RECEIVED
Mar 06 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

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

Trial Court Case No. 2018CP3600089
Appellate Case No. 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.

FINAL BRIEF OF RESPONDENT BETTY S. AMICK, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF C. RAY AMICK

Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite #200 (29201)
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Email: jimkoutrakos@callisontighe.com
Email: harrydixon@callisontighe.com

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

ATTORNEYS FOR RESPONDENT BETTY S. AMICK, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF C. RAY AMICK

March 6, 2024

TABLE OF CONTENTS

PAGE

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

A. CASES PAGE

B. STATUTES **PAGE**

C. RULES AND OTHER AUTHORITIES **PAGE**

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT PROPERLY HOLD THAT THE LIONS CLUB LETTER WAS NOT AN OFFER AS A MATTER OF LAW?

II. DID THE TRIAL COURT PROPERLY HOLD THAT THE RICES LETTER WAS NOT AN ACCEPTANCE AS A MATTER OF LAW?

III. DID THE TRIAL COURT PROPERLY HOLD THAT THE PAROL EVIDENCE RULE AND THE STATUTE OF FRAUDS REQUIRE THAT THE CONTRACT BE ESTABLISHED THROUGH ONLY THE LIONS CLUB LETTER AND THE RICE RESPONSE?

IV. DID THE TRIAL COURT PROPERLY HOLD THAT THERE WAS NO CONTRACT BETWEEN THE RICES AND THE LIONS CLUB, EVEN IF THE TRIAL COURT CONSIDERED THE EXTRINSIC EVIDENCE IN THE RECORD?

V. DID THE TRIAL COURT PROPERLY HOLD THAT THE RICES FAILED TO PROVE PROMISSORY ESTOPPEL?

VI. DID THE TRIAL COURT PROPERLY HOLD THAT SPECIFIC PERFORMANCE WOULD NOT BE APPROPRIATE EVEN IF THERE WERE A CONTRACT?

VII. DID THE TRIAL COURT PROPERLY EXCLUDE THE IMPERMISSIBLE EXPERT TESTIMONY OFFERED BY AFFIDAVIT FROM STEVEN SPITZ, ESQUIRE?

VIII. WHETHER THIS COURT SHOULD AFFIRM ON THE ALTERNATIVE GROUND UNDER RULE 220(c), SCACR, THAT MR. AMICK WAS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE OF THE RICES' CLAIM DESPITE THE TRIAL COURT'S FAILURE TO REACH THIS QUESTION?

STATEMENT OF THE CASE

This case concerns an alleged contract supposedly formed in two letters by Appellants Lisa Summer Rice and Joseph F. Rice ("Rices") and Respondent Newbery Lions Club ("Lions Club") regarding property owned by the Lions Club on Lake Murray in Newberry County ("Property"). On February 20, 2018, the Rices filed this lawsuit against the Lions Club seeking specific performance of the allegedly breached contract. The following day, the Rices filed a lis pendens identifying the Property. *See* (R. pp. 100–05). The Rices later added Mr. C. Ray Amick ("Mr. Amick")[1] as a defendant. The operative complaint asserted, among other things, claims for a declaratory judgment/injunction, specific performance, and intentional interference with a contract against Mr. Amick, as well as declaratory judgment/injunction, specific performance, promissory estoppel, and breach of contract accompanied by a fraudulent act against the Lions Club, all based on the Rices' alleged contract with the Lions Club. (R. pp. 308–359). In his Second Amended Answer to the Rices' Fifth Amended Complaint, Mr. Amick, among other things, raised as affirmative defenses the statute of frauds and his status as a bona fide purchaser for value. *See* (R. pp. 360–373).

In May 2019, several non-party landowners adjoining the Property filed suit in Newberry County against Mr. Amick alleging an easement over the Property, which action was assigned case number 2019-CP-36-00245.[2]

In February, March, and May of 2019, respectively, Mr. Amick filed motions for partial summary judgment and to strike expert affidavits from Stephen Spitz, Esquire offered by the Rices.

[1] Mr. Amick passed away while this appeal was pending. Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, was substituted as a party Respondent by order of this Court on December 8, 2023.

[2] This action remains pending.

In June 2019, Judge Eugene C. Griffith, Jr. heard these motions, denying the motion for partial summary judgment via Form 4 order and granting the motion to strike any legal conclusions offered in the Spitz affidavit via Form 4 order. (R. pp. 4–6); *see also* (R. pp. 1–3). After the hearing, Judge Griffith indicated via email that "it may be prudent for this case to be heard by another judge who does not live in the neighborhood" and would not hear the trial of the case. *See* (R. pp. 4–6). Mr. Amick then filed a motion to bifurcate the trial to try the contract-based and specific performance claims raised by the Rices before proceeding to the Rices' remaining claims. *See* (R. pp. 204–05).

In October 2019, after Mr. Amick's motion to bifurcate was filed but before it was ruled upon, two adjoining landowners, Claude and Melissa Schumpert, filed a suit in Newberry County with case number 2019-CP-36-00496 against the Lions Club and Mr. Amick. The Schumperts alleged claims similar to the Rices, including a claim for specific performance against the Lions Club and Mr. Amick based on the Lions Club Letter and a response from Claude Schumpert. On December 3, 2019, the three cases concerning the Property were then designated as complex by consent order, with J. Mark Hayes, II, assigned to hear all matters in the cases. *See* (R. pp. 7–9).

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

On July 24, 2020, the trial court set the initial dates for trial to be September 16 and 17, 2020. The trial court also set a schedule for dispositive motions, with a hearing for those motions on August 27, 2020. Mr. Amick timely filed a second motion for partial summary judgment in the Rice case, to which the Rices timely filed a response in opposition. Mr. Amick again filed a motion

to strike expert affidavits from Stephen Spitz offered by the Rices. Additionally, Mr. Amick timely filed a motion for summary judgment in the Schumpert case, to which the Schumperts timely filed a response in opposition.

The trial court heard arguments on all motions related to the specific performance issue as scheduled on August 27, 2020. Following the hearing and before the scheduled trial, the trial court granted partial summary judgment in favor of Mr. Amick and the Lions Club on the claims related to the Rice- and Schumpert-alleged contracts with the Lions Club. *See* (R. pp. 10–25). Additionally, the trial granted Mr. Amick's motion to exclude the Spitz expert testimony offered by the Rices. The Schumperts did not move to alter, amend, or reconsider the judgment and did not appeal the order granting summary judgment to the Lions Club and Mr. Amick. Following a timely motion to reconsider by the Rices, the trial court vacated its order granting partial summary judgment in favor of the Lions Club and Mr. Amick. (R. pp. 281–91); (R. pp. 26–28). The trial court's decision to reconsider was based solely on the "two-judge rule" given Judge Griffith's earlier denial of Mr. Amick's first partial summary judgment motion by Form 4 order. (R. pp. 4–6); (R. pp. 26–28).

