IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 3, 2023 Session

TOBY S. WILT, JR. v. ESPACES FRANKLIN, LLC, ET AL.

Appeal from the Chancery Court for Davidson County
No. 21-74-III Ellen Hobbs Lyle, Chancellor

No. M2022-00978-COA-R3-CV

This appeal arises from a lawsuit filed by a former CEO seeking funds owed to him from his company and two of its subsidiaries. The trial court awarded summary judgment to the plaintiff. The defendants appeal. We affirm in part, vacate in part, and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Vacated in Part, and Remanded

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Stephen C. Knight and Nader Baydoun, Brentwood, Tennessee, for the appellants, ESPACES Franklin, LLC, ESPACES Knoxville, LLC, and ESPACES, Inc.

Eugene N. Bulso, Jr., Paul J. Krog, and Nicholas D. Bulso, Brentwood, Tennessee, for the appellee, Toby S. Wilt, Jr.

OPINION

I. FACTS & PROCEDURAL HISTORY

ESPACES, Inc. is a company that provides business and entrepreneurial workspaces, each of which is generally operated by a separate limited liability company.[1]

[1] During the time period relevant to this case, ESPACES, Inc. was the parent company of ESPACES Franklin, LLC and ESPACES Knoxville, LLC. We note that the name ESPACES, as used in the names of the corporation and the LLCs, is seen sometimes as "e|spaces." However, we use ESPACES when referring to the names of the corporation and the LLCs in this opinion.

Mr. Toby S. Wilt, Jr., served as CEO of ESPACES, Inc. from October 2018 to May 2020. During his time as CEO, Mr. Wilt incurred out-of-pocket expenses on behalf of ESPACES, Inc. and advanced funds to ESPACES Franklin, LLC and ESPACES Knoxville, LLC. On May 8, 2020, he met with Mr. James David Gibbs, who was the chairman of the board for ESPACES, Inc., and they mutually agreed that Mr. Wilt should no longer serve as CEO of ESPACES, Inc. They also discussed other matters such as severance pay and repayment of funds owed to Mr. Wilt. Mr. Wilt told Mr. Gibbs at the end of the meeting that he would send him a memorandum summarizing their discussion.

Following the meeting, Mr. Gibbs and Mr. Wilt exchanged a number of emails. Mr. Gibbs emailed Mr. Wilt stating in pertinent part as follows:

> In the interest of ensuring a smooth transition for our mutual benefit and to make sure nothing is overlooked in the process, here are my thoughts and understandings based on our discussion about proceeding from here.
>
> . . .
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> 2. I will take care of making sure that all company obligations owed to you are well understood, documented as necessary or desirable and that those obligations are repaid as soon as possible. You agreed to provide me the list of those obligations so that we can be sure we have everything in one place. I expect funds to be available for this purpose by the end of the day Monday, May 18 at the latest and will confirm or let you know of any change in schedule as soon as possible. If funds are available sooner, I will let you know that also and assure you we will take care of all obligations to you at the earliest possible date.
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> . . .
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> 4. We will provide you with severance pay in the amount of one month's base pay plus that same period of any benefits you currently receive, effective as of your date of termination. I suggest we plan on Friday May 15 as that date.

Mr. Wilt then emailed the memorandum to Mr. Gibbs listing the obligations owed to him. In addition to listing the obligations, he stated:

> As per our conversation, in order for this process to go smoothly while maintaining the integrity of the company, . . . I will write a formal letter stating that I am stepping down from my role on May 22, 2020 due to personal circumstances. This allows me to continue over the next two weeks to peacefully transition my existing obligations to other members of my team

> in a professional and seamless manner in order to not create a perceived environment of turmoil just as you are finalizing a debt package from a new partner. I have listed below all the financial obligations that e|spaces will maintain and reimburse as we discussed today. In addition to this, given the current COVID-19 climate and the suddenty of your decision to remove me from my position as CEO, respectfully I am requiring my current compensation to extend 60 days beyond May 22, 2020.

According to Mr. Wilt, the memorandum was drafted for record purposes; it was not a proposal but an understanding of what was discussed at the meeting. He believed it both summarized what they had discussed and set out what they had agreed upon.

After receiving the memorandum from Mr. Wilt, Mr. Gibbs emailed the following response:

> I'll call you later today. The company's obligations to you will be addressed as you have outlined them here. As to the time frame for winding up, I really think May 22 extends the process longer than it should take. If you think it will take that long, we can talk more about it. As I said yesterday, 60 days of salary continuation is not in the cards.

When asked about this email exchange in his deposition, Mr. Gibbs admitted, "I said that we would repay him" and "we had every intention of repaying" the funds owed to Mr. Wilt. However, he explained this was "in expectation that [a] $20 million investment would close imminently." Mr. Wilt emailed Mr. Gibbs replying as follows:

> I agree on the timeline of May 15th, I was simply respecting the 2-week notice protocol. Factoring in the personal risk I took with lease guarantees and [Letter of Credit] guarantees over the past 18 months without the equity reward and the current business climate due to the state of the world, an additional 30 days compensation is more than fair.

Mr. Gibbs emailed Mr. Wilt stating, "I don't want to belabor this." He then stated the following:

> 7% interest on your loans and the Knoxville deposit is designed to compensate you for your risk, such as it was. It is now going to be eliminated altogether and in that sense the risk is now zero, given that we have agreed to have you removed as an obligor on all bank loans. I'm not sure your risk was ever much higher than zero but we're happy to repay you on the terms you've set out.
>
> 30 days of salary continuation is what we're willing to do.

He concluded, "I'm sorry if that doesn't meet your expectations but please consider this our best offer."

After stepping down as CEO of ESPACES, Inc., Mr. Wilt emailed Mr. Gibbs on May 28, 2020, stating the following:

> Per our discussion and at your suggested date of May 18, 2020[,] I expected all my financial items to be taken care of by now. You stated by May 18 or earlier if possible. It has been over a week past that date. . . . I expect you to hold up your end of our agreement as you stated as I agreed to and held up my end.

