

NOTICE

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SECOND DIVISION
SEPTEMBER 28, 2010

1-09-3132

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE TOWN OF CICERO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 06 L 13062
)	
WAYNE A. JOHNSON,)	Honorable
)	Barbara A. McDonald,
Defendant-Appellee.)	Judge Presiding.

ORDER

This appeal arises from the circuit court of Cook County's June 15, 2009 order granting summary judgment in favor of the defendant, Wayne Johnson (Johnson), on two counts of a three-count complaint filed by the plaintiff, Town of Cicero (Cicero), and from the circuit court's November 9, 2009 order granting Johnson's motion to dismiss the third count of the complaint with prejudice and disposing of the case in its entirety. On appeal, Cicero argues that: (1) the circuit court erred in entering summary judgment in favor of Johnson on counts I and II of the complaint; and (2) the circuit court erred in granting Johnson's motion to dismiss count III of the complaint. For the following reasons, we affirm the judgments of the circuit court of Cook County.

BACKGROUND

From February 2003 to April 2005, Johnson was employed by Cicero as the superintendent of police and inspector general. Prior to his tenure with Cicero, Johnson had 24 years of experience

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working for the Chicago Police Department, where he served as a supervisor at the "Intelligence Division of the Chicago Police Department" and a chief investigator for the Chicago Crime Commission.

On April 12, 2005, Johnson entered into a "Confidential Severance Agreement and General Release" (agreement) with Cicero, the terms of which were drafted by Cicero's attorney, Dennis Both (Attorney Both). The agreement stated that Johnson would resign from his employment position with Cicero in exchange for a severance payment of \$88,000. The terms of the agreement also stated that Johnson would agree not to sue Cicero for any known or unknown claims Johnson might have had at the time of the execution of the agreement. Further, paragraph 6 of the agreement outlined the following terms for confidentiality:

"Confidentiality EMPLOYEE acknowledges that one of EMPLOYER's reasons for entering into this [a]greement is to avoid the expense and inconvenience involved in defending its actions in court and/or to its remaining employees, former or prospective employees, people doing business with EMPLOYER, and to the media. EMPLOYEE therefore agrees that neither he nor his agents will disclose anything relating to his employment to any of the foregoing or to any lawyer representing the foregoing, except as may be necessary in response to lawful process of any judicial or adjudicative authority or otherwise allowed by law. In addition,

except as otherwise required by law, EMPLOYEE agrees that neither he nor his attorneys or agents will disclose the terms of this [agreement] to anyone except EMPLOYEE's attorneys, tax advisors and immediate family. If any non-party identified in this paragraph asks about [sic] the [agreement], EMPLOYEE will not [sic] respond only that 'the matter has been resolved' or 'I have no comment.' ”

(Emphasis in original.)

On that same day, April 12, 2005, Johnson submitted a letter of resignation to Cicero.

In a Chicago Sun-Times article dated October 18, 2006, Johnson was quoted as saying that during his tenure at Cicero, he had never stopped conducting an internal investigation into the alleged police misconduct committed by former Cicero deputy police superintendent, James DiSantis (DiSantis). Specifically, Johnson stated that “ [w]e did an investigation parallel to the federal government,” and that “[DiSantis] was not even working when [Johnson] left in April of 2005.” See N. Korecki, *FBI Arrests 3 Cops in Cicero Abuse Case*, Chicago Sun-Times, Oct. 18, 2006.

In a letter sent to Johnson dated November 2, 2006, another Cicero attorney, Michael Del Galdo (Attorney Del Galdo), noted that Johnson's statements to the Chicago Sun-Times constituted “a clear violation of [paragraph] 6” of the agreement regarding confidentiality, and requested that Johnson “cease and desist from any further conduct which violate[ed] the [a]greement.”

On December 14, 2006, Cicero filed the instant lawsuit against Johnson, alleging that Johnson breached the terms of the agreement when he “made media statements to the Chicago Sun[-]Times

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relating to his employment with [Cicero],” and requesting monetary damages and equitable relief that Johnson be required to publicly retract his media statements.

