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A Professional Corporation of Attorneys at Law

Lawyer's Approval for Acceptance of Offer

When the owners of a party store received an offer to purchase not the entire property, but only their liquor license and fixtures, they accepted the offer, but on the condition that their attorney approve the deal. Before the attorney's review of the first offer, the owners received a better offer from another potential buyer, this time for the entire property, including the license, the fixtures, the real property, and the business itself.

The second offer was for about five times as much money as the first offer. The owners also accepted this offer, but again conditioned acceptance on approval by their attorney. The owners' attorney then reviewed both offers at the same time and, not surprisingly, approved the second, more favorable one.

The disappointed party that had made the first offer sued the owners to enforce what it regarded as a completed contract for the sale of the license and fixtures. It contended that the sellers had waived the requirement of attorney approval by their bad faith in simultaneously submitting to the attorney two competing purchase agreements, both of which conditioned acceptance on approval by the attorney. The disappointed party further argued that, by procuring the second offer and prospective agreement, the sellers had wrongly hindered the fulfillment of the only condition remaining to be fulfilled on the first agreement—attorney approval.

A court disagreed that there was any bad faith and upheld the contract formed when the second offer was accepted and approved by the sellers' attorney. While the plaintiff had been the first to make an offer of any kind, nothing in its potential contract prohibited the sellers from considering other offers. Nor were the sellers obliged to take the property off the market pending review of the first offer by legal counsel. Consideration and eventual full acceptance of the second offer was not legally impermissible where the first offer had been only conditionally accepted.

There was no limit on what aspects of the first agreement were subject to the attorney's approval. He was free to disapprove it, as he did, simply because there had been a better competing offer made by a competing prospective buyer. Moreover, the sellers had not interfered with their attorney's actions, such as by instructing him to disapprove the first offer. In short, the sellers had not acted in bad faith. They were guilty of nothing more than shrewd business moves during what the court described as a period of "dickering" that preceded the formation of an enforceable contract.