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V. Commercial Law

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V. COMMERCIAL LAW

Application of Promissory Estoppel to UCC Statute of Frauds

In competitive bidding for construction contracts, general contractors solicit oral price quotes from subcontractors¹ and then incorporate into the general contractors' bid on an overall project the lowest price quotations from the subcontractors.² Although the law generally does not require a contractor to award a subcontract to the lowest bidder,³ the general contractor to whom a project owner awards a prime contract usually grants subcontracts to the subcontractors that submitted the lowest estimates.⁴ A subcontractor, however, later may attempt to cancel a bid because the subcontractor based the bid either on erroneous information or on computational mistakes in the estimate.⁵

1. See *Preload Technology, Inc. v. A.B. & J. Constr. Co.*, 696 F.2d 1080, 1082 (5th Cir. 1983) (general contractor accepted bids from subcontractors for earth work and piping); *C.R. Fedrick, Inc. v. Borg-Warner Corp.*, 552 F.2d 852, 854 (9th Cir. 1977) (general contractor asked supplier to submit sub-bid); *Debron Corp. v. National Homes Constr. Corp.*, 493 F.2d 352, 354 (8th Cir. 1974) (general contractor sought estimates from several steel erectors); *McDabco, Inc. v. Chet Adams Co.*, 548 F. Supp. 456, 457 (D.S.C. 1982) (plaintiff requested defendant to quote prices for various items). See generally *Closen & Weiland, Construction Industry Bidding Cases: Application of Traditional Contract, Promissory Estoppel, and Other Theories to the Relations Between General Contractors and Subcontractors*, 13 JOHN MARSHALL L. REV. 565 (1980) (oral contracts create problems in bids for construction projects).

2. See *C & K Eng'g Contractors v. Amber Steel Co.*, 23 Cal. 3d 1, 5, 587 P.2d 1136, 1137, 151 Cal. Rptr. 323, 324 (Cal. 1978) (plaintiff included defendant's low bid in plaintiff's master bid); *Loranger Constr. Corp. v. E.F. Hauserman Co.*, 6 Mass. App. Ct. 152, ___, 374 N.E. 2d 306, 307 (App. Ct. 1978) (plaintiff contractor included defendant's low bid figures in plaintiff's bid for general contract); *James King & Son, Inc. v. De Santis Constr. No. 2 Corp.*, 97 Misc. 2d 1063, 1065, 413 N.Y.S.2d 78, 79 (N.Y. Sup. Ct. 1977) (contractor incorporated defendant's bid into contractor's overall bid on project).

3. See CALAMARI & PERILLO, *THE LAW OF CONTRACTS* § 6-9 (2d ed. 1977). Calamari and Perillo state that courts that apply promissory estoppel hold that the general contractor may accept or reject the bid although the offer binds the subcontractor. *Id.*; see *Seacoast Elec. Co. v. Franchi Bros. Constr. Corp.*, 437 F.2d 1247, 1249-50 (1st Cir. 1971) (general contractor using subcontractor's bid in general's bid did not create contract); *Cortland Asbestos Prods. v. J. & K. Plumbing & Heating Co.*, 33 A.D.2d 11, 12-13, 304 N.Y.S.2d 694, 696 (App. Div. 1969) (general contractor did not accept subcontractor's bid by merely using bid and subcontractor's name in contractor's major bid to owner of project). But see *Southern Cal. Acoustic Co. v. C.V. Holder, Inc.*, 71 Cal. 2d 719, ___, 456 P.2d 975, 981, 79 Cal. Rptr. 319, 325 (Cal. 1969) (contractor bound because of terms of specific statute).

4. See *Preload Technology, Inc. v. A.B. & J. Constr. Co.*, 696 F.2d 1080, 1083 (5th Cir. 1983) (general contractor awarded subcontract to defendant because of defendant's bid lowest); *C.R. Fedrick, Inc. v. Borg-Warner Corp.*, 552 F.2d 852, 854 (9th Cir. 1977) (general contractor accepted defendant's low bid and awarded subcontract to defendant); *Debron Corp. v. National Homes Constr. Corp.*, 493 F.2d 352, 354 (8th Cir. 1974) (general contractor awarded subcontract to defendant based on defendant's low bid).

5. See, e.g., *Saliba-Kringlen Corp. v. Allen Eng'g Co.*, 15 Cal. App. 3d 95, 101, 92 Cal. Rptr. 799, 801 (Cal. Ct. App. 1971) (defendant's employee should have doubled estimate figures because employee based bid on half-scale plans); *Harry Harris, Inc. v. Quality Constr. Co.*, 593 S.W.2d 872, 873 (Ky. App. 1979) (supplier failed to include price of five ovens); *Anderson Constr.*

In refusing to perform, the subcontractor may claim that the state's statute of frauds renders the oral promise unenforceable because the parties did not reduce the contract to writing.⁶ The general contractor, however, may rely upon the doctrine of promissory estoppel to circumvent the statute of frauds writing requirement and sue the subcontractor for any extra amounts the general contractor expended above the subcontractor's bid price.⁷ Promissory estoppel permits a court to enforce a promise notwithstanding the statute of frauds when a person makes a promise to a promisee that the promisor should

Co. v. Lyon Metal Prods., 370 So. 2d 935, 936 (Miss. 1979) (bid covered only 306 school lockers although plans called for 496 lockers). Errors in estimates sometimes occur because a subcontractor calculates his final bid only hours or even minutes before the general contractor must bid on an overall project. See *C.F. Fedrick, Inc., v. Borg-Warner Corp.*, 552 F.2d 852, 854 (9th Cir. 1977) (subcontractor submitted bid only ten minutes before general contractor submitted overall bid); *Saliba-Kringlen Corp.*, 15 Cal. App. 3d at 101, 92 Cal. Rptr. at 801-02 (general contractor received subcontractor's bid less than two hours before time for submitting master bid). Suppliers and subcontractors submit their estimates as late as possible to prevent the general contractor from using the first supplier's bid to persuade another supplier to bid lower than the first supplier. See *Saliba-Kringlen Corp.*, 15 Cal. App. 3d at 100, 92 Cal. Rptr. at 801.

6. See *McDabco, Inc. v. Chet Adams Co.*, 548 F. Supp. 456, 458 (D.S.C. 1982) (defendant contended that oral bid was unenforceable under South Carolina's version of UCC statute of frauds); *Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance*, 463 F. Supp. 543, 549 (N.D. Miss. 1978) (defendant based motion for summary judgment on sole ground that negotiations were unenforceable under Mississippi's version of UCC statute of frauds); *Tiffany Inc. v. W.M.K. Transit Mix*, 16 Ariz. App. 415, —, 493 P.2d 1220, 1222 (Ariz. Ct. App. 1973) (defendant filed for summary judgment alleging that oral contract was unenforceable under Arizona's version of UCC statute of frauds); see also U.C.C. § 2-201 (1978) (statute of frauds provision).

All states except Louisiana have adopted Article 2 of the Uniform Commercial Code which contains a statute of frauds section relating to the sale of goods. See *Edwards, The Statute of Frauds of the Uniform Commercial Code and the Doctrine of Estoppel*, 62 MARQ. L. REV. 205, 205-06 (1978); see also U.C.C. § 2-201 (1978). Section 2-201 of the UCC states that for a court to enforce a contract for the sale of goods involving \$500 or more, some writing must document the transaction and the party against whom enforcement is sought must have signed the writing. See U.C.C. § 2-201(1) (1978). Only a few statutory exceptions exist to the UCC's statute of frauds. See *id.* § 2-201(2), (3). Section 2-201(2) provides for an exception to the general requirement of a writing where all parties to the contract are merchants. *Id.* § 2-201(2). A written confirmation of the oral contract will satisfy the statute of frauds if within a reasonable time the merchant sends the written confirmation to the other merchant who receives the writing and has reason to know of the writing's contents. *Id.* The exception between merchants applies unless the receiving merchant objects to the contents of the contract in writing within ten days of receipt. *Id.* Section 2-201(3) provides exceptions to the § 2-201(1) writing requirement for contracts for the sale of specially manufactured goods not suitable for resale, for contracts in which the party against whom the contract is sought to be enforced admits in the pleadings or in testimony or otherwise in court that the parties made a contract for sale, and for contracts with respect to goods accepted and paid for or received and accepted. *Id.* § 2-201(3).

