
FINE FIX MEDIATION

General Information

Culture Bubble, Inc. is a newly formed subsidiary of the multinational entertainment company Club Jed. Culture Bubble was originally proposed by Club Jed's strategic planning director, C.J. Bassin to Club Jed's board of directors, who eventually authorized seed funding for the new corporation on the strength of its central idea: a high-end, high-culture family recreation resort. Now the President of Culture Bubble, Bassin described the Culture Bubble concept as a blend of arts and learning Chautauqua, a museum center, Lego Land, and a sports and recreation resort. Culture Bubble would steer clear of tacky concessions, violent computer game simulations, and blatant consumerism. The facility would have multiple stages for opera, dance, theater, and concerts, making higher culture accessible to all guests. For example, daytime performances would be light and short and would allow children to participate and learn singing, dancing, and acting. Teenagers and adults could participate in discussions of performances or learn more advanced musical and theatrical skills. A technology learning center would feature state-of-the-art innovations, and host demonstrations and lectures by patent holders and other scientists and engineers, geared to all age levels. Amusement rides would be more focused on history, fantasy, art, and illusion than rough thrills. Swimming pools, rafting, canoeing, tennis, volleyball, etc., would be available to all. Bassin chose a location in the Berkshire mountains, on the New York/Connecticut/Massachusetts border as proximate to populations who enjoyed culture in the city and other Berkshire offerings but sought longer vacations with educational and recreational facilities.

Culture Bubble Berkshires was largely completed by spring. Extensive marketing was quite successful: the resort was booked at 60% capacity in February for its first summer season, even though the technology museum, amusement rides, and performance centers were not yet fully constructed. Bassin was confident that completion of the facility by June would attract many more people, at least for long weekend stays in that first season.

In the spring, the rush was on to complete construction, particularly for the center entrance building, Culture Portal, and the Opulent Opera House.

Culture Portal was designed as an artistic fantasy experience, to move guests to a "timeless, floating interaction with art, beauty, and knowledge." Guests were to be lifted across a platform, as actors, dancers, and surreal stagings created a magical pageant. The huge domed structure was delayed in construction, and the artistic director was preoccupied with designing the illusion. When the design was complete, it was clear that two mechanical lifts would be required, to "float" the guests into the illusion.

The Opulent Opera House was scheduled to stage a production of Mozart's Magic Flute – a full version in the evening, and a children's version for performances throughout the day. The Opera House would also require two mechanical lifts, enabling the "Witch of the Night"



and participating guests to “swoop” across the stage. The lifts would also undoubtedly be used for other performances, if not at the Opera House, then at other Culture Bubble Berkshires facilities.

Culture Bubble’s operations manager, Ian Marcu, recognized that he needed to find a specialty designer and fabricator of mechanical lifts, *and fast*. He determined that four modular lifts would be needed, as stated in the bid description, “modular units, to be moved easily under and across a platform, adaptable for movement and refit for different performances.” Four companies submitted initial bids. The Marcu decided to work with Fine Arts Fabricators because their bid price was reasonable, they had experience in designing and fabricating lifts and other mechanicals for amusement park rides, and their president, Fran Finley stressed the company’s “can do” attitude.

Because the Culture Portal’s and the Opulent Opera House’s construction had been delayed, there was very little time between the execution of the contract and Culture Bubble’s target completion date. It is undisputed that Fran Finley explained to operations manager Marcu that Fine Arts’ Fabricators’ normal lead time, between contract execution and delivery was 12 weeks. The significant contract discussions occurred on or about March 10, but the contract was not finally executed until April 13, 10 weeks before the Culture Bubble’s scheduled opening on June 22. The contract contains handwritten language indicating that Fine Arts Fabricators would use “best efforts, to deliver the lifts by June 7” (8 weeks later). Still, it references delivery being due 12 weeks after the “commencement of the contract” (which would have been July 5). Each party has a different version of the negotiations regarding delivery, the intended consequences of failure to meet the target date, and thus the meaning of the contract language. The relevant paragraphs of the contract are attached as Exhibit A.

Each of the four lifts was priced at \$60,000, for a total contract price of \$240,000. Culture Bubble paid an \$80,000 deposit upon the execution of the contract.

The Culture Bubble people anticipated the arrival of the lifts on or before June 7, the “target date”. That would have allowed two weeks for installation and tech crews, the artistic director, and the Culture Bubble “players” to become familiar with the equipment and decorate it appropriately for use in the illusion and the opera.

