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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PETER F. GERACI,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant/Cross-Appellee,)	
)	
v.)	No. 10-CH-4854
)	
R. WILLIAM AMIDON, LEGAL HELPERS,)	
P.C., d/b/a Macey and Aleman, P.C.;)	
THOMAS MACEY, JEFFREY ALEMAN,)	
RICHARD GUSTAFSON, SHOBHANA)	
KASTURI,)	
)	
Defendants-Appellees/Cross-Appellants)	
)	Honorable
(Joseph P. Doyle, d/b/a)	Bonnie M. Wheaton,
Dupagebankruptcylawyer.com, Defendant).)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in granting the defendant's motion for summary judgment on the plaintiff's complaint. We reverse and remand for additional proceedings. The defendants' cross-appeal for fees is premature.
- ¶ 2 This action was brought by the plaintiff, Peter F. Geraci, against the defendants, R. William Amidon; Legal Helpers P.C., Thomas Macey, Jeffrey Aleman, Richard Gustafson, and Shobhana

Kasturi (collectively, the “Legal Helpers defendants”); and Joseph Doyle, to recover damages for alleged violations of the Illinois Trade Secrets Act (Act) (765 ILCS 1065/1 *et seq.* (West 2010)), in misappropriating bankruptcy law practice management software owned by the plaintiff. The plaintiff also alleged claims against Amidon for breach of contract. The trial court granted summary judgment in favor of all the defendants on the issue of trade secret misappropriation. The trial court also denied the Legal Helpers defendants’ motion for attorney fees under section 5 of the Act (765 ILCS 1065/5 (West 2010)). The plaintiff appeals from the order granting summary judgment and the Legal Helpers defendants cross-appeal from the order denying their motion for attorney fees. We reverse in part, affirm in part, vacate in part, and remand for additional proceedings.

¶ 3

BACKGROUND

¶ 4 On August 25, 2010, the plaintiff filed this suit against defendants seeking damages and injunctive relief. The plaintiff claimed that his bankruptcy law practice management software, Geraci Automated Program (GapC), was a trade secret and that it had been misappropriated by the defendants. He alleged that Amidon, a former employee, copied and disseminated the software and source code to the remaining defendants by creating similar law practice management software for them. The plaintiff asserted claims under the Act against all the defendants and, additionally, asserted a breach of contract claim against Amidon.

¶ 5 On October 5, 2010, the Legal Helpers defendants moved to dismiss, pursuant to section 2-619(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a) (West 2010)), the plaintiff’s claim against them on the ground that the plaintiff had released any pre-October 13, 2003 claims in a settlement agreement reached by the parties in a previous suit. Specifically, in June 2003, the plaintiff asserted a claim against the Legal Helpers defendants, in Cook County Case No. 03-CH-

9763, arguing that they had improperly used his “infotapes” trademark. The case was settled on October 13, 2003, when the parties entered into the following settlement agreement and release:

“[The plaintiff] and each of his present and former affiliates, employees, agents, representatives, insurers, attorneys, creditors, successors and assigns in consideration of the payment and promises and agreements contained herein, shall, and do hereby waive, release, relinquish and forever discharge [the Legal Helpers defendants] and all of their present and former affiliates, officers, directors, employees, agents, representatives, insurers, attorneys, successors, and assigns from any and all claims, demands, lawsuits, causes of action, obligations, duties, responsibilities, liabilities and damages of whatever nature or source, whether in law or in equity, monetary or injunctive, known or unknown, asserted or unasserted, including, without limitation, claims for losses, damages, expense, punitive damages, injunctive relief, attorneys fees and costs, which they now has [sic], or ever had, or may have in the future, based upon, arising from or related to the use or publication of the terms set forth in Paragraph 1(c), and the alleged damages and all matters and disputes that were or could have been asserted in [the plaintiff’s] Complaint and Verified Petition for Preliminary Injunction. [The plaintiff] represents and warrants that all matters and disputes that were, or could have been, asserted in his Complaint and Verified Petition for Preliminary Injunction have been fully compromised, adjourned, settled and will be dismissed with prejudice, and that no further or other claims are outstanding with respect thereto.”

Paragraph 1(c) stated that the Legal Helpers defendants agreed to cease and refrain from “referring to in any manner anything containing “info tapes,” “infotapes,” “bankruptcy information tapes,” “informational tapes,” “bankruptcy tapes,” “our tapes,” “divorce tapes,” or any combination of “info” and “tapes.”

¶ 6 On October 15, 2010, following a hearing, the trial court granted the Legal Helpers defendants' motion to dismiss the claim. The trial court noted that the language of the release was "broad and general and all inclusive and totally encompassing as one could possibly put into a release." The trial court found that, because the parties to the 2003 settlement agreement were sophisticated business people as well as attorneys, they could be "charged with knowledge of the import of the documents that they sign." The trial court found that the allegations of the plaintiff's complaint fell within the broad language of the 2003 release. The trial court further noted that the release only applied to pre-October 13, 2003, claims and thus granted the plaintiff leave to file an amended complaint, limiting the claims to post-October 13, 2003, conduct.

¶ 7 On October 29, 2010, the plaintiff filed an amended verified complaint. The plaintiff limited the claims to the acts or omissions that occurred on or after October 13, 2003. In his complaint, the plaintiff alleged that his GapC software and "highly refined methods of doing business as a consumer bankruptcy practice" had been built up at a great cost over many years and provided an economic and strategic advantage over his competitors. The plaintiff also alleged that he hired Amidon in 1996 to provide computer programming services. As a condition of employment, Amidon signed a confidentiality and non-compete agreement that precluded him from divulging, to anyone, any information about the plaintiff's computer systems and software.

¶ 8 The plaintiff further alleged that Amidon created GapC, on behalf of and for the benefit of the plaintiff, and that it was based on the plaintiff's years of experience as a bankruptcy practitioner. GapC was used to set appointments, manage client information, access creditor and trustee information, generate forms, manage litigation, and generate pleadings. It allowed the plaintiff to provide client services in a cost-effective manner.

¶ 9 In October 2006, the plaintiff fired Amidon after discovering that Amidon possessed copies of the GapC software and source code. As a result of his termination, Amidon had signed exit agreements acknowledging that GapC belonged to the plaintiff and agreeing that he would not sell, reengineer, or in any way transfer GapC to any other party.

¶ 10 The plaintiff further alleged that, in October 2009, he learned that Amidon had installed or sold GapC software to the Legal Helpers defendants and defendant Doyle. The plaintiff alleged that the defendants either knew or had reason to know that Amidon had acquired the software by improper means. The plaintiff also alleged that Amidon himself was marketing similar bankruptcy law practice management software under the name “BestClient.” In July 2010, the plaintiff was informed by a former employee of Legal Helpers that Legal Helpers had employed Amidon from 2001 to 2003, while Amidon was still employed by the plaintiff. Former employees of Legal Helpers had also told the plaintiff that it was common knowledge that the Legal Helpers management software belonged to the plaintiff and that the software was so similar to GapC, that no training was necessary to use it.

¶ 11 Based on the foregoing, the plaintiff asserted claims under the Act against Amidon (count 1), Doyle (count 2), Legal Helpers (count 3), Macey (count 4), Aleman (count 5), Gustafson (count 6) and Kasturi (count 7). Geraci also asserted a breach of contract claim against Amidon (count 8) and sought injunctive relief (count 9).

¶ 12 On September 15, 2010, Legal Helpers filed a motion to require the plaintiff to identify his trade secrets with particularity. Legal Helpers argued such disclosure would narrow the scope of discovery, permit resolution of the case through a dispositive motion, prevent the plaintiff from conducting a fishing expedition into his competitor’s computer capabilities, and prevent the plaintiff from tailoring his trade secret claim based on discovery. On September 17, 2010, the trial court

granted the motion and ordered the plaintiff to identify his alleged trade secrets. The plaintiff subsequently identified his trade secret as the entire GapC source code and its architecture, features, functions, reports, procedures, hot keys, data base tables and activity codes. The plaintiff identified the foregoing as individual trade secrets and every combination of the whole as a combination trade secret.

¶ 13 On October 5, 2010, Legal Helpers filed a motion to compel, arguing that the plaintiff had not identified his alleged trade secrets with any particularity. On October 8, 2010, the trial court granted the motion and ordered the plaintiff to identify the alleged trade secrets and combination trade secrets with greater particularity and to “identify the portions of source code that are tied to various functions, features, keys, etc.” that the plaintiff believed were individual or combination trade secrets.

¶ 14 On October 15, 2010, the plaintiff filed a supplemental interrogatory response, explaining in further detail why the entire GapC source code and all related details were trade secrets, individually and in combination. The plaintiff contended that his expert had opined that a person having ordinary skill in the art of computer software engineering could adequately identify what was being claimed as a trade secret from the information provided by the plaintiff. On November 5, 2010, the trial court found that the disclosure was sufficient. The trial court noted that the main issue was whether the Legal Helpers bankruptcy law practice management software, LH-1, was based on the GapC software, which might be a trade secret, and that experts would need to look at the entire source code to make that determination. The case proceeded to discovery on the basis of this order.

¶ 15 Also on November 5, 2010, the trial court denied the plaintiff’s motion to appoint a special master. The plaintiff had argued that the case involved technical, complex issues that might be

outside the trial court's practical experience. The trial court found that expert witnesses would suffice to educate the court as to the necessary issues.

