

2026 IL App (2d) 260299-U
No. 2-26-0299
Order filed October 21, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

EDWARD LITKE, Plaintiff and Counterdefendant-Appellant,

v.

MICHAEL MINSKY, DANIEL WEINKAUF, and THE BALDWIN GROUP SOUTHEAST,
LLC, Defendants and Counterplaintiffs-Appellees.

Appeal from the Circuit Court of Lake County.
Honorable Daniel L. Jasica, Judge, Presiding.
No. 26-CH-36

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Kennedy and Justice Mullen concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court's ruling denying plaintiff's request for injunctive relief is affirmed, where it did not err in determining that plaintiff did not raise a fair question of success on the merits or irreparable injury.
- ¶ 2 Plaintiff and counterdefendant, Edward Litke, appeals from the trial court's decision denying his request for injunctive relief against defendants and counterplaintiffs, Michael Minsky, Daniel Weinkauf, and The Baldwin Group Southeast, LLC (Baldwin). The dispute concerns the validity and enforceability of non-competition and non-solicitation agreements between Litke, an insurance broker, and defendants, his former employers. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 20, 2026, Litke filed a six-count complaint and motion for temporary restraining order and preliminary injunction against defendants, seeking, in part: (1) a declaration that he is not bound by the provisions of an employment agreement or a protective agreement; (2) preliminary and permanent injunctive relief to stop defendants from telling others that Litke is bound by a non-competition agreement and to promptly provide loss runs for Litke's customers; and (3) injunctive relief to prevent defendants from interfering with Litke's efforts to solicit business and compete with Baldwin in the commercial insurance arena.

¶ 5 In a 10-count counterclaim, defendants sought, in part, damages for Litke's alleged breach of the agreements and a preliminary injunction against him. They asserted that Litke, in violation of the employment and protective agreements, was competing with Baldwin, soliciting Baldwin's customers, improperly using confidential Baldwin information, and tortiously interfering with Baldwin's business relationships with its customers.

¶ 6 On April 29, 2026, the court held a preliminary injunction hearing. At the outset, Baldwin's counsel represented that the parties had agreed, regarding the scope of the hearing, that the issue was whether the employment agreement was in effect or the protective agreement was valid and enforceable. Further, "we're going to leave issues relevant to, like, damages and the like, to, you know, full merits discovery and the like. So the focus today is intended to be on the enforceability of those two agreements." After receiving evidence and post-hearing written arguments, on May 26, 2026, the court issued a memorandum opinion denying the cross-motions for preliminary injunctions. As the court's factual findings are not disputed on appeal, we recount them nearly verbatim here, along with contractual provisions that are relevant to the issues on appeal.

¶ 7 Specifically, the court found that Litke had been an insurance broker for approximately 20 years, primarily selling insurance products to condominium owners' associations. From 2008 through 2019, Litke owned his own insurance agencies. However, in December 2019, Litke sold his agency and all of its "existing and new clients" to Rosenthal Bros, Inc. Thereafter, Litke became Rosenthal's employee and signed an employment agreement. The employment agreement had a five-year term, providing,

"Employment Term. The term of this Agreement shall commence on [December 1, 2019] and will continue until the fifth (5th) anniversary hereof unless otherwise terminated earlier as contemplated below (the 'Employment Term'). Thereafter, the term of this Agreement may be extended by mutual agreement[.]"

The agreement next contained a "termination" section with several subsections providing ways the agreement and employment term could end, including "immediately" upon termination for cause (with "cause" defined). The agreement also contemplated termination without cause, as referenced in its non-compete provision, which stated,

"[Litke] shall not, through [Litke's] employment with the Company and for a period commencing with the Effective Date, and continuing thereafter until the later of two (2) years after the termination or expiration of Employee's employment hereunder *** (the 'Restricted Period'), directly *or indirectly*, through any person, entity, or otherwise, engage in a Competitive Business Activity *** anywhere in the Restricted Territory ***; provided, however, that in the event of the Company's *termination of [Litke's] employment without Cause*, the Restricted Period shall extend only through the effective date of termination of employment." (Emphases added; underlining in original.)

A “competitive business activity” was defined to include any business that competed with the company. The “restricted territory” was defined as anywhere within 75 miles of Chicago. The agreement prohibited Litke from “directly *or indirectly*” (emphasis added) discussing or providing third parties with confidential information, both while employed and following his termination. A non-disparagement provision prohibited him from “directly *or indirectly*” (emphasis added) disparaging the company. Finally, the employment agreement contained a non-solicitation provision that broadly precluded Litke from, in sum, directly *or indirectly* contacting, attempting to contact, inducing, or attempting to induce to gain the business of any “customer” (including those even merely “pursued”) of the Company’s that Litke had contact with during the 12 months prior to the termination of his employment. The agreement specified that it was the “entire agreement between the parties with respect to its subject matter and supersedes all other agreements, whether oral or written, between them with respect to such subject matter.”

¶ 8 In 2020, Rosenthal was sold to Baldwin or its predecessors, and Litke became Baldwin’s employee. In June 2020, Litke signed a first amendment to the employment agreement that assigned Rosenthal’s rights under the agreement to Baldwin in connection with the purchase.

¶ 9 The court found that Litke “thrived” at Baldwin. It noted that: (1) his business grew substantially, such that the commissions he generated for Baldwin rose from approximately \$800,000 in 2019 to over \$4 million in 2025; (2) he was one of Baldwin’s top commissions producers; (3) he brought new property manager clients to Baldwin during his tenure; and (4) he expanded the business generated from Baldwin’s preexisting clients.

¶ 10 In March 2023, Baldwin initiated a “recertification” process with all employees. As part of the process, each Baldwin employee was required to electronically sign a new set of uniform documents, such as an employee handbook, company policies, and a “protective agreement.” The

documents were made available to all Baldwin employees through an online portal in which employees were able to review and download each document. The first document an employee was asked to review and e-sign was an “E-signature Disclosures and Consent” form. A series of other employer documents followed; if they agreed to the terms of the specific document, employees were directed to electronically click on an “I agree” box and to electronically “submit” their consent. The deadline to complete the e-signing of all documents was April 14, 2023.

¶ 11 In his testimony, Litke denied ever seeing or signing the protective agreement. He testified that, if he had been asked to sign a new non-compete or non-solicitation agreement, he would have first consulted with counsel. However, Litke acknowledged that he presumptively received several emails relating to Baldwin’s recertification initiative, including an email on April 7, 2023, which reminded him that he still needed to sign the Baldwin recertification documents.

¶ 12 Baldwin utilized a software platform called “Workday” to effectuate the recertification and track the e-signing of required documents. Samantha Clark, a senior analyst in Baldwin’s human resources department, testified to the Workday platform and the authenticity of a computer-generated report that tracked each employee’s opening and e-signing of the recertification documents. Again, the software allowed an employee to click on a link to open and review each document the employee was being asked to e-sign. The reports indicated that, on April 7, 2023, Litke signed into the Workday platform with a unique username and through a password-protected, two-factor-authenticated portal. Litke e-signed the: (1) E-Sign Disclosures & Consent form at 12:17:12 p.m.; (2) Protective Agreement at 12:17:28 p.m. (16 seconds later); (3) Code of Business Conduct and Ethics at 12:17:43 p.m. (15 seconds later); (4) Regulation FD Disclosure Policy at 12:17:55 p.m. (12 seconds later); (5) Whistleblower Policy at 2:39:23 p.m.; and (6) Baldwin Colleague handbook at 2:39:32 (nine seconds later).

