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United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FOUR B PROPERTIES, LLC; RANCH 10, LLC; GARY A. BINNING, individually and as trustee of JH RIVER RANCH LAND TRUST U/A/D DECEMBER 21, 2020,

Plaintiffs - Appellants,

v.

THE NATURE CONSERVANCY, a District of Columbia 501(c)(3) corporation,

Defendant - Appellee.

No. 25-8024

Appeal from the United States District Court
for the District of Wyoming
(D.C. No. 1:24-CV-00006-SWS)

Carolyn Gurland of White & Case LLP, Chicago, Illinois (Erica Rachel Day and Scott E. Ortiz of Williams, Porter, Day & Neville P.C., Casper, Wyoming; Lauren Papenhausen of White & Case LLP, Boston, Massachusetts, with her on the briefs), for Plaintiffs-Appellants.

Leah C. Schwartz of Parsons Behle & Latimer, Jackson, Wyoming (William P. Schwartz, Jackson, Wyoming; Elizabeth Butler and Hannah J. Ector, Salt Lake City, Utah, with her on the brief), for Defendant-Appellee.

Before **MORITZ** and **FEDERICO**, Circuit Judges, and **ALLEN**, District Judge*.

FEDERICO, Circuit Judge.

This case is about a property owner who wanted to build a guest house. The litigation history over whether he had the right to build the desired guest house is extensive. The problem for the property owner, Gary Binning, is that he purchased the parcel of land subject to a conservation easement held by The Nature Conservancy (TNC), which limited use of the property. Binning and TNC first entered litigation nearly a decade ago, disputing the meaning of the easement. At that point, Binning wanted to build a guest house measuring more than 2,500 square feet. But a state trial court granted summary judgment against him and in favor of TNC. The Wyoming Supreme Court affirmed, holding that Binning had no right to build any guest house at all. That, however, was not the end of the dispute.

During a lunch meeting in 2020, the Wyoming state director of TNC told Binning that she wanted to move forward. And, he alleges, she said that he could build a structure on the property that would accommodate overnight guests – though not a "guest house," forbidden by the then-recent

* The Honorable Ann Marie McIff Allen, United States District Judge for the District of Utah, sitting by designation.

Wyoming Supreme Court opinion. Binning then sought approval for new building plans, which TNC rejected. So, Binning sued, again.

This time, he sued in federal court and sought to bind TNC to the alleged lunchtime promise on a legal theory of promissory estoppel. The district court disposed of Binning's case on summary judgment and ruled in favor of TNC. He now appeals, arguing that he should have access to an equitable remedy to bind TNC to its promises and to build his not-guest house.

We agree with the district court. Binning has failed to establish that the three elements of promissory estoppel under Wyoming law could weigh in his favor. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the judgment of the district court.

I

In 1905, a Wyoming family homesteaded a 500-acre ranch between the Snake River and Grand Teton National Park. The land was ultimately conveyed to a trust. Ninety years after the homesteading, a trustee established a conservation easement running with the land. Such easements under Wyoming law impose limitations or affirmative obligations on a piece of land in order to, *inter alia*, protect the "natural, scenic, or open space values" of the property. Wyo. Stat. Ann. §34-1-201(b)(i). Here, the easement limits the types of development that

could occur on the land. The trustee named TNC, the non-profit corporation that is Defendant-Appellee here, as beneficiary of the easement. Then, in 2004, the trustee died and left the entirety of the 500-acre property to TNC. This conveyance also amended a portion of the conservation easement.

