IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
PILGRIMS PRIDE CORPORATION,	§	Bankruptcy Court Case
	§	No. 08-45664-dml11
Debtor.	§	
	§	
	§	
CLINTON GROWERS, ET AL.,	§	
	§	
Applicants,	§	
	§	District Court Case
VS.	§	No. 4:11-CV-333-A
	§	
PILGRIM'S PRIDE CORPORATION, ET AL.,	§	
	§	
	§	
Appellees.	§	

MEMORANDUM OPINION
and
ORDER

Before the court for decision is the appeal of a group of persons known as the "Clinton Growers" from rulings of the bankruptcy court in the above-captioned bankruptcy case summarily denying their proofs of claim in bankruptcy. The persons referred to herein as the Clinton Growers are listed in the exhibit that is an attachment hereto. The court has concluded that the rulings of the bankruptcy court, as set forth in the document titled "Final Order on Clinton Growers' Claims" entered in the bankruptcy case on February 11, 2011, R. at 8-15, denying

the Clinton Growers' claims in bankruptcy against Pilgrim's Pride Corporation should be affirmed.

The bankruptcy court ruled in favor of the debtors, Pilgrim's Pride Corporation, PSF Distribution Company, PPC Transportation Company, To-Ricos, Ltd., To-Ricos Distribution, Ltd., Pilgrim's Pride Corporation of West Virginia, and PPC Marketing, Ltd. ("Debtors"), on two theories--first, that the bankruptcy court was bound by the law-of-the-case doctrine to rule for Debtors by reason of rulings made by United States District Judge Terry R. Means in City of Clinton, Ark. v. Pilgrim's Pride Corp., 654 F. Supp. 2d 576, 544-45 (N.D. Tex. 2009), and, second, even if the law-of-the-case doctrine does not apply, the promissory estoppel theory of recovery urged by Clinton Growers (their sole remaining theory in support of their bankruptcy claims) is legally unmeritorious under facts established without dispute in the record on which the bankruptcy court acted.

Clinton Growers' contentions on appeal amount to the propositions that the bankruptcy court erred in holding that the law-of-the-case doctrine applies and in applying that doctrine as a basis for denial of their claims, and that the bankruptcy court erred in its conclusion that denial of the claims was justified because the record established as a matter of law that Clinton

Growers' promissory estoppel claims lack legal merit. R. at 8-15.

Debtors filed several motions for partial summary judgment, each directed to an aspect of one of the three theories of recovery urged by Clinton Growers in their proofs of claim in bankruptcy. R. at 4009 (summary of bases for proofs of claim); R. at 9-11 (final order listing the theories of recovery asserted by Clinton Growers and motions for partial summary judgement filed by Debtors). Clinton Growers admitted the merits of the motions for partial summary judgment as to two of their three theories of recovery; and, the bankruptcy court granted the motions as to those two theories. R. at 7429, 7432 (orders granting motions for partial summary judgment as to Clinton Growers' causes of action based on fraud or deceit, fraudulent inducement, and constructive fraud and their cause of action based on alleged violations of the Arkansas Livestock and Poultry Contract Protection Act).

The remaining theory of recovery advanced by Clinton Growers, promissory estoppel, was the subject matter of the bankruptcy court's ruling from which Clinton Growers have appealed. R. at 8-15 (final order); R. at 3983-4005 (memorandum opinion). Six of the motions for partial summary judgment were directed to Clinton Growers' promissory estoppel theory, one

focusing on the parol evidence rule, another on the statute of frauds, another on merger, another on statute of limitations, another on absence of actionable promises on which Clinton Growers could justifiably rely, and the final on barred by contract. R. at 10. The bankruptcy court's memorandum opinion says that the bankruptcy court was granting its relief based on the merger motion. R. at 3983 n.1, 4005. Because of the bankruptcy court's granting of the merger motion, the bankruptcy court concluded that the remaining motions were moot. R. at 4005. In the final order, the bankruptcy court granted the merger motion, but none of the others. Id. However, the explanation the bankruptcy court gave in its memorandum opinion as why Arkansas law compelled a rejection of Clinton Growers' promissory estoppel theory seems to say that the bankruptcy court has accepted Debtors' arguments that the promissory estoppel theory is not viable by reason of the contract bar urged by one of the motions as well as the merger bar urged by the motion the bankruptcy court expressly granted.

