

Business law analysis

[Finance](#), [Financial Analysis](#)



Name: Instructor: Course: Date: Business Law Analysis Employees at the Disco Shop

The basic “bait-and-switch” principle is regularly used among commercial circles to gain unfair advantage over either the consumer or the employees. First, potential customers are attracted (bait) by sellers’ advertising campaigns that display services and products at affordable prices, but when buyers reach the store, they find out that the publicized goods are not in stock, or that they are coerced into buying the same goods at a higher price (“switching”). The idea of bait and switch is underlined by several grey areas that are case-sensitive and very difficult to discern even among experienced consumers. Various factors such as disclaimers, date of advertisements and inflation can all influence a certain situation and disqualify it as being a classical bait and switch attempt. In the case of the Disco Shop approach, it cannot be considered an unlawful application of the bait and switch method.

Several factors that underlie the Disco Shop situation disqualify it from being considered a typical bait and switch circumstance. One, the employees were not coerced into working for the company, accepting the commission terms and even the subjecting themselves to the difference in product prices. A key element of the bait and switch method is the lack of knowledge on the part of the affected party.

When an individual or company attempts the bait and switch technique, the affected parties are unaware that they will be exposed to changes in prices, costs or salaries. Only when they encounter the actual transaction takes place that the victim realizes they were shortchanged. The employees at the Disco Shop were well aware of the difference in prices and commission that

they received. They were probably briefed about these differences when they were being employed. Therefore, they had the choice of taking the job or refusing it. When they made the choice to work with Disco Shop, they became subject to the terms in the company. It is difficult to determine whether a decision by a company or an individual was inclined towards bait and switch or not. The Federal Trade Commission Act specifies that the practice or act should be considered bait and switch only if it is perceived so by the consumer.

The consumer must be able to express their true sentiments on the representations and consider if they were genuine. When a representation illustrates several meanings, it may be deceptive and the FTC regulations outline the proper channels to take in evaluating such circumstances. The FTC regulations also stipulate that the issue at hand should be material. This means that the omission or misrepresentation should be tangible or quantifiable. It is also considered material only if the financial institution had prior knowledge of the issue before it was exposed by the consumer. Pat, Tom and the Lost Bicycle In the case of Tom versus Pat, the loss of the bicycle constituted a conflict between the two with either party blaming each other.

Several elements of the conflict need to be elaborated upon before a conclusion is made. One, within the duration that pat was given the bicycle to repair, he was personally responsible for its safety and condition. Two, while Tom had entrusted Pat with the bicycle, he was aware of the fact that it could be spoilt or stolen. Their conflict can be categorized as an issue that

can be solved using the bailment technique. Bailment describes a legal association in law where physical handling of chattels or personal possessions, is shifted from bailer or owner to the bailee who is a different person. The bailee consequently owns and administers the property. Bailment becomes applicable when an individual offers property to another person for custody. Bailment is differentiated from a gift or a contract of sale because it entails the relocation of properties and not its rights.

To procure a bailment, the bailee must both purpose to have, and in reality physically have, the bailable property. Additionally, in a manner different to a rental, where the rights remain with the lesser but the renter can still use the property, the bailer is not permitted to utilize the property while he is handling it. The bailee receives only authority or ownership of the belongings while the bailer keeps the ownership interests in it. During the precise episode a bailment exists, the bailee's significance in the possessions is greater to that of the others, including the bailer, unless this agreement is violated. Once the intention for which the possession was delivered is complete, the property should be returned to the bailer or owner unless disposed off in a manner stipulated by the bailer. The current example of bailment is when Tom left his bicycle with Pat.

While Pat was entrusted with fixing the bicycle and keeping it safe, he was not allowed to use it for his own purposes during the weekend. In light of the events that unfolded between the times that Pat was given the bicycle and the time that it was stolen, Pat should be held liable for the loss based on two reasons. One, Pat was squarely responsible for safekeeping the bicycle

during the period that he had been entrusted with it. Any harm that would have occurred to the property during his watch would have to be attributed to him. Tom had entrusted Pat with his property.

