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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas for the Eighth Circuit

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2023-001162

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

RECORD ON APPEAL
Vol. I of III

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INDEX
VOLUME I of III
(Pages 1-407)

ORDERS

Form 4 Order Granting in Part Amick’s Motion to Strike Legal Conclusions from the Spitz Affidavits dated 7/17/19.....	1
Form 4 Order Denying Motions for Summary Judgment dated 7/31/19.....	4
Order Establishing Complex Case Designation dated 12/3/19.....	7
Order Granting Amick’s Motion for Partial Summary Judgment dated 12/9/20.....	10
Order Granting Plaintiffs’ Motion to Alter or Amend the December 9, 2020 Order dated 12/8/21.....	26
Form 4 Order (Trial Decision) dated 9/2/22	29
Order Finding in Favor of Defendants Newberry Lions Club and C. Ray Amick on Multiple Claims (not ending action) dated 10/25/22.....	36
Form 4 Order Denying Plaintiffs’ Motion to Reconsider dated 5/16/23.....	67
Order Denying Plaintiffs’ Motion for Reconsideration and to Alter or Amend dated 6/22/23.....	70

PLEADINGS, MOTIONS, AND MEMORANDA (with Exhibits)

Summons and Complaint dated 2/20/18.....	78
Lis Pendens dated 2/21/18.....	100
Amick’s Motion for Partial Summary Judgment dated 2/8/19.....	106
Amick’s Motion to Strike Affidavit of Spitz dated 3/1/19.....	126
Amick’s Motion to Strike the Supplemental Affidavit of Spitz dated 5/1/19	130
Amick’s Memorandum of Law in support of his Motion for Partial Summary Judgment dated 6/17/19.....	136
Amick’s Motion to Bifurcate dated 8/29/19.....	193
Amick’s Motion for Partial Summary Judgment dated 8/13/20.....	206

Amick’s Motion to Strike Expert Affidavit dated 8/25/20.....	264
Plaintiffs’ Motion to Alter or Amend the December 9, 2020 Order Granting Partial Summary Judgment dated 12/18/20.....	281
Amick’s Response to Plaintiffs’ Motion to Alter or Amend the December 9, 2020 Order dated 6/15/21.....	292
Fifth Amended Summons and Complaint dated 8/31/21.....	308
Second Amended Answer of Defendant C. Ray Amick to Fifth Amended Complaint dated 5/24/22.....	360
Answer of Defendant Newberry Lions Club to Fourth & Fifth Amended Complaints dated 5/26/22.....	374
Plaintiffs’ Motion for Reconsideration and to Alter or Amend dated 11/4/22.....	379
Amick’s Response to Plaintiffs’ Motion for Reconsideration dated 1/18/23.....	398
Plaintiffs’ Notice of Appeal dated 7/19/23.....	406

VOLUME II of III
(Pages 408-890)

TRANSCRIPTS

Transcript of Trial before the Honorable J. Mark Hayes on May 31, 2022,..... to June 1, 2022 (Day 1)	408
Pretrial.....	409
Joe Rice	
Direct Examination by Pope.....	440
Cross-Examination by Koutrakos.....	478
Cross-Examination by Price.....	515
Redirect Examination by Pope.....	520
Claude Schumpert	
Direct Examination by Pope.....	524
Cross-Examination by Koutrakos.....	538

Transcript of Trial before the Honorable J. Mark Hayes on May 31, 2022,.....547
to June 1, 2022 (Day 2)

Argument After Plaintiffs' Case.....555

Lisa Lee Smith

Direct Examination by Koutrakos.....611

Cross-Examination by Pope.....631

Ray Amick

Direct Examination by Dixon.....648

Cross-Examination by Pope.....666

Cross-Examination by Price.....680

Gene Crocker

Direct Examination by Price.....686

Cross-Examination by Pope.....691

Cross-Examination by Dixon.....706

Pete Simpson

Direct Examination by Price.....710

Cross-Examination by Pope.....715

Cross-Examination by Dixon.....725

Post-Trial.....728

DEPOSITIONS PUBLISHED (but not transcribed into record of Trial Transcript)

Pete Simpson (taken 10/22/18).....732

Direct Examination by Pope.....733

Cross-Examination by Koutrakos.....806

Pete Simpson (taken 6/29/20).....816

Direct Examination by Bradley.....817

Gene Crocker (taken 10/22/18).....846

Direct Examination by Pope.....847

Cross-Examination by Koutrakos.....889

**Volume III of III
(Pages 891-1175)**

Gene Crocker (taken 6/18/20).....	891
Direct Examination by Bradley.....	892
Ray Amick (taken 11/30/18).....	926
Direct Examination by Pope.....	927
Ray Amick (taken 6/17/20).....	949
Direct Examination by Bradley.....	950
Cross-Examination by Koutrakos.....	975
Lisa Rice.....	978
Direct Examination by Koutrakos.....	979
Joe Rice.....	983
Direct Examination by Koutrakos.....	984

EXHIBITS

Plaintiffs' Exhibits:

1 Newberry Lions Club Charter dated 12/15/1928.....	988
2 Newberry Lions Club Constitution and By-Laws (Amended February 2002).....	989
3 Meeting Minutes of Newberry Lions Club Board of Directors..... (Year 2015)	1013
4 Meeting Minutes of Newberry Lions Club Board of Directors..... (Year 2016)	1024
5 Meeting Minutes of Newberry Lions Club Board of Directors..... (Year 2017)	1032
5a Meeting Minutes of Newberry Lions Club Board of Directors..... (dated 5/23/2017)	1042
5b Meeting Minutes of Newberry Lions Club Board of Directors..... (dated 11/28/17)	1043
6 Letter from Lions Club Secretary Pete Simpson to Joe & Lisa Rice (undated) with attached plat.....	1044

7	Letter from Lions Club Secretary Pete Simpson to Ray Amick.....	1046
8	Plat.....	1047
9	List of Adjacent Property Owners.....	1048
10	Email from Gene Crocker to Pete Simpson dated 2/13/2017.....	1049
12	Letter from Thad McCrackin to Gene Crocker dated 2/14/2017.....	1050
13	Letter from Sid Boone to Pete Simpson dated 2/14/2017.....	1051
14	Email from Claude Schumpert to Joe Rice dated 4/8/2017.....	1052
15	Letter from Sid Boone to Pete Simpson and Gene Crocker dated 5/15/2017.....	1053
16	Letter from James Verner to Sid Boone dated 6/5/2017.....	1055
17	Letter from James Verner to Ray Amick dated 6/6/2017.....	1056
18	Email from Claude Schumpert to Joe Rice dated 11/16/2017.....	1057
19	Letter from Michael Scardato to Pete Simpson, Gene Crocker, and James Verner dated 11/21/2017.....	1058
20	Title to Real Estate to McCracken (encroachment) dated 12/20/2017..... (15 acres)	1060
21	Newberry Lions Club Board Meeting Minutes for 1/23/2018.....	1063
22	Letter from Gene Crocker to Ray Amick dated 1/23/2018.....	1064
23	Contract of Sale.....	1065
26	Summons and Complaint.....	1070
27	Lis Pendens.....	1079
28	Affidavit of Service.....	1085
29	Title to Real Estate.....	1086
30	Disclosure.....	1091
32	Contract of Sale.....	1092
34	Aerial Photo.....	1101
35	GIS Aerial Photo of Ray Amick's Property.....	1102

36	Plat (Book D99 at Page 6).....	1103
37	Email of Joe Rice to Claude Schumpert dated 4/8/2017.....	1104
38	Email of Claude Schumpert to Joe Rice dated 6/2/2017.....	1105
39	Email of Claude Schumpert to Joe Rice dated 6/9/2017.....	1106
40	Email of Claude Schumpert to Joe Rice dated 11/16/2017.....	1107
41	Letter of Pete Simpson to Claude Schumpert.....	1108
43	Commonwealth Land Title Insurance Company Owner’s Affidavit and Indemnity	1109
44	Not Admitted, but marked for identification – Affidavit of Stephen Spitz dated 2/21/2019 (<i>by proffer</i>)	1111
45	Not Admitted, but marked for identification – Supplemental Affidavit of..... Stephen Spitz dated 3/22/2019 (<i>by proffer</i>)	1118
46	Power of Attorney from Joe Rice to Sidney Boone dated 8/17/2004.....	1130

Defendant Amick’s Exhibits:

1	Resolution dated 2/7/1933 (Lexington County Register of Deeds).....	1132
2	Email from Claude Schumpert to Joe Rice dated 2/15/18.....	1133
3	Email from Lisa Lee Smith to Newberry Lions Club dated 2/20/18.....	1134
4	Funding Check of Ray Amick dated 2/20/18.....	1136
5	HUD/Settlement Statement dated 2/21/28.....	1137
6	Check payable to Newberry Lions Club by Smith & Sullivan, LLC..... dated 2/21/18	1140
7	Seller Information/Certification Sheet of Smith & Sullivan..... dated 2/21/18	1141

Court Exhibits:

1	Defendant’s Timeline.....	1142
2	Plaintiffs’ Pretrial Brief.....	1146
3	Plaintiffs’ Timeline.....	1164
4	Memo (of Plaintiffs).....	1168
5	Letter of Newberry Lions Club to Joe & Lisa Rice.....	1172
6	Letter of Sid Boone to Pete Simpson dated 2/14/17.....	1174
	CERTIFICATE OF COUNSEL.....	1175

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al
PLAINTIFF(S)

Newberry Lions Club et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant Ray Amick's Motion to Strike Expert Steven Spitz's Affidavit came before the court on July 19, 2019. Upon review of the record and the arguments presented at the hearing, the legal conclusions contained within the affidavit must be stricken and disregarded. However, the remaining portions of the affidavit may be considered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/17/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al
Case Number: 2018CP3600089
Type: Order/Electronic Form 4

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2019-07-17 09:39:20 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al
PLAINTIFF(S)

Newberry Lions Club et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before this Court on June 19, 2019 in Newberry County by way of cross motions for Summary Judgment by Plaintiff Lisa Rice and Defendant Ray Amick. After thoughtful consideration, I find that several questions of fact exist. Therefore, both Motions for Summary Judgment are respectively denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/31/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Newberry Common Pleas

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

Case Number: 2018CP3600089

Type: Order/Electronic Form 4

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2019-07-31 09:56:37 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Lisa Summer Rice and Joe Rice,)
Plaintiff(s),)

Case Number **2018-CP-36-0089**

v.)

ORDER

(To establish complex case designation
and time for trial)

Newberry Lions Club and C. Ray Amick,)
Defendant(s).)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

A. Murray Gray, Claude H. Schumpert)
and Melissa B. Schumpert,)
Plaintiff(s),)

Case Number **2019-CP-36-00245**

v.)

ORDER

(To establish complex case designation
and time for trial)

C. Ray Amick,)
Defendant(s).)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Claude H. Schumpert and Melissa B.)
Shumpert,)
Plaintiff(s),)

Case Number **2019-CP-36-00496**

v.)

ORDER

To establish complex case designation
and time for trial

Newberry Lions Club and C. Ray)
Amick,)
Defendant(s).)

ORDER/COMPLEX CASE

MOTION GRANTED. IT IS ORDERED that these cases be designated as complex and that the trial of these cases take place after April, 2020. This court finds that the parties may agree as to consolidate or re-caption these cases to accommodate any electronic filing issues, otherwise the assigned judge may issue an order if needed to that end.

IT IS FUTHER ORDERED that this case be assigned to the Honorable J. Mark Hayes to hear and handle all pre-trial motions and other matters pertaining to this case.

Chief Judge for Administrative Purposes

_____ day of _____, 2019.



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

Eugene C. Griffith, Jr. 2154

Electronically signed on 2019-12-03 08:54:04 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

**ORDER GRANTING DEFENDANT C.
RAY AMICK'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

This matter is before the Court on Defendant C. Ray Amick's ("Mr. Amick") motion pursuant to Rule 56, SCRPC, for an order granting Mr. Amick partial summary judgment in his favor on whether a contract was formed between the Newberry Lions Club ("Lions Club") and Plaintiffs Lisa Summer Rice and Joseph F. Rice ("Rices") and on the Rices' specific performance claim. After the parties briefed this motion, a hearing was held in Spartanburg on August 27, 2020. Thomas H. Pope, III and Kyle B. Parker appeared on behalf of the Rices, Demetri K. Koutrakos and Harry A. Dixon appeared on behalf of Mr. Amick, and Sam Price appeared on behalf of the Lions Club. The parties fully briefed these issues and this matter is ripe for consideration. The Court carefully considered the evidence and materials in the record, the memoranda of law submitted, and the arguments of counsel. For the following reasons, Mr. Amick's motion is granted.

I. FACTS

The facts viewed in the light most favorable to the non-moving party, the Rices, are as follows:

In early 2017, the Lions Club sent letters (the “Lions Club Letter”) to adjoining landowners and Lions Club members explaining that the Lions Club would be selling a certain parcel of property on Lake Murray in Newberry County (“Property”). In pertinent part, the letter provided:

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. ***We have also decided to make the property available to those individuals whose property adjoins the Lions Club property.***

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. ***First consideration will be given to current members of the Newberry Lions Club.***

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

(emphasis added)

Both the Rices and Mr. Amick received the Lions Club Letter. Mr. Amick is both an adjoining landowner and a Lions Club member while the Rices are only adjoining landowners.

On February 14, 2017, the Rices responded to the Lions Club Letter with a letter from their attorney (the “Rice Response”), which stated in pertinent part:

Pursuant to your recent letter to [the Rices], they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

On February 28, 2017, Mr. Amick sent the Lions Club a \$1,000 earnest money check and an unexecuted contract of sale offering \$300,000.00 for the Property.

On March 28, 2017, the Lions Club held a board meeting and voted to accept “Amick’s offer of \$300,000.00 provided that closing would take place by June 1st.”

On May 15, 2017, the Rices’ attorney sent a letter to the Lions Club stating they were the successful bidders and requested that they be conveyed the Property pursuant to their “bid.”

On May 23, 2017, the Lions Club held another board meeting and decided to “send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property.”

On June 5, 2017, the attorney for the Lions Club sent identical letters to Mr. Amick and the Rices, which stated in full:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

The encroachment issues were eventually resolved.¹

On November 21, 2017, the Rices’ attorney sent another letter to the Lions Club indicating the Rices “are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.”

On January 23, 2018, the Lions Club voted to sell the Property to Mr. Amick. On February 14, 2018, the Lions Club entered into a formal, written contract with Mr. Amick, wherein Mr. Amick agreed to purchase the Property for \$300,000.00. A closing took place on February 21, 2018, and the deed transferring the Property to Mr. Amick was recorded on February 22, 2018.

¹ It is undisputed the Lions Club sold the portion of the Property with the encroachment to the encroaching party, which resolved the issue. The portion sold represents the difference between the 5.5 acres in the Lions Club Letter and the 5.35 acres eventually conveyed to Mr. Amick.

II. PROCEDURAL HISTORY

The day before Mr. Amick's deed was recorded, but after the deed was delivered, the Rices filed a lis pendens against the Property. Subsequently, the Rices filed a complaint against the Lions Club seeking specific performance of an allegedly breached contract. The Rices have since added Mr. Amick as a defendant, and their current Fourth Amended Complaint asserts, among other things, claims for a declaratory judgment/injunction, specific performance, and intentional interference with a contract against Mr. Amick, all based on the Rices' alleged contract with the Lions Club.

On February 8, 2019, Mr. Amick first moved for summary judgment. The Rices moved for summary judgment as well, and this Court heard the parties' cross motions on June 19, 2019, with the Honorable Eugene C. Griffith, Jr. presiding. Shortly after the hearing, Judge Griffith emailed the parties wherein he stated he was denying the motions, and noted he did not feel comfortable hearing further matters in the case because he lived in the neighborhood of the parties and the Property. He later entered a Form 4 order denying both motions for summary judgment.

In May 2019, several landowners adjoining the Property filed suit against Mr. Amick alleging an easement over the Property with case number 2019-CP-36-00245. Mr. Amick then filed a motion to bifurcate the trial in this case and to first try the specific performance claims raised by the Rices before proceeding to the Rices' remaining claims. However, in October 2019, two adjoining landowners, Claude and Melissa Schumpert, filed a suit alleging claims similar to the Rices, including a claim for specific performance, with case number 2019-CP-36-00496. These three cases concerning the Property were then consolidated and designated as complex by order of this Court dated December 3, 2019, with the undersigned assigned to hear all matters in the consolidated cases.

On May 22, 2020, the Court held a status conference to discuss discovery and pretrial matters. During this status conference, the parties agreed to another round of summary judgment motions and to first have a trial on only the specific performance claims raised by the Rices and Schumperts. On July 24, 2020, this Court set trial dates for September 16 and 17. The Court also set a briefing schedule for dispositive motions with all briefing to be completed by August 25, 2020, and set a hearing for those motions on August 27, 2020. Mr. Amick timely filed his motion for partial summary judgment to which the Rices timely filed a response in opposition. Mr. Amick timely replied and filed a motion to strike an expert affidavit attached to the Rices' response. The Court heard argument on all motions related to the specific performance issue as scheduled on August 27, 2020, where the parties agreed the summary judgment record would include all matters raised by all parties in either the Rice or Schumpert cases.²

III. LEGAL STANDARD

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact

² The Court notes the Schumperts timely moved for summary judgment with respect to their claim for specific performance, and Mr. Amick moved for summary judgment with respect to the Schumperts' claim as well. The Court grants Mr. Amick's motion for summary judgment and denies the Schumperts' motion by separate order.

finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose as a matter of law.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment “mirrors” standard for directed verdict).

Normally, whether a contract exists is a question of fact. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). However, “[w]here, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract vel non is a question of law.” *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) (*quoting Valjar, Inc. v. Maritime Terminals, Inc.*, 220 Va. 1015, 1018, 265 S.E.2d 734, 736 (1980)).

IV. ANALYSIS

A. Mr. Amick’s Second Motion for Summary Judgment is Properly before this Court.

The Court concludes Mr. Amick’s second motion for summary judgment on whether the Lions Club and the Rices formed a contract is properly before this Court given the procedural history of this case. Moreover, South Carolina allows parties to re-assert the arguments raised in a denied motion for summary judgment and for courts to reconsider earlier denials of summary judgment.

First, the Rices dispute that Amick could re-file his motion for summary judgment during the status conferences that took place on May 22, 2020, and July 24, 2020.

Nevertheless, the denial of a summary judgment motion is not binding on this Court and parties may re-file a summary judgment motion. *See Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (“The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to

reconsider the summary judgment motion”); *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993) (holding “trial court interlocutory orders are amendable” where the trial court denied a motion for summary judgment, allowed leave to re-file after a motion to amend, and ultimately granted the re-filed motion for summary judgment); *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988) (“A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.”). The Court finds it is particularly appropriate to address Mr. Amick’s motion for partial summary judgment because Judge Griffith informally recused himself after hearing the first summary judgment motion and indicated he did not want to further hear the case or make additional rulings. Additionally, the Court holds *Ballenger*, *Johnston*, and *Orangeburg Paint* are clear this Court may consider a second motion for summary judgment as a motion to reconsider the earlier ruling denying summary judgment.

Conversely, the Rices assert Mr. Amick cannot raise a second motion for summary judgment or motion to reconsider and rely upon *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E. 2d 546 (1986). However, *Enoree Baptist Church* was decided under the old rules of civil procedure and does not apply given the clear authority since *Enoree Baptist Church* that allows a second motion for summary judgment or a motion to reconsider the denial of a summary judgment motion. *See Ballenger*, 313 S.C. at 477, 443 S.E.2d at 380; *Johnston*, 313 S.C. at 63, 437 S.E.2d at 47; *Orangeburg Paint*, 297 S.C. at 183, 375 S.E.2d at 334.

The Court concludes Mr. Amick properly filed a second motion for summary judgment—whether or not construed as a motion to reconsider this Court’s earlier denial of summary

judgment—even if Mr. Amick’s re-filed motion for summary judgment had not been consented to by the Rices. Accordingly, Mr. Amick’s motion is properly before this Court.

B. The Lions Club Letter Was Not an Offer Because It Was Not Capable of Acceptance and Could Not Conclude a Bargain.

Turning to the merits, this Court concludes no fact finder could reasonably consider the Lions Club Letter to be an offer and that summary judgment is appropriate on this issue as a matter of law.

“The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). For parties to form a contract, there must be “a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014).

Furthermore, “[a]n offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999). “An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance, and if it is an offer merely to open negotiations which may ultimately result in a contract it is not binding.” *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2, 5 (1932).

In *McLaurin*, the defendant sent a letter to his brother stating he would buy out several other investors and he thought he could obtain financing to do so. *See McLaurin*, 165 S.C. 411, 164 S.E. at 4. The defendant’s letter further directed the brother to “see boys at once and see what they would like to do” and stated “[i]f all decide to do this have each write me at once and you wire me ‘all accept’” *Id.* Despite addressing an alleged offer that contained instructions for accepting, *McLaurin* held this letter was not “such an offer as could, by acceptance, be changed,

converted or construed into a binding agreement of sale.” *Id.* at 165 S.C. 411, 164 S.E. at 5. The court then cited authority explaining that some offers are offers to open preliminary negotiations rather than to form a contract and upheld the trial court’s directed verdict in favor of the defendant. *See id.*

This Court concludes the Lions Club Letter was not an offer because it merely opened negotiations for the Property and did not indicate that an offer could be accepted or that assent to certain terms would conclude a deal. *See McLaurin*, 165 S.C. at 411, 164 S.E. at 5; *Prescott*, 335 S.C. at 336, 516 S.E.2d at 926. Like the *McLaurin* letter, the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. First, it sought expressions of interest from the letter’s recipients by stating “[i]f you have an interest in the property please let us know right away.” Moreover, the Lions Club Letter did not invite acceptance but offers by stating “[f]irst consideration will be given to current members of the Newberry Lions Club.” (emphasis added). By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept.

Moreover, the Court is not persuaded that the phrases “decided to offer the property for sale” and “[t]his offer is valid until” turn the letter into an offer capable of being accepted. The *McLaurin* letter contained directions for communicating an acceptance, but the court held that an acceptance could not conclude the bargain. Like *McLaurin*, more remained to conclude a deal with the Lions Club, regardless of the term “offer.” In fact, the Rices realized as much: the Rice Response described itself as a “bid” rather than an “acceptance” and only contemplated acceptance by the Lions Club, stating, “We would need 30 days from notice that the **bid was accepted**” (emphasis added).

Likewise, this Court is not persuaded by the Rices' reliance on § 29 of the Restatement (Second) of Contracts. The examples given there are items capable of multiple acceptances—a publisher's reward for information, a bank advance if people perform certain acts, and anyone with a certain disease who uses a treatment. No reasonable person could imagine the Lions Club could sell the Property to different persons several times over based on the Lions Club Letter.

Accordingly, this Court concludes the Lions Club Letter was not an offer as a matter of law and no reasonable fact finder could find otherwise. The Lions Club Letter used the word "offer" only to communicate an offer to open negotiations and did not state an offer capable of acceptance. Therefore, partial summary judgment in favor of Mr. Amick is appropriate on this ground alone.

C. The Rice Response Was Not an Acceptance Because It Described Itself as a "Bid" Rather Than an Acceptance and Added Additional Terms.

Even if this Court concluded the Lions Club Letter were an offer, this Court concludes the Rice Response was not an acceptance as a matter of law because the Rice Response described itself as a bid and violated South Carolina's "mirror-image" rule by requiring additional terms.

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). Further, "[t]he acceptance must be unequivocal and unconditional" and additional conditions operate as a rejection and counteroffer. *See Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124, 128 (1963) ("If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, there is a rejection of the offer, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the

modification suggested.”); *see also Columbia Hyundai, Inc. v. Carll Hyundai, Inc.*, 326 S.C. 78, 80, 484 S.E.2d 468, 469 (1997).

In *Sossamon*, the South Carolina Supreme Court held that a purported acceptance letter opening with “[y]our offer of sale . . . is hereby accepted” but including different terms for the time and manner of payment “imposed new or other conditions not contemplated in the offer” and that the purported acceptance was in fact a rejection and counteroffer. *Sossamon*, 241 S.C. at 487, 129 S.E.2d at 128. Similarly, in *Columbia Hyundai*, the court held there was no contract under the mirror image rule where the party attempting to accept added only the words “current year” between the words “saleable” and “new” in the phrase “[a]ll of Seller’s right title and interest in and to all saleable new Hyundai vehicles.” *Columbia Hyundai, Inc.*, 326 S.C. at 80, 484 S.E.2d at 469 (upholding a jury verdict finding there was no contract).

To begin with, this Court concludes the Rice Response by its own terms did not attempt to accept an offer—the only “acceptance” discussed was if the Lions Club accepted the Rices’ bid. *See, e.g., Electro-Lab of Aiken*, 357 S.C. at 369, 593 S.E.2d at 173 (an acceptance requires a manifestation of assent). Specifically, the Rice Response stated: (1) The Rices authorized their attorney to “make a bid of \$325,000.00”; (2) The Rices understood the “bids” would be opened at an upcoming meeting; and (3) The Rices “would need 30 days from notice that **the bid was accepted**” to close the sale. (emphasis added). The use of the term “bid” three times and their request that the Lions Club inform the Rices if the Lions Club accepted the bid is dispositive. A “bid” is “[a] buyer’s **offer** to pay a specified price for something that may or may not be for sale.” BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added); *see also Ramsay v. Vogel*, 970 F.2d 471, 463 (8th Cir. 1992) (“the words ‘bid’ and ‘bidder’ commonly are used to refer to the making of an offer to buy or sell property or to provide services in a private sale or transaction.”).

Accordingly, these statements show the Rices did not attempt to accept an offer but made an offer—a bid—that they understood would have to be accepted by the Lions Club.

Furthermore, the Court concludes the Rice Response would not be an acceptance even if the Rice Response were titled “**WE ACCEPT**” because South Carolina law follows the mirror image rule. Specifically, the Rice Response contained three conditions not present in the Lions Club Letter:

1. **A good title condition:** “subject only to the property having good and marketable title”;
2. **The 30 Days to Close Condition:** The Rices “need 30 days from notice that the bid was accepted in which to conduct the title search and close” with payment “due and payable at closing”; and
3. **A different price term:** The Lions Club asked for \$300,000.00 while the Rices offered \$325,000.00.

First, the Lions Club Letter did not explain what title the Lions Club would convey and stated that encroachments would have to be dealt with after the property was sold. While the Rice Response accepted the encroachment issue, the “good and marketable” title condition added terms not in the Lions Club Letter.

Second, the Lions Club Letter was silent as to terms of payment and delivering possession of the property. Where the contract is silent on these terms, South Carolina law assumes payment in full upon tender of the property. *See Sossamon*, 241 S.C. at 485, 129 S.E.2d at 127 (“when the plaintiff proposed in his alleged acceptance conditions other than cash upon delivery of the property . . . he imposed new or other conditions not contemplated in the offer.”). By requiring 30 days to search title with payment at closing, the Rices conditioned their acceptance of the alleged offer and therefore rejected it.

Third, the Rice Response stated a different price. While the Rices offered a price higher than what the Lions Club sought, the Lions Club Letter indicated the club was selling the property

for less than the appraisal and that first consideration would go to Lions Club members. Obtaining the highest price was not the Lions Club's sole or primary goal by the terms of the letter, and the Rices offered a different price term.

Additionally, 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. *See, e.g., Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975) (a writing must show the contract's essential terms without needing parol evidence). The "auction" theory is a red herring, and this Court concludes it does not create a genuine dispute of material fact.

Accordingly, the Court concludes the Rice Response was not an acceptance as a matter of law. Even by viewing the facts in favor of the Rices as the Court must do at this stage, it cannot be reasonably disputed that the Rices never accepted and instead made an offer expressly leaving it to the Lions Club to decide whether to accept the Rices' offer. Like *Sossamon* and *Columbia Hyundai*, the Rice Response added terms in the alleged acceptance and could not have accepted any offer in the Lions Club Letter as a matter of law because of South Carolina's mirror image rule.

Therefore, partial summary judgment in favor of Mr. Amick is also appropriate on this ground alone.

D. This Court did not consider Expert Affidavits.

The Rices attached to their memorandum in opposition expert affidavits from Professor Stephen A. Spitz. Mr. Amick took the position that expert testimony was not admissible, but submitted an affidavit from Professor Ben Means in case this Court thought otherwise.

First, this Court holds the expert affidavits from Professor Spitz were previously excluded to the extent they contain legal conclusions and that legal conclusions are not proper expert testimony. Mr. Amick moved to strike the affidavit attached to the Rices' memorandum in opposition and relied upon *Dawkins v. Fields*, 354 S.C. 58, 65-66, 580 S.E.2d 433, 437 (2003) (holding expert testimony on issues of law or offered to establish a conclusion of law is inadmissible, and noting expert testimony that constitutes a legal conclusion or which relates to legal issues which will determine the outcome of a case is inadmissible); *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 249 S.E.2d 734 (1978); and *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002). *Cf. Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008) (allowing expert testimony on standard of care for breach of fiduciary duty claim). Additionally, Mr. Amick pointed to the prior order of this Court excluding expert testimony to the extent the expert asserted legal conclusions. The Court notes the Rices have not asked this Court to reconsider the Court's earlier order excluding expert testimony on legal conclusions or otherwise contested the order's application in this case.

The Court concludes it is not proper for it to consider these expert affidavits from law professors on issues of law or offered to establish a conclusion of law. Accordingly, the Court did not consider these expert affidavits in deciding Mr. Amick's motion for summary judgment.³

V. CONCLUSION

For these reasons, the Court concludes Mr. Amick's motion for partial summary judgment is properly before this Court. Furthermore, the Court concludes the Lions Club Letter was not an offer as a matter of law, and even if it were, the Rice Response is not an acceptance as a matter of law. Finally, the Court concludes the expert affidavits should not be considered because expert testimony was previously excluded and because these affidavits set forth legal conclusions that are exclusively for this Court to make.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- A. Defendant C. Ray Amick's motion for partial summary judgment is **GRANTED**;
- B. No contract was formed between the Newberry Lions Club and Plaintiffs Lisa Summer Rice and Joseph F. Rice; and
- C. Defendant C. Ray Amick is granted summary judgment in his favor on Plaintiffs Lisa Summer Rice and Joseph F. Rice's cause of action for specific performance.

IT IS SO ORDERED.

[Judge's Signature Page to Follow]

³ The Court notes it reviewed those few portions of the affidavits cited in the Rices' brief in the course of reaching its decision. However, the few expert statements cited in the brief would not be dispositive either way even if the Court concluded the statements were admissible.



Newberry Common Pleas

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

Case Number: 2018CP3600089

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-12-09 10:43:07 page 16 of 16

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al
PLAINTIFF(S)

Newberry Lions Club et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

See Attached

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/08/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court on Rice's SCRCP Rule 59 (e) motion to reconsider this Court's prior order granting Amick's motion for partial summary judgement.

After reviewing the submissions made by the parties and considering the arguments offered by the attorneys, this Court grants the motion to reconsider to the extent that this Court's prior granting of partial summary judgement violated the rule that prohibits one circuit judge from overruling a prior ruling made by another circuit judge in the same case on the identical issue.

As background information, this Court is assigned as the circuit court trial judge to handle three (3) separate lawsuits involving real property that was owned by the Newberry Lions Club that borders Lake Murray in Newberry County. (2018-CP-36-0089, 2019-CP-36-00245 and 2018-CP-36-00496). All three (3) cases involve contractual issues, among other issues, concerning the 2017 sale of the Lions Club's real property to Amick.

On July 31, 2019, prior to this Court's involvement, Judge Griffith denied Amick's and Rice's cross motions for partial summary judgement. His ruling was contained within an electronic Form 4. He wrote:

This matter came before this Court on June 19, 2019 in Newberry County by way of cross motions for Summary Judgment by Plaintiff Lisa Rice and Defendant Ray Amick. After thoughtful consideration, I find that several questions of fact exist. Therefore, both Motions for Summary Judgment are respectively denied.

No motion for reconsideration was filed by either Amick or Rice.

A few days after his ruling, Judge Griffith expressed his view about his continued involvement with the case and that the case should be transferred to a circuit judge. He wrote, "I think it may be prudent for this case to be heard by another judge who does not live in the neighborhood."

With the consent of the parties, Judge Griffith, as Chief Administrative Judge, designated the all three (3) cases as complex, allowed the parties to explore consolidation, and assigned all three (3) cases to this Court. Judge Griffith's order was dated December 3, 2019.

Subsequent to the cases being assigned to this Court, a non-recorded status conference with all of the lawyers was conducted. Part of the discussions involved the prior summary judgment motions.

After conferencing with all of the attorneys, Amick filed its motion for partial summary judgment for this Court to consider. The motion was identical to the motion ruled upon by Judge Griffith. The parties to the present motion do not contest that no further development of the case had been accomplished through the discovery process at the time of filing or when argued to this Court. After receiving the arguments and considering the motion, this Court granted partial summary judgment in favor of Amick based upon contractual issues.

A motion for reconsideration was timely filed by Rice. A portion of the present motion challenged the process used by this Court in reaching the decision to grant the partial motion for summary judgment on the contractual issues. Rice contended that since the identical motion for partial summary judge had been considered and ruled upon had another circuit judge in the case, this Court's decision to review the contractual issues again was improper. Rice asserted that the holding (one circuit court judge cannot reverse the order of a prior circuit judge in the same case) of *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1986), was still good law in South Carolina. Rice also asserted that since Amick's motion was identical to the prior motion, that the present motion was not a SCRCP Rule 59 or 60 motion (reconsideration). Additionally, since nothing in the case had changed from the time of the prior motion, the holding of *Enoree Baptist* should apply to the prohibit the process used by this Court in granting the present partial summary judgment motion. Amick countered, defending the process used by this Court referring to cases that were decided after *Enoree Baptist* and SCRCP Rule 54(b) that limit the application of *Enoree Baptist* rule. Arguments were received June 24, 2021, from the attorneys.

After receiving the arguments and reviewing the materials, this Court agrees with Rice that the rule from *Enoree Baptist* is still good law in South Carolina. All of the cases cited by the Amick and Rice have been reviewed by this Court. Under the limited facts and timing of the present motion, this Court grants the motion to reconsider based upon the holding of *Enoree Baptist*. For clarity purposes, this decision is a very close call. Amick's present motion was not filed as a Motion for Reconsideration. It is unclear to what extent the prior judge's comments "I think it may be prudent for this case to be heard by another judge who does not live in the neighborhood" affected the decision to file (or not) a motion for reconsideration. While this Court believes the timing (within the 10 days allowed for a motion for reconsideration) may have been a factor, the prior judge did not actually recuse himself. Since this Court's granting of partial summary judgment affects the merits of one of the claims, the better approach in this case is to not allow a process issue at this time to interfere with a decision that affects the merits.

Notwithstanding this ruling, again for clarity purpose, this Court views the rule from *Enoree Baptist* as having only a narrow application in the present case. While *Enoree Baptist* applies to the present motion, the authorities cited and referenced by Amick in his filing are also proper statements of law. While Amick's legal authorities do not overrule *Enoree Baptist*, these authorities establish some strong and limiting guardrails to *Enoree Baptist*'s rule. Therefore, to the extent this Court may be asked, this process decision is without prejudice if these issues are properly before this Court in the future.



Newberry Common Pleas

Case Caption: Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,
defendant, et al
Case Number: 2018CP3600089
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2021-12-08 14:29:09 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-36-00089

Lisa Summer Rice

Newberry Lions Club

Joseph R. Rice

C. Ray Amick

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : See below

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

 CLERK OF COURT

Court Reporter:**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Everyone

Thank you all for appearing in Spartanburg, in May, for the trial of the above referenced case. After considering the testimony and evidence presented during the trial, I ask that Defendant Amick's lawyer, Mr. Koutrakos, prepare a proposed formal order finding and concluding that no enforceable contract existed between the plaintiffs and the defendant, Newberry Lions Club. Thus, specific performance of the contract cannot be ordered.

This email is not intended to be an exhaustive analysis of the issues that were presented during the trial. However, it will highlight some of the factual and legal issues that were significant in reaching the overarching decision that no contract existed between the Plaintiffs and the Defendant Lions Club. The proposed final order should address all issues, including citations, even if issues are not stated within this email. Once the proposed final order is received, it will be reviewed for amendments and edits. The final order of this Court will be the formal order once signed and filed with the Newberry Clerk of Court Office. Nevertheless, a copy of this email will be incorporated into a Form 4 and filed with the Clerk's office for record keeping purposes.

All three parties advanced significant issues in support of their respective positions during the course of the trial. Notwithstanding, the issue of the existence of a contract in this case is controlled by the exchange of the writings between the Lions Club and the Rices' attorney. (Whether the attorney for the Plaintiffs was their attorney-in-fact or merely their legal representative had no influence to this Court's decision. For purposes of a future review, this issue [the status of Plaintiff's attorney when presenting the letter] and this Court's view of the issue should be noted in the order because it was raised during the trial). The initial letter from the Lions Club is not an offer to sell the property which could have been accepted to make a contract which a court could find as binding and enforceable on the parties. The Lions Club letter is better called an invitation to "start negotiations" for the sale of the real property and informs the letter's recipients of some of the considerations that the Lions Club had determined were significant to them. As established at trial, the documents material to the contractual issue began with a letter sent by the Lion Clubs to the Plaintiffs, Defendant Amick, and other adjoining land owners announcing that the Lions Club had decided to offer to sell its property

due to declining membership and the burden of maintenance and upkeep. In the letter, the Lions Club noted a recent appraisal of the land was for \$369,000.00 but that the club members had "decided to ask" \$300,000.00 for the sale of the property "if we can make the sale without involving a realtor." The recipients of the letter were asked to advise the Lions Club "right away" if they had "an interest in the property." The letter also stated that "first consideration will be given to current members of the Newberry Lions Club." Additionally, stated in the letter was that "any encroachments would have to be settled after the property was sold." The letter also stated that this offer was valid until June 1, 2017, at which time the property would be advertised for sale to the public.

Moreover and likewise, the letter from the Plaintiffs' attorney responding to the initial letter uses terminology that he too knew the initial letter was incapable of being accepted to form a binding and enforceable contract. The Plaintiffs' letter came from their attorney which indicated he was authorized to make a bid of \$325,000.00, subject only to having a good and marketable title for the property. He explained his understanding was that the bids were to be opened at a February 28th meeting and that the encroachments on the property would have to be cleared after the property was sold. He asked for 30 days once the bid was accepted before closing to conduct a title search. The use of these terms indicate an intent consistent with engaging in negotiations rather than unconditionally acceptance of an offer to form an binding contract. In the order, include in the alternative analysis that even if the Defendant's initial letter had been an offer capable of acceptance to form an enforceable contract, the letter from the Plaintiffs' attorney was not an unconditional acceptance of the initial letter. Thus, the alleged acceptance also fails to form a binding contract.

The determinative contractual issue in this case involves the formation of a contract. The subject matter of the contract involves real property. Therefore, the Statute of Frauds (S.C. Code section 32-3-10) applies. To be enforceable by a court, the Statute of Frauds requires the existence of a writing (the agreement or contract) signed by the parties (once again, it can be noted in the order that Defendants assert that the reply letter was not signed by the plaintiffs but rather by their lawyer) as a prerequisite before a judge can require compliance with the contract or order specific performance of the contract's terms. In the proposed formal order, as previously stated, include a finding that the exchange of letters between the Plaintiffs' attorney and the Defendant Lions Club did not establish the required meeting of the minds to satisfy the contractual elements necessary for a binding agreement between these two parties to buy and sell the real property that is enforceable by this Court.

Include also in the proposed formal order a discussion of the parol evidence rule. The parol evidence rule prohibits the introduction of evidence (extrinsic evidence) outside of or beyond the alleged contract (here the exchange of two letters) to create a contract. Central to the present case is the Plaintiffs' and Defendant Lions Club's dispute that the exchange of the two letters formed, or did not form, a binding and enforceable agreement. It is important to note in the formal order that, after the Lions Club received the Plaintiffs' letter, no evidence was presented to conclude or suggest that the Lions Club ever thought or otherwise acted in a manner to suggest it had made or entered into an agreement to sell the real estate to the Plaintiffs. The Lions Club Board voted to sell the property only to Defendant Amick. The Board twice voted to sell the property to Amick but never voted once to enter into a contract with the plaintiffs. Note also in the order the chronology of events that the Board, subsequent to receiving advice from their attorney that marketable or fee simple title could be produced by the Lions Club, voted to cancel the decision to sell the property to anyone. The Plaintiffs and others were made aware of the Board's decision to cancel the sale. Note in the Order as well that prior to receiving the advice from counsel, the Board's actions, including drafting its initial letter, were without the benefit of an attorney. The only possible exception contained in the record is that the Board may have received advice to have the property surveyed.

Assuming arguendo that the initial letter from the Lions Clubs was ambiguous and requires the use of extrinsic evidence to conclude that the Lions Clubs' intent was to have expressed an offer capable of acceptance to form an enforceable real estate contract (including an intent to sell to the highest bidder), then it is the ambiguous nature of the initial letter which also cautions a court against imposing a binding interpretation of the initial letter. Given the record before this Court, the proper conclusion is that the initial letter was an offer not capable of an unconditional acceptance but rather was an offer to engage into negotiations concerning the sale of the real estate.

In the order include a background narrative about the parties as it related to the property (the Lions Club and its history with the property; the Plaintiffs' family connection as an adjoining property owner; and Amick's connection as an adjoining property owner, as a Lions Club member, and as a caretaker of the property)

If the parol evidence rule prohibition does not apply to the two letters, the extrinsic evidence presented during the trial does not change the outcome as to parties' meeting of the minds, or lack thereof, on the issue of the formation of an enforceable real estate sale contract between the Defendant Lions Club and the Plaintiffs. The evidence clearly established that the Plaintiffs wanted to buy the real estate and submitted a proposal in response to the Lion Club's initial letter that included the amount of \$325,000.00 (the highest amount received from the three interested prospective buyers). The fact that the plaintiffs wished to pay more money for the property than anyone else is substantial to their position. But, a finding that awards the real estate to the party who would pay the most money would require a court to rewrite the initial Lions Club letter, ignore other consideration expressed in the letter by the Lions Club, 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.

Questions were presented during the trial that the Lions Club was doing something wrong (suggesting a breach of duty or of its charter, or otherwise a bad business decision) because it did not accept the highest monetary amount. The correctness or wisdom of the financial decision to accept \$300,000.00 for the property is not before this Court and should not be before a court when deciding the narrow issue of the existence of the elements of a contract between these parties. The narrow issue concerns what was the agreed, not what was best. Additionally, there is a lack of evidence before this Court to make such a financial decision as to what is "best" for the Lions Club. Notwithstanding, it was suggested that the certain Board members expressed a desire that the sale of the property should be made to the highest bidder. Even though some inconsistencies with trial testimony to deposition testimony were presented, the trial testimony of the Board members carried greater weight with the Court. These witnesses appeared credible during the trial. Note in the formal order that the \$300,000.00 price accepted by the Lions Club board was contained in the initial letter. The \$300,000.00 price was not presented as unreasonable, it was merely presented as not being the highest offer, (another potential buyer also offered \$300,000.00 for the property). Assuming arguendo that one or more board members may have expressed to the Plaintiffs a desire to receive the highest price for the property, the Board's vote was to accept the \$300,000.00 amount. Moreover, deposition testimony was presented that the Board was informed of all monetary offers, discussions included consideration of the \$325,000.00, at least one member thought going with the highest offer was better, but that the Board voted to accept the \$300,000.00 for the property. Deposition testimony also indicates that the Board felt \$300,000.00 was a fair amount and that the Board had been advised to expect to receive as low as \$250,000.00 for the property. It is noted that the Board, in its collective wisdom, made other decisions (no public advertising, not to use a realtor, and limit notice to only adjoining property owners) which are not before this Court for consideration. Include in the order that, based on the record, this Court cannot conclude the \$300,000.00 amount was unfair or unreasonable.

The record, again, is also clear that that the Lions Club never acted or responded to the Plaintiffs with the intent to form a contract. This is not a case where consideration was paid or accepted between the parties or a case of partial performance by either party. Include in the order that extrinsic evidence in the case established in March 2017, the Lions Club accepted the offer of \$300,000 from Defendant Amick (a Lions Club member and a preference expressed in the initial letter). Extrinsic evidence also established that by letter dated May 15th, the Plaintiffs' attorney, once he was made aware of the agreement to sell the property to Defendant Amick, wrote to the Lions Club expressing his belief that his clients were the successful "bidder" on the property and that the property should be conveyed to his clients. Extrinsic evidence also established that the Lions Club Board, after receiving legal advice from an attorney (again, the record before this Court supports the conclusion that the Lions Clubs wrote the initial letter without advice from legal counsel) voted to withdraw their prior decision to sale the property and wrote letters to all interested persons. After certain issues were resolved (including selling a portion of the property an adjoining property owner to resolve an encroachment issue), Defendant Lions Club and Defendant Amick entered, again, into negotiations for the purchase of the property. Even though the Board did not again seek offers from the Plaintiffs or other adjoining property owners, the Plaintiffs' attorney became aware of the negotiations with Defendant Amick and, once again, asserted that his clients were the successful bidders.

While the allegation was made that Defendant Amick was asserting undue influence over the Board by his attending meetings to advocate for his purchase of the property, the record before this this Court does not support an inference of undue influence or wrongdoing by Defendant Amick. Likewise, the record does not support the inference of wrongdoing by the Plaintiffs' attorney even though he wrote over a period of months to the Board asserting his client's position after being made aware of the negotiations with Defendant Amick and the Board's vote to sell the property to Defendant Amick. Even though the source of Plaintiffs' lawyer's information is not completely clear to this Court (it is known that a non-Lions Club member who was an adjoining property owner provided some information to the Plaintiffs), assigning a nefarious motive to Plaintiff's attorney is not supported for acquiring the information and advocating for his clients, and, likewise, a nefarious motive is not assigned to Defendant Amick for his uncounseled self-advocacy with the Board. The Board minutes and testimony indicate Defendant was not allowed in the room, except possibly for the November 2017 meeting, during executive sessions.

Note in the proposed formal order that during the trial, the 1933 deed transferring the property to the Lions Club was presented into evidence. This deed restricted the resale of the property to only a member in good standing of the Newberry Lions Club. Testimony from the Lions Club established that Mr. Amick's possession as a current Lions Club member was material in the Clubs' decision to negotiate the sale of the property with Amick.

Note also in the order that on November 21, 2017, the Rices' attorney wrote to the Lions Club indicating his belief that the Plaintiffs were the successful bidder in response to the Lions Club's "original request to purchase" and that his clients were willing to follow through with their bid or participate in any further bid procedure to acquire the property. The Lions Club made no response to the November 21, 2017, letter from the Rices' attorney. The record before this Court is not clear that Defendant Amick knew of the contents of the November 21st letter. However, the record supports the conclusion that it is more likely than not that Defendant Amick knew or should have known that the Plaintiffs still wished to acquire the property from the Defendant Lions Club and were willing to pay more for the property. These items can be referenced in the section below addressing BFPV.

The record also supports the conclusion that the closing of February 12, 2018, was the first time Defendant Amick acted upon the advice of his own attorney. Until the closing of February 12, 2018,

the record supports the conclusion that he was unrepresented when he dealt with the Defendant Lions Club.

In the order, set forth the history related to the closing to include that on January 23, 2018, the Lions Club voted to sell the property to Defendant Amick for \$300,000.00 and a formal contract was subsequently signed between the Defendant Lions Club and Defendant Amick. The closing occurred on February 21, 2018, involving the Lions Clubs Board members signing a deed before lunch transferring the property to Defendant Amick for \$300,000.00 and Defendant Amick's paying the \$300,000.00 for the property. On the afternoon of the 21st, the Plaintiffs filed a Lis Pendens on the property. The Deed was recorded the next day February 22nd.

In the proposed order also address the issue of the Defendant Amick being, or not being, a Bona Fide Purchaser for Value (BFPV) as it stands with the above decision related to the lack of an enforceable real estate contract. The case of *Shirley v. Bishop* was instructive. Include in the proposed order the conclusion that the evidence supports the decision that Defendant Amick was a Bona Fide Purchaser of Value when he paid for the property and the deed was signed by the Lions Club. A detailed analysis of being a (BFPV) is unnecessary if there is not a binding and enforceable contract between the Plaintiffs and the Defendant Lions Club. Notwithstanding, the following factual observation are made in the event future review is necessary. Evidence is unclear to establish what Defendant Amick actually knew of the details of the Plaintiffs' claim to the property until the November 2017 Board meeting. A fair assumption and reasonable conclusion was that Defendant Amick knew that other people, including the Plaintiffs, had a desire to purchase the real estate and that other people had responded to the initial letter. At one point in the chronology (early in 2017), Defendant Amick questioned why letters were being sent to other people when he was making arrangement to purchase the property. Testimony also suggested that the November 21, 2017, letter from Plaintiffs' attorney was read during the Board meeting while Defendant Amick was present (Defendant's Amick testimony was unclear he knew of the November 21, 2017, letter). The reading of the letter conveyed actual knowledge of the Attorney's position to those present at the meeting. The letter did not express an actual legal claim to the property. It did express, however, the thoughts, among other things, that the Plaintiffs were the "successful bid offer of \$325,000," asked for information about "bid procedures" and his clients' willingness to follow through with their bid or participate in future bid procedures. If Amick was present, the reading of the letter, more likely than not, placed him on at least inquire or constructive notice of the Plaintiffs' position as expressed in the letter. The closing of the property took place in the morning but the deed was not filed until the next day. The Plaintiffs' Lis Pendens was filed during the afternoon of the day of closing prior to the filing of the deed transferring the property to Defendant Amick. Thus, if the above analysis concerning the lack of an enforceable contract is determined to be incorrect, the equitable analysis in determining if defendant was a BFPV will necessarily expand to include Amick's level of knowledge because of the filing of the Lis Pendens. Likewise, the warranties provided by deed from the Defendant Lions Club to Amick may also need to be considered. For clarity purposes, this Court is not performing an expanded BFPV analysis that goes beyond a determination that Defendant is a BFPV based on the conclusion that the record does not support a finding that an enforceable contract existed between the Plaintiffs and the Defendant Lions Club.

Through the Plaintiffs' pre-trial filings, Promissory Estoppel is raised as an issue to be addressed in the trial. For the reasons explained above, please include in the Order that Promissory Estoppel has not been established.

If possible, I request a propose order be submitted for review within 30 days. As time approaches, please let me know if the request cannot be met. I have to make monthly reports to Court Administration on the status of cases under advisement



Again, thank you all for your attendance at the trial. Also thank you for your patience while I reviewed this case and for your continued attention to this case.

Mark Hayes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

ORDER FINDING IN FAVOR OF
DEFENDANTS NEWBERRY LIONS CLUB
AND C. RAY AMICK ON MULTIPLE CLAIMS
(not ending action)

This matter came before the Court for a two-day bench trial in Spartanburg County on May 31, 2022, and on June 1, 2022. Plaintiffs Lisa Summer Rice and Joseph F. Rice (“Rices”) were represented at trial by Thomas H. Pope, III, Esquire and Kyle B. Parker, Esquire.¹ Samuel M. Price Jr., Esquire represented Defendant Newberry Lions Club (“Lions Club”). Demetri “Jim” K. Koutrakos, Esquire and Harry A. Dixon, Esquire represented Defendant C. Ray Amick (“Mr. Amick”).

The Court carefully considered the evidence presented at trial, the testimony of the live witnesses, the credibility of the live witnesses, and the legal arguments made by the parties. As explained below, the Court finds no contract was formed between the Rices and the Lions Club and concludes the Rices’ claims based on the alleged contract must fail.

I. BACKGROUND AND PROCEDURAL HISTORY

This case concerns an alleged contract supposedly formed by the Rices and the Lions Club regarding property owned by the Lions Club on Lake Murray in Newberry County (“Property”). On February 20, 2018, the Rices filed this lawsuit against the Lions Club seeking specific

¹ The Court notes Mr. Parker attended the trial via video conferencing technology.

performance of the allegedly breached contract. The following day, the Rices filed a lis pendens identifying the Property. The Rices later added Mr. Amick as a defendant, and the operative Fifth Amended Complaint asserts, among other things, claims for a declaratory judgment/injunction, specific performance, and intentional interference with a contract against Mr. Amick, as well as declaratory judgment/injunction, specific performance, promissory estoppel, and breach of contract accompanied by a fraudulent act against the Lions Club, all based on the Rices' alleged contract with the Lions Club. In his Second Amended Answer to the Rices' Fifth Amended Complaint, Mr. Amick, among other things, raised as affirmative defenses the statute of frauds and his status as a bona fide purchaser for value.

In May 2019, several non-party landowners adjoining the Property filed suit against Mr. Amick alleging an easement over the Property, which action was assigned case number 2019-CP-36-00245. Mr. Amick then filed a motion to bifurcate the trial in this case and to first try the specific performance claims raised by the Rices before proceeding to the Rices' remaining claims. In October 2019, after that motion was filed but before it was ruled upon, two adjoining landowners, Claude and Melissa Schumpert, filed a suit against the Lions Club and Mr. Amick alleging claims similar to the Rices, including a claim for specific performance, with case number 2019-CP-36-00496. These three cases concerning the Property were then designated as complex by order of this Court dated December 3, 2019, with the undersigned assigned to hear all matters in the cases.

On May 22, 2020, the Court held a status conference to discuss discovery and pretrial matters. During this status conference, the parties agreed to first hold a trial on whether the Rices and/or Schumperts and the Lions Club formed a contract, or what the parties have called "the specific performance claims," raised by the Rices and Schumperts.

On July 24, 2020, this Court set an initial trial date for September 16 and 17 of 2020. The Court also set a schedule for dispositive motions with a hearing for those motions on August 27, 2020. Mr. Amick timely filed a motion for partial summary judgment in the Rices' case, to which the Rices timely filed a response in opposition. Mr. Amick also timely filed a motion to strike an expert affidavit attached to the Rices' response. Additionally, Mr. Amick timely filed a motion for summary judgment in the Schumpert case, to which the Schumperts' timely filed a response in opposition. The Court heard argument on all motions related to the specific performance issue as scheduled on August 27, 2020.

Following the hearing and before the scheduled trial, the Court granted summary judgment on the Schumperts' claims against Mr. Amick and the Lions Club related to the Schumperts' alleged contract in favor of Mr. Amick and the Lions Club.² The Court also granted the motion for partial summary judgment in favor of the Lions Club and Mr. Amick with respect to the Rices' claims based on the alleged contract with the Lions Club. Additionally, the Court granted Mr. Amick's motion to exclude expert testimony offered by the Rices.³ However, following a timely

² The Schumperts neither moved to alter, amend, or reconsider the judgment nor did they appeal this Court's order granting summary judgment to the Lions Club and Mr. Amick. The Court notes the Schumperts also raised easement claims in a separate case involving Mr. Amick and the Property.

³ The Rices objected to this ruling at trial and proffered affidavits from their expert, Professor Stephen Spitz, which were not admitted but marked for identification as Plaintiffs' Exhibits 44 and 45. The Court reiterated its ruling that expert testimony was not admissible on whether a contract was formed. Defendants also objected to the proffer of an affidavit, asserting that the proffered testimony was hearsay and a proffer required sworn testimony subject to cross examination (i.e., by deposition or live testimony). The Court notes that even if this evidence were admissible, it would not change the Court's findings of fact or conclusions of law as stated herein. In any event, the Court reiterates its ruling that the expert testimony was not admissible in this case to tell the Court the law and also holds that the proffered testimony is equally inadmissible as hearsay because it was presented by affidavit.

motion to reconsider by the Rices, the Court vacated its order granting partial summary judgment in favor of the Lions Club and Mr. Amick.

Following the order vacating the partial summary judgment order, the Court rescheduled the trial for the Rices' claims on the alleged contract for May 31, 2022, and June 1, 2022. Mr. Amick filed a motion in limine to exclude all evidence other than the letters purportedly creating the contract between the Rices and Lions Club under the statute of frauds and the parol evidence rule. Before trial, the Court heard argument on this motion and decided to hear contemporaneous objections while noting Mr. Amick's objection to the competency of evidence outside of the letters purportedly creating the contract.

At trial, the Court heard testimony from the following witnesses:

- For the Rices:
 - Joe Rice (via live testimony);
 - Claude Schumpert (via live testimony);
 - Gene Crocker (via deposition testimony);
 - Ladson Heath "Pete" Simpson (via deposition testimony); and
 - Mr. Amick (via deposition testimony).
- For Mr. Amick:
 - Joe Rice (via deposition testimony);
 - Lisa Rice (via deposition testimony);
 - Mr. Amick (via live testimony); and
 - Lisa Lee Smith, Esquire (via live testimony).
- For the Lions Club:
 - Gene Crocker (via live testimony); and
 - Ladson Heath "Pete" Simpson (via live testimony).

For the live witnesses, the Court carefully listened to the testimony, observed each witness's demeanor, and made credibility determinations. The Court also heard a number of objections over the competency and admissibility of certain evidence from Mr. Amick related to the statute of frauds and the parol evidence rule, which the Court addresses in detail below. The Court also received into evidence certain trial exhibits largely agreed to by the parties and marked as exhibits in the trial record,⁴ which have been filed with the Court. A court reporter transcribed the trial proceedings.

