Empire College School of Law Student ID#_____
Professor Illsley
Contracts – Final Exam
Monday, August 13, 2012

QUESTION NO. 1 – One Hour

On June 1, Contractor called Dozer to purchase an additional bulldozer which Contractor could use on various construction projects. Contractor stated that he wished to purchase a model B-7 bulldozer at the standard list price as long as payments could be spread out over a year.

The next day, Dozer sent its standard sales form to Contractor, a form that had been used between the parties previously. The form was signed by Dozer. The front of the form indicated that the price would be $30,000 paid in 12 equal monthly installments of $2,500 and that if Contractor breached any of its obligations under the agreement, Dozer could repossess the equipment and resell it for its own benefit, but also retain all installments previously paid as liquidated damages. On the reverse side of the form one of the 32 paragraphs stated, in capital letters, that the equipment was sold "as is" and that the Dozer expressly disclaimed all warranties, express or implied.

Contractor reviewed the front of the form, but not the back, and called Dozer to arrange for picking up the bulldozer. Dozer then told Contractor that he had forgotten to spell out in the agreement a clause that required Contractor to keep the bulldozer in Sonoma County until it had been fully paid for. Contractor assured Dozer that the form looked fine and the additional provision would be "no problem". However, Contractor did not sign the form, assuming that a new one would be sent to him for signature.

About six months after picking up the bulldozer, Contractor was awarded a job for a project in San Rafael. He decided to use the bulldozer for that project (having forgotten about his previous conversation with Dozer). He hadn't used the bulldozer until that point, and almost immediately began experiencing engine difficulties.

As a result of these engine problems, Contractor refused to pay the next installment due on the contract. Shortly thereafter, Contractor received a letter from Bank which advised Contractor that Dozer had assigned the contract to Bank. Bank advised Contractor that Bank intended to repossess the bulldozer and keep all funds previously paid. Contractor responded by saying that either Dozer or Bank should fix the engine before he would pay. He stated that he was unaware of the disclaimer of warranties and had never agreed to it and he never signed any contract form. He argued that even if the disclaimer clause was part of the contract, it was an honest mistake on his part to have accepted the equipment with that clause in place. He also stressed that the limitation on location of the equipment was not part of the contract. Finally, he argued that it would be totally unfair for Dozer or the Bank to keep his money AND take back the bulldozer.

Please discuss the rights and remedies, if any, of the parties. Make sure to address the various contentions raised by Contractor.

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QUESTION NO. 2 – One Hour

Dealer is in the business of selling office equipment. Copy Cat is a company which provides duplication, binding, and photocopying services to the general public.

On March 1, the parties entered into a written agreement whereby Copy Cat was to purchase a Xerox IA photocopier from Dealer. The agreement provided that Dealer would perform all routine maintenance on the photocopier for two years, with compensation for the maintenance to be calculated at a flat monthly fee, regardless of the number of copies made. The agreement also stated "purchaser shall absolutely not assign this contract without the express written consent of seller." On March 12 the copier was delivered and Copy Cat paid the agreed price.

On April 1, unbeknownst to Dealer, Copy Cat sold its entire business to Self-Service Copy, including the photocopier and maintenance contract in question. Unlike Copy Cat, Self-Service Copy primarily allowed its customers to use the photocopiers on a self-service basis. As part of the contract to purchase Copy Cat's business, Self-Service agreed to assume certain past due obligations of Copy Cat, including Copy Cat's obligation to pay the $10,000 attorney fee bill it had incurred with the law firm of John Jay over the past year.

Dealer's business was booming. Dealer decided that it had more service contracts than it could handle, so, on April 10, Dealer assigned the Copy Cat contract to Maintenance Co.

On May 1, when Maintenance Co went to make its routine service call, it discovered that Copy Cat had sold the copier to Self-Service Copy. Maintenance Co immediately notified Self-Service Copy that this was a breach of contract and Maintenance Co was suspending its service calls until it could determine its legal rights.

That same day, Self-Service Copy contacted the John Jay firm to determine its rights against Maintenance Co for failing to perform. John Jay promptly reminded Self-Service Copy of Self-Service Copy's failure to pay the attorney fee bill that had been incurred by Copy Cat. In order to address both issues, John Jay faxed Maintenance Co the following letter:

> "Gentlemen, I understand that you are refusing to provide service on the Xerox 1A photocopier which was purchased from Dealer and transferred by Copy Cat to Self-Service Copy under a business sale agreement. Pursuant to that agreement, Self-Service Copy is required to pay this firm's attorney's fees, and therefore your refusal to perform your contractual obligations has a direct impact on this firm. We hereby demand that you give us assurance in writing, within the next 48 hours, that you will immediately resume your service obligations."

By May 20, Maintenance Co had still not responded. John Jay contacted Self-Service Copy once again to determine the status of payments and was told that Self-Service Copy was withholding payment from John Jay because they had recently discovered that John Jay had given negligent tax advice to Copy Cat.

Please discuss the rights and remedies of Self-Service Company, Maintenance Co and John Jay.