Therefore, he was right to make Pat liable for the loss. Furthermore, Pat had not even locked the bicycle on his balcony where he had stored. The negligence and inattentive behavior exhibited by Pat showed who was to blame for the loss explicitly. The second reason is that Pat's actions violated the terms of the bailment agreement that stipulated that once the intention for which the possession was delivered is complete, the property should be returned to the bailer or owner unless disposed off in a manner stipulated by the bailer. Therefore, once Pat was done with repairing the bicycle, legally he should have returned the bicycle instead of keeping it until the weekend was over.

This action violated the terms of the bailment that require that the property should be returned as soon as its purpose was complete. Hank and Limited Partnerships In limited companies, the decisions of the individuals within the companies might be binding but they cannot lead to the individual being liable for the debts. In definition, a limited liability partnership (LLP) focuses on the idea that all the partners possess limited liability.

In such a partnership, one partner cannot be liable or accountable for another partner's misdemeanors or carelessness. This is the major difference between such types of companies and unlimited partnerships. In a limited liability partnership, all the partners have the privilege of managing the company directly.

Furthermore, the decisions made by these partners are binding and applicable with immediate effect. It is against this background that Hank was operating in when he assumed office as the consultant for the limited partnership. The creditor claiming that Hank should be considered a general partner proposed that because his decisions were administrative and had far-reaching consequences on the organization, he should therefore bear the consequences of acting in such a capacity. It would be appropriate to state that a general partner within a limited liability partnership contributes towards the every day operations of the company and is individually responsible for the liabilities of the business. General partners therefore are allocated their due portion of losses and profits depending on how much they contributed in the partnership. As to whether Hank would be personally liable for the losses accrued by the company, it would be prudent to state that he could not be considered a general partner.

This is because of one major reason. In a limited liability partnership, the liability is limited to the property or assets owned by the firm and do not include the personal property of the partners in the event that the company goes under. Within the company, Hank was employed as a consultant and legally, this did not even constitute the position of a partner. Even though his actions had significant impacts on the future and position of the company, Hank was still not liable in the event that the debts exceeded the assets. However, the creditors would probably have a valid case in categorizing Hank in the rank similar to a general partner if their claims were based on evidence of fraud. This is because partners are not covered when they engage in fraudulent actions.

However, Hank had also not engaged in fraud and therefore could be considered liable for the company's losses. Limited Liability Company

Limited Liability Companies (LLC) are business structures created by owners that are otherwise called 'members'. Some of the major distinct features of a limited liability company include the 'limited liability' that refers to the protection offered to property belonging to the owners of the LLC. The members of an LLC therefore exist as separate entities to the company and cannot be held responsible for the losses accrued by the business unless they sign a personal guarantee. An LLC also enjoys several forms of distributing their profits when compared to partnerships or other forms of businesses.

Limited liability companies also enjoy the flow through taxation that means that they can avoid paying tax on two levels. In the case concerning Mari and Vanessa, there is considerable doubt as to whether they would be liable in the event that the company was liquidated. Several factors have to be considered before a verdict on their liability can be determined. First, the roles played by Maria and Vanessa were presented a conflict of interest that would eventually lead to both of them being held liable when the company collapsed.

Both the two women were part of the six-team ownership group that had invested in the limited liability company. Therefore, they had effectively safeguarded their personal property from being repossessed by creditors if the business collapsed. When they started the company, their intention was to safeguard their assets. Within the company documentation, there are

clear descriptions to the extent of liability covered by the company. Other authorities such as The Federal Trade Commission Act also offer detailed description of the privileges that owners or ‘members’ are awarded. Therefore, it can be assumed that both Maria and Vanessa were fully aware of their privileges as owners of the company.

The second significant role played by Maria and Vanessa was in executing a personal loan against a bank loan for the same company in which they were owners. There is a big difference between debts that only the company was liable for and debts that individuals are legally responsible to pay from private sources. If an individual were not individually accountable for their business’s debts, there would be little to worry over. This is because creditors can only go after the company’s assets and bank account if your company cannot clear its debts.

In this case, creditors cannot foreclose the owners’ house, garnish their wages or freeze their bank accounts. However, if it is discovered that the owner of the company was personally responsible for the company’s debts, they have a lot to lose during the liquidation period. This is the situation in which Maria got herself into when she too a personal guarantee against a bank loan for her company. Because most property owners, banks, and suppliers recognize that members or LLC owners do not have personal liability for the company, they are reluctant to loan money or offer credit to a startup LLCs or businesses without the owner’s personal guarantee. By signing a bank loan with a personal guarantee, the borrower pledged that they would pay the loan in the event that the company failed to pay the

loan. In other words, Maria and Vanessa personally guaranteed that they would repay the debt by intentionally giving up their limited liability for the bank loan. They willingly offered to let the bank sue them and repossess their personal assets if the company failed to service the debt.

