

LAWS1150/JURD7150 PRINCIPLES OF PRIVATE LAW

MID-TERM ASSIGNMENT – T3 2021

Word Limit: 1,500 words

Due Date: Wednesday 20 October 2021 at 4pm

(see Moodle for additional instructions)

In June 2020, Mary Stefas purchased an historic farmhouse – ‘Riverview’ – near Wisemans Ferry. Mary plans to renovate the farmhouse, and open it as a restaurant and event venue. On 20 April 2021, she telephones Klaus Petersen to ask his price for painting the interior and exterior of Riverview. The same day, following their phone conversation, Klaus emails Mary a document titled ‘Quotation’ that sets out the work in the following terms:

‘Work to be completed at Riverview, including all labour and materials:

- Painting throughout interior in Dulux paint in the colour “Manila”;
- Painting of exterior in Dulux paint in the colour “White on White”;
- All preparation and two layers of undercoat, removal of debris on completion;
- Work to be completed by 7 September 2021.

Total cost: \$11,000, 50% deposit due immediately and balance on satisfactory completion.’

Mary emails Klaus back with the message: ‘Thanks, Klaus. That looks perfect, and I’m happy for you to begin work on 14 June, Mary.’ Mary pays a deposit of \$5,500 to the bank account nominated by Klaus on 20 April 2021.

In late April, Mary meets Luna Liu (a jazz singer and pianist) at a friend’s house-warming party in Sydney. Luna and Mary become romantically involved, and commute regularly to see each other.

On 15 May 2021, Mary receives an unexpected visit at Riverview from a man who introduces himself as Trent Faulkner. Trent explains that his company, Faulkner Locations Pty Ltd (‘Faulkner Locations’), scouts for locations for television, movie and still photography shoots and that he thinks Riverview would receive lots of interest among his clients, if Mary might be willing to hire the venue out. Mary tells Trent she loves the idea, and allows Trent to take photos throughout the property. Trent says, ‘I’ll be in touch with any proposals.’

Klaus commences work on the interior painting preparation and undercoat layers from 14 June 2021. However, Klaus is based in the Greater Sydney region and soon has to cease work due to the lockdown following the COVID outbreak. He emails Mary to say he will recommence work as soon as he is permitted under government health orders.

Mary and Luna are no longer able to visit each other from late June onwards as a result of the COVID restrictions, but they stay in touch by phone and text and video calls. During one video call in July, Luna seems visibly depressed and tells Mary that she is worried about

whether she will be able to keep meeting her expenses now that so many of her shows have been cancelled. Mary is very concerned to see Luna so low.

Mary continues to worry about Luna's difficulties and thinks she would like to offer her money to help, without hurting Luna's pride. She calls Luna on 5 August and says, 'Sweetheart, I'm wondering if you could do me a favour when the restaurant opens. Do you think you would be able to play at the restaurant for the first four Saturday nights? I'd pay your usual fee and pay a deposit now so you have something in the meantime.' At first Luna protests that she's become a 'charity case' and Mary 'shouldn't be doing this'. But Mary says, 'Seriously, you'd be doing me a favour. I've been trying to work out entertainment for those Saturdays and you'd be perfect.'

Luna eventually agrees to this proposal, and accepts Mary's payment of a \$1,000 deposit. Mary tells Luna that she'll pay the balance of \$800, after Luna's four performances.

On 10 August, the movement restrictions are reduced and Klaus recommences the painting work. Two weeks later, Mary visits Riverview one afternoon while Klaus is painting. On seeing his progress, Mary exclaims, 'But Klaus – this all needs to be finished by 7 September. You agreed that it could all be done by then, but you haven't even started on the exterior.'

Klaus says, 'I agreed to that before the movement restrictions came in under the health orders and I priced it on the basis that I could do all the work myself. I could hire someone to help me get it done by then, if you pay the extra cost of that.' He takes out his mobile phone and uses the calculator before saying, 'I'll still get it finished by then if you pay the \$3,000 in extra labour that would cost. That's in addition to the \$5,500 you still owe me.'

Mary protests, 'But finishing by 7 September is what you agreed to do in the first place.'

Klaus says, 'I told you, the COVID lockdown put me behind. If you want it done by the same date, you'll need to pay the extra \$3,000. Let me know what you decide.' Klaus packs his ute and drives away.

Mary calls several house painters over the next couple of days but no one is currently available. On 26 August, Mary emails Klaus, stating, 'Klaus, I will pay you an extra \$2,500, no more, to finish the job. Let me know by 31 August. If you finish the whole job by 7 September, I will pay the total of \$8,000.'

On 28 August, Mary has still heard nothing from Klaus, but she receives another visit from Trent Faulkner. Trent says that a production company, Shock Value Productions Pty Ltd ('Shock Value'), is very keen to use Riverview to film a series of television advertisements for a large retailer from 17 September to 20 September inclusive. He says the production company is offering \$8,000 for the four days, which will be paid in full prior to entry on the property.

