

Case 17-7c

Mesmerizing Marketers

Mesmerizing Marketers (MM) is a marketing company that offers a variety of marketing offerings to its customers. Specifically:

- MM will create a TV commercial for \$1M, build an app for \$500K, and build a social media Web page for \$250K. These amounts represent MM's charges for these items when MM sells them separately to customers. The TV commercial, the app, and the social media Web page are not interrelated; that is, each functions independently of the other offerings.
- If a customer purchases all aforementioned items together, the total amount owed to MM is \$1.5M. Payment terms are 50 percent consideration due at contract signing, with the remaining 50 percent due over the rest of the development period (25 percent at midpoint, 25 percent at completion).
- If the app is downloaded 500K times or more in the first month, there is a one-time bonus of \$250K payable to MM.

Stone, a customer, approaches MM with the hopes of reinventing its image to appeal to a younger customer base. Stone has a verbal agreement with MM that is based on MM's unsigned quote to Stone on November 30, 20X5, for one TV commercial, one app, and a social media Web page for total consideration of \$1.5M and payment terms noted above. The agreement creates enforceable rights and obligations in accordance with MM's customary business practices. None of these items can be redirected by MM to another customer. MM performed a credit check on Stone and has determined that Stone has the intention and ability to pay MM for fulfilling its portion of the contract. Stone is required to pay MM for performance completed to date if Stone cancels the contract with MM for reasons other than MM's failure to perform under the contract as promised.

The TV commercial, the app, and the social media Web page can be readily used by Stone with Stone's existing resources. If MM fails to deliver one or more of these offerings, Stone can hire one of MM's competitors to purchase the same offering.

Stone makes a payment on November 30, 20X5, in the amount of \$750K (50% of total consideration of \$1.5M) in accordance with the agreement. From the date of the quote, it takes MM six months to develop and produce the TV commercial, two weeks to complete the social media Web page, and three months to complete a fully functioning app. MM does not think that the app will be downloaded 500K times in the first month because Stone's customer base does not quickly accept newly developed technology. On the basis of its experience with similar technology, MM has determined that it takes over three months for Stone's users to begin to download its apps.