2025 IL App (4th) 240883-U

NO. 4-24-0883

FILED
February 28, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PUA CONSULTANTS, LLC,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Peoria County
ADCO ADVERTISING AGENCY, INC.; and JULIE RUSSELL, Individually,	)	No. 21L177
	)	
Defendants-Appellees.	)	Honorable
	)	Stewart J. Umholtz,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Steigmann and Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted summary judgment in favor of defendants on seven of plaintiff's claims in the amended complaint. However, defendants did not demonstrate their right to a judgment as a matter of law on plaintiff's two Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2022)) claims. Accordingly, the appellate court affirmed the grant of summary judgment on seven claims, reversed the grant of summary judgment on two claims, and remanded for further proceedings.

¶ 2 Plaintiff, PUA Consultants, LLC (PUA Consultants), appeals an order granting summary judgment in favor of defendants, AdCo Advertising Agency, Inc. (AdCo), and Julie Russell, on all claims contained in the nine-count amended complaint. We affirm the order with respect to seven of PUA Consultants' claims. However, defendants have not demonstrated their right to a judgment as a matter of law on the two claims brought pursuant to the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West

2022)). Accordingly, we reverse the grant of summary judgment on counts VI and VII of the amended complaint and remand for further proceedings on those claims.

¶ 3 I. BACKGROUND

¶ 4 A. The Parties and the Pleadings

¶ 5 David Smith is the owner and chief executive officer of PUA Consultants, a company formed in 2020 to help individuals obtain benefits through the federal Pandemic Unemployment Assistance program. AdCo is an advertising and marketing company, and Russell is its president.

¶ 6 PUA Consultants and AdCo did business with each other for less than a month pursuant to a written contract. AdCo terminated the business relationship and allegedly started competing with PUA Consultants, leading to this litigation.

¶ 7 1. *The Original Complaint*

¶ 8 In August 2021, PUA Consultants filed a 12-count complaint. Defendants moved to dismiss this complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code). See 735 ILCS 5/2-619.1 (West 2020) (authorizing combined motions presenting arguments pursuant to both sections 2-615 and 2-619 of the Code). The trial court denied the section 2-619 aspect of this motion but granted, without prejudice, defendants' motion to dismiss the complaint pursuant to section 2-615.

¶ 9 2. *The Amended Complaint*

¶ 10 In May 2022, PUA Consultants filed a nine-count amended complaint, alleging as follows.

¶ 11 In March 2020, Smith learned that the federal government planned to create an assistance program to support Americans who were impacted by the COVID-19 pandemic. During

the summer of 2020, Smith assisted friends with applying for these benefits, and he wanted to offer widespread services through a new business called PUA Consultants. On or about October 15, 2020, Smith met with Russell and her team to discuss Smith's idea "and to seek AdCo's services for marketing and developing the business because of the knowledge and expertise that Defendants [had] with regard to marketing and the Plaintiff's lack of expertise and experience in that area." At the time, Russell was not aware of the federal program.

¶ 12 During a second meeting on or about October 20, 2020, Russell presented Smith with a proposal that included two options for compensation arrangements. On or about October 29, 2020, PUA Consultants opted for one of those arrangements, and Smith and Russell signed a contract. This contract, which was attached as exhibit A to the amended complaint, provided as follows in its entirety:

> "Pandemic Unemployment Assistance Agency Engagement
>
> Consideration A
>
> AdCo will provide marketing and online presence for consumer acquisition. In addition, AdCo will streamline and automate via cloud software/services to develop leads, funnel to call center, collect information at qualifying steps and the provide data [*sic*] and reporting at time of application submission. The online software system will allow for tracking and email/text communications as well as contract signing via authentisign/docusign.
>
> Based on the sales model of 15% earned per client for the registered agent, we propose this tiered compensation based on gross profit, collected funds, before operating expenses:
>
> 1-250 clients 20%

251-1000 clients 25%

1001+ clients 33%

Rationale: The goal being as many clients as fast as possible. As the number gets larger, the agency earns higher commissions which engages us out of the gate to get to the higher number faster. This affects how effective our marketing and social chatter becomes and converting those leads as quickly as possible into completed applications through smooth and automated (as much as possible) systems.

