

HOFFMAN v. RED OWL STORES, INC.
133 N.W.2d 267 (Wis. 1965)

CURRIE, C.J.

Action by Joseph Hoffman (hereinafter "Hoffman") and wife, plaintiffs, against defendants Red Owl Stores, Inc. (hereinafter "Red Owl") and Edward Lukowitz.

The complaint alleged that Lukowitz, as agent for Red Owl, represented to and agreed with plaintiffs that Red Owl would build a store building in Chilton and stock it with merchandise for Hoffman to operate in return for which plaintiffs were to put up and invest a total sum of \$18,000; that in reliance upon the above mentioned agreement and representations plaintiffs sold their bakery building and business and their grocery store and business; also in reliance on the agreement and representations Hoffman purchased the building site in Chilton and rented a residence for himself and his family in Chilton; plaintiffs' actions in reliance on the representations and agreement disrupted their personal and business life; plaintiffs lost substantial amounts of income and expended large sums of money as expenses. Plaintiffs demanded recovery of damages for the breach of defendants' representations and agreements.

The action was tried to a court and jury. The facts hereafter stated are taken from the evidence adduced at the trial. Where there was a conflict in the evidence the version favorable to plaintiffs has been accepted since the verdict rendered was in favor of plaintiffs.

Hoffman assisted by his wife operated a bakery at Wautoma from 1956 until sale of the building late in 1961. The building was owned in joint tenancy by him and his wife. Red Owl is a Minnesota corporation having its home office at Hopkins, Minnesota. It owns and operates a number of grocery supermarket stores and also extends franchises to agency stores which are owned by individuals, partnerships and corporations. Lukowitz resides at Green Bay and since September, 1960, has been divisional manager for Red Owl in a territory comprising Upper Michigan and most of Wisconsin in charge of 84 stores. Prior to September, 1960, he was district manager having charge of approximately 20 stores.

In November, 1959, Hoffman was desirous of expanding his operations by establishing a grocery store and contacted a Red Owl representative by the name of Jansen, now deceased. Numerous conversations were had in 1960 with the idea of establishing a Red Owl franchise store in Wautoma. In September, 1960, Lukowitz succeeded Jansen as Red Owl's representative in the negotiations. Hoffman mentioned that \$18,000 was all the capital he had available to invest and he was repeatedly assured that this would be sufficient to set him up in business as a Red Owl store. About Christmastime, 1960, Hoffman thought it would be a good idea if he bought a small grocery store in Wautoma and operated it in order that he gain experience in the grocery business prior to operating a Red Owl store in some larger community. On February 6, 1961, on the advice of Lukowitz and Sykes, who had succeeded Lukowitz as Red Owl's district manager, Hoffman bought the inventory and fixtures of a small grocery store in Wautoma and leased the building in which it was operated.

After three months of operating this Wautoma store, the Red Owl representatives came in and took inventory and checked the operations and found the store was operating at a profit. Lukowitz advised Hoffman to sell the store to his manager, and assured him that Red Owl would find a larger store from him elsewhere. Acting on this advice and assurance, Hoffman sold the fixtures and inventory to his manager on June 6, 1961. Hoffman was reluctant to sell at that time because it meant losing the summer tourist business, but he sold on the assurance that he would be operating in a new location by fall and that he must sell this store if he wanted a bigger one. Before selling, Hoffman told the Red Owl representatives that he had \$18,000 for “getting set up in business” and they assured him that there would be no problems in establishing him in a bigger operation. The makeup of the \$18,000 was not discussed; it was understood plaintiff’s father-in-law would furnish part of it. By June, 1961, the towns for the new grocery store had been narrowed down to two, Kewaunee and Chilton. In Kewaunee, Red Owl had an option on a building site. In Chilton, Red Owl had nothing under option, but it did select a site to which plaintiff obtained an option at Red Owl’s suggestion. The option stipulated a purchase price of \$6,000 with \$1,000 to be paid on election to purchase and the balance to be paid within 30 days. On Lukowitz’s assurance that everything was all set plaintiff paid \$1,000 down on the lot on September 15th.

On September 27, 1961, plaintiff met at Chilton with Lukowitz and Mr. Reymund and Mr. Carlson from the home office who prepared a projected financial statement. Part of the funds plaintiffs were to supply as their investment in the venture were to be obtained by sale of their Wautoma bakery building.