Of particular importance here is language in the amended easement providing that a property owner may, with regard to each parcel of the subdivided ranch, "construct, maintain, and replace if destroyed one additional single family residential structure and associated improvements." *Four B Props., LLC v. Nature Conservancy*, 458 P.3d 832, 837 (Wyo. 2020) (alteration adopted) (footnote omitted). This language has already been construed by another court. In a previous and separate litigation, the Wyoming Supreme Court authoritatively announced the meaning of the easement. *See id.* at 843. "[A]s a matter of law," the easement's language "limits construction [on a given parcel] to a single building in which one family can live and dwell." *Id.* Associated improvements, on the other hand, "are not structures typically associated with activities that occur on a daily basis within a residential structure." *Id.* Thus, the Wyoming Supreme Court reasoned, "'associated improvements' do not include residential structures." *Id.* The bottom line is that:

> The Conservation Easement permits *one* single-family residential structure, and [a provision of the easement] explicitly prohibits the construction of any structure, "except as permitted herein." To define "associated improvements" so that they include a second residential structure, such as a guest house or caretaker's quarters, would render meaningless both the allowance for one single-family residential structure and the prohibition against unpermitted structures.

Id. at 844.

Well before the Wyoming Supreme Court made this ruling, two land parcels of interest here changed hands repeatedly. In 2004, when TNC took title to the homestead, it came as four parcels. TNC sold two of those parcels to a developer. The developer later encountered financial difficulties. He entered bankruptcy, and Binning took the opportunity to purchase one of the parcels. Because the conservation easement runs with the land, the property came subject to it. Binning did not immediately purchase the second parcel that is subject to this litigation – somebody else purchased that parcel out of bankruptcy. However, about five years later, Binning purchased the adjoining parcel from that buyer.[1]

[1] Binning is joined in this case as Plaintiff-Appellant by Four B Properties, LLC; Ranch 10, LLC; and JH River Ranch Land Trust. Binning is trustee of at least some of these entities. In their briefing, "for convenience," the Plaintiff-Appellants refer to themselves collectively as "Mr. Binning" notwithstanding that legal title to the properties at issue changed hands between various Plaintiff-Appellants over time. *See* Op. Br. at 19 n.2. We will follow the same custom and refer to Plaintiff-Appellants collectively as Binning.

Then, in 2016, Binning sought approval to build a main house, caretaker's quarters, and guest house on one of the parcels. In an email, TNC told Binning that it understood the conservation easement to allow for a primary residential dwelling plus a 2,500 square foot guest house. But TNC determined Binning's plans did not fall within its then-operative understanding of the conservation easement. It rejected the plans due to the size of the caretaker's quarters and guesthouse.

Thus began the litigation that led the parties to the Wyoming Supreme Court. Binning filed in state trial court alleging breach of contract, breach of the implied covenant of good faith, and additionally sought a declaratory judgment that would interpret the easement's "associated improvements" language to allow the construction. TNC counterclaimed for declaratory relief. It sought a declaration that the easement provides for one single-family residential structure per parcel and that the "associated improvements" language does not allow for residential structures such as guest houses or caretaker's quarters.

The state trial court granted summary judgment and judgment on the pleadings for TNC. Binning appealed to the Wyoming Supreme Court. The state's high court affirmed. As discussed above, the Wyoming court held that the easement's language "limits construction to a single building in which one family can live and dwell." *Id.* at 843. And it concluded that

"'associated improvements' do not include residential structures." *Id.* The court's opinion held that the easement did not provide for even the 2,500 square foot secondary structure that TNC apparently would have allowed prior to the litigation.

Following his loss before the Wyoming Supreme Court, Binning hired an architecture firm to design a main house and a 2,500 square-foot guest house. Binning then sent a letter to TNC stating he would begin "the construction originally approved" to include a main residence and "a guest house containing 2,500 s.f. of habitable space." Aplt. App. VII at 182. TNC responded that it was "compelled by law" – announced in the Wyoming Supreme Court opinion – to prohibit construction of a guest house. *Id.* at 185. Binning, his architect, and TNC representatives then met by videoconference. But this meeting made Binning no headway. In another letter, TNC's new state director, Hayley Mortimer, told Binning: "We now have clear legal direction from the Wyoming Supreme Court that a second residential structure is not allowed under the terms of the conservation easement. Because the court was clear in its holding, we have no choice but to adhere to its interpretation." *Id.* at 264.