On April 6, 2007, in a newspaper article published by El Norte, a local Spanish newspaper, Johnson was also quoted as saying that the police career of Cicero’s president, Larry Dominick (Dominick), was “ ‘a joke,’ ” and that “ ‘if Dominick’s philosophy of crime-fighting remain[ed] unchanged, ‘then God help the citizens of Cicero.’ ” Johnson also noted that “Dominick was one of the most uninspired police officers [he] had ever met,” that Dominick resisted management training, had “never disciplined a subordinate,” and “had never worked in a detective unit or a gang unit or presented a thought regarding gang suppression.” See E. Muniz de la Rosa, *The Power of the Word*, El Norte, April 6, 2007.

On June 1, 2007, Cicero filed a first amended complaint, alleging two counts of breach of contract (counts I and II) by Johnson, who was alleged to have violated paragraph 6 of the agreement when he made media statements to the Chicago Sun-Times and El Norte. The first amended complaint alleged that Johnson was unjustly enriched by his retention of the \$88,000 severance payment (count III).

On October 28, 2008, Cicero filed a motion for partial summary judgment, requesting the circuit court to determine as a matter of law that the agreement was “clear on its face, [was] unambiguous and [was] not in need of interpretation by parol or extrinsic evidence.” See 735 ILCS 5/2-1005 (West 2006).

On January 5, 2009, Johnson filed a cross-motion for summary judgment, asserting that the

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breach of contract counts in the first amended complaint (counts I and II) should be dismissed because the agreement was ambiguous on its face, and that the confidentiality clause of the agreement was overbroad and thus, unenforceable. Johnson further argued that Cicero's claim for unjust enrichment (count III) should also be dismissed because the claim was "based upon no more than an allegation that Johnson 'failed to abide by the [a]greement,' *** which must be brought as a breach of contract, not unjust enrichment, claim."

On February 3, 2009, Cicero filed a second amended complaint, which remained largely unchanged from the first amended complaint except that the second amended complaint alleged a claim for promissory fraud (count III) rather than a claim for unjust enrichment. The second amended complaint sought damages in the amount of \$88,000 plus punitive damages, expenses, costs and fees.

On June 15, 2009, the circuit court granted Cicero's motion for partial summary judgment, stating that the confidentiality clause in paragraph 6 of the agreement was unambiguous. However, the circuit court also granted Johnson's motion for summary judgment, finding that the confidentiality clause of the agreement was overbroad and unenforceable, based on the "factors stated in Coady v. Harpo, Inc." See Coady v. Harpo, Inc., 308 Ill. App. 3d 153, 719 N.E.2d 244 (1999). The circuit court then dismissed the breach of contract claims from the second amended complaint (counts I and II), but requested that Johnson respond to the allegations of the promissory fraud claim (count III).

On June 29, 2009, Johnson filed a motion to dismiss count III of the second amended complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code). 735 ILCS 5/2-619.1 (West 2006). Johnson's motion to dismiss alleged that, as a matter of law, the claim for

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promissory fraud (count III) must fail because the agreement was found by the circuit court to be unenforceable. The motion to dismiss further attacked the sufficiency of the promissory fraud claim.

On July 10, 2009, Cicero filed a motion to reconsider the circuit court's June 15, 2009 ruling, which granted summary judgment on counts I and II of the second amended complaint. On August 5, 2009, the circuit court denied Cicero's motion to reconsider.

On November 9, 2009, the circuit court granted Johnson's motion to dismiss count III of the second amended complaint, dismissing count III with prejudice. In light of the circuit court's previous June 15, 2009 order entering summary judgment in favor of Johnson for counts I and II, the circuit court disposed of the case in its entirety.

On November 13, 2009, Cicero filed a notice of appeal before this court, appealing from both the circuit court's June 15, 2009 and November 9, 2009 orders.

ANALYSIS

We determine the following issues: (1) whether the circuit court erred in entering summary judgment in favor of Johnson on counts I and II of the second amended complaint; and (2) whether the circuit court erred in granting Johnson's motion to dismiss count III of the second amended complaint.

