

STATE OF MICHIGAN  
IN THE SUPREME COURT

NORTH AMERICAN BROKERS, LLC,  
a Michigan limited liability company, and,  
MARK RATLIFF, an individual,

Plaintiffs/Appellees,

Supreme Court Docket No. 155498  
Court of Appeals Docket No. 330126  
Lower Court Case No.: 15-28669-CH

vs.

HOWELL PUBLIC SCHOOLS,  
a Michigan general powers school district, and,  
ST. JOHN PROVIDENCE, a Michigan corporation,

Defendant/Appellant.

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**DEFENDANT/APPELLANT HOWELL PUBLIC SCHOOLS' SUPPLEMENTAL BRIEF  
SUBMITTED PURSUANT TO THE COURT'S JANUARY 3, 2018 ORDER**

**ORAL ARGUMENT REQUESTED**

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**BASIS FOR SUPPLEMENTAL BRIEF**

On March 22, 2017, Defendant/Appellant Howell Public Schools (“Howell”) filed with this Court an application for leave to appeal (“Application”). The subject of the Application was the Michigan Court of Appeals’ decision reversing the Livingston County Circuit Court’s dismissal of Plaintiffs’ lawsuit in its entirety pursuant to MCR 2.116(C)(8). The primary basis for the trial court’s dismissal of Plaintiffs’ lawsuit was its determination that Plaintiffs’ claim asserting an entitlement to a commission on the sale of real property was void pursuant to Michigan’s statute of frauds, MCL 566.132(1), as the alleged commission agreement was not in writing. Plaintiffs appealed the trial court’s dismissal of their complaint, asserting that because they pled a promissory estoppel claim in their complaint, the application of the statute of frauds was suspended, as promissory estoppel operates as an exception to the statute of frauds.

The Michigan Court of Appeals adopted Plaintiffs’ argument and reversed the trial court’s dismissal of Plaintiffs’ lawsuit on this basis. In its opinion and order, the Court of Appeals stated that while it felt it was bound to reverse the trial court’s decision, it was not in favor of doing so and encouraged this Court to grant Howell leave to appeal its decision.

On January 3, 2018, this Court issued an order directing the parties to submit supplemental briefs regarding whether promissory estoppel is an exception to the statute of frauds, specifically MCL 566.132(1). The Court further directed that the parties should not submit mere restatements of their application papers and that the Court would hold oral argument on Howell’s Application following submission of the parties’ supplemental briefs. This brief is Howell’s timely supplemental brief submitted pursuant to the Court’s January 3, 2018 order. For the reasons set forth below, Howell respectfully requests that this Court grant its Application, reverse the Court of Appeals’ order reversing summary disposition in Howell’s favor, reinstitute the trial court’s

grant of summary disposition to Howell and grant any other relief the Court deems just and appropriate.

**SUPPLEMENTAL STATEMENT OF QUESTIONS PRESENTED**

**IS PROMISSORY ESTOPPEL AN EXCEPTION TO THE APPLICATION OF THE STATUTE OF FRAUDS?**

The Trial Court Answers: "No"

The Court of Appeals Answers: "Yes"

Defendant/Appellant Howell Answers: "No"

Plaintiff/Appellee Answers: "Yes"

**STATEMENT OF FACTS**

As the Court has directed the parties not to simply reiterate the arguments set forth in their application documents, Howell incorporates by reference the Statement of Facts set forth in its Application.

## I. INTRODUCTION

On September 17, 2015, Howell filed its motion for summary disposition in the Livingston County Circuit Court pursuant to MCR 2.116(C)(7) **Error! Bookmark not defined.** and MCR 2.116(C)(8) (Appendix at A1). For purposes of this supplemental brief, in its motion, Howell asserted that Plaintiffs could not demonstrate that their Complaint stated any claim upon which relief could be granted, as their claim of entitlement to a commission for the sale of real property was void pursuant to Michigan's statute of frauds, MCL 566.132(1)(e), because any purported agreement to pay the commission to Plaintiffs was not in writing.

