

Consider the following scenario:

A marketing company MARCO approaches a software engineering firm SENG (started by two recent computer engineering graduates from Waterloo) to create a software package to be used by MARCO. After an initial meeting with the team leads of SENG, SENG creates a letter of intent specifying the general scope of the project, a proposed list of requirements, and other details regarding the project. The letter begins with the statement “For discussion purposes only, ...” Over the following two months, the two parties come to an impasse with respect to the negotiations concerning the payment, and thus they break off discussions. SENG sent MARCO an invoice for the time SENG spent during the second, more intense, month of discussions referring to an item in the letter indicating that consulting fees would be \$150 per hour; however, MARCO refused to pay.

Next, MARCO took the notes that resulted from the discussions with SENG and approached two other software companies SOCO and INTREPID. During discussions, the lead developer at SOCO, Ripley, noted that SENG was going to develop a smartphone application for the Android operating system only, but indicated that SOCO had the developers who could also create an application for the iPhone. One manager from MARCO, Steve Macintosh, took rather warmly to this additional offer. Thus, on Steve’s recommendation, MARCO continued negotiations with SOCO to come up with a contract to develop the desired software. MARCO indicates that the software must be installed in six months. MARCO indicated that at this time, a software package that was licenced would expire and if the delivery did not occur, MARCO would need to renew their licence agreement on a month-by-month basis of \$2500 per month. The company also indicated that if the software was late, the company would incur losses of \$5000 per month and as it was strongly desired to finish this on time, included an additional penalty of \$2000 per month if the software was late. A contract was put together based on the discussions that had taken place.

A week after the contract is signed, SOCO noted a discrepancy in one of the payments. The third payment was supposed to be \$19 600, but the contract had the figure \$16 900. The first figure had appeared in numerous previous communications, and MARCO agreed this was a mistake and they corrected it.

One month into the project, an executive at MARCO e-mailed the owner of SOCO and indicated they would like to have an additional database connected to the new system. The owner of SOCO e-mailed back and indicated that this was simply not possible in the given time frame and it would cost an additional \$22 000, and the executive counteroffered to extend the deadline by one month, with an additional \$20 000. The owner e-mailed back the comment “That is much more reasonable.”

Four months into the project, Ripley gave her two-week notice that she was terminating her employment with the company. Following a heated discussion with the owner, she was escorted from the property. At this point, the owner was sure that they could still complete the project; however, it became apparent that a significant number of details were known only to the lead developer. Over the next two months, the owner repeatedly assured MARCO that the software would be delivered on time. With one week left on the project, however, the owner approached MARCO and indicated that there were a number of unexpected developments and that the delivery would be delayed.

The owner tried hiring additional developers, but a local company, BlueBerry, was bought by Donald Grump who invested millions into the company, thereby resulting in a significant hiring surge within the Waterloo Region. Of course, with BlueBerry growing again, and the owner could not find any competent developers. He did hire two Waterloo undergraduates who had not found co-op placements that term, but they quickly ended up requiring more resources than they would be worth—they were quickly terminated. The project dragged on and was late.

When the product was finally delivered two months after the initial deadline, the system was installed and made operational. Steve Macintosh objected that there was no iPhone application; however, no one on the team was aware of this requirement, and it wasn’t in the contract. Steve indicated that this feature had been promised by

Ripley; however, no record of the conversation existed. Steve, however, objected and indicated this was one of the main reasons they continued with SOCO.

Within a few days, it soon became obvious that neither the data processing and management system nor the database system worked correctly. While the smaller test cases worked, when the entire system was installed, it slowed to the point of being unusable. At this point, MARCO still owed SOCO \$25 000. The older system was restored and for the next month, SOCO attempted to correct the issues. At the end of the month, the owner of SOCO indicated that he couldn't correct the failures. The owner claimed that the unexpected resignation of his lead developer together with BlueBerry entering a hiring phase resulted in an impossible situation—there simply were not enough competent developers left in Waterloo to hire.

MARCO approached SENG again, who indicated they could correct the two issues quite quickly—the core data structures used simply were not scalable. Within one month, the data processing and management systems and the database systems were correctly installed and working. SENG charged \$65 000 for the work, \$30 000 for each major component and \$5000 for the iPhone application. On top of this, they included a fee of an additional \$750 for the initial consulting fees that were never paid. MARCO agreed to all charges.

MARCO indicated that because the software was three months late, they needed to renew the aforementioned licence for that time, costing a total of \$7500; however, in the ninth month, they also needed to renew a licence required by the older software package. MARCO claimed damages from SOCO for the cost of that licence to the amount of \$5,000. Thus, MARCO indicated that they would pursue damages due to licence renewals for \$12,500. MARCO also claimed late penalties of \$21 000, as indicated in the initial package.

MARCO also pursued damages for having to hire SENG to the tune of \$65 750 minus the \$25 000 they still owed. The owner of SOCO indicated that the database and iPhone application were not in the original contract, thus reducing the claim to \$30 750 minus the \$5000 they still owed (offering to take the cost of the database out of the \$25 000 balance). As for the late penalties, due to the labor shortage, the owner of SOCO claimed they should not apply—he was in an impossible situation. Besides, if they were to apply, they should also only apply for the first two months that the initial installation was late.

You are required to write an essay that investigates the actions of the parties involved. First summarize the situation. Next, for each action, discuss how the action relates to contract law. You must cite the appropriate case when you describe. Finally, given the various claims made, indicate the actual breaches in contract and what the associated damages are. The essay must be Times New Roman, 10 pt, no more than four pages with 1.5 spacing, with standard one-inch margins. The due date is Sunday the 18<sup>th</sup> of October at 10:00 PM. The essay will be out of 120 and the drop box will be open until midnight, with a 1 mark penalty for each minute over the deadline. There will be no submissions after midnight—any student who fails to submit an essay by that time will receive 0.

Remember: The introduction does not introduce the subject matter, the introduction introduces your essay and its structure. After reading the introduction, the reader should be able to anticipate what you will be discussing in the essay, and not necessarily understanding the entire scope of the problem. The body should be broken into an appropriate number of paragraphs, each of which focuses on one aspect of your requirements. Finally, the conclusions should summarize the breaches and penalties that are likely to be paid by SOCO to MARCO involved.

Note: This is not an essay attempting to determine what a real court of law would decide. It is based entirely on those cases we have examined in class. There may be other cases which may influence the outcome of this case if an incident similar to it happened in real life. As we have only looked at a handful of cases, no doubt a professional lawyer could easily find many other cases that would influence any judgement.