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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Trial Court Case No. 2018CP3600089

Appellate Case No. 2023001162

Lisa Summer Rice and Joseph F. Rice Appellants,

v.

Newberry Lions Club and Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondents.

INITIAL BRIEF OF RESPONDENT NEWBERRY LIONS CLUB

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ATTORNEY FOR RESPONDENT
Newberry Lions Club

February 1, 2024

The undersigned has read the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick.

The undersigned joins with and concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick as indicated below.

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TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Same as the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick.

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT PROPERLY HOLD THAT THE LIONS CLUB LETTER WAS NOT AN OFFER AS A MATTER OF LAW?
- II. DID THE TRIAL COURT PROPERLY HOLD THAT THE RICES LETTER WAS NOT AN ACCEPTANCE AS A MATTER OF LAW?
- III. DID THE TRIAL COURT PROPERLY HOLD THAT THE PAROL EVIDENCE RULE AND THE STATUTE OF FRAUDS REQUIRE THAT THE CONTRACT BE ESTABLISHED THROUGH ONLY THE LIONS CLUB LETTER AND THE RICE RESPONSE?
- IV. DID THE TRIAL COURT PROPERLY HOLD THAT THERE WAS NO CONTRACT BETWEEN THE RICES AND THE LIONS CLUB, EVEN IF THE TRIAL COURT CONSIDERED THE EXTRINSIC EVIDENCE IN THE RECORD?
- V. DID THE TRIAL COURT PROPERLY HOLD THAT THE RICES FAILED TO PROVE PROMISSORY ESTOPPEL?
- VII. DID THE TRIAL COURT PROPERLY EXCLUDE THE IMPERMISSIBLE EXPERT TESTIMONY OFFERED BY AFFIDAVIT FROM STEVEN SPITZ, ESQUIRE?

Respondent Newberry Lions Club joins in with and consents with the Issues and Argument of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick.

STATEMENT OF THE CASE

STATEMENT OF FACTS

STANDARD OF REVIEW

ARGUMENT

A. The Trial Court Properly Held that the Lions Club Letter was Not an Offer as a Matter of Law.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

B. The Trial Court Properly Held that the Rice Response Was Not an Acceptance as a Matter of Law.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

C. The Trial Court Properly Held that the Parol Evidence Rule and the Statute of Frauds Require that the Contract be Established Through Only the Lions Club Letter and the Rice Response, if at all.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

- 1. The Rices waived any argument that Mr. Amick was barred from asserting the parole evidence rule and the statute of frauds by not raising it at trial.*
- 2. The Lions Club joined in Mr. Amick's motion in limine to exclude all evidence other than the two letters as not competent under the parol evidence rule and statute of frauds.*

3. *Mr. Amick would not be a “stranger” to the alleged agreement under the Rices’ theory.*
4. *The parol evidence rule and statute of frauds are substantive rules and not evidentiary rules—contemporaneous objections are not required because the evidence itself is not legally competent.*

D. The Trial Court Properly Held that there was no Contract Between the Rices and the Lions Club, even if the Trial Court Considered the Extrinsic Evidence in the Record.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

E. The Trial Court Properly Held that the Rices Failed to Prove Promissory Estoppel.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

F. The Trial Court Properly Excluded the Impermissible Expert Testimony Offered by Affidavit from Steven Spitz, Esquire.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

G. The Rices assert a host of other miscellaneous “errors” by the trial court that would be immaterial and in any event are not errors but factually accurate findings supported by the record.

Respondent Newberry Lions Club concurs with the Initial Brief of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick. With the concurrence of Respondent Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, Respondent Newberry Lions Club submits this as its own.

1. *The trial court accurately found that the Lions Club passed the 1933 Resolution and never expressly amended or repealed it.*
2. *The trial court accurately found that Mr. Amick did not improperly attempt to influence the board.*

3. *The trial court did not overlook Mr. Amick's withdrawn offer.*
4. *The trial court did not hold that the encroachments created an unmarketable title, and in any event whether the encroachments rendered title unmarketable was immaterial.*

CONCLUSION

The issues of bona fide purchaser and specific performance are unrelated to the Newberry Lions Club and, therefore, not a part of this Initial Brief of Respondent Newberry Lions Club.

The Initial Brief of Respondent Betty S. Amick as Personal Representative of the Estate of C. Ray Amick, as amended, is submitted by Respondent Newberry Lions Club. Therefore, the entire trial court decision should be affirmed.

Respectfully submitted,

s/ Samuel M. Price, Jr.

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