APPENDIX INDEX

16-2356

15-3805
15-3413

APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT, FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 337 other Named Plaintiffs listed on Exhibit 23 to the Third Amended Complaint,
Plaintiffs-Appellants

v.

CITY OF CHICAGO, a Municipal Corporation,
Defendant, and
Trustees of the Policemen's Annuity and Benefit Fund of Chicago;
Trustees of the Firemen's Annuity and Benefit Fund of Chicago;
Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and
Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.
Defendants- Appellees

No. 13-CH-17450
Hon. Judge Neil Cohen
Cal. No. 5

NOTICE OF INTERLOCUTORY APPEAL

Petitioner-Appellant Michael W. Underwood, et al., hereby appeals to the Appellate Court of Illinois, First District (an Interlocutory Appeal as of Right), the August 9, 2016, Order of the Circuit Court, Cook County, Illinois, Chancery Division, denying plaintiffs' motion for a Preliminary Injunction to restore the 2013 Status Quo and enjoin the City from raising rates for Retiree/Annuitant Health Benefits during this litigation, which was renewed and denied again on August 31, 2016. Exhibits 1 (August 9, 2016, Order) and 2 (August 31, 2016, Order).

Date: September 1, 2016

By: s/Kenneth T. Goldstein
Attorney for Plaintiff

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APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT, FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 337 other Named Plaintiffs listed on Exhibit 23 to the Third Amended Complaint,

Plaintiffs-Appellants

v.

CITY OF CHICAGO, a Municipal Corporation, Defendant, and
Trustees of the Policemen's Annuity and Benefit Fund of Chicago;
Trustees of the Firemen's Annuity and Benefit Fund of Chicago;
Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and
Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.

Defendants- Appellees

No. 13-CH-17450
Hon. Judge Neil Cohen
Cal. No. 5

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Date: September 1, 2016

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CERTIFICATE OF SERVICE

I, Kenneth T. Goldstein, an attorney, state that on September 1, 2016, I caused a copy of the foregoing Notice of Interlocutory Appeal**,** to be served upon the parties listed below on the Service List, and on the Illinois Appellate Court, via E-Mail, and/or U.S. Mail, postage prepaid and properly addressed**,** by depositing same in the mailbox located at 20 N. Wacker Drive, Chicago, Illinois.

s/ Kenneth T. Goldstein

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago

No. 13 CH 17458
Cal. 5
Hon Neil H. Cohen

ORDER

The matter came before the court on Plaintiffs' Emergency Motions for 1) Reconsideration/clarification of the July 21, 2016 Memorandum and Order, 2) Rule 304(a) Findings and 3) Renewed motion for Preliminary Injunction. The parties were present by counsel and addressed the court. Accordingly, as stated by the court on the record, IT IS ORDERED:

1) Reconsideration of the July 21, 2016 Order is DENIED.
2) Rule 304(a) Findings are Granted as to Subclass 4, Denied as to Subclass 3, and held in abeyance as to subclasses 1 (Kosher) and 2 (Window) subclass for the ~~parties~~ Plaintiff and City counsel to confer and report back to the court.
3) and 4) Preliminary Injunction/Renewed Motion is Denied. Defendants are to Answer the Second Amended Complaint to the Class Certification motion by Sept 8, 2016
5) The matter is set for report and further status on Aug 31, 2016 at 10:30am without prejudice

Attorney No.: 26711/91198
Name: Clint Krislov
Atty. for: Plaintiff
Address: 20 S Wacker 1500
City/State/Zip: Chicago IL 60606
Telephone: 312-606-0500

ENTERED:
Dated:
Judge
Judge's No.

ENTERED
Judge Neil H. Cohen-2021
AUG - 9 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago

No. 13 CH 17458
Cal 5
Hon Neil H. Cohen

ORDER

The matter came before the court on Plaintiffs' Emergency Motion for 1) Reconsideration/clarification of the July 21, 2016 Memorandum and Order, 2) Rule 304(a) Findings and 3) Renewed Motion for Preliminary Injunction. The parties were present by counsel and addressed the court. Accordingly, as stated by the Court on the record,

IT IS ORDERED:

1) Reconsideration of the July 21, 2016 Order is DENIED.
2) Rule 304(a) Findings are Granted as to Subclass 4, Denied as to Subclass 3, and held in abeyance as to Subclasses 1 (Kosher) and 2 (Window Tinting) pending for the Plaintiffs and City counsel to confer and report back to the court.
3) and Preliminary Injunction Renewed Motion is Denied
4) Defendants are to Answer and Respond to the Class Certification motion by Sept 8, 2016
5) the matter is set for report and further status on Aug 31, 2016 at 10:30am

ENTERED:

Dated: _____, _____

Judge _____ Judge's No. _____

without prejudice

ENTERED
Judge Neil H. Cohen-2021
AUG - 9 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
DEPUTY CLERK

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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2013-CH-17450
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A5

Order (Rev. 02/24/93) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago et al

No. 2013 CH 17450
Cal. No. 5

ORDER

For the reasons stated by the court on the record, IT IS ORDERED

1. The court grants Rule 304(a) Findings that there is no just reason to delay enforcement or appeal of the Court's ~~August 31, 2016~~ dismissal of the claims of Plaintiffs Classes 1 (Korshak retirees) 2 (Window retirees) and 4 (Post 6/23/1989 hires) and its ~~ruling~~ ruling with respect to Class 3 (Pre-8/23/89 ~~hire~~ participants who have not retired by that date).

2. The case is otherwise stayed pending the appeal.

3. Participants' renewed ~~motion~~ motions for preliminary injunction and ~~motion~~ to certify at this time are denied without prejudice.

4. Status on this matter is set for Feb. 23, 2017 at 10:00 A.M.

Dated:

Judge

Judge's No.

ENTERED
Judge Neil H. Cohen-2021
AUG 31 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
DEPUTY CLERK

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DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

16-2357

**APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 337 other Named Plaintiffs listed on Exhibit 23 to the Third Amended Complaint,

Plaintiffs - Appellants

v.

CITY OF CHICAGO, a Municipal Corporation,
Defendant,
and
Trustees of the Policemen's Annuity and Benefit Fund of Chicago;
Trustees of the Firemen's Annuity and Benefit Fund of Chicago;
Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and
Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.

Defendants-Appelles

No. 13-CH-17450
Hon. Judge Neil Cohen
Cal. No. 5

AMENDED - NOTICE OF APPEAL

Petitioner-Appellant Michael W. Underwood, et al., hereby appeals to the Appellate Court of Illinois, First District, the following Orders of the Circuit Court, Cook County, Illinois, Chancery Division: July 21, 2016, August 9, 2016, and August 31, 2016, granting defendants' motions to dismiss, and finding no just cause to delay enforcement or appeal of dismissal of the claims, which are attached as Exhibit 1, July 21, 2016, August 9, 2016, and August 31, 2016 Orders.

Date: September 2, 2016

By: s/Kenneth T. Goldstein
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I, Kenneth T. Goldstein, an attorney, state that on September 2, 2016, I caused a copy of the foregoing Notice of Appeal**,** to be served upon the parties listed below on the Service List via E-Mail, and/or U.S. Mail, postage prepaid and properly addressed**,** by depositing same in the mailbox located at 20 N. Wacker Drive, Chicago, Illinois.

s/ Kenneth T. Goldstein

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JUDGE NEIL H. COHEN
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FACSIMILE TRANSMITTAL SHEET

DATE: July 21, 2016	FROM: Chambers of Judge Neil H. Cohen
TO: Clint Krislov	FAX NUMBER: 312-739-1098
RE: **Underwood v. Chicago 13-CH-17450**	NUMBER OF PAGES (INCLUDING COVER PAGE) 18

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE CONFIRM ☐ PLEASE RECYCLE

NOTES/COMMENTS:

If any of this message is not clear please call 312/603-6052

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Michael W. Underwood and 349 other named Plaintiffs have filed a Third Amended Class Action Complaint seeking declaratory and other relief regarding their entitlement to lifetime subsidized health care as participants in the Annuity & Benefit Funds covering the City of Chicago's employees.

Defendants City of Chicago, the Laborers' & Retirement Board Employees Annuity & Benefit Fund of Chicago, the Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago, the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago and the Trustees of the Policemen's Annuity and Benefit Fund of the City of Chicago have all filed Motions to Dismiss the Third Amended Class Action Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code, the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) The Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) The Firemen's Annuity and Benefit Fund ("Fire");
(3) The Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) The Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to its annuitants are financed through a tax levy by the City.[1]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

The 1983 amendments were devoid of any provision setting forth an expiration date for the benefits granted and the obligations accepted.

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Pension Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7]

While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Illinois Pension Code specifies that the tax levy finances all of the Funds' financial obligations under the Illinois Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants,[9] but provided that the approved healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

As with the 1983 amendments, absent from the 1985 amendments were any provision setting forth an expiration date for the benefits granted and the obligations accepted.

---

[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).

[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.

[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).

[6] Id.

[7] Id.

[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.

[9] Id.

[10] Id.

C. *The 1987 Korshak Litigation, Settlements and Pension Code Amendments*

1. 1987: Litigation Begins

In 1987, the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988. (Am. Compl. ¶89). At the same time, the City filed suit seeking a declaration that it had no obligation to provide healthcare to retirees (City of Chicago v. Korshak, 87 CH 10134, ("the Korshak Litigation").

In response, the Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds annuitants. (Id. at ¶¶93-94).

A group of retirees who retired on or before December 31, 1987 were allowed to intervene and certified as the "the Korshak sub-class." (Id. at ¶92). A second group of employees - those who retired after December 31, 1987, but before August 23, 1989 - was certified as the "Window sub-class."

2. 1988-1989: First Settlement & Pension Code Amendments Reflecting Same

In 1988, the parties entered into a settlement agreement which was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96).

The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments to the Pension code were time-limited, specifically stating that the benefits and obligations set forth expired on December 31, 1997.[12]

Additionally, the amendments provided that that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

3. 1997: Second Settlement & Pension Code Amendments Reflecting Same

In June 1997, six months prior to the expiration of original settlement period, the parties entered into a second settlement agreement which was codified by the 1997 amendments to the Pension Code.[14]

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required the City to pay 50% of the costs of the annuitants' health care coverage.[15]

The 1997 amendments to the Pension code were time-limited, specifically stating that the benefits and obligations set forth would terminate on June 30, 2002. (Am. Compl. ¶11).

The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

4. 2003: Third Settlement & Pension Code Amendments Reflecting Same

In April 2003, the parties entered into yet another settlement agreement and again, the Pension Code was amended to codify the settlement. [17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10 per month for all annuitants.[21]

The 2003 settlement agreement and Pension Code amendments were time-limited; specifically stating that the benefits and obligations set forth expired on June 30, 2013,

As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

Unlike prior settlement agreements, the 2003 settlement agreement provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The parties agreed that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

---

[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).
[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.

5. The January, 2013 RHBC Report and Thereafter

On January 11, 2013, the RHBC issued its report. (City's Motion to Dismiss at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees other than those in the Korshak and Window subclasses. (Am. Compl. ¶98).

To that end, the City sent the annuitants a letter, dated May 15, 2013, informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex.2).

The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.).

For all annuitants retiring on or after August 23, 1989, the City stated its intent to modify benefits and ultimately phase out its healthcare subsidies and plans by 2017. (Id.).

D. *Proceedings in this Case*

In July 2013, Plaintiffs filed a motion seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003. Plaintiffs filed this new action on July 23, 2013 against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision.

On December 3, 2015, this court issued a Memorandum and Order ruling on Defendants' motions to dismiss the Amended Complaint. This court found that Count I stated a cause of action for declaratory relief as to the City's and the Funds' obligations under the 1983 and 1985 amendments as to the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3, but failed to state a cause of action for declaratory relief as to the City's and the Funds' obligations under the under the 1989, 1997 and 2003 amendments to the Pension Code. This court dismissed Counts II, breach of contract, and III, equitable estoppel, with leave to amend.

E. *The Third Amended Complaint*

Plaintiffs have now filed a Third Amended Complaint. The Third Amended Complaint once again identifies four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who participated in any of the four Funds before the August 23, 1989 Amendments to the Pension Code ("Sub-Class 3")
4) Any person who participated in the Funds after August 23, 1989 ("Sub-Class 4")

(3rd Am. Compl. ¶26).

Count I of the Third Amended Complaint essentially seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution. Count II alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract. Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Count IV, previously dismissed by the federal district court with prejudice, is pled solely to preserve the issue for appeal. Count V asserts a claim for impairment of contract under the Illinois Constitution.[23] Count VI asserts a claim for denial of equal protection. Count VII asserts a violation of the special legislation clause of the Illinois Constitution.

II. Motions to Dismiss

The City and the Funds have filed motions to dismiss the Third Amended Complaint pursuant to 735 ILCS 5/2-619.1. A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id.

A. *Judge Albert Green's Rulings in the Korshak Litigation*

Initially, Plaintiffs again make various assertions based on the alleged preclusive effect of Judge Albert Green's denial of the City's motion to dismiss the Funds' counterclaims in the Korshak Litigation. This court previously rejected this argument finding that a denial of a

[23] Count V also asserts impairment of contract under the U.S. Constitution, but only to preserve the issue for appeal.

motion to dismiss is not a final and appealable order necessary for the application of collateral estoppel or the doctrine of the law of the case. E.g., State Farm Mut. Auto. Ins. Co. v. Illinois Farmers Ins. Co., 226 Ill. 2d 395, 415 (2007); Ericksen v. Rush-Presbyterian-St. Luke's Medical Ctr., 289 Ill. App. 3d 159, 168 (1st Dist. 1997). Plaintiffs have not presented any basis to this court for reconsideration, nor could they.

B. *Capacity to Be Sued*

The trustees of Fire and Municipal Funds again argue that they do not have the capacity to be sued in this action. This court has already ruled against the Funds on this issue and the Funds have not presented any valid basis for this court to reconsider its decision.

C. *Count I (§2-615)*

This court has previously found that Plaintiffs had stated a claim for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but had not stated a claim as to the 1989, 1997 and 2003 amendments which were expressly time-limited.[24]

1. "Impairment" Allegations

Initially, Count I of the Third Amended Complaint adds additional "impairment of contract" language. This language, however, does not change the fact that Count I is essentially a claim for declaratory relief against the City and the Funds for alleged violations of the Pension Clause. To the extent that Count I also attempts to state a claim for violation of the contract clause of the Illinois Constitution, Illinois Const. 1970, Art. I, § 16, Count I is duplicative of Count V and will be addressed below.

2. Matthews v. Chicago Transit Authority

Plaintiffs' Third Amended Complaint again asserts claims of a violation of the Pension Clause based on the 1989, 1997 and 2003 amendments. The City contends that these claims should be dismissed with prejudice because, as previously found by this court, the amendments were time-limited. The City argues that if there was any doubt that pension benefits can be granted on a time-limited basis, this doubt was eliminated by the Illinois Supreme Court's recent decision in Matthews v. Chicago Transit Authority, 2016 IL 117638.

In Matthews, the plaintiffs asserted that the CTA's modification of retiree health benefits granted by a 2004 collective bargaining agreement ("CBA") constituted a violation of the Pension Clause. Id. at ¶¶1-2. The primary issue in Matthews was "whether the pension protection clause operates to automatically vest the retirement benefits of public employees, regardless of the terms of the contract that confers those rights." Id. at ¶57.

[24] The court notes that Plaintiffs disagree with certain prior rulings regarding Count I and have devoted numerous pages to asserting the alleged errors made by this court. If Plaintiffs disagreed with this court's rulings, their recourse was to file a motion to reconsider.

Our supreme court first noted that it "has consistently held that the contractual relationship protected by [the Pension Clause] is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system." Id. at ¶59. "While the pension protection clause guarantees the vested rights provided in the contract that defines a participant's retirement system membership, it does not change the terms of that contract or the essential nature of the rights it confers." Id. at ¶59.

"[W]here a public employee becomes a member of a retirement system under a statute that includes a provision which may operate to deny him benefits in the future, that provision does not become an unconstitutional impairment of his retirement benefits because he agreed to it as a condition of his membership in the system." Id. at ¶61, citing, Kerner v. State Employees' Retirement System, 72 Ill. 2d 507, 514.

