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Oct 23 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
The Hon. Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2024-000677

Jennifer Pringle and Dewayne Pringle,.....Plaintiffs,

Of Whom Jennifer Pringle is the .....Appellant,

v.

Mackenzie Alice Hunt and Thomas Christopher Newman, ... Respondents.

FINAL REPLY BRIEF OF APPELLANT

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The circuit court erred in enforcing a settlement when State Farm did not accept Appellant's offer but instead presented a counteroffer that Appellant rejected.

Respondents goes to great lengths to recast the terms of the Offer of Compromise ("Offer"), but those efforts are unavailing. As noted in Appellant's initial brief, the Offer used the singular "offer" over twenty times, and never once used the plural "offers." It is equally clear, that the Offer required the payment of checks—plural—for policy limits and specified how each check was to be made payable. The Offer stated:

> You must pay the settlement funds by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows:
>
> - Dewayne Pringle: a *pro rata* apportionment of bodily-injury limits and all remaining property-damage limits, payable to Dewayne Pringle and Poulin, Willey, Anastopoulo, LLC.
>
> - Jennifer Pringle: a *pro rata* apportionment of bodily-injury limits and all remaining property-damages limits, payable to Jennifer Pringle and Poulin, Willey, Anastopoulo, LLC.
>
> My office must **RECEIVE** the checks no later than 5:00 p.m. EDT on July 17, 2023.

(R. p. 40). Respondents' contention that this language permitted State Farm to settle Jennifer's claims but reject Dewayne's offer is patently erroneous. The Offer required payment of settlement funds and receipt of checks. The Offer also clearly warned that any additional terms would be considered a rejection of the Offer and would constitute a counteroffer. In other words, the Offer unambiguously required State Farm to settle *both* of the Pringles' claims for the policy limits, and the offer to settle both claims as opposed to only Jennifer's claim was unquestionably a material term of the offer. *Cf. Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 619, 879 S.E.2d 746, 760

(2022) (noting "[i]t goes without saying" that a clause in a contract that addressed who may be sued was "a material term of the agreement").

Appellant agrees that the language of the Offer governs, and that the "court is not at liberty to consider [the parties'] secret intentions." *Ecclesiastes Prod. Ministries v. Outparcel Assocs*., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007). However, there is nothing secret about what the language of the agreement states. Page eight of the Offer explained that Dewayne and Jennifer were willing to settle their claims for the policy limits, and the rest of the Offer discussed the terms that State Farm needed to fulfill in order to settle the claims. (R. p. 39). Nowhere in the Offer did it suggest that State Farm could pick and choose which claim to settle and which one to litigate. Rather, the Offer explained that the Pringles continued to suffer from their injuries, that "their medical bills are collectively over $200,000 without taking into consideration any future surgeries or therapy they may need," and that checks were required to settle both claims. (R. p. 39). State Farm made a decision to split the claims, which created a classic counteroffer.[1] *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus*., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) ("[A]n acceptance which adds different or additional terms is treated as a counteroffer, which may be accepted or rejected by the other party.").[2]

[1] Respondents imply that they had no way of knowing that Dewayne and Jennifer Pringle were married. While the context of the Offer makes it abundantly clear that the couple was married, even if State Farm thought otherwise, the Offer required the Pringles' claims to be settled together. It can hardly be said that the Pringle's marital status and their desire to resolve their claims together is a "secret intention" as Respondents claim. *See* Resp. Br. at 5.

[2] Respondents argued before the circuit court that the two claims were legally possible of being settled separately, but that argument has no bearing on whether State Farm's purported "acceptance" was instead a counteroffer. It appears Respondents acknowledge this fact, as they have abandoned that argument in their brief to this Court.

Further, Respondents argue about future, unknown events that are not before the Court. It is premature to evaluate State Farm's conduct in deciding to alter the terms of the Offer because the issue before the Court concerns the fundamental principle of freedom of contract. As Appellant noted in her initial brief, while settlements should be encouraged, freedom of contract is an equally compelling principle. Stated differently, one party may not unilaterally change the terms of a contract, purport to "accept" those terms, and then force the other party to abide by those new terms.

Moreover, this record is insufficient to analyze the reasonableness of State Farm's conduct, as the parties have not engaged in any discovery or had the opportunity to make their arguments to the circuit court. It is a fundamental principle of this state's appellate jurisprudence that an issue must have been raised and ruled upon by the circuit court before appellate review. *Lucas v. Rawl Family Ltd. P'shp*, 359 S.C. 505, 510-11, 598 S.E.2d 712, 715 (2004) ("It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court."). Neither has occurred in this case, and this Court should follow the well-established principle first stated by former Chief Judge Alex Sanders that "appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), *rev'd*, 286 S.C. 85, 332 S.E.2d 100 (1985), but *cited with approval in* 303 S.C. 243, 399 S.E.2d 783 (1991); *see, e.g.*, *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 331 n.4, 730 S.E.2d 282, 286 (2012); *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001).

CONCLUSION

The Pringles offered to settle both of their claims for policy limits, but State Farm unilaterally elected to settle only Appellant's claim for policy limits. This presented a classic counteroffer, and thus, no valid contract was ever formed. Accordingly, this Court should reverse the circuit court's order granting the motion to enforce settlement and remand for the Pringles to pursue their claims.

Respectfully submitted,

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