THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Circuit Court Judge R. Scott Sprouse

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

Appellate Case No. 2019-000374

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

v.

City of Columbia, Respondent.

and

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

v.

City of Columbia, Respondent.

REPLY BRIEF OF APPELLANTS

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1. Respondent cites no legal precedent in support of its contention that detrimental reliance is an element of a promissory estoppel claim.

The gist of Respondent's argument is that the fourth element of a promissory estoppel claim, "injury in reliance on the promise," requires an injury other than the promise. (Reply, p. 6.) Respondent cites the case of Barnes v. Johnson, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013) in support of this argument, but that case held that a plaintiff "must show, but for the promisor's inconsistent disposition, the complained-of injury would not have otherwise resulted." 402 S.C. at 474, 742 S.E. 2d at 14. The word "detrimental" is not used in Barnes. Respondent cites no case law to support its argument that detrimental reliance is an element of promissory estoppel. In fact, this Court has already acknowledged that although a prejudicial change in position is an element of an equitable estoppel claim, it is not an element of a promissory estoppel claim. See, Bishop v. City of Columbia, 401 S.C. 651, 663, 738 S.E. 2d 255, 261 (Ct. App. 2013) citing S.C. Dep't of Transp. v. Horry Cnty., 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011).

Respondent asserts that two (2) ancillary Orders in this case relating to an unsuccessful motion to certify a class establish as a matter of law that detrimental reliance is an element of promissory estoppel, but then acknowledges that Judge Gee did not use the term detrimental in her Order Denying Class Certification. (Order of Judge Gee dated August 2, 2016.) Only Judge Toal ever used this term, but with all due respect, she used it in error when she denied Plaintiffs' Motion for Reconsideration. (Order of Judge Toal dated April 19, 2017.) There are multiple Supreme Court and Court of Appeals decisions that set forth the elements of promissory estoppel and none of them use the term

"detriment." These cases are more binding on this Court than a Circuit Court Order regarding class certification. See. e.g., N. Am. Rescue Prod., Inc. v. Richardson, 411 S.C. 371, 379–80, 769 S.E.2d 237, 241 (2015); Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005); Bishop v. City of Columbia, 401 S.C. 651, 664, 738 S.E. 2d 255, 261 (Ct. App. 2013); Woods v. State, 314 S.C. 501, 505, 431 S.E. 2d 260, 263 (Ct. App. 1993); Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 306, 322 S.E.2d 30, 33 (Ct. App 1984). Respondent's attempt to introduce a new element into a promissory estoppel cause of action is contrary to legal precedent and as already set forth in Appellant's initial brief, the Record reflects Appellants have sustained injury in reliance on Respondent's promise.

ADDITIONAL SUSTAINING GROUNDS

1. The promise of free health insurance was not a promise of benefits, but one of wages, made by the City Manager as the City's chief administrator and approved and funded by City Council for decades.

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. Ann. Code § 41-10-10 (emphasis added). The payment of the future costs of health care premiums represents compensation for work that had already been performed by Respondents, and wages already earned by them. (Dec. 19-20, 2018 Trial Trans., pp. 84, 121-122, 134-135, 245, 290, 305-307, 319, 347.) Respondents worked for the City for the requisite number of

years to obtain insurance that would cost them nothing and, thus, the promise has significant value which is an easily ascertainable monetary amount.

In Bishop, supra, this Court referred to the promise of retiree health insurance as a promise for "free" insurance, indicating its agreement that the promise involved the monetary value of the insurance, not merely 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. at 667, 738 S.E.2d at 263. (emphasis added).

This Court has already held that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now and the Circuit Court did not err in holding the promise was capable of being fulfilled as deferring wages for work already accomplished is a recognized form of compensation under S.C. Code Ann. § 41-10-10.