We would begin work on this next week, with a marketing goal of 10 days, and a fully operational software system in 30 days. Initial marketing budget (paid by PUA Consultants) to be $5,000 per week for 4 weeks, and then to be determined for following weeks.

Needed deliverables:

Call Center Relationship

Project Manager

Application Data Center Processors (1-10)

Accounting/Accounts Receivable Management

Data Center Location with computers/internet/phone

Legal Representation."

The parties also "discussed the need to hire a team of people to process the applications." Smith eventually hired and trained five individuals, "who worked out of the physical offices of AdCo."

¶ 13 On October 31, 2020, the websites and advertising for the project "went live." AdCo generated three websites, which were paid for by and belonged to PUA Consultants.

Between October 16, 2020, and November 9, 2020, PUA Consultants paid AdCo $20,000 in "four installments as agreed compensation" for work on the project. Between October 31, 2020, and either November 16 or 17, 2020, "the project had generated over 100 leads."

¶ 14 On either November 16 or 17, 2020, Russell informed Smith that AdCo was "making the decision to stop work on the PUA Consultants project and focus more on its everyday business." According to the amended complaint, "In other words, rather than fulfilling the contractual obligations between AdCo and Plaintiff, Jullie [*sic*] Russell, individually, decided to cease all work for Plaintiff, essentially steal Plaintiff's ides [*sic*], business models and property and operate in direct competition with Plaintiff." Thereafter, the individuals paid by PUA Consultants "continued to work at the AdCo offices," and defendants gave PUA Consultants access and control to only one of the three websites. Russell told Smith that the other websites were her idea, and she "continued to control, maintain, market and operate" them in competition with PUA Consultants.

¶ 15 Based on these facts, count I alleged that AdCo breached the contract by (1) leaving the project, (2) keeping two of the websites for itself, and (3) "failing to perform the services" for which PUA Consultants had contracted.

¶ 16 Counts II and IV alleged "breach of fiduciary duty/punitive damages" against AdCo and Russell, respectively. These counts alleged that a fiduciary relationship arose because PUA Consultants approached and trusted defendants for marketing and social media services due to their expertise, reputation, and knowledge in those areas. Defendants allegedly breached their fiduciary duty by "dropping out of the marketing agreement" and competing with PUA Consultants, using knowledge of its business model.

¶ 17 Counts III and V alleged "fraud and deceit/willful and wanton misconduct/punitive

damages" against AdCo and Russell, respectively. These counts alleged that on November 17, 2020, Russell told Smith that "AdCo wished to disengage in [*sic*] the agreement in order to focus on its everyday business activities." When Smith requested a recommendation for another company to perform the same service, Russell responded that "AdCo was special and no one else could do the work." These allegedly were false statements of material facts designed to induce PUA Consultants "to believe that the business model was not successful and to not seek other forms of internet advertising." Consequently, PUA Consultants "turned to friends and family members for assistance in creating an online presence and did not immediately engage with another professional marketing company." Meanwhile, defendants advertised on two websites and attempted to attract customers who were seeking assistance obtaining federal funds. The amended complaint alleged that defendants' false statements constituted willful and wanton misconduct in that defendants took PUA Consultants' business idea as their own and attempted to hinder PUA Consultants' "ability to recover from the loss of the marketing agreement."

¶ 18 Counts VI and VII alleged violations of the Consumer Fraud Act against AdCo and Russell, respectively. These counts alleged that (1) defendants engaged in a deceptive act by offering and contracting to use their services to market PUA Consultants' business, (2) defendants intended to induce reliance on this deceptive act, (3) this deceptive act "occurred in the course of commerce or trade," and (4) PUA Consultants suffered damages.

