

## GORHAM V. BENSON OPTICAL

COURT OF APPEALS OF MINNESOTA, 1995

539 N.W.2d 798

**FACTS** In early September 1993, Carl Gorham received a phone call from Ed Iwinski about a job opportunity with Benson Optical. At that time, Gorham earned \$38,000 annually as a store manager for LensCrafters, but indicated he was interested in employment with Benson Optical. Iwinski, who had been offered the job of chief operating officer (COO) for Benson Optical but was not yet part of the decision-making process on hiring, told Gorham that he would forward Gorham's name to Benson Optical. The next day, Benson Optical's eastern regional manager, Sue Opahle, called Gorham to schedule an interview for an area manager position.

On September 15, 1993, Opahle interviewed Gorham in Chicago. During this interview, Gorham came to believe that Iwinski was Opahle's boss and the COO at Benson Optical. On September 18, Opahle telephoned Gorham and offered him the job of area manager for half of North Carolina and some stores in Florida and Kentucky at a \$50,000 annual salary and discussed relocation. After describing the terms of employment Opahle promised to send a confirming letter and employee packet in two days. Gorham told Opahle that he accepted the position provisionally, and unless he notified her otherwise within two days, he would give LensCrafters his notice of termination.

When Gorham did not receive the packet on September 20, he called Benson Optical where someone informed him that the packet was in the mail and reassured him that the deal was finalized so he could give LensCrafters notice. On September 21, Gorham gave LensCrafters his two-week notice of resignation. LensCrafters attempted to keep Gorham in its employment with an offer of a raise, but Gorham declined. When Gorham received the packet a few days later, it contained two shortcomings, which he called to Benson's attention. Gorham received a corrected letter, which asked that he sign and return it as acceptance of the terms of employment. Gorham signed this letter, but never returned it because he had started

having reservations about his employment with Benson Optical.

On about September 30, Iwinski informed Benson Optical's vice president of human resources, Fran Scibora, that he was declining the COO position. Scibora, Opahle, and Benson Optical's chief financial officer, Dominic Sblendorio, immediately contacted Gorham and three other new employees who had been recommended by Iwinski, asking for their reactions to the fact that Iwinski would not be working for Benson Optical. Gorham responded that Iwinski's absence did not change his decision to accept the job. When Gorham asked if Iwinski's departure affected Gorham's job, Scibora assured him that it would not.

Gorham's last day of work for LensCrafters was October 1. On October 3, he flew to Minneapolis for Benson Optical's national sales meeting. The meeting then turned into another interview in which they reviewed Gorham's skills and aptitudes. Scibora finally told Gorham that he did not possess the skills necessary for the area manager position. Gorham had the clear impression that he had been or would be terminated. This group also met with and terminated three other employees whom Opahle had hired at Iwinski's suggestion. In a letter to Gorham dated October 15, Benson Optical explained that it had terminated his position because Iwinski had declined the job as COO, because of a "change [in] the requirements of the Area Manager's position," and because Gorham's "skills and abilities did not satisfy the requirements for the new direction in which the company is going." Gorham brought suit claiming breach of contract and promissory estoppel. The district court granted Benson Optical's motion for summary judgment on all claims, and Gorham appealed.

**DECISION** The district court's summary judgment on Gorham's promissory estoppel claim reversed and remanded.

**OPINION** Davies, J. A party may manifest acceptance of an agreement by written or spoken words, or by conduct

and actions. [Citation.] The record establishes that a contract existed here before October 4 because, even though Gorham did not return the acceptance letter to Benson Optical, he demonstrated his acceptance by verbally agreeing to take the job, resigning his former employment, flying to Chicago at his own expense, and reporting for the sales meeting on October 3. He also admitted that, at that time, he considered himself hired.

The hiring letter, however, fell short as a matter of law of guaranteeing Gorham employment for 90 days as he claims. The relevant statement merely informed Gorham that he needed to produce in 90 days or face termination. Because the contract was at-will and there are no issues of fact as to its terms, the district court properly granted summary judgment on Gorham's breach of contract claim.

Gorham alternatively contends that the district court erred in granting summary judgment for Benson Optical on the promissory estoppel claim. We agree.

The elements of promissory estoppel are:

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.

Restatement of Contracts § 90 (1932), [citation]. [Court's footnote: This provision has remained substantially the same in Restatement (Second) of Contracts § 90 (1981).]

Respondents argue that promissory estoppel is not available when a contract exists. This is true (but with one exception). [Citation.] In *Grouse*, however, the supreme court in effect found an exception to this rule. The exception applies when the contract is of a type that provides no basis for a contract recovery, i.e., an at-will employment contract. [Citation.] Then there is no bar to a promissory estoppel claim.

In *Grouse*, the supreme court applied the doctrine of promissory estoppel to facts very similar to the present case and allowed the plaintiff to recover reliance damages. There, a pharmacy offered a pharmacist a job and, after the pharmacist accepted, resigned his current position, and declined another job offer, the pharmacy hired someone else. \*\*\*

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Significant to this case, the *Grouse* court stated, in dictum: “[U]nder appropriate circumstances we believe section 90 [of the Restatement] would apply even after employment has begun.” [Citation.] Gorham presents the specific hypothetical situation the *Grouse* court's dictum addressed—a short time actually on the job. And, independent of the hypothetical and like Grouse himself, Gorham relied on the promise of a new job when he quit his job with LensCrafters and declined any renegotiations with them. Gorham came to Minneapolis to begin work on October 4, believing that he had been hired. Within a day, Benson Optical terminated him. These facts show Gorham's reasonable reliance on Benson Optical's promise of employment, his declining any other job in deference to his new job with Benson Optical, and the injustice to him when, on his first day of “employment,” he went through a hostile re-interview process that led to his immediate termination.

We see no relevant difference between Gorham, who reported to the national sales meeting on his first day of employment, and Grouse, who was denied even one day on the job. Both men relied to their detriment on the promise of a new job, only to discover that the opportunity had disintegrated before they ever actually started working. Neither man had a “good faith opportunity to perform his duties.” [Citation.] Given these facts, Gorham's claim fits squarely within the spirit of *Grouse* and is entitled to the benefit of promissory estoppel leading to reliance damages.

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The district court erred when it granted summary judgment against Gorham's promissory estoppel claim.

**INTERPRETATION** The courts will enforce a promise that the promisor should reasonably expect to induce detrimental reliance by the promisee if the promisee takes such action and justice requires enforcement.

**ETHICAL QUESTION** Did Benson Optical act ethically in terminating Gorham and the three other employees hired at Iwinski's suggestion? Explain.

**CRITICAL THINKING QUESTION** What could Gorham have done to better protect his interests? Explain.