2021 IL App (2d) 200574-U
No. 2-20-0574
Order filed April 23, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DENT WIZARD INTERNATIONAL CORPORATION, Plaintiff-Appellant, v. JOHN ANDRZEJEWSKI, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 2020-CH-406 Honorable Bonnie M. Wheaton, Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying plaintiff's motion for preliminary injunction, where the underlying Confidentiality and Non-Competition Agreement sought to be enforced was overly broad. Therefore, we affirm.

¶ 2 Plaintiff, Dent Wizard International Corporation, appeals the trial court's order denying its motion for a preliminary injunction to enforce a Confidentiality and Non-Competition Agreement (Agreement) between itself and defendant, John Andrzejewski. On appeal, Dent Wizard argues that the trial court erred in finding that the Agreement was unenforceable. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 Andrzejewski currently operates a business where he performs touch-up services[1] on automobiles. Previously, he was employed by Dent Wizard doing similar work, and before that by Dent Wizard's predecessor Carnica, Inc. As part of his employment with Carnica, Andrzejewski signed the Agreement, which Dent Wizard purchased from Carnica as part of a larger asset purchase agreement. The Agreement contained a "non-competition clause," which precluded Andrzejewski from performing touch-up services in the counties of Cook, Du Page, and Will, for a period of two years. The agreement also contained a "non-solicitation clause" which included various restrictions on Andrzejewski's conduct. After resigning from Dent Wizard and starting his own business, Andrzejewski began performing touch-up services for Westphal Chevrolet, a previous client of Carnica and Dent Wizard.

¶ 5 On May 26, 2020, Dent Wizard filed a verified complaint for breach of the non-compete agreement (count I), tortious interference (count II), and injunctive relief (count III). On May 27, 2020, Dent Wizard filed an emergency motion for a temporary restraining order and a preliminary injunction, seeking to enjoin Andrzejewski from "soliciting or engaging in any business with customers of Dent Wizard for two years after the termination of his employment." A hearing on the emergency motion for a temporary restraining order was held on June 10, 2020. At that hearing, Dent Wizard argued that it was entitled to enjoin Andrzejewski from performing work for seven or eight different car dealerships but would agree to limit the order to the two dealerships Andrzejewski primarily serviced: specifically, Westphal Chevrolet and Infiniti of Clarendon Hills.

[1] The term "touch-up" was used throughout the proceedings and generally is meant to include buffing out scuffs and scratches as well as painting in scratches and dings. Though sometimes it referred specifically only to painting.

The trial court denied the emergency motion for a temporary restraining order, without prejudice. A hearing on Dent Wizard's motion for preliminary injunction was held on September 9, 2020, via Zoom videoconferencing.

¶ 6 Andrzejewski testified as follows: He began working for Carnica in 2004 as a porter/trainee. Prior to that he had no professional experience working on cars. As a porter/trainee, he rode along with another technician, assisting and learning from him. In 2006 he was promoted to the role of technician. On March 2, 2011, he signed the Agreement. He primarily serviced two accounts: Westphal Chevrolet and Naperville Infiniti. Don Friedel and Bill Houlis were Andrzejewski's primary contacts at Westphal Chevrolet, and he met both of them through his employment with Carnica. As a technician, he learned Carnica's pricing guidelines. In October 2017, Dent Wizard purchased Carnica. Dent Wizard was a larger company that performed more services than Carnica, which included dent repair, wheel repair, and interior work.

¶ 7 Andrzejewski testified that on November 22, 2019, he went to Hawk Mazda to perform a "demo" of his services after being asked to do so by a friend who worked there. He was not working for Dent Wizard on that day. His manager, Andrew Shambo, arrived at Hawk Mazda while he was doing the demo. Andrzejewski resigned that day. The reason he gave for his resignation, at the hearing, was that he was unhappy about the way Dent Wizard was running the company and wanted to start his own business.

