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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JAMES TOOLE,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 06-L-219
	)	
EXECUTIVE TRAVEL, INC., BRUCE	)	
HAGSHENAS, CATHY CARTER-CYRS,	)	
and MINOO HAGSHENAS,	)	Honorable
	)	J. Edward Prochaska,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in: (1) denying plaintiff's motion to strike one defendant's partial summary judgment motion; (2) granting that motion; (3) finding, after a bench trial, that plaintiff's claim was time-barred (based on its finding concerning certain contract language); and (4) finding that two defendants did not knowingly permit any statutory violations. Affirmed.

¶ 2 Plaintiff, James Toole, sued defendants, Executive Travel, Inc. (ETI),<sup>1</sup> Bruce Hagshenas (Bruce), Cathy Carter-Cyrs, and Minoo Hagshenas (Minoo), alleging violations of the Illinois Wage

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<sup>1</sup>ETI was later known as Executive BTI Travel, Inc. For consistency, we refer to it as ETI.

Payment and Collection Act (Act) (820 ILCS 115/1 *et seq.* (West 2012)). Following a prior appeal (*Toole v. Executive Travel, Inc.*, No. 2-10-0242 (unpublished order under Supreme Court Rule 23)) (*Toole I*) and several interim rulings, a bench trial commenced in this case. Following trial, the court entered judgment in defendants' favor. Plaintiff appeals. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 ETI provides travel services for travel suppliers. In 1995, Bruce served as ETI's chief operating officer and was its majority owner. Carter-Cyrs and Minoo were officers and shareholders of ETI. Plaintiff had worked at Sundstrand Corporation in Rockford.

¶ 5 On January 23, 1995, plaintiff and ETI (by Bruce) executed an "Employment Agreement," the pertinent portions of which provided:

"Commencing 1/30/95 [plaintiff] will act as the general manager for the Corporate Transportation Services (CTS) unit of Executive USTravel, and as the account manager for Sundstrand and any future accounts he may acquire for that division.

His compensation will be as follows:

Year 1: \$87,000 per annum, plus a one time moving bonus of \$15,000, payable by February 1, 1995.

Year 2 and beyond: \$102,000 per annum, adjusted annually based on the CPI.

In the event that Sundstrand pays [plaintiff] directly for his services regarding fleet and freight management, the above amount would be reduced by the Sundstrand payments to [plaintiff].

In addition to the base compensation, 30% of the profitability of the CTS division will be given to [plaintiff] in the form of profit sharing within 90 days after the close of our year with

Sundstrand. In addition to this [plaintiff] will be provided with our normal employee benefits.

*This contract shall remain in effect for as long as the Sundstrand contract is in effect. If Executive USTravel terminates this contract for any other cause, Executive will owe as severance pay, an amount equal to six months['] working salary.”* (Emphasis added.)

¶ 6 On January 30, 1995, ETI and Sundstrand Corporation entered into a Travel Management Services Agreement (1995 Travel Agreement), whereby ETI would provide management assistance to Sundstrand in servicing its travel needs. The initial term of the agreement was January 30, 1995, through January 29, 1998; the contract further provided for automatic annual renewals.

¶ 7 On February 20, 1995, ETI and Sundstrand entered into a Freight Transportation and Auto Fleet Administrative Services Agreement (Freight Agreement), whereby ETI would provide Sundstrand with administrative assistance in managing Sundstrand’s freight transportation and auto fleet needs. The contract’s term was from February 1, 1995, through February 20, 1996, and it provided for automatic annual renewals. (The Freight Agreement was terminated by ETI on May 1, 2006.)

¶ 8 ETI and Sundstrand entered into another Travel Management Services Agreement on January 30, 1998 (1998 Travel Agreement). ETI was to provide travel services to Sundstrand from January 30, 1998, through January 29, 2001. However, on May 5, 2000, Sundstrand provided ETI with 90-days’ notice, pursuant to the contract, of its termination of the agreement. Sundstrand was acquired by United Technologies Corporation (UTC) and came under new management, and UTC and ETI entered into months of discussions over the pricing in the agreement. The dispute went to arbitration over the money due to ETI for services it rendered during the period the parties negotiated pricing,

including for the period from mid-1999 through the third quarter of 2000. The 1998 Travel Agreement terminated on August 5, 2000. (In October 2001, ETI was awarded \$817,025.95 in the arbitration.)

¶ 9 On April 26, 2006, plaintiff, through his attorney, demanded payment of \$350,000 in profit sharing from ETI. On June 23, 2006, plaintiff sued defendants, alleging violations of the Act and seeking wages (*i.e.*, cost-of-living payments), profit sharing, and severance payments. On September 9, 2009, defendants moved for summary judgment, arguing, *inter alia*, that plaintiff's claims were barred by the five-year limitations period for actions under the Act. 735 ILCS 5/13-205 (West 2006). They asserted that, because plaintiff's employment agreement provided that any bonus be paid within 90 days of the contract year with Sundstrand, any claim that plaintiff had a right to a bonus prior to June 2001 was time-barred.

¶ 10 The trial court granted summary judgment to defendants, finding that plaintiff's cause of action was barred by the five-year statute of limitations in section 13-205 of the Code of Civil Procedure (Code) (735 ILCS 5/13-205 (West 2006) ("actions on unwritten contracts, express or implied, \*\*\* and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued")).<sup>2</sup> On appeal in *Toole I*, this court reversed and remanded, determining that the timeliness of plaintiff's complaint hinged on the identity of a contract (the "Sundstrand contract") referenced in the employment agreement; because that agreement was

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<sup>2</sup>After plaintiff filed suit, section 13-206 of the Code was amended to provide that the limitations period under the Act is 10 years. P.A. 95-209, §5, eff. Aug. 16, 2007; 735 ILCS 5/13-206 (West 2012) ("actions brought under the Illinois Wage Payment and Collection Act shall be commenced within 10 years next after the cause of action accrued").

ambiguous as to whether the contract was one or both of two other agreements (the Travel Agreement and/or the Freight Agreement, only one of which—the Travel Agreement—had clearly been terminated more than five years before plaintiff filed his complaint), it was not clear that the complaint was untimely filed and, thus, summary judgment was not proper. *Toole v. Executive Travel, Inc.*, No. 2-10-0242 (unpublished order under Supreme Court Rule 23).

