



Regina M. Hunter El



Notice to the Principal is Notice to the Agent; Notice to the Agent is Notice to the Principal

22 June 2022 C.E., 23 Dhul-Qi'dah 1443, A.H.

Via First Class U.S.P.S. Mail
Via E-mail

Ms. Tonnya K. Kohn, State Court Administrator
c/o Ms. Tammie M. Holmes, Court Reporter Manager
South Carolina Judicial Branch
Office of Court Administration
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RECEIVED
Jun 22 2022
SC Court of Appeals

Dear Ms. Kohn, et. al.:'

I am in receipt of Court Administration's response dated 18 May 2022 to which I provide the following reply.

WHAT IS THE GOVERNING LAW?

The common law applies when the subject matters is services, real property, land sales, and construction. The Uniform Commercial Code (UCC) applies to transaction involving goods. Contracts not governed by the UCC are governed by the common law. Here, the subject matter of this contract is transcription services for *Hunter v. Hunter* (Appellate Case No. 2021-001128, CCP Case No. 2021-CP-4301-534). Here, the production of a transcript involves the conversion of a digital voice recording of an appeal hearing to text format.

WHO ARE THE PARTIES?

Julie A. Cendroski, a court reporter, is an employee of the South Carolina Judicial Branch (SCJB), Court Administration (SCCA) and not a private court reporter. Her letterhead identifies her as a professional Circuit Court Reporter III, for the Seventh Judicial Circuit Court. The evidence of her employer-employee contract is shown by the "*Agreement, Receipt and Acknowledgment*" of the SCCA Court Reporter Manual, as amended (CRM, 43). Furthermore, Ms. Cendroski is bound to adhere to the standards of conduct stated in the same and SCACR Rules 207, 607.

Both the Circuit Court judges and SCCA have a shared responsibility to supervise court reporters (CRM, p. 3). Ms. Cendroski is under the direct supervision of the Court Reporter Manager, Tammie M. Holmes who is also a party to the case. Moreover, the presiding judge over the appeal, Hon. R. Ferrell Cothran, Jr. and Chief Administrative Judges at the time of the offer may be deemed parties to the case.

Furthermore, the Chief Justice of the Supreme Court of South Carolina, the Hon. Donald W. Beatty is the administrative head of the unified court system. Article V, §4 of the S.C. Constitution states, in part, “*The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts*” (S.C. Const., Art. V, 1895, as amended), (S.C. Code of Laws §14-1-90).

Regina M. Hunter El, is an Appellant now on appeal in the South Carolina Court of Appeals (Case No. 2021-00128) who requires a transcript to comply with Rule 207(a). The appeal hearing was held in the Sumter County Court of Common Pleas on 13 September 2021 in the above matter.

IS THERE A VALID CONTRACT?

A valid contract consists of an offer, acceptance, consideration and no defenses to the formation of contract.

OFFER

An offer is a manifestation of present contractual intent, communicated to an identified offeree, with certain and definite terms. The offeror is the person who makes the offer. The offeree is one to whom the offer is made.

Present Intent to Be Bound

Here, Ms. Cendroski sent a written offer twice but showed no serious commitment to be bound on each occasion.

First Offer

On 27 September 2021, Ms. Cendroski responded to a 16 September 2021 request to the Digital Court Reporter Program (DCRP) for expedited transcription services, (SCACR 607(h)(1)(J)). Her response was at the incorrect regular rate of \$4.25 per page (SCACR 607(h)(1)(A)) with a 60-day completion window (SCACR, 607(d)). Ms. Cendroski abrogated my name to “*Regina M. Hunter*” when I sent and signed the request as “*Regina M. Hunter El*” without explanation. She also did not return and complete the bottom portion of “*Transcript*”

Request Form” (SCCA 800 1/2019) titled “*For Court Reporter Only*”. The top of the form states “*Once your request is received, you will receive a copy of this form with the bottom portion completed*”. The bottom portion of the form required Ms. Cendroski to provide her 1) full name; 2) date she received the request; 3) e-mail address; 4) notice of estimate to requesting party (which should include the date, number of pages, and estimated amount); and 5) her mailing address for payment.

I inquired the same day by e-mail to Ms. Cendroski for the correct costs for an expedited transcript. The next day, Ms. Cendroski replied by e-mail with the corrected price and time frame required to complete the work. However, again Ms. Cendroski’s reply did not contain a copy of the “*Transcript Request Form*” (SCCA 800 1/2019) with bottom portion completed.

Thus, the first offer was rejected mainly because it did not quote the correct rate specified in SCACR 607(h)(1)(J) for expedited services.

