

STATE OF MICHIGAN
COURT OF APPEALS

TRISHA J. ARNDT,

Plaintiff-Appellant,

v

MEDICAL CENTER CITIZENS' DISTRICT
COUNCIL, HENRY HAGOOD, ANGELA
BRADBY and CITY OF DETROIT,

Defendants-Appellees.

UNPUBLISHED

June 26, 1998

No. 191667

Wayne Circuit Court

LC No. 94-420236 CK

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition to defendants City of Detroit, Henry Hagood, and Angela Bradby. We reverse and remand for further proceedings.

Plaintiff, an attorney, was retained by the Medical Center Citizens' District Council (the MCCDC), a citizens' district council existing by virtue of MCL 125.74; MSA 5.3504 and Detroit City Ordinance 429-H. Plaintiff sent bills for her services to the MCCDC, which then forwarded the bills to defendant City of Detroit (the City) for processing. The City refused to release funds to allow the MCCDC to pay plaintiff. Plaintiff filed suit against both the MCCDC and defendants. The trial court granted defendants' motion for summary disposition and entered a default judgment against the MCCDC.

Plaintiff first contends that the trial court erred in determining that the City did not have sufficient control over the MCCDC so as to establish an agency relationship. We disagree. The test of whether an agency has been created is whether there is a right to control the actions of the agent. *Anspach v Livonia*, 140 Mich App 403, 409; 364 NW2d 336 (1985). Citizens' district councils exist to give a voice to local communities regarding urban renewal policy and are not extensions of city government. See MCL 125.74(8); MSA 5.3504(8); see also Detroit City Ordinance 14-6-11(c). The City cannot control the actions of the MCCDC; for example, the City does not have the authority to direct staffing

at the MCCDC. The fact that the MCCDC receives funding from the City is not determinative. See *Anspach, supra* at 410.

Plaintiff next argues that summary disposition should not have been granted with respect to her breach of implied contract claim against defendants. Again, we disagree. An implied contract exists when the parties do not explicitly manifest their intent to contract by words, but their intent can be gathered by implication from their conduct, language, and other circumstances attending the transaction. *Featherston v Steinhoff*, 226 Mich App 584, 589; 575 NW2d 6 (1997). An implied contract must satisfy the elements of mutual assent and consideration. *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989).

Here, plaintiff has not established the element of mutual assent. Plaintiff has presented no facts that indicate that plaintiff and defendants agreed to enter a contract regarding the payment of plaintiff's bills. Furthermore, plaintiff has not established the element of consideration. The mere fact that defendants may have received some benefit from plaintiff's representation of the MCCDC does not establish that there was legal consideration arising out of a bargain. See *Higgins v Monroe Evening News*, 404 Mich 1, 20-21; 272 NW2d 537 (1978). Plaintiff has failed to allege facts to indicate that the parties intended any benefit received by defendants to be consideration for a contract. See *id.* at 21. We therefore conclude that plaintiff has not alleged sufficient facts to support a breach of implied contract claim.

Despite our finding that there was no implied contract, we nevertheless conclude that summary disposition was premature. Plaintiff has alleged facts that indicate that she may have a claim of promissory estoppel. The elements of promissory estoppel are: (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 *or a third person*, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. *First Security Savings Bank v Aitken*, 226 Mich App 291, 312; 573 NW2d 307 (1997); *Ypsilanti Twp v General Motors Corp*, 201 Mich App 128, 133-134; 506 NW2d 556 (1993). Because promissory estoppel is an exception to general contract principles in that it permits enforcement of a promise that may have no consideration, an actual, clear, and definite promise is required. *State Bank of Standish v Curry*, 442 Mich 76, 96; 500 NW2d 104 (1993); *Aitken, supra*. To determine the existence and scope of a promise, we look to the words and actions of the transaction as well as the nature of the relationship between the parties and the circumstances surrounding their actions. *Curry, supra* at 86; *Aitken, supra* at 313. The remedy granted for breach may be limited as justice requires. *Aitken, supra* at 312; *Ypsilanti Twp, supra*.

Plaintiff has submitted affidavits from Jewell Johnson and Earline Crain of the MCCDC stating that the City, through defendant Bradby and others, told them that it would pay plaintiff's legal bills. Plaintiff alleges that defendants allowed her to rely on representations that she would be paid while she continued acting on behalf of the MCCDC. Plaintiff has presented evidence of an actual, clear, and definite promise. Plaintiff alleges that she is owed approximately \$50,000 in legal fees. Under these facts, it is possible that injustice may be avoided only by enforcement of the promise. We therefore conclude that the trial court erred in granting defendants' motion for summary disposition¹ and remand

for further proceedings so that it may be determined whether plaintiff is entitled to recovery under a theory of promissory estoppel.

Plaintiff's final argument on appeal is that the trial court erred in denying her motion for relief from judgment because defendants misrepresented to the court that the City could not use funds provided by the Housing and Urban Development Department to reimburse the MCCDC for plaintiff's legal fees. A trial court's decision regarding whether to grant a motion for relief from judgment is reviewed for an abuse of discretion. *Huber v Frankenmuth Mutual Ins Co*, 160 Mich App 568, 575-576; 408 NW2d 505 (1987). In denying plaintiff's motion, the trial court stated:

I don't want to rehash the whole thing again, Ms. Arndt. I'll stick by what I did before.
I'll deny the motion. Take it up.

From these comments, it does not appear that the trial court actually addressed this issue. We therefore instruct the trial court to consider the merits of this issue on remand.

Reversed and remanded for further proceedings. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh

¹ The trial court granted defendants' motion for summary disposition without indicating whether it was relying on MCR 2.116(C)(8) or (10). However, under either subrule, we conclude that summary disposition was erroneously granted. Plaintiff both stated a claim under which relief could be granted and presented affidavits in support of that claim.