

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. 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.

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ARGUMENT

I. The Court of Appeals did not correctly apply this Court's holdings in *Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co.*, 276 S.C. 663, 281 S.E.2d 469 (1981), and *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015), in affirming the circuit court's judgment in favor of the City of Columbia on Petitioners' promissory estoppel claim.

Fraud is not an element of promissory estoppel.

The Court of Appeals concentrated on the element of fraud in its Order, and that was error as fraud is not an element of promissory estoppel. Rather, fraud is relevant to promissory estoppel only when the refusal of a court to enforce estoppel “would be virtually to sanction the perpetration of fraud or would result in other injustice.” *Higgins Construction Co. v. Southern Bell Telephone & Telegraph Co.*, 276 S.C. 663, 665, 281 SE 2d 469, 470 (1981). Rather than considering the effect of not finding estoppel, the Court of Appeals focused on whether there was an intent on the part of the City to defraud Petitioners. *Cruz v. City of Columbia*, 437 S.C. 204, 218, 877 S.E.2d 479, 486 (Ct. App. 2022) (“This case does not reveal an intent on the part of the City to defraud [Petitioners]. It has not changed the premiums charged to retirees on a whim. ... Based on all of the forgoing, we conclude the decision of the circuit court in favor of the City is AFFIRMED.”). The issue is not why the City broke its promise or if it had a good or bad reason to do so. Fraud was never alleged by Petitioners as it is not an element of a promissory estoppel claim. The issue is simply whether a promise relied on was broken. The intent behind the breaking of a promise is not relevant in a promissory estoppel claim and the Court of Appeals erred in focusing on this issue.

II. The Court of Appeals incorrectly found that Petitioners failed to prove an “unambiguous promise” that group health insurance offered at retirement was guaranteed to continue for their lifetimes without charge.

Respondent’s promise of free health insurance for retirees was not ambiguous.

Respondent has failed to acknowledge several facts regarding the issue of ambiguity that cannot be denied. First, the reason the promise of free health insurance for life for retirees who met the requisite years of employment criteria was broken by Respondent had nothing to do with the issue of ambiguity. Respondent only broke its promise because an accounting change (GASB 45) required Respondent to acknowledge its contingent liabilities on its balance sheets and accurately reflect the full cost of retiree health care. Respondents knew exactly what it promised the retirees and how much it would cost to keep the promise at the time it decided to require its retirees to start paying part of its cost. (App. pp. 791-794, 798-799, 848-851, 867, 881.) In fact, it was not until Respondent had to treat the cost of retiree health insurance as a contingent liability, that it considered breaking its promise.

Second, the promise of retirees continuing to receive the same health care they received before they retired had never been a promise that was considered ambiguous by either party. Neither Respondent nor Petitioners ever alleged ambiguity of the promise of free health insurance for retirees was an issue.

28 Am. Jur. 2d *Estoppel and Waiver* § 52 (2011) requires a promise be enforced according to its terms. Here, all that is necessary for a court to enforce Respondent’s promise is for Respondent to again provide the same health insurance it provides to its employees to Petitioners for free. The promise at issue was a simple promise which was

communicated to Petitioners in an unambiguous manner as required by *Barnes v. Johnson*, 402 S.C. 458, 471, 742 S.E.2d 6, 12 (Ct. App. 2013). In short, if retirees remained employed with Respondent a certain number of years, their health insurance would continue after their retirement for free. The expectation of free health insurance during retirement is exactly the type of clear definite, specific, unambiguous promise required for promissory estoppel relief. *Barnes*, 402 S.C. at 471, 742 S.E.2d at 12.

Just as South Carolina recognizes a court engages in over-reaching when it blue-pencils a restrictive covenant agreed to by parties in an employment agreement, here, the Court of Appeals should not decide decades after a promise was made to Petitioners, and decades after that promise has been kept by Respondent, that the promise was ambiguous.

III. Respondent's Additional/Alternative Sustaining Grounds

1. Judge Sprouse erred in holding Petitioners failed to satisfy all criteria necessary to obtain relief on their promissory estoppel claim.

Respondent argues again that detrimental reliance is an element of promissory estoppel; it is not. The term “in reliance on” does not mean “reliance to your detriment.” The Court of Appeals has correctly differentiated between equitable estoppel (which does include detrimental reliance as an element) and promissory estoppel. *Cruz v. City of Columbia*, 437 S.C. at 212, 877 S.E.2d at 483 (“A successful equitable estoppel claim clearly requires a plaintiff to show a prejudicial change in position. By contrast, a promissory estoppel requires an injury in reliance on an unambiguous promise.”). Similarly, this Court held in *Thomerson v. DeVito*, 430 S.C. 246, 254, 844 S.E.2d 378, 383 (2020):

In contrast to promissory estoppel, equitable estoppel is used defensively only and is grounded on a party's misstatement of

existing fact; the essence of equitable estoppel is that the party invoking it was misled to his injury. *See Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017); *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992); 31 C.J.S. *Estoppel and Waiver* § 76 (2008). [Whereas] The representation in equitable estoppel “must relate to some present or past fact or state of things as distinguished from mere promises or statements as to the future,” as with claims for promissory estoppel. 28 Am. Jur. 2d *Estoppel and Waiver* § 49 (2011).