After the Rices' case, Mr. Amick and the Lions Club each moved for an involuntary non-suit pursuant to Rule 41(b), SCRCP. Mr. Amick moved for an involuntary nonsuit in his favor, asserting the facts in the record showed there was no contract, and in any event, Mr. Amick was a bona fide purchaser for value. The Lions Club asserted no contract was formed with the Rices. The Court did not rule on the motions, reserving a ruling until after all the evidence to address the factual findings and legal conclusions in full in this order.

The Court has now reached a decision in this case. After carefully considering the evidence presented at trial, the legal arguments from counsel, and after having carefully observed the testimony of the live witnesses, this Court finds in favor of Mr. Amick and the Lions Club on each of the Rices' claims based on the Rices' alleged contract. In accordance with Rule 52, SCRCP, the Court makes the following findings of fact and conclusions of law.

⁴ References to trial exhibits in this Order will be as follows: "Pls' Trial Ex. ___ at p. ___"; "Amick's Trial Ex. ___ at p. ___" or "Lions Club Trial Ex. ___ at p. ___." While most exhibits were undisputed, save Mr. Amick's objection to their competency under the statute of frauds and parol evidence rule, the bulk of the exhibits were offered through the Rices. Several additional exhibits were offered by Mr. Amick and the Lions Club, which exhibits were marked to identify them as "Amick" or "Lions Club" exhibits.

II. FINDINGS OF FACT⁵

In 1933, the Lions Club acquired the Property, which is located on Lake Murray in Newberry County.⁶ **Pls' Trial Exs. 8, 33,⁷ 34, 35, 36; Lions Club Trial Ex. 1.** Designated trustees of the Lions Club received a deed from Mr. Amick's grandfather for a tract that included the Property. **Lions Club Trial Ex. 1.** The Lions Club passed and recorded a resolution stating that the designated trustees could sell to Lions Club members only. **Lions Club Trial Ex. 1.** The Court finds on the record presented that there is no evidence the Lions Club ever amended the 1933 resolution requiring sales to members of the Lions Club.

Since the initial purchase, the Lions Club sold several lots now adjoining the Property to then-members of the Lions Club. Lisa Rice and Claude Schumpert both own lots that were inherited from former Lions Club members. Lisa Rice owns a lakefront lot adjoining the Property, as do the Schumperts. **Pls' Trial Exs. 33, 34, 36.** Lisa Rice and Claude Schumpert grew up in Newberry County, spent time at the Property in their childhood summers, participated in Lions Club activities on the Property, and their respective fathers were members of the Lions Club.

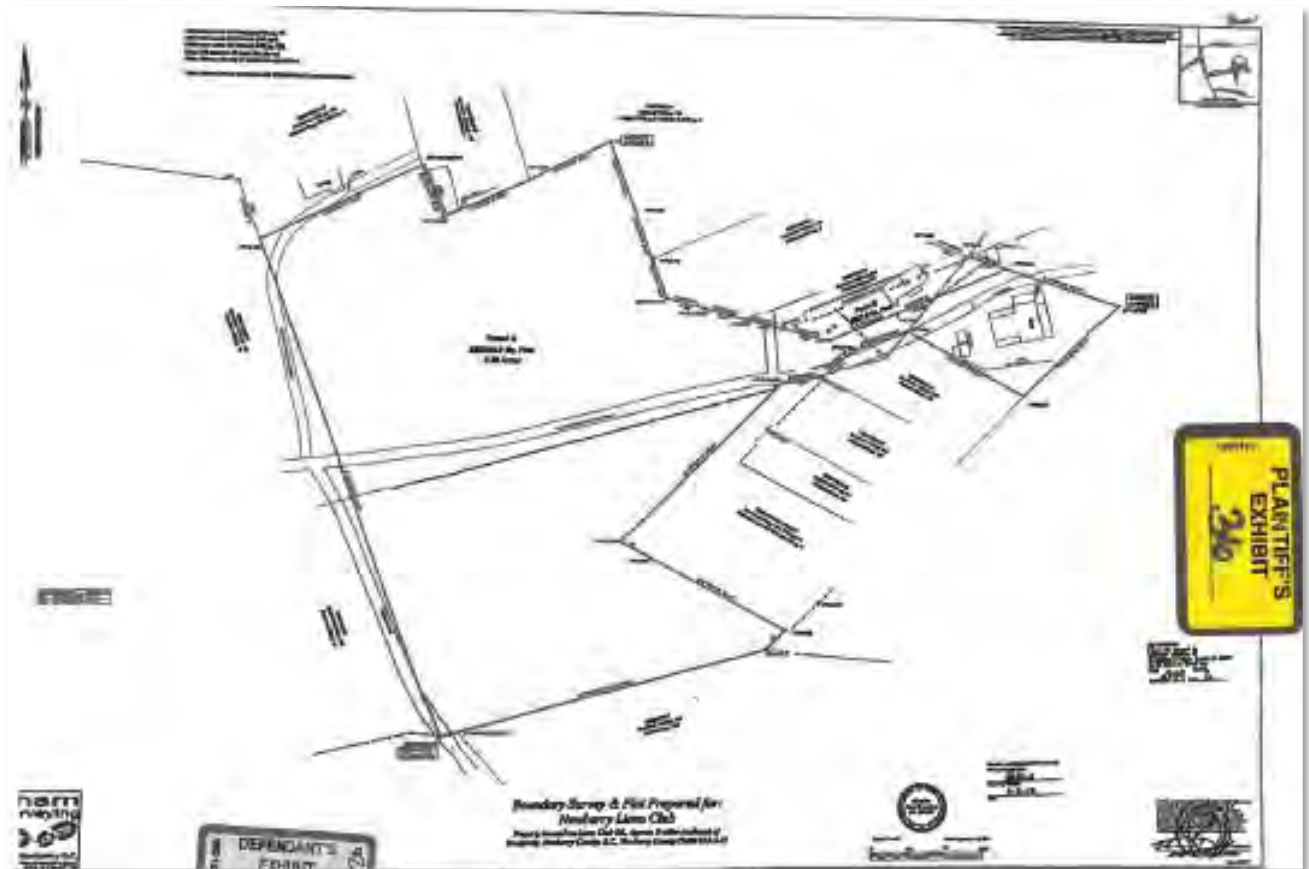
Mr. Amick owns property (other than the Property) that does not adjoin Lake Murray but which does adjoin the Property. **Pls' Trial Exs. 33, 34, 35, 36.** Mr. Amick has been an active member of the Lions Club for many years and has taken care of the clubhouse and Property for the Lions Club for many years. Mr. Amick's role with the club and with the Property were testified to at trial by Lions Club board members Gene Crocker and Pete Simpson.

⁵ Where appropriate, this Court's findings of fact shall be construed as conclusions of law and vice versa.

⁶ The Court notes the Property was part of Lexington County when the Lions Club acquired it in 1933.

⁷ The Court notes Plaintiffs' Trial exhibit 33 was admitted by consent with a redacted portion of certain items identified on the image.

The Property has a larger upland area away from Lake Murray and narrows and extends nearly to the lake, where a clubhouse sits on the point:



By 2016, the Lions Club began considering whether to sell the Property as Lions Club membership dwindled and the Property became a burden. After deciding to sell, the Lions Club sent letters in early 2017 to adjoining landowners and Lions Club members explaining that the Lions Club would be selling the Property. In pertinent part, the letter (the “Lions Club Letter”) provided:

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. ***We have also decided to make the property available to those individuals whose property adjoins the Lions Club property.***

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. ***First consideration will be given to current members of the Newberry Lions Club.***

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Pls' Trial Exs. 6 & 7 (emphasis added). Lions Club members prepared the Lions Club Letter, and the Lions Club did not have assistance of counsel in preparing the Lions Club Letter.

Both the Rices and Mr. Amick received the Lions Club Letter. Mr. Amick is both an adjoining landowner and a Lions Club member, while Lisa Rice was only an adjoining landowner. Joe Rice did not own any adjoining property and was not a member of the Lions Club.

Mr. Amick expressed his desire to purchase the Property to the Lions Club before the Lions Club sent the Lions Club Letter. Mr. Amick attended board meetings before and after the Lions Club sent the Lions Club Letter to reiterate his interest in purchasing the Property. While he would attend the board meetings, he would not attend the portions of the meetings when the board went into executive session because he was not a board member. The Court finds he did not attempt to improperly influence the Lions Club board by asserting his continued interest in the Property to the board members.

On February 14, 2017, the Rices responded to the Lions Club Letter with a letter from their attorney (the "Rice Response"), which stated in pertinent part:

Pursuant to your recent letter to [the Rices], they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need

30 days from notice that the bid was accepted in which to conduct the title search and close.

Pls' Trial Ex. 13. Sidney Boone, the Rices' attorney, held a recorded power of attorney for only Joe Rice. **Pls' Trial Ex. 46.** In the Rice Response, the Court finds Sidney Boone purported to act as counsel to the Rices and not as Joe Rice's attorney in fact. From the time the Lions Club sent the Lions Club Letter, the Rices communicated with Claude Schumpert regarding the sale by the Lions Club.

On February 28, 2017, Mr. Amick sent the Lions Club a \$1,000 earnest money check and an unexecuted contract of sale offering \$300,000.00 for the Property. **Pls' Trial Ex. 32.** Mr. Amick was not represented by counsel in preparing his offer.

On March 28, 2017, the Lions Club held a board meeting and voted to accept "Amick's offer of \$300,000.00 provided that closing would take place by June 1st." **Pls' Trial Ex. 5.**

The Lions Club voted to accept Mr. Amick's offer because he was a Lions Club member as well as an adjoining landowner and because he had taken care of the Property for many years. The Lions Club decided to accept the lower price despite the offer of \$325,000.00 from the Rices. The Court finds Gene Crocker and Pete Simpson, the Lions Club members that testified in person at the trial, offered credible testimony as to why the Lions Club made this decision.

On May 15, 2017, the Rices' attorney sent a letter to the Lions Club stating they were the successful bidders and requested that they be conveyed the Property pursuant to their "bid." **Pls' Trial Ex. 15.**

After voting to accept Mr. Amick's offer, Mr. Amick and the Lions Club believed the Lions Club could not convey marketable title with the encroachments on the Property. The Lions Club consulted an attorney, who informed them that the Lions Club could not convey a marketable title with the encroachments. After receiving the attorney's advice, the first assistance of counsel

received by the Lions Club, the board of the Lions Club decided to resolve the encroachments before selling the Property to anyone. On May 23, 2017, the Lions Club decided to “send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property.”

Pls’ Trial Ex. 5a.

On June 5, 2017, the attorney for the Lions Club sent identical letters to Mr. Amick and the Rices, which stated in full:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

Pls’ Trial Ex. 12 &13. The encroachment issues were eventually resolved.⁸

On November 21, 2017, the Rices’ attorney sent another letter to the Lions Club indicating the Rices “are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.” **Pls’ Trial Ex. 19.** The record reflects that this letter was read at the November Lions Club board meeting. The Court finds Mr. Amick was present at the meeting and would have knowledge of the contents in the letter if he were at the meeting.

On January 23, 2018, the Lions Club voted to sell the Property to Mr. Amick, **Pls’ Trial Ex. 21**, and Gene Crocker sent a letter dated the same day to Mr. Amick accepting Mr. Amick’s offer, **Pls’ Trial Ex. 22.**

⁸ It is undisputed the Lions Club sold the portion of the Property with the encroachment to the encroaching party, which resolved the issue. The portion sold represents the difference between the 5.5 acres in the Lions Club Letter and the 5.35 acres eventually conveyed to Mr. Amick. **Pls’ Trial Ex. 20.**

On February 14, 2018, the Lions Club entered into a formal, written contract with Mr. Amick, wherein Mr. Amick agreed to purchase the Property for \$300,000.00. **Pls' Trial Ex. 23.** The Court notes that Mr. Amick first received the assistance of counsel as part of the closing process for the Property.

Closing took place on February 21, 2018. **Pls' Trial Exs. 25, 29, 30, 31, 43; Amick's Trial Exs. 3–7.** The testimony of the live witnesses at trial (Gene Crocker, Pete Simpson, Mr. Amick, and Lisa Lee Smith) reflects that the closing took place in the morning and that the deed was delivered to Mr. Amick before noon. The deed transferring the Property to Mr. Amick was recorded on February 22, 2018. **Pls' Trial Ex. 29.**

The Rices filed a complaint against the Lions Club on February 20, 2018. **Pls' Trial Ex. 26.** The Rices filed a lis pendens naming the Lions Club as a defendant and identifying the Property on February 21, 2018, but not until that afternoon. **Pls' Trial Ex. 27** (indicating a filing time of 1:48PM).

Based on the facts found by this Court and set forth above, the Court finds and concludes the following:

1. The Lions Club Letter was not an offer;
2. Even if the Lions Club Letter were an offer, the Rice Response was not an acceptance;
3. The Lions Club did not intend to make an offer capable of acceptance;
4. The Rices' attorney intended to make an offer in the Rice Response;
5. The extrinsic evidence does not show the Lions Club intended to be bound by a highest bidder process;
6. The Lions Club accepted Mr. Amick's offer twice, the second acceptance ultimately resulting in an executed contract and deed to Mr. Amick;
7. The Lions Club never acted as if a contract was formed with the Rices or the Lions Club intended to sell the Property to the Rices; and

8. Mr. Amick had inquiry or constructive notice of the contents of the November 2021 letter from the Rices' attorney.

III. CONCLUSIONS OF LAW⁹

Based on the above factual findings, the Court makes the following conclusions of law.

A. THE LIONS CLUB LETTER WAS NOT AN OFFER.

This Court concludes the Lions Club Letter was not an offer capable of acceptance but rather an invitation to begin negotiations.

“The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). For parties to form a contract, there must be “a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014).

Furthermore, “[a]n offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999). “An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance, and if it is an offer merely to open negotiations which may ultimately result in a contract it is not binding.” *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2, 5 (1932).

In *McLaurin*, the defendant sent a letter to his brother stating he would buy out several other investors and he thought he could obtain financing to do so. *See McLaurin*, 165 S.C. 411, 164 S.E. at 4. The defendant’s letter further directed the brother to “see boys at once and see what they would like to do” and stated “[i]f all decide to do this have each write me at once and you

⁹ Where appropriate, this Court’s conclusions of law shall be construed as findings of fact and vice versa.

wire me ‘all accept’” *Id.* Despite addressing an alleged offer that contained instructions for accepting, *McLaurin* held this letter was not “such an offer as could, by acceptance, be changed, converted or construed into a binding agreement of sale.” *Id.* at 165 S.C. 411, 164 S.E. at 5. The court then cited authority explaining that some offers are offers to open preliminary negotiations rather than to form a contract and upheld the trial court’s directed verdict in favor of the defendant. *See id.*

This Court concludes the Lions Club Letter was not an offer because it merely opened negotiations for the Property and did not indicate that an offer could be accepted or that assent to certain terms would conclude a deal. *See McLaurin*, 165 S.C. at 411, 164 S.E. at 5; *Prescott*, 335 S.C. at 336, 516 S.E.2d at 926. Like the *McLaurin* letter, the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. First, it sought expressions of interest from the letter’s recipients by stating “[i]f you have an interest in the property please let us know right away.” Moreover, the Lions Club Letter did not invite acceptance but offers by stating “[f]irst consideration will be given to current members of the Newberry Lions Club.” (emphasis added). By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept. The Lions Club Letter also noted a recent appraisal of the Property for \$369,000.00 but that the Lions Club “decided to ask” \$300,000.00 for the sale of the Property “if we can make the sale without involving a realtor.” Likewise, the Lions Club Letter asked to advise the Lions Club “right away” if they had “an interest in the property.”

Conversely, the Court is not persuaded that the phrases “decided to offer the property for sale” and “[t]his offer is valid until” turn the Lions Club Letter into an offer capable of being

accepted. The *McLaurin* letter contained directions for communicating an acceptance, but the court held that an acceptance could not conclude the bargain. Like *McLaurin*, more remained to conclude a deal with the Lions Club, regardless of the term “offer.” In fact, the Rices realized as much: the Rice Response described itself as a “bid” rather than an “acceptance” and only contemplated acceptance by the Lions Club, stating, “We would need 30 days from notice that the **bid was accepted**” (emphasis added).

In fact, the Rice Response used terminology that indicated its writer knew the Lions Club Letter was incapable of being accepted to form a binding and enforceable contract. The Rice Response, sent by the Rices’ attorney, indicated he was authorized to make a bid of \$325,000.00, subject only to having a good and marketable title for the property. He explained his understanding was that the bids were to be opened at a February 28th meeting and that the encroachments on the property would have to be cleared after the property was sold. He asked for 30 days once the bid was accepted before closing to conduct a title search. The Court concludes the use of these terms indicate an intent consistent with engaging in negotiations rather than unconditional acceptance of an offer to form a binding contract.

Assuming arguendo that the Lions Club Letter from the Lions Club was ambiguous and required the use of extrinsic evidence to conclude that the Lions Club intended to express an offer capable of acceptance—including an intent to sell to the highest bidder—the Court concludes such an ambiguous letter would not be capable of acceptance. A letter with so ambiguous an intent cautions this Court against imposing a binding interpretation on parties whose minds, as the evidence shows, never met on any contract terms. If the purported offer was ambiguous such that other evidence was necessary to prove the offer, then the Court is not persuaded that it can infer terms and impose them on the parties. Given the record before this Court, the proper conclusion is

that the Lions Club Letter was an offer not capable of an unconditional acceptance but rather was an offer only in the sense of offering to engage in negotiations concerning the sale of the Property.

Accordingly, this Court concludes the Lions Club Letter was not an offer but rather an “offer” only to open negotiations and did not state an offer capable of acceptance.

B. THE RICE RESPONSE WAS NOT AN ACCEPTANCE BECAUSE IT DESCRIBED ITSELF AS A “BID” RATHER THAN AN ACCEPTANCE AND ADDED ADDITIONAL TERMS.

Even if this Court concluded the Lions Club Letter were an offer, this Court concludes the Rice Response was not an acceptance as a matter of law because the Rice Response was sent by counsel, indicating it was not an acceptance; the Rice Response used the language of making a bid or offer in response to the Lions Club Letter; and it violated South Carolina’s “mirror-image” rule by requiring additional terms.

“Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.” *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). Further, “[t]he acceptance must be unequivocal and unconditional” and additional conditions operate as a rejection and counteroffer. *See Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124, 128 (1963) (“If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, there is a rejection of the offer, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the modification suggested.”); *see also Columbia Hyundai, Inc. v. Carll Hyundai, Inc.*, 326 S.C. 78, 80, 484 S.E.2d 468, 469 (1997).

In *Sossamon*, the South Carolina Supreme Court held that a purported acceptance letter opening with “[y]our offer of sale . . . is hereby accepted” but including different terms for the time and manner of payment “imposed new or other conditions not contemplated in the offer” and

that the purported acceptance was in fact a rejection and counteroffer. *Sossamon*, 241 S.C. at 487, 129 S.E.2d at 128. Similarly, in *Columbia Hyundai*, the court held there was no contract under the mirror image rule where the party attempting to accept added only the words “current year” between the words “saleable” and “new” in the phrase “[a]ll of Seller’s right title and interest in and to all saleable new Hyundai vehicles.” *Columbia Hyundai, Inc.*, 326 S.C. at 80, 484 S.E.2d at 469 (upholding a jury verdict finding there was no contract).

To begin with, this Court concludes the Rice Response by its own terms did not attempt to accept an offer—the only “acceptance” discussed was if the Lions Club accepted the Rices’ bid. *See, e.g., Electro-Lab of Aiken*, 357 S.C. at 369, 593 S.E.2d at 173 (an acceptance requires a manifestation of assent). Specifically, the Rice Response stated: (1) The Rices authorized their attorney to “make a bid of \$325,000.00”; (2) The Rices understood the “bids” would be opened at an upcoming meeting; and (3) The Rices “would need 30 days from notice that **the bid was accepted**” to close the sale. (emphasis added). The use of the term “bid” three times and their request that the Lions Club inform the Rices if the Lions Club accepted the bid is dispositive. A “bid” is “[a] buyer’s **offer** to pay a specified price for something that may or may not be for sale.” BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added); *see also Ramsay v. Vogel*, 970 F.2d 471, 463 (8th Cir. 1992) (“the words ‘bid’ and ‘bidder’ commonly are used to refer to the making of an offer to buy or sell property or to provide services in a private sale or transaction.”). Accordingly, these statements show the Rices did not attempt to accept an offer but made an offer—a bid—that they understood would have to be accepted by the Lions Club.

The Court also concludes the Rices did not otherwise manifest an acceptance. Instead, their attorney sent a letter indicating the Rices’ interest. While Sidney Boone was Joe Rice’s attorney-in-fact, Lisa Rice was the adjoining landowner, and Sidney Boone did not purport to act as Joe

Rice's attorney-in-fact but as counsel for the Rices. Attorneys engaged as counsel do not ordinarily bind their clients through letters sent on their behalf, and the Court concludes the purported acceptance could not do so here. This conclusion is not altered because the attorney was actually Joe Rice's attorney-in-fact—the Rice Response is clear he was acting as counsel.

Furthermore, the Court concludes the Rice Response would not be an acceptance even if the Rice Response were titled “**WE ACCEPT**” because South Carolina law follows the mirror image rule. Specifically, the Rice Response contained three conditions not present in the Lions Club Letter:

1. **A good title condition:** “subject only to the property having good and marketable title”;
2. **The 30 Days to Close Condition:** The Rices “need 30 days from notice that the bid was accepted in which to conduct the title search and close” with payment “due and payable at closing”; and
3. **A different price term:** The Lions Club asked for \$300,000.00 while the Rices offered \$325,000.00.

First, the Lions Club Letter did not explain what title the Lions Club would convey and stated that encroachments would have to be dealt with after the property was sold. While the Rice Response accepted the encroachment issue, the “good and marketable” title condition added terms not in the Lions Club Letter.

Second, the Lions Club Letter was silent as to terms of payment and delivering possession of the property. Where the contract is silent on these terms, South Carolina law assumes payment in full upon tender of the property. *See Sossamon*, 241 S.C. at 485, 129 S.E.2d at 127 (“when the plaintiff proposed in his alleged acceptance conditions other than cash upon delivery of the property . . . he imposed new or other conditions not contemplated in the offer.”). By requiring 30 days to search title with payment at closing, the Rices conditioned their acceptance of the alleged offer and therefore rejected it.

Third, the Rice Response stated a different price. While the Rices offered a price higher than what the Lions Club sought, the Lions Club Letter indicated the club was selling the property for less than the appraisal and that first consideration would go to Lions Club members. Obtaining the highest price was not the Lions Club's sole or primary goal by the terms of the letter, and the Rices offered a different price term.

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.¹⁰ 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. *See, e.g., Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975) (a writing must show the contract's essential terms without needing parol evidence).¹¹

Accordingly, the Court concludes the unambiguous Rice Response would not be an acceptance even if the Lions Club Letter were an offer. The Rice Response was written by counsel, who lacked authority to make a binding acceptance, and the language of the Rice Response shows an intent to make an offer rather than accept an offer. The Rices never accepted and instead made an offer expressly leaving it to the Lions Club to decide whether to accept the Rices' offer. And like *Sossamon* and *Columbia Hyundai*, the Rice Response added terms in the alleged acceptance

¹⁰ The Court notes the Lions Club members that testified were clear there was no "bid" or "auction" process.

¹¹ The application of the parol evidence rule and statute of frauds to this case is discussed below.

and could not have accepted any offer in the Lions Club Letter as a matter of law because of South Carolina's mirror image rule.

C. 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.

The Court concludes the Lions Club Letter and the Rice Response are the only competent evidence as to whether the Lions Club and the Rices formed a contract because the parol evidence rule and the statute of frauds apply to this case.

South Carolina's codification of the statute of frauds provides:

No action shall be brought whereby:

(4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them;

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

S.C. Code Ann. § 32-3-10(4). "Under the statute of frauds, the form of the writing is not material, and may be shown entirely by written correspondence, provided, all of the essential terms of the contract can be gathered from the correspondence or some other writing to which it refers, without resort to parol testimony." *Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975) (affirming summary judgment where two letters did not create a contract) (internal citations omitted).

Similarly, "[t]he parol evidence rule *prevents the introduction of extrinsic evidence* of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument." *Estate of Holden v. Holden*, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000) (emphasis added).

“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.” *Id.* (emphasis added). “[T]he writings relied upon must in and of themselves furnish the evidence that the minds of the parties met as to the particular property which the one proposed to sell and the other agreed to buy; and, when such evidence is not found in the writings, it cannot be supplied by parol.” *Cash v. Maddox*, 265 S.C. 480, 485, 220 S.E.2d 121, 123 (1975) (quoting *Speed v. Speed*, 213 S.C. 401, 410, 49 S.E.2d 588, 592 (1948)).

The Court concludes these cases illustrate how the statute of frauds and the parol evidence rule apply in this case. *Barr* considered an appeal from summary judgment where the purported contract for the sale of real estate consisted of two letters. *Barr*, 263 S.C. at 430, 211 S.E.2d at 234. The South Carolina Supreme Court considered whether the letters created a contract “without resort to parol testimony.” *Id.* at 430, 211 S.E.2d at 234. Affirming summary judgment, the Court held the letters themselves did not create a contract.

Likewise, *Estate of Holden* addressed disclaimers filed by devisees of an estate. *Estate of Holden v. Holden*, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000). The Court held the language of the disclaimers was unambiguous and therefore other writings purportedly explaining the disclaimers were incompetent as extrinsic evidence. *Id.* The Court held “it would have been improper for the probate court to consider” the other writings, even though the appellants failed to object to the admission of the extrinsic evidence.

Cash, addressing whether letters created a contract, held the letters at issue did not create a contract and recognized extrinsic evidence could not cure a failure of the purported contract to comply with the statute of frauds. *Cash*, 265 S.C. at 485, 220 S.E.2d at 123 (reversing after a trial on specific performance). On appeal after a trial, the Court only considered the writings themselves

because of the statute of frauds and parol evidence rule.

Finally, *Kennedy* held “parol evidence is inadmissible to supply an omission in the writing of any reference to the particular property, yet such evidence is competent to show the situation and surrounding circumstances of the parties, and thereby identify the particular property referred to in writing.” *Kennedy v. Gramling*, 33 S.C. 367, 383, 11 S.E. 1081, 1087 (1890) (reversing trial court’s grant of specific performance). The two letters in *Kennedy* identified the property but did not indicate that the parties agreed to price terms—the letters themselves did not show a meeting of the minds on price and the statute of frauds was not satisfied. *Id.* at 388, 11 S.E. at 1088 (“no valid contract under the statute of frauds established in this case”). Again, the court considered only the letters themselves.

As the cases illustrate, an alleged contract must be proved through the contents of the writings that purportedly create the contract, which in this case are only the Lions Club Letter and Rice Response. The Court concludes the cited cases establish clearly 1) that a writing is required to satisfy the statute of frauds and 2) that parol evidence is not competent to establish an element not present in the alleged writing(s). In other words, in cases like this where the alleged contract for the sale of real estate was formed in two letters, the law requires the evidence of the contract to be present in those two letters.

Accordingly, the Court concludes the Lions Club Letter and the Rice Response are the sole competent evidence to establish the alleged contract and that any evidence offered to vary, contradict, or add to these two letters between the Rices and the Lions Club is incompetent. As stated above, the two letters do not create a contract, and the Court did not consider extrinsic evidence in deciding that the Lions Club Letter and the Rice Response did not create a contract.

D. EVEN IF THE COURT CONSIDERED THE EXTRINSIC EVIDENCE OFFERED BY THE RICES, THE COURT WOULD STILL FIND AND CONCLUDE THERE WAS NO CONTRACT.

The Court concludes that even if the parol evidence rule and statute of frauds did not apply in this case, the extrinsic evidence received at trial would not change the Court's determination as to the parties' meeting of the minds, or lack thereof, on whether the Lions Club and the Rices formed an enforceable contract.

The evidence at trial clearly established that the Rices wanted to buy the Property and that the Rices submitted a proposal in response to the Lion Club Letter that offered \$325,000.00. The Rices' \$325,000.00 offer represented the highest amount received from the three interested prospective buyers. The Court considers the fact that the Rices wished to pay more money for the Property than anyone else as the key fact supporting their position in this case. 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. In other words, the Court would have to disregard the intent of the Lions Club as expressed in the Letter. Moreover, the Court notes the Lions Club members who testified were clear there was no bidding or auction process. Accordingly, all of the bid and auction evidence offered by the Rices does not change this Court's opinion—it was not the Lions Club's intent to make an offer capable of acceptance and the Lions Club Letter was not such an offer.

Moreover, the Court considered the evidence presented during the trial that the Lions Club was doing something wrong, such as breaching an alleged fiduciary duty or the club charter,

because it did not accept the highest monetary amount offered. The Court notes that the perceived correctness or wisdom of the financial decision to accept \$300,000.00 for the Property is not before this Court, which is deciding whether a contract was formed at all. Whether a party believes the contract was a “good” or “correct” decision is not—and should not—be before a court when deciding the narrow issue of whether a contract exists between two parties. This Court is deciding whether the Lions Club and the Rices agreed to anything, and if so, to what did they agree, not what was best for the Lions Club or the Rices. Accordingly, this extrinsic evidence was irrelevant to the question before the Court and did not change the Court’s conclusion that there was no contract between the Lions Club and the Rices.

Additionally, the Court notes there is a lack of evidence before this Court to determine if a financial decision was “best” for the Lions Club. Notwithstanding, it was suggested that the certain Board members, other than the Lions Club witnesses who testified at trial (Gene Crocker and Pete Simpson), expressed a desire for the Property to be sold to the highest bidder. The Court recognizes some slight inconsistency between the live trial testimony and the deposition testimony presented. However, the Court concludes the trial testimony of Lions Club board members Gene Crocker and Pete Simpson carried greater weight with the Court. The Court considered their testimony and finds and concludes both witnesses offered credible live testimony during the trial. This testimony and other evidence in the record reflects that the Lions Club board accepted a \$300,000.00 purchase price, which is the same price the Lions Club sought in the Lions Club Letter. There was no evidence that the \$300,000.00 price was unreasonable; the Rices merely attempted to show \$300,000.00 was not the highest offer. In fact, another potential buyer also offered \$300,000.00 for the Property. Assuming *arguendo* that one or more board members expressed a desire to sell for the highest price, the evidence is absolutely clear the Lions Club board voted to accept the

\$300,000.00 offer from Mr. Amick. 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. The deposition testimony also indicated the Lions Club felt \$300,000.00 was a fair amount and that the Lions Club board was advised it might receive as low as \$250,000.00 for the Property. The Court also noted that the Lions Club board made other decisions (e.g., no public advertising, not to use a realtor, and to limit notice to only adjoining property owners) that are not before this Court, which is deciding whether the Rices and the Lions Club formed a contract. Based on the record, this Court cannot conclude the \$300,000.00 amount was unfair or unreasonable. Accordingly, the extrinsic evidence on this issue would not alter the Court's conclusion that there was no contract between the Rices and the Lions Club.

Furthermore, the Court concludes the Lions Club never acted or responded to the Rices with the intent to form a contract. This case is not the case where one party paid value or accepted consideration or a case of partial performance. The extrinsic evidence established that in March 2017 the Lions Club accepted an offer from Mr. Amick for \$300,000. Extrinsic evidence also established that by letter dated May 15th, the Rices' attorney, once he was made aware of the agreement to sell the property to Mr. Amick, wrote to the Lions Club expressing his belief that his clients were the successful "bidder" on the Property and that the Property should be conveyed to his clients. Extrinsic evidence also established that the Lions Club board, after receiving legal advice from an attorney (again, the record before this Court supports the conclusion that the Lions Clubs wrote the initial letter without advice from legal counsel), voted to withdraw the prior decision to sell the Property and wrote letters to all interested persons. After certain issues were

resolved (including resolving an encroachment issue by selling a portion of the Property to an adjoining property owner), the Lions Club and Mr. Amick entered, again, into negotiations for the purchase of the Property. Even though the Board did not seek offers again from the Rices or other adjoining property owners, the Rices' attorney became aware of the negotiations with Mr. Amick and, once again, asserted that the Rices were the successful bidders. Accordingly, this extrinsic evidence would not alter the Court's conclusion that there was no contract between the Rices and the Lions Club.

Additionally, the Court rejects any attempt to show Mr. Amick asserted undue influence over the Board by attending meetings to advocate for his purchase of the Property. The extrinsic evidence before this Court does not support an inference of undue influence or wrongdoing by Mr. Amick. Likewise, the evidence does not support an inference of wrongdoing by the Rices' attorney, even though he wrote to the Lions Club over a period of months arguing for his client's position after being made aware of negotiations between the Lions Club and Mr. Amick and after the Lions Club board's vote to sell the Property to Mr. Amick. Even though the source of the Rices' information is not completely clear to this Court (it is known that a non-Lions Club member who was an adjoining property owner provided some information to the Rices), assigning a nefarious motive to the Rices' attorney is not supported by merely acquiring the information and advocating for his clients. Similarly, a nefarious motive cannot be assigned to Mr. Amick for his uncounseled self-advocacy with the Lions Club board. The board minutes and testimony indicate Mr. Amick was not allowed in the room, except possibly during the November 2017 meeting, during executive sessions.

Accordingly, the Court concludes the extrinsic evidence offered at trial would not change this Court's conclusion—there was no contract formed between the Rices and the Lions Club.

E. THE RICES FAILED TO PROVE PROMISSORY ESTOPPEL.

For the same reasons set forth above, the Court concludes the Rices failed to prove their claim for promissory estoppel against the Lions Club.

To establish a promissory estoppel claim, a plaintiff must show: “(1) a promise unambiguous in its terms; (2) reasonable reliance upon the promise; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.” *See generally A&P Enters., LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 587, 812 S.E.2d 759, 763 (Ct. App. 2018) (*quoting Satcher v. Satcher*, 351 S.C. 477, 483–84, 570 S.E.2d 535, 538 (Ct. App. 2002)).

The Court concludes the Lions Club Letter was not an unambiguous promise that was relied on by the Rices to their detriment. As set forth above, the Court finds and concludes the Lions Club Letter was unambiguously *not* an offer capable of acceptance but instead one to open negotiations. Accordingly, it was not a promise and could not be reasonably relied upon. Even assuming the Lions Club Letter was ambiguous, the Court concludes that the Lions Club Letter then could not be an unambiguous promise that would support a claim for promissory estoppel.

Moreover, the Court concludes no reasonable person would foresee that a recipient would rely on the Lions Club Letter to their detriment. As explained above, the Lions Club Letter is an invitation to negotiate. The extrinsic evidence offered at trial shows the Rices did not actually rely to their detriment. While the Rices periodically wrote letters pursuing the Property, the Rices never paid earnest money or took any action indicating they relied on a promise by the Lions Club to convey the Property to the Rices. Instead, the Lions Club barely responded to the Rices, only writing to say that the Lions Club would not sell to anyone without clearing the encroachments. Certainly, this behavior by the Lions Club is not behavior that the Rices could rely on to reasonably believe the Lions Club would be conveying the Property to them.

Finally, the Court concludes the Rices did not prove an injury even if they could prove the other elements. The Rices were unable to purchase the Property, which leaves the Rices in exactly the same position they were when they made an offer to purchase the Property. Accordingly, the Court concludes a rejected offer is not damage and does not support a promissory estoppel claim.

For these reasons, the Court concludes the Rices failed to prove promissory estoppel.

F. MR. AMICK WAS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE TO THE EXTENT THERE WAS NO CONTRACT FORMED BETWEEN THE RICES AND THE LIONS CLUB.

The Court only concludes Mr. Amick was a bona fide purchaser for value without notice (“BFP”) of a prior claim to the extent the Rices’ alleged contract fails. The Court finds and concludes the Rices did not have a contract with the Lions Club, and the Court is expressly not deciding whether Mr. Amick would be a BFP if the Court assumed the Rices formed a contract with the Lions Club.

The Court concludes the evidence shows Mr. Amick was a BFP when he paid for the Property and the deed was signed and delivered by the Lions Club. The evidence does not establish what Defendant Amick actually knew of the details of the Rices’ claim to the property until the November 2017 Board meeting. The extrinsic evidence is capable of a conclusion that Mr. Amick knew other people, including the Rices, had a desire to purchase the real estate and that other people had responded to the Lions Club Letter. Early on, Mr. Amick questioned why letters were being sent to other people when he was making arrangement to purchase the Property. The evidence also suggested that the November 21, 2017 letter from the Rices’ attorney was read during the Lions Club board meeting while Mr. Amick was present. The Court notes Mr. Amick’s testimony was unclear whether he knew of the November 21, 2017, letter. The Court concludes the reading of the letter conveyed actual knowledge of the Rices attorney’s position to those present at the November 21, 2017, meeting. However, the Court concludes the letter did not

express an actual legal claim to the Property. It did express, however, that the Rices believed they made the “successful bid offer of \$325,000”; asked for information about “bid procedures”; and expressed the Rices’ willingness to follow through with their bid or participate in future bid procedures. The Court concludes that if Amick were present, then the reading of the letter, more likely than not, would place him on at least inquiry or constructive notice of the Rices’ position as expressed in the letter.

Furthermore, the Court concludes that the closing of the Property took place in the morning on February 21, 2022, and that the deed was not filed until the next day. The Rices’ Lis Pendens was filed during the afternoon of February 21, 2022, prior to the recording of the deed transferring the Property to Mr. Amick.

Accordingly, the Court concludes Mr. Amick was a BFP only to the extent the Court concludes the Rices did not have an enforceable contract with the Lions Club. To be clear, this Court is not performing an expanded BFP analysis that goes beyond a determination that Mr. Amick is a BFP to the extent the Court concludes the Rices did not have an enforceable contract with the Lions Club.

G. EVEN IF THERE WERE A CONTRACT, SPECIFIC PERFORMANCE IS NOT APPROPRIATE HERE.

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

“Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties.” *See generally Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). Courts weigh the equities of the parties to determine if specific performance is appropriate. *See generally Shirey v. Bishop*, 431 S.C. 412, 427, 848 S.E.2d 325, 333 (Ct. App. 2020). “In order to compel specific performance, a

court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.” *See generally Campbell v. Carr*, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004).

The equities favor Mr. Amick over the Rices on whether specific performance should be granted. The Rices, the most sophisticated parties, waited to assert their alleged rights until well after the Lions Club agreed to sell to Mr. Amick twice. The Rices were also most capable of protecting their interests throughout, as they were represented by counsel throughout the negotiation period. Mr. Amick was not represented until the very end, just before he closed on the Property. Likewise, the Lions Club had limited assistance from counsel and were not represented with respect to the Lions Club Letter. Accordingly, the equities weigh in favor of Mr. Amick.

Moreover, if there were a contract with the Lions Club, then the Rices would have an adequate remedy at law in the form of money damages against the Lions Club. The alleged contract, if it existed, would not be a clear agreement to purchase but an ambiguous contract requiring the Court to impose bid procedures on the parties. The Lions Club never considered the Rice Response to have created a contract, and the Lions Club never acted as if it had a contract with the Rices, so the Rices never took steps under the purported agreement. Accordingly, the Court concludes specific performance would not be appropriate in this case, even if there were a contract, because there was no clear agreement between the Rices and Lions Club and the alleged agreement was never partly carried forward by the Rices and/or Lions Club.

IV. CONCLUSION

For the reasons set forth above, the Court finds and concludes there was no contract formed

between the Lions Club and the Rices for the sale of the Property. Because there was no contract, the Court finds in favor of Defendants Mr. Amick and the Lions Club on all the Rices' claims arising from the alleged contract. The Court also finds in favor of the Lions Club on the Rices' promissory estoppel claim.

ACCORDINGLY, IT IS HEREBY ORDRED ADJUDGED AND DECREED:

- A. No contract was formed between the Newberry Lions Club and Plaintiffs Lisa Summer Rice and Joseph F. Rice;
- B. Judgment shall be entered in favor of Defendant C. Ray Amick and against Plaintiffs Lisa Summer Rice and Joseph F. Rice on their causes of action for declaratory judgment/injunction, specific performance, and intentional interference with contractual relations;
- C. Judgment shall be entered in favor of Defendant Newberry Lions Club and against Plaintiffs Lisa Summer Rice and Joseph F. Rice on their causes of action for declaratory judgment, specific performance, promissory estoppel and breach of contract with fraudulent intent;
- D. The lis pendens is dissolved with respect to the claims based on the alleged contract by Plaintiffs Lisa Summer Rice and Joseph F. Rice; and
- E. The only remaining matters in this case are the easement allegations raised by the Rices in their Fifth Amended Complaint.

IT IS SO ORDERED.

(Judge's Signature Page 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

Electronically signed on 2022-10-24 15:53:41 page 31 of 31

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al
PLAINTIFF(S)

Newberry Lions Club et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Thank you for your patience while the Plaintiffs' Motion for Reconsideration and Motion to Alter or Amend and the Defendant Amick's Response in Opposition to the Motion were reviewed and considered. As has become customary in this case, the lawyers have done an excellent job advocating their respective positions. The positions and arguments are detailed and clearly stated. After considering the positions articulated in the motion and in the response, I do not believe additional argument through an oral presentation would benefit the Court in deciding the issues. Therefore, as allowed by SCRCP Rule 59, this Court exercises its discretion to determine the issues without oral argument.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/16/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

The lawyers for the Defendant Amick are asked to prepare a formal order denying the present motion. The motion was fully considered. As expressed in great detail in the motion, Plaintiffs clearly disagree with the prior order. Much of the present motion articulated the Plaintiffs' views of the fact and the law which were already received and ruled upon by this Court. Again, Plaintiffs disagree with this Court's view of the facts and the law. Nevertheless, after reviewing and considering the issues raised in the motion, the 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. (Note in the proposed order this Court's familiarity with the legal issues and factual background includes the numerous arguments presented to this Court since being assigned this case). Also, this Court's opinion is that Plaintiffs do not present any issue of fact or law that was previously presented to the Court that was overlooked in the prior Order. Even though parts of the motion read as the Plaintiffs presenting granular pieces of facts to support their position, the prior Order addresses the factual and legal issues raised in the motion.

Because both parties discussed the Spitz's affidavit in their filings, for purposes of clarity, the affidavit was not considered on the issue of the issue on the formation of a contract. This Court's opinion remains that the affidavit was improper as an expert opinion on the law and properly excluded as evidence. Please note in the proposed order that footnote 3 from the original Order is correct.

This Court also observes that, in the present motion, issues are raised for the first time. These issues are presented to create a separation between the Lions Club and Amick based upon a party's evidentiary objections (or failure to do so) during the trial. Thus, the Plaintiffs' argument asserts, one party/defendant has a different standing than the other related to the admissibility or exclusion of certain evidence and/or arguments. Plaintiffs suggest that the issues of waiver and standing now determine the substantive issues related to the statute of fraud and parol evidence. Raising such issues for the first time through a post-trial motion is not appropriate. Notwithstanding, the issues related to the statute of frauds and parol evidence were extensively argued and ruled upon. Nevertheless, this Court agrees with the Defendant's observation that this Court found no contact ever existed between the Plaintiffs and the Newberry Lion Club.

In the proposed Order, note that in Plaintiffs' effort to "critically analyze" (Motion Pgh 30) the prior Order, the mischaracterization of the factual basis for determination that no contract existed between the Lions Club and the Plaintiffs.

Reference in the proposed order the erroneous assertion 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). Plaintiffs' Motion, p. 15, pgh 37. Reference in the proposed the prior Order's analysis from pages 22, 24, 25, and 26 --- evidence that Lions Club never had an intent to sale the property to the plaintiffs, the highest bidder --- including the board being aware of at that least one member's desire to accept the higher amount but the board voting to sale to defendant Amick. Also, include in the proposed order -- assuming the original Order was unclear that this Court does not find a contract existed -- this Court's opinion remains that Specific Performance is not appropriate. This Court recognizes that the previous assertion was made as an "alternative" argument, this Court does not find that factual assertions are not supported in the case tired before it.

This email will be incorporated into a form 4 for recordkeeping purposes. The final order of this Court as to the present motion will be formal order, once it is read, edited, signed, and filed.



Newberry Common Pleas

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

Case Number: 2018CP3600089

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2023-05-16 10:53:36 page 3 of 3

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), SCRPC, 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, SCRPC, 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), SCRPC); *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), SCRPC). “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 parole evidence rule or the statute of frauds.

The Rices assert a new, never-before raised argument that Mr. Amick could not assert the parole 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 parole 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 parole 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 parole 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

Electronically signed on 2023-06-22 16:34:32 page 8 of 8

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

) CASE NO.: _____

LISA SUMMER RICE AND JOSEPH F. RICE,

Plaintiffs,

SUMMONS

v.

(Jury Trial Requested)

NEWBERRY LIONS CLUB,

Defendant.

TO: DEFENDANT NEWBERRY LIONS CLUB:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer or a motion under Rule 12 of the *South Carolina Rules of Civil Procedure* in response to said Complaint on the Plaintiff's attorneys, McNair Law Firm, P.A., at their office located at 100 Calhoun Street, Suite 400 (P. O. Box 1431), Charleston, South Carolina, 29401 (29402), within thirty (30) days after service thereof exclusive of the day of such service. If you fail to answer or move in response to the Complaint within the time period stated above, the Plaintiff in this action will apply to the court for default judgment and the relief demanded in the Complaint and a judgment by default will be rendered against you. You also must file your answer or motion with the Court.

Dated: February 20, 2018

MCNAIR LAW FIRM, P.A.

By: s/Michael A. Scardato

Michael A. Scardato (SC004962)

E-mail: mcardato@mcnair.net

Post Office Box 1431

Charleston, SC 29402

Telephone: 843.723.7831

Fax: 843.722.3227

Attorneys for Plaintiffs Lisa Summer Rice
and Joseph Rice

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

) CASE NO.: _____

LISA SUMMER RICE AND JOSEPH F. RICE,

Plaintiffs,

COMPLAINT

v.

NEWBERRY LIONS CLUB,

Defendant.

The Plaintiffs above-named, hereby respectfully allege and show the Court in this Complaint against the Defendant as follows:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice ("Rices") are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

4. The Newberry Lions Club published and offered to sell the 5.5 acres tract to an adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

5. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1.

6. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other property owners who were adjoining landowners to this property.

7. The offer stated in part "We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property."

8. As part of this offer of sale, the offer further stated: "A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. IF you have any interest in the property please let us now right away . . ." Exhibit 1 attached hereto.

9. The offer further stated, "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public." Exhibit 1.

10. The above-referenced offer was sent to the Rices and upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

11. As a result of the offer, the Rices through their attorney sent a bid of \$325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

12. Upon information and belief, the Rices' bid was the highest received and therefore, was the offer which was accepted by the Rices and the Newberry Lions Club.

13. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of the Defendant's offer.

14. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

15. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club, which indicated that they understood that they were the successful bidders and again, reiterated their bid of \$325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of \$325,000.00 which was made in response to the earlier offer by the Newberry Lions Club.

16. As a result of the May 15, 2017 letter attached hereto as Exhibit 3, an attorney for the Newberry Lions Club sent a letter dated June 5, 2017, indicating that the Newberry Lions Club Board of Directors met on May 23, 2017 and voted not to sale the property located at Lake Murray at this time because they were not able to convey a good fee simple marketable title hereto because of encroachments. All is set forth in the letter attached hereto and made part hereof as Exhibit 4.

17. The Rices had already complied with the Defendant's offer and the Defendant was attempting to avoid selling the property at the agreed upon price.

18. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold for the offer of \$325,000.00 which complied with the terms of the original offer letter attached hereto as Exhibit 1. The letter dated November 21, 2017 is attached hereto and made part hereof as Exhibit 5.

19. Upon information and belief, the Defendant Newberry Lions Club is considering to convey this property to others in breach of the accepted offer that was made by the Rices.

20. Upon information and belief, the Defendant Newberry Lions Club has conveyed certain property to an adjoining landowner which resolved an encroachment issue with the owner

of this property to Joseph T. McCrackin, III and Gena B. McCrackin in Deed Book 2017 page 110, and this has resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified by TMS 652-3-22.

21. The Plaintiffs are ready, willing and able to close and provide the consideration for the purchase of the property as it is now configured after the settlement of the encroachment issue.

22. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

23. The Rices are again reiterating their agreement to purchase the property for \$325,000.00 as set forth in the original letter accepting the terms of the offer outlined in Exhibit 1.

24. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are again ready, willing and able to pay the agreed upon price of \$325,000.00 for the property in question as presently configured.

25. As a result of the failure of the Defendant to follow through with the offer and convey the property, the Plaintiffs have suffered special damages including attorney's fees and costs which should be paid in addition to ordering specific performance due to the failure to close on this agreement, together with prejudgment interest.

26. The Defendant should be required to specifically perform the agreement which was outlined to the Plaintiffs in which the Plaintiffs were the successfully bidder and further pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A FIRST CAUSE OF ACTION
(Specific Performances)

27. Plaintiffs reiterate and reallege the above 1-26 and said are hereby incorporated by reference.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment/Injunction)

28. Plaintiffs reiterate and reallege the above 1-23 and said are hereby incorporated by reference.

29. The Plaintiffs were the successful bidder and accepted the offer to purchase the property from the Defendant. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and their acceptance of the terms and requested that the property be made to them for the \$325,000.00 consideration.

30. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

31. The actions by Defendant Newberry Lions Club in failing to perform, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreements and/or the presentations as set forth in the communications from the Newberry Lions Club and/or its representatives.

32. In the meantime, the Plaintiffs request that the Defendant be enjoined and restrained from conveying the property to any other person or entity and that the Rices be given the right to participate in any further offers of sale for this property or any portion thereof as may be offered by the Defendant.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

33. Plaintiffs reiterate and reallege the above 1-23 and said are hereby incorporated by reference as if repeated verbatim herein.

34. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

35. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant.

36. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by the Defendant.

37. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their ready, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to the Defendant several times.

38. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, another individual who had not made a successful bid is being considered as the one to receive the property in spite of the Rices successful bid.

39. Although the Rices had performed and complied with the offer in Exhibit 1, the Defendant claimed that it would not sell the property at this particular time and contradicted the terms of its offer outlined in Exhibit 1.

40. As a result of the Defendant's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, the Defendant is contemplating a transfer to another party that did not comply with the original bid requirements as set forth in Exhibit 1 and/or had undisclosed and/or attempted to repudiate the offer outlined in the letter attached hereto as Exhibit 1.

41. The Plaintiffs suffered damages as a result of the promises made and not kept.

42. In the alternative, if the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to those who were relying on the original bid procedures, then the Defendant should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property with as it may have done to any other individual who is attempting to purchase the property now.

43. The Plaintiffs are entitled to actual damages resulting from the promissory estoppel and/or are entitled to obtain the property under specific performance.

44. Pursuant to Rule 38 SCRCP, Plaintiffs request trial by jury as to the claims and/or facts that may be so determined by a jury.

WHEREFORE, Plaintiffs pray as follows:

1. An order requiring Defendant to specifically perform under the terms of the agreement.
2. Award Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;
3. Enjoin the Defendant from transferring the property to any other person or entity.
4. In the alternative, award such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by the Defendant and thereafter breached, as well as the damages flowing therefrom.
5. For such other and further relief as this Court may deem just and proper.

[SIGNATURE BLOCK ON NEXT PAGE]

Dated: February 20, 2018

MCNAIR LAW FIRM, P.A.

By: s/Michael A. Scardato
Michael A. Scardato (SC004962)
E-mail: mcardato@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Plaintiffs

ELECTRONICALLY FILED - 2018 Feb 20 4:32 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

EXHIBIT 1



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete
Pete Simpson,
Secretary, Newberry Lions Club

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EXHIBIT

0088

SCSPC(NAD83 2011)

LINE	BEARING	DISTANCE
L1	S 17° 24' 44" E	56.65
L2	S 20° 19' 41" E	78.71
L3	S 20° 20' 10" E	54.85
L4	S 20° 13' 20" E	46.29
L5	S 75° 25' 49" E	41.66
L6	S 75° 25' 28" E	45.20
L7	S 75° 27' 10" E	44.92
L8	S 71° 51' 12" E	44.80
L9	S 70° 43' 28" W	62.48
L10	S 49° 29' 43" W	44.52
L11	S 61° 25' 28" W	43.74
L12	S 61° 25' 19" E	26.91
L13	S 65° 47' 01" W	28.80

Abraham
Land Surveying
1323 Kendall Rd., Newberry S.C.
www.surveysc.com 803.276.8719

Scale: 1" = 100' Date: June 30, 2013
0' 100' 200' 300'

Boundary Survey & Plat Prepared for:
Newberry Lions Club
Property located on Lions club Rd., Approx. 9 miles southeast of
Prosperity, Newberry County, S.C.



I hereby state that to the best of my knowledge, information, and belief, this survey shown herein was made in accordance with the requirements of "The Minimum Standards for the Practice of Land Surveying in South Carolina", and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown.

Thomas D. Abraham
Thomas D. Abraham, S.C.E.L.S. #27728

Dwg. # 09415

EXHIBIT 2

February 14, 2017

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3305

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

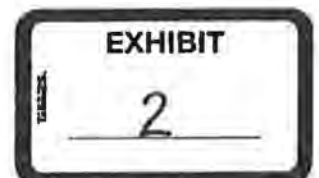


EXHIBIT 3

MCNAIR

ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

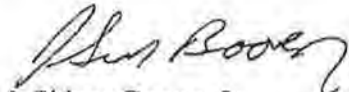


Eugene Crocker, President
May 15, 2017
Page 2

MCNAIR
ATTORNEYS

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@molleyrice.com)

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EXHIBIT 4

Rec'd 6/8/17

HARLEY & VERNER LLP

ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484

NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER
CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

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0096

EXHIBIT 5

COPY

November 21, 2017

McNAIR
ATTORNEY

Michael A. Scardato

mcardato@mcnair.net

T 843 723.7831

F 843 722.3227

Via FedEx

Via E-mail: lawyers@sc.rr.com

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



1678525v1

BLUFFTON

CHARLESTON

CHARLOTTE

COLUMBIA

GREENVILLE

HILTON HEAD

MYRTLE BEACH

0098

Eugene Crocker, President
James S. Verner, Esq.
November 21, 2017
Page 2

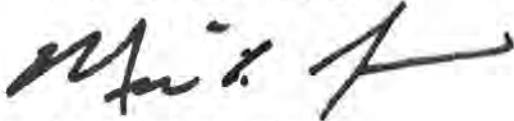
MCNAIR
ATTORNEY

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: jrice@motleyrice.com)

ELECTRONICALLY FILED - 2018 Feb 20 4:32 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: _____
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	
Plaintiffs,	)	LIS PENDENS
	)	
v.	)	
	)	
NEWBERRY LIONS CLUB,	)	
	)	
Defendant.	)	
_____	)	

NOTICE IS HEREBY GIVEN that an action has been commenced or will be commenced in this Court upon Complaint of the Plaintiffs against the Defendant, and such action affects title to real property in which the above-named Defendant may claim an interest. That the property affected by this action is situated in the County of Newberry, South Carolina, and is described as follows, to wit:

All that lot, piece or parcel of land, situate, lying and being on Lions Club Circle, Prosperity, Newberry County, South Carolina, and more particularly shown as 5.50 Acres on a plat entitled "Boundary Survey & Plat Prepared For: Newberry Lions Club" by Thomas D. Abraham, S.C.R.L.S. #27728, Abraham Land Surveying dated June 30, 2015, (Boundary Survey).

Saving and excepting a portion conveyed to Joseph T. McCrackin III and Gena B. McCrackin by Deed 2017 at page 110, and as further shown on plat D99 at page 6, recorded in the Newberry County Register of Deeds, Newberry County, South Carolina (TMS 652-3-22).

A markup of the Boundary Survey showing the excluded portion is attached as Exhibit A.

The parcel described above is also shown on the attached tax map as TMS 652-3-21. (Exhibit B).