Undoubtedly conscious of the ability of this court to affirm the bankruptcy court's ruling on any ground supported by the record, Clinton Growers assign in their brief as issues to be resolved on the appeal each of the theories urged by Debtors in the bankruptcy court as to why Clinton Growers cannot

successfully assert promissory estoppel. Br. of Appellants at 1. Appellees responded in kind, agreeing that Clinton Growers' statement of the issues was accurate, Br. of Appellees at 1, and by providing responsive argument as to each of those issues.

In this memorandum opinion the court expresses its conclusion that promissory estoppel is not a viable theory of recovery for two reasons--because it is barred by reason of the existence of a contract between the parties dealing with the same subject matters of the statements upon which the estoppel theory is based and because the merger language in the contracts prohibits reliance on the extra-contractual statements Clinton Growers urge in support of their promissory estoppel theory. While the court finds persuasive the arguments and authorities presented by Debtors in support of their other reasons why promissory estoppel cannot successfully be asserted, the court chooses to limit its discussion to the merger and barred-by-contract issues.

The bankruptcy court and Debtors make persuasive arguments in support of the bankruptcy court's law-of-the-case ruling, but the court has reservations as to whether that doctrine is applicable. Consequently, the court chooses not to base the court's affirmance of the bankruptcy court's judgment on law of the case. For the reasons given below, the court has no

misgivings about the bankruptcy court's denial of Clinton Growers' claims on the ground that the record establishes as a matter of law that Clinton Growers' promissory estoppel theory is without merit.

The bankruptcy court's December 15, 2010, memorandum opinion correctly and adequately described in all material respects the procedural history and undisputed factual background. R. at 3983-88. The contract, which is titled "Pilgrim's Pride Corporation Broiler Production Agreement," between each of the Clinton Growers and Pilgrim's Pride Corporation has essentially the same terms and provisions as the other contracts. The terms and provisions that have potential relevance to the viability of Clinton Growers' promissory estoppel claims are as follows:

1. Under the heading "Engagement of the Independent Grower,"[1] the contract provides that "[s]uch agreement is to continue unless terminated in accordance with the provisions . . . contained" in the agreement. R. at 2045, ¶ A.

2. Under the heading "Term, the contract provides that:

> The term of this Agreement shall commence on the date of execution of this Agreement, continue on a flock to flock basis, and shall terminate upon completion of the engagement(s) subject to

[1]The Clinton Growers are called "Independent Growers" in the contract.

the right of the Company to terminate this Agreement upon written notice to the Independent Grower in the event the Independent Grower does not timely perform its objections hereunder as provided in this Agreement.

Id., ¶ C.

3. Under the heading "Termination," the contract provides:

> Either the Independent Grower or the Company shall have the right to terminate this Agreement and its Exhibits without any need for cause provided that written notice is given after a flock is settled and before a new flock is placed. Written notice from the Independent Grower should be given to the Live Production Manager or Broiler Manager. Written notice shall be given from the Company to the Independent Grower. Termination during a flock shall be in accordance with the other terms of this Agreement. Should such termination occur, the Company agrees to pay the Independent Grower for all services performed until termination of this Agreement, and the Independent Grower agrees to perform all obligations until termination of this Agreement. Once notice has been given by either party to terminate, the Company will not deliver new chicks, nor will the Independent Grower accept new chicks. Except for cause or economic necessity, Company will not terminate this Agreement without first requiring Independent Grower to follow the "Cost Improvement Program" as described in Exhibit B.

Id., ¶ D.

4. Under the subheading "Prior Agreements/Entire Agreement," the contract provides:

> This agreement supersedes, voids and nullifies any and all previous Broiler Production

> Agreements and all other previous agreements governing the relationship between Independent Grower and Company. The Independent Grower and Company hereby release and extinguish all claims that they may have against each other under any previous Broiler Production Agreement and all other previous agreements governing the relationship between Independent Grower and Company. This Agreement, and any Exhibits hereto, constitute the entire agreement between the parties, and those documents supersede all oral statements and other communications made before the execution of those documents. Independent Grower acknowledges that in entering into this Agreement, he/she has not relied upon any statements that are not contained in this document, and/or the Exhibits hereto.

R. at 2047-48, ¶ H.9).

5. Under the subheading "No Modification Except in Writing," the contract provides:

> The parties agree that this Agreement and the Exhibits hereto may not be modified except in writing signed by both the Company and Independent Grower.

Id., ¶ H.12).

6. Under the subheading "Exclusion of Incidental, Consequential, and Certain Other Damages," the contract provides:

> TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER THE COMPANY NOR INDEPENDENT GROWER SHALL BE LIABLE TO ONE ANOTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR NON-COMPENSATORY DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT AND/OR ITS

EXHIBITS, AND/OR THE PERFORMANCE OF THE PARTIES UNDER THIS AGREEMENT AND/OR ITS EXHIBITS.

