



## **Promissory Estoppel And How To Enforce It**

Promissory estoppel is a type of equitable estoppel and it was explained in the case of *Crabb V. Arun DC*<sup>1</sup>, whereby the reason equitable estoppel is crucial is because it has the effect of preventing a party in a case from insisting on his/her legal rights when it would be inequitable to do so considering the dealings agreed between the parties in the case.

Therefore, promissory estoppel can be defined as an equitable doctrine which in some occasions can prevent a party from going back on a promise made even if the said promise is not supported by a consideration<sup>2</sup>.

Similar to other doctrines, the doctrine of promissory estoppel has several elements that need to be satisfied in order for it to be applicable. The three elements are firstly, there must have been a promise which was made on the part of the promisor and this in turn has caused the promisee to act on the promise made. Secondly, the promisee must have relied on the promise of the promisor. The third one is that it must be deemed by the court that it is inequitable for the promisor to go back on the promise that he/she has made.

The beginnings of the doctrine of promissory estoppel can be traced back over a century ago revolving two important English cases in regards to the establishment of promissory estoppel. Firstly, there was the case of *Hughes v Metropolitan Rly Co*<sup>3</sup>, in which there was half a year's notice given by the landlord to the tenant, instructing the tenant to repair the house, failing which would result in termination of the tenancy. After 3 months of the aforesaid notice being given, negotiations were entered into between the said landlord and tenant for the landlord to sell the house to the tenant but these negotiations ended a month later. Once the period of the notice expired, the tenant had failed to repair the house and the landlord sought to evict the tenant. The court held that the negotiations which were entered into by the landlord to sell the house were amounted to a promise and the tenant had acted in reliance of that promise by not performing the repairs. Therefore, the court was of the view that the date (regarding the

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<sup>1</sup> (1976) 1 Ch 179

<sup>2</sup> Promissory Estoppel. (n.d.). Retrieved April 17, 2020, from <http://www.e-lawresources.co.uk/Promissory-estoppel.php>

<sup>3</sup> (1877) 2 App Cas 439

time period for the repairs) should be counted from the date the negotiations were ended and not from the date the notice was given.

Also in the case of **Central London Property Trust Ltd v High Trees House Ltd**<sup>4</sup>, the modern principle of promissory estoppel was laid down. Lord Denning in this case explained that when a party makes a promise with the intention that the other party should rely on the promise made and act based on that reliance, and if the party to whom the promise was made does end up acting on the promise, then it is essential for the promise to be fulfilled even if there is no new consideration given. Lord Denning also explained that if the party relying on the promise suffers loss, then if the party who made the promise brings an action against him, he is entitled to utilise the promise made in order to estop the person who made the promise.

**Section 3(1) of the Civil Law Act**<sup>5</sup>, permits for the application of common law and rules of equity in Malaysia when there exists a lacuna in the Malaysian Law. It is through this provision that promissory estoppel, which falls under the category of rules of equity, is possible to be enforced in Malaysia (as promissory estoppel is not codified under any law in Malaysia).

Promissory estoppel has been successfully argued in several cases in Malaysia in the past. For example, in the case of **Sim Siok Eng v Government of Malaysia**<sup>6</sup>, the appellant was given the task of constructing a building and the appellant failed to complete the task within the stipulated time. A promise was made to the appellant by the respondent to supply the materials which were difficult to obtain. Subsequently, the respondent stopped supplying those materials without providing any notice to the appellant. The court deemed this (the promise made on the part of the respondent) to amount to a variation of the original contract between the respondent and the appellant. The court held that if the respondent wished for the original contract to be resumed then the respondent would be required to give notice to the appellant.

Another important case in regards to the doctrine of estoppel which is adopted in Malaysia is the case of **Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd**<sup>7</sup>, in which the Federal Court was of the view it is not necessary for the party who is invoking the doctrine of estoppel to show that he was induced to act in a specific manner due to the conduct of the other party. However, what is needed is that

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<sup>4</sup> [1947] KB 130

<sup>5</sup> Civil Law Act 1956, s3(1)

<sup>6</sup> [1978] 1 MLJ 15

<sup>7</sup> [1995] 3 MLJ 331

sufficient evidence be brought before the court to show that the party invoking the doctrine was influenced by the actions of the other party. It was also explained in this case that one more element which needs to be proven is that it would be unjust for the encourager (the party whose actions influenced the party invoking the estoppel) to enforce his strict legal rights.

In conclusion, the doctrine of promissory estoppel is applicable in Malaysia by the virtue of Section 3(1) of the Civil Law Act. However, in order for promissory estoppel to be enforced, the three required elements need to be satisfied. Firstly, there must have been a promise by the promisor, intending that the promisee rely on the said promise. Secondly, the promisee must have relied on that promise. These two elements were explained in the High Trees case. The third one, expanded upon the second element, it needs to be proven that the promisee's actions had been influenced by the conduct of the promisor (making the promise to the promisee). This was explained in the case of Boustead Trading Sdn Bhd. Also explained in Boustead's case was that the third element is that it must be unjust for the promisor to be able to enforce his strict legal rights (to go back on his promise). Only once within the Malaysian context that all these elements have been proven for the promissory estoppel to be enforced.

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