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McInerney v. Charter Golf, Inc.: The Court Swings and Misses

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Notes

McInerney v. Charter Golf, Inc.: The Court Swings and Misses

I. INTRODUCTION

"[T]he most important relationship in the lives of most Americans, so far as economic security is concerned, is their own actual or potential employment relationship, with government and family serving as back-up systems." If this theory is true, it would seem to follow that more than a handshake between an employer and new employee would be required to signify and solidify their employment relationship. However, the reality is that employment relationships are often created by handshakes and introductions, rather than by written employment contracts.

These oral contracts commonly result in employer-employee conflicts. In Illinois, employment-related breach of contract disputes range from alleged oral promises for bonuses and commissions to promises of job security. The Illinois Supreme Court faced this latter

3. See Farber & Matheson, supra note 2, at 903.
type of conflict in *McInerney v. Charter Golf, Inc.* In *McInerney*, a former employee sued his employer for breach of contract, alleging that he had relinquished a lucrative job offer in exchange for his employer’s guarantee of a job “for the remainder of his life.” The Illinois Supreme Court decided in the employer’s favor, holding that although foregoing another job opportunity in exchange for an oral promise of lifetime employment constituted sufficient consideration to change an at-will employment relationship to a valid lifetime employment contract, the statute of frauds barred the enforcement of the promise because there was no writing.

This Note first examines the validity of oral promises for permanent employment through an analysis of the contractual requirements used to rebut the presumption of employment at will. This Note next discusses how the exceptions to the statute of frauds and the doctrine of promissory estoppel can be used to enforce oral promises for permanent employment. In doing so, this Note examines the disagreement among the Illinois appellate courts concerning the requirements for modifying at-will-employment, the applicability of the exceptions to the statute of frauds’ one-year clause, and the availability of the promissory estoppel doctrine. Next, this Note discusses the facts of *McInerney* and the opinions of the majority and the dissent. This Note agrees with the majority’s opinion that foregoing another job opportunity is sufficient consideration to modify an at-will employment contract. However, this Note criticizes the majority for its inequitable and flawed decision that an oral promise for

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7. See infra Part II.A.
8. See infra Part II.B.
9. See infra Part II.C.
10. The terms “permanent” and “lifetime” will be used interchangeably throughout this Note in order to maintain continuity with the language used by various judges and authors. “Lifetime” employment contracts are essentially “permanent” employment contracts. See id. at 1351-52. Throughout the *McInerney* decision, the court used “permanent” and “lifetime” interchangeably. See id. at 1355.
11. See infra Part II.A.
12. See infra Part II.B.
13. See infra Part II.C.
15. See infra Part II.B.1.
16. See infra Part II.C.
17. See infra Part III.A.
18. See infra Part III.B.
19. See infra Part III.C.
20. See infra Part IV.
lifetime employment is barred by the statute of frauds, and argues that the one-year exception, the full performance doctrine, or promissory estoppel should excuse the absence of a writing. This Note argues that the majority's rationale converts valid contracts for lifetime employment into their original at-will employment status. Finally, this Note predicts that the *McInerney* decision will ultimately harm employees by denying a remedy to those who have detrimentally relied upon an employer's verbal promise of permanent employment.

II. BACKGROUND

Despite a presumption of at-will employment, oral statements modify many employer-employee relationships into permanent employment contracts. However, many of these oral contracts, although valid, are not evidenced by a writing, and may therefore, be barred by the statute of frauds. With regard to these oral employment agreements, Illinois courts disagree as to whether foregoing a job or job offer constitutes sufficient consideration for these oral contracts, whether the possibility of death within one year would complete performance of a lifetime employment contract, and whether an employee can state a cause of action based on the promissory estoppel doctrine, despite the statute of frauds' writing requirement.

A. Contractual Analysis of At-Will and Permanent Employment Agreements

This section first discusses at-will employment contracts and permanent employment contracts. This section next discusses the judicially-created two-prong test used to determine the validity of permanent employment contracts. This begins by outlining what is a "clear and definite agreement," the first prong. Then, in great detail,
this section discusses what constitutes “sufficient consideration” in Illinois courts, the second prong.

1. The Presumption of At-Will Employment

Unless an employment contract specifies duration, Illinois law states that the contract is presumed to be at-will. At-will employment provides that an employment agreement for an uncertain duration allows the employer to terminate the employment relationship without notice for any or no reason at all. During the late nineteenth century, the employment-at-will doctrine rose in popularity when the Industrial Revolution necessitated a substantial increase in labor. By the early twentieth century, most jurisdictions adopted this doctrine.

Even though the doctrine provides an employee with the simultaneous right to leave employment without notice and for no reason at all, the at-will rule favors employers while being unduly harsh to employees. Therefore, in the early 1970s, courts began to limit an employer’s right to terminate employees by creating legal exceptions to the at-will doctrine. Today, a majority of courts construe the doctrine as a simple rule of construction, treating at-will employment as a rebuttable presumption. This presumption may be


36. See Maddux, supra note 32, at 199. In most instances, the exercise of the termination rights under employment-at-will harms the employee more than the employer. See id. Usually the employee has fewer employment options, while the employer has a vast number of potential employees waiting to pick up where the fired employee left off. See id.

37. See Vickory, supra note 4, at 108-09. These exceptions are based on theories of public policy, good faith and fair dealing, and termination standards specified in employee handbooks. See id. at 118. For example, an employee who refuses “to engage in illegal activities” for the employer is protected from retaliatory discharge. See Tom Werner, The Common Law Employment-at-Will Doctrine: Current Exceptions for Iowa Employees, 43 DRAKE L. REV. 291, 314 (1994).

rebutted and the at-will employment contract modified if the parties can show that they "contracted otherwise."  

2. Contracts for Permanent Employment

Lifetime or permanent employment contracts assure the employee's fear of downsizing, while increasing employee loyalty to, and productivity for, the employer. The main problem with oral permanent employment contracts is their uncertain duration; thus, the oral agreements may be unenforceable because they are presumed to create at-will employment relationships absent a contrary indication. Three types of promises could be interpreted as guaranteeing permanent employment: (1) promises that employees will be employed for life, meaning until death, retirement, or disability; (2) promises...
that employees can stay as long as they desire, and (3) promises not to terminate absent unsatisfactory performance. These promises, if supported by the required contractual elements, can be enforced as valid contracts of permanent employment, thus rebutting the presumption of an at-will agreement.

3. Testing the Validity of an Oral Promise for Permanent Employment

The traditional elements of a contract—offer, acceptance, and consideration—are used to determine the validity of an oral promise for permanent employment. However, in the oral contracts “the

44. See Taylor, 69 F.3d at 782-83 (holding that alleged statements by employer to employee promising job security for “as long as [employee] wished” were sufficiently clear and definite to preclude summary judgment); see also Martin v. Federal Life Ins. Co., 644 N.E.2d 42, 44 (Ill. App. Ct. 1994) [hereinafter Martin II]. In the Martin II case, the reviewing court held that statements by employer to employee that he could be “rest assured that he would have continual employment” and that he “could have a job as long as he wanted” were more than mere assurances—they were promises of a job with continual employment for as long as the employee desired. Martin II, 644 N.E.2d at 44; see also Strzelecki v. Schwarz Paper Co., 824 F. Supp. 821, 824 (N.D. Ill. 1993). The Strzelecki court held that plaintiff’s allegations that he was asked to purchase and run subdivision, and told that he could work at the company “for as long as he wanted, for at least twenty more years,” alleged clear and definite terms to withstand motion to dismiss. Strzelecki, 824 F. Supp. at 828; see also Farr v. Continental White Cap, Inc., 774 F. Supp. 522, 524 (N.D. Ill. 1991) (holding that although the oral contract failed for insufficient consideration, the words promising a job for as long as employee desired were more than assurances of goodwill); Lamaster, 766 F. Supp. at 1503-04 (concluding that plaintiff’s allegations that employer promised him a director position for as long as he chose to keep it were clear and definite terms sufficient to withstand motion to dismiss).

45. See Wilder v. Butler Mfg. Co., 533 N.E.2d 1129, 1130 (Ill. App. Ct. 1989) (alleging that the employer’s statement that the employee would have a job “as long as [she] produced” was a permanent employment contract); Kula v. J.K. Schofield & Co., Inc., 668 F. Supp. 1126, 1133 (N.D. Ill. 1987) (alleging that the employer’s promise that the employee had a job “as long as he continued to perform satisfactorily” created permanent employment).

46. These contractual elements include: offer, acceptance, and consideration. See RESTATEMENT (SECOND) OF CONTRACTS §§ 22, 71 (1988). See also infra note 48 and accompanying text (discussing how the traditional elements of a contract are used to determine the validity of oral promises for permanent employment).

47. See supra Part II.A.3. (discussing how the traditional elements of contract are examined to rebut the presumption of at-will employment).