Id., H.13).

7. Under the subheading "Choice of Law and Venue," the agreement provides that the "substantive laws of the State in which the farm is located shall govern the interpretation of this Agreement . . . ." Id., ¶ H.17).

Clinton Growers maintain that, notwithstanding the provisions of their respective contracts with Pilgrim's Pride Corporation, each of them should recover from Debtors based on a statement or statements made to the grower by one or more employees of Pilgrim's Pride Corporation (or of its predecessor) such as, or similar to, that the grower "would receive chickens as long as he met the company's requirement" and that they were "here for the long haul." Each of the Clinton Growers maintains that he took such statement or statements to mean that the grower's contract with Pilgrim's Pride Corporation would continue in effect for at least a sufficient length of time to enable the grower to recoup through income from the contract the cost of making the necessary preparations for performance under the contract.

All farms of the Clinton Growers were located in the State of Arkansas. The law of Arkansas appears to be quite clear that

promissory estoppel applies only when the elements of a contract cannot be shown. See Skallerup v. City of Hot Springs, 309 S.W.3d 196, 201 (Ark. 2009). Another holding of the Supreme Court of Arkansas that illustrates the extent to which Arkansas law allows the existence of a contract to insulate the contracting parties from extra-contractual claims is Lowell Perkins Agency, Inc. v. Jacobs, 469 S.W.2d 89 (Ark. 1971). In Lowell, the Arkansas Supreme Court made clear that Arkansas "law never accommodates a party with an implied contract when he has made a specific one on the same subject matter," id. at 93, citing to authorities to the effect that the doctrine of unjust enrichment or recovery in quasi-contract applies only to situations where there is no legal contract and that, generally, where there is an express contract, the law will not imply a quasi or constructive contract, id. at 92-93. The Arkansas Supreme Court quoted with approval from 17 C.J.S. Contracts § 6, p. 574, that "[a] quasi-contractual principle of unjust enrichment does not apply to an agreement deliberately entered into by the parties, however harsh the provisions of such contract may seem in the light of subsequent happenings." Id. at 92. See also Farmer's Coop. Ass'n v. Garrison, 454 S.W.2d 644, 647-48 (Ark. 1970).

The decisions of intermediate appellate courts of Arkansas seem uniformly to apply the rule announced by the Arkansas Supreme Court that promissory estoppel may be a basis for recovery only when formal contractual elements do not exist. See Moore v. Keith Smith Co., Inc., No. CA 08-884, 2009 Ark. App. LEXIS 283, at *13 (Ark. App. May 6, 2009) ("Promissory estoppel is not to be used as a vehicle to engraft a promise on a contract that differs from the written terms of the contract."); Taylor v. George, 212 S.W.3d 17, 25 (Ark. App. 2005) ("Promissory estoppel may be a basis for recovery only when formal contractual elements do not exist."); MDH Builders, Inc. v. Nabholz Constr. Corp., 17 S.W.3d 97, 101 (Ark. App. 2000) (holding that there was no need to explore whether the plaintiff proved entitlement to relief on an extra-contractual theory inasmuch as the trial court correctly found that a contract existed between the plaintiff and defendant). See also Glenn Mech. v, S. Ark. Reg'l, 278 S.W.3d 583, 587 (Ark. App. 2008).

In Heating & Air Specialists, Inc. v. Jones, 180 F.3d 923 (8th Cir. 1999), the Eighth Circuit provided the following explanation as to the status of Arkansas law on the subject under discussion:

> Arkansas courts have permitted parties to assert the doctrine of promissory estoppel as an alternative to breach of contract in the absence of consideration or

> as a means of overcoming a statute of frauds defense. The courts of Arkansas thus have applied the doctrine in order to overcome deficiencies in the formation of an enforceable contract, but have not applied it in order to determine the parties' rights under a contract that is otherwise enforceable. Their failure to do so reflects the widely accepted principle that promissory estoppel is applicable only in the absence of an otherwise enforceable contract.

180 F.3d at 934 (citations omitted, emphasis added). A recent United States District Court decision interpreting Arkansas law noted that:

> As repeatedly stated by the Arkansas Supreme Court, the law never accommodates a party with an implied contract when he has made a specific [one] on the same subject matter. The Arkansas Supreme Court has also held that promissory estoppel may be a basis for recovery only when formal contractual elements do not exist.

