MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kevin R. Patmore
Patmore Law Office
Santa Claus, Indiana

ATTORNEY FOR APPELLEE

Ryan P. Sink
Fox Williams & Sink, LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James R. Collins,

Appellant,

v.

Inland Technologies International Limited,

Appellee.

February 18, 2021

Court of Appeals Case No. 20A-PL-1008

Appeal from the Spencer Circuit Court

The Honorable Jon A. Dartt, Judge

Trial Court Cause No. 74C01-1411-PL-541

Brown, Judge.

[1] James R. Collins appeals the entry of summary judgment in favor of Inland Technologies International Limited ("Inland") and asserts he was entitled to payment for certain unused vacation time and incentive payments. We affirm.

Facts and Procedural History

[2] Inland offered employment to Collins in a letter dated March 28, 2005, which provided:

> 1) Position: Vice President, Inland Fluids
> (Job Description attached)
>
> 2) Base Salary: Effective with commencement of employment, your annual base salary will be . . . paid in bi-weekly deposits.
>
> 3) Employment Contract: Within one month of acceptance of this offer an Employment contract will be executed. This contract will include confidentiality, noncompetition clauses, nonsolicitation clause and other conditions of employment including conditions of the acceptance bonus, 4) below.
>
> 4) Acceptance Bonus: Upon acceptance of this offer a one time payment of . . . will be made.
>
> 5) Incentive Package: Should this offer be accepted, on or before the one year anniversary of the start of employment an incentive package including a % of base salary performance bonus and a divisional profit based incentive will be implemented. Eligibility for the incentives will be based on divisional performance and profitability from the second year of employment and forward.
>
> 6) Benefit Package: All normal company benefits will apply including retirement plan contribution (matching up to 3%), standard health insurance, company vehicle and four weeks paid vacation.
>
> 7) Hours of work: Hours of work and travel time must remain flexible due to the nature of the companies [sic] business. . . .

Appellee's Appendix Volume II at 60-61. Collins signed the letter on April 11, 2005, indicating that he agreed to "the above terms and conditions" and accepted employment with Inland. *Id*. at 61. Collins began his employment on April 20, 2005. Collins and Inland did not enter a subsequent separate agreement. Collins resigned from his position effective May 31, 2014, and requested payment for vacation time and bonuses. Inland informed him that the company's policy was that vacation time did not carry over from year to year.

[3] On November 26, 2014, Collins filed a complaint.[1] The parties filed motions for summary judgment. On April 8, 2020, the court issued findings of fact and conclusions of law. The court found that Collins was a full-time salaried employee and an at-will employee at all relevant times. The court observed the language of paragraph 3 of the letter and found the parties never executed such an employment contract. It further observed the language of paragraph 5 of the March 28, 2005 letter and found the terms and conditions of the incentive package were not spelled out in the letter and were never detailed during Collins's employment. It found that Inland's employee handbook applied to Collins and that every iteration of the handbook during Collins's tenure indicated that vacation time could not be accrued or carried over to subsequent years. The court concluded the March 28, 2005 letter was not an enforceable

[1] Collins's brief states the complaint alleged breach of contract and violations of the Indiana Wage Payment Statute.

employment contract, it did not contain "any specifics regarding the mentioned Incentive Package," and the "failure to include these material terms renders the [] Letter unenforceable." *Id*. at 165. It concluded Collins "could not accrue or carry over unused vacation from year-to-year" and Inland "was not required to pay Collins for vacation pay in lieu of taking actual time off." *Id*. at 166. The order also provided:

> 8. In the Court's opinion, this would have been a different case if the employment letter . . . contained specific terms showing that vacation days were going to accrue from year-to-year. There was a lack of evidence that Inland actually agreed to the accrual from year-to-year and the Court cannot now force Inland to pay for said vacation time when there was no "meeting of the minds" as to that issue, especially when the subsequent employee handbook for salaried employees clearly states that no such accrual is allowed from year-to-year. The fact that Inland did not specifically follow all of the provisions of the employment policies as they pertained to Collins does not mean the rest of the provisions are unenforceable. . . .
>
> 9. Similarly, the specifics about the percentage base salary bonus were not set out in the engagement letter. Collins attempts to rely on discussion between the parties that the bonus could be as high as 50% of Collins' salary but the actual percentage was never listed or agreed to in writing. Further, there was evidence that Inland Fluids, the division Collins was initially hired into, was never profitable and the division was ultimately eliminated effective December, 2006. Interesting to note, Collins did not assert a yearly bonus claim until leaving his employment, a full ten (10) years after he was hired. In short, there was an "agreement to agree" that incentive package terms would be spelled out in a later employment contract. That subsequent agreement never occurred and there was not a sufficient "meeting of the minds" as to the bonus/incentive issue for it to be enforceable either.

