THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2022-001494

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

v.

City of Columbia, **Respondent.**

and

Larry Strickland, Denious L. Dimery and Bailey G. McClinton, **Petitioners,**

v.

City of Columbia, **Respondent.**

BRIEF OF PETITIONERS

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STANDARD OF REVIEW

Appellate courts determine questions of law *de novo*. Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008). "In equitable actions like promissory estoppel, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." S.C. Department of Transportation v. Horry County, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011) (citing Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)).

STATEMENT OF THE CASE

In 2009, Respondent decided to start making retirees under age 65 contribute to the cost of their retiree health insurance. On August 10, 2009, the Petitioners who were under age 65 filed

a lawsuit captioned Bishop v. City of Columbia, which included a claim for promissory estoppel. After discovery, Respondent moved for summary judgment and Judge James R. Barber, III granted Respondent's motion for summary judgment on all claims on September 13, 2010. (App. p. 9.) The Bishop Petitioners appealed the Order Granting Summary Judgment and, on January 23, 2013, the Court of Appeals reversed the Circuit Court's summary judgment order as to Petitioners' promissory estoppel claim and remanded the case for trial on the promissory estoppel claim.

While the Bishop case was pending in the Court of Appeals, in 2013, Respondent began requiring its retirees over age 65 pay the cost of their Medicare supplement plans, which Respondent had previously provided at no cost. In response, a group of retirees over age 65 filed a promissory estoppel lawsuit on August 27, 2013, captioned Strickland v. City of Columbia. The two (2) cases were consolidated on August 18, 2018 and a non-jury trial was held in Columbia on December 19th and 20th before Judge R. Scott Sprouse. Judge Sprouse issued a Trial Order on January 29, 2019 finding Petitioners had proven the elements of their promissory estoppel claim but were not entitled to any damages as they had not proven detrimental reliance. (App. p. 44.)

A Motion for Rehearing was filed by Petitioners on February 6, 2019 (App. pp. 468-480) and denied on February 19, 2019. (App. pp. 47-49.) Petitioners appealed to the Court of Appeals and the Court of Appeals heard the case on February 10, 2022. The Court of Appeals issued an Opinion denying Petitioners' Appeal on August 3, 2022 holding that although detrimental damages are not an element of promissory estoppel, the promise at issue was ambiguous and it was unreasonable for Petitioners to rely on an ambiguous promise. Motions for Rehearing were timely filed by Petitioners and Respondent and both were denied by the Court of Appeals on

September 22, 2022. (App. p. 1053.) Petitioners thereafter timely filed a Petition for Writ of Certiorari, which was granted on May 24, 2023.

STATEMENT OF FACTS

The ten (10) Petitioners in this combined action are retired City of Columbia firefighters. Each Petitioner began working for the Respondent City of Columbia in the 1960s through 1980s. (App. pp. 708-710.) Petitioners allege that when they were hired, and during their employment as firefighters, various officials with the City of Columbia (City Managers, Human Resources officials, and Fire Department Chiefs) promised them that if they remained employed with the City for a specific number of years, they would be provided free health insurance for life when they retired. (App. p. 719.) The promise of free retiree health insurance was repeatedly made to Petitioners over decades of employment. (App. pp. 508-09, 520, 529, 533, 554, 585.) Petitioners knew co-workers and relatives who had received the promised free health insurance. (App. pp. 579, 619-20.) Some Petitioners 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. (App. pp. 576-77, 588, 605-06.) All Petitioners received free retiree health insurance when they retired, some for more than 20 years. (App. pp. 523, 575-76, 619-20, 716-719.) In 2009, Respondent stopped providing free health insurance to retirees. (App. p. 719.)

LEGAL ARGUMENTS

1. **The Court of Appeals has misconstrued this Court's holding in Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co., 276 S.C. 663, 281 S.E.2d 469 (1981) regarding the significance of fraud in promissory estoppel claims.**

In its Opinion, the Court of Appeals held, "promissory estoppel is only invoked when the failure to find it would essentially result in a fraud." Cruz v. City of Columbia, 437 S.C. 204, 218, 877 S.E.2d 479, 486 (Ct. App. 2022), reh'g denied (Sept. 22, 2022). The Court of Appeals then held that there was "no intent on the part of [Respondent] to defraud [Petitioners]" inferring that the absence of an intent to defraud, a cause of action for promissory estoppel must fail. Id. This is not a correct statement of the law or of the elements necessary to prove promissory estoppel. As this Court held in Davis v. Greenwood School District 50, 365 S.C. 629, 620 S.E.2d 65 (2005), there are only four (4) elements necessary to prove promissory estoppel, and fraud is not one of them. "The elements of promissory estoppel are (1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance." 365 S.C. at 634, 620 S.E.2d at 67.

