

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Alvar R. Rissanen; Michael H. Baxley; Clifford W. Forner; and Willie L. Hood,)	Case No.: 2013-CP-10-3210
)	
Plaintiffs,)	
)	
vs.)	
)	
City of North Charleston,)	
)	
Defendant.)	

FILED
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RECEIVED ORDER
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 SC Court of Appeals

This matter came before me as a bench trial on October 18 and 19, 2017. There is one cause of action in Plaintiffs' Amended Complaint, promissory estoppel. Based on the pleadings, the witnesses' testimony, the exhibits, the trial briefs, and post trial memoranda submitted by counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The four (4) Plaintiffs are retired fire fighters who were all employed with Defendant City of North Charleston at the time of their retirement.
2. Plaintiff Rissanen worked for the City of North Charleston for 35 years. He retired on September 30, 2005. At the time of his retirement, he was the Fire Chief and he had held that position for 13 years.
3. Plaintiff Baxley worked for the City of North Charleston for 34 years. He retired on June 30, 2005. At the time of his retirement, he was the Personnel Chief and he had held that position for 7-8 years.
4. Plaintiff Hood worked for the City of North Charleston for 33 years. He retired in 2005. At the time of his retirement, he was an Assistant Fire Chief.

5. Plaintiff Forner worked for the City of North Charleston for 27½ years. He retired in June of 2009 shortly after receiving a letter from Mayor Summey indicating that employees who retired after July 1, 2009, would be treated differently than those who had retired before July 1, 2009. At the time of his retirement, Plaintiff Forner was a Battalion Chief. Plaintiff Forner had to purchase 2 ½ years of retirement to be able to retire in 2009, at a cost to him of \$20,000.

6. Three (3) of the Plaintiffs are currently paying between \$130.00 and \$140.00 every month to purchase a Medicare Supplement Policy (or about \$1,680.00 annually.) The Plaintiffs testified that the cost of a Medicare Supplement Policy increases each year. Plaintiff Forner testified he estimates that when he turns age 65, the cost to purchase a Medicare Supplement Policy will likely be greater than \$140 per month.

7. The City of North Charleston has a "strong mayor" form of government pursuant to S.C. Code Ann. §5-9-20. R. Keith Summey is the Mayor of North Charleston.

8. Pursuant to S.C. Code Ann. § 5-7-272, municipal ordinances that have been approved by City Council in two (2) readings have the force of law.

9. All municipal ordinances must be codified per S.C. Code Ann. § 5-7-290.

10. North Charleston first codified its municipal ordinances in 1986. (Ord. 1986-29.)

11. North Charleston Ordinance No. 1984-23 is included in the City's codification.

12. North Charleston Ordinance No. 1984-23 states, in pertinent part, "Be it ordained by the Mayor and City Council of the City of North Charleston . . . : Upon retirement from the City, employees who meet the requirements listed below have the option to retain health, life, and dental insurance under the City's group plan by paying the applicable rate budgeted for full time active employees . . . : Police/Fire: age 55 or 30 years

covered service, or early retirement age 50 or 25 years covered service.” The ordinance goes on to state that “Coverage will terminate upon failure of the retiree to make the required advance payment, upon termination of the City’s group plan, or when determined to be in the best interest of the City.”

13. North Charleston City Council has never repealed Ord. No. 1984-23.

14. The manner to amend City ordinances is stated in the North Charleston City Code (North Charleston City Code, Section 1-5) and North Charleston City Council has never amended Ord. No. 1984-23.

15. In May of 1998, while Plaintiffs were still employed and shortly after Mayor Keith Summey assumed the position of Mayor, Mayor Keith Summey wrote a memo to the Finance Committee of Council where he delineated his plan to provide retirees with free retiree health insurance

16. Whereas Ord. 1984-23 merely stated that after working a certain number of years, retirees could remain on the City’s health insurance plan paying the same amount fulltime employees paid, Mayor Summey’s Memo acknowledged the fact that Medicare would become available to retirees at age 65, and that when retirees turned 65 and went on Medicare, the City would pay the cost of a Medicare Supplement Policy for them so their health insurance would continue to be free.

17. In this 1998 Memo, Mayor Summey also acknowledged that if retirees had family plans their dependents would also be covered until they were Medicare eligible.

18. Specifically, in this 1998 Memo, Mayor Summey stated retirees would receive: 1) free single coverage health insurance when they retired if they had worked for the City for 30 years (or a smaller percentage paid if they retired with less than 30 years’ service); 2) a free Medicare supplemental health insurance policy when they became eligible for Medicare at age

65; and 3) the continuation of health care coverage for their spouse and/or dependents on a City health insurance policy until their spouse and/or dependents became Medicare eligible.

19. Defendant's Finance and Human Resources employees were authorized to provide information to employees regarding retiree health insurance and they confirmed and explained to employees the Mayor's promise when asked about it after 1998.

20. Defendant operates under a Mayor-Council form of government in which the Mayor is the Chief Administrator of the City.

21. As Chief Administrator, the Mayor is responsible for appointing all employees and directing and supervising the administration of all departments. (S.C. Code § 5-9-30.)

22. As Chief Administrator, the Mayor has the responsibility of appointing all employees and directing and supervising the administration of all departments, including establishing personnel policies. (North Charleston Code of Ordinances Sections 2-96, 2-176.)

23. The Mayor can draw on City funds with the Finance Director's approval. (*Id.* at Section 2-86)

24. City Council cannot repeal by ordinance obligations assumed by the City fixing the salaries of employees of the City. (*Id.* at Section 2-113.)

25. The City implemented the Mayor's 1998 interpretation of Ordinance 1984-23 from 1998 until 2009.

26. Plaintiffs testified they trusted HR Director Bob Cannella and Mayor Summey when they made promises about free health insurance for retirees because Bob Cannella and Mayor Summey had authority as Mayor and Finance Department Head to make those promises. Additionally, they testified (and the Mayor agreed) that the Mayor had made the promises repeatedly through the years at staff meetings and luncheons and at different fire stations to hundreds of employees. Plaintiffs testified they knew they could count on the Mayor because he

had never broken a promise to them and was a man of his word. It is undisputed that the Mayor confirmed the promises made in his 1998 Memo verbally on many occasions.

27. Defendant's Mayor used the promise of free retiree health insurance as a recruiting tool to keep firefighters, including Plaintiffs, employed by the City. Plaintiffs testified when firefighters would complain about low wages or consider leaving the City, Defendant's Mayor would point to the promise of free retiree health insurance and boast to the employees, "You've got a honey of a deal."

28. Plaintiff Rissanen, a former Fire Chief for Defendant, testified that the City's Fire Department personnel were paid less than other municipalities, that the promise of the City paying the cost of retiree health insurance was an inducement for fire personnel to remain employed by the City, and the promise of free retiree health insurance for life reduced turnover.

29. When three (3) of the Plaintiffs (Rissanen, Baxley and Hood) retired in 2005, they began obtaining what they were promised. Specifically, they remained on the City's health plan with the City paying the cost of their single coverage health insurance. None of these Plaintiffs were Medicare eligible at the time they retired.

30. In 2009, accounting practices changed for political entities, and cities and counties were required to begin accounting for their contingent liabilities in the same manner as private businesses. This meant that for the first time the City had to set aside funds that were sufficient to meet their future financial obligations to its retirees.

31. Mayor Summey sent Plaintiffs and other employees a letter in 2009 indicating the City would continue to pay all of or a percentage of the cost of retiree health insurance until age 65, but for employees retiring after June 30, 2009, all healthcare benefits would cease once an employee became eligible for Medicare.

32. In effect, the City was reneging on two (2) of the three (3) parts of its promise: it would continue to provide free health insurance to retirees until age 65 when they became eligible for Medicare; but it would no longer pay the cost of a Medicare supplement which meant retiree health care would no longer be free after the age of 65. Additionally, the City would no longer allow retirees' spouses to be covered by the City's self-insured health insurance program once a retiree turned 65. However, this promise was never conveyed directly to the retirees' dependents and the City never shared costs for eligible dependents of retirees to participate in the plan.

