EXHIBIT A

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FIFTH JUDICIAL DISTRICT**
COUNTY OF RICHLAND)	
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,)	**Civil Action File No.: 2009-CP-40-05680**
Plaintiffs,)	
v.)	
City of Columbia,)	
Defendant.)	
Larry Strickland, Denious L. Dimery and Bailey G. McClinton,)	**Civil Action File No.: 2013-CP-40-05097**
Plaintiffs,)	
vs.)	
City of Columbia,)	
Defendant.)	

ORDER

The above consolidated cases were tried before me on December 19 and 20, 2018. For the following reasons, I find that the Plaintiffs have failed to prove all necessary elements of the sole cause of action presented at trial. Accordingly, I find in favor of the Defendant.

STATEMENT OF THE CASE

Plaintiffs were formerly employed by the City of Columbia ("City"). At the time of their various retirements, City policy provided individual health coverage without charge for employees and retirees. A premium was charged for spouse and dependent coverage.

Due to increasing costs and the obligation to prefund benefits, in 2009 City Council

announced that it was considering a change in policy that would require all participants in its group health plans to pay a premium. Committees were formed and public meetings were called to address this change. As a result of this process, Council voted to charge a premium for all active and retired members under 65 who chose to continue participating in the City's group health insurance plan effective July 1, 2009. The cost to individual participants was set at $33.18 per month, with the City contributing $800.00 per month for each member.

On August 10, 2009, a group of retirees under 65 years of age filed suit asserting that the premium charge breached contractual rights, violated the Unfair Trade Practices Act, and should be equitably barred on ground of promissory estoppel. At the conclusion of discovery, Judge Barber granted summary judgment on all claims.

On January 23, 2013, the Court of Appeals affirmed summary judgment on all claims except promissory estoppel. That cause of action was remanded for nonjury trial. Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)[1]

Also in January 2013, the City extended the premium requirement to its Medicare supplemental coverage for post-65 retirees. On August 27, 2013, Plaintiffs Strickland, Dimery and McClinton filed a class action suit on behalf of all post-65 retirees, alleging that the City was estopped from charging this premium. By order dated August 2, 2016, the late Tanya A. Gee denied class certification. On April 19, 2017, former Chief Justice Jean H. Toal denied Plaintiffs' motion to reconsider.

The two cases were consolidated for nonjury trial on August 18, 2018. The only claim remaining in each case was Plaintiffs' assertion that the City is estopped from imposing any charge for their continuing participation in group health coverage and must provide reimbursement for

[1] Of the original Bishop plaintiffs, Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith preserved their claims on appeal.

any insurance premiums paid. As addressed below, Plaintiffs failed to prove by a preponderance of the evidence that they sustained damages in reliance upon representations regarding continuing individual health coverage without cost. The absence of this necessary element bars relief under Plaintiffs' estoppel claim and compels me to rule in favor of the City.

FINDINGS OF FACT

1. Each Plaintiff participates in the City's group health insurance program. Plaintiffs testified that during the course of their employment, fellow employees, including city managers, supervisors and human resources staff informed them that they would receive group health coverage without cost during retirement. Plaintiffs introduced newsletters directing employees to the Office of Human Resources for benefits questions and offered group health booklets containing references to "escalating health care costs" and "the possibility of contribution increases."

2. Plaintiffs signed applications for group health insurance during employment and as retirees confining their participation to the same terms and benefits as other participants. Plaintiffs were informed in writing by the City's benefits administrator that "current policy" provided retirees health insurance without charge. Plaintiffs conceded that the term "current" means "now" or "at the present."

3. Plaintiffs acknowledged that health care benefits are determined by City Council on an annual basis as part of the City-wide budget. Plaintiffs further conceded that no supervisor, department head or City manager has the authority to spend funds which are not budgeted.

4. Handbooks issued during Plaintiffs' employment stated that the City reserved the right "to revise, supplement or rescind any policies . . . in its sole and absolute discretion," and "alter its rules, policies and procedures from time to time."

