MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Doug Martin,

Appellant-Defendant / Third-Party Plaintiff,

v.

Front End Digital, d/b/a Pyrimont Operating Solutions,

Appellee-Plaintiff,

and

M. David Welch, Ryan Watson, and Josh Lake,

Appellees-Plaintiffs / Third-Party Defendants

August 25, 2021

Court of Appeals Case No. 21A-PL-195

Appeal from the Hamilton Superior Court, Civil Division

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-1809-PL-8430

Tavitas, Judge.

Case Summary

[1] Doug Martin appeals the trial court's grant of partial summary judgment to Front End Digital, Inc., d/b/a Pyrimont Operating Solutions ("Pyrimont"). After Martin, a shareholder in Pyrimont, executed a Stock Redemption Agreement, issues arose between Martin and Pyrimont. Pyrimont brought an action against Martin, and Martin filed counterclaims against Pyrimont and third-party claims against M. David Welch, Ryan Watson, and Josh Lake, who are other shareholders of Pyrimont. The trial court granted partial summary judgment on the counterclaims and third-party claims.

[2] We conclude that the trial court properly granted summary judgment to Welch, Watson, and Lake on the third-party complaint for breach of fiduciary duty. Moreover, we conclude that the trial court properly granted summary judgment to Pyrimont on Count II of Martin's counterclaim for breach of contract. We, however, conclude that the trial court erred by applying a two-year statute of limitation on Count I of Martin's counterclaim for unpaid vacation days. Rather, the trial court should have applied a six-year statute of limitation and granted partial summary judgment to Pyrimont on the counterclaim for unpaid vacation days. Accordingly, we affirm in part, reverse in part, and remand.

Issues

I. Whether the trial court properly granted summary judgment to Welch, Watson, and Lake on Martin's third-party claim for breach of fiduciary duty.

II. Whether the trial court properly granted partial summary judgment to Pyrimont on Count I of the counterclaim,

which is Martin's claim related to alleged unpaid vacation time.

III. Whether the trial court properly granted partial summary judgment to Pyrimont on Count II of the counterclaim, which pertained to Martin's breach of contract claim related to Pyrimont's bonuses.

Facts

[3] Pyrimont is a software provider, and Martin became a shareholder and employee of Pyrimont in 2003. Welch, Watson, and Lake are also shareholders. Martin left Pyrimont's employment in 2004, but he returned in 2010 as a software developer and chief technology officer. In March 2014, Martin entered into agreements with Pyrimont, including an Employment Agreement, which included four weeks of paid vacation and holidays as part of Martin's compensation.

[4] In 2015, Pyrimont placed Martin on probation because Martin was found to "have been engaging in unauthorized communications with customers of Pyrimont and taking other actions that were adverse to the interests of Pyrimont." Appellant's App. Vol. III p. 72. Pyrimont again placed Martin on probation in December 2017 due to, among other things, "[m]ultiple instances of work 'no shows'"; poor communication; missed deadlines; "[w]orking substantially less than required hours"; and "[e]ngaging in substantial use of company assets during working time for personal and multiple other business ventures." *Id.* at 37. As part of the 2017 probation, Pyrimont suspended Martin's paid time off until further notice.

[5] Pyrimont's bonus structure changed in 2017. Beginning in 2017, bonuses for 2017, which were paid in 2018, were calculated using "an employee review scoring algorithm," which took into account "an employee's length of service and the performance of the employee for the year in question." *Id.* at 79. The new bonus structure resulted in Martin receiving a smaller bonus than he received in prior years.

[6] In early 2018, Martin began negotiating with Pyrimont to sell his shares of the company. Martin entered into a Stock Redemption Agreement with Pyrimont on July 2, 2018. The parties agreed that the purchase price for Martin's shares would be the fair market value of the shares as of December 31, 2022, and Pyrimont agreed to pay Martin as follows: (1) $45,000.00 on the effective date of the Agreement; (2) $45,000.00 on April 10, 2019; (3) $45,000.00 on April 10, 2020; and (4) $45,000.00 on April 10, 2021, with the difference between these payments and the fair market value of the shares as of December 31, 2022, paid or reimbursed by one of the parties.