¶ 16 On May 12, 2011, the plaintiff filed a motion for reconsideration of the trial court's October 15, 2010, dismissal of all pre-October 13, 2003, claims. In that motion, the plaintiff argued that a general release was not applicable to an unknown claim and that the intention of the parties controlled the scope and effect of a release. The plaintiff further argued that discovery had revealed that none of the parties were aware of a possible trade secret misappropriation claim at the time of the October 13, 2003, release. On June 15, 2011, the trial court denied the motion to reconsider. The trial court stated:

“If this had been brought within 30 days on the argument that the release was a specific release rather than a general release, I probably would have granted it ***.”

The trial court acknowledged that it had misapplied the law, but stated that seven months was untimely for a motion to reconsider based on misapplication of the law. The trial court also noted that other bases for granting the motion to reconsider, such as new evidence or new legal authority, did not exist. The trial court stated that it did not want to grant the motion because it was too late to “throw open all of the discovery.”

¶ 17 On June 9, 2011, the Legal Helpers defendants filed a motion for summary judgment, arguing that: GapC was not a trade secret, there was no evidence of misappropriation, and there was no evidence to sustain any claim against the individual defendants. The Legal Helpers defendants argued that both GapC and LH-1 were created with “Zachary,” a basic database management software, and therefore did not qualify as a trade secret. On July 8, 2011, Amidon filed a partial motion for summary judgment. Therein, Amidon alleged that he had independently developed

BestClient after the plaintiff terminated his employment. BestClient did not share code, data structures, menus, forms, or the appearance of any of the plaintiff's software.

¶ 18 Evidence Presented in Connection with the Motions for Summary Judgment

¶ 19 Aleman, Macey, Gustafson, Kasturi Affidavits

¶ 20 There was evidence that Amidon placed certain GapC-related materials onto Legal Helper's server in the spring of 2006. No one at Legal Helpers knew why Amidon would have done so. By 2006, LH-1 had been operating for eight years and had been running in its current form for several years. These defendants contended that GapC was never incorporated or used in LH-1. The defendants were not aware of GapC being on Legal Helpers server until it was revealed during discovery in this case. Aleman, Gustafson, and Kasturi were all former employees of the plaintiff's.

¶ 21 Macey Deposition

¶ 22 Macey stated that he started Legal Helpers in December 1993. In 2011, Legal Helpers employed about 300 attorneys. Kasturi, Gustafson, and Aleman were all partners in the Chicago office. He hired Kasturi in 1998 or 1999 and Gustafson about 2001. Macey stated that he went to law school with Kevin Chern. He hired Chern and Aleman in 1997. At the time he hired Chern, he knew Chern was working for the plaintiff. Based on information gathered from Chern, he believed the plaintiff was using SalesCTRL at that time. Chern recommended that Macey call Amidon for help with his computers. Macey did so and Amidon starting working for Legal Helpers in 1997. Amidon worked on an hourly basis, when there was work to do. He paid Amidon about \$50 per hour. He knew that Amidon was also working for the plaintiff. He believed that Amidon did the same work for the plaintiff—hooking up printers and general computer work. He did not know that Amidon was working on law practice management software for the plaintiff. He did not know how much he paid Amidon in 1997. He would have paid him by check and he no longer had any of those

records. They started developing LH-1 in 1998 and it was functional by 1999 or 2000. Amidon was the one who developed LH-1 for Legal Helpers, with input from Macey, Chern, and later Aleman. Macey had no idea how Amidon developed LH-1. He believed he paid Amidon somewhere between 15 and 30 thousand dollars for the development of LH-1.

¶ 23 Amidon Deposition

¶ 24 Amidon stated that he started working for the plaintiff in February 1996. At that time, the plaintiff was using SalesCTRL as the practice management software. He worked for the plaintiff for almost 11 years. He started working on GapC at the end of 1997 or early 1998. He used tools such as Zachary, Clipper, and Another Dimension to create the GapC software. He created GapC by combining SalesCTRL and Chap7..13. The plaintiff did not participate in the creation of GapC. Amidon stated he was fired because the plaintiff accused him of having disks of the GapC source code in his possession. However, it was standard procedure for him to have such disks. He did a backup every day and took a disk home for “disaster recovery.” He destroyed all the disks at home the day he was terminated. He did later find one disk, which he returned to the plaintiff.

¶ 25 Chern offered him the job at Legal Helpers. He worked with Chern at the plaintiff’s firm. Amidon believed he started working for Legal Helpers at the end of 1996 or early 1997. He continued to work for Legal Helpers until 2009. He did not speak with Macey until the first day he started work at Legal Helpers. At that time, Legal Helpers was using SalesCTRL. When he performed work for Legal Helpers, he would give a verbal invoice and he would be paid. There was no written documentation. He does not know how much he was paid by Legal Helpers over the years and he had no records. He could not recall if he ever filed 1099s.

¶ 26 Legal Helpers began using LH-1 in 1998 or 1999. He stopped working on LH-1 in 1999 or 2000. At that time, it was pretty much complete and only minor things may have changed. To the

best of his memory, he believed he was writing LH-1 before he started working on GapC. Amidon had no recollection one way or the other as to whether he took code from LH-1 or GapC and used it in the other program. BestClient was a contact management system. It could be used in a bankruptcy environment but could also be used in doctors' offices or other law offices. It was written for a Windows environment, but it was not a Windows version of LH-1. When he used "gap" in his written code, it had nothing to do with GapC. He used "gap" scattered throughout all the code he had written for the past 30 years. "Gap" stood for "gay and proud."

¶ 27 Donnay Affidavit

¶ 28 Legal Helpers submitted the affidavit of Richard Donnay. Donnay was retained as an expert in software development and programming. Donnay examined both GapC and LH-1. Based on his education and experience (including familiarity with Clipper and Zachary), Donnay concluded that (1) both programs were rudimentary applications that could be easily duplicated; (2) as of October 13, 2003, both programs were fully operational; (3) as of that same date, there were significant differences between the two programs; (4) because of the differences, it would have been impossible for any amount of code to have been copied from GapC and transferred into LH-1 during the post-October 13, 2003 time period; and (5) there was no evidence that any source code from GapC was incorporated into LH-1 after October 13, 2003.

¶ 29 With respect to his first conclusion, Donnay stated that both programs were created using a product called Zachary that was specifically designed to allow users "to create basic database management applications for their businesses." The majority of the source code in both programs was generated by Zachary. The little amount of code that was written by Amidon was rudimentary. The "architect" of GapC and LH-1 was Zachary, not Amidon. Donnay was very familiar with Zachary because he had sold Zachary nationwide to businesses in the mid-1990s.

¶ 30 Zachary was designed to allow an unsophisticated user to create a database management application. Zachary could be used for any type of business. Zachary prompts the user to identify the appropriate fields to be used in the database, information for those fields, what fields should be linked to other fields, etc. This is called the metadata. Once the metadata is entered, Zachary generates the necessary code to create the fields and display them on the screen. Because the code is generated by Zachary, many Zachary-generated database management applications have very similar codes. Donnay stated that the plaintiff's use of Zachary in the bankruptcy field was not unique or unusual and that others in the same field could create a very similar product.

¶ 31 Donnay stated that little of the source code was written by Amidon. Of the 137 program files in the GapC source code and the 125 program files in the LH-1 source code, only a handful were written by Amidon. Both GapC and LH-1 were used to manage client information and to monitor dates and deadlines. Although GapC performed some functions that LH-1 did not, such as creating bankruptcy petitions and electronic filing, those functions were not original or unobvious. Donnay, in contrast to the plaintiff's expert (Richard Weyand), did not believe that functions contained in function.prg or rwalib.prg files in GapC's source code were trade secrets because they were basic software functions used in many other programs. The combinations of functions within the two programs, such as the use of "Crystal Reports" and "tools" from Amidon's tool kit, was obvious and common. The use of activity codes and hot keys used by GapC and LH-1 were basic. Donnay stated that, because it was built on a DOS platform, GapC was virtually obsolete from the time it was created. Donnay believed that a competent user could create one of these Zachary-based applications in a few weeks.

¶ 32 Regarding his second conclusion, that both programs were fully operational by October 13, 2003, Donnay stated that it was obvious that LH-1 could not have been developed by a

misappropriation of GapC at some point after October 13, 2003. Although both parties made changes to their respective programs after October 2003, the changes did not alter the basic structure or core functionality of the applications.

¶ 33 Regarding his third conclusion, that both programs had significant differences by October 13, 2003, Donnay noted that GapC allowed a user to generate a bankruptcy petition online and filed it with the court. LH-1 did not have these functions. As a result of the differences, it would have been very difficult to move any source code or data from one program to the other.

¶ 34 As to his fourth conclusion, Donnay stated that a comparison of the 2006 version of GapC and the 2009 version of LH-1 showed that the source codes contained many different program files. LH-1 used 61 program files that were not in GapC. There were 73 program files unique to GapC. Of the 125 files in LH-1 and the 137 files in GapC, only 64 program files were contained in both the GapC and LH-1 source code. The majority of those files were either Zachary files or Zachary-generated files, which would be very similar. In total, only 25% of the code in LH-1 and GapC was common. Donnay stated that this was a very low percentage and confirmed that LH-1 was not a copy of GapC. He further stated that this percentage was misleadingly high because 58 of the 64 program files that appeared in both programs were either Zachary or Zachary-generated files; only four program files in both were authored by Amidon: `rwalib.prg`, `function.prg`, `dbpurge.prg`, and `p4dups.prg`.

