PATRICIA EWING HENDRIK, NUMBER 494,150 “B”

INDIVIDUALLY AND AS TRUSTEE

OF THE ROBERT EWING TRUST

UNDER WILL

VERSUS FIRST JUDICIAL DISTRICT COURT

BENTON PATTERSON, JR, AIA, AND CADDO PARISH, LOUISIANA

NEFF CONSTRUCTION, INC

**REASONS FOR JUDGMENT ON MOTION FOR**

**JUDGMENT ON OFFER OF JUDGMENT**

This Court has thoroughly considered the Motion for Judgment on Offer of Judgment filed by Plaintiffs, Nicholas deBerardinis and David deBerardinis (“the deBerardinis”), on September 23, 2010; the Opposition to Motion for Judgment on Offer of Judgment filed by Defendant, Neff Construction, Inc., (“Neff”) on October 22, 2010; oral arguments held on October 25, 2010; the entire record and applicable law. For reasons which follow, this Court concludes that the Motion for Judgment on Offer of Judgment should be denied.

Prior to trial on the merits, a party may serve an offer of judgment upon an adverse party. This offer must be made in writing, state that it is made under La. C.C.P. Art. 970, specify the total amount offered, and “specify whether that amount is inclusive or exclusive of costs, interest, attorney fees, and any other amount which may be awarded pursuant to statute or rule.” Written notice of acceptance of the offer must also be made. La. C.C.P. Art. 970. In this case, an offer pursuant to La. C.C.P. Art. 970 was made by Neff on September 15, 2010. The offer was properly accepted by the deBerardinis on September 17, 2010.

An offer of judgment, which is properly accepted, constitutes a compromise under La. C.C. Art. 3071, *et seq*. A compromise is only valid “if there is a meeting of the minds between the parties as to exactly what they intended at the time the compromise was reached.” This mutual consent of the parties is critical to the existence of a valid compromise. *Crawford v. United Services Automobile Association*, 899 So. 2d 668, 671 (La. App. 1 Cir. 2005). In addition to the mutual consent of the parties, a compromise must be made in writing, requires the capacity of both parties, and must meet all necessary contractual requirements of form. La. C.C. Art. 3072 and 3073.

The interpretation of a compromise is governed by the same general rules applicable to contracts. *Crawford*, 899 So. 2d at 671. The proper interpretation of a contract is a determination of the common intent of the parties. La. C.C. Art. 2045. If the words of the contract are clear and “lead to no absurd consequences”, then no further interpretation is necessary. La. C.C. Art. 2046.

Neff’s Offer of Judgment specifies that the “total amount of $125,000.00” is “exclusive of costs, interest and attorney fees.”[[1]](#footnote-1) The acceptance by the deBerardinis states that it is an acceptance of the offer “as written”.[[2]](#footnote-2) The letter further specifies that the amount offered would satisfy all claims of the deBerardinis, “other than their claims for legal interest on the amounts due, costs and expenses, and attorney’s fees.”[[3]](#footnote-3) The offer and acceptance contain seemingly different terms pertaining to the availability of costs, interest and attorney fees. This difference is evidence that the parties entered into the compromise without a common intent as to whether Neff would be responsible for the additional claims. There was no common intent or meeting of the minds as to the “total” amount to be paid by Neff at the time when the compromise was entered into, so there cannot be a valid compromise.

The deBerardinis rely upon *Crawford v. United Services Automobile Association* to support their position that “exclusive of costs, interest and attorney fees” in the Offer of Judgment indicates that these claims should be additional to the $125,000.00 offered. However, additional claims were not at issue in *Crawford*. The only issue on appeal in that case was whether or not the offer included a credit for previous payments made by the insurer. *Crawford*, 899 So. 2d at 668-669. Any discussion by the Court of the availability of additional claims to costs, interest or attorney fees is merely dicta.

Furthermore, the deBerardinis’s additional claims, totaling $148,516.55, are more than the amount offered in settlement. If the offer of judgment in question were interpreted in the manner suggested by the deBerardinis, the amount actually paid by Neff would be more than twice that offered in settlement. This Court finds that to effectively double an offer of compromise by adding interest, costs and attorney fees would be an absurd consequence and was not intended by the parties at the time of the compromise.

There was no meeting of the minds, or common intent, regarding the payment of interest, costs and attorney fees. There can be no valid compromise without such a common intent; therefore, this Court finds that the Offer of Judgment does not constitute a valid compromise and is unenforceable. Moreover, even if this Court had found a common intent, the addition of interest, costs and attorney fees would lead to an absurd consequence. For reasons assigned, the Court concludes that the Plaintiffs’ Motion for Judgment on Offer of Judgment is denied.

Signed this 17th day of November, 2010 in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

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1. Exhibit A [↑](#footnote-ref-1)
2. Exhibit B [↑](#footnote-ref-2)
3. Exhibit B [↑](#footnote-ref-3)