Days later, Mortimer met Binning and his now-wife Marianna Binning for lunch. The trio sat for about an hour on the outdoor deck of the

Teton Pines Country Club in Jackson. This meeting forms the basis for the present litigation.

Binning later recalled in deposition testimony that he had a "very nice conversation" with Mortimer, with whom he found he "[h]ad a lot in common." *Id.* at 45. Conversation turned to the property in question; Binning testified that Mortimer, new to her role as the non-profit's state director, seemed unfamiliar with the property's history. After Binning explained his frustration, Mortimer told him that she'd try to help him. Binning testified:

> [Mortimer] said she didn't want any more lawsuits. She said: We have this problem called the [Wyoming] Supreme Court decision, which we have to work with, but reiterated that she didn't want any more lawsuits and wanted to resolve the matter.
>
> She said that she wanted to move forward, just don't call it a guesthouse. Abide by the [Land Development Regulations] for the County of Teton. And I pressed to say: Well, I'd like to have something in writing from the TNC. And I'd also wanted to see if there was a way I could get a kitchen.
>
> * * *
>
> She assured me that they just really wanted to get it resolved, and so she committed that – you know, go ahead and build the structure. Don't call it a guesthouse. Don't put a kitchen in it.

Aplt. App. X at 189–90, 192.

In her deposition, Marianna Binning also recalled Mortimer making the foregoing statement. She testified:

> [Mortimer said] that she wished she had been there when this started, that she didn't want any more litigation, that she – that they weren't going to come on our property and count kitchens and bathrooms, that – don't call it a guesthouse, that they would look to the LDRs, don't put a kitchen in it, that their hands were tied on it. You know, can't be a guesthouse.

Id. at 242–43.

Mortimer, for her part, did not recall making these statements. She did, though, recall telling Binning that "whatever we discussed, I had to . . . run it through our legal counsel and qualified staff, and that I would follow up." Aplt. App. VII at 275.

About a month after the meeting, Mortimer followed up in an email with a letter attached. The letter stated that Binning had "requested additional guidance regarding what might be permitted as part of a single family residential structure." Aplt. App. VIII at 57. It directed Binning to the Teton County Land Development Regulations (LDRs) for guidance. And it discussed the possibility of constructing a residence with smaller units connected by "wings." *Id.* The letter stated: "Subject to a review of actual plans and confirmation with Teton County, we would not object if such a design is approved by Teton County as one single family residential structure and not multiple accessory residential units (even if such accessory units are allowed under the LDRs)." *Id.*

Eight minutes later, Binning emailed Mortimer requesting "a call to discuss." *Id.* at 55. The next day, Binning emailed his architects to say that he'd hit a roadblock with TNC: "Will let you know when we can pick up work on the project again. Unfortunately[,] it may involve further litigation." *Id.* at 60.

In the following days, Binning wrote back to Mortimer. He requested modifications to the letter, including excision of the statement that TNC would not approve "multiple accessory residential units." Aplt. App. VII at 71–72. When Mortimer declined to make that revision – but agreed to make another addressing the letter's scope – Binning stated he had "no need" for a revised letter. *Id.* at 73.

Toward the end of the month, Binning asked his architects to resume work. In place of a guest house, though, he directed them to develop a "kitchenless wellness center." Aplt. App. VII at 80. In contemporaneous meeting minutes, the architecture team wrote that it would consider development of "a wellness center where guest[s] can stay overnight" in one of "four en-suite bedrooms." Aplt. App. VIII at 118. Nine months later, the architects developed a slide deck depicting the "wellness center" with bedrooms, beds, and en suite bathrooms.

During this time, Binning did not contact TNC. But in July 2022, approximately 22 months after the lunch meeting, Teton County approved

building permits for three buildings, including a "Gym and Yoga studio." *Id.* at 263. This permit allowed for development of a building with approximately 2,500 "habitable" square feet. Binning's architects then submitted the plans to TNC.

