

A REVIEW OF PROMISSORY ESTOPPEL LAW IN MICHIGAN

Lee Hornberger
Arbitrator

The elements of promissory estoppel are (1) a clear and definite promise, (2) that the promisor should have expected that the promisee would induce reliance and that there was a change in the promisee's position due to reliance on the promise, and (3) that injustice can be avoided only by enforcing the promise. The doctrine of promissory estoppel was originally created in England's Chancery Court equity decisions. *North American Brokers, LLC v Howell Public Schools*, 502 Mich 882 (2018) (McCormack, concurring). American courts adopted the Chancery Courts' equitable cause of action based on good faith reliance to enforce promises unsupported by consideration when this was needed to prevent injustice.

This occurred in Michigan in *Faxton v Faxton*, 28 Mich 159 (1873). In *Faxton* the promisor promised the promisee that, if the promisee stayed on the land and took care of the land and the promisor, the promisor who was the owner and mortgagee of the land, on his death would have the land deeded to the promisee caretaker. In reliance on this promise, the promisee took care of the land. When the promisor eventually attempted to foreclose the mortgage on the land and evict the promisee, the Supreme Court held that "the foreclosure of these mortgages now is a violation of distinct promises and assurances of which were the inducement in the labor and devotion of the defendant. It would be contrary to equity to permit this to be done." *Id* at 161-162.

Eventually the promissory estoppel doctrine developed on the national level and was adopted by the Restatement Contracts, § 90 (1932). The Restatement provides that:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires. Restatement Contracts, (2d), § 90 (1981).

State Bank of Standish v Curry, 442 Mich 76 (1993), is the leading Michigan promissory estoppel case. Curry was a dairy farmer who had received loans from the bank for many years. Curry was considering leaving the dairy industry. As part of his consideration, he discussed the situation with the bank officials. In these discussions, the bank orally promised to loan money to Curry for his next year's farming needs. In reliance on this promise, Curry stayed in the farming business and did not go elsewhere for work. Eventually the bank announced that it would not give the promised loan and brought a foreclosure proceeding. Curry counterclaimed for his losses on a promissory estoppel theory. He prevailed at the trial court level on his claim which was eventually reviewed by the Supreme Court.

The Bank argued that there was no evidence of a clear and definite promise of a loan. The Supreme Court indicated that promissory estoppel was developed to protect the ability of individuals to trust promises in circumstances where trust is essential. In essence, promissory estoppel can be an "invisible handshake." *Id* at 85. A promissory estoppel analysis includes an inquiry into the circumstances surrounding the making of the promise and the promisee's reliance as a question of law. The promissory estoppel promise has to be clear and definite. It can be either oral or in writing or can be inferred from conduct. There is an objective standard that looks at the words and actions of the

transaction as well as the nature of the relationship. According to the Supreme Court, objectively viewed, the jury was entitled to find that there was a specific promise of future action concerning a loan from the bank.

Michigan courts have utilized the promissory estoppel doctrine to find binding obligations in other situations. As we have seen in *Faxton, supra*, the promises made by a mortgagor to an individual to induce him to stay on the land have been enforced under promissory estoppel.

An insurance company's promise to make payment can be enforced under promissory estoppel. *Ardt v Titan Ins Co*, 233 Mich App 585 (1999). Unilateral promises to make a charitable contribution have been enforced. *In re Estate of Timko*, 51 Mich App 662 (1974).

A promisee can plead the doctrine of promissory estoppel as a ground for recovery in addition to a breach of contract theory as alternative or inconsistent theories based on the same set of facts. Even though the promisee may argue that a contract existed, this does not preclude the promisee from alternatively arguing a claim based on promissory estoppel. *H J Tucker & Ass'n, Inc v Allied Chucker and Engineering Co*, 234 Mich App 550 (1999).

The utilization of promissory estoppel claims in employment cases has been problematic in Michigan. Because of the employment at will doctrine, oral promises of job security must be clear and unequivocal. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627 (1991), *Bodnar v St John Providence, Inc*, 327 Mich App 203 (2019), and *Novak v Nationwide Mut Ins Co*, 235 Mich App 675 (1999).

A promise of an advance on the purchase of fixtures which was relied upon by a fixture manufacturer was enforced. *Feiler v Midway Sales, Inc*, 363 Mich 105 (1961).

Courts have utilized promissory estoppel to enforce a stock broker's recommendation that the promisee purchase stocks and, if there were a loss in the first six months, the stock broker would hold the purchaser harmless for the loss. *Young v Wallace*, 327 Mich 395 (1950).

On occasion, when promissory estoppel is pled, thought should also be given to pleading fraud in the inducement. Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon. *Samuel D Begola Servs v Wild Bros*, 210 Mich App 636 (1995), lv den 451 Mich 876 (1996). A fraud claim may have more bite because there is broader possible recovery, including pain and suffering.

A promissory estoppel claim can be utilized to supplement a breach of contract claim and has some advantages over a breach of contract claim. Where the technical requirements of a contract are lacking, promissory estoppel can be utilized to prevent an injustice for an individual who has relied on clear promises. This is even though no return act or promise was bargained for. In addition, promissory estoppel can remove oral promises from the Statute of Frauds where there has been detrimental reliance. *Clark v Coats & Suits Unlimited*, 135 Mich App 87 (1984).

A problem with promissory estoppel is the high burden that some courts will create for requiring that the promise be clear and unequivocal and that the alleged reliance was reasonable under the circumstances.

In conclusion, promissory estoppel is alive and well in Michigan. It has English roots that are more than three hundred years old and Michigan roots that are more than one hundred years old. It has been repeatedly and favorably followed by the Michigan Supreme Court and Courts of Appeal. ■