Turning first to whether the circuit court erred in entering summary judgment in favor of Johnson on counts I and II of the second amended complaint, Cicero argues that the court erred because the confidentiality clause in paragraph 6 of the agreement was enforceable. Specifically, Cicero contends that the confidentiality clause in the agreement neither affected nor inhibited

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Johnson's pursuit of employment in the areas of law enforcement or government, nor did it restrict him from "using his training, experience and acquired skill in any future employment." Thus, the confidentiality agreement was unlike other restrictive covenants which unreasonably restricted an employee's ability to be "gainfully employed." Moreover, Cicero argues that the confidentiality clause of the agreement was not overbroad because there was no evidence of any injury to the public, undue hardship on Johnson, nor did it impose a restraint greater than necessary to maintain Johnson's confidentiality. Therefore, Cicero argues, the circuit court improperly granted summary judgment in Johnson's favor on counts I and II of the second amended complaint.

Johnson counters that the circuit court properly granted summary judgment in his favor on counts I and II of the second amended complaint because the confidentiality clause of the agreement was overbroad and therefore unenforceable as a matter of law. Further, the confidentiality clause also violated Illinois public policy, and was "an unconstitutional attempt to restrain Johnson's First Amendment freedom of speech."

Summary judgment is proper where, "the pleadings, depositions, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009), citing 735 ILCS 5/2-1005(c) (West 2000). We review the grant of a motion for summary judgment *de novo*. Adames, 233 Ill. 2d at 296, 909 N.E.2d at 753; see also Woodfield Group, Inc. v. DeLisle, 295 Ill. App. 3d 935, 938, 693 N.E.2d 464, 466 (1998) ("[t]he determination of whether a restrictive covenant is enforceable is a question of law").

In the instant case, in a June 15, 2009 order the circuit court granted Cicero's motion for partial summary judgment by holding that the confidentiality clause in paragraph 6 of the agreement was unambiguous. However, the circuit court also granted Johnson's motion for summary judgment, finding that the confidentiality clause of the agreement was overbroad and unenforceable based on the factors stated in Coady. Coady, 308 Ill. App. 3d 153, 719 N.E.2d 244.

In Coady, a former senior producer for the Oprah Winfrey Show sought a declaratory judgment against her former employer, Harpo, Inc., that a confidentiality policy established by Harpo, Inc. was unenforceable against her. Coady, 308 Ill. App. 3d at 155, 719 N.E.2d at 246. The relevant portions of the confidentiality agreement stated that an employee was "obligated to keep confidential and never disclose, use, misappropriate, or confirm or deny the veracity of, any statement or comment concerning Oprah Winfrey, [all entities related to Harpo, Inc.], or any of her/its [c]onfidential [i]nformation," and that an employee was "obligated to refrain from giving or participating in any interview(s) regarding or related to Ms. Winfrey, Harpo, [the employee's] employment or business relationship with Harpo and/or [any] matter which concerns, relates to or involves any [c]onfidential [i]nformation." Coady, 308 Ill. App. 3d at 157, 719 N.E.2d at 247. The trial court in Coady granted Harpo, Inc.'s motion to dismiss the complaint, finding that the confidentiality agreement was enforceable, that "its terms [were] reasonable and it protects a legitimate business interest of [Harpo, Inc.]" Coady, 308 Ill. App. 3d at 158, 719 N.E.2d at 248.

In affirming the trial court's ruling, the appellate court in Coady noted that the reasonableness of a restrictive covenant was dependent on "whether enforcement of the covenant will injure the

public, whether enforcement will cause undue hardship to the promisor and whether the restraint imposed by the covenant is greater than is necessary to protect the interests of the employer.” Coady, 308 Ill. App. 3d at 161, 719 N.E.2d at 250. Applying these factors, the appellate court found that the confidentiality agreement was reasonable and enforceable because it did not seek to restrain the former employee’s future career, did not restrict commerce nor did it restrict the former employee’s ability to work in any chosen career field at any time. Coady, 308 Ill. App. 3d at 161-62, 719 N.E.2d at 250. Further, the Coady court found that the confidentiality agreement restricted the former employee’s ability to “disseminate confidential information that she obtained or learned while in [Harpo, Inc.’s] employ,” and that the confidentiality agreement, which contained no geographical boundaries or time limits, was not too broad in light of the fact that “interest in a celebrity figure and his or her attendant business and personal ventures somehow seems to continue endlessly, even long after death.” Coady, 308 Ill. App. 3d at 162, 719 N.E.2d at 250-51.

