STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC	**Filed February 19, 2008**	**SUPERIOR COURT**
PERSIAN CULTURAL FOUNDATION OF RHODE ISLAND, INC.	:	
vs.	:	**PC–00–0613**
STEPHEN P. NAPOLITANO, Treasurer for City of Providence	:	
AND	:	
KRYSALIS FOUNDATION, f/k/a PERSIAN CULTURAL FOUNDATION OF RHODE ISLAND, INC. and SHANAZ BINA	:	
vs.	:	**PC–02–3262**
PROVIDENCE REDEVELOPMENT AGENCY, JOHN GELATI, in his Capacity as Tax Assessor for City of Providence, and JOSEPH M. LUSI	:	

DECISION

GIBNEY, J. These actions are before the Court after a jury–waived trial. Plaintiffs Krysalis Foundation, f/k/a Persian Cultural Foundation of Rhode Island, Inc. ("PCF"), and Shanaz Bina ("Bina") (collectively "plaintiffs"), brought these actions seeking damages, attorney's fees, costs, and specific performance related to the conveyance of property located in the City of Providence, Rhode Island, designated as Assessor's Plat 67, Lot 162 ("Lot 162") and Assessor's Plat 67, Lot 211 ("Lot 211"). In case No. PC–00–0613, the plaintiffs brought suit against Stephen P. Napolitano in his capacity as Treasurer for the City of Providence ("Treasurer"), alleging that the City of Providence

demolished a structure owned by PCF on Lot 162 and placed a lien on this land. In case No. PC–02–3262, the plaintiffs brought suit against the Providence Redevelopment Agency ("PRA"), John Gelati, in his capacity as Tax Assessor for the City of Providence ("Gelati" or "Tax Assessor"), and Joseph M. Lusi ("Lusi"), alleging that the PRA breached a contract for conveyance of Lot 162 to PCF and that the Tax Assessor breached a contract to convey Lot 211 to Bina. Lusi was joined as an indispensable party. In the alternative, plaintiffs raise claims of promissory estoppel against the City and unjust enrichment against the City and Lusi. After trial, Lusi and the defendants that comprise subunits of the City of Providence—the Treasurer, PRA, and Tax Assessor (collectively "the City")—moved for judgment as a matter of law pursuant to Rule 52(c) of the Superior Court Rules of Civil Procedure. Lusi also moved for attorney's fees. Decision is herein rendered.

I
Facts and Travel

This Court has previously detailed the complex interactions involving the parties and parcels of land involved here. Persian Cultural Foundation v. Napolitano, No. 00–0613, 02–3262, 2006 WL 2623292, *1–*5 (Sept. 12, 2006). Lot 162 is located at 124 West Park Street in Providence, Rhode Island. Lot 211 is located at 120R West Park Street in Providence. At all relevant times, Bina was PCF's president and executive director. The Court incorporates the facts as recounted in the earlier decision, supplying additional facts as needed.

II
Standard of Review

Rule 52(c) instructs the court, during or after a trial without a jury, to "enter judgment as a matter of law . . . with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue . . . ." Rule 52(a) requires the court to "find the facts specially and state separately its conclusions of law . . . ." Accordingly, this Court addresses the controlling factual and legal issues. J.W.A. Realty, Inc. v. City of Cranston, 121 R.I. 374, 399 A.2d 479, 485 (1979). In addition, these cases concern the existence of a contract between PCF and the City. Since "[c]ontract interpretation is a question of law," this Court will review the matters de novo. 1800 Smith Street Associates, L.P. v. Gencarelli, 888 A.2d 46, 52 (R.I. 2005) (citing Lajayi v. Fafiyebi, 860 A.2d 680, 686 (R.I. 2004)).

III
Case No. PC–00–0613

In its complaint, PCF contends that the City did not provide it with actual or constructive notice prior to demolishing a structure that existed on Lot 162. (Compl. ¶ 7–8.) This Court previously found that PCF did receive notice, but did not address whether said notice was sufficient. Persian Cultural Foundation, 2006 WL 2623292, at *2. The Court now addresses that issue.

