COURT OF APPEALS
DECISION
DATED AND FILED

June 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2532 **Cir. Ct. No. 2011CV1298**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MARC A. BLANC AND SCHULZ AUTOMOTIVE MACHINE, LTD. D/B/A CARQUEST AUTO PARTS OF JANESVILLE,

PLAINTIFFS-APPELLANTS,

V.

CITY OF JANESVILLE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed*.

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. This case involves claims for relocation assistance and related benefits after the City of Janesville considered purchasing, but did not ultimately acquire, a property owned by Marc Blanc and rented by Schulz Automotive Machine, Ltd. Blanc and Schulz Automotive appeal an order

granting summary judgment in favor of the City, which effectively denied Schulz Automotive's claim for relocation assistance and Blanc's claims for rental losses and legal expenses. On appeal, Schulz Automotive argues that it meets the definition of a "displaced person" and thus is entitled to relocation assistance. Blanc argues that he is entitled to recovery of rental losses and legal expenses under constitutional and estoppel theories. We conclude that Schulz Automotive did not move from the property as a direct result of any circumstances set forth in WIS. ADMIN. CODE § ADM 92.01(14)(a) (Dec. 2011) and thus is not a "displaced person" under the Wisconsin statutes and administrative code. We also conclude that Blanc is not entitled to rental losses or legal expenses under any of the theories on which he relies. Therefore, we affirm.

BACKGROUND

¶2 For purposes of our summary judgment analysis, the following facts are undisputed and reflect the chronology of events and contacts between the City and Blanc, relating to the City's possible acquisition of Blanc's property located at 545 North Main Street. Blanc is a minority shareholder of Schulz Automotive and leased the property to Schulz Automotive for a five-year term beginning May 1, 2006, for $2,166.66 per month. Schulz Automotive operated Carquest Auto Parts of Janesville, a retail auto parts store, on the property. On June 9, 2007, a fire damaged the property, causing Schulz Automotive to enter into a month-to-month lease commencing on June 14, 2007, in a building next to the damaged property.

¶3 Prior to Blanc acquiring ownership of the 545 North Main Street property in 2006, the City expressed interest to the previous owner in acquiring the property as part of a redevelopment project for the City's riverfront area. After the fire, on July 2, 2007, the City's Leisure Services Director, Michael Williams, met

with Blanc regarding the City's possible purchase of the property. Williams noted in an internal e-mail dated July 5, 2007, that "[t]here was a recent fire at this location and the City Manager directed staff to talk to the owner about potential acquisition."

¶4 On July 12, 2007, a City representative interviewed Blanc about his business and completed a relocation plan questionnaire. Later in July, the City contracted with an appraisal company to appraise the property. The appraiser inspected the property on August 2 and sent its report to the City on August 22. The appraiser valued the property at $265,000 in its "as-is" condition, $309,000 in its "pre-fire" condition, and $350,000 in its anticipated condition upon completion of proposed improvements.

¶5 Also during August 2007, the City submitted a relocation plan to the Wisconsin Department of Commerce[1] in compliance with WIS. STAT. § 32.25 (2011-12).[2] The Department of Commerce approved the plan on August 21, 2007. In a confidential memo to the City Manager dated August 29, 2007, Williams wrote that "City Administration is requesting permission from the City Council to proceed with negotiations with the owner in an effort to secure an offer to purchase the Car Quest property.... The approval of an offer to purchase will require the review of the Plan Commission and the approval by the City Council ...." The memo further noted that the "building was not condemned following the

[1] As of January 1, 2012, the Department of Administration, rather than the Department of Commerce, is responsible for the approval of relocation plans, and the Wisconsin Administrative Code provisions governing relocation assistance were renumbered from WIS. ADMIN. CODE § COMM 202.001, *et. seq.* to WIS. ADMIN. CODE § ADM 92.001 *et. seq.*

[2] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

fire, so the owner does have the option to renovate the interior which was damaged by the fire…. [T]he owner has expressed interest in relocating his business to a location which is more convenient to his customers."

¶6 Meanwhile, on August 23, 2007, Blanc submitted an offer to purchase a property located at 1908 Humes Road, which the seller accepted that same day. The purchase contract provided a closing date of September 25, 2007.

¶7 On September 10, 2007, the City Council authorized negotiations for acquiring the property, "including, but not limited to, a purchase price of $190,000 less insurance proceeds for the damage to the property, and other terms and conditions."