Matthews is clear that "[i]f the underlying contract provides that certain retirement benefits may be modified in the future, then that is the contract protected by article XIII, section 5. Nothing in the pension protection clause requires or permits a court to rewrite the terms of such an agreement." Id. at ¶62; see also, Id. at ¶66.

3. The 1983 and 1985 Amendments: No Time Limitations

The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

The 1985 amendments obligated the Municipal and Laborers Funds to approve a group health insurance plan and subsidize monthly premiums for their annuitants by making payments to the organization underwriting the group plan.

The 1983 and 1985 amendments did not set forth *any* termination date for the Funds' obligations. While the 1983 amendments provided that the group healthcare contracts made by the Firemen and Police Funds could not extend beyond two fiscal years, this limitation was not a time-limitation on the Funds' obligation to provide group health care to their annuitants. This was only a limitation on the length of any of the group healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time-limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes.

The court notes further that in its May 15, 2013 letter, (Am. Compl. Ex.2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its briefs and at oral argument on this Motion to Dismiss.

Therefore, Count I states a cause of action for declaratory relief as to the City's and the Funds' obligations under the 1983 and 1985 amendments. E.g., Alderman Drugs, Inc. v.

Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979)(A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action.).

4. The 1989, 1997 and 2003 Amendments: Time Limited

Unlike the 1983 and 1985 amendments, the amendments to the Pension Code which codified the subsequent settlement contracts in the Korshak litigation, were all time-limited. Nothing in the 1989, 1997 and 2003 amendments provided that the healthcare benefits set forth therein were for the lifetime of the annuitants. Rather, the language of these amendments was clear that the health care benefits and obligations set forth therein expired with the settlement agreements which the amendments codified.

Therefore, Count I fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

5. Conclusion

The Pension Clause is clear that benefits, once given, cannot be impaired or diminished. However, as this court stated previously, and as Matthews supports, "[t]he Pension Clause protects only benefits that have actually been granted. It does not serve to magically create a right to receive benefits not specifically granted." (Memorandum & Order of December 3, 2015, at 11).

In this case, the 1983 and 1985 amendments were not time-limited and were in effect when the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 entered into the Funds' retirement systems. They provided those sub-class annuitants with "lifetime" or "permanent" healthcare benefits.

The 1989, 1997 and 2003 amendments to the Illinois Pension Code, however, were time-limited at creation. By their express terms, these amendments specifically did *not* provide the annuitants with "lifetime" or "permanent" healthcare benefits. Rather, the annuitants who became members of the retirement systems during the effective period of these amendments could, and did, validly agree to the amended time-limited healthcare benefits as conditions of their membership in the system without violating article XIII, section 5. Matthews, 2016 IL 117638, at ¶61.

Accordingly, Count I states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but fails to raise any valid claims under the 1989, 1997 and 2003 amendments. The latter, therefore, are dismissed with prejudice.

D. *Count II (§2-615)*

This court previously dismissed Plaintiffs' breach of contract claim finding that Plaintiffs had failed to allege the existence of any contract between themselves and the City or themselves and the Funds. The City and the Funds are again moving to dismiss the breach of contract claim.

Count II of the Third Amended Complaint alleges a contract between the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 for "$55/21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds . . . without reduction." (3rd Am. Compl. ¶171). However, as before, Plaintiffs still fail to attach any contract to the Third Amended Complaint containing such an obligation.

Plaintiff' Third Amended Complaint does attach an undated copy of the City of Chicago Annuitant Medical Benefits Plan handbook ("City Handbook"). Plaintiffs contend this City Handbook constitutes a binding agreement requiring the City to provide lifetime subsidized healthcare premiums. (3rd Am. Compl., Ex. 6). The City Handbook, however, contains no language requiring the City to provide lifetime subsidized premiums to City's annuitants. Furthermore, the City Handbook expressly stated that the plan's coverage would terminate "the date the Plan is terminated" or "the date the Plan is terminated for the class of Annuitant of which you are a member." (Id. at 9). The Handbook's provision for termination of the Plan clearly contradicts any contractual obligation to provide lifetime healthcare beuefits.

The Third Amended Complaint also attaches a copy of the Police Fund's benefit handbook ("Police Handbook"). The Police Handbook does not contain any provision promising lifetime subsidized healthcare benefits.

As to the other Funds, Plaintiffs do not attach any benefit handbooks or other alleged contracts. Nor do Plaintiffs provide any valid factual or legal basis to support their assertion that such handbooks obligated those Funds to provide lifetime subsidized healthcare benefits.

Plaintiffs have failed to cure any of the deficiencies which led to the dismissal of Count II of the Amended Complaint. Because Plaintiffs have again failed to show the existence of any valid contract for the provision of lifetime subsidized healthcare benefits, Count II is dismissed with prejudice.

E. *Count III (§2-615)*

This court previously dismissed Plaintiffs' equitable estoppel claim finding that Plaintiffs had failed to allege sufficient facts to state a claim. Defendants contend that Plaintiffs have still failed to allege such facts.

While the Third Amended Complaint alleges a claim for equitable estoppel, Plaintiffs asserted at oral argument that they are actually asserting a claim for promissory estoppel. But, whether Count III is considered a claim for equitable estoppel or promissory estoppel, it fails as a matter of law.

The elements of equitable estoppel are: (1) words or conduct amounting to a misrepresentation or concealment of material facts on the part of the party allegedly estopped; (2) knowledge by the party allegedly estopped at the time the representations were made that the representations were untrue; (3) lack of knowledge by the party asserting estoppel at the time the representations were made and at the time they were acted upon that the representations were

untrue; (4) the party allegedly estopped must intend or reasonably expect the representations to be acted upon; (5) good faith reliance on the representations by the party asserting estoppel to its detriment; and (6) prejudice to the party asserting estoppel if the party allegedly estopped is permitted to deny the truth of the representations." Williams & Montgomery, Ltd. v. Stellato, 195 Ill. App. 3d 544, 552 (1st Dist. 1990).

Illinois courts do not favor applying equitable estoppel against public bodies and will do so only to prevent fraud or injustice. Morgan Place v. City of Chicago, 2012 IL App (1st) 091240, ¶33. In order to apply equitable estoppel against a public body, there must be an affirmative act by the public body itself (i.e. legislation) or an act by an official with the express authority to bind the public body. Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, ¶39. Furthermore, for reliance on an officer's actions to be detrimental and reasonable, the party claiming estoppel must have substantially changed his or her position based on the affirmative act of the public body's officials and on his or hers own inquiry into the official's authority. Id.

Promissory estoppel is employed to form a contract when the promisee has detrimentally relied on the promisor's gratuitous promise to do or refrain from doing something in the future. Matthews, 2016 IL 117638 at ¶91. The doctrine operates to impute contractual stature based upon a promise that is not supported by consideration and to provide a remedy to the party who detrimentally relied on that promise. Id. at ¶93.

Count III alleges that the City and the Funds "are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the City "is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." (3rd Am. Compl., ¶¶175-176). Count III, however, still fails to allege any specific facts supporting a basis for the application of equitable or promissory estoppel against either the City or the Funds.

Plaintiffs again allege that the City's "Pre-Retirement" seminars form a basis for the application of estoppel. However, Plaintiffs still do not allege any specific facts showing that any City employee at these seminars possessed the ***actual*** authority to promise lifetime subsidized healthcare benefits on behalf of the City. Plaintiffs allege only vague conclusions of such authority. (3rd Am. Compl. ¶84). Nor do Plaintiffs allege any specific facts showing they inquired whether these City employees possessed actual authority granted by the City to promise lifetime subsidized healthcare benefits. Illinois is a fact-pleading jurisdiction. Simpkins v. CSX Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

Plaintiffs contend that the City Handbook and the Police Handbook support a claim for estoppel. But neither Handbook contains any representation or promise of lifetime subsidized healthcare benefits. Nor are any facts pled showing that such a representation or promise, if made, was done so by the City Council or by a City official with the express authority to make such a representation. Actual authority must be shown in order to assert equitable or promissory estoppel against a governmental body. As previously emphasized by this court, apparent

authority is insufficient. Patrick Engineering, 2012 IL 113148, ¶36. At the most, Plaintiffs allege facts supporting only the existence of apparent – not actual – authority as to the City.[25]

Finally, Plaintiffs assert that the City Council's past appropriations for retiree healthcare support the application of estoppel. (3rd Am. Compl., ¶¶91-97). Such allegations do not support the application of either equitable or promissory estoppel. Appropriating funds for retiree healthcare does not amount to a representation that the City's retirees will be entitled to lifetime subsidized healthcare. The annual budget appropriation ordinances relied upon by Plaintiffs contain no representation that the City will provide lifetime subsidized healthcare to any retiree. Furthermore, Matthews expressly held that the act of providing healthcare and continuing to provide healthcare does not amount to enforceable promise to continue to provide such healthcare in the future. Matthews, 2016 IL 117638, ¶¶97-99.

Plaintiffs have failed to cure any of the deficiencies which led to the dismissal of Count III of the Amended Complaint. Because Plaintiffs have again failed to plead any specific facts supporting either equitable or promissory estoppel against the City or the Funds, Count III is now dismissed with prejudice.

F. ***Count V (Impairment of Contract) (§2-615)***

Count V asserts that Defendants have impaired Plaintiffs' contractual rights in violation of the contracts clauses of the Illinois Constitution and the U.S. Constitution. Plaintiffs' claim under the U.S. Constitution was previously dismissed with prejudice.

Article I, §6 of the Illinois Constitution of 1970 provides that: "[n]o ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed." Illinois Const. 1970, Art. I, § 16. "With respect to the contracts clauses of the United States and Illinois Constitutions, a statute violates these when it operates as a substantial impairment of a contractual relationship." Nissan N. Am., Inc. v. Motor Vehicle Review Bd., 2014 IL App (1st) 123795, ¶37.

Count V fails to identify any law passed by the City or the Funds which impaired any contractual right of Plaintiffs. The General Assembly enacted the statutes at issue, not the City or the Funds. This was the basis of the dismissal with prejudice of Plaintiffs' federal claim and is also fatal to Plaintiffs' state claim. Underwood v. City of Chicago, 779 F.3d 461, 463-64 (7th Cir. 2015).

G. ***Count VI (Equal Protection) (§2-615)***

Count VI of the Third Amended Complaint adds a new claim for violation of the Equal Protection Clause of the Illinois Constitution. "The equal protection clause requires that the government treat similarly situated individuals in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently." People v. Masterson, 2011 IL 110072, ¶25. "An equal protection claim requires a threshold allegation that the plaintiff was

[25] The court notes that Plaintiffs have not alleged facts sufficient to support even apparent authority as to the Funds.

treated differently from similarly situated individuals." In re C.E., 406 Ill. App. 3d 97, 112 (1st Dist. 2010).

Plaintiffs allege that the City is treating Fund participants hired prior to August 23, 1989 differently from Fund participants hired on or after August 23, 1989 and that this constitutes an equal protection violation. (3rd Am. Compl. ¶192). However, Plaintiffs fail to allege any facts showing that the two groups of Fund participants are, in fact, similarly situated.

Furthermore, "[e]conomic and social welfare legislation not affecting a suspect class or fundamental right is subject to [the] rational basis test." Jacobson v. Dept. of Public Aid, 171 Ill. 2d 314, 323 (1996). Because no protected class or fundamental right is involved here, the City needed only a rational basis for treating Fund participants hired on or after August 23, 1989 differently from Fund Participants hired before August 23, 1989.

Under the rational basis standard, a classification "is presumed to be constitutional, and the state is not required to actually articulate the [classification]'s purpose or produce evidence to sustain the rationality of the classification." Am. Fed'n of State, Cty., Mun. Employees (AFSCME"), Council 31 v. State of Ill., Dep't of Cent. Mgmt. Servs., 2015 IL App (1st) 133454, ¶32. " Instead, there is a weighty burden on the challenger, who must negative every basis which might support the law because it should be upheld if there is any reasonably conceivable set of facts supporting the classification". Id.

Plaintiffs fail to allege facts negating a rational basis for the challenged classification. Nor could Plaintiffs allege such facts as the City of Chicago's dire financial condition is a matter of public record and forms a rational basis for declining to extend the same benefits to the much larger group of post-August 23, 1989 Fund participants.

Because Plaintiffs cannot establish the lack of a rational basis for the challenged classification, Count VI is dismissed with prejudice.

H. *Count VII (Special Legislation) (§2-615)*

Count VII seeks a declaration that the 1989, 1997 and 2003 amendments are unconstitutional as "special legislation." "[T]he special legislation clause prohibits the General Assembly from conferring a special benefit or privilege upon one person or group and excluding others that are similarly situated." Big Sky Excavating, Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 235 (2005).

Count VII fails to state a claim. "Classifications drawn by the General Assembly are always presumed to be constitutionally valid, and all doubts will be resolved in favor of upholding them. The party who attacks the validity of a classification bears the burden of establishing its arbitrariness." In re Vernon Hills, 168 Ill. 2d 117, 119 (1995). Special legislation challenges are treated under the same standard as equal protection challenges, Id., and therefore, as discussed above, the rational basis standard applies here.

Plaintiffs appear to assert in Count VII that the General Assembly passing statutes – the 1987, 1989 and 2003 amendments - applicable only to City of Chicago employees, the General Assembly violated the special legislation clause. However, the General Assembly is permitted to make classifications based on population or territorial differences. Village of Chatham v. County of Sangamon, 351 Ill. App. 3d 889, 898 (4th Dist. 2004), aff'd, 216 Ill. 2d 402 (2005). Plaintiffs allege no facts showing that the General Assembly's classification is arbitrary or lacking in a rational basis.

Count VII is dismissed with prejudice.

I. *Statute of Limitations*

The City argues that all of Plaintiffs' claims under the 1983 and 1985 amendments are barred by the statute of limitations. The Firemen and Municipal Funds contend that all of Plaintiffs' claims arising under each of the amendments to the Pension Code are time-barred.

1. Waiver

Initially, Plaintiffs argue that the City has waived this argument by not raising it on the City's motion to dismiss the Amended Complaint. However, the City asserted this defense after this court ruled that the city has a derivative obligation to provide, through the collection of the special tax levy, the monies used by the Funds to subsidize/provide healthcare for the Funds' annuitants. Therefore, the City did not waive its right to assert a statute of limitations defense. E.g., Hassebrock v. Ceja Corp., 2015 IL App (5th) 140037, ¶38.

2. Term of the Statute of Limitations

The City contends that Plaintiffs' claims under the 1983 and 1985 amendments are subject to the ten-year statute of limitations applicable to breach of contract cases. The Firemen and Municipal Funds assert that Plaintiffs' Counts I, II and III are similarly subject to the same ten-year statute of limitations.

Because the rights claimed by Plaintiffs under the Pension Clause are contract based, Matthews, 2016 IL 117638, ¶59, the ten-year statute of limitations applies.

3. Triggering the Running of the Statute of Limitations/Discovery Rule

"A statute of limitation begins to run when the party to be barred has the right to invoke the aid of the court to enforce his remedy." Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 266 (2001). "Stated another way, a limitation period begins 'when facts exist which authorize one party to maintain an action against another.'" Id., quoting, Davis v. Munie, 235 Ill. 620, 622 (1908); Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 167 (1999).

Nonetheless, the discovery rule delays commencement of the statute of limitations "'until the person has a reasonable belief that the injury was caused by wrongful conduct thereby creating an obligation to inquire further on that issue.'" Carlson v. Fish, 2015 IL App (1st)

140526, ¶23, quoting, Dancor Int'l, Ltd. v. Friedman, Goldberg & Mintz, 288 Ill. App. 3d 666, 673 (1st Dist. 1997). The plaintiff bears the burden of proof regarding the date of discovery. Id.

4. The Facts of this Case

The long history between the parties in this case began in October, 1987 when the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988 and filed the Korshak suit seeking, *inter alia*, a declaration that it had no obligation to provide healthcare to retirees.

The City's 1987 complaint against the Funds sought: (1) to compel the Funds to enter into contracts to provide insurance coverage to the City's annuitants; and (2) sought restitution of the amounts that the City had previously paid for retiree health care. (3rd Am. Compl., Ex. 2).

The Funds counterclaimed asserting that it was the City, not the Funds, which was responsible for providing health care coverage, and seeking to enjoin the City from discontinuing health care to its retirees. (Id. at Ex. 3). In December 1987, the Korshak and Window sub-classes intervened and requested that the court enter judgment in favor of the Funds and against the City. (Id. at Ex. 4).