This Court has already held, based on a long line of cases, that "[t]he acts of a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality." Bishop v. City of Columbia, 401 S.C. at 665, 738 S.E.2d at 262. Respondent's argument that the City Manager as chief executive officer was precluded from making promises to employees he hired and fired about wages because such a promise was a legislative power fails as this Court has already held that unless the

promise contradicts a statute or ordinance or a City Manager act outside his authority, estoppel can be found. 401 S.C. at 666, 738 S.E. 2d at 263. As Respondent's City Council funded the promise for decades in its annual budgets, it clearly believed the City Manager was authorized to make a promise of free health insurance for retirees.

2. There was never any delegation of the City Council's legislative functions as the Council exercised its legislative power by funding Respondent's promise for decades.

Respondent asserts in error that there was an illegal delegation of legislative powers by Respondent's City Council to the administrative branch of government, the City Manager. For decades Respondent's City Council funded the City Manager's promise. Appellant Martin testified his father received free retiree health insurance until he died, as did many other former Respondent fire fighters. (Dec. 19-20, 2018 Trial Trans., pp. 150, 325-326.)

It is undisputed that any employer, including Respondent, can increase the cost of health insurance for its current employees or change the terms of their insurance health coverage during employment. But a retiree is not a current employee. Appellants, as retirees, had fulfilled their part of the bargain; they had worked the requisite years and were owed what had been promised to them. When Respondent's City Council exercised their legislative prerogative to stop funding the promise that the retirees had already fulfilled in its annual budget, which Respondent City Council had every legal right to do, it broke a promise and Appellants are entitled to damages resulting from Respondent's decision to break its promise. Had Respondent entered into a construction contract and then decided to breach that contract, it would necessarily be responsible for the consequential damages caused to its actions; this case is no different.

3. Appellants do not dispute that City Council could refuse to fully fund the Mayor's promise but when it did so it breached the promise and is responsible for the damages resulting from that breach.

Again, whether Respondent decides to stop providing health insurance to its current employees or significantly increases the costs of health insurance to current employees, it must nevertheless continue to pay the cost of single coverage health insurance for its retirees who worked the requisite number of years to receive the promise or pay the damages associated with its failure to do so.

Respondent could have funded the cost of keeping its promise to its retirees in a number of ways; it could have raised taxes, decreased the amount of insurance premiums it paid on behalf of current employees, or delayed construction projects. Instead, Respondent chose to break its promise to Respondents to save money. This is not a case about legislative policy decisions except to the extent that when Respondent's City Council makes a policy decision to break a promise to former employees, it is responsible for the consequences of its actions.

4. The promise of free health insurance for life was unambiguous.

Appellant contends its promise was ambiguous because it did not specify details. The fact that deductibles or prescription amounts could change over the years is not enough to make the admitted promise of free retiree health insurance so ambiguous that it cannot be kept. These are details associated with the promise that could not be easily known in advance but that does not alter the underlying terms of the promise. The Court did not err in finding that a promise that was kept by Respondent for decades was not an ambiguous promise.

Respondent's citation to the case of Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005) is not on point as that case concerned a promise made to current teachers regarding receiving incentive pay that they were told was subject to Board Approval. Retirees are not current employees and they were never told the promise was subject to being changed. (Dec. 19-20, 2018 Trial Trans., pp. 86-87; 101-102; 242-243; 245-246; 259; 262; 283; 317; 329-330; 348.)

5. **The concepts of legislative immunity, separation of powers and constitutional spending limits are irrelevant and do not bar the relief sought by Appellants.**

Appellants have never alleged that Respondent City Council cannot make changes in its group health insurance program. Respondent has continually tried to make this case more complicated than it is. This case is about a promise made over a long period of time by various agents of Appellant with authority to make the promise; decades of keeping and funding the promise; and a decision to break the promise. The Circuit Court properly found that all of the elements of a promissory estoppel claim were met. It erred only in deciding that detrimental reliance was an element of a promissory estoppel claim, which it is not.

CONCLUSION

For all of the above reasons, Appellants respectfully request the trial Court's Order as to the issue of damages be reversed, the remainder of the Order be upheld, and this matter be remanded for an award of damages, attorney fees in accordance with S.C. Code Ann. § 15-77-300 and costs.