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

The Rices attempted yet again to offer affidavits from Stephen Spitz. The Rices proffered the affidavits, which were not admitted but marked for identification as Plaintiffs' Exhibits 44 and 45. The trial court reiterated its ruling that expert testimony was not admissible on whether a contract was formed. Mr. Amick also objected to the proffer of an affidavit, asserting that the proffered testimony was hearsay and a proffer required sworn testimony otherwise admissible at trial. The trial court reiterated its ruling that the proffered expert testimony was not admissible to tell the trial court the law. It also held that the proffered testimony was equally inadmissible as hearsay because it was presented by affidavit. For good measure, the trial court noted that even if the proffered evidence were admissible, it would not have changed the trial court's findings of fact or conclusions of law.

At trial, the parties offered testimony from the following witnesses:

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

- Ladson Heath "Pete" Simpson (via live testimony).

The trial court also heard a number of objections over the competency and admissibility of certain evidence from Mr. Amick related to the statute of frauds and the parol evidence rule. The trial court received into evidence certain trial exhibits largely agreed to by the parties and marked as exhibits in the trial record.[3]

After the Rices' case, Mr. Amick and the Lions Club each moved for an involuntary non-suit under Rule 41(b), SCRCP. The trial court did not rule on the motions, reserving a ruling until after all the evidence was presented. The trial court ultimately found for Mr. Amick and the Lions Club in its order making findings of fact and conclusions of law under Rule 52, SCRCP ("Order"). (R. pp. 36–66).

After the order was entered, the Rices timely moved to alter, amend, or reconsider it, raising numerous issues. (R. pp. 379–97). The trial court denied the Rices' motion by written order in June 2023. (R. pp. 67–69); (R. pp. 70–77). The Rices timely filed a notice of appeal on July 10, 2023.

STATEMENT OF FACTS

In 1933, the Lions Club acquired the Property, which is located on Lake Murray in Newberry County.[4] (R. pp. 1047; 1101–03; 1132). Designated trustees of the Lions Club received a deed from Mr. Amick's grandfather for a tract that included the Property. (R. p. 1132). The Lions Club passed and recorded a resolution stating that the designated trustees could sell to Lions Club

[3] While most exhibits were undisputed—except for the objection to their competency under the statute of frauds and parol evidence rule—the bulk of the exhibits were offered through the Rices and are identified as "P-__" in the trial transcript. Several additional exhibits were offered by Mr. Amick or marked as Court exhibits, which exhibits are marked in the trial transcript as "D-___" or "C-___" exhibits, respectively.

[4] The Property was in Lexington County when the Lions Club acquired it in 1933.

members only. (R. p. 1132). There was no evidence the Lions Club ever amended the 1933 resolution requiring sales to members of the Lions Club.

Since the initial purchase, the Lions Club sold several lots now adjoining the Property to then-members of the Lions Club. Lisa Rice and Claude Schumpert both own lots that were inherited from former Lions Club members. Lisa Rice owns a lakefront lot adjoining the Property, as do the Schumperts. (R. pp. 1047; 1101–03; 1132). Lisa Rice and Claude Schumpert grew up in Newberry County, spent time at the Property in their childhood summers, participated in Lions Club activities on the Property, and their respective fathers were members of the Lions Club.

Mr. Amick owns property (other than the Property) that does not adjoin Lake Murray but which does adjoin the Property. (R. pp. 1047; 1101–03; 1132). Mr. Amick was an active member of the Lions Club for many years and took care of the clubhouse and Property for the Lions Club for many years. (R. p. 650). Lions Club board members Gene Crocker and Pete Simpson testified to Mr. Amick's role with the club and with the Property at trial. (R. p. 896); (R. pp. 711–12).

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

> At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. ***We have also decided to make the property available to those individuals whose property adjoins the Lions Club property.***
>
> A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of $369,000.00 for the property. The club

> members have decided to ask $300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. ***First consideration will be given to current members of the Newberry Lions Club.***
>
> As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.
>
> This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

(R. pp. 1044–46) (Lions Club Letter) (emphasis added). Lions Club members prepared the Lions Club Letter, and the Lions Club did not have the assistance of counsel in preparing the Lions Club Letter.

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

Mr. Amick expressed his desire to purchase the Property to the Lions Club before the Lions Club sent the Lions Club Letter. (R. p. 652). Mr. Amick attended board meetings before and after the Lions Club sent the Lions Club Letter to reiterate his interest in purchasing the Property. (R. p. 1030); (R. pp. 1032–41). While he would attend the board meetings, he would not attend the portions of the meetings when the board went into executive session because he was not a board member. (R. pp. 1032–41). Although asserted by the Rices, Mr. Amick did not attempt to improperly influence the Lions Club board by asserting his continued interest in the Property to the board members.

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

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

> survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

(R. p. 1051). (Rice Response). Sidney Boone, the Rices' attorney, held a recorded power of attorney for only Joe Rice. (R. p. 1130). On the face of the Rice Response, however, Sidney Boone purported to act as counsel to the Rices and not as Joe Rice's attorney in fact. From the time the Lions Club sent the Lions Club Letter, the Rices communicated with Claude Schumpert regarding the sale by the Lions Club.

On February 28, 2017, Mr. Amick sent the Lions Club a $1,000 earnest money check and an unexecuted contract of sale offering $300,000.00 for the Property. (R. pp. 1092–1100). Mr. Amick was not represented by counsel in preparing his offer.

On March 28, 2017, the Lions Club held a board meeting and voted to accept "Amick's offer of $300,000.00 provided that closing would take place by June 1st." (R. p. 1034).

The Lions Club voted to accept Mr. Amick's offer because he was a Lions Club member, an adjoining landowner, and he had taken care of the Property for many years. The Lions Club decided to accept the lower price despite the offer of $325,000.00 from the Rices. Lions Club members Gene Crocker and Pete Simpson testified why the Lions Club made this decision. (R. pp. 894–98).

On May 15, 2017, the Rices' attorney sent a letter to the Lions Club stating they were the successful bidders and requested that they be conveyed the Property pursuant to their "bid." (R. p. 1053).

After voting to accept Mr. Amick's offer, Mr. Amick and the Lions Club believed the Lions Club could not convey marketable title with the encroachments on the Property. (R. pp. 1032–41); (R. pp. 898–99). The Lions Club consulted an attorney, who informed them that the Lions Club could not convey a marketable title with the encroachments. (R. pp. 894–95). After receiving the

attorney's advice, the first assistance of counsel received by the Lions Club, the board of the Lions Club decided to resolve the encroachments before selling the Property to anyone. (R. p. 895). On May 23, 2017, the Lions Club decided to "send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all offers were being withdrawn to sell the property." (R. p. 1042).

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

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

(R. pp. 1055–56). The encroachment issues were eventually resolved.[5]

On November 21, 2017, the Rices' attorney sent another letter to the Lions Club indicating the Rices "are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property." (R. p. 1058). The record reflects that this letter was read at the November Lions Club board meeting, and the trial court found Mr. Amick was present. (R. pp. 1032–41).

On January 23, 2018, the Lions Club again voted to sell the Property to Mr. Amick, (R. p. 1063), and Gene Crocker sent a letter dated the same day to Mr. Amick accepting Mr. Amick's offer, (R. p. 1064).

On February 14, 2018, the Lions Club entered into a formal, written contract with Mr. Amick, wherein Mr. Amick agreed to purchase the Property for $300,000.00. (R. pp. 1065–69).

