COURT OF APPEALS OF VIRGINIA

Record No. 0981-25-4

C&A SCIENTIFIC COMPANY, INC., ET AL.
v.
CHENHUA YU, A/K/A
KENNY YU, ET AL.

Present: Judges Raphael, Lorish and Frucci

Argued at Arlington, Virginia

Opinion Issued August 18, 2026

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
David A. Oblon, Judge

James J. O'Keeffe, IV (Matthew R. McGuire; Arktouros, PLLC, on briefs), for appellants.

Andrew E. Suddarth (Kevin S. Jaros; PJI Law, PLC, on brief), for appellees.

PUBLISHED OPINION BY
JUDGE STUART A. RAPHAEL

This business dispute arises between C&A Scientific Company, Inc. and its principal, Sam Xiang, on the one hand, and CoreAmp, Inc. and its principal, Kenny Yu, on the other. After Yu left his job at C&A and, through CoreAmp, solicited business from one of C&A's clients, C&A's lawyer warned the client that Yu was violating various contractual obligations to C&A. Yu and CoreAmp sued C&A and Xiang for, among other things, tortious interference with business expectancy. C&A and Xiang counterclaimed, alleging that Yu had breached his noncompete and non-solicitation obligations and had disclosed C&A's trade secrets.

At the jury trial that followed, the trial court invalidated the noncompete provision as vague and overbroad. The jury then returned a verdict for Yu and CoreAmp on their tortious-interference claim and assessed damages at $200,000. The jury rejected C&A's claim that Yu breached his non-solicitation agreement or disclosed C&A's trade secrets.

On appeal, C&A argues that the trial court erred in finding the noncompete agreement unenforceable; erred in failing to set aside the jury's verdict on Yu and CoreAmp's tortious-interference claim; and erred by admitting into evidence an English translation of a letter written in Mandarin. We disagree and affirm the judgment. The noncompete agreement was fatally overbroad; the evidence sufficed to show that C&A interfered with a probable business expectancy that the jury could properly value at $200,000; and the trial court committed no reversible error by admitting the English translation into evidence.

Background

Applying "well-settled principles of appellate review," we "view the evidence in the light most favorable to the [appellees]"—Yu and CoreAmp—as they have in their "favor a jury verdict confirmed by the trial judge." *United Leasing Corp. v. Lehner Fam. Bus. Tr.*, 279 Va. 510, 513 (2010). "Doing so requires that we 'discard' the [appellants'] evidence when it conflicts with the [appellees'] evidence, 'regard as true all the credible evidence favorable to the [appellees],' and read 'all fair inferences' in the [appellees'] favor." *Camann v. Commonwealth*, 79 Va. App. 427, 431 (2024) (en banc) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)).

Yu and Xiang are cousins. Xiang's parents founded C&A in the 1990s. C&A is a wholesaler of scientific equipment and educational supplies. Xiang started working for the company in 2015, quickly becoming the Chief Executive Officer.

A. Xiang hires Yu at C&A, but they have a falling out.

In 2017, Xiang approached Yu "to help save" the company. C&A was in "very bad shape" and "almost bankrupt." By 2019, with Yu's help, C&A was turning a profit; Yu was promoted to Chief Operating Officer.

After Yu's promotion, Xiang and Yu entered into a shareholder agreement that was prepared by Xiang. The agreement gave Yu a 30% interest in C&A and Xiang a 70% interest. Section 8(a) of the shareholder agreement contained a broad noncompete provision—with an incomplete conditional clause at the end—governing a departing shareholder's obligations after selling his shares:

> Noncompetition. . . . Unless otherwise agreed to in writing by a majority of the Board of Directors, a departing Shareholder will not be employed, concerned, or financially interested, either directly or indirectly, in the same or a similar business as that conducted by the Corporation, or compete with the Corporation for a one-year period following the date the departing Shareholder conveys his or her shares *if any customers of the same, similar, or competing business*.

(Emphasis added). Paragraph 8(b) of the shareholder agreement also obligated Yu not to disclose C&A's trade secrets or customer lists.

Under Yu's leadership, C&A's gross revenue increased from $4.5 million to $26 million. But in 2020, the relationship between Yu and Xiang soured.

According to Yu, Xiang demanded that he "make [C&A] another $100,000,000 in the next five years" or Xiang would withhold Yu's ownership distribution. Without that distribution, Yu worried that he would be unable to pay his share of C&A's tax liability.[1] Xiang also directed Yu to "double" his workload.

[1] Yu explained that because C&A was structured as an S-Corporation, he and Xiang had to pay their respective shares of the corporate tax.

Unable to resolve the conflict, Yu and Xiang negotiated a stock-purchase agreement under which Yu agreed to sell his shares back to the company. Paragraph 6(a) of the agreement contained a non-solicitation provision obligating Yu for a period of 12 months from the termination of his employment not to "solicit or contact" any C&A customer "with a view to induce or encourage" the customer "to discontinue or curtail its relationship with" C&A.

B. Yu forms CoreAmp, Inc.

Yu formed CoreAmp, Inc. in July 2021, while Yu and Xiang were negotiating the stock-purchase agreement. Though he had no plans for CoreAmp when he created it, Yu contemplated consulting, software, and third-party logistics as potential business options. The "third-party logistics" he contemplated would not compete with C&A; the company could have worked "either for or with C&A," not against it.

The stock-purchase agreement took effect on August 1, 2021, starting the one-year noncompete obligation under paragraph 8(a) of the shareholder agreement. Yu testified that his last day of work at C&A was August 23, 2021. So his separate, 12-month non-solicitation obligation under paragraph 6(a) of the stock-purchase agreement extended to August 23, 2022.

In the year following his departure from C&A, Yu did not contact "any other entity that had a business relationship with C&A in order to induce or encourage that entity to discontinue or curtail its relationship with C&A." Nor did he try to compete with C&A for business during that period. And at no time after leaving C&A did Yu ever disclose any of C&A's confidential information.

In September 2022, a month after his noncompete and non-solicitation obligations had ended, Yu reached out to one of C&A's customers, Carolina Biological Supply Company. In October, Carolina Biological invited CoreAmp to become one of its vendors. Yu and CoreAmp signed a nondisclosure agreement on October 25, 2022. Carolina Biological's vice president introduced Yu to the company's purchase manager, who added CoreAmp to the company's computer system. In November or December, Carolina Biological told Yu that it "wanted [CoreAmp] to completely replace C&A Scientific" as the company's supplier. Carolina Biological had grown unhappy with C&A for cutting corners on quality while raising prices. Carolina Biological gave Yu the "C&A Scientific product list for [Yu] to replace with the [CoreAmp] target price." Based on his "knowledge of the industry," Yu anticipated that replacing C&A as Carolina Biological's vendor would net CoreAmp $300,000 per year. In late 2022, CoreAmp made its first sale to Carolina Biological in the amount of $1,000.

C. Litigation ensues after C&A warns Carolina Biological to stop working with Yu.

On January 12, 2023, however, Yu received a letter from Kelly Nash, a lawyer engaged by C&A "to investigate and prosecute civil claims against [Yu] and any of [his] affiliated companies, including CoreAmp, Inc. [] relating to alleged breaches" of the shareholder and stock-purchase agreements. Nash's letter requested that Yu submit to mediation to "informally and amicably" resolve the alleged contractual violations.

The next day, Nash sent a letter to Carolina Biological warning it of Yu's obligations under the shareholder and stock-purchase agreements. Nash accused Yu of violating his obligations "by attempting to engage or engaging in business activity with" Carolina Biological. The letter asked Carolina Biological to "refrain from dealing with [Yu]," as doing so "would be in keeping with [its] duty to not interfere with third party contracts under applicable law." Carolina Biological forwarded the letter to Yu, informing him that although it was happy with his business, it could not continue working with him until he resolved his dispute with C&A.