¶ 35 `Rwalib.prg` stood for “R. William Amidon’s library” and was a “toolkit” file. It was common for computer software professionals to develop “toolkit” files during their careers and to use these files in all their jobs. The `rwalib.prg` files in GapC and LH-1 only have 5% similarity. Of the several parts of `rwalib.prg` in GapC that Weyand identified as trade secrets, those parts (1) do not appear in

LH-1, (2) serve common and basic functions, (3) are different in the two programs, and (4) were created prior to October 13, 2003.

¶ 36 “Function.prg” was a very common name for a source code file that was used as a “catch-all” file for miscellaneous code. Amidon used it to hold 153 different functions in GapC and 197 different functions in LH-1. Many of the functions were different. Weyand conceded that 136 of the 153 functions in function.prg of GapC were not trade secrets. Donnay found that the remaining 17 functions were (1) not present in LH-1; (2) basic and common functions not unique to either program; and (3) in existence prior to October 13, 2003.

¶ 37 Dbpurge.prg was used to purge information from various databases. The LH-1 version of this file was last updated in 2002, and there was no evidence that it was ever used or updated after October 13, 2003. “P4dups.prg” was used to search for duplicate database records. This file was in use in LH-1 before October 13, 2003, and was last updated in 2000.

¶ 38 With respect to his final conclusion, Donnay found it “very clear” that GapC was not copied into LH-1. Donnay explained that by October 13, 2003, the two programs had such significant differences that misappropriation would have been difficult, if not impossible. Furthermore, comparisons of their source code showed that both programs were on their own development trajectories by October 13, 2003. At no time after October 13, 2003, was there any material or meaningful insertion of GapC source code into LH-1, or vice versa. Donnay knew of Weyand’s suggestion that the LH-1 function.prg file may have been copied from GapC at some point after January 23, 2004. Donnay found this extremely unlikely. He noted that there were about 258 pre-October 13, 2003, comments that were unique to one file or the other, and by that date, the two files were very different from each other. As such, if one function.prg file was copied to the other at any point after October 13, 2003, the person doing the copying would have had to go in and backfill all

of the 258 unique comments, and all the unique functions and code. This made it highly impractical and unlikely that any copying occurred.

¶ 39 About 222 comments were added to LH-1 function.prg after October 13, 2003. About 214 comments were added to GapC function.prg after that same date. Of all those comments, only one comment appeared in both. However, the comment was a routine and common-sense modification to the programs. It could just have easily been copied from LH-1 to GapC. Regardless, it was related to a function that Weyand acknowledged was not a trade secret.

¶ 40 Donnay similarly concluded that there could not have been any copying of the rwalib.prg files because the files in each program were too different. After October 13, 2003, there were about 61 comments entered into the GapC rwalib.prg file and about 76 comments entered into the LH-1 rwalib.prg file. Only six of those comments appear to be identical and relate to work being done to conform the two programs to changes in the bankruptcy code. The comments were not material to the function of rwalib.prg or the overall application. Donnay acknowledged that Weyand had noted that there were numerous GapC files on Legal Helpers servers. Donnay stated that there was no evidence that the GapC files were ever made a part of LH-1 during the relevant time period. Donnay also noted that Weyand took issue with certain metadata contained in several databases that bear the name “Zfree” and suggested that the metadata was used in creating or running LH-1. Donnay stated that such a suggestion was wrong because the Zfree databases were Zachary databases that were meant to assist a user in running certain reports. LH-1 never used those databases. Instead, LH-1 used a third-party product, Crystal Reports, to run reports on data in LH-1.

¶ 41 Donnay stated that hot keys are not trade secrets. Further, the 10 hot keys identified by Weyand as trade secrets were already being used by Legal Helpers in 2003. Thus, Legal Helpers’ use of those hot keys could not be the result of post-October 13, 2003, theft or copying from GapC.

GapC's activity codes were not trade secrets because they were not unusual, complex, difficult or unobvious.

¶ 42 Expert Report of Leonard A. Dozois

¶ 43 In his expert report, Leonard Dozois stated that he was a multi-talented IT professional. From June 1991 through October 1999, he was the owner, President, and Chief Technical Officer of Zachary Software, Inc. Zachary was designed to eliminate the need for a software programmer to hand write original source code for a database management application. Zachary was designed to allow the user to insert outside source code in logical locations to allow for additional functionality. Both GapC and LH-1 were non-original, obvious, expected and intended uses of Zachary. Because both were developed using Zachary, the source code and the screens should look very similar, if not the same. The majority of the source code for both GapC and LH-1 was either Zachary copyrighted code, Zachary-generated code, or third-party copyrighted or generated code. However, there was a small amount of source code that originated from Amidon, such as the source code found in function.prg and rwalib.prg. It was unclear whether this code was written by Amidon or copied from other sources. He opined that an experienced Zachary user, working with a competent bankruptcy attorney and using Zachary, could develop database management systems similar to GapC and LH-1 "within two or three weeks at a relatively inexpensive cost."

¶ 44 The Plaintiff's Affidavit

¶ 45 The plaintiff stated that he directed the development of proprietary bankruptcy law practice management software, beginning in 1987 with the customization of SalesCTRL and since with continued development of various versions referred to as Gap, Gap2, GapC and Gap4 (collectively referred to as Gap). The expense, effort, and time devoted to developing Gap was in excess of several million dollars over 20 years. Before he had Gap, there was no available bankruptcy law

practice management software on the market. At the time of his affidavit, he was still unaware of another piece of software similar to Gap, except for Legal Helpers LH-1 and Amidon's BestClient. The plaintiff believed that Gap was the single most important aspect to the management of his high-volume law practice and was the main reason the law practice was able to expand across multiple states. The plaintiff believed that Gap provided a competitive advantage because it allowed him to manage a multiple-location bankruptcy law practice in a cost-effective manner.

¶ 46 The plaintiff further stated that he never authorized any duplication of Gap. He protected the secrecy of Gap by restricting access to it and requiring those who use it to sign confidentiality agreements. Amidon, Aleman, Gustafson, Kasturi, and Chern all executed confidentiality agreements when hired by the plaintiff. Gap was not fully developed by October 13, 2003, at the time he entered into a settlement agreement and release with the defendants related to the infringement of his "infotapes" trademark. He did not release the defendants from his claims regarding trade secret misappropriation because he did not know about it at the time and did not learn of it until the time he filed this suit. Prior to his termination, Amidon had been working on Gap4, a windows-based version of the Gap software. The plaintiff believed that Amidon used his Gap software to create "BestClient" which Amidon began to market seven months after his termination.

¶ 47 Preliminary Expert Report of Richard F. Weyand

¶ 48 In his preliminary expert report, Weyand stated that he had over 34 years' experience in the computer industry and had provided expert technical analysis in litigation concerning the alleged misappropriation of trade secrets embodied in computer software. Weyand concluded that GapC in whole and certain components within it were trade secrets. He determined that a significant

portion of LH-1 (source code, metadata, and database files) was identical to GapC, that the two were divergent versions of the same software package, and that LH-1 was copied from GapC.

¶ 49 Weyand further opined that the plaintiff's trade secrets had economic value from not being known to others. He noted that the plaintiff had used these alleged trade secrets to run his law practice for 15 years, that he had not found a publicly available substitute, and that he developed GapC at considerable expense. Weyand noted that the plaintiff's opinion in this matter was to be trusted and that the plaintiff believed that GapC was a key to his successful practice. Weyand further noted that LH-1 had been used by Legal Helpers since 1999.

¶ 50 With respect to not being generally known, Weyand concluded that the pieces of source code written by Amidon were not generally known in the trade because it was not published or widely disseminated. While general database management items (client information, appointment dates, billing, etc.) would not be a trade secret, Weyand opined that the processing of bankruptcy-specific items such as court dates, judges, filings, etc. would require the writing of necessary software and therefore qualify as a trade secret as being "not generally known." Weyand acknowledged that GapC was written using third-party tools such as Clipper, Click!, Zachary, AD2, FoxPro, and Crystal Reports. However, the use of these products did not render GapC "generally known in the trade."

¶ 51 With respect to reasonable security measures, Weyand noted that the plaintiff used password protection, security tokens, security suites and network administration tools, locked the computer server in a separate room, and used employment and confidentiality agreements. The security measures were reasonable under the circumstances. With respect to difficulty of duplication, Weyand stated:

"First, let us note that the software development here is not dependent on some technical breakthrough. That is, there is no uncertainty about the ability of another team of

programmers to develop a similar bankruptcy law practice management package completely independently of access or information from various versions of Plaintiff Geraci's GAP software. Given access to a bankruptcy law practitioner of Plaintiff Geraci's experience and insight to provide the product requirements, a programming team would be able to complete such an assignment with something like the same amount of effort and the same amount of cost."

Weyand further noted, however, that the programming effort would take several years and cost in excess of one million dollars.

¶ 52 Weyand opined that GapC, including its source code, metadata, database files, and database architecture, was a combination trade secret. Weyand also stated that the negative know-how trade secrets (knowledge of what does not work), set forth in the plaintiff's supplemental responses to the defendants' first set of interrogatories were also trade secrets.