TMS 652-3-21

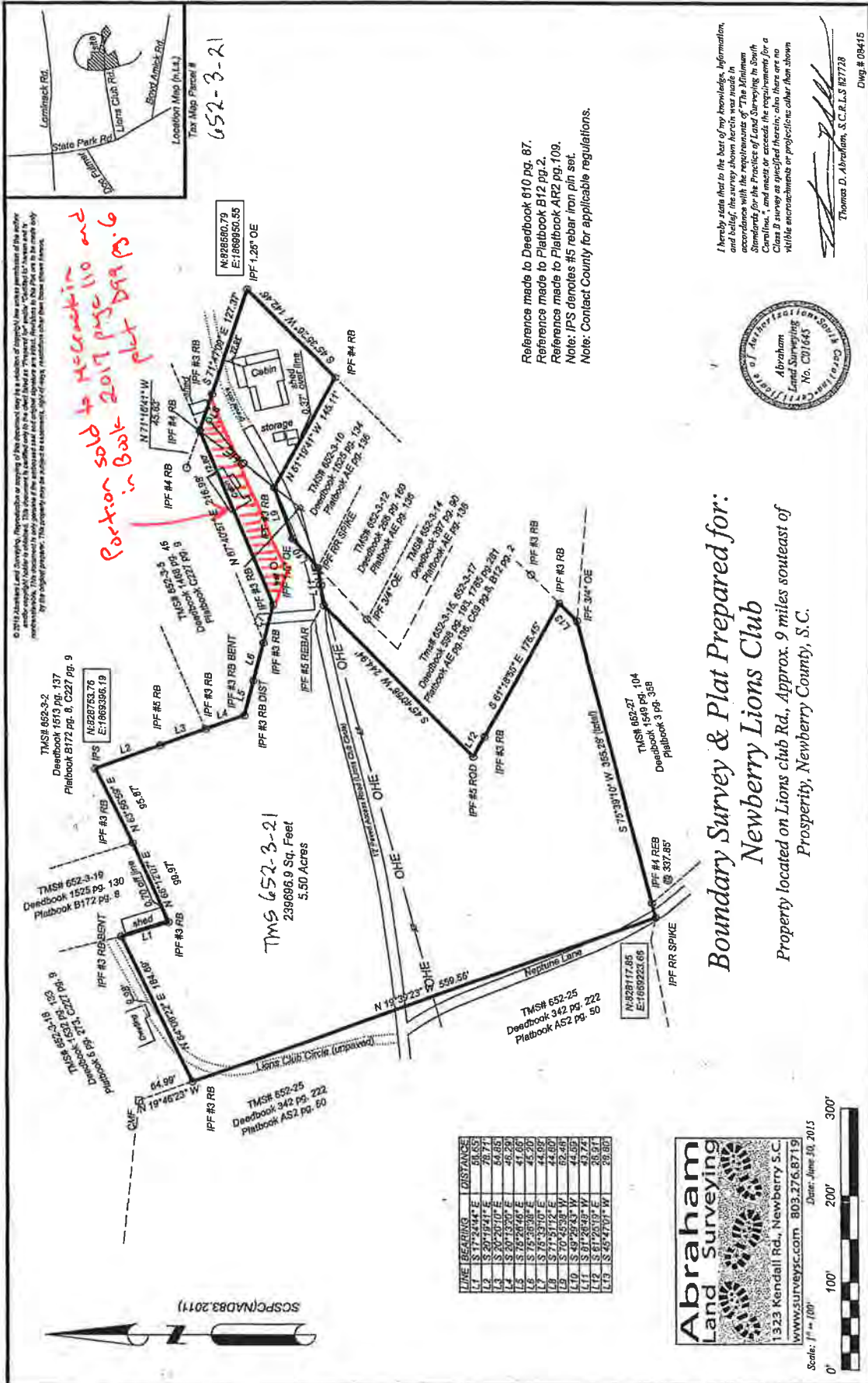
[SIGNATURE BLOCK ON NEXT PAGE]

Dated: February 20, 2018

MCNAIR LAW FIRM, P.A.

By: s/Michael A. Scardato
Michael A. Scardato (SC004962)
E-mail: mcardato@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Plaintiffs

EXHIBIT A



EXHIBIT

0103

EXHIBIT B



EXHIBIT

B

0105

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.

**DEFENDANT C. RAY AMICK'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT**

TO: THOMAS H. POPE, III and MICHAEL A. SCARDATO, Attorneys for Plaintiffs:

YOU WILL PLEASE TAKE NOTICE that Defendant C. Ray Amick ("Defendant") hereby moves pursuant to Rule 56, SCRPC, for an order granting Defendant summary judgment in his favor on all claims asserted against him by Plaintiffs in their Second Amended Complaint, as there are no genuine issues of material fact and Defendant is entitled to judgment in his favor as a matter of law.

This motion will be supported by the pleadings filed herein; deposition testimony; a memorandum of law in support that may be filed by Defendant; such other matters as may be properly presented to the Court at the time of the hearing; and the following:

1. This case involves property on Lake Murray owned by Defendant containing 5.35 acres ("subject property"). The subject property was previously owned by Defendant Newberry Lions Club. On February 14, 2018, Defendant Newberry Lions Club entered into a contract with Defendant, a true and accurate copy of which is attached as **Exhibit A**, wherein Defendant agreed to purchase the subject property for \$300,000.00. A closing took place on February 21,

2018, and title to the subject property was transferred to Defendant by Deed recorded February 22, 2018, a copy of which is attached as **Exhibit B**.

2. Plaintiffs assert claims in their Second Amended Complaint for Declaratory Judgment/Injunction, Specific Performance, and Promissory Estoppel, all based on a contract Plaintiffs claim they have with Defendant Newberry Lions Club, a contract which simply does not exist.

3. Plaintiffs allege a letter sent by Defendant Newberry Lions Club in early 2017 to Newberry Lions Club members and adjoining property owners, a copy of which is attached as **Exhibit C** (“Lions Club Letter”), constitutes an offer to sell the subject property. Plaintiffs further claim a letter from their lawyer in response, dated February 14, 2017, attached as **Exhibit D** (“Plaintiffs’ Letter”), constitutes an acceptance of the claimed offer.

4. Pursuant to the South Carolina Statute of Frauds, any contract for an interest in land must be in writing and signed by the party against whom enforcement is sought. S.C. Code Ann. § 32-3-10(4). A writing sufficient to remove an oral agreement from the Statute of Frauds “must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement.” *Smith v. McClam*, 289 S.C. 452, 456, 346 S.E.2d 720, 723 (1986).

5. The essential terms of a contract are offer, acceptance of the offer, and valuable consideration. *Sauner v. Pub. Serv. Auth. of South Carolina*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). To have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Patricia Grand Hotel v. MacGuire Enters.*, 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct. App. 2007). The “meeting of the minds” requirement cannot be met by the “secret purpose or intention on the part

of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989).

6. The Lions Club Letter does not constitute an offer. The Lions Club Letter lacks the definitiveness required to constitute an offer. At most, the Lions Club Letter was an invitation to make offers, not an offer. Furthermore, the Lions Club Letter contains the following very important reservation and preference: “First consideration will be given to current members of the Newberry Lions Club.” Plaintiffs are not members of the Newberry Lions Club. Defendant is a member of the Newberry Lions Club. This reservation and preference explicitly gave Defendant Newberry Lions Club an unbridled right to decide to whom it would agree to sell the subject property. The Lions Club Letter therefore does not constitute an offer.

7. Even if the Court construes the Lions Club Letter as an offer, Plaintiffs’ Letter is not an acceptance of that offer. Plaintiffs’ Letter acknowledges there is more to be done for a contract to be formed: “We would need 30 days from ***notice that the bid was accepted*** in which to conduct the title search and close.” (emphasis added). In addition, at most, Plaintiffs’ Letter is a counteroffer insofar as it requires that “the property [to have] good and marketable title . . . “

8. “Where, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract *vel non* is a question of law.” *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 330 S.E.2d 307, 309 (Ct. App. 1985).

9. There are no genuine issues of material fact. There is no contract between Plaintiffs and Defendant Newberry Lions Club. Accordingly, Defendant is entitled to judgment in his favor as a matter of law.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com

Thornwell F. Sowell, III
Bess J. DuRant
Sowell & DuRant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
Email: bdurant@sowelldurant.com
Email: bsowell@sowelldurant.com

**ATTORNEYS FOR DEFENDANT
C. RAY AMICK**

February 8, 2019

1026.038\MSJ

EXHIBIT A

STATE OF SOUTH CAROLINA)
) **CONTRACT OF SALE**
COUNTY OF NEWBERRY)

THIS AGREEMENT is made by and between C. RAY AMICK ("Purchaser"), and Doggett Whitaker, Pete Simpson and Lee Ringer as Trustees of the NEWBERRY LIONS CLUB ("Seller"). Purchaser and Seller may be individually referred to herein as "Party" or jointly as the "Parties."

1. **OFFER AND DESCRIPTION.** Purchaser agrees to buy and Sellers agree to sell all that certain piece, parcel or lot of land, with any buildings and improvements thereon, situated in the County of Newberry, State of South Carolina, known as Parcel A (5.35 Acres) on a private road designated as Lions Club Road and being more particularly shown on a plat prepared for Newberry Lions Club recorded in Newberry County ROD Slide D99 at page 6., with current TMS# 652-3-21.
2. **PRICE.** The Purchase Price for the real property and improvements thereon is Three Hundred Thousand and no/100 (\$300,000.00) Dollars to be paid as follows: \$1,000.00 earnest money paid within five (5) business days of the signing of this Contract and held in trust by the Purchaser's closing attorney law firm, Smith & Sullivan, LLC, 271 Columbia Ave, Ste. A, Chapin, SC 29036, and the balance, paid at closing, to be paid in certified or wired funds.
3. **CLOSING COSTS.** Purchaser agrees to pay all closing costs for this transaction, with the exception that Sellers are responsible and agree to pay for Sellers' attorney's fees and any closing costs necessary to deliver a marketable fee simple title (including recording of a satisfaction), if any.
4. **WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller warrants and represents that:
 - a. Seller owns fee simple title to the Property, including the improvements thereon; and
 - b. Seller's Trustees, as identified herein, are the property appointed and authorized representatives of the Newberry Lions Club to sign all closing documents including the deed, and the delivery and/or performance of this Agreement will not require the approval or consent of any third party or governmental entity.
 - c. Seller will remove any and all personal property from the subject property prior to closing, and if any personal property remains on the subject property after the closing, Seller represents and warrants that it shall be deemed abandoned and the Purchaser shall be entitled to use or dispose of

any such personal property as determined in the sole discretion of the Purchaser without any notice to the Seller.

5. **AS IS, WHERE IS.** The property is being conveyed on an "AS IS, WHERE IS" condition and basis; however, Seller represents to buyer that it is not aware of any hazardous materials located on, or buried within, the subject property.

6. **DUE DILIGENCE PERIOD.** Purchaser has previously had the right to inspect or select an inspector(s) at Purchaser's expense, to make any inspections, tests, surveys, title search or investigations of the Property as desired by the Purchaser.

7. **TITLE.** Seller agrees to convey fee simple marketable title at Closing and deliver a General Warranty Deed in proper form for recording, free and clear of liens and encumbrances except restrictions and easements of record; to include reference to the new survey obtained by the Purchaser. On or before Closing, Seller will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by Purchaser to completely vest in and assure to Purchaser full rights in or to the Property.

9. **EFFECTIVE DATE AND CLOSING REQUIREMENTS.** The Effective Date of this Agreement shall be the last signature date thereon. The Closing shall take place at the law office of Smith & Sullivan, LLC at a date agreed upon by both Parties intended to be no later than February 28, 2018, unless otherwise agreed to by both Parties in writing.

10. **TAXES.** Property taxes, if any, and other assessments that may apply to the Property, shall be adjusted as of the date of Closing between Purchaser and Seller for the current year. Tax pro-rations pursuant to this Agreement are to be based on the tax information available at the date of Closing and are to be prorated on that basis.

11. **POSSESSION.** Purchaser shall have the right of occupancy immediately at Closing.

12. **FIRE OR CASUALTY.** In case the Property herein referred to is destroyed wholly or partially by fire or other casualty, Seller shall give notice thereof to Purchaser as soon as possible in accordance with the Notice provision of Section 14 below, and Purchaser shall have the option for ten (10) days after the effective date of notice of fire or other casualty, with an agreed adjustment in the Purchase Price, or of terminating this agreement and being repaid Earnest Money hereunder.

13. **DEFAULT.** The remedies of the Parties in the event of default are as follows:

Seller's Default: In the event of default by Seller under the terms of this Agreement, including but not limited to Seller's failure to transfer the Property by said Closing date, Purchaser's remedy shall be to compel the transfer by seeking specific performance of this Agreement, and/or to recoup from the Seller the full cost expended in due diligence and preparation for the closing, including its attorney's fees.

14. **NOTICES.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be effective upon personal delivery to the Party to whom they are addressed; or e-mailed or sent by facsimile as indicated below; or, if mailed five (5) days following deposit in the United States mail first class postage prepaid, registered or certified; or, if sent by nationally recognized overnight courier, the date when signed for at addressee's residence or place of business and addressed to each Party at the addresses listed below.

15. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina.

16. **COOPERATION OF PARTIES.** Both Parties agree that they will cooperate in the negotiation, preparation and execution of all documents required to effectuate the transaction contemplated herein.

17. **COUNTERPARTS.** So that each Party may have an original of this Agreement, this document shall be executed in two identically worded counterparts. Further, both Purchaser and Seller agree that receipt of a signed Agreement by facsimile or e-mail shall be the same as receipt of an original signed Agreement.

18. **SURVIVAL OF PROVISIONS.** The provisions of this Agreement which are not fully executed through the Closing date of this transaction shall survive the Closing date and remain in full force and effect, enforceable by the Parties according to such terms.

19. **NO COMMISSIONS.** Purchaser and Sellers represent and affirm that no real estate agents/professionals or realtors are due any sales commissions regarding this transaction.

20. **ENTIRE CONTRACT; BINDING CONTRACT.** This Agreement expresses the entire agreement between the Parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder and the Agreement shall be binding on both Parties, their principals, heirs, personal representatives, successors, and assigns as state law permits. This Agreement shall only be amended by a written agreement signed by both Parties.

WITNESS the Parties hereby by their hands and seals the dates indicated below.

In the Presence of:

Sonya M. Hancock
Witness
Lisa Lee Smith
Witness

PURCHASER:

C. Ray Amick
C. RAY AMICK

Date: February 12, 2018

Address: 62 Lions Club Road
Prosperity, S.C. 29127

E-Mail:

Phone: 803-364-3184 803-924-0142

SELLER:

NEWBERRY LIONS CLUB

Whitney Price
Witness
[Signature]
Witness

By: [Signature]
DOGGETT WHITAKER, TRUSTEE

Date: February 17, 2018

[Signature]
Witness
[Signature]
Witness

By: Pete Simpson
PETE SIMPSON, TRUSTEE

Date: February 14, 2018

[Signature]
Witness
[Signature]
Witness

By: Lee Ringer
LEE RINGER, TRUSTEE

Date: February 14, 2018

Address: _____

E-Mail: _____

Phone: _____

EXHIBIT B

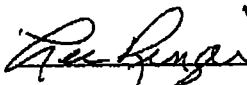
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, **C. Ray Amick**, his Heirs, Successors and Assigns forever. And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal.

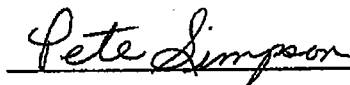
Date: Feb. 21st, 2018

Newberry Lions Club a/k/a The Lions Club of Newberry, Grantor

BY:



Lee Ringer, Trustee

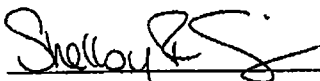


Pete Simpson, Trustee



Doggett Whitaker, Trustee

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:



Witness #1



Witness #2

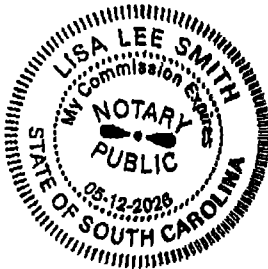
STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ACKNOWLEDGEMENT

I, Lisa Lee Smith, the undersigned Notary Public, do hereby certify that **Lee Ringer, Pete Simpson and Doggett Whitaker as Trustees of Newberry Lions Club a/k/a The Lions Club of Newberry**, personally appeared before me this 21st day of February, 2018, and acknowledged the due execution of the foregoing instrument.

going instrument.

Lisa Lee Smith
Notary Public for South Carolina
My Commission expires 5-17-26



STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)

Instrument Book Page
 201800042023 OR 2028 197
 AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at on Lions Club Road, bearing Newberry County Tax Map Number 652-3-21, was transferred by Lee Ringer, Pete Simpson and Doggett Whitaker as Trustee of Newberry Lions Club a/k/a The Lions Club of Newberry to C. Ray Amick on February 21, 2018.

3. Check one of the following: The deed is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) _____ exempt from deed recording fee because (See information section of affidavit): _____
 (If exempt, please skip items 4 – 6 and go to Item 7 of this Affidavit)

If exempt under exemption #14 as described in the Information section of this Affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$300,000.00
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for the property tax purposes which is _____
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$300,000.00
- (b) Place the amount listed in item 5 above here: 0
 (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$300,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1,110.00 stamps + \$10.00 recording fee
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Closing Attorney for the Purchaser/Grantee

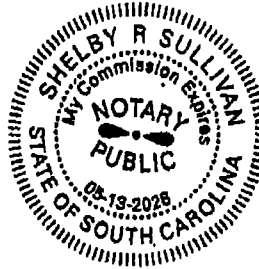
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one thousand dollars or imprisoned not more than one year, or both.

Lisa Lee Smith
Responsible Person Connected with the Transaction

Lisa Lee Smith, Closing Attorney
Print or Type Name Here

SWORN to before me this 21st
day of February, 2018

Shelby R. Sullivan
Notary Public for South Carolina
My Commission Expires: 5-13-2026



EXEMPTIONS

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT C



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice

Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

EXHIBIT

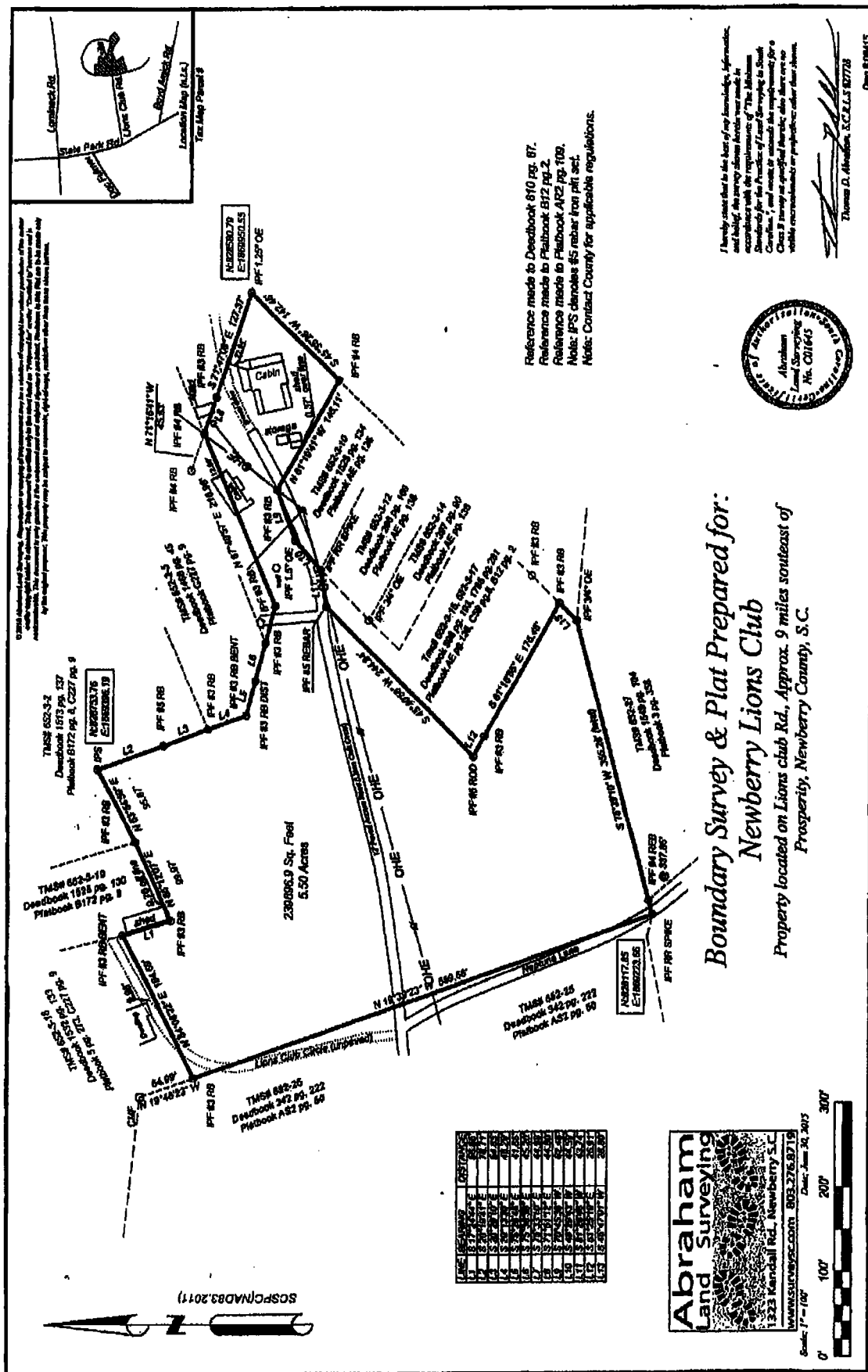


EXHIBIT D

MCNAIR
ATTORNEY

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

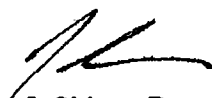
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

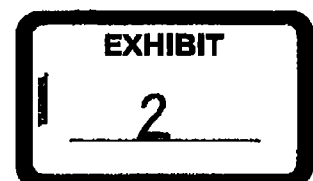
JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



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.

**DEFENDANT C. RAY AMICK'S NOTICE OF
MOTION AND MOTION TO STRIKE THE
AFFIDAVIT OF STEPHEN A. SPITZ**

**TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,
ATTORNEYS FOR PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that Defendant C. Ray Amick ("Defendant Amick") hereby moves for an order striking the Affidavit of Stephen A. Spitz.

This motion is based on the following:

INTRODUCTION

Plaintiffs filed this action asserting that two letters between Plaintiffs' attorney and Defendant Newberry Lions Club constitute a contract to purchase the subject property. Plaintiffs request specific performance of that alleged contract. Defendant Amick and Defendant Newberry Lions Club deny a contract exists with Plaintiffs, but instead assert Defendant Amick and Defendant Newberry Lions Club entered into a real contract, that contract was closed, and the subject property was properly conveyed to Defendant Amick. The issues before the Court have been briefed by the parties in conjunction with their respective motions for summary judgment.

In support of their motion for partial summary judgment, Plaintiffs submitted the expert affidavit of Stephen A. Spitz. In his affidavit, Mr Spitz opines as to the meaning of various

documents, his interpretation of the law, and indicates how this Court should rule, effectively invading and usurping the role of the Court.

ARGUMENT

A. Expert testimony pertaining to questions of law and legal conclusions are not admissible.

Mr. Spitz's opinions, which concern purely legal matters and conclusions, invade the sole province of the Court and, therefore, are inadmissible.

Mr. Spitz's testimony is inadmissible because such testimony would necessarily pertain to questions of law and legal conclusions which are properly to be established by the Court. *See Dawkins v. Fields*, 354 S.C. 58, 65-66, 580 S.E.2d 433, 437 (2003) (holding expert testimony on issues of law or offered to establish a conclusion of law is inadmissible, and noting expert testimony that constitutes a legal conclusion or which relates to legal issues which will determine the outcome of a case is inadmissible).

"Where, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract *vel non* is a question of law." *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 330 S.E.2d 307, 309 (Ct. App. 1985).

The South Carolina Rules of Evidence addresses the issue of expert testimony and provide that: "If . . . specialized knowledge will assist the *trier of fact* to *understand the evidence* or to *determine a fact in issue*, a witness qualified as an expert . . . may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE (emphasis added). In the instant case, there are no facts to be considered, understood, or determined by Mr. Spitz, but instead only legal issues to be addressed and legal conclusions to be made. Therefore, there is no necessity for expert testimony in this case, and such expert testimony is clearly inappropriate as it would

necessarily involve the rendering of legal analysis and conclusions relating to the issues presented in this case.

Our Supreme Court has directly addressed this issue and has concluded expert testimony that contains primarily legal arguments and conclusions is properly excluded. *Dawkins*, 354 S.C. at 65-66, 580 S.E.2d at 437. In *Dawkins*, the Supreme Court held that an affidavit submitted by Professor John Freeman of the University of South Carolina School of Law on the topics of corporations and securities “primarily contained legal arguments and conclusions,” and as such, was properly rejected by the trial court. *Id.* at 65, 580 S.E.2d at 437. Such an affidavit “inappropriately attempted to usurp the trial court’s role in determining whether petitioners were entitled to summary judgment” and read “as if it could have been respondents’ oral argument to the trial court at the summary judgment hearing.” *Id.* at 65-66, 580 S.E.2d at 437.

In reaching this conclusion, the Court noted that “in general, expert testimony on issues of law is inadmissible,” and that expert testimony offered to establish a conclusion of law is properly excluded because such matters are within the exclusive province of the court. *Id.* (citing *O’Quinn v. Beach Assocs.*, 272 S.C. 95, 249 S.E.2d 734 (1978)).

As succinctly stated by our Supreme Court in *O’Quinn*, the Court has a responsibility to determine and interpret the law applicable to a case, and this responsibility is diminished if expert testimony is allowed into the record as to what the law is in a case. *O’Quinn* at 106, 249 S.E.2d at 739-40.

Here, Mr. Spitz’s affidavit contains conclusions of law. Mr. Spitz went as far to opine Plaintiffs are entitled to the relief they are seeking. For example, Mr. Spitz opines: “For each and every one of these reasons, it is my considered opinion that the question presents the Court

with a clear question of South Carolina law that is only proper to be resolved in favor of the Plaintiffs.”

Mr. Spitz’s affidavit is inadmissible and should be stricken.

CONCLUSION

Based upon the foregoing, Mr. Spitz’s affidavit should be stricken.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos
Demetri K. Koutrakos
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com

Thornwell F. Sowell, III
Bess J. DuRant
Sowell & DuRant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
Email: bdurant@sowelldurant.com
Email: bsowell@sowelldurant.com

**ATTORNEYS FOR DEFENDANT
C. RAY AMICK**

March 1, 2019

1026.038\MotionStrike-SpitzAffidavit

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

**DEFENDANT C. RAY AMICK'S NOTICE OF
MOTION AND MOTION TO STRIKE
THE SUPPLEMENTAL AFFIDAVIT OF
STEPHEN A. SPITZ**

**TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,
ATTORNEYS FOR PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that Defendant C. Ray Amick ("Defendant Amick") hereby moves for an order striking the Supplemental Affidavit of Stephen A. Spitz.

This motion is based on the following:

I. INTRODUCTION

Professor Spitz's Supplemental Affidavit "reads as if it could have been respondents' oral argument to the trial court at the summary judgment hearing." *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (refusing to consider expert affidavit filled with legal conclusions at summary judgment). South Carolina law prevents such an expert opinion because it would usurp the court's role by offering testimony "to establish a conclusion of law within the exclusive province of the [C]ourt." *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 107, 249 S.E.2d 734, 740 (1978). Accordingly, this Court should strike the Supplemental Affidavit.

II. BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs Joe and Lisa Rice filed a motion for partial summary judgment on their specific performance claim arising from an alleged breach of contract with the Newberry Lions Club. To support their motion, Plaintiffs offered an expert affidavit from Professor Stephen A. Spitz (“the First Affidavit”). In response, Defendant Amick filed a motion for summary judgment and a motion to strike the First Affidavit. Plaintiffs then filed a second affidavit from Professor Spitz (“the Supplemental Affidavit”). Defendant Amick now moves to strike the Supplemental Affidavit.

III. ANALYSIS

A. PROFESSOR SPITZ’S SUPPLEMENTAL AFFIDAVIT OVERWHELMINGLY CONTAINS CONCLUSIONS OF LAW AND SHOULD NOT BE CONSIDERED AT SUMMARY JUDGMENT

The Supplemental Affidavit from Professor Spitz overwhelmingly contains conclusions of law and would not aid the fact finder in understanding the facts. Accordingly, this Court should strike the Supplemental Affidavit—like the First Affidavit—because the testimony would be inadmissible at trial.

Affidavits supporting or opposing summary judgment “shall set forth such facts as would be **admissible** in evidence” Rule 56(e), SCRPC (emphasis added). Expert testimony, “opinion or otherwise,” is admissible at trial “[i]f scientific, technical, or other specialized knowledge will **assist the trier of fact** to understand the evidence or to determine a fact in issue.” Rule 702, SCRE (emphasis added)). “In general, expert testimony on issues of law is inadmissible.” *Dawkins*, 354 S.C. at 66, 580 S.E.2d at 437.

South Carolina law is clear that courts should not consider affidavits like the Supplemental Affidavit from Professor Spitz at summary judgment. In *Dawkins*, the South Carolina Supreme Court held that a trial court correctly refused to consider an expert affidavit at summary judgment

where it “primarily contained **legal** arguments and conclusions.” *Dawkins*, 354 S.C. at 66, 580 S.E.2d at 437 (emphasis original). Acknowledging that Professor John Freeman’s affidavit “arguably offered some helpful, factual information,” the court held “the overwhelming majority of the affidavit [was] simply legal argument.” *Id.* (also describing the affidavit as “if it could have been respondents’ oral argument to the trial court at the summary judgment hearing.”). The South Carolina Supreme Court has applied this same reasoning consistently in other contexts. *See, e.g., Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (upholding trial court’s refusal to consider proffered expert testimony at a PCR hearing because “[t]he testimony was not designed to assist the PCR court to understand certain facts, but, rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel’s actions fell below an acceptable legal standard of competence.”); *O’Quinn*, 272 S.C. at 107, 249 S.E.2d at 740 (upholding exclusion of expert witness testimony on whether certain contracts were “investment contracts” under federal law).

Like the *Dawkins* expert affidavit, the “the overwhelming majority” of the Supplemental Affidavit from Professor Spitz asserts legal conclusions.¹ To begin with, Paragraphs 12, 13, and 14—new additions since the First Affidavit—offer the legal conclusion that his own expert opinion is admissible, which is not a question for a fact finder. *See, e.g., Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008) (whether to allow expert testimony is left to the trial court’s discretion). Likewise, Paragraphs 17, 18, and 19 do not address factual matters because they explain to the Court why specific performance is the appropriate remedy—a matter left to the trial court’s discretion—and how the Court should decide the case, specifically stating “it is my considered opinion that the question presents the Court with a clear question of

¹ Professor Spitz lists his professional background within the first ten paragraphs. Paragraph 11 then states what materials he reviewed.

South Carolina law that is only proper to be resolved in favor of the Plaintiffs.” *See, e.g., Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004) (“The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case.”).

Furthermore, Paragraphs 15 and 16 tell the fact finder the law and what to conclude: there is a contract. In fact, Paragraph 16 nearly mirrors a charge on the law. *Compare, e.g.,* Spitz Supplemental Aff. ¶16 (“the offer was further made in such a way as to justify the Plaintiff and any other reasonable person to conclude that a promise to comply with and assent to the bargain described in the letter constitute a binding contract”) *with* RALPH KING ANDERSON, JR., ANDERSON'S SOUTH CAROLINA REQUESTS TO CHARGE - CIVIL § 19-3 (2d ed. 2016) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”). Paragraph 15, although reciting mostly undisputed facts, includes conclusions of law. *See, e.g.,* Spitz Supplemental Aff. ¶15 at (c) (“The only conditions in the Lions Club letter were . . .”). The “specialized knowledge” in the Supplemental Affidavit is legal knowledge, and these statements are summary judgment arguments.

B. VORTEX SPORTS IS NOT AN EXCEPTION TO DAWKINS AND DOES NOT ALLOW TESTIMONY ON LEGAL CONCLUSIONS

Despite *Dawkins* and its supporting authority, Plaintiffs would have this Court rely on *Vortex Sports*, where the South Carolina Court of Appeals upheld a trial court’s decision to allow expert testimony from Professor Freeman on whether a party breached a fiduciary duty. *Vortex Sports*, 378 S.C. at 207–08, 662 S.E.2d at 449–50. *Vortex Sports* and *Dawkins* both addressed breach of fiduciary duty claims with expert affidavits from Professor Freeman. However, *Vortex Sports* applied the *Dawkins* rule to different facts: instead of arguing summary judgment should

not be granted, Professor Freeman explained the defendant's roles with the company—shareholder, officer, and general counsel—and how the defendant's actions in those roles either conformed or did not conform to a fiduciary standard. *Vortex Sports*, 378 S.C. at 207, 662 S.E.2d at 450 (allowing expert testimony on “specific acts [the defendant] committed and how those acts constituted a breach of his fiduciary duty”). The *Vortex Sports* distinction with *Dawkins* makes sense: testimony on what acts would meet the fiduciary duty standard and how the defendant fell short would be admissible but mere conclusions that certain acts are breaches would not be admissible.

This case is *Dawkins*; not *Vortex Sports*. The Supplemental Affidavit contains legal conclusions, as explained above, and *Vortex Sports* does not provide an exception that allows legal conclusions. By his own terms, Professor Spitz asserts a legal conclusion based on the facts of this case. See Spitz Supplemental Aff. ¶19 (“it is my considered conclusion that the question presents the Court with a clear question of South Carolina law”). Unlike *Vortex Sports*, Professor Spitz would not testify how specific acts relate to a standard. Rather, he would usurp the court's role and tell the fact finder the legal conclusion to reach—which is why his factual analysis reads like a conclusory charge on the law.²

IV. CONCLUSION

Professor Spitz filed a memorandum of law in support of Plaintiffs' motion for partial summary judgment that was mistakenly labeled an “expert affidavit.” South Carolina law does not

² Additionally, the Supplemental Affidavit includes analysis of new claims for breach of contract with fraudulent intent and intentional interference with contractual relations. Plaintiffs recently asserted these new claims in their proposed third amended complaint (the motion for leave to file is currently pending). The new claims are not at issue in either pending motion for summary judgment. However, the Supplemental Affidavit overwhelmingly contains legal conclusions on these claims as well. Accordingly, any purported expert testimony in the Supplemental Affidavit on these new claims would be inadmissible for the same reasons explained above.

allow experts to testify on the law. Accordingly, this Court should strike the Supplemental Affidavit.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com

Thornwell F. Sowell, III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
Sowell & DuRant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: 803-722-1100
Email: bdurant@sowelldurant.com
Email: bsowell@sowelldurant.com

**ATTORNEYS FOR DEFENDANT
C. RAY AMICK**

May 1, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

DEFENDANT C. RAY AMICK'S
MEMORANDUM OF LAW IN SUPPORT OF
HIS MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT

TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,
ATTORNEYS FOR PLAINTIFFS:

Defendant C. Ray Amick hereby submits this memorandum of law in support of his motion for summary judgment filed February 8, 2019, and in opposition to Plaintiffs' motion for partial summary judgment filed January 30, 2019.

I. Introduction

Defendant Ray Amick entered into a contract with the Newberry Lions Club to buy the club's Lake Murray property on February 14, 2018. Mr. Amick and the Lions Club finalized the sale at a closing on February 21, 2018, and a deed reflecting the conveyance was properly recorded in Newberry County on the following day.

Plaintiffs Joseph and Lisa Rice contest this sale and assert they have a contract with the Lions Club—predating the contract with Mr. Amick—to purchase the property. Plaintiffs claim two letters exchanged between the Lions Club (who allegedly offered the property) and Plaintiffs (who allegedly accepted with their response) created a contract.

The Lions Club entered one contract to sell their property at Lake Murray—the February 14, 2018 contract with Mr. Amick. Plaintiffs’ claims to the contrary fail because the Lions Club letter was not an offer and Plaintiffs’ response was not an acceptance. Accordingly, this Court should grant summary judgment in favor of Mr. Amick and deny Plaintiffs’ motion for partial summary judgment because no contract exists between Plaintiffs and the Lions Club.

II. Facts

In early 2017, the Newberry Lions Club (“the Lions Club”) sent letters to adjoining land owners and Lions Club members explaining that the Lions Club would be selling its property on Lake Murray (“the Lions Club Letter”).¹ In pertinent part, the letter provided:

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

¹ The Lions Club Letter to Plaintiffs, with the plat, is attached as **Exhibit A**.

See Ex. A. Both Plaintiffs and Mr. Amick received this letter.²

On February 14, 2017, Plaintiffs responded to the Lions Club Letter with a letter from their attorney (“Plaintiffs’ Response”),³ which stated, in pertinent part:

Pursuant to your recent letter to [Plaintiffs], they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

See Ex. B.

On February 28, 2017, Mr. Amick sent the Lions Club a \$1,000 earnest money check and an unexecuted contract of sale offering \$300,000.00 for the property.⁴

On March 28, 2017, the Lions Club held a board meeting and voted to accept “Amick’s offer of \$300,000.00 provided that closing would take place by June 1st.”⁵

On May 15, 2017, Plaintiffs’ attorney sent a letter to the Lions Club stating they were the successful bidders and requested that they be conveyed the property pursuant to their “bid.”⁶

² Mr. Amick is both an adjoining landowner and a Lions Club member while Plaintiffs are only adjoining landowners.

³ Plaintiffs’ Response to the Lions Club is attached as **Exhibit B**.

⁴ An excerpt from Mr. Amick’s deposition, the unexecuted contract, and a redacted copy of Mr. Amick’s check are attached collectively as **Exhibit C**.

⁵ The March 28, 2017 Lions Club Board Meeting Minutes are attached as **Exhibit D**.

⁶ This letter is attached as **Exhibit E**.

On May 23, 2017, the Lions Club held another board meeting and decided to “send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property.”⁷

On June 5, 2017, the attorney for the Lions Club sent identical letters⁸ to Mr. Amick and Plaintiffs, which stated in full:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

The encroachment issues were eventually resolved.⁹

On November 21, 2017, Plaintiffs’ attorney sent another letter to the Lions Club indicating Plaintiffs “are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.”¹⁰

On January 23, 2018, the Lions Club voted to sell the property to Mr. Amick.¹¹ On February 14, 2018, the Lions Club entered into a formal, written contract with Mr. Amick, wherein Mr. Amick agreed to purchase the subject property for \$300,000.00.¹² A closing took place on February

⁷ The May 23, 2017 Lions Club Board Meeting Minutes are attached as **Exhibit F**.

⁸ Copies of these letters are attached as **Exhibit G**.

⁹ The Lions Club sold the portion of the property with the encroachment to the encroaching landowner, which resolved the issue. The portion sold represents the difference between the 5.5 acres in the Lions Club letter and the 5.35 acres eventually conveyed to Mr. Amick.

¹⁰ A copy of this letter is attached as **Exhibit H**.

¹¹ The January 23, 2018 Lions Club Board Meeting Minutes are attached as **Exhibit I**.

¹² The contract with Mr. Amick is attached as **Exhibit J**.

21, 2018, and a deed transferring the subject property to Mr. Amick was recorded on February 22, 2018.¹³

The day before Mr. Amick's deed was recorded, Plaintiffs filed a lis pendens against the property. Subsequently, Plaintiffs filed a complaint against the Lions Club seeking specific performance of an allegedly breached contract. Plaintiffs have since added Mr. Amick as a defendant, and their current amended complaint asserts claims for a declaratory judgment/injunction, specific performance, and promissory estoppel, all based on Plaintiffs' alleged contract with the Lions Club.¹⁴

III. Legal Standard

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one

¹³ The deed to Mr. Amick is attached as **Exhibit K**.

¹⁴ Plaintiffs filed a motion for leave to file a proposed third amended complaint, which is currently pending before this Court. The putative third amended complaint would add claims for interference with contractual relations against Mr. Amick, claims for a prescriptive easement to use the property, and a claim for breach of contract accompanied by a fraudulent act against the Lions Club.

party must lose as a matter of law.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment “mirrors” standard for directed verdict).

Whether a declaratory judgment action sounds in law or equity depends on the underlying claim, and here Plaintiffs assert a claim for specific performance, which is a matter in equity. *See, e.g., Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 406, 656 S.E.2d 775, 779 (Ct. App. 2008) (declaratory judgment action seeking specific performance for asserted breach of contract sounded in equity). Normally, whether a contract exists is a question of fact. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). However, “[w]here, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract vel non is a question of law.” *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) (*quoting Valjar, Inc. v. Maritime Terminals, Inc.*, 220 Va. 1015, 1018, 265 S.E.2d 734, 736 (1980)).

IV. Analysis

The letters between Plaintiffs and the Lions Club did not create a contract because the Lions Club Letter was not an offer and Plaintiffs’ Response was not an acceptance. *See Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003) (“The necessary elements of a contract are an offer, acceptance, and valuable consideration.”). Without an offer and acceptance, the Lions Club and Plaintiffs never agreed to the terms of a deal. *See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (contracts require “a meeting of the minds between the parties with regard to all essential and

material terms of the agreement”). Accordingly, this Court should grant summary judgment in favor of Mr. Amick and deny Plaintiffs’ motion for partial summary judgment.¹⁵

A. The Lions Club Letter Was Not an Offer Because It Was Not Capable of Acceptance and Could Not Conclude a Bargain

The Lions Club Letter opened negotiations for the property and was not an offer. See *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2, 5 (1932) (“An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance, and if it is an offer merely to open negotiations which may ultimately result in a contract it is not binding.”). Moreover, the Lions Club Letter did not indicate an offer could be accepted or that assent to certain terms would conclude a deal. See, e.g., *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”).

In *McLaurin*, the defendant sent a letter to his brother stating that he would buy out several other investors and that he thought he could obtain financing to do so. See *McLaurin*, 165 S.C. 411, 164 S.E. at 4. The defendant’s letter further directed the brother to “see boys at once and see what they would like to do” and stated “[i]f all decide to do this have each write me at once and you wire me ‘all accept’” *Id.* Despite addressing an alleged offer that contained instructions for accepting, *McLaurin* held that this letter was not “such an offer as could, by acceptance, be changed, converted or construed into a binding agreement of sale.” *Id.* at 165 S.C. 411, 164 S.E. at 5. The court then cited authority explaining that some offers are offers to open preliminary

¹⁵ The Court should only consider the Lions Club Letter and Plaintiffs’ Response in deciding whether the parties formed a contract because South Carolina’s statute of frauds requires that the contract be in writing. See, e.g., *Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975). However, even if the Court were to consider evidence outside of the two letters, the outcome would still be the same—no contract.

negotiations rather than to form a contract and upheld the trial court's directed verdict in favor of the defendant. *See id.*

Like the *McLaurin* letter, the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. First, it sought expressions of interest from the letter's recipients by stating "[i]f you have an interest in the property please let us know right away." Moreover, the Lions Club Letter did not invite acceptance but offers by stating "[f]irst consideration will be given to current members of the Newberry Lions Club." By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept.

Moreover, the phrases "decided to offer the property for sale" and "[t]his offer is valid until" did not turn the letter into an offer capable of being accepted. The *McLaurin* letter contained directions for communicating an acceptance, but the court held that an acceptance could not conclude the bargain. Like *McLaurin*, more remained to conclude a deal with the Lions Club, regardless of the term "offer." In fact, Plaintiffs realized as much: Plaintiffs' Response described itself as a "bid" rather than an "acceptance" and only contemplated acceptance by the Lions Club. *See* Ex. B ("We would need 30 days from notice that the **bid was accepted** . . .") (emphasis added). Accordingly, the Lions Club Letter used "offer" only to communicate an offer to open negotiations, and no reasonable fact finder could find otherwise.¹⁶

¹⁶ If the Court decides it should deny summary judgment for Mr. Amick on the question of offer, Plaintiffs' motion for partial summary judgment should also be denied. If the Lions Club Letter were construed in Mr. Amick's favor, the letter would at the very least allow a reasonable factfinder to conclude the letter was not an offer capable of acceptance but an offer to negotiate.

B. Plaintiffs' Response Was Not an Acceptance Because It Described Itself as a "Bid" Rather Than an Acceptance and Added Additional Terms.

Even if the Court were to conclude a question of fact existed on whether the Lions Club Letter was an offer, Plaintiffs never accepted the offer. Plaintiffs' Response described itself as a bid and violated South Carolina's "mirror-image" rule by requiring additional terms.

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). Further, "[t]he acceptance must be unequivocal and unconditional" and additional conditions operate as a rejection and counteroffer. *See Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124, 128 (1963) ("If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, there is a rejection of the offer, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the modification suggested."); *see also Columbia Hyundai, Inc. v. Carll Hyundai, Inc.*, 326 S.C. 78, 80, 484 S.E.2d 468, 469 (1997).

In *Sossamon*, the South Carolina Supreme Court held that a purported acceptance letter opening with "[y]our offer of sale . . . is hereby accepted" but including different terms for the time and manner of payment "imposed new or other conditions not contemplated in the offer" and that the purported acceptance was in fact a rejection and counteroffer. *Sossamon*, 241 S.C. at 487, 129 S.E.2d at 128. Similarly, in *Columbia Hyundai*, the court held there was no contract under the mirror image rule where the party attempting to accept added only the words "current year" between the words "saleable" and "new" in the phrase "[a]ll of Seller's right title and interest in and to all saleable new Hyundai vehicles" *Columbia Hyundai, Inc.*, 326 S.C. at 80, 484 S.E.2d at 469 (upholding a jury verdict finding there was no contract).

To begin with, Plaintiffs' Response by its own terms did not attempt to accept an offer—the only “acceptance” discussed was if the Lions Club accepted Plaintiffs' bid. *See, e.g., Electro-Lab of Aiken*, 357 S.C. at 369, 593 S.E.2d at 173 (an acceptance requires a manifestation of assent). Specifically, the letter stated: 1) Plaintiffs authorized their attorney to “make a bid of \$325,000.00”; 2) Plaintiffs understood the “bids” would be opened at an upcoming meeting; and 3) Plaintiffs “would need 30 days from notice that **the bid was accepted**” to close the sale. *See* Ex. B (emphasis added). These statements show Plaintiffs did not attempt to accept an offer but made an offer—a bid—that they understood would have to be accepted by the Lions Club.

Furthermore, even if Plaintiffs had titled their Response “**WE ACCEPT**,” the letter would still not be an acceptance under South Carolina's mirror image rule because it contained three conditions not present in the Lions Club Letter:

1. **A good title condition:** “subject only to the property having good and marketable title”;
2. **The 30 Days to Close Condition:** Plaintiffs “need 30 days from notice that the bid was accepted in which to conduct the title search and close” with payment “due and payable at closing”; and
3. **A different price term:** The Lions Club asked for \$300,000.00 while Plaintiffs offered \$325,000.00.

First, the Lions Club Letter did not explain what title the club would convey and stated that encroachments would have to be dealt with after the property was sold. While Plaintiffs' Response accepted the encroachment issue, the “good and marketable” title condition added terms not in the Lions Club Letter.

Additionally, the Lions Club Letter was silent as to terms of payment and delivering possession of the property. Where the contract is silent on these terms, South Carolina law assumes payment in full upon tender of the property. *See Sossamon*, 241 S.C. at 485, 129 S.E.2d at 127 (“when the plaintiff proposed in his alleged acceptance conditions other than cash upon delivery

of the property . . . he imposed new or other conditions not contemplated in the offer.”). By requiring 30 days to search title with payment at closing, Plaintiffs conditioned their acceptance of the alleged Lions Club offer.

Finally, the Lions Club and Plaintiffs differed on the price term. While Plaintiffs offered a price higher than what the Lions Club sought, the Lions Club Letter indicated the club was selling the property for less than the appraisal and that first consideration would go to Lions Club members. Obtaining the highest price was not the Lions Club’s sole or primary goal by the terms of the letter, and Plaintiffs offered a different price term.¹⁷

Like *Sossamon* and *Columbia Hyundai*, Plaintiffs’ Response added terms in the alleged acceptance and could not have accepted any offer in the Lions Club Letter as a matter of law because of South Carolina’s mirror image rule.¹⁸

V. Conclusion

The Lions Club never made an offer capable of acceptance to Plaintiffs. Rather, the Lions Club sent a letter to open negotiations. Plaintiffs offered, and the Lions Club rejected it. While Plaintiffs assert the Lions Club Letter was an offer, this position fails as a matter of law because

¹⁷ Plaintiffs have also put forward an “auction” theory and assert that Mr. Amick withdrew his offer; Plaintiffs’ offer and one other offer were the only operative offers on June 1, 2017; and therefore, Plaintiffs’ offer must have been accepted because it was higher than the other offer. The “auction” theory does not have any legal basis and the Lions Club Letter certainly did not impose a hard deadline to *sell* by June 1st as part of an auction process. *See, e.g., Barr*, 263 S.C. at 430, 211 S.E.2d at 234 (a writing must show the contract’s essential terms without needing parol evidence); *see also* Ex. A (“This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.”). Accordingly, this theory is a red herring. The facts show the Lions Club letter was not an offer, and Plaintiffs’ Response did not accept by its own terms.

¹⁸ If the Court decides it should deny summary judgment for Mr. Amick on the question of acceptance, Plaintiffs’ motion for partial summary judgment should also be denied. If Plaintiffs’ Response were construed in Mr. Amick’s favor, the letter would at the very least allow a reasonable factfinder to conclude it was not an acceptance.

the letter was not capable of being accepted and would not conclude a bargain. Moreover, even if the Lions Club Letter were an offer, Plaintiffs did not accept it because their Response did not indicate Plaintiffs accepted and included additional terms not in the Lions Club Letter. For these reasons, summary judgment should be entered in favor of Mr. Amick and Plaintiffs' motion for partial summary judgment should be denied.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318

Harry A. Dixon, SC Bar No. 103509

1812 Lincoln Street, Suite #200

P. O. Box 1390

Columbia, SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

Email: jimkoutrakos@callisontighe.com

Email: harrydixon@callisontighe.com

Thornwell F. Sowell, III

Bess J. DuRant

Sowell & DuRant, LLC

1325 Park Street, Suite 100

Columbia, SC 29201

Email: bdurant@sowelldurant.com

Email: bsowell@sowelldurant.com

ATTORNEYS FOR DEFENDANT

C. RAY AMICK

June 17, 2019

EXHIBIT A



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice

Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

EXHIBIT

Rice000001

0149

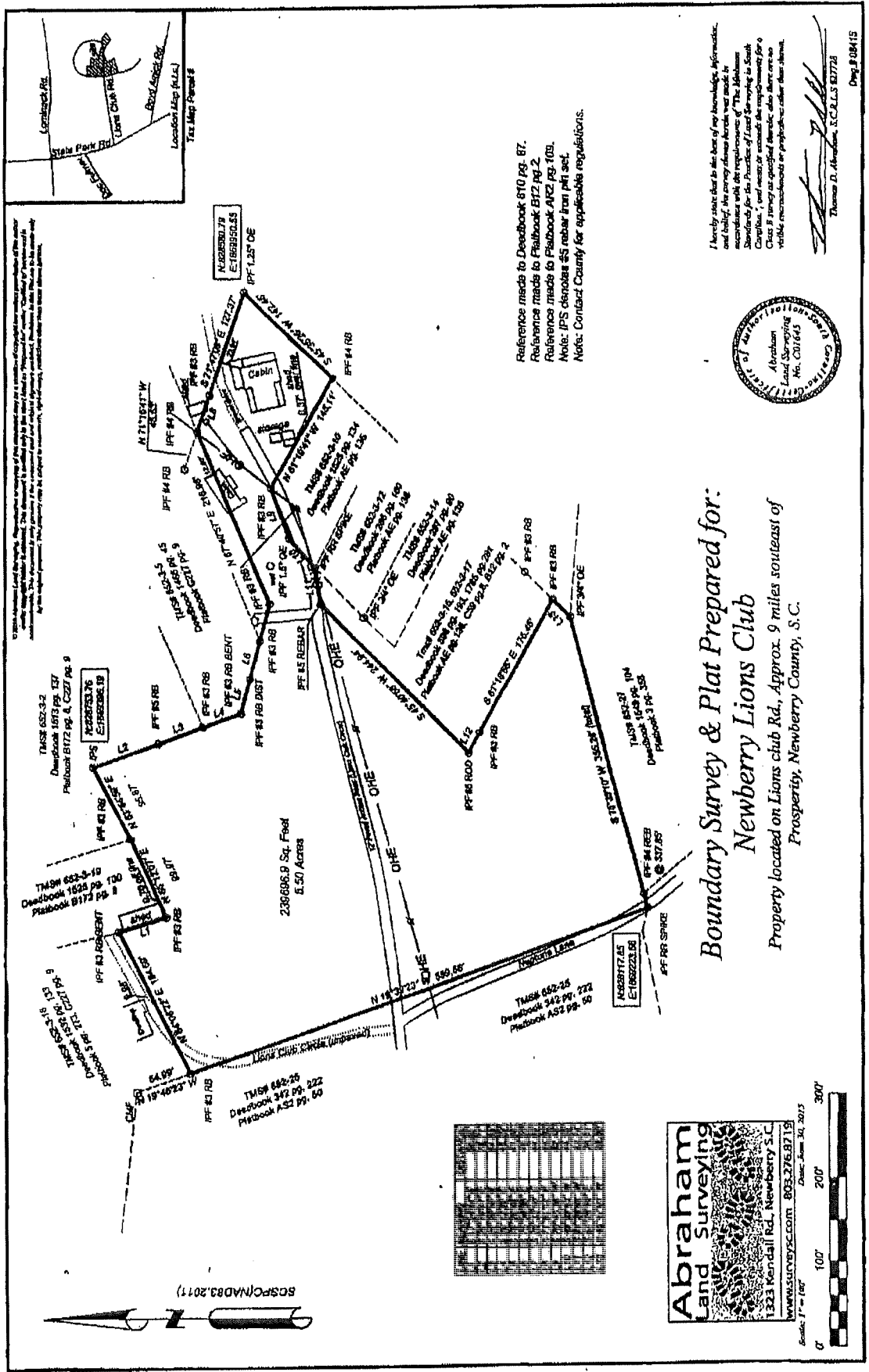


EXHIBIT B

MCNAIR
ATTORNEY

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

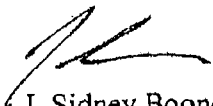
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT

2

1393043v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH | PAWLEYS ISLAND

Rice000003

0152

ELECTRONICALLY FILED - 2019 Jun 17 3:49 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

EXHIBIT C

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY

LISA SUMMER RICE and JOSEPH F. RICE,
Plaintiffs,

vs. CASE NO. 2018-CP-36-00089

NEWBERRY LIONS CLUB and C. RAY AMICK,
Defendants.

DEPOSITION OF: RAY AMICK

DATE: November 30, 2018

TIME: 11:11 A.M.

LOCATION: POPE PARKER JENKINS, PA
1508 College Street
Newberry, South Carolina 29108

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Jennifer Duy, Registered
Professional Reporter, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC
(828) 785-5699



1 APPEARANCES OF COUNSEL:

2
3 ATTORNEY FOR THE PLAINTIFFS
4 LISA SUMMER RICE and JOSEPH F. RICE:

5 POPE PARKER JENKINS, PA
6 Thomas H. Pope, III
7 1508 College Street
8 Newberry, South Carolina 29108
9 (803) 276-2532
10 tom@ppjlaw.com

11
12 ATTORNEY FOR THE DEFENDANT
13 C. RAY AMICK:

14 CALLISON TIGHE & ROBINSON
15 BY: DEMETRI "JIM" K. KOUTRAKOS
16 1812 Lincoln Street, Suite 200
17 Palmetto Armory Office Building
18 Columbia, South Carolina 29201
19 (803) 256-2371
20 jimkoutrakos@callisontighe.com

21
22 ATTORNEY FOR THE DEFENDANT
23 NEWBERRY LIONS CLUB:

24 LAW OFFICE OF SAMUEL M. PRICE, JR.
25 BY: SAMUEL M. PRICE, JR.
1413 Main Street
Newberry, South Carolina 29108
(803) 276-0796
rshealy517@hotmail.com

26 ALSO PRESENT:

27 Lisa Summer Rice
28 Gene Crocker

29 (INDEX AT REAR OF TRANSCRIPT)

1 property?

2 A Right.

3 (PLF. EXH. 4, Check from Ray Amick, was
4 marked for identification.)

5 BY MR. POPE:

6 Q This is Exhibit 4 to this deposition. It
7 shows a check on February 28, 2017 to the Lions Club
8 as earnest money. And it shows a copy of a contract
9 of sale.

10 We have never been furnished with any
11 contract of sale that you signed. Did you sign any
12 contract of sale?

13 A This was in '17. And I worked part time
14 for an engineering firm in Columbia.

15 Q For who?

16 A It's a group of lawyers downstairs. And I
17 went down one day on my lunch hour and just asked
18 him to write a contract, that I was going to make an
19 offer on a piece of property. And he wrote this.
20 And I took it and I turned it in, I believe, in
21 February of '17. I don't know the exact date
22 offhand. And I took the \$1,000 earnest money check.
23 I turned it in to Gene when I made my offer. When
24 it was all said and done, they took this, they took
25 the \$1,000 check. And I was making an offer on it

60

1 when they told me that I had the property, they kept
2 the check. And they kept this. And when I asked
3 for a fee simple title on the deed, a few days later
4 they returned all of this together along with the
5 canceled check.

6 Q After you requested you wanted a clear
7 title, this was withdrawn?

8 A Right. As I was told, they were taking it
9 off the mark for everybody.

10 Q Now if you look on the page that is marked
11 Amick 66, it is about the third page.

12 A Right.

13 Q It says, "Verbal agreement and
14 handwriting." Is that what that says?

15 A That's what it says. I am not sure who
16 put that there.

17 Q Is that your handwriting?

18 A No, it is not.

19 Q Well, there is no signed agreement. Do
20 you think you ever signed this, or do you know?

21 A Did I ever sign this?

22 Q Right.

23 A I gave this to Mr. Crocker. They accepted
24 it. Kept it until I asked for a fee simple title.
25 As to why they did or did not sign it, I don't know.

RAY AMICK
62 LIONS CLUB ROAD
PROSPERITY, SC 29127

8588
67-776/532 9336
1003235454184

February 28, 2017 Date

Pay to the Order of Newberry Lions Club \$ 1000.00

One Thousand and 00/100 Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

For Earnest Money

RAY
Safe
Deposit
Box

RAY



CONTRACT OF SALE RESIDENTIAL

Revised December 2016



THE BUYER ☐ SELLER ☐ IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **PARTIES:** This Contract of Sale is entered into on _____,
between Buyer(s) Ray Amick (hereinafter called "Buyer"),
and Seller(s) Newberry Lions Club (hereinafter called "Seller").

