

NOTICE

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2015 IL App (4th) 150528-U

NO. 4-15-0528

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 3, 2015
Carla Bender
4th District Appellate
Court, IL

FIDUCIAL BUSINESS CENTERS, INC., d/b/a)	Appeal from
FEDERATED FUNERAL DIRECTORS OF)	Circuit Court of
AMERICA, a Delaware Corporation, and FABRICE)	Sangamon County
MORIAUX,)	No. 15CH136
Petitioners-Appellees,)	
v.)	Honorable
DANIEL SCHAFER,)	Peter C. Cavanagh,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Where the trial court found the initial TRO was appropriately granted but modified the initial order to narrow its scope and set forth more precise detail regarding the conduct sought to be restrained, respondent was not entitled to reversal on the basis that the initial TRO was imprecise and overbroad and failed to comply with the statutory requirements for TROs.

(2) A TRO was not properly entered based on petitioners' claims, alleging defamation, commercial disparagement, or a violation of the Uniform Deceptive Trade Practices Act (815 ILCS 510/2(8) (West 2014)).

(3) Respondent failed to demonstrate the trial court abused its discretion by granting petitioners a TRO based on their breach of contract claim.

¶ 2 Petitioners, Fiducial Business Centers, Inc. (Fiducial), doing business as Federated Funeral Directors of America (Federated), a Delaware Corporation, and Fabrice Moriaux, filed a complaint for injunctive relief against respondent, Daniel Schafer, a former Federated

employee, alleging respondent had "undertaken a willful and continuing pattern of harassment, defamation, commercial disparagement[,] and unauthorized disclosure of confidential information related to Federated's operations." At petitioners' request, the trial court entered a temporary restraining order (TRO), prohibiting respondent from communicating with petitioners' employees, clients, and corporate affiliates; disclosing information related to petitioners' business; and attending a specific event that was to be held by petitioners. Respondent filed a motion to dissolve the TRO. The court denied respondent's motion to dissolve but entered an order modifying the scope of the previous order. Respondent appeals, arguing the court erred by (1) refusing to dissolve the original TRO and (2) issuing a modified TRO. We affirm the court's decision as modified by this order.

¶ 3

I. BACKGROUND

¶ 4

Fiducial is a corporation with its principal place of business in Columbia, Maryland. In October 2011, it purchased Federated, which became a division of Fiducial. Federated maintains its corporate headquarters in Springfield, Illinois, and provides accounting, tax, and business consulting services to "those specializing in the funeral business." Moriaux is Fiducial's Midwest district manager and based in Federated's Springfield headquarters. Respondent worked for Federated for 35 years, until July 15, 2014, when he was terminated from his employment. The final position respondent held with Federated was manager of accounting services.

¶ 5

In October 2011, the same month Fiducial acquired Federated, Fiducial and respondent entered into an employment agreement. The parties' agreement contained the following provision:

"(a) Non-Disclosure Obligation. The Employee acknowledges that while employed by the Employer, the Employee will occupy a position of trust and confidence. The Employee shall not at any time disclose, cause to be disclosed, or use, whether directly or indirectly, for his/her benefit or for the benefit of any other person or entity, any Confidential Information. 'Confidential Information' means all 'Developments' as described below and all information about the Company or any of its clients, suppliers, licensees, vendors, contractors or partners that was revealed to or learned by the Employee in the course of employment, including any proprietary knowledge, trade secrets, data, methodologies, client information (including, without limitation, client lists, names of internal personnel, technical or accounting needs, accounting outsourcing practices or needs or purchasing patterns, services the client purchases externally, technical modalities and equipment, software ownership and service maintenance requirements, usage patterns of accounting or business services or intended purchases of the same), pricing, quotations, budgets, proposals, existing or contemplated services or products, prospects lists, designs, software implementation methodologies, passwords, instructional materials and training methodologies, employee lists, compensation arrangements, personnel data and employment terms and all research, financial,

marketing and operational plans, proposals and strategies, or any documents or other materials whatsoever containing such Confidential Information. 'Company' means the Employer and any and all of its current or future affiliated or acquired entities, effective as of the date of affiliation or acquisition, should employment continue thereafter."