In February 2023, Xiang's parents sent a letter to Yu's family that berated and disparaged Yu and his wife over Yu's falling out with Xiang. The letter was written in Mandarin, but Yu translated it into English.[2] The letter accused Yu of being ungrateful and threatened to embarrass Yu to his family members and business partners unless he agreed, among other things, to sign a "Permanent Non-compete agreement." Yu refers to that document as the "blackmail" letter. The parties attempted mediation in the third week of February 2023, but it did not succeed. Xiang's counsel received the English translation of the blackmail letter in the course of that mediation.

On February 24, 2023, Yu and CoreAmp sued Xiang, C&A, Nash, and Nash's law firm. On May 26, Yu and CoreAmp amended the complaint to allege, among other things, that all four defendants "intentionally interfered with CoreAmp's business relationship and business expectancies with Carolina [Biological]." C&A counterclaimed, alleging that Yu breached the shareholder agreement, the stock-purchase agreement, and his fiduciary duties to C&A. C&A also accused Yu and CoreAmp of interfering with its "contract and/or business expectancy," and further accused Yu of misappropriating its trade secrets.[3] C&A and Xiang sought compensatory damages of $3 million and punitive damages of $350,000.[4]

D. Yu and CoreAmp prevail at trial.

The jury trial that followed spanned five days: March 3, 4, 6, 10, and 11, 2025. As described in Part I below, the transcripts for only the first and fourth days of trial (March 3 and 10) were timely filed.

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[2] At trial, Yu was uncertain at first in recalling whether he or his lawyer had translated the letter into English, but Yu ultimately remembered that he translated the letter himself.

[3] Two of the counts originally pleaded against Nash and his law firm were dismissed by plea in bar on August 10, 2023. The remaining count against Nash and the law firm was dismissed by agreement of the parties on January 31, 2025. The court sustained Xiang's demurrer to Yu and CoreAmp's tortious-interference claim, dismissing that claim with prejudice as to Xiang on August 10, 2023.

[4] C&A did not seek specific performance or injunctive relief to extend the noncompete for another one-year period. *Cf. Roanoke Eng'g Sales Co. v. Rosenbaum*, 223 Va. 548, 554-56 (1982) (permitting prospective enforcement of noncompete when equity warrants it).

Yu testified on March 3 to the facts set forth above. C&A did not object when Yu estimated that the net value of CoreAmp's replacing C&A as Carolina Biological's vendor was $300,000 per year. Nor did C&A object when Yu repeatedly referred to the February 2023 letter from Xiang's parents as the "blackmail" letter.

C&A agreed to the admission of the original letter from Xiang's parents, written in Mandarin, as Defense Exhibit 61. But C&A objected on two grounds when Yu and CoreAmp offered the English translation as Plaintiff's Exhibit 11. First, C&A argued that the English version had not been produced in discovery. But the trial court overruled that objection after C&A admitted that the English translation had been provided to Xiang's counsel at the February 2023 mediation. C&A also objected that the English version was not "a certified translation[]." The trial court was unpersuaded, however, and it received Plaintiff's Exhibit 11 into evidence.

In the defense case on March 10, Nash testified that Xiang and C&A hired his law firm to investigate Yu and CoreAmp. Based on that investigation, Nash concluded that "there was one very small [purchase order] and no other agreement in place between either [Yu] or CoreAmp or Carolina Biological." Nash admitted that he sent copies of the shareholder and stock-purchase agreements to Carolina Biological with his January 2023 letter.

In the plaintiffs' rebuttal case on March 10, Yu testified that he signed a nondisclosure agreement with Carolina Biological as a "requirement" for doing business. A copy of the nondisclosure agreement was admitted into evidence without objection.

At the close of all evidence, Yu moved to strike Count IV of C&A's counterclaim to the extent that it alleged that he breached the noncompete provision in paragraph 8(a) of the shareholder agreement. Focusing on the last sentence of that provision, the court found that it ended "with a run-on sentence" that was unclear and that "no evidence in the trial makes it clear." The court considered "blue penciling" that language but determined that Virginia law would not allow that. Because the noncompete provision was "unintelligible," the court continued, it was "unenforceable," and "the remedy is to strike the entire provision." The court also ruled that the noncompete provision "as a whole, is not narrowly tailored and is overbroad" because it "bars an investment in a similar business that doesn't even compete with C&A." The provision also lacked "a geographical limitation," and there was "no evidence that C&A need[ed] a worldwide pr[o]scription."

The court, however, permitted C&A's other counterclaims to go forward. They included C&A's claim that Yu breached both the trade-secrets provision in paragraph 8(b) of the shareholder agreement and the non-solicitation provision in paragraph 6(a) of the stock-purchase agreement.

The jury returned a verdict for Yu and CoreAmp on their tortious-interference claim and awarded them $200,000 in compensatory damages. The jury also returned a verdict for Yu and CoreAmp on all of C&A's counterclaims.

The court initially entered a "Final Judgment" for Yu and CoreAmp on March 11, 2025 but suspended the order for the parties to file post-trial motions. C&A moved to set aside the verdict and reduce the damage award on the tortious-interference claim, attaching the transcripts from the first and fourth days of trial. C&A argued that Yu and CoreAmp had failed to prove tortious interference or to offer evidence to support the $200,000 compensatory-damage award.

After hearing argument on May 30, 2025, the trial court denied C&A's post-trial motions and reinstated the final judgment for Yu and CoreAmp.[5] C&A and Xiang noted a timely appeal from the May 30 final order, representing that they would file hearing transcripts. They filed ten transcripts on August 4, 2025, including the transcripts for all five days of trial. But the 60-day

[5] C&A posted a cash bond of $371,000 to stay execution of the judgment pending appeal.

window to file transcripts under Rule 5A:8 had closed on July 29, and they failed to request an extension of time.

ANALYSIS

I. The Court can reach the assignments of error despite C&A's failure to timely file all trial transcripts.

We must first consider whether the Court can reach the assignments of error given that the transcripts for three of the five days of trial were filed later than the 60 days allowed under Rule 5A:8(a). Neither side raised this issue on brief, but we alerted the parties to be prepared to discuss it at oral argument. In response, C&A asked us to stay this case pending a decision by the Supreme Court in *Faruque v. Bhuiyan*, No. 250657 (petition for appeal granted June 1, 2026). The appellant there argues, among other things, that a panel of this Court erred in deeming late-filed transcripts not part of the record when the transcripts had been transmitted to our Court by the clerk of the circuit court and the appellee had not objected to their inclusion in the record.[6] Yu and CoreAmp responded that they opposed a stay. They also consented to our considering the late-filed transcripts. Even so, C&A's counsel expressed concern at oral argument that, depending on how *Faruque* is resolved, even an appellee's *explicit* waiver of a Rule 5A:8(a) deficiency might not be enough to make late-filed transcripts part of the record on appeal.

Unless the appellant obtains a time extension, "[t]he transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court no later than 60 days after entry of the final judgment." Rule 5A:8(a). "When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission will not be considered." Rule

[6] The order appealed from in *Faruque v. Bhuiyan*, No. 0209-24-4 (Va. Ct. App. May 21, 2025), is unpublished.

5A:8(b)(4)(ii). We regularly affirm the trial court's judgment when a transcript that has not been timely filed is found to be indispensable to resolving the assignment of error. *See, e.g.*, *Smith v. Commonwealth*, 281 Va. 464, 466 (2011) (noting that the transcript was not part of the record because it "was not filed in the circuit court until eight days beyond the time prescribed by Rule 5A:8").

Even so, "cases may often be decided without the filing of a transcript." *Id.* at 468 (collecting cases). "[T]he absence of a hearing transcript is not fatal to an assignment of error when . . . the specific basis for the trial court's ruling and the appellant's objections to that ruling are evident in the record." *Hammond-Schrock v. Commonwealth*, 86 Va. App. 780, 792 (2026) (finding the hearing transcript not indispensable because the appellant's arguments were made in her written pleading and the trial court explained the basis for the challenged ruling); *see also JSR Mech., Inc. v. Aireco Supply, Inc.*, 291 Va. 377, 382 (2016) (finding the transcript not indispensable when the record "sufficiently sets before the Court the pure issue of law" on appeal); *Shaw-McDonald v. Eye Consultants of N. Va., P.C.*, 79 Va. App. 576, 582 n.2 (2024) (finding the issues adequately preserved in the record despite the absence of a hearing transcript), *aff'd on other grounds*, 304 Va. 164 (2025). In other words, the appellant's "failure to include a transcript . . . will result in a waiver *only* when . . . [it] . . . is 'necessary to permit resolution of appellate issues.'" *Jacks v. Commonwealth*, 74 Va. App. 783, 795 (2022) (en banc) (emphasis added) (quoting Rule 5A:8(b)(4)(ii)).