Mr. Gibbs emailed a response stating, "We expected to have taken care of all of your financial terms by now also, as you know. The Awalco loan closed May 13 but has not been funded. Without belaboring the gory detail, there has been every imaginable hiccup . . . ." However, he assured Mr. Wilt, "We are committed to taking care of the items you and I discussed and we will do so just as soon as we can raise capital, whether debt or equity." On June 4, 2020, Mr. Wilt emailed Mr. Gibbs expressing his frustration with not being repaid yet:

> Another week has passed. You have now put me in a very difficult position. . . . [N]ot holding up your end of the agreement is not acceptable. Our agreement was not contingent on the funding, nor on a debt package. . . . I anticipate the rest of the items we agreed to will be fulfilled by no later than the end of next week (June 12, 2020). This will be 4 weeks past the date you gave me of May 18, 2020[,] to have this completed.

On June 11, 2020, he emailed Mr. Gibbs again stating, "A week has passed since my email below and I have not seen a response from you. I need to know if you plan on fulfilling your side of our agreement." Mr. Gibbs replied, "I did respond. Will find email and resend."[2] He added, "Of course we plan on fulfilling our commitments, as outlined in my response."[3] After another week had passed, Mr. Wilt emailed Mr. Gibbs stating, "I do

[2] Mr. Gibbs later emailed the response he intended to send to Mr. Wilt on June 4, 2020. He explained in the email that the response went to Mr. Wilt's inactive email address.

[3] In this response, Mr. Gibbs had stated, "As I stated in response to your May 8 memo, the company will fulfill its obligations to you in full." However, he explained, "We all had in mind May 8 what we believed was a $20 million loan which we all thought would close in the near term (and it did, [o]n May 13). However, the loan failed to fund as I think you know." Therefore, he said his "statement that we will fulfill our obligations to you in full must now be appended with the phrase 'as soon as we are able.'" He then added, "We are working on getting [your expenses] reimbursed to the maximum possible extent very soon. We are operating on the assumption that some reimbursement sooner will be better than waiting until we have marshaled the cash to repay them in full later."

expect you . . . to uphold your agreement with me that was put in place when we parted ways and not connect it to the funding of the company as you chose to do after the Awalco deal fell through." On September 29, 2020, he emailed Mr. Gibbs stating, "I need to get a time when you expect to repay me for the funds . . . you owe me." Mr. Gibbs responded, "We are still pursuing financing, and while we have made progress we are not as far along as we need to be. . . . If[,] as I expect, we're unable to reimburse all at one time[,] please identify the components in priority order."

In January 2021, Mr. Wilt filed a complaint against ESPACES Franklin, LLC, ESPACES Knoxville, LLC, and ESPACES, Inc. (collectively, "Defendants").[4] For Counts I and II, he alleged that he made a "demand loan" of $200,000 to ESPACES Franklin, LLC and a "demand loan" of $52,669.58 to ESPACES Knoxville, LLC, both of which remained unpaid and in default.[5] He sought to recover these amounts along with interest at a rate of 7% per annum. For Count III, he alleged that he incurred out-of-pocket expenses on behalf of ESPACES, Inc. in the amount of $20,298.84 and that he had not been reimbursed for such expenses. He sought to recover this amount along with prejudgment interest. Defendants filed an answer to the complaint in February 2021. In a declaration filed by Defendants, Mr. Gibbs denied that the funds advanced by Mr. Wilt were "demand loans." Instead, he explained that Mr. Wilt's payments were to be treated as early contributions, meaning Mr. Wilt would receive an equity interest or would be paid back when funding arrangements were finalized.

In October 2021, Mr. Wilt filed a motion for summary judgment. In support of his motion, he asserted that Mr. Gibbs had agreed to repay the funds owed to him and reaffirmed such obligations in his deposition. Defendants then filed a response to the motion for summary judgment. They admitted that they had obligations to Mr. Wilt but argued that such obligations were not the obligations claimed in his motion for summary judgment. They explained that, per the parties' discussions and prior business practices, Mr. Wilt was entitled to equity interests in the LLCs or to repayment once full funding was obtained for Defendants' current projects. Furthermore, they admitted that Mr. Wilt was entitled to be reimbursed for some portion of the expenses he incurred in connection with his work for ESPACES, Inc. However, they argued that the amount which was legitimately due was still unclear. Mr. Wilt then filed a reply. After a hearing on the matter, the trial court entered an order for supplemental briefing on the motion for summary judgment. Therefore, Defendants filed a sur-reply in opposition to the motion for summary judgment, and Mr. Wilt filed a response.

In the meantime, Defendants filed a motion to amend their answer to more

[4] The complaint was originally filed in Part II of the Davidson County Chancery Court; however, the case was subsequently transferred to Part III in March 2021.

[5] According to the record, Mr. Wilt advanced the $200,000 to ESPACES Franklin, LLC in June 2019, and the $52,669.58 to ESPACES Knoxville, LLC in March 2019.

specifically state the factual basis of their affirmative defenses of offset, unclean hands, and fraudulent and illegal conduct. The trial court entered an order granting Defendants' motion, and Defendants filed their amended answer in December 2021. Defendants also filed a motion to transfer for consolidation, requesting that the trial court transfer the case to Part I so that it could be consolidated with a related case.[6] Alternatively, they requested that the related case in Part I be transferred to Part III so that it could be consolidated with this case. Mr. Wilt filed a response to the motion to transfer arguing that it was untimely and unnecessary, and Defendants filed a reply.

In March 2022, the trial court entered an order denying Defendants' motion to transfer for consolidation and granting Mr. Wilt's motion for summary judgment.[7] For Counts I and II, the court found there was no genuine issue of material fact that an agreement was reached for ESPACES Franklin, LLC and ESPACES Knoxville, LLC to repay Mr. Wilt the funds he advanced. The court also found the agreement the parties reached was not contingent upon whether Defendants had sufficient funds to pay. The court explained:

> After all was said and done, Mr. Gibbs admitted in his deposition that an agreement by the Defendants to pay the amounts claimed was reached. This evidence eliminates the need for a jury trial. Because Mr. Gibbs admitted that the Defendants owed and would pay [Mr.] Wilt the funds he had advanced, there are no genuine issues of material fact to put to a jury to decide whether there was a meeting of the minds of the parties on Counts I and II as to repayment of [Mr.] Wilt.

