FOURTH DIVISION
March 30, 2017

No. 1-16-1277

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GRANT PARK COMMODITIES LLC, and GRANT PARK HOLDINGS, LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 10 L 4474
JOACHIM ATTEFJORD, MICHAEL L. KLEMA, GFI GROUP INC., and GFI SECURITIES LLC,	)	Honorable Joan Powell,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed; the trial judge properly vacated a predecessor judge's order denying a motion to strike plaintiffs' jury demand based on the waiver provision in the contract at issue in the dispute; a directed finding in favor of one defendant on an element of plaintiffs' claim against another defendant could serve as the basis of a directed verdict in favor of the other defendant;

and the trial judge properly modified a directed verdict into a directed finding based on rulings of law made after entry of the directed verdict.

¶ 2 Plaintiffs, Grant Park Commodities LLC and Grant Park Holdings LLC, filed a six-count second amended complaint against defendants, Joachim Attefjord and Michael L. Klema, and GFI Group, Inc. and GFI Securities LLC (collectively, GFI). Grant Park Commodities, LLC (GPC) is a brokerage business engaged in the business of trading "soft" and agricultural commodities. Grant Park Holdings, LLC (GPH) is a partner in GPC. Defendants Joachim Attefjord and Michael L. Klema were former partners in GPC. GPH entered into an Operating Agreement with Attefjord and Klema to operate GPC. Attefjord and Klema left GPC to work for GFI. GPC has not engaged in any trading since Attefjord and Klema left GPC.

¶ 3 GPC and GPH sued Attefjord, Klema, and GFI for breach of contract, breach of fiduciary duty, fraudulent concealment, and (against GFI) tortious interference. Plaintiffs demanded trial by jury, which the trial court granted. During trial, the trial judge struck plaintiffs' jury demand as to count I for breach of contract based on a jury trial waiver in that contract (at which point only the breach of contract and tortious interference counts remained pending).[1] At the close of plaintiffs' case-in-chief, the trial judge entered a directed verdict in favor of Klema on count I. At the close of all evidence, the trial judge entered a directed finding in favor of Attefjord on count I and entered a directed verdict in favor of GFI, finding that GFI could not be liable if Attefjord did not breach the Operating Agreement.

¶ 4 For the following reasons, we affirm.

¶ 5 BACKGROUND

[1] Before trial, defendants' motion to dismiss counts IV and VI was granted, and the trial judge granted defendants' motion for a directed finding in their favor as to counts II and III. Plaintiffs did not appeal any of those judgments.

¶ 6 In June 2009 Attefjord and Klema met with Michael Hickman and two other partners of GPH regarding a proposal to engage in the trading of "soft" commodities and agricultural commodities. Attefjord, Klema, and the partners in GPH formed GPC, with each owning a 20% share of the newly formed company. In August 2009, after GPC was formed, Hickman presented Attefjord and Klema with the Operating Agreement for GPC. GPC needed an operating agreement to do business with certain banks. The Operating Agreement contains the following provision:

> "7.15 Other Activities; Opportunities. Except as provided in this Agreement, no provision of this Agreement will be construed to preclude any Member from engaging in any activity whatsoever or from receiving compensation therefor or profit from any such activity; provided that each Member agrees that it shall present all investment and business opportunities to the Company that are within the Company's Line of Business (as defined below) prior to directly or indirectly taking such opportunity. If the Manager elects not to take such opportunity on behalf of the Company or if after giving the Company a reasonable opportunity to take such opportunity the Company fails to take such opportunity, such Member may proceed with such opportunity. For purposes of this Paragraph, the 'Company's Line of Business' shall mean commodity futures and derivatives thereon, cash or physical commodity transactions incident thereto, brokerage of foreign exchange spot and forward contracts, and brokerage and trading in securities."

¶ 7 The Operating Agreement also contains the following provisions relevant to this appeal:

> "14.14 Waiver of Jury Trial. The Members waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement or any dealings between them relating to the subject matter of this Agreement and the relationship that is being established. *** The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. The Members acknowledge that this waiver is a material inducement to enter into a business relationship, that each has already relied on the waiver in entering into this Agreement and that each will continue to rely on the waive[r] in their related future dealings. *** This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this agreement or to any other documents or agreements relating to the transaction completed hereby. In the event of litigation, this agreement may be filed as a written consent to a trial by the court."

¶ 8 In fall 2009, Attefjord and Klema began discussions with GFI. The nature of those discussions as talks to sell GPC to GFI or as negotiations for employment of Attefjord and Klema by GFI is a central dispute in this case. According to plaintiffs, Attefjord and Klema were involved in negotiations to move GPC's commodities brokering business to GFI. According to defendants, defendants were only discussing an employment opportunity. In January 2010 Attefjord and Klema received offers from GFI to begin working for GFI, and informed Hickman. Attefjord and Klema resigned from GPC in February 2010.

¶ 9 Defense witnesses testified GFI never offered to purchase GPC, but only made standard employment offers to Attefjord and Klema. Plaintiffs acknowledge that "[m]ost of the trial evidence regarding the nature, terms and date of Attefjord's and Klema's agreement with GFI was presented to the jury through a collection of electronic communications that were retrieved from Attefjord's computer." A majority of these communications were between Attefjord and his girlfriend stating that his company was being purchased and how much money he was going to receive. There was testimony that it was Attefjord's relationship with his girlfriend that contributed to his receiving offers from GPC and GFI, because her father was a major figure in the brokerage industry, and that business is "relationship based." At trial, Attefjord testified that he lied in his emails. There was testimony that Attefjord and Klema's attempts to develop soft and agricultural brokerage business at GFI were not successful.

¶ 10 The only counts at issue in this appeal are counts I against Attefjord and Klema for breach of contract, and count V against GFI for tortious interference with contract. Count I of plaintiffs' second amended complaint (hereinafter "complaint") alleges Attefjord and Klema breached section 7.15 of the Operating Agreement by "entering into an agreement with [GFI] to provide services for [GFI] within [GPC]'s 'Line of Business' without first presenting that business opportunity to [GPC]" and by "appropriating for themselves business opportunities that rightfully belonged to [GPC]." Count V of plaintiffs' complaint alleges GFI "wrongfully caused Attefjord and Klema to breach Section 7.15 of the Operating Agreement by not first presenting to [GPC] their business opportunity with GFI." Plaintiffs' complaint contains a demand for a jury trial. Attefjord and Klema's affirmative defenses state that plaintiffs' demand for a jury trial as against Attefjord and Klema must be stricken pursuant to section 14.14 of the Operating Agreement. Attefjord and Klema's counterclaims and cross-claim demand trial by jury "on all

issues so triable." During pretrial proceedings, the judge assigned to the case (hereinafter the "motion judge") denied defendants' motion to strike plaintiffs' jury demand. The case was transferred to another judge for trial (hereinafter, the "trial judge").