BUYER (Initials: _____) Date _____ acknowledges receipt of the Disclosure of Brokerage Relationships form, and Client ☐ Customer ☐
service in this transaction.

SELLER (Initials: _____) Date _____ acknowledges receipt of the Disclosure of Brokerage Relationships form, and Client ☐ Customer ☐
service in this transaction.

2. **PROPERTY:** Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot _____ Block _____ Phase _____ Subdivision _____
Address 5.5 Acres on Lions Club Road Unit # _____ City Prosperity Zip 29127
TMS# 652-3-21 County of Newberry, State of South Carolina.

3. **PRICE:** The purchase price is \$ 300,000.00.

4. **EARNEST MONEY:**

A. \$ 1,000.00 Earnest money is paid by: Check ☒ Cash ☐ Other ☐ _____

B. \$ _____ Additional earnest money (hereinafter referred to as earnest money) to be delivered on or before _____.

C. Earnest money to be held in trust by _____ (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-136 (E). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs. The court may also award the prevailing parties treble damages (defined as three times the amount of Earnest Money).

BUYER (Initials: _____) Date _____

SELLER (Initials: _____) Date _____

5. TRANSACTION COSTS: Buyer's Transaction Costs include but are not limited to all closing costs, pre-paid items, insurance (mortgage, lender/owner title, flood, hazard), discount points, all costs to obtain information from or pertaining to any owners association, interest, title fees, FHA/VA allowable costs, fees and expenses of Buyer's attorney, deed recording costs, and the cost of any inspector, appraiser, or surveyor. Seller's Transaction Costs include but are not limited to deed preparation, deed stamps/tax, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens, property taxes pro-rated to the day of closing, real estate brokerage fees, and expenses of Seller's attorney.

Buyer's and Seller's Transaction Costs will be paid at closing as follows: **(Select, initial and date only one of the options below)**

A. BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____ Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

B. BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____ Seller will pay Buyer's Transaction Costs not to exceed \$ _____ which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

6. FINANCING: Buyer's obligation under this Contract is ☐ is not ☒ contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to and not including the closing date set forth in Paragraph 7, and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____

A. FINANCING TYPE. Financing type will be: Conventional ☐ FHA ☐ VA ☐ USDA ☐ SC Housing FHA ☐

SC Housing Conventional ☐ Seller ☐ Cash (no financing required) ☒ Other ☐ _____

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if financing type changes. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, a lender required FHA/VA Addendum will be signed by Buyer and Seller. All parties agree to execute this document as required. Utilizing FHA or VA financing will require Seller to pay upon closing for certain loan-related closing costs termed "non-allowable costs", which for VA financing may also include the termite inspection (CL-100).

B. APPLICATION FOR FINANCING. If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).

3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

C. **SELLER FINANCING.** If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. **CASH TRANSACTION.** In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D). *Verbal agreement*

E. **APPRAISAL CONTINGENCY.** This Contract is ☐ is not ☒ contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have three business days after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the three business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. **SELLER'S MORTGAGE PAYOFF.** SELLER (Initials _____) Date _____ Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. **CONVEYANCE DATE OF CLOSING/POSSESSION:** Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Ray C. Amick *C. Ray Amick (CRA)*, or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before _____, 20_____, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. **BUYER** (Initials _____) Date _____ **SELLER** (Initials _____) Date _____ Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing ☒, 24 hours after closing ☐, 48 hours after closing ☐, or in accordance with attached agreement ☐.

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. **RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY:** Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. **PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:**
(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. **DUE DILIGENCE PERIOD INSPECTIONS:** Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system, and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). Any re-inspections that may be required will also be at Buyer's expense.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion or as a result of any inspection, examination or test conducted, determines property to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports, if any, and written notice of termination to Sellers or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

- a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;
- b. Buyer will have two business days after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;
- c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (If Selected, Terms of Paragraph 9 do not apply) (Initial and date only one of the options below if applicable)

A. BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____

PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period to conduct at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____

PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: Except for Property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____ Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____ Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

13. LEAD-BASED PAINT: Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will ☐ will not ☒ be provided at closing. If applicable, the warranty premium will be paid by Buyer ☐ Seller ☐ in the amount of \$_____, provided by _____ (home warranty company) and written by the Buyer's Agent ☐ Seller's Agent ☐. If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

15. PROPERTY DOCUMENTATION: (Buyer to complete information in Paragraphs A-E, and Seller to confirm)

Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____ Buyer acknowledges and Seller represents the following:

- A. This sale is ☐ is not ☒ subject to approval by a Third Party (i.e. bank in the case of a short sale, corporation, or relocation company.)
- B. The Property is: Connected to: public/community sewer system ☐ septic tank ☐ Lett system ☐ Other ☐ _____
Connected to: public/community water system ☐ well system ☐ Other ☐ _____
- C. To the best of Seller's knowledge, the Property is ☐ is not ☐ partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.
- D. The Property is ☐ is not ☐ subject to a mandatory association fee (i.e. homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$_____ per _____ and is payable to _____.
- E. The Property is ☐ is not ☐ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$_____.

16. ADDITIONAL CONTINGENCIES: (Buyer's failure to disclose the existence of Contingency A or B will constitute a default of this Contract and earnest money will be released to Seller. See paragraph 4(D). Initial and date Paragraph C if other contingencies apply.)

- A. SALE AND CLOSING CONTINGENCY ADDENDUM is ☐ is not ☒ attached to and part of this Contract of Sale.
- B. CLOSING CONTINGENCY ADDENDUM is ☐ is not ☒ attached to and part of this Contract of Sale.
- C. OTHER CONTINGENCIES: BUYER (Initials _____) Date _____ SELLER (Initials _____) Date _____ This Contract is contingent on:

17. FIXTURES AND PERSONAL PROPERTY: This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, playsets, lawn irrigation system and all related equipment, pool and spa equipment, TV wall mounts and brackets, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system and equipment, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached or hanging bathroom vanity mirrors, light bulbs, switch plates, heating and air system registers, and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

19. ADJUSTMENTS: Real estate taxes, homeowner association/regime fees, and rents when applicable, will be adjusted as of the date of closing. Unless otherwise agreed to in writing by the Parties in this Contract, tax proration pursuant to this Contract are to be based on the most current tax bill and prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing. All proration are final.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

- ✓ 21. **DEFAULT:** If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.
- ✓ 22. **MEDIATION:** Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of Realtors. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.
23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.
24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.
25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at _____ o'clock _____ M. (Eastern Time) on _____ unless accepted or countered by Seller in written form prior to such time.
26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.
27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.
28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.
29. **DEFINITIONS:**
- A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.
- B. Successful negotiation of this offer will have been completed when one of the Party's to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.
- C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.
- D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.
30. **SETTLEMENT STATEMENT RELEASE:** Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of a Settlement Statement for the transaction.
31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as Real Estate Agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. **This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.**

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

_____ Buyer's Signature	(L.S.)	_____ Buyer's Printed or Typed Name	_____ Date
_____ Buyer's Signature	(L.S.)	_____ Buyer's Printed or Typed Name	_____ Date
_____ Seller's Signature	(L.S.)	_____ Seller's Printed or Typed Name	_____ Date
_____ Seller's Signature	(L.S.)	_____ Seller's Printed or Typed Name	_____ Date

_____ Buyer's Agent/ Company	_____ Buyer's Agent License#/ LLR Office Code

_____ Buyer's Agent's Email Address	_____ Buyer's Agent's Telephone Number

_____ Seller's Agent/ Company	_____ Seller's Agent License#/ LLR Office Code

_____ Seller's Agent's Email Address	_____ Seller's Agent's Telephone Number

This section is not to be completed until the conditions of paragraph 29B are fulfilled

CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK ____ M (ET) ON _____ DATE

ACCEPTANCE ENTERED BY _____ (AGENT)

NOTE: Once the above Contract acceptance date and time are filled in a copy of this Contract in its entirety should be promptly forwarded to the other Party.

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EXHIBIT D



OFFICIAL MINUTES OF BOARD OF DIRECTORS MEETING

The Newberry Lions Club held its regular Board Meeting at Newberry County Special Needs Office- Braswell Administrative Building on March 28, 2017

Lion Gene Crocker, President, with the following Lion Board Members in attendance called meeting to order at 7:00 p.m.

Lion William Ashmore

Lion Randy Cannon

Lion Lee Ringer

Lion Randy Senn

Lion Pete Simpson

Lion Doggett Whitaker

Lion Ray Amick, Non-Board Member

Minutes of Business Meeting

Opened with Prayer by Lion Doggett Whitaker

SECRETARY'S REPORT: Read and approved.

TREASURER'S REPORT: Read and approved.

OLD BUSINESS:

The lake property was brought up for discussion. The board moved to go into executive session for discussion of the matter at which time Lion Ray Amick excused himself.

The board returned to open session and Lion Ray Amick returned to the meeting.

A motion was made to accept Lion Ray Amick's offer of \$300,000.00 provided that closing would take place by June 1st at which time other offers would be considered if the property closing has not occurred by the June 1st deadline. The motion passed unanimously.

With no other business the meeting was adjourned at 8:00 p.m.

Lion Pete Simpson, Secretary

EXHIBIT E

MCNAIR
ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723.7631
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property -- 5.50 acres -- Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

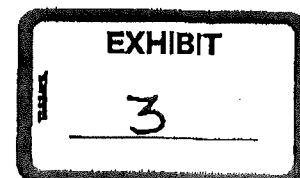
If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



1454538v1B

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH | PAWLEY ISLAND

Rice000004

0170

ELECTRONICALLY FILED - 2019 Jun 17 3:49 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089
ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

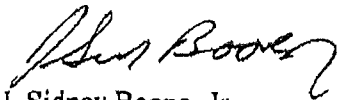
Eugene Crocker, President
May 15, 2017
Page 2

MCNAIR
ATTORNEYS

ELECTRONICALLY FILED - 2019 Jun 17 3:49 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089
ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@molleyrice.com)

EXHIBIT F



OFFICIAL MINUTES OF BOARD OF DIRECTORS MEETING

The Newberry Lions Club held its regular Board Meeting at Newberry County Special Needs Office- Braswell Administrative Building on May 23, 2017

Lion Gene Crocker, President, with the following Lion Board Members in attendance called meeting to order at 7:00 p.m.

Lion William Ashmore

Lion Lee Ringer

Lion Doggett Whitaker

Lion Ray Amick, Non-Board Member

Mr. Jay Verner, Attorney

Lion Randy Cannon

Lion Randy Senn

Lion Jean Williamson

Lion Milton Price \

Lion Pete Simpson

Minutes of Business Meeting

Opened with Prayer by Lion William Ashmore

SECRETARY'S REPORT: Read and approved.

TREASURER'S REPORT: Read and approved.

OLD BUSINESS:

Lion Gene Crocker reported that he and Lion Jean Williamson had gone down the lake clubhouse and retrieved some of the Lions Club memorabilia. Lion Doggett Whitaker agreed to allow the club to store the items at Whitaker Funeral Home.

Lion Ray Amick was given the opportunity to speak regarding his purchase of the lake property. He stated that he had funds ready to purchase the property, but wanted to have a clear title to the property with the deed being made to him and his wife.

A motion was made to move into executive session with attorney Jay Verner.

The board returned from executive session with no action being taken.

Mr. Verner excused himself and Lion Ray Amick returned to the meeting.

A motion was made to send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property. The motion passed unanimously.

A motion was made to return to executive session.

The board returned from executive session with no action being taken.

With no other business the meeting was adjourned at 8:45 p.m.

Lion Pete Simpson, Secretary

EXHIBIT G

HARLEY & VERNER LLP
ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER
CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

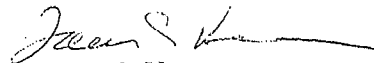
Mr. Ray Amick
62 Lions Club Circle
Prosperity, SC 29127

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

AMICK_0056
0175

HARLEY & VERNER LLP
ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER
CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

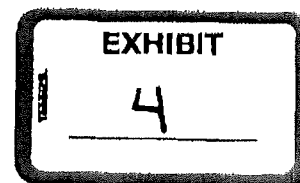
With kindest regards, I am

Truly yours,


James S. Verner

JSV/als

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ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089



Rice000006
0176

EXHIBIT H

COPY

November 21, 2017

MCNAIR
ATTORNEYS

Michael A. Scardato

mcardato@monair.net
T 843.723.7831
F 843.722.3227

Via FedEx

Via E-mail: lawyers@sc.rr.com

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

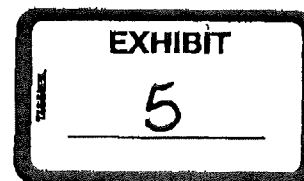
If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 40
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

monair.net



1698525v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH

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0178

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James S. Verner, Esq.
November 21, 2017
Page 2

MCNAIR
ATTORNEY

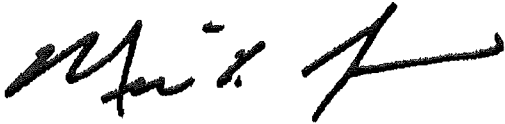
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ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: jrice@motleyrice.com)

EXHIBIT I



OFFICIAL MINUTES OF BOARD OF DIRECTORS MEETING

The Newberry Lions Club held its regular Board Meeting at Newberry County Special Needs Office- Braswell Administrative Building on January 23, 2018

Lion Gene Crocker, President, with the following Lion Board Members in attendance called meeting to order at 7:00 p.m. A quorum was present.

Lion Randy Senn
Lion Doggett Whitaker

Lion Lee Ringer
Lion Jean Williamson

Lion Pete Simpson

Minutes of Business Meeting

Opened with Prayer by Lion Gene Crocker

SECRETARY'S REPORT: Read and approved.

TREASURER'S REPORT: Read and approved.

OLD BUSINESS:

A recommendation was presented from the task force consisting of Lion Randy Senn, Lion Doggett Whitaker and Lion Jean Williamson for disbursement of funds from the sale to Mr. Thad McCracken of Parcel B at the lake. A copy of the recommendation is attached to these minutes. The motion passed.

A motion was made to look into getting a CPA, lawyer or both for advice about the tax consequences of the sale of the lake property. The motion passed.

A motion was made to sell the remaining lake property to Lion Ray Amick for \$300,000.00 plus other considerations. The motion passed.

A motion was made that closing cost for the selling of the remaining lake property will be treated the same as was done for Parcel B to Mr. Thad McCracken. The motion passed.

With no other business the meeting was adjourned at 8:30 p.m.

Lion Pete Simpson, Secretary

EXHIBIT J

STATE OF SOUTH CAROLINA)
) **CONTRACT OF SALE**
COUNTY OF NEWBERRY)

THIS AGREEMENT is made by and between C. RAY AMICK ("Purchaser"), and Doggett Whitaker, Pete Simpson and Lee Ringer as Trustees of the NEWBERRY LIONS CLUB ("Seller"). Purchaser and Seller may be individually referred to herein as "Party" or jointly as the "Parties."

1. **OFFER AND DESCRIPTION.** Purchaser agrees to buy and Sellers agree to sell all that certain piece, parcel or lot of land, with any buildings and improvements thereon, situated in the County of Newberry, State of South Carolina, known as Parcel A (5.35 Acres) on a private road designated as Lions Club Road and being more particularly shown on a plat prepared for Newberry Lions Club recorded in Newberry County ROD Slide D99 at page 6., with current TMS# 652-3-21.

2. **PRICE.** The Purchase Price for the real property and improvements thereon is Three Hundred Thousand and no/100 (\$300,000.00) Dollars to be paid as follows: \$1,000.00 earnest money paid within five (5) business days of the signing of this Contract and held in trust by the Purchaser's closing attorney law firm, Smith & Sullivan, LLC, 271 Columbia Ave, Ste. A, Chapin, SC 29036, and the balance, paid at closing, to be paid in certified or wired funds.

3. **CLOSING COSTS.** Purchaser agrees to pay all closing costs for this transaction, with the exception that Sellers are responsible and agree to pay for Sellers' attorney's fees and any closing costs necessary to deliver a marketable fee simple title (including recording of a satisfaction), if any.

4. **WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller warrants and represents that:

- a. Seller owns fee simple title to the Property, including the improvements thereon; and
- b. Seller's Trustees, as identified herein, are the properly appointed and authorized representatives of the Newberry Lions Club to sign all closing documents including the deed, and the delivery and/or performance of this Agreement will not require the approval or consent of any third party or governmental entity.

c. Seller will remove any and all personal property from the subject property prior to closing, and if any personal property remains on the subject property after the closing, Seller represents and warrants that it shall be deemed abandoned and the Purchaser shall be entitled to use or dispose of

any such personal property as determined in the sole discretion of the Purchaser without any notice to the Seller.

5. **AS IS, WHERE IS.** The property is being conveyed on an "AS IS, WHERE IS" condition and basis; however, Seller represents to buyer that it is not aware of any hazardous materials located on, or buried within, the subject property.

6. **DUE DILIGENCE PERIOD.** Purchaser has previously had the right to inspect or select an inspector(s) at Purchaser's expense, to make any inspections, tests, surveys, title search or investigations of the Property as desired by the Purchaser.

7. **TITLE.** Seller agrees to convey fee simple marketable title at Closing and deliver a General Warranty Deed in proper form for recording, free and clear of liens and encumbrances except restrictions and easements of record; to include reference to the new survey obtained by the Purchaser. On or before Closing, Seller will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by Purchaser to completely vest in and assure to Purchaser full rights in or to the Property.

9. **EFFECTIVE DATE AND CLOSING REQUIREMENTS.** The Effective Date of this Agreement shall be the last signature date thereon. The Closing shall take place at the law office of Smith & Sullivan, LLC at a date agreed upon by both Parties intended to be no later than February 28, 2018, unless otherwise agreed to by both Parties in writing.

10. **TAXES.** Property taxes, if any, and other assessments that may apply to the Property, shall be adjusted as of the date of Closing between Purchaser and Seller for the current year. Tax pro-rations pursuant to this Agreement are to be based on the tax information available at the date of Closing and are to be prorated on that basis.

11. **POSSESSION.** Purchaser shall have the right of occupancy immediately at Closing.

12. **FIRE OR CASUALTY.** In case the Property herein referred to is destroyed wholly or partially by fire or other casualty, Seller shall give notice thereof to Purchaser as soon as possible in accordance with the Notice provision of Section 14 below, and Purchaser shall have the option for ten (10) days after the effective date of notice of fire or other casualty, with an agreed adjustment in the Purchase Price, or of terminating this agreement and being repaid Earnest Money hereunder.

13. **DEFAULT.** The remedies of the Parties in the event of default are as follows:

Seller's Default: In the event of default by Seller under the terms of this Agreement, including but not limited to Seller's failure to transfer the Property by said Closing date, Purchaser's remedy shall be to compel the transfer by seeking specific performance of this Agreement, and/or to recoup from the Seller the full cost expended in due diligence and preparation for the closing, including its attorney's fees.

14. **NOTICES.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be effective upon personal delivery to the Party to whom they are addressed; or e-mailed or sent by facsimile as indicated below; or, if mailed five (5) days following deposit in the United States mail first class postage prepaid, registered or certified; or, if sent by nationally recognized overnight courier, the date when signed for at addressee's residence or place of business and addressed to each Party at the addresses listed below.

15. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina.

16. **COOPERATION OF PARTIES.** Both Parties agree that they will cooperate in the negotiation, preparation and execution of all documents required to effectuate the transaction contemplated herein.

17. **COUNTERPARTS.** So that each Party may have an original of this Agreement, this document shall be executed in two identically worded counterparts. Further, both Purchaser and Seller agree that receipt of a signed Agreement by facsimile or e-mail shall be the same as receipt of an original signed Agreement.

18. **SURVIVAL OF PROVISIONS.** The provisions of this Agreement which are not fully executed through the Closing date of this transaction shall survive the Closing date and remain in full force and effect, enforceable by the Parties according to such terms.

19. **NO COMMISSIONS.** Purchaser and Sellers represent and affirm that no real estate agents/professionals or realtors are due any sales commissions regarding this transaction.

20. **ENTIRE CONTRACT; BINDING CONTRACT.** This Agreement expresses the entire agreement between the Parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder and the Agreement shall be binding on both Parties, their principals, heirs, personal representatives, successors, and assigns as state law permits. This Agreement shall only be amended by a written agreement signed by both Parties.

WITNESS the Parties hereby by their hands and seals the dates indicated below.

In the Presence of:

Sonya M. Hancock
Witness
Lisa Lee Smith
Witness

PURCHASER:

C. Ray Amick
C. RAY AMICK

Date: February 12, 2018

Address: 62 Lions Club Road
Prosperity, S.C. 29127

E-Mail: _____

Phone: 803-364-3184 803-924-0162

SELLER:

NEWBERRY LIONS CLUB

Whitney Price
Witness
[Signature]
Witness

By: [Signature]
DOGGETT WHITAKER, TRUSTEE

Date: February 17, 2018

Arthur B. Carlson
Witness
[Signature]
Witness

By: Pete Simpson
PETE SIMPSON, TRUSTEE

Date: February 14, 2018

Arthur B. Carlson
Witness
[Signature]
Witness

By: Lee Ringer
LEE RINGER, TRUSTEE

Date: February 14, 2018

Address: _____

E-Mail: _____

Phone: _____

EXHIBIT K

Recorded by and to be returned to:
Smith & Sullivan, LLC
271 Columbia Ave., Suite A
Chapin, SC 29036

File No.: (17-0534-01) Amick

201800042023
Filed for Record in
NEWBERRY COUNTY, SC
ELIZABETH P FOLK, CLERK OF COURT
02-22-2018 At 03:55 pm.
DEED 10.00
STATE 780.00
COUNTY 330.00
OR Book 2028 Page 194 - 198

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY) TITLE TO REAL ESTATE

KNOW ALL PERSONS BY THESE PRESENTS, That **Lee Ringer, Pete Simpson and Doggett Whitaker as Trustees of Newberry Lions Club a/k/a The Lions Club of Newberry** (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Three Hundred Thousand & 00/100 (\$300,000.00) Dollars and other consideration to the Grantor paid by **C. Ray Amick of 62 Lions Club Road, Prosperity, SC 29127**, (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to easements and restrictions of record, unto the said **C. Ray Amick** the property described as follows:

All that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in District No. 6 outside, in the County of Newberry, State of South Carolina, containing 5.35 acres, more or less, and being designated as **Parcel A** on a plat prepared for Newberry Lions Club by Thomas D. Abraham, SCRLS, dated November 9, 2017 and recorded in the Office of the Clerk of Court for Newberry County in Slide D99-6; reference to said plat being had for a more complete and accurate description thereof.

Together with all Grantor's non-exclusive rights of ingress, egress and/or regress over and across a private drive designated as Lions Club Road for access to State Park Road to or from Parcel A described above.

This being a portion of the same property conveyed to the Trustees of the Newberry Lions Club by deed recorded in the Office of the RMC for Lexington County on the 18th day of February 1933, in Deed Book 4Q at page 603.

TMS: 652-3-21

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

17-534-01

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, **C. Ray Amick**, his Heirs, Successors and Assigns forever. And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal.

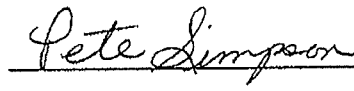
Date: Feb. 21st, 2018

Newberry Lions Club a/k/a The Lions Club of Newberry, Grantor

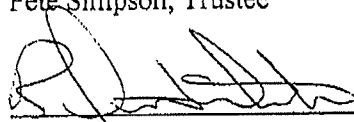
BY:



Lee Ringer, Trustee

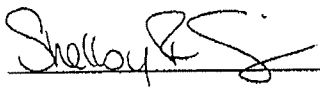


Pete Simpson, Trustee

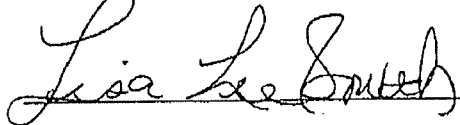


Doggett Whitaker, Trustee

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:



Witness #1



Witness #2

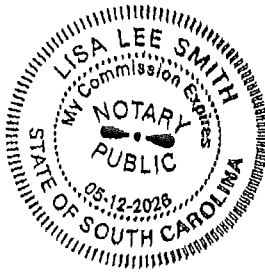
17-534-01

Instrument	Book	Page
201800042023 DR	2028	196

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

ACKNOWLEDGEMENT

I, Lisa Lee Smith, the undersigned Notary Public, do hereby certify that **Lee Ringer, Pete Simpson and Doggett Whitaker as Trustees of Newberry Lions Club a/k/a The Lions Club of Newberry**, personally appeared before me this 21st day of February, 2018, and acknowledged the due execution of the foregoing instrument.



going instrument.

Lisa Lee Smith
Notary Public for South Carolina
My Commission expires 5-17-26

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)

AFFIDAVIT

Instrument Book Page
 201800042023 OR 2028 197

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at on Lions Club Road, bearing Newberry County Tax Map Number 652-3-21, was transferred by Lee Ringer, Pete Simpson and Doggett Whitaker as Trustee of Newberry Lions Club a/k/a The Lions Club of Newberry to C. Ray Amick on February 21, 2018.

3. Check one of the following: The deed is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) _____ exempt from deed recording fee because (See information section of affidavit): _____
 (If exempt, please skip items 4 – 6 and go to Item 7 of this Affidavit)

If exempt under exemption #14 as described in the Information section of this Affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$300,000.00
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for the property tax purposes which is _____
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$300,000.00
- (b) Place the amount listed in item 5 above here: 0
 (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$300,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1,110.00 stamps + \$10.00 recording fee
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Closing Attorney for the Purchaser/Grantee

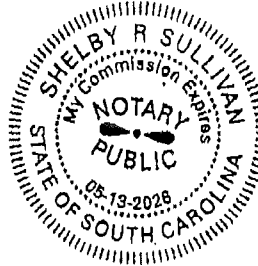
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one thousand dollars or imprisoned not more than one year, or both.

Lisa Lee Smith
Responsible Person Connected with the Transaction

Lisa Lee Smith, Closing Attorney
Print or Type Name Here

SWORN to before me this 21st
day of February, 2018

Shelby R. Sullivan
Notary Public for South Carolina
My Commission Expires: 05-13-2026



EXEMPTIONS

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

**DEFENDANT C. RAY AMICK'S MOTION TO
BIFURCATE TRIAL ON THE SPECIFIC
PERFORMANCE CLAIM AND MOTION TO
REFER THE SPECIFIC PERFORMANCE
CLAIM TO A SPECIAL REFEREE**

TO: THOMAS H. POPE, III; KYLE B. PARKER; AND MICHAEL A. SCARDATO, ATTORNEYS FOR PLAINTIFFS; AND SAM PRICE, ATTORNEY FOR THE NEWBERRY LIONS CLUB:

YOU WILL PLEASE TAKE NOTICE that Defendant C. Ray Amick ("Defendant Amick") hereby moves this Court pursuant to Rule 42 of the South Carolina Rules of Civil Procedure for an order bifurcating the trials in this case and first holding a bench trial on the specific performance claim. In addition, Defendant Amick moves pursuant to Rule 53 of the South Carolina Rules of Civil Procedure for an order referring the specific performance claim to a special referee.

I. INTRODUCTION

On July 26, 2019, Plaintiffs Joseph and Lisa Rice ("Plaintiffs") filed their third amended complaint adding tort and easement claims¹ to their initial claims for declaratory judgment/injunction, specific performance, and promissory estoppel based on an alleged contract

¹ Plaintiffs added claims for Intentional Interference with Contractual Rights against Defendant Amick and Breach of Contract Accompanied by a Fraudulent Act against the Lion Club as well as an alternative claim for Declaratory Judgment/Easement/Injunction against Defendant Amick. Others have raised the same easement claim against Defendant Amick in a separate action—2019-CP-36-00245.

with Defendant Newberry Lions Club (“Lions Club”). The key question in this case is whether a letter from the Lions Club² and a response from Plaintiffs³ created a valid contract. No matter how the Court answers the contract question, some of Plaintiffs’ claims will be resolved. Accordingly, the contract question is a distinct and primary issue and should be tried first in a separate bench trial.

II. LEGAL STANDARD

“Trial judges have discretion as to whether to bifurcate a trial.” *Durham v. Vinson*, 360 S.C. 639, 645, 602 S.E.2d 760, 763, n. 2 (2004).

“In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case.” Rule 53(b), SCRCP; *see also Jefferies v. Harvey*, 206 S.C. 245, 250, 33 S.E.2d 513, 515 (1945) (reference not mandatory, but is within discretion of the court).

III. ANALYSIS

A. The Court should bifurcate the trials in this case and first hold a bench trial on the specific performance claim.

Resolving the contract question will effectively resolve this case. Rather than putting judicial time and resources—as well as the time and resources of the parties, witnesses, and jurors—into preparation for a lengthier trial, this Court should hold a short (likely part of one day) bench trial to decide the existence of the contract before trying any remaining claims.

Rule 42 provides “[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, **may order a separate trial of any claim**, cross-claim, counterclaim, or third-party claim, **or of any separate issue** or of any

² Attached as **Exhibit A**.

³ Attached as **Exhibit B**.

number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.” SCRCF, 42(b) (emphasis added). Whether bifurcation is appropriate depends on whether the issue is so distinct—i.e., whether the evidence overlaps—that a separate trial would not be an injustice. *See Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998).

The contract question in this case is a distinct issue, and the evidence offered on the contract question would not overlap with the remaining issues in the case. In fact, evidence on whether the two letters formed a contract will be limited because this alleged contract to sell land is subject to the statute of frauds and the subjective intent of the parties is irrelevant. *See* S.C. Code Ann. § 32-3-10(4) (“No action shall be brought whereby: . . . (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them”); *Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975) (essential terms of the contract must be in a writing without resort to parol testimony). *See generally* 1 WILLISTON ON CONTRACTS “Need for Objective Manifestation of Assent” § 4:1 (4th ed. 2019) (“[I]n the formation of contracts . . . it was long ago settled that secret, subjective intent is immaterial, so that mutual assent is to be judged only by overt acts and words rather than by the hidden, subjective or secret intention of the parties.”).

In contrast, the evidence necessary to prove the remaining tort and easement claims will likely involve extensive and detailed testimony from many people. For example, the alleged contract interference by Defendant Amick and fraudulent act by the Lions Club will require long and detailed testimony about the nearly year-long process to sell the disputed property—testimony unnecessary and irrelevant to whether Plaintiffs and the Lions Club formed a contract

with the two letters. Likewise, the evidence to prove the alleged easement will involve testimony from multiple persons—14 separate affidavits were submitted in support of a request for an injunction in 2019-CP-36-00245—as to how the property was used over the past 60+ years.

Practically, bifurcating this case into a bench trial on the specific performance claim and a separate trial on everything else most effectively resolves two pending cases requiring two trials. If the Court found there was a contract, the tort claims could proceed while the easement claims—in both cases—would fail as a matter of law against Defendant Amick. Conversely, if the Court found there was no contract, then the tort claims would fail as a matter of law, and the easement claims—which assert the same easement in two separate suits—would likely be consolidated for one trial.⁴ Accordingly, the best way to resolve these two pending cases is to first try and decide the specific performance claim and then try whatever is left.

Finally, trying the specific performance cause of action first will expedite the case; avoid inconvenience for the Court, the parties, and the jurors; and clarify the issues tried by a jury. Whether the contract exists is a question for the Court sitting as factfinder.⁵ *Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 406, 656 S.E.2d 775, 779 (Ct. App. 2008) (“An action for specific performance lies in equity.”). Moreover, Defendant Amick has demanded a jury trial on the newly asserted tort claims against him—claims which fail as a matter of law without a contract between the Lions Club and Plaintiffs. Bifurcation avoids pulling a jury unnecessarily when this Court would effectively decide the tort claims if it finds the Lions Club

⁴ Plaintiffs and the plaintiffs in case 2019-CP-36-00245 assert exactly the same easement claim, based on the same facts, and governed by the same law. It is hard to see why the two cases would not be consolidated for trial. In fact, Defendant Amick does not expect Plaintiffs to—or see why they would—object to a consolidated trial on the easement question considering the risk of inconsistent verdicts on the same issue.

⁵ In fact, Plaintiffs have not demanded a jury trial on any of the claims they asserted. Defendant Amick seeks a jury trial on only those matters triable before a jury.

and Plaintiffs did not form a contract. Furthermore, all parties are ready to move forward on the specific performance claim while more discovery will likely be necessary on the newly asserted claims, including the easement issue.

B. The Court should refer Plaintiffs' specific performance claim to a special referee.

Rule 53(b) provides in part:

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. *In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case.* Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

Judge Griffith has essentially recused himself from hearing additional matters in this case. See **Exhibit C**. A review of the upcoming terms of court show that this leaves only Judge Hocker available to hear this case. For convenience of the parties and the Court in scheduling this matter for a trial on the specific performance claim and to expedite resolution of the key issue in this case, the Court should exercise its discretion and refer Plaintiffs' specific performance claim to a special referee or to a Master of a nearby county willing to hear the specific performance claim.

IV. CONCLUSION

Despite the newly amended complaint, this case continues to turn on one issue: whether the Lions Club and Plaintiffs formed a contract by exchanging two letters. Resolving this question will largely resolve this case. Accordingly, this Court should bifurcate the issues in this

case and try and decide the specific performance claim before proceeding to any remaining matters.

In addition, the Court should refer Plaintiffs' specific performance claim to a special referee.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos S.C. Bar #: 11318

Harry A. Dixon S.C. Bar #: 103509

1812 Lincoln Street, Suite #200

P. O. Box 1390

Columbia, SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

Email: jimkoutrakos@callisontighe.com

Email: harrydixon@callisontighe.com

Thornwell F. Sowell, III

Bess J. DuRant

Sowell & DuRant, LLC

1325 Park Street, Suite 100

Columbia, SC 29201

Email: bdurant@sowelldurant.com

Email: bsowell@sowelldurant.com

ATTORNEYS FOR DEFENDANT

C. RAY AMICK

August 29, 2019
Columbia, South Carolina

EXHIBIT A



NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

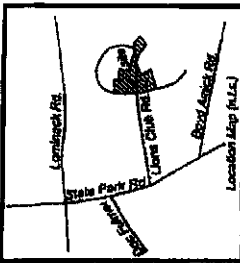
A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

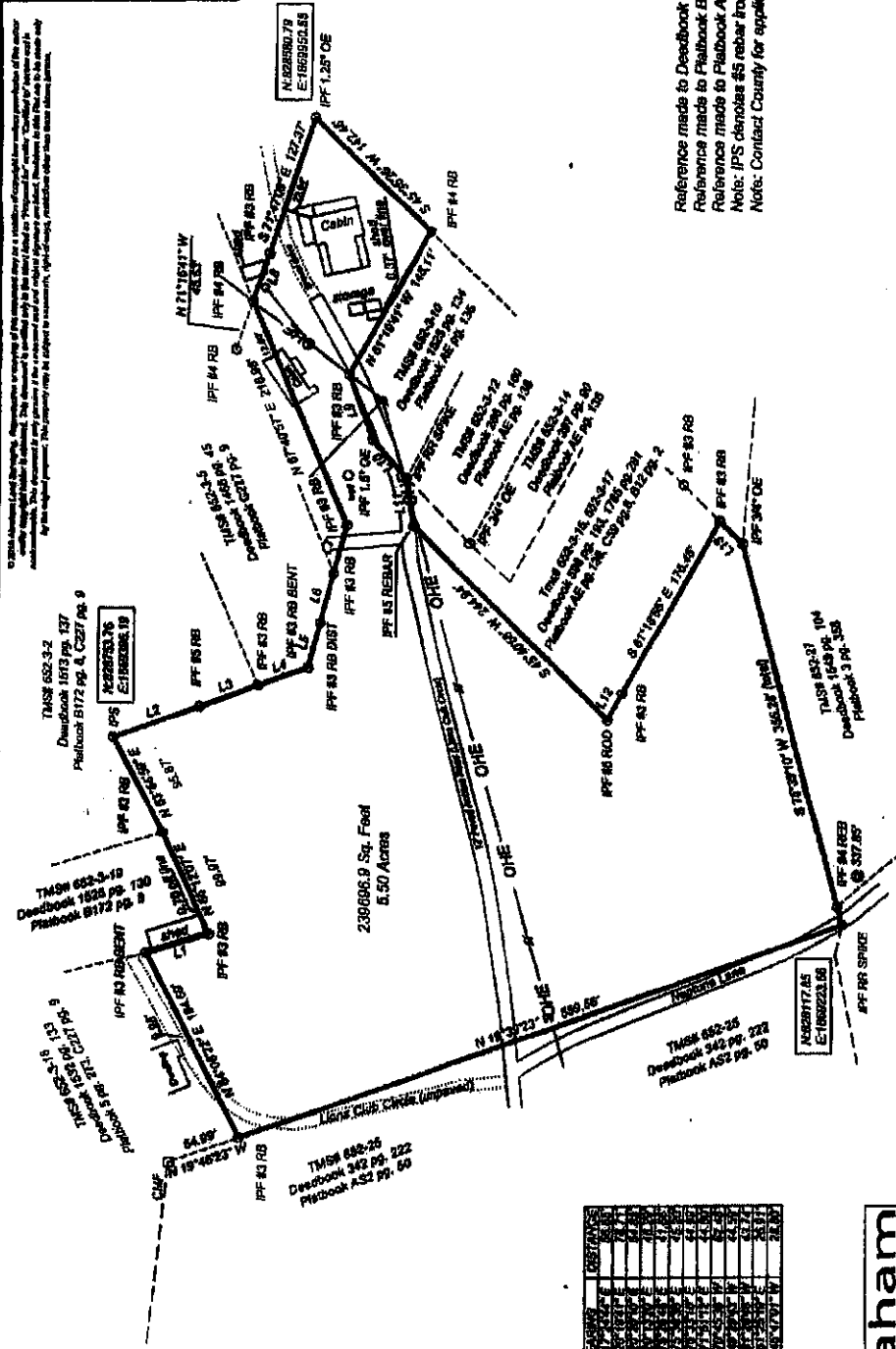
This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete
Pete Simpson,
Secretary, Newberry Lions Club



ABRAHAM LAND SURVEYING, LLC is a professional corporation. The survey shown here was made by a duly licensed and qualified surveyor. The surveyor is not responsible for the accuracy of the information shown here. The surveyor is not responsible for the accuracy of the information shown here. The surveyor is not responsible for the accuracy of the information shown here.



Reference made to Deedbook 610 pg. 87.
Reference made to Deedbook 612 pg. 2.
Reference made to Deedbook 612 pg. 109.
Note: IPS denotes 45 rebar iron pin set.
Note: Contact County for applicable regulations.

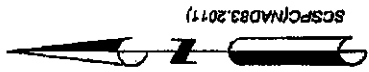
Boundary Survey & Plat Prepared for: Newberry Lions Club Property located on Lions club Rd., Approx. 9 miles southeast of Prosperity, Newberry County, S.C.

I hereby state that to the best of my knowledge, information, and belief, the survey shown here was made by a duly licensed and qualified surveyor. The surveyor is not responsible for the accuracy of the information shown here. The surveyor is not responsible for the accuracy of the information shown here.



Thomas D. Abraham, S.C.L.S. 027728

08/15



LINE	BEARING	DISTANCE	AREA
1	N 17° 15' 11" W	45.37	0.00
2	S 72° 30' 00" E	122.27	0.00
3	N 17° 15' 11" W	45.37	0.00
4	S 72° 30' 00" E	122.27	0.00
5	N 17° 15' 11" W	45.37	0.00
6	S 72° 30' 00" E	122.27	0.00
7	N 17° 15' 11" W	45.37	0.00
8	S 72° 30' 00" E	122.27	0.00
9	N 17° 15' 11" W	45.37	0.00
10	S 72° 30' 00" E	122.27	0.00
11	N 17° 15' 11" W	45.37	0.00
12	S 72° 30' 00" E	122.27	0.00
13	N 17° 15' 11" W	45.37	0.00
14	S 72° 30' 00" E	122.27	0.00
15	N 17° 15' 11" W	45.37	0.00
16	S 72° 30' 00" E	122.27	0.00
17	N 17° 15' 11" W	45.37	0.00
18	S 72° 30' 00" E	122.27	0.00
19	N 17° 15' 11" W	45.37	0.00
20	S 72° 30' 00" E	122.27	0.00
21	N 17° 15' 11" W	45.37	0.00
22	S 72° 30' 00" E	122.27	0.00
23	N 17° 15' 11" W	45.37	0.00
24	S 72° 30' 00" E	122.27	0.00
25	N 17° 15' 11" W	45.37	0.00
26	S 72° 30' 00" E	122.27	0.00
27	N 17° 15' 11" W	45.37	0.00
28	S 72° 30' 00" E	122.27	0.00
29	N 17° 15' 11" W	45.37	0.00
30	S 72° 30' 00" E	122.27	0.00

Abraham Land Surveying
13223 Kendall Rd., Newberry, S.C.
WWW.ABRAMSURVEYS.COM 803.276.8719
Date: June 30, 2013



EXHIBIT B

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

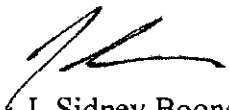
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail jrice@motleyrice.com)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net



EXHIBIT C

Jim Koutrakos

From: Griffith, Eugene Law Clerk (Whitney Yongue) <egriffithlc@sccourts.org>
Sent: Monday, July 29, 2019 12:55 PM
To: Tom Pope; Jim Koutrakos; sam price; Biff Sowell; Kyle Parker; Betsy Alexander; Griffith, Eugene
Cc: Janeen Toby
Subject: Lisa Summer Rice, et al v. Newberry Lions Club, et al (2018-CP-36-00089)

Everyone:

I have considered your respective motions for summary judgment. I find that a question of fact exists (or several questions of fact exist actually). I am therefore denying the cross motions for SJ. I will also continue the cases past next week's civil term in Newberry.

Additionally, I think it may be prudent for this case to be heard by another judge who does not live in the neighborhood. I suggest that we agree on which upcoming term of court would be most agreeable with everyone's schedule and then work out a switch of presiding judges if the term is assigned to me.

Please advise if this plan is suitable.

Sincerely,

Eugene C. Griffith, Jr.
Resident Circuit Judge
Eighth Judicial Circuit
PO Drawer 10
1226 College Street
Newberry SC 29108
(803)321-1430

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

**DEFENDANT C. RAY AMICK'S**  
**NOTICE OF MOTION AND**  
**MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT**

**TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,**  
**ATTORNEYS FOR PLAINTIFFS:**

**YOU WILL PLEASE TAKE NOTICE** that Defendant C. Ray Amick ("Mr. Amick") hereby moves pursuant to Rule 56, SCRCF, for an order granting Mr. Amick partial summary judgment<sup>1</sup> in his favor on whether a contract was formed between the Newberry Lions Club

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<sup>1</sup> This is Mr. Amick's second motion for summary judgment on whether the Lions Club and the Rices formed a contract. Although a second motion for summary judgment is not the usual practice, it is appropriate in this case for two reasons: 1) the Rices and this Court agreed both sides could re-file motions for summary judgment during the May 22, 2020, and July 24, 2020, status conferences; and 2) a summary judgment motion is not binding on the Court and parties may re-file a summary judgment motion. *See Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) ("The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion."); *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993) (holding "trial court interlocutory orders are amendable" where the trial court denied a motion for summary judgment, allowed leave to re-file after a motion to amend, and ultimately granted the re-filed motion for summary judgment); *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988) ("A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree."). Accordingly, even if Mr. Amick's re-filed motion for summary judgment had not been consented to by the Rices, Mr. Amick (or the Rices, for that matter) could still properly re-file the motion as a motion to reconsider the Court's earlier denial.

(“Lions Club”) and Plaintiffs Lisa Summer Rice and Joseph F. Rice (“Rices”), as there are no genuine issues of material fact and Mr. Amick is entitled to judgment in his favor as a matter of law. This motion is supported by the pleadings; deposition testimony; the evidence in the record; such other matters as may be properly presented to the Court at the time of the hearing; and the arguments included herein.

### **I. INTRODUCTION**

Mr. Amick entered into a contract with the Lions Club to buy the Lions Club’s Lake Murray property (“Property”) on February 14, 2018. Mr. Amick and the Lions Club finalized the sale at a closing on February 21, 2018, and a deed reflecting the conveyance was properly recorded in Newberry County on the following day.

The Rices contest this sale and assert they have a contract with the Lions Club—predating the contract with Mr. Amick—to purchase the property. The Rices claim their letter to the Lions Club (who allegedly offered to sell the Property) accepted an offer and created a contract.

However, the Rices’ alleged contract fails as a matter of law because the Lions Club letter was not an offer and the Rices’ response was not an acceptance. Accordingly, this Court should grant summary judgment in favor of Mr. Amick on all claims arising from the alleged contract between the Lions Club and the Rices because no contract was created between them.

### **II. FACTS**

In early 2017, the Lions Club sent letters to adjoining land owners and Lions Club members explaining that the Lions Club would be selling the Property (“the Lions Club Letter”).<sup>2</sup> In pertinent part, the letter provided:

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in

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<sup>2</sup> The Lions Club Letter to the Rices, with the plat, is attached as **Exhibit A**.

recent years. We no longer are able to use the club as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. ***We have also decided to make the property available to those individuals whose property adjoins the Lions Club property.***

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. ***First consideration will be given to current members of the Newberry Lions Club.***

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Ex. A (emphasis added).

Both the Rices and Mr. Amick received the Lions Club Letter.<sup>3</sup>

On February 14, 2017, the Rices responded to the Lions Club Letter with a letter from their attorney (“the Rices’ Response”),<sup>4</sup> which stated, in pertinent part:

Pursuant to your recent letter to [the Rices], they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

See Ex. B.

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<sup>3</sup> Mr. Amick is both an adjoining landowner and a Lions Club member while the Rices are only adjoining landowners.

<sup>4</sup> The Rices’ Response to the Lions Club is attached as **Exhibit B**.

On February 28, 2017, Mr. Amick sent the Lions Club a \$1,000 earnest money check and an unexecuted contract of sale offering \$300,000.00 for the property.<sup>5</sup>

On March 28, 2017, the Lions Club held a board meeting and voted to accept “Amick’s offer of \$300,000.00 provided that closing would take place by June 1st.”<sup>6</sup>

On May 15, 2017, the Rices’ attorney sent a letter to the Lions Club stating they were the successful bidders and requested that they be conveyed the property pursuant to their “bid.”<sup>7</sup>

On May 23, 2017, the Lions Club held another board meeting and decided to “send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property.”<sup>8</sup>

On June 5, 2017, the attorney for the Lions Club sent identical letters<sup>9</sup> to Mr. Amick and the Rices, which stated in full:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

The encroachment issues were eventually resolved.<sup>10</sup>

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<sup>5</sup> An excerpt from Mr. Amick’s deposition, the unexecuted contract, and a redacted copy of Mr. Amick’s check are attached collectively as **Exhibit C**.

<sup>6</sup> The March 28, 2017 Lions Club Board Meeting Minutes are attached as **Exhibit D**.

<sup>7</sup> This letter is attached as **Exhibit E**.

<sup>8</sup> The May 23, 2017 Lions Club Board Meeting Minutes are attached as **Exhibit F**.

<sup>9</sup> Copies of these letters are attached as **Exhibit G**.

<sup>10</sup> The Lions Club sold the portion of the property with the encroachment to the encroaching landowner, which resolved the issue. The portion sold represents the difference between the 5.5 acres in the Lions Club letter and the 5.35 acres eventually conveyed to Mr. Amick.



On November 21, 2017, the Rices' attorney sent another letter to the Lions Club indicating The Rices "are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property."<sup>11</sup>

On January 23, 2018, the Lions Club voted to sell the property to Mr. Amick.<sup>12</sup> On February 14, 2018, the Lions Club entered into a formal, written contract with Mr. Amick, wherein Mr. Amick agreed to purchase the subject property for \$300,000.00.<sup>13</sup> A closing took place on February 21, 2018, and the deed transferring the subject property to Mr. Amick was recorded on February 22, 2018.<sup>14</sup>

The day before Mr. Amick's deed was recorded, the Rices filed a lis pendens against the property. Subsequently, the Rices filed a complaint against the Lions Club seeking specific performance of an allegedly breached contract. The Rices have since added Mr. Amick as a defendant, and their current Fourth Amended Complaint asserts, among other things, claims for a declaratory judgment/injunction, specific performance, and intentional interference against Mr. Amick, all based on the Rices' alleged contract with the Lions Club.

### **III. LEGAL STANDARD**

Summary judgement is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn

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<sup>11</sup> A copy of this letter is attached as **Exhibit H**.

<sup>12</sup> The January 23, 2018 Lions Club Board Meeting Minutes are attached as **Exhibit I**.

<sup>13</sup> The contract with Mr. Amick is attached as **Exhibit J**.

<sup>14</sup> The deed to Mr. Amick is attached as **Exhibit K**.

therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 504 S.E.2d 117 (1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose as a matter of law.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment “mirrors” standard for directed verdict).

Whether a declaratory judgment action sounds in law or equity depends on the underlying claim, and here the Rices assert a claim for specific performance, which is a matter in equity. *See, e.g., Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 406, 656 S.E.2d 775, 779 (Ct. App. 2008) (declaratory judgment action seeking specific performance for asserted breach of contract sounded in equity). Normally, whether a contract exists is a question of fact. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). However, “[w]here, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract vel non is a question of law.” *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) (*quoting Valjar, Inc. v. Maritime Terminals, Inc.*, 220 Va. 1015, 1018, 265 S.E.2d 734, 736 (1980)).

#### **IV. ANALYSIS**

The letters between the Rices and the Lions Club did not create a contract because the Lions Club Letter was not an offer and the Rices’ Response was not an acceptance. *See Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003) (“The necessary elements of a contract are an offer, acceptance, and valuable consideration.”). Without an offer and

acceptance, the Lions Club and the Rices never agreed to the terms of a deal. *See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (contracts require “a meeting of the minds between the parties with regard to all essential and material terms of the agreement”). Accordingly, this Court should grant partial summary judgment on the question of whether a contract existed between the Lions Club and the Rices in favor of Mr. Amick.<sup>15</sup>

**A. The Lions Club Letter Was Not an Offer Because It Was Not Capable of Acceptance and Could Not Conclude a Bargain.**

The Lions Club Letter opened negotiations for the property and was not an offer. *See McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2, 5 (1932) (“An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance, and if it is an offer merely to open negotiations which may ultimately result in a contract it is not binding.”). Moreover, the Lions Club Letter did not indicate an offer could be accepted or that assent to certain terms would conclude a deal. *See, e.g., Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”).

In *McLaurin*, the defendant sent a letter to his brother stating that he would buy out several other investors and that he thought he could obtain financing to do so. *See McLaurin*, 165 S.C. 411, 164 S.E. at 4. The defendant’s letter further directed the brother to “see boys at once and see

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<sup>15</sup> The Court should only consider the Lions Club Letter and the Rices’ Response in deciding whether the parties formed a contract because South Carolina’s statute of frauds requires that the contract be in writing. *See, e.g., Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975). However, even if the Court were to consider evidence outside of the two letters, the outcome would still be the same—no contract.

what they would like to do” and stated “[i]f all decide to do this have each write me at once and you wire me ‘all accept’ . . . .” *Id.* Despite addressing an alleged offer that contained instructions for accepting, *McLaurin* held that this letter was not “such an offer as could, by acceptance, be changed, converted or construed into a binding agreement of sale.” *Id.* at 165 S.C. 411, 164 S.E. at 5. The court then cited authority explaining that some offers are offers to open preliminary negotiations rather than to form a contract and upheld the trial court’s directed verdict in favor of the defendant. *See id.*

Like the *McLaurin* letter, the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. First, it sought expressions of interest from the letter’s recipients by stating “[i]f you have an interest in the property please let us know right away.” Moreover, the Lions Club Letter did not invite acceptance but offers by stating “[f]irst consideration will be given to current members of the Newberry Lions Club.” By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept.

Moreover, the phrases “decided to offer the property for sale” and “[t]his offer is valid until” did not turn the letter into an offer capable of being accepted. The *McLaurin* letter contained directions for communicating an acceptance, but the court held that an acceptance could not conclude the bargain. Like *McLaurin*, more remained to conclude a deal with the Lions Club, regardless of the term “offer.” In fact, the Rices realized as much: the Rices’ Response described itself as a “bid” rather than an “acceptance” and only contemplated acceptance by the Lions Club. *See Ex. B* (“We would need 30 days from notice that the **bid was accepted** . . .”) (emphasis added).

Accordingly, the Lions Club Letter used “offer” only to communicate an offer to open negotiations, and no reasonable fact finder could find otherwise.

**B. The Rices’ Response Was Not an Acceptance Because It Described Itself as a “Bid” Rather Than an Acceptance and Added Additional Terms.**

Even if the Court were to conclude a question of fact existed on whether the Lions Club Letter was an offer, the Rices never accepted. The Rices’ Response described itself as a bid and violated South Carolina’s “mirror-image” rule by requiring additional terms.

“Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.” *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). Further, “[t]he acceptance must be unequivocal and unconditional” and additional conditions operate as a rejection and counteroffer. *See Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124, 128 (1963) (“If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, there is a rejection of the offer, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the modification suggested.”); *see also Columbia Hyundai, Inc. v. Carll Hyundai, Inc.*, 326 S.C. 78, 80, 484 S.E.2d 468, 469 (1997).

In *Sossamon*, the South Carolina Supreme Court held that a purported acceptance letter opening with “[y]our offer of sale . . . is hereby accepted” but including different terms for the time and manner of payment “imposed new or other conditions not contemplated in the offer” and that the purported acceptance was in fact a rejection and counteroffer. *Sossamon*, 241 S.C. at 487, 129 S.E.2d at 128. Similarly, in *Columbia Hyundai*, the court held there was no contract under the mirror image rule where the party attempting to accept added only the words “current year” between the words “saleable” and “new” in the phrase “[a]ll of Seller’s right title and interest in

and to all saleable new Hyundai vehicles.” *Columbia Hyundai, Inc.*, 326 S.C. at 80, 484 S.E.2d at 469 (upholding a jury verdict finding there was no contract).

To begin with, the Rices’ Response by its own terms did not attempt to accept an offer—the only “acceptance” discussed was if the Lions Club accepted the Rices’ bid. *See, e.g., Electro-Lab of Aiken*, 357 S.C. at 369, 593 S.E.2d at 173 (an acceptance requires a manifestation of assent). Specifically, the letter stated: 1) The Rices authorized their attorney to “make a bid of \$325,000.00”; 2) The Rices understood the “bids” would be opened at an upcoming meeting; and 3) The Rices “would need 30 days from notice that **the bid was accepted**” to close the sale. *See* Ex. B (emphasis added).

The Rices’ use of the term “bid” three times and their request that the Lions Club inform the Rices if it accepted the bid is dispositive. A “bid” is “[a] buyer’s **offer** to pay a specified price for something that may or may not be for sale.” BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added); *see also Ramsay v. Vogel*, 970 F.2d 471, 463 (8<sup>th</sup> Cir. 1992) (“the words ‘bid’ and ‘bidder’ commonly are used to refer to the making of an offer to buy or sell property or to provide services in a private sale or transaction.”).

Accordingly, these statements show the Rices did not attempt to accept an offer but made an offer—a bid—that they understood would have to be accepted by the Lions Club.

Furthermore, even if the Rices had titled their Response “**WE ACCEPT**,” the letter would still not be an acceptance under South Carolina’s mirror image rule because it contained three conditions not present in the Lions Club Letter:

1. **A good title condition:** “subject only to the property having good and marketable title”;
2. **The 30 Days to Close Condition:** The Rices “need 30 days from notice that the bid was accepted in which to conduct the title search and close” with payment “due and payable at closing”; and

3. **A different price term:** The Lions Club asked for \$300,000.00 while the Rices offered \$325,000.00.

First, the Lions Club Letter did not explain what title the Lions Club would convey and stated that encroachments would have to be dealt with after the property was sold. While the Rices' Response accepted the encroachment issue, the "good and marketable" title condition added terms not in the Lions Club Letter.

Additionally, the Lions Club Letter was silent as to terms of payment and delivering possession of the property. Where the contract is silent on these terms, South Carolina law assumes payment in full upon tender of the property. *See Sossamon*, 241 S.C. at 485, 129 S.E.2d at 127 ("when the plaintiff proposed in his alleged acceptance conditions other than cash upon delivery of the property . . . he imposed new or other conditions not contemplated in the offer."). By requiring 30 days to search title with payment at closing, the Rices conditioned their acceptance of the alleged Lions Club offer and therefore rejected it.

Finally, the Lions Club and the Rices differed on the price term. While the Rices offered a price higher than what the Lions Club sought, the Lions Club Letter indicated the club was selling the property for less than the appraisal and that first consideration would go to Lions Club members. Obtaining the highest price was not the Lions Club's sole or primary goal by the terms of the letter, and the Rices offered a different price term.<sup>16</sup>

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<sup>16</sup> The Rices have also put forward an "auction" theory and assert that Mr. Amick withdrew his offer; the Rices' offer and one other offer were the only operative offers on June 1, 2017; and therefore, the Rices' offer must have been accepted because it was higher than the other offer. The "auction" theory does not have any legal basis and the Lions Club Letter certainly did not impose a hard deadline to *sell* by June 1 as part of an auction process. *See, e.g., Barr*, 263 S.C. at 430, 211 S.E.2d at 234 (a writing must show the contract's essential terms without needing parol evidence); *see also* Ex. A ("This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public."). Accordingly, this theory is a red herring. The facts show the Lions Club letter was not an offer, and even if it was an offer, the Rices never accepted, but instead made an offer expressly leaving it to the Lions Club to decide whether to accept the Rices' offer.

