

ANSWER TO OUESTION NO. 12

The transaction is governed by Article 2 of the Uniform Commercial Code, which governs contracts, whether oral or written, that involve the sale of goods. See MCL 440.2102. Chip entered into an agreement with Minnow Boat Sales, MCL 440.2204(1), to purchase the boat, MCL 440.2106(1), an item movable at the time identified in the contract for sale. MCL 440.2105(1).

Chip can revoke his acceptance of the boat. To prove a revocation claim, a plaintiff must show: (1) the buyer accepted a lot or commercial unit whose nonconformity substantially impairs its value to him; (2) he accepted based on a reasonable assumption that the nonconformity would be cured or without discovering the nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or the seller's assurances; (3) he revoked acceptance within a reasonable time after discovering (or should have discovered) the grounds for the revocation; and (4) he revoked before any substantial change in the condition of the goods. MCL 440.2608(1), (2).

In regard to (1), Chip accepted the boat and must establish that the soot problem substantially impairs the boat's value to him. In interpreting this requirement the Michigan Supreme Court has held that "a buyer must show the nonconformity has a *special devaluing effect on him* and that the buyer's assessment of it is factually correct." *Colonial Dodge, Inc v Miller*, 420 Mich 452, 458 (1984) (emphasis added).

Chip can persuasively argue that buildup of soot on longer trips devalues the boat's value to him. Chip would maintain he specifically purchased the boat for longer trips. He can also claim that the buildup of soot on these trips is more than a nuisance, requiring him to clean the boat and damaging his clothes. A buyer in Chip's position could reasonably find that the soot devalues the boat. Although Minnow Boat Sales may contend that the soot is trivial and does not substantially reduce the value of the boat, the Michigan Supreme Court has upheld the revocation of acceptance for goods where the nonconformity does not substantially impair the good's monetary value. In *Colonial Dodge*, 420 Mich at 458-459, the Court upheld a finding of revocation of acceptance of a car because the dealer failed to include a spare tire. Dismissing arguments that "a missing spare tire is a trivial defect" that is "easy to replace," the Court focused on the value of the spare tire to the purchaser. *Colonial Dodge*, 420 Mich at

458-459. The purchaser had expressed the spare tire's value by purchasing special tires and indicating he had to travel extensively, often in the city. The Court found these concerns sufficient to establish that the car had a substantial impairment. Likewise, while the presence of soot may not affect the monetary value of the boat, the presence of soot substantially impairs the value of the boat to Chip.

In regard to (2), the question does not suggest that Chip could have discovered the soot problem before actually operating the boat. Further, after being aware of the defect, Chip only used the boat after receiving assurances from Grumby that the soot would eventually abate.

In regard to (3), Chip can persuasively argue that he revoked acceptance within a reasonable time after discovering the grounds for the revocation. Here, Chip initially informed Grumby of the soot and was assured that the problem would eventually go away. Chip waited and notified Grumby that the problem had not gone away. Grumby then attempted to repair the problem, but Chip could not have learned that the defect had not been corrected until the next boating season. Thus, for much of the time between Chip's acceptance of the boat and his attempt to revoke his acceptance, Grumby was attempting to fix the boat. "The seller's attempts to repair are likewise a factor in determining whether the buyer notified the seller of revocation within a 'reasonable time' after discovering the defect." *Head v Phillips Camper Sales*, 234 Mich App 94, 106 (1999) (buyer properly revoked acceptance of pop-up camper nearly one year after purchase and three attempted repairs). Here, considering the continuing efforts to correct the soot problem, and the inability to discover whether the first repair worked, Chip can persuasively argue that he revoked his acceptance within a reasonable time.

In regard to (4), there is no evidence of a substantial change to the boat. The facts only indicate the boat was subjected to normal wear and tear, which cannot amount to a "substantial" change in the goods.

Therefore, Chip should be advised that he has a credible claim to revoke his acceptance of the boat. Under the UCC remedy of revocation, the buyer is treated as if the goods were rejected at the outset and the buyer is entitled to a refund of the purchase price paid. MCL 440.2711(1).

Chip can also be advised that even without an express warranty, he may pursue implied warranty claims under the UCC, MCL 440.2314 and MCL 440.2315.

The stronger of the implied warranty claims is that the boat was not merchantable or fit for an ordinary purpose under MCL 440.2314. The warranty of merchantability requires that the goods sold be of average quality within the industry. *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 316-317 (2005). Merchantable is not a synonym for perfect. *Id.* Chip will stress that the boat produces an "abnormal" amount of soot and cannot be wholly repaired.

Grumby will maintain that the boat produces an acceptable amount of soot. The conflicting evidence will likely produce a question of fact in regard to whether the boat was of "average quality" or fit for an "ordinary purpose" of pleasure riding under MCL 440.2314. Notably, this resolution will focus on an objective "usage of trade," and not whether the soot problem substantially impairs the boat's value to Chip. Also, damages under a UCC warranty claim are generally limited to the difference between the value of the boat at the time of acceptance and the value of a boat that produces average soot. MCL 440.2714. Accordingly, even a successful claim for breach of a warranty of merchantability may not entitle Chip to a "full refund."

Chip is less likely to prevail in a claim under the implied warranty of fitness for a particular purpose under MCL 440.2315. A warranty of fitness for a particular purpose requires that the goods sold be fit for the purpose for which they are intended; in order to take advantage of this type of warranty, the seller must know, at the time of sale, the particular purpose for which the goods are required and also that the buyer is relying on the seller to select or furnish suitable goods. *Computer Network, Inc v AM Gen Corp*, 265 Mich App at 316-317. Here, Chip expressed to Grumby his purpose to tour the Great Lakes with a boat. While the boat he purchased may produce excessive soot, there is no evidence that the boat cannot nonetheless tour the Great Lakes. Accordingly, Chip would not likely prevail in action for breach of the implied warranty of fitness for a particular purpose under MCL 440.2315.