**Alternate Case Problems**

*Chapter 11*

**Sales and Lease Contracts**

**11-1. Goods versus Services.** Fred and Zuma Palermo contacted Colorado Carpet Installation, Inc., for a price quotation on providing and installing new carpeting and til­ing in their home. In response, Colorado Carpet submitted a written proposal to pro­vide and install the carpet at a certain price per square foot of material, *including* labor. The total was in excess of $500. The proposal was never accepted in writing by the Palermos, and the parties disagreed over how much of the proposal had been agreed to orally. After the installation of the carpet and tiling had begun, Mrs. Palermo became dissatisfied and sought the services of another contractor. Colorado Carpet then sued the Palermos for breach of the oral contract. The trial court held that the contract was one for services and was thus enforceable (that is, it did not fall under the Statute of Frauds [UCC 2–201], which requires contracts for the sale of *goods* for the price of $500 or more to be in writing to be enforceable). Discuss fully whether the contract between the Palermos and Colorado Carpet was primarily for the sale of goods or the sale of serv­ices. [*Colorado Carpet Installation, Inc. v. Palermo,* 668 P.2d 1384 (Colo. 1983)]

**11-2. Statute of Frauds.** SNK, Inc., makes video arcade games and sells them to distributors, including Entertainment Sales, Inc. (ESI). Most sales between SNK and ESI were phone orders. Over one four-month period, ESI phoned in several orders for “Samurai Showdown” games. SNK did not fill the orders. ESI filed a suit against SNK and others, alleging, among other things, breach of contract. There was no written contract covering the orders. ESI claimed that it had faxed purchase orders for the games to SNK but did not offer proof that the faxes had been sent or received. SNK filed a motion for summary judgment. In whose favor will the court rule, and why? [*Entertainment Sales Co. v. SNK, Inc.,* 232 Ga.App. 669, 502 S.E.2d 263 (1998)]

**11-3. Goods and Services Combined.** Dennis Dahlmann and Dahlmann Apartments, Ltd., entered into contracts with Sulchus Hospitality Technologies Corp. and Hospitality Management Systems, Inc. (HMS), to buy property management sys­tems. The systems included computer hardware and software, as well as installation, training, and support services, for the Bell Tower Hotel and the Campus Inn in Ann Arbor, Michigan. The software controlled the central reservations systems at both ho­tels. When Dahlmann learned that the software was not Y2K compliant—that it could not be used to post reservations beyond December 31, 1999—he filed a suit against Sulchus and HMS, alleging in part breach of contract. The defendants filed a motion for summary judgment. One of the issues was whether the contracts were subject to Article 2 of the Uniform Commercial Code. Are they? Why or why not? Explain fully. [*Dahlmann v. Sulchus Hospitality Technologies Corp.,* 63 F.Supp.2d 772 (E.D.Mich. 1999)]

**11-4. Open Terms.** In 1988, International Business Machines Corp. (IBM) and American Shizuki Corp. (ASC) signed an agreement for “future purchase by IBM” of plastic film capacitors made by ASC to be used in IBM computers. The agreement stated that IBM was not obligated to buy from ASC and that future purchase orders “shall be [ASC]’s only authorization to manufacture Items.” In February 1989, IBM wrote to ASC about “the possibility of IBM purchasing 15,000,000 Plastic Capacitors per two consecutive twelve (12) month periods. \*  \*  \* This quantity is a forecast only, and represents no commitment by IBM to purchase these quantities during or after this time period.” ASC said that it wanted greater assurances. In a second letter, IBM reexpressed its “intent to order” from ASC 30 million capacitors over a minimum period of two years, contingent on the condition “[t]hat IBM’s requirements for these capacitors continue.” ASC spent about $2.6 million on equipment to make the capacitors. By 1997, the need for plastic capacitors had dissipated with the advent of new technology, and IBM told ASC that it would no longer buy them. ASC filed a suit in a federal district court against IBM, seeking $8.5 million in damages. On what basis might the court rule in favor of IBM? Explain fully. [*American Shizuki Corp. v. International Business Machines Corp.,* 251 F.3d 1206 (8th Cir. 2001)]

**11–5. Goods Associated with Real Estate.** Heatway Radiant Floors and Snowmelting Corp. sells parts for underground radiant heating systems. These systems circulate warm fluid under indoor flooring as an alternative to conventional heating systems or under driveways and sidewalks to melt snow and ice. Goodyear Tire and Rubber Co. made and sold a hose, Entran II, that Heatway used in its radiant systems. Between 1989 and 1993, 25 million feet of Entran II was made by Goodyear and installed by Heatway. In 1992, homeowners began complaining about hardening of the hose and leaks in the systems. Linda Loughridge and other homeowners filed a suit in a federal district court against Goodyear and Heatway, alleging a variety of contract breaches under Colorado’s version of the Uniform Commercial Code (UCC). Goodyear filed a motion for summary judgment, arguing in part that because Entran II was used in the construction of underground systems that were covered by flooring or cement, the hose was not a “good” and thus the UCC did not apply. Should the court agree with this interpretation of the scope of Article 2? Explain. [*Loughridge v. Goodyear Tire and Rubber Co.,* 192 F.Supp.2d 1175 (D.Colo. 2002)]

