

In mid-November, 2014, the week before Thanksgiving and the traditional holiday rush, Jim's Toys, Inc.<sup>1</sup> of Hicksville, Nassau County, NY, realized that the Larry the Lawyer doll has been a much bigger seller than expected. The Larry doll has various fun features which the public has embraced. For example, if you pull its left arm, it responds with five different Latin phrases such as "*res ipsa loquitor*" Pulling the right arm causes Larry to say phrases like "A good lawyer knows the law. A great lawyer knows the judge." Tweaking its nose causes the doll to say "See you in court."

Within five days of Thanksgiving, Jim's Toys sold out its entire inventory of 400 dolls. Demand had been so great that there was a waiting list of 500 customers who have each paid a \$35.00 deposit for the \$119.99 doll to assure they would have it by Christmas/Chanukah. (Chanukah fell from December 17 to 24 that year). After the waiting list customers, he believed he could sell another 800 or so dolls, at least, at a premium per unit price of at least \$200.00. This doll

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<sup>1</sup> Jim's Toys was founded by James Tyler's grandfather, Cyrus, when he returned from fighting in World War II. Believing in the American Dream, he moved his family to the suburbs to open a toy store named for his grandson. Tyler's father, Henry, ran the store until the late 1970's. Then, fresh from college with a degree in business administration, Jim began running and ultimately owning the family business. In addition to the usual toys and games one would expect, the store specialized in unique, specialty items which held it in good stead with its bargain-conscious customers when box stores with their deeply discounted prices started cropping up. Thus, it was able to survive as a "mom and pop" store securing those hard-to-find toys and novelties which kept generations of customers loyal.

was bigger than the Cabbage Patch Kids and Tickle-Me-Elmo dolls combined.

On Friday, November 28, 2014, the owner of Jim's Toys, James Tyler, contacted the manufacturer of the doll, Doll Sensations, Inc. to order 1,250 new dolls. After speaking with the Sales Director of Doll Sensations, Mary Moore, Tyler forwarded a fax dated November 28, 2014, which read:

"Mary -- In accordance with our conversation, please ship 1,250 Larry the Lawyer dolls to us at \$50 per plus \$2,500 shipping via UPS overnight. Payment, as always, will be 10 days net. Remember, Mary, I have orders coming out of my ears. My Christmas season will be made with these dolls bringing customers into my store. Many thanks for your prompt attention. Merry Christmas and Happy New Year.

s/ Jim"

Ms. Moore responded, by fax, on Monday morning, December 1, 2014:

"Jim - This doll has been going like hot cakes. But, we are happy to accept your order. However, due to the Christmas holiday rush, we must charge \$80.00 per doll and \$4,000 for overnight shipping. Merry Christmas to you and yours.

s/ Mary"

[Emphasis in original]

At 8:00 a.m. the next morning, December 2, 2014, Tyler faxed a response to Moore:

"Mary - That's highway robbery but for my business to survive, I need those dolls *yesterday*. I will pay what 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 upon the foregoing, Tyler immediately rented an illuminated sign for

the front of his store (at a cost of \$750) which proclaimed in large red letters, "JIM'S TOYS HAS THE LARRY THE LAWYER DOLL! DO YOUR HOLIDAY SHOPPING AT JIM'S!!" The response was immediate and positive. Customers flocked to Jim's.

Based upon his correspondence with Moore, Tyler expected the dolls on December 4 or 5, at the latest. They did not arrive. Despite his regular calls and faxes to Moore and her staff over the ensuing period during Chanukah and leading up Christmas, the dolls were not received until December 29. During the time leading up to Chanukah and Christmas, his customers grew despondent, angry and disillusioned.

He learned that the late arrival was not the fault of UPS. The problem apparently was that the Doll Sensations factory could not keep up with the demand and was unable to timely fill the order. Jim believed that Mary knew this all along but did not tell him. He also believed that many other Doll Sensations customers did not receive their orders for the same reason.

As a result, Tyler had to refund all of the deposits from all of his customers on the waiting list. While initial sales were great after announcing the availability doll, they dwindled to almost nothing during the week before Christmas; usually a very strong sales time. Over the next several months, Jim's Toys had virtually no customers as word of mouth spread over its failure to provide the Larry dolls. By the end of March 2015, after the profits from early December were gone, Jim's Toys was forced to close its doors.

To avoid bankruptcy and to do the right thing, Jim paid off all of the store's

creditors but he exhausted his life savings. Now, he is working as a manager at the local Walmart in its toy department and is barely making ends meet. When Jim's Toys was open, before anyone heard of the Larry dolls, he was able to save between \$4 - 5,000 per month after all store and personal expenses and his monthly salary of \$6,000.

Jim has come to you and told you his story and wants to retain you to sue Doll Sensations and all of those responsible for this horrible turn of business events.

**Assignment #1 - Due on January 11, 2016** -- Prepare a retainer agreement for a fee calculated on an hourly basis. (Hint - look at 22 NYCRR 1210 and 1215).

**Assignment #2 - Due on January 25, 2016**– Prepare a complaint alleging causes of action sounding in breach of contract and fraud. (Look at Siegel, *New York Practice* [5<sup>th</sup> Ed.], chapter 9 A-E.)