2016 IL App (5th) 150148-U

NO. 5-15-0148

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DAPHNE BROWN-WRIGHT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 14-AR-662
	)	
EAST ST. LOUIS SCHOOL DISTRICT 189,	)	Honorable
	)	Heinz M. Rudolf,
Defendant-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's dismissal of the plaintiff's complaint is reversed, and the cause is remanded. The plaintiff sufficiently pled actions for promissory estoppel, breach of implied contract, and violation of the Illinois Wage Payment and Collection Act.

¶ 2 The plaintiff, Daphne Brown-Wright, filed a complaint in the circuit court of St. Clair County, alleging that the defendant, East St. Louis School District 189 (the District), failed to comply with its policy to pay a percentage of accumulated sick leave as severance pay upon her retirement. The plaintiff alleged claims for promissory estoppel, breach of implied contract, and violation of the Illinois Wage Payment and Collection Act (the Wage Payment Act) (820 ILCS 115/1 *et seq.* (West 2014)). The

circuit court granted the District's motion to dismiss the plaintiff's claims, and the plaintiff appeals. For the following reasons, we reverse and remand.

¶ 3 BACKGROUND

¶ 4 In the plaintiff's second-amended complaint, the plaintiff alleged that she was employed by the District from September 1975 until September 1999. The plaintiff alleged that she was thereafter rehired by the District in August 2002 and worked until June 30, 2012, when she retired. The plaintiff alleged that during her employment, she served the District for more than 33 years. The plaintiff alleged that her rate of pay on June 30, 2012, was $421.23 per day and that as of that date, she had accumulated 69.5 days of sick leave for the period between 2002 and 2012, in addition to more than 110.5 days of sick leave for the period between 1975 and 1998. Thus, the plaintiff alleged that during her employment with the District, she had accumulated 180 total sick days.

¶ 5 The plaintiff alleged that the District's policy regarding retirement of its administrative employees stated as follows:

> "Severance Pay for Administrators
>
> Accumulated sick leave shall be paid in severance pay when an administrator retires or leaves the system in accordance with policy. Severance pay shall be equal to 25% of the accumulated sick leave up to a maximum of 180 days for those administrators with 11 to 15 years of service to the District; 50% of the accumulated sick leave up to a maximum of 180 days for the administrators with 16 to 19 years of service to the District; and 75% of the accumulated sick leave for those administrators with 20 or more years of service to the District. This means

that the maximum number of days paid to an administrator shall be 135 days. The rate of pay for each day shall be the administrator's daily rate of pay on the date of the letter announcing [his or her] retirement or resignation. ***"

¶ 6 Pursuant to the District policy, the plaintiff alleged severance pay at the date of her retirement in the amount of $56,866.05 (180 x .75 x $421.23). The plaintiff alleged that on July 26, 2012, the District notified her in writing of its refusal to pay the accumulated sick leave severance.

¶ 7 On January 22, 2015, citing section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2014)), the District filed a motion to dismiss the plaintiff's second-amended complaint. In support of its motion, the District filed a copy of District policy 5:210, which mirrored the policy language alleged in the plaintiff's complaint. In its motion, the District argued that the plaintiff failed to allege a *prima facie* case of promissory estoppel because District policy 5:210 was adopted after her return to the District. The District further argued that the plaintiff could not impose an implied contract upon it because it was a local governmental entity. The District also argued that the plaintiff failed to sufficiently allege an employment contract pursuant to the Wage Payment Act (820 ILCS 115/2 (West 2014)).

¶ 8 At the April 14, 2015, hearing on the District's motion to dismiss, the circuit court addressed counts II and III, stating that there could be no implied contract against a governmental entity and that sick leave was not final compensation due under the Wage Payment Act. On the same date, the circuit court entered its order dismissing with

prejudice the plaintiff's second-amended complaint. On April 22, 2015, the plaintiff filed a timely notice of appeal.