Like *Sossamon* and *Columbia Hyundai*, the Rices' Response added terms in the alleged acceptance and could not have accepted any offer in the Lions Club Letter as a matter of law because of South Carolina's mirror image rule.

### **V. CONCLUSION**

The Lions Club never made an offer capable of acceptance to the Rices. Rather, the Lions Club sent a letter to open negotiations. The Rices offered, and the Lions Club rejected it. While the Rices assert the Lions Club Letter was an offer, this position fails as a matter of law because the letter was not capable of being accepted and would not conclude a bargain. Moreover, even if the Lions Club Letter were an offer, the Rices did not accept it because their Response did not indicate the Rices accepted and included additional terms not in the Lions Club Letter. For these reasons, summary judgment should be entered in favor of Mr. Amick on all claims based on a contract between the Lions Club and the Rices.

Respectfully submitted,

### **CALLISON TIGHE & ROBINSON, LLC**

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318

Harry A. Dixon, SC Bar No. 103509

1812 Lincoln Street, Suite #200

P. O. Box 1390

Columbia, SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

Email: [jimkoutrakos@callisontighe.com](mailto:jimkoutrakos@callisontighe.com)

Email: [harrydixon@callisontighe.com](mailto:harrydixon@callisontighe.com)

Thornwell F. Sowell, III, SC Bar No. 5197

Bess J. DuRant, SC Bar No. 77920

Sowell & DuRant, LLC

1325 Park Street, Suite #100

Columbia, SC 29201

Telephone: 803-722-1100



Email: [bdurant@sowelldurant.com](mailto:bdurant@sowelldurant.com)  
Email: [bsowell@sowelldurant.com](mailto:bsowell@sowelldurant.com)

**ATTORNEYS FOR DEFENDANT  
C. RAY AMICK**

August 13, 2020

# EXHIBIT A



## NEWBERRY LIONS CLUB

1724 Main Street  
Newberry, SC 29108  
803-381-1952

*Joe Rice*  
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

*Pete*

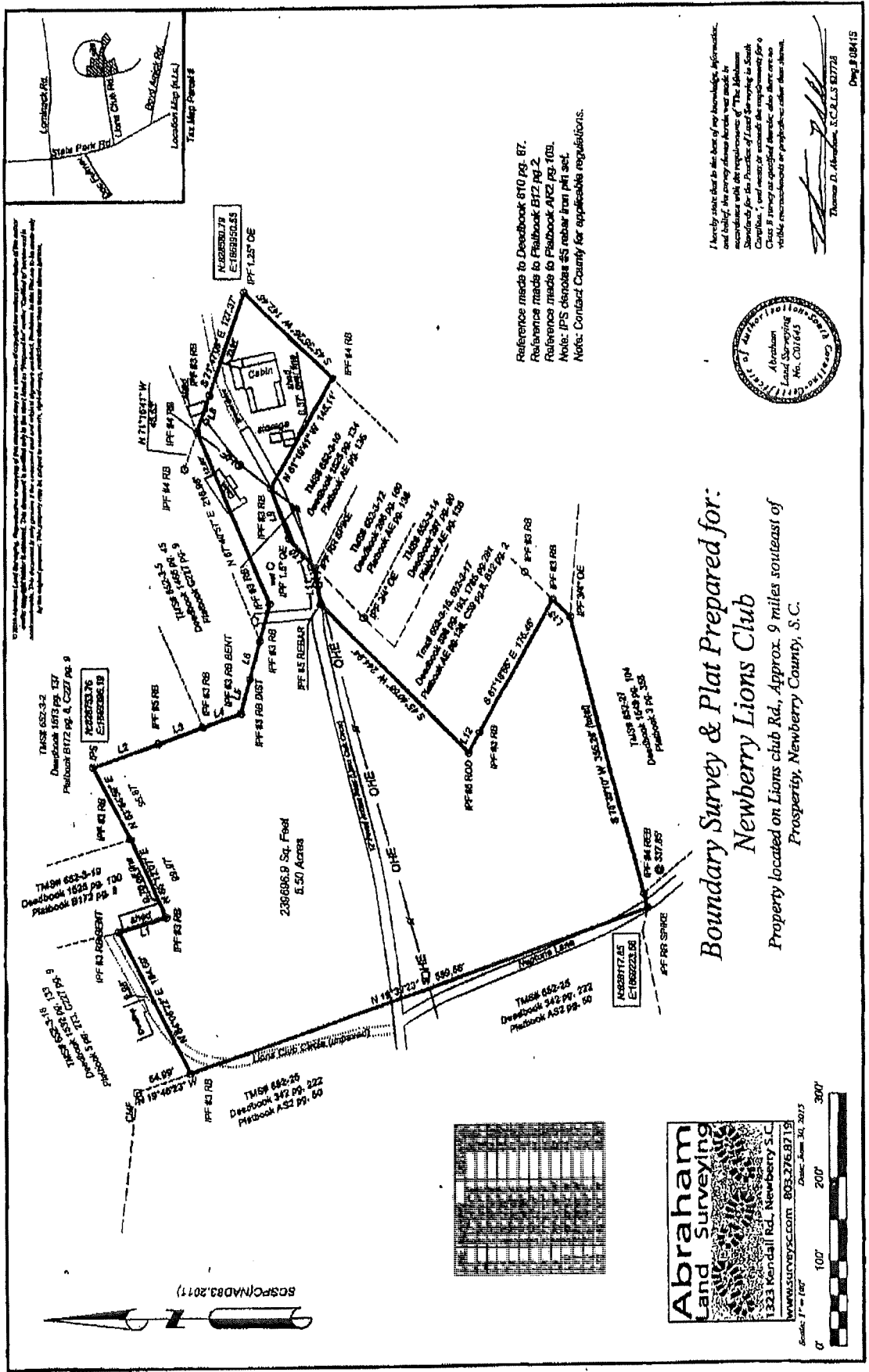
Pete Simpson,  
Secretary, Newberry Lions Club

ELECTRONICALLY FILED - 2020 Aug 13 4:29 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089  
ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

EXHIBIT

Rice000001

0220



# EXHIBIT B

MCNAIR  
ATTORNEY

February 14, 2017

J. Sidney Boone,

sboone@mcnair  
T 843.723.7  
F 843.722.3

Pete Simpson, President  
Newberry Lions Club  
1724 Main Street  
Newberry, SC 29108

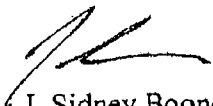
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail [jrice@motleyrice.com](mailto:jrice@motleyrice.com))

McNAIR LAW FIRM, P.A.  
100 Calhoun Street, Suite 400  
Charleston, SC 29401

Mailing Address  
Post Office Box 1431  
Charleston, SC 29402

[mcnair.net](http://mcnair.net)

EXHIBIT

2

1393043v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH | PAWLEYS ISLAND

Rice000003

0223

ELECTRONICALLY FILED - 2020 Aug 13 4:29 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089  
200889

# EXHIBIT C

STATE OF SOUTH CAROLINA                      IN THE COURT OF COMMON PLEAS  
COUNTY OF NEWBERRY

LISA SUMMER RICE and JOSEPH F. RICE,

Plaintiffs,

vs.

CASE NO. 2018-CP-36-00089

NEWBERRY LIONS CLUB and C. RAY AMICK,

Defendants.

---

DEPOSITION OF:                      RAY AMICK

DATE:                                      November 30, 2018

TIME:                                      11:11 A.M.

LOCATION:                                  POPE PARKER JENKINS, PA  
1508 College Street  
Newberry, South Carolina 29108

TAKEN BY:                                  Counsel for the Plaintiffs

REPORTED BY:                              Jennifer Duy, Registered  
Professional Reporter, RPR

---

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC  
(828) 785-5699





1 APPEARANCES OF COUNSEL:

2  
3 ATTORNEY FOR THE PLAINTIFFS  
4 LISA SUMMER RICE and JOSEPH F. RICE:

5 POPE PARKER JENKINS, PA  
6 Thomas H. Pope, III  
7 1508 College Street  
8 Newberry, South Carolina 29108  
9 (803) 276-2532  
10 tom@ppjlaw.com

11  
12 ATTORNEY FOR THE DEFENDANT  
13 C. RAY AMICK:

14 CALLISON TIGHE & ROBINSON  
15 BY: DEMETRI "JIM" K. KOUTRAKOS  
16 1812 Lincoln Street, Suite 200  
17 Palmetto Armory Office Building  
18 Columbia, South Carolina 29201  
19 (803) 256-2371  
20 jimkoutrakos@callisontighe.com

21  
22 ATTORNEY FOR THE DEFENDANT  
23 NEWBERRY LIONS CLUB:

24 LAW OFFICE OF SAMUEL M. PRICE, JR.  
25 BY: SAMUEL M. PRICE, JR.  
1413 Main Street  
Newberry, South Carolina 29108  
(803) 276-0796  
rshealy517@hotmail.com

26 ALSO PRESENT:

27 Lisa Summer Rice

28 Gene Crocker

29 (INDEX AT REAR OF TRANSCRIPT)

1 property?

2 A Right.

3 (PLF. EXH. 4, Check from Ray Amick, was  
4 marked for identification.)

5 BY MR. POPE:

6 Q This is Exhibit 4 to this deposition. It  
7 shows a check on February 28, 2017 to the Lions Club  
8 as earnest money. And it shows a copy of a contract  
9 of sale.

10 We have never been furnished with any  
11 contract of sale that you signed. Did you sign any  
12 contract of sale?

13 A This was in '17. And I worked part time  
14 for an engineering firm in Columbia.

15 Q For who?

16 A It's a group of lawyers downstairs. And I  
17 went down one day on my lunch hour and just asked  
18 him to write a contract, that I was going to make an  
19 offer on a piece of property. And he wrote this.  
20 And I took it and I turned it in, I believe, in  
21 February of '17. I don't know the exact date  
22 offhand. And I took the \$1,000 earnest money check.  
23 I turned it in to Gene when I made my offer. When  
24 it was all said and done, they took this, they took  
25 the \$1,000 check. And I was making an offer on it

1 when they told me that I had the property, they kept  
2 the check. And they kept this. And when I asked  
3 for a fee simple title on the deed, a few days later  
4 they returned all of this together along with the  
5 canceled check.

6 Q After you requested you wanted a clear  
7 title, this was withdrawn?

8 A Right. As I was told, they were taking it  
9 off the mark for everybody.

10 Q Now if you look on the page that is marked  
11 Amick 66, it is about the third page.

12 A Right.

13 Q It says, "Verbal agreement and  
14 handwriting." Is that what that says?

15 A That's what it says. I am not sure who  
16 put that there.

17 Q Is that your handwriting?

18 A No, it is not.

19 Q Well, there is no signed agreement. Do  
20 you think you ever signed this, or do you know?

21 A Did I ever sign this?

22 Q Right.

23 A I gave this to Mr. Crocker. They accepted  
24 it. Kept it until I asked for a fee simple title.  
25 As to why they did or did not sign it, I don't know.

RAY AMICK  
62 LIONS CLUB ROAD  
PROSPERITY, SC 29127

8588  
67-776/532 9336  
1003235454184

February 28, 2017 Date

Pay to the Order of Newberry Lions Club \$ 1000.00

One Thousand and 00/100 Dollars

WELLS FARGO  
Wells Fargo Bank, N.A.  
South Carolina  
wellsfargo.com

For Earnest Money

Ray Amick

01810707 N.A. All rights reserved.

Photo Safe Deposit Box



## CONTRACT OF SALE RESIDENTIAL

Revised December 2016



THE BUYER ☐ SELLER ☐ IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **PARTIES:** This Contract of Sale is entered into on \_\_\_\_\_,  
between Buyer(s) Ray Amick (hereinafter called "Buyer"),  
and Seller(s) Newberry Lions Club (hereinafter called "Seller").

BUYER (Initials: \_\_\_\_\_) Date \_\_\_\_\_ acknowledges receipt of the Disclosure of Brokerage Relationships form, and Client ☐ Customer ☐  
service in this transaction.

SELLER (Initials: \_\_\_\_\_) Date \_\_\_\_\_ acknowledges receipt of the Disclosure of Brokerage Relationships form, and Client ☐ Customer ☐  
service in this transaction.

2. **PROPERTY:** Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot \_\_\_\_\_ Block \_\_\_\_\_ Phase \_\_\_\_\_ Subdivision \_\_\_\_\_  
Address 5.5 Acres on Lions Club Road Unit # \_\_\_\_\_ City Prosperity Zip 29127  
TMS# 652-3-21 County of Newberry, State of South Carolina.

3. **PRICE:** The purchase price is \$ 300,000.00.

4. **EARNEST MONEY:**

A. \$ 1,000.00 Earnest money is paid by: Check ☒ Cash ☐ Other ☐ \_\_\_\_\_

B. \$ \_\_\_\_\_ Additional earnest money (hereinafter referred to as earnest money) to be delivered on or before \_\_\_\_\_.

C. Earnest money to be held in trust by \_\_\_\_\_ (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-136 (E). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs. The court may also award the prevailing parties treble damages (defined as three times the amount of Earnest Money).

BUYER (Initials: \_\_\_\_\_) Date \_\_\_\_\_

SELLER (Initials: \_\_\_\_\_) Date \_\_\_\_\_

**5. TRANSACTION COSTS:** Buyer's Transaction Costs include but are not limited to all closing costs, pre-paid items, insurance (mortgage, lender/owner title, flood, hazard), discount points, all costs to obtain information from or pertaining to any owners association, interest, title fees, FHA/VA allowable costs, fees and expenses of Buyer's attorney, deed recording costs, and the cost of any inspector, appraiser, or surveyor. Seller's Transaction Costs include but are not limited to deed preparation, deed stamps/tax, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens, property taxes pro-rated to the day of closing, real estate brokerage fees, and expenses of Seller's attorney.

Buyer's and Seller's Transaction Costs will be paid at closing as follows: **(Select, initial and date only one of the options below)**

A. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

**OR**

B. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Seller will pay Buyer's Transaction Costs not to exceed \$ \_\_\_\_\_ which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

**6. FINANCING:** Buyer's obligation under this Contract is ☐ is not ☒ contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to and not including the closing date set forth in Paragraph 7, and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_

A. FINANCING TYPE. Financing type will be: Conventional ☐ FHA ☐ VA ☐ USDA ☐ SC Housing FHA ☐

SC Housing Conventional ☐ Seller ☐ Cash (no financing required) ☒ Other ☐ \_\_\_\_\_

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if financing type changes. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, a lender required FHA/VA Addendum will be signed by Buyer and Seller. All parties agree to execute this document as required. Utilizing FHA or VA financing will require Seller to pay upon closing for certain loan-related closing costs termed "non-allowable costs", which for VA financing may also include the termite inspection (CL-100).

B. APPLICATION FOR FINANCING. If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).

3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D). *Verbal agreement*

E. APPRAISAL CONTINGENCY. This Contract is ☐ is not ☒ contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have three business days after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the three business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. SELLER'S MORTGAGE PAYOFF. SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. CONVEYANCE DATE OF CLOSING/POSSESSION: Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Ray C. Amick *C. Ray Amick (CRA)*, or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before \_\_\_\_\_, 20\_\_\_\_\_, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing ☒, 24 hours after closing ☐, 48 hours after closing ☐, or in accordance with attached agreement ☐.

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:  
(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system, and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). Any re-inspections that may be required will also be at Buyer's expense.



B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion or as a result of any inspection, examination or test conducted, determines property to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports, if any, and written notice of termination to Sellers or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

- a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;
- b. Buyer will have two business days after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;
- c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

**10. PROPERTY SOLD "AS-IS": (If Selected, Terms of Paragraph 9 do not apply) (Initial and date only one of the options below if applicable)**

A. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_

**PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD**

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period to conduct at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

**OR**

B. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_

**PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD**

All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.



**11. CONDITION OF PROPERTY:** Except for Property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

**12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)**

A. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

**OR**

B. BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

**13. LEAD-BASED PAINT:** Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

**14. HOME WARRANTY COVERAGE:** Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will ☐ will not ☒ be provided at closing. If applicable, the warranty premium will be paid by Buyer ☐ Seller ☐ in the amount of \$\_\_\_\_\_, provided by \_\_\_\_\_ (home warranty company) and written by the Buyer's Agent ☐ Seller's Agent ☐. If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

**15. PROPERTY DOCUMENTATION: (Buyer to complete information in Paragraphs A-E, and Seller to confirm)**

Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ Buyer acknowledges and Seller represents the following:

- A. This sale is ☐ is not ☒ subject to approval by a Third Party (i.e. bank in the case of a short sale, corporation, or relocation company.)
- B. The Property is: Connected to: public/community sewer system ☐ septic tank ☐ Lett system ☐ Other ☐ \_\_\_\_\_  
Connected to: public/community water system ☐ well system ☐ Other ☐ \_\_\_\_\_
- C. To the best of Seller's knowledge, the Property is ☐ is not ☐ partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.
- D. The Property is ☐ is not ☐ subject to a mandatory association fee (i.e. homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$\_\_\_\_\_ per \_\_\_\_\_ and is payable to \_\_\_\_\_.
- E. The Property is ☐ is not ☐ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$\_\_\_\_\_.

**16. ADDITIONAL CONTINGENCIES:** (Buyer's failure to disclose the existence of Contingency A or B will constitute a default of this Contract and earnest money will be released to Seller. See paragraph 4(D). Initial and date Paragraph C if other contingencies apply.)

- A. SALE AND CLOSING CONTINGENCY ADDENDUM is ☐ is not ☒ attached to and part of this Contract of Sale.
- B. CLOSING CONTINGENCY ADDENDUM is ☐ is not ☒ attached to and part of this Contract of Sale.
- C. OTHER CONTINGENCIES: BUYER (Initials \_\_\_\_\_) Date \_\_\_\_\_ SELLER (Initials \_\_\_\_\_) Date \_\_\_\_\_ This Contract is contingent on:

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**17. FIXTURES AND PERSONAL PROPERTY:** This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, playsets, lawn irrigation system and all related equipment, pool and spa equipment, TV wall mounts and brackets, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system and equipment, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached or hanging bathroom vanity mirrors, light bulbs, switch plates, heating and air system registers, and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

**18. OTHER TERMS:** If conflicting with pre-printed portions of this Contract, the following terms will control:

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**19. ADJUSTMENTS:** Real estate taxes, homeowner association/regime fees, and rents when applicable, will be adjusted as of the date of closing. Unless otherwise agreed to in writing by the Parties in this Contract, tax proration pursuant to this Contract are to be based on the most current tax bill and prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing. All proration are final.

**20. FIRE OR CASUALTY:** In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

- ✓ 21. **DEFAULT:** If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.
- ✓ 22. **MEDIATION:** Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of Realtors. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.
23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.
24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.
25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at \_\_\_\_\_ o'clock \_\_\_\_\_ M. (Eastern Time) on \_\_\_\_\_ unless accepted or countered by Seller in written form prior to such time.
26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.
27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.
28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.
29. **DEFINITIONS:**
- A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.
- B. Successful negotiation of this offer will have been completed when one of the Party's to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.
- C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.
- D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.
30. **SETTLEMENT STATEMENT RELEASE:** Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of a Settlement Statement for the transaction.
31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

**32. NON-RELIANCE CLAUSE:** Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as Real Estate Agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. **This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.**

**33. DISCLAIMER:** Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

|                             |        |                                         |               |
|-----------------------------|--------|-----------------------------------------|---------------|
| _____<br>Buyer's Signature  | (L.S.) | _____<br>Buyer's Printed or Typed Name  | _____<br>Date |
| _____<br>Buyer's Signature  | (L.S.) | _____<br>Buyer's Printed or Typed Name  | _____<br>Date |
| _____<br>Seller's Signature | (L.S.) | _____<br>Seller's Printed or Typed Name | _____<br>Date |
| _____<br>Seller's Signature | (L.S.) | _____<br>Seller's Printed or Typed Name | _____<br>Date |

|                                 |                                                  |
|---------------------------------|--------------------------------------------------|
| _____<br>Buyer's Agent/ Company | _____<br>Buyer's Agent License#/ LLR Office Code |
|---------------------------------|--------------------------------------------------|

|                                        |                                           |
|----------------------------------------|-------------------------------------------|
| _____<br>Buyer's Agent's Email Address | _____<br>Buyer's Agent's Telephone Number |
|----------------------------------------|-------------------------------------------|

|                                  |                                                   |
|----------------------------------|---------------------------------------------------|
| _____<br>Seller's Agent/ Company | _____<br>Seller's Agent License#/ LLR Office Code |
|----------------------------------|---------------------------------------------------|

|                                         |                                            |
|-----------------------------------------|--------------------------------------------|
| _____<br>Seller's Agent's Email Address | _____<br>Seller's Agent's Telephone Number |
|-----------------------------------------|--------------------------------------------|

**This section is not to be completed until the conditions of paragraph 29B are fulfilled**

**CONTRACT ACCEPTED BY BOTH PARTIES AT \_\_\_\_\_ O'CLOCK \_\_\_\_ M (ET) ON \_\_\_\_\_ DATE**

**ACCEPTANCE ENTERED BY \_\_\_\_\_ (AGENT)**

**NOTE:** Once the above Contract acceptance date and time are filled in a copy of this Contract in its entirety should be promptly forwarded to the other Party.

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# EXHIBIT D



## OFFICIAL MINUTES OF BOARD OF DIRECTORS MEETING

The Newberry Lions Club held its regular Board Meeting at Newberry County Special Needs Office- Braswell Administrative Building on March 28, 2017

Lion Gene Crocker, President, with the following Lion Board Members in attendance called meeting to order at 7:00 p.m.

Lion William Ashmore

Lion Randy Cannon

Lion Lee Ringer

Lion Randy Senn

Lion Pete Simpson

Lion Doggett Whitaker

Lion Ray Amick, Non-Board Member

### Minutes of Business Meeting

Opened with Prayer by Lion Doggett Whitaker

SECRETARY'S REPORT: Read and approved.

TREASURER'S REPORT: Read and approved.

#### OLD BUSINESS:

The lake property was brought up for discussion. The board moved to go into executive session for discussion of the matter at which time Lion Ray Amick excused himself.

The board returned to open session and Lion Ray Amick returned to the meeting.

A motion was made to accept Lion Ray Amick's offer of \$300,000.00 provided that closing would take place by June 1<sup>st</sup> at which time other offers would be considered if the property closing has not occurred by the June 1<sup>st</sup> deadline. The motion passed unanimously.

With no other business the meeting was adjourned at 8:00 p.m.

Lion Pete Simpson, Secretary

# EXHIBIT E



MCNAIR  
ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net  
T 843.723.7631  
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President  
Pete Simpson, Secretary  
Newberry Lions Club  
1724 Main Street  
Newberry, SC 29108

Re: Lions Club Property -- 5.50 acres -- Newberry County  
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

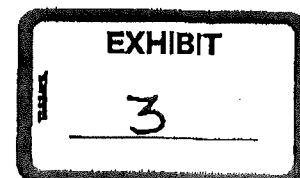
If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.  
100 Calhoun Street, Suite 400  
Charleston, SC 29401

Mailing Address  
Post Office Box 1431  
Charleston, SC 29402

mcnair.net



1454538v1B

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH | PAWLEYS ISLAND

Rice000004

0241

ELECTRONICALLY FILED - 2020 Aug 13 4:29 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089  
ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089



Eugene Crocker, President  
May 15, 2017  
Page 2

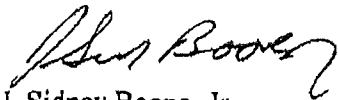
MCNAIR  
ATTORNEYS

ELECTRONICALLY FILED - 2020 Aug 13 4:29 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089  
ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

---

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail [jrice@molleyrice.com](mailto:jrice@molleyrice.com))

# EXHIBIT F



## OFFICIAL MINUTES OF BOARD OF DIRECTORS MEETING

The Newberry Lions Club held its regular Board Meeting at Newberry County Special Needs Office- Braswell Administrative Building on May 23, 2017

Lion Gene Crocker, President, with the following Lion Board Members in attendance called meeting to order at 7:00 p.m.

Lion William Ashmore

Lion Lee Ringer

Lion Doggett Whitaker

Lion Ray Amick, Non-Board Member

Mr. Jay Verner, Attorney

Lion Randy Cannon

Lion Randy Senn

Lion Jean Williamson

Lion Milton Price \

Lion Pete Simpson

### Minutes of Business Meeting

Opened with Prayer by Lion William Ashmore

SECRETARY'S REPORT: Read and approved.

TREASURER'S REPORT: Read and approved.

#### OLD BUSINESS:

Lion Gene Crocker reported that he and Lion Jean Williamson had gone down the lake clubhouse and retrieved some of the Lions Club memorabilia. Lion Doggett Whitaker agreed to allow the club to store the items at Whitaker Funeral Home.

Lion Ray Amick was given the opportunity to speak regarding his purchase of the lake property. He stated that he had funds ready to purchase the property, but wanted to have a clear title to the property with the deed being made to him and his wife.

A motion was made to move into executive session with attorney Jay Verner.

The board returned from executive session with no action being taken.

Mr. Verner excused himself and Lion Ray Amick returned to the meeting.

A motion was made to send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property. The motion passed unanimously.

A motion was made to return to executive session.

The board returned from executive session with no action being taken.

With no other business the meeting was adjourned at 8:45 p.m.

Lion Pete Simpson, Secretary

# EXHIBIT G

HARLEY & VERNER LLP

ATTORNEYS AT LAW  
1219 BOYCE STREET  
P.O. BOX 484  
NEWBERRY, SOUTH CAROLINA 29108  
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER  
CHARLES VERNER

FACSIMILE  
276-7834

LAWYER@SC.RR.COM

June 5, 2017

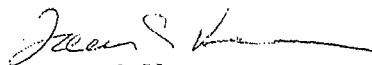
Mr. Ray Amick  
62 Lions Club Circle  
Prosperity, SC 29127

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23<sup>rd</sup>, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,

  
James S. Verner

JSV/als

AMICK\_0056  
0246

HARLEY & VERNER LLP  
ATTORNEYS AT LAW  
1219 BOYCE STREET  
P.O. BOX 484  
NEWBERRY, SOUTH CAROLINA 29108  
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER  
CHARLES VERNER

FACSIMILE  
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.  
McNair Law Firm  
PO Box 1431  
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23<sup>rd</sup>, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

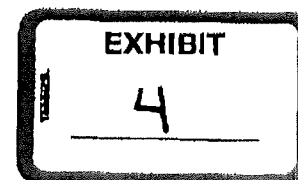
With kindest regards, I am

Truly yours,

  
James S. Verner

JSV/als

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Rice000006  
0247

# EXHIBIT H

COPY

November 21, 2017

MCNAIR  
ATTORNEYS

Michael A. Scardato

mcardato@monair.net

T 843.723.7831  
F 843.722.3227

Via FedEx

Via E-mail: [lawyers@sc.rr.com](mailto:lawyers@sc.rr.com)

Eugene Crocker, President  
Pete Simpson, Secretary  
Newberry Lions Club  
1724 Main Street  
Newberry, SC 29108

James S. Verner, Esq.  
Harley & Verner, LLP  
1219 Boyce Street  
PO Box 484  
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County  
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

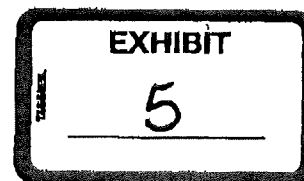
If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.  
100 Calhoun Street, Suite 40  
Charleston, SC 29401

Mailing Address  
Post Office Box 1431  
Charleston, SC 29402

monair.net



1698525v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH

Rice000007  
0249

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James S. Verner, Esq.  
November 21, 2017  
Page 2

MCNAIR  
ATTORNEY

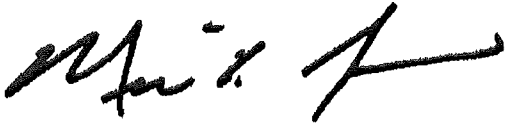
ELECTRONICALLY FILED - 2020 Aug 13 4:29 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089  
ELECTRONICALLY FILED - 2018 May 14 9:01 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: [jrice@motleyrice.com](mailto:jrice@motleyrice.com))

# EXHIBIT I



## OFFICIAL MINUTES OF BOARD OF DIRECTORS MEETING

The Newberry Lions Club held its regular Board Meeting at Newberry County Special Needs Office- Braswell Administrative Building on January 23, 2018

Lion Gene Crocker, President, with the following Lion Board Members in attendance called meeting to order at 7:00 p.m. A quorum was present.

Lion Randy Senn  
Lion Doggett Whitaker

Lion Lee Ringer  
Lion Jean Williamson

Lion Pete Simpson

### Minutes of Business Meeting

Opened with Prayer by Lion Gene Crocker

SECRETARY'S REPORT: Read and approved.

TREASURER'S REPORT: Read and approved.

#### OLD BUSINESS:

A recommendation was presented from the task force consisting of Lion Randy Senn, Lion Doggett Whitaker and Lion Jean Williamson for disbursement of funds from the sale to Mr. Thad McCracken of Parcel B at the lake. A copy of the recommendation is attached to these minutes. The motion passed.

A motion was made to look into getting a CPA, lawyer or both for advice about the tax consequences of the sale of the lake property. The motion passed.

A motion was made to sell the remaining lake property to Lion Ray Amick for \$300,000.00 plus other considerations. The motion passed.

A motion was made that closing cost for the selling of the remaining lake property will be treated the same as was done for Parcel B to Mr. Thad McCracken. The motion passed.

With no other business the meeting was adjourned at 8:30 p.m.

Lion Pete Simpson, Secretary

# EXHIBIT J

STATE OF SOUTH CAROLINA               )  
                                                                )     **CONTRACT OF SALE**  
COUNTY OF NEWBERRY               )

THIS AGREEMENT is made by and between C. RAY AMICK ("Purchaser"), and Doggett Whitaker, Pete Simpson and Lee Ringer as Trustees of the NEWBERRY LIONS CLUB ("Seller"). Purchaser and Seller may be individually referred to herein as "Party" or jointly as the "Parties."

1. **OFFER AND DESCRIPTION.** Purchaser agrees to buy and Sellers agree to sell all that certain piece, parcel or lot of land, with any buildings and improvements thereon, situated in the County of Newberry, State of South Carolina, known as Parcel A (5.35 Acres) on a private road designated as Lions Club Road and being more particularly shown on a plat prepared for Newberry Lions Club recorded in Newberry County ROD Slide D99 at page 6., with current TMS# 652-3-21.

2. **PRICE.** The Purchase Price for the real property and improvements thereon is Three Hundred Thousand and no/100 (\$300,000.00) Dollars to be paid as follows: \$1,000.00 earnest money paid within five (5) business days of the signing of this Contract and held in trust by the Purchaser's closing attorney law firm, Smith & Sullivan, LLC, 271 Columbia Ave, Ste. A, Chapin, SC 29036, and the balance, paid at closing, to be paid in certified or wired funds.

3. **CLOSING COSTS.** Purchaser agrees to pay all closing costs for this transaction, with the exception that Sellers are responsible and agree to pay for Sellers' attorney's fees and any closing costs necessary to deliver a marketable fee simple title (including recording of a satisfaction), if any.

4. **WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller warrants and represents that:

a. Seller owns fee simple title to the Property, including the improvements thereon; and

b. Seller's Trustees, as identified herein, are the properly appointed and authorized representatives of the Newberry Lions Club to sign all closing documents including the deed, and the delivery and/or performance of this Agreement will not require the approval or consent of any third party or governmental entity.

c. Seller will remove any and all personal property from the subject property prior to closing, and if any personal property remains on the subject property after the closing, Seller represents and warrants that it shall be deemed abandoned and the Purchaser shall be entitled to use or dispose of

any such personal property as determined in the sole discretion of the Purchaser without any notice to the Seller.

5. **AS IS, WHERE IS.** The property is being conveyed on an "AS IS, WHERE IS" condition and basis; however, Seller represents to buyer that it is not aware of any hazardous materials located on, or buried within, the subject property.

6. **DUE DILIGENCE PERIOD.** Purchaser has previously had the right to inspect or select an inspector(s) at Purchaser's expense, to make any inspections, tests, surveys, title search or investigations of the Property as desired by the Purchaser.

7. **TITLE.** Seller agrees to convey fee simple marketable title at Closing and deliver a General Warranty Deed in proper form for recording, free and clear of liens and encumbrances except restrictions and easements of record; to include reference to the new survey obtained by the Purchaser. On or before Closing, Seller will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by Purchaser to completely vest in and assure to Purchaser full rights in or to the Property.

9. **EFFECTIVE DATE AND CLOSING REQUIREMENTS.** The Effective Date of this Agreement shall be the last signature date thereon. The Closing shall take place at the law office of Smith & Sullivan, LLC at a date agreed upon by both Parties intended to be no later than February 28, 2018, unless otherwise agreed to by both Parties in writing.

10. **TAXES.** Property taxes, if any, and other assessments that may apply to the Property, shall be adjusted as of the date of Closing between Purchaser and Seller for the current year. Tax pro-rations pursuant to this Agreement are to be based on the tax information available at the date of Closing and are to be prorated on that basis.

11. **POSSESSION.** Purchaser shall have the right of occupancy immediately at Closing.

12. **FIRE OR CASUALTY.** In case the Property herein referred to is destroyed wholly or partially by fire or other casualty, Seller shall give notice thereof to Purchaser as soon as possible in accordance with the Notice provision of Section 14 below, and Purchaser shall have the option for ten (10) days after the effective date of notice of fire or other casualty, with an agreed adjustment in the Purchase Price, or of terminating this agreement and being repaid Earnest Money hereunder.

13. **DEFAULT.** The remedies of the Parties in the event of default are as follows:

**Seller's Default:** In the event of default by Seller under the terms of this Agreement, including but not limited to Seller's failure to transfer the Property by said Closing date, Purchaser's remedy shall be to compel the transfer by seeking specific performance of this Agreement, and/or to recoup from the Seller the full cost expended in due diligence and preparation for the closing, including its attorney's fees.

14. **NOTICES.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be effective upon personal delivery to the Party to whom they are addressed; or e-mailed or sent by facsimile as indicated below; or, if mailed five (5) days following deposit in the United States mail first class postage prepaid, registered or certified; or, if sent by nationally recognized overnight courier, the date when signed for at addressee's residence or place of business and addressed to each Party at the addresses listed below.

15. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina.

16. **COOPERATION OF PARTIES.** Both Parties agree that they will cooperate in the negotiation, preparation and execution of all documents required to effectuate the transaction contemplated herein.

17. **COUNTERPARTS.** So that each Party may have an original of this Agreement, this document shall be executed in two identically worded counterparts. Further, both Purchaser and Seller agree that receipt of a signed Agreement by facsimile or e-mail shall be the same as receipt of an original signed Agreement.

18. **SURVIVAL OF PROVISIONS.** The provisions of this Agreement which are not fully executed through the Closing date of this transaction shall survive the Closing date and remain in full force and effect, enforceable by the Parties according to such terms.

19. **NO COMMISSIONS.** Purchaser and Sellers represent and affirm that no real estate agents/professionals or realtors are due any sales commissions regarding this transaction.

20. **ENTIRE CONTRACT; BINDING CONTRACT.** This Agreement expresses the entire agreement between the Parties, and there is no other agreement, oral or otherwise, modifying the terms hereunder and the Agreement shall be binding on both Parties, their principals, heirs, personal representatives, successors, and assigns as state law permits. This Agreement shall only be amended by a written agreement signed by both Parties.

WITNESS the Parties hereby by their hands and seals the dates indicated below.

In the Presence of:

Sonya M. Hancock  
Witness  
Lisa Lee Smith  
Witness

PURCHASER:

C. Ray Amick  
C. RAY AMICK

Date: February 12, 2018

Address: 62 Lions Club Road  
Prosperity, S.C. 29127

E-Mail: \_\_\_\_\_

Phone: 803-364-3184 803-924-0162

SELLER:

NEWBERRY LIONS CLUB

Whitney Price  
Witness  
[Signature]  
Witness

By: [Signature]  
DOGGETT WHITAKER, TRUSTEE

Date: February 17, 2018

Arthur B. Carlson  
Witness  
[Signature]  
Witness

By: Pete Simpson  
PETE SIMPSON, TRUSTEE

Date: February 14, 2018

Arthur B. Carlson  
Witness  
[Signature]  
Witness

By: Lee Ringer  
LEE RINGER, TRUSTEE

Date: February 14, 2018

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone: \_\_\_\_\_



# EXHIBIT K

Recorded by and to be returned to:  
Smith & Sullivan, LLC  
271 Columbia Ave., Suite A  
Chapin, SC 29036

File No.: (17-0534-01) Amick

201800042023  
Filed for Record in  
NEWBERRY COUNTY, SC  
ELIZABETH P FOLK, CLERK OF COURT  
02-22-2018 At 03:55 pm.  
DEED 10.00  
STATE 780.00  
COUNTY 330.00  
OR Book 2028 Page 194 - 198

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY ) TITLE TO REAL ESTATE

KNOW ALL PERSONS BY THESE PRESENTS, That **Lee Ringer, Pete Simpson and Doggett Whitaker as Trustees of Newberry Lions Club a/k/a The Lions Club of Newberry** (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Three Hundred Thousand & 00/100 (\$300,000.00) Dollars and other consideration to the Grantor paid by **C. Ray Amick of 62 Lions Club Road, Prosperity, SC 29127**, (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to easements and restrictions of record, unto the said **C. Ray Amick** the property described as follows:

All that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in District No. 6 outside, in the County of Newberry, State of South Carolina, containing 5.35 acres, more or less, and being designated as **Parcel A** on a plat prepared for Newberry Lions Club by Thomas D. Abraham, SCRLS, dated November 9, 2017 and recorded in the Office of the Clerk of Court for Newberry County in Slide D99-6; reference to said plat being had for a more complete and accurate description thereof.

Together with all Grantor's non-exclusive rights of ingress, egress and/or regress over and across a private drive designated as Lions Club Road for access to State Park Road to or from Parcel A described above.

This being a portion of the same property conveyed to the Trustees of the Newberry Lions Club by deed recorded in the Office of the RMC for Lexington County on the 18th day of February 1933, in Deed Book 4Q at page 603.

TMS: 652-3-21

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

17-534-01

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, **C. Ray Amick**, his Heirs, Successors and Assigns forever. And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

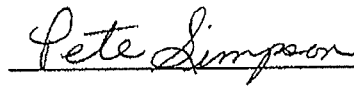
IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal.

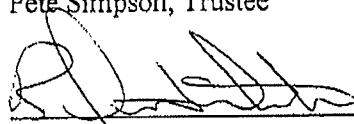
Date: Feb. 21<sup>st</sup>, 2018

Newberry Lions Club a/k/a The Lions Club of Newberry, Grantor

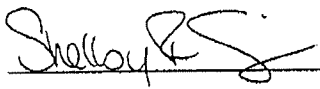
BY:

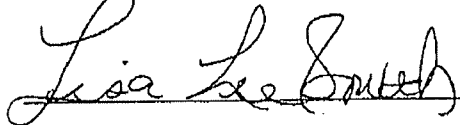
  
\_\_\_\_\_  
Lee Ringer, Trustee

  
\_\_\_\_\_  
Pete Simpson, Trustee

  
\_\_\_\_\_  
Doggett Whitaker, Trustee

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

  
\_\_\_\_\_  
Witness #1

  
\_\_\_\_\_  
Witness #2

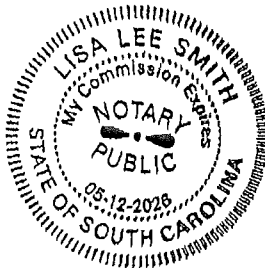
Instrument  
201800042023 DR

Book Page  
2028 196

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

## ACKNOWLEDGEMENT

I, Lisa Lee Smith, the undersigned Notary Public, do hereby certify that **Lee Ringer, Pete Simpson and Doggett Whitaker as Trustees of Newberry Lions Club a/k/a The Lions Club of Newberry**, personally appeared before me this 21<sup>st</sup> day of February, 2018, and acknowledged the due execution of the foregoing instrument.



going instrument.

Lisa Lee Smith  
Notary Public for South Carolina  
My Commission expires 5-17-26

17-534-01

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )

## AFFIDAVIT

Instrument Book Page  
 201800042023 OR 2028 197

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at on Lions Club Road, bearing Newberry County Tax Map Number 652-3-21, was transferred by Lee Ringer, Pete Simpson and Doggett Whitaker as Trustee of Newberry Lions Club a/k/a The Lions Club of Newberry to C. Ray Amick on February 21, 2018.

3. Check one of the following: The deed is
  - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b) \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
  - (c) \_\_\_\_\_ exempt from deed recording fee because (See information section of affidavit): \_\_\_\_\_  
 (If exempt, please skip items 4 – 6 and go to Item 7 of this Affidavit)

If exempt under exemption #14 as described in the Information section of this Affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes \_\_\_\_\_ or No \_\_\_\_\_

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):
  - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$300,000.00
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for the property tax purposes which is \_\_\_\_\_
5. Check Yes \_\_\_\_\_ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ \_\_\_\_\_.
6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$300,000.00
- (b) Place the amount listed in item 5 above here: 0  
 (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$300,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1,110.00 stamps + \$10.00 recording fee
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Closing Attorney for the Purchaser/Grantee

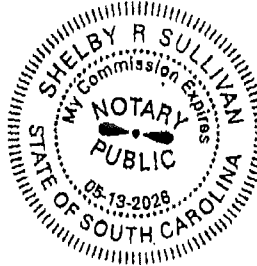
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one thousand dollars or imprisoned not more than one year, or both.

Lisa Lee Smith  
Responsible Person Connected with the Transaction

Lisa Lee Smith, Closing Attorney  
Print or Type Name Here

SWORN to before me this 21st  
day of February, 2018

Shelby R. Sullivan  
Notary Public for South Carolina  
My Commission Expires: 05-13-2026



#### EXEMPTIONS

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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.

**DEFENDANT C. RAY AMICK'S**  
**MOTION TO STRIKE PLAINTIFFS'**  
**EXPERT AFFIDAVIT**

**TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,**  
**ATTORNEYS FOR PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that Defendant C. Ray Amick ("Mr. Amick") hereby moves for an order striking the affidavits of Stephen A. Spitz, which affidavits have been submitted by Plaintiffs in opposition to Mr. Amick's motion for partial summary judgment.

Judge Griffith previously ruled the legal conclusions in Professor Stephen Spitz's affidavits must be stricken and disregarded:

Defendant Ray Amick's Motion to Strike Expert Steven Spitz's Affidavit came before the court on July 19, 2019. Upon review of the record and the arguments presented at the hearing, the legal conclusions contained within the affidavit must be stricken and disregarded. However, the remaining portions of the affidavit may be considered.

See Ex. B of Amick's Reply.

Plaintiffs have not asked that this order be reconsidered, although they have again offered Stephen Spitz's affidavits as record evidence. Accordingly, these affidavits should be stricken and disregarded in line with the Court's prior order.

To the extent the Court considers attaching the affidavits to their response brief as a motion to reconsider the Court's earlier ruling, this Court should deny the motion for the

reason set forth in Mr. Amick's motions to strike the affidavits of Stephen Spitz. See **Exhibit A** and **Exhibit B** attached hereto.

Accordingly, Mr. Amick asks this Court to strike and disregard all portions of Stephen Spitz's affidavits attached to Plaintiffs' response to Mr. Amick's motion for partial summary judgment.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

s/ Demetri K. Koutrakos

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Harry A. Dixon, SC Bar No. 103509

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Email: [harrydixon@callisontighe.com](mailto:harrydixon@callisontighe.com)

Thornwell F. Sowell, III, SC Bar No. 5197

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Email: [bsowell@sowelldurant.com](mailto:bsowell@sowelldurant.com)

**ATTORNEYS FOR DEFENDANT  
C. RAY AMICK**

August 25, 2020



# EXHIBIT A

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.

**DEFENDANT C. RAY AMICK'S NOTICE OF  
MOTION AND MOTION TO STRIKE THE  
AFFIDAVIT OF STEPHEN A. SPITZ**

**TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,  
ATTORNEYS FOR PLAINTIFFS:**

**YOU WILL PLEASE TAKE NOTICE** that Defendant C. Ray Amick ("Defendant Amick") hereby moves for an order striking the Affidavit of Stephen A. Spitz.

This motion is based on the following:

**INTRODUCTION**

Plaintiffs filed this action asserting that two letters between Plaintiffs' attorney and Defendant Newberry Lions Club constitute a contract to purchase the subject property. Plaintiffs request specific performance of that alleged contract. Defendant Amick and Defendant Newberry Lions Club deny a contract exists with Plaintiffs, but instead assert Defendant Amick and Defendant Newberry Lions Club entered into a real contract, that contract was closed, and the subject property was properly conveyed to Defendant Amick. The issues before the Court have been briefed by the parties in conjunction with their respective motions for summary judgment.

In support of their motion for partial summary judgment, Plaintiffs submitted the expert affidavit of Stephen A. Spitz. In his affidavit, Mr Spitz opines as to the meaning of various

documents, his interpretation of the law, and indicates how this Court should rule, effectively invading and usurping the role of the Court.

### **ARGUMENT**

**A. Expert testimony pertaining to questions of law and legal conclusions are not admissible.**

Mr. Spitz's opinions, which concern purely legal matters and conclusions, invade the sole province of the Court and, therefore, are inadmissible.

Mr. Spitz's testimony is inadmissible because such testimony would necessarily pertain to questions of law and legal conclusions which are properly to be established by the Court. *See Dawkins v. Fields*, 354 S.C. 58, 65-66, 580 S.E.2d 433, 437 (2003) (holding expert testimony on issues of law or offered to establish a conclusion of law is inadmissible, and noting expert testimony that constitutes a legal conclusion or which relates to legal issues which will determine the outcome of a case is inadmissible).

"Where, as here, the material facts concerning the formation of an alleged contract are not in dispute, the issue of contract *vel non* is a question of law." *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 330 S.E.2d 307, 309 (Ct. App. 1985).

The South Carolina Rules of Evidence addresses the issue of expert testimony and provide that: "If . . . specialized knowledge will assist the *trier of fact* to *understand the evidence* or to *determine a fact in issue*, a witness qualified as an expert . . . may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE (emphasis added). In the instant case, there are no facts to be considered, understood, or determined by Mr. Spitz, but instead only legal issues to be addressed and legal conclusions to be made. Therefore, there is no necessity for expert testimony in this case, and such expert testimony is clearly inappropriate as it would

necessarily involve the rendering of legal analysis and conclusions relating to the issues presented in this case.

Our Supreme Court has directly addressed this issue and has concluded expert testimony that contains primarily legal arguments and conclusions is properly excluded. *Dawkins*, 354 S.C. at 65-66, 580 S.E.2d at 437. In *Dawkins*, the Supreme Court held that an affidavit submitted by Professor John Freeman of the University of South Carolina School of Law on the topics of corporations and securities “primarily contained legal arguments and conclusions,” and as such, was properly rejected by the trial court. *Id.* at 65, 580 S.E.2d at 437. Such an affidavit “inappropriately attempted to usurp the trial court’s role in determining whether petitioners were entitled to summary judgment” and read “as if it could have been respondents’ oral argument to the trial court at the summary judgment hearing.” *Id.* at 65-66, 580 S.E.2d at 437.

In reaching this conclusion, the Court noted that “in general, expert testimony on issues of law is inadmissible,” and that expert testimony offered to establish a conclusion of law is properly excluded because such matters are within the exclusive province of the court. *Id.* (citing *O’Quinn v. Beach Assocs.*, 272 S.C. 95, 249 S.E.2d 734 (1978)).

As succinctly stated by our Supreme Court in *O’Quinn*, the Court has a responsibility to determine and interpret the law applicable to a case, and this responsibility is diminished if expert testimony is allowed into the record as to what the law is in a case. *O’Quinn* at 106, 249 S.E.2d at 739-40.

Here, Mr. Spitz’s affidavit contains conclusions of law. Mr. Spitz went as far to opine Plaintiffs are entitled to the relief they are seeking. For example, Mr. Spitz opines: “For each and every one of these reasons, it is my considered opinion that the question presents the Court

with a clear question of South Carolina law that is only proper to be resolved in favor of the Plaintiffs.”

Mr. Spitz’s affidavit is inadmissible and should be stricken.

### **CONCLUSION**

Based upon the foregoing, Mr. Spitz’s affidavit should be stricken.

Respectfully submitted,

### **CALLISON TIGHE & ROBINSON, LLC**

s/ Demetri K. Koutrakos

Demetri K. Koutrakos  
1812 Lincoln Street, Suite #200  
P. O. Box 1390  
Columbia, SC 29202-1390  
Telephone: 803-404-6900  
Facsimile: 803-404-6902  
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Thornwell F. Sowell, III  
Bess J. DuRant  
Sowell & DuRant, LLC  
1325 Park Street, Suite 100  
Columbia, SC 29201  
Email: [bdurant@sowelldurant.com](mailto:bdurant@sowelldurant.com)  
Email: [bsowell@sowelldurant.com](mailto:bsowell@sowelldurant.com)

**ATTORNEYS FOR DEFENDANT  
C. RAY AMICK**

March 1, 2019

1026.038\MotionStrike-SpitzAffidavit

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

**DEFENDANT C. RAY AMICK'S NOTICE OF  
MOTION AND MOTION TO STRIKE  
THE SUPPLEMENTAL AFFIDAVIT OF  
STEPHEN A. SPITZ**

**TO: THOMAS H. POPE, III, KYLE B. PARKER, AND MICHAEL A. SCARDATO,  
ATTORNEYS FOR PLAINTIFFS:**

**YOU WILL PLEASE TAKE NOTICE** that Defendant C. Ray Amick ("Defendant Amick") hereby moves for an order striking the Supplemental Affidavit of Stephen A. Spitz.

This motion is based on the following:

**I. INTRODUCTION**

Professor Spitz's Supplemental Affidavit "reads as if it could have been respondents' oral argument to the trial court at the summary judgment hearing." *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (refusing to consider expert affidavit filled with legal conclusions at summary judgment). South Carolina law prevents such an expert opinion because it would usurp the court's role by offering testimony "to establish a conclusion of law within the exclusive province of the [C]ourt." *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 107, 249 S.E.2d 734, 740 (1978). Accordingly, this Court should strike the Supplemental Affidavit.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

Plaintiffs Joe and Lisa Rice filed a motion for partial summary judgment on their specific performance claim arising from an alleged breach of contract with the Newberry Lions Club. To support their motion, Plaintiffs offered an expert affidavit from Professor Stephen A. Spitz (“the First Affidavit”). In response, Defendant Amick filed a motion for summary judgment and a motion to strike the First Affidavit. Plaintiffs then filed a second affidavit from Professor Spitz (“the Supplemental Affidavit”). Defendant Amick now moves to strike the Supplemental Affidavit.

## **III. ANALYSIS**

### **A. PROFESSOR SPITZ’S SUPPLEMENTAL AFFIDAVIT OVERWHELMINGLY CONTAINS CONCLUSIONS OF LAW AND SHOULD NOT BE CONSIDERED AT SUMMARY JUDGMENT**

The Supplemental Affidavit from Professor Spitz overwhelmingly contains conclusions of law and would not aid the fact finder in understanding the facts. Accordingly, this Court should strike the Supplemental Affidavit—like the First Affidavit—because the testimony would be inadmissible at trial.

Affidavits supporting or opposing summary judgment “shall set forth such facts as would be **admissible** in evidence . . . .” Rule 56(e), SCRPC (emphasis added). Expert testimony, “opinion or otherwise,” is admissible at trial “[i]f scientific, technical, or other specialized knowledge will **assist the trier of fact** to understand the evidence or to determine a fact in issue.” Rule 702, SCRE (emphasis added)). “In general, expert testimony on issues of law is inadmissible.” *Dawkins*, 354 S.C. at 66, 580 S.E.2d at 437.

South Carolina law is clear that courts should not consider affidavits like the Supplemental Affidavit from Professor Spitz at summary judgment. In *Dawkins*, the South Carolina Supreme Court held that a trial court correctly refused to consider an expert affidavit at summary judgment

where it “primarily contained **legal** arguments and conclusions.” *Dawkins*, 354 S.C. at 66, 580 S.E.2d at 437 (emphasis original). Acknowledging that Professor John Freeman’s affidavit “arguably offered some helpful, factual information,” the court held “the overwhelming majority of the affidavit [was] simply legal argument.” *Id.* (also describing the affidavit as “if it could have been respondents’ oral argument to the trial court at the summary judgment hearing.”). The South Carolina Supreme Court has applied this same reasoning consistently in other contexts. *See, e.g., Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (upholding trial court’s refusal to consider proffered expert testimony at a PCR hearing because “[t]he testimony was not designed to assist the PCR court to understand certain facts, but, rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel’s actions fell below an acceptable legal standard of competence.”); *O’Quinn*, 272 S.C. at 107, 249 S.E.2d at 740 (upholding exclusion of expert witness testimony on whether certain contracts were “investment contracts” under federal law).

Like the *Dawkins* expert affidavit, the “the overwhelming majority” of the Supplemental Affidavit from Professor Spitz asserts legal conclusions.<sup>1</sup> To begin with, Paragraphs 12, 13, and 14—new additions since the First Affidavit—offer the legal conclusion that his own expert opinion is admissible, which is not a question for a fact finder. *See, e.g., Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008) (whether to allow expert testimony is left to the trial court’s discretion). Likewise, Paragraphs 17, 18, and 19 do not address factual matters because they explain to the Court why specific performance is the appropriate remedy—a matter left to the trial court’s discretion—and how the Court should decide the case, specifically stating “it is my considered opinion that the question presents the Court with a clear question of

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<sup>1</sup> Professor Spitz lists his professional background within the first ten paragraphs. Paragraph 11 then states what materials he reviewed.



South Carolina law that is only proper to be resolved in favor of the Plaintiffs.” *See, e.g., Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004) (“The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case.”).

Furthermore, Paragraphs 15 and 16 tell the fact finder the law and what to conclude: there is a contract. In fact, Paragraph 16 nearly mirrors a charge on the law. *Compare, e.g.,* Spitz Supplemental Aff. ¶16 (“the offer was further made in such a way as to justify the Plaintiff and any other reasonable person to conclude that a promise to comply with and assent to the bargain described in the letter constitute a binding contract”) *with* RALPH KING ANDERSON, JR., ANDERSON'S SOUTH CAROLINA REQUESTS TO CHARGE - CIVIL § 19-3 (2d ed. 2016) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”). Paragraph 15, although reciting mostly undisputed facts, includes conclusions of law. *See, e.g.,* Spitz Supplemental Aff. ¶15 at (c) (“The only conditions in the Lions Club letter were . . .”). The “specialized knowledge” in the Supplemental Affidavit is legal knowledge, and these statements are summary judgment arguments.

**B. VORTEX SPORTS IS NOT AN EXCEPTION TO DAWKINS AND DOES NOT ALLOW TESTIMONY ON LEGAL CONCLUSIONS**

Despite *Dawkins* and its supporting authority, Plaintiffs would have this Court rely on *Vortex Sports*, where the South Carolina Court of Appeals upheld a trial court’s decision to allow expert testimony from Professor Freeman on whether a party breached a fiduciary duty. *Vortex Sports*, 378 S.C. at 207–08, 662 S.E.2d at 449–50. *Vortex Sports* and *Dawkins* both addressed breach of fiduciary duty claims with expert affidavits from Professor Freeman. However, *Vortex Sports* applied the *Dawkins* rule to different facts: instead of arguing summary judgment should

not be granted, Professor Freeman explained the defendant's roles with the company—shareholder, officer, and general counsel—and how the defendant's actions in those roles either conformed or did not conform to a fiduciary standard. *Vortex Sports*, 378 S.C. at 207, 662 S.E.2d at 450 (allowing expert testimony on “specific acts [the defendant] committed and how those acts constituted a breach of his fiduciary duty”). The *Vortex Sports* distinction with *Dawkins* makes sense: testimony on what acts would meet the fiduciary duty standard and how the defendant fell short would be admissible but mere conclusions that certain acts are breaches would not be admissible.

