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Case in Brief: James Baird Co. v. Gimbel Bros., Inc.**Enhanced Case Summary****Notable Case Analysis**

The case is notable for the holding that the doctrine of promissory estoppel does not apply to hold a subcontractor liable to a general contractor in a bidding case when the subcontractor underestimated the amount of a material necessary to complete a job.

Enhanced Procedural Posture

Plaintiff general contractor filed a breach of contract suit against defendant subcontractor. The general contractor appealed a judgment of the District Court of the United States for the Southern District of New York, which directed a verdict for the subcontractor. At issue was whether promissory estoppel applied when the cost of linoleum needed for a job was underestimated.

Explanation of Parties

Plaintiff - general contractor

James Baird Co. was a general contractor that had submitted a bid to the Department of Highways in Pennsylvania (public authorities).

Defendant - subcontractor

Gimbel Bros., Inc. was a subcontractor was a New York merchant that knew that the Department of Highways in Pennsylvania had asked for bids for the construction of a public building

Parties' Arguments**I. Argument that there was a contract**

The general contractor argued that it was a reasonable implication from defendant subcontractor's offer that it should be irrevocable in case the general contractor acted upon it, that is to say, used the prices quoted in making its bid, thus putting itself in a position from which it could not withdraw without great loss. [Link P. Arg. ▼](#)

The subcontractor argued that no contract existed. [Link P. Arg. ▼](#)

Holding: The court held that there was no bilateral contract made. [Link P. Arg. ▼](#)

The general contractor argued that, even though no bilateral contract was made, the subcontractor was liable under the doctrine of "promissory estoppel." [Link P. Arg. ▼](#)

Holding: The court held that the subcontractor was not liable under promissory estoppel. [Link P. Arg. ▼](#)

Quick Holding Bullets

- There was no contract between the parties because the phrase, "if successful in being awarded this contract," is scarcely met by the mere use of the prices in the bids [Link Quick Holding ▼](#)
- Promissory estoppel did not apply to the case at bar because an offer for an exchange is not meant to become a promise until a consideration has been received, either a counter-promise or whatever else is stipulated; to extend it would be to hold the offeror regardless of the stipulated condition of his offer. [Link Quick Holding ▼](#)
- The offer could not be regarded as an option giving the plaintiff general contractor the right seasonably to accept the linoleum at the quoted prices if its bid was accepted, but not binding it to take and pay, if it could get a better bargain elsewhere; there was not the least reason to suppose that the defendant subcontractor meant to subject itself to such a one-sided obligation. [Link Quick Holding ▼](#)

Enhanced Overview

I. Facts

Defendant subcontractor had an employee who computed the amount of linoleum that would be required on a job for the Department of Highways in Pennsylvania, which had asked for bids in the construction of a public building. The amount of linoleum was underestimated by about one-half of the proper amount. Plaintiff general contractor received an offer by the subcontractor on the same day that the subcontractor learned of its mistake. On that day, the subcontractor telegraphed all of the contractors to whom it had sent the offer notifying them that the offer was withdrawn and that a new one would be in its place at about double the amount of the old.

The withdrawal reached the general contractor but not until after the general contractor had put in a bid based upon the linoleum being at the underestimated cost. The bid was accepted on December 30th and the confirmation of the withdrawal was received on December 31st.

The general contractor formally accepted the offer on January 2nd. The subcontractor refused to recognize the existence of a contract, and the general contractor sued for breach.

II. Court's decision and rationale

After a district court found in favor of the subcontractor, the general contractor appealed. The court on appeal affirmed, finding that the mere use by the general contractor of one subcontractor's bid did not constitute acceptance of that bid. The court further found that the subcontractor's offer could have become a promise to deliver only if the general contractor promised to take and pay for the linoleum. Thus, promissory estoppel did not apply.

Finally, the court found that the offer could not be considered an option, either, because there was not the least reason to suppose that the subcontractor meant to subject itself to such a one-sided obligation.

Expanded Headnote Coverage

LexisNexis Headnotes

[HN1] Unless there are circumstances to take it out of the ordinary doctrine, if an offer is withdrawn before it is accepted, the acceptance is too late.

[HN2] In commercial transactions it does not in the end promote justice to seek strained interpretations in aid of those who do not protect themselves.

[HN3] Offers are ordinarily made in exchange for a consideration, either a counter-promise or some other act which the promisor wishes to secure. In such cases they propose bargains; they presuppose that each promise or performance is an inducement to the other.