On October 15, 2015, the trial court held a hearing on Howell's motion. (See Appendix at A1). After oral argument, the trial court correctly granted Howell's motion on the basis that, pursuant to Michigan case law, Plaintiffs failed to establish that they adequately alleged a promissory estoppel, quantum meruit, procuring cause or breach of contact claim, as Michigan's statute of frauds required that any agreement to pay the commission on a real estate transaction must be in writing. (See Appendix at A4-A5). The trial court also correctly determined that even if the statute of frauds did not require that an agreement to pay a real estate commission had to be in writing, Plaintiffs failed to adequately assert the elements of their claims.

Plaintiffs appealed the trial court's dismissal of their complaint to the Michigan Court of Appeals. (See Appendix at A6). On February 9, 2017, the Court of Appeals issued its opinion reversing the trial court's dismissal of Plaintiffs' lawsuit on the basis that promissory estoppel barred application of the statute of frauds. (See Appendix at A10). The Court of Appeals stated, however, that it disagreed with this result and encouraged this Court to grant Howell leave to appeal its decision and to clarify Michigan law on this issue. (Appendix at A13). The Court stated:

While we acknowledge that our opinion reaches the *correct* result under our present legal framework, it is the *wrong* result. We urge the Michigan Supreme Court to grant leave to address the issue presented in this case. The judicially created doctrine of promissory estoppel, as applied to the facts of this case, subsumes the statute of frauds and makes the statute of frauds irrelevant.

*North American Brokers, LLC, et al, v Howell Public Schools, et al*, unpublished opinion per curiam of the Michigan Court of Appeals, Docket No. 330126 (dated February 9, 2017) (emphasis in original) (Appendix at A13).

As set forth below, the Court of Appeals incorrectly reversed the trial court's dismissal of Plaintiffs' complaint. However, in doing so, the Court correctly noted that the application of promissory estoppel as an exception to the statute of frauds makes the statute of frauds irrelevant. This outcome is inconsistent with Michigan's rules of statutory construction, allows for inappropriate judicial intervention to circumvent the Legislature's directive in adopting the statute of frauds and creates a statutory ambiguity where none exists. Further, any purported basis for the application of promissory estoppel as an exception to application of the statute of frauds is contrary to this Court's position on judicial intervention as to legislative intent. For these reasons, Howell requests that this Court reverse the Court of Appeals' decision, determine that promissory estoppel is not an exception to application of the statute of frauds and overrule any prior case law to the extent it conflicts with this Court's decision.

## II. ARGUMENT

### A. The Judicially Created Doctrine Of Promissory Estoppel Is Not An Exception To The Application Of The Statute Of Frauds, MCL 566.132(1), And This Is The Appropriate Time For This Court To Definitively Resolve This Issue, As This Court Has Consistently Rejected The Basis For Allowing Such An Exception.

#### 1. Relevant Law.

The origin of the judicially created assault on the application of subsection (1) of the statute of frauds appears to emanate from this Court’s adoption of the “unjust” or “absurd” result rule, a rule that has, over time, become generally disfavored. In *Holy Trinity v United States*, 143 US 457 (1892), the United States Supreme Court first articulated the so called “absurd result” rule of statutory construction. In *Holy Trinity*, the Supreme Court stated: “It is a familiar rule, that a thing may be within the letter of the statute and yet not within its spirit, nor within the intention of its makers.” *People v McIntire*, 461 Mich 147, 155; 599 NW2d 102 (1999) (quoting *Holy Trinity*, *supra* at 459).

In Michigan, this “so-called rule of statutory construction” appears to have been asserted first in 1976, and is described as follows:

Departure from the literal construction of a statute is justified when such construction would produce an *absurd and unjust result* and would be clearly inconsistent with the purposes and policies of the act in question.

*McIntire*, *supra* at 155 (quoting *Salas v Clements*, 399 Mich 103, 109; 247 NW2d 889 (1976)).