¶ 8 A couple of weeks after resigning from Dent Wizard, Friedel called Andrzejewski about doing work for Westphal Chevrolet. After leaving his employment with Dent Wizard, Andrzejewski was primarily working for two clients, Westphal Chevrolet and West Jeff Auto Sales. He charged $25 for buffing, which was less than Dent Wizard charged. For touch-up work, his charges depended on the job.

¶ 9 Andrew Shambo testified to the following: He worked as a manager at Dent Wizard and was Andrzejewski's supervisor. He had worked at Carnica for around 25 years before they were bought by Dent Wizard. Shambo had acquired Westphal Chevrolet as a client before Andrzejewski started working for Carnica by performing a demo for them. They were a long-term client and were eventually assigned to Andrzejewski. Andrzejewski serviced them for about seven years before his resignation. Westphal Chevrolet stopped doing business with Dent Wizard, with their last bill in April 2020. He had not received any complaints from Westphal Chevrolet or any explanation regarding Westphal Chevrolet's decision to stop using Dent Wizard. He did not contact Westphal Chevrolet to find out why they had stopped using Dent Wizard.

¶ 10 The technicians were the primary customer contact at Dent Wizard and were provided with pricing guidelines. The technicians, including Andrzejewski, had some discretion regarding what they could bill. The pricing guidelines were not provided to competitors.

¶ 11 On November 22, 2019, Shambo was working in Joliet when he observed Andrzejewski at Hawk Mazda touching-up one of the dealership's vehicles, while working out of Andrzejewski's personal vehicle. Hawk Mazda was not one of Dent Wizard's clients. When he asked Andrzejewski what he was doing, Andrzejewski gave him vague answers. Ultimately Andrzejewski told him that he had been planning on resigning after the holidays, but instead he would resign that day.

¶ 12 Don Friedel testified to the following: He had worked as a sales manager at Westphal Chevrolet for 10 years. He had six contractors that regularly performed repairs on his vehicles as well as two body shops. He used Andrzejewski for minor touch-up work, and that he also had a "dent guy," from another company that they used for major touch-ups, a detail shop for detailing vehicles, a company that performed wheel work, and some other "dent guys" for when their main

guy was out of town. He estimated he had around 10 to 12 other contractors who solicited him monthly.

¶ 13 Friedel testified that before they became Dent Wizard, Westphal Chevrolet used Carnica for minor paint work, touch-ups, and quick bumper repaints. He said when Dent Wizard acquired Carnica he stopped using Dent Wizard as often for the larger paint jobs, because he was not happy with their work. He said they had botched a couple of touch-up jobs after Andrzejewski left. One in December 2019, and one in either February or March of 2020. He testified concerning one example where he had hired them to fix a door and fender, and when the car was returned it had three different colors of paint on the car which did not match. The car ultimately had to be repainted. That was the last time he used Dent Wizard. Friedel said he did not explicitly tell them that he was not going to be giving them any more business, since he may need to use them again in the future, and since Shambo had been good to him over the years.

¶ 14 Friedel learned Andrzejewski had left Dent Wizard when Shambo began coming in to do the work. Andrzejewski never approached him about doing work or to tell him he was starting his own business. Instead, he called Andrzejewski after the first botched paint job in December and asked him who he was working for. Andrzejewski replied that he had left to start his own business. Friedel hired him, because he considered Andrzejewski's work to be "niche" and skilled at painting black cars.

¶ 15 The trial court ultimately denied the motion for a preliminary injunction. In delivering its ruling, the trial court emphasized that while Dent Wizard was seeking only an injunction to prevent Andrzejewski from performing work for a single client, the court's focus was on the entirety of the Agreement. The trial court found the non-competition clause of the Agreement was overly broad and overly restrictive and that the non-solicitation clause within it also contained a non-

competition provision, making the Agreement as a whole overly broad, anti-competitive, and against public policy. The court described it as follows: “It is a non-competition provision wrapped in a word salad as a non-solicitation agreement. It doesn’t just mix apples and oranges. It makes a fruit salad.” Further, the court declined to “blue pencil” the Agreement.