7. See *McDabco, Inc. v. Chet Adams Co.*, 548 F. Supp. 456, 458 (D.S.C. 1982) (plaintiff argued that promissory estoppel abrogates South Carolina's version of UCC statute of frauds); *Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance*, 463 F. Supp. 543, 550 (N.D. Miss. 1978) (plaintiff argued that Mississippi's version of UCC statute of frauds had no application when facts justified use of promissory estoppel); *Tiffany Inc. v. W.M.K. Transit Mix*, 16 Ariz. App. 415, —, 493 P.2d 1220, 1222 (Ariz. Ct. App. 1972) (plaintiff urged that theory of promissory estoppel provides a defense to statute of frauds); see also *infra* text accompanying notes 52-113 (discussion of promissory estoppel's application to the UCC statute of frauds).

reasonably expect to cause the promisee to act or forbear from acting, and the promisee relies on the promise to his detriment.⁸ The courts are divided on whether promissory estoppel applies once a state has enacted a version

8. See RESTATEMENT (SECOND) OF CONTRACTS § 139 (1981) (promise reasonably inducing action or forbearance is binding despite statute of frauds); see also *id.* § 90 (promise reasonably inducing action or forbearance is binding despite lack of consideration for contract). Promissory estoppel first arose in cases in which courts used the doctrine to enforce promises in charitable subscription cases. See Metzger and Phillips, *Promissory Estoppel and Section 2-201 of the Uniform Commercial Code*, 26 VILL. L. REV. 63, 78-79 (1980); see also *University of S. Cal. v. Bryson*, 103 Cal. App. 3d, ___, 283 P. 949, 954 (Cal. Dist. Ct. App. 1929) (university began construction of building based on promisor's promise to contribute money toward construction). Other courts found promissory estoppel useful in enforcing oral promises to make gifts of land when promisees had taken possession and made improvements in reliance on an oral promise from the owner to make a later gift of the land. Metzger and Phillips, *supra*, at 79. Many courts, however, applied the doctrine to gratuitous bailments, gratuitous agency, waivers, rent reductions, and pensions and bonuses. *Id.*; see *Debron Corp. v. National Homes Constr. Corp.*, 493 F.2d 352, 356 (8th Cir. 1974) (early cases applied promissory estoppel to gratuitous promises).

The American Law Institute included promissory estoppel as § 90 of the First Restatement of Contracts. See RESTATEMENT OF CONTRACTS § 90 (1932). Section 90 stated that a court could enforce a promise which the promisor should have reasonably expected to induce the promisee to act or forbear from acting and which did induce the promisee's action or forbearance if a court could avoid injustice only by enforcing the promise. See *id.* The same basic idea of § 90 of the First Restatement appears with slight modification in the Second Restatement. See RESTATEMENT (SECOND) OF CONTRACTS § 90(1) (1981). Section 90(1) of the Second Restatement states that a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third party and which does induce action of forbearance binds the promisor if the court can avoid injustice only by enforcing the promise. *Id.* Section 90(1) also states that a court may limit the remedy granted to the promisee for breach of the contract as justice requires. *Id.*

The doctrine of promissory estoppel, however, enjoyed little popularity until the California Supreme Court's landmark decision in *Drennan v. Star Paving Co.* 51 Cal. 2d 409, 333 P.2d 757 (Cal. 1958); cf. *James Baird Co. v. Gimbel Bros.*, 64 F.2d 344, 346 (2d Cir. 1933) (refusing to allow promissory estoppel in construction bidding situation). In *Drennan*, a paving contractor submitted an oral bid over the telephone to a general contractor. 51 Cal. 2d at ___, 333 P.2d at 758. The general contractor used the estimate in making a successful bid on a construction project for a school district. *Id.*, 333 P.2d at 758. The California Supreme Court held that the general contractor's reliance on the paving contractor's bid made the bid irrevocable in spite of the subcontractor's claim that the low bid resulted from a mistake. *Id.* at ___, 333 P.2d at 760-61.

Many other courts subsequently relied on either the *Drennan* decision or on § 90 of the First Restatement in reaching similar results in construction bidding cases. See *Janke Constr. Co. v. Vulcan Materials Co.*, 527 F.2d 772, 778 (7th Cir. 1976) (courts relied on *Drennan* and Restatement § 90 in construing Wisconsin law); *Debron Corp. v. National Homes Constr. Corp.*, 493 F.2d 352, 356 (8th Cir. 1974) (court relied on § 90 of the Restatement in construing Missouri law); *Air Conditioning Co. of Hawaii v. Richards Constr. Co.*, 200 F. Supp. 167, 171 (D. Hawaii 1961) (reliance on both *Drennan* and Restatement § 90 in construing Hawaii law), *aff'd on other grounds*, 318 F.2d 410 (9th Cir. 1963); *Reynolds v. Texarkana Constr. Co.*, 237 Ark. 583, ___, 374 S.W.2d 818, 820 (1964) (court relied upon both *Drennan* and Restatement § 90 in construing Arkansas law); *Norcross v. Winters*, 209 Cal. App. 2d 207, ___, 25 Cal. Rptr. 821, 827 (Ct. App. 1962) (court relied on both *Drennan* and Restatement § 90 in construing California law); *Constructors Supply Co. v. Bostrom Sheet Metal Works*, 291 Minn. 113, ___, 190 N.W.2d 71, 73-74 (1971) (court relied on both *Drennan* and § 90 of Restatement in construing Minnesota law); *E.A. Coronis Assoc. v. M. Gordon Constr. Co.*, 90 N.J. Super. 69, 74-77, 216 A.2d 246, 250-51 (N.J. Super. Ct. App. Div. 1966) (court quoted Restatement § 90 and cited with approval

of the Uniform Commercial Code's (UCC) statute of frauds.⁹ In the recent case of *Allen M. Campbell Co. v. Virginia Metal Industries*,¹⁰ the Fourth Circuit decided that North Carolina law allowed a court to apply promissory estoppel to cases involving the North Carolina version of the UCC's statute of frauds.¹¹

In *Campbell*, the plaintiff contractor, Campbell, bid on a Navy construction project at Camp Lejeune, North Carolina.¹² One half-hour before the Navy's deadline for accepting bids, the defendant subcontractor, Virginia Metal Industries, telephoned Campbell and quoted a price of 193,121 dollars plus taxes for the hollow metal doors and frames required for the project.¹³ Campbell incorporated the Virginia Metal bid into Campbell's overall bid to perform the work.¹⁴ Subsequently, the Navy awarded the contract to Campbell as low bidder on the project.¹⁵ Virginia Metal, however, refused to perform in accordance with the telephone bid, claiming that the sub-bid included a price quotation for only part, and not all, of the doors and frames required.¹⁶ Campbell eventually obtained the necessary items from another supplier at 45,562 dollars more than Virginia Metal's quoted price.¹⁷

Alleging breach of the oral contract, Campbell filed suit in the United States District Court for the Eastern District of North Carolina against Virginia Metal to recover the 45,562 dollars in increased costs that Campbell paid to complete the project.¹⁸ Virginia Metal filed a motion for judgment on the pleadings,¹⁹ alleging that the contract failed to satisfy the North Carolina Commercial Code's statute of frauds writing requirement.²⁰ Campbell, however, argued that the doctrine of promissory estoppel prevented Virginia Metal from

Drennan in construing New Jersey law); cf. *James Baird Co. v. Gimbel Bros.*, 64 F.2d 344, 346 (2d Cir. 1933) (case decided prior to *Drennan* in which court refused to allow promissory estoppel in construction bidding context).