As to subsection (1) of the statute of frauds, this “absurd result” rule was utilized by this Court in *Opdyke Inv Co v Norris Grain Co*, 413 Mich 354, 364; 320 NW2d 836 (1982). In *Opdyke*, the Court stated, without citation or support, that “estoppel and promissory estoppel have developed to avoid the arbitrary and unjust results required by an overly mechanistic application of” the statute of frauds. *Opdyke*, *supra* at 364. Without citation or justification, the Court further stated that “[a]s this original rationale for the rule gradually disappeared, so did the policy of strict

judicial enforcement.” *Id.* Thus began the gradual erosion of our Legislature’s clear and unambiguous language contained in subsection (1) of the statute of frauds. Based on *Opdyke*, and despite the clear and unambiguous language contained in subsection (1) of the statute of frauds, the parties are before this Court to determine whether promissory estoppel is an exception to the statute of frauds. Based on the evolution of this Court’s stance toward use of the “absurd result” rule, even if promissory estoppel was ever an exception to application of subsection (1) of the statute of frauds, such an exception is no longer appropriate. Further, application of the “absurd result” rule actually creates an absurd result in this very matter.

In 1999, this Court decided *People v McIntire*, a case in which the Court unquestionably expressed its disfavor for the “absurd result” rule. In reversing a Court of Appeals decision in which the Court utilized the “absurd result” rule to vary the application of the unambiguous language in an immunity statute, this Court determined that use of the “absurd result” rule was inappropriate. *McIntire*, *supra* at 152, 155. The *McIntire* Court stated:

Because our judicial role precludes imposing different policy choices than those selected by the Legislature, our obligation is, by examining the statutory language, to discern the legislative intent that may reasonably be inferred from the words expressed in the statute. . . . A fundamental principle of statutory construction is that a clear and unambiguous statute leaves no room for judicial construction or interpretation. . . . When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to *apply* the terms of the statute to the circumstances in a particular case. . . . Finally, in construing a statute, we must give the words used by the Legislature their common, ordinary meaning.

These traditional principles of statutory construction thus force courts to respect the constitutional role of the Legislature as a policy-making branch of the government and constrain the judiciary from encroaching on this dedicated sphere of constitutional responsibility. Any other nontextual approach to statutory construction will necessarily invite judicial speculation regarding the probable, but unstated, intent of the Legislature with the likely consequence that a court will impermissibly substitute its own policy preferences.

*Id.* at 153 (internal citations omitted) (emphasis in original). In *McIntire*, the Court of Appeals determined that in order to be granted immunity under MCL 767.6 for testimony given before a grand jury, that testimony had to be truthful. *Id.* at 151. The referenced statute did not make this distinction. This Court therefore, reversed the Court of Appeals for failing to adhere to the clear and unambiguous language in the statute and instead applying the “absurd result” rule. This Court stated:

Significantly, the [Court of Appeals] majority never, with respect to the *text* of the statute, identifies the terms or phrases it finds to be ambiguous. Rather, in order to justify its action in looking beyond the text to determine legislative intent, the [Court of Appeals] majority embarks on an “absurd result” analysis in which the [Court] focuses not on what the Legislature *said* through the text of the statute, but what the [Court] believes the Legislature *must really have meant* despite the language it used.

The essence of the [Court of Appeals] majority’s position is that it concludes that the Legislature could not have intended a perjury charge to be the sole consequence for testifying falsely before a one-man grand jury. Therefore, in order to avoid what it believes would be an “illogical” result, the [Court of Appeals] majority expends a great deal of interpretive justification to “infer” a legislative intent that the immunity granted by MCL 767.6 not apply when a witness gives “materially false testimony.”

*Id.* at 155-156 (emphasis in original). This Court further stated:

Unfortunately, the [Court of Appeals] majority has abandoned these traditional rules of construction, ignored the plain text of the statute before us, and substituted its own policy preferences for those of our Legislature by finding an unexpressed legislative intent that a witness who lies in a one-man grand jury proceeding forfeits statutory immunity granted under MCL 767.6. While [we] do not question the sincerity of the [Court of Appeals majority’s] effort [we] view the [Court of Appeals] opinion as a herculean, yet ultimately unsuccessful, attempt to create an ambiguity where none exists in order to reach a desired result, albeit one with which [we] might wholeheartedly agree [if we were legislators] authorized to enact policy.

*Id.* at 153-154 (emphasis added).