Having carefully reviewed the assigned errors and the portions of the record they implicate, we conclude that we can resolve all four assignments of error based on the timely filed transcripts from the first and fourth days of trial. The March 3 transcript contains Yu's case-in-chief testimony. The March 10 transcript includes Xiang's testimony, Nash's testimony, and Yu's rebuttal testimony. Their testimony covers the basis for Yu and CoreAmp's tortious-interference claim and the $200,000 damages award; the admission into evidence of the English translation of the "blackmail" letter; and the trial court's ruling invalidating the noncompete agreement. We have also reviewed the record citations in the parties' briefs that reference any other day of trial for which the transcript was filed late. There were few such references. And none of the points supported by those citations changes the basis for our decision here. So we deny C&A's motion to stay this case pending a decision in *Faruque*.

II. The trial court properly invalidated the noncompete provision (Assignment of Error 1).

"The enforceability of a provision that restricts competition is a question of law that [appellate courts] review de novo." *Home Paramount Pest Control Cos. v. Shaffer*, 282 Va. 412, 415 (2011). Paragraph 8(a) of the shareholder agreement imposed this noncompete[7] obligation on Yu (ending with an incomplete conditional clause):

> Unless otherwise agreed to in writing by a majority of the Board of Directors, a departing Shareholder will not be employed, concerned, or financially interested, either directly or indirectly, in the same or a similar business as that conducted by the Corporation, or compete with the Corporation for a one-year period following the date the departing Shareholder conveys his or her shares if any customers of the same, similar, or competing business.

The trial court invalidated that provision on two grounds: the incomplete conditional clause at the end made the sentence unintelligible; and the noncompete was overbroad in function and

[7] The term *noncompete* can function as an adjective, as in *noncompete provision* and *noncompete obligation*. It may also operate as a noun, referring to a covenant not to compete. Some legal lexicographers in the 1980s disfavored *noncompete* as a noun. *See* Bryan A. Garner, *Noncompetition agreement, A Dictionary of Legal Usage* (1987) ("*Noncompete* is not listed in most dictionaries and we may justifiably hope that it never gains widespread approval."). Although it does not yet have its own entry in Black's Law Dictionary, *noncompete* is now commonly used as a noun. *See, e.g.*, *Noncompete*, *Merriam-Webster Dictionary* (last visited July 27, 2026), https://perma.cc/B4V3-8VWQ; Uniform Restrictive Employment Agreement Act (Unif. L. Comm'n 2021) (using *noncompete* and *noncompetes* as nouns throughout the commentary), https://perma.cc/MVG2-5JBL; *see also* Bryan A. Garner, *LawProse Lesson #277: "Noncompete" competes with "noncompetition"* (Mar. 9, 2017), https://perma.cc/672Q-2ALG (discussing the term's evolution since the 1980s).

geographic scope. The trial court said it considered "blue penciling" the provision but concluded that Virginia law does not allow blue penciling.[8] And even if it did, the court would be unable "to figure out how to reform the contract." So the court struck Count IV of C&A's counterclaim to the extent that it was based on Yu's alleged breach of the noncompete provision.

C&A challenges both grounds, but we find no reversible error.

A. The noncompete provision cannot be reformed.

1. C&A defaulted its party-presentation objection.

C&A first argues that we should not consider the trial court's ruling that reformation is not available to delete the incomplete conditional clause because the trial court raised this issue on its own. In doing so, C&A says, the trial court violated "the principle of party presentation." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).

The party-presentation principle captures the idea that "[t]he parties '"frame the issues for decision,"' while the court serves as '"neutral arbiter of matters the parties present."'" *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam) (quoting *Sineneng-Smith*, 590 U.S. at 375). "To put it plainly, courts 'call balls and strikes'; they don't get a turn at bat." *Id.* (quoting *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 599 (2020)). But "[t]he party presentation principle is supple, not

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[8] The metaphor owes its origin to the publishing profession, where the editor's use of a blue pencil to correct the author's words had become commonplace by at least the second half of the nineteenth century. For a reporter's satirical description of an editor as a "Blue Pencil Fiend," see *The Weekly News and Advertiser* at 1 (Albany, Ga. Apr. 23, 1881) ("Why is his pencil blue? Because he makes the reporter feel blue, and because that color represents the flame in which his Satanic majesty works."), https://perma.cc/6RJ8-Y3D3. The metaphor appears to have made its way into restrictive-covenant law in *Attwood v. Lamont*, 2 K.B. 146, 155 (1920) (Bailhache, J.) ("[T]he Courts will sever in a proper case where the severance can be performed by a blue pencil but not otherwise."), *rev'd*, 3 K.B. 571, 578 (1920) (C.A.) (Sterndale, M.R.) (describing the divisional court's metaphor of "running a blue pencil through it" as a "figurative way of expressing the principle").

ironclad. There are no doubt circumstances in which a modest initiating role for a court is appropriate." *Sineneng-Smith*, 590 U.S. at 376.[9]

We are not as sure as C&A that the trial court violated the party-presentation principle. Yu and CoreAmp moved to strike Count IV of the counterclaim on the ground that the noncompete provision was not only "extraordinarily broad" but also "extremely vague and ambiguous." The trial judge struggled in reading the text for himself, saying, "I must have read it a million times." The trial judge zeroed in on the incomplete conditional clause at the end, assuming it was "a run-on sentence" and noting, "I don't understand what that last clause means." So the court, understandably, asked the parties what they thought it meant. C&A's counsel responded, "I agree, Your Honor, there's a typo there." He posited that it was "supposed to be a restriction on competing with"—he probably meant competing *for*—"C&A customers." He offered that if the text were ambiguous, the incomplete conditional clause could be severed under paragraph 10(g) of the shareholder agreement, allowing "the rest of" the provision to remain.

The court next asked whether Virginia allows "blue penciling," to which C&A responded that the parties could agree to it. But Yu and CoreAmp's counsel insisted that the entire noncompete provision would have to be stricken and that reformation was not available because

[9] Our appellate courts, for instance, identify when subject-matter jurisdiction is lacking even when the parties and the trial court have overlooked that requirement. *E.g.*, *Garrett v. Majied*, 252 Va. 46, 47-48 (1996). We regularly find that appellants have defaulted an issue by failing to have contemporaneously objected in the trial court, even when the appellee failed to point out the omission. *E.g.*, *Antigone v. Taustin*, 88 Va. App. 56, 86 (2026). Our courts sometimes affirm a judgment as right for the wrong reason or right for a different reason even when the appellee did not raise the correct reason in the trial court. *E.g.*, *Perry v. Commonwealth*, 280 Va. 572, 580 (2010). We invoke the constitutional-avoidance doctrine even when the parties have not mentioned it. *E.g.*, *Taylor v. Commonwealth*, 78 Va. App. 147, 157 (2023). And we have identified legal authorities that support or oppose a party's legal argument even when the party itself has failed to bring those authorities to our attention. *See, e.g.*, *Orange v. Commonwealth*, ___ Va. App. ___, ___ n.12 (July 28, 2026).

it was impossible here "to figure out what the parties were contemplating." It appears from our own review of the record that the legal question at issue on the motion to strike—whether the noncompete provision could be reformed by striking the incomplete conditional clause—arose organically as part of the parties' debate over what the noncompete provision meant.

In any event, we do not decide whether the trial court violated the party-presentation principle because C&A defaulted this objection by failing to raise it below. "No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice." Rule 5A:18. The "contemporaneous-objection requirement affords 'the trial court a fair opportunity to resolve the issue at trial, thereby preventing unnecessary appeals and retrials.'" *Hammer v. Commonwealth*, 74 Va. App. 225, 236 (2022) (quoting *Creamer v. Commonwealth*, 64 Va. App. 185, 195 (2015)). Because C&A never argued that the trial court's questioning about the incomplete conditional clause ran afoul of the party-presentation principle, "the trial court did not have an opportunity to intelligently rule on this ground." *Commonwealth v. Carolino*, 303 Va. 399, 408 (2024). So C&A's argument "is waived pursuant to Rule 5A:18." *Id.* at 412.

2. *Reformation is unavailable.*

Could the incomplete conditional clause in the noncompete provision be reformed or deleted as a mistake? In discussing this question in the trial court, the parties appear to have elided the distinction between (1) when a contract with a typo or scrivener's error may be reformed and (2) whether a noncompete provision may be "blue penciled."

Those questions are easy to blend. "The validity of a covenant not to compete is determined by applying not only the general principles of contract construction, but also legal principles specifically applicable to such covenants." *Motion Control Sys., Inc. v. East*, 262 Va.

33, 37 (2001). The rules surrounding when a contractual provision can be reformed or a scrivener's error corrected belong among the "general principles of contract construction." *Id.*

By contrast, the idea of "blue penciling" a restrictive covenant to remove portions that render it invalid has often come up in Virginia circuit-court cases and federal cases applying Virginia law. Under the "blue-pencil" approach, "only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words." *Blue-pencil test*, *Black's Law Dictionary* (12th ed. 2024). Courts in other States and model-law advocates are divided about whether a court may "blue pencil" a restrictive covenant and, if so, to what extent.[10] Without a published Virginia

[10] *See generally* Ferdinand S. Tinio, *Enforceability, Insofar as Restrictions Would Be Reasonable, of Contract Containing Unreasonable Restrictions on Competition*, 61 A.L.R.3d 397 (1975 & Supp. 2025) (collecting cases). Some States have enacted statutes that prohibit noncompete provisions in employment contracts. *See* Cal. Bus. & Prof. Code § 16600; Minn. Stat. § 181.988, subdiv. 2; N.D. Cent. Code Ann. § 9-08-06; Okla. Stat., tit. 15, § 217. Some States that permit noncompete agreements in employment contracts have adopted statutes allowing courts to revise restrictive covenants to eliminate overbroad provisions. *See* Ark. Code Ann. § 4-75-101(f); Fla. Stat. Ann. § 542.335(1)(c); Ga. Code Ann. § 13-8-54(b); Mich. Comp. Laws. Ann. § 445.774a; Nev. Rev. Stat. Ann. § 613.195(6); Tex. Bus. & Com. Code § 15.51(c). *But see* Wis. Stat. Ann. § 103.465 ("Any covenant, described in this section, imposing an unreasonable restraint is illegal, void and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.").

In 2021, the Uniform Laws Commission recommended that States adopt its model code for handling restrictive covenants. *See* Uniform Restrictive Employment Agreement Act, *supra* note 7. The Commission proposed two alternatives for dealing with overbroad provisions. *Id.*, § 16 at 42. Option A would forbid courts from modifying a restrictive covenant. *Id.* The Commission called this the "red-pencil approach." *Id.*, § 16 cmt. at 43. "The rationale for the red-pencil approach is that it discourages employers from entering overly broad agreements by risking nonenforcement." *Id.* Option B would forbid a court from extending the duration of a restrictive covenant beyond one year but allow the court to modify the covenant to save it from invalidity; the court could do so, however, "only on a finding that the employer reasonably and in good faith believed the agreement was enforceable . . . and only to the extent necessary to protect the employer's interest and render the agreement enforceable." *Id.*, § 16 at 42. The Commission called this the "reformation/blue-pencil" approach. *Id.*, § 16 cmt. at 43.

The American Law Institute had earlier recommended something closer to the reformation/blue-pencil approach. *See* Restatement of Employment Law § 8.08 (A.L.I. 2015) ("A court may delete or modify provisions in an overbroad restrictive covenant in an employment agreement and then enforce the covenant as modified unless the agreement does not allow for modification or the employer lacked a reasonable and good-faith basis for believing the appellate case to guide them, various federal courts and Virginia circuit courts have concluded that "courts in Virginia have no authority to '"blue pencil" or otherwise rewrite the contract' to eliminate overbroad portions of the agreement in order to preserve its enforceability."[11]

We need not address whether those rulings are correct under Virginia law because C&A does not advocate blue-penciling here. It argues that "[t]he circuit court erred by failing to recognize that the last clause was a scrivener's error for which the remedy is not 'blue penciling' in any respect." C&A Br. 19. C&A claims instead that "the proper remedy for a 'typo' is to strike the 'typo' from the document, which, in this case, leaves a fully complete non-competition clause with no impact on the parties' bargain." *Id.* at 18.

"The correction of a scrivener's error is a court-sanctioned action reforming a contract or other document." *Westgate at Williamsburg Condo. Ass'n v. Philip Richardson Co.*, 270 Va. 566, 575 (2005). Likewise, "[a] court's decision to fix a typographical error in a contract is tantamount to reforming the contract when it has material consequences." 27 Samuel Williston, *A Treatise on the Law of Contracts* § 70:93, at 469 (4th ed. 2020) [hereafter "Williston"]. Whether an apparent error constitutes "a scrivener's error . . . is a question of law." *Westgate*, 270 Va. at 574; *accord Yourko v. Yourko*, 74 Va. App. 80, 87-88 (2021) ("While the court's

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covenant was enforceable. Lack of a reasonable and good-faith basis for believing a covenant was enforceable may be manifested by its gross overbreadth alone, or by overbreadth coupled with other evidence that the employer sought to do more than protect its legitimate interests.").

[11] *Tactical Rehab., Inc. v. Youssef*, No. 2:24-cv-173, 2024 U.S. Dist. LEXIS 203575, at *12 (E.D. Va. Nov. 7, 2024) (quoting *Update, Inc. v. Samilow*, 311 F. Supp. 3d 784, 788 (E.D. Va. 2018)); *see also, e.g.*, *Lanmark Tech., Inc. v. Canales*, 454 F. Supp. 2d 524, 529 (E.D. Va. 2006) ("[T]here is no authority for courts to '"blue pencil" or otherwise rewrite the contract' to eliminate any illegal overbreadth." (quoting *Pais v. Automation Prods., Inc.*, 36 Va. Cir. 230, 239 (Newport News 1995))). Courts have also sometimes confronted express contractual provisions—"blue pencil clauses"—that purport to authorize a reviewing court to modify the parties' agreement to effectuate the most restrictive covenant allowable. *E.g.*, *Update*, 311 F. Supp. 3d at 794-95 (rejecting argument that a blue-pencil clause invalidates the entire agreement but noting that several Virginia circuit courts have found such clauses to be invalid) (collecting cases).

underlying findings of fact are entitled to deference, the ultimate conclusion of whether particular conduct constitutes a scrivener's error is a question of law to be reviewed de novo."), *rev'd on other grounds*, 302 Va. 149 (2023).

"[A] court's role in 'correcting' documents is limited. The rule is well-settled that a court is not permitted to rewrite a document or add terms not included by the parties." *Westgate*, 270 Va. at 575. "A scrivener's error presents an exception to this general rule, because . . . scrivener's errors 'are difficult to prevent, and . . . no useful social purpose is served by enforcing . . . mistaken term[s].'" *Id.* (second, third, and fourth alterations in original) (quoting *S.T.S. Transp. Serv., Inc. v. Volvo White Truck Corp.*, 766 F.2d 1089, 1093 (7th Cir. 1985)).

"In contract law, a scrivener's error, like a mutual mistake, occurs when the intention of the parties is identical at the time of the transaction but the written agreement does not express that intention because of that error; this permits a court acting in equity to reform an agreement." Williston, *supra*, § 70:93, at 469. Still, the power to correct "a scrivener's error presents a significant exception to a well-established rule, so we must construe" what constitutes a scrivener's error "narrowly." *Westgate*, 270 Va. at 575. "Equity has undoubted jurisdiction to reform an instrument if it does not express the intent of the parties. . . . But equity should not act lightly." *Gibbs v. Price*, 207 Va. 448, 449-50 (1966). "To support reformation on the ground of mutual mistake, the proof 'must be clear and satisfactory, leaving but little, if any, doubt of the mistake.'" *Id.* at 450 (quoting *French v. Chapman*, 88 Va. 317, 322 (1891)); *see also Knewstep v. Jackson*, 259 Va. 263, 269 (2000) (requiring clear and convincing evidence); *accord* Restatement (Second) of Contracts § 155 cmt. c (A.L.I. 1981) (same).

"The purpose of reformation in such cases is to correct the error in order that the instrument will accurately reflect the true intent of the parties." Kent Sinclair, *Sinclair on Virginia Remedies* § 54-2[A] at 54-4 (5th ed. 2016). The court, "sitting in the Chancellor's seat, [must be] convinced that a mistake in the writing was made *and the court knows what the parties really intended*." 5 Corbin on Contracts § 24.2 at 37 (Matthew Bender 2024) (emphasis added). In other words, "the party alleging a mistake in a written instrument must show by evidence which leaves no reasonable doubt upon the mind of the court, not only of what the mistake consists, but the correction which should be made." *Temple v. Va. Auto. Mut. Ins. Co.*, 181 Va. 561, 569 (1943). The proponent must establish "the agreement contemplated by them when executed." Williston, *supra*, § 70:94, at 481.[12]

C&A cannot satisfy that standard here because there is no evidence—let alone clear and convincing evidence—of what the parties intended. Perhaps the incomplete conditional clause was a remnant from an earlier draft that was inadvertently left in the final document. Or as hypothesized by C&A's counsel during the motion to strike, perhaps the clause could have been completed in a way that would have narrowed the otherwise broad scope of the noncompete provision. For instance, the clause "if any customers of the same, similar, or competing business" could have been finished with:

- "*are* customers of the Corporation."
- "*were* customers of the Corporation."
- "are *solicited* by the departing Shareholder."
- "are *diverted* from the Corporation."

Based on the record compiled here, we simply do not know what the parties wanted.

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[12] This principle is analogous to the one under Code § 8.01-428(B) that permits a trial court to correct a scrivener's error in a final order after the court has otherwise lost jurisdiction under Rule 1:1. That power too is "narrowly construed and applied." *Morgan v. Russrand Triangle Assocs., Inc.*, 270 Va. 21, 25 (2005). The error is correctable only when it is "'demonstrably contradicted by all other documents'" so as to "'cause the court's record to fail to "speak the truth."'" *Id.* (quoting *Wellmore Coal Corp. v. Harman Mining Corp.*, 264 Va. 279, 283 (2002)).

Accordingly, the trial court did not err in concluding that the noncompete provision was incapable of judicial enforcement. Without evidence of what the parties intended, the noncompete provision could not be reformed into an intelligible sentence. Nor could the incomplete conditional clause be deleted as a mere scrivener's error.

B. The noncompete provision is invalid because it is fatally overbroad.

We also agree with Yu that "even if this Court were to strike the [incomplete conditional clause] as [C&A and Xiang] request, the resulting provision would still fail." Yu Br. 12. We hold that this ground provides an independent basis to invalidate the noncompete.

"In general, parties may contract as they wish, and courts will enforce their agreements without passing on their substance. Sometimes, however, a court will decide that the interest in freedom of contract is outweighed by some overriding interest of society and will refuse to enforce a promise or other term on grounds of public policy." Restatement (Second) of Contracts, *supra*, ch. 8, Topic 1, Intro. Note, at 2. "The common law's policy against restraint of trade is one of its oldest and best established." *Id.*, ch. 8, Topic 2, Intro. Note, at 35.

In Virginia, the policy against unreasonable restraints of trade has ancient roots. "At independence, Virginia adopted the common law of England as her own unless modified by the General Assembly, a directive that remains codified today in Code § 1-200." *Hopkins v. Ryan*, 88 Va. App. 137, 162 (2026). Our appellate courts have not yet decided whether the relevant date for the reception of English common law is 1776 or 1792. *See White v. United States*, 300 Va. 269, 277 n.5 (2021). But that does not matter here because the prohibition against unreasonable restraints of trade was already well-established in England before independence.

"By early common law[,] any limitation upon the right of one to work was against public policy." *Stoneman v. Wilson*, 169 Va. 239, 245 (1937). For instance, the court held in *The Blacksmith's Case*, 2 Leo. 210, 74 Eng. Rep. 485 (C.P. 1587), that a bond by which a blacksmith promised to "not exercise his trade" in the same town or "within a certain precinct of it" was "void because it was against law." *Id.* at 210, 74 Eng. Rep. at 485.

Later cases, however, found that certain restraints of trade were valid if reasonable. In *Mitchel v. Reynolds*, 1 P. Wms. 181, 24 Eng. Rep. 347 (K.B. 1711) (Parker, C.J.), the Court of King's Bench upheld a restrictive covenant by which the lessor of a bakehouse agreed to pay the tenant 50 pounds if the lessor "exercise[d] the trade of a baker within that parish" during the five-year lease term. *Id.* at 181, 24 Eng. Rep. at 347. "The Rule of Reason suggested by *Mitchel v. Reynolds* has been regarded as a standard for testing the enforceability of covenants in restraint of trade [that] are ancillary to a legitimate transaction, such as an employment contract or the sale of a going business." *Nat'l Soc. of Pro. Eng'rs v. United States*, 435 U.S. 679, 689 (1978).

Mitchel distinguished cases "where the restraint is general not to exercise a trade throughout the kingdom, and where it is limited to a particular place; for the former of these must be void, being of no benefit to either party, and only oppressive." 1 P. Wms. at 182, 24 Eng. Rep. at 348. But "[w]here a contract for restraint of trade appears to be made upon a good and adequate consideration, so as to make it a proper and useful contract, it is good." *Id.* at 186, 24 Eng. Rep. at 349. The "reasons [for] the distinction are . . . the mischief [that] may arise from [restraints of trade], [first] to the party, by the loss of his livelihood, and the subsistence of his family; [second], to the publick, by depriving it of [a] useful member." *Id.* at 190, 24 Eng. Rep. at 350. Restrictive covenants were also susceptible to "great abuses" by those seeking "exclusive advantage in trade." *Id.* But the court recognized their potential benefit as well, such as for an "old man" who might wish to sell his business, making it "better for him to part with it for a consideration" and thereby procure a "livelihood . . . [that] he might probably have lost . . . by trading longer." *Id.* at 191, 24 Eng. Rep. at 350.

In 1905, our Supreme Court identified *Mitchel*, though "decided nearly two hundred years" earlier, as the foundation of the common law governing restraints of trade. *Merriman v. Cover, Drayton & Leonard*, 104 Va. 428, 435 (1905). The Court ruled that "restraints are valid and enforceable when they are not greater than are necessary for the fair protection of the covenantee in respect to the subject matter of the contract, and not injurious to trade in general." *Id.*

A series of cases since *Merriman* have crystallized the current standard. A provision that restricts competition "is enforceable if it 'is narrowly drawn to protect the employer's legitimate business interest, is not unduly burdensome on the employee's ability to earn a living, and is not against public policy.' The employer bears the burden of proving each of these factors." *Home Paramount*, 282 Va. at 415 (quoting *Omniplex World Servs. Corp. v. US Investigations Servs., Inc.*, 270 Va. 246, 249 (2005)). "When evaluating whether the employer has met that burden, we consider the 'function, geographic scope, and duration' elements of the restriction. These elements are 'considered together' rather than 'as three separate and distinct issues.'" *Id.* (quoting *Simmons v. Miller*, 261 Va. 561, 581 (2001)).[13]

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[13] The General Assembly has recently imposed certain restrictions on covenants not to compete, although those statutes are not at issue here. A statute enacted in 2020 provides that "[a] 'covenant not to compete' shall not restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client." 2020 Va. Acts chs. 949, 949 (codified as amended at Code § 40.1-28.7:8(A)). The statute also bars noncompetes "with any low-wage employee or health care professional," Code § 40.1-28.7:8(B), but allows noncompetes "or similarly restrictive covenants with any health care professional or such person's business entity as part of a sale of business," Code § 40.1-28.7:8(H)(2). A 2026 amendment added what is now subsection C of that statute, barring the enforcement of a covenant not to compete against an employee dismissed without cause unless the employer provides "severance benefits or other monetary payment" and those benefits were disclosed when the noncompete was executed. 2026 Va. Acts ch. 883. Another statute enacted this year prohibits noncompetes in retail-franchise agreements except agreements for the sale of a franchise, in which case a noncompete is allowed "for a period of no more than two years after such sale." 2026 Va. Acts ch. 554 (codified at Code § 13.1-563(A)(4), (B)).