33. Between 2009 and 2011, the Mayor met with Plaintiffs Rissanen and Baxley and Plaintiffs Rissanen and Baxley were assured by the Mayor, City Council members, and HR personnel that they would be not treated differently as they had already retired so they were grandfathered in. Plaintiffs Rissanen and Baxley relayed this information to the other Plaintiffs and retirees.

34. The former HR Director, Bob Canella, repeatedly assured Plaintiff Rissanen he would be grandfathered.

35. City Councilmembers Rhonda Jerome and Bob King assured Plaintiff Baxley he would be grandfathered.

36. Nevertheless, at some time after 2011, Plaintiffs realized that these representations were probably not true and that the City intended to break its promise to them. In fact, the City stopped paying the cost of Plaintiffs' Medicare supplement when Plaintiffs Rissanen, Baxley and Hood reached age 65 and the City has refused to provide health insurance for Plaintiffs Rissanen's and Baxley's wives.

37. The Plaintiffs filed this lawsuit on May 31, 2013. The City contends that their claims are barred by the three year statute of limitations because it began to run in 2009 when

Plaintiffs received the letter from the City stating all healthcare benefits will cease once a retiree becomes Medicare eligible. Absent the City's continued promises that the Plaintiffs would be grandfathered into the former retirement system, the statute would in fact begin to run on the date of the City's letter. However, as stated more fully below, the City's actions bars them from asserting the statute of limitations as a defense.

38. Plaintiffs Rissanen's and Baxley's wives are currently on COBRA which will end shortly for Plaintiff Baxley's wife, and in a year or so for Plaintiff Rissanen's wife.

39. The City's Finance Director Warren Newton testified the City's annual budget is about \$120 million dollars. Of that amount, Mr. Newton testified about 6.5 million dollars is spent on health care for all of its 1100 employees, or about 6.5% of its budget. In 2009, there were only about 67 retired employees receiving free health insurance.

40. The cost to the City of paying for these four (4) Plaintiffs' Medicare Supplement Policies and/or their and their dependents' insurance until age 65 is an extremely small percentage of the City's budget.

CONCLUSIONS OF LAW

1. "[A]n 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." *Higgins Constr. Co. v. S. Bell. Tel. & Tel. Co.*, 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981).

2. "The 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 Columbia*, 401 S.C. 651, 664 (Ct. App. 2013) citing *Woods v. State*, 314 S.C. 501, 505 (Ct. App. 1993).

3. Promissory estoppel is used where the refusal to apply it would sanction the perpetration of a fraud or would result in other injustice. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (quoting *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). South Carolina courts recognize a remedy in equity in a promissory estoppel claim. *Satcher v. Satcher*, 351 S.C. 477, 483-484, 570 S.E.2d 535, 538 (Ct. App. 2002); *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). The principle that equity “regards as done that which ought to be done” applies in cases where the party seeking equitable relief establishes “a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.” *Regions Bank v. Wingard Proprs., Inc.*, 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011) (citing *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, “courts look to the substance and intent of the parties, and give a construction consistent with such intent.” *Regions Bank*, 394 S.C. at 253-254, 715 S.E.2d at 354-355 (quoting *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480 (1842)): Once a party establishes an equitable right, the court may dispense with formalities that would defeat the equity. *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. Where a substantive right

exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004).

4. The promise of free retiree health insurance was not ambiguous. The fact that the City complied with its promise for several years is direct evidence that the promise was unambiguous and capable of being fulfilled. In fact, Defendant City is still complying with part of its promise, paying the cost of single coverage retiree health insurance until the retirees reach age 65. Defendant cannot contend that the promise is so ambiguous that it cannot be fulfilled when it continues to keep part of the promise and was very clear on what part of the promise it was not going to keep per the Mayor's 2009 letter. In fact, Mayor Summey acknowledged that a promise had been made and he testified would have continued doing what had promised if he could have financially, which indicates the promise was clear enough that all parties understood its terms and clear enough that it could easily be fulfilled if the City so chose.

