MARINI & FISCHER LTD.
SOLICITORS

Date: 24 May 2002

Our Reference : 'Ambassador Desks' 123456/B

Your Reference : Westway Office/ Legal, May 02

Subject : Legal rules which involves the sell of Ambassador Desks

Westway Office Equipment
29 Church Road
Hove
BN3 2JH

Dear Sir or Madam,

In response to your letter for legal advice involving the sale of one particular type of desks the 'Ambassador'. This case has been analysed into a number of points involving the Law of Contract.

In order for a contract to be enforceable under English Law by an action in the civil courts, there must be a valid offer and acceptance.
An offer may be made to a particular person or, in some cases, to the world at large. A valid offer is a clear statement of the terms on which party (the offeror) is prepared to do business with another party (the offeree), provided to be capable of acceptance, the offer must not be too vague and must be unconditionally accepted by the other party.

Very briefly, I would also like to give the definition of contract for your reference: **"A contract is an agreement between two or more persons which is intended by them to be legally binding".**

However, areas of law concerned in your case with legal issues explained below together with examples of court cases from the past as appendices.

I hope, these will be helpful for you to understand your legal position.

What makes an offer binding?

A legally binding offer has to be ***certain in its terms, intended to do business*** and ***communication of that intention.***
Evans Furniture Ltd. on the 1st. of February sent you a letter, describing the particular type of desk –the 'Ambassador'- and announcing to 'clear out' the 12 desks, which remain in stock in the warehouse for £250 per desk by the end of the month.
By doing so, Evans Furniture Ltd. fulfilled the offer's requirements. ***Scammell (G) & Nephew Ltd. and Ouston (1941)*** [1] is an appropriate case which illustrates the point that a statement which should not be too vague to comprise a valid offer.

Relying on the terms you have given by Evans Furniture Ltd. made you believe that the offer has been made, communicates an **'acceptance'**.
It is essential to understand what is precisely meant by 'accepting' in order to prevent any misunderstanding if and when they arise.

An offer represents the parties **'last word'** prior to acceptance. A statement which does not indicate commitment to be bound by its terms (if accepted) will not be interpreted as a valid offer. However, if the original statement is not a valid offer, there will be no contract, since a valid contract requires both offer and acceptance.

There are two types of statement, which may be found confusing with a legal binding offer:

- Invitation to treat;
- Statement in negotiation

An Invitation to Treat

An invitation to treat is an invitation to another person to make an offer. Such statements invite potential customers to make an offer. It is then the decision of the seller whether to accept the offer. As it is illustrated in ***Partridge& Crittenden (1968)*** [2] giving a magazine advertisement is invitation to treat, which is not as an offer for sale. The courts would regard the letter from Evans Furniture Ltd. to attract your attention to make an offer for the desks, which means it is an invitation to treat.

Statements made in negation are irrelevant to mention in your case where protracted negotiations made.

Acceptance of Offer

An acceptance to be legally binding must be 'mirror image' of the offer, must be unconditional and must be communicated to the offeror.

Your acceptance of the offer to Evans furniture Ltd. was the 'mirror image' of the offer. However, it did not fulfil communication for acceptance.

Acceptance must be communicated

The communication of an offer can be written or spoken, but it may be by conduct. However, it must be received by the offeror that is it must be communicated. Silence cannot be imposed as a means of acceptance.
In ***Felthouse & Bindley (1862)*** [3] it was held that " Although the nephew intended to sell the horse to his uncle, he had not communicated that intention. There was, therefore, no contract between parties" (Keenan, 1997 pp.15).

On The 4th February, you posted a letter to Evans Furniture Ltd. to communicate your acceptance of the offer. However, there was no communication of acceptance because you did not speak to them directly and Evans Furniture cannot say to you "I shall assume you have accepted my offer unless I hear to the contrary".
An acceptance, to be binding, must also be communicated. This generally means that the offeror must know that the acceptance has been made. In ***Entores Ltd. & Miles Far East Corporation (1955)*** [4] it was held that "Where communication is instantaneous, as where parties are face to face or speaking on the telephone, acceptance must be received by the offeror"(Keenan, 1997 pp.16-17).