Almost immediately after deciding *McIntire*, this Court began reiterating its rejection of the “absurd result” rule. In 2000, the Court instructed the Court of Appeals to take note of *McIntire* in interpreting a statutory provision, further rejecting the “absurd result” rule of statutory

construction. In *Gilbert v Second Injury Fund*, 463 Mich 866, 867; 616 NW2d 161 (2000), the Court instructed the Court of Appeals as follows:

On remand, the Court of Appeals shall ... take note of *People v McIntire*, 461 Mich. 147, 156, fn 8; 599 N.W.2d 102 (1999), in which we discussed the problems inherent in the so-called “absurd result” rule of statutory construction. The Court of Appeals must begin by examining the literal language of MCL 418.372(2); MSA 17.237(372)(2). If it is unambiguous, then the court shall apply the statute as written. The court may engage in judicial construction only if it determines that the statutory language is ambiguous.

*Id.* at 867 (emphasis added). Continuing its rejection of the “absurd result” rule, in 2002, this Court decided *Koontz v Ameritech Servs*, 466 Mich 304, 312; 645 NW2d 34 (2002), and again reiterated its rejection of the “absurd result” rule:

When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute. *Wickens v Oakwood Healthcare System*, 465 Mich. 53, 60; 631 N.W.2d 686 (2001). When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself, and judicial construction is not permitted. *Huggett v Dep’t of Natural Resources*, 464 Mich 711, 717; 629 NW2d 915 (2001). . . Because the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute.

*Koontz*, *supra* at 312. More recently, the Court upheld its rejection of judicial law making in *Jones v Dep’t of Corr*, 468 Mich 646, 655-56; 664 NW2d 717 (2003). In *Jones*, with respect to a statutory provision setting forth a parole board’s authority to revoke parole, this Court referred to its *McIntire* decision and stated:

As we have recently noted on several occasions, ‘our judicial role precludes imposing different policy choices than those selected by the Legislature, [and] our obligation is, by examining the statutory language, to discern the legislative intent that may reasonably be inferred from the words expressed in the statute.’ *People v Sobczak-Obetts*, 463 Mich 687, 694-695; 625 NW2d 764 (2001), quoting *People v McIntire*, 461 Mich 147, 152; 599 NW2d 102 (1999). In determining that the parole board had waived its authority and that the plaintiff was entitled to discharge, the *Stewart* Court created a remedy for a violation of former MCL 791.240 that was not grounded anywhere in the statutory scheme and thus exceeded its judicial authority.

We decline to impose the relinquishment of the parole board’s statutory authority to revoke parole as a remedy for a violation of the forty-five-day limitation period provided in MCL 791.240a(1). To infer such a legislative intent where none is indicated either in the text of MCL 791.240a or elsewhere in the statutory scheme “would be an exercise of will rather than judgment.” *People v Stevens (After Remand)*, 460 Mich. 626, 645; 597 N.W.2d 53 (1999) (emphasis in original).

*Id.* at 655-656 (emphasis added).<sup>1</sup>

This Court’s rejection of the “absurd result” rule was reiterated in its 2012 decision in *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 213-16; 815 NW2d 412 (2012). In *Joseph*, the Court not only rejected the Court of Appeals’ decision to inject its own judgment into the application of clear and unambiguous statutory language, it expressly rejected and disavowed its own prior decisions doing so. Although *Joseph* finally decided a conflict in the manner in which this Court interpreted and applied a statutory limitations period and tolling provision in the state’s no-fault insurance statute, the rules of statutory interpretation applied by the Court demonstrate that this Court has affirmatively dismissed and disavowed its prior allowance of judicial activism in statutory interpretation. The Court stated:

Again, the rules of statutory interpretation mandate that we give effect to the Legislature’s intent, relying on the plain language of the no-fault statute itself. If the statutory language is unambiguous, we must presume that the Legislature intended the meaning it clearly expressed and further construction is neither required nor permitted. As is evident from its holding, the interpretation advanced by *Regents* superseded the Legislature’s explicit intent that recovery of PIP benefits be limited to losses incurred within one year before the date on which an action is filed. The statutory provision containing the one-year-back rule employs plain, clear, and simple language. The minority/insanity tolling provision sets forth an equally simple concept, tolling the time in which an action may be commenced