¶ 11 On remand, on October 21, 2011, Carter-Cyrs and Minoos moved for summary judgment, arguing that, although they were officers, there was no evidence that they “knowingly permitted” violations of the Act because they lacked the authority and ability to prevent something. 820 ILCS 115/13 (West 2012). The trial court denied this motion.

¶ 12 On the same day, Bruce moved for partial summary judgment, arguing that any claims (for CPI adjustments and bonus payments, not severance) that arose more than five years before plaintiff filed suit were time-barred. Plaintiff moved to strike Bruce’s motion, arguing that the motion raised no new argument and was barred by the law of the case doctrine. He relied on *Toole I*, arguing that this court held that there was a factual issue concerning the statute of limitations. The trial court granted Bruce’s motion for partial summary judgment, finding that any recovery by plaintiff would be limited to claims that arose on or after June 23, 2001, (five years before June 23, 2006, the date plaintiff filed suit). It noted that the issue in *Toole I* was “different” and involved a ruling on the entire suit. However, the court further noted that it would not limit the *evidence* that could be presented at trial to this period. “I am certainly going to allow the plaintiff[ ] to present any evidence you want in this case, including claims that may have arose [*sic*] before that in order to preserve the record in this case. But for purposes of ruling, I’m not going to be considering that evidence in terms of any judgment that I ultimately would award the plaintiff[ ].”

¶ 13

A. Plaintiff's Testimony

¶ 14 The bench trial, which related to plaintiff's claims during the pendency of the 1998 Travel Agreement (he was paid during the term of the 1995 contract), commenced on January 18, 2012. Plaintiff testified that he started working at Sundstrand in 1989 as corporate manager of transportation and travel services. He was in charge of travel, lease vehicles, and transportation. Plaintiff managed a \$25 million budget and supervised 12 employees. In the mid-1990s, Sundstrand had an outside travel agency, namely, American Express. Plaintiff and his superior became dissatisfied with American Express's performance, and plaintiff was encouraged to speak to Bruce. Also at this time, Sundstrand wanted to reduce the number of employees at its corporate office. Plaintiff spoke to Bruce several times between 1992 and 1994. They each believed that Sundstrand could out-source its transportation and travel business to ETI. Plaintiff proposed this plan to Sundstrand. He also had additional conversations with Bruce. In 1994, Bruce offered to employ plaintiff at \$102,000 per year, along with full benefits and 30% of CTS's (a subsequent name given to the division that was going to be dedicated to Sundstrand) profits. Ultimately, Sundstrand approved the out-sourcing of travel, transportation management, and fleet leasing management and requested bids from several travel agencies.

¶ 15 In December 1994, ETI was awarded the Sundstrand contract. In January 1995, plaintiff met with Bruce to discuss his employment. Bruce offered plaintiff \$72,000 per year. When plaintiff reminded him that he had initially mentioned \$102,000, Bruce told plaintiff to "write something up." Plaintiff and Bruce entered into the Employment Agreement. Plaintiff drafted all but one paragraph of the contract; that paragraph related to the direct payments from Sundstrand for fleet and freight

management. Plaintiff began working at ETI. (The employees he had supervised at Sundstrand also became ETI employees.)

¶ 16 Plaintiff further testified that he first saw the 1995 Travel Agreement after he started working at ETI, perhaps on his first day of work (February 1, 1995). He first saw the Freight Agreement on February 20, 1995. Plaintiff believed that the Travel Agreement and the Freight Agreement represented the whole of the relationship between Sundstrand and ETI.

¶ 17 Sundstrand paid ETI \$73,000 per year for services under the Freight Agreement. Plaintiff spent about 30 to 40% of his time at ETI on the freight part of the contract with Sundstrand.

¶ 18 During plaintiff's first year at ETI, the commissions that airlines paid to travel agencies were capped at \$50 per domestic round-trip ticket. In March 1996, Bruce spoke to plaintiff about his profit sharing, stating that company profits were not as high as expected, and he requested that plaintiff forego taking his profit sharing payment. Plaintiff stated that he had been promised the money and that he wanted it. Bruce arranged another meeting, which also included Minoo, and the parties reviewed CTS's expenses and revenues and what plaintiff's bonus would have been. Bruce instructed Minoo to "write Jim a check," which she did (in the amount of \$12,538.50).

¶ 19 During plaintiff's second year at ETI, plaintiff and a Sundstrand auditor discussed the fact that Canadian flights had been placed in the domestic category (which was capped) and that the airfares were high. Sundstrand had a significant amount of Canadian travel. The auditor agreed that the Canadian flights could be moved into the international category, which helped profits in the year ending 1997. In the spring of 1997, plaintiff and Bruce met to discuss profit sharing. Bruce asked plaintiff to consider taking less or renegotiating the amount. Plaintiff refused, and Bruce said "okay"

and that he would instruct Minoo to prepare a statement. Plaintiff was paid \$27,771.81 in profit sharing.

¶ 20 In the third year of plaintiff's contract, 1997 to 1998, Bruce again asked plaintiff to defer his profit sharing (because Carter-Cyrs was upset with how much money plaintiff was making and Bruce wanted to do something for Carter-Cyrs), and plaintiff refused. He was paid, under the final year of the 1995 Travel Agreement, over \$50,361.06 in profit sharing.

¶ 21 After the 1995 Travel Agreement expired, Sundstrand again sought bids. At this time, plaintiff explained, the travel business had changed and a travel agency was no longer a "cash cow." Plaintiff prepared the ETI bid for Sundstrand's business with this change in mind. He proposed a system where commissions were not considered and where Sundstrand would pay ETI's expenses based on a budget plaintiff prepared; Sundstrand would pay ETI the difference between a typical business fare and the fares ETI was able to achieve. Plaintiff worked with Minoo to prepare the budget and proposed the system to ETI. Specifically, he proposed a \$700,000 budget (\$175,000 per quarter), which was accepted by Sundstrand.