In an interesting turn-about, the City now champions the Funds' position to argue that any claims the annuitants may have against the Funds are time-barred.[26]

It is the City's position that the statute of limitations applies to bar any claims that the annuitants may have against the Funds because the 1989 Korshak settlement agreement did not preserve those claims. (City's Mem. at 4).

The provision of the 1989 Korshak settlement agreement upon which the City relies provided that:

> The parties agree to negotiate in good faith toward achieving a permanent resolution of this dispute on or before December 31, 1997. Failing agreement, **the parties shall be restored to the same legal status which existed as of October 19, 1987,** * * *. The Funds, intervenors or any annuitant may contend that the City is obligated to provide and pay for the health care benefits of its retired employees and their dependents to the extent such cost exceeds the premiums which went into effect in April of 1982. Similarly, the City may contend …that it has no obligation to provide or pay for health care benefits for its retired employees or their dependents.

(3rd Am. Compl., Ex. 10)(emphasis added).

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[26] Plaintiffs posit that the City lacks standing to assert any position on behalf of the Funds. But this would require the court to ignore the fact that, per the amended Pension Code, any Fund liability under the 1983 and 1985 amendments must be funded by City tax levies. The City's fate in this regard is inextricably intertwined with that of the Funds. Therefore, the City has standing to champion this issue on behalf of the Funds, as well as itself.

The City further contends that even if the 1989 Korshak settlement preserved claims against the Funds, the 2003 Korshak settlement agreement also did not do so. The 2003 Korshak settlement agreement provided in relevant part that:

> After the termination of the Settlement Period, Class Members retain any right they currently have to assert any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 [sic] amendments to the Pension Code, or for damages relating to the amounts of the premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including this Settlement Agreement.

(3rd Am. Compl., Ex. 13). The City argues that this language did not preserve any claims Plaintiffs had against the Funds because any claims against the Funds had been time-barred since December 31, 1997 – ten plus years after the 1987 Korshak settlement agreement.

a. Korshak Sub-Class and Window Sub-Class

Initially, the entire statute of limitation discussion concerning the Korshak and Window Sub-Classes is moot. The City has agreed – by its May 15, 2013 letter (Am. Compl. Ex.2), and statements made to this court in the City's briefs and during oral argument – to continue to provide a healthcare plan with a continued contribution from the City for the lifetime of those annuitants who retired prior to August 23, 1989, to-wit, the Korshak and Window Sub-Class annuitants. Therefore, it is not necessary for this court to determine whether the claims of the Korshak and Window Sub-Classes are barred by the statute of limitations.

b. Sub-Class 3

The parties have defined the Sub-Class 3 annuitants as "[a]ny participant who participated in any of the four Funds before the August 23, 1989 amendments to the Pension Code." [3rd Am. Compl. ¶26).

The Sub-Class 3 annuitants were not parties to the 1987 Korshak litigation, let alone the 1989 Korshak settlement agreement. Indeed, the exact language of the 1989 Korshak settlement agreement only covers the Korshak and Window Sub-Class annuitants. The Korshak litigants could not bind the non-party Sub-Class 3 participants to the 1989 Korshak settlement agreement, nor could the non-party Sub-Class 3 participants have preserved any of their claims through that 1989 settlement.

When, then, *did* the statute of limitations begin to run on the claims of the Sub-Class 3 participants? The discovery rule delays commencement of the statute of limitations until the Sub-Class 3 participants had a reasonable belief that they suffered an injury caused by wrongful conduct. Carlson, 2015 IL App (1st) 140526, ¶23.

Based on the Motion to Dismiss before this court, it has not been established when members of Sub-Class 3 knew or should have known of any claims they possessed. The court will not assume that the members of Sub-Class 3 were aware of the facts in the 1987 Korshak litigation and were then or thereafter put on notice of the potential for their claims against the Funds. Nor will the court assume without sufficient evidence as to how many, if any, of the Sub-Class 3 participants either knew of the terms of the 1989 Korshak settlement agreement or, as of August 23, 1989, "had a reasonable belief that their injury was caused by wrongful conduct" of the City or the Funds. Id. While the substance of this matter may be flushed out through discovery and may be the proper subject of future summary judgment motions, speculation about the matter will not suffice as a basis upon which to grant the current Motion to Dismiss.

c. Sub-Class 4

The Sub-Class 4 participants are defined as "[a]ny person who participated in the Funds after August 23, 1989." By definition, those participants are subject to the time limitations provided for in the Pension Code amendments of 1989, 1997 and 2003. As discussed above, Plaintiffs have no viable claim with regard to these amendments. It is therefore unnecessary to discuss the applicability, *vel non*, of the statute of limitations to Sub-Class 4.

III. Conclusion

Count I of the Third Amended Complaint is dismissed with prejudice as to any claim based on the 1989, 1997 and 2003 amendments.

Count I remains pending as to the claims under the 1983 and 1985 amendments except as to the members of Sub-Class 4. The members of Sub-Class 4 have no remaining claims under Count I because they have no rights under the 1983 and 1985 amendments.

Counts II, III, V, VI and VII of the Third Amended Complaint are dismissed with prejudice.

This case is set for status on August 11, 2016 at 10:30 a.m.

Enter: 7/21/16

ENTERED
Judge Neil H. Cohen-2021
JUL 2 , 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Neil H. Cohen

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago

No. 13 CH 17458
Cal. 5
Hon Neil H. Cohen

ORDER

The matter came before the court on Plaintiffs' Emergency Motions for 1) Reconsideration/clarification of the July 21, 2016 Memorandum and Order, 2) Rule 304(a) Findings and 3) Renewed motion for Preliminary Injunction. The parties were present by counsel and addressed the court. Accordingly, as stated by the Court on the record, IT IS ORDERED:

1) Reconsideration of the July 21, 2016 Order is DENIED.
2) Rule 304(a) Findings are Granted as to Subclass 4, Denied as to Subclass 3, and held in abeyance as to Subclasses 1 (Kosher) and 2 (Window) Subclasses for the ~~parties~~ Plaintiff and City counsel to confer and report back to the court.
3) Renewed Motion for Preliminary Injunction is Denied
4) Defendants are to Answer the Second Amended Complaint to the Class Certification motion by Sept 8, 2016
5) The matter is set for report and further status on Aug 31, 2016 at 10:30am without prejudice

Attorney No.: 26711/91198
Name: Clint Krislov
Atty. for: Plaintiff
Address: 20 S Wacker 1500
City/State/Zip: Chicago IL 60606
Telephone: 312-606-0500

ENTERED:
Dated:
Judge
Judge's No.

ENTERED
Judge Neil H. Cohen-2021
AUG - 9 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago

No. 13 CH 17458
Cal 5
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ORDER

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IT IS ORDERED:

1) Reconsideration of the July 21, 2016 Order is DENIED.
2) Rule 304(a) Findings are Granted as to Subclass 4, Denied as to Subclass 3, and held in abeyance as to Subclasses 1 (Kosher) and 2 (Window Tinting) pending for the Plaintiffs and City counsel to confer and report back to the court.
3) and Preliminary Injunction Renewed Motion is Denied
4) Defendants are to Answer and Respond to the Class Certification motion by Sept 8, 2016
5) the matter is set for report and further status on Aug 31, 2016 at 10:30am

ENTERED:

Dated: _____, _____

Judge _____ Judge's No. _____

ENTERED
Judge Neil H. Cohen-2021
AUG - 9 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
DEPUTY CLERK

Attorney No.: 26711/91198
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DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

without prejudice

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago et al

No. 2013 CH 17450
Cal. No. 5

ORDER

For the reasons stated by the court on the record, IT IS ORDERED

1. The court grants Rule 304(a) Findings there is no just reason to delay enforcement or appeal of the Court's ~~August 31, 2016~~ dismissal of the claims of Plaintiffs Classes 1 (Korshak retirees) 2 (Window retirees) and 4 (Post 6/23/1989 hires) and its ~~ruling~~ ruling with respect to Class 3 (Pre-6/23/89 ~~current~~ participants who have not retired by that date).

2. The case is ~~otherwise~~ stayed pending the appeal.

3. Participants' renewed ~~motions for preliminary injunction and to certify a class~~ motions for preliminary injunction and to certify at this time are denied without prejudice.

4. Status on this matter is set for Feb. 23, 2017 at 10:00 A.M.

Dated:

Attorney No.: 91198
Name:
Atty. for: Clint Krislov / Plaintiffs
Address: 20 W. Wacker Dr 1300
City/State/Zip: Chicago IL
Telephone: 60606

ENTERED:

Judge

Judge's No.

ENTERED
Judge Neil H. Cohen-2021
AUG 31 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
DEPUTY CLERK

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

No. 16-2356

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 338 other Named Plaintiffs listed in Exhibit 1 to Complaint, Plaintiffs,

v.

CITY OF CHICAGO, a Municipal Corporation, Defendant,
and
Trustees of the Policemen's Annuity and Benefit Fund of Chicago;
Trustees of the Firemen's Annuity and Benefit Fund of Chicago;
Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and
Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.

Defendants.

From the Circuit Court, Cook County, No. 13 CH 17450, CAL. 5, Hon. Judge Cohen

Notice of Interlocutory Appeal: September 1, 2016

(Proposed) ORDER

Upon consideration of Plaintiff-Appellants' Motion to Consolidate and Response thereto this case with 16-2357, it is Ordered:

the motion is (Allowed) – ~~Denied~~

ORDER ENTERED

Dated: NOV 03 2016

APPELLATE COURT, FIRST DISTRICT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

City of Chicago

v.

Korshak et al
and Ryan et al

No. 01 CH 4962
Cal. 5
Hon Neil H. Cohen

ORDER

The case came before the court upon Participant Class' Motions ① to return the Case to the Active Calendar ② for Leave to file an Amended Complaint, and ③ to Set a Schedule. For the reasons Stated by the court on the record,

IT IS ORDERED:

The Motion is denied, without prejudice to participants' rights to assert their claims retained in the 2003 Settlement Agreement by filing a new action.

Atty. No.: 26711 / 91198

Name: Clint Krislov

Atty. for: Participants Korshak & Windor Classes

Address: 20 N. Wacker #1300

City/State/Zip: Chicago IL 60606

Telephone: 312-606-0500

ENTERED:

Dated:

ENTERED
Judge Neil H. Cohen-2021
JUL 17 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Plaintiff Michael W. Underwood and 349 other named Plaintiffs, as participants in the Annuity & Benefit Funds covering the City of Chicago's employees, have filed an Amended Class Action Complaint seeking declaratory and other relief regarding their contention that they are entitled to lifetime subsidized health care.

Defendants are the City of Chicago, the Laborers' & Retirement Board Employees Annuity & Benefit Fund of Chicago, the Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago, the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago and the Trustees of the Policemen's Annuity and Benefit Fund of the City of Chicago.

They have all filed Motions to Dismiss the Amended Class Action Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code ("Pension Code"), the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) the Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) the Firemen's Annuity and Benefit Fund ("Fire");
(3) the Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) the Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to their annuitants under the Pension Code are actually financed by the taxpayers of the City through a tax levy.[1]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.

The Pension Code was amended from time to time, as new collective bargaining agreements were negotiated.

A discussion of the salient provisions of the amendments which are relevant to the disposition of these Motions to Dismiss follows.

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7] While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Pension Code specifies that the City's tax levy finances all of the Funds' financial obligations under the Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants.[9]

The 1985 amendments further provided that the healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

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[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).

[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.

[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).

[6] Id.

[7] Id.

[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.

[9] Id.

[10] Id.

C. *The Korshak Litigation, and the 1989, 1997 and 2003 Amendments to the Illinois Pension Code*

In 1987, the City notified the Funds that it intended to terminate retiree health care by the beginning of 1988.

The City soon thereafter filed suit in the Chancery Division of the Circuit Court of Cook County, City of Chicago v. Korshak, 87 CH 10134, seeking a declaration that it had no obligation to provide healthcare to retirees ("the Korshak litigation"). (Am. Compl. ¶89). In response, the Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds' retirees. (Am. Compl. at ¶¶93-94).

Employees who retired on or before December 31, 1987 were allowed to intervene as a group. This group was certified as the "the Korshak sub-class." (Id. at ¶92).

Employees who retired after December 31, 1987, but before August 23, 1989, were permitted to intervene as a group, which was certified as the "Window sub-class." (Id.).

In 1988, the parties entered into a settlement agreement. This agreement was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96). The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments specifically stated that the obligations set forth expired on December 31, 1997.[12]

Additionally, these amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

In June 1997, prior to the expiration of original settlement period, the parties entered into a new settlement agreement which extended the settlement period until June 20, 2002. (Am. Compl. ¶11). This new agreement was also codified by amendments to the Pension Code.[14]

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.
[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).

the City to pay 50% of the costs of the annuitants' health care coverage.[15] The amendments stated that the obligations set forth would terminate on June 30, 2002.

The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

In April 2003, the parties entered into yet another settlement agreement extending the settlement period until June 30, 2013 and, again, the Pension Code was amended to codify the terms of the settlement.[17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10 per month for all annuitants.[21]

As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

The 2003 settlement agreement also provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The 2003 settlement agreement provided that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

D. *2013: The RHBC Report and the City's Decision to Phase-Out Health Care Support*

On January 11, 2013, the RHBC issued its report. (City's MTD at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees, other than those who retired before August 23, 1989, e.g., the Korshak and Window subclasses. (Am. Compl. ¶98).

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[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.

To that end, the City sent annuitants a letter dated May 15, 2013 informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex. 2). The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.). For all annuitants retiring after August 23, 1989, the City stated its intent to modify benefits and to ultimately phase-out its healthcare subsidies and plans by the beginning of 2017. (Id.).

E. Proceedings in this Case

In July 2013, Plaintiffs filed a motion before this court seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003.

On July 23, 2013, Plaintiffs filed this new action against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

Before the federal district court, Plaintiffs filed their Amended Complaint which identified four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who contributed to any of the four Funds before the August 23, 1989 amendments to the Pension Code ("Sub-Class 3")
4) Any person who was hired after August 23, 1989 ("Sub-Class 4")

(Am. Compl. ¶7).

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

Count II of the Amended Complaint alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract.

Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits.

Counts IV and V asserted claims under federal law.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision. As only the state law claims were remanded, only Counts I, II and III are currently pending before this court.

II. Motions to Dismiss

The City and the Funds have filed motions to dismiss Counts I, II and III of the Amended Complaint pursuant to 735 ILCS 5/2-619.1.

A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id. Section 2-619(a)(9) authorizes dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

A. *Judge Albert Green's Rulings in the Korshak Litigation*

During the Korshak litigation, the trial judge, Judge Albert Green, denied the City's motion to dismiss the Funds' counterclaim. Now, in the present litigation, Plaintiffs initially contend that Judge Albert Green's order denying the City's motion to dismiss in the Korshak litigation disposes of virtually all of the bases for dismissal raised by City and Funds' current Motion to Dismiss. Plaintiffs are incorrect.

First, Judge Green did not address many of the issues currently pending before this court. Second, a denial of a motion to dismiss is not a final judgment as required for the application of collateral estoppel. State Farm Mut. Auto. Ins. Co. v. Illinois Farmers Ins. Co., 226 Ill. 2d 395, 415 (2007). Nor does Judge Green's denial of the City's motion to dismiss in the Korshak litigation constitute the law of *this* case. Only final and appealable orders which are left undisturbed by the appellate court become the law of the case. Ericksen v. Rush-Presbyterian-St. Luke's Medical Ctr., 289 Ill. App. 3d 159, 168 (1st Dist. 1997). A denial of a motion to dismiss is not a final and appealable order.

B. *Capacity to Be Sued*

The trustees of Fire and Municipal Funds contend that dismissal is proper since they do not have the capacity to be sued.

The court finds this argument to be wholly unconvincing given the existence of the Korshak litigation and the Funds' active participation in it. The trustees of the Fire and Municipal Funds were defendants in that suit, filed counterclaims in that suit, and were parties to the settlement agreements in that suit. They have now waived any right to claim that they lack the capacity to be sued. Aurora Bank FSB v. Perry, 2015 IL App (3d) 130673 (lack of standing to be sued can be waived); People ex rel. Illinois State Dental Soc. v. Vinci, 35 Ill. App. 3d 474 (1st Dist. 1976)(same).