In response, TNC sent a letter stating that it would not approve the plans for the purported wellness center. It stated:

> We have reviewed the plans, in light of the plain language of TNC's conservation easement and the controlling Wyoming Supreme Court opinion[.]
>
> * * *
>
> Upon reviewing the plans, it appears the Wellness Center features most elements of a residential structure. For example, there are four rooms, each with closets and adjoining full bathrooms, an entry vestibule, a separate powder room, laundry facilities, and a central room with a fireplace and improvements for food storage and preparation including a refrigerator, one or more sinks, a microwave, and a dishwasher. Regardless of how the various spaces are labeled, we must conclude the plan elements are residential in nature. This is consistent with our phone conversation in which you acknowledged this structure would accommodate the Binnings' guests.

Aplt. App. IX at 26.

In a subsequent email to Binning, one of the architects wrote: "[S]o much for your efforts to get approval. Very disappointing, and more so because [TNC] seems to think that it was our conversation that tipped her off to its use for housing guests." *Id.* at 32.

Binning then wrote a letter to TNC, stating that "TNC is equitably estopped from preventing the construction of a guest house" because at the time he purchased the property, Binning was of the impression that he could build a 2,500 square foot guest house. *Id.* at 38. He did not make any mention of Mortimer's alleged lunchtime promise in this letter. In response, TNC offered to allow Binning to build the wellness center if Binning would agree in writing that the structure would not be used for guest accommodations. Binning declined this offer.

Next, Binning filed in the District of Wyoming the lawsuit that gives rise to the present appeal. At the time of filing, he wrote to Mortimer to explain the existence of the lawsuit. The letter to Mortimer did not mention the lunchtime conversation; however, the filed complaint did.

In the complaint, Binning pleaded two counts of promissory estoppel. The first alleged that, in 2016, TNC represented to Binning that he would be able to build a guest house if he purchased the second parcel. The second alleged that Mortimer's lunchtime statements in fact comprised a promise binding on TNC. The district court later granted TNC's motion to dismiss the first claim. The second claim survived TNC's motion to dismiss but failed at summary judgment.

In disposing of the case at summary judgment, the district court held that Mortimer's lunchtime statements did not constitute a clear and

definite promise, that Binning did not act in reasonable reliance on the statements, and that the equities did not require enforcement of the alleged promise against TNC. In other words, the court held that none of promissory estoppel's three elements could be proven on the summary judgment record.

Binning timely appeals only the district court's grant of summary judgment in favor of TNC.

II

Because this appeal arises from the grant of summary judgment, we will review it de novo, applying the same legal standard used by the district court. *Am. Sw. Mortg. Corp. v. Cont'l Cas. Co.*, 84 F.4th 910, 913 (10th Cir. 2023). This means that we view the evidence in the light most favorable to the non-moving party (here, Binning) and draw all reasonable factual inferences in his favor. *See id.*

If, on the foregoing view of the evidence, there is no genuine dispute as to any material fact and TNC is entitled to judgment as a matter of law, then the district court's grant of summary judgment was proper. *Sanderson v. Wyo. Highway Patrol*, 976 F.3d 1164, 1173 (10th Cir. 2020). We deem a factual dispute to be "genuine" if a rational jury could find in favor of Binning based on the evidence presented. *Jones v. Norton*, 809 F.3d 564, 573 (10th Cir. 2015).

The claim alleging promissory estoppel arises under Wyoming law. Federal subject-matter jurisdiction arises from diversity of the parties. *See* 28 U.S.C. § 1332(a). In cases like this, we apply federal procedural law and state substantive law. *Banner Bank v. Smith*, 30 F.4th 1232, 1238 (10th Cir. 2022) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)).

Promissory estoppel in Wyoming has three elements:

> (1) the existence of a clear and definite promise which the promisor should reasonably expect to induce action by the promisee; (2) proof that the promisee acted to its detriment in reasonable reliance on the promise; and (3) a finding that injustice can be avoided only if the court enforces the promise.