¶ 22 On January 30, 1998, ETI and Sundstrand entered into the 1998 Travel Agreement. Plaintiff saw Sundstrand statements in which it reported budget overruns (*i.e.*, when ETI went over budget for the quarter). ETI "ate" the expense. Plaintiff decided to report the excess over the budget so that the next year he submitted a budget, he could show Sundstrand that ETI had sustained budget overruns the prior year. Plaintiff calculated that profits in the first year of the 1998 Travel Agreement were about \$620,000.

¶ 23 In mid-February 1999, plaintiff learned that UTC was going to purchase Sundstrand, which he believed was bad news for ETI. Plaintiff and Bruce discussed the potential impact of the sale,

and Bruce believed that he might be able to obtain UTC's business. Bruce asked plaintiff to postpone taking his profit sharing payment because ETI needed to "build a war chest" to have the resources to retain the UTC business and to obtain new business from UTC. Plaintiff stated that he expected to receive his profit sharing at some point; Bruce, according to plaintiff, assured him that he would get it.

¶ 24 On April 1, 1999, plaintiff informed Bruce that he had prepared his tax returns and did not have taxes taken out of the prior year's profit sharing; plaintiff owed \$15,000 in taxes. He requested a portion of his profit sharing in order to pay his obligation. Bruce agreed and instructed Minoo to write plaintiff a check for \$15,000, which she did.

¶ 25 On June 15, 1999, UTC acquired Sundstrand. ETI offered UTC a lower share of profit sharing on the reduced airfares, which was accepted; however, UTC, specifically Mike Prado (its travel manager), later informed ETI that it would have to offer a better deal (UTC was 25 times larger than Sundstrand and had a 40% discount with the airlines that ETI could not obtain). ETI retained the business for a while, but a dispute arose between the companies concerning how much Sundstrand/UTC owed ETI for services it performed while the entities renegotiated a contract. By May 5, 2000, UTC had stopped paying ETI. (Also that month, it gave notice to ETI that it was terminating the 1998 Travel Agreement effective August 5, 2000.) The parties' dispute subsequently went through arbitration (in July 2001).

¶ 26 The 1998 Travel Agreement was terminated on August 5, 2000. On December 19, 2000, Minoo gave plaintiff a check for \$2,500, stating it was for Christmas and was not his profit sharing. She stated that Bruce was "going to take care of you on your profit sharing."

¶ 27 Plaintiff further testified that, after the termination, he continued to perform freight and fleet management, coordinated arbitration (and was the only witness therein for ETI), and sought new accounts. The arbitration award was rendered in October 2001. Shortly thereafter, Bruce spoke to plaintiff, asking him to postpone taking his profit sharing because ETI might have to acquire new travel agencies. Bruce stated he would pay plaintiff his money, but “I just want you to wait. Wait for a while. Stick with us.” Plaintiff agreed, but stated that he expected to receive all of his money at some point.

¶ 28 Thereafter, according to plaintiff, Bruce distanced himself from plaintiff. Although plaintiff initially believed that he would be paid by ETI, he came to change his mind. However, prior to 2006, plaintiff made no demand of Bruce for his money. In late 2005, Carter-Cyrs spoke to plaintiff to inform him that ETI was going to hire a full-time salesperson. Plaintiff told her that he would not work for commissions for ETI because he was owed a lot of money. According to plaintiff, when he told Carter-Cyrs that he had not been fairly treated by the company, she asked him what he meant. He told her that he was owed a lot of money; Carter-Cyrs told plaintiff to speak to Bruce, and plaintiff did not speak to him.

¶ 29 In January 2006, ETI offered plaintiff an independent contractor agreement to replace his Employment Agreement. He did not sign it. In February 2006, plaintiff told Carter-Cyrs that he was owed “hundreds of thousands of dollars” in profit sharing. In March or April 2006, plaintiff met with Bruce and Carter-Cyrs and demanded (including in writing) his profit sharing payments. According to plaintiff, Bruce stated “that was a long time ago and that is all over and I ain’t paying you a dime.” He also stated that “if you want this company, take it.” ETI offered plaintiff another independent contractor agreement, which he did not sign, that provided that his annual salary would

be \$29,000. (Also at this meeting, plaintiff provided Bruce and Carter-Cyrs with a spreadsheet he had prepared in 2001 in which he had calculated his profit sharing. He did not produce this at trial.) In May 2006, plaintiff went to work for a different employer, where he continued to perform freight services for Sundstrand.

¶ 30 Plaintiff further testified that the total profit sharing amount he should have been paid was \$419,092 based on the profits of which he was aware. Plaintiff *was* paid his profit sharing for the periods 1995-1996 (\$12,538.50), 1996-1997(\$27,771.81), and 1997-1998 (\$50,361.06) (for years ending January 31). According to plaintiff, he *should have been paid* \$212,581.37 for 1998 through 1999, based on CTS's \$1,499,270.29 in revenues that year. For the year 1999, plaintiff based his profit sharing calculation on expenses and revenue calculations (or profits) from the Sundstrand account; these figures were provided to him. For 2000, he used figures from the arbitration award. Plaintiff conceded that, between 1999 and 2005, he did not have ETI execute a note acknowledging it owed him money.

¶ 31 From his date of hire to the day he left ETI, plaintiff's supervisors were Bruce, Minoo, and Carter-Cyrs. Minoo addressed financials, bill payments, and payroll, including for the CTS division.

¶ 32 Plaintiff believed that the continuation of the Freight Agreement (which was worth \$73,000 per year) is the basis of why his Employment Agreement continued up to at least April 2006. In other words, the reference to the Sundstrand Contract in his Employment Agreement meant to him *any* contract that existed between ETI and Sundstrand.

