In competitive bidding for construction contracts, general contractors solicit oral price quotes from subcontractors and then incorporate into the general contractors' bid on an overall project the lowest price quotations from the subcontractors. Although the law generally does not require a contractor to award a subcontract to the lowest bidder, the general contractor to whom a project owner awards a prime contract usually grants subcontracts to the subcontractors that submitted the lowest estimates. 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. See, e.g., Saliba-Kringlen Corp. v. Allen Eng’g Co., 15 Cal. App. 3d 95, 101, 92 Cal. Rptr. 799, 801 (Cal. App. 1971) (defendant’s employee should have doubted 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. 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. 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...
reasonably expect to cause the promisee to act or forbear from acting, and the promisee relies on the promise to his detriment. 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. 39, ___, 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.

of the Uniform Commercial Code’s (UCC) statute of frauds. In the recent case of *Allen M. Campbell Co. v. Virginia Metal Industries*, 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.

In *Campbell*, the plaintiff contractor, Campbell, bid on a Navy construction project at Camp Lejeune, North Carolina. 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. Campbell incorporated the Virginia Metal bid into Campbell’s overall bid to perform the work. Subsequently, the Navy awarded the contract to Campbell as low bidder on the project. 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. Campbell eventually obtained the necessary items from another supplier at 45,562 dollars more than Virginia Metal’s quoted price.

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. Virginia Metal filed a motion for judgment on the pleadings, alleging that the contract failed to satisfy the North Carolina Commercial Code’s statute of frauds writing requirement. Campbell, however, argued that the doctrine of promissory estoppel prevented Virginia Metal from

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*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).

denying the existence of the contract. 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. 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. 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.

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. After the parties' oral arguments to the Fourth Circuit, however, the North Carolina Supreme Court explicitly stated in Wachovia Bank & Trust Co. v. Rubish that the doctrine of promissory estoppel always had existed as part of North Carolina law.

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.
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

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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).


32. 708 F.2d at 932; see *N.C. Gen. Stat.* § 25-1-103 (1965). The North Carolina legislature patterned the state 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. 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. 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. Section particular 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 courts confronting the issue of whether promissory estoppel provides an exception to the 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.\(^3\) 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.\(^3\) 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.\(^3\) 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.\(^3\) The Campbell court, therefore, reversed and remanded as erroneous the district court's decision granting judgment on the pleadings to Virginia Metal.\(^4\)

In contrast to Campbell, a minority of courts have not applied promissory estoppel to cases involving state versions of the UCC statute of frauds.\(^4\) Many

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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).

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. For example, in *McDabco, Inc. v. Chet Adams Co.*, 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.

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. Adams, however, refused to sell the items to McDabco when a dispute arose over the number of items included in the bid. The *McDabco* court noted that the statute of frauds provided several specific exceptions to the statute's strict writing requirement. 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.

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.
For example, in *C.R. Fedrick, Inc. v. Borg-Warner Corp.*, the Ninth Circuit determined that extending promissory estoppel to California’s version of the UCC’s statute of frauds would nullify the statute. 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. 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. After the government awarded the prime contract to Fedrick, Fedrick granted the subcontract to Borg-Warner. Borg-Warner, however, later expressed concern to Fedrick that the pumps would fail to meet the government’s specifications. Borg-Warner offered to modify the pumps and sell the modified pumps to Fedrick at an increased price. 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. 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. 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. 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.

Although most courts that deny the application of promissory estoppel...
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. For example, in *Ivey's Plumbing & Electric Co. v. Petrochem Maintenance, Inc.*, Ivey's incorporated Petrochem's oral price quotation for five air compressors into Ivey's successful bid on a government project. 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. 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. Petrochem asserted a cross-claim against the supplier for any amounts which Petrochem might have owed to Ivey's. Gardner-Denver moved for summary judgment, asserting that Mississippi's version of the UCC's statute of frauds rendered unenforceable

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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).


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. 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. The courts thus refused to allow the application of promissory estoppel to defeat the UCC statute of frauds defense.

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. 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. 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. In Lige Dickson Co. v. Union Oil Co. of California, 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.
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. Lige Dickson had previously purchased liquid
asphalt exclusively from Union Oil in transactions that always took place over
the telephone. As the price of asphalt increased dramatically, Union Oil
granted Lige Dickson an oral guarantee against further price increases. Subse-
quently, Union Oil reneged on the oral promise not to increase the price of
asphalt. 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. The trial court held that Washington's ver-
sion of the UCC statute of frauds rendered the oral contract unenforceable
because the statute required the parties to reduce the contract to writing. Lige
Dickson appealed to the Ninth Circuit Court of Appeals which certified
the question to the Washington Supreme Court. 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. The Washington Supreme
Court expressed a fear of increased confusion and litigation if the court ap-
plied promissory estoppel in cases involving the UCC statute of frauds. The
court, therefore, rejected the use of promissory estoppel in UCC cases.

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. 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
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.
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
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, 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. 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. A few days later, Warder & Lee sold the same quantities of corn and beans to other elevators. The price of grain subsequently increased substantially, and Britten refused to deliver the grain to Warder & Lee at the agreed price. 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. Britten contended at trial that Iowa's version of the UCC statute of frauds rendered the oral contract with the elevator unenforceable. 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.

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. 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. The Britten court found that the Iowa statute of frauds did not displace the principle of estoppel described in the UCC supplementary general

principles provision. 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. 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.

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. Although many courts have noted correctly that the UCC statute
of frauds does not mention the doctrine of promissory estoppel, the statute’s
silence should not preclude a court’s use of the doctrine to enforce an oral
promise within the statute’s terms. The UCC statute of frauds’ silence on
the use of estoppel could suggest that the draftsmen of the UCC did not in-
tend to displace promissory estoppel but intended to leave the ultimate disposi-
tion of the question to the courts. 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. In light of the supplementary general principles pro-
vision, 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 un-
necessary or redundant. Prior to the UCC, many courts recognized pro-
missoory 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 estop-
   pel 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 estop-
   pel 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 accompa-
   nying 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 pro-
    missoory 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.\textsuperscript{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.\textsuperscript{105} Those courts give insufficient credence to the evidentiary value of the promisee's detrimental reliance on the oral promise.\textsuperscript{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.\textsuperscript{107}

Furthermore, the courts that have not distinguished older precedents disallowing the use of promissory estoppel\textsuperscript{108} have failed to realize that the modern businessman habitually relies on oral contracts of sale.\textsuperscript{109} Commercial realities dictate that those relying on oral promises deserve the legal protection provided by the doctrine of promissory estoppel.\textsuperscript{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.\textsuperscript{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 \textit{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-

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

\textsuperscript{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).

\textsuperscript{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).

\textsuperscript{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).

\textsuperscript{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).

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

\textsuperscript{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).