¶ 16 Dent Wizard timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Before addressing Dent Wizard's arguments, we must comment on the quality of the brief filed by the appellee, John Andrzejewski. The argument section of the brief consists primarily of boilerplate law, with no recitation of why the Agreement is overbroad and of the trial court's factual findings. The brief essentially contains no argument, in violation of Supreme Court Rule 341, which requires an appellee's brief to include argument consisting of the appellee's contentions with citations of the pages of the record and the authorities relied on. Ill. S. Ct. R. 341(h)(7), (i) (eff. Feb. 6, 2013). We would be within our authority to strike the brief and to address Dent Wizard's contentions under *Talandis* as if no appellee's brief had been filed. *Plooy v. Paryani*, 275 Ill.App.3d 1074, 1088 (1995). However, because the record on the issue of whether the Agreement is overly broad, and because the claimed errors are such that this court can easily decide them on the merits, we would reach the same result whether or not we considered the brief. See *Plooy,* 275 Ill.App.3d at 1088. However, we caution John Andrzejewski and his attorney that the rules governing the content of briefs are mandatory and apply with equal force to both appellants and appellees. *Plooy*, 275 Ill.App.3d at 1088.

¶ 19 As a preliminary matter, Dent Wizard lists as an issue on appeal whether non-solicitation agreements generally are unenforceable as against public policy in Illinois, arguing that the trial court’s ruling was essentially, “a finding that non-solicitation agreements are unenforceable in

Illinois." This assertion drastically misrepresents the finding of the trial court. It did not find, in essence or otherwise, that non-solicitation agreements generally are unenforceable as against public policy. Hence, we need not address this argument further.

¶ 20 Dent Wizard sought a preliminary injunction to enforce the Agreement. A party seeking a preliminary injunction must demonstrate: (1) a clearly ascertainable right in need of protection, (2) that they will suffer irreparable harm in the absence of an injunction, (3) that no adequate remedy at law exists, and (4) a likelihood of success on the merits. *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002). Regarding the first element, on appeal, we examine whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed right. *Id.*

¶ 21 The preeminent Illinois case regarding the enforceability of restrictive covenants is *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871. In *Reliable Fire*, the supreme court examined decades of caselaw addressing whether a restrictive covenant is enforceable, arriving at the definitive test for whether a restrictive covenant is enforceable. It is traditionally stated that the enforceability of a restrictive covenant is a question of law reviewed *de novo*. *Id.* ¶ 12. Illinois uses a three-prong rule of reason to determine the reasonableness of a restrictive covenant, whereby an employer must demonstrate that the restrictive covenant "(1) is no greater than is required for the protection of a legitimate business interest of the employer-promisee; (2) does not impose undue hardship on the employee-promisor, and (3) is not injurious to the public." *Id.* ¶ 17. The scope of an employer's legitimate interest may be limited by type of activity, geographical area, and time. *Id*.

¶ 22 Prior to the holding in *Reliable Fire*, the appellate court had set forth various rigid and conclusive tests to determine the existence of a legitimate business interest. *Id.* ¶ 38 (reciting

numerous tests applied throughout the previous decades). To the extent that previous holdings utilized these rigid tests, the supreme court rejected them but held that the factors utilized in those cases could be used as nonconclusive aids. *Id.* ¶¶ 40-42. Instead, the supreme court held that whether a legitimate business interest exists is based on the totality of the circumstances, and the court considers the following non-exhaustive factors: the near-permanence of customer relationships, the employee's acquisition of confidential information through their employment, and time and place restrictions. *Id.* ¶ 43.