[HN4] A man may make a promise without expecting an equivalent, for example, a donative promise, conditional or absolute. The doctrine of promissory estoppel is to avoid the harsh results of allowing the promisor in such a case to repudiate, when the promisee has acted in reliance upon the promise.

[HN5] An offer for an exchange is not meant to become a promise until a consideration has been received, either a counter-promise or whatever else is stipulated. To extend it would be to hold the offeror regardless of the stipulated condition of his offer.

Jurisprudential Analysis

Status of the Case

Prior History

The District Court of the United States for the Southern District of New York

Plaintiff general contractor sued defendant subcontractor for breach of contract, and the parties tried the case to a district court judge under a written stipulation. The district court judge found in favor of the subcontractor.

Comparative Case Content

Topic: Promissory Estoppel

Holding in favor of general contractor

Drennan v. Star Paving Co., [51 Cal. 2d 409](#) [Shepardize](#) (Cal. 1958)

OVERVIEW: In a contractor's action to recover damages caused by a subcontractor's refusal to perform paving work according to its bid, the contractor was properly awarded damages because the subcontractor's mistake caused the resulting loss.

Healy v. Brewster, [59 Cal. 2d 455](#) [Shepardize](#) (Cal. 1963)

OVERVIEW: General contractor was entitled to new trial on subcontractor's cross-complaint for breach of contract when original complaint was amended to plead inapplicable theory and case could not be affirmed on theories of original cross-complaint.

Holding that promissory applied

Double AA Builders, Ltd. v. Grand State Constr. L.L.C., [210 Ariz. 503](#) [Shepardize](#) (Ariz. Ct. App. 2005)

OVERVIEW: Substantial evidence supported trial court's application of promissory estoppel doctrine to allow a contractor to recover damages for subcontractor's refusal to perform on its bid where contractor relied on bid, also Statute of Frauds, [Ariz. Rev. Stat. § 44-101](#) [Shepardize](#) (4), did not bar recovery where subcontract involved sale of services rather than goods.

Norcross v. Winters, [209 Cal. App. 2d 207](#) [Shepardize](#) (Cal. Ct. App. 1962)

OVERVIEW: While the use of subcontractor's bid by the general contractor did not create a contract, the doctrine of promissory estoppel made subcontractor's bid irrevocable without general contractor notifying subcontractor that he was awarded the contract.

Mead Assocs., Inc. v. Scottsbluff Sash & Door Co., [856 P.2d 40](#) [Shepardize](#) (Colo. Ct. App. 1993)

OVERVIEW: In the contractor's action alleging the subcontractor's failed to honor a bid, the doctrine of promissory estoppel applied to allow recovery of damages sustained in the contractor's reliance on the bid.

Alaska Bussell Elec. Co. v. Vern Hickel Constr. Co., [688 P.2d 576](#) [Shepardize](#) (Alaska 1984)

OVERVIEW: A general contractor was awarded damages pursuant to a special jury verdict under a theory of promissory estoppel because it relied on a subcontractor's withdrawn bid and adequately proved replacement damages.

Lyon Metal Products, Inc. v. Hagerman Constr. Corp., [181 Ind. App. 336](#) [Shepardize](#) (Ind. Ct. App. 1979)

OVERVIEW: Where appellee sought to recover damages incurred as a result of appellant's refusal to supply lockers at a quoted price for a construction project, the doctrine of promissory estoppel was applicable, and appellant was liable.

Holding that promissory estoppel did not apply and/or there was no contract

Southeastern Sales & Service Co. v. T. T. Watson, Inc., [172 So. 2d 239](#) [Shepardize](#) (Fla. 2nd DCA 1965)

OVERVIEW: Vendor's bid to general contractor for use in bid on building project did not create binding contract, and promissory estoppel did not apply to allow general contractor to recover damages for vendor's withdrawal of bid.

C. H. Leavell & Co. v. Grafe & Assocs., [90 Idaho 502](#) [Shepardize](#) (Idaho 1966)

OVERVIEW: Various communications involving a bid by the subcontractor to supply mechanical work to the prime contractors for a proposed project amounted to nothing more than a series of offers and counter offers, which never ripened into a binding contract.

S. N. Nielsen Co. v. National Heat & Power Co., [32 Ill. App. 3d 941](#) [Shepardize](#) (Ill. App. Ct. 1975)

OVERVIEW: Where substantial evidence supported the fact that a general contractor had reason to believe that a subcontractor's bid was in error, the general contractor could not have justifiably relied and claim promissory estoppel.