Billingsley v. Weyerhaeuser Co., No. 4:09-cv-04040, 2010 U.S. Dist. LEXIS 95254, at *13 (W.D. Ark. Aug. 24, 2010) (quotation marks & citations omitted), adopted by 2010 U.S. Dist. LEXIS (W.D. Ark. Sept. 10, 2010).

While the court is not giving law-of-the-case effect to the rulings of Judge Means in City of Clinton, the court finds that the first reason given by Judge Means for rejecting the promissory estoppel theory advanced by the poultry growers in that case is persuasive and equally applicable to the promissory estoppel theory advanced by Clinton Growers in support of their

claims in bankruptcy in this same bankruptcy case in which Judge Means made his City of Clinton ruling.

The law of Arkansas on the effect of the merger doctrine is that it prevents reliance by a contracting party on extra-contractual statements or representations. In Farm Bureau Insurance Co. v. Running M Farms, the Arkansas Supreme Court explained:

> [T]his court has said that "[w]hen two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing." U.S. Rubber v. Northern, 236 Ark. 381, 384, 366 S.W.2d 186, 188 (1963); see also Ultracuts Ltd. v. Wal-Mart Stores, Inc., 343 Ark. 224, 232, 33 S.W.3d 128, 134 (2000) (holding that "[i]t is a general proposition of the common law that in the absence of fraud, accident or mistake, a written contract merges, and thereby extinguishes, all prior and contemporaneous negotiations, understandings and verbal agreements on the same subject.")

237 S.W.3d 32, 37 (Ark. 2006). See also Hagans v. Haines, 984 S.W.2d 41, 44 (Ark. App. 1998); Stevens v. Ark. Power & Light Co., 124 S.W.2d 972, 973, 975 (Ark. 1939).

No plausible argument can be made that the statements on which Clinton Growers rely in support of their promissory estoppel theory are not directly dealt with in their broiler production contracts. The subjects of those statements are

express elements of the contracts. The contracts could not have been more specific and complete on the subjects of the terms of the contract and circumstances that would cause the contracts to terminate. Nor could they have been any more specific and complete in their provisions that the written documents constituted the entire agreement between the parties, and that they superseded all oral statements and other communications made before the execution of the contracts. The contracts dealt directly with the possibility that someone would claim a verbal modification after the contract was entered into by providing in each contract that it was not subject to modification except in writing signed by both parties. The contracts went so far as to provide that the kinds of damages Clinton Growers are asserting against Debtors would not be recoverable. The Arkansas courts could not have made it any plainer that a promissory estoppel claim under the circumstances existing here would not be viable under Arkansas law.

Aside from significant attention devoted by Clinton Growers in their briefs to their contention that the bankruptcy court erred in giving effect to the law-of-the-case doctrine in its denial of their claims in bankruptcy, the main thrust of their appellate arguments is that the decision of the Arkansas Supreme Court in Tyson Foods v. Davis, 66 S.W.3d 568 (Ark. 2002), is

controlling, and that the rulings in Tyson establish that, at the least, the record on which the bankruptcy court acted presented issues of fact that caused the bankruptcy court's summary rulings against Clinton Growers to be in error. Br. of Appellants at 12-19, 21-24, 31-33; Reply Br. at 8-18. The bankruptcy court did not overlook Tyson; rather, it devoted four pages of the opinion to explanations of why Tyson is inapplicable to the legal issues related to the promissory estoppel theory advanced by Clinton Growers. R. at 3997-4000. The court concurs with the bankruptcy court's analysis of Tyson, and agrees that none of the Tyson holdings are inconsistent with, or impair, any of the rulings made by Judge Means in City of Clinton or by the bankruptcy court here as to why the promissory estoppel theories urged by the growers in City of Clinton and the instant action is not legally viable.

If, as Clinton Growers seem to contend, the Arkansas Supreme Court in Tyson changed the rule that promissory estoppel applies only when the elements of a contract cannot be shown, that court would not have said, as it did seven years after Tyson, in Skallerup that:

> To the extent that Skallerup argues that estoppel applies to the contract obligations asserted, he is in error. Promissory estoppel applies when the elements of a contract cannot be shown. Skallerup argues that contracts exist in the present case making promissory

> estoppel inapplicable. We hold that there is no relief available under either equitable estoppel or promissory estoppel.

Skallerup, 309 S.W.3d at 201 (citation omitted).

The court has given full consideration to all arguments and authorities advanced by Clinton Growers in support of their equitable estoppel theory, and finds none of them persuasive.

Therefore,

The court ORDERS that the order of the bankruptcy court in the above-captioned bankruptcy case entered February 11, 2011, that each and every one of the Clinton Growers take nothing by their claims against Pilgrim's Pride Corporation be, and is hereby, affirmed.