Singer v. Lajaunie, 339 P.3d 277, 283 (Wyo. 2014) (quoting *City of Powell v. Busboom*, 44 P.3d 63, 66 (Wyo. 2002)).

Binning argues that the district court erred in its analysis of all three elements. In considering this argument, we are cognizant that the first two elements present questions of fact. *Id.* The third element is a question of law reserved for the court. *Id.* Under Wyoming law, Binning must establish each element to the standard of "strict proof." *Id.* The Wyoming Supreme Court has not made clear the precise meaning of this phrase. Whatever its meaning, we are certain that it must signify a burden which is at the very least equivalent to or greater than the preponderance of the evidence standard typically applicable in civil cases. Because the standard we apply will not dictate the outcome on this record, we assume without deciding that

the typical preponderance of the evidence standard applies and proceed under that standard, which is more favorable to Binning.[2]

A

We begin, then, with the first question: whether a rational jury could find the existence of a clear and definite promise which TNC should have reasonably expected to induce action by Binning. Binning argues that he has put this element into dispute by proof of what he calls the "Baseline Promise." *See* Op. Br. at 27–30. That is, Binning's deposition testimony (and that of Marianna Binning) demonstrates that Mortimer bound TNC by promising that Binning could build the structure in question, so long as he didn't call it a guesthouse, it did not have a kitchen, and it complied with the LDRs. *See id.* at 11–12. On Binning's theory, his follow-up

[2] Although the Wyoming Supreme Court has repeatedly applied this standard, it apparently has never announced the precise weight of the evidentiary burden. *See, e.g., Orthopaedics of Jackson Hole, P.C. v. Ford*, 250 P.3d 1092, 1103 (Wyo. 2011) (applying a "strict standard of proof" but failing to describe its relationship to other standards). And there is little authority from other sources that might conclusively resolve the issue. *Compare, e.g., Grocery Outlet Inc. v. Albertson's Inc.*, 497 F.3d 949, 952 (9th Cir. 2007) (Wallace, J., concurring) (positing that "strict proof" in the Lanham Act context is "no different than clear and convincing evidence") *with id.* at 953–54 (McKeown, J., concurring) (reasoning that the "traditional preponderance of the evidence standard" applies where the court has "not elaborated on the meaning of 'strict proof'"). The district court observed a similar split in persuasive authority and applied the preponderance standard. *See* Aplt. App. XIII at 174–75; Aplt App. II at 104 n.4. We will take the same tack.

communications did not discuss Mortimer's lunchtime statements because he was seeking something above and beyond the Baseline Promise. But we think the evidence, including the deposition testimony, does not suffice to establish a clear and definite promise in the first place. And, in any event, TNC would not have reasonably expected Binning to rely on the lunchtime statement.

The first element includes a "dual emphasis on clarity and inducement." *Inter-Mountain Threading, Inc. v. Baker Hughes Tubular Servs., Inc.*, 812 P.2d 555, 559 (Wyo. 1991) (quotation omitted). To show clarity under Wyoming law, the proffered evidence must serve to prove "promises clear and unambiguous in their terms." *Id.* Statements that constitute only "conditional and inchoate representations" are insufficiently clear and definite to bind a putative promisor. *Brown v. Royal Maccabees Life Ins. Co.*, 137 F.3d 1236, 1248 (10th Cir. 1998) (applying Wyoming law). Where the parties arrive at "an agreement to agree in the future," there is no clear and definite promise. *See Rialto Theatre, Inc. v. Commonwealth Theatres, Inc.*, 714 P.2d 328, 334 (Wyo. 1986). Similarly, "mere expressions of hope and opinion in an obviously preliminary negotiation context" will not do. *Inter-Mountain Threading*, 812 P.2d at 559. In determining whether the agreement is sufficiently definite, we are to look to both the nature of the transaction and the relationship of the parties to one another. *Davis v.*

Davis, 855 P.2d 342, 348 (Wyo. 1993). Where the parties' past dealings show a typical business practice, the putative promisor should not reasonably expect its counterpart to rely on the promise by diverging from that historical practice. *See Doud v. First Interstate Bank of Gillette*, 769 P.2d 927, 930 (Wyo. 1989).

