DePaul Law Review

Volume 4
Issue 2 *Spring-Summer 1955*

Article 17

Contracts - Promissory Estoppel Held Insufficient to Make an Offer Irrevocable

DePaul College of Law

CONTRACTS—PROMISSORY ESTOPPEL HELD INSUFFICIENT TO MAKE AN OFFER IRREVOCABLE

Defendant had signed a document with his tenant, the plaintiff in this action, whereby it was agreed that for the sum of one dollar, defendant would give the plaintiff the right to renew his lease, in the event that he, the plaintiff, would secure a bona fide and approved sublease. The dollar was never paid. About four months later, the plaintiff entered into several binding subleases, none of which were ever submitted for approval to the defendant. Subsequently, the defendant notified the plaintiff that he did not intend to renew the leases which were to expire shortly. The plaintiff thereafter attempted to exercise his rights under the option agreement, the end result being that the defendant evicted the plaintiff at the expiration of the lease. The plaintiff in this action sued for damages caused by the eviction. In holding for the defendant Chief Justice Vanderbilt speaking for the Supreme Court of New Jersey said that the consideration of one dollar did not make the offer irrevocable, because it was neither paid nor was it the consideration bargained for. Nor, as was contended by the plaintiff, did the plaintiff's reliance in securing subtenants serve to make the offer irrevocable, because the defendant could not have reasonably foreseen such reliance without the plaintiff first having secured the defendant's approval. Thus, the court found that the agreement to renew was simply a revocable offer, which in fact was revoked before any valid acceptance was attempted. *American Handkerchief v. Frannat*, 109 A. 2d 793 (N.J., 1955).

This case is noteworthy in that the court in disposing of the plaintiff's first contention asserted the bargain element as being necessary to have sufficient consideration to support an offer, and at the same time entertained the doctrine of reliance in disposing of the plaintiff's second contention. Chief Justice Vanderbilt, in deciding against the plaintiff on the issue of whether the dollar was sufficient consideration, cited Williston[1] and several cases[2] in which it was held that in order to have a binding consideration it is absolutely necessary that the consideration must have in fact been bargained for, even in the face of a written agreement in which such consideration is recited.

Going to the second contention of whether plaintiff's reliance in securing subtenants was sufficient to make the offer irrevocable, Chief Justice Vanderbilt in going against the plaintiff cited Corbin's work in which it is contended that substantial reliance on the faith of an offer which could have been reasonably foreseen by the offeror will serve to make that offer irrevocable.[3] Thus, this case illustrates the peculiar phenomena that seems to prevail among the

[1] Williston, Contracts § 115 (rev. ed., 1936).

[2] Robertson v. Garvan, 270 Fed. 643 (D.C.N.Y., 1920); Finegan v. Prudential Ins. Co. of America, 300 Mass. 147, 14 N.E. 2d 172 (1938); Kay v. Spencer, 29 Wyo. 382, 213 Pac. 571 (1923).

[3] 1 Corbin, Contracts § 51 (1950).

jurisdictions that have entertained or applied the doctrine of reliance, more commonly called promissory estoppel, namely, that the court will consider two doctrines that would seem to be contradictory and apply one of them without rejecting the other.

Before this case New Jersey adhered rather strictly to the rule of bargain and consideration, the question of reliance or promissory estoppel as being sufficient to support liability on a promise, seldom, if ever, having arisen. Now, by reasserting the requirement of bargain, and at the same time entertaining the idea that reliance might make an offer or promise binding, New Jersey seems to have joined the groups of states that demand the bargain element as a necessity of consideration, and at the same time admit in a rather faint voice the possibility that reliance may make a promise binding. After reading this case, one wonders if, had the facts been sufficient, the court would have applied the doctrine of reliance to find a verdict for the plaintiff. Be that as it may, while this case cannot be cited as an express acceptance of the doctrine of promissory estoppel, it can be considered as representing a willingness of the courts to entertain the doctrine, and perhaps be looked on as a small crack in the iron-clad doctrine of consideration in New Jersey.

Heretofore, the doctrine of promissory estoppel has usually been asserted in cases involving absolute promises of one sort or another; seldom has the doctrine been called up in cases where an offer is being sought to be enforced as irrevocable. Accepting for the moment the doctrine of promissory estoppel, can the doctrine be used to support an offer? It is on such a question as this that it becomes important to ascertain just what promissory estoppel is. Shall we accept reasonably foreseeable reliance as consideration itself or as a substitute for consideration so as to make it a paid-for offer and therefore irrevocable,[4] or shall we make the offer irrevocable by ignoring the idea of consideration entirely, and substituting Corbin's doctrine of reliance? The authorities are not at all in agreement on just where promissory estoppel fits into the law. Some say that it is consideration,[5] or a substitute for consideration.[6] Some have looked upon it as a clear-cut exception to the requirement of consideration.[7] The author cited by Chief Justice Vanderbilt in the principal case seems to make it a facet of his all-embracing doctrine of reliance;[8] others say that the doctrine logically and historically is a tort rule and does not fit into the law of contracts at all.[9] Although there is no uniformity among the authorities as to the nature of

[4] Rest., Contracts § 46 (1933).

[5] Allegheny College v. National Chautauqua Co. Bank, 246 N.Y. 369, 159 N.E. 173 (1927).

