

Artists Against AIDS, Inc. - known as the AAA - has over the last few years raised several million dollars to support fundamental research into the causes and possible cures of AIDS. Although it raises money throughout the year, most of its contributions come from pledges given at the yearly Artists' Assembly. The Assembly is partly a gourmet banquet and partly an art show of recent works by local artists; the invitees include the rich and the fashionable, as well as the artists themselves. There is no charge, which may seem surprising since the food is excellent and the surroundings plush; indeed, it costs about \$65,000 each year to stage the event. Instead, pledge cards are placed on the tables near the wine glasses, and discreetly collected at the end of the meal. The large donors are given publicity in the AAA's next newsletter. One way or another, a competition has developed to be near the top of the list, and giving the free party has turned out to be a shrewd fund-raising strategy. Pledges for the 1995 Assembly totaled about \$750,000; for 1996, \$950,000; and for 1997, \$1,000,000.

In 1998, the pledges came to only \$525,000. For this, the plaintiff, the AAA, blames the defendant, Howell Hutchins.

The high point of each Assembly is the unveiling of a new work painted for the occasion by a nationally-known artist and kept secret from everyone else until just before dessert is served. Because of the publicity the Assembly garners, there are always several artists happy to fill this spot, even though they are paid nothing for their efforts. (Of course, they do not have to donate their painting, only allow it to be shown.) In the past, the Director of the AAA, Alice Austin - an executive rather than an artist, and somewhat unsure of her aesthetic judgments - had always chosen an academic artist teaching at a famous university. This time, she decided to be more daring. She contacted Hutchins, a very successful commercial artist, and asked him if he wanted to be the keynote artist for the 1998 Assembly. He was very enthusiastic, but said that his busy schedule would only allow him time to do it in the last few days before the Assembly. "I'll tell you what," he told her. "Hang a large blank canvas behind the curtain in the banquet hall and I'll come and on the spot do what I want to do." Austin agreed, but informed Hutchins that she reserves the right to cancel the agreement if she decides to contact another artist instead.

Hutchins did come once, about two weeks before the Assembly, to make sure the canvas was the right size. But a lucrative rush order for painted advertisements came his way, and he never returned. Austin kept calling him, and his secretary kept promising that he would get back to her when his commercial work eased up; but he did not return her calls. On the day before the banquet, Hutchins at last admitted that he will not be able to paint the canvas. Austin decided simply to make bland excuses for Hutchins; she would announce that because of unforeseen circumstances there would be no special painting this year. However, she left the empty canvas hanging on the wall, behind the curtain. At the banquet, as she stood up to give her speech, a high-spirited guest jumped from his seat, yelled out "let us see it," and pulled the curtain apart. There stood the naked canvas. "Is it the latest in modern art?" asked one donor, in a loud voice. "It's a fraud," barked another. By the time Austin got to have her say, the damage was done. Her excuses sounded false. The AAA was a laughingstock. As one of the long-standing donors testified at trial, "the whole incident made you feel that the AAA wasn't very competent - and no one wants to give a lot of money to an incompetent organization, whatever the merits of its 'cause.' I'm sure it influenced me to pledge less than I had in prior years."

When Austin later confronted Hutchins, all he did was shrug and say "I'm sorry - I'd hoped to be able to do more, but I had to give priority to my long-standing clients." To the AAA, however, hundreds of thousands of dollars is neither a laughing matter nor something that can be shrugged off. And so, The AAA filed a suit for damages

The following facts were demonstrated at trial:

- * A month prior to the banquet, the stock market collapsed, diminishing the wealth of many of the assembly's rich invitees. It was rumored, but not proven, that some of the invitees were significantly involved in currency investments, and suffered huge losses, making them unable to donate this year.
- * Hutchins secretary sent a confidential e-mail to Austin, about a week before the banquet, telling her that based on his experience with HH, he predicts that HH will never finish the work in time. Austin read but ignored that e-mail.
- * Although she reserved the unconditional right to do so, Austin never tried to contact another artist.

Outline the contract law issues over which the dispute would focus, the legal arguments available to both parties, their references and the policy consideration that could support them.