

Detrimental reliance essay sample

Law



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Detrimental Reliance occurs when someone takes action or fails to take action because of what appeared to be a promise made by another individual, without knowing if true or untrue. It is very similar to Promissory Estoppel in that the other party is “ estopped” or legally prevented from denying liability, even though no formal contract was formed, because of its promise. An estoppel by representation [of fact] will arise between A and B if the following elements are made out. First, A makes a false representation of fact to B or to a group of which B was a member. [It is not necessary to demonstrate A knew that the representation was untrue.] Second, in making the representation, A intended or [in the alternatively,] knew that it was likely to be acted upon. Third, B, believing the representation, acts to its detriment in reliance on the representation. [It must have been reasonable to rely on the representation.] Fourth, A subsequently seeks to deny the truth of the representation. Fifth, no defense to the estoppel can be raised by A. (The Law of Waiver, Variation and Estoppel)

Section 90 of the Restatement (Second) of the Law of Contracts reads, “ Promise Reasonably Inducing Action or Forbearance: A promise which the promisor 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. So, in other words, someone (the “ promisor”) made a representation of fact which could reasonably expect the other party to rely upon, that is, one party made a promise and the other person (the “ promisee”) did in fact rely

upon the representation or promise. Now, the promisee suffers a detriment or injury as a result of that reliance.

The case of *Condrey v. SunTrust Bank of Georgia*, 431 F. 3d 191- Court of Appeals, 5th Circuit 2005, *Harrell Equipment Company, Inc.* (“Harrell Equipment”) appeals the district court’s grant of summary judgment for SunTrust Bank of Georgia (“SunTrust”) regarding a cross-claim brought by Harrell Equipment against SunTrust alleging fraud, conversion, tortious interference with property rights, detrimental reliance, and fraudulent breach of contract. In 1997, Harrell Equipment began to experience the slump in the agriculture industry that was occurring. Therefore, SunTrust told Harrell Equipment that in order to receive further financing, Harrell Equipment would have to reduce its outstanding debt, lower its expenses and sell more of its inventory. Harrell Equipment agreed and reduced its outstanding debt by \$1 million; SunTrust, however, later refused to grant Harrell Equipment further financing. The agreement, or lack thereof, that resulted from this refusal is the subject of this appeal.

Because Harrell Equipment could not get further financing, it asserts that it considered filing for bankruptcy as its only solution. Harrell Equipment claims that it did not file for Chapter 11 protection because SunTrust branch president, Will Sims, offered, what seemed at the time, a better deal.

Pursuant to his offer, Harrell Equipment claims that SunTrust fraudulently induced it to forego plans to file for bankruptcy by entering into an oral agreement whereby Harrell Equipment would (1) allow SunTrust to take possession of all its assets; (2) SunTrust would continue to advance additional funds to Harrell Equipment to maintain business as usual; (3)

Harrell Equipment would reduce its indebtedness to less than \$1 million over the following year; and (4) thereafter, SunTrust would sell the remaining inventory and assets to a third party designated by Harrell Equipment. The parties, however, did not reduce this agreement to writing. On February 13, 2001, Tommy H. Condrey filed suit against SunTrust, LMC Bainbridge and Harrell Equipment in the United States District Court for the Western District of Louisiana. Condrey had developed a cotton handling feeder system in the late 1980s; he called this system Modtrack. After receiving his first patent for Modtrack, Condrey entered into a licensing agreement with Harrell Equipment.

This licensing agreement, and the copyrighted blueprints of the Modtrack system, formed the basis of his lawsuit. In response to Condrey's allegations, Harrell Equipment filed a cross-complaint against SunTrust asserting that SunTrust: (1) fraudulently induced Harrell Equipment to agree to the March 1999 deal because SunTrust never intended to follow through with the agreement; (2) caused Harrell Equipment to partially perform and thus detrimentally rely on SunTrust's oral promises; (3) fraudulently converted Harrell Equipment's property because SunTrust's foreclosure proceedings involved violations of state law duties regulating professional conduct in foreclosure proceedings; (4) breached its contract with Harrell Equipment when it failed to sell the assets to Vada, the third party purchaser selected by Harrell Equipment; (5) tortiously interfered with Harrell Equipment's business opportunities during its daily operation of Harrell Equipment; and (6) concealed and destroyed evidence that would support Harrell Equipment's claims.

