

## Detrimental Reliance

< *NOTE: This instruction is for use with “equitable estoppel” claims, not with contract claims based on a theory of detrimental reliance or “promissory estoppel.”<sup>1</sup> The model instruction for contract claims covers contracts that are allegedly based on detrimental reliance rather than consideration.* >

PLF has brought a claim for “detrimental reliance,” which the lawyers have also called “estoppel.” PLF alleges that DFT intended PLF to rely on the [describe statement], that PLF did rely on the statement and that, as a result, PLF suffered harm.

To prove this claim, PLF must show that four things are more likely true than not true<sup>2</sup>:

1. DFT made a statement and intended for PLF to rely on the statement;
2. PLF relied on the statement when it acted [or refrained from acting];
3. PLF’s reliance on the statement was reasonable; and
4. PLF suffered some loss or disadvantage because of that action [or inaction].

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<sup>1</sup> The Supreme Judicial Court has distinguished “between a claim for equitable estoppel and one for promissory estoppel,” explaining that “ ‘under a theory of equitable estoppel, there must be reliance on a misrepresentation of past or present facts, while a theory of promissory estoppel permits reliance on a misrepresentation [or other statement] of future intent.’ ” *Sullivan v. Chief Justice for Administration and Management of the Trial Court*, 448 Mass. 15, 28 n.9 (2006), quoting *Boylston Dev. Group, Inc. v. 22 Boylston St. Corp.*, 412 Mass. 531, 542 n.17 (1992); see also *Loranger Constr. Corp. v. E.F. Hauserman Co.*, 6 Mass. App. Ct. 152, 155 (equitable estoppel permits recovery “only where there has been reliance upon the misrepresentation of past or present facts,” while promissory estoppel applies “where reliance has been placed upon statements of future intent”), *aff’d*, 376 Mass. 757, 760–761 (1978).

<sup>2</sup> *Anzalone v. Admin. Office of the Trial Court*, 457 Mass. 647, 661 (2010). See also *Kanamaru v. Holyoke Mutual Ins. Co.*, 72 Mass. App. Ct. 396, 404-407 (2008), citing *Sullivan v. Chief Justice of Admn. & Mgmt. of the Trial Court*, 448 Mass. 15, 27-28 (2006); *Bongaards v. Millen*, 440 Mass. 10, 15 (2003).

Let me explain these items in more detail.

**(a) Liability**

**First**, PLF must prove both that DFT made a statement and that DFT reasonably expected PLF to rely on the statement. The statement may be an offer, a promise, or another kind of statement as long as DFT reasonably expected PLF to take definite and substantial action [or refrain from such action] based upon the statement. A mere opinion or an invitation to further negotiations is not enough. Generally, the statement must express a commitment or intention to act in a specific way.<sup>3</sup>

**Second**, PLF must show that, it actually relied on the statement. It must show that it acted [or refrained from acting] because of the statement.<sup>4</sup>

**Third**, PLF must show that its reliance was reasonable. You evaluate this based upon the facts that existed at the time PLF acted [refrained from acting]. As the jury, you should decide whether a reasonable person would have relied on the statement in acting as PLF did [or in refraining from acting]. You may consider all the circumstances in deciding whether reliance was reasonable.

Among other things, you may ask yourselves whether the statement itself made reliance reasonable or unreasonable. For instance:

- Was the statement a clear-cut commitment, or did it reflect some doubt or uncertainty?<sup>5</sup>

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<sup>3</sup> See *Rhode Island Hosp. Trust Nat'l Bank v. Varadian*, 419 Mass. 841 (1995); *Loranger Constr. Corp. v. E.F. Hauserman Co.*, 376 Mass. 757 (1978).

<sup>4</sup> *Loranger Constr. Corp. v. E.F. Hauserman Co.*, 376 Mass. 757 (1978); *Kanamaru v. Holyoke Mutual Ins. Co.*, 72 Mass. App. Ct. 396, 404-407 (2008); *Tull v. Mister Donut Development Corp.*, 7 Mass. App. Ct. 626 (1979).

<sup>5</sup> See *Cataldo Ambulance Serv. v. City of Chelsea*, 426 Mass. 383 (1998).

- Was the statement definite, or was it vague? For instance, did it just express a hope, opinion or expectation<sup>6</sup> - or was it more definite than that?
- Did the statement include any unmet conditions or limitations?

