THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Opinion No. 2025-UP-139, Filed April 23, 2025

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.

Appellate Case No. 2023-001162

PETITION FOR REHEARING

In accordance with Rule 221(a), SCACR, the Appellants petition this Honorable Court for rehearing of Opinion No. 2025-UP-139 (the "Opinion") filed on April 23, 2025.

WHEREFORE, Appellant respectfully requests that this Honorable Court rehear the matters contained in the Opinion and reverse the judgment in the Circuit Court, and/or modify its Opinion in the following particulars:

a. Reversing the lower court's failure to make the following findings of fact that are undisputed.

   1. That at the January 2017 meeting of the Lions Club Board, Amick asked the Board to extend the deadline for bids until June 1, 2017, so he could get his finances together, and the Board agreed (R. p. 1032);

   2. That at the May 23, 2017, meeting, Amick withdrew and/or rescinded his offer of $300,000 (including acceptance of all conditions) and asked that the Lions Club clear up the encroachments to the Lions Club property, contrary to Amick's prior acceptance of the encroachments to the Lions Club property, contrary to Amick's prior acceptance of the encroachments

(R.,p. 1042) and the Lions Club acquiesced and did so (R. p. 1042 R. p. 888-889; R. p. 942, 945-946);

3. That as of June 1, 2017, there were two active bids: Plaintiffs' ($325,000) and the Schumperts ($300,000); both Rice and Schumpert accepted all conditions of sale imposed by the Lions Club (R. p. 1051);

b. Reversing the lower court Order finding and concluding that the Lions Club letter of January 2017 was not an offer to sell the property and was merely an invitation to certain people to express interest in the property. In affirming, the Court overlooked, in part, the following:

1. The Lions Club letter used the word "sell" or "sale" three times; it never expressed the word "invitation" or "invite".

2. The letter used the word "offer" twice and concluded stating "[t]his offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public." (R. p. 1044).

3. The Lions Club Board voted to "send letters to those who had shown an interest in purchasing the lake property stating that the club was unable to get a fee simple title to the property and all ***offers*** were being withdrawn to sell the property." (R. p. 1036) (emphasis added).

4. Lions Club president, Gene Crocker, admitted in deposition testimony designated in Plaintiffs case in chief that the letter could be reasonably interpreted as an offer to sell (R. p. 916).

5. Both the President and Secretary of the Lions Club Board told Joe Rice and Claude Schumpert, respectively, that the intent of the January 2017 letter and that of the Lions Club was that the Lions Club was selling the property to the highest bidder subject to the conditions set forth in the letter. (R. pp. 448, lines 9-12; R. p. 448, line 25-p. 449, line 16; p. 530, line 11-p. 531, line 6; R. p. 1108).

c. Reversing the lower court finding and conclusion that Appellants February 14, 2017, letter responding to the Lions Club January 2017 letter was not an acceptance. In affirming, the Court overlooked, in part, the following:

1. Appellant's use of the term "bid" was natural in the context of the terms of the Lions Club letter and the statements of the Lions Club officers made to Rice and Schumpert indicating a sale to the highest ***bidder***. (R. pp. 448, lines 9-12; R. p. 448, line 25-p. 449, line 16; p. 530, line 11-p. 531, line 6; R. p. 1108).

2. Lions Club president testified that the Appellants February 2017 complied with every condition imposed by the January 2017 letter. (R. p. 1044).

d. Reversing the lower court's order finding no contract was formed and denying specific performance.

e. Reversing the lower court's order concluding Appellants failed to prove their cause for promissory estoppel

f. Reversing the lower court's order in every respect raised in the Appellants' briefs filed in this appeal.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

In support of the Petition for Rehearing of Opinion No. 2025-UP-139 (the "Opinion"), the Appellants respectfully submit this Memorandum.

