

UCC Tip of the Month - Does the UCC even apply?

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Mixed contracts for goods and services

Article II of the Uniform Commercial Code applies to transactions in “goods.” The Code defines “goods” as “all things, including specially manufactured goods, which are movable at the time of identification to the contract for sale” MCL 440.2102; MCL 440.2105(1).

For example, purchasing a truckload of scrap steel or a thousand bushels of corn are simple examples of sales of goods. But what about transactions that involve the provision of services in addition to the sale of goods – the so-called “mixed contract?” Picture a contract that dictates the seller shall “remove” a defective electrical conduit system in an office complex and also “install” an entirely new electrical system. The contract specifies a price for the labor involved and the actual electrical system – the goods – being purchased. What then? What law governs?

Under Michigan law, when a dispute arises involving a mixed contract for goods and services, the courts will apply the *predominate factor test* to determine if the UCC governs. Under the predominate factor test the issue is not whether the sale mixes goods and services.

Rather, given that the goods and services are mixed, the inquiry is whether the contract’s predominant factor or purpose was the sale of a product, or the provision of a service. Put another way, if the purchaser’s goal was to buy a product the contract likely will be considered a transaction in goods even if a service is incidentally required. On the other hand, if the purchaser’s goal was to obtain a service, the contract likely will not be governed by the UCC, even though goods were incidentally required in the provision of the service.

Determining which is which under the predominate factor test can be a fact-intensive review and one that is decided on a case-by-case basis. The intent of the parties typically will guide the outcome, but identifying that intent often is unclear once a dispute has arisen. This determination can be significant, particularly when deciding the applicable period of limitations to sue. A contract for the sale of goods is subject to a four-year statute of limitations but a contract for services has a six-year statute of limitations.

UCC TIP OF THE MONTH - DOES THE UCC EVEN APPLY? Cont.

Whether the UCC applies also touches upon various other aspects of the parties' agreement such as missing terms, warranty obligations and rights and remedies upon a default. When in doubt, call us. We can help you work it through, hopefully before a lawsuit is filed.

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