The Rhode Island Building Code ("Building Code") burdens building officials with specific requirements for notifying owners and mortgagees of structures deemed unsafe. The Building Code instructs building officials to

> "issue a notice of the unsafe condition to the owner of record describing the building or structure deemed unsafe, and an order either requiring that the building, sign, or

> structure be made safe or be demolished within a reasonable, stipulated time. All notices and orders shall be in writing and shall be delivered to the owners of the building by the building official or his or her designated agent or shall be sent by registered or certified mail to the last known address of the owner or owners. Orders to demolish any building, a sign, or structure shall also be issued to all mortgagees of record. *If any owner or mortgagee cannot be located after due and diligent search, the notice and order shall be posted upon a conspicuous part of the building or structure, and the procedure shall be deemed the equivalent of personal notice.* When a building or structure is ordered secured for any reason by the building official, the owner shall board the building or structure . . . within seven (7) days, or the building official may cause the necessary work to be done to secure the building or structure. The cost of the work shall be billed to the owner and be a lien against the real property . . . ." G.L. 1956 § 23–27.3–124.2 (emphasis added); see G.L. 1956 § 23–27.3–124.5 (requiring building officials to "cause all the necessary work to be done to either make the building, sign, or structure safe or to have it demolished. The cost of the work shall be billed to the owner and shall be a lien against the real property . . . .").

If, after receiving notice, an owner fails to correct the unsafe condition or demolish the structure, building officials are authorized to take the necessary measures to correct the unsafe condition or demolish the structure. Section 23–27.3–124.2, –124.5. Section 23–27.3–124.5 requires that any expenses incurred by the municipality's efforts to correct the unsafe condition "shall be billed to the owner and shall be a lien against the real property . . . ."

The sufficiency of the notice required by § 23–27.3–124.2 of the Building Code is a matter of first impression.[1] Consequently, this Court turns to considerations of sufficiency of notice in other areas of law for guidance. In the adverse possession

[1] Section 23–27.3–124.2 has been cited once by Rhode Island courts, but not for the purpose of considering the sufficiency of notice issued under this statute. In State v. Hoffman, the Supreme Court cited this provision in a footnote merely as an explanation of the statutory authority under which a town building inspector acted. 567 A.2d 1134, 1138 n.2 (R.I. 1990).

context, the Rhode Island Supreme Court "has made it clear that the true owner will be charged with knowledge of whatever occurs upon his land in an open manner." Taffinder v. Thomas, 119 R.I. 545, 381 A.2d 519, 552 (1977). In the zoning context, the Supreme Court held that notice was sufficient if it "inform[ed] an ordinary layman lacking expertise in zoning matters of the property affected and the changes sought." Sweetman v. Town of Cumberland, 117 R.I. 134, 364 A.2d 1277, 1283 (1976). Similarly, in the public utilities context, the Supreme Court examined the notice issued to determine whether it "was '. . . reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" East Greenwich Fire Dist. v. Penn Central Co., 111 R.I. 303, 302 A.2d 304, 315 (1973) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

The evidence presented to this Court indicates that the City's Department of Inspection and Standards (DIS) took measures to notify the owners of the structure on Lot 162 of the City's intent to demolish the structure on that lot. On November 11, 1996 the City issued a demolition permit, though it was not sent to the property's owner or previous owner, nor was it recorded in the property's chain of title. Persian Cultural Foundation, 2006 WL 2623292, at *1. On April 16, 1997 the City mailed an order to demolish to individuals who were no longer record title holders of the property. Id. Then, on May 27, 1997, the City posted a demolition notice on the property. Less than one month later, on June 24, 1997, PCF took title to Lot 162. Id. Finally, on December 11, 1997, the City issued another demolition permit. Id. The next day the structure was demolished. Id.

Without question the City's efforts of November 11, 1996 and April 16, 1997 were not sufficient to provide the plaintiffs with notice of the demolition order. As such, the critical consideration for this Court is whether the notice posted on the structure was itself sufficient to satisfy the statutory requirement found in § 23–27.3–124.5, as well as the Supreme Court's guidance in Taffinder, Sweetman, and East Greenwich Fire District. Specifically, this Court must determine whether posting the notice in accordance with § 23–27.3–124.5 was constitutionally sufficient. PCF does not claim that the contents of the posted notice were insufficient to satisfy § 23–27.3–124.5 or "'to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" East Greenwich Fire Dist., 302 A.2d at 315 (quoting Mullane, 339 U.S. at 314).

