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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. II of III

Demetri “Jim” K. Koutrakos, Esquire
Harry A. Dixon, Esquire
Callison & Tighe
PO Box 1390
Columbia, S.C. 29202
Attorneys for Respondent Betty S. Amick,
as Personal Representative of the Estate
of C. Ray Amick

Thornwell F. Sowell, Esquire
Sowell & Durant
1325 Park Street – Suite 100
Columbia, S.C. 29201
Attorneys for Respondent Betty S. Amick,
as Personal Representative of the Estate
of C. Ray Amick

Samuel M. Price, Jr., Esquire
Jennifer Nichols, Esquire
Nichols & Price
PO Drawer 836
Newberry, S.C. 29108
Attorneys for Respondent Newberry Lions
Club

Mary M. Caskey, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street – 22nd Floor
Columbia, S.C. 29201
Attorneys for Respondent Cheryl Littlejohn

Thomas H. Pope III, Esquire
Kyle B. Parker, Esquire
Pope Parker Jenkins, P.A.
P.O. Box 190
Newberry, S.C. 29108
Attorneys for Appellants Lisa Summer Rice
and Joseph F. Rice

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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.)
_____)

TRANSCRIPT OF RECORD
(VOLUME I of II)

May 31, 2022
Spartanburg, South Carolina

B E F O R E:

Honorable J. Mark Hayes, Judge.

A P P E A R A N C E S:

Mr. Thomas H. Pope, III
Attorney at Law
Mr. Kyle Parker (virtually)
Attorneys for the Plaintiffs
Newberry, South Carolina

Mr. Samuel M. Price, Jr.
Attorney at Law
Attorney for the Defendant Newberry Lions Club
Newberry, South Carolina

Mr. Harry A. Dixon
Attorney at Law
Attorney for the Defendant C. Ray Amick
Mr. Demetri Koutrakos
Attorney at Law
Attorney for the Defendant C. Ray Amick
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: Okay. We'll go ahead and slowly get
2 started. All right. Welcome to Spartanburg. Hopefully, if
3 y'all come back in about twelve, thirteen, fourteen,
4 fifteen, sixteen months, we'll be in the building that you
5 see behind us, but in the meantime this is what we're
6 working with is this building here, so it is -- they've
7 already sort of relaxed this building, so the hallways are
8 getting difficult, bathrooms are across the way if you need
9 them and security's doing the best they can by keeping the
10 building together with Band-Aids, paper clips and staples,
11 so, but welcome to Spartanburg.

12 We're here to a case that was assigned to me the Chief
13 Administrative Judge down in the Newberry Circuit. This is
14 the case, I've got it listed today as Rice versus Newberry
15 Lions Club and Ray Amick, showing the case number for
16 today's purposes, 2018-CP-36-0089, consolidated of several
17 cases that were filed that deal with same subject matter.

18 For purposes of this proceeding, the Rices will be
19 considered the plaintiff and then the defendants will be
20 Newberry Lions Club and Ray Amick.

21 What I'm going to do is we now have Mr. Pope's partner
22 has appeared online. He will be appearing -- he will be
23 able to, hopefully, hear us, but he will not be able to
24 participate during the proceeding, but thank you for letting
25 us know if his COVID status ahead of time.

1 What we'll do is I believe I've conferenced with the
2 lawyers. We're not going to do opening statements unless
3 one of the lawyers feels strongly one, because this Court
4 seems to be pretty familiar with the factual background of
5 the case. We've done several motions hearings already in
6 this case and so, Gentlemen, if you would, when you start,
7 announce your name and anybody else you want the court
8 reporter to be aware of so that she can make a record of it
9 for this proceeding, so please do that at least for the
10 first time that you speak.

11 But at this time we've got a motion in limine that has
12 been filed by the -- by Amick, a motion in limine, I
13 believe, that has to be addressed prior to the trial. So
14 I'll be more than happy to hear from the defendant on his
15 motion in limine.

16 MR. DIXON: Thank you, Your Honor. May it please the
17 Court. I'm Harry Dixon on behalf of defendant C. Ray Amick.

18 We're moving to exclude any evidence on the issue of
19 whether a contract was formed, other than the two letters
20 that purportedly make up the contract and that will be the
21 letter from the Lions Club to Mr. and Mrs. Rice and then the
22 response in February of 2017 from Mr. Sid Boone, faxed to
23 the Lions Club. Everything beyond that is incompetent as
24 evidence under the statute of frauds and parol evidence
25 rule.

1 This is, of course, an alleged contract for the
2 purchase of real estate and it has to fit within the statute
3 of frauds and it has to be in writing. Those two letters
4 are the only things alleged that could make up the supposed
5 contract. So any kind of testimony or other documents that
6 might be offered to show the contract are not just not
7 proper evidence, they're just not substantively able to show
8 the contract as a matter of law. So any testimony, any
9 other exhibits will be irrelevant to the question before the
10 Court on whether a contract was formed and that,
11 practically, Your Honor, touches a number of plaintiffs'
12 exhibits that should be excluded. And, you know, I will
13 say, Your Honor, that this is a -- we recognize this is a
14 bench trial and that there's a number of exhibits and, you
15 know, we just discussed some designated deposition
16 testimony. So we would also understand maybe if the Court
17 heard the evidence and waited to rule on it afterwards,
18 because it's going to be -- even if you exclude it, it's
19 going to be proffered anyway, so there's some practical
20 considerations there that I think the Court is going to hear
21 it no matter how you rule on the motion on limine, but it
22 might be a question that could be -- could be reserved until
23 later as well, so we certainly recognize that, but we've
24 cited a number of cases and welcome to discuss the cases as
25 the Court requests, but I think it's pretty clear that when

1 you -- when you say there's a contract to purchase real
2 estate, it has to be in writing and you can't introduce a
3 lot of testimony and other writings to say that's what makes
4 up the contract.

5 THE COURT: Okay. Thank you very much. Yes, sir, Mr.
6 Pope.

7 MR. POPE: Your Honor, this was, of course, filed
8 yesterday. In fact, I don't even have a hard copy, I looked
9 at my phone, but we say the Statute of Limitations -- I
10 mean, the statute of frauds doesn't apply -- the Parol
11 Evidence Rule doesn't include what we'll be proffering, but
12 we also say, most importantly, it's premature. They've
13 protected their rights on those two issues by raising it in
14 a motion, but I think without a jury here, as he indicated,
15 Mr. Dixon indicated, you're going to have to know what we
16 present to determine whether that's violative of a rule or
17 not. Parol evidence prohibits verbal testimony to
18 contradict a writing, but it doesn't prohibit it to explain
19 a writing and we will have evidence in this case that a
20 member of the Lions -- two members of the Lions Club
21 explained this letter to Mr. Rice, one to Mr. Rice and one
22 to Mr. Schumpert, that said it was an offer to sell to the
23 highest bidder if they did it by June the 1st.

24 Anyway, be that as it may, Your Honor, we would urge
25 that you not take this matter up at this point. I have a

1 memo that's written by Mr. Parker, who's not here, that I
2 could submit, but I would prefer to have him finalize it and
3 get it to you later in these proceedings. I'd say it's --
4 their position is wrong, but we'll be arguing the facts at
5 this point to make our argument.

6 THE COURT: Anything from the Newberry Lions Club on
7 the motion in limine?

8 MR. PRICE: Judge, we would stand with Mr. Amick's
9 attorneys.

10 THE COURT: Okay. Announce your name for the court
11 reporter.

12 MR. PRICE: Oh, excuse me. Sam Price. I represent the
13 Lions Club.

14 THE COURT: Thank you, Mr. Price. Any reply?

15 MR. DIXON: Just say briefly, Your Honor, you know, I
16 think that counsel for the Rices is arguing you can have
17 testimony to explain, but that -- I think the classic
18 situation for that is where there's no dispute there is a
19 contract and there's an ambiguous permission, then you have
20 some extrinsic evidence, testimony or other writings,
21 whatever, to explain that ambiguity, but I think you -- I
22 don't think the parol evidence rule lets you bring in other
23 new terms to try to show a meeting of the minds between the
24 two letters. I think the cases we cited, particularly, the
25 letters cases, the Courts only look at the letters to

1 determine whether there's a contract. So I don't see that
2 application here.

3 In terms of, you know, perhaps if there's an allegation
4 that somehow this comes outside of the statute of frauds,
5 you know, potentially you could have some evidence on that,
6 but I don't think -- but that's a different argument and
7 you're saying, really, there wouldn't be a contract in that
8 situation, but we get around the statute of frauds. You
9 still wouldn't have evidence to show what the contract is,
10 so I think the cases are clear on that.

11 I would say, Your Honor, if you do -- if you are
12 inclined to rule against us, we would like a ruling on 43.
13 Rule 43(c)(1) allows us to object to the admission of the
14 evidence and that it's not necessary for us to object out --
15 so we would like to be sure we're preserved on the record
16 under that rule or that the -- potentially, the ruling on
17 the admissibility could be held until after the end of
18 trial, but I think that the case law is clear. This
19 additional outside the letter evidence is not competent to
20 breach a contract.

21 THE COURT: Okay. Thank you very much for those
22 arguments. I think the statute of frauds is going to apply
23 with this case. This is a case that involves real estate.
24 Statute of Fraud applies to real estate and it seems to be
25 pretty clear as to what the purpose of the statute of Fraud

1 was and I say that, 'cause I think, historically, from ever
2 since law school, in applying the statute of frauds, it is
3 that it's not competent to prove by oral testimony, any of
4 the essential elements of a contract, which the statute of
5 Fraud requires to be in writing. So that's going to be the
6 rule that I'm going to apply in this case.

7 Now, as a practical matter, I don't know what y'all are
8 going to give me, so I can't make any rulings as to what I'm
9 going -- how I would view a particular piece of evidence, so
10 -- and I think with it being non-jury, I don't have to worry
11 about what the Courts have talked about about being
12 prejudicial to a jury to hear evidence that doesn't bear on
13 whether or not a real estate contract exists or not. So for
14 practical purposes, it's probably going to be presented to
15 me anyway, because it's going to be proffered and proffering
16 the testimony, I'm the one that's got to receive the pro-
17 offered testimony, so I'm going to hear it one way or the
18 other, but that's going to be my ruling that the statute of
19 fraud does apply.

20 I, again, I do not know the details of what y'all are
21 going to present, so it's more than likely going to be heard
22 by the Court. I intend to apply the statute of frauds as
23 the way I understand it or as the way that y'all would like
24 to educate me as to how I should apply the statute of
25 frauds, but I will -- so, basically, I'm ruling in favor of

1 Mr. Amick on the issue of statute of frauds, but on the
2 specifics as to what would be excluded, I can't tell you
3 'cause I don't know what that is yet. Okay.

4 MR. DIXON: Thank you, Your Honor.

5 THE COURT: All right. Okay. Anything else pretrial
6 before we start with the testimony?

7 MR. DIXON: Your Honor, given the approach you've
8 outlined, can we have a ruling under 43(c)(1) that we don't
9 have to raise that same objection throughout the -- when
10 they read in the designated deposition testimony? Can we
11 have a -- without having to object to specific portions of
12 the designation under that same statute of frauds parol
13 evidence theory?

14 THE COURT: Do you really want to do that? You don't
15 want to alert me as to when it is?

16 MR. KOUTRAKOS: Yeah. Your Honor, if I may, the
17 designated testimony, I would suggest about eighty percent
18 of it --

19 THE COURT: Are we talking about the depositions?

20 MR. KOUTRAKOS: Yeah. -- I would say seventy-five to
21 eighty percent, you know, there's some background about the
22 Lions Club,---

23 THE COURT: Right.

24 MR. KOUTRAKOS: ---you know, the letter was sent, but a
25 lot of it -- and the reason why it's been -- was designated

1 by plaintiff is to show that there was additional terms or
2 conditions or things outside of the letter, oral
3 communications and some process that's not stated in the
4 letter. So, you know, quite frankly, we'd be -- you know,
5 we didn't -- when we were listing our objections to the
6 designations, there was clear ones where, you know, calls
7 for legal conclusion, you know, we have that there, but we
8 would have been there all day objecting to every line,
9 because the testimony, and someone can correct me if I'm
10 wrong, most of it has to do with, hey, the Lions Club sent
11 this letter, there's some sort of bidding process. Mr. Rice
12 talked to Gene Crocker, who's going to come here and
13 testify. Mr. Crocker talked to the Lions Club. Mr. Crocker
14 conveyed that information to Mr. Rice and you're going to
15 hear a lot of testimony about that, which under the Court's
16 ruling, would be a violation of statute of frauds. And so I
17 think what was suggested is that if you make that ruling,
18 which I think you have, and any evidence that comes in is
19 automatically a proffer, we're not going to be here all day
20 objecting to all that, because you will hear testimony, I
21 think, from the beginning that goes outside the four corners
22 of the two documents, because on the sole issue of whether a
23 contract existed is really those two letters. Right? You
24 know, statute of frauds, what constitutes a contract? This
25 is a specific performance case and they got to prove by

1 clear evidence an agreement exists. They're going to show
2 you those two letters, which you've seen before, Your Honor,
3 and anything outside of those two letters is irrelevant to
4 the issue of formation a contract.

5 Now, we have evidence that we'll submit we have a
6 bona fide purchaser for value and some other things, but
7 other than that, you know, we assert blanket objections to
8 almost all of the designated testimony. So I -- you know, I
9 don't know any other way of doing it, 'cause we're
10 going to be objecting to almost -- we'd be constantly
11 objecting. We object to all the designations of anything --
12 any oral testimony having to do with the issue of contract
13 formation other than the two letters.

14 THE COURT: If this case gets -- let's say that I rule
15 that you don't have to make your object- -- you don't have
16 to make your objections under Rule 43. All right. Then how
17 in the world is an appellate court going to be able to take
18 a look at the record that's produced and be able to see, oh,
19 well, they -- that's part of what their ongoing objection
20 was about or that's not part of what their ongoing objection
21 was about. How is an appellate court going to be able to
22 review the record?

23 MR. KOUTRAKOS: Yeah.

24 THE COURT: Now, my comment was -- not only included
25 the deposition testimony, which y'all have both been through

1 in great detail, but also the testimony that was going to be
2 presented here and so I was wondering why would you not want
3 to object to the testimony that's being presented live here
4 and just let somebody continue to testify as to things you
5 feel like are not appropriate, when I don't know what it is
6 they're going to testify to. The deposition testimony,
7 y'all have gone through in great detail, highlighted and I
8 know where—

9 MR. KOUTRAKOS: Right.

10 THE COURT: ---the issues are and the deposition
11 testimony we could take up at an appropriate time for y'all
12 to say, well, it's pages 35 through 27, lines 2 and 4. You
13 know we could do it that way and then y'all could make a
14 record of it.

15 MR. KOUTRAKOS: All right.

16 THE COURT: Mr. Pope?

17 MR. POPE: Your Honor, the four corners concept only
18 applies if the Court finds a writing is unambiguous and
19 fully integrated and neither is true in this case.

20 THE COURT: Okay. Now, I've already made my ruling.
21 My understanding is the four corner concept, though, deals
22 when you actually have an agreement and you're trying to
23 determine what the definitions of the agreement are.

24 The four corners concept does not go into the formation
25 of a contract. That's my understanding.

1 MR. POPE: That's all I have.

2 THE COURT: Okay. What about their statements about
3 Rule 43?

4 MR. POPE: Well, I don't really have a position. If
5 they want to object every time, that's fine, if you -- if
6 they don't -- they say they don't want to.

7 MR. KOUTRAKOS: You know, Your Honor, --

8 MR. POPE: They said to want to -- this objection they
9 hope they're presenting right now cover the trial, I don't
10 care.

11 THE COURT: Okay; okay. Then you don't have to object.

12 MR. KOUTRAKOS: Well, I -- you know, --

13 MR. DIXON: I think we could object to the live
14 testimony as it comes up and it would be to the whole line
15 of questions rather than every single question, but in terms
16 of the deposition, I mean, we want -- we understand -- kind
17 of the point of bringing this up, Your Honor, is really
18 logistically.

19 THE COURT: Okay.

20 MR. DIXON: I don't think any of this testimony, what
21 about the letters, matters to the ultimate decision of the
22 Court, but we understand practically it would really get in
23 the way of us getting through the evidence here if we
24 objected to every single question. So I think this rule
25 lets us object to the whole series of questions and say

1 in the deposition designations, the testimony's just not
2 competent and then we can object to the live witnesses as
3 something comes up, depending on what they say, 'cause we
4 don't know what they're going to say.

5 THE COURT: Okay. So you're going to object to the --
6 when you feel appropriate to the live testimony and for the
7 deposition testimony, you'll take that up at the appropriate
8 time or that you already designated it?

9 MR. DIXON: We've object to that in a blanket sense.

10 THE COURT: Okay.

11 MR. DIXON: Our objections are specific, like form of
12 the question, improper question--

13 THE COURT: Right.

14 MR. DIXON: ---objections, which are designated on the
15 grounds, but the --

16 THE COURT: Okay.

17 MR. DIXON: ---this objection to sort of the
18 deposition testimony in general is --

19 THE COURT: Okay.

20 MR. DIXON: -- is still there and I think that's what
21 we really want to be preserved---

22 THE COURT: Okay.

23 MR. DIXON: ---for the rule.

24 THE COURT: Well, if you're wanting it to be preserved,
25 I think you're preserving it, you know, 'cause you're

1 objecting so -- okay. You're preserved for my purposes.

2 Now, you object wherever you feel the neces- -- where
3 you to object. According to Mr. Pope, he doesn't care
4 whether you object or not, so I guess Rule 43 is going to
5 apply to say you don't have to object to preserve your
6 statute of Fraud objection, but it -- it would benefit the
7 trier of fact that if I hear a statement from a witness and
8 there's no objection to it, for -- it would help the trier
9 of fact of knowing that that is something y'all viewed as
10 being violative of the statute of Fraud versus I might not
11 think it's violative of the statute of Fraud, that I might
12 consider it substantively.

13 MR. DIXON: Right.

14 THE COURT: So that's the reason I was wondering do you
15 really want to do that, but -- so-

16 MR. DIXON: We would --

17 THE COURT: ---I just want both sides to agree as to
18 the process we're going to follow.

19 MR. DIXON: Right. And I think, Your Honor, you know,
20 you can hear and then decide later that it violates the
21 statute of frauds, too, given the bench trial format.

22 THE COURT: Yeah, but somebody's got to tell me,
23 though, if they want to raise an issue. I just can't
24 unilaterally or sua sponte say, oh, that violates the
25 statute of frauds, you know. I got to have somebody to

1 argue it does or does not to alert me to an issue.

2 MR. DIXON: Right. We'll certainly object as necessary
3 to the live testimony.

4 THE COURT: I'm sure you will. Okay. Thank you very
5 much.

6 MR. POPE: If Your Honor would give us a second.

7 THE COURT: Uh-huh.

8 MR. DIXON: Thank you, Your Honor.

9 THE COURT: Anything else before you call the
10 witnesses?

11 MR. POPE: Nothing else at this time, Your Honor.

12 THE COURT: Okay. Not hearing any from the defense.
13 Yes, sir, Mr. Pope, you want to call your first witness?

14 MR. POPE: Yes, Your Honor. I'm Tom Pope representing
15 the plaintiffs and I'd call -- we're going to publish the
16 deposition of Pete Simpson and Betsy Alexander --

17 THE COURT: Pete Simpson?

18 MR. POPE: Pete -- Ladsen H. Simpson. He's a Lions
19 member.

20 THE COURT: Is this the one from June the 29th, 2020?

21 MR. POPE: No. This is October 22nd, 2018.

22 THE COURT: Okay. I've got it.

23 Ma'am, just watch your
24 step as you're stepping up and then you can pull the chair
25 up to the microphone. You can pull the microphone down to

1 you, but do so gently. That comes out of the socket very
2 easily.

3 MS. ALEXANDER: Okay.

4 MR. POPE: Your Honor, this is Betsy Alexander who will
5 be doing the reading for the witness.

6 THE COURT: Yes, ma'am, Ms. Alexander.

7 MS. ALEXANDER: I have one quick question. Am I
8 reading the objections as well or just the yellow portion?

9 MR. POPE: Yes. When you get to that read it.

10 MR. DIXON: Stop -- let's stop at the objections and
11 take it up as it comes up, I think will be the best --

12 THE COURT: Okay. Is she, then, going to read the
13 green?

14 MR. DIXON: She'll read yellow and green and then when
15 we get to red, I think we should take it up with the Court.

16 THE COURT: Okay.

17 MR. DIXON: And we will object for the Court's -- as
18 you requested, as we get into something and kind of flag it
19 if we need to--

20 THE COURT: Okay.

21 MR. DIXON: ---not object to further stuff if it's
22 repetitive.

23 THE COURT: Okay. Sounds good. So I guess the short
24 answer is yeah, you will read both parts and then when it
25 gets to a red part, stop and we'll address it.

1 MS. ALEXANDER: Okay. Thank you.

2 THE COURT: Thank you.

3 MR. POPE: All Right. This is the deposition of Ladsen
4 Heath Simpson, taken on October 22nd, 2018 at the Pope,
5 Parker, Jenkins Law Office at 10:30 in the morning.

6 (Whereupon, excerpts from the deposition transcript of
7 Ladsen Heath Simpson were published to the Court.)

8 MR. POPE: Your Honor, we'd offer exhibit 1 into
9 evidence.

10 THE COURT: All right. Without objection.

11 MR. POPE: Then we go to exhibit 2.

12 (Publication continued)

13 MR. POPE: Your Honor, we'd offer exhibit 2 in
14 evidence.

15 THE COURT: Okay. Without objection.

16 (Publication continued)

17 MR. DIXON: Objection. We'd object to this, Your
18 Honor, as being within the motion in limine, irrelevant,
19 should be excluded under the statute of frauds parol
20 evidence rule.

21 THE COURT: All right. Your objection is noted. I'll
22 let her go ahead and pro-offer the testimony.

23 MR. POPE: Yes. We'd offer exhibit 3 in evidence.

24 (Publication continued)

25 MR. DIXON: Objection, Your Honor. Same objection as

1 the prior exhibit.

2 THE COURT: All right. I'll let it in for what it's
3 worth. Go ahead.

4 (Publication continued)

5 MR. POPE: Your Honor, I would publish that exhibit 4,
6 the page relating to the minutes of September 27, 2016, the
7 next to the last paragraph says, Lion Ray Amick stated he
8 would like to buy all the property or at least the upper
9 portion of the property.

10 (Publication continued)

11 MR. DIXON: Objection, Your Honor. Same objection as
12 the prior two.

13 THE COURT: Your objection is that that testimony
14 violates the statute of frauds?

15 MR. DIXON: The -- to the extent those meeting minutes
16 are offered to show anything about the alleged contract, it
17 should be excluded as irrelevant.

18 THE COURT: Okay. I'll sustain the objection, but you
19 can proffer.

20 (Publication continued.)

21 MR. POPE: Next, Plaintiffs' Exhibit 6, letter from
22 Pete Simpson to Mr. and Ms. Rice was marked for
23 identification and Plaintiffs' Exhibit 7, letter from Pete
24 Simpson to Mr. Amick was marked for identification. I would
25 offer those in evidence.

1 MR. DIXON: No objection.

2 THE COURT: Without objection.

3 (Publication continued)

4 MR. DIXON: Objection and we object to lines 9 through
5 22 because -- first, because it calls for a legal
6 conclusion.

7 MR. POPE: Can I publish it, Your Honor?

8 THE COURT: Give me --

9 MR. DIXON: When did the offer -- it says -- the
10 question at line 9 is, When did the offer expressed in those
11 letters, that improper question and the testimony shouldn't
12 be admitted from 9 to 22.

13 THE COURT: Okay. I'll sustain the objection to the
14 extent that it goes to the statute of Fraud issue. He can
15 -- Mr. Pope will be able to publish it, because I think it
16 does -- the word offer denotes a legal term that I think is
17 being used as a -- so I'm going to let him publish it.

18 (Publication continued)

19 MR. POPE: Your Honor, we'd offer exhibit 9.

20 MR. DIXON: No objection.

21 THE COURT: Without objection.

22 (Publication continued)

23 MR. DIXON: Objection, Your Honor. This would be our
24 first objection on the statute of frauds, extrinsic
25 evidence. That is exactly what we're talking about, oral

1 testimony to contradict the letters themselves. So that
2 would be improper in the case, not admissible as evidence
3 and not competent to address the question of whether a
4 contract was formed.

5 THE COURT: All right. I believe the statute of frauds
6 is addressing the agreement itself and involves the subject
7 to the real estate. Part of what I'm aware of is that this
8 term "offer" is also debated as to what was offered, because
9 there was an offer to -- for bids, there was an offer to
10 make proposals, but the word "offer" has been used in
11 several different ways prior to us getting to this trial
12 here. So as it relates to the statute of frauds, I would
13 sustain the objection, but I'm not viewing this term "offer"
14 to be at a narrow sense as far as the factual background of
15 this case. All right. You can go ahead. Publish it, Mr.
16 Pope.

17 MR. POPE: Thank you, Your Honor.

18 (Publishing continued)

19 MR. DIXON: Objection. Objection, Your Honor. That's
20 the same statute of frauds, extrinsic evidence rule.

21 THE COURT: As it relates to statute of frauds, but
22 she's just saying what she was told or what she remembers.
23 Okay. Go ahead, sir.

24 (Publishing continued)

25 MR. POPE: And I'm going to publish, Your Honor, the --

1 part of the minutes of January 24, 2017, exhibit 5. The
2 last full paragraph says, "Lion Amick questioned why the
3 letters would still be going out if he had 'til June the
4 1st. He was told that this would help -- would be to help
5 expedite the sale of the property after June 1st if he
6 declined to purchase the property. At that time we would
7 have on file other property owners who had shown interest in
8 purchasing the property.

9 MR. DIXON: Your Honor, I'm going to object and move to
10 strike the reading of exhibit 5. In my notes I had -- they
11 offered exhibit 5, we objected and I think you sustained the
12 objection and let them proffer. So to the extent it's read
13 in, we would move that it be stricken.

14 THE COURT: All right. Help me out. I was following
15 her reading the deposition and then when you started to read
16 exhibit 5, I lost a part of the deposition. Where in the
17 deposition is it that you published exhibit 5?

18 MR. POPE: The part I published, Your Honor, is the
19 first page of Plaintiffs' Exhibit 5, the meeting of January
20 24, 2017.

21 THE COURT: All right. Let me ask you this and let me
22 re-ask my question. Where is it in the deposition that you
23 published exhibit 5 with her testimony?

24 MR. POPE: Oh. I didn't publish it in the deposition.

25 THE COURT: Then why are you doing it now?

1 MR. POPE: Well, because it was referenced. He said
2 these were the minutes for that period.

3 THE COURT: Okay. But we're -- but you're doing it
4 from a deposition and so my understanding is when you go
5 from a deposition, you've got to do what's in the
6 deposition. You can't -- don't have the liberty to go
7 outside of the deposition. If you want to argue that later
8 to me, fine, but I don't think you have the ability, when
9 you're doing deposition excerpts, to go outside of the
10 deposition.

11 MR. POPE: All right. I can deal it with it.

12 THE COURT: Okay. Thank you.

13 (Publication continued)

14 MR. POPE: We'd offer exhibit 8 into evidence.

15 MR. DIXON: No objection.

16 THE COURT: Without objection.

17 (Publication continued)

18 MR. DIXON: Objection, Your Honor. We'd object to this
19 on the statute of frauds, extrinsic evidence ground to the
20 extent it's offered to show the meaning or change the terms
21 or form part of the written contract.

22 THE COURT: All right. To the extent statute of Fraud
23 would apply, I don't think it applies to this one, but
24 you're protected under Rule 43. Okay.

25 MR. POPE: We would move the introduction of exhibit

1 10.

2 THE COURT: All right. It is admitted.

3 (Publication continued)

4 MR. POPE: Next is Plaintiffs' Exhibit 12, a letter
5 from Thad McCracken to Crocker dated 2/14/17, marked for
6 identification. We would offer that in evidence.

7 THE COURT: Without objection.

8 (Publication continued)

9 MR. POPE: Exhibit 13, letter from Sid Boone to Pete
10 Simpson, dated 2/14/2017, marked for identification. We
11 offer the admission of that exhibit.

12 THE COURT: Number 13? All right. Without objection.

13 (Publication continued)

14 MR. POPE: On page 68, exhibit 15, the letter from Sid
15 Boone, Pete Simpson and Gene Crocker, dated 5/15/17 marked
16 for identification. We would offer that into evidence.

17 THE COURT: Without objection.

18 (Publication continued)

19 MR. POPE: Plaintiffs' Exhibit 16, letter from James
20 Verner to Sid Boone, dated June 5, 2017 marked for
21 identification and Plaintiffs' Exhibit 17, letter from James
22 Verner to Ray Amick, dated 6/6/17 marked for identification.
23 We would offer those two exhibits in evidence.

24 MR. DIXON: No objection.

25 THE COURT: Without objection. That's 16 and 17.

1 Okay.

2 (Publication continued)

3 MR. POPE: Plaintiffs' Exhibit 18, email from Claude
4 Schumpert to Lions Club, we offer that in evidence.

5 THE COURT: Without objection.

6 (Publication continued)

7 MR. POPE: Exhibit 19 --

8 MR. DIXON: Objection. Can I clear up one thing with
9 you, Tom? In the deposition it says Schumpert to Lions
10 Club. On your exhibit list it's Schumpert to Joe Rice.

11 MR. POPE: That's true. That's an error.

12 MR. DIXON: Is that the same --

13 THE COURT: My exhibit 18 is Schumpert to Joe Rice. An
14 email? Dated November the 16th, 2017?

15 MR. POPE: Yes.

16 MR. DIXON: Okay. No objection. I think it's --

17 THE COURT: Okay. You can go ahead, Mr. Pope. They've
18 cleared it up for themselves.

19 MR. POPE: It was supposed to be to Joe Rice. Can we
20 correct it.

21 THE COURT: Yeah. Yes, sir.

22 MR. POPE: Exhibit 19, a letter from Sid Boone, Pete
23 Simpson, Gene Crocker, Verner, dated 11/21/17 and, Your
24 Honor, actually, that was a letter from Michael Scardata,
25 who is Sid Boone's partner, so that's an error there. If we

1 could substitute Michael Scardata for Sid Boone.

2 THE COURT: Okay. Tell me where that is in here.

3 MR. POPE: Exhibit 19.

4 THE COURT: In the deposition.

5 MR. POPE: It's on page 75, the third line. It's a
6 letter from Michael Scardata.

7 THE COURT: Okay. Instead of Sid Boone, it's Michael
8 -- Michael Scardata. Okay.

9 MR. POPE: Okay. Next, November 28, -- 19 was
10 admitted?

11 THE COURT: Yes, sir.

12 MR. POPE: All right.

13 THE COURT: Without objection.

14 (Publication continued)

15 MR. POPE: We'd offer exhibit 20 in evidence.

16 THE COURT: Without objection.

17 (Publication continued)

18 MR. POPE: We'd offer exhibit 21 in evidence.

19 THE COURT: Without objection.

20 (Publication continued)

21 MR. POPE: We'd offer exhibit 22 in evidence.

22 THE COURT: Without objection.

23 (Publication continued)

24 MR. POPE: We would offer that in evidence, Your Honor,
25 23.

1 MR. DIXON: No objection.

2 THE COURT: Without objection.

3 MR. POPE: We offer that into evidence, Your Honor.

4 MR. DIXON: No objection.

5 THE COURT: Without objections.

6 (Publication continued)

7 MR. POPE: We'd offer exhibit 27 in evidence.

8 MR. DIXON: No objection.

9 THE COURT: Without objection.

10 (Publication continued)

11 MR. POPE: We'd offer exhibit 28.

12 MR. DIXON: No objection.

13 THE COURT: Without objection.

14 (Publication continued)

15 MR. POPE: We offer exhibit 29 in evidence.

16 MR. DIXON: No objection.

17 THE COURT: Without objection.

18 (Publication continued)

19 MR. POPE: That's all of that deposition.

20 THE COURT: Thank you, ma'am. Watch your step as
21 you're stepping down.

22 MR. POPE: Wait a minute. We have one more.

23 THE COURT: Same person?

24 MR. POPE: It's the same person in the other case.

25 Your Honor, this is the deposition of Ladsen Simpson taken

1 6/29/20 in the case of Schumpert versus Lions Club.

2 THE COURT: Hang on one second. Let me find it. Okay.
3 I've got my copy. You ready?

4 MR. POPE: All right. We're ready, Your Honor. We're
5 on page 10.

6 (Whereupon, excerpts from the deposition transcript of
7 Ladsen Heath Simpson, dated 6/29/2020 was published to the
8 Court.)

9 THE COURT: Thank you, ma'am. You may step down.
10 Watch your step as you're stepping down.

11 MR. POPE: Could we have a bathroom break?

12 THE COURT: All right. We'll take a short bathroom
13 break. Come back in about five minutes or so.

14 MR. POPE: Thank you, Your Honor.

15 (Whereupon, court was in recess from 11:26 A.M. until
16 11:36 A.M.)

17 THE COURT: Plaintiff ready to call their next witness?

18 MR. POPE: Yes, Your Honor. We will call, by
19 deposition, Clyde Eugene Crocker, first was the deposition
20 taken October 22nd, 2018.

21 THE COURT: Okay. Yes, sir. I've got mine.

22 MR. POPE: Okay. This deposition was taken October 22,
23 2018 at Pope, Parker, Jenkins Law Office.

24 (Whereupon, excerpts from the deposition transcript of
25 Clyde Eugene Crocker, Junior, dated October 22, 2018 were

1 published to the Court.)

2 MR. KOUTRAKOS: Your Honor, we objected here and we
3 maintain that objection. That question calls for
4 speculation, if you had a buyer or two or three or five
5 buyers and they all accepted. That calls for speculation.

6 THE COURT: All right. You're noted for your
7 objection. Go ahead, Mr. Pope.

8 (Publication continued)

9 MR. KOUTRAKOS: Your Honor, we objected here and
10 maintain the objection; calls for speculation.

11 THE COURT: I'll allow the answer -- question answered
12 for what it's worth to the case. Go ahead.

13 (Publication continued)

14 MR. POPE: That's all of that deposition. The next
15 deposition of C. Eugene Crocker, Junior was taken on 6/18/20
16 by -- in the case of Claude and Missy Schumpert versus Lions
17 Club and Amick.

18 (Whereupon, excerpts from the referenced deposition
19 were published to the Court.)

20 MR. KOUTRAKOS: Your Honor, here we objected and we
21 maintain that objection. In this particular question, he's
22 clearly calling for a legal conclusion, that the Club letter
23 is clearly an offer to sell the property.

24 THE COURT: All right. I'll sustain the objection as
25 far as it applies to the statute of frauds, but go ahead.

1 (Publication continued)

2 MR. KOUTRAKOS: Your Honor, the same objection; calls
3 for a legal conclusion. Yeah, just for lines 7 through -- 7
4 through 12.

5 THE COURT: All right. To the extent it applies to the
6 statute of frauds, I'll sustain the objection, but you can
7 go ahead.

8 (Publication continued)

9 MR. POPE: That's all.

10 THE COURT: Thank you, ma'am. You may step down. May
11 I see the lawyers for a moment.

12 (Whereupon, a bench conference was held off the
13 record.)

14 THE COURT: We're going to take a lunch break. Since
15 we don't have a jury, let's take about an hour and fifteen.
16 That allows the staff to be able to do the things they have
17 to do that's not related to this.

18 If you've not been to Spartanburg lately, a lot of
19 restaurants are now that way from the courthouse. There's
20 also a couple that are over to the left side of the
21 courthouse as well on Magnolia Street. That should give you
22 enough time to get to a place to be able to eat here and get
23 back in time, but we'll see y'all about, let's say, ten
24 minutes 'til 2:00. How about that? Okay. Thank you very
25 much.

1 (Whereupon, court was adjourned for lunch at 12:21 P.M.
2 and reconvened at 1:51 P.M.)

3 THE COURT: Is the plaintiff ready to call or do their
4 next witness?

5 MR. POPE: Yes, sir. We wanted to ask Your Honor one
6 thing---

7 THE COURT: Okay.

8 MR. POPE: ---about the status of the exhibits. The
9 court reporter that everything we thought would have been
10 has been admitted except 3 and 5. I think those are the
11 only -- those are the only two.

12 THE COURT: All right. I wrote down that 3 was, but I
13 might have written it down wrong. Okay. I did not write
14 down 5.

15 MR. POPE: We would offer exhibit 5.

16 THE COURT: Okay. Any Objection?

17 MR. POPE: And 3.

18 MR. DIXON: We objected to both of those, subject to
19 just -- to the extent it's offered to show the contract part
20 of the statute.

21 THE COURT: Okay.

22 MR. DIXON: Yeah. I think he -- I had it in my notes
23 that you stated objection noted and you let them proffer the
24 evidence.

25 THE COURT: Right.

1 MR. DIXON: So however Your Honor wants to resolve it,
2 but we, you know, want to be clear on our objection.

3 THE COURT: Sure. Okay. They'll be admitted to the
4 extent they don't -- not inconsistent with my prior ruling
5 about the statute of frauds. Okay. Okay. Anything else?

6 MR. POPE: Nothing else.

7 THE COURT: Okay. Hang on one second.

8 MR. POPE: Okay. She had noted that 1 through 10 were
9 admitted except for 3 and 5.

10 MR. KOUTRAKOS: Okay; okay. I didn't hear the 1
11 through whatever. Okay.

12 MR. POPE: And then that 12 through 29 were admitted
13 except for 14 and we have witnesses to do that.

14 MR. KOUTRAKOS: Okay. Thank you.

15 MR. POPE: We're ready now to call Mr. Joe Rice, Your
16 Honor.

17 THE COURT: Mr. Rice, just come right up here. We do
18 not have the benefit of having a Clerk office since this is
19 a Newberry case, so if you'll lay left hand on the Bible and
20 raise your right hand.

21 (JOSEPH FRED RICE, being first duly sworn, was examined
22 and testified as follows:

23 THE COURT: Watch your step as you're stepping up and
24 just slide up to the microphone. If you need to move the
25 microphone, do it gently, 'cause it comes out of socket very

1 easily.

2 THE WITNESS: All right.

3 DIRECT EXAMINATION

4 JOSEPH FRED RICE BY MR. POPE:

5 Q. Give us your full name and address.

6 A. Joseph Fred Rice, 676 Old Salt Run, Mount Pleasant,
7 South Carolina.

8 Q. All right. And you grew up in North Carolina. Is that
9 right?

10 A. I grew up moving around a lot. My dad was in the
11 textiles, so I actually lived in Clinton, South Carolina for
12 three or four years and then I moved to Gastonia when I was
13 going in the sixth grade and stayed there until my sophomore
14 -- after my sophomore year of college, so I called Gastonia
15 home, but I've lived a lot of places. Born in South
16 Carolina.

17 Q. And tell us about your family. When did you start
18 dating your wife?

19 A. I met Lisa when she came to the University of South
20 Carolina in 1973.

21 Q. And you graduated from Carolina undergraduate school
22 what year?

23 A. '76.

24 Q. Okay. You graduated law school?

25 A. '79.

1 Q. And did -- you visited, I take it, your wife a lot
2 during the courting years before you got married?

3 A. Yeah. We -- I spent a lot of time at the lake and in
4 Newberry and then she would come to the beach where I was
5 living with my parents and --

6 Q. I want to show you this, for orientation, this is
7 Plaintiffs' Exhibit 34, which is an overhead aerial mast
8 photograph. Excuse me. I'm supposed to give you the
9 original. And you recognize that?

10 A. I recognize the plat as being a plat of the houses
11 around the Lions Club and that's the Newberry Lions Club
12 (indicating) and Lions Club Road coming in from the Villager
13 Island Road down to the clubhouse and to the water. Drove
14 it many times.

15 Q. Okay. And the largest there is the permanent home of
16 Claude and Missy Schumpert?

17 A. Yeah. That's where Mr. Bob and Ms. Peggy lived and
18 there's a house to the left of the big house, which is where
19 Ms. Peg moved and Claude and Missy built a larger home for
20 their family right next door to us.

21 Q. And your house is designated on here as what number?

22 A. 652-35. It's the house that Lisa and I built ten-plus
23 years ago after her mom and dad passed away. There were
24 two small cabins that we had used all through college and
25 law school and I lived in Barnwell. When I finished law

1 school in 1979, I went to work for Battenfelds in Barnwell
2 and I stayed in Barnwell until '86 and we continued to spend
3 time at the lake on weekends until we moved to Charleston in
4 '87. I had bought a -- Lisa and I bought a lake house on
5 the other side of Villager Island on the what they call the
6 Lexington side, I guess, more like the Saluda side and then
7 so we spent summers up there, Lisa and Annie. When Annie
8 was born in '84, they spent a lot of time over at the Lions
9 Club and Mr. Ferd and Ms. Jo would come get them and take
10 them over there. So we -- from '74 to '86, I spent a
11 tremendous amount of time, leisure time, at that -- at the
12 Lions Club.

13 Q. At the spot shown on 34, see right here?

14 A. Right.

15 Q. All right. Now, Lisa parents -- the house you're in
16 now, the one that -- you rebuilt the house that was there,
17 basically, rebuilt a new one?

18 A. The house at the lake?

19 Q. Yes.

20 A. It was a -- we replaced the two cabins that were there.
21 We were just not able to salvage them, so we replaced them
22 and put a log home, one of those factory log homes, on it --
23 on the lot, on the same property.

24 Q. What is your wife's attachment to this property?

25 A. Strong. She --

1 Q. Tell us why.

2 A. Well, ever since she can remember, they would leave
3 Newberry, you know, Memorial Day, and they would come back
4 to Newberry, you know, after Labor Day. This is where she
5 lived every summer of her, you know, growing up years and --

6 Q. She also lived in Newberry. Correct?

7 A. Yeah. They lived in Newberry and were until -- and
8 the Schumperts were next door and there was a bunch of
9 Schumpert kids and the Jays (ph) and all the -- it was just
10 a one big summer retreat for those families and most of them
11 stayed there the whole time and Uncle Tommy and Mr. Jay and
12 Mr. Bob and -- Bob Hawkins, they called each other rat pack
13 and they were always there --

14 Q. Bubba Ware was a part of that?

15 A. Bubba Ware was a part of that and Bubba lived right
16 across the slip and it was just a big multi-family family.

17 Q. There's a lots of cabins there?

18 A. Oh, yeah. Little cabins and then --

19 Q. Did they have to lock the doors down there?

20 A. I've never seen a door locked down there.

21 Q. That's the kind of place --

22 A. We locked the screen when Annie was born so she
23 wouldn't go out, but other than that I don't -- we didn't
24 lock any doors.

25 Q. All right. Now, so in addition to enjoying your house,

1 you enjoyed the neighbors and bonding with friends?

2 A. It was -- it was her family. This -- and then when her
3 mom and dad died, this was her last contact to Newberry and
4 the people she grew up with.

5 Q. Now, her daddy Ferd, was he active in the Lions Club?

6 A. He was. He was -- my understanding he was president
7 one time, that he was, you know, all of them, Mr. Bob, Uncle
8 Tommy, all of them were, you know, the core of the Lions
9 Club for many years and they, you know, Buddy (ph) and John,
10 Lisa's two brothers, one younger, one older, many times when
11 I was down there, you know, Mr. Ferd would say, guys, go cut
12 the grass, go clean up this, go get the beach. He was in
13 charge of putting the sand down in the summer.

14 Q. Who did that?

15 A. I don't know who Mr. Ferd had do it, but they brought
16 fresh sand in the summer. They maintained the boat -- you
17 know, the landing, boat launching area.

18 Q. Now, your brother-in-law, John, Lisa's brother, he was
19 president of the Lions Club also, wasn't he?

20 A. I believe so. That was --

21 Q. Now, when did Lisa's mom die?

22 A. I think Ms. Jo died in 1996. We were in the middle of
23 tobacco negotiations when I got that call. I think it was
24 about this time of year, might have been June, '96.

25 Q. And Ferd, her dad died when?

1 A. Mr. Ferd lived about five years after that and he moved
2 into an assisted living place and then he passed away in
3 about --

4 Q. So it was --

5 A. -- it was in 2003.

6 Q. So does Lisa have any attachment to the property other
7 than -- any attachment to Newberry other than that property
8 at the lake?

9 A. No. Other than her siblings. Well, her brother still
10 lives there, but he moved out to the country and they sold
11 the house on Caldwell Street. So the lake was the only --
12 only thing she had from her childhood and she wanted to --
13 you know, we built a new house down there for her to spend
14 time and that's where, you know, Annie, my daughter, which
15 is the only child I have, you know, when we were Barnwell,
16 it was go to the lake for the summer. So it was not just
17 Lisa, Annie as well.

18 Q. When did you first hear that the Lions Club might be
19 pursuing a sell of the property?

20 A. I got called by Claude Schumpert and asked me what I
21 thought about the letter from the Lions Club and I said, I
22 don't know what you're talking about. I don't have a
23 letter. He said, well, they sent a letter to all the
24 adjacent property owners that said they were going to sell
25 the property and offering for sale at \$300,000 and I said,

1 well, that's very interesting. I didn't know anything about
2 it, but I'll follow up. So Claude sent me a copy of the
3 letter and on the letter there was a name and address for
4 Mr. Simpson and I followed up and called him.

5 Q. Did you tell him you didn't get a letter?

6 A. I did. I told him I -- I said, you know, we're
7 adjacent and he said, yeah, we sent you a letter and I said,
8 well, we never got it and we had a discussion and he said,
9 well, we probably mailed it to the lake house address, which
10 we don't have a mailbox at the lake house, so we never got
11 it and he sent me another copy of it within a day or so.

12 Q. And I'm going to show you exhibit 6. Is that the
13 letter he sent you?

14 A. I believe it is, because this one is -- right above
15 Lisa's name, it's got my name handwritten. So I believe
16 that's when he sent it to me and I believe this is a copy of
17 the one he sent me.

18 Q. Read the second paragraph of that letter.

19 A. At the present time, the Lions Club owns 5.5 acres
20 including the clubhouse. As with many civic clubs, the
21 membership in the Newberry Lions Club has fallen in recent
22 years. We no longer are able to use the clubhouse as we
23 were -- as we once used it and the maintenance of the
24 property has become a burden on the current members. We
25 have reluctantly decided to offer the property for sale.

1 We've also decided to make the property available first to
2 those individuals whose property adjoins the Lions Club
3 property.

4 Q. And the next -- continue.

5 A. A recent plat was prepared, which we're including in
6 his letter. Also, a recent appraisal determined the current
7 value of 369,000 for the property. The club members have
8 decided to ask 300,000 if we can make the sale without
9 involving a REALTOR. If you have an interest in the
10 property, please let us know right away. We'll be happy to
11 answer any questions you might have. First consideration
12 will be given to current members of Newberry Lions Club. As
13 an additional note, the presence of a second tank in the
14 well adds value to the property. Any encroachments will
15 have to be settled after the property is sold. This offer
16 is valid until January 1, 2017, at which time the property
17 will be available for sale to the public and it's signed by
18 Pete Simpson, secretary of the Lions Club.

19 Q. Okay. And when you got the letter, did you talk to
20 Pete about it?

21 A. I did.

22 Q. What did he say -- what did you say?

23 A. I wanted to understand exactly what was being done
24 after I read the letter, so I called him and I thanked him
25 and he was -- again, the conversations were extremely

1 cordial and he was apologetic that we didn't get the letter
2 before and I said, so this is the sell of all the undeeded
3 property, because if you look at the plat, there's the
4 clubhouse and the land that goes down toward the lake, which
5 the buffer belongs to the power company, but then behind my
6 lots is some more land that was still owned by the Lions
7 Club, which goes also back behind Claude's house. So I
8 wanted to understand that it was all the property and that
9 it was -- you know, they were offering it for sale and we
10 talked about the 300 and we talked about the 369 and
11 basically said, you know, it's going to go the highest
12 bidder.

13 MR. KOUTRAKOS: Your Honor, I object on the grounds of
14 hearsay, statute of frauds parol evidence rule. He's
15 testifying about somebody told him this letter means, so I
16 object for those reasons.

17 THE COURT: All right. I'll sustain as to the statute
18 of frauds. So far he's mentioning, what I've heard, is
19 someone who's already testified through way of a deposition
20 who I believe has been designated as an officer of the Lions
21 Club, not as to the hearsay part.

22 MR. KOUTRAKOS: Understood.

23 THE COURT: Yes, sir. Go ahead.

24 MR. POPE: Go ahead?

25 Q. He told you it was a sell to the highest bidder?

1 A. Sell to the highest bidder and they had -- they were
2 reluctant, but they were offering to sell and they were
3 hoping, you know, not to have to go through a public sell
4 process and they had a hard deadline, so they -- I had a
5 plat of the property, I had confirmation it was all the
6 property. The encroachments had been there for years, so
7 the encroachment was no issue to anybody and it encroaches
8 upon Mr. Jay's property, encroaches on Mr. Gray's property.
9 The road's been there for fifty years or more all the way
10 down to the lake. That's how we go boats in and out for
11 decades. And so I knew what the property was and they set
12 the value and they set the price, so I said -- talked to the
13 Lisa and she was adamant that she wanted to buy it and she
14 wanted to preserve it and she was very concerned about
15 development and changing the lifestyle and said just, you
16 know, offer enough to buy the property. So, ultimately, --
17 Q. And she's technically the owner of the property, isn't
18 she? Y'all consider it family property, but she owns full
19 title?
20 A. Well, it was -- yeah. The property's in her name, but
21 it's our property, the house in our names, but it was
22 something that was important to her to have and life was not
23 going to easy if I hadn't tried to buy it, so I offered more
24 than they were asking and I sent in a acceptance of their
25 offer for the 550 subject to the encroachments and all I

1 needed was, you know, marketable title to prove they owned
2 it, whatever I was buying, and I was ready to close within
3 thirty days.

4 Q. Exhibit 13 has been admitted. Is that the letter that
5 you had to Sid Boone write?

6 A. Yes. Sid Boone is an attorney with it was the McNair
7 Firm. He's now retired. And I gave him the letter,
8 instructions to, you know, put in an offer for Lisa and I
9 for 325,000, accept anything they said and close as quick as
10 we could close.

11 Q. And did you get any --

12 A. It was a cash transaction.

13 Q. Excuse me. Go ahead.

14 A. It wasn't subject to any financing, it'd be a cash
15 transaction.

16 Q. And you were agreeable to accept encroachments?

17 A. No problem.

18 Q. Is there anything improper by taking title to
19 encroachments if you're willing to put up with it as a
20 buyer?

21 A. No. I mean you buy properties all the time that have
22 encroachments, whether it be easements or power line
23 situations. As long it's disclosed, it's not a problem.

24 Q. Now, did you -- you didn't get any response to that
25 letter?

1 A. I did not.

2 Q. Did you hear -- and, of course, you live in Mount
3 Pleasant, which is a ways away from Newberry County?

4 A. Yeah. Not that far, but it's --

5 Q. I mean, you don't -- you don't see Gene Crocker or
6 those folks on a regular basis at all?

7 A. No. I don't personally have a lot of connection with
8 anyone from Newberry that didn't arise from the lake.

9 Q. All right. Exhibit 14 is an email that Claude
10 Schumpert sent you on April the 8th.

11 A. It is.

12 Q. All right. Tell us what that said, how you --

13 A. Well, Claude lives next door. We had a -- Claude was a
14 vet. We had a Jack Russell Terrier that used to spend time
15 at the lake and several times while we were at the lake we
16 called upon Claude to save the life of this little Jack
17 Russell that got into trouble. Claude was somebody that
18 we'd stayed in touch with over the years and he lived next
19 door and he would call me if there was a tree down or
20 something. He knew where the key to the house was and so we
21 just stayed in touch. So -- and he knew I was interested,
22 so he sent me this email in early April, reflecting that he
23 had had a conversation with Gene Crocker and that they were
24 going to -- the Lions Club was awarding Ray Amick the bid
25 after he matched the high bid offer from non-member Lions

1 and he has until June 1 to close the offer. The Lions had
2 been assured by legal counsel that their rights to preserve
3 preference treatment -- preferential
4 treatment for Ray were preserved in the letter submitted,
5 just wanted to pass it on to you the information I learned.

6 Q. So how did you react to receiving that news?

7 A. I was upset a little bit, disappointed that no one from
8 the Lions Club had contacted us and I was shocked that Mr.
9 Amick had paid 325, but if he was the highest bidder, he was
10 the highest bidder.

11 Q. So your view was if he had matched your high bid of
12 325, 325,000, as first consideration under that letter, he
13 could have gotten it?

14 A. If he had accepted the -- if he had accepted the offer
15 in writing, accepted the encroachments, paid the 325 and
16 closed by June 1, he would have complied with the offer.

17 Q. Did any of those things happen, any of them?

18 A. Ultimately, none of them happened, as I understand.

19 Q. Now, you had -- your lawyer had written and presented a
20 response to the letter and you had heard nothing still and
21 time clicks on and another month goes by. By May had you
22 heard anything?

23 A. We never heard anything from anybody from the Lions
24 Club, which hurt Lisa's feelings tremendously, because she
25 knew those men and they knew her dad and she thought that,

1 you know, she would get at least a response of some kind,
2 acknowledgment; we never did. So --

3 Q. So exhibit 15 is the letter -- well, you tell us what
4 exhibit 15 is.

5 A. Sometime around the 8th I had a conversation with
6 Claude and just got confirmation that, you know, it was --
7 that Mr. Crocker had said it was going -- it went to the
8 highest bidder and no one had called me about, you know, if
9 I was prepared to pay more, which I would have, but no one
10 ever called us and I didn't think it was necessary, because
11 we'd done everything we could do. So I talked with my
12 counsel and we wrote or they wrote this letter and I had had
13 a contract dispute on the house involving bug infestation
14 from the woods, the loggers. So McNair -- Michael Scardata
15 had represented me in that case, so Michael and Sid both
16 were familiar with the property. So then Sid writes this
17 letter on May 15.

18 THE COURT: Just to be sure the language is clear --
19 just to be sure that's clear, you're looking at exhibit 15?

20 THE WITNESS: Exhibit 15.

21 Q. And this letter was written at your direction, because
22 you heard nothing?

23 A. That's correct.

24 Q. And tell us what the -- summarize or read the letter
25 for the Court.

1 A. Well, by this time, we still felt we were the highest
2 bidder, because we had not gotten any confirmation that Mr.
3 Amick had offered 325,000 or more for the property and then
4 we had heard from or learned through the emails and
5 conversation that, in fact, that there had been something
6 that took place, and we weren't sure what it was, that had
7 given Mr. Amick a chance to bid after he knew what everybody
8 else had bid, so which we thought was somewhat of an
9 improper process, so we were inquiring if they had made any
10 subsequent changes to their process, we'd like to know what
11 they were and we objected to it. We asked for full notice
12 of any rebidding process, the name of the bidder given such
13 a right, together with their bid amount, and the ability to
14 provide such a bid if indeed it was disclosed and authorized
15 and just confirm that the offer period was open 'til June 1.

16 Q. And --

17 A. And then we said, you know, please do not make any
18 advances to any parties except the Rices and otherwise
19 we'll, you know, defend our rights.

20 Q. And did you get a response to exhibit 15?

21 A. No response whatsoever from the Lions Club.

22 Q. Now, I want to show you --

23 MR. POPE: Your Honor, I'll offer exhibit 15 into
24 evidence.

25 THE COURT: Any objection to exhibit 15?

1 MR. KOUTRAKOS: No -- I think it's already in, but no
2 objection.

3 THE COURT: I think it is, too. Okay. Without
4 objection, already in.

5 Q. I'll show you now exhibit 38, which is an email to you
6 from Claude Schumpert and Claude lives in the house right
7 there in the middle of the Lions Club all the time,---

8 A. Yeah.

9 Q. ---Lions Club Circle?

10 A. Yeah. That's their full-time residence, yeah, except
11 when they're traveling some now since Claude's retired.

12 Q. And this email is dated June 2nd, 2017?

13 A. It is.

14 Q. Tell us what the subject of that is.

15 A. This is just Claude sending me what he called an update
16 and tells me that the sell of the Lions Club property has
17 been put on hold, they've got to work out the issues with
18 the McCracken's house, which McCracken lives on the other
19 side of us, facing the lake. Claude and Missy are on the
20 left and Thad's family house is on the right and it has been
21 for decades. They've had a house there for decades.

22 They've got it worked out with the McCracken's house and the
23 road that is on Jay's and Grace and property before selling
24 it, you and I should receive a letter soon from Jay Verner
25 updating us on the status. It sounds like when they reopen

1 the property to sell, it will be a closed bid process with
2 the property going to the highest bidder. At some point I'd
3 like to discuss the property and plans that you or I would
4 have for it. Let me know if there is a good time we can
5 talk and what a number -- what number is best for you. So
6 at this point in time, I mean, I accepted the property with
7 the encroachments. I wasn't highly upset that they were
8 going to fix the encroachments, but it wasn't a necessary
9 element, but it was still the highest bidder process and so,
10 you know, I thought that I was still the highest bidder
11 unless they were going to open up the process again.

12 Q. So you felt like you were still in the game, so to
13 speak?

14 A. Well, I thought I had the property under contract and I
15 still think I had the property under contract, because I did
16 everything they said to do, was ready to close, but here,
17 this was the first time that a lawyer had been involved and
18 I felt that that wouldn't -- that would simplify things and
19 not complicate things, but I knew that, you know, clearing
20 the encroachments was not a -- wasn't an objectionable thing
21 to me, wasn't necessary to me.

22 Q. And this is just -- this is an update, but it's based
23 on unknown sources. It's sort of a rumor of some sort?

24 A. Yeah. I mean, I had no personal knowledge other than
25 what Claude's updated me. I still haven't heard anything

1 from the Lions Club at this point in time, or any
2 representative of the Lions Club.

3 MR. POPE: We'll offer exhibit 38.

4 THE COURT: Exhibit 38. Any objection to 38?

5 MR. KOUTRAKOS: No objection, Your Honor.

6 THE COURT: Without objection, 38 will be admitted.

7 Q. Exhibit 16 is dated June the 5th, 2017.

8 A. This is the letter that --

9 Q. That's a letter that --

10 A. -- that James Verner -- it's dated the 5th. I can't
11 tell you -- it's got a handwritten note on the upper right
12 that says received June 8, so I would have gotten it from
13 Sid shortly after that. It's addressed to Sid, but they did
14 not copy me on it.

15 Q. And when you had Sid Boone respond to the letter from
16 the Lions Club, did you feel like that was consistent with
17 what Mr. Simpson said to you about the highest bidder?

18 A. Totally.

19 Q. All right. What is your response to getting the Verner
20 letter after sometime, like you said June th 8th of '17,
21 Plaintiffs' Exhibit 16? What did you think was going on
22 here?

23 A. Well, I thought they were going to clear the
24 encroachments, but I don't know why they decided to clear
25 the encroachments, but it wasn't objectionable to me and

1 they said that, you know, they voted not to sell the
2 property located at the lake at this time and they were not
3 able to close good fee-simple title, which I don't agree
4 with. I think they could have given marketable title,
5 'cause they'd already accepted the encroachments in their
6 offer and they'd already told any proposed buyer that they
7 had to accept it subject to encroachments, so I don't think
8 that interfered with the marketability of the title. So
9 again, I thought I was the highest bidder and, you know,
10 they apparently were, you know, going to do a survey and see
11 what they were going to do.

12 Q. So why didn't you sue them right then?

13 A. I -- the Lions Club is a charitable group and while I
14 wouldn't know these gentlemen personally if I -- I may have
15 met them during the years. To be honest, I just don't have
16 a vivid recollection, but I assume they were doing the right
17 thing and I knew they were in, you know, shutdown mode. So
18 I felt that this was just, you know, the procedure and that
19 we were going to close and I would close as soon as they had
20 a survey and from my years at the lake, I knew the Lions
21 Club pretty much didn't function during the summer months,
22 except on a social basis, so I just sort of let it go until
23 we could, you know, see what the response was when they got
24 their survey.

25 Q. So at some point they apparently surveyed it and

1 cleared the encroachments?

2 A. At some point in time I got another communication
3 from Claude that said they had cleared up the McCracken
4 corner, which was like, you know, a few feet and that they
5 -- looked like the survey was done. So --

6 MR. POPE: I think we offered 16 into evidence?

7 THE COURT: Yes, sir.

8 Q. Eighteen --

9 MR. POPE: I'm showing Mr. Rice exhibit 18 now.

10 A. This is --

11 Q. What's the date of it and who is it from?

12 A. This is Claude Schumpert to me, November 16, 2017 at
13 7:58 P.M., re: Lions Club Property, Hello, Sir, hope all
14 your family's preparing for a wonderful Thanksgiving. I
15 have not heard any confirmation from the Lions Club, yet it
16 appears that survey work has been done. It is my
17 understanding the Lions have agreed to sell the property to
18 Ray Amick for 300,000 that they were asking. If I get any
19 other information, I'll let you know. So this is -- I mean,
20 Claude lives down there, so he obviously saw the surveyors
21 doing their work and now they're not there anymore and you
22 got stakes all over the place, so it's pretty obvious that
23 the survey process is done and now, understanding that
24 they've decided to sell it Amick for less than my bid and
25 I'm -- temper is rising.

1 Q. Is this the first time you've heard that the Lions Club
2 was going to sell to Amick for 300?

3 A. Yes. First time I had confirmation that there was
4 going to be a sell for less than I had bid in the process.

5 MR. POPE: We'd offer exhibit 18 in evidence.

6 THE COURT: Any objection to 18?

7 MR. KOUTRAKOS: We believe it's already in evidence, so
8 we have no objection.

9 THE COURT: Okay. Yes, sir.

10 Q. I'm going to hand you now exhibit 19. Now, this is
11 something like five days after Claude's email to you?

12 A. Yeah.

13 Q. Did you contact Michael Scardata at that time?

14 A. I probably contacted Sid and Sid was either not in
15 office or Sid turned it to Michael and Michael and I talked,
16 'cause Michael was more of the litigator. He sent the
17 letter to Mr. Crocker, Mr. Simpson and Mr. Verner, which is
18 the first time we'd had Mr. Verner's contact was when we got
19 the June information, and said, We represent Lisa Summer
20 Rice and her husband, Joe Rice, who had submitted the
21 successful bid offer of 325, it was clearly the highest bid,
22 submitted in writing for the property as is and we were
23 ready to close before June 1, in response to the original
24 request for the purchase of the above-referenced property.
25 We are therein asking you for the status of any sell of this

1 property or any proposed sell since we have not been
2 notified of any further bidding or request for bids for this
3 property. If there were any undisclosed bid procedures,
4 then it goes back through, you know, giving us full notice,
5 name of the bidder, et cetera. Then he goes on to say, If
6 indeed it was disclosed and authorized to the Rices, since
7 the original request for bids resulted in the highest bid
8 from the Rices, but a subsequent letter from Mr. Verner on
9 June 5th indicated that the property would not be sold
10 because of the inability to provide a marketable title due
11 to encroachments. The Rices are very willing and able to
12 follow through with their successful bid and/or
13 participate in any further bid process procedure that is
14 properly noticed for the sell of the property and, please
15 provide us with information as soon as possible and that was
16 on November 21st.

17 Q. And he never responded?

18 A. No response.

19 Q. Now, is it a correct statement to say that the property
20 could not be sold because of the inability to provide
21 marketable title due to encroachments? Can you have
22 marketable title and accept the encroachments?

23 A. Absolutely.

24 Q. Did this opinion or this statement bother you?

25 A. It bothered me that now, for several months, that they

1 were totally ignoring our -- what we thought was our
2 contractual rights and I finally, at this time, or shortly
3 after this, probably after Thanksgiving and we didn't hear
4 anything by, you know, ten days or so, I told Michael, let's
5 just sue them. I said seek to enforce the contract and find
6 out what's going on.

7 Q. So the suit was commenced as soon as possible. Did you
8 have an idea when -- any details about if and when the Lions
9 Club was going to execute a deed to Mr. Amick, any idea?