¶ 13 As such, and “[b]ased on the limited record,” the court determined “it is most probable that Litke did in fact e-sign the Protective Agreement, among other documents, on April 7, 2023, in response to the email he had received that morning reminding him that he had only one week remaining to complete the required recertification process at Baldwin.” Given that Litke appeared to have e-signed numerous documents within a matter of seconds, the court found it reasonable to further find that Litke did not necessarily read each document before signing. In fact, the court noted, since the report reflected that Litke signed the protective agreement 16 seconds after he signed the E-Signature Disclosures and Consent form, this most likely explained why he had no recollection of seeing or signing the protective agreement or the non-compete and non-solicitation provisions contained within the 20-page document.

¶ 14 The protective agreement provided, in relevant part,

“I hereby agree, during my employment and for a period of twenty-four (24) months after the Last Day (the “Restricted Period”) that I will not directly or Indirectly (defined below), other than for the benefit of the Company Group, take the following actions:

(i) solicit or encourage any Restricted Customer (defined below) or Prospective Restricted Customer (defined below) to terminate any business relationship with the Company Group (including, without limitation, by facilitating the execution of a broker of record letter) and/or commence a similar business relationship with any other individual or business entity;

(ii) accept or provide for the benefit of myself or any other individual or entity, with or without solicitation, any business or service of the type being offered or provided by, or

which is competitive to, the business or services being offered or provided by the Company Group to or on behalf of any Restricted Customer or Prospective Restricted Customer;

(iii) divert or attempt to divert from the Company Group, or any customer, any business whatsoever, including encouraging, either directly or Indirectly, any existing employee or member of a customer to terminate his or her enrollment in any healthcare plan or insurance policy with such customer or otherwise discontinue his or her relationship with such customer;

(iv) solicit, induce, entice or recruit any of the employees, independent contractors, producers, or sales agents (producers and sales agents may be employees or independent contractors) of the Company Group with whom, during my employment with the Company Group, I had business contact or knowledge of because of my access to Confidential Information *** to (A) terminate any business relationship with the Company Group or (B) enter into or commence any relationship *** [as an employee or independent contractor] with any other entity or individual.”

¶ 15 The protective agreement defined “Restricted Customer” as including any person or entity who “is or was” a Company Group client, customer, or account and “with whom I had direct or Indirect business contact, I directly or Indirectly assisted in the servicing of or *** with respect to any such relationship, business contact or assistance, I had direct or Indirect supervisory authority during the [24] months prior to [termination].”

¶ 16 A “Prospective Restricted Customer” was defined as any person or entity “to whom the Company Group made or submitted a presentation or proposal of any kind about which I had knowledge because of my access to Confidential Information or in which I directly or Indirectly participated or assisted, during the [24] months prior to [termination].”

¶ 17 “Indirectly” or “Indirect” meant “through other individuals or entities, including but not limited to, assisting and/or supervising any other individual or business entity (or such business entity’s employees) in the sale or solicitation of products or services.”

¶ 18 The protective agreement also expressed that,

“I further agree and acknowledge that a geographic scope is not required for this Section 2 because its post-employment restrictions are tied to and are coextensive with: (i) Restricted Customers and Prospective Restricted Customers and (ii) employees and independent contractors with whom during my employment with the Company Group, I had business contact or knowledge of because of my access to Confidential Information. To the extent a court requires a geographic scope, the geographic scope shall be any state in the United States and any other jurisdiction throughout the world in which such Restricted Customers, Prospective Restricted Customers, and subject employees and independent contractors of the Company Group are located. I also agree and acknowledge that, subject to my compliance with the terms of this Agreement, the applicable restrictions contained throughout this Section 2 do not prohibit me from being gainfully employed in the insurance or benefits services industries as a general matter or performing insurance services or benefits services for potential clients throughout the entire world except for Restricted Customers and Prospective Restricted Customers, and that those restrictions are reasonable and narrowly tailored to further the Company Group’s legitimate interest to protect its Confidential Information, account relationships, and goodwill, and such restrictions will not unduly burden my ability to earn a living after my employment with the Company Group is terminated.”

¶ 19 The court further noted that the protective agreement contained a “broad” definition of confidential information, including “customer, prospective customer and sales agent lists, leads, information, and records,” and a 24-month prohibition on using or disclosing such confidential Baldwin information.

¶ 20 The protective agreement acknowledged that consideration was being provided in the forms of: (1) continued employment; (2) certain payments and other benefits; (3) eligibility for all future discretionary compensation, including any and all bonuses or grants of restricted stock; (4) the disclosure of, and access to, the company’s confidential information, business relationships, and “its goodwill therein”; (5) the specialized training the company would provide; and (6) “the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of such consideration and the importance of protecting the Company Group’s proprietary and confidentiality interests being hereby acknowledged and accepted.”

¶ 21 The “Final Agreement” section provided that the document “records the final, complete, and exclusive expression of the understandings between the parties with respect to the matters addressed in it and supersedes any prior or contemporaneous agreement, representation, or understanding, oral or written, by either of them.” In section 7(g)(ii), it also provided, in part, that,

“Notwithstanding the foregoing, this Agreement is in addition to, and does not supplant, supersede, modify or limit in any manner, any other protective, confidentiality, non-disclosure, non-competition, non-solicitation *** or other similar obligations imposed on me, whether imposed by law *** by contract (including contracts entered into prior to the date of, or concurrently with, this Agreement), by generally applicable Company Group policy, or otherwise; provided, that in the event of any conflict between this Agreement and

any such other similar obligations imposed on me, the conflict shall be resolved such that the provision (or portion thereof) most beneficial to the Company Group shall control[.]”

¶ 22 The agreement expressed that it could not be amended, except by written agreement signed by both parties. Finally, it contained a “blue-pencil” provision, explaining, in essence, that each term and covenant was severable and independent, such that reformation or a finding of unenforceability of one clause would not affect other provisions. We note that the agreement contained a rider pursuant to Illinois law, specifying that Baldwin had: (1) provided Litke at least 14 days to review the agreement; and (2) advised him to consult counsel before entering into the agreement.

¶ 23 The initial term of the 2019 employment agreement expired by December 1, 2024. Litke continued to be employed by Baldwin. The court noted that no extension, amendment, or new written employment agreement was signed, and there were no emails or communications explaining the parties’ understanding with respect to Litke’s continued employment. Litke simply continued to be employed and was apparently treated and compensated the same as he had been during the employment agreement’s initial term. However, on December 1, 2025, Baldwin ended Litke’s employment, with Minsky writing that Baldwin had “decided not to renew your Employment Agreement, which is set to expire today, December 1, 2025.” There is no dispute that Litke’s termination was without cause.