C. *Statute of Limitations*

The Laborers, Municipal and Fire Funds all contend that Plaintiffs' claims are time-barred because they were not filed within 10 years of 1987. Plaintiffs contend that the settlement agreements entered into during the course of the Korshak litigation reserved Plaintiffs' rights to assert the claims raised in the Amended Complaint. Plaintiffs are correct.

The 1989 settlement agreement provided that if the parties failed to reach a permanent resolution of their dispute by December 31, 1997, the parties would be restored to the same legal status which existed as of October 19, 1997. (Response at Ex. 10). The 1989 settlement agreement further provided that the court's jurisdiction would continue after January 1998 if no permanent solution was reached. (Id.). And, the 2003 settlement agreement expressly provided that after its expiration the class members would retain any right they then had "to assert any claims with regard to the provision of annuitant healthcare benefits" other than claims arising under the prior settlement agreements or amendments to the Pension Code.

The court finds that the 1989 and 2003 settlement agreements defeat any statute of limitations claims.

Moreover, "a statute of limitation begins to run when the party to be barred has the right to invoke the aid of the court to enforce his remedy." Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 266 (2001). "Stated another way, a limitation period begins 'when facts exist which authorize one party to maintain an action against another.'" Id., quoting, Davis v. Munie, 235 Ill. 620, 622 (1908); Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 167 (1999). This action was triggered by the City's letter of May 15, 2013 informing the Funds' annuitants of the City's plan to modify and ultimately phase-out its healthcare subsidies and annuities by 2017. Arguably, the statute of limitations did not begin to run until May 15, 2013.

D. *Motion to Dismiss Count I (§2-615)*

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution.

The City and the Funds argue that Count I should be dismissed with prejudice because a reduction in the annuitants' healthcare benefits does not constitute a violation of §5, Art. XIII of the Illinois Constitution of 1970.

Article XIII, §5 of the Illinois Constitution of 1970 ("the Pension Clause") provides that:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Ill. Const. 1970, art. XIII, §5.

1. Kanerva v. Weems

Plaintiffs contend that Kanerva v. Weems, 2014 IL 115811, definitively establishes that Plaintiffs' healthcare benefits cannot be reduced.

In Kanerva, the plaintiffs in four consolidated cases filed suit challenging the validity of Public Act 97-695 which amended §10 of the State Employees Group Insurance Act of 1971 by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems. Id. at ¶¶1, 16. The plaintiffs argued that by amending the law to require annuitants to contribute additional amounts toward the cost of their health care, where the amounts were previously paid by the State, Public Act 97-695 diminished or impaired a membership benefit in violation of the Pension Clause. Id. at ¶20.

Our supreme court identified the central issue of Kanerva as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Id. at ¶35.

The supreme court found that currently, and prior to the approval of the Pension Clause, most state employees were provided with a package of benefits including subsidized healthcare, disability and life insurance coverage and eligibility to receive a retirement annuity and survivor benefits. Id. at ¶39. Eligibility for all these benefits, including healthcare, is conditioned on, and flows directly from, membership in a public pension system. Id. at ¶40. Therefore, subsidized healthcare must be considered a benefit of membership in a pension or retirement system protected by the Pension Clause. Id.

Our supreme court found that although it is true that healthcare costs and benefits are governed by a different set of calculations than retirement annuities, this fact is legally irrelevant. Id. at ¶54. If a benefit is derived from membership in a public pension system, it is protected under the Pension Clause. Id.

Finally, our supreme court reiterated the fundamental principle that "[u]nder settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule

of construction applies with equal force to our interpretation of the pension protection provisions set forth in article XIII, section 5." Id. at ¶55.

2. Application of Kanerva v. Weems

Kanerva is clear that healthcare benefits are covered by the Pension Clause and, therefore, cannot be diminished or impaired. The question is whether the healthcare benefits of Plaintiffs and the putative class members will be diminished or impaired by the City's plan to gradually phase out healthcare coverage for annuitants retiring on or after August 23, 1989.

a. Whether the Legislature Could Validly Disclaim the Pension Clause's Application to the 1985, 1989, 1997 and 2003 Amendments to the Pension Code

The 1985, 1989, 1997 and 2003 amendments to the Pension Code all contained language providing that the healthcare plans were not to be construed as retirement benefits under the Pension Clause. Our supreme court has now unequivocally held that healthcare is a benefit of membership in a pension or retirement system and is protected by the Pension Clause. Defendants do not cite to any authority holding that the General Assembly may avoid the application of the Illinois Constitution by inserting exemption language within a statute.

Under Kanerva, healthcare benefits are covered by the Pension Clause. The amendments' language to the contrary is not enforceable. The General Assembly cannot erase the constitutional rights of the annuitants by statute.

b. Whether Kanerva Applies to the Funds

At oral argument, the Funds asserted that Kanerva applies only to public *employers* and, therefore, has no application to the Funds. It is true that the Funds are not public employers. It is also true that the Kanerva court framed the central issue as "whether the pension protection clause applies to an Illinois public employer's obligation to contribute to the cost of health care benefits for employees covered by one of the state retirement systems." Kanerva, 2014 IL 115811 at ¶35. That being said, however, it does not follow under the circumstances of this case that Kanerva has no application to the Funds.

The Pension Clause protects, "[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency ***or instrumentality thereof***." Ill. Const. 1970, art. XIII, §5 (emphasis added).

Under Kanerva, healthcare benefits fall within the scope of the Pension Clause. Nothing in the language of the Pension Clause limits its scope to benefits provided *directly* by public employers.

The Illinois Pension Code provided for the creation of the Funds, by the city council, for the specific purpose of establishing, funding and administering pension funds for the City's employees. E.g., 40 ILCS 5/5-101; 40 ILCS 5/6-101; 40 ILCS 5/8-101; 40 ILCS 5/11-101.

Accordingly, in a very real and practical sense, the Pension Code designed a scheme by which the Funds were created as an instrumentality of the City. Since the Pension Clause protects the benefits of membership in the retirement system of any "unit of local government" or "any agency or instrumentality, thereof," Ill. Const. 1970, art. XIII, §5, Kanerva applies to the Funds.

c. The 1983 and 1985 Amendments: No Time Limitations

The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

The 1985 amendments obligated the Municipal and Laborers Funds to approve a group health insurance plan and subsidize monthly premiums for their annuitants by making payments to the organization underwriting the group plan.

The 1983 and 1985 amendments did not set forth *any* termination date for the Funds' obligations. While the 1983 amendments provided that the group healthcare contracts made by the Firemen and Police Funds could not extend beyond two fiscal years, this limitation was not a time-limitation on the Funds' obligation to provide group health care to their annuitants. This was only a limitation on the length of any of the group healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time-limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak sub-class, the Window sub-class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes. The court notes that in its May 15, 2013 letter, (Am. Compl. Ex.2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its Memorandum in support of its Motion to Dismiss.

Therefore, Count I clearly states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments. E.g., Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979)(A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action.).

The exact nature of those obligations, however, is not properly decided on a §2-615 motion to dismiss.

d. The Effect of the Time Limitations of the 1989, 1997 and 2003 Amendments

Unlike the 1983 and 1985 amendments, the amendments to the Pension Code which codified the settlement agreements in Korshak were all time-limited. The 1989, 1997 and 2003 amendments did not provide that the healthcare benefits set forth therein were for the lifetime of the annuitants. Rather, these amendments were clear that the obligations set forth expired with the settlement agreements the amendments codified.

Plaintiffs contend that there is an argument that the rates set forth in the 1989, 1997 and 2003 amendments cannot be diminished or impaired. Plaintiffs, however, fail to develop this argument. Furthermore, the court disagrees that such an argument is valid.

The Pension Clause is clear that benefits, once given, cannot be impaired or diminished. The Pension Clause, however, does not by itself confer benefits. The nature and extent of any health benefits to be conferred is the subject of the legislative power. In this case, the 1989, 1997 and 2003 amendments to the Illinois Pension Code were time-limited at creation, and for good reason. They were enacted solely to codify the time-limited settlement agreements between the parties. By their express terms, these amendments specifically did *not* provide the annuitants with "lifetime" or "permanent" healthcare benefits. Since any obligations under these amendments expired by the specific terms of those amendments, there is nothing to diminish or impair.

Plaintiffs cite to In re Pension Reform Litigation (Heaton v. Quinn), 2015 IL 118585, to argue that the General Assembly cannot impose a time limit on a grant of pension benefits. Heaton, however, nowhere addresses whether the General Assembly can enact pension statutes with time limitations. Indeed, the General Assembly generally has the right to impose conditions, including time limitations, on statutorily created rights. E.g., In re Petition for Detachment of Land from Morrison Community Hosp., 318 Ill. App. 3d 922, 930 (3d Dist. 2000); Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826, 831 (1st Dist. 1988).

The Pension Clause protects only benefits that have actually been granted. It does not serve to magically create a right to receive benefits not specifically granted.

Therefore, Count I fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

E. ***Motion to Dismiss Count II (§2-615 and §2-619)***

Count II asserts a common law breach of contract claim against the City based on a contractual right the Plaintiffs and the putative class members have alleged they have under the Pension Clause "to the fixed-for-life subsidized healthcare premiums in effect on their retirement date." (Am. Compl. ¶116).

Count II also alleges that, independent of the Pension Clause, "Plaintiffs and the pre-August, 23, 1989 retirement or hire date putative class members have a contractual right to the plan in effect during the period of October 1, 1987 to August 23, 1989, at the $55/$21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds . . . without reduction." (Id. at ¶117).

Plaintiffs allege that the City "has breached its contractual obligation by unilaterally requiring the plaintiffs and [putative] class members to pay increased healthcare premiums." (Id. at ¶119).

The City and the Funds argue that any breach of contract claim would be barred by the Statute of Frauds. The City and the Funds further argue that Count II alleges no facts supporting the existence of any contract between themselves and Plaintiffs providing for life-time subsidies for healthcare benefits.

1. Statute of Frauds

Illinois law is clear that any "lifetime" contract must be in writing or the contract is barred by the Statute of Frauds. McInerey v. Charter Golf, Inc., 176 Ill. 2d 482 (1997).

Plaintiffs argue that Dell v. Streator, 193 Ill. App. 3d 810 (3d Dist. 1990), provides otherwise, but that case did not address a Statute of Frauds defense. Plaintiffs further contend that written contracts *do* exist. But, as discussed below, the Amended Complaint fails to allege sufficient facts to establish the existence of such written contracts.

2. Section 2-615

"In order to state a cause of action for breach of contract, a plaintiff must allege (1) an offer and acceptance; (2) consideration; (3) definite and certain terms of the contract; (4) plaintiff's performance of all required contractual conditions; (5) defendant's breach of the terms of the contract; and (6) damage resulting from the breach." Weis v. State Farm Mut. Auto. Ins. Co., 333 Ill. App. 3d 402, 407 (2d Dist. 2002).

Illinois is a fact-pleading jurisdiction. Simpkins v. Csx Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

Count II fails to allege specific facts showing the existence of any written contracts between Plaintiffs, the City, or the Funds. While Plaintiffs attempt to cure this deficiency in their Response, this court can only consider those facts actually pled in the Amended Complaint.

During oral argument, Plaintiffs argued at length that the City's handbook constituted a contract for lifetime healthcare, and that a "three-way" contract to provide lifetime healthcare somehow existed between the City, the Funds, and the annuitants. But, regardless of Plaintiffs' assertions during oral argument, the existence of a contract relied upon by them for relief must be actually pled in order to be considered by this court. Count II does not plead that the handbook is the contract at issue or contain any allegations regarding any supposed "three-way" contract. Furthermore, Plaintiffs failed to attach the handbook to the Amended Complaint, as required by 735 ILCS 5/2-606.

The court further notes that Count II does not allege any breach of contract by the Funds. While their Response makes it clear that Plaintiffs believe they have a breach of contract claim against the Funds, Count II only alleges a purported breach by the City and only seeks relief from the City.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

F. *Motion to Dismiss Count III (§2-615)*

Count III asserts that Defendants are, as a matter of common law, estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Though Count III fails to allege whether Plaintiffs are asserting a claim for promissory or equitable estoppel, Plaintiff's Response confirms that they are asserting a claim for equitable estoppel.

The elements of equitable estoppel are: (1) words or conduct amounting to a misrepresentation or concealment of material facts on the part of the party allegedly estopped; (2) knowledge by the party allegedly estopped at the time the representations were made that the representations were untrue; (3) lack of knowledge by the party asserting estoppel at the time the representations were made and at the time they were acted upon that the representations were untrue; (4) the party allegedly estopped must intend or reasonably expect the representations to be acted upon; (5) good faith reliance on the representations by the party asserting estoppel to its detriment; and (6) prejudice to the party asserting estoppel if the party allegedly estopped is permitted to deny the truth of the representations." Williams & Montgomery, Ltd. v. Stellato, 195 Ill. App. 3d 544, 552 (1st Dist. 1990).

Illinois courts do not favor applying equitable estoppel against public bodies and will do so only to prevent fraud or injustice. Morgan Place v. City of Chicago, 2012 IL App (1st) 091240, ¶33. In order to apply equitable estoppel against a public body, there must be an affirmative act by the public body itself (i.e. legislation) or an act by an official with the *express authority* to bind the public body. Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, ¶39. Furthermore, for reliance on an officer's actions to be detrimental and reasonable, the party claiming estoppel must have substantially changed his or her position based on the affirmative act of the public body's officials, *and* upon his or her own inquiry into the official's authority. Id.

Count III alleges that the City and the Funds "are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the City "is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." (Am. Compl. ¶¶121-122). Count III, however, fails to set forth any specific facts supporting the application of equitable estoppel.

Plaintiffs allege that between 1984 and 1987, the City held a series of "Pre-Retirement" seminars at which unidentified City officials informed the attendees that they would be able to participate in the City's health plan for life with no cost for their own coverage. (Id. at ¶¶46-47). This allegation does not show an affirmative act by a City official with *express authority* to bind the City. Furthermore, Plaintiffs have failed to allege that they undertook any inquiry into the

unidentified City officials' actual authority to bind the City. Without such factual allegations, Count III does not state a claim against the City.

Count III is even more deficient in factual support as to the Funds. The Amended Complaint does not contain a single allegation of any affirmative act by any of the Funds, much less an affirmative act by an official with the express authority to bind the Funds.

At oral argument, Plaintiffs' counsel asserted that the City representatives at the "Pre-Retirement" seminars had "apparent authority" to bind the City. "Apparent authority," however, is not a basis for equitable estoppel against a public body:

> Because apparent authority is not actual, but only ostensible, an apparent agent may make representations the specifics of which the principal is unaware, and still bind the principal. **'If the unauthorized acts of a governmental employee are allowed to bind a municipality ***, the municipality would remain helpless to correct errors'** (*City of Chicago v. Unit One Corp.*, 218 Ill. App. 3d 242, 246, 578 N.E.2d 194, 161 Ill. Dec. 67 (1991)) or, worse, to escape the financial effects of frauds and thefts by unscrupulous public servants (*D.S.A. Finance Corp.*, 345 Ill. App. 3d at 563). **Thus, we have required, 'anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority, and *** this is so even though the agent himself may have been unaware of the limitations on his authority.'**

Patrick Engineering, 2012 IL 113148, ¶36 (emphasis added).

Count III is dismissed, without prejudice, for failure to state a claim.

III. Conclusion

Count I states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

Count II is dismissed, without prejudice, pursuant to §2-615 for failure to state a claim for breach of a written contract against either the City or the Funds.

Count III is dismissed, without prejudice, for failure to state a claim for breach of contract under a theory of common law equitable estoppel.

Plaintiffs are given leave to amend Counts II and III.

The status date of December 11, 2015 at 9:30 a.m. stands.

Enter: 12/3/15

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
DEC 03 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Michael W. Underwood, et al., Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 388 other Named Plaintiffs listed, **Plaintiffs,** **v.** **CITY OF CHICAGO, a Municipal Corporation,** **Defendant,** **And** **Trustees of the Policemen's Annuity and Benefit Fund of Chicago;** **Trustees of the Firemen's Annuity and Benefit Fund of Chicago;** **Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and** **Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, et al.** **Defendants.**	**No. 13-CH-17450** **Calendar No. 5** **Hon. Neil H. Cohen**

Order No. 1 of 2.