Additionally, the court found Defendants' assertion that Mr. Wilt was entitled to equity interests in the LLCs or to repayment once full funding was obtained for Defendants' current projects did not provide a defense to summary judgment. It explained that the record established ESPACES Franklin, LLC and ESPACES Knoxville, LLC never provided any equity to Mr. Wilt and did not intend to do so as testified by Mr. Gibbs in his deposition.

As for Count III, the trial court noted ESPACES, Inc. had conceded that it was obligated to reimburse Mr. Wilt for all legitimate expenses he incurred. The court explained that the issue then was whether all of the claimed expenses were legitimate. The court found that the declaration of Mr. Gibbs failed to demonstrate a genuine issue of fact concerning the legitimacy of the expenses. The court explained that Mr. Wilt's testimony

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[6] The related case was a breach of contract action filed by Blackbird Capital, LLC against ESPACES Midtown, LLC, Mr. Crom Carmichael, and Mr. Gibbs. Mr. Wilt subsequently became a third-party defendant in the case.

[7] The trial court denied Defendants' motion to transfer for consolidation because it found that there was no sufficient commonality of law between the two cases and that there was undue delay in seeking transfer.

concerning the legitimacy of the expenses was uncontradicted. Therefore, the court found that there was no issue of fact regarding Mr. Wilt's entitlement to recover the $20,298.84 for expenses he incurred on behalf of ESPACES, Inc. while serving as its CEO. As a final matter, the court rejected Defendants' affirmative defense of setoff.

Afterward, Mr. Wilt filed a brief in support of his calculation of prejudgment interest. He included both his calculations of prejudgment interest and the dates he claimed that the calculations of prejudgment interest should commence. Defendants filed a brief doing the same. In April 2022, the trial court entered an order concluding that the commencement date for accrual of prejudgment interest was May 8, 2020, which was the date asserted by Defendants. The court awarded Mr. Wilt a total judgment of $308,461.80, consisting of the following amounts: (1) $200,000 against ESPACES Franklin, LLC, plus prejudgment interest of $26,005.48; (2) $52,669.58 against ESPACES Knoxville, LLC, plus prejudgment interest of $6,848.49; and (3) $20,298.84 against ESPACES, Inc., plus prejudgment interest of $2,639.41.

In June 2022, Defendants filed a notice claiming that they were not served with the April 2022 order and that they intended to file a motion under Tennessee Rules of Civil Procedure 58 and 60 addressing the finality of the order. Accordingly, Defendants filed a motion to vacate the order and to enter a new order. Mr. Wilt filed a response to the motion to vacate, and Defendants filed a reply. In July 2022, the trial court entered an order vacating its April 2022 order due to a clerical omission. Alongside this order, the court entered a new order concluding again that the commencement date for accrual of prejudgment interest was May 8, 2020, and awarding Mr. Wilt the same amounts listed above. Thereafter, Defendants timely filed this appeal.[8]

II. ISSUES PRESENTED

Defendants present the following issues for review on appeal, which we have slightly restated:

1. Whether Defendants accepted Mr. Wilt's offer and formed a contract;
2. Whether the parties ever formed a contract at all; and
3. Whether Defendants testified that they entered into an enforceable contract, and, if so, whether that was a binding judicial admission entitling Mr. Wilt to summary judgment.

Mr. Wilt presents the following issues for review on appeal, which we have slightly restated:

[8] After filing their appeal, Defendants filed an emergency motion for stay and a surety bond in the amount of 110% of the total judgment against them. The trial court granted the emergency motion to stay and approved the proposed surety bond.

1. Whether the trial court properly awarded summary judgment to Mr. Wilt;
2. Whether, absent an agreement, Mr. Wilt may recover the amounts he advanced through unjust enrichment; and
3. Whether the trial court erred by awarding Mr. Wilt prejudgment interest from May 8, 2020, rather than from the dates Mr. Wilt advanced the funds to Defendants as the parties had agreed.

For the following reasons, we affirm the trial court's award of summary judgment, vacate the trial court's award of prejudgment interest, and remand for further proceedings consistent with this opinion.

III. STANDARD OF REVIEW

In this appeal, we are required to review the trial court's grant of summary judgment. "Such rulings are reviewed by this Court de novo, affording the trial court no presumption of correctness." *Snake Steel, Inc. v. Holladay Constr. Grp., LLC*, 625 S.W.3d 830, 834 (Tenn. 2021) (citing *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015)). "In doing so, we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye*, 477 S.W.3d at 250 (citing *Estate of Brown*, 402 S.W.3d 193, 198 (Tenn. 2013)). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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.'" *Id.* (quoting Tenn. R. Civ. P. 56.04).

Additionally, "[q]uestions of contract formation and interpretation are questions of law." *ICG Link, Inc. v. Steen*, 363 S.W.3d 533, 543 (Tenn. Ct. App. 2011) (citing *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999); *German v. Ford*, 300 S.W.3d 692, 701 (Tenn. Ct. App. 2009)). Pursuant to Tennessee Rule of Appellate Procedure 13(d), "the trial court's conclusions on these issues are not entitled to a presumption of correctness . . . on appeal." *Id.* (citing *Angus v. W. Heritage Ins. Co.*, 48 S.W.3d 728, 730 (Tenn. Ct. App. 2000)). Therefore, "we will review these contractual issues de novo and reach our own independent conclusions regarding their meaning and legal import." *Id.* (citing *Guiliano*, 995 S.W.2d at 95; *Hillsboro Plaza Enters. v. Moon*, 860 S.W.2d 45, 47 (Tenn. Ct. App. 1993)).

IV. DISCUSSION

Defendants first two issues concern whether the parties formed a contract for Defendants to repay the funds owed to Mr. Wilt. Their third issue concerns the effect of admissions related to the formation of a contract between the parties. We begin our discussion by addressing the issue concerning the admissions.

A. Admissions

In its order granting summary judgment, the trial court quoted verbatim from Mr. Wilt's reply and adopted his citations to the record. After doing so, the court stated as follows:

> The Court finds that the foregoing evidence in the summary judgment record establishes that there is no genuine issue of material fact that an agreement was reached for Defendants . . . to pay [Mr.] Wilt the amounts he had advanced. The foregoing evidence is further clear that the agreement the parties reached was not contingent on whether the Defendants had sufficient funds to pay.