¶ 23 Dent Wizard contends that it has a legitimate business interest in restricting Andrzejewski's activities because its predecessor in interest trained him in how to perform touch-up work and how to interact with dealership personnel and because it had a legitimate interest in protecting its customer relationship with Westphal Chevrolet, as well as its pricing guidelines, both of which Andrzejewski exploited. We conclude that there was no protectable interest regarding the training Andrzejewski received because, at the termination of employment, an employee may take with them general skills and knowledge acquired during their employment. *Burt Dickens & Co. v. Bodi*, 144 Ill. App. 3d 875, 879 (1986).

¶ 24 As to the matter of customer relationships, Illinois courts previously utilized two tests to determine whether a near-permanent customer relationship exists, namely the seven objective factors test and the nature of the business test. *Reliable Fire*, 2011 IL 111871, ¶ 38. While these tests are no longer determinative, their factors may be used as nonconclusive aids. *Id.* ¶ 42. The factors considered in the seven factors test are "(1) the length of time required to develop the clientele; (2) the amount of money invested to acquire clients; (3) the degree of difficulty in acquiring clients; (4) the extent of personal customer contact by the employee; (5) the extent of the employer's knowledge of its clients; (6) the duration of the customer's association with the

employer; and (7) the continuity of the employer-customer relationships." *Audio Properties, Inc. v. Kovach*, 275 Ill. App. 3d 145, 148-49 (1995). The nature of the business test focuses on the nature of the business involved, and is usually satisfied where a business engenders customer loyalty by providing a unique product or personal service. It is less likely to succeed when the business is sales-based and customers utilize many suppliers simultaneously. *Lawrence & Allen, Inc. v. Cambridge Human Resource Group., Inc.*, 292 Ill. App. 3d 131, 142 (1997).

¶ 25 Upon consideration of the factors of both the seven-factor test and nature of the business test, the near-permanence of Dent Wizard's customers relationship somewhat favors Dent Wizard. Shambo testified that he solicited the Westphal Chevrolet account prior to Andrzejewski coming to work for Carnica by performing a demo. There was no evidence presented that suggests that this was a particularly difficult, expensive, or lengthy process. Since obtaining the account, Westphal Chevrolet had been a regular source of work giving Carnica/Dent Wizard jobs on a nearly weekly basis. Andrzejewski performed services for Westphal Chevrolet on behalf of Dent Wizard and Carnica for roughly seven years and was their primary contact with Westphal Chevrolet during that time. There was no evidence presented to suggest that Westphal Chevrolet's relationship with Dent Wizard was either typical or atypical.

¶ 26 Friedel testified that he had several service providers who performed repairs on Westphal Chevrolet's vehicles, and that while he had regular service providers to perform the various repair work, he received several solicitations each month and used other service providers when his regulars were unavailable. This suggests that this was a competitive area of business. Further, he testified that had Andrzejewski remained employed at Dent Wizard, he would likely still be using them.

¶ 27 Given the scope of the testimony, any conclusions regarding Dent Wizard's business as a

whole will involve extrapolation from a rather limited sample size. That being said, the evidence suggests that the services at issue were specialized and that Dent Wizard had long-term customer relationships with its clients. However, the market is competitive with several service providers soliciting business from car dealerships. Additionally, while Dent Wizard's relationship with Westphal Chevrolet lasted for several years, there was little evidence suggesting that the process of obtaining new customers was particularly expensive or difficult, with the typical method being to have technicians perform "demos" for prospective clients. The evidence before us suggests that it is largely the skill of the technician servicing the client that determines the length of the relationship, as Friedel testified that he liked the work Andrzejewski performed and stopped using Dent Wizard based on their unsatisfactory performance. So, while the evidence is somewhat mixed, the factor of the near-permanent customer relationships between Dent Wizard and the clients serviced by Andrzejewski weighs in Dent Wizard's favor.