¶ 6 On March 23, 2015, petitioners filed a six-count verified complaint for injunctive relief, alleging that, following his termination from employment, respondent undertook "a willful and continuing pattern of harassment, defamation, commercial disparagement[,] and unauthorized disclosure of confidential information related to Federated's operations." Petitioners alleged respondent sent e-mail communications to various Federated employees, which they characterized as harassing, derogatory, disparaging, and defamatory, and made an improper posting on an online corporate recruiting site. Petitioners specifically alleged respondent (1) made false and misleading statements concerning Moriaux that impugned his integrity with respect to his business and profession and constituted defamation *per se* (count I), (2) made false and misleading statements concerning Federated that impugned its integrity with respect to its business and constituted defamation *per se* (count II), (3) made false and misleading communications that disparaged the quality of Federated's services and constituted actionable commercial disparagement (count III), (4) made false and misleading communications that disparaged the quality of Moriaux's services and constituted actionable commercial disparagement (count IV), (5) willfully violated the Uniform Deceptive Trade Practices Act (Deceptive Trade Practices Act) (815 ILCS 510/2(8) (West 2014)) by disparaging Federated's business practices through false and

misleading communications to Federated's employees (count V), and (6) breached his employment agreement by improperly disclosing confidential business information regarding Federated's management strategies, production levels, and recruiting practices (count VI).

¶ 7 Petitioners asked the trial court to enter judgment in their favor "temporarily and permanently enjoining" respondent from engaging in any of the complained-of conduct. In connection with their counts alleging a violation of the Deceptive Trade Practices Act and breach of respondent's employment agreement, petitioners also asked that they be awarded costs and attorney fees.

¶ 8 The same day petitioners filed their complaint, the trial court granted their request for a TRO pursuant to section 11-101 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/11-101 (West 2014)). The court found petitioners had shown (1) clearly ascertainable rights in need of protection, "namely [petitioners'] business reputation and enforcement of the terms of [respondent's] Employment Agreement"; (2) a fair question existed that they would succeed on the merits because their verified complaint alleged facts which established a *prima facie* case for the claims set forth therein; (3) they would suffer irreparable harm if an injunction did not issue; and (4) they had no adequate remedy at law or in equity. The court then ordered as follows:

"1. [Respondent] is temporarily restrained from any and all communication with the employees and clients of [petitioners] and their Corporate Affiliates and shall immediately cease disclosure of information relating, in any manner, to the Company's business, including, but not limited to, internal production levels, corporate structure, staff retention, and recruiting matters. [Petitioners']

'Corporate Affiliates' shall include the following:

- a. Fiducial, Inc.;
- b. Fiducial Support Systems, Inc.;
- c. Fiducial Recruiting Services, Inc.;
- d. Fiducial Expats, Inc.;
- e. Fiducial Business Services, Inc.;
- f. Fiducial Paymaster, Inc.; and
- g. Fiducial Properties, Inc.

2. [Respondent] shall not attend [petitioners'] event at the Springfield Hilton Hotel on May 27-28, 2015."

Finally, the court ordered that the TRO would "remain in full force and effect pending further [o]rder of" the court.

¶ 9 On May 29, 2015, respondent filed a motion to dissolve the TRO. He argued the TRO (1) was overly broad and imprecise in violation of section 11-101 of the Civil Code, (2) amounted to an unconstitutional prior restraint on speech, and (3) was unwarranted because each count of petitioners' complaint failed to state a cause of action. On June 24, 2015, the trial court conducted a hearing in the matter. A docket entry reflects the court denied respondent's motion to dissolve but directed petitioners "to prepare an order to modify."

¶ 10 On June 26, 2015, the trial court entered a modified TRO, wherein it stated it denied respondent's motion to dissolve. Although the court "affirm[ed] entry of the March 23, 2015," TRO, it modified "the scope of such [o]rder." It found petitioners had shown (1) clearly ascertainable rights in need of protection, "namely [petitioners'] recognized property right to op-

erate their business free from false or misleading disparagement by [respondent] and enforcement of the terms of [respondent's] Employment Agreement"; (2) a fair question existed that petitioners would succeed on the merits of their case because their complaint alleged facts which established a *prima facie* case for their claims; (3) they would suffer irreparable harm if an injunction did not issue because of respondent's repeated and continuing commercial disparagement and disclosure of information in violation of his employment agreement; and (4) they had no adequate remedy at law or in equity.

