Charter Township of Ypsilanti v. General Motors: The Politics of Promissory Estoppel Run Amok

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CHARTER TOWNSHIP OF YPSILANTI v. GENERAL MOTORS: THE POLITICS OF PROMISSORY ESTOPPEL RUN AMOK

In an unprecedented expansion of promissory estoppel doctrine, on February 9, 1993, a Michigan state court judge held that General Motors ("GM") was barred from closing its Willow Run auto manufacturing plant and moving those operations to Arlington, Texas.\(^1\) The decision was based on the fact that GM accepted from Ypsilanti Township local tax abatements which were scheduled to continue until 2003,\(^2\) and thereby purportedly promised that it would keep the plant in operation during those years.\(^3\)

This comment will demonstrate the court's misapplication of the doctrine of promissory estoppel\(^4\) and conclude that the trial judge, Donald E. Shelton, relied on impermissible factors, such as his sympathy for the people of Ypsilanti,\(^5\) in issuing injunctive relief against GM. Moreover, it will detail how Judge Shelton's decision was in direct contravention of corporation and agency law.

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1. Charter Twp. of Ypsilanti v. General Motors Corp., No. 92-43075-CK (Washtenaw County Cir. Ct. Feb. 9, 1993). The case is currently on appeal in the Michigan Court of Appeals, No. 161245. Both parties filed leaves to appeal directly to the Michigan Supreme Court to bypass decision by the Court of Appeals. However, the Supreme Court denied both petitions on April 9, 1993.
2. Id. at 15.
3. Id. at 23-27.
4. See infra notes 56-130 and accompanying text.
5. This comment will not argue that Judge Shelton's sympathy was misplaced. Rather, it asserts that sympathy is not a proper rationale for judicial decisionmaking. For example, in a personal injury case, one may have sympathy towards the victim, however that sympathy does not automatically render the defendant liable as a tortfeasor. Similarly, while we may feel empathetic towards the citizens of Ypsilanti, our emotions do not give rise to the automatic conclusion that GM is legally responsible for ameliorating their condition. However, this comment asserts that, for whatever reason, Judge Shelton did translate his emotions into legal liability, thereby overstepping the bounds of his judicial role. See infra notes 35-39 and 54-55 and accompanying text.
and policy and the Commerce Clause of the United States Constitution. In sum, this comment concludes that Judge Shelton's opinion and order should not, and cannot, stand.

I. FACTUAL BACKGROUND

For several years, GM has operated two plants in Ypsilanti, Michigan: the Hydra-Matic plant and the Willow Run Assembly plant. Over the years, each of these plants applied for, and received, several property tax abatements from Ypsilanti Township. The tax abatements which Judge Shelton found important were granted in 1984 and 1988 at the Willow Run facility. The 1984 abatement followed an established procedure whereby GM would invite town officials for a briefing, plant tour and lunch prior to a public hearing where the application was approved by the township. Specifically, the twelve year abatement was granted in connection with a $175 million project to modify the plant in order to produce different automobiles. In section ten of its application, GM stated that this project would create 200 new jobs and help retain 4300 existing jobs at the plant. The Washtenaw County Board of Tax Commissioners concurred in the issuance of the abatement and issued a letter stating that the basis for its approval

6. See infra notes 118-23 and accompanying text.
7. See supra notes 124-30 and accompanying text.
9. These abatements, including the ones which will be at issue in the case at bar, were issued under Michigan's Plant Rehabilitation and Industrial Development Districts Act 198 ("Act 198"). General Motors, 92-43075-CK, slip op. at 8-11. The Act provides that a municipality may develop a plant rehabilitation or industrial development district if it levies an income tax or if it levies ad valorem taxes at a rate greater than or equal to thirty dollars for each one thousand dollars of valuation. MICH. COMP. LAWS ANN. § 207.554 (West 1986). Ad valorem taxes are taxes which are determined according to the value of the item subject to taxation. BLACK'S LAW DICTIONARY 58 (Rev. 4th ed. 1968). After the development of a plant rehabilitation or industrial development district, a company planning restoration, replacement or construction at its facility may apply for a complete exemption from ad valorem and personal property taxes for a specified period of time. MICH. COMP. LAWS ANN. §§ 207.555, .558 (West 1986).
11. Id. In particular, GM was changing the plant to produce "H" model cars instead of the "X" model cars which had been produced at Willow Run.
12. Id.
was its concern regarding economic development which would result in increased job opportunities in the county. Based on these recommendations, the State Tax Commission granted the abatement. By 1988, the demand for the automobiles being produced at Willow Run had again declined and GM decided to modify the plant once again, this time to produce a new rear wheel “B” model Chevrolet Caprice. The Caprice had been manufactured at facilities in Arlington, Texas and Lakewood, Georgia. GM decided to close the Georgia facility and modify Willow Run to manufacture the Caprice so that the plant would have the flexibility to produce both front and rear wheel drive vehicles. GM made this decision before requesting an abatement. In turn, however, GM did request a tax abatement in connection with the $75 million project. In section ten of this application, GM stated that no new jobs would be created by the project but that 4900 jobs would be retained as a result. Along with the usual procedure, it was suggested that GM make a public presentation since a number of new township board trustees had recently been elected.

At the public hearing that ensued, Willow Run’s plant manager read a statement prepared by its comptroller which stated, “completion of this project and favorable market demand . . . will allow

13. Id. at 10-11.
14. Id. at 11. Although the 1984 abatement was at issue in this case, Judge Shelton’s analysis relies for the most part on the circumstances surrounding the 1988 abatement.
15. Id.
16. Id.
17. Id.
18. Id. From this fact, Judge Shelton infers that GM assumed Ypsilanti would issue the abatement. He states that since GM would have invested in the facility anyway and since the township knew it, the purpose of Act 198 was thwarted since there was no inducement to make an investment. Id. at 11-12. This author would argue that if, as Judge Shelton asserts, GM did assume the abatement would be granted, Act 198 did in fact induce investment because GM’s decision to invest was based on its assumption.