¶ 33 The revenue from the companies whose accounts plaintiff acquired for ETI were not run through the CTS division. Plaintiff denied that his failure to insist that these accounts be booked

through CTS (to ensure he was credited for them) reflects his belief that his Employment Agreement terminated on August 5, 2000, the day the 1998 Travel Agreement terminated.

¶ 34 In 2003, Minoo and Carter-Cyrs became the owners of ETI. Plaintiff did not have a meeting with them to discuss the profit sharing he believed that he was owed. He testified that, at this time, he understood that Bruce “still held the purse strings.” In 2005, when ETI lost its largest account (US Filter), plaintiff did not demand his profit sharing. Plaintiff was also aware in 2000 and 2001 that the company had a liability related to the Apollo airline reservation system it used. However, he did not believe it had a bearing on the Sundstrand account and did not incorporate it into his calculations.

¶ 35 Plaintiff conceded that he never explicitly asked Bruce for the \$204,562.82 in profit sharing he believed he was due in 1999. He explained that Bruce asked him to defer it due to the need to build a “war chest” after Sundstrand was acquired. According to plaintiff, he believed Bruce. Plaintiff conceded that he knew he had a right to the money and that 1999 is over five years from the time he filed his lawsuit. Also, plaintiff conceded that he never asked Bruce, Minoo, or Carter-Cyrs for his cost-of-living increase. Plaintiff agreed that he never provided a dollar figure to Bruce prior to April 2006. Plaintiff asked for the \$15,000 payment in 1998 in order to pay his tax liability. He denied mentioning any side deal with Sundstrand related to freight.

¶ 36 Plaintiff believed that only Bruce had authority to approve any payments made to plaintiff for any bonus; he did not believe that Carter-Cyrs or Minoo had any such authority during the time he worked for ETI.

¶ 37

B. Bruce Hagshenas

¶ 38 Bruce Hagshenas testified that, at the commencement of ETI's operations, he was the majority shareholder and was an officer of the company. Carter-Cyrs also owned shares at this time and was an officer. Bruce and Carter-Cyrs each made hiring and purchase decisions and decided the total dollar amount of any bonuses; Carter-Cyrs and Minoos then divided the bonuses.

¶ 39 Bruce believed that the reference in the Employment Agreement to the "Sundstrand contract" was a reference to the booking of the company's airline, hotels, and car rentals (*i.e.*, travel, not freight, services). At the time the parties entered into the employment contract, there was no fleet and freight agreement. However, plaintiff had mentioned that he might "work out a side deal with some of his ex-colleagues" for additional revenue (to plaintiff) that would be part of ETI's profits; Bruce had "no idea what the revenue was or whether we were going to get it or not."

¶ 40 Bruce denied that he ever had conversations with plaintiff where he asked him to defer his bonus or made reference to a war chest or promised to pay the bonus at a later date. Bruce believed that plaintiff's agreement with ETI ended at the expiration of the 1995 Travel Agreement.

¶ 41 In 2006, Bruce instructed Carter-Cyrs to terminate plaintiff's employment. After plaintiff left the company, he never made any comments to Bruce that he was owed hundreds of thousands of dollars. Bruce denied that he knowingly withheld any payment from plaintiff.

¶ 42 Addressing the \$15,000 plaintiff was paid in 1998 (while the 1998 Travel Agreement was in effect), Bruce testified that plaintiff approached him, stating that he had mismanaged his personal finances and owed taxes to the Internal Revenue Service. He asked for assistance to pay his tax liability, and Bruce assumed plaintiff was requesting a loan.

¶ 43 C. Cathy Carter-Cyrs

¶ 44 Carter-Cyrs testified that she is a shareholder and was at one time president of ETI. She reviewed the company's financial statements every month. She hired and fired certain employees and supervised some employees. When asked what actions she took to ensure that plaintiff was properly paid, Carter-Cyrs testified that she was not responsible for the CTS division and, thus, there were no actions for her to take. In 2003, she and Minoo became the majority owners of ETI; however, Bruce had the ultimate authority with respect to the company's major expenditures.

¶ 45 D. Minoo Hagshenas

¶ 46 Minoo Hagshenas testified that she held the position of secretary-treasurer at ETI for a time and prepared the company's financial statements. Bruce and Carter-Cyrs determined everyone's compensation, except that Bruce had sole authority over plaintiff's compensation. Minoo hired and fired certain employees and supervised some. However, at no time did Minoo have authority or input as to plaintiff's hiring, compensation, or his termination.

¶ 47 Minoo reviewed the 1999 expenses for the CTS division of ETI. The budgeted expenses were \$175,000, which is the amount that Sundstrand agreed to pay. However, the document reflects that the total expenses for ETI were over \$191,000. Minoo testified that the actual expenses were even higher because the document does not incorporate overhead costs.

¶ 48 If CTI did not book a certain number of segments with Apollo, the company would have to pay back that money to Apollo. For the year ending 1999, ETI's liability to Apollo was \$195,000. By 2001, the liability was \$306,582 due to the reduced number of bookings as a result of losing Sundstrand as a client. ETI's balance sheet for that year reflects a \$250,000 line of credit with the company's bank; according to Minoo, the company borrowed money because "we had to meet payroll and expenses for the Sundstrand division when they were not paying us." After Sundstrand

terminated the 1998 Travel Agreement, only plaintiff worked in ETI's CTS division; CTS's income from Sundstrand was \$73,000 per year and ETI paid \$102,000 in salary to plaintiff. Thus, the division experienced a net financial loss. At no time after the termination of the 1998 Travel Agreement did CTS operate at a profit. Minoos conceded, though, that ETI did receive the benefit of the revenues that plaintiff brought in by acquiring new accounts (which were not booked through the CTS division).

¶ 49 In ETI's financial statements, corporate overhead (factored at 2% of air commissions) was not reflected in CTS's calculations because the division would have appeared to be losing money if it did. (One exception is 1997-1998.)

