EXHIBIT 20

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

[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