

14. Isabel owns a house, which she advertises for sale for \$300,000. On April 1, Jon-Pierre verbally offers to pay Isabel \$280,000 for the house. On April 5, Isabel has delivered via Fedex to Jon-Pierre at his office a form that includes additional terms but does not state a price. At 9 A.M. on April 6, Jon-Pierre signs the form and gives it to Karla, his administrative assistant, with instructions to mail it. At 10 A.M., Isabel calls to tell Jon-Pierre that the deal is off. The next day, Karla mails the signed form to Isabel. When Isabel refuses to sell the house to Jon-Pierre, he files a suit against her, alleging breach of contract. Isabel claims that there was no contract. What are arguments supporting each party's position? What is the court likely to rule? Explain.

ANSWER:

Issue: Was there a valid offer made by either party and if so was that offer accepted prior to the offer being revoked?

Rule(s): A valid contract requires, among other things, that there have been a valid offer made and the valid offer has then been accepted using an appropriate method to communicate the acceptance. A valid offer requires: 1) a serious present intent to enter into an agreement; 2) that the terms of the offer are definite enough that a court could determine whether a breach has occurred, and 3) that the offer is then communicated to the offeree. An offeror is entitled to revoke his offer any time prior to the offer being accepted. In order to accept an offer, the offeree must satisfy the "mirror image" rule that each and every term of the offer must be accepted. If terms are changed or added as part of an acceptance, the attempted acceptance will be treated as a rejection of the original offer and a counter-offer which could then be accepted by the party to whom the counter-offer was made. An acceptance must be communicated in the manner indicated by the offer if there is an express authorized means. If there is no express authorized means, then the manner in which the offer was communicated is considered an implied authorized means. Under the mailbox rule, if there is an express authorized means of communicating the acceptance, then the acceptance is effective when sent. If there is a substitute means of communication of the acceptance used, then the acceptance is not effective until it is received.

Analysis: Isabel's advertisement of the house for sale is not generally treated as an offer, and it is not directed at a particular party, nor does it evidence a present intent to enter into an agreement. Generally, advertisement is treated as an invitation to negotiate or an invitation to make an offer.

Jon-Pierre does make an offer, but Isabelle's response with a form that includes additional terms and no price would be treated as a rejection and perhaps a counter-offer. If it is a counter-offer, a court would likely find that no agreement could be formed because the counter-offer lacked a price, which made it indefinite as to what Jon-Pierre could accept.

Based upon Isabelle subsequently calling Jon-Pierre to indicate that the "deal is off" could be construed as evidence of her present intent that the form sent was in fact intended as an offer.

Jon-Pierre will argue that he accepted the counter offer from Isabelle, and because the counter-offer did not change the price, that Isabelle's intent was to make the counter-

offer at the same price as Jon-Pierre's original offer. He could also point to the written document sent fedex as further proof of Isabelle's present intent to make a counter-offer.

Jon-Pierre will argue that since he signed the form and gave it to his assistant to mail, that he accepted the counter-offer.

If a court were to determine that Isabelle made a valid counter-offer that Jon-Pierre accepted, the question then is when does Jon-Pierre's acceptance become effective? Here, the form sent by Isabelle does not apparently include an express authorized means to communicate the acceptance. The implied authorized means would have been for Jon-Pierre to return the acceptance via Fed-Ex. If he had dropped the form in a Fed-Ex box, he could argue that under the mail-box rule that this would have made acceptance effective when sent.

Unfortunately for Jon-Pierre, he gave the form to his assistant with instructions to mail it. In this situation, the acceptance would not be effective until it was received by Isabelle. Because Isabelle then phones Jon-Pierre to revoke her offer prior to her receiving the acceptance, here revocation is effective, and Jon-Pierre's acceptance is not.

CONCLUSION: A court would rule in favor of Isabelle.