While fraud is not an element of promissory estoppel, courts have found the doctrine of promissory estoppel can be applied by a court to *avoid* sanctioning the perpetration of a fraud or when the failure to apply the doctrine would result in other injustice. Therefore, although the terms fraud and injustice are not elements of a promissory estoppel claim, they are terms used to explain when a court should exercise its powers of equity. Besides avoiding the sanctioning of fraud, this Court also permits the application of promissory estoppel 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."); North American Rescue Products, Inc. v. Richardson,

411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) ("Courts have used the doctrine [of promissory estoppel] where the refusal to apply it would be virtually to sanction the perpetration of a fraud or would result in other injustice."); and Powers Construction Co., Inc. v. Salem Carpets, Inc., 283 S.C. 302, 309-310, 322 S.E. 2d 30, 35 (Ct. App. 2004) (holding use of the term fraud in a jury instruction for promissory estoppel was "inapplicable to the pleadings and evidence" but resulted in no prejudice to the complaining party). This Court has never required evidence of an intent by a party to defraud someone in a promissory estoppel claim. The Court of Appeals' emphasis on Petitioners' failure to prove an intent to defraud is misplaced.

In promissory estoppel claims, the word "fraud" has only been used as another word for "injustice" and only in the context of the Court's use of promissory estoppel as an equitable *solution* to avoid the sanctioning of fraud or injustice. There is simply no requirement that a party in a promissory estoppel claim prove an intent to defraud by another party. Respondent's decision to break a promise Respondent had kept for over 20 years in exchange for Petitioners 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 erred by focusing on Respondent's intent to defraud, as such an additional requirement is not relevant in a promissory estoppel case. Here, Petitioners never alleged Respondent intended to defraud them. Rather, Petitioners assert that allowing Respondent to break a promise it had kept for over 20 years merely because Respondent wanted to spend public funds on something else would sanction a fraud and result in an injustice to Petitioners.

In its Return to the Petition, Respondent argues that Petitioners have taken one sentence in the Court of Appeals' Order regarding fraud out of context when concluding the Court of Appeals has added an additional element of fraud into promissory estoppel. However, other

statements by the Court of Appeals in its Opinion indicate the Court of Appeals considered, in error, whether Respondent had acted with an intent to defraud Petitioners. In fact, the Court of Appels opined, "This case does not reveal an intent on the part of the City to defraud Appellants. It had not changed the premiums charged to retirees on a whim. The City continues to pay approximately 90-95% of the retirees' coverage depending on the coverage selected." Cruz, 437 S.C. at 218, 877 S.E.2d at 486.

The Court of Appeals' decision confuses the established law regarding the elements of promissory estoppel and for this reason, its decision should be reversed to clarify that an intent to defraud is not an element of a promissory estoppel claim and Petitioners were not required to prove Respondent intended to defraud them to prevail on this cause of action.

2. The ambiguity of a promise must be determined based on the facts existing at the time the promise is made, not after the promise has been kept for 20 years.

It is important to note that the issue of ambiguity was not considered by the Court of Appeals initially, because it is undisputed that the reason Respondent decided to stop keeping its promise to its retirees had nothing to do with the ambiguity of the promise. There was never a contention by Respondent that the promise was ambiguous or that Respondent did not know how to keep its promise. Rather, the only reason Respondent stopped paying the full cost of retiree health insurance was because there was an accounting change (GASB 45) which required municipalities to begin treating future payment obligations as contingent liabilities. (App. pp. 791-794, 798-799, 848-851, 867, 881.) When GASB 45 became effective, the Respondent had to acknowledge the future costs of its promise to pay the cost of retiree health insurance and it was then that it decided to renege on its promise. The ambiguity of the promise was never an issue for either party.

The Court of Appeals erred when it determined that a promise kept for decades, which was unambiguous to both parties for decades, can nevertheless become ambiguous in hindsight. Respondent's promise, as stated previously by the Court of Appeals was simple: "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). Details such as which company would provide the insurance, or what the co-pays might be year to year, were not material to the promise and Respondent could not possibly have known such details in advance. Respondent kept its promise of free retiree health insurance for decades. Petitioners never complained about which entity was providing health care or that the co-pays changed over time. Petitioners expected to receive health insurance similar to what they had received while employed. (App. pp. 500-501). During the decades when Respondent provided free retiree health insurance, not a single Petitioner ever brought suit challenging the adequacy of the health insurance they received. Respondent never promised to contract with a certain provider or negotiate a specific co-pay and Petitioners never required Respondent to contract with a certain provider or maintain a specific co-pay. Respondent's attempt to create ambiguity where none existed is demonstrated by the fact that for over two (2) decades Respondent never claimed its promise was too ambiguous to keep or that it did not know how to keep its promise.

