THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Circuit Court Judge R. Scott Sprouse

Consolidated Cases 2009-CP-40-05680 and 2013-CP-40-05097

Appellate Case No. 2019-000374

Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, Appellants,

v.

City of Columbia, Respondent.

and

Larry Strickland, Denious L. Dimery and Bailey G. McClinton, Appellants,

v.

City of Columbia, Respondent.

APPELLANTS' PETITION FOR REHEARING

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1. The Court of Appeals erred when it found the promise of free health insurance for retirees for life was ambiguous.

a. Respondent's past performance related to the promise at issue is evidence that the promise was not ambiguous.

A general promise is not necessarily an ambiguous promise. Although some promises are accompanied by specific details, some are not. For instance, a promise involving the payment of money requires details regarding the amount, the source of funds, and the form of payment. On the other hand, a payment to take certain action may only require a description of the action to be taken and when it will occur.

This Court stated the promise at issue succinctly in its 2013 decision: "retiree health insurance would continue to be free throughout retirement." Bishop v. City of Columbia, 401 S.C. 651, 666–67, 738 S.E.2d 255, 263 (Ct. App. 2013). The provision of free health insurance to retirees over time is not the type of promise that could be too specific as insurance details necessarily change over time as insurance coverage changes. What was promised was clear and unambiguous; how Respondent intended to keep its promise is not relevant to the issue of whether the original promise was ambiguous.

Over the course of many years, Appellants received the same health insurance as retirees as they had received as employees and Appellants, nor Respondent, ever complained that the promise was ambiguous or that they did not know or understand the terms of the promise. For decades Respondent kept its promise to its retirees, never expressing concern over what the promise required. Respondent's past performance is evidence that the promise was not ambiguous. There was simply no uncertainty at all surrounding the key terms of the promise as

was this Court's concern in the case of Barnes v. Johnson, 402 S.C. 458, 472, 742 S.E.2d 6, 12-13 (Ct. App. 2013) (promise found ambiguous when selling price of property unknown, purchaser was unsure how much to borrow, and additional funds would be paid "whenever" he could). The only unknown factors here were how Respondent would keep the promise and what it would cost Respondent, but these facts are irrelevant to whether the promise was ambiguous.

A promise does not become ambiguous after it has been relied upon and kept for many years. Respondent did not tell Appellants in advance what type of health insurance it would provide to them throughout their retirement, which company would provide the insurance, or what the co-pays might be year to year. These are facts Respondent did not know and could not possibly have known in advance. However, Respondent did promise that health insurance would be free during retirement.

The Court misapprehended the nature of the promise when it held that there is ambiguity inherent in the promise because different Appellants had different expectations and opinions about what they considered good insurance coverage. Appellants never alleged that the quality of the health insurance they received from Respondent was not what they had been promised as the plaintiff did in Barnes, supra. The promise was that retiree health insurance would be free and all of the Appellants complained as soon as the promise was broken. Appellants' personal opinions do not alter the fact free retiree health insurance was provided to two of the Appellants for more than 20 years, and throughout the term of six different City Managers. (R. 708-711.) Further, Respondent did not break its promise because the promise was ambiguous; Respondent broke its promise because it became expensive to keep it and Respondent preferred to spend money on other matters. As Appellant Gillian succinctly testified, " Once I retired I had done my part of the bargain… It's kind of like you go to the store, bread is on sale, you buy a loaf of bread, you leave

the store, they don't tell you later on give me more money for that loaf of bread, we changed our mind." (R. 489.)