The trend toward allowing promissory estoppel to circumvent the statute of frauds has gained momentum with the adoption of § 139 of the Restatement (Second) of Contracts. See Metzger & Phillips, *supra*, at 84; see also RESTATEMENT (SECOND) OF CONTRACTS § 139(1) (1981) (enforcement of action by virtue of reliance).

9. See *infra* text accompanying notes 43-97 (discussion of cases reaching different conclusions on effect of promissory estoppel on UCC statute of frauds).

10. 708 F.2d 930 (4th Cir. 1983).

11. *Id.* at 934; see N.C. GEN. STAT. § 25-2-201 (1965). The North Carolina Commercial Code's statute of frauds is identical to the UCC's statute of frauds. See N.C. GEN. STAT. § 25-2-201 (1965); U.C.C. § 2-201 (1978); see also *supra* note 6 (provisions of UCC statute of frauds).

12. 708 F.2d at 930.

13. *Id.*

14. *Id.* at 931.

15. *Id.*

16. *Id.* at 930-31.

17. *Id.* at 931.

18. *Id.*

19. Joint Appendix of Appellant and Appellee at 1, 10; *Allen M. Campbell Co. v. Virginia Metal Indus.*, 708 F.2d 930 (4th Cir. 1983) [hereinafter cited as Joint Appendix]; see FED. R. Civ. P. 12(c) (motion for judgment on pleadings).

20. Joint Appendix, *supra* note 19, at 7-8; see N.C. GEN. STAT. § 25-2-201 (1965) (North Carolina Commercial Code's statute of frauds).

denying the existence of the contract.²¹ Nonetheless, the district court rejected Campbell's argument and held that a contractor must have a subcontractor's written proposal satisfying the statute of frauds before the contractor may act in reliance on the subcontractor's proposal.²² The district court also noted that a previous case interpreting North Carolina law held that estoppel might prevent enforcement of the statute of frauds only when the party asserting the breach of an oral contract proved fraud on the part of the party relying on the statute of frauds.²³ The district court then granted Virginia Metal's motion for judgment on the pleadings because Campbell did not allege that Virginia Metal committed any fraud.²⁴

On appeal to the Fourth Circuit, both Campbell and Virginia Metal conceded that no direct North Carolina authority recognized or refuted the doctrine of promissory estoppel.²⁵ After the parties' oral arguments to the Fourth Circuit, however, the North Carolina Supreme Court explicitly stated in *Wachovia Bank & Trust Co. v. Rubish*²⁶ that the doctrine of promissory estoppel always had existed as part of North Carolina law.²⁷ The Fourth Circuit

21. Joint Appendix, *supra* note 19, at 3.

22. *Id.* at 92; see N.C. GEN. STAT. § 25-2-201 (1965) (North Carolina's version of UCC statute of frauds). *But see infra* text accompanying note 109 (commercially impracticable to require contractors to have written bids from subcontractors before relying on bids).

23. Joint Appendix, *supra* note 19, at 91; see *Davis v. Crown Cent. Petroleum Corp.*, 483 F.2d 1014, 1016 (4th Cir. 1973) (promissory estoppel applies only when fraud alleged).

24. Joint Appendix, *supra* note 19, at 92.

25. *Allen M. Campbell Co. v. Virginia Metal Indus.*, 708 F.2d 930, 931 (4th Cir. 1983). In diversity of citizenship cases such as *Campbell*, the doctrine of *Erie Railroad v. Tompkins* requires a federal court to follow the applicable cases and statutes from the state whose law controlled the transaction or activity. 304 U.S. 64 (1938); see C. WRIGHT, *THE LAW OF FEDERAL COURTS* § 55, at 354 (4th ed. 1983) (*Erie* doctrine requires federal court to follow applicable rules and court decisions from state whose law controls the transaction litigated). If no state law exists on the particular point involved, the federal court must choose a rule that the federal court believes the state court would adopt in the same situation. WRIGHT, *supra*, § 55, at 354.

26. 306 N.C. 417, 293 S.E.2d 749 (1982).

27. *Id.* at 427, 293 S.E.2d at 756. In *Wachovia Bank*, the bank as executor of an estate brought an action against a tenant for ejectment and damages because the tenant had failed to comply with provisions of a lease requiring written notice of intention to extend the lease. *Id.* at 418-19, 293 S.E.2d at 751. The defendant Rubish proposed three grounds on which promissory estoppel barred the executor from asserting the requirement of a written notice to renew the lease. *Id.* Rubish claimed promissory estoppel applied because the deceased had waived the written notice requirement before dying, the executor had actual oral notice of Rubish's intent to renew the lease, and the executor failed to notify Rubish to direct written notice to the bank as trustee. *Id.* The bank appealed from the lower court's dismissal of the case and from the North Carolina Court of Appeals' decision that the lower court committed no error. *Id.* On appeal, the North Carolina Supreme Court stated that to prove the elements of promissory estoppel the defendant must show an express or implied promise by the plaintiff and that the defendant detrimentally relied on the plaintiff's promise. *Id.* at 427, 293 S.E.2d at 756. The *Wachovia Bank* court distinguished promissory estoppel from equitable estoppel. *Id.* The North Carolina court noted that equitable estoppel requires proof of an actual misrepresentation and reliance whereas promissory estoppel requires an express or implied promise and a showing of detrimental reliance on that promise. *Id.*, 293 S.E.2d at 755-56; see *supra* text accompanying note 23 (*Davis* case held promissory estoppel applicable only when fraud alleged).

noted the *Wachovia Bank* decision and cited with approval a statement by the North Carolina Supreme Court that promissory estoppel requires an express or implied promise by a promisor and reliance on the promise by the promisee.²⁸ The *Campbell* court stated that the facts as pleaded by Campbell clearly presented a case providing all of the elements of the doctrine of promissory estoppel and that Virginia Metal's oral promise bound Virginia Metal to provide Campbell with the contract items at the quoted price.²⁹

The Fourth Circuit then examined whether the doctrine of promissory estoppel could render ineffective North Carolina's version of the UCC statute of frauds.³⁰ The North Carolina statute of frauds requires a writing to document a contract for the sale of good costing more than 500 dollars.³¹ The Fourth Circuit, however, noted that the general principles section of the North Carolina version of the UCC states that the principles of law and equity, including the law of estoppel, supplement the North Carolina commercial code unless particular provisions of the code displace those principles.³² The Fourth

28. *Allen M. Campbell Co. v. Virginia Metal Indus.*, 708 F.2d 930, 931 (4th Cir. 1983); see *Wachovia Bank & Trust Co., v. Rubish*, 306 N.C. 417, 427, 293 S.E.2d 749, 756 (promissory estoppel requires express or implied promise by promisor and detrimental reliance on promise by promisee).

29. 708 F.2d at 932. The Fourth Circuit noted that when an appellate court reviews a decision of a district court in which the district court disposed of the case by awarding judgment under Federal Rule of Civil Procedure 12(b) or 12(c), the appellate court must assume the truth of all of the plaintiff's well-pleaded allegations of fact. *Id.* at 930-31; FED. R. CIV. P. 12(b) (defenses which pleader may assert by motion rather than in responsive pleading); FED. R. CIV. P. 12(c) (motion for judgment on pleadings); see also *Coakley & Williams, Inc. v. Shatterproof Glass Corp.*, 706 F.2d 456, 457 (4th Cir. 1983) (facts as stated accepted as true on rule 12(b) (6) motion). In *Campbell*, Virginia Metal's answer denied that Virginia Metal made the quotation to supply all of the hollow metal doors and frames required for the job. 708 F.2d at 930 n. 1. The Fourth Circuit noted that on a rule 12(b) or 12(c) motion, the court may not take a denial into account. *Id.* The Fourth Circuit stated that the facts as pleaded in the plaintiff's complaint control and that Campbell unambiguously had pleaded both the promise and Campbell's detrimental reliance on the promise. *Id.*

30. 708 F.2d at 932; see N.C. GEN. STAT. § 25-2-201 (1965) (North Carolina's version of UCC statute of frauds); *supra* note 6 (discussion of UCC statute of frauds and statutory exceptions to statute of frauds).