On the other hand, Judge Shelton’s argument may be that, after the commitment to invest, Ypsilanti was free to deny the abatement without repercussion. Thus, its granting of the abatement must have been conditioned on independent grounds; it is this supposition which leads to the inference of a promise sufficient for the imposition of promissory estoppel. Judge Shelton’s analysis will be discussed later in this comment, however this author would briefly note that Act 198 does not require a municipality be induced to issue the abatement or that any exchange take place — only that investment does in fact occur.
19. Id. at 12.
20. Id. at 13.
21. Id. at 12.
Willow Run to continue production and maintain continuous employment for our employees.\(^\text{22}\) The facility’s comptroller then reviewed charts depicting GM’s market share decline and emphasized its relationship to employment.\(^\text{23}\) Finally, the township assessor recommended approval of the abatement, stating, “Based on the past history in dealing with the people of General Motors they’ve always done what they said they would do and they’ve kept the jobs there and they’ve kept the plant operating as an operational facility.”\(^\text{24}\)

The township board of trustees unanimously approved the Willow Run tax abatement application for a twelve year period.\(^\text{25}\) Upon solicitation by the state, Washtenaw County issued a previously adopted standard statement of policy concerning abatements issued under Michigan’s Plant Rehabilitation and Industrial Development Act 198 (“Act 198”).\(^\text{26}\) The state tax commission approved the application on August 7, 1989 for the period beginning December 30, 1989 and ending December 30, 2003.\(^\text{27}\)

Despite some early success, actual market demand for the Caprice did not meet projected market demand.\(^\text{28}\) In fact, by late 1991, the demand for the Caprice had lessened and GM decided that production should be consolidated into one plant.\(^\text{29}\) Since Wil-

\(^{22}\) Id. at 13; Public Hearing on the Request of General Motors Corporation, BOC Group for an Industrial Facilities Exemption Certificate, Ypsilanti Board of Trustees 4-5 (Dec. 6, 1988, as amended Dec. 30, 1992) [hereinafter Public Hearing].

\(^{23}\) Charter Twp. of Ypsilanti v. General Motors Corp., No. 92-43075-CK, slip op. at 13 (Feb. 9, 1993 Washtenaw County Cir. Ct.); Public Hearing, supra note 22, at 5.

\(^{24}\) General Motors, No. 92-43075-CK, slip op. at 14; Public Hearing, supra note 22, at 8.

Although Judge Shelton also found this comment “telling,” it could just as easily signify that the township was rewarding GM for past investment rather than relying on any promise of future investment.

\(^{25}\) General Motors, No. 92-43075-CK, slip op. at 15.

\(^{26}\) Id. The county resolution stated:

The use of Industrial Facilities Tax Exemptions is one of many methods for attracting new or retaining existing employers. The Board of commissioners recognizes that the use of these exemptions is a local option for local units of government to expand employment opportunities. Therefore, we endorse the application of Act 198 (1974) the Industrial Development and Rehabilitation Act. Further, where the facts indicate that positive results in gains in employment and taxes appear justified and provided that both the spirit and the letter of the law are complied with, we will support all local units[’] decisions.

\(^{27}\) Id. For an explanation of Act 198, see supra note 9.

\(^{28}\) Id.

\(^{29}\) Id. at 16.

\(^{29}\) Id. Sales of the Caprice had previously averaged approximately 300,000 per year.
low Run was operating at one shift per day and Arlington was operating at two shifts per day, it seemed a logical and prudent business decision to transfer Willow Run's production schedule to Arlington and operate Arlington at three shifts per day. GM then gave notice required by the federal "WARN" Act that it intended to close Willow Run. The Township of Ypsilanti commenced a suit seeking injunctive relief.

II. THE OPINION

A. The Contract Discussion

Judge Shelton's analysis commenced with a discussion of whether the Act 198 statutory process resulted in a contract between the governmental unit issuing the abatement and the entity receiving it. The judge noted that states may create such a contract statutorily but concluded that the Michigan "legislature did not intend to create contractual rights for the State or its subdivisions when it enacted Act 198 and that the statute [did] not therefore create an enforceable contract between the government and the subsidized industry." However, by late 1991, sales fell below 100,000 per year. General Motors Corporation's Application for Leave to Appeal Prior to Decision of the Court of Appeals at 11, Charter Twp. of Ypsilanti v. General Motors Corp., No. 161245 (Mich. Ct. App. filed Mar. 9, 1993) [hereinafter "GM Application"].

30. Id.
32. Charter Twp. of Ypsilanti v. General Motors Corp., No. 92-43075-CK, slip op. at 17 (Feb. 9, 1993 Washtenaw County Cir. Ct.).
33. Id. (quoting the United States Supreme Court as stating, "[A] legislative enactment may contain provisions which, when accepted as the basis of action by individuals, become contracts between them and the State or its subdivisions" in Indiana ex rel Anderson v. Brand, 303 U.S. 95, 99 (1938)). A statute should be interpreted as creating a contract "when the language and the circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State." United States Trust Co. v. New Jersey, 431 U.S. 1, 17 n.14 (1977). Ultimately this inquiry is the same as is initially made in determining whether a contract exists between private parties, i.e., whether the parties intended to be contractually bound or, in other words, whether there was a "meeting of the minds" regarding the essential items of the alleged contract. General Motors, No. 92-43075-CK, slip op. at 18. These elements include: the presence of parties with the ability to enter into a contract, mutuality of agreement, mutuality of obligation, and consideration. RESTATEMENT (SECOND) OF CONTRACTS §§ 12, 17 (1979).
34. General Motors, No. 92-43075-CK, slip op. at 18. This conclusion was based on a standard means of statutory construction and specifically included the following factors: (1) Act 198 never used the term "contract" or a term with a similar meaning; (2) Act 198 lacked mutuality because it allowed the entity receiving the abatement to unilaterally re-
Although this facet of the opinion was correctly decided, Judge Shelton immediately evidenced his bias against GM and took the opportunity to rant against the current system of big business in this country. For example, he deemed the legislature’s lack of intent to create contractual rights for municipalities to have been “unwise.” Moreover, the clearly political tone of Judge Shelton’s opinion took on a didactic quality:

This Court’s conclusion that the legislature did not, when it enacted Act 198, intend to impose contractual obligations on subsidized industries is not something of which the State should be proud. The relationship of government and industry in this country is necessarily one of conflict, for it is the purpose of government to provide for the common welfare of all and it is the antithetical purpose of an industry to strive solely for the profit of its owners. For example, contrary to the approach of the defendant in this case that “what is good for General Motors is good for the country”, the truth is, as this case demonstrates, that what is good for General Motors may only coincidentally help, and often hurts, many of our people. Industry is the source of many of the jobs of our nation and it may well be that our nation needs a new relationship of trust and cooperation between government and industry in order to compete with heavily subsidized indus-

voice it; (3) Act 198 does not contain specific contractual language or contractual remedies; and (4) several states have similar legislation which does create such contracts. Id. at 18-19. For states which have statutorily required written contracts in connection with tax abatements and/or provide damages in the event of noncompliance see OHIO REV. CODE ANN. § 5709.62(D) (Anderson Supp. 1992) (providing that the granting of a tangible personal or real property tax exemption constitutes an “agreement” and that municipalities “may take any action available to a party to a contract to obtain compliance” therewith); TEX. [TAX] CODE ANN. § 312.205(a)(4) (West 1992) (“An agreement made under Section 312.204 must: . . . provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.”).

35. General Motors, No. 92-43075-CK, slip op. at 18.
36. For a discussion of GM’s responsibility to strive for the welfare of its owners, and a discussion of the derivation and importance of that purpose, see infra notes 118-22 and accompanying text.
37. This statement, which Judge Shelton so cavalierly applied to the case at bar, was actually made in 1953 by Charles Erwin Wilson, a large GM stockholder, just after his nomination to be Secretary of Defense for President Eisenhower; the original statement was “[F]or many years I thought that what was good for our country was good for General Motors and vice versa.” General Motors, No. 92-43075-CK, slip op. at n.38.
tries from other, perhaps less democratically and socially sophisticated, countries. But such an effort must be national in scope and must be a real partnership with industry, not one in which industry simply views government as a part of its "business climate" and another opportunity to increase profits. The tax abatement statutes in this State and others are not the product of a well thought out effort to forge such a new partnership.

Unfortunately, however, this Court cannot interpret a statute to have other than its intended meaning because the legislature chose to act unwisely or improvidently. Thus, the judge reluctantly held that there had been no contract to keep Willow Run in operation.

B. The Promissory Estoppel Discussion

All was not lost for Judge Shelton and his ideals, however. As opposed to the "rigid and technical rules of conventional contract law" which "sometimes fail . . . in [the] attempt to wring justice," the judge viewed the flexible principles of equity, namely promissory estoppel, as the saviour for the unfortunate people of Ypsilanti. Promissory estoppel is the equitable doctrine whereby promises which failed to rise to the level of contract are enforced as such. The doctrine, as set forth in Section 90 of the Restatement (Second) of Contracts, states:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . 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.

It is thus the duty of the courts to determine the existence of a promise, the reasonableness and foreseeability of reliance on that promise, and the resulting injustice in the absence of enforcement. Promissory estoppel is distinguished from the general requirements of contract in that the promisee's performance does not

38. Id. at 20-21.
39. Id. at 22.
41. See, e.g., Edo Corp. v. Beech Aircraft Corp., 911 F.2d 1447, 1454 (10th Cir. 1990).
have to be explicitly bargained for. However, a promise which is binding under Section 90 is a contract despite its failure to meet traditional contract requirements.

According to Judge Shelton, GM's statements at the public hearing on its 1988 application and its statements within the abatement application itself, taken together with its "pattern of inducing" the township to give abatements, constituted representations that GM would provide continuous employment at the Willow Run plant if Ypsilanti provided tax abatements. Thus, when GM's plant manager stated that "subject to 'favorable market demand', General Motors would 'continue production and maintain continuous employment'" at Willow Run, he made an unequivocal promise that if the township granted the abatement, GM would make the Caprice at Willow Run for the life of the automobile's production.

In so holding, Judge Shelton rejected GM's assertion that if a promise existed, it was conditioned upon favorable market demand. There was testimony at trial that the meaning of the phrase was intended to mean sufficient public demand for the Caprice to keep both plants operating at two shifts per day. While this testimony may concededly be suspect, it is certainly a reasonable interpretation of the phrase. However, Judge Shelton dismissed that construction. Instead he stated that the phrase "clearly" meant that if there was sufficient market demand to manufacture the Caprice at all, they would be produced at Willow Run. In fact, he reasoned, GM must have made the promise because otherwise the township had no incentive to grant the abatement. Hence, according to Judge Shelton, the first element of promissory estoppel — the existence of a promise — was fulfilled.

The second element of promissory estoppel is that the promisee

42. RESTATEMENT (SECOND) OF CONTRACTS § 90 cmt. a (1979).
43. Id. at cmt. d.
44. Id. at 23.
45. Id. at 24.
46. Id. at 25.
47. Id.
48. Is not Ypsilanti's contention that it relied on GM's "promises" in 1988 equally suspect?
49. Id. at 26.
50. Id. at 24-25. Of course, not only did Judge Shelton engage in the most obvious form of "bootstrapping" with this circular logic, but he absurdly transformed GM's remarks regarding favorable market demand to mean any market demand. This clearly was not the intended meaning of the statements.
reasonably relied on the promise. Judge Shelton demonstrated actual reliance by noting that Ypsilanti had foregone $2 million in local taxes in the period of 1988-92 for the 1988 tax abatement. However, the judge failed even to mention the reasonableness of that reliance, which is one of the most important components of promissory estoppel analysis. As for the third element of promissory estoppel, the foreseeability of reliance, Judge Shelton opined that in the context of an abatement hearing, GM should have reasonably foreseen that Ypsilanti would rely on such a promise in connection with the abatement. In other words, the statement regarding favorable market demand was of the type which GM should reasonably have expected would induce action of the character sought, i.e., the granting of the abatement. It was at this point in his opinion, in fact, where Judge Shelton circuitously concluded that GM must have made an actionable promise because otherwise Ypsilanti had no incentive to grant the abatement.