¶ 9 ANALYSIS

¶ 10 Although the District's motion to dismiss cited section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)), a portion of the District's motion and arguments, *i.e.*, that the plaintiff failed to sufficiently allege promissory estoppel or a violation of the Wage Payment Act (820 ILCS 115/1 *et seq.* (West 2014)), primarily challenge the legal sufficiency of the plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). Since the substance of the motion, rather than the label, determines its classification, we will consider defendant's motion to dismiss under section 2-619.1 (735 ILCS 5/2-619.1 (West 2014)), as a combined motion for involuntary dismissal pursuant to both sections 2-615 and 2-619. See *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54; *Betts v. City of Chicago*, 2013 IL App (1st) 123653, ¶ 12; *Loman v. Freeman*, 375 Ill. App. 3d 445, 448 (2006) (the substance of a motion, not its title, determines how a court should treat it).

¶ 11 In the context of a section 2-615 motion to dismiss, "[t]he proper inquiry is whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). "In ruling on a section 2-615 motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). "[A]

cause of action should not be dismissed, pursuant to a section 2-615 motion, unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). "A motion to dismiss under section 2-615 raises issues of law; we therefore review the dismissal *de novo*." *Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill. App. 3d 1060, 1065 (2005).

¶ 12 "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). A section 2-619 motion to dismiss admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts, but asserts defects, defenses or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. 735 ILCS 5/2-619(a)(9) (West 2008) (a defendant may file a motion for involuntary dismissal on the grounds that "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim"); *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008); *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). "[W]hen ruling on a section 2-619 motion to dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *Porter*, 227 Ill. 2d at 352. "On appeal from a section 2-619 motion, the reviewing court 'must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 436 (2008)

(quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). The standard of review for an order granting a motion to dismiss pursuant to section 2-619 is *de novo*. *Tkacz v. Weiner*, 368 Ill. App. 3d 610, 612 (2006).

¶ 13 Promissory Estoppel

¶ 14 On appeal, the plaintiff argues that the circuit court improperly dismissed her action for promissory estoppel. The plaintiff argues that she properly alleged promissory estoppel, including the element of reliance, when she alleged that after receiving the District's clear and unambiguous policy promising accumulated sick leave as severance pay, she continued to work for the District in reliance on such policy.

¶ 15 Promissory estoppel is "an equitable device invoked to prevent a person from being injured by a change in position made in reasonable reliance on another's conduct." *Kulins v. Malco, a Microdot Co.*, 121 Ill. App. 3d 520, 527 (1984). A party may recover under the doctrine of promissory estoppel even in the absence of a contract. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 55 (2009). To establish a claim based upon promissory estoppel, a plaintiff must allege and prove that (1) the defendant made an unambiguous promise to the plaintiff, (2) the plaintiff relied on such promise, (3) the plaintiff's reliance was expected and foreseeable by the defendant, and (4) the plaintiff relied on the promise to her detriment. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 309-10 (1990). A plaintiff's reliance must be reasonable and justifiable. *Newton Tractor Sales, Inc.*, 233 Ill. 2d at 51; *Quake Construction, Inc.*, 141 Ill. 2d at 309-10.

¶ 16 Pursuant to the plaintiff's allegations in her second-amended complaint, the District's written policy regarding the retirement of its administrative employees contained a specific and quantifiable offer involving severance pay of a specific value, using language that was clear and mandatory, and the District disseminated the offer to its administrators. The policy unambiguously provided that accumulated sick leave shall be paid to administrators as severance pay upon retirement. The policy language set forth a tiered structure for the percentage of accumulated sick leave to be paid based upon years of service to the District, starting with 11 years of service and rising to 20 years of service. The policy also stated the rate of pay that corresponded to the days of accumulated sick leave to be paid as severance. The offer stated the means of its acceptance, *i.e.*, work for a definite period of years and accrue unused sick days, and the value of the benefit conveyed based on an express formula. Pursuant to the plaintiff's allegations, taken as true and construed in a light most favorable to her, a retiring employee would reasonably understand the District's policy as a promise to employees of the District for severance pay of a specific value upon retirement. There is no indication in the record that the plaintiff could not establish that the District knew its employees would rely upon its policy when making decisions about continued employment with the District or that the plaintiff was aware of the District policy and understood the terms as a promise and reasonably relied on it in continuing her employment with the District. The plaintiff thereby sufficiently alleged that the District was estopped to act in a manner contrary to the plain language of its clear policy regarding retirement of its administrative employees.