I & R Mech. Inc. v. Hazelton Mfg. Co., [62 Mass. App. Ct. 452](#) [Shepardize](#) (Mass. App. Ct. 2004)

OVERVIEW: Facsimile transmission, by a distributor, of price quotes received from manufacturer was not an offer on which prospective purchasers were intended to rely without further inquiry. Therefore, its mistake in calculating price did not bind distributor.

Holding that there was no breach of contract

Corbin-Dykes Elec. Co. v. Burr, [500 P.2d 632](#) [Shepardize](#) (Ariz. Ct. App. 1972)

OVERVIEW: No breach of contract occurred where the general contractor refused to use a subcontractor who had submitted a bid because the subcontractor's bid was an offer and the general contractor had not voluntarily accepted the offer.

Arc Elec. Co. v. Esslinger-Lefler, Inc., [121 Ariz. 501](#) [Shepardize](#) (Ariz. Ct. App. 1979)

OVERVIEW: Although subcontractor correctly recorded total hours it worked on extras, it failed to prove that its actual labor costs were wages paid to journeymen and failed to prove its material costs. Both were required on cost-plus contract with contractor.

Holding that reasonable reliance had to be shown

Diede Construction, Inc. v. Monterey Mechanical Co., [125 Cal. App. 4th 380](#) [Shepardize](#) (Cal. Ct. App. 2004)

OVERVIEW: General contractor did not have to request relief from its bid to a city after learning of a subcontractor's mistaken proposal, but in order to recover, the general contractor had to prove reasonable reliance on the proposal.

MacIsaac & Menke Co. v. Freeman, [194 Cal. App. 2d 327](#) [Shepardize](#) (Cal. Ct. App. 1961)

OVERVIEW: A contractor who did not take the time to clarify a subcontractor's bid before submitting it was not entitled to damages under the theory of promissory estoppel because there was not reasonable reliance.

Holding that there was no privity

Neptune Gunit Co. v. Monroe Enterprises, Inc., [229 Cal. App. 2d 439](#) [Shepardize](#) (Cal. Ct. App. 1964)

OVERVIEW: Sub-subcontractor was not entitled to relief from owner for his bidding mistake because they were not in privity; while he had right to rescind as to subcontractor, he could not affect rights of owner who owed him no debt or other obligation.

Legal Analysis

Related Treatise Content

[3-8 Corbin on Contracts § 8.12](#) Comprehensive Jurisdiction-by-Jurisdiction Analysis of Promissory Estoppel and the Restatements § 90 in the Courts

The treatise discusses American jurisdictions and their adoption and application of theories of promissory estoppel grounded in section 90 of the Contracts Restatements.

[11-67 Appleman on Insurance § 67.4](#) Comprehensive State-by-State Case-Law Analysis of Promissory Estoppel

The treatise author attempts to assist the reader in both understanding and finding the current status of promissory estoppel in each jurisdiction.

[1-2 Commercial Damages: Remedies in Business Litig P 2.03](#) Reliance as a Factor in the Law of Contract and Tort

The treatise includes a discussion of “reliance interest” and the important role that protection of reliance lays in the role of contract and tort.

[1-2 Construction Law P 2.01](#) Private Contracts

[1-2 Corbin on Contracts § 2.31](#) Effect of Action in Reliance That is Not Part Performance

[1-4 Doing Business in the United States § 4.02](#) Formation of Contracts

[8-49 Government Contracts: Law, Admin & Proc § 49.100](#) Prime Contractor's Rights Against Subcontractor

[8-49 Government Contracts: Law, Admin & Proc § 49.110](#) Subcontractor's Rights Against Prime Contractor

[1-2 Murray on Contracts § 43](#) Irrevocable Power of Acceptance

[1-3 Murray on Contracts § 66](#) Detrimental Reliance -- "Promissory Estoppel"

[1-3 North Carolina Contract Law § 3-43](#) The North Carolina rule: "Offensive" use of promissory estoppel is not permitted

[3-4 Sales & Bulk Transfers Under the UCC § 4.03](#) Offer

[1 Witkin Sum. Cal. Law Contracts § 250](#)

Related Restatements and/or Model Codes

[Restat 2d of Contracts, § 87](#)—Formation of Contracts—Consideration—Contracts Without Consideration—Option Contracts

The Restatement discusses option contracts and when an offer is binding. The Restatement discusses *Baird* in the context of the reliance interest in contract damages.