¶ 11 As will be discussed in greater detail below, after the close of plaintiffs' case-in-chief, the trial judge entered a directed verdict in favor of Klema. At this stage of the proceedings, count I against Klema was still being tried to the jury because the trial judge allowed briefing on defendants' oral motion to reconsider the motion judge's order denying defendants' motion to strike plaintiffs' jury demand. After considering the briefing on the motion to reconsider the motion judge's order denying the motion to strike the jury demand, the trial judge granted the motion and struck plaintiffs' jury demand. The trial judge thereafter entered a directed finding in favor of Attefjord. Based on the directed finding in favor of Attefjord, the judge entered a directed verdict in favor of GFI on count V. The trial judge granted a posttrial motion to modify the directed verdict in favor of Klema into a directed finding in favor of Klema. The trial judge's posttrial order also made additional findings of fact, including that the Operating Agreement was void *ab initio*.

¶ 12 This appeal followed.

¶ 13 ANALYSIS

¶ 14 On appeal plaintiffs argue the trial judge erred when she (1) entered a directed verdict in favor of Klema on count I at the close of plaintiffs' case-in-chief; (2) purported to convert the directed verdict in favor of Klema into a directed finding in favor of Klema; and (3) entered a directed verdict in favor of GFI based on the finding in favor of Attefjord. Plaintiffs also argue the trial judge erred when she (4) reversed the prior ruling that defendants waived enforcement

of the jury waiver provision of the operating agreement; and (5) entered a directed finding in favor of defendant Attefjord based on a preponderance of the evidence.

> "In *Pedrick*[*v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494 (1967)], the supreme court established a single standard for directing verdicts and entering judgments n.o.v.: 'In our judgment verdicts ought to be directed and judgments n.o.v. entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.' [Citation.] The presence of some evidence favoring the opponent will not preclude a directed verdict or a judgment n.o.v. where it is overwhelmingly contradicted by the remaining evidence. [Citations.] However, '[w]here the evidence demonstrates a substantial factual dispute, or where the assessment of the credibility of witnesses or determination regarding conflicting evidence may be decisive to the outcome, it is error to direct a verdict or enter judgment notwithstanding the verdict.' [Citation.]" *Sitowski v. Buck Brothers*, 147 Ill. App. 3d 282, 287 (1986).

¶ 15 The foregoing "*Pedrick* standard" applies to jury trials. Also at issue in this appeal is the standard applicable to directed findings in a bench trial, which is found in section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2014)).

> "A ruling on a motion for a directed finding at the close of plaintiff's case in a bench trial involves a two-prong analysis. First, the trial court must determine whether, as a matter of law, the plaintiff presented a *prima facie* case. [Citation.] We review this question of law *de novo*. [Citation.] If plaintiff meets that burden, the trial court then proceeds to the second prong. This requires the court to

> consider the totality of the evidence presented, including any evidence favorable to the defendant, and weigh the quality of all the evidence, determine the credibility of witnesses, and draw reasonable inferences therefrom while applying the required standard of proof for the underlying action to determine whether sufficient evidence remains to establish plaintiff's *prima facie* case. [Citation.]" *Katsoyannis v. Findlay*, 2016 IL App (1st) 150036, ¶ 27.

"Generally, in ruling on a section 2-1110 motion, evidence examined under the second prong must prove the plaintiff's case by a preponderance of the evidence." *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 40.

¶ 16 Defendants argue that if this court upholds the trial judge's ruling striking plaintiffs' jury demand based on the jury waiver in the Operating Agreement, we have no need to address any of plaintiffs' other arguments because plaintiffs have failed to argue the trial judge's rulings in favor of Klema, Attefjord, and GFI are erroneous under a preponderance of the evidence standard. In reply, plaintiffs dispute that assertion and contend that even if we hold the trial judge properly struck plaintiffs' jury demand we must nonetheless determine whether the directed verdict in favor of Klema was proper because "the court directed Klema out of the case before it took Count I away from the jury" and because the trial judge could not convert that ruling into a directed finding in Klema's favor. Plaintiffs' reply also asserts that the trial judge never ruled that plaintiffs' waived their right to a jury trial against GFI. We will address first whether the trial judge properly struck plaintiffs' jury demand because resolution of that issue will eliminate the need to address other issues. Plaintiffs do not argue that the finding in Attefjord's favor was erroneous if the trial judge properly struck the jury demand; plaintiffs only

argue that the evidence does not support a directed verdict in Attefjord's favor. Thus, if the trial judge properly struck plaintiffs' jury demand, the finding in favor of Attefjord must be affirmed.

¶ 17 Jury Trial Waiver

¶ 18 Plaintiffs first argue the trial judge erroneously reversed the earlier ruling that defendants waived or were estopped from enforcing the jury trial waiver provision of the Operating Agreement because, pursuant to *Balciunas v. Duff*, 94 Ill. 2d 176, 188 (1983), that earlier ruling is subject to reconsideration and modification by another judge "only if there is a change of circumstances or additional facts which warrant such action." Plaintiffs argue it is reversible error for a trial judge to modify or vacate a discretionary ruling of another judge "in the absence of a change of circumstances or additional facts which warrant such action." Plaintiffs assert the only justification the trial judge offered in this case for reversing the earlier ruling that defendants could not enforce the jury trial waiver provision was testimony that Michael Hickman drafted the Operating Agreement, a fact the trial judge believed was unknown to the motion judge. Plaintiffs state that the motion judge was aware that Hickman "presented the full drafted Operating Agreement to Attefjord and Klema" and they "signed the Agreement without reading it or having it reviewed by an attorney." Plaintiffs argue that because there was no change in circumstances or additional facts to warrant vacating the prior ruling, the trial judge erred in striking the jury demand as to count I.

¶ 19 Defendants argue *Balciunas* applies only to discovery rulings and, moreover, "is concerned only with preventing 'bad faith,' 'abusive tactics,' and 'judge-shopping.' " Defendants argue the trial judge's ruling in this case did not involve a discovery ruling or any of those concerns. Defendants assert the "more fundamental rule recognized in *Balciunas*," followed by "numerous" Illinois decisions, is that interlocutory orders may be modified or

vacated at any time prior to a final judgment regardless of whether the order was entered by a different judge. Defendants assert that because the order denying defendants' motion to strike plaintiffs' jury demand was an interlocutory order, that order was subject to reversal by the trial judge.

¶ 20 The proceedings in *Balciunas* were an original action in which our supreme court allowed the plaintiff to file a complaint for the issuance of a writ of *mandamus* to compel a trial court judge "to expunge certain pretrial discovery orders" entered in separate litigation. *Balciunas*, 94 Ill. 2d at 178. In the separate litigation, a motion judge entered a discovery order requiring the defendant to produce certain materials at the office of the plaintiff's attorney. *Id.* at 181. A primary issue in the discovery proceedings was the production of certain films at the plaintiff's attorney's office, which the defendant argued would involve "considerable risk of loss or damage" if the originals were produced, or significant cost to reproduce the films. *Id.* The defendant filed a motion to reconsider that ruling, by which time, "under the regular Cook County assignment system," the judge who entered the discovery order was transferred to another section and replaced by another judge. *Id.* at 182. The plaintiff moved for the judge who entered the discovery order to hear the motion to reconsider, but that motion was denied, and the new motion judge held a hearing on the defendant's motion to reconsider. *Id.* Following the hearing, the new motion judge ordered the defendant to produce the films at its offices for review after which the plaintiff could request copies. *Id.* at 182-83.