In addition, consider the context of the parties' negotiations up until PLF acted in reliance on the statement. Did something about those negotiations make it reasonable or unreasonable for PLF to rely on the statement?

Asking other questions may also help you decide the question of reasonableness, such as:

- Before s/he/it acted [declined to act] did PLF receive other communications from DFT that conflicted with the statement and, if so, did it take reasonable steps to determine which statement, if any, was reliable?<sup>7</sup>
- Did DFT need someone else's approval before it could do what the statement said s/he/it would do?<sup>8</sup>
- Was there some other reason why, at the time PLF acted, s/he/it should have known that s/he/it could not rely on the statement?<sup>9</sup>

**Fourth**, PLF must show that s/he/it suffered some loss or disadvantage (in other words, some detriment) because s/he/it reasonably relied on DFT's statement.<sup>10</sup>

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<sup>6</sup> See *Cambridge Sav. Bank v. Boersner*, 413 Mass. 432 (1992); *Congregation Kadimah Toras-Moshe v. DeLeo*, 405 Mass. 365 (1989); *Bump v. Robbins*, 24 Mass. App. Ct. 296 (1987).

<sup>7</sup> *McMahon v. Digital Equip. Corp.*, 162 F.3d 28 (1<sup>st</sup> Cir. 1998).

<sup>8</sup> *Anzalone v. Admin. Office of the Trial Court*, 457 Mass. 647, 661 (2010).

<sup>9</sup> See, e.g., *I & R Mechanical, Inc. v. Hazelton Mfg. Co.*, 62 Mass. App. Ct. 452 (2004).

<sup>10</sup> *Suominen v. Goodman Indus. Equities Mgmt. Group, LLC*, 78 Mass. App. Ct. 723, rev. denied, 459 Mass. 1109 (2011); *Transamerican Ins. Group v. Turner Constr. Co.*, 33 Mass. App. Ct. 446 (1992). See also *Kanamaru v. Holyoke Mutual Ins. Co.*, 72 Mass. App. Ct. 396, 404-407 (2008) *Bump v. Robbins*, 24 Mass. App. Ct. 296 (1987); *Cellucci v. Sun Oil Co.*, 2 Mas. App. Ct. 722 (1974).

If PLF has proven all these things are more likely true than not true, then s/he/it has proven its detrimental reliance claim and is entitled to any damages that it has proven.

### **(b) Damages**

Finally, if PLF proves detrimental reliance, s/he/it must prove the amount of damages. By instructing you on damages, I am not suggesting anything about your answers to questions 1 to 4 [question 1].

The purpose of damages is to award PLF the benefit of the statement on which it relied. You may not award damages for to reward PLF or to punish DFT.

You must determine an amount that will compensate PLF for his/her/its reasonable reliance upon the statement. You should ask: "Would PLF have benefited if DFT had [describe substance of statement]?" If so, you should award money damages to compensate PLF for the dollar value that it lost because it relied on DFT's statement. As with the other elements of the claim, PLF must prove that DFT's conduct more likely than not caused the damages. You should not award damages for any harm that PLF or someone other than DFT caused.

### **(1) Mitigation of Damages**

In addition, PLF had the duty to take all reasonable steps to reduce the damages s/he/it incurred because of reasonable reliance on the statement. On this issue —called mitigation of damages— DFT, and not PLF, has the burden to prove that, more likely than not, PLF could have prevented or reduced some of the damages by reasonable measures.

PLF may not recover damages which it reasonably could have avoided. This rule applies to all types of damages in this case. You must not include in your damages award any damages you find PLF could have prevented or reduced by reasonable efforts.

## (2) Concluding Remarks on Damages

I will conclude with a few words about damages in this case.

First, some damages are difficult to prove with certainty. Sometimes you have little evidence to work with. But you can still award full and fair compensation, if the evidence allows you to determine damages in a reasonable way. The important thing is that you cannot determine damages by guessing. You must base your decision on fair and reasonable conclusions based on the evidence. If you decide to award damages, the amount of damages you award is up to your judgment as jurors.

Finally, you must not consider the application of any interest upon the amount of damages that you may find, since this the court's job. Nor may you consider federal or state income taxes, since the damages award in this case may or may not be subject to payment of such taxes. Taxes would need to be determined later – not by the jury. In other words, just follow my instructions on what issues to consider. If you go beyond what I have outlined, your verdict may well have unexpected consequences that you did not intend. When you have made your determination on the amount of damages, using the rules I have just described, you should write down an amount both in numbers and in words.