5. Upon consideration of the totality of the circumstances, this Court concludes that the Plaintiffs' reliance on the promise of free retiree health insurance for life was reasonable despite the discretionary language contained with Ord. No. 1984-23 stating "[c]overage will terminate . . . when determined to be in the best interest of the City." *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337-38 (Ct. App. 2000) ("A determination of justifiable reliance involves the evaluation of the totality of the circumstances, including the positions and relations of the parties."). A party's reliance on a representation is not unreasonable, unexpected, or unforeseeable as a matter of law when testimony indicates that the representations were "not uncommon" within the setting in which they were made. *See Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). Here, there was ample evidence that the Plaintiffs' reliance was reasonable because of the circumstances surrounding the promise, the

context in which the promise was made and repeated, and the position of the parties making the promise.

6. The final element of promissory estoppel requires demonstrating that the reasonably relying promisee sustains injury due to a disposition inconsistent with alleged promise. *Craft v. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In *Craft*, promissory estoppel was found not to exist as the plaintiff's unemployed status was due to an external factor. Similarly, *Barnes v. Johnson*, 402 S.C. 458, 475, 742 S.E.2d 6, 15 (Ct. App. 2013), is distinguished from the facts in this case as in *Barnes* case, an external factor (a fire) destroyed the property at issue. These cases are distinguishable from the case at hand because, here, each of the Plaintiffs has suffered injuries resulting directly from Defendant's actions. Specifically, Plaintiffs have paid more and are paying more for health insurance than they would have because Defendant did not keep its promise.

7. In reliance on Defendant's promises, Plaintiffs accepted lower wages, turned down job offers or did not seek other employment, retired earlier than they would have, and did not fully pursue jobs with higher earning potential.

8. Defendant contends that a promise for future benefits is an unenforceable violation of public policy. This Court disagrees. The future benefits the Plaintiffs were continuously promised was the basis for their reasonable reliance. To say that a promise for future benefits is a violation of public policy would effectively void the doctrine of promissory estoppel.

9. The facts in this case are similar to the facts in a case involving retired firefighters in Columbia, S.C. where the Court of Appeals reversed summary judgment finding there was a scintilla of evidence to support a claim for promissory estoppel and remanded the case for trial. (*Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)).

10. In *Bishop*, a similar argument was made by Defendant City of Columbia as by Defendant in this case. Specifically, the City of Columbia, citing the case of *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996), argued that the decision to provide free retiree health insurance based on the number of years worked is a legislative, not a business decision and that one legislative body cannot bind a future legislative body. However, that particular argument is not relevant here as the Court of Appeals only considered this argument as it related to a governmental entity's *contractual* obligations and Plaintiffs have not brought a contract claim in this case as the plaintiffs did in *Bishop*; here, Plaintiffs have only alleged a promissory estoppel claim.

11. In *Bishop*, the Court of Appeals did not decide this particular issue as it dismissed the contract cause of action on other grounds.

The City also argues, and Retirees dispute, that summary judgment on the contract claims was appropriate because: (1) Retirees were "at-will" employees; (2) contracts for continuing free health insurance would violate public policy; and (3) Retirees could not have a permanent right to free lifetime health insurance under *Alston v. City of Camden*, 322 S.C. 39, 471 S.E.2d 174 (1996). Because we affirm the grant of summary judgment against the contract claims on other grounds, we need not address these arguments.

Bishop supra, 401 S.C. 651, 663, 738 S.E.2d 255, 261.

12. Additionally, Defendant City operates under a Mayor-Council (strong Mayor) form of government in which the Mayor is the Chief Administrator of the City. Our Supreme Court held in *Townes Associates, Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976) that a city's chief administrator has the authority to enter into contracts on behalf of the city to further its policies. Here, the policy of the City to provide free retiree health insurance is reflected in Ord. 1984-23. Therefore, the Mayor did not act outside the scope of his employment by making representations to City employees regarding payment of the cost of retiree health insurance by

the City as that is the type of representation for which he is responsible for as Chief Administrator.