¶8 On September 24, 2007, Al Hulick, the City's Development Specialist, sent a letter to "Marc Blanc Carquest Auto Parts" informing Blanc that the City's appraised value of the property was $265,000. Hulick explained that "it is our understanding that you wish to continue operating your business at an alternative location if the City moves forward with the acquisition of your property." Hulick explained that state statutes "mandate that when property is purchased by a local governmental unit, relocation benefits must be offered to any parties that will be displaced as a result of that acquisition," and that a "total package *could* be as much as $325,000" with moving expenses, business replacement and business reestablishment amounts included. (Emphasis in original.)

¶9 The next day, Williams sent a letter addressed to "Mr. Marc Blanc Car Quest Auto Parts" stating that "[t]his letter and the attached letter from Al Hulick should provide you with the additional information you requested regarding the financial benefits available to you if the City of Janesville acquires

your property at 545 N. Main Street." Williams summarized the costs, in addition to the relocation benefits and acquisition price, which the City would incur if the acquisition occurred.

¶10 On October 16, 2007, Blanc offered to sell the property to the City for "$636,917.81, [i]n addition to the state relocation package that we have discussed, the Business Replacement payment, the Re-establishment payment, Moving Estimate, and others, plus closing costs as discussed." Blanc explained in the letter that he reached this figure by relying on the same price per square foot of property that the City had offered to another riverfront business owner in 2006.

¶11 On October 22, 2007, Williams, on behalf of the City, replied to Blanc stating that Blanc's "counter-offer is unacceptable" and that it "is inappropriate to compare your property with the [other riverfront] parcel." Williams wrote:

> I was initially optimistic that we had an opportunity to negotiate an acquisition package. The unfortunate fire at your place of business seemed to be an opportunity for both you and the City. I am less optimistic now. I have discussed your property with key members of the City Administration. As you know, we are currently negotiating the acquisition of several riverfront parcels. It would be desirable if we could still negotiate a reasonable purchase price. If not, we will shift our attention to other willing sellers of riverfront parcels.
>
> … I am prepared to support the higher [appraised] value of $375,000. Based on the State approved plan, your estimated relocation payment would be $40,000. Based on your quotation for moving expenses, we would establish a reimbursement payment of $47,510.... This offer to purchase is subject to the approval of the Plan Commission and City Council….
>
> I also heard from a reliable source that you may have already purchased another piece of property for your business. If that is the case, then it is important for you to realize that you would not be eligible for relocation or

> moving expense reimbursement. If you have any questions about your eligibility, please contact Al Hulick ....
>
> In closing, I hope you find the City's counter-offer of $375,000 acceptable. If that is not the case, then we will go our separate ways.

¶12 On November 1, 2007, Schulz Automotive entered into a five-year lease with 1908 Humes Road LLC, commencing December 1, 2007, for the property purchased by Blanc located at 1908 Humes Road.

¶13 On November 8, 2007, Hulick sent a letter to Blanc individually at his home address, stating "[t]he City of Janesville is interested in purchasing your property located at 545 North Main Street. This is a notice of entitlement for relocation assistance." The letter provided that the "effective date of this notice is October 22, 2007," the date on which Williams informed Blanc that he was willing to seek approval from the City for the higher value of $375,000. The letter outlined the various categories of relocation expenses.

¶14 On November 14, 2007, Blanc submitted to Hulick "documentation and information" for the business relocation assistance, including a quote for moving expenses, estimates for signage packages (which falls under the business reestablishment category of assistance), and copies of the original lease for the property and the lease of the replacement property.

¶15 On November 19, 2007, Williams wrote to Blanc to summarize Williams's recent meeting with City Administration, noting that his comments were "consistent with our phone conversation on November 13." Williams stated: "Unless you are willing to reduce the purchase price to the 'as is' value, the Administration prefers to shift our resources and time to a different acquisition project. Of course, the relocation and moving expense assistance, which we

previously identified, would remain unchanged if we would acquire your property."