INTRODUCTION

Appellant submits that the Opinion overlooked or misapprehended the points in the record set forth herein and in the Petition of Appellant for Rehearing. These points reflect that the lower court ignored the four corners of the offer letter of the Lions Club (R. p. 1044) in finding that it did not constitute an offer for sale of the property which is the subject of this proceeding to the highest bidder; it ignored or overlooked the significance of the terms used by the Lions Club in its letter and the conditions stated therein; it misapprehended the Appellant's response to the letter in finding that it did not constitute an acceptance of the Lions Club offer; it similarly ignored or overlooked that, as of the deadline of June 1, 2017, provided in the Lions Club offer letter, Respondent

Amick had withdrawn his bid and Appellants had made the highest bid and were, therefore, entitled to the property by way of specific performance or pursuant to the doctrine of promissory estoppel.[1]

ARGUMENTS

I. In Affirming the Lower Court, This Court Ignored or Overlooked the Terms Used in the Lions Club's January 2017 Letter in Failing to Find That It Was An Offer to Sell to the Highest Bidder, that the Appellants' Bid Constituted the Highest Bid, and that the Contract Thereby Formed Should Be Specifically Performed.

A. The Lions Club January 2017 Letter Was An Offer to Sell to the Highest Bidder.

This Court affirmed the lower court's erroneous conclusion that the Lions Club letter was not an offer. In doing so, this Court cites McLaurin v. Hamer, 165 S.C. 411, 164 S.E. 2 (1932) for the proposition that the Lions Club letter was not an offer capable of acceptance and amounted to mere negotiations.

It is implied by the lower court and this Court's affirmance of it that there is no such thing as an offer which creates separate powers of acceptance in multiple parties. The lower court's order suggests that the law does not recognize an offer to the highest bidder. This is obviously incorrect. That such an offer is and has been recognized by the law is evidenced by the fact that there is an entire section discussing the concept in the Restatement (Second) of Contracts. See § 29, comment b (1981).

Section 29 of the Restatement provides, "[a]n offer may create separate powers of acceptance in an unlimited number of persons, and the exercise of the power by one

[1] This Memorandum will address only the conclusions reached in the Opinion; however, as to the issues on appeal which the Court declined to address, Appellants herewith reassert the arguments with regard to each of those issues set forth in their briefs.

person may or may not extinguish the power of another. Where one acceptor only *is to be selected*, various *methods of selection* are possible: for example, *...the highest bidder*. Who can accept, and how, is determined by interpretation of the offer." (emphasis added).

Where an offeror "knows or has reason to know that he is creating *an appearance of assent, he may be bound by that appearance*. Id. (emphasis added). The offeror is the "master of his offer", and the "making of any offer at all can be avoided by appropriate language or other conduct". Id. However, any conduct from which a reasonable person in the offeree's position would be justified in inferring a promise in return for the requested act, amounts to an offer for contract purposes. See, *e.g.*, Prescott v. Farmers Tel. Co-op, Inc., 335 S.C. 330, 516 S.E.2d 923 (1999). It is, therefore, the objective import of the language of the communication that controls, and the offeror is bound by the reasonable perception of his intention manifested by the terms of the offer. Restatement (Second) § 29.

This Court concluded that the January 2017 letter "plainly" expresses an intent to provide a mere "invitation to begin negotiations". However, this conclusion and the Opinion itself ignores the actual terms used by the Lions Club in the letter, which quite clearly indicate the opposite. The Court ignores that the letter explicitly states it is an "offer" by using that term twice. It states that the board decided to "offer the property for sale" and "make the property available" to the adjoining landowners, yet never employs the word "invitation" or "invite" or any similar term. It further uses the term "sell" or "sale" three times. The letter concludes by stating "[t]his *offer* is valid until June 1, 2017..." (R. p. 1044) (emphasis added). Therefore, it is error to conclude any reasonable

person receiving the letter would perceive it as anything other than an "offer" to sell the property to the highest bidder.

This Court further misapprehends the applicability of McLaurin in relation to the instant appeal. In McLaurin, the writing alleged to constitute an offer contained terms such as "suggest" and "think". The offeror in McLaurin wrote that he and another discussed a suggestion that they purchase the interest of others in a development in Florida and stated that he could not pay cash but thought he might be able to obtain security for financing if the others wanted to be bought out. The McLaurin court held that the result reached there was a foregone conclusion because the writings in that case impermissibly left material terms for future settlement. McLaurin, 164 S.E.2d at 5. As a result, the McLaurin court found that the alleged offer was nothing more than an invitation to negotiate.

