

STATE OF MICHIGAN
COURT OF APPEALS

NORTHERN WAREHOUSING INC., d/b/a
NORTHERN FOOD SERVICE,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF
EDUCATION,

Defendant-Appellant.

UNPUBLISHED
March 7, 2006

No. 260598
Court of Claims
LC No. 04-000239-MK

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

BORRELLO, J. (*dissenting*).

I respectfully dissent from the majority because plaintiff has an adequate remedy by law, which negates the issuance of an injunction. I also dissent because the majority opinion opens a new venue for the financially disabled corporation—claim your competition *could* cause your company to file for bankruptcy and thereafter enjoin your competition from doing business.

Further, I find troubling the majority's assertion that the granting of the injunction is predicated on the likelihood of success on the merits of plaintiff's promissory estoppel claim. By fostering such an argument, the majority fails to recognize that plaintiff's promissory estoppel claim is based on pre-contract negotiations. Having failed to point out any ambiguity in the contract between the parties, I fail to understand how a claim for promissory estoppel can defeat a written contract or even survive a summary disposition motion, much less provide a prevailing argument. Additionally, because plaintiff contends that the basis for its claim of promissory estoppel is information which is expressly stated in the contract, the majority fails to recognize the general rule in this state that a claim for promissory estoppel cannot lie when the promise relied on as a basis for the claim, stands in stark contradiction to a written contract. See *Novak v Nationwide Mut Ins Co*, 235 Mich App 675; 599 NW2d 546 (1999).

For the reasons state herein, I dissent.

/s/ Stephen L. Borrello