

### Question 3

On May 1, Owner asked Builder to give her an estimate for the cost of building a wooden fence around her back yard. Builder gave Owner signed written estimates of \$4,000, consisting of \$2,500 for labor and \$1,500 for materials for a cedar fence, and of \$7,000, consisting of \$2,500 for labor and \$4,500 for materials for a redwood fence. He said, however, that he would have to verify that the redwood was available.

Owner said she liked the idea of a redwood fence but wanted to think about it before making a decision. In any case, she said she wanted the fence completed by June 1 because she was planning an important event in her back yard for a local charity. Builder said he would check with redwood suppliers and get back to her within two days.

On May 2, Builder telephoned Owner. Owner's phone was answered by her voice-message machine, which informed callers that she had been called away until about May 25 but would be checking her messages daily and would return calls as soon as she could. Builder left a message stating, "I've found the redwood, and I can build the redwood fence for \$7,000, as we agreed. Please give me a call, as I will otherwise buy the redwood, which is in short supply, and start the work within a few days." Owner heard the message, but because the charity event she had planned had been cancelled and there was no longer any urgency about getting the fence erected, she decided to wait until she returned to speak to Builder.

By May 14, Builder had still not heard from Owner. He was concerned that the supply of redwood might not hold and that if he did not start work immediately he would not be able to finish by June 1. Thus, he bought the redwood and completed construction of the fence on May 24.

When Owner returned on May 25, she saw the completed fence and sent Builder a letter stating, "You did a great job, but I never agreed to go ahead with the fence, and I certainly hadn't decided on redwood. Besides, the charity event that I had planned got cancelled. You should have waited until I got back. But, to avoid a dispute with you, I'll offer to split the difference – I'll pay you \$5,500."

Builder received the letter on May 26. He telephoned Owner and said, "When I first read your letter, I was going to get a lawyer and sue you, but I decided to let it go and I do accept your offer of \$5,500." Owner replied, "Well, you're too late. I've changed my mind. I don't think I owe you anything."

May Builder recover all or any part of \$7,000 from Owner on a contractual or other basis? Discuss.