10 A. I had no information whatsoever for what the Lions Club
11 was doing except for what I was getting from Claude, who
12 was, you know, being -- quote, "getting updates from
13 somewhere and somebody."

14 Q. And your Complaint is exhibit 26. Is that right?

15 A. This is the lawsuit that Lisa and I filed against the
16 Lions Club.

17 Q. And what was the date of filing?

18 A. It's got electronically filed on February 20, 2018 at
19 4:32 P.M., Newberry Common Pleas or Newberry. I'm assuming
20 that stamp is the date of the filing.

21 Q. And, now, the lis pendens was filed --

22 MR. POPE: I move the admission of exhibit 26. It may
23 already be in. Is it?

24 COURT REPORTER: It is.

25 Q. Okay. I'm going to show you exhibit 27, lis pendens,

1 and that was filed when?

2 A. Immediately after the Complaint was filed. The stamp
3 on it is February 21, 2018 at 1:48 P.M., Newberry Common
4 Pleas.

5 Q. This is exhibit 29.

6 MR. POPE: Has it be entered in evidence yet.

7 COURT REPORTER: Yes, sir.

8 MR. POPE: Okay.

9 Q. Exhibit 29, the deed to Mr. Amick. When was it filed?

10 A. February 22nd, 2018 at 3:55 P.M. is when it was filed
11 and recorded.

12 THE COURT: I'm sorry. Can you tell me what exhibit --
13 the exhibit number.

14 MR. POPE: It's exhibit 29.

15 THE COURT: Twenty-nine. Thank you.

16 Q. The lis pendens has an issue about marketable title,
17 but not encroachments. Why is that?

18 A. Well, lis pendens is --

19 MR. KOUTRAKOS: Your Honor, I object. I know Mr. Rice
20 is an attorney, but I -- he wants to give an opinion of
21 title on what a lis pendens does and he's already talked
22 about marketability, so I'm going to -- I'm objecting to all
23 that.

24 THE COURT: I'll sustain the objection.

25 Q. So did you -- at this far in the chronology we've gone

1 with you so far, this is what you knew at the time or were
2 told through Claude or through other things. Right?

3 A. Yes, sir. I've had -- the only contact I've had
4 directly from the Lions Club was the original conversation
5 with Mr. Simpson and then the subsequent letter from Mr.
6 Verner on behalf of the -- in June on behalf of the Lions
7 Club. Everything else has just been whatever was in the
8 rumor mill in Newberry that Claude had gotten and Claude
9 would tell me what he knew.

10 Q. And you didn't -- of course, you didn't see any board
11 minutes from the Lions Club for any time period at all. Is
12 that correct?

13 A. Not prior to the litigation. No.

14 Q. And you have since, since they've been produced in
15 discovery, you have had a chance to read depositions and
16 look at the documents produced, such as, minutes, corporate
17 records and things like that?

18 A. I attended the depositions of Mr. Crocker and Mr.
19 Simpson and others and I've read all the -- what I believe
20 to be all the pertinent minutes of the Lions Club going back
21 to 2015.

22 THE COURT: Point of clarification. The exhibit 29
23 that you're referencing, what is your 29? My 29, I'm trying
24 to make it consistent with what you're testifying to.

25 MR. POPE: I don't have a 29.

1 THE WITNESS: I've got 26 and 27.

2 THE COURT: Okay.

3 THE WITNESS: Twenty-six is the Complaint and 27 is the
4 lis pendens.

5 MR. POPE: Twenty-nine is that title to property

6 THE COURT: Okay. Twenty-nine's the title. Okay.
7 That clarifies. Okay. Thank you very much.

8 Q. Now, looking at these documents, I want to show you
9 exhibit 5-A, which is the minutes of the meeting on May 23,
10 2017.

11 A. I read this subsequent to the filing of the lawsuit
12 during the discovery process here.

13 Q. Say again.

14 A. I read this for the first time after the lawsuit was
15 started, when we started getting discovery.

16 Q. Correct. And as you read the minutes, what did Mr.
17 Amick say on May the 23rd?

18 A. It says, Lion Ray Amick was given the opportunity to
19 speak regarding his purchase of the lake property. He
20 stated that he had funds ready to purchased the property,
21 but wanted to have clear title to the property with the deed
22 being made to him and his wife, and there was --

23 Q. Did this appear to be a personal request he was making?

24 A. No question. He was there making a personal request,
25 the way I read it, and they went into executive session with

1 Mr. Verner who, I'm making the assumption, was now acting as
2 their attorney. It said, A motion was made to send letters
3 to those who had shown an interest in purchasing the lake
4 property, stating the club was unable to get a fee simple
5 title to the property and all offers were being withdrawn to
6 sell the property, and the motion passed unanimously.

7 Q. And it says, All offers were being withdrawn to sell
8 the property. Whose offer was that, selling the property?

9 A. They were saying they were withdrawing the offer they
10 had made to sell the property, which I had accepted in
11 writing previously.

12 Q. Okay. So you didn't see this, obviously, until many
13 months later. Correct?

14 A. No. We didn't see this until well into 2018, 2019,
15 when we started getting discovery.

16 MR. POPE: We'll offer exhibit 5-A in evidence.

17 THE COURT: Exhibit 5?

18 MR. POPE: Five-A.

19 THE COURT: Five-A. Any objection?

20 MR. KOUTRAKOS: No objection, Your Honor.

21 THE COURT: Without objection. Now, is mine numbered
22 5-A as well in your book?

23 MR. POPE: You have it. It should be right after
24 exhibit 5. It's in the same tab as 5, but it's 5-A and B
25 back behind it. It'd be at the very end.

1 MR. KOUTRAKOS: Your Honor, for the Court's
2 clarification, I think 5-A and 5-B are a part of 5. Isn't
3 that correct, Mr. Pope?

4 MR. POPE: Sort of, but they're separate exhibits.
5 Yeah. 5-A came out of 5, 5-B came out of five, but it was
6 just isolated.

7 THE COURT: Okay. I've got them now. Yes, sir. Thank
8 you.

9 Q. So you mentioned that you -- you talked about the Lions
10 Club letter and you talked about the deadline of June 1,
11 which you said you would adhere to when you wrote your
12 response and you had Sid Boone write the response.

13 A. I had offered to close in thirty days.

14 Q. And so now we have seven days, eight days, whatever,
15 before June the 1st, we have a withdrawal of all offers
16 because of the request of the Mr. Amick made. Is that
17 right?

18 MR. KOUTRAKOS: Objection, Your Honor, leading.

19 THE COURT: Do you wish to rephrase the question?

20 Q. What happened on that day with the seven days
21 remaining?

22 A. According to the minutes, to the extent that Mr. Amick
23 had previously made an offer that would have been compliant
24 to offer to sell and he apparently withdrew whatever he had
25 previously offered and said he now wanted them to get clear

1 title, which I'm not sure what he meant exactly by that, but
2 --

3 MR. KOUTRAKOS: Your Honor, this is a person who was
4 not at the meeting, testifying what he believes the minutes
5 say. That's it. He has no personal knowledge about these
6 minutes. I've let it go on for a little while, but if he's
7 going to sit here and editorialize what he thinks these
8 minutes mean, it's not proper testimony. The minutes speak
9 for themselves. He can give opinions on them all day long
10 in some other forum, not here, so I object for that reason.

11 MR. POPE: We'll go to another topic.

12 THE COURT: Okay. And I -- we don't have a jury here.

13 MR. KOUTRAKOS: I know. I know, Your Honor.

14 THE COURT: So --

15 MR. KOUTRAKOS: I know.

16 THE COURT: Okay.

17 MR. KOUTRAKOS: Understood, Your Honor.

18 THE COURT: All right. Thank you. Yes, sir. Go on.

19 Q. As of the June 2 deadline, how many offers, compliant
20 offers or bids, were there out there to the Lions Club
21 letter, offer letter or whatever it was, in January of 2017?

22 A. Based on what I know, there were two offers that had
23 been made or two acceptance of the offers. The Lion Clubs
24 offered the property for sale, I accepted it. I paid the --
25 offered the 325, agreed to accept the encroachments and

1 agreed to close in thirty days, which was well before the
2 June 1 deadline. I subsequently learned that Claude had
3 made an offer at 300,000, accepting the encroachment,
4 willing to close before the June 1 deadline. So as of June
5 1, there were -- prior to June 1 there were two offers that
6 were fully compliant with the solicitation for the second
7 one.

8 Q. And yours was the highest?

9 A. And mine was the highest.

10 Q. And based on what you read in the documents, was Mr.
11 Simpson's comment to you consistent with what the was your
12 contract was on the -- to the offer and the acceptance, with
13 the understanding it was going to be sold to the highest
14 bidder?

15 A. My initial conversation with Mr. Simpson back in early
16 '17, indicated that this was the terms in which you became
17 the purchaser of the property and I completely complied with
18 all of the terms they set forth in writing and I did so in
19 writing and agreed to close within their deadline.

20 Q. And you were the high bidder?

21 A. And I was the highest bidder, which is what he
22 indicated to me was the factor and had subsequently been
23 confirmed by Mr. Crocker through his testimony.

24 Q. All right. Did you learn later -- you had already
25 talked about the letter that Mr. Scardata wrote, which is

1 exhibit 19. You have it up there somewhere.

2 A. I do.

3 Q. Okay. And exhibit 5-B, I'll show you that. That is
4 the minutes of the meeting of the Board of Directors of the
5 Newberry Lions Club, November 28, 2017. That's how many
6 days after you wrote the -- after Mr. Scardata wrote the
7 letter, exhibit 19?

8 A. Seven days later.

9 Q. Okay.

10 A. And this -- there was no -- not that I recall getting
11 minutes during the summer months, as my historical knowledge
12 is they didn't meet during the summer months except for
13 social purposes.

14 Q. Right. All right. So in this November 28 meeting
15 where Mr. Amick was present as a non-board member, it says
16 that Gene Crocker read the letter from the McNair firm. He
17 identified the letter he read as being the November letter.

18 A. Right. So the November, 21st, 2017 letter, which is
19 the only November letter, it's the only letter from McNair
20 that period of time, was published to the board and to the
21 attendees at the November 28th meeting, which included Mr.
22 Amick.

23 THE COURT: Give me the exhibit number again.

24 MR. POPE: 5-B. 5-B.

25 THE COURT: Thanks.

1 MR. POPE: And exhibit 19 was the letter.

2 Q. All right. It's been testified that Mr. Crocker was
3 the president and that he read the letter in full out loud.

4 A. It does so indicate.

5 Q. So if you read only the first paragraph, what would
6 that have told you?

7 A. That the -- that the McNair firm represented Lisa
8 Summer Rice and myself and we'd submitted a successful bid
9 of 325.

10 Q. Would that be pretty clear to anyone reading it, that
11 they had notice of your claim?

12 A. Yes, sir. I would think so.

13 Q. Okay.

14 A. This also says the letter will be forwarded to Mr.
15 Verner for his office to respond, but I don't know that we
16 ever got anything else from Mr. Verner.

17 Q. All right.

18 A. I don't remember.

19 Q. Now, did you participate in preparing a time line?

20 A. I did, because once we got -- started getting this
21 stuff, it started getting more intriguing and complicated
22 about what was going on, so I worked my time lines in my
23 other major litigations, so I wanted a time line of it and
24 we collectively worked on the time line.

25 Q. Is exhibit 47 that time line?

1 A. It is. This is the -- this is the latest version of
2 it. It grew over time.

3 Q. And without reading it verbatim, would you highlight
4 the developments, and these are chronological, what you saw
5 and developed a time line relative to what you observed and
6 did relative to what we found out in discovery and what was
7 said in depositions.

8 A. Well, when I went back and looked at this, it was clear
9 that the issue of selling the Lions Club went back to --
10 well, it didn't go back before 2015, but at least to 2015,
11 and at a meeting sometime in, I think it was, 2016, they
12 talked about seriously putting it on the market, but there
13 was actually a motion made to include in their offer a right
14 of first refusal for the Lions Club, which is, you know, a
15 specific, you know, term of art, so to speak, in
16 transferring property and then the only minutes that I saw,
17 looking at all the minutes that Mr. Amick was in attendance
18 when he was not a board member, he wasn't a board member
19 during the time that I could identify from looking at the
20 minutes, was when he was there and the property was being
21 talked about. So it was a sole issue, attendance appeared
22 to be, as to when he was there.

23 MR. KOUTRAKOS: And, Your Honor, if I may interrupt.
24 This is a litigation time line that every lawyer in this
25 room would prepare that's being given to a fact witness who

1 happens to be a lawyer, who's reading from it for the
2 Court's benefit. I believe that's the job of counsel by
3 closing argument, wrapping up the evidence. He's reading
4 from a litigation time line into the record and I will
5 object to a time line being admitted into evidence, because
6 that is not evidence, that is like a brief. It's like me
7 submitting my brief on a legal issue to the Court. This is
8 a time line, it was prepared by counsel, that could be a
9 part of a trial brief, it could be part of any type of
10 legal brief, but it should not be an exhibit into evidence.
11 So we object to the exhibit and we kind of -- we object to
12 this line of questioning by Mr. Rice reading off this
13 exhibit, this litigation time line.

14 MR. POPE: Your Honor, under -- we think under Rule
15 one oh- -- Rule of Evidence 1006 is a summary and it's based
16 on what he's participated in and what he's seen and it's not
17 unusual to have a time line. He's not reading from it, it's
18 a very narrow narrative type of time line anyway that
19 relates to dates and things that happened. It's also a
20 document that could be, under Rule 612 of the Rules of
21 Evidence, a writing used to refresh his memory and --

22 THE COURT: He hasn't indicated his memory's faulty
23 yet.

24 MR. POPE: I would also say that each documentation,
25 each item on the time line relates to an exhibit or a

1 deposition.

2 THE COURT: Say that last part again. I'm sorry.

3 MR. POPE: I said every entry on the time line relates
4 to an exhibit -- I think every one of them relates to
5 an exhibit. They were just exhibits that he didn't see at
6 the time, but there were minutes from the meetings and
7 correspondence and such things as that that he got in
8 discovery.

9 MR. KOUTRAKOS: Your Honor, if I may respond.

10 THE COURT: Uh-huh.

11 MR. KOUTRAKOS: Rule 106 says, The contents of
12 voluminous writings, recordings or photographs, which cannot
13 conveniently be examined in court, may be presented in the
14 form of a chart, summary or calculation, provided the
15 underlying data are admissible into evidence, and so he's
16 made all these -- it's clearly not a summary admissible
17 under Rule 1006, 'cause he's actually referring to exhibits
18 that have been admitted into evidence and so this is akin,
19 Your Honor, to me handing an outline to my client to refresh
20 his recollection on, you know, on the testimony that
21 I'm wanting to provide to the Court. That's what's
22 happening here. He's got a time line and he's being asked
23 questions according to that time line that was prepared by
24 counsel. I've never seen anything like it. I object.

25 THE COURT: I have to sustain the objection on this

1 point. He can testify, as he has throughout this entire
2 proceeding, as to his views of what has taken place as far
3 as he is concerned.

4 I'm not going to take a summary of the events just to
5 throw it at me as a summary. I think, so far, everything
6 that he's going to testify to in this outline is already
7 part of the record and somehow I agree with counsel. You
8 can argue that to me, but my -- but it's going to come in
9 anyway, because everything he's going to testify to, if he's
10 going to testify to it, is what I assume is that's been in
11 evidence, I'm going to get it anyway, so I'm either going to
12 get it from the witness or from counsel. I just think it's
13 better presented if counsel presents it to me as argument
14 than having the witness testify as to things that he was not
15 a first -- directly involved with, so I'm going to address
16 it that way. So I will receive it, but I think it's better
17 received from counsel as arguments.

18 MR. POPE: All right, sir. So it's not going to be
19 admitted?

20 THE COURT: It will not be considered as a piece of
21 evidence. Right. But you can argue it to me when you
22 summarize the facts. I think we discussed I would benefit
23 from having some closing arguments from counsel.

24 MR. POPE: Sure.

25 THE COURT: If you want to give me that summary in that

1 fashion as to what you believe the facts have shown, I'll
2 take it like that.

3 MR. POPE: Good. Thank you.

4 THE COURT: Yes, sir. Thank you.

5 Q. And this is exhibit 46. That's what?

6 A. It's a Power of Attorney I had done for -- to Sid
7 Boone, which is --

8 Q. He sent -- that Power of Attorney is dated what?

9 A. 2004.

10 Q. It's still active now?

11 A. Yeah. Mr. -- well, it was --

12 Q. He's retired?

13 A. Mr. Boone's retired, but Mr. Morrison, who replaced him
14 at the same firm, has a similar power.

15 Q. Okay.

16 A. 'Cause I do a lot of property transactions and business
17 transactions and I travel a lot, so I vested them with a
18 Power of Attorney 'cause I can't be as close as --

19 MR. POPE: We move the admission of exhibit 46.

20 THE COURT: Any objection?

21 MR. KOUTRAKOS: No objection, Your Honor.

22 THE COURT: Without objection, be 46.

23 Q. Mr. Rice, based on the chronology you've identified
24 prior to the exhibit which was not admitted, based on
25 everything you knew at the time, did you comply with the

1 Lions Club letter in January -- undated letter of January of
2 2017?

3 A. I have reviewed everything that they've produced by the
4 Lions Club. I've produced -- reviewed Claude's letter and
5 my letter and I believe that I fully complied with their
6 offer, what they sent to me in January of '17 and based on
7 the documents that they have produced, I complied. I
8 believe Mr. Schumpert complied, but Mr. Amick never gave
9 them a written offer before 2018, did not accept
10 encroachments, was not the highest bidder and did not close
11 by June 1. So I reviewed all this as I was making decisions
12 whether to continue with this lawsuit and I believe I was
13 the highest bidder that fully complied with their offer and
14 they didn't transfer the property 'til after they were on
15 notice of my filing a lien and that's why I proceeded with
16 the lawsuit.

17 Q. Thank you very much.

18 MR. POPE: Let me check, make sure I've got all the
19 exhibits, if you don't mind, Your Honor. Just a second.

20 THE COURT: Uh-huh.

21 (Whereupon, Mr. Pope reviewed the referenced documents
22 and discussion was held off the record.)

23 MR. POPE: Your Honor, we -- I don't know if we offered
24 exhibit 14 into evidence. It's that email from Claude to
25 Joe in April 8; we offer that.

1 THE COURT: I wrote down you did, but let me get
2 counsel's input on that.

3 MR. KOUTRAKOS: No objection, Your Honor.

4 THE COURT: All right. Be 14.

5 MR. POPE: Thank you, Mr. Rice.

6 THE COURT: Yes, sir.

7 MR. KOUTRAKOS: Yes, sir.

8 CROSS-EXAMINATION

9 JOSEPH FRED RICE BY MR. KOUTRAKOS:

10 Q. Good afternoon, Mr. Rice.

11 A. Good afternoon, sir.

12 Q. Have you got in front of you Plaintiffs' Exhibit
13 Number 6?

14 A. I have.

15 Q. You have it in front of you, sir?

16 A. (Nods head affirmatively)

17 Q. All right. Plaintiffs' Exhibit Number 6, in that
18 letter it says, We have also decided to make the property
19 available to those individuals whose property adjoins the
20 Lions Club property. Correct?

21 A. That's what it says.

22 Q. Okay. You do not, individually, in your name, own any
23 property near the Lions Club property. Correct?

24 A. I haven't looked at the deed lately, but it would not
25 surprise me if it's in my wife's name.

1 Q. Okay. Your wife owns this property in her name.

2 Correct?

3 A. I'll accept it if you say that.

4 Q. You'll agree with me that the Lion -- that exhibit
5 number 6, the Lions Club letter, says, First consideration
6 will be given to current members of the Newberry Lions Club?
7 It says that, doesn't it?

8 A. Pardon me. I know it says something like that. I
9 don't know the exact words.

10 Q. Okay. It is on --

11 A. We've also decided to make the property first to those
12 individuals whose property joins the Lions Club and then it
13 says --

14 Q. It's the third paragraph, last sentence. First
15 consideration would be given to current members of the
16 Newberry Lions Club. You see that? And I'll blow it up for
17 you if you want to look at it bigger.

18 A. Yeah.

19 Q. First consideration will be given to current members of
20 the Newberry---

21 A. Yes.

22 Q. ---Lions Club. Do you see that?

23 A. Yeah. It's a lot easier to read it.

24 Q. Yeah. Plaintiffs' Exhibit 6 does, in fact, say that.
25 Right?

1 A. First consideration will be given to the current
2 members, yes.

3 Q. And that's something you would have reviewed when you
4 received Plaintiffs' Exhibit Number 6. Correct?

5 A. That's correct.

6 Q. And you're not a Lions Club member. Correct?

7 A. I am not.

8 Q. You have never been a Lions Club member. Correct?

9 A. I have not.

10 Q. Ray Amick, you have personal knowledge, is a Lions Club
11 member. Correct?

12 A. He became one in later years.

13 Q. Well, he is. He's been a Lions Club member for over
14 twenty years and you knew that. Correct?

15 A. No.

16 Q. Okay. Mr. Amick is also an adjoining property owner
17 and you knew that as well. Correct?

18 A. I knew -- I knew that he owned the property on the
19 highway that came back. I didn't know how far it came back,
20 but --

21 Q. Isn't it true that the Lions Club letter, Plaintiffs'
22 Exhibit Number 6, does not mention the words or the term
23 highest bidder?

24 A. That letter does not, Mr. Simpson did, but it sets a
25 minimum price here.

1 Q. It says -- you agree with me it says nothing about
2 whoever submits the highest bid wins. It doesn't say
3 highest bidder, does it?

4 A. The word highest bidder's not in there. It was
5 conveyed to me by Mr. Simpson in explaining --

6 Q. But not -- Right. He told you something on the phone
7 that he failed to put in Plaintiffs' Exhibit Number 6.
8 True?

9 A. I don't believe Mr. Simpson wrote number 6.

10 Q. Okay. The Lions Club, whatever Mr. Simpson told you,
11 the Lions Club decided not to put it in Plaintiffs' Exhibit
12 Number 6. Correct?

13 A. I have not seen anything to indicate they made a
14 decision one way or another. I received two pieces of
15 information. Mr. Simpson told me it was going to highest
16 bidder and Mr. Crocker testified and told Mr. Schumpert that
17 it was going to the highest bidder. Mr. Crocker was the
18 author of the letter to the best of my understanding.

19 Q. Right. But that is not included in the letter.
20 Correct?

21 A. I think it's included in the intent of the letter since
22 the author of the letter has testified that's what it was.

23 Q. Okay. But he chose not to tell anybody else that it
24 goes to the highest bidder, 'cause it's not in Plaintiffs'
25 Exhibit Number 6. Correct?

1 A. I think the letter can fairly be read to indicate that
2 they've given a value of 369, they decided to ask 300, but
3 they're going to sell and that indicates to me, having done
4 quite a few property transactions, that it would go to the
5 highest bidder and Mr. Simpson confirmed that in our first
6 phone call.

7 Q. That's something you read into the letter. Correct?
8 That's not apparent on Plaintiffs' Exhibit Number 6?

9 A. I don't -- I think I interpreted the letter properly
10 and that's how I interpreted it.

11 Q. You do not see anywhere in the letter that mentions the
12 word auction, do you?

13 A. I do not.

14 Q. And, in fact, you own properties, both numerous
15 investment and commercial properties, both in the United
16 States and internationally. Correct?

17 A. If the Bahamas is international, yes.

18 Q. Right; right. So outside the United States, you own
19 commercial and investment property, both in the United
20 States and internationally. Correct?

21 A. Yes, sir.

22 Q. And it's dozens of investment properties that you own.
23 Correct?

24 A. I don't know if it's dozens, but I have some
25 properties.

1 Q. If you look at Plaintiffs' Exhibit Number 6, do you see
2 the word "bid" mentioned in Plaintiffs' Exhibit Number 6?

3 A. The word "bid" is not in Plaintiffs' Exhibit 6.

4 Q. You agree with me on Plaintiffs' Exhibit Number 6 also
5 says, If you have an interest in the property, please let us
6 know right away. Do you see that?

7 A. I do.

8 Q. And that's something that you would have read when you
9 received Plaintiffs' Exhibit Number 6. Correct?

10 A. I read Plaintiffs' 6 several times. Yes.

11 Q. Okay. You responded, you testified, to Plaintiffs'
12 Exhibit Number 6 through a letter from your attorney, Sid
13 Boone. Is that true?

14 A. I responded through a letter from Lisa and my attorney,
15 Sid Boone.

16 Q. Right. And that's Plaintiffs' Exhibit Number 13.
17 Correct?

18 A. If that's the letter from --

19 Q. And if you could have that in front of you, please.

20 THE COURT: I'm sorry. What number did you say?

21 MR. KOUTRAKOS: Exhibit 13, Your Honor.

22 THE COURT: Thank you.

23 Q. I'll represent to you, Mr. Rice, that this is a blown-
24 up version or a typed version of exhibit number 13. Would
25 you agree with me that that --

1 A. I do, but the first one you put up is not exhibit 6,
2 because exhibit 6 is the letter that Mr. Simpson sent to me
3 that has my name at the top, in addition to---

4 Q. Right; right. Right.

5 A. So just to make the record clear, that is another copy
6 of this,---

7 Q. Correct.

8 A. ---but not the one that came to me.

9 Q. Correct. And this is, what I have here to my immediate
10 left, that is a blown-up version of Plaintiffs' Exhibit
11 Number 13. Correct? Excuse me. Yeah, Plaintiffs' Exhibit
12 Number 13.

13 A. Without the recording information on it, yes.

14 Q. What do you mean by recording information?

15 A. The---

16 Q. Right; right. Right.

17 A. ---stamp. The information on the side.

18 Q. When it was filed with the Court. Correct. You did
19 not sign Plaintiffs' Exhibit Number 13, did you?

20 A. I did not.

21 Q. You already testified that Mr. Boone had your Power of
22 Attorney. Correct?

23 A. He had Power of Attorney.

24 Q. In exhibit number 13, Mr. Boone does not mention that
25 he's your attorney-in-fact, does he?

1 A. No. He says he represents Lisa Summer Rice and her
2 husband, Joe Rice, and I had retained him to represent both
3 of us---

4 Q. Right.

5 A. ---in this transaction.

6 Q. So the answer to my question is yes. He mentions
7 nothing that he is the attorney in fact for you in exhibit
8 13. Correct?

9 A. He does not mention attorney-in-fact.

10 Q. Okay. Mr. Boone did not sign your name to Plaintiffs'
11 Exhibit Number 13, did he?

12 A. As my attorney, he indicated that --

13 Q. He didn't say -- well, I assume Mr. Boone has used your
14 Power of Attorney before. Correct?

15 A. I guess.

16 Q. And I assume you've hired him and used him numerous
17 times, 'cause he's qualified and competent. Correct?

18 A. Yes.

19 Q. Okay. And you and I both know, and I'm sure Your Honor
20 knows, that if somebody's signing as attorney-in-fact for
21 somebody, they say, John Smith, as Attorney-in-Fact for
22 Charles Jones. Would you agree with me?

23 A. I believe that to be correct,---

24 Q. Sid Boone --

25 A. ---if it's a legal document that's going to be recorded

1 or whatever.

2 Q. If it's a legal document. Right? Sid Boone, in this
3 document, chose not to do that when he signed exhibit number
4 13. Correct?

5 A. Mr. Boone is hired as our attorney, Lisa and mine, and
6 he sent a letter on our behalf to accept the Lions Club's
7 offer to sell the property.

8 Q. Well, I --

9 A. This was not a transaction.

10 Q. It's not a legal document like you testified to.
11 Right?

12 A. No, sir. I didn't say -- I said it's not a document to
13 be recorded.

14 Q. But on legal documents he signed as attorney-in-fact
15 for Joe Rice. Correct?

16 A. It's my understanding, when you're going to record a
17 document and you're signing under a Power of Attorney, in
18 order to record that document, you do indicate that you are
19 signing and you indicate the language as --

20 Q. So somehow is not your understanding that if somebody's
21 signing a contract as an attorney-in-fact, they don't
22 mention attorney-in-fact. Sid Boone ignores that and just
23 signs Sid Boone to contracts where you're buying pieces
24 of property. He does not mention attorney-in-fact in those
25 contracts. Correct?

1 A. I do -- he does not. I don't think it's necessary when
2 he's representing me in accepting an offer.

3 Q. Okay. Well, he chose -- he specifically chose not to
4 put in Plaintiffs' Exhibit 13 that he was your attorney-in-
5 fact. Correct? It's not in there. You would agree with
6 me?

7 A. He says he represents Lisa and Joe.

8 Q. Your wife, Lisa Rice, did not give Mr. Boone a Power of
9 Attorney. Correct?

10 A. I do not think she did.

11 Q. You have no knowledge or evidence, there's no evidence
12 in the record that your wife ever gave Mr. Boone a Power of
13 Attorney. Correct?

14 A. I'm not aware of it if she has, but Mr. Boone's handled
15 numerous property transactions for us.

16 Q. In exhibit number 13, Mr. Boone says you and your wife
17 have authorized me to make a bid of \$325,000. Do you see
18 that?

19 A. I do.

20 Q. Isn't it true that the word "bid" means offer?

21 A. The word "bid" means bid.

22 Q. Means offer?

23 A. The word -- I think the word "bid" means bid.

24 Q. Okay. You have no knowledge of the word "bid" meaning
25 offer?

1 A. Well, when I've got the word "offer", I accept the word
2 "offer". When I got the word "bid", I accept the word
3 "bid".

4 Q. And you think something -- you think the two terms are
5 different?

6 A. I think when you take them together, that when you have
7 an offer and then someone indicates a bid, then that's where
8 I come to the conclusion that the highest bid gets the
9 transaction.

10 Q. Exhibit 13, Mr. Boone says your offer is subject only
11 to the property having good and marketable title due and
12 payable on closing. Do you see that?

13 A. I do.

14 Q. Plaintiffs' Exhibit Number 13 also says that -- Mr.
15 Boone says, quote, "We would need thirty days from notice
16 that the bid was accepted in which to conduct the title
17 search and close." Do you see that?

18 A. I do.

19 Q. You approved -- let me back up. You did not review
20 this language in exhibit 13 before Mr. Boone sent it out.
21 Correct?

22 A. I -- I really can't answer that. I don't remember the
23 way --

24 Q. Today you approve of what Mr. -- you do approve of what
25 Mr. -- you do approve of what Mr. Boone did on your behalf.

1 Is that correct?

2 A. I approve of him notifying the Lions Club that we were
3 making the bid of 325 in response to their offer on the
4 Lions Club property.

5 Q. Mr. Rice, do you approve of this letter? Yes or no?
6 Simple question.

7 MR. POPE: He keeps interrupting the witness

8 MR. KOUTRAKOS: He's giving a speech. He's giving a
9 speech, Your Honor. I'm asking---

10 THE COURT: All right. Gentlemen, --

11 MR. KOUTRAKOS: ---a simple question and he's giving a
12 speech that I didn't ask for.

13 THE COURT: All right. He gets to answer the question
14 the way he wants to answer. Fortunately, we do not have to
15 to worry about a jury being confused by a witness who does
16 give a speech, so I'm going to let him answer.

17 MR. KOUTRAKOS: Okay. That's fine.

18 THE COURT: But I'm going to let the witness try to
19 focus in on the question as well. You want to ask the
20 question one more time?

21 MR. KOUTRAKOS: Yes.

22 Q. You approved of Plaintiffs' Exhibit Number 13.
23 Correct?

24 A. I approved of Mr. Boone notifying Mr. Simpson, the
25 Lions Club, that Lisa and I were making a bid of \$325,000,

1 subject to them being able to convey marketable title.

2 Q. Are there parts of exhibit number 15 that you don't
3 agree to?

4 A. Exhibit 15?

5 Q. I'm sorry. Exhibit -- excuse me -- exhibit 13,
6 Plaintiffs' Exhibit Number 13 that you don't agree to?

7 (Whereupon, the witness reviewed the referenced
8 document.)

9 A. I'm not sure we would have needed thirty days, but he
10 asked for thirty days to get marketable title, which is
11 customary.

12 Q. Okay. So you can't tell this Court that you -- do you
13 approve -- easy question. Do you approve of everything in
14 this letter that your lawyer sent for you or not?

15 A. Counsel, I'm not sure what you mean by do I approve. I
16 authorized the letter and he sent the letter on my behalf.

17 Q. Which means you approved your lawyer sending out
18 exhibit 13. Correct?

19 A. Yes, on behalf of Lisa and myself.

20 Q. You approved the language in exhibit number 13 that
21 gave the Lions Club the power to accept the bid. Correct?

22 A. I don't think so.

23 Q. Okay. Well, it says here, will you agree with me, We
24 would need thirty days for notice that the bid was
25 accepted in which to conduct the title search and close. Do

1 you see that? That's what the letter says, doesn't it?

2 A. We understand that bids are to be open at the meeting
3 on February 28 and we would need thirty days from notice
4 that the bid was accepted to -- in which conduct the title
5 search and close, which means we would have know that we
6 were the highest bidder and we wouldn't have the right
7 unless we were the highest bidder.

8 Q. You never received notice from the Lions Club that your
9 bid offer was accepted, did you?

10 A. I never received any notice from the Lions Club 'til
11 Mr. Verner's letter in June.

12 Q. You just said you received no writing from the Lions
13 Club accepting the offer you made in exhibit 13. Correct?

14 A. I received on writing from the Lions Club, period.

15 Q. So you received no -- nothing in writing from the Lions
16 Club accepting the offer your lawyer made in Plaintiffs'
17 Exhibit Number 13. Correct?

18 A. Again, I received nothing from the Lions Club.

19 Q. All your testimony about your understanding about the
20 so-called bidding process, about -- about that initial
21 conversation about the -- you've testified the highest
22 bidder came from somebody other than the Lions Club.

23 A. That's not true.

24 Q. Okay. Your information about this auction bidding
25 process came -- let me back up. It came from Mr. Schumpert.

1 Correct?

2 A. It originally came from Mr. Schumpert that he had been
3 told, but Mr. Crocker, in the deposition that I attended, in
4 the depositions I've read, said that it was going to the
5 highest bidder and so testified under the --

6 Q. Mr. Crocker testified that it was going to the highest
7 bidder?

8 A. My understanding.

9 Q. And you heard that here today?

10 A. I read the depositions.

11 Q. Okay.

12 A. And I've seen the writing that Mr. Schumpert indicated
13 from the phone call he had with Mr. Crocker.

14 Q. Isn't it true that in year 2017 neither you nor your
15 lawyers ordered a title examination of the subject property?

16 A. Did we order one? No.

17 Q. And it's your position that you were ready, willing
18 able to close in 2017, even though you did not have the
19 final -- title examination document. Correct?

20 A. I have been quite familiar with that property for forty
21 years, thirty years, whatever the number is, since 1973/74
22 time frame and there was no question in my mind that it was
23 the Lions Club property. I just didn't know, and I'm sure
24 Mr. Boone didn't know, if there was any kind of lien on it
25 or anything like that that we would have had to look at in

1 order for them to have marketable title to it. There was
2 never a doubt in my mind that the Lions Club still owns
3 whatever there was for the Lions Club, so I didn't check the
4 title before accepting their offer.

5 Q. Are you familiar with the restriction on the property
6 that prohibits the Lions Club from selling the property to
7 anybody other than a Lions Club member?

8 A. I had not read that.

9 Q. You knew in April, 2017 that the Lions Club had agreed
10 to sell the property to my client, Mr. Amick. Correct?

11 A. In 2018?

12 Q. 2017. April of 2017.

13 A. At some point in time -- I'd have to look at the title,
14 'cause dates get confusing, but I --

15 Q. If you'll look at Plaintiffs' Exhibit 37.

16 A. Thirty-seven?

17 Q. Yes, sir.

18 A. Counsel, I don't think I have a 37. Can you tell me
19 what it is? That might help me.

20 Q. Let's do this: -- I'm in the same boat.

21 THE COURT: I don't think Mr. Pope used 37 with this
22 witness, so he might not have it.

23 MR. KOUTRAKOS: Yeah.

24 Q. Here's a notebook. Might make your life easier. I
25 don't know why you don't have one there.

1 (Whereupon, Mr. Koutrakos handed the referenced
2 notebook to the witness.)

3 Q. Plaintiffs' Exhibit 37?

4 A. Yes, sir.

5 Q. So if you look at Plaintiffs' Exhibit Number 37, you
6 were informed in April of 2017 that the Lions Club has
7 awarded Ray Amick the bid after he matched the high bid
8 offer for non-member Lions. Do you see that?

9 A. Yes. This is -- exhibit 38 is the original email.
10 That's the second email on the string that's on 37.

11 Q. Right.

12 A. So Claude had sent me, on April the 8th, and I had
13 responded that night, okay, I will see what counsel says.

14 Q. You got me confused about 37. I asked you questions
15 about 37.

16 A. Right. I'm just indicating for the record and for the
17 Court exhibit 38 -- exhibit 37 has two emails on it. It's
18 an email and then a response to an email. Exhibit 38 is the
19 first email, which is from Mr. Schumpert to myself and
20 exhibit --

21 Q. Exhibit 38 is in June. Correct? I'm asking about
22 exhibit --

23 A. I'm sorry.

24 Q. I'm asking about exhibit 37 in there.

25 A. I'm sorry. You're right. It just starts the same way.

1 So, yes, on April the 8th I got an email from Claude, which
2 I acknowledged. Yeah, said that Ray Amick -- they awarded
3 Ray Amick the bid after he matched the high bid offered from
4 non-member Lions.

5 Q. Okay. At what point in time did you believe --

6 A. And he has until June 1 to close on the property.

7 Q. At what point --

8 A. Excuse me. I apologize; sorry. He has 'til June 1 to
9 close on the offer.

10 Q. Okay. At that point in time you did not file a lawsuit
11 seeking to enforce the current contract that you claim that
12 you had with the Newberry Lions Club. Correct?

13 A. At this point in time I was told that he was the
14 highest bidder.

15 Q. Okay. If you look at Plaintiffs' Exhibit 15. You were
16 asked questions about this document by Mr. Pope.

17 A. I got 14, 16 --

18 Q. I'm sorry. Fifteen. It's in your notebook, it should
19 be.

20 A. All right.

21 Q. Just flip to the tab, if you would, sir. That's it.

22 A. Yes. This is a May 15th letter from Mr. McNair to Mr.
23 Crocker and Mr. Simpson.

24 Q. At that point in time in May of 2017, you believe that
25 you're the highest bidder. Correct?

1 A. Based on what I had personal knowledge of, yes.

2 Q. Why didn't you immediately file suit against Newberry
3 Lions Club?

4 A. Well, it wasn't June 1st and I had no reason to believe
5 they weren't going to honor the process.

6 Q. If you look at this letter, would you agree with me
7 that is -- first of all, this letter is written, again, by
8 Mr. Boone. Correct?

9 A. Yes.

10 Q. And he --

11 A. It's signed by Mr. Boone.

12 Q. Signed by Mr. Boone as counsel for you and your wife.
13 Correct?

14 A. Correct.

15 Q. Is that a yes?

16 A. I said correct.

17 Q. Okay. And in the subject matter section, you would
18 agree with me in a typical lawyer letter, the "re:" section
19 is the subject matter section. Correct?

20 A. Yes.

21 Q. Okay. You would agree with me that that letter says,
22 quote, "Requests for bid prior to advertizing property for
23 sale," close quote. Do you see that?

24 A. I do.

25 Q. Did I accurately read that part of the subject matter

1 section of the letter?

2 A. You did.

3 Q. Okay. And would you further agree with me that in the
4 last sentence of the first paragraph your lawyer says,
5 quote, "Please find enclosed a copy of their bid offer of
6 \$325,000 in response to your request for bid," period, close
7 quote. Did I read that correctly?

8 A. You did.

9 Q. And your lawyer said that in the letter. Correct?

10 A. That's what the letter says.

11 Q. And if you look at the second paragraph of this May
12 15th, 2017 letter, Plaintiffs' Exhibit Number 15, you'll see
13 in the -- would you agree with me that in the first sentence
14 of the second paragraph your lawyer chooses to use the term,
15 quote, "The Rice's bid offer," close quote. Do you see
16 that?

17 A. I do.

18 Q. Okay. And in the next sentence, the last sentence of
19 this letter, the last sentence of the second paragraph,
20 again, your lawyer chooses to use the term, quote, "bid
21 offer," close quote. Isn't that true?

22 A. In the second paragraph, yes.

23 Q. Yes. In the second paragraph, your lawyer chose to use
24 the words "bid offer" twice in that paragraph. Correct?

25 A. Yes.

1 Q. Okay. And if you look at the -- if you look at the
2 last sentence of the last paragraph on the first page,
3 again, your lawyer chooses to use the term, quote, "bid
4 offer." Do you see that?

5 A. He used those two words. Yes.

6 Q. And he wrote this letter on your behalf. Correct?

7 A. He did.

8 Q. At that point in time, in the summer of 2017, you knew
9 that the Lions Club was fixing the encroachments. Correct?

10 A. I think in June was when that -- some time in the late
11 May, early June time frame.

12 Q. And you did nothing to stop the Lions Club from fixing
13 the encroachments. Correct?

14 A. No.

15 Q. And is at the same --

16 A. Sir, you're using -- you've used the term encroachments
17 and that's not accurate. They fixed the McCracken
18 encroachment. I've not seen anything to indicate there's
19 been any alteration to the encroachment related to the Lions
20 Club Road that goes from the highway all the way to the
21 water that crosses what was the Jay property and what was
22 the Gray property and I believe the last plat I saw those
23 encroachments still exist.

24 Q. You did nothing to prevent the Lions Club from fixing
25 the McCracken encroachments. Correct?

1 A. No.

2 Q. You sat back and you let them do what they wanted to
3 do. Correct?

4 A. It didn't bother me.

5 Q. You didn't --

6 A. That house was there.

7 Q. Yeah. And you --

8 A. Had been for years.

9 Q. And you didn't choose to file a lawsuit at that time,
10 even though your letter, your -- Plaintiffs' Exhibit 15,
11 your lawyer was indicating that you had the successful bid
12 offer. Correct?

13 A. That's correct, 'cause at this point in time I've heard
14 nothing from the Lions Club and I'm still trying to work
15 with them. I didn't want to litigate this issue.

16 Q. If you look at Plaintiffs' Exhibit 39, which I'm not
17 sure is in evidence.

18 MR. KOUTRAKOS: Is that in evidence?

19 MR. POPE: No, it's not.

20 Q. If you look at Plaintiffs' Exhibit 39.

21 A. Yes, sir.

22 Q. This is -- in this email Mr. Schumpert told you after
23 Mr. Verner sent out the letters, he said, on June 9, 2017,
24 to you, quote, "I guess we will wait to see what is next,"
25 close quote. Do you see that?

1 A. I do.

2 Q. And so this is a time, in June of 2017, would you agree
3 with me, where the Lions Club letter had been sent out, you
4 submitted a response.

5 A. When you say Lions Club letter, you're talking about
6 number 6. Right?

7 Q. I'm talking about number -- yeah. I'm talking about --
8 talking about number 6. Your lawyer responded to the Lions
9 Club letter once and twice. Correct?

10 A. Maybe more than that.

11 Q. Through exhibit number 13, Plaintiffs' Exhibit Number
12 13, and Plaintiffs' Exhibit Number 15, you had written two
13 lawyers -- excuse me -- two letters to the Lions Club,
14 correct, through your attorney?

15 A. Yes, at least two.

16 Q. And Mr. Schumpert had also, to your knowledge, written
17 a response to the Lions Club letter, Plaintiffs' Exhibit
18 Number 6. Correct?

19 A. Mr. Schumpert -- I don't remember when I saw Mr.
20 Schumpert's acceptance, but clearly I knew that -- I knew
21 that he had made an acceptance, but I don't remember when.

22 Q. Well, Mr. Schumpert's telling you in Plaintiffs'
23 Exhibit 39 that, I guess we will wait -- we will wait to see
24 what is next. Do you see that? Exhibit 39.

25 A. Yes. Okay.

1 Q. Okay. And that's, basically, what you chose to do,
2 right, to see what happens next?

3 A. Well, I believe exhibit 39 is Mr. Schumpert responding
4 to an email that I sent him.

5 Q. I understand that. He's told you I want to wait and
6 see what's next, but I mean, in fact, both you and Mr.
7 Schumpert did exactly the same thing. Y'all both waited to
8 see what was next. Correct?

9 A. I didn't -- I got the letter that said that they were
10 clearing -- basically, it said they were clearing the
11 encroachments and not going to transfer at this time. That
12 was fine with me if they wanted to clear the encroachments.
13 I still believed I had an enforceable contract.

14 Q. But nothing happened and you already talked about,
15 you know, the time frames when things happened from June
16 of 2017 to November of 2017. There's no testimony or
17 anything I know of besides some meeting minutes that had
18 nothing to do with this case. Nothing happened on your
19 behalf or Mr. Schumpert's behalf from June of 2017, from
20 exhibit 39, 'til November of 2017. Correct?

21 A. For the twenty years I was -- when Mr. Schum- -- Mr.
22 Ferd -- the Lions Club didn't function in the summers, so I
23 didn't do anything in the summer. That's correct. I was
24 waiting on them, Claude -- they were doing the survey, you'd
25 go up there and you could see they were doing the survey

1 when we went up there.

2 Q. And you didn't do anything in September of 2017,
3 October, 2017, not until November of 2017, which we'll talk
4 about in a minute, did you do anything. Correct?

5 A. I --

6 Q. In relation to the property.

7 A. As far as doing anything in writing, that's correct. I
8 don't remember how many times I was up there that summer.
9 You said I didn't do anything. I don't remember.

10 MR. KOUTRAKOS: I would -- in case 39, Plaintiffs' 39
11 is not in evidence, I'd like to admit it into evidence.

12 THE COURT: Any objection, Mr. Pope?

13 MR. POPE: No objection.

14 THE COURT: Without objection.

15 Q. And then you got exhibit -- Plaintiffs' Exhibit 40.

16 A. Yes.

17 Q. And this is Mr. Schumpert telling you that it is,
18 quote, "It is my understanding that the Lions have agreed to
19 sell the property to Ray Amick for the \$300,000 they were
20 asking. If I get any other information, I will let you
21 know." That's what that email says, Plaintiffs' 40.
22 Correct?

23 A. That's correct.

24 Q. And --

25 MR. KOUTRAKOS: I would like to -- I assume plaintiff

1 has no objection to his plaintiffs' exhibit. I'd like to
2 move exhibit 40 into evidence.

3 THE COURT: Without objection.

4 Q. That email prompted -- that email prompted you to ask
5 your attorney to send Plaintiffs' Exhibit Number 19.
6 Correct?

7 A. That email was sent my wife and I, yes, and we asked
8 them to send a stronger letter.

9 Q. And this is sent by -- by Mr. Scardata. Correct?

10 A. I believe that is true.

11 Q. And this letter is dated November 21, 2017. Correct?

12 A. Yes, exhibit 19, I think it is.

13 Q. And, again, your lawyer, in the subject matter section,
14 on November 21, 2017, you would agree with me, says, quote,
15 "Requests for bid prior to advertizing property for sell,"
16 close quote. Is that correct?

17 A. If you say that's the way it -- I don't see it in here,
18 but I'm not --

19 Q. You don't see it in the subject matter section?

20 A. Oh. Subject matter. I'm sorry.

21 Q. Yeah. I'm sorry.

22 A. Yes. Request for bid prior to advertizing property
23 for sell.

24 Q. And, again, this is after you testified that you
25 already thought you had a contract. Correct?

1 A. That is correct.

2 Q. Your attorney, in Plaintiffs' Exhibit Number 19, also
3 says, quote, "We are again asking for the status of any sale
4 of this property or any proposed sale since we have not been
5 notified of any further bidding or request for bid for this
6 property." Do you see that?

7 A. I do.

8 Q. Would you agree with me that your lawyer is indicating
9 to the Lions Club that when you re-bid this property up,
10 we're ready to participate. Correct? That's what your
11 lawyer is saying. Isn't that true?

12 A. I don't think so.

13 Q. At that point you were willing to participate in any
14 further bid procedures. Correct?

15 A. At that point we were trying to find out if the Lions
16 Club was going to breach the contract, 'cause this was the
17 first time, November, that we'd gotten any information and
18 not from the Lions Club, but from Claude's whisper that he
19 was led to understand the Lions have agreed to sell the
20 property to Amick for 300. That was the first time that it
21 appeared a concern that they were going to try to breach the
22 agreement. So we wrote them and said, look, we're, again,
23 asking for the status, we're asking if there's been anything
24 else done, what's going on.

25 Q. But at the same time your lawyer -- and I assume your

1 lawyer is smart and you hired him because he's smart and
2 chooses his words wisely, like all lawyers do. In the last
3 sentence he says that -- it says, quote, "And/or participate
4 in any further bid procedure that is properly noticed for
5 the sale of this property." You guys, in this letter,
6 wanted to do it all over again. That's what your lawyer's
7 saying. Correct?

8 A. Not correct.

9 Q. You think a reasonable reader -- reader of this letter
10 would not conclude that the Rices, if there was another bid
11 process, an alleged bid process, if it took place, you guys
12 were going to participate again. I'm asking you, do you
13 believe a reasonable reader of this letter should not
14 conclude that?

15 A. I don't think a reasonable reader would only conclude
16 that.

17 Q. Fair enough.

18 MR. POPE: Your Honor, he needs to finish his --

19 MR. KOUTRAKOS: Okay. That's fine.

20 THE COURT: Yes, sir. Go ahead and finish.

21 Q. Go ahead.

22 A. I think you have to read the letter in context and this
23 was the first time that we had been notified, not by the
24 Lions Club, but by -- that they were going to breach the
25 contract. We were trying to find a way to say, look, what's

1 going on? Why are doing whatever you're doing? What are
2 you doing, and let's talk about this, because we're not
3 looking to have litigation and if there's some other process
4 you want to talk about, I'll talk to you and now, by this
5 time, I had become aware that they had talked to Claude
6 about upping his offer. So I was interested in closing on
7 the property and I wanted to know what was going on and I,
8 frankly, thought that these guys, Mr. Crocker, Mr. Simpson
9 were contemporaries of Mr. Ferd, that we would hear
10 something from them and we could sit down and say what's
11 going on.

12 Q. You weren't happy, 'cause you weren't getting what you
13 wanted. Correct?

14 A. I was not happy because we thought we had a contract.

15 Q. You and your wife are used to getting what you wanted
16 and you weren't getting it here and that upset you. Isn't
17 that true?

18 A. I don't accept your characterization.

19 Q. Okay. Your lawyer chose to use the words, again, in
20 this letter, in the first paragraph, bid offer of \$325,000.
21 Do you see that?

22 A. I do.

23 Q. So this letter talks about the prior communication and
24 refers to it as a bid offer and at the same time says, hey,
25 we're the Rices and we want to participate again in this

1 auction process. Would you agree with me that those are two
2 things that this letter says?

3 A. Rices are ready, willing and able to follow through
4 with their successful bid in order to participate in any
5 further bid procedure that's properly noticed,---

6 Q. It says -- go ahead. I'm sorry.

7 A. ---if they want to tell us what's going on and let's
8 see what we can work out. Yeah.

9 Q. This letter says nothing you were going to a file a
10 lawsuit for specific performance. Correct?

11 A. No.

12 Q. Plaintiffs' 19 says nothing that -- doesn't say that
13 you and your wife have a binding and enforceable contract to
14 buy the property. It doesn't say that, does it?

15 A. It says we have submitted the successful bid offer.

16 Q. It doesn't say, hey, we have a binding contract, Lions
17 Club, and we want to close. It doesn't say that, does it?

18 A. I read it to indicate that.

19 Q. Okay. Okay. I think there's a stack of defendant's
20 exhibits. Yep. You have this, yes. Defendant's exhibit 2,
21 if you'd take a look at that.

22 (Whereupon, Mr. Koutrakos indicated to a document for
23 the witness.)

24 A. Okay.

25 Q. This is the email communication between you and Mr.

1 Schumpert. Correct?

2 A. Yes.

3 Q. And on February 15, 2018, you write to Mr. Schumpert
4 and you said, quote, "They are selling for less money. So a
5 current member could sue to stop sell as breach of duty by
6 board. Do you know any member that would do that? I will
7 pay lawyer," close quote. Do you see that?

8 A. I do.

9 Q. This is the day after the Newberry Lions Club signed
10 the contract with Mr. Amick, correct, Plaintiffs' Exhibit
11 Number 23?

12 A. I know that now.

13 Q. You see nothing in this email to Mr. Schumpert about
14 stopping the sale because I have a valid and binding
15 contract. Instead you're fishing for a plaintiff. Correct?

16 A. No, sir.

17 Q. That's exactly what you're doing. You're fishing for a
18 plaintiff. Do you know any member that would do that? I
19 will pay lawyer. That's what you're telling Mr. Schumpert.
20 You're not telling Mr. Schumpert, hey, I can stop the sale,
21 'cause I have a binding contract? You did not tell Mr.
22 Schumpert that in Defendant's Exhibit Number 2. Correct?

23 A. I was inquiring if anybody that was a member of the
24 Lions Club was aware that the board of a charitable
25 organization had taken less money than they could get for a

1 charitable asset, which based on my history in litigation
2 against corporate America and other entities, I believe is a
3 breach of duty and I think that would be a simple process to
4 address. I didn't have standing to bring that action. I
5 was looking for someone that would inquire and ask for the
6 grounds for the board making the decision they made under a
7 breach of duty or a fiduciary inquiry, which would have
8 potentially resulted in getting this information of what had
9 happened over the course of time. A lot easier for --

10 Q. Mr. Schumpert, in your request to find a plaintiff for
11 him, was not successful and that is the top part of
12 Defendant's Exhibit Number 2. Correct?

13 A. Yeah. Claude told me that he thought it was the only
14 one that he knew was still a member.

15 Q. He couldn't find a plaintiff for you. That's what he's
16 basically saying. Correct?

17 A. I don't know that he looked for a plaintiff. I think
18 he indicated or he was aware that it was a small group and
19 there was no longer any younger folks in there that he was
20 familiar with.

21 MR. KOUTRAKOS: I would like to introduce into evidence
22 Defendant's Exhibit 2.

23 THE COURT: Any objection to Defendant's 2?

24 MR. POPE: No objection.

25 THE COURT: Without objection, Defendant's 2.

1 Q. Five days after Mr. Schumpert told you that he couldn't
2 find a plaintiff for you, you filed this lawsuit. Correct?
3 Which is Plaintiffs' Exhibit Number 26.

4 A. I think that's correct, on the 21st. Is that right?

5 Q. It's in your notebook, if you want to flip to 26.

6 (Whereupon, the witness reviewed the referenced
7 document.)

8 A. Yes. Five days.

9 Q. And this is after you learned that Mr. Amick had a
10 contract on the property. Correct?

11 A. It is.

12 Q. You filed a lawsuit after you learned that they were
13 selling the property to Mr. Amick. Right?

14 A. I filed the suit after I learned they were breaching my
15 contract and I filed --

16 Q. You had all of 2017 to file a lawsuit, but you chose
17 not to do so. Correct?

18 A. That's correct.

19 Q. You were aware that the deed was signed and the money
20 disbursed through exhibits your lawyer has submitted up
21 prior to the day to -- the contract - let me back up. I'm
22 sorry. You know and understand that the contract was signed
23 between my client and the Newberry Lions Club before your
24 lawsuit was filed or your lis pendens was filed.
25 Correct?

1 A. I don't -- I certainly wasn't aware of it then. I,
2 frankly, think I had seen the contract, but I don't remember
3 the date. I understood there was no contract in 2017. I
4 understood there was no writing in 2017 and I do remember at
5 the depositions somebody testifying that Mr. Amick gave them
6 a contract in 2018, but I don't remember the date.

7 Q. But you learned that a law- -- that my client and the
8 Lions Club had scheduled a closing and you told your lawyers
9 to rush to file a lawsuit. Correct?

10 A. I learned in November what we talked about. I had no
11 contact with anyone after November.

12 Q. Why did your lawyers file a lawsuit first and the lis
13 pendens second? Do you have any idea?

14 A. I have no idea. I don't --

15 Q. Is it -- I'm sorry.

16 A. I don't do any real estate transactions -- real
17 estate litigation, so I don't know what the norm is, but it
18 could be just the timing they filed.

19 Q. You believe -- do you have any knowledge of them filing
20 the lis pendens only once they found out that the Lions Club
21 was at Lisa Smith's office closing the transaction that
22 morning?

23 A. No. I had told them to file the lis pendens and I told
24 them to file the lawsuit and do quick as they could sometime
25 in December after we didn't get response to our letters

1 before Thanksgiving and through the holidays. They just got
2 it filed when they got it filed.

3 Q. How often do you visit the log cabin you have over
4 there by the Lions Club property?

5 A. Give me a time frame.

6 Q. Well, you only visit a few times a year, correct,
7 nowadays?

8 A. More recently, we don't visit very often at all, but we
9 used to visit much more frequently.

10 Q. Your wife, she's not here today, is she?

11 A. She's not.

12 Q. She's also a plaintiff in this case. Correct?

13 A. She is.

14 Q. And she's the one who wanted the property, has
15 historical tie for it and she's the one who instructed you
16 to file this -- to send the letter and file this lawsuit.
17 Correct?

18 A. It is. She testified in her deposition and she's out
19 of the country.

20 Q. When was the last time your wife's been to the subject
21 property, your property, the Newberry -- your property by
22 the Lions club property, the log cabin?

23 A. She and I went by there probably in 2019 and I was
24 walking around the front, she was sitting on the porch and
25 Mr. -- whoever was living in the cabin brought their pit

1 bulls out while I was walking around the property and my
2 wife has not been back since then until this is resolved.

3 Q. She has historical ties and family memories of the
4 property, but she still owns a piece of property, the log
5 cabin, right there. Correct? She can go back every weekend
6 if she wants.

7 A. She can go back, but not to the lifestyle that she
8 lived in -- not the lifestyle and nobody can live in the
9 lifestyle that they live in there based on the circumstances
10 --

11 Q. What country is your wife in right now?

12 A. Bahamas.

13 Q. Is Bahamas more of a lifestyle than Newberry?

14 A. You'd have to ask her. I think they're both part of
15 relaxation, though.

16 Q. It's your testimony today that the contract that you
17 claim exists is Plaintiffs' Exhibit Number 6, the Lions Club
18 letter, and Plaintiffs' Exhibit Number 13, which is your
19 response to the Lions Club letter. Correct?

20 A. That was the original information I had until all this
21 information came forth and I now believe, based on the
22 totality of the circumstances, I clearly had a
23 contract.

24 Q. And your contract -- we have to point to write it.

25 Right? Writings, documents. You're only pointing to Your

1 Honor as what constitutes the contract is Plaintiffs'
2 Exhibit Number 6, which is the Newberry Lions Club letter to
3 you, Joe Rice,---

4 A. Right.

5 Q. ---and Plaintiffs' Exhibit Number 13, which is Sid
6 Boone's response. Correct?

7 A. Correct. But I read those in context of what I've done
8 to further my position.

9 MR. KOUTRAKOS: Give me one moment, Your Honor. Just
10 bookkeeping or administrative, Plaintiffs' 37, I think I may
11 have asked questions about it. It's plaintiffs' exhibit. I
12 assume you want it into evidence, so I'll move Plaintiffs'
13 Exhibit Number 37 into evidence.

14 THE COURT: Any objection as to the email, Mr. --

15 MR. POPE: No objection.

16 THE COURT: Okay.

17 MR. POPE: Thirty-seven?

18 THE COURT: Thank you, Mr. Pope. Yeah, 37. That's the
19 one that went with 38--

20 MR. KOUTRAKOS: Yes.

21 THE COURT: ---or 36. Okay. Without objection.

22 MR. KOUTRAKOS: That's all the questions I have. Thank
23 you.

24 MR. PRICE: Just a couple.

25 THE COURT: Mr. Price?

1 MR. PRICE: Yes, sir.

2 CROSS-EXAMINATION

3 JOSEPH FRED RICE BY MR. PRICE:

4 Q. Mr. Rice, I want to commend you for trying to take on
5 this matter for your wife. I, too, am a beneficiary of the
6 Newberry Lions Club. In 1960, I joined Troop 66, which was
7 sponsored by the Lions Club. One weekend a month -- excuse
8 me -- a year Lions Club would have Troop 66 down there, we'd
9 spend the night on the beach and somebody would cook hotdogs
10 and hamburgers for us and we always looked forward to that.
11 My questions to you are limited, but would it be fair to say
12 since the pandemic y'all really haven't spent any time to
13 speak of down there?

14 A. The time parallels, yes, for several reasons, but
15 yeah, we haven't been there since, I think I said, 2019.

16 Q. Okay. And prior, like 2018, how many times you reckon
17 y'all spent the night down there?

18 A. I don't remember. I really don't. I mean, it's not a
19 lot. My wife would go, maybe she'd go to Columbia and pick
20 up Pam Summer, who you probably know from Newberry, it was
21 her cousin and college roommate, and they would go spend a
22 few days. My nephew goes up there some, I go some. I don't
23 remember how often.

24 Q. Well, now you mentioned Tommy Sue (ph) or the Jays,
25 Bill and Julia McSwain, the Schumperts, Ferd, Gray and,

1 of course, it's a different time now. There are no folks
2 down there with children and grandchildren that live down
3 there in the summer time, are there?

4 A. I couldn't tell you. My grandchild liked it when we
5 went, but we've only been a couple times since then.

6 Q. And so the idea of, you know, the Fourth of July
7 celebration where they had the parade and all that, that
8 ship has sailed. They don't do that anymore, do they?

9 A. I don't have personal knowledge of that.

10 Q. Right.

11 A. I know that when we have gone down there, we hook up
12 with Claude and those and if we're there, sometimes John,
13 Lisa's brother, would come down and some of the old guys,
14 so, you know, --

15 Q. But it's not like it was---

16 A. I --

17 Q. ---in the memories of Lisa?

18 A. It's certainly not today, as I -- as we see it now,
19 it's been over a year, but --

20 Q. Right. And that cannot be restored whether you own the
21 property or some third party owns the property, can it?

22 A. Why not?

23 Q. Where are the kids? You know, where are the teenagers?
24 Where's the population?

25 A. You build -- you take down the clubhouse that's there

1 now that's in disarray and you build -- as they say, you
2 build it, they will come. You build a nice clubhouse and
3 make it available to the civic clubs, you make it available
4 to the boys clubs, you make it available to the highschool
5 golf team, you make it available to people, they'll come.

6 Q. And you think that the residents would fund that?

7 A. No. I would. I mean, the whole idea is to -- in
8 Lisa's mind, she took a lot out of that property and her
9 idea is to give back to it and she wanted to maintain the
10 atmosphere, the friendliness. You got the boat ramp right
11 there, you got the little beach right there, you got an open
12 area that kids can play. It's safe to swim 'cause there's
13 not that much boat traffic coming out of the Saluda, so you
14 get out, though, for sure and she wanted that to be there
15 and Claude's still there and today I learned Claude's, you
16 know, family had bought another house and now Doggett's
17 daughter. So there's younger people going down there, as I
18 understand it. There's no reason that it can't be the safe
19 family atmosphere that my wife and her friends grew up in
20 and that's what she wanted.

21 Q. And that is commendable. But to get back to the facts
22 of this case, basic contract law, what are the elements?

23 A. Am I testifying as a witness now or as an expert?

24 Q. Both. As a very successful lawyer.

25 A. You have an offer that's accepted that identifies the

1 item involved and identifies the price and the parties
2 agree.

3 Q. Offer, acceptance, consideration.

4 A. And an identified item.

5 Q. Right.

6 A. So here's a offer to sell 5.5 acres with a plat
7 attached with a asking price that I accepted within the time
8 frame it said. That to me is a contract.

9 Q. However, if the letter that is -- this letter that was
10 sent out January of 2017. I forget the exhibit number.

11 A. It's exhibit 6.

12 Q. Thank you. Exhibit 6. If that is, in fact, an offer,
13 which we do not agree to, but just for the sake of argument,
14 if it were, then your offer to -- or your acceptance to pay
15 \$325,000 is not an acceptance, because that wasn't the
16 alleged offer, it was \$300,000.