¶ 11 In reaching its decision, the trial court detailed the specific communications from respondent which it found constituted "commercial disparagement and disclosure of information in violation of [the] Employment Agreement." It also found "the allegations of the Verified Complaint establish[ed] a private harm and [did] not pertain to informational speech involving matters of public concern." The court ordered as follows:

- "1. [Respondent] is enjoined from making any false or misleading Statements which disparage the quality of [petitioners'] goods, services or ability to perform the duties of their employment. The term 'Statements' shall mean and refer to any oral or written communications of any kind or nature whether physical, paper, electronic, digital or any other medium;
2. [Respondent] shall refrain from disclosure of information about the Company or any of its clients, suppliers, licensees, vendors, contractors, including any proprietary knowledge, trade secrets, data, methodologies, client information (including, without limita-

tion, client lists, names of internal personnel, technical or accounting needs, accounting outsourcing practices or needs or purchasing patterns, services the client purchases externally, technical modalities and equipment, software ownership and service maintenance requirements, usage patterns of accounting or business services or intended purchases of the same), pricing, quotations, budgets, proposals, existing or contemplated services or products, prospects lists, designs, software implementation methodologies, passwords, instructional materials and training methodologies, employee lists, compensation arrangements, personnel data and employment terms and all research, financial marketing and operation plans, proposals and strategies, or any documents or other materials whatsoever containing any of the foregoing information. 'Company' means Fiducial Business Centers, Inc. and any and all of its affiliated or acquired entities, including the following entities:

- a. Fiducial, Inc.;
- b. Fiducial Support Systems, Inc.;
- c. Fiducial Recruiting Services, Inc.;
- d. Fiducial Expats, Inc.;
- e. Fiducial Business Services, Inc.,;
- f. Fiducial Paymaster, Inc.; and
- g. Fiducial Properties, Inc."

The court ordered its TRO would remain in effect until September 10, 2015, when a hearing could be held on petitioners' request for a preliminary injunction.

¶ 12 This interlocutory appeal, filed pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010), followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, respondent argues the trial court erred in denying his motion to dissolve the original TRO and by entering a modified TRO. Specifically, he contends (1) the original TRO entered March 23, 2015, was overly broad and imprecise in violation of section 11-101 of the Civil Code; (2) both the initial and modified TROs amounted to an unconstitutional prior restraint on speech; (3) the TRO is unwarranted because the court had reasonable alternatives available to it short of prior restraint; and (4) neither the initial TRO nor the modified TRO was properly entered because each count of petitioners' complaint failed to state a cause of action.

¶ 15 A TRO " 'is a drastic remedy which may issue only in exceptional circumstances and for a brief duration.' " *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567, 927 N.E.2d 88, 95 (2010) (quoting *American Federation of State, County, & Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 966, 773 N.E.2d 1196, 1198 (2002)). "Its purpose is to allow the trial court to preserve the status quo until it can hold a hearing to determine whether it should grant a preliminary injunction." *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 541, 447 N.E.2d 288, 291 (1983). "To be entitled to temporary injunctive relief, plaintiffs must demonstrate that they (1) possess a protectable right, (2) will suffer irreparable harm without the protection of an injunction, (3) have no adequate remedy at law, and (4) are likely to be successful on the merits of their action." *Bartlow*, 399 Ill. App. 3d at 567, 927 N.E.2d at 95.

¶ 16 "A TRO should not be refused or dissolved merely because the court may not be absolutely certain the plaintiff has the right he claims." *Stocker*, 94 Ill. 2d at 541-42, 447 N.E.2d at 291. Further, "[t]he plaintiff is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the cause can be decided on the merits." *Stocker*, 94 Ill. 2d at 542, 447 N.E.2d at 291. "A trial court's order granting or denying a TRO is reviewed for an abuse of discretion." *Bradford v. Wynstone Property Owners' Ass'n*, 355 Ill. App. 3d 736, 739, 823 N.E.2d 1166, 1169 (2005); see also *Stocker*, 94 Ill. 2d at 541, 447 N.E.2d at 291 ("The granting or denial of a TRO is within the sound discretion of the trial court.").