Our Supreme Court has observed that "the scope of permissible restraint is more limited between employer and employee than between seller and buyer." *Linville v. Servisoft of Va., Inc.*, 211 Va. 53, 55 (1970) (quoting *Richardson v. Paxton Co.*, 203 Va. 790, 795 (1962)). The Court cited Harlan M. Blake, *Employee Agreement Not to Compete*, 73 Harv. L. Rev. 625, 646-47 (1960). *Id.* at 55 n.1. Professor Blake explained in that article that the sale of a business requires the "transfer of good will [that] cannot be effectively accomplished without an enforceable agreement by the transferor not to act so as unreasonably to diminish the value of that which he is selling." Blake, *supra*, at 646; *see also supra* note 13 (noting recent legislation authorizing noncompete agreements ancillary to the sale of a health-care business or franchise). "Unlike a restraint accompanying a sale of good will, an employee restraint is not necessary for the employer to get the full value of the thing being acquired—in this case, the employee's current services." Blake, *supra*, at 647. "Thus, courts properly should, and do, look more critically to the circumstances of the origin of postemployment restraints than to the circumstances of other classes of restraints." *Id.*

Even though Yu's noncompete was in the shareholder agreement, the parties have analyzed the issues surrounding its validity under the standard that applies to noncompetes in employment agreements. *See* C&A Br. 19; Yu Br. 14-17. We do the same, assuming without deciding that it makes no difference that the noncompete was not in Yu's employment agreement. *See, e.g.*, *AV Auto., LLC v. Bavely*, 85 Va. App. 559, 582 n.9 (2025) (relying on the parties' joint legal assumption as the basis for not deciding whether it was correct); c*f. Roto-Die Co. v. Lesser*, 899 F. Supp. 1515, 1519 (W.D. Va. 1995) (analyzing the noncompete required by an asset-sale agreement "as equivalent to a case involving an employer and employee" because, "[i]n similar cases, courts have held the minority shareholder to be in no better bargaining position than a mere employee").

Under the analysis required by *Home Paramount*, the one-year duration of Yu's noncompete obligation is not the problem. Yu conceded at trial that the one-year restriction was "reasonable." *Cf. Update, Inc. v. Samilow*, 311 F. Supp. 3d 784, 789 (E.D. Va. 2018) (finding that a "one-year limitation allows [the employer] a reasonable time to convince customers to remain . . . without interference from [the former employee]"). The noncompete provision is invalid, however, because it is functionally and geographically overbroad.

1. The noncompete provision is functionally overbroad.

Our Supreme Court has upheld "covenants not to compete . . . only when employees are prohibited from competing directly with the former employer or through employment with a direct competitor." *Omniplex*, 270 Va. at 249. Noncompete provisions are invalid when they prohibit a "former employee [from] find[ing] new employment with his former employer's competitor in which he engages exclusively in activities that do not compete with the former employer." *Home Paramount*, 282 Va. at 417. Thus, a noncompete provision has been found invalid when "it prevented the former employee from working *in any capacity* for a competitor of her former employer." *Modern Env'ts, Inc. v. Stinnett*, 263 Va. 491, 494 (2002) (emphasis added). In *Home Paramount*, the functional overbreadth was so great that the noncompete provision would have prevented the former employee, a pest-control worker, from being "even . . . a passive stockholder of a publicly traded international conglomerate with a pest control subsidiary." 282 Va. at 418.

C&A's noncompete provision is just as functionally overbroad. It purported to prevent Yu from being "employed, concerned, or financially interested, either directly or indirectly, in the same or similar business as that conducted by the Corporation, or compete with the Corporation." It thus prevented far more than working for a competitor in a competitive capacity. It barred Yu from working for any company in a "similar" business, even one that did not compete with C&A. It also barred him from working for a competitor in a capacity that would not compete with C&A. And it barred him from owning stock in any publicly traded company in the same industry as C&A. The provision is patently overbroad.

Its functional overbreadth is also illuminated by comparing it to noncompete provisions that our Supreme Court has upheld as reasonable. For instance, in *Advanced Marine Enterprises v. PRC Inc.*, 256 Va. 106 (1998), the noncompete did "not contain a blanket prohibition against working for a competitor. Instead, the covenant merely prohibit[ed] an employee for eight months from 'rendering competing services to or, with respect to such services, solicit[ing] any customer of PRC for whom Employee performed services while employed by PRC, within 50 miles of a PRC office.'" *Id.* at 119 (second alteration in original). And in *Blue Ridge Anesthesia & Critical Care v. Gidick*, 239 Va. 369 (1990), the former employees, medical-equipment salesmen, were "not forbidden from working in *any* capacity for a medical equipment company, or from selling any type of medical equipment. They [were] only prohibited 'from working in the medical industry in some role [that] would . . . compete with the business of [Blue Ridge].'" *Id.* at 373 (third and fourth alterations in original).

Measured against those cases, C&A's noncompete provision is so functionally overbroad that it cannot be saved by other considerations. What was true in *Home Paramount* is also true here. "Although [courts] weigh the function element of a provision that restricts competition together with its geographic scope and duration elements, the clear overbreadth of the function here cannot be saved by narrow tailoring of geographic scope and duration." *Home Paramount*, 282 Va. at 419 (footnote omitted).

2. The noncompete provision is also geographically overbroad.

The noncompete is also invalid because it applied worldwide without good reason. It literally prevented Yu from working for or being "financially interested, either directly or indirectly, in the same or similar business" anywhere in the world. C&A claims that it needs a "global" restriction because C&A has sold products to customers in "Herndon, Virginia," "Houston, Texas," and "Burlington, North Carolina." C&A Br. 20. We are not persuaded. The Supreme Court in *Simmons* found a noncompete geographically overbroad because it restricted the former employee from working for a cigar-importing business "anywhere in the world" when the company itself had imported cigars only into the "'east coast of the United States.'" 261 Va. at 581. The same geographic overbreadth is obvious here.

It is a rare case in which a worldwide noncompete obligation is appropriate. *See, e.g.*, *O'Sullivan Films, Inc. v. Neaves*, 352 F. Supp. 3d 617, 626 (W.D. Va. 2018) (upholding a global noncompete provision because the employer competed in a "niche market" selling artificial leather worldwide "to win the same clients for the same projects"). This is not one of them. C&A has failed to justify a prohibition on Yu's working for other companies in the many parts of the world where C&A itself has never done any business.

* * *

"An employer may prove a seemingly overbroad restraint to be reasonable under the particular circumstances of the case." *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 144-45 (2013). The employer may "present evidence to demonstrate that the restraints are no greater than necessary to protect its legitimate business interests, are not unduly harsh or oppressive in curtailing [the employee's] ability to earn a livelihood, and are reasonable in light of sound public policy." *Id.* at 145. But C&A failed to carry that burden here. Although Yu's one-year noncompete was not excessively long, it was overbroad in function and limitless in geographic scope. It was clearly broader than necessary to protect C&A's interests. It threatened Yu's financial livelihood and deprived the public of his talents during the period it was in effect. So the trial court was right to invalidate it.[14]

III. The trial court did not err in refusing to set aside the tortious-interference verdict (Assignments of Error 2 and 4).

"Virginia currently recognizes two types of tortious-interference claims: tortious interference with contract; and tortious interference with a contract at will or with business expectancy." *Allegheny Constr. Co. v. Town of Christiansburg*, 86 Va. App. 321, 349 (2025) (Raphael, J., concurring). The latter type is the one at issue here. To establish a prima facie case of tortious interference with business expectancy, a plaintiff must show that:

> (1) it had a contract expectancy;
>
> (2) [the defendant] knew of the expectancy;
>
> (3) [the defendant] intentionally interfered with the expectancy;
>
> (4) [the defendant] used improper means or methods to interfere with the expectancy; and
>
> (5) [the plaintiff] suffered a loss as a result of [the defendant]'s disruption of the contract expectancy.

Maximus, Inc. v. Lockheed Info. Mgmt. Sys. Co., 254 Va. 408, 414-15 (1997) (paragraph breaks added); *see also Hopkins*, 88 Va. App. at 154 (same).

C&A challenges only the first and fifth elements. It argues that Yu and CoreAmp "offered no competent evidence to establish . . . a 'probable' future expectancy, much less damages in the amount of $200,000." C&A Br. 31. Thus, C&A does not dispute that the evidence sufficed to show that it used improper methods to intentionally interfere with Yu and CoreAmp's dealings with Carolina Biological.

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[14] C&A argued below that the trial court could sever any illegal portions of the noncompete provision and preserve the rest under paragraph 10(g) of the shareholder agreement. Because C&A has not advanced that claim on appeal, however, we do not consider it. *See* Rule 5A:20(e).

The standard of review is well-settled. "When parties come before us with a jury verdict that has been approved by the trial court, they hold the most favored position known to the law." *Syed v. Zh Techs., Inc.*, 280 Va. 58, 68 (2010) (quoting *Banks v. Mario Indus.*, 274 Va. 438, 450 (2007)). In determining whether the trial court erred in declining to set aside the verdict, we "consider[] whether the evidence presented, taken in the light most favorable to the plaintiff, was sufficient to support the jury verdict in favor of the plaintiff." *Boyd v. Weisburg*, 75 Va. App. 725, 736 (2022) (alteration in original) (quoting *Ferguson Enters., Inc. v. F.H. Furr Plumbing, Heating & Air Conditioning, Inc.*, 297 Va. 539, 547-48 (2019)). "We will not set aside a trial court's judgment sustaining a jury verdict unless it is plainly wrong or without evidence to support it." *Id.* (quoting *Ferguson Enters.*, 297 Va. at 548).

A. The evidence sufficed to show a probable business expectancy.

The business-expectancy element requires more than "merely a possibility that future economic benefit would accrue." *Com. Bus. Sys., Inc. v. Halifax Corp.*, 253 Va. 292, 303 (1997). "[M]ere proof of a plaintiff's belief and hope that a business relationship will continue is inadequate to sustain the cause of action." *Id.* at 301. "[T]he proof must establish a 'probability' of future economic benefit to a plaintiff." *Hopkins*, 88 Va. App. at 155 (quoting *Halifax*, 253 Va. at 301). Put another way, there must be "a reasonable certainty that absent defendant's intentional misconduct, plaintiff would have continued in the relationship or realized the expectancy." *Id.* (quoting *Halifax*, 253 Va. at 300).

The evidence here, taken in the light most favorable to Yu and CoreAmp, sufficed to show a probability that, but for C&A's interference, Yu and CoreAmp would have "continued in the relationship," *id.*, with Carolina Biological. Yu entered into a nondisclosure agreement with Carolina Biological in October 2022, "a requirement to do business with them." Yu testified without contradiction that in November or December 2022, Carolina Biological invited

CoreAmp "to replace [C&A] as a whole completely"; Yu responded, "yes, of course." Carolina Biological then "sent [Yu] all the C&A Scientific product list for [Yu] to replace with [CoreAmp's] target price." Yu and CoreAmp had begun performance before C&A interceded; CoreAmp had completed a $1,000 purchase order.

Yu and CoreAmp's probable business expectancy in replacing C&A as Carolina Biological's vendor was interrupted only when Nash sent his threatening letter, warning Carolina Biological not to do business with Yu. Carolina Biological told Yu that Nash's letter required it to stop working with him and CoreAmp—not simply because Yu had allegedly solicited business, but because he was already "doing business with" Carolina Biological. Taking the evidence in the light most favorable to the appellees, the jury could properly find that Yu and CoreAmp had a probable business expectancy in continued purchases by Carolina Biological.

C&A relies on *Halifax*, where our Supreme Court affirmed the trial court's ruling that the future business expectancy was too uncertain, but *Halifax* is distinguishable. The company plaintiff there had a two-year contract with BellSouth to repair and refurbish teleprinters, and the plaintiff hoped to be awarded a new contract when the existing one expired. *Halifax*, 253 Va. at 298. The plaintiff had a good working relationship with BellSouth's contract administrator, who expressed optimism eight months before the contract expired that it would be renewed. *Id.* Five months before the hoped-for renewal, however, BellSouth's contract administrator was replaced. *Id.* The replaced administrator later testified that it was "hard to say" whether he would have continued to do business with the plaintiff had he remained in the position. *Id.* at 302. The new contract administrator expressed concerns about the plaintiff's performance. *Id.* at 298. Indeed, at the time of the renewal, the plaintiff "was experiencing problems that made it a tarnished participant in the competition among many vendors for BellSouth's work." *Id.* And "there was no credible evidence of any BellSouth 'standard practice' or 'preference' for continuing to work with incumbent vendors." *Id.* at 303. So the plaintiff had established "merely a subjective belief or hope that the business relationship would continue," rather than a probability that it would. *Id.*

Yu's testimony that he had agreed with Carolina Biological to replace C&A as its equipment vendor evidences the probable business expectancy that was missing in *Halifax.* Yu and CoreAmp agreed not only to replace C&A but, unlike the plaintiff in *Halifax*, they had already commenced performance. The business expectancy here is closer to what we found sufficient in *Hopkins*. The commission salesman there had a longstanding sales relationship with "Company C." *Hopkins*, 88 Va. App. at 155. He alleged "that he had 'sealed' Company C's commitment to a $1.8 million deal to buy products from [the plaintiff's company] for [an] apartment-development project, a deal from which [the plaintiff] would earn substantial commissions." *Id.* While Yu did not testify that he had "sealed" his deal with Carolina Biological, his testimony that he accepted the company's offer for CoreAmp to replace C&A as its equipment vendor suffices to show "a reasonable certainty that absent defendant's intentional misconduct, plaintiff would have continued in the relationship or realized the expectancy." *Halifax*, 253 Va. at 300. Thus, we cannot say that the jury's verdict was "plainly wrong or without evidence to support it." *Ferguson Enters.*, 297 Va. at 548.

B. The evidence sufficed to support the damage award.

C&A also argues the trial court erred in allowing "Yu to recover damages based on nothing but his personal testimony about the value of the allegedly lost business with Carolina Biological and conjecture about how CoreAmp would perform in the future." C&A Br. 38. C&A invokes the common-law "new business rule" that estimating profits for a new business is inherently speculative compared to measuring the loss to an existing business:

> When an established business, with an established earning capacity, is interrupted and there is no other practical way to

> estimate the damages thereby caused, evidence of the prior and subsequent record of the business has been held admissible to permit an intelligent and probable estimate of damages. . . . But where a new business or enterprise is involved, the rule is not applicable for the reason that such a business is a speculative venture, the successful operation of which depends upon future bargains, the status of the market, and too many other contingencies to furnish a safeguard in fixing the measure of damages.

Com. Bus. Sys. v. Bellsouth Servs., 249 Va. 39, 50 (1995) (alteration in original) (quoting *Mullen v. Brantley*, 213 Va. 765, 768 (1973)).