¶ 50 E. Judgment

¶ 51 The court entered judgment in defendants' favor. It found that the "Sundstrand contract" referenced in the Employment Agreement meant only the Travel Agreement and did not include the Freight Agreement, which was signed one month later. The evidence reflected, in the court's view, that the travel portion was the focus of the parties' discussions; it was the "large chunk" of the Sundstrand business; the Travel Agreement (the "million-dollar-plus contract") was the only agreement that was signed at the time of the Employment Agreement; and the Freight Agreement amounted to only \$73,000 per year. The court further found that plaintiff's Employment Agreement continued after the 1998 Travel Agreement was entered into: "They intended this employment agreement to go on as long as there was a travel [agreement] in effect between Sundstrand and [ETI] bringing millions of dollars into the company." The court determined that plaintiff's Employment Agreement terminated on August 5, 2000, the date the 1998 Travel Agreement expired. From that point forward, plaintiff was an at-will employee.

¶ 52 The trial court noted that it “did not make sense” and “damages [plaintiff’s] credibility that he would continue to work there year after year after year after year after year if he truly felt that he had a legitimate claim going back to 1999, 2000, and 2001. It doesn’t make sense to me that you would wait another five years before bringing [it] to the attention of” defendants. It further noted: “But it doesn’t make any difference ultimately on that because it’s all barred by the Statute of Limitations,” which would have run by November 2005. The court found that any cause of action accrued 90 days after the Employment Agreement’s expiration, or in November 2000. As the statute of limitations period is five years, plaintiff’s claim should have been brought by November 2005; however, it was not brought until 2006. Thus, plaintiff’s claim was time-barred:

“This was not timely filed. And whether you want to call it barred by the Statute of Limitations, which I clearly think it was, or whether you want to call it *laches*, which is an affirmative defense in this case, the bottom line is you just can’t wait so long to assert your rights. And so I don’t really quite frankly see any reason to get to the damages portion of this case because I think it was all barred by the Statute of Limitations when he filed his lawsuit in 2006.”

¶ 53 The court also found that plaintiff did not prove his case against Carter-Cyrs or Minoo, where only Bruce negotiated with plaintiff for ETI or ever dealt with plaintiff’s arrangement. Carter-Cyrs and Minoo did not knowingly participate in any decision-making.

¶ 54

## II. ANALYSIS

¶ 55

### A. The Act

¶ 56 The Act provides that “[e]very employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly

scheduled payday for such employee.” 820 ILCS 115/5 (West 2012). The Act’s purpose is to ensure the prompt payment of wages to workers at the time of separation from employment. *Armstrong v. Hedlund Corp.*, 316 Ill. App. 3d 1097, 1107 (2000). “Final compensation” is defined as “wages, salaries, earned commissions, earned bonuses, \*\*\* and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties.” 820 ILCS 115/2 (West 2012). A formally negotiated contract is not necessary to pursue a claim under the Act; rather, because the statute refers to a “contract or agreement,” and because an agreement is a broader concept than a contract, a plaintiff need only show a manifestation of mutual assent.<sup>3</sup> *Catania*, 359 Ill. App. 3d at 724; see also *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 249 (2004) (“parties may enter into an ‘agreement’ without the formalities and accompanying legal protections of a contract”).

¶ 57 The Act defines the term “employer” in two different places. Section 2 of the Act states that, “[a]s used in [the Act], the term ‘employer’ shall include any individual, partnership, association, corporation, business trust \* \* \*, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed.” 820 ILCS 115/2 (West 2012). Section 13, in turn, states that “any officers of a corporation or agents of an employer who *knowingly permit* such employer to violate the provisions

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<sup>3</sup>This differs from the requirements to establish a breach of contract, which include: (1) a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) resultant injury to the plaintiff. *Catania v. Local 4250/5050 of the Communication Workers of America*, 359 Ill. App. 3d 718, 724 (2005).

of this Act shall be deemed to be the employers of the employees of the corporation.” (Emphasis added.) 820 ILCS 115/13 (West 2012).

¶ 58 The Act does not contain a statute of limitations. At the time of plaintiff’s suit, “the five year ‘catch-all’ limitations period found in section 13-205 [of the Code] [applied] to actions brought under the Act.” *People ex rel. Illinois Department of Labor v. Tri State Tours, Inc.*, 342 Ill. App. 3d 842, 848 (2003). Generally, the “statute of limitations begins to run when facts exist which authorize the bringing of an action.” *Armstrong*, 316 Ill. App. 3d at 1104. The regulations implementing the Act provide (as to earned bonuses) that “[a] claim for an earned bonus arises when an employee *performs the requirements for a bonus set forth in a contract or an agreement between the parties.*” (Emphasis added.) 56 Ill. Admin. Code 300.500(a) (2013); see also *Armstrong*, 316 Ill. App. 3d at 1107 (“*final* compensation<sup>4</sup>] must be paid at the time of separation, creating a cause of action if payment is not paid and starting the running of the statute of limitations.”) (Emphasis added.).

¶ 59 B. Denial of Plaintiff’s Motion to Strike

¶ 60 Plaintiff argues first that the trial court erred in denying his motion to strike Bruce’s partial summary judgment motion based on the law of the case doctrine. “Under the law of the case doctrine, issues presented and disposed of in a prior appeal are binding and will control in the circuit court upon remand as well as in the appellate court in a subsequent appeal.” *Zabinsky*, 347 Ill. App. 3d at 248. We review this issue *de novo*. See *Jackson v. Graham*, 323 Ill. App. 3d 766, 773 (2001)

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<sup>4</sup>Final compensation must be paid “in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee.” 820 ILCS 115/5 (West 2012).

(applying *de novo* review to trial court’s ruling on a motion to strike an affidavit filed in support of a motion for summary judgment).

¶ 61 In *Toole I*, we held that the trial court had erred in granting defendants summary judgment (on the basis that plaintiff’s complaint was barred by the five-year limitations period). We noted that the timeliness of plaintiff’s complaint (and the premise of the trial court’s ruling) hinged on the identity of a contract (the “Sundstrand contract”) referenced in plaintiff’s Employment Agreement. Because that agreement was ambiguous as to whether the Sundstrand contract was one or both of two other agreements (the Travel Agreement and/or the Freight Agreement, only one of which—the Travel Agreement—had clearly been terminated more than five years before plaintiff filed his complaint), it was not clear that the complaint was untimely filed. Accordingly we reversed and remanded the cause.