Id. at 166-167.

Discussion

[4] Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.*, 756 N.E.2d 970, 973 (Ind. 2001). The fact that the parties make cross-motions for summary judgment does not alter our standard of review. *Huntington v. Riggs*, 862 N.E.2d 1263, 1266 (Ind. Ct. App. 2007), *trans. denied.*

[5] Collins asserts the parties entered into an enforceable agreement and he is entitled to vacation pay and incentive-based compensation. Inland responds that, even if an agreement existed, there was no breach, the issue of carrying over vacation time from one year to the next was not discussed or expressed in the letter, and no details were ever agreed upon with respect to an incentive plan.

[6] Interpretation of a contract presents a question of law. *Jernas v. Gumz*, 53 N.E.3d 434, 443 (Ind. Ct. App. 2016), *trans. denied*. Our paramount goal is to ascertain and effectuate the intent of the parties. *Id.* at 444. Contracts are formed when parties exchange an offer and acceptance. *Id.* at 445. There must be mutual assent or a meeting of the minds on all essential elements or terms in order to form a binding contract. *Id*. In addition, to be valid and enforceable, a contract must be reasonably definite and certain. *Id*. (citing RESTATEMENT (SECOND) OF CONTRACTS § 33 (recognizing that in order to give effect to a

contract, its terms must be "reasonably certain")); *see also* Comment (b) to RESTATEMENT (SECOND) OF CONTRACTS § 33 (observing "the degree of certainty required may be affected by the dispute which arises and by the remedy sought"); *Wolvos v. Meyer*, 668 N.E.2d 671, 675 (Ind. 1996) ("Enforcement of a writing which is incomplete or ambiguous creates the substantial danger that the court will enforce something neither party intended."); *Wenning v. Calhoun*, 827 N.E.2d 627, 629 (Ind. Ct. App. 2005) ("In order to be enforceable, a contract must be reasonably definite and certain in its material terms so that the intention of the parties may be ascertained."), *trans. denied*. A contract must "provide a basis for determining the existence of a breach and for giving an appropriate remedy." *Wenning*, 827 N.E.2d at 629 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 33). The court may not "write a new contract for the parties or supply missing terms" and "must interpret the contract as written, not as it might have been written." *B&R Oil Co., Inc. v. Stoler*, 77 N.E.3d 823, 829 (Ind. Ct. App. 2017), *trans. denied*; *see also Mead Johnson & Co. v. Oppenheimer*, 458 N.E.2d 668, 670 (Ind. Ct. App. 1984) ("This court cannot make a contract for the parties, nor are we at liberty to revise a contract, or supply omitted terms while professing to construe it.") (citations omitted).

[7] In addition, "[t]he law is well established that a mere agreement to agree at some future time is not enforceable." *Wolvos*, 668 N.E.2d at 674. While parties may make an enforceable contract which obligates them to execute a subsequent final written agreement, "it is necessary that agreement shall have

been expressed on all essential terms that are to be incorporated in the document" and "[t]hat document is understood to be a mere memorial of the agreement already reached." *Id.* at 674-675 (citing 1 Arthur Linton Corbin and Joseph M. Perillo, CORBIN ON CONTRACTS § 2.8 at 133-134 (rev. ed. 1993)). "If the document or contract that the parties agree to make is to contain any material term that is not already agreed on, no contract has yet been made; the so-called 'contract to make a contract' is not a contract at all." *Id*. "[W]e consider the parties' 'intent to be bound' as a question separate from but related to the definiteness of terms." *Block v. Magura*, 949 N.E.2d 1261, 1266 (Ind. Ct. App. 2011) (citing *Wolvos*, 668 N.E.2d at 675).

[8] With respect to vacation, the Indiana Supreme Court has stated:

> While employers are not legally required to compensate employees for their unused vacation time, if vacation pay is to be compensated, it is deferred compensation in lieu of wages and is subject to the provisions of the Wage Payment Statute.[2] . . .
>
> [T]he default under Indiana law is that an employee who is promised vacation time by his employer is entitled to use that time or save it for use or payment at a later date. *Die & Mold, Inc.* [*v. Western*], 448 N.E.2d [44,] 46-47 [(Ind. Ct. App. 1983)]. This general rule can be abrogated, however, by an arrangement or policy of the employer that either places a prerequisite on an employee's ability to use the promised vacation time or prevents the employee from using the vacation time after a date certain or period of time.