On the summary judgment record in this case, there is no genuine dispute as to the existence of Mortimer's lunchtime statement. Binning both alleges the existence of the statement and proffers evidence in support. TNC does not attempt to impeach the deposition testimony. And, in any event, we must assume that Binning's evidence is accurate and infer that Mortimer simply forgot that she made the statement.

The statement, though, is at most a "conditional and inchoate representation[]" that does not bind TNC. *Royal Maccabees Life Ins. Co.*, 137 F.3d at 1248. Binning acknowledged in his deposition that he wanted a written memorialization of the agreement given what he perceives as "TNC's history of not honoring their past promises." Aplt. App. X at 193. And, Binning testified, Mortimer "was very emphatic" that the parties comply with the Wyoming Supreme Court's opinion. *Id.* at 194. Although Binning reads that opinion to allow for any structure that does not contain a kitchen, Op. Br. at 57, we do not read it to say that. Certainly, given the years that the parties had already spent litigating this matter, Mortimer's

statement reads as little more than an "expression[] of hope," *Inter-Mountain Threading*, 812 P.2d at 559, that the parties could comply with the Supreme Court opinion while also allowing development of a building that would allow "you know, somebody [to] sleep over, grandkids, you know, for a night or two," Aplt. App. X at 199 (deposition testimony of Binning).

The parties' history bears even more heavily on the inducement portion of this first element. Indeed, a jury could not rationally find that TNC would reasonably expect the proffered statement to induce Binning's actions. At the lunch, Binning told Mortimer that he wanted "something in writing from the TNC." Aplt. App. X at 190 (testimony of Binning). Mortimer, for her part, said that she would consult with counsel before following up in writing. *Id.* at 152 (testimony of Mortimer). This mutual desire for written confirmation is unsurprising – after all, the parties had already spent years in litigation regarding the very issue being negotiated. And, as a result, Binning perceived TNC to have a "history of not honoring their past promises." *Id.* at 193.

All this surrounding context indicates the "conditional and inchoate" nature of Mortimer's lunchtime statements. *See Royal Maccabees Life Ins. Co.*, 137 F.3d at 1248. When Mortimer did follow up in writing after the lunch, her letter characterized their lunchtime conversation as involving Binning's request for "additional guidance regarding what might be

permitted" in development of the property. Aplt. App. VIII at 57. Binning did not object to Mortimer's characterization that he sought additional guidance from TNC, nor did his response to the letter even reference the alleged promise.

Instead, Binning undertook to negotiate the terms of a different agreement. He argues that this does not invalidate the binding nature of the alleged promise – which again he refers to in briefing as the "Baseline Promise," *see* Op. Br. at 24–29 – and only demonstrates that he wanted something more. But Binning's attempts to negotiate further and on different points demonstrates the "obviously preliminary negotiation context" in which the lunch conversation arose. *See Inter-Mountain Threading*, 812 P.2d at 559.

We agree with the district court that, given this background, there is no genuine dispute of material fact because a jury could not rationally find the lunchtime statement was a clear and definite promise that would create a reasonable expectation that Binning would act. Binning cannot shoulder his burden on the first element of promissory estoppel.

B

The foregoing conclusion is sufficient to dispose of the appeal. In the interest of completeness, though, we will analyze the remainder of Binning's arguments. This brings us to the second element of promissory

estoppel, which requires Binning to bring proof that he acted to his detriment in reasonable reliance on Mortimer's alleged promise. Binning argues that he did so act, expending nearly a million dollars for design and permitting. Op. Br. at 60–69. He asks this court to reverse the district court's determination that any reliance on the alleged promise was not reasonable under the totality of the circumstances. *See* Aplt. App. XIII at 178.