17 A. They were asking 300.

18 Q. Okay. So --

19 A. Pete Simpson told me it was the highest bidder, so Lisa
20 said pay more.

21 Q. Well, common sense would lend it so that that would be
22 the proper thing to do if you really wanted the property,
23 but that's not what the law says. The law says you either
24 accept it or you don't. So your offering more was not an
25 acceptance of a bid or an offer that was in fact an offer,

1 but reading this common sense, does this not indicate to you
2 that they are trying to stir up interest by this letter?

3 A. I don't think they were trying to stir up interest. I
4 think they were paying respect to the adjoining property
5 owners by giving them the opportunity to enter into an
6 agreement to buy the property before they went to the
7 public.

8 Q. Right. And how about the provision down here where it
9 says that first consideration will be given to current
10 members of the Newberry Lions Club? Is it not your
11 understanding that Ray Amick was an extremely valuable
12 member to the Lions Club over the last number of years?

13 A. I have -- I have read the depositions that have
14 indicated since, I think it was, 1920, what Mr. Amick has
15 done. I have thirty years, forty years of experience before
16 that that would make some of those things debatable if it
17 were worth debating, but I don't think it's worth debating
18 today.

19 Q. Okay. Good response. But you wouldn't deny he's the
20 man that cut the grass, made sure that no trespassers were
21 using the clubhouse, making sure that the water was cut off
22 in the winter time and he was the handyman?

23 A. I -- well, number 1, the clubhouse, the last time I saw
24 it was in total disarray, so that is part of it, I question
25 the value of that. Second thing is the 5.5 acres, there's

1 only about an acre or so of grass that belongs to the Lions
2 Club, 'cause the 5.5 acres includes the woods back up there
3 and then you've got the power company property that goes, I
4 haven't measured it, but---

5 Q. Right.

6 A. ---it's not a large area and over the years I've seen
7 many, many people cut the grass, including the power company
8 grass, including Lisa's brother cut it every time I was
9 there that I recall in the seventies.

10 Q. Right. But you would not deny that is of a great value
11 to the club to have somebody on the property responsible for
12 that?

13 A. It's valuable to have someone down there, but there's
14 other families that live there full time that have as much
15 interest in protecting that area.

16 MR. PRICE: Thank you. No further questions.

17 THE WITNESS: Okay.

18 THE COURT: Any reply limited to what they went into?

19 MR. POPE: Just very short, Your Honor.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION

22 JOSEPH FRED RICE BY MR. POPE:

23 Q. Mr. Rice, when you said you got -- you talked to Mr.
24 Simpson, you got the letter from him and he explained what
25 you just testified to about the highest bidder, were those

1 words supported by your interpretation? Did they jive with
2 what you thought?

3 A. Yes, because the way I'd read it, they had made the
4 hard decision they were going to sell the piece of property.
5 They were trying to avoid a public sale. They didn't want
6 to pay a REALTOR. They were asking 300, they were going to
7 sell it and, typically, sell it to the highest bidder and so
8 that's what I conveyed to Lisa and that's what I conveyed to
9 Mr. Boone and Lisa said pay more than they're asking to be
10 the highest bidder. I did --

11 Q. If Mr. Simpson had told you hypothetically, well, this
12 letter just means we're just checking on interest. We're
13 not really going to sell it necessarily to any of the
14 adjacent property owners, would you have bid?

15 A. If I had thought it was just a inquiry of interest, I
16 would have indicated an inquiry of interest and I would have
17 indicated a willingness to pay probably more than 325,000.

18 Q. Now, when Mr. Sid Boone represented you, he represented
19 you and your wife as attorney for this specific purpose.
20 Correct?

21 A. Correct.

22 Q. And he was your agent with authority to bind both of
23 you and that was the intent. Correct?

24 A. He was our attorney, entitled to represent both of us
25 and only both of us.

1 Q. Now, exhibit -- do you have exhibit 15 there?

2 A. I just put them in numerical order, so I could find
3 them.

4 (Whereupon, the witness retrieved the referenced
5 document.)

6 A. Yes, sir.

7 Q. You were questioned about that when it says bid offer.
8 Is exactly what Mr. Simpson was implying when you talked
9 about the intent of the letter, a bid offer?

10 A. I mean, yeah. That's the way he interp- -- that's the
11 way he explained it, so when I told, you know, Sid, I said,
12 they said it's going to the highest bid, so let's, you know,
13 pay more than they're asking. So give them a bid --

14 Q. And the Lions Club never contacted you to say will you
15 pay more or we want to talk to you about your bid or
16 anything. Is that right?

17 A. No.

18 MR. POPE: Thank you. Oh. I've got one more thing.

19 Q. You indicated you had talked about -- the question that
20 Mr. Price asked you about lifestyle. Your plan, as you've
21 expressed to the Lions Club members, for the property, what
22 is your plan -- what was your plan for the property, is your
23 plan for the property?

24 A. We had talked about doing -- putting a conversation
25 easement on it to preserve it forever. I have been very,

1 very fortunate growing up in the textile world, but my law
2 practice has gone beyond anything I ever imagined it would
3 and Lisa and I try to give back as much as we can in
4 different things. This is something she wanted to give back
5 to people that she grew up with, lived there with, that
6 still lived in Newberry and to Newberry. So we were going
7 to put a conservation easement on it. We had talked -- I
8 had mentioned to Claude about, you know, tearing down the
9 clubhouse, building a bigger pavilion, you know, some kind
10 of common gathering area. We had contract SCE&G about
11 allowing us to put the sand back on the beaches and to clean
12 up the beach and all that and that's what we were planning.

13 Q. That is your plan?

14 A. It still is my plan.

15 Q. Okay. Now, you're -- in terms of how long -- how often
16 you've been down there, wasn't your wife down there in
17 February doing some maintenance on the house?

18 A. I don't remember for sure, but my nephew and his wife
19 were there this weekend. They've been there several times.

20 Q. And your brother-in-law goes down there?

21 A. My brother-in-law goes down there and, you know, I --
22 I'm going to roll over in my grave if my grandson doesn't go
23 to Carolina and, hopefully, he'll go down there while he's
24 at South Carolina, like I did when I could. Heck of a good
25 time.

1 MR. POPE: Amen. Thank you.

2 THE COURT: Thank you, sir. You may step down. Watch
3 your step as you're stepping down.

4 THE WITNESS: Thank you. You want me to leave these
5 exhibits up here?

6 THE COURT: Yeah. Just leave them there. They'll sort
7 them out. Lawyers approach for a moment.

8 (Whereupon, a bench conference was held off the record,
9 after which a brief recess was taken.)

10 MR. POPE: Your Honor, we'll call Claude Schumpert as a
11 witness.

12 THE COURT: Mr. Schumpert, come on up. Just place your
13 left hand on the Bible and raise your right hand and I'll
14 swear you in.

15 (CLAUDE HUTCHINSON SCHUMPERT, being first duly sworn,
16 was examined and testified as follows):

17 THE COURT: Watch your step as you're stepping up and
18 have a seat in the chair. Pull the chair up to the
19 microphone. If you need to move the microphone, please do
20 it gently.

21 THE WITNESS: Yes, sir.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 CLAUDE HUTCHINSON SCHUMPERT BY MR. POPE:

25 Q. State your full name and address?

1 A. Claude Hutchinson Schumpert, 131 Lions Club Circle,
2 Prosperity, South Carolina.

3 Q. All right. And you grew up in Newberry County?

4 A. Yes, sir.

5 Q. And after high school, where did you go to college?

6 A. I did my undergrad at Clemson and---

7 Q. And where did you go --

8 A. ---graduated there in May of '86.

9 Q. And where did you get your vet degree?

10 A. University of Georgia.

11 Q. And you've been practicing veterinarian medicine since
12 you got the degree?

13 A. Yes, in May of '90.

14 Q. Like 1990 or something?

15 A. '99.

16 Q. And tell me about your family. You grew up in
17 Newberry. You lived in Newberry. Correct?

18 A. Yes. 800 Caldwell Street. I was the youngest of five.

19 Q. You and four siblings and your parents were Bob and
20 Peggy?

21 A. Correct.

22 Q. And Bob -- it's stupid of me to ask this, but what was
23 Bob?

24 A. Dad was an attorney.

25 Q. All right. He practiced law with my dad.

- 1 A. Practiced law with your father.
- 2 Q. All right. And did for many years?
- 3 A. Yes, sir.
- 4 Q. And your mom, tell me a little bit about her.
- 5 A. When daddy had his stroke in '73, mama went on -- she
- 6 started as the secretary for the probate judge and later
- 7 became the probate judge in Newberry County.
- 8 Q. And served many years as probate judge?
- 9 A. Yes, sir. Until '95-ish.
- 10 Q. Your mom died in 2012?
- 11 A. 2012. December 19th, 2012.
- 12 Q. Now, you practiced veterinary medicine mostly out of
- 13 Irmo or Chapin. Is that right?
- 14 A. I was at Dutch Fork Animal Hospital 'til I finished up
- 15 there October of '20 is when I finished there and now I've
- 16 just done a little bit of relief work.
- 17 Q. And your permanent address is at the Lions Club Circle?
- 18 A. Yes, sir. We moved there permanently August of 2011.
- 19 Q. And this exhibit 34, it's already in evidence, but let
- 20 me show you a copy of it. This is a aerial photo of the
- 21 area?
- 22 A. Yes, sir.
- 23 Q. And your---
- 24 A. This is us (indicating on photo).
- 25 Q. ---home is the --

1 A. That's us right there, 6523-2.

2 Q. Right. It's largest property on the point here, isn't
3 it?

4 A. Yes, it is, that and the original cottage that was
5 there is to the left.

6 Q. That's your father lived?

7 A. Yes.

8 Q. And now your daughter's getting ready to move down
9 there, isn't she?

10 A. My oldest daughter purchased the house to the left of
11 the cottage from the McSwains after Ms. Sherry Fay (ph)
12 passed away. She has since sold that and Erin Whitaker and
13 her partner in the funeral home now own it or, excuse me,
14 there is a contract, I think they said, was going to close
15 July 1st.

16 Q. Okay. Growing up, what did you and your four siblings
17 and your parents do in the summertime? Where did you go?

18 A. This past weekend, Memorial Day weekend, was always the
19 weekend we went to the lake, had the best weekend of the
20 year and the worst weekend was Labor Day, 'cause we always
21 went home, but we spent Memorial Day to Labor Day at the
22 lake.

23 Q. And did your dad -- what was his position in the Lions
24 Club?

25 A. He was -- I know he was a member and he had been

1 president. I'm not sure if he was president multiple times,
2 but he did serve as president.

3 Q. And was your brother, Yon, (ph.) a member?

4 A. Yes. Yon (ph) was a member for several years, for
5 three or four years.

6 Q. And so you were basically there on the point at the
7 same location, of course, you've got a nice house there, but
8 you had another house there?

9 A. Yes, sir. We were there -- I think they built the
10 original cottage in the late forties.

11 Q. And recreation was all around the homes in the area,
12 everybody was friends. Right?

13 A. Everywhere. We rode horses, 'cause we had horses for
14 several years. We rode horses and, needless to say,
15 sometimes we had to clean up behind the horses, but go-
16 carts, golf carts. That's where I learned to swim, where I
17 learned to ski, same thing for -- well, one of my daughters,
18 one still hasn't been able to learn to ski yet, but --

19 Q. So you would go down to the beach on the Lions Club
20 Road?

21 A. Yes.

22 Q. And what about the Fourth of July down there?

23 A. Fourth of July, as I've said plenty of times, was
24 actually the one thing between my wife and I, it's the one
25 holiday that our families competed, 'cause high noon, I

1 think they said earlier when there was this brief reference
2 to the parade that occurred, and it was always high noon and
3 Mr. Ferd would always start firing his cannon at eight A.M.
4 and fire it 'til noon, but no, it was -- that was the --
5 there was even a time -- I mean, I was obviously the
6 youngest running around the point, but when my siblings and
7 some of the others, Murray and the Wares and the Sextons
8 were all older, I mean, they even had their own marching
9 band. We had the one year where they had the boat races,
10 which several of the boats some of us were in sunk, but
11 still -- but that was -- that was always a part of the year
12 we always -- this is before they had the fireworks
13 celebration, we had our own fireworks celebration every
14 year. All the families chipped in and we went and bought
15 fireworks.

16 Q. I'm going to show you exhibit 41. Tell us what that
17 is.

18 A. This is the letter that we received from the Lions Club
19 informing us of, I guess, in there it does say something to
20 extent of it said, having been reluctant there, We
21 reluctantly decided to offer the property for sell to the
22 contingent land owners.

23 Q. All right. And when you got the letter, who did you
24 call?

25 A. Well, I started and I called the number on there and

1 Mr. Simpson referred me to call Mr. Crocker, who was the
2 president, 'cause I just had a few things that I wanted to
3 make sure with on the letter of how the process was going to
4 be handled.

5 Q. So you called. Approximately when was it that you
6 called?

7 A. It -- from sometime between when we received the letter
8 and before we actually sent our acceptance letter in
9 February 13th.

10 Q. And so what did you ask -- you called Mr. Crocker?

11 A. I called Mr. Crocker second. I called Mr. Simpson
12 first and then called Mr. Crocker and the biggest question I
13 wanted to ask was by sending this letter, was it their
14 intent to have -- what was the process to be handled and was
15 it a given that it was going to a member, that they would be
16 offering it to the highest bidder.

17 Q. And Mr. Crocker -- what did you write down there at the
18 bottom? You wrote Mr. Crocker's name?

19 A. I wrote, Gene Crocker, who was the president at the
20 time.

21 Q. That's your handwriting?

22 A. Yes, sir.

23 Q. All right. What's above that?

24 A. It says, The question that I was writing was not Ray/a
25 member, a Lion - was it going to going to go to the highest

1 bid?

2 Q. He assured you it would go to the highest bidder?

3 A. Highest bid.

4 Q. Okay. And based on this letter and his assurance, you
5 put in a response?

6 A. Correct.

7 Q. And you went 300,000, not 25. Correct?

8 A. We offered 300 -- excuse me. We were accepting their
9 offer and we put down 300 with -- in that letter also we --
10 the contingencies would be something we would work out and
11 even also, knowing that the Lions had met there for years,
12 we wanted the Lions to still have availability to use the
13 clubhouse in the future.

14 Q. Well, the conditions in the letter, exhibit 41, where
15 they were going -- they said they were going to make the
16 property available to, first to adjacent property owners?

17 A. If that's in the letter, yes.

18 Q. All right. Did it also say they were asking 300,000?

19 A. Yes. It says they're asking 300,000. Correct.

20 Q. And first consideration will be given to current
21 members of the Lions Club?

22 A. Yes. It does say that in the letter.

23 MR. KOUTRAKOS: Your Honor, I don't know if Your Honor
24 is aware, but Mr. Schumpert sued my client, claiming that
25 this letter and his, quote, "acceptance," which of course,

1 -- he sued my client, we -- we had this lawsuit about it, we
2 took depositions in that case. We moved for summary
3 judgment, we got summary judgment and he's here in court
4 giving his interpretation of this letter, calling it an
5 offer, calling his letter acceptance. Your Honor found
6 that letter was not an offer as a matter of law and he's in
7 court today testifying some -- I don't understand why he's
8 here testifying. I know he has an important role, because
9 Mr. Rice testified about him, but who cares what he thinks
10 that letter says and I don't understand why we're doing
11 this. He's not a plaintiff. His case has been kicked out.
12 He chose not to appeal and he's stuck with that, so I'm
13 trying to figure out why are we here, why are we -- why are
14 we hearing from him about his interpretation of the letter.
15 I get it about other things, but his interpretation of the
16 letter, I don't know why we're hearing about it.

17 MR. POPE: Your Honor, the evidence in his case was
18 that Mr. Amick had no knowledge of his bid, among other
19 things and so he didn't file a lis pendens and he didn't
20 have any proof that Mr. Amick had seen his letter.

21 MR. KOUTRAKOS: Your Honor, you found that that letter,
22 the Lions Club letter, was not an offer in that case. He's
23 here, the same person who sued my client and I thought we
24 were done with it, is testifying in court, his
25 interpretation of what that letter says, which by the way,

1 we already know 'cause we can read ourselves and we've heard
2 all day, so I'm trying to figure out why Mr. Schumpert's
3 here testifying about what the letter says--

4 THE COURT: Okay. Thank you for --

5 MR. KOUTRAKOS: ---and so I object.

6 THE COURT: Thank you for pointing that out. Okay. I
7 do recall and I think I was here when we took those
8 arguments and I think I made the ruling, so I'm aware of the
9 history. You may use that on cross-examination to impeach
10 the witness however you see fit.

11 Mr. Pope, I will agree with counsel on one thing. You
12 need to probably move forward with the witness, you know.

13 MR. POPE: All right. I will.

14 Q. You would receive information from time to time by way
15 of reports that you weren't sure were even accurate, right,
16 that you would relay to Joe?

17 A. Yes. Simple answer is yes. It was being at the
18 practice that I was at, it's in Irmo, my days were long, so
19 I did not have an opportunity to be in Newberry, but those
20 that were in Newberry, I would hear at time to time about
21 and updates about how things were going. Yes, sir.

22 MR. POPE: Before I go any further, I'd like to offer
23 exhibit 41 in evidence.

24 THE COURT: Without objection, 41 will be admitted.

25 Q. Okay. Exhibit 14, is that an email that you sent?

1 A. It is an email that I sent to Mr. Rice. Yes.

2 Q. What's the date?

3 A. April 8th.

4 Q. 2017?

5 A. 2017, yes, 9:42 A.M.

6 Q. And what had you heard that you reported there, just
7 briefly?

8 A. I had heard that the Lions Club had awarded Mr. Amick
9 the bid after he matched the high bid from a non-member and
10 I went and actually had a conversation and called Mr.
11 Crocker in reference to that to just get confirmation so
12 that I could hear it from a present Lion that that had
13 occurred.

14 Q. And so the report in here is what you got from Mr.
15 Crocker?

16 A. Correct. I called Mr. Crocker to confirm what I'd been
17 told.

18 Q. All right. So Mr. Amick had matched the high bid?

19 A. Had matched the high bid. Correct.

20 Q. Knowing what you know now, was that accurate?

21 A. Knowing what I know now, is that accurate? It was not.

22 Q. Okay. Here's an email, exhibit 38. This is Friday,
23 June 2nd, an email from you to Mr. Rice, June 2nd. What had
24 you heard that made you report that email?

25 A. The latest report at this time in June was that the

1 property -- they were actually -- the sell was being put on
2 hold, that they had to work out issues with the McCracken's
3 house and also the direction that Lions Club Road goes
4 through those properties and all the way to the lake, that
5 Mr. Verner had -- and I should be receiving a letter from
6 Mr. Verner.

7 Q. Did you later get that letter?

8 A. I did get that letter.

9 Q. Excuse me. I'm trying to find it. This is exhibit 16,
10 which is a letter to Mr. Boone. Do you have a copy of your
11 letter from Mr. Verner?

12 A. Unfortunately, I do not. I was very disgruntled with
13 -- with how things were handled and proceeded to put that
14 in a file that was unretrievable.

15 Q. Threw it away?

16 A. Threw it away.

17 Q. Okay. But the contents of this letter, 16, identical
18 as far as what --

19 A. Except that my --

20 Q. Your name was at the top?

21 A. Correct. My name was at the top.

22 Q. And when you did that, then you, at that point, were at
23 a loss at what to do?

24 A. At a loss, yes. At the same time, I still maintained
25 hope that at some point I would actually hear from the Lions

1 Club and handle things in the way that I thought it had been
2 presented.

3 Q. And did they explain themselves or --

4 A. I received no further explanation, letters or
5 conversations to that effect.

6 Q. Here's exhibit 18, to Mr. Rice from you, November 16,
7 2017. What did you see in there that made you write that?

8 A. I wrote him just to clarify, once again, that I had not
9 heard anything else from the Lions Club itself, but it was
10 very clear that survey work had been done down on the
11 properties. It was also my understanding at that point that
12 they were proceeding with the sell of the property to Mr.
13 Amick for 300,000.

14 Q. Now, you hadn't -- you hadn't gotten any written
15 confirmation, you just heard this through --

16 A. Yes. That was heard. That was not a written
17 confirmation. In a conversation that I had with a present
18 Lion member, it was something I had heard.

19 THE COURT: And you're reading from the exhibit number
20 at the top, is that 18?

21 THE WITNESS: Eighteen.

22 MR. POPE: Eighteen.

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you.

25 Q. And that was the first word, even though it wasn't

1 official, you had heard that they were going to sell it to
2 Ray Amick for \$300,000?

3 A. Correct.

4 Q. I take it you don't know anything about what the board
5 -- what Mr. Amick knew or what the board was told when he
6 was present about the claims by the Rices. You don't know
7 anything of your own knowledge of that, do you?

8 A. No, sir. Through this process? No, sir.

9 Q. Did you know at some later date that the Rices had
10 offered 325,000?

11 A. At a later date, I did understand that they had---

12 Q. Right. That would have been 2018---

13 A. ---325.

14 Q. ---or late '17 or do you know?

15 A. I cannot confirm exactly when. I know we had -- that
16 was something I'd learned, yes, but I can't tell you exactly
17 when.

18 Q. Did Mr. Rice expressed his concern about not getting
19 answers when he was writing the club?

20 A. He was frustrated that their communication was not
21 better.

22 Q. Now, he testified earlier about his having had no
23 discussions with the Lions Club about his bid or his offer.
24 Did you have any discussions with Mr. Crocker or Mr. Simpson
25 about upping your bid?

1 A. About upping my bid?

2 Q. Uh-huh.

3 A. The discussion that I recall was one that I said I was
4 not interested in getting in a bidding war. Not that I
5 could not, but I was not interested in getting into a
6 bidding war. That was not my goal.

7 Q. And as far as you know, you hadn't -- you have had no
8 confirmation that that kind of conversation ever took place
9 with Mr. Rice?

10 A. I have no idea of that.

11 MR. POPE: One second.

12 Q. Are you aware of the Rice's plans to enhance the
13 lifestyle if their bid had been honored or if they got the
14 high bid?

15 A. I was aware that they had planned on putting it in a
16 conservative easement and putting up a nice outdoor area
17 that people could enjoy. So, yes, I was aware that that was
18 their plan.

19 Q. And that would benefit all the --

20 A. It would benefit everyone that was, I would say the
21 Lions Club property, those properties inside the gate. Yes

22 MR. POPE: Thank you.

23 CROSS-EXAMINATION

24 CLAUDE HUTCHINSON SCHUMPERT BY MR. KOUTRAKOS:

25 Q. Good afternoon, Mr. Schumpert. I'm going to try to

1 make this quick. You sued my client. Correct?

2 A. Correct.

3 Q. And you claimed that Plaintiffs' Exhibit Number 6 and

4 your response to Plaintiffs' Exhibit Number 6 formed a

5 contract. Correct?

6 A. Could I be refreshed on 6, 'cause I'm not --

7 Q. Yeah. Plaintiffs' 6 is --

8 A. Is that --

9 (Whereupon, Mr. Koutrakos passed the

10 A. Okay. That's fine.

11 Q. It's this letter. Do you have a notebook right there,

12 sir?

13 A. This one?

14 Q. Yeah. If you could --

15 A. I'll be glad to.

16 Q. If you flip through that and all the exhibits are

17 tabbed.

18 A. Six?

19 Q. Six? Right? It's this right (displaying document)?

20 A. Well, I haven't compared exactly, but I see --

21 Q. Yes. And you got one addressed to you. Correct?

22 A. I got one addressed to me. Yes, sir.

23 Q. And then you responded to that and then you sued my

24 client and claimed that you had a contract with the Newberry

25 Lions Club. Correct?

1 A. Correct.

2 Q. And we were in this court and this Court granted
3 summary judgment against you and found that there was no
4 contract. Correct?

5 A. That was the judgment of the Court. Yes, sir.

6 Q. And you chose not to appeal. Correct?

7 A. I did not appeal. No, sir. To answer that correctly,
8 I did not appeal. Did I agree with the decision? With all
9 respect due to the Court, sir, I did not.

10 Q. You had all the opportunity in the world to appeal.
11 Right?

12 A. I had the opportunity to appeal. Yes, sir.

13 Q. And you had a good lawyer. Ward Bradley represented
14 you. Right?

15 A. Yes. Sure did.

16 Q. You also sued my client in another lawsuit involving an
17 easement. Correct?

18 A. That is correct.

19 Q. Mr. Rice is paying your lawyer in that case. Correct?

20 A. I have no idea on that one.

21 Q. You're not paying -- your lawyer in that case is Mr.
22 Pope. Correct?

23 A. Mr. Pope is the lawyer for that. That's right.

24 Q. And you haven't paid Mr. Pope for that case, have you?
25 Correct?

- 1 A. I have not paid him for that.
- 2 Q. So somebody other than you, presumably Joe and Lisa
3 Rice, have been paying for the prosecution of that case.
4 Correct?
- 5 A. I'm not going to answer something that I don't have
6 knowledge of, sir.
- 7 Q. Okay.
- 8 A. 'Cause I don't know who's paying the bills.
- 9 Q. You have no clue. So of all people in the world, it's
10 probably no Joe and Lisa Rice.
- 11 A. I'm not going to answer when I don't have confirmation.
- 12 Q. Did Joe and/or Lisa Rice fund your litigation against
13 my client?
- 14 A. They did not.
- 15 Q. This -- did they reimburse you for anything?
- 16 A. They did not. That was over -- to the tune of over
17 \$25,000 out of our pocket. We paid personally and have not
18 been reimbursed.
- 19 Q. Have you asked to be reimbursed?
- 20 A. I have not and will not.
- 21 Q. When was the first time -- let me back up. Joe Rice,
22 in an email or otherwise, never communicated to you and
23 said, hey, I have a binding contract with the Lions Club.
24 Correct?
- 25 A. We didn't have a discussion to that effect. No, sir.

1 Q. In fact, if you look at Defendant's Exhibit Number 2,
2 which is not in the notebook, but is right there. Do you
3 see that?

4 A. Yes, sir.

5 Q. In Defendant's Exhibit Number 2, Mr. Rice is sending
6 you an email on February 15, 2018. Correct?

7 A. Yes, sir.

8 Q. And you were in the court here, you heard his
9 testimony, you're familiar with this email, but basically
10 Mr. Rice was looking for a plaintiff, correct, to file a
11 lawsuit against the Lions Club? Isn't that true?

12 A. Specifically on this, he was looking for someone, who I
13 don't remember, that would handle what he referenced in
14 there as far the breach of the --

15 Q. And you responded and said, basically, just summing up
16 what you said in that email, that you couldn't find a him,
17 there's no body available?

18 A. I did not ask him -- I didn't say if there was anybody
19 available. No, sir. I simply made reference of the Lions
20 Club members that I was familiar with. I did not go out and
21 search actively for a member to continue what he was asking.

22 Q. Right. You weren't able to help?

23 A. I didn't know of anyone that I could approach about
24 that.

25 Q. Right. At that point in time, prior to February 15,

1 2018, did Joe Rice -- Joe Rice never told you, Listen, Mr.
2 Schumpert, I have a contract with the Lions Club and I'm
3 going to specifically enforce that contract? That was never
4 discussed. Correct?

5 A. That was not a discussions Mr. Rice had with me. No,
6 sir.

7 Q. In February of 2018, you learned that the Newberry
8 Lions Club had agreed to sell the property to Mr. Amick and
9 had signed the contract. Correct?

10 A. My first knowledge about what I understood at that time
11 of year when that came about, was when there were "No
12 Trespassing" signs put up on the road.

13 Q. You had an inside source in the Newberry Lions Club
14 that was feeding you information. Correct?

15 A. That would be incorrect.

16 Q. Okay. How were you -- you were supplying information
17 to Joe Rice and it was through a source that knew somebody
18 within the Newberry Lions Club. Correct?

19 A. I don't know of their relationships and what that
20 connection would have been, so I cannot confirm that there
21 was a Lion or this person had a connection with Lions. No,
22 sir.

23 Q. You want Joe Rice to win this litigation, because he's
24 promised you and promised neighbors something that would
25 benefit you. Correct? You know, the conservation easement

1 and everybody could use Joe Rice's property. Correct?

2 A. Joe Rice did not make a promise to me.

3 Q. You --

4 A. Joe Rice -- let me finish, please.

5 Q. Yes.

6 A. Joe Rice said what his plans would be. That's much
7 different than somebody promised me a benefit. He has
8 actually interested in the same thing I'm interested, in
9 that the property where the clubhouse is, which is the term
10 I use for it, is something that can be used by all the
11 landowners down there on a perpetual basis. That was the
12 goal that I had that he shared, maybe different ways to
13 approach that, but we both had the same goal of wanting to
14 continue with something that everyone down there, in my
15 lifetime, especially growing up and spending my summers, was
16 able to enjoy.

17 Q. So you want -- you have a preference -- you prefer Mr.
18 Rice owning the property over Mr. Amick owning the property.
19 Correct?

20 A. If the property were used for the same intention I
21 would have, I'd love for anyone to have it, but that
22 property is no longer used in that manner. Instead, we
23 can't even cross a property or a road without being told
24 we're trespassing.

25 Q. If you had to pick somebody to win this lawsuit, you

1 would pick Joe Rice over Mr. Amick. Correct? Simple
2 question.

3 A. For his goal and how to use it?

4 Q. Yes. Yeah. In other words, you would prefer that Joe
5 Rice owned the Newberry Lions Club property over Mr. Amick.
6 Correct? Simple question.

7 A. From what I've experienced in the last four years with
8 Mr. Amick down there, that would be yes.

9 Q. Were you ever informed of when a closing -- when Mr.
10 Amick's closing was going to take place?

11 A. No, sir.

12 MR. KOUTRAKOS: I have no further questions. Thank
13 you.

14 THE COURT: Yes, sir, Mr. Price.

15 MR. PRICE: I have no questions of Dr. Schumpert.

16 THE COURT: Okay. Any --

17 MR. POPE: Your Honor, I was going to say I forgot to
18 introduce his wife. Is this your wife, Missy Schumpert,
19 here?

20 THE WITNESS: That is my wife, Missy Schumpert, my
21 better half for sure.

22 MR. POPE: That's it.

23 THE COURT: That's your cross -- I mean, that's your
24 redirect?

25 MR. KOUTRAKOS: Your Honor, it's outside the scope.

1 It's too late. Waited way too long for that.

2 THE COURT: Thank you, sir. You may step down. Watch
3 your step as you're stepping down.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you. Lawyers approach a moment.

6 (Whereupon, a bench conference was held off the record,
7 and court was adjourned for the day at 4:42 P.M. and
8 reconvened on June 1st at 9:36 A.M.)

9 (END OF VOLUME I)

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STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMONS PLEAS
CASE NO.: 2018-CP-36-00089

LISA SUMMER RICE and)
JOSEPH F. RICE,)
)
Plaintiffs,)
)
v.)
)
NEWBERRY LIONS CLUB and)
C. RAY AMICK,)
)
Defendants.)
_____)

TRANSCRIPT OF RECORD
(Volume II of II)

June 1, 2022
Spartanburg, South Carolina

BEFORE:

The Honorable Mark Hayes, Judge.

A P P E A R A N C E S:

Mr. Thomas H. Pope, III
Attorney at Law
Mr. Kyle Parker (via virtual courtroom)
Attorneys for the Plaintiffs
Newberry, South Carolina

Mr. Samuel M. Price, Junior
Attorney at Law
Attorney for the Defendant Newberry Lions Club
Newberry, South Carolina

Mr. Harry A. Dixon
Attorney at Law
Mr. Demetri Koutrakos
Attorneys for the Defendant C. Ray Amick
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: All right. We'll go back on the record o
2 the Rice versus Newberry matter. I know we got a lot of
3 stuff to do today and we only have one day scheduled. Do
4 not think that time is -- you need to press, not present
5 your case based on the amount of time. If we need to run
6 over, we'll run over. We just can't do it tomorrow, 'cause
7 tomorrow I've got a class action settlement that I've got to
8 for, lawyers are already scheduled, they're flying in from
9 all across the country and so we would have to do it at
10 another time, but I want y'all to take your time and present
11 your case the way you want it to be presented. Don't rush
12 just because we only have one day. We'll get it worked out
13 somehow, but with that being said, anything before we start
14 with the receiving of the testimony?

15 MR. PRICE: No, Your Honor.

16 MR. POPE: Your Honor, I wanted to move the admission
17 of some exhibits that were identified, 34 and 38. I think
18 the court reporter noted they weren't in evidence and I --

19 THE COURT: I'm sorry. I didn't hear you .

20 MR. POPE: Thirty-four and 38.

21 THE COURT: Okay.

22 MR. KOUTRAKOS: No objections, Your Honor.

23 THE COURT: Thirty-four was the aerial survey or that's
24 what I call aerial survey, 34 and 38.

25 MR. POPE: That was Claude Schumpert's email of June

1 2nd.

2 THE COURT: Is the June 2nd email. Yeah; okay.

3 Without objection it will be admitted.

4 MR. POPE: The other thing, Your Honor, is we talked
5 about it briefly at the status conference. We have also got
6 exhibits 44 and 45. We understand that you're not going to
7 admit them, but we're proffering those. Those are both
8 affidavits of Steven Smith (ph) and the supplemental
9 affidavit of Steven Smith.

10 MR. PRICE: Your Honor, we have an objection to, you
11 know, the grounds. It's expert testimony and most proffered
12 testimony is oral testimony and this is just affidavit being
13 submitted into the record and I think it's -- even on top of
14 the fact they're inadmissible because experts giving opinion
15 on the law, the fact that it's in an affidavit format is no
16 reason for it to be included. I haven't had a chance to
17 cross-examine an affidavit.

18 MR. POPE: It's just proffer, Your Honor. We
19 understand it's not admitted.

20 THE COURT: All right. Yeah. We had had -- in my
21 prior ruling indicate I would not accept as part of evidence
22 expert testimony of witnesses that relate to the law.
23 That's what y'all are for. The lawyers can educate me as to
24 which law you feel I need to be aware of and apply to the
25 facts of the case and so I -- I don't think I've ever had a

1 case where I've allowed a lawyer to testify to me as to what
2 the law is. I've always looked at the lawyers, so I will --
3 you're right. I will not admit them, but I will -- you can
4 pro-offer them, they're part of the record. I have not
5 reviewed them. Okay.

6 MR. PRICE: Thank you, Your Honor.

7 MR. POPE: The next thing we have is the deposition of
8 Mr. Amick. We're going to publish it, two depositions.

9 THE COURT: Give me one second. I've got to plug my
10 mic in. You say there are two?

11 MR. POPE: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. POPE: The one in the Rice case taken November 30,
14 2018, that's the first one, and the other one is taken in
15 the Schumpert case, June 17, 2020.

16 THE COURT: Give me just a second. I've got the 17th,
17 2020. Let me look for the other one. Okay. I now have the
18 November the 30th, 2018. You going to start with that one
19 or the other one?

20 MR. POPE: We're going to do the 2018 first.

21 THE COURT: Okay.

22 MR. POPE: This is from the deposition of Mr. Amick,
23 November 30, 2018.

24 (Whereupon, excerpts from the deposition transcript of
25 C. Ray Amick were published to the Court.)

1 MR. KOUTRAKOS: Your Honor, at this point we objected
2 and we want to maintain that objection. We don't believe --
3 we believe that the bylaws simply don't state what he's
4 paraphrasing and that's why I objected then and that's why
5 we want to maintain our objection now, Your Honor.

6 THE COURT: Okay. I'll let the witness answer again.
7 Go ahead.

8 (Publication continued)

9 MR. POPE: That's all of that deposition, Your Honor.
10 We'll now publish portions of Mr. Ray Amick's deposition
11 taken in the Schumpert case.

12 MR. KOUTRAKOS: Your Honor, as far as I know, there's
13 more designated -- it's a counter designation, but it's on
14 page --

15 MR. POPE: Excuse me. What page?

16 MR. KOUTRAKOS: Sixty-seven and I think it's a short,
17 few lines on page 67.

18 MR. POPE: Okay. Sorry. Line 5 on page 67.

19 (Publication continued)

20 MR. POPE: Now we'll go the Amick deposition in
21 Schumpert, June 17, 2020.

22 (Whereupon, excerpts from the deposition transcript
23 of C. Ray Amick, dated 6/17/2020 published to the Court.)

24 MR. KOUTRAKOS: Your Honor, I object again and want to
25 maintain the objection. It calls for a legal conclusion.

1 THE COURT: All right. I'll allow it. Go ahead.

2 (Publication continued)

3 MR. KOUTRAKOS: Your Honor, I have the same objection.

4 THE COURT: Okay. I'm going to allow the witness to
5 respond.

6 (Publication continued)

7 MR. KOUTRAKOS: Your Honor, we -- I'm sorry. We had an
8 objection here. This is -- it mischaracterizes the letter
9 in question. That's the basis of our objection and there
10 are a lot of objection here where Ward Bradley, in our
11 opinion, was not a counsel in this, was mischaracterizing
12 the letter, so I objected to those.

13 THE COURT: Okay. I'll let the witness respond to the
14 answer. Okay. You're noted.

15 (Publication continued)

16 MR. KOUTRAKOS: Your Honor, I have an objection here.
17 It calls for a legal conclusion.

18 THE COURT: All right. You're noted for the objection.
19 I'll let the witness go ahead and read the response.

20 (Publication continued)

21 MR. KOUTRAKOS: Your Honor, where exactly are we?

22 THE COURT: I'm reading lines 10 to 18, page 26.

23 MR. KOUTRAKOS: Okay.

24 MR. POPE: I'll go back.

25 (Publication continued)

1 MR. KOUTRAKOS: Your Honor, I objected here again. It
2 mischaracterizes the letter.

3 THE COURT: Okay. You're noted. I'll let the witness
4 respond.

5 (Publication continued)

6 MR. KOUTRAKOS: Your Honor, objection here again,
7 mischaracterizing the letter and it's giving a legal term.
8 The word "offer" is in the question. We made an objection
9 there; we maintain it here today.

10 THE COURT: Okay. I'll let the witness read the
11 response. Noted.

12 MR. POPE: I'll read the question again.

13 (Publication continued)

14 MR. KOUTRAKOS: Your Honor, objection here and
15 maintaining the objection, calls for a legal conclusion
16 using the words "offer" and "acceptance."

17 THE COURT: Okay. You're noted on the record for your
18 objection. I'll let the witness read the response.

19 (Publication continued)

20 MR. KOUTRAKOS: Your Honor, here it's not an objection,
21 but evidence of insurance is inadmissible in any type of
22 case and so I object to any evidence -- I know it's not a
23 jury trial, but any evidence of insurance involved in this
24 case, I object to, again, to that question.

25 THE COURT: Okay. I'm not sure I agree with your broad

1 statement that insurance is never allowed into -- admissible
2 at trial, but I don't believe insurance is relevant to this
3 case. I haven't heard anything yet.

4 MR. KOUTRAKOS: Okay.

5 THE COURT: I'm going to let the witness respond.

6 MR. KOUTRAKOS: I understand.

7 THE COURT: Yeah. Okay.

8 (Publication continued)

9 MR. KOUTRAKOS: Your Honor, here I want to maintain the
10 objection about insurance.

11 THE COURT: Okay. Is there a particular reason that,
12 you know, that Mr. Bradley was asking these questions?

13 MR. POPE: I think it gets to the point that there was
14 a certification that the trustees knew nothing about any
15 claims against --

16 MR. KOUTRAKOS: And we have no objection to the
17 certification, as a document typical in real estate closings
18 and it's actually on his exhibit list and we have no problem
19 to the introduction of that document, but the introduction
20 or mention of any party being insured, we object to, but
21 that one document that Mr. Pope just mentioned, we have no
22 objection to that document.

23 THE COURT: Okay. I'll receive the testimony for that
24 limited purpose then. Okay.

25 MR. KOUTRAKOS: Okay.

1 THE COURT: Yes, sir. Go ahead.

2 (Publication continued)

3 MR. KOUTRAKOS: Your Honor, one of the documents that
4 he just referenced is Plaintiffs' 43, the Affidavit of
5 Indemnity, and that was -- questions were being discussed on
6 that purpose, for the purpose of that deposition. I think
7 Plaintiffs' 43, which I assume he's going to move into
8 evidence, but Plaintiffs' 43 should be moved into evidence
9 for that deposition to make sense.

10 THE COURT: Any objection to Plaintiffs' 43 coming into
11 evidence?

12 MR. POPE: No, Your Honor.

13 THE COURT: Okay; all right. You want it marked as
14 your exhibit then?

15 MR. POPE: Yes, sir. That's fine. And that concludes
16 Plaintiffs' case.

17 THE COURT: All right. You going to do motions now?

18 MR. KOUTRAKOS: Yes, Your Honor.

19 THE COURT: Okay. Let's take five minutes and we'll
20 come right back.

21 MR. KOUTRAKOS: Yes, Your Honor. Thank you.

22 (Whereupon, a brief recess was observed from 10:12 A.M.
23 until 10:25 A.M.)

24 THE COURT: Yes, sir.

25 MR. KOUTRAKOS: Your Honor, may it please the Court.

1 At this point Defendant Amick is moving for an
2 involuntary nonsuit pursuant to Rule 41(b). I think
3 counsel and perhaps Your Honor are used to a directed
4 verdict in a jury trial. I had to re-familiarize myself
5 with the involuntary nonsuit rule and so just for the
6 Court's edification, I want to read the parts of that rule,
7 which are different than directed verdict. As Your Honor
8 knows, directed verdict state in a jury trial is akin to
9 summary judgment and you view the evidence in the light most
10 favorable to the non-moving party. Here it's different.

11 Under 43(b), it says, After the plaintiff in an action,
12 tried by the Court without a jury, has completed the
13 presentation of his evidence, the defendant, without waiving
14 his right to offer evidence in the event the motion is not
15 granted, may move for dismissal on the ground that upon the
16 facts and the law, the plaintiff has shown no right to
17 relief.

18 The Court, as trier of the fact, may then determine
19 them and render judgment against the plaintiff or may
20 decline to render any judgment until the close of all
21 evidence. If the Court renders judgment on the merits
22 against the plaintiff, the Court shall make finding as
23 provided in Rule 52(a), which is the findings for, you know,
24 a non-jury trial. So the standard is much different.

25 The question here is how plaintiffs presented evidence

1 to show that they're entitled to relief, right, and there's
2 no -- and Your Honor can make those findings. You're not
3 bound by summary judgment standard or a directed verdict
4 standard. This is much different than most folks are
5 accustomed to, so I want to start kind of the inverse.

6 You've heard before, numerous times, about whether a
7 contract exists, offer, acceptance and all those things, but
8 I want to start a little bit differently. I think you've
9 heard evidence, and it's at the tail end of plaintiffs'
10 case, that clearly show that my client is a bona fide
11 purchaser for value without notice and so what are the
12 elements of that; that my client, Mr. Amick, actually paid
13 in full the purchase money. He purchased and acquired legal
14 title or the best right to it and he purchased bona fide, in
15 good faith and with integrity of deal and without notice of
16 leave or defect and the most recent case are following -- I
17 don't want to say similar case, but the case that I often
18 cite is Spence v. Spence, a 2006 Supreme Court case. And so
19 what evidence do we have to meet the first element and this
20 is evidence that plaintiff put in the record and the
21 evidence of that is Plaintiffs' Exhibit 20, is the deed, the
22 deed on its face and the affidavit of consideration states
23 that \$300,000 was paid. So that he clearly paid in full the
24 purchase money, so element one through evidence the
25 plaintiff has submitted has been met.

1 Element two, Mr. Amick purchased and acquired legal
2 title or the best right to it. Again, exhibit number 20 is
3 the deed from the Newberry Lions Club to Mr. Amick, so he
4 acquired legal title. On the day that deed was signed and
5 the closing took place, he acquired legal title.

6 And the third element is he purchased bona fide, i.e.,
7 in good faith and with integrity of dealing without notice
8 of leave or defect. And so you just heard, Your Honor,
9 testimony on this particular issue and it is from -- it's
10 from Mr. Amick's deposition in the Rice case. It's like,
11 Are you aware that a lis pendens was filed before then?

12 Answer: No, I wasn't. Are you aware now that it happened?

13 Answer: It wasn't filed through me. I don't know who it
14 was filed to. Question: Filed in the Clerk of Court's
15 office for Newberry County, and the -- Mr. Amick asked what
16 time. Questioner then asked, It was filed before this. I
17 want show you exhibit 27 from the Lions Club depositions and
18 the recording is on the side. It says, recorded,
19 electronically, filed February 21 at 1:48 P.M., so it was
20 filed the day before, but the property was closed by that
21 time and so we have in the record is you have the deed,
22 signed by the Newberry Lions Club on the same day and that's
23 exhibit -- that is exhibit 20. It's signed by the three
24 trustees -- excuse me -- of the Lions Club. Excuse me.
25 It's not exhibit 20. I apologize, Your Honor. That is the

1 wrong deed. It is exhibit 29. It is the deed from the
2 Lions Club signed by Mr. Ringer, Mr. Simpson and Mr.
3 Whitaker and it's signed February 21, 2018. Ray Amick
4 testified that, yeah, the closing was done by the time the
5 lis pendens was recorded and, furthermore, Mr. Amick, in his
6 deposition, presented by the plaintiff was asked, Did you
7 have any knowledge of anybody making a claim? Did you have
8 any knowledge of any other party making a claim that they
9 had a contract to the property; answer was no by Mr. Amick.

10 So what you have in the record, and there's nothing to
11 the contrary, and I'll talk about the evidence that
12 plaintiff will submit -- will claim is to the contrary. Mr.
13 Amick had no notice or knowledge that somebody had a
14 contract. The closing took place, it was completed, the
15 deed delivered, the funds paid prior to the lis pendens
16 being filed and you have no notice of any adverse claim or
17 interest and so what you'll hear plaintiff say, well, no,
18 Jim, you're wrong, because the deed was recorded the next
19 day. The plaintiff will argue that the title transfers when
20 the deed is recorded, but that is simply wrong. Our case
21 law says deeds between parties effectively transfer title
22 whether they are recorded or not. There's the Smith v.
23 Hawkins case from 1970, if the conten- -- it says, quote,
24 "If the contention that the deeds were witnessed by a
25 disqualified person and the probates were defective were

1 sustained, it would simply mean that the deeds were without
2 witnesses, which would not destroy their validity and
3 effectiveness to transfer title in this case. They were
4 good as between the parties."

5 There's a 1883 case, McNamee versus Huckabee, 20 S.C.
6 190, quote, "That a deed of land never recorded was not
7 thereby absolutely void, but as between the parties was
8 still good," and so that is the South Carolina case law.

9 We've gone and looked at the secondary sources and it's
10 clear, in my understanding, having practiced real -- you
11 know, I've been involved in real estate litigation my whole
12 career, it's not when the deed is recorded, it's when the
13 deed is signed, when the deed is signed and delivered. It's
14 --

15 THE COURT: For what purposes when the deed is signed?
16 That property is transferred?

17 MR. KOUTRAKOS: As --

18 THE COURT: That the world is on notice?

19 MR. KOUTRAKOS: No. As between the parties, the
20 property's transferred. If you want to put a third party on
21 notice, you go ahead and record it and that's the purpose of
22 recording and so we cited, I think, in our pretrial brief
23 Thompson on Real Property, it says, quote, "Despite the
24 literal lay (ph) of the various state statutes, the
25 recording of a deed is not essential to its validity. In

1 other words, the unrecorded deed is binding upon the
2 parties.

3 Now, Your Honor, in some states, for example, in North
4 Carolina, North Carolina is a rate state, which means first
5 to the courthouse always wins. So North Carolina would be
6 different and you -- I suspect you'll hear from the
7 plaintiff that in order for the conveyance to be valid, it
8 has to be recorded. Well, true in North Carolina that would
9 be the case. We don't have that in our state. That's not
10 the law in this state.

11 The transaction between the Newberry Lions Club and Mr.
12 Amick was effective when the money was paid and the deed was
13 signed, which Mr. Amick testified happened before the lis
14 pendens. So Mr. Amick completed his purchase of the
15 property without any actual knowledge or notice that the
16 Rices were claiming a right to the property.

17 So let's focus on the knowledge issue. I read parts of
18 his deposition. There was affidavit at closing, which was
19 submitted into evidence as part of plaintiffs' case, this
20 Owner's Affidavit and Indemnity, which is a standard,
21 typical document that you will see and it's exhibit 43,
22 paragraph two, and mind you, this was signed by the three
23 trustees, Lee Ringer, Pete Simpson, Doggett Whitaker, on
24 February 21 and in paragraph two they state, The Lions Club
25 has been in peaceful -- peaceable and undisturbed possession

1 of the premises known as parcel A Lions Club Road in the
2
3 County of Newberry, State of South Carolina since February,
4 1933 and as to the best of deponent's knowledge, title to
5 the said premises has never been disputed or questioned.

6 Next paragraph, Deponents further state that no person,
7 corporation or other entity has any valid contract to
8 purchase any or all said premises or holds any unrecorded
9 deeds to said property, nor does it know of any facts or
10 other reason by and through which possession or title to
11 said premises might be questioned or any claim to said
12 premises which might be made adverse to the present title to
13 the property.

14 In paragraph six, -- this is under oath, mind you, Your
15 Honor, signed before the notary. In paragraph six, the
16 Lions Club says, Deponents further say that it, the entity,
17 does not have any judgments, pending suits, court actions,
18 lis pendens, defaulted surety bonds, executions or
19 attachments against deponent in or from any state or federal
20 court has not been in bankruptcy in the past ten years.

21 This document was signed by the Newberry Lions Club.
22 It comports with what Mr. Amick knew. Nobody was out there
23 claiming that they had a contract to the property. So with
24 that said, what are plaintiffs going to rely on? Plaintiffs
25 are going to say, okay, Your Honor, they're going to say, Go

1 -- go to Plaintiffs' Exhibit Number 15. This was -- no
2 evidence that Mr. Amick saw exhibit number 15. This is --
3 this is the letter from Sid Boone to Gene Crocker, dated May
4 15, 2017.

5 In that letter, Mr. Boone, a lawyer from McNair Law
6 Firm, who I assume is competent and capable and understands
7 black-letter contract law, decides to put in his subject
8 matter section, which wasn't in the previous letter,
9 "Request for bid prior to advertising property for sale,"
10 and then he uses the word "bid offer" three times to
11 describe -- to describe the prior communication made by the
12 McNair Law Firm to the Lions Club. So, again, there's no
13 evidence my client has ever seen exhibit number 15.

14 So let's go to exhibit number 19. Exhibit number 19 is
15 a November 21, 2017 letter and they say -- they're going
16 to argue this letter is what puts my client of notice that
17 the Rices were somehow -- had a claim to the property and,
18 again, it's -- there's no mention of, hey, we're going to
19 sue you, hey, we have a contact on the piece of property.

20 My client was at -- apparently there's evidence in the
21 minutes that he was at this meeting when this was read. He
22 doesn't remember that taking place, but even if he was there
23 and even if he heard everything and even if he understood
24 everything in this letter, looking at this letter alone,
25 it's clear there's no claim being made to title of the

1 property or they have a contract. Again, the word "bid
2 offer" is used, We represent Lisa Summer Rice and her
3 husband, who have submitted the successful bid offer of 325,
4 and then they go and acknowledge that Mr. Verner said that
5 the property would not be sold of the inability to provide
6 marketable title due to encroachments. That's the second to
7 last paragraph, last line and the last paragraph, The Rices
8 are ready, willing and able to follow through with their
9 successful bid and/or participate in any further bid
10 procedures that is properly noticed for sale of this
11 property. So they say, Hey, guys, we know you canceled the
12 sale. If you want to sell it again on this bid procedure,
13 which doesn't exist in the first place, we want to bid
14 again. They want to participate again in a possible future
15 sale of the property. This is not a threat of litigation.
16 This is not a threat of litigation. This is not a defect
17 that encumbers title and on top of it, by the time we get to
18 closing, the Newberry Lions Club is swearing under oath to
19 the closing attorney, to everybody, that there are no other
20 contracts on the piece of property. So with that said, on
21 the facts that the plaintiff submitted, the plaintiffs
22 submitted themselves, it shows that my client is a bona fide
23 purchaser for value, without notice of the Rices claim. The
24 date of recording of the deed, as a matter of law, is
25 immaterial.

1 In fact, Your Honor, let me take it a step further, if
2 you look at the contract, the contract that was entered into
3 which is exhibit 23, that is the written contract between
4 Mr. Amick and the Newberry Lions Club, dated February 14th,
5 2018. That's the date it was last signed. My client had
6 equitable title to the property at that point in time, as a
7 vendee under the contract.

8 So contract was executed before the lis pendens,
9 closing took place before the lis pendens, money was paid
10 before the lis pendens, title was transferred before the lis
11 pendens.

12 On the same day of the closing, members of the Newberry
13 Lions Club, who would know better than anybody whether there
14 was any other contract, swore under oath there was no
15 contract. My client, in his testimony presented by the
16 plaintiff themselves, said he had no knowledge of anybody
17 making a claim. As a matter of law, through the evidence
18 presented by the plaintiffs, it establishes that my client
19 is a bona fide purchaser for value without notice.

20 The next point on this motion, Your Honor, is the
21 document laches. Right?

22 THE COURT: We're still under your Rule 41?

23 MR. KOUTRAKOS: Yes; yes; yes; yes. My first point was
24 bona fide purchaser for value. My second point I want to
25 talk about laches.

1 Your Honor is familiar with the laches -- the laches
2 elements and, you know, basically, we would have to show
3 delay, unreasonable and prejudice. Right? And so the
4 plaintiffs, under their theory of the case, which we think
5 is totally wrong and you've already considered this in the
6 other case, in the Schumpert case, and the proceeding in
7 this case, even assuming they have a contract, which we
8 don't -- we'll talk about that more in a second, it would
9 have been formed in early 2017. They sat around. Mr.
10 Schumpert was feeding Mr. Rice all this information. Hey,
11 Mr. Verner said, they got to fix the encroachments. I'm
12 going to sit by and wait to see where the encroachments are
13 being fixed.

14 He finds out in November that they've agreed to sell
15 the property to Mr. Rice -- excuse me -- to Mr. Amick; sits
16 back, does nothing. He does nothing. He waits and the
17 timing is very curious, that the lis pendens notice, the
18 lawsuit was filed, 'cause normally when you file a lawsuit
19 that effects title to real estate, you draft a lis pendens,
20 you draft a summons, a complaint and a lis pendens. Here
21 the summons and complaint were filed. Somebody said, hmm,
22 there was no lis pendens filed initially. I suspect
23 somebody found out the closing was taking place and he filed
24 the lis pendens and I suspect that that's what happened, but
25 they waited too long. It's a year. They waited a year to

1 file any litigation. If they thought they had a contract on
2 the piece of property and it's so plain as day, they should
3 have immediately filed an action for specific performance.
4 Instead, they sat by for a year. They waited for the
5 encroachments to be fixed. They waited for my client to
6 enter into a formal contract. The only formal contract
7 you'll see is my client's contract with the Lions Club,
8 exhibit number 23. That delay is unreasonable. Was my
9 client prejudiced? Of course. He's stuck in this
10 litigation. He's not been able to use the property. He
11 can't make improvements to the property 'cause he doesn't
12 know what's going to happen. He's been stuck in this
13 litigation for a long time. Had they filed a lawsuit early
14 on, maybe that lawsuit would have been resolved, maybe that
15 lawsuit would have been dismissed. My client may -- you
16 know, perhaps closing wouldn't have taken place. If the
17 Rices acted upon their claims earlier, we wouldn't be here.
18 My client's prejudiced. As a matter of law, through
19 evidence presented by the plaintiffs themselves, we believe
20 laches have established.

21 The next thing I want to talk about, Your Honor, is I
22 want to go into -- and you've heard this before and I just
23 want to get this on the record, is specific performance, you
24 know, the contract issue. Right?

25 Your Honor knows in order to obtain the remedy of

1 specific performance, the first element and perhaps the most
2 important element is there is clear evidence of a valid
3 agreement. So as Your Honor knows, for a communication to
4 count as an offer, it must contain definite terms and make
5 clear that an acceptance is invited and will complete the
6 bargain.

7 The Lions Club letter, when you look at the evidence
8 and you look at the law, is not an offer to sell the
9 property. A reasonable recipient would understand that
10 letter to be an invitation to negotiate or to submit an
11 offer.

12 It's basically, Your Honor, and I've argued this to you
13 before, that that letter is, in essence, a for sale sign
14 stuck in the middle of the yard. That's what that letter
15 was. It was, hey, show us if you're interested in the
16 property, and I'll talk about it more in a second. That's
17 exactly -- that's exactly what the letter says. And so
18 there are five main reasons why that letter is not an offer
19 and, again, I'm going to fly through these, Your Honor,
20 'cause you've considered this before.

21 The first is the letter discloses it's gone to multiple
22 recipients. You know, those individuals whose property
23 adjoins the Lions Club property. Right? That's what the
24 letter says. It would be unreasonable for a recipient of
25 this letter to conclude that the Lions Club was going to

1 subject themselves to multiple acceptances. Right? If it's
2 an offer written to all these different people, all these
3 different people could accept. So it would unreasonable to
4 think that.

5 The letter -- reason number 2 is the letter explicitly
6 cautions the recipients that, quote, "First consideration
7 will be given to current members of the Newberry Lions
8 Club." It's in there. It would be unreasonable -- you
9 know, let me back up. By stating members would receive
10 first consideration, the Lions Club, in that letter,
11 indicated that more work would need to be done before
12 concluding a bargain. The Lions Club would have to consider
13 any offers in deciding which offer to accept and a
14 reasonable reader of this letter would know that the -- a
15 member of the Newberry Lions Club would have -- would take
16 precedence.

17 The third reason is the letter does not request an
18 acceptance. It doesn't ask for one. Instead, it asks for
19 expressions of interest. If you have an interest in the
20 property, please let us know right away. It doesn't say if
21 you accept the offer, please let us know. It doesn't ask
22 for an acceptance.

23 And so one of the cases on point, Your Honor, we've
24 talked about it before, is the McLaren v. Hamer (ph) case
25 and I want to read a quote from that. "An offer to

1 constitute a contract must be one which is intended of
2 itself to create legal relations on acceptance and if it is
3 an offer merely to open negotiations, which may ultimately
4 result in a contract, it is not binding," so this is what
5 this said.

6 This letter is not intended to create any legal
7 relations, not asking for an acceptance. It's only ask- --
8 you know, if you want to use their terms, an offer to open
9 up negotiations. It's a for sale sign in the yard.

10 Further, the statements in a letter, We have
11 reluctantly decided to offer the property for sale and this
12 offer is valid until June 1, 2017, would not lead a
13 reasonable person to believe that the Lions Club letter was
14 an offer capable of acceptance. Rather, the June 1st date
15 established a time period within which the adjacent land
16 owners were invited to communicate with the Lions Club if
17 they wished to purchase the property. Although some members
18 were to receive first consideration, the Lions Club
19 indicated it'd be willing to prioritize adjacent land owners
20 over members of the general public.

21 The final reason is this letter -- you know, you've
22 seen in the documents, there's numerous documents where a
23 resolution has to be passed and the lead trustees have to
24 sign. You look at the contract my client executed, the
25 three trustees were authorized to sign it and signed it.

1 There's no such authorization here. This is a letter set
2 out to express interest in the property. And so, as Your
3
4 Honor knows, the statute of frauds, and we talked about this
5 earlier when we filed the motion in limine, says a contract
6 between parties has to be in writing. Right? So you're
7 considering, like you've done before in the Schumpert case
8 and like you've done here before, today, is you look at
9 these two letters and do these letters constitute a
10 contract. So we've argued and we believe it's absol- --
11 quite frankly, Your Honor, we think it's black-letter law.
12 If I was teaching a contract class, I would come up with a
13 more difficult question than this, as to what a contract
14 says.

15 The Lions Club letter is not an offer, but even if it
16 was an offer, right, the next step is is the letter written
17 by a licensed attorney, is it an acceptance. An acceptance
18 must be unequivocal and unconditional and additional
19 consideration, additional conditions operate as a rejection
20 and counter offer. So the letter doesn't purport to be an
21 acceptance at all.

22 You know, Your Honor, it is, you know, four or five
23 sentences and it says -- it uses the word "bid" numerous
24 times and so this is the lawyer from a letter -- excuse me
25 -- this is a letter from a lawyer and you think the lawyer

1 at the McNair Law Firm, of that age and experience, would
2 choose his words wisely. Well, he choosed (sic) to use the
3 word "bid" three times. I have Black's Law Dictionary in my
4 office. I suspect a lot of lawyers do that they probably
5 had from law school; that's where mine's from. So I decided
6 to look what a bid means early on this case. It means, a
7 buyer's offer to pay a specified price for something that
8 may or may not be for sale. So Rices' attorney uses the
9 word "bid" three times, but most importantly, it says, We
10 will need thirty days from notice that the bid was accepted
11 in which to conduct the title search and sell. So it's
12 clearly putting the power of acceptance in the Lions Club.

13 If this would be an acceptance, it would say, I accept
14 your offer. This letter here is saying, hey Lions Club, let
15 us know when our bid is accepted, our offer is accepted. So
16 this is clearly not to the extent the Lions Club letter is
17 an offer. The Rices' response is clearly not an acceptance.

18 They add three conditions, Your Honor. The two main
19 conditions are good title -- the good title condition, which
20 is not mentioned in the -- which is not mentioned in the
21 Lions Club letter and it also says thirty days to close and
22 you will hear the plaintiff say, all that stuff is implied.
23 Well, if you have a contract, if there's actually a legal,
24 binding contract and you don't have a provision about title
25 and you don't have the timing thing, maybe a reasonable

1 time's applied, maybe a good title is applied, but they're
2 -- they are adding this. This is something they've added to
3 the mix. It's not already a contract where we're trying to
4 presume the intent or figure out the intent of the parties.
5 So the Rices are adding the title condition, the time
6 condition and, of course, the price number is a different
7 price term.

8 So for those reasons -- and another reason, Your Honor,
9 and you've heard testimony about this in plaintiffs' case,
10 Joe Rice gave a Power of Attorney to Sid Boone. Lisa Rice,
11 who's not here, never gave a Power of Attorney to Mr. Boone.
12 He said he's a lawyer. Does that, as a matter of law, under
13 the statute of frauds, is that binding? I don't think so.

14 Mr. Boone doesn't say -- doesn't sign -- doesn't
15 mention that he's attorney-in-fact for Joe Rice, doesn't say
16 it. He doesn't sign Jason E. Boone, Junior as attorney-in-
17 fact for Joe Rice, does he? He doesn't. This is a letter
18 from an attorney. Guess what, Your Honor? If the situation
19 was flipped and the Lions Club said, yeah, we have a
20 contract. We want to enforce this letter and the Rices
21 didn't want to close, they'd be arguing, this is a lawyer
22 from a -- this is a letter from a lawyer. Joe Rice didn't
23 sign it, Lisa Rice didn't sign it. How could it possibly
24 bind us. Right? That's what they would say. So this is a
25 contract. There's no document signed in this case, from my

1 recollection, unless I'm missing something, that contains
2 the signatures of either Joe Rice or Lisa Rice. Joe Rice
3 gave a Power of Attorney to Sidney Boone, that's in the
4 record. We don't dispute that. Sidney Boone doesn't
5 mention it. Sydney Boone doesn't say what authority he has
6 to act on behalf of Lisa Rice, doesn't say anything. If
7 43(k) applied here, you couldn't enforce this, but somehow
8 they want us to get away with it in the real -- in the non-
9 legal world.

10 So for those reasons, we don't believe, and Your
11 Honor's held previously that that is not acceptance.
12 Nothing's changed. The evidence you've heard today, there's
13 nothing different that you've heard today. Deposition
14 portions were provided, I don't know if it's voluminous, on
15 summary judgment. Nothing's really -- nothing's really
16 changed. So there being no offer, there can't be a contract.
17 Even if there was an offer, the Rices letter is not accept
18 -- not an acceptance.

