STATE OF MICHIGAN

COURT OF APPEALS

ALLAN CECILE,

Plaintiff-Appellee,

v

BOHERED CORPORATION, d/b/a WILD MUSTANG BAR & GRILL, ISSAC, INC., ROBERT KATZMAN, DUMMY CORPORATION, and RUDOLPH BECKER, III,

Defendant-Appellants.

UNPUBLISHED
July 6, 2001

No. 215053
Wayne Circuit Court
LC No. 95-535436-CK

Before: Hoekstra, P.J, and Cavanagh and Gage, J.J.

PER CURIAM.

In this case arising from an employment relationship between plaintiff and defendants, defendants appeal as of right the trial court's order of final judgment awarding plaintiff $70,307.83.[1] We reverse and remand.

Plaintiff filed a five-count complaint against defendants and made a jury demand. After a hearing, the trial court determined that the provisions of plaintiff's complaint relating to contract would be heard before a jury and thereafter the court would try the equitable claims. After the jury returned a verdict in favor of defendants on the two counts before it, the trial court considered plaintiff's equitable claim of promissory estoppel. The trial court found that plaintiff was entitled to the equitable relief of promissory estoppel. Because we find that the trial court erred in its application of promissory estoppel, we need not consider the further action on the remaining two counts of plaintiff's complaint.

Defendants argue that the trial court erred in entering judgment for plaintiff on the basis of promissory estoppel because none of the elements of promissory estoppel were met.

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[1] After the trial court ruled in favor of plaintiff on his promissory estoppel claim, further proceedings ensued on plaintiff's complaint before the order of final judgment was entered on September 25, 1998.

The elements of promissory estoppel include "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided. *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999); *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999). This Court must exercise caution in evaluating an estoppel claim, applying the doctrine only where the facts are unquestionable and the wrong to be prevented undoubted. *Novak, supra* at 687, citing *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442-443; 505 NW2d 275 (1993).

In a promissory estoppel action, the existence and scope of a promise are questions of fact; an appellate court will not overturn a trial court's determination that a promise exists unless it is clearly erroneous. *State Bank of Standish v Curry*, 442 Mich 76, 84; 500 NW2d 104 (1993). In determining whether a requisite promise existed, this Court must objectively examine the words and actions surrounding the transaction in question, the nature of the relationship between the parties, and the circumstances surrounding the parties' actions. *Novak, supra* at 687. "[R]eliance is reasonable only if it is induced by an actual promise." *Ypsilanti Twp v General Motors Corp*, 201 Mich App 128, 134; 506 NW2d 556 (1993), quoting *Standish, supra* at 84. "To support a claim of estoppel, a promise must be definite and clear." *Schmidt v Bretzlaff*, 208 Mich App 376, 379; 528 NW2d 760 (1995), citing *Standish, supra* at 85. "A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made." *Standish, supra*, quoting 1 Restatement Contracts, 2d § 2, p 8. "[A] promise must be distinguished from a statement of opinion, a prediction of future events, or a party's will, wish, or desire for something to happen." *First Security Savings Bank v Aitken*, 226 Mich App 291, 313; 573 NW2d 307 (1997), overruled on other grds 460 Mich 446 (1999), citing *Standish, supra* at 86, 89.

In the present case, plaintiff claimed that defendant Katzman promised him that part of his compensation for locating, establishing, and managing the business would be a 10% ownership interest in the venture. According to plaintiff, "[m]y equity was sweat equity." Further, plaintiff claimed that defendant Katzman has repeatedly held out to patrons of the bar that plaintiff was an owner and partner in the bar, that plaintiff was provided with evidence of his ownership when he requested it to finance his home, and that the corporate minutes reflect plaintiff's entitlement to 10% of the distributions of the corporation. Defendants countered that plaintiff was not a shareholder and was not promised 10% ownership in the business, but that he would be given the opportunity to acquire shares of stock.

In its order of judgment finding in favor of plaintiff on the promissory estoppel count of his complaint, the trial court found that the elements of promissory estoppel were met. Specifically, the trial court found that defendant Katzman promised plaintiff, in exchange for plaintiff's unique talents and skill in locating and managing the Wild Mustang Bar & Grill, an opportunity to purchase an 8.1% interest in defendant Bohered Corporation; that said promised opportunity induced action by plaintiff; that plaintiff detrimentally and substantially relied on said promise; and that Plaintiff forbore from pursuing other opportunities. The trial court concluded that plaintiff's "promised opportunity remains viable and exercisable [sic]."

On appeal, defendant's challenge whether the trial court findings establish an enforceable claim by plaintiff against defendants arising from promissory estoppel. The flaw in the ruling according to defendants is that "the promise enforced was the offer to purchase stock, whereas the purported reliance was on the promise to give ownership for free." We agree. Plaintiff maintained that he quit his former job and endeavored on defendants' behalf to locate, establish and ultimately run the Wild Mustang Bar & Grill. However, plaintiff did these things not so he could purchase at a favorable price 8.1% of defendant Bohered Corp., but rather, upon promise that he would receive a 10% interest in the resulting enterprise in exchange for his sweat equity. Because the promise that the trial court found that the evidence supported was distinctly different from that on which plaintiff claimed that he relied, we believe the trial court clearly erred when it held that plaintiff had established his claim for promissory estoppel. Simply put, because plaintiff's claim was based on sweat equity and the trial court found the evidence did not support his claim, plaintiff did not prove his claim of promissory estoppel.

Further, even if we were to assume that the right to *purchase* stock could give rise to plaintiff's promissory estoppel claim, the evidence fails to establish a concurrence between that promise and plaintiff's actions supposedly in reliance upon the promise. At best, the promise of a right to purchase an interest was made to plaintiff sometime after the business was purchased and began operating. No one testified that at the time defendant was quitting his job or searching for a business to purchase that defendants were offering plaintiff the opportunity to purchase stock in the business. Consequently, the promise to purchase could not have been a factor relied upon by plaintiff when he did any of these things.

Where the promise that the trial court found was not the promise relied on by plaintiff or was not in existence at the time plaintiff quit his job and helped establish the business, the trial court erred in finding that the elements of promissory estoppel were met.

Because of our resolution of the previous issue, we need not address defendants other arguments.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Hilda R. Gage