

### QUESTION ONE

Max, an auto repair shop owner, and Carl agreed that Max's shop would make all necessary repairs on Carl's 2010 car for the year 2012 and Carl would pay \$100.00 per month therefore.

In January 2012, Max's shop made several repairs to Carl's car. Carl was dissatisfied with some of Max's work and, on February 2, when he received Max's bill for \$100.00 for the month of January, Carl sent Max a \$50.00 check on the back of which Carl had written: "January payment in full." When Max received the check, he crossed out those words and cashed it.

On February 10, Max sold his "entire auto repair business including all tools, accounts receivable and service and repair contracts..." to Al. Al continued to employ all of Max's mechanics. Max's customers were not notified of the sale.

On February 15, Carl's car was repaired in the shop Al had purchased from Max, and on March 1, Al sent Carl the following bill: "January balance---\$50.00, February monthly payment, \$100.00. Total--\$150.00. Upon receipt of the bill on March 2, Carl first learned that Al had purchased the repair shop. Carl refused to pay Al and advised him of the fact that, on February 5, 2012, Carl had paid Tire Co. \$100.00 and in return had received a transfer of Tire Co.'s \$200 claim against Max for \$200.00 worth of tire retreads which it had sold and delivered to Max in December 2011, and for which it had never been paid. Neither Max nor Al knew of the dealings between Carl and Tire Co. prior to that time. However, according to Max, half the retreads were defective, which he returned to Tire Co back in January, expecting a reduction in the bill by half.

Beginning in March, Carl took his car elsewhere whenever it needed repairs. On April 1, Al sent Carl a bill for \$250.00, which included \$150.00 "past due" and \$100.00 for the March 2012 monthly payment. Carl refused to pay, and said: "I'll never come into your shop again."

Discuss the rights and liabilities of the parties.

## QUESTION TWO

Owner (O hereafter) and Contractor (C hereafter) entered into a written contract (referred to as construction contract hereafter) under which C would construct a large residence for O in accordance with O's plans. The written construction contract identified the parties, the general subject matter, and then, as relevant to this question, various provisions of the construction contract stated as follows:

Clause Five: C will clear and grade O's lot, and build a residence on O's lot exactly according to the attached plans and design, which are incorporated into this construction contract. (There are attached to the construction contract design and plans and specifications for a large stone 6-bedroom home with an attached 4-car garage.

Clause Six: The price for the work is one million (\$1,000,000) dollars.

Clause Seven: All work under and in connection with this construction Contract will be performed in a workmanlike manner.

Clause Eight: Construction of the house on O's lot will begin May 1, 1988 and will conclude no later than August 30, 1988. If each month's construction work under this construction contract (which work will consist of approximately  $\frac{1}{4}$  of the total work necessary on the residence) is completed in a workmanlike manner, at the end of each calendar month during which construction is underway, O will pay C two hundred and fifty thousand (\$250,000) dollars for the work completed in that month.

Clause Nine: This is the final agreement of the parties, and no oral modifications are permitted.

When C cleared the lot on which O's house was to be built, C cleared the trees only on the front two thirds of the lot, and left the trees standing on the back third. O, who honestly believed that the contract clause which provided that C would "clear" the lot meant the C would entirely clear the lot of trees, protested strongly that C was required to remove all trees on the lot by the contract. C refused because C's understanding, based on some other jobs that he had performed, was that he only had to clear what was necessary to build the residence structure.

Before C could begin the actual construction of the residence, the municipality in which the lot was located changed its zoning code to require numerous changes in the plumbing, electrical and structural systems of the residence. These changes substantially increased C's costs of construction from \$900,000 to \$1,050,000, thus resulting in a \$50,000 loss for C on the job instead of the \$100,000 profit that had been built into the construction contract. C therefore immediately told O that he, C, was stopping construction on O's residence under the construction contract unless O agreed to a \$100,000 increase in the contract price.

O had only the day before signed a sales agreement with a buyer for his present residence. O is aware that the building season for new residences is only about 6 months long, and, if C does not finish the job, the time to find a new contractor and get him started will almost certainly result in O's residence not being completed during this 1988 building season, and it will not be completed until at the earliest late next spring of 1989. O complained bitterly to C, but when C refused to relent, O verbally agreed to pay C a total contract price of \$1,100,000. C then continued construction.

Construction of O's residence proceeded without incident, and O made all required payments until the beginning of July, 1988. At that time, O observed that C had not provided downspouts and gutters on the house and that C had misplaced the living room wall by 8 feet. The result was that the living room was now 38' long and 18' wide instead of 26' wide as the plans called for. In addition, the misplaced wall now caused the dining room to be 8' wider than in the plans.

O called these defects to C's attention and demanded that C repair them. C refused, and since it was the end of July, demanded his third progress payment. O refused to make the payment until C moved the wall and put gutters and downspouts onto the house. C then stopped all work on the house, even though O urged him to continue and assured him that he would pay the instant the omissions were repaired. C refused to do any further work on the job, and brought a breach of contract action against O for \$550,000 which was the balance of all payments remaining under the revised contract that C alleged existed between him and O. O counterclaimed for breach of contract against C. Assume that both parties raise all available appropriate defenses.

What are the rights and liabilities of the parties?