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<sup>1</sup> Although members of this Court have arguably spoken out in favor of application of the “absurd result rule,” that position was seemingly retracted in the dissenting opinion in *Regents of the Univ of Mich v Titan Ins Co*, 487 Mich 289, 336-37; 791 NW2d 897 (2010). In *Regents*, the majority opinion of which was ultimately overruled by *Joseph, supra*, Justice Markman correctly stated: “[t]he majority here commits the same error that *Geiger* committed. That is, the majority believes that it can somehow discern the purpose of the statute from something other than its actual language, despite the fact that this Court has repeatedly held that this constitutes an improper approach to statutory interpretation. . . .” *Id.*

after a person's disability is removed. This tolling provision, however, is silent regarding the amount of damages a claimant may recover and, accordingly, there is no support for the conclusion that that minority/insanity tolling statute precludes application of the no-fault act's one-year-back rule. Because *Regents* reached such a conclusion, it was wrongly decided.

*Id.* at 215-216.

**2. Analysis.**

The statutory provision at issue in the present matter is MCL 566.132(1), which provides:

In the following cases an agreement, contract, or promise **is void** unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise: . . .

- (e) An agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate.

Based on the holding in *People v McIntire*, this Court has already decided the question at issue in this appeal; there is no exception, based on promissory estoppel or otherwise, to the application of this provision of the statute of frauds. As set forth above, this Court has definitively rejected the judicial use of the “absurd result” rule of statutory construction in favor of strict application of unambiguous statutory language.

Contrary to the purported basis for application of the “absurd result” rule, and based on the evolution of this Court's approach to use of the rule, the only time a court may apply judicial interpretation of a statutory provision is when that provision is ambiguous. It is only when an ambiguity is identified that it is appropriate for there to be judicial construction as to the meaning of the statute. Contrary to that established principle, and as this Court has recognized, applying promissory estoppel to prevent an “absurd” or “unjust” result is inappropriate with respect to the unambiguous statutory language contained in MCL 566.132(1).

In the instant matter, there is no dispute that the meaning of the term “void” is unambiguous. As this Court has recognized,

Void contracts do not in effect exist; indeed, the very term “void contract” is an oxymoron because a contract that is void is not a contract at all. See *Black’s Law Dictionary* (6th ed) (defining “void contract” as: “[a] contract that *does not exist* at law”) (emphasis added).

*Epps v 4 Quarters Rest LLC*, 498 Mich 518, 547; 872 NW2d 412 (2015). Based on this Court’s own decisions, there is no ambiguity as to the term “void.” Pursuant to the Legislature’s directive and use of the term “void,” any agreement relative to the commission on the sale of real property is void and, according to this Court, does not exist. There is no exception to this mandatory statutory language where the result of applying this provision as written would lead to an absurd or unjust result. Not only is the Legislature’s directive in this regard unambiguous and mandatory, the application of the absurd result rule to justify use of a promissory estoppel claim has been disavowed by this Court. Therefore, the very basis for this “exception” to the mandatory application of subsection (1) of the statute of frauds has eroded and it is appropriate for this Court to now overrule any precedent that can be viewed as endorsing use of the “absurd result” rule exception.

In *Joseph, supra*, in which this Court rejected judicial intervention in the application of an unambiguous statutory provision, the Court further determined that its prior decisions on the subject were wrongly decided such that stare decisis did not compel the Court’s adherence to those prior decisions. Based on the Court’s progress in rejecting the “absurd result” rule in favor of strict statutory construction, it is appropriate for the Court to now overrule *Opdyke, supra*, and any prior decision that endorses application of the rule in *Opdyke* on the same basis.

The test for determining whether stare decisis compels the continued adherence to a precedent is set forth in *Robinson v Detroit*, 462 Mich 439, 463-468; 613 NW2d 307 (2000), and calls for the Court to examine, among other factors:

‘(a) whether the earlier decision was wrongly decided, and (b) whether overruling such decision would work an undue hardship because of reliance interests or expectations that have arisen.’