This matter came to be heard on Plaintiffs' Motion for a Preliminary Injunction. Due notice was given, all parties were present by counsel, who had briefed the court. The Court heard arguments, received testimony from witnesses and, for the reasons stated by the Court on the Record, it is HEREBY ORDERED:

Plaintiffs' motion for preliminary injunction is DENIED.

Hon Neil H. Cohen, Circuit Judge

Entered on December 23, 2015

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Defendant City of Chicago has filed a Motion for Clarification or, alternatively, for Reconsideration of this court's December 3, 2015 Memorandum and Order as to Count I.

The Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago and the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago have filed a Motion for Clarification or alternatively, for Reconsideration of this court's December 3, 2015 Memorandum and Order as to Count I.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code, the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) the Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) the Firemen's Annuity and Benefit Fund ("Fire");
(3) the Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) the Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to its annuitants are financed through a tax levy by the City.[1]

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.
[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Pension Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7] While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Illinois Pension Code specifies that the tax levy finances all of the Funds' financial obligations under the Illinois Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants.[9] The 1985 amendments further provided that the healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

C. *The Korshak Litigation*

In 1987, the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988. (Am. Compl. ¶89). The City filed suit, City of Chicago v. Korshak, 87 CH 10134, ("the Korshak Litigation"), seeking a declaration that it had no obligation to provide healthcare to retirees. The Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds annuitants. (Id. at ¶¶93-94).

A group of retirees who retired on or before December 31, 1987 were allowed to intervene and certified as the "the Korshak sub-class." (Id. at ¶92).

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[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).
[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.
[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).
[6] Id.
[7] Id.
[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.
[9] Id.
[10] Id.

A second group of employees who retired after December 31, 1987, but before August 23, 1989, was certified as the "Window sub-class."

In 1988, the parties entered into a settlement agreement which was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96). The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments specifically stated that the obligations set forth expired on December 31, 1997.[12] Additionally, these amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

In June 1997, prior to the expiration of original settlement period, the parties entered into a new settlement agreement extending the settlement period until June 20, 2002. (Am. Compl. ¶11). This new agreement was also codified by amendments to the Pension Code.[14]

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required the City to pay 50% of the costs of the annuitants' health care coverage.[15] The amendments stated that the obligations set forth would terminate on June 30, 2002. The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

In April 2003, the parties entered into yet another settlement agreement extending the settlement period until June 30, 2013, and again, the Pension Code was amended to codify the settlement.[17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.
[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).
[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.

per month for all annuitants.[21] As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

The 2003 settlement agreement also provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The 2003 settlement agreement provided that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

On January 11, 2013, the RHBC issued its report. (City's MTD at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees other than those in the Korshak and Window subclasses. (Am. Compl. ¶98). To that end, the City sent the annuitants a letter dated May 15, 2013 informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex. 2). The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.). For all annuitants retiring after August 23, 1989, the City stated its intent to modify benefits and ultimately phase out its healthcare subsidies and plans by 2017. (Id.).

D. *Proceedings in this Case*

In July 2013, Plaintiffs filed a motion seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003. Plaintiffs filed this new action on July 23, 2013 against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

Before the federal court, Plaintiffs filed their Amended Complaint which identified four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who contributed to any of the four Funds before the August 23, 1989 amendments to the Pension Code ("Sub-Class 3")
4) Any person who was hired after August 23, 1989 ("Sub-Class 4")

(Am. Compl. ¶7).

Count I of the Amended Complaint seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution. Count II of

[21] Id.
[22] Id.

the Amended Complaint alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract. Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Counts IV and V asserted claims under federal law.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision.

Following remand, the City and the Funds filed motions to dismiss the Amended Complaint. After extensive briefing and oral argument, this court issued its Memorandum and Order denying the motions as to Count I, granting dismissal of Count II with leave to amend and granting dismissal of Count III with prejudice.

II. Motions for Clarification or Reconsideration

The City and the Fire and Municipal Funds have filed motions for clarification or reconsideration as to the denial of their motions to dismiss Count I. "The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." Chelkova v. Southland Corp., 331 Ill. App. 3d 716, 729-30 (1st Dist. 2002).

A. ***The City's Obligations under the 1983 and 1985 Amendments***

The City seeks clarification as to the City's obligations to the Funds' annuitants under the 1983 and 1985 amendments. The Funds also seek clarification on this issue. While the court believes its Memorandum and Order was clear on this issue, the court will restate its findings for the parties.

The City is correct that it does not have any obligation under the 1983 or 1985 amendments to subsidize or provide healthcare for the Funds' annuitants. That obligation is placed on the Funds. However, the City does have a obligation to contribute, through the collection of the special tax levy, the monies used by the Funds to subsidize/provide healthcare for the Funds' annuitants. Therefore, both the Funds and the City have certain obligations under the 1983 and 1985 amendments and both the City and the Funds are proper parties to Count I.

The court notes that Plaintiffs' Response challenges this court's prior findings regarding the extent and nature of the City's obligations under the 1983 and 1985 amendments. If Plaintiffs believed the court's ruling was in error, they should have filed their own motion to reconsider.

The court further notes that Plaintiffs once again make numerous references to alleged contracts with the City which have not been actually pled leading to the dismissal of Count II with leave to amend.

B. *The Fire and Municipal Funds' Motion for Reconsideration*

The Fire and Municipal Funds' motion to reconsider repeats the same arguments made by these Funds in the prior briefing and oral argument. "A motion to reconsider is not an opportunity to simply reargue the case and present the same arguments and authority already considered." People v. Teran, 376 Ill. App. 3d 1, 4-5 (2d Dist. 2007). The Fire and Municipal Funds submit nothing other than their disagreement with this court's decision. Disagreement with a court's decision is not a basis for reconsideration.

III. Conclusion

The December 3, 2015 Memorandum and Order is clarified as set forth above. The motions to reconsider are denied.

Enter: 3/3/16

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
MAR 03 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL W. UNDERWOOD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	13 CH 17450
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Michael W. Underwood and 349 other named Plaintiffs have filed a Third Amended Class Action Complaint seeking declaratory and other relief regarding their entitlement to lifetime subsidized health care as participants in the Annuity & Benefit Funds covering the City of Chicago's employees.

Defendants City of Chicago, the Laborers' & Retirement Board Employees Annuity & Benefit Fund of Chicago, the Trustees of the Firemen's Annuity and Benefit Fund of the City of Chicago, the Trustees of the Municipal Employees' Annuity and Benefit Fund of the City of Chicago and the Trustees of the Policemen's Annuity and Benefit Fund of the City of Chicago have all filed Motions to Dismiss the Third Amended Class Action Complaint pursuant to 735 ILCS 5/2-619.1.

I. Background

A. *The Creation of the Funds*

In order to administer and carry out the provisions of the Illinois Pension Code, the General Assembly created four pension funds covering employees of the City of Chicago ("the City"):

(1) The Laborers' & Retirement Board Employees Annuity & Benefit Fund ("Laborers");
(2) The Firemen's Annuity and Benefit Fund ("Fire");
(3) The Municipal Employees' Annuity and Benefit Fund ("Municipal"); and
(4) The Policemen's Annuity and Benefit Fund ("Police").

(Am. Compl. ¶¶17-18). The Funds' obligations to its annuitants are financed through a tax levy by the City.[1]

[1] 40 ILCS 5/5-168; 40 ILCS 5/6-165; 40 ILCS 5/8-173; 40 ILCS 5/11-169.

B. *The 1983 and 1985 Amendments to the Pension Code*

In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees.[2]

The 1983 amendments also provided that the boards of the Fire and Police Funds were to subsidize annuitants' monthly insurance premiums by contributing up to $55 per month for annuitants who were not qualified for Medicare and $21 per month for Medicare-qualified annuitants through payments to the City.[3]

The 1983 amendments further stated that the basic monthly premium for each annuitant would be contributed by the City from the tax levy used to finance the Funds. If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the additional cost was to be deducted from the annuitant's monthly benefit.[4]

The 1983 amendments were devoid of any provision setting forth an expiration date for the benefits granted and the obligations accepted.

In 1985, the General Assembly amended the Pension Code to require the Laborers and Municipal Pension Funds to pay up to $25 per month of the annuitant's monthly premiums.[5] If monthly premiums for a chosen plan exceeded the maximum subsidized amount, the annuitant could elect to have the additional cost deducted from the annuitant's monthly benefit.[6] If the annuitant did not so elect, coverage would terminate.[7]

While the 1985 amendment did not specify that the premiums would be funded by the City's tax levy, the Illinois Pension Code specifies that the tax levy finances all of the Funds' financial obligations under the Illinois Pension Code.[8]

The 1985 amendments also directed the Funds to approve a group health insurance plan for the annuitants,[9] but provided that the approved healthcare plans were not to be construed as pension or retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[10]

As with the 1983 amendments, absent from the 1985 amendments were any provision setting forth an expiration date for the benefits granted and the obligations accepted.

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[2] Am. Compl. ¶27; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, §1, eff. Jan. 12, 1983).

[3] (Am. Compl. ¶33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2).

[4] Am. Compl. ¶¶26, 31, 33; see also, 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2.

[5] Am. Compl. ¶36; see also, 40 ILCS 5/5-164.1 (added by P.A. 84-23, §1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, §1, eff. Aug. 16, 1985).

[6] Id.

[7] Id.

[8] 40 ILCS 5/8-173; 40 ILCS 5/11-169.

[9] Id.

[10] Id.

C. *The 1987 Korshak Litigation, Settlements and Pension Code Amendments*

1. 1987: Litigation Begins

In 1987, the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988. (Am. Compl. ¶89). At the same time, the City filed suit seeking a declaration that it had no obligation to provide healthcare to retirees (City of Chicago v. Korshak, 87 CH 10134, ("the Korshak Litigation").

In response, the Funds filed counterclaims seeking to compel the City to continue healthcare coverage for the Funds annuitants. (Id. at ¶¶93-94).

A group of retirees who retired on or before December 31, 1987 were allowed to intervene and certified as the "the Korshak sub-class." (Id. at ¶92). A second group of employees - those who retired after December 31, 1987, but before August 23, 1989 - was certified as the "Window sub-class."

2. 1988-1989: First Settlement & Pension Code Amendments Reflecting Same

In 1988, the parties entered into a settlement agreement which was subsequently codified by 1989 amendments to the Pension Code. (Am. Compl. ¶¶95-96).

The amendments increased the amounts the Funds were required to contribute monthly for the health care of their annuitants (up to $65 for non-Medicare eligible annuitants and up to $35 for Medicare eligible annuitants); required the City to pay 50 percent of the cost of the annuitants' health care coverage through 1997; and made the annuitants responsible for paying the remaining portion of their premiums.[11]

The 1989 amendments to the Pension code were time-limited, specifically stating that the benefits and obligations set forth expired on December 31, 1997.[12]

Additionally, the amendments provided that that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[13]

3. 1997: Second Settlement & Pension Code Amendments Reflecting Same

In June 1997, six months prior to the expiration of original settlement period, the parties entered into a second settlement agreement which was codified by the 1997 amendments to the Pension Code.[14]

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[11] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 86-273, §1, eff. Aug. 23, 1989).
[12] Id.
[13] Id.

The 1997 amendments increased the Funds' monthly contribution (up to $75 for non-Medicare eligible annuitants and up to $45 for Medicare eligible annuitants) and again required the City to pay 50% of the costs of the annuitants' health care coverage.[15]

The 1997 amendments to the Pension code were time-limited, specifically stating that the benefits and obligations set forth would terminate on June 30, 2002. (Am. Compl. ¶11).

The amendments again provided that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[16]

4. 2003: Third Settlement & Pension Code Amendments Reflecting Same

In April 2003, the parties entered into yet another settlement agreement and again, the Pension Code was amended to codify the settlement. [17]

Under the 2003 amendments, the City was to pay at least 55% of the health care costs of annuitants who retired before June 30, 2005.[18] For annuitants retiring after that date, the City was to pay between 40-50% of the health care costs.[19] The City was not to pay any costs for annuitants with less than 10 years of service.[20] Between July 1, 2003 and July 1, 2008, the Funds contributed $85 for each annuitant who was not qualified for Medicare and $55 for each annuitant who was qualified for Medicare. After July 1, 2008, the Funds paid an additional $10 per month for all annuitants.[21]

The 2003 settlement agreement and Pension Code amendments were time-limited; specifically stating that the benefits and obligations set forth expired on June 30, 2013,

As with the previous amendments, the 2003 amendments stated that the health care plans were not to be construed as retirement benefits under Article XIII, § 5 of the 1970 Illinois Constitution.[22]

Unlike prior settlement agreements, the 2003 settlement agreement provided for the creation of the Retiree Healthcare Benefits Commission ("RHBC"). (Plaintiffs' Response, Ex. 13 at 9). The parties agreed that before July 1, 2013, the RHBC would make recommendations concerning the state of retiree health care benefits, their related cost trends, and issues affecting any retiree healthcare benefits offered after July 1, 2013. (Id. at 10).

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[14] 40 ILCS 5/167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d)(as amended by P.A. 90-32, §5, eff. June 27, 1997).
[15] Id.
[16] Id.
[17] Am. Compl. ¶97; 40 ILCS 5/5-167.5(b); 40 ILCS 5/164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, §5, eff. July 1, 2003).
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.

5. The January, 2013 RHBC Report and Thereafter

On January 11, 2013, the RHBC issued its report. (City's Motion to Dismiss at Ex. B). The report concluded that continuing the existing financial arrangement was not viable given the City's financial circumstances, industry trends and market conditions. (Id.).

Following the RHBC's report, the City decided to gradually reduce and ultimately end its contributions toward the health care of retirees other than those in the Korshak and Window subclasses. (Am. Compl. ¶98).

To that end, the City sent the annuitants a letter, dated May 15, 2013, informing them that the City would extend current health care coverage and benefits through December 31, 2013. (Am. Compl. Ex.2).

The letter stated that after January 1, 2014, the City would provide a healthcare plan with a continued contribution from the City of up to 55% of the cost of that plan for the lifetimes of the annuitants retiring prior to August 23, 1989. (Id.).

For all annuitants retiring on or after August 23, 1989, the City stated its intent to modify benefits and ultimately phase out its healthcare subsidies and plans by 2017. (Id.).

D. *Proceedings in this Case*

In July 2013, Plaintiffs filed a motion seeking to revive the Korshak action. That motion was denied because the Korshak action had been dismissed with prejudice in 2003. Plaintiffs filed this new action on July 23, 2013 against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013.

The City filed a motion to dismiss before the federal district court. The district court granted the motion to dismiss with prejudice. On appeal to the Seventh Circuit, the district court's order was vacated and the state law claims remanded to this court for decision.

On December 3, 2015, this court issued a Memorandum and Order ruling on Defendants' motions to dismiss the Amended Complaint. This court found that Count I stated a cause of action for declaratory relief as to the City's and the Funds' obligations under the 1983 and 1985 amendments as to the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3, but failed to state a cause of action for declaratory relief as to the City's and the Funds' obligations under the under the 1989, 1997 and 2003 amendments to the Pension Code. This court dismissed Counts II, breach of contract, and III, equitable estoppel, with leave to amend.

E. *The Third Amended Complaint*

Plaintiffs have now filed a Third Amended Complaint. The Third Amended Complaint once again identifies four putative sub-classes of plaintiffs:

1) The Korshak sub-class (those retiring prior to December 31, 1987)
2) The Window sub-class (those retiring between January 1, 1988 and August 23, 1989)
3) Any participant who participated in any of the four Funds before the August 23, 1989 Amendments to the Pension Code ("Sub-Class 3")
4) Any person who participated in the Funds after August 23, 1989 ("Sub-Class 4")

(3rd Am. Compl. ¶26).

Count I of the Third Amended Complaint essentially seeks a declaration that any reduction in Plaintiffs' healthcare benefits would violate Article XIII, §5 of the 1970 Illinois Constitution. Count II alleges that a reduction in benefits from the benefits in effect from October 1, 1987 to August 23, 1989 constitutes a breach of contract. Count III asserts that Defendants are estopped from changing or terminating the annuitant coverage to a level below the highest level of benefit during an annuitant's participation in group healthcare benefits. Count IV, previously dismissed by the federal district court with prejudice, is pled solely to preserve the issue for appeal. Count V asserts a claim for impairment of contract under the Illinois Constitution.[23] Count VI asserts a claim for denial of equal protection. Count VII asserts a violation of the special legislation clause of the Illinois Constitution.