The court also rejected Defendants' assertion that no agreement was reached because there was evidence of ongoing negotiations. The court explained that the assertion did not "confront," "undercut," or "rebut" the admissions made by Mr. Gibbs in his emails and in his deposition. Therefore, the court concluded that there were no genuine issues of material fact as to whether there was a meeting of the minds as to the repayment of funds owed to Mr. Wilt because Mr. Gibbs admitted Defendants owed and would repay Mr. Wilt.

After examining the trial court's order, it is evident that the trial court, in making its decision, relied heavily on the statements made by Mr. Gibbs in his emails and his deposition. We briefly reiterate some of those statements here. Following the meeting on May 8, 2020, Mr. Gibbs emailed Mr. Wilt stating, "I will take care of making sure that all company obligations owed to you are well understood . . . and that those obligations are repaid as soon as possible." Furthermore, he said, "[I] assure you we will take care of all obligations to you at the earliest possible date." After receiving the memorandum from Mr. Wilt that listed these obligations, Mr. Gibbs said, "The company's obligations to you will be addressed as you have outlined them here." In his deposition, Mr. Gibbs admitted, "I said that we would repay him" and "we had every intention of repaying" the funds owed to Mr. Wilt. In response to another email sent by Mr. Wilt, he said that "we're happy to repay you on the terms you've set out." On May 28, 2020, he stated, "We are committed to taking care of the items you and I discussed and we will do so just as soon as we can raise capital, whether debt or equity." On June 11, 2020, he said, "Of course we plan on fulfilling our commitments . . . ." He also said, "As I stated in response to your May 8 memo, the company will fulfill its obligations to you in full" but "my statement that we will fulfill our obligations to you in full must now be appended with the phrase 'as soon as we are able.'" He then added that "we are working on getting [your expenses] reimbursed to the maximum possible extent very soon."

Defendants argue that Mr. Gibbs did not admit Defendants entered into a contract, but, even if he had, such an admission would not be a binding judicial admission. Indeed,

this Court has held that "a party may admit the existence of a contract, but that admission does not establish whether the contract is one that is enforceable and has bound certain parties to its obligations." *Old Hickory Coaches, LLC v. Star Coach Rentals, Inc.*, 652 S.W.3d 802, 815 (Tenn. Ct. App. 2021); *see Com. Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 336 (6th Cir. 2007) ("[L]egal conclusions are rarely considered to be binding judicial admissions."). As evidenced by the statements made in his emails and his deposition, we find that Mr. Gibbs clearly admitted to the existence of a contract between the parties. Nevertheless, "the admission of the existence of a contract is not an admission of a binding, enforceable contract." *Id.* at 814-15 (quoting *Nichols v. Blocker*, No. 87-110-II, 1988 WL 39569, at *2 (Tenn. Ct. App. Apr. 29, 1988)). Instead, "[i]t is for a court to determine the legal effect of a contract, and consequently, a party is not ordinarily bound to an admission or averment concerning the legal effect of a contract because it is a legal conclusion for the court to make." *Id.* at 815. Accordingly, notwithstanding the admissions made by Mr. Gibbs, we must determine whether a valid and enforceable contract was formed.

B. Requirements of a Valid Contract

As such, we now turn to the issues concerning the formation of a contract between the parties. Defendants first argue that, to the extent that Mr. Wilt's memorandum was an offer, they did not accept it. They further argue that no contract was ever formed because the parties did not agree to the essential terms. Mr. Wilt argues that Defendants, through Mr. Gibbs, agreed Mr. Wilt would resign as CEO of ESPACES, Inc. and that Defendants agreed to repay the funds owed to Mr. Wilt. Before we address these issues, we review some of the relevant requirements of a valid contract.

In the simplest of terms, a contract is "an agreement between two parties, based on adequate consideration, to do or not to do a particular thing." *Bill Walker & Assocs., Inc. v. Parrish*, 770 S.W.2d 764, 771 (Tenn. Ct. App. 1989) (citation omitted). The requirements of a valid contract are well settled in Tennessee law:

> [A contract] may be either express or implied. It may be written or oral. It must result from a meeting of the minds of the parties in mutual assent to its terms. It must be founded on a sufficient consideration. It must be mutual, free from fraud or undue influence, not against public policy, and sufficiently definite.

Am. Lead Pencil Co. v. Nashville, Chattanooga & St. Louis Ry., 124 Tenn. 57, 134 S.W. 613, 615 (1911); *see Staubach Retail Services-Southeast, LLC v. H.G. Hill Realty Co.*, 160 S.W.3d 521, 524 (Tenn. 2005); *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001); *Higgins v. Oil, Chem. and Atomic Workers Int'l Union, Local No. 3-677*, 811 S.W.2d 875, 879 (Tenn. 1991); *Johnson v. Cent. Nat'l Ins. Co. of Omaha, Neb.*, 210 Tenn. 24, 356 S.W.2d 277, 281 (1962). This "has remained unchanged in our case

law for more than a century." *Smythe v. Fourth Ave. Church of Christ, Inc.*, No. M2020-01190-COA-R3-CV, 2021 WL 4770249, at *6 n.3 (Tenn. Ct. App. Oct. 13, 2021).

i. Mutual Assent

With respect to the requirement of mutual assent, "[t]he legal mechanism by which parties show their assent to be bound is through offer and acceptance." *Moody Realty Co., Inc. v. Huestis*, 237 S.W.3d 666, 675 n.8 (Tenn. Ct. App. 2007). According to the Restatement, "[t]he manifestation of mutual assent to an exchange ordinarily takes the form of an offer or proposal by one party followed by an acceptance by the other party or parties." Restatement (Second) of Contracts § 22 (1981). It also provides that "[a] manifestation of mutual assent may be made even though neither offer nor acceptance can be identified and even though the moment of formation cannot be determined." *Id.* This Court has described an offer as a promise,[9] i.e., an undertaking to carry the intention into effect; an offer is not a mere expression of intention or general willingness to do something. *Talley v. Curtis*, 23 Tenn. App. 181, 129 S.W.2d 1099, 1102 (1939) (citations omitted). The Restatement defines an offer as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement (Second) of Contracts § 24 (1981). As for acceptance, the Tennessee Supreme Court has explained:

> An acceptance, to be effectual, must be identical with the offer and unconditional. Where a person offers to do a definite thing, and another accepts conditionally or introduces a new term into the acceptance, his answer is either a mere expression of willingness to treat, or it is a counter proposal, and in neither case is there an agreement.
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> . . .
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> In order that there may be a meeting of the minds which is essential to the formation of a contract, the acceptance of the offer must be substantially as made. There must be no variance between the acceptance and the offer. Accordingly[,] a proposal to accept, or an acceptance, upon terms varying from those offered, is a rejection of the offer, and puts an end to the negotiation unless the party who made the original offer renews it, or assents to the modifications suggested.