[5] It is undisputed the Lions Club sold the portion of the Property with the encroachment to the encroaching party, which resolved the issue. The portion sold represents the difference between the 5.5 acres in the Lions Club Letter and the 5.35 acres eventually conveyed to Mr. Amick. (R. p. 1060).

Mr. Amick first received the assistance of counsel as part of the closing process for the Property.

Closing took place on February 21, 2018. (R. p. 1086–91; 1109; 1134–41). Testimony from the live witnesses at trial (Gene Crocker, Pete Simpson, Mr. Amick, and Lisa Lee Smith) established that the closing occurred in the morning and that the deed was delivered to Mr. Amick before noon on the 21st. The deed transferring the Property to Mr. Amick was recorded on February 22, 2018. (R. p. 1086).

On February 20, 2018, the Rices filed a complaint against the Lions Club. (R. pp. 1070–78). On February 21, 2018—but not until after noon—the Rices filed a lis pendens naming the Lions Club as a defendant and identifying the Property. (R. p. 1079) (indicating a filing time of 1:48 PM).

Lion Gene Crocker was clear that Mr. Amick's membership, service, and family history with the Property were considerations in selling the Property to him. (R. pp. 894–98). He was clear that there was no bidding process. For example, in responding to a question about a letter from the Rices' attorney, he explained there was no bidding:

> **Q. And one of the letters is [Pl. Trial Ex. 15]. In that letter, the attorney for Lisa and Joe related that they had the highest -- they were successful bidders?**
> A. There's so many inaccuracies here.
> **Q. I'm just relating what it says. They were successful bidders?**
> A. Huh? That's what he said, but that was not the case because there was no bidding process. And when he states, "Without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices'" that is a total fabrication. Absolutely not.

(R. p. 871).

In addition, Mr. Crocker testified:

And he's been the caretaker of the Lions Club property for that period of time, for the 20 years. And he's maintained the grass. It's 5 acres there, and he would cut the grass. He would look after the clubhouse and make any needed corrections or repairs. And he would also in the following year he would cut the water off so the pipes wouldn't freeze. We did not use that during the winter months. And then in the spring he would start it back up.

And so he just looked after the property for us for that period of time. Actually, at the point of sale it had been 18 years. And so we thought that that was a consideration we should give to him. And he's been a loyal member. He's still a loyal member of the Lions Club. So that was a part of the consideration too. And so that's why we decided that we would offer him the property.

We had -- in the fall of 2016, when we got some estimates of the value of the property, sales value from two Realtors, and when we had gotten the appraisal, we decided to ask $300,000 for the property. And we told Mr. Amick at the time that if he wanted to give us -- to purchase the property, if he would give us the 300,000, it would be his. At that time he said he did not have that, that money he could give.

But then in the spring -- I mean in the winter of 2017, in January when we drafted the letter to go out to the property owners and we stated that that's the price we would like to get and that we were advising them that the property was for sale and we wanted to know if any of them had an interest in the property, as a result of that letter we got three offers. We did not have a bidding process. We did not go that far. We actually really thought we'd just hear from one or two that might have an interest in it. And we got three offers on the property.

And one of those offers was from Mr. Amick. I was kind of surprised because he said he couldn't pay that much. But his offer was for the 300,000, and with that offer he provided a contract and also a check for a thousand dollars as earnest money. We also got an offer from Schumperts for 300,000, along with a check for a thousand dollars for earnest money. And we also got an offer from Mr. Rice through the McNair Law Firm where he offered 325,000 for the property under the condition that it would be a clear and legal title.

So those were the three offers that we opened. But because of the fact that we had previously offered it to Mr. Amick for that amount and also because of the work that he's done there over the past at that point 18 years, we decided we would allow him to purchase the property. It had been in his family, and so there was some considerations there for that too. The property was originally purchased from his grandfather. And so that's the reason that we went with his offer rather than the other two.

(R. pp. 896–98).

STANDARD OF REVIEW

An action for specific performance is one in equity. *Shirey v. Bishop*, 431 S.C. 412, 421, 848 S.E.2d 325, 330 (Ct. App. 2020). "In reviewing a proceeding in equity, this court may find facts based on its own view of the preponderance of the evidence." *Clardy v. Bodolosky*, 383 S.C. 418, 424–25, 679 S.E.2d 527, 530 (Ct. App. 2009) (quoting *Greer v. Spartanburg Technical College*, 338 S.C. 76, 79, 524 S.E.2d 856, 858 (Ct. App. 1999)). "This broad scope of review does not require this court to ignore the findings below when the trial court was in a better position to evaluate the credibility of the witnesses." *Id*.

ARGUMENT

The trial court Order ruling in favor of the Lions Club and Mr. Amick is supported by several independent grounds, including that the purported offer was not an offer and that the purported acceptance was not an acceptance. If this Court holds the Lions Club Letter was not an offer, there is no need to consider the many other issues raised by the Rices because this issue would be dispositive of this appeal—there could be no contract. Likewise, if this Court held the Rice Response was not an acceptance, there would be no contract and no need to consider the other arguments raised by the Rices. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that when a decision on a prior issue is dispositive of an appeal, the appellate court need not address the remaining issues raised by the appellant).

The other issues raised are either fully supported by the law (parol evidence is incompetent to establish a written contract; expert testimony is inadmissible to tell a court the law) or facts (even considering the parol evidence, there was no meeting of the minds or promissory estoppel; specific performance would be inappropriate; and Mr. Amick was a bona fide purchaser for value without notice).

Accordingly, this Court should summarily affirm the trial court's Order in favor of Respondents.

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

The Lions Club Letter was not an offer capable of acceptance but rather an invitation to begin negotiations.

"[T]here can be no contract unless there is both an offer and an acceptance . . . [, and] [t]he fundamental basis of a suit for specific performance is that there is a contract between the parties." *Finklea v. Carolina Farms Co.*, 196 S.C. 466, 473, 13 S.E.2d 596, 599 (1941). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). For parties to form a contract, there must be "a meeting of the minds between the parties with regard to all essential and material terms of the agreement." *See, e.g., Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014).

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

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

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

The Lions Club Letter was not an offer because it merely opened negotiations for the Property and did not indicate that an offer could be accepted or that assent to certain terms would conclude a deal. *Compare* (R. pp. 1044–46) *with McLaurin*, 165 S.C. at 411, 164 S.E. at 5; *Prescott*, 335 S.C. at 336, 516 S.E.2d at 926. Like the *McLaurin* letter, the Lions Club Letter was not an offer capable of acceptance and was meant to open negotiations with the adjoining landowners and Lions Club members. First, it sought expressions of interest from the letter's recipients by stating, "[i]f you have an interest in the property please let us know right away." (R. pp. 1044–46). Moreover, the Lions Club Letter did not invite acceptance but offers by stating, *"[f]irst consideration will be given to current members of the Newberry Lions Club.*" *Id.* (emphasis added). By stating members would receive first consideration, the Lions Club indicated more work remained before concluding a bargain—the Lions Club would have to consider any offers and decide which offer to accept. *Id.* The Lions Club Letter also noted a recent appraisal of the Property for $369,000.00 but that the Lions Club "decided to ask" $300,000.00 for the sale of the Property "if we can make the sale without involving a realtor." *Id.*

Conversely, the Rices assert the phrases "decided to offer the property for sale" and "[t]his offer is valid until" make the Lions Club Letter an offer capable of being accepted to conclude a bargain. However, the *McLaurin* letter contained directions for communicating agreement, but

McLaurin held that an acceptance could not conclude the bargain. Like *McLaurin*, more remained to conclude a deal with the Lions Club, regardless of the term "offer." In fact, the Rices realized as much: the Rice Response described itself as a "bid" rather than an "acceptance" and only contemplated acceptance by the Lions Club, stating, "We would need 30 days from notice that the **bid was accepted** . . . ." (R. p. 1051) (emphasis added).