¶ 53 Weyand stated that function.prg appeared in GapC and LH-1 and was written by programmers. GapC's function.prg had 10,282 lines of code. Weyand concluded that 75% of the function.prg file of GapC appeared in the same file of LH-1. The function.prg files also contained identical typographical errors, suggesting that the statistics were "not simply a remarkable case of parallel development." He further noted that references to "gap" in the GapC code were simply missing in the LH-1 code, with a double space where "gap" was. This suggested that the LH-1 code was modified to remove references to "gap," but the leading and following spaces both remained. Additionally, there were comments written in both files. The earliest comment read "bill amidon—December 1996." In 1996, Amidon worked for the plaintiff but not for Legal Helpers. Weyand opined that this showed that the GapC code was copied and became the starting point for LH-1. The earliest comment appearing in LH-1 and not GapC was February 3, 1999. This,

therefore, was the time at which LH-1 diverged from GapC. Amidon had begun working for Legal Helpers prior to this date. The last comment appearing in both files was dated January 23, 2004. Weyand opined that on that date, GapC was again copied and transferred into LH-1. Amidon was working for the plaintiff and Legal Helpers at that time.

¶ 54 Weyand further opined that 66 files contained in the TEMP folder of LH-1 were copies of the files of the same name in the “gap.zip” file of GapC as they existed between March 18 and 28, 2006. Further, the “temp function.prg” file of LH-1 was a copy of the GapC “gap.zip function.prg” as it existed between March 17 and April 7, 2006. The database architecture of LH-1 and GapC descended from a common database architecture “ancestor file” (previous version), and had been independently modified forward from that point. The extent and similarities in the activity codes of the two programs indicated that LH-1 was based on and developed with access to GapC software. The metadata-based report generation package of LH-1 was copied from GapC. Weyand noted that eight of the hot key assignments in LH-1 were identical to those used in GapC and that this was an occurrence of such low probability that one of them had to have been made with the benefit of access to another.

¶ 55 Supplemental and Rebuttal Expert Report of Richard F. Weyand

¶ 56 Weyand stated that after his initial report, Legal Helpers produced additional LH-1 files amounting to 467MB. Legal Helpers originally produced LH-1 files totaling 15.76GB. In the original files produced, “gap” did not appear in any file names. In the additional files produced, “gap” appeared in 54% of the file names. This suggested to Weyand that Legal Helpers consciously eliminated files containing “gap” in the file names from their original production.

¶ 57 Weyand stated that 1080 of the files in the gap.zip file of LH-1 were identical to the files of the same name in GapC’s gap.zip file. An analysis of the gap.zip files indicates that the gap.zip file

of GapC was copied to Legal Helpers between March 24 and 28, 2006. In his opinion, the GapC software was copied to Legal Helpers by Amidon on multiple occasions, including at least once between March 24 and 28, 2006. Weyand opined that the majority (75 of 102) of the activity codes used in LH-1 were identical to those used in GapC. He reiterated his opinion that this showed that LH-1 was based on and developed with access to GapC software.

¶ 58 In rebuttal to the expert report of Dozois, Weyand opined that Zachary tools were designed to allow a programmer to create a database management application by inserting outside source code in logical locations to allow for additional functionality. Function.prg and rwalib.prg were examples of such outside source code. Weyand explained that although Dozois stated that GapC and LH-1 were obvious and intended uses of Zachary, Dozois did not say that function.prg and rwalib.prg were not trade secrets. Weyand argued that simply because Amidon used Zachary the way it was intended to be used, did not render his work product, GapC, obvious or expected or not a trade secret. Weyand noted that Dozois said programs such as GapC or LH-1 could be written “within two or three weeks at a relatively inexpensive cost.” Weyand opined that this assertion defied common sense. The industry standard for software productivity was 10 lines of source code per programmer per day. Function.prg, which is 10,282 lines of code, would require four years to write and rwalib.prg, which had 2,639 lines of code, would take another year. Weyand noted that the plaintiff employed Amidon for ten years to develop the GapC software. If it were that easy to write such a program, Amidon would have done that, rather than copying GapC and transporting it to Legal Helpers.

¶ 59 Weyand also provided rebuttal to the expert opinions of Donnay. Weyand noted that Donnay argued that function.prg and rwalib.prg were “commonly known” and not “unique” or “unobvious.” Weyand explained that the creation of a cola-flavored soft drink, with the use of a sweetener and

caramel coloring, would also be obvious. However, that would not make the formula for Coke not a trade secret.

¶ 60

Weyand Deposition

¶ 61 Weyand acknowledged that he was not an attorney and did not have legal training. Weyand stated that he did not analyze the differences in functionalities between GapC and LH-1. He did not try to identify functions that LH-1 had that GapC did not have or vice versa. Weyand was not familiar with and never used Clipper. Weyand never used Zachary and had done nothing to familiarize himself with Zachary. As part of his analysis in this case, he had not looked at practice management software generally used in the industry. He had not spoken with other bankruptcy practitioners to ask what their office needs were or how they ran their offices. He did not know what software other bankruptcy practices used. He did not know how the business processes used by the plaintiff differed from other bankruptcy firms. He did not know why GapC was unique as compared to other commercially available bankruptcy management software. As far as he knew, there could be other products available with similar functions to GapC.

¶ 62 With respect to rwalib.prg and function.prg, he did not know whether these functions related to ordinary common needs that would occur in any reasonably large commercial bankruptcy practice. During the course of this suit, he only spoke to the plaintiff once, over the phone. He did not typically communicate with clients because he did not want them influencing his determinations. He did not analyze whether GapC was nonobvious. Because he had not analyzed other bankruptcy law firms, he could not say whether GapC was unique. He had never done a side by side comparison of GapC and LH-1 to determine what was unique in either of them. It would not impact his decision if he were to learn that GapC had important functions that were not present on LH-1 and never had been present on LH-1. He did not do a functional analysis of p4dups or dbpurge.

¶ 63 Weyand stated that the combination trade secret was the combination of Clipper, Zachary, AD2 environment, the activity codes, the function.prg code, the rwalib.prg code, the dbpurge.prg code, all of the code that Amidon wrote, and all of the database configurations. Weyand acknowledged that there was nothing remarkable about Clipper, Zachary, and AD2 being used all together. With respect to the activity code list, he considered things that were specific to a bankruptcy law practice management software to be more likely to be a trade secret. He acknowledged that he did not talk to other bankruptcy practitioners to determine what activity codes they used and therefore did not know whether the plaintiff's activity codes were unique or commonplace. Nonetheless, it was his expert opinion that the plaintiff gained an economic advantage over his competitors because of the specific activity codes that the plaintiff used. This conclusion was based on the deposition testimony and actions of the litigants in this matter. Weyand acknowledged that he had not done any analysis to determine whether any of the activity codes had economic value to the plaintiff's firm or whether the codes were used by others in the legal industry. With respect to hot keys, *e.g.*, using F7 to pull up an accounting screen, one economic advantage would be if one of the plaintiff's attorney was hired by another firm that used the same hot keys, the attorney would not have to learn a new system. In determining the economic value of GapC, he relied, to a certain extent, on the plaintiff's words and actions.

¶ 64 Remaining Procedural History

¶ 65 On August 19, 2011, following argument, the trial court entered summary judgment in favor of the Legal Helpers defendants. The trial court determined that GapC was not a trade secret. The trial court found that Zachary was the common ancestor of LH-1 and GapC but that both had evolved into completely separate programs. The trial court further found that the commonalities in the two programs were either generated by Zachary or were things that did not consist of trade secrets.

Finally, the trial court found that there was no evidence of any economic advantage of secrecy so as to transform GapC into a trade secret.

¶ 66 On that same date, the trial court granted Amidon's motion for partial summary judgment. The trial court found that GapC was not a trade secret, there was no commonality in the source code of GapC and BestClient, and that, even if GapC was a trade secret, there was no evidence of economic value.

¶ 67 During the hearing on the motions for summary judgment, the Legal Helpers defendants pointed out that the plaintiff had not re-pled any of his pre-October 13, 2003 claims and had, therefore, waived any right to appeal the October 15, 2010, dismissal order. On August 23, 2011, the plaintiff filed a motion for leave to amend his complaint for the express purpose of preserving his claims for pre-2003 conduct. On September 30, 2011, the trial court denied that motion, but made a finding that the plaintiff had adequately preserved his claims. On October 20, 2011, the plaintiff filed a motion for leave to file a second-amended complaint. The purpose of the amendments was to conform the pleadings to the proofs by identifying each of the contracts breached by Amidon, and to add a cause of action against Amidon for fraudulent misrepresentation. On October 25, 2011, the trial court denied that motion. On October 31, 2011, the plaintiff voluntarily dismissed his breach of contract claim against Amidon.

¶ 68 On November 30, 2011, the Legal Helpers defendants filed a motion for fees under Section 5 of the Act (765 ILCS 1065/5 (West 2010)), arguing that the plaintiff had prosecuted his claims in "bad faith." Following testimony and argument, the trial court denied the motion as to Legal Helpers. The trial court determined that the plaintiff's pre-suit investigation gave him a reasonable ground for filing suit and that the claims against Legal Helpers were not prosecuted in bad faith. However, the trial court found that the plaintiff prosecuted the claims against the individual Legal

Helpers defendants in bad faith. Nonetheless, the trial court denied the motion with respect to all five Legal Helpers defendants, unless the four individual defendants could show that they had incurred attorney fees, individually. The trial court granted the individual Legal Helpers defendants 30 days to file a motion to demonstrate that they had incurred individual attorney fees. No such motion was filed.