¶ 21 In the proceedings before our supreme court, the plaintiff argued that the new motion judge "reviewed and reversed orders entered by another judge of coordinate authority, and that such action is neither consistent with the orderly administration of justice nor with our judicial system." *Id.* at 183. Our supreme court held that the first motion judge's orders "were not

binding upon" the second motion judge and that the second motion judge "was not *completely precluded* from their reconsideration." (Emphasis added.) *Id.* at 186. The court also noted that the defendant's motion did not evidence bad faith or abusive tactics or involve problems of "judge-shopping." *Id.* at 185. Rather, the defendants "pursued a proper remedy in petitioning for reconsideration of those prior interlocutory rulings which were not appealable." *Id.* The plaintiff asked the court to compel the expungement of the orders entered by the second judge and the reassignment of the motion to reconsider to the first judge. *Id.* The plaintiff asserted that such an order would be appropriate for discovery orders. *Id.* at 186-87. Our supreme court found that "[i]t seems clear that it is far preferable to place some limitations on the circumstances under which a successor judge should review or modify previous discovery orders than to impose a requirement such as that suggested by plaintiff, which, we believe, would be totally inconsistent with the orderly and efficient administration of justice in this State." *Id.* at 187. The court held that "[i]n the context of discovery, where abuse is said to be widespread and delay phenomenal [citations], we think it is particularly appropriate for a judge before whom a motion for reconsideration is pending to exercise considerable restraint in reversing or modifying previous rulings." *Id.* at 187-88. Thus, the court held that in the context of discovery,

> "once the court has exercised its discretion, that ruling should not be reversed by another member of the court simply because there is disagreement on the manner in which that discretion was exercised. Rather, a successor judge, before whom the case has been assigned, should revise or modify *previous discovery rulings* only if there is a change of circumstances or additional facts which warrant such action. Such a rule minimizes the potential for 'judge shopping' and preserves the

orderly and efficient functioning of the judicial system." (Emphasis added.) *Id.* at 188.

¶ 22 In this case, defendants are correct that the specific language from *Balciunas* plaintiffs rely upon, requiring "a change of circumstances or additional facts" warranting revising or modifying prior rulings, applies to prior *discovery* rulings. We find that in *Balciunas*, our supreme court created a limited standard for courts to follow in revising or modifying previous discovery rulings. *Id.* at 188-89 (reversing for second motion judge or his successor to reconsider the ruling on the defendant's motion to reconsider in view "of the discussion and standard embodied herein"). Plaintiffs cite *Thomas v. Johnson Controls, Inc.*, 344 Ill. App. 3d 1026, 1031 (2003), *People ex rel. Phillips Petroleum Co. v. Gitchoff*, 65 Ill. 2d 249, 257 (1976), and *People ex rel. Kelly, Ketting Furth, Inc. v. Epstein*, 61 Ill. 2d 229, 230-31 (1974) in reply, in support of their contention the standard articulated in *Balciunas* is applicable not only to discovery orders, but also to "any discretionary rulings made by a prior judge." However, *Thomas* involved a discovery order and, moreover, repeated and reaffirmed the rule stated in *Balciunas* that "[a] successor judge should not reverse or modify a prior judge's discretionary *discovery ruling* unless there is a change of circumstances or additional facts that warrant such action." (Emphasis added.) *Thomas*, 344 Ill. App. 3d at 1031-32 (citing *Balciunas*, 94 Ill. 2d at 188). (As did *Falstad v. Falstad*, 152 Ill. App. 3d 648, 655 (1987), cited in plaintiffs' opening brief in support of this argument.) Plaintiffs assert the rulings in *Gitchoff* and *Epstein* arose in non-discovery contexts; but our review of those cases reveal that they do not support the proposition plaintiffs assert: that only a change of circumstances or additional facts will permit a successor judge to overrule or modify a prior interlocutory order.

¶ 23 In *Epstein*, a plaintiff obtained an order from a circuit court judge in the Law Division of the Circuit Court of Cook County restraining the payment or transfer of specified funds by the defendants in that case. *Epstein*, 61 Ill. 2d at 230. The plaintiff notified the defendants of its intent to appear before that same judge to seek a temporary injunction. *Id.* The defendants then notified the plaintiff they would appear before another judge in the Chancery Division to present an emergency petition to vacate the first judge's orders and enjoin the plaintiff from proceeding with the motion for injunctive relief. *Id.* The Chancery Division judge found that the Law Division judge had "erroneously exercised chancery jurisdiction and entered 'defective' orders." *Id.* The Chancery Division judge enjoined the plaintiff from proceeding further before the Law Division judge until the matter of the jurisdiction of the Law Division judge could be determined. *Id.* The plaintiff then filed an original action in our supreme court to vacate the chancery judge's order. Our supreme court found that the Chancery judge "should have declined to act." *Id.* The court stated that "[r]eview of the orders of one judge by another judge of the same court in the same case is neither consistent with the orderly administration of justice nor with our judicial system." *Id.* at 231. The court, in an exercise of its supervisory jurisdiction, ordered the chancery judge to vacate his order and dismiss the defendants' motion.

¶ 24 In *Gitchoff*, an explosion in a rail yard led to several lawsuits in both Madison County and Macon County. *Gitchoff*, 65 Ill. 2d at 252. One plaintiff, Rucker, filed a complaint for damages against a defendant, Norfolk and Western, in Madison County, and another defendant, Phillips, was later added as a defendant in that case. *Id.* at 252. Thereafter, Phillips filed a complaint in Macon County against Norfolk and Western seeking a declaratory judgment establishing liability for the explosion and indemnity for any judgments entered against it, including in the Rucker action. *Id.* at 252-53. After Phillips filed its complaint for a declaratory

judgment in Macon County, Norfolk and Western filed a counterclaim against Phillips in the Rucker action in Madison County seeking indemnity for all damages arising out of the explosion, including damages from the Rucker action. *Id.* at 253. Phillips filed a motion in its action in Macon County to consolidate Phillips' Macon County action with Norfolk and Western's counterclaim in Madison County. The Macon County court ordered the consolidation over objection. The Macon County court "expressly found that the Phillips complaint preceded the Norfolk and Western counterclaim; the indemnity claims asserted in each action were the same; the great preponderance of the many occurrence witnesses reside in and about Decatur; the convenience of the court, jurors and witnesses would be best served by a consolidation in Macon County; and no substantial right of any party would thereby be prejudiced." *Id.* at 253. The Madison County court ordered the clerk of that court not to transmit the record of the counterclaim to the clerk in Macon County. *Id.* at 251-52. Phillips then sought a writ of *mandamus* to compel the judge and clerk of the Madison County circuit court to comply with the consolidation order, and directing Norfolk and Western to take no further action in Madison County to interfere with orders entered in the consolidated Macon County action." *Id.* at 251-52. Our supreme court found that it was not error for the circuit court in Macon County to entertain jurisdiction over the Phillips indemnity suit because it and the action in Madison County were not identical or substantially similar. *Id.* at 255-56. It found that the more difficult question was "whether, after Norfolk and Western filed a counterclaim for indemnity in Madison County, the court in Macon County had authority to consolidate the two indemnity actions." *Id.* at 256. The court held that "irrespective of the propriety of the Macon County order consolidating the proceedings, the refusal of the Madison County court to abide by that order was improper. One circuit judge may not review or disregard the orders of another circuit judge in the judicial

system of this State [citation], and such action can only serve to diminish respect for and public confidence in our judiciary [citation]." *Id.* at 257. The court exercised its supervisory authority to order the Madison County judge to vacate his order directing the clerk of that court not to transmit the record to Macon County, dismiss Norfolk and Western's counterclaim, and take no further action to interfere with orders entered in the Macon County proceedings. *Id.*