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

Assuming arguendo that the Lions Club Letter from the Lions Club was ambiguous and required the use of extrinsic evidence to conclude that the Lions Club intended to express an offer capable of acceptance—including an intent to sell to the highest bidder—such an ambiguous letter would not be capable of acceptance. A letter so ambiguous could not be imposed as a binding interpretation on parties whose minds, as the evidence shows, never met on any contract terms. The only proper conclusion is that the Lions Club Letter was not an offer capable of unconditional acceptance but rather was an offer only in the sense of offering to engage in negotiations concerning the sale of the Property.

Accordingly, the Lions Club Letter was an "offer" only to open negotiations and did not state an offer capable of acceptance. *Cf. McLaurin,* 165 S.C. at 411, 164 S.E. at 5 (letter at issue was not "such an offer as could, by acceptance, be changed, converted or construed into a binding agreement of sale.").

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

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

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

In *Sossamon,* the South Carolina Supreme Court held that a purported acceptance letter opening with "[y]our offer of sale . . . is hereby accepted" but including different terms for the time and manner of payment "imposed new or other conditions not contemplated in the offer" and that the purported acceptance was in fact a rejection and counteroffer. *Sossamon*, 241 S.C. at 487,

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

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

The Rices did not otherwise manifest an acceptance. Instead, their attorney sent a letter indicating the Rices' interest. While Sidney Boone was Joe Rice's attorney-in-fact, Lisa Rice was the adjoining landowner, and Sidney Boone did not purport to act as Joe Rice's attorney-in-fact but as counsel for the Rices. Attorneys engaged as counsel do not ordinarily bind their clients

through letters sent on their behalf, and the purported acceptance could not do so here. *See* 7A C.J.S. *Attorney & Client* § 284 ("Unless empowered to do so, an attorney has no authority to bid or contract to purchase property for his or her client."). This conclusion is not altered because the attorney was actually Joe Rice's attorney-in-fact—the Rice Response is clear he was acting as counsel rather than as their attorney-in-fact.

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

1. **A good title condition**: "subject only to the property having good and marketable title";

2. **The 30 Days to Close Condition**: The Rices "need 30 days from notice that the bid was accepted in which to conduct the title search and close" with payment "due and payable at closing"; and

3. **A different price term**: The Lions Club asked for $300,000.00, while the Rices offered $325,000.00.

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

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

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

Conversely, the Rices have asserted an "auction" theory and that they had the supposed last bid on June 1, 2017. Specifically, the Rices assert Mr. Amick withdrew his offer, leaving the Rices' bid and one other offer as the only operative offers on June 1, 2017. Following this theory, the Rices' bid must have been accepted because it was higher than the other offer. However, the record does not support any such procedure by the Lions Club.[6] Rather, the record is clear the "auction" theory is actually the Rices' own characterization outside of the Lions Club Letter. Indisputably, the Lions Club Letter—which stated "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public"—did not impose a hard deadline to *sell* by June 1 as part of an auction process. *See, e.g., Barr v. Lyle*, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975) (a writing must show the contract's essential terms without needing parol evidence).[7]

Accordingly, the unambiguous Rice Response would not be an acceptance even if the Lions Club Letter were an offer. The Rice Response was written by counsel, who lacked apparent authority at that time to make a binding acceptance, and the language of the Rice Response shows an intent to make an offer rather than accept an offer. The Rices never accepted and instead made

[6] The Lions Club Letter on its face does not contemplate an auction, and the Lions Club members that testified were clear there was no "bid" or "auction" process. *See, e.g.*, (R. pp. 863) (Crocker 2018 Deposition) ("By the way, the letter did not specify bidding procedure and it really was just requesting if there was interest. It stated the asking price.").

[7] The application of the parol evidence rule and statute of frauds to this case is discussed below. *See* § C, *infra*.

an offer expressly leaving it to the Lions Club to decide whether to accept the Rices' offer. And like *Sossamon* and *Columbia Hyundai*, the Rice Response added terms in the alleged acceptance and could not have accepted any offer in the Lions Club Letter as a matter of law because of South Carolina's mirror image rule.

Accordingly, the trial court did not err in holding that the Rice Response was not an acceptance.

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

The trial court held the Lions Club Letter and the Rice Response were the only competent evidence as to whether the Lions Club and the Rices formed a contract because the parol evidence rule and the statute of frauds applied to this case over two letters. On appeal, the Rices now assert 1) Mr. Amick cannot raise the parol evidence rule and the statute of frauds and 2) in any event those doctrines do not apply in this case. However, the Rices are incorrect, and the trial court properly looked to only the Lions Club Letter and the Rice Response.

1. The Rices waived any argument that Mr. Amick was barred from asserting the parol evidence rule and the statute of frauds by not raising it at trial.

As the trial court held, the Rices first raised this argument in their motion to reconsider, and therefore, the argument is waived. (R. pp. 72) ("raising such issues for the first time through a post-trial motion is not appropriate.") (citing *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) and *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990)); *see also* (R. pp. 388–89) (¶ 26).

Conversely, the Rices have not identified where this argument was properly raised at trial and instead assert that they preserved it by proffering evidence. *See Appellant's Brief* at 20, n. 5. However, the trial court heard argument on Mr. Amick's motion in limine to exclude all extrinsic

evidence other than the two letters, and the Rices did not raise this argument at that time. (R. pp. 410–16).

Accordingly, the Rices' new post-trial argument that Mr. Amick cannot raise the parol evidence rule and/or the statute of frauds was waived.

2. The Lions Club joined in Mr. Amick's motion in limine to exclude all evidence other than the two letters as not competent under the parol evidence rule and statute of frauds.

The Lions Club joined in the motion by Mr. Amick over the application of the parol evidence rule and statute of frauds:

> THE COURT: Anything from the Newberry Lions Club on the motion in limine?
>
> MR. PRICE: Judge, we would stand with Mr. Amick's attorneys.
>
> THE COURT: Okay. Announce your name for the court reporter.
>
> MR. PRICE: Oh, excuse me. Sam Price. I represent the Lions Club.

(R. p. 413). Accordingly, the Lions Club agreed the parol evidence rule and statute of frauds applied and asserted so at trial.