Finally, Judge Shelton discussed at length whether “injustice [was] to be avoided” by enforcement of the “promise”. In addition to noting that tax abatements were somehow special and merited the distinction of other cases on point and noting that relocating operations was not economically necessary for GM, Judge Shelton simply stated, “[T]his Court ... simply finds that the failure to act in this case would result in a terrible injustice and that the doctrine of promissory estoppel should be applied.” However, he felt compelled to add the following piece of prose:

Each judge who dons this robe assumes the awesome, and lonely, responsibility to make decisions about justice, and injustice, which will dramatically affect the way people are forced to live their lives. Every such decision must be the judge’s own and it must be made honestly and in good conscience. There would be gross inequity and patent unfairness if General Motors, having lulled the people of the Ypsilanti area into giving up millions of tax dollars which

51. Charter Twp. of Ypsilanti v. General Motors Corp., No. 92-43075-CK, slip op. at 26 (Washtenaw County Cir. Ct. Feb. 9, 1993). GM asserts that the amount of Ypsilanti’s reliance actually only amounted to $384,207.02 in lost tax revenue. While the abatement did save GM about $2 million in taxes, approximately 77% of that would have gone to the State of Michigan and 22% to Washtenaw County. GM Application, supra note 29, at 30 n.14.

52. Id.

53. See supra note 50 and accompanying text.

54. General Motors, No. 92-43075-CK, slip op. at 26-27.
they so desperately need to educate their children and provide basic governmental services, is allowed to simply decide that it will desert 4500 workers and their families because it thinks it can make these same cars a little cheaper somewhere else. Perhaps another judge in another court would not feel moved by that injustice and would labor to find a legal rationalization to allow such conduct. But in this Court it is my responsibility to make that decision. My conscience will not allow this injustice to happen.\textsuperscript{55}

This passage is quite telling regarding the intense local sympathies harbored by Judge Shelton and the likelihood that it was these sympathies which truly motivated his decision.

III. \textbf{ANALYSIS}

Judge Shelton's fierce affinity with the people of Ypsilanti clearly drove his opinion. However, that may be all that drove the decision. His inclination to find a legal rationale to justify forcing GM to maintain Willow Run is understandable; however, it is also unforgivable.\textsuperscript{56} Although Judge Shelton purportedly based his

\textsuperscript{55} Id. at 27-28.

\textsuperscript{56} It should be noted that other judges have expressed similar feelings with respect to a plant closing, however they confined themselves to the merits of the case instead of the plight of the jobless. See Local 1330, United Steel Workers v. United States Steel Corp., 492 F. Supp. 1 (N.D. Ohio 1980), aff'd in part and vacated in part, 631 F.2d 1264 (6th Cir. 1980) (affirming holding with respect to promissory estoppel). In that case, Judge Thomas D. Lambros stated:

This Court is mindful of the efforts taken by the workers to increase productivity, and has applauded these efforts . . . . In view of the fact, however, that this Court has found that no contract or enforceable promise was entered into by the company and that, additionally, there is clear evidence to support the company's decision that the plants were not profitable, the various acts of forbearance taken by the plaintiffs do not give them the basis for relief against defendant.

. . . .

This Court has spent many hours searching for a way to cut to the heart of the economic reality — that obsolescence and market forces demand the close of the Mahoning Valley plants, and yet the lives of 3500 workers and their families and the supporting Youngstown community cannot be dismissed as inconsequential. United States Steel should not be permitted to leave the Youngstown area so devastated after drawing from the lifeblood of the community for so many years.

Unfortunately, the mechanism to reach this ideal settlement, to recognize this new property right, is not now in existence in the code of laws of our nation . . . . \textit{This Court is not a legislative body and can not [sic] make laws}
opinion on promissory estoppel, it was based solely on his sympathy for the citizens of the township. And basic jurisprudence teaches that sympathy alone, without firm legal grounds, is an unacceptable mode of decision.

A. The Promissory Estoppel Analysis

Promissory estoppel claims regarding several plant closings have previously been brought and in each case that theory was rejected.57 The first case to do so was Local 1330 v. United States Steel Corp.58 In the fall of 1977, there was much public speculation that U.S. Steel planned to close two steel mills in the Youngstown, Ohio area.59 These plants, the Ohio and McDonald Works, had become obsolete in their facilities, machinery and technology.60 In response to the speculation, the superintendent of the plants made tape recorded oral representations over the plants' "hotlines".61 These statements assured employees that there were no plans to close the plants but warned that steps needed to be taken to improve profitability.62 Similarly such statements were made and press releases were issued concerning the plants' profitability and management's projections for continued operations into 1979.63

Plaintiffs claimed they relied on such statements and that the statements induced them to overlook safety hazards and plant violations, to increase their productivity, to combine machinists at the two plants into one seniority list, to forego other employment opportunities, and to commit themselves to major expenditures.64 Thus, based on this reliance, the steel worker local unions, the

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58. 631 F.2d 1264 (6th Cir. 1980).
59. Id. at 1270.
60. Id. at 1265.
61. Id. at 1270. These hotlines were telephones placed strategically throughout the plant so that employees could listen to statements of policy prerecorded by management. Id. at n.3.
62. Id. at 1270-73.
63. Id.
64. Id. at 1273-77.
district’s congressman and Ohio’s attorney general sued to enjoin the plant closing or, in the alternative, for issuance of an injunction to require U.S. Steel to sell the two plants to plaintiffs and to restrain piecemeal dismantling of the plants until a community purchase proposal could be brought to fruition. However, the court held that U.S. Steel’s “promise” to keep the plants operating was contingent on their profitability as defined in the normal course of corporate accounting and not any other method of accounting nor as used loosely in management’s statements. Therefore, reliance on any purported promise was unreasonable, since there could have been no reasonable expectation that profitability would be attained.

