HENNESSY, J., dissenting. I respectfully disagree with the majority and would affirm the judgment of the trial court. I believe that the majority, in part I of its opinion, incorrectly concluded that the offer by the defendants Ruth A. Adinolfi and Gerald S. Adinolfi[1] to purchase the land was a bona fide offer. Additionally, I believe that the dispositive issue of the appeal is whether the Adinolfis' $100,000 offer was a bona fide offer, not whether the Adinolfis were ''ready, willing and able to purchase the land'' as the majority suggests. The majority's conclusion that the offer was genuine because the Adinolfis were ''ready, willing and able'' to buy the property is unsupported by case law. This court has often referred to a party's readiness and willingness to purchase land in specific performance cases. Those cases, however, do not stand for the proposition that a party's offer is *bona fide* if a party is ready, willing and able to purchase land by that offer. As stated previously, to create case law that supports that conclusion would be to usurp the trial court's right to determine the bona fides of an offer or other issue. The fact that a party is ''ready, willing and able'' to purchase land may lend support to proving that the party is a bona fide *purchaser*. It does not, however, prove that an *offer*

made by that individual is a bona fide offer. The majority has improperly substituted the test for bona fide purchaser as the test for bona fide offer.

The majority improperly focuses its analysis on whether the Adinolfis were bona fide purchasers.[2] The trial court's determination that the Adinolfis' $100,000 offer was not bona fide is a finding of fact. Thus, as the majority states, and I agree, the proper standard of review is whether the court's findings are clearly erroneous.

Although the majority's conclusion about the bona fides of the offer does reach the result the majority seeks to reach, namely to find that the offer in this case does trigger the right of first refusal, the majority fails to see the wider ramifications of such a holding. By its approach, the majority states that any offer that is accepted is, ipso facto, a bona fide offer. That would write out of existence the preface bona fide as used with respect to offers in areas of the law too numerous to recount here.

Additionally, the majority's opinion would rewrite, sub silentio, our Supreme court's long-standing rule that the question of the bona fides of anything is a question of fact for the trier of fact. See *Levy* v. *Commission on Human Rights & Opportunities*, 236 Conn. 96, 107, 671 A.2d 349 (1996); *Hamm* v. *Taylor*, 180 Conn. 491, 496, 429 A.2d 946 (1980); *Goldman* v. *Coppola*, 149 Conn. 317, 320, 179 A.2d 817 (1962); *Cohen* v. *Lenehan*, 134 Conn. 514, 516, 58 A.2d 707 (1948); *Sullo* v. *Luysterborghs*, 129 Conn. 172, 175, 26 A.2d 784 (1942); cf. *Rice* v. *Rice*, 134 Conn. 440, 445, 58 A.2d 523 (1948), aff'd, 336 U.S. 674, 69 S. Ct. 751, 93 L. Ed. 957 (1949). It is the policy of this court that we do not create conflict with prior holdings of our Supreme Court. The majority opinion in this case would abrogate more than one-half century of Supreme Court precedent on a matter of first impression before this court.

The majority opinion states that "[t]he court did not identify the circumstantial evidence, if any, it considered" when concluding that the sale was not the result of a bona fide offer. The facts show otherwise. The court listed the other factors it considered, the most compelling factor being that the daughter of the sellers had lived on the land all of her life prior to purchasing it. Other factors that led the court to find that the sale was not the result of a bona fide offer were that "(t)he plaintiffs failed to prove that the price paid by the daughter was a bona fide offer or that they were ready and willing to pay the market price." "We do not duplicate the role of the trial court in weighing the evidence, but determine only whether the trial court's conclusion was reasonable. In the absence of clear error [we] should not overrule the thoughtful decision of the trial court, which has had an opportunity to assess the legal issues which may be raised and to weigh the credibility of

. . . the witnesses.'' (Internal quotation marks omitted) *Lapuk* v. *Simons*, 41 Conn. App. 750, 750, 677 A.2d 24, cert. denied, 239 Conn. 926, 683 A.2d 21 (1996).