48. See Tolmie v. United Parcel Serv., Inc., 930 F.2d 579, 581 (7th Cir. 1991). One party (the offeror) extends an offer, written or oral, that is accepted or rejected by the other party (the offeree). See RESTATEMENT (SECOND) OF CONTRACTS § 24 (1981) (defining offer); id. § 50 (defining acceptance); id. § 38 (defining rejection). Once both parties assent to the same terms and conditions at the same time, consideration will make the contract enforceable. See id. § 22 (discussing mode of assent); id. § 71 (discussing the requirement of consideration).
analysis is more scrutinizing." To overcome the presumption of, or to modify at-will employment, the party seeking damages for a breach of an oral contract must prove the contract's validity by showing: (1) a clear and definite promise to employ for a particular duration, or to terminate only upon a certain event or for specified reasons; and (2) the giving of sufficient consideration.

a. Clear and Definite Agreement for a Specific Duration

First, courts must look to the totality of the circumstances to determine whether a clear and definite agreement for permanent employment exists. In particular, the courts must assess whether the employer's conduct or representations reflect a guarantee of a permanent job. Language between the employer and employee must be clear and definite, and must not require the courts to impose an obligation where none was intended or where the obligation is ambiguous. Furthermore, language that merely amounts to "optimistic expressions about the future" does not provide sufficient consideration to establish an oral contract for permanent employment; these types of statements express only "long continuing good will and hope for eternal association." However, the standard for creating a

49. Tolmie, 930 F.2d at 581 (noting that an offer with "clear and definite" terms is required to support an oral employment contract, rather than any mere offer).
51. Courts consider factors such as the personnel policies or practices of the employer, the employee's longevity of service, the communications by the employer to assure continued employment, and the practices of the particular industry. See Pugh v. See's Candies, Inc., 171 Cal. Rptr. 917, 925-26 (Cal. App. 1981). In one case, an Illinois court focused on whether the promisor had the proper authority to guarantee job security. See Martin II, 644 N.E.2d 42, 47 (Ill. App. Ct. 1994) (finding that the executive vice-president, who was also general counsel, had the authority to offer lifetime employment).
52. See supra notes 38-39, 44-47.
53. See Koch, 529 N.E.2d at 284. In Koch, the plaintiff could not recall the language used by the employer; thus, the contract failed for lack of clarity. See id. Further, some "[c]ourts have held that where there are no definite terms of employment, . . . employment is and should be regarded as 'at-will.'" Joseph Z. Fleming, Labor and Employment Law: Recent Developments—At-Will Termination of Employment Has Not Been Terminated, 20 NOVA L. REV. 437, 440 (1995) (discussing Florida courts).
54. Kercher, 630 N.E.2d at 981 (quoting Wilder, 533 N.E.2d at 1131) (holding that comments by employer that plaintiff was being groomed to become president and that job was a long-term proposition were not clear and definite terms); see also Wilder, 533 N.E.2d at 1130-31 (finding no clear and definite terms of an enforceable contract in the
clear agreement is minimal; it merely requires that the alleged promise be "clear enough that an employee would reasonably believe that an offer has been made."\textsuperscript{55} Determining the clarity of a promise requires the use of an objective test, rather than a subjective one.\textsuperscript{56} If no clear promise for permanent employment exists, then the employment is presumed to be at-will.\textsuperscript{57} If the promise is clear, the inquiry turns to the sufficiency of the consideration.\textsuperscript{58}

b. What Constitutes Sufficient Consideration

Consideration is a performance or a return promise that must be bargained for, meaning that "it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise."\textsuperscript{59} Any promise, act, or forbearance that results in a detriment to one party is consideration.\textsuperscript{60}

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\textsuperscript{56} See Tolmie, 930 F.2d at 581. The analysis is objective because Illinois law determines whether the alleged promise is "clear enough that an employee would reasonably believe that an offer has been made." \textit{Id}. However, courts require "objective evidence of the employer's intent to never terminate him." Warren H. Albrecht, Jr., \textit{The Changing Face of Employment Law and the Practical Lawyer}, 67 N.D. L. Rev. 469, 473 (1991). In contrast, a subjective analysis would look at what the employee in question believed to be true.

\textsuperscript{57} See Kercher, 630 N.E.2d at 981-82 (holding that the employment was terminable at-will because the language did not establish a clear promise for permanent employment).

\textsuperscript{58} See Kula v. J.K. Schofield & Co., Inc., 668 F. Supp. 1126, 1131 (N.D. Ill. 1987). Appellate court cases disagree as to what constitutes sufficient consideration and as to whether additional consideration is necessary. \textit{See} Lamaster v. Chicago & Northeast Ill. Dist. Council of Carpenters Apprentice & Trainee Program, 766 F. Supp. 1497, 1500 (N.D. Ill. 1991); \textit{see also infra} notes 61-75 and accompanying text (discussing the disagreements among the courts as to what constitutes sufficient consideration for a permanent employment contract).

\textsuperscript{59} Restatement (Second) of Contracts § 71 (1981). Consideration insures that the "promise enforced as a contract is not accidental, casual, or gratuitous," but has been purposely given after deliberation or negotiation. \textit{Murphy & Speidel, Studies in Contract Law} 28-29 (4th ed. 1991). For a contract to be enforceable, "neither 'serious intent,' nor intention to be legally bound," is necessary for consideration. 2 Joseph M. Perillo & Helen Hadjiyankakis Bender, \textit{Corbin on Contracts} § 5.3 (rev. ed. 1995).

\textsuperscript{60} See Davies v. Martel Lab. Serv., Inc., 545 N.E.2d 475, 477 (Ill. App. Ct. 1989). Detriment "means giving up something which immediately prior thereto the promisee
Some Illinois courts find sufficient consideration where there is a promise to forego another job or job offer on the express condition that the current or new job will be permanent. The key element is that foregoing the alternative employment must be a "specially bargained-for detriment." Merely promising to do the job and "waiving the right to pursue or accept alternative employment" will not support a contract for permanent employment. Rather, the exchange amounts to consideration only where the plaintiff relinques a job or job offer in exchange for a promise of permanent employment, and the employer agrees to relinquish its right to fire that employee at will.

was privileged to retain, or doing or refraining from doing something which he was then privileged not to do, or not to refrain from doing." \(\text{id.\)} (quoting I WILLISTON, CONTRACTS § 102A at 380-82 (3d ed. 1957)). Determining the exact circumstances that require the application of the "legal detriment" principles is difficult. \(\text{See Taylor v. Canteen Corp., 69 F.3d 773, 784 (7th Cir. 1995).}\) However, consideration probably exists when an employee is "lured away from a position with a promise of permanent employment." Taylor, 69 F.3d at 784; \(\text{see also Adams v. Lockformer Co., 520 N.E.2d 1177, 1180 (III. App. Ct. 1988) (holding that employee’s relinquishment of interest in a product constituted sufficient consideration).}\)

61. \(\text{See Martin I, 440 N.E.2d 998, 1003-04 (III. App. Ct. 1982).}\) In Martin I, the plaintiff rejected a job offer, including a salary increase, improved benefits, and increased opportunity for advancement, based upon the employer’s promises that he could “rest assured that he would have continual employment,” and that he “could have a job for as long as he wanted.” \(\text{id.}\) at 1001. The court found that the relinquishment of this job offer for the alleged oral agreement for permanent employment was sufficient consideration. \(\text{See id. at 1003-04; see also Johnson v. George J. Ball, Inc., 617 N.E.2d 1355, 1359-60 (III. App. Ct. 1993) (addressing the split among Illinois courts regarding the need for “additional consideration” beyond relinquishing other job opportunities); Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695, 698-699 (III. App. Ct. 1945) (finding plaintiff’s giving up law practice in New York and moving to Chicago per defendant’s request as sufficient consideration).}\)

Courts in other states agree with this position. \(\text{See, e.g., Ohanian v. Avis Rent-A-Car Sys., Inc., 779 F.2d 101 (2d Cir. 1985) (applying New York law and holding that relocating from San Francisco to New York constitutes sufficient consideration to establish an oral contract for lifetime employment); Eggers v. Armour & Co. of Delaware, 129 F.2d 729, 731 (8th Cir. 1942) (holding that merely waiving the right to pursue or accept alternative employment constitutes sufficient consideration); Shebar v. Sanyo Bus. Sys. Corp., 544 A.2d 377 (N.J. 1988) (holding that employee’s revocation of his acceptance of another job opportunity was sufficient consideration); Kestenbaum v. Pennzoil Co., 766 P.2d 280 (N.M. 1988) (holding that an implied contract requiring good reason for termination was created by: (1) an employer’s statement that employment would be long-term and permanent, (2) a management practice not to terminate except for good reason, and (3) no mention of the consequences of termination without cause in an insurance benefits manual or in a policy manual).}\)

62. \(\text{Lamaster, 766 F. Supp. at 1502.}\)


64. \(\text{See Ladesic v. Servomation Corp., 488 N.E.2d 1355, 1357 (III. App. Ct. 1986).}\) "Illinois courts will enforce an oral promise to employ a person for life or some other
Furthermore, if the requirement of consideration is met, the contract does not require any "mutuality of obligation" or any additional consideration. Therefore, as long as the employment terms are bargained-for, foregoing alternative employment sufficiently modifies the former at-will employment contract.

In contrast, some courts in Illinois vigorously argue that foregoing a job or job offer is not sufficient consideration to enforce an oral promise for lifetime employment. Even if the terms of the oral contract appear to be bargained for, these courts find that relinquishing a job or job offer is simply incidental to accepting new employment. Although the new opportunity is more lucrative, the employee suffers...
no detriment because he merely chose to accept job security over money. The employee is "not surrendering anything of value" when he promises to stay with or leave his current employer. Therefore, these courts require that oral agreements for lifetime employment be supported by additional consideration other than the foregoing of a job or job offer.

A few Illinois courts also contend that alleged oral promises for lifetime employment are unenforceable because they lack mutuality of promises. Because the employee often does not make a return promise to stay with the current employer for life, and is thus free to leave at any time, these courts find these promises merely illusory.

B. The Exceptions to the Statute of Frauds

An oral contract for lifetime employment requires a clear agreement and the support of sufficient consideration. However, even if these two elements exist to establish a contract's validity, the statute of

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70. See Ladesic, 488 N.E.2d at 1357. In Ladesic, the plaintiff rejected an offer with increased benefits from a competing food catering company, and remained with his current employer. See id. at 1356. Ladesic alleged that in exchange for rejecting the competitor’s offer, his current employer promised him permanent employment that would end only if the plaintiff retired or gave four weeks' notice, or if the plaintiff was performing unsatisfactorily. See id. The court ultimately found that sufficient consideration did not exist. See id. Here, the employee “merely compared the benefits of one position with another,” and chose job security over money. See id. at 1357.

The Ladesic court rejected the Martin I court's finding that additional consideration was not required, noting that a substitution of the parties' intentions might lead to the abolishment of the consideration requirement altogether. See id. at 1357.

71. Id. at 1357; see Heuvelman, 161 N.E.2d at 877.

72. See Smith v. Board of Ed., 708 F.2d 258, 263 (7th Cir. 1983); Bordenkircher v. Burlington Air Express, No. 87 C 3897, 1989 WL 84998 (N.D. Ill. July 19, 1985); Heuvelman, 161 N.E.2d at 877. But see Martin I, 440 N.E.2d at 1002 (criticizing the Heuvelman rule as “overbroad” and “a misstatement of the consideration concept”). One example of sufficient consideration is making some sacrifice, like moving a family. See Smith, 708 F.2d at 263.