¶ 28 With regard to Andrzejewski's possession of Dent Wizard's proprietary knowledge, Dent Wizard argues that Andrzejewski was familiar with Dent Wizard's pricing guidelines and was aware of who to contact at the dealerships he serviced. Dent Wizard's clients appear to have primarily been car dealerships. It is not especially difficult to find a list of car dealerships in a given area, as these businesses serve the general public and are readily discoverable by a simple internet search. Additionally, Dent Wizard failed to demonstrate why it would be difficult to locate the correct person at a dealership to speak to regarding performing touch- up services; presumably it would be the managers, who are likely listed on the dealership's website. Customer information which is known by others in the trade or could be easily duplicated is generally insufficient to establish a legitimate business interest. *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 269 (2007).

¶ 29 As to the pricing information, Andrzejewski testified that he knew Dent Wizard's pricing

guidelines. Dent Wizard argued that he could use this knowledge to undercut Dent Wizard's prices. There is some evidence to support their argument, as Andrzejewski testified that he charged $25 for buffing services, which was less than what Dent Wizard charged. However, there was no evidence suggesting that Dent Wizard's pricing was categorically different from others in the industry, or that the information could not be readily obtained by asking a potential client what Dent Wizard was charging them for the work performed. See *Springfield Rare Coin Galleries, Inc. v. Mileham*, 250 Ill. App. 3d 922, 934-35 (1993) (no confidential information where coin and precious metals dealer's formula for purchase of scrap gold was typical of other dealers whose formulas were readily available); *Label Printers v. Pflug*, 206 Ill. App. 3d 483, 496 (1991) (quotes on printed labels were not confidential when clients would readily share the information and there was no evidence that the information was substantially different from those of its competitors); *Image Supplies, Inc. v. Hilmert*, 71 Ill. App. 3d 710, 713 (1979) (pricing information on printing supplies was not confidential where customers will willingly disclose information). Additionally, Westphal Chevrolet's decision to use Andrzejewski over Dent Wizard appears to be based primarily on the quality of the work, not the price. Thus, the factor regarding the employee's acquisition of confidential information does not support Dent Wizard having a legitimate business interest.

¶ 30 Accordingly, after considering the totality of the circumstances Dent Wizard has established a fair question as to its legitimate business interest in preserving its customer relationships with the customers serviced by Andrzejewski, though not as to its pricing information.

¶ 31 While the factors regarding whether Dent Wizard had a legitimate business expectation were mixed, the trial court properly determined that the scope of the non-competition agreement

was greater than necessary to protect any possible legitimate business interest. Throughout its brief Dent Wizard argues that the restriction it sought, *i.e.*, enjoining Andrzejewski from doing business with Westphal Chevrolet, was reasonable and narrowly tailored to protect its legitimate business interests. However, what matters to the enforceability of a restrictive covenant is the scope of the restrictive covenant itself, not the scope of relief sought. See *Lawrence*, 292 Ill. App. 3d at 139.

¶ 32 The trial court found that the non-solicitation clause contained within it a covenant not to compete. Dent Wizard argues that this was error and that the trial court should not have considered the unrelated non-competition clause. We disagree. Black's Law Dictionary defines "nonsolicitation agreement" as "[a] promise usually in a contract for the sale of a business, a partnership agreement, or an employment contract, to refrain, for a specified time, from either (1) enticing employees to leave the company, or (2) trying to lure customers away." Black's Law Dictionary (10th ed. 2014). It likewise defines a "covenant not to compete" as "[a] promise usually in a sale-of-business, partnership, or employment contract not to engage in the same type of business for a stated time in the same market as the buyer, partner, or employer." *Id.* The non-solicitation clause at issue in the instant case contains within it a covenant not to compete stating that the employee covenants not to "call upon, solicit, *enter into or engage in the business conducted by Employer* ***." (Emphasis added). Indeed, the relief sought by Dent Wizard was not to enjoin Andrzejewski from soliciting Dent Wizard's customers, but to prevent him from engaging in business with Westphal Chevrolet. Clearly this was not merely a non-solicitation provision. See *Zabaneh Franchises, LLC v. Walker*, 2012 IL App (4th) 110215, ¶ 21 (provision restricting accountant from engaging in business with clients she filed tax returns for while working at her previous employer was deemed a noncompetition covenant).