31. See N.C. GEN. STAT. § 25-2-201 (1965).

32. 708 F.2d at 932; see N.C. GEN. STAT. § 25-1-103 (1965). The North Carolina legislature patterned the state commercial code's supplementary general principles provision after the UCC's supplementary general principles provision. See N.C. GEN. STAT. § 25-1-103 (1965); U.C.C. § 1-103 (1978). The general principles section states that unless specific sections of the UCC displace the general principles of law, the general principles shall supplement the provisions of the UCC. See N.C. GEN. STAT. § 25-1-103 (1965); U.C.C. § 1-103 (1978). The general principles of law recognized in § 1-103 comprise the principles of law and equity including the law relative to the law merchant, the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause. N.C. GEN. STAT. § 25-1-103 (1965); U.C.C. § 1-103 (1978).

One commentator has noted that although the UCC explicitly provides a statute of frauds, the code does not contain a similar statement of how courts should apply promissory estoppel to supplement the code. See Edwards, *supra* note 6, at 219. Edwards states that the supplemental general principles provision of UCC § 1-103 does not contain rules for determining when a par-

Circuit stated that in considering the effect of promissory estoppel on North Carolina's version of the UCC statute of frauds, the court must determine whether promissory estoppel created an exception to the statute of frauds or whether the statute of frauds displaced the doctrine of promissory estoppel.³³ After noting the supplementary general principles provision of the North Carolina commercial code, the Fourth Circuit stated that courts have taken divergent views on the issue of the effect of promissory estoppel on the UCC's statute of frauds.³⁴ Although the Fourth Circuit observed that North Carolina had not adopted explicitly the use of promissory estoppel in UCC statute of frauds cases, the Fourth Circuit found persuasive the *Wachovia Bank* court's approval of section 139 of the Restatement (Second) of Contracts.³⁵ Section

ticular UCC section displaces the general principles of law and equity. *Id.* Edwards also notes that neither UCC § 2-201 nor its accompanying comments contain any express statement indicating the intent of the drafters as to whether the statute of frauds displaced the law of promissory estoppel. *Id.* Other authorities state that promissory estoppel exists independently of the UCC although the courts may apply the doctrine to cases involving the UCC when necessary. *See* J. WHITE & R. SUMMERS, *HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE* § 5, at 19 (2d ed. 1980) (supplemental general principles remain largely intact under UCC and serve to create exceptions to UCC sections or otherwise modify the statute); CALAMARI & PERILLO, *supra* note 3, § 1-7 (traditional rules prevail where UCC is silent).

33. *See* 708 F.2d at 932.

34. *Id.* at 932-33. The Fourth Circuit cited many cases in which courts confronted the issue of whether promissory estoppel provides an exception to the statute of frauds. *Id.* Many of the cases the Fourth Circuit cited reached the conclusion that promissory estoppel may provide relief from the harsh effects of the UCC's statute of frauds. *See* R.S. Bennett & Co. v. Economy Mechanical Indus., 606 F.2d 182, 187 (7th Cir. 1979) (Illinois law allows promissory estoppel recovery to succeed notwithstanding UCC statute of frauds); Ralston Purina Co. v. McCollum, 271 Ark. 840, 841, 611 S.W.2d 201, 203 (Ark. Ct. App. 1981) (promissory estoppel prevents party from asserting UCC statute of frauds); Warder & Lee Elev. v. Britten, 274 N.W.2d 339, 342 (Iowa 1979) (UCC § 2-201 does not displace doctrine of promissory estoppel); Decatur Coop. Ass'n v. Urban, 219 Kan. 171, ___, 547 P.2d 323, 329-30 (1976) (promissory estoppel available to defeat UCC statute of frauds); Jamestown Terminal Elev. v. Hieb, 246 N.W.2d 736, 740-41 (N.D. 1976) (promissory estoppel may bar raising UCC statute of frauds defense). Many other cases, however, have reached the opposite conclusion that the doctrine of promissory estoppel may not abrogate the UCC statute of frauds. *See* C.R. Fedrick, Inc. v. Borg-Warner Corp., 552 F.2d 852, 856-57 (9th Cir. 1977) (promissory estoppel does not defeat California Commercial Code's statute of frauds); Tiffany Inc. v. W.M.K. Transit Mix, 16 Ariz. App. 415, ___, 493 P.2d 1220, 1226 (Ariz. Ct. App. 1972) (court may not apply promissory estoppel when case is clearly within UCC statute of frauds); C. G. Campbell & Son, Inc. v. Comdeq Corp., 586 S.W.2d 40, 40-41 (Ky. Ct. App. 1979) (court denied use of promissory estoppel citing only § 2-201 of UCC with no discussion of § 1-103 or Restatement); Anderson Constr. Co. v. Lyon Metal Prods., 370 So. 2d 935, 936-37 (Miss. 1979) (court rejected use of promissory estoppel when bid lower than other bids received); Wilke v. Holdrege Coop. Equity Exch., 200 Neb. 803, ___, 265 N.W.2d 672, 674-75 (1978) (court held promissory estoppel inapplicable in UCC § 2-201 situation but did not discuss § 1-103); Edward Joy Co. v. Noise Control Prods., 111 Misc. 2d 64, 65, 443 N.Y.S.2d 361, 362 (N.Y. Sup. Ct. 1981) (court rejected promissory estoppel argument when plaintiff relied upon bid containing substantial error that should have prompted plaintiff's inquiry); Lige Dickson Co. v. Union Oil Co. of Cal., 96 Wash. 2d 291, 299-300, 635 P.2d 103, 107 (1981) (court held that promissory estoppel did not apply in Washington to defeat effect of UCC statute of frauds).

35. 708 F.2d at 933; *see* Wachovia Bank & Trust Co. v. Rubish, 306 N.C. 417, 433, 293

139 states that a court may enforce a promise notwithstanding the statute of frauds when a promisor makes a promise to a promisee that the promisor reasonably should expect to cause the promisee to act or forbear from acting, and the promisee relies upon the promise to his detriment.³⁶ Section 139 also states that courts may apply promissory estoppel to enforce a promise if enforcing the promise provides the only method of avoiding injustice.³⁷ The Fourth Circuit noted that many of the courts that have found that promissory estoppel creates an exception to the UCC statute of frauds writing requirement have relied upon section 139.³⁸ The Fourth Circuit concluded that the doctrine of promissory estoppel would prevent Virginia Metal from asserting the statute of frauds to deny Campbell's recovery for the breach of Virginia Metal's oral contract.³⁹ The *Campbell* court, therefore, reversed and remanded as erroneous the district court's decision granting judgment on the pleadings to Virginia Metal.⁴⁰

In contrast to *Campbell*, a minority of courts have not applied promissory estoppel to cases involving state versions of the UCC statute of frauds.⁴¹ Many

S.E.2d 749, 759 (1982) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 139 (1981)); see also RESTATEMENT (SECOND) OF CONTRACTS § 139 (1981) (doctrine of promissory estoppel abrogates harsh effects of statute of frauds); *supra* note 27 (discussion of *Wachovia Bank*).

36. RESTATEMENT (SECOND) OF CONTRACTS § 139 (1981); see *id.* § 90 (promise inducing action or forbearance from action is binding); *supra* note 8 (discussion of RESTATEMENT (SECOND) OF CONTRACTS § 90 (1981)).