3. Mr. Amick would not be a "stranger" to the alleged agreement under the Rices' theory.

Mr. Amick is a grantee of and in privity with the Lions Club and (under the Rices' theory) took title subject to the Rices' interest in the property. *Cf. Orangeburg v. Buford*, 227 S.C. 280, 284, 87 S.E.2d 822, 824 (1955) (recognizing parol evidence rule is for the benefit of the parties "and their privies"). The Rices are seeking to specifically enforce their alleged contract against the Lions Club's successor-in-interest, Mr. Amick. Under the Rices' theory, the two-letter contract would be executory

and would have given equitable title to the Rices under the doctrine of equitable conversion. *See generally Brooks v. Council of Co-Owners of Stones Throw Horizontal Prop. Regime I*, 315 S.C. 474, 476, 445 S.E.2d 630, 632 (1994) ("under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor."). If the Rices' alleged executory contract gave them equitable title, then Mr. Amick stepped into the shoes of the Lions Club as its grantee and received bare legal title subject to the Rices' claim when he received the deed from the Lions Club. *See generally Von Elbrecht v. Jacobs*, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct. App. 1985) ("a grantor of real property generally can transfer no greater interest than he himself has in the property.") (*citing Belue v. Fetner*, 251 S.C. 600, 164 S.E. (2d) 753 (1968)). Accordingly, under the Rices' theory of the case, Mr. Amick would not be a stranger to the contract that the Rices seek to enforce specifically against him.

4. The parol evidence rule and statute of frauds are substantive rules and not evidentiary rules—contemporaneous objections are not required because the evidence itself is not legally competent.

Parol evidence is incompetent evidence that does not require the usual contemporaneous objection to preserve, and as noted, the Lions Club maintained throughout the litigation that no contract existed with the Rices. *See Estate of Holden v. Holden*, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000) ("The parol evidence rule is a rule of substantive law, not a rule of evidence. Accordingly, admission of *evidence violating the parol evidence rule is legally incompetent* and should not be considered even if no objection is made at trial.") (emphasis added).

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

> No action shall be brought whereby:
>
> ****
>
> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them;
>
> ****

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

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

Similarly, "[t]he parol evidence rule *prevents the introduction of extrinsic evidence* of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument." *Estate of Holden v. Holden*, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000) (emphasis added). "The parol evidence rule is a rule of substantive law, not a rule of evidence. Accordingly, *admission of evidence violating the parol evidence rule is legally incompetent* and should not be considered even if no objection is made at trial." *Id.* (emphasis added). "[T]he writings relied upon must *in and of themselves* furnish the evidence that the minds of the parties met as to the particular property which the one proposed to sell and the other agreed to buy; and, when such evidence is not found in the writings, it cannot be supplied by parol." *Cash v. Maddox*, 265 S.C. 480, 485, 220 S.E.2d 121, 123 (1975) (quoting *Speed v. Speed*, 213 S.C. 401, 410, 49 S.E.2d 588, 592 (1948)) (emphasis added).

The statute of frauds and the parol evidence rule apply in this case over whether two letters formed a contract. *Barr* considered an appeal from summary judgment where the purported contract for the sale of real estate consisted of two letters. *Barr*, 263 S.C. at 430, 211 S.E.2d at 234. The South Carolina Supreme Court considered whether the letters created a contract "without

resort to parol testimony." *Id.* at 430, 211 S.E.2d at 234. Affirming summary judgment, *Barr* held the letters themselves did not create a contract.

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

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

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

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

Accordingly, the trial court was correct—the Lions Club Letter and the Rice Response are the sole competent evidence to establish the alleged contract. Any evidence offered to vary, contradict, or add to these two letters between the Rices and the Lions Club was incompetent and should not have been considered for the question of whether a contract was formed. The two letters do not create a contract, and the trial court did not err by refusing to consider extrinsic evidence in deciding whether the Lions Club Letter and the Rice Response formed a contract.

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

Even if the Rices could show extrinsic evidence should properly be considered to determine whether the parties formed a contract, the record would still not support their position, as the trial court concluded. The extrinsic evidence proffered at trial showed that the minds of the Lions Club and the Rices never met on whether to form an enforceable contract.

The evidence was clear that the Rices wanted to buy the Property and submitted a proposal offering $325,000.00 in response to the Lion Club Letter. (R. p. 1051) (Rice Response). The Rices' $325,000.00 offer represented the highest amount received from the three interested prospective buyers. The Rices' principal argument at trial and the thrust of the evidence they offered was of a "bidding" process, with the Property to be sold to the highest bidder. However, the Rices'

interpretation—that the Property was to be sold to the party who would pay the most money—requires rewriting the Lions Club Letter and the Rice Response, ignoring the plain words of the Lions Club Letter and the Rice Response, and imposing a "meeting of the minds" that never occurred and the facts do not support. The Lions Club rejected this interpretation. (R. pp. 894–98). The Lions Club members who testified were clear there was no bidding or auction process. *Id.* All of the bid and auction evidence offered by the Rices (principally testimony from Joe Rice and Claude Schumpert) does not support a finding that it was the Lions Club's intent to make an offer capable of acceptance.

Furthermore, even if there was some auction process, the Rice Response could never be an acceptance under auction law. *See* David Carl Minneman, Annotation, Auction Sales Under UCC § 2-328 44 A.L.R. 4th 110 § 2(a) (1986) ("A sale by way of auction is the making of a contract in which the bid is the offer and the action of the auctioneer in accepting the bid is the acceptance of an offer which results in the formation of a contract."); *see also* 1 Corbin on Contracts § 4.14 (2021) ("When an auctioneer presents an article for sale at auction and asks for bids, the auctioneer is ordinarily not making an operative offer and creates no power of acceptance."); *Id.* § 2.3 ("In the process of negotiation, it is not uncommon for one party to request the other to make an offer. Usually when such a request is made, the subject matter is already specific and most of the terms are already understood. In these cases, the request is not the operative offer, even though it is expressed in what may appear to be words of offer. A seller's advertisement of an auction is not an offer but a declaration of intention to hold an auction where bids may be accepted. At the auction, prospective buyers are requested to submit bids and are not empowered to accept an offer to sell. The bid is an offer, not an acceptance. The bidder is requested to state a willingness to pay

a definite price, thus stating the terms of a bargain. This statement makes an offer that will create a power of acceptance in the auctioneer.").

The Rices have also asserted the Lions Club engaged in wrongdoing. However, the trial court considered and rejected the evidence presented during the trial that the Lions Club was somehow doing something wrong, such as breaching an alleged fiduciary duty or the club charter because it did not accept the highest monetary amount offered. The trial court noted that the perceived correctness or wisdom of the financial decision to accept $300,000.00 for the Property was not before it. Whether a party believes the contract was a "good" or "correct" decision is not—and should not—be considered by a court deciding whether a contract exists between two parties. The issue before this Court is whether the Lions Club and the Rices agreed to anything, and if so, to what did they agree, not what was best for the Lions Club or the Rices. The extrinsic evidence in the record is irrelevant and does not change the conclusion that the Lions Club and the Rices did not form a contract.

