

**Sales**  
William Mitchell College of Law  
Professor Gregory M. Duhl  
Fall 2010

***In re Sonrise Landscaping***  
**(Course “Problem”)**

Your clients are Gertrude and Oscar Wax. The Waxes live in Tulsa, Oklahoma. Gertrude works for Saint Francis Hospital as a nurse, and she has legal insurance through her job. The legal insurance company referred you to Gertrude; you will be reimbursed \$50 an hour by the insurance company for your time. Gertrude has consulted you, a licensed Oklahoma attorney, about a problem the Waxes are having with a contractor that they hired, Sonrise Landscaping. The website of Sonrise Landscaping is [www.sonriselandscaping.com](http://www.sonriselandscaping.com).

The Waxes own a home at 3403 E. 63rd Place, Tulsa, Oklahoma. They have no kids, and two dogs named Homer and Corkscrew. They have about a half acre in their backyard, enclosed by a cedar fence. Part of the yard was mostly dirt, not grass, and they wanted to plant sod so Homer and Corkscrew could have a grassy yard and did not get their muddy paw prints in the home after playing in the backyard.

Gertrude filled out a form on Sonrise’s website to request an estimate on May 15, 2010. Lloyd Muffin, a Sonrise employee, contacted her by telephone, and came out to visit with Gertrude on May 18. Lloyd Muffin measured the area that had to be covered with sod, recommended zoysia grass, and discussed with Gertrude how Sonrise would dig up the old grass and weeds on the areas that were mostly dirt, level it with dirt that Sonrise would supply, and then place the sod on top of the dirt. He told Gertrude he would e-mail her an estimate.

John Yonsin, the owner of Sonrise, e-mailed Gertrude a proposal on May 20, 2010. It said:

**Sod:** We will import 6 yards of fresh topsoil to grade the areas in back that need sod. We will import 1,200 s.f. of new Zoysia sod to put down in the backyard mostly between the back of the house and back wall and a little around the back patio. We will not put any sod under the trees as it will not live. Please note we have the sod cut the day before we lay it and therefore do not warranty any sod after it has been cut and delivered. The cost of this project is \$1800. The project is subject to the terms and conditions on our website. Indicate your acceptance by return e-mail.

Gertrude consulted with Oscar, and they decided to have Sonrise do the work, especially in light of the company’s favorable reviews on Angie’s List. Gertrude e-mailed Mr. Yonsin that she wanted Sonrise to do the work, and Mr. Yonsin scheduled it for Friday, June 18, 2010.

The Sonrise workers came out on June 18, 2010, and they did put down 1,200 s.f. of zoysia sod and six yards of fresh topsoil. Unfortunately, Gertrude had three concerns about the work: (i) the sod did not cover fully the dirt parts of the yard that Lloyd had measured on May

18; (ii) in many places, Sonrise put the new sod over old grass and weeds and did not remove the old grass or level the ground with dirt; and (iii) Sonrise dumped extra dirt, about three yards worth, around their trees. Consequently, when it rained the next day on Saturday, June 19, there were piles of mud underneath the trees, and Homer and Corky got a mud bath.

Gertrude called John Yonsin to complain when she came home from work that Friday and saw the backyard. Oscar was out of town while Sonrise was doing the work. Gertrude reached Mr. Yonsin's voicemail and left a message to call her back as soon as possible because she and Oscar were unsatisfied with the work in their backyard. Mr. Yonsin responded by e-mail on Sunday, June 20, 2010, that his workers would come back out the following day.

On Monday, June 21, 2010, Mr. Yonsin's workers came back out, and they tried to remove the excess dirt around the tree trunks. They were able to remove some of it but could not remove it all. Consequently, there was more mud around the tree trunks than before the work was done. The only way to fix that would be to put sod or mulch around the tree trunks. Oscar asked the Sonrise workers to put sod or mulch around the tree trunks on the afternoon of June 21, 2010; the Sonrise workers called Mr. Yonsin to ask what they should do, and Mr. Yonsin refused to authorize his workers to do further work. Consequently, Homer and Corky continue to get muddy when they play in the backyard.

In an e-mail sent the evening of June 21, 2010, Mr. Yonsin also indicated that he refused to cover fully the areas of the backyard with sod that originally had mostly dirt (with some old grass and weeds) because he said that Gertrude and Oscar only contracted for 1,200 s.f., even if Lloyd Muffin had measured incorrectly. He also said that nowhere in the contract did Sonrise promise to remove the old grass and weeds and level the dirt, even if Lloyd had told Gertrude Sonrise would do so.

Mr. Yonsin also indicated in his e-mail dated June 21, 2010, that he demanded full payment, and that the Waxses would incur a late fee (as specified in the terms on the website) if they did not pay immediately. Gertrude and Oscar feel the work was not performed adequately and the job is not complete. The Waxses therefore have not paid any of the \$1,800 due. Sonrise had not required a deposit.

Today is June 25, 2010. Please write the Waxses an advice letter (of no more than 3,000 words) analyzing their potential claims against Sonrise Landscaping, their potential liabilities, and any remedies, whether legal or non-legal.