¶ 24 Thereafter, Litke, seeking employment and believing he was not subject to any non-competition or non-solicitation clauses under the employment agreement because he was terminated without cause, reached out to several of Baldwin’s competitors. He received a job offer from DCI Insurance and, for a short period, had a DCI email address. Further, Litke also, at a minimum, fielded calls from customers he had serviced while at Baldwin and proposed to service

them outside of Baldwin. When Baldwin learned that Litke was in communication with its customers, Baldwin's attorneys sent Litke a cease-and-desist letter, claiming violations of the employment agreement. A series of letters followed, with Litke's attorneys contending that Litke was not bound by any non-competition or non-solicitation agreement because Baldwin terminated him without cause.

¶ 25 On December 17, 2025, however, Baldwin's attorney for the first time referenced the protective agreement. Specifically,

“I write to correct my previous correspondence. I sent the wrong contract that Baldwin seeks to enforce. I apologize for the error—was drinking from a fire hose at the time. Please see the Protective Agreement signed by Mr. Litke. Please let us know whether he intends to comply with it going forward, notwithstanding his prior breaches.”

¶ 26 Ultimately, Litke did not work for DCI. Instead, on December 31, 2025, he incorporated his own insurance company and began doing business as Litke Insurance Group. Litke Insurance Group competes directly with Baldwin, and Litke services some of the same customers he serviced while at Baldwin.

¶ 27 The court found that, because of his termination, Litke did not receive and was not entitled to receive his 2025 bonus (estimated to be approximately \$250,000). It further found that there was no evidence that Litke took any proprietary or confidential information or documents with him following his termination from Baldwin. Similarly, the court noted that Minsky denied making any disparaging comments about Litke to others or stating that Litke was terminated for cause. The court found that there was no evidence to contradict this testimony.

¶ 28 Having made those findings, the court resolved the cross-motions for preliminary injunctions as follows. First, it determined that Litke established a protectible interest in his

employment as an insurance broker. Next, it found that he raised a fair question that he had no adequate remedy at law.

¶ 29 However, the court then determined that Litke had *not* raised a fair question as to whether he would suffer irreparable injury in the absence of an injunction. Rather, the evidence reflected that: (1) Litke had established his own competing brokerage firm and obtained business from clients he formerly serviced at Baldwin (approximately 96 of Baldwin’s former clients informed Baldwin that they would be working with Litke); and (2) although Litke requested the injunction to stop defendants from contacting customers and telling them that he was fired for cause or was precluded from soliciting their business, as well as to prevent defendants from delaying the process of “loss run reports,” there was no testimony or evidence presented that defendants were doing or had done those things. As such, Litke did not establish irreparable harm but, rather, only speculative injury.

¶ 30 The court further found that Litke had *not* raised a fair question as to his likelihood of success on the merits. The court found that Litke was likely not bound by any provisions of the 2019 employment agreement; it had expired, such that he became simply an at-will employee. In any event, under the employment agreement, Litke’s termination without cause rendered him free to compete with and solicit Baldwin’s customers. However, the court found that Litke was likely bound by the 2023 protective agreement. Specifically, it first rejected Litke’s argument that the 2019 employment agreement’s integration provision could bar subsequent agreements between the parties. Next, the court found that, in all probability, Litke e-signed the protective agreement. The court reviewed the Workday platform steps and the prompts that Litke would have responded to and accepted, as well as the email he received advising him that someone signed into his Workday account on April 7, 2023, and directing him to contact an administrator if he did not recognize that

action; there was no evidence he contacted anyone about potential unauthorized access. “In sum, it seems highly improbable that anyone other than Litke entered the Workday platform and electronically signed the [protective agreement] at issue.” Moreover, the court noted that a party is presumed to understand a signed agreement and failure to read the document before signing does not excuse the party from the legal consequences of the executed contract. Finally, the court determined that Litke’s continued employment by Baldwin from April 2023 through November 2025 would likely constitute adequate consideration for the protective agreement.

¶ 31 Regarding the protective agreement’s restrictive covenants and non-competition provisions, the court determined that: (1) Baldwin had a legitimate interest in not having its confidential customer information used against it by a former employee or having its customers poached; (2) the 24-month temporal limitation and nationwide geographic limitations were not overbroad, as relationships with customers and property managers, particularly with major contracts or accounts, can take time to develop and last for years and, further, the market for the sale of condominium insurance was national; (3) Litke is a sophisticated insurance businessman; (4) the non-solicitation and non-competition restrictions do not extend to all Baldwin customers, only those customers that “Litke directly contacted, or assisted or supervised another that had business contact with, during the last [24] months of his employment”; and (5) the non-solicitation clause prohibits Litke from soliciting only “customers that he directly contacted, or supervised or assisted others in contacting, during his last [24] months of employment. It is not a blanket prohibition on soliciting all Baldwin customers. Litke is not prevented from working in the insurance industry or serving as a broker entirely.”

¶ 32 The court next denied defendants' counterclaim for a preliminary injunction. Defendants do not challenge the court's ruling and, thus, we do not detail the court's findings with respect thereto. On June 16, 2026, Litke appealed.

¶ 33 II. ANALYSIS

¶ 34 Litke appeals pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). Rule 307(a)(1) applies to interlocutory appeals as of right and allows an appeal from an order granting or refusing an injunction. *Id.*

¶ 35 A preliminary injunction is an extraordinary remedy, the purpose of which is not to resolve the merits of a case, but to preserve the status quo until the merits can be decided. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Railway Co.*, 195 Ill. 2d 356, 365 (2001). Indeed, the issuance of a preliminary injunction is an extreme remedy and should not be undertaken unless an emergency exists and serious harm would result if the injunction were not issued. *Id.* A party seeking injunctive relief bears the burden of establishing: (1) a clearly ascertainable right in need of protection; (2) irreparable injury absent the injunction; (3) the absence of an adequate remedy at law; and (4) a substantial likelihood of success on the merits. *Id.* The failure to establish any one of these requirements is sufficient to justify denial of the requested relief. *Maday v. Township High School District 211*, 2018 IL App (1st) 180294, ¶ 40. However, the party seeking injunctive relief need only show that he or she raises a "fair question" on these points, not that he or she is entitled to a final judgment, such that the court should preserve the status quo until it can decide the case on the merits. *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985). Therefore, our examination on appeal concerns whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62-63 (2006).

¶ 36 Generally, a court’s decision to grant or deny a preliminary injunction is reviewed for an abuse of discretion; however, “whether injunctive relief should issue to enforce a restrictive covenant not to compete in an employment contract depends upon the validity of the covenant, the determination of which is a question of law.” *Id.* Accordingly, here, particularly as there are no factual questions in dispute, our review is *de novo*. See *id.*; see also *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 22 (2006) (we also review *de novo* the question whether a contract or a portion thereof is unconscionable).

¶ 37 Litke contends that he met his burden for injunctive relief. He asks us to find the protective agreement unenforceable, find him not subject to any restrictive covenants, reverse the court’s denial of his motion for preliminary injunction, and grant the parties’ “agreed remedy” that defendants shall furnish client insurance policies in 7 days and loss runs within 30 days. In support, he raises three overarching arguments. First, he argues that the protective agreement is unenforceable because: (1) its language is ambiguous and its provisions unconscionable; (2) the restrictive covenants are overbroad; and (3) he was not provided adequate consideration for the protective agreement. Critically, we note that, for purposes of this appeal, Litke assumes that he did, in fact, electronically execute the 2023 protective agreement.