¶ 25 The cases on which plaintiffs rely do not support their contention because neither *Epstein* nor *Gitchoff* involve the rule stated in *Balciunas* that interlocutory rulings, other than discovery rulings, can be modified or vacated by a successor judge "after careful consideration." *Balciunas*, 94 Ill. 2d at 187. Neither *Epstein* nor *Gitchoff* involved a *successor* judge vacating a prior interlocutory order. Both involved a separate judge entering an order that was antagonistic to an order by another judge in a concurrent proceeding, and both were concerned with the effect of such orders on the orderly and efficient administration of justice. *Epstein*, 61 Ill. 2d at 231; *Gitchoff*, 65 Ill. 2d at 257. In *Balciunas*, our supreme court did not retreat from earlier rulings that prior interlocutory orders may be modified or vacated by a successor judge, but "only after careful consideration." *Balciunas*, 94 Ill. 2d at 187. One such prior ruling applying the general rule pertaining to review of interlocutory orders by successor judges was in *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 121 (1978), in which the court wrote as follows:

> "In the instant case, the trial court had jurisdiction over the entire controversy, and would retain jurisdiction until final judgment. While prior rulings should be vacated or amended only after careful consideration, especially if there is evidence of 'judge shopping' on behalf of one who has obtained an adverse ruling, a court is not bound by an order of a previous judge [citation] and has the power to correct orders which it considers to be erroneous. Here, the cause was

> assigned to the second judge as a matter of procedure. The defendant could properly renew his motion, even though it had been denied by another judge, and the pretrial judge, in turn, could review and modify the first judge's interlocutory order." (Internal quotation marks omitted.) *Balciunas*, 94 Ill. 2d at 186 (quoting *Towns*, 73 Ill. 2d at 121).

¶ 26 "Furthermore, contrary to plaintiff's claim, a judge acts within the bounds of his or her authority when reconsidering a prior ruling in the same case by a different judge, so long as the record lacks evidence of bad faith or 'judge shopping' by the movant seeking reconsideration. [Citation.]" *Swain v. City of Chicago*, 2014 IL App (1st) 122769, ¶ 10 (citing *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 214 (1988) (finding that judge had authority, after being assigned a case in the ordinary course of judicial reassignment, to reconsider previous judge's denial of summary judgment)). In this case, defendants were not engaged in "judge shopping," and plaintiffs' only argument that the trial judge erred in striking the jury demand is that no change of circumstances or additional facts were presented. Plaintiffs do not argue that the trial judge did not give "careful consideration" to her order vacating the motion judge's ruling denying defendants' motion to strike plaintiffs' jury demand based on the waiver in the Operating Agreement. We find that the trial judge did give careful consideration to this matter and vacated the motion judge's ruling only after giving the parties an opportunity to brief the issues, and after considering their arguments, the language of the agreement, and that the trial judge learned in the proceedings that the Operating Agreement should be strictly construed against plaintiffs because Hickman drafted the agreement.

¶ 27 Plaintiffs do argue the trial judge erred in granting defendants' motion to reconsider the order denying their motion to strike plaintiffs' jury demand because (1) that ruling is legally

inconsistent with her ruling that the Operating Agreement is void *ab initio*, (2) defendants failed to identify any newly discovered evidence, changes in existing law, or law the motion judge misapplied in support of their motion to reconsider, and (3) defendants waived or are estopped from enforcing the jury trial waiver provision of the Operating Agreement. We will address each of those arguments in turn.

¶ 28 (1) Legal Inconsistency

¶ 29 Defendants argue the trial judge's rulings applying the jury trial waiver provision in the Operating Agreement, and finding the Operating Agreement void *ab initio*, are not inconsistent because when the trial judge struck the jury demand, the question of whether plaintiffs' claims were triable to the jury was a live issue, whereas the ruling that the Operating Agreement was void *ab initio* did not occur until after trial. Defendants also argue that the trial judge properly found that parties can both contest a contract and rely on its provisions. When ruling on the motion to reconsider, the trial judge stated: "you can contest a contract and make claims that it is either void or unenforceable."

> "According to Black's Law Dictionary, a 'legally inconsistent verdict' is one 'in which the same element is found to exist and not to exist, as when a defendant is acquitted of one offense and convicted of another, even though the offenses arise from the same set of facts and an element of the second offense requires proof that the first offense has been committed.' [Citation.] Another reference describes legally inconsistent verdicts as 'two findings treating of the same essential matter.' [Citation.]" *Redmond v. Socha*, 216 Ill. 2d 622, 649 (2005).

A "verdict is not legally inconsistent unless it is absolutely irreconcilable." *Tedeschi v. Burlington Northern R.R. Co.*, 282 Ill. App. 3d 445, 449 (1996). "A verdict is not irreconcilably

inconsistent if any reasonable hypothesis supports the verdict. [Citation.]" *Kleiss v. Cassida*, 297 Ill. App. 3d 165, 176 (1998).

¶ 30 In this case we are not dealing with inconsistent verdicts issued after a trial. *Cf. Redmond*, 216 Ill. 2d at 627. Rather, what is at issue is a ruling prior to a verdict that a jury trial waiver provision between the parties bars the plaintiffs' request for a trial by jury, followed by a finding after a final order in the case that the same contract was void *ab initio*. The two findings are not "absolutely irreconcilable." When the trial court found that the Operating Agreement was void *ab initio*, it did so when ruling on posttrial motions. The trial judge's statements establish that its finding the Operating Agreement was void was based on all of the evidence it received. At that time, the judge stated as follows:

> "[L]ooking back at all of the record that has been submitted to me and that I had prior *** looking at everything, including going over this operating agreement and all of the testimony about the operating agreement, *** the operating agreement is void *ab initio*, there is no consideration for it. There cannot be any breach of it where it is absolutely void."

The trial judge also addressed the fact she had previously relied on the jury waiver provision of the Operating Agreement, and stated as follows:

> "Now, if you say so it is void, how can you say that the jury waiver applies? [A] trial judge before you hear all the evidence you are taking it bit by bit, there is a jury waiver clause in there, I had a ruling by [the motion judge] I was trying to understand why he thought he was right in that, the more that I heard, he was incorrect, the whole—your know, and so I considered the waiver first ***."

¶ 31 The trial judge initially construed the jury waiver provision in the Operating Agreement that formed the basis of the parties' dispute and determined that it applied to bar plaintiffs' jury demand. After hearing all of the evidence, the trial judge determined that the evidence established that the Operating Agreement was in fact void. Those rulings are thus easily reconciled. The trial judge's ruling that the jury trial waiver provision applied was based on the language of the contract and on construing the contract strictly against the drafter. The trial judge's ruling that the contract was void *ab initio* was based on evidence adduced later that the Operating Agreement was not supported by consideration. Thus there is no legal inconsistency. *Tedeschi*, 282 Ill. App. 3d at 449. Plaintiffs call this reconciliation of the trial judge's rulings (which defendants also argued) "a legal absurdity" because there is no way to reconcile the trial judge's findings that the Operating Agreement is both not void and void. We disagree. "[I]n Illinois, the validity of a jury trial waiver is determined by fundamental principles of contract law." *JF Enterprises, LLC v. Fifth Third Bank*, 824 F. Supp. 2d 818, 824 (N.D. Ill. 2011).

