IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ROGER J. HOLTHAUS,	:	APPEAL NOS. C-150017 C-150058
Plaintiff-Appellee/Cross-Appellant,	:	TRIAL NO. A-1300722
	:	*JUDGMENT ENTRY.*
vs.	:	
RPI COLOR SERVICES, INC.,	:	
Defendant-Appellant/Cross-Appellee.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee/cross-appellant Roger J. Holthaus began working for defendant-appellant/cross-appellee RPI Color Services, Inc., ("RPI") in 1986 as an accountant. RPI was a family-owned graphic-data-solutions firm. Holthaus worked for the company for two decades, eventually earning the position of executive vice president.

In 1998, the directors of RPI met and decided that the company would adopt a "Top Hat Deferred Compensation" program. The minutes from the meeting stated that Holthaus would receive $300,000 over a period "not to exceed 60 months" upon reaching the age of 55 and his voluntary retirement. The plan also provided for health and life insurance "for five years after [his] retirement."

On November 27, 2006, Holthaus wrote a letter to William Reller, Jr., attempting to clarify the terms of the benefits. Reller had been one of the directors who had approved the original retirement package, and was the chief financial officer, treasurer, and vice-president of finance for RPI. The letter set out the conditions, as Holthaus understood them, including that Holthaus would be paid

$300,000 over a period of 60 months. The letter concluded by saying that "[i]f the above is correct, please sign and date and return to me at your earliest convenience." Reller signed and returned the document the same day.

One year later, Holthaus informed RPI of his intent to retire. Rather than require him to work for a year from the date of his notice, as the agreement required, Holthaus was permitted to retire immediately with his official retirement to commence at the end of the year. Beginning in 2008, RPI provided wages and benefits to Holthaus consistent with the agreement. This continued until March 2009, when company president Ken Reller, brother of Bill Reller, Jr., informed Holthaus that the payments would have to be reduced by 50 percent, because the company had hit financial hard times. In September of that year, RPI stopped making payments entirely. Of the $300,000 in total compensation that Holthaus was promised in the letter of November 27, 2006, Holthaus has received $86,000.

Holthaus filed suit against RPI. On cross-motions for summary judgment, the trial court ruled in favor Holthaus on his claim for breach of contract and awarded damages for that claim. It declined to award damages under Holthaus's related claims under Ohio's Prompt Pay Act.

In one assignment of error, RPI claims that summary judgment was improper on Holthaus's claim for breach of contract. In order to prove a breach-of-contract claim, a plaintiff must show the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Powell v. Grant Med. Ctr.*, 148 Ohio App.3d 1, 10, 771 N.E.2d 874 (10th Dist.2002). The letter contained all the essential terms of the agreement and was signed by William Reller, Jr., who was a director as well as the chief financial officer, treasurer, and vice-president of finance for RPI. After Holthaus left RPI, RPI made payments in accordance with the agreement for over a year. At no time did anyone from RPI indicate that the payments were gifts, or that RPI was not under an obligation to make them. RPI

treated the payments as Holthaus's income for tax purposes. When the payments slowed and then stopped, the correspondence between Holthaus and RPI discussed the payments as part of his retirement.

When RPI stopped making the payments to Holthaus, it breached its agreement with him and the trial court properly found in his favor. We overrule RPI's sole assignment of error.

In one cross-assignment of error Holthaus claims that he was entitled to an award under the Prompt Pay Act. While the trial court properly awarded damages for breach of contract, the act does not apply when parties dispute the amounts owed to the employee. *See* R.C. 4113.15(B); *Fridrich v. Seuffert Const. Co., Inc.,* 8th Dist. Cuyahoga No. 86395, 2006-Ohio-1076, ¶ 23. Therefore the trial court properly declined to award damages under the statute, and we overrule Holthaus's sole cross-assignment of error.

Holthaus makes an argument within his cross-assignment of error relating to the decision of the trial court not to release certain garnished funds. But this argument does not arise from the final judgment appealed from, nor is it related to the assignment of error, and we decline to address it. *See Barker v. Kattelman*, 92 Ohio App.3d 56, 67, 643 N.E.2d 241 (1st Dist.1993); App.R. 12(B).

We affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and **MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on December 16, 2015
per order of the court _____.

Presiding Judge