¶ 38 Second, Litke argues that the protective agreement is unenforceable because it was superseded by renewal of the employment agreement. Specifically, he asserts that: (1) his continued employment after December 2024 constituted the parties’ mutual agreement to renew the employment agreement; (2) the terms of the 2024 renewed employment agreement include its “entire agreement” clause; and (3) the 2024 renewal of the employment agreement foreclosed enforcement of the 2023 protective agreement.

¶ 39 Third, Litke argues that he demonstrated irreparable harm by virtue of the parties' stipulation at the injunction hearing that the purpose of the hearing was for the court to determine the applicability of the employment agreement and protective agreement and their stipulation to damages and harm.

¶ 40 For the following reasons, we conclude that Litke's first two overarching arguments collectively fail to demonstrate that he is not subject to the protective agreement and, thus, he does not raise a fair question as to his likelihood of success on the merits. Similarly, we conclude that Litke's third overarching argument fails to demonstrate that, absent a permanent injunction, he will suffer irreparable injury.

¶ 41 A. The Protective Agreement

¶ 42 Litke argues that the protective agreement is unenforceable because its language is vague and conflicting, the restrictive covenants are overbroad, and it is so one-sided as to render it unconscionable. Further, Litke argues that he was not provided with adequate consideration for the protective agreement. He contends that, because the restrictive covenants are invalid, not severable, and unmodifiable, the entire protective agreement is unenforceable.

¶ 43 Preliminarily, defendants argue that Litke forfeited his attacks on the protective agreement, as his argument before the trial court concerned only assent, *i.e.*, he argued that defendants could not prove that he read, understood, and agreed to the protective agreement and, thus, he was not bound by it and, instead, the employment agreement controlled. Now, defendants note, Litke assumes that he signed the protective agreement, but recasts the case as one concerning the

protective agreement's purported overbreadth, unconscionability, consideration, and capacity for judicial modification.

¶ 44 We agree that Litke's specific arguments on appeal differ from those he emphasized below. Nevertheless, we decline to find them forfeited. In their cross-motions for injunctive relief, the parties asked the court to address the enforceability of the agreements and, in particular, Litke's contention that the protective agreement was unenforceable against him. Those broader questions encompass the more specific arguments that Litke raises now, even if they were not the focus of the hearing or the court's analysis.

¶ 45 1. Conflicting Language and Unconscionability

¶ 46 Litke argues that the protective agreement's integration clause is confusing and conflicting, thus, preventing it from superseding the employment agreement. He points to section 7(g)(ii) in the protective agreement, which states that the agreement is "in addition to, and does not supplant, supersede, modify, or limit in any manner, any other protective, confidentiality, non-disclosure, non-competition, non-solicitation, *** or other similar obligations imposed on [Litke]." Litke argues that his employment agreement contained a two-year non-solicitation provision that would have been triggered only if his termination had been for cause, whereas the protective agreement's two-year non-solicitation provision covers separations of employment even without cause. The language "in addition to" other similar obligations also contradicts the following language that it does not modify prior obligations, as the non-solicitation clause in the protective agreement changed his obligations by subjecting him to restrictive covenants even if terminated without cause. "[T]he protective agreement cannot be an addition that 'does not supplant, supersede, modify, or limit' the employment agreement because an addition, by its very nature, is a modification." Thus, he contends, despite its own language, the protective agreement modified

his obligations under the employment agreement, and its “more restrictive” non-solicitation provision is unenforceable against him.

¶ 47 Defendants disagree, asserting that the trial court properly recognized that the employment agreement and protective agreement operated alongside one another, with the protective agreement simply imposing separate, cumulative obligations while leaving existing obligations under the employment agreement in place. As such, when Litke was terminated without cause, his restrictions under the employment agreement ended; however, the protective agreement imposed separate post-employment obligations. Defendants argue this construction properly gives effect to both agreements and supports the trial court’s finding that Litke did not establish a fair question on the likelihood of success.

¶ 48 We agree with defendants. Litke presents no persuasive authority for the proposition that, even if it contains confusing language, the executed protective agreement is invalid and could not co-exist for a period that overlapped Litke’s employment agreement. That the protective agreement claimed to be “in addition” to other obligations, while also not modifying existing obligations, did not render it unenforceable here, particularly as the court found the employment agreement had expired such that the parties’ obligations thereunder had ended at the time of Litke’s termination. The issue is therefore whether the protective agreement’s terms were triggered upon Litke’s termination of employment. We do not find convincing Litke’s argument that because the protective agreement’s terms possibly conflicted for a period with the employment agreement’s now-expired terms, the protective agreement is invalid and unenforceable. In fact, the challenged section also provided that “in the event of any conflict between this Agreement and any such other similar obligations imposed on me, the conflict shall be resolved such that the provision (or portion thereof) most beneficial to the Company Group shall control,” which would serve to resolve any

confusion or conflict between the agreement's obligations. Further, Litke cites a case that states, "[m]odification of a contract normally occurs when the parties agree to alter a contractual provision or to include additional obligations, while leaving intact the overall nature and obligations of the original agreement." *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 468 (2004). Here, Litke concedes that he signed the protective agreement and, therefore, to the extent that he views that agreement as containing conflicting terms with or modifying the employment agreement, he agreed to those terms and modification.

¶ 49 We acknowledge that Litke also contends that the protective agreement's conflict provision is substantively unconscionable where it states, in section 7(g)(ii), that, in the event of any conflict between the protective agreement and "any other such similar obligations" imposed upon him, "the conflict shall be resolved such that the provision (or portion thereof) most beneficial to the Company Group shall control[.]" He argues that the provision permits Baldwin to unilaterally modify the protective agreement without consent or consideration, as Baldwin could create new obligations and then use section 7(g)(ii) to simply resolve any conflicts in its own favor. He notes that section 7(g)(ii) encompasses not only existing obligations under the agreement, but also similar obligations imposed by company policy, which Baldwin could unilaterally change with no input or agreement from him. If that change conflicted with the terms of the protective agreement, the change, assuming it was most beneficial to the company, would control. Litke contends that, because the agreement's vague language permits unilateral modification and one-sided interpretation, it creates an imbalance that unfairly suppresses and oppresses innocent parties and, thus, it is substantively unconscionable and unenforceable.

¶ 50 Defendants respond that Litke is simply asking this court to relieve a competent contracting party from an enforceable agreement that he now views as unfavorable, which Illinois law forbids.

They explain that a contract is not unconscionable simply because it may appear unfair; rather, unconscionability is a demanding standard, and the protective agreement here is not unconscionable. That the agreement provides that any conflicts between similar contractual obligations be resolved in its favor addresses only how existing obligations are to be harmonized if more than one agreement applies to the same subject. Moreover, defendants argue that the protective agreement's plain language forecloses Litke's theory that Baldwin may unilaterally modify his contractual obligations, as the agreement provides that it "may not be amended except by written agreement signed by [Litke] and [Baldwin]." Therefore, defendants assert, Baldwin cannot amend the protective agreement or impose upon Litke any changed or additional obligations without Litke's written consent and cannot function as the unilateral modification clause Litke imagines.