[7] The Stock Redemption Agreement also provided in part:

> WHEREAS, the Owners and the Corporation are a party [sic] to that certain Buy-Sell, Operating, Non-Competition, and Anti-Dilution Agreement dated March 3, 2015 (the "Shareholders Agreement"), and the Owners are a party to this Agreement for the sole purpose of consenting to the purchase by the Corporation of the Shares for the Purchase Price (as defined in Section 2 hereof) which Purchase Price is higher than as provided pursuant to the terms of the Shareholders Agreement[.]

* * * * *

3. Operating Restrictions. Salary increases to existing employees, bonuses, dividends and fringe benefits to any employee, and any new employee salaries shall, after the Effective Date, be paid or provided in the normal course of business consistent with past practices.

* * * * *

10. Termination of Employment Agreement. Effective as of the Effective Date, Martin and the Corporation agree to terminate that certain Employment Agreement entered into by and among the Corporation as employer and Martin as employee, dated March 26, 2014 (the "Employment Agreement") provided, however, that Martin shall be paid $3,077.00 on the Effective Date. **Martin and the Corporation acknowledge that, except for the additional payment described in this paragraph 10, after the Effective Date, neither Martin nor the Corporation shall have any obligation to the other pursuant to the Employment Agreement except that the Corporation shall pay to Martin any compensation due Martin pursuant to the Employment Agreement through the Effective Date and thereafter shall have no further payment or other obligation to Martin with respect to the Employment Agreement.** Notwithstanding the foregoing, Martin and the Corporation acknowledge that the provisions of Section 5 of the Employment Agreement[1] shall survive the termination of the Employment Agreement indefinitely. . . .

[1] Section 5 of the Employment Agreement pertains to copyrights and is not relevant here. Appellant's App. Vol. III pp. 28-29.

* * * * *

> 13. Release. In consideration of the covenants undertaken herein, and except for those obligations created by or arising out of this Agreement or the Martin Agreement (as defined in Section 13 hereof), the parties to this Agreement, . . . hereby acknowledge complete satisfaction of and hereby release, absolve and discharge each other . . . with respect to and from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts, expenses, attorneys' fees, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, or suspected or unsuspected, which any of the parties now owns or holds or has at any time heretofore owned or held as against said Releases, or any of them, related to any dispute between or among them arising prior to the date of this Agreement. The parties agree that this Release does not include claims that the parties cannot waive by law, or claims for breach of this Agreement.
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> Each of the parties to this Agreement represents and warrants that it has not filed and knows of no other claims filed in any civil action, suit, arbitration, or legal proceeding against any party hereto. The parties to this Agreement hereby stipulate and agree that upon timely performance of this Agreement, they will forego [sic] and abandon all claims asserted or which could have been asserted by a party hereto against another party hereto and that none of them will file or cause to be filed any claims, action, lawsuit, or other proceeding which seeks to recover money damages or other relief arising from any matters other than those described in this Agreement or in the Martin Agreement.

Appellant's App. Vol. III pp. 170-75 (emphasis added). The Stock Redemption Agreement was then signed by Welch, as president of Pyrimont, and Welch,

Watson, Lake, and others in their individual capacity. A few weeks later, Pyrimont discovered that data and/or a hard drive were missing from the computer that Martin used. Pyrimont also learned that Martin was competing with Pyrimont in violation of his agreements with Pyrimont.

[8] In September 2018, Pyrimont filed a verified complaint for preliminary and permanent injunctive relief and damages against Martin. Pyrimont alleged that Martin committed computer trespass, conversion, theft, breach of the Indiana Uniform Trade Secrets Act, breach of contract, and breach of fiduciary duty by taking a hard drive and/or cloned image of a hard drive from Pyrimont. Pyrimont also requested injunctive relief. The trial court granted a temporary restraining order.

[9] Pyrimont filed an amended complaint in August 2019, which included the same counts as the original complaint. Pyrimont and Martin entered into an Agreed Preliminary Injunction, which was consistent with the earlier temporary restraining order. The trial court signed the Agreed Preliminary Injunction in September 2019.

[10] Martin then filed an answer to the amended complaint, a counterclaim, and a third-party complaint. Martin's counterclaim against Pyrimont included two counts: (1) Count I, a claim that, pursuant to the Employment Agreement, Martin was entitled to three weeks of paid vacation per year from 2014 through 2018 with a value of $23,076.92; and (2) Count II, a claim that Pyrimont breached the Stock Redemption Agreement by failing to make the $45,000.00

installment payment to Martin in April 2019 and by "paying increased salaries, bonuses, dividends or fringe benefits to employees outside of the normal course of business and inconsistent with past practices." Appellant's App. Vol. II p. 202.