[Restat 2d of Contracts, § 153](#)—Rules and Principles—Mistake—When Mistake of One Party Makes a Contract Voidable

The Restatement states the rule that, where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in § 154, and (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or (b) the other party had reason to know of the mistake or his fault caused the mistake.

Related Law Review Articles

Kai-Niklas A. Schneider, Comment: *Maryland's Application of Promissory Estoppel in Construction Industry Bidding Disputes: Eliminating Further Confusion*, [30 U. Balt. L. Rev. 171](#) [Shepardize](#) (Fall 2000).

The comment discusses promissory estoppel as applied to construction bid disputes in Maryland and also includes an examination of the bidding process.

Kevin M. Teeven, Article: *Origins of Promissory Estoppel: Justifiable Reliance and Commercial Uncertainty Before Williston's Restatement*, [34 U. Mem. L. Rev. 499](#) [Shepardize](#) (Spring 2004).

The article discusses the history of promissory estoppels and mentions *Baird* 10 times in discussing the Restatement's retardation of justifiable reliance.

Jean Fleming Powers, Article: *Promissory Estoppel and Wagging the Dog*, [59 Ark. L. Rev. 841](#) [Shepardize](#) (2007).

The article addresses promissory estoppels, and the author suggests that the issue is not whether promissory estoppel is a contract or a tort theory, but whether cases decided under the doctrine are contract or tort cases, or whether they are something else.

Jay M. Feinman, *Promissory Estoppel and Judicial Method*, [97 Harv. L. Rev. 678](#) [Shepardize](#) (Jan. 1984).

Charles L. Knapp, *Reliance in the Revised Restatement: The Proliferation of Promissory Estoppel*, [81 Colum. L. Rev. 52](#) [Shepardize](#) (1981).

Daniel Markovits, Article: *Contracts and Collaboration*, [113 Yale L.J. 1417](#) [Shepardize](#) (May 2004).

Kevin M. Teeven, Article: *The Advent of Recovery on Market Transactions in the Absence of a Bargain*, [39 Am. Bus. L.J. 289](#) [Shepardize](#) (Winter 2002).

John Krahmer, *Annual Summary of Texas Law: Commercial Transactions*, [59 SMU L. Rev. 1013](#) [Shepardize](#) (Summer 2006).

Kevin M. Teeven, Article: *A Legal History of Binding Gratuitous Promises at Common Law: Justifiable Reliance and Moral Obligation*, [43 Duq. L. Rev. 11](#) [Shepardize](#) (Fall 2004).

Michael T. Gibson, Article: *Reliance Damages in the Law of Sales Under Article 2 of the Uniform Commercial Code*, [29 Ariz. St. L.J. 909](#) [Shepardize](#) (Winter 1997).

Joel M. Ngugi, Article: *Promissory Estoppel: The Life History of an Ideal Legal Transplant*, [41 U. Rich. L. Rev. 425](#) [Shepardize](#) (Jan. 2007).

J.P. Kostritsky, Article: *"Why Infer"? What the New Institutional Economics Has to Say About Law-Supplied Default Rules*, [73 Tul. L. Rev. 497](#) [Shepardize](#) (Dec. 1998).

Roy Kreitner, Article: *The Gift Beyond the Grave: Revisiting the Question of Consideration*, [101 Colum. L. Rev. 1876](#) [Shepardize](#) (Dec. 2001).

David V. Snyder, Article: *A Comparative Law in Action: Promissory Estoppel, the Civil Law, and the Mixed Jurisdiction*, [15 Ariz. J. Int'l & Comp. Law 695](#) [Shepardize](#) (1998).

Avery Wiener Katz, Essay: *The Economics of Form and Substance in Contract Interpretation*, [104 Colum. L. Rev. 496](#) [Shepardize](#) (Mar. 2004).

Kevin M. Teeven, Article: *Development of Reform of the Preexisting Duty Rule and its Persistent Survival*, [47 Ala. L. Rev. 387](#) [Shepardize](#) (Winter 1996).

Mary Joe Frug, *A Symposium of Critical Legal Study: Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, [34 Am. U.L. Rev. 1065](#) [Shepardize](#) (Summer 1985).

