



Topic 25: Frustration of Purpose

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Frustration of Purpose

- Frustration of purpose for a buyer is analogous to commercial impracticability for a seller.
- The idea is that there was a purpose of the buyer for purchasing the goods that was a basic assumption of the contract, and if that assumption turns out to be false, then the purpose is frustrated, and the buyer should be excused.
- A successful frustration-of-purpose excuse is much more plausible if the seller will not be put in a worse position than prior to contracting.
- Like commercial impracticability, frustration of purpose is supposed to be very rare.

Frustration of Purpose

- The UCC does not specifically provide for excusing the buyer because of frustration of purpose.
- but the availability of excuse for frustration of purpose can be derived from official comments and §1-103's provision of supplementation by general law and equity.

Frustration of Purpose

- Chase Precast Corp. v. John J. Paonessa Co., Inc., 566 N.E.2d 603, 605 (Mass. 1991)
 - Buyer excused from paying damages for lost profits for partial cancellation of order for concrete barriers where need for barriers was obviated by cancelled construction contract, where the already-manufactured barriers were paid for, and where unpaid-for barriers had not been manufactured, and where seller "suffered no out-of-pocket expense as a result of cancellation of the remaining portion of barriers."

Problems

Hurricane Sharona, Version 1

At 2:03 p.m., the National Hurricane Center issues a hurricane warning saying Hurricane Sharona will veer west and make landfall tomorrow afternoon. Claire contracts to purchase 100 sheets of plywood from Sally to board up the windows on Claire's building, delivery set for the next morning at 10 a.m. Then, at 2:05 p.m. the National Hurricane Center retracts its warning. (An intern had made the wrong selection from a pulldown menu.) Sally procures the plywood from the wholesaler, puts it on a truck, and sends it out. At 9:30 a.m., Claire calls to cancel the order. Can she avoid the contract?

ANSWER: Probably not. The occurrence of the hurricane was a basic assumption of the contract, and without the hurricane, the buyer's purpose is frustrated. But sticking Sally with the plywood doesn't seem very equitable. It puts Sally in a worse position than pre-contract. This doesn't seem like the rare case for application of frustration of purpose.

Problems

Hurricane Sharona, Version 2

At 2:03 p.m., the National Hurricane Center issues a hurricane warning saying Hurricane Sharona will veer west and make landfall tomorrow afternoon. Claire contracts to purchase 100 sheets of plywood from Sally to board up the windows on Claire's building, delivery set for the next morning at 10 a.m. Then, at 2:05 p.m. the National Hurricane Center retracts its warning. (An intern had made the wrong selection from a pulldown menu.) At 2:07 p.m., Claire calls to cancel the order. Sally hadn't yet done anything to procure the plywood. Can Claire avoid the contract?

ANSWER: Probably yes. The occurrence of the hurricane was a basic assumption of the contract, and without the hurricane, the buyer's purpose is frustrated. Moreover, in recognizing the excuse, Sally is not put in any worse position than pre-contract. Expectation damages for Sally would be a windfall, seemingly inequitable. This seems like the rare case for application of frustration of purpose.