¶ 69 On December 29, 2011, the plaintiff and defendant Doyle filed an agreed motion vacating and setting aside any orders entered in favor of Doyle and against the plaintiff and dismissing defendant Doyle with prejudice. On January 4, 2012, the trial court entered an order in accordance with the motion. Thereafter, the plaintiff filed this appeal.

¶ 70 ANALYSIS

¶ 71 Appeal

¶ 72 The plaintiff raises nine arguments on appeal. The plaintiff argues that the trial court erred in (1) granting summary judgment to the Legal Helpers defendants; (2) granting summary judgment to Amidon on the trade secret claims; (3) denying his September 2011 motion to amend his complaint to preserve his pre-October 13, 2003, claims; (4) granting the Legal Helpers defendants' partial motion to dismiss on October 15, 2010; (5) denying his motion to appoint a special master; (6) ordering, in response to the plaintiff's motion to compel the payment records of Legal Helpers to Amidon, that only 1099s be produced, rather than all payment records; (7) failing to compel production of the defendants Joint Defense Agreement (JDA); (8) ordering him to identify his trade secrets with greater particularity; and (9) denying his October 2011 motion to amend his complaint, to conform the pleadings to the proofs on his breach of contract claim against Amidon. We will address these arguments in turn.

¶ 73 1. Motion for Summary Judgment In Favor of Legal Helpers Defendants

¶ 74 On appeal, the plaintiff argues that the trial court erred in granting summary judgment to the Legal Helpers defendants. A motion for summary judgment is properly granted where the pleadings, depositions, admissions, and affidavits, when viewed in the light most favorable to the nonmoving party, establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). “In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent.” *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). A triable issue precluding summary judgment exists where material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from the undisputed facts. *Id.* We review the grant of summary judgment *de novo*. *Ioerger v. Halverson Construction Co., Inc.*, 232 Ill. 2d 196, 201 (2008).

¶ 75 A trade secret “is one of the most elusive and difficult concepts in the law to define” and, therefore, the existence of a trade secret is generally a question of fact. *Learning Curve Toys, Inc. v. Playwood Toys, Inc.*, 342 F. 3d 714, 723 (7th Cir. 2003) (quoting *Lear Siegler, Inc. v. Ark–Ell Springs, Inc.*, 569 F. 2d 286, 288 (5th Cir.1978)). As such, the question of whether certain information constitutes a trade secret ordinarily is best “resolved by a fact finder after full presentation of evidence from each side.” *Id.*

¶ 76 Under Illinois law, a trade secret is defined as:

“information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:

(1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.” 765 ILCS § 1065/2(d) (West 2010).

To succeed on a claim for trade secret misappropriation under the Act, the plaintiff must establish (1) that he had a trade secret, and (2) that the secret was misappropriated. *Thermodyne Food Service Products, Inc. v. McDonald’s Corp.*, 940 F. Supp. 1300, 1304 (N.D. Ill. 1996). To establish the existence of a trade secret, the plaintiff must show that: (1) the information is sufficiently secret to derive economic value; (2) the information is not within the realm of general skills and knowledge of the relevant industry; and (3) the information cannot be readily duplicated without involving considerable time, effort, or expense. *Computer Care v. Service Systems Enterprises, Inc.*, 982 F. 2d 1063, 1072 (7th Cir. 1992). “Information that is derived from public sources, but requires laborious accumulation, culling, and/or analysis of the public information can still qualify as a trade secret.” *United States Gypsum Co. v. LaFarge North America, Inc.*, 508 F. Supp. 2d 601, 624 (N.D. Ill. 2007).

¶ 77 A. Trade Secret

¶ 78 In general, software may qualify for trade secret protection. See 765 ILCS 1065/2(d) (West 2010) (defining a trade secret as information such as a computer program); *Computer Care v. Service Systems Enterprises, Inc.*, 982 F. 2d 1063, 1074 (7th Cir. 1992); *ISC-Bunker Ramo Corp. v. Altech, Inc.*, 765 F. Supp. 1310, 1323 (N.D. Ill. 1990). Courts consider the following facts as significant in determining whether a trade secret exists:

“(1) [T]he extent to which the information is known outside of [the plaintiff’s] business; (2) the extent to which it is known by employees and others involved in [the plaintiff’s] business; (3) the extent of measures taken by [the plaintiff] to guard the secrecy of the information; (4) the value of the information to [the plaintiff] and to [the plaintiff’s] competitors; (5) the amount of effort or money expended by [the plaintiff] in developing the information; [and] (6) the ease or difficulty in which the information could be properly acquired or duplicated by others.’” *Strata Marketing Inc. v. Murphy*, 317 Ill. App. 3d 1054, 1068 (2000) (quoting *ILG Industries Inc. v. Scott*, 49 Ill.2d 88, 93 (1971)).

¶ 79 In the present case, there is evidence that the plaintiff made efforts to maintain the secrecy of GapC. In his affidavit, the plaintiff testified that he required all his employees to sign confidentiality agreements, he did not allow the code to be taken offsite, only high level employees had access to the code, he kept his server and code under lock and key, and he had password protection on his computers. Such steps have been found sufficient to demonstrate reasonable efforts to keep source code secret under the Act. See *BondPro Corporation v. Siemens Power Generation, Inc.*, 463 F. 3d 702, 709 (7th Cir. 2006) (holding that employee confidentiality agreements and keeping the alleged trade secret under lock and key were measures a reasonable jury could find sufficient); see also *Computer Associates, International v. Quest Software, Inc.*, 333 F. Supp 2d 688, 696 (N.D. Ill. 2004). Although employees and former employees knew about the plaintiff’s software, they did not have access to copies of the source code.

¶ 80 The plaintiff also provided evidence that GapC was sufficiently secret to derive economic value. It could be reasonably inferred from the evidence that the parties believed that such software provided economic value as they were all attempting to procure such software for their law practices. Further, the plaintiff testified in his affidavit that the software was the single most important aspect

of managing and growing his high-volume multi-jurisdictional law practice. The plaintiff testified that there was no integrated bankruptcy law practice database management software on the market. He had developed it at great expense over a number of years. The record also reveals that Chern signed a separation agreement from Legal Helpers on March 15, 2005. In a schedule attached to that agreement, “LH-1 Source Code” was identified as a “trade secret.” It could therefore be inferred that Legal Helpers believed that there was at least some economic value to maintaining the secrecy of such software. Additionally, when Chern went to work for Legal Helpers, he recruited Amidon to develop a bankruptcy law practice management software. From this, it could be inferred that Chern/Legal Helpers believed there was economic value to getting the same software that the plaintiff was using. If not, Macey could have hired any other programmer to work at Legal Helpers.

¶ 81 Further, there was evidence that the software was not within the realm of the general skills and knowledge of the industry. The plaintiff testified in his affidavit that before he developed GapC, and its predecessor software, there was no similar law practice management software on the market. At the time of his affidavit in January 2011, the plaintiff said he was still not aware of another piece of software featuring the same functions required by his law firm and provided in GAP, except for LH-1 and Amidon’s “BestClient.”

¶ 82 The defendants argue that GapC was within the general knowledge of the industry because it was created using Zachary, performed only routine functions, and could be easily duplicated. However, in *Minnesota Mining and Manufacturing Co. v. Pribyl*, 259 F. 3d 587 (7th Cir. 2001), the Seventh Circuit held that a plaintiff had a valid trade secret in its operations-and-procedures manual, even though most of the information it contained was publicly available:

“In order to be considered a trade secret, a pattern, technique, or process need not reach the level of invention necessary to warrant patent protection. A trade secret can exist in a

combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design and operation of which, in unique combination, affords a competitive advantage and is a protectable secret.” *Id.* at 595-96.

The court further noted that:

“There is no doubt that within the 500-plus pages of manuals at issue, there are a host of materials which would fall within the public domain. *** Yet, *** that compilation *** may be considered a trade secret.

Contrary to defendants’ suggestion, 3M *** is seeking to prevent Accu-Tech from using and disclosing a process which it took the company six years and considerable income to perfect. These manuals and processes, even if comprised solely of materials available in the public domain, have been created by combining those materials into a unified system which is not readily ascertainable by other means.” *Id.*

Accordingly, even if portions of GapC were created using Zachary and could be considered within the general knowledge in the industry, the compilation in certain portions of the source code or the source code as a whole could still be a trade secret. See also *ISC-Bunker Ramo Corp.*, 765 F. Supp. at 1322 (the effort of compiling useful information is entitled to trade secret protection even if the information is otherwise generally known).

¶ 83 There was also evidence that GapC was not easily duplicated. The plaintiff stated that he had developed GAP over a period of twenty years at a cost in excess of several million dollars, “including what [he] paid Mr. Amidon for over 10 years, in addition to what [he] spent on other programmers, software, hardware, and networking to get GAP to work property [sic].” Although Legal Helpers’ experts opined that GapC and LH-1 could be easily duplicated, Weyand opined that it would take years and a considerable expense to create similar software from scratch. Further,

while the Legal Helpers defendants argue that LH-1 and GapC was common software used in the industry, they did not provide any evidence that other similar software was in use or on the market.

As such, there is a genuine question of material fact on this issue.

