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STATE OF MINNESOTA
COURT OF APPEALS

Jeanine M. Barker, Michael T. Blum,
Nancy Boogaard, Marlan Buchert, Diane M. Campbell,
Dean Champine, Joan Davis, Bernard Doom,
Ramona Hammer, Todd I. Hammer, Paul Henriksen,
James A. Hubley, Ronald A. Krause, Richard Maes,
Chad Magnusses, Mark Mather, Carol A. Oakland,
Susan A. Paradis, Don Raveling, Carolyn Runholt,
Douglas E. Swenson, Mark Swenson, James L. Thomasson,
Steven Van Moer, Paula Van Overbeke, Tamara K. Van Overbeke,
Donna Swalboski, Lorene Verstraete, Nadine Vierstraete,
Michael R. Williams, Mary Jo Zimmer, and Susan Zvorak,

Appellants,

vs.

County of Lyon and Lyon County
Board of Commissioners,

Respondents.

APPELLANTS' REPLY BRIEF

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CERTIFICATE AS TO BRIEF LENGTH

This brief complies with the form and length requirements of Minn. R. App. P. 132.01, subds. 1-3. Appellants' attorneys prepared this brief using the word processing software Microsoft Office Word 2007. The brief uses the proportional font "Times New Roman," in 13-point type. According to the software's word count utility feature, this brief contains 2,489 words, thereby satisfying Minn. R. App. P. 132.01.

INTRODUCTION

The district court erroneously dismissed Appellants' promissory estoppel claim based solely on the disclaimer in Respondents' Policy Manual. This decision was wrong because Appellants presented sufficient evidence of Respondents' collateral promises to overcome this disclaimer. Respondents have failed to show that it was unreasonable for Appellants to rely on the promise in the Policy Manual in light of these collateral promises. They have also failed to show that Appellants did not satisfy the other elements of promissory estoppel, or that Appellants' unconstitutional impairment of contract claim should be dismissed.

ARGUMENT

I. Appellants' Reliance on Respondents' Promises Was Not Unreasonable as a Matter of Law.

Appellants' reliance on the Respondents' promise to provide the benefit was not unreasonable as a matter of law. "The reasonableness of a party's reliance is a fact question for the jury and not generally amenable to summary judgment." Norwest Bank Minn., N.A. v. Midwestern Machinery Co., 481 N.W.2d 875, 880 (Minn. Ct. App. 1992) (finding that a jury could find that a promise was of infinite duration and reversing district court decision on issue of promissory estoppel). Summary judgment is appropriate only if there is a "complete failure of proof" that reliance was reasonable. Nicollet Restoration, Inc. v. City of St. Paul, 533 N.W.2d 845, 848 (Minn. 1995). Because Appellants produced evidence that that their reliance was reasonable, summary judgment is inappropriate.

Respondents' sole argument that reliance was unreasonable, and the sole basis for the district court's decision, is that the Policy Manual contained a disclaimer. But twenty-six Appellants[1] actually began working before the disclaimer was added. (App. 1-6.) Further, in Garmaker, which Respondent also relies on, this Court found that there was no intent to "guarantee" future benefits based on the disclaimer, but also stated indicated that a disclaimer alone may be insufficient to defeat summary judgment. Garmaker v. Sterling Elec. Const. Co. Inc., 1995 WL 606591, *3 (Minn. Ct. App. 1995) (unpublished) (App. 721). Rather, the existence of a collateral promise may refute the disclaimer, precluding a finding that reliance was unreasonable as a matter of law. Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)). Appellants have provided evidence of several collateral promises, thus defeating Respondents' argument that the disclaimer alone is sufficient to render reliance unreasonable.

Appellants identified the collateral promises in their initial brief, and Respondents have failed to show that it was unreasonable as a matter of law for Appellants to rely on each of these promises. The collateral promises are: the 1997 resolution, statements made to Plaintiffs by County Board members, and the County's practice of paying retirees the benefit.

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[1] These Appellants are: Jeanine Barker, Nancy Boogaard, Michael Blum, Marlene Buchert, Diane Campbell, Dean Champine, Joan Davis, Bernard Doom, Ramona Hammer, Todd Hammer, Paul Henriksen, James Hubley, Ronald Krause, Mark Mather, Carol Oakland, Susan Paradis, Don Raveling, Douglas Swenson, Mark Swenson, James Thomasson, Steven Van Moer, Paula Van Overbeke, Tamara Van Overbeke, Lorene Verstraete, Nadine Vierstraete, and Susan Zvorak. (App. 1-6.)

The 1997 resolution was a promise to provide the benefit for current employees. The Board decided to preclude future employees from accessing the benefit because it realized that the benefit's cost was rising. (App. 541.) By explicitly preserving the benefit for current employees, the Board was promising that current employees would be paid the benefit. A reasonable person would have understood that the 1997 resolution required the County to continue to provide the benefit for current employees, particularly because the Board reassured itself that the resolution would not affect current employees. (App. 692.)