When both parties understand and act for many years in accordance with a promise, it is incongruous for a court after the fact to conclude the promise is ambiguous and can be broken without consequences. Although a promise involving the exchange of money or property may need to be precise as to details, the promise of free health insurance for retirees is overtly unambiguous because of its simple terms. A promise that is ambiguous is one that is hard to keep or incapable of being kept due to uncertainty as to what is required. Here, there was no

uncertainty; Petitioners were certain of the number of years they had to work to receive free health insurance when they retired, and Respondent knew it had to provide free health insurance to retirees who worked the requisite number of years, and it did so for many years.

Cases that have considered the issue of ambiguity in the context of promissory estoppel have focused on the original promise; the issue is always whether the promise is so ambiguous that that reliance on an uncertain promise is unreasonable. In a case considered the first to recognize the theory of promissory estoppel,[1] although not using that term, a promise to contribute to a charitable institution was upheld on the following basis:

> ...[M]utual promises are in legal sense simultaneous when the continuing promise of one is met by, and is the inducement for, the reciprocal promise of the other....Where, in the absence of a formal acceptance or promise or covenant on the part of the promisee to assume the performance of an enforceable obligation, the promisee or beneficiary on the faith of the subscription and before its withdrawal has expended money or incurred liabilities in furtherance of the enterprise or undertaking that the promisor intended to promote, the reciprocal promise or covenant on the part of the promisee required to supply the element of consideration will be implied, or the expense incurred or liabilities assumed will be regarded as in the nature of an executed consideration induced by the request impliedly contained in the subscription offer.

Furman University v. Waller, 124 S.C. 68, 117 S.E. 356, 362 (1923).

The importance of the Furman case is the recognition that liability for a promissory estoppel claim is assumed when a promise (in this case, Petitioners continuing to work for Respondent for a certain period of time) is induced by a reciprocal promise (free retiree health

[1] In 1981, this Court explained, "while this Court has never used the term 'promissory estoppel,' it has applied the doctrine in Furman University v. Waller, 124 S.C. 68, 117 S.E. 356 (1922)" Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co., 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981).

insurance). In this case, the Court of Appeals erred by examining how the promise would continue to be kept through the years instead of focusing on an analysis of the original promise. No court in South Carolina has ever held a promise performed for 20 years was ambiguous because the parties did not know exactly how the promise would be kept over time. Our courts have always focused on whether the underlying promise was too vague or ambiguous to enforce, not on how the promisor intended to keep the promise.

In Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006), a case cited by the Court of Appeals, the Court analyzed the initial promise between the parties and determined that 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. Additionally, in Rushing, the respondent never acted in accordance with the alleged promise. The facts in Rushing are very different from those in this case. In Rushing, the appellant testified that because the respondents did not reply to his proposal in any way, he believed there was 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 appellant in Rushing assumed that silence was acquiescence, whereas 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. Further, simply because a promise is general or simple in nature does not mean it cannot be kept. Respondent's promise was simple (retiree health insurance would be free) and Respondent kept it for decades; Respondent never complained that it was ambiguous or too vague to understand or follow.

The case of Satcher v. Satcher, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002) is factually similar to this case and also involves an analysis of the terms of an original promise, not an analysis of how a promise could be kept over time. In Satcher, there were two (2) 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. The Court of Appeals 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 first 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 of Appeals referenced Satcher in its Opinion, but focused only on the second promise in Satcher in support of its finding of ambiguity. The second promise involved the grandfather leaving additional property to the grandson. Regarding this promise, the Court held it was unclear whether the grandfather intended to leave only the farmland to his grandson, or all 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, Petitioners 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 capable of being fulfilled can be unambiguous and the basis for a promissory estoppel claim.

Furthermore, when the Court of Appeals overturned summary judgment in this case in 2013, it never expressed concern regarding any ambiguity of the City's promise to its retirees. The Court of Appeals stated the promise at issue succinctly, "[R]etiree health insurance would continue to be free throughout retirement." Bishop, 401 S.C. 651, 666–67, 738 S.E.2d 255, 263 (Ct. App. 2013). In 2013, the Court of Appeals found:

> 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). What was promised was clear and unambiguous; how Respondent would keep its promise through the decades is not relevant to the issue of whether the original promise was unambiguous.

