STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND

This matter is before the Court on a "Motion for Reconsideration and Motion to Alter or Amend under Rules 52, 59, and 60 S.C.R.C.P." by Plaintiffs Lisa Summer Rice and Joseph F. Rice ("Rices"). Defendant C. Ray Amick ("Mr. Amick") filed a response in opposition, and this matter is ripe for consideration. Pursuant to Rules 52(c) and 59(f), SCRCP, the Court exercises its discretion to determine the motion on the briefs filed by the parties without oral argument.[1]

Following a two-day bench trial, this Court found in favor of Mr. Amick and the Newberry Lions Club, holding among other things that the Rices and the Lions Club did not form a contract. Following the entry of this Court's October 25, 2022 Order Finding in Favor of Defendants Newberry Lions Club and C. Ray Amick on Multiple Claims ("Order"), the Rices filed their instant motion, asserting this Court overlooked material facts and law and that the Court should alter or amend its Order. After carefully considering the positions articulated in the Rices' motion and Mr. Amick's response, the Rices' motion is denied.[2]

[1] Although the Rices cited Rule 60, SCRCP, they do not appear to be seeking relief under that rule.

[2] The facts are fully set forth in this Court's Order and are incorporated fully herein. The capitalized/defined terms used in this order are the same terms used in the Order.

I. LEGAL STANDARD

This Court exercises its discretion when deciding whether to grant the relief under post-trial motions. *See Pollard v. Cty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994) (discretion left to court when considering motion pursuant to Rule 59(e), SCRCP); *see generally BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006) (discretion left to court when considering motion pursuant to Rule 60(b), SCRCP). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

II. ANALYSIS

Much of the present motion restates the Rices' view of the facts and applicable law, arguments already received and ruled upon by this Court. As expressed in great detail in their motion, the Rices clearly disagree with this Court's prior Order, including this Court's view of the facts and the law. After reviewing and considering the issues raised in the Rices' motion, Mr. Amick's response to the motion, the prior Order, and considering the evidence and arguments presented during the trial, this Court is not persuaded to alter or amend the prior order.

The Court notes that it is quite familiar with the issues, facts, and evidence presented in this case. Since this case was designated as complex, the Court has heard all the arguments, seen and heard the evidence, and reviewed extensive briefing on the legal issues at a summary judgment hearing, a hearing on a prior motion to alter or amend, and at the two-day trial in this matter. Recognizing this extensive familiarity with this case and the issues raised in the Rices' motion, this Court holds that the Rices have not presented any issue of fact or law that was previously presented to the Court that was incorrect or overlooked in the prior Order. Accordingly, the Court

concludes the Rices have not identified a basis to alter, amend, or reconsider any portion of the Order finding in favor of the Lions Club and Mr. Amick.

A. The Court properly excluded the proffered affidavits and expert opinions by Spitz.

The parties again dispute whether the affidavits from Professor Spitz should have been allowed. The Rices assert in paragraph 1 of their motion that the Court erred by excluding expert testimony by their expert, Professor Spitz. However, this Court stands by its ruling that experts do not tell the Court what the law is. The Court again finds that the analysis in footnote 3 of the Order was correct. Accordingly, the Court concludes there is no reason to alter, amend, or reconsider the decision to exclude expert testimony from Professor Spitz.

B. The Court rejects the Rices' new argument that Mr. Amick could not assert the parol evidence rule or the statute of frauds.

The Rices assert a new, never-before raised argument that Mr. Amick could not assert the parol evidence rule or the statute of frauds at trial because "Defendant Amick is not a party to the agreement in dispute." *See* Rice Motion at ¶ 26. To the Rices, only the Lions Club could raise parol evidence and statute of frauds arguments. Accordingly, the Rices suggest that the issues of waiver and standing now determine the substantive issues related to the statute of fraud and parol evidence rulings in the Order. However, the Court concludes that raising such issues for the first time through a post-trial motion is not appropriate. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *see also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

Moreover, the Lions Club joined in most, if not all, of Mr. Amick's arguments at trial, asserting that there was no contract between the Rices and the Lions Club. Certainly, the parties argued the application of the statute of frauds and the parol evidence rule thoroughly before and

during the trial after Mr. Amick moved in limine to exclude any evidence other than the two letters that purportedly created the contract. The Court also notes parol evidence is incompetent evidence that does not require the usual contemporaneous objection to preserve, and as noted, the Lions Club maintained throughout the litigation that no contract existed with the Rices. *See Estate of Holden v. Holden*, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000) ("The parol evidence rule is a rule of substantive law, not a rule of evidence. Accordingly, admission of *evidence violating the parol evidence rule is legally incompetent* and should not be considered even if no objection is made at trial.") (emphasis added). Accordingly, the Court concludes that even if it reached this argument by the Rices, the statute of frauds and parol evidence rule were properly raised by the Lions Club and the parties at trial and properly applied by this Court.

The Court also notes that it found no contract existed even considering all extrinsic evidence, as Mr. Amick pointed out in his response brief and as the Court stated in the Order. *See Order* at 22–25. Whether or not Mr. Amick raised the statute of frauds or parol evidence arguments, this Court found there was no contract between the Rices and Lions Club.