This case is *Dawkins*; not *Vortex Sports*. The Supplemental Affidavit contains legal conclusions, as explained above, and *Vortex Sports* does not provide an exception that allows legal conclusions. By his own terms, Professor Spitz asserts a legal conclusion based on the facts of this case. See Spitz Supplemental Aff. ¶19 (“it is my considered conclusion that the question presents the Court with a clear question of South Carolina law”). Unlike *Vortex Sports*, Professor Spitz would not testify how specific acts relate to a standard. Rather, he would usurp the court's role and tell the fact finder the legal conclusion to reach—which is why his factual analysis reads like a conclusory charge on the law.<sup>2</sup>

#### **IV. CONCLUSION**

Professor Spitz filed a memorandum of law in support of Plaintiffs' motion for partial summary judgment that was mistakenly labeled an “expert affidavit.” South Carolina law does not

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<sup>2</sup> Additionally, the Supplemental Affidavit includes analysis of new claims for breach of contract with fraudulent intent and intentional interference with contractual relations. Plaintiffs recently asserted these new claims in their proposed third amended complaint (the motion for leave to file is currently pending). The new claims are not at issue in either pending motion for summary judgment. However, the Supplemental Affidavit overwhelmingly contains legal conclusions on these claims as well. Accordingly, any purported expert testimony in the Supplemental Affidavit on these new claims would be inadmissible for the same reasons explained above.

allow experts to testify on the law. Accordingly, this Court should strike the Supplemental Affidavit.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318

Harry A. Dixon, SC Bar No. 103509

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**ATTORNEYS FOR DEFENDANT**

**C. RAY AMICK**

May 1, 2019

# EXHIBIT B

STATE OF SOUTH CAROLINA  
COUNTY OF Newberry  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3600089

Lisa Summer Rice et al  
PLAINTIFF(S)

Newberry Lions Club et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant Ray Amick's Motion to Strike Expert Steven Spitz's Affidavit came before the court on July 19, 2019. Upon review of the record and the arguments presented at the hearing, the legal conclusions contained within the affidavit must be stricken and disregarded. However, the remaining portions of the affidavit may be considered.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/17/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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## Newberry Common Pleas

**Case Caption:** Lisa Summer Rice , plaintiff, et al VS Newberry Lions Club ,  
defendant, et al  
**Case Number:** 2018CP3600089  
**Type:** Order/Electronic Form 4

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2019-07-17 09:39:20 page 3 of 3

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,

v.

Newberry Lions Club, C. Ray Amick, and Cheryl  
Littlejohn,  
Defendants.

**PLAINTIFFS' MOTION TO ALTER OR  
AMEND JUDGMENT OR FOR RELIEF  
FROM JUDGMENT PURSUANT TO  
RULES 59(e) AND 60(b), SCRCP**

**TO: JIM KOUTRAKOS, ESQUIRE, THORNWELL F. SOWELL III, ESQUIRE, AND  
SAMUEL M. PRICE, JR., ESQUIRE, ATTORNEYS FOR DEFENDANTS:**

Plaintiffs Lisa Summer Rice and Joseph F. Rice hereby file their Motion to Alter or Amend or for Relief from Judgment as to this Court's Order Granting Partial Summary Judgment to Defendants filed December 9, 2020. Plaintiffs move pursuant to SCRCP Rules 59(e) and 60(b) and the inherent authority of this Court, on the grounds that the Court has overlooked or misapprehended matters of fact and law and the Order should be reconsidered and amended accordingly.

Plaintiffs respectfully move that this Court reconsider its Order of December 9, 2020, and issue an Amended Order finding and concluding that there are genuine issues of material fact as to the existence of a contract between Plaintiffs and Defendant Lions Club concerning which Plaintiffs are entitled to specific performance as pled in their Fourth Amended Complaint.

In addition to the arguments set forth by Plaintiffs in their Memorandum in Opposition to Amick's Motion for Summary Judgment, including exhibits (filed August 20, 2020), which are incorporated herein by reference, Plaintiffs request and moves that this Court consider the following points in support of this motion for reconsideration:



1. This Court overlooked that Defendants' motion for summary judgment was a repetitive motion which had already been denied by Order of Judge Eugene C. Griffith, Jr. on July 31, 2019. The Defendants' second motion and memorandum were virtually identical (same arguments, same exhibits, same authorities) to the one filed and denied by Order of Judge Griffith and was not based on any new or additional evidence that had not been presented to Judge Griffith. No additional documents were supplied, nor were any additional depositions taken, between Defendants' first and second motions for summary judgment.
2. In the first paragraph on page 7 of this Court's Order, there is an erroneous finding that Judge Griffith informally recused himself after denying the Defendants' first motion for summary judgment. Judge Griffith did not recuse himself. The email sent to counsel by Judge Griffith on July 29, 2019, stated:

“I have considered your respective motions for summary judgment. I find that a question of fact exists (or several questions of fact exist actually). I am therefore denying the cross motions for SJ. I will also continue the cases past next week's civil term in Newberry.

Additionally, I think it may be prudent for this case to be heard by another judge who does not live in the neighborhood. I suggest that we agree on which upcoming term of court would be most agreeable with everyone's schedule and then work out a switch of presiding judges if the term is assigned to me.

Please advise if this plan is suitable.” (emphasis added)

3. After Judge Griffith issued the Form 4 Order filed on July 21, 2019, stating that “after thoughtful consideration” the cross-motions were denied, Defendants did not file a motion for reconsideration of that Order. Instead, Defendants presented a second, identical motion 12 months later. It is respectfully submitted that this Court overlooked these facts and that it is the law that repetitive motions for summary judgment are not allowed unless a second motion for summary judgment is based on new evidence that was not available or produced with the initial motion for summary judgment. The holding in Enoree Baptist Church v.

Fletcher, 287 S.C. 602, 340 S.E. 2d 546 (1986), has not been reversed or cited unfavorably by the Supreme Court or the Court of Appeals. (held that one circuit court cannot reverse the order of a prior judge).

4. The Court overlooked that the cases cited in the Order are not applicable here and/or are distinguishable from the holding in Enoree Baptist Church. The Ballenger case recognized the long-standing rule that denial of summary judgment is not appealable (and thus “decides nothing”). This case did not directly or impliedly reverse the holding in Enoree Baptist Church. The Court also relied on the case of Johnston v. Bowen which is not applicable. In that case, after the Court denied summary judgment, the Defendant moved to reconsider; the court granted the motion to reconsider, allowed discovery, and afterwards granted summary judgment. Defendants here did not move for reconsideration of Judge Griffith’s Order. The Johnston case did not deal with one Court granting summary judgment after a prior court denied it. Finally, the Court misapprehended a third case, PPG Indus., Inc. v. Orangeburg Point. In that case, the trial court denied summary judgment, the Defendant moved to reconsider, and the Court granted it and ordered summary judgment for the Defendant. In the case at bar Defendants never filed a motion for reconsideration of Judge Griffith’s Order denying summary judgment in July 2019. The Defendants orally argued “reconsideration” more than 12-months after the Order of Judge Griffith; they ignored Rules 59 and 60 SCRCp which provide the methodology for asking a court to reconsider a court order. None of the three cases cited in this Court’s order overruled or cited Enoree Baptist Church.
5. The Court overlooked and erred in finding and concluding on page 6 of the Order that denial of a summary judgment Order does not preclude a new summary judgment motion and that “parties may re-file a summary judgment motion.” This would be correct if Defendant Amick had submitted new evidence, but not applicable where he did not move

for Judge Griffith to reconsider the denial of his first motion and where Amick produced no new or additional evidence here. If this position were not correct, every litigant whose motion for summary judgment is first denied, will continue filing his same motion indefinitely in hopes that another judge will grant it.

### **Contract Issues**

6. The Court erred in finding and concluding on Page 9 of the Order that the Lions Club letter was not an offer, but “was meant to open negotiations with adjoining landowners.” This is contradicted in the record. If it was not an offer to sell, it was an offer to sell to the highest bidder, per the testimony of Joe Rice and Claude Schumpert below. Comparing the Lions Club letter and the admissions against interest expressed by Lions Club Secretary Pete Simpson (the signatory of the letter) and Lions Club President Gene Crocker (author of the letter), show that the intent of the letter created genuine issues of material fact. The fact that the Lions Club letter used the word “offer” twice, that there was testimony that it was an “invitation to bid,” and other evidence that it was to be sold “to the highest bidder” shows conflicting, genuine issues of material fact.
7. This Court overlooked that in Plaintiff Joe Rice’s deposition he testified that after he saw the Lions Club letter, he talked to the signatory of the letter, Pete Simpson, on the telephone about the letter and Simpson told him that the Lions Club had “decided to sell the property” and that “the intent was to sell the property to the highest bidder that would accept the property in the condition it was in, and they had to do it by June 1...” (Deposition of Joe Rice, pp. 34-35). (emphasis added). The Simpson statement was an admission against interest by a party-opponent’s agent. Rule 801(d)(2) SCRE. Rice further testified that he and his wife “agreed to pay more than they were asking in order to the best of our ability ensure that we were the highest bidder.” (Deposition of Joe Rice, p. 36).

8. This Court also overlooked the testimony of Joe Rice regarding the letter as follows: “I interpreted that they were going to sell the property to the highest person that was going to pay the most money for it, because they were going to use the money for charity.” (Deposition of Joe Rice, p. 41).
9. This Court also erred in overlooking the testimony of Claude Schumpert in his deposition, where Schumpert talked to the president of the Lions Club, Gene Crocker, about the process that the Lions Club was following. He said Crocker told him that “bids would be sealed and put in, that the person would be awarded that submitted the highest...bid for it.” (Deposition of Claude Schumpert, p. 46). (emphasis added). Schumpert’s notation on his copy of the Lions Club letter during that conversation was “highest bid.” (Deposition of Claude Schumpert, p. 46). The Court further overlooked Schumpert’s testimony that Crocker explained that the letter was asking for people to “make bids on the property.” (Deposition of Claude Schumpert, p. 47). These statements by Lions Club President Gene Crocker were also admissions against the interest of the Lions Club under Rule 801(d)(2).
10. The Court overlooked that, in finding that the letter was not an “offer”, there was evidence that the Lions Club leadership claimed it was a sale to the highest bidder and the evidence to this effect should be weighed at a trial by the fact-finder.
11. The Court erred in overlooking that Amick initially accepted the conditions of the Lions Club offer and then later, on May 23, 2017, he told the Lions Club Board that he would not agree to accept the encroachments, a condition of the Lions Club for the sale of the property, and that he withdrew his “acceptance.” (Deposition of Ray Amick, p. 39; Deposition of Ray Amick in *Schumpert* case taken 6/17/20, p. 36; Deposition of Gene Crocker, p. 65; and, Deposition of Crocker in *Schumpert* case taken 6/17/20, p. 54). This was a repudiation of any contract he claimed. Masonic Temple v. Ebert, 199 S.C. 5, 18 SE 2d 584 (1942). He now claims there was no offer, which is disputed by the fact that his

conduct in accepting and then rescinding the “offer” shows the opposite.

12. On the fourth paragraph on page 3 of the Order, this Court found that “On May 23, 2017, the Lions Club held another board meeting and decided to “send letters to those who had shown an interest in purchasing the lake property stating “that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property.” Lions Club cannot withdraw an offer if this Court finds it did not make one. This finding overlooks the fact that Amick at the meeting on May 23, 2017, withdrew his acceptance of the Lions Club offer and/or his bid to purchase the property before the June 1 deadline, leaving the Rice response as the highest bid. The Court overlooked that the Lions Club did not communicate to the adjacent property owners that the Lions Club letter offer was withdrawn until after the June 1 deadline.
13. The above finding also overlooked that the Lions Club letter to all adjacent property owners in January 2017 (whether it was an offer to sell or an offer of sale to the high bidder) had a response deadline of no later than June 1; that this deadline was a “hard” deadline (Deposition of Gene Crocker, p. 69); and, that as of this deadline only two responses/bids were pending: that of Plaintiffs for \$325,000, and the other of the Schumperts for \$300,000.
14. This Court overlooked that the Lions Club letter in January 2017 to the adjacent property owners by its language called itself an offer to sell and therefore was an offer to sell. It was also overlooked that the President of the Lions Club, Gene Crocker, testified in his deposition on June 17, 2020, in the *Schumpert* case that the letter “offers the property for sale”. (Deposition of Gene Crocker, p. 42). He also testified at his deposition in *Schumpert* that the intent of the letter was to offer the property for sale. (Deposition of Gene Crocker, p. 38; Hearing Transcript, p. 40).

15. This Court overlooked that, in the alternative, if the letter was not an offer to sell to the highest bidder, it was ambiguous and was intended to convey the property to the highest bid received by the deadline of June 1, 2017, at which time only two active “bids” were received by the Lions Club (see No. 13 above).
16. This Court overlooked the case of Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010); cert denied January 26, 2012. In that case, there was an action for breach of contract of sale. The Master-in-Equity granted summary judgment in favor of buyer. The Court of Appeals reversed that ruling and stated “a contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation”, citing South Carolina Department of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E. 2d 299 (2001). In the Wallace case, the Court of Appeals determined that the contract was ambiguous because it was reasonably susceptible to more than one interpretation. The case at bar involves an offer letter by the Lions Club which is susceptible to more than one interpretation. The Lions Club says it is not an offer despite the words “offer” appearing in the letter. The Lions Club also argues that the intention of the letter was not to sell the property when the language of the letter indicates otherwise. Further, this Court did not consider the case of Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2008) where the Lower Court ruling granting summary judgment for the defendant was reversed because the Court of Appeals determined that “summary judgment is improper where there is an issue to the construction of a written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument.” *Id.* at 241. In the instant case, the language of the letter offer is ambiguous and summary judgment is inappropriate. Further, extrinsic evidence may be admitted to show the intent of the parties. Wallace, *supra* at 75.

17. The Court overlooked the principle that an ambiguous contract is one capable of being understood in more ways than one, through indefiniteness of expression or having a double meaning or a conflict in the words or clauses used. Where a contract is ambiguous this Court may consider parol evidence to ascertain intent of the parties. Estate of Revis v. Revis, 326 S.C. 470, 484 S.E. 2d 112 (Ct. App. 1997); Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 161 S.E. 2d 179 (1968) (summary judgment was reversed where contract was ambiguous and parol evidence was admissible to show intent).
18. The Court overlooked that it is uncontradicted in the evidence that the Lions Club intended to sell the property. The question of how is in dispute (genuine issues of material fact). The letter specified that if it was not sold per the letter to adjoining owners by June 1, 2017, it would be offered for sale to “others” (presumably the general public).
19. The Court erred in characterizing the Rice responses as not being an acceptance because it overlooked that the Rice response was unequivocal, it did not introduce additional conditions as a matter of law, and because the Rice response was an acceptance to the Lions Club offer to sell to the high bidder as explained by its letter and the statement of Pete Simpson referenced above.
20. The Court overlooked that the Rice response of February 14, 2017, (a) constituted the highest bid (\$325,000) to the Lions Club offer; (b) accepted all conditions in the Lions Club letter; and, (c) was submitted over 3½ months before the June 1 deadline. The Court overlooked that the Rice response’s reference to “needing 30 days notice to close the sale” did not add an additional condition; rather, it simply identified what the Rice’s perceived to be a reasonable time for closing. Where no time is provided in a contract a “reasonable” time is imputed. See, *e.g.*, Cloniger v. Cloniger, 261 S.C. 603, 193 S.E.2d 647 (1973) (holding that parol contract for the sale of land where time for performance is not specified, the law implies that “it shall be done within a reasonable time, which is sufficient”), *citing*,

McMillian v. McMillian, 77 S.C. 511, 58 S.E. 431 (1907); see also, Smith v. Spratt Machine Co., 46 S.C. 511, 245 S.E. 376 (1896); Drews Company v. Ledwith-Wolfe, 296 S.C. 207, 371 S.E. 2d 532 (1988).

21. The Court overlooked that the Rice response that the purchase was “subject only to the property having good and marketable title” was not a material change of condition because marketable title is a fundamental requirement of any seller’s performance of a real estate contract and is therefore a covenant implied by law. See Kennedy v. Gramling, 33 S.C. 367, 11 S.E. 1081 (1890). See also *e.g.*, Sales Intern. Ltd v. Black River Farms, Inc., 270 S.C. 391, 242 S.E.2d 432 (1978) (holding that it is axiomatic that a purchaser cannot be required to take unmarketable title), *citing*, Laurens v. Lucas, 27 S.C.Eq. (6 Rich) 217 (1854), 77 Am. Jur. 2d, *Vendor and Purchaser*, § 168, and 57 A.L.R. 253, 1301, et seq. (1928), and followed by, Sanders v. Costal Capital Ventures, Inc., 296 S.C. 132, 370 S.E.2d 903 (Ct. App. 1988). It is simply black letter law that the acceptance of an offer to sell land which makes no specifications or limitations as to title is not made conditional merely by including a provision requiring marketable title. See, 2 Williston on Contracts § 6:15 (4<sup>th</sup> ed.); 1 Corbin, Contracts, § 86.
22. The Court overlooked and erred in finding and concluding on Page 13 that as a matter of law the highest price was not the sole or primary goal by the terms of the letter. There are genuine issues of material fact as to this issue. For example, Lions Club President Gene Crocker testified in his deposition that, hypothetically, if Schumpert had offered \$600,000 in his letter response “we probably would not be meeting today.” (Deposition of Gene Crocker, p. 34; See also, Deposition of Gene Crocker, pp. 62-63 (getting the top net proceed was important.); Deposition of Gene Crocker, p. 47 (witness agreed that it might have been prudent to get the most money to go to charity); and, Deposition of Gene Crocker, pp. 62-63 (board member thought it should go to highest offer) .



23. The Court erred in finding and concluding that the Rices' "auction theory was rejected", as there is evidence in the record (testimony of Rice and Schumpert referenced above) that the two main Lions Club officers admitted that the Lions Club intended to sell the property to the highest bidder, and the Rice response was consistent with what Simpson told Rice.
24. The Court further overlooked the Lions Club officers' admissions as to the meaning and intent of the letter offer were statements relied upon by Plaintiffs to their detriment. Therefore, the Lions Club is estopped to deny the contract asserted by Plaintiffs based on the statute of frauds or otherwise. See, *e.g.*, Florence Printing Co. v. Parnell, 178 S.C. 119, 182 S.E. 313 (1935) (holding that seller making oral agreement under contract otherwise subject to the statute of frauds which is relied upon by buyer to his detriment cannot avoid enforcement of such agreement by claiming benefit of statute).
25. The Court erred in failing to conclude that the admissions of the Lions Club officers that the letter offer was an offer to sell to the highest bidder, in the alternative, to the extent not unambiguously set out in the letter, amount to evidence of additional terms (not contradicting or varying the terms of the letter) or explanatory of what was meant by the letter and form a part of the agreement asserted by Plaintiffs. See Parr v. Parr, 268 S.C. 58, 231 S.E.2d 695 (1977) (holding parol testimony admissible to explain what is meant by the words of a written instrument.)

#### **Expert Testimony**

26. The Court erred in failing to consider the relevant portions of Professor Steve Spitz's supplemental affidavit. While it is true that the Order of Judge Griffith correctly ruled that Spitz's opinions on legal conclusions were not admissible; however, his opinions identifying the relevant evidence on the causes of action are proper for an expert. Vortex Sports v. Ware, 378 S.C., 662 S.E. 2d 444 (2008). Spitz opined that the following facts

were in the record and most material to the claims:

- a. The letter of the Lions Club was by its terms an offer “valid until June 1, 2017, at which time it will be advertised for sale to others.”;
  - b. That the Rice “bid” agreed to all conditions of the Lions Club;
  - c. That on May 23, 2017, Amick withdrew his acceptance/response by repudiating his prior acceptance, which left the Rices as high bidders on that date;
  - d. That the Lions Club never withdrew its “offer” before the June 1, 2017, deadline;
  - e. That Amick had actual knowledge of the Rices’ high bid no later than by November 28, 2017;
  - f. The Lions Club letter included no indication that any further action by the part of the Lions Club was necessary to manifest its assert to the resulting contract with the Rices; and,
  - g. “These facts are the most material to the claims involved in this case and inform the conclusion that Plaintiffs are entitled to specific performance of their contract.”
- (Supplemental Affidavit of Spitz filed March 25, 2019, p. 7).

This motion is based on the applicable law, the entire record in this matter, including all depositions, affidavits, pleadings, and exhibits in the record, and the depositions in the *Schumpert* case which were discussed at the summary judgment hearing on August 27, 2020.

Respectfully submitted,

**POPE PARKER JENKINS, P.A.**

s/Thomas H. Pope III

s/Kyle B. Parker

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*Attorneys for Plaintiffs*

December 18, 2020

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.

**DEFENDANT C. RAY AMICK'S  
RESPONSE IN OPPOSITION TO THE  
RICE'S MOTION TO ALTER OR  
AMEND THIS COURT'S SUMMARY  
JUDGMENT ORDER**

**TO: THOMAS H. POPE, III; KYLE B. PARKER; AND MICHAEL A. SCARDATO;  
ATTORNEYS FOR PLAINTIFFS:**

**I. INTRODUCTION<sup>1</sup>**

This Court granted Defendant C. Ray Amick (“Mr. Amick”) partial summary judgment because “the Lions Club Letter was not an offer as a matter of law, and even if it were, the Rice Response [was] not an acceptance as a matter of law.”

Plaintiffs Lisa Summer Rice and Joseph F. Rice (“Rices”) now assert this Court overlooked material facts and law and that the Court should alter or amend its Order. However, the Rices have only raised similar arguments already rejected or have pointed to immaterial facts that do not support altering the Order. Accordingly, this Court should deny the Rices’ motion.

**II. LEGAL STANDARD**

“[W]hether to reconsider a motion for summary judgment is within the trial judge’s discretion.” *Brown v. Pearson*, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997). “[I]t is

<sup>1</sup> The facts are fully set forth in this Court’s Order Granting Defendant C. Ray Amick’s Motion for Partial Summary Judgment (“Order”) entered on December 9, 2021 and are incorporated fully herein.

proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) “A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.” *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988) (cited by *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993)).

### **III. ANALYSIS**

#### **A. The Court properly considered Mr. Amick’s Motion for Partial Summary Judgment.**

The Rices begin by stating this Court improperly considered Mr. Amick’s motion for partial summary judgment because Judge Griffith did not recuse himself, Mr. Amick improperly asked the Court to grant summary judgment a second time, and *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E. 2d 546 (1986), supports the Rices’ position. See Rice’s Motion to Alter at ¶¶ 1–5. The Rices are again incorrect.

Judge Griffith effectively recused himself by deciding to have no further involvement in the case, which led to the complex case designation and a new judge. Judge Griffith stated clearly in his email, “I think it may be prudent for this case to be heard by another judge who does not live in the neighborhood.” While a formal recusal order was not entered on the docket, Judge Griffith clearly indicated he would not rule again in the case after denying summary judgment. Given the new posture of the case with a new judge and the newly filed and nearly identical case with the Shumperts, Mr. Amick did not ask for “reconsideration” but rather presented the summary

judgment arguments to the same Court with a new judge.<sup>2</sup>

As this Court held, the law allows exactly what Mr. Amick did here—ask the Court to again consider summary judgment after a first summary judgment motion was denied. See *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (“The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion.”); *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993) (holding “trial court interlocutory orders are amendable” where the trial court denied a motion for summary judgment, allowed leave to re-file after a motion to amend, and ultimately granted the re-filed motion for summary judgment); *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr. Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988) (“A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.”).

It is also worth noting Rule 54(b), SCRCp, specifically leaves any order subject to revision by the Court prior to final judgment and provides an additional basis for the Court to enter partial summary judgment for Mr. Amick. Rule 54(b) states, in pertinent part, “any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and *the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*” (emphasis added).

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<sup>2</sup> Of course, Mr. Amick understood the Rices to have consented to either side raising motions for summary judgment as set forth in Mr. Amick’s motion for partial summary judgment. However, this Court did not make this finding in its Order.

Conversely, *Enoree Baptist Church* does not support the Rices because it was decided under the old rules of civil procedure and abrogated with the enactment of the current rules. *Enoree Baptist Church* relied on the former Circuit Court Rule 60 to hold a judge could not set aside a prior judge's order on the same set of facts. *See also Dukes & Dukes, Inc. v. Hygrade Food Prod. Corp.*, 236 S.C. 69, 73, 113 S.E.2d 254, 255 (1960) (partially quoting the old Rule 60: "If any application for an order be made to any Judge and such order be refused in whole or in part or be granted conditionally or on terms, no subsequent application upon the same state of facts shall be made to any other Judge, and if upon such subsequent application any order be made, it shall be revoked."). Under the new rules of civil procedure, the South Carolina Supreme Court has allowed exactly the motion Mr. Amick has raised here. *See Ballenger*, 313 S.C. at 477, 443 S.E.2d at 380 ("The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion.") and *Johnston*, 313 S.C. at 63, 437 S.E.2d at 47 (holding "trial court interlocutory orders are amendable" where the trial court denied a motion for summary judgment, allowed leave to re-file after a motion to amend, and ultimately granted the re-filed motion for summary judgment). While the old Circuit Court Rule 60 barred motions on the same state of facts, the new rules and intervening case law establish no such express prohibition.

Finally, the Rices have not identified a basis to *prevent* this Court from considering Mr. Amick's legal arguments after the Form 4 denial by Judge Griffith. Instead, the Rices attempt to distinguish *Johnston* and *PPG Indus., Inc.* only because Mr. Amick did not file a motion to "reconsider" and did not follow Rules 59 and 60, SCRCP. However, Mr. Amick noted in his motion for partial summary judgment—and the Rices admit—a motion to reconsider the Court's earlier denial would be procedurally proper and before the Court for a decision on the merits.

Compare Mr. Amick's Motion for Partial Summary Judgment at n. 1 with Rices' Motion to Alter at ¶ 4 ("In the case at bar Defendants never filed a motion for reconsideration of Judge Griffith's Order denying summary judgment in July 2019."). And Mr. Amick did not face a time limit to file a motion to reconsider because Rules 59 and 60 apply to final judgments rather than interlocutory denials of motions, which are governed by Rule 54(b) and "subject to revision at any time before the entry of judgment."

Despite the Rices' arguments to the contrary, the song remains the same, and this Court properly considered and granted Mr. Amick's motion for partial summary judgment.

**B. The Rices still have not identified a genuine dispute of material fact whether the Lions Club Letter was an offer.<sup>3</sup>**

The Rices now assert the following facts indicate the Lions Club Letter was an offer:

- Joe Rice talked to the signatory of the Lions Club Letter, Pete Simpson, on the telephone about the letter and Simpson told him that the Lions Club had "decided to sell the property" and that "the intent was to sell the property to the highest bidder that would accept the property in the condition it was in, and they had to do it by June 1..." (Deposition of Joe Rice, pp. 34-35) (emphasis added);
- Testimony from Joe Rice: "I interpreted that they were going to sell the property to the highest person that was going to pay the most money for it, because they were going to use the money for charity." (Deposition of Joe Rice, p. 41);
- Claude Schumpert testified that Crocker told him "bids would be sealed and put in, that the person would be awarded that submitted the highest...bid for it." (Deposition of Claude Schumpert, p. 46);

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<sup>3</sup> Again, the Court should only consider the Lions Club Letter and the Rice Response in deciding whether the parties formed a contract because South Carolina's statute of frauds requires that the contract be in writing. *See, e.g., Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975). However, the Rices cite a fair amount of testimony, and even if the Court were to consider evidence outside of the two letters, the outcome would still be the same—no contract.

- Claude Schumpert's notation on his copy of the Lions Club letter during that conversation was "highest bid." (Deposition of Claude Schumpert, p. 46);
- Schumpert's testimony that Crocker explained that the letter was asking for people to "make bids on the property." (Deposition of Claude Schumpert, p. 47);
- Mr. Amick stated he would not agree to accept the encroachments;
- The Lions Club letter in January 2017 to the adjacent property owners by its language called itself an offer to sell and therefore was an offer to sell;
- President of the Lions Club, Gene Crocker, testified in his deposition on June 17, 2020, that the letter "offers the property for sale." (Deposition of Gene Crocker, p. 42);
- Gene Crocker also testified that the intent of the letter was to offer the property for sale. (Deposition of Gene Crocker, p. 38; Hearing Transcript, p. 40); and
- The Rices continue to assert the highest bid theory.<sup>4</sup>

See Rices' Motion to Alter at ¶¶ 6–15.

Simply, none of these facts support the Rices' assertion that the Lions Club Letter was an offer. The facts cited all point to an expectation that "bids" or "offers" would be made to the Lions Club or indicate how Joe Rice and Claude Schumpert interpreted what they heard. These facts, construed in favor of the Rices, would only tend to show the same situation in *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E. 2, 5 (1932)—that the purported offer was in fact one to open negotiations for a binding agreement. In fact, each fact identified follows the statements in the Lions Club Letter, asking for bids or offers from the letter recipients. The Rices' theory of the case is that the

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<sup>4</sup> The Rices cite *Estate of Revis v. Revis*, 326 S.C. 470, 484 S.E. 2d 112 (Ct. App. 1997), and *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 161 S.E. 2d 179 (1968) for the proposition that parol evidence is admissible to show intent for an ambiguous contract. Rice Motion at ¶ 17. While these legal propositions are undoubtedly true, they do not apply here, where the statute of frauds limits the contract to sell real estate to writings, and the Rices are not asserting some provision is ambiguous. However, even if the Court considered these facts, they would not create a genuine dispute of material fact in this case.



Rices put in a *bid*—i.e., an offer—on the Property. None of the “overlooked” facts set forth would tend to show the Lions Club Letter was an offer.

Instead, the Lions Club Letter did what this Court already held it did as a matter of law—opened negotiations for the Property and was not an offer that if accepted would conclude a bargain. *See McLaurin*, 165 S.C. at 411, 164 S.E. at 5 (“An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance, and if it is an offer merely to open negotiations which may ultimately result in a contract it is not binding.”); *see also Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”). Where there was no offer, there is no contract. *See generally Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003) (“The necessary elements of a contract are an offer, acceptance, and valuable consideration.”); *see also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (contracts require “a meeting of the minds between the parties with regard to all essential and material terms of the agreement”).

Nor have the Rices identified any basis to conclude *McLaurin* does not resolve this case because the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. In *McLaurin*, the defendant sent a letter to his brother stating that he would buy out several other investors and that he thought he could obtain financing to do so. *See McLaurin*, 165 S.C. 411, 164 S.E. at 4. The defendant’s letter further directed the brother to “see boys at once and see what they would like to do” and stated “[i]f all decide to do this have each write me at once and you wire me ‘all accept.’” *Id.* Despite addressing an alleged offer that contained instructions for accepting, *McLaurin* held that

this letter was not “such an offer as could, by acceptance, be changed, converted or construed into a binding agreement of sale.” *Id.* at 165 S.C. 411, 164 S.E. at 5. The court then cited authority explaining that some offers are offers to open preliminary negotiations rather than to form a contract and upheld the trial court’s directed verdict in favor of the defendant. *See id.*

Like *McLaurin*, the Lions Club Letter sought expressions of interest from the letter’s recipients by stating, “[i]f you have an interest in the property please let us know right away.” It did not invite acceptance but offers by stating, “[f]irst consideration will be given to current members of the Newberry Lions Club.” By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept. Like *McLaurin*, more remained to conclude a deal with the Lions Club. The Rices realized as much, describing the Rice Response as a “bid” rather than an “acceptance” and only contemplating acceptance by the Lions Club. *See* Rice Response (“We would need 30 days from notice that the **bid was accepted** . . .”) (emphasis added).

Conversely, the Rices cite several cases addressing questions of fact when a contract provision is ambiguous. However, these cases do not apply because the issue here is whether any evidence shows a contract was *formed*, not the intent of an ambiguous provision. *See* Rices’ Motion at ¶16 (citing *Wallace v. Day*, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010) and *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2008)). Certainly, neither case addresses *McLaurin* at all or whether a contract was formed. The Rices still have not distinguished *McLaurin*, and they cannot do so under the facts of this case.

Accordingly, this Court was exactly right in its Order, and the Lions Club Letter used “offer” only to communicate an offer to open negotiations like *McLaurin*. No reasonable fact finder could find otherwise.

**C. Even if the Lions Club Letter were an offer, the Rices have not identified any genuine dispute of material fact whether the Rice Response was an acceptance.**

The Rices never accepted the supposed offer, but they now point to several facts supposedly showing the Rice Response was an acceptance:

- it is uncontradicted in the evidence that the Lions Club intended to sell the property;
- the Rice response was unequivocal, it did not introduce additional conditions as a matter of law, and because the Rice response was an acceptance to the Lions Club offer to sell to the high bidder as explained by its letter and the statement of Pete Simpson [“the Lions Club had “decided to sell the property” and that “the intent was to sell the property to the highest bidder that would accept the property in the condition it was in, and they had to do it by June 1...”];
- the Rice Response (a) constituted the highest bid (\$325,000) to the Lions Club offer; (b) accepted all conditions in the Lions Club letter; and (c) was submitted over 3½ months before the June 1 deadline;
- The Rice Response “30 days notice to close” did “not add an additional condition; rather, it simply identified what the Rice’s perceived to be a reasonable time for closing”;
- the Rice Response that the purchase was “subject only to the property having good and marketable title” was not a material change of condition because marketable title is a fundamental requirement of any seller’s performance of a real estate contract and is therefore a covenant implied by law;
- There are genuine issues of material fact whether “the highest price was not the sole or primary goal by the terms of the letter”; and
- there is evidence in the record (testimony of Rice and Schumpert referenced above) that the two main Lions Club officers admitted that the Lions Club intended to sell the property to the highest bidder, and the Rice Response was consistent with what Simpson told Rice.

Rices’ Motion to Alter at ¶¶ 18–25. Contrary to the Rices’ assertions, these facts (and legal arguments) do not identify a basis to alter or amend this Court’s Order.

First, the facts are clear the Rice Response described itself as a “bid” rather than a manifestation of assent. The Rice Response by its own terms did not attempt to accept an offer—the only “acceptance” discussed was if the Lions Club accepted the Rices’ bid. *See, e.g., Electro-Lab of Aiken*, 357 S.C. at 369, 593 S.E.2d at 173 (an acceptance requires a manifestation of assent). Specifically, the letter stated: 1) The Rices authorized their attorney to “make a bid of \$325,000.00”; 2) The Rices understood the “bids” would be opened at an upcoming meeting; and 3) The Rices “would need 30 days from notice that **the bid was accepted**” to close the sale. The Rices’ use of the term “bid” three times and their request that the Lions Club inform the Rices if it accepted the bid is dispositive. A “bid” is “[a] buyer’s **offer** to pay a specified price for something that may or may not be for sale.” BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added); *see also Ramsay v. Vogel*, 970 F.2d 471, 463 (8<sup>th</sup> Cir. 1992) (“the words ‘bid’ and ‘bidder’ commonly are used to refer to the making of an offer to buy or sell property or to provide services in a private sale or transaction.”). Accordingly, the Court correctly concluded as a matter of law that the Rices did not manifest assent to accept and conclude a bargain but made an offer—a bid—that they understood would have to be accepted by the Lions Club. *See generally Stevens & Wilkinson of S.C., Inc.*, 409 S.C. at 578, 762 S.E.2d at 701 (contracts require “a meeting of the minds between the parties with regard to all essential and material terms of the agreement”).

Furthermore, the Rice Response violated South Carolina’s “mirror-image” rule by requiring additional terms not present in the Lions Club Letter:

1. **A good title condition:** “subject only to the property having good and marketable title”;
2. **The 30 Days to Close Condition;** and
3. **A different price term:** The Lions Club asked for \$300,000.00 while the Rices offered \$325,000.00.

*See Sossamon v. Littlejohn*, 241 S.C. 478, 486, 129 S.E.2d 124, 128 (1963) (“If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, there is a rejection of the offer, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the modification suggested.”) (emphasis added).

The “good and marketable” title condition added terms not in the Lions Club Letter. Additionally, where the contract is silent on payment terms, South Carolina law assumes payment in full upon tender of the property. *See Sossamon*, 241 S.C. at 485, 129 S.E.2d at 127 (“when the plaintiff proposed in his alleged acceptance conditions other than cash upon delivery of the property . . . he imposed new or other conditions not contemplated in the offer.”). By requiring 30 days to search title with payment at closing, the Rices conditioned their acceptance of the alleged Lions Club offer and therefore rejected it. *See id.* Finally, the Lions Club and the Rices differed on the price term, clearly violating the “mirror image” of the alleged offer. The Rices, just as they stated in the Rice Response, made an offer—or bid—that was not accepted.

The Rices of course do not think the “good and marketable” title condition and the “30 days notice to close” condition violate the mirror image rule and cite a host of cases.<sup>5</sup> *See Rices’ Motion to Alter* at ¶¶ 17, 21 (citing cases). In *Cloniger*, *Martin*, and *McMillan*, the courts addressed contracts where the existence was undisputed but there was no term for the time of payment. Likewise, in *Kennedy*, *Sales Intern. Ltd*, and *Sanders*, the courts addressed contracts undisputedly existing but held the buyer could not be compelled to accept an unmarketable title. The Rices thus

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<sup>5</sup> For payment term, *see Cloniger v. Cloniger*, 261 S.C. 603, 193 S.E.2d 647 (1973); *Martin v. La Boon*, 116 S.C. 97, 104, 107 S.E. 320, 322 (1921); *McMillan v. McMillan*, 77 S.C. 511, 513, 58 S.E. 431, 432 (1907). For marketable title, *see Kennedy v. Gramling*, 33 S.C. 367, 11 S.E. 1081 (1890); *Sales Intern. Ltd v. Black River Farms, Inc.*, 270 S.C. 391, 242 S.E.2d 432 (1978); *Sanders v. Costal Capital Ventures, Inc.*, 296 S.C. 132, 370 S.E.2d 903 (Ct. App. 1988).

assert the alleged contract with the Lions Club was formed and these additional terms were just reasonable terms that would have been implied anyway. This position is incorrect and cannot be reconciled with *Sossamon*, where an offer was made, and the purported acceptance *added* a term for the time of payment. *Sossamon* held the additional time-for-payment term in the purported acceptance violated the mirror image rule. *Sossamon*, 241 S.C. at 486, 129 S.E.2d at 128 (“If a condition is affixed to the acceptance by the party to whom the offer is made or any modification of, or change in, the offer is made or requested, *there is a rejection of the offer*, which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the modification suggested.”) (emphasis added). While a court might apply a reasonable time where the evidence showed the parties formed a contract without the missing term, it will not imply a term where one party attempts to accept with an additional term to which the other side has not agreed. Accordingly, this case is not one where the parties agreed to a deal without a closing date or where the quality of title is left unaddressed but one where the alleged acceptance included terms that were not in the alleged offer.<sup>6</sup> *Sossamon* thus applies in this case as this Court held, and *Cloniger, et al* are inapposite.

The Rices also attempt to get around their factual and legal problems by continuing to assert the ‘bid/auction’ theory and cite several statements from Lions Club officers that they wanted to sell the property for the highest price. However, these statements do not show the Lions Club intended to be bound by offers, and the highest one at that, on June 1<sup>st</sup>. In fact, following this theory would require clearly disregarding the phrases in the letter, “[i]f you have an interest in the property please let us know right away” and “[f]irst consideration will be given to current members

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<sup>6</sup> Notably, the Rices did not raise any argument regarding the different price term.

of the Newberry Lions Club.” Nothing cited by the Rices provides any evidence of a contract where the entire premise by the Rices would contradict the plain language of the Lions Club Letter.

Additionally, the Rices assert several other facts/legal theories purportedly affecting the Order:

- the Lions Club officers’ admissions as to the meaning and intent of the letter offer were statements relied upon by Plaintiffs to their detriment; and
- the admissions of the Lions Club officers that the letter offer was an offer to sell to the highest bidder, in the alternative, to the extent not unambiguously set out in the letter, amount to evidence of additional terms (not contradicting or varying the terms of the letter) or explanatory of what was meant by the letter and form a part of the agreement asserted by Plaintiffs.

These issues appear to touch on the Rices’ promissory estoppel claim. However, it is worth noting that even if true, promissory estoppel is a contract replacement theory—i.e., no contract was formed<sup>7</sup>—and could not affect the Court’s analysis finding no contract between the Rices and the Lions Club as a matter of law. Certainly, the Rices are not asserting promissory estoppel against Mr. Amick, who clearly did not make any promises to the Rices.

Moreover, the Court’s Order finding both the Lions Club Letter was not an offer and that the Rice Response was not an acceptance would seem to foreclose any potential detrimental reliance theory. The Rices did not own the Property before the Lions Club Letter and they still do not.

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<sup>7</sup> See *Thomerson v. DeVito*, 430 S.C. 246, 257, 844 S.E.2d 378, 384 (2020):

It has also been observed that “[p]romissory estoppel is a quasi-contract remedy.” See, e.g., *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (citing Higgins). A “quasi-contract” has been defined as “an obligation imposed by law because of some special relationship between the parties or because one of them would otherwise be unjustly enriched”; it “is not actually a contract but instead a remedy that allows the plaintiff to recover a benefit conferred on the defendant.” Quasi-Contract, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added).

Accordingly, the Rices have not identified facts or law indicating a genuine dispute of material fact as to whether the Rice Response was an acceptance, and this Court was exactly right in its Order.

**D. The Court properly excluded the testimony presented by affidavit from Professor Spitz, and he cannot recite “facts” to the factfinder.**

The Rices are still incorrect about any testimony being admissible from Professor Spitz.

Each of Professor Spitz’s assertions are inadmissible:

1. The letter of the Lions Club was by its terms an offer “valid until June 1, 2017, at which time it will be advertised for sale to others.”;
  - a. **Inadmissible:** expert testimony is not necessary to read the words in the letter to the fact finder and any opinion about it being an offer is excluded as a legal conclusion.
2. That the Rice “bid” agreed to all conditions of the Lions Club;
  - a. **Inadmissible:** expert testimony is not necessary to read the words in the letter to the fact finder and any opinion about it being an offer is excluded as a legal conclusion.
3. That on May 23, 2017, Amick withdrew his acceptance/response by repudiating his prior acceptance, which left the Rices as high bidders on that date;
  - a. **Inadmissible:** any opinion about a repudiated acceptance would be an inadmissible legal conclusion.
4. That the Lions Club never withdrew its “offer” before the June 1, 2017, deadline;
  - a. **Inadmissible:** would be an inadmissible legal conclusion.
5. That Amick had actual knowledge of the Rices’ high bid no later than by November 28, 2017;
  - a. **Inadmissible:** would be an inadmissible legal conclusion and/or a fact in the record not requiring expert testimony because it is within a fact finder’s understanding.
6. The Lions Club Letter included no indication that any further action by the part of the Lions Club was necessary to manifest its assert to the resulting contract with the Rices; and,



- a. **Inadmissible:** expert testimony is not necessary to read the words in the letter to the fact finder and any opinion about it being an offer is excluded as a legal conclusion.
7. These facts are the most material to the claims involved in this case and inform the conclusion that Plaintiffs are entitled to specific performance of their contract.
  - a. **Inadmissible:** whether specific performance is solely left to the Court and excluded as a legal conclusion, as is any testimony about what is “most material,” a clear issue for the fact finder.

Accordingly, this Court correctly addressed this issue in the Order, and the Rices have not identified any basis to alter or amend the Order on this issue.

### **V. CONCLUSION**

This Court considered completely and thoroughly the facts and law concerning whether the Lions Club Letter and the Rice Response formed a contract. This Court properly concluded summary judgment was appropriate because there was no genuine dispute of material fact—the Lions Club Letter was not an offer, and even if it were, the Rice Response was not an acceptance. The Rices have not identified any basis for this Court to alter or amend its Order. Accordingly, the Rices’ motion should be denied.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

s/ Demetri K. Koutrakos

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**ATTORNEYS FOR DEFENDANT  
C. RAY AMICK**

June 15, 2021

|                                       |   |                              |
|---------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS |
|                                       | ) |                              |
| COUNTY OF NEWBERRY                    | ) | CASE NO.: 2018-CP-36-00089   |
|                                       | ) |                              |
| LISA SUMMER RICE AND JOSEPH F. RICE,  | ) |                              |
|                                       | ) |                              |
| Plaintiffs,                           | ) | AMENDED SUMMONS              |
|                                       | ) | (NON-JURY)                   |
| v.                                    | ) |                              |
|                                       | ) |                              |
| NEWBERRY LIONS CLUB and C. RAY AMICK, | ) |                              |
|                                       | ) |                              |
| Defendants.                           | ) |                              |
|                                       | ) |                              |

**TO: NEWBERRY LIONS CLUB AND DEFENDANT C. RAY AMICK:**

YOU ARE HEREBY SUMMONED and required to answer the Fifth Amended Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer or a motion under Rule 12 of the *South Carolina Rules of Civil Procedure* in response to said Complaint on the Plaintiffs' attorneys, Pope Parker Jenkins, at their office located at 1508 College Street, Newberry, South Carolina, 29108, within thirty (30) days after service thereof exclusive of the day of such service. If you fail to answer or move in response to the Complaint within the time period stated above, the Plaintiffs in this action will apply to the court for default judgment and the relief demanded in the Complaint and a judgment by default will be rendered against you. You also must file your answer or motion with the court.

**POPE PARKER JENKINS, P.A.**

s/Thomas H. Pope, III

s/Kyle B. Parker

Thomas H. Pope, III

Kyle B. Parker

1508 College Street

P.O. Box 190

Newberry, South Carolina 29108

(803) 276-2532

*Attorneys for Plaintiffs*

Newberry, South Carolina  
August 31, 2021

|                                      |   |                              |
|--------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA              | ) | IN THE COURT OF COMMON PLEAS |
|                                      | ) |                              |
| COUNTY OF NEWBERRY                   | ) | CASE NO.: 2018-CP-36-00089   |
|                                      | ) |                              |
| LISA SUMMER RICE AND JOSEPH F. RICE, | ) |                              |
|                                      | ) |                              |
| Plaintiffs,                          | ) | <b>FIFTH</b>                 |
|                                      | ) | <b>AMENDED COMPLAINT</b>     |
|                                      | ) | <b>(NON-JURY)</b>            |
| v.                                   | ) |                              |
|                                      | ) |                              |
| NEWBERRY LIONS CLUB, C. RAY AMICK,   | ) |                              |
| AND CHERYL LITTLEJOHN,               | ) |                              |
|                                      | ) |                              |
| Defendants.                          | ) |                              |

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The Plaintiffs complaining of the Defendants would show and allege as follows:

### **BACKGROUND**

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice (“Rices”) are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant C. Ray Amick is a citizen and resident of Newberry County, and upon information and belief, was a member of Defendant Newberry Lions Club at all times relevant to this proceeding.

4. Defendant Cheryl A. Littlejohn (“Littlejohn”), upon information and belief, is a citizen and resident of Newberry County and is the owner of property at 454 Lions Club Road, in

Newberry County (TMS No. 652-3-10). She acquired title to this lot by deed of Stewart Jay Layman and Christopher Jay dated April 6, 2018.

5. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and, at all times relevant to this proceeding, retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

6. The Newberry Lions Club published and offered to sell the 5.5 acre tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

7. At a meeting of the Board of Directors of the Lions Club on January 14, 2017, the board was presented with a proposed letter drafted by the President of Defendant Lions Club offering the property for sale to all adjacent property owners of the subject property. Defendant Ray Amick, although not a member of the board of the Lions Club, was in attendance at that meeting. Before a vote was taken by the board at the meeting on January 14, 2017, Defendant Amick insisted that he needed until June 1, 2017, to buy the property. In response to his demand, by unanimous vote of the board of directors, the Lions Club acquiesced in Amick's demand.

8. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1. This letter was approved by the board of the Lions Club after being amended at Amick's insistence to include a deadline of June 1, 2017, after which the Lions Club's offer would no longer be valid.

9. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other adjoining landowners.

10. The offer stated in part, “We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.”

11. As part of this offer of sale, the offer further stated: “A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property, please let us now right away . . .” Exhibit 1 attached hereto.

12. The offer provided that any prospective purchaser would take title subject to encroachments where it stated, “[a]ny encroachments will have to be settled after the property is sold.”

13. The offer further stated, “This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.” Exhibit 1.

14. The above-referenced offer was sent to the Rices and, upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

15. As a result of the offer and accepting the conditions set forth therein, the Rices, through their attorney, sent a bid of \$325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

16. The Newberry Lions Club, upon information and belief, received other offers including one for \$300,000 from Claude Schumpert.

17. Upon information and belief, the Rices’ bid was the highest received and therefore, was the offer which was accepted by the Newberry Lions Club.

18. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of Defendant Newberry Lions Club's offer.

19. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club (Exhibit 3), which indicated that they understood that they were the successful bidders and again, reiterated their bid of \$325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of \$325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

20. Defendant Lions Club did not respond to either letter (Exhibit 2 or Exhibit 3) and never contested that Plaintiffs were the high bidder for the subject property or that the bid response of the Plaintiffs was anything other than acceptance of the offer of the Lions Club.

21. At the meeting of the Board of Directors of the Lions Club on May 23, 2017, Defendant Amick, a non-board member, was present. He spoke at the meeting and said that he would not accept the encroachments on the subject property referenced in the Lions Club offer of late-January 2017. By unanimous vote of the Lions Club board, it voted to withdraw its offer set forth in Exhibit 1 and instead opted to clear up "encroachments." The board voted at that meeting for its attorney to write the landowners who had submitted bids (Plaintiffs and Claude Schumpert) to inform them that the Lions Club offer on Exhibit 1 was withdrawn.

22. Amick's actions at the meeting on May 23, 2017, constituted a withdrawal of any offer he may contend he made.

23. The effect of the vote of the board at this board meeting on May 23, 2017, was an attempt to negate the bids of Plaintiffs (and Schumpert) and rescind its prior offer before the June

1 deadline. However, Defendant Lions Club did not reserve the right to do so in its offer (Exhibit 1), nor did it inform Plaintiffs (or Schumpert) before the June 1 deadline of its attempt to withdraw its offer of sale.

24. On June 1, 2017 (which was the deadline imposed by the Lions Club in late February 2017; Exhibit 1), there were only two bids pending: Plaintiffs' bid of \$325,000 and Schumpert's bid of \$300,000. Plaintiffs were high bidders.

25. Defendant Lions Club has refused to acknowledge that Plaintiffs were the high bidders and it has ignored Plaintiffs original bid as well as the follow-up letters from Plaintiffs' counsel on May 15, 2017.

26. After the letter of May 15, 2017 (Exhibit 3), the attorney for the Newberry Lions Club sent a letter dated June 5, 2017 (Exhibit 4), indicating that at its meeting on May 23, 2017, the Lions Club board had voted not to sell the property located at Lake Murray at that time because they were not able to convey a good fee simple marketable title hereto "because of encroachments."

27. At the time of this letter (Exhibit 4), the Lions Club deadline of June 1 had passed and the Rices had already accepted Defendant Newberry Lions Club's offer as highest bidder and thereby agreed to accept title subject to the encroachments.

28. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold to them as highest bidders. The letter dated November 21, 2017, is attached hereto and made part hereof as Exhibit 5.

29. Even though not a member of the Lions Club's board, Defendant Amick attended every board meeting in 2017 except April. His purpose in being present at these meetings was to try to insure that he obtain title to the subject property by insisting on terms favorable to him,



which were not in the public interest and about which no adjoining property owners had knowledge.

30. From at least November 2017, Amick had knowledge that the Rice's bid response was the highest and that Plaintiffs had accepted the Lions Club offer. Despite that knowledge, and in full assumption of any risk, Amick and Lions Club proceeded to attempt to close for a sale price (\$300,000) that was less than Plaintiffs'.

31. The original summons and complaint in this matter was filed on February 20, 2018, at 4:32 pm. A lis pendens properly describing the property which is the subject of this action was filed by the Rices, through counsel, on February 21, 2018, at 1:48pm. A copy of both documents was served on Defendant Newberry Lions Club on February 22, 2018 at 1:28pm.

32. Upon information and belief, Defendant Newberry Lions Club has conveyed certain property which resolved an encroachment issue with an adjoining landowners, Joseph T. McCrackin, III and Gena B. McCrackin, by deed recorded in the Office of the Clerk of Court in Deed Book 2017 page 110. This transaction resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified as TMS 652-3-22.

33. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

34. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are ready, willing and able to pay the agreed upon price of \$325,000 for the property in question even as it is presently configured.

35. Despite the foregoing, Defendant Newberry Lions Club took action meant to defeat Plaintiffs' claims to the property in favor of one of their own members conveying the property at

a discounted price to Defendant C. Ray Amick by deed recorded on February 22, 2018 at 3:55 pm in the Office of the Clerk of Court for Newberry County in Book 2028 at Page 198. The consideration recited in said deed from Defendant C. Ray Amick to Defendant Newberry Lions Club was \$300,000 and “other consideration”. The act of authorizing and carrying out the conveyance of the property in breach of the agreement with the Rices at a discounted price constitutes, upon information and belief, a breach of board member/trustee’s fiduciary duties.

36. The Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder.

37. Furthermore, as a result of the failure of Defendant Newberry Lions Club to follow through with their offer, the Plaintiffs have suffered special damages including attorney’s fees and costs which should be paid in addition to ordering specific performance, together with prejudgment interest.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment/Injunction)**

38. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

39. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

40. Plaintiffs properly filed the aforementioned lis pendens more than a day prior to the recording of the said deed from Defendant Newberry Lions Club to Defendant C. Ray Amick.

41. Upon information and belief, S.C. § 30-7-10 provides that the recording of the said deed to Defendant C. Ray Amick only operates as to affect the rights of all creditors from “day

and hour” when it was recorded, and the priority of the competing claims to the said property is determined by the time of the filing of record.

42. Upon information and belief, Defendant C. Ray Amick had actual and constructive knowledge of the Plaintiffs claims prior to the recordation of the aforesaid deed, and, therefore is not a bona fide purchaser for value without notice.

43. Because the said deed was recorded more than twenty-eight hours after Plaintiffs’ lis pendens was filed, the conveyance to Defendant C. Ray Amick was made subject to the judgment of this Court within this proceeding.

44. The Plaintiffs were the successful bidder and accepted the offer to purchase the property from Defendant Newberry Lions Club. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and they accepted the terms and requested that the property be conveyed to them for the consideration of \$325,000.00.

45. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

46. The actions by Defendant Newberry Lions Club, in failing to perform and further entering into the conveyance to its member, Defendant C. Ray Amick, for less consideration than agreed with Plaintiffs, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreement as set forth in the communications from the Newberry Lions Club and/or its representatives.

47. In the meantime, the Plaintiffs request that the Defendants be enjoined and restrained from conveying the property to any other person or entity and if the Court determines that the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to

those who were relying on the original bid procedures, then Defendant Newberry Lions Club should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property in similar fashion.

**FOR A SECOND CAUSE OF ACTION**  
**(Specific Performance)**

48. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

49. For the reasons set forth above, including Defendant Lions Club's breach of contract with Plaintiffs, the Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

**FOR A THIRD CAUSE OF ACTION**  
**(Promissory Estoppel)**

50. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

51. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

52. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant Newberry Lions Club.

53. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by Defendant Newberry Lions Club.

54. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their readiness, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to Defendant Newberry Lions Club several times.

55. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, Defendant C. Ray Amick was conveyed the property in spite of the Rices' successful bid.

56. Although the Rices had performed and complied with the offer in Exhibit 1, Defendant Newberry Lions Club claimed that it would not sale the property at that time and contradicted the terms of its offer outlined in Exhibit 1.

57. As a result of Defendant Newberry Lions Club's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, Defendant Newberry Lions Club conveyed the property to Defendant C. Ray Amick, who did not comply with the original bid requirements as set forth in Exhibit 1 and/or who had by his conduct repudiated and/or withdrew (on May 23, 2017) any prior acceptance of the offer outlined in the letter attached hereto as Exhibit 1.

58. The Plaintiffs suffered damages as a result of the promises made and not kept.

59. The Plaintiffs are entitled to obtain the property and/or actual damages under the doctrine of promissory estoppel.

**FOR A FOURTH CAUSE OF ACTION**  
**(Intentional Interference with Contractual Rights as to Defendant Amick)**

60. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

61. From June 1, 2017 through February 2018, Defendant Amick was not a member of the board of directors of the Defendant Lions Club (“the “board”); nevertheless, he insinuated himself into the decisions of the board by attending every board meeting in which the subject of the sale of the Lions Club property was discussed during this time period (all minutes of board meetings January 2017 through February 2018).

62. In attending these board meetings, Amick was pursuing his own personal agenda to buy the subject property on terms favorable to him without regard to Plaintiffs’ rights as highest bidder.

63. At said board meetings during 2017, Defendant Amick made demands to the board as follows:

- a. He insisted the board extend the offer period to June 1, 2017 (see Minutes of January 24, 2017).
- b. He insisted at the May 23, 2017, meeting that the board clear up the encroachments so that he could purchase the property with “clear title.”

Defendant Lions Club acquiesced in all of Defendant Amick’s demands.

64. Based on his personal agenda, Defendant Amick did not want to, or was not able to, purchase the subject property by the June 1, 2017, deadline in the Lions Club’s offer, and he coerced the Lions Club to try to change the bid conditions in May 2017 without notice to Plaintiffs so that encroachments would be cleared up by the Lions Club at his insistence, that the offer deadline of June 1 would be ignored, that the Plaintiffs’ bid response/acceptance would be ignored and that he would be able to purchase the property in February 2018 – all with his knowledge of Plaintiffs’ highest bid.

65. Amick's actions were wrongful and interference with Plaintiffs' contract with the Lions Club in each of the following particulars:

a. As set forth herein, Plaintiffs had a contract with Defendant Lions Club to purchase the subject property for \$325,000 (plus their agreement to accept the encroachments as stipulated by the offer of the Lions Club);

b. Defendant Amick had actual and/or constructive knowledge of Plaintiffs' contract;

c. Defendant Amick intended to interfere with Plaintiffs' contract;

d. Defendant Amick's interference with Plaintiffs' contract was without justification because he exerted pressures and maneuvers to get Defendant Lions Club to accept his bid by circumventing the Plaintiffs' highest bid and/or by changing the terms and conditions of the sale to circumvent Plaintiffs' high bid as set forth herein; and,

e. By virtue of Defendant Amick's conduct, Plaintiffs have been damaged by the fact that they are not able to place the property in a conservation easement to protect it from development.