73. See Farr v. Continental White Cap, Inc., 774 F. Supp. 522, 525 (N.D. Ill. 1991) (holding that mutuality does not exist where employer cannot fire employee, but the employee may leave whenever he wants); Koch, 529 N.E.2d at 285 (adopting Ladesic over Martin I); Ladesic, 488 N.E.2d at 1357 (holding that an employee suffers no detriment in foregoing an alternative job opportunity—the employee is merely making a choice).

74. See Ladesic, 488 N.E.2d at 1357.


76. See Koch, 529 N.E.2d at 284; Martin I, 440 N.E.2d at 1002-03.
frauds’ writing requirement may nonetheless bar the enforcement of an oral promise.\(^7\) The Illinois statute of frauds requires a writing and a signature by the promisor when the contract specifies that performance is not to be completed within one year.\(^8\) The statute seeks to bar the enforcement of contracts based solely upon fabricated oral evidence.\(^9\) The drafters feared that allegations of promises would go uncontested if the alleged promisor, in this case the employer, died or forgot that the oral promise was made.\(^10\)

Despite the original intention of the drafters, some believe that the statute of frauds may be used as a legal technicality to shield those who breach contracts.\(^11\) This prompted the creation of the following exceptions to excuse the writing requirement: (1) the one-year exception,\(^12\) (2) the full performance exception,\(^13\) and (3) the part performance doctrine.\(^14\) Because of a prevailing distaste for the one-year clause, many courts adopt and apply these exceptions in an effort to significantly narrow the use of the statute.\(^15\)

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\(^8\) See 740 ILL. COMP. STAT. § 80/1 (West 1996). The statute of frauds provides in pertinent part:

No action shall be brought, . . . upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

\(^9\) See Vickory, supra note 4, at 98. The purpose behind the statute is to “promote certainty in contracts by protecting against their enforcement on the basis of fabricated verbal testimony.” Id.

\(^10\) See id. at 101. Vickory argues that a writing is necessary when it is likely that an employer will be unable to offer any testimony “due to death, retirement, or simply . . . faded memories,” making it “difficult for juries to separate fact from invention.” Id. at 118.

\(^11\) See, e.g., id.

\(^12\) See supra Part II.B.1.

\(^13\) See supra Part II.B.2.

\(^14\) See supra Part II.B.2.

1. The Exception to the One-Year Clause

Illinois courts recognize an exception to the statute of frauds, and will enforce an oral promise where the terms of the promise could possibly be fully performed within one year of its making. The statute of frauds language "not to be performed" is construed to mean "not capable of being performed" within one year. Under this interpretation, if the contracted performance is possible within one year, the statute's writing requirement does not apply, even if it is unlikely that performance will actually occur within the space of that year. Thus, in theory, a contract for lifetime employment may be enforceable without a writing because the employee could die within one year, thus fully performing her contractual obligations.

Illinois courts, however, disagree as to whether this exception should exempt permanent employment contracts from the statute of frauds' writing requirement. One line of cases concludes that the possibility of an employee's death within one year renders the lifetime employment contract fully performed. These courts assert that the applicability of the statute should depend on the nature of the contingency, and whether the occurrence of the contingency would "frustrate performance of the contract or complete the contract."
These courts find that if the parties contracted the duration of the employment contract to last for life, death would render the contract fully performed. Likewise, death would prematurely terminate permanent employment contracts contingent upon occurrences such as retirement, good cause, or when the employee quits.

In contrast, two Illinois appellate courts contend that death merely cuts short the contract since parties anticipate a contract for permanent or lifetime employment to last longer than a year. These courts contend that parties to a permanent employment contract anticipate the relationship to last longer than one year. Thus, these courts assert that the possibility of death is irrelevant because it would frustrate the expectations of the parties, as well as the actual subsequent events.

(agreeing that employee's possibility of death or resignation does not remove the oral employment contract outside the statute of frauds); Milazzo v. O'Connell, 925 F. Supp. 1331, 1341 (N.D. Ill. 1996) (discussing the different approaches taken by Illinois courts), aff'd 108 F.3d 129 (7th Cir. 1997), reh'g denied, 1997 U.S. App. LEXIS 8562 (7th Cir. Apr. 22, 1997); Drago v. Davis, No. 96 C 2398, 1996 WL 479696, * 4 (N.D. Ill. Aug. 20, 1996) (interpreting Illinois law regarding oral promises for lifetime employment); Farr v. Continental White Cap, Inc., 774 F. Supp. 522, 524 (N.D. Ill. 1991) (holding that risk of an employee's death within one year usually may not save an otherwise unenforceable contract); Brudnicki v. General Elec. Co., 535 F. Supp. 84, 86-87 (N.D. Ill. 1982). Death and termination are contingencies that "threaten the longevity of any employment relationship." Brudnicki, 535 F. Supp. at 86-87. "Whether the possibility of an employee's death or termination takes the employment agreement from the bar of the Statute ... depends in large part on the underlying purpose and specific terms of the agreement itself." Id. at 87 (citations omitted).

92. See supra note 91; see also CORBIN, supra note 90, § 446, at 549 (reviewing situations where the continued life of a person was necessary to enable performance).

93. See Evans, 799 F.2d at 366 (contract to employ a 20-year old plaintiff until he was 65 was not capable of being performed within one year); Farr, 774 F. Supp. at 524 (holding that the one-year exception applies to promises that an employee can stay as long as he wants because the employee can leave in one year); Brudnicki, 535 F. Supp. at 86-87 (contract for employment that "would extend over 24 years until plaintiff retired at age 65" was void under the statute of frauds); Palmateer v. International Harvester Co., 406 N.E.2d 595, 597 (Ill. App. Ct. 1980) (holding that the alleged implied agreement to employ until retirement could not be completed in one year), aff'd in part and rev'd in part, 421 N.E.2d 876 (Ill. 1981); Gilliland, 388 N.E.2d at 70 (holding that death or bankruptcy would have simply terminated the employment contract that was to last until the employee retired at the age of 62).

94. See Cohn v. Checkers Motors Corp., 599 N.E.2d 1112, 1116 (Ill. App. Ct. 1992) (agreeing that a contract expected "to last more than a year, such as a permanent contract, should be in writing"); Koch v. Ill. Power Co., 529 N.E.2d 281, 286 (Ill. App. Ct. 1988) (stating that "a contract which should have a duration of more than one year, such as for permanent employment, should be in writing").

95. See Koch, 529 N.E.2d at 286; Cohn, 599 N.E.2d at 1116.

Given this confusion, the Illinois courts no longer recognize the assertion that death within one year by one party would render any contract completely performed.\textsuperscript{97}

2. Complete and Partial Performance

If the one-year exception does not apply, the writing requirement may still be excused if there is complete or partial performance. Generally, the statute of frauds requires a contract to be in writing if it cannot be fully performed within one year.\textsuperscript{98} However, where one party completely or partially performs the terms of an oral contract, this performance serves as strong evidence of the existence of the contract, and may exempt the promise from the statute of frauds' writing requirement.\textsuperscript{99}

Courts recognize that complete performance by one of the parties to the alleged contract can bar the statute of frauds defense.\textsuperscript{100} If the employee's relinquishment of a job or job offer could render his obligations fully performed, then the writing requirement is excused, and the contract enforced.\textsuperscript{101}

\textsuperscript{97} See Sinclair v. Sullivan Chevrolet Co., 195 N.E.2d 250, 252-253 (holding that termination and performance are not synonymous, thus, the possibility of death would prematurely terminate a contract specified to last at least one year), aff'd 202 N.E.2d 516 (Ill. 1964). \textit{But see} Stein v. Malden Mills, Inc., 292 N.E.2d 52, 57 (Ill. App. Ct. 1972) (holding that the possibility of death rendered the sale contract for an unspecified duration complete).

\textsuperscript{98} See 740 ILL. COMP. STAT. 80/1 (West 1996).


\textsuperscript{100} See RESTATEMENT (SECOND) OF CONTRACTS § 130, cmt. d (1981) (noting that the one-year provision does not prevent enforcement of the promises of other parties if one party completes performance); see, \textit{e.g.}, McIntosh v. Magna Sys., Inc., 539 F. Supp. 1185, 1190 (N.D. Ill. 1982) (discussing the statute of frauds); Sun Life Assur. Co. of Canada v. Hoy, 174 F. Supp. 859, 864 (E.D. Ill. 1959) (discussing generally the statute of frauds under Illinois law); \textit{see also} Adams v. Lockformer Co., 520 N.E.2d 1177, 1182 (Ill. App. Ct. 1988) (finding that the employee's relinquishment of any rights in rival concept constituted full performance of his obligations, thus barring the defense of the statute of frauds); Mapes v. Kalva Crop., 386 N.E.2d 148, 152-53 (Ill. App. Ct. 1979) (finding that the statute of frauds was barred where employee worked the entire year and completed duties as required under oral employment contract). Illinois courts have long held "[t]hat executed, as opposed to executory, contracts are never voided." \textit{Mapes}, 386 N.E.2d at 152-53 (citing Swanzey v. Moore, 22 Ill. 63, 74 (Ill. 1859)).

In addition, Illinois courts recognize and use the part performance doctrine to remove oral employment contracts from the statute of frauds. When an employee partly performs contractual duties in reliance on an employer's promise, the statute of frauds does not bar enforcement of an oral agreement for a specified duration. The partial performance doctrine is limited, however, to situations where it is impossible or impractical to compensate the performing party for his work, and where refusal to enforce the promise would operate as a fraud upon the party.

performance, the one-year provision of the statute does not prevent enforcement of the promises of the other party." *Id.*; see *Lamaster*, 766 F. Supp. at 1508 (noting that the plaintiff turned down a substantial promotion to take a job with the defendant for as long as he chose to do so); see also *Balstad v. Solem Machine Co.*, 168 N.E.2d 732, 734 (Ill. App. Ct. 1959) (addressing a dispute over the terms of an at-will contract).