*Joseph, supra* at 218-220 (quoting *Robinson, supra*). This Court’s consideration of these factors in *Joseph, supra*, demonstrates that it is appropriate for the Court to overrule prior decisions in which it allowed a promissory estoppel claim to provide an exception to subsection (1) of the statute of frauds. In *Joseph*, the Court overruled *Regents, supra*, because “it ignored the Legislature’s clear and unambiguous directives” in the statutory provision at issue in that case “by failing to enforce th[o]se statutory provisions as written.” *Id.*

As to the reliance factor, “the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental, to everyone’s expectations that to change it would produce not just readjustments, but practical real-world dislocations.” Here, although *Opdyke* was decided in 1982, as set forth in Howell’s brief in support of its Application at pages 7 and 8, its validity in providing an exception to subsection (1) of the statute of frauds has been consistently called into question. Therefore, this Court’s decision to overrule *Opdyke* would not create “practical real-world dislocations.” *Joseph, supra*.

Indeed, based on the Court of Appeals’ hesitation to fully endorse *Opdyke* and the Court of Appeals’ recent request to this Court to reconsider the promissory estoppel exception to subsection (1) of the statute of frauds, overruling *Opdyke* will in no way disadvantage plaintiffs. Instead, overruling *Opdyke* will provide the direction and consistency this state needs at this time. On the other hand, allowing the *Opdyke* decision to stagnate in confusion will cause significant inconsistent decisions, as demonstrated by this very matter, and invalidate Michigan’s long-standing rules of statutory construction that clear and unambiguous statutory language will be enforced as written. This will cause residents of the state of Michigan to be unable to rely on these rules. Accordingly, this Court should definitively disavow the “absurd result” rule, determine that

there is no promissory estoppel exception to subsection (1) of the statute of frauds, overrule *Opdyke* and any other case law allowing for judicial construction of unambiguous statutory provisions, reverse the Court of Appeals' decision in the instant matter and reinstate the trial court's grant of summary disposition in favor of Howell.

**B. The Michigan Legislature's 1992 Amendment Of The Statute Of Frauds Has No Impact On The Efficacy Of The Statutory Provision At Issue Here.**

**1. The Court of Appeals' Crown Tech Park Decision Demonstrates That There Is No Promissory Estoppel Exception To The Statute Of Frauds.**

In its opinion in the present matter, holding that promissory estoppel is an exception to application of subsection (1) of the statute of frauds, the Court of Appeals discussed and analyzed *Crown Tech Park v D&N Bank, FSB*, 242 Mich App 538, 550-53; 619 NW2d 66 (2000), another statute of frauds decision.<sup>2</sup> In *Crown Tech Park*, the Court of Appeals determined that promissory estoppel was not a bar to the application of MCL 566.132(2) relating to financial institutions. The Court of Appeals' decision was based on the particular language the Legislature used in a 1992 amendment to the statute of frauds. The 1992 amendment provides: "An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution. . . ." *Id.* (citing MCL 566.132(2)).

In holding that promissory estoppel was not a bar to application of this provision of the statute of frauds, the Court of Appeals applied the clear and unambiguous language in the statute stating that "an action shall not be brought against a financial institution." *Id.* Based on this language, the Court of Appeals held that because the statute of frauds specifically barred "an action," this was an unqualified and broad ban on any action, including promissory estoppel, to

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<sup>2</sup> The Court of Appeals opinion in *Crown Tech Park* was authored by now Justice Zahra.

enforce an unwritten contract. *Id.* at 550. The Court of Appeals also found it telling that the Legislature used the broadest possible language in MCL 566.132(2) by not specifying the types of action it prohibits, thereby “eliminating the possibility of creative pleading to avoid the ban.” *Id.* at 551.

In the Court of Appeals’ decision in the instant matter, the opinion and order states that *Crown Tech Park* does not apply as a bar to the promissory estoppel exception to the statute of frauds because MCL 566.132(1), the provision at issue here, does not contain the “mandatory language” that MCL 566.132(2) contains. *NAB, supra* at 3. This assessment of *Crown Tech Park* is inconsistent with the actual impact of the *Crown Tech Park* decision, which supports Howell’s position here.

At its core, *Crown Tech Park* is an endorsement, with respect to the statute of frauds, of Michigan’s established rules of statutory interpretation. Indeed, the basis for the Court’s decision was the enforcement of the clear and unambiguous statutory language contained in the 1992 amendment to the statute of frauds.