¶ 17 Breach of Implied Contract

¶ 18 The plaintiff also argues on appeal that the circuit court erred in dismissing her claim for breach of an implied-in-fact contract. We agree.

¶ 19 "In Illinois, two types of implied contracts are recognized: those implied in fact and those implied in law." *Brody v. Finch University of Health Sciences/The Chicago Medical School*, 298 Ill. App. 3d 146, 154 (1998). "A contract implied in fact must contain all elements of an express contract, and there must be a meeting of the minds. 17 C.J.S. *Contracts* § 4(b) (1963)." *Foiles v. North Greene Unit District No. 3*, 261 Ill. App. 3d 186, 190 (1994). "Contracts implied in law (quasi-contracts) result, notwithstanding the parties' intentions, from a duty imposed by law and are contracts merely in the sense that they are created and governed by principles of equity." *Brody*, 298 Ill. App. 3d at 154.

¶ 20 A contract implied in fact is alleged in the case *sub judice* and is one whereby a contractual duty is imposed by a court by reason of a promissory expression inferred from facts, circumstances, and expressions by the promisor showing an intent to be bound. *Citizen's Bank-Illinois, N.A. v. American National Bank & Trust Co. of Chicago*, 326 Ill. App. 3d 822, 831 (2001). The plaintiff must allege and "prove the existence of the essential elements of a contract implied in fact, conveyed by implication from the parties' conduct or actions." *Brody*, 298 Ill. App. 3d at 154. "The elements of a contract are an offer, a strictly conforming acceptance to the offer, and supporting consideration." *Id.*

¶ 21 In her second-amended complaint, the plaintiff alleged that the District's offer, as set forth in its policy, was sufficiently clear and defined enough that an employee would understand it to mean severance pay of a specific value would be given upon retirement for service to the District in compliance with the policy. The plaintiff alleged that the policy was included in the District board policy manual and was widely disseminated. The plaintiff alleged that she understood the terms of the offer made and that she accepted the offer by her continued employment with the District. The plaintiff alleged that a valid and enforceable contract was thereby created when she accepted the District's offer and that the District's denial to pay the benefits of the policy constituted a breach of the terms of the implied contract. In contrast, nothing in the record indicates that the District's promise to provide accumulated sick days as severance upon retirement was not intended to be contractual in nature. Accordingly, the plaintiff has sufficiently alleged a contract implied in fact, a contractual duty by reason of the District's promissory expression which may be inferred from the facts and circumstances and by expressions on the part of the District showing an intention to be bound. See *Suarez v. Pierard*, 278 Ill. App. 3d 767, 771 (1996).

¶ 22 Wage Payment Act

¶ 23 The plaintiff argues that the circuit court erred as a matter of law by dismissing her claim under the Wage Payment Act on the basis that the District did not assent to an agreement based on the policy.