19 You've heard a lot about auction, bid, an auction type
20 theory from the plaintiff. Right? And what's clear is that
21 evidence is not there in the writing for certain. The Lions
22 Club letter does not seek bids. It doesn't require payment
23 of earnest money. It just does not describe any process or
24 criteria by which the bid would be evaluation and does not
25 commit to accept any of the offers that might be received.

1 So regardless, I decided to look up some auction law,
2 'cause, quite frankly, I've never really dealt with auction
3 law and so I want to cite to you a case from our Federal
4 District Court, Judge Childs, Simmons v. Danhour. I can
5 give you the LEXIS cite, 2010 U.S. District, LEXIS 112483,
6 Simmons verse Danhour, quote, "A sale by way of auction is
7 the making of a contract in which the bid is the offer and
8 the action of the auctioneer in accepting the bid is the
9 acceptance of an offer which results in the formation of a
10 contract." Right? So you hear this -- we don't believe its
11 credible evidence, but even if it was, bids were being
12 accepted, there was some kind of auction process, the way
13 auctions typically work. It doesn't matter, because the bid
14 is an offer, the auctioneer, that would be the Lions Club,
15 if they accepted the offer, then there would be a contract.
16 So I said, well, maybe Judge Childs was wrong. Who knows?
17 I mean, it's just Judge Childs, you know. She's a great
18 judge and everything. So I decided to go to Corbin on
19 Contracts and so Corbin on Contracts says, quote, "When an
20 auctioneer presents an article for sale at auction and asks
21 for bids, the auctioneer is ordinarily not -- not making an
22 operative offer and creates no power of acceptance." Quote,
23 "The auctioneer is asking for offers. The bids made in
24 response thereto are themselves offers that can be revoked
25 by the bidders prior to an acceptance by the auctioneer.

1 This is true even though the seller or the seller's agent
2 has issued advertisements or made other statements that the
3 article will be sold to the highest bidder or is offered for
4 sale to the highest bidder. Such statements are usually
5 merely preliminary negotiation, not intended and not
6 reasonably understood to be intended to effect legal
7 relations." So and there's more, Corbin on Contracts also
8 says, The seller's advertisement of an auction is not an
9 offer, but a declaration of an intention to hold an auction
10 where bids may be accepted. At the auction, prospective
11 buyers are requested to submit bids and are not empowered to
12 accept an offer to sale. The bid is an offer, not an
13 acceptance. The bidder has requested to state a willingness
14 to pay a definite price, thus stayed the terms of the
15 bargain. This statement makes an offer that would create a
16 power of acceptance to the auctioneer. So even under their
17 theory of the case, it goes to the highest bidder, right,
18 well, they're a bidder as a matter of law. Bid means offer.
19 Under auction law, which is their -- the theory that they're
20 trying to impress on this Court, their bid is in fact an
21 offer.

22 The Lions Club letter, if it was -- even if it says
23 it's going to go out to the highest bidder, which it
24 doesn't, that's not an offer. The bid in response is an
25 offer, leaving the power of acceptance in the Lions Club.

1 So as a matter of law, there's no contract, looking at
2 those two letters alone. Even if you consider this
3 extrinsic evidence about -- which we think is wrong, by the
4 way, we don't believe is true, but even if you say, you
5 know, Mr. Rice believed there was some kind of auction going
6 to the highest bidder, even if that's the case, the law
7 doesn't support there's a contract, 'cause they're making a
8 bid to an auctioneer. The Lions Club would be the
9 auctioneer, right, taking the bid, same concept. Our law
10 states that the bid is an offer leaving the power of
11 acceptance to the Lions Club, which the Lions Club, which
12 Mr. Rice admitted, never heard back from them. You know
13 why? 'Cause they never accepted your offer and they don't
14 have to communicate.

15 One other thing before I forget, Your Honor, I don't
16 want to take too much time, but especially in this market,
17 there are people who make offers all the time. People try
18 to sell property and they'll have, you know, five offers,
19 ten offers, depending on the market. Right? The seller
20 will accept one of those offers and enter into a contract.
21 Right? If there are ten offers, there are nine losers.
22 Because I have knowledge of nine other offers on the
23 property, does that give me knowledge of somebody claiming
24 title to the property? Of course, it doesn't. Do I have an
25 obligation to write them back and say, hey, we don't accept

1 your offer.

2 So if you hear evidence -- everybody knew that the
3 Rices made an offer. Who cares? People make offers on
4 houses all the time and they don't close. The successful --
5 the person who makes a successful offer can close, being
6 free of mind that somebody lost his offer was not selected
7 to purchase the property is not going to come back and sue
8 them.

9 One final thing is here, Your Honor, the equities in
10 this case favor Mr. Amick, you know, specific performance.
11 Even if you find that there is a contract, even if you find
12 there's an offer, even if you find that there's an
13 acceptance, even if you find that there's some merit to his
14 auction theory, even if find that my client is not a bona
15 fide purchaser for value or laches doesn't preclude
16 plaintiffs' claim, the equities favor Mr. Amick.

17 Mr. Rice is a lawyer, he's an accomplished lawyer and I
18 think everybody in this room respects him and admires that,
19 but he's also represented by the McNair Law Firm, who's an
20 accomplished law firm. He was represented by counsel each
21 and every step of the way, the Lions Club was not, except
22 when Mr. Verner came in to talk about the marketable title
23 issue with the encroachments. They had legal advice on
24 sending in that letter. Mr. Amick didn't have a lawyer
25 involved until the time of closing. They're everyday,

1 common people sending out letters and you have Rices
2 represented by counsel. Mr. Rice is sophisticated. My
3 client is 77 years old, he owns four parcels around this
4 property. He's lived there his whole life. He has the
5 piece of property in North Carolina, a vacation home, but
6 he's not the sophisticated party. He's got a high school
7 education and he's dealing with the McNair Law Firm and Joe
8 Rice and it just -- and so the Rices were most capable of
9 protecting their interest.

10 They have accomplished lawyers and just with having the
11 accomplished lawyers that they had involved in this case,
12 those lawyers still chose to use the words "bid" numerous
13 times. In their so-called acceptance letter, they used the
14 word "bid" three times with the power of acceptance and the
15 Newberry Lions Club and in those other letters that we
16 talked about, the May letter and the November letter, their
17 lawyers called it a bid offer. Words have meaning and when
18 you're represented by counsel, you're a lawyer represented
19 by counsel, and they're using those words, we have to
20 attribute some sort of meaning to that; they use it so many
21 times. They were making an offer to buy a piece of
22 property. There was no contract that existed.

23 Anyway, my final point is the equities tip in the favor
24 of Mr. Amick to deny specific performance in this case. I
25 think that's all I have, Your Honor, but let me check with

1 my co-counsel for a second.

2 (Whereupon, defense counsel conferred.)

3 MR. KOUTRAKOS: One more time, Your Honor, I just want
4 to reiterate the standard. This is not directed verdict
5 standard. You can actually make findings of fact on what
6 you have heard here and I suggest that what you're going to
7 hear today, you're going to hear my client get up and he's
8 going to probably say not much anything different than
9 you've heard before. Lisa Smith is going to testify about
10 the closing, about the deed, about the affidavit. That's
11 already into evidence. The Lions Club members are going to
12 come up here and they're going to deny there was any auction
13 process, stuff which is great and we want to have on the
14 record, but what you've heard today, yesterday and pretty
15 much today, they cannot make a case for a contract. Their
16 claims are barred by laches, by the bona fide purchaser for
17 value doctrine and I think, as a matter of law, using the
18 standard where you can make your own findings of fact,
19 they're not entitled to any relief. So for those reasons we
20 ask for an involuntary nonsuit, Your Honor.

21 THE COURT: Question.

22 MR. KOUTRAKOS: Yes.

23 THE COURT: All right. Now, your motion is based on
24 Rule 41 and you're arguing that -- I understand you're
25 arguing, I believe, that at this juncture the rules allow

1 you to ask for me to make specific findings of fact based
2 upon my view of the evidence that has been presented---

3 MR. KOUTRAKOS: Right.

4 THE COURT: ---on the issues that you have now raised.
5 The rule also provides that I can pass on that.

6 Now, if I pass on that, you're not going to make a
7 directed verdict motion?

8 MR. KOUTRAKOS: I don't think I'm obligated to make a
9 directed verdict motion.

10 THE COURT: Okay. I just wanted to be sure.

11 MR. KOUTRAKOS: I'm positive that under a non-jury
12 context -- if you want me to -- if you think I need to --

13 THE COURT: I don't want -- I don't want you to do
14 anything. I mean, you do what you want to do.

15 MR. KOUTRAKOS: Oh. Well, let me do this just to
16 protect the record in case there's any confusion, I'm
17 comfortable that in order to preserve what I need to
18 preserve, I didn't have to do this, but in order to preserve
19 to the extent somebody thinks differently, I would -- for
20 the same reasons I moved for involuntary nonsuit, I would
21 move for a directed verdict if that makes everybody feel
22 more comfortable. I --

23 THE COURT: I want you to feel comfortable. Don't
24 worry about everybody else.

25 MR. KOUTRAKOS: Well, Your Honor --

1 THE COURT: You have to feel comfortable.

2 MR. KOUTRAKOS: Your Honor, I have the same -- I have
3 the concerns, you can ask Mr. Dixon, we talked about it and
4 said, look, the judge is going to expect me to make a
5 directed verdict and if I don't make it, he's going to think
6 I did something wrong and so, you know, I couched it in a
7 way, although I think it's an appropriate rule is 41(b), but
8 you can say for an alternative, I'm also moving for a
9 directed verdict, if you want to consider it that way and,
10 quite frankly, if this was a jury trial, I would have moved
11 for a directed verdict. I think the standard under 41(b),
12 you don't have to look at the evidence in the light most
13 favorable to the plaintiff. Under 41(b), you can say, you
14 know what, Mr. Amick, Newberry Lions Club, I find in your
15 favor for the reasons stated, draft me up an order, make the
16 findings of fact and conclusions of law, which quite
17 frankly, if you wait until the end of all the evidence, it's
18 not going to be much different. It's not going to be much
19 different.

20 THE COURT: Well, I appreciate your argument. I just
21 wanted to ask for clarity, 'cause I read Rule 41 and
22 directed verdict motions as to where I sit now, my roll
23 becomes different and most of the evidence that supports
24 your argument, because you have not presented your case yet,
25 has been through deposition testimony. Deposition testimony

1 is not subject to the same type of review by a Court sitting
2 here, and the Appellate Court taking a look at what I've
3 done. Appellate Courts can give deference to decisions I
4 make when I have sat and watched the witnesses. I've not
5 sat and watched the witnesses through the depositions.

6 MR. KOUTRAKOS: Right.

7 THE COURT: I've sat and read words.

8 MR. KOUTRAKOS: Right.

9 THE COURT: And so there's just a -- might not matter
10 in this case, but I'm concerned about that, because this
11 case has been going on a long enough for everybody in this
12 courtroom, parties need to get some resolution to it and,
13 you know, I'm just trying to be sure that for future review,
14 that there's not some concern by Appellate Courts that I did
15 not do my job the way -- as thoroughly as I needed to to let
16 them make a final decision. Then we get back together again
17 and we do it all over again years down the road.

18 MR. KOUTRAKOS: I understand a hundred percent and I
19 totally support that and, quite frankly, that's the reason
20 why you're worried about what an appellate court would
21 think, I'm also worried about an appellate court, so that's
22 why I've moved in the alternative,---

23 THE COURT: Sure.

24 MR. KOUTRAKOS: ---to the extent I'm wrong on the law,
25 which I don't think I am, I move in the alternative for --

1 besides 41(b), involuntary nonsuit, I move also for a
2 directed verdict to the extent --

3 THE COURT: All right. Let me ask you this about your
4 41 maneuver -- I mean, your 41 offer to me. You think -- so
5 you're viewing Rule 41 as allowing you at the end of a
6 plaintiffs' case to ask for nonsuit on affirmative defenses
7 or issues that you have the burden on?

8 MR. KOUTRAKOS: That is an interesting question and I'm
9 glad you asked it. I would say, yes, I do have the burden--
10 -

11 THE COURT: Okay.

12 MR. KOUTRAKOS: ---of meeting affirmative defenses.
13 Bona fide purchaser for value is an affirmative defense.
14 But through evidence submitted by the plaintiffs themselves,
15 I've met that burden. I mean, he decided to read the
16 depositions into evidence. He decided to present -- the
17 plaintiffs decided to present the case the way they did and
18 there's evidence there, I have the burden of proof, I get
19 it, if it's an affirmative defense, you know, the
20 defendant has the burden of proof, but that burden of proof
21 has been met, has been met by the plaintiffs' evidence
22 submitted.

23 THE COURT: Well, my -- the reason I asked the question
24 is that usually I see affirmative defenses that someone in
25 the defense posture raises as part of litigation after

1 they're presented, then the other side here would be the
2 plaintiff. How do they have a chance to respond to it?

3 I've seen -- you don't know this guy, Jim Raymond, who
4 was a local lawyer, died many, many years ago, did
5 commercial litigation and he, when prosecuting a lawsuit,
6 and he saved his best evidence when it came to the issue of
7 punitive damages to place and apply---

8 MR. KOUTRAKOS: Uh-huh.

9 THE COURT: ---to what the defense had and by that time
10 Jim had it set up and Jim was just a sole practitioner and
11 he set it up so beautifully from where I sat, that all of a
12 sudden he gets up in reply and he then says, Judge, based on
13 what they've said, we've got this transfer trailer truck
14 parked outside the courthouse we now would like the jury to
15 go view, you know and so all of a sudden we're marching the
16 jury out and he ended up getting a verdict and punitive
17 damages. So I just wonder if 41, with it being affirmative
18 defenses, I'm wondering if that's really appropriate for me
19 to address on affirmative defenses when that denies the
20 plaintiffs an opportunity to reply to things you want to
21 present, you know.

22 MR. KOUTRAKOS: I understand that and that -- that's a
23 point well taken.

24 THE COURT: Yeah, but that's why I'm asking the
25 question out of --

1 MR. KOUTRAKOS: That's a point well taken and that's a
2 concern, but, yeah, I get it.

3 THE COURT: Okay; all right. Do you have any motion
4 before I hear from the plaintiff, Mr. Price?

5 MR. PRICE: Yes, sir. Judge, we seek the same relief,
6 same motion.

7 Our position is clearly there was not, cannot be a
8 contract. The black-letter law is that there must be an
9 offer, an acceptance, a meeting of the minds and
10 consideration and as learned counsel has pointed out, this
11 notice to the property owners was simply a for sale sign
12 posted in the yard. It solicited offers. It did -- it was
13 not an offer and I think one thing that is critically
14 important to this, from the very beginning there was a
15 prejudice toward Mr. Amick, because the Lions Club members
16 particularly, the board, wanted him to wind up with the
17 property. They owned the property and they could have done
18 anything they wanted to with the property. They could have
19 given it to, you know, Macedonia Church, Macedonia Lutheran
20 Church, but they sold -- they decided that they wanted to
21 sell it. They had it appraised, they had it surveyed. They
22 came up with what they thought would be a reasonable price
23 that would make it sell quickly and they just wanted to make
24 sure that they did whatever they did publically.

25 We have a situation in which the offer, if it were an

1 offer, which we claim it was not, must be capable of being
2 accepted. This refers to the McLaren case and there's no
3 way that this offer could have been accepted.

4 If five people had said, here's my check for \$300,000,
5 that does not create a contract, because it has to be
6 accepted and you can not accept five different checks for
7 \$300,000.

8 The fact that the offer, the so-called offer that we
9 believe was not an offer, was for \$300,000, when an amount
10 of \$325,000 was proposed, that was not an acceptance, that
11 was a counter offer. And other than the comments made by
12 Mr. Koutrakos, Judge, I think he has covered it adequately.
13 That concludes my argument.

14 THE COURT: Thank you, sir.

15 MR. POPE: Your Honor, I have some documents to submit
16 to be in the record, a memo about denials of directed
17 verdict, my pretrial brief and a time line similar to the
18 one that we had previously that set forth the chronological
19 status.

20 THE COURT: Are these mine or are these for the court
21 reporter and me?

22 MR. POPE: Well, they would be for both.

23 THE COURT: Okay. I'll try not to write on them then.

24 MR. POPE: Your Honor, I'll first address what the
25 argument has been.

1 In the motion for a nonsuit and directed verdict, they
2 have said that Mr. Amick is a bona fide purchaser for value
3 without notice and we have pointed out in the record
4 previously and we emphasize again that he had both actual
5 and the record noted constructive notice.

6 South Carolina recording statute is 30-7-10 and the
7 title of that chapter is Recordation Essential to Validity.
8 It's not a matter of when you did the deed or whether you
9 file it late or not, when you file it is when it counts and
10 they filed the deed a day after the lis pendens and two days
11 after the summons and complaint.

12 THE COURT: You say when it counts. When it counts for
13 what purpose?

14 MR. POPE: For purposes of determining whether he did
15 not have notice. So when the lis pendens was filed before
16 the deed is filed, he had notice as a matter of law. He had
17 notice of that claim and that's section 30-7-10. The
18 instrument evidencing the subsequent conveyance must be
19 filed for record in order for its holder to claim under this
20 section as a purchaser for value without notice and the
21 priority is determined by the time of filing for record.
22 That's the last portion of that statute.

23 So we have heard other arguments. We've heard of no
24 case that's overruled that statutory provision about
25 recordation being the determining factor for when you got

1 notice. We also have heard that Mr. Amick was present at
2 the meeting on November 28, 2017 when the letter from
3 Michael Scardato was read, it was read out loud, it's
4 exhibit 19, and the record says -- I mean, the letter says,
5 We represent Lisa Summer Rice and her husband Joe Rice, who
6 have submitted the successful bid offer of \$325,000 in
7 response to the original request for the purchase of the
8 above property." That is certainly notice of right,
9 contrary to Mr. Amick's and that is he was not without
10 notice. He had both actual by virtue of that and, plus, in
11 his deposition. Mr. Amick just testified where we read it
12 that he knew about the Rice offer of \$325,000 before he
13 closed; he said it in his own words. He knew about it.

14 The next argument about laches, laches is an equitable
15 doctrine. I would submit that in equity in this case, Your
16 Honor, there's only one party that has been totally
17 equitable throughout and that's Mr. Rice and his wife.
18 They've written letters, they had their counsel write
19 letters. They weren't getting any answers and he did the
20 only thing he could do, he just brought suit, 'cause they
21 would not respond to him.

22 Now, we don't say that there was illegality involved,
23 we just say it was inequitable conduct by both Mr. Amick who
24 went to every meeting to be sure he got that property, who
25 prevailed on the Lions Club to do things that were in his

1 interest, not theirs. He said, I need 'til June 1 to close,
2 okay, we'll do that. Said, I want to withdraw my bid and
3 you guys clean up the encroachments. Okay, we'll do that,
4 but they didn't tell anybody and the arguments made by the
5 defense ignore some very important dates. May the 23rd was
6 a meeting and at that time Mr. Amick, by his own admission,
7 we just read it, he withdrew his bid 'cause he wanted the
8 Lions Club to clear up the encroachments. He admitted the
9 critical ingredient in accepting the proposal from the Lions
10 Club to pay 300,000 and to accept encroachments. He came to
11 that meeting and said, I don't want encroachments. I want
12 clear title. I want you to clear up the encroachments.
13 That wasn't part of the deal. This letter that goes out,
14 and we talk about they say -- when they say in the letter
15 twice it's an offer, they didn't mean that. Well, I think
16 there's an ambiguity. When you write a letter that says we
17 have an offer, then the normal person would say they offer
18 it to sale and they say, no, it wasn't an offer to sell, it
19 was an offer to negotiate, but they never negotiated with
20 Mr. Rice. He wrote three letters. They never called him
21 and said, will you pay more. They never called him and
22 said, your bid isn't appropriate and he called them bid --
23 he called it a bid because of the admissions of two Lions
24 Club officers. The president, Mr. Crocker, told us Claude
25 Schumpert, this letter, before Claude Schumpert responded to

1 the letter, he called Mr. Crocker, he said this is going to
2 be sold to the highest bidder and he wrote it down on this
3 letter, it's in evidence, exhibit 41, and when Mr. Rice did
4 not get the letter, after talking to Claude and he said he'd
5 gotten the letter, said, I don't know anything about it.
6 Who do I contact? He said, call Mr. Simpson. He called Mr.
7 Simpson, said, what's going on, he said, well, sorry, I sent
8 it to the wrong address. I'll be glad to send it to you,
9 very cordial, and he sent Mr. Rice a letter and he said,
10 what's this all about? He said, we're selling it to the
11 highest bidder. That's the secretary who wrote the letter,
12 Mr. Simpson, and the president, Mr. Crocker both admitted
13 independently to
14 each other that this was an offer to sell to the highest
15 bidder. It was not an invitation to negotiate.

16 The critical thing is what happened between -- what
17 happened as of the deadline. They all admitted there was a
18 deadline. In this letter that they wrote to Joe and Lisa,
19 This offer is valid until June 1, at which time the property
20 will advertise for sale to the public. Mr. Amick said he
21 understood when he withdrew his offer on May the 23rd, that
22 there were still two people out there who could have bought
23 the property, but they never contacted them. They called
24 the lawyer who wrote on June the 5th, after the deadline,
25 and said, you know, we are withdrawing our offers and they

1 offer they were withdrawing was the Lions Club offer. The
2 Lions Club made the offer and did it is ambiguous and the
3 testimony of Mr. Crocker and Mr. Simpson are not to
4 contradict the writing, but merely to explain the intent of
5 the writing and the person that wrote it and those are
6 exceptions widely recognized in the law.

7 So the reason ambiguity is a factor in this case is
8 because Lions Club said it was not an offer. We said offer,
9 but it wasn't an offer. Their official said, yes, it was an
10 offer for the highest bidder, selling it to the highest
11 bidder, so there is ambiguity which should be corrected by
12 parol evidence, not to contradict the intent consistent with
13 Par v. Par, which is cited.

14 Now, I have the memo in support of opposition that
15 directed verdict and nonsuit should be denied, which cite
16 cases, parol evidence rule applies to exclude evidence which
17 varies of contradicts the material terms of a writing that
18 is both unambiguous and fully integrated. In this instance
19 apparently there is ambiguity, because even though the
20 letter says offer and the officers it's an offer to the
21 highest bidder, they now say something else.

22 Now, there was some question about no signed document
23 by Rices. There was testimony yesterday from Mr. Rice that
24 Mr. Sid Boone was his agent, was his lawyer for the specific
25 purpose of this engagement and he was also representing Joe

1 and Lisa. He signed the letter as attorney. He was the
2 agent for Mr. Rice. He had the authority to do it and so it
3 is a signed document within the meaning of the statute, and
4 the Power of Attorney is in evidence, but it's really not
5 relevant, necessarily, except to show the close relationship
6 that Mr. Boone and Mr. Rice had with regard to business
7 transactions.

8 Your Honor, I have a time line here that's four or five
9 pages long, but it takes it -- it takes you through the
10 chronology. I don't know how much you want me to talk about
11 the chronology, but the Lions Club is going to sell their
12 property. They started talking about selling it in 2015,
13 they proceeded in 2016. Mr. Amick started coming as a non-
14 board member, attending all the board meetings and there's
15 nothing illegal about him attending the board meetings, but
16 he's projecting his interest, he said that, I was looking
17 after my interest in buying that property, and they acceded
18 to every request he made of them, extending the deadline.
19 The significance of that deadline, Mr. Amick admitted when
20 we read his testimony, when you get to June 1, if there are
21 bids out there, they got to be -- you know, somebody's got
22 to something with them, who's the high bidder. The fact
23 that they met the terms and they bid the high bid, that
24 contract should have been effected then.

25 Mr. Rice, on this issue of laches, he didn't want to

1 sue the Lions Club, he wanted some answers. They never
2 would respond to any request that he made and so he did the
3 only thing he could do is bring action and he didn't do it
4 in an untimely fashion and he didn't do it, as I said
5 earlier, as was a matter of equity, Joe Rice and Lisa Rice
6 did nothing inequitable in this case. The inequities fall
7 on Mr. Amick and on the Lions Club for not communicating
8 with him and not responding to him and not acknowledging him
9 after they told him that this was a sale to the highest
10 bidder.

11 So we think, Your Honor, at this stage there are
12 numerous issues of fact about the contract and about what
13 the intents were and it's absolutely inappropriate, we
14 believe, to direct a verdict or to grant a nonsuit. In
15 fact, specific performance, talking about the law, on the
16 third page of the memo I handed up, it says, Generally
17 speaking, specific performance should be granted only if
18 there's no adequate remedy of law and specific performance
19 of the contract is equitable between the parties. When land
20 is the subject matter of an agreement, the jurisdiction of
21 equity to enforce specific performance is undisputed and
22 does not depend on the inadequacy of the legal remedy in a
23 particular case.

24 So in this case, the Rices were trying to pay more to
25 charity. They're trying to offer more money to go to

1 charity and their efforts have been rejected for reasons
2 unknown to anybody, except the Lions Club's devotion to
3 their bidder, Mr. Amick, who I'm sure is a fine person, but
4 that has nothing to do with equities here.

5 In January of 2017, they put out a letter to twelve
6 land owners, we're going to sell this property. We're
7 offering to sell it. Respond by June the 1st, accept the
8 encroachments, pay at least \$300,000 and you can be the high
9 bidder, you get it. That's the intent and the meaning of
10 that letter and, Your Honor, I stand on the filings we've
11 made, the time line, the pretrial brief and the memo I just
12 handed up.

13 THE COURT: Question: back to your topic of bona fide
14 purchaser, bona fide purchaser without knowledge, what are
15 you saying is sufficient knowledge on the part of Mr. Amick
16 to say that he can't be a bona fide purchaser?

17 MR. POPE: Well, he admitted in his deposition that if
18 he withdrew his bid, the club could consider the other bids.

19 THE COURT: Okay. So --

20 MR. POPE: He knew that. So he knew that there was 325
21 out there before he settled. He said he knew exactly what
22 Schumpert had offered and what Rice had offered in January
23 before he ever closed.

24 THE COURT: Okay. So is it your position that it is
25 sufficient in a real estate transaction simply for a

1 purchaser to know that there were other offers?

2 MR. POPE: It is, particularly. Yes.

3 THE COURT: So that's sufficient, just that he had to
4 have knowledge that there's a offer?

5 MR. POPE: That is and, plus, when they read the letter
6 from the McNair firm and he listened to it, he said he was
7 present, he knew then and then the record notice, his actual
8 constructive notice because the lis pendens was filed before
9 the deed was recorded.

10 THE COURT: Okay. Let's take the lis pendens issue
11 out. I'm just trying to get the other factual argument as
12 to what y'all's position is. So whatever's -- so is it your
13 position that what's contained in the November 21, 2017
14 letter that if I'm convinced Mr. Amick was in the meeting
15 when the letter was read, then he had actual knowledge of
16 what's in the letter.

17 MR. POPE: Right.

18 THE COURT: And that what's contained in the letter is
19 sufficient information for him not to be considered a
20 bona fide purchaser for purposes of applying that theory?

21 MR. POPE: Actual notice; right.

22 THE COURT: Actual notice. Okay. And then --

23 MR. POPE: And constructive notice because of the lis
24 pendens and actual notice because he sat there when the
25 letter was read.

1 THE COURT: And then you also then back that up with
2 the lis pendens, that that---

3 MR. POPE: Correct.

4 THE COURT: ---also makes him not a bona fide
5 purchaser. Okay. Couple of -- couple questions. Hang on.

6 With the issue of specific performance, there's two
7 parties on the other side. Let's say I agree with the
8 presentation of the facts that have been made by the
9 plaintiff for purposes of today, how do I get specific
10 performance against Mr. Amick?

11 MR. POPE: You have to -- you would have issue an order
12 declaring the transaction void and have the deed issued back
13 to the Lions Club.

14 THE COURT: Oh, but do you view the Lions Club and Mr.
15 Amick differently.

16 MR. POPE: Well, one's the receiving party of the
17 money, one gets the lands, so opposite sides of the
18 transaction, grantor/grantee.

19 THE COURT: So if I --

20 MR. POPE: They're part of the same thing, because it's
21 -- you know, we were negotiating with the Lions Club, not
22 with Mr. Amick.

23 THE COURT: Right. You were nego- -- your client was
24 negotiating with the Lions Club. Your client wasn't
25 negotiating with Mr. Amick.

1 MR. POPE: No, we weren't. We didn't know anything --
2 we -- the facts that Mr. Rice talked about he learned about
3 were from the minutes and all that stuff.

4 THE COURT: Yeah.

5 MR. POPE: At the time he knew nothing about Mr. Amick.
6 He knew he wasn't getting a response and he was ready to
7 close and he was offering more money than anybody else and
8 it was going to charity.

9 THE COURT: I understand. Your argument, though, has
10 been that it was okay for Mr. Amick to go to those meetings
11 to protect his interest.

12 MR. POPE: It wasn't illegal for him to be there.

13 THE COURT: Was not illegal for him to be there. Okay.

14 MR. POPE: But it's suspicious if he goes to every
15 meeting, which puts pressure on his pals to make concession
16 to him, which they did every time.

17 THE COURT: Is that Mr. Amick's fault?

18 MR. POPE: I think it's the Lions Club's fault. But
19 his motive was selfish, though, I mean, not -- not evil, but
20 selfish.

21 THE COURT: Selfish. I think everybody that buys a
22 piece of property or drives a -- buys a car or just, you
23 know, that's selfish on their part. I'm trying -- I see Mr.
24 Amick and the Lions Club differently in this transaction.
25 I'm just trying to see if -- and specific performance at

1 this stage is such a strong remedy, because -- as it would
2 apply to Mr. Amick.

3 MR. POPE: It is, but that's why you have to be a
4 bona fide purchaser without notice before you can walk that
5 --

6 THE COURT: But I would have to cross that desert or
7 cross that road to get to bona fide purchaser to say that
8 specific performance was going to have to apply to Mr. Amick
9 as opposed to apply to Mr. Amick and the Lions Club.

10 MR. POPE: Yes. It would apply to both. Yes.

11 THE COURT: I know I could, but what if I don't. Can I
12 apply --

13 MR. POPE: That would not be specific performance.

14 THE COURT: Well, it wouldn't be what you want, I know,
15 but, you know, -- okay. I think I got your argument.
16 Anything else before I get reply?

17 MR. POPE: Nothing else.

18 THE COURT: Okay. Thank you.

19 MR. KOUTRAKOS: Your Honor,---

20 THE COURT: Yes, sir.

21 MR. KOUTRAKOS: ---very briefly. On the ambiguity
22 issue, you know, courts consider extrinsic evidence when
23 there is an ambiguous contract, right, to come and figure
24 out the terms, you look at extrinsic evidence, what's the
25 description of the property -- of a contract, of an

1 instrument. What they're trying to do is use extrinsic
2 evidence to be part of the contract, to form the contract.
3 Notice the letter doesn't say highest bidder. Well, they're
4 saying, oh, it's extrinsic evidence that, you know, explains
5 the letter. They're not explaining the letter, they're
6 adding provisions to the letter through all the testimony.
7 So all the ambiguity case law simply doesn't count and, in
8 fact, Your Honor, there's cases from -- and there's a case
9 from other jurisdictions, but it makes sense, you know,
10 Kansas, 1987 case, The trial court did not err in holding
11 that the contracts were ambiguous and could have deemed
12 specific -- could have denied specific performance on this
13 basis alone. This is a case from Maryland, 1970, All
14 parties acknowledge this case is controlled by this Court's
15 frequently stated rule that to be specifically enforce a
16 contract for the sale of land must be definite and certain
17 in all of its terms, free from ambiguity and in accordance
18 with the statute of frauds.

19 So they want to have the best -- they want to have the
20 best of all possible worlds. They want to say, we want you
21 to say that a contract exists by looking at extrinsic
22 evidence that's in violation of the statute of frauds and
23 the parol evidence, want to look at this evidence to form a
24 contract that we believe is ambiguous, 'cause that's what we
25 want you to act, the extrinsic evidence in the first place

1 and on top of it, we want you, specifically, perform, A, an
2 ambiguous contract.

3 The final point I want to make is, again, you know, the
4 notion that somebody has knowledge of an offer on a piece of
5 property, that is sufficient to ruin their bona fide
6 purchaser for -- to make them not a bona fide purchaser.
7 That argument has no merit.

8 I would point to you, Your Honor, the case of Shirey
9 verse Bishop was actually tried by Mr. Pope's partner, Kyle
10 Parker, so Kyle's very aware of that case and in that case
11 the Court said, A purchaser does not have to actually argue
12 the title before receiving notice of any outstanding
13 encumbrance or equities in the property in order to be
14 deemed a bona fide purchaser. Rather, our courts have
15 indicated that a party may acquire bona fide purchaser
16 status if the party acquires the best right to the title
17 before receiving notice of any outstanding encumbrance or
18 equities in the property and it cites the Tax Commission
19 versus Belk case that -- and quotes it as saying or it --
20 string cite, it says, indicating the party seeking bona fide
21 purchaser status must acquire the title or best right to it
22 and pay the purchase price before notice of an outstanding
23 encumbrance or equities. So the Court found in that case
24 they had the best right to it. We had a contract to the
25 property. We had a contract to the property, we received

1 title to the property and, again, the title -- the signing
2 of the deed is effective to transfer title of the property.
3 The recording, like I said, the recording is only to put
4 third parties on notice. Right?

5 Now, for example, Your Honor, if the Lions Club, on the
6 side, had a contract with John Smith and John Smith closed
7 the same day that we closed, he didn't have knowledge of our
8 closing, we didn't have knowledge of his, and he recorded
9 his deed first, well, he's a bona fide purchaser for value.
10 Rice is just a guy filing a lis pendens. He's not a bona
11 fide purchaser for value. He paid no value. He's not
12 accordant -- he's not accorded bona fide purchaser status
13 under the recording act. He's like a tax -- he's like a
14 lien creditor, he's like a judgment creditor. So that's the
15 final point I wanted to raise.

16 I do want to offer, you know, when Mr. Pope, during the
17 trial, wanted to hand a time line up into evidence, I came
18 up with the idea over the weekend that if you accepted it, I
19 wanted to have -- into evidence, that I wanted to have the
20 ability to comment on it, so I believe he handed up to you
21 the same time line. So what I've done is I have a red line
22 with my comments to his time line showing the inaccuracies
23 in the dates, the not-complete quotes and so on. So I just
24 hand it up there if the Court wants to review it or not and
25 unless the Court has any questions of me, that's all I have

1 to say at this point.

2 THE COURT: Well, let me ask you a question. Yeah, if
3 you would, just --

4 MR. KOUTRAKOS: Yes.

5 THE COURT: So Plaintiffs' 19, the letter from Mr. --
6 from the McNair lawyer to Mr. Crocker and to Mr. Verner, if
7 that were read during the meeting and Mr. Amick was present
8 at the meeting, does that knowledge, what's contained in the
9 letter, then, disqualify him as being a bona fide purchaser?

10 MR. KOUTRAKOS: I don't think so. I don't think so.
11 It says that they had a successful bid offer, it says
12 they're ready, willing and able to follow through with their
13 successful bid and/or participate in any further bid
14 procedure. It talks about Mr. Verner, in the last
15 paragraph, a subsequent letter from Mr. Verner indicated
16 that the property would not be sold because of the inability
17 to provide marketable title due to encroachments and then
18 they said, okay, we either want to follow through with our,
19 you know, successful bid or we want to be involved in
20 further bid procedures. It's -- what the plaintiff wants to
21 say is, hey, I have a contract -- they want you to believe
22 that this letter says, hey, we have a contract for 325 and
23 we're going to enforce it. That's what they want you to
24 believe, but what the letter actually says is, hey, guys,
25 Lions Club, if you decide to sell, we want to participate

1 again. We want to make another offer on the property.
2 That's what they're saying. There's nothing here, hey, we
3 got title to the property, deed to property, we're going to
4 file an action for specific performance, we're the
5 successful -- you know, we have a contract with you, Lions
6 Club, you cannot even rebid this property. They said, Lions
7 Club, go ahead and rebid it; if you do, we want to
8 participate. That's what they're saying. How can someone
9 who has a contract, wants to specifically enforce it says,
10 hey, seller, I have a contract with you. You better not
11 sell it. But anyway, if you resale it again, I want to
12 provide another offer. That's what they're saying in this
13 letter, we want to bid again. We want to make another
14 offer. So anybody reading this is going to say are they
15 going to file a lawsuit now? They want to participate if
16 the property's sold again via this process. That's what
17 they're saying. So I don't think that's sufficient to
18 create any -- assuming -- assuming the Court finds that Mr.
19 Amick was there and he read it and understood it, you
20 certainly have a copy of it, 'cause that letter -- but even
21 assuming he read this letter, this is not sufficient.

22 THE COURT: Thank you for that. Another question: is
23 it your position that in order to not be disqualified as
24 bona fide purchaser, that he had to have knowledge of the
25 lis pendens and the lis pendens had to have been filed prior

1 to the signing of the deed? Is that the only way?

2 MR. KOUTRAKOS: He has to knowledge prior to the
3 closing taking place. He has to have knowledge of some
4 outstanding interest. Prior to him imparting the funds and
5 receiving title, he has to have some knowledge of some
6 defect or encumbrance on the property, which he did not
7 have. What he had knowledge of, to the extent it is exhibit
8 19, he had somebody who made an offer that lost, who's upset
9 and wants to make another offer. That's what he had know-
10 -- assuming he understood, he was there, assuming he heard
11 everything -- he's got a hearing aid on right now --
12 assuming, you know, just assuming he read this, is that
13 enough? I got a contract. I'm going to sue you, you better
14 not sell it. All that stuff is missing. What's in the
15 letter is, hey, you revoked the property because of an
16 encroachments issue. We know about your letter, Mr. Verner.
17 If you're going to bid again or if you have this bidding
18 process again, we want to participate. That's what they're
19 saying. It's a letter from somebody who lost.

20 THE COURT: Okay. In order to be qualified as a
21 bona fide purchaser, is the only way that he loses that
22 status is if he becomes aware of the lis pendens or the lis
23 pendens is actually filed prior to --

24 MR. KOUTRAKOS: You know, quite frankly, I -- you know,
25 I can make the argument that the lis pendens is irrelevant,

1 but -- it's irrelevant, but he didn't have knowledge of it.
2 It wasn't filed until after closing, so it doesn't really
3 matter. It doesn't really matter.

4 He had entered to a contract before the lis pendens was
5 filed. The closing took place, value was paid, deed was
6 signed, closing was completed; testimony in the record. So
7 he's -- he meets all the elements.

8 THE COURT: And you disagree with Mr. Pope's
9 interpretation of 37 and 10?

10 MR. KOUTRAKOS: Exhibit 37?

11 THE COURT: No; I'm sorry. South Carolina Code Section
12 30-7-10.

13 MR. KOUTRAKOS: Yeah. 37-10 says, hey, if you want to
14 be a bona fide -- well, it is -- has to do with providing
15 notice to third parties. Right? With notice to third
16 parties, remember my hypothetical about deed being recorded,
17 right? If the Lions Club is to prevent a secret conveyance,
18 you not knowing about, right, so if we're -- so if Lions
19 Club does two closings in the same day, but the buyers have
20 no knowledge of each other and the buyer who records first
21 would win in that circumstance. That's not what we have
22 here. What we have here is, basically, somebody filing a
23 lis pendens, who I equate to somebody being like a lien
24 creditor, like a judgment creditor. Judgment creditors
25 don't check title before getting the judgment. They just

1 file the judgment. That's what these guys did. They filed
2 the lis pendens and, of course, it was too late because the
3 closing had already been final.

4 THE COURT: Okay. One more question.

5 MR. KOUTRAKOS: Yes, sir.

6 THE COURT: On the issue of laches, you argued the
7 prejudice aspect of it as being his involvement in the
8 lawsuit.

9 MR. KOUTRAKOS: Yeah.

10 THE COURT: Is there any other prejudice that you would
11 assert?

12 MR. KOUTRAKOS: Prejudice prior to the filing of the
13 lawsuit?

14 THE COURT: I mean, if I understood your argument
15 correctly when you were going through the elements of
16 laches, you said the prejudice to your client was the fact
17 that he's been involved in this litigation.

18 MR. KOUTRAKOS: Yeah. I mean, if they had chose to
19 enforce their alleged contract earlier, anytime in 2017,
20 that specific performance action, without Mr. Amick being a
21 defendant, would have been filed. My client would -- yeah.
22 He's prejudiced because, had they filed the specific
23 performance action, Mr. -- I'm sure his lawyer, I would
24 advise, there's specific -- if this action was pending in
25 2017 and a lis pendens was filed before a contract was ever

1 formed, Mr. Amick would have never purchased it. They
2 waited too long. They waited too long.

3 THE COURT: Okay.

4 MR. KOUTRAKOS: And unless their -- well, obviously,
5 because, Judge, you know, you lose the property, you know,
6 right, but they would have -- they should have filed their
7 lawsuit earlier, seeking to enforce their rights, but they
8 claimed this in early 2017. So --

9 THE COURT: Okay; all right. All right. Lawyers want
10 to approach a moment. Lawyers want to approach a moment?

11 (Whereupon, a bench conference was held off the
12 record.)

13 THE COURT: You referenced some cases, but didn't give
14 me the cites.

15 MR. KOUTRAKOS: Yes. I want to -- the Shirey versus
16 Bishop case, I'll hand you up a copy of the case and the
17 portion that I read is highlighted, it's towards the end.
18 I'll hand you up, and I don't have extra copies of this,
19 but this -- I'll -- can I email it to you? It was the
20 ambiguity case law and the auction case law. I'm just
21 handing up what I'm reading from and I'll print out extra
22 copies for everybody to have.

23 THE COURT: Both of you referenced the McLaren --
24 McLaren case.

25 MR. KOUTRAKOS: Yes.

1 THE COURT: One of you have a cite for that?

2 MR. KOUTRAKOS: Yes. Your Honor, that case was cited
3 in the summary judgment order. I have it here somewhere.

4 MR. DIXON: Your Honor, it's 165 S.C. 411.

5 THE COURT: Not S.C. 2d, just S.C.

6 MR. PRICE: It's S.C.

7 THE COURT: S.C.; S.C.

8 MR. PRICE: 1932.

9 THE COURT: Thank you very much.

10 (Whereupon, court was adjourned for lunch at 12:45 P.M.
11 and reconvened at 1:18 P.M.)

12 THE COURT: Okay. This is what we're going to do.
13 Thank you both for the arguments that we took just prior to
14 the lunch break.

15 In accordance with Rule 41, I'm not going to make a
16 ruling on the 41 motions. I think it's more appropriate for
17 us to go ahead and conclude the receiving of the testimony
18 and evidence that's going to be received.

19 In regards to the directed verdict motions, I'm going
20 to reserve ruling on those until after we receive the rest
21 of the evidence. So I'm not going to make any decisions on
22 any of the motions that were just made, but with that being
23 said, they were very -- substantively, they were very
24 powerful, so I learned a lot about the position of the
25 parties, so I appreciate that very much. I also had a

1 chance to take a look at some of the legal precedence that
2 y'all had referenced including the statutory provisions and
3 the case law.

4 With that being said, y'all both handed me supplemental
5 materials that I'm going to make part of the record of this
6 case. I've got the plaintiff presented me, which I had, but
7 I'm not sure the court reporter had, was Plaintiffs'
8 Pretrial Brief, the time line, the memo that was dated
9 6/1/2022 and then also, then, the defense gave me their
10 response to the time line, which I might have left on my
11 desk. No. Here's the defense response to the time line,
12 which I'll also make a part of the record of this case. I
13 did not write on those.

14 I'm not making part of the record of this case the
15 statutory and case law that y'all gave me, 'cause that's
16 mine and I need it, so okay. Is the defense ready to call
17 their next witness?

18 MR. KOUTRAKOS: Yes, Your Honor. Mr. Amick calls Lisa
19 Lee Smith.

20 THE COURT: Ma'am, just come right up here. You'll see
21 a Bible at the corner of the bench, I guess I'd say. Put
22 your left hand on the Bible and raise your right hand.

23 (LISA LEE SMITH, being first duly sworn, was examined
24 and testified as follows):

25 THE COURT: Thank you, ma'am. Watch your step as

1 you're stepping up. You can pull the chair up to the
2 microphone. If you need to move the microphone, you can,
3 but be careful, 'cause sometimes it comes out of its socket.

4 THE WITNESS: Okay.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION

7 LISA LEE SMITH BY MR. KOUTRAKOS:

8 Q. Okay. Good afternoon, Mrs. Smith. Can you state your
9 full name, please?

10 A. My name is Lisa Lee Smith.

11 Q. And where do you live?

12 A. I live in Chapin, South Carolina.

13 Q. What do you do for a living?

14 A. I'm an attorney.

15 Q. Where do you practice law?

16 A. I practice law in Chapin. I have a solo practice and
17 the name of my law firm is the Lisa Lee Smith Law Firm, LLC.

18 Q. Where did you go to undergraduate school?

19 A. Clemson University.

20 Q. What year did you graduate?

21 A. 1991.

22 Q. And where'd you go to law school?

23 A. I went to law school at the University of South
24 Carolina.

25 Q. And what year did you finish up at USC?

1 A. In 1995.

2 Q. Tell me about your work history after law school.

3 A. My -- I was first employed as a judicial law clerk for
4 Judge Keesley in the Circuit Court in the Eleventh Circuit.
5 I did that for two years and then was hired into the firm,
6 at the time, known as Nicholson, Davis, Frawley, Anderson
7 and Ayer. I practiced at that law firm for about eighteen
8 years as an associate and then a partner. It changed names
9 a few times as partners retired and so forth. It is
10 currently known as the Davis, Frawley Law Firm and in 2015,
11 I left that firm and joined with one partner to establish
12 the firm of Smith and Sullivan. I'm the Smith in that law
13 firm and for four years I practiced with Matt Sullivan in
14 Chapin and in late 2018, we parted ways. He went back to
15 Lexington and I decided to go on my own at that point, so
16 since late 2018 I've been in my own law firm.

17 Q. And you're a member in good standing with the South
18 Carolina Bar?

19 A. I am.

20 Q. Okay. Tell the Court a little bit about what kind of
21 work you do as an attorney.

22 A. Okay. So I've always practiced real estate and early
23 in my career I did a lot of real estate litigation and other
24 civil litigation matters. I worked also with the county
25 attorney, Jeff Anderson, and did a lot of county work during

1 my career at that law firm. Once going into my own firm and
2 establishing my practice in Chapin, I focused more on real
3 estate, probate, administration and estate planning. That
4 continues to this day. In 2018 I also became the town
5 attorney for the town of Chapin and I do that work on a
6 contract basis. I'm also a certified circuit court mediator
7 and arbitrator.

8 Q. Do you do any activities with the South Carolina Bar?

9 A. I've been very involved in the South Carolina Bar
10 throughout my career, a member of the house of delegates for
11 probably fifteen or eighteen years. I'm the past president
12 of the Lexington County Bar Association and have served on
13 numerous committees with the South Carolina Bar.

14 Q. Mrs. Smith, how much of your practice is dedicated to
15 real estate transactions?

16 A. Probably about a third of my practice is real estate
17 transactions and that's been consistent, I would say, for
18 about the last six or seven years.

19 Q. Okay. In February 2018, you did a closing for Ray
20 Amick to purchase property from Newberry Lions Club. Is
21 that right?

22 A. That's correct.

23 Q. And you're familiar with the property involved in the
24 closing. Right?

25 A. I am.

1 Q. It's the property that's the subject of this case. You
2 understand that. Right?

3 A. Yes.

4 Q. Who did you represent at that closing?

5 A. Ray Amick was my client for all aspects of the
6 transaction. I had represented Ray once before in a real
7 estate matter and he was the reason I had the file opened in
8 my office. I represented him for the contract formation and
9 the closing. I agreed to represent the Newberry Lions Club
10 for limited dual representation to prepare the deed for the
11 Lions Club and I did that limited dual representation at the
12 closing.

13 Q. And if you look at your notebook, you'll see -- there's
14 a notebook there of plaintiffs' exhibits. If you go to tab
15 30, that is the Plaintiffs' Exhibit 30 and it's a disclosure
16 regarding dual representation. Do you see that?

17 A. Yes, I do.

18 Q. Is that something that you would have prepared?

19 A. Yes. I prepared that.

20 Q. In a very brief manner, can you explain to the Court
21 what this document is?

22 A. Right. So this document is explaining the limited role
23 of my -- in taking on a dual representation for the seller
24 only with regard to preparing the deed and that that is
25 allowed in South Carolina. This gives a brief explanation

1 of how that is allowed; if we are objectively determining
2 that I am going to exercise independent judgment in the
3 representation; there's no actual or perceived conflict
4 between the parties and it also is a caution to the parties
5 that if a conflict develops, I may not be able to represent
6 either party going forward, that it could create a situation
7 where I would have to withdraw. This is my standard
8 disclosure of dual representation when I'm preparing a deed
9 for a seller in a transaction where I represent the buyer.

10 Q. And here Mr. Amick signed and the trustee for the
11 Newberry Lions Club signed it. Correct?

12 A. That's correct and I would have been present when they
13 all had signed.

14 Q. And it's dated February 21, 2018. Correct?

15 A. Correct.

16 Q. Okay.

17 MR. KOUTRAKOS: I would like to move into evidence
18 Plaintiffs' Exhibit 30. I do not believe it's been admitted
19 into evidence before.

20 THE COURT: No objection?

21 MR. POPE: No, sir.

22 THE COURT: No objection.

23 Q. Who first contacted you about this closing?

24 A. Mr. Amick.

25 Q. Okay. After he contacted you, what did you do next?

1 Did you prepare a document?

2 A. My memory of the initial contact was that he had a
3 letter from the Newberry Lions Club and that stated he
4 wanted -- they wanted to accept his offer to purchase and I
5 recommended that a full and formal contract was necessary
6 and the letter gave the lawyer's name for who was
7 representing the seller and so I contacted Mr. Verner, who
8 was the lawyer's name on that letter, about the contract.
9 The purpose of my contacting him was to say, do you have a
10 contract or do you want me to draft one, just to get that
11 started because we needed to put a contract in place.

12 Q. If you look at, in the notebook, at Plaintiffs' Exhibit
13 Number 22, which I believe has been admitted into evidence.
14 Is that what you're referencing, the letter you reviewed?

15 A. Yes. That is the letter that Mr. Amick brought to my
16 office that explained the Newberry Lions Club wanted to
17 accept his offer to purchase and giving me the name of James
18 Verner as the attorney that would represent the Lions Club.

19 Q. Okay. If you flip over to the next exhibit, it's
20 Plaintiffs' Exhibit Number 23. Is this the contract that
21 you prepared?

22 A. That is the contract that I prepared. The -- after
23 speaking with Mr. Verner, he sent me a blank real estate
24 broker's contract that real estate brokers typically use as
25 a suggestion of one that could be used in the transaction.

1 I felt like that so much of that would have to stricken as
2 irrelevant because there were no real estate brokers in this
3 transaction, so I prepared this contract for the transaction
4 and sent it to Mr. Verner.

5 Q. And eventually both parties, Mr. Amick and Newberry
6 Lions Club, signed?

7 A. Yes. Mr. Amick would have signed with me in my office
8 at the same time he provided me with the earnest money check
9 that's referenced in the contract and then I sent the
10 contract to Mr. Verner for him to have the Lions Club
11 trustees execute the contract for the Lions Club.

12 Q. Okay. If you look at the contract provision for --
13 it's entitled, "Warranties and Representations of Seller."
14 Do you see that?

15 A. I do.

16 Q. And then it says, "Seller warrants and represents
17 that," and there is an A listed there. Can you read that to
18 the Court and explain what that means?

19 A. Sure. The seller warrants and represents that seller
20 owns fee simple title to the property, including the
21 improvements thereon. So this representation by the seller
22 in the contract was a term that has the seller affirming and
23 representing to the buyer that they own all rights to the
24 property. Fee simple ownership being a complete and total
25 ownership of the property and the ability to convey

1 marketable title to the buyer.

2 Q. How about paragraph 4(b)? It begins with "Seller's
3 trustees." Can you explain to the Court what the purpose of
4 that provision is?

5 A. Sure. It reads, "Seller's trustees, as identified
6 herein, are the properly appointed and authorized
7 representatives of the Newberry Lions Club to sign all
8 closing documents, including the deed and delivery and/or
9 performance of this agreement will not require the approval
10 or consent of any third party or governmental entity." The
11 purpose of this representation of warrant is because the
12 Newberry Lions Club is an entity that can only act by
13 authorized representatives and I had been informed that
14 these were the three trustees that needed to sign and that
15 had been authorized, but in the contract process I requested
16 that be a warranty and representation in the contract I
17 drafted.

18 Q. Okay. Fair enough. And you eventually -- you were the
19 closing attorney. Is that correct?

20 A. I was.

21 Q. I'm showing you what has been marked as Defendant's
22 Exhibit 4. Can you explain to the Court what Defendant's
23 Exhibit Number 4 is?

24 A. This is a copy of a cashier's check for \$302,000 from
25 Mr. Amick, the defendant Mr. Amick, and a copy of a deposit

1 slip for Smith and Sullivan, which was my law firm, dated
2 February 20th, 2018, and it shows that 302,000 was deposited
3 into my trust account. My trust account number is blacked
4 out, but I know that is where the money was deposited.

5 Q. And the date is February 20, 2018?

6 A. That's correct.

7 Q. And this document is a true and accurate copy of
8 something that you keep in the normal course of business?

9 A. It is.

10 MR. KOUTRAKOS: At this point, I would like to
11 introduce in evidence -- have admitted into evidence
12 Defendant's Exhibit Number 4.

13 THE COURT: Without objection, it will be admitted.

14 Q. Let's talk about when the closing was scheduled and
15 when it took place. I'm showing you what's marked as
16 Defendant's Exhibit Number 3. This is an email chain
17 between you and it looks like the members of the Lions Club.
18 Can you explain to the Court what you're saying in this
19 email? Let me back up. What's the date of this email?

20 A. Okay. So the email, at the top of the first page, is
21 February 20th at 10:59 A.M. and it's an email from me to
22 Gene Crocker, Doggett Whitaker, Lee Ringer and Pete Simpson
23 and I'm letting them know that the closing is scheduled and
24 the -- this is an attempt to get everybody on the same
25 schedule for the next day.

1 Q. Okay. And in this email, do you kind of -- you set
2 forth time when you want the parties to come in?

3 A. That's right. I was asking for all the trustees to
4 come at the same time, at nine o'clock the next day, which
5 would be February 21st. That was my preference, that they
6 all come at the same time so that I would be going over the
7 documents with them, but there were some -- I was unsure, I
8 think, at the time of this email whether they were all
9 coming at the same time and I had said in the email if
10 something comes up and any of you need to come at a
11 different time, please let me know. I said, Mr. Amick is
12 scheduled to come and sign documents with me at 11:00, so I
13 was anticipating the disbursement of proceeds would be
14 midday or afternoon tomorrow, which would have been the
15 21st.

16 MR. KOUTRAKOS: At this point, I would like to have
17 Defendant's Exhibit Number 3 admitted into evidence.

18 THE COURT: Without objection, will be defense 3.

19 Q. What's your recollection -- so the closing took place
20 on the 21st of February of 2018. Correct?

21 A. That's correct.

22 Q. What time of day -- despite what this email says, to
23 your recollection, what time of day did the Newberry Lions
24 Club folks come in and what time of day did Mr. Amick come
25 in?

1 A. The Newberry Lions Club trustees all came together at
2 nine A.M. and signed the documents, the deed, everything
3 they needed to sign. My memory of that is that it lasted
4 maybe about forty-five minutes. That is certainly a guess
5 at this point, but that would have also been typical. We
6 went through the documents -- pardon me -- we went through
7 the documents in detail for them to sign them. Mr. Amick
8 was scheduled to come at 11:00. My memory is that he came
9 in sooner than that. My office would have contacted him, my
10 staff, after the trustees left, to say he could go ahead and
11 come. I wanted him to be the second -- the last party to
12 sign, so that we weren't still waiting on trustees to come
13 by, because I knew they have to act with all three of them,
14 so I wanted all their signatures in place.

15 Q. Okay. At what point in time -- at that point in time
16 when the parties came in, you already had the money to fund
17 the closing in your trust account. Correct?

18 A. Right. The money is reflected in Defendant's Exhibit 4
19 and that deposit slip shows it was deposited at 10:31 A.M.
20 on February the 20th. So on the morning of the 21st, we are
21 collecting all the signatures and actually conducting the
22 closing.

23 Q. Okay. You testified about some times. Have you looked
24 at any document in your office, your computer, calendar,
25 anything else that would confirm what you're saying here

1 today?

2 A. Yes. After the lawsuit was filed in this matter, which
3 I became aware of on March the 1st, I pulled my calendar, I
4 looked back --

5 Q. March the 1st of 2018?

6 A. Of 2018. That's right. So I did, at that point and in
7 a much closer in time point than now, go back and look and I
8 did have a calendar of that day.

9 Q. Okay.

10 A. And I also think I didn't finish answering a question
11 you asked me.

12 Q. I'm sorry.

13 A. Okay. You were asking me the time line and I don't
14 think --

15 Q. Yeah. I'm asking you what you reviewed to -- is there
16 anything at your office that you reviewed to confirm your
17 memory---

18 A. Sure.

19 Q. ---that the time the closing took place?

20 A. Since then -- certainly. I have reviewed my calendar
21 and I know that that day I had to be home by noon. I had
22 workers coming to my house at noon and so I concluded the
23 signing of documents with Mr. Amick, I cut the check, I
24 signed the check and left it with my staff to contact the
25 Newberry Lions Club trustees that they could pick up their

1 check when they wanted to. It was finished before I went
2 home for the workers that were coming to my house that day
3 at noon; I had to be there.

4 Q. So on February 21, 2018, by noon, is it your testimony
5 the closing was finished?

6 A. It was finished.

7 Q. Okay. If you look at exhibit -- Plaintiffs' Exhibit 29
8 in the notebook, which I believe has already been admitted
9 into evidence, that is the deed that you prepared?

10 A. That is correct.

11 Q. And it is signed February 21, 2018 by the trustees and
12 you are a witness. Correct?

13 A. Right. February 21st, 2018, I'm a witness and Shelby
14 Sullivan, a paralegal in my office, is the other witness.

15 Q. And you also served, it looks like, as the notary as
16 well. Correct?

17 A. I did.

18 Q. And that's your notary stamp. Correct?

19 A. It is.

20 Q. And that would have been signed when the trustees came
21 in around 9:00 A.M. on February 21, 2018. Correct?

22 A. That's right.

23 Q. I'm showing you what's marked as Defendant's Exhibit 5.
24 Can you explain to the Court what Defendant's Exhibit 5 is?

25 A. This is the settlement statement. It's also referred

1 to as a HUD1. It's a settlement statement commonly used in
2 a transaction that does not involve a lender and so this is
3 from February 21st, 2018, between the Newberry Lions Club
4 and Mr. Ray Amick. The last page, the third page of it, is
5 a Buyer/Seller Certification that I add to the settlement
6 statement so that the parties affirm that they have checked,
7 reviewed and approved the figures on the settlement
8 statement. It is a full and accurate representation of the
9 transaction, so there's no other money changing hands that's
10 not reflected on the statement and they acknowledge the
11 status of what -- how taxes would be handled, so the next
12 tax bill would be the buyer's tax bill.

13 Q. And on page three of Defendant's Exhibit 5, you signed
14 it as well. Correct?

15 A. I do.

16 Q. And that is typical. Correct?

17 A. Yes, and I'm saying to the best of my knowledge, the
18 HUD1 Settlement Statement, which I prepared and reviewed, is
19 a true and accurate account of the funds that were received
20 and that have been or will be disbursed by me.

21 Q. And before you left to go home and meet the contractors
22 around noon on December -- excuse me -- February 21, 2018,
23 you would have signed -- tell me -- tell the Court whether
24 you would have signed Defendant's Exhibit 5?

25 A. Right. I certainly signed it. I would have signed it

1 when Mr. Amick signed it and I would have done the action
2 call for there, disbursing the proceeds according to the
3 settlement statement before I left the office.

4 MR. KOUTRAKOS: I would like to have, at this time,
5 Defendant's Exhibit Number 5 admitted into evidence.

6 MR. POPE: No objection.

7 THE COURT: Without objection, it is admitted.

8 Q. Show you what's been marked as exhibit 6 and we'll get
9 to exhibit 7 in a second, but can you explain to the Court
10 what Defendant's Exhibit Number 6 is?

11 A. Defendant's Exhibit Number 6 is the disbursement check
12 from my real estate trust account for check number 3805,
13 addressed to the Newberry Lions Club, which was also known
14 as the Lions Club of Newberry, which were the two ways their
15 name showed up on the title, so that's how I had cut the
16 check, my signature, dated February 21st, 2018.

17 Q. And what time on February 21, 2018 would you have
18 signed this check?

19 A. It would have been before noon when I left to meet the
20 contractor and I live about two miles from my office, so
21 when I say I had to be home at noon, I probably left at five
22 'til.

23 Q. And at that point in time, were the folks at the
24 Newberry Lions Club free to come pick up the check?

25 A. Yes.

1 Q. And doing this, you were disbursing as a settlement
2 agent or disbursing agent in accordance with Defendant's
3 Exhibit Number 5, the HUD. Correct?

4 A. That's correct. If you look at the Defendant's Exhibit
5 Number 5 on the first page, the bottom right-hand column, it
6 says, "Cash to the seller" is 300,000. That was the amount
7 they were getting from the closing, because the buyer paid
8 all the closing costs. There was nothing deducted from the
9 contract sell then.

10 Q. The next document, Lisa, that I want to discuss is
11 Defendant's Exhibit Number 7, which is right in front of
12 you, it's titled, "Seller Information Certification Sheet."
13 Can you explain to the Court what that document is?

14 A. So this is a document just used in my office to make
15 sure that sellers are given the opportunity to represent if
16 they're aware of any lien or judgment or mortgage on the
17 property and to also provide me with their tax ID number and
18 contact information for any follow up that's needed after
19 the closing. So the seller trustees signed the document,
20 gave me a phone number for follow up and an email address to
21 use. They represented there were no mortgages on the
22 property, there were no other liens or judgments on the
23 property and represented that they were the duly authorized
24 trustees of the Newberry Lions Club, also known as the Lions
25 Club of Newberry, with the authority to sign all closing

1 documents in the transaction for the club.

2 Q. Thank you. The next document I want you to review is
3 -- it's in the notebook and it's Plaintiffs' Exhibit 43.
4 Can you explain to the Court what Plaintiffs' Exhibit Number
5 43 is?

6 A. Plaintiffs' Exhibit Number 43 is a title insurance
7 affidavit, an Owner's Affidavit and Indemnity is what it's
8 called. Commonwealth Land Title Insurance Company was the
9 company that I was an agent for at the time of the
10 transaction and that I was writing a title insurance policy
11 for the owner, Mr. Amick. In order to issue that title
12 insurance policy, the seller, as the owner leading up to the
13 closing, has to give this sort of affidavit of indemnity to
14 give marketable title or insurable title the affidavits
15 require. So this affidavit goes through a number of things.
16 It has twelve sections that are looking for the seller to
17 represent they're not aware of any title issues.

18 Q. Okay. I want to -- this was signed on February 21,
19 2018. Correct?

20 A. That's correct.

21 Q. And you notarized it, again. Correct?

22 A. That's correct. At that nine o'clock appointment with
23 the trustees.

24 Q. I want you to briefly discuss what -- subparagraph
25 three, without reading it in the court,---

- 1 A. Uh-huh.
- 2 Q. ---what's the purpose of paragraph three?
- 3 A. For the sellers to represent under oath that they have
- 4 -- they're not aware of any other contract on the property
- 5 or deed unrecorded or any other facts that would be adverse
- 6 to the title that they are conveying.
- 7 Q. Okay. And it -- they're not swearing under oath that
- 8 there's -- I mean, they obviously had a contract with Mr.
- 9 Amick. Correct?
- 10 A. Well, they had -- they had the contract we were closing
- 11 and then, arguably, they had a prior contract a year before,
- 12 but what they're saying here is that there's no contract or
- 13 deed out there that we don't know about, but they do,---
- 14 Q. Okay.
- 15 A. ---that would be adverse to the deed they're getting
- 16 ready to sign.
- 17 Q. Okay. And if you look at -- explain to the Court
- 18 subparagraph six, The deponents warranty there's no judgment
- 19 pending suits or lis pendens filed," is that the same area?
- 20 A. That's correct.
- 21 Q. At the time of the closing or any time before closing,
- 22 did you have any knowledge that the Newberry Lions Club had
- 23 entered into a contract to sell the property to any other
- 24 party other than Mr. Amick?
- 25 A. No.

