38 N.E.2d 416

Court of Appeals of Ohio, Second District, Montgomery County.

CRAFT

v.

ELDER & JOHNSTON CO.

July 14, 1941.

**Opinion**

BARNES, Judge.

. . . On or about January 31, 1940, the defendant, the Elder & Johnston Company, carried an advertisement in the Dayton Shopping News, an offer for sale of a certain all electric sewing machine for the sum of $26 as a “Thursday Only Special.” Plaintiff . . . alleges that the above publication is an advertising paper distributed in Montgomery County and throughout the city of Dayton; that on Thursday, February 1, 1940, she tendered to the defendant company $26 in payment for one of the machines offered in the advertisement, but that defendant refused to fulfill the offer and has continued to so refuse. The petition further alleges that the value of the machine offered was $175 and she asks damages in the sum of $149 plus interest from February 1, 1940 . . .

The case was submitted to the court by agreement of the parties . . . for determination solely of the question as to whether the advertisement referred to in the petition of plaintiff constituted an offer . . . The trial court dismissed plaintiff’s petition, [explaining]: “Upon consideration the court finds that said advertisement was not an offer which could be accepted by plaintiff to form a contract, and this case is therefore dismissed with prejudice to a new action, at costs of plaintiff.” [P]laintiff filed notice of appeal on questions of law and thus lodged the case in our court . . .

The first question to be determined is the proper characterization to be given to defendant’s advertisement in the Shopping News. It was not an offer made to any specific person but was made to the public generally . . . [Under the applicable authorities,] it is clear that in the absence of special circumstances an ordinary newspaper advertisement is not an offer, but is an offer to negotiate—an offer to receive offers—or, as it is sometimes called, an offer to chaffer . . . [Consider] the following illustration: “A,” a clothing merchant, advertises overcoats of a certain kind for sale at $50. This is not an offer but an invitation to the public to come and purchase. Thus, if goods are advertised for sale at a certain price, it is not an offer and no contract is formed by the statement of an intending purchaser that he will take a specified quantity of the goods at that price. The construction is rather favored that such an advertisement is a mere invitation to enter into a bargain rather than an offer. So a published price list is not an offer to sell the goods listed at the published price . . .

The commonest example of offers meant to open negotiations and to call forth offers in the technical sense are advertisements, circulars and trade letters sent out by business houses. While it is possible that the offers made by such means may be in such form as to become contracts, they are often merely expressions of a willingness to negotiate . . . But generally a newspaper advertisement or circular couched in general language and proper to be sent to all persons interested in a particular trade or business, or a prospectus of a general and descriptive nature, will be construed as an invitation to make an offer . . .

We are constrained to the view that the trial court committed no prejudicial error in dismissing plaintiff’s petition.

The judgment of the trial court will be affirmed and costs adjudged against the plaintiff-appellant.

Entry may be prepared in accordance with this opinion.

GEIGER, P. J., and HORNBECK, J., concur.