

QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Mall Management contracted with Landscape Design to develop a landscape design for a new shopping mall. Mall Management told Landscape Design that it envisioned an "upscale" mall with designer boutiques, while acknowledging Michigan's tough economic circumstances. On April 2, 2008, Mall Management and Landscape Design entered a contract, which included this provision:

Mall Management agrees to pay Landscape Design for landscape design services, including master planning, budgeting, grading and drainage, irrigation and lighting, a fee equal to 8% of the cost of implementing the design, except that and in addition to the foregoing, preliminary work shall be paid at the hourly rate of \$150. Prior to submission of any design plan, Landscape Design must comply with cost limitations, if any, imposed by Mall Management.

During the preliminary design phase, Landscape Design and Mall Management met to discuss design concepts. No cost limitation on the plan was discussed, although Mall Management mentioned it was having problems attracting upscale retailers. On September 10, 2008, Landscape Design presented its preliminary plan to Mall Management, with an invoice for 458 hours worked, reflecting a balance due of \$68,700.

After paying the invoice, Mall Management asked Landscape Design to budget the cost of plan implementation. On September 28, 2008, Landscape Design presented a cost estimate of \$1,152,600 with an additional invoice for 32 hours worked, or \$4,800, compiling the estimate.

On October 15, 2008, Mall Management notified Landscape Design that the economy required scaling back the plan and that any future plan must comply with a \$700,000 cost limitation.

On December 10, 2008, Landscape Design presented its revised plan with an estimate of \$865,600, explaining that it could make no further cuts without jeopardizing the project's integrity.

Mall Management demanded that Landscape Design further revise the plan to satisfy the cost limitation. Landscape Design repeated it could not do so. Mall Management then forwarded the plan to another design firm, which indicated the current plan could not be reduced and that design planning would have to start from scratch. Mall Management refused to pay any additional sums to Landscape

Design, demanded that Landscape Design refund sums already paid, and hired the other firm, which submitted a plan within the cost limitation.

Landscape Design has contacted you for advice on whether it can recover any additional amount from Mall Management or whether it must refund any money it already received. What advice do you give? Explain your answer.

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