¶ 17 On appeal, respondent first argues the trial court erred by refusing to dissolve the initial TRO, entered on March 23, 2015. He maintains the original TRO did not conform to statutory requirements, in that it was so imprecisely and broadly drawn that it violated section 11-101 of the Civil Code (735 ILCS 5/11-101 (West 2014)).

¶ 18 Section 11-101 of the Civil Code authorizes the entry of TROs. 735 ILCS 5/11-101 (West 2014). That section provides as follows:

"Every order granting an injunction and every restraining order shall set forth the reasons for its entry; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, employees, and attorneys, and upon those persons in

active concert or participation with them who receive actual notice of the order by personal service or otherwise." 735 ILCS 5/11-101 (West 2014).

¶ 19 Here, respondent challenges the "initial TRO" as failing to conform to statutory requirements. However, the record reflects that, in denying respondent's motion to dissolve the initial TRO, the trial court found a TRO had been appropriately granted under the circumstances of the case and entered a new TRO, which modified "the scope" of the previous order. Notably, respondent does not argue on appeal that the modified TRO failed to meet the requirements of section 11-101. In fact, the modified TRO was much more detailed than the initial TRO and set forth the specific conduct by respondent that would cause harm to petitioners if not restrained. The modified TRO also contained a specific date on which the order would expire.

¶ 20 In *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 274, 880 N.E.2d 188, 199 (2007), this court affirmed the trial court's order granting a preliminary injunction but remanded for the court to make clarifications to its order. Like in this case, the defendants in that case argued the trial court's order ran afoul of section 11-101. *Lifetec*, 377 Ill. App. 3d at 273, 880 N.E.2d at 199. However, we held as follows:

"While it appears the order does not comply with section 11-101 of the [Civil] Code, this does not render the order invalid or require reversal. A simple motion for clarification based on the requirements of section 11-101 would have sufficed to correct the deficiencies in the order; this could have been done prior to appeal." *Lifetec*, 377 Ill. App. 3d at 274, 880 N.E.2d at 199.

¶ 21 Here, the trial court found the initial TRO was appropriately entered but modified the initial order to narrow its scope and more precisely define the conduct subject to restraint. Although respondent only sought to dissolve the initial TRO and did not seek clarification or modification, we nevertheless find the trial court's action—denying respondent's motion to dissolve and entering a modified TRO—was within its authority and it committed no error.

¶ 22 Respondent next argues both the initial TRO and the modified TRO amounted to an unconstitutional prior restraint on speech. "A prior restraint has been defined as a 'predetermined judicial prohibition restraining specified expression.' " *In re A Minor*, 127 Ill. 2d 247, 264, 537 N.E.2d 292, 299 (1989) (quoting *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 248 (7th Cir. 1975)). "[A]ny prior restraint upon speech, while not unconstitutional *per se*, bears a heavy presumption against its validity." *A Minor*, 127 Ill. 2d at 265, 537 N.E.2d at 300.

¶ 23 Initially, we note that, to support his position, respondent relies heavily on the supreme court's decision in *Kemner v. Monsanto Co.*, 112 Ill. 2d 223, 492 N.E.2d 1327 (1986). However, that case dealt with extrajudicial comments about pending litigation (*Kemner*, 112 Ill. 2d at 243, 492 N.E.2d at 1336), a very different factual situation than presented by the case at bar.

¶ 24 More instructive to the present case is *Montgomery Ward & Co. v. United Retail, Wholesale & Department Store Employees of America, C.I.O.*, 400 Ill. 38, 43, 79 N.E.2d 46, 49 (1948), another supreme court case cited by respondent. There, the plaintiff, a retailer, filed a complaint against the defendants, a union, its subordinate local union, and union members, "to enjoin and restrain them *** from issuing, publishing and circulating certain papers, pamphlets and publications, claimed to be defamatory and libelous, and for damages and other relief."