In Abbington v. Dayton Malleable, Inc., an Ohio district court also rejected promissory estoppel with respect to a plant closing. In that case, Dayton Malleable, Inc. (“DMI”), a castings manufacturer, was party to a collective bargaining agreement which was in effect from 1977 through 1980. In 1979, as a result of severe financial losses in DMI’s foundry in Columbus, it informed a union representative, pursuant to the agreement, that it intended to close the Columbus plant. However, thereafter the plant closing was postponed and, eventually, management and union officials met and agreed that there was a possibility the plant closing could be avoided with certain changes. Among the changes to be made were 1) the extension of the collective bargaining agreement, as it applied to the foundry, for a period of one year; 2) a separation of the Columbus employees from other DMI employees in terms of bargaining agreements; 3) a suspension of cost of living adjustments and the institution of a wage freeze; and 4) union and management cooperation in devising new production methods and in setting new incentive rates. Management informed union representatives that if these concessions were made, DMI would make every effort to keep the foundry in operation. Based on these representations, the union members overwhelmingly approved these

65. Id. at 1265-66.
66. Id. at 1279.
67. Id.
69. Id. at 1292.
70. Id.
71. Id.
72. Id. at 1293.
concessions and the agreements were committed to writing. On its part DMI continued to invest in the foundry’s modernization in the hope of renewing its profitability despite continually deteriorating financial conditions. However, finally the losses became so great that DMI’s board of directors voted to close the plant. Employees in the Columbus foundry commenced suit against the union and DMI.

Among plaintiffs’ several claims was a claim based on promissory estoppel. Plaintiffs claimed that DMI’s contractual promises to modernize the foundry instead of closing it should be enforced by promissory estoppel. However, the court disagreed. Specifically, it detailed statements made by DMI’s president which induced the foundry’s employees to accept the modifications to the collective bargaining agreement, noting that such statements included comments such as “we have at least a chance” and “we’re going to do our best.” The court thought that these comments highlighted the conditional nature of the representations and ultimately concluded that no definite promise had been made to continue operation or modernize the foundry.

In a case directly on point, the City of Yonkers also attempted the use of promissory estoppel in their desperation to keep a plant open. In 1968, Otis Elevator Co.’s (“Otis”) plant in Yonkers required modernization and expansion in order to remain a viable part of Otis’ business. However, expansion appeared impossible due to limited acreage and Otis considered shutting the plant. After negotiations with Otis in 1972, Yonkers provided for expansion of Otis’ plant through the use of urban renewal. This renovation and expansion was complete in 1976. By 1982, however, elevator technology had undergone substantial change and two of the three components manufactured at the Yonkers plant had become obsolete. Thus, citing economic unfeasibility, Otis closed

73. Id.
74. Id. at 1294.
75. Id.
76. Id. at 1296.
77. Id. at 1297.
78. Id.
80. Id. at 44.
81. Id.
82. Id.
83. Id.
84. Id. at 44-45.
the plant in 1982. Contending that Otis committed itself to staying in Yonkers for a "reasonable time," Yonkers sued, inter alia, based on promissory estoppel.

Evidence showed that, like GM, Otis would not have agreed to operate its Yonkers facility for any specific period of time. Both parties believed that the size of Otis' investment in the Yonkers plant would guarantee Otis' continued presence in Yonkers, as surely GM and Ypsilanti felt about its investment in Willow Run. However, such continued presence was merely a "goal," not a promise or commitment to stay. As is the case with GM, "Otis was able to satisfy its requirements for the third component from its other plants, and Yonkers production was accordingly terminated because there was no business justification for its continuance."

In fact, the facility at Yonkers operated at a profit until it closed. Nevertheless, the court concluded that there was no promise nor any reasonable reliance.

Judge Shelton distinguished the first two of the aforementioned cases on the grounds that 1) they did not involve a tax abatement and 2) the defendants in those cases were "simply closing a plant because it was economically necessary to close it and the courts concluded that the company never promised to operate a plant when there was no demand for its product." However, in City of Yonkers v. Otis Elevator Co., an urban renewal plan, which required the expenditure of city funds, was involved; this is clearly similar to the establishment of a plant rehabilitation or industrial development district. Further, there was no mention of economic necessity in Yonkers. Finally, the courts in all of the cases actually

85. Id. at 45.
86. Id. at 46.
87. Id. at 47.
88. Id.
89. Id.
90. Id.
91. Id. at 48-49. In at least two other cases, federal district courts have refused to enjoin plant closings. Amalgamated Local 813, Int'l Union, Allied Indus. Workers v. Diebold Inc., 605 F. Supp. 32 (N.D. Ohio 1984) (refusing to enjoin employee layoffs and transfer of equipment and production and order arbitration under collective bargaining agreement); Local 461, Int'l Union of Elec., Radio & Mach. Workers v. Singer Co., 540 F. Supp. 442, 448 (D.N.J. 1982) (not based on promissory estoppel but refusing to find a commitment to "relinquish[] the prerogative of all employers to terminate parts of their business for economic reasons").
92. Charter Twp. of Ypsilanti v. General Motors, 92-43075-CK, slip op. at 26-27 (Washtenaw County Cir. Ct. Feb. 9, 1993). GM stipulated to the fact that it was not economically necessary to close Willow Run. See infra note 120 and accompanying text.
reached the merits underlying promissory estoppel and did not rely on economic necessity. Thus, there was no rationale for their distinction and the principles they set forth could have been applied to the case at hand.

1. The Existence of a Promise

The judge erred in his conclusion with respect to the existence of a promise. Judge Shelton contended that the usual promise in exchange for the granting of an abatement would be a promise to make the investment; however, in connection with the 1988 abatement, GM had already committed to invest, thus, "the only logical reason the township would have to give up half of the taxes on the project is that General Motors represented . . . that as long as it made those cars it was going to make them in Willow Run." First, inferring this representation from the language of GM’s remarks, even coupled with its history of dealings with the township, was an unwarranted leap in inferential logic. It is one which Judge Shelton made easily because of his clear sympathies. However, such an inference is too speculative to be the basis of a promise for the purposes of the application of promissory estoppel doctrine. Promissory estoppel cannot be applied on the basis of ambiguous facts; rather, there must be unequivocal evidence of a promise. However, there is no clear evidence of anything in this

93. General Motors, No. 92-43075-CK, slip op. at 25.
94. See Abbington v. Dayton Malleable, Inc., 561 F. Supp. 1290, 1297 (S.D. Ohio 1983) ("The Court is simply not convinced that any of these statements constitute promises which would reasonably be expected to induce action or forbearance [sic].") See also supra notes 77-78 and accompanying text (discussing the indefiniteness of the purported promises made by DMI), aff’d, 738 F.2d 438 (6th Cir. 1984).
The remarks made by GM's management were merely expressions of future intent which are too indefinite to constitute promises.96