[11] Martin's third-party complaint was filed against Welch, Watson, and Lake. The third-party complaint included the following claims: (1) Count I, a claim that Welch, Watson, and Lake breached the Stock Redemption Agreement by "failing to pay Martin pursuant to the agreement and by paying themselves and authorizing loans in violation of the terms of the agreement"; (2) Count II, a claim that Welch, Watson, and Lake breached their fiduciary duties "by loaning [Pyrimont] funds to affiliated entities, by paying themselves salaries, bonuses and distributions that are not consistent with past practices in order to reduce the value of [Pyrimont], resulting in a devaluation of Martin's interest in [Pyrimont]"; and (3) a request for a preliminary and permanent injunction. *Id.* at 204. Welch, Lake, and Watson filed answers and affirmative defenses to the third-party complaint.

[12] In January 2020, Pyrimont filed a motion for summary judgment regarding Martin's counterclaim against Pyrimont and the third-party complaint against Welch, Lake, and Watson. Pyrimont argued in part that: (1) Welch, Watson, and Lake were entitled to summary judgment as to Count II of Martin's third-party complaint for breach of fiduciary duty pursuant to the shareholder termination rule; (2) Welch, Watson, and Lake were entitled to summary judgment as to Count I of the third-party complaint because (a) Pyrimont, not

the individual shareholders, were obligated to pay Martin pursuant to the Stock Redemption Agreement and (b) salaries and bonuses were paid in the normal course of business; (3) Pyrimont was entitled to summary judgment on Martin's claim for unpaid vacation time pursuant to the language of the Stock Redemption Agreement and because Martin was not entitled to the claimed vacation time; and (4) Pyrimont was entitled to summary judgment as to Count II of the counterclaim because Martin was the first party to breach the Stock Redemption Agreement.

[13] In response, Martin argued in part that: (1) Pyrimont had no standing to request the dismissal of claims against Welch, Lake, and Watson; (2) an exception to the shareholder termination rule provides that the rule is inapplicable to transactions "which have their inception before the termination of the relationship"; (3) Martin was entitled to his vacation pay pursuant to the Stock Redemption Agreement; and (4) Pyrimont breached the Stock Redemption Agreement by failing to make timely payments to Martin and genuine issues of material fact exist regarding whether Martin breached the Agreement. Appellant's App. Vol. III p. 191.

[14] After a hearing, the trial court partially granted Pyrimont's motion for summary judgment. As to Martin's third-party claims against Welch, Lake, and Watson, the trial court found: (1) Welch, Lake, and Watson were entitled to summary judgment on Count I of Martin's third-party complaint for breach of contract claim because "the Owners lacked any contractual obligation to Martin under the Stock Redemption Agreement"; (2) Welch, Lake, and Watson were entitled

to summary judgment on Count II of Martin's third-party complaint for breach of fiduciary duty because Martin's claims "are based on actions that took place following the redemption of his stock under the Stock Redemption Agreement"; and (3) the claim for injunctive relief fails because Counts I and II failed. Appellant's App. Vol. II p. 18.

[15] As to Martin's counterclaims against Pyrimont, the trial court found: (1) a two-year statute of limitations applied to Martin's wage claim and, thus, the wage claim could only extend to May 24, 2017, and genuine issues of material fact exist regarding whether Martin was entitled to vacation benefits from May 24, 2017, to July 2, 2018; (2) the 2018 bonuses were consistent with the 2017 bonuses and the Stock Redemption Agreement did not restrict Pyrimont from loaning funds to an affiliate; and (3) genuine issues of material fact exist regarding Pyrimont's failure to pay installments to Martin pursuant to the Stock Redemption Agreement. The trial court found "no just reason for delay, and direct[ed] the entry of judgment thereon."[2] *Id.* at 21. Martin now appeals.

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[2] Indiana Appellate Rule 2(H)(2) notes that a judgment is a "final judgment" if:

> the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties.