¶ 84 The defendants also argue that they were entitled to summary judgment on any claim involving GapC's individual components, namely, hot keys, functions and features, activity codes, negative know-how, database architecture, database table names/contents, reports, relationship of procedures, and the GapC user guide. However, Weyand opined that many, although not all, of the plaintiff's identified individual trade secrets met the statutory definition of a trade secret. In opposition to this, the defendants point only to the competing expert evidence set forth by Donnay and Dozois. These competing expert opinions create a factual dispute that is not appropriate for summary judgment. See *Kodish v. Oakbrook Terrace Fire Protection Dist.*, 604 F. 3d 490, 505 (7th Cir.2010) (the court cannot weigh competing facts on summary judgment).

¶ 85 B. Misappropriation

¶ 86 Under the Act, a "misappropriation" in pertinent part is: "Disclosure or use of a trade secret of a person without express or implied consent by another person who *** at the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was *** acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use." 765 ILCS 1065/2(b)(2)(B)(II) (West 2010). Whether a trade secret has been misappropriated is generally a question of fact. *Cerner Corp. v. Visicu, Inc.*, 667 F. Supp. 2d 1062, 1077 (W.D. Mo. 2009).

¶ 87 In the present case, the plaintiff presented sufficient evidence of misappropriation to survive a motion for summary judgment. There was evidence of misappropriation both before and subsequent to October 13, 2003. Weyand opined that the source codes of GapC and LH-1 were 25% the same. He further noted that 75% of the custom code in function.prg was identical and that LH-1

was copied from GapC. Weyand noted that there were identical typographical errors in the source code and that there were obvious attempts to obscure the copying of the source code through the changing of names and comments to remove references to “gap.” Weyand opined that the GapC software had been transported to Legal Helpers by Amidon on multiple occasions. He believed that on January 23, 2004, GapC was again copied and transferred into LH-1. This also occurred at least once between March 24 and 28, 2006. Amidon was working for the plaintiff and Legal Helpers at these times. Weyand also opined that the function.prg file of the plaintiff’s source code was copied and transferred to LH-1 at some point after January 23, 2004. He stated that the “temp function.prg” of LH-1 was a copy of the “gap.zip function.prg” of GapC as it existed between March 17 and April 7, 2006. Further, during discovery, a complete copy of the GapC source code was found on the server at Legal Helpers in a file entitled gap.zip. When confronted by the plaintiff in October 2006, Amidon admitted that he regularly took copies of GapC home with him.

¶ 88 The Legal Helpers defendants note that section 7 of the Act states that “[f]or purposes of this Act, a continuing misappropriation constitutes a single claim.” They argue that this is fatal to the plaintiff’s claim because LH-1 was already operational in its current form by October 13, 2003. The defendants note that, in his deposition, Weyand stated that he was not aware of any fundamental difference in LH-1 before and after October 13, 2003. Nonetheless, Weyand’s expert opinion was sufficient to establish a question of fact as to whether any misappropriation, either little or great, occurred both before and after October 13, 2003.

¶ 89 The defendants also argue that the trial court properly entered summary judgment in favor of Macey, Aleman, Gustafson, and Kasturi because there was no evidence that they knew about, participated in, encouraged, or aided any misappropriation, misuse, copying or dissemination of GapC. Pursuant to the statute, misappropriation includes the use of a trade secret, without consent,

by a person who knew or had reason to know that the trade secret was derived or acquired through improper means. 765 ILCS 1065/2(b)(2)(B) (West 2010). There was evidence that Aleman, Kasturi, and Gustafson were former employees of the plaintiff and used either GapC or some previous version of it while working for the plaintiff. Since there are genuine questions of fact as to the identical nature of GapC and LH-1, there is also a genuine question of fact as to whether these defendants knew about the alleged trade secret misappropriation when using the software at Legal Helpers. As to Macey, he knew that Amidon was working for the plaintiff when he hired Amidon and knew that he was hiring Amidon to do the same type of work. Chern, who worked for the plaintiff, recommended Amidon to Macey. Macey and Chern went to law school together. Soon thereafter, Chern himself left the plaintiff's law firm and joined Legal Helpers as a profit-sharing partner. Chern was employed by Legal Helpers to help Macey grow the law firm. These circumstances certainly raise a question of fact as to whether Macey knew about any alleged trade secret misappropriation.

¶ 90 Accordingly, because there are questions of fact as to whether GapC was a trade secret and whether it was misappropriated under the Act, we reverse the grant of summary judgment in favor of the Legal Helpers defendants.

¶ 91 2. Partial Summary Judgment as to Defendant Amidon

¶ 92 The plaintiff next argues that the trial court erred in granting partial summary judgment to Amidon as to the trade secret claim against him (count 1). The plaintiff's claim against Amidon included two separate instances of trade secret misappropriation: (1) Amidon's alleged disclosure and use of GapC in creating LH-1; and (2) Amidon's disclosure and use of GapC to create, market, and sell software known as BestClient. Based on the foregoing analysis, it is clear that there are genuine questions of fact as to whether Amidon disclosed and used GapC while creating LH-1.

Accordingly, summary judgment was improper on that prong. The question then is whether there was a genuine question of fact as to whether Amidon misappropriated GapC when creating BestClient.

¶ 93 In Weyand’s preliminary expert report, he opined that the BestClient software must have been in development for some “significant” time before Amidon was fired by the plaintiff. The plaintiff’s Gap4 and BestClient were both Windows-based bankruptcy law practice management software. Weyand found that there were similarities in the two programs and opined that they were not independently developed. Rather, the similarities indicated that Amidon’s BestClient software was based on and developed with access to the plaintiff’s software.

¶ 94 “It is clear that an employee may take with him, at the termination of his employment, general skills and knowledge acquired during his tenure with the former employer. It is equally clear that the same employee may not take with him confidential particularized plans or processes developed by his employer and disclosed to him while the employer-employee relationship exists, which are unknown to others in the industry and which give the employer advantage over his competitors.” *Schulenburg v. Signatrol, Inc.*, 33 Ill. 2d 379, 387 (1965).

¶ 95 In *Affiliated Hospital Products, Inc. v. Baldwin*, 57 Ill. App. 3d 800 (1978), the defendant worked for the plaintiff corporation on a design for the construction of hypodermic needles. *Id.* at 801. Following the defendant’s termination, the defendant developed a competitive process. *Id.* In so doing, the evidence showed that the defendant used the plaintiff’s confidential and proprietary drawings. *Id.* at 802. The defendant was able to design a competitive process in eight to ten weeks by using the plaintiff’s drawings, which took five years to develop. *Id.* at 807. The trial court denied the plaintiff’s request for a preliminary injunction, and the reviewing court reversed that determination. *Id.* at 809. The reviewing court noted that the defendant was entitled to use his

expertise gained during his employment with the plaintiff, but he was not allowed to use the actual drawings that belonged to the plaintiff. *Id.* The reviewing court further noted that whether the defendant could have independently developed the process was not relevant because he did not; rather, he referred to confidential information. *Id.*

¶ 96 In the present case, Weyand's expert opinion and the fact that BestClient was marketed so soon after Amidon's termination, raise a genuine question of material fact as to whether BestClient was developed independently or with the use of the plaintiff's alleged trade secrets. The trial court granted summary judgment on the basis that there was no common source code between GapC and BestClient. This was because GapC is a DOS-based program while BestClient is a Windows-based program. Nonetheless, "although a product appears to be a new or modified product, a violation of the Act occurs if the modification or new product was substantially derived from another's trade secret." *Thermodyne*, 940 F. Supp. at 1308. Accordingly, the trial court erred in granting Amidon's motion for partial summary judgment.

¶ 97 3. September 2011 Motion for Leave to File Second Amended Complaint

¶ 98 On August 23, 2011, the plaintiff filed a motion for leave to file a second-amended complaint. The purpose of the motion was to add a footnote to specifically preserve his pre-October 13, 2003, claims. On September 30, 2011, the trial court denied the motion but entered an order finding that the plaintiff had adequately preserved his previously-dismissed claims.

¶ 99 As a general rule, a trial court should exercise its discretion liberally in favor of allowing amendments to pleadings if doing so would further the ends of justice. *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 748 (2009). The decision to grant leave to amend a complaint rests within the sound discretion of the trial court, and we will not reverse such a decision absent an abuse of that discretion. *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211,

2013 IL App (2d) 120023-U

219 (2010). A trial court abuses its discretion when it makes an error of law. *Najas Cortes v. Orion Securities, Inc.*, 362 Ill. App. 3d 1043, 1047 (2005). Whether a dismissed claim has been preserved for review is strictly a question of law. *People v. Gutierrez*, 2012 IL 111590, ¶ 16.

¶ 100 “The rules governing the preservation of dismissed claims for purposes of appellate review are clear and well settled.” *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17. Following the entry of an order dismissing a complaint, if a party files an amended complaint that is complete in itself and does not refer to or adopt the prior pleading, the party has waived any challenge to the order dismissing the prior complaint. *Foxcroft Townhome Owners Association v. Hoffman Rosner Corp.*, 96 Ill.2d 150, 154-55 (1983).

¶ 101 However, a party can avoid waiver and preserve his dismissed claims for appellate review by filing an amended pleading that realleges, incorporates by reference, or refers to the dismissed counts. *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 719 (2010). A “simple paragraph or footnote” is sufficient for this purpose. *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 114 (1996). A party is not precluded from filing subsequent amendments to preserve dismissed claims. See *Foxcroft*, 96 Ill. 2d at 154 (“we perceive no undue burden in requiring a party to incorporate in its *final* pleading all allegations which it desires to preserve for trial or review” (emphasis added)); see also *Barnett v. Zion Park District*, 171 Ill. 2d 378 (1996) (holding that the plaintiff had waived appellate review of previously dismissed claims by failing to “reallege or otherwise incorporate those [claims] in her third, fourth, or fifth amended complaint”).

