J. W. SOUTHWORTH v. Joseph C. OLIVER and Arlene G. Oliver (EDITED)
Supreme Court of Oregon, Decided Nov. 29, 1978.

TONGUE, Justice.

This is a suit [to determine whether] defendants "are obligated to sell" to plaintiff 2,933 acres of ranch lands in Grant County. Defendants appeal from a decree of specific performance [requiring defendants to sell the land to] plaintiff. We affirm.

Defendants contend on this appeal that a certain "writing" mailed by them to plaintiff was not an offer to sell such lands; that if it was an offer there was no proper acceptance of that offer [to] constitute a binding contract.

The parties and the property.

Defendants are ranchers in Grant County and owned ranches in both the Bear Valley area and also in the John Day valley. In 1976 defendants came to the conclusion that they should "cut the operation down" and sell some of the Bear Valley property. Defendant Joseph Oliver discussed this matter with his wife, defendant Arlene Oliver, and also with his son, and the three of them "jointly arrived" at a decision to sell a portion of the Bear Valley property. Joseph Oliver also conferred with his accountant and attorney and, as a result, it was decided that the sale "had to be on terms" rather than cash, for income tax reasons.

Defendant Joseph Oliver then had "a discussion with Mr. Southworth (the plaintiff) about the possibility of * * * selling this Bear Valley property." Plaintiff Southworth was also a cattle rancher in Bear Valley. The land which defendants had decided to sell was adjacent to land owned by him and was property that he had always wanted.

The initial meeting between the parties on May 20, 1976.

According to plaintiff, defendant Joseph Oliver stopped by his ranch on May 20, 1976, and said that he (Oliver) was interested in "selling the ranch" and asked "would I be interested in buying it, and I said 'yes'." Southworth also testified…that the conversation terminated with the understanding:

> "That he would develop and determine value and price and I would make an investigation to determine whether or not I could find the money and get everything arranged for a purchase. In other words, he was going to do A and then I would B."

According to plaintiff Southworth, defendant Oliver said that when he determined the value of the property he would send that information to Southworth so as to give him "notice" of "what he wanted for the land."

The telephone call of June 13, 1976.

Plaintiff testified that on June 13, 1976, he called defendant Oliver by telephone to "ask him if his plans for selling * * * continued to be in force, and he said 'yes'," that "he was progressing and there had been some delay in acquiring information from the Assessor, but they expected soon to have the information needed to establish the value on the land." Defendant Oliver's testimony was to the same effect, but he also recalled that at that time Mr. Southworth "said everything was in order and that I didn't have to worry, he had the money available and that everything was ready to go."

The letters of June 17, June 21, and June 24, 1976.

Several days later plaintiff received from defendants a letter dated June 17, 1976, as follows:

> "Enclosed please find the information about the ranch sales that I had discussed with you previously..."These prices are the market value according to the records of the Grant County Assessor..."Please contact me if there are any questions."

The enclosure with the letter was as follows:

> "JOSEPH C. and ARLENE G. OLIVER 200 Ford Road John Day, OR 97845
>
> "Selling approximately 2933 Acres in Grant County in T. 16 S., R. 31 E., W. M. near Seneca, Oregon at the assessed market value of:
>
> | | |
> |---|---|
> | Land | $ 306,409 |
> | Improvements | $ 18,010 |
> | Total | $ 324,419 |
>
> "Terms available - 29% down - balance over 5 years at 8% interest. Negotiate sale date for December 1, 1976 or January 1, 1977."

Defendant Joseph Oliver testified that this letter and enclosures were "drafted" by his wife, defendant Arlene Oliver; that he then read and signed it; that he sent it not only to plaintiff, but also to [three] other neighbors.

Upon receiving that letter and enclosures, plaintiff immediately responded by letter addressed to both defendants, dated June 21, 1976, as follows:

> "Re the land in Bear Valley near Seneca, Oregon that you have offered to sell; I accept your offer."

Finally, on June 24, 1976, defendants mailed the following letter to plaintiff:

> "We received your letter of June 21, 1976. You have misconstrued our prior negotiations and written summaries of the lands which we and J. C. wish to sell. That was not made as or intended to be a firm offer of sale..."
>
> "The memorandum of ours was for informational purposes only and as a starting point for further negotiation between us and you and the others also interested in the properties..."
>
> "We are open to further negotiation with you and other interested parties, but do not consider that we at this point have any binding enforceable contract with you."

This lawsuit then followed. The trial court...held that: "the conduct of the defendant together with the words (in Exhibit 3):

'Selling * * * at the assessed market value * * * terms available * * * ' leads to only one reasonable objective conclusion; the defendants were making an offer to sell their property." The trial court [also] held that the letter [plaintiff's dated June 21, 1976] was an acceptance of defendants' offer.