¶ 51 In addition, defendants argue, Litke cannot claim unfair surprise or oppression, as the record reflects that it announced the recertification process on March 22, 2023, launched it on March 24, 2023, and gave employees until April 14, 2023, to complete it. Defendants note that Litke is not an unsophisticated party; rather, he is an experienced broker who owned and sold an insurance agency, negotiated the buyout and employment agreement with counsel, and later became one of Baldwin's top commissions producers. They explain that the covenants are limited to 24 months and to "customers, prospects, and certain personnel tied to Litke's work or confidential information, while preserving his ability to work generally in the insurance or benefits-services industries outside of those relationships." Defendants conclude that Litke cannot characterize the agreement as so one-sided that no reasonable person would accept such an arrangement, as every single Baldwin employee did so, and, further, that an agreement is not unconscionable simply because it is, at most, employer friendly.

¶ 52 A contract provision will not be enforced if it is unconscionable. *Williams v. Jo-Carroll Energy, Inc.*, 382 Ill. App. 3d 781, 784 (2008). Unconscionability may be either procedural, substantive, or both. *Id.* Here, Litke alleges substantive unconscionability, which concerns the agreement’s terms and the relative fairness of the obligations assumed. *Bain v. Airoom, LLC*, 2022 IL App (1st) 211001, ¶ 25. A contract will be found substantively unconscionable where its “terms are so one-sided that they oppress or unfairly surprise an innocent party,” when there is “an overall imbalance in the obligations and rights imposed by the bargain,” or when a “significant cost-price disparity” exists. *Turner v. Concord Nursing & Rehabilitation Center, LLC*, 2023 IL App (1st) 221721, ¶ 20. “Substantive unconscionability refers to those terms which are inordinately one-sided in one party’s favor.” *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 100 (2006). “A contract is not unconscionable merely because it appears to be unfair. The contract must be totally one-sided or oppressive, one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept on the other.” (Internal citations omitted.) *In re Marriage of Lee*, 135 Ill. App. 3d 509, 514 (1985).

¶ 53 We reject Litke’s arguments that the protective agreement is substantively unconscionable. As defendants note, the protective agreement expressly provides that it may not be modified or amended except by written agreement by both parties. Although section 7(g)(ii)’s language references conflict between the agreement and “similar obligations,” with examples of similar obligations including law, contract, or company policy, the provision addresses *interpretation* of the conflicting provisions, while expressly separating and prohibiting amendment of provisions or obligations without written agreement. Thus, we disagree with Litke that the agreement’s language, allowing conflict resolutions in Baldwin’s favor, equates to unilateral modification and one-sided interpretation. Moreover, and as noted above, an imbalanced contract is not necessarily

unconscionable; a party may enter into an unfair agreement. See, *e.g.*, *Lee*, 135 Ill. App. 3d at 514. Rather, an agreement is unconscionable only where it is so one-sided that it oppresses or unfairly surprises an innocent party or there is significant disparity in the balance of obligations or bargaining power between parties. See, *e.g.*, *Turner*, 2023 IL App (1st) 221721, ¶ 20.

¶ 54 Here, the court found, and the evidence supports, that Litke is a sophisticated businessman. He has owned, managed, and/or sold multiple businesses, has decades of experience in the insurance industry, and has previously entered into employment-related agreements with the advice of his counsel. Indeed, Litke does not even expressly allege that he is a surprised and innocent party, and he concedes, for purposes of this appeal, that he signed the protective agreement. That agreement was circulated for several weeks and advised him to consult counsel before signing. The court reasonably found that Litke likely did not read the entire agreement before signing, as the computer-generated report reflected that he signed it mere seconds after opening it, but that, of course, does not render unenforceable or unconscionable the agreement's terms. Rather, "an unconscionability analysis asks whether the agreement, by its formation or by its terms, is so unfair that the court cannot enforce it consistent with the interests of justice," and not every imbalanced or unfair contract is substantively unconscionable. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 60, 75 (2011). Finally, two cases that Litke cites for the proposition that a contract that unfairly surprises a party may be substantively unconscionable both involved contract terms that were literally not available or provided to one of the contracting parties at the time the contract was executed. See *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 104-05 (2006); *Frank's Maintenance & Engineering, Inc. v. C.A. Roberts Co.*, 86 Ill. App. 3d 980, 991-92 (1980). There are no similarities here; the terms were in the agreement at the time Litke signed it. He cannot claim they were unavailable, and his claims that they constitute unfair surprise and

oppress him are unavailing. See *Phoenix Insurance*, 242 Ill. 2d at 75 (imbalanced terms not so inordinately one-sided that the agreement could not be enforced, particularly where the terms were not hidden or an unfair surprise).

¶ 55

2. Overbroad Language

¶ 56 Litke also argues that the restrictive covenants are overbroad, and that the trial court incorrectly found the restrictions are limited to “only those customers that Litke directly contacted, assisted or supervised another that had business contact with,” as that finding directly contradicts the plain language of the agreement. Litke asserts that the agreement actually prohibits him from conducting business even with customers with whom he never had direct or significant contact and further restricts him from offering services that were not of the type he offered while employed by defendants. Specifically, Litke notes the agreement:

- restricts him from providing business “of the type being offered or provided by, or which is competitive to, the business or services being offered by the Company Group” to “any Restricted Customer or Prospective Restricted Customer”;
- does not allow him to “solicit or encourage any Restricted Customer *** or Prospective Restricted Customer” to “commence a similar business relationship with any other individual or business entity” for 24 months after the termination of his employment;
- defines “Restricted Customer” as any person or entity that “is or was a client, customer or account of the Company Group *** with whom [Litke] had direct or Indirect business contact, directly or Indirectly assisted in the service of, or with respect to any such relationship, business contact or assistance, had direct or indirect supervisory authority”;
- defines “Prospective Restricted Customer” as any person or entity to whom the “Company Group made or submitted a presentation or proposal of any kind about which [Litke] had

knowledge because of access to Confidential Information or in which [he] directly or Indirectly participated in or assisted”; and

- defines “Indirect” to mean “through other individuals or entities, including but not limited to, assisting and/or supervising any other individual or business entity (or such business entities’ employees) in the sale or solicitation of products or services.”

¶ 57 Litke argues that the above provisions collectively reflect that the court incorrectly interpreted the protective agreement as restricting him only from soliciting customers that he directly serviced. He argues that the non-solicitation provision extends to customers and potential customers with whom he did not have direct contact and, therefore, is overbroad and unenforceable. Indeed, Litke contends, the definitions encompass customers of which he was not aware he was indirectly assisting or servicing.