On the basis of this meeting Lukowitz assured Hoffman: “. . . [E]verything is ready to go. Get your money together and we are set.” Shortly after this meeting Lukowitz told plaintiffs that they would have to sell their bakery business and bakery building, and that their retaining this property was the only “hitch” in the entire plan. On November 6, 1961, plaintiffs sold their bakery building for \$10,000. Hoffman was to retain the bakery equipment as he contemplated using it to operate a bakery in connection with his Red Owl store. After sale of the bakery Hoffman obtained employment on the night shift at an Appleton bakery.

. . . . Red Owl was to procure some third party to buy the Chilton lot from Hoffman, construct the building, and then lease it to Hoffman. No final plans were ever made, nor were bids let or a construction contract entered. Some time prior to November 20, 1961, certain of the terms of the lease under which the building was to be rented by Hoffman were understood between him and Lukowitz. The lease was to be for 10 years with a rental approximating \$550 a month calculated on the basis of 1 percent per month on the building cost, plus 6 percent of the land cost divided on a monthly basis. At the end of the 10-year term he was to have an option to renew the lease for an additional 10-year period or to buy the property at cost on an instalment basis. There was no discussion as to what the instalments would be or with respect to repairs and maintenance.

On November 22nd or 23rd, Lukowitz and plaintiffs met in Minneapolis with Red Owl’s credit manager to confer on Hoffman’s financial standing and on financing the agency. Another projected financial statement was there drawn up entitled, “Proposed Financing For An Agency Store.” This showed Hoffman contributing \$24,100 of cash capital of which only \$4,600 was to

be cash possessed by plaintiffs. Eight thousand was to be procured as a loan from a Chilton bank secured by a mortgage on the bakery fixtures, \$7,500 was to be obtained on a 5 percent loan from the father-in-law, and \$4,000 was to be obtained by sale of the lot to the lessor at a profit.

A week or two after the Minneapolis meeting Lukowitz showed Hoffman a telegram from the home office to the effect that if plaintiff could get another \$2,000 for promotional purposes the deal could go through for \$26,000. Hoffman stated he would have to find out if he could get another \$2,000. He met with his father-in-law, who agreed to put \$13,000 into the business provided he could come into the business as a partner. Lukowitz told Hoffman the partnership arrangement "sound[ed] fine" and that Hoffman should not go into the partnership arrangement with the "front office." On January 16, 1962, the Red Owl credit manager teletyped Lukowitz that the father-in-law would have to sign an agreement that the \$13,000 was either a gift or a loan subordinate to all general creditors and that he would prepare the agreement. On January 31, 1962, Lukowitz teletyped the home office that the father-in-law would sign one or other of the agreements. However, Hoffman testified that it was not until the final meeting some time between January 26th and February 2nd, 1962, that he was told that his father-in-law was expected to sign an agreement that the \$13,000 he was advancing was to be an outright gift. No mention was then made by the Red Owl representatives of the alternative of the father-in-law signing a subordination agreement. At this meeting the Red Owl agents presented Hoffman with the following projected financial statement:

Capital required in operation:		
Cash		\$ 5,000.00
Merchandise		20,000.00
Bakery		18,000.00
Fixtures		17,500.00
Promotional Funds		1,500.00

TOTAL:		\$ 62,000.00

Source of funds:		
Red Owl 7-day terms		\$ 5,000.00
Red Owl Fixture contract (Term 5 years)		14,000.00
Bank loans (Term 9 years Union State Bank of Chilton)		8,000.00
(Secured by Bakery Equipment)		
Other loans (Term No-pay Father-in-law No interest)		13,000.00
(Secured by None)		
(Secured by Mortgage on Wautoma Bakery Bldg.)		2,000.00
Resale of land		6,000.00
Equity Capital:		
Cash amount owner has to invest	\$ 5,000.00	
Bakery Equipment	17,500.00	
		22,500.00

TOTAL:		\$ 70,500.00

Hoffman interpreted the above statement to require of plaintiffs a total of \$34,000 cash made up of \$13,000 gift from his father-in-law, \$2,000 on mortgage, \$8,000 on Chilton bank loan, \$5,000 in cash from plaintiff, and \$6,000 on the resale of the Chilton lot. Red Owl claims \$18,000 is the total of the unborrowed or unencumbered cash, that is, \$13,000 from the father-in-law and \$5,000 cash from Hoffman himself. Hoffman informed Red Owl he could not go along with this proposal, and particularly objected to the requirement that his father-in-law sign an agreement that his \$13,000 advancement was an absolute gift. This terminated the negotiations between the parties.