¶ 62 On remand, defendants claimed the five-year limitations period precluded claims (for CPI adjustments and profits) from 1996 through 2001. Here, plaintiff argues that defendants presented no new facts and their argument should not again have been considered by the trial court (although he concedes that the cut-off date differs from prior arguments). Plaintiff argues that *Toole I* precluded summary judgment on the basis of the statute of limitations. Further, plaintiff argues that *Toole I* expressly reserved the issue whether the Freight Agreement was still in effect (a reference to the trial court’s comment, “It is entirely possible that the Freight Agreement was still in effect for several years after the Travel Agreement was terminated and that, as a result, plaintiff’s cause of action was not barred by the five-year statute of limitations”); thus, he contends, his action is not barred. Finally, plaintiff notes that, in their petition for rehearing in *Toole I*, defendants argued that claims before June 23, 2001, were barred and, thus, they were precluded. In plaintiff’s view, this

court's denial of the petition for rehearing was a direct ruling on the issue defendants raised again on remand. The law of the case doctrine, plaintiff argues, required the trial court to grant his motion to strike Bruce's motion for partial summary judgment. We reject plaintiff's argument.

¶ 63 Here, plaintiff characterizes our holding in *Toole I* as stating that summary judgment is precluded on the statute of limitations issue. This is incorrect. The factual issue this court identified, but, obviously, did not resolve given the case's procedural posture, was *the identity of the "Sundstrand contract" referenced in the Employment Agreement*. We held that this reference was ambiguous, thereby precluding summary judgment. (The identity of the contract is critical because the Employment Agreement terminated when the Sundstrand contract terminated, thus, triggering the statute of limitations.) Again, we remanded in *Toole I* for a determination of the identity of the Sundstrand contract; we did not broadly hold that there should be no summary judgment on the basis of the statute of limitations, as plaintiff suggests.

¶ 64 Upon remand, Bruce argued that the claims that arose more than five years before the complaint was filed were time-barred. The trial court granted partial summary judgment, noting that plaintiff's complaint was filed on June 23, 2006, and, thus, the cause of action had to have arisen within the five preceding years (*i.e.*, on or after June 23, 2001). However, the court further noted that it would not limit plaintiff in terms of the evidence he wished to present: "I am certainly going to allow the plaintiff[ ] to present any evidence you want in this case, including claims that may have arose [*sic*] before that in order to preserve the record in this case. But for purposes of ruling, I'm not going to be considering that evidence in terms of any judgment that I ultimately would award the plaintiff[ ]."

¶ 65 We also reject plaintiff's argument that this court's statement in *Toole I* concerning the Freight Agreement had the effect of determining the impact of that contract and that his action was not time-barred (or directed the trial court to find that the statute of limitations did not bar plaintiff's claim). The language referencing the Freight Agreement is not the holding in *Toole I*. This court merely noted, in the context of announcing our holding that a factual issue precluded summary judgment, that the record was unclear if the Freight Agreement was still in effect. The statement concerning the effect of the Freight Agreement was mere surplusage.

¶ 66 Plaintiff's argument concerning the petition for rehearing also fails. This court's denial of defendants' petition for rehearing was not a direct ruling on the issue defendants raised again on remand. The mere denial of the petition did not alter the aforementioned holding in *Toole I*.

¶ 67 In summary, the trial court did not err in denying plaintiff's motion to strike Bruce's motion for partial summary judgment.

¶ 68 C. Granting of Bruce's Motion for Partial Summary Judgment

¶ 69 Next, plaintiff argues that the trial court erred in granting Bruce's motion for partial summary judgment, thereby limiting plaintiff's suit to claims that arose on or after June 23, 2001 (*i.e.*, within five years of the filing of plaintiff's suit). He contends that it is impossible to select a commencement date without consideration of evidence of events *prior* to the alleged date; thus, the court erred as a matter of law. He urges that the statute of limitations does not govern the admissibility of evidence, but only bars claims that accrued before the limitations date and is an affirmative defense that defendants must prove. Finally, plaintiff argues that factual issues precluded partial summary judgment. For the following reasons, we reject plaintiff's argument.

¶ 70 A motion for summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits on file establish that no genuine issue as to any material fact exists and, therefore, the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012); *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 530 (1996). The purpose of summary judgment is to determine whether a fact question exists, not to try a question of fact. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 517 (1993); *Starr v. Gay*, 354 Ill. App. 3d 610, 613 (2004). We review *de novo* the trial court's granting of a summary judgment motion. *McNamee v. State of Illinois*, 173 Ill. 2d 433, 438 (1996).

¶ 71 Here, plaintiff first argues that the court erred in ruling that it would not consider any evidence prior to June 23, 2001. It erroneously cut itself off, he contends, from considering the travel agreements that had expired by June 23, 2001, the pattern of any payments, any statements Bruce may have made, and other indicia of an agreement that existed prior to the cut-off date.

¶ 72 In granting the motion for partial summary judgment, the court noted that plaintiff's complaint was filed on June 23, 2006, and, thus, the cause of action had to have arisen within the five preceding years (*i.e.*, on or after June 23, 2001). However, the court further noted that it would not limit plaintiff's presentation of evidence: "I am certainly going to allow the plaintiff[ ] to present any evidence you want in this case, including claims that may have arose [*sic*] before that in order to preserve the record in this case. But for purposes of ruling, I'm not going to be considering that evidence in terms of any judgment that I ultimately would award the plaintiff[ ]."

¶ 73 We disagree with plaintiff that the foregoing reflects that the court declined to consider evidence prior to June 2001. As noted above, the court's statement (and subsequent actions) reflect that its ruling cut off any *claims* before that date, but not the *evidence* that plaintiff could present to

show, *inter alia*, when his claims accrued. After the bench trial, for example, the court found that the Employment Agreement continued after the 1995 Travel Agreement expired (in January 1998). The court also determined that most of the parties' initial discussions focused on the 1995 Travel Agreement, not the Freight Agreement, and that the Travel Agreement involved more money and was the only agreement that was signed near the time of the Employment Agreement (in 1995). Further, the foregoing documents and many more were admitted into evidence.