¶ 24 The Wage Payment Act applies to employees of school districts and provides an avenue for employees to seek complete payment for earned compensation. 820 ILCS

115/1 (West 2014); *Miller v. Kiefer Specialty Flooring, Inc.*, 317 Ill. App. 3d 370, 374 (2000). The Wage Payment Act requires an "employer" to pay "final compensation" due to a separated employee within specified time limits. 820 ILCS 115/2, 5 (West 2014). To properly assert a violation of the Wage Payment Act, the plaintiff must allege that: (1) the defendant was an "employer" as defined in the Wage Payment Act; (2) the parties entered into an "employment contract or agreement"; and (3) the plaintiff was due "final compensation." 820 ILCS 115/1 *et seq.* (West 2014); *Catania v. Local 4250/5050*, 359 Ill. App. 3d 718, 724 (2005). Although the Wage Payment Act does not specifically require the payment of accrued sick leave (*Grant v. Board of Education of the City of Chicago*, 282 Ill. App. 3d 1011, 1022 (1996)), "final compensation" includes "any other compensation owed the employee by the employer pursuant to an employment contract or agreement" between the two parties (820 ILCS 115/2 (West 2014)).

¶ 25 Accordingly, in order for the plaintiff to state a claim under the Wage Payment and Collect Act, the plain language of the statute requires the existence of either an employment contract or agreement. *Id.* An "agreement" is broader than a contract and requires only a manifestation of mutual assent of two or more persons; parties may enter into an "agreement" without the formalities of a contract. *Landers-Scelfo*, 356 Ill. App. 3d at 1067-68; *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 249 (2004). Because the existence of a formally negotiated contract is not necessary under the Wage Payment Act, a plaintiff "seeking to recover under [the Wage Payment Act] does not need to plead all contract elements if she can plead facts showing mutual assent to terms that support the recovery." *Landers-Scelfo*, 356 Ill. App. 3d at 1068. Mutual assent to

the terms of an agreement may be demonstrated by the parties' conduct. *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991). "Generally, it is the objective manifestation of intent that controls whether a contract has been formed." *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 51.

¶ 26 In her second-amended complaint, the plaintiff alleged that the District was an "employer" as defined in section 2 of the Wage Payment Act (820 ILCS 115/2 (West 2014)). The plaintiff alleged a meeting of the minds expressed by the District's disseminated, written policy, offering severance pay credit to administrators for unused sick leave, and the plaintiff's acceptance of the policy, by continuing to work for the District. See *Tooley v. Industrial Comm'n*, 236 Ill. App. 3d 1054, 1056 (1992) (contractual relationship is a product of a meeting of minds expressed by some offer on the part of one and an acceptance on the part of the other). The plaintiff alleged actions by both parties showing they mutually assented to the agreement. See *Landers-Scelfo*, 356 Ill. App. 3d at 1068 (an employer and an employee, by acting in a manner consistent with an employment agreement, can set the material terms of the agreement). Again, the District cites no express, explicit, or unequivocal statement showing an intent to disclaim or negate the promise to pay accumulated sick leave upon retirement. See *Urban Sites of Chicago, LLC*, 2012 IL App (1st) 111880, ¶ 51 (assertion of no meeting of the minds undercut by clear representation expressed in agreement); *Wheeler v. Phoenix Co. of Chicago*, 276 Ill. App. 3d 156, 160 (1995) (disclaimer language may negate promises made in an employment policy statement). The plaintiff sufficiently alleged that in

refusing her demand for severance pay under the District policy, the District violated its obligation to timely pay wages earned to her as an employee.

¶ 27 *Duldulao*

¶ 28 On appeal, the District argues that the plaintiff's complaint was properly dismissed because policy 5:210, containing the express language cited in the plaintiff's complaint, was not adopted until June 2006, after the plaintiff returned to the District to work as an administrator in August of 2002. The District argues that the plaintiff could not therefore prove that she relied on the District policy as a basis for her return to work for purposes of promissory estoppel. Likewise, because plaintiff's return was subsequent to the date of District policy 5:210, the District argues that the plaintiff cannot prove an implied contract and cannot prove mutual assent for purposes of her Wage Payment Act claim.

¶ 29 The plaintiff argues that the relevant point of inquiry to evaluate reliance as an element of promissory estoppel, consideration in a contract claim, and mutual assent in a Wage Payment Act claim is when the District promulgated its policy to pay accumulated sick leave to retiring administrators as severance and the plaintiff responded by continuing to work. We agree.