Under Wyoming law, "detriment in reasonable reliance is closely tied to the existence of a clear and definite agreement." *Davis*, 855 P.2d at 348. This is because a reasonable person would not "rely to his or her detriment on an oral agreement unless it is sufficiently clear and definite" as to induce action. *Id.* In analyzing reasonable reliance, we may consider the "knowledge and sophistication of the relying party." *Id.* Ultimately, any reliance must be "reasonable under the circumstances of the case considered as a whole." *Id.* (quoting *Roth v. First Sec. Bank of Rock Springs*, 684 P.2d 93, 97 (Wyo. 1984)).

Given that the alleged promise was not so clear and definite as to induce reliance, it necessarily follows that Binning's argued reliance was unreasonable. Even if the first element were a close call (and it is not), reliance on the lunchtime statement would be unreasonable. Binning is a sophisticated individual who "buy[s] companies for a living and frequently

entertain[s] CEOs." Aplt. App. X at 191 (testimony of Binning). He spent years litigating his rights as they pertain to this Wyoming property and had already lost the case he brought before the Wyoming Supreme Court about this same property. He admits that he finds TNC untrustworthy and perceives that it has a "history of not honoring [its] past promises." *Id.* at 193. He acknowledges that Mortimer "was very emphatic" that the parties comply with the Wyoming Supreme Court's opinion. *Id.* at 194. And he further concedes that "whatever [Mortimer] agreed to at that meeting I wanted in writing." Aplt. App. VII at 51 (testimony of Binning).

Yet the writing that TNC sent following the lunch meeting made no reference to the alleged promise and instead characterized Binning during the meeting as requesting "additional guidance" from TNC "regarding what might be permitted as part of" his development plans. Aplt. App. VIII at 57.

Given Binning's sophistication, the extensive history of litigation between the parties, his stated desire for a writing memorializing the agreement, and the alleged promise's tension with the Wyoming Supreme Court opinion, any reliance on the alleged oral agreement was wholly unreasonable. We also note that Binning did seek to bind TNC in written correspondence. These attempts, which never mentioned Mortimer's lunchtime statement, demonstrate the sort of efforts that would be expected from a sophisticated party negotiating against a history of litigation and

distrust. And the absence of any written mention of the lunchtime statement demonstrates by contrast the unreasonableness of any reliance here.

Indeed, it would be unreasonable for a person to rely on oral statements that are in great tension with this later-written representation. *See Woodward v. Chesapeake Operating, LLC*, 2020 WL 13564063, at *5 (D. Wyo. Feb. 7, 2020). It would also be unreasonable to rely on oral statements that are additionally in tension with the Wyoming Supreme Court's opinion resolving the dispute over the same property at issue here. Binning's apparent acquiescence in TNC's characterization of the lunchtime meeting further renders unreasonable any reliance on the alleged promise. We affirm the district court on the second element of promissory estoppel.

C

The third element of promissory estoppel presents a legal question reserved for the court. *Inter-Mountain Threading*, 812 P.2d at 560. In ruling on this element, a court has discretion to determine whether invocation of promissory estoppel is "necessary to avoid injustice." *Id.* (quotation omitted). The Wyoming Supreme Court has announced that in this context "[a] court's equitable authority to limit recovery as a matter of law is broad, but not absolute." *Verschoor v. Mountain W. Farm Bureau Mut. Ins. Co.*, 907 P.2d 1293, 1299 (Wyo. 1995). Thus, if a plaintiff can show material

questions of fact on the first two elements of promissory estoppel, the court may not grant summary judgment on the third element alone. *Id.* Here, though, Binning has not established that either of the first two elements of promissory estoppel are met. There is thus no basis in equity to enforce the alleged promise.

To merit reversal, Binning needed to show that the district court erred on all three elements of promissory estoppel. It erred as to none.

AFFIRMED.