SIGNED December 19, 2011.

JOHN McBRYDE
United States District Judge

No.	Grower Name	Proof of Claim No.
1	Billy E Appleby	3885
2	Ricky & Debbie Arnold	3884
3.	Lillian Bass	4801
4.	Bobby D. Beavers	4800
5	Milton & Faith Biggers	4012
6.	Phyllis Blackshire	4011
7.	Anita J Taylor f/k/a Anita J Breshears	5177
8	George Brents	4001
9.	Herman K Brents	3949
10	Kenneth Brents d/b/a Brents Farm LLLC	3962
11	Janie S. & Harold Brown	4005
12	Jerry M. Brown	4014
13	Peggy Bryant	3894
14	Sharon K Bryant	3896
16	Marilyn S Carr	3877
17.	Neal Chism d/b/a Chism Farms	4015
18	Jamie L. & Jana A Coffman	4004
19.	Wayne Cole d/b/a W And J Ranch, Inc	4802
20	Linda J Cothern	3942
21.	Edmund Cunningham	3898
22	Diana & James Curry	3869
23.	Phillip A. Desalvo	4010
24	Tony J Desalvo	5175
25.	Barbara J. Dixon	3998
26	Darris & Sarah Dixon dba Darris Dixon Farm	4007
27	Brad J & Robin Dunlap	4002
28	Carrolyn Dunlap	3990
29	Charles W. Dunlap	3992
30	Jerry J. Dunlap	3937
31	Nell Dunn	5174
32.	Burl D. Duvall	3983
33	Jerry D Duvall	3938
34.	Paul W. Duvall	3931
35	Rodney Edwards	3944
36	Angela N Faulkner	3862
37	Gayle Faulkner	3879
38	Randy W Findley	4021
39	Christopher K Flory	3867
40	Darrell K Flory	4008
41	Michael B Gadberry	3946
42	Gibson Family Partnership a/k/a Gibson Family Partnership	4000
43	Jerry N Golden	3892
44	Linda Golden	3895

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45.	William D & Geraldine Hartman	4988
46.	William Steve Hartman	4796
47.	Joe & Marilyn Hawkins dba J & M Hawkins' Farm, Inc	3872
48.	Randy Hayes	3868
49.	Alan Hoelzeman	5179
50.	Timothy Honeycutt	3981
51.	Mary S. Hule	4793
52	Frankie L. Ingram	3880
53	Ronnie L Jones	4933
54	Scott W. and Deana L. Jones	3897
55	Johnny Joslin	4017
56	L Shane Kasper	3920
57.	Joe E. Keeton	3934
58	Eulina Lay	3994
59.	James & Carol Mallett	3874
60	Charles A. Malone	3991
61	Dalton T. Malone	3933
62	Marion Wayne Martin	3878
63.	Steve C. Masingill	3890
64	Benny McClaren	4013
65	Eric Q. McClaren	3996
66	Martha E McClaren	4405
67	Michael B. McNabb	3947
68	Jimmy B Miller & Charlene M Miller	4019
69	James Miller Jr	3873
70	Mary R Miller	4795
71	Mary E & Charles E. Miller	4932
72.	Loretta & Shawna Miller	3876
73	Sherman D. Millsap	4794
74	Doris Peugh	4016
75	Kyle R Price	3919
76	Gary R Pulliam	3883
77	Jeremy G Rainey	3980
78	William D Roberson	4797
79	Josh Rogers	3995
80	Ralph W Ruff Jr	3951
81	Sammy Sims	4915
82	Travis L Sims	5176
83	Paul L. & Linda J. Singleton	3927
84	Benjamin L. & Cleta M Sommers	4009
85	Frank E Southard	3941
86	Doug & Carla Spence	4018
87	Dale D Stracner	3930
88	Roger A Stratton	3871
89	Roy Sullivan	4934
90	Steve Trafford	3889
91	Julie A Trigg Ward	4020
92	Troy A Vang	3881

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93	Jerri Christy Wallace	4003
94.	Mike L. Wallace	3925
95	John A. Wesley	3997
96.	Thomas W. Whitlock	3888
97	Billy E. & Charlotte T. Wilchman	4405
98	Annette & Benny Williams	5178
99	David K. Williams	4006
100	Greg Williams d/b/a David L. Williams	3999
101.	Terry Williams d/b/a Williams Bros. Farm	3886
102	Lawrence F. Williams	3921
103	Shirley Williams	3891
104.	Linda S. Wooten	3875
105	Rodney N. Wyllie	3670
106	Paul Zimmerman	3893

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