Trent says, 'We'll put all of that in our usual Location Agreement which is a bit more detailed, so you'll have it in black and white. And Faulkner Locations takes care of a COVID

clean by professional cleaners before filming and after each day of filming, so you don't need to worry about that.'

Mary says, 'That sounds good. And I was going to ask about the cleaning, so that's great too. I'm happy to dot the i's and cross the t's closer to the day. I'll block those days out for you in my calendar in the meantime.'

Later that day, Mary receives a phone call from a house painter she had called earlier. The painter offers to do the work with her painting crew the following week for a total of \$6,000. Mary agrees over the phone.

However, on 31 August, Mary receives a phone call from Klaus Petersen. Klaus asks Mary why she hasn't responded to his email. When Mary says she has not received any emails from Klaus, he tells her he sent an email on 29 August, accepting her offer. Mary tells Klaus she has actually hired another painter to do the work, since she didn't hear back. Klaus says, 'But you did hear back. Check your emails!'

Mary opens her email inbox the same day and discovers that there was an email from Klaus on 29 August, saying that he accepted her offer. She emails Klaus back, 'Sorry, Klaus. I hadn't checked my email in the last couple of days, so I've only just seen this email. Unfortunately, I've given the job to the other painter, and paid their deposit. I'll go ahead with them because I didn't hear from you, and they also offered me a better price.'

Mary hears nothing more from Klaus and the new painter completes the painting work in the agreed time.

On 16 September, Mary receives an online payment of \$8,000 from Shock Value. The next morning, Trent Faulkner arrives at Riverview with a cleaning crew and introduces Taylor Lin from Shock Value. Mary hands Trent and Taylor a document titled 'Riverview Hire Terms' and says, 'By the way, these are my standard terms for hiring the place.' Trent says, 'Thanks. That's right. I said I'd get our terms to you in black and white too. I'll remember this afternoon.'

That evening, as the crew is packing up for the first day, Trent hands Mary a document titled 'Location Agreement'. Mary reads the first two paragraphs of the Agreement, which read:

'Mary Stefas owns the property, "Riverview" ("the Owner"). Taylor Lin is the Producer at Shock Value Productions Pty Ltd ("the Producer" and "the Production Company"). Faulkner Locations Pty Ltd is the locations company that sources and manages locations for the Owner and the Production Company. The parties agree to carry out their respective obligations set out in this Agreement.'

The Owner agrees to give the Production Company permission to pictorially represent "Riverview" for the purpose of filming scenes for a television advertisement, including the internal rooms at Riverview and the surrounding grounds, for a total fee of \$8,000.'

Mary does not read the rest of the agreement, but thanks Trent and Taylor, and says she will see them the next day. The filming finishes on time on 20 September. However, on 25 September, Mary receives an invoice from Faulkner Locations, which claims that Mary owes Faulkner Locations '\$420.00 for COVID cleaning, in accordance with our Location Agreement'. Mary finds the Location Agreement and discovers that clause 13 states: 'Faulkner Locations will arrange for COVID cleaning before production and after each day of filming. Faulkner Locations and the Owner will each pay half the cost of this cleaning.'

Mary sends a text message to Trent immediately and writes, 'The Hire Agreement I gave you on the first day sets out my terms, as I said. It includes my clause 24, which says that the person hiring the venue will be responsible for all cleaning costs, just as you said yourself.' Trent texts back, 'Sorry, Mary. I didn't promise to pay for the cleaning. The Location Agreement is the one that sets out our terms.'

That evening, Mary calls Luna and tells her about her bad day. But Mary says she also has good news because she's decided that she can set a date of 29 October for outdoor dining at the restaurant. Mary says, 'So, soon you'll be able to come up and start your performances, not to mention – we'll finally be able to start seeing each other again!'

Luna says, 'That's terrific on the opening and the performances. I'm looking forward to that. But I also need to tell you – I've met someone down here.' Luna tells Mary that she and Mary won't have a romantic relationship in future, but she still wants to go ahead with the performances. Mary says, 'Luna, I was just offering you that work to help you out. If you've met someone else, then no, there won't be any performances. And I'd like you to pay back the \$1,000 I let you borrow as soon as possible.'

When Mary gets off the call with Luna, she sees an email from a solicitor who says she is acting for Klaus Petersen and that Klaus is demanding 'payment of the outstanding amount of \$8,000 owing on your contract for painting of Riverview'.

Mary seeks your advice on what contract law issues arise between Mary and each of:

- (a) Klaus Petersen;**
- (b) Luna Liu; and**
- (c) Faulkner Locations Pty Ltd.**

All events take place in New South Wales. For the purposes of this question, assume that any negotiations conducted, and agreements made, on behalf of organisations were appropriately authorised. Take into account only the topics covered in Principles of Private Law weeks 1 to 4 inclusive.