Canton Cotton Mills v. Bowman Overall Co., 149 Tenn. 18, 257 S.W. 398, 402 (1924); *see*

[9] We note, however, that "an offer is not necessarily a promise when it is made as an offer of performance in exchange for a return performance or promise." 21 Steven W. Feldman, *Tenn. Prac.: Contract Law and Practice* § 4:14 (2022); *see* Restatement (Second) of Contracts § 24 cmt. a (1981) ("There may also be an offer of a performance, to be exchanged either for a return promise . . . or for a return performance; in such cases the offer is not necessarily a promise . . . .").

Petway v. Loew's Nashville & Knoxville Corp., 22 Tenn. App. 59, 117 S.W.2d 975, 982 (1938) ("An offer must be unconditionally accepted, and if the acceptance is conditional or the terms are varied from the offer this constitutes a new offer and cannot be relied upon as acceptance of the original offer."). Therefore, "acceptance of an offer must exactly and precisely accord with the terms of the offer." *Tullahoma Concrete Pipe Co. v. T. E. Gillespie Constr. Co.*, 56 Tenn. App. 208, 405 S.W.2d 657, 665 (1966) (citing *Ray v. Thomas*, 191 Tenn. 195, 232, S.W.2d 32, 35 (1950)).

ii. Definiteness

There is also the requirement that a contract be sufficiently definite. In regard to definiteness, or a lack thereof, this Court has said that:

> Indefiniteness concerning an essential element of a contract "may prevent the creation of an enforceable contract." [*Doe*, 46 S.W.3d at 196] (internal citations omitted). A contract "must be of sufficient explicitness so that a court can perceive what are the respective obligations of the parties." *Id.* Put another way, the terms of a contract are sufficiently definite "if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." *Id.* (citing Restatement (Second) of Contracts § 33(2) (1981)).

ICG Link, 363 S.W.3d at 544. We "will not enforce a contract that is vague or indefinite or missing essential terms, and will not make a new contract for the parties." *German*, 300 S.W.3d at 706 (citing *Four Eights, LLC v. Salem*, 194 S.W.3d 484, 487 (Tenn. Ct. App. 2005); *Marshall v. Jackson & Jones Oils, Inc.*, 20 S.W.3d 678, 682 (Tenn. Ct. App. 1999)). Nevertheless, "a finding that a contract is sufficiently definite is favored, so as to carry out the reasonable intentions of the parties," and therefore "courts will seek to avoid finding that an agreement is too uncertain to be enforceable by considering the surrounding circumstances and the conduct of the parties." *Id.* On this matter, we have explained:

> The primary test as to the actual character of a contract is the intention of the parties, to be gathered from the whole scope and effect of the language used, and mere verbal formulas, if inconsistent with the real intention, are to be disregarded. It does not matter by what name the parties chose to designate it. But the existence of a contract, the meeting of the minds, the intention to assume an obligation, and the understanding are to be determined in case of doubt not alone from the words used, but also the situation, acts, and the conduct of the parties, and the attendant circumstances.

St. Paul Cmty. Ltd. P'ship v. St. Paul Cmty. Church, No. M2017-01245-COA-R3-CV, 2018 WL 5733288, at *4 (Tenn. Ct. App. Oct. 31, 2018) (quoting *APCO Amusement Co., Inc. v. Wilkins Family Rests. of Am., Inc.*, 673 S.W.2d 523, 527 (Tenn. Ct. App. 1984)).

C. Whether a Valid Contract was Formed

Keeping these specific requirements of a valid contract in mind, we now address whether a valid contract was formed in the case at bar. Mr. Wilt and Mr. Gibbs met on May 8, 2020, and Mr. Wilt claims that they reached an agreement for him to be repaid the funds owed to him if he stepped down as CEO.[10] At the end of this meeting, Mr. Wilt told Mr. Gibbs he would send a memorandum summarizing their discussion. In his deposition, Mr. Wilt described the memorandum as a record of what was discussed at the meeting. Additionally, he believed that the memorandum both summarized what was discussed and set out what was agreed to between him and Mr. Gibbs. This suggests that Mr. Wilt and Mr. Gibbs planned to memorialize an agreement which had already been reached at the meeting.

When faced with similar circumstances in a prior case, this Court has relied on the Restatement in order to address whether a contract existed:

> **§ 27. Existence of Contract Where Written Memorial is Contemplated**
>
> **Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations.**
>
> **Comment:**
>
> *a.* Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract.
>
> *b.* On the other hand, if either party knows or has reason to know that the other party regards the agreement as incomplete and intends that no obligation shall exist until other terms are assented to or until the whole has

[10] While there appears to have been a question regarding whether Mr. Gibbs possessed the authority to obligate Defendants, Defendants admitted at oral argument that they have not contested this nor raised it as an issue.

> been reduced to another written form, the preliminary negotiations and agreements do not constitute a contract.

EnGenius Ent., Inc. v. Herenton, 971 S.W.2d 12, 17 (Tenn. Ct. App. 1997) (quoting Restatement (Second) of Contracts § 27 (1981)). We also have relied on the following authority:

> It is quite possible for parties to make an enforceable contract binding them to prepare and execute a subsequent final agreement. In order that such may be the effect, it is necessary that agreement shall have been expressed on all essential terms that are to be incorporated in the document. That document is understood to be a mere memorial of the agreement already reached. 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. at 17-18 (quoting 1 Arthur L. Corbin et al., *Corbin on Contracts* § 2.8, at 133-34 (Rev. ed. 1993)).