In Satcher v. Satcher, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002), there were two promises made. The first involved a grandfather leaving his house and the property around it to his grandson who had moved into the house and lived with his grandfather for 20 years. This Court found that promise to be clear and understood by the parties and relied on by the grandson for years. Satcher, 351 S.C. at 486, 570 S.E.2d at 540. "Moreover, we believe it would be an injustice not to apply the doctrine of promissory estoppel here because of the extreme amount of time and energy Chip has expended in reliance on Grandfather's promise." Id. When the house would become the grandson's, whether the house was mortgaged or had liens on it, and what the house's value or condition would be when the grandfather died were all details regarding how the promise would be fulfilled but this Court did not find that the absence of these details made the original general promise ambiguous. Similarly, the promise at issue in this case is unambiguous; even if some of the details regarding how Respondent would fulfill the promise were absent.

The Court focused on the second promise in Satcher in support of its finding of ambiguity in this case. The second promise involved the grandfather leaving additional property to the grandson. Regarding this promise, the Court correctly held it was unclear whether the grandfather intended to leave only the farmland to his grandson, or all of the property. "Thus, even [plaintiff] was unclear as to the details of the promise. …no other witness testified to any specific promises by Grandfather." 351 S.C. at 487, 570 S.E.2d at 540. The second promise was clearly ambiguous because it was vague, not understood by the recipient, and there were no witnesses to the promise. None of those facts are present in this case. Here, Appellants understood the promise (health insurance during retirement would be provided for free) and there were witnesses to the promise.

Satcher supports the legal conclusion that a general promise can be unambiguous and the basis for a promissory estoppel claim.

In Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006), another case cited by the Court, the appellant could not clearly articulate the terms of the alleged oral contract, "including whether the money would be treated as a loan or capital contribution, how much money would ultimately be paid, or how respondents would 'settle up.'" 370 S.C. at 295, 633 S.E.2d at 925. Further, the respondent never acted in accordance with the alleged promise. In Rushing, the appellant testified that because the respondents did not reply to his proposal in any way, he believed they had an agreement. 370 S.C. at 286, 633 S.E.2d at. 920. To the contrary, in this case, both parties understood the promise and both parties acted in accordance with the promise for decades. The facts in Rushing are very different from those in this case. In Rushing, the appellant assumed that silence was acquiescence; here decades of Respondent acting to keep its promise by providing free health insurance to its retirees is evidence that the promise could not possibly have been ambiguous to either party. Simply because the promise was a general promise does not invalidate decades of action by both parties. The promise was simple (retiree health insurance would be free) and Respondent acted in accordance with it for decades, never complaining that it was ambiguous or too vague to understand or follow.

b. This Court's holding that there is "ambiguity inherent in such a general promise" cannot stand in light of its earlier decision in Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013).

The Court's holding in this case that reliance is questionable when a promise is ambiguous, fails in light of the Court of Appeals holding in Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013) that there was evidence to support reasonable reliance, as a promise cannot be ambiguous if it was relied upon. If it is unreasonable to rely on an ambiguous promise, then a finding of reasonable reliance by a court confirms the promise relied upon was

unambiguous. In Bishop, the Court of Appeals found there was a scintilla of evidence that the promise at issue had been reasonably relied upon by Appellants.

> Retirees also testified that several supervisors informed them they would receive free health insurance for life during their individual merit interviews and evaluations, which were incidental to the supervision of their employment. *Therefore, the employment review context during which the representations were made provides a scintilla of evidence to suggest the representations and promises were within the supervisors' authority and reasonably relied upon*.

Bishop, 401 S.C. at 667, 738 S.E.2d at 263 (Ct. App. 2013) (emphasis added).

As this Court has already found there was a scintilla of evidence that the promise at issue was reasonably relied upon, using the Court's reasoning in this case that reliance on an ambiguous promise is questionable, it follows that the promise at issue was not ambiguous. In fact, in Bishop, the Court of Appeals never addressed the issue of ambiguity and made no finding of ambiguity. Here, the Court's decision regarding ambiguity contradicts its earlier decision, and for that additional reason the Court erred in holding the promise of free health insurance for retirees for life was ambiguous.

2. The Court of Appeals erred when it held that Appellants' reliance fell short of what is required to prove a promissory estoppel claim as this factual determination failed to give deference to the Lower Court's determination and is not supported by a preponderance of evidence.