¶ 19 Count VIII alleged breach of the covenant of good faith and fair dealing against AdCo. Specifically, AdCo "exercised their discretion in a manner contrary to the reasonable expectations of the parties" and this resulted in a breach of contract and breach of the covenant of good faith and fair dealing.

¶ 20 Count IX alleged "tortious interference with business relations/prospective

economic advantage" against AdCo. This count alleged that (1) defendants were aware there was a valid contract, (2) defendants were aware that PUA Consultants "had a reasonable expectation of entering into business relationships with third parties," (3) defendants "intentionally and without justification interfered with that expectation," (4) defendants' actions prevented PUA Consultants' "legitimate expectancy from developing business relations," and (5) PUA Consultants suffered damages.

¶ 21 Defendants moved to dismiss the amended complaint pursuant to section 2-619.1 of the Code. The trial court evidently denied the motion, though the record does not contain an order documenting that ruling. The parties then engaged in written discovery, returning to court multiple times on defendants' motions to compel discovery responses from PUA Consultants. The parties did not take any depositions.

¶ 22 B. The Summary Judgment Motion

¶ 23 On February 6, 2024, defendants moved for summary judgment on all claims in the amended complaint. Relevant to this appeal, defendants reasoned as follows. Summary judgment was proper on count I (breach of contract), as the parties' contract did not prohibit AdCo from acting as alleged. With respect to counts II and IV, the circumstances did not give rise to a fiduciary duty. There was no evidence supporting the fraud/willful and wanton misconduct claims in counts III and V. Counts VI and VII, which invoked the Consumer Fraud Act, failed because PUA Consultants was not a "consumer" for purposes of the act. Count VIII likewise failed, as breach of the covenant of good faith and fair dealing is not a recognized cause of action in Illinois. Summary judgment was warranted on count IX, as defendants did not intentionally interfere with any specific prospective business relationship.

¶ 24 On March 13, 2024, PUA Consultants filed a response to the motion for summary

judgment. Rather than requesting to engage in additional discovery before responding to the motion or citing record evidence in support of its claims, PUA Consultants repeatedly rested on the allegations of its amended complaint. Although PUA Consultants did not reference or attach any exhibits, pages 21 and 22 of the response had the numbers "1" and "2" printed on them in bold typeface but were otherwise blank.

¶ 25 On May 10, 2024, after defendants had filed their reply in support of their motion for summary judgment, PUA Consultants filed exhibit Nos. 1 and 2 to its response to the motion for summary judgment. Exhibit No. 1 was a copy of the amended complaint. Exhibit No. 2 was an undated affidavit signed by Smith that largely tracked the allegations of the amended complaint. In the analysis section, we will quote portions of the affidavit that PUA Consultants relies on in support of its various claims.

¶ 26 On May 14, 2024, the trial court held a hearing on defendants' motion for summary judgment. PUA Consultants' counsel stated that two exhibits were inadvertently omitted from the response to the motion. PUA Consultants' counsel said that he provided those exhibits to the court, and he referred the court to certain paragraphs of Smith's affidavit in presenting his argument. Defendants' counsel replied that he recently received a copy of Smith's affidavit and considered filing a motion to strike it. Defendants' counsel submitted that Smith's affidavit contained legal conclusions, was simply a "copy and paste job" of the amended complaint, and did not create factual issues precluding summary judgment. Defendants' counsel mentioned in detail and quoted certain portions of the affidavit that he argued demonstrated its inadequacy.

¶ 27 At the beginning of its ruling on the motion for summary judgment, the trial court made the following comments:

"I have read the pleadings that have been filed, the motion, the response,

> the reply. I did not read the affidavit that was attached, evidently, but I still find it puzzling why there's no reference to it in the response. But, in any event, I don't find that that creates any issues for the Court with regard to determining where we're at on this Motion for Summary Judgment."