37. RESTATEMENT (SECOND) OF CONTRACTS § 139 (1981).

38. 708 F.2d at 933; see *Debron Corp. v. National Homes Constr. Corp.*, 493 F.2d 352, 356 (8th Cir. 1974) (adopting rationale of § 90 of First Restatement); *Warder & Lee Elev. v. Britten*, 274 N.W.2d 339, 342-43 (Iowa 1979) (adopting rationale of § 217A in Tentative Drafts which become § 139 in final form).

39. 708 F.2d at 934.

40. *Id.* The Fourth Circuit rejected Virginia Metal's claim that *Davis v. Crown Central* controlled the transaction involved in *Campbell*. *Id.* n.6; see *supra* note 23 and accompanying text (trial court's opinion that *Davis* applied to instant case); *Davis v. Crown Cent. Petroleum*, 483 F.2d 1014, 1016 (4th Cir. 1973) (North Carolina law allows application of estoppel only when party alleges fraud). In *Davis* Crown Central Petroleum made oral agreements to supply the plaintiff independent oil dealers with the dealers' gasoline requirements. 483 F.2d at 1015. As the oil shortage developed, Crown Central refused to make any further deliveries to the independent oil dealers. *Id.* The Fourth Circuit in *Davis* held that the oral contracts to furnish gasoline were unenforceable under the statute of frauds. *Id.* at 1016. The *Davis* court stated that in exceptional cases, courts of equity will find an estoppel against the enforcement of the statute of frauds but that such an estoppel could arise in North Carolina only upon a showing of fraud committed by the party relying upon the statute. *Id.*

The Fourth Circuit in *Campbell* noted that in *Davis* the plaintiff oil dealers had failed to make any promissory estoppel argument. *Campbell*, 708 F.2d at 934 n.6. The *Campbell* court commented that even if the *Davis* oil dealers had argued promissory estoppel, the claim would have failed because of no showing of reliance on a promise or a change in position to the oil dealers' detriment. *Id.* The *Campbell* court stated that the *Davis* opinion, therefore, referred to equitable estoppel which requires a showing of fraud to defeat the effect of the statute of frauds. *Id.* The *Campbell* court noted that promissory estoppel does not require a showing of fraud to escape the strictures of the statute. *Id.*; see *supra* text accompanying note 23 (district court's opinion that estoppel might prevent enforcement of statute of frauds only upon showing of fraud).

41. See *Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance*, 463 F. Supp. 543, 552-54

courts have held that the terms of the UCC statute of frauds do not allow recourse to the doctrine of promissory estoppel and that the statutory exceptions listed in the statute of frauds provide the only conditions under which the parties can avoid the effects of the statute.⁴² For example, in *McDabco, Inc. v. Chet Adams Co.*,⁴³ the United States District Court for the District of South Carolina held that under the express terms of South Carolina's version of the UCC statute of frauds, plaintiff, McDabco, Inc., could not use promissory estoppel to defeat the statute of frauds writing requirement.⁴⁴ McDabco had included the defendant Chet Adams Company's oral price quotations for certain parts in McDabco's own bid on a mechanical services contract.⁴⁵ Adams, however, refused to sell the items to McDabco when a dispute arose over the number of items included in the bid.⁴⁶ The *McDabco* court noted that the statute of frauds provided several specific exceptions to the statute's strict writing requirement.⁴⁷ The court concluded that the statute's specific exceptions to the writing requirement indicated that the legislature intended the statute of frauds to provide the only exceptions to the requirements of a written contract for sale.⁴⁸

While some courts reject the application of promissory estoppel to cases involving a state's version of the UCC's statute of frauds because of the limited exceptions stated in the statute, other courts reach the same result by finding that allowing promissory estoppel to operate in cases involving the UCC's statute of frauds effectively would negate the statute's writing requirement.⁴⁹

(N.D. Miss. 1978) (Mississippi law does not allow promissory estoppel in statute of frauds case); *C.G. Campbell & Son, Inc. v. Comdeq Corp.*, 586 S.W.2d 40, 40-41 (Ky. Ct. App. 1979) (UCC § 2-201(2) provides only methods of alleviating the hardships of § 2-201(1) statute of frauds); *Wilke v. Holdrege Coop. Equity Exch.*, 200 Neb. 803, —, 265 N.W.2d 672, 675 (1978) (promissory estoppel unavailable to defeat UCC statute of frauds); *Edward Joy Co. v. Noise Control Prods.*, 111 Misc. 2d 64, 65-66, 443 N.Y.S.2d 361, 362 (Sup. Ct. 1981) (court refused to apply promissory estoppel to defeat § 2-201 claimed defense where defendant made mathematical mistake); *Lige Dickson Co. v. Union Oil Co. of Cal.*, 96 Wash. 2d 291, 299, 635 P.2d 103, 107 (Wash. 1981) (promissory estoppel unavailable to abrogate statute of frauds because UCC adopted to provide uniformity among jurisdictions).

42. See *Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance*, 463 F. Supp. 543, 553 (N.D. Miss. 1978) (Mississippi courts look disfavorably upon non-statutory exceptions to writing requirement of statute of frauds); *McDabco, Inc. v. Chet Adams Co.*, 548 F. Supp. 456, 461 (D.S.C. 1982) (legislature provided only exceptions to § 2-201(1) in § 2-201(2) and § 2-201(3)); *C.G. Campbell & Son, Inc. v. Comdeq Corp.*, 586 S.W.2d 40, 41 (Ky. Ct. App. 1979) (limited relief of § 2-201(2) is all legislature was willing to grant); see also U.C.C. § 2-201(2), (3) (1978) (statutory exceptions to UCC statute of frauds writing requirement); *supra* note 6 (discussing statutory exceptions to UCC § 2-201(1) statute of frauds).

43. 548 F. Supp. 456 (D.S.C. 1982).

44. *Id.* at 461.

45. *Id.* at 457.

46. *Id.* at 458.

47. *Id.* at 461; see U.C.C. § 2-201(2), (3) (1978) (specific statutory exceptions to UCC § 2-201(1)); see also *supra* note 6 (discussion of statutory exceptions to UCC § 2-201(1)).

48. 548 F. Supp. at 461.

49. See *C.R. Fedrick, Inc. v. Borg-Warner Corp.*, 552 F.2d 852, 857 (9th Cir. 1977) (California courts would not allow promissory estoppel to render § 2-201(1) and (2) a nullity); *McDabco*,

For example, in *C.R. Fedrick, Inc. v. Borg-Warner Corp.*,⁵⁰ the Ninth Circuit determined that extending promissory estoppel to California's version of the UCC's statute of frauds would nullify the statute.⁵¹ The plaintiff, C.R. Fedrick, Inc., asked defendant, Borg-Warner Corp., to bid on some pumps necessary for a government project on which Fedrick intended to bid.⁵² Fedrick reduced the bid to the government by 200,000 dollars because Borg-Warner's bid was more than 450,000 dollars lower than the next lowest bid.⁵³ After the government awarded the prime contract to Fedrick, Fedrick granted the subcontract to Borg-Warner.⁵⁴ Borg-Warner, however, later expressed concern to Fedrick that the pumps would fail to meet the government's specifications.⁵⁵ Borg-Warner offered to modify the pumps and sell the modified pumps to Fedrick at an increased price.⁵⁶ Fedrick refused to pay any price increase for the modified pumps and stated that Fedrick had incorporated Borg-Warner's original price into the Fedrick bid.⁵⁷ On appeal, the Ninth Circuit stated that application of promissory estoppel would render California's version of the UCC statute of frauds a nullity because allowing promissory estoppel would mean that the statute's writing requirement never would apply.⁵⁸ Although the California cases had applied the doctrine of promissory estoppel to cases involving oral bids for the sale of both work and materials, those cases had not considered the California version of the UCC statute of frauds nor did the California version of the UCC statute of frauds apply.⁵⁹ The Ninth Circuit, therefore, held that the doctrine of promissory estoppel did not bar the defendant Borg-Warner from relying upon the California version of the UCC's statute of frauds writing requirement.⁶⁰

Although most courts that deny the application of promissory estoppel

Inc. v. Chet Adams Co., 548 F. Supp. 456, 461 (D.S.C. 1982) (to allow promissory estoppel would nullify § 2-201); *Cox v. Cox*, 292 Ala. 106, 111-12, 289 So. 2d 609, 613 (1974) (to allow promissory estoppel would nullify statute of frauds); *Farmland Serv. Coop. v. Klein*, 196 Neb. 538, 542-45, 244 N.W.2d 86, 90 (1976) (permitting promissory estoppel would render statute of frauds meaningless); *Lige Dickson Co. v. Union Oil of Cal.*, 96 Wash. 2d 291, 299-300, 635 P.2d 103, 107 (1981) (adopting promissory estoppel would allow parties to circumvent UCC).