> "Under Illinois law, the Court must interpret the language of the contract in accordance with its plain meaning ***. [Citations.] The Court also must ascertain and give effect to the intent of the parties. [Citation.] A written contract is presumed to speak the intention of the parties who signed it, and their intentions must be determined from the language used. [Citation.] *** Further, where a contract purports on its face to be a complete expression of the parties' entire agreement, courts will not add another term about which the agreement is silent. [Citation.] A court's analysis begins with the language of the contract itself, and '[i]f the language unambiguously answers the question at issue, the inquiry is over.' [Citation.]" *Id.* at 824-25.

"When a contract is unambiguous, its construction is a question of law for the court." *Stichter v. Zuidema*, 269 Ill. App. 3d 455, 459 (1995). Contract language should be construed most strongly against the maker. *Cathay Bank v. Accetturo*, 2016 IL App (1st) 152783, ¶ 37. On the contrary, if the construction of a written agreement is dependent upon extrinsic facts that are disputed by the parties, the case must be submitted to the jury. *Ridenhour v. Mollman Publishing Co.*, 66 Ill. App. 3d 1049, 1051 (1978). Therefore, in accord with well-settled principles of contract construction, the trial judge properly determined as a matter of law that the jury waiver provision in the Operating Agreement applied to count I of plaintiffs' complaint. The trial judge stated repeatedly that the language in that provision could not be clearer. The determination of whether the Operating Agreement was supported by adequate consideration in the form of mutual promises (as asserted by plaintiffs) relied upon extrinsic facts—specifically that the Operating Agreement did not change any terms of Attefjord and Klema's employment and they did not bargain for any of its terms. Therefore, that determination had to await the presentation of evidence. Moreover, it would be absurd for a subsequent determination based on evidence adduced at a trial that a contract is void to either be rendered ineffective by a pretrial determination that a clear and unambiguous jury trial waiver provision applied or to require an entirely new trial before a jury. The manner in which the trial court proceeded was legally sound.

¶ 32 (2) Motion to Reconsider

¶ 33 The intended purpose of a motion to reconsider pursuant to section 2-1203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2014)) is to "bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. [Citation.]" (Internal quotation marks omitted.) *City of Chicago v. Chicago Loop*

Parking LLC, 2014 IL App (1st) 133020, ¶ 51. Plaintiffs argue there was no legal basis for the trial judge to overrule the prior ruling on the jury waiver issue because defendants failed to bring to the court's attention any errors in the motion judge's application of the law. We disagree. The trial judge understood that the basis of the motion to reconsider the prior ruling was an error in the previous application of existing law. Before the trial judge ordered written pleadings on the motion to reconsider, she stated that defendants "have been arguing mistake of law all along." After the parties submitted their pleadings on the issue, when the trial judge was issuing her ruling, the judge clarified that the basis of her ruling was that she believed the motion judge's ruling was error. The trial judge identified the applicable law that was the source of the error. The judge stated: "I think that he [(the motion judge)] was trying to be protective of the right to a jury trial, and it sounds like the arguments in terms of inconsistency of pleading and unenforceable contract got a little bit thick maybe, at least that is my interpretation from reading the transcript." The reference to "inconsistency of pleading" is related to plaintiffs' argument defendants waived or are estopped from enforcing the jury trial waiver provision. It was the "law" related to the right to trial by jury, waiver and/or estoppel (a ground for reversal plaintiffs have asked this court to review separately), and the interpretation of contracts that the trial judge found the motion judge misapplied. Defendants' motion to reconsider was proper.

¶ 34 (3) Waiver/Estoppel

¶ 35 Finally, plaintiffs argue defendants waived or are estopped from relying on the jury trial waiver provision of the Operating Agreement. Plaintiffs argue defendants waived their right to enforce the jury trial waiver provision by waiting too long to attempt to enforce it and by acting inconsistently with its existence (by filing motions on the grounds the Operating Agreement is void). Plaintiffs complain defendants did not move to strike the jury demand until May 2015 and

note the motion judge relied in part on this delay to deny the motion. Defendants respond they filed their motion to strike six months before the original trial date. We find the decision in *Liberty Chevrolet, Inc. v. Rainey*, 339 Ill. App. 3d 949, 953 (2003), instructive.

¶ 36 In *Rainey*, the court had to determine whether the plaintiff waived a right to demand arbitration by failing to assert its arbitration rights more promptly. *Rainey*, 339 Ill. App. 3d at 953. The court stated that it must "consider not only a party's conduct but also whether its delay in asserting its right to arbitration has prejudiced the opposing party." *Id.* The court found that the defendant did not claim she suffered any prejudice and the record would not support such a claim. *Id.* For this, and other reasons, the court held that the plaintiff's conduct was not inconsistent with the intention to seek arbitration. *Id.* at 954. In this case, we find no prejudice to plaintiffs from the timing of defendants' motion to strike plaintiffs' jury demand. In support of their argument defendants should be estopped from enforcing the jury trial waiver provision, plaintiffs argue that by allowing defendants "to belatedly enforce the contractual jury trial waiver in the midst of trial, the circuit court unfairly deprived Plaintiffs of the benefit of a jury trial and at the same time deprived them of the benefit of a bench trial." Plaintiffs argue they were deprived the opportunity to have their case "decided by a panel of their peers" and simultaneously deprived of the opportunity offered by a bench trial for a more prompt resolution of their clams. We agree with the trial judge's assessment of the prejudice to plaintiffs from striking the jury demand. The judge stated:

> "Now we get to the point of prejudice at this point. So we are already in week two of a jury trial, and if we only had jury issues in this case it would be very possible to think that this is too prejudicial to the plaintiff, but we still have bench trial issues and the court would have to hear all of this anyway."

Plaintiffs were not deprived of a "more prompt resolution" because there were matters that remained pending that still had to be tried to the jury. We find no grounds to refute the trial judge's prejudice assessment. Because defendants acted in advance of trial to enforce the jury trial waiver provision (*cf. St. George Chicago, Inc. v. George J. Murges & Associates, Ltd.*, 296 Ill. App. 3d 285, 294 (1998)), and plaintiffs were not prejudiced thereby, we find defendants did not wait too long to assert the jury trial waiver provision.