The court granted defendants' motion for summary judgment on all counts. PUA Consultants timely appealed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, PUA Consultants argues in its opening brief that a reversal and/or reversal with remand is required because the trial court stated that it ruled on defendants' motion for summary judgment without reading Smith's affidavit. Defendants respond that PUA Consultants misrepresents the court's comments and that the court properly granted summary judgment as to each claim. As part of defendants' argument, they maintain that Smith's conclusory affidavit violated Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013). In its reply brief, PUA Consultants proposes that genuine issues of material fact precluded summary judgment on seven of the nine counts of the amended complaint. PUA Consultants also maintains that defendants forfeited their right to challenge Smith's affidavit because they failed to do so below.

¶ 30 Summary judgment is warranted where "the pleadings, depositions, and admissions 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." 735 ILCS 5/2-1005(c) (West 2022). Summary judgment is "a drastic means of disposing of litigation," so the party filing such a motion must demonstrate a right to judgment that is "clear and free from doubt." *Belknap v. Crawford*, 2024 IL App (4th) 230679, ¶ 17. In addressing a motion for summary judgment, the court construes "pleadings and the evidentiary material in the record strictly against the moving

party." *Belknap*, 2024 IL App (4th) 230679, ¶ 17. We review an order granting summary judgment *de novo*. *Habdab, LLC v. County of Lake*, 2024 IL 130323, ¶ 18.

¶ 31 A. Threshold Issues

¶ 32 Before addressing whether summary judgment was warranted as to each count of the amended complaint, we will address PUA Consultants' arguments that the trial court failed to read Smith's affidavit and that defendants forfeited their right to challenge this affidavit.

¶ 33 1. *The Trial Court's Purported Failure to Read Smith's Affidavit*

¶ 34 We determine that the trial court's comments do not compel the conclusion that the court failed to review or be familiar with the contents of Smith's affidavit. Nevertheless, our review is *de novo*, which means that "we afford no deference to the trial court's decision" and that we consider the record anew to determine whether the judgment was correct. *Jackson v. Graham*, 323 Ill. App. 3d 766, 779 (2001). Accordingly, even if the court never read Smith's affidavit in its entirety, there would be no need to remand the matter for further proceedings on defendants' motion, as we must review the affidavit independently anyway.

¶ 35 2. *Whether Defendants Forfeited Their Right to Challenge the Conclusory Statements in Smith's Affidavit*

¶ 36 One of the requirements of Rule 191(a) is that affidavits submitted in connection with summary judgment motions "shall not consist of conclusions but of facts admissible in evidence." Ill. S. Ct. R. 191 (eff. Jan. 4, 2013). Smith's affidavit violated this rule repeatedly, as it included legal conclusions about the parties' duties and interactions. PUA Consultants contends that defendants forfeited their right to challenge Smith's affidavit by failing to do so below. The record does not reflect a forfeiture. "The general rule in Illinois is that 'the sufficiency of an affidavit cannot be tested for the first time on appeal where no objection was made either by a

motion to strike, *or otherwise*, in the trial court.' " (Emphasis added.) *Kolakowski v. Voris*, 83 Ill. 2d 388, 398 (1980) (quoting *Fooden v. Board of Governors of State Colleges & Universities*, 48 Ill. 2d 580, 587 (1971)). Here, at the hearing on the motion for summary judgment, defendants' counsel emphasized that Smith's affidavit was conclusory, so the objection was properly raised.

¶ 37 B. Analysis of PUA Consultants' Claims

¶ 38 We now consider whether the trial court properly granted summary judgment in favor of defendants.

¶ 39 1. *Breach of Contract (Count I)*

¶ 40 To support a claim for breach of contract, a party must prove "(1) the existence of a valid and enforceable contract, (2) substantial performance by the plaintiff, (3) breach by the defendant, and (4) damages caused by that breach." *Ivey v. Transunion Rental Screening Solutions, Inc.*, 2022 IL 127903, ¶ 28.