¶ 58 Litke also disagrees with the court’s decision that the protective agreement’s temporal and geographic scope are not overbroad “because its findings were based solely on a nonexistent limitation of the sale of condominium insurance to customers Litke had direct contact with, whereas the agreement’s limitations are far broader and restrict him from engaging in “an unknown scope of business.” Namely, it prohibits him from providing, with or without solicitation, “any business or service of the type being offered or provided by, or which is competitive to, the business or service being offered or provided by the Company Group to or on behalf of any Restricted Customer or Prospective Restricted Customer.” He emphasizes that, although his work for Baldwin concerned condominium property and casualty insurance sales, the “nebulous network” of “Company Group” affiliates provides a plethora of other services. Litke argues the protective agreement is overbroad and unenforceable because the agreement’s non-solicitation provision prohibits him from providing any type of competitive service to customers and potential customers

he might not have known he was “indirectly” assisting while employed, and it prevents him from providing any service that competes with the “Company Group” (which is defined to include current *and future* affiliates and subsidiaries or any of their successors or assignees” and is a corporate structure that is “virtually impossible” to ascertain). Further, he asserts it prohibits him from “providing services he never offered at [Baldwin] or to compete with unidentifiable Company Group entities to customers or potential customers he may not have known he ‘indirectly assisted’ or had ‘indirect business contact’ [with] while working for [Baldwin].” Litke contends this court cannot “blue pencil” and reform the agreement because the deficiencies are so extensive and would require a complete reformation of at least five provisions and definitions and, thus, modification would be tantamount to creating a new agreement.

¶ 59 Defendants disagree that Litke’s attacks on the defined terms “Company Group” and “directly or indirectly” convert the protective agreement into an improper, overbroad prohibition on competition. They assert that the trial court correctly interpreted the agreement as not reaching all Baldwin customers, but only those customers that Litke contacted, assisted, or supervised another in contacting during his final 24 months of employment. Defendants disagree that the restrictions are too broad, asserting that they are expressly limited to customers and prospective customers with whom Litke had meaningful contact or access to via confidential information during his last 24 months of employment, which render them enforceable restrictions under Illinois law. They further note that this is not an instance where the term “indirect” is left undefined and potentially ambiguous; rather, the definitions work to make clear that Litke cannot engage in restricted activities “through other individuals or entities,” such as by soliciting or accepting business from a customer who was contacted by another Baldwin employee who was assisting Litke or whom Litke was supervising, which it asserts is a reasonable limitation. Similarly,

although defendants concede that the phrase “Company Group” encompasses a number of entities under the Baldwin umbrella, the restrictions remain limited to restricted customers and prospective restricted customers and, thus, are not triggered merely because a person is a customer within the corporate family. They are triggered only for: (1) customers with whom Litke had business contact, assisted in the servicing of, or for whom he had supervisory authority; or (2) prospects to whom the Company Group made a presentation proposal of “which [Litke] had knowledge because of access to Confidential Information,” or in which he “participated or assisted,” all within the last 24 months of his employment. Defendants assert that the customers at issue are not unknown to Litke.

¶ 60 We disagree that the restrictive covenant provisions are so overbroad as to render them unenforceable. Preliminarily, Litke’s arguments primarily take issue with the possibility that he could breach the agreement on account of “indirect” actions. However, we note that the term “indirect” was also *repeatedly* used (and undefined) in his 2019 employment agreement. The protective agreement, in contrast, defines “indirect” or “indirectly” as “through other individuals or entities, including but not limited to, assisting and/or supervising any other individual or business entity (or such business entity’s employees) in the sale or solicitation of products or services.” Accordingly, when the terms “indirect” or “indirectly” are used in the protective agreement, they require by definition that Litke assist or supervise another in the prohibited conduct, thereby incorporating an element of knowledge. This narrows the scope such that it would not include, as he suggests, unidentifiable customers or entities he did not know he was indirectly assisting.

¶ 61 Moreover, as to his concern about the nebulous Company Group and the many services the group provides, the agreement expressly provides that the post-employment restrictions “do not

prohibit [Litke] from being gainfully employed in the insurance or benefits services industries as a general matter or performing insurance services for potential clients throughout the entire world *except for Restricted Customers and Prospective Restricted Customers.*” (Emphasis added.) Again, those terms are clearly defined and incorporate a knowledge element, as well as a scope of the last 24 months of his employment. Thus, even if the Company Group offers numerous types of services, Litke is prohibited from offering them only to specifically defined classes of customers. Therefore, the agreement’s plain language makes clear the restrictions are not intended to prohibit him from conducting all business, including services that were not of the type he offered while employed by Baldwin, to anyone, but, rather, only competitive services to clients whom he directly assisted; to whom he knew the company had made a proposal or presentation or if he participated in such a proposal; or to whom another individual or entity sold or solicited products or services with his assistance or supervision during the 24 months prior to his termination. The terms are therefore distinguishable from those Litke cites, where provisions were found overbroad because they barred solicitation of persons with whom the employee had no communications or relationships. See, *e.g.*, *League Corp. v. Khan*, 2025 WL 1305281, *5 (N.D. Ill. May 6, 2025) (“courts have held that non-solicitation provisions that cover individuals with whom the former employee never had contact are overbroad”). We agree with the trial court that these provisions, when read collectively, are not so broad as to be rendered unenforceable.

¶ 62

3. Consideration

¶ 63 Finally, Litke contends that the protective agreement lacked sufficient consideration. He asserts that the court incorrectly found that his employment from April 2023 through November 2025 would likely constitute adequate consideration because: (1) the employment agreement’s five-year term already guaranteed his employment through December 2024; and (2) the remaining

year of his employment (December 2024 to December 2025) is insufficient consideration under Illinois law. Moreover, to the extent that the protective agreement provides that, in addition to continued employment, consideration was provided in the form of eligibility for future discretionary compensation, including bonuses or stock grants, and access to confidential information, such promises were illusory because: (1) they provided no benefit to him (*e.g.*, the access to confidential information was to be used for the company's benefit only); or (2) they were discretionary and, thus, illusory. Finally, the agreement lists payments and other benefits as additional consideration for the restrictive covenants, but ties eligibility thereto to continued employment, which renders the consideration illusory (and, he notes, he was denied the 2025 bonus after he was terminated, because it is discretionary). In sum, Litke asserts that the protective agreement is unenforceable because it lacked adequate consideration, as Baldwin was previously obligated to employ him pursuant to the employment agreement, and any compensation paid to him in connection with his employment constituted a preexisting duty and/or was illusory because the payments were made at Baldwin's discretion.

¶ 64 Defendants respond that the consideration is straightforward: after executing the protective agreement in April 2023, Litke remained employed by Baldwin for more than two years, which the court correctly found would likely constitute adequate consideration under section 90/5 of the Illinois Freedom to Work Act (820 ILCS 90/5 (West 2022)).¹ They argue that Litke has not

¹Defining "adequate consideration" as meaning:

"(1) the employee worked for the employer for at least 2 years after the employee signed an agreement containing a covenant not to compete or a covenant not to solicit or (2) the employer otherwise provided consideration adequate to support an agreement to not compete or to not solicit, which consideration can consist of a period of employment plus additional professional or financial

presented any reason to overturn that finding. Defendants note that the employment agreement did not impose upon it an “absolute, condition-free promise of five years of employment regardless of performance, conduct, compliance or other contractual conditions.” While the agreement had a five-year term, Litke’s continued employment remained subject to contractual conditions, and Baldwin could have terminated him at any point during that period with or without cause. Thus, defendants contend, Litke’s continued employment after signing the protective agreement was not merely the performance of an unconditional preexisting duty. Moreover, even setting aside the continued employment, defendants note that Litke received: (1) non-illusory consideration, including two bonuses (2023 and 2024) that were expressly conditioned, under the terms of Baldwin’s annual performance bonus plan, *upon Litke’s execution of the protective agreement*; and (2) access to confidential information and business relationships which, they note, possessed real, non-abstract value, as they were the very business assets that the agreement was designed to protect, that allowed Litke to build customer relationships, and which he used to rapidly compete for the same customer base after his employment ended.

