NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1914

SHERI HARRELL

VERSUS

LOUISIANA SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Judgment Rendered: JUL 17 2014

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C608403

Honorable Timothy E. Kelley, Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

GUIDRY, J.

Defendant, Louisiana School Employees' Retirement System (LSERS), appeals from a judgment of the trial court granting summary judgment in favor of plaintiff, Sheri Harrell, and awarding her specific performance of LSERS' promise to apply a thirty-six month final average compensation calculation, using the twenty-five years of service at fifty-five years of age provision in the determination of Ms. Harrell's LSERS retirement benefit. For the reasons that follow, we reverse.

FACTS AND PROCEDURAL HISTORY

Ms. Harrell was employed by the Louisiana State Employees' Retirement System (LASERS) as a retirement benefits analyst from April 25, 1988, until August 12, 2007. During that time, she was a contributing member of LASERS. On August 13, 2007, Ms. Harrell took a position with LSERS, also as a retirement benefits analyst, and subsequently transferred her retirement account from LASERS to LSERS in March 2008.

Prior to Ms. Harrell's transfer of her employment and retirement account from LASERS to LSERS, Sandy Norwood, a LSERS employee, requested an opinion from Warren Ponder, then Executive Counsel of LSERS, regarding Ms. Harrell's retirement benefits. Particularly, Ms. Norwood asked whether Ms. Harrell's final average compensation (FAC) for retirement purposes, if she transferred her retirement to LSERS, would be calculated based on the prior thirty-six months or the prior sixty months. Mr. Ponder responded that if Ms. Harrell was hired after July 1, 2006, and transferred her retirement from LASERS to LSERS, the thirty-six month final average compensation provision would apply, as long as there was no break in service. Mr. Ponder reiterated his opinion in a December email addressed to Ms. Norwood.

Thereafter, the Executive Director of LSERS, Charles Bujol, overruled Mr. Ponder's opinion and determined that the sixty-month FAC calculation would apply to employees who transferred from other retirement systems. In June 2011, Mr. Ponder rendered a written legal opinion reflecting Mr. Bujol's position, stating that La. R.S. 11:1141.2(B)(10) and 11:1002(6), as amended by Act 563 of 2006 to change the FAC from a thirty-six month average to a sixty-month average, made no distinction between employees newly hired for public service and those transferring from another retirement system into LSERS. Mr. Ponder notified Ms. Harrell of the change in LSERS' position in a letter dated June 27, 2011, to which he attached a copy of the legal opinion. On August 16, 2011, Mr. Bujol sent a letter to Ms. Harrell, stating that the sixty-month FAC calculation would be used in her case.

On January 17, 2012, Ms. Harrell filed a petition against LSERS, asserting that she relied on the representations of LSERS' Executive Counsel that the thirty-six month FAC and the twenty-five years of service at fifty-five years of age provision would apply to her transfer of retirement from LASERS to LSERS. Ms. Harrell asserted that her retirement benefits under LSERS or by utilizing a reverse transfer are less than the promised benefit, and she requested a judgment declaring that she is entitled to retirement benefits from LSERS based upon the application of the thirty-six month FAC and twenty-five years of service at fifty-five years of age provision.

Thereafter, LSERS filed a motion for summary judgment, asserting that Ms. Harrell is unable to establish that reliance upon any representation by LSERS resulted in any damage or harm to her. First, LSERS alleged that Ms. Harrell was eligible for a reverse transfer, which would place Ms. Harrell in the identical financial position she was in prior to her transfer to LSERS. Additionally, LSERS asserted that, even applying the sixty-month FAC under LSERS, her monthly

retirement benefit would be greater than the benefit she would have received had she remained a member of LASERS.

Ms. Harrell also filed a motion for summary judgment, asserting that there is no genuine issue of material fact that she relied on the representations of LSERS that her retirement benefits would be calculated applying a 3-1/3% accrual rate and a thirty-six month FAC in transferring her employment and retirement benefits to LSERS. Additionally, Ms. Harrell reiterated that any benefit under LSERS or through a reverse transfer is less than the promised benefit.

Following a hearing on both motions for summary judgment, the trial court granted summary judgment in favor of Ms. Harrell and denied LSERS' motion for summary judgment. In a judgment signed on September 3, 2013, the trial court rendered judgment in favor Ms. Harrell and against LSERS, based upon the specific performance of the promise to apply a thirty-six month final average compensation calculation using the twenty-five years of service at fifty-five years of age provision in the determination of Ms. Harrell's LSERS retirement benefit. LSERS now appeals from the trial court's judgment.

STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. Johnson v. Evan Hall Sugar Cooperative, Inc., 01-2956, p. 3 (La. App. 1st Cir. 12/30/02), 836 So. 2d 484, 486. A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2). If the issue before the court on the motion for summary judgment is one on which the party bringing the motion will bear the burden of proof at trial, the burden of showing that there is no genuine

issue of material fact is on the party bringing the motion. See La. C.C.P. art. 966(C)(2); Buck's Run Enterprises, Inc. v. Mapp Construction, Inc., 99-3054, p. 4 (La. App. 1st Cir. 2/16/01), 808 So. 2d 428, 431.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Lieux v. Mitchell, 06-0382, p. 9 (La. App. 1st Cir. 12/28/06), 951 So. 2d 307, 314, writ denied, 07-0905 (La. 6/15/07), 958 So. 2d 1199.

DISCUSSION

The doctrine of detrimental reliance is codified in La. C.C. art. 1967, which provides:

> Cause is the reason why a party obligates himself.
>
> A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable.

The doctrine of detrimental reliance is designed to prevent injustice by barring a party from taking a position contrary to his prior acts, admissions, representations, or silence. Suire v. Lafayette City-Parish Consolidated Government, 04-1459, p. 31 (La. 4/12/05), 907 So. 2d 37, 59. To establish detrimental reliance, a party must prove the following by a preponderance of the evidence: (1) the defendant (promisor) made a promise to the plaintiff (promisee); (2) the defendant knew or should have known that the promise would induce the plaintiff to rely on it to his detriment; (3) the plaintiff relied on the promise to his detriment; (4) the plaintiff was reasonable in relying on the promise; and (5) the

plaintiff suffered damages as a result of the reliance. Wooley v. Lucksinger, 06-1167, p. 14 (La. App. 1st Cir. 5/4/07), 961 So. 2d 1228, 1238.[1]

In support of her motion for summary judgment, Ms. Harrell submitted her deposition testimony, the deposition testimony of Mr. Ponder, a copy of the August 16, 2011 letter from Mr. Bujol to Ms. Harrell, and a sample retirement calculation. According to this evidence, LSERS initially told Ms. Harrell that if she transferred her employment and retirement benefits from LASERS to LSERS, her retirement benefit would be calculated applying a 3-1/3% accrual rate and a thirty-six month FAC for her twenty-five years of service at fifty-five years of age. However, LSERS subsequently determined that a 3-1/3% accrual rate and a sixty-month FAC would apply to Ms. Harrell's retirement benefit. According to Ms. Harrell's testimony and the sample retirement calculation, Ms. Harrell's benefit applying the sixty-month FAC under LSERS is less than the promised benefit.

However, Ms. Harrell acknowledged, and the sample retirement calculation confirmed, that Ms. Harrell's retirement benefit using the sixty-month FAC is still *greater than* the retirement benefit she would have received had she remained a member of LASERS. Additionally, Ms. Harrell acknowledged in her testimony that she is eligible to utilize a reverse transfer in order to obtain the retirement benefit she would have received under LASERS. As such, the record establishes that Ms. Harrell is in the same, if not a better position, after the transfer of her retirement benefits to LSERS than she was in before the transfer. Therefore, Ms. Harrell has failed to establish that she relied on LSERS' promise *to her detriment.*

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[1] LSERS asserts that proving detrimental reliance against a governmental agency is more burdensome, requiring that a plaintiff establish: (1) unequivocal advice from an unusually authoritative source, (2) reasonable reliance on that advice by an individual, (3) extreme harm resulting from that reliance, and (4) gross injustice to the individual in the absence of judicial estoppel. See Showboat Star Partnership v. Slaughter, 00-1227, p. 13 (La. 4/3/01), 789 So. 2d 554, 562. However, because we find that Ms. Harrell has failed to establish that she can meet her burden of proof under the lesser standard articulated above, we do not address whether she would be able to satisfy her burden under the heightened standard applicable to an action against a governmental agency. See Luther v. IOM Company, LLC, 13-0353, pp. 11-12 (La. 10/15/13), 130 So. 3d 817, 825-26.

That the reliance on the promise operated to the promisee's detriment is a key element to enforceability of the alleged promise. See Prime Income Asset Management, Inc. v. Tauzin, 07-1380, p. 13 (La. App. 3rd Cir. 4/30/08), 981 So. 2d 897, 905.

Therefore, because Ms. Harrell is unable to establish that she relied on LSERS' promise to her detriment, we find that she has failed to establish that she is entitled to judgment as a matter of law on her claim for detrimental reliance against LSERS.

CONCLUSION

For the foregoing reasons, we reverse the judgment of the trial court, which granted summary judgment in favor of Ms. Harrell and rendered judgment in favor of Ms. Harrell and against LSERS based upon the specific performance of the promise to apply a thirty-six month final average compensation calculation using the twenty-five years of service at fifty-five years of age provision in the determination of Ms. Harrell's LSERS retirement benefits. We remand this matter to the trial court for further proceedings consistent with this opinion. All costs of this appeal are assessed to Sheri Harrell.

REVERSED AND REMANDED.