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[2] The Wage Payment Statute provides that an employer must pay employees any unpaid wages, and employers who do not comply are subject to liquidated damages and attorney fees. *City of Lawrence Utilities Serv. Bd. v. Curry*, 68 N.E.3d 581, 587 (Ind. 2017).

> As an example, an employer who promises a new employee . . . two weeks of vacation may require that employee to work for a specified period of time before actually taking the promised vacation time. Alternatively, the employer could permit the employee to use the vacation time anytime he likes so long as it is used before December 31; otherwise, the vacation time (or the corresponding pay) is forfeited. Either of those scenarios would be permissible "arrangements or policies" under our statutory and case law. If the employee quit before he had worked the requisite amount of time to be able to use his promised vacation days, or if he failed to use the vacation time before the expiry period, his employer would not be required to pay him for the unused time under Indiana's Wage Payment Statute.

Comm'r of Labor ex rel. Shofstall v. Int'l Union of Painters & Allied Trades AFL-CIO, CLC Dist. Council 91, 991 N.E.2d 100, 103-104 (Ind. 2013) (some citations and quotation marks omitted). *See also Williams v. Riverside Cmty. Corr. Corp.*, 846 N.E.2d 738, 750 (Ind. Ct. App. 2006) (citing *Die & Mold, Inc.* and holding the employer's policies contained in its employee handbook were enforceable and limited the employee's eligibility to receive vacation pay and when the employee could receive payment for accrued vacation), *trans. denied*.

[9] Here, the March 28, 2005 letter stated that "all normal company benefits will apply," including the company's retirement plan and health insurance, and that Collins would receive four weeks of paid vacation. Appellee's Appendix Volume II at 61. The letter did not include specific provisions related to the accrual, use, or accumulation of Collins's vacation benefit. Inland's employee handbooks included the following policies:

> Full-time employees are eligible for paid vacation time.

* * * * *

> Vacation cannot be carried over from one year to the next nor is vacation pay granted in lieu of taking the actual time off.

Id. at 88, 101, 115, 130, 158.[3] While Inland agreed that Collins would receive four weeks of paid vacation, the letter and other materials to which Collins points do not demonstrate that he and Inland agreed that any vacation not used by Collins would be carried over to the next year. Nor did the letter suggest that the general policies of the company, including policies related to the use and accumulation of vacation time, as they were implemented and amended from time to time would not apply to Collins's employment. The company's policy was that vacation could not be carried over from one year to the next and vacation pay would not be granted in lieu of taking the time. *See Williams*, 846 N.E.2d at 750 (employee handbook limited payment for accrued vacation).

[10] The March 28, 2005 letter further stated that "an incentive package including a % of base salary performance bonus and a divisional profit based incentive will be implemented." Appellee's Appendix Volume II at 61. This language reflects, at most, "a mere agreement to agree at some future time." *See Wolvos*, 668 N.E.2d at 674. The letter did not include terms related to the bases upon which a performance bonus or divisional profit-based incentive would be determined or how the incentive measures would be implemented. We will not

[3] The provisions also included the amount of paid vacation employees received and, in general, provided for two or three weeks of annual paid vacation based on an employee's length of employment with the company.

supply these omitted terms for the parties. The record reveals there was not mutual assent or a meeting of the minds as to the terms of a performance bonus or profit-based incentive. Moreover, the letter did not set forth the essential terms of the incentive measures which were to be incorporated into a subsequent agreement, and the terms of the incentives were never later finalized or concluded. We conclude the parties did not enter an enforceable agreement as to an incentive package. *See RQAW Corp. v. Dearborn Cty.*, 83 N.E.3d 745, 753 (Ind. Ct. App. 2017) (noting a construction contract did not include the scope of work or cost and indicated such terms would be determined at a later date, and holding that, without these essential terms, it would be impossible to determine whether a future breach occurred and, if so, what damages would be appropriate and that enforcing the contract would create the substantial danger of enforcing something that neither party intended); *see also Wolvos*, 668 N.E.2d at 674-675 (an agreement to execute a subsequent final agreement, to be enforceable, must express all essential terms that are to be incorporated into the subsequent document); *Jernas*, 53 N.E.3d at 445 (an agreement must be reasonably definite and mutual assent or a meeting of the minds on all essential terms is required); *Wenning*, 827 N.E.2d at 629 (there must be a basis for determining breach and an appropriate remedy); *Mead Johnson*, 458 N.E.2d at 670 (we cannot supply omitted terms).

[11] For the foregoing reasons, we affirm the trial court's entry of summary judgment.

[12] Affirmed.

Vaidik, J., and Pyle, J., concur.