Related Bar Association & Journal Articles

John W. Maupin & W. Dudley McCarter, Article: *Public Works Projects*, [52 J. Mo. B. 94](#) (Mar./Apr. 1996).

The article explains the processes involved in bidding for public works projects, and cases in Missouri are given as examples.

J. Bert Grandoff & Patricia E. Davenport, *When the King Does Wrong: Failing to Fulfill Implied Duties*, [77 Fla. Bar J. 44](#) [Shepardize](#) (Nov. 2003).

The article discusses sovereign immunity in the context of construction litigation and public bids.

William F. Frey, *Contract Law: Obligations Implied in Michigan Construction Contracts*, [86 MI Bar Jnl. 36](#) [Shepardize](#) (May 2007).

The article briefly identifies the implied duties arising out of construction contracts as they affect the responsibilities of the owner and the contractor.

Phillip G. Alber, *Feature: Construction Law: Delay Claims in Michigan*, [76 MI Bar Jnl. 566](#) [Shepardize](#) (June 1997).

James S. Ganther, *Column: Representing the Federal Government Contractor*, [70 Fla. Bar J. 58](#) [Shepardize](#) (Apr. 1996).

Kyle Gooch, *Feature: 2004 Legal Perspective: Construction Law*, [68 Tex. B. J. 32](#) [Shepardize](#) (Jan. 2005).

Kathleen Dolegowski, *Legal Reports: Good Faith Instruction Inapplicable where Parties' Intent Clear from Contract Language: Court not Required to Instruct in Language of Points for Charge*, [3 Lawyers J. 3](#) [Shepardize](#) (Nov. 30, 2001).

J. Alberto Boada, *Department: Practice Tips: Liability in Negotiations Between Developers and Public Entities*, [24 Los Angeles Lawyer 25](#) [Shepardize](#) (May 2001).

Cases and Recent Developments, [16 Fed. Cir. B.J. 285](#) [Shepardize](#) (2006/2007).

Brett D. Baber, *Feature: The Foundations of Construction Litigation*, [21 Maine Bar J. 96](#) [Shepardize](#) (Spring 2006).

Steven W. Feldman, *Article: Federal Government Contracting: A Legal and Practical Guide for Alabama Lawyers*, [66 Ala. Law. 220](#) [Shepardize](#) (May 2005).

Steven B. Lesser, *Feature: Chipping Away at the Economic Loss Rule: The Supreme Court Decides Moransais v. Heathman*, [73 Fla. Bar J. 22](#) [Shepardize](#) (Oct. 1999).

Thomas F. Quilling, *Barristers Tips: Limiting The Liability Of Design Professionals In Public Contracts*, [29 Los Angeles Lawyer 10](#) [Shepardize](#) (Jan. 2007).

Phillip G. Alber, *Feature: Construction Law: Delay Claims In Michigan*, [76 MI Bar Jnl. 566](#) [Shepardize](#) (June 1997).

Michael W. Homer and David J. Burns, *Article: Utah Construction Law: Recovery for Nonpayment*, [9 Utah Bar J. 8](#) [Shepardize](#) (May 1996).

News

Recent News Coverage of the Case

Garmisa, Steve P., *No Bad Faith in Terminating Simple Contract*, Chicago Daily Law Bulletin, Sept. 27, 2004.

The article discusses *Mid-West Energy Consultants Inc. v. Covenant Home Inc.*, [352 Ill. App. 3d 160](#) [Shepardize](#) (1st Dist.) (Aug. 27), and the holding in *Baird* that, in commercial transactions, it does not in the end promote justice to seek strained interpretations in aid of those who do not protect themselves.

Garmisa, Steven P., *Bid Chiseling' Contractor Loses Estoppel Claim*, Chicago Daily Law Bulletin, June 26, 1996.

The article includes a discussion of *Lahr Construction Corp. v. J. Kozel & Son Inc.*, [1996 N.Y. Misc. LEXIS 80](#) [Shepardize](#), and a discussion of secondary resources that address promissory estoppels.

Humanities (Reviews of Scholarly Works in the Humanities Area), University of Toronto Quarterly, Sept. 1993.

The article discusses the application of literary methods to legal texts, with wonderful titles like *Allegheny College v. National Chautaugua County Bank* and *James Baird Co. v. Gimbel Brothers, Inc.*"

Friedland, ML, ED, *Rough Justice: Essays on Crime in English Literature*, University of Toronto Quarterly, Sept. 1993.