#### **FOR A FIFTH CAUSE OF ACTION**

#### **(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)**

66. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

67. Defendant Lions Club knew or should have known that, in offering for sale the subject property, its handling of said sale included an implied covenant of good faith and fair dealing.

68. Defendant Lions Club, after offering said property for sale in January 2017 (Exhibit 1), knew or should have known that all bids received were entitled to be treated in good faith and dealt with fairly.

69. Plaintiffs' bid-response to the offer of the Lions Club constituted the highest bid and was an acceptance by Plaintiffs of the offer of the Lions Club.

70. Defendant Lions Club, in failing to honor Plaintiffs' bid, was in breach of the contract/agreement with Plaintiffs.

71. Based on the circumstances surrounding the breach, Defendant Lions Club had fraudulent intent and its unfair dealings and fraudulent intentions were manifested as follows:

- a. Lions Club allowed Amick (an "insider") to have input in the decision of the Lions Club even though Amick was not a board member;
- b. Lions Club fielded and acquiesced to Amick's demands relating to the terms and conditions of the sale as set forth above;
- c. Lions Club, knowing that Amick withdrew his bid on May 23, 2017, refused to honor Plaintiffs highest bid as of the June 1, 2017, deadline;
- d. Lions Club, after the June 1 deadline, without notice to Plaintiffs, let Amick in effect purchase the property on his terms in a single-bid process in January 2018, and for a price lower than Plaintiffs; and,
- e. Lions Club ignored all written communications from Plaintiffs' attorneys in February, May, and November 2017 demanding that Lions Club acknowledge Plaintiffs' highest bid and consummate the sale to Plaintiffs.

72. Lions Club's breach of contract was accompanied by a fraudulent act and unfair dealing as set forth herein.

73. These actions by the Lions Club constitute breach of contract accompanied by fraudulent act which have damaged Plaintiffs as set forth above, and Plaintiffs are entitled to all damages therefrom.

**FOR A SIXTH CAUSE OF ACTION**  
**(Declaratory Judgment – Easement – Injunction As To Amick and Littlejohn)**  
**(IN THE ALTERNATIVE)**

74. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein. This cause of action is set forth alternatively.



75. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through “Lions Club Point” over, through and beyond the Lions Club property and that of Defendant Littlejohn to the boat ramp and beach area on the shores of Lake Murray. These lands where the boat ramp and beach area are located at the edges of the peninsula of the Lions Club Point have been used for more than eight decades as a recreational spot for the Lions Club, the grantees of its out conveyances (the predecessors in interest of the Plaintiffs), and their guests..

76. Defendant Amick further claims title to a parcel of land over which Lions Club Road runs which was conveyed to him by Dominion Energy Corporation by deed dated October 15, 2019, (referred to in this complaint as Amick’s “fringeland parcel”). A copy of this deed is attached as Exhibit 6 hereto; this conveyance is for .6 acres, more or less. When Amick took title to this property, he had actual knowledge of the Order Granting Temporary Injunction filed on August 6, 2019, in a case in which Amick was a party-Defendant.

77. The area comprising “Lions Club Road”, as such term is used herein, traverses over, through and beyond both Lions Club Point and Amick fringeland parcels to the said boat ramp and beach area as is shown and depicted on the plat of survey of Thomas D. Abraham, surveyor, prepared for Joe Rice and Claude Shumpert, dated February 25, 2021, attached hereto as Exhibit 7.

78. Within a short time after obtaining a deed from the Lions Club to the subject property in February 2018 (referenced in Paragraph 35 above), Defendant Amick installed “no trespassing” signage and placed a barricade across Lions Club Road, which barricade blocked access to the boat ramp and the beach area.

79. Plaintiffs and all property owners adjoining the subject property have used Lions Club Road for over 60 years to access the boat ramp and the beach area on the Point. The usage of this road by the neighborhood of at least 15 adjoining property owners has been without permission, restriction, or limitation, and at no time during this 60-year period has the road been blocked.

80. Defendant Amick's actions in blocking the use of Lions Club Road for such access is unlawful and in contravention of the rights of the Plaintiffs and all other property owners to use said road for access to boating and recreational use of the Point as has been the case for over five decades.

81. Littlejohn acquired title to the above referenced property on Lions Club Road by deed of Stewart Jay Layman and Christopher Jay (the "Jays") dated April 6, 2018, and recorded in the Office of the Clerk of Court in Book 2039 at Page 58.

82. At the time Littlejohn acquired such title, she had record notice of the plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, which depicts Lions Club Road traversing over, through, and beyond the Littlejohn property to the fringelands beyond the eastern boundary of the Lions Club property. Said plat is recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6.

83. Upon information and belief, Littlejohn had actual notice of the location of Lions Club Road and the use made of it by the Plaintiffs and the other adjoining land owners for access to the fringeland on a continuous basis for over 60 years.

84. At a minimum, Littlejohn had constructive notice of the location of said road in relation to her and the Lions Club properties and the use thereof by others by virtue of the recordation of the aforesaid plat at the time she acquired her property.

85. Littlejohn uses the portion of Lions Club Road traversing over the Lions Club property for access to her own property. She and the Jays before her have exclusively used Lions Club Road for access to such property since its subdivision from the Lions Club property decades ago.

86. Littlejohn, by virtue of the facts herein, is estopped from denying the existence of the easements asserted herein.

87. For over 60 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to and onto the fringe lands, including in May and June 2010 when they spent over \$42,000. The amounts paid by these Plaintiffs and others are shown on Exhibit 9, attached hereto. No one complained about these improvements, and the landowners spent this money relying on their right to use the road for the purpose which heretofore remained unquestioned.

88. The Plaintiffs and the Lions Club Point property owners, all of whom acquired their titles from the Newberry Lions Club, also have maintained those portions of Lions Club Road which are gravel, being that portion running along beside the old Lions Club clubhouse and for several hundred feet on the shores of Lake Murray as shown on Exhibit 7. The Plaintiffs and their neighbors have purchased gravel, spread gravel, and performed other maintenance of the gravel portion in these areas of Lions Club Road (including the boat ramp) for more than 60 years.

89. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to Lions Club Point over which Lions Club Road traverses for over 60 years. Amick has acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 60 years.

90. The Lions Club Road is the only road access for the Plaintiffs and the Lions Club Point landowners to use for vehicles to launch boats or to drive onto and access the beach area.

91. During the week of May 6, 2019, Amick put in place two additional “No Trespassing” signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he “owns” the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

92. Defendant Amick’s actions in May 2019 (emails attached as Exhibit 8) reveal his intention to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

93. This matter is of some urgency in the absence of an injunction because Amick’s actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the area and the beach on Lions Club Point.

94. Based on the facts set forth herein (supported by the affidavits of 15 witnesses), the Honorable Donald J. Hocker, Circuit Judge, issued an Order Granting Temporary Injunction filed in a companion case under civil action no. 2019-CP-36-00245 on August 6, 2019.

95. Defendant Amick filed a Notice of Appeal with regard to this Order, but withdrew his appeal on October 22, 2019.

96. All of the parties’ property, including Amick’s claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

97. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area as depicted on Exhibit 7 under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (and thus never received) permission for such use.

98. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evinced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

99. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club and Amick.

100. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road (both paved and gravel), the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

101. Plaintiffs constructed a large home on their lot expecting and believing that they had and would have use of said Road. Without the use of the Road, there would be no way for them to take a vehicle and boat trailer to the lake to launch and use said boat. Amick had full knowledge of Plaintiffs' use of the road yet remained silent regarding the same prior to obtaining his deed. Amick is estopped by his conduct from denying Plaintiffs' easement for use of Lions Club Road to access their properties, the boat ramp and beach area.

102. Plaintiffs have an easement implied by prior use because they have unity of title with Defendants Amick and Littlejohn; there has been severance of title; the prior use was not temporary; it was known or apparent to the parties; and, there is a necessity for the easement.

103. Plaintiffs are entitled to an Order of this Court declaring that they (and the neighbors) have one or more of the following with respect to Lions Club Road as depicted on Exhibit 7:

- (a) an easement by prescription
- (b) an easement by estoppel; and
- (c) an easement by prior use.

104. Plaintiffs believe this is a genuine controversy that should be determined by the Court in a declaratory judgment.

105. As a result, the Court should issue its Order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

106. Given that the Plaintiffs and their predecessor in title used the road for many decades prior to Defendant's erection of the obstructions without complaint from anyone, including Defendant, their continued use (to trailer fishing and pleasure boats for launch at the

boat ramp and access the beach area) cannot and does not prejudice Defendant and the entry of injunctive relief will merely return the parties to the *status quo ante*.

107. When Amick obtained his purported title to the property (which is disputed), he obtained a title insurance policy; however, such policy did not insure him against claims for:

(7) "...rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle...all of which traverse or encroach upon the ...premises without a recorded road maintenance agreement;..." (Exhibit 10 attached)

108. Furthermore, Plaintiffs have no adequate remedy at law and have demonstrated a likelihood of success on the merits. Therefore, equity demands that this Court issue its Order requiring Amick to remove the obstructions insomuch as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' use to and over Lions Club Road for purposes of accessing the boat ramp and beach area and otherwise enjoying use of the shores of Lake Murray.

**WHEREFORE**, the Plaintiffs pray for the issuance of an Order as follows:

- a. setting the aforesaid conveyance to Defendant C. Ray Amick aside;
- b. requiring Defendant to specifically perform under the terms of the agreement by conveying said subject property to Plaintiffs;
- c. awarding Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;
- d. enjoining the Defendants from transferring the property to any other person or entity;
- e. in the alternative, awarding such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by Defendant Newberry Lions Club and thereafter breached, as well as the damages flowing therefrom;

- f. in the alternative, declaring that Plaintiffs, the adjoining landowners, and their guests have a right to use Lions Club Road as it has been historically, per one or more easements set forth above (easement implied by prior use, a prescriptive easement, or an easement by estoppel);
- g. declaring for the public record that the road shown on Exhibit 7 all the way from State Park Road along Lions Club Road to the shores of Lake Murray is for the benefit of Plaintiffs, their families and guests, and the adjacent landowners;
- h. enjoining temporarily and permanently the Defendants from blocking, fencing, or any act which attempts to restrict the use of Lions Club Road and directing Amick to remove the ropes, parked cars, debris, and any other obstructions which exist as of the time of a Court Order; and,
- i. awarding such other and further relief as this Court may deem just and proper.

Dated: August 31, 2021

**POPE PARKER JENKINS, P.A.**

By: s/Thomas H. Pope, III  
 Thomas H. Pope, III (SC004508)  
 E-mail: tom@ppjlaw.com

s/Kyle B. Parker  
 Kyle B. Parker (SC071764)  
 E-mail: kyle@ppjlaw.com  
 Post Office Box 190  
 1508 College Street  
 Newberry, SC 29108  
 Telephone: 803.276.2532  
 Fax: 803.276.8684

*Attorneys for Plaintiffs*



# EXHIBIT 1



## NEWBERRY LIONS CLUB

1724 Main Street  
Newberry, SC 29108  
803-381-1952

*Joe Rice*  
Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of \$369,000.00 for the property. The club members have decided to ask \$300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

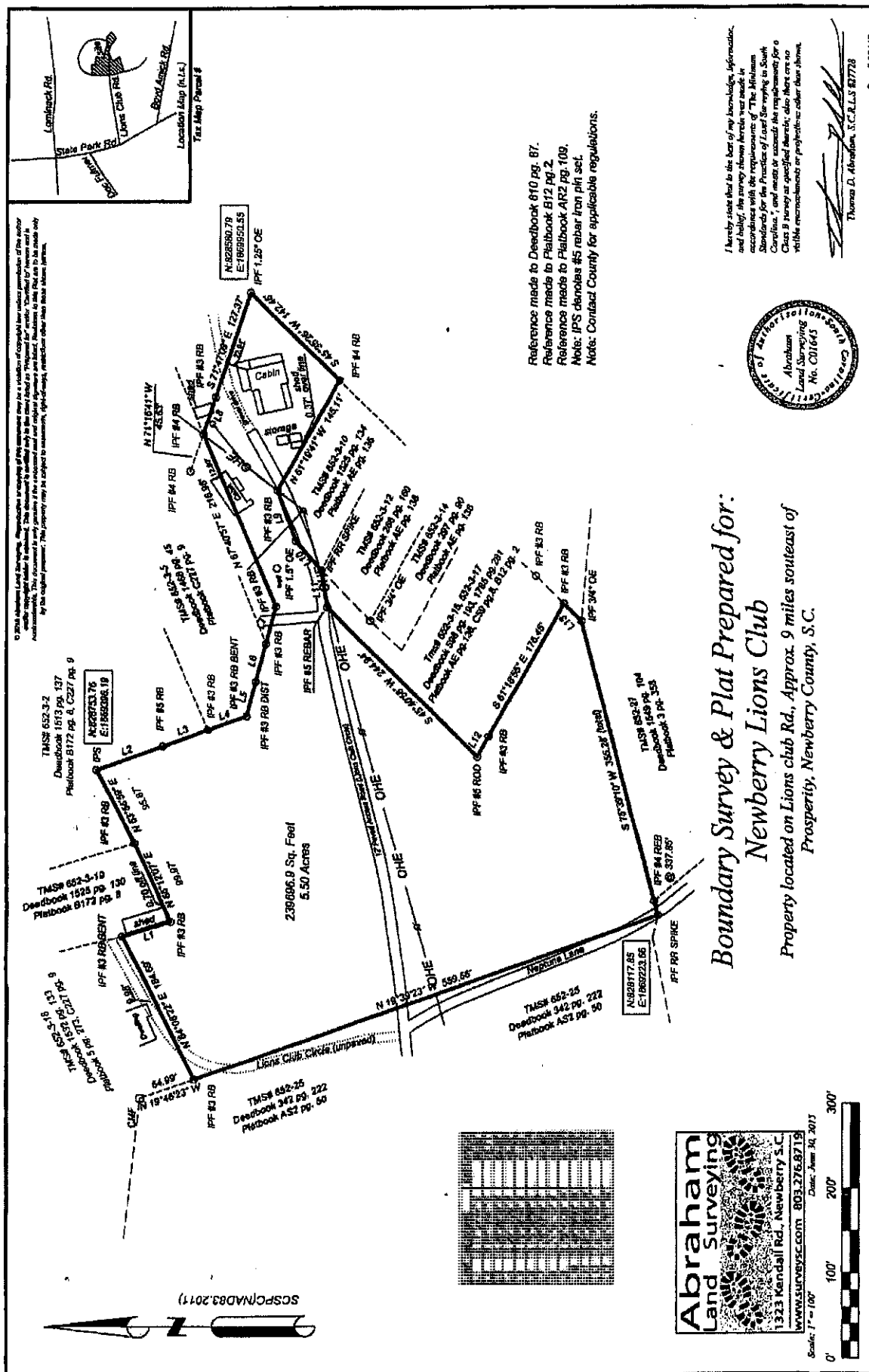
Yours truly,

*Pete*

Pete Simpson,  
Secretary, Newberry Lions Club

EXHIBIT

0331



# EXHIBIT 2

February 14, 2017

J. Sidney Boone,

sboone@mcnair  
T 843.723.7  
F 843.722.3

Pete Simpson, President  
Newberry Lions Club  
1724 Main Street  
Newberry, SC 29108

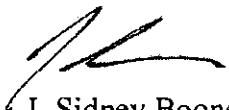
Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of \$325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (via E-mail [jrice@motleyrice.com](mailto:jrice@motleyrice.com))

McNAIR LAW FIRM, P.A.  
100 Calhoun Street, Suite 400  
Charleston, SC 29401

Mailing Address  
Post Office Box 1431  
Charleston, SC 29402

[mcnair.net](http://mcnair.net)



# EXHIBIT 3

J. Sidney Boone, Jr.

sboone@mcnair.net  
T 843.723.7831  
F 843.722.3227

May 15, 2017

**Via FedEx**

Eugene Crocker, President  
Pete Simpson, Secretary  
Newberry Lions Club  
1724 Main Street  
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County  
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of \$325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

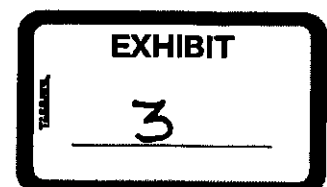
If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.  
100 Calhoun Street, Suite 400  
Charleston, SC 29401

Mailing Address  
Post Office Box 1431  
Charleston, SC 29402

mcnair.net



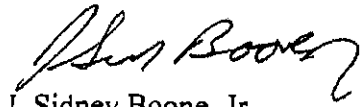
Eugene Crocker, President  
May 15, 2017  
Page 2

MCNAIR  
ATTORNEYS

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Sincerely,

McNAIR LAW FIRM, P.A.



J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com*)

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089



# EXHIBIT 4

HARLEY & VERNER LLP  
ATTORNEYS AT LAW  
1219 BOYCE STREET  
P.O. BOX 484  
NEWBERRY, SOUTH CAROLINA 29108  
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER

CHARLES VERNER

FACSIMILE  
276-7834

LAWYER@SC.RR.COM

June 5, 2017

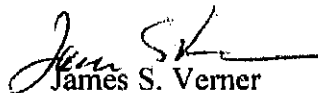
Mr. J. Sidney Boone, Jr.  
McNair Law Firm  
PO Box 1431  
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23<sup>rd</sup>, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,

  
James S. Verner

JSV/als

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089



0555

# EXHIBIT 5

# COPY

MCNAIR  
ATTORNEYS

November 21, 2017

Michael A. Scardato

mcardato@mcnair.net

T 843.723.7831  
F 843.722.3227

Via FedEx

Via E-mail: [lawyers@sc.rr.com](mailto:lawyers@sc.rr.com)

Eugene Crocker, President  
Pete Simpson, Secretary  
Newberry Lions Club  
1724 Main Street  
Newberry, SC 29108

James S. Verner, Esq.  
Harley & Verner, LLP  
1219 Boyce Street  
PO Box 484  
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County  
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of \$325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

MCNAIR LAW FIRM, P.A.  
100 Calhoun Street, Suite 4C  
Charleston, SC 29401

Mailing Address  
Post Office Box 1431  
Charleston, SC 29402

mcnair.net



1698525v1

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH

0341

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Eugene Crocker, President  
James S. Verner, Esq.  
November 21, 2017  
Page 2

MCNAIR  
ATTORNEY

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

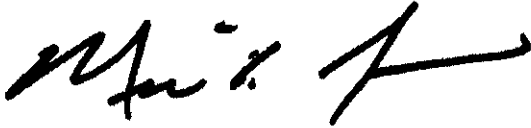
---

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.



Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. (via E-mail: [jrice@motleyrice.com](mailto:jrice@motleyrice.com))

# Exhibit 6

Requested By: CCC 07/02/2020

**EXHIBIT L**

201900051340  
 Filed for Record in  
 NEWBERRY COUNTY, SC  
 ELIZABETH P. FOLK, CLERK OF COURT  
 10-15-2019 At 02:02 PM.  
 DEED 15.00  
 SC 182.00  
 NEWBERRY 77.00  
 OR Book 2157 Page 96

STATE OF SOUTH CAROLINA )  
 )  
 ) DEED OF REAL PROPERTY  
 )  
 COUNTY OF NEWBERRY )

KNOW ALL MEN BY THESE PRESENTS, that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Seventy Thousand (\$70,000) Dollars, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, subject to any easements, restrictions, reservations and conditions set forth below, unto **C. Ray Amick** (hereinafter referred to as the "Grantee"), the following real property, to-wit:

All those certain pieces, parcels, lots or tracts of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, and being shown and delineated as Parcel "R", containing 0.595 Acres, more or less, and Parcel "AA", containing 0.018 Acres, more or less, on that plat prepared for Dominion Energy South Carolina Inc. by Associated E & S, Inc., dated February 17, 2000, last revised September 28, 2009, and recorded on 11/6/09 in the Office of the Clerk of Court for Newberry County, SC in Book C227, at Page 9; said parcels having such boundaries and measurements as shown on said plat.

**DERIVATION:** This being a portion of that property acquired by Lexington Water Power Company (corporate predecessor to the Grantor herein), by Deed of W.N. Amick (Option 129), recorded on 1/21/28 in the Office of the Register of Deeds for Lexington County, SC in Record Book 4-I, at Page 270.

**TMS #:** Adjacent to, and to be combined with, 652-3-21.

**GRANTEE'S ADDRESS:** 62 Lions Club Rd.  
 Prosperity, SC 29127

The portions of the property conveyed herein which are within the Project Boundary Line of the hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project") are conveyed herein subject to any and all easements or servitudes which now exist, inchoate or perfected, or as may be revealed by a visual inspection of the property, and reserving to the Grantor, its successors and assigns, the right of ingress, egress and access in, to, over, across and out of such property for malaria control and for other corporate utility purposes; subject further to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, presence, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River at or near Dreher Shoals, whether such damage is caused by the flooding of the property or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, and the Grantee, by acceptance of this Deed, for the Grantee and his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns, from any and all liability for any and all damages that may be caused to said property as aforesaid.

ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

|                 |      |      |
|-----------------|------|------|
| Instrument      | Book | Page |
| 201900051340 OR | 2157 | 97   |

As further consideration for this Deed, the use of the property conveyed herein which is within the Project Boundary Lines shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and the Grantee, his heirs and assigns, shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on the property will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project. Title to the property shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. The Grantee, his heirs and assigns, agrees to abide by and comply with such FERC orders and the Plan to the extent the same affect the property conveyed herein, and to fully indemnify the Grantor, its successors and assigns, for all costs (including attorney and court fees) reasonably incurred to enforce the provisions of these covenants.

The Grantee acknowledges the Grantor, its successors and assigns, is and shall remain the fee simple owner of the area below the 360 foot contour elevation of Project 516 and within the 75 foot Vegetative Buffer Zone.

These covenants and restrictions shall run with and be binding on the property hereinabove conveyed. These covenants are for the sole benefit of the Grantor, its successors and assigns, recognizing the ecological integrity of the lake and immediate boundary, and shall not be enforceable by anyone other than Grantor, its successors and assigns.

This conveyance is also made subject to any and all existing reservations, easements, encroachments, restrictions, covenants, zoning, governmental regulations, land use regulations, rights-of-way, and other matters of record which may affect the property, or which may be evident upon visible inspection of the property and/or as shown on the plat referred to herein or on other plats of record.

The Grantee, in accepting the Deed to the property, agrees to comply with all of the above as affect or restrict the use of the property. The Grantee agrees to fully indemnify the Grantor, its successors and assigns, for all costs reasonably incurred by the Grantor, including any attorney and court fees to enforce these provisions.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular said property unto the Grantee, his heirs and assigns forever.



Requested By: CCC 07/02/2020

Instrument 201900051340 BR Book 2157 Page 98

AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the Grantee, his heirs and assigns, against itself and its successors and against every person whomsoever lawfully owning, holding, or claiming by, through, or under the Grantor, which claims are based upon matters occurring subsequent to the Grantor's acquisition of the said premises, or any part thereof, except as to the following: Any servitudes, easements, conditions, restrictions or other similar instruments of public record, including plats which may affect the property, and matters which may be revealed by an inspection of the property, including but not limited to licenses, rights-of-way, easements, public or private roads, railroad tracks, guy wires and utility lines; and, except as to all exceptions and reservations specified herein.

IN WITNESS WHEREOF the Grantor has caused this Deed to be executed on the date set forth below.

Signed, sealed and delivered  
in the presence of:

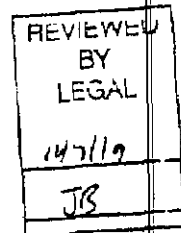
Raymond L. H.  
Wendy Quinn

**Dominion Energy South Carolina, Inc.**

By: P. Rodney Blenkins

Its: President & CEO

Date: 10/8/19



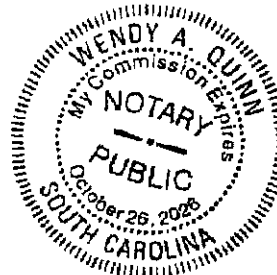
STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

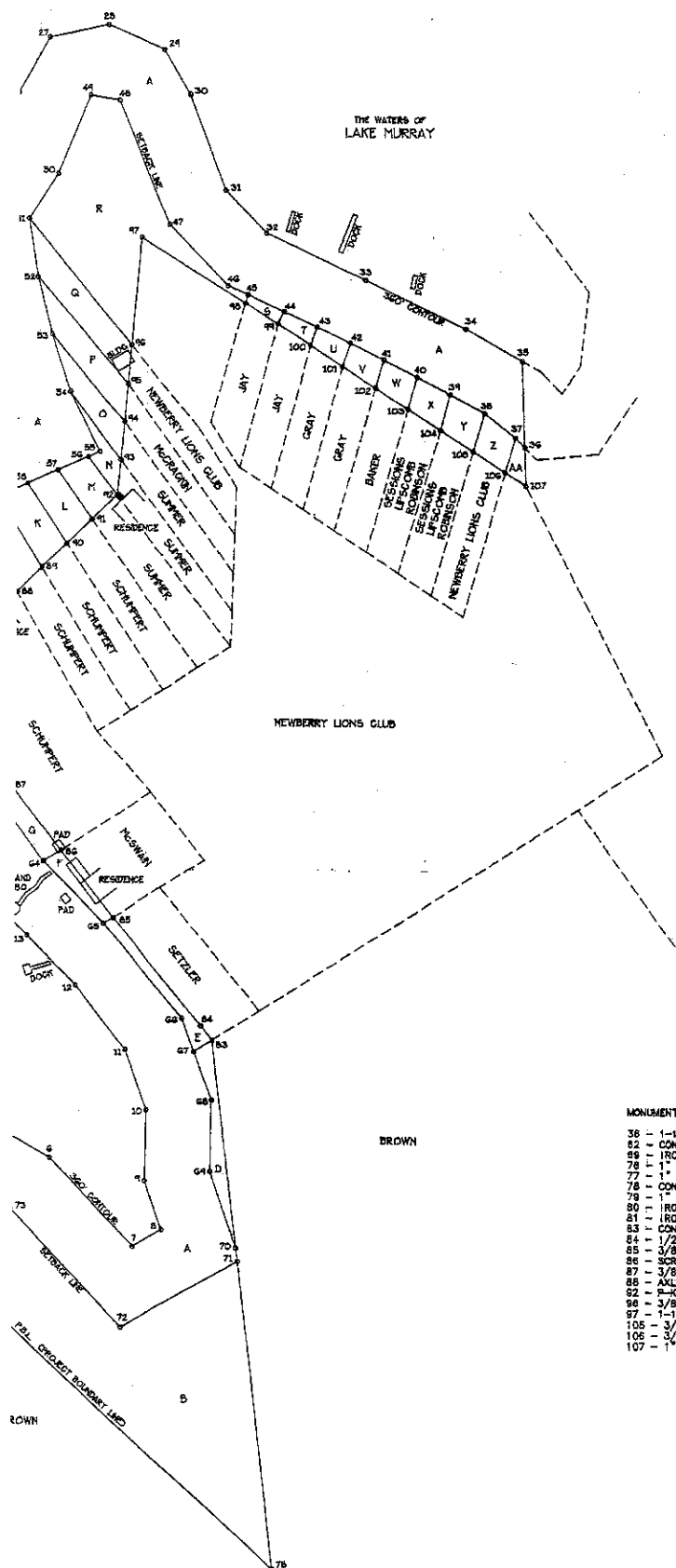
ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation, by P. Rodney Blenkins, its President & CEO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 8th day of October, 2019.

Wendy Quinn (L.S.)  
Notary Public for the State of South Carolina  
My Commission Expires: 10/26/26





### MONUMENTATION DESCRIPTIONS

- 36 - 1-1/4" OPEN PIPE, FOUND  
52 - CONCRETE MONUMENT, FOUND  
59 - IRON PIN, FOUND  
78 - 1" RE-BAR, FOUND  
77 - 1" RE-BAR, FOUND  
76 - CONCRETE MONUMENT, FOUND  
79 - 1" RE-BAR, FOUND  
81 - IRON PIN, FOUND  
81 - IRON PIN, FOUND  
83 - CONCRETE MONUMENT, FOUND  
84 - 1/2" OPEN PIPE, FOUND  
85 - 3/8" RE-BAR, FOUND  
86 - SCRIBE IN CONCRETE, SET  
87 - 3/8" RE-BAR, FOUND  
88 - ASB FOUND  
92 - P-K NAIL SET  
96 - 3/8" RE-BAR FOUND  
97 - 1-1/4" OPEN PIPE, FOUND  
105 - 3/8" RE-BAR, FOUND  
106 - 3/8" RE-BAR, FOUND  
107 - 1" OPEN PIPE, FOUND

## REFERENCE

1. - A PLAT PREPARED F  
INC. DATED JUNE 11,  
2. - A PLAT PREPARED F  
ADD NELVA A. BROW  
3. - A PLAT PREPARED F  
DATED DECEMBER 6,  
4. - A PLAT PREPARED F

# CERTIFICAT

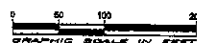
I HEREBY STATE THAT TO THE SURVEY SHOWN HERE THE MINIMUM STANDARDS CAROLINA AND MEETS OF AS SPECIFIED THEREIN, ALL OTHER THAN SHOWN.

**LEGEND**

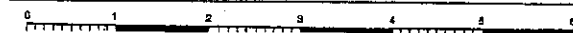
- 1/2" RE-BAR SET ON SETBACK AND P.B.L. EXCEPT WHERE OTHERWISE NOTED
- ALL POINTS ON 360 CONTOUR ARE IRON PINS, FOUND OF VARIOUS SIZES

REVISED: AUG. 21, 2009 TO ADD VEGETATIVE BUFFER ZONE STATEMENT.  
NO FIELD SURVEY PERFORMED AT THIS TIME.

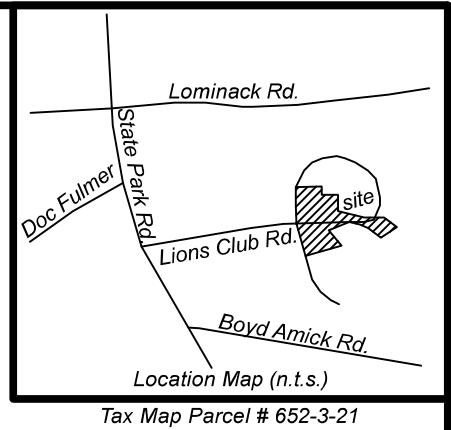
REVISED SEPTEMBER 28, 2009 TO CHANGE DASHED LINE BETWEEN SCHUMPERT AND McSWAIN AS PER SC868G



0347



# Exhibit 7



Reference made to Deedbook 610, page 87.  
Reference made to Deedbook 2028, page 194.  
Reference made to Deedbook 2039, page 58.  
Reference made to Deedbook 2157, page 96.  
Reference made to Platbook AR2, page 109.  
Reference made to Platbook 812, page 2.  
Reference made to Platbook C227, page 9.  
Reference made to Platbook D99, page 6.  
Note: IPS denotes #5 rebar iron pin set.  
Note: CP denotes calculated point.  
Note: x denotes edge of gravel location as located in the field.  
Note: No new property lines created at this time.  
Note: Contact County for applicable regulations.

TMS# 652-3-5  
Deedbook 1468 pg. 45  
Platbook C227 pg. 9  
Platbook AE pg. 136

TMS# 652-3-8  
Deedbook 2073 pg. 243  
Platbook D99 pg. 6  
Platbook D125 pg. 3

TMS# 652-3-8  
Deedbook 2073 pg. 243  
Platbook D99 pg. 6  
Platbook D125 pg. 3

Parcel "R" (Amick)  
0.60 Acres 25931 Sq. Ft.  
Deedbook 2157, page 96.  
Platbook C227, page 9.

Parcel "S" (Littlejohn)  
0.01 Acres 612 Sq. Ft.  
Deedbook 2039, page 58.  
Platbook C227, page 9.

Parcel "T" (Littlejohn)  
0.02 Acres 868 Sq. Ft.  
Deedbook 2039, page 58.  
Platbook C227, page 9.



### Boundary Survey & Plat Prepared for: Joe Rice & Claude Schumpert

Property located on Lions Club Rd., Approx. 9 miles southeast of  
Prosperity, Newberry County, S.C., Newberry County TMS# 652-3-21



Scale: 1" = 20'  
0 20 40 60  
Date: February 23, 2021  
Dwg # 07520

I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of "The Minimum Standards for the Practice of Land Surveying in South Carolina", and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown.

Thomas D. Abraham, S.C.R.L.S. #27728



# Exhibit 8

From: **Jim Koutrakos** [JimKoutrakos@callisontighe.com](mailto:JimKoutrakos@callisontighe.com)

Subject: RE: RICE/LIONS CLUB and Amick

Date: May 8, 2019 at 12:12 PM

To: Tom Pope [tom@ppjlaw.com](mailto:tom@ppjlaw.com)

Cc: Biff Sowell [bsowell@sowelldurant.com](mailto:bsowell@sowelldurant.com), sam price [rshealy517@hotmail.com](mailto:rshealy517@hotmail.com), Kyle Parker [kyle@ppjlaw.com](mailto:kyle@ppjlaw.com), Betsy Alexander [betsy@ppjlaw.com](mailto:betsy@ppjlaw.com), Harry A. Dixon [HarryDixon@callisontighe.com](mailto:HarryDixon@callisontighe.com), Bess DuRant ([bdurant@sowelldurant.com](mailto:bdurant@sowelldurant.com))

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos  
CALLISON TIGHE & ROBINSON, LLC  
1812 Lincoln Street, 2nd Floor  
Post Office Box 1390 (29202-1390)  
Columbia, South Carolina 29201  
Office: (803) 404-6900  
Direct Dial: (803) 404-6966  
Mobile: (803) 603-9079  
Facsimile: (803) 404-6902  
[JimKoutrakos@CallisonTighe.com](mailto:JimKoutrakos@CallisonTighe.com)

From: Tom Pope <[tom@ppjlaw.com](mailto:tom@ppjlaw.com)>

Sent: Wednesday, May 08, 2019 11:59 AM

To: Jim Koutrakos <[JimKoutrakos@callisontighe.com](mailto:JimKoutrakos@callisontighe.com)>

Cc: Biff Sowell <[bsowell@sowelldurant.com](mailto:bsowell@sowelldurant.com)>; sam price <[rshealy517@hotmail.com](mailto:rshealy517@hotmail.com)>; Kyle Parker <[kyle@ppjlaw.com](mailto:kyle@ppjlaw.com)>; Betsy Alexander <[betsy@ppjlaw.com](mailto:betsy@ppjlaw.com)>

Subject: RICE/LIONS CLUB and Amick

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles

... He was of course unable to move the pontoon”

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs,and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.

We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.

We need your client to follow through with his promise. Please give us your response today.

Tom Pope

Pope Parker Jenkins, P.A.

(formerly Pope & Hudgens PA)

1508 College Street - P.O. Box 190

Newberry, SC 29108

803.276.2532 F: 803.276.8684

[tom@ppjlaw.com](mailto:tom@ppjlaw.com)

[www.ppjlaw.com](http://www.ppjlaw.com)

# Exhibit 9



## Lions Club Road Paving

| Contributor               | Amount           | From Rd. to Gate | Beyond Gate      | Total            |                                                      |
|---------------------------|------------------|------------------|------------------|------------------|------------------------------------------------------|
| Amick, Ray                | \$ 1,000         | \$ 1,000         |                  | \$ 1,000         |                                                      |
| Byars, Wick               | \$ 1,500         | \$ 1,500         |                  | \$ 1,500         |                                                      |
| Gray, Murray              | \$ 1,500         | \$ 1,125.00      | \$ 375.00        | \$ 1,500         |                                                      |
| Jay, Nelda                | \$ 500           | \$ 375.00        | \$ 125.00        | \$ 500           |                                                      |
| McCrackin, Ruth           | \$ 1,000         | \$ 750.00        | \$ 250.00        | \$ 1,000         |                                                      |
| McSwain, Bill & Julia     | \$ 2,000         | \$ 2,000         |                  | \$ 2,000         |                                                      |
| Parr, Jim                 | \$ 5,050         | \$ 5,050         |                  | \$ 5,050         |                                                      |
| Rice, Joe & Lisa          | \$ 9,800         | 5050             | \$ 4,750         | \$ 9,800         |                                                      |
| Schumpert, Claude & Missy | \$ 10,550        | 5050             | \$ 5,500         | \$ 10,550        | (pd \$11950: \$1,400 to be reimbursed by Sharicks)   |
| Sharick, Merle & Cheryl   | \$ 5,050         | \$ 5,050         |                  | \$ 5,050         | (pd \$3,650: \$1,400 to be reimbursed to Schumperts) |
| Stewart, Dave & Susan     | \$ 5,050         | \$ 5,050         |                  | \$ 5,050         |                                                      |
|                           | <u>\$ 43,000</u> | <u>\$ 32,000</u> | <u>\$ 11,000</u> | <u>\$ 43,000</u> |                                                      |

|                                    |                                                        |
|------------------------------------|--------------------------------------------------------|
| <b>Total Cost from Rd. to Gate</b> | 32000                                                  |
| Miscellaneous Contributions        | -6750 (Amick, Byars, Gray, Jay, McCrackin, McSwain)    |
| Balance to be Shared Equally       | <u>25250</u> (Parr, Rice, Schumpert, Sharick, Stewart) |
| Divide by 5                        | <u><u>5050</u></u> each                                |

|                               |                                |
|-------------------------------|--------------------------------|
| <b>Total Cost Beyond Gate</b> | 11000                          |
| Miscellaneous Contributions   | -750 (Gray, Jay, McCrackin)    |
| Balance to be Shared Equally  | <u>10250</u> (Rice, Schumpert) |
| Divide by 2                   | <u><u>5125</u></u>             |

MERLE D SHARICK 08-01  
 CHERYL J SHARICK  
 182 NEPTUNE LN (803) 364-0120  
 PROSPERITY, SC 29127

2650

67-448/539 SC  
 708

5/14/10

Date

Pay to the order of Jim Barr \$ 3,650.00  
Three thousand six hundred fifty + no Dollars  
 100

Bank of America

ACH R/T 053904483

Memo Road paving

Merle D. Sharick

MP

SUSAN F STEWART 803-920-5807  
 DAVID E STEWART 803-600-6944  
 732 GARD COURT 130 N. Garden Lane  
 CHAPIN, SC 29036 Prosperity, SC 29127

3865

64-22/610  
 BRANCH 77271

June 5, 2010

Date

Pay to the order of Bird Paving \$ 5,050.00  
Five thousand + fifty + no Dollars  
 100



WACHOVIA

Wachovia Bank, N.A.  
 wachovia.com

For

Susan F. Stewart

Bank of America Advantage

NELDA E. JAY 07-69  
 PH. 803-276-2239 SCDL1676789  
 1320 SUMMER ST.  
 NEWBERRY, SC 29108-3046

6781

67-448/539 SC  
 402

May 14, 2010

Date

Pay to the order of Bird Paving Company \$ 500.00  
five hundred + no Dollars  
 100

Bank of America

ACH R/T 053904483

Memo Lions Club Road paving

Nelda Jay

MP

JOHN J McSWAIN  
JULIA B McSWAIN  
85 Lions Club Circle  
Prosperity, SC 29127

3105

67-776/532  
BRANCH 77454

5/11/10

Date

Pay to the  
Order of

Bird Paving  
Two thousand and no/100

\$2,000.00

Dollars



Security  
Features  
Details on  
Back



WACHOVIA

Wachovia Bank, N.A. until March 20, 2010  
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For

Road paving

Julia B McSwain

MP

JAMES N PARR JR  
1303 MAIN ST. STE 311  
NEWBERRY, SC 29108

111

67-604/539  
BRANCH 142

6/3/10

Date

Pay to the  
Order of Bird Paving  
Five thousand fifty

\$5,500.00

Dollars



Security  
Features  
Details on  
Back

First Citizens  
First Citizens Bank & Trust Company, Inc.

For

James N Parr Jr

MP

THE MURRAY CO. OF NEWBERRY INC.

12 BEAVER DAM CREEK RD.  
NEWBERRY, SC 29108-8991

005520

67-448/539 SC  
402

5-27-10

Date

Pay To The  
Order of Bird Construction  
One thousand five hundred & no/100

\$1,500.00

Dollars



Security  
Features  
Details on  
Back

Bank of America

Murray

MP

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

0356

Joseph F. or Lisa S. Rice

676 Olde Salt Run  
Mt. Pleasant, SC 29464

1ST CITIZENS BANK & TRUST COMPANY, INC.

CHARLESTON, SC 29401

67-148/532

10993

5/12/2010

Pay to the  
Order of

Bird Paving

\$\*\*9,800.00

Nine Thousand Eight Hundred and 00/100\*\*\*\*\*

Dollars

Bird Paving  
c/o Claude Schumpert  
322 Hill Haven Road  
Chapin, SC 29036

*Lisa S. Rice*

CLAUDE H OR MELISSA B SCHUMPERT

322 Hill Haven Rd  
Chapin, SC 29036

BB&T

BRANCH BANKING AND TRUST COMPANY  
1-800-BANK BBT BBT.com  
67-160/532

1450

6/8/2010

PAY TO THE  
ORDER OF

Bird Paving

\$\*\*11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100\*\*\*\*\*

DOLLARS

Bird Paving  
P.O. Box 27  
Gramling, SC 29348

MEMO

Paving Lions Club Road

*Melissa B Schumpert*  
AUTHORIZED SIGNATURE

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY COMMON PLEAS - CASE#2018CP3600089

Details on Back.

Security Features Included

# Exhibit 10



# **SCHEDULE B** **EXCEPTIONS FROM COVERAGE**

**File No: 17-0534-01 (AMICK)**

**Policy No.: 813064040-213470248**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
- 5.
6. Easement(s) to State Rural Electrification Authority or its successor in interest recorded in Book 45 at Page 277.
7. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267.
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
  - a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before accessing the eastern portion of the property;
  - b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;
  - c. Overhead electric lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and
  - d. Shed in the eastern area of the property projects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10, located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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ALTA Owner's Policy (Schedule B)



(17-0534-01 (AMICK).PFD/17-0534-01 (AMICK)/21)

Lisa Smith Closing File\_0076

0359

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick and  
Cheryl Littlejohn,

Defendants.

**DEFENDANT C. RAY AMICK'S SECOND  
AMENDED ANSWER AND CROSS-CLAIM  
TO FIFTH AMENDED COMPLAINT**  
(Jury Trial Demanded)

Defendant C. Ray Amick ("Amick"), reserving any prior motions, answers the allegations of the Fifth Amended Complaint as follows:

**FOR A FIRST DEFENSE**

1. Amick denies all allegations of the Fifth Amended Complaint unless otherwise admitted, qualified, or explained.

2. Amick admits the allegations of paragraphs 1 and 2 of the Fifth Amended Complaint upon information and belief.

3. Amick admits the allegations of paragraph 3 of the Fifth Amended Complaint.

4. Amick admits the allegations of paragraph 4 of the Fifth Amended Complaint upon information and belief.

5. Amick admits the allegations of paragraph 5 of the Fifth Amended Complaint upon information and belief.

6. As to the allegations of paragraph 6 of the Fifth Amended Complaint, Amick craves reference to the document attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 6 are inconsistent with said document, Amick denies the same.

7. As to the allegations of paragraph 7 of the Fifth Amended Complaint, Amick admits he attended the January 14, 2017 board meeting and, further, Amick craves reference to the minutes of that board meeting. To the extent the allegations of paragraph 6 are inconsistent with the minutes of the board meeting, Amick denies the same.

8. As to the allegations of the first sentence of paragraph 8 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1, and denies the letter is an offer. Amick denies the remaining allegations of paragraph 8.

9. Amick admits the allegations of paragraph 9 of the Fifth Amended Complaint upon information and belief.

10. As to the allegations of paragraph 10 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 10 are inconsistent with said letter, Amick denies the same.

11. As to the allegations of paragraph 11 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 11 are inconsistent with said letter, Amick denies the same.

12. As to the allegations of paragraph 12 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 12 are inconsistent with said letter, Amick denies the same.



13. As to the allegations of paragraph 13 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 13 are inconsistent with said letter, Amick denies the same.

14. As to the allegations of paragraph 14 of the Fifth Amended Complaint, Amick denies the letter was an offer, but admits upon information and belief the letter was sent.

15. As to the allegations of paragraph 15 of the Fifth Amended Complaint, Amick admits the Rices through their attorney sent an offer of \$325,000 as set forth in Exhibit 2. Amick denies the remaining allegations of paragraph 15 inconsistent with the foregoing.

16. Amick admits the allegations of paragraph 16 of the Fifth Amended Complaint.

17. As to the allegations of paragraph 17 of the Fifth Amended Complaint, Amick denies there was a bidding process and denies the allegations of paragraph 17. Further, Amick denies any contractual relationship was formed between the Newberry Lions Club and the Rices.

18. As to the allegations of paragraph 18 of the Fifth Amended Complaint, Amick admits the Rices' letter was an offer. Amick denies the remaining allegations of paragraph 18.

19. As to the allegations of paragraph 19 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 3. To the extent the allegations of paragraph 19 are inconsistent with said letter, Amick denies the same.

20. As to the allegations of paragraph 20 of the Fifth Amended Complaint, Amick admits upon information and belief that Defendant Lions Club did not respond to either letter attached as Exhibit 2 and Exhibit 3 to the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 20.

21. As to the allegations of paragraph 21 of the Fifth Amended Complaint, Amick craves reference to the minutes of the May 23, 2017 board meeting and, to the extent the allegations of paragraph 21 are inconsistent with said minutes, Amick denies the same.

22. Paragraph 22 of the Fifth Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Amick denies the same.

23. Amick denies the allegations of paragraphs 23 and 24 of the Fifth Amended Complaint.

24. Amick admits the allegations of paragraph 25 of the Fifth Amended Complaint as there was no bidding process and the Newberry Lions Club had no duty to respond.

25. As to the allegations of paragraph 26 of the Fifth Amended Complaint, Amick craves reference to the letters attached as Exhibit 3 and Exhibit 4 to the Fifth Amended Complaint. To the extent the allegations of paragraph 26 are inconsistent with said letters, Amick denies the same.

26. Amick denies the allegations of paragraph 27 of the Fifth Amended Complaint.

27. As to the allegations of paragraph 28 of the Fifth Amended Complaint, Amick admits the letter was sent and is attached as Exhibit 5 to the Fifth Amended Complaint and craves reference to said letter. To the extent the allegations of paragraph 28 are inconsistent with said letter, Amick denies the same.

28. Amick admits the allegations of the first sentence of paragraph 29 of the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 29.

29. Amick denies the allegations of paragraph 30 of the Fifth Amended Complaint.

30. As to the allegations of paragraph 31 of the Fifth Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to

the public court docket and, to the extent the allegations of paragraph 31 are inconsistent with the docket, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 and, therefore, denies the same.

31. As to the allegations of paragraph 32 of the Fifth Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gent B McCrackin, Amick craves reference to said deed and, to the extent the allegations of paragraph 32 are inconsistent with said deed, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 32 and, therefore, denies the same.

32. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 33 of the Fifth Amended Complaint and, therefore, denies the same.

33. Amick denies the allegations of paragraph 34 of the Fifth Amended Complaint.

34. As to the allegations of paragraph 35 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him by deed recorded on February 22, 2018 at 3:55 p.m. in the Office of the clerk of Court for Newberry County in Book 2028 at Page 198 and that the consideration recited in said deed from Defendant Newberry Lions Club to him was \$300,000 and “other consideration.” Amick denies the remaining allegations of paragraph 35.

35. Amick denies the allegations of paragraphs 36 and 37 of the Fifth Amended Complaint.

36. As to the reiterated allegations of paragraph 38 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

37. Paragraph 39 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

38. As to the allegations of paragraph 40 of the Fifth Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records and, to the extent the allegations of paragraph 40 are inconsistent with these public records, Amick denies the same. Further, Amick avers that the filing of the lis pendens was not proper.

39. Paragraph 41 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

40. Amick denies the allegations of paragraphs 42, 43, and 44 of the Fifth Amended Complaint.

41. As to the allegations of paragraph 45 of the Fifth Amended Complaint, Amick denies that there is any agreement between the Rices and Newberry Lions Club. Amick denies the remaining allegations of paragraph 45.

42. Amick denies the allegations of paragraphs 46 and 47 of the Fifth Amended Complaint.

43. As to the reiterated allegations of paragraph 48 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

44. Amick denies the allegations of paragraph 49 of the Fifth Amended Complaint.

45. As to the reiterated allegations of paragraph 50 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

46. Amick denies the allegations of paragraphs 51, 52, 53, and 54 of the Fifth Amended Complaint.

47. As to the allegations of paragraph 55 of the Fifth Amended Complaint, Amick admits he was conveyed the property. Amick denies the remaining allegations of paragraph 55.

48. As to the allegations of paragraph 56 of the Fifth Amended Complaint, Amick admits upon information and belief that the Newberry Lions Club would not sell the property at issue to Plaintiffs. Amick denies the remaining allegations of paragraph 56.

49. As to the allegations of paragraph 57 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him. Amick denies the remaining allegations of paragraph 57.

50. Amick denies the allegations of paragraphs 58 and 59 of the Fifth Amended Complaint.

51. As to the reiterated allegations of paragraph 60 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein,

52. Amick denies the allegations of paragraphs 61, 62, 63, 64, and 65 of the Fifth Amended Complaint.

53. As to the reiterated allegations of paragraph 66 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

54. The allegations of paragraphs 67, 68, 69, 70, 71, 72, and 73 of the Fifth Amended Complaint are not asserted against Amick and, therefore, no response is required. To the extent a response is required, Amick is without knowledge and information sufficient to form a belief as to those allegations and, therefore, denies those allegations.

55. As to the reiterated allegations of paragraph 74 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

56. Amick denies the allegations of paragraph 75 of the Fifth Amended Complaint.

57. Amick admits the allegations of paragraph 76 of the Fifth Amended Complaint.

58. Amick denies the allegations of paragraphs 77, 78, 79, and 80 of the Fifth Amended Complaint.

59. Amick admits the allegations of paragraph 81 of the Fifth Amended Complaint upon information and belief.

60. Amick denies the allegations of paragraphs 82, 83 and 84 of the Fifth Amended Complaint.

61. Amick admits the allegations of paragraph 85 of the Fifth Amended Complaint upon information and belief.

62. Amick denies the allegations of paragraph 86 of the Fifth Amended Complaint.

63. Amick denies the allegations of paragraphs 87, 88, 89, and 90 of the Fifth Amended Complaint.

64. As to the allegations of paragraph 91 of the Fifth Amended Complaint, Amick admits he owns the road and has a right to prohibit or restrict access to Plaintiffs and anyone else he chooses. Amick denies the remaining allegations of paragraph 91.

65. Amick denies the allegations of paragraphs 92 and 93 of the Fifth Amended Complaint.

66. Amick admits the allegations of paragraphs 94 and 95 of the Fifth Amended Complaint.

67. Amick admits the allegations of paragraph 96 of the Fifth Amended Complaint upon information and belief.

68. Amick denies the allegations of paragraphs 97, 98, 99, 100, 101, 102, and 103 of the Fifth Amended Complaint.

69. Amick admits the allegations of paragraph 104 of the Fifth Amended Complaint on information and belief.

70. Amick denies the allegations of 105, 106, 107, and 108 of the Fifth Amended Complaint.

**FOR A SECOND DEFENSE**  
***(Rule 12(b)(6))***

71. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

72. Plaintiffs' Fifth Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

**FOR A THIRD DEFENSE**  
***(Waiver)***

73. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

74. Some or all of Plaintiffs' claims are barred by the doctrine of waiver.

**FOR A FOURTH DEFENSE**  
***(Estoppel)***

75. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

76. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

**FOR A FIFTH DEFENSE**  
***(No Contract)***

77. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

78. Some or all of Plaintiffs' claims are barred as there was never a contract between Plaintiffs and Defendant Newberry Lions Club.

**FOR A SIXTH DEFENSE**  
***(Statute of Frauds)***

79. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

80. Some or all of Plaintiffs' claims are barred by the Statute of Frauds, which is codified at S.C. Code Ann. § 32-3-10.

**FOR A SEVENTH DEFENSE**  
***(Bona Fide Purchaser for Value)***

81. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

82. Amick is a bona fide purchaser for value without notice of Plaintiffs' claims; therefore, he owns the subject property free and clear of any right, title, claim, or interest of Plaintiffs.

**FOR AN EIGHTH DEFENSE**  
***(Failure to Mitigate Damages)***

83. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

84. The Plaintiffs' claims are barred in whole or in part by their failure to mitigate their damages.



**FOR A NINTH DEFENSE**  
***(Various Equitable Doctrines)***

85. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

86. The Plaintiffs' claims are barred in whole or in part by all equitable doctrines available to Amick including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

**FOR A TENTH DEFENSE AND**  
**BY WAY OF CROSS-CLAIM**  
***(Indemnity/Breach of Deed Warranty)***

87. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

88. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds Plaintiffs are entitled to specific performance or that Plaintiffs possess an easement over the subject property.

89. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 ("Lions Club Deed").

90. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

91. Amick denies Plaintiffs have an interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Fifth Amended Complaint, the loss of title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could

only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club.

92. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

93. In the Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

94. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

95. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

96. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

97. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club breached the deed warranties that run in favor of Amick as Defendant Newberry Lions Club would not have had clear legal title to the subject property when it conveyed the subject property to Amick pursuant to the Lions Club Deed.

98. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Defendant Newberry Lions Club (A) finding Defendant Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Defendant Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs, (3) any loss or damage to be suffered by Amick arising out of Plaintiffs' Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Defendant Newberry Lions Club, including pre-judgment interest.

WHEREFORE, having fully answered Plaintiffs' Fifth Amended Complaint and having set forth his Cross-Claim, Defendant C. Ray Amick requests the Court issue an Order:

- A. Dismissing Plaintiffs' Fifth Amended Complaint;
- B. Awarding Amick the relief requested in his Cross-Claim;
- C. Awarding Amick attorney fees and the costs of this action; and
- D. Awarding any such further relief as the Court deems just and proper.

[Signatures on Following Page]

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318  
Harry A. Dixon, SC Bar No. 103509  
CALLISON TIGHE & ROBINSON, LLC  
1812 Lincoln Street, Suite #200  
P. O. Box 1390  
Columbia, SC 29202-1390  
Telephone: 803-404-6900  
Email: [jimkoutrakos@callisontighe.com](mailto:jimkoutrakos@callisontighe.com)  
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Thornwell F. Sowell, III, SC Bar #5197  
Bess J. DuRant, SC Bar #77920  
Sowell & DuRant, LLC  
1325 Park Street, Suite 100  
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Email: [bsowell@sowelldurant.com](mailto:bsowell@sowelldurant.com)

**ATTORNEYS FOR DEFENDANT  
C. RAY AMICK**

May 24, 2022

**JURY TRIAL DEMANDED**

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA               | ) |                               |
|                                       | ) |                               |
| COUNTY OF NEWBERRY                    | ) | IN THE COURT OF COMMON PLEAS  |
|                                       |   | 2018-CP-36-00089              |
|                                       |   |                               |
| Lisa Summer Rice and Joseph F. Rice,  | ) |                               |
| Plaintiffs,                           | ) |                               |
|                                       | ) |                               |
| vs.                                   | ) | ANSWER OF NEWBERRY LIONS CLUB |
|                                       | ) | TO FOURTH AND FIFTH AMENDED   |
| Newberry Lions Club and C. Ray Amick, | ) | COMPLAINTS                    |
| and Cheryl Littlejohn,                | ) |                               |
| Defendants.                           | ) |                               |

Defendant Newberry Lions Club would respectfully answer the Fourth and Fifth Amended Complaints of plaintiffs as follows:

1. That defendant Newberry Lions Club would deny each and every allegation of the Fourth and Fifth Amended Complaints unless expressly admitted herein and such paragraphs that are denied, defendant Newberry Lions Club would demand strict proof thereof.
2. That defendant Newberry Lions Club would admit allegations of paragraphs one (1), two (2), three (3) of the Amended Complaints.
3. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraph four (4) of the Amended Complaints and would demand strict proof thereof.
4. That defendant Newberry Lions Club would deny the allegations contained in paragraphs five (5), seven (7), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen

(14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28) of the Amended Complaints.

5. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraph twenty-nine (29) of the Amended Complaints and would demand strict proof thereof.

6. That defendant Newberry Lions Club would admit the allegations contained in paragraphs thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), and thirty-four (34) of the Amended Complaints.

7. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraph thirty-five (35) of the Amended Complaints and would demand strict proof thereof.

8. That defendant Newberry Lions Club would deny the allegations contained in paragraphs thirty-six (36) and thirty-seven (37) of the Amended Complaints.

**IN ANSWER TO THE FIRST CAUSE OF ACTION**  
**(Declaratory Judgment/Injunction)**

9. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

10. That defendant Newberry Lions Club would deny every allegation of the First Cause of Action of the Fourth and Fifth Amended Complaints unless expressly admitted herein.

11. That defendant Newberry Lions Club would deny the allegations contained in paragraphs thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-

three (43), forty-four (44), forty-five (45), forty-six (46), and forty-seven (47) of the First Cause of Action of the Fourth and Fifth Amended Complaints.

**IN ANSWER TO THE SECOND CAUSE OF ACTION**  
**(Specific Performance)**

12. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

13. That defendant Newberry Lions Club would deny every allegation of the Second Cause of Action of the Fourth and Fifth Amended Complaints unless expressly admitted herein.