Instead, the record reflects that the Lions Club decided to accept an offer different from the one submitted by the Rices. The trial court noted there was some evidence that certain Board members, other than the Lions Club witnesses who testified at trial (Gene Crocker and Pete Simpson), expressed a desire for the Property to be sold to the highest bidder. However, the testimony of Lions Club board members Gene Crocker and Pete Simpson carried greater weight with the trial court. (R. p. 58) (finding and concluding "both witnesses offered credible live testimony during the trial."). The Lions Club board accepted a $300,000.00 purchase price, the same price the Lions Club sought in the Lions Club Letter and the same price offered by Schumpert. There was no evidence that the $300,000.00 price was unreasonable. Instead, the Rices believed their higher offer should have prevailed. The evidence is absolutely clear the Lions Club

board voted to accept the $300,000.00 offer from Mr. Amick (twice). (R. pp. 1032–41; 1063–69. The trial court noted deposition testimony was presented showing the Board was informed of all monetary offers; trial exhibits reflected board meeting discussions over the $325,000.00, with at least one board member stating the highest offer was better, but the Lions Club board ultimately voted to accept $300,000.00. (R. pp. 1032–41). The deposition testimony also indicated the Lions Club felt $300,000.00 was a fair amount and that the Lions Club board was advised it might receive as low as $250,000.00 for the Property. The Lions Club board made other decisions (e.g., no public advertising, not to use a realtor, and to limit notice to only adjoining property owners). Accordingly, the extrinsic evidence about the Rices' view of the price would not have changed whether there was a contract between the Rices and the Lions Club.

Furthermore, the Lions Club never acted or responded to the Rices with the intent to form a contract. This case is not the case where one party paid value or accepted consideration or a case of partial performance. In March 2017, the Lions Club accepted an offer from Mr. Amick for $300,000. (R. pp. 1034). By letter dated May 15th, the Rices' attorney, once he was made aware of the agreement to sell the property to Mr. Amick, wrote to the Lions Club expressing his belief that his clients were the successful "bidder" on the Property and that the Property should be conveyed to his clients. After receiving legal advice from an attorney, the Lions Club board voted to withdraw the prior decision to sell the Property and wrote letters to all interested persons. After encroachment issues were resolved by selling a portion of the Property to an adjoining property owner), the Lions Club and Mr. Amick entered, again, into negotiations for the purchase of the Property. (R. pp. 1063–69). Even though the Board did not seek offers again from the Rices or other adjoining property owners, the Rices became aware of the negotiations with Mr. Amick and, once again, asserted through counsel that the Rices were the successful bidders. Any purported

contract depends on the Rices' characterization of their auction theory, which was unsupported by the record. The Lions Club never acted as if the Rices had a contract, and the Rices did not take any steps as if they had a contract—neither party took any step towards closing with the other.

Additionally, Mr. Amick did not assert undue influence over the Board by attending meetings to advocate for his purchase of the Property. The extrinsic evidence does not support an inference of undue influence or wrongdoing by Mr. Amick. As the trial court noted, assigning a nefarious motive to the Rices' attorney was not supported by merely acquiring information and advocating for his clients after being made aware of negotiations between the Lions Club and Mr. Amick and after the Lions Club board voted to sell the Property to Mr. Amick. Similarly, the trial court did not assign nefarious motives to Mr. Amick for his "uncounseled self-advocacy." The board minutes and testimony indicate Mr. Amick was not allowed to participate in board executive sessions. (R. pp. 1032–41).

The Rices place great emphasis on statements by Joe Rice and Claude Schumpert about the bidding process and assert this Court must find their statements credible and impose the auction theory. However, the Lions Club was clear there was no bidding process, and the Lions Club members stated there was no bidding process as the Rices assert. (R. p. 871). The Lions Club invited interest in the Lions Club Letter, and the Rices' and Schumpert's conception of bids seems to have come from somewhere other than the Lions Club representations.

More importantly, even if a court believed they were told about receiving bids, it would be immaterial because the Lions Club Letter plainly does not contemplate bids. The purported "bid" contract terms would vary from the Lions Club Letter, and the Lions Club clearly never acted as though there were any "bid" procedures. Extrinsic evidence of the Rice-asserted bid procedures,

even assuming it is accurate, only accentuates the failure of the Lions Club and the Rices to have a "meeting of the minds."

Moreover, the general principles of law from inapposite cases cited by the Rices about credibility and evidence do not suggest a different conclusion—the Lions Club denied stating any of the bid procedures or process asserted by the Rices, and the statements of the Lions officers are corroborated by the Lions Club Letter. *See Ross v. Paddy*, 340 S.C. 428, 434, 532 S.E.2d 612, 615 (Ct. App. 2000) ("Even where the evidence is uncontradicted, the [factfinder] may believe all, some, or none of the testimony, and where the credibility of the witness has been questioned, the matter is properly left to the [factfinder] to decide."); *see also Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("If there is anything tending to create distrust in his or her truthfulness, the question must be left to the [fact finder]."); *see also Clardy v. Bodolosky*, 383 S.C. 418, 428, 679 S.E.2d 527, 532 (Ct. App. 2009) ("Under [its] standard of review, this court can give deference to the trial court's credibility determinations."). The Rices' arguments about "positive" and "negative" evidence overlooks that the testimony from Joe Rice and Claude Schumpert was at odds with the plain language of the Lions Club Letter, that the Lions Club officers disagreed with the Rices understanding of their conversations (i.e., there was no bid procedure outlined), and that the trial court found the testimony of the Lions Club officers to be credible on the matter. The most powerful positive evidence in the record is the Lions Club Letter that says nothing about an auction or bidding process, leaving a fact question to the trial court for its determination. This disputed factual point with competing evidence was resolved in favor of the Lions Club version, even if the Court considered all of the Rices' extrinsic evidence on the auction theory.

Accordingly, even if all the extrinsic evidence offered at trial were considered, the result would be the same—no contract was formed between the Rices and the Lions Club.

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

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

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

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

Moreover, no reasonable person could foresee that a recipient would rely on the Lions Club Letter to their detriment. The Lions Club Letter is an invitation to negotiate, and the extrinsic evidence offered at trial shows the Rices did not actually rely to their detriment. While the Rices periodically wrote letters pursuing the Property (three letters in total over roughly ten months), the Rices never paid earnest money or took any action indicating they relied on a promise by the Lions Club to convey the Property to the Rices. The Lions Club certainly never acted like the Rices had a contract—the Lions barely responded to the Rices, only writing to say that the Lions Club would

not sell to anyone without clearing the encroachments. Indeed, this behavior by the Lions Club is not behavior that the Rices could rely on to reasonably believe the Lions Club would be conveying the Property to them.

Finally, the Rices did not prove an injury even if they could prove the other elements. The Rices were unable to purchase the Property, which leaves the Rices in precisely the same position they were in when they made an offer to purchase the Property. A rejected offer is not damage and does not support a promissory estoppel claim. Accordingly, the trial court did not err in ruling against the Rices' claim for promissory estoppel.

F. The Trial Court Properly Held That Specific Performance Would Not Be Appropriate Even if There Were a Contract.

Even if there were a contract, specific performance would not be appropriate on these facts.

Whether to allow specific performance is a matter of sound judicial discretion. *See Guignard v. Atkins*, 282 S.C. 61, 66, 317 S.E.2d 137, 140 (Ct. App. 1984) ("The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case."); *see also Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). Courts weigh the equities of the parties to determine if specific performance is appropriate. *See generally Shirey v. Bishop*, 431 S.C. 412, 427, 848 S.E.2d 325, 333 (Ct. App. 2020).

"Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *See generally Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other;

and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Id.* at 264, 603 S.E.2d at 628.

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

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

Accordingly, the trial court did not err by refusing to award specific performance to the Rices.