Accordingly, the Rices have not identified a basis to reconsider, alter or amend the Order on this basis.

C. The Court's factual findings were proper, and the Rices' arguments mischaracterize the facts of this case.

The Rices assert that certain facts, "[w]hen critically analyzed," result in a different outcome—i.e., the Rices and Lions Club actually formed a contract. *See Rices' Motion* ¶ 30. However, this Court heard the testimony, considered the evidence presented, and reached a different conclusion from the Rices' interpretation based on the facts in the record and applicable law. In each disputed fact raised by the Rices, the Rices failed to identify an error of fact or law but instead disagree with this Court's conclusions.

The Rices assert an alternative view of facts that allegedly support the formation of a contract. *See, e.g., Rices' Motion* ¶¶ 30–31 (describing testimony and the Rices' bid theory). However, the Court rejected these same arguments in the Order, recognizing that the alleged letters never satisfied the applicable mirror image rule for a variety of reasons. *See Order* at 12–18. The bid theory was expressly rejected by this Court because the facts in the record do not support it. *See Order* at 18 ("Finally, the Court rejects the Rices' 'auction' theory. The Rices have asserted Mr. Amick withdrew his offer, leaving the Rices' bid and one other offer as the only operative offers on June 1, 2017. Following this theory, the Rices' bid must have been accepted because it was higher than the other offer. However, there is no evidence in the record to support any such procedure by the Lions Club.[] Rather, the Court holds the evidence in the record is clear the 'auction' theory is actually the Rices' own characterization outside of the Lions Club Letter. Indisputably, the Lions Club Letter—which stated, "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public"—did not impose a hard deadline to *sell* by June 1 as part of an auction process."). The Rices' motion does not identify a basis to reconsider, alter, or amend the Order by restating the same arguments and mischaracterizing the facts in the record.

Accordingly, the Rices have not identified a basis to reconsider, alter or amend the Order on this basis.

D. The Court again finds the extrinsic evidence would not support a different outcome and does not establish a contract between the Lions Club and the Rices.

The Rices erroneously assert that "extrinsic evidence in the record before the Court clearly established that the intent of the Lions Club and the Plaintiffs was that the property would be sold to the highest bidder as of June 1, 2017, (assuming the buyer complied with the terms and conditions of the Lions Club letter)." *See Rices' Motion* at 15, ¶ 37. However, as noted above and

in the Order, the Court held that even if the parol evidence rule and statute of frauds did not apply, then the extrinsic evidence at trial would not have changed the outcome. Even if the extrinsic evidence were proper, it showed that the Lions Club never intended to sell the property to the Rices, who were the highest bidder. *See Order* at 22 ("In fact, the Rices' principal argument at trial and the thrust of the evidence they offered was of a 'bidding' process, with the Property to be sold to the highest bidder. However, the Court concludes that to find that the Property was to be sold to the party who would pay the most money would require this Court to rewrite the Lions Club Letter, ignore other considerations expressed in the Lions Club Letter, and impose a factual conclusion of "intent" or 'meeting of the minds' upon the Lions Club that is not supported by the extrinsic evidence offered during the trial."). The factual record at trial shows at least one board member noted a desire to accept the Rices' bid. *See Order* at 24 ("The Court notes deposition testimony was presented showing the Board was informed of all monetary offers; trial exhibits reflected board meeting discussions over the $325,000.00, with at least one board member stating the highest offer was better; but that ultimately the Lions Club board voted to accept $300,000.00."). However, the board twice voted to sell the Property to Mr. Amick instead. *See Order* at 24–26 (discussing extrinsic evidence surrounding the sale and the Lions Club board decisions).

Accordingly, the Rices have not identified a basis to reconsider, alter or amend the Order on this basis.

E. The Court concludes specific performance is not appropriate even if there were a contract between the Rices and the Lions Club.

Assuming this Court's Order was unclear, the Court reiterates that specific performance would not be appropriate even if this Court found a contract existed between the Rices and the Lions Club. To be clear, this Court recognizes that its ruling on this issue in the Order was in the

"alternative." However, the facts in the record are clear that the Rices sought to enforce an agreement that was unclear and to which they did not take steps to consummate. The factual record before this Court at trial and set forth in the Order does not support awarding specific performance, even if this Court had found a contract existed.

Accordingly, the Rices have not identified a basis to reconsider, alter or amend the Order on this basis.

III. CONCLUSION

This Court at trial considered completely and thoroughly the facts and law and whether the Lions Club and the Rices formed a contract with two letters. This Court twice granted summary judgment on this issue and issued detailed findings of fact and conclusions of law in its Order after a two-day bench trial, again reaching the same conclusion—no contract. The Court concludes the Rices' motion failed to identify any basis for this Court to reconsider, alter, or amend its Order. Accordingly, the Rices' "Motion for Reconsideration and Motion to Alter or Amend under Rules 52, 59, and 60 S.C.R.C.P." is denied.

[Judge's Signature to Follow]

Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club , defendant, et al

Case Number: 2018CP3600089

Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132