For example, an Illinois appellate court found that an employee completed his part of the bargained-for exchange with his employer when he gave up an interest to compete with his employer for the employer's promise of three-years employment. *See Adams*, 520 N.E.2d at 1182. By focusing on the specific promise made by the employee, the court found that the employee did not promise to work for the employer for three years, rather, he promised to relinquish his interest in a rival product. *See id.*

102. *See RESTATEMENT (SECOND) OF CONTRACTS § 130 cmt. e (1981).*

103. *See Tabora v. Gottlieb Mem'l Hosp.*, 664 N.E.2d 267, 276 (Ill. App. Ct. 1996) (finding that the physician's reappointments did not constitute partial performance); *Johnson v. George J. Ball, Inc.*, 617 N.E.2d 1355, 1360 (Ill. App. Ct. 1993) (finding that moving family to a new job location constituted partial performance); *Davies v. Martel Lab. Serv., Inc.*, 545 N.E.2d 475, 478 (Ill. App. Ct. 1989) (stating that whether the employee's acceptance of the terms and conditions of the offer "then and there," including commitment to pursue an MBA degree and serve as member of council, amounted to partial performance was a question of fact); cf. *Mapes*, 386 N.E.2d at 152 (finding that since the employee had been paid for two months of work, partial performance would not bar application of the statute of frauds).

104. *Johnson*, 617 N.E.2d at 1360; *Culbertson v. Carruthers*, 383 N.E.2d 618, 623 (Ill. App. 1978); *see also Carmack v. Beltway Dev. Co.*, 701 S.W.2d 37, 40 (Tex. Civ. App. 1985) (enforcing partially performed real estate commission agreement). For example, an Illinois appellate court found that an employee's relocation in reliance on his employer's promises was partial performance because it was one of the terms of the bargain-for contract. *See Johnson*, 617 N.E.2d at 1360. *But see Taylor v. Canteen Corp.*, 789 F. Supp. 279, 284 (C.D. Ill. 1992), *aff'd in part and rev'd in part*, 69 F.3d 773 (7th Cir. 1995) (finding that the doctrine of partial performance is inapplicable in the employment context and that oral contracts for permanent employment must completely comply with requirements of the statute of frauds).

105. *See Mapes*, 386 N.E.2d at 152 (citing *Ellison v. Ellison*, 23 N.E.2d 718 (Ill. 1939)) (finding that since employee had been paid for two months of his work, there was no partial performance). This doctrine focuses on whether a party has "suffered substantial detriment without a remedy absent enforcement, and the other party would reap an unearned benefit or windfall if permitted to plead the statute." *In re Fairchild Aircraft Corp. v. Whyte*, 6 F.3d 1119, 1129 n.25 (5th Cir. 1993). *See, e.g.*, Estate of *Kaiser v. Gifford*, 692 S.W.2d 525, 526-27 (Tex. Ct. App. 1985); *Carmack*, 701 S.W.2d at 40 (finding that loan from decedent was outside the statute of frauds despite oral agreement to pay back over 300 monthly installments).
C. The Use of Promissory Estoppel

When attempting to enforce an oral promise for permanent employment, an employee may use promissory estoppel as a defense to the writing requirement of the statute of frauds. Promissory estoppel applies when an employer makes a promise to the employee which the employer can reasonably expect to induce reliance on the part of the employee, and when injustice can only be avoided by enforcement of the promise. Historically, courts used promissory estoppel as a defensive theory to prevent a party from avoiding liability for a promise.

Under Illinois law, a plaintiff asserting a breach of contract claim under promissory estoppel must establish the following four elements: (1) a clear and definite promise; (2) reliance upon that promise; (3) reliance that is reasonably expected and foreseeable; and (4) a direct injury resulting from the reliance. However, Illinois courts disagree as to whether promissory estoppel claims can defeat the statute of frauds' writing requirement.

106. See Maddux, supra note 32, at 198 (stating that employees may use promissory estoppel to prevent an employer from asserting a statute of frauds defense based on the absence of a writing).


108. See Maddux, supra note 32, at 198 (citing Benjamin F. Boyer, Promissory Estoppel: Principle from Precedents: Part I, 50 Mich. L. Rev. 639, 646-49 (1952)). Note that some courts allow promissory estoppel to become an independent cause of action, expanding the doctrine "beyond its traditional use as a defensive shield." Id. at 198; see also Joseph W. Ambush, Recent Developments in Employment-At-Will, in Employment-At-Will on Trial 5, 19, 1987 A.B.A. Sec. Labor & Employment Law Div. For Prof'L Educ.


110. See Time Warner Sports Merchandising v. Chicagoland Processing Corp., 974 F. Supp. 1163, 1172 (N.D. Ill. 1997) ("Illinois law has been unsettled as to whether promissory estoppel claims are subject to the statute of frauds"); see also Phillips v. Britton, 516 N.E.2d 692, 700 (Ill. App. Ct. 1987) ("The law in Illinois is unsettled as to whether an action based on promissory estoppel can prevail, where, as here, the action would otherwise fall within the Statute of Frauds."). In addition, many federal courts have attempted to predict how the Illinois Supreme Court would decide on the use of the promissory estoppel doctrine as a bar to the statute of frauds. See, e.g., Genin, Trudeau & Co., 845 F. Supp. at 619 (denying a motion to dismiss the promissory estoppel claim based on the circumstances of the case); Novacor Chem. v. Aluf Plastics, Inc., No. 87 C
Most Illinois courts dismiss promissory estoppel claims, finding that such claims are barred by the statute of frauds' writing requirement. Although these courts refuse to allow parties to use promissory estoppel to trump the statute of frauds, they do permit parties to invoke the doctrine of equitable estoppel. The doctrine of equitable estoppel's use is limited to cases in which there is proof of misrepresentation. When considering oral employment contracts, some Illinois courts adopt this rule, refusing to allow promissory estoppel to defeat a statute of frauds defense.

In contrast, a long line of Illinois appellate court cases take the opposite position and permit a cause of action predicated on the


111. See Time Warner, 974 F. Supp. at 1172; see also infra notes 160-66.


113. See Sinclair, 202 N.E.2d at 518. The doctrine of equitable estoppel requires that a party allege words or conduct amounting to a misrepresentation or concealment of material facts. See id. Individuals who relied on an employer's representations use equitable estoppel to prevent the promisor from denying or lying about the promise. See Maddux, supra note 32, at 205-06. However, the requirement of misrepresentation has limited the use of equitable estoppel and makes it impractical. See id. As a result, promissory estoppel was created to protect this reliance. See id.

114. See First Nat'l Bank, 642 N.E.2d at 142 (finding that bank did not have to honor oral agreement with customer); Vajda v. Arthur Andersen & Co., 624 N.E.2d 1343, 1350-51 (Ill. App. Ct. 1993) (finding promissory estoppel applicable because there were sufficient writings to remove an employment contract from statute of frauds); Dickerson, 615 N.E.2d at 386 (stating that two-year coaching contract had to be in writing); Cohn, 599 N.E.2d at 1116 (stating that contract for resale of taxi cab business, in which performance could not be within a year, had to be in writing).
doctrine of promissory estoppel despite the absence of a writing. These courts allow parties to allege promissory estoppel so long as they demonstrate some kind of reasonable reliance on the alleged oral promise.

III. DISCUSSION

A. Facts of the Case and the Lower Courts’ Opinions

In *McInerney v. Charter Golf, Inc.*, Dennis McInerney sued his former employer, Charter Golf, for breach of contract when Charter Golf fired him. McInerney worked as a sales representative for Charter Golf from 1988 through 1992. In 1989, another manufacturer and seller of golf apparel offered McInerney a position as an exclusive sales representative, with an eight percent commission. McInerney planned to accept the competitor’s offer, but during his attempt to tender his resignation, Charter Golf’s president, Jerry Montiel, made an oral counter-offer. If McInerney rejected the competitor’s offer and continued to work for Charter Golf, Montiel promised McInerney a ten percent commission on sales “for the

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115. See Leekha v. Wentcher, 586 N.E.2d 557, 563 (Ill. App. Ct. 1991) (recognizing promissory estoppel as a separate cause of action despite an absence of a writing); Derby Meadows Util. Co. v. Inter-Continental Real Estate, 559 N.E.2d 986, 995 (Ill. App. Ct. 1990) (holding that real estate company’s statement regarding use of utility company gave rise to claim of promissory estoppel by utility company); Gold v. Dubish, 549 N.E.2d 660, 664 (Ill. App. Ct. 1989) (holding that prospective buyers could raise promissory estoppel claim for relied-upon oral promise); see also Colosi v. Electri-Flex Co., 965 F.2d 500, 504 (7th Cir. 1992) (stating that a discharged employee could have argued promissory estoppel if the employee had reasonably relied on the company’s promise to continue to pay); Lamaster v. Chicago & Northeast Ill. Dist. Council of Carpenters Apprentice and Trainee Program, 766 F. Supp. 1497, 1505 (N.D. Ill. 1991) (allowing promissory estoppel doctrine to proceed because the defendant failed to raise the argument that promissory estoppel undermines the presumption of employment at will).

116. See *Gold*, 549 N.E.2d at 664. For example, in *Gold*, prospective buyers claimed that they quit their jobs in reasonable reliance upon a property owner’s promise that the transaction would be completed by a specific date. See *id.* at 664. The court held that the buyers adequately alleged promissory estoppel despite the absence of a writing. See *id.* The court also noted that there was no practical difference between promissory estoppel and equitable estoppel. See *id.*

117. 680 N.E.2d 1347 (Ill. 1997).

118. See *id.* at 1349.

119. See *id.*

120. See *id.* The decision does not state what commission McInerney was making at the time of the eight percent commission offer. See *id.*

121. See *id.*
remainder of his life.”

McInerney accepted this offer, placing him in a favorable position because the company could now only discharge him for two reasons: dishonesty or disability.

However, three years after the promise for lifetime employment, McInerney was discharged. McInerney then filed suit against Charter Golf for breach of contract. The circuit court granted the employer’s motion for summary judgment and the appellate court affirmed on a completely different ground. The plaintiff then appealed to the Illinois Supreme Court.