The magistrate judge found that the conversion and tortious interference with property rights claims were improper collateral attacks on the underlying state court judgments; those judgments terminated Harrell Equipment's interest in its assets and inventory. The magistrate judge also found the promissory estoppel claim failed because the alleged agreement was too vague to enforce. There is nothing in the record to convince us that SunTrust's actions were detrimental to Harrell Equipment's interests. We are unpersuaded about how the selling of Harrell Equipment's assets to a third party of SunTrust's choosing rather than Harrell Equipment's choosing, even if SunTrust did make such a promise, supports the notion that Harrell Equipment relied to its detriment on SunTrust's promise. Thus, Harrell Equipment's lack of damages indicates a lack of detriment and ultimately a lack of a successful promissory estoppel claim. (*Condrey v. SunTrust Bank of Georgia*, 431 F. 3d 191- Court of Appeals, 5th Circuit 2005).

In the previous case, I believe the court's decision was accurate in that detrimental reliance did not apply. Harrell Equipment could not prove any evidence to support any detriment or of a contract or agreement made by SunTrust.

In a separate case concerning detrimental reliance, Appellee Parsons, Brinckerhoff, Quade & Douglas, Inc. ("Parsons") contracted with the Georgia Department of Transportation ("DOT") to design the reconstruction of State Highway 19 in Savannah, including the construction of ten approach bridges for the Talmadge Memorial Bridge over the Savannah River ("the Project"). As part of its design package, Parsons planned a detailed erector system for use in erecting a number of bridge girders, each weighing approximately fifty

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tons, that were to be installed above a highway and warehouse district. After DOT received the design package from Parsons, it accepted bids to construct the Project. Appellant Hardaway Co. (“Hardaway”) was the successful bidder, and in May 1988, it entered into a contract with DOT to construct the Project. No contract existed between the parties to this action—Parsons and Hardaway—rather, each party contracted with DOT; the former to design the project, and the latter to construct it. Under Hardaway’s construction plan, fabrication of the bridge girders was to begin in July 1989, and their installation was to begin in September 1989.

Six months after contracting with DOT, in October 1988, Hardaway asked DOT to verify the workability of the erector system designed by Parsons. In November 1988, apparently after consulting with Parsons, DOT affirmed the integrity of the designed erector system. The record indicates that no additional representations about the erector system’s workability were made to Hardaway until June 1989. The record shows that in March 1989, Parsons began to revise its computer analysis of the erector system, and by May 1989, Parsons appears to have concluded that its designs for the erector system were flawed. On June 15, 1989, Hardaway apparently was informed that the erector system would not operate properly as designed. Hardaway claims that as a result, the fabrication of the bridge girders was delayed for approximately two months, and installation of the girders was delayed roughly six months.

The uncontroverted evidence of record shows that until it learned of the alleged faults in the erector system designs on June 15, 1989, Hardaway incurred no pecuniary losses due to delays in the Project’s construction.

From that date onward, however, Hardaway claims it incurred economic losses due to extra work caused by delays in the fabrication and installation of the bridge girders. On April 8, 1993, Hardaway filed suit against Parsons, alleging that Parsons' negligent design of the erector system, and its negligent misrepresentation of the system's integrity, caused Hardaway to suffer pecuniary loss. In the trial court, Parsons filed a motion for summary judgment, claiming that Hardaway's cause of action was barred by the applicable four year limitation period. Parsons argued that the statute of limitation began to run when Hardaway contracted with DOT in May 1988. In opposition, Hardaway argued that the limitation period did not commence until it began to incur economic losses in June 1989.

The trial court denied Parsons' summary judgment motion. The Court of Appeals reversed, ruling that Hardaway's cause of action accrued when it contracted with DOT in May 1988, because at that time it " could first have maintained the action to a successful result," and thus the four year limitation period had run when Hardaway filed its complaint. In reaching this conclusion, the Court of Appeals reasoned that because Hardaway had relied upon Parson's imperfect designs in preparing its bid to construct the Project, it had suffered injury from the moment it contracted with DOT in partial reliance thereon. This Court granted certiorari in order to examine when a cause of action accrues when recovery is sought for economic loss resulting from alleged tortious negligent misrepresentation. As explained below, we find that the Court of Appeals misapprehended the essential requirement that in order to maintain its action, Hardaway must have suffered economic loss, and that until actual economic losses were incurred with certainty, and

not merely as a matter of speculation, Hardaway's claim did not accrue, and the limitation period did not commence.

Hardaway's cause of action was first recognized by this Court in *Robert & Co. Assoc. v. Rhodes-Haverty Partnership*, and was adopted from the Restatement (Second) of Torts, § 522. Its essential elements are: (1) the defendant's negligent supply of false information to foreseeable persons, known or unknown; (2) such persons' reasonable reliance upon that false information; and (3) economic injury proximately resulting from such reliance. Parsons urges us to affirm the Court of Appeals' ruling that Hardaway's cause of action accrued in May 1988, when it contracted with DOT to construct the Project based upon Parson's allegedly deficient designs, because at that time, Hardaway could have successfully maintained an action. At that time, Parsons argues, Hardaway (1) had been provided with the allegedly defective erector system plans; (2) had relied on those plans to its detriment in preparing its bid; and (3) had suffered pecuniary loss by contracting itself to build the Project for a payment price it claims was too low, given the error in the plans. With regard to this last element, Parsons argues that the economic losses that Hardaway claims it sustained were the same on the day it signed the contract as on the day it learned the Project would be delayed due to the faulty erector system.

