

## **This Just Isn't Right: Using Equitable Claims and Remedies to Right a Wrong**

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There are some cases in which something is just not right, but there is no legal remedy. Instead, one may need to rely on equitable principles to right the wrong. Such was the situation in *Nardone v. LVI Services, Inc.*, a case decided by the Massachusetts Appeals Court in October. There, Mr. Nardone and his supervisor, Mr. Fried, believed that Mr. Nardone had been granted stock options. However, when the options should have been worth a substantial amount of money, Mr. Nardone and Mr. Fried discovered that no grant had been made. Mr. Nardone's response was to tell Mr. Fried to get someone else to finish certain work (a roadshow) as he (Mr. Nardone) was "done." Mr. Fried promised Mr. Nardone that if he (Mr. Nardone) finished the roadshow, he (Mr. Fried) would "make it right." In late 2005, when other executives were cashing in their stock options, Mr. Fried paid Mr. Nardone a \$50,000 bonus.

However, in early 2008, Mr. Fried learned that the never-granted options were worth closer to \$1 million and he complained to Mr. Fried's successor, Mr. McNamara. Mr. McNamara said he would make Mr. Nardone whole by giving him stock options that would soon be worth an equivalent amount when the company went public. Unfortunately, the 2008 financial crisis intervened. Apart from the \$50,000, Mr. Nardone never received what Mr. Fried promised – to "make it right."

Mr. Nardone sued, relying on the equitable claim of promissory estoppel and the equitable remedy of quantum meruit (that, even absent a contract, people should be paid for the value conferred by their labor). The company's defense was that working the roadshow was a task Mr. Nardone had previously performed and, therefore, was part of the job for which he was paid his regular salary. The jury disagreed, and the Appeals Court upheld the jury's verdict – and Mr. Nardone's \$1 million award.

First, regarding promissory estoppel, the Appeals Court held that it would be inconsistent with the equitable nature of the doctrine of promissory estoppel to say that a promise that was intended to induce voluntary action, and that did induce such action, was not actionable as a matter of law, simply because at an earlier time, Mr. Nardone had done that same action without such promise. Second, the Appeals Court held that recovery in quantum meruit is based on the value received by the promisor (the company), not on the rate the promisee (Mr. Nardone) might have charged for his services. Here, the Appeals Court upheld the jury's determination that the value to the company of Mr. Nardone's work on the roadshow, as evidenced by Mr. Fried's promise to "make it right," was far

in excess of Mr. Nardone's salary.

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