¶ 37 Plaintiffs cite *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 223-24 (2001) in support of their argument defendants waived their right to enforce the jury trial waiver provision by acting inconsistently with that provision. There, the court held as follows:

> "Waiver is the express or implied voluntary and intentional relinquishment of a known and existing right. [Citations.] Parties to a contract may waive provisions contained in the contract for their benefit and such waiver may be established by conduct indicating that strict compliance with those contractual provisions will not be required. [Citation.] The doctrine serves to prevent the waiving party from lulling another into a false belief that strict compliance with a contractual obligation will not be required and then suing for noncompliance. [Citations.] *** An implied waiver may arise when conduct of the person against whom waiver is asserted is inconsistent with any other intention than to waive it. [Citation.] Implied waiver has been viewed as a concept based upon either waiver or estoppel and, accordingly, has been stated to arise where (1) an unexpressed intention to waive can be clearly inferred from the circumstances or (2) the conduct of the waiving party has misled the other party into a reasonable belief that a waiver has occurred. [Citations.]" *Id.*

¶ 38 We find *Wolfram* inapposite. We do not find that defendants' conduct indicated that strict compliance with the jury waiver provision would not be required. Defendants asserted plaintiffs did not have a right to a jury trial under the jury trial waiver provision in their answer to the complaint. Plaintiffs could not have been "lulled into a false belief" regarding that provision where defendants asserted their rights at the earliest opportunity. Defendants' demand, in that same answer, for a jury trial on any counts "so triable" is not inconsistent with the jury trial waiver provision. That defendants demanded a jury trial on the issues "so triable" does not give rise to a clear inference that defendants intended to waive that provision, nor do we believe such a demand misled plaintiffs into a reasonable belief that a waiver had occurred in light of defendants' assertion in their answer that plaintiffs did not have a right to a jury trial on some, but not all, of the counts in their complaint. See *Wolfram*, 328 Ill. App. 3d at 224. We find *St. George Chicago, Inc.*, 296 Ill. App. 3d at 294, also relied upon by plaintiffs to support their claim defendants acted inconsistently with the jury waiver provision, distinguishable. There, the plaintiff failed to object to the jury demand until the day of trial. *St. George Chicago, Inc.*, 296 Ill. App. 3d at 294. The court held that the trial court in that case did not err in refusing to strike the defendants' jury demand. *Id.* Here, defendants did not wait until the day of trial to object to plaintiffs' jury demand. Defendants filed their motion to strike plaintiffs' jury demand (albeit unsuccessfully) well in advance of trial.

¶ 39 The trial judge could revisit the motion judge's orders absent a change in circumstances or additional facts. The judge's pretrial ruling, based on the language of the contract at issue in the case, that the jury trial waiver provision was enforceable as to count I is not legally inconsistent with its determination after trial based on the parties' testimony that the contract containing the waiver provision is void *ab initio*. Defendants' conduct did not result in waiver or

estoppel against enforcing the waiver provision. We hold the trial judge did not err in striking plaintiffs' jury demand on count I of the complaint and affirm its order.

¶ 40 Judgment for Attefjord and GFI

¶ 41 As we stated above, plaintiffs argue only that the trial judge erroneously entered a directed finding in favor of Attefjord on count I because the judge should not have stricken plaintiffs' jury demand and, therefore, the standard for directed verdicts would apply, which, plaintiffs argue, is not met in this case. Plaintiffs do not argue that a finding in favor of Attefjord was erroneous if the judge properly struck the jury demand. Plaintiffs raised no other arguments in opposition to the directed finding in favor of Attefjord. We hold the trial judge did properly strike plaintiffs' jury demand; accordingly, plaintiffs' argument the trial judge erroneously entered judgment in favor of Attefjord under the *Pedrick* standard must fail. When the trial judge entered her finding as to Attefjord, the *Pedrick* standard did not apply. The standard for a directed finding in a non-jury case is stated in section 2-1110 of the Code. Section 2-1110 reads as follows:

> "In all cases tried without a jury, defendant may, at the close of plaintiff's case, move for a finding or judgment in his or her favor. In ruling on the motion the court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence. If the ruling on the motion is favorable to the defendant, a judgment dismissing the action shall be entered." 735 ILCS 5/2-1110 (West 2014).

¶ 42 "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)." *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 81. Because plaintiffs did not argue the

trial court's directed finding in favor of Attefjord was erroneous under the section 2-1110 standard, which did apply, the trial judge's finding in favor of Attefjord is affirmed.

¶ 43 Plaintiffs also argued the trial judge erred in granting a directed verdict in favor of GFI on count V for tortious interference with contract because, under the standard applicable to directed verdicts, "it cannot be said that *** all the evidence, viewed in the light most favorable to Plaintiffs, so overwhelmingly favors GFI, that no contrary verdict based on that evidence could ever stand."

> "Recovery under an action for tortious interference with a contractual relation requires that a plaintiff plead and prove (1) the existence of a valid and enforceable contract between the plaintiff and a third party, (2) that defendant was aware of the contract, (3) that defendant intentionally and unjustifiably induced a breach of the contract, (4) that the wrongful conduct of defendant caused a subsequent breach of the contract by the third party, and (5) that plaintiff was damaged as a result. [Citations.]" *Bank Financial, FSB v. Brandwein*, 2015 IL App (1st) 143956, ¶ 43.

Plaintiffs argue that conflicts in the evidence precluded a directed verdict in favor of GFI. Plaintiffs argue that because a directed verdict in favor of GFI requires that "all of the evidence" (including the evidence that Attefjord did not breach the Operating Agreement) must be so overwhelming as to leave no doubt that a contrary verdict could ever stand, the trial judge erroneously relied on a finding in favor of Attefjord based on a preponderance of the evidence to enter a directed verdict in favor of GFI.

¶ 44 It is undisputed that if a plaintiff cannot establish that the defendant's wrongful conduct caused a subsequent breach of the contract by a third party the plaintiff cannot sustain a cause of action for tortious interference with contract. See *Brandwein*, 2015 IL App (1st) 143956, ¶ 46

(holding that if there was no breach of contract, there was no tortious interference). Plaintiffs did not cite any authority in support of its proposed rule that a directed finding on one count tried to the court cannot support a directed verdict on another count tried to a jury.

> "A contention that is supported by some argument but no authority does not meet the requirements of Rule 341 and is considered forfeited. [Citation.] *** The purpose of [supreme court] rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. [Citation.] *** [A] reviewing court may choose to disregard portions of a brief that do not comply with the supreme court rules. [Citation.]" (Internal quotation marks omitted.) *Country Preferred Insurance Co. v. Groen*, 2017 IL App (4th) 160028, ¶ 12.

Plaintiffs' failure to cite relevant legal authority for the proposition of law that a directed verdict cannot rest on final determinations by the trial court sitting as trier of fact in the same proceeding has hindered our review in that plaintiffs have provided no basis for that position from which we may assess its propriety. Plaintiffs' failure to comply with supreme court rules would permit us to disregard this portion of their brief. *Id.* ¶ 12.

¶ 45 Forfeiture aside, plaintiffs' argument must be rejected for other reasons. If we were to accept plaintiffs' argument it would effectively nullify the jury trial waiver provision or possibly result in contrary findings in the same case. Plaintiffs' proposed rule in this case would require the question of Attefjord's breach of contract to be determined by the jury. If the trial court were then required to apply the jury's determination to count I of the complaint, the result would be nullification of the jury trial waiver provision. If not, the possible outcome is that there could be contrary findings as to whether Attefjord breached the contract. Absent any authority requiring

it, we decline to impose a rule that would, as described above, disrupt the proper administration of justice. We hold the trial court could rely on its directed finding that Attefjord did not breach the Operating Agreement to enter a directed verdict in favor of GFI on the grounds plaintiffs will be unable to prove an element of the cause of action for tortious interference with contract. The directed verdict in favor of GFI on count V of the complaint is affirmed. Accordingly, we have no need to determine whether the jury waiver provision in the Operating Agreement applies to count V against GFI.