But the common-law new-business rule reflected in those cases was superseded by statute in 2002. *See* 2002 Va. Acts ch. 624, codified at Code § 8.01-221.1. None of the parties mentioned this statute either in the trial court or on brief here. Under the statute, "[d]amages for lost profits of a new or unestablished business may be recoverable upon proper proof. A party shall not be deemed to have failed to prove lost profits because the new or unestablished business has no history of profits." Code § 8.01-221.1.

Because C&A has never claimed that Yu's damages testimony was insufficient under Code § 8.01-221.1, we have no need to determine what counts as "proper proof" under the statute. Doing so is unnecessary here because C&A failed to object at trial to the basis for Yu's damages estimate.

Yu explained that when Carolina Biological asked him to replace C&A as its vendor, it gave him C&A's "product list for [him] to replace with [CoreAmp's] target price." Yu testified that "the net value of this agreement" to CoreAmp was "$300,000 a year." Giving Yu and CoreAmp the benefit of all facts and "fair inferences," *Camann*, 79 Va. App. at 431, it is a fair inference that the $300,000 figure represents the net profit after multiplying the items on the product list by the target price and subtracting CoreAmp's costs to arrive at "net value."

C&A failed to object at trial that Yu's estimate should have been excluded as speculative or as lacking foundation. C&A might have argued that it was not "proper proof" of lost profits for a "new or unestablished business." Code § 8.01-221.1. But C&A allowed that testimony to come into evidence. And when "a litigant sits by and permits evidence to go to the jury which the court, if it had been objected to, would have excluded, the jury have the right and it is their duty to consider it along with all the evidence and give it such weight as they think it is entitled to." *Bitar v. Rahman*, 272 Va. 130, 141 (2006) (quoting *TransiLift Equip., Ltd. v. Cunningham*, 234 Va. 84, 91-92 (1987)). We need not explore the outer limits of the waiver principle in *Bitar*. It suffices under the facts of this case that Yu and CoreAmp established "'sufficient facts' to support the award." *Preferred Sys. Sols., Inc. v. GP Consulting, LLC*, 284 Va. 382, 399 (2012).

IV. The trial court committed no reversible error in admitting the English translation of the "blackmail" letter (Assignment of Error 3).

Finally, C&A argues that the trial court abused its discretion by admitting the English translation of the "blackmail" letter into evidence. C&A frames this as an "authentication" problem under Virginia Rule of Evidence 2:901 ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the thing in question is what its proponent claims."). It argues that "no competent direct or circumstantial evidence was introduced to show that the English language document was a 'genuine' translation of the letter, i.e., the 'thing in question.'" C&A Br. 26.

We reject C&A's argument on two independent grounds.

First, this argument is different from the one C&A advanced below and is therefore not preserved for review. "Rule 5A:18 requires a litigant to make timely and specific objections." *Carolino*, 303 Va. at 409 (quoting *Brown v. Commonwealth*, 279 Va. 210, 217 (2010)). The purpose "is to alert opposing counsel to the issue and to provide the trial court an opportunity to intelligently rule on the issue." *Id.* "Procedural-default principles require that the argument asserted on appeal be *the same* as the contemporaneous argument at trial." *Bethea v. Commonwealth*, 297 Va. 730, 743 (2019) (emphasis added). And it "must be both *specific* and *timely*—so that the trial judge would know the particular point being made in time to do something about it." *Id.* (quoting *Dickerson v. Commonwealth*, 58 Va. App. 351 (2011)). "Specific, timely objections are required because they are often resolved, either because the trial court intervenes with a corrective ruling that accommodates the asserted interests of both sides or because opposing counsel gives a winning explanation that moots the objection altogether." *Id.* at 744.

As noted above, C&A raised only two objections when Yu moved to admit the English translation at trial. C&A no longer pursues its claim that the document was not produced in discovery, given its admission that its prior counsel had a copy before suit was filed.

The other objection was that the English version was "not [a] certified translation and under the court policies on translations, it should be a certified translation." C&A cited the Virginia Language Access Plan Manual, prepared by the Office of the Executive Secretary of the Supreme Court of Virginia.[15] Although C&A said during the course of argument that "we have no idea the accuracy of the translation," that was in the context of its complaint that the translation had not been certified. The court responded that C&A could call its own translator in rebuttal if it wished, and C&A's counsel proffered that "I do have a witness [who] would like to talk about the difference between the translations." C&A later restated that its objection "was that [the English version] wasn't a *certified* translation." (Emphasis added.) C&A never argued that Yu failed to testify that the English translation was accurate.

[15] *See* Virginia Language Access Plan Manual (Office of Exec. Sec'y July 2024), https://perma.cc/5P8C-BC8W.

On appeal, C&A has dropped its claim that a certified translation was required. It has instead put "a different twist on [the] question that is at odds with the question presented to the trial court." *Bethea*, 297 Va. at 744 (quoting *Commonwealth v. Shifflett*, 257 Va. 34, 44 (1999)). C&A now argues that Yu's testimony was insufficient to admit the English translation because Yu did not show that *he* translated it accurately. *E.g.*, C&A Br. 28 ("[T]he testimony showed that the English translation was done in 2023, before Yu says he tested as an interpreter."). C&A claims that Yu's testimony was not "sufficient to support a finding that the thing in question is what its proponent claims." Va. R. Evid. 2:901.

But that objection differs in kind from the one raised below and failed to alert the trial judge to the argument that C&A advances on appeal. *Cf. Carolino*, 303 Va. at 410 (holding that defendant's objections in the trial court that the proffered testimony was irrelevant, elicited prior bad acts, and was beyond the scope of direct examination did not alert the trial court to the specific argument that it constituted improper impeachment on a collateral matter). Had C&A argued below that Yu failed to lay a proper foundation by testifying that his English translation was accurate, Yu could have cured that omission. Indeed, Yu points out on brief that he later testified without objection that the English translation "fairly and accurately represents the Chinese original." Yu Br. 36.

We also find that any error in the admission of the English translation was harmless. "Under the doctrine of harmless error, we will affirm the circuit court's judgment when we can conclude that the error at issue could not have affected the court's result." *Loan Funder LLC, Series 715 v. Farm Life, LLC*, 86 Va. App. 552, 567 (2026) (quoting *Ferrara v. Commonwealth*, 299 Va. 438, 450 (2021)). "Absent an error of constitutional magnitude, 'no judgment shall be arrested or reversed' [w]hen it plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached.'" *Ferrara*, 299 Va. at 450 (alteration in original) (quoting Code § 8.01-678).

C&A complains that the alleged error was not harmless because "Yu repeatedly referred to the letter as 'blackmail,' and [as] 'threaten[ing]' to him, in front of the jury. The admission of the unauthenticated English document thus had a plainly prejudicial effect on the trial." C&A Br. 30 (citations omitted).

We disagree and find that the English translation was immaterial to the outcome. C&A did not object to the admission of the original "blackmail" letter, written in Mandarin. It did not object when Yu referred to it repeatedly as the "blackmail" letter. Nor did C&A object when Yu testified that the blackmail letter threatened him and demanded a "forever noncompete." So C&A waived any objection to that evidence under Rule 5A:18. And given that waiver, the marginal prejudice to C&A from the English translation was negligible. The trial court also invited C&A to call its own translator if it wished, but C&A never did. Indeed, C&A has never proffered—either in the trial court or here—specifically what in the English translation was inaccurate let alone how that inaccuracy could have affected the outcome.[16] In short, any error in admitting the English translation was harmless because "it plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached." Code § 8.01-678.

CONCLUSION

The trial court was right to invalidate the noncompete as overbroad. The court properly denied C&A's motion to set aside the jury verdict on the tortious-interference claim. And there

[16] We have scoured C&A's opening brief and reply brief for references to any alleged prejudice suffered by C&A from the admission of the English translation, including references to the three trial transcripts that were not timely filed. Even if those late-filed transcripts were properly part of the record—a question we do not resolve—none of C&A's citations persuades us that excluding the English translation would have changed the jury's verdict.

was no reversible error in the trial court's decision to admit the English translation of the "blackmail" letter.

Affirmed.