

**The FIRST NATIONAL BANK OF LOGANSPORT, Appellant, v. LOGAN MFG. CO.,
INC.,**

Supreme Court of Indiana
577 N.E.2d 949 (Ind. 1991)

KRAHULIK, Justice.

In a memorandum decision, the Court of Appeals affirmed, with certain amendments and corrections, the trial court's judgment against The First National Bank of Logansport, awarding \$726,532 in damages for breach of a loan commitment, allegedly made to the plaintiffs below, Logan Manufacturing Co., Inc., Donald Moore, Sondra Moore, Clifford Garrett and Judith Ann Garrett (collectively "Garrett and Moore"). The bank has petitioned us to accept transfer of this case. We accept the request.

The issues presented are whether a contract to loan money was entered into by the parties and what damages are recoverable. The facts relevant to our discussion follow.

In 1982, Max Brandt was a senior vice president and senior loan officer at the bank. During this time, there was high unemployment in Logansport and Brandt was interested in bringing new industry to the area and in obtaining new business for the bank. In 1982, Brandt became aware of a small corporation in Michigan called Winamac Plastics Drinkwear which was undercapitalized and had suffered losses as the result of high rental payments, high labor costs and some questionable management practices, but which also was considering a move to Indiana. Representatives of the bank reviewed the products and potential of Winamac Plastics, its customer lists, contracts, equipment lists and appraisals, and its financial data, and determined that with additional capital and new management, the business was viable.

Thereafter, in late 1982, Garrett and Moore became interested in Winamac Plastics. In January 1983, Garrett and Moore met with Brandt at the bank. Numerous meetings and telephone conversations over the following weeks culminated in Brandt's determination that the bank would get involved with financing the business if Garrett and Moore were involved and the business moved to Logansport.

Both Garrett and Moore were told by Brandt that the limit on his lending authority was \$100,000, and that requests for loans above that amount had to be approved by certain bank committees. Pursuant to that authority, Brandt approved a loan to Garrett and Moore personally for \$100,000, \$80,000 of which was to be used to acquire a two-thirds interest in the business for Garrett and Moore. Ultimately, Garrett and Moore borrowed a total of \$100,000 from the bank.

In March, Brandt prepared a loan application for Winamac. The request was for a term loan of \$420,000 and an operating loan of \$120,000. At the same time, Brandt prepared a loan request for Garrett and Moore for \$206,000 which included the \$80,000 already borrowed. Brandt submitted the Winamac loan request to the bank's loan committee and it was turned down because of the company's heavy debt load. When Garrett and Moore learned that the loan had been denied, they were upset and frustrated because they already had borrowed money from the bank and spent it on the project. Without additional loans, they would not be able to proceed with operation of the business.

Brandt assured Garrett and Moore that the bank would help them purchase the Winamac machinery and go into operation under a new corporate entity. Brandt encouraged them to continue the process of moving the business to Logansport and setting up a new corporation to operate it. Garrett and Moore decided to proceed in that fashion.

Brandt then prepared a new loan application using the name Logan Drinkwear, Inc., which was one of the names proposed by Garrett and Moore for the new corporation. Neither Garrett nor Moore were asked to sign the new application. This application, for a term loan of \$346,000 and a line of credit of \$250,000, was approved the same day it was submitted (four days after the Winamac application was denied) by both the officer's loan committee and the director's loan committee of the bank. Garrett and Moore were advised of the approval that day also.

On March 31, 1983, the bank issued letters of commitment for a \$346,000 term loan and a \$250,000 operating loan. This commitment provided, for the first time, that the term loan (\$346,000) had to be guaranteed by the state. When Garrett and Moore questioned Brandt about this requirement, he indicated that the guaranty would be a good thing, but that the bank did not need it, and assured them that the bank would lend the money to buy the machinery whether or not the Indiana Economic Development Commission guaranteed the loan. The commitment also provided that Garrett and Moore would give the bank a security interest in the machinery, equipment, furniture and fixtures. The letters of commitment carried an expiration date of May 31, 1983. Subsequently, the bank refused to close on either loan. Garrett and Moore used the remaining \$20,000 from the \$100,000 initially borrowed, and they sought loans elsewhere without success, until 1987. Then, with loans from state agencies, they opened a similar plastics business in Iowa.

Garrett and Moore sued the bank for damages suffered as a result of its refusal to make the term loan and extend the line of credit as provided in the loan commitment letters, and proceeded to trial on the theories of breach of contract, breach of implied contract, promissory estoppel, interference with contractual relations, and fraud. Following a bench trial, a judgment in favor of Garrett and Moore in the amount of \$726,532 was entered, consisting of the following components

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| 1. Lost profits from mid-1983 to mid-1987; | \$583,452 |
| 2. Loss of equity in their personal machinery and equipment; and | \$ 70,000 |
| 3. Out-of-pocket expenses. | \$ 73,080 |

[The court held that there was no enforceable oral or written contract, on these facts.]

III. *Promissory Estoppel*

The trial court also concluded that Garrett and Moore were entitled to relief on a theory of promissory estoppel because they had relied to their detriment upon Brandt's assurances that the bank would lend additional money. We agree. The Restatement (Second) of Contracts § 90 provides:

A promise which the promissor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

That section . . . is today adopted by this Court.

The doctrine of promissory estoppel encompasses the following elements: (1) a promise by the promissor (2) made with the expectation that the promisee will rely thereon (3) which induces reasonable reliance by the promisee (4) of a definite and substantial nature and (5) injustice can be avoided only by enforcement of the promise. . . . Thus, a promissor who induces a substantial change of position by the promisee in reliance upon the promise is estopped to deny enforceability of the promise. The reason for the doctrine is to avoid an unjust result in that justice and fair dealing require that one who acts to his detriment on the faith of a promise should be protected by estopping denial of that promise.