Montgomery Ward, 400 Ill. at 39, 79 N.E.2d at 47. The defendants filed a motion to dismiss the complaint, which was denied, and, ultimately, the trial court issued a permanent injunction "by which the defendants were enjoined from conspiring together to publish, or cause to be published, or to assist or encourage any other organization to publish untrue statements concerning the plaintiff, its officers, or working conditions, for the purpose of causing the plaintiff's employees, or prospective employees, to fear, dislike, or distrust the plaintiff, or its officers, or from causing plaintiff's customers, or its prospective customers, to dislike, or distrust the plaintiff, or its officers." *Montgomery Ward*, 400 Ill. at 39, 79 N.E.2d at 47.

¶ 25 Ultimately, the supreme court held the plaintiff had "failed to bring itself within that class of cases where injunctive relief [was] permissible." *Montgomery Ward*, 400 Ill. at 54, 79 N.E.2d at 54. Initially, the court noted that for the plaintiff to obtain relief it had to "bring itself within the exceptions to two general principles denying injunctive relief from publishing defamatory matters": (1) "that equity does not have jurisdiction to enjoin the commission of crimes and libels" and (2) "that the constitutional guaranty of free speech as a general rule prohibits both the courts and the legislature from putting previous restraints on publications." *Montgomery Ward*, 400 Ill. at 41-42, 79 N.E.2d at 48. The court noted there were recognized exceptions to those general principles but the plaintiff had "the burden of showing facts which bring it within these exceptions." *Montgomery Ward*, 400 Ill. at 42, 79 N.E.2d at 48; see also *CBS, Inc. v. Davis*, 510 U.S. 1315, 1318 (1994) ("Subsequent civil or criminal proceedings, rather than prior restraints, ordinarily are the appropriate sanction for calculated defamation or other misdeeds in the First Amendment context."). It stated as follows:

"There are other exceptions to the general rule, as for in-

stance where defamation is used as coercion in connection with picketing; or is connected with violence or the injuring of property; and injunction is generally limited to those cases where language, or publications, are used in connection with other activities, which actually affect property rights. We are not aware, however, of any case in which it has been held that as against these two general principles an injunction has been granted to prevent defamation, consisting of libel or slander. As we suggested above, it is necessary that the plaintiff in this case bring itself within some exception to the general rule." *Montgomery Ward*, 400 Ill. at 45, 79 N.E.2d at 50.

¶ 26 The supreme court stated "[t]he rule long in force was that in the absence of the showing of a violation of some property right, or some breach of trust or of a contract, an injunction was not available to prevent actual or threatened publications of a defamatory character." *Montgomery Ward*, 400 Ill. at 42, 79 N.E.2d at 48. The court further noted the free speech provision of Illinois Constitution, which provides that "[a]ll persons may speak, write and publish freely, being responsible for the abuse of that liberty" (Ill. Const. 1970, art. I, § 4) and stated as follows:

"This provision is broader than that of the constitution of the United States, which merely prohibited Congress from making any law abridging freedom of speech or of the press. It will be noted that the person may speak, write, or publish, being responsible for an

abuse. We would infer from this language that it refers to punishment by way of damages or criminal penalties. The language does not adjust itself to preventive relief by way of injunction ***."

Montgomery Ward, 400 Ill. at 46, 79 N.E.2d at 50.

¶ 27 With respect to exceptions to the two recited general principles, the supreme court noted cases which dealt with " 'trade libels' " and those which dealt with the doctrine of " 'constructive coercion' " or " 'effect of force words.' " *Montgomery Ward*, 400 Ill. at 48, 79 N.E.2d at 51. The court distinguished defamation from trade libel, noting libel and slander was classified as defamation, which " 'is concerned with interests of personality' " while trade libel was classified as disparagement and concerned " 'with interests in property.' " *Montgomery Ward*, 400 Ill. at 49, 79 N.E.2d at 52 (quoting *Black & Yates, Inc., v. Mahogany Ass'n, Inc.*, 129 F.2d 227, 235 (1941)). Finally, the court found that "[t]he citation of cases involving only trade disputes does not support the proposition that opprobrious or scurrilous epithets concerning an employer, or the supervising officials of the employer, constitute a trade libel, *which in its essence requires some statement of a competitor or business rival*, which will take away business and give it to another." (Emphasis added.) *Montgomery Ward*, 400 Ill. at 51, 79 N.E.2d at 53.