The Court of Appeals further erred in analyzing the terms of this simple promise by comparing it to the terms necessary for an oral contract. When a promise has been kept for more than 20 years with no complaint by either the promisor or promisee, the Court of Appeals should have focused on equitable, not contract issues. Instead, the Court of Appeals justified its determination of ambiguity on the basis its finding was "consistent with this balancing of interests and the lack of a contract specifically defining the agreement, an inability '*to clearly articulate the terms* of [an] alleged oral contract.'" Cruz v. City of Columbia, 437 S.C. 204, 877 S.E.2d at 485 (quoting Rushing v. McKinney, 370 S.C. at 295, 633 S.E.2d at 935).

Yet, promissory estoppel is not a contract claim.

> The circumstances which may trigger the application of promissory estoppel in this case cannot be tortured into the requisite elements of a traditional contract. *A contract and promissory estoppel are two different creatures of the law*; they are not legally synonymous; the birth of one does not spawn the other.

Thomerson v. DeVito, 430 S.C. 246, 256, 844 S.E.2d 378, 383–84 (2020) (emphasis added) (citing Duke Power Co. v. S.C. Public Service Comm'n, 284 S.C. 81, 100–01, 326 S.E.2d 395, 406 (1985); see also Link v. School District of Pickens County, 302 S.C. 1, 7, 393 S.E.2d 176, 179 (1990) ("Promissory estoppel and contract are separate and distinct causes of action."). The Court of Appeals erred by failing to use promissory estoppel as a flexible doctrine to achieve equitable results which can provide a remedy where contract law cannot. Furthermore, the Court of Appeals' conclusion that there is "ambiguity inherent in such a general promise" cannot stand considering its earlier decision in Bishop and its holding in Satcher. Additionally, the holding is in error as there is not always ambiguity inherent in general promises, and the Court of Appeals neither defined the term "general promises" nor cited to any law to support this holding.

The Court of Appeals erred when used a contract analysis to decide the issue of ambiguity and focused its reasoning on how Respondent could continue to keep its promise, as opposed to whether the promise was ambiguous at the time it was made. The Court of Appeals' decision should be overturned to clarify the issue of ambiguity in the context of a promissory estoppel as Respondent's promise was not ambiguous.

3. The Court of Appeals exceeded its appellate review authority when it ignored the trial judge's findings of fact regarding reasonable reliance and failed to make its own findings of fact regarding this issue based on a preponderance of evidence.

The Bishop case was remanded for trial in 2013 because "Retirees provided a scintilla of evidence that they reasonably relied upon the representations and promises of the City's human resource employees...[who]were authorized to inform Retirees about their insurance benefits." 401 S.C. at 667, 738 S.E.2d at 263. Here, the Court of Appeals' analysis of the element of reasonable reliance was not based on a preponderance of evidence, but rather, appears to rest entirely on its holding that the promise at issue was ambiguous, which conflicts with its earlier decision in Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013).

The Court of Appeals presented no facts, much less a preponderance of evidence, to support its changed view of the element of reliance. In its opinion, the Court of Appeals stated "the ambiguity of the promise renders its reliability questionable." "In equitable actions like promissory estoppel, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." S.C. Department of Transportation v. Horry County, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011) (citing Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)). "The general rule is that questions concerning reliance and its reasonableness are factual questions for the jury." Unlimited Services, Inc., v. Macklen Enterprises, Inc., 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); see also, Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (question of whether buyers could reasonably rely on the statement at issue is for the trier of fact to determine). However, 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). An appellate court should still afford deference to the trial judge as he 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).

Here, rather than affording deference to the trial judge's authority to determine the witnesses' credibility, the Court of Appeals reasoned that if the original promise was ambiguous, Petitioner's reliance was unreasonable. This conclusion is wholly dependent on the original promise being ambiguous and ignores the fact that reliance is an issue for the trier of fact to determine by a preponderance of evidence. "[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)). The Court of Appeals did not find by a preponderance of evidence Petitioners' reliance on Respondent's promise was unjustified.

The trial judge was in the best position to determine the reasonableness of Petitioners' reliance after hearing their testimony. There was sufficient evidence for the trial judge to conclude Petitioners' 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 reasonableness of the act of reliance is not a quantitative measure that someone can fall short of. 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, a preponderance of evidence indicated Petitioners were justified in their reliance on Respondent's promise. Some Petitioners were instructed to recruit firefighters and retain employees by telling them about the promise (App. pp. 576-78, 605-06); the promise was repeatedly made to Petitioners over decades of employment (App. pp. 508-09, 520, 529, 533, 554, 585); Petitioners knew co-workers and relatives who had received the promised free health insurance (App. pp. 578, 619-20); and the Petitioners received free retiree health insurance when they retired, some for more than 20 years. (App. pp. 5235, 575-76, 619-20, 716-19.) The Court of Appeals erred by analyzing reasonableness in terms of something Petitioners fell short of instead of considering whether Petitioners' reliance was justified based on the representations made to them. The Court of Appeals issued conflicting opinions based on the same set of facts and overruled the trial judge's findings of fact without making an independent determination of reliance based on a preponderance of evidence, so for this additional reason, the Court of Appeals' decision should be overturned.