Applying the Coady factors to the facts of the instant case, we find that the confidentiality clause of the agreement to be overbroad and thus, unenforceable. Here, not only did the confidentiality clause of the agreement prohibit Johnson from disclosing the *terms* of the agreement, it also restricted Johnson from disclosing “*anything* relating to his employment” to any “remaining employees, former or prospective employees, people doing business with [Cicero], and to the media.” (Emphasis added.) We find that enforcement of the confidentiality clause of the agreement would cause injury to the public because it would prevent the public from knowing what activities Cicero, as a governmental entity, or its employees, engaged in during Johnson’s tenure. As the

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superintendent of police and inspector general of Cicero, Johnson was obligated to investigate allegations of corruption within Cicero's police community, the process and results of which the public had a right to know. See generally Better Government Ass'n v. Blagojevich, 386 Ill. App. 3d 808, 818, 899 N.E.2d 382, 391 (2008) ("the sunshine of public scrutiny is the best antidote to public corruption, and Illinois courts are duty-bound to enforce that policy"). Prohibiting Johnson from speaking about *anything* relating to his employment with Cicero to the media and to wide-sweeping groups of individuals would contradict public policy which is in favor of public disclosure. Thus, we find the first Coady factor to be satisfied, and we reject Cicero's contention that it must prevail because Johnson had not provided "provable fact or supportable argument" of any injury that the public would suffer by the enforcement of the confidentiality clause of the agreement. See Com-Co Insurance Agency, Inc. v. Service Insurance Agency, Inc., 321 Ill. App. 3d 816, 819, 748 N.E.2d 298, 301 (2001) (whether a restrictive covenant is enforceable is a question of law).

~~We also find that enforcement of the confidentiality clause of the agreement would cause Johnson undue hardship. Although the confidentiality clause of the agreement did not contain any restrictions limiting Johnson's future employment prospects *per se*, the terms of the confidentiality clause, as discussed, would unnecessarily require that Johnson seek out the employment status of each individual with whom he comes into contact in the process of securing new employment—in an effort to avoid inadvertently speaking with a former Cicero employee, a prospective Cicero employee, "people doing business with" Cicero, or members of the media about his tenure with Cicero. Thus, unlike the facts of Coady, we find that enforcement of the confidentiality clause would cause undue~~

hardship on Johnson. Therefore, the second factor in Coady was also satisfied.

Further, we find that the restriction imposed by the confidentiality clause of the agreement to be greater than necessary to protect Cicero's legitimate interests. Here, Cicero's stated reasons for entering into the agreement with Johnson was to "avoid the expense and inconvenience involved in defending its actions in court and/or to its remaining employees, former or prospective employees, people doing business with [Cicero], and to the media." Attorney Both's affidavit in the record on appeal before us also stated that he was directed by Cicero's then president, Ramiro Gonzalez, to draft the April 12, 2005 agreement in order "to avoid future litigation." We find merit to Johnson's argument that requiring him to keep silent about all aspects of his employment amounted to a "blanket gag order on [his] speech with no legitimate public interest" to justify such an extreme measure. While requiring Johnson to remain silent about the *terms* of the agreement was reasonable, the extraneous provision in the confidentiality clause preventing Johnson from disclosing "anything relating to his employment" to a wide range of people was greater than necessary to protect Cicero's interests in avoiding lawsuits and media sensationalism.

Cicero could have drafted the confidentiality clause of the agreement more narrowly, by restricting the type of information Johnson was required to keep confidential. See Coady, 308 Ill. App. 3d at 157, 719 N.E.2d at 247. Cicero's failure to do so has rendered the confidentiality clause of the agreement to be overbroad, and thus, unenforceable as a matter of law. Thus, the third Coady factor was satisfied. Therefore, the circuit court properly entered summary judgment in favor of Johnson on the breach of contract counts (counts I and II) of the second amended complaint and we

need not address Johnson's alternative arguments regarding that issue.

We next determine whether the circuit court erred in granting Johnson's motion to dismiss count III of the second amended complaint.

Cicero argues that the claim for promissory fraud (count III) of the second amended complaint was properly pled and should not have been dismissed by the circuit court. Cicero also contends that even if the confidentiality clause of the agreement were indeed unenforceable, the remaining portions of the agreement were enforceable through the severability clause of the agreement. Thus, Cicero argues, the circuit court erred in dismissing count III of the second amended complaint.