2. The Presence of Reasonable Reliance

Of course, all the elements of promissory estoppel must be met in order to prevail under that theory. Thus, the conclusion that there was no promise made by GM would be dispositive in this case. However, presuming a promise existed in this case, there still should have been no application of promissory estoppel because Ypsilanti's reliance, if there was any, was unreasonable. First, GM's statement that it would continue to produce the Caprice at Willow Run subject to favorable market demand was a contingent expression of future intent. Reliance on a statement of future intention cannot be reasonable because it does not constitute a sufficiently definite promise.97 In other words, a party can promise that it has interest and even future intent, however, if he or she makes

GM employee constitute a definitive promise . . . ."), aff'd, 852 F.2d 1287 (6th Cir. 1988); Marine Transp. Lines, Inc. v. International Org. of Masters, Mates, & Pilots, 636 F. Supp. 384, 391 (S.D.N.Y. 1986) ("clear and unambiguous promise . . . is an indispensable element"); Derry Finance N.V. v. Christiana Cos., Inc., 616 F. Supp. 544, 550 (D. Del. 1985) ("[A] truthful statement as to the present intention of a party with regard to his future acts is not the foundation upon which an estoppel may be built. The intention is subject to change."); aff'd, 797 F.2d 1210 (3d Cir. 1986); Reeder v. Sanford School, 397 A.2d 139, 141 (Del. Super. 1979) ("expressions of opinion, expectation, or assumption are insufficient" to give rise to promissory estoppel liability).


This comment has taken a narrow view of the nature of an acceptable promise under promissory estoppel. See Jay M. Feinman, Promissory Estoppel and Judicial Method, 97 HARV. L. REV. 678, 689-93 & n.55 (1984) (explaining the broad and narrow views of promise and recognizing that courts may take a broad or narrow view of promise not based on any method of decision or on the general politics of the court, but because they are motivated by the underlying factual content). This author would speculate that even advocates of a broad view of promissory estoppel would hesitate to impose liability on GM based on the sophistication of the parties and the opportunity to reach an explicit bargain. See generally Juliet P. Kostritsky, Bargaining with Uncertainty, Moral Hazard and Sunk Costs: A Default Rule for Precontractual Negotiations, 44 HASTINGS L.J. 1 (March 1993) (taking a more flexible view of the conditions necessary for the imposition of liability in the precontract phase of negotiations based on obstacles in the bargaining relationship).

97. In re Phillips Petroleum, 881 F.2d at 1250 ("reliance upon a mere expression of future intention cannot be 'reasonable'"; Santoni, 677 F.2d at 179 ("mere expression of future intention . . . does not justify reasonable reliance"). See also supra note 96 and accompanying text.
it clear that these promises are in any way conditional or that it
does not intend to become bound, any reliance on such promises is
unnecessary. Because of the conditional nature of any promise
that GM might have made, any reliance thereon was unreasonable.

Based on statements at the public hearing on the abatement
application, it seems unlikely that Ypsilanti did actually rely on
any so-called promise by GM. However, even if it did actually
rely, such reliance would have been unreasonable in light of the
fact that several individuals at the meeting criticized the absence of
a promise on the part of GM to keep operating. For example, after
stating that he was in favor of the abatement, one individual atten-
dant at the meeting, presumably in response to the plant manager’s
comments, stated, “What promise does he make for General Motors
that they are going to stay in this area? . . . I’d like to see them
stay here twelve years so I can retire, but they are not promising
anything . . . .” Later, he stated, “[B]y God I think there should
be some kind of proof by them [GM] that they are not going to
say, move out.” Another citizen commented that he had been
concerned about whether Ypsilantians were getting their “fair share
of jobs” and reported at the meeting that he had been told that
GM could not be legally bound to giving jobs to Ypsilanti Town-
ship. Yet another individual observed:

The plant has not given us any commitments in any way
that they will not “out source” production, they will not
tell you how long they are going to stay, they will not tell
you that we only want it as long as we stay. Who knows,
they might move tomorrow or two years from now and
they will have been given three tax breaks with a hidden
plan.

Any response to these comments by GM or any member of the
Ypsilanti Board of Trustees is conspicuously absent from the re-

cord. GM did not have a hidden agenda to desert Willow Run; however, these comments demonstrate general recognition that GM
was not binding itself to keep Willow Run in operation or provide

98. Doll v. Grand Union Co., 925 F.2d 1363, 1373 (11th Cir. 1991); See also Edo
Corp. v. Beech Aircraft Corp., 911 F.2d 1447, 1455 n.8 (10th Cir. 1990).
100. Id.
101. Id. at 20.
102. Id. at 22.
Ypsilanti’s citizens with jobs. In light of that recognition, it is impossible to conclude that Ypsilanti reasonably relied on any purported promise of GM. In fact, it makes it hard to believe that Ypsilanti relied on any representations by GM at all.  

Finally, GM and Ypsilanti were both sophisticated actors. Ypsilanti was aware of the intricacies of Act 198, since it was an administrator of Act 198 exemptions. Thus, it must have been aware that GM could unilaterally choose to terminate the tax exemption at any time for any reason. Moreover, given the township’s sophistication, it would have recognized that any promise by GM to keep Willow Run operating would have been commercially unreasonable. The fact that GM was statutorily free to discontinue the abatement at any time lends support to the notion that any reliance by Ypsilanti would have been unreasonable.

3. The Foreseeability of Reliance

GM could not have foreseen that its “promise,” which was contingent in nature, would be relied upon — especially in light of the objections expressed at the meeting as detailed above. Foreseeability of reliance, embracing notions of fault, is an integral component of promissory estoppel. For example, in Edo Corp. v. Beech Aircraft Corp., a case involving the forbearance of research and development opportunities by a subcontractor based on the contractor’s oral assurances that doing so would ensure the continuation of a productive relationship, the Tenth Circuit held that even if there were a promise, the subcontractor failed to demonstrate that the contractor reasonably expected the subcontractor would rely.