¶ 33 Postemployment restrictive covenants are closely examined and strictly construed because

they operate as a partial restriction on trade and must be construed as a whole. *Northwest Podiatry Center, Ltd. v. Ochwat*, 2013 IL App (1st) 120458, ¶¶ 38-40. Here the non-solicitation clause contains a covenant not to compete and therefore must be considered alongside the non-competition clause which restricts Andrzejewski from competing with Dent Wizard in the counties of Will, Cook, and Du Page.

¶ 34 A restrictive covenant must be no greater than required to protect the legitimate business interest of the employer. *Reliable Fire*, 2013 IL App (1st) 120458, ¶ 17. "An employer seeking to enforce the restrictive covenant bears the burden of showing that the full extent of the restriction is necessary to protect its legitimate business needs." *Northwest Podiatry*, 2013 IL App (1st) 120458, ¶ 19.

¶ 35 As discussed previously, Dent Wizard established a fair question as to its legitimate business interest in protecting its near-permanent customer relationships (though not its alleged confidential information). As such, the question becomes whether the full extent of the restrictive covenant is necessary to protect that interest. The answer is that it is not. Dent Wizard has argued that it is only interested in protecting its interest in the two primary customers serviced by Andrzejewski. Yet, the restrictive covenants contained within the agreement extend far beyond these two customers. The non-competition clause includes all of Cook, Will, and Du Page counties. Westphal Chevrolet is in Kendall County and Naperville Infiniti is in Du Page County. As such, there is no justification for the inclusion of Cook and Will counties, nor does the existence of a single protectable customer relationship in DuPage county justify a complete ban on doing business in that county.

¶ 36 With regard to the non-solicitation clause, Dent Wizard argues that it is limited only to those customers Andrzejewski actually serviced on behalf of Dent Wizard during his last 18

months of his employment and thus applies only to two primary customers. We find Dent Wizard's argument to be counterfactual. Dent Wizard argued at the hearing on their emergency motion for a temporary restraining order that Andrzejewski had serviced between seven and eight dealerships during the last 18 months of this employment. Further, in their prayer for relief they sought to enjoin Andrzejewski from soliciting or engaging in any business, with any of their customers, regardless of where they are situated or whether Andrzejewski had serviced them. Additionally, subsection (i)(a) the non-solicitation clause (the portion Dent Wizard seeks to enforce) was not limited only to Dent Wizard's customers that Andrzejewski had serviced during the final 18 months of his employment, but rather prevented him from soliciting or engaging in touch-up business with any customer of Dent Wizard that he had direct or indirect contact with during his last 18 months, regardless of whether he had provided any service to them. Courts are hesitant to enforce restrictions on the solicitation or servicing of customers with whom an employee has had little to no contact. *Eichmann v. National Hospital & Health Care Services Inc.*, 308 Ill. App. 3d 337, 345 (1999); *cf. Zabaneh Franchise*, 2012 IL App (4th) 110215, ¶ 21 (holding that the restrictive covenant was reasonable where an accountant was restricted only from servicing customers for whom she had prepared tax returns herself).

¶ 37 However, this barely scratches the surface of the non-solicitation clause which reads as follows:

> "Non-Solicitation. Employee covenants that during the term of his employment with Employer and for a period of two (2) years after the termination of his employment, for any reason whatsoever, Employee shall not, directly or indirectly, as an employee, agent, salesman or member of any person, corporation, firm or otherwise, (i) call upon, solicit, enter into or engage in the business conducted by Employer with a customer or

> supplier of the Employer (a) with which, within the eighteen month period preceding the Employee's termination of employment with Employer, Employee had direct or indirect contact as an employee of Employer, or (b) regarding which customer or supplier Employee had learned, or become aware of, Employer's Proprietary Information, or (ii) solicit any employee or agent of Employer or make such other contact with the employees or agents of Employer, the product of which contact will or may yield a termination of the employment of such employees from Employer."