Johnson argues that as a matter of law, count III of the second amended complaint must fail because it was based upon the breach of an unenforceable agreement. Specifically, Johnson contends that Cicero's promissory fraud claim was premised on Johnson's alleged breach of the agreement, and that the unenforceability of the agreement "doomed the promissory fraud claim." Johnson further argues that Cicero failed to sufficiently plead a claim for promissory fraud and thus, it was properly dismissed by the circuit court.

In the case at bar, Johnson filed a combined motion to dismiss count III of the second amended complaint pursuant to sections 2-615 and 2-619 of the Code, which the circuit court granted on November 9, 2009. 735 ILCS 5/2-619.1 (West 2006). "A motion to dismiss under section 2-615(a) of the Code *** tests the sufficiency of the complaint, whereas a motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complain, but asserts affirmative matters

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outside the complaint that defeats the cause of action.” Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 361, 919 N.E.2d 926, 931-32 (2009). We review this issue *de novo*. Kean, 235 Ill. 2d at 361, 919 N.E.2d at 932.

First, we disagree with Johnson’s contention that the promissory fraud claim (count III) of the second amended complaint must be dismissed because the agreement was found by the circuit court to be unenforceable. Based on our review of the record before us, the circuit court’s June 15, 2009 order showed that it had found the confidentiality clause to be unenforceable, contrary to Johnson’s assertion that the circuit court found the entirety of the agreement to be unenforceable. We further note that paragraph 12 of the agreement contained a “severability” provision, the plain language of which stated that “[i]n the event that any of the provisions of this [agreement] are found by a judicial or other tribunal to be unenforceable, the remaining provisions of the [agreement] will *** remain enforceable.” Thus, because only the confidentiality clause was found to be unenforceable and the severability provision of the agreement rendered the remainder of the agreement enforceable, we reject Johnson’s erroneous argument that count III of the second amended complaint must be dismissed on the basis that the entirety of the agreement was unenforceable. See Tortoriello v. Gerald Nissan of North Aurora, Inc., 379 Ill. App. 3d 214, 239, 882 N.E.2d 157, 180 (2008) (“ [t]he existence of a severability clause in a contract certainly strengthens the case for the severance of unenforceable provisions because it indicates that the parties intended for the lawful portions of the contract to be enforced in the absence of the unlawful portions’ ”), citing Abbott-Interfast Corp. v. Harkabus, 250 Ill. App. 3d 13, 21, 619 N.E.2d 1337, 1343 (2008).

Second, although count III of the second amended complaint could not have been dismissed on the basis that the confidentiality clause of the agreement was unenforceable, we find that it could be dismissed on the basis that Cicero failed to sufficiently plead a claim for promissory fraud.

“Illinois does not allow a recovery for promissory fraud, that is, fraud based on a false representation of intention of future conduct.” Stamatakis Industries, Inc. v. King, 165 Ill. App. 3d 879, 881-82, 520 N.E.2d 770, 772 (1987). “However, Illinois does recognize an exception to the non-liability for the promissory fraud rule if the promise is part of a scheme employed to accomplish the fraud.” Stamatakis Industries, Inc., 165 Ill. App. 3d at 882, 520 N.E.2d at 772. To plead an action for fraud, the complaint must allege that “there was a false representation of material fact, the party making the statement must have known or believed the statement to be untrue, the party to whom the statement was made had a right to rely on it and in fact did so, and the statement must have been made for the purpose of inducing the other party to act,” and the reliance led to injury. Stamatakis Industries, Inc., 165 Ill. App. 3d at 882, 520 N.E.2d at 772.

We find that Cicero had failed to sufficiently plead a claim for promissory fraud. Here, count III of the second amended complaint alleged that Johnson “committed promissory fraud when he entered into the [a]greement with [Cicero] and accepted compensation in exchange for, among other things, his promise not to disclose anything relating to his employment to the media, with the intention not to perform his obligations under the [a]greement.” Count III of the second amended complaint further alleged that Johnson “engaged in a scheme to defraud [Cicero] by promising not to discuss his employment, receiving the compensation, *** and thereafter discussing his employment

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with the [media].” Count III further alleged that Cicero relied on Johnson’s representations and promises in the agreement to its detriment and was “defrauded of \$88,000 plus benefits.”

