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

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| **MICHAEL W. UNDERWOOD, et al.,** | ) | |
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| **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 benefits.

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