

Empire College School of Law
Professor Boyd
Contracts – Final
Spring 2010
Monday, April 19, 2010

Essay Question No. 1 – 1 Hour

On March 1, 2009, Best, a wholesaler of building materials in Santa Rosa, California, sent a written purchase order to Strong Steel company (Strong), a company located in Cleveland, Ohio, ordering 200 roof trusses at "the standard price". Best had heard that one of its best customers, Harris Home Builders ("Harris") had been awarded a contract for the construction of a new subdivision of single family homes and wanted to be prepared for orders it anticipated from Harris. On March 4, Strong sent Best its acknowledgement form, acknowledging the sale of 200 trusses at \$2,000 each, including delivery, to Best. On the face of Strong's form the following statement appeared:

Seller's acceptance is expressly conditional on Buyer's assent to the additional or different terms and conditions set forth on the reverse side. If these terms and conditions are not acceptable, Buyer should notify Seller at once.

One of the terms on the reverse side of Strong's form was a provision requiring arbitration of all disputes in Cleveland, Ohio. Best neither expressed assent to nor objected to the terms stated above until after litigation was commenced months later.

Best paid Strong for the trusses. On March 8, Best entered into a written contract with Harris to sell to Harris 50 of the trusses for \$2,300 each. Strong had not yet delivered the trusses and Best telephoned Strong to deliver 150 of the trusses to their yard and 50 to Harris which was located next door to Best which Strong did.

After Harris received the trusses, it advised Best that the trusses were defective as the nailing pattern required by the Uniform Building Code for all roof trusses was not followed and they could therefore not be used in residential or commercial construction. Harris refused to pay Best for the trusses and a few days later bought 50 correctly made trusses at a cost of \$2,400 each from Good, another wholesaler of building products and Best's major competition.

Discuss the rights and liabilities of all parties including recoverable damages.

Include a discussion of whether or not Harris can sue Strong on a claim that it was a third party beneficiary of the Best-Strong contract.

To what claims, if any, would the arbitration clause apply and where would the arbitration be held?

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Essay Question No. 2 – 1 Hour

Ethel and Fred Borrower ("Borrower") had a mortgage on their residence with Planet Savings and Loan ("Planet") and had become three months behind in their payments. They received a letter from Planet advising them that Planet was beginning foreclosure proceedings against them and intended to sell their home at a foreclosure sale. Borrower telephoned Planet and spoke with Mr. Greedy ("Greedy"), a loan modification officer employed by Planet. They told Greedy that they did own a small rental property which they were willing to sell to get sufficient cash to bring the loan with Planet current. Greedy then told them that if they were able to make a \$12,000 payment to pay for past due payments and cover the expenses incurred by Planet in beginning the foreclosure proceedings, Planet would reinstate the loan. Borrower told Greedy that it would probably take 60 days to get the cash and Greedy told them, "Not to worry. Get the cash as soon as you can."

Borrower put their rental property on the market the next day and to their surprise and excitement, received a full price offer with acceptable terms within a week. They accepted the offer. Escrow was to close in 45 days. They then sent an e-mail to Greedy stating that they had opened an escrow on their rental property well within the 60 days they had told Greedy it would take to get the cash to make the payment.

30 days later Borrower telephoned Greedy wanting to discuss the status of the loan with Planet but did not receive a return call.

The escrow on the sale of the rental house closed on schedule. However, on the same day that this escrow closed, Borrower received in the mail a notice from Planet that their residence on which Planet had the mortgage had been sold the day before at a foreclosure sale because the mortgage was in default. Borrower did not send the \$12,000 payment to Planet within the 60 day period discussed above.

Questions to be answered:

1. Would Borrower succeed in a suit against Planet for Breach of Contract?
2. Are other types of action available for Borrower to pursue?
3. Are there any defenses Planet can raise against any suit brought against it by Borrower?

For purposes of answering these questions, ignore any particular notice or other requirements necessary for a foreclosure sale. Do not add any additional facts to those stated in the scenario above.