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

The Spitz affidavits "read[] as if [they] could have been [the Rices'] oral argument to the

trial court at the summary judgment hearing." *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (refusing to consider expert affidavit filled with legal conclusions at summary judgment). Accordingly, the trial court correctly excluded the testimony and reiterated its rulings on expert testimony for the final time: expert testimony is not allowed to explain the law to the trial court. As Judge Griffith ruled in 2019, as Judge Hayes ruled in 2020, and as Judge Hayes ruled at trial, expert testimony from Spitz, live or by affidavit, is not allowed.

Whether to allow expert testimony is left to the trial court's discretion. *See, e.g., Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008). South Carolina law prevents such an expert opinion because it would usurp the court's role by offering testimony "to establish a conclusion of law within the exclusive province of the [C]ourt." *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 107, 249 S.E.2d 734, 740 (1978). "To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both error and resulting prejudice." *See generally Altman v. Griffith*, 372 S.C. 388, 401, 642 S.E.2d 619, 626 (Ct. App. 2007).

South Carolina law is clear that courts should not consider affidavits like the affidavits from Spitz. In *Dawkins*, the South Carolina Supreme Court held that a trial court correctly refused to consider an expert affidavit at summary judgment where it "primarily contained **legal** arguments and conclusions." *Dawkins*, 354 S.C. at 66, 580 S.E.2d at 437 (emphasis original). Acknowledging that Professor John Freeman's affidavit "arguably offered some helpful, factual information," the court held "the overwhelming majority of the affidavit [was] simply legal argument." *Id.* (also describing the affidavit as "if it could have been respondents' oral argument to the trial court at the summary judgment hearing."). The South Carolina Supreme Court has applied this same reasoning consistently in other contexts. *See, e.g., Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325

(2002) (upholding trial court's refusal to consider proffered expert testimony at a PCR hearing because "[t]he testimony was not designed to assist the PCR court to understand certain facts, but, rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel's actions fell below an acceptable legal standard of competence."); *O'Quinn*, 272 S.C. at 107, 249 S.E.2d at 740 (upholding exclusion of expert witness testimony on whether certain contracts were "investment contracts" under federal law).

Despite *Dawkins* and its supporting authority, the Rices would have this Court rely on *Vortex Sports*, where the South Carolina Court of Appeals upheld a trial court's decision to allow expert testimony from Professor Freeman on whether a party breached a fiduciary duty. *Vortex Sports*, 378 S.C. at 207–08, 662 S.E.2d at 449–50. *Vortex Sports* and *Dawkins* both addressed breach of fiduciary duty claims with expert affidavits from Professor Freeman. However, *Vortex Sports* applied the *Dawkins* rule to different facts: instead of arguing summary judgment should not be granted, Professor Freeman explained the defendant's roles with the company—shareholder, officer, and general counsel—and how the defendant's actions in those roles either conformed or did not conform to a fiduciary standard. *Vortex Sports*, 378 S.C. at 207, 662 S.E.2d at 450 (allowing expert testimony on "specific acts [the defendant] committed and how those acts constituted a breach of his fiduciary duty"). The *Vortex Sports* distinction with *Dawkins* makes sense: testimony on what acts would meet the fiduciary duty standard and how the defendant fell short would be admissible, but mere conclusions that certain acts are breaches would not be admissible.

This case is not *Vortex Sports*. For example, by his own terms, Spitz asserted his opinions were legal conclusions based on the facts of this case: "it is my considered conclusion that the question presents the Court with a clear question of South Carolina law." *See* Plaintiff's 45

(Marked only) (Spitz Supplemental Aff.) ¶19 (excluded from consideration at summary judgment (twice) and not admitted at trial). Unlike *Vortex Sports,* Spitz would not testify how specific acts relate to a standard. Rather, he would usurp the court's role and tell the judge the legal conclusion to reach—which is why his factual analysis reads like a conclusory charge on the law.

In addition, submitting testimony at trial via affidavit, expert or otherwise, is improper and inadmissible. *See* 2A C.J.S. *Affidavits* § 57 ("Generally, affidavits are regarded as the least satisfactory mode of presenting testimony, and a party cannot be compelled to try a case on affidavits. Affidavits are unsatisfactory as forms of evidence as they are not subject to cross-examination, combine facts and conclusions, and, unintentionally or sometimes even intentionally, omit important facts or give a distorted picture of them. Accordingly, affidavits, although made under oath, are ordinarily not considered competent evidence."); 3 Am. Jur. 2d *Affidavits* § 19 ("Generally, affidavits are not competent evidence and should not be considered by the court as a trier of fact. . . . An affidavit is ordinarily not admissible to prove facts in issue at an evidentiary hearing because it is not subject to cross examination and would improperly shift the burden of proof to the adverse party.).

Moreover, the trial court was clear that it would not change the outcome even if the affidavits were not excluded. The trial court noted, "even if this evidence were admissible, it would not change the Court's findings of fact or conclusions of law as stated herein." (R. p. 38, n. 3). Even assuming it was error to refuse the Spitz testimony, there was no prejudice to the Rices because it would not have affected the outcome. *See Altman,* 372 S.C. at 401, 642 S.E.2d at 626 ("the complaining party must prove both error and resulting prejudice").

Accordingly, the trial court properly exercised its discretion and did not err in striking the Spitz affidavits or by excluding their admission at trial.

H. This Court Should Affirm on the Alternative Ground Under Rule 220(C) that Mr. Amick was a Bona Fide Purchaser for Value Without Notice of the Rices' Claim Despite the Trial Court's Failure to Reach this Question.

The trial court concluded that Mr. Amick was a bona fide purchaser for value without notice ("BFP") of a prior claim to the extent the Rices' alleged contract fails. The trial court "expressly [did] not decid[e] whether Mr. Amick would be a BFP if the trial court assumed the Rices formed a contract with the Lions Club." R. p. 62. However, the record evidence shows Mr. Amick was a BFP because he paid for the Property, and the deed was signed and delivered by the Lions Club before the Rices filed their lis pendens.

To be considered a bona fide purchaser for value without notice, a party must show that: (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, *i.e.,* in good faith and with integrity of dealing, without notice of a lien or defect. *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874–75 (2006). The bona fide purchaser must show all three conditions—actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. *Id.* Moreover, deeds between parties effectively transfer title, whether or not they are recorded. *See Smith v. Hawkins*, 254 S.C. 423, 428, 175 S.E.2d 824, 826 (1970) ("If the contention that the deeds were witnessed by a disqualified person and that the probates were defective were sustained, it would simply mean that the deeds were without witnesses, which would not destroy their validity and effectiveness to transfer title in this case. They were good as between the parties."); *McNamee & Co. v. Huckabee*, 20 S.C. 190, 196 (1883) ("That a deed of land never recorded was not thereby absolutely void; but as between the parties was still good."); 9 Thompson on Real Property, Thomas Editions § 82.08 (2022) ("Despite the literal language of various state statutes, the recording of a deed is not essential to its validity; in other words, the unrecorded deed

is binding upon the parties."); 14 Powell on Real Property § 82.01 (2022); 2 Law of Real Property "Conveyances and Titles" § 11.9 (2022).