¶ 28 Here, in its modified TRO, the trial court determined petitioners had shown they would "suffer irreparable harm if an injunction [did] not issue because of [respondent's] repeated and continuing commercial disparagement and disclosure of information in violation of his Employment Agreement." "Defamation lies when a person's integrity in his business or profession is attacked while commercial disparagement lies when the quality of his goods or services is attacked." *Allcare, Inc. v. Bork*, 176 Ill. App. 3d 993, 1000, 531 N.E.2d 1033, 1037 (1988). Fur-

ther, "[d]efamation protects interests of personality" while "[c]ommercial disparagement protects property interests." *Allcare*, 176 Ill. App. 3d at 1000, 531 N.E.2d at 1038.

¶ 29 In *Montgomery Ward*, the supreme court acknowledged that trade libels, *i.e.*, disparagement claims concerned with property interests, were a recognized exception to the general principles which would prevent injunctive relief based on defamation claims. However, as noted, such an exception required "in its essence[,] *** some statement of a competitor or business rival, which will take away business and give it to another." *Montgomery Ward*, 400 Ill. at 51, 79 N.E.2d at 53. In this case, respondent is a former employee of Federated and not a competitor or business rival of petitioners. As a result, petitioners' commercial disparagement claims do not fit within the "trade libel" exception set forth in *Montgomery Ward*.

¶ 30 Here, we find petitioners were not entitled to entry of a TRO based upon either their defamation or commercial disparagement claims (counts I through IV). Specifically, petitioners failed to establish with respect to those claims that they had no adequate remedy at law or that a "fair question" existed that they would be likely to succeed on the merits.

¶ 31 We note that in count V of their complaint, petitioners alleged a violation of section 2(8) of the Deceptive Trade Practices Act (815 ILCS 510/2(8) (West 2014)). That section codifies "the common law tort of commercial disparagement, *i.e.*, disparagement of the quality of one's goods or services." *Allcare*, 176 Ill. App. 3d at 999, 531 N.E.2d at 1037; see also *Cincinnati Insurance Co. v. Eastern Atlantic Insurance Co.*, 260 F.3d 742, 745 (2001) (noting "[t]he tort of commercial disparagement is codified in Illinois in [section 2/(8) of the Deceptive Trade Practices Act]"). Further, the Deceptive Trade Practices Act expressly provides for injunctive relief. 815 ILCS 510/3 (West 2014) ("A person likely to be damaged by a deceptive trade prac-

tice of another may be granted injunctive relief upon terms that the court considers reasonable.").

¶ 32 However, section 2(8) provides that "[a] person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person *** disparages the goods, services, or business of another by false or misleading representation of fact." 815 ILCS 510/2(8) (West 2014). Again, here, the record fails to reflect respondent was acting "in the course of his *** business, vocation, or occupation." 815 ILCS 510/2(8) (West 2014). Thus, petitioners failed to establish that a "fair question" existed that they were likely to succeed on the merits of count V of their complaint.

¶ 33 As stated, the trial court also found petitioners entitled to injunctive relief based on their claim that respondent violated his employment agreement. To the extent respondent argues that, pursuant to the principles set forth in *Montgomery Ward*, injunctive relief is improper based on this breach of contract claim, we disagree. *Montgomery Ward*, 400 Ill. at 42, 79 N.E.2d at 48 ("The rule long in force was that in the absence of the showing of a violation of some property right, or some breach of trust or of a contract, an injunction was not available to prevent actual or threatened publications of a defamatory character."); see also *Allcare*, 176 Ill. App. 3d at 1002, 531 N.E.2d at 1038 ("[E]quity may enjoin defamations causing breaches of contract ***.").

¶ 34 Further, we also disagree with respondent's claim that petitioners failed to state a cause of action in their complaint for breach of contract. As discussed, "[t]he plaintiff is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the cause can be decided on the merits." *Stocker*, 94 Ill. 2d at 542, 447

N.E.2d at 291. "To state a cause of action for breach of contract, a plaintiff must allege the existence of a contract, the plaintiff's performance of all contractual obligations required of him or her, the facts constituting the alleged breach, and the existence of damages resulting from the breach." *Segall v. Berkson*, 139 Ill. App. 3d 325, 332, 487 N.E.2d 752, 757 (1985); see also *Mack Industries, Ltd. v. Village of Dolton*, 2015 IL App (1st) 133620, ¶ 29, 30 N.E.3d 518 ("The essential elements of a breach of contract are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) resultant injury to the plaintiff.").