II. Motions to Dismiss

The City and the Funds have filed motions to dismiss the Third Amended Complaint pursuant to 735 ILCS 5/2-619.1. A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id.

A. ***Judge Albert Green's Rulings in the Korshak Litigation***

Initially, Plaintiffs again make various assertions based on the alleged preclusive effect of Judge Albert Green's denial of the City's motion to dismiss the Funds' counterclaims in the Korshak Litigation. This court previously rejected this argument finding that a denial of a

[23] Count V also asserts impairment of contract under the U.S. Constitution, but only to preserve the issue for appeal.

motion to dismiss is not a final and appealable order necessary for the application of collateral estoppel or the doctrine of the law of the case. E.g., State Farm Mut. Auto. Ins. Co. v. Illinois Farmers Ins. Co., 226 Ill. 2d 395, 415 (2007); Ericksen v. Rush-Presbyterian-St. Luke's Medical Ctr., 289 Ill. App. 3d 159, 168 (1st Dist. 1997). Plaintiffs have not presented any basis to this court for reconsideration, nor could they.

B. ***Capacity to Be Sued***

The trustees of Fire and Municipal Funds again argue that they do not have the capacity to be sued in this action. This court has already ruled against the Funds on this issue and the Funds have not presented any valid basis for this court to reconsider its decision.

C. ***Count I (§2-615)***

This court has previously found that Plaintiffs had stated a claim for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but had not stated a claim as to the 1989, 1997 and 2003 amendments which were expressly time-limited.[24]

1. "Impairment" Allegations

Initially, Count I of the Third Amended Complaint adds additional "impairment of contract" language. This language, however, does not change the fact that Count I is essentially a claim for declaratory relief against the City and the Funds for alleged violations of the Pension Clause. To the extent that Count I also attempts to state a claim for violation of the contract clause of the Illinois Constitution, Illinois Const. 1970, Art. I, § 16, Count I is duplicative of Count V and will be addressed below.

2. Matthews v. Chicago Transit Authority

Plaintiffs' Third Amended Complaint again asserts claims of a violation of the Pension Clause based on the 1989, 1997 and 2003 amendments. The City contends that these claims should be dismissed with prejudice because, as previously found by this court, the amendments were time-limited. The City argues that if there was any doubt that pension benefits can be granted on a time-limited basis, this doubt was eliminated by the Illinois Supreme Court's recent decision in Matthews v. Chicago Transit Authority, 2016 IL 117638.

In Matthews, the plaintiffs asserted that the CTA's modification of retiree health benefits granted by a 2004 collective bargaining agreement ("CBA") constituted a violation of the Pension Clause. Id. at ¶¶1-2. The primary issue in Matthews was "whether the pension protection clause operates to automatically vest the retirement benefits of public employees, regardless of the terms of the contract that confers those rights." Id. at ¶57.

[24] The court notes that Plaintiffs disagree with certain prior rulings regarding Count I and have devoted numerous pages to asserting the alleged errors made by this court. If Plaintiffs disagreed with this court's rulings, their recourse was to file a motion to reconsider.

Our supreme court first noted that it "has consistently held that the contractual relationship protected by [the Pension Clause] is governed by the actual terms of the contract or pension plan in effect at the time the employee becomes a member of the retirement system." Id. at ¶59. "While the pension protection clause guarantees the vested rights provided in the contract that defines a participant's retirement system membership, it does not change the terms of that contract or the essential nature of the rights it confers." Id. at ¶59.

"[W]here a public employee becomes a member of a retirement system under a statute that includes a provision which may operate to deny him benefits in the future, that provision does not become an unconstitutional impairment of his retirement benefits because he agreed to it as a condition of his membership in the system." Id. at ¶61, citing, Kerner v. State Employees' Retirement System, 72 Ill. 2d 507, 514.

Matthews is clear that "[i]f the underlying contract provides that certain retirement benefits may be modified in the future, then that is the contract protected by article XIII, section 5. Nothing in the pension protection clause requires or permits a court to rewrite the terms of such an agreement." Id. at ¶62; see also, Id. at ¶66.

3. The 1983 and 1985 Amendments: No Time Limitations

The 1983 amendments obligated the Fire and Police Funds to contract for group health care coverage for their annuitants and to subsidize the monthly premiums for their annuitants.

The 1985 amendments obligated the Municipal and Laborers Funds to approve a group health insurance plan and subsidize monthly premiums for their annuitants by making payments to the organization underwriting the group plan.

The 1983 and 1985 amendments did not set forth *any* termination date for the Funds' obligations. While the 1983 amendments provided that the group healthcare contracts made by the Firemen and Police Funds could not extend beyond two fiscal years, this limitation was not a time-limitation on the Funds' obligation to provide group health care to their annuitants. This was only a limitation on the length of any of the group healthcare contracts the Fire and Police Funds could enter into while fulfilling its non-time-limited obligation to its members.

The 1983 and 1985 amendments were in effect when the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 entered into the Funds' retirement systems. There does not appear to be any dispute between the parties that the 1983 and 1985 amendments apply to these sub-classes.

The court notes further that in its May 15, 2013 letter, (Am. Compl. Ex.2), the City stated that it would continue to provide a healthcare plan with a continued contribution from the City for the lifetime of the annuitants who retired prior to August 23, 1989. The City again reiterated this assertion in its briefs and at oral argument on this Motion to Dismiss.

Therefore, Count I states a cause of action for declaratory relief as to the City's and the Funds' obligations under the 1983 and 1985 amendments. E.g., Alderman Drugs, Inc. v.

Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979)(A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action.).

4. The 1989, 1997 and 2003 Amendments: Time Limited

Unlike the 1983 and 1985 amendments, the amendments to the Pension Code which codified the subsequent settlement contracts in the Korshak litigation, were all time-limited. Nothing in the 1989, 1997 and 2003 amendments provided that the healthcare benefits set forth therein were for the lifetime of the annuitants. Rather, the language of these amendments was clear that the health care benefits and obligations set forth therein expired with the settlement agreements which the amendments codified.

Therefore, Count I fails to state a cause of action for declaratory relief as to the City's and Funds' obligations under the 1989, 1997 and 2003 amendments to the Illinois Pension Code.

5. Conclusion

The Pension Clause is clear that benefits, once given, cannot be impaired or diminished. However, as this court stated previously, and as Matthews supports, "[t]he Pension Clause protects only benefits that have actually been granted. It does not serve to magically create a right to receive benefits not specifically granted." (Memorandum & Order of December 3, 2015, at 11).

In this case, the 1983 and 1985 amendments were not time-limited and were in effect when the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 entered into the Funds' retirement systems. They provided those sub-class annuitants with "lifetime" or "permanent" healthcare benefits.

The 1989, 1997 and 2003 amendments to the Illinois Pension Code, however, were time-limited at creation. By their express terms, these amendments specifically did *not* provide the annuitants with "lifetime" or "permanent" healthcare benefits. Rather, the annuitants who became members of the retirement systems during the effective period of these amendments could, and did, validly agree to the amended time-limited healthcare benefits as conditions of their membership in the system without violating article XIII, section 5. Matthews, 2016 IL 117638, at ¶61.

Accordingly, Count I states a cause of action for declaratory relief as to the City's and Funds' obligations under the 1983 and 1985 amendments, but fails to raise any valid claims under the 1989, 1997 and 2003 amendments. The latter, therefore, are dismissed with prejudice.

D. ***Count II (§2-615)***

This court previously dismissed Plaintiffs' breach of contract claim finding that Plaintiffs had failed to allege the existence of any contract between themselves and the City or themselves and the Funds. The City and the Funds are again moving to dismiss the breach of contract claim.

Count II of the Third Amended Complaint alleges a contract between the Korshak Sub-Class, the Window Sub-Class and Sub-Class 3 for "$55/21 fixed-rate-for-life healthcare premiums, subsidized by their respective Funds . . . without reduction." (3rd Am. Compl. ¶171). However, as before, Plaintiffs still fail to attach any contract to the Third Amended Complaint containing such an obligation.

Plaintiff' Third Amended Complaint does attach an undated copy of the City of Chicago Annuitant Medical Benefits Plan handbook ("City Handbook"). Plaintiffs contend this City Handbook constitutes a binding agreement requiring the City to provide lifetime subsidized healthcare premiums. (3rd Am. Compl., Ex. 6). The City Handbook, however, contains no language requiring the City to provide lifetime subsidized premiums to City's annuitants. Furthermore, the City Handbook expressly stated that the plan's coverage would terminate "the date the Plan is terminated" or "the date the Plan is terminated for the class of Annuitant of which you are a member." (Id. at 9). The Handbook's provision for termination of the Plan clearly contradicts any contractual obligation to provide lifetime healthcare beuefits.

The Third Amended Complaint also attaches a copy of the Police Fund's benefit handbook ("Police Handbook"). The Police Handbook does not contain any provision promising lifetime subsidized healthcare benefits.

As to the other Funds, Plaintiffs do not attach any benefit handbooks or other alleged contracts. Nor do Plaintiffs provide any valid factual or legal basis to support their assertion that such handbooks obligated those Funds to provide lifetime subsidized healthcare benefits.

Plaintiffs have failed to cure any of the deficiencies which led to the dismissal of Count II of the Amended Complaint. Because Plaintiffs have again failed to show the existence of any valid contract for the provision of lifetime subsidized healthcare benefits, Count II is dismissed with prejudice.

E. *Count III (§2-615)*

This court previously dismissed Plaintiffs' equitable estoppel claim finding that Plaintiffs had failed to allege sufficient facts to state a claim. Defendants contend that Plaintiffs have still failed to allege such facts.

While the Third Amended Complaint alleges a claim for equitable estoppel, Plaintiffs asserted at oral argument that they are actually asserting a claim for promissory estoppel. But, whether Count III is considered a claim for equitable estoppel or promissory estoppel, it fails as a matter of law.

The elements of equitable estoppel are: (1) words or conduct amounting to a misrepresentation or concealment of material facts on the part of the party allegedly estopped; (2) knowledge by the party allegedly estopped at the time the representations were made that the representations were untrue; (3) lack of knowledge by the party asserting estoppel at the time the representations were made and at the time they were acted upon that the representations were

untrue; (4) the party allegedly estopped must intend or reasonably expect the representations to be acted upon; (5) good faith reliance on the representations by the party asserting estoppel to its detriment; and (6) prejudice to the party asserting estoppel if the party allegedly estopped is permitted to deny the truth of the representations." Williams & Montgomery, Ltd. v. Stellato, 195 Ill. App. 3d 544, 552 (1st Dist. 1990).

Illinois courts do not favor applying equitable estoppel against public bodies and will do so only to prevent fraud or injustice. Morgan Place v. City of Chicago, 2012 IL App (1st) 091240, ¶33. In order to apply equitable estoppel against a public body, there must be an affirmative act by the public body itself (i.e. legislation) or an act by an official with the express authority to bind the public body. Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, ¶39. Furthermore, for reliance on an officer's actions to be detrimental and reasonable, the party claiming estoppel must have substantially changed his or her position based on the affirmative act of the public body's officials and on his or hers own inquiry into the official's authority. Id.

Promissory estoppel is employed to form a contract when the promisee has detrimentally relied on the promisor's gratuitous promise to do or refrain from doing something in the future. Matthews, 2016 IL 117638 at ¶91. The doctrine operates to impute contractual stature based upon a promise that is not supported by consideration and to provide a remedy to the party who detrimentally relied on that promise. Id. at ¶93.

Count III alleges that the City and the Funds "are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the City "is estopped from changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." (3rd Am. Compl., ¶¶175-176). Count III, however, still fails to allege any specific facts supporting a basis for the application of equitable or promissory estoppel against either the City or the Funds.

Plaintiffs again allege that the City's "Pre-Retirement" seminars form a basis for the application of estoppel. However, Plaintiffs still do not allege any specific facts showing that any City employee at these seminars possessed the ***actual*** authority to promise lifetime subsidized healthcare benefits on behalf of the City. Plaintiffs allege only vague conclusions of such authority. (3rd Am. Compl. ¶84). Nor do Plaintiffs allege any specific facts showing they inquired whether these City employees possessed actual authority granted by the City to promise lifetime subsidized healthcare benefits. Illinois is a fact-pleading jurisdiction. Simpkins v. CSX Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

Plaintiffs contend that the City Handbook and the Police Handbook support a claim for estoppel. But neither Handbook contains any representation or promise of lifetime subsidized healthcare benefits. Nor are any facts pled showing that such a representation or promise, if made, was done so by the City Council or by a City official with the express authority to make such a representation. Actual authority must be shown in order to assert equitable or promissory estoppel against a governmental body. As previously emphasized by this court, apparent

authority is insufficient. Patrick Engineering, 2012 IL 113148, ¶36. At the most, Plaintiffs allege facts supporting only the existence of apparent – not actual – authority as to the City.[25]

Finally, Plaintiffs assert that the City Council's past appropriations for retiree healthcare support the application of estoppel. (3rd Am. Compl., ¶¶91-97). Such allegations do not support the application of either equitable or promissory estoppel. Appropriating funds for retiree healthcare does not amount to a representation that the City's retirees will be entitled to lifetime subsidized healthcare. The annual budget appropriation ordinances relied upon by Plaintiffs contain no representation that the City will provide lifetime subsidized healthcare to any retiree. Furthermore, Matthews expressly held that the act of providing healthcare and continuing to provide healthcare does not amount to enforceable promise to continue to provide such healthcare in the future. Matthews, 2016 IL 117638, ¶¶97-99.

Plaintiffs have failed to cure any of the deficiencies which led to the dismissal of Count III of the Amended Complaint. Because Plaintiffs have again failed to plead any specific facts supporting either equitable or promissory estoppel against the City or the Funds, Count III is now dismissed with prejudice.

F. ***Count V (Impairment of Contract) (§2-615)***

Count V asserts that Defendants have impaired Plaintiffs' contractual rights in violation of the contracts clauses of the Illinois Constitution and the U.S. Constitution. Plaintiffs' claim under the U.S. Constitution was previously dismissed with prejudice.

Article I, §6 of the Illinois Constitution of 1970 provides that: "[n]o ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed." Illinois Const. 1970, Art. I, § 16. "With respect to the contracts clauses of the United States and Illinois Constitutions, a statute violates these when it operates as a substantial impairment of a contractual relationship." Nissan N. Am., Inc. v. Motor Vehicle Review Bd., 2014 IL App (1st) 123795, ¶37.

Count V fails to identify any law passed by the City or the Funds which impaired any contractual right of Plaintiffs. The General Assembly enacted the statutes at issue, not the City or the Funds. This was the basis of the dismissal with prejudice of Plaintiffs' federal claim and is also fatal to Plaintiffs' state claim. Underwood v. City of Chicago, 779 F.3d 461, 463-64 (7th Cir. 2015).

G. ***Count VI (Equal Protection) (§2-615)***

Count VI of the Third Amended Complaint adds a new claim for violation of the Equal Protection Clause of the Illinois Constitution. "The equal protection clause requires that the government treat similarly situated individuals in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently." People v. Masterson, 2011 IL 110072, ¶25. "An equal protection claim requires a threshold allegation that the plaintiff was

[25] The court notes that Plaintiffs have not alleged facts sufficient to support even apparent authority as to the Funds.

treated differently from similarly situated individuals." In re C.E., 406 Ill. App. 3d 97, 112 (1st Dist. 2010).

Plaintiffs allege that the City is treating Fund participants hired prior to August 23, 1989 differently from Fund participants hired on or after August 23, 1989 and that this constitutes an equal protection violation. (3rd Am. Compl. ¶192). However, Plaintiffs fail to allege any facts showing that the two groups of Fund participants are, in fact, similarly situated.

Furthermore, "[e]conomic and social welfare legislation not affecting a suspect class or fundamental right is subject to [the] rational basis test." Jacobson v. Dept. of Public Aid, 171 Ill. 2d 314, 323 (1996). Because no protected class or fundamental right is involved here, the City needed only a rational basis for treating Fund participants hired on or after August 23, 1989 differently from Fund Participants hired before August 23, 1989.