Communication by post

If the post is a proper and reasonable method of communication between parties, then acceptance is deemed complete immediately of an acceptance is posted, even if is delayed or is lost or destroyed in the post so that it never reaches the offeror, provided that it is properly stamped, addressed and placed in a post receptacle or handed to a person entitled to receive Her Majesty's mail. ***Adams & Lindsell (1818)*** [5] `s case can be made reference.
You posted a letter of acceptance on the 4th February, before Evans Furniture Ltd. sold the desks. However, your decision to buy the desks and subsequent communication for acceptance to Evans Furniture Ltd. by post is not binding, because there was not any effective communication. As I mentioned in the paragraph "An invitation to treat", a letter to you from Evans Furniture Ltd. was merely an invitation to you to make an offer for the desks.

Termination of Offer

An offer if not accepted, can be terminated in a number of different ways.

Revocation and counter offer

The general rule is that an offer may be revoked or withdrawn, at any time before acceptance. If an offer is rejected it ceases to exist. If offerees then change their minds and try to accept, they will in contractual terms be making a new offer. The same result is achieved by a counter-offer. This is an attempt to get a price reduction or such like.

On the 6th February, Evans Furniture Ltd. had a phone call at the Evans's premises of Evans Furniture Ltd. from a local retail shop offering a better price for the twelve desks. The offer was accepted and the desks were delivered to next day (7th February).

The local retail shop's offer was a counter-offer, which was terminated the first one. ***Hyde and Wrench (1840)***[6] provides a useful illustration of the operation of the rules of revocation and counter-offer.
Your letter arrived to Evans Furniture Ltd. on the 8th February, after the contract had been made with the local retail shop and the desks had already been sold. Evans Ltd. also posted a revocation letter to you before they received the letter.

It was held in the case of ***Byrne and Tienhoven (1880)***[7], postal revocation is effective only when the offeree receives it and the mere posting of the letter is not communication to the person to whom it is sent.

Your legal position

The facts of your case and reference to relevant case law indicate that your acceptance did not raise any contractual relationship. Evans Furniture Ltd. had never progressed beyond a mere an invitation to treat. You assumed that an offer had been made and communicated 'acceptance'. If you had communicated to Evans Furniture Ltd. directly and immediately then it could have been different. However, you had also paid nothing to them for the option to keep the offer (the desks) open. Therefore, Evans Furniture Ltd. can make a contract with anyone, who communicates with them directly and immediately and you have no grounds to make a claim for possible breach of contract.

If you have any further inquiries, please do not hesitate to contact the office.

Yours Sincerely,

Marini & Fischer Ltd.

Solicitors

References to Case Law

Scammell (G) & Nephew Ltd. and Ouston (1941) [1]

The House of Lords held that it was not possible to construe a contract from the vague language used by the parties.

Partridge & Crittenden (1968) [2]

Held - That advertisement constituted in law an invitation to treat, not an offer for sale, and the offence was not, therefore established.

Felthouse & Bindley (1862) [3]

The claimant had been engaged in negotiations with his nephew John regarding the purchase of John's horse, and there had been some misunderstanding as to the price. Eventually the claimant wrote to his nephew as follows: 'if I hear no more about him I consider the horse is mine at £30.75p.' The nephew did not reply but wishing to sell the horse to his uncle, but the horse had been sold by mistake.

Held – The claimant's action failed. Although the nephew intended to sell the horse to his uncle, he had not communicated that intention. There was, therefore, no contract between parties.

Entores Ltd. and Miles Far East Corporation (1955) [4]

The claimants, who conducted a business in London, made an offer to the defendants' agent in Amsterdam by means of a teleprinter service. The offer was accepted by a message received on the claimants' teleprinter in London. Later, the defendants were in breach of contract and claimants wished to sue them.

Held – Where communication is instantaneous, as where the parties are face to face or speaking on the telephone, acceptance must be received by the offeror. The same rule applies to communication of this kind. Therefore, the contract was made in London where the acceptance was received.

Adams and Lindsell (1818) [5]

Held – That once a letter of acceptance is posted, a contract comes into existence immediately.

Hyde & Wrench (1840)[6]

The defendant offered to sell his farm for £1000. The claimant 's agent offered £950. and the defendant asked for a few days to think about it.

Held – The claimant could not enforce this 'acceptance' because his counter-offer of £950. was an implied rejection of the original offer to sell at £1000.

Byrne and Tienhoven (1880)[7]

The defendant made an offer to the claimant by letter on October 1. On October 8, the defendant changed his mind and posted a letter of revocation. The claimant received the letter on October 11, and immediately accepted by telegram. On October 15, the claimant affirmed his acceptance by letter. The letter of revocation was received by the claimant on October 20.

Held – that a contract was formed on 11 October when the claimant mailed his telegram of acceptance. The revocation was not communicated to the claimant until 20 October and was, therefore, too late to be effective.