¶ 41 In the amended complaint, PUA Consultants alleged that AdCo breached the written contract by (1) leaving the project, (2) keeping "two of the three working websites that were designed to acquire and process individuals seeking PUA assistance for itself after these websites were designed and advertised for use by Plaintiff," and (3) "failing to perform the services for which the Plaintiff had contracted."

¶ 42 Defendants argue that AdCo could not have breached the contract by leaving the project, as the contract contained "no defined duration of the relationship between the parties." Defendants further maintain that AdCo could not have breached the contract by keeping two websites, as the contract did not mention "designing or delivering any websites" to PUA Consultants. According to defendants, PUA Consultants also failed to identify any evidence that defendants otherwise did not perform the services required by the contract.

¶ 43 On appeal, PUA Consultants does not direct our attention to any portions of the record specifically supporting its breach-of-contract claim. PUA Consultants has forfeited any arguments it could have raised. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (establishing that points not argued are forfeited).

¶ 44 Forfeiture aside, our own review of the record confirms that the trial court properly granted summary judgment on the breach-of-contract claim for the reasons defendants identify. The contract did not specify the duration of the parties' obligations toward each other. The contract merely set one month's advertising budget and established that AdCo would be compensated based on the number of customers its marketing and advertising efforts procured. With respect to the amended complaint's allegation that AdCo breached the contract by keeping two websites, the contract did not say that AdCo had to deliver any websites to PUA Consultants. The complaint's allegation that AdCo otherwise failed to perform the services required by the contract is a legal conclusion bereft of substance. Thus, the court properly granted summary judgment on count I of the amended complaint.

¶ 45 2. *Breach of Fiduciary Duties (Counts II and IV)*

¶ 46 To establish a claim for breach of fiduciary duties, a party must show both the existence of a fiduciary relationship and a breach of the duties that ensue from such a relationship. *Miller v. Harris*, 2013 IL App (2d) 120512, ¶ 21.

¶ 47 A fiduciary duty arises as a matter of law from some engagements, such as the relationship between an attorney and a client or a principal and an agent. *Miller*, 2013 IL App (2d) 120512, ¶ 21. Aside from those situations, the parties' special circumstances may give rise to a fiduciary relationship. *Gonzalzles v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 210 (2000). To that end, "[a] fiduciary relationship exists where one party reposes trust and confidence

in another, who thereby gains a resulting influence and a superiority over the subservient party." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 58. "This is generally accomplished by establishing facts showing an antecedent relationship that gives rise to trust and confidence reposed in another." *Khan*, 2012 IL 112219, ¶ 58. "[T]he party asserting the existence of the relationship has the burden of establishing such by clear and convincing evidence." *Gonzalzles*, 315 Ill. App. 3d at 210. Relevant factors include "the degree of kinship between the parties; the disparity in age, health, mental condition and education and business experience between the parties; and the extent to which the 'servient' party entrusted the handling of its business affairs to the 'dominant party' and placed trust and confidence in it." *Gonzalzles*, 315 Ill. App. 3d at 210 (quoting *Ransom v. A.B. Dick Co.*, 289 Ill. App. 3d 663, 673 (1997)).

¶ 48 Here, defendants propose that PUA Consultants has not identified "any evidence of the existence of a fiduciary relationship between the parties." In its reply brief, PUA Consultants cites the following paragraphs of Smith's affidavit as supporting the existence of a fiduciary relationship:

> "12. I approached Adco specifically due to its expertise and reputation in this field of marketing[.]
>
> 13. I placed trust in the AdCo [*sic*] due to the specialized knowledge of AdCO in the field of marketing and social media presence and my lack of social media expertise and marketing, knowledge, expertise and experience[.]
>
> 14. Because of the special circumstances of the relationship between myself and Defendant, I expected the Defendant to act with the utmost candor, care, loyalty, full disclosure, and good faith.
>
> 15. Defendant dropped out of the marketing agreement less than three

> weeks after the business plan went live and becoming [*sic*] a direct competitor to me and my company by using the knowledge it acquired of the business model from me—knowledge that was supposed to be used to assist I [*sic*], not compete against it.
>
> 16. I approached Julie Russell specifically due to her expertise and reputation in this field of marketing and my lack of experience, expertise and knowledge in the same.
>
> 17. I placed trust in Julie Russell due to her specialized knowledge in the field of marketing and social media presence."