¶16 The next day, Hulick sent a letter to Blanc to "clear up an item of concern contained in [Blanc's November 14] letter." Hulick explained:

> The letter that I sent you dated November 8, 2007 indicated that you do not need to move now and will not be required to move without at least a 90-day written notice. In the event the City Council approves the purchase of the property located at 545 N. Main St., you will receive that written notice and will have your relocation information reviewed and reimbursed accordingly.
>
> Wisconsin Administrative Code Comm 202.01 (14)(b) indicates that a "Displaced Person" does not include (1.) a person who moves before initiation of negotiations. The purpose of my November 8, 2007 and our previous conversation was to inform you that City staff had determined that you had not moved prior to the initiation of negotiations with the City, and that in the event the City does acquire 545 N. Main St. we would consider you a "Displaced Person." I want to make it clear that, Comm 202 (14) (a) (1.) further indicates that a person who moves after the initiation of negotiations, but before the acquisition, will receive relocation benefits **if** the property is subsequently acquired.
>
> Therefore, in the event that the City Council approves the purchase of 545 North Main Street, you will be notified in writing by the City that Carquest will have 90 days to move from said property. At that time, the City will begin to review and approve your relocation payments. I apologize for any confusion in this matter.

(Emphasis in original.)

¶17 On January 4, 2008, the Department of Commerce responded to Schulz Automotive's "request for a review of the City of Janesville decision to deny relocation benefits." The Department of Commerce opined that Blanc "chose to accommodate the City's stated objective of acquiring parkland and

should be declared a displaced person eligible for relocation benefits regardless of the City's success in actually acquiring the property." The Department of Commerce's theory was that the City, while representing that it was only pursuing an arm's length transaction in acquiring property, "cannot deny the condemnation authority of future Councils" and "could simply take [Blanc's] property at the price they indicated leaving [Blanc] to litigate just compensation in the courts." The Department of Commerce noted that "[t]his is only an opinion and not binding in anyway upon you or the City."

¶18 On January 13, 2008, Blanc wrote to Williams, offering to sell the property for "$329,000, along with the relocation package, and the 2007 property taxes that you offered." Blanc noted that "with or without completion of this sale, CARQUEST Auto Parts will pursue full payment of the Relocation package, as per the Department of Commerce decision." The City declined the counter offer and explained that it had opted to pursue acquisition projects downtown, rather than in the riverfront area.

¶19 On February 24, 2010, Blanc entered into a one-year lease with a new tenant for the property commencing on March 1, 2010. On July 7, 2011, Blanc and Schulz Automotive filed this lawsuit against the City. Blanc sought recovery of rental losses in the amount of $60,767, for the period from December 1, 2007, when Schulz Automotive vacated the property, to March 1, 2010, when Blanc secured a new tenant for the property. Blanc also claimed $2,035 in legal expenses that he incurred negotiating the purchase of the 1908 Humes Road property. Schulz Automotive claimed relocation assistance in the amount of $75,420, based on the sum of the statutory maximum amounts for business replacement, reestablishment, and search expenses ($30,000, $10,000 and $1,000, respectively) and actual moving expenses of $34,420.

¶20 The City moved for summary judgment, which the circuit court granted. The circuit court found that Schulz Automotive was not displaced and therefore was not entitled to receive relocation assistance. The circuit court rejected Blanc's equitable claims for rental losses and legal expenses, stating that "his conduct is the reason there was no purchase to begin with. He drove a hard bargain. He didn't get the deal he wanted, [and the] city walked away." Blanc and Schulz Automotive now appeal.

DISCUSSION

¶21 We review summary judgment de novo, applying the same method as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when there is no material factual dispute and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Summary judgment methodology is well established and need not be repeated here. *See, e.g.*, ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751.

¶22 This appeal presents the following issues: (1) whether Schulz Automotive qualifies as a "displaced person" entitled to relocation assistance, and (2) whether Blanc is entitled to recover rental losses and legal expenses under constitutional or estoppel theories. We conclude, as explained below, that neither Schulz Automotive nor Blanc is entitled to recover the amounts sought.

A. Schulz Automotive's Claim for Relocation Assistance

¶23 WISCONSIN STAT. § 32.19 is part of the statutory chapter governing eminent domain and provides for payments to persons or businesses displaced by public projects. WISCONSIN ADMIN. CODE ch. ADM 92 implements WIS. STAT.

§§ 32.185 through 32.27 by establishing minimum standards for providing relocation payments to displaced persons who move as a result of an agency's acquisition of property for a public project. WIS. ADMIN. CODE § ADM 92.001.[3] A "displaced person" is defined, in relevant part, as:

> any person who moves from real property ... [a]s a direct result of a written notice of intent to deny possession or use of rented property or to purchase real property, the initiation of negotiations for, or the purchase of, such real property by a displacing agency, in whole or in part, for a public project. A person is also considered to have moved because of the purchase when the person occupies a property at the time of initiation of negotiations, but moves before acquisition, if the property is subsequently acquired ....