50. 552 F.2d 852 (9th Cir. 1977); see Note, *Promissory Estoppel and the Statute of Frauds in California*, 66 CAL. L. REV. 1219, 1220 (1978) (suggesting that California courts will not follow *Fedrick* because Ninth Circuit incorrectly decided *Fedrick*). See generally, Note, *Contracts - Promissory Estoppel and the UCC Statute of Frauds - Subcontractor Is Not Estopped to Assert the Statute of Frauds Despite General Contractor's Reliance on Oral Sub-bid in Calculating the Prime Bid*, 48 Miss. L.J. 883 (1977) (discussion of *Fedrick* decision and promissory estoppel's effect on the UCC statute of frauds).

51. 552 F.2d at 856-57.

52. *Id.* at 854.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 854-55.

58. *Id.* at 856-57.

59. *Id.* at 856.

60. *Id.* at 858.

to UCC cases rely on the lack of a specific promissory estoppel exception in the UCC statute of frauds or state that to apply promissory estoppel would negate the UCC statute of frauds writing requirement, some courts follow precedential case law holding promissory estoppel unavailable in any statute of frauds case.⁶¹ For example, in *Ivey's Plumbing & Electric Co. v. Petrochem Maintenance, Inc.*,⁶² Ivey's incorporated Petrochem's oral price quotation for five air compressors into Ivey's successful bid on a government project.⁶³ Petrochem later refused to perform at the price quoted to Ivey's because Petrochem's supplier, Gardner-Denver Company, issued a revised price on the compressors and refused to perform under an earlier lower quote to Petrochem.⁶⁴ Ivey's sued Petrochem and Gardner-Denver in the U.S. District Court for the Northern District of Mississippi to recover the increased costs of obtaining the compressors from another supplier.⁶⁵ Petrochem asserted a cross-claim against the supplier for any amounts which Petrochem might have owed to Ivey's.⁶⁶ Gardner-Denver moved from summary judgment, asserting that Mississippi's version of the UCC's statute of frauds rendered unenforceable

61. See *Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance*, 463 F. Supp. 543, 552-54 (N.D. Miss. 1978) (Mississippi Supreme Court has exhibited unfavorable attitude toward judicially created exceptions to other statutes); *Cox v. Cox*, 292 Ala. 106, 111-12, 289 So. 2d 609, 613 (1974) (followed twenty-year-old case without attempting to distinguish or analyze earlier opinion); *Wilke v. Holdrege Coop. Equity Exch.*, 200 Neb. 803, ___, 265 N.W.2d 672, 674-75 (1978) (followed cases stating promissory estoppel to be inapplicable to any case involving statute of frauds). At least one court distinguished previous state court decisions supporting the use of promissory estoppel because the previous decisions applied the doctrine of promissory estoppel to cases involving both work and materials rather than goods alone. See *C.R. Fedrick, Inc. v. Borg-Warner Corp.*, 552 F.2d 852, 856-57 (9th Cir. 1977). In *Fedrick*, the Ninth Circuit anticipated that the Supreme Court of California would not extend the rule of *Drennan v. Star Paving Co.* to a situation involving the sale of goods only. *Id.*; see *Drennan v. Star Paving Co.*, 51 Cal. 2d 409, ___, 333 P.2d 757, 760-61 (1958); *supra* note 8 (discussion of *Drennan*). Another court distinguished previous case authority allowing the use of promissory estoppel in a statute of frauds context because the previous case did not arise under the UCC. See *C.G. Campbell & Son, Inc. v. Comdeq Corp.*, 586 S.W.2d 40, 41 (Ky. Ct. App. 1979) (distinguishing non-UCC case authority); *Meade Constr. Co. v. Mansfield Commercial Elec.*, 579 S.W.2d 105, 106 (Ky. 1979) (court allowed use of promissory estoppel in non-UCC context). In *Comdeq*, the Kentucky Court of Appeals cited to the Kentucky Supreme Court's decision in *Meade Constr. Co. v. Mansfield Commercial Elec.*, 579 S.W.2d 105, 106 (Ky. 1979), which held that an oral bid for a contract should bind a subcontractor when the subcontractor reasonably should foresee that the general contractor would rely on the sub-bid in the formulation of an overall bid. 586 S.W.2d at 41. The *Comdeq* court rejected *Meade* because *Meade* did not discuss the effect of the UCC's statute of frauds. 586 S.W.2d at 41; see *Meade Constr. Co. v. Mansfield Commercial Elec.*, 579 S.W.2d 105, 106 (Ky. 1979) (promissory estoppel allowed to operate in non-UCC statute of frauds case). See also *Roeder, Commercial Law*, 69 Ky. L. REV. 517 (1981) (discussing *Comdeq* case); cf. *Harry Harris, Inc. v. Quality Constr. Co.*, 593 S.W.2d 872, 874 (Ky. Ct. App. 1979) (court applied promissory estoppel to case involving sale of goods where appellant failed to assert Kentucky's version of UCC statute of frauds).

62. 463 F. Supp. 543 (N.D. Miss. 1978).

63. *Id.* at 545.

64. See *id.* at 545-48.

65. *Id.* at 545.

66. *Id.* at 548.

the oral contract between Petrochem and Gardner-Denver.⁶⁷ The district court held that Mississippi case law strongly disfavored judicially created exceptions to the statute of frauds and that Mississippi courts consistently had rejected attempts to avoid the plain statutory language of the statute of frauds.⁶⁸ The courts thus refused to allow the application of promissory estoppel to defeat the UCC statute of frauds defense.⁶⁹

Of the decisions that have held that the doctrine of promissory estoppel does not apply to cases involving the UCC's statute of frauds, many have failed to note the UCC's supplementary general principles provision.⁷⁰ At least one court has noted the general principles section but failed to discuss the general principles section's possible effect on the UCC's statute of frauds.⁷¹ The supplementary general principles provision of the UCC and similar or duplicate provisions of the state codes state that the principles of law and equity, including the law of estoppel, supplement the UCC unless particular provisions of the UCC displace those principles.⁷² In *Lige Dickson Co. v. Union Oil Co. of California*,⁷³ the Washington Supreme Court noted the general principles provision of Washington's version of the UCC but reached no conclu-

67. *Id.*

68. *Id.* at 552.

69. *Id.* at 554.

70. See generally *C.R. Fedrick, Inc. v. Borg-Warner Corp.*, 552 F.2d 852 (9th Cir. 1977); *McDabco, Inc. v. Chet Adams Co.*, 548 F. Supp. 456 (D.S.C. 1982); *Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance*, 463 F. Supp. 543 (N.D. Miss. 1978); *Tiffany Inc. v. W.M.K. Transit Mix*, 16 Ariz. App. 415, 493 P.2d 1220 (1972); *C.G. Campbell & Son, Inc. v. Comdeq Corp.*, 586 S.W.2d 40 (Ky. Ct. App. 1979); *Anderson Constr. Co. v. Lyon Metal Prods.*, 370 So.2d 935 (Miss. 1979); *Wilke v. Holdrege Coop. Equity Exch.*, 200 Neb. 803, 265 N.W.2d 672 (1978).

