

On June 1, an appliance manufacturer telephoned a supplier to determine whether the supplier could provide 300 washing machine motors of a particular model by October 1. The supplier offered to do so at a price of \$300 per motor (a total price of \$90,000). The manufacturer's representative said, "Deal." The next day the manufacturer's representative sent the supplier an unsigned note on company letterhead that stated, "I am happy that you are going to supply us with the motors. I will call you soon to talk about another order." The manufacturer then sent catalogs to its regular customers advertising washing machines that included the specified motors.

The manufacturer did not hear from the supplier until July 1, when the supplier called to say that it would be unable to supply the motors because it was no longer carrying that model. At that time, the manufacturer had received no orders for the machines with the specified motors.

The manufacturer sued the supplier for breach of contract, and the supplier raised the statute of frauds as a defense.

Is the supplier's statute of frauds defense likely to succeed?

- A. No, because the manufacturer distributed the catalogs in reliance on the contract, making the contract enforceable under the statute of frauds.
- B. No, because the supplier failed to object to the contents of the note sent by the manufacturer.
- C. Yes, because the manufacturer's note failed to contain a signature.
- D. Yes, because there is no writing that contains the quantity term of the contract.

## Explanation:

### Statute of frauds requirements

- Writing** Physical or electronic document(s) containing reasonable basis to believe contract was formed (eg, receipt, check, emails) AND
- at common law – identifies parties, subject matter, consideration, time & nature of performance
  - under UCC – lists quantity of goods (contract enforceable only up to written quantity)
- Signature** General rule – handwritten signature from, or other mark identifying, party to be charged (eg, letterhead, electronic signature, initials)
- Merchant exception – between merchants, written confirmation that satisfies statute of frauds as to *sender* will bind both parties if no written objection within 10 days

**UCC** = Uniform Commercial Code,

Under the **UCC statute of frauds**, contracts for the sale of goods of \$500 or more (as seen here) must be in a **writing** that states the **quantity of goods to be sold** and **signed** by the party against whom enforcement is sought. If the contract is **between merchants**, then a written confirmation will bind *both* parties if:

- the confirmation is **sent within a reasonable time**
- the confirmation satisfies the **statute of frauds as to the sender and**
- the **recipient does not object** in writing within 10 days.

Here, the manufacturer's representative sent the supplier an unsigned note on company letterhead to confirm their agreement for the supply of motors. But this confirmation does not satisfy the statute of frauds because it failed to state the *quantity* of the motors to be sold. Therefore, the supplier's statute-of-frauds defense will succeed.

Had the confirmation listed the quantity of motors being sold, it would have been binding as to *both* parties and defeated the supplier's statute-of-frauds defense. That is because (1) the manufacturer's letterhead was an identifying mark that satisfied the signature requirement under the statute of frauds and (2) the supplier never objected to the written confirmation **(Choices B & C)**.

**(Choice A)** Under the doctrine of **promissory estoppel**, a party's reliance may serve as an alternative basis for recovery when no valid contract was formed—but it does not make a contract enforceable under the statute of frauds. Additionally, this doctrine only applies if reliance was reasonable and caused *substantial* detriment (eg, had the manufacturer received orders).

**Educational objective:**

Under the UCC, a written confirmation between merchants satisfies the statute of frauds as to *both* parties if it (1) is sent within a reasonable time, (2) satisfies the statute of frauds—ie, signed writing with quantity stated—as to the sender, and (3) is not objected to in writing within 10 days.

**References**

- UCC § 2-201 (statute of frauds requirements).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.