It cannot be reasonably disputed that the closing of the Property occurred on the morning of February 21, 2022, and that the deed was not filed in Newberry until the next day. The Rices' Lis Pendens was filed during the afternoon of February 21, 2022, before the recording of the deed transferring the Property to Mr. Amick but after its delivery. However, the transfer was effective upon delivery.

Conversely, the trial court refused to find for Mr. Amick on the BFP claim principally because Mr. Amick appears to have been at a November 2017 board meeting where the last Rice letter was read. The evidence shows that Mr. Amick could have known other people, including the Rices, had a desire to purchase the real estate and that other people had responded to the Lions Club Letter. The trial court noted Mr. Amick's testimony was unclear whether he knew of the November 21, 2017, letter. The trial court concluded that the reading of the letter conveyed actual knowledge of the Rices attorney's position to those present at the November 21, 2017, meeting. However, the trial court also concluded the letter did not express an actual legal claim to the Property. The November 2017 Rice letter stated the Rices believed they made the "successful bid offer of $325,000"; asked for information about "bid procedures"; and expressed the Rices' willingness to follow through with their bid or participate in future bid procedures. *See* R. p. 1058. While the trial court found this would be enough notice to potentially defeat the BFP claim, the facts show the Rices had not made a claim to a superior contract or a right to specific performance that was known to Mr. Amick.

Even assuming knowledge of the November 2017 Rice Letter, Mr. Amick would not have knowledge of the Rice claim, only that they believed they were high bidders and would be willing to bid again with new procedures. Knowledge that others made offers on the Property or wanted

to buy it is not enough to defeat a BFP claim. The knowledge required would be knowledge that the Property was subject to a competing claim. Mr. Amick did not have any such knowledge or notice of the claim, and the November 2017 Rice Letter did not give him such notice.

Moreover, Mr. Amick did not have constructive notice. While the lis pendens provides constructive notice, it did not do so until filed, which occurred after the deed was delivered to Mr. Amick. Accordingly, Mr. Amick actually paid value, acquired legal title by receiving the deed, and did so before he had notice of a title defect or other adverse claim, lien, or interest in the Property from the Rices.

Accordingly, the trial court should have found and concluded that Mr. Amick was a BFP, and this Court should take its own view of the facts and so hold as alternative ground now.

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

The Rices assert several alleged errors over the trial court's factfinding. However, the alleged errors, even if they were errors, would not change whether a contract was formed between the Lions Club and the Rices—it was not. Moreover, the trial court's fact findings are accurate based on the facts in the record.

1. The trial court accurately found that the Lions Club passed the 1933 Resolution and never expressly amended or repealed it.

First, whether the 1933 Resolution was effective or was not, its effectiveness does not show whether the Lions Club Letter and Rice Response formed a contract in those two letters. The Court also did not rest its holding on the 1933 Resolution, noting that "the extrinsic evidence offered at trial would not change [the trial court's] conclusion—there was no contract formed between the Rices and the Lions Club." R. p. 60. However, it is factually undisputable that the 1933 Resolution was passed and there was no evidence in the record that it was expressly repealed, modified, or

revoked. *Compare* (R. p. 1132) (1933 Resolution Recorded in the Lexington Register of Deeds) *with* (R. pp. 1032–41) (Board Meeting Minutes); *see also* R. p. 41.

2. The trial court accurately found that Mr. Amick did not improperly attempt to influence the board.

The trial court rightly rejected these arguments, and this Court should, too. Mr. Amick attended board meetings but did not participate in executive sessions when the matters concerning the Property were discussed. He pursued his own interest in purchasing the Property like the Rices and Schumperts. He was a member of the Lions Club who had long cared for the Property. As the trial court stated, "a nefarious motive cannot be assigned to Mr. Amick for his uncounseled self-advocacy with the Lions Club board." (R. p. 60) (also refusing to assign a nefarious motive to the Rices' attorney for asserting the Rices' interest).

3. The trial court did not overlook Mr. Amick's withdrawn offer.

This entire argument presupposes the Rices' bid theory, which was rejected at trial and is not supported by the facts. R. p. 57; *see also* § D, *supra.* The bid theory requires disregarding the plain terms of the Lions Club Letter. *Cf.* (R. p. 1044) ("If you have an interest in the property please let us know right away . . . First consideration will be given to current members of the Newberry Lions Club."). Accordingly, the trial court did not overlook the fact that Mr. Amick withdrew his offer in order to obtain marketable title but instead properly recognized this fact was immaterial to whether the Rices and Lions Club formed a contract. (R. p. 57) ("all of the bid and auction evidence offered by the Rices does not change this Court's opinion—it was not the Lions Club's intent to make an offer capable of acceptance and the Lions Club Letter was not such an offer.").

4. The trial court did not hold that the encroachments created an unmarketable title, and in any event whether the encroachments rendered title unmarketable was immaterial.

The trial court actually held that "Mr. Amick and the Lions Club ***believed*** the Lions Club could not convey marketable title with the encroachments on the Property." (R. p. 44) (emphasis added). It is indisputable that Mr. Amick and the Lions Club believed the Lions Club could not convey marketable title with the encroachments. *See, e.g.*, R. pp. 1042; 1055–56. The Rices assert this belief was erroneous; however, the Court did not make a finding that title was unmarketable, and it does not matter whether title was marketable or not when the parties believed title was unmarketable with encroachments.

The Rices also assert that statements by attorney Verner to members of the Lions Club were hearsay. However, Verner's statements were included in a letter offered by the Rices, *see* (R. pp. 1055–56), (R. p. 431), and in deposition testimony offered by the Rices, *see* R. pp. 898–99. Accordingly, the Rices cannot now object on appeal when they offered the evidence at trial.

5. The trial court did not reach whether Mr. Amick would have been a bona fide purchaser without notice and expressly held Mr. Amick would have had notice if he heard the letter read.

The trial court did not rule in favor on Mr. Amick on this issue, expressly declining to rule on whether Mr. Amick would have been a bona fide purchaser for value without notice of the Rices' claim if in fact the Rices had formed a contract with the Lions Club. (R. p. 62) ("the Court is expressly not deciding whether Mr. Amick would be a BFP if the Court assumed the Rices formed a contract with the Lions Club."). However, the Rices cannot claim error when they were not prejudiced by the trial court's ruling on this issue. *See Altman*, 372 S.C. at 401, 642 S.E.2d at 626 ("the complaining party must prove both error and resulting prejudice"). As set forth above, this Court should find Mr. Amick was a bona fide purchaser for value without notice. *See supra* at p. 38-40, ¶ H.

CONCLUSION

For these reasons, Respondent Amick asks that this Court affirm the trial court's Order finding in favor of Mr. Amick and the Newberry Lions Club.

Respectfully submitted,

s/ Demetri K. Koutrakos
Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Email: jimkoutrakos@callisontighe.com
Email: harrydixon@callisontighe.com

&

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

ATTORNEYS FOR RESPONDENT BETTY S. AMICK, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF C. RAY AMICK

March 6, 2024

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief complies with Rule 211(b), SCACR.

s/ Demetri K. Koutrakos

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

ATTORNEYS FOR RESPONDENT BETTY S. AMICK, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF C. RAY AMICK

March 6, 2024