¶ 49 We hold that there is no genuine issue of material fact as to whether defendants owed a fiduciary duty to PUA Consultants and that defendants are entitled to a judgment as a matter of law on these claims. Smith's conclusory allegations in these paragraphs of his affidavit about the nature of his relationship with defendants could apply to just about any transaction in any service industry. One very common reason for engaging someone to perform a service is that the provider has knowledge and experience that the client lacks. But the law does not dictate that all service providers owe fiduciary duties to their clients. Significantly, PUA Consultants cites no evidence that (1) the parties had any prior business engagements or personal relationships, (2) there was any disparity in age, health, mental condition, education, or business experience between the parties, or (3) PUA Consultants generally entrusted its business affairs to defendants. The record merely shows that the parties briefly did business with each other pursuant to a perfunctory contract that neither contained a noncompetition clause nor specified the duration of the parties' obligations. Under these circumstances, there is simply no evidence that could be construed as giving rise to a fiduciary relationship. Thus, the trial court properly granted summary

judgment on counts II and IV of the amended complaint.

¶ 50 3. *Fraud (Counts III and V)*

¶ 51 To establish a fraud claim, a plaintiff must show:

> "(1) a false statement of fact by the defendant, (2) made with the knowledge that the statement was false; (3) the defendant intended that the statement would induce the plaintiff to act; (4) the plaintiff justifiably relied upon the statement; and (5) the plaintiff suffered damages arising from that reliance." *Abazari v. Rosalind Franklin University of Medicine & Science*, 2015 IL App (2d) 140952, ¶ 14.

¶ 52 In the amended complaint, PUA Consultants alleged that Russell falsely told Smith on November 17, 2020, that AdCo "wished to disengage in [*sic*] the agreement in order to focus on its everyday business activities." When Smith requested a recommendation for another company to perform the same service for him, Russell allegedly falsely responded that "AdCo was special and no one else could do the work." PUA Consultants further alleged that Russell made these statements to induce it "to believe that the business model was not successful and to not seek other forms of internet advertising." According to PUA Consultants, as a result of Russell's false statements, PUA Consultants relied on friends and family to create an online presence, rather than immediately engage another marketing company. Meanwhile, defendants assumed Smith's business idea as their own, causing damage to PUA Consultants.

¶ 53 Defendants contend that PUA Consultants "has never come forth with any evidence of fraud or willful and wanton misconduct." In its reply brief, PUA Consultants cites eight paragraphs of Smith's affidavit that largely echo the amended complaint's allegations.

¶ 54 We hold that there is no genuine issue of material fact with respect to the fraud claims and that defendants are entitled to a judgment as a matter of law. It is not apparent how

Russell made a false statement when she told Smith that AdCo "wished to disengage in [*sic*] the agreement in order to focus on its everyday business activities." Presumably, the falsehood from PUA Consultants' perspective is that Russell failed to add that AdCo intended to compete with PUA Consultants. However, PUA Consultants does not cite any authority indicating that defendants had a duty to disclose this information. As mentioned above, there was no defined termination date for the parties' contract, the contract did not contain a noncompete clause, and there was no fiduciary relationship.