¶ 30 In *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482, 491 (1987), our supreme court held that language in an employee handbook, stating that a nonprobationary employee could be discharged only after written notice, was sufficient to contractually modify the at-will nature of the plaintiff's employment. The supreme court found as undisputed that the defendant had given the handbook to the plaintiff and had intended that the plaintiff become familiar with its contents. *Id.* Notably, the court also

found that the plaintiff continued to work with knowledge of the handbook provisions, and therefore, the handbook's provisions became binding on the employer. *Id.* The *Duldulao* court held: "When these conditions are present, then the employee's continued work constitutes consideration for the promises contained in the statement, and under traditional principles a valid contract is formed." *Id.* at 490; see also *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 111 (1999) (reciting *Duldulao*'s holding that an employee's continuation of work after learning of an employer's promise may constitute consideration to form an employment contract).

¶ 31 In this case, the plaintiff alleged that the District's policy language, stating that accumulated sick leave shall be paid as severance pay when an administrator retires and providing for a specific formulation to do so, was sufficient to contractually modify the plaintiff's employment. The plaintiff has alleged that the District disseminated the policy to the plaintiff and intended that the plaintiff become familiar with its contents. As noted by the plaintiff on appeal, because the benefit to her was ostensibly available to administrators only after 11 years of service to the District, she was required to foreclose other employment options for many years to qualify for it. Although District policy 5:210 was enacted by the District after the plaintiff had returned to the District to work as an administrator, the plaintiff's continued work demonstrated her reliance on the policy for purposes of promissory estoppel, constituted consideration for the promises contained in the District's offer, and manifested her assent to the District's policy. See *Duldulao*, 115 Ill. 2d at 490-91; *Doyle*, 186 Ill. 2d at 111 (an employee's continuation of work after learning of an employer's promise constitutes consideration for the promises contained in

the employer's offer, forming a valid contract); *Landers-Scelfo*, 356 Ill. App. 3d at 1068 (plaintiff could have manifested her assent to Synergy being her employer by continuing to work after it began paying her).

¶ 32 School Board as Legislative State Agency

¶ 33 The District also argues that its promulgation of policy is governmental legislative action that cannot form the basis of reasonable reliance for purposes of promissory estoppel and cannot create contractual rights for purposes of the plaintiff's actions for breach of implied contract and violation of the Wage Payment Act.

¶ 34 To establish a claim for promissory estoppel, the plaintiff's reliance on the District's promise must be reasonable and forseeable by the District. *Newton Tractor Sales, Inc.*, 233 Ill. 2d at 51. Although there is no vested right in the mere continuance of a law and the doctrine of promissory estoppel is not favored in its application against the state and state agencies (*Lawrence v. Board of Education of School District 189*, 152 Ill. App. 3d 187, 202 (1987)), estoppel may be invoked against public bodies where a governmental body acted and induced substantial reliance (*County of Du Page v. K-Five Construction Corp.*, 267 Ill. App. 3d 266, 273 (1994) (because director of building department had authority to decide zoning violations, his letters finding no violation constituted affirmative acts of county and county was equitably stopped from enforcing ordinance)). Indeed, promissory estoppel has been invoked against state agencies, including school boards. *Lawrence*, 152 Ill. App. 3d at 202. Moreover, although an agreement cannot restrict or expand a school board's statutory powers, a school board can bind itself by contract so long as there is no violation of the School Code. *Perlin v.*

Board of Education of the City of Chicago, 86 Ill. App. 3d 108, 113 (1980); see also *Hallack v. County of Cook*, 264 Ill. App. 3d 887, 893-94 (1994) (promissory estoppel may be invoked against governmental body where government affirmatively acted and induced substantial reliance, as long as affirmative act was not unauthorized).