Recent News Coverage of the Issue

Gerald I. Katz, *Subcontractor Not Bound by Bid Incorporated Into Contractor's Bid*, Concrete Contractor, Feb./Mar. 2007.

The article discussed the rule that subcontractors' bids are routinely included in contractors' bids prior to the contractor accepting the subcontractors' bids but that, if a contractor does not accept a subcontractor's bid in a timely manner after the contractor's bid is accepted, the subcontractor may not be bound by its bid.

Sam K. Abdulaziz, *Promissory Estoppel: What it is and How it Can Work in Construction Cases*; Legal Corner, Reeves Journal, Jan. 1, 2006.

The article discusses promissory estoppel as applied to construction cases and contracts.

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James Baird Co. v. Gimbel Bros., Inc.[64 F.2d 344](#) [Shepardize](#)

JAMES BAIRD CO. v. GIMBEL BROS., Inc.

No. 330

Circuit Court of Appeals, Second Circuit

[64 F.2d 344](#) [Shepardize](#) ; [1933 U.S. App. LEXIS 4091](#) [Shepardize](#)

April 10, 1933

PRIOR HISTORY:

Appeal from the District Court of the United States for the Southern District of New York.

OPINIONBY: HAND**OPINION:**

Before MANTON L. HAND, and SWAN, Circuit Judges.

L. HAND, Circuit Judge.

The plaintiff sued the defendant for breach of a contract to deliver linoleum under a contract of sale; the defendant denied the making of the contract; the parties tried the case to the judge under a written stipulation and he directed judgment for the defendant. The facts as found, bearing on the making of the contract, the only issue necessary to discuss, were as follows: The defendant, a New York merchant, knew that the Department of Highways in Pennsylvania had asked for bids for the construction of a public building. It sent an employee to the office of a contractor in Philadelphia, who had

possession of the specifications, and the employee there computed the amount of the linoleum which would be required on the job, underestimating the total yardage by about one-half the proper amount. In ignorance of this mistake, on December twenty-fourth the defendant sent to some twenty or thirty contractors, likely to bid on the job, an offer to supply all the linoleum required by the specifications at two different lump sums, depending upon the quality used. These offers concluded as follows: "If successful in being awarded this contract, it will be absolutely guaranteed, * * * and * * * we are offering these prices for reasonable" (sic), "prompt acceptance after the general contract has been awarded." The plaintiff, a contractor in Washington, got one of these on the twenty-eighth, and on the same day the defendant learned its mistake and telegraphed all the contractors to whom it had sent the offer, that it withdrew it and would substitute a new one at about double the amount of the old. This withdrawal reached the plaintiff at Washington on the afternoon of the same day, but not until after it had put in a bid at Harrisburg at a lump sum, based as to linoleum upon the prices quoted by the defendant. The public authorities accepted the plaintiff's bid on December thirtieth, the defendant having meanwhile written a letter of confirmation of its withdrawal, received on the thirty-first. The plaintiff formally accepted the offer on

January second, and, as the [Link P. Arg.▲](#) defendant persisted in declining to recognize the existence of a contract, sued it for damages on a breach.

[HN1] Unless there are circumstances to take it out of the ordinary doctrine, since the offer was withdrawn before it was accepted, the acceptance was too late. Restatement of Contracts, § 35. To meet this the [Link P. Arg.▲](#) plaintiff argues as follows: It was a reasonable implication from the defendant's offer that it should be irrevocable in case the plaintiff acted upon it, that is to say, used the prices quoted in making its bid, thus putting itself in a position from which it could not withdraw without great loss. [Link P. Arg.▲](#) While it might have withdrawn its bid after receiving the revocation, the time had passed to submit another, and as the item of linoleum was a very trifling part of the cost of the whole building, it would have been an unreasonable hardship to expect it to lose the contract on that account, and probably forfeit its deposit. While it is true that the plaintiff might in advance have secured a contract conditional upon the success of its bid, this was not what the defendant suggested. It understood that the contractors would use its offer in their bids, and would thus in fact commit themselves to supplying the linoleum at the proposed prices. The inevitable implication from all this was that when the contractors acted upon it, they accepted the offer and promised to pay for the linoleum, in case their bid were accepted.