103. Interestingly, Judge Shelton’s opinion makes no mention of these comments, which offer convincing evidence that, contrary to Ypsilanti’s position, GM’s remarks left no impression of a promise to keep Willow Run open.

104. Mich. Comp. Laws Ann. § 207.565 (West 1986). On the other hand, Ypsilanti had no power to revoke the exemption after its issuance.

105. See RCM Supply Co., Inc. v. Hunter Douglas, Inc., 686 F.2d 1074, 1078 (4th Cir. 1982) (holding that expenditures of almost $1 million in reliance upon an oral promise to provide the lowest price and an unlimited credit line for an indefinite amount of time, without regard to the promisee’s financial condition, exceeded the bounds of commercial reasonableness and hence could not be the basis of recovery on promissory estoppel grounds).

106. See supra notes 99-102 and accompanying text.

107. Id. at 1455; Edo Corp. v. Beech Aircraft Corp., 715 F. Supp. 990, 992 (D. Kan. 1988) (finding as a matter of fact that the oral assurances were made), aff’d, 911 F.2d
Basically, the same evidence which would demonstrate unreasonable reliance supports the notion that there was no foreseeability. In fact, the court stated, "[T]he indefinite nature of those assurances and . . . that he was unwilling to make any commitment to [the subcontractor] concerning future production strongly suggest that it would have been unreasonable . . . to expect such assurances to induce [the subcontractor] to forego the . . . work. Absent this intent and reasonable expectation, . . . promissory estoppel fails." These considerations are very similar to the factors courts discussed in relation to reasonable reliance.

In this case, GM's management was unwilling to commit to keeping the plant open after being pressed to do so; it was unilaterally entitled to revoke its tax exemption; and its statement regarding manufacture of the Caprice was purely contingent in nature. Further, like in Edo, only one GM representative made the purported promise. These factors are surely evidence of the fact that GM could not foresee that Ypsilanti would rely on its "promise".

4. The Interests of Justice

Under Section 90 of the Restatement (Second) of Contracts, a promise should only be enforced if enforcement is necessary to avoid injustice; as a corollary, the remedy for breach of promise should be limited as justice requires. Thus, even if plaintiffs did establish the other elements of their promissory estoppel claims, enjoining the plant closing was an inappropriate remedy because the interests of justice do not demand equitable relief.

a. Under Promissory Estoppel Generally

Relief under Section 90 may be "limited to restitution or damages or specific relief measured by the extent of the promisee's reliance rather than by the terms of the promise." In addition, at least one court has held that damages based on detrimental reliance on a promise are limited to those specific expenditures

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109. Edo, 911 F.2d at 1455 & n.8 (relying on the fact that the contractor's president was the only person to make such assurances and that he believed any potential opportunities were prohibited by the noncompetition agreement).
110. Id. at 1455.
111. See supra notes 97-105 and accompanying text.
112. See supra note 40 and accompanying text.
made in reliance thereupon.\textsuperscript{114} Furthermore, the general practice of the judiciary is to grant specific performance and injunctive relief sparingly.\textsuperscript{115} Acting as a court of equity, if he found a promise, Judge Shelton should have awarded monetary damages in the amount of revenue foregone.\textsuperscript{116} In this particular case, the granting of injunctive relief will cost GM millions of dollars\textsuperscript{117} and thus, is patently unfair. Judge Shelton’s fashioning an “equitable” remedy did not avoid injustice — rather, it created it.

b. The Single Permitted Objective

Keeping in mind the aforementioned limitations on promissory estoppel, if one considers that the other elements of promissory estoppel were technically met, this would be the perfect case for the exercise of those limitations. Forcing GM to keep its plant in operation will actually result in a violation of state corporation law. Thus, both law and equity require that the plant closing not be enjoined.

Under Michigan corporation law, the directors and officers of a corporation are required to discharge their duties according to a single permitted objective — the best interests of the corporation.\textsuperscript{118} In interpreting this objective, the Michigan Supreme Court has stated:

A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the

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\textsuperscript{114} RCM Supply Co., Inc. v. Hunter Douglas, Inc., 686 F.2d 1074, 1079 (4th Cir. 1982).

\textsuperscript{115} Restatement (Second) of Contracts § 365 (1979) (“Specific performance or an injunction will not be granted if the act or forbearance that would be compelled or the use of compulsion is contrary to public policy.”); id. at cmt. a (“Its performance may, for example, involve a breach of duty to a third person arising under tort law, out of a fiduciary relation . . . .”). In relation to this provision, see infra note 123 and accompanying text. See also Restatement (Second) of Contracts § 359 (“Specific performance or an injunction will not be ordered if damages would be adequate to protect the expectation interest of the injured party.”); id. § 362 (“Specific performance or an injunction will not be granted unless the terms of the contract are sufficiently certain to provide a basis for an appropriate order.”); id. § 364 (“Specific performance or an injunction will be refused if such relief would be unfair because . . . the relief would cause unreasonable hardship or loss to the party in breach or to third persons”); id. § 366 (“A promise will not be specifically enforced if the character and magnitude of the performance would impose on the court burdens disproportionate to the advantages to be gained from enforcement and to the harm to be suffered from its denial.”).

\textsuperscript{116} See supra note 51.

\textsuperscript{117} See infra note 123.

\textsuperscript{118} Mich. Comp. Laws Ann. § 450.1541a (West 1990).\
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directors are to be employed for that end. The discretion of
directors is to be exercised in the choice of means to attain
that end, and does not extend to a change in the end itself,
to the reduction of profits, or to the nondistribution of
profits among stockholders in order to devote them to other
purposes.

... [It is not within the lawful powers of a board of direc-
tors to shape and conduct the affairs of a corporation for
the merely incidental benefit of shareholders and for the
primary purpose of benefiting [sic] others.]