While Mr. Wilt and Mr. Gibbs reached an agreement on some terms at the meeting on May 8, 2020, it was not a complete one based on the correspondence between them that followed, which indicated they were still in the stages of preliminary negotiations. As explained by Mr. Wilt in his deposition, he and Mr. Gibbs discussed several items at the meeting but did not reach an agreement on everything:

> [Mr. Gibbs] and I had a meeting . . . , of which in that meeting we discussed several items, but one of which we mutually agreed that I was not going to be part of the company anymore. With that, we then had several discussions on what that means and how we move forward. I told him at the end of that I would send him something that summarized what we discussed. [The memorandum] is that summary.

The back-and-forth emails after this meeting demonstrate that they were not in agreement on all of the terms, such as when Mr. Wilt would step down as CEO and how long Mr. Wilt would receive severance pay. They had only discussed these terms at the meeting on May 8, 2020. In his appellate brief, Mr. Wilt admits to this stating that they did not decide these terms during the meeting but "negotiated them afterward, adding them to their previous agreement concerning repayment of the Defendants' obligations." What is more, they had not set a date for the repayment of the funds owed to Mr. Wilt.

After their meeting, Mr. Gibbs emailed Mr. Wilt stating that he would make sure that all of the obligations owed to Mr. Wilt were well understood, the funds would be repaid as soon as possible, and he expected funds to be available to repay Mr. Wilt by May 18,

2020. Additionally, he said that Mr. Wilt would receive severance pay for one month after the effective date of his termination and suggested that the date should be May 15, 2020. Mr. Wilt responded to Mr. Gibbs by emailing the memorandum listing the financial obligations. However, he added that he would step down as CEO on May 22, 2020, and requested severance pay for 60 days after that date. To the extent that there was an offer from Mr. Gibbs at this point, Mr. Wilt rejected it when he varied the terms concerning the date of his termination and the length of time for severance pay after that date.

This discussion continued between Mr. Wilt and Mr. Gibbs into the next day. Mr. Gibbs responded by reaffirming that the funds owed to Mr. Wilt would be addressed. He disagreed that Mr. Wilt should step down as CEO on May 22, 2020, but left the possibility open and stated they could "talk more about it." He also disagreed with the proposal of 60 days of severance pay, stating that it was "not in the cards." While Mr. Wilt and Mr. Gibbs were in agreement on the matter of repayment of the funds owed to Mr. Wilt, they did not agree on when he should step down as CEO nor how long he should receive severance pay after doing so. The memorandum contained terms not already agreed upon, some of which Mr. Gibbs expressly rejected.

In response to Mr. Gibbs's email, Mr. Wilt assented to the proposal of stepping down as CEO on the date of May 15, 2020. However, he continued to maintain that he should be compensated for 60 days after stepping down. He said, "an additional 30 day compensation is more than fair." Mr. Gibbs reaffirmed again that Mr. Wilt would be repaid the funds owed, but he rejected the idea of compensating Mr. Wilt for 60 days and stood firm on his offer of 30 days of compensation. He concluded his email by renewing his offer: "I'm sorry if that doesn't meet your expectations but please consider this our best offer." Mr. Wilt did not immediately respond to this "best offer" from Mr. Gibbs nor did he expressly accept or reject it. Still, he did step down as CEO of ESPACES, Inc.

This Court has said that "[s]ilence is generally insufficient to constitute acceptance of an offer and thereby bind a party to a contract." *Hyatt v. Adenus Grp., LLC*, 656 S.W.3d 349, 372 (Tenn. Ct. App. 2022). "[S]ilence or inaction generally does not constitute acceptance of an offer, unless the circumstances indicate that such an inference of assent is warranted." *Westfall v. Brentwood Serv. Grp., Inc.*, No. E2000-01086-COA-R3-CV, 2000 WL 1721659, at *5 (Tenn. Ct. App. Nov. 17, 2000) (citing *Smith v. Murray*, 203 Tenn. 292, 311 S.W.2d 591, 595 (1958)). Under the circumstances of this case, we find such an inference of assent is warranted given that Mr. Wilt ultimately acted in accordance with Mr. Gibbs's offer by stepping down as CEO on May 15, 2020, thereby acquiescing to 30 days of severance pay instead of 60 days. As evidence of this, Mr. Wilt emailed Mr. Gibbs on May 28, 2020, stating that he had "held up [his] end" by stepping down from CEO as they agreed. Lastly, we note that a complete contract may be gathered from emails between the parties, where those emails "relate to the subject matter of the contract and are so connected with each other that they may be fairly said to constitute one document relating to the contract." 17A Am. Jur. 2d Contracts § 169 (2023). Therefore, we conclude

that the parties formed a contract in mutual assent to its terms.

We reach this conclusion despite the dispute regarding *when* Defendants must repay Mr. Wilt. Defendants have characterized this as the central subject of controversy between the parties. Mr. Gibbs had indicated that he expected funds to be available to repay Mr. Wilt on May 18, 2020, or possibly earlier. Mr. Wilt indicated in the memorandum that the funds owed to him were "to be reimbursed . . . in full by May 22, 2020[.]" Mr. Gibbs responded in pertinent part, "The company's obligations to you will be addressed as you have outlined them here." This reimbursement date of May 22, 2020, corresponded with the date Mr. Wilt had proposed to step down, but he later assented to Mr. Gibbs's proposal to step down on May 15, 2020. After stepping down as CEO, Mr. Wilt indicated that he had expected to be repaid the funds owed to him at Mr. Gibbs's "suggested date of May 18, 2020." In the following months, he continued to email Mr. Gibbs asking for the funds owed to be repaid. Mr. Gibbs responded by assuring Mr. Wilt that they would repay the funds owed. He said, "We expected to have taken care of all of your financial terms by now . . . . The Awalco loan closed on May 13 but has not been funded." He added, "We are committed to taking care of the items you and I discussed and we will do so just as soon as we can raise capital, whether debt or equity." On June 4, 2020, Mr. Wilt said, "I anticipate the rest of the items we agreed to will be fulfilled by no later than the end of next week (June 12, 2020). This will be 4 weeks past the date you gave me of May 18, 2020 to have this completed." Mr. Gibbs responded that Defendants would fulfill its obligations to Mr. Wilt in full but his statement would have to be "appended with the phrase 'as soon as we are able.'" On June 19, 2020, Mr. Wilt said, "I do expect you . . . to uphold your agreement with me that was put in place when we parted ways and not connect it to the funding of the company as you chose to do after the Awalco deal fell through." Nevertheless, Defendants never repaid the funds owed to Mr. Wilt, which then led Mr. Wilt to file this lawsuit in January 2021.[11]