The case was submitted to the jury on a special verdict with the first two questions answered by the court. This verdict, as returned by the jury, was as follows:

* * *

Question No. 3: Did the Red Owl Stores, Inc., in the course of said negotiations, make representations to Joseph Hoffman that if he fulfilled certain conditions that they would establish him as franchise operator of a Red Owl Store in Chilton? Answer: Yes.

Question No. 4: If you have answered Question No. 3 "Yes," then answer this question: Did Joseph Hoffman rely on said representations and was he induced to act thereon? Answer: Yes.

Question No. 5: If you have answered Question No. 4 "Yes," then answer this question: Ought Joseph Hoffman, in the exercise of ordinary care, to have relied on said representations? Answer: Yes.

Question No. 6: If you have answered Question No. 3 "Yes" then answer this question: Did Joseph Hoffman fulfill all the conditions he was required to fulfill by the terms of the negotiations between the parties up to January 26, 1962? Answer: Yes.

* * *

Plaintiffs moved for judgment on the verdict while defendants moved to change the answers to Questions 3, 4, 5, and 6 from "Yes" to "No" On March 31, 1964, the circuit court [affirmed all of the relevant part of the verdict].

* * *

Defendants have appealed from this order

CURRIE, C.J.:

The instant appeal and cross-appeal present these questions:

....

(2) Do the facts in this case make out a cause of action for promissory estoppel?

* * *

The record here discloses a number of promises and assurances given to Hoffman by Lukowitz in behalf of Red Owl upon which plaintiffs relied and acted upon to their detriment.

Foremost were the promises that for the sum of \$18,000 Red Owl would establish Hoffman in a store. After Hoffman had sold his grocery store and paid the \$1,000 on the Chilton lot, the \$18,000 figure was changed to \$24,100. Then in November, 1961, Hoffman was assured that if the \$24,100 figure were increased by \$2,000 the deal would go through. Hoffman was induced to sell his grocery store fixtures and inventory in June, 1961, on the promise that he would be in his new store by fall. In November, plaintiffs sold their bakery building on the urging of defendants and on the assurance that this was the last step necessary to have the deal with Red Owl go through.

We determine that there was ample evidence to sustain the answers of the jury to the questions of the verdict with respect to the promissory representations made by Red Owl, Hoffman's reliance thereon in the exercise of ordinary care, and his fulfillment of the conditions required of him by the terms of the negotiations had with Red Owl.

There remains for consideration the question of law raised by defendants that agreement was never reached on essential factors necessary to establish a contract between Hoffman and Red Owl. Among these were the size, cost, design, and layout of the store building; and the terms of the lease with respect to rent, maintenance, renewal, and purchase options. This poses the question of whether the promise necessary to sustain a cause of action for promissory estoppel must embrace all essential details of a proposed transaction between promisor and promisee so as to be the equivalent of an offer that would result in a binding contract between the parties if the promisee were to accept the same.

Originally the doctrine of promissory estoppel was invoked as a substitute for consideration rendering a gratuitous promise enforceable as a contract. *See WILLISTON ON CONTRACTS* § 139, p. 307. In other words, the acts of reliance by the promisee to his detriment provided a substitute for consideration. If promissory estoppel were to be limited to only those situations where the promise giving rise to the cause of action must be so definite with respect to all details that a contract would result were the promise supported by consideration, then the defendants' instant promises to Hoffman would not meet this test. However, § 90 of *Restatement of Contracts* does not impose the requirement that the promise giving rise to the cause of action must be so comprehensive in scope as to meet the requirements of an offer that would ripen into a contract if accepted by the promisee. Rather the conditions imposed are:

- (1) Was the promise one which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee?
- (2) Did the promise induce such action or forbearance?

(3) Can injustice be avoided only by enforcement of the promise?²

We deem it would be a mistake to regard an action grounded on promissory estoppel as the equivalent of a breach of contract action. . . . [I]t is desirable that fluidity in the application of the concept be maintained. While the first two of the above listed three requirements of promissory estoppel present issues of fact which ordinarily will be resolved by a jury, the third requirement, that the remedy can only be invoked where necessary to avoid injustice, is one that involves a policy decision by the court. Such a policy decision necessarily embraces an element of discretion.

We conclude that injustice would result here if plaintiffs were not granted some relief because of the failure of defendants to keep their promises which induced plaintiffs to act to their detriment.

* * *

² “Enforcement” of the promise embraces an award of damages for breach as well as decreeing specific performance.