As Johnson correctly argued on appeal, count III of the second amended complaint did not allege that Johnson’s promise to comply with the terms of the agreement induced Cicero to enter into the agreement. Nor could Cicero have made such an allegation. In fact, Attorney Both, as Cicero’s counsel, drafted the agreement in order for Cicero to “avoid future litigation,” and Johnson made no modifications to any of the terms of the agreement before signing it. We note that count III of the second amended complaint failed to state that Cicero “had a right to” rely on Johnson’s promise to comply with the terms of the agreement.

Cicero further alleged in count III of the second amended complaint that Johnson fraudulently promised Cicero that he would not discuss his employment with the media, then received compensation from Cicero and subsequently discussed his employment with the media. We find such allegation to be insufficient to allege the “scheme to defraud” exception to a claim of promissory fraud, as recognized by Illinois courts. Rather, this allegation in essence asserted that Johnson promised to perform the contract with an intention not to perform, an allegation which Illinois courts have held to be non-actionable. See Stamatakis Industries, Inc., 165 Ill. App. 3d at 882, 520 N.E.2d at 772. Thus, we find that Cicero has failed to sufficiently plead a claim for promissory fraud. Therefore, the circuit court properly dismissed count III of the second amended complaint with prejudice.

Johnson urges this court to sanction Cicero and its attorneys under Supreme Court Rule 375

(155 Ill. 2d R. 375), because Cicero's appeal was frivolous, had not been filed in good-faith, and had been brought for the improper purpose of harassing Johnson and causing Johnson to incur needless expense. Johnson contends that Cicero's claims against him from the outset had been specious, particularly because "Cicero itself [had] spoke[n] to the media about the [a]greement, thus violating the provision it sought to enforce against Johnson." Moreover, Johnson argues that Cicero should also be sanctioned because Cicero's initial brief before this court "wholly failed to comply with the requirements of the Illinois Supreme Court Rules." Johnson argues that Cicero's initial brief failed to provide a "standard of review," a "jurisdiction statement," references to the record in the statement of facts, a proper appendix, a certificate of service, and failed to provide sufficient points and authorities. See Supreme Court Rules 341, 342 (210 Ill. 2d R. 341, 342).

Our review of Cicero's initial brief before this court shows that it, as Johnson correctly asserts, contains multiple violations of Rule 341. Supreme Court Rule 341 (210 Ill. 2d R. 341). However, Cicero's violations of Rule 341 notwithstanding, we chose to proceed with a review of the case because we have the benefit of the record, as well as Johnson's compliant brief. Further, we are unable to conclude that Cicero willfully violated applicable appellate procedural rules in submitting its initial brief before this court. See Supreme Court Rule 375(a) (155 Ill. 2d R. 375(a)). Thus, we will not sanction Cicero for violating Rule 341. See Budzileni v. Department of Human Rights, 392 Ill. App. 3d 422, 440-41, 910 N.E.2d 1190, 1204 (2009). Our holding today does not lessen the mandatory nature of complying with all supreme court rules in the future, and we caution parties appealing to this court to always comply with applicable supreme court rules to avoid possible

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sanctions.

We further find no indication in the record that Cicero's appeal was frivolous, brought in bad-faith, or that it was filed in order to harass Johnson or to cause him needless expense. Cicero exercised its right to appeal the circuit court's June 15, 2009 and November 9, 2009 orders, which ruled in Johnson's favor. Cicero believed, and had alleged as such on appeal, that the confidentiality clause of the agreement was enforceable because it neither affected nor inhibited Johnson's pursuit of employment in the areas of law enforcement or government, nor did it restrict Johnson from using skills and experiences acquired during his tenure with Cicero in any future employment. Further, Cicero had a right to allege that Johnson's statements to the media were a violation of the agreement, which it had believed to be enforceable. We have no basis to assume that these arguments were made in bad-faith by Cicero or that the appeal was brought in order to harass Johnson. Thus, we find that Cicero properly exercised its right to appeal before this court. Therefore, no sanctions will be imposed on Cicero.

For the foregoing reasons, we affirm the judgments of the circuit court of Cook County.

Affirmed.

CUNNINGHAM, J., with THEIS, P.J., and KARNEZIS, J., concurring.