1 Q. Can you tell the Court whether or not you knew that
2 other offers had been made on the property?

3 A. I was aware of the prior year's efforts by Mr. Amick to
4 purchase the property and the way I was aware of that was he
5 had not -- he had not been able to purchase it. Right. My
6 memory of it is that they said they were going to sell this
7 large tract to him for 300,000 and then they had a title
8 issue and they cancelled that transaction and then they came
9 back to him later and said, now we're willing to accept your
10 offer of 300,000. It's less property now, it's just tract
11 A, they'd cut a piece off, still 300,000.

12 Q. My question, I think, was little bit --

13 A. Sorry.

14 Q. ---different.

15 A. Sorry.

16 Q. Did you have any knowledge, in other words, that other
17 folks had made offers on the property other than Mr. Amick?

18 A. I think I knew that there were people who wanted --
19 from Mr. Verner, there were people who wanted it to be a
20 bidding process, but it wasn't and so there were some people
21 who were unhappy that it had not been a bidding process.
22 So, yes, I think I probably knew some people had tried to
23 bid on it in that 2017 process when then they stopped all
24 efforts to sell.

25 Q. Would that concern you at all? Did that cause you any

1 concern?

2 A. No. I mean, other bids would not have been contracts.

3 Q. Right. Was there any information provided to you that
4 showed that the Rices had or may have had a contract to
5 purchase the property from the Newberry Lions Club?

6 A. Say that one more time.

7 Q. I'm sorry. Was any information provided to you that
8 showed the Rices had or may have had a contract with the
9 Newberry Lions Club?

10 A. Absolutely not and when I received notice of the
11 lawsuit on March the 1st, about ten days after the closing
12 I conducted, I was shocked.

13 Q. At the time of closing, did you have any knowledge or
14 notice that the Rices had or thought they had a contract to
15 purchase the property from Newberry Lions Club?

16 A. No.

17 Q. At the time of closing and when the deed was recorded,
18 what was your opinion as to the title Mr. Amick received?

19 A. My opinion was that he received good, fee simple,
20 marketable title. I was not aware of any adverse claims to
21 the title.

22 Q. When was the deed recorded?

23 A. The deed actually went on record the next day. It was
24 mailed to Newberry County by my office the afternoon of the
25 21st. I wasn't at the office to know what time the mail

1 left that day, but that -- it was obviously mailed that day,
2 because it was recorded the next day. We did not travel in
3 person to Newberry.

4 Q. Okay. Can you give me one moment?

5 A. Certainly.

6 MR. KOUTRAKOS: I would like to move into evidence
7 Defendant's 6 and 7, which apparently I have not moved into
8 evidence yet.

9 THE COURT: Any objection to 6 and 7?

10 MR. POPE: No, Your Honor.

11 THE COURT: They'll be admitted. Thank you very much.

12 MR. KOUTRAKOS: Your Honor, I have no further
13 questions. Please answer any questions Mr. Pope may
14 have.

15 THE COURT: Yes, sir, Mr. Pope. We'll let Mr. Pope go
16 first.

17 MR. POPE: You want the Lions Club go next?

18 THE COURT: You can go ahead.

19 MR. POPE: All right. Thank you.

20 CROSS-EXAMINATION

21 LISA LEE SMITH BY MR. POPE:

22 Q. The deed was filed after the lis pendens in this
23 matter. Correct?

24 A. I believe that is correct---

25 Q. One day late.

1 A. ---as far as it going on record. It was mailed from my
2 office the same afternoon the lis pendens was filed.

3 Q. But as a matter of record, the lis pendens was filed
4 the day after the deed -- day before the deed was filed.

5 A. The lis pendens went on record before the deed went on
6 record, but after the closing.

7 Q. And you got -- you offered some thoughts there at the
8 end about a prior contract. You were representing either
9 Mr. Amick or the Lions Club in regards to that?

10 A. No; I was not. I was only made aware of it in the
11 context of the letter that he brought for this transaction,
12 saying that they now wanted to accept his offer of \$300,000.

13 Q. And this was in 2018?

14 A. That's right.

15 Q. But I'm talking about 2017.

16 A. Right. I was only made aware of that after the fact,
17 when we were looking at the letter -- the new letter in 2018
18 for the -- their wanting to accept his \$300,000 offer for
19 the property, which would -- was at that point now just
20 parcel A, not the whole tract that was being discussed, it
21 was just A.

22 Q. This is after the closing when you're looking into
23 this --

24 A. No; no. Before the closing, when we were looking at
25 the contract.

1 Q. Okay. If a person wants to -- if a seller wants to
2 convey property and wants the buyer to accept encroachments,
3 you can do that if both the buyer and the seller agree.
4 Correct?

5 MR. KOUTRAKOS: Your Honor, I object. Ms. Smith is
6 here as a fact witness. He's asking an expert witness a
7 question about what a buyer can do this. Lisa Smith is only
8 a fact witness. I did not ask her any questions that would
9 be expert testimony. That's what he's trying to elicit
10 right now.

11 THE COURT: All right. I -- generally, I do agree with
12 him. If you have any questions about the facts of it, you
13 might want to try to rephrase the question.

14 MR. POPE: All right.

15 Q. Well, let me get specific. You said you understood
16 from a prior year's efforts that Mr. Amick was not able to
17 close because of a title issue. That's what you said.
18 Correct?

19 A. That's right.

20 Q. All right. You can sell property with encroachments if
21 the buyer agrees and the seller agrees and that's not a
22 title issue, is it?

23 A. It would --

24 MR. KOUTRAKOS: Your Honor, I just have the same
25 objection.

1 THE COURT: All right. I'll let her answer. Go ahead.

2 A. It would be a title issue, but people can agree to
3 close with title issues.

4 Q. Correct. Now, you produced to us -- we subpoenaed your
5 entire file. Do you remember that?

6 A. I do.

7 Q. Okay. And you produced -- it's in a notebook here, but
8 it was like three-hundred and some pages? I'm sure you
9 haven't looked at it lately, but this is basically your
10 entire file that you produced pursuant to a subpoena duces
11 tecum?

12 A. It appears to be the right amount of paper.

13 Q. Okay. Well, they're numbered sequentially. You got
14 Lisa Smith Closing File 0001 and then the last page is Lisa
15 Smith closing file what?

16 A. 0320.

17 Q. So we got about what looks like 320 pages stacked up
18 here.

19 A. Okay.

20 Q. Now, you had in that stack of documents some minutes
21 from the Lions Club board meetings.

22 A. Correct.

23 Q. Did you ask for those?

24 A. I did.

25 Q. All right. This is -- I'm going to turn now to page

1 Lisa Smith Closing File 0129 and go down to -- through Lisa
2 Smith Closing File 0138, and ask you to identify the dates
3 and they actually are in reverse chronological order, so if
4 you want to start at the end. Tell us what dates it was
5 supplied -- you supplied us, the dates of the meeting would
6 be.

7 A. So these are all meeting minutes. I'm just looking
8 through here to see if this is all -- what this is. Okay.

9 Q. All right. What was the first date on page---

10 A. All right. So --

11 Q. ---138?

12 A. On page 138, these are minutes from the board on their
13 meeting January 24th, 2017.

14 Q. Okay. Next. On page 137, when is the meeting?

15 A. That's February 28th, 2017.

16 Q. Okay. Next is a letter.

17 A. Next is a letter from -- to Mr. Amick from Pete
18 Simmons, secretary of the Lions Club and---

19 Q. It's not dated, is it?

20 A. ---it's not dated.

21 Q. Okay. Next sequentially is file number 135. What date
22 is that meeting minutes?

23 MR. KOUTRAKOS: Your Honor, may we approach, 'cause I'm
24 not sure what document she's looking.

25 MR. POPE: She's looking at the documents she produced.

1 MR. KOUTRAKOS: Right, but I don't have a copy of it,
2 so I mean, I'm trying to pull it up on a computer, but
3 you've not shared that with me, you've not shared it with
4 the Court, so --

5 MR. POPE: We shared it with you when we got it. You
6 have the same file we got.

7 MR. KOUTRAKOS: Oh, yeah. I'm sure; yeah. But you're
8 showing the witness a number and I'm saying I have hurry
9 up and try to find where we saved it, 'cause we didn't bring
10 it here 'cause we didn't know you were going to use it. If
11 you show a witness a document, we're entitled to know --

12 MR. POPE: Sure. We'll pause if you want to --

13 THE COURT: You want to -- you mind if he comes up and
14 looks --

15 MR. KOUTRAKOS: I'm familiar with the documents, Your
16 Honor. I just don't like sitting up here and, forgive me, I
17 just can't --

18 THE COURT: Okay.

19 MR. POPE: We don't object if he comes around.

20 MR. KOUTRAKOS: Yeah. That's all I want to do.

21 THE COURT: Yeah. You can come up here.

22 MR. KOUTRAKOS: All right. I just want to --

23 Q. All right. The next -- we're going --

24 A. So page 135 is the minutes from the March 28th, 2017
25 board meeting.

1 Q. Okay.

2 A. Page 134 is the minutes from the April 25th, 2017 board
3 meeting.

4 Q. Okay. Have you got the letter from James Verner, dated
5 June 5, 2017?

6 A. So document 133 is the letter from -- to Mr. Amick from
7 James Verner, stating that at the May 23rd, 2017 meeting
8 they voted not to sell the property located at Lake Murray
9 at this time, because they were not able to convey good fee-
10 simple, marketable title because of the encroachments.

11 Q. Okay. And going sequentially to page 132. What's the
12 date of that meeting?

13 A. The date of that meeting was June 27th, 2017.

14 Q. Okay. And the next one is 0131 and what is that date?

15 A. The date of those meeting minutes is from a meeting
16 October 24th, 2017.

17 Q. Okay. 130, what is that?

18 A. Those minutes are from the meeting held on December
19 4th, 2017.

20 Q. And then you go to the first document numbered 129 and
21 what is the date of that meeting?

22 A. The date of that meeting was January 23rd, 2018.

23 Q. Okay. So you have the minutes that were produced to
24 you. At your request, you asked for the minutes?

25 A. That is correct.

1 Q. All right. And you got the minutes from -- according
2 to this sequential set of documents from you, you got
3 minutes of the board minutes of the Lions Club from January
4 2017 through January 2018?

5 A. That is correct.

6 Q. All right. There is no minute in this book from
7 November. Did you ever see the November meeting minutes?

8 A. I do not remember.

9 Q. Okay. Well, I'll just point -- 5-B. All right. I'll
10 show you now exhibit 5-B, which is the minutes -- it's
11 already in evidence -- of November 28, 2017 board meeting,
12 ask you if you've ever seen that?

13 (Whereupon, the witness reviewed the referenced
14 document.)

15 A. I don't remember seeing this. It doesn't mean that I
16 didn't, just there were a lot of minutes. I just don't
17 specifically remember it.

18 Q. All right. The significance that I'm pointing to here
19 now is on the third -- the second paragraph under "Old
20 Business", it says, "Lion Gene Crocker read a letter
21 received by the club from McNair Law Firm as representative
22 for the Rice family. The letter will be forwarded to
23 Attorney Jay Verner for his office to respond." Does that
24 ring a bell?

25 A. It doesn't ring a bell in terms of my familiarity with

1 the meeting minutes and I never saw a letter from the McNair
2 Law Firm.

3 Q. If I told you there were three letters from the McNair
4 Law Firm on behalf of the Rices to the Lions Club, could you
5 recall ever seeing any of those three?

6 A. No.

7 Q. Okay. I'm going to show you exhibit 19. First, I'll
8 show you exhibit 15. Exhibit 15 is a letter written to Mr.
9 Crocker and Mr. Simpson of the Lions Club, May 15, 2017.

10 (Whereupon, the witness reviewed the referenced
11 document.)

12 A. Okay.

13 Q. Have you ever seen it?

14 A. I have not.

15 Q. Okay. In that letter, the write of the letter, a
16 member of the McNair firm named Sid Boone says that Joe and
17 Lisa Rice have offered \$325,000.

18 A. I see that in response to your, I guess, the Newberry
19 Lions Club request for bid.

20 Q. Okay. And it says at the end, you've read it, and
21 correct me if I'm wrong, it says, "Please don't convey this
22 to anybody except the Rices, otherwise we'll be forced to
23 bring a declaratory judgment action to establish the Rices
24 as the successful bidders. You ever seen that, have you?

25 A. I've never seen that.

1 Q. If you had seen it, it would have put you on inquiry
2 notice at a minimum, wouldn't it?

3 MR. KOUTRAKOS: Object to the form, calls for a legal
4 conclusion.

5 THE COURT: All right. You want to try to rephrase the
6 question.

7 Q. Well, there's such a thing as inquiry notice that
8 lawyers are familiar with, that term? In other words, you
9 don't know for sure that there's something going on, but you
10 have facts that indicate there might be and you have a duty
11 to investigate if that's the case.

12 A. Okay.

13 Q. Would that have put you on inquiry notice?

14 MR. KOUTRAKOS: Your Honor, this calls for speculation.
15 She testified she never reviewed this letter, never seen it
16 and he wants to say if you have seen this letter, would it
17 cause you to do A, B, or C and he's throwing some legal
18 jargon in there, so I object.

19 THE COURT: Okay. You're noted for the objection. She
20 can answer, if she can.

21 Q. Would you not want to know more facts if you had been
22 read that letter or sent that letter?

23 A. If I had been sent the letter, I would have wanted to
24 know more facts. It was my conclusion that is not a bidding
25 process that had taken place.

1 Q. You weren't involved -- you didn't represent any party
2 during 2017?

3 A. I did not.

4 Q. Okay.

5 A. But we looked at the issue because Mr. Amick was now
6 being offered to -- they were trying to accept his offer to
7 buy less property for the same price and so I looked at this
8 from the perspective with him of was he going to conclude --
9 go ahead and form this contract now for 300,000 to buy less
10 property, that's why I had looked at the issues of the bids,
11 people had placed bids, but the Newberry Lions Club had been
12 clear they were going to sell it to a member if a member
13 would pay that price.

14 Q. You didn't discuss, analyze or view any offers or any
15 bids or any responses to the Lions Club letter by other
16 perspective purchasers?

17 A. I did not.

18 Q. All right. And exhibit 19 is a letter from the McNair
19 firm to the Lions Club and its attorney and the first
20 paragraph announces again they have -- the high --
21 successful high bidder at \$325,000. Correct?

22 A. I see this letter. That is what it is saying. I've
23 never seen this before---

24 Q. Correct.

25 A. ---and I don't know how someone is a successful bidder

1 if the bid isn't accepted.

2 Q. So -- but you didn't have the benefit of this exhibit
3 15 or exhibit 19?

4 A. I did not.

5 Q. And you were not asked any legal opinion about the
6 validity of the bidding process or the sales process or the
7 offer process from 2017?

8 A. I did not review that for any client in that process at
9 the time.

10 Q. Okay. And exhibit 19, if that were read out loud at a
11 meeting where two witnesses have said Ray Amick was present
12 and it was read out loud, that would -- you would want to
13 know about that, wouldn't you?

14 MR. KOUTRAKOS: Objection, Your Honor; calls for
15 speculation.

16 THE COURT: I'll probably sustain that objection.

17 MR. POPE: Okay.

18 THE COURT: If you want to rephrase.

19 Q. If you were aware that that letter had been raised --
20 read in full out loud at a meeting on this date, November
21 the 22nd -- excuse me -- November the 28th, 2017, you would
22 have asked questions about that letter, would you not?

23 MR. KOUTRAKOS: Objection; calls for conjecture and
24 speculation.

25 THE COURT: I'll sustain the objection. You want to

1 try again?

2 Q. If you had been presented with that letter and
3 presented -- and if you'd been presented with the minutes
4 that reflect that letter was read out loud, what would you
5 have done?

6 MR. KOUTRAKOS: Your Honor, again, this all calls for
7 speculation. She's a fact witness.

8 THE COURT: Go ahead. No; go ahead. I'm not trying
9 to cut you off.

10 MR. KOUTRAKOS: It calls for speculation and
11 conjecture. He can ask it fifty-five different ways, he can
12 show additional documents, it's still calling for
13 speculation.

14 THE COURT: Okay. I'm going to let her answer that
15 question if she can.

16 A. If I had become aware of this letter in
17 November/December of 2017 -- I'm sorry -- before the
18 contract --

19 Q. Before the --

20 A. -- before the contract that I prepared for Mr. Amick, I
21 guess that's not so relevant, the timing. If I had been
22 aware of this letter, I still don't think it would have
23 given me any real concern, because it's talking about the
24 prior process, which had been terminated by the Lions Club.
25 If anybody had a complaint about the prior process, it would

1 have been Mr. Amick, 'cause he -- his offer was accepted, he
2 paid earnest money and then they decided they didn't have
3 good title and so they cancelled his contract and mailed him
4 his earnest money back and sent a letter saying, we've
5 decided not to sell. This bid that is being discussed in
6 this letter was in that process. Now, we --

7 Q. And you're not familiar with that process?

8 A. I'm -- only to what I just said about how it affected
9 my client, because he's coming to me now saying, they want
10 me to buy this property for 300,000 and it's less property
11 now. What do we -- what do I think of that? So I looked at
12 that issue and said let's get a contract. You need a
13 contract.

14 Q. Let's go back to the old process. You said you're not
15 familiar with it, but assuming the old process they were
16 going to offer to sell the property to someone who would
17 take the encroachments, who would pay at least \$300,000 and
18 who would close by June 1. Did you know anything about
19 those terms?

20 MR. KOUTRAKOS: Your Honor, I object.

21 A. Those are not the terms that were in the letter, but --

22 Q. Well, --

23 A. ---I understand what you're saying.

24 Q. Okay. And if, in fact, Mr. Amick had gone to a meeting
25 on May the 23rd and told the Lions Club he didn't want the

1 encroachments, he was rejecting the terms and he was adding
2 something new, you've got to settle the encroachments before
3 I'll buy.

4 MR. KOUTRAKOS: Your Honor, I'm objecting. He's asking
5 a if and when question. He's asking for speculation and
6 conjecture. I object.

7 THE COURT: All right. I'm going to sustain the
8 objection. This witness is called as a fact witness. Her
9 involvement, as has been relayed to the Court, was dealt
10 with the closing, if you want to deal with questions of
11 that nature. You're getting -- you're getting into where
12 you're actually going to use her an expert witness, to which
13 she's not been qualified and I think I --

14 MR. POPE: All right. I'll change gears.

15 THE COURT: -- and I think I've made clear my view of
16 lawyers testifying as to what the law is to the Court. I'm
17 not inclined to do that. That's what y'all are hired to do
18 and that's why you're in the courtroom is to explain why
19 things are important legally to me and not to use witnesses.

20 MR. POPE: Yes, sir. All right.

21 Q. Let's just say you had no knowledge of exhibit 15,
22 which is the letter back in -- what was the date -- May the
23 15th of 2017. You never saw that?

24 A. Right. Plaintiffs' Exhibit 15 --

25 Q. And you never saw exhibit 19?

1 A. Correct.

2 Q. And you never saw the minutes -- you got every minute
3 from 2017, but you don't have the November minutes. Is that
4 right?

5 A. I don't remember those minutes specifically and don't
6 know whether I saw those minutes before or not.

7 Q. Well, if you want to go through what you produced.
8 It's there in sequential order. If you can find it, you can
9 tell us --

10 A. I don't know whether they're in here or not and I don't
11 have a specific memory of the meeting minutes that you're
12 referring to on Plaintiffs' 5-B.

13 Q. Okay. So until today, you've never seen those letters
14 we just talked about, exhibits 15, 18 and exhibit 5-B?

15 A. That's correct.

16 Q. So --

17 A. I'm not aware of having ever seen those.

18 Q. So when did you put -- did you put your -- your carrier
19 on notice in this case?

20 MR. KOUTRAKOS: Objection, Your Honor; relevance.

21 THE COURT: I'll sustain the objection.

22 MR. POPE: That's all we have, Your Honor.

23 THE WITNESS: Your notebook's up here, Mr. Pope.

24 MR. POPE: Hmm?

25 THE WITNESS: This is yours.

1 MR. POPE: Oh. Thank you.

2 THE COURT: Mr. Price?

3 MR. PRICE: I have no questions.

4 THE COURT: Okay. Any reply, limited to what he went
5 into?

6 MR. KOUTRAKOS: No, Your Honor.

7 THE COURT: Thank you.

8 MR. KOUTRAKOS: Unless Mr. Price has any questions.

9 THE COURT: He already said he did not.

10 MR. KOUTRAKOS: He did? Okay. Thank you. Thank you,
11 Ms. Smith.

12 THE COURT: Thank you, ma'am. Watch your step as you're
13 stepping down. Defense ready to call their next witness?

14 MR. DIXON: Yes, Your Honor. At this time Mr. Amick is
15 going to call Mr. Amick as a witness.

16 THE COURT: Okay. Sir, just come right up here.
17 You'll find a Bible on the corner of the desk, just place
18 your left hand, raise your right hand.

19 (CARROLL RAY AMICK, being first duly sworn, was
20 examined and testified as follows):

21 THE COURT: Thank you, Mr. Amick. Watch your step as
22 you're stepping up, but just step up there. Have a seat in
23 the chair, pull the chair up to the microphone. You can
24 move the microphone, but be gentle when you do it, 'cause it
25 might come out of the socket.

DIRECT EXAMINATION

CARROLL RAY AMICK BY MR. DIXON:

Q. Mr. Amick, please introduce yourself to the Court.

A. My name is Carroll Ray Amick. I live at 62 Lions Club Road.

Q. How old are you?

A. I'll be 77 November.

Q. Where did you grow up?

A. About a hundred yards from where I live at now.

Q. Okay. Where do you live now?

A. 62 Lions Club Road.

Q. Where is that in relation to this property at issue, just generally?

A. Roughly a half mile.

Q. Okay. Flip with me in that notebook to exhibit 35.

Do you see the exhibit?

A. Yeah; yeah.

Q. Is that showing, not the property at issue, but the other property you own in the neighborhood?

A. No, not the other property. It shows a very small corner of it.

Q. It doesn't show the rest of it---

A. No.

Q. ---in blue outline there?

A. No. You're said the rest of the property that I own?

- 1 Q. Yes, sir.
- 2 A. No.
- 3 Q. Okay. What's depicted there? What's depicted there?
- 4 A. What's the --
- 5 Q. What's depicted on this exhibit?
- 6 A. The Lions Club property.
- 7 Q. Okay. This is 34.
- 8 A. Oh, okay.
- 9 Q. Flip with me to 35.
- 10 A. Okay. I'm sorry.
- 11 Q. That's okay. That's okay. I thought we might be
- 12 looking at something different.
- 13 A. Okay.
- 14 Q. What's shown on 35?
- 15 A. Yeah. It shows the remainder of the property that I
- 16 own.
- 17 Q. Okay. And that adjoins this Lions clubhouse property?
- 18 A. Yes, it does.
- 19 Q. Okay. Okay. Do you know how the Lions Club acquired
- 20 the property at issue in this case?
- 21 A. They acquired it from my grandfather.
- 22 Q. And looking back at Plaintiffs' 35, right there in the
- 23 notebook, do you have a conversation easement on that
- 24 property?
- 25 A. Do I have a what?

- 1 Q. Conservation easement.
- 2 A. Yes, I do.
- 3 Q. Okay. And are you a member of the Newberry Lions Club?
- 4 A. I am.
- 5 Q. How long have you been a member?
- 6 A. Since 2000.
- 7 Q. So over twenty years?
- 8 A. Yeah.
- 9 Q. What roles have you held?
- 10 A. Well, I've been the groundskeeper. I've been the --
- 11 I've been on the board. I've held pretty well all the
- 12 positions except secretary and treasurer.
- 13 Q. Okay. You mentioned groundskeeper. Who maintained
- 14 the clubhouse at this Lions Club property while you were a
- 15 member?
- 16 A. I did.
- 17 Q. Okay. Have you had any health issues recently?
- 18 A. Yes, I have.
- 19 Q. What were those?
- 20 A. Well, I've had congestive heart failure. I have some
- 21 memory loss.
- 22 Q. Okay. Was that related to some oxygen?
- 23 A. Yeah. I use oxygen at night and sometimes during the
- 24 daytime.
- 25 Q. And I think you said you had -- it's affected you with

1 some memory?

2 A. Right.

3 Q. Slower on the recall?

4 A. Right.

5 Q. Do you feel comfortable testifying today?

6 A. Yeah. I think so.

7 Q. All right. Let's talk about this Lions Club property a

8 little more. Do you remember the January of 2017 Lions Club

9 board meeting?

10 A. Well, I don't remember the board meeting per say. If

11 you remind me of something---

12 Q. Okay.

13 A. ---that happened in it, I --

14 Q. Flip with me to tab 5 in the book there.

15 A. Okay.

16 Q. Yeah. I'm going to make sure we're on the same page

17 (reviewing documents). We are. Okay. And are those the

18 January 24, 2017 minutes from the Lions Club board meeting?

19 A. They are.

20 Q. Okay. Do you remember what happened at that meeting?

21 A. Well, we had an issue with Lions Sims and Hayes

22 (ph) paying their dues.

23 Q. Right. I mean, particularly in relation to the Lions

24 Club property.

25 A. Okay. Gene Crocker presented a list of names and

1 addresses of all the adjoining property owners, which I was
2 one. The board agreed to extend the deadline to June the
3 1st.

4 Q. Right. Let me ask you a question about that. Did you
5 ask to have until June 1st?

6 A. I did.

7 Q. Okay. Why did you ask to have until June 1st?

8 A. Because I had several CDs that was maturing in late May
9 and I didn't want to have to draw them out and take a
10 penalty on them.

11 Q. Okay. Had you already communicated your interest in
12 the property to the Lions Club?

13 A. I had.

14 Q. By this meeting, you'd already told them you wanted to
15 purchase the property?

16 A. Right.

17 Q. And they knew that?

18 A. Yes.

19 Q. Okay. Okay. I think in this board meeting, if you
20 look with me, this last full paragraph here, starts at the
21 bottom of this page (indicating),---

22 A. Yes, sir.

23 Q. ---same page we're looking at.

24 A. Yeah.

25 Q. I think it starts with Lion Amick was invited back into

1 the meeting.

2 A. Right. I see it. Right.

3 Q. You see it? So if you look at that paragraph, did the
4 Lions Club decide to send a letter to the adjoining property
5 owners?

6 A. In the last paragraph? It says, Lion Amick questioned
7 why the letters were still going out if he had until June
8 the 1st?

9 Q. Right.

10 A. I was told that it would help expedite the sell of the
11 property if I declined --

12 Q. Right. But did the Lions Club decide to send the
13 letters to the adjoining land owners?

14 A. Yes.

15 Q. And did the letter, not this particular copy, 'cause
16 that says, Dear Lisa Rice, but did you get one substantially
17 the same?

18 A. I did.

19 Q. Okay. What did you do after you got your copy of
20 the letter?

21 A. Well, I let them know that I was definitely interested
22 in the property.

23 Q. Did you propose a contract?

24 A. I did.

25 Q. Okay. Will you flip with me to 32 in the book. What

1 is exhibit 32?

2 A. What is it?

3 Q. Yes, sir.

4 A. It's paying earnest money on the property.

5 Q. Right. And what's it say at the very top of it?

6 What's it titled?

7 A. Contract of Sell of Residential.

8 Q. Okay. And so did you give this contract to the Lions
9 Club?

10 A. I did.

11 Q. And you mentioned earnest money, did you give a earnest
12 money check with the contract?

13 A. I did.

14 Q. Okay. So what did they do after you gave them this
15 contract?

16 A. Well, they kept it for a period of time and eventually
17 they sent it back to me.

18 Q. Okay. Flip with me to the very last page of that
19 number 32. It's right before the 33 tab.

20 MR. POPE: Which exhibit?

21 MR. DIXON: Thirty-two.

22 A. Okay. That's the check, copy of the check for earnest
23 money.

24 Q. Right. Okay. And that's the earnest money check that
25 you gave to the Lions Club with the contract?

1 A. Right.

2 Q. Okay.

3 MR. DIXON: I'm going to move to admit Plaintiffs' 32.

4 MR. POPE: No objection.

5 THE COURT: Without objection.

6 Q. Okay. So let me go back a step. You gave the Lions
7 this contract and I think I asked you what did they do after
8 you gave them this contract?

9 A. They kept it for a period of time and then they gave it
10 back to me.

11 Q. Okay. Well, did they agree to sell the property to
12 you at that time?

13 A. I don't -- I don't remember that they did at that time.

14 Q. Okay. Well, flip back with me to tab 5.

15 A. Okay.

16 Q. Okay. And it's going to be the third page in tab 5.

17 A. Okay.

18 Q. Let me make sure we're on the same page (reviewing
19 documents). Okay. And are these the March 28th, 2017 Lions
20 Club board minutes?

21 A. They are.

22 Q. Okay. If you'll look at the largest paragraph there,
23 it starts with, "A motion was made."

24 A. Yes.

25 Q. Does that paragraph say, "A motion was made to accept

- 1 Lion Ray Amick's offer of \$300,000"?
- 2 A. It does.
- 3 Q. Okay. So the Lions agreed to sell you the property for
- 4 \$300,000 in March of 2017?
- 5 A. Right.
- 6 Q. Did y'all ever close that sale in March or April of
- 7 2017?
- 8 A. No.
- 9 Q. Do you remember why not?
- 10 A. No. I don't remember why not offhand.
- 11 Q. Okay. Well, flip with me to tab 17 in the book. And
- 12 is 17 a letter from James Verner to you?
- 13 A. It is.
- 14 Q. Okay. And that -- does he say that the Lions Club
- 15 couldn't convey a fee simple title because of encroachments?
- 16 A. It does.
- 17 Q. Does that help refresh your memory as to why---
- 18 A. Yes, it does.
- 19 Q. ---y'all didn't close?
- 20 A. Yes.
- 21 Q. And was it because of those encroachments?
- 22 A. Right.
- 23 Q. Okay. Okay. Do you remember what the Lions Club
- 24 thought about those encroachments in relation to fee simple
- 25 title at that time?

1 A. They spoke with Jay Verner about it and he told them
2 that -- to get a fee simple, they would have to clear it up.

3 Q. Okay. So do you remember what the Lions did after
4 Verner told them they needed to clear up the encroachments
5 to get the fee simple title?

6 A. They had spoke to Thad McCracken, who had the
7 encroachment and cleared it up with Thad.

8 Q. Okay. So they cleared it up. Let's jump ahead a
9 little bit. Do you remember the November 2017 Lions --
10 Lions Club board meeting?

11 A. Not offhand, I don't.

12 Q. Okay. Will you flip back with me to tab 5 and it's
13 going to be 5-B. There's a separate tab with B on it.

14 THE COURT: It's in the same section.

15 A. Okay.

16 Q. And is 5-B, is that the minutes from the November
17 28th, 2017 Lions Club board meeting?

18 A. It appears so. Yes.

19 Q. Okay. If you look at the top there, it has a number of
20 names, Lion Randy Cannon, Lion Randy Sen (ph). Do you see
21 that?

22 A. Right. I see it.

23 Q. It shows Lion Ray Amick. Do you see that?

24 A. I do.

25 Q. Do you remember whether you were there on November

1 28th, 2017?

2 A. November 28th is my birthday.

3 Q. Right.

4 A. I feel that I was not there, because my wife and I
5 generally goes out to supper on her birthday and my
6 birthday.

7 Q. Okay. So to be clear, you don't really remember
8 whether you were there?

9 A. No, I don't.

10 Q. Okay. And if you look down under "Old Business", it
11 says -- you see where it says "Lion Gene Crocker read a
12 letter"?

13 A. I do.

14 Q. I know you just told me that you don't remember whether
15 you were there, but do you remember Gene Crocker reading a
16 letter from the McNair Law Firm at any meeting?

17 A. No, I don't.

18 Q. Okay. Flip with me to tab 19. Do you see that?

19 A. I do.

20 Q. And does that look like a November 21st, 2017 letter
21 from McNair Law Firm addressed to Gene Crocker and James
22 Verner?

23 A. November 21st, 2017? Yes.

24 Q. Yes, sir. Have you ever seen that letter before other
25 than in this litigation? I'm talking about in 2017.

- 1 A. I think that I have. I couldn't swear to it.
- 2 Q. In this -- I mean, you've seen it in this litigation?
- 3 A. Sure.
- 4 Q. Right. But do you remember seeing it in November of
- 5 2017 at the board meeting?
- 6 A. No, I don't.
- 7 Q. Okay. Do you remember ever hearing that letter read
- 8 aloud at a board meeting?
- 9 A. No, I don't.
- 10 Q. Okay. Do you remember when the Lions Club decided to
- 11 sell the property to you in 2018?
- 12 A. Yes. February -- in February of 2018.
- 13 Q. Okay.
- 14 A. I think it was Valentine's Day, but I don't know.
- 15 Q. All right. Well, let's -- let me get you to flip to
- 16 22. And is exhibit 22 a letter from the Lions Club to you?
- 17 A. Yes.
- 18 Q. And it's dated January 23rd, 2018?
- 19 A. Right.
- 20 Q. And they're saying -- looks like they're saying --
- 21 A. Accept the offer.
- 22 Q. Yeah. Okay. They accepted your offer. Do you
- 23 remember getting that letter?
- 24 A. I don't remember getting it, but I'm sure I have it. I
- 25 mean, I kept a file at home and I'm sure I had that letter.

1 Q. Okay. But did you hear -- did anybody call you and
2 tell you?

3 A. Yeah. Gene Crocker called me one night, late one
4 night, and told me that --

5 MR. POPE: Your Honor, I object as to hearsay.

6 THE COURT: Okay. I let you get in hearsay evidence
7 with Mr. Crocker when we read his deposition. I'll let him,
8 for this purpose, let him state what he said, if that's what
9 he was going to do.

10 MR. DIXON: Thank you, Your Honor.

11 THE COURT: He's here to testify.

12 MR. DIXON: I would say it is a statement by a party
13 opponent, but it's also Mr. Amick saying, you know, somebody
14 told him. I think he answered the question.

15 A. Say what now?

16 Q. Let me -- let me rephrase. Did anybody from the Lions
17 Club call you to tell you---

18 A. Yes. They --

19 Q. ---they accepted your bid?

20 A. Gene Crocker called me roughly ten o'clock at night and
21 told me.

22 Q. Okay. Okay. So do you remember what you did after you
23 received this letter? What was the next step in the
24 process?

25 A. No. I don't remember exactly what I did, but sometime

- 1 I went to see Lisa Sen (ph) and -- to settle up with them.
- 2 Q. Okay. I think you mentioned her name. Did you hire an
- 3 attorney?
- 4 A. Yes.
- 5 Q. Who was that?
- 6 A. Lisa Sen.
- 7 Q. What's her last name? I think it's -- did you say
- 8 Smith?
- 9 A. Yeah, I think, Lisa Smith.
- 10 Q. Okay. Lisa Smith --
- 11 A. She has an office right beside the cemetery in Chapin.
- 12 That's where it was at that time.
- 13 Q. Right. She was just sitting where you are about thirty
- 14 minutes ago?
- 15 A. Right.
- 16 Q. Okay. Okay. Do you remember whether you executed
- 17 another written contract with the Lions Club?
- 18 A. I think she did. Yes.
- 19 Q. Flip with me to the next tab, tab 23. Now, is that
- 20 document titled, "Contract of Sale" and it's between you --
- 21 you see Ray Amick. Right?
- 22 A. Right.
- 23 Q. And it's got the trustees of the Newberry Lions Club.
- 24 Right?
- 25 A. Yes.

1 Q. Yeah. You see your name and then the Newberry Lions
2 Club Trustees at the right top?

3 A. Yes.

4 Q. Okay. If you'll flip with me to not quite the last
5 page, but the page before the last page in exhibit 23.

6 A. All right.

7 Q. Is that the signature page?

8 A. Right.

9 Q. And it's got -- you signed there as purchaser and it's
10 dated February 12th. Is that right?

11 A. Right.

12 Q. And the Lions signed below you?

13 A. Say again.

14 Q. And the Lions signed below you?

15 A. Right.

16 Q. And that, it looks like they signed on Valentine's Day?

17 A. Right.

18 Q. Right. Okay. I think you mentioned Valentine's Day
19 before. That was when y'all had fully executed the
20 contract?

21 A. Right.

22 Q. Okay. Okay. So after this contract, did you
23 ultimately close on the Lions Club property?

24 A. I did.

25 Q. Okay. Do you remember when the closing took place?

- 1 A. I don't remember the exact date. It was in February.
2 I'm thinking it was Valentine's Day, but I'm not sure.
- 3 Q. Well, flip with me to Plaintiffs' 31.
- 4 A. Okay.
- 5 Q. Okay. If you look in the top middle part of the page
6 on the right side it says, "Settlement Date." Do you
7 see that? Sort of on the right side. Do you see this area
8 here (indicating on the document)? I'm pointing to the
9 settlement date?
- 10 A. Yeah. February 21st,---
- 11 Q. Right.
- 12 A. ---2018.
- 13 Q. Is that the day you closed at Lisa Smith's office?
- 14 A. Yes.
- 15 Q. And this is actually a copy of the settlement
16 statement?
- 17 A. Right.
- 18 Q. And it shows -- you signed this on the 21st. Right?
- 19 A. Right.
- 20 Q. Okay. And do you remember how much you paid?
- 21 A. \$300,000.
- 22 Q. Okay.
- 23 A. Plus all the closing costs.
- 24 Q. Yeah; right. Do you remember what time of day?
- 25 A. It was mid-morning.

1 Q. Okay. On the day of closing, -- let me rephrase that.
2 When was the first time you learned Joe and Lisa Rice
3 claim they had a contract with the Lions Club before yours?

4 A. I don't remember. I don't remember.

5 Q. Was it after the day you closed?

6 A. Oh, yeah. If they'd had a contract, I wouldn't have --
7 if they'd had a contract and I knew it, I wouldn't have
8 closed.

9 Q. Okay. Okay. Well, let me shift gears a little bit.
10 How many pieces of real estate have you purchased in your
11 life?

12 A. In my lifetime?

13 Q. Yes, sir.

14 A. Well, I got the piece of property that I live on right
15 now. I got it from my daddy, which is a gift from him. I
16 purchased a piece down the Lions Club Road from Mr. Richard
17 Brown. I bought a house and lot in Maggie Valley and the
18 Newberry Lions Club.

19 Q. Okay. So most -- is it fair to say most of the
20 property you purchased in our life has been in this Lions
21 Club circle vicinity?

22 A. Yeah, except for the house in the mountains.

23 Q. Except for the North Carolina property?

24 A. Right.

25 Q. Okay. How far did you go in school?

1 A. How far did I go in school?

2 Q. Yes, sir.

3 A. Twelfth grade.

4 Q. Do you have any legal training?

5 A. No.

6 Q. Do you have a Juris Doctorate?

7 A. No.

8 Q. Did you have an attorney advising you in 2017 while you
9 were negotiating with the Lions Club?

10 A. Other than Lisa Smith, I didn't.

11 Q. Okay. And you didn't -- and you didn't -- when did you
12 hire Lisa Smith?

13 A. I hired her to do the closing on it.

14 Q. Right. So that would have been -- was that after
15 January 23rd, 2018, the letter that we just looked
16 at?

17 A. I think it was. I don't remember exactly.

18 Q. Okay. Okay. Bear with me one second, Mr. Amick.

19 MR. DIXON: Mr. Amick, I don't have anything further at
20 this time. Please answer any questions Mr. Pope or Mr.
21 Price may have for you.

22 THE WITNESS: All right.

23 MR. POPE: Your Honor, we would offer in evidence
24 exhibit 35. He identified it on direct and I don't think he
25 offered it.

1 MR. DIXON: No objection.

2 THE COURT: Without objection. Thank you,
3 sir.

4 CROSS-EXAMINATION

5 CARROLL RAY AMICK BY MR. POPE:

6 Q. Now, on exhibit 35, Mr. Amick, this blue line around
7 -- juggling around there, that's the property you own.
8 Correct?

9 A. It is.

10 Q. Okay. And your house is in the box kind of in the
11 middle of it?

12 A. Yes. Right.

13 Q. How much acreage do you have there?

14 A. Roughly 60 acres.

15 Q. Sixty?

16 A. (Nods head affirmatively)

17 Q. Okay. Now, I would -- I'm not going to be long, Mr.
18 Amick, but I just have a couple of things to ask you. You
19 were vitally interested in protecting your rights to buy
20 this property when you went to the board meetings in 2017
21 even though you weren't on the board. Correct?

22 A. I was.

23 Q. And that was the only interest you had was to protect
24 your rights and to buy that property. Right?

25 A. Right.

1 Q. Now, you understood that the offer or whatever you want
2 to call it, offer, I called it an offer, called it a request
3 for bids, or you want to call it an offer by the Lions Club
4 had conditions on it, didn't it?

5 A. It did.

6 Q. And the offer only went to either Lions Club members or
7 adjacent property owners?

8 A. Right.

9 Q. There were about twelve adjacent property owners and
10 they showed over thirty-five --

11 A. I'm an adjacent property owner and a Lions Club member.

12 Q. And what -- it says, "First considerations to current
13 members of the club." Right?

14 A. Right.

15 Q. It also says you have to take encroachments if you buy
16 it. Correct?

17 A. It did.

18 Q. And you have to pay at least \$300,000. Correct?

19 A. Right.

20 Q. And you have to do that by June the 1st, 2017.

21 A. Right.

22 Q. And that was your request. When you went to the
23 January 24th, 2017 meeting, you requested -- you wanted more
24 time to gather up your money 'cause your CDs were maturing
25 or whatever and you wanted to have 'til June the 1st?

1 A. Yes. So I wouldn't to --

2 Q. Sir?

3 A. So I wouldn't have to withdraw the CDs and pay the
4 penalty.

5 Q. Yes, sir. But if you didn't close by June the 1st,
6 then you knew your acceptance was no good. Correct?

7 A. Right.

8 Q. All right. And you agreed to take encroachments when
9 you sent your -- when you accepted verbally or otherwise to
10 the Lions Club. You said I'll take encroachments. I'll
11 pay 300,000. I'm a Lions Club member and I'll do it by
12 June the 1st?

13 MR. DIXON: Objection, Your Honor, calling for a legal
14 conclusion by calling it acceptance.

15 THE COURT: Okay. Well, I'm going to let him answer.
16 Go ahead.

17 A. Restate that question.

18 Q. And when you responded to the Lions Club offer letter,
19 you agreed to all those terms. You said I'll pay 300,000.
20 I'm not an adjacent -- I'm an adjacent property owner, but
21 I'm a member of the club and I'll pay 300,000, I'll take the
22 encroachments and I'll do it by June the 1st?

23 A. Well, I said I would -- I was an adjacent property
24 owner.

25 Q. Sir?

- 1 A. I am an adjacent property owner. I was --
- 2 Q. Yes. I'm not arguing with that. I'm talking about all
- 3 that was going to happen before June the 1st.
- 4 A. I never said that I would take the encroachments.
- 5 Q. You came to the -- you came to the May 23rd meeting and
- 6 withdrew your offer because you would not take
- 7 encroachments. Is that right?
- 8 A. I don't remember, but I think -- I think that's
- 9 probably right.
- 10 Q. All right. I'm going to show you -- I don't think I
- 11 have a second copy in my hand, but this deposition in the
- 12 Schumpert case between you -- I don't know if you can read
- 13 it. The question was, "And you had already made an
- 14 agreement with the Lions Club if you could buy by June the
- 15 1st and if you didn't buy it, somebody else could buy it?"
- 16 And you said, "I assume so. Yes." Is that correct?
- 17 A. That's what you got there.
- 18 Q. Okay. That's your testimony under oath?
- 19 A. Okay. If I said that, I said it.
- 20 Q. You also say on page 12, the question is, "So you would
- 21 agree that one of the terms of this offer was you had to buy
- 22 the property with the encroachments?" What did you say?
- 23 Did you say, "By this letter, yes."
- 24 A. Yeah. That's correct.
- 25 Q. Is that correct?

1 MR. DIXON: Objection, Your Honor.

2 A. That's what it says there.

3 MR. DIXON: Can I walk up and look at it, maybe show it
4 to him like we did before?

5 THE COURT: Okay. Mr. Pope, you and the witness are
6 now going way over there. We got to be able to hear, so --

7 MR. POPE: All right. I can go on this side.

8 THE COURT: Well, just be sure he's speaking into a
9 microphone. That's all I need. Yeah.

10 MR. POPE: Don't touch the microphone.

11 THE COURT: Just speak into it, don't touch it. Yeah.

12 Q. And the question here is, "So both these letters
13 required whoever was going to buy the property to accept it
14 with the encroachments?" And what was your answer?

15 A. Yes.

16 Q. And over here on page 36, the question was, "Before
17 June 1st you withdrew your acceptance of the Lions Club
18 offer. Is that true?"

19 MR. DIXON: Objection, Your Honor. This is a portion
20 of the deposition that we objected to when it was designated
21 as testimony and we continue to restate the objection from
22 the depo designation, 'cause it calls for a legal
23 conclusion.

24 THE COURT: Okay. You're noted for your objection. He
25 can give his prior answer.

1 Q. I'll read it again, Mr. Amick. "Before June 1st you
2 withdrew your acceptance of the Lions Club Offer. Is that
3 true?" Read your answer.

4 A. That's what it says there.

5 Q. Says, "That's true"?

6 A. That's true.

7 Q. All right. And you did not close by June the 1st, did
8 you?

9 A. No.

10 Q. So you knew that June the 1st was an important date
11 because you had asked that the offer be extended to cover up
12 to June 1st. Is that right?

13 MR. DIXON: Objection, Your Honor; same, calls for a
14 legal conclusion.

15 THE COURT: Okay. You're noted for your objection. He
16 can answer if he can.

17 A. All right. Say the question again.

18 Q. I said you knew that June the 1st was an important date
19 because you were the one that asked that the offer extend to
20 responses by June the 1st?

21 A. Yes. I knew it was June the 1st.

22 Q. And June the 1st was a deadline. Correct?

23 A. Was an important date.

24 Q. And you didn't close by June 1st?

25 A. No.

1 Q. And you also said that in that letter was sent out
2 pursuant to the agreement on January 24th, 2017, that you
3 had until June 1st to buy the property and then an adjoining
4 land owner could buy it if you didn't. Correct?

5 MR. DIXON: Objection, Your Honor. We already read the
6 deposition in the record. He's supposed impeach on the
7 answer if he doesn't get the same --

8 THE COURT: Okay.

9 MR. DIXON: Using it just to restate the answer, then
10 asking him to reaffirm isn't proper use of the deposition
11 testimony.

12 THE COURT: That I'll agree with. So ask him a
13 question, then if you need to impeach him with the
14 deposition, use it that way.

15 MR. POPE: All right. I think I was doing that.

16 Q. Is this the letter that was talking about -- the offer
17 letter. Is this the letter that was sent out pursuant to
18 the agreement of January 24, 2017, that you had until June
19 1st to buy the property and then an adjoining land owner
20 could buy it?

21 MR. DIXON: Same objection, Your Honor.

22 THE COURT: All right. I'll sustain the objection.

23 Now, Mr. Pope, Mr. Pope, the spirit of my rulings need
24 to be complied with as well as the letter of my ruling.
25 Okay. You---

1 MR. POPE: Well, let me rephrase.

2 THE COURT: ---ask him a question, then you use the
3 deposition then to impeach him. Don't use the deposition as
4 a way of getting him to -- as a way of asking the questions.
5 You ask the questions and then if he gives an inconsistent
6 answer,---

7 MR. POPE: Right.

8 THE COURT: ---then use the deposition to refresh his
9 memory, what he gave as part of the deposition.

10 MR. POPE: That's what I --

11 THE COURT: You're reading directly from the deposition
12 to read the questions.

13 MR. POPE: Well, I wanted it to be the same question,
14 but I'll just paraphrase it.

15 THE COURT: That would be very beneficial, Mr. Pope.

16 MR. POPE: I'll do it.

17 THE COURT: The rulings made by the Court, both in how
18 I express and also in the spirit of the ruling, needs to be
19 complied with. Okay?

20 MR. POPE: Yes, sir.

21 THE COURT: You use a deposition not to come in as a
22 play book to ask witnesses questions. You use your
23 abilities in this courtroom. Okay?

24 MR. POPE: Yes, sir. Yes, sir.

25 THE COURT: It allows the Court an opportunity, then,

1 to judge the credibility of the witness. When you're simply
2 using a deposition and republishing the deposition twice,
3 then it denies the Court the opportunity to be able to judge
4 the credibility of a witness that actually appears in front
5 of him.

6 MR. POPE: Yes, sir.

7 THE COURT: Okay?

8 MR. POPE: Yes, sir.

9 Q. All right. Mr. Amick, you knew that there were others
10 were -- that the spirit of the letter was that adjoining
11 property owners could bid as well as you. Correct?

12 A. It wasn't -- wasn't a bid.

13 Q. Well, I mean, could respond to the letter.

14 A. Yes.

15 Q. Correct?

16 A. Yes (Nodding head affirmatively).

17 COURT REPORTER: Please answer verbally.

18 A. Yes; yes.

19 Q. And then they, like you, would have to comply with the
20 terms and the conditions in the letter. Correct?

21 A. Yes.

22 Q. And that they and you would have to do that by June the
23 1st. Is that right?

24 A. Right.

25 Q. All right. And if, say, if Schumpert had said, Well, I

1 decided I don't want it and withdrew his bid, then there
2 would have two bids left on June the 1st, yours and whoever
3 else bid. Correct?

4 A. I suppose so. I don't know.

5 Q. All right. But in May, you withdrew your bid, correct,
6 your offer, your acceptance, whatever you want to call it?

7 A. No.

8 Q. You went to the meeting, though, and said you didn't
9 want encroachments.

10 A. That's right.

11 Q. Okay. So you said in your deposition, did you not,
12 that that meant you withdrew it. I think we just read that.
13 Did you withdraw your bid because you wouldn't take
14 encroachments?

15 A. I said I didn't want the encroachments, but I don't
16 remember withdrawing my bid.

17 Q. Well, at the time of June the 1st, your bid was no
18 longer active, was it?

19 A. No.

20 Q. Okay. And if there was another active bid out there,
21 you would expect that person should be under consideration
22 as of June the 1st. Correct?

23 A. Well, I don't know what was out there.

24 Q. Sir?

25 A. I don't know what was out there.

1 Q. I don't know what? I'm sorry.

2 A. I do not -- I did not know what was out there.

3 Q. I'm just talking hypothetically. If there are other
4 bids, if your bid is no longer active because you don't want
5 encroachments, that's a condition that was required.

6 Correct?

7 MR. DIXON: Objection, Your Honor. It calls for
8 speculation.

9 THE COURT: All right. Let him ask a question first.
10 Go ahead.

11 Q. Encroachments -- you had to accept the encroachments.
12 That was part of the response. Correct?

13 A. I did not want to accept the encroachments.

14 Q. But you did when you first accepted the bid. Correct?

15 A. I don't remember exactly. I did not ever want to
16 accept the encroachments.

17 Q. But if you didn't buy it by the June 1st deadline, if
18 there was an active bid out there somebody else could have
19 bought it by June 1st. Correct?

20 A. I didn't know -- I didn't know it was a bid process.

21 Q. Now, is it correct or not that you knew that there were
22 two offers -- at some point you knew there were two offers,
23 one from Schumpert for 300,000 and one from the Rices for
24 325,000. You knew that; correct?

25 A. I had no formal knowledge of that.

1 Q. I'm going to read you this part of your deposition.
2 "When did you learn that the Rices had responded to the
3 offer of the Lions Club by saying they would pay \$325,000?"
4 And what was your answer?

5 A. Okay. It was after the February meeting.

6 Q. February, 2018 meeting?

7 A. Yeah.

8 Q. And that was well before the closing. Correct?

9 A. No. That was not well before the closing. I did not
10 learn of it until after the closing.

11 Q. Well, --

12 A. As I remember, I didn't.

13 Q. In this statement you found out about the offers of
14 300,000 --

15 MR. DIXON: Objection, Your Honor. Which deposition is
16 it this time?

17 MR. POPE: This is the dep- -- his deposition.

18 MR. DIXON: Which case?

19 MR. POPE: Oh. Sorry. It's the one in the first case,
20 in the Rice case.

21 MR. DIXON: The 2018?

22 MR. KOUTRAKOS: And which page numbers are you reading
23 from so we can follow along?

24 MR. POPE: Fifty-five; 55.

25 Q. You said you learned about at in February meeting. It

1 was before your closing. Is that correct? Did you say
2 that?

3 A. I don't remember saying that.

4 Q. Okay. Let me just refresh you here (indicating on
5 document). You found out about the offers for \$300,000 from
6 Schumpert and 325 from Rice. You said no, it was the March
7 meeting. It was after -- no. It was at the January meeting
8 when he wrote me the letter. In the February regular
9 meeting, I asked and he told me who had made offers on the
10 property and that's when I found out who had -- the other
11 participants were. At the February meeting, what year?
12 2018. This is before your closing? You said, Yeah, but it
13 was actually -- they had offered me the property in June.
14 They'd written me a letter.

15 A. Who did I offer -- who did I ask about it?

16 Q. I'm sorry. It's your testimony. I can't surmise that.
17 You want me to read it again? The question, Was you found
18 out the offers were 300,000 from Schumpert and 325 from
19 Rice, and you said, No, it was the March meeting. It was
20 after -- no. It was after the January meeting when he wrote
21 me the letter and the February regular meeting asked him.
22 He told me who had made offers on the property and that's
23 when I found out who the other participants were. Question
24 was, At the February meeting of what year? You said, 2018.
25 A. All right. My question is who is "he" in "he" told me?

- 1 Q. But that was your testimony, sir. I don't know.
- 2 A. I don't know who "he" was.
- 3 Q. Well,---
- 4 A. Did -- did this man over here tell me? Did Rice tell
- 5 me? Did Pete Simpson tell me? I don't know who "he" is.
- 6 Q. Okay. Well, if you can't explain that, I can't help
- 7 you with that, but this -- talking about the time frame and
- 8 I asked you is, At the February meeting of what year? And
- 9 you said, year 2018. Is that right?
- 10 A. (No response)
- 11 Q. And I asked if this is before your closing and you
- 12 said, Yeah, but it was after they had offered me the
- 13 property and Gene had written me a letter. Does that sound
- 14 right?
- 15 A. Well, I still don't know who "he" is.
- 16 Q. Well, is that time frame correct or not?
- 17 A. Let me look at it again.
- 18 Q. Yes, sir.
- 19 (Whereupon, Mr. Pope indicated on the referenced
- 20 document for the witness.)
- 21 A. I just don't remember. I just don't remember.
- 22 Q. Does the time frame sound about right, though?
- 23 A. Well, it was probably in that period of time, whatever
- 24 happened happened. Whether that's exactly what happened or
- 25 not, I don't -- don't remember.

1 Q. Now, Mr. Verner was not your lawyer at that May 23rd
2 meeting. Is that right? He wasn't representing you, was
3 he?

4 A. I don't remember. Lisa from Chapin is the person I
5 originally talked to and I don't remember.

6 Q. Isn't it correct that Mr. Verner was the Lions Club
7 lawyer. Is that correct?

8 A. Yeah.

9 MR. POPE: I think that's all. One second. Thank you.

10 THE COURT: Yes, sir, Mr. Price.

11 MR. PRICE: Thank you.

12 CROSS-EXAMINATION

13 CARROLL RAY AMICK BY MR. PRICE:

14 Q. Mr. Amick, you have owned this property since February
15 of 2018?

16 A. Right.

17 Q. And do you have anybody using that property now?

18 A. I have a step-daughter who lives in the house.

19 Q. How would you describe the condition of the clubhouse?

20 A. Well, it needs some work done on it, but I'm afraid to
21 do very much for the simple reason if some reason or another
22 I don't get it.

23 Q. All right, sir. Now, would you consider the fact that
24 you've been hesitant or unable to improve the property a
25 damage to yourself?

1 A. Yes, I would.

2 Q. And if this question were resolved in your favor and it
3 was determined that you were the owner of this 5.35 acres,
4 formerly the Lions Club property, if you owned it in fee --
5 fee simple absolute, what things would you have done?

6 A. Well, one of the first things I would do is paint the
7 house.

8 Q. Okay. And what type of heating system is in this
9 clubhouse?

10 A. Well, she -- she has portable air conditioning for air
11 conditioning and which that will reverse and get some heat
12 from it, but then she has a fireplace in the house.

13 Q. Okay. Would you -- how would you describe her style of
14 living?

15 MR. POPE: Your Honor, this is not relevant. I object.
16 This is speculative about what use --

17 MR. PRICE: Well, the issue of damages came up earlier
18 and so that's what this is about. If --

19 THE COURT: Okay. I'll allow you to go into a little
20 bit. There was some evidence presented by the plaintiff as
21 to some conditions of the property, so I'll let him go into
22 it a little bit. Go ahead.

23 MR. POPE: All right.

24 Q. How would you describe the living style in that house?

25 A. Not very well. Personally, I would not like to live

1 in it as is.

2 Q. Would you live in it?

3 A. Well, I would if I had to. I slept in an Army tent far
4 as that goes. I would rather not.

5 Q. All right, sir.

6 MR. PRICE: I don't have any further questions, Judge.

7 THE COURT: Any redirect limited to what they went
8 into?

9 MR. DIXON: Nothing further, Your Honor.

10 THE COURT: Sir, you may -- watch your step as you're
11 stepping down. See the lawyers for a moment. Lawyers
12 approach. Mr. Pope.

13 (Whereupon, a bench conference was held off the
14 record.)

15 THE COURT: Which one are y'all doing first?

16 MR. KOUTRAKOS: We're going to do Lisa Rice first and
17 start at page 15, line 19.

18 (Whereupon, the excerpts from the deposition transcript
19 of Lisa Rice were published to the Court.)

20 MR. KOUTRAKOS: And that's it for the deposition of
21 Lisa Rice. For Lisa and Joe Rice we also designated
22 exhibits 1 and 2 to those depositions. They're -- they're
23 just, for clarification, exhibits 1 and 2. Exhibit 1 is the
24 -- exhibit 1 is the Lions Club letter and exhibit 2 is the
25 Rice response. So since we designated those, I just want to

1 submit them in the record so it's clear for appellate
2 purposes when we're talking about exhibit 1 and exhibit 2
3 and for Your Honor's purpose.

4 THE COURT: I started to say. We've got to get there
5 first.

6 MR. KOUTRAKOS: We'll know what we're talking about.
7 So I don't know. I'm just designating those.

8 THE COURT: Any objection to the 1 and 2 that were
9 mentioned in the deposition?

10 MR. POPE: I need to see it, but I don't think so.

11 MR. KOUTRAKOS: Here they are, exhibits 1 and 2.

12 MR. DIXON: These are already in evidence.

13 MR. KOUTRAKOS: Yeah. Okay. So---

14 THE COURT: Okay.

15 MR. KOUTRAKOS: ---we're reading from Joe Rice's
16 deposition. Page 47. Excuse me. Page -- yeah, page forty-
17 -- hold on. I'm on page 47, but it's not making sense to me
18 why we're having -- do you know Harry -- that we should
19 start there?

20 THE COURT: Is this one of those depositions where they
21 shifted columns again?

22 MR. KOUTRAKOS: Yeah. A little bit -- a little bit and
23 I don't know why we designated it 47, line 1. If you'd give
24 me one second.

25 (Whereupon, Mr. Koutrakos reviewed documents in his

1 possession.)

2 MR. KOUTRAKOS: So it's actually 48. Actually starts
3 48, line 21 through page 49, line 5. Okay. So whatever is
4 on 47 marked green I think is an error. So the question --
5 I'm starting on page 48, line 21.

6 (Whereupon, excerpts from the deposition transcript of
7 Joe Rice were published to the Court.)

8 MR. KOUTRAKOS: That's it, Your Honor.

9 THE COURT: All right. And does counsel for Amick have
10 any other witnesses?

11 MR. KOUTRAKOS: Hold on. We're going to -- oh. We'd
12 like to, just for clarity, Plaintiffs' Exhibit 36 is the
13 original plat, I guess, of --

14 MR. DIXON: It's the recording
15 plat.

16 MR. KOUTRAKOS: It's the recording plat of the subject
17 property. Just for clarity and for a complete record, we'd
18 like to -- I assume plaintiff's not going to object --
19 exhibit number -- Plaintiffs' Exhibit Number 36 into the
20 record.

21 MR. POPE: No objection.

22 THE COURT: Without objection.

23 MR. KOUTRAKOS: That's it, Your Honor. That's all we
24 have.

25 THE COURT: All right. We're going to take a short

1 recess. Let everybody use the facilities and we'll come
2 right back. I'll make the -- what was handed to me exhibit
3 -- Defendant's Exhibit 1 and Defendant's 2 to the
4 deposition, I'll make them part of the record.

5 MR. KOUTRAKOS: Okay. Thank you, Your Honor.

6 (Whereupon, a brief recess was observed from 3:05 P.M.
7 until 3:17 P.M.)

8 THE COURT: Mr. Price, are you ready to call your first
9 witness?

10 MR. PRICE: Yes, sir. Our first witness will be Gene
11 Crocker. He's coming in as I speak.

12 THE COURT: Okay. Sir, just come right up here.
13 You'll find a Bible on the edge of the bench. Just place
14 your left hand on the Bible, raise your right hand and I'll
15 swear you in.

16 (CLYDE EUGENE CROCKER, JUNIOR, being first duly sworn,
17 was examined and testified as follows):

18 THE COURT: Thank you, sir. Watch your step.

19 THE WITNESS: And my name is Clyde Eugene Crocker,
20 Junior.

21 THE COURT: Thank you, sir. Careful stepping up. Just
22 have a seat in the chair. Pull the chair up to the
23 microphone. If you need to move it, you may, but do it
24 gently, 'cause it may break.

25 MR. CROCKER: Okay.

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 CLYDE EUGENE CROCKER, JUNIOR BY MR. PRICE:

4 Q. Mr. Crocker, if you --

5 THE WITNESS: Your Honor, could I make a couple remarks
6 before the interrogation starts?

7 THE COURT: That is something you have to ask your
8 lawyer. I can't answer that question.

9 THE WITNESS: Mr. Price, could I make a couple of
10 comments before the interrogation starts?

11 MR. PRICE: You may.

12 THE WITNESS: I've been thinking about this and it
13 seems to me that, basically, what we're considering is the
14 rights of the seller. I've heard the expression for a long
15 time that possession is 9/10 of the law and I do know that
16 the laws protect the property owner to a greater extent than
17 they protect someone who offers to purchase that property.

18 As an example, if you, Your Honor,---

19 THE COURT: Let me ask you --

20 THE WITNESS: ---own the house next door to yourself --
21 excuse me.

22 THE COURT: Let me ask you to do something. I
23 appreciate your willingness and wanting to make a statement,
24 but this is a trial and your lawyer needs to ask you a
25 question and get a response. Okay? And if that -- and glad

1 you want to make a statement, but it's highly improper to
2 conduct a trial, just have a witness make a statement at the
3 start.

4 MR. PRICE: Thank you, Judge.

5 THE COURT: Yeah.

6 Q. Mr. Crocker, give us your address, please.

7 A. I live at 723 Mendenhall Road in Newberry, South
8 Carolina.

9 Q. And you've lived there approximately how long?

10 A. I've lived there for thirty-six years.

11 Q. All right. And you came to Newberry to work for Carter
12 and Holmes?

13 A. Yes, I did.

14 Q. And what is Carter and Holmes?

15 A. Carter and Holmes is an orchid nursery that -- they
16 sell plants and when I came there they still sold cut
17 flowers for Easter and Mother's Day; basically, plants.
18 They're shipped all over the world. They're one of the
19 largest in the country.