¶ 35 Respondent specifically contends petitioners' complaint failed to state a cause of action for breach of contract because petitioners failed to identify the specific statements by respondent which violated his employment agreement. However, as petitioners argue, their complaint set forth the relevant provisions of the parties' employment agreement regarding the disclosure of confidential information. Specifically, respondent's employment agreement provided he was prohibited, "at any time," from disclosing confidential information related to Fiducial "or any of its clients, suppliers, licensees, vendors, contractors[,] or partners." "Confidential Information" was described as information that was revealed or learned during the course of respondent's employment, including data, methodologies, compensation arrangements, and personnel data. In count VI of their complaint, petitioners asserted respondent "improperly disclosed confidential business information regarding Federated's management strategies, production levels, and recruiting practices" and that the disclosures were made "to numerous Federated employees."

¶ 36 In their complaint, petitioners further provided specific examples of prohibited

disclosures found in respondent's e-mails. The e-mail correspondence was also attached to their complaint. The record reflects, on March 13, 2015, respondent sent an e-mail to several of petitioners' employees asserting: "a record number of CY corporate extensions are expected once again this year ***. CY business close-outs have been seriously falling behind last year's figures, which were down from the prior year. In many cases, the necessary information has been provided by the member, but the accounts haven't been touched." Respondent further discussed "a new compensation package" implemented by Moriaux, as well as recruiting practices. In an e-mail dated March 19, 2015, respondent again discussed corporate tax return extensions, as well as the employment status of a particular employee.

¶ 37 We find petitioners' complaint set forth the essential elements of a breach of contract claim. Additionally, their allegations were sufficient to present a "fair question" regarding their right to relief.

¶ 38 Finally, with respect to petitioners' breach of contract claim, we address respondent's contention that petitioners failed to explain why an award of damages would not have been a sufficient remedy. "A legal remedy is adequate when it is clear, complete and is as practical and efficient in achieving the prompt administration of justice as is the equitable remedy." *Northrop Corp. v. AIL Systems, Inc.*, 218 Ill. App. 3d 951, 954, 578 N.E.2d 1208, 1210 (1991). "Illinois courts have consistently held that money damages are the appropriate remedy for breach of contract." *Lake in the Hills Aviation Group, Inc. v. Village of Lake in the Hills*, 298 Ill. App. 3d 175, 185, 698 N.E.2d 163, 169 (1998). However, "[a] legal remedy is inadequate where damages are difficult to calculate at the time of the hearing." *Central Water Works Supply, Inc. v. Fisher*, 240 Ill. App. 3d 952, 959, 608 N.E.2d 618, 623 (1993). In *Central Water Works*, 240 Ill.

App. 3d at 959-60, 608 N.E.2d at 623-24, we held that "because of the potential loss of profits and customers to plaintiff by defendant's competition in the geographical area, the damages [were] difficult to calculate" and, therefore, the plaintiff had "established the inadequacy of a legal remedy."

¶ 39 Here, in connection with count VI of their complaint alleging breach of contract, petitioners asserted that due to respondent's actions they would "likely suffer irreparable harm, loss of goodwill, loss of business expectations and relations, harm from disclosure of confidential information, and other damages." We find these claims of loss similar to those presented in *Central Water Works*. Thus, we find no abuse of discretion by the trial court in finding petitioners showed they had no adequate remedy at law.

¶ 40 In this case, we find a TRO was unwarranted based on petitioners' claims alleging defamation (counts I and II), commercial disparagement (counts III and IV), or a violation of the Deceptive Trade Practices Act (count V). However, we find respondent has failed to demonstrate the trial court abused its discretion in entering a TRO based on petitioners' breach of contract claim (count VI). Given our findings regarding the claims alleging commercial disparagement and a violation of the Deceptive Trade Practices Act, we modify the trial court's modified TRO by striking paragraph one on page four of the court's modified order, which prohibited respondent "from making any false or misleading Statements which disparage the quality of [petitioners'] goods, services, or ability to perform the duties of their employment." We affirm the court's judgment as modified.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment as modified.

¶ 43

Affirmed as modified.