To that extent, Maria was fully liable for the bank loan against which she personally guaranteed to service if the company was unable to pay it. Breach of Warranty Claim Warranties are essentially promises or guarantees offered by sellers on products and services. Therefore, a breach of warranty refers to breaking a promise on a good. The phrase also refers to a failure to honor a declaration or contract with a seller when the reality of the declaration is essential to the legitimacy of the deal. Warranties can be implied or express. Implied warranties are unspoken promises that come up from the type of transaction and the natural understanding by the purchaser, rather than from the explicit representations of the vendor.

A warranty of merchantability is part of the implied category and generally addresses the conformity with the buyer's expectations. Another element of indirect warranties is the guarantee of fitness for a specific reason that handles the sale of goods that serve a different purpose than the one desired by the customer. In the case concerning Mary and the purchase of the tractor, several factors have to be addressed before discerning how much she could collect on a breach of recovery claim.

One, Mary had been led to believe that the tractor she was buying had covered 1, 100 hours while in reality, it had been used for over 2, 500 hours. This difference in usage would have affected greatly the initial price of the

tractor during the selling period. Mary's claim was genuine as she discovered the discrepancy when she had already used the machine and was servicing it later. An implied warranty of merchantability simply means an indirect assumption that the merchandise being sold will deliver the same way goods of its variety normally do without failing or providing poor services.

For example, when Mary bought the used tractor to till her land, she generally assumed that it would be productive for the remaining hours that she had been promised by the dealer without any technical mishaps or machine failure. Similarly, any consumer would purchase an item without expecting it to do operate contrary to what it was designed to do. The seller of the tractor may hide under the blanket by claiming to sell the product 'as-is' or 'with-all-faults' and in this way, avoid the trappings of the implied warranty of merchantability. In the event that the vendor's claim is valid, the buyer would not receive any compensation arising from a breach of warranty. However, in this case, the seller was clear in stating that the tractor had only covered a certain number of hours while this was not true. Therefore, the vendor would have been liable in the event that both Mary and the seller were in 'privity'. This describes the situation where both parties had signed the same contract. If Mary had purchased the tractor directly from the company, she would have been right to sue for a breach of warranty when the tractor turned out to be older than stated.

This is because Mary and the manufacturer were party to the sales contract. Conversely, Mary had bought the used tractor from a secondhand shop and could not sue the manufacturer for a breach of warranty because she did not

buy the tractor from them. Mary could only sue the dealer because he sold a tractor with the wrong information over its usage and this constituted a breach of warranty. She could however only claim the amount that the tractor was genuinely worth at the time of the sale that would be \$3, 000.

Bankruptcy Bankruptcy refers to a legal condition where an individual or company cannot pay back its creditors the debts it owes. In most situations, bankruptcy is declared by a court order that is frequently instigated by the defaulter. Most people who consider bankruptcy as an option are normally threatened with foreclosure, garnishment and repossession of property.

However, the decision to file for bankruptcy is an important one for several reasons. The most important reason is that an individual can only file for bankruptcy once in every six years. Therefore, such a chance should be put off until it is absolute necessary. There may also be no need to file for bankruptcy even when creditors start sending threatening messages if the individual possesses no non-exempt property or income. Mary could be considered in the group that considers bankruptcy due to overwhelming debts. While bankruptcy may seem a good option for people entrenched in debt such as Mary, several drawbacks that they may encounter. The very process of filing a successful bankruptcy claim is highly complex.

The applicant will have to fill several forms with the official receiver as well as the trustee who might initiate in depth investigations into the personal affairs of the applicant. The most significant disadvantage of bankruptcy is the loss of assets or property. An individual can have all their valuable assets reclaimed including their home, furniture, pension and insurance. The

reclaiming process also entails repossessing any other assets such as inheritance that may have been acquired during the bankruptcy term. Any companies owned by the individual applying for bankruptcy would be immediately liquidated and all the employees dismissed.