Here, the Lions Club letter has no such indefinite language like that at issue in McLaurin. Instead, the letter contains all of the material terms of the sale. It identifies the property that is the subject of the bargain, a minimum price expected, the conditions on which the sale will occur and invites the submission of bids. To conclude that any material term was left open and find that the Lions Club did not intend for the word "offer" to actually mean "offer" would necessarily require the Court to read into the letter intent on the part of the Lions Club not revealed by the terms actually used, which, of course, the Court cannot do. *See* Blakeley v. Rabon, 266 S.C. 68, 221 S.E.2d 767 (1976).

Besides, it is not the Lions Club's intent that controls the question, but is the objective import of the language used in the letter. Again, that conveys an intent to offer the sale of the Lions Club Point property to the highest bidder. No reasonable recipient

would perceive that the letter, calling itself an offer, as anything but an offer. This Court should not ignore the terms of the letter and should rehear, reconsider and reverse the lower court's findings in this regard.

B. The February 2017 Response of Appellants Was An Acceptance Complying With The Conditions Set Forth in the Lions Club Offer Letter.

The Opinion erroneously concludes that Appellants' February 14, 2017 letter in response to the Lions Club letter cannot be construed as an acceptance because it "specifies that it is a bid requiring notice of approval and other conditions." As shown above, this conclusion ignores the import of the terms of the Lions Club letter. When the same are considered, Appellants' February 2017 letter (hereinafter, "Appellants' bid") constitutes an acceptance complying with the conditions set forth in the Lions Club letter. Cf., *e.g.*, Fender & Latham, Inc. v. First Union Nat. Bank of SC, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994) (holding that no contract was formed because the offeree failed to comply with the conditions of the offer).

First, the Opinion's conclusion that Appellants' bid does not constitute an acceptance because it "requires notice of approval" is error and again ignores or overlooks the actual terms of the Lions Club letter. Appellants' bid merely states that Appellants "would need 30 days from notice that the bid was accepted". The particular substance of the parties exchange as explaining why certain terms may be used are proper matters to consider in determining offer and acceptance. Restatement (Second) of Contracts. See § 29. Because both the Lions Club letter and the evidence in the record regarding the statements by the Lions Club officers to Joe Rice and Claude Schumpert ((R. pp. 448, lines 9-12; R. p. 448, line 25-p. 449, line 16; 530, line 11-p. 531, line 6)

show that the sale was to be to the highest bidder and in light of the fact that Appellants were not the only recipients of the Lions Club letter, the use of this language was nothing more or less than an acknowledgement that the Lions Club would necessarily have to communicate to the highest bidder that their bid was, in fact, the highest. Therefore, contrary to this Court's conclusion, this language in Appellants' bid does not indicate a requirement of "notice of approval".

The Opinion also implies that Appellants' bid is violative of the "mirror image" rule. The lower court cited the cases of Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963), and Columbia Hyundai, Inc. v. Carll Hyundai, Inc., 326 S.C. 78, 484 S.E.2d 468 (1997), on this question. This reliance is misplaced.

Just as with McLaurin, the Sossamon decision is entirely based on the terms of the writings at issue in that case. Because the writings in this case are unique to the bargain described in the parties letters, Sossamon is of no real instruction here.

The same is true with regard to Columbia Hyundai. There, the response to the offer clearly imposed new and different terms than that of the offer. The offer in Columbia Hyundai took the form of a written contract for the sale of all of the offeror's "new Hyundai vehicles". In response, the opposite party signed the contract but added the words "current year" before the phrase "new Hyundai vehicles". In so much as the Columbia Hyundai court was not asked and therefore did not pass on the implication of the "mirror image" rule, the Appellants contend the case does not have any bearing on this appeal. This is particularly true where the Columbia Hyundai court expressly confined its decision to the "limited factual circumstances presented [there]". Id. at 82.