¶ 74 Plaintiff also argues that factual issues precluded partial summary judgment to defendants, specifically: (1) his claims relating to the October 2001 arbitration award to ETI arose prior to June 23, 2001, and that the trial court erred in allegedly disregarding these facts; (2) whether the parties entered into an "agreement" in October 2001 to pay plaintiff all of his compensation, some of which related to events prior to June 23, 2001, and which the trial court stated it would not consider; (3) whether defendants' conduct both before and after June 23, 2001, estopped them from raising the statute of limitations; and (4) whether defendants made a new promise to pay plaintiff after June 23, 2001, which served to bar application of the statute of limitations.

¶ 75 We reject these arguments. As to the first and second arguments, again, the court did *not* state (and the record does not reflect) that it would *not* consider evidence of events prior to June 23, 2001. Rather, the court merely found that any *claims that arose* prior to five years before plaintiff filed suit were time-barred. This was not erroneous. The Employment Agreement provided that bonus payments, if paid, accrued annually and were to be given to plaintiff "within 90 days after the close of our year with Sundstrand" and "for as long as the Sundstrand contract is in effect." Thus, plaintiff's bonus claims arose annually and within 90 days after the close of the Sundstrand year (the final one of which, the court found after trial, ended upon termination on August 5, 2000). Five

years after this, a claim for a given (Sundstrand) year's bonus became time-barred. *Armstrong*, 316 Ill. App. 3d at 1104 (“statute of limitations begins to run when facts exist which authorize the bringing of an action”); see also 56 Ill. Admin. Code 300.500(a) (2013) (“A claim for an earned bonus arises when an employee performs the requirements for a bonus set forth in a contract or an agreement between the parties.”). This was the court's finding in granting partial summary judgment. Plaintiff's argument that some events arose prior to June 23, 2001 (and impacted post-June 23, 2001, events), is not well-taken, where: (1) the argument does not address the fact that any bonus claims arose annually and triggered the running of the statute of limitations for each year's claim; and (2) again, as to any post-June 23, 2001, events, the court heard at trial evidence of events prior to this date (and this does not raise a factual issue as to the limitations period). As to the second point and contrary to plaintiff's claim, the court did hear testimony at trial concerning: the Employment Agreement (which was also admitted into evidence), both Travel Agreements (admitted), the Freight Agreement (admitted), payments from ETI to plaintiff, the alleged \$15,000 “advance” on plaintiff's profit sharing pursuant to the 1998 Travel Agreement, statements Bruce allegedly made promising to pay plaintiff, the 2000 Christmas bonus and Minoo's statement that Bruce would take care of plaintiff's profit sharing, and the arbitration. Accordingly, we reject plaintiff's argument that the trial court “truncated its analysis of the facts so that it was left to consider in isolation the post-June 23, 2001[,] facts.”

¶ 76 We also reject plaintiff's third and fourth arguments. Generally, to invoke equitable estoppel against a statute of limitations defense, “ ‘the plaintiff must have relied on acts or representations of the defendant which caused the plaintiff to refrain from filing suit within the applicable statute of limitations.’ ” *Kheirkhavash v. Baniassadi*, 407 Ill. App. 3d 171, 182 (2011) (quoting *Leffler*

*v. Engler, Zoghlin, & Mann, Ltd.*, 157 Ill. App. 3d 718, 722-23 (1987)). However, equitable estoppel applies only if a plaintiff had no knowledge or means of knowing the true facts giving rise to a cause of action within the applicable limitations period. *Wheaton v. Steward*, 353 Ill. App. 3d 67, 71 (2004). Further, if the defendant's conduct ended with ample time remaining under the statute of limitations, equitable estoppel will not extend the limitations period. *Butler v. Mayer, Brown & Platt*, 301 Ill. App. 3d 919, 925 (1998). Here, plaintiff testified during his deposition<sup>5</sup> that he spoke to Bruce in April 1999 (when Bruce allegedly asked him to wait to see what will happen with Sundstrand's acquisition and that he would take care of plaintiff) and in the fall of 2001 (when Bruce allegedly asked plaintiff to "stick with us" and "we'll take care of you"), after which Bruce did not make "eye contact" with plaintiff. However, plaintiff further testified at his deposition that he did not make a specific demand until he filed suit, explaining that he feared being fired if he pressed for his profit sharing payments. Where there is no agreement as to the specific amount of the compensation, the limitations period is not extended. *Schmidt v. Desser*, 81 Ill. App. 3d 940, 943 (1980).

¶ 77 We further conclude that, even if the trial court erred in granting partial summary judgment, reversal is not warranted because plaintiff has not shown prejudice. The summary judgment ruling did not limit the scope of the trial or in any way preclude plaintiff from presenting his entire case.

¶ 78 In sum, the trial court did not err in granting Bruce partial summary judgment.

¶ 79 D. Finding Concerning the Sundstrand Contract

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<sup>5</sup>We note that the parties repeatedly refer to *trial* testimony in the sections of their briefs addressing the *summary judgment* ruling. We caution them to cite to the proper testimony.

¶ 80 Next, plaintiff argues that the trial court erred in finding that the Employment Agreement's reference to the Sundstrand contract was, in turn, a reference to only the Travel Agreement(s) and did not include the Freight Agreement. We review the court's findings following a bench trial to determine if they were against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App. 3d 884, 890 (2010). A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary, and not based on the evidence, or when the opposite conclusion is clearly evident from the record. *In re Estate of Savio*, 388 Ill. App. 3d 242, 247 (2009). Under the manifest-weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). Questions of contract interpretation are reviewed *de novo*. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007).