B. Majority Opinion

On May 22, 1997, in a four-to-three decision, the Illinois Supreme Court held that, although foregoing the other job offer was sufficient consideration to modify an existing at-will employment relationship, the statute of frauds barred the enforcement of the oral promise for lifetime employment between McInerney and Charter Golf. This decision resolved the conflict among the Illinois lower courts as to what constitutes sufficient consideration to modify a contract, whether a lifetime or permanent employment contract falls into the one-year exception to the statute of frauds, and whether promissory estoppel is applicable, notwithstanding the statute of frauds.

1. Foregoing Another Job Opportunity for Permanent Employment Is Bargained-for Consideration

In McInerney, the Illinois Supreme Court held that a contract is formed when an employee promises to forgo another employment
opportunity in exchange for an employer’s return promise of permanent employment.\textsuperscript{131} In this case, the court found a bargained-for exchange between McInerney and Charter Golf, evidencing a modification of the at-will employment agreement into a lifetime employment contract.\textsuperscript{132}

The court found that Montiel, Charter Golf’s president, engaged McInerney in negotiations over the terms of McInerney’s contract at Charter Golf.\textsuperscript{133} The parties then came to an agreement in which Charter Golf retained a valuable employee and McInerney, in return, received job security.\textsuperscript{134} Thus, the at-will employment relationship changed to lifetime employment when Charter Golf promised to relinquish its right to terminate McInerney for any reason, other than disability and dishonesty, without notice, and McInerney promised to forgo a valuable job offer.\textsuperscript{135} In analyzing the definition of consideration, the court concluded that both parties exchanged “bargained-for benefits.”\textsuperscript{136} The court rejected the defendant’s assertions that additional consideration was necessary.\textsuperscript{137} The court also rejected the defendant’s assertion that the lack of mutuality of obligation barred enforcement of the promise.\textsuperscript{138} Rather, the court found that mutuality of obligation was not required, given that there was other consideration for the contract at issue.\textsuperscript{139}

\textsuperscript{131} See McInerney, 680 N.E.2d at 1351. Although the first element of proving a clear and definite promise was not at issue, the court acknowledged this test and implied that it was met. See id. at 1349.

\textsuperscript{132} See id. at 1351; supra Part II.A (discussing rebuttal and modification of at-will employment).

\textsuperscript{133} See McInerney, 680 N.E.2d at 1350-51.

\textsuperscript{134} See id. at 1351.

\textsuperscript{135} See id.

\textsuperscript{136} Id. at 1350. Consideration is a “bargained-for exchange of promises or performances, and may consist of a promise, an act or a forbearance.” Id. (citing \textsc{Restatement (Second) of Contracts} § 71 (1981)). Thus, McInerney’s promise, in exchange for Charter Golf’s promise, was sufficient consideration. See id. The court stated that holding otherwise “would ignore the economic realities underlying the case.” Id.

\textsuperscript{137} See id. The court noted that the defendant failed to give “any principled reason why this court should depart from traditional notions of contract law,” and stated that “a promise for promise constitutes consideration to support the existence of a contract.” Id. at 1350.

\textsuperscript{138} See id. at 1351. The defendant argued that because McInerney could quit at any time, whereas Charter Golf had no corresponding right to terminate, there was no mutuality of obligation, thus rendering the contract unenforceable. See id.

\textsuperscript{139} See id. at 1350-51. “If the requirement of consideration is met, there is no additional requirement of . . . mutuality of obligation.” \textsc{Restatement (Second) of Contracts} § 79 (1981); see also Armstrong Paint & Varnish Works v. Continental Can Co., 133 N.E. 711, 714 (Ill. 1922) (holding that mutuality of obligation is not essential
In addition, the court noted the split between the appellate courts as to whether foregoing another job or job offer in exchange for permanent employment is sufficient consideration. The court ultimately agreed with the Martin I court which stated that a valid lifetime employment contract forms when an employee gives up another job opportunity in direct exchange for job security. However, the court recognized that “not every relinquishment of a job offer will necessarily constitute consideration to support a contract.”

2. Possibility of Death in First Year of Lifetime Employment Does Not Excuse Writing Requirement of Statute of Frauds

Although the court found a valid contract in McInerney’s case, the court refused to enforce the alleged oral promise because it fell within the statute of frauds’ one-year provision, and was not evidenced by a writing. The court observed that many courts construe the phrase “not to be performed” to mean “not capable of being performed” within one year. Under this interpretation, an oral contract for lifetime employment could be enforced because the employee could die within one year, thus completing the contract.

The McInerney court rejected this interpretation to the extent that it allowed the possibility of death within one year to excuse the lack of a written contract. The court found that the “actual course of
Mclnerney v. Charter Golf, Inc.

subsequent events” and “expectations of the parties” were crucial factors. The court reasoned that because a lifetime employment contract is a permanent contract, the employer would anticipate a relationship of longer than one year. In addition, the court rationalized that the purpose of the statute of frauds was to bar frivolous claims based upon loose oral statements, and to protect against “charlatans, perjurers and the problems of proof” associated with oral contracts. Ultimately, the majority concluded that enforcing an oral lifetime employment contract would frustrate the purpose behind the statute of frauds, thereby inviting fraud and confusion.

Additionally, the court observed the distinction between “death as full performance and death operating to terminate or excuse the contract.” However, because the complete performance intended by McInerney and Charter Golf, is lifetime employment, which is the same event giving rise to termination or excuse, the court considered this distinction useless.

3. The Part and Complete Performance Exceptions Do Not Apply

The Illinois Supreme Court also rejected McInerney’s assertions that the oral contract should be enforced because McInerney performed, either fully or partially, the terms of his oral contract. The court recognized that full performance of the contract by merely one party would mandate enforcement of the oral contract. However, the

“unpersuasive.” Id. at 1351.

147. Id. at 1351.
148. See id. at 1351-52.
149. Id. at 1351.
150. Id.
151. See id. at 1352. The court stated that oral lifetime employment contracts would “eviscerate the policy underlying the statute of frauds.” See id.
152. Id. at 1351, n. 1 (citing Sinclair v. Sullivan Chevrolet Co., 195 N.E.2d 250 (Ill. App. Ct. 1964), aff’d 202 N.E.2d 516 (Ill. 1964); Martin I, 440 N.E.2d 998; Gilliland v. Allstate Ins. Co., 388 N.E.2d 68 (Ill. App. Ct. 1979)). Contrary to views that treat death as full performance of the contract, some courts treat the possibility of death within a year as a contingency that would prematurely terminate the contract. See id.; see also supra Part II.B.1 (discussing the one-year provision and Illinois judicial interpretations of its meaning).
153. See id. This distinction would determine that McInerney’s death within one year of the contract’s creation would have rendered the contract fully performed. See id.
154. See id. at 1352; see also supra Part II.B.1 (discussing in detail the part performance doctrine).
155. See McInerney, 680 N.E.2d at 1352 (citing American College of Surgeons v. Lumbermens Mut. Cas. Co., 491 N.E.2d 1179 (Ill. App. Ct. 1986)). This exception “exists to avoid a ‘virtual fraud’ from being perpetrated on the performing party.” Id.
court reasoned that McInerney’s full performance was impossible because the terms of the contract required him to work until his death, and he remains alive.156

Next, the court asserted that the part performance doctrine did not apply because McInerney had been fully compensated for his work.157 According to the court, partial performance only bars the use of the statute of frauds when it is otherwise impossible to compensate the performing party.158

4. Promissory Estoppel Does Not Bar the Application of the Statute of Frauds

The court rejected McInerney’s contention that the defendant should be estopped from asserting the writing requirement of the statute of frauds to bar enforcement of the oral promise pursuant to any estoppel doctrines.159 First, the court determined that equitable estoppel did not apply because McInerney’s complaint lacked allegations of coercion, misrepresentation, or fraud.160 Second, the court held that reasonable reliance on an employer’s promise was insufficient to allow promissory estoppel to bar the application of the statute of frauds.161 Rather, promissory estoppel would apply only if McInerney could demonstrate a lack of alternative remedies, coupled with the existence of “some element of unjust enrichment.”162 Because McInerney received compensation for his work, the only injustice he suffered was his employer’s failure to provide him with lifetime employment.163 Consequently, this failed to illustrate injury under the meaning of

(quotating Barrett v. Geisinger, 35 N.E. 354, 357 (Ill. 1893)).

156. See id.
157. See id. “Accordingly, part performance—on these facts—will not take the case out of the statute of frauds.” Id.
158. See id. The court noted that partial performance bars the use of the statute of frauds only if “it would otherwise be impossible or impractical to place the parties in status quo or restore or compensate the performing party for the value of his performance.” Id. (quoting Mapes v. Kalva Corp., 386 N.E.2d 148 (Ill. App. Ct. 1979)).
159. See id. McInerney argued that he relied upon the oral promise of Charter Golf to his detriment and that injustice would arise without enforcement of the promise. See id.
160. See id. at 1352-53. “Equitable estoppel is available if one party has relied upon another party’s misrepresentation or concealment of a material fact.” Id. at 1352 (citing Sinclair v. Sullivan Chevrolet Co., 202 N.E.2d 516, 518 (Ill. 1964); Ozier v. Haines, 103 N.E.2d 485, 487-88 (Ill. 1952)).
161. See id. at 1352.
162. Id. (citing RESTATEMENT (SECOND) OF CONTRACTS § 139 cmt. c, at 355-56 (1981)).
163. See id. at 1352-53. The court reasoned that McInerney had already been compensated for his work, such that the “sole injustice” about which he complain[ed was] his employer’s failure to honor its promise of lifetime employment.” Id. at 1353.
Further, the court chastised the plaintiff for his claim because he was a "sophisticated man of commerce," who should have known not to rely on the promise. Thus, the court concluded that it would adhere to Illinois Supreme Court precedent providing that the statute of frauds is applicable even where a party has relied on a promise.

C. The Dissenting Opinion

Justice Nickels, joined by Justice Miller and Justice McMorrow, authored the dissent. Agreeing with the majority, the dissent noted that relinquishment of an alternative job offer constitutes sufficient consideration for the promise of lifetime employment. However, the dissent strongly disagreed with the majority's conclusion that a lifetime employment contract required a writing in order to be enforceable. The dissent asserted that the majority's holding: (1) contradicts the statutory language and substantial precedent; (2) lacks any policy justifications; and (3) increases uncertainty with regard to the one-year provision.