¶ 65 We reject Litke’s argument that the protective agreement lacked adequate consideration. As previously noted, the protective agreement acknowledged that, in exchange for his signature, Litke received consideration in the forms of: (1) continued employment; (2) certain payments and other benefits; (3) eligibility for all future discretionary compensation, including any and all bonuses or grants of restricted stock; (4) the disclosure of, and access to, the company’s confidential information, business relationships, and “its goodwill therein”; (5) the specialized training the company would provide; and (6) “the mutual covenants contained herein and other

benefits or merely professional or financial benefits adequate by themselves.” 820 ILCS 90/5 (West 2022).

good and valuable consideration, the receipt and adequacy of such consideration and the importance of protecting the Company Group's proprietary and confidentiality interests being hereby acknowledged and accepted." This consideration was not illusory. In particular, we agree with defendants that, under Illinois law, two years of continued employment suffices as consideration for a non-compete agreement (see *id.*), and, here, Litke remained employed by Baldwin for more than two years after he signed the protective agreement (April 7, 2023, to December 1, 2025). We also agree that the employment agreement's five-year term did not render his employment assured, such that one year of his post-protective-agreement employment was already guaranteed. Although Litke argues that defendants' contention that Baldwin was not contractually bound to employ Litke under the employment agreement should be rejected out of hand, because it is undisputed that the employment agreement was in effect until December 1, 2024, he ignores that the employment agreement's anticipated five-year term still expressly anticipated the possibility of his termination during that term, either with or without cause (as defined). Indeed, in the "termination" section, the employment agreement stated that the employment term could end "immediately" upon termination for cause, and the agreement's non-competition provision contemplated termination without cause. Thus, we conclude that Litke's continued employment for a two-year period after signing the protective agreement sufficed as adequate consideration.

¶ 66 Nevertheless, we also note that, upon completing the required recertification process and signing the protective agreement, Litke received access to valuable confidential information. Litke claims that, because the referenced confidential information may be used only for the benefit of the Company and not for personal use, its value as consideration is illusory. Yet, as defendants note, Litke's access to that confidential information, including client information, allowed him to

“thrive” and successfully serve clients to a degree from which he personally benefitted in the form of bonuses. And, apparently, Litke also assigned value to the information and relationships gleaned therefrom, as some of those form the basis of his actions to build business post-termination. Further, the agreement provided that eligibility for certain payments and bonuses was conditioned upon, and was consideration for, his execution of the protective agreement. In sum, Litke has not demonstrated that the protective agreement is unenforceable because it lacked adequate consideration.

¶ 67 B. Renewal of Employment Agreement Did Not Supersede the Protective Agreement

¶ 68 Next, Litke argues that the 2023 protective agreement is unenforceable because, in 2024, it was superseded by the parties’ renewal of his 2019 employment agreement. Specifically, Litke contends that, at the time of his termination, his employment was governed by the 2024 “renewed” employment agreement, as evidenced by the parties’ mutual agreement to his continued employment beyond the fixed term of his 2019 employment contract. While acknowledging that the temporal term of his continued employment likely converted to an at-will term, Litke asserts that all other terms of his post-December 2024 employment were those contained in the initial employment agreement and that no additional writing to that effect was required because the employment agreement allowed for renewal by mutual agreement. One of those terms, Litke notes, was the “entire agreement” provision, which reflected that the employment agreement constituted the entire agreement between the parties “with respect to its subject matter and supersedes all other agreements, whether oral or written, between the parties with respect to its subject matter.” Accordingly, Litke concludes, since the 2024 renewed employment agreement contains the “entire agreement” clause, it superseded the 2023 protective agreement. As such, only

the employment agreement's provisions regarding restrictive covenants were enforceable and he is not subject to the protective agreement.

¶ 69 Defendants respond that the protective agreement expressly provides that it “may not be amended except by a written agreement signed by [Litke] and the Company Group” and that “[t]hese words mean what they say.” Defendants dispute Litke’s notion that a prior agreement that is extended solely through conduct could amend the protective agreement out of existence. Further, defendants argue that Litke offers no support for the proposition that the renewed employment agreement was a “new” agreement or contract, as opposed to a continuation of the agreement entered into in 2019; rather, defendants assert, caselaw reflects that employment past an initial term will be considered work under the original contract, thus, not supporting Litke’s implication that a new agreement was formed.

¶ 70 We agree with defendants. As Litke notes, modification of the protective agreement is a separate concept from contract supersession. However, the protective agreement provides that it may not be amended or modified absent written agreement signed by both parties. There is no written agreement here. Thus, the “renewed” employment agreement (again, which was not a new written document signed by anyone), could not modify the protective agreement’s terms; it merely extended the employment agreement. As such, the protective agreement’s terms suggest that, without more, neither amendment nor supersession could be achieved by Litke’s continued employment.

¶ 71 Further, the court properly found that the 2019 employment agreement’s integration clause served to bar only prior or contemporaneous agreements; thus, *extending* that provision with its accompanying limitations would not serve to suddenly allow the clause to bar subsequent agreements. As such, Litke seeks to transform an employment agreement that could be extended

by mutual agreement into a “new” agreement, such that a “new” integration clause was created which would then bar any preceding agreements concerning the same subject matter and invalidate the 2023 protective agreement. He explains that when an agreement contains a “clear integration clause,” as was contained in the “2024 Renewed Employment Agreement,” courts must accept it at face value as an expression of the parties’ will. See *Midwest Builder Distributing, Inc. v. Lord and Essex, Inc.*, 383 Ill. App. 3d 645, 662 (2007). However, we disagree that there is a “clear integration clause” in a “2024 Renewed Employment Agreement” that unequivocally expressed the parties’ will to supersede the 2023 protective agreement. Indeed, Litke cites several cases for the proposition that continued employment beyond a fixed term is considered a renewal, equivalent to a new contract, upon the same terms. See, e.g., *Ignalls v. Allen*, 132 Ill. 170, 173-74 (1890); *Foster v. Springfield Clinic*, 88 Ill. App. 3d 459, 463 (1980); *H.B.G. Corp. v. Houbolt*, 51 Ill. App. 3d 955, 962 (1977); *Chambers v. John T. Shayne & Co.*, 32 Ill. App. 2d 16, 25 (1961); *Fish v. Marzluff*, 128 Ill. App. 549, 551 (1906); *Moline Plow Co. v. Booth*, 17 Ill. App. 574, 576 (1885). However, even if no writing was required to renew the employment agreement’s terms generally, we disagree that the extension or renewal revived the “entire-agreement” term such that where it previously barred only those agreements pre-2019, it now served to retroactively bar any agreements pre-2024, including the protective agreement.