20 Q. All right. Now, as part of your civic duties, did you
21 join the Lions Club?

22 A. Yes, I did. I joined --

23 Q. And you've been a member of the Lions Club how long?

24 A. Thirty-six years. I joined the summer after I moved to
25 Newberry in the Spring of the 36, I joined that summer in

1 the Lions Club.

2 Q. And have you held offices in the Lions Club?

3 A. I have been president more than once and that's the
4 main office I've held, vice-president and president.

5 Q. All right. And you were the one involved in drafting
6 this letter about the sell of real estate?

7 A. Yes. I was president of the club in 2016-2017 when
8 these things took place.

9 Q. All right. Now, we've heard a lot of talk about
10 selling the property and the proceeds going to charitable
11 purposes. Was it the desire -- let me withdraw that. Was
12 the sell intended to go to the highest bidder no matter
13 what?

14 A. No. We always had a preference to sell it to a member
15 of the club, but we only had one member who expressed an
16 interest in purchasing the property and this happened in the
17 fall of 2016, when we first decided that it was sort of a
18 burden on us to keep up the property no more than we used
19 it, membership had dropped down and so we did offer the
20 property or we did decide that preference would be given to
21 a member of the club. We only had, like I say, one person,
22 Mr. Ray Amick, who was interested in purchasing the
23 property.

24 Q. And as I understand it, when the board decided to sell
25 the property to Mr. Amick for \$300,000, only one board

1 member voted no, because that board member thought that 325
2 should purchase it?

3 A. That was not -- that's not correct.

4 Q. Tell me what's correct.

5 A. The board decided, in the fall of 2016, to determine
6 what the fair market value would be and so we got some -- an
7 appraisal and we talked to Realtors and that's how we came
8 up with the \$300,000 as an asking price. At that time we
9 let Mr. Amick know that if he would pay the asking price,
10 \$300,000, that the property would be his and that would have
11 taken place prior to the letter that was sent out back in --
12 back in January of 2017. He said at the time he could not
13 come up with that amount.

14 Q. So what you're telling me is that even though the club
15 may have gotten more than \$300,000, knowing that it could
16 have gotten less than \$300,000, you wanted to give it first
17 to Ray?

18 A. Well, we wanted to get the asking price and so we were
19 pretty adamant that Mr. Amick would need to pay that price
20 for the property, but he kept telling us he couldn't come up
21 with that much.

22 Q. And that's why you were adamant about never
23 telling anybody it's going to the highest
24 bidder?

25 A. Well, I never, never --

1 MR. POPE: Your Honor, I object, leading. He's leading
2 the witness.

3 THE COURT: Okay. Hang on one
4 second.

5 A. I know Mr. --

6 THE COURT: Hang on a second. Mr. Pope made an
7 objection. When he makes an objection, I have to make a
8 decision.

9 MR. PRICE: I'll rephrase.

10 THE COURT: Okay. He's going to rephrase. Thank you,
11 Mr. Pope.

12 Q. Can you tell us why you never used the term "highest
13 bidder" when talking to any potential purchaser?

14 A. I did not, because we -- from the beginning, we had to
15 make a decision. If we had a bidding process, of course, we
16 would publicize that, but we would also put in the condition
17 that we could accept or refuse any or all bids. That's
18 common in a bidding process and so we decided we wouldn't go
19 with a bidding process and so that's why we had not used
20 that term. That's why I hadn't used it -- I had not used
21 it.

22 Q. All right.

23 MR. PRICE: That's all I got. Please answer any
24 questions of Mr. Jim Koutrakos or Mr. Pope.

25 THE COURT: Yes, sir, Mr. Pope.

CROSS-EXAMINATION

CLYDE EUGENE CROCKER, JUNIOR BY MR. POPE:

Q. Mr. Crocker, the letter -- is it correct or not correct that you agree that the letter could be interpreted as an offer to sell?

A. I think the letter could be interpreted that way, because we did list the asking price and we didn't request offers. Like I say, we never mentioned bids, but we never requested offers. We requested if anyone had an interest in the property, to let us know. Now, the reason we sent out the letter was because Mr. Amick had said he couldn't come up with our asking price, so we decided to advertise the property to the adjacent lake owners and not to advertise it to the public until after June the 1st of that year. This was in the spring -- well, early in January, 2018, and so I can see, since we mentioned the asking price and we requested anyone who had interest in the property to notify us, that could be interpreted to mean offer to sell, but --

Q. The letter used the word "offer" twice, did it not?

A. Well, that second meant was that this was being publicized to the lake property owners and would not be released to the public until after June the 1st. That's what that one refers to.

Q. But the offer letter, I call this document offer letter, it ends with the statement, "This offer of the Lions

1 Club is valid until June 1."

2 A. That's correct.

3 Q. Okay. And so anybody that put in a response that was
4 favorable to that, that means taking the conditions you
5 impose in the letter, signed June the 1st, assuming --

6 A. We did spell out conditions. The first consideration
7 would be given to a member of the Lions Club.

8 Q. Right. All right. You knew that on May the 23rd
9 Mr. Amick had withdrawn his bid. Correct?

10 A. Beg pardon?

11 Q. Mr. Amick, at the May 23rd meeting, withdrew his
12 acceptance or bid or whatever you want to call it?

13 A. He did not withdraw his bid. He was still willing to
14 accept the property. He just specified he needed a clear
15 title.

16 Q. And that was different from -- you understood when you
17 sent the letter -- Mr. Simpson signed it, but you were the
18 author. Correct?

19 A. Yes, sir.

20 Q. You understood that you could -- you could sell
21 property subject to encroachments if a buyer would do that?

22 A. We did that until we consulted with Jay Verner. Jay
23 was retired from our club, a civil lawyer in Newberry and,
24 of course, he's quite elderly, but he had retired from the
25 club and at that board meeting in May of 2018, was when he

1 made the comment that in his opinion we could not offer a
2 clear title to the property while there were encumbrances on
3 it.

4 Q. But your offer letter -- you didn't consult with a
5 lawyer when you sent the offer?

6 A. Beg pardon?

7 Q. You did not consult with Mr. Verner---

8 A. That's correct.

9 Q. ---or any lawyer---

10 A. That's correct.

11 Q. ---when you sent the offer letter. Correct?

12 A. That's correct.

13 Q. All right. And you believed that you could sell the
14 property if a buyer would accept the encroachments, you
15 could do it with that condition, didn't you?

16 A. At the time we sent the letter we did believe that. I
17 never heard otherwise.

18 Q. But it was Mr. Amick that came to the meeting in May,
19 May the 23rd, and said I don't want these encroachments, I
20 want clear title?

21 A. Actually, I think Mr. Amick mentioned that prior to the
22 meeting on -- in May, the board meeting, and I think that's
23 the reason we asked Mr. Verner to meet with the board was to
24 see whether we could get a clear title at that point. Mr.
25 Amick was willing to accept the encroachments, because he

1 had been in touch with Mr. McCracken and so they were on a
2 friendly basis and he felt sure they could work it out
3 between the two of them.

4 Q. And you believed that you could sell the property with
5 encroachments even at the time of the deposition, didn't
6 you?

7 A. At the time the letter was sent out in January, we felt
8 we could.

9 Q. Let me show you page 22 of your deposition in the
10 Schumpert case. The question on line 14 was, Right. So you
11 knew at the time the property was offered for sale and could
12 be sold with the encroachments on it?

13 A. Yes. That's what we understood.

14 Q. All right. So when you sent --

15 A. Not really knowledge, per se.

16 Q. So when you sent the letter out you believed you could
17 sell it with encroachments. True?

18 A. Yes.

19 Q. You said, If a buyer agrees to buy it with the
20 encroachments. Yes?

21 A. Yes.

22 Q. Okay. All right. And the next question on 30, 23 is
23 Right. And you believed that ever since. No one's ever
24 told you otherwise.

25 MR. DIXON: Objection, Your Honor. Again, for the next

1 question he ought the question, get the answer, doesn't like
2 the answer, go back to the deposition.

3 MR. POPE: I had already asked that question. I asked
4 him earlier did he believe at the time of your deposition
5 you could sell property with encroachments.

6 THE COURT: And I believe his response that I heard was
7 yes and then you then continued to put the deposition in
8 front of him and ask him the same question again and got the
9 same response. Okay.

10 MR. POPE: All right. But he hadn't answered this
11 question.

12 A. Actually, the answer was --

13 THE COURT: Well, ask him -- why don't you ask him the
14 question and let's see if you need to use the deposition.

15 MR. POPE: All right.

16 Q. The question is you believed at the time of your
17 deposition, ever since the time of the offer letter, that
18 you could -- and nobody had told you otherwise, that you
19 couldn't sell without -- with encroachments?

20 MR. DIXON: Same objection.

21 THE COURT: All right. I've got -- Mr. Pope, you see,
22 both parties have offered to this Court excerpts from these
23 depositions. You offered me excerpts from depositions,
24 you're allowed to under the rules, I take them and I take
25 them for the substance of them and the same witnesses that

1 are being offered as part of these -- part of these
2 depositions have come in to testify in front of this Court.
3 The Court likes to have the benefit of being able to
4 see the witnesses testify, not just re-read their
5 depositions. Okay. So if you're going to use the
6 depositions, try to use them properly. Ask him a question
7 without reading from the deposition or -- and then see if
8 there's something inconsistent or something that can be used
9 to refresh his memory.

10 MR. POPE: All right.

11 THE COURT: It aids the Court to be able to determine
12 and judge the credibility of those who come into court to
13 testify.

14 MR. POPE: Yes, sir.

15 THE COURT: Not their ability to read.

16 MR. POPE: Correct.

17 THE COURT: Okay.

18 A. After the meeting with Jay Verner, I believed from then
19 on that we could not get a clear title with the
20 encroachments.

21 Q. Well, is that the same question? I didn't ask if you
22 could get clear title with encroachments. I asked if you
23 could sell property if a buyer agreed -- you could sell
24 property with encroachments if he agreed. Correct? And you
25 believed that in that deposition, did you not?

1 A. I did not.

2 Q. You didn't?

3 A. No, because he had said we couldn't get a clear title.

4 You can't sell the property without getting a title.

5 Q. Well, two different questions. I wasn't really asking

6 about clear title. I was asking about selling with the

7 encroachments, which would not be clear title.

8 A. And my answer was no.

9 Q. Your answer was, That's true. You believed ever since

10 that you could still sell property with encroachments, if

11 the buyer --

12 A. Look what it says right here (indicating on document.)

13 Q. Let's go back to --

14 A. Read it right here (indicating on document).

15 Q. When you sent the letter out, you believed you could

16 sell the property with encroachments? True?

17 A. That's true.

18 Q. Here it is. All right.

19 A. That is true.

20 Q. Next question is, You believed that ever since. No

21 one's ever told you otherwise? Your answer was, No.

22 A. That's correct.

23 Q. Is that true?

24 A. That's true. No.

25 Q. Read your answer, please. I don't want to beat this to

1 death.

2 A. You said, And you believed that ever since. No one's
3 ever told you otherwise? My answer was, No.

4 Q. Is that true? You said, Yes.

5 A. No. That -- none of these -- I did not believe it ever
6 since.

7 Q. Doesn't matter. I'll go on to something else.

8 A. At the time we sent the letter out, I honestly did not
9 know whether we would receive an offer for the asking price,
10 because Mr. Amick said he couldn't come up with that and so
11 I -- personally, I have never had a lot of money. I
12 couldn't conceive of somebody paying more.

13 Q. But the reason that -- the reason you didn't close with
14 Mr. Amick in 2017, by that deadline date, was because he
15 required the club remove the encroachments. Right?

16 A. No. He required a clear title.

17 Q. Okay.

18 A. He never said that he required the encroachments to be
19 removed. If Mr. Verner had said we could offer a clear
20 title, as long as the buyer accepted the encroachments, then
21 we would have proceeded with that, but we had to take care
22 of the encroachment.

23 Q. All right. So is it correct that you said that --
24 wouldn't it be correct that Mr. Amick said he wanted clear
25 title and that would mean removing the encroachments?

1 A. According to Mr. Verner.

2 Q. And that was not something that the Rices ever
3 required. They never said you'd have to remove the
4 encroachments. Correct?

5 A. Well, they said they wanted clear title. In the
6 initial offer that came in, the initial letter that came
7 from Mr. Boone, it was spelled out they needed clear title
8 to the property.

9 Q. It said marketable title. Correct? Marketable title?

10 A. Yeah.

11 Q. Okay. Now, -- but in the first meeting the board
12 acceded to Mr. Amick's request to extend the deadline to
13 June the 1st, correct, of 2017?

14 A. In that meeting in January, yes.

15 Q. Okay. And Mr. Amick asked, Why is the letter still
16 going to the adjacent land owner if I've got 'til June?

17 A. He did ask that. Yes.

18 Q. All right. And you -- did you explain that the reason
19 is because if you don't buy it, we'll have somebody else
20 that can buy it because they've been in the process?

21 A. We would like to find out before we accept any offer
22 from you that -- whether anyone else is interested in the
23 property. I would like to say that, in my opinion, an offer
24 to purchase does not imply a contract on the basis of the
25 seller.

1 MR. POPE: Your Honor, I would say that --

2 A. I've heard that word contract mentioned.

3 MR. POPE: No question was asked on that point.

4 THE COURT: You want to---

5 MR. POPE: I move to strike.

6 THE COURT: ---state an objection?

7 MR. POPE: Objection.

8 THE COURT: Okay.

9 MR. PRICE: I think that's the current statement of the
10 law.

11 THE COURT: Okay. Well, he's not a lawyer. All right.
12 I'm going to sustain the objection.

13 If you would, try to listen to what Mr. Pope's asking.
14 It goes a lot smoother and I don't have to interject myself
15 in the trial as much, but thank you very much for listening.

16 THE WITNESS: You can strike it, but you heard what I
17 said.

18 Q. But the point was Mr. Amick accepted the encroachments
19 when he first accepted the offer, letter offer?

20 A. Yes, he did.

21 Q. Then he came and said he wanted clear title and wasn't
22 taking the encroachments?

23 A. Well, actually, he accepted the encroachments not
24 before he got the letter. He accepted -- yeah. That's
25 right, he did, because that was in January, he accepted the

1 encroachments, but he just told us he couldn't come up with
2 the money.

3 Q. But there wasn't anything that Mr. Amick ever asked of
4 the board that they didn't -- that you didn't comply with or
5 acquiesce in. Correct?

6 A. (No response)

7 Q. I mean, he wanted 'til June the 1st for the deadline,
8 you agreed. He wanted to withdraw his response, you agreed.

9 A. With regard to withdraw his response, I'm not sure what
10 you mean. Regarding the encroachments,---

11 Q. Right.

12 A. ---he did say he wanted clear title.

13 Q. Right.

14 A. That's what both of the other offers had included that
15 comment.

16 Q. And I want to ask you about the meeting on March the
17 28th, which is in exhibit 5.

18 THE COURT: He's got a notebook in front of him. One
19 of those?

20 MR. POPE: Oh. Yeah. Excuse me.

21 Q. Open up that, please, to exhibit 5.

22 (WHEREUPON, the witness turned to the referenced
23 document.)

24 Q. Look at the March meeting, March 28, 2017. Is it --

25 A. Yes, sir. I'm reading it.

1 Q. Read the last paragraph there, next to the last
2 paragraph. Read it out loud, please.

3 A. It says, A motion was made to accept Lion Ray Amick's
4 offer of \$300,000, provided that closing would take place by
5 June the 1st, at which time other offers would be considered
6 if the property closing had not taken place by that date.

7 Q. So that was the intent of the board and the intent of
8 the club to, at that time, to accept Amick's offer, provided
9 he close by June the 1st and if he didn't close by then,
10 which he didn't, that other offers would be processed and
11 considered?

12 A. Well, we actually withdraw the property for sell at
13 that May meeting until we could clear the title.

14 Q. But the point --

15 A. That was prior to the June 1st deadline.

16 Q. I'm talking about March. As of March, though, the
17 feeling of the board and the feeling of the club was that if
18 Mr. Amick would pay 300,000, take the encroachments and
19 close by June 1st, it was his, but if he didn't close, you
20 would consider whatever other offers were out there, bids or
21 responses. Correct?

22 A. Yes, sir, but you have to understand that there were
23 other factors that at that time, until we talked to Mr.
24 Verner, we did not consider.

25 Q. Yeah, but at the time this letter went out, what other

1 factors were there?

2 A. At the time that letter went out, there were no other
3 factors.

4 Q. Okay. And if he had -- if he had closed by June 1 and
5 complied otherwise, fine. If he didn't, and he didn't, then
6 you would consider other offers that were released under the
7 terms of those minutes. Correct?

8 A. Yes, but the March 28th meeting of the board was
9 followed by the May meeting of the board in which Mr. Verner
10 was present and he convinced us -- I don't know whether this
11 is legally correct or not, but we didn't have another law-
12 -- another lawyer in our club. We didn't have anybody to
13 contradict Mr. Verner, so we took his word as -- as fact and
14 that's when we realized that we couldn't sell the property
15 until we had handled the encroachment.

16 Q. You never showed Mr. Verner any -- your offer letter or
17 the responses to it. Is that right?

18 A. I think we did at that meeting. I'm not sure we showed
19 him all the responses, but I'm sure we told him we had
20 received three offers.

21 Q. You didn't get his advice on the letter? You didn't
22 get his advice on the --

23 A. Not prior to sending it out. No, we did not.

24 Q. -- on the offer letter, did you?

25 A. We did not.

1 Q. And you didn't get his advice on the Rice's response,
2 did you?

3 A. No, we did not, really.

4 Q. And did he -- did you show him all the letters that the
5 Rices, through their attorney, sent you?

6 A. We did not.

7 Q. Is it correct or not correct that you thought that
8 getting the top net proceed was important?

9 A. It's correct. Like I say, I wasn't sure we were going
10 to even get the 300,000. The reason that I dealt with
11 Realtors and the reason that we had an appraisal was to get
12 some idea of what the property might be worth. The property
13 was purchased by the members of the club. No public money
14 was used to purchase it and it belonged to the Newberry
15 Lions Club, but actually it belonged to the members, because
16 we could have just split the proceeds among ourselves, but
17 early on, when we first talked about selling the property,
18 we agreed it would go to charity and subsequently, working
19 with an auditor, I found out that if we donated the money to
20 501c3 charities, we would not have to pay any taxes on the
21 -- on the income.

22 Q. But the deadline you said in that letter was a hard
23 deadline, wasn't it, June 1?

24 A. I said -- June 1? No. Offers could have come in from
25 these same people after June 1. It just meant that on June

1 1 we would advertise the property to the public through -- I
2 guess through a newspaper ad or whatever. Putting a sign up
3 there would not have helped. And, also, we didn't want to
4 go to a Realtor, but if we hadn't had an acceptable offer by
5 June the 1st, we might have gone to a Realtor.

6 Q. Would you say it was a hard deadline or a soft
7 deadline, June the 1st?

8 A. Well, it's a hard deadline as far as publicity of the
9 property.

10 Q. Now, the first -- you never communicated with Mr. Rice
11 about whether he would pay more or not or anything about his
12 -- his bid offer?

13 A. I did not.

14 Q. Now, the Rices never withdrew their responses to your
15 letter to the adjacent property owners, the offer letter,
16 did they?

17 A. No.

18 Q. And you never called their attorney's office or had
19 your attorney call their attorney's office?

20 A. I didn't call them. I did get a call from Mr. Boone
21 and talked to -- talked to him about, in essence, about the
22 same situation. He wanted to confirm that we had received
23 this letter.

24 Q. You never told him the substance of it?

25 A. That's right.

1 Q. There was never discussion of anything improper or out
2 of line about the Rice's response or anything like that?

3 A. No.

4 Q. Do you think this whole thing could have worked out
5 better if the Lions Club had been more transparent and
6 communicated with the Rices about what you were planning and
7 about getting money for charity and such things as that?

8 A. I don't know. You know, I can't answer that, 'cause I
9 can't speak for them, but I think we were transparent enough
10 with the letter we sent out.

11 Q. That one letter, though?

12 A. Just one letter.

13 Q. Okay. And no response to the other letters?

14 A. No.

15 MR. POPE: Thank you.

16 THE COURT: Yes, sir, Mr. Dixon.

17 MR. DIXON: Thank you.

18 CROSS-EXAMINATION

19 CLYDE EUGENE CROCKER, JUNIOR BY MR. DIXON:

20 Q. Mr. Crocker, I'll be brief. I want to clear up one --
21 a couple points. Did -- when the Lions Club decided to sell
22 to Mr. Amick in March of 2017, did the board vote on that?

23 A. Yes, we did.

24 Q. And the board voted to sell it to Mr. Amick?

25 A. Yes. We -- we voted to sell it to Mr. Amick if he

1 could pay the \$300,000 price that we'd come up with.

2 Q. Right. Okay. And in January of 2018, did the board
3 vote again to sell the property to Mr. Amick?

4 A. At that point we voted to accept Mr. Amick's offer of
5 the \$300,000 for the property. Yes.

6 Q. Right. And did the board vote on that?

7 A. Yes, we did.

8 Q. Okay. And I think -- correct me if I'm wrong, was the
9 only other time -- for this property, this clubhouse
10 property -- is the only other sell the sale to Thad
11 McCracken to clear up the encroachments?

12 A. Well, the property had been sold in previous years to
13 individuals who bought the property and wanted to have a
14 home or --

15 Q. Right. I'm asking only about this 5.5 acres.

16 A. But not -- not while I was president, not at the time
17 that we discussed the five and a half acres of property.

18 Q. Right. In 2017?

19 A. Right. '16 and '17.

20 Q. And did the board vote in 2017 to authorize the sell
21 to McCracken and clear up the encroachments?

22 A. The board -- yes. In fact, Mr. McCracken in -- in the
23 February '17 had sent an offer to purchase what was called
24 lot number 9, which was the lot that was still owned by the
25 Lions Club where Mr. McCracken's cabin encroached upon the

1 Lions Club property. It's not a very large house. It's a
2 fairly small house, but when we had a survey run it showed
3 about at least a third of that house, maybe up to a half of
4 that house, was on Lions Club property and that lot number
5 19 and so he had offered to purchase that lot for \$15,000.

6 Q. Right; right.

7 A. And then we found out that if he did so -- we got
8 another survey, which -- and it showed that the road going
9 down to the clubhouse slightly encroached on another piece
10 of property and we wanted to know the space between that one
11 and what we were selling to Mr. McCracken to allow the road
12 to be moved over to the --

13 Q. Right; right. I'm with you on all that. I just wanted
14 to be clear that the board actually voted to take that
15 action?

16 A. The board voted to get it re-surveyed and when they
17 did -- when we did, the board voted to offer it again to Mr.
18 McCracken and when -- explained that it, you know, was not
19 quite as much and he came back with an offer of \$13,000 to
20 purchase it---

21 Q. Right.

22 A. ---and the board agreed to sell it to him at that
23 price.

24 Q. Right. And just so we're absolutely clear, --

25 A. And Mr. Amick agreed to continue to purchase it even

1 with that small amount that's been sold to Mr. McCracken.

2 Q. Yes, sir. And just so we're absolutely clear, the
3 Lions Club board never voted to do anything with this Rice
4 offer?

5 A. No. We accepted Mr. Amick's offer, which I guess by --
6 by edification means that we turned down the offer from the
7 Rices and we turned the offer from the Schumperts.

8 Q. Okay. And then just so we're crystal clear, you never
9 told Claude Schumpert that the highest bid would get the
10 property?

11 A. I did not mention that to anyone. I didn't use the
12 term bid and I did not say the highest offer would get the
13 property, because I was president of the club, but the board
14 had the authority. In other words, I could not speak for
15 the board, so I could not make that comment to anyone,
16 because the board would have had to specify that.

17 Q. The board would have had to vote on it?

18 A. The board would have to say we're going to take the
19 highest offer. They never did.

20 MR. DIXON: Thank you. No further questions, Your
21 Honor, from defendant Amick.

22 THE COURT: Any redirect?

23 MR. PRICE: We have no redirect.

24 THE COURT: Thank you, sir. You may step down. Watch
25 your step as you're stepping down. Thank you, sir.

1 Is the Lions Club ready to call their next witness?

2 MR. PRICE: Yes, sir. We call Mr. Pete Simpson.

3 THE COURT: Sir, just come right up here. Place your
4 left hand on the Bible and raise your right hand and let me
5 swear you in.

6 (LADSEN HEATH SIMPSON, being first duly sworn, was
7 examined and testified as follows):

8 THE COURT: Thank you, sir. Watch your step as you're
9 stepping up. Have a seat in the chair. Pull the chair up
10 to the microphone. You can adjust the microphone, but be
11 sure you do it gently, 'cause it may break.

12 DIRECT EXAMINATION

13 LADSEN HEATH SIMPSON BY MR. PRICE:

14 Q. Mr. Simpson, if you'd please state your full name and
15 address.

16 A. Ladsen Heath Simpson, nickname Pete, 1724 Main Street,
17 Newberry, South Carolina.

18 Q. And what is your position at the Lions Club?

19 A. I'm the secretary.

20 Q. And you've been the secretary how long?

21 A. Seven or eight years probably.

22 Q. And what do you do when you're not being a Lion?

23 A. My full-time position is I'm a funeral director.

24 Q. Okay. And you've been doing that how long?

25 A. Thirty-five years.

1 Q. Okay. Now, are you the one that is responsible for
2 doing minutes for the board meetings?

3 A. I am.

4 Q. All right. And have you used the term, as far as the
5 sell of this 5.35 acres of the Lions Club, have you used the
6 term "it will go to the highest bidder"?

7 A. I have not.

8 Q. And why not?

9 A. Because that was never -- I would have gone by what the
10 board of directors had said and that was never a term that
11 was ever used.

12 Q. All right. Do you think it was -- you've been there
13 long enough to know Mr. Ray Amick?

14 A. Correct.

15 Q. And what kinds of things did he do as caretaker for the
16 Lions Club?

17 A. He cut the grass and, like I say, you know, during the
18 winter time would drain water out of the pipes when we
19 didn't meet, like I say, just kept general upkeep of the
20 property and look over it.

21 Q. Other than Ray, were there any people that lived down
22 there who were members of the Lions Club that could have
23 done those services that Ray provided?

24 A. Now, at one point we did have Bill McSwain, who was a
25 member and lived there, but Bill was up in age, like I say,

1 he wasn't physically able to do it. That's the only other
2 member that was down there.

3 Q. Now, if Ray had not provided those services, would you
4 have had -- tell us whether or not you would have had to
5 hire somebody to do those things.

6 A. Mostly likely, we'd have had to hire somebody and the
7 club, at this point, had dwindled down and had continued to
8 dwindle, but like I say, there probably wouldn't have been
9 anybody in the club that would have taken on those
10 responsibilities.

11 Q. All right. Do you have in front of you a document that
12 says "Miscellaneous Book A, True Certified Copy" from
13 Lexington County?

14 A. I do.

15 MR. PRICE: Judge, if I may, I don't have copies of
16 these and I don't know what facilities we --

17 MR. KOUTRAKOS: That's Defendant's Exhibit Number 1.

18 MR. PRICE: Oh, okay. Good.

19 THE COURT: Defendant's 1.

20 MR. KOUTRAKOS: Which has not been introduced into
21 evidence, but --

22 MR. PRICE: Okay. If I could -- what number --

23 THE COURT: Defense 1.

24 MR. KOUTRAKOS: Defendant's Exhibit 1.

25 MR. PRICE: Okay. Good; good.

1 Q. Okay. Pete, if you would tell us why this thing says
2 Lexington County Register of Deeds?

3 A. Well, at one point the property where the clubhouse is
4 was actually in Lexington County and, of course, there's a
5 history that I'm not familiar with completely, but, of
6 course, Lake Murray was manmade, created and, of course,
7 during the course of things and, I think, being that
8 boundaries shifted some and what was Lexington County has
9 now become Newberry County, so it's actually in Newberry
10 County, but in 1935 or, I think this is, or '36, like I say,
11 apparently it was in Lexington County.

12 Q. Right. So this is a document related to subject
13 property?

14 A. Correct.

15 Q. All right. If you could publish this for us, just read
16 it.

17 THE COURT: The whole document?

18 MR. PRICE: Yes, sir. It's only one page.

19 THE COURT: All of this?

20 MR. PRICE: Yes, sir.

21 THE COURT: Is there a particular reason you want him
22 to read a 1935 deed?

23 MR. PRICE: Well, actually, it's a resolution.

24 Q. But if it would be easier, let's just read the third
25 paragraph—

1 THE COURT: Okay.

2 Q. ---where it says, Be it further resolved that John F.
3 Clarkson --

4 A. Be it further resolved that John F. Clarkson, somebody
5 and Neil Farmer(ph), Marvin O'Summer (ph) are hereby duly
6 elected and defined designated as trustees of said property,
7 that they serve to serve as trustee until their successors
8 are duly elected by the Newberry Lions Club. That said
9 trustees are to receive a deed from said W.W. Amick for the
10 use and benefit of the Newberry Lions Club. That the
11 trustees are hereby given the right, are empowered to sell
12 to the members of the Newberry Lions Club lots for building
13 purposes. The deeds from the trustees is -- to the members
14 shall contain a restriction that the property, cannot be
15 resold except to a member in good standing of the Newberry
16 Lions Club.

17 Q. Thank you. Now, being the secretary, are you familiar
18 with any resolutions or other documents that have ever
19 revoked that provision?

20 A. Not that I know of. Not that I've ever seen. I mean,
21 I knew this existed, but I've never seen anything to the
22 contrary.

23 MR. PRICE: That's all I have. Thank you. Please
24 answer any questions the others may have.

25 THE COURT: Yes, sir, Mr. Pope.

CROSS-EXAMINATION

LADSEN HEATH SIMPSON BY MR. POPE:

Q. Mr. Simpson, you -- you mailed a letter, the offer letter, out from the Lions Club to the adjacent property owners?

A. Yes, sir, I did.

Q. And did you mail one to the Rices?

A. I did mail one to an address that we had, which we later determined was an incorrect address.

Q. And you got a call from Mr. Rice?

A. I -- to my knowledge, I had never spoken with Mr. Rice. Now, I would love to recall and tell you exactly who told me, but my recollection is is that at one of the board meetings or one of the meetings, not necessarily a board meeting that we had, someone brought to my attention that he -- they had not received a letter and gave me a new correct address that I mailed the letter to and, like I say, I do not recall who told me that, but I do believe that is accurate, because I believe if Mr. Rice would have called me, I would have made the offer to actually fax that letter on to him and not having gone to the extent of having to mail it.

Q. But you did -- you did mailed it to him at --

A. It was mailed. It was mailed.

Q. -- to the correct address?

1 A. It was mailed to the correct address.

2 Q. Now, do you have a recollection that you did not talk
3 to Mr. Rice or do you say you just don't recall it?

4 A. I have no recollection of ever talking with Mr. Rice.

5 Q. Okay. So it would be fair to say that you did have --

6 A. I did not --

7 Q. -- you did not have a conversation---

8 A. I didn't --

9 Q. ---or you don't recall having one?

10 A. I did not have a conversation with Mr. Rice.

11 MR. POPE: Just a minute. Excuse me, Your Honor. I'll
12 be just a second.

13 THE COURT: Do you need a copy of the depositions?

14 MR. POPE: My paralegal is looking for one.

15 THE COURT: I've got -- I've got them if you need to
16 borrow them.

17 MR. POPE: Well, that'd be fine. I'll be careful.

18 Q. And you recall mailing two of the letters to the Rices,
19 one to the wrong address and one to the current address?

20 A. That's correct.

21 Q. Did you say you absolutely didn't have a conversation
22 with him or you don't recall it?

23 A. I did not have a conversation with him.

24 Q. But in the deposition didn't I ask you, You don't
25 recall the conversation you had with Mr. Rice?

1 MR. DIXON: Which deposition?

2 Q. It's the first one in the Rice case. You don't recall
3 the conversation you had with Mr. Rice?

4 A. No. I don't recall that.

5 Q. You know that you had one or you don't what -- but
6 don't know what he said? What was your answer?

7 A. I don't recall ever having one.

8 Q. What's the rest of it?

9 A. But I guess I must have.

10 Q. Okay. Now, you're the secretary, but you never
11 responded to any of the letters that the Rice family or
12 their lawyer sent to you?

13 A. That's correct.

14 Q. Did you turn them over to anybody or just put them in
15 the file or what?

16 A. They were presented at -- I mean, they were -- I mean,
17 the board members had access to them.

18 Q. I'm sorry?

19 A. The board members had access to them when the board
20 submitted them.

21 Q. Did you have any discussion about the May 15th letter
22 where the lawyer said the Rices are the high bidder and we
23 want to close and we'll have to bring a DJ action if you
24 don't respond, exhibit 15?

25 A. What was the question?

1 Q. The question was did you discuss that at the board
2 meeting, that you had a letter from the Rice attorney saying
3 that they had the high bid of 325,000 and they wanted to
4 close or they would have to bring a DJ action?

5 A. I would have to see the board minutes to remember. I
6 can't remember.

7 Q. You can remember the letter, though?

8 A. I remember the letter. Correct.

9 Q. All right. Did any action get taken on that letter?

10 A. I'd have to see the board minutes to remember.

11 Q. Do you remember any action?

12 A. Like I say, I don't remember.

13 Q. And what about the October -- I mean, excuse me -- the
14 November letter, Plaintiffs' Exhibit 19, where they
15 reiterate the same thing, We were the successful high bidder
16 at 325,000? What action did the board take about that?

17 A. Like I say, I'd have to see the board minutes to
18 refresh my memory.

19 Q. You know that that letter was read aloud at the board
20 meeting. Right?

21 A. Like I say, I don't -- it would -- I would have to see
22 the minutes to refresh. I don't remember.

23 Q. Well, if you look at 5-B, the minutes of November 28,
24 2017, you see that down there near the bottom?

25 A. Right. Correct. But they were --

1 Q. Mr. Crocker read it?

2 A. Correct.

3 Q. Did it ever -- in the interest of transparency, did the
4 board ever say maybe we ought to talk to the Rices?

5 A. According to this, it says that they were -- we
6 forwarded that to Attorney Jay Verner for his office to
7 respond, if needed.

8 Q. But no response was made?

9 A. I assume that it was. I mean, according to this, we
10 turned it over to Attorney Jay Verner.

11 Q. I know, but did he ever make a response far as you
12 know?

13 A. I don't remember.

14 Q. Did you ever make -- and you never decided or thought
15 it was a good idea to give the closing attorney, at the
16 closing for Mr. Amick, to give her the letters from the Rice
17 family lawyer?

18 A. I don't know what reason she'd have needed them.

19 Q. But you didn't tell her, oh, by the way, we've got
20 people that are writing us, their lawyers are writing us,
21 telling us they got the high bid and they want to close?

22 A. I mean, they -- we didn't have -- we weren't taking
23 bids, so, I mean, -- I mean, yes, they sent letters, they're
24 inquiring and interested in it, but like I say, they didn't
25 have bids.

1 Q. All right. But the letters you got, you didn't bring
2 to her attention for whatever reason she might want to know
3 if somebody's complaining about the process that the Lions
4 Club is following in not communicating?

5 A. We did not.

6 Q. But it's very clear you had an interested buy in the
7 Rices. Correct?

8 A. We did. We did have --

9 Q. And they were offering to give you more money for
10 charity, basically? Correct?

11 A. They were.

12 Q. And you didn't think it was important for the club to
13 try to get the most money it could to give to charitable
14 endeavors?

15 A. We felt like we were -- the price that we were
16 receiving was a fair price according to what appraisal we
17 had been given.

18 Q. Well, there's been some testimony that the high net
19 proceed was a factor or an important factor or at least some
20 factor. You don't think that was important?

21 A. I think the price we were asking was what we considered
22 to be favorable.

23 Q. Did it occur to say, well, let's go to the Rices just
24 for the heck of it and let's ask them if they'll pay 450 or
25 400?

- 1 A. We didn't.
- 2 Q. Do you think that's the wise thing to do for a charity?
- 3 A. We felt like we had grasped a fair price.
- 4 Q. Were you at the meeting when Mr. Amick came and said he
- 5 did not want encroachments, weren't you?
- 6 A. Correct.
- 7 Q. All right. And that's how you knew that there were
- 8 still two bids pending and it was---
- 9 A. Still knew there --
- 10 Q. ---open 'til June 1. Correct?
- 11 A. Still knew there were two interested individuals in the
- 12 property. Correct.
- 13 Q. And they had put in money offers or bids or responses
- 14 or whatever you want to call it?
- 15 A. They had responded that they were interested. Correct.
- 16 Q. And they complied with the conditions in the offer
- 17 letter. Correct?
- 18 A. They -- what we had mentioned, correct.
- 19 Q. All right. And on June 1 they were the only two people
- 20 who had active bids. Correct?
- 21 A. They had shown their interest in the property. As I
- 22 say, we never were taking bids.
- 23 Q. Well, they had active responses, monetary amounts
- 24 accepting the conditions on June the 1st and you didn't deal
- 25 with either one of them?

1 A. By that point we had been -- dealt with the
2 encroachment issue that, like I say, Attorney Jay Verner
3 said we probably needed to handle so we handled so we
4 handled, so we were, actually, at that point, whatever
5 information we had at that point was sort of, in our
6 opinion, null and void. We were ready to start the process
7 again, because we needed to settle the encroachments before
8 we proceeded.

9 Q. But on June the 1st, far as you knew, based on what Mr.
10 Amick said in the May meeting, there were two bids out there
11 that were acceptances or responses, whatever you want to
12 call it, that qualified, weren't there?

13 A. We had two people that were interested, but at that
14 point in the process we had to resolved the encroachments
15 and then begin the process again.

16 Q. So your belief is you can't sell property with
17 encroachments even if the buyer agrees that --

18 A. I have no idea. I mean, I know nothing about
19 encroachments or selling properties.

20 Q. So you're saying --

21 A. I went by the advice of Jay Verner.

22 Q. If someone had said in response to your offer letter,
23 we'll pay you 400,000, 350, 500,000, you would have rejected
24 that, is that right, at that point?

25 A. At that point, because we were under the impression we

1 needed to get the encroachments.

2 Correct.

3 Q. So looking back on it, you don't think there's anything
4 the Lions Club should have done differently to communicate
5 with the Rice family?

6 A. We had their information that they were interested in
7 it, but like I say, at that point I don't really know why we
8 would have needed to have communicated, because, like I say,
9 we had not -- I mean, I just don't know why we would have
10 needed to. Of course, you know, we did not and I don't know
11 really why we would needed to have.

12 Q. It was not important to you or to the other board
13 members that you have more money for charity. Is that
14 right?

15 A. We -- again, like I say, we felt like we were being
16 fair to the club with what we were asking.

17 Q. And the fact that Mr. Amick went to all these board
18 meetings when he wasn't even a member of the board and
19 expressed himself on several occasions about things he
20 wanted, like extensions of the offer, withdrawal of the
21 encroachment requirement, you acceded to those?

22 A. We did what?

23 Q. You agreed with those?

24 A. Well, like with the encroachment, when that was brought
25 to our attention, that's when we actually sought legal

1 advice to find out about and, like I said, that was brought
2 to our attention by him, we actually sought legal advice as
3 to whether we should or we shouldn't.

4 Q. But it was Mr. Amick that said I don't
5 want encroachments at that meeting,
6 though?

7 A. Correct.

8 Q. Did you take any minutes when you went into executive
9 session?

10 A. No. We did not.

11 MR. POPE: Thank you.

12 THE COURT: Yes, sir, Mr. Dixon.

13 MR. DIXON: Thank you, Your Honor. I'd like to move at
14 this time that, I guess, Lions Club 1 be admitted into
15 evidence, the resolution.

16 MR. PRICE: Without objection.

17 MR. POPE: What is it?

18 MR. KOUTRAKOS: Defendant's 1.

19 THE COURT: It's the resolution that he read
20 from.

21 MR. POPE: I think it's irrelevant and I would object
22 to that.

23 THE COURT: Okay. I'm going to allow it in. He's
24 already published it. Go ahead.

25 MR. DIXON: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 LADSEN HEATH SIMPSON BY MR. DIXON:

3 Q. Okay. Mr. Simpson, just briefly. Were you one of the
4 trustees authorized to sign for the sell to Mr. Amick?

5 A. I was.

6 Q. Do you remember signing an owner's affidavit at the
7 closing?

8 A. Well, I mean, I signed so many papers, I --

9 Q. Right. Will you flip with me in that book in front of
10 you to 43.

11 (Whereupon, the witness turned to the referenced page.)

12 Q. Are you at 43?

13 A. Yes, sir.

14 Q. Okay. And this -- do you have two pages?

15 A. Yes.

16 Q. Okay. And then on the second page you see towards the
17 bottom it says, Witness our signatures as of the date herein
18 below. Do you see that?

19 A. I do.

20 Q. And it's dated there. What day is that?

21 A. February the 21st, 2018.

22 Q. Okay. And right below that it shows a Pete Simpson,
23 Trustee.

24 A. Correct.

25 Q. Is that you?

1 A. That's me.

2 Q. Okay. That's your signature?

3 A. That's my signature.

4 Q. And if we look down below there, there's a Notary
5 Public signature. Do you see where it says, Sworn to and
6 Subscribed?

7 A. Correct.

8 Q. Okay. So you signed this before the Notary, swearing
9 to the contents at that time?

10 A. I did.

11 Q. Okay. Flip back with me to the first page. At
12 paragraph 3, does this document say, Deponents further state
13 that no person, corporation or other entity has any valid
14 contract to purchase any part or all of said premises or
15 holds any unrecorded deeds to said property, nor does it
16 know of any facts or other reason buyer through which
17 possession or title to said premises might be questioned or
18 of any claim to said premises, which might be made adverse
19 to the present title to the property?

20 A. I see that.

21 Q. Do you see that?

22 A. Yes.

23 Q. When you signed this on February 21st, 2018, was that
24 statement true?

25 A. It was to my knowledge.

1 Q. Okay. Do you remember when you first learned of the
2 alleged contract between the Rices and the Lions Club?

3 A. You mean the litigation and so forth started. Is that
4 what --

5 Q. Yes.

6 A. Yes. The day after we signed, I mean, I received it
7 the next day.

8 Q. Okay. Will you flip with me to Plaintiffs' Exhibit 28
9 in that same notebook?

10 THE COURT: I'm sorry. What number?

11 MR. DIXON: Twenty-eight.

12 Q. And do you see the document at the top there and just
13 below the exhibit sticker, does that say Affidavit of
14 Service?

15 A. It does.

16 Q. Okay. If you look towards the middle, does this
17 document say -- does it show Heath Simpson, Agent of
18 service?

19 A. It does.

20 Q. Who is Heath Simpson?

21 A. That's myself.

22 Q. Okay. And it has Date Served. Do you see that?

23 A. Correct.

24 Q. What's the date and time you were served?

25 A. February the 22nd, 2018 at 1:28 P.M.

1 Q. Is that when you were, in fact, served?

2 A. Correct.

3 Q. And is that the day after the --

4 A. Correct.

5 Q. Okay. Bear with me one second.

6 MR. DIXON: Nothing further from Defendant Amick, Your
7 Honor.

8 THE COURT: Any reply limited to what they went into?

9 MR. PRICE: No, sir. We have nothing further.

10 THE COURT: Thank you, sir. You may step down. Watch
11 your step as you're stepping down.

12 MR. PRICE: Judge, that concludes our witnesses.

13 THE COURT: Any reply witnesses for the plaintiff?

14 MR. POPE: No reply witnesses.

15 THE COURT: Okay. All right. Thank y'all very much.

16 Any -- you're rising, so I'm going to assume you have
17 motions?

18 MR. KOUTRAKOS: Yeah. I was going to renew my motion
19 for involuntary nonsuit under Rule 41(b) and I also want
20 to, as this point, renew my motion for a directed verdict
21 since we're at the close of evidence and I think at this
22 point under 41(b) you could make -- you can -- for the same
23 reasons you were hesitant, you now have evidence of those
24 affirmative defenses and everything is in the record for you
25 to rule on 41(b). You don't have to -- you don't have to

1 view it in the light most favorable to any party. You can
2 actually make -- you can find facts and we're renewing the
3 directed verdict motion for all the same reasons that I
4 mentioned and I incorporate here by reference that I
5 mentioned when I previously moved for involuntary nonsuit
6 and directed verdict.

7 THE COURT: Thank you for your summary. And you're
8 going to oppose those motions for the same reasons you
9 previously stated?

10 MR. POPE: Same reasons we argued and presented in
11 paper form.

12 THE COURT: Okay. And, Mr. Price, you join in with
13 the---

14 MR. PRICE: Yes, sir, Your Honor.

15 THE COURT: ---other defendant? Okay.

16 MR. PRICE: Join in with the other defendant. Yes,
17 sir.

18 THE COURT: Okay. All right. Let's do this: first of
19 all, thank y'all very much for coming to Spartanburg. I
20 know that this was -- we tried to do it in Newberry. We
21 couldn't get it done in Newberry for some reason, so
22 fortunately I thank the people in Spartanburg as well for
23 accommodating me in getting me moved from Common Pleas jury
24 trials to actually being able to do this case in Newberry,
25 so thank you for the people in Spartanburg and thank y'all

1 for agreeing to come here so we could get the case done. I
2 know this has been weighing on the parties for a long time
3 and we needed to get it done. I appreciate the parties for
4 showing -- witnesses for showing up here. I know it was a
5 drive. I appreciate the lawyers.

6 It is a pleasure being a circuit court judge when I
7 have the opportunity to conduct these trials in front of
8 lawyers that are well prepared. So you make my life
9 difficult, but it is still a pleasure to do these types of
10 trials when the lawyers are as good as the lawyers as I've
11 seen, so thank y'all very much.

12 What I would like to do is to now recess this
13 proceeding, give me a chance to go through my notes, to go
14 through what I've heard. I'll make the appropriate response
15 to the motions and then make the decisions that need to be
16 made in this case.

17 We had spoken in chambers or in the hallway prior to
18 the beginning of the case that I would benefit from
19 receiving closing arguments. I still believe I might need
20 that, but before I engage in having y'all to give me closing
21 arguments, let me do some work on my end and then if need be
22 or if -- if need be, I'll reach out to y'all for closing
23 arguments, but if y'all get back to your offices and think,
24 oh, we really need to make -- say something, reach out to me
25 and maybe we could schedule something to get us -- for y'all

1 to make your closing arguments, but I will -- let me do some
2 work on my end first to see how far I can get, but just
3 thank y'all very much. Thank you. Thank you for your
4 patience.

5 MR. PRICE: Thank you, Judge.

6 MR. KOUTRAKOS: Thank you, Your Honor. Thank you so
7 much.

8 MR. POPE: Thank you very much.

9 (END OF VOLUME II)

10 * * * * *

11

12

13

14

15

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF NEWBERRY

3
4 LISA SUMMER RICE and
5 JOSEPH F. RICE,

6 Plaintiffs,

7 vs.

CASE NO. 2018-CP-36-00089

8 NEWBERRY LIONS CLUB and
9 C. RAY AMICK,

10 Defendants.

11 DEPONENT: LADSON HEATH SIMPSON

12 DATE: October 22, 2018

13 TIME: 10:30 a.m.

14 LOCATION: Pope Parker & Jenkins, P.A.
15 1508 College Street
Newberry, SC

16 TAKEN BY: Counsel for the Plaintiffs

17 REPORTED BY: KIMBERLY T. POWER, COURT REPORTER

18
19 A. WILLIAM ROBERTS, JR. & ASSOCIATES
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21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
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23 Asheville, NC
24 (828) 123-9876

25



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 LADSON HEATH SIMPSON,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. POPE:

5 Q. Please state your full name and address.

6 A. Ladson Heath Simpson, 1724 Main Street,
7 Newberry, South Carolina, 29108.

8 Q. And you're employed at Whitaker Funeral
9 Home?

10 A. McSwain-Evans Funeral Home.

11 Q. And how long have you been there?

12 A. Thirty-two years.

13 Q. When did you join the Lions Club? When I
14 say Lions Club, I'm talking about the Newberry Lions
15 Club or the Lions Club in Newberry.

16 A. Right. I think it's been about eight
17 years.

18 Q. What's your position with the Lions Club
19 right now?

20 A. I'm secretary.

21 Q. How long have you been secretary?

22 A. Probably six years.

23 Q. So that goes back to 2012?

24 A. Right. Roughly.

25 Q. Are you -- are you familiar with the

1 pay that twice a year, I think is what it is. The
2 dues are paid. Of course, the treasurer takes care
3 of that.

4 Q. How much are those dues?

5 A. Like I say, I haven't -- I don't know.
6 The treasurer would have that information.

7 Q. Well, I sent your counsel what they call a
8 30(b)(6) notice of a deposition. And 30(b)(6) is
9 just a rule number, but it's designed so you can
10 depose a corporate official that you might not know
11 his name, but you want to know what he knows about a
12 certain subject area. I was informed earlier today
13 that there is no 30(b)(6) witness. So is there
14 anyone that you can think of that knows more about
15 the constitution and bylaws of the club other than
16 you, perhaps Gene Crocker, or not?

17 A. Like I say, I can't answer. I don't --
18 don't have any idea.

19 Q. The club was formed in -- the Newberry
20 Lions Club was formed in 1928; is that right?

21 A. Correct. Had the 90th anniversary, I
22 think, in December, I think it is.

23 (PLF. EXH. 1, Charter, was marked for
24 identification.)

25 BY MR. POPE:

1 Q. I want to show you Exhibit 1. Is that a
2 copy of y'all's charter?

3 A. Right. Yes. Appears to be.

4 Q. And is it correct that the Newberry Lions
5 Club is set up as a non-profit or charitable
6 corporation?

7 A. That's correct. That's my understanding.

8 Q. It exists for charitable functions only?

9 A. Correct.

10 (PLF. EXH. 2, Newberry Lions Club
11 Constitution and Bylaws, was marked for
12 identification.)

13 BY MR. POPE:

14 Q. I'll show you Exhibit 2. Is it correct
15 that Exhibit 2 is the constitution and bylaws of the
16 Newberry Lions Club?

17 A. Yes, sir.

18 Q. Is it true that these bylaws are effective
19 as of today? They have not been changed since this
20 copy?

21 A. Not that I'm aware of.

22 Q. And what charitable functions does the
23 Lions Club -- Newberry Lions Club carry out?

24 A. We provide assistance for people needing
25 glasses, hearing aids, provide the Boys and Girls

7
1 Club organizations some. A number over the years --
2 of course, a number of organizations that have asked
3 for financial assistance, we've helped with.

4 Q. You made charitable donations; is that
5 right?

6 A. Right. Correct.

7 Q. It's my understanding, based on this
8 exhibit, the second page of No. 2, is that the Lions
9 Club -- the object of the Lions Club, which is on
10 Page 2 and on Page 1 of the constitution, is for a
11 service-minded people to serve their community
12 without personal financial award and to encourage and
13 promote high ethical standards and commerce and
14 private endeavors; is that right?

15 A. Correct.

16 Q. Have I summarized that accurately?

17 A. Correct.

18 Q. So, to your knowledge, the Lions Club has
19 never engaged in any for-profit activity, obviously;
20 is that right?

21 A. That's correct.

22 Q. You have the tax exempt status?

23 A. Correct.

24 Q. As secretary of the club for the last six
25 years or so, what is your job description just in lay

1 terms?

2 A. I, of course, take the minutes for our
3 board meetings and, of course, I do a monthly report
4 as far as membership and activities to international.

5 Q. That reports goes to international?

6 A. Correct.

7 Q. Did you make a report when you got the
8 sales proceeds from the --

9 A. We don't report -- what we report is
10 activities -- activity service projects that we do
11 such as, you know, the glasses and hearing aids.

12 Q. Has the Lions Club, since you've been a
13 member and to your knowledge, ever disposed of
14 valuable asset other than the gifts you make for
15 glasses and things like that?

16 A. No.

17 Q. What is your understanding of the duty
18 that members of the board of directors and officers
19 have with regard to carrying out their job functions
20 for a charitable entity like the Lions Club?

21 A. Well, they're responsible for making the
22 decisions that are in the best interest of the club
23 for handling those affairs.

24 Q. And that would also include consideration
25 as stated on Exhibit 2 of the highest ethical

1 standards?

2 A. Correct.

3 Q. And whether that standard be relating to a
4 commercial or a private endeavor, correct?

5 A. Correct.

6 Q. Do you understand what a breach of
7 fiduciary duty is for a board of director or an
8 officer of the company?

9 A. Well, possibly, but if you can explain it
10 so I make sure I know.

11 Q. Well, do you understand that an officer of
12 the company of the lions club, as well as a board
13 member, has a duty of loyalty to the club?

14 A. Right. Correct.

15 Q. Duty of due care?

16 A. Right.

17 Q. When was the last time that Mr. Ray Amick
18 was a member of the board of trustees of the Lions
19 Club?

20 A. I think he went off probably two years
21 ago, three years ago. I would have to check for
22 certain.

23 Q. I'm looking at the minutes that you have
24 provided with the Lions Club board meetings in 2015.
25 I'm going to show you that. It's exhibit three.

1 (PLF. EXH. 3, Lions Club Board
2 Meeting Minutes for 2015, was marked for
3 identification.)

4 BY MR. POPE:

5 Q. You correct me if I'm wrong, but I don't
6 see his name?

7 A. No, he wasn't on there. So it had to have
8 been prior to 2015. Must have been about 2014, I
9 guess was the last he was on.

10 Q. As you're going through the minutes of
11 2015, which is Exhibit 3, I'm going to ask you if
12 Mr. Amick attended any meeting during 2015?

13 A. I don't see that he did. No, sir.

14 Q. During 2015, if you look at the February
15 minutes, the second page, you note it in the
16 minutes -- you prepared these minutes -- all these
17 minutes, correct?

18 A. Correct. Right.

19 Q. That the club was in dire financial
20 situation because of the maintenance at the lake
21 property?

22 A. Correct.

23 Q. Now, when was the last time y'all met at
24 the actual Lions Club property on the lake?

25 A. It's been -- it's probably 2016, probably,

11
1 the last time we met there. It's been at least two
2 years, two and a half years.

3 Q. Well, is that a correct statement that the
4 Lions Club was in dire financial condition?

5 A. At the time, yes, sir.

6 Q. Now, if you look at the March 2015 minutes
7 under old business, it says there was a discussion
8 held on the next step with the lake property. Do you
9 remember that discussion then?

10 A. Not specifically.

11 Q. Do you remember any discussions before
12 March 2015 about, perhaps, the club was going to sell
13 or needed to sell or consider selling the lake
14 property?

15 A. There was -- I mean, I don't recall any
16 specifics. But, I mean, of course, because of the
17 financial situation and the declining membership,
18 like I say, the possibility of disposing of the
19 property, I mean, just in general, just between club
20 members, was probably discussed, but nothing
21 specific.

22 Q. Again, the minutes of March 24 are part of
23 Exhibit 3 refer to the fact that what Lion Member
24 Doggett Whitaker made a motion to give the president
25 authority to give a survey and appraisal completed on

1 A. In that --

2 Q. Wait a minute. -- board minutes meetings
3 for those months in 2015?

4 A. Correct.

5 (PLF. EXH. 4, Newberry Lions Club
6 Board Meeting Minutes for 2016, was marked for
7 identification.)

8 BY MR. POPE:

9 Q. Exhibit 4 is the minutes of the board of
10 director meetings of the Lions Club during 2016; is
11 that right?

12 A. Correct.

13 Q. And you prepared all these minutes?

14 A. That's correct.

15 Q. Who were on the board of directors during
16 the year 2016?

17 A. Who what?

18 Q. What were the members of the board? The
19 first page of Exhibit 4 shows Randy Cannon,
20 Randy Senn, Jean Williamson, Milton Price, yourself,
21 Lee Ringer, and Doggett Whitaker?

22 A. Correct.

23 Q. And it notes William Ashmore?

24 A. Correct.

25 Q. So that's nine people -- well, eight

18
1 people. Excuse me. Is that the way it was all year?
2 A. Yes, sir.
3 Q. Is anybody else on the board that doesn't
4 show on these minutes?
5 A. I think that was all.
6 Q. All right. The first page of Exhibit 4,
7 these minutes reflect that Lee Ringer had been
8 notified that Abraham had completed the plat
9 finally --
10 A. Correct.
11 Q. -- is that right?
12 A. Correct.
13 Q. Do you remember any other discussion at
14 that meeting?
15 A. No.
16 Q. Sir?
17 A. No, sir.
18 Q. When was the first discussion you remember
19 taking place at the board meeting where the board
20 members were contemplating selling the lake property?
21 A. It was around this time because, like I
22 say, we were looking at the plats. It was probably,
23 you know, at least among the members being discussed.
24 As far as the board, I don't recollect specifically.
25 Q. So the members we're talking about it in

1 2016?

2 A. Right.

3 Q. What were their ideas?

4 A. Well, the possibility that we may have to
5 sell the property to somebody.

6 Q. What were they going to do with the sales
7 proceeds?

8 A. They were going to be used for charitable
9 which, I mean, is what our club has always done. It
10 was to be disbursed among charitable organizations.

11 Q. Was it discussed among the members that
12 they felt like the club had a duty to maximize the
13 amount of dollars they got so that it could go to
14 charity in a higher number?

15 A. I mean, not -- we just wanted to find out
16 what the value was and be fair to the club and
17 raising funds, but not necessarily -- I mean, I don't
18 know anything we discussed about maximum amount.

19 Q. All right. On the second meeting in
20 Exhibit 4, February 2016, it appears -- and you
21 correct me if I'm wrong, but it says here that a
22 motion was made by Randy Senn to have a lawyer assist
23 with advertising the property on a seal bid basis; is
24 that right?

25 A. Correct.

1 A. I would have to see whenever it was dated
2 that it was done. He got it right to me.

3 Q. Did anything else happen in that
4 discussion in these minutes of May 24, 2016?

5 A. Not that I recall.

6 Q. The next meeting was June 28 and it says
7 that the appraisal has not been completed; is that
8 correct?

9 A. Correct.

10 Q. Up until this point in June -- from
11 January 2016 until the June 28, 2016 meeting, no
12 non-board member had attended any of your meetings;
13 is that right?

14 A. Correct.

15 Q. On September 27, 2016, who attended that
16 was not on the board?

17 A. Ray Amick.

18 Q. And had you ever had Mr. Amick come to a
19 board member before?

20 A. Not as a non-board member.

21 Q. Do you remember him being there?

22 A. Not specifically.

23 Q. This meeting lasted an hour. Your minutes
24 say under old business that Crocker had spoken with
25 Jay Verner who suggested another appraisal and that

1 Crocker spoke with Bill Braswell about an appraisal
2 and he was going to check with somebody else; is that
3 right?

4 A. Correct.

5 Q. It says in these minutes that Crocker had
6 spoken with several people who had the opinion that
7 the property was worth about \$150,000-dollars?

8 A. I mean, that's my understanding. Right.

9 Q. Now, what had happened in the last
10 sentence of substance in your minutes? What did you
11 write? Read that for us.

12 A. Now which sentence?

13 Q. Begins with, "Lion Ray Amick."

14 A. "Lion Ray Amick stated he would like to
15 buy all the property or at least the upper portion of
16 the property."

17 Q. And what was that discussion?

18 A. Well, I mean, like I say, at this point,
19 you know, the club among itself at various points had
20 discussed the disposal of the property. So, I mean,
21 at this point, I would assume Ray was aware of that
22 and he was interested in purchasing.

23 Q. And would it be fair to say that he
24 started attending meetings on a regular basis after
25 that even though he wasn't a member of the board?

1 I mean, we didn't -- we didn't -- we were just going
2 by what the appraisal said.

3 Q. Then October the 25th, after Mr. Amick had
4 spoken up in the previous meeting about wanting to
5 buy all the property, October 25th minutes reflect
6 that it was discussed having a realtor list the
7 property for sale?

8 A. Uh-huh.

9 Q. And that you and Gene Crocker were going
10 to inquire of two or three realtors about their
11 charges and, et cetera, selling the property, right?

12 A. Correct.

13 Q. What did you do after that meeting?

14 A. As far as getting in touch with realtors?

15 Q. Yes.

16 A. I think I spoke with one realtor. I can't
17 even remember who it was.

18 Q. Which one?

19 A. Which one did I speak with?

20 Q. What realtor? Yes.

21 A. I think I -- gosh. What is her name?
22 Honestly, right now I can't remember her name. And I
23 inquired, too, sort of on the basis of trying to find
24 out of them giving a speculation of what they thought
25 the property was worth, is the only conversation that

1 I had with the realtor.

2 Q. What did they tell you they thought it was
3 worth?

4 A. And I don't think she actually had an
5 idea.

6 Q. So what happened to that whole concept of
7 having a realtor list it?

8 A. Like I say, I think Lion Crocker may have
9 spoken with someone and, like I say, we just sort of
10 got ideas of what they thought would be the best
11 avenue.

12 Q. There are no minutes after -- there are no
13 minutes during the year 2016 after the October 25th
14 minutes?

15 A. That's correct.

16 Q. You didn't meet in November or December?

17 A. Correct.

18 (PLF. EXH. 5, Newberry Lions Club
19 Board Meeting Minutes for 2017, was marked for
20 identification.)

21 BY MR. POPE:

22 Q. Exhibit 5 is the minutes we got for the
23 year 2017. The first one is January the 24th. You
24 prepared all these minutes on Exhibit 5; is that
25 right?

1 A. Correct.

2 Q. All right. On January 24, 2017, the
3 second paragraph under old business starts with,
4 "Lion Crocker presented a list of names and addresses
5 for the adjoining property owners of the lake
6 property along with a draft letter to send to them
7 regarding the proposed sale of the lake property;" is
8 that right?

9 A. Correct.

10 Q. So where did that idea come from? The
11 last minutes of the previous year reflected that you
12 were talking about considering a realtor to list the
13 property. That was in October 2016. And now January
14 of 2017, you're talking about sending owners of --
15 the adjoining property owners letters concerning the
16 sale of the property?

17 A. And in my best recollection, I think
18 Lion Gene Crocker, you know, just sort of took that
19 upon himself to come up with the names as an option
20 to present to the club.

21 Q. Why did he do that?

22 A. Well, just to give another option to the
23 club.

24 Q. Is it fair to say you would assume that
25 someone adjacent to the lake property would have an

1 interest in paying top dollar, so to speak?

2 A. I would assume they have an option -- I
3 mean, would have a desire to purchase the property.
4 Correct.

5 Q. And that was discussed at the board
6 meeting; is that right?

7 A. Correct.

8 Q. Was Mr. Amick angry about that? It shows
9 he was there even though he's not a member. He was
10 not a member in 2017 of the board, right?

11 A. Correct. That's correct.

12 Q. He was there as a non-board member?

13 A. Correct.

14 Q. Did he disagree with Crocker's suggestion
15 that you write all the adjacent property owners?

16 A. I don't know that he had an objection to
17 it.

18 Q. What does it say here that he said at the
19 meeting?

20 A. It said he wanted to have until June 1st
21 to make a decision as to whether he could purchase
22 it.

23 Q. And what discussion followed his request?

24 A. According to the board minutes, like I
25 said, it was agreed upon to extend the date until

1 June 1st.

2 Q. The letter was adjusted; is that right?

3 A. Correct.

4 Q. Sir?

5 A. Correct.

6 Q. And then it was -- a revised copy of the
7 letter was approved at the board meeting; is that
8 correct?

9 A. Correct.

10 (PLF. EXH. 6, Letter from
11 Pete Simpson to Mr. and Mrs. Rice, was marked for
12 identification.)

13 (PLF. EXH. 7, Letter from
14 Pete Simpson to Mr. Amick, was marked for
15 identification.)

16 BY MR. POPE:

17 Q. I'm going to show you -- keep 5 there for
18 a minute. I'm going to show you Exhibit 7 and I'll
19 show you Exhibit 6. Exhibit 6 is a letter addressed
20 to Joe Rice and Lisa Summer Rice, correct?

