor's conduct in this context, the conduct, *i.e.*, the

[7] This purpose, according to the court, was to create a "reasonable expectation of an economic gain by the holder of the job protection."

means of interfering with a business expectancy, cannot be considered in isolation.

> "[T]he same means may be permissible under some circumstances while wrongful in others. The issue is not simply whether the actor is justified in causing the harm, but rather whether he is justified in causing it in the manner in which he does cause it. The propriety of the means is not, however, determined as a separate issue unrelated to the other factors. On the contrary, the propriety is determined in the light of all the factors present." Restatement (Second) of Torts §767, Comment *c*, at 29 (1979).

¶ 40 One such factor is the social utility of the parties' interests, particularly the interest in the "competitive enterprise." *Id*., Comment *g*, at 35. Here, as noted, defendant expressly pleaded, in his answer to plaintiff's second amended complaint, the affirmative defense of lawful competition. In addition, the "lawful competition" privilege was argued in other pleadings before the circuit court. Notwithstanding the foregoing, the court's order of January 12, 2010 makes no mention of the "lawful competition" privilege. As defendant correctly notes, the court "did not address or discuss [defendant's] asserted right to the 'competition' exception to liability" for tortious interference with plaintiff's business expectancy. This was error. While defendant's conduct here might very well be improper in the absence of the "lawful competition" privilege, that privilege was clearly "present" in this case and should have been addressed. As previously noted, conduct which is wrongful in some circumstances may be permissible in others. *Id*.,

Comment *c*, at 29. We believe that is the case here.

¶ 41 We hold, as a matter of law, that defendant's conduct, which was incorrectly found improper, is permissible under the "lawful competition" privilege, which should have been applied. In light of that privilege, defendant is not liable for tortious interference with plaintiff's prospective business advantage. We reverse the circuit court's judgment to the contrary, as well as the award of damages. Ill. S. Ct. R. 366(a)(5) (eff. February 1, 1994); *Allstate Insurance Co. v. Horn*, 24 Ill. App. 3d 583, 592 (1974).

¶ 42 *Plaintiff's Cross-appeal*

¶ *43* As noted, plaintiff filed a cross-appeal challenging a number of the circuit court's rulings. Plaintiff first argues the court erred in denying plaintiff's claim for breach of fiduciary duty.

¶ 44 With regard to this claim, the court noted that the "principal allegation against [defendant] is his misappropriation of names of prospective customers, referred to as 'job protections' during the trial." In denying the fiduciary duty claim, the court expressly found that "the information needed to complete a job protection was available from public sources." The court concluded: "[T]he breach of fiduciary duty claim is not sufficiently established by the evidence and the law."

¶ 45 The standard of review here is the manifest weight of the evidence. *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 976 (2010). Under this standard, a trial court's decision is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent or the trial court's finding is palpably erroneous and wholly unwarranted, is clearly the result of passion or prejudice, or appears to be arbitrary and unsubstantiated by the evidence. *Id*.

¶ 46 Here, in light of the record on appeal and pursuant to this deferential standard, we cannot say the circuit court's denial of plaintiff's fiduciary duty claim was against the manifest weight of the evidence. We reject plaintiff's argument to the contrary. We also reject plaintiff's claim for additional damages[8] based on defendant's alleged breach of fiduciary duty. As we have concluded, the circuit court properly denied the fiduciary duty claim.

¶ 47 Plaintiff next argues the circuit court erred in denying its motion for leave to file a third amended complaint adding a claim for "aiding and abetting" against Melanie Ferenc and Robert Skogh (count VI), and a claim against Melanie, Skogh, MAB and defendant James Ferenc for an accounting to facilitate calculation of damages (count VII).

¶ 48 There is no absolute right to amend a pleading. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 6 (2004); *Butler v. Kent*, 275 Ill. App. 3d 217, 229 (1995). The decision whether to grant leave to amend a complaint rests within the sound discretion of the circuit court (*Hayes*, 351 Ill. App. 3d at 7), which has "broad discretion in ruling upon motions to amend pleadings" (*Butler*, 275 Ill. App. 3d at 229). The relevant factors in determining whether the court abused its discretion are: (1) whether the proposed amendment would cure the defective pleading, (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment, (3) whether the proposed amendment is timely, and (4) whether previous opportunities to amend the pleading could be identified. *Hayes*, 351 Ill. App. 3d at 7.

¶ 49 Here, plaintiff emphasizes the prejudice factor as the most important, and argues, *inter alia*, that defendants would not have been prejudiced by either the "aiding and abetting" claim or

[8]Plaintiff seeks the forfeiture of portions of defendant's compensation earned while he was at CAB, as well as punitive damages.

the claim for an accounting.