4. The Court of Appeals' decision contradicts its earlier decision in Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013).

The Court of Appeals' 2022 decision states in error, "The circuit court did not address any other elements of the promissory estoppel claim except damages." Cruz v. City of Columbia, 437 S.C. 204, 877 S.E.2d at 479, 484–85. In fact, the trial judge in this non-jury case found facts in his Order regarding the element of reliance: "Plaintiffs testified they relied upon verbal and written promises of post-employment group health insurance without charge and observed other retirees receiving benefits over a period of many years." (App. p. 40.) The trial judge also stated in his Order, "[S]ome Plaintiffs testified that they could have pursued or accepted other employment if informed that they may be charged for health insurance in the future" and "[o]ther

Plaintiffs testified that they may have postponed their retirement dates had they known that after July 1, 2009 retirees would be required to pay...for individual group health coverage." (App. p. 42.) The trial judge expressed "no doubt regarding the sincerity and honesty of their testimony." (App. p. 41.)

The Court of Appeals also held that "[n]one of the written materials presented as exhibits indicate that the no-cost benefit was guaranteed for life" and "the newsletters presented only informed plan participants when new insurance booklets were being issued and make no mention of the cost to participate much less indicating promises regarding *future* costs or participation." Cruz v. City of Columbia, 437 S.C. at 217, 877 S.E.2d at 485. The Court of Appeal's reliance on Petitioners' written documents and the lack of individual guarantees neglects the fact that at trial Petitioners based their case in large part on the verbal representations of Respondents' HR staff and Town Managers because in Bishop the Court of Appeals 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. (App. pp. 486, 490, 497, 522, 533, 545-46, 553, 590-91, 593, 603, 606-610, 619.)

At trial, in 2018, as the Court of Appeals had previously held Petitioners could not reasonably rely on written documents, Petitioners' case was based on the verbal representations of Respondents' employees. As the verbal promises and representations did not change at trial, the Court of Appeals erred in reversing the trial judge's finding of reliance based on the verbal representations and focusing its decision regarding the issue of reliance on written representations.

Additionally, in Bishop, the Court of Appeals 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. The Court of Appeals in Cruz then held, "Moreover, Appellants testified they understood any individual who proclaimed no-cost health insurance was guaranteed for life was not personally able to fulfill such an obligation." Cruz v. City of Columbia, 437 S.C. at 217–18, 877 S.E.2d at 486. The issue of individual City employees making guarantees was irrelevant and should not have been addressed in a manner contrary to the Court of Appeals' decision in Bishop. This case was brought against Respondent, a municipal corporation, not against any individual employees of Respondent.

The significance of the verbal representations and promises made by Petitioners' supervisors, HR officials, and Town Managers was that these were individuals authorized by Respondent to speak on Respondent's behalf. As the Court of Appeals previously 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 was a preponderance of evidence to support the Circuit Court's finding that Petitioners "relied on the representations made by the City through its agents and the City's official policy over the years." (App. p. 44.)

Finally, addressing the issue of legislative functions, Petitioners do not, and have never, contended Respondent does not have the legislative authority to make changes to its group health insurance program for its current employees. The Court of Appeals noted "several Appellants testified they understood City Council was responsible for the budget and that City Council held the authority to make changes as needed. Cruz, 437 S.C. at 217, 877 S.E.2d at 486. This statement

indicates the Court of Appeals misapprehended Petitioners' argument regarding individuals as Petitioners never alleged individual employees within the City of Columbia had authority to act on behalf of Respondent or bind Respondent. Rather, Petitioners have argued that Respondent's promise of free health insurance made by its authorized agents of Respondent to qualified retirees (former employees) over a long period of time, which promise was honored for decades, can be broken by Respondent's legislative body, but if the promise is broken, Respondent must pay the damages associated with breaking its promise.

CONCLUSION

Petitioners respectfully request this Court (1) reverse the Court of Appeals' decision; (2) find that Petitioners have established their promissory estoppel claims by a preponderance of the evidence; (3) award Petitioners make-whole relief; and (4) remand the case to the trial judge for the sole purpose of calculating damages and awarding attorney fees pursuant to S.C. Code §15-77-300.

Respectfully submitted,

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