With all of this in mind, we must agree with the trial court's finding that the agreement the parties reached was not contingent upon whether Defendants had sufficient funds to pay. "The law imputes to contracting parties an intention corresponding to the reasonable meaning of their words and acts." *Bill Walker & Assocs., Inc.*, 770 S.W.2d at 770 (citing *Sutton v. First Nat'l Bank of Crossville*, 620 S.W.2d 526, 530 (Tenn. Ct. App. 1981)). Before Mr. Wilt stepped down as CEO, Mr. Gibbs had suggested Mr. Wilt would be repaid on May 18, 2020, or at an earlier date possibly. After Mr. Wilt stepped down as CEO, Mr. Gibbs's position changed to "just as soon as we can raise capital, whether debt or equity" and "as soon as we are able." After reading the emails exchanged between Mr. Gibbs and Mr. Wilt, we find it unreasonable to conclude that the parties agreed for repayment of the funds to be contingent upon Defendants receiving the funding to do so. Additionally, this Court has explained that the parties' state of mind when they entered into

[11] Mr. Gibbs even indicated that Mr. Wilt might be partly reimbursed rather than waiting for funds to pay him in full, but this did not occur.

the contract is not our concern. *Bill Walker & Assocs., Inc.*, 770 S.W.2d at 770 (citing *Petty v. Sloan*, 197 Tenn. 630, 277 S.W.2d 355, 360-61 (1955)). "[T]herefore, we do not consider their uncommunicated, subjective intentions." *Id.* (citing *Malone & Hyde Food Servs. v. Parson*, 642 S.W.2d 157, 159 (Tenn. Ct. App. 1982); *Ward v. Berry & Assocs., Inc.*, 614 S.W.2d 372, 375 (Tenn. Ct. App. 1981)). While Mr. Gibbs expected to receive funding to make the repayment of funds more financially strategic for Defendants, the record fails to demonstrate any agreement that repayment of the funds would only occur once funding was obtained. This was not clearly communicated to Mr. Wilt nor assented to by Mr. Wilt before he stepped down as CEO of ESPACES, Inc.

Additionally, the emails between Mr. Wilt and Mr. Gibbs, both before and after Mr. Wilt stepped down as CEO, show that the two of them failed to agree on a date certain for when Defendants were required repay the funds owed to Mr. Wilt. It was Mr. Gibbs's understanding that the obligation to repay the funds could be fulfilled whenever it became convenient for Defendants to do so, i.e., when they obtained funding. It was Mr. Wilt's understanding that he would be repaid on May 18, 2020, or earlier, but this had only been "suggested" by Mr. Gibbs. However, this failure to agree on a date certain for repayment is not fatal. "[A] finding that a contract is sufficiently definite is favored, so as to carry out the reasonable intentions of the parties," and "courts will seek to avoid finding that an agreement is too uncertain to be enforceable by considering the surrounding circumstances and the conduct of the parties." *German*, 300 S.W.3d at 706. "For example, 'failure of the parties to fix a time or a definite time for performance does not normally defeat a contract.'" *Id.* (quoting *First Nat. Bank of Bluefield v. Clark*, 191 W.Va. 623, 447 S.E.2d 558, 562 (1994)). Instead, "[t]he court will usually imply a term requiring performance within a reasonable time under the circumstances." *Id.* (citing *Minor v. Minor*, 863 S.W.2d 51, 54 (Tenn. Ct. App. 1993).

Considering the surrounding circumstances and the parties' conduct in this case, we find that the parties formed a contract which was sufficiently definite. Furthermore, "[w]here the parties fail to set forth a time, the court may impose a reasonable time period consistent with the circumstances and reasonable intent of the parties." *Clark v. Gilliam Candy Co., Inc.*, No. 01-A-01-9006CH00229, 1991 WL 1059, at *3 (Tenn. Ct. App. Jan. 9, 1991) (citing *Turner v. Yow*, 657 S.W.2d 94, 97 (Tenn. Ct. App. 1983)). We emphasize that Mr. Wilt stepped down as CEO in May 2020, more than three years ago. Under the circumstances, a fixed time for repayment need not be implied here because Defendants have had more than a reasonable amount of time to fulfill their financial obligations to Mr. Wilt.[12]

Accordingly, we find that the parties formed a valid contract. Mr. Wilt's unjust enrichment issue is pretermitted, and the trial court's award of summary judgment to Mr.

[12] Defendants have filed a surety bond in the amount of 110% of the total judgment against them, which was approved by the trial court.

Wilt is affirmed.

D. Prejudgment Interest

Mr. Wilt presents an additional issue concerning whether the trial court erred by awarding him prejudgment interest running from May 8, 2020, rather than from the dates he advanced the funds to Defendants as the parties had agreed. He argues that the trial court erred because the parties had agreed Mr. Wilt's interest would run from the respective dates of his advancements of the funds. Defendants state that the trial court's analysis concerning the award of prejudgment interest was correct. They also assert that Mr. Wilt has waived this issue.

The Tennessee Supreme Court has set forth the standard by which courts now award prejudgment interest:

> An award of prejudgment interest is within the sound discretion of the trial court and the decision will not be disturbed by an appellate court unless the record reveals a manifest and palpable abuse of discretion. *Spencer v. A-1 Crane Service, Inc.*, 880 S.W.2d 938, 944 (Tenn. 1994); *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 446 (Tenn. 1992). This standard of review clearly vests the trial court with considerable deference in the prejudgment interest decision. Generally stated, the abuse of discretion standard does not authorize an appellate court to merely substitute its judgment for that of the trial court. Thus, in cases where the evidence supports the trial court's decision, no abuse of discretion is found. *See State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978) (applying abuse of discretion standard to trial court's decision to deny request for suspended sentence), *cert. denied*, 439 U.S. 1077, 99 S.Ct. 854, 59 L.Ed.2d 45 (1979).