1. Contradicts Statutory Language

According to the dissent, the majority lacked persuasive justification for its broad construction of the statute of frauds. The dissent noted that the prevailing view among the judiciary and other authorities illustrates that when performance is contingent upon the duration of human life, the promise is not barred by the statute of frauds. The

164. See id. at 1352-53.
165. Id. at 1353.
166. See id.
167. See id. (Nickels, J., dissenting).
168. See id. at 1353 (Nickels, J., dissenting) (stating the "plaintiff's promise to forgo another job opportunity is sufficient consideration . . .").
169. See id. (Nickels, J., dissenting). Hence, the dissent argued that the contract did not fall within the requirements of the statute of frauds. See id. (Nickels, J., dissenting).
170. See id. at 1355 (Nickels, J., dissenting).
171. See id. at 1353-54 (Nickels, J., dissenting).
172. See id. at 1353 (Nickels, J., dissenting) (citing RESTATEMENT (SECOND) OF CONTRACTS §130, illus. 2, at 328 (1981)); 72 AM. JUR. 2D Statute of Frauds § 14, at 578 (1974)). "The rule generally accepted by the authorities is that an agreement or promise the performance or duration of which is contingent on the duration of human life is not within the statute . . ." 72 AM. JUR. 2D Statute of Frauds § 14, at 578 (1974); see also J. CALAMARI & J. PERILLO, THE LAW OF CONTRACTS § 19-20, at 810 (3d ed. 1987) (discussing the promise of extended performances and the happening of a condition and stating that "if A promises . . . to employ X for life, the promise is not within the Statute because it is not for a fixed term and the contract by its terms is conditioned upon the continued life of X and the condition may cease to exist within a year because X may
possibility of death within one year, even if slight, would render the contract fully performed, thus taking the contract outside the statute.  

Furthermore, the dissent asserted that this prevailing interpretation is evident by the plain language of the statute. The unambiguous terms of the one-year provision require that, in order to fall within the one-year provision, "the agreement must be one of which it can truly be said at the very moment that it is made, 'This agreement is not to be performed within one year.'" Further, the dissent noted that even if consideration of the statute's purpose was proper, the majority still lacked justification for extending the statute such broad meaning. Consequently, according to the dissent, Charter Golf's promise to employ McInerney until death failed to fall within the one-year provision because McInerney's death within one year would render the contract fully performed.

2. Lack of Justification

The dissent stressed a narrow construction of the one-year provision of the statute of frauds, finding such construction reasonable due to a lack of identifiable rationale for the provision. Specifically, although the purpose of the statute of frauds is to protect parties from forgetting their obligations under prior promises, the one-year

die within a year").

173. See McInerney, 680 N.E.2d at 1354 (Nickels, J., dissenting) (citing CORBIN, supra note 90, § 444, at 535). The issue "is not what the probable, or expected, or actual performance of the contract was; but whether the contract, according to the reasonable interpretation of its terms, required that it should not be performed within the year." Id. at 1354 (Nickels, J., dissenting) (quoting Warner v. Texas & Pacific Ry. Co., 164 U.S. 418, 434 (1896)). Case law demonstrates that there "must not be the slightest possibility that it can be fully performed within one year." Id. (quoting CORBIN, supra note 90, § 444, at 535). Thus, the dissent concluded that the majority incorrectly considered whether the parties expected that the contract would take more than one year to perform. See id. at 1353 (Nickels, J., dissenting).

174. See id. at 1354 (Nickels, J., dissenting). In fact, the dissent explained, "[i]t is well established that where the words of a statutory provision are unambiguous, there is no need to resort to external aids of interpretation in order to glean the legislative's purpose." Id. (Nickels, J., dissenting).

175. Id. at 1354 (Nickels, J., dissenting) (quoting CORBIN, supra note 90, § 444, at 535). Because of the unambiguous words of the one-year provision in this case, the dissent considered its narrow and literal interpretations proper. See id. (Nickels, J., dissenting).

176. See id. (Nickels, J., dissenting) (providing that the majority "lack[ed] any reasoned basis for its holding . . . resort[ing] to nearly tautological wordplay . . .").

177. See id. (Nickels, J., dissenting).

178. See id. (Nickels J., dissenting).

179. See id. at 1353 (Nickels, J., dissenting).
provision does not adequately guard against these dangers because there is "no necessary relationship between the time of the making of the contract, the time within which its performance is required and the time when it might come to court to be proven." 

Furthermore, the dissent criticized the majority for its belief that a "lifetime" employment contract implies a long-term relationship. While the dissent agreed that a lifetime employment contract is essentially a permanent employment contract, the dissent asserted that the mere label of "permanent" should not bar its enforcement.

3. Increased Uncertainty

Unlike the majority's assertion that barring enforcement of oral lifetime employment contracts was necessary to avoid confusion and uncertainty, the dissent argued that this ban would only create greater uncertainty. The dissent asserted that additional confusion would result from the lack of articulable standards designating which types of contracts include relationships that are greater than one year. As a result of this failure, the dissent foresaw a future of guessing games to determine whether the statute of frauds' one-year provision bars enforcement of their contract for an uncertain duration. In conclusion, the dissent stated that it would reverse the judgments of

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180. See id. (Nickels J., dissenting) (stating that the majority "notes the dangers of stale evidence and faded memories").

181. Id. (Nickels J., dissenting) (quoting CALAMARI & PERILLO, supra note 172, § 19-17, at 807 (quoting D & N Boening, Inc. v. Kirsch Beverages, Inc., 472 N.E.2d 992, 993 (N.Y. 1984))). The problem with the one-year provision is that if the suit is brought a few years after the alleged breach, the memories will be stale and the one-year provision is ineffective. See infra notes 247-49 and accompanying text.

182. See McInerney, 680 N.E.2d at 1355 (Nickels J., dissenting). The dissent argued that the majority failed to support the idea that a "lifetime" employment contract "inherently anticipates a relationship of long duration." Id. (Nickels J., dissenting).

183. See id. (Nickels J., dissenting) (quoting CORBIN, supra note 90, § 446, at 549-50). "A contract for permanent employment is not within the one-year clause for the reason that such a contract will be fully performed, according to its terms, upon the death of the employee. The word permanent has, in this connection, no more extended meaning than for life." Id. (Nickels J., dissenting) (quotation mark omitted) (quoting CORBIN, supra note 90, § 446, at 549-50).

184. See id. (Nickels J., dissenting) (stating that the "majority's reasoning is likely to cause greater confusion and uncertainty").

185. See id. (Nickels, J., dissenting). The dissent criticizes the majority for declaring that lifetime employment contracts "anticipate" a relationship of more than one year without providing "guidance as to other types of contracts that do not . . . set forth a specific time frame for performance." Id.

186. See id. (Nickels, J., dissenting). The parties to the contract would no longer be able to look at the actual terms of their agreement to determine whether the contract needed to be in writing. See id. (Nickels, J., dissenting).
the lower courts and find Charter Golf's promise for lifetime employment enforceable even absent a writing.187

IV. ANALYSIS

McInerney v. Charter Golf, Inc. attempted to resolve three controversial issues in Illinois contract and employment law: (1) whether foregoing a job opportunity is sufficient consideration of a lifetime employment contract; (2) whether oral promises for such a contract require a writing; and (3) whether promissory estoppel can be applied notwithstanding the statute of frauds.188 While the Illinois Supreme Court correctly concluded that foregoing another job offer or job created sufficient consideration to modify the at-will employment relationship,189 the Court erroneously barred its enforcement pursuant to the statute of frauds' writing requirement.190 In doing so, the Court ignored the existence of both judicially-created exceptions and the doctrine of promissory estoppel.191 The Court improperly reverted a valid permanent employment contract into an at-will employment relationship.192

The Court's rationale for finding the promise within the one-year clause, and refusing to apply any of the statute's exceptions lacks both logical support and persuasiveness.193 The dissent highlighted these

187. See id. (Nickels, J., dissenting).

188. See supra Part III.A for an explanation of the confusion among Illinois courts about: (1) whether foregoing a job or job offer constitutes sufficient consideration to rebut the at-will presumption; (2) whether oral promises for permanent employment require a writing; and (3) whether promissory estoppel can be applied notwithstanding the statute of frauds. See also Taylor v. Canteen Corp., 69 F.3d 773, 783 (7th Cir. 1995) (noting that "additional guidance [on whether relinquishing present employment or another job offer constitutes adequate consideration] from the Illinois Supreme Court is sorely needed"); Lamaster v. Chicago & Northeast Ill. Dist. Council of Carpenters Apprentice & Trainee Program, 766 F. Supp. 1497, 1507 (N.D. Ill. 1991) (noting the Illinois Supreme Court's silence concerning whether the statute of frauds bars an oral promise for permanent or lifetime employment).

189. See McInerney, 680 N.E.2d at 1353 (Nickels, J., dissenting) (agreeing with the majority's conclusion on the consideration issue).

190. See id.; infra Part IV.A-C (discussing death as complete performance of the contract, the court's failure to recognize this doctrine, and the unresolved issue of promissory estoppel in this area of law).

191. See infra Part IV.A-C.

192. But see Vickory, supra note 4, at 111-12 (noting that "[t]he presumption that 'lifetime' or 'permanent' employment contracts are employment-at-will contracts shields employers from the undesirable effects of the statute of frauds 'one year' rule allowing such long-term contracts to be enforced without a writing").

193. See McInerney, 680 N.E.2d at 1355 (Nickels, J., dissenting) (noting that the court lacked any reasoned basis for its holding and lacked a persuasive justification for its broad construction of the statute).
weaknesses and provided sound reasons for supporting a narrow construction of the statute of frauds. However, the dissent’s discussion contains flaws as a result of its failure to discuss the complete performance doctrine, and to examine the majority’s faulty determination that the statute of frauds barred the use of promissory estoppel. Rather, the Mclnerney court should have enforced the oral promise based on the one-year exception, the full performance exception, and/or the doctrine of promissory estoppel. Enforcing the valid permanent employment agreement would have created an equitable precedent, supported by solid legal reasoning.

A. Death Would Legitimately Complete Performance

While recognizing that an employee’s death within one year would have rendered a lifetime employment contract completely performed, the majority in Mclnerney nonetheless erroneously rejected this well-supported conclusion, calling it “hollow and unpersuasive.” The court’s broad interpretation of the statute of frauds conflicts with well-supported precedent. First, the United States Supreme Court, in analyzing the one-year exception to the statute of frauds, noted the irrelevant impact of both the parties’ expectations and subsequent events to determine whether performance of a contract can be completed within one year of its making. Specifically, the

194. See supra Part III.C (discussing the Mclnerney dissent’s criticism of the majority’s opinion); infra Part IV.A-B (discussing why the promise was possible within one year and why complete performance existed).
195. See Mclnerney, 680 N.E.2d at 1353 (Nickels, J., dissenting).
196. See Evans v. Fluor Dist. Co., Inc., 799 F.2d 364, 366 (7th Cir. 1986) (discussing the applicability of the statute of frauds to a promise the existence of which has been admitted by the employer); Farber & Matheson, supra note 2, at 905 (noting that promissory estoppel and other exceptions should enforce credible promises because “the underlying legal policy is to protect the ability of individuals to trust promises in circumstances in which that trust is socially beneficial”); see also Vickory, supra note 4, at 118-19 (recognizing that certain considerations should prevent a “harshly inflexible application of the employment at-will doctrine” when an employer who verbally promises lifetime employment breaches that promise).
197. See infra Part IV.D (discussing valid premises of permanent employment and reasons supporting their enforcement).
198. See Mclnerney, 680 N.E.2d at 1351.
199. See supra notes 144-154 and accompanying text (discussing why death would complete performance of the contract within one year).
200. See Mclnerney, 680 N.E.2d at 1351.
201. See supra notes 172-178 and accompanying text.

[the parties may well have expected that the contracts would continue in force for more than one year, it may have been very improbable that it would not do
prevailing rule in Illinois establishes that the slightest possibility of full performance within one year places an oral contract outside the statute.\textsuperscript{203} Second, many Illinois state courts, as well as the Seventh Circuit Court of Appeals, advocate the examination of a contract's precise terms to assess whether the happening of a certain event would complete performance of the contract, thus exempting the contract from the statute of frauds; or, whether the event would impede the performance of the contract, thus placing the contract within the statute of frauds' writing requirement.\textsuperscript{204}

Furthermore, a plain reading of the statute clearly shows that the one-year clause requires both parties to agree that the "agreement . . . is not to be performed," not that the agreement "is not at all likely to be performed," nor that the agreement "may not be performed."\textsuperscript{205} This literal construction does not frustrate the purpose behind the statute of frauds, and is consistent with the purpose behind the judicial exceptions.\textsuperscript{206} Many courts had adopted these exceptions in an effort to significantly narrow the use of the statute as a shield to fraud.\textsuperscript{207} Thus, because a plain reading is consistent with the judiciary's efforts to prevent the statute from being used to perpetrate fraud, the statute of frauds' one year clause should be read narrowly.\textsuperscript{208}

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so; and it did in fact continue in force for a much longer time. But they made no stipulation, which in terms, or by reasonable inference, required that result. The question is not what the probable, or expected, or actual performance of the contract was . . . .
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\textit{Id.}

\textsuperscript{203} See supra notes 86-97 and accompanying text (providing a discussion of the one-year exception and the meaning of "performance").

\textsuperscript{204} See Taylor v. Canteen Corp., 69 F.3d 773, 785 (7th Cir. 1995) (citing Lamaster v. Chicago & Northeast III. Dist. Council of Carpenters Apprentice & Trainee Program, 766 F. Supp. 1497, 1506-09 (N.D. Ill. 1991)); see also supra notes 144-154 and accompanying text (providing a discussion of judicial interpretations of "performance" and the meaning of "capability of performance").

\textsuperscript{205} McInerney, 680 N.E.2d at 1354 (Nickels, J., dissenting) (quoting CORBIN, supra note 90, § 444, at 534).

\textsuperscript{206} See supra notes 79-85 and accompanying text (discussing the purpose of the statute of frauds and its exceptions). The McInerney dissent also noted that even if the court had been required to look beyond the language of the statute, it did "not find the majority's policy analysis to be persuasive justification for the broad construction it gives the statute." McInerney, 680 N.E.2d at 1354 (Nickels, J., dissenting).

\textsuperscript{207} See McInerney, 680 N.E.2d at 1351. Although these exceptions have not been added to the statute of frauds, the United States Supreme Court has interpreted congressional silence and inaction to a judicial interpretation to mean that Congress has acquiesced. See Evans v. United States, 504 U.S. 255, 268-69 (1992). Evans holds that in light of a silent and informed legislature, "[o]ur conclusion is buttressed by the fact that so many other courts that have considered this issue over the last [twenty] years have interpreted the statute in the same way." Id. (footnote and citations omitted).

\textsuperscript{208} See McInerney, 680 N.E.2d at 1354 (Nickels, J., dissenting) (citing CALAMARI
In addition, the dissent correctly noted that the one-year clause does not prevent the dangers of "stale evidence and faded memories." For example, the evidence and testimonies for six-month contracts will remain unprotected where the employee files a breach of contract claim almost five years later and the case is not resolved by a court or jury for another few years.

B. Both the Majority and Dissent Fail to Recognize Full Performance

Charter Golf’s promise should have been enforced because McInerney fully performed his obligations under the contract. The facts unequivocally show that McInerney’s obligations were to reject the competitor’s job offer and to continue to work for Charter Golf. McInerney did not promise to work at Charter Golf for the rest of his life, nor did Charter Golf bargain for that promise. The Illinois Supreme Court realized this fact when it rejected the Charter Golf’s argument that the contract was unenforceable because it lacked “mutuality of obligation.” Although the majority admittedly recognized that McInerney had only promised to reject the other offer and to continue work, the majority later blatantly ignored this conclusion and misconstrued McInerney’s promise to mean that he was required to work until his death. The dissent completely

& PERILLO, supra note 172, § 19-17, at 807). The one-year clause produces inconsistent results and does "not achieve a logical balance between protecting against the enforcement of fraudulently alleged promises and, at the same time, withholding aid to promise-breakers." Vickory, supra note 4, at 99 (noting that “the 'one-year' rule . . . has long been interpreted narrowly; enforcement of an oral contract depends on the mere possibility of its performance within one year . . .”).

209. McInerney, 680 N.E.2d at 1354 (Nickels, J., dissenting). “[T]he one-year provision does not effectively guard against these dangers because ‘[t]here is no necessary relationship between the time of the making of the contract, the time within which its performance is required and the time when it might come to court to be proven.’” Id. (quoting CALAMARI & PERILLO, supra note 172, § 19-17, at 807 (quoting D & N Boening, Inc. v. Kirsch Beverages, Inc., 472 N.E.2d 992, 993 (N.Y. 1984))).


212. See McInerney, 680 N.E.2d at 1349.

213. See id. at 1349, 1351.

214. Id. at 1350-51.

215. See id. at 1351 (acknowledging that McInerney could terminate the employment
neglected to recognize the majority’s inconsistent conclusions of fact and law.\textsuperscript{216}

McInerney fully completed his obligations to the contract.\textsuperscript{217} He rejected the competitor’s job offer and continued to work for three years.\textsuperscript{218} Therefore, the complete performance exception to the statute of frauds should have applied and excused the absence of a writing.\textsuperscript{219}

C. Use of Promissory Estoppel Doctrine—Still a Gray Area

The Illinois Supreme Court confused the issue of whether promissory estoppel could trump the statute of frauds. While the court concluded that it would follow the Sinclair rule, which prohibits invoking promissory estoppel against the statute of frauds,\textsuperscript{220} the court appeared to soften that rule by examining McInerney’s reliance interests.\textsuperscript{221} The court recognized the Second Restatement rule whereby promissory estoppel can be used in cases where a party would be without any other remedy and there would be some kind of unjust enrichment.\textsuperscript{222} Despite this recognition, the court wrongly refused to apply this rule to McInerney’s case.

The court erroneously found that McInerney had been fully compensated for his services and the “sole injustice . . . [was] his employer’s failure to honor its promise of lifetime employment.”\textsuperscript{223} In addition, the court unfairly chided McInerney for failing to know that an oral promise was unenforceable under the statute of frauds.\textsuperscript{224} However, even if McInerney was a “sophisticated man of commerce,”\textsuperscript{225} the reasonable employee, who wants to establish a trusting and long-lasting relationship with his employer, may appropriately refrain from asking for a promise in writing to avoid any

\textsuperscript{216} See id. at 1353-55 (Nickels, J., dissenting).
\textsuperscript{217} See id. at 1349.
\textsuperscript{218} See id.
\textsuperscript{219} See supra notes 100-101 and accompanying text.
\textsuperscript{220} See McInerney, 680 N.E.2d at 1352; see also supra notes 112-13 and accompanying text (discussing the Sinclair rule in detail).
\textsuperscript{221} See McInerney, 680 N.E.2d at 1352.
\textsuperscript{222} See id. (citing RESTATMENT (SECOND) OF CONTRACTS § 139, cmt. c, at 355-56 (1981)). It appears that the Illinois Supreme Court may approve of this rule in some instances because it stated: “[W]e do not believe that this case is one which requires us to adopt such a rule.” Id.
\textsuperscript{223} Id. at 1352-53.
\textsuperscript{224} See id. at 1353. The court found that McInerney’s reliance on Charter Golf’s promise was “misplaced.” Id.
\textsuperscript{225} Id.
insult to the employer.\textsuperscript{226} Furthermore, McInerney’s reliance was not misplaced, but foreseeable and expected by Charter Golf.\textsuperscript{227} Though he was compensated for his services, he was not fairly compensated for rejecting a lucrative job offer with a competitor.\textsuperscript{228} Despite these facts, the court nonetheless concluded that his reliance was not enough to adopt the Second Restatement rule, leaving some uncertainty as to when the Second Restatement rule should be applied.