5. Plaintiffs testified that they relied upon verbal and written promises of post-employment group health insurance without charge and observed other retirees receiving these benefits over a period of many years. Plaintiffs further testified that they may have explored other employment opportunities or postponed their retirements had they been made aware that charges could be imposed for retiree health insurance.

6. The City offered the testimony of former City Manager, Steve Gantt, Human Resources Director, Pamela Benjamin and Budget and Program Management Director, Missy Caughman. These witnesses confirmed that City Council reserves to itself the authority to determine benefits provided to employees and retirees.

7. Mr. Gantt held several administrative positions before serving as City Manager. He testified that neither he nor his fellow administrators had authority to bind Council. This testimony is consistent with the City's ordinances and state law.

8. Ms. Benjamin has served as a human resources professional in state and municipal governments for more than twenty years. She testified that in her prior positions and as Director of the City's Human Resources Office, human resources staff routinely administers employee and retiree benefits. Ms. Benjamin further testified that the authority to administer does not extend to policymaking or offering any "promise" that benefits will be provided beyond the time frame affected by the City's budget or Council vote.

9. Ms. Caughman testified that she had been involved in budgeting for employee and retiree benefits since her first employment with the City in 1998. Ms. Caughman further testified that Council alone votes on employee and retiree benefits, including any charges that might be imposed. Records of City Council meetings admitted without objection confirm that the City's

Council received information from staff and outside consultants before voting on imposing charges for employee and retiree health benefits, including the actions challenged by Plaintiffs.

CONCLUSIONS OF LAW

To establish a claim of promissory estoppel, Plaintiffs must show: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). I am mindful of Plaintiffs' expressions of frustration and betrayal arising from the imposition of charges for individual health insurance following retirement. Moreover, I have no doubt regarding the sincerity and honesty of their testimony. As addressed below, however, I am compelled to conclude that Plaintiffs failed to establish compensable injuries incurred in reliance upon representations regarding the availability of individual health insurance without charge throughout their retirements.

The order of remand in Bishop specifically affirms dismissal of Plaintiffs' contract claim seeking enforcement of continuing health insurance without charge. The order further states that relief under promissory estoppel requires proof of "injury in reliance on the promise." Bishop v. City of Columbia, 401 S.C. at 664, 738 S.E.2d at 261 (Ct. App. 2013), *citing* Woods v. State, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). In dismissing the class claims in Strickland, both Judge Gee and former Chief Justice Toal rejected Plaintiffs' attempts to avoid proving reliance damages by arguing that each was entitled to the same "expectation relief" in the form of reimbursement for premiums paid and compensation for future premium costs. Specifically, Judge Gee ruled that each Plaintiff must "demonstrate how he was prejudiced or how his position was made worse in reliance on a promise by the City" in order to prevail. Similarly, Chief Justice Toal

observed that "the controlling law of this state [requires] individualized examinations necessary to address the detrimental reliance (injury) element of Plaintiffs' estoppel claims. . . ."

To prove the detrimental reliance element necessary to obtain relief on promissory estoppel, a plaintiff must demonstrate that he would have been better off if he had not relied upon a promise and provide a measure of relief not dependent upon speculation. Plaintiffs failed on both counts. Although some Plaintiffs testified that they could have pursued or accepted other employment if informed that they may be charged for health insurance in the future, no Plaintiff identified an available employment opportunity that offered better pay, benefits or future guarantees. Other Plaintiffs testified that they may have postponed their retirement dates had they known that after July 1, 2009 retirees would be required to pay $33.18 per month for individual group health coverage. These Plaintiffs likewise offered no measure of loss beyond premiums charged for their insurance and conceded that they experienced substantial increases in pay during employment, obtained significant promotions, enjoyed personal gratification and continue to receive valuable pension benefits as a result of their employment with the City.

