

Fact Pattern

Roofer is a large roofing subcontractor in the State of Nevada. Roofer as part of its business sells roofing tiles. For an extra fee, Roofer will also install the roofing tiles.

Homeowner decides that she wants to buy a new roof for her home. She calls Roofer on the telephone from her Friend's house and requests a bid for the re-roofing of her home. Roofer tells Homeowner that it can re-roof the entire home for \$30.00 per square (10' x 10'). Of the \$30.00, \$20.00 represents labor and \$10.00 represents the price of roof tiles.

Homeowner tells Roofer that she accepts Roofer's offer and tells Roofer to be at her house starting Tuesday of next week. Homeowner then abruptly hangs up the telephone without telling Roofer her address. Roofer felt very fortunate because it had "caller-id" installed on its telephone and identified the caller as Friend.

The following Tuesday, Roofer shows up at Friend's house and prepares to re-roof the entire roof. Unbeknownst to Roofer, Friend is in her house as Roofer begins its work. However, Friend, who recently had her wisdom teeth removed is sleeping in her bedroom. Friend is awakened by the loud banging. When she looks out the window, she sees Roofer's truck outside and ladders, but decides to go back to sleep.

At approximately 4:00 p.m., Friend's husband comes home and sees Roofer working on the roof. Upon seeing Roofer, Friend's husband immediately yells at Roofer to get off of his roof. At this point, Roofer was 90% complete, i.e., Roofer had installed 27 squares and only had 3 more squares to remove.

Questions

1. Discuss Roofer's rights against Homeowner.
2. Discuss Roofer's rights against Friend.

Answers

1. Roofer v. Homeowner

A contract is a legally enforceable agreement. The first question you must ask in the analysis of any contracts questions is the applicable law. The answer will be either the Uniform Commercial Code (UCC) Article 2 or the common law (C/L). The UCC applies to contracts involving the sale of goods. § 2-102. The Common Law applies to all other contracts, for example service contracts.

Here, the facts indicate that Roofer is in the business of selling roof tiles (a product), but will also install the tiles (a service). When faced with mixed contracts (goods and services), Courts use the Bonebrake or predominant factor test, i.e., did the contract involve the sale of goods more or service. Here, the services (installation) appears to be the predominate factor because the tiles cost \$10.00 while the installation cost \$20.00.

Contract formation usually requires a bargain between the parties in which there is a manifestation of mutual assent to the exchange and consideration given (i.e., meeting of the minds). An offer is the manifestation of willingness to enter into a bargain, made in such a way as to justify the offeree's understanding that assent to the bargain is invited and will form a contract. Acceptance of an offer is the offeree's manifestation of assent to the offeror's terms in a manner invited or required by the offer. Here, Roofer offered to roof Homeowner's building and the Homeowner accepted the offer.

Homeowner is likely to raise the defense of mistake because Roofer roofed the wrong house. The issue will be whether Homeowner had reason to believe that Roofer would roof Friend's house. It does not seem reasonable that Roofer would use "caller-id" to identify which house to roof. Accordingly, Roofer will likely not be able to recover against Homeowner for the value of services he provided.

2. Roofer v. Friend

Roofer is likely to recover under a theory of quasi-contract. A quasi-contract is not a contract, but is a term a court applies when imposing an obligation on a person when justice so requires, even though there is no agreement between the parties.

In the case at hand, Friend was not part of the original contract between Roofer and Homeowner. Although Friend was not part of the original contract, she received a benefit from Roofer. The fact pattern indicates that Friend was awoken by the loud sounds and even noticed Roofer's truck and ladders. So, the issue will be whether it was reasonable for Friend to not investigate.