Nevertheless, the lower court concluded based on these authorities that

Appellants' bid was not an acceptance because it violated the "mirror image" rule by referring to "good and marketable title", proposing 30 days to close, and bidding $325,000 as opposed to the $300,000 referenced in the Lions Club letter. The court below overlooked that in order to constitute violations of the mirror image rule, the terms of the putative acceptance must actually modify or change the terms of the offer. Appellants' bid did not include did not purport to change the property to be sold, alter the Lions Club's asking price or otherwise change conditions of the sale.

The "good and marketable title" reference relied on by the lower court was merely a recitation of a fundamental requirement of performance by a seller of land implied by law. See Kennedy v. Gramling, 33 S.C. 367, 11 S.E. 1081 (1890). See also *e.g.*, Sales Intern. Ltd v. Black River Farms, Inc., 270 S.C. 391, 242 S.E.2d 432 (1978) (holding that it is axiomatic that a purchaser cannot be required to take unmarketable title), *citing*, Laurens v. Lucas, 27 S.C.Eq. (6 Rich) 217 (1854), 77 Am. Jur. 2d, *Vendor and Purchaser*, § 168, and 57 A.L.R. 253, 1301, et seq. (1928), and followed by, Sanders v. Costal Capital Ventures, Inc., 296 S.C. 132, 370 S.E.2d 903 (Ct. App. 1988). It is literally black letter law that the acceptance of an offer to sell land which makes no specifications or limitations as to title is not made conditional merely by including a provision requiring marketable title. See, 2 Williston on Contracts § 6:15 (4th ed.); 1 Corbin, Contracts, § 86.

The reference to "30 days to close" also did not add an additional terms so as to violate the mirror image rule; rather, it simply identified what Appellants perceived to be a reasonable time for closing. Where no time is provided in a contract a "reasonable" time is imputed. See, *e.g.*, Cloniger v. Cloniger, 261 S.C. 603, 193 S.E.2d 647 (1973) .

Finally, as to the addition of $25,000 over and above the "asking" price does not constitute an additional condition in violation of the mirror-image rule. Instead, it is evidence that further corroborates the testimony in the record that the officers of the Lions Club told both Joe Rice and Claude Schumpert that the intent of the letter was to offer the sale of the Property to the highest bidder. After all, why else would an otherwise rational person volunteer an additional $25,000?

Appellants' bid did not add new or different terms to that of the Lions Club offer in violation of the mirror image rule. In fact, the Lions Club president testified that the Appellants response complied with every condition imposed by the January 2017 letter. (R. p. 1044). The Opinion ignores this part of the record.

For the reasons stated above and in the Appellants' brief, the Appellants' February 2017 response was an acceptance in accordance with the terms of the Lions Club January 2017 letter, and, together, all of the material terms of the sale were, in fact, finalized. This Court and the lower court's finding to the contrary is erroneous.

C. The Lower Court Erred in Denying Specific Performance.

This Court held Appellants are not entitled to specific performance as a result of the Court's conclusion that no contract was formed. As stated above, the Court should rehear and reconsider those conclusions and reverse the trial court.

The lower court overlooked the fact that the question of the specific performance of contracts concerning land is treated differently than contracts relating to other matters by the courts of this State. When the subject matter of the contract is land, however, "the jurisdiction of equity to enforce specific performance is undisputed, *and does not depend on the inadequacy of the legal remedy* in the particular case." (emphasis added). Adams

v. Willis, 225 S.C. 518, 83 S.E.2d 171 (1954). In fact, that a party may have an adequate remedy at law "clearly constitutes no ground for denying specific performance of a written contract for the sale of land." Belin v. Stikeleather, 232 S.C. 116, 101 S.E.2d 185 (1957). Instead, specific performance of a contract for the sale of real estate "will be ordered provided the contract is fair and was entered into openly and aboveboard." Amick v. Hagler, 286 S.C. 481, 334 S.E.2d 525 (Ct. App. 1985); Shirey v. Bishop, 431 S.C. 412, 848 S.E.2d (Ct. App. 2020).

There is nothing in the record indicating any unfair dealings on the part of Appellants. The same is true with regard to the Lions Club at least up to the point of disseminating the January 2017 letter. In addition, it cannot be said that the receipt of more money under Appellants' contract is in any way unfair to the Lions Club. The contract was made openly and above board. Moreover, the record is clear that, contrary to the court below, the equities favor Appellants. As a result, the lower court should have granted Appellants specific performance and its order to the contrary should be reversed. Because this Court erroneously concluded that no contract was formed between the parties, the Court's conclusion that specific performance was unavailable to Appellants should also be reheard and reconsidered.

II. The Lower Court Erred in Concluding that the Appellants Did Not Prove Promissory Estoppel.

The Opinion concluded that Appellants failed to show they were entitled to relief pursuant to promissory estoppel, finding that the Lions Club letter included no promises to the adjacent landowners but merely invited negotiations. For the reasons stated above, this conclusion was erroneous. Furthermore, this Court ignored or overlooked that the

requisite representations in order to show a right to promissory estoppel are not confined to any writings involved in the case, but may and often do extend to parol representations. See Craft v. South Carolina Com'n for Blind, 385 S.C. 560, 685 S.E.2d 625 (Ct. App. 2009). Towards that end, the Court ignored the testimony of Appellant Joseph F. Rice that the signatory of the letter, Pete Simpson, represented to him that the sale was "going to the highest bidder." (R. pp. 448, lines 9-12; R. p. 448, line 25-p. 449, line 16). Mr. Rice's testimony is corroborated by a virtually identical phone conversation recounted by Claude Schumpert. Mr. Schumpert testified that after receiving the January 2017 letter, he spoke to Lions Club President Gene Crocker about the process for the sale and Crocker told him that the Lions Club was offering the property to the "highest bidder." (R. p. 530, line 11-p. 531, line 6). Schumpert made contemporaneous notes during the call and wrote on his copy of the offer letter "Gene Crocker" and "highest bid." (R. p. 1108)[2].

Mr. Simpson should have known that Mr. Rice, calling about the sale of the Lions Club Point property, would rely on his representations regarding the January 2017 letter. The representations made to Mr. Rice and Mr. Schumpert were simple and to the point: the Lions Club intended by its letter to offer the sale of the Lions Club Point property to the "highest bidder". It is clear from each of the letters the Appellants sent to the Lions Club after Mr. Rice's phone call with Mr. Simpson that the Appellants relied on these

[2] The subsequent denials of these statements by Crocker and Simpson should not be given any weight, particularly in light of Schumpert's contemporaneous written notation of "highest bid". They should also be disregarded because these Lions Club officers have every reason to deny making these statements. Respondent Amick, after all, has asserted a crossclaim against the Lions Club seeking not only the return of his $300,000 but also his attorneys fees and costs.

representations.

Unfortunately, the Lions Club would break this promise, selling the property to Amick at a discount. In doing so, the Lions Club sought to deprive the Appellants of the property, which is an injury to Appellants in and of itself. Had Appellants known that the Lions Club would not live up to the word of its officers regarding the sale, they could have taken further actions to protect their interest in the property.

The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice. Craft, *supra*. This Court should not condone the Lions Club and its officer's conduct. The Court should rehear, reconsider and the lower court's conclusion on this cause should be reversed.

CONCLUSION

The Opinion overlooked or misapprehended the actual terms used by the Lions Club in its January 2017 letter in finding that it did not constitute an offer to sell the subject property to the highest bidder. The Court also misapprehended the Appellant's bid in finding that it did not constitute an acceptance of the Lions Club offer and ignored or overlooked that even the Lions Club president admitted that Appellants' bid complied with every condition of its January 2017 letter. Consequently, it was erroneous to conclude that no contract was formed by virtue of the Appellants highest bid, and consequently, Appellants are entitled to the property by way of specific performance.

The Opinion also misapprehended the terms of the Lions Club letter with regard to the issue of promissory estoppel and further ignored the evidence of Lions Club officer's parol representations that the letter was, in fact, an offer to sell to the highest

bidder. As stated above, Appellants have shown that they are otherwise entitled to relief pursuant to the doctrine of equitable estoppel.

For the reasons stated herein and those stated in Appellants' Petition for Rehearing and their briefs, this Court should rehear and reconsider the Opinion and reverse the lower court's order.

Respectfully submitted,

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