¶ 46 Directed Verdict/Directed Finding for Klema

¶ 47 Plaintiffs argue the trial judge erred when she entered a directed verdict in favor of Klema because the evidence against Klema on count I "was substantial and easily precluded the entry of a directed verdict" in his favor. Plaintiffs assert that in making its ruling on the directed verdict for Klema that the trial judge impermissibly "weighed the evidence and made credibility determinations." Plaintiffs also argue the trial judge's order "attempting" to convert the directed verdict into a directed finding cannot cure the error in entering a directed verdict in favor of Klema. Plaintiffs' also assert several reasons the trial judge erroneously entered a directed finding for Klema: (1) the trial judge erroneously struck plaintiffs' jury demand; (2) no justiciable issue remained regarding Klema when the trial judge entered the order; (3) Klema's motion was procedurally improper; and (4) the legal rulings in the order that (a) the Operating Agreement is void *ab initio* and (b) Klema had no duty to disclose his agreement with GFI to GPC are "manifestly incorrect." We review an order on a motion for a directed finding applying a manifest weight of the evidence standard. *Katsoyannis*, 2016 IL App (1st) 150036, ¶ 27.

¶ 48 We find the trial judge's April 13, 2016 order entering a directed finding in favor of Klema was procedurally proper and not against the manifest weight of the evidence. This

finding obviates the need to address plaintiffs' argument the trial judge erred when she entered a directed verdict in favor of Klema. Procedurally, the trial judge properly ruled on Klema's posttrial motion to amend the directed verdict judgment against him. Plaintiffs argue the issues as to Klema were moot. We disagree because it was possible for the trial judge to grant effective relief to Klema by entering a directed finding in his favor pursuant to section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2014)); and, for the following reasons, we find it was proper for the trial judge to grant the relief Klema sought.

¶ 49 We reject plaintiffs' argument Klema's motion was not proper under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2014)) because Klema "did not allege error in the judgment, or newly discovered facts or law." At the hearing on the posttrial motions, the parties discussed the court's decision in *Geske v. Geske*, 343 Ill. App. 3d 881, 885 (2003). In *Geske*, the trial court in a bench trial denied a motion for a directed finding at the conclusion of the plaintiff's case-in-chief. *Geske*, 343 Ill. App. 3d at 882. We note again that a motion for a directed finding in a bench trial is properly denied only where the trial court first finds the plaintiff has made out a *prima facie* case. *Id.* at 885. In *Geske*, after the trial court denied the defendant's motion at the close of the plaintiff's case-in-chief, the defense rested without putting on any evidence. *Id.* at 882. Following closing arguments, the trial court ruled in favor of the defendant on all counts. *Id.* The plaintiff appealed, and this court held that "when the defendant rested without offering any additional evidence, the initial determination that the plaintiff had satisfied his required burden of proof was unchallenged. Therefore, *** the trial judge erred in finding that the plaintiff had failed to satisfy his required burden of proof and entering a judgment in the defendant's favor. [Citation.]" (Internal quotation marks omitted.) *Id.* at 883.

¶ 50 This court reversed and remanded for further proceedings not inconsistent with this court's order. On remand, the plaintiff filed a motion for entry of an order in his favor. The defendant asked the trial court to deny the plaintiff's requested relief and either enter an order clarifying its reasons for its original finding or to reopen proofs to allow the defendant to present evidence. *Id.* The trial court denied the plaintiff's motion and instead ruled in favor of the defendant on her motion for a directed finding. *Id.* The trial court stated that when it first ruled on the defendant's motion it incorrectly applied the *Pedrick* standard, which "is the wrong standard in civil bench trials," instead of section 2-1110 of the Code. (The trial court also noted that when the defendant filed her motion she had not cited or argued the statute.) *Id.* The trial court reviewed its notes and, after applying the correct standard under section 2-1110, granted the defendant's motion. *Id.* at 884. A second appeal followed. *Id.* In the second appeal, this court held that

> "[t]rial courts have the inherent power to correct their previous rulings. [Citation.] It would be absurd to suppose that trial judges who conclude they have made mistakes should not be free to correct them within an appropriate time frame. Here, the trial judge acknowledged numerous times that he had made a mistake when he originally ruled on the motion for a directed finding by applying the *Pedrick* standard rather than the *Kokinis*-section 2-1110 standard. We find, therefore, that having once determined he had erred by applying an incorrect standard, the trial judge had the inherent authority to reopen the motion for a directed finding and rule on it accordingly by applying the correct standard. *Id.* at 885 (citing *People v. Van Cleve*, 89 Ill. 2d 298 (1982)).

¶ 51 Here, the trial judge found this case presented a different situation, because she did not apply an incorrect standard when she entered a directed verdict for Klema. Regardless, the trial judge ultimately granted Klema's motion to reconsider. Although the trial judge was correct that this case is distinguishable from *Geske* because the trial judge here did not misapply the legal standard in her earlier ruling, *Geske* is nonetheless instructive. One justice dissented from the judgment in *Geske*. The dissenting justice believed the trial court's act of "*sua sponte* vacat[ing] its order denying the defendant's motion for a directed finding at the close of the plaintiff's case-in-chief, grant[ing] the motion, and again enter[ing] judgment in favor of the defendant" was "inconsistent with the determinations made by this court" in the first appeal. *Id.* at 887 (Hoffman, P.J., dissenting). The dissenting justice found that "implicit in the trial court's order [was] a finding that the plaintiff failed, in his case-in-chief, to satisfy his required burden of proof." *Id.* at 888. (On remand from the first appeal, the trial court acknowledged that in making that finding the trial court erroneously "considered the evidence in the light most favorable to the plaintiff, the nonmoving party." *Id.* at 884.) The dissenting justice found the trial court's finding that the plaintiff failed to satisfy the burden of proof was inconsistent with this court's order in the first appeal. *Id.* at 888. Thus, to be "not inconsistent" with this court's order in the first appeal, "only two options were available to the trial court. It could have entered judgment in favor of the plaintiff or, in the exercise of its discretion, it could have reopened proofs and continued on with the trial." *Id.* Instead, the trial court revisited the matter an applied the correct legal standard to the motion, which the dissenting justice believed was not allowed under this court's judgment. *Id.*

¶ 52 The analogy in these two cases lies in the fact that the dissent believed that having once ruled, even erroneously, and an appeal having been taken and ruled upon, the trial court was

bound by its judgment applying the wrong legal standard. The majority in *Geske* rejected that view and found that the trial court properly revisited the issue to correct its previous ruling. In this case, plaintiffs take the position that having determined as a matter of law that plaintiffs waived their right to a jury trial as to count I against Attefjord and Klema, the trial judge was bound by its judgment applying what was not the wrong legal standard at the time but what was subsequently determined to be the wrong legal standard applicable in this case. At the hearing on the posttrial motions, defense counsel argued that but for the trial judge's ruling allowing plaintiffs to brief defendants' motion to reconsider the order denying defendants' motion to strike plaintiffs' jury demand (which the trial judge initially granted but then withdrew that ruling to allow additional briefing after which she again granted the motion and struck the jury demand), the motion for a finding as to Klema at the close of plaintiffs' case would have been subject to the section 2-1110 standard. Although the failure to initially apply the section 2-1110 standard in this case did not result from an error by the trial court, as it had in *Geske*, nonetheless, a different standard was applicable to Klema's motion after the trial court ruled that plaintiffs' had waived their right to a jury trial as to count I against Attefjord and Klema. We believe the trial judge had the inherent power to "correct" her previous ruling to apply the law the judge later determined was applicable to a finding on count I as to Klema, which was the section 2-1110 standard.