Plaintiffs did not meet their burden of proving by a preponderance of the evidence that any opportunities lost due to reliance upon an expected post-employment benefit would have exceeded or equaled the compensation, benefits, continuing retirement pension and access to group health insurance made available through their employment with the City. This failure to prove a determinable reliance injury bars estoppel relief. See generally, Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009); Barnes v. Johnson, 402 S.C. 458, 474-476, 742 S.E.2d 6, 14-15 (Ct. App. 2013) (reversing a promissory estoppel judgment despite the plaintiff's sympathetic situation based upon failure to prove an unambiguous promise and "injury sustained in reliance upon such a promise.")

The burden of proving reliance damages addressed in Craft applies here as it applied in Barnes. In Craft, the Court of Appeals found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that a compensable injury resulted from his reliance. Specifically, Craft could not show that he lost a better business opportunity.

Like Craft, Plaintiffs assert that they relied upon representations regarding a future event. In this case, Plaintiffs seek no cost health insurance throughout retirement. Like Craft, however, no Plaintiff offered evidence that he lost a better opportunity, such as higher pay and guaranteed benefits, or suffered any determinable loss beyond expectation that his health insurance would continue to be paid in full by the City. As in Craft and Barnes, this failure prohibits relief on promissory estoppel grounds.

Plaintiffs presented a 1987 Hofstra Law Review article entitled "Promissory Estoppel Damages" to support their request for expectation damages. I have examined this publication and have carefully considered the evidence presented, as well as the arguments advanced by Plaintiffs' capable counsel. As Craft confirms, however, promissory estoppel is not available to enforce even an authorized promise absent evidence of reliance injuries. The opportunity to obtain enforcement relief ended with the summary judgment dismissal of Plaintiffs' contract cause of action and affirmance of that dismissal by the Court of Appeals in Bishop. Instead, as Judge Gee and Chief Justice Toal ruled in Strickland, promissory estoppel relief requires a detrimental change of position separate from the value of the promise itself. Expectation of future benefits does not provide a basis for relief regardless of the "reasonableness" of the expectation or the authority supporting the promise. No Plaintiff offered the necessary proof of a more favorable employment

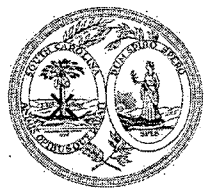
opportunity or other compensable loss due to an expectation of continuing post-employment benefits. Therefore, as in Craft and Barnes, Plaintiffs' claims fail.

CONCLUSION AND ORDER

To prevail in this consolidated proceeding, Plaintiffs had the burden of proving by a preponderance of the evidence all necessary elements of their promissory estoppel cause of action. Having considered the testimony and evidence presented at trial, I find that the Plaintiffs relied on the representations made by the City through its agents and the City's official policy over the years, even though the City had the right to change its policies regarding employees. As stated above, I am sympathetic to the Plaintiffs' situation. However, the Plaintiffs have failed to prove by a preponderance of the evidence that they incurred damages as a result of their reliance. There was much testimony about possible other employment opportunities or possible dates of retirement from the various Plaintiffs. There was no testimony with specifics regarding post-retirement health insurance costs had the Plaintiffs not continued in their employment with the City through retirement, making the Plaintiffs' claims for damages speculative. Each Plaintiff's specific costs of their post-retirement health insurance once the policy changes went into effect go toward the now dismissed breach of contract cause of action, not promissory estoppel. A requirement that post-retirement health insurance be provided free of charge, or specific performance, also goes directly to a breach of contract cause of action, not promissory estoppel. Accordingly, judgment is hereby rendered for the Defendant City of Columbia.

IT IS SO ORDERED.

R. Scott Sprouse
Circuit Court Judge



Richland Common Pleas

Case Caption: Larry Strickland , plaintiff, et al vs City Of Columbia

Case Number: 2013CP4005097

Type: Order/Civil Judgment

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit