

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge
Charleston County

Case No. 2013-CP-10-03210
Appellate Case No. 2019-000332

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JUL 31 2019

SC Court of Appeals

Alvar R. Rissanen, Michael H. Baxley, Clifford W. Forner
and Willie L. Hood Respondents,

v.

City of North Charleston.....Appellant.

REPLY BRIEF OF APPELLANT

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REPLY

I. THE CIRCUIT COURT ERRED IN APPLYING DOCTRINE OF EQUITABLE ESTOPPEL

Respondents reference deposition transcripts of Rissanen and Baxley to support their contention the Circuit Court properly applied the doctrine of equitable estoppel. However, Respondents' reliance upon testimony contained in the deposition transcripts of Rissanen and Baxley, for this purpose or any other, is improper for several reasons.

First, the record is clear the deposition transcripts of Rissanen and Baxley were used at trial for impeachment purposes only during cross-examination, and only limited portions of the transcripts are discussed or otherwise referenced in the record. (Trial Transcript 10/18 - 10/19/17, p. 1; p. 109, l. 10 – p. 112, l. 3; p. 151, l. 23 – p. 162, l. 23.) Second, and most important, the deposition transcripts were only “received” by the Circuit Court as “Court Exhibits,” and the deposition transcripts were neither marked nor offered by Respondents, nor admitted into evidence by the Circuit Court. (Trial Transcript 10/18 – 10/19/17, p. 5.) Consequently, the Circuit Court could not rely upon the deposition transcripts because the transcripts were never offered or admitted into evidence.

II. RESPONDENTS DID NOT PROVE THE ELEMENTS OF THEIR PROMISSORY ESTOPPEL CLAIM

In Bishop v. City of Columbia, 401 S.C. 661, 738 S.E.2d 255 (Ct. App. 2013), this Court affirmed dismissal of plaintiffs' breach of contract claim requesting enforcement of an alleged promise to provide continuing health insurance without charge. Notably, this Court in Bishop stated relief under promissory estoppel requires proof of “injury **in reliance** on the promise.” Id. at 664, 738 S.E.2d at 261 (emphasis added).

This Court's holding in Bishop is consistent with the following principal: promissory estoppel is not measured by the expected *value of the promise* and, therefore, relief is available only when the plaintiff proves a specific loss **other than the promise**, such as an opportunity obtainable or an injury sustained but for actions taken in reliance. See Barnes v. Johnson, 402 S.C. 458, 474-476, 742 S.E.2d 6, 14-15 (Ct. App. 2013) (reversing a promissory estoppel judgment because plaintiff failed to prove an unambiguous promise and "injury sustained in reliance upon such a promise.").

The detrimental reliance element necessary to obtain relief on a promissory estoppel claim requires each Respondent prove: 1) he would have been better off (or at least as well off) if he had not relied upon the alleged promise by the City; and, 2) a measure of relief not dependent upon speculation. Contrary to Respondents' contention, the Circuit Court incorrectly ruled Respondents met their burden. For example, no Respondent identified an available employment opportunity offering better or equal pay, benefits or future guarantees.

The Circuit Court's conclusion each Respondent proved lost opportunity either exceeding or equaling the compensation, benefits, retirement pension and continuing access to group health insurance made available through their employment with the City is without support. Indeed, the Circuit Court failed to adhere to established precedent by not requiring each Respondent provide proof of detrimental reliance, beyond mere expectation the City's alleged promise would be fulfilled. Respondents' failure to demonstrate detrimental reliance through evidence of equal or better compensation and benefits than obtained from employment with the City should have resulted in the Circuit Court denying Respondents' requested relief and finding in favor of the City. See Barnes at 474-476, 742 S.E.2d 14-15; Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009).

Contrary to Respondents' assertions, the Circuit Court ignored or failed to recognize the burden of proving reliance damages addressed in Craft applies here as it applied in Barnes. In Craft, this Court concluded the Commission for the Blind, through its agents, made unambiguous promises, plaintiff reasonably relied upon the promises and the Commission expected the plaintiff to rely upon the promises. However, the plaintiff's promissory estoppel claim failed because the plaintiff could not demonstrate a recognizable injury resulted from his reliance. Specifically, the plaintiff could not show that he lost another business opportunity. Craft at 568, 685 S.E.2d at 629.

Like the plaintiff in Craft, Respondents assert they relied upon representations regarding a future event, here retirement. However, like the plaintiff in Craft, no Respondent offered evidence he lost a better (or equal) *opportunity*, with regard to pay, career advancement, personal satisfaction or guaranteed benefits in reliance upon the City's alleged promise. Like Craft and Barnes, Respondents' failure eliminates promissory estoppel as a basis for relief.

Respondents attempt to distinguish or ignore Craft by contending their cost to purchase a Medicare supplement is sufficient evidence of injury. However, if the value of an authorized representation were sufficient to support promissory estoppel relief, this Court, in Craft, would have considered the plaintiff's expected income stream lost from cancellation of future business at the Commission for the Blind. Instead, the circuit court in Craft awarded summary judgment and this Court affirmed.

III. PROMISE OF FUTURE BENEFITS IS AN UNENFORCEABLE VIOLATION OF PUBLIC POLICY

After this Court's decision in Bishop, the South Carolina Supreme Court accepted an action in its original jurisdiction challenging a decision by the State Budget and Control Board (the "Board") to alter premiums charged to members of the State group health insurance plan. Hampton

v. Haley, 403 S.C. 395, 743 S.E.2d 258 (2013). Members of the Board included the Governor, Comptroller General, State Treasurer and other significant office holders.

Concluding the Board's action in Hampton violated the separation of powers guaranteed by our constitution, the Supreme Court confirmed that "[i]ncluded within the legislative power is the **sole prerogative to make policy decisions**; to exercise discretion as to what the law will be." Id. at 403, 743 S.E.2d at 262 (emphasis added). The Supreme Court further noted "while non-legislative bodies may make policy determinations when delegated such power by the legislature, absent such a delegation, **policymaking is an intrusion upon the legislative power.**" Id. at 403-404, 743 S.E.2d at 262 (emphasis added). Applying the principles, the Supreme Court concurred the "appropriation of public funds is a legislative function and the . . . power to reduce appropriations according to [administrative] criteria would be an impermissible delegation of legislative powers." Id. at 408, 743 S.E.2d at 265 (citing Gilstrap v. S. C. Budget & Control Bd., 310 S.C. 210, 212, 423 S.E.2d 101, 105 (1992)).

The City, by approval of its lawful, mandated, budget ordinances (i.e. by legislative action), chose to either fund or not fund retiree access to the City's self-funded healthcare plan. (Trial Transcript 10/18 - 10/19/17, p. 213, l. 17 – p. 218, l. 25; Appellant Exhibit 7, 8, 9 and 10.) By legislative action, including the passage of the 2009-2010 budget ordinance, the City lawfully changed retiree access to the City's healthcare plan, including the costs to City retirees. (Trial Transcript 10/18 - 10/19/17, p. 213, l. 17 – p. 218, l. 25; Appellant Exhibit 7, 8, 9 and 10.)

Moreover, because the City's Council maintains legislative authority, neither individual employees nor City Council members may bind the City regarding future benefits, including health insurance benefits. See Willoughby v. City Council of City of Florence, 51 S.C. 462, 29 S.E. 242 (1898) (verbal assurances insufficient to bind a municipality); State v. Burgess, 408 S.C. 421, 438,

759 S.E.2d 407, 416 (2014) (a governing body is prevented from delegating its “high functions” to any entity or officer and may not “surrender or restrict any portion of [the] power conferred upon it”). As previously recognized, a resolution duly adopted by the City’s Council “is a legislative enactment and presumed to be constitutional.” Sandlands C & D, LLC v. County of Horry, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011) (quoting Aakjer v. City of Myrtle Beach, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010)).

Despite Respondents’ contentions otherwise, Respondents are not insulated from the consequences of a legislative decisions made by City Council that impact alleged “promises” of future benefits. Moreover, Respondents’ quest for a resolution of the loss of a benefit is not found in the judicial process. Instead, Respondents’ remedy, if any, must be found in legislative action by the City’s Council, absent proof of unlawful or unconstitutional conduct on the part of the City’s Council.

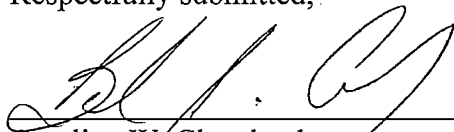
The City cannot be judicially barred, as the Circuit Court practically concludes, from making changes in its group health insurance program, including whether and how it is funded, and cannot be compelled to provide an unfunded benefit. *See* Health Promotion Specialists, LLC v. S.C. Board of Dentistry, 403 S.C. 623, 635-637, 743 S.E.2d 808, 814-815 (2013) (public entities are immune from liability on the basis of decisions to fund or impose costs for liabilities); Tenney v. Brand Hove, 341 U.S. 367, 376-378 (1951) (exercise of discretion in selecting projects for public funding is not a matter of judicial review); Sandlands at 460, 716 S.E. 2d at 284 (a duly adopted resolution is a legislative enactment and presumed to be constitutional); S.C. Const., art. X, § 14 (public subdivisions barred from incurring public indebtedness beyond revenue production).

These legal principals establish the reach and limits of governmental authority in matters involving expenditure of public funds. Contrary to Respondents' assertions, the relief requested is not available, even if Respondents satisfied all elements of their promissory estoppel claim.

CONCLUSION

For the reasons stated, this Court should reverse the Circuit Court's Order and enter judgment in favor of the City.

Respectfully submitted,



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Charleston, South Carolina
July 29, 2019

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PROOF OF SERVICE OF APPELLANT'S REPLY BRIEF

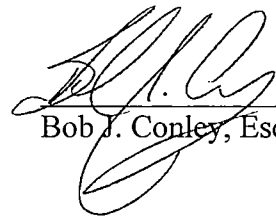
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I hereby certify that on July 29, 2019, I served a copy of Appellant's Reply Brief on the following:

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



Bob J. Conley, Esquire

Charleston, South Carolina

Date: July 29, 2019

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Re: *Alvar R. Rissanen et al. v. City of North Charleston*
Appellate Case No.: 2019-000332

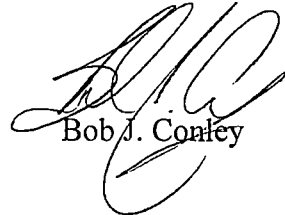
Dear Ms. Kitchings:

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

- 1) Appellant's Reply Brief; and,
- 2) Proof of Service of Appellant's Reply Brief.

Yours truly,

CLEVELAND & CONLEY, LLC



Bob J. Conley




BJC/Imp
Enclosures: as stated
cc: Nancy Bloodgood, Esquire

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