Analysis

[16] Martin appeals the trial court's grant of partial summary judgment. "When reviewing the grant or denial of a motion for summary judgment we stand in the shoes of the trial court." *Supervised Estate of Kent*, 99 N.E.3d 634, 637 (Ind. 2018) (quoting *City of Lawrence Utils. Serv. Bd. v. Curry*, 68 N.E.3d 581, 585 (Ind. 2017)). Summary judgment should be granted "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C).

[17] The party moving for summary judgment bears the burden of making a prima facie showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020). The burden then shifts to the non-moving party to show the existence of a genuine issue. *Id.* Any doubts about the facts, or the inferences to be drawn from the facts, are resolved in favor of the non-moving party. *Id.* Findings of fact and conclusions of law entered by the trial court aid our review, but they do not bind us. *Supervised Estate of Kent*, 99 N.E.3d at 637.

[18] Several of Martin's arguments concern an interpretation of the Stock Redemption Agreement. In interpreting a contract, we "determine the intent of the parties at the time that they made the agreement." *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 752 (Ind. 2018). "We start with the contract language to determine whether it is ambiguous." *Id.* "If the language is

unambiguous, we give it its plain and ordinary meaning in view of the whole contract, without substitution or addition." *Id.* When the contract terms are unambiguous, we do not go beyond the four corners of the contract to investigate meaning. *Id.* at 756. We "determine the meaning of a contract by considering all of its provisions, not individual words, phrases, or paragraphs read alone." *Id.*

[19] "'The goal of contract interpretation is to determine the intent of the parties when they made the agreement.'" *Celadon Trucking Servs., Inc. v. Wilmoth*, 70 N.E.3d 833, 839 (Ind. Ct. App. 2017) (quoting *Tender Loving Care Mgmt., Inc. v. Sherls*, 14 N.E.3d 67, 72 (Ind. Ct. App. 2014)), *trans. denied*. This Court must examine the plain language of the contract, read it in context and, whenever possible, construe it so as to render every word, phrase, and term meaningful, unambiguous, and harmonious with the whole. *Id*. "If contract language is unambiguous, this court may not look to extrinsic evidence to expand, vary, or explain the instrument but must determine the parties' intent from the four corners of the instrument." *Id*. "And, in reading the terms of a contract together, we keep in mind that the more specific terms control over any inconsistent general statements." *DLZ Ind., LLC v. Greene Cnty.*, 902 N.E.2d 323, 328 (Ind. Ct. App. 2009).

[20] "The terms of a contract are ambiguous only when reasonably intelligent persons would honestly differ as to the meaning of those terms." *Perrill v. Perrill*, 126 N.E.3d 834, 841 (Ind. Ct. App. 2019), *trans. denied*. "Only 'reasonable' certainty is necessary; 'absolute certainty in all terms is not

required.'" *Allen v. Clarian Health Partners, Inc.*, 980 N.E.2d 306, 310 (Ind. 2012). The parties' disagreement over a term's plain meaning does not itself create ambiguity. *Hartman v. BigInch Fabricators & Constr. Holding Co., Inc.*, 161 N.E.3d 1218, 1223 (Ind. 2021). We review a trial court's interpretation of contract language de novo. *Care Grp. Heart Hosp.*, 93 N.E.3d at 753.

I. Breach of Fiduciary Duty Claim Against Welch, Watson, and Lake

[21] We first note that Martin argues Pyrimont did not have "standing" to request summary judgment on Count II of Martin's third-party complaint against Welch, Watson, and Lake because Welch, Watson, and Lake were required to file the motion for summary judgment. Indiana Trial Rule 56(B), however, provides: "When any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party." Accordingly, the trial court was not prohibited from granting summary judgment to Welch, Watson, and Lake even though Pyrimont filed the motion for summary judgment. *See, e.g.*, *Richardson's RV, Inc. v. Indiana Dep't of State Revenue*, 112 N.E.3d 192, 194 n.1 (Ind. 2018) (noting that summary judgment could be granted to the Department even though it did not move for summary judgment).

[22] Martin claims that the trial court erred by granting summary judgment to Welch, Watson, and Lake on Martin's third-party breach of fiduciary duty

claim.[3] Martin claims that Welch, Watson, and Lake breached their fiduciary duties by loaning Pyrimont funds to affiliated entities and by paying themselves salaries, bonuses, and distributions that were inconsistent with past practices.