¶ 38 The covenant applies to any business conducted by Dent Wizard, regardless of whether Andrzejewski engaged in that type of business while employed with Dent Wizard. Besides, it even prevents Andrzejewski from buying supplies from the same suppliers as used by Dent Wizard. This covenant would also prevent Andrzejewski from engaging in business with customers about whom he learned Dent Wizard's "Proprietary Information,"[2] which is defined broadly in the parties' agreement as:

> "customer lists or records, customer information, marketing techniques, systems and networks of distribution, supplier information, product content, product mix, processes, Inventions (as herein defined), procedures, techniques, and, generally, the confidential information of the Employer which gives, or may give, the Employer an advantage in the marketplace against its competitors."

Because this definition includes customer lists and customer information, it effectively encompasses any of Dent Wizard's customers Andrzejewski learned about while working at Dent Wizard, regardless of if he had any contact with them. When construing the clauses together, as we must, these restrictions are clearly broader than necessary to protect Dent Wizard's legitimate

[2] The language of subsection (i)(b) is poorly drafted and possibly omits some words.

business interest.

¶ 39 Dent Wizard argues that the agreement contains a severability clause and that the trial court erred by failing to sever the non-competition clause. We disagree. Whether to modify a contract to comport to the law or sever an unenforceable provision is within the trial court's discretion. *Abbott-Interfast Corp. v. Harkabus*, 250 Ill. App. 3d 13, 21 (1993). The existence of a severability clause strengthens the case for modifying a contract as does the degree to which the clauses operate independently. *Id.* However, the court will be less justified in modifying a contract if by doing so they are essentially drafting a new contract. *Lee/O'Keefe Insurance Agency, Inc. v. Ferega*, 163 Ill. App. 3d 997, 1007 (1987). Likewise, the trial courts are cautioned against engaging in this practice too often, as it discourages careful draftsmanship when trial courts modify otherwise unenforceable agreements. *Id.*; *Eichmann*, 308 Ill. App. 3d at 348. "Thus, while Illinois law allows a court to modify a restrictive covenant, and even where the parties have incorporated this principle into their agreement through the use of express language allowing modification, a court should refuse to modify an unreasonable restrictive covenant, not merely because it is unreasonable, but where the *degree* of unreasonableness renders it unfair." (Emphasis in original.) *Eichmann*, 308 Ill. App. 3d at 347-48. By drafting overly broad restrictive covenants employers "impose upon an employee the risk of proceeding at his peril, or the burden of expensive litigation to ascertain the scope of his obligation." *House of Vision, Inc. v. Hiyane*, 37 Ill. 2d 32, 39 (1967).

¶ 40 Under the terms of the agreement as written, for a period of two years, Andrzejewski was not permitted to perform his profession in Cook, Will, and DuPage Counties or for any of Dent Wizard's customers, not to mention all the other restrictions imposed by the non-solicitation clause. As in *House of Vision*, the restrictive covenant as written placed Andrzejewski in the position of either proceeding at his own peril or engaging the court to determine the scope of his

obligations. That is unfair. Accordingly, the trial court did not abuse its discretion in declining to modify the agreement or sever the non-competition clause.

¶ 41 Dent Wizard further argues that it has satisfied the remaining elements of its preliminary injunction claim. As the trial court did not reach them and because the issue of enforceability is dispositive, we need not reach those arguments.

¶ 42 III. Conclusion

¶ 43 After considering the totality of the circumstances, the trial court did not err in denying Dent Wizard's motion for preliminary injunction on the basis that the non-solicitation and non-competition clauses (restrictive covenants) contained within the Agreement were overly broad. For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 44 Affirmed.