71. See *Lige Dickson Co. v. Union Oil Co. of Cal.*, 96 Wash. 2d 291, 297-98, 635 P.2d 103, 106 (Wash. 1981) (although court mentioned § 1-103 in footnote, court failed to reach any conclusion as to effect of § 1-103 on § 2-201 statute of frauds).

72. U.C.C. § 1-103 (1978). Professors White and Summers call the general principles provision the most important single provision in the UCC. See WHITE & SUMMERS, *supra* note 32, § 5, at 19. Professors White and Summers note that although the UCC sections generally displace prior legal principles, the UCC sections have no effect on equitable principles. *Id.* White and Summers also state that the general equitable principles remain intact under the UCC and serve to create exceptions to the UCC sections or otherwise modify the statute. *Id.* Professors White and Summers state that the general principles provision imposes on the court an affirmative duty to reach an equitable result unless the UCC displaces the relevant equitable general principles. *Id.*

Professor Summers suggests that judges will reach equitable results in accordance with the UCC if the judges consider the following issues in order. See Summers, *General Equitable Principles Under Section 1-103 of the Uniform Commercial Code*, 72 Nw. L. Rev. 906, 945-46 (1978). First, which specific UCC sections apply or appear to apply? *Id.* at 945. Second, would the application of the UCC section bring about an inequity between the parties? *Id.* Third, if the result appears inequitable, do general equitable principles apply under § 1-103 of the UCC or do the relevant UCC sections displace all such principles? *Id.* at 946. Fourth, if the specific sections do not displace the general equitable principles, which of the general principles come into play? *Id.* Fifth, does the non-UCC law repudiate the principle, and, if so, should the court reject the repudiation? *Id.* Sixth, if the non-UCC law does not repudiate the principle, how should the court apply the principle to avoid an inequitable result between the parties? *Id.*

73. 96 Wash. 2d 291, 635 P.2d 103 (Wash. 1981).

sion as to the general principles section's effect on Washington's version of the UCC statute of frauds.⁷⁴ Lige Dickson had previously purchased liquid asphalt exclusively from Union Oil in transactions that always took place over the telephone.⁷⁵ As the price of asphalt increased dramatically, Union Oil granted Lige Dickson an oral guarantee against further price increases.⁷⁶ Subsequently, Union Oil reneged on the oral promise not to increase the price of asphalt.⁷⁷ Lige Dickson filed suit against Union Oil in the United States District Court for the Western District of Washington to recover the increased costs Lige Dickson expended to acquire the liquid asphalt necessary to complete the plaintiff's existing contracts.⁷⁸ The trial court held that Washington's version of the UCC statute of frauds rendered the oral contract unenforceable because the statute required the parties to reduce the contract to writing.⁷⁹ Lige Dickson appealed to the Ninth Circuit Court of Appeals which certified the question to the Washington Supreme Court.⁸⁰ Although the Washington Supreme Court noted the supplementary general principles provision of the Washington statute and discussed some of the cases interpreting the section, the court failed to make any conclusion as to the section's effect on Washington's version of the UCC statute of frauds.⁸¹ The Washington Supreme Court expressed a fear of increased confusion and litigation if the court applied promissory estoppel in cases involving the UCC statute of frauds.⁸² The court, therefore, rejected the use of promissory estoppel in UCC cases.⁸³

Unlike the *Lige Dickson* court, a majority of courts have held that the UCC's supplementary general principles provision does permit a court to apply promissory estoppel to cases involving the UCC's statute of frauds.⁸⁴ For

74. See *id.* at 297-98, 635 P.2d at 106-07.

75. *Id.* at 292, 635 P.2d at 103.

76. *Id.* at 293, 635 P.2d at 103-04.

77. *Id.*, 635 P.2d at 104.

78. *Id.* at 294, 635 P.2d at 104.

79. *Id.*; see WASH. REV. CODE § 62A.2-201 (1965) (Washington's version of UCC statute of frauds).

80. 96 Wash. 2d at 294, 635 P.2d at 104.

81. See *id.* at 297-98, 635 P.2d at 106-07.

82. *Id.* at 299, 635 P.2d at 107.

83. *Id.*

84. See Metzger & Phillips, *supra* note 8, at 93 (substantial weight of authority supports proposition that some form of estoppel applies to UCC § 2-201); U.C.C. § 1-103 (1978) (UCC's supplementary general principles provision). Many of the cases holding that promissory estoppel applies to cases involving the UCC statute of frauds have arisen from oral contracts between a general contractor and a materialman or supplier. See *R.S. Bennett & Co. v. Economy Mechanical Indus.*, 606 F.2d 182, 186-89 (7th Cir. 1979) (promissory estoppel applied to case in which sewage pumps dealer sued mechanical subcontractor for breach of oral contract); *Jenkins & Boller Co. v. Schmidt Iron Works*, 36 Ill. App. 3d 1044, 1046-48, 344 N.E.2d 275, 278-79 (Ill. App. Ct. 1976) (promissory estoppel binds subcontractor to written bid for goods worth over \$500 when bid failed to meet UCC statute of frauds requirement of specifying quantity of goods); *Maryland Supreme Corp. v. Blake Co.*, 279 Md. 531, 548-50, 369 A.2d 1017, 1028-29 (1977) (lower court should determine if defendant is estopped to assert UCC statute of frauds). At other times the controversy developed from a sale of crops or other farm goods. See *Robert Johnson Grain Co. v. Chemical Interchange Co.*, 541 F.2d 207, 211 (8th Cir. 1976) (summary judgment wrong

example, in *Warder & Lee Elevator v. Britten*,⁸⁵ the Iowa Supreme Court held that under the doctrine of promissory estoppel, the plaintiff could recover for breach of an oral contract despite the defendant's contention that the writing requirement of Iowa's version of the UCC statute of frauds rendered the oral contract unenforceable.⁸⁶ In *Britten*, the plaintiff, Warder & Lee Elevator, Inc., orally agreed to purchase 4,000 bushels of corn and 2,000 bushels of soybeans from Britten.⁸⁷ A few days later, Warder & Lee sold the same quantities of corn and beans to other elevators.⁸⁸ The price of grain subsequently increased substantially, and Britten refused to deliver the grain to Warder & Lee at the agreed price.⁸⁹ Warder & Lee sued Britten for the increased costs in obtaining from other sources the corn and soybeans necessary to fulfill Warder & Lee's contracts for sale to other grain elevators.⁹⁰ Britten contended at trial that Iowa's version of the UCC statute of frauds rendered the oral contract with the elevator unenforceable.⁹¹ The trial court ruled that Iowa law permitted the application of promissory estoppel in cases involving the Iowa version of the UCC statute of frauds.⁹²