¶ 55 Russell's statement to Smith that "AdCo was special and no one else could do the work" was an opinion rather than a concrete factual assertion that could form the basis of a fraud claim. See *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 17 (noting that fraud claims must be based on statements of fact rather than opinions). Even if this could be construed as a factual assertion, it is not arguable that this statement justified Smith refraining from contacting other marketing companies. Considering that the parties worked together so briefly, the notion that no other company could service PUA Consultants' business needs is inherently dubious.

¶ 56 We also note that PUA Consultants alleged in its amended complaint that the project generated more than 100 leads while the parties worked together. PUA Consultants does not explain how either of Russell's allegedly false statements could have caused a belief that the business model was unsuccessful when the project obtained leads on more than 100 potential customers in only a few weeks.

¶ 57 Counts III and V of the amended complaint also contained references to "willful and wanton misconduct." However, in context, it seems that these allegations were part and parcel of the fraud claims, not an attempt to plead some other distinct cause of action. See 735 ILCS

5/2-603(b) (West 2022) (requiring separate causes of action to be pleaded in separate counts).

¶ 58 For these reasons, the trial court properly granted summary judgment in defendants' favor on counts III and V.

¶ 59 4. *Violation of the Consumer Fraud Act (Counts VI and VII)*

¶ 60 To support a cause of action for a violation of the Consumer Fraud Act, a plaintiff must show " '(1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception.' " *Tri-Plex Technical Services, Ltd. v. Jon-Don, LLC*, 2024 IL 129183, ¶ 26 (quoting *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149 (2002)).

¶ 61 Defendants do not directly question PUA Consultants' ability to prove these elements. Rather, defendants contend that the trial court properly granted summary judgment on the Consumer Fraud Act counts because PUA Consultants has not shown that it was a "consumer." See 815 ILCS 505/1(e) (West 2022) (defining "consumer" as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household"); see also *Commonwealth Edison Co. v. Munizzo*, 2013 IL App (3d) 120153, ¶ 48 (explaining that the Consumer Fraud Act does not apply where the claimant is not a "consumer").

¶ 62 We hold that defendants have not met their burden of showing their entitlement to a judgment as a matter of law on this issue. Contrary to what defendants argue, it seems that PUA Consultants meets the statutory definition of a "consumer" in connection with the transaction giving rise to this litigation. Corporations such as PUA Consultants are included within the definition of "person" for purposes of the Consumer Fraud Act. See 815 ILCS 505/1(c) (West

2022) (establishing that " 'person' includes any *** corporation (domestic and foreign), company, *** business entity or association"); see also *Skyline International Development v. Citibank, F.S.B.*, 302 Ill. App. 3d 79, 85 (1998) (determining that the plaintiff corporation was a "consumer" of the defendant corporation's banking services pursuant to the Consumer Fraud Act's definition of that term). Additionally, this lawsuit arises out of PUA Consultants' purchase of advertising and marketing services from AdCo, and "services" are "merchandise" for purposes of the Consumer Fraud Act. See 815 ILCS 505/1(b) (West 2022) (defining "merchandise" to include "any objects, wares, goods, commodities, intangibles, real estate situated outside the State of Illinois, or services"). We recognize that some professional services fall outside the purview of the Consumer Fraud Act. See *Mathis v. Yildiz*, 2023 IL App (1st) 221703, ¶ 23 (explaining that Illinois courts have refused to recognize "Consumer Fraud Act claims arising out of the provision of medical, dental, or legal services"). However, defendants provide no argument or authority suggesting that advertising and marketing are akin to such services. Furthermore, PUA Consultants purchased these advertising and marketing services for its own use, not to resell those services or to incorporate them into a product to be sold. See 815 ILCS 505/1(e) (West 2022) (providing that a corporation will be deemed a consumer if it purchases services for its own use rather than for resale). It is not clear what more defendants believe would be required for PUA Consultants to meet the statutory definition of a "consumer." The fact that the subject transaction involves a dispute between two business entities does not inherently render the Consumer Fraud Act inapplicable. See *American Roller Co. v. Foster-Adams Leasing, LLP*, 472 F. Supp. 2d 1019, 1022 (N.D. Ill. 2007) (noting that a corporation may sue under the Consumer Fraud Act when it " 'is a consumer of the other business's product' ") (quoting *Lefebvre Intergraphics, Inc. v. Sanden Machine Ltd.*, 946 F. Supp. 1358, 1368 (N.D. Ill. 1996)).