This Court finds that the notice posted on the structure located on Lot 162 on May 27, 1997 was sufficient to inform PCF that the property was deemed unsafe and slated for demolition. As the Taffinder Court suggested, it is reasonable to expect a property owner to have knowledge of "whatever occurs upon his land in an open manner." 381 A.2d at 552. This Court notes that title to the land was transferred to the plaintiffs less than one month after the City posted a demolition notice on the property. As the purchaser, PCF was reasonably expected to inspect the land and accompanying structure to determine their condition. In addition, after receiving title to Lot 162, PCF was reasonably expected to make itself aware of the property's condition. This Court cannot presume, and the parties do not claim, that the notice posted by the City on the structure on May 27, 1997 was removed. As such, any person visiting the site between that date and the date on which the structure was demolished would have seen the demolition notice. After two

failed attempts at providing notice—the first on November 11, 1996 and the second on April 16, 1997—the City ultimately provided the plaintiffs with appropriate notice. Since the demolition was conducted properly, the lien placed on the property was also proper. Section 23–27.3–124.5, –125.7.

The plaintiff also contends that the property was improperly taken by eminent domain. (Comp. ¶ 10.) Section 23–27.3–125.7 provides that a lien imposed to recover costs incurred as a result of a structure's unsafe condition is to be considered identical to a lien for failure to pay taxes. As such, the city tax collector is empowered to sell or take the land for nonpayment. Section 23–27.3–125.7. The lien imposed on Lot 162 was no more than a claim on the plaintiff's property as security for the payment of a debt. 51 Am. Jur. 2d Liens § 1 (2000). The lien was "not an estate or proprietary interest in the land, but rather [wa]s a remedy against it which may be impaired without amounting to a taking requiring compensation . . . ." 26 Am. Jur. 2d Eminent Domain § 242 (2004). As the Rhode Island Supreme Court has noted, the government's exercise of its power of eminent domain is regulated by the Due Process Clause and the Takings Clause. Rhode Island Econ. Dev. Corp. v. The Parking Co., L.P., 892 A.2d 87, 97 (R.I. 2006). Importantly, the plaintiffs have not alleged that § 23–27.3–125.7 is constitutionally infirm. Since the plaintiffs were properly notified of the City's intent to demolish the structure on Lot 162, this Court finds that the plaintiffs' due process rights were met. Consequently, the City acted in accordance with constitutional and statutory requirements. Since the plaintiffs' claims concerning the City's demolition of the structure on Lot 162 and its imposition of a lien on the land cannot be maintained under the controlling law, judgment as a matter of law is granted. Super. R. Civ. P. 52(c).

IV
Case No. PC–02–3262

This case arises from PCF's contention that it entered into a settlement agreement with the PRA to convey title of Lot 162 to PCF. PCF contends that this agreement was formed in a series of letters between the PRA, acting through its attorney and several of its employees, and PCF, acting through its attorney and executive director. PCF alleges that the PRA failed to comply with the terms of this putative agreement. Also, Bina claims that the City breached a contract for the sale of Lot 211 by conveying the property to Lusi, and that Lusi was aware of the contract between her and the City. The plaintiffs further allege that the City and Lusi were unjustly enriched at their expense. Lastly, the plaintiffs allege that the City was estopped from conveying Lot 211 to any party but PCF.

A
Breach of Contract by the PRA

PCF alleges that it and the PRA formed an agreement to transfer title of Lot 162 to PCF. This agreement was purportedly formed through a series of letters exchanged by F. Monroe Allen ("Allen"), PCF's attorney, and various members of the PRA's staff—namely, former Executive Director John F. Palmieri ("Palmieri"), Assistant Director William G. Floriani ("Floriani"), and the agency's attorney Richard A. Pacia ("Pacia"). (Third Am. Compl. ¶ 9.) The City denies that a contract was formed, claiming that the relevant letters indicated that any agreement was conditional upon satisfaction of various criteria. Lusi also argues that no contract was formed between PCF and the PRA and that the subsequent designation of Lusi as developer of Lot 162 was proper.