[6] Porter v. Commissioner, 60 F. 2d 673 (C.A. 2d, 1932).

[7] Rest., Contracts §§ 85, 90 (1933).

[8] 1 Corbin, Contracts §§ 193–208 (1950).

[9] Snyder, Promissory Estoppel as Tort, 35 Iowa L. Rev. 28 (1949).

promissory estoppel, there seems to be agreement as to the requirements necessary to establish it:

1) A promise which the promisor should reasonably expect to produce action or forbearance of a definite and substantial character.
2) Actual action or forbearance is induced.
3) Injustice can only be avoided by enforcement.[10]

The objection has been raised that promissory estoppel requires a promise and that in cases like the principal one, it is an offer that is sought to be enforced, and for that reason promissory estoppel should not apply. In *Bard v. Kent*,[11] a case that is very much like the present one, it was on such reasoning that the court refused to apply the doctrine of promissory estoppel to an offer so as to make it irrevocable. Such logic seems to display a lack of understanding of what an offer is. After all, is not an offer simply a conditional promise?[12] Should the fact that a promise is conditional instead of absolute bar promissory estoppel from operating upon it? Nevertheless, it was the distinction between an offer and a promise, that the court used in the *Bard* case as its reason for barring promissory estoppel from making an offer irrevocable.

Judging from the amount of material that has been written on the subject and the number of cases that have used or considered the doctrine, it seems that promissory estoppel has a place somewhere in American law. The great impediment, however, to being able to say that the doctrine is a definite part of our law is the inconsistency with which the courts have applied it. The doctrine first seems to have emerged in situations where there has been a promise to abandon an existing right.[13] Subsequently, it has been extended to representations of future conduct in certain classes of cases, the great majority of which involved the enforcement of charitable subscriptions.[14] There has been a general reluctance to extend the doctrine to commercial contracts; yet there are a few cases where it has been done.[15]

It is easy to see the violence that the doctrine of promissory estoppel does to the rule of consideration, and perhaps because of fear of eventually having promissory estoppel supplant the doctrine of consideration, the courts are reluctant to apply it generally, and use it only as a sort of auxiliary rule to mitigate the harshness of the requirement of consideration in certain isolated or extreme cases where they feel justice will be better served by not demanding consideration. If the doctrine were to be generally applied, it would certainly

[10] Rest., Contracts § 90 (1933).

[11] 19 Cal. App. 2d 500, 65 P. 2d 955 (1937).

[12] Rest., Contracts § 24 (1933).

[13] Hatten v. Vose, 156 F. 2d 464 (C.A. 10th, 1946); Hood v. Polish Nat'l Alliance, 246 Ill. App. 137 (1927).

[14] Danby v. Osteopathic Hospital Ass'n, 104 A. 2d 903 (Del. S. Ct., 1954).

[15] Goodman v. Dicker, 169 F. 2d 684 (App. D.C., 1948).

establish liability on promises[16] to be based on three rules that are controlled by such words as *substantial*, *forseeable*, *reasonable*, *actual*, and *injustice*. Corbin presents a good argument in stating that the courts are already familiar with such terms and their application.[17] Nevertheless, it is understandable that they should be somewhat jealous of a rule that is relatively simple to apply, and which works justice in the majority of cases.

As yet, the Illinois courts have not been called upon to apply the doctrine of promissory estoppel to a commercial case.

To conclude, it is probably a fair appraisal of this case to say the New Jersey court has taken a step toward joining the many states that while adhering to the doctrine of consideration pay some recognition to the doctrine of promissory estoppel.

[16] 1 Williston, Contracts § 139 (rev. ed., 1936).

[17] 1 Corbin, Contracts § 200 (1950).

CRIMINAL LAW—JURORS READING NEWSPAPER ACCOUNT OF PRIOR ACTS OF DEFENDANT HELD ERROR

The defendant was convicted of rape and given a life sentence. Sixteen years later, under the subsequently passed Illinois Post-Conviction Hearing Act,[1] the defendant filed a petition for relief alleging a substantial denial of his constitutional rights. The Criminal Court of Cook County granted a new trial, holding that because the jury had been allowed to read prejudicial newspaper articles concerning the defendant during the trial, his right to a fair and impartial trial was impaired. It was alleged and not denied that the prosecuting attorney released the story. The Illinois Supreme Court affirmed, three justices dissenting, holding that where all of the jurors were allowed to read, on the evening before they were to render their verdict, that the defendant had confessed to two murders, had boasted of attacking more than fifty women, had been referred to by the police as a "vicious degenerate" and had been arrested while attempting to attack another woman, it was an abuse of the trial court's discretion to deny the defendant's motion to withdraw a juror. The court so held notwithstanding the jurors' affirmances that they could and would disregard what they had read and notwithstanding the court's instructions to that effect. *People v. Hryciuk*, 5 Ill. 2d 176, 125 N.E. 2d 61 (1954).

The majority of decisions support the view that a mistrial is warranted only if the reading of the prejudicial matter appears to actually have the effect of influencing a juror's decision, and this determination is vested with the trial court.[2] The effect of reading a prejudicial article may be mitigated by showing that the

[1] Ill. Rev. Stat. (1953) c. 38, §§ 826–832.

[2] People v. Herbert, 340 Ill. 320, 172 N.E. 740 (1930); Collins v. Dunbar, 131 Me. 337, 162 Atl. 897 (1932).