

In mid-November, 2012, the week before Thanksgiving and the beginning of the traditional holiday rush, James Tyler, president and sole shareholder of Jim's Toys, Inc. of Hicksville, NY, realized that the Larry the Lawyer doll was a much bigger seller than even he expected. The Larry doll has various fun features which the public – young and old – has embraced. For example, if you pull its left arm, it responds with five different phrases such as "*res ipsa loquitor*" and "*mens rea*". Pulling the right arm causes Larry to say such phrases as "A good lawyer knows the law, a great lawyer knows the judge." By tweaking its nose, the Larry doll will say, "See you in court." This doll was such a sensation and customer favorite that it made the marketing phenomena of the Tickle Me Elmo and Cabbage Patch Dolls, combined, pale in comparison.

Jim's Toys is a local "mom and pop" retail toy store. It was founded by Tyler's grandparents in the 1940's after World War II when his grandfather, James Martin Tyler, returned from the war and settled on Long Island. It has survived over the years despite the proliferation of so called big box stores such as Kay-Bees and Toys-R-Us and shopping malls. Essentially, Jim's Toys remained viable due to its longevity in the community, its ability to get unique and popular toys and games and a loyal following in the Hicksville community.

By the end of the Thanksgiving weekend (Sunday November 25, 2012), Jim's Toys sold out its entire inventory of 200 Larry the Lawyer dolls. Demand was so great

that it had a waiting list of 400 customers (many of whom were first time customers) who each paid a \$40.00 deposit for the \$100.00 (retail price) doll to assure that they would have it in time for the Christmas/Chanukah holidays (The first night of Chanukah was December 8). After the waiting list customers, Tyler believed he could sell another 600 dolls (or more) for a premium price of at least \$200.00 per doll.

On Monday, November 26, 2012, Tyler contacted the manufacturer of the doll, Doll Sensations, Inc. to order 850 new dolls. No other toy manufacturer made the Larry the Lawyer doll.

After speaking with the Sales Director of Doll Sensations, Mary Moore that morning, Tyler forwarded a fax dated November 26, 2012, which read:

Mary – In accordance with our conversation this morning, please ship 850 Larry the Lawyer dolls to us at \$30 per plus \$500 for shipping vis UPS overnight. As usual, payment will be 10 days net. Remember Mary, I already have orders for this doll coming out of my ears. My Christmas holiday season will be made with these dolls bringing customers into my store for the Christmas/Chanukah holiday. Many thanks for your taking this order, continued support and prompt attention. Merry Christmas and Happy New Year.

s/ Jim

Moore responded by fax the next morning November 27, 2012, as follows:

Jim – This doll has been going like hot cakes. But, we are happy to accept your order. However, as I am sure you understand, due to the heavy Christmas demand, we must charge \$60 per doll and \$1,000 for processing your order and for overnight delivery. Merry Christmas to you and yours.

s/ Mary

At 8:00 a.m. the next morning (November 28), a shocked and dismayed Tyler faxed a response to Moore:

Mary – That’s highway robbery but I have a substantial waiting list and need those dolls yesterday! I will pay whatever it takes to make my customers happy. You have me over a barrel so you have a deal. Send those dolls out *today*. Bah humbug!!

s/ Jim

Based on the foregoing, Tyler expected to receive the dolls by Friday, November 30 or Saturday, December 1, at the very latest. Tyler was thrilled that he was able to order these very hot dolls. He caused a large banner sign in green and red lettering to be placed in his store window proclaiming, “**WE HAVE THE LARRY THE LAWYER DOLLS. DO YOUR HOLIDAY SHOPPING AT JIM’S TOYS.**” The dolls did not arrive that Friday or Saturday. Despite regular calls and faxes to Moore and her staff, the dolls were not received until Friday, December 28. Tyler learned that the late arrival was not the fault of UPS.

The real problem was that the Doll Sensations factory had not anticipated the demand and could not keep up with the orders it received. Tyler believed that Moore knew about this problem all along but did not tell him.

As a result, Tyler had to refund all of the deposits from his customers on the waiting list. The Christmas season for Jim’s Toys was much quieter than usual. In fact, it was dismal. Over the next several months, Jim’s Toys had virtually no customers as word of mouth spread over its failure to provide the promised Larry the Lawyer dolls.

To avoid bankruptcy and as a matter of pride, Tyler paid off all of the store's creditors. In so doing, he exhausted his life savings and his children's college funds. Now, he is working as a sales manager in the toy department of a local department store but he is barely making ends meet. When Jim's Toys was open, before anyone heard of the Larry the Lawyer dolls, his weekly salary was \$1,000 and his monthly distribution was not less than \$7,500. He was able to save between \$3,000 and \$4,000 per month. Since the bankruptcy, he has next to nothing as he lives hand to mouth.

Tyler has now come to you and told you the foregoing story. He wants to retain you to sue Doll Sensations and all of those responsible for this horrible situation.

*Assignment #1* – Prepare a retainer agreement for legal services on an hourly basis. A form appropriate to accomplish can be found in the Library or on-line. You should also look at 22 NYCRR 1215 and 1400 for guidance.

This assignment is due the first class on **Monday, August 19, 2013**.

*Assignment # 2* – Based on the foregoing facts prepare a complaint (a summons is not necessary) on behalf of the plaintiff sounding in breach of contract and fraud.

This assignment is due on **Monday, August 26, 2013**.

If you have any questions, you can contact me via e-mail at [laustin@courts.state.ny.us](mailto:laustin@courts.state.ny.us) and [lbawprof@gmail.com](mailto:lbawprof@gmail.com) (please use both to assure a rapid response).