¶ 35 With regard to the plaintiff's promissory estoppel claim, she alleged that she relied on the written policy statement of the District, which was authorized to make determinations as to administrators' salaries and terms of employment. See *Byerly v. Board of Education of Springfield School District No. 186 of Sangamon County*, 65 Ill. App. 3d 400, 403 (1978) (School Code (105 ILCS 5/10 *et seq.* (West 2014)) authorizes school boards to make payments to retiring teachers for accumulated sick leave). Accepting all well-pled facts as true, as we are required to do at this stage in the proceedings, the plaintiff relied on the policy and to allow the District to retract its promise after years of reliance would run counter to the fundamental principles of equity and justice. See *Lawrence*, 152 Ill. App. 3d at 192-201 (although collective bargaining agreement had been modified and eliminated provision allowing attendance officers to accumulate sick leave days and receive them as severance pay, the requisite factors of promissory estoppel were met to allow the plaintiff to recover merit pay for accumulated sick leave days at retirement); *Perlin*, 86 Ill. App. 3d at 115 (plaintiffs properly pleaded cause of action based on promissory estoppel where plaintiffs relied on the adoption of an administrative compensation plan by the school board, which was authorized by statute to make determinations as to the principals' salaries and terms of employment).

¶ 36 With regard to the plaintiff's implied contract claim, the District cites *Howard v. Chicago Transit Authority*, where the court stated that "implied contracts are not recognized where one of the parties is a municipal corporation." *Howard v. Chicago Transit Authority*, 402 Ill. App. 3d 455, 461 (2010). Notwithstanding the fact that the District is not a municipal corporation, this statement in *Howard* is incomplete. To support its statement, the court in *Howard* cited *McMahon v. City of Chicago*, 339 Ill. App. 3d 41, 48 (2003). The court in *McMahon*, however, addressed whether a municipality can be bound by a contract that did not comply with the Illinois Municipal Code. *Id.* at 45. The court in *McMahon* explained that where the plaintiff relies on statements of an unauthorized official outside the bounds of the statutory requirements to contract, the plaintiff's reliance is unwarranted because the statutory requirements put her on notice that the official's authority was limited. *Id.* Thus, the court held that "a contract cannot be implied if the statutory method of executing a municipal contract has not been followed." *Id.* at 48-49 (no contract because municipal purchasing statute provided that only the city's procurement officer or purchasing agent had authority to contract).

¶ 37 This holding is consistent with the body of Illinois law finding that a contract may not be implied to a municipal corporation where the implied contract would be *ultra vires*, contrary to statutes or charter provisions, or contrary to public policy. See *Stone v. City of Arcola*, 181 Ill. App. 3d 513, 529-30 (1989) (a contract cannot be implied to a municipal corporation where the implied contract would be *ultra vires*, contrary to statutes or charter provisions, or contrary to public policy); *South Suburban Safeway*

Lines, Inc. v. Regional Transportation Authority, 166 Ill. App. 3d 361, 367 (1988) (no contract may be implied against a municipal corporation where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer can bind such corporation by contract); see also *Roemheld v. City of Chicago*, 231 Ill. 467, 470-71 (1907) (where statute prescribes method by which officer may bind municipality by contract, and method was not followed, there can be no implied contract or implied liability of municipality).

¶ 38 However, the District cites no statutory provision, charter provision, or public policy violated by the District's offer to provide accumulated sick leave as severance upon its administrator's retirement. *Stone*, 181 Ill. App. 3d at 530. On the contrary, as noted above, school boards are authorized to make payments to retiring employees for accumulated sick leave. *Lawrence*, 152 Ill. App. 3d at 200; *Perlin*, 86 Ill. App. 3d at 115; *Byerly*, 65 Ill. App. 3d at 403. A policy providing for severance for retiring employees, which is duly enacted by a board of education for a school district, is within the authority of the District. *Id.*