13. The promise in this case involved payment of money, or additional wages, and a promise of wages in the future can be part of an employee's salary. The South Carolina Payment of Wages Act defines wages as "*all amounts at which labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee *under any employer policy* or employment contract." *S.C. Code § 41-10-10* (emphasis added). The future wages promised to Plaintiffs are compensation for work which had already been performed by them. Plaintiffs worked for the City for the requisite number of years to obtain insurance that would cost them nothing (or almost nothing in Plaintiff Forner's case) and, thus, the promise had significant value which is an easily ascertainable monetary amount. Further, in *Bishop*, the Court of Appeals referred to the promise of retiree health insurance as a promise for "free" insurance, indicating its agreement that the promise involved the money value of the insurance and not just a future benefit.

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 v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013) (emphasis added).

The Court of Appeals considered and ruled that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now—that its claim for benefits rather than a claim for money. By allowing the *Bishop* case to go forward, the Court of

Appeals rejected Defendant's argument that the promise was unenforceable because it was a promise for future benefits.

14. The City's mere failure to enforce an ordinance by failing to fund it does not amend or repeal the ordinance. The enforcement of an ordinance is discretionary. North Charleston's failure to enforce Ord. No. 1984-23 by not funding it does not amend or repeal that Ordinance. In this case, the 1984 Ordinance is evidence of Defendant's policy of paying the cost of retiree health insurance which was reflected in the Mayor's actions and promises in 1998 and subsequently through the years.

15. Defendant argues the Tort Claims Act (S.C. Code § 15-78-60 (4)) absolves Defendant of liability. However, Plaintiffs' only cause of action is a promissory estoppel claim which is a quasi-contract claim, so the Tort Claims Act is not relevant to this case. *See, North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

16. Plaintiffs' claims are not barred by the statute of limitations. Plaintiffs had many discussions with Defendant's Mayor and HR personnel after receiving the Mayor's letter in May of 2009. For at least two years after May of 2009, Defendant continued to represent that Plaintiffs would be "grandfathered." The Mayor's May 2009 letter stated that proposed changes would go into effect in June 2010 inferring that employees retiring before June 1, 2009 would be treated differently than employees retiring after June 1, 2009. A memorandum authored by Mayor Summey confirmed that grandfathering was being discussed. Plaintiffs were not on notice that Defendant had decided not to grandfather them until after 2011. In fact, Plaintiffs testified they believed the Mayor was an outstanding mayor who could make things happen, and was a man of his word. As late as 2011, Mayor Summey told Plaintiffs he wanted to keep the promise and would try to find a way to do so and was directing City employees to find a way to help Plaintiffs.

17. “[A] defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant’s conduct.” *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007) (quoting *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997)). Here, the Mayor and the City’s HR and administrative personnel continued over the course of many months after the Mayor’s 2009 letter to assure Plaintiffs verbally and in writing that they would be grandfathered; the City even arranged for Plaintiffs to meet with an insurance company. The City’s conduct was intended to, and did, induce the Plaintiffs to hold off filing a lawsuit as they believed that the promises made to them would be kept.

18. Plaintiffs are entitled to an equitable remedy. In *Dockins v. Ingles Mkts.*, 306 S.C. 496, 497, 413 S.E.2d 18, 18-19 (1992), the Court held equitable relief included employment, reinstatement, and promotion; the idea being to put the employee back in the position he would have been. “[A] plaintiff could seek restitution in equity, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession . . . for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession.” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213-214 (2002). Contrary to Defendant’s argument, reliance damages can be money damages.

19. Back pay is an equitable remedy because it is a form of restitution. *Curtis v. Loether*, 415 US 189, 197 (1974). Here, restitution takes the form of money owed to Plaintiffs Rissanen, Baxley and Hood not as back pay, but as reimbursement to them for their purchase of Supplemental Medicare policies which the City should have purchased on

their behalf. The amount of restitution is easily ascertainable year to year. The three (3) Plaintiffs (Rissanen, Baxley, and Hood) who have already had to pay the cost of Medicare Supplement policies out of their pocket should be repaid these amounts.

20. An equitable remedy can also include the damages caused when a plaintiff sustains injury by quitting his job in reliance on a promise. *Craft v. S.C. Comm'n for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In Plaintiff Forner's case, he resigned before working for 30 years because he received a letter from the Mayor in 2009 indicating employees who retired before June of 2009 would be treated differently than those who retired after that date. By retiring early to obtain the benefit of what was promised to him, he failed to qualify for free insurance until age 65 as he only worked 28 years so he has been paying 16.5% and will continue to pay 16.5% of the cost of his insurance until age 65.