D. Valid Promises of Permanent Employment Should be Enforced

Instead of broadly ruling that all permanent employment contracts require a writing because they anticipate a duration longer than one year,\textsuperscript{229} the Illinois Supreme Court should have looked to the totality of the circumstances in determining when a writing is needed.\textsuperscript{230} If the circumstances surrounding the promise and the authority of the promise-makers are sufficiently clear to establish the existence of consideration to modify the at-will employment relationship, then the oral promises should be enforced.\textsuperscript{231} In McInerney, the employee’s relinquishment of another job offer for job security established a credible lifetime employment contract\textsuperscript{232} and constituted complete performance.\textsuperscript{233} Thus, the form and substance necessary for a valid and enforceable permanent employment contract had been met.\textsuperscript{234}

\textsuperscript{226} See Farber & Matheson, supra note 2, at 926; see also Alan Hyde et al., After Smyrna: Rights and Powers of Unions That Represent Less Than a Majority, 45 Rutgers L. Rev. 637, 669 n.37 (1993) (citations omitted) (discussing the understanding of employer-employee contracts as “genuine reflections of trust that typify modern business enterprise”).

\textsuperscript{227} See McInerney, 680 N.E.2d at 1349-50. The facts show that McInerney relinquished a job offer for job security. See id. at 1349.

\textsuperscript{228} See id. at 1349-50.

\textsuperscript{229} See supra note 129 and accompanying text.

\textsuperscript{230} See Farber & Matheson, supra note 2, at 939 (asserting that, if the surrounding circumstances, the promisor’s promises, and authority of the promisor are sufficiently clear to establish consideration, the promise should be enforced); see also Maddux, supra note 32, at 216 (noting that employee allegations of indefinite term contracts result in fact questions to be addressed by the fact finder). In determining the time of performance and applicability of the statute of frauds, the fact finder “must carefully examine the subject matter and the circumstances surrounding the parties’ situation present at the time of the contract.” Id. (quoting Gerstacker v. Blum Consulting Eng’rs, Inc., 884 S.W.2d 845, 850 (Tex. App. Ct. 1994)).

\textsuperscript{231} Farber & Matheson, supra note 2, at 939.

\textsuperscript{232} See supra notes 131-142 and accompanying text.

\textsuperscript{233} See supra notes 99-105 and accompanying text.

\textsuperscript{234} See supra notes 48-50 and accompanying text (discussing the test for determining whether a valid contract had been created) and notes 100-01 and accompanying text (discussing enforcing an oral contract through the complete performance exception).
However, in its quest to protect employers from being liable for their own loose verbal statements, or from an employee’s fabricated testimony, the court completely and unreasonably ignored the fact that it had already found that Charter Golf’s oral promise constituted a valid permanent employment contract. In allowing the statute of frauds analysis to essentially render the at-will analysis nugatory, the court failed to explain how its decision promotes the purpose behind the statute of frauds. While it duly noted that the purpose of the statute is to protect the fact finder “from charlatans, perjurers and the problems of proof accompanying oral contracts,” the facts clearly indicate that McInerney was not a charlatan or perjurer, and that the consideration given was adequate proof of the oral contract.

The majority failed to realize that its decision only helps perpetuate fraud by protecting employers who break promises of job security upon which employees reasonably rely. Although protecting employers from false allegations of permanent employment contracts constitutes a legitimate concern, the court should have balanced that concern with the corresponding crucial concern that the statute of frauds itself is being used as a fraud against employees, who often are already functioning at unequal bargaining levels.

235. See McInerney v. Charter Golf, Inc., 680 N.E.2d 1347, 1350-51 (Ill. 1997) (concluding that where an “employee relinquishes something of value in a bargained-for exchange for the employer’s guarantee of permanent employment, a contract is formed”); see supra Part III.B (discussing the McInerney majority holding).

236. See Vickory, supra note 4, at 116 (recognizing that at-will employment may be overcome through an examination of the “entire relationship of the parties . . . [in order to] ascertain their actual intent . . .”) (quoting Foley v. Interactive Data Corp., 765 P.2d 373, 386 (Co. 1988)).

237. See McInerney, 680 N.E.2d at 1351 (stating that “the statute exists to protect not just the parties to a contract, but also—perhaps more importantly—to protect the fact finder from charlatans, perjurers and the problems of proof accompanying oral contracts”). The majority’s assertion that enforcing an oral promise for lifetime employment “would invite confusion, uncertainty, and outright fraud” is unsupported. Id. at 1352. The dissent attempted to counter this point by stating that the majority’s holding is likely to increase uncertainty. See id. at 1355 (Nickels, J., dissenting) (noting that parties would have to guess whether the type of contract they have will be treated as “inherently anticipating a relationship of more than one year”). However, the more effective argument is that requiring a writing here would lead to outright fraud by protecting an employer’s inducement. See infra notes 246-251 and accompanying text.

238. McInerney, 680 N.E.2d at 1351.

239. See id. at 1348-51.

240. See supra note 69 and accompanying text; infra notes 246-51 and accompanying text (noting that under the McInerney holding, employers can revoke oral offers of lifetime employment even though employees have relied on the offers).

241. See Maddux, supra note 32, at 200-01 (arguing that employment at will already favors the employer and therefore, employees should have use of “every viable vehicle” through which they can enforce an employer’s promise).
V. IMPACT

In Illinois, employees no longer have any legal rights to permanent employment unless the promise is in writing.\textsuperscript{242} The Illinois Supreme Court's decision in \textit{McInerney v. Charter Golf, Inc.} essentially eliminates all oral promises for lifetime employment, and leaves employees who have relied upon these promises terminable at the will of their employers.\textsuperscript{243} In doing so, the decision blatantly disregards concerns of the employee's unprotected reliance interests and unequal bargaining power,\textsuperscript{244} setting forth a disturbing precedent that lower Illinois courts must follow. The court also ignored the reality that almost all employment relationships are created and memorialized by words and actions, rather than by paper.\textsuperscript{245}

The decision unfairly and unreasonably assists management in performing acts of fraud by giving them absolute protection from being sued for breaking valid oral promises for permanent employment.\textsuperscript{246} This decision also gives the employer the ultimate, non-negotiable right to revoke its offer of lifetime employment, despite the fact that it was part of a bargained-for exchange.\textsuperscript{247} Consequently, it leaves employees in the confusing and unreasonable position of not knowing what promises they can actually rely upon and not knowing whom to trust.\textsuperscript{248} The employee must now ask for all promised terms for hiring and firing practices and procedures to be in writing.\textsuperscript{249} This

\textsuperscript{242} See \textit{McInerney}, 680 N.E.2d at 1353. "[T]he statute of frauds requires that contracts for lifetime employment be in writing." \textit{Id.} "Permanent" is used here because the court's rationale for requiring a writing was based on its description that a permanent employment contract expects a long relationship, one longer than a year. \textit{See id.} at 1352. The court further defined "lifetime" employment contracts as "permanent" employment contracts. \textit{See id.} at 1351-52.

\textsuperscript{243} See \textit{id.} at 1353.

\textsuperscript{244} See infra notes 246-51 and accompanying text.

\textsuperscript{245} See supra notes 2-3 and accompanying text.

\textsuperscript{246} The decision will perpetuate fraud, a vital concern that the exceptions were created to limit. \textit{See supra} note 81 and accompanying text; \textit{see also} Evans v. Fluor Distribution Co., 799 F.2d 364, 366 (7th Cir. 1986) (discussing the applicability of the statute of frauds to a promise whose existence has been admitted by the employer).

\textsuperscript{247} See \textit{supra} notes 131-42 and accompanying text (discussing the majority's holding that there was bargained-for consideration.

\textsuperscript{248} See generally Farber & Matheson, \textit{supra} note 2, at 905 (discussing the legal policy to protect the ability of individuals to trust promises).

\textsuperscript{249} See \textit{McInerney}, 680 N.E.2d at 1353. This Note recognizes that not every employer will renege on the promise. Ironically, it is normally employers who are advised to avoid overselling job security at the time of hire. \textit{See Vickory, supra} note 4, at 121. In Illinois, employers can verbally promise lifetime employment without worry of liability because they will not be bound by oral promises. \textit{See McInerney}, 680 N.E.2d at 1353.
task may prove difficult, given the unequal bargaining power between the employer and the employee, and could potentially breed distrust, or offend an employer.\textsuperscript{250} It is possible that the employee may not even be in a position to ask for a written contract at all.\textsuperscript{251}

The court's decision also causes confusion as to the application of the at-will-employment doctrine to permanent contracts, given that the use of the statute of frauds seems to render useless the court's first determination that the contract was a valid permanent employment contract.\textsuperscript{252} It no longer seems to matter whether the employee proves that employment-at-will was not intended because an unwritten permanent employment contract can be readily voided by the statute of frauds.\textsuperscript{253} Thus, the \textit{McInerney} decision strengthens the at-will employment doctrine by allowing employers to terminate employees despite the existence of a valid lifetime employment contract, while simultaneously making futile all analyses concerning the modification of employment-at-will relationships into permanent employment contracts.

\section*{VI. CONCLUSION}

While requiring that permanent employment contracts be in writing will certainly benefit both employer and employee, the Illinois Supreme Court, in \textit{McInerney v. Charter Golf, Inc.}, failed to take fairness and reality into consideration. \textit{McInerney} provided the court with the opportunity to establish that the totality of the circumstances coupled with fairness considerations, should take precedence over mere form. In fact, \textit{McInerney} would have been an easy case to resolve because the Court had already established that the promise between Charter Golf and McInerney was an unequivocal permanent employment contract supported by bargained-for consideration. However, the \textit{McInerney} majority instead found misplaced solace in the statute of frauds. By misinterpreting the statutes' well-supported exceptions, and even some of the facts of the case, it erroneously justified reverting a valid permanent employment contract back to an at-will employment agreement.

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\textbf{GINA M. CHANG}
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\textsuperscript{250} See generally Maddux, \textit{supra} note 32, at 228 (discussing that the primary argument for using promissory estoppel to prove oral promises of indefinite term employment is to even the playing field between employers and employees).
\textsuperscript{251} See \textit{supra} note 226 and accompanying text.
\textsuperscript{252} See \textit{supra} notes 232-35 and accompanying text.
\textsuperscript{253} See Part III.B.