I believe that the trial court reasonably could have found that the sale of property for substantially less than its fair market value to the seller's daughter and son-in-law, the natural objects of his bounty, was not the result of a bona fide offer. ''Our role as an appellate court is not to substitute our judgment for that of a trial court that has chosen one of many reasonable alternatives.'' (Internal quotation marks omitted.) *State* v. *Day*, 233 Conn. 813, 842, 661 A.2d 539 (1995). The trial court listed the factors it took into account when making its finding. As such, the finding of the court is not clearly erroneous and the judgment of the court must be affirmed.[3]

Moreover, the contract granting John Lescovich the right of first refusal was constructed in such a manner that would allow a transfer of the property without triggering the right. The contract states in relevant part: ''This agreement shall continue in force during the life of the Grantee and for twenty-one (21) years thereafter, and is binding on the heirs, successor[s] and assigns of the parties hereto.'' By including that phrase, the drafter did not restrict the grantee, now seller, from conveying the property without activating the right of first refusal. By binding the ''heirs, successor[s] and assigns of the parties,'' the drafter protected the holder of the right of first refusal while still allowing a conveyance of the land in a manner that does not activate the right. This court has held that ''where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.'' *Sachs* v. *Sachs*, 60 Conn. App. 337, 343, 759 A.2d 510 (2000). This court ''will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . .'' Id.

''It is the general rule that a contract is to be interpreted according to the intent expressed in its language and not by an intent the court may believe existed in the minds of the parties.'' (Internal quotation marks omitted.) *John M. Glover Agency* v. *RDB Building, LLC*, 60 Conn. App. 640, 644, 760 A.2d 980 (2000). In particular, this court endeavors to give effect to all the terms of a contract. The majority's conclusion that any sale would activate the right would fail to give effect to the provision of the contract that kept it in force during the life of the grantee and for twenty-one years thereafter.[4]

At the end of part I, the majority states that ''[t]he contract and petition are sufficient evidence that the [defendants Russell C. Roly, Sr., and his wife, Eleanor Augur Roly] considered the $100,000 offer from the Adinolfis bona fide because they took steps to sell, and in fact, sold the land for that price.'' I would submit that this conclusory statement is unsupported by case

law and does not prove that the court's finding was clearly erroneous. Consequently, the trial court reasonably could have found that the sale did not trigger the right of first refusal.

II

Part II of the majority opinion deals with the notice requirement of the right of first refusal. I would agree with the majority that if the right of first refusal had been triggered, and the plaintiff did not receive notice in accordance with the terms of the right, then the sale to the Adinolfis would have been improper. See *Briggs* v. *Sylvestri*, 49 Conn. App. 297, 304, 714 A.2d 56 (1998). I can not, however, adopt the reasoning in part II in that it fails to (1) explain what part of Ruth A. Adinolfi's testimony contradicts the trial court's findings or (2) articulate the reasons why it finds that the trial court's findings were in error.

Further, I agree with the majority that a trier of fact must consider *all* of the evidence before it. I note, however, that the court in this case has done just that. Additionally, "(t)his court has proclaimed repeatedly that it is not within our province to retry facts. . . . A factual ruling of a trial court will not be disturbed unless it is clearly erroneous." (Internal quotation marks omitted.) Id., 305. Thus, I believe the ruling of the trial court should be affirmed.[5]

I would affirm the judgment of the trial court.

[1] See footnote 2 of the majority opinion.

[2] The majority states that: "The case here, however, does not require a finding of whether the Adinolfis' offer was sincere or made in good faith. Clearly, the offer was genuine because the Adinolfis were ready, willing and able to purchase the land and did, in fact, purchase the land for the price they offered."

[3] See *Mucci* v. *Brockton Bocce Club, Inc.*, 19 Mass. App. 155, 158, 472 N.E.2d 966, review denied, 394 Mass. 1102 (1985), wherein the Massachusetts Appeals Court held that the question of whether an act is bona fide for purposes of a right of first refusal to purchase property is one of fact, and the party alleging its absence ordinarily has the burden of proof.

[4] I note that although the sale did not activate the right, the right of first refusal remains in full force and effect, and continues to bind the Adinolfis for the remainder of the twenty-one year period recited in the agreement. Specifically, if the Adinolfis offer the property for sale and receive a bona fide offer to purchase the property within the remainder of the twenty-one year period, they would be bound to honor the plaintiffs' right of first refusal.

[5] I also agree with the majority that the court properly refused to admit the third party complaint into evidence.