To form a contract the parties must communicate an offer and an acceptance. Opella v. Opella, 896 A.2d 714, 720 (R.I. 2006). "Each party must have and manifest an objective intent to be bound by the agreement." Id. (quoting Weaver v. Am. Power Conversion Corp., 863 A.2d 193, 198 (R.I. 2004)). "An agreement is a manifestation of mutual assent on the part of two or more persons." Restatement (Second) Contracts § 3 (1981). For two or more parties to assent to an agreement, they must indicate a meeting of the minds. Id. (citing Mills v. Rhode Island Hosp., 828 A.2d 526, 528 (R.I. 2003)). That is, "the parties must intend to be bound by the terms of the agreement." Rhode Island Five v. Med. Assocs. of Bristol County, Inc., 668 A.2d 1250, 1253 (R.I. 1996). "A mere expression of intention or general willingness to do something on the happening of a particular event . . . does not amount to an offer . . . ." 17A Am. Jur. 2d Contracts § 47 (2004); see Restatement (Second) Contracts § 26 (1981). Moreover, a contract can be said to have formed only if the terms of the putative contract were reasonably certain. Texas v. New Mexico, 482 U.S. 124, 129 (1987) (citing Restatement (Second) Contracts § 33 (1981)).

In addition, this Court is mindful of the well–settled rules on the interpretation of contracts. "Contract interpretation is a question of law; it is only when contract terms are ambiguous that construction of terms becomes a question of fact." Clark–Fitzpatrick, Inc./Franki Foundation Co. v. Gill, 652 A.2d 440, 443 (R.I. 1994). "Clear and unambiguous language set out in a contract is controlling in regard to the intent of the parties to such contract and governs the legal consequences of its provisions. Such language is assigned its ordinary, dictionary meaning." Dudzik v. Leesona Corp., 473 A.2d 762, 766 (R.I. 1984). "In determining whether a contract is clear and unambiguous,

the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning. In applying this standard, this Court has consistently held that a contract is ambiguous only when it is reasonably and clearly susceptible of more than one interpretation." Paradis v. Greater Providence Deposit Corp., 651 A.2d 738, 741 (R.I. 1994) (citation omitted). "If the court finds that the terms of a contract are clear and unambiguous, the task of judicial construction is at an end and the contract must be applied as written." Id. "In situations in which the language of a contractual agreement is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids." Clark–Fitzpatrick, 652 A.2d at 443 (quoting Greenwald v. Selya & Iannuccillo, 491 A.2d 988, 989 (R.I. 1985)).

The communications exchanged between the parties with regard to Lot 162 illuminate the parties' differing intentions. In a letter dated June 29, 2000, Allen wrote to Palmieri expressing PCF's "request . . . that the property [Lot 162] is deeded back to them . . . ." (June 29 Letter to Palmieri.) In that letter, Allen referenced an earlier conversation with Pacia in which Pacia "indicated that [the] Providence Redevelopment Agency *might* be willing to deed the property back to [the] Persian Cultural Foundation on the assumption that the foundation has an intention to improve the property." (Id. (emphasis added).) That same day Allen wrote a letter to Superior Court Justice Patricia Hurst, who was then assigned to case No. 00–0613, indicating that the parties were "negotiating a possible settlement." (June 29 Letter to Superior Court.) On October 23, 2000, Palmieri wrote to Allen acknowledging Pacia's statements and indicating

> "that the Agency would consider deeding the property back to your client. There are *certain conditions that we will require* that are not addressed in your letter. The Agency would need to know what type of building your client

> would build, a timetable of when they will start construction, and when they will complete construction. *When we receive this information we will then take your request into consideration*." (October 23 Letter (emphasis added).)

On February 21, 2001, Allen responded to Floriani, indicating, "the Foundation would like to have a commitment or a letter of intent from the Providence Redevelopment Agency indicating that they are willing to deed back the lot in question when the Foundation is ready to break ground for its project." (Feb. 21 Letter.) Allen requested a five–year period in which to initiate PCF's proposed ground–breaking and to resolve existing issues regarding title to the property and adjacent land. (Id.) In late March of that year, Palmieri wrote to Allen explaining, "The Agency would be willing to convey the parcel back to the Persian Cultural Foundation, *provided certain conditions were met*. We are aware of the legal problems you face in cleaning up the titles." (March 29 Letter (emphasis added).) Palmieri explicitly rejected Allen's request for a five–year time period; instead, he stated that the PRA "would be able to grant an eighteen (18) month extension in transferring the parcel, with the possibility of reviewing the status of your legal problems at the time." (Id.) On May 21, 2001, Allen wrote to Palmieri "acknowledg[ing] your offer to grant an eighteen (18) month extension" and stating that PCF is "proceeding with a title clearance of those lots and within eighteen months we should have a plan for the development of the lots." (May 21 Letter.)