¶ 50 Defendant, for his part, emphasizes that here, the circuit court did not deny plaintiff's motion for leave to amend until *after* the trial in this matter. "In other words, the trial court had heard all of the evidence in this case when it determined that there was no basis to allow the proposed amendment." Defendant acknowledges that amendments are permitted after trial to allow the amendment of a pleading to conform to proof. "However, in order to allow the amendment to conform to proof, the proof already produced must support the amendment." *Harding v. Amsted Industries, Inc.*, 276 Ill. App. 3d 483, 494 (1995). Defendant argues that, in denying the motion for leave to amend after the trial in this case, "the trial court clearly determined that [plaintiff] did not 'prove' a cause of action for either aiding and abetting or an accounting."

¶ 51 After carefully reviewing the record in this case, as well as the parties' arguments, we conclude the circuit court acted within its discretion in denying plaintiff's motion for leave to file a third amended complaint. There was no abuse of discretion.

¶ 52 Plaintiff also appeals the circuit court's granting of defendants' cross-motion for summary judgment. On May 27, 2008, about three months prior to trial, the circuit court entered an order granting defendants' motion, in part, by dismissing Melanie and Skogh from the case with prejudice, and dismissing plaintiff's conspiracy claim. Plaintiff subsequently filed a motion to reconsider, which the circuit court denied *after* trial.

¶ 53 Here again, as with plaintiff's motion for leave to amend, the circuit court had heard all of the evidence in this case when it denied plaintiff's motion to reconsider its dismissal of Melanie and Skogh with prejudice, and its dismissal of plaintiff's conspiracy claim.

¶ 54 In appeals from summary judgment rulings, the standard of review is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). However, here, the denial of plaintiff's motion to reconsider, which occurred post-trial, is not subject to *de novo* review, but instead is subject to the "abuse of discretion" standard applicable to post-trial motions. See *Poliszczuk v. Winkler*, 387 Ill. App. 3d 474, 491 (2008).

¶ 55 Having reviewed the record in this case, as well as the parties' arguments, we conclude the circuit court did not abuse its discretion in denying plaintiff's motion to reconsider its order dismissing plaintiff's conspiracy count, and dismissing Melanie and Skogh with prejudice.

¶ 56 Plaintiff next argues the circuit court should have determined that defendant tortiously interfered with plaintiff's contractual relationships. Plaintiff's argument is based on an incorrect premise, specifically, that an "accepted job protection created a valid and enforceable contract between the distributor and the manufacturer." In its January 12, 2010 order, the circuit court pointed to the "compelling" testimony of Sioux City co-CEO Norman Mahoney, and expressly found that Mahoney's testimony "clearly shows that a job protection does not create a contractual relationship." In the court's view, plaintiff's claim alleging tortious interference with contract "[was] not supported by the testimony at trial."

¶ 57 This determination was not against the manifest weight of the evidence.

¶ 58 Plaintiff next argues it was error for judgment not to have been entered against defendant's new business, MAB. According to defendant, "it was against the manifest weight of the evidence for the Court to not have entered judgment against MAB in addition to judgment being entered against [defendant James] Ferenc." A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is apparent or when findings appear to be

arbitrary, unreasonable, or not based on the evidence presented at trial. *Fox*, 375 Ill. App. 3d at 46. Here, we cannot conclude that the circuit court's decision to enter judgment solely against defendant, and not against MAB, was against the manifest weight of the evidence.

¶ 59 Finally, plaintiff challenges the circuit court's award of more than $367,000 in damages for tortious interference with plaintiff's business expectancy. According to plaintiff, the amount of damages awarded should have been greater.

¶ 60 The court's tortious interference with business expectancy ruling was limited to "jobs protected for CAB prior to January [ ] 2003 and for which job protections were sought by [defendant] in January 2003." It did not include any jobs protected in January 2003 for MAB which were not previously protected for CAB. The court's January 12, 2010 order listed nine jobs for which recovery was denied "based on the evidence that they were not protected for CAB prior to [defendant's] departure."

¶ 61 Plaintiff argues that two of the nine jobs on the "recovery denied" list–the Welbourn Row and Chinatown Homes projects–were mistakenly included in that list, and should have been included, instead, in the jobs for which recovery was *allowed*. Plaintiff requests that we remand to the circuit court to enter additional compensatory damages of more than $200,000.

¶ 62 We have already reversed the circuit court's judgment that defendant was liable for tortious interference with plaintiff's business expectancy, and the award of damages based on that judgment. We need not rule on plaintiff's contention that this damages award, which has been reversed, should have been larger.

¶ 63 CONCLUSION

¶ 64 We reverse that part of the circuit court's judgment finding defendant liable for tortious

interference with plaintiff's business expectancy, as well as the damages award based on that finding. We affirm the remainder of the circuit court's judgment.

¶ 65 Affirmed in part and reversed in part.