¶ 39 The District also cites *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 71 (2004), and *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 104 (1990), to argue that its policy was legislative action that did not create a contractual right. We note initially that although there is a presumption that legislative action is not intended to create contractual rights, legislative action, including a statute alone, has been held to have created contractual rights where the language of the statute demonstrates an intent to do so. See *Board of Education of Schaumburg Community Consolidated School District*

No. 54 v. Teachers' Retirement System, 2013 IL App (4th) 120419, ¶ 21 (plain language of section 10-23.8a of the School Code overcame presumption that statute was not intended to create contractual rights); *Kaszubowski v. Board of Education of the City of Chicago*, 248 Ill. App. 3d 451 (1993) (pursuant to plain language of School Reform Act, legislature intended to create contract with subdistrict superintendants).

¶ 40 Likewise, the courts in both *Fumarolo* and *Unterschuetz* examined the policy and legislative language at issue to determine whether the language created a private contractual right and overcame the presumption that a contract does not arise out of a legislative enactment. *Fumarolo*, 142 Ill. 2d at 104; *Unterschuetz*, 346 Ill. App. 3d at 71. In *Fumarolo*, the court distinguished the wording of the provision in the board policy manual from the employee handbook in *Duldulao*. *Id.* at 103. The court reviewed the introduction to the handbook in *Duldulao*, which clarified that the policies in the handbook were designed to clarify the "rights" and "duties" of employees, and compared it to the board's policy manual at issue, which stated that the original sources on which the publication was based were the definitive policy statements and that the publication was merely a guide to the sources. *Id.* Thus, the court concluded that the board, through the plain language of its policy manual, only obligated itself to follow statute. *Id.* The court further concluded that even though statutory tenure provisions for public school principals granted specific and secure statutory rights and benefits, the legislative acts fixing terms or tenure of employment of public employees did not create private contractual rights where there was no clear indication of the legislative intent to contract. *Id.* at 104-05; see also *Unterschuetz*, 346 Ill. App. 3d at 72-73 (court applied the same

standard and determined that the language of the city's personnel ordinance did not reveal an intent by the city council to create a contract between the city and its employees and did not match language of offer and acceptance as in *Duldulao*).

¶ 41 In *Unterschuetz*, the court further explained that while there is a presumption against considering laws to be contractual; no such presumption exists for employee handbooks because an employee handbook, by definition, governs the employer and employee relationship. *Unterschuetz*, 346 Ill. App. 3d at 73. The court stated that the relevant question raised with respect to a handbook is whether it makes contractual policies or sets out current working policies subject to change. *Id.* When the language reveals an intent to create contractual policies, Illinois case law has recognized such claims against a public entity. See *Wood v. Wabash County*, 309 Ill. App. 3d 725, 728 (1999) (personnel policy handbook contained sufficiently clear promise such that plaintiff would reasonably have believed that an offer had been made and that an implied contract was formed); see also *Cook v. Board of Education of Edwardsville Community Unit School District No. 7*, 126 Ill. App. 3d 1013, 1019 (1984) (permitting teachers to amend pleadings to allege breach of contract and violation of board policy was not abuse of discretion); *Perlin*, 86 Ill. App. 3d at 114 (administrative compensation plan adopted by board as board report established terms of employment and was sufficient to support action for breach of contract).

¶ 42 Here, the District does not cite language in the board policy that would restrict the promise cited by the plaintiff. The District failed to address below or on appeal any language in its policy that discounts the clear, specific, written, and disseminated promise

found in the plaintiff's complaint. When reviewing dismissals pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure, we accept all well-pled facts as true and draw all reasonable inferences in favor of the plaintiff. See *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29 (2003). We therefore conclude that the circuit court improperly dismissed the plaintiff's complaint.

¶ 43 CONCLUSION

¶ 44 For the reasons stated, we reverse the circuit court's order dismissing the plaintiff's complaint, and we remand the cause for further proceedings consistent with this disposition.

¶ 45 Reversed and remanded.