Respondents' argument that statements by Board members are not collateral promises misconstrues Appellants' argument about why such statements are binding. Appellants have argued that courts may apply an equitable doctrine to bind a sovereign entity to its past statements. Respondents apparently concede this point, acknowledging that in Mesaba, a court applied the doctrine of equitable estoppel to prevent a county from reneging on an earlier tax opinion. Mesaba Aviation Div. of Halvorson of Duluth v. Cnty. of Itasca, 258 N.W.2d 877 (Minn. 1977). The foundation of both estoppel theories is justice, and there is no reason a court may not apply promissory estoppel, another equitable doctrine, to bind a county. In Mesaba, the Supreme Court held that courts should examine the equities of the circumstances and estop the government if justice so requires. Id. at 881. This reasoning applies with equal force to promissory estoppel. Because examining the equities of the circumstances requires a fact-intensive analysis, the court erred by taking the question of whether the County made an enforceable promise out of the hands of the jury.

Further, the hearsay rule does not bar consideration of County Boards' statements because the rule does not apply. A promise does not make any truth claims, and therefore, falls outside the scope of the hearsay rule. Rather, a promise commits the speaker to a course of conduct. State v. Orscanin, 266 N.W.2d 880, 881 (Minn. 1978) (finding that court erred in criminal case by refusing to admit testimony relating to promise on the basis that it was hearsay because "the promise was not being offered to prove the truth of the matter asserted, only to prove that the promise was made and that it induced defendant to confess").

The County established a course of conduct by promising employees that it would pay the benefit, and then paying it. Appellants were aware that the County was making such payments, and having received the promise, they believed the County would also pay the benefit to them. This conduct was a collateral promise sufficient to defeat the disclaimer because it was evidence that the County did intend to pay what it promised. That is, by paying the benefit to retirees, the County demonstrated that the County intended to be bound by its promise to pay the benefit regardless of the disclaimer.

Respondents' parol evidence argument also does not defeat these collateral promises. First, the parol evidence rule does not apply because the 1997 Board resolution was made part of the Policy Manual through the revision of the Manual. But more importantly, unlike Jara, the contract in this case contained no integration clauses limiting the agreements to the contract's express terms. Jara v. Buckbee-Mears Co., St. Paul, a Unit of BMC Indus., Inc., 469 N.W.2d 727 (Minn. Ct. App. 1991). On the contrary, the

Policy Manual states that the Board may deviate from these policies. The County cannot simultaneously argue that the Board can deviate from the Policy Manual any time it wants and that the Board's actions and statements do not justify any deviation from the Policy Manual.

Construing all these facts in favor of the Appellants, a jury could reasonably find that these collateral promises overcome the disclaimer in the Handbook, and that Appellants' reliance on the County's promise to provide the benefit was reasonable.

II. Respondents Are Not Entitled to Summary Judgment on Other Elements of Promissory Estoppel.

A. Respondents Failed to Show that Respondents' Promise Was not Clear and Definite as a Matter of Law.

A promise is "clear and definite" when it is specific. This understanding of the "clear and definite" requirement is supported by Martens, Ruud, and Aberman,[2] where courts discuss promises that are not "clear and definite." In Martens, the Supreme Court stated that a description of a compensation and promotion ladder was not clear and

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[2] Respondent's characterization of Appellants' reliance on Ruud and Aberman is inaccurate. Respondents' Br. 26 (citing Appellants' Br. at 19). Appellants' opening brief explicitly contrasts the promises in this case, and the promises in Ruud and Aberman. Appellants' brief explains the *differences* between the vague promises in those cases and the clear and definite promise in this case. ("In cases like Ruud and Aberman, courts found that the employer's promises were too vague to create a contract. . . Unlike *this* case, the alleged promises in *those* cases were more akin to general policy statements. . .")

definite because it "set[] forth only a *general framework* for compensating and promoting employees and is based upon the employee meeting the 'challenge of added responsibility." Martens v. Minn. Min. & Mfg. Co., 616 N.W.2d 732, 746 (Minn. 2000) (emphasis added). In Ruud, the promise was not clear and definite because the employer was "simply making policy statements as to the general goodwill of the company toward" its employees, and the statements were too vague to modify the existing agreement. Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369, 372 (Minn. 1995). In Aberman, general statements about job security were insufficiently definite to support a claim for promissory estoppel. Aberman v. Malden Hills Indus. Inc., 414 N.W.2d 769, 771-72 (Minn. Ct. App. 1987). In each case, the court determined whether the promise was specific or vague. The court did not consider the existence of any disclaimer when determining whether the promise was clear and definite because the existence of the disclaimer is relevant only to the separate question of reasonableness. Because Respondents have not contradicted Appellants' argument that the promised benefit is specific and that all parties understood what the benefit was, Respondents have failed to raise any valid argument that the promise was not clear and definite.

B. Respondents Failed to Show that Appellants Did Not Rely on Respondents' Promise as a Matter of Law.

Contrary to Respondents' assertion, Appellants have provided sufficient evidence of their detrimental reliance to defeat Respondents' motion for summary judgment. Appellants provided this evidence in their interrogatory answers and their deposition

testimony. Respondents state that it is insufficient for Appellants to assert that they did not save for retirement premiums or investigate other sources of health care insurance, but the Supreme Court has found otherwise:

> Baker reasonably relied on the county's assurances that he and his dependents were entitled to health care insurance at the county's expense and on its custom of regular payment of the premiums. As a consequence, he did not anticipate having to pay such premiums from his own funds or to investigate alternative sources of health care insurance, which have now become very expensive.