The precise language of these letters is crucial. Dudzik, 473 A.2d at 766. PCF clearly manifested an intent to receive title to Lot 162. However, the PRA manifested an intent only to discuss the *possibility* of conveying title to PCF. On two occasions, Palmieri referenced "certain conditions." (Oct. 23 Letter; March 29 Letter.) In a separate

letter, Palmieri explained that the PRA "might" convey title of the land to PCF. (June 29 Letter.) These statements were, at best, only expressions of a general willingness to convey title after the specified conditions were met. 17A Am. Jur. 2d Contracts § 47 (explaining that an "expression of . . . general willingness to do something on the happening of a particular event . . . does not amount to an offer . . . ."). As such, Palmieri's letters can only be considered to have indicated that PCF's satisfaction of these conditions precedent was necessary to the formation of a contract.

The testimony offered at trial buttresses the parties' differing intentions as communicated in the letters introduced into evidence. Allen's testimony that a contract was formed is without basis. There was nothing said or done on behalf of the City which could in any way be construed as the formation of a contract. In contrast, Pacia's testimony was clear, logical, unambiguous, and compelling. In no way did he at any time enter into a contract on behalf of the City, nor was it his function to do so even had he so desired. Pacia's statement that he "categorically" never entered into an agreement is accepted by this Court as he was a most compelling and credible witness.

Furthermore, assuming, *arguendo*, that Palmieri's letters expressed an intent to convey title to PCF, thus enabling the formation of a contract, the terms of the putative agreement are unclear. The October 23 letter in which Palmieri first referenced "certain conditions that we will require" functioned as an invitation extended to PCF to offer a proposal for transferring title. Allen's response on February 21, in which he promised to "clear[] the title" and "break ground," was such an offer. Opella, 896 A.2d at 720. The promises to clear title and develop the property each became integral components of the offer. As PCF admits in its Third Amended Complaint, any agreement was conditioned

"upon receipt of suitable development plans, and that Krysalis would be afforded eighteen months to develop such plans." (Third Am. Compl. ¶ 8.) In his response to this letter, Palmieri, however, failed to agree to these terms. (March 29 Letter.) Rather, he expressed a willingness to convey title "provided certain conditions were met," but only referenced the title clearing problem. Rhode Island Five, 668 A.2d at 1253 (holding that for a contract to form the parties must manifest their agreement to the terms). Palmieri's failure to reference the development term of Allen's promise left the PRA's acceptance of this critical term uncertain. Texas, 482 U.S. at 129.

Lastly, assuming, *arguendo*, that the terms of the offer were reasonably certain so that Allen's communications can be construed as an offer, Palmieri's letter indicates that his response was not intended to be an acceptance of that offer. Palmieri explained that if PCF succeeded in clearing title within 18 months the PRA would then "review[] the status of your legal problems at that time." (March 29 Letter.) Therefore, Palmieri's letter only expressed a willingness to consider transferring title to PCF after that 18 month period. This was nothing more than a "general willingness to do something on the happening of a particular event . . . ." 17A Am. Jur. 2d Contracts § 47 (2004). Consequently, there was no meeting of the minds regarding any agreement.

Since no contract was formed between PCF and the PRA, there could be no breach. Therefore, the plaintiffs' contention that the PRA breached a contract cannot be maintained. Accordingly, judgment as a matter of law is granted as to this claim. Super. R. Civ. P. 52(c).

B

Breach of Contract by the Tax Assessor

In addition to the claims brought by PCF based on its allegations of a contract between it and the PRA, Bina claims that she and the Tax Assessor formed a contract for the purchase of Lot 211 from the Tax Assessor. (Third Am. Compl. ¶ 14–18.) Bina's contention stems from a February 2001 notice printed in the *Providence Journal* in which the Tax Assessor announced the proposed sale of Lot 211. (*Providence Journal* Announcement, Joint Ex. 37.) The notice stated that the sale would be in conformance with the following terms:

> "(1) SALE TO THE FIRST QUALIFIED BUYER; (2) THE COLLECTOR RESERVES THE RIGHT TO WITHOLD SALES TO PARTIES WITH INTERESTS IN THE PROPERTY OR INSIDERS THERETO AND (3) CASH OR BANK CHECK ONLY. *OFFERS* ON THESE PREMISES WILL BE ACCEPTED AFTER MARCH 5, 2001 ON A FIRST COME BASIS, AND CAN BE MADE BY APPOINTMENT AT 421–7770 X533." Id. (emphasis added).