Second Offer

Ms. Cendroski’s second offer came in an envelope postmark 13 October 2021, but with an interior letter dated “*November 9,*” Here, Ms. Cendroski corrected the rate to \$5.00 per page as specified in SCACR 607(h)(1)(J). However, the offeror’s writing was defective mainly for two reasons. First, she claimed she received my transcript request on 1 October 2021 when the request was sent in mid-September. Second, the notice on her estimate to the requesting party did not contain any year; it just read “*November 9,*” which for the majority of the world’s countries would be read as 9 November (dd/mm/yyyy) and numerically as 9/11/yyyy. Since her offer date contained no year, I construed it to mean in perpetuity.

I was immediately concerned that Ms. Cendroski may had cognizance of the vandalism incident that took place in Greenville County--the defacing of the 911 memorial at a local business. I also pondered whether the missing year echoed the words in front of the memorial--“*Never Forget*”. The news story appeared in both national and local newspapers—USA Today¹ and The State newspaper². Ms. Cendroski’s letterhead showed a mailing address P.O. Box 27248 Greenville, S.C. 28616 which is in close proximity to the local business where the memorial is located.

¹ Hayes, Christal. “*Vandal spray-painted ‘Taliban’ on 9/11 memorial in South Carolina, authorities say*” 13 Sept. 2021, USA Today. Retrieved from <https://www.usatoday.com/story/news/nation/2021/09/13/september-11-memorial-taliban-south-carolina-authorities/8325944002/> on 22 June 2022.

² Price, Mark. “*Vandal who spray painted ‘Taliban’ on 9/11 memorial was caught on video, SC cops say*”, 18 Sept. 2021. The State. Retrieved from <https://www.thestate.com/news/state/south-carolina/article254212973.html> on 22 June 2022.

Here, Ms. Cendroski's was not bound to her second offer because of the date contained therein did not meet the writing requirement on the bottom of the transcript form section to be completed by the Court Reporter. The notice of estimate to the the requesting party must include an accurate date. Here, as stated above, Ms. Cendroski's envelope was postmarked 13 October 2021, but the letter was dated "November 9," a difference which spans 27 days.

Thus, the second offer failed to motivate the offeree because it did not reflect a valid date on its "*notice of estimate to requesting party*".

Was the Offer Communicated to an Identified Offeree?

Knowledge of the offer is essential. The offeree is motivated by the offer.

Here, per court procedures, I made a written request for the transcript prior to the appeal docketing with the S.C. Court of Appeals. The request was sent to the DCRP at transcripts@sccourts.org and copied to Ms. Holmes, the Court Reporter Manager at tholmes@sccourts.org. Ms. Cendroski took cognizance of the request through court administration's DCRP internal procedures and communicated an offer twice. Yet, for the reasons stated above, I was not motivated to contract with Ms. Cendroski.

What were the certain and definite terms?

Certain and definite terms are quantity; time and place; identification of parties; price and subject matter.

- Quantity: One transcript
- Date and Time: 10 days
- Condition Precedent: "*Upon receipt of a check or money made out to Julie Cendroski for the full amount of \$150 the 10 days begin*"
- Place: Delivery by standard mail
- Identification of parties: Ms. Cendroski and Hunter El
- Price: \$150, \$5.00 per page with notice of any balance due prior to delivery of transcript
- Subject matter: Transcription services
- Transcript Accuracy: 1 year period

Therefore, the first offer was rejected and the second offer lapsed.

ACCEPTANCE

An acceptance is an assent to the terms of the offer.

Here, there was no acceptance. I neither accepted Ms. Cendroski's first or second offer. If an offer is not accepted there can be no contract.

CONSIDERATION

Here, there was not sufficient consideration. I did not meet Cendroski's condition precedent to send a check or money in the amount of \$150 for her to commence work on the transcript.

Therefore, there is no consideration that induced Ms. Cendroski's current performance.

DEFENSES TO FORMATION OF CONTRACT

On the 24 April 2022, Ms. Cendroski sent an invoice in the amount of \$195.50 for 46 pages at the rate of \$4.25 per page. As such, I argue the following defenses to the formation of the contract: 1) Lack of Formation, 2) No Consideration, 3) Statute of Frauds, and 4) Emotional Duress.

Lack of Formation

Here, no contract was formed because the offers were rejected and there is no acceptance.

No Consideration

Ms. Cendroski was instructed to prepare the transcript by her manager prior to receipt of payment, without notice to the Appellant. Here, Ms. Cendroski, your assigned court reporter is entitled to receive remuneration for performing transcription services and her employer is vicariously liable for her actions or failure to act. In October 2021, the condition precedent set by Ms. Cendroski in her contract offer required an advance payment of \$150.00 to complete an expedited transcript in 10 days. SCCA is attempting to coerce me to pay Ms. Cendroski for the work, as her employer, it assigned her to perform.

