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Temporary Restraining Order

A plaintiff can seek a temporary restraining order (TRO) when there is a likelihood that (1) the plaintiff will suffer immediate irreparable harm and (2) that the emergency situation requires that the opposing party not be given notice for fear of causing the harm. The plaintiff must still give the opposing party reasonable notice of the TRO if they know of the location of the party and where to send notice. A TRO lasts for 14 days, at which point the plaintiff will have a chance to argue for a preliminary injunction.

Here, S has told R that he intends to sell the queen to another collector. R can argue that if S is allowed to sell the queen to the other collector he would suffer immediate irreparable harm because of the uniqueness of the piece. Since there are so few queens out there, and none of them are selling their pieces, there is a strong likelihood that if S sells the queen the harm would be irreparable to R. Further, the situation is dire to R because he is seeking to prevent S from going back on his contract and selling this exclusive piece to another collector. If the court waits too long, then the queen could be sold, and R would be severely harmed.

Thus, the court should grant R's TRO to order S to refrain from selling the queen to the other collector.

Preliminary Injunction

A plaintiff can seek a preliminary injunction after a TRO to prevent the opposing party from acting, or require them to do something if (1) there is a chance of irreparable harm (2) the court balances the hardships of the parties (3) probability plaintiff will succeed on the merits (4) feasibility of enforcement and (5) no equitable defenses. A party who seeks a preliminary injunction is also

required to post a bond for the amount of the contested injury.

Irreparable Harm

Similar to above for TRO, R would potentially