Respectfully submitted,

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Date: July 8, 2019

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APPELLANTS' PROOF OF SERVICE OF REPLY BRIEF

I hereby certify that on July 8, 2019 I served a copy of Appellants' Reply Brief on the following:

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by placing a copy of said documents in the United States mail with sufficient postage thereon.

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

Dear Ms. Kitchings,

Enclosed for filing are the original and one copy each of the following:

1) Appellants' Reply Brief;
2) Proof of Service of Appellants' Reply Brief;
3) Designation of Matter; and
4) Proof of Service of Designation of Matter.

With kindest regards, I am,

Sincerely,

Nancy Bloodgood

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Enclosures

cc: Al Nickles, Esquire

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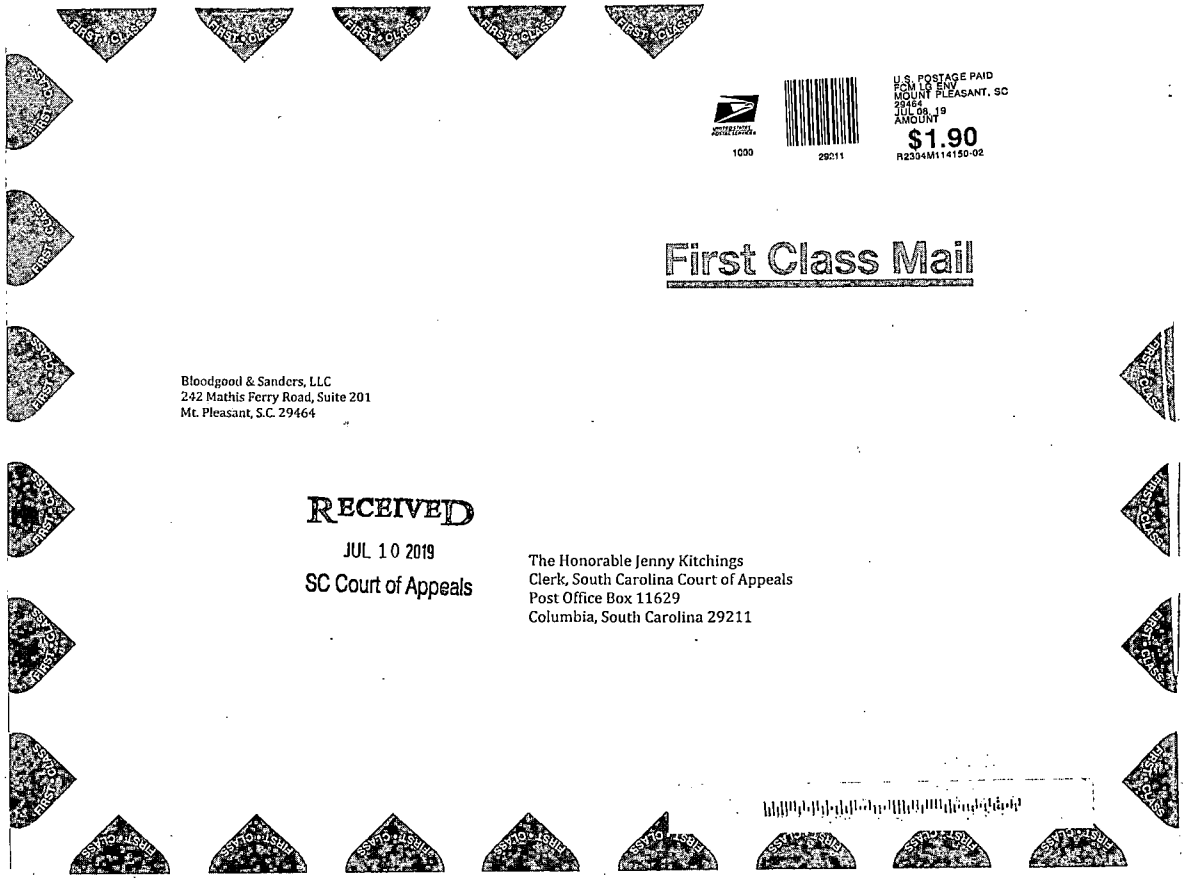

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