21 A. Correct.

22 Q. And Exhibit 7 is a letter wrote to
23 Ray Amick?

24 A. Correct.

25 Q. And those letters are identical except for

1 the addressees?

2 A. Correct.

3 Q. They are not dated, but when were they set
4 out, sometime shortly after the January 24 meeting?

5 A. Correct.

6 Q. Exhibit 6 and 7 are the ones that were
7 approved to go out?

8 A. Correct.

9 Q. And when did that -- when did the offer
10 expressed in those letters, 6 and 7, when did it
11 expire?

12 MR. KOUTRAKOS: Object to form.

13 BY MR. POPE:

14 Q. Go ahead.

15 A. When was it to expire?

16 Q. Right. Was that until when?

17 A. Until June 1, 2017.

18 Q. And how many written responses to that
19 offer come to you after you wrote and mailed Exhibit
20 6 and 7?

21 MR. KOUTRAKOS: Object to form.

22 THE WITNESS: How many responses?

23 BY MR. POPE:

24 Q. Right.

25 A. Three.

1 Q. Those were Claude Schumpert?

2 A. Right. The Rices.

3 Q. And he offered \$300,000?

4 A. Correct.

5 Q. And Lisa Summer and Joe Rice offered --
6 presented a response of \$325,000?

7 A. Correct.

8 Q. And what was the third one?

9 A. And Ray Amick of \$300,000.

10 Q. He never wrote a letter; is that right?

11 A. He...

12 Q. I've seen the letter. I'm just asking.

13 A. I don't -- no. I don't know that there
14 was an actual written letter. It was verbally
15 agreed.

16 Q. Who did he make this verbal response to?

17 A. Well, I mean, it was somewhere along the
18 way. I assume at one of the board meetings, but I
19 don't remember at what point.

20 Q. Is it fair to say that you have never seen
21 a written response by Ray Amick to the letter sent by
22 the Lions Club offering the property?

23 A. No. I mean, I don't recollect.

24 (PLF. EXH. 8, Plat, was marked for
25 identification.)

1 (PLF. EXH. 9, List of Adjacent
2 Property Owners, was marked for identification.)

3 BY MR. POPE:

4 Q. Exhibit 9 is the names and addresses of
5 the adjoining property owners that's referred to in
6 the January 24, 2017 meeting?

7 A. Correct.

8 Q. And that's y'all's list, right?

9 A. Correct.

10 Q. And that was something you had at the
11 board meeting?

12 A. Correct.

13 Q. So there were 14 -- count the number on
14 there.

15 A. Twelve.

16 Q. So there were 12 adjacent landowners that
17 the club voted to extend the right to buy the
18 property if they -- if they could respond by June 1?

19 A. We extended a letter asking them if they
20 were interested to let us know.

21 Q. You only wrote one letter?

22 A. Correct.

23 Q. And that's a letter, Exhibit 6 and Exhibit
24 7?

25 A. Correct.

1 Q. You never sent a second letter?

2 A. No.

3 Q. Did you ever respond to Joe and Lisa
4 Rice's response? Did you ever have any contact with
5 the Rices?

6 A. I did not.

7 Q. Is it not true that Joe Rice called you
8 and said Claude Schumpert said he got a letter
9 offering the property for sale and I didn't get one?
10 You don't recall that and that you remailed it? You
11 sent it to the wrong address and you remailed it to
12 the correct address?

13 A. I mean, it's --

14 Q. Does that sound familiar?

15 A. Now that you mention it, it's a
16 possibility that -- I mean, it does seem like one
17 letter had to go out twice, but I don't remember who
18 it was to.

19 Q. Well, that would be the logical that
20 happened, would it not?

21 A. Right, right.

22 Q. Now, when you were talking with Mr. Rice,
23 is it not correct you said that the Lions Club was
24 offering this property for sale until June 1 to
25 adjacent property owners?

1 A. Now that I don't recall.

2 Q. You don't deny it. You just don't
3 remember it?

4 A. Like I say, I don't recall it.

5 Q. Okay. And do you recall telling Mr. Rice
6 that you were going to sell that property to the
7 highest bid received from an adjacent property owner?

8 A. No, I don't recall that.

9 Q. Do you recall telling him that the bids
10 had to come in by June 1 for the offer to be valid?

11 A. Like I say, we didn't ask for bids. Like
12 I say, we were just interested in people who was --
13 who was interested in the property.

14 Q. Well, your letter says you have until June
15 1.

16 A. To respond that you were interested in the
17 property.

18 Q. Does it say anything about interest in the
19 property in that letter? Take a look at it.

20 A. It says, "If you have an interest in the
21 property, please let us know right away."

22 Q. And in the last it says, "This offer is
23 valid until June 1, 2017, after which or at which
24 time the property will be advertised for sale to the
25 public," correct?

1 A. Correct.

2 Q. So there was a deadline associated with
3 this letter?

4 A. Correct.

5 Q. And you never received any written
6 response to your letter from Mr. Amick prior to
7 June 1; is that right?

8 A. Not that I recall.

9 Q. And prior to June 1, the Lions Club --

10 A. Well, we did because we did actually -- I
11 mean, we did actually get a -- gosh, the word won't
12 come to me -- a check -- check for -- what is the
13 word I'm looking for?

14 Q. Earnest money?

15 A. Earnest Monday, yeah, from Ray. But, like
16 I say, as far as a letter --

17 Q. But that was in 2018, wasn't it?

18 A. It could have been. Right, right.

19 Q. Prior to June 1, you got nothing in
20 writing from Ray Amick?

21 A. Not that I recall.

22 Q. Continuing on with the minutes of the
23 January 24, 2017 meeting. We talked about the fact
24 that you've already said that you're going to send
25 this letter out, and we discussed that, to the

1 adjacent owners and Mr. Amick then stoop up and said
2 that he wanted to have June 1 to make a decision
3 about his interest in buying the property, correct?

4 A. Correct.

5 Q. So the board agreed to extend the date
6 until June 1 for purchase of the property, correct?

7 A. Correct.

8 Q. And then you made adjustments to the
9 letter in light of that fact. That's why this last
10 paragraph in Exhibit 6 has until June 1, 2017,
11 correct?

12 A. Correct.

13 Q. It says here that Mr. Amick was asked to
14 excuse himself while the board members had a
15 discussion. Now, why was that?

16 A. Well, that was when we were discussing
17 whether we were going to -- I assume whether we were
18 going to allow it to be extended to June the 1st.

19 Q. Why would Amick -- why was Amick excused?

20 A. He was non-board member.

21 Q. Was Mr. Amick putting undue pressure on
22 the members of the board?

23 A. No.

24 Q. Sir?

25 A. No.

1 Q. All right. In the fourth paragraph under
2 old business it says that after the part that agrees
3 to extend the date until June 1, it talks about the
4 drafted letter being sent and it said that issues
5 concerning encroachments will be settled when the
6 property is sold, correct?

7 A. Correct.

8 Q. Everybody was aware that where Thad
9 McCrackin's house had been built, he had gone over
10 the line and built -- about ten feet of his house was
11 on y'all's property, right?

12 A. Correct.

13 Q. And y'all had known that for years?

14 A. I don't know how long it had been in
15 existence, but --

16 Q. For months or whatever?

17 A. Right, right.

18 Q. I mean, you didn't know about it. Did you
19 know about it in 2012?

20 A. I doubt it. I mean, like I say, unless
21 somebody had the plat and at that point nobody was
22 looking at the plat.

23 Q. But in any event, by January of 2017 at
24 this meeting on Exhibit 5, everybody was aware that
25 McCrackin's house was on the Lions Club property and

1 that was an encroachment?

2 A. Correct.

3 Q. And that's why -- and that's referenced in
4 Exhibit 6 and 7 in the letters that went out to the
5 adjacent owners?

6 A. Correct.

7 Q. Is it fair to say that what people were
8 told was if -- in order to bid on this property or to
9 respond to this letter, you have to be an adjacent
10 owner, correct?

11 A. Correct.

12 Q. You have to offer at least \$300,000?

13 A. Correct.

14 Q. You have to accept the encroachments?

15 A. Correct.

16 Q. And you have to do it by June 1?

17 A. Correct.

18 Q. And you later learned, going forward a
19 little bit now, that the Rices complied with all
20 those, correct? They were adjacent owners, correct?

21 A. Correct.

22 Q. They did offer more than \$300,000,
23 \$325,000?

24 A. Correct.

25 Q. They accepted the encroachments?

1 A. Well, I think on some of the letters --
2 the letter that they responded that they wanted the
3 encroachments corrected.

4 Q. We'll look at that in a minute. But if
5 they accepted the encroachments, that would be in
6 compliance?

7 A. To the letter, yes.

8 Q. And they did do it before June 1?

9 A. Correct.

10 Q. So we'll get to the encroachment issue in
11 a minute. So you made the changes in this fourth
12 paragraph of the old business of that meeting of
13 January 24, 2017. It says a revised copy of the
14 letter is attached to these minutes. We didn't get
15 that, but I assume it's identical to Exhibit 6 and 7
16 that went to the Rices and Mr. Amick?

17 A. Correct.

18 Q. The minutes show next, in paragraph five,
19 that Amick was invited back to the meeting and told
20 that he would have until June 1 to give a decision
21 and that the adjoining landowners would be receiving
22 the drafted letter with the revisions and you did
23 that. You mailed them all, right?

24 A. Correct.

25 Q. And your recollection is you had to mail

1 one of them twice and you think it was the Rices?

2 A. Correct.

3 Q. And you don't recall the conversation you
4 had with Mr. Rice?

5 A. I don't recall that.

6 Q. You know you had one, but you don't know
7 what he said?

8 A. I don't recall ever having one, but I
9 guess I must have.

10 Q. Going to the minutes again. Lion Amick
11 questioned why the letters would still be going out
12 if he had until June 1st. Explain that.

13 A. Well, like I say, I mean, we were sending
14 the letters out to get any interest in case Ray, who
15 was a Lion Club member, could not come up with the
16 asking price that we were asking. Like I say, we
17 would have a compiled list of those other adjoining
18 property owners that would be interested in possibly
19 purchasing it.

20 Q. Was it always the contention of the board
21 of directors to ultimately accept the highest bid
22 from the adjoining landowners?

23 A. I mean, our asking price was \$300,000.

24 Q. Well, you're aware that in the real estate
25 world if you have a list price of a certain amount, a

1 buyer certainly can pay more than that to be sure he
2 gets it, correct?

3 A. Oh, yeah. I mean, correct.

4 Q. It happens all the time?

5 A. Correct.

6 Q. But it was your intention to get the
7 highest dollar you could get?

8 A. Like I say, our asking price was \$300,000.
9 So...

10 Q. Well, what about Claude Schumpert? He had
11 a bid of \$300,000?

12 A. Right. But, of course, the letter stated
13 club members had first option. He's not a member.

14 Q. Do you remember anything else about the
15 January 24, 2017 letter?

16 A. No.

17 Q. If we look through all the Exhibit 5,
18 which are the minutes of the board of the year 2017,
19 can you tell us if Mr. Amick attended every single
20 one of those meetings or not?

21 A. I don't think he attended in April.

22 Q. January he was certainly there?

23 A. Right. In February he was there.

24 Q. February he was there. March he was
25 there?

1 A. Right.

2 Q. Correct?

3 A. Correct.

4 Q. April?

5 A. He was not there, I don't think. He was
6 there in May. I think he was there in June, July --
7 I mean, excuse me, June and then September, October,
8 November. And then the December was a called
9 meeting, but he wasn't -- he was there. That's
10 right. He was there.

11 Q. He was at every meeting the whole year
12 even though he wasn't a member of the board?

13 A. Correct.

14 MR. KOUTRAKOS: Object to form.

15 BY MR. POPE:

16 Q. Have you ever known any other non-board
17 member to attend a board meeting of the Lions Club
18 since you've been affiliated with it? Can you recall
19 any time?

20 A. I think there have been other occasions
21 that --

22 Q. Who?

23 A. I don't recall who, but there have been.

24 Q. When?

25 A. Like I say, it's been a long time ago, but

1 there have been some that attended.

2 Q. Can you give me one name of somebody that
3 might have attended a board meeting who wasn't a
4 board member of the Lions Club?

5 A. Not right off. Actually, I can. Greg
6 Turner who is -- who is a Lions Club member, not
7 specifically of our club, but he has attended a board
8 meeting.

9 Q. One time?

10 A. I think he probably attended a couple of
11 times.

12 Q. For what -- for what purpose?

13 A. Actually, at the time he was executive
14 director for the South Carolina Lions and just
15 visited the board meeting.

16 Q. Okay. We finished the January 24th
17 minutes; is that right? You've told us everything
18 you can recall?

19 A. Right.

20 MR. POPE: Why don't we take a short
21 break.

22 (Off the record.)

23 BY MR. POPE:

24 Q. Mr. Simpson, we just talked about the
25 January 24, 2017 meeting of the board and we're

1 mailed out your letters. You mailed them out in late
2 January, correct?

3 A. Correct.

4 Q. Exhibit 6, 7, and all the others to
5 adjoining landowners?

6 A. Right.

7 Q. Okay. So you've gotten back responses,
8 have you not?

9 A. I think we should have at that point, yes.

10 Q. So that was discussed?

11 A. Correct.

12 Q. Sir?

13 A. Yes.

14 Q. So you discussed at the February 28
15 meeting that you had had a response of \$300,000 from
16 Claude Schumpert, correct?

17 A. Well, we had -- that was not discussed.
18 We had just gotten -- it was discussed that we had
19 gotten responses.

20 Q. From Claude Schumpert?

21 A. Right.

22 Q. And from Joe and Lisa Rice?

23 A. I would think that is correct.

24 Q. So February the 28th meeting, at that
25 meeting Mr. Amick knew that at least two adjoining

1 property owners had submitted responses?

2 A. Correct.

3 Q. And did you tell him the amounts of the --

4 A. No, sir.

5 Q. Had they been opened at that point?

6 A. They had not been opened at that point.

7 Q. When were they opened?

8 A. That was later.

9 Q. How much later?

10 A. I would have to look and see.

11 Q. All right. We'll wait. I'm going to go
12 through all these, not too much detail if I can help
13 it, but you can tell us when they were opened.

14 Why did you have an executive session at
15 that meeting?

16 A. Like I say, I would assume we were
17 discussing getting a lawyer to check out and make
18 sure the -- what documentation we had for the sale
19 was proper.

20 Q. When you say "check out," you're talking
21 about checking out your letter?

22 A. Right. Correct.

23 Q. Which is Exhibit 6 and Exhibit 7?

24 A. Correct.

25 Q. And also check out the responses you got?

1 A. Well, not the responses, but the letter
2 that was sent.

3 Q. Why wouldn't you check out the responses?

4 A. Well, like I say, the responses we got
5 were just for those -- were for those that were
6 interested in the property and that was the only
7 purpose we had them for.

8 Q. And that's what the executive session was
9 about?

10 A. To the best of my recollection.

11 Q. All right. It says that Doggett Whitaker
12 made a motion to get a lawyer to check out the
13 documentation related to the sale of the lake
14 property to make sure what we're doing is legal and
15 proper and that documentation would be the letter you
16 just talked about?

17 A. Correct.

18 Q. And then it says that Amick returned to
19 the meeting. Do you remember that? Do you remember
20 him coming back in the meeting and being told what
21 was going to happen next?

22 A. I don't recollect -- specifically recall,
23 but, I mean, I was there. So, I mean, I'm sure I was
24 there when he was told.

25 Q. Was he concerned about that or pleased

1 with that or angry with that or what?

2 A. I don't recall.

3 Q. All right. It says that he returned and
4 was informed that the board was seeking legal advice
5 from an attorney before proceeding with any further
6 action on the matter of the lake sale.

7 A. Correct.

8 Q. Was he questioning the legality or wisdom
9 of the board voting to send adjoining landowners
10 these letters?

11 A. No.

12 Q. It sounds to me like he was objecting to
13 it, but you tell me.

14 A. I mean, no, he wasn't objecting. Like I
15 say, he wasn't -- I don't know that he was objecting
16 to anything. He was just -- like I say, we as a
17 board were wanting to make sure we were doing -- the
18 letter was in order.

19 Q. If you go back to the previous meeting and
20 it says he -- he questioned why the letter would be
21 going out if he had till June 1. So he didn't want
22 those letters to go out, did he?

23 A. I can't answer for him.

24 Q. It appears that that was the substance of
25 what you wrote?

1 A. Like I say, he just questioned it.

2 Q. Which means he didn't like it, correct?

3 A. I have no idea.

4 MR. SOWELL: Object to the form of
5 the question.

6 BY MR. POPE:

7 Q. All right. What was Mr. Amick's response
8 when he was informed, according to your minutes, that
9 the board was seeking advice from a lawyer before
10 proceeding any further?

11 A. I don't recall.

12 Q. Did you talk to anyone about the letters
13 that went out from the Lions Club to adjoining
14 property owners after that meeting and before the
15 next meeting which is March 28?

16 A. Did I talk to who?

17 Q. Did you talk to anyone else about the
18 substance of the legalities involved or the issues
19 surrounding letters going to adjoining property
20 owners offering the property for sale?

21 A. I don't recall specifically.

22 Q. All right. Let's look at the March 28,
23 2017 minutes. Again, Ray Amick is present, correct?

24 A. Correct.

25 Q. And under old business, the lake property

1 was brought up for discussion and then it looks like
2 you immediately went into executive session; is that
3 right?

4 A. Correct.

5 Q. What was that about?

6 A. That was just discussing the actual sale
7 of the property, I would assume.

8 Q. Well, this is -- this is from the date the
9 letter to adjoining owners went out until the
10 deadline of June 1, correct?

11 A. Tell me that time frame again.

12 Q. I said that was between --

13 A. Right.

14 Q. -- late January when the letters to the --

15 A. Right.

16 Q. -- adjoining property owners went out and
17 the deadline of June 1?

18 A. Correct.

19 Q. So did you ever have a discussion with
20 Mr. Rice or his lawyers about the fact that -- excuse
21 me. Let me back up. Exhibit 8 is a plat of the
22 subject property; is that correct?

23 A. Correct.

24 Q. And the Lions Club property, of course, is
25 about five-plus acres, correct?

1 A. Correct.

2 (PLF. EXH. 10, E-mail from
3 Gene Crocker to Pete Simpson, dated 02/13/2017, was
4 marked for identification.)

5 BY MR. POPE:

6 Q. I'm going to put a little more context on
7 this thing. Here is Exhibit 10, which is an e-mail
8 from Gene Crocker to you February 13, 2017, correct?

9 A. Correct.

10 Q. And Crocker is telling you that he got a
11 call from Sid Boone with the McNair firm on behalf of
12 Lisa and Joe Rice and that he is submitting a bid on
13 the lake property, correct?

14 A. Correct.

15 Q. And Gene says, "I told him we would open
16 it on the 28th at the board meeting," correct?

17 A. Correct.

18 Q. Did that happen?

19 A. No.

20 Q. Huh?

21 A. No.

22 Q. Why not?

23 A. I don't recall why, but it didn't.

24 Q. When was it opened?

25 A. Like I say, that was later. I don't know.

1 BY MR. POPE:

2 Q. Here is Exhibit 11. This is -- Claude
3 Schumpert is a veterinarian and, of course, an
4 adjacent property owner, correct?

5 A. Correct.

6 Q. And a long time resident of the Lions Club
7 era?

8 A. Correct.

9 Q. And you got this letter he wrote
10 February 13, 2017, correct?

11 A. Correct.

12 Q. And is there anything in this letter that
13 is not in compliance with the requirements in the
14 Lions Club letter to what I call the adjoining
15 owners?

16 A. I don't see anything.

17 Q. And, of course, Mr. Schumpert was adjacent
18 property owner, correct?

19 A. Correct.

20 Q. He offered \$300,000?

21 A. Correct.

22 Q. He accepted the encroachments?

23 A. Correct.

24 Q. And he made this offer before June 1?

25 A. Correct.

1 and, I mean, he states it in his letter. But, like I
2 say, we didn't -- the only thing we did was sent out
3 a letter for information.

4 Q. Now, the letter -- if you go back for a
5 minute to Exhibit 6, I think it is. So in this
6 letter in the second paragraph, is it fair to say
7 that because of the dire financial straits of the
8 Lions Club, you had decided to offer the property for
9 sale?

10 A. It was becoming more of a burden for the
11 club, so --

12 Q. Is that correct or not?

13 MR. SOWELL: Tom, let him finish
14 before you ask him another question. I object to
15 that last question.

16 BY MR. POPE:

17 Q. Go ahead.

18 A. I mean, like I say, I mean, you know,
19 whether that was exact reason or not, like I say,
20 with as few of members as we had and keeping the club
21 up, it wasn't advantageous for us. So, I mean,
22 whether it was dire strait financially, you know, I
23 mean, eventually it would have destroyed the club if
24 we didn't have financial means to operate.

25 Q. All right. The next to the last sentence

1 in paragraph two says, "We have reluctantly decided
2 to offer the property for sale," correct?

3 A. Correct.

4 Q. And we have also decided to make the
5 property available first to those individuals whose
6 property adjoins the Lions Club property, correct?

7 A. Correct.

8 Q. Now, you got a letter and, at that time,
9 the letter, of course, referred to encroachments, did
10 it not?

11 A. Correct.

12 Q. And whoever bought it had to take it
13 subject to those?

14 A. Correct.

15 Q. And those encroachments were the
16 well-known to be the Thad McCrackin lot extending --
17 house extending onto the Lions Club property?

18 A. Correct.

19 Q. And everybody knew that when this letter
20 went out?

21 A. Correct.

22 (PLF. EXH. 12, Letter from
23 Thad McCrackin to Gene Crocker, dated 02/14/2017, was
24 marked for identification.)

25 BY MR. POPE:

1 Q. Exhibit 12 is a letter of Thad McCrackin.
2 Did you get this? This is to Gene Crocker. Do you
3 remember seeing that?

4 A. I remember seeing it.

5 Q. He's offering to correct the encroachment
6 by selling that little strip of his -- where his
7 house is to the Lions Club?

8 A. Right. Purchase -- actually purchase.

9 Q. Purchase. Right. All right.

10 (PLF. EXH. 13, Letter from Sid Boone
11 to Pete Simpson, dated 02/14/2017, was marked for
12 identification.)

13 BY MR. POPE:

14 Q. Let's look at Exhibit 13. That's the
15 letter of Sid Boone, counsel for the Rices,
16 February 14, 2017?

17 A. Right.

18 Q. And he sent it to you and you got it; is
19 that right?

20 A. Correct.

21 Q. Is there anything in that letter that is
22 not compliant with the letter that you sent to all
23 adjacent property owners?

24 MR. KOUTRAKOS: Object to form.

25 THE WITNESS: Again, like I say, we

1 just sent letters requesting interest in the
2 property.

3 BY MR. POPE:

4 Q. Well, the question is: Was there
5 anything --

6 A. I mean, they replied -- they responded
7 they were interested. Correct.

8 Q. So their response, as far as you thought,
9 was it complete or incomplete?

10 A. It was complete that they showed an
11 interest.

12 Q. Well, if they had written back and said
13 we're interested, we offer X dollars, but we're not
14 going to take over those encroachments, that wouldn't
15 have been complete if they said that, right?

16 MR. KOUTRAKOS: Object to form.

17 THE WITNESS: Like I say, here again,
18 we just asked for a list of those that were
19 interested in the property.

20 BY MR. POPE:

21 Q. And you checked all the boxes for them
22 that you did for Claude Schumpert, correct?

23 MR. KOUTRAKOS: Object to form.

24 THE WITNESS: I mean, like I say,
25 they said they were interested in the property. So,

1 yes, we were aware --

2 BY MR. POPE:

3 Q. At the price you mentioned?

4 A. Like I say, the price wasn't the issue of
5 our letter. Like I say, we were just interested in
6 the landowners who were interested in purchasing it.

7 Q. Well, you said it wasn't the issue, but it
8 was specifically referenced in your letter, correct?

9 A. Our price is referenced, correct. But,
10 like I say, our letter didn't ask for any offers. We
11 just wanted a list of those who were interested in
12 purchasing the property.

13 Q. "The club members have decided to ask
14 \$300,000 if we could make a sell without involving a
15 realtor," correct?

16 A. Correct.

17 Q. So if an adjacent landowner contacted you
18 and said I'm going to offer you \$250,000, you would
19 have thrown that aside, would you not?

20 A. Well, like I say, we didn't ask for -- we
21 just asked -- our letter just asked for those that
22 were interested in the property. The price wasn't --
23 I mean, we didn't ask for that. We just asked -- we
24 presented that as information and asked for a list of
25 those that were interested in purchasing.

1 BY MR. POPE:

2 Q. Let's go back to March 28, 2017. It says
3 here that a motion was made to accept
4 Lion Ray Amick's offer of \$300,000 provided closing
5 would take place by June 1, at which time other
6 offers would be considered if the property closing
7 had not occurred by the June 1 deadline; is that
8 right?

9 A. Correct.

10 Q. Do you remember any discussion that
11 accompanied these actions?

12 A. No.

13 Q. Did you ever write the adjacent landowners
14 and tell them that you were going to accept Amick's
15 offer of \$300,000 provided he had to do it by June 1?

16 A. No, not that I recall.

17 Q. Did he, in fact, close or make any offer
18 to close under the terms of your letter by June 1,
19 Mr. Amick?

20 A. I think, if I recall, he was willing to do
21 that. But, like I say, the encroachment issue came
22 up.

23 Q. Well, the encroachment issue had been
24 addressed in your previous letter to the adjoining
25 owners, right?

1 A. Correct.

2 Q. So he did not respond to your letter to
3 adjoining landowners by June 1; is that correct?

4 A. He didn't -- repeat that.

5 Q. He didn't -- he didn't close by June 1?

6 A. Correct. No, he did not.

7 Q. And you didn't write any adjacent
8 landowners and tell them you were going to sell to
9 Amick at that point?

10 A. That is correct.

11 Q. April 25, 2017, those minutes show that
12 you discussed what you could do with the money from
13 the sale of the lake property. What was that
14 discussion?

15 A. That was, like I say, coming up with
16 people asking for input as to -- at some point as to
17 how we can give the money away to charitable
18 organizations.

19 Q. What were your decisions about that or
20 conclusions?

21 A. Nothing was decided at that point.

22 Q. Anything else happen in that meeting that
23 you can recall?

24 A. No.

25 Q. May 23, 2017. Now you're getting

1 approximately a little more than a week from the
2 June 1 deadline. Old business, second paragraph,
3 says, "Amick was given the opportunity to speak
4 regarding his purchase of the lake property. He
5 stated that he has funds ready to purchase the
6 property, but he wanted to have a clear title to the
7 property with the deed being made to him and his
8 wife," correct?

9 A. Correct.

10 Q. Do you remember that discussion?

11 A. He wanted -- needed a clear title or
12 wanted a clear title.

13 Q. And that was -- that was different from
14 what you contemplated when you wrote out the letter
15 to the adjoining landowners, right?

16 A. That's correct.

17 Q. So why were you yielding to his requests?

18 A. Like I say, we weren't -- like I say, of
19 course, the next we went into executive session and
20 with Jay Verner and his advice, like I say, was, like
21 I say, for anybody to get a clear title, the
22 encroachments were going to have to be resolved.

23 Q. Well, you understand that both Claude
24 Schumpert and the Rices were willing to take on the
25 encroachments, correct?

1 A. I mean, I -- I assume, but they may have
2 had the same issues. I don't know.

3 Q. Well, they said they would accept it.

4 A. Well, I think -- I think in the Rices' in
5 the original letter they sent, I think it's mentioned
6 somewhere that they wanted a clear title.

7 Q. If you look at Exhibit 13, it says -- this
8 is from the Rices' lawyer. "We further understand
9 that any encroachments as shown on the survey
10 provided would have to be cleared after the property
11 is sold." In other words, after they owned it,
12 correct?

13 A. Correct.

14 Q. So that was something that was accepted --
15 the encroachment issue was accepted by the Rices,
16 right?

17 A. Yes, sir.

18 Q. Okay. So why did Mr. Amick wanting a
19 clear title matter to y'all? Why was that a
20 condition that caused you to change your mindset
21 about selling the property?

22 MR. KOUTRAKOS: Object to the form.

23 THE WITNESS: Because as a board
24 member, we had granted him the option to purchase it
25 and he needed a clear title to purchase it.

1 BY MR. POPE:

2 Q. Was there any discussion at this meeting
3 that you had given the adjoining landowners a
4 deadline of June 1 to make responses?

5 A. Not that I recall.

6 Q. You were aware that you had a June 1
7 deadline in your letter, correct?

8 A. Correct.

9 Q. The minutes show that the motion was made
10 to send letters to those who had shown an interest in
11 purchasing the properties stating that the club was
12 unable to get a fee simple title to the property and
13 all offers were being withdrawn to sell the property,
14 correct?

15 A. Correct.

16 Q. And so you -- now on May 23rd, is it fair
17 to say that the board of directors has changed its
18 opinion about the offer letters that went out
19 earlier?

20 A. Correct.

21 Q. But did you call the Rices or Claude
22 Schumpert either one?

23 A. Well, they were sent a letter.

24 Q. Okay. The letter was dated June 5,
25 correct?

1 A. I think that's correct.

2 Q. I mean, the letter is written after the
3 deadline, correct?

4 A. Correct. I mean, I don't have the letter
5 here, but correct if that's what the letter says.

6 Q. Was there any discussion about the fee
7 simple title issue at that May 23 meeting?

8 A. Was it discussed?

9 Q. Yeah. This meeting lasted -- excuse me.
10 Go ahead.

11 A. I mean, like I say, it was discussed that
12 we were going to get the encroachment resolved so
13 that they could have that.

14 Q. Would that concession, if you want to call
15 it that, to have that encroachment resolved, that
16 didn't extend to the adjoining property owners?

17 A. I mean, it -- I mean, it pertained to the
18 property itself. I mean, I don't know how to answer
19 that.

20 Q. This meeting lasted an hour and 45
21 minutes, according to the minutes. It started at
22 7:00 and ended at 8:45. You said that letters went
23 out. I'll find it in a minute.

24 (PLF. EXH. 14, E-mail from
25 Claude Schumpert to Joe Rice, dated 04/08/2017, was

1 marked for identification.)

2 BY MR. POPE:

3 Q. I'll show you Exhibit 14. I don't know if
4 you've seen this. If you haven't, I'll go to
5 something else. It's an e-mail from Claude Schumpert
6 to Joe Rice, April 8, 2,017.

7 A. I don't think I've ever seen this.

8 Q. He says that he's reporting secondhand to
9 Joe Rice that the Lions Club has awarded Amick the
10 bid after he matched the high bid offered from
11 non-member Lions. He has until June 1 to close on
12 the offer. The Lions have been ensured by legal
13 counsel that their rights to preserve preferential
14 treatment for Ray were reserved in the letter
15 submitted. Just wanted to pass this along. You
16 never heard that Claude had talked to Gene Crocker?

17 A. I don't -- I don't -- I don't remember
18 hearing or seeing that.

19 (PLF. EXH. 15, Letter from Sid Boone
20 to Pete Simpson and Gene Crocker, dated 05/15/2017,
21 was marked for identification.)

22 BY MR. POPE:

23 Q. Here's a letter to you and to
24 Gene Crocker, Exhibit 15. This is a May 15, 2017
25 letter from Sid Boone to you and Mr. Crocker. Do you

1 remember getting this?

2 A. I do.

3 Q. The lawyer for the Rices recites that they
4 were the successful bidders, correct?

5 A. That's what they say.

6 Q. And they also say that without notice to
7 them, another bidder was given the right to submit
8 the bid after theirs was disclosed. When was the
9 Rice offer opened -- the letter opened?

10 A. I'm trying to -- it's not noted, but I
11 think, if I recollect, unless I find it elsewhere, on
12 that May 23rd, when it was decided about the
13 encroachments, I think at that meeting might have
14 been when all of that was finally opened and
15 presented.

16 Q. So May 23, 2017, you think is when
17 Claude Schumpert's bid and the Rices' letters were
18 opened?

19 A. Their letters were opened, correct.

20 Q. What response did Amick have to those
21 letters?

22 A. He wasn't in on -- I mean, he wasn't there
23 for that. I mean, he was not in on the opening part.
24 That was probably done in that executive session part
25 because, like I say, I don't -- well, obviously he

1 say, whether it was shared with him. I don't
2 remember.

3 Q. You've got 15 still there?

4 A. Right.

5 Q. And this letter basically says that -- I
6 mean, I'm paraphrasing. You can disagree if it's not
7 right. But that without notice to the clients,
8 another bidder was allowed to bid after seeing the
9 Rices' bid?

10 A. That's not -- I mean, like I -- no.

11 Q. And it also inquires if there is some
12 undisclosed bid procedures, tell them what they are,
13 basically, right?

14 A. That's what the letter said. Correct.
15 But I don't know what they are.

16 Q. And then it specifically says based on
17 what they feel they have complied with, don't make
18 any conveyance to anybody except the Rices or there
19 could be litigation, correct?

20 A. Correct.

21 Q. Did you ever respond to Exhibit 15?

22 A. Like I say, we responded after this about
23 what we were going to do with the encroachment.

24 Q. I mean, did you respond to the Rices or to
25 Claude Schumpert?

1 A. At the point, like I say, we were going to
2 clear the encroachment.

3 Q. But that wasn't communicated to the Rices,
4 was it?

5 A. Right. Yeah. They received a letter.
6 Should have received a letter.

7 (PLF. EXH. 16, Letter from James
8 Verner to Sid Boone, dated 06/05/2017, was marked for
9 identification.)

10 (PLF. EXH. 17, Letter from James
11 Verner to Ray Amick, dated 06/06/2017, was marked for
12 identification.)

13 BY MR. POPE:

14 Q. That will get to 16, correct?

15 A. Correct.

16 Q. Is that the letter?

17 A. Correct.

18 Q. This is after the deadline, correct?

19 A. Correct.

20 Q. Sir?

21 A. Correct.

22 Q. And it simply says that on that last
23 meeting we discussed, May 23, 2017, the board decided
24 not to sell the property because they couldn't convey
25 good fee simple marketable title because of

1 encroachments, correct?

2 A. Correct.

3 Q. But those were the same encroachments that
4 they were aware of when the letter first went out,
5 right?

6 A. Correct.

7 Q. And this letter, Exhibit 16 and No. 17, to
8 Ray Amick went to all 12 or however many there were
9 adjacent property owners, right?

10 A. It went to the -- it just went to the ones
11 that were -- had shown an interest in the property.

12 Q. Claude Schumpert got one?

13 A. Correct.

14 Q. The next minutes of June 27, 2017, once
15 again, Ray Amick is there at the meeting, correct?

16 A. Correct.

17 Q. And the discussion was had, if I'm reading
18 this right, that they -- some of the officers had
19 discussed with Abraham Surveying correcting that
20 encroachment problem, correct?

21 A. Correct.

22 Q. By doing a survey?

23 A. Correct.

24 Q. Anything else discussed at that meeting?

25 A. No.

1 Q. Sir?

2 A. No.

3 Q. September 26, 2017, that meeting -- at
4 that point a revised plat had been prepared
5 correcting the encroachment, right?

6 A. Correct.

7 Q. And there was a vote about offering
8 Thad McCrackin money for part of that property?

9 A. Correct.

10 Q. He was paying you rather. He was paying
11 you for that property. Anything else about the --
12 about Mr. Amick's interest in buying the land at that
13 meeting or in the Rice or Claude Schumpert's
14 interest?

15 A. No.

16 Q. All right. October 24th. The vote was
17 noted to sell Mr. McCrackin that small piece of
18 parcel of land, right?

19 A. Correct.

20 Q. To correct the encroachment?

21 A. Correct.

22 Q. Do you remember anything else at that
23 meeting?

24 A. No.

25 (PLF. EXH. 18, E-mail from Claude

1 Schumpert to Lions Club, dated 11/16/2017, was marked
2 for identification.)

3 (PLF. EXH. 19, Letter from Sid Boone
4 to Pete Simpson, Gene Crocker and James Verner, dated
5 11/21/2017, was marked for identification.)

6 BY MR. POPE:

7 Q. November 28, 2017. Before that meeting,
8 did -- I'll show you Exhibit 19. No. 19 is written
9 by their firm, Michael Scardato to you, Gene Crocker
10 and Jay Verner, right?

11 A. Correct.

12 Q. Stating that their belief was that they
13 had submitted the successful bid of \$325,000; is that
14 right?

15 A. Correct.

16 Q. And they expressed concern that the
17 Lions Club was basically rebidding this?

18 A. I would assume. I mean, that's what it
19 possibly appeared.

20 Q. And then it thirdly says that the Rices
21 are ready, willing, and able to follow through on
22 their bid, correct?

23 A. Correct.

24 Q. And/or participate in any further bid
25 procedure that is properly noticed for the sale of

1 the property?

2 A. Correct.

3 Q. So is it pretty clear to you, you had an
4 interested buyer in the Rices, correct?

5 A. Correct.

6 Q. That they had responded to the Lions Club
7 either directly or indirectly on numerous occasions,
8 correct?

9 A. Correct.

10 Q. And did you ever write, other than
11 Mr. Verner writing to say that they were withdrawing
12 their offer which -- after the deadline for that
13 offer, they were withdrawing it because they couldn't
14 get clear title because of encroachments, did they
15 ever write -- did anybody at the Lions Club ever
16 write the Rices except that letter?

17 A. That's all that I know about.

18 Q. Look at the November 28, 2017 minutes.
19 Mr. Amick is there again, non-board member being
20 present. And the first part of old business was
21 Crocker informed the club board that McCrackin had
22 accepted the purchase price of \$13,000?

23 A. Correct.

24 Q. And then it says, "Mr. Crocker read a
25 letter received by the club from the McNair firm as

1 representative of the Rice family?"

2 A. Correct.

3 Q. That's the letter we just had. That's
4 No. --

5 A. Exhibit 19.

6 Q. -- 19?

7 A. 18.

8 Q. And Mr. Amick, of course, was at that
9 meeting?

10 A. Correct.

11 Q. And this wasn't an executive session,
12 correct?

13 A. Correct.

14 Q. So presumably he heard the letter being
15 read in full?

16 A. Correct.

17 Q. Do you know if that letter was ever
18 responded to by the Lions Club, Exhibit 19?

19 A. I don't know that it was.

20 Q. As secretary of the Lions Club, was your
21 mailing address used for the receipt of any mail
22 relating to the Lions Club?

23 A. Correct.

24 Q. Sir?

25 A. Correct.

1 Q. Did Mr. Amick say anything in this meeting
2 about the letter from the McNair firm on behalf of
3 the Rices?

4 A. Not that I recall.

5 Q. Anything else discussed at that meeting,
6 to your knowledge?

7 A. Not that I know of.

8 Q. The last meeting of 2017 was December 4;
9 is that right?

10 A. Correct.

11 Q. Mr. Amick was there?

12 A. Correct.

13 Q. And the only thing at that meeting, you
14 elected -- the only business was to elect trustees to
15 convey the property?

16 A. Correct.

17 (PLF. EXH. 20, Title to Real Estate,
18 was marked for identification.)

19 BY MR. POPE:

20 Q. This is Exhibit 20. That's the deed for
21 the Lions Club trustees to McCrackin of that little
22 sliver that is an encroachment?

23 A. That's correct.

24 Q. It's an encroachment that the Lions Club
25 has known about for a good many months by this time;

1 is that right?

2 A. Correct.

3 Q. And it's now over?

4 A. Correct.

5 Q. And these are the encroachments that were
6 referred to in the letter to adjoining property
7 owners?

8 A. Correct.

9 (PLF. EXH. 21, Newberry Lions Club
10 Board Meeting Minutes for January 23, 2018, was
11 marked for identification.)

12 BY MR. POPE:

13 Q. 21 is board minutes of January 23, 2018.
14 What action was taken at that meeting?

15 A. Of course, we had told the -- had resolved
16 the encroachment and were looking at the tax
17 consequences for the sale of that and also a motion
18 was made to sell the remaining property for \$300,000
19 to Ray Amick.

20 Q. Again, he had presented no written offer?

21 A. Correct. As far as I recall, other than
22 he had done given us a check and that was --

23 Q. Say again?

24 A. He had given us a check, but that was
25 prior to resolving the -- when we resolved the

1 encroachment issue, that was returned to him. For
2 this part, I don't recall.

3 Q. It says here that the motion was made to
4 get a CPA to get tax advice about the -- advice about
5 the tax consequences of the sale?

6 A. Correct.

7 Q. What were the tax consequences of the
8 sale?

9 A. Well, like I said, we just wanted to make
10 sure, being a non-profit, you know, there weren't
11 tax -- that we were going to have to pay taxes which
12 is, like I say, we ran that question by the CPA.

13 Q. Was there any other monies or
14 consideration paid by Amick other than \$300,000?

15 A. That's all he paid. Correct.

16 (PLF. EXH. 22, Letter from
17 Gene Crocker to Ray Amick, dated 01/23/2018, was
18 marked for identification.)

19 BY MR. POPE:

20 Q. Exhibit 22 is a letter to Amick by
21 Crocker. You got a copy of this; is that right?

22 A. Correct.

23 Q. Informing him that the offer of \$300,000
24 was accepted; is that right?

25 A. Correct.

1 Q. This was done --

2 A. January 23rd.

3 Q. This was done at the meeting because it's
4 the same date?

5 A. Correct. I mean, I think he typed this
6 letter up after the meeting, probably is what it was.

7 Q. Do you think he brought it to the meeting?

8 A. No. I think this was done after the
9 meeting. He went home and typed this letter and just
10 dated it that day.

11 (PLF. EXH. 23, Contract of Sale, was
12 marked for identification.)

13 BY MR. POPE:

14 Q. Here's Exhibit 23, which is a contract of
15 sale that was sent to Amick after being signed by you
16 and the other two trustees?

17 A. Correct.

18 Q. In February of -- you signed it
19 February 14, 2018?

20 A. Correct.

21 Q. In No. 3 on the first page, closing costs,
22 it pointed out that the Lions Club was giving Amick
23 marketable fee simple title, correct?

24 A. Correct.

25 Q. That's normal in the real estate

1 Plaintiff's Exhibit 25. At the top it says date of
2 closing February 20, 2018, and that's the closing
3 between the Lions Club and Amick?

4 A. Right.

5 Q. At the bottom it appears that the
6 signatures were dated the next day, February 21?

7 MR. KOUTRAKOS: Object to form.

8 BY MR. POPE:

9 Q. Does that refresh your recollection?

10 A. Like I say, I mean, this is the first time
11 I remember seeing -- I mean, I've seen it, but, I
12 mean, like I say, I mean, it's got February 21st and
13 February 20th one other place.

14 Q. Sir?

15 A. I said it's got February 20, 2018 at the
16 top and then, like I say, it's dated down at the
17 bottom February 21st.

18 Q. When did you become aware that the lawsuit
19 was pending against the Lions Club by the Summers --
20 I mean, by the Rices?

21 A. I assume on February 22nd. If we did this
22 on the 21st, it was the following day.

23 (PLF. EXH. 26, Summons and Complaint,
24 was marked for identification.)

25

1 BY MR. POPE:

2 Q. Here is Exhibit 26. Is this a summons and
3 complaint?

4 A. Correct.

5 Q. You see the file date of February 20 at
6 4:32 p.m. that's on the side on the edge?

7 A. Oh, correct.

8 (PLF. EXH. 27, Lis Pendens, was
9 marked for identification.)

10 BY MR. POPE:

11 Q. 27 is a lis pendens and that reflects it
12 was filed February 21 at 1:48?

13 A. Correct.

14 Q. Did you know what a lis pendens was?

15 A. No.

16 Q. Do you know now what it is?

17 A. No.

18 (PLF. EXH. 28, Affidavit of Service,
19 was marked for identification.)

20 BY MR. POPE:

21 Q. Here's Exhibit 28. That reflects that you
22 were served. It says Pete Simpson, agent of service
23 for -- you're the agent of service for the Lions
24 Club; is that right?

25 A. Correct.

1 Q. And it says you were served with the
2 complaint, exhibits, and with the lis pendens with
3 its exhibits; is that right?

4 A. Correct.

5 Q. And the service time on here is
6 February 22, 2018 at 1:28 p.m.?

7 A. Correct.

8 Q. Sir?

9 A. Correct.

10 Q. So you got it and then did you understand
11 what, if anything, Lisa Smith was supposed to do with
12 regard to checking the records for any discrepancies
13 or judgments or filings or anything?

14 A. I have no knowledge of that, no.

15 Q. And when you got this -- these documents
16 as shown on the affidavit of service, what did you
17 do?

18 A. Like I say, at the next board meeting, we,
19 you know, like I say, pursued seeking legal advice
20 from Sam Price.

21 Q. But, I mean, that would have been several
22 days later, several hours later?

23 A. Several days later.

24 (PLF. EXH. 29, Title to Real Estate,
25 was marked for identification.)

1 BY MR. POPE:

2 Q. Here's Exhibit 29, the title to real
3 estate. Is it your understanding that this conveyed
4 the property to Mr. Amick?

5 A. Correct.

6 Q. And then it was recorded February 22 at
7 3:55?

8 A. Correct.

9 MR. POPE: Let's take about five
10 minutes.

11 (Off the record.)

12 BY MR. POPE:

13 Q. Mr. Simpson, you got the \$300,000 sales
14 proceeds right after the closing, correct?

15 A. Correct. Well, I think the treasurer got
16 it. I did not get it.

17 Q. Well, I didn't mean you. I meant the
18 club.

19 A. The club got it. Correct.

20 Q. The treasurer being?

21 A. Jean Williamson. That's J-E-A-N.

22 Q. Okay. What's happened to the proceeds?
23 Are they still being held?

24 A. They're being held.

25 Q. Have any of them been distributed?

1 A. No, sir.

2 Q. Do you have any future plans for
3 distribution, charitable interests?

4 A. Charitable interests, but none
5 specifically that I know of at this point.

6 Q. Now, we looked at several years of
7 minutes. Would you agree or disagree that it's
8 highly unusual for a non-board member to attend a
9 board meeting?

10 A. Highly unusual to attend on a regular
11 basis.

12 Q. That's a yes if it's a regular basis?

13 A. Yes. Yeah.

14 Q. Would you agree that it's highly unusual
15 for a non-board member to attend a board meeting even
16 on a non-regular basis if that person has an interest
17 before the board?

18 A. I can't -- I mean, I don't know of any
19 other circumstances to relate that to. So I don't
20 know how to -- I can't answer.

21 Q. That's a hypothetical question.

22 A. I mean, I still don't know how to answer
23 that.

24 Q. Would you agree that if a person,
25 non-board member, wants to come to a board meeting

1 just because he's interested in hearing what you guys
2 are discussing, that's one thing, correct?

3 A. Correct.

4 Q. But if he comes because he has something
5 he wants that benefits him, that's different, isn't
6 it?

7 A. That's different.

8 Q. And that would make it highly unusual if a
9 person came to a meeting with that agenda?

10 A. Correct.

11 Q. Now, May the 23rd of 2017, it's Exhibit 5.
12 It's the fourth or fifth page of Exhibit 5. And it
13 says -- it's referenced to the fact that you said the
14 bids were opened on this occasion, correct?

15 A. Correct.

16 Q. If I understood you, I think you said they
17 were opened in executive session or were they open
18 in --

19 A. Correct. They were opened in executive
20 session.

21 Q. And you don't remember when they were
22 shared later in open session?

23 A. No.

24 Q. But they were at some point?

25 A. Well, I don't know. At that meeting, I

1 don't know that they were shared. At some point,
2 they could have been.

3 Q. You just don't know when they were shared?

4 A. Right.

5 Q. But, anyway, on May the 23rd, 2017, at
6 that meeting the bids of Schumpert and Rice were
7 opened, correct?

8 A. Correct.

9 Q. And also at that meeting, Mr. Amick was
10 present and you changed gears or you changed your
11 course with regard to that property?

12 A. In what respect?

13 Q. In the respect that Mr. Amick is telling
14 you he has to have clear title and he wants you to
15 straighten out the encroachments?

16 A. Correct. We decided to correct the
17 encroachment.

18 Q. And that was a change of course from what
19 you started out with those letters to the adjacent
20 property owners?

21 A. Correct.

22 Q. Now, on December 4, 2017, there was a
23 meeting that you pointed out was a called meeting.
24 It wasn't a scheduled meeting?

25 A. That's correct.

1 on that meeting.

2 Q. He, Mr. Amick, was the only non-board
3 member that attended that?

4 A. Well, Lion Tim Stafford was not a member
5 either.

6 Q. But everybody else was a board member --

7 A. Correct.

8 Q. -- except Amick and Stafford; is that
9 right?

10 A. Correct.

11 Q. Did you guys get any legal advice about
12 encroachments before you sent out the letter?

13 A. Lion -- I mean, Jay Verner, like I say, he
14 is the one we spoke with and he advised us, like I
15 say, the only way to get a clear title was to correct
16 that encroachment.

17 Q. That was after the May 17 meeting,
18 correct?

19 A. Right, right. That's right. Right.

20 Q. I'm talking about back in January of 2017?

21 A. No.

22 Q. You didn't get any advice about
23 encroachments --

24 A. No.

25 Q. -- is that correct?

1 A. That's correct.

2 Q. And you didn't get any advice about any
3 other title issues before you sent that letter --

4 A. Correct.

5 Q. -- to the adjacent owners; is that right?

6 A. Correct.

7 Q. Now, Thad McCrackin, he's the poster child
8 for the encroachment issue, I guess, right?

9 A. Right.

10 Q. He never -- he never disagreed with the
11 Lions Club that he was encroaching?

12 A. No.

13 Q. And he never took the position that he had
14 adverse possession or anything like that?

15 A. No.

16 Q. Who was the contact person with
17 Thad McCrackin about the encroachments?

18 A. I think that was Lion Gene Crocker, I
19 think, dealt with him.

20 Q. All right. Now, in the -- give me
21 minutes. Things are scrambled around. Here it is
22 right on top. December 21.

23 A. What's the number?

24 Q. I'm sorry. Plaintiff's Exhibit 21. This
25 is the January 23, 2018 meeting where you -- the

1 A. I don't know if he was ever on the board,
2 but he's a Lion.

3 Q. And he resigned at some point?

4 A. He's still a Lion. He just resigned as
5 executive secretary because of the South Carolina
6 Lions Club.

7 Q. I got you. We've talked at pretty good
8 length about -- I'm not going to ask you anymore, but
9 about Exhibit 6 and 7 that went out to all the
10 adjacent property owners?

11 A. Correct.

12 Q. Is it correct that the Lions Club -- that
13 no member of the Lions Club ever wrote a letter or
14 verbally rescinded, modified, or withdrew the
15 contents of those -- contents of that letter to the
16 adjacent property owners?

17 A. Correct.

18 MR. POPE: Thank you. Somebody else
19 may have questions.

20 EXAMINATION

21 BY MR. KOUTRAKOS:

22 Q. Mr. Simpson, my name is Jim Koutrakos and
23 I represent Mr. Amick. I'm going to ask you -- I
24 don't know how long I'll be. I'm going to ask you a
25 few follow-up questions and some more substantive

1 questions.

2 In your communications with -- did you
3 have any direct communications with Sid Boone?

4 A. No.

5 Q. Did you ever -- you received -- the Lions
6 Club did receive letters from Sid Boone; is that
7 correct?

8 A. Correct.

9 Q. Is that correct?

10 A. Correct.

11 Q. Did Mr. Boone ever provide you any written
12 authority that said he had the -- any written
13 documentation to say that he had authority to act on
14 behalf of the Rices?

15 MR. POPE: Object to the form.

16 THE WITNESS: Not that -- I mean, the
17 only thing -- the only correspondence I had were just
18 the letters from them.

19 BY MR. KOUTRAKOS:

20 Q. In regards to what we're dealing with here
21 today, which is the sale of the property -- and the
22 property I'm referring to, the lake property that was
23 owned by Newberry Lions Club, correct?

24 A. Correct.

25 Q. Did Newberry Lions Club or yourself ever

1 receive any direct written communication from the
2 Rices?

3 A. Not that I -- I mean, no. Like I say,
4 through McNair and, like I say, that's all that I
5 know of.

6 Q. Mr. Boone never provided you with a power
7 of attorney saying he had authority to speak on
8 behalf of or enter into contracts on behalf of the
9 Rices?

10 A. No.

11 Q. If you look at I think they are Exhibits 6
12 and 7. One or the other, I think. I think Exhibit
13 7. Exhibit 6 is the letter you sent to the Rices.
14 Exhibit 7 is an identical letter -- it's identical to
15 the letter you sent to Mr. Amick, correct?

16 A. Correct.

17 Q. Did you draft this letter?

18 A. I did not. Lion Gene Crocker, the
19 president, actually drafted it.

20 Q. Did you participate in revising it,
21 finalizing it, or anything of that nature?

22 A. Right. Yeah, we went over it together.

23 Q. And you went over it at the -- I believe
24 it was the January 2017 meeting, correct?

25 A. Correct, correct.

1 Exhibits 6 or 7?

2 A. No.

3 MR. POPE: Object to the form.

4 BY MR. KOUTRAKOS:

5 Q. Did Sidney Boone or anybody at the McNair
6 Law Firm, Michael Scardato, or the Rices ever contact
7 you and ask you questions about the bidding process?

8 A. No.

9 Q. When you first heard the word "bidding
10 process" in conjunction with this proposed sale, what
11 was your reaction of that?

12 MR. POPE: Object to the form.

13 THE WITNESS: I mean, response was
14 that we didn't do -- we weren't asking for bids. We
15 were just sending out a letter of information.

16 BY MR. KOUTRAKOS:

17 Q. In Exhibit 6 or 7, did the Newberry Lions
18 Club ever state when the responses to the letter
19 would be opened?

20 A. No.

21 Q. Did the Newberry Lions Club in Exhibits 6
22 or 7 state when the actual closing would occur?

23 A. No.

24 Q. Did they have a requirement of when the
25 closing would occur?

1 A. No.

2 Q. In Exhibits 6 or 7, did the Newberry Lions
3 Club say who would pay the closing costs in eventual
4 reclosing?

5 MR. POPE: Object to form.

6 THE WITNESS: No.

7 BY MR. KOUTRAKOS:

8 Q. Did the Newberry Lions Club in Exhibits 6
9 or 7 state where the closing would take place?

10 A. No.

11 Q. Did they say who the closing attorney
12 would be?

13 A. No.

14 Q. Did they tell you whether property would
15 be conveyed via quick claim deed, limited warranty
16 deed, specialty warranty deed, or any other type of
17 similar instrument?

18 A. No.

19 Q. Did the Newberry Lions Club in Exhibits 6
20 or 7 state that time was of the essence?

21 A. No.

22 Q. Do you know what time of the essence is?

23 MR. POPE: Object to the form.

24 THE WITNESS: That it needed to be
25 done quickly.

1 Q. Was there any indication in 6 or 7 that
2 the house would be sold with any type of warranty?

3 A. No.

4 MR. POPE: Object to form.

5 BY MR. KOUTRAKOS:

6 Q. In any of the correspondence between the
7 Newberry Lions Club and the Rices regarding this
8 transaction, including the Rices' attorney, was there
9 any mention as to how taxes would be prorated at
10 closing?

11 A. No.

12 Q. In the correspondence between the Rices
13 and their attorney and the Newberry Lions Club, was
14 there ever any mention of what would happen if the
15 structure got burned down before closing?

16 A. No.

17 Q. Do you believe that the Newberry Lions
18 Club had a contract with the Rices?

19 A. No.

20 MR. POPE: Object to form.

21 BY MR. KOUTRAKOS:

22 Q. Isn't it correct that the Newberry Lions
23 Club did, in fact, have a contract with Mr. Amick?

24 MR. POPE: Object the form.

25 THE WITNESS: Did? Did? I that what

1 you --

2 BY MR. KOUTRAKOS:

3 Q. Did. Yes.

4 A. Yes.

5 Q. Did Mr. Boone, Mr. Scardato, or the Rices
6 ever forward to you a written contract of sale for
7 consideration by the Newberry Lions Club?

8 A. No.

9 MR. POPE: Object to form.

10 BY MR. KOUTRAKOS:

11 Q. Did they ever say that they were going to
12 do so?

13 A. Not that I know of.

14 Q. You were asked a few times by Mr. Pope
15 whether the Newberry Lions Club ever informed the
16 Rices of certain actions taken by the Newberry Lions
17 Club and my question to you is: Do you believe that
18 the Newberry Lions Club had any obligation to keep
19 the Rices informed as to what was going on?

20 MR. POPE: Object to form.

21 THE WITNESS: No.

22 BY MR. KOUTRAKOS:

23 Q. Attached to one of the later exhibits and,
24 I believe it was Exhibit 23, which was the actual
25 contract the Newberry Lions Club entered into with

1 Mr. Amick, there was a check at the end, a \$1,000
2 earnest money deposit paid by Mr. Amick. Do you
3 recall that?

4 A. Correct.

5 MR. POPE: Object to form.

6 BY MR. KOUTRAKOS:

7 Q. That's the second time Mr. Amick had
8 provided an earnest money deposit to the Newberry
9 Lions Club, correct?

10 A. That's correct.

11 MR. POPE: Object to form.

12 BY MR. KOUTRAKOS:

13 Q. When was the first time he provided an
14 earnest money deposit to the --

15 A. When the --

16 Q. Let me finish asking the question. When
17 was the first time he provided an earnest money
18 deposit to the Newberry Lions Club?

19 A. That was after the letter had gone out
20 when he showed interest in the property.

21 Q. It would have been early 2017?

22 A. Correct.

23 MR. POPE: Object to form.

24 THE WITNESS: Correct.

25

1 BY MR. KOUTRAKOS:

2 Q. If you would take a look at Exhibit 22.
3 This is an affidavit of service, Exhibit No. -- maybe
4 I got it wrong. I don't think it's Exhibit 22. It
5 might be Exhibit 28. I'm sorry. That's an affidavit
6 of service. Do you understand what Exhibit 28 is?

7 A. Yes.

8 Q. It's somebody saying that they personally
9 served you or at least he served you with the lis
10 pendens, summons and complaint, on February 22, 2018
11 at 1:28 p.m. Do you understand that?

12 A. Correct.

13 Q. At the time you received -- and do you
14 confirm with me that you actually received those
15 documents on that date and time?

16 A. I did.

17 Q. And that would have been the day after the
18 closing took place?

19 A. That's correct.

20 Q. At that point in time, the Newberry -- at
21 this point in time, had the Newberry Lions Club
22 signed all the documents they needed to sign for the
23 closing?

24 A. Correct.

25 Q. At that point in time, at the time you

1 were served with the lis pendens, summons and
2 complaint, I presume the Newberry Lions Club already
3 had a proceeds check from the closing?

4 A. Correct.

5 Q. And I presume, you tell me if I'm wrong,
6 that the proceeds check had already been deposited in
7 the bank account?

8 MR. POPE: Object to form.

9 THE WITNESS: Had been deposited in
10 our checking account?

11 BY MR. KOUTRAKOS:

12 Q. Yeah.

13 A. Yeah, it was in -- if it hadn't been in
14 the bank, it was in our possession.

15 Q. Okay. So to the extent -- did you have
16 any belief when you received Exhibit No. 28 -- when
17 you received -- excuse me, when you received the
18 pleadings, the lis pendens, summons and complaint, on
19 February 22, 2018, was there any -- did you believe
20 that the closing could be undone at that point in
21 time?

22 MR. POPE: Object to the form.

23 THE WITNESS: No.

24 BY MR. KOUTRAKOS:

25 Q. Mr. McCrackin wrote a letter -- first of

State of South Carolina	)	
	)	
County of Newberry	)	
	)	
Claude H. Schumpert and	)	2019-CP-36-00496
Melissa B. Schumpert,	)	
	)	
Plaintiffs,	)	
	)	Deposition
v.	)	
	)	of
Newberry Lions Club and	)	
C. Ray Amick,	)	Ladson H. Simpson
	)	
Defendants.	)	

Date: June 29, 2020

Time: 10:08 a.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cindy H. Patterson

1 You took an oath to tell the truth. Do you recall
2 that?

3 A Yes.

4 Q Do you know what that means?

5 A Yes.

6 Q What does that mean?

7 A To answer the questions to the best of my knowledge
8 as what the truth is.

9 Q There -- that's part of it. In addition, because
10 this is an official court proceeding, if you were
11 found to have not answered the questions
12 truthfully, you could be subject to the penalties
13 of perjury. Do you understand that?

14 A Yes.

15 Q All right. If I ask you a question and you do not
16 understand it, will you ask me to clarify it?

17 A Yes.

18 Q All right. If you -- if I ask you a question and
19 you answer it, I'm going to assume you understood
20 it; is that fair?

21 A That's fair.

22 Q What is your name?

23 A Ladson Heath Simpson.

24 Q All right. Do you go by any other names besides
25 Ladson --

1 clubs besides the Lions Club?

2 A No.

3 Q Do you have any hobbies?

4 A No. Work.

5 Q Okay. Besides work and the Lions Club and Glenn

6 Street Baptist Church, are there any community

7 activities or groups in which you're involved?

8 A No.

9 Q All right. Have you ever served in the military?

10 A No.

11 Q All right. You're a member of the Lions Club?

12 A Yes.

13 Q How long have you been a member?

14 A Probably about eight or nine years.

15 Q Have you held any leadership positions in the Lions

16 Club?

17 A Yeah. I'm club secretary.

18 Q Okay. Any other positions?

19 A No.

20 Q All right. What is the purpose of the Lions Club?

21 A It's a community organization that's there to help

22 the community, mainly with vision and hearing

23 difficulties, such as with glasses or hearing aids.

24 Q Okay.

25 A And, of course, we do -- do provide assistance --

1 you know, others ask, I guess, for various things
2 that we may contribute to.

3 Q Is it a tax-exempt organization?

4 A Yes.

5 Q Do you know what kind?

6 A Not right offhand.

7 Q Have you ever heard it called a "501(c)(4)"? Does
8 that help you remember?

9 A No. I've -- it's -- I think it is a 501, but I
10 don't know which --

11 Q Do you know the distinctions -- do you know the
12 distinctions between different kinds of charitable
13 organizations?

14 A Not really.

15 Q Okay. So it wouldn't matter to you whether it was
16 a 501(c)(4) or a 501(c)(3)? You don't know the
17 difference?

18 A No. That's correct.

19 Q Okay. But you know it's a charitable organization?

20 A Correct.

21 Q And it's dedicated to serving the public?

22 A Correct.

23 Q Would you think it would be appropriate for a
24 member of the Lions Club to take money from the
25 club?

1 A For a member, no.

2 Q Okay. And would it be appropriate for a member of
3 the Lions Club to get a financial advantage from
4 being a member of the Lions Club?

5 A No.

6 Q All right. And would it be right for a member of
7 the Lions Club to get some benefit a member of the
8 public is not entitled to receive?

9 MS. NICHOLS: (To the deponent) You can ask
10 him to restate.

11 A Yeah. If you could restate that. I'm not
12 real . . .

13 Q Sure. By virtue of being a member of the Lions
14 Club, should that member receive preferential
15 treatment from the club regarding club assets?

16 A I mean, I guess it depends on -- I mean, I -- I
17 still don't really know how to -- how to answer
18 that. I mean, as a club member, if there -- if
19 there's things that -- I don't really know how --

20 Q Would it be --

21 A -- to answer that.

22 Q I'm sorry. Well, let me back it up a little bit.

23 Would it be appropriate for the Lions Club to
24 sell something the Lions Club owns, for less than
25 it's worth, to a member?

1 A I mean, I think whatever the -- the club has the
2 opportunity to sell. And if they have an asset,
3 it's their ability to sell something at what price
4 they see is fair.

5 Q Right. But if the club's dedicated to the public
6 and it's tax-exempt, would it be fair for the club
7 to sell an asset to a member for less than the
8 market price?

9 A Here again, I think it is -- it's at the club's
10 discretion as to what they receive for it.

11 Q So you think it would be appropriate for the club
12 to sell an asset for less than it was worth, to a
13 member?

14 A I think it's up to the club's board of directors to
15 decide whether -- what's fair.

16 Q Right. Even though it's a tax-exempt organization?

17 A Correct.

18 Q All right. And, as the secretary, have you ever
19 been in touch with any of the accountants that help
20 with the tax returns?