Even though it is not currently economically necessary for GM
to close the Willow Run plant, it would be economically prudent. Thus, following Dodge v. Ford Motor Co., a Michigan Supreme Court case, adopting a corporate policy which benefits GM's workers while harming GM's shareholders by decreasing its earning potential is outside the bounds of the corporate purpose and the directors' powers. Under this rationale, since GM's directors could not have decided to keep the plant open, they surely should not be compelled to do so by an outside force. In sum, by requiring GM to keep its plant open with a lower potential for profit, Judge Shelton is violating, or forcing GM's directors to unintentionally violate, Michigan's single permitted objective re-

119. Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919). But see A.P. Smith Mfg. Co. v. Barlow, 98 A.2d 581 (N.J. 1953) (holding a $15,000 donation to Princeton University not outside the scope of the directors' power). These decisions can be reconciled because Ford's "gift" constituted selling cars to the public at a lower price, a gift of an unspecified amount to unknown recipients; on the other hand, the gift in Smith was more definite. Tamar Frankel, Fiduciary Law, 71 CALIF. L. REV. 795, 827 (1983).


121. In its brief in support of its application for direct appeal to the Michigan Supreme Court, GM contends that forcing GM to involuntarily keep the plant open will have "enormously destructive consequences," including an immediate cost to GM of $5.5 million for duplicate equipment to produce 1994 model vehicles and additional monthly pro-
duction costs of $15 million. GM Application supra note 29, at 2. The monthly cost of $15 million is based on a projected savings of $800 per car at current sales rates if production were transferred. Id. at 11. Also of significance is the fact that GM reported losses of $4.5 billion in 1990, $2.1 billion in 1991, and $23.5 billion in 1992, "by far the largest loss in American corporate history." Id. at 10.

122. 170 N.W. 668 (Mich. 1919).
In addition, the general common law provides that if a third party knowingly interferes in the agency relationship between agents and principals, that third party could be sued by the principals for breach of the relationship. If that is the case, then surely the terms of any agreement between the third party and the agent should be modified to reflect the third party’s understanding of any limitations of the agency relationship. Applying this logic to the case at bar, Ypsilanti and Judge Shelton were necessarily aware of the limitation imposed by the single permitted objective, that is, that GM's management must act for the welfare of the shareholders; for, this limitation in the agency relationship between management and the corporation as an entity was derived from a state statute. Clearly a political subdivision of a state and a state judge must be presumed to know the content of state law. Because of this presumed awareness of the single permitted objective and the limitation it imposed on GM, the terms of any contract between GM and Ypsilanti created by promissory estoppel should be modified to reflect this understanding. This is certainly a less drastic application of Section 312 of the Restatement (Second) of Agency and its analogs than theoretically allowing Ypsilanti to be subject to suit by GM's shareholders.

Thus, because Ypsilanti was necessarily aware of the statutory limitations inherent in the agency relationship between GM's directors and the corporation for the breach of that agency relationship, theoretically it could be held liable for any breach of that relationship. While this seems unlikely, it is much less of a leap to apply equitable principles to avoid imposing promissory estoppel and the flood of illegalities and problems which accompany its application.

c. The Commerce Clause

Finally, because Judge Shelton’s order prohibits GM from transferring production and jobs from Michigan to Texas, the order

123. See generally Restatement (Second) of Agency § 312 (1958) ("A person who, without being privileged to do so, intentionally causes or assist an agent to violate a duty to his principal is subject to liability to the principal."). See also Restatement (Second) of Torts § 876 (1979) ("For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so as to conduct himself."); Restatement (Second) of Trusts § 326 (1959) ("A third person who, although not a transferee of trust property, has notice that the trustee is committing a breach of trust and participates therein is liable to the beneficiary for any loss caused by the breach of trust.").
is in contravention of the Commerce Clause of the United States Constitution.\(^{124}\) The Commerce Clause is a limitation on the power of the states even without implementing legislation by Congress.\(^ {125}\) For example, the Supreme Court has held that an order by an Arizona state official prohibiting an Arizona company, which customarily had its cantaloupes inspected and packed in California, from shipping outside Arizona without proper packaging unduly burdened interstate commerce.\(^ {126}\) This was so because enforcement of the order would require an operation conducted outside of the state to be performed within it.\(^ {127}\) That case set forth the rule:

Where the statute regulates even-handedly to effectuate a legitimate local public interest and its efforts on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.\(^ {128}\)

While the Supreme Court has acknowledged that securing employment for its people is a valid state interest,\(^ {129}\) it should be remembered that the burden on interstate commerce in this case did not derive from statute. Judge Shelton explicitly held that the statute itself did not create a contract.\(^ {130}\) Thus, upholding this injunction would be allowing the views of one man — not several representatives of the people — to burden interstate commerce generally and specifically interfere with employment opportunities for the people of Texas. Had Michigan opted to create a statutory obligation, GM could have made its business decisions accordingly. However, to impose liability via the common law, with weak factual evidence to support its application, after arrangements had already been made to effectuate the production transfer, inequitably

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124. The Commerce Clause provides that "Congress shall have power . . . [t]o regulate Commerce . . . among the several States." U.S. CONST. art. I, § 8, cl. 3.
127. Id. at 141.
128. Id. at 142 (citations omitted).
129. Id. at 146.
130. See supra notes 34-38 and accompanying text.
burdens interstate commerce.

CONCLUSION

It is difficult not to have intense feelings for the thousands of displaced workers from GM’s Willow Run plant. It must have been particularly difficult for Judge Shelton—who had their lives in his hands and saw what he thought was a way to help. However, Judge Shelton did not use his position legitimately. Instead, he used, or abused, his power by creating a legal fiction in the form of a “promise” by GM. In his opinion, Judge Shelton charged, “Perhaps another judge in another court would not feel moved by that injustice and would labor to find a legal rationalization to allow such conduct.” However, it was he who was guilty of laboring to find a legal rationalization. Unfortunately for the people of Ypsilanti, Judge Shelton was unable to find a rationale which was legally justifiable.

In this case, there was no promise. There was no reasonable reliance. In fact, it is doubtful whether there was any actual reliance at all. It was not foreseeable for GM to expect that Ypsilanti would rely on any of its statements. And, specifically enforcing any purported promise in this case would be in contravention of the basic principles guiding contractual remedies, of state corporation and agency law, and the Commerce Clause of the United States Constitution. There is likely no case more clear-cut than this. Promissory estoppel was misapplied.

HALLE FINE TERRION