21. Due the Court's inability to force the City to change its budget to account for the cost of the Plaintiff's Medicare supplement policies, a lump sum shall be awarded to the Plaintiffs in the form of a judgment against the City.

22. Plaintiffs are entitled to attorney fees as they prevailed against a state entity. S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

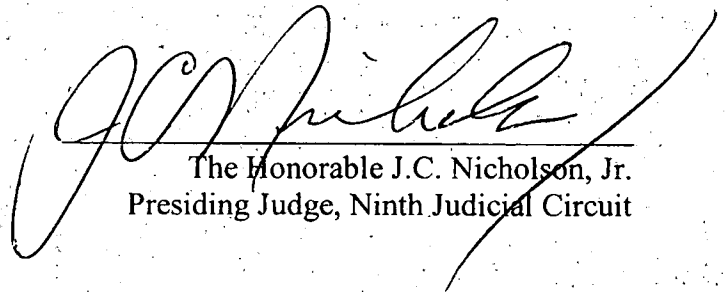
Id. (emphasis added).

Defendant is a political subdivision of that State. Plaintiffs are the prevailing party, the City acted without substantial justification when it broke its promise. The cost to the City to keep its promise to these four (4) Plaintiffs was very minimal. There also appears to be no special circumstances presented by the City that would make an award of attorney fees unjust.

For all of the above reasons, I Order as follows:

1. Plaintiffs Rissanen, Forner, Baxley, and Hood shall be reimbursed the cost for any and all Medicare Supplement Policies they have purchased and will continue to purchase;
2. After considering the expert testimony, I conclude the Plaintiffs are entitled to \$214,236.15 as a judgment against the City. This includes actual damages, attorney's fees, and costs. The breakdown is shown on Exhibit A of this Order and attached and made part hereof;
3. The City of North Charleston is not responsible for purchasing or reimbursing the Plaintiffs for their dependent's policies.
4. Plaintiff Forner is not entitled to the \$20,000 he paid to qualify for retirement.
5. After consideration of the factors used for evaluating reasonable attorney's fees, this Court finds Plaintiffs' attorney fees and costs in the amount of \$51,100.00 reasonable and must be paid by the City pursuant to S.C. Code 15-77-300.
6. Plaintiffs are not entitled to compensation for their spouses concerning insurance matters.

AND IT IS SO ORDERED.



The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

November 9, 2018
Charleston, South Carolina

EXHIBIT A

Plaintiffs' Allocation¹:

Alvar R. Rissanen - \$43,556.00

Michael H. Baxley - \$42,740.00

Willie L. Hood - \$38,633.00

Clifford W. Former - \$31,255.00

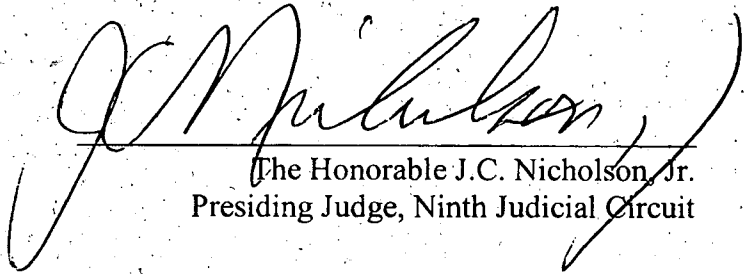
Total Plaintiff Amount - \$156,183.00

Attorney's fees based upon the Amended Affidavit is as follows²:

Attorney's Fees - \$55,335.00

Costs - \$2,713.15

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CLERK OF COURT


The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

November 9, 2018
Charleston, South Carolina

¹ The breakdown shown for each respectful Plaintiff is shown in Plaintiff's Exhibit 11. Plaintiff's Exhibit 11 is a part of this Order by reference.

² The Amended Affidavit in Support of Attorney's Fees is filed with the Charleston County Clerk of Court. The Affidavit is a part of this Order by reference.