The notice added that any sale would be "at the *discretion* of the [City Tax] collector." Id. (emphasis added). The proposed sale announced in the notice was part of a bulk tax sale pursuant to G.L. 1956 § 44–5–73. Section 44–5–73(b) authorizes cities and towns to "make regulations for the . . . sale or assignment, either individually or in bulk, of land purchased or taken for taxes, not inconsistent with law or the right of redemption."

Bina urges this Court to find that she was the first person to comply with the terms of the defendant's putative offer and is therefore lawfully entitled to title of Lot 211. (Pl.'s Proposed Findings of Fact ¶¶ 7, 9.) This Court, in its earlier decision, noted the relevant facts and allegations as follows:

> "According to the Defendant City, Bina claims that on March 5, 2001, at 8:15 a.m., she called the Providence Finance Department and asked about purchasing Lot 211. According to Bina, during that telephone conversation Mathew Clarkin ("Clarkin"), a Providence Finance Department employee, told her that she was the first person to call inquiring about Lot 211 and would be awarded the property. Bina also asserts that Clarkin informed her that she could not make a deposit that day, and consequently, she had to make an appointment for 'two days or a day later.' Defendants, though, claim that if this matter goes to trial, Clarkin will testify that he never made such comments.
>
> "Subsequent to this phone call, on March 9, 2001, Lusi placed a $100 deposit with the City for the purchase of Lot 211. Five days later, on March 14, 2001, Bina made an $80 deposit towards her purchase of Lot 211. Bina claims that she was also told by Clarkin that despite the date on Lusi's affidavit, Bina was actually the first to have made the deposit." Persian Cultural Foundation, No. 00–0613, at 8–9 (footnote and citations omitted).

Importantly, Bina's testimony at trial regarding her interactions with Clarkin and other City employees was singularly incredible. Her testimony was riddled with inconsistencies and failed to ring true.

There exists a well–developed body of law addressing putative contracts for sale allegedly formed through published announcements. Newspaper announcements are seldom considered offers which, if accepted by another party, would form a contract. Zanakis–Pico v. Cutter Dodge, Inc., 47 P.3d 1222, 1237 (Haw. 2002). "The most important factor in determining whether an advertisement is an offer is whether the advertiser intends the advertisement to be an offer." 17A Am. Jur. 2d Contracts § 52. For an advertisement to constitute an offer, "there must ordinarily be some language of commitment or some invitation to take action without further communication." Restatement (Second) Contracts § 26, comment b; see Zanakis–Pico, 47 P.3d at 1237

("[A]dvertisements are generally not binding contractual offers, unless they invite acceptance without further negotiations in clear, definite, express, and unconditional language."). "Another important factor is the definiteness or certainty of the wording of an advertisement; clarity, definiteness, and completeness militate in favor of a construction that the advertisement is an offer, while indefiniteness generally rules out this construction." 17A Am. Jur. 2d Contracts § 52; see Lane v. Hopfeld, 273 A.2d 721, 723 (Conn. 1970) (finding that the defendant did not make an offer by advertising in trade journals for the sale of ladders and mailing to the plaintiff a brochure and list price with more details about the ladders; rather, these actions were mere solicitations for an offer).

Outside the context of published announcements, "[t]he test for an offer is whether it induces a reasonable belief in the recipient that he can, by accepting, bind the sender." Architectural Metal Sys., Inc. v. Consol. Sys., Inc., 58 F.3d 1227, 1229 (7th Cir. 1995). Moreover, as the Massachusetts Supreme Judicial Court instructed, "[t]he indication by the defendant of a willingness to receive proposals did not ripen into any contract or contracts until the proposals were accepted." Kuzmeskus v. Pickup Motor Co., 115 N.E. 2d 461, 464 (Mass. 1953).