On appeal, the Iowa Supreme Court noted that Iowa had long recognized promissory estoppel as a means of defeating the state's general statute of frauds.⁹³ The *Britten* court stated that the UCC statute of frauds exceptions listed in the same statute were purely definitional and did not purport to eliminate the legal and equitable principles traditionally applicable in contracts actions.⁹⁴ The *Britten* court found that the Iowa statute of frauds did not displace the principle of estoppel described in the UCC supplementary general

when possible for promissory estoppel to abrogate statute of frauds); *Warder & Lee Elev. v. Britten*, 274 N.W.2d 339, 341-44 (Iowa 1979) (UCC § 1-103 makes doctrine of promissory estoppel available against UCC statute of frauds claim); *Decatur Coop. Ass'n v. Urban*, 219 Kan. 171, 176-80, 547 P.2d 323, 329-30 (1976) (promissory estoppel doctrine available to defeat UCC § 2-201 statute of frauds defense); *Jamestown Terminal Elev. v. Hieb*, 246 N.W.2d 736, 740-42 (N.D. 1976) (promissory estoppel acts as bar to raising statute of frauds in case of oral contract for sale of goods); *Potter v. Hatter Farms, Inc.*, 641 P.2d 628, 632 (Or. 1982) (§ 1-103 allows promissory estoppel because legislature did not specifically displace the doctrine in § 2-201); *Farmers Elev. Co. v. Lyle*, 90 S.D. 86, 91-93, 238 N.W.2d 290, 293-94 (1976) (§ 1-103 allows an estoppel to prevent raising of § 2-201 statute of frauds). Sometimes, the controversy developed through the breach of an oral contract for sale of new or used equipment. *See Meylor v. Brown*, 281 N.W.2d 632, 634-35 (Iowa 1979) (promissory estoppel applies to UCC § 2-201 with same force as it does to other Iowa statutes); *Fairway Mach. Sales Co. v. Continental Motors Corp.*, 40 Mich. App. 270, 272, 198 N.W.2d 757, 757-58 (1972) (remanded for determination of factual issues involving promissory estoppel in UCC statute of frauds case).

85. 274 N.W.2d 339 (Iowa 1979).

86. *Id.* at 340.

87. *Id.*

88. *Id.* at 341.

89. *Id.*

90. *Id.*

91. *Id.*; see IOWA CODE ANN. § 554.2201 (West 1967) (Iowa's version of UCC statute of frauds).

92. 274 N.W.2d at 340.

93. *Id.* at 342.

94. *Id.*

principles provision.⁹⁵ The court stated that a contrary decision would mean that a court could not enforce any oral contract coming within the terms of the statute of frauds despite fraud, deceit, misrepresentation, dishonesty or any other form of unconscionable conduct by the party asserting the statute since these defenses or exceptions were not mentioned specifically in the statute of frauds.⁹⁶ The *Britten* court, therefore, held that the court correctly allowed the application of promissory estoppel to cases involving the Iowa version of the UCC statute of frauds.⁹⁷

Although a split of authority remains as to whether promissory estoppel may operate in UCC statute of frauds cases, the Fourth Circuit reached the correct result and joined the growing majority of courts that have applied the doctrine of promissory estoppel to cases involving the UCC's statute of frauds.⁹⁸ Although many courts have noted correctly that the UCC statute of frauds does not mention the doctrine of promissory estoppel,⁹⁹ the statute's silence should not preclude a court's use of the doctrine to enforce an oral promise within the statute's terms.¹⁰⁰ The UCC statute of frauds' silence on the use of estoppel could suggest that the draftsmen of the UCC did not intend to displace promissory estoppel but intended to leave the ultimate disposition of the question to the courts.¹⁰¹ Furthermore, the supplementary general principles provision of the UCC specifically provides that the law of estoppel shall supplement the Code unless particular provisions of the UCC displace the general principles.¹⁰² In light of the supplementary general principles provision, the draftsmen of the UCC may have decided that stating the rules of promissory estoppel in the UCC's statute of frauds section would be unnecessary or redundant.¹⁰³ Prior to the UCC, many courts recognized promissory estoppel as a means of circumventing the statute of frauds and the probability that courts would continue to apply promissory estoppel after

95. *Id.*

96. *Id.*

97. *Id.*

98. See *supra* text accompanying notes 84-97 (discussion of cases holding promissory estoppel applies to cases involving UCC statute of frauds); see also Edwards, *supra* note 6, at 221 (majority of courts support interpretation that promissory estoppel may supplement UCC statute of frauds); Allen M. Campbell Co. v. Virginia Metal Indus., 708 F.2d 930, 932-34 (4th Cir. 1983) (promissory estoppel binds parties to oral contract despite North Carolina's version of UCC statute of frauds).

99. See *supra* text accompanying notes 42-48 (discussion of cases where courts relied on literal reading of exceptions specifically listed in UCC statute of frauds).

100. See *infra* text accompanying notes 101-104 (reasons why UCC statute of frauds' silence on use of promissory estoppel should not preclude doctrine's use).

101. See Edwards, *supra* note 6, at 221 (UCC's silence in § 2-201 concerning promissory estoppel indicates legislative intent to leave issue to courts).

102. See U.C.C. § 1-103 (1978) (general principles provision which states that law of estoppel supplements UCC); see also Metzger & Phillips, *supra* note 8, at 97-98 (§ 1-103 standing alone allows promissory estoppel and should end all controversy on issue); *supra* text accompanying note 72 (general principles section states that law of estoppel supplements UCC).

103. See Edwards, *supra* note 6, at 221 (draftsmen saw no need to restate principle of promissory estoppel in statute of frauds section).

passage of the UCC indicates that the UCC draftsmen had no intentions of precluding the use of promissory estoppel to enforce contracts involving the UCC statute of frauds.¹⁰⁴

The courts that are concerned with the evidentiary purposes served by the statute of frauds writing requirement assert that recognition of promissory estoppel would result in the nullification of the statute.¹⁰⁵ Those courts give insufficient credence to the evidentiary value of the promisee's detrimental reliance on the oral promise.¹⁰⁶ Fearing fraud on the part of the promisee, these courts fail to recognize that if the courts disallow the use of promissory estoppel and declare unenforceable any contract that fails to meet the terms of the UCC statute of frauds, an unscrupulous promisor could use the statute's writing requirement to defeat enforcement of an oral contract upon which the parties have agreed and on which the promisee has relied to his detriment.¹⁰⁷

Furthermore, the courts that have not distinguished older precedents disallowing the use of promissory estoppel¹⁰⁸ have failed to realize that the modern businessman habitually relies on oral contracts of sale.¹⁰⁹ Commercial realities dictate that those relying on oral promises deserve the legal protection provided by the doctrine of promissory estoppel.¹¹⁰ Not only should a supplier expect a contractor to use the supplier's bid because the supplier submitted the lowest estimate, but the contractor serves the supplier's best interest in relying on the bid, receiving the overall contract, and awarding the subcontract to the supplier.¹¹¹

In addition to the sound reasons that support the Fourth Circuit's ruling and refute the arguments advanced by the courts reaching results different from the Fourth Circuit's holding, the *Campbell* decision clarifies North Carolina law and renders the commercial code's statute of frauds inapplicable when the general contractor successfully bids on a project relying on a sup-

104. See *id.* (no reason for draftsmen to think that courts would discontinue use of doctrine of promissory estoppel after UCC).

105. See *supra* text accompanying notes 49-60 (discussion of cases in which courts stated that allowing promissory estoppel would negate effect of UCC statute of frauds).

106. See Metzger & Phillips, *supra* note 8, at 99 (courts that express concern about promissory estoppel nullifying statute of frauds' evidentiary protections fail to recognize evidentiary value of detrimental reliance).

107. See Edwards, *supra* note 6, at 221 (strict enforcement of UCC statute of frauds may cause unconscionable injury or injustice); see also *supra* text accompanying note 96 (if promissory estoppel were unavailable, court could not enforce oral contracts falling within terms of statute of frauds despite unconscionable conduct by party asserting statute).

108. See *supra* text accompanying notes 61-69 (discussion of cases in which courts failed to distinguish prior case law holding promissory estoppel unavailable in any statute of frauds case).

109. See *supra* text accompanying notes 1-4 (process involved in accepting oral sub-bids in construction contract cases).

110. See Metzger & Phillips, *supra* note 8, at 103 (common business practices include reliance on oral contracts); see also *supra* text accompanying notes 1-2 (contractors rely on oral price quotes in bidding process for construction projects).

111. See *Drennan v. Star Paving Co.*, 51 Cal. 2d 409, ___, 333 P.2d 757, 760 (Cal. 1958) (in best interest of subcontractor for general contractors to use subcontractor's bid).