Under the rational basis standard, a classification "is presumed to be constitutional, and the state is not required to actually articulate the [classification]'s purpose or produce evidence to sustain the rationality of the classification." Am. Fed'n of State, Cty., Mun. Employees (AFSCME"), Council 31 v. State of Ill., Dep't of Cent. Mgmt. Servs., 2015 IL App (1st) 133454, ¶32. " Instead, there is a weighty burden on the challenger, who must negative every basis which might support the law because it should be upheld if there is any reasonably conceivable set of facts supporting the classification". Id.

Plaintiffs fail to allege facts negating a rational basis for the challenged classification. Nor could Plaintiffs allege such facts as the City of Chicago's dire financial condition is a matter of public record and forms a rational basis for declining to extend the same benefits to the much larger group of post-August 23, 1989 Fund participants.

Because Plaintiffs cannot establish the lack of a rational basis for the challenged classification, Count VI is dismissed with prejudice.

H. *Count VII (Special Legislation) (§2-615)*

Count VII seeks a declaration that the 1989, 1997 and 2003 amendments are unconstitutional as "special legislation." "[T]he special legislation clause prohibits the General Assembly from conferring a special benefit or privilege upon one person or group and excluding others that are similarly situated." Big Sky Excavating, Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 235 (2005).

Count VII fails to state a claim. "Classifications drawn by the General Assembly are always presumed to be constitutionally valid, and all doubts will be resolved in favor of upholding them. The party who attacks the validity of a classification bears the burden of establishing its arbitrariness." In re Vernon Hills, 168 Ill. 2d 117, 119 (1995). Special legislation challenges are treated under the same standard as equal protection challenges, Id., and therefore, as discussed above, the rational basis standard applies here.

Plaintiffs appear to assert in Count VII that the General Assembly passing statutes – the 1987, 1989 and 2003 amendments - applicable only to City of Chicago employees, the General Assembly violated the special legislation clause. However, the General Assembly is permitted to make classifications based on population or territorial differences. Village of Chatham v. County of Sangamon, 351 Ill. App. 3d 889, 898 (4th Dist. 2004), aff'd, 216 Ill. 2d 402 (2005). Plaintiffs allege no facts showing that the General Assembly's classification is arbitrary or lacking in a rational basis.

Count VII is dismissed with prejudice.

I. *Statute of Limitations*

The City argues that all of Plaintiffs' claims under the 1983 and 1985 amendments are barred by the statute of limitations. The Firemen and Municipal Funds contend that all of Plaintiffs' claims arising under each of the amendments to the Pension Code are time-barred.

1. Waiver

Initially, Plaintiffs argue that the City has waived this argument by not raising it on the City's motion to dismiss the Amended Complaint. However, the City asserted this defense after this court ruled that the city has a derivative obligation to provide, through the collection of the special tax levy, the monies used by the Funds to subsidize/provide healthcare for the Funds' annuitants. Therefore, the City did not waive its right to assert a statute of limitations defense. E.g., Hassebrock v. Ceja Corp., 2015 IL App (5th) 140037, ¶38.

2. Term of the Statute of Limitations

The City contends that Plaintiffs' claims under the 1983 and 1985 amendments are subject to the ten-year statute of limitations applicable to breach of contract cases. The Firemen and Municipal Funds assert that Plaintiffs' Counts I, II and III are similarly subject to the same ten-year statute of limitations.

Because the rights claimed by Plaintiffs under the Pension Clause are contract based, Matthews, 2016 IL 117638, ¶59, the ten-year statute of limitations applies.

3. Triggering the Running of the Statute of Limitations/Discovery Rule

"A statute of limitation begins to run when the party to be barred has the right to invoke the aid of the court to enforce his remedy." Sundance Homes v. County of Du Page, 195 Ill. 2d 257, 266 (2001). "Stated another way, a limitation period begins 'when facts exist which authorize one party to maintain an action against another.'" Id., quoting, Davis v. Munie, 235 Ill. 620, 622 (1908); Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 167 (1999).

Nonetheless, the discovery rule delays commencement of the statute of limitations "'until the person has a reasonable belief that the injury was caused by wrongful conduct thereby creating an obligation to inquire further on that issue.'" Carlson v. Fish, 2015 IL App (1st)

140526, ¶23, quoting, Dancor Int'l, Ltd. v. Friedman, Goldberg & Mintz, 288 Ill. App. 3d 666, 673 (1st Dist. 1997). The plaintiff bears the burden of proof regarding the date of discovery. Id.

4. The Facts of this Case

The long history between the parties in this case began in October, 1987 when the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988 and filed the Korshak suit seeking, *inter alia*, a declaration that it had no obligation to provide healthcare to retirees.

The City's 1987 complaint against the Funds sought: (1) to compel the Funds to enter into contracts to provide insurance coverage to the City's annuitants; and (2) sought restitution of the amounts that the City had previously paid for retiree health care. (3rd Am. Compl., Ex. 2).

The Funds counterclaimed asserting that it was the City, not the Funds, which was responsible for providing health care coverage, and seeking to enjoin the City from discontinuing health care to its retirees. (Id. at Ex. 3). In December 1987, the Korshak and Window sub-classes intervened and requested that the court enter judgment in favor of the Funds and against the City. (Id. at Ex. 4).

In an interesting turn-about, the City now champions the Funds' position to argue that any claims the annuitants may have against the Funds are time-barred.[26]

It is the City's position that the statute of limitations applies to bar any claims that the annuitants may have against the Funds because the 1989 Korshak settlement agreement did not preserve those claims. (City's Mem. at 4).

The provision of the 1989 Korshak settlement agreement upon which the City relies provided that:

> The parties agree to negotiate in good faith toward achieving a permanent resolution of this dispute on or before December 31, 1997. Failing agreement, **the parties shall be restored to the same legal status which existed as of October 19, 1987, * * *.** The Funds, intervenors or any annuitant may contend that the City is obligated to provide and pay for the health care benefits of its retired employees and their dependents to the extent such cost exceeds the premiums which went into effect in April of 1982. Similarly, the City may contend ...that it has no obligation to provide or pay for health care benefits for its retired employees or their dependents.

(3rd Am. Compl., Ex. 10)(emphasis added).

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[26] Plaintiffs posit that the City lacks standing to assert any position on behalf of the Funds. But this would require the court to ignore the fact that, per the amended Pension Code, any Fund liability under the 1983 and 1985 amendments must be funded by City tax levies. The City's fate in this regard is inextricably intertwined with that of the Funds. Therefore, the City has standing to champion this issue on behalf of the Funds, as well as itself.

The City further contends that even if the 1989 Korshak settlement preserved claims against the Funds, the 2003 Korshak settlement agreement also did not do so. The 2003 Korshak settlement agreement provided in relevant part that:

> After the termination of the Settlement Period, Class Members retain any right they currently have to assert any claims with regard to the provision of annuitant healthcare benefits, other than claims arising under the prior settlement of this Action or under the 1989, 1997, or 2002 [sic] amendments to the Pension Code, or for damages relating to the amounts of the premiums or other payments that they have paid relating to healthcare under any prior health care plans implemented by the City, including this Settlement Agreement.

(3rd Am. Compl., Ex. 13). The City argues that this language did not preserve any claims Plaintiffs had against the Funds because any claims against the Funds had been time-barred since December 31, 1997 – ten plus years after the 1987 Korshak settlement agreement.

a. Korshak Sub-Class and Window Sub-Class

Initially, the entire statute of limitation discussion concerning the Korshak and Window Sub-Classes is moot. The City has agreed – by its May 15, 2013 letter (Am. Compl. Ex.2), and statements made to this court in the City's briefs and during oral argument – to continue to provide a healthcare plan with a continued contribution from the City for the lifetime of those annuitants who retired prior to August 23, 1989, to-wit, the Korshak and Window Sub-Class annuitants. Therefore, it is not necessary for this court to determine whether the claims of the Korshak and Window Sub-Classes are barred by the statute of limitations.

b. Sub-Class 3

The parties have defined the Sub-Class 3 annuitants as "[a]ny participant who participated in any of the four Funds before the August 23, 1989 amendments to the Pension Code." [3rd Am. Compl. ¶26).

The Sub-Class 3 annuitants were not parties to the 1987 Korshak litigation, let alone the 1989 Korshak settlement agreement. Indeed, the exact language of the 1989 Korshak settlement agreement only covers the Korshak and Window Sub-Class annuitants. The Korshak litigants could not bind the non-party Sub-Class 3 participants to the 1989 Korshak settlement agreement, nor could the non-party Sub-Class 3 participants have preserved any of their claims through that 1989 settlement.

When, then, *did* the statute of limitations begin to run on the claims of the Sub-Class 3 participants? The discovery rule delays commencement of the statute of limitations until the Sub-Class 3 participants had a reasonable belief that they suffered an injury caused by wrongful conduct. Carlson, 2015 IL App (1st) 140526, ¶23.

Based on the Motion to Dismiss before this court, it has not been established when members of Sub-Class 3 knew or should have known of any claims they possessed. The court will not assume that the members of Sub-Class 3 were aware of the facts in the 1987 Korshak litigation and were then or thereafter put on notice of the potential for their claims against the Funds. Nor will the court assume without sufficient evidence as to how many, if any, of the Sub-Class 3 participants either knew of the terms of the 1989 Korshak settlement agreement or, as of August 23, 1989, "had a reasonable belief that their injury was caused by wrongful conduct" of the City or the Funds. Id. While the substance of this matter may be flushed out through discovery and may be the proper subject of future summary judgment motions, speculation about the matter will not suffice as a basis upon which to grant the current Motion to Dismiss.

c. Sub-Class 4

The Sub-Class 4 participants are defined as "[a]ny person who participated in the Funds after August 23, 1989." By definition, those participants are subject to the time limitations provided for in the Pension Code amendments of 1989, 1997 and 2003. As discussed above, Plaintiffs have no viable claim with regard to these amendments. It is therefore unnecessary to discuss the applicability, *vel non*, of the statute of limitations to Sub-Class 4.

III. Conclusion

Count I of the Third Amended Complaint is dismissed with prejudice as to any claim based on the 1989, 1997 and 2003 amendments.

Count I remains pending as to the claims under the 1983 and 1985 amendments except as to the members of Sub-Class 4. The members of Sub-Class 4 have no remaining claims under Count I because they have no rights under the 1983 and 1985 amendments.

Counts II, III, V, VI and VII of the Third Amended Complaint are dismissed with prejudice.

This case is set for status on August 11, 2016 at 10:30 a.m.

Enter: 7/21/16

ENTERED
Judge Neil H. Cohen-2021
JUL 21 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Neil H. Cohen

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago

No. 13 CH 17458
Cal. 5
Hon Neil H. Cohen

ORDER

The matter came before the court on Plaintiffs' Emergency Motions for 1) Reconsideration/clarification of the July 21, 2016 Memorandum and Order, 2) Rule 304(a) Findings and 3) Renewed motion for Preliminary Injunction. The parties were present by counsel and addressed the court. Accordingly, as stated by the Court on the record, IT IS ORDERED:

1) Reconsideration of the July 21, 2016 Order is DENIED.
2) Rule 304(a) Findings are Granted as to Subclass 4, Denied as to Subclass 3, and held in abeyance as to Subclasses 1 (Forced) and 2 (Window) Subclass for the ~~parties~~ Plaintiff and City counsel to confer and report back to the court.
3) and 4) Preliminary Injunction Renewed Motion is Denied. Defendants are to Answer the Second Amended Complaint to the Class Certification motion by Sept 8, 2016
5) The matter is Set for report and further Status on Aug 31, 2016 at 10:30am without prejudice

Attorney No.: 26711/91198
Name: Clint Krislov
Atty. for: Plaintiff
Address: 20 S Wacker 1300
City/State/Zip: Chicago IL 60606
Telephone: 312-606-0500

ENTERED:
Dated:
Judge
Judge's No.

ENTERED
Judge Neil H. Cohen-2021
AUG - 9 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Underwood et al
v.
City of Chicago et al

No. 2013 CH 17450
Cal. No. 5

ORDER

for the reasons stated by the court on the record, IT IS ORDERED

1. The court grants Rule 304(a) Findings there is no just reason to delay enforcement or appeal of the Court's ~~August 31, 2016~~ dismissal of the claims of Classes 1 (Korshak retirees) 2 (Window retirees) and 4 (Post 8/23/1989 hires) and its ruling with respect to Class 3 (Pre-8/23/89 participants who have not retired by that date).

2. The case is stayed pending the appeal.

3. Participants' renewed motions for preliminary injunction and to certify at this time are denied without prejudice.

4. Status on this matter is set for Feb. 23, 2017 at 10:00 A.M.

Dated:

Judge Neil H. Cohen-2021 Judge's No.

ENTERED
AUG 31 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
DEPUTY CLERK

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DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

corrected copy

2016 IL App (1st) 153613
No. 1-15-3613

FIRST DIVISION
September 21, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL W. UNDERWOOD, JOSEPH M. VUICH, RAYMOND SCACCHITTI, ROBERT McNULTY, JOHN E. DORN, WILLIAM J. SELKE, JANIECE R. ARCHER, DENNIS MUSHOL, RICHARD AGUINAGA, JAMES SANDOW, CATHERINE A. SANDOW, MARIE JOHNSTON, and 338 other Named Plaintiffs listed, Plaintiffs-Appellants, v. CITY OF CHICAGO, a Municipal Corporation, Defendant, and TRUSTEES OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO; TRUSTEES OF THE FIREMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO; TRUSTEES OF THE MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND OF CHICAGO; and TRUSTEES OF THE LABORERS & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO, et al., Defendants-Appellees.	Appeal from the Circuit Court of Cook County. No. 13 CH 17450 Honorable Neil H. Cohen Judge Presiding

JUSTICE SIMON delivered the judgment of the court, with opinion.
Presiding Justice Connors and Justice Harris concurred in the judgment and opinion.

OPINION

¶ 1 This appeal is taken from the denial of a motion for a preliminary injunction. The case stems from the City of Chicago's plan to phase out the healthcare benefits it offers to its employees. The trial court held that one category of plaintiffs did not have a clearly ascertainable right in need of protection. The court then ruled that the other category of plaintiffs had some rights given by statute, but that the medical care plan offered by the City for 2016 was not a diminution in their benefits. We affirm.

¶ 2 BACKGROUND

¶ 3 The General Assembly created four pension funds for City employees in order to administer and carry out the provisions of the Illinois Pension Code ("Pension Code"): 1) the Policemen's Annuity Benefit Fund ("Police"); 2) the Firemen's Annuity Benefit Fund ("Fire"); 3) the Municipal Employees' Annuity Benefit Fund ("Municipal"), and 4) the Laborer's and Retirement Board Employees' Annuity Benefit Fund ("Laborers") (collectively "Funds"). The Funds' obligations to their annuitants under the Pension Code are financed by the taxpayers of the City through a tax levy. 40 ILCS 5/5-168 (West 2013).

¶ 4 In 1983, the General Assembly amended the Pension Code to require the Fire and Police Funds to contract with one or more insurance carriers to provide group health care coverage for their retirees. Ill Rev. Stat 1983, Ch. 108-1/2, par. 8-164.1 (eff. Jan.12 1983). The 1983 amendments also required the Funds to pay the premiums for such health insurance for each annuitant "up to a maximum of $55 per month if the annuitant is not qualified to receive Medicare benefits, or up to a maximum of $21 per month if the annuitant is qualified to receive Medicare benefits." Ill Rev. Stat 1983, Ch. 108-1/2, par. 8-167.5 (eff. Jan.12 1983). If the payments made by the Funds did not cover an annuitant's health care premium, the Funds were to deduct the additional cost from the annuitant's monthly pension payment. *Id.*

¶ 5 In 1985, the General Assembly amended the Pension Code to require the Municipal and the Laborers Funds to pay up to $25 per month toward the health care premiums of each annuitant age 65 or older with at least 15 years of experience. Ill Rev. Stat 1985, Ch. 108-1/2, par. 11-160.1 (eff. Aug. 16, 1985). If the monthly premium for such coverage exceeded the $25 per month, the Funds would deduct that amount from the retiree's monthly pension payment. *Id.*

¶ 6 In 1987, the City notified the Funds that it intended to cease making healthcare payments to the Funds' retirees no later than January 1, 1988. On October 19, 1987, the City filed suit seeking a declaration that it had no obligation to provide health care to retirees and to recover the money it had spent over the previous years. *City of Chicago v. Korshak*, No. 87 CH 10134 (Cir. Ct. Cook Cty.). The Funds counterclaimed for declaratory relief seeking to compel the City to continue healthcare coverage for the Funds' retirees. Two group of retirees intervened in the litigation: employees who retired on or before December 31, 1987, were certified as the "Korshak sub-class" and employees who retired after December 31, 1987, but before August 23, 1989 were certified as the "Window sub-class."