[W]as] Defendants' letter of June 17, 1976, an "offer to sell" the ranch lands?

Defendants contend that defendants' letter of June 17, 1976, to plaintiff was "not an offer. In support of that contention defendants say that their testimony that the letter was not intended as an offer was uncontradicted... Defendants also say the circumstances in this case were such as to require the conclusion that defendants did not intend the letter as an offer and that plaintiff knew or reasonably should have known that it was not intended as an offer because:

"1. Defendants obviously did not intend it as an offer.

"2. The wording of the 'offer' made it clear that this was 'information' that plaintiff had previously expressed an interest in receiving.

"3. It did not use the term offer, but only formally advised plaintiff that defendants are selling certain lands and permits and set forth generally the terms upon which they would consider selling.

"4. Plaintiff knew and expected this same information to go to others."

[M]odern law rightly construes both acts and words as having the meaning which a reasonable person present would put upon them in view of the surrounding circumstances. Even where words are used, "a contract includes not only what the parties said, but also what is necessarily to be implied from what they said." And it may be said broadly that any conduct of one party, from which the other may reasonably draw the inference of a promise, is effective in law as such.' "

It is often difficult to draw an exact line between offers and negotiations preliminary thereto. It is common for one who wishes to make a bargain to try to induce the other party to the intended transaction to make the definite offer, he himself suggesting with more or less definiteness the nature of the contract he is willing to enter into.

The difficulty in determining whether an offer has been made is particularly acute in cases involving price quotations, as in this case. It is recognized that although a price quotation, standing alone, is not an offer, there may be circumstances under which a price quotation, when considered together with facts and circumstances, may constitute an offer which, if accepted, will result in a binding contract. It is also recognized that such an offer may be made to more than one person. Thus, the fact that a price quotation is sent to more than one person does not, of itself, require a holding that such a price quotation is not an offer.

[W]e are of the opinion that defendants' letter to plaintiff dated June 17, 1976, was an offer to sell the ranch lands. We believe that the "surrounding circumstances" under which this letter was prepared by defendants and sent by them to plaintiff were such as to have led a reasonable person to believe that defendants were making an offer to sell to plaintiff the lands described in the letter's enclosure and upon the terms as there stated.

That letter did not come to plaintiff "out of the blue," as in some of the cases involving advertisements or price quotations. Neither was this a price quotation resulting from an inquiry by plaintiff. According to what we believe to be the most credible testimony, defendants decided to sell the lands in question and defendant Joseph Oliver then sought out the plaintiff who owned adjacent lands. Defendant Oliver told plaintiff that defendants were interested in selling that land, inquired whether plaintiff was interested, and was told by plaintiff that he was "very interested in the land," after which they discussed the particular lands to be sold. That conversation was terminated with the understanding that Mr. Oliver would "determine" the value and price of that land, i. e., "what he wanted for the land," and that plaintiff would undertake to arrange financing for the purchase of that land. In addition to that initial conversation, there was a further telephone conversation in which plaintiff called Mr. Oliver "to ask him if his plans for selling * * * continued to be in force" and was told "yes"; that there had been some delay in getting information from the assessor, as needed to establish the value of the land; and that plaintiff then told Mr. Oliver that "everything was in order" and that "he had the money available and everything was ready to go."

Under these facts and circumstances, we agree with the finding and conclusion by the trial court, in its written opinion, that when plaintiff received the letter of June 17th, with enclosures, which stated a price of $324,419 for the 2,933 acres in T 16 S, R 31 E., W.M., as previously identified by the parties with reference to a map, and stating "terms" of 29 percent down balance over five years at eight percent interest with a "sale date" of either December 1, 1976, or January 1, 1977, a reasonable person in the position of the plaintiff would have believed that defendants were making an offer to sell those lands to him.

As previously noted, defendants contend that they "obviously did not intend (the letter) as an offer." While it may be proper to consider evidence of defendants' subjective intent under the "objective test to which this court is committed, it is the manifestation of a previous intention that is controlling, rather than a "person's actual intent." We do not agree with defendants' contention that it was "obvious" to a reasonable person, under the facts and circumstances of this case that the letter of January 17th was not intended to be an offer to sell the ranch lands to plaintiff.

We recognize, as contended by defendants, that the failure to use the word "offer," the fact that the letter included the "information" previously discussed between the parties, and the fact that plaintiff knew that the same information was to be sent to others, were important facts to be considered. We disagree, however, with defendants' contention that these and other factors relied upon by defendants require a holding that the letter of January 17th was not an offer. The failure to add the word "offer" and the use of the word "information" are also not controlling, and, as previously noted, an offer may be made to more than one person.

[U]nder all of the facts and circumstances existing at the time that this letter was received, a reasonable person in the position of the plaintiff would have understood the letter to be an offer by defendants to sell the land to him.

For all of these reasons, the decree of the trial court is affirmed.