¶ 63 The matter is distinguishable from *Munizzo*, a case defendants cite where the counterplaintiff was determined not to be a "consumer" because the transaction giving rise to his Consumer Fraud Act counterclaim was the alleged mismarking of utility lines, a service that ComEd performed without charging a fee. See *Munizzo*, 2013 IL App (3d) 120153, ¶ 49. The appellate court emphasized that the transaction described in the counterclaim was "not one involving a person who purchases or contracts for the purchase of merchandise." *Munizzo*, 2013 IL App (3d) 120153, ¶ 49. Here, by contrast, the lawsuit arose out of PUA Consultants' purchase of "merchandise," as that word is defined in the Consumer Fraud Act.

¶ 64 As defendants have articulated no other challenge to the Consumer Fraud Act counts, we reverse the grant of summary judgment in their favor on counts VI and VII of the amended complaint.

¶ 65 5. *Breach of the Covenants of Good Faith and Fair Dealing (Count VIII)*

¶ 66 Defendants point out that Illinois does not recognize a cause of action for breach of the covenants of good faith and fair dealing. See *Voyles v. Sandia Mortgage Corp*., 196 Ill. 2d 288, 295 (2001) (declining to recognize "an independent cause of action in tort for the alleged breach of an implied duty of good faith and fair dealing arising from a contract"). PUA Consultants does not address this issue in its reply brief, which we take as a concession. Accordingly, we hold that the trial court properly granted summary judgment in favor of defendants on count VIII of the amended complaint.

¶ 67 6. *Tortious Interference With Business Relations/Prospective Economic Advantage (Count IX)*

¶ 68 To sustain a claim for tortious interference with a prospective advantage or business opportunity, a plaintiff must show "(1) the plaintiff has a reasonable expectancy of entering into a

business relationship; (2) the defendant knows of the expectancy; (3) the defendant interferes and prevents the realization of the business relationship; and (4) the defendant's interference actually damages the plaintiff." *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 747 (2009).

¶ 69 Here, defendants contend there is no evidence to support this claim. In its reply brief, PUA Consultants cites the following paragraphs of Smith's affidavit as support for count IX of the amended complaint:

> "33. I had a valid contract with the Defendants[.]
>
> 34. Defendants were aware of the contract[.]
>
> 35. I had an expectation of entering into business relationships with third parties.
>
> 36. Defendants were aware of that expectation[.]
>
> 37. Defendants intentionally interfered with that expectation[.]
>
> 38. Defendants[']actions prevented my legitimate expectancy from developing business relations."

¶ 70 We hold that there is no genuine issue of material fact with respect to this claim and that defendants are entitled to a judgment as a matter of law. Smith's affidavit alleged mere legal conclusions, without identifying any specific customer lost due to defendants' actions. Moreover, the gravamen of PUA Consultants' tortious-interference claim is that defendants misappropriated a business idea and competed for prospective customers. However, PUA Consultants had no proprietary right to the business idea of assisting customers with applying for federal benefits, and the parties' contract did not contain a noncompete clause or specify the duration of the parties' relationship. Accordingly, the trial court properly granted summary judgment in defendants' favor on count IX of the amended complaint.

¶ 71 III. CONCLUSION

¶ 72 For the reasons stated, we affirm the trial court's grant of summary judgment as to counts I through V, VIII, and IX of the amended complaint. We reverse the judgment as to counts VI and VII, and we remand the matter for further proceedings on those two claims.

¶ 73 Affirmed in part and reversed in part; cause remanded.