¶ 72 Litke asserts that even if the 2024 “renewed” employment agreement did not contain the entire-agreement clause, it covered the same subject matter as the protective agreement, the conduct of the parties demonstrates that they intended for the renewed agreement to control, there is no dispute that the employment agreement was renewed, and defendants waived the written modification provision of the protective agreement by their admissions and conduct. On this limited record, we disagree that the evidence supports these assertions. Although Litke cites *E.A.*

Cox Co. v. Road Savers International Corp., 271 Ill. App. 3d 144, 152 (1995), for the proposition that when “reasonable men could reach only one conclusion,” the issue of written modification may be decided as a matter of law, the court in that case actually reversed summary judgment because of a fact question on an alleged modification. It also reiterated that, generally, “extrinsic evidence is admissible to show a subsequent oral agreement which modifies the terms of a written contract or to show that a provision of a written contract has been waived,” and “when extrinsic evidence is introduced to establish a subsequent modification of a written contract or to establish that a provision of a written contract has been waived, the question of the final agreement of the parties is usually one of fact for the jury.” *Id.* Here, there is no dispute that Litke’s employment continued past the term of the 2019 employment agreement, but we disagree with Litke that this reflects “clear and convincing” evidence of intent to waive the protective agreement’s prohibition on modifications *and* to alter his post-employment restrictions that the protective agreement imposed. Litke’s cited portions of the record reflect at most that his employment continued and that the parties presumed by his continued work that the employment agreement was renewed; he does not cite any evidence or testimony speaking to the parties’ alleged intent to supersede the protective agreement by his simple continuation of employment.

¶ 73 In sum, the trial court did not err in denying Litke’s request for a declaration or preliminary injunction on the basis that he is not subject to the protective agreement and, thus, he had not raised a fair question as to his likelihood of success on the merits.

¶ 74 C. Irreparable Injury

¶ 75 As previously noted, Litke’s failure to establish any one of the requirements for an injunction is sufficient to justify denial of the requested relief. *Maday*, 2018 IL App (1st) 180294,

¶ 40. We uphold the court’s determination that Litke failed to establish a likelihood of success on the merits and, thus, our analysis could end here.

¶ 76 We nevertheless address Litke’s final argument that, where it found he did not demonstrate irreparable injury, the court overlooked the parties’ stipulation to damages and harm. Litke notes that the parties stipulated that the purpose of the hearing was for the court to determine the applicability and enforceability of the employment and protective agreements, and he asserts that they agreed that, if Litke was not bound by either agreement, defendants would furnish his requested relief by providing loss runs within 7 days and insurance policies within 30 days. Litke notes that they limited the evidence at the hearing accordingly, and he contends that the stipulation was included in his proposed judgment on the preliminary-injunction motions but was overlooked by the court. He concludes that, although the court found that he did not raise a fair question that, without an injunction, he will suffer irreparable harm, it incorrectly did so based on its determination that harm was speculative when, in fact, the parties stipulated to harm. Litke asserts that he needs the loss runs and insurance policies to operate his business and notes his testimony that defendants’ actions caused him to lose job opportunities and that they were aggressively attempting to prevent him from operating (including through litigation defendants had filed against him in Florida). Litke, citing *McRand, Inc. v. van Beelen*, 138 Ill. App. 3d 1045, 1054 (1985), argues that, once he establishes a protectible interest, irreparable harm is presumed.

¶ 77 In response, defendants argue that Litke forfeited any argument regarding irreparable injury because he did not raise it in his closing argument and brief before the trial court, and he does not develop any argument that he will suffer irreparable harm without an injunction. Defendants call a “blatant mischaracterization” Litke’s position that the parties stipulated to damages and harm. Rather, they assert they merely agreed to Litke’s proposed *remedy*, *i.e.*, that, if the court granted

Litke's request for injunctive relief, they would provide copies of loss runs within 7 days of a request and insurance policies within 30 days of a request. Defendants assert that an agreement to a remedy is a far cry from stipulating to damages and harm. In any event, defendants argue that Litke has not identified what purported irreparable injury he will suffer if his request for injunctive relief is denied, and, further, that Litke conflates damages and irreparable injury. They note there was no evidence of its purported failure to provide loss runs or policies with certain time frames, and "Litke's ability to poach 96 Baldwin clients makes clear that Litke is not the party who has been harmed here."

¶ 78 We agree with the court that Litke has not established that he will suffer irreparable injury *absent an injunction*. Indeed, he focuses on timing for loss runs and insurance policies but does not elaborate upon how defendants' purported failure to provide that information in a timely manner will, absent an injunction, harm him irreparably and in a manner beyond money damages. While *McRand* involved a non-competition agreement, we find it distinguishable. There, the court determined that, once the plaintiff-employer had established a protectible interest in its near-permanent customer relationships, it was presumed to have established irreparable injury absent protection, where the evidence demonstrated that the defendant-employee, while working, set up a competing corporation and, later, solicited the plaintiff's customers. *McRand*, 138 Ill. App. 3d at 1054. Here, in contrast, although the trial court determined that Litke had established a protectible interest in employment as an insurance broker, it found that he had not demonstrated that he had been unable to proceed with that work, as he had set up a competing brokerage firm and obtained business from approximately 96 of the clients he formerly serviced at Baldwin. The court also found that Litke had not established that Baldwin was interfering with his customers. Thus, while there may be a presumption that an established interest will suffer irreparable injury

if not protected, we do not agree that plaintiff established a fair question here that his interest has been threatened.

¶ 79 We emphasize that, although we were called upon here to review the agreements' terms, we are *not* resolving the merits of the underlying litigation. See *Giannone*, 108 Ill. 2d at 386 (“[t]he purpose of a preliminary injunction is *not* to determine controverted rights or to decide controverted facts or the merits of the case”) (emphasis added); see also *Maday*, 2018 IL App (1st) 180294, ¶ 64 (“[i]n an interlocutory appeal from the denial of a preliminary injunction motion, we are limited to a determination of the propriety of the court’s denial of the relief requested. *** We make no findings or suggestions as to the merits of the issues in the underlying case, as those have yet to be determined in the trial court proceedings”). Rather, our review is to ascertain whether the court properly determined that Litke failed to establish the need for the “extraordinary” remedy of a *preliminary injunction*, which is an extreme remedy that should not be undertaken unless an emergency exists and serious harm would result if the injunction were not issued. See *id.* (a preliminary injunction “is an extraordinary remedy, the use of which is applicable only to situations where an extreme emergency exists and serious harm would result in the absence of the injunction”). The court found that Litke is apparently working and has obtained clients; it is unclear that, if the protective agreement is enforced until the case can be resolved on the merits, he will suffer irreparable injury. In sum, we agree with the court that Litke did not raise a fair question at this stage that, absent a preliminary injunction, his injury will be irreparable.

¶ 80

III. CONCLUSION

¶ 81 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 82 Affirmed.