14. That defendant Newberry Lions Club would deny the allegations contained in paragraphs forty-eight (48) and forty-nine (49) of the Second Cause of Action of the Fourth and Fifth Amended Complaints.

**IN ANSWER OF THE THIRD CAUSE OF ACTION**  
**(Promissory Estoppel)**

15. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

16. That defendant Newberry Lions Club would deny every allegation of the Third Cause of Action of the Fourth and Fifth Amended Complaints.

**IN ANSWER TO THE FOURTH CAUSE OF ACTION**  
**(Intentional Interference with Contractual Rights as to Defendant Amick)**

17. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

18. That defendant Newberry Lions Club would deny every allegation of the Fourth Cause of Action of the Fourth and Fifth Amended Complaints.

**IN ANSWER TO THE FIFTH CAUSE OF ACTION**  
**(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)**

19. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

20. That defendant Newberry Lions Club would deny every allegation of the Fifth Cause of Action of the Fourth and Fifth Amended Complaints.

**IN ANSWER TO THE SIXTH CAUSE OF ACTION**  
**(Declaratory Judgment – Easement – Injunction as to Amick)**  
**(IN THE ALTERNATIVE)**

21. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

22. That defendant Newberry Lions Club would deny every allegation of the Sixth Cause of Action of the Fourth and Fifth Amended Complaints.

**IN ANSWER TO SEVENTH DEFENSE**  
**(Attorneys' Fees)**

23. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

24. That defendant Newberry Lions Club would deny each and every allegation of contained in the Fourth and Fifth Amended Complaints.

25. That defendant Newberry Lions Club would seek attorneys' fees for bringing this action without merit.

**WHEREFORE**, having set forth its Answer to Fourth and Fifth Amended Complaints in full, defendant Newberry Lions Club would respectfully request of this Honorable Court:



- (a) For an Order of this Court dismissing plaintiffs' action.
- (b) For an Order of this Court finding that the sale of the Lake Murray property by the Newberry Lions Club to C. Ray Amick was proper, lawful and correct and the sale should be confirmed by this Court.
- (c) For an Order of this Court awarding defendant Newberry Lions Club's legal costs and attorneys' fees to be paid by plaintiffs.
- (d) For such other and further relief as the Court deems necessary and proper.

/s/ Samuel M. Price, Jr.  
Samuel M. Price, Jr. (SC Bar #04566)  
Jennifer Dowd Nichols (SC Bar #75916)  
NICHOLS & PRICE  
1413 Main Street, P. O. Drawer 836  
Newberry, South Carolina 29108  
Phone: 803-276-0796  
Email: ramona@nicholspricelaw.com

Newberry, South Carolina  
May 26, 2022

|                                      |   |                                       |
|--------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA              | ) | IN THE COURT OF COMMON PLEAS          |
|                                      | ) |                                       |
| COUNTY OF NEWBERRY                   | ) | CASE NO.: 2018-CP-36-00089            |
|                                      | ) |                                       |
| LISA SUMMER RICE AND JOSEPH F. RICE, | ) |                                       |
|                                      | ) |                                       |
| Plaintiffs,                          | ) |                                       |
|                                      | ) |                                       |
| v.                                   | ) | PLAINTIFFS' MOTION FOR                |
|                                      | ) | RECONSIDERATION AND                   |
|                                      | ) | MOTION TO ALTER OR AMEND              |
| NEWBERRY LIONS CLUB AND C. RAY       | ) | UNDER RULES 52, 59, AND 60 S.C.R.C.P. |
| AMICK,                               | ) |                                       |
|                                      | ) |                                       |
| Defendants.                          | ) |                                       |

**TO: DEFENDANTS NEWBERRY LIONS CLUB AND C. RAY AMICK AND THEIR ATTORNEYS JIM KOUTRAKOS, ESQUIRE, BIFF SOWELL, ESQUIRE, AND SAM PRICE, ESQUIRE:**

The Plaintiffs, by and through its undersigned counsel, hereby moves pursuant to the provisions of Rules 59, 60, and 52 S.C.R.C.P. that this Court reconsider its Order filed October 25, 2022, and issue an Order altering and amending the judgment.

The Court's Order dated October 24, 2022, and filed on October 25, 2022, was received by counsel on October 25, 2022.

Plaintiffs respectfully assert that this Order was in error in each of the following particulars:

1. It is correct that this Court previously ruled that the affidavits and/or testimony of Plaintiffs' expert Steve Spitz were not admissible and that Plaintiffs proffered his two affidavits (Plaintiffs' Exhibit 44 and 45). However, in Footnote 3 on Page 3 of the Order, the Court found that Defendants also objected to the proffer of an affidavit, asserting that the proffered testimony was hearsay and "a proffer required sworn testimony subject to cross-examination (i.e. by deposition or live testimony." This quoted portion is incorrect, as Plaintiffs' counsel had in advance of trial stated that these affidavits would be proffered only and that they represented what the expert witness would say if he had been called as a witness. Plaintiffs also stipulated that the affidavit of Defendants' expert could likewise be proffered. Defendants did not object. Footnote 3 erroneously concluded by saying the affidavits are inadmissible as hearsay because "[it] was presented by

affidavit.” This is erroneous because the proffer of the affidavits of Spitz was agreed to before trial without objection (except as to inadmissible opinions of the expert). The proffered testimony was properly presented. Absent a proffer of testimony, a party cannot demonstrate the effect of the excluded testimony. See Baber v. Greenville County, 327 S.C. 31, 488 S.E. 2d 314, 319 (1997).

The Court erred in ruling Plaintiffs’ Exhibits 44 and 45 inadmissible in toto. As stated in Vortex Sports & Entertainment v. Ware, 378 SC 197, 662 S.E.2d 444 (2008), the Supreme Court, noting that an expert opinion is not objectionable just because it embraces an ultimate issue to be decided, held that an expert can offer testimony about factual information, including testimony about specific acts committed by a party and how those facts may inform any conclusion to be determined by the Court. In Plaintiffs’ Exhibit 45, expert Spitz tailored his opinions within the parameters of Vortex and his opinions in Paragraphs 15 through 28 of Plaintiffs’ Exhibit 45, at a minimum, were admissible in evidence and should have been considered by the Court.

2. On Page 6, the Order erroneously found that “there is no evidence that the Lions Club ever amended the 1933 Resolution requiring sales to members of the Lions Club,” the error being that the record shows that the Board of the Lions Club voted to send the letter in January 2017 (Plaintiffs’ Exhibits 5 and 6) and this superceded the 1933 Resolution.
3. On Page 7 of the Order, it is erroneously found that the Lions Club “by 2016 began considering whether to sell the property.” The error is that it was in 2015 when the Board discussed getting an appraisal of the property (Plaintiffs’ Exhibit 3).
4. On Page 8, the Order finds that “Amick did not attempt to improperly influence the Lions Club Board by asserting his continued interest...” This finding is erroneous because it overlooks evidence that he aggressively pursued his own self-interest by attending all board meetings in 2017 (except one), and made requests and demands regarding the Lion Club’s sale of the property which were repeatedly acceded to by the Board at both January and May meetings in 2017.
5. On Page 9, the Order finds that Amick sent Lions Club at \$1,000 earnest money check and a contract of sale offering \$300,000. It should also be found that, by doing so, Amick attempted to accept the Lions Club letter (Amick Deposition, pp. 29-32 in *Schumpert*), which he later withdrew on May 23, 2017 (Plaintiffs’ Exhibit 5a; Amick Deposition, pp. 44, 53 in *Schumpert*; Crocker Deposition, pp. 53, 72 in *Schumpert*; Crocker Deposition, pp. 49-50 in this case).
6. On Page 9, the Order found erroneously that “Amick and the Lions Club believed the Lions Club could not convey marketable title with encroachments on the property.” The error being that all persons are presumed to know the law and it is the law in South Carolina that “marketable title” does not mean a

flawless title. Gibbs v. G.K.H., Inc., 311 S.C. 103, 427 S.E.2d 701 (Ct. App. 1993) (holding an encroachment does not render a title unmarketable). There must be a reasonable probability of litigation with respect to title in order to render a title unmarketable. Sales Intern. Ltd. v. Black River Farms, Inc., 270 S.C. 391, 242 S.E.2d 432 (1978). The record is devoid of any evidence which would reveal such a probability with respect to the subject encroachments. On the contrary, the record reflects that the encroachments had existed and were known to all parties involved for decades without issue. Besides, Plaintiffs had agreed to take title subject to the encroachments rendering Amick and the Lions Club's belief irrelevant and constitutes evidence that this claim with respect to encroachments was a mere pretext for the Lions Club's attempt to avoid the consequences of its January 2017 letter. Even if there were evidence in the record (which there is not) that would tend to show encroachments did render the title unmarketable, there is no law against a purchaser accepting unmarketable title.

7. On Page 9, the Order found erroneously that the Lions Club consulted an attorney "who informed them that the Lions Club could not convey a marketable title with encroachments." The error being that the attorney did not testify and the only evidence submitted regarding the issue of title with respect to encroachments was the referenced June 5, 2017, letter. Therefore, what the attorney may have allegedly told the Lions Club is inadmissible hearsay.
8. The Court erred by overlooking evidence in the record that Amick repudiated his bid to purchase the property made to the Lions Club by his February 28, 2017, check and unexecuted contract even after the March 28, 2017, vote of the Board to sell the property to him for the lower bid of \$300,000 by telling the Board at its April 2017 meeting that he was no longer willing to accept the property with encroachments. The Court further erred by overlooking evidence in the record that it was only because Amick refused to accept the encroachments that the Lions Club Board voted to "send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all *offers* were being withdrawn to sell the property." (Emphasis added).
9. On Page 11, the Order erroneously makes the findings set forth in the numbered paragraphs 1-8. The Court error being that the Court overlooked evidence in the record that (a) both the President and Secretary of the Lions Club Board told Joe Rice and Claude Schumpert, respectively, that the intent of the January 2017 letter and that of the Lions Club was that the Lions Club was selling the property to the highest bidder subject to the conditions set forth in the letter; (b) each Board member testifying admitted that the Rice Response (as that term is defined in the Order) was in compliance with each of the conditions set forth in the January, 2017 letter (Crocker Deposition, pp. 39-40, 61); (c) the Rice Response was intended to comply with the bidding process represented by the Secretary to be intended by the Lions Club letter and constituted the highest bid in response

to the letter; and (d) the Rices were ready, willing, and able to carry out the purchase on such terms.

10. On Page 11, the Order erroneously finds that “[t]he Rices’ attorney intended to make an offer in the Rice Response.” The error being that the referenced attorney did not appear and testify in the case, and thus, the record does not contain any evidence to support this finding.
11. On Page 11, the Order erroneously finds that “[t]he extrinsic evidence does not show the Lions Club intended to be bound by a highest bidder process”. The error being that the Court overlooked the fact that the “extrinsic evidence” in the record consists almost exclusively of the aforementioned representations of the Lions Club President and Secretary made to Joe Rice and Claude Schumpert regarding the intent of the Lions Club’s January 2017 letter (to sell to the highest bidder).
12. On Page 11, the Order erroneously finds that “[t]he Lions Club accepted Mr. Amick’s offer twice...”. The error being that the Court overlooks evidence in the record showing that Amick made a bid wherein he agreed to accept the property with the encroachments, and later repudiated that bid indicating he would not accept the encroachments. Further, it was only after the Lions Club withdrew all “offers” on the pretext that the encroachments prevented Lions Club from conveying marketable title, that he made a markedly different offer and managed to obtain a contract and deed. The evidence clearly indicated that Amick insisted that, in repudiating and withdrawing his prior acceptance/bid, he influenced the Lions Club to ignore the terms of its offer letter and its June 1 deadline for bids (Plaintiffs’ Exhibit 6), to correct encroachments, per Amick’s demand, and later sell the subject property to Amick in a 2018 “side deal.”
13. On Page 11, the Order erroneously finds that the Lions Club “never acted as if a contract was formed with the Rices or the Lions Club intended to sell the Property to the Rices”. The error being that the actions of Lions Club board members after the fact is irrelevant to the question before the Court as it relates to the formation of a contract and further overlooks evidence in the record that the Lions Club board attempted to “withdraw all offers” by letter of its counsel dated June 5, 2017 (Plaintiffs’ Exhibit 16). Clearly, if the Lions Club did not feel a contract was formed, there would be no need to go through that exercise of withdrawing “all offers”.
14. On Page 12, the Order erroneously finds that the Lions Club letter was not an offer, but “an invitation to begin negotiations.” The error being that this ignores the rule that the question of whether an offer has been made or not is determined by looking to the objective import of the language of the communication, and the offeror is bound by the reasonable perception of his manifested intention conveyed by such language. Restatement (Second) Contracts § 29, comment a. This finding is further contradicted in the record. If it was not an offer to sell, it

was an offer to sell to the highest bidder, per the testimony of Joe Rice and Claude Schumpert. Comparing the Lions Club letter and the admissions against interest expressed by Lions Club Secretary Pete Simpson (the signatory of the letter) and Lions Club President Gene Crocker (author of the letter), show that the intent of the letter was to offer the sale of the Property to the highest bidder. The Court further disregards the rule that an offer may create separate powers of acceptance in an unlimited number of persons, and the exercise of the power by one person may or may not extinguish the power of another. Restatement (Second) Contracts § 29, comment b. Where only one acceptance is to be selected, various methods of selection are possible such as the highest bidder as is the case at bar. Id. In those circumstances, each bid operates as an acceptance creating rights and duties in both the offeror and the party submitting the bid conditional on no higher bid being received. Id.

15. On Pages 12 and 13, the Order misapprehends the import of the decision in McLaurin v. Hamer, 165 S.C. 411, 164 S.E.2d 5 (1932), stating that the McLaurin court explained “that some offers are offers to open preliminary negotiations”. The McLaurin court merely affirmed the decision of the lower court that the writing in that particular case was insufficient to constitute an offer on the peculiar facts of that case, facts which are dissimilar to the case at bar. It does not appear that there is any basis on which to find that the Lions Club letter was merely an invitation to negotiate apart from the disparate testimony of the Lions Club President and Secretary to that effect, which is testimony that is refuted by the actual terms of the letter itself and the greater weight of the evidence to the contrary discussed more fully below. In short, the Order contains circular reasoning on this issue: McLaurin says the letter is an invitation to negotiate because the Lions Club President says it is and he says it is because McLaurin says it is. McLaurin has no application to this case. So, all that is left is the Lions Club’s officers’ denial, which is contradicted by the greater weight of the evidence, including other statements in their own testimony. As to whether such denials should nevertheless be believed, the Court further overlooked the fact that Amick has plead crossclaims against the Lions Club for damages, including the \$300,000 purchase price plus his attorneys’ fees and costs, which provides ample incentive for its officers to “forget” and/or hedge what was intended by and said in relation to the letter.

The record contains, as examples, the following showing that the Lions Club letter was an offer, was intended as such, and represented to Plaintiffs and others to be an offer to sell to the highest bidder:

- a. the letter uses the term “offer” more than once.
- b. the letter states by its very terms that the Property would be “advertised for sale to the public” if no recipients accepted the offer or placed a bid before June 1, 2017.

- c. the letter provides a deadline of June 1, 2017, which has no relevance if the letter is a mere invitation to negotiate.
- d. Joe Rice testified that he called the signatory of the letter, Lions Club Secretary Pete Simpson when he received it and that, during their conversation, Simpson told him that the intent of the letter and that of the Lions Club was to sell the Property to the highest bidder.
- e. Claude Schumpert, who, after failing to appeal the Court's order dismissing his claims to the Property, has no incentive to fabricate anything, particularly concerning the Lions Club letter, testified that he called the author of the letter, Lions Club President Gene Crocker, and Crocker likewise confirmed that the intent of the letter and that of the Lions Club was to sell the Property to the highest "bidder".
- f. Plaintiffs, following Joe Rice's phone call with Pete Simpson, submitted a "bid" for \$325,000 (\$25,000 more than the "asking" price in the letter) and Joe Rice testified that they did so in an effort to ensure that they were the "highest bidder". If the letter was just an invitation and Simpson did not tell Rice that the intent was to sell to the highest bidder, there is no rational reason why Plaintiffs would have submitted such a bid.
- g. Claude Schumpert identified Plaintiffs' Exhibit 41 as being the Lions Club letter he received and testified that he wrote on this letter contemporaneously during his phone call with Crocker his notes from the call including "highest bid" further corroborating his account of the statements of Crocker relating to the intent of the letter and that of the Lions Club to sell the Property to the highest bidder.
- h. Gene Crocker admitted in deposition testimony designated in Plaintiffs case in chief that the letter could be reasonably interpreted as an offer to sell (Crocker Deposition, p. 52 in *Schumpert* case); that getting the top net proceeds for the sale was important to the Lions Club; that obtaining the most money for the sale of the Property was the most prudent thing for the Lions Club; and, that other board members agreed that the sale should be to the highest bidder.
- i. the letter was not prepared by an attorney, and therefore, does not more clearly convey what was related to Joe Rice and Claude Schumpert by the Lions Club officers, but it nonetheless contains all of the terms of a sale to the highest bidder that they represented



as the intent of the letter. It contains an identification of the property, a “reserve” in the amount of \$300,000, the terms of the sale (accepting encroachments, etc.), and a deadline for bids of June 1, 2017.

- j. the letter states that the Lions Club decided “to make the property available first to those individuals whose property adjoins the Lions Club Property.” If the letter is not an offer, then what does it mean to “make the property available” to the adjoining landowners? The plain meaning of that phrase is synonymous with the term offer. If it is not an offer to sell to the highest bidder, then why did the letter go to all of the adjoining landowners at the same time? Furthermore, there would not have been a reason for the Lions Club to “withdraw all offers” as its board resolved to do at its May 2017 meeting.

The Court has overlooked a substantial amount of compelling probative evidence to pin its ruling on nothing more than the denials of officers who have every incentive to testify exactly as they did as it is the only testimony for the Lions Club to possibly defeat the claims of both Plaintiffs and Amick.

16. On Page 13, the Order erroneously concludes that the Lions Club’s use of the phrase “[f]irst consideration will be given to current members of the Newberry Lions Club” means that the letter could not be an offer because it indicated “more work remained before concluding a bargain-the Lions Club would have to consider any offers and decide which offer to accept.” The error being that the Court overlooks that such phrase, appearing in the letter just after the “asking” or minimum bid/reserve of \$300,000, can only reasonably be interpreted to mean that any tie among the bids received would go to the Lions Club member and further overlooks testimony in the record to that effect.
17. On Page 13, the Order erroneously concludes that the Lions Club’s inclusion of the value of the Property found by their appraisal and its “asking” price supports the notion that the letter is not an offer but an invitation to negotiations. The error being that this information has no relevance to that question, but rather merely gives the recipient relevant information as to the value and the Lions’ Club’s expectations (or minimum bid/reserve).
18. On Pages 13 and 14, the Order erroneously concludes that Lions Club’s use of the term “offer” actually means something other than the ordinary meaning of the term citing the McLaurin case as authority for this proposition. The error being that the Court ignores the ordinary, plain meaning of the term “offer” and relying on McLaurin for authority to do so where the term “offer” was not used in the writings at issue in that case, nor was there any other rule about disregarding the plain meaning of terms used by the parties espoused in that case.



19. On Page 14, the Order erroneously concludes that the Lions Club letter was not an offer based on the terms used in the Rice Response (as defined by the Order). The error being that whether the Lions Club letter was an offer or not cannot be determined with reference to the Rice Response (see Restatement (Second) Contracts § 29, comment a.), and to place any significance on the Rices' use of the term "bid" ignores the fact that this is exactly the term customarily used to describe an acceptance in the context of a sale to the highest *bidder*.
20. On Page 14, the Order erroneously concludes that if the Lions Club Letter was ambiguous, it was so ambiguous that the Court should not enforce it stating that "if other evidence was necessary to prove the [Lions Club] offer, then the Court is not persuaded that it can infer terms and impose them on the parties." The error being that the extrinsic evidence in the record does not "prove" the offer, it instead explains the terms used in the letter consistent with their plain, ordinary meaning with, among other things, the statements of Lions Club President, Gene Crocker, the very person writing the letter in the first place. Parr v. Parr, 268 S.C. 58, 231 S.E.2d 695 (1977) (holding parol testimony admissible to explain what is meant by the words of a written instrument).
21. On Pages 15-18, the Order erroneously concludes that the Rice Response violates the "mirror-image rule" because the response contained reference to (i) good and marketable title; (ii) 30 days to close; and, (iii) a bid in excess of the "asking" price. The error being that the court overlooked that the alleged violations of the rule in an acceptance must actually modify or change the terms of the offer, matters which do not appear in the record in this case. The "good and marketable title" reference relied on by the Court was merely a recitation of a fundamental requirement of performance under the contract implied by law. See Kennedy v. Gramling, 33 S.C. 367, 11 S.E. 1081 (1890). See also *e.g.*, Sales Intern. Ltd v. Black River Farms, Inc., 270 S.C. 391, 242 S.E.2d 432 (1978) (holding that it is axiomatic that a purchaser cannot be required to take unmarketable title), *citing*, Laurens v. Lucas, 27 S.C.Eq. (6 Rich) 217 (1854), 77 Am. Jur. 2d, *Vendor and Purchaser*, § 168, and 57 A.L.R. 253, 1301, et seq. (1928), and followed by, Sanders v. Costal Capital Ventures, Inc., 296 S.C. 132, 370 S.E.2d 903 (Ct. App. 1988). It is simply black letter law that the acceptance of an offer to sell land which makes no specifications or limitations as to title is not made conditional merely by including a provision requiring marketable title. See, 2 Williston on Contracts § 6:15 (4<sup>th</sup> ed.); 1 Corbin, Contracts, § 86. The error further being that reference to "30 days to close" did not add an additional condition; rather, it simply identified what the Rice's perceived to be a reasonable time for closing. Where no time is provided in a contract a "reasonable" time is imputed. See, *e.g.*, Cloniger v. Cloniger, 261 S.C. 603, 193 S.E.2d 647 (1973) (holding that parol contract for the sale of land where time for performance is not specified, the law implies that "it shall be done within a reasonable time, which is sufficient"), *citing*, McMillian v. McMillian, 77 S.C. 511, 58 S.E. 431 (1907); see also, Smith v. Spratt Machine Co., 46 S.C. 511, 245 S.E. 376 (1896); Drews Company v. Ledwith-Wolfe, 296 S.C. 207, 371 S.E. 2d 532 (1988). Finally, the addition of \$25,000 over and above the "asking" price

does not constitute an additional condition in violation of the mirror-image rule. Instead, it is evidence that further corroborates the evidence that the officers of the Lions Club told both Joe Rice and Claude Schumpert that the intent of the letter was to offer the sale of the Property to the highest bidder. Therefore, rather than being a reason to rule against Plaintiffs, it is evidence that makes the testimony of Rice and Schumpert all the more credible. After all, why else would an otherwise rational person volunteer an additional \$25,000?

22. On Page 16, the Order again places significance on the use of the term “bid” indicating that it is evidence that the Rice Response was not an acceptance. The error being that the Court overlooks the context of the use of that term. Where the statements of the Lions Club officers made to Rice and Schumpert are considered in tandem with the terms of the Lions Club letter indicating a sale to the highest **bidder**, the use of the term “bid” leads to the opposite conclusion. Rather than use of the term “bid” constituting a basis on which to deny Plaintiffs relief, it is instead all the more corroboration of the evidence in the record that a sale to the highest bidder is precisely what the Lions Club intended. Deposition of Gene Crocker, pp. 62-63 (getting the top net proceeds was important.); Deposition of Gene Crocker, p. 47 (witness agreed that it might have been prudent to get the most money to go to charity); and, Deposition of Gene Crocker, pp. 62-63 (board member thought it should go to highest offer).
23. On Page 16, the Order finds the Rice Response was not an acceptance but instead an offer and places significance to use of the term “offer” in the definition of Black’s Law Dictionary. The error being that the definition of the term “bid” is nothing more or less than “a statement of what one will give or take for something”. Merriam Webster.com Dictionary, [https: www.merriam-webster.com/dictionary](https://www.merriam-webster.com/dictionary). Another dictionary may use different terms in its definition of “bid”, the point being that what words are used to define a term in any given dictionary should not form the basis for the Court’s conclusion as to whether the Rice Response constitutes their acceptance without any consideration of the context in which the term is used. When such context is considered, the definition cited in the Order is irrelevant. The Court overlooks that the use of the term “bid” in the Rice Response is intended in the plain, ordinary meaning of such term in the context of an auction to the highest bidder as explained by Joe Rice in his trial testimony. By making a “bid” in a sale to the highest bidder, one is agreeing to pay the specified amount for the purchase of the auctioned property on the terms first indicated in the notice thereof and can be held liable in contract for payment of his bid. See 6 S.C. Jur., Auctions and Auctioneers § 24 (2022). See also, Cauthen v. Cauthen, 79 S.C. 456, 61 S.E. 112 (1908); Boinest v. Leigne, 31 S.C.L. (2 Rich.) 464 (1846). Thus, use of the term “bid” by the Rices does not imply any other meaning other than that associated with the term in the context of the “sale to the highest bidder” described by the Lions Club officers to Joe Rice and Claude Schumpert.
24. On Pages 16-17, the Order erroneously concludes that the Rice Response did not manifest an acceptance because their attorney, Sidney Boone, “did not purport to act as Joe Rice’s attorney-in-fact but as counsel for the Rices”. The error being that the said Sidney Boone was and is the attorney-in-fact for Joe Rice as evidenced by

Plaintiffs' Exhibit 46. The Court further erroneously concluded that “[a]ttorneys engaged as counsel do not ordinarily bind their clients through letters sent on their behalf...”. The error further being that the general rule is quite the opposite. The acts of an attorney are directly attributable to and binding upon his client. *e.g.*, Costas v. First Federal Sav. and Loan Ass’n, 283 S.C. 94, 321 S.E.2d 51 (1984). This is particularly true, as is the case here, where the client ratifies the actions of the attorney and confirms the attorney’s authority. The Court’s finding in this respect is further error as there is no evidence in the record regarding the subject, apart from the testimony of Joe Rice affirming the attorney’s authority, which is contrary of the Court’s finding.

25. On Page 18, the Order erroneously “rejects the Rices’ ‘auction’ theory.” The error being that the Court overlooked the weight of the evidence which shows that the Lions Club letter was intended and did set out just that, an auction to the highest bidder. Both the officer drafting the letter (Gene Crocker) and the officer signing it (Pete Simpson) told Joe Rice and Claude Schumpert, respectively, that the intent of the letter and that of the Lions Club was to sell the Property to the highest bidder who agreed to pay at least \$300,000, accepted the encroachments, and submitted their bid prior to June 1, 2017. While it is true, as the Court notes, that these officers denied that they made these statements to Rice and Schumpert at trial, these very same officers admitted that the letter can be properly construed as constituting an offer to sell to the highest bidder. The Court further overlooked the incentives at play with regard to the denials of these officers in light of the fact that Amick has brought crossclaims against the Lions Club for damages, including the \$300,000 purchase price plus attorney’s fees and costs, if Plaintiffs are awarded specific performance, an outcome that becomes unavoidable if the officers admit that Joe Rice and Claude Schumpert are telling the truth in reporting their conversations regarding the January 2017 letter. It is no small wonder then that they testified as they did.
26. On Pages 19-21, the Court erroneously concludes that the parol evidence rule and the statute of frauds apply so as to prevent the Court’s consideration of the extrinsic evidence proffered by Plaintiffs. The error being that the Court purports in so doing to be sustaining objections to such evidence made by Amick. The specific performance cause of action tried by the Court concerns an agreement between Plaintiffs and Defendant Lions Club. Defendant Amick is not a party to the agreement in dispute. He is a stranger to that agreement, and, as such, cannot assert the statute of frauds or the parol evidence rule. A third party to an alleged agreement cannot assert the statute of frauds. *e.g.*, Hatcher v. Harleysville Mut. Ins. Co., 266 S.C. 548, 225 SE2d 181 (1976) (the statute of frauds is a personal privilege of the parties to the agreement, and a stranger to the agreement cannot avail himself of the fact that the statute of frauds renders the contract unenforceable). Parol evidence rule cannot be applied in a controversy between third party and one of the parties to the agreement in question and, thus, parol evidence is admissible. Baptist Foundation for Christian Edu. v Baptist College at Charleston, 282 SC 53, 317 SE2d 453 (Ct. App. 1984); Nelson v. United Fire Ins. Co., 275 SC 92, 267 SE2d 604 (1980); City of Orangeburg v. Buford, 227 S.C. 280, 284, 87 S.E.2d 822, 824 (1955) (holding the rule that parol evidence

is one for the benefit of the parties to the instrument and is generally limited to them). A party's failure to make an objection at the time evidence is offered constitutes a waiver of the right to object to that evidence. Carson v. CSX Transp., Inc., 400 S.C. 221, 734 S.E.2d 148 (2012). Therefore, given that the Lions Club did not make a single objection to any of Plaintiff's evidence and Amick has no standing to make such objections, there is no basis for excluding any of the extrinsic evidence and the Court must therefore consider all such evidence and it is error to refuse to do so. Furthermore, even if the Lions Club had not waived its objections, extrinsic evidence, including the statements regarding the sale to the highest bidder would be admissible as they do not vary or contradict anything in the January 2017 letter. Parr, supra (parol evidence is admissible for the purpose of explaining the true intent of the parties manifested by the language used). Extrinsic evidence is further admissible for each of the reasons set forth in Plaintiffs' Motion to Alter or Amend filed in this matter on December 18, 2020, which is incorporated herein by reference. The Order erroneously failed to so find and conclude.

27. On Pages 22-25, the Order erroneously concludes that the extrinsic evidence offered by Plaintiff does not show the Plaintiff's right to recovery. The error being that the greater weight of the evidence shows that the Lions Club offered to sell the Property to the highest bidder; that the Rices were the highest bidder; and the Rices complied with each of the other conditions of the offer within the time required by the offer; and, that as of June 1, 2017, no Lions Club member bid remained as Amick, the only bidder to be a Lions Club member, had previously repudiated his bid by telling the Lions Club he would not purchase the property with the encroachments.
28. On Pages 26-27, the Order erroneously concludes that the Plaintiffs have "failed to prove their claim for promissory estoppel against the Lions Club." The error being that the Court has disregarded the greater weight of evidence, including the testimony of Claude Schumpert, the lone witness in the case that no longer has a "dog in the fight". The record contains ample evidence to corroborate Schumpert and Joe Rice's testimony that officers of the Lions Club represented that the intent of the January 2017 letter and that of the Lions Club was to sell the property to the highest bidder. The officers had to know that when Rice and Schumpert called to discuss the Property after receipt of the letter that each would rely on both the letter and whatever the officers told them. Plaintiffs clearly did rely on this representation as is evidenced by the Rice Response and the subsequent letters to the Lions Club regarding their bid. Finally, it cannot be denied that Plaintiffs were injured as a result of such reliance. After all, the Lions Club sold the Property to Amick, a property that, according to the Lions Club, was worth \$369,000 or \$44,000 more than the Plaintiffs' bid. Thus, Plaintiffs were damaged by both not obtaining the Property and the equity over and above their bid amount. Had the representations not been made, Plaintiffs could have conducted themselves in other ways to protect their interest in the Property. For example, Plaintiffs could have made a larger bid or negotiated a

resolution with Amick. Consequently, the Plaintiffs did, in fact, prove each element of promissory estoppel, Satcher v. Satcher, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002), and to refuse to enforce the promise made by the Lions Club would amount to sanctioning the inequitable conduct of the Lions Club.

29. On Pages 27-28, the Court concludes that Amick was a bona fide purchaser for value without notice only in the event the Plaintiffs did not have an enforceable contract for the purchase of the Property. To the extent that the Court's conclusion in this respect has any effect on Amick's status as a bona fide purchaser in the event it is determined that Plaintiffs have any enforceable claim to the Property, by way of promissory estoppel for example, the Court is in error. For the very reasons stated by the Court, Amick cannot claim to be a bona fide purchaser for value without notice as it relates to Plaintiffs claims to the Property under any circumstances.
30. The Court erred in giving credibility to the denials of the Lions Club officers over the testimony of Joe Rice and Claude Schumpert and failing to consider the greater weight of the evidence as recited herein supporting the fact that the Lions Club, by its January 2017 letter and the representations of its officers, did offer the sale of the Property to the highest bidder, who agreed to accept the property with the encroachments, pay in excess of \$300,000, and submitted their bid prior to June 1, 2017; that Plaintiffs bid was the highest bid and complied with all of these conditions; and, that Plaintiffs are ready, willing, and able to comply with their bid. When critically analyzed, the Court's ruling hinges almost entirely on the testimony of the Lions Club officers denying that the letter is an offer despite the fact that its terms plainly state that it is and their further denial that they told Joe Rice and Claude Schumpert that the intent of the letter and that of the Lions Club was to sell the Property to the highest bidder. All of the other evidence in the record belie these denials. See, Taylor v. Cox, 218 S.C. 488, 63 S.E.2d 470 (1951) (holding the interest of defendant testifying in case should properly be considered as bearing on the weight and probative value of the defendant's testimony); Paige v. Crisp, 303 S.C. 117, 399 S.E.2d 161 (Ct. App. 1990) (holding that while a fact finder is not required to believe testimony when reasonable persons could disagree as to facts, but it is not permitted to disbelieve testimony unless there is good reason for questioning the credibility of the witness). Atlantic Works v. Brady, 107 U.S. 192 (1883) (a party's testimony could not be allowed to prevail against a course of conduct utterly at variance with it); Bose Corp. v. Consumers Union of US, Inc., 466 U.S. 485 (1984) (holding that discredited testimony is not considered a sufficient basis for drawing a contrary conclusion).

It is further error to give weight to the denials as positive evidence to the contrary exists in the record. Claude Schumpert no longer has any interest in this case. He did not appeal this Court's prior order dismissing his claims to the Property with prejudice. There is no reason, therefore, to question his credibility as he stands nothing to gain by saying one thing or the other. Schumpert testified that



Gene Crocker, the author of the Lions Club January 2017 letter, told him that the intent of the letter and that of the Lions Club was to sell the Property to the highest bidder making a bid consistent with the terms of the letter. Joe Rice testified about a similar conversation with the Club Secretary, Pete Simpson. The only evidence in the record concerning the question is the disparate testimony of these Lions Club officers denying that they ever said such a thing. Schumpert's testimony is positive evidence which is corroborated by other evidence in the record. It should, therefore, prevail over the negative evidence of Simpson and Crocker's denials. 29A Am. Jur.2d, *Evidence* § 1321; Eames v. Home Ins. Co., 94 U.S. 621 (1876) (negative evidence cannot prevail over positive evidence where other evidence supports its veracity).

31. The record clearly shows that the Lions Club intended to sell the Property to the highest bidder; that 3 bids were received; that Plaintiffs were the highest bidder; that Amick repudiated his bid by refusing to accept the encroachments; that, as a result, Plaintiffs bid was the highest remaining bid as of the June 1, 2017 deadline; that, nevertheless, Amick pushed the Lions Club board to accede to his desire for the property at a lower price at every possible turn; and when the board became concerned that Plaintiffs could have a claim to the Property, they resolved to "withdraw all offers" (after the June 1 deadline) on the pretext that the Lions Club could not convey marketable title; then proceeded to sell the Property to Amick; and because it is the only way to escape unscathed, the officers of the Lions Club have since being sued by Plaintiffs and Amick turned the plain, ordinary meaning of the term "offer" used in the letter on its head by denying that it means what it means and further denied their statements to Joe Rice and Claude Schumpert that the intent of the letter and that of the Lions Club was to sell to the highest bidder. These facts show an enforceable contract was formed between Plaintiffs and the Lions Club and the equities favor Plaintiffs and an order of specific performance is well supported by the evidence.
32. On Page 10 of the Order, it is found that "Mr. Amick was present at the meeting and would have known of the contents of the letter if he were at the meeting." The underlined portion of that finding should be stricken, as it was uncontradicted that Amick was at the meeting of November 28, 2017, when the letter of Rice's attorney was read out loud.
33. The Order does not include the following findings of fact that are undisputed:
  - a. That at the January 2017 meeting of the Lions Club Board, Amick asked the Board to extend the deadline for bids until June 1, 2017, so he could get his finding together, and the Board agreed (Plaintiffs' Exhibit 6);
  - b. That at the May 23, 2017, meeting, Amick withdrew and/or rescinded his offer of \$300,000 (including acceptance of all conditions) and asked that the Lions Club clear up the encroachments to the Lions Club property, contrary to Amick's prior acceptance of the encroachments to

the Lions Club property, contrary to Amick's prior acceptance of the encroachments (Plaintiffs' Exhibit 5a) and the Lions Club acquiesced and did so (Plaintiffs' Exhibit 5; Crocker Deposition, p. 65-66; Amick Deposition, p. 39, 50-51);

- c. That as of June 1, 2017, there were two active bids: Plaintiffs' (\$325,000) and the Schumperts (\$300,000); both Rice and Schumpert accepted all conditions of sale imposed by the Lions Club (Plaintiffs' Exhibit 13);
  - d. That at the January 2017 Board Meeting, Amick asked the Board to extend the deadline to June 1, 2017, as he needed more time to come up with the money (\$300,000) – and it did so;
  - e. That at the May 23, 2017, Board Meeting, Amick appeared, withdrew his bid acceptance, and asked the Board to clear up encroachments (which Amick had agreed to accept in March 2017) and the Board acquiesced and did so; and,
  - f. The Lions Club failed/refused to respond to all three letters sent to it by Plaintiffs' counsel which are dated February 14, 2017 (Plaintiffs' Exhibit 13), March 15, 2017 (Plaintiffs' Exhibit 15), and November 21, 2017 (Plaintiffs' Exhibit 19).
34. In addition to finding on Page 12 that Amick had inquiry or constructive notice of the contents of the November 21, 2017, letter of Plaintiffs' counsel, it is error to omit a finding of fact that “the evidence is undisputed that he had actual notice of the contents of that letter, as it was read aloud in his presence at the November 28, 2017, Board Meeting.” (Plaintiffs' Exhibits 5 and 5b; Crocker Deposition, p. 37-38; Plaintiffs' Exhibit 19).
35. The Order failed to note that the Court erred in ruling that it would not consider Plaintiffs' evidence per the statute of frauds and/or the parol evidence rule. The Order should be amended to make findings and conclusions relative to the statute of frauds and the parol evidence rule set forth herein.
36. The following evidence in the record demonstrates that the Lions Club letter, especially considering the extrinsic evidence, was an offer to sell to the highest bidder:
- a. The Lions Club was financially destitute in 2016 and 2017 and its Board had considered in 2016 selling via listing with a broker (rejected because a realtor's commission would diminish the client's net proceeds) and via sealed bids to the public (also rejected). (Plaintiffs' Exhibit 4, Crocker Deposition, p. 62-63);

- b. The Lions Club President acknowledges that getting a good price (“top net proceeds”) was desirable (Crocker Deposition, p. 63);
  - c. Schumpert testified that when he received the Lions Club letter, he called President Crocker who told him that the Lions Club would sell to the “highest bidder,” and contemporaneously therewith Schumpert wrote on the letter he received from the Lions Club what Crocker told him (Plaintiffs’ Exhibit 41, Letter with notation “highest bid”);
  - d. Plaintiff Rice, per his testimony, after receipt of the letter, called the author of the letter Pete Simpson to ask him about the process and Simpson said the property would be sold to the highest bidder. In his deposition, Simpson did not deny this, but said he did not recall it (Simpson Deposition, p. 34);
  - e. After rejecting a sale by realtor and a sale by sealed bids, the Lions Club, consistent with the extrinsic evidence (admissions by Simpson and Crocker), the Lions Club letter said that in essence if no responses/bids were received by June 1, 2017, “at which time the property will be advertised for sale to the public.” (Plaintiffs’ Exhibits 6 and 7); and,
  - f. The above evidence shows that the Lions Club was on a path to sell to the highest bidder, but was derailed by Amick’s aggressive insistence on being the purchaser such that the Lions Club acquiesced to all of his wishes and ignored the June 1 deadline.
37. In the alternative, if the Lions Club letter was not an offer according to the plain, ordinary meaning of the terms used, it was error for the Court not to find and conclude that the Lions Club letter was ambiguous. A writing is ambiguous where it is capable of being understood in more senses than one, is of obscure meaning through indefiniteness of expression, or having a double meaning. *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007). Even Lions Club President Crocker acknowledged in his deposition that the Lions Club letter “could be interpreted” as an offer to sell the property (Crocker Deposition, p. 52 in *Schumpert*). In that event, extrinsic evidence of the intent of the parties must be considered. *Id.* The extrinsic evidence in the record before the Court clearly established that the intent of the Lions Club and of 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) (Plaintiffs’ Exhibit 6).
38. The Order further erroneously failed to properly consider the equities involved in the case. Specific performance is an equitable remedy and the principles of equity apply. The record in this case shows that the equities favor the Plaintiffs, not the Lions Club. The equities as to the Plaintiff are as follows:



- (a) The Rices are completely innocent in this transaction and have been accused of no wrongdoing. They simply offered the highest money for the property;
- (b) The Plaintiffs reasonably relied on the letter of the Lions Club in January 2017 and what Simpson said about the letter immediately after Plaintiffs receipt of same (being a sale to the high bidder);
- (c) The Plaintiffs were “outsiders” in the entire transaction. They do not live in Newberry County, although they own property in Newberry County, and they did not attend any Board Meeting;
- (d) The Plaintiffs, through counsel, sent three letters to the Lions Club and the Lions Club failed and refused to respond to any of the letters, either by letter or verbally – making Plaintiffs suspicious of the intentions of Lions Club for ignoring them and requiring them to bring suit (discovery proved their suspicious to be well-founded);
- (e) The Plaintiffs had no knowledge that Amick was given preferential treatment and they wrote a letter dated November 21, 2017, to the Lions Club which was based on their assumption that he was given preferential treatment based on hearsay that they had learned and based on the fact that their letters were not answered;
- (f) Plaintiffs have “clean hands”;
- (g) Equity will not suffer a wrong to be without a remedy; and,
- (h) Equity imputes an intention to fulfill an obligation.

The equities as to the Defendants are not favorable:

- (a) The Lions Club ignored all three letters written by Plaintiffs’ counsel;
- (b) The Lions Club granted every concession that Amick asked for in the Board Meeting of January 24, 2017 (when he asked for a June 1 deadline), and on May 23, 2017, when he withdrew his bid and insisted that the Lions Club clear up encroachments, contrary to the terms of the Lions Club offer letter;
- (c) Amick admitted that his intention throughout 2017 was to pursue his selfish interest in buying the property (see above – every concession Amick sought was agreed to by Lions Club) and causing Lions Club to ignore its own offer letter (Plaintiffs’ Exhibits 6 and 7);

- (d) The Lions Club allowed Amick to attend all Board Meetings in 2017 (except one where the property was not discussed) and knew that he was pursuing an aggressive course which commenced in 2015 or 2016 to try to buy the property;
- (e) Lions Club ignored the June 1, 2017, deadline it set in its offer letter (Plaintiffs' Exhibit 6), despite its President admitting it "was a hard deadline." (Crocker Deposition, p. 69);
- (f) The Lions Club ignored Amick's withdrawal of his "acceptance" of the Lions Club bid at the Lions Club Board Meeting on May 23, 2017, which meant that any outstanding bids/responses from the date of May 23 until the June 1, 2017, deadline were in fact active and open. ON June 1, 2017, the Lions Club should have considered Plaintiffs as high bidders and proceeded to sell the property to them per the terms of the Lions Club letter in January (Plaintiffs' Exhibit 6);
- (g) The June 1 deadline that Lions Club ignored was, according to the Lions Club President Crocker, considered to be a "hard deadline";
- (h) The Lions Club has "unclean hands";
- (i) After its November 28, 2017, Board Meeting, the Lions Club proceeded with its "side deal" to sell the property to Amick despite knowing the exact contents of the letter of Rice attorney to the Lions Club (dated November 21, 2017) which was read aloud at the meeting and included the following:
 

"We represent [the Rices] who had submitted the successful bid offer of \$325,000, in response to..."  
 "The Rices are ready, willing, and able to follow through with their successful bid..."
- (j) The Lions Club never communicated to Plaintiffs or their attorney that their bid (Plaintiffs' Exhibit 13) was not in good order during 2017 (Testimony of Joe Rice; Crocker Deposition, pp. 61-620;
- (k) For the Lions Club to ignore the high bid of Plaintiffs was at complete odds with its Charter and Constitution as a non-profit corporation (Plaintiffs' Exhibit 1 and 2) and with the Crocker admission that "getting the top net proceeds was important" (Crocker Deposition, p. 63);
- (l) Unclean hands is demonstrated by President Crocker's admission that Amick had accepted the original offer to purchase with encroachments, but Lions Club then allowed him on May 23, 2017, to withdraw his

acceptance because he had changed his mind about encroachments. For Lions Club to yield to Amick's will about encroachments (and deadline for bids at the January 24, 2017, meeting) without notice to Plaintiffs is evidence of "unclean hands";

- (m) The Lions Club never consulted with an attorney as to whether the Lions Club letter was an offer or whether the Plaintiffs' letter was an acceptance;
- (n) Amick's attendance at Board Meetings regularly in 2017, which was "highly unusual" according to the Lions Club Secretary Simpson (Simpson Deposition, p. 87) should have put Lions Club on notice that, despite Amick's pressure, the Lions Club had a duty to follow the terms of its letter (Plaintiffs' Exhibit 6) and the hard deadline of June 1, 2017, which it failed to do;
- (o) See equitable factors adverse to Lions Club set forth in paragraph 31 above;
- (p) The Lions Club proceeded with trying to close/sell the property to Amick with full knowledge that:
  - (1) Plaintiff had written three specific letters to Lions Club which it ignored;
  - (2) In these letters, Plaintiffs, via counsel informed the Lions Club that they were high bidders at \$325,000 (and Lions Club never refuted that); and,
  - (3) These letters informed the Lions Club that legal action would be likely against the Lions Club.
- (q) See factors in Supplemental Affidavit of Professor Steve Spitz (Plaintiffs' Exhibit 45), Paragraphs 22-28.

**WHEREFORE,** Plaintiffs move that this Court reconsider its October 25 Order and issue an Order altering or amending the findings of fact and conclusions of law in the previous Order in accordance with the matters set forth herein, based on the entire record in this case. The amended Order should find and conclude that the deed from the Lions Club to Amick be rescinded and

should order that a new deed by the Lions Club transferring title/deed of the property to Plaintiffs upon their payment to Lions Club of \$325,000.

Dated: November 4, 2021

**POPE PARKER JENKINS, P.A.**

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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.

**DEFENDANT C. RAY AMICK'S  
RESPONSE IN OPPOSITION TO THE  
RICES' MOTION FOR  
RECONSIDERATION AND TO ALTER  
OR AMEND UNDER RULES 52, 59,  
AND 60, SCRPC**

**TO: THOMAS H. POPE, III; KYLE B. PARKER; AND MICHAEL A. SCARDATO;  
ATTORNEYS FOR PLAINTIFFS:**

**I. INTRODUCTION<sup>1</sup>**

Following a two-day bench trial, this Court found (again) that the Lions Club Letter was not an offer and that the Rices and the Lions Club did not form a contract. Now, Plaintiffs Lisa Summer Rice and Joseph F. Rice ("Rices") assert this Court overlooked material facts and law and that the Court should alter or amend its Order. However, the Rices have only raised already rejected or similar arguments and have only pointed to immaterial facts that do not support altering the Order. Accordingly, this Court should deny the Rices' motion.<sup>2</sup>

**II. 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.

<sup>1</sup> The facts are fully set forth in this Court's October 25, 2022 Order Finding in Favor of Defendants Newberry Lions Club and C. Ray Amick on Multiple Claims ("Order") and are incorporated fully herein.

<sup>2</sup> Under Rules 52(c) and 59(f), SCRPC, the Court need not hold a hearing on this motion, and Mr. Amick believes the Court can deny the Rices' motion based on the briefing before it. Although the Rices cited Rule 60, SCRPC, they do not appear to be seeking relief under that rule.

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).

### **III. ANALYSIS**

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. The grounds set forth by the Rices should be rejected as set forth below:

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

The Rices assert at Paragraph 1 that the Court erred by excluding expert testimony by their expert, Professor Spitz. However, this Court has ruled correctly (multiple times now) that experts do not tell the Court what the law is, and this Court’s analysis at footnote 3 in the Order and in this Court’s December 9, 2020 Order excluding expert testimony were correct. Moreover, the parties never agreed to a proffer by affidavit, and the Court properly recognized proffered affidavits are not a sufficient proffer. Accordingly, there is no reason to alter, amend, or reconsider the decision to exclude expert testimony or reject the supposed “proffer by affidavit.”

**B. The Court’s factual findings were proper and the Court should disregard the Rices’ suggested (mis)characterization of these facts at paragraphs 2–14 and 33.**

The Rices ask this Court to interpret certain facts in ways suggested by the Rices at paragraphs 2–13 of their motion. However, this Court heard the testimony, considered the evidence presented, and reached a different conclusion from the Rices’ interpretation. In each of these

paragraphs, the Rices have not identified an error of fact or law and only disputed the conclusion to be drawn from these facts.

For instance, the Rices object that “the Order found erroneously that ‘Amick and the Lions Club believed the Lions Club could not convey marketable title with encroachments on the property.’” *See* Rices’ Motion at 2, ¶ 6 (*quoting* Order at 9). The Rices rely on cases purporting to show that the encroachments did not *actually* make the title unmarketable. However, the testimony was clear and the Court’s fact-finding was spot-on: both Mr. Amick and the members of the Lions Club explained that they believed the encroachments made the title unmarketable. The Rices obviously contest the legal significance of this fact, but the fact itself—the belief by Mr. Amick and the Lions Club—is accurate.

Similarly, the Rices object that “the Order found erroneously that the Lions Club consulted an attorney ‘who informed them that the Lions Club could not convey a marketable title with encroachments.’” *See* Rices’ Motion at 2, ¶ 7 (*quoting* Order at 9). Though now objecting to the testimony, the Rices do not identify when they raised a contemporaneous objection to the testimony establishing this fact or what the contents of their objection were. Accordingly, as the Rices point out later in their Motion (albeit incorrectly in the context of the parol evidence rule), “[a] party’s failure to make an objection at the time evidence is offered constitutes a waiver of the right to object to that evidence.” *See* Rices’ Motion at 10–11, ¶ 26 (*citing Carson v. CSX Transp., Inc.*, 400 S.C. 221, 734 S.E.2d 148 (2012)). Accordingly, this objection should be denied because the Rices did not object to the testimony.

Even with a contemporaneous objection, the Court would be well-justified to find an attorney told the Lions Club about the title issue when the evidence admitted at trial **by the Rices themselves** included the two letters from attorney Jay Verner stating, “The Newberry Lions Club

Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time ***because they are not able to convey a good fee simple marketable title thereto because of encroachments.***” (emphasis added). Pls’ Trial Ex. 12 &13.

Each other critique in paragraphs 2–14 and 33 of the Rices’ motion follows along these same lines—disputing the conclusions to be drawn from the facts rather than identifying a clear error of fact based on the evidence in the record. Accordingly, the Rices’ motion to alter or amend on these bases should be denied.

**C. The Court properly rejected the erroneous legal arguments set forth in paragraphs 14–32 and 34–38 of the Rices’ Motion.**

The Rices ask this Court to interpret certain facts and law in ways suggested by the Rices in paragraphs 14–32 and 34–38 of the Rices’ Motion. However, this Court heard the testimony, considered the evidence presented, and reached different legal conclusions from the Rices’ suggested legal interpretation. In each of these paragraphs, the Rices have not identified an error of fact or law and only disputed the legal conclusions to drawn by the Court from these facts.

For example, paragraph 15 asserts several legal arguments for a different application of *McLaurin v. Hamer*, 165 S.C. 411, 164 S.E.2d 5 (1932), and interpretation of the facts in this case in light of *Hamer*. However, these arguments were presented to and rejected by the Court at the trial and before because they propose an incorrect analysis of the rule in *Hamer*. The Rices’ different view of the law and facts are not a basis to alter or amend the Order.

For another illustration, paragraph 17 is merely the Rices’ view that this Court has already rejected (“On Page 13, the Order erroneously concludes that the Lions Club’s inclusion of the value of the Property found by their appraisal and its “asking” price supports the notion that the letter is not an offer but an invitation to negotiations. The error being that this information has no relevance to that question, but rather merely gives the recipient relevant information as to the value



and the Lions' Club's expectations (or minimum bid/reserve)."). The Rices assert the law applies differently to the facts than how this Court ruled in the Order. These arguments were addressed and rejected in the Order and should be again.

Even if the Court considered any of these old arguments, the answer would still be that even under the Rices' theory of the case, the Rices were still only a "high bidder" and made an offer rather than an acceptance that formed a contract. *See, e.g.*, Rice Motion at ¶¶ 19, 22, 23, 25 (discussing "bid"). In fact, the Court ruled on this issue directly and accurately in the Order:

The use of the term "bid" three times and their request that the Lions Club inform the Rices if the Lions Club accepted the bid is dispositive. A "bid" is "[a] buyer's **offer** to pay a specified price for something that may or may not be for sale." BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added); *see also Ramsay v. Vogel*, 970 F.2d 471, 463 (8th Cir. 1992) ("the words 'bid' and 'bidder' commonly are used to refer to the making of an offer to buy or sell property or to provide services in a private sale or transaction."). Accordingly, these statements show the Rices did not attempt to accept an offer but made an offer—a bid—that they understood would have to be accepted by the Lions Club.

Order at 16. The Rices have not identified any overlooked law or fact that would change this correct legal and factual analysis by the Court.

Notably, the Rices assert a new, never-before raised argument—Mr. Amick may not assert the parol evidence rule or the statute of frauds because "Defendant Amick is not a party to the agreement in dispute." *See* Rice Motion at ¶ 26. Rather, the Rices assert only the Lions Club could raise parol evidence and statute of frauds arguments.

However, the Rices' new argument fails for several reasons. The Rices are first raising this new argument in a Rule 59(e) motion, and it should be denied on this basis alone for being too late. *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 throughout 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. 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 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.

Notwithstanding the role of the Lions Club in the litigation, Mr. Amick is not a “stranger” to the agreement under the Rices’ theory—he is grantee of and in privity with the Lions Club, and (under the Rices’ theory) took title subject to the Rices’ interest in the property. *Cf. Orangeburg v. Buford*, 227 S.C. 280, 284, 87 S.E.2d 822, 824 (1955) (recognizing parol evidence is for the benefit of the parties “and their privies”). The Rices are seeking to specifically enforce their alleged contract against the Lions Club’s successor-in-interest. Under the Rices’ theory, the two-letter contract would be executory and would have given equitable title to the Rices under the doctrine of equitable conversion. *See generally Brooks v. Council of Co-Owners of Stones Throw Horizontal Prop. Regime I*, 315 S.C. 474, 476, 445 S.E.2d 630, 632 (1994) (“under an executory

contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor.”). If the Rices’ alleged executory contract gave them equitable title, then Mr. Amick stepped into the shoes of the Lions Club as its grantee and received bare legal title subject to the Rices’ claim when he received the deed from the Lions Club. *See generally Von Elbrecht v. Jacobs*, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct. App. 1985) (“a grantor of real property generally can transfer no greater interest than he himself has in the property.”) (citing *Belue v. Fetner*, 251 S.C. 600, 164 S.E. (2d) 753 (1968)). Certainly, under the Rices’ theory of the case, Mr. Amick is no stranger to a contract that the Rices seek to specifically enforce against him. Accordingly, notwithstanding the Lions Club’s position in this case, the Rices’ new argument that Mr. Amick may not raise the statute of frauds or parol evidence fails on the merits as well.

Finally, even if the Court hypothetically accepted the Rices’ argument regarding parol evidence and statute of frauds, there would still be no basis to alter, amend or reconsider the judgment because the Court found no contract existed even if all extrinsic evidence were considered. *See Order at 22–25.*

Accordingly, the Rices’ motion to alter, amend or reconsider on these bases should be denied.

## **V. CONCLUSION**

This Court considered completely and thoroughly the facts and law over whether the Lions Club and the Rices formed a contract with two letters. This Court twice granted summary judgment on this issue and has now issued findings of fact and conclusions of law after a two-day bench trial, again reaching the same conclusion—no contract. This Court properly concluded the Lions

Club and the Rices did not form a contract, and the Rices have not identified any basis for this Court to alter or amend its Order. Accordingly, the Rices' motion should be denied.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

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**ATTORNEYS FOR DEFENDANT**

**C. RAY AMICK**

January 18, 2023

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2018-CP-36-00089

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Lisa Summer Rice and Joseph F. Rice.....Appellants

v.

Newberry Lions Club and C. Ray Amick.....Respondents

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**NOTICE OF APPEAL**

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Lisa Summer Rice and Joseph F. Rice appeal the Order Finding in Favor of Defendants Newberry Lions Club and C. Ray Amick on Multiple Claims (Not Ending Action) of The Honorable J. Mark Hayes, II, dated October 25, 2022, and his Order Denying Plaintiffs' Motion for Reconsideration and to Alter or Amend dated June 22, 2023. Appellants received written notice of entry of this Order on June 22, 2023.

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