¶ 81 Plaintiff contends that a critical finding supporting the court's determination is missing: the court noted that the 1995 Travel Agreement and the Employment Agreement were executed on the same dates; however, the Employment Agreement was actually signed on January 23, 1995, and the 1995 Travel Agreement was executed on January 30, 1995. (The Freight Agreement was signed on February 20, 1995). We conclude that this is of little import and does not render unreasonable the court's findings. In announcing its findings, the court emphasized that it found significant that the parties' discussions focused on the travel contract, which was reflected in the income ETI expected to receive thereunder, and that the Freight Agreement was, in contrast and as evidenced by the \$73,000 in expected annual income, a much less significant aspect of the entities' business relationship. Thus, the court did not rely only on the near contemporaneous execution of the Employment Agreement and the 1995 Travel Agreement; rather, it assessed the impact on ETI's

finances as the most determinative factor in assessing the meaning of “Sundstrand contract.” Thus, we cannot conclude that the court erred in ascertaining the parties’ intent on this issue (and further determining, based on this finding, that plaintiff’s claims were time-barred).

¶ 82 E. Findings Concerning Carter-Cyrs and Minoos Hagshenas

¶ 83 Plaintiff’s final argument is that the trial court erred in finding in favor of Carter-Cyrs and Minoos. Section 13 of the Act provides that, “any officers of a corporation or agents of an employer who *knowingly permit* such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.” (Emphasis added.) 820 ILCS 115/13 (West 2012). The trial court found that only Bruce negotiated with plaintiff on ETI’s behalf or ever dealt with plaintiff’s employment arrangement and that, accordingly, Carter-Cyrs and Minoos did not knowingly participate in any decision-making. Given that we determined above that the court’s findings, following trial, concerning the limitations period were not erroneous, we need not reach this issue. However, for the following reasons, we conclude that, if we were to address it, the court did not err in finding in favor of Carter-Cyrs and Minoos.

¶ 84 Plaintiff first notes that the regulations promulgated under the Act define the word “knowingly” to mean “knowledge of the existence of facts constituting the alleged violation, rather than a knowledge of the unlawfulness of the act or omission.” 56 Ill. Admin. Code 300.620(a)

(2013).<sup>6</sup> Further, the word “permit” means “to allow to happen or to fail to prevent.” 56 Ill. Admin. Code 300.620 (2013). He argues that the trial court ignored the “fail to prevent” language.

¶ 85 We cannot conclude that the trial court’s findings were against the manifest weight of the evidence or reflected that the court applied the wrong standard. First, as to Carter-Cyrs, she testified that she was a shareholder and one-time president of ETI and was responsible for ETI’s finances. However, she testified that Bruce had ultimate authority over the company’s major expenditures. Further, when asked what actions she took to ensure that plaintiff was properly paid, Carter-Cyrs testified that she had no authority over the CTS division and, thus, there were no actions for her to take. Plaintiff, testifying to a 2005 conversation with Carter-Cyrs, stated that, when he told her that he had not been treated fairly by ETI, Carter-Cyrs asked him what he meant; plaintiff then stated that he was owed a lot of money, and Carter-Cyrs told him to speak to Bruce about it (which he did not do). This evidence does not reflect that Carter-Cyrs knowingly permitted any violation.

¶ 86 Second, as to Minoo, she was secretary-treasurer of ETI for a time and, later, one of the majority shareholders; she also prepared the company’s financial statements. Minoo testified that she was not involved in determining employee compensation and that Bruce had sole authority over

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<sup>6</sup>As defendants point out, prior to July 20, 2011, the regulations provided that an officer of a corporation or agent of an employer was personally liable under section 13 of the Act when he or she “actively asserted substantial control over the management and financial affairs of the corporation or employer.” 56 Ill. Admin. Code 300.620(a) (2010); 35 Ill. Reg. 12933. Plaintiff claims that this version of the regulations does not apply here. For purposes of our analysis, we assume, without deciding, that the current version applies (and we nevertheless reject plaintiff’s argument).

plaintiff's compensation arrangement. Bruce similarly testified that he and Carter-Cyrs made hiring decisions and decided the total dollar amount of any bonuses and that Carter-Cyrs and Minoo then divided the bonuses. Bruce denied that he had any conversation with plaintiff where he asked plaintiff to defer his bonus. Plaintiff himself testified that he believed only Bruce had authority to approve any bonuses paid to plaintiff and that he did not believe that Carter-Cyrs or Minoo had any such authority. Plaintiff further testified that, in 2003, when Carter-Cyrs and Minoo became ETI's majority shareholders, plaintiff did *not* have a meeting with them to discuss the profit sharing that he believed he was owed. Critically, he testified that, at this time, he believed that Bruce "still held the purse strings." Plaintiff also testified to conversations where he asked for his bonus (while the 1995 Travel Agreement was still in effect) and that Bruce would eventually agree to pay him his bonus and then would instruct Minoo to prepare a check. When Minoo gave plaintiff the check for \$2,500 in December 2000, she stated, according to plaintiff, that Bruce was "going to take care of you on your profit sharing." This statement does not reflect that she had knowledge that the opposite would occur or that plaintiff was owed any other bonuses or payments.

¶ 87 Plaintiff essentially relies on the fact that Carter-Cyrs and Minoo held ownership positions at ETI to support his argument that they knowingly permitted a violation of the Act. However, mere ownership does not necessarily imply that the individuals knowingly permitted ETI to allegedly violate the Act. The evidence was uncontroverted that, even after Carter-Cyrs and Minoo acquired majority ownership of ETI, Bruce "still held the purse strings." Without authority to determine whether plaintiff was owed any compensation nor authority over his division, it was not unreasonable for the trial court to determine that Carter-Cyrs and Minoo did not knowingly permit any violation of the Act. As to the alleged conversations plaintiff had with Bruce (which the trial

court determined were incredible), plaintiff did not mention that any of them occurred after the 1998 Agreement was in effect (*i.e.*, the relevant period addressed during the bench trial) and that Carter-Cyrs and/or Minoo were present. Accordingly, we reject plaintiff's argument.

¶ 88

### III. CONCLUSION

¶ 89 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 90 Affirmed.