In that regard, the *Crown Tech Park* decision appropriately noted that “[i]f the statute is unambiguous on its face, we simply enforce the statute as written.” *Id.* (citing *Kiesel Intercty Drain Drainage Dist v Dep’t of Nat Res*, 227 Mich App 327, 334; 575 NW2d 791 (1998)). Importantly, in coming to this conclusion, the Court of Appeals did not consider or even reference the “absurd result rule” that forms the only basis for attacking the statute of frauds in the present matter. Based on the application of Michigan’s established rules of statutory construction in *Crown Tech Park*, regardless of the fact that the statutory language at issue in that case was different, the rules nonetheless apply here and *Crown Tech Park* and the instant case can be considered consistently together. Like the language in the 1992 amendment, the “void” language

contained in subsection (1) of the statute of frauds is unqualified. The Legislature did not draft the statute of frauds to state that an oral contract is voidable or that application of the statute can be suspended under any circumstances. Rather, the Legislature used the unqualified and unambiguous word “void.” Accordingly, contrary to the Court of Appeals’ decision here, *Crown Tech Park* supports Howell’s position in this matter and promissory estoppel is not an exception to subsection (1) of the statute of frauds, regardless of whether the statute refers to “an action” or states that an unwritten contract is “void.”

As the Court of Appeals correctly recognized in *Crown Tech Park*, the only relevant inquiry as to whether the statute of frauds applies is whether the statutory language at issue is ambiguous. The word “void,” like the term “an action” is unambiguous. Therefore, subsection (1) of the statute of frauds must be enforced as written and it is inappropriate to read an exception into the statute which the Legislature did not draft into the statute.

**2. The Disfavored Doctrine Of Legislative Acquiescence Does Not Diminish The Rules Of Statutory Construction.**

In *Crown Tech Park*, the defendant unsuccessfully asserted that because the Legislature did not address whether promissory estoppel was an exception to the 1992 amendment to the statute of frauds, the doctrine of legislative acquiescence applied to demonstrate that the Legislature actually intended to maintain the exception. *Crown Tech, supra* at 551-552. The Court of Appeals definitively rejected that assertion. For the same reasons stated in *Crown Tech Park* and elsewhere by members of this Court, legislative acquiescence should not apply in the instant matter to maintain the judicially created promissory estoppel exception to the statute of frauds simply because the Legislature did not amend the language in MCL 566.132(1) at the same time. As the Court of Appeals stated in *Crown Tech Park*: “even if we were to conclude that the Legislature was silent on this issue, we would hesitate to rely on legislative acquiescence to

maintain this cause of action because legislative acquiescence is disfavored as an ‘exceedingly poor indicator of legislative intent.’” *Crown Tech, supra* at 552. Therefore, should Plaintiffs or the Court be inclined to infer that the Legislature somehow intended to maintain a promissory estoppel exception to the statute of frauds when it drafted the 1992 amendment through legislative acquiescence, such an inference should be rejected.

In rejecting the doctrine of legislative acquiescence, the Court of Appeals cited to and analyzed a decision of this Court, which unquestionably rejected the concept. In *Donajkowski v Alpena Power Co*, 460 Mich 243, 257-59; 596 NW2d 574 (1999), this Court explained the basis for its rejection of this concept. The Court stated:

In response to the dissent’s legislative acquiescence argument, we must take this opportunity to observe that legislative acquiescence is an exceedingly poor indicator of legislative intent. . .

The majority’s analysis poses yet a further problem, for it should not be assumed that the Legislature even agrees it has a duty to correct interpretations by the courts that it considers erroneous. As Judge Stephen Markman, of our Court of Appeals, insightfully observed on this topic in one of his scholarly writings, “no sensible theory of statutory interpretation would require Congress to devote a substantial portion of its time to extinguishing judicial forest fires.” Markman, *On interpretation and non-interpretation*, 3 Benchmark 219, 226, n 60 (1987).

As is clear, in my view, this case is an excellent example of the misuse of the doctrine of legislative acquiescence. Indeed, whether it can ever be appropriate to use legislative acquiescence has in the past been the subject of heated debate on this Court. In *Autio v Proksch Construction Co*, 377 Mich 517, 527; 141 NW2d 81 (1966), Justice Souris described it as “a pernicious evil designed to relieve a court of its duty of self-correction” and indicated that it “has been examined and rejected by this Court before, but its current resurrection demands we perform the task once more lest our silence be construed as signifying its unanswerable validity.” In the course of his discussion, Justice Souris quoted language from *Van Dorpel v Haven-Busch Co*, 350 Mich. 135, 145-146; 85 N.W.2d 97 (1957), which is worthy of consideration: . . .