[23] Our Supreme Court has held that "[t]he standard imposed by a fiduciary duty is the same whether it arises from the capacity of a director, officer, or shareholder in a close corporation." *G & N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227, 240 (Ind. 2001). "'The fiduciary must deal fairly, honestly, and openly with his corporation and fellow stockholders. He must not be distracted from the performance of his official duties by personal interests.'" *Id.* (quoting *Hartung v. Architects Hartung/Odle/Burke, Inc.*, 157 Ind. App. 546, 552, 301 N.E.2d 240, 243 (1973)). Indiana has adopted the "shareholder termination rule," which provides that the "[t]ermination of the fiduciary relationship does not shield the fiduciary from its duties or obligations concerning transactions which have their inception before the termination of the relationship." *Abdalla v. Qadorh-Zidan*, 913 N.E.2d 280, 286 (Ind. Ct. App. 2009) (quoting *Thompson v. Central Ohio Cellular, Inc., f.k.a., Cellwave Inc., et al.*, 639 N.E.2d 462, 470 (Ohio Ct. App. 1994)), *trans. denied*.

[24] The trial court found that the actions alleged by Martin regarding breach of fiduciary duty occurred after the termination of the fiduciary relationship and,

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[3] Martin does not appeal the trial court's grant of summary judgment in favor of Welch, Watson, and Lake on Count I of Martin's third-party complaint for breach of the Stock Redemption Agreement or the claim for injunctive relief.

thus, Martin's claim failed. Martin, however, argues that the actions occurred prior to the termination of the fiduciary relationship. We begin by noting that Martin's third-party complaint alleged Welch, Watson, and Lake breached their fiduciary duties by "loaning [Pyrimont] funds to affiliated entities, by paying themselves salaries, bonuses and distributions that are not consistent with past practices . . . ." Appellant's App. Vol. II p. 204. In the third-party complaint, Martin alleged that, between July 31, 2018, and May 31, 2019, Pyrimont's bank accounts were reduced by approximately $600,000.00. As the trial court found, the conduct complained of in the third-party complaint occurred after the Stock Redemption Agreement was executed. Accordingly, pursuant to the shareholder termination rule, the trial court properly granted summary judgment to Welch, Watson, and Lake on Count II of the third-party complaint.

[25] To the extent Martin now argues that additional conduct by Welch, Watson, and Lake, which occurred prior to the Stock Redemption Agreement, resulted in a breach of their fiduciary duties, we note that the Stock Redemption Agreement contained a release provision, which provides, in part:

> 13. Release. . . . [T]he parties to this Agreement, . . . hereby acknowledge complete satisfaction of and hereby release, absolve and discharge each other . . . with respect to and from any and all claims, . . . causes of action, . . . and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, or suspected or unsuspected, which any of the parties now owns or holds or has at any time heretofore owned or held as against said Releases, or any of them, related to any dispute

> between or among them arising prior to the date of this Agreement. . . .

Appellant's App. Vol. III p. 175. While other provisions of the Stock Redemption Agreement specifically relate to obligations between Martin and the Corporation, *i.e.*, Pyrimont, the release provision concerns the "parties" to the Agreement, and Welch, Watson, and Lake were parties to the Agreement. Accordingly, to the extent Martin's claims relate to actions taken prior to the Stock Redemption Agreement, those claims were released when Martin entered into the Agreement. The trial court properly granted summary judgment to Welch, Watson, and Lake on Count II of Martin's third-party complaint.

II. Wage Claim Against Pyrimont

[26] Next, Martin argues that the trial court erred by partially granting summary judgment to Pyrimont on Martin's counterclaim for unpaid vacation days. Count I of Martin's counterclaim against Pyrimont alleged that, pursuant to his Employment Agreement, he was entitled to four weeks of vacation each year from 2014 through 2018 and that he only used one week of vacation per year. Martin alleged that he is entitled to $23,076.92 in unpaid vacation time. The trial court concluded that Martin's claim was a wage claim and that the statute of limitations on wage claims is two years. Accordingly, Martin's wage claim could only extend back to May 24, 2017, two years before his counterclaim was filed.

[27] On appeal, Martin argues that the trial court applied the wrong statute of limitations for wage claims; according to Martin, a six-year statute of limitations for a written contract should be applied. Martin also argues that the parties agreed to extend the statute of limitations through the Stock Redemption Agreement.

[28] Indiana Code Section 34-11-2-1 provides:

> An action relating to the terms, conditions, and privileges of employment *except actions based upon a written contract* (including, but not limited to, hiring or the failure to hire, suspension, discharge, discipline, promotion, demotion, retirement, wages, or salary) must be brought within two (2) years of the date of the act or omission complained of.

(emphasis added). Indiana Code Section 34-11-2-9(b) provides: "An action upon . . . other written contracts for the payment of money executed after August 31, 1982, must be commenced within six (6) years after the cause of action accrues."

[29] Martin's claim is based upon the Employment Agreement, which is referred to in the following provision to the Stock Redemption Agreement:

> 10. Termination of Employment Agreement. Effective as of the Effective Date, Martin and the Corporation agree to terminate that certain Employment Agreement entered into by and among the Corporation as employer and Martin as employee, dated March 26, 2014 (the "Employment Agreement") provided, however, that Martin shall be paid $3,077.00 on the Effective Date. Martin and the Corporation acknowledge that, except for the additional payment described in this paragraph 10, after the

> Effective Date, neither Martin nor the Corporation shall have any obligation to the other pursuant to the Employment Agreement *except that the Corporation shall pay to Martin any compensation due Martin pursuant to the Employment Agreement through the Effective Date* and thereafter shall have no further payment or other obligation to Martin with respect to the Employment Agreement.

Appellant's App. Vol. III p. 174 (emphasis added). The Employment Agreement defined "compensation" to include Martin's annual salary and benefits, including "4 weeks paid vacation and holidays." *Id.* at 27. According to Martin, he was due $23,076.92 in unpaid vacation time pursuant to the Employment Agreement.

[30] "Where a written contract refers to another instrument and makes the terms and conditions of such other instrument a part of it, the two will be construed together as the agreement of the parties." *Performance Servs., Inc. v. Hanover Ins. Co.*, 85 N.E.3d 655, 660 (Ind. Ct. App. 2017). Although the Stock Redemption Agreement does not specifically incorporate the Employment Agreement, it refers to the Employment Agreement and cannot be properly construed without considering the language of the Employment Agreement. The Employment Agreement terminated as of the date of the Stock Redemption Agreement, but the Stock Redemption Agreement still obligated Pyrimont to pay compensation already owed under the Employment Agreement. Because Martin's claim is based upon a written contract, we conclude that the trial court erred by applying a two-year statute of limitation.

[31] The Stock Redemption Agreement unambiguously required Pyrimont to pay Martin compensation due under the Employment Agreement, and the vacation time was part of Martin's compensation under the Employment Agreement. We note that the Stock Redemption Agreement provides:

> 13. Release. In consideration of the covenants undertaken herein, and except for those obligations created by or arising out of this Agreement or the Martin Agreement (as defined in Section 13 hereof), the parties to this Agreement, . . . hereby acknowledge complete satisfaction of and hereby release, absolve and discharge each other . . . with respect to and from any and all claims, . . . *wages*, obligations, . . . and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, or suspected or unsuspected, which any of the parties now owns or holds or has at any time heretofore owned or held as against said Releases, or any of them, related to any dispute between or among them arising prior to the date of this Agreement. . . .
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> . . . The *parties to this Agreement hereby stipulate and agree that upon timely performance of this Agreement, they will forego* [sic] *and abandon all claims asserted or which could have been asserted by a party hereto against another party hereto and that none of them will file or cause to be filed any claims, action, lawsuit, or other proceeding which seeks to recover money damages or other relief arising from any matters other than those described in this Agreement* or in the Martin Agreement.

Id. at 175 (emphasis added). Considering the Stock Redemption Agreement as a whole, we conclude that, although Martin released certain obligations occurring prior to the execution of the Stock Redemption Agreement, obligations arising from the Stock Redemption Agreement were not released. Payment of compensation due under the Employment Agreement was an

obligation of the Stock Redemption Agreement and, accordingly, was not released.[4]

[32] The parties designated competing affidavits as to whether Martin used all of his vacation time from 2014 through 2018. Pyrimont, however, designated unopposed evidence that Martin was placed on probation effective December 31, 2017, and Martin's "paid time off [was] suspended until further notice" as part of the probation. Appellant's App. Vol. III p. 154. Accordingly, there are genuine issues of material fact regarding whether Martin was entitled to compensation for unpaid vacation time from 2014 through December 31, 2017. Pryimont, however, was entitled to summary judgment on Martin's claim for unpaid vacation time from December 31, 2017, through 2018.

