

**October 2009 Baby Bar  
Question 3 – Contracts**

**Under what theory or theories may Luxe be successful in a breach of contract action against Betsy? Discuss.**

**Luxe v. Betsy**

**U.C.C.**

A contract involving a transaction in goods is governed by the U.C.C.

Since the transaction involved the sale of a luxury boat, the transaction would qualify as a transaction of goods. Therefore, the transaction would be governed by the U.C.C.

**Merchants**

A merchant is a person who deals in the kind of goods involved in the transaction or otherwise holds himself out as having knowledge and skill peculiar to the practices or goods involved in the transaction.

Luxe is a distributor of luxury boats. Thus, they deal in the kind of goods involved in the transaction.

Betsy is a consumer looking for a luxury boat. Thus, she does not hold herself out as having special knowledge and skill peculiar to the goods involved.

Thus, only Luxe is a merchant under the U.C.C.

**Preliminary Negotiations**

Preliminary negotiations are communications between the parties that do not equate to the necessary present contractual intent and are essentially an inquiry or an invitation to deal.

Betsy contacted Sam, a salesman who worked for Luxe in regard to purchasing a luxury boat. Sam showed Betsy some boats in the showroom and Betsy became interested. Sam gave Betsy a one-page purchase order form with the words “Wind Catcher” written in the blank space marked “Boat Model” and “\$200,000” was written in the blank space marked “Price.” Sam’s conduct of filling in the model and price on the purchase order form and his actions of giving Betsy the purchase order form shows his intent to negotiate an invitation to deal with Betsy.

Thus a preliminary negotiation existed.

**Offer**

An offer is an outward manifestation of present contractual intent, with definite and certain terms that is communicated to the offeree.

Betsy took the purchase order form and returned home. She checked out prices on the internet and found that the Wind Catcher with a quoted price of \$200,000 was a good deal. She signed the purchase order form and faxed it back to Luxe. Her act of signing the order form and her conduct of faxing it back demonstrates her outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: Wind Catcher, quantity; delivery date not stated, but the court would look to a reasonable period of time for the time period; Betsy and Luxe are the parties; \$200,000 is the price; and the Wind Catcher is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

The facts state after receiving the purchase order form Sam, the salesman for Luxe prepared the documents that Betsy would need to register the boat. Hence, the facts evidence a communication to the offeree, Luxe.

Therefore, there was a valid offer.

### **Acceptance**

An acceptance is an unequivocal assent to the terms of the offer.

Once Betsy signed and sent over the purchase order form, she received a photocopy of the order form with the words "Accepted" stamped on it. Hence, Sam's act of mailing back a copy of the order form with the words accepted shows an unequivocal assent to the terms of the original offer.

Therefore, a valid acceptance occurred.

### **Mailbox Rule**

Pursuant to the mailbox rule, an acceptance is valid upon dispatch.

Luxe will argue that when they deposited the letter of acceptance in the mail, the acceptance became effective. Luxe's letter of acceptance was valid when Luxe deposited the acceptance letter in the mail. Pursuant to the mailbox rule the acceptance was effective upon dispatch.

Thus, Luxe's mailed "acceptance" was a valid acceptance and effective the day it was mailed.

### **Revocation**

A revocation is an express statement by the offeror to revoke the offer prior to timely acceptance.

Betsy made an offer to Luxe to purchase the Wind Catcher for \$200,000. Later Betsy learned that the model was older and did not have the navigation and safety features that were available on the newer model. A few days after sending in the offer Betsy immediately faxed a letter to Luxe stating that she did not want to make the purchase. Thus, an express statement by the offeror to revoke the offer.

However, on the same day in the afternoon Betsy received the acceptance from Luxe. As discussed *supra*, the acceptance was effective upon dispatch. Therefore, the offer had been accepted and the revocation was not received prior to timely acceptance.

Further, Luxe will argue that Betsy signed the purchase order form. On the form signed by Betsy it stated "This offer by Purchaser, i.e. Betsy, is irrevocable for thirty (30) days." Since Betsy is the offeror and signed the offer with the express term of no revocation within thirty days, the offer cannot be revoked for 30 days. Betsy may contend that the purchase order form had the terms already embodied within the document that was provided by Luxe to her.

Luxe will rebut based on the fact that the express language was in red italics above the purchaser signature line Betsy would have seen the language "offer irrevocable for thirty days." Based on her

signing the form she accepted the existing terms – including the language of irrevocability – and made them part of her offer.