Here, the Appellant holds she is not obliged to pay Ms. Cendroski for transcription services because she neither accepted Cendroski's offer nor sent any money for Ms. Cendroski to begin work. The fact that your 18 May 2022 letter states you checked Cendroski's work for accuracy is irrelevant because no contract was ever formed. I cannot challenge the accuracy of a document I neither ordered nor that was delivered to me. The transcript prepared by Cendroski's was delivered to her employer for review.

Statute of Frauds

Under the Statute of Frauds (SOF), certain contracts must be evidenced by a writing to be enforceable. A contract that cannot be performed in one year is governed by the SOF.

In this matter, all court records are the property of the SCJB (CRM, p. 13) and the court reporter has to preserve the record for a five-year period (CRM, p. 13). Specifically, SCACR Rule 607(i) states *“In any proceeding which has been transcribed on or after March 1, 2017, the court reporter shall retain the primary and backup tapes which have been transcribed for a period of at least one (1) year after the original transcript is sent to the requesting party, to allow any party to challenge the accuracy of the transcription. If no challenge is received by the court reporter within the one (1) year period, the tapes may be reused or destroyed”* (S.C. Code of Laws §14-13-20). Undoubtedly, a challenge at the date marking one year would exceed the one year period to resolve between the requesting party and court reporter. This, a writing is necessary between the parties.

Here, I hold that the replies sent by Ms. Cendroski did not contain the portion of the requesting party’s form she was required to complete. Thus, there is no writing between the parties. Further, the form did not explicitly contain any language stating the requesting party could challenge the accuracy of the transcript within one year after receipt.

Therefore, the SOF is a valid defense to any implied contract.

Emotional Duress

The standards of court for court reporters and the Court Reporter Manager is the SCCA Court Reporter Manual, as amended (CRM), and applicable S.C. Court Rules. Both the court reporter and manager are required to be familiar with the contents of the manual and apply it to their daily work (CRM, p. 3 The willful failure of the court reporter to comply with the manual may constitute contempt of court enforceable by Order of the Supreme Court.

Ms. Holmes, the Court Reporter Manager for SCCA stated in her letter dated 18 May 2022, that she instructed Ms. Cendroski to prepare the transcript. Ms. Holmes told her employee to prepare the transcript based on the letter I sent to the Clerk of the Court of Appeals on 20 April 2022. Holmes overlooked the fact that I asked her to assign another court reporter. My letter explicitly stated *“At the time of this letter, I asked the Court Reporter Manager to assign another person for transcription and await her reply. Thereafter, I will make satisfactory arrangements to pay the transcript fee and file such with the SCCOA.”* Ms. Holmes failed to provide a straight answer for almost 30 days until I contacted her supervisor, Ms. Tonia Kohn, the Court Administrator.

Your actions caused me emotional distress when you willful withheld the fact that you instructed Ms. Cendroski to perform the transcription without notice to the Appellant. The last communiqué I received from Cendroski stated she would begin transcription services upon receipt of payment which was never sent to her. Ms. Cendroski also never informed me of her decision to proceed without payment. As her employer, you are vicariously liable for her actions or failure to act. SCCA knew that I had no intention of entering into a contract with Ms. Cendroski because I requested her replacement.

In my opinion, rather than informing promptly me of your decision not to assign another court reporter to prepare the transcript, you subverted my freedom to contract, or not contract. Your treatment of my request was that of a minor, minority unable to legally contract. Any attempt to coerce a contract with Ms. Cendroski who I deemed may have lacked neutrality, *as discussed supra*, undermines my right to self-determination.

As a result, on 27 April 2022, the Clerk of the Court mistakenly issued a deficiency letter claiming my 20 April 2022 letter was not sent to the Office of Court Administration. As Court Reporter Manager you are under the supervision of Court Administration. Thus, any notice sent to you, an employee was in fact notice to Ms. Tonnia Kohn, Court Administrator. Thus, I also hold that no deficiency occurred.

CONCLUSION

Therefore, no legally enforceable contract exists between the parties for the performance of transcription services.

Ms. Kohn I require an official transcript to continue the appeal and comply with Rule 207(a). The transcript aids in the administration of justice. The manual states “*In the appeal process, the transcript is the official document which provides the appellate court reliable information regarding trial court proceedings*” (CRM, p. 27). I believe as Chief Justice Beatty’s administrative arm you serve with professionalism and integrity. Thus, I look forward to hearing from you and an amicable solution going forward.

Cc:

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