¶ 53 The fact the determination that a different standard applied to Klema's motion resulted from the trial judge's finding that count I was not triable to a jury rather than a mistake by the judge is immaterial. The trial judge entered a written order granting Klema's motion for a directed verdict on November 2, 2015, at the same time the judge granted Attefjord's motion for a directed finding, after the trial court struck plaintiffs' jury demand. The court's oral ruling

granting Klema's motion for a directed verdict was not final. See *Beehn v. Eppard*, 321 Ill. App. 3d 677, 680 (2001) ("the trial court's order was dated and entered March 23, 1999. The record contains no objection as to the date, indicating the trial court and parties' intention that a written order would signify the final judgment in the matter"). An interlocutory order can be reviewed, modified, or vacated at any time before final judgment. *Balciunas*, 94 Ill. 2d at 185. When the trial judge entered the final order granting Klema's motion for a directed verdict, the law applicable to his motion should have been section 2-1110, not the *Pedrick* standard, because the trial judge had already ruled that plaintiffs waived their right to a jury trial on count I.

¶ 54 The case for the trial judge's authority to revisit her earlier ruling to apply the law applicable to the motion is stronger here where the matter had not been ruled upon by this court. We hold the trial judge properly ruled upon the motion to reconsider the judgment granting a directed verdict in favor of Klema to correct the judgment to conform with the law applicable to count I against Klema.

¶ 55 Plaintiffs argue the trial judge's findings in her order granting Klema's motion are manifestly incorrect because (a) the Operating Agreement created reciprocal obligations which provide consideration to support formation of the contract, and (b) the Operating Agreement required Klema to disclose the employment opportunity with GFI.[2] When ruling on the parties' posttrial motions, the trial judge summarized the evidence from the trial. We have already addressed the trial judge's ruling striking plaintiffs' jury demand and concluded that her ruling was correct. Thus, the finding for Klema was subject to the section 2-1110 standard, which permits the trial judge to weigh the evidence, consider the credibility of the witnesses, and consider the weight and quality of the evidence. 735 ILCS 5/2-1110 (West 2014). Under this

[2] Specifically, plaintiffs argued that "[s]ection 7.15's definition of 'Company's Line of Business' does not exclude employment opportunities.

standard, the directed finding in favor of Klema was not against the manifest weight of the evidence.

¶ 56 With regard to the finding that the Operating Agreement is void *ab initio*, the trial judge stated the evidence as follows:

> "I made the ruling on the *** operating agreement [to] be void *ab initio*, not voidable, but void, and there was no consideration, there was no adequate consideration for the restrictive covenant, 7.15.
>
> * * *
>
> It was undisputed that the operating agreement was forwarded to the defendants Attefjord and Klema because they needed evidence of some type of operating agreement like this so that they could continue to do work with certain banking entities that were requiring it, it wasn't the defendants were requiring it to do the work, it was the people they were dealing with.
>
> It was signed about August 25, 2009.
>
> It was well after GPC and defendants were already working on some kind of enterprise with softs and ag OTC trades for the benefit of GPC.
>
> The operating agreement added nothing to the terms of the original agreement in terms of what the defendants Attefjord and Klema were already doing except restrictive terms and the jury waiver and the appointment of their being officers, which Attefjord and Klema were never asked, never bargained for.
>
> *** Mr. Hickman admits the defendants did not ask to be named as partners nor given titles, they didn't ask for that, Mr. Hickman did this unilaterally without informing or discussing with Attefjord or Klema or even other members

> of the GP Holdings, and the purpose was to give them some incentive, make them feel that they had some skin in the game."

Later, the trial judge added:

> "The operating agreement changed nothing in terms of New York trading set up which the defendants previously set prior to the operating agreement, there was no consideration for the operating agreement. Banks required it for GPC to do business.
>
> Mr. Hickman also testified the defendants never agreed to be partners.
>
> He did testify that they returned the signature page to him, so they signed the agreement, but they didn't ask, it was not bargained for."

¶ 57 " 'Consideration' is the 'bargained-for exchange of promises or performances, and may consist of a promise, an act or forbearance.' [Citations.] 'Any act or promise which is of benefit to one party or disadvantage to the other is a sufficient consideration to support a contract.' [Citations.]" *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 23. The trial judge found Attefjord and Klema did not bargain for an exchange of promises with GPC. As demonstrated above, the trial judge's finding that nothing in the parties' relationship changed, except to add additional restrictions on Attefjord and Klema, is not against the manifest weight of the evidence. Therefore, we find there was no mutual promise by plaintiffs to serve as consideration for Attefjord and Klema's promise to be bound by these additional restrictions. See *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 112 (1999) ("in adding the disclaimer to the handbook, the defendant provided nothing of value to the plaintiffs and did not itself incur any disadvantage. In fact, the opposite occurred: the plaintiffs suffered a detriment-the loss of rights previously granted to them by the handbook-while the defendant gained a corresponding

benefit."); *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 487-88 (1997) (finding sufficient consideration to modify employment-at-will relationship where "both parties exchanged bargained-for benefits"). We reject plaintiffs' argument the trial judge's finding the Operating Agreement was void *ab initio* is manifestly incorrect.

¶ 58 This finding also obviates the need to address plaintiffs' argument the trial judge's findings in the April 13, 2016 order entering a directed finding in favor of Klema are against the manifest weight of the evidence because Klema was required to disclose an employment offer from GFI to plaintiffs. Klema was under no such obligation if the Operating Agreement was void. However, we note the trial judge's findings as to the evidence also support finding that Klema was not required to disclose the employment offer. The judge, again summarizing the evidence adduced at trial, found the following facts:

> "It was undisputed at trial, no employment contract with the defendants, the defendants could have left at any time, they could resign at any time, no noncompete agreement. There was no duration to any agreement.
>
> * * *
>
> They could have left at any time, they had no noncompete.
>
> * * *
>
> Mr. Hickman testified *** [he] could have terminated the defendants' membership at GPC at any time, they were not required to work for GPC for any particular period of time, there were not required to give notice if they are retiring."

¶ 59 The trial judge did not err in striking plaintiffs' jury demand because it could review the motion judge's ruling and could vacate the prior ruling after careful consideration. The judge's

finding in favor of Attefjord therefore applied the correct legal standard, and the finding in favor of Attefjord could support a directed verdict in favor of GFI. The trial judge also had authority to modify her directed verdict in favor of Klema to apply the standard applicable to the motion in light of the judge's ruling striking plaintiffs' jury demand. Accordingly, the judgment is affirmed.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 62 Affirmed.