

FILED

JAN 31 1978

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

DICKENS COOPERATIVE ELEVATOR,

Filed January 31, 1978

Appellant,

v.

PAUL FERGUSON,

343
2-59898

Appellee.

Appeal from Clay District Court - Murray S. Underwood, Judge.

Appeal from summary judgment denying enforcement of an alleged oral contract.

Plaintiff attempts to invoke promissory estoppel to bar Statute of Frauds defense.

Affirmed.

Bradley Howe, of Sackett, Sackett & Hemphill, of Spencer, for appellant.

Christopher A. Bjornstad, of Cornwall & Avery, of Spencer, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

The issue which this case presents is whether promissory estoppel can be invoked to bar a U.C.C. Article 2 Statute of Frauds defense, § 554.2201, The Code.¹ Plaintiff, Dickens Cooperative Elevator Co., appeals a summary judgment entered in favor of defendant, Paul Ferguson. Such summary judgment denied enforcement of an alleged oral contract for defendant to sell plaintiff 2500 bushels of beans.

The supreme court has applied the doctrine of promissory estoppel to Statute of Frauds defenses in cases involving the general statute, § 622.32, The Code. *Johnson v. Pattison*, 185 N.W.2d 790, 795 (Iowa 1971); *Shell Oil Co. v. Kelinson*, 158 N.W.2d 724, 729 (Iowa 1968); *Miller v. Lawlor*, 245 Iowa 1144, 1152-55, 66 N.W.2d 267, 272-74 (1954). The estoppel doctrine enters the U.C.C. via § 554.1103, The Code.

The supreme court has never had the occasion to consider the application of the estoppel theory developed in *Miller v. Lawlor*, supra, to § 554.2201, The Code. We need not speculate on its application, however, because, even assuming that promissory estoppel does apply to this statute, the facts of this case do not permit such application.

Promissory estoppel consists of three essential elements: (1) a clear and definite oral agreement; (2) that plaintiff acted to his detriment in reliance on said agreement; and (3) that a weighing of all the equities entitles plaintiff to this relief. *Johnson v. Pattison*, supra, 185 N.W.2d at 795. The undisputed facts, taken in the light most favorable to plaintiff, disclose that the third element fails here. The equities do not favor a grant of the relief requested.

The two Iowa cases which have granted this relief, *Johnson v. Pattison*, supra, and *Miller v. Lawlor*, supra, both involved harm to real estate. Promissory estoppel has never been applied, in Iowa, to a situation such as the present, where mere monetary damages are involved.

Few states have been so liberal as Iowa in their willingness to use promissory estoppel, in appropriate circumstances, to bar the Statute of Frauds defense. D. Dobbs, *Handbook on the Law of Remedies*, § 13.2, p. 964 (1973). California, however, is one

¹ Plaintiff concedes, both in brief and argument, that the exceptions set forth in § 554.2201(3), The Code, do not apply here.

such state. See *Monarco v. Lo Greco*, 35 Cal.2d 621, 220 P.2d 737 (1950). It is held in that state that "loss of bargain, and damage resulting therefrom, do not of themselves estop a seller from relying upon the Statutes of Frauds." *Carlson v. Richardson*, 267 Cal. App. 2d 204, 208, 72 Cal. Rptr. 769, 772 (1968); see also *Caplan v. Roberts*, 506 F.2d 1039 (9th Cir. 1974). Because the general rule in California is compatible with the general rule in Iowa as discussed in *Miller v. Lawlor*, supra, 245 Iowa at 1155-56, 66 N.W.2d at 274, we find these specific applications of the California rule to be instructive.

The level of detrimental reliance which would require that promissory estoppel bar the Statute of Frauds defense has not been reached in this case. To apply that doctrine here would nullify the Statute of Frauds. *Sacred Heart Farmers Cooperative Elevator v. Johnson*, 232 N.W.2d 921, 923 (Minn. 1975); but see *Decatur Cooperative Association v. Urban*, 219 Kan. 171, 547 P.2d 323 (1976). This we cannot do. Cf. *Huston v. Gelane Co., Inc.*, 254 Iowa 752, 755, 119 N.W.2d 188 (1963). Trial court was correct in ruling that the undisputed material facts entitled defendant to judgment as a matter of law.

AFFIRMED.