¶ 102 In the present case, the plaintiff did not specifically state either in a paragraph or a footnote of his amended complaint that he wished to preserve his claims to the extent they were based on pre-2003 conduct. The claims were, therefore, not properly preserved. Accordingly, the trial court erred

as a matter of law (*Gutierrez*, 2012 IL 111590, ¶ 16), and thereby abused its discretion (*Najas Cortes*, 362 Ill. App. 3d at 1047), when it determined that the claims were properly preserved. The trial court should have allowed the plaintiff to amend his complaint to preserve his claims.

¶ 103 4. Partial Motion to Dismiss due to October 13, 2003 Release

¶ 104 The plaintiff next argues that the trial court erred in granting the Legal Helpers defendants' partial motion to dismiss based on the October 13, 2003, release. The plaintiff further argues that the trial court erred in denying his motion to reconsider, which was filed seven months later. The 2003 release resolved a trademark infringement lawsuit between the parties. The plaintiff argues that the trial court erred in granting the partial motion to dismiss either because (1) the release was a specific release; or (2) the release was a general release that was inapplicable to the unknown trade secret claims.

¶ 105 The Legal Helpers defendants argue that the plaintiff waived this issue because he filed an amended complaint and did not replead his pre-October 13, 2003, claims. Alternatively, they argue that the trial court did not err in granting their partial motion to dismiss because both LH-1 and GapC had been running for five years at the time of the 2003 settlement and, therefore, claims relating thereto were within the contemplation of the parties at the time they agreed to the release.

¶ 106 At the outset, we address the Legal Helpers defendants' waiver argument. As noted above, the trial court abused its discretion in failing to allow the plaintiff to amend his complaint to preserve his pre-October 13, 2003 claims. The amendment should have been allowed and, therefore, the issue is not waived. See *Gaylor v. Champion, Curran, Rausch, Gummerson and Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 81 (McLaren, J., specially concurring) (because the plaintiff had attempted to file an amended pleading to preserve his dismissed claims, appellate review of those claims was not waived). Although the majority in *Gaylor* held that appellate review of dismissed claims was waived

even though the plaintiffs had attempted to file an amended pleading to preserve those claims, we find that case distinguishable. In *Gaylor*, the plaintiffs did not attempt to amend their complaint to preserve their dismissed claim for appellate review. *Id.* at ¶43. Rather, they were essentially asking the trial court to reconsider its earlier dismissal order. *Id.* In the present case, the plaintiff was clearly asking the trial court to allow him to preserve his dismissed claims in compliance with *Foxcroft* and the trial court failed to allow him to do so based on an erroneous determination that his dismissed claims were adequately preserved. Moreover, *Foxcroft* requires that a party incorporate in its *final* pleading all allegations which it desires to preserve for trial or review. *Foxcroft*, 96 Ill. 2d at 154. Here, the plaintiff's amended complaint was presented well in advance of trial. Under these circumstances, the plaintiff has not waived appellate review of his dismissed claims.

¶ 107 “[A] motion to dismiss under section 2-619(a) of the Code [citation] admits the legal sufficiency of the complaint, but asserts affirmative matter outside the complaint that defeats the cause of action.” *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). We review *de novo* the dismissal of a complaint pursuant to section 2-619. *Id.*

¶ 108 In the present case, the trial court acknowledged that it had misapplied the law when it granted the Legal Helpers defendants' partial motion to dismiss. We agree. If the language of the agreement was interpreted as a specific release, it would only have applied to the trademark infringement claims at issue, not the presently alleged trade secret violations. If interpreted as a general release, it is well settled that a general release is not applicable to unknown claims. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 448 (1991). At the time the trial court granted the partial motion to dismiss, there was no evidence that the parties knew of the alleged trade secret violations when they entered the 2003 settlement agreement and release. Moreover, during discovery in this case, the plaintiff stated that he was not aware of the alleged trade secret violations

until shortly before he filed this suit. Aleman stated that, at the time the 2003 release was negotiated, he was not aware of any disputed issue other than the “infotapes” trademark infringement. Gustafson stated that during settlement negotiations leading up to the 2003 settlement agreement and release, there were no discussions regarding GapC or LH-1. Accordingly, the present trade secret allegations were not within the contemplation of the parties in 2003 and, therefore, the 2003 release, whether specific or general, did not bar these claims. *Clear-Vu Packaging, Inc. v. National Union Fire Insurance Co.*, 105 Ill. App. 3d 671, 674 (1982) (the language of a release cannot be interpreted so broadly as to defeat a valid claim not then in the minds of the parties). The trial court erred in granting the Legal Helpers defendants’ partial motion to dismiss.

¶ 109 Furthermore, the trial court erred in denying the plaintiff’s motion to reconsider. The trial court acknowledged that it had erred in granting the partial motion to dismiss, but denied the motion to reconsider because of the seven month delay in the filing of the motion and because it did not wish to “throw open all of the discovery” at that point in the proceedings. While the motion could have been brought sooner, the trial court abused its discretion when it realized it made a mistake and refused to correct it. See *Hernandez v. Pritikin*, 2012 IL 113054, ¶42 (recognizing that circuit court has inherent power to review, modify, or vacate interlocutory orders while the court retains jurisdiction over the entire controversy). At the time the motion to reconsider had been brought, a trial date had not been set and the proceedings were not so advanced that the delay caused by additional discovery would outweigh correcting the court’s mistake concerning the release. On remand, the trial court shall allow the plaintiff to amend his complaint to include the improperly dismissed claims.

¶ 110 5. Motion to Appoint a Special Master

¶ 111 The plaintiff next argues that the trial court abused its discretion in denying his motion to appoint a special master. In denying the motion, the trial court found that it did not have the authority to make such an appointment. The plaintiff argues that the trial court does have the authority to appoint a neutral attorney or computer expert to advise the trial court in technical matters relating to the parties' computer source codes.

¶ 112 The trial court did not err in denying the plaintiff's motion for appointment of a special master. In 1962, an amendment to article VI of our State constitution, which became effective January 1, 1964, abolished the offices of fee officers and masters in chancery as a part of our judicial system. *Carey v. Elrod*, 49 Ill. 2d 464, 469 (1971); see also *Jenner v. Wissore*, 164 Ill. Ap. 3d 259, 265 (1988) (noting that the office of master in chancery has been abolished and suggesting that the trial court should not have appointed a special master to review a college's expenditures in light of an allegation that the college had unlawfully used its funds); *Hurst v. Papierz*, 16 Ill. App. 3d 574, 579 (1973) (noting that the trial court should not allow a master or other fee officer to conduct an accounting as to the amount the plaintiff was wrongfully denied of an interest in a joint venture but should itself conduct the accounting). Section 8 of Article VI of the Illinois Constitution now provides that "[t]here shall be no fee officers in the judicial system." Ill. Const. Art. 6, Section 14.

¶ 113 In arguing that the appointment of a special master is not improper, the plaintiff relies on *Anderson v. Anderson*, 42 Ill. App. 3d 781, 786 (1976). In *Anderson*, the reviewing court held that the trial court did not err in appointing a commissioner in a partition action. The reviewing court noted that such an appointment was in direct compliance with section 6 of the Partition Act. *Id.* at 785 (citing Ill. Rev. Stat., 1973, ch. 106, par. 49). The court further reasoned that such an appointment was not in conflict with the constitutional provision prohibiting fee officers because the commissioner was "but a ministerial adjunct of the court who performs a nonjudicial function." *Id.*

at 786. The reviewing court stated that the prohibition of fee officers applied to judicial or quasi-judicial officers, but not to lesser administrative assistants. *Id.* In support, the court pointed to statutes which authorize the trial court to appoint individuals to perform ministerial tasks, “such as receivers in foreclosure proceedings (Ill. Rev. Stat., 1975, ch. 95, pars. 22b.57, 23.6-5, 23.6-6); receivers in corporate liquidations (ch. 32, par. 157.87); conservators (ch. 3, par. 113); trustees (ch. 148, par. 44); guardians (ch. 3, par. 133), and guardians ad litem (ch. 3, par. 67). See, generally, ch. 110A, par. 61(c)(11).” *Id.* at 787.

¶ 114 We find the defendant’s reliance on *Anderson* unpersuasive. In *Anderson*, there was a statute authorizing the appointment of a commissioner in a partition action. *Id.* at 785. In the present case, the Act does not have a provision authorizing the appointment of a special master. Accordingly, the trial court did not err in denying the plaintiff’s motion.

¶ 115 6. Motion to Compel Payment Records

¶ 116 On March 4, 2011, the plaintiff filed a motion to compel payment records, seeking records of the amounts paid by Legal Helpers to Amidon for his work on LH-1 and the amount of time Amidon and Legal Helpers spent developing LH-1. On March 22, 2011, the trial court ordered Amidon to produce his 1099 forms received from Legal Helpers but denied the remaining relief sought in the motion. The plaintiff argues that the trial court abused its discretion. Specifically, the plaintiff argues that the amount of time that Amidon spent developing LH-1 and the amount of money he was paid by Legal Helpers go to the “heart of the issue of economic advantage.” He further argues that the payment records are relevant to establish whether Legal Helpers knew that Amidon was using GapC in developing LH-1, *i.e.*, if Amidon produced a complex software system with minimal effort, and to establish damages.