Thomerson v. DeVito, 430 S.C. 246, 254, 844 S.E.2d 378, 383 (2020)

Respondent focuses in error on the elements of equitable estoppel. Petitioners did not bring an equitable estoppel claim. Petitioners’ only cause of action is a promissory estoppel claim. “[T]he elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.” Bishop v. City of Charleston, 401 S.C. 651, 665, 738 S.E.2d 255, 262 (Ct. App. 2013) (citing Woods v. State, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App.1993)).

The Court of Appeals held in Bishop that the acts of a City official acting within the proper scope of his or her authority may give rise to estoppel against a municipality. (Id.) The decision in Bishop recognized the decisions of this Court holding estoppel can lie against a municipality.

The acts of a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality. Charleston Cnty. v. Nat'l Advert. Co., 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987); Landing Dev. Corp. v. City of Myrtle Beach, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985) (“Government agents, acting within the proper scope of their authority, can by their acts give rise to

estoppel against a municipality.”); Abbeville Arms v. City of Abbeville, 273 S.C. 491, 493–94, 257 S.E.2d 716, 718 (1979).

(Id.)

The law in this State is that municipal agents acting within the scope of their authority can give rise to an action for estoppel against the municipality based on their acts. The Court of Appeals correctly acknowledged this legal principal, and differentiated between equitable and promissory estoppel. The only cause of action Petitioners have brought is a promissory estoppel claim, and detrimental reliance is not an element of promissory estoppel.

2. Respondent’s three additional grounds do not justify affirming the Court of Appeals’ holding.

Addressing all of Respondent’s three (3) additional /alternative sustaining grounds, none of the arguments regarding the powers and functions of the legislative branch of municipal government are relevant in this promissory estoppel cause of action. Respondent’s legislative exercise to examine and fund budgetary components, including group health costs, is not being questioned by Petitioners. Respondent’s decision to require all participants in the group health plan to contribute financially was within its legislative authority but Respondent broke a promise to its retirees in doing so and such breach is compensable. Further, neither legislative immunity, separation of powers, or constitutional spending limitations bar the relief sought by Petitioners.

Petitioners have acknowledged Respondent’s City Council is responsible for Respondent’s budget and can change the budget year to year. Cruz, 437 S.C. at 217, 877 S.E.2d at 486. Petitioners also do not deny Respondent’s legislative branch sets policy, but a promise is not a policy. Whereas a policy sets forth the “general principles by which a

government is guided in the management of its public affairs” (Black’s Law Dictionary, 4th Ed. p. 1317 (1968)), a promise is a “declaration which binds the person who makes it, either in honor, conscience, or law, to do or forbear a certain specific act, and which gives to the person to whom made a right to expect or claim the performance of some particular thing.” (Id. at 1378.)

Petitioners agree if Respondent’s legislative branch decides it no longer wants to fund a promise, it can choose to stop funding that promise, but not without risking liability for breaking its promise. In short, this case has nothing to do with the legislative powers of a municipality; it is about a promise made, relied on, and broken. This Court has held repeatedly that estoppel can lie against a municipality. Charleston Cnty. v. Nat’l Advert. Co., 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987); Landing Dev. Corp. v. City of Myrtle Beach, 285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985); Abbeville Arms v. City of Abbeville, 273 S.C. 491, 493–94, 257 S.E.2d 716, 718 (1979). All of Respondent’s arguments regarding legislative powers, political questions, policy-making, or separation of powers are just attempts to challenge or negate existing law which holds estoppel can lie against a municipality.

Respondent’s authorized agents made a promise of free retiree health insurance in exchange for Petitioners agreeing to long-term employment. Petitioners relied on that promise by continuing to work for Respondent the required number of years and planning their retirement based on not having to pay for health insurance. Respondent kept its promise for decades. When Respondent’s legislative branch voted to stop funding the cost of health insurance for its eligible retirees, it was also breaking its promise to Petitioners. When Respondent chose to break its promise, its action resulted in damages to Petitioners

and Petitioners are entitled to damages for a broken promise the same as any other promisee.

CONCLUSION

For all of the above reasons, Appellants respectfully request this Court hold the Court of Appeals erred in holding the promise at issue was ambiguous and it was not reasonable for Petitioners to rely upon it, reverse these holdings, hold that Petitioners be compensated for the injuries they incurred in reliance on Respondent's promise, and remand this matter for an award of damages and attorney fees and costs in accordance with S.C. Code Ann. § 15-77-300.

Respectfully submitted,

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