The City's announcement published in the *Providence Journal* includes language indicating that the City did not intend the notice to function as an offer for sale. First, the notice explicitly requested that "offers" be made and provided detailed information about the appropriate procedure for making those offers. An explicit request for "offers" in a published notice cannot be interpreted to mean that the party that authorized the notice intended the notice itself to serve as an offer. 17A Am. Jur. 2d Contracts § 52. Similarly,

PCF could not reasonably believe that its compliance with the notice's request for offers would bind the City. Architectural Metal Sys., Inc, 58 F.3d at 1229. Second, the notice limited the potential sale of the property to "qualified buyer[s]." Importantly, the notice did not specify the criteria used to determine whether a particular party would qualify. As such, no interested party could possibly determine with "clarity, definiteness, and completeness" the actual conditions upon which the City would consider selling the property. 17A Am. Jur. 2d Contracts § 52; Lane, 273 A.2d at 723. Additionally, the notice stated that any sale would be at the City's "discretion." However, again the notice did not identify the criteria considered under this discretionary review. Without clarification of the meaning of "discretion," the notice's language was, at best, indefinite and, at worst, amorphous. 17A Am. Jur. 2d Contracts § 52. Either way, the notice could not be construed as an offer, the acceptance of which would form a contract. Architectural Metal Sys., Inc, 58 F.3d at 1229. The announcement could only be considered an indication by the City that it was willing to receive proposals for the sale of Lot 211. Kuzmeskus, 115 N.E. 2d at 464. Consequently, no contract was formed between Bina and the City with regard to Lot 211.

Since no contract was formed between Bina and the City, there could be no breach. Therefore, the plaintiffs' contention that the City breached a contract cannot be maintained. Accordingly, judgment as a matter of law is granted as to this claim. Super. R. Civ. P. 52(c).

C. Unjust Enrichment

"Recovery for unjust enrichment is predicated upon the equitable principle that one shall not be permitted to enrich himself at the expense of another by receiving

property or benefits without making compensation for them." Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 99 (R.I. 2006) (citing R & B Elec. Co. v. Amco Constr. Co., 471 A.2d 1351, 1355 (R.I. 1984)). To recover under the doctrine of unjust enrichment, the plaintiff must prove three elements: that a benefit was conferred upon the defendant by the plaintiff; that the defendant appreciated this benefit; and that acceptance of this benefit by the defendant under the existing circumstances would be inequitable unless the defendant pays for the value of this benefit. Narragansett Elec. Co., 898 A.2d at 99 (quoting Bouchard v. Price, 694 A.2d 670, 673 (1997)). According to the Narragansett Electric Court, "a benefit is conferred when improvements are made to property, materials are furnished, or services are rendered without payment." 898 A.2d at 99. The second element—appreciation of the benefit conferred—is satisfied if the defendant profited from the benefit. See id. at 100 (finding that the second element was satisfied because the defendant paid a portion of the electric bill and could be assumed to have used some of the home's electrical appliances, thus profiting from the transmission of unbilled electricity to the home). The third element—that retention of the benefit without payment would be inequitable—is the "most significant" of the three requirements and is satisfied "if the plaintiff can prove the reasonable value of services rendered without payment." Id. at 99 ((quoting R & B Elec. Co, 471 A.2d at 1356) (citing Best v. McAuslan, 27 R.I. 107, 60 A. 774, 774–75 (1905))).

In this matter, the plaintiffs contend that the City was unjustly enriched by its demolition of the structure on Lot 162. This contention fails because the demolition was not a benefit to the City. On the contrary, the demolition was costly and time–consuming. Second, the plaintiffs contend that the City benefited by imposing a lien on

Lot 162. The evidence clearly indicates that the City was benefited by imposing a lien on the property and that the City profited from this benefit by selling the property. However, the City's retention of this benefit without payment to the plaintiffs was not inequitable because the lien was imposed to ensure payment of taxes. G.L. 1956 § 44–9–1. Lastly, the plaintiffs contend that the PRA's decision to award development rights to and sell Lot 162 to Lusi was inequitable. However, § 44–5–73 authorizes the City to sell "land purchased or taken for taxes," including "any and all liens for taxes," such as Lot 162, "either by public auction to the highest bidder or by direct sale . . . ." Section 44–5–73(a)–(c). Moreover, the City was authorized to make specific "regulations for the . . . . sale or assignment . . . of land purchased or taken for taxes." Section 44–5–73(b). The City was therefore entitled to determine the conditions for sale of Lot 162. Having already determined that the City adhered to the conditions listed in the announcement published in the *Providence Journal*, this Court finds that neither the City nor Lusi was unjustly enriched by the plaintiffs.