¶ 117 Issues of discovery are within the trial court's discretion, and the trial court's discovery rulings will not be disturbed absent an abuse of discretion. *Janda v. U.S. Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 96. An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 118 As the plaintiff argues, the amount paid by Legal Helpers to Amidon could shed light on the economic value to Legal Helpers and whether or not the software was easily duplicated, which is relevant to establishing a trade secret. Additionally, to establish a trade secret, the plaintiff must show, in part, that the information is sufficiently secret to derive economic value. *Computer Care*, 982 F. 2d at 1072. Economic value is relevant to both parties. See *Mangren Research and Development Corp. v. National Chemical Co., Inc.*, 87 F. 3d 937, 942 (7th Cir. 1996) (holding that to qualify as a "trade secret," information must be sufficiently secret to impart economic value to both its owner and its competitors because of its secrecy). As such, any evidence of the economic value of the LH-1 software, would be relevant to establish the economic value of GapC because of their similarity.

¶ 119 We cannot say the trial court abused its discretion in ordering the defendants to produce only the 1099s for Amidon, rather than all accounting and development records. If the defendants had produced 1099s, it would have given the plaintiff the information he wanted. Amidon did state in his response to interrogatories that he was paid \$100 per hour for development work on LH-1. Accordingly, if the plaintiff knew how much Legal Helpers paid Amidon, he could calculate how much time was spent, approximately, on LH-1. However, it is unclear from the record whether any 1099s were actually produced. If not produced, the trial court may, on remand, revisit the issue based on further motion of the parties. *Hernandez*, 2012 IL 113054, ¶42.

¶ 120 7. Motion to Compel Production of a Joint Defense Agreement

¶ 121 On February 9, 2011, the plaintiff filed a motion to compel the disclosure of the Legal Helpers defendants' Joint Defense Agreement (JDA). On June 15, 2011, the trial court denied the motion. The plaintiff argues that because the Legal Helpers defendants failed to establish that the JDA was privileged, the motion to compel should have been granted. The plaintiff notes that when the trial court denied his motion, it did so without making a finding as to whether the JDA was privileged pursuant to the work product doctrine. The plaintiff does not challenge the defendants' "common interest," just the lack of a finding as to whether the JDA contained privileged information.

¶ 122 Discovery orders are reviewed for an abuse of discretion. *Janda*, 2011 IL App (1st) 103552 at ¶ 96. In the present case, in denying the motion, the trial court stated that it had reviewed the JDA, that the parties to the JDA had a similar interest and that their cooperation under the JDA appeared to be entirely proper.

¶ 123 Material which is otherwise privileged is discoverable if it has been disclosed to a third party. *Allendale Mutual Insurance Co. v. Bull Data Systems, Inc.*, 152 F.R.D. 132, 139 (N.D. Ill. 1993). However, the privilege is not waived if the third party shares a common interest with the disclosing party which is adverse to the party seeking discovery. *Id.* As stated, the plaintiff does not challenge that a common interest exists. The plaintiff only challenges whether a privilege exists. Applicability of a privilege is reviewed *de novo*. *Cangelosi v. Capasso*, 366 Ill. App. 3d 225, 227 (2006).

¶ 124 Material prepared by or for a party in preparation for trial is subject to discovery unless it contains or discloses theories, mental impressions, or litigation plans of the party's attorney. 134 Ill.2d R. 201(b)(2). This exception to discovery is known as the work product doctrine. The work-product doctrine is designed to protect the right of an attorney to thoroughly prepare his case and to preclude a less diligent adversary attorney from taking undue advantage of the former's

efforts. See *Hickman v. Taylor*, 329 U.S. 495, 511 (1947). In the present case, the JDA was prepared in anticipation of litigation and contains the thought processes of the attorney, including defense strategies and theories. It is therefore privileged under the work product doctrine. *McNally Tunneling Corp. v. City of Evanston, Illinois*, 2001 WL 1246630, No. 00-C-6979, *4 (N.D. Ill. 2001) (holding that joint defense agreement prepared in anticipation of litigation was privileged under the work product doctrine). Although, “the privilege may be overcome if the party seeking discovery demonstrates that it has both a substantial need for the material and that it would suffer undue hardship if required to obtain the information in some other way” (*id.*), the plaintiff has not shown either of these. Accordingly, the JDA is protected by the work product doctrine.

¶ 125 8. Motion Requesting Specific Identification of Trade Secrets

¶ 126 The plaintiff also argues that the trial court erred on October 8, 2010, when it ordered him to “identify [his] trade secrets with greater particularity and [to] identify the portions of the source code that are tied to the various functions, features, keys, etc. that [the plaintiff] contends are trade secrets. Such response shall also identify the combinations that [the plaintiff] contends are trade secrets.” The plaintiff contends that this order resulted in the ultimate defeat of his claim for a combination trade secret because the trial court did not consider his source code as a whole.

¶ 127 The trial court entered three orders on this point. On September 17, 2010, it ordered the plaintiff to disclose his trade secrets via responses to the defendants’ interrogatory. On October 8, 2010, the trial court granted a motion to compel, and ordered that the plaintiff disclose his trade secrets with greater particularity. On November 5, 2010, the trial court denied another motion to compel and found that the plaintiff had identified his trade secrets with sufficient particularity. Generally, discovery rulings are reviewed for an abuse of discretion. *DeFilippis v. Gardner*, 368 Ill. App. 3d 1092, 1095 (2006).

¶ 128 In the present case, we cannot say that the trial court abused its discretion in granting the motion to compel and ordering the plaintiff to identify his trade secrets with particularity. A plaintiff that does not identify its trade secrets with sufficient specificity risks dismissal of the claim. *Nilssen v. Motorola, Inc.*, 963 F. Supp. 664, 672 (N.D. Ill. 1997); *Composite Marine Propellers, Inc. v. Van der Woude*, 962 F. 2d 1263, 1266 (7th Cir. 1992) (is not enough to point to broad areas of technology and assert that something there must have been secret and misappropriated; the plaintiff must show concrete secrets). To the extent the plaintiff argues that the trial court failed to consider his source code as a combination trade secret, the record belies that assertion. On November 5, 2010, the trial court found that the plaintiff had adequately identified his alleged trade secrets and that it would consider whether LH-1 was a product of or derived from GapC in some form. The trial court further noted that the experts would need to look at the source codes, as a whole, to make that determination.

¶ 129 9. October 2011 Motion for Leave to File Second Amended Complaint

¶ 130 On October 25, 2011, the plaintiff filed another motion to amend his complaint to conform the pleadings to the proofs. The plaintiff argues that, during discovery, he learned that Amidon (1) was employed by himself and Legal Helpers simultaneously from 1996 to 2006; (2) was also employed by Doyle in 2006; (3) licensed bankruptcy practice management software known as BestClient and sold it while employed by the plaintiff; and (4) a copy of the plaintiff's software files were located on Legal Helpers' servers. Based on this information, the plaintiff wanted to amend the complaint to identify each of the six contracts breached by Amidon and to add a cause of action for fraudulent misrepresentation. At the time the motion was filed, the plaintiff and Amidon were preparing for trial on the breach of contract count against Amidon.

¶ 131 We need not reach this issue. Whether the trial court abused its discretion in failing to grant the motion to amend is moot. See *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006) (an issue is moot where no actual controversy is presented, or where intervening events foreclose the reviewing court from granting effectual relief to the complaining party). Here, after the trial court denied the motion to amend, the plaintiff voluntarily dismissed his breach of contract claims against Amidon. After voluntarily dismissing his claims (on October 31, 2011), the plaintiff had the opportunity to refile his breach of contract claim within one year and to include his amendments within that pleading.

¶ 132 Cross-Appeal

¶ 133 On cross-appeal, the Legal Helpers defendants argue that the trial court erred in denying their motion for fees under Section 5 of the Act (765 ILCS 1065/5 (West 2010)). Based on our determination, reversing summary judgment and remanding for additional proceedings in the trial court, we find the Legal Helpers defendants' request for fees to be premature. *Jewish Hospital v. Boatmen's National Bank*, 261 Ill. App. 3d 750, 770 (1994). Accordingly, we vacate the trial court order denying the motion for fees. The defendants may raise the issue again after final disposition of the case in the trial court. *Id.*

¶ 134 CONCLUSION

¶ 135 In summary, we reverse the grant of summary judgment in favor of the Legal Helpers defendants and Amidon. We hold that the trial court erred in granting the Legal Helpers defendants' partial motion to dismiss based on the 2003 release, in denying the plaintiff's motion to reconsider that order, and in denying the plaintiff's September 2011 motion to amend his complaint to preserve his dismissed claims. We affirm the denial of the motions to appoint a special master and to compel production of the JDA, the trial court's order requiring the plaintiff to identify his trade secret with particularity, and the trial court's ruling on the plaintiff's motion to compel the payment records of

Amidon. We deny, as moot, the plaintiff's request to review the trial court's ruling on his October 2011 motion to file a second amended complaint. We vacate the trial court's order denying the motion for fees, and dismiss as premature the Legal Helpers defendants' cross-appeal for fees.

¶ 136 For the foregoing reasons, the judgment of the circuit court of Du Page County is reversed in part, affirmed in part, vacated in part and remanded for additional proceedings not inconsistent with this order. The cross-appeal is dismissed.

¶ 137 Reversed in part, affirmed in part and vacated in part; cross-appeal dismissed; cause remanded.