WIS. ADMIN. CODE § ADM 92.01(14)(a)1. To summarize, a person[4] is considered "displaced" if a person moves as a *direct result* of: (1) a written notice of intent to deny possession or use of rented property, (2) a written notice of intent to purchase real property, (3) the initiation of negotiations for real property, or (4) the purchase of the real property. *See* ***id.***

¶24 Schulz Automotive argues that it meets the definition of a "displaced person," because "[n]otice of intent to acquire or initiation of negotiations dates from September 24, 2007," and, as a result of that triggering event, Schulz Automotive entered into a lease in November 2007 and moved in December 2007.

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[3] The relocation assistance statutes are "related" to and "sometimes overlapping" with the condemnation statutes; however, they are separate and have different applications. ***City of Racine v. Bassinger***, 163 Wis. 2d 1029, 1037 n.6, 473 N.W.2d 526 (Ct. App. 1991). In the absence of a condemnation, the relocation assistance laws may still apply. ***Id.*** (citing 68 Op. Att'y Gen. 3 (1979) and 63 Op. Att'y Gen. 201 (1974)).

[4] Schulz Automotive qualifies as a "person" for purposes of relocation assistance. *See* WIS. ADMIN. CODE § ADM 92.01(29) (including "business or farm operation" under the definition of "person").

In other words, Schulz Automotive argues that the City's correspondence constituted either initiation of negotiations to ultimately purchase the property or written notice of intent to purchase the property, and that, under either characterization, Schulz Automotive moved locations as a direct result of the City's actions. We conclude that the record does not support either of Schulz Automotive's two characterizations of the City's correspondence.

¶25 First, Schulz Automotive did not move as a direct result of the City's initiation of negotiations because the City's correspondence prior to Schulz Automotive's move did not meet the statutory definition of "initiation of negotiations." WISCONSIN ADMIN. CODE § ADM 92.01(21) defines the "initiation of negotiations" in acquisition projects as "the date a displacing agency, or its representative, initially contacts an owner of real property, or the owner's representative *and makes a written monetary offer* to purchase the property." (Emphasis added.)

¶26 Here, the City never made a written monetary offer to purchase the property. The City's September 24, 2007 letter informed Blanc that the "total package *could* be as much as $325,000" which was based on the property's "appraised value (current condition) of $265,000" and an "estimated payout" of relocation benefits. The language in this letter does not constitute a "written monetary offer to purchase," because the letter merely informs Blanc as to the City's appraised value of the property and an estimated relocation benefits package.

¶27 The City's October 22, 2007 letter, the only other letter from the City in which a purchase price was discussed *before* Schulz Automotive moved, also does not constitute a written monetary offer to purchase. In that letter,

Williams wrote: "I am prepared to support the higher value of $375,000.... This offer to purchase is subject to the approval of the Plan Commission and the City Council." This language cannot constitute a written offer to purchase, because the offer had not yet been approved by the City. Under WIS. ADMIN. CODE § ADM 92.06(5), "[a]n offer to purchase a property shall be in writing and shall establish the date of initiation of negotiations. However, the date of a verbal monetary offer to purchase authorized by the acquiring agency shall be considered as initiation of negotiations to establish eligibility for a relocation benefit." If, under the administrative code, a verbal monetary offer must be authorized by the acquiring agency, so too must a written offer be authorized, as it would be absurd for the statutory scheme to allow unauthorized written offers to bind municipalities while requiring that verbal offers be authorized.

¶28 While in the last paragraph of the October 22 letter Williams labels its contents as the City's "counter-offer," the letter's language quoted in the previous paragraph expressly communicates that Williams needed to present an offer of $375,000 to the City for its approval. Because as of the date of the letter the offer to purchase had not been approved by the City, it was not an authorized offer to purchase under WIS. ADMIN. CODE § ADM 92.06(5). In the absence of a written monetary offer to purchase, there was no "initiation of negotiations" under WIS. ADMIN. CODE § ADM 92.01(21).

¶29 Schulz Automotive argues that the City conceded on appeal that it initiated negotiations because, in its responsive appellate brief, the City wrote that "[n]egotiations for the purchase of the property … commenced on September 24, 2007." While perhaps carelessly drafted, this sentence does not concede that the "initiation of negotiations," as defined by statute, occurred on that date. Elsewhere the City plainly argues that there was no such initiation within the

meaning of the statute. And, as we have explained, without an authorized offer to purchase, the City did not initiate negotiations under the meaning of WIS. ADMIN. CODE ch. ADM 92.