The doctrine of estoppel springs from equitable principles and is designed to aid the law in the administration of justice where, without its aid, injustice might result. Its purpose is to preserve rights previously acquired and not to create new ones. *Pepkowski v. Life of Indiana Ins. Co.* (1989), Ind., 535 N.E.2d 1164, 1167, quoting *State v. Mut. Life Ins.* (1910), 175 Ind. 59, 82, 93 N.E. 213, 222. Estoppel is "the misleading of a party entitled to rely on the acts or statements in question and a consequent change of position to his detriment." *Travelers Ins. Co. v. Eviston* (1941), 110 Ind.App. 143, 154, 37 N.E.2d 310, 314. Fraud need not be proven; "[i]t is sufficient if the conduct of the party has been knowingly such as would make it unconscionable on his part to deny what his conduct had induced another to believe and act upon in good faith and without knowledge of the facts." *Pitcher v. Dove* (1884), 99 Ind. 175, 177-78. . . .

A plaintiff may recover on a theory of promissory estoppel even in the absence of a contract. *Quake Construction [Inc. v. American Airlines, Inc.]* (1990), 114 Ill. 2d 281]. Promissory estoppel is an exception to the general rule that estoppel is not available upon promises to be performed in the future. *Reeve v. George-Pacific Corp.* (1987), Ind.App., 510 N.E.2d 1378, 1382. The doctrine of promissory estoppel can act as a substitute for lack of consideration or lack of mutuality. Unjust enrichment is not required, and the promissor need not receive any benefit or consideration from the transaction. *Citizens State Bank v. Peoples Bank* (1985), Ind.App., 475 N.E.2d 324, 327. Whether the promissor's action "constitutes a misrepresentation of current fact or an unfulfilled promise as to future action is irrelevant to the application of promissory estoppel." *Id.* . . .

We turn now to an examination of the facts to determine whether each of the five elements have been established. First, was there a promise? We believe so. The trial court found that participation in the business by Garrett and Moore was suggested by Brandt. From the beginning of the relationship, the bank, through Brandt, was aware that Garrett and Moore needed funds from the bank to invest in and operate the plastics business. Brandt indicated that

the bank was willing to lend the money to Garrett and Moore for this purpose. All parties knew that large sums, in addition to the \$100,000 authorized by Brandt, would be necessary to move and operate the plastics business. From the beginning, Brandt represented to Garrett and Moore that the bank would provide the financing. Brandt made the initial loan of \$100,000 with complete knowledge that it would be used by Garrett and Moore to obtain a financial interest in the plastics business, move the business to Logansport, and prepare a building for its operation there. Brandt also had complete understanding that \$100,000 would not be sufficient money to accomplish this end, and knew that none of the \$100,000 would benefit Garrett and Moore unless the business actually moved to Logansport. Brandt talked to Garrett and Moore several times concerning their spending of the \$100,000 loan; the bank was kept advised about how the loan proceeds were being spent; it questioned Garrett and Moore about some expenditures and directed the use of some of the funds. After the loan application for \$540,000 made in the name of Winamac Plastics was denied, Garrett and Moore sought and received assurances from Brandt that the bank would help Garrett and Moore buy the machinery under a different corporate entity. At this time, Brandt continued to encourage Garrett and Moore to proceed with moving the business to Indiana. We find that these representations and actions on the part of the bank justified the trial court's conclusion that a promise to lend additional sums was made by the bank during this period.

Even though there were insufficient terms for the enforcement of an express oral contract (see our discussion in section I), and unfulfilled pre-existing conditions prohibiting recovery for breach of a written contract (see section II), we are not precluded from finding a promise under these circumstances. Indeed, it is precisely under such circumstances, where a promise is made but which is not enforceable as a "contract," that the doctrine of promissory estoppel is recognized.

Turning to elements two, three and four, we think it clear these requirements have been met. The bank should have reasonably expected that Garrett and Moore would rely on the bank's representations that the loan would be made. In addition, the trial court found the bank had actual knowledge of such reliance as a result of continued conversations among Brandt and Garrett and Moore and Brandt's participation in directing the use of the \$100,000 loan. Indeed, it would be unusual for a lender under these circumstances not to expect or anticipate that a promise to lend needed money would induce a borrower to rely on the promise by making preparations for the loan as did Garrett and Moore, or to cease searching to borrow the money elsewhere. See *Malaker Corp. v. First Jersey Nat'l Bank* (1978), 163 N.J. Super. 463, 474, 395 A.2d 222, 231. Garrett and Moore's actions in reasonable reliance on Brandt's promise were of a definite and substantial character because they borrowed \$100,000, for which they were personally liable, and spent most of the loan proceeds on preparing to move the business to Logansport.

The fifth element is whether injustice can be avoided only by enforcement of the promise. Again, we believe so. Even though the parties' dealings up to the time of the issuance of the commitment letter formed no contract, Brandt's representations and actions induced Garrett and Moore to reasonably rely on the loan being made in the future. In reliance on the representations, Garrett and Moore began making arrangements and spending money on moving the business to Logansport expecting that the additional money needed would be made available.

We think it clear that had Garrett and Moore known that the loan commitment would contain conditions they could not meet or that the loan ultimately would not have been made, they would not have spent the proceeds from the \$100,000 loan until they had secured alternative financing. An injustice would result if Garrett and Moore were penalized for relying on the representations made by the bank's loan officer when the loan officer was aware of and participated in the actions of Garrett and Moore which constitute reliance. It would also be unjust for the bank to recoup the \$100,000 originally loaned, without imposing on it the responsibility for the actions of its lending officer.

All five elements of promissory estoppel are established by the evidence and the trial court's findings in this regard are affirmed. . . .