“Yet there are several dark shadows in this picture. For one, it suggests a legislative passion for reading and heeding the decisions of our supreme courts which we suspect may be scarcely borne out by the facts. For another, pushed too far such a doctrine suggests

the interesting proposition that it is the legislatures which have now become the ultimate courts of last resort in our various States; that if they delay long enough to correct our errors those errors thus become both respectable and immutably frozen; and, finally, the larger and more dismal corollary that if enough people persist long enough in ignoring an injustice it thereby becomes just.”

If it has not been clear in our previous decisions, we wish to make it clear now: “legislative acquiescence” is a highly disfavored doctrine of statutory construction; sound principles of statutory construction require that Michigan courts determine the Legislature’s intent from its words, not from its silence. . . .

*Donajkowski, supra* at 260-61 (emphasis added).

Plaintiffs may suggest, as did the Court of Appeals in this matter, that the Legislature’s failure to amend subsection (1) of the statute of frauds somehow indicates an intent to allow the presence of a promissory estoppel claim to suspend application of the statute of frauds. As this Court has repeatedly recognized, such a use of legislative acquiescence would presume that the Legislature both knew of decisions finding promissory estoppel is an exception to the statute of frauds and that it intentionally failed to amend subsection (1) to prevent use of this exception. This conclusion requires the parties and the Court to presume to know the Legislature’s intent, which they cannot. In that regard, by not amending subsection (1), the Legislature could just as easily have intended that the statute of fraud’s present use of the word “void” is sufficient to prevent collateral attacks on its applicability based on promissory estoppel claims such that it need not be amended.

This Court, however, has rejected such assumptions and use of the disfavored legislative acquiescence doctrine. Therefore, this Court should affirmatively reject use of this doctrine in the current matter and should instead apply the clear and unambiguous statutory language contained in subsection (1) of the statute of frauds to determine that the Legislature’s use of the term “void” means that there is no promissory estoppel exception to application of this statutory provision.

**IV. CONCLUSION**

WHEREFORE, Defendant Howell Public Schools respectfully requests that this Court:

- (1) grant its Application for Leave to Appeal;
- (2) reverse the Court of Appeals' February 9, 2017 order,
- (3) determine that promissory estoppel is not an exception to the statute of frauds, MCL 566.132(1);
- (4) overrule any inconsistent case law holding that promissory estoppel is an exception to the statute of frauds, including *Opdyke, supra*; and
- (5) grant any other relief the Court deems just and appropriate.

Respectfully submitted,

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Date: February 14, 2018

STATE OF MICHIGAN  
IN THE SUPREME COURT

NORTH AMERICAN BROKERS, LLC,  
a Michigan limited liability company, and,  
MARK RATLIFF, an individual,

Plaintiffs/Appellees,

Supreme Court Docket No. 155498  
Court of Appeals Docket No. 330126  
Lower Court Case No.: 15-28669-CH

vs.

HOWELL PUBLIC SCHOOLS,  
a Michigan general powers school district, and,  
ST. JOHN PROVIDENCE, a Michigan corporation,

Defendant/Appellant.

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**DEFENDANT/APPELLANT HOWELL PUBLIC SCHOOLS' APPENDIX TO  
SUPPLEMENTAL BRIEF SUBMITTED PURSUANT TO THE COURT'S  
JANUARY 3, 2018 ORDER**

<b><u>APPENDIX</u></b>		
<b><u>Appendix Document No.</u></b>	<b><u>Description</u></b>	<b><u>Page No.</u></b>
1	Livingston County Circuit Court Register of Actions	A1
2	Livingston County Circuit Court Order Granting Summary Disposition to Howell Public Schools, Entered October 15, 2015	A4
3	Michigan Court of Appeals Docket Entries	A6
4	<i>North American Brokers, LLC et al v Howell Public Schools et al</i> , unpublished opinion per curiam of the Michigan Court of Appeals, Docket No. 330126 (Decided February 9, 2017)	A10