¶30 Turning to Schulz Automotive's second alternative characterization, of the City's correspondence as "written notice of intent," we conclude that the record refutes this argument. The undisputed facts demonstrate that Schulz Automotive did not move as a result of any "written notice of intent" by the City to purchase the property. The City repeatedly indicated that any acquisition was potential and would only occur if the parties could agree on a purchase price, not by condemnation. Numerous statements in the City's correspondence expressed this position: the September 24, 2007 letter stated "*if* the City moves forward with the acquisition of your property"; the September 25, 2007 letter stated "*if* the City of Janesville acquires your property at 545 N. Main Street"; and the October 22, 2007 letter stated "[i]t would be desirable if we could still negotiate a reasonable purchase price. If not we will shift our attention to other willing sellers of riverfront parcels ... [and] go our separate ways." (Emphasis added.) In sum, the City's correspondence to Blanc consistently stated that it intended to purchase the property only if an agreement could be reached as to price. Therefore, Schulz Automotive's lease commitment in November 2007 was not the direct result of any written notice of intent to purchase the property, because the parties never met the City's condition, i.e. agreed on a purchase price.

¶31 To summarize, we conclude that summary judgment is proper in favor of the City as to Schulz Automotive's claim for relocation assistance, because Schulz Automotive did not meet the definition of a "displaced person" entitled to such assistance. We note that the City also argues that Schulz Automotive did not present a proper claim for relocation benefits to the City, but

because Schulz Automotive failed to meet the definition of a "displaced person," we need not address this argument, and we turn to Blanc's claims for rental losses and legal expenses.

B. Blanc's Claims for Rental Losses and Legal Expenses

¶32 Blanc seeks rental losses for the period from December 1, 2007, when his tenant, Schulz Automotive, moved from the property, to March 1, 2010, the date on which a new tenant took possession. Blanc also seeks recovery of legal expenses incurred in the purchase of the property at 1908 Humes Road. Blanc advances two theories in support of his claims: a constitutional theory and an equitable estoppel theory.[5] We reject both theories for recovery.

1. Blanc's Constitutional Theory for Recovery of Rental Losses

¶33 With regard to the constitutional theory, Blanc argues that he is entitled to lost rental income under the Wisconsin Constitution's "just compensation" provision, which provides: "The property of no person shall be taken for public use without just compensation therefor." WIS. CONST. art. I, § 13. Under the Wisconsin Constitution, "two types of governmental conduct can constitute a taking: (1) 'an actual physical occupation' of private property or (2) a restriction that deprives an owner 'of all, or substantially all, of the beneficial use of his property.'" ***E-L Enters., Inc. v. Milwaukee Metro. Sewerage Dist.***, 2010 WI 58, ¶22, 326 Wis. 2d 82, 785 N.W.2d 409 (quoted source omitted).

[5] Blanc concedes that he is not seeking statutory entitlement to rental losses. *See* WIS. STAT. § 32.195(6)(a) ("the condemnor shall reimburse the owner of real *property acquired for a project* for all reasonable and necessary expenses incurred for ... [r]easonable net rental losses [that are] *directly attributable* to the public improvement project." (Emphasis added.)

¶34 Blanc relies on ***Luber v. Milwaukee County***, 47 Wis. 2d 271, 283, 177 N.W.2d 380 (1970), a case in which the Wisconsin Supreme Court declared constitutionally invalid a former statute that set a twelve-month limit for rental losses caused by condemnation. The court explained: "We believe that one's interest in rental loss is such as is required to be compensated under the 'just compensation' clause .... [The statute] insofar as it limits compensation for the taking of such interest is in conflict with the state constitution." ***Id.*** [6] Blanc argues that under this holding, his rental losses must be justly compensated.

¶35 However, the present case is distinguishable from ***Luber*** because, unlike in ***Luber***, the City did not "take" Blanc's property. In ***Luber***, the property owners sought reimbursement for net rental losses as consequential damages of a county commission's condemnation of their property. ***Id.*** at 272-74. It was "undisputed that the pendency of the condemnation was the sole cause of the appellants' rental loss." ***Id.*** at 279. Here, Blanc's claimed rental losses were not caused by any pendency of condemnation because the City never exercised such power. The City did not undertake an "'actual physical occupation'" of Blanc's property, nor did it impose any restrictions that deprived Blanc of the beneficial use of his property. *See* ***E-L Enters., Inc.***, 326 Wis. 2d 82, ¶22 (quoted source omitted). There was no taking by the government here and Blanc is not entitled to compensation.

