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I. CONTRACT REMEDIES

Contracts for the sale of goods are governed by Article 2 of the UCC and all other contracts are governed by common law. For any contract that has both goods and services, contract law will be based on the most pertinent part of the contract.

Here, Ben and Carl entered into a written agreement for the installation of solar panels with a certain type of equipment. A court will find that this contract is mainly a service contract; that is, Ben is contracting with Carl for Carl to install (service) solar panels. As such, the remedies in this case will be based on underlying common law contract theories.

II. REMEDIES AVAILABLE TO CARL

A. Legal Damages

Compensatory Damages

Carl's Argument. Compensatory damages put a plaintiff in the position he would have been, had the contract been fully performed. In order for a party to receive compensatory damages under a contract, he must show (1) damages, (2) foreseeability, (3) certainty to a reasonable degree, and (4) an attempt to mitigate his damages.

Firstly, in this case, Carl can show damages based on his labor or equipment expenses with receipts or payments of wages to other parties if available. If Carl could have taken on other installation jobs if he had not taken Ben's, he can show this with prior work history. For actual damages, Carl can show that but-for doing Ben's installation job, he would not have incurred labor or equipment

expenses. Carl can also show proximate cause because these damages are related to the contract.

Secondly, Carl can show foreseeability because any reasonable person would know that obtaining equipment would cost money. Under the facts, Carl was not going to be paid until after "completion of construction," so Ben should know that Carl will most likely incur expenses related to the commencement of Carl's performance in installing the solar panels.

Thirdly, Carl's damages are certain to a reasonable degree. The cost of the equipment and labor are not speculative, but very calculable. He can show this with either receipts or show equipment costs based on its fair market value in obtaining it.

Lastly, Carl will argue that he attempted to mitigate his damages because he knew that Carl was adamant about completing the construction by Thanksgiving. If Carl believed that time was the most important aspect to Ben, then Carl reasonably believed that substituting Sun solar equipment with an "equal grade" manufactured by its competitor was an attempt to mitigate damages. On the other hand, Ben told Carl that Sun was owned by Ben's brother, so perhaps Carl should have known that the type of equipment was more important than the construction's timing.

Ben's Defenses. Ben will most likely argue that Carl did not perform under the terms of the contract. The third provision has a merger clause that states with specificity that the contract contains their full agreement. Ben will argue that Carl should have known that the exact manufacturer of the equipment, and not the quality of the equipment, was most important to him because Ben wanted to bring business to his brother. He will also say that He did not agree to change the equipment by writing and that none of the terms have changed.

Furthermore, the fourth provision states that the contract cannot be modified unless there is written consent by both parties. Ben will also argue that the fourth provisions excludes any other agreements under the parol evidence rule. He will state that any oral agreement as to an offered bonus or assurances should be disregarded (discussed further below).

Under the theory of compensatory damages, Carl will seek full performance by Ben. That is, he will ask the court to award him the full \$200,000 for the completion of the (arguably) comparable type of solar panels on Ben's property.

Reliance Damages

Reliance damages are awarded when the contract induced reliance by a party to perform. Such damages are awarded when begins commencing performance or in preparation of performance. Like above, in order for a plaintiff to receive reliance damages he must show (1) damage, (2) foreseeability, (3) causation, and (4) certainty (with a duty to mitigate).

Carl can show all four elements because, (1) his damages can be shown with receipts or labor costs, (2) his costs were foreseeable, especially in view of the fair market value of solar panel installation, (3) his damages where caused by inducing his reliance on this contract, (4) his damages are certain to a reasonable degree and he attempted to mitigate his damages with substitution of an equal grade of equipment. Carl will argue that he relied on Ben's promised performance by commencing construction of the solar panel.

\$25,000 bonus. As to the bonus, Carl will also argue that Ben induced him to "rush" performance even though he promised that he would finish by Thanksgiving. Nothing in the facts indicate that Ben had any reason to doubt Carl's performance. As a defense, however, Ben will argue that there was lack of consideration, because assurance based on a performance already promised was not *new* consideration, but past consideration. Ben will say that there was

not additional contract because Carl's lack of consideration. Also, under the parol evidence rule, Ben will argue that there was no additional term and that any evidence to an oral agreement should be excluded.

Restitutionary Damages

Restitutionary damages are based on the benefit conferred onto the other party. Under this theory of damages, the plaintiff will receive the value of the benefit conferred onto the defendant by their part or full performance of the contract. Such damages must be certain to a reasonable degree.

Carl will argue that Ben was still benefited by the installation of the solar panels, even if performance was not done in the manner that Ben had specifically wanted. If, however, Ben has to pay for taking the solar panels down and replacing the panels, then he will argue that there was no such benefit. A court however, will most likely say that Carl has indeed conferred a benefit, and that requiring Carl to take down and pay Sun solar equipment is not feasible or may be unduly burdensome.

If Carl seeks restitutionary damages, he will probably not receive the full \$200,000, but he will receive the value of the benefit that was conferred on Ben. Most likely, he Carl will receive the fair market value of his services under this theory.

Nominal Damages

Nominal damages are awarded when there is proof of a breach, but no proof of damages. Nominal damages will *not* be appropriate here because Carl performed substantially under the contract and actually incurred damages

No Punitive Damages Available

Since this is a contract theory with no underlying tort theories (such as tortious interference), there will be *no* punitive damages available to Carl. Carl will not

seek punitive damages.

B. Equitable Remedies

Equitable damages are available when legal damages are not insufficient. Under the theory of equity, one must do equity to receive equity. A court will look at the conduct of both parties to determine whether equitable damages are appropriate.

Specific Performance

Specific performance is granted when a court orders another party to perform. It is usually never applied to a party who is supposed to offer a service, unless they meet certain exceptions.

Here, Carl is the servicing party and Carl will ask the Ben specifically perform under the contract and pay \$200,000 as was due upon the completeion of the installation. If a court is persuaded, the court will order Ben to perform and pay \$200,000 to ben.

Reformation

Reformation occurs when a court changes the terms of the contract in order to conform to the parties original intent.

Here, it is clear that Ben intended there to be Sun solar panels, but Carl placed a different set of panels of equal grade. It is clear that Carl understood this term because he attempted to obtain Sun equipment but was out of stock. Carl will ask the court to reform the contract because Carl's and Ben's original intent was clear and was reflected under the contract.

However, Carl may ask the court to reform "manufactured by Sun Company" term under the first provision because of a later unforeseen event. Specifically,

Carl will say that it was impossible for him to actually obtain that exact type of equipment. In order to prevail, Carl must show (1) the changes in circumstances affected the contract, (2) the change was not due to the Carl, and (3) the change made it impossible to perform. Carl can successfully show all three because it was unanticipated that Sun would run out of equipment and it was not his fault. Carl will claim that it was impossible for him to completely comply under the terms of the original contract because no Sun equipment was available. He will further claim that in order to comply with the timing of the construction, he replaced the Sun equipment with an equal grade of equipment.

If Carl asks for reformation, he will ask the court to strike out any of the terms that refer to Sun Company.

Rescission

Rescission is sought when a party

III. CONCLUSION

Carl's best remedy to receive the \$200,000 will be compensatory damages, specific performance, or reformation. If a court is unpersuaded by this, Carl should ask to receive a restitutionary remedy, and Carl will be paid the fair market value of the installation and services.

Carl will probably not be able to receive the \$25,000 bonus because of Ben's defenses described above.