Ordinarily, an appellate court reviews cases in equity by finding facts in accordance with its own view of the preponderance of the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). However, an appellate court should still afford deference to the Lower Court as it was in the best position to judge the witnesses' credibility. Lewis v. Lewis, 392 S.C. 381, 391, 709 S.E.2d 650, 655 (2011). "A determination of justifiable reliance involves the evaluation of the totality of the circumstances, including the

positions and relations of the parties." West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337-38 (Ct. App. 2000).

In this matter, there was sufficient evidence for the Lower Court to conclude Appellants' reliance was reasonable based on the circumstances surrounding the promise (including the fact that the promise was kept for decades), the context in which the promise was made and repeated, and the position of the parties making the promise. The Court erred in finding there was a preponderance of evidence indicating Appellants' reliance was unjustified.

The reasonableness of the act of reliance is not a quantitative measure that someone can fall short of as the Court of Appeals held. Rather, a reasonable act is "[s]uch as may fairly, justly, and reasonably be required of a party." Black's Law Dictionary, p. 1431 (4th ed. 1968) The term "reasonable" is defined as just and proper (Id.) See, e.g., S.C. Code Ann. § 62-7-1006. ("For example, a trustee's reliance on the trust instrument would not be *justified* if the trustee is aware of a prior court decree or binding nonjudicial settlement agreement clarifying or changing the terms of the trust.") (emphasis added).

Here, Appellants were clearly justified in their reliance on Respondent's promise. Some Appellants were instructed to recruit firefighters and retain employees by telling them about the promise (R. 568-69, 597-98); the promise was repeatedly made to Appellants over decades of employment (R. 500-01, 512, 521, 525, 546, 577); Appellants knew co-workers and relatives who had received the promised free health insurance (R. 570, 611-12); and all of the Appellants received free retiree health insurance when they retired, some for more than 20 years. (R. 515, 567-68, 611-12, 708-711.) "The Court of Appeals erred by analyzing reasonableness in terms of something Appellants fell short of instead of considering whether Appellants' reliance was justified based on the representations made to them.

Further, the Court of Appeals' reliance on Appellants' written documents and the lack of individual guarantees neglects the fact that, Appellants based their case in large part on the verbal representations of Respondents' HR staff and Town Managers. (R. 478, 482, 489, 514, 525, 537-38, 545, 582-83, 585, 595, 598-602, 611.) Appellants' reliance on verbal statements was because this Court in Bishop had already held "Retirees cannot claim reasonable reliance on [the employee handbook and benefits booklets], and the estoppel claims cannot survive summary judgment to the extent the claims are based on them." Bishop, 401 S.C. at 665, 738 S.E.2d at 262-262. In Bishop, the Court held it was the promises and representations of the City employees that proved sufficient to create an issue of fact as to whether there was reasonable reliance. (Id.) The verbal promises and representations did not change at trial and the Court erred in reversing the Lower Court's finding of reliance based on the verbal representations and basing its decision on the written representations.

Additionally, in Bishop, this Court already held Respondent's HR employees were authorized to inform retirees about their insurance benefits and that the evidence did not indicate the employees acted outside the scope of their authority when they explained retirees' benefits. Bishop, 401 S.C. at 666-667, 738 S.E.2d at 262-263. Therefore, the issue of individual City employees making guarantees is irrelevant. This case was brought against Respondent, a municipal corporation, not against any individual employees of Respondent. The Court misapprehended Appellants' argument regarding individuals as Appellants never alleged all individuals within the municipality had authority to act on behalf of Respondent or bind Respondent. The significance of the verbal representations and promises made by Appellants' supervisors, HR officials, and Town Managers was that these were individuals authorized by Respondent to speak on Respondent's behalf. As this Court already acknowledged, "The acts of

a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality." Bishop, 401 S.C. at 665, 738 S.E.2d at 262. There is certainly a preponderance of evidence to support the Lower Court's finding that Appellants "relied on the representations made by the City through its agents and the City's official policy over the years." (R. 36.) It was error for this Court to disregard the Lower Court's findings regarding the reasonableness of Appellants' reliance.