Lastly, the offer by Betsy expressly stated that “All sales are final when approved by Luxe.” Further, Betsy signed the offer stating once the offer is accepted by Luxe, the sale became final and can’t be terminated.

Therefore, there is not a valid revocation.

### **Consideration**

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

Betsy bargained for the Wind Catcher for \$200,000 in exchange for Luxe’s return promise to sale and deliver to her title to the Wind Catcher. Betsy bargained to pay \$200,000 for the Wind Catcher from Luxe in exchange for Luxe’s return promise to deliver title to the Wind Catcher.

Thus, Luxe obligated itself to deliver title to the Wind Catcher to Betsy in which it was not previously obligated to do, a legal detriment, and Betsy received the boat, a legal benefit. Conversely, Betsy incurred a legal detriment of making payment to Luxe, which receipt of payment by Luxe is a legal benefit.

Therefore, there is valid consideration.

### **Statute of Frauds – Contract for the Sale of Goods for \$500 or More**

Pursuant to the Statute of Frauds, a contract for the sale of goods for \$500 or more is unenforceable unless in writing.

The contract involved the sale of a boat for \$200,000. Since the agreement was made with partial writings, i.e., made on Luxe’s purchase order form and with Luxe’s photocopy of the purchase order form, and deals with the sale of goods for over \$500, the contract is unenforceable under the Statute of Frauds.

### **Exception – Sufficient Memorandum**

A memorandum with essential terms signed by the party to be charged will take the contract out of the purview of the Statute of Frauds.

Luxe’s purchase order form contained the description of the quantity, identity of the parties, price and subject matter. As stated supra, time will be a reasonable time. Thus, it contained the essential terms.

Further, the form was signed by Betsy, which may satisfy the signing by the party to be charged.

Thus, a valid exception.

### **Exception - Estoppel to Plead Statute of Frauds**

Where a promisor represents by conduct that they will perform, in spite of Statute of Frauds, coupled with promisee's detrimental reliance, the party will be estopped to assert the Statute of Frauds.

Soon after receiving Betsy's order form, Sam, the salesman started preparing the documents that Betsy would need in order to register the boat. Further, Sam went down to the harbor where Betsy planned to keep the boat to make sure that the docking facilities were adequate for the Wind Catcher. As evidenced by Sam's conduct, Luxe relied on Betsy's offer to its detriment.

Thus, the Statute of Frauds is no defense.

### **Misrepresentation**

Intentional misrepresentation is the misrepresentation of a material fact made with knowledge to induce reliance by the plaintiff and causing damage.

Betsy will argue that Sam, the salesman for Luxe represented to her that the Wind Catcher was "state of the art" when, in fact, the Wind Catcher did not have the navigation and safety features that were available on the newer models. Thus, a misrepresentation of a material fact.

Sam will contend that he explained the features of the Wind Catcher that Betsy was looking at in the showroom. He further told her that it was state of the art. The words "state of the art" is merely an expression and not a representation of a material fact.

Betsy will further contend that Sam came by her hotel room and told her that he had just learned that Luxe was about to raise its prices, but that she could order the Wind Catcher at the current price if she quickly returned the purchase order form. Betsy later learned that despite what Sam said Luxe had no plans to raise its prices. Thus, a material fact. However, the fact that the price may or may not go up is not a material fact in regard to the product, i.e. the Wind Catcher, to which Luxe and Betsy were negotiating.

There are no facts to show that Sam knew when he made the representation to Betsy of the newer models with the navigational system and safety features. Thus, the misrepresentation was made without knowledge.

Betsy will further argue that Sam represented to her that the Wind Catcher was state of the art when he was negotiating with Betsy. This representation induced Betsy to justifiably rely on Sam's statement and caused her to enter into the contract.

However, Betsy did check out prices on the internet for comparable boats. She decided that the price quoted was a good deal. Based on her own comparisons she could not rely on Sam's representations to her detriment.

Therefore, misrepresentation is not a valid defense.

### **Breach**

A breach is an unjustified failure to perform which goes to the essence of the bargain.

When Betsy faxed a letter to Luxe that stated that she did not want to make the purchase, this establishes an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Betsy.

### **Damages**

The breach of contract entitles the non-breaching party to the expectancy under the terms of the contract

Luxe can sue for the contract price if \$200,000 less offsets for the cost they inquire to purchase the boat.