Within 3 weeks after the contract execution, Fine Arts Fabricators had completed their design, based upon the performance specs and the architectural plans provided for the Culture Portal and the Opulent Opera. Fine Arts Fabricators faxed a design drawing and the attached Exhibit B, which provided the anticipated dimensions (weights and measures) of the four lifts. Culture Bubble’s operations manager Marcu sent back his approval.

When the lifts failed to arrive on June 7, Marcu became concerned and called Finley at Fine Arts Fabricators. Finley explained that there had been some last-minute glitches and promised delivery the next day. Finally, on June 15, after daily phone calls and promises, the lifts were delivered to Culture Bubble’s loading dock. Marcu took one look and was horrified.



The base width of two lifts looked nearly as wide as the floor space in the Culture Portal, and larger than the trap door opening in the Opulent Opera House. These were larger than the dimensions stated in the Fine Arts Fabricators' "weights and measures" document. According to Marcu, they could not have met the staging requirements of the creative illusion at the Culture Portal or for the Magic Flute at the Opulent Opera House and could not be slid down the back ramps of other Culture Bubble buildings, for use in future performances or events.

Marcu called Finley and left an angry voicemail. He then called his lawyer to get his advice on how best to handle the problem. The lawyer advised him not to accept delivery, and the lifts were promptly returned to Fine Arts Fabricators.

Marcu was unable to locate satisfactory lifts for the 2011 summer season (the largest revenue season at Culture Bubble). He obtained a rather rickety lift from an old theatre for Culture Portal. The entrance illusion had to be dramatically "downscaled."

Culture Bubble did obtain four new lifts the next winter, at a cost of \$90,000 each, \$360,000 total, fabricated by the highest of the original bidders. Each lift's base area was considerably smaller, and Culture Bubble somewhat reduced the lift performance specs for live loads.

Culture Bubble sued Fine Arts Fabricators, seeking a return of the \$80,000 deposit paid, the \$120,000 difference between the contract price and the price of replacements, \$680,000 in lost revenues, and \$1,000,000 in damages for loss of reputation at Culture Bubble – a total of \$1,880,000.

Fine Arts Fabricators counterclaimed for \$100,000 in lost profits – the full contract price of \$240,000 less \$140,000 in materials and labor. Fine Arts maintains that Culture Bubble terminated the contract prematurely, because Fine Arts was not in breach for delay, and under the terms of the contract, should have been given 14 days to cure any defect. They also maintain that the contract language precludes delay damages, in any event.

Culture Bubble is a Massachusetts Corporation; Fine Arts Fabricators is located in Kentucky. Culture Bubble filed suit in the Federal District Court in Massachusetts, the Western District. Shortly after the suit was filed, about a month after discovery began, the court clerk's office scheduled an "early status conference" and suggested that the parties participate in the court's mediation program. Both parties agreed. The case is now scheduled for mediation at the courthouse, by a mediator on the courthouse panel.

The mediator has been provided with the pleadings and the attached key contract documents and has spoken with counsel in a lengthy conference call. The information contained in this "General Information" document is now known to the mediator, from reviewing the pleadings and conversation with counsel. Fran Finley, co-owner and founder of Fine Arts Fabricators, Inc., and C. J. Bassin, President of Culture Bubble, Inc., will both attend the mediation, accompanied by counsel.



Exhibit A

Relevant excerpts of the contract between Culture Bubble, Inc., and Fine Arts Fabricators, Inc., signed and dated April 13.

Fine Arts Fabricators required delivery date is 12 weeks from commencement of this contract, for design, fabrication, and delivery of product: 4 mechanical lifts as specified.....

Lift products design and fabrication will be scheduled for delivery to purchaser on June 7 of this year, Fine Arts Fabricators shall receive incentive payments of \$10,000 additional per lift upon delivery by June 7, . . .

If lift products are not delivered by June 7, Fine Arts Fabricators will forfeit these “incentive payments”

If lift products fail to meet performance specifications on site, purchaser will notify Fine Arts Fabricators of alleged defects. Fine Arts Fabricators will be given the opportunity to verify and perform independent testing and will have 14 days after notice of defect within which to cure any defects.....

Exhibit B

Relevant excerpts of the “weights and measures” document provided by Fine Arts Fabricators and approved by Culture Bubble, Inc.

Sizes: 7' x 9' base size, expand up to 20' height
Dynamic Load: 1580 psf
Speed: 0-6fps (0-110 meter/minute)
Travel: 15'
Assembly weight (net) approx. 2500 lbs.
Motor Power: 20 hp
Actuators: Three hydraulic cylinders with double rod
Command: by variable flow hydraulic pump and electric valves
Speed and position censored