III. Breach of Contract Claim Against Pyrimont Regarding Bonuses

[33] Finally, Martin argues that the trial court erred by partially granting summary judgment to Pyrimont on Martin's counterclaim for breach of the Stock

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[4] Pyrimont argues that we should consider extrinsic evidence regarding Martin's vacation time. Pyrimont designated extrinsic evidence that:

> As part of the negotiations for such agreement, Martin sought to include the payment to him of a sum of money representing what he alleged was additional vacation pay from his employment at Pyrimont. Pyrimont refused to include such payment to Martin and the parties eventually agreed to execute an agreement without any such payment. The final agreement specifically states that nothing other than Martin's unpaid salary was owed or would be paid to him. This is evidenced by the e-mails exchanged between counsel for Martin and counsel for Pyrimont, attached to [Welch's] Affidavit as Exhibit "8-H."

Appellant's App. Vol. III p. 76. Where a contract is unambiguous, however, we may not consider extrinsic evidence. *See, e.g., Brockmann v. Brockmann*, 938 N.E.2d 831, 834 (Ind. Ct. App. 2010) ("Clear and unambiguous terms in a contract are deemed conclusive, and we will not construe an unambiguous contract or look to extrinsic evidence, but will merely apply the contractual provisions."), *trans. denied*.

Redemption Agreement. Count II of Martin's counterclaim against Pyrimont alleged, in part, that Pyrimont breached the Stock Redemption Agreement by paying increased bonuses to employees "outside of the normal course of business and inconsistent with past practices . . . ."[5] Appellant's App. Vol. II p. 202.

[34] The Stock Redemption Agreement provided, in part:

> 3. Operating Restrictions. Salary increases to existing employees, bonuses, dividends and fringe benefits to any employee, and any new employee salaries shall, after the Effective Date, be paid or provided in the normal course of business consistent with past practices.

Appellant's App. Vol. III p. 171. The designated evidence demonstrated that Pyrimont instituted a new bonus structure in late 2016. The 2018 bonuses, which were paid in 2019, after the Stock Redemption Agreement, were consistent with the 2017 bonuses, which were paid in early 2018, prior to the Agreement. The trial court noted that "Martin does not dispute that the 2018 bonuses paid in early 2019 were consistent with the 2017 bonus paid while Martin was an owner of Pyrimont." Appellant's App. Vol. II p. 20. The trial

[5] Count II of Martin's counterclaim against Pyrimont alleged that Pyrimont breached the Stock Redemption Agreement by "failing to pay $45,000.00 to Martin on April 10, 2019 . . . ." Appellant's App. Vol. II p. 202. The trial court found genuine issues of material fact regarding Pyrimont's failure to make the installment payments required by the Stock Redemption Agreement, and the parties do not appeal this determination. Martin also argued below that Pyrimont breached the Agreement by making loans to affiliated companies. The trial court concluded that the Stock Redemption Agreement did not restrict Pyrimont from loaning funds to an affiliate, and Martin does not appeal this determination.

court then found "no evidence that bonuses were inconsistent with prior practices" and determined that Pyrimont was entitled to summary judgment on such breach of contract claims. *Id.*

[35] On appeal, Martin again argues that the 2018 bonus, paid in 2019, was inconsistent with the bonuses paid in years prior to 2017. Martin, however, makes no argument that the 2018 bonus was inconsistent with the 2017 bonus or that the 2018 bonus was inconsistent with the bonus structure in effect when he signed the Stock Redemption Agreement. Accordingly, we agree with the trial court that the bonuses were "provided in the normal course of business consistent with past practices," and we conclude that Pyrimont was entitled to summary judgment on this claim.

Conclusion

[36] The trial court properly granted summary judgment to Welch, Watson, and Lake on Count II of Martin's third-party complaint, and the trial court properly granted summary judgment to Pyrimont on Count II of Martin's counterclaim regarding the bonuses. As to Count I of Martin's counterclaim for allegedly unpaid vacation time, genuine issues of material fact exist except that Pryimont was entitled to summary judgment on Martin's claim for unpaid vacation time from December 31, 2017, through 2018. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

[37] Affirmed in part, reversed in part, and remanded.

Mathias, J., and Weissmann, J., concur.