21 A We don't have -- we just have to -- our treasurer
22 has a small form that he has to fill out once a
23 year. We don't actually have to deal with an
24 accountant, with tax forms.

25 Q Okay. That's because you're a tax-exempt

1 organization?

2 A Correct.

3 Q Do you know what a "preferential transfer" is under
4 the Internal Revenue Code?

5 A No.

6 Q Do you know whether the club had paid a capital
7 gains tax on the sale of the property to Mr. Amick?

8 A I don't know.

9 Q All right. Do you know what a "excess benefit
10 transaction" is?

11 A No.

12 Q All right. Did you -- are you aware that under the
13 Internal Revenue regulations that if a tax-exempt
14 organization sells an asset to one of its members
15 for less than it's worth, that it can create a tax
16 problem for that organization?

17 A No.

18 Q All right. And do you know whether the Lions Club
19 has a accountant that it uses, at all?

20 A It does. I mean, what -- for the past year, or
21 since this property was sold -- now, there was a
22 different form, a longer form, that had to be
23 filled out, that a local accountant did complete
24 for the club, that I think they had to do one time
25 after -- in the year that the property was sold.

1 Q Who was the accountant that did that?

2 A And that -- and that was Henry Summer.

3 Q Henry Summer. So you don't know whether the club
4 has paid any taxes on the sale of property?

5 A No.

6 Q Would you agree that the club sold the property for
7 less than was offered on it, to a member of the
8 club?

9 A We sold it for what we asked for it.

10 Q Right. But that wasn't my question.

11 A All right.

12 Q My question is: The -- the club sold the property
13 to Mr. Amick for less money than was offered to be
14 paid by other people; isn't that true?

15 A That's true.

16 Q All right. So Mr. Amick received a \$25,000 benefit
17 by being a member of the club, didn't he?

18 MS. NICHOLS: Object to the form.

19 A We -- we got what we asked for it.

20 Q Right. But I -- and that's not what I asked you.
21 I -- I asked you if he received a \$25,000 benefit
22 by being a member of the club?

23 A No.

24 Q I mean, wasn't there an offer to sell, under the
25 same terms, for \$25,000 more than he paid for it?

1 A But we didn't have a -- I mean, there -- we never
2 asked for any prices. We just asked the people to
3 let us know if they were interested.

4 Q Right. But that's not my question. Didn't Joe
5 Rice offer to buy the property for \$325,000?

6 A He did send a -- saying that he was willing to pay
7 325, correct.

8 Q And Mr. Amick bought it for \$300,000 --

9 A Correct.

10 Q -- right?

11 A Correct.

12 Q And Mr. Schumpert accepted the offer to buy it for
13 \$300,000, with all the encroachments on it,
14 correct?

15 MR. DIXON: Object -- object to form.

16 MS. NICHOLS: Object to the form. (Audio
17 disturbance.)

18 Q Is that true?

19 A Correct.

20 Q All right. And the Lions Club sold it to Mr. Amick
21 for \$300,000 after the Lions Club cleared all of
22 the encroachments --

23 A Correct.

24 Q -- right?

25 A Correct.

1 Q Right. Which was the least beneficial sale to the
2 Lions Club --

3 MS. NICHOLS: Object to the form.

4 Q -- right?

5 A Want to restate that? I don't follow that.

6 Q Sure. The Lions Club could've sold it for \$25,000
7 more to the Rices, right?

8 A Correct.

9 Q So Mr. Amick got to buy it for \$25,000 less than it
10 could've been sold for?

11 A Correct.

12 Q Because he was a member of the Lions Club?

13 A Correct.

14 Q All right. And you're not aware that that creates
15 a tax problem for the club? No one's ever
16 mentioned that to you?

17 A No.

18 Q And the club didn't consult anybody regarding the
19 problem that a non-profit agency could get by
20 selling a piece of property for \$25,000 less than
21 is offered to it, to a member of the club?

22 A No.

23 Q All right. Did you guys consult any tax advisors
24 before you sold the property?

25 A I don't remember if that was done or not.

1 Q Okay. Certainly, if the property had been sold for
2 \$325,000, there would be \$25,000 there extra to
3 dedicate to the community; isn't that right?

4 A Correct.

5 Q Okay. What was your position with the Lions Club
6 at the time the property was sold to Mr. Amick?

7 A I was secretary.

8 Q Were you in favor of selling the property to Mr.
9 Amick?

10 A Yes.

11 Q Why is that?

12 A Well, my personal opinion, as a -- as a member of
13 the club. Like I say, he should've -- we clearly
14 stated that board -- that club members had the
15 opportunity to -- to have first opportunity, and he
16 was the only club member that was interested.

17 Q Okay.

18 Plaintiffs' Exhibit Number 1, "Official
19 Minutes of Board of Directors Meeting,"
20 dated 01/24/17.

21 Q All right. Take a look, if you would, at Exhibit
22 1.

23 A Okay.

24 Q Are these the minutes from the January 24th, 2017,
25 meeting of the Lions Club?

1 A Yes.

2 Q All right. Were you there at that time?

3 A I was.

4 Q Do these meetings correctly reflect what was done
5 that day?

6 A Yes.

7 Q And do these meetings correctly reflect the
8 position of the Lions Club as of January 24th,
9 2017?

10 A Yes.

11 Q All right. Take a look, if you would, at the
12 second paragraph under "Old Business." It says,
13 "Lion Gene Crocker presented a list of names and
14 addresses for the adjoining property owners." Do
15 you see that?

16 A I do.

17 Q And it also says he presented a draft letter to
18 send those owners.

19 A Correct.

20 Q Do you see that?

21 A Correct.

22 Q All right.

23 A I do.

24 Q So was the idea that a letter was going to go out
25 from the Lions Club offering the property for sale?

1 A Correct. Or all -- going out and letting people
2 know that the property was probably going to be
3 sold, correct.

4 Q What -- what's the difference?

5 A We were just inquiring, trying to get interest from
6 the adjoining landowners, just to see if they would
7 be interested if the property was sold.

8 Q Okay. Was the letter itself presented at the
9 meeting for review by the board?

10 A I mean, I think so, but, like I say, I don't
11 remember specifically.

12 Q Well, it says "a draft letter to send" to those
13 landowners was presented.

14 A Yes. I -- so, yeah. I assume -- I assume it was.

15 Q Okay. And when the draft letter was presented, did
16 the board approve it?

17 A Yes.

18 Q Okay. So the letter that went out to the adjoining
19 property owners was approved by the board of
20 directors of the Lions Club?

21 A That's correct.

22 Q As an official statement of the Lions Club?

23 A Correct.

24 Q And the next paragraph says, "Ray Amick was present
25 at the meeting and expressed his desire to buy the

1 property" --

2 A Correct.

3 Q -- correct?

4 A Correct.

5 Q All right. He wanted to have until June 1st to

6 make that decision; is that true?

7 A Correct.

8 Q All right. And did the club agree to give him

9 until June 1st to make that decision?

10 A Correct.

11 Q All right. And then, if you'll look at the fifth

12 paragraph under "Old Business," it says, "The board

13 discussed and agreed to extend the date until June

14 1st." Do you see that --

15 A Correct.

16 Q -- Mr. Simpson?

17 A Yes.

18 Q And that's what the board agreed, is to -- to allow

19 Mr. Amick to have until June 1st to buy the

20 property, right?

21 A Correct.

22 Q And, based on that, it says, "Adjustments were made

23 to the drafted letter." Do you see that?

24 A Correct. Yes.

25 Q Okay. So would it be fair to say that, at the

1 meeting, Mr. Crocker presented a letter, and the
2 board changed a few things on the letter before
3 sending it out?

4 A Correct.

5 Q All right. And one of the matters that was to be
6 addressed in the letter was that, "members of the
7 Lions Club would have first refusal and that issues
8 concerning encroachments will be settled when the
9 property is sold." Does that make sense?

10 A Yes.

11 Q All right. And is that what the club agreed on?

12 A Yes.

13 Q All right. And when it says "issues concerning
14 encroachments," does that mean the property was
15 going to be sold as is, with the encroachments on
16 it?

17 A Yes.

18 Q All right. And the actual letter that went out was
19 approved by the Lions Club board, correct?

20 A Yes. That's correct.

21 Q And the position of the club at that time was Mr.
22 Amick would have the opportunity to buy the
23 property until June 1st, correct?

24 A Correct.

25 Q All right. And, if he didn't, then the adjoining

1 landowners would have the opportunity to buy the
2 property?

3 A Yes. Yeah. They -- yes.

4 Plaintiffs' Exhibit Number 2, Letter to
5 Ray Amick from Pete Simpson.

6 Q Okay. Take a look, then, at Exhibit 2, which I
7 think is the letter than went to Mr. Amick; is that
8 correct?

9 A That's correct.

10 Plaintiffs' Exhibit Number 3, Letter to
11 Claude Schumpert from Pete Simpson.

12 Q And if you look at Exhibit 3, I believe that's
13 exactly the same letter except that it's addressed
14 to Mr. Schumpert?

15 A Correct.

16 Q And it's signed by you?

17 A Correct.

18 Q All right. And you had authority to send that
19 letter out for the club?

20 A That's correct.

21 Q So the first -- the second paragraph -- well, let's
22 back up a second.

23 This letter doesn't have a date on it, but it
24 says that it was approved at the January 24th,
25 2017, meeting. Would it have been sent out at the

1 end of January 2017?

2 A I think just -- most likely, shortly after that
3 meeting.

4 Q Okay. So sometime towards the end of January 2017?

5 A Correct.

6 Q And the letter says, in the second paragraph, "At
7 the present time, the Lions Club owns 5.5 acres,
8 including the clubhouse." Do you see that?

9 A Correct.

10 Q Do you think that adequately describes the
11 property?

12 A Yes.

13 Q All right. And, in fact, in the second paragraph,
14 it says, "A recent plat was prepared, which we are
15 including with this letter." Do you see that?

16 MS. NICHOLS: (Audio disturbance.)

17 A Oh, okay. Yes. Yes.

18 Q So between the plat that was sent with the letter
19 and the description of the property, including the
20 clubhouse, the property was described such that
21 anyone who saw this letter would know what property
22 was being offered for sale?

23 A Correct.

24 Q All right. And it says there, in the -- I think
25 the second -- maybe the third sentence of the

1 interested in purchasing the property?

2 A It says that, "If you are interested" -- on -- in
3 the -- one, two, three -- in the fourth paragraph,
4 it says, "If you have interest in the property,
5 please let us know right away." That was the --

6 Q Right.

7 A -- intention of this letter.

8 Q When you say "this offer" at the bottom of the
9 letter, what are you referring to?

10 A To the interest in the property, in the possibility
11 of --

12 Q You're not referring to the letter itself?

13 A We're referring to the letter, but not necessarily
14 is it making an offer for -- to actually -- for a
15 price. It's just that -- for information that the
16 property may be sold.

17 Q Would you agree that the letter identifies the
18 property? Is that true?

19 A Correct.

20 Q It identifies the price?

21 A A potential price, yes.

22 Q Well, it doesn't say a "potential price." It says
23 a "price."

24 A Correct.

25 MS. NICHOLS: Object.

1 Q It says you're asking \$300,000?

2 A Correct.

3 Q All right. And would you agree that it has a
4 deadline for acceptance?

5 A Correct.

6 Q And that deadline was June 1st, 2017?

7 A Correct.

8 Q And the letter was sent to a limited group of
9 people?

10 A Correct.

11 Q And it calls itself an "offer" in the last
12 paragraph?

13 MS. NICHOLS: Object to the form.

14 A It -- it does say -- the word "offer" is used.

15 Q Right. The word "offer" is used in the last
16 paragraph where it says "this offer," correct?

17 A Correct.

18 Q And it's also in the second paragraph, where it
19 says, "We have reluctantly decided to offer the
20 property for sale"?

21 A Yes.

22 Q All right. Would you agree that Claude Schumpert
23 accepted this offer?

24 MR. DIXON: Object to the form.

25 MS. NICHOLS: Object to the form.

1 MS. NICHOLS: Okay. Thank you.

2 A Like I say, right off, without looking at all the
3 -- having all the board minutes, I wouldn't --
4 don't recall.

5 Q Okay.

6 Plaintiffs' Exhibit Number 5, "Official
7 Minutes of Board of Directors Meeting,"
8 dated 03/28/17.

9 Q Well, take a look at Exhibit 5, then. Are these
10 the board minutes from March 28th, 2017?

11 A Yes.

12 Q And you were at that meeting?

13 A Yes.

14 Q And so was Ray Amick?

15 A Correct.

16 Q And, at the time, you were the secretary of the
17 board?

18 A Correct.

19 Q And y'all discussed the lake property, right?

20 A Correct.

21 Q All right. And you made -- someone made a motion
22 to accept Lion Ray Amick's offer of \$300,000, with
23 the --

24 A Correct.

25 Q -- condition that the closing would take place by

1 June 1st?

2 A Correct.

3 Q Did the closing take place by June 1st?

4 A I don't remember the date they closed. I don't --

5 I don't -- I think it was later than that.

6 Q Right. Right. And that's my understanding, as

7 well, is that it did not take place by June 1st; is

8 that --

9 A Right. Correct.

10 Q Do you agree with that?

11 A Correct.

12 Q Okay. All right. But, at the meeting of March

13 28th, you guys agreed to sell the property to Ray

14 Amick provided he closed by June 1st?

15 A Correct.

16 Q All right. At this point, would Ray Amick have

17 known about the Schumpert's acceptance?

18 A I don't -- I don't recall. I don't -- I'm not real

19 certain.

20 Plaintiffs' Exhibit Number 6, "Official

21 Minutes of Board of Directors Meeting,"

22 dated 05/23/17.

23 Q Okay. Take a look at Exhibit 6, if you would.

24 A Okay.

25 Q I believe these are the minutes from the meeting of

1 May 23rd, 2017; is that --

2 A Correct.

3 Q -- correct?

4 A Correct.

5 Q And were you at that meeting?

6 A I was.

7 Q And so was Ray Amick?

8 A Correct.

9 Q All right. And it says here that, "Lion Ray Amick

10 was given the opportunity to speak regarding his

11 purchase of the lake property." Do you see that?

12 A Correct.

13 Q And it says, "He had the funds ready to purchase

14 the property, but he wanted to have a clear title

15 to the property with a deed being made to him and

16 his wife." Do you see that?

17 A Yes.

18 Q All right. Do you know what it means when he's

19 saying he wants a "clear title"?

20 A Yes. There was an encroachment issue on there,

21 and, like I say, that -- he was wanting that

22 resolved.

23 Q Right. But the original letter, your letter,

24 Exhibit 3, said that whoever bought this property

25 had to buy it with the encroachments?

1 not a letter that says it's an offer is an offer.

2 But my question is this: At May 23rd, 2017, there
3 was no agreement to sell the property to Ray Amick;
4 is that true?

5 A At that point, we wanted to clear up the
6 encroachment issues, and so there was -- so, at
7 that point, it was not -- there wasn't an offer, no
8 -- I mean, for -- to Ray, correct.

9 Q Right. Ray had said, "I will buy it as it sits,"
10 earlier, before this meeting, right?

11 A Correct.

12 Q But now, at this meeting, he said, "I will not buy
13 it as it sits"?

14 A Correct.

15 Q But Mr. Schumpert had said he would buy it as it
16 sits, as of this meeting?

17 A Correct. He had -- in his letter, correct.

18 Q All right. And it was your understanding that it
19 could be sold to Mr. Schumpert as it sat?

20 MS. NICHOLS: Object to the form.

21 A I suppose.

22 Q Are you unclear on whether it could've been sold to
23 Mr. Schumpert as it sat?

24 A I mean, he -- his letter -- according to his
25 letter, he was willing to accept it if we were

1 going to take offers or take bids, which, like I
2 say, we -- we only took his letter as information
3 he was wanting -- interested in purchasing the
4 property.

5 Q Right. So -- but as of March 28th -- I mean, May
6 23rd, 2017, Exhibit 6, you were aware that Mr.
7 Schumpert would buy the property as it sat, with
8 the encroachments?

9 A We had received his letter stating that, yes.

10 Q All right. And so you could have agreed to sell
11 the property to Mr. Schumpert, as it sat, with the
12 encroachments?

13 A Yes.

14 Q But you decided instead to not do that?

15 A Correct.

16 Plaintiffs' Exhibit Number 7, Letter to
17 Ray Amick from James S. Verner.

18 Q Okay. And there's a letter here, Exhibit 7. Do
19 you see that?

20 A Yes.

21 Q Was this letter sent to all the same people that
22 the initial letters, Exhibits 2 and 3 --

23 A I --

24 Q -- were sent to?

25 A I think that's -- yes, sir.

1 Q There's no question about that?

2 A Correct.

3 Q But the board decided, instead of selling it to
4 that one person who said, "I'll buy it as it sits,"
5 that they would go back and clear the encroachments
6 for Mr. Amick?

7 MS. NICHOLS: Object to form.

8 Q Right?

9 A That's what the board decided, but, here again, we
10 also stated from the beginning that the board
11 member -- club members would have first refusal.
12 And -- and, as it was, like I say, we did not
13 actually ask for any offers. All we ever initially
14 asked for was those interested in the property.
15 And, as board members, we elected to -- for Ray
16 Amick to be able to purchase the property.

17 Q I understand that you were not -- your letter,
18 Exhibits 2 and 3, was not seeking offers; is that
19 correct?

20 A That's correct.

21 Q All right. And it says that it, itself, is an
22 offer, doesn't it?

23 MR. DIXON: Object to the form.

24 MS. NICHOLS: Object to the form.

25 A It does use the word "offer," correct.

1 Plaintiffs' Exhibit Number 8, "Official
2 Minutes of Board of Directors Meeting,"
3 dated 11/28/17.

4 Q So take a look at the Exhibit 8, the minutes from
5 the November 28th, 2017, Lions Club meeting.

6 A I see them.

7 Q All right. Were you at that meeting?

8 A I was.

9 Q And Mr. Amick was at that meeting, as well, right?

10 A Correct.

11 Q All right. And, at that meeting, Gene Crocker read
12 a letter received by the club from the -- by the
13 McNair Law Firm. Do you see that?

14 A Correct.

15 Q On behalf of the Rice family?

16 A Correct.

17 Q All right. So, at that point, would Ray Amick have
18 known about the Rice family's letter stating that
19 they would buy the property?

20 A Possibly. Like I said, I don't -- as far as
21 really, truly recollecting, I don't know.

22 Q Well, the minutes say you were at the meeting.
23 Were you at the meeting?

24 A Right. I was there.

25 Q And the minutes say Ray Amick was at the meeting.

1 Was he at the meeting?

2 A He was at the meeting.

3 Q And the minutes say Gene Crocker read a letter from
4 the McNair Law Firm on behalf of the Rice family.

5 Did Gene Crocker read a letter on behalf of the
6 Rice family?

7 A That's what the minutes say.

8 Q Was that what happened?

9 A Yes, sir.

10 Q All right. So Ray Amick would've known that the
11 Rice family was making an offer on the property, at
12 least?

13 A Well --

14 MR. DIXON: Object to the form.

15 A Well, I'm not real certain, and I don't have a copy
16 of the letter attached. So I'm not real certain
17 what the letter said.

18 Q Do you remember the letter from the McNair Law
19 Firm?

20 A There were several letters of correspondence. I --
21 like I say, I don't have them. I don't know.

22 Q And they all had to do with the Rice family wanting
23 to buy the property, didn't they?

24 A Correct.

25 Q Okay. So all of the letters from the McNair Law

1 Firm talked about the Rice family buying the
2 property?

3 A As far as I recollect, correct.

4 Q So whichever letter it was that was read at this
5 time, Ray Amick would've heard it and would've
6 known that the Rice family was interested in buying
7 the property?

8 A I would assume.

9 MR. DIXON: Object to the form.

10 Q And would also Mr. Schumpert's acceptance letter
11 have been read at this time or been part of the
12 discussion?

13 MS. NICHOLS: Object to the form.

14 A That was done at some point, but I don't recollect
15 at what point.

16 Q All right. By November 28th of 2017, would Ray
17 Amick have been made aware of the Schumpert's
18 acceptance letter?

19 A Like I say, I don't recollect.

20 MR. DIXON: Object to the form.

21 Plaintiffs' Exhibit Number 9, Letter to
22 Lion Ray Amick from Gene Crocker.

23 Q Take a look at Exhibit 9, if you would.

24 A I see it.

25 Q All right. Have you seen this letter before?

1 Q As of June 1st, one person had standing an
2 unconditional acceptance of the terms of this
3 letter, and that person was Claude Schumpert,
4 correct?

5 MR. DIXON: Object to the form.

6 MS. NICHOLS: Object to the form.

7 A He had responded to the letter, correct.

8 Q All right. But as of June 1st, Mr. Amick had said
9 he wasn't going to buy the property pursuant to the
10 terms of your letter in Exhibit 2 and Exhibit 3,
11 correct?

12 A He -- at that point, our legal counsel had told us
13 to get a clear title and to do away with the
14 encroachment, so that is the reason things got
15 changed.

16 Q Isn't the reason because Mr. Amick said he didn't
17 want to buy the property with encroachments?

18 A He did bring that to the board's attention, but,
19 upon advisement by attorney, we were told that
20 nobody would truthfully be able to get -- I mean,
21 would need clear title. Whoever purchased it would
22 need clear -- need clear title, and it would be in
23 our best interest to get it cleared up before we
24 sold it.

25 Q All right. As of June 1st, 2017, there was no

1 agreement to sell the property to Ray Amick; is
2 that true?

3 A I think that's correct, uh-huh.

4 Q All right. And, as of June 1st, 2017, the reason
5 there was no agreement to sell the property to Ray
6 Amick is because Ray Amick was not interested in
7 buying the property with encroachments?

8 MS. NICHOLS: Object to the form.

9 A Because we, as a board, had discovered that a clear
10 title needed to really be in existence before we
11 sold it, and so we had removed the offer to sell
12 the property, to get that corrected.

13 Q But, as of May 23rd, 2017, Ray Amick said he would
14 not buy the property with encroachments; is that --

15 A He --

16 Q -- true?

17 A True.

18 Q All right. And, as of May 23rd, 2017, Mr.
19 Schumpert had said, "I will buy the property with
20 encroachments"?

21 A According to his letter, correct.

22 Q Right.

23 MR. BRADLEY: Okay. I don't think I have any
24 more questions. I want to look over my notes,
25 but I think that's all I have. I don't know

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF NEWBERRY

3
4 LISA SUMMER RICE and
5 JOSEPH F. RICE,

6 Plaintiffs,

7 vs.

CASE NO. 2018-CP-36-00089

8 NEWBERRY LIONS CLUB and
9 C. RAY AMICK,

10 Defendants.

11 DEPONENT: CLYDE EUGENE CROCKER, JR.

12 DATE: October 22, 2018

13 TIME: 1:50 p.m.

14 LOCATION: Pope Parker & Jenkins, P.A.
15 1508 College Street
Newberry, SC

16 TAKEN BY: Counsel for the Plaintiffs

17 REPORTED BY: KIMBERLY T. POWER, CR

18
19 A. WILLIAM ROBERTS, JR. & ASSOCIATES
20 Fast, Accurate & Friendly

21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919

23 Asheville, NC
24 (828) 123-9876

25



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 CLYDE EUGENE CROCKER, JR.,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. POPE:

5 Q. State your full name and address, please.

6 A. My full name -- my special name is
7 Clyde Eugene Crocker, Jr., but I'm always known as
8 Gene Crocker. My address is 723 Mendenhall Road,
9 Newberry.

10 Q. And you've been president of the Newberry
11 Lions Club since when?

12 A. I was -- well, I've been president several
13 times. Before we go further, can I be introduced
14 to --

15 Q. Oh, you haven't been introduced?

16 A. I haven't met everybody.

17 Q. That's Jim Koutrakos from Columbia. This
18 is Lisa Summer Rice.

19 A. Lisa, hey.

20 Q. You know Lisa. You know Kyle Parker.

21 A. I don't know Kyle.

22 Q. He's a partner. You know Biff Sowell.

23 A. I met Biff earlier.

24 Q. And Mr. Amick.

25 A. And you are?

1 THE COURT REPORTER: I'm Kim. I
2 demand equal time, by the way, same as Pete. I want
3 to be deposed for as long as he was.

4 BY MR. POPE:

5 Q. You can have it, but I don't think you
6 want it. It will be quicker. He was identifying
7 things as secretary that we won't have to ask you
8 about, probably.

9 A. Right.

10 Q. Anyway, your presidency?

11 A. I was president for the year 2016 and
12 2017. I gave it up in June of this year. So for two
13 years.

14 Q. June of '08 -- I mean, '18?

15 A. June of, '18, yeah. So from June of '16
16 to June of '18, I was president.

17 Q. Pete is still the secretary?

18 A. He's been the secretary for a long time.

19 Q. Y'all can't make him -- he doesn't want to
20 give it up, I guess.

21 How many active members are there in the
22 club?

23 A. I think there are around 12.

24 Q. During 2015, do you recall whether
25 Ray Amick ever attended a meeting of the board of the

1 Lions Club?

2 A. 2015, I do not.

3 Q. If the records show he did not attend any
4 meetings, would that conform to your memory?

5 A. As a non-member, he may not be mentioned
6 in the minutes.

7 Q. We went through those with Pete who kept
8 them and he didn't -- we didn't have any reference in
9 2015 to him attending.

10 MR. KOUTRAKOS: Did you say
11 non-member or non-board member?

12 THE WITNESS: Non-board is what I
13 meant. He's been a member of the Lions Club for 18
14 years.

15 BY MR. POPE:

16 Q. Since 2000?

17 A. 2000.

18 Q. In Exhibit 4 -- we went through these with
19 Pete. I'll save a little time here by summarizing.
20 If you don't think it's right, you can correct me.
21 But you went round and round about getting a plat.
22 That took quite a while. Do you remember that?

23 A. Oh, yeah.

24 Q. It took like six or eight months or
25 whatever?

1 A. Right.

2 Q. In the second meeting of the year, if you
3 turn to page February 23, 2016, there's a discussion
4 under old business regarding the lake property.
5 There was a discussion about Randy Senn making a
6 motion to contact a lawyer to get assistance with the
7 wording of a seal bid for advertising with the club
8 to have the right of first refusal?

9 A. Yes.

10 Q. That never happened, did it?

11 A. Did not.

12 Q. Why not?

13 A. Well, it took a while after that part for
14 us to get the -- get the procedure done. And in the
15 fall of that year, we decided -- well, we had to get
16 an appraisal and so forth. That's when we decided on
17 an asking price for the property. And I had met with
18 two real estate agents and provided them with
19 information on the property for sale and gotten
20 information from them as to what they felt the asking
21 price should be.

22 Q. Which two were those? That was
23 Molly Sims?

24 A. Molly Sims.

25 Q. And Jonathan Downs?

1 reported that Sam had started work on the appraisal,
2 right?

3 A. Right.

4 Q. Anything about that meeting that you
5 recall that's not reflected in the minutes?

6 A. No, no. I'm 77 years old.

7 Q. I'm sorry?

8 A. I'm 77 years old.

9 Q. I'm 72.

10 A. What I'm saying is my memory -- I have a
11 pretty good memory. Nevermind.

12 Q. June 28th, the only thing that happened
13 there was reported the appraisal hadn't been
14 completed?

15 A. Right.

16 Q. The next meeting, September 27, 2016. It
17 reflects that Mr. Amick was in attendance?

18 A. Yes, it does.

19 Q. Do you remember the meeting?

20 A. Well, I remember --

21 Q. From looking at the --

22 A. -- it somewhat, yeah.

23 Q. You can take your time if you want to look
24 at it.

25 A. Yeah. I did check with Bill Braswell

1 regarding someone who does appraisals.

2 Q. Right.

3 A. But that person was no longer doing that.
4 So we did not have another person to appraise the
5 property.

6 Q. The second paragraph under old business
7 says that Mr. Amick stated he wanted to buy all the
8 property or at least the upper portion of it?

9 A. Right.

10 Q. Is that the first time you recall him
11 saying he wanted to buy the property?

12 A. He may have stated that to us informally
13 prior to that.

14 Q. Several times?

15 A. Well, yeah, because from the time we
16 decided to offer for sale, he expressed an interest
17 in purchasing it.

18 Q. Is it fair to say that as a club -- what
19 did you see the fiduciary duty of a member of the
20 board of directors at that point in the time of your
21 service with regard to assets of the club?

22 A. I'm not sure what fiduciary duty means,
23 but we -- the members of the board, we're responsible
24 for the club membership as it deals regarding money.
25 We have two different accounts. We have our

1 other than that one sentence?

2 A. Not that I'm aware of.

3 Q. Was there consideration made -- we can't
4 just sell it to any one person without due diligence
5 as to price, as to terms?

6 A. Yeah. That's why we got the appraisal.
7 That's why we consulted realtors.

8 Q. And was it the consensus of the board,
9 although I don't see any vote to that affect, that it
10 goes to charities, it would be -- we would want to
11 maximize the amount you could give within reason?

12 A. No, we didn't talk so much about that, you
13 know. The appraisal -- the appraised value was
14 higher than our final asking price, but the asking
15 price was based on what we thought we could
16 reasonably get for the property. And we agreed --
17 the board did agree to offer the property at a price
18 of \$300,000.

19 Q. That's sometime later. Let me follow up
20 sequentially here. The next meeting is October 25?

21 A. Right.

22 Q. And the discussion under old business
23 there says they discussed having a realtor listed.
24 Do you remember that?

25 A. It was discussed to investigate having a

1 realtor list the property, yeah.

2 Q. And that's where you contacted Downs?

3 A. Yeah.

4 Q. And the lady, Sims?

5 A. Yeah. Pete and myself were the two people
6 asked to do that, but I'm the one who wound up doing
7 it. And, yeah, I did ask what commissions they would
8 charge and --

9 Q. Because that would affect the net to the
10 club?

11 A. That's correct.

12 Q. So you initially started out, we saw, with
13 considering, well, let's look at sealed bids and you
14 discarded that?

15 A. Yeah, we did not do that.

16 Q. Then you came to the realtor listing the
17 property?

18 A. Right.

19 Q. It wasn't rejected at that meeting of
20 October 25, though, right?

21 A. What was not rejected?

22 Q. Having a realtor list it.

23 A. No, because we were to inquire as to cost
24 and so forth.

25 Q. All right. So that's the end of 2016. If

1 you look at Exhibit 5, this exhibit is the minutes
2 for 2017.

3 A. Right.

4 Q. Now, this is January 24 of that year and
5 old business shows that you presented a list of the
6 names and addresses of the adjoining property owners
7 of the lake property along with a draft letter to
8 send to these landowners regarding the sale, correct?

9 A. That's correct. I drafted the letter. It
10 went out under Pete Simpson's signature as secretary.

11 Q. And it was revised at the meeting?

12 A. Yeah.

13 Q. If you would pick up No. 6. That's an
14 identical letter that was sent to all 12 of the
15 adjoining property owners?

16 A. That's correct.

17 Q. And that was the revised letter that was
18 approved?

19 A. Yeah. There was not much a revision. It
20 was pretty much the way I drafted it.

21 Q. Okay. But, anyway, this was approved at
22 the January 24 meeting?

23 A. Right.

24 Q. And you provided a six-month time period
25 the offer would be valid until June 1 of that year --

1 A. Yeah.

2 Q. -- is that right?

3 A. Let me back up.

4 Q. Excuse me. Is that correct? You can
5 explain it.

6 A. Yeah, it would be valid. We were not
7 going to advertise it to the public until June 1st.
8 We were acquiring -- inquiring whether there was any
9 interest from the current lake property owners
10 that -- these are people whose property adjoins the
11 Lions Club property, one of whom was on the next
12 peninsula. I want to say that when we came up with
13 the asking price, we informed Ray Amick -- it may not
14 be in the minutes, but we did inform Ray Amick that
15 if he would meet that price, he would get the
16 property.

17 Q. Is that at the meeting of January 24?

18 A. No, this was in the fall of 2016. Because
19 the letter was prompted because, at that time, he
20 says he could not pay that for the property.

21 Q. He should not pay what?

22 A. He could not pay what we were asking. He
23 could not pay the \$300,000.

24 Q. And then the next item in the minutes
25 after the paragraph about the letter, it says

1 Mr. Amick who was present at the meeting expressed
2 his continued desire to buy the property and
3 requested he have until June 1 to make a decision.

4 A. Right.

5 Q. And the board agreed because that's what
6 the letter said?

7 A. Right.

8 Q. Now, at any time did Mr. Amick make a
9 written offer to buy the property in response to the
10 letter he got along with the Rice and the rest of
11 them?

12 A. I think -- do you not have a --

13 Q. Prior to June 1.

14 A. I'm trying to think when those offers were
15 opened. I think they were opened at the February
16 meeting, weren't they?

17 Q. Well, there's no reference. We'll get to
18 that in a second, but there's no reference in that
19 meeting. I'm not saying it didn't happen. But did
20 Mr. Amick make a written response to that letter?
21 Look at Exhibit 7, if you don't mind, which is the
22 same letter that went to the Rices went to him?

23 A. Right.

24 Q. Did he respond to that letter, Exhibit 7,
25 in writing in any form prior to June 1, 2017?

1 but I'll skip forward to February if it helps you.
2 The February 28, 2017 meeting, again, Mr. Amick is
3 present. He was excused. Why was he excused?

4 A. Because we were going to discuss the
5 offers that we received.

6 Q. So at the executive session, were those
7 offered opened then?

8 A. Yes. To the best of my memory, that's
9 when they were opened.

10 Q. And the three offers were
11 Claude Schumpert --

12 A. Claude Schumpert had an offer of \$300,000
13 together with an earnest money of \$1,000. Ray Amick
14 had an offer of \$300,000 together with a contract and
15 a check earnest money for \$1,000. The letter from
16 Joe Rice through the McNair Law Firm, I think it came
17 from Sid Boone, was also opened and it included an
18 offer of \$325,000 conditioned on having a clear title
19 to the property.

20 Q. But both Claude and Joe Rice accepted the
21 encroachment condition in the letter which was you
22 took the property with the encroachment to be dealt
23 with after you bought it?

24 A. No. The one from Joe Rice did not, as I
25 recall, say anything about the encroachment. Maybe

21
1 it did. I think it did because it wasn't until later
2 when we talked with Jay Verner that we found out that
3 we really couldn't legitimately sell it and give a
4 title to the property and transfer the deed without
5 first clearing up the encroachment.

6 Q. Well, if you had --

7 A. And that was in, I think, May.

8 Q. Excuse me. If you had a buyer or a two or
9 three or five buyers and they all accepted, we'll
10 take the encroachment, that will be our problem,
11 we'll buy it, you can do that, can you not?

12 MR. KOUTRAKOS: Object to form.

13 THE WITNESS: Well, we relied on Jay
14 Verner's legal advice on that. He says we could not.
15 BY MR. POPE:

16 Q. Well, his letter was in June. The advice
17 was given in June?

18 A. In May. But Ray Amick also came back to
19 us and said he could not accept it with the
20 encroachment, that he would have to have a clear
21 title to the property.

22 Q. All right. Now, we have -- let me see.
23 If you look at Exhibit 11. Well, 11 is one day ahead
24 of 13. So I'll ask about Claude's first. He
25 accepted the encroachments, correct?

1 A. Yeah. He says, "I will settle any
2 encroachments after the sale."

3 Q. He unconditionally accepted your offer to
4 sell for \$300,000; is that right?

5 A. That's correct.

6 Q. Was there anything out of line or
7 unacceptable about the form in which this offer was
8 made or this response was made?

9 A. Let me read over it again.

10 Q. Yeah, take your time.

11 A. It's been a while.

12 MR. KOUTRAKOS: Are you referring to
13 11?

14 MR. POPE: 11, yeah.

15 THE WITNESS: Okay. Yes.

16 BY MR. POPE:

17 Q. It was acceptable?

18 A. Yes.

19 Q. Was Exhibit 13 acceptable in form?

20 A. Yes. But I do point out that it was
21 subject to the property having good and marketable
22 title which we were told we could not get until after
23 we settled the encroachment issue.

24 Q. He accepted, "he" being Mr. Boone, on
25 behalf of the Rices --

1 A. Right.

2 Q. -- he accepted the encroachment condition
3 you placed on it?

4 A. Yes, he did.

5 Q. If you look at No. 10. This is an e-mail
6 you wrote to Pete Simpson --

7 A. Yeah.

8 Q. -- that you got a call from Sid Boone
9 saying he's submitting a bid on the lake property?

10 A. That's right.

11 Q. And you reported that the club would open
12 his bid, I guess, and any other ones on the 28th?

13 A. Right.

14 Q. Okay. Would you go back to -- I think
15 it's on the bottom of that stack you've got. No,
16 it's not. Right there in your hand.

17 A. This one?

18 Q. That. The 2017 minutes. And look at
19 February 28 again. It's your recollection, as I
20 understand it, that the executive session was when
21 you opened the three offers?

22 A. That's correct.

23 Q. Let me say this: We have sent requests
24 for documents to your counsel and also to Mr. Amick's
25 counsel for any offers or responses to that letter

1 purchased by the club members, the income wouldn't
2 have to go to charity. I was just checking into
3 other aspects of it.

4 Q. But it had already been determined by
5 vote, or had it, that the club wanted this money to
6 go to charity?

7 A. Yes, it had already been determined.

8 Q. There's no -- why isn't there a vote in
9 the minutes? Do you have any idea?

10 A. I have no idea. This would be up to the
11 secretary, I think, to record it.

12 Q. But, anyway, when this paragraph says,
13 "Check out documentation to make sure what we're
14 doing is legal," that was the letters you sent out.
15 Those were the only documents that existed at that
16 time, right?

17 A. Wait a minute. Let me see. Here it is.
18 Yeah, I think maybe it related more to that.

19 Q. Okay. And then it says that you and
20 Doggett are going to speak to Jay Verner about that?

21 A. This was after the fact, though. That
22 letter had already gone out.

23 Q. That's what I mean. The letter went out
24 without --

25 A. We did check --

1 Q. -- Mr. Verner's -- without his input?

2 A. We did check with Jay Verner. We did
3 check with him after this meeting.

4 Q. But as far as when the letters went out in
5 January '17, you had not consulted with Mr. Verner at
6 that point?

7 A. We had consulted earlier, you know. He
8 recommended we get the appraisal.

9 Q. Well, I understand that, but he never told
10 you about the letter and he never reviewed the
11 letter?

12 A. He did not review the letter before that.

13 Q. All right. And then the minutes show that
14 Amick returned to the meeting. He was informed that
15 y'all were seeking legal advice before proceeding
16 further; is that right?

17 A. That's right.

18 Q. Well, at that point no one ever said that
19 you could not sell the property by means of the
20 letter you set out Exhibit 6 and 7?

21 A. No.

22 Q. Now, the next board meeting --

23 A. By the way, the letter did not specify
24 bidding procedure and it really was just requesting
25 if there was interest. It stated the asking price.

1 It was just requesting whether any of the lake
2 property people would have an interest in purchasing
3 the property.

4 Q. But it was referred to as an offer?

5 A. Yeah. It says this offer will remain
6 until June the 1st prior to being publicly offered.
7 So it was an exclusive offer until June the 1st for
8 the lake property owners.

9 Q. Going back for a minute to the first
10 meeting on Exhibit 5. Just turn back to the top
11 page. January 24. At the bottom it says you
12 confirmed that the landowners -- the adjacent
13 landowners would be getting a drafted letter with
14 revisions and Mr. Amick questioned why the letter
15 would still be going out if he had until June 1.

16 A. Okay.

17 Q. Do you remember that?

18 A. He was -- he was given until June 1 to say
19 that -- this was in January. He was given until
20 June 1st to say whether he would purchase it at that
21 \$300,000 price. And then subsequent to that, he sent
22 to us the contract, the check, and his offer to
23 purchase it at the asking price.

24 Q. We have no documents that --

25 A. I'm going to see if we can't get that for

1 you.

2 Q. We've had no document produced from
3 Mr. Amick to the Lions Club in response to your
4 letters, Exhibits 6 and 7, from the time they were
5 sent in January until June 1. Nothing. You say this
6 offer was presented in writing. Your recollection is
7 that?

8 A. Yes, it was. And the decision was made to
9 accept his offer for \$300,000, plus other
10 considerations.

11 Q. We'll get to that in just a minute.

12 A. Okay.

13 Q. March 28th.

14 A. March 28, 2017?

15 Q. 2017. And the club voted to accept
16 Amick's offer of \$300,000, provided the closing will
17 take place June 1 -- by June 1?

18 A. Right.

19 Q. And that the other offers will be
20 considered if the property closing has not occurred
21 by June 1; correct?

22 A. That's correct.

23 Q. All right. Now, the adjacent landowners
24 were never written or told about this motion that was
25 adopted; is that right?

1 A. No.

2 Q. The next meeting is April 25, 2017. The
3 discussion centered around what can you do with the
4 money from the sale?

5 A. Right.

6 Q. Is that when you brought out what you just
7 mentioned about checking the website of the
8 International Lions Club?

9 A. I may have already checked it prior to
10 that when we were talking about documentation. But,
11 also, I had to check on tax -- what would happen
12 regarding taxation on the proceeds. And subsequent
13 to that, we did employ the services of an accountant.

14 Q. Okay. So we went first from looking at
15 sealed bids and that was rejected and then --

16 A. They were not bids.

17 Q. And then you had the realtor looking --

18 A. We did not have a bidding process.

19 Q. I understand that. Then the realtor
20 listing, that was rejected. And then we get into
21 2017 and you decide to write the adjoining
22 landowners?

23 A. Yes.

24 Q. All right. Now, in the May 23, 2017
25 minutes, it's presented by Mr. Amick that he has the

1 funds, but we wants to have clear title to the
2 property with the deed made to him and his wife?

3 A. Right.

4 Q. And he verbally said, correct me if I'm
5 wrong, that he wanted the encroachments taken care
6 of?

7 A. It's not -- that's not stated in the
8 minutes.

9 Q. I know that.

10 A. He said he wanted to have a clear title to
11 the property. And Lion Jay Verner was at that
12 meeting, and so we went into executive session to get
13 advice from him and then he excused himself and
14 Lion Ray came back to the meeting. And that's when
15 we agreed that we would send the letter. We actually
16 took the property off sale, withdrew the offer to
17 sell the property until we could get that
18 encroachment cleared up.

19 Q. The first notification to the adjacent
20 landowner was Jay Verner's letter. Look at
21 Exhibit 16.

22 A. All right. That was dated June 5th.

23 Q. So this was after the June 1 deadline that
24 you had given to all the adjoining landowners,
25 correct?

1 A. It was. But we had already received three
2 offers prior to the June 1st deadline. But -- well,
3 May the 23rd is when we met with Jay Verner and there
4 was a delay in him getting the letter written out.
5 But anyway, yeah, that was in response to our
6 meeting.

7 Q. Well, after the March 28th, the minutes
8 show you accepted Ray Amick's offer of \$300,000?

9 A. That's correct.

10 Q. Provided the closing would take place on
11 June 1?

12 A. Right.

13 Q. And his closing didn't take place pursuant
14 to your letter on June 1?

15 A. That's correct. The June 1 date was the
16 date which we would offer to the public -- advertise
17 to the public.

18 Q. I take it the club members or the board
19 members were aware that the two offers had been made
20 by adjacent landowners, Claude Schumpert and Joe and
21 Lisa Rice?

22 A. Yes.

23 Q. And neither of them were club members,
24 correct?

25 A. Correct.

1 belonged to the Lions Club and his house -- we
2 thought at one time just a part of his porch was on
3 our one side of the property, but the survey that was
4 done in 2016 showed that it was almost half the
5 house. And --

6 Q. But the encroachment, whether it was minor
7 or major, it was well-known to the club for a number
8 of years?

9 A. Oh, yeah. But once Lion -- once
10 Jay Verner advised us that we could not offer clear
11 title until this was settled, we had another survey
12 made. In that survey we had him survey an adjacent
13 piece. On that survey it's identified as Parcel B.
14 Parcel A was the larger part. Parcel B was the
15 smaller part which was most of Lot No. 9. But when
16 we had him do the survey, we specified that there had
17 to be enough space between the Jay's property and
18 Thad McCrackin's new property for the road to be
19 moved over some because the road encroaches on the --

20 Q. So the little small parcel that McCrackin
21 had to basically buy from y'all to avoid encroaching
22 was like fifteen-hundredths of one acre?

23 A. Yeah, and that was Parcel B.

24 Q. The June 27th meeting, you talk about
25 having Abraham survey so you can correct it?

1 we also had an offer from Mr. McCrackin of \$15,000
2 for Lot No. 9 that I mentioned that was an earlier
3 thing.

4 Q. You're saying that was the fourth offer
5 that was considered?

6 A. Yeah, his was just for that adjacent lot.

7 Q. You said January, but it would have been
8 February, wouldn't it?

9 A. February, yeah, when we opened the others.
10 And we did not respond to him at that time. But then
11 after the new survey was made, we responded to
12 Mr. McCrackin offering to sell him Parcel B, which
13 was a little bit smaller than Lot No. 9, for \$15,000,
14 and he came back to us and he said that that parcel
15 was not as large as Lot No. B. And so we at this
16 meeting on October 28 -- 24th, we agreed to let him
17 have it for \$13,000 with him paying the closing
18 costs, which he did. It was December before that was
19 finalized.

20 Q. Then November 28, 2017, it says that you
21 read a letter received by the club from the McNair
22 Law Firm as representatives of the Rice family?

23 A. Yeah.

24 Q. So you read it out loud at that point?

25 A. Yes, I did.

1 Q. And Mr. Amick was present?

2 A. He was present. He was just reiterating
3 their offer.

4 Q. Now, you got other correspondence from
5 McNair Law Firm on behalf of the Rices, correct?

6 A. Yeah, we've had a couple. Some from
7 Sid Boone and I forget the other person, but each of
8 them basically was the same. It was just reiterating
9 the interest in purchasing the property.

10 Q. You knew the Rices were very interested in
11 it?

12 A. Yes.

13 Q. And one of the letters is Exhibit 15. In
14 that letter, the attorney for Lisa and Joe related
15 that they had the highest -- they were successful
16 bidders?

17 A. There's so many inaccuracies here.

18 Q. I'm just relating what it says. They were
19 successful bidders?

20 A. Huh? That's what he said, but that was
21 not the case because there was no bidding process.
22 And when he states, "Without notice to my clients,
23 another bidder was given the right to submit a
24 subsequent bid after disclosure of the Rices' bid,"
25 that is a total fabrication. Absolutely not.

1 Q. Your belief is that --

2 A. This letter stating something doesn't mean
3 it was true.

4 Q. I'm not saying it necessarily does. I'm
5 just saying that it's your testimony that
6 Claude Schumpert's offer was not disclosed to anyone
7 else and the Rices' offer was not disclosed to anyone
8 else and that Mr. Amick's offer, whatever it was,
9 verbal, written, or whatever, it was not disclosed?

10 A. It was written and it was not.

11 Q. Now, if you look at No. 19, it's another
12 letter. And this is a letter from McNair firm to you
13 and Pete Simpson, November 21, 2017. Again, they
14 state that they have the successful bid offer of
15 \$325,000 pursuant to the original request for the
16 lake property, correct?

17 A. Yeah, that's what they're stating.

18 Q. And you're stating you don't believe that
19 was correct, but did you -- the letter was written to
20 you and to Pete Simpson. Did you respond to either
21 the May letter or the November letter to the McNair
22 firm?

23 A. I don't think I did.

24 Q. Did you call them and talk about it?

25 A. I did not.



1 Q. Did you ever talk to Michael Scardato or
2 Sid Boone? Did you talk to Sid?

3 A. I think I did talk to Sid on one occasion.

4 Q. Did you ever tell him that -- what did you
5 tell him?

6 A. I don't recall because I don't recall what
7 he asked.

8 Q. I'm sorry?

9 A. I don't recall what he asked.

10 Q. Did you ever tell him that the Rices' bid
11 was not in acceptable form?

12 A. I did not.

13 Q. Did you ever tell him that you were going
14 to open the bids on --

15 A. It was not a bid.

16 Q. Well, whatever. I'm just --

17 A. Offer. The word "offer" I'll accept. The
18 word "bid" I don't because that implies a bidding
19 process which there was not.

20 Q. Okay. Well, we'll agree to disagree with
21 that. I'll try to pick a word that's neutral. How
22 about that?

23 A. Okay.

24 Q. Did you ever tell him that the letter that
25 Sid Boone wrote in February of 2017 was not in

1 acceptable form in response to your letter?

2 A. I did not. In some of these letters it
3 says that their bid was accepted, but it was never
4 accepted. There was never any information
5 communicated to either McNair Law Firm or to the
6 Rices saying that the Lions Club had accepted
7 anything.

8 Q. In the November 28, 2017 meeting when you
9 read the letter from the McNair firm, were you
10 reading the November letter or the May letter or
11 both?

12 A. Must have been the November letter.

13 Q. That's No. 19?

14 A. Yeah, Exhibit 19.

15 Q. And Mr. Amick was there when it was read?

16 A. Yeah.

17 Q. Did you ever at that meeting or any other
18 time talk about the Schumpert bid?

19 A. Not to my recollection. See, he says if
20 there were any undisclosed bid procedures subsequent
21 to our request in May, please provide us with all
22 this. There were none and so that's why I didn't
23 respond.

24 Q. On the last page of Exhibit 5, the 2017,
25 that's the last page, this is a call meeting on

1 Q. June he was there?

2 A. Yeah.

3 Q. September he was there?

4 A. Yeah.

5 Q. October he was there?

6 A. Yeah.

7 Q. November he was there?

8 A. Yeah.

9 Q. And December's meeting he was there?

10 A. Yeah. And he had a vote on the trustees.

11 Q. I'm sorry?

12 A. He had a vote. That was a membership
13 meeting and so he had a vote on the trustees.

14 Q. Normally you don't keep minutes of a
15 member meeting, do you, as opposed to a board
16 meeting?

17 A. No, that's true. We don't, normally. We
18 kept those, I guess, because --

19 Q. How often -- did you meet the same day as
20 the board meeting when you had your member meeting?

21 A. No.

22 Q. Or the day before or the week before?

23 A. In December, we don't have board meetings.
24 So that was the only meeting.

25 Q. I didn't mean just in December. I mean in

1 general?

2 A. We meet usually the fourth Tuesday.

3 Q. The board does or the members?

4 A. The board meets the fourth Tuesday.

5 Q. And when do the members meet?

6 A. Second Tuesday. Second Monday up until
7 now. Second Tuesday now.

8 Q. Did you discuss with the members the fact
9 that the bids were being presented or whatever they
10 are, the responses to your letter had been coming in?

11 A. Yeah, we did.

12 Q. And so the members all knew that Claude
13 and the Rices and McCrackin, to the extent he was
14 worried about his encroachment --

15 A. Yeah.

16 Q. -- had submitted --

17 A. Right.

18 Q. -- responses?

19 A. Right.

20 Q. Mr. Amick would have been present at the
21 member meeting?

22 A. Yes.

23 Q. So he would have known that the Rices
24 submitted something?

25 A. Yes.

1 There's a lot of grass down there. It's a big area.
2 So for 18 years, he had been doing that. Well,
3 actually, when this -- at this time, it wasn't quite
4 18 years. But, anyway, these were the other
5 considerations.

6 Q. There's no attempt to put a value on that,
7 a financial value?

8 A. No. But, you know, also, we had sold a
9 piece of property. We had gotten \$13,000 for that
10 part. So, no, we did not attempt to put a value on
11 it. He was not compensated for any of that.

12 Q. Did anyone go to Claude Schumpert and/or
13 the Rices and say, well, you've offered \$300,000 or
14 \$325,000, will you pay \$400,000 or \$350,000?

15 A. We did not.

16 Q. Would that have been prudent if you are
17 trying to get the most money to go to a charity?

18 MR. KOUTRAKOS: Object to form.

19 BY MR. POPE:

20 Q. You can answer that.

21 A. Huh?

22 Q. Go ahead.

23 MR. KOUTRAKOS: Go ahead and answer.

24 BY MR. POPE:

25 Q. He can object any time he wants. You

1 still have to answer.

2 A. Okay. Would it have been prudent? It
3 might have been, but we already knew that \$300,000
4 was the fair price for the property. And we had been
5 told by one lawyer that we might only get \$250,000 --
6 not lawyer, one real estate agent that we might only
7 get \$250,000. At that time there was no
8 consideration of increasing the price for the
9 property.

10 Q. Of course, as you know, I guess you know,
11 the fair market value is determined by what a willing
12 seller will sell for it and a willing buyer will pay?

13 A. That's correct.

14 Q. Did you have any reason to think that
15 Claude wasn't really interested in that property
16 since he lived right there?

17 A. I did talk to Claude. He said he could
18 not get into a bidding war over the property. So he
19 let it sit at \$300,000.

20 Q. Did you talk to the Rices and extend the
21 same?

22 A. I did not. I talked to Joe Rice on one
23 occasion, but that was earlier. I think we was
24 asking questions about the property.

25 Q. Tell me about that discussion.

1 A. I think he was just asking questions about
2 the property. I don't have a record of it and I
3 don't have a clear regulation of it -- recollection.

4 Q. Was it after you --

5 A. I also talked with Neal McSwain, the son
6 of Bill McSwain.

7 Q. Let me finish with Joe and we will come
8 back. Was your conversation with Joe after he placed
9 his response letter in?

10 A. No.

11 Q. Well, when was it then?

12 A. Well, wait a minute.

13 Q. In other words, you have a late --

14 A. No.

15 Q. Excuse me one second. You had a late
16 January meeting?

17 A. It was after that. Yeah, it was after the
18 letter.

19 Q. After that meeting, before he submitted
20 his bid which would have been like two weeks?

21 MR. KOUTRAKOS: Object to form.

22 BY MR. POPE:

23 Q. Two or three weeks?

24 A. It was after the letter and it was
25 probably before the meeting which we opened the

1 bids -- open the offers. Erase that.

2 (Laughter.)

3 BY MR. POPE:

4 Q. Between late January and late September
5 then -- I mean, late February?

6 A. Yeah.

7 Q. What was the questions that you remember?

8 A. I don't recall the questions. It was just
9 to clarify, I think, what the letter had said.

10 Q. But you understood either from his
11 response letter of the McNair firm or his
12 conversation that he accepted the encroachments
13 stipulation?

14 A. I understood that from the letter from the
15 law firm. Initially we understood that, I think,
16 also from Ray Amick that he accepted that, but then
17 later he said he had to have fee simple title.

18 Q. So Mr. Amick initially accepted the
19 encroachment condition and then changed his mind and
20 wanted clear title?

21 A. That's correct.

22 Q. But the Lions Club never --

23 A. That was after he had proceeded to get the
24 funds together.

25 Q. But at no time did y'all then say, okay,

1 we're going to change this deal. We're going to take
2 encroachments as a condition off. We're going to
3 call it a clear title situation. Did you ever
4 contact Claude Schumpert or the Rices about that
5 change of heart?

6 A. Jay Verner's letter in June.

7 Q. That was after the June 1 deadline, wasn't
8 it?

9 A. Yeah.

10 Q. Did you ever do that before the June 1
11 deadline?

12 A. My recollection we did not. We requested
13 the letter be sent out in May.

14 MR. POPE: Let's take a short break.

15 (Off the record.)

16 (PLF. EXH. 30, Disclosure of Dual
17 Representation, was marked for identification.)

18 (PLF. EXH. 31, Settlement Statement,
19 was marked for identification.)

20 (PLF. EXH. 32, Contract of Sale, was
21 marked for identification.)

22 BY MR. POPE:

23 Q. This is exhibit 32, Mr. Crocker, to your
24 deposition. All the exhibits we've been referring to
25 so far were to Pete Simpson's deposition. This says

1 A. Member of the board.

2 Q. Do you remember him expressing himself
3 about the \$325,000 number presented by the Rices?

4 A. I do not.

5 Q. William Ashmore?

6 A. He's current president.

7 Q. Did he ever express himself about the --

8 A. I don't --

9 Q. -- \$325,000 offer?

10 A. -- recall.

11 Q. Randy Cannon, where does he work?

12 A. I'm not sure where Randy works.

13 Q. Did he have any special contact over the
14 sale of the property?

15 A. I think Randy worked for the railroad.
16 I'm not sure. Randy is a board member and I'm sure
17 he may have had some comments, but I don't recall.

18 Q. Do you recall whether they were pro or
19 cons?

20 A. Lion William was a board member too.

21 Q. Say again?

22 A. Lion William Ashmore was also a board
23 member. I don't recall his comments either.

24 Q. Were there any comments among the board
25 members that were negative towards selling to

60
1 Mr. Amick for \$300,000 versus the \$325,000 offered by
2 the Rices?

3 A. There may have been, but I don't recall.
4 I don't recall who would have made them.

5 Q. What were the nature of the remarks, if
6 you don't remember who said them or what was said?

7 MR. SOWELL: Well, I object to the
8 form of the question.

9 BY MR. POPE:

10 Q. Go ahead and answer.

11 A. I think it was just, you know, someone on
12 the board felt that we should go for the highest
13 offer.

14 Q. Was it one, two, three, four group or do
15 you know?

16 A. I only recall one.

17 Q. And you don't have a recollection as to
18 who the one was?

19 A. No.

20 Q. Was it Doggett Whitaker?

21 A. It could have been, but I don't know.

22 Q. Milton Price, did he have any special
23 involvement in the sale of the lake property?

24 A. No.

25 Q. Did Randy Senn have any involvement of the

1 sale of the lake property?

2 A. No. Both of them were board members at
3 the time.

4 Q. That's why I'm asking. Doggett, did he
5 have any involvement other than as a board member in
6 the sale of the property?

7 A. No. Except for the fact, I mentioned
8 earlier, I think he may have conversed with
9 Claude Schumpert.

10 Q. Do you remember Mr. Sid Boone calling you
11 in March, approximately a month after the letter went
12 out to the adjacent owners, following up on that
13 letter?

14 A. Yes, I do.

15 Q. Was he following up on the Rices'
16 response?

17 A. Yes.

18 Q. And did you say anything to him to
19 indicate that the \$325,000 response by the Rices were
20 not in good order?

21 A. I do not recall.

22 Q. Did you say anything to him to indicate
23 that the Rices' response of \$325,000 would not be
24 fully considered by the Lions Club prior to the
25 June 1 deadline?

1 A. I don't recall.

2 Q. What do you recall was said?

3 A. To be honest, I don't recall what was
4 said, what kind of response I made, or what kind of
5 questions he asked.

6 Q. Was it obvious from his inquiry and from
7 his previous letter that he was -- or that the Rices,
8 his client, were very interested in this property?

9 A. Yes.

10 Q. Do you remember him calling a second time
11 in May, approximately?

12 A. I don't recall a second call.

13 Q. You don't recall that there even was a
14 second call?

15 A. I don't.

16 Q. So the board of the Lions Club initially
17 considered sealed bids very briefly?

18 A. Not bids. Oh, yes, originally we -- yeah,
19 there was --

20 Q. In 2016?

21 A. -- that motion and it was agreed.

22 Q. And nothing happened with that?

23 A. Nothing.

24 Q. And then you went to the route of
25 considering listing with a realtor?

1 A. Yes, we did.

2 Q. And you decided not to do that?

3 A. Yes, we did.

4 Q. You didn't want to have to pay commission
5 and cut back on the net proceeds?

6 A. Correct.

7 Q. Getting the top net proceed was important?

8 A. Yes.

9 Q. And then, thirdly, you changed gears and
10 you talked to Mr. Amick about his idea that you
11 should have -- you should clear up the encumbrances
12 rather than subject to the letter you wrote, you
13 would clean them up for him and that he would get fee
14 simple title?

15 A. He just requested fee simple title and
16 Jay Verner advised that we would need to clear the
17 encumbrances or encroachments in order to do that.

18 Q. So he pretty much insisted that your
19 letter of late January to the adjacent landowners
20 would be thrown out the window, basically, and you
21 would -- you would clear up the encroachment before
22 the sale?

23 MR. SOWELL: I object to the form of
24 the question.

25 MR. KOUTRAKOS: Object to form.



1 BY MR. POPE:

2 Q. Go ahead.

3 A. Lion Jay Verner said that we could not
4 offer a fee simple title prior to clearing up the
5 encroachments.

6 Q. That was the change you made at the
7 insistence of Mr. Amick, correct?

8 A. No. That was the change we made at the
9 insistence of Mr. Verner. That's when we -- when
10 Mr. Amick pointed out that he needed a fee simple
11 title, we went to Mr. Verner to see what requirements
12 we would have to fulfill to do that and he said we
13 would have to clear the encroachments to do it.

14 Q. So that meant rescinding the offer you
15 had -- I mean, rescinding the letter you put out in
16 late January 2017?

17 A. In effect.

18 Q. But you never told the adjacent landowners
19 that until June the 5th by his letter which was after
20 that deadline?

21 A. That's correct. But we did not advertise
22 the sell to the public which that deadline referred
23 to.

24 Q. Well, I think you said earlier in the
25 February 28th meeting, Ray Amick did not want the

1 encroachments?

2 A. Right. Basically, he wanted a fee simple
3 title.

4 Q. Let me take just a second.

5 A. Which is the same thing the letter from
6 Sid Boone had said when the offer was made from the
7 Rices.

8 (Off the record.)

9 BY MR. POPE:

10 Q. I want to be clear. In February,
11 Mr. Amick said that he didn't want the encroachment,
12 but it was May 23rd, was that the meeting --

13 A. It was later than the February meeting.

14 Q. Look at Exhibit 5 over there. Look at May
15 23rd. Was that the meeting -- you've identified that
16 Mr. Amick said he did not want the encroachment. Is
17 that the meeting where that happened?

18 A. Yes. And it was at that meeting that
19 Jay Verner was present also.

20 Q. So Amick was no longer in agreement with
21 what was proposed in your letter to all the adjacent
22 landowners?

23 A. That's correct.

24 Q. Now, the Rices -- neither the Rices nor
25 Claude Schumpert ever withdrew their responses to

1 your letter to the adjacent landowners?

2 A. That's correct.

3 Q. And they certainly didn't withdraw by the
4 June 1 deadline?

5 A. No.

6 MR. POPE: Thank you. That's all.

7 EXAMINATION

8 BY MR. KOUTRAKOS:

9 Q. I have a few questions, Mr. Crocker.

10 A. Okay.

11 Q. When did the Lions Club first acquire the
12 property that's the subject of this case; do you
13 recall?

14 A. 1933.

15 Q. And who did they acquire it from?

16 A. They acquired it from Mr. Amick's, I
17 think, grandfather.

18 Q. That's correct. How long was --
19 Mr. McCrackin's house encroached on the Lions Club
20 property; is that right?

21 A. Correct.

22 Q. How long was Mr. McCrackin's house there?

23 A. It was built -- his father was a member of
24 the Lions Club. Mr. McCrackin is up in years, but
25 his father was there a long time back and I don't

1 Q. And the Lions Club had authority to -- the
2 folks who signed Exhibit 29 had authority on behalf
3 of the Lions Club to sign Exhibit No. 29; is that
4 correct?

5 MR. POPE: Object to form.

6 THE WITNESS: Yes, they were the
7 trustees -- trustees of the lake property.

8 BY MR. KOUTRAKOS:

9 Q. There were a couple of questions about the
10 deadline, the June 1st deadline. That was the
11 deadline -- who set that deadline?

12 A. We set the deadline as a date at which we
13 would offer the property for sale to the general
14 public.

15 Q. Was that a hard deadline or soft deadline?

16 MR. POPE: Object to the form.

17 THE WITNESS: At the time it was a
18 hard deadline.

19 BY MR. KOUTRAKOS:

20 Q. Okay. Was that a deadline that you can
21 all -- that the Lions Club had authority to revoke or
22 change or alter?

23 MR. POPE: Object to the form.

24 THE WITNESS: We could have, yeah.
25 I'm sure we could have changed it, but we did not.