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2012 IL App (3d) 100058-U

Order filed March 9, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2012

|   |   |   |
|---|---|---|
| ACID PRODUCTS CO., INC., an Illinois Corporation,   | ) | Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois |
| Plaintiff-Appellee,   | ) |   |
| v.  | ) |   |
| POLYENVIRO LABS, INC., an Illinois Corporation, and POLYENVIRO, LLC, an Illinois Limited Liability Company, Intervenor and Assignee of Polyenviro Labs, Inc., | ) | Appeal No. 3-10-0058<br>Circuit No. 06-AR-652                                     |
| Defendant-Appellant.  | ) |   |
| <hr/>   |   |   |
| POLYENVIRO LABS, INC., an Illinois Corporation, and POLYENVIRO, LLC, an Illinois Limited Liability Company, Intervenor and Assignee of Polyenviro Labs, Inc., | ) |   |
| Counter-Plaintiffs,   | ) | Honorable Barbara Petrungaro, Judge, Presiding.                                   |
| v.  | ) |   |
| ACID PRODUCTS CO., INC., an Illinois  | ) |   |

|  |   |
|--|---|
| Corporation,                               | ) |
|  | ) |
| Counter-Defendant,                         | ) |
| _____                                      | ) |
|  | ) |
| BESSIE GEANAKOPLOS and ORCHARD )           |   |
| PRODUCTS, INC., an Illinois Corporation, ) |   |
|  | ) |
| Third-Party Plaintiffs,                    | ) |
|  | ) |
| v.   | ) |
|  | ) |
| POLYENVIRO LABS, INC., an Illinois )       |   |
| Corporation, POLYENVIRO, LLC, an )         |   |
| Illinois Limited Liability Company, )      |   |
| Intervenor and Assignee of Polyenviro )    |   |
| Labs, Inc., and ACID PRODUCTS, INC., )     |   |
| an Illinois Corporation,                   | ) |
|  | ) |
| Third-Party Defendants.                    | ) |

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

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## ORDER

- ¶ 1 Held: The trial court did not abuse its discretion in barring Vishnu Gor's testimony, allowing Acid's expert to testify or in relying on Acid's expert's testimony. The trial court's finding that Polyenviro failed to prove Acid violated the Trade Secrets Act is not against the manifest weight of the evidence.
- ¶ 2 This procedurally complex case originally involved Acid Products Company, Inc. (Acid), bringing suit for breach of contract against Polyenviro Labs, Inc. Polyenviro Labs, Inc., and its predecessor in interest, Polyenviro, LLC (collectively Polyenviro), counterclaimed alleging: (1) breach of a non-disclosure agreement; (2) intentional interference with prospective business

advantage; (3) violations of the Illinois Trade Secrets Act (765 ILCS 1065/1 (West 2008)); (4) violations of the Uniform Deceptive Trade Practices Act (815 ILCS 510/1 (West 2008)); and (5) violations of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 (West 2008)). The trial court allowed Bessie Geanakopolos (Bessie), and her corporation, Orchard Products, Inc., to intervene. Bessie sought a judgment declaring that she invented the formula for a compound known as PE102. Therefore, Bessie claimed her company, Orchard Products, Inc., owned PE102.

¶ 3 Polyenviro's counterclaim also included a count alleging "threatened dumping." The trial court granted plaintiff's motion for summary judgment as to the threatened dumping count, finding "no case law has been presented, nor has the court been able to find any, to support such a cause of action under Illinois law."

¶ 4 Following a bench trial on the remaining issues, the court ruled in Bessie's favor finding she invented PE102. It further found in favor of Polyenviro on count I of Polyenviro's counterclaim and ordered Acid to return certain equipment. The court found Polyenviro failed to prove any damages to support its Uniform Deceptive Trade Practices Act claim, but enjoined Acid from engaging in conduct which would violate that act in the future. Finally, the court found against Polyenviro on all remaining counts. Polyenviro appeals, claiming the trial court erred in barring testimony of one of its witnesses, Vishnu Gor. Polyenviro further claims the trial court erred when allowing Acid's expert witness, Michael Burnson, to testify regarding "legal issues" and requiring it to produce documents without allowing redaction of information contained within the documents. Finally, Polyenviro argues the trial court erred in finding it failed to prove a violation of the Illinois Trade Secrets Act.