In making this argument, Parson focuses on the third requirement of Hardaway's claim for economic loss due to negligent misrepresentation — "pecuniary loss caused by... justifiable reliance upon the [false] information" supplied by a defendant. Parsons urges us to construe this requirement to include "speculative pecuniary loss" caused by negligent misrepresentation.

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For the reasons explained below, we reject Parsons' argument. With the benefit of hindsight, we can see now that at the time Hardaway signed the contract, it may have been foreseeable, or even likely, that it would lose money due to delays caused by apparent errors in the initial designs. However, the uncontroverted evidence shows that it did not suffer actual "pecuniary loss" due to flawed designs until it was certain that the Project would not commence as scheduled. A plain reading of the essential elements underlying Hardaway's cause of action shows that in order to file a legitimate claim, it had to show actual economic loss proximately resulting from Parsons' negligent misrepresentation. Indeed, until it suffered economic loss, Hardaway did not even have a claim for negligent misrepresentation, and we think it palpably obvious that in order for the prescriptive period to commence, the plaintiff must be able to state a cause of action.

In this case, that required the negligent provision of false information, detrimental reliance, and resulting economic loss. Because the resulting loss must necessarily occur after the negligent act and reliance thereon, the statute of limitation runs from that point. Thus, until economic loss actually was sustained by Hardaway, it did not have a cause of action against Parsons, and the prescriptive period did not begin to run. Furthermore, this result is more consistent with the general rule set forth in the case law that the four year limitation period of OCGA § 9-3-31 does not begin to run until actual injury occurs. Insofar as the injury complained of in a claim for negligent misrepresentation brought under Robert & Co. Assoc. is economic loss, the prescriptive period set forth in that statute cannot commence until such loss is sustained with certainty. Moreover, as recognized by the Court of

Appeals, it is generally recognized that the true test to determine when a cause of action accrues is to ascertain the time when the plaintiff first could have maintained his action to a successful result.

As stated above, Hardaway could not successfully maintain its action until it had an action, and that required definite economic loss. Thus, we disagree with Parson's assertion, and the Court of Appeals' conclusion, that Hardaway first could have brought its claim for negligent misrepresentation when it contracted with DOT in May 1988. Rather, in a claim for economic injury sustained due to reliance upon false information negligently provided by a defendant, the statute of limitations begins to run when the plaintiff suffers pecuniary loss with certainty, and not as a matter of pure speculation. Finally, we believe that once public policy considerations are taken into account, this can be the only just result.

Implicit in Parsons' argument that the limitation period commenced upon the signing of the contract is the assumption that Hardaway was somehow obligated to make its own evaluation of Parsons' specifications in order to determine whether they were in fact reliable and would work as planned. In order to conduct such an evaluation, Hardaway would be required to employ the services of an independent engineering and design firm. The additional cost of such an independent evaluation, sure to be substantial, would necessarily be a consideration in bid preparations and factor into the final price paid under the contract. Because this particular matter involves a public contract, the additional cost required to conduct an independent evaluation would eventually be borne by the taxpayers of this State. We decline to endorse, even by implication, such a wasteful approach to public

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spending. (Hardaway Co. v. PARSONS, BRINCKERHOFF, ETC., 479 SE 2d 727 – Ga: Supreme Court 1997)

Again, I agree with the court’s decision that Hardaway did not have a negligent misrepresentation claim resulting in actual economic loss against Parsons. Hardaway could not prove economic loss, much less done so by Parsons.

Promissory estoppel serves as a “ consideration substitute” in contract law that renders certain promises otherwise lacking in consideration binding and enforceable. In such cases, the promisee’s reliance is treated as an independent and sufficient basis for enforcing the promise. Promissory estoppel can be viewed as a legal device that prohibits the promisor from denying the existence of a contract for lack of consideration. In general, the elements of promissory estoppel are: a promise reasonably expected by the promisor to induce action or forbearance, action or forbearance by the promisee in justifiable reliance on the promise (i. e. “ detrimental reliance”), and injustice can be avoided only through enforcement of the promise. (Lawnix). I conclude that both of the cases discussed previously displayed the elements of promissory estoppel with parties relying on their detriment to the promise.

Works Cited

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