[6] Wisconsin courts have since noted that the ***Luber*** case was a "radical departure from the prevailing view" and should be "read and limited to its holding that the twelve-month limit as to rent losses allowable was constitutionally invalid." ***Hasselblad v. City of Green Bay***, 145 Wis. 2d 439, 442-43, 427 N.W.2d 140 (Ct. App. 1988); ***Rotter v. Milwaukee Cnty. Expressway & Transp. Comm'n,*** 72 Wis. 2d 553, 562, 241 N.W.2d 440 (1976).

¶36 Blanc argues that "the taking of the ability to collect rental income at a property constitute[s] a taking" under ***Maxey v. Redevelopment Authority of Racine***, 94 Wis. 2d 375, 288 N.W.2d 794 (1980). Blanc's reliance on ***Maxey*** is misplaced. First, the City did not take away Blanc's ability to collect rental income. Second, the context of ***Maxey*** is distinguishable. ***Maxey*** is an inverse condemnation case, a type of case governed by WIS. STAT. § 32.10, which requires a property owner to file its own inverse condemnation action, with a jurisdictional prerequisite "that the property prior to the commencement of the action 'has been occupied by a body possessing the power of condemnation.'" ***Maxey***, 94 Wis. 2d at 388. Blanc has not filed an inverse condemnation action nor would he meet the jurisdictional prerequisite.

¶37 In sum, we conclude that Blanc is not constitutionally entitled to his claimed rental losses as just compensation because no taking occurred. We now turn to the doctrine of equitable estoppel, Blanc's second theory for recovery of rental losses and legal expenses.

2. Blanc's Estoppel Theory for Recovery of Rental Losses and Legal Expenses

¶38 Blanc argues that under the doctrine of equitable estoppel, the City should be estopped from denying his claim for rental losses and legal expenses. Blanc cites ***State v. City of Green Bay***, 96 Wis. 2d 195, 201, 291 N.W.2d 508 (1980) for its recognition of the use and elements of equitable estoppel against governmental entities.[7] However, that case specifically and appropriately

[7] Equitable estoppel requires proof of four elements: (1) action or non-action; (2) on the part of one against whom estoppel is asserted; (3) which induces reasonable reliance thereon by the other, either in action or non-action; (4) which is to the relying party's detriment. ***Affordable Erecting, Inc. v. Neosho Trompler, Inc.,*** 2006 WI 67, ¶33, 291 Wis. 2d 259, 715 N.W.2d 620.

characterizes the doctrine as "the defense of equitable estoppel." ***Id.*** at 202. Generally speaking, "equitable estoppel (estoppel *in pais*) is a bar to the assertion of what would otherwise be a right; it does not of itself create a right." ***Murray v. City of Milwaukee***, 2002 WI App 62, ¶15, 252 Wis. 2d 613, 642 N.W.2d 541 (footnote omitted). Blanc must demonstrate his right to recover rental losses on a basis other than equitable estoppel, as equitable estoppel does not establish that right. *See* ***id.***[8]

¶39 The only other basis upon which Blanc claims entitlement to rental losses is his constitutional theory, which we have already determined to be without merit. Therefore, we conclude that Blanc is not entitled to rental losses under equitable estoppel. For the same reasons, we also conclude that Blanc cannot recover under an equitable estoppel theory the legal expenses that he incurred while negotiating the purchase of the 1908 Humes Road property.[9]

CONCLUSION

¶40 For the reasons stated, we affirm the circuit court's order granting summary judgment in favor of the City of Janesville.

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[8] We note that "[p]romissory estoppel, in contrast to equitable estoppel or estoppel *in pais*, does provide an affirmative basis for recovery." ***Murray***, 252 Wis. 2d 613, ¶15 n.10. However, Blanc has not presented an argument under this theory, and therefore we will not address its merits.

[9] In addition to his equitable estoppel theory for recovery of legal expenses, we note that Blanc devotes one paragraph in his brief-in-chief to theory of entitlement under WIS. ADMIN. CODE § ADM 92.92(5). We reject recovery under this theory as well, because Blanc does not meet the requirements of that regulation. Specifically, Schulz Automotive was not a "displaced person" for which a comparable replacement business was purchased, nor does Blanc, as a minority shareholder in Schulz Automotive, meet the definition of an "owner-occupant." *See* WIS. ADMIN. CODE §§ ADM 92.01(7), 92.01(28), 92.92.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.