3. The Court of Appeals overlooked relevant case law when it held "promissory estoppel is only invoked when the failure to find it would essentially result in a fraud."

The Court of Appeals misapprehended the holding in Satcher when it held that promissory estoppel can only be invoked when necessary to avoid fraud. In addition to avoiding fraud, the case law in South Carolina also permits the application of promissory estoppel in order to avoid "other injustice." See, e.g., Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co., 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981) ("an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud *or would result in other injustice*."); N. Am. Rescue Prod., Inc. v. Richardson, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) ("Courts have used the doctrine where the refusal to apply it would be virtually to sanction the perpetration of a fraud *or would result in other injustice."*) (citing Satcher v. Satcher, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct.App.2002)); Citizens Bank v. Gregory's Warehouse, Inc., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct.App.1988) ("…if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud *or would result in other injustice*.") (citing 28 Am.Jur.2d, Estoppel and Waiver, Section 48, pp. 656–657 (1966)). Appellants have never alleged Respondent intended to defraud them. Rather,

Appellants assert that Respondent decision to break a promise it had kept for over 20 years in exchange for Appellants continuing to work for Respondent for a requisite number of years, merely because Respondent wanted to spend money on something else, is an injustice. The Court of Appeals overlooked the fact that promissory estoppel can be also invoked to prohibit an injustice.

For decades, Appellants organized their lives around Respondent's promise. They remained employed by Respondent, they planned their retirement dates, they budgeted for retirement, and they budgeted based on fixed incomes after retirement based on Respondent's promise that it had kept year after year. Some Appellants were required as part of their job to tell recruits they should work for Respondent because even though they would not be paid much, they would get free health insurance when they retired. (R. 568-69, 580, 597-98.) The trial judge was in the best position to determine the reasonableness of Appellants' reliance. "[I]ssues of reliance and its reasonableness going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the trier of facts." McLaughlin v. Williams, 379 S.C. 451, 457, 665 S.E.2d 667, 670–71 (Ct. App. 2008) (quoting Unlimited Services, Inc. v. Macklen Enterprises, Inc., 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991)).

Although "there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter" (Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct.App.1992)), here the truth of the matter was Respondent had and still could, if it wished, continue to provide free health insurance to its retirees. The only reason Respondent has broken its promise is that it prefers to spend money elsewhere, and that is an injustice.

CONCLUSION

Appellants respectfully request this Court reconsider its decision as a general promise is not inherently an ambiguous promise; a promise kept for decades cannot possibly be ambiguous; this Court has already found a scintilla of evidence proving reasonable reliance so the promise upon which the reliance was made cannot be ambiguous; the Lower Court was in the best position to determine Appellants' reliance; and promissory estoppel should be invoked to prevent a grave injustice.

Respectfully submitted,

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August 29, 2022

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Honorable Circuit Court Judge R. Scott Sprouse

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APPELLANTS' PROOF OF SERVICE OF PETITION FOR REHEARING

I hereby certify that on August 29, 2022 I served a copy of Appellant's Petition for Rehearing on the following by email:

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Date: August 29, 2022

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August 29, 2022

RECEIVED
Aug 29 2022
SC Court of Appeals

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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RE: *Basilides F. Cruz et al. v. City of Columbia*
Appellate Case No. 2019-000374

Dear Ms. Kitchings,

Enclosed please find Appellants' $50.00 filing fee in connection with Appellants' Petition for Rehearing in the above captioned case. The Petition was filed electronically today.

With kindest regards, I am,

Sincerely,

Nancy Bloodgood

Nancy Bloodgood

Enclosures

cc: Al Nickles, *via email*
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