¶ 5

## FACTS

¶ 6 Acid is a packager and distributor of commercially available commodity chemicals. It sells the chemicals to chemists and factories. These chemicals are produced in large quantities, generally available globally and listed in the chemical market reporter for pricing. Acid also blends such products as dishwashing soap, commercial cleaners and a variety of other soaps.

¶ 7 Polyenviro is a reseller of products and specialty chemicals. It sells chemicals primarily used as industrial cleaning products. Vishnu Gor is the company's founder. Nahal "Neal" Gor is Vishnu's son and day-to-day manager of Polyenviro.

¶ 8 In 1999, Polyenviro purchased a product line consisting of three chemicals: Metso 200, Metso 66 and Metso 55 from Philadelphia Quartz. Polyenviro changed the name of those chemicals to Polymet 200, Polymet 66 and Polymet 55, respectively. Polyenviro and Philadelphia Quartz entered into a non-disclosure agreement regarding the formulas for those products.

¶ 9 Polyenviro contracted with a company called L. Carlton Mertz (LCM) to blend chemicals to produce these products. In March of 2004, LCM's building suffered severe damage, which resulted in LCM's relocation to a smaller building. After LCM downsized, Acid began blending four Polyenviro chemicals from July 2005 until the end of May 2006. These four products included Polymet 55, Polymet 66, Polymet 200 and PE102. Bob Waddell, an employee of LCM, gave Acid the formulas for Polymets 55, 66 and 200 in late May of 2005. Evidence indicated that Acid received the formula for PE102 from Bessie in 2004 and again on July 15, 2005. On July 19, 2005, Acid signed a confidentiality agreement with Polyenviro.

¶ 10 Eventually, Acid initiated this lawsuit alleging breach of contract, claiming it was not

paid \$37,000 for services performed. Polyenviro's counterclaims are detailed above.

¶ 11 As the case progressed, Vishnu Gor's deposition was scheduled and postponed several times. Ultimately, he was hospitalized. Vishnu's physician was deposed and testified that Vishnu was too ill to give a deposition. Polyenviro informed the court that Vishnu was so ill he could not even participate in written discovery. While Vishnu was originally designated by Polyenviro as its "corporate representative" for discovery purposes, Polyenviro substituted Neal Gor for his father and informed the court that Neal had "the most information generally" about the matters involved in the lawsuit. On January 20, 2009, the trial court barred Vishnu for testifying at trial.

¶ 12 Thereafter, Bessie filed a motion to intervene, claiming she recently became informed that this litigation raised questions concerning the ownership of PE102, that counsel for one of the parties objected to her request to make objections during testimony concerning PE102 and that her interests would not be adequately protected by the current parties. On February 19, 2009, the trial court granted her motion to intervene.

¶ 13 Trial began on March 17, 2009, and consisted of 16 different sessions with testimony from more than a dozen witnesses. The primary witnesses for Acid were Jann Fisher, the company's vice-president, Beata White, and Michael Burnson. Fisher testified that during 2005 and 2006, Acid blended Polymets 200, 66 and 55, as well as PE102. She stated the relationship ended when Polyenviro stopped paying Acid for its services and stopped sending Acid orders. She identified 15 separate transactions between Acid and Polyenviro. She noted that Polyenviro placed no orders with Acid before July 19, 2005, as Polyenviro used LCM to mix the chemicals prior to July of 2005.

¶ 14 Fisher further testified concerning a bill of lading for \$85,000 worth of chemicals Acid received from Polyenviro. She acknowledged that Acid did not pay for the chemicals. In an effort to explain why Acid received chemicals it did not pay for, Fisher described the transaction as doing “a favor for Vish.”

¶ 15 Beata White testified that she is a chemist at Acid. She previously worked for LCM. At both companies, she tested finished products for compliance. At Acid, she was involved in research and development. She also formulated and tested new products. While at LCM, she learned some customers’ names, but not those of Polyenviro customers.

¶ 16 White continued by noting that while at Acid, she developed a product known as PQ 66 after talking with National Silicates about their similar product, Metso 66. While working at LCM, she learned the formulas for Polymet 66 and Metso 66. She noted Polymet 200 is a sodium orthosilicate. Sodium orthosilicate is within the public domain which, according to White, meant information concerning the chemical is “accessible, available to the public to read.” She claimed not to need the formula for sodium orthosilicate as everyone knows it. It is sold by a number of companies in the area, including Ashland Chemical. Ashland’s material safety data sheet disclosed the ingredients necessary, and ratio for each, to create sodium orthosilicate.

¶ 17 White claimed that Polyenviro asked her, while she worked at Acid part-time, for help reformulating PE102 due to the lack of availability of one of the materials used in its production. White’s handwritten notes regarding her efforts to reformulate PE102 were admitted into evidence. While searching for possible substitutes, she obtained information from the company that supplied the original ingredients for PE102. The supplier proposed possible substitutes.

Other than the initial phone call asking her to reformulate PE102 and suggesting she contact the original supplier, Vishnu was not involved in the reformulation process.

¶ 18 Foaming and splitting problems arose with PE102 after substituting the one ingredient. White already developed a product called Super Clean 402. In trying to reformulate PE102, she created a chart to compare Super Clean 402 to PE102 in an effort to help Polyenviro with the foaming and stability problems.

¶ 19 Thomas Lubke of Allied Tube was assigned to investigate the foaming issue. Lubke attempted to contact Neal, Visnu and other Polyenviro personnel. He made 5 to 10 attempts with no success. Polyenviro responded to Lubke's inquiries once Allied Tube stopped ordering PE102. By that time, however, Allied Tube already moved to another manufacturer's product. Allied Tube wanted to return the foaming product for a refund but Polyenviro only offered to reformulate it. Allied Tube incurred costs for disposal of PE102.

¶ 20 Multiple people testified that Clean 102, renamed PE102 by Polyenviro, was formulated by Bessie Geanakoplos. Bessie is the owner of Orchard Products. Clean 102 existed before PE102. Bessie started to develop Clean 102 around 1996 and it became fully developed by 1998. When Polyenviro sold PE102, it was first called Clean 102, but relabeled to PE102 at Bessie's request. Polyenviro paid Bessie a royalty for using her formula.

¶ 21 Around November of 2004, after learning that LCM subcontracted blending to Acid and another blender, Bessie disclosed the formula for PE102 to Acid. She did so knowing there was no confidentiality agreement in place between Polyenviro and Acid.

¶ 22 Polyenviro's principal witness was Neal Gor. He assumed many of the company's administrative duties upon his father's hospitalization. He stated at trial that he had the "most

information about the events in this case” and the “most information about this lawsuit.”

¶ 23 Dr. Edward Funk also testified. He has Ph.D. degrees from Yale University and the University of California at Berkley. Relevant portions of Dr. Funk's testimony will be detailed below.

¶ 24 Ultimately, the trial court entered its judgment on August 3, 2009. The court found for Acid and ordered Polyenviro to pay \$37,185.12 for outstanding invoices. The court found that Polyenviro failed to meet its burden of proof for its: intentional interference with prospective business advantage claims; breach of non-disclosure agreement claims; and claims brought under the Illinois Trade Secrets Act. The trial court further found that Polyenviro failed to prove damages under the Uniform Deceptive Trade Practices Act, but that evidence existed indicating Acid filled a \$660 order for Polymet 66 with a different product. As such, the court entered an injunction prohibiting further substitution. The trial court also ruled for Acid on Polyenviro's Consumer Fraud and Deceptive Business Practices Act claim.

¶ 25 Polyenviro filed a notice of appeal on September 1, 2009, but the next day, Bessie filed a posttrial motion seeking sanctions against Polyenviro. Polyenviro then withdrew its notice of appeal. The trial court denied Bessie's posttrial motion on December 16, 2009. Polyenviro filed a timely notice of appeal on January 15, 2010. This appeal followed.

¶ 26 ANALYSIS

¶ 27 Both appellees, Bessie and Acid, argue that this court should find all Polyenviro's arguments waived for failure to comply with Supreme Court Rule 341(h) governing citation to authority and the record on appeal. Ill. S. Ct. R. 341(h) (eff. July 1, 2008).

¶ 28 Failure to provide proper citations to the record and relevant legal authority may result in



forfeiture of issues not properly supported. *People v. Sprind*, 403 Ill. App. 3d 772 (2010).

However, if such failure does not hinder an appellate court's review of the issues, it need not strike the brief. *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096 (2008). While appellant's briefs provide, at best, limited citation to the record and relevant authority, we nevertheless find we are able to review the issues presented.

¶ 29 Substantively, Polyenviro makes four categories of arguments. Appellant claims: (1) the trial court committed reversible error in barring the testimony of Vishnu Gor; (2) the trial court erred in allowing Burnson to "testify on legal issues" then relying on that testimony; (3) the trial court erred in ordering Polyenviro to produce certain confidential documents; and (4) the trial court erred when finding Polyenviro failed to prove a violation of the Illinois Trade Secrets Act.

¶ 30 A. Vishnu Gor

¶ 31 Polyenviro initially argues the trial judge erred in barring Vishnu's testimony. Doing so, appellant claims, improperly interfered with its ability to prove its theory of the case "effectively dismiss[ing] Polyenviro's counterclaim by keeping the company's most knowledgeable witness off the stand." Polyenviro continues that barring Vishnu's testimony was an improper discovery sanction and improper exercise of the court's authority under Supreme Court Rule 219. Ill. S. Ct. R. 219 (eff. July 1, 2002).

¶ 32 Appellees argue that the trial court did not bar Vishnu's testimony as a discovery sanction. Acid submits that the trial court barred his testimony at Polyenviro's request or, at a minimum, with its acquiescence. In the alternative, appellees argue that if this court finds the order barring Vishnu was a discovery sanction, it was nevertheless a proper discovery sanction.

¶ 33 At a June 24, 2008, hearing, Polyenviro's attorney explained to the court that he was

attempting to acquire a note from Vishnu's physician describing the nature of Vishnu's illness. Polyenviro acknowledged at this hearing that Vishnu previously signed answers to interrogatories. However, Polyenviro claimed Neal was now its corporate representative and, as such, questioned the need to depose Vishnu. Subsequently, on November 18, 2008, Polyenviro's attorney reminded the court that, "We went through the cardiologist who said he is absolutely in no shape," referring to Vishnu Gor and his inability to sit for a deposition.

¶ 34 Acid filed a motion seeking to compel Vishnu Gor to sign an Internal Revenue Service (IRS) authorization as well as motion to bar him from testifying at trial. At a December 9, 2008, hearing on the motions, the following exchange took place at the hearing:

"THE COURT: You know what, let me start with the Vishnu Gor – – barring him from testimony.

MS. WARDEN [Acid's counsel]: Okay.

THE COURT: Do you have an objection, Mr. Shupenus (Polyenviro's counsel), that if Vishnu Gor can't testify at a deposition, that he shouldn't testify at trial?

MR. SHUPENUS: Yeah, I think that's fine.

\*\*\*

THE COURT: So if the two of you enter into an agreed order that says because Vishnu Gor has not been produced for testimony during discovery, that he will not be testifying at trial?"

MR. SHUPENUS: That's fine. \*\*\*

THE COURT: If the two of you – – can the two of you reach

the agreement that unless he is produced before the end of discovery for deposition --

MR. SHUPENUS: That's fine.

THE COURT: That would be the end of the month.

\*\*\*

THE COURT: Unless he has some miraculous turn-around before the end of the month, that he will not be allowed to testify.

MR. SHUPENUS: I don't think that will happen, but that's fine."

¶ 35 At a January 20, 2009, hearing the following exchange took place:

"MS. WARDEN: We have mediation tomorrow. I am asking that today's order say that Vishnu Gor is hereby barred from testifying at mediation or trial in this matter.

\*\*\*

THE COURT: Is there a motion up before me to bar him from testifying at trial?

MS. WARDEN: Yes.

MR. SHUPENUS: We went over this a long time ago.

THE COURT: Didn't we agree to that, that if he wasn't deposed --

MS. WARDEN: No.

MR. SHUPENUS: Yes.

THE COURT: -- he wouldn't be -- oh, it was up for hearing again.

MS. WARDEN: No, we never entered an order. We were waiting until fact discovery closed, which that's what I am also --

THE COURT: Is there any dispute on that? Vishnu Gor hasn't testified --

MR. SHUPENUS: This was already covered.

THE COURT: So there is no dispute. Great."

¶ 36 After the hearing, the trial court entered an order, also dated January 20, 2009, stating, "Vishnu Gor is barred from testifying at trial." Polyenviro now claims that the trial court erred in entering the order, characterizing it as a "discovery sanction." Polyenviro further claims that "because of the court's order, Polyenviro had no way to rebut [Bessie's] testimony, even though Vishnu Gor had been barred from testifying some time before [Bessie] intervened and there was no way that any dispute between Acid Products and Polyenviro could affect any of [Bessie's] rights."

¶ 37 The record is clear that Polyenviro agreed to the order barring Vishnu from testifying. While arguing that the trial court erred in barring Vishnu's testimony, Polyenviro includes complaints regarding Bessie's intervention into this case. To be clear, Polyenviro's arguments concerning Bessie's intervention are intertwined with its complaints regarding the barring of Vishnu's testimony. The trial court entered the order barring the Vishnu's testimony on January 20, 2009. It allowed Bessie's intervention on February 19, 2009. Polyenviro acknowledges that it never asked the trial court, either before or after Bessie's intervention, to reconsider the

interlocutory order barring Vishnu's testimony.

¶ 38 "The rule of invited error or acquiescence is a procedural default sometimes described as estoppel. [Citation.] Simply stated, a party cannot complain of error which that party induced the court to make or to which the party consented." *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004); see also *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795 (2009); *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20 (2008); *Bidani v. Lewis*, 285 Ill. App. 3d 545 (1996). Polyenviro cannot now be heard to complain of the order barring Vishnu from testifying when it, at a minimum, acquiesced to that order.

¶ 39 Moreover, we are "precluded from reviewing" any contention suggesting the trial court erred in excluding Vishnu's testimony. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495-96 (2002). "When a trial court excludes evidence, no appealable issue remains unless a formal offer of proof is made. The failure to do so results in a waiver of the issue on appeal. The purpose of an offer of proof is to inform the trial court, opposing counsel, and a reviewing court of the nature and substance of the evidence sought to be introduced." *Id.* Polyenviro acknowledged at oral argument to this court, and the record clearly establishes, that it failed to make an offer of proof regarding what Vishnu would have testified to had his testimony not been barred. Without knowing what evidence was barred, there is no way of knowing whether any error was prejudicial. As such, we hold Polyenviro's claim that the trial court erred in barring Vishnu's testimony is forfeited.

¶ 40 **B. Burnson's Testimony**

¶ 41 Next, Polyenviro argues that the trial court erred, as a matter of law, when it allowed Acid's expert, Michael Burnson, "to testify on legal issues and then rel[y] on that testimony as

support for [its] decision." Specifically, appellant takes issue with the fact that Burnson was allowed to: (1) testify as to the composition of sodium orthosilicate; (2) define the term "public domain;" (3) indicate that "customer lists are not always trade secrets;" (4) that it is a generally accepted rule that one product is different from another if the product has a greater than 1% difference in chemical composition; and (5) testify that a company must meet certain conditions to make a claim that a product constitutes a trade secret. Polyenviro also challenges the trial court's reliance on Burnson's testimony. It notes that Burnson possessed a mere bachelor's degree in chemistry while its own expert, Dr. Funk, possessed a Ph.D. from Yale and Cal-Berkley.

¶ 42 Acid correctly identifies two categories in which Polyenviro's arguments fit. First, Polyenviro claims that some of Burnson's statements equate to improper legal conclusions. Second, Polyenviro claims the statements from Burnson are simply wrong as Funk's testimony contradicted Burnson's.

¶ 43 I. Improper Legal Conclusions

¶ 44 This case did not take the traditional procedural path in which a plaintiff puts on all of its evidence then defendant responds. Given the vast number of witnesses and the bench trial nature of the case, the trial court allowed the parties to call their witnesses based upon witness availability. This resulted in defendant's expert, Dr. Funk, testifying before (on March 24, 2009) the plaintiff's expert, Burnson (April 7, 2009). During Funk's direct testimony, Polyenviro elicited answers from him indicating that he had been involved in "trade secret" cases, including one involving Nutrasweet.

¶ 45 On direct examination, Polyenviro's attorney specifically asked Dr. Funk, "You understand with respect to trade secrets, in particular the term public domain?" He answered in

the affirmative then proceeded to explain the meaning of the term. Dr. Funk opined that Polymet 200 is not in the public domain "because I found no detailed process for making sodium orthosilicate." He reviewed patent literature and technical literature worldwide and concluded that the formula for Polymet 200 was not publicly available. He further testified that through the course of his training and education, he learned "what a trade secret is." Finally, Dr. Funk was also asked during his direct examination, "Do you have any opinions regarding whether any type of customer list constitutes a trade secret?" He answered affirmatively and provided a basis and explanation for his answer.

¶ 46 Again, Polyenviro claims on appeal that Burnson impermissibly testified to legal conclusions: (1) regarding the term public domain; (2) when giving his opinion as to what is and is not a trade secret; and (3) when indicating that a 1% difference in chemical composition renders one product distinct and different from another. Polyenviro claims these statements should have been stricken from the record and its objections to them sustained. However, Burnson answered the precise questions Polyenviro asked of its expert well before Burnson ever testified. The gravamen of Polyenviro's argument is that its expert was properly allowed to testify to these issues given his degrees from Yale and Cal-Berkley, while Acid's expert had a mere bachelor's degree in chemistry and, as such, should not have been allowed to comment on these matters.

¶ 47 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 36-37 (2010). An abuse of discretion occurs only if no reasonable person would take the view adopted by the trial court. *Id.* at 37. Expert testimony is admissible if the expert has specialized

knowledge that will assist the trier of fact in understanding the evidence or in determining a fact at issue. *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781 (2009). The decision to admit expert testimony is one that lies within the sound discretion of the trial court and, accordingly, we will uphold the trial court's ruling absent an abuse of that discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003).

¶ 48 While it is true that expert testimony containing legal conclusions, which will determine the outcome of a case is inadmissible (*Id.* at 799), we cannot say that the trial court abused its discretion in allowing Acid's expert to answer nearly the exact same questions Polyenviro asked of Dr. Funk. Days before Burnson ever uttered the words "public domain" or "trade secrets," Polyenviro called Dr. Funk to the stand to comment on the same subjects which it now claims experts should not be allowed to testify. Given our standard of review and the deference we must afford the trial court on evidentiary matters, we find no abuse of discretion by the trial court.

¶ 49 Procedurally, we note that other than one citation to the record where Burnson used the term "public domain," appellant fails to identify where exactly in the record Burnson's other objectionable testimony can be found.

¶ 50 ii. Reliance on Burnson

¶ 51 Polyenviro further claims that the trial court erred in relying on Burnson's testimony and ignoring Dr. Funk's as it pertained to the composition of sodium orthosilicate. Polyenviro goes so far as to call Dr. Funk a "true expert" in "stark contrast to Burnson's minimal technical background \*\*\*." It also refers to Burnson as an "unqualified itinerant chemist" while characterizing Funk as "an eminently credentialed chemical engineer." Again, the gist of



Polyenviro's argument is that as a matter of law, Funk's testimony was more reliable than Burnson's. We reject this notion. As noted above, expert testimony is admissible if the expert has specialized knowledge that will assist the trier of fact in understanding the evidence or in determining a fact at issue. *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781 (2009). The decision to admit expert testimony is one that lies within the sound discretion of the trial court and, accordingly, we will uphold the trial court's ruling absent an abuse of that discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003).

¶ 52 Burnson testified that he held a degree in chemistry and completed postgraduate work in the field at Illinois Institute of Technology. He worked as a chemist for "better than 30 years." At the time of his testimony, Burnson worked for a company handling 40 different accounts' "chemical analysis" needs pertaining to the metal finishing industry. During his career, Burnson worked with everything from paint manufacturing to dry film lubricants. The trial court asked Polyenviro if it wished to examine Burnson regarding his education and experience. Polyenviro declined, and the trial court found Burnson to be an expert in the field of chemistry.

¶ 53 Clearly, what weight should be afforded Burnson's and Funk's testimony was for the trial court to determine, not this court. Burnson testified that the formula for Polymet 200, like other sodium orthosilicates, is readily available and, therefore, within the public domain. Funk disagreed, claiming Polymet 200 was a subset or distinct sodium orthosilicate. Where a trier of fact is presented with testimony of experts with conflicting opinions, our task is not to reweigh the evidence and make our own determinations as to which is more credible. *DiCosolo v. Janssen Pharmaceuticals, Inc.*, 2011 IL App (1st) 093562, ¶ 14. Funk's multiple graduate degrees did not make him, ipso facto, a more reliable expert. We hold the trial court did not err

in weighing expert testimony.

¶ 54

#### C. Production of Documents

¶ 55 Polyenviro next argues that the trial court erred "by requiring Polyenviro to produce confidential documents without allowing redaction in accord with the controlling non-disclosure provisions." Nowhere in Polyenviro's argument to this court does it identify exactly which documents it is referring to or where such documents can be located in the record on appeal. Moreover, Polyenviro fails to cite to a single piece of authority indicating a trial court errs when forcing production of such documents. As such, we find this argument forfeited. Ill. S. Ct. R. 341(h) (eff. July 1, 2008).

¶ 56

#### D. Illinois Trade Secrets Act

¶ 57 Polyenviro further claims the trial court erred in finding it did not prove a violation of the Illinois Trade Secrets Act (the Act) (765 ILCS 1065/1 (West 2008)). Polyenviro qualifies this argument, claiming the trial court erred "as a matter of law." It then claims the "only reasonable conclusions to be drawn from the evidence at trial" is that Acid violated the Act. However, Polyenviro fails to identify which "evidence" should lead us to the inescapable conclusion that Acid violated the Act. Arguably, this argument is also forfeited. Ill. S. Ct. R. 341(h) (eff. July 1, 2008).

¶ 58 Nevertheless, we cannot say the trial court's finding that Polyenviro failed to prove a violation of the Act is against the manifest weight of the evidence. In *ILG Industries, Inc. v. Scott*, 49 Ill. 2d 88 (1971), our supreme court noted that the exact definition of a trade secret, applicable in all situations, is not possible. *Id.* at 396. Factors to be considered in determining one's trade secret include: (1) the extent to which the information is known outside of his

business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Id.*

¶ 59 Evidence indicated that Bessie created and, therefore, owned PE102, not Polyenviro. Moreover, Burnson testified that Polymet 200 was nothing more than sodium orthosilicate, a commodity so common that its formula is found in chemical texts and dictionaries. Information that is generally known within an industry cannot be a trade secret. *System Development Services, Inc. v. Haarmann*, 389 Ill. App. 3d 561, 572 (2009). Polyenviro's formulas were not locked up at LCM allowing all LCM employees access to them. None of these formulas were marked confidential and LCM employees were not required to sign confidentiality agreements. Neal Gor acknowledged that LCM employees likely had access to the four formulas, and still Polyenviro did not ask LCM to force its employees to sign confidentiality agreements.

¶ 60 Other evidence supported a finding that Polyenviro's customer lists were not trade secrets. Testimony indicated that most targeted customers could be readily identified through industry directories. Polyenviro also directed its customers to contact Acid in a June of 2006 letter sent to certain customers identifying Acid as its blender. Acid learned of many customers when they called Acid in response to Polyenviro's letter. We hold the trial court's finding that Polyenviro did not prove Acid violated the Act is not against the manifest weight of the evidence.

¶ 61 E. Count II of Polyenviro's Counterclaim

¶ 62 Finally, in its reply brief, Polyenviro claims that the trial court erred in failing to "enter judgment for Polyenviro, which had claimed \$85,000 in count II of its counterclaim." This is error so claims Polyenviro, given "Fisher's undisputed evidence that she took Polyenviro's property without paying for it."

¶ 63 The record reveals that while count II of Polyenviro's original counterclaim alleged Acid absconded with \$85,000 worth of its materials, the original counterclaim was supplanted by numerous amended counterclaims culminating in a third amended counterclaim. Count II of the third amended counterclaim requests relief for "threatened dumping," a tort that the trial court found did not exist in Illinois. Polyenviro makes no argument that the trial court erred in granting Acid's motion for summary judgment as to the imaginary tort of threatened dumping.

¶ 64 Regarding the allegedly unaccounted for inventory, the trial court found that the matter was settled between the parties through a Cook County replevin action and, as such, Polyenviro "has not met its burden of proof" regarding its contention that Acid "agreed to purchase certain raw materials and finished goods from [Polyenviro] and that although [Acid] took possession of the raw materials and finished goods, [Acid] did not pay for the same." Polyenviro made no claim of error against this finding until it filed its reply brief in this court. In its reply brief, Polyenviro alleges the trial court ignored undisputed evidence when making this finding. We hold the issue is forfeited. Issues raised for the first time in an appellant's reply brief are forfeited unless they are responsive to an argument raised in appellee's brief. *G.I.S. Venture v. Novak*, 388 Ill. App. 3d 184, 187 (2009); Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 65

## CONCLUSION

¶ 66 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 67 Affirmed