**11–6. Statute of Frauds.** Quality Pork International is a Nebraska firm that makes and sells custom pork products. Rupari Food Services, Inc., buys and sells food products from and to retail operations and food brokers. In November 1999, Midwest Brokerage arranged an oral contract between Quality and Rupari, under which Quality would ship three orders to Star Food Processing, Inc., and Rupari would pay for the products. Quality shipped the goods to Star and sent invoices to Rupari. In turn, Rupari billed Star for all three orders but paid Quality only for the first two (for $43,736.84 and $47,467.80, respectively), not for the third. Quality filed a suit in a Nebraska state court against Rupari, alleging breach of contract, to recover $44,051.98, the cost of the third order. Rupari argued that there was nothing in writing, as required by Uniform Commercial Code (UCC) Section 2–201, and thus there was no enforceable contract. What are the exceptions to the UCC’s writing requirement? Do any of those exceptions apply here? Explain. [*Quality Pork International v. Rupari Food Services, Inc.,* 267 Neb. 474, 675 N.W.2d 642 (2004)]

**11–7.** **Additional Terms.** B.S. International, Ltd. (BSI), makes costume jewelry. JMAM, LLC, is a wholesaler of costume jewelry. JMAM sent BSI a letter with the terms for orders, including the necessary procedure for obtaining credit for items that customers rejected. The letter stated, “By signing below, you agree to the terms.” Steven Baracsi, BSI’s owner, signed the letter and returned it. For six years, BSI made jewelry for JMAM, which resold it. Items rejected by customers were sent back to JMAM, but were never returned to BSI. BSI filed a suit against JMAM, claiming $41,294.21 for the unreturned items. BSI showed the court a copy of JMAM’s terms. Across the bottom had been typed a “PS” requiring the return of rejected merchandise. Was this “PS” part of the contract? Discuss. [*B.S. International, Ltd. v. JMAM, LLC,* 13 A.3d 1057 (R.I. 2011)]

**11–8. Delivery without Movement of the Goods.** Aleris International, Inc., signed a contract to buy a John Deere loader from Holt Equipment Co. The agreement provided that “despite physical delivery of the equipment, title shall remain in the seller until” Aleris paid the full price. The next month, Aleris filed for bankruptcy. Holt asserted that it was the owner of the loader and filed a claim with the court to repossess it. Who is entitled to the loader, and why? [*In re Aleris International, Ltd.,* 456 Bankr. 35 (D.Del. 2011)]

**11–9. Partial Performance and the Statute of Frauds.** After a series of e-mails, Jorge Bonilla, the sole proprietor of a printing company in Uruguay, agreed to buy a used printer from Crystal Graphics Equipment, Inc., in New York. Crystal Graphics, through its agent, told Bonilla that the printing press was fully operational, contained all of its parts, and was in excellent condition except for some damage to one of the printing towers. Bonilla paid $95,000. Crystal Graphics sent him a signed, stamped invoice reflecting this payment. The invoice was dated six days after Bonilla’s conversation with the agent. When the printing press arrived, Bonilla discovered that it was missing parts and was damaged. Crystal Graphics sent replacement parts, but they did not work. Ultimately, Crystal Graphics was never able to make the printer operational. Bonilla sued, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, breach of express warranty, and breach of implied warranty. Crystal Graphics claimed that the contract was not enforceable because it did not satisfy the Statute of Frauds. Can Crystal Graphics prevail on this basis? Why or why not? [*Bonilla v. Crystal Graphics Equipment, Inc.,* 2012 WL 360145 (S.D.Fla. 2012)]

**11-10. A Question of Ethics**

John Schwanbeck entered into negotiations with Federal-Mogul Corp. to purchase Federal-Mogul’s Vellumoid Division. The two parties drew up a letter of intent stating that “[n]o further obligation will arise until a definitive agreement is reduced to writ­ing” and that it was the parties’ intention “to proceed in good faith in the negotiation of such binding definitive agreement.” At another place in the letter of intent were the words, “Of course, this letter is not intended to create, nor do you or we presently have any binding legal obligation whatever in any way relating to such sale and purchase.” Federal-Mogul eventually sold the Vellumoid Division to another party. Schwanbeck sued Federal-Mogul, alleging, among other things, that Federal-Mogul had breached an agreement to negotiate in good faith the proposed contract with Schwanbeck. Given these facts, con­sider the following questions. [*Schwanbeck v. Federal-Mogul Corp.,* 412 Mass. 703, 592 N.E.2d 1289 (1992)]

**1.** Did the letter of intent create a legally binding obligation, or was the letter merely an “agreement to agree” in the future?

**2.** The UCC requires that all parties to commercial contracts exercise good faith and commercial reasonableness in their dealings with one another. In your opin­ion, did Federal-Mogul breach this duty when it sold its Vellumoid Division to a third party?

**3.** Regardless of its legal duties under the UCC, did Federal-Mogul have an ethi­cal duty to proceed in negotiating a contract with Schwanbeck? Discuss.