Law Enforcement Labor Servs., Inc. v. Cnty. of Mower, 483 N.W.2d 696, 701 (Minn. 1992) (finding that the county was "estopped from depriving Baker and similarly situated retirees of the fruit of their legitimate expectations"). Rather than address the finding that this reliance was sufficient, Respondents focus on the fact that the plaintiff in Mower had retired. This distinction is irrelevant to the finding that Baker presented sufficient evidence of his reliance by stating that he failed to save enough money to pay the retirement premiums. Accordingly, it is up to a jury to consider Appellants' assertions that they chose to forgo job opportunities and failed to save for retirement health insurance based on the County's promise to provide this benefit. See Seegerg v. Monson Trucking, Inc., 717 F. Supp. 2d 863, 873 (D. Minn. 2010) (denying summary judgment because fact questions existed as to plaintiff's assertion that he detrimentally relied on employer's promise not to terminate him because of absence to enter alcohol treatment program).

Further, this Court did not reject in Roberts the argument that an employer is estopped from modifying benefits that are "earned." Roberts v. Brunswick Corp., 783 N.W.2d 226 (Minn. Ct. App. 2010). In Roberts, this Court considered whether a contract was effectively modified when an employer switched from a policy where employees earned vacation each year and were paid out what they did not use at the end of the year, to one where employees accrued vacation, but lost what they did not use. In Roberts, this Court considered only the plaintiffs' contractual claim, and did not consider a promissory estoppel claim, which is the issue on appeal. Id.

C. Respondents Failed to Show that Enforcing the Promise Will Not Prevent Injustice.

Respondents fail to address the reasoning in Christensen that denying a benefit to long-term employees who counted on a retirement benefit is unjust. Christensen v. Minneapolis Municipal Employees Retirement Bd., 331 N.W.2d 740 (Minn. 1983). The Christensen court explained its reasoning thus:

> In the realities of the modern employment marketplace, the state reasonably expects its promise of a retirement program to induce persons to accept and remain in public employment, and persons are so induced, and injustice can only be avoided only by enforcement of that promise.

Id., at 749. The injustice arises from the state's inducement of persons to accept employment, and then taking away that inducement once the employees provided the service. Respondents fail to address this argument, focusing instead on immaterial facts

about public meetings or continued employment after the alteration. Accordingly, Respondents have failed to show that enforcing the promise will not prevent injustice.

III. Respondents Are Not Entitled to Summary Judgment on Plaintiffs' Unconstitutional Impairment of Contract.

This court should allow Appellants to proceed on their unconstitutional impairment of contract claim based on promissory estoppel. Respondents conceded below that unconstitutional impairment of contract applies to quasi-contractual rights created by promissory estoppel. (App. 410.) Minnesota is a notice pleading state. N. States Power Co. v. Franklin, 122 N.W.2d 26 (Minn. 1963). Respondents were on notice of Appellants' claim for unconstitutional impairment of contract, as well as all grounds for that claim, including the allegation of an enforceable promise. Respondents would suffer no prejudice by application of the unconstitutional impairment claim to Appellants' quasi-contractual claim, and no additional discovery is necessary. Therefore, Appellants should be permitted to proceed on their claim for unconstitutional impairment based on the quasi-contractual rights created by Respondents' promise. Cohen v. Cowles Media Co., 479 N.W.2d 387, 390 (Minn. 1992) (permitting plaintiffs to proceed on promissory estoppel theory that was not pled or raised at trial because case was pled and tried on "closely akin" contract theory).

In addition, the vested rights doctrine Respondents relied on is inapplicable. Respondents cite to Halla for the proposition that contracts right vest once liabilities under that right have been so far determined that nothing remains to be done by the party

asserting it. Halla Nursery, Inc. v. City of Chanhassen, 781 N.W.2d 880 (Minn. 2010). But in Halla, the Supreme Court stated that this theory applies to a very different type of case:

> The vested rights doctrine developed to resolve questions of state control over private development through the use of zoning provisions and building permits. . . . When applying the doctrine, the court asks whether the developer has progressed sufficiently with his construction to acquire a vested right to complete it.

Id. at 885. The Supreme Court went on to describe cases where it had applied this theory: all cases related to private development rights. Id. at 885-86. Because that entire line of cases is inapposite, this Court should reject Respondents' argument that Plaintiffs' rights to the benefit did not vest with each year of service.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the decision of the district court and remand to permit a jury to consider Appellants' promissory estoppel and unconstitutional impairment claims against Respondents.

Dated: January 18, 2012

GREGG M. CORWIN & ASSOCIATE
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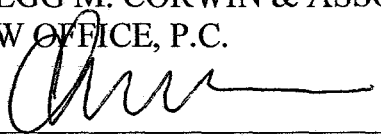

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