

A door-to-door saleswoman for an extermination company introduced herself to a homeowner and stated, "We are offering a one-time special. Our extermination truck is coming around this afternoon, and our technician will spray your entire yard for mosquitoes for just \$100." The homeowner replied, "I will give you \$75 for that service, but no more." The saleswoman said, "Unfortunately, I cannot accept \$75, but the offer still stands at \$100. I will be in the neighborhood for the next hour if you change your mind." The saleswoman left.

After thinking it over, the homeowner decided that \$100 was a good deal, so he found the saleswoman as she was returning to her car and said to her, "I changed my mind. I accept your offer for \$100." The saleswoman replied, "I apologize, but I was just informed that the truck ran out of mosquito repellent for the day and the offer is no longer available."

The extermination company never again sent its truck to the homeowner's neighborhood.

If the homeowner sues the extermination company in small claims court for breach of contract, will he be likely to prevail?

- A. No, because the extermination company's duty to perform was discharged due to impracticability.
- B. No, because the homeowner's counteroffer of \$75 was also a rejection of the saleswoman's offer.
- C. Yes, because the extermination company was a merchant and the firm-offer rule applies.
- D. Yes, because the saleswoman offered the service for \$100 and the homeowner accepted the offer.

Explanation:

To form a contract, an offer must be accepted before it **terminates**. An offer will terminate if, for example, the offeree rejects it by clearly conveying that he/she does not intend to accept the offer OR by making a counteroffer. Once the **offer** has **terminated**, it **cannot be accepted**. But the offer can be **revived** if the offeror conveys that it is still open. This creates a **renewed opportunity for acceptance** by the offeree. If the offeree then accepts, the offer can no longer be rescinded and a binding contract is formed.

Here, the saleswoman offered to spray the homeowner's yard for \$100. This offer terminated when the homeowner rejected it by counteroffering for \$75 (**Choice B**). However, the saleswoman then revived her original offer ("The offer still stands at \$100"), and the homeowner accepted it shortly thereafter. The saleswoman was unable to rescind the offer once the man accepted it, and a binding contract was formed. The extermination company then breached the contract by failing to spray the homeowner's yard. Therefore, the homeowner is likely to prevail.*

*However, the homeowner can only recover damages if the market value of the agreed-upon service (spraying his yard for mosquitoes) exceeds the contract price (\$100).

(**Choice A**) Contractual obligations can be **discharged** if they become impossible or impracticable to perform due to unforeseen circumstances. But here, even though the truck ran out of mosquito repellent that day, the truck could have sprayed the homeowner's yard on another day.

(**Choice C**) Under the UCC's **firm-offer rule**, a merchant's offer to buy or sell goods is irrevocable for a stated or reasonable time. But since this rule does not apply to contracts for services (eg, spraying for mosquitoes), the extermination company's merchant status is irrelevant and the firm-offer rule does not apply.

Educational objective:

An offer cannot be accepted after it terminates (eg, is rejected by the offeree). But the offer can be revived if the offeror conveys that it is still open, which creates a renewed opportunity for the offeree to accept.

UCC = Uniform Commercial Code.

References

17A Am. Jur. 2d Contracts § 84 (2020) (explaining that a rejected offer has new vitality if the offeror renews the offer).

Offeree's power of acceptance

