

Contracts Problem 4

Palumbo Rec Center has hired Jaclyn's Painting Service to paint their afterschool space. Jaclyn is charging \$3,000 to repaint the large room in Cotton Candy Pink over the weekend of October 10 (payment due upon completion). Brian took that deal right away, because other painters charge \$5,000 for the same service.

Brian has recently started renting out the afterschool room for other community events, which are essentially pure profit for the center because they do not require staffing. There is a big sign in the lobby now that says, "Rent Palumbo for Your Community Event: Birthdays, Seminars, and More!" Brian has scheduled events for every weekend in October and November except the weekend of the 10th. On the 17th, they are going to be hosting an actual wedding reception for the first time. Brian charged the groom, Oliver, a \$7,000 rental fee, which was paid upfront.

On the evening of October 10, Brian comes in to check on Jaclyn's progress and discovers that the room is still unpainted. He calls Jaclyn who apologizes but says that the pink paint was very expensive so it wasn't actually worth it to her. He is very displeased. "Listen Brian," she says, "Just paint it yourself if you care that much. That color is available at the Benjamin Moore on 4th Street and the whole room will probably take fewer than 10 hours total to paint." He tells her she can expect to hear from his lawyer.

On October 14, Oliver comes to check out the space. He is surprised to see the room still has its old, peeling, green paint. Brian apologizes and said he can return the payment if Oliver wants to back out of the deal. Oliver agrees, takes his \$7,000, and gets married elsewhere.

Brian does not repaint because he dislikes painting. Aside from the cancelled wedding, the other planned events go off as expected.

Brian sues Jaclyn. Please write a brief memo to Jaclyn explaining Brian's likely claims against her and her best responses. Please begin by explaining how much Brian will seek in damages. **Please write no more than 350 words.**

Model Answer 4

Damages

In order to put Brian in the position he would have been in had the contract been fulfilled, he would have a pink room (cost of completion \$5,000) and the money from a wedding (\$7,000), for an outlay of \$3,000, so Brian is going to sue for \$9,000.

I think that the recovery of the \$2,000 (the difference between Jaclyn's price and the next cheapest painter) is an easy call. Jaclyn clearly breached a contract, and in order to give Brian a newly painted pink room, he will have to pay \$2,000 more than originally contracted for.

There are two issues with the recovery of the revenue from the wedding rental: avoidability and foreseeability. I will treat them separately.

Foreseeability

The important issue here is whether Jaclyn should have foreseen that her failure to paint the space might cause Palumbo to lose 4-figure rental revenue. Jaclyn will argue that it is not reasonably foreseeable to a painting contractor that an afterschool space in a recreation center might be rented out for use in a wedding. Brian will likely respond by pointing to the lobby sign as special communication which makes clear that Palumbo can be rented for various events. It's sensible for Brian to contend that the reason to spruce up a venue is to make it more attractive to potential clients. But even if the sign constituted notice of special circumstances, the kinds of clients you usually see renting space in a community center would be more like Knitting Night or Teen Book Club, for more like \$100, not \$7,000.

Avoidability

Jaclyn will argue that Brian could have avoided the loss of \$7,000 by getting the room painted by someone else or by himself. The question for mitigation is whether or not he could have mitigated without undue burden. If another painter was available to do the work before the wedding, then Brian cannot recover; he has to make reasonable efforts to mitigate. A court seems less likely to conclude that Brian himself had to paint the room. Brian hired a painter because he did not have the time or inclination to paint. It bears some similarities to Parker, where the court is reluctant to suggest that the non-breaching party can only recover if she does something she definitely does not personally want to do.

In order to get full credit:

\$: 9,000

A: He should have looked for another painter; but it's not reasonable/is pretty burdensome to expect him to paint the room himself

F: Natural consequence of breach of contract to paint a rec center space might be minor lost profits at most; maybe the sign could constitute special notice/communication but even that seems unlikely given that a wedding (a high-cost event) is really an odd fit for a rec center afterschool space.