D. Promissory Estoppel

Promissory estoppel applies only when a promise was made without consideration; therefore, no contract formed. Hayes v. Plantations Steel Co., 438 A.2d 1091, 1096 (R.I. 1982) (quoting East Providence Credit Union v. Geremia, 103 R.I. 597, 239 A.2d 725, 727 (1968)); see IV Williston on Contracts, § 8:4 (1992). "Promissory estoppel operates to make a promise binding if the promise was '[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person,' the promise 'does induce such action or forbearance' in reliance on that promise, and 'injustice can be avoided only by enforcement of the

promise.'" Dellagrotta v. Dellagrotta, 873 A.2d 101, 110 (R.I. 2005) (quoting Filippi v. Filippi, 818 A.2d 608, 625 (R.I. 2003)); see Restatement (Second) Contracts § 90. The Dellagrotta Court explained that a promisee must prove the existence of a clear and unambiguous promise; reasonable and justifiable reliance upon the promise; and detriment to the promisee caused by his or her reliance on the promise. 873 A.2d at 110 (quoting Filippi, 818 A.2d at 626).

For the claim of promissory estoppel to proceed, the plaintiffs must first prove that the defendant made a clear and unambiguous promise. In Filippi, the Court found that a promise was unclear and ambiguous where the decedent, the defendant's deceased spouse, promised to the plaintiff that if the plaintiff helped the decedent run his business, it "will be yours and you will take care of the family . . . ." Filippi, 818 A.2d at 626. The Court determined that this statement "failed to indicate whether he [the decedent] meant . . . the business including the good will or simply the stock . . . ." Id. The Court added that a hand–written letter from the decedent "indicating that the stock will 'take effect' upon his death confirms this ambiguity," since the plaintiff contended that the decedent promised to leave her the entire business. Id. After finding that the plaintiff did not satisfy the first element of promissory estoppel, the Court nonetheless addressed her failure to satisfy the second element, reasonable reliance. According to the Court, the plaintiff's "knowledge, understanding and acquiescence" of the decedent's testamentary documents giving control of the business to an institutional trustee and giving her only limited compensation, "destroyed any argument that she previously had for reasonably relying on the promise." Id.

In light of the Filippi Court's guidance, this Court finds that the plaintiffs failed to show that the City was estopped with regard to Lot 162 or Lot 211. In the same manner that the Filippi Court found that the conflicting statements made by the plaintiff and the decedent rendered a promise unclear and ambiguous, the series of letters written by Allen and Palmieri indicate that there existed significant ambiguity in the City's position with regard to Lot 162. Id. At most, Palmieri's letters indicate only a future willingness to consider PCF's request for transfer of title. (October 23 Letter.) Indeed, Allen's response in which he requested a commitment letter reveals that even PCF did not understand Palmieri's communications to be reasonably clear and unambiguous. (February 21 Letter.) Similarly, the *Providence Journal* notice upon which the plaintiffs contend that they relied with regard to Lot 211 included several ambiguous statements. The notice indicated only that the City would only sell the property to "qualified buyer[s]." (*Providence Journal* Announcement, Joint Ex. 37.) Additionally, the notice stated that a final decision regarding sale of the property would be made "at the *discretion* of the [City Tax] collector." (Id.) Both of these phrases indicate that the City did not make a "clear and unambiguous promise" to sell Lot 211 to the first person who arrived at the stated time and place. Filippi, 818 A.2d at 626. Consequently, the City did not make a promise which the City "should reasonably [have] expect[ed] to induce action or forbearance on the part of the" plaintiffs. Dellagrotta v. Dellagrotta, 873 A.2d at 110.

Conclusion

Without question the City could have been more coordinated in its interactions with the plaintiffs. Nonetheless, all the witnesses on behalf of the City—Clarkin; Pacia; Robert P. Ceprano, the City's Tax Collector; Ramzi Loqa, director of the City's

Department of Inspection and Standards; Samuel J. Shamoon, former executive director of the PRA; Thomas Deller, the PRA's current executive director; and Alex Prignano, the City's Finance Director—were credible, consistent, and persuasive in their testimony. Each did what they were obligated to do and did so according to statutorily and constitutionally sound procedures. In contrast, the plaintiffs' witnesses—in particular, Bina—were not credible. As such, the plaintiffs' claims cannot be maintained. Super. R. Civ. P. 52(c). Therefore, the defendants' motion for judgment as a matter of law is granted in whole. Lusi's motion for attorney's fees is denied. Counsel shall prepare an order consistent with this Decision.