It was of course possible for the parties to make such a contract, and the question is merely as to what they meant; that is, what is to be imputed to the words they used. Whatever plausibility there is in the argument, is in the fact that the defendant must have known the predicament in which the contractors would be put if it withdrew its offer after the bids went in. However, it seems entirely clear that the contractors did not suppose that they accepted the offer merely by putting in their bids. If, for example, the successful one had repudiated the contract with the public authorities after it had been awarded to him, certainly the defendant could not have sued him for a breach. If he had become bankrupt, the defendant could not prove against his estate. [Link Quick Holding▲](#) It seems plain therefore that there was no contract between them. And if there be any doubt

as to this, the language of the offer sets it at rest. The phrase, "if successful in being awarded this contract," is scarcely met by the mere use of the prices in the bids. Surely such a use was not an "award" of the contract to the defendant. Again, the phrase, "we are offering these prices for * * * prompt acceptance after the general contract has been awarded," looks to the usual communication of an acceptance, and precludes the idea that the use of the offer in the bidding shall be the equivalent. It may indeed be argued that this last language contemplated no more than an early notice that the offer had been accepted, the actual acceptance being the bid, but that would wrench its natural meaning too far, especially in the light of the preceding phrase. The contractors had a ready escape from their difficulty by insisting upon a contract before they used the figures; and [HN2] in commercial transactions it does not in the end promote justice to seek strained interpretations in aid of those who do not protect themselves.

But [Link P. Arg.▲](#) the plaintiff says that even though no bilateral contract was made, the defendant should be held under the doctrine of "promissory estoppel." This is to be chiefly found in those cases where persons subscribe to a venture, usually charitable, and are held to their promises after it has been completed. It has been applied much more broadly, however, and has now been generalized in section 90, of the Restatement of Contracts. [Link P. Arg.▲](#) We may arguendo accept it as it there reads, for [Link Quick Holding▲](#) it does not apply to the case at bar. [HN3] Offers are ordinarily made in exchange for a consideration, either a counter-promise or some other act which the promisor wishes to secure. In such cases they propose bargains; they presuppose that each promise or performance is an inducement to the other. *Wisconsin, etc., Ry. v. Powers*, [191 U.S. 379, 386, 387](#) [Shepardize](#), [24 S. Ct. 107](#) [Shepardize](#), [48 L. Ed. 229](#) [Shepardize](#); *Banning Co. v. California*, [240 U.S. 142, 152, 153](#) [Shepardize](#), [36 S. Ct. 338](#) [Shepardize](#), [60 L. Ed. 569](#) [Shepardize](#). But [HN4] a man may make a promise without expecting an equivalent; a donative promise, conditional or absolute. The common law provided for such by sealed instruments, and it is unfortunate that these are no longer generally available. The doctrine of "promissory estoppel" is to avoid the harsh results of allowing the promisor in such a case

to repudiate, when the promisee has acted in reliance upon the promise. *Siegel v. Spear & Co.*, [234 N.Y. 479](#) [Shepardize](#), [138 N.E. 414](#) [Shepardize](#), [26 A.L.R. 1205](#) [Shepardize](#). Cf. *Allegheny College v. National Bank*, [246 N.Y. 369](#) [Shepardize](#), [159 N.E. 173](#) [Shepardize](#), 57 L.R.A. 980 [Shepardize](#). But [HN5] an offer for an exchange is not meant to become a promise until a consideration has been received, either a counter-promise or whatever else is stipulated. To extend it would be to hold the offeror regardless of the stipulated condition of his offer. In the case at bar the defendant offered to deliver the linoleum in exchange for the plaintiff's acceptance, not for its bid, which was a matter of indifference to it. That offer could become a promise to deliver only when the equivalent was received; that is, when the plaintiff promised to take and pay for it. There is no room in such a situation for the doctrine of "promissory estoppel."

[Link Quick Holding▲](#) Nor can the offer be regarded as of an option, giving the plaintiff the right seasonably to accept the linoleum at the quoted prices if its bid was accepted, but not binding it to take and pay, if it could get a better bargain elsewhere. There is not the least reason to suppose that the defendant meant to subject itself to such a one-sided obligation. True, if so construed, the doctrine of "promissory estoppel" might apply, the plaintiff having acted in reliance upon it, though, so far as we have found, the decisions are otherwise. *Ganss v. Guffey Petroleum Co.*, 125 App. Div. 760, [110 N.Y.S. 176](#) [Shepardize](#); *Comstock v. North*, [88 Miss. 754](#) [Shepardize](#), [41 So. 374](#) [Shepardize](#). As to that, however, we need not declare ourselves.

Judgment affirmed.