Brown v. White

Article 2

Article 2 applies to a sale of a good which is moveable. The Tahiti ketch is a movable thing, even though White has lived on it for some time.

Moreover, things “attached to realty and capable of severance without material harm thereto” are also goods under 2-107(2). So even if the boat is attached (by rope or mooring) to realty (the dock), it can be severed without harm (cast off from the mooring) and is a good, regardless of which party does the severing.

Formation

Is White a merchant?

For purposes of the statutes discussed below, the broadest definition of merchant applies. Anyone in business is expected to have knowledge of general business practices, such as answering mail. See 2-104.

The question is whether this transaction is a business matter so far as White was concerned. On the one hand, he has more than one boat for sale, and could be in the business of selling boats, which could make him a merchant. On the other hand, since he lives on the Tahiti ketch, he might not be acting as a merchant in this particular transaction—he is just selling his used personal property, as we all do from time to time.

Electronic contracting

This fact pattern involves several e-mails. E-Sign and UETA provide that parties can contract electronically if both consent. Here, White’s ad invites e-mail responses, and both parties send and respond to e-mails without objection. By using e-mail, the parties have implicitly consented to transact electronically.

Offer

The newspaper ad is not an offer, because ads are generally not offers. This is true despite the fact that the ad lists most of the essential terms.

In the e-mails of November 1, 2 and 3, Brown asks for information about the age and condition of the boat and White answers. Brown also asks to see the Tahiti ketch. These requests for information and answers are best characterized as negotiations. Neither side is ready to commit.

On November 4, White sends this e-mail: “Come on down to the harbor any time before the 9th. I’m sure I can work something out for you.”
Brown may argue that a reasonable person would view this as an offer. Many details of the sale (characteristics of boat, the price) have already been discussed, and the language “I’m sure I can work something out” might imply willingness to deal. On the other hand, the November 4 must be read in light of Brown’s immediately preceding e-mail of November 3. Given the context, it seems more likely that White intends to invite Brown to come see the boat, with the thought that Brown might make an offer himself after that.

**Offers are revocable**

Let us assume for the sake of argument that the November 4th is an offer. Even then, since offers are generally revocable, White can revoke the offer before November 9 unless it is firm (see section 2-205) or he is estopped (see RS (2d) section 87(2)).

**Firm Offer**

White never promises to keep this offer open until November 9th. When he speaks of November 9th, he seems to be setting a time for Brown to see the boat.

Therefore, even though an e-mail can serve as the writing required under 2-205 (see UETA), and even though simply hitting the “send” button can constitute a signature (see the International Casings decision), 2-205 will not create a firm offer here.

**Option contract through estoppel**

Under 1-103, unless the common law is displaced by article 2, it can be used to supplement Article 2. 2-205, which deals with firm offers, does not state that it is the only means of making an offer irrevocable and does not displace estoppel under Restatement (2d) section 87(2).

Applying the elements of 87(2): White probably has not made an offer. Even if he did, he has no reason to expect Brown to rely before he accepts the offer. Brown could have accepted the boat by promise before he terminated his lease or (maybe) rented a slip.

Therefore, even if Brown did rely substantially by terminating his lease and (maybe) renting a slip (see analysis below), his reliance was not reasonable and justice does not require making the offer irrevocable.

**Revocation**

White can revoke the offer through express language or conduct. Here, White sells the Tahiti ketch to Black. This conduct is inconsistent with intent to sell the same boat to Brown. Moreover, he also provides Brown with notice (“I just sold the ketch to Mrs. Black”). Therefore, the offer was revoked through conduct on November 8.
Acceptance?

Assuming the November 4 e-mail is an offer, it does not specify a means of acceptance. That means Brown can accept in any manner and by any medium reasonable in the circumstances. See 2-206(1)(a).

Brown never makes a promise to purchase the Tahiti ketch. Nor does he begin performance (i.e., make payment to White). His various acts (terminating his lease and renting a slip) may be conduct, but they are not performance under the contract.

Conclusion: Most likely no offer was made, but if one was, White revoked it before Brown accepted and there is no contract.

Enforceability

Statute of Frauds

Article 2 requires a sale for goods over $500 to be in writing. Since the price of the boat is $50,000, section 2-201 applies. The writing must indicate that a contract has been formed, include quantity, and be signed by the person against whom enforcement is sought (White).

Under UETA and E-Sign, electronic records such as e-mails can serve as the required writing. The problem here is that the e-mails do not indicate that a contract has been formed.

The signature requirement is satisfied. If White’s name is in the header, when he presses the “send” button, he adopts it with intent to authenticate the email. See International Casings.

Promissory estoppel

Courts are split as to whether estoppel can supplement section 2-201. See 1-103(b). Assuming estoppel is an available argument, the next step is to apply the elements as set forth in Restatement (2d) section 139.

Brown must first establish that a promise has been made to him. This may be difficult. White does not promise to sell the boat to Brown in his November 4th e-mail. He just invites Brown to come see the boat.

Second, Brown must show that White has reason to foresee that Brown will rely on his promise. This also will be very difficult. Most people would accept an offer before taking it on themselves to cancel their lease and (maybe) rent a slip.

Third, Brown can show that he cancelled the lease and (maybe) rented the slip, but his reliance was not reasonable. Again, most people would finalize a deal before reacting this way.

Given the above analysis, the better conclusion is that White is not estopped to assert the Statute of Frauds against Brown.
Remedies

There is no contract between the parties. Even if there is a contract, it is not enforceable. Brown has no action for breach of contract. Moreover, he cannot recover in restitution, because his actions have conferred no benefit on White.

**Brown v. Landlord**

Pursuant to a termination clause in his lease, Brown notifies his Landlord that he is terminating his lease as of November 30. Now the Landlord wants him to sign a new lease for a higher rent. Brown may wish to argue that he has the right to get the apartment back at the same price.

**Pre-existing duty rule**

Under the pre-existing duty rule, if a party already has a duty to perform, he cannot obtain a modification from the other side without providing new consideration. Brown may try to argue that Landlord is offering him the same apartment, but demanding an additional $1,000. However, this argument will not work. Brown terminated the lease, so Landlord no longer has a duty to lease it to him after November 30th.

**Duress**

Brown may attempt to rescind the new lease on the grounds of economic compulsion. A contract in which one party’s assent is attained by an improper threat is voidable if the threatened party was precluded from exercising his free will and had no choice but to agree. A breach of an existing contract may constitute such a threat.

However, Landlord has no duty to rent the apartment after the 30th, so he is not threatening to breach a contract. Even if he did, Brown has other options. He can find another boat for his slip, or rent another apartment, and sue Landlord for damages later.

**Price unconscionability**

Finally, Brown may argue that the price is exorbitant and the court should reduce it. We do not know enough about the rental market to determine this. Moreover, if other apartments are available for less, then Brown had other options and was not forced to take this one.

**Brown v. Harbor**

**Formation**

Brown requests a slip. The girl at the counter tells him “It’s as good as yours.”

Is this offer and acceptance? The better argument is no. Brown is merely writing his name on a waiting list. The girl tells him that paperwork is coming later, signaling that the harbor may be the one to make an offer at some later time.
Statute of Frauds

Agreements to lease land for more than 1 year must be in writing. If the slip lease runs for more than 1 year, and is not in writing, it is unenforceable.

There isn’t much to go on here. Brown signs his name on the wait list. That could be a signature. However, the list does not indicate that a contract has been formed; it is merely a request for a contract. Finally, the wait list does not include the essential terms of the contract.