

## House of Russell—Warranty Problem

THC Extraction Company manufactures production machinery for the marijuana industry. Dabba Doo, LLC, negotiated with THC Extraction for a contract to buy a production machine capable of converting fresh marijuana flowers into THC concentrate known as dabs. Representatives of the firms reached agreement. A THC Extraction engineer wrote the order on a form document that THC Extraction's lawyers created. On the form he described the machine sold as a "THC extraction machine capable of using fresh marijuana, produced according to the plans and specifications attached to this document." THC Extraction's engineers prepared these plans and specifications for this contract after lengthy negotiations with Dabba Doo's engineers. At the bottom of the form document, just above the line for Dabba Doo's signature, the following printed language appeared: "THC Extraction agrees to replace all defective parts for 30 days, without charge for parts or labor, which shall be the exclusive remedy if any part is defective. There are NO OTHER REPRESENTATIONS OR WARRANTIES, express or implied, accompanying this sale. This contract is the final and complete expression of the parties' agreement." Authorized representatives of both THC Extraction and Dabba Doo signed the form.

THC Extraction manufactured the machine and delivered it to Dabba Doo within the time specified in the contract. Dabba Doo paid the full purchase price upon delivery. Dabba Doo installed the machine properly and attempted to extract THC from fresh marijuana buds in order to produce dabs. Dabba Doo soon discovered that the machine was not capable of producing

acceptable THC concentrate from fresh marijuana. The concentrate produced was moldy and contained residue from the solvents used in the extraction process. Dabba Doo immediately notified THC Extraction that the machine was defective and explained the problem in detail.

Dabba Doo asked THC Extraction to honor its warranty. THC Extraction sent a representative to Dabba Doo's factory, and she inspected the machine. Based on her report, THC Extraction refused to accept return of the machine or to repair it. THC Extraction explained that it had built the machine according to plans and specifications (which nowhere specified that fresh rather than dried marijuana would be used, and there were no defective parts. Both parties now agree that no machine manufactured according to the plans and specifications attached to their contract could produce acceptable THC concentrate from fresh marijuana buds.

Dabba Doo sued THC Extraction for the price of the machine. Dabba Doo also claimed as damages its lost profits for the time it had taken a third company to manufacture a THC extraction machine that would meet its needs. How likely is it that Dabba Doo will win the remedies it seeks? What will it argue? How will THC Extraction defend?