Myint v. Allstate Ins. Co., 970 S.W.2d 920, 927 (Tenn. 1998). As explained by this Court, "*Myint* departed from prior decisions strictly limiting prejudgment interest awards to cases involving substantial certainty in the existence and amount of an underlying obligation and placed the principles of equity at the forefront of a court's decision[.]" *Poole v. Union Planters Bank, N.A.*, 337 S.W.3d 771, 790 (Tenn. Ct. App. 2010). Specifically, our Supreme Court in *Myint* held:

> Several principles guide trial courts in exercising their discretion to award or deny prejudgment interest. Foremost are the principles of equity. Tenn. Code Ann. § 47-14-123. Simply stated, the court must decide whether the award of prejudgment interest is fair, given the particular circumstances of the case. In reaching an equitable decision, a court must keep in mind that the purpose of awarding the interest is to fully compensate a plaintiff for the loss of the use of funds to which he or she was legally entitled, not to penalize

> a defendant for wrongdoing. *Mitchell v. Mitchell*, 876 S.W.2d 830, 832 (Tenn. 1994); *Otis*, 850 S.W.2d at 446.

Myint, 970 S.W.2d at 927.

However, we note that a trial court does not have the discretion to award prejudgment interest when a plaintiff is entitled to such an award as a matter of right:

> Interest *as a matter of right* is purely statutory, unknown to the common law, and its positive allowance must be confined to those obligations and demands specified and enumerated in statutory provisions, and [in a] case not so included, it remains, as at common law, a matter of discretion in the jury or chancellor to be allowed or not, according to the facts presented.

Giles v. Geico Gen. Ins. Co., 643 S.W.3d 171, 176 (Tenn. Ct. App. 2021) (quoting *Fortner v. Frank Proctor & Wyatt-Johnson Buick, Pontiac, GMC Truck, Inc.*, No. 01-A-01-9002-CH00060, 1990 WL 125514, at *7 (Tenn. Ct. App. 1990) (emphasis added)); *see R.D. Robinson, Inc. v. DQHSX, Inc.*, No. 03A01-9405-CH-00175, 1994 WL 585778, at *2 (Tenn. Ct. App. Oct. 20, 1994) ("We, of course, cannot re-write the contract. Since the parties agreed that all payments due under the contract would bear interest, there the matter ends. The issue involves no discretionary function."). Prejudgment interest is recoverable as a matter of right pursuant to Tennessee Code Annotated section 47-14-109. *SecurAmerica Bus. Credit v. Southland Transp. Co., LLC*, No. W2016-02505-COA-R3-CV, 2018 WL 1100958, at *12 (Tenn. Ct. App. 2018) (citing *Myin*t, 970 S.W.2d at 927). That statute provides in pertinent part, "[T]he time from which interest is to be computed shall be the day when the debt is payable, *unless another day be fixed in the contract itself*." Tenn. Code Ann. § 47-14-109(c).

In its order granting summary judgment, the trial court found that there was no genuine issue of material fact that an agreement was reached for Defendants to repay Mr. Wilt the funds he had advanced. The court awarded Mr. Wilt $200,000 against ESPACES Franklin, LLC, $52,669.58 against ESPACES Knoxville, LLC, and $20,298.84 against ESPACES, Inc. The court also awarded Mr. Wilt 7% prejudgment interest but ordered the parties to brief the issues concerning the commencement date and the amount of prejudgment interest to be awarded. After the parties submitted their briefs, the court entered an order concluding that the commencement date for accrual of prejudgment interest was May 8, 2020, which was the date Defendants had proposed. This was the date Mr. Wilt and Mr. Gibbs met and discussed plans for Mr. Wilt to step down as CEO and plans for Defendants to repay the funds owed to Mr. Wilt. Using this date, the court awarded Mr. Wilt the following amounts: (1) $200,000 against ESPACES Franklin, LLC, plus prejudgment interest of $26,005.48; (2) $52,669.58 against ESPACES Knoxville, LLC, plus prejudgment interest of $6,848.49; and (3) $20,298.84 against ESPACES, Inc., plus prejudgment interest of $2,639.41. The court then vacated this order due to a clerical

omission and entered a new order using the same date and awarding Mr. Wilt the same amounts.

We have affirmed the trial court's finding that the parties formed a valid contract. Mr. Wilt argues that the parties fixed a date in that contract for the commencement of the computation of interest, that being the dates upon which the respective funds were advanced. However, the trial court failed to make any findings as to whether the parties' agreement included the payment of interest to Mr. Wilt from the dates that he advanced the respective funds. If so, such interest would be recoverable as a matter of right. We determine that Mr. Wilt has not waived this issue because, after the trial court awarded him summary judgment, he maintained that he was entitled to receive interest from these dates when filing his brief in support of calculation of prejudgment interest. When presented with this issue in a prior case, this Court proceeded with deciding the question of whether the plaintiff was entitled to interest as a matter of right, determined that he was, and remanded to the trial court for a determination of the amount. *Jaffe v. Bolton*, 817 S.W.2d 19, 28 (Tenn. Ct. App. 1991). Under the circumstances of this case, however, we determine that it is appropriate for the trial court to decide this issue on remand after the parties have been afforded the opportunity to more fully brief this issue. *Bridgewater v. Adamczyk*, No. M2009-01582-COA-R3-CV, 2010 WL 1293801, at *6 (Tenn. Ct. App. Apr. 1, 2010); *see Mid-South Maint. Inc. v. Paychex Inc.*, No. W2014-02329-COA-R3-CV, 2015 WL 4880855, at *14 (Tenn. Ct. App. Aug. 14, 2015) ("Generally, when the trial court fails to address an issue in the first instance, this Court will not consider the issue, but will instead remand for the trial court to make a determination in the first instance.").

As such, we conclude that we must vacate the trial court's award of prejudgment interest and remand to the trial court for findings of fact and conclusions of law on the question of whether the agreement between the parties entitled Mr. Wilt to interest as a matter of right.

V. CONCLUSION

For the aforementioned reasons, we affirm the trial court's award of summary judgment, vacate the trial court's award of prejudgment interest, and remand for further proceedings consistent with this opinion. Costs of this appeal are taxed to the appellants, ESPACES Franklin, LLC, ESPACES Knoxville, LLC, and ESPACES, Inc., for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE