

2 **Introduction:**

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The ability to find implied rules is important in preparing for class, preparing an outline, and practicing law. In the following document, Professor Gibson examines *Ruben Garcia v. Conoco Oil Co.*, page-by-page, line-by-line, stating the express and implied rules. Nearly every technique is used for spotting rules. The following case is not unadulterated. It is a composite of several opinions including doctrinal material and professorial notes.

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Ruben Garcia v. Conoco Oil Co., 345 F.3d 789 (12th Cir. 2002)

ELLEN PETERS, J.

This action arose because of the national uncertainty of oil supplies in the summer of 2000. Conoco Oil Co., defendant, produces and distributes petroleum products. The plaintiff, Ruben Garcia, contacted Conoco in late December, 1999, about the possibility of locating a combination foodstore and service station on a site in Middleton. He purchased the site and the station on it in February, 2000, and made improvements upon it, based upon promises made by, and the continuing negotiations with, representatives from Conoco. Garcia also testified, and Conoco's witnesses agreed, that Conoco's usual practice was to agree to an annual dealership agreement, which would automatically renew unless either party gave notice of termination at least thirty days before the agreement's expiration. Paperwork apparently proceeded normally, and Garcia's proposal was delivered to Conoco in April 2000. Before Conoco accepted Garcia's proposal, but after it was

2 received at the office, Conoco placed a nation-wide moratorium on the consideration of new applications for dealerships and refused to sign the agreement.

4 Garcia sued Conoco on two counts: breach of contract and promissory estoppel. After a bench trial, the trial court found against Garcia on breach of contract and for Garcia on the theory
6 of promissory estoppel, as per Section 90 of the **RESTATEMENT (SECOND) OF CONTRACTS**.¹
8 The correctness of the first finding is too obvious to warrant discussion, and we affirm the trial court's decision on the contract issue. The only issues that need review concern promissory estoppel. More particularly, we must examine the award of damages in the form of lost profits (normally
10 awarded in breach of contract actions), and Garcia's alleged failure to take reasonable steps to mitigate his damages. We affirm the judgment of the district court.
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14 Conoco first argues that the trial court committed error by ignoring evidence that Garcia failed to take reasonable steps to mitigate his damages. The record clearly reflects, however, that after
16 Conoco rejected Garcia's application, he contacted four other oil companies and was rejected by each of them, apparently because they, too, had stopped accepting new dealers. There are ample facts in
18 the record to support the finding of the trial court that Garcia exercised the ordinary care of a person in the same circumstances to mitigate his damages. That finding, under the evidence, was not clearly
20 erroneous. Furthermore, the trial court found that Garcia "had no gasoline market experience and was not familiar with the marketing practices of gasoline companies." Thus, the fact that alternative
22 suppliers may have existed if Garcia had asserted legal rights, and complied with Department of Energy regulations, does not alone impose the duty to mitigate damages by searching for additional
24 sources, if Garcia lacked the sophistication with which to conduct such a search.

26 Conoco next argues that the trial court's computation of damages is clearly erroneous and
28 contrary to the law. The trial court found that Garcia lost anticipated profits of six cents per gallon for the 370,000 gallons he would have received under his allocation for the first year's gasoline sales,
30 totaling \$22,200.00, and awarded this amount in damages. The appellant insists that since Garcia succeeded at trial solely on a promissory estoppel theory, and the district court so found, loss of
32 profits is not a proper measure of damages. It contends that Garcia's damages should have been the amount of his expenditures in reliance on the promise, measured by the difference between his
34 expenditures and the present value of the property. Using this measure of damages, Garcia would have received no award, for the present value of the real estate and its improvements is slightly more
36 than the amount expended by Garcia in reliance upon the promise. As a consequence, Conoco says

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46 ¹ Professorial Note: The Restatements are multi-volume summaries of the law in particular areas. The American Law Institute and the National Conference of Commissioners on
48 Uniform State Laws wrote them. The Restatement of Contracts appeared in 1932; the Restatement (Second) of Contracts appeared in 1982. Each purports to summarize existing law
50 and to suggest changes that would improve the law.

2 that because Garcia can recoup all he spent in reliance on Conoco's promise, he would be in the same
3 position he would have been in had the promise not been made. This, of course, is the goal of
4 reliance damages.

5 Traditionally, contract law enforced only those promises supported by mutual consideration
6 bargained for and exchanged by the two parties, and it enforced such promises in full.² But we often
7 have used Section 90(1) to protect injured parties:

8 A promise which the promisor should reasonably expect to induce action or
9 forbearance on the part of the promisee or a third person and which does induce such
10 action or forbearance is binding if injustice can be avoided only by enforcement of the
11 promise. The remedy granted for breach may be limited as justice requires.

12 See also Illustration 1 to Section 90.³

13 Our task is to determine the appropriate type of damages to be awarded in an action under
14 § 90. Comment d, speaking of partial enforcement, says

15 A promise binding under this section is a contract, and full-scale enforcement by
16 normal remedies is often appropriate. But the same factors which bear on whether any
17 relief should be granted also bear on the character and extent of the remedy. In
18 particular, relief may sometimes be limited to restitution or to damages or specific
19 relief measured by the extent of the promisee's reliance rather than by the terms of the
20 promise.⁴

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34 ² Scholars have dubbed this the "expectation" interest, since it puts the aggrieved party
35 where it expected to be if the breaching party had fully performed. See Fuller & Perdue, *The*
36 *Reliance Interest*, 46 YALE L.J. 52(1936). In contrast, the "reliance" interest compensated the
37 aggrieved for losses he has suffered or expenses he has incurred in reliance on the promise. *Id.*
38 Except in a losing contract, the expectation interest always exceeds the reliance interest.

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40 ³ "A, knowing that B is going to college, promises B that A will give him \$5,000 on
41 completion of his course. B goes to college, and borrows and spends more than \$5,000 for college
42 expenses. When he has nearly completed his course, A notifies him of an intention to revoke the
43 promise. A's promise is binding and B is entitled to payment on completion of the course without
44 regard to whether his performance was "bargained for" under § 71."

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46 ⁴ The relevant Illustrations to Comment d say
47 **8.** A applies to B, a distributor of radios manufactured by C, for a "dealer franchise" to
48 sell C's products. Such franchises are revocable at will. B erroneously informs A that C has
49 accepted the application and will soon award the franchise, that A can proceed to employ
50 salesmen and solicit orders, and that A will receive an initial delivery of at least 30 radios. A
expends \$1,150 in

2 We shall now attempt to follow the RESTATEMENT'S guidance. In reliance upon Conoco's
3 promise to supply gasoline supplies, Garcia purchased the station, and invested his funds and time.
4 It is unreasonable to assume that he did not anticipate a return of profits from this investment of time
5 and funds, but, in reliance upon Conoco's promise, he gave up the opportunity to invest the money
6 and time elsewhere. As indicated, the record reflects that had Conoco performed according to its
7 promise, Garcia would have received the anticipated net profit of \$22,200.00.

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9 The findings of the trial court in this regard were fully supported by the evidence. For
10 example, it was shown that the 1999-2000 base period for this particular station was 375,450 gallons.
11 The appellant's own exhibit reflected the same amount. The testimony of the previous owner showed
12 that the location pumped 320,000 gallons in 1998, and that he pumped 375,450 gallons in 1999.
13 Furthermore, an expert witness testified that the site would pump 360,000 gallons a year. Conoco's
14 own witness testified that all of its dealers received 100% of their base period allocation for the time
15 in question. Thus, the trial court was not clearly erroneous in its finding that Garcia would have sold
16 370,000 gallons of gasoline in its first year of operation had Conoco performed its promise.

17 An equity court possesses some discretionary power to award damages in order to do

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30 preparing to do business, but does not receive the franchise or any radios. B is liable to A for the
31 \$1,150 but not for the lost profit on 30 radios. Compare RESTATEMENT, SECOND, AGENCY
32 § 329...

33 **10.** A, who owns and operates a bakery, desires to go into the grocery business. He
34 approaches B, a franchisor of supermarkets. B states to A that for \$18,000 B will establish A in a
35 store. B also advises A to move to another town and buy a small grocery to gain experience. A
36 does so. Later B advises A to sell the grocery, which A does, taking a capital loss and foregoing
37 expected profits from the summer tourist trade. B also advises A to sell his bakery to raise capital
38 for the supermarket franchise, saying "Everything is ready to go. Get your money together and we
39 are set." A sells the bakery taking a capital loss on this sale as well. Still later, B tells A that
40 considerably more than an \$18,000 investment will be needed, and the negotiations between the
41 parties collapse. At the point of collapse many details of the proposed agreement between the
42 parties are unresolved. The assurances from B to A are promises on which B reasonably should
43 have expected A to rely, and A is entitled to his actual losses on the sales of the bakery and
44 grocery and for his moving and temporary living expenses. Since the proposed agreement was
45 never made, however, A is not entitled to lost profits from the sale of the grocery or to his
46 expectation interest in the proposed franchise from B.

47 **12.** A promises to make a gift of a tract of land to B, his son-in-law. B takes possession
48 and lives on the land for 17 years, making valuable improvements. A then dispossesses B, and
49 specific performance is denied because the proof of the terms of the promise is not sufficiently
50 clear and definite. B is entitled to a lien on the land for the value of the improvements, not
exceeding their cost.

2 complete justice. *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Minnis v. International*
3 *Union, United Automobile, Aerospace and Agricultural Workers of America, UAW*, 531 F.2d 850
4 (8th Cir. 1975). Furthermore, since it is the historic purpose of equity to secure complete justice,
5 the courts are able to adjust the remedies so as to grant the necessary relief, *Equal Employment*
6 *Opportunity Commission v. General Tel. Co. of Northwest, Inc.*, 599 F.2d 322 (9th Cir. 1979),
7 **affirmed**, 446 U.S. 318 (1980), and a district court sitting in equity may even devise a remedy
8 which extends or exceeds the terms of a prior agreement between the parties, if it is necessary to
9 make the injured party whole. *Levitt Corp. v. Levitt*, 593 F.2d 463 (2nd Cir. 1979).
10 Since promissory estoppel is an equitable matter, the trial court has broad power in its choice of a
11 remedy, and it is significant that the ancient maxim that "equity will not suffer a wrong to be
12 without a remedy" has long been the law. [citations omitted]

13 In this case the promissory estoppel finding of the district court is correct under RESTATEMENT
14 (SECOND) § 90. Moreover, it is apparent that Garcia suffered a loss of profits as a direct result of
15 his reliance upon the promise made by appellant, and the amount of the lost profits was
16 ascertained with reasonable certainty.⁵ In addition, Garcia took reasonable steps to mitigate his
17 damages, and an award of damages based upon lost profits was appropriate in order to do
18 complete justice.

19 Since the findings of the district court are not clearly erroneous, we affirm the judgment which
20 awards damages to Garcia based upon lost profits.

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38 ⁵ In *Goodman v. Dicker*, 169 F.2d 684 (D.C.Cir. 1948), relied upon by Conoco, the court held
39 that the true measure of damages in that equitable estoppel case was the loss in the sum of \$1150
40 sustained by expenditures made in reliance on assurances given to the injured parties, and that the
41 trial court had erred in adding the item of \$350 for lost profits, for a total of \$1500.

42 No reasons were assigned or authorities cited by the court for the action it took, and there was no
43 suggestion that in an appropriate case loss of profits could not be a true measure of damages. In
44 any event, it is apparent that the award of figure of \$1150 was chosen in order to do complete
45 justice. In this connection, it is interesting to note that in *National Savings and Trust Company v.*
46 *Kahn*, 300 F.2d 910 (D.C.Cir. 1962), the same circuit commented that "(T)he cost of performance
47 may be the proper measure of damages where plaintiff renders part performance and it is
48 impossible to estimate the profits he would have received but for defendant's breach. That is not
49 this case." (Emphasis supplied). *See id.* at 914 n. 7.
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