¶ 7 The issues in the Korshak litigation were never judicially resolved. Instead, in 1988, the parties entered into a settlement agreement which was subsequently codified through amendments to the Pension Code. The amendments specifically stated that the obligations set forth "shall terminate on December 31, 1997." 40 ILCS 5/167.5 (d) (as amended by P.A. 86-273, § 1, eff. Aug. 23, 1989). The amendments provided that between January 1, 1988, until December 31, 1992, the Funds "shall pay to the City on behalf of each of the Board's annuitants the following amounts: up to a maximum if $65 per month for each annuitant who is not qualified to receive Medicare benefits, and up to a maximum of $35 per month for each annuitant who is not qualified to receive Medicare benefits." *Id.* Next, from January 1, 1993,

through December 31, 1997, the Funds would pay "up to a maximum if $75 per month for each annuitant who is not qualified to receive Medicare benefits, and up to a maximum of $45 per month for each annuitant who is not qualified to receive Medicare benefits." *Id.* The amendments also required the City to pay 50% of the cost of the annuitants' health care coverage through 1997, and required the annuitants to make the payments for the remaining portion of their premiums. 40 ILCS 5/167.5(c) (as amended by P.A. 86-273, § 1, eff. Aug. 23, 1989).

¶ 8 In June 1997, before the expiration of the initial settlement period, the parties entered into a new settlement agreement which extended the settlement period until June 30, 2002. The new settlement was again codified by amendments to the Pension Code. The amendments provided that the Funds were required to pay "up to a maximum of $75 per month for each annuitant who is not qualified to receive Medicare benefits, and up to a maximum of $45 per month for each annuitant who is qualified to receive Medicare benefits." 40 ILCS 5/167.5(c) (as amended by P.A. 90-32, § 5, eff. June 27, 1997). The City was required to pay 50% of the cost of the annuitants' health care coverage. The amendments stated that the obligations would terminate on June 30, 2002.

¶ 9 In April 2003, the parties entered into a third settlement agreement extending the settlement period until June 30, 2013. The Pension Code was accordingly amended to codify the terms of the settlement. Pursuant to this amendment the Funds were responsible for payments to the City the following amounts:

> "(1) From July 1, 2003 through June 30, 2008, $85 per month for each annuitant who is not eligible to receive Medicare benefits and $55 per month for each such annuitant who is eligible to receive Medicare benefits
>
> (2) From July 1, 2008 through June 30, 2013, $95 per month for each such

annuitant who is not eligible to receive Medicare benefits and $65 per month for each such annuitant who is eligible to receive Medicare benefits."

40 ILCS 5/5-167.5 (b) (as amended by P.A. 93-42, eff. July 1, 2003).

¶ 10 The 2003 settlement agreement created the Retiree Health Care Benefits Commission ("RHBC") that would make recommendations concerning the state of retiree health care benefits, the costs of those benefits, and issues affecting the retirees benefits to be offered after July 1, 2013. The RHBC was constituted in 2011 with its members drawn from academia and labor union leadership, the fields of municipal finance, health care, health insurance, and business. The RHBC issued its report on January 11, 2013, concluding that continuing the existing healthcare arrangements for the retirees was not viable given the City's financial circumstances, industry trends, and market conditions.

¶ 11 Based on the RHBC's findings and recommendations, the City decided that after the 2003 settlement agreement expired on June 30, 2013, it would gradually reduce and, by 2017, end its coverage of health care benefits for retirees other than those in the Korshak and Window sub-classes. The City sent annuitants a letter dated May 15, 2013, informing them that the City extended the 2013 existing coverage through December 31, 2013. The letter stated that the City would continue coverage for the Korshak and Window sub-classes by offering them a health care plan and paying up to 55% of the cost for the plan for life. The City indicated that, for those who retired on or after August 23, 1989, it would make changes to their existing health care plan, including adjusting premiums and deductibles and modifying benefits, and gradually phase out the plan entirely over a 3-year period. Starting on January 1, 2014, the City commenced the 3-year phase-out of the prior subsidies of retiree health care for those who retired on and after August 23, 1989.

¶ 12 On July 23, 2013, plaintiffs filed a new action against the City and the trustees of the Funds. The case was removed to federal court on August 9, 2013. *Underwood v. City of Chicago*, No. 13 C 5687, 2013 WL 6578777 (N.D. Ill. Dec. 13, 2013). Plaintiffs raised the following claims: Count I sought a declaration that any reduction in plaintiffs' healthcare benefits would violate Art. XIII § 5 of the Illinois Constitution (the Pensions Clause); Count II alleged that a reduction of the benefits constituted a breach of contract, Count III asserted that the defendants were estopped from changing and terminating the annuitants' coverage to a level below the highest level of benefit during an annuitant participation in group healthcare benefits; Count IV alleged a claim under 42 U.S.C. § 1983 for deprivation of a property interest, and Count V alleged a violation of the Contract Clause, U.S. Const § 10, cl. 1. The complaint named four putative sub-classes of plaintiffs: 1) the Korshak sub-class (those retiring prior to December 31, 1987), 2) the Window sub-class (those retiring between January 1, 1988, and August 23, 1989), 3) any participant who contributed to any of the four Funds before August 23, 1989, (Sub-Class 3), and 4) any person who was hired after August 23, 1989 (Sub-Class 4).

¶ 13 The City filed a motion to dismiss before the federal district court which was granted. Plaintiffs filed a notice of appeal and then three successive motions asking the Seventh Circuit to enjoin the City's phase-out plan on retiree's health care coverage. All plaintiff's motions for injunctive relief were denied. On February 25, 2015, the Seventh Circuit affirmed the dismissal of plaintiffs' federal claims while the state law claims, counts I, II and III, were remanded to the circuit court. *Underwood v. City of Chicago*, 779 F. 3d 461, 462 (7th Cir. 2015).

¶ 14 Once the case was back in state court, on June 22, 2015, the City moved to dismiss plaintiffs' remaining state law claims pursuant to section 2-619.1 of the Code of Civil Procedure. Before the oral argument on the motion to dismiss, plaintiffs filed an Emergency Motion for

Preliminary Injunction on October 1, 2015. That motion sought to enjoin the third step of the City's three year plan to phase out the City's subsidy for retiree health care. The circuit court denied the motion and, on October 13, 2015, plaintiffs filed a notice of appeal from that order. Subsequently, after an agreement by the parties, plaintiffs withdrew that appeal and that record was transferred to this case.

¶ 15 The circuit court heard oral arguments on defendants' motion to dismiss on November 13, 2015, and then on December 3, 3015, it issued its memorandum and order. The court granted the City's motion to dismiss in part. It dismissed plaintiffs' contract and estoppel counts without prejudice. The court concluded that count I did state a claim under the 1983 and 1985 amendments for those plaintiffs who were hired prior to August 23, 1989 because the 1983 and 1985 amendments were not time limited. The circuit court rejected plaintiffs' arguments for lifetime benefits based upon the 1989, 1997 and 2003 Pension Code amendments which codified the various Korshak settlements holding that these amendments and settlement agreements provided only time-limited benefits.

¶ 16 In a March 3, 2016, Memorandum and Order, addressing the City's motion to clarify or, in the alternative to reconsider the December 3, 2015, ruling, the circuit court clarified that any obligation to provide or subsidize retiree medical benefits was limited to the Funds and did not extend to the City. The circuit court explained that "[t]he City is correct that it does not have any obligation under 1983 and 1985 amendments to subsidize or provide health care for the Funds' annuitants." Instead, the City's only obligation was to continue the pre-existing tax levy imposed by the Pension Code.

¶ 17 On December 10, 2015, plaintiffs filed a Renewed Emergency Motion for Preliminary Injunction seeking to enjoin the City from making its 2016 increases as previously established in

the phase-out plan and to preserve the *status quo* pending the resolution of the case on the merits. Plaintiffs argued that the City's 2016 plan diminished or impaired retirees' health care benefits in violation of the Pension Clause, and created financial hardship for retirees because, among other things, if retirees left the City's 2016 plan due to increased costs posed by that plan, they would not later be able to return to the City's plan without showing proof of good health. Plaintiffs argued that the effect of the City's actions would increase rates "as much as 40%" which they view as a violation of the Pension Code.

¶ 18 The City filed its opposition to the preliminary injunction motion arguing that the plaintiffs could not demonstrate either that they would be harmed or that their benefits would be diminished in violation of the Pension Clause. The City claimed that plaintiffs would be better off under the 2016 plan because they receive a greater premium subsidy than they would have received under the 1983 and 1985 statutes. The City also argued and presented evidence that there were other health care plans available for all retirees including non-Medicare eligible retirees that had lower-cost premiums than retirees could obtain through the City's 2015 previous plan.

¶ 19 After a hearing on December 23, 2015, the trial court denied plaintiffs' motion for injunctive relief finding that plaintiffs had not shown three of the required elements for such relief: an ascertainable claim for relief, a likelihood of success on the merits, and an inadequate remedy at law. The trial court held that plaintiffs who were hired after August 23, 1989 had no ascertainable claim for relief because the 1989, 1997, and 2003 settlement agreements and the Pension Code amendments codifying those agreements provided only time-limited health care benefits that had expired. The court noted that the other sub-classes, the Korshak, Window and sub-class three, while they had an ascertainable claim for relief under the 1983 and 1985

amendments, they could not establish a likelihood of success on the merits because the benefits that would have been available under those statutes are less than under the City's 2016 plan. The court also concluded that plaintiffs could not show that they lacked an adequate remedy at law. This appeal followed. We note that the instant appeal concerns solely the circuit court's ruling on the preliminary injunction regarding the 2016 increases.

¶ 20 ANALYSIS

¶ 21 On appeal, plaintiffs argue that the trial court erred in denying their motion for preliminary injunctive relief. A preliminary injunction is an extraordinary relief and will only be granted where a plaintiff shows: (1) that he has a clearly ascertainable right that needs protection, (2) that he will suffer irreparable harm without the protection, (3) that he has no adequate remedy at law, and (4) that he is likely to succeed on the merits. *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 399 (1993). A decision to grant or deny a preliminary injunction is generally reviewed for an abuse of discretion. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006). The party looking for injunctive relief has to establish all four elements by a preponderance of the evidence. *Gastroenterology Consultants of N. Shore, S.C. v. Meiselman*, 2013 IL App (1st) 123692, ¶ 9.

¶ 22 Here, the trial court did not abuse its discretion when it denied plaintiffs' motion for injunctive relief. The trial court properly held that plaintiffs hired after August 23, 1989 (Sub-Class 4), did not have an ascertainable right to health care benefits. The Illinois Constitution provides that "membership in any pension or retirement system of the State, any unit of local government . . . shall be an enforceable contractual relationship, the benefit of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. The Pension Code does not by itself confer those benefits. Instead, the benefits are created by contract or by statute. But, the

legislature can impose conditions, including time limitations on statutorily created rights. See *In re Petition for Detachment of Land from Morrison Cmty. Hosp. Dist.*, 318 Ill. App. 3d 922, 930 (2000) (the legislature may incorporate expiration dates on privileges it grants).

¶ 23 The 1989, 1997, and 2003 Pension Code amendments codifying the settlement agreements between the parties provided only time-limited health care benefits, all of which expired by 2013. Because all these amendments were expressly time-limited, they could not create and give plaintiffs rights beyond what the legislature afforded. Therefore, sub-class 4 has no ascertainable claims to lifetime health care benefits, and it was not an abuse of discretion to deny them preliminary injunctive relief.

¶ 24 The trial court also correctly determined that the rest of the plaintiffs could not demonstrate a likelihood of success on the merits of their Pension Clause claim concerning the other two statutes, the 1983 and 1985 Pension Code amendments. The 1983 and 1985 Pension Code amendments were not time limited. So this was the primary issue for the trial court to decide: have the retirees made a sufficient showing that the 2016 version of the plan diminishes or impairs what they are entitled to under the 1983 and 1985 amendments. And, following the hearing on the preliminary injunction and based on all of the evidence submitted, the circuit court determined that the City's 2016 plan did not diminish or impair the benefits that were set forth in the 1983 and 1985 amendments.

¶ 25 The record amply supports the trial court's determination. The retirees received greater health care subsidies under the City's 2016 plan than what they received under the 1983 and 1985 amendments. Under the 1983 and 1985 amendments, the maximum amount that the Funds were required to pay for its annuitants was $21 or $55 per month for the Police and Fire retirees, and $25 per month for Municipal and Labor retirees if they satisfied the Pension Code's

eligibility requirements. Neither the 1983 or 1985 amendment provided for any increase in these monthly subsidies nor did they provide for fixed premiums. In addition, under these amendments, retirees were responsible for the difference between the required monthly premiums and the Funds' monthly subsidies. In contrast, under the City's 2016 plan, Medicare-eligible retirees receive monthly premium subsidies raging from $65 to $159 and non-Medicare eligible retirees receive monthly premium subsidies between $95 to $399.

¶ 26 The trial court heard all the evidence. It analyzed the 2016 plan as compared to what it found the retirees were entitled to under the amendments. The court discussed the possibility that the retirees were actually better off under the 2016 plan. Its finding that the retirees failed to demonstrate that they had a likelihood of succeeding on the merits for a claim that the 2016 plan was a diminishment of anything that they were entitled to was not an abuse of discretion.

¶ 27 Plaintiffs believe that the trial court ignored our supreme court's holding in *Kenerva v. Weems*, 2014 IL 115811—that there is a presumption in favor of pensioners and that the Pension Code is not restricted to protecting what is provided therein. But, again, the relevant constitutional provision and case law do not create benefits—they protect them. In *Kanerva*, the benefit recipients already had the enduring right. *Id.* at ¶ 57. The Court just explained that, based on our constitution, it could not be taken away. *Id.* at ¶ 42. But here, the benefit always came with an expiration date. The time period was part of the benefit itself. The only enduring rights that these retirees ever contracted for or were successfully able to get adopted by the legislature are those codified in the 1983 and 1985 amendments. The retirees know, because they have now negotiated and settled with the City several times, that they had a ten-year plan in place to cover their healthcare benefits. But at this preliminary stage, they have not demonstrated a likelihood of succeeding on the merits for a constitutional claim to lifetime

healthcare benefits.

¶ 28 The retirees also refer us to the City Annuitant's Handbook and maintain that they have rights based on that. But the handbook does not state that the retirees are entitled to lifelong medical benefits. In fact, the book refers several times to the idea that the plan will at some time terminate. The trial court likewise did not abuse its discretion in refusing to grant a preliminary injunction on the basis of a contract claim.

¶ 29 The retirees claim that they are entitled to continued benefits based on the fact that they were told that they would have lifetime healthcare by the City. They point to retirement seminars and other supposed communications where they were allegedly informed that their healthcare would be taken care of. In order to apply equitable estoppel against a municipality, a plaintiff must plead specific facts that show: (1) an affirmative act by either the municipality itself or an official with express authority to bind the municipality; and (2) reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position. *Vaughn v. City of Carbondale*, 2016 IL 119181, ¶ 48. The usual elements of estoppel are further supplemented with the additional restriction that a public body will be estopped only when necessary to prevent fraud or injustice, particularly when public revenues are involved. *Id.* Perhaps the retirees can meet their burden on a claim of this nature at trial, but they have not done so here. At this stage they have not shown that they can overcome the statute of frauds nor have they shown any express act by the City or any authorized representative to bind itself to such a commitment. They have not even produced evidence from a witness who might have heard these promises.

¶ 30 Insofar as the 2016 plan is concerned, the trial court did not abuse its discretion in denying the extraordinary relief that is a preliminary injunction. The retirees did not make a

sufficient showing that they have a clear right to anything other than what is in the 1983 and 1985 amendments. That being so, the trial court reviewed the 2016 plan side by side with what is provided for in the amendments, compared them, and exercised its discretion to determine that the 2016 plan did not constitute any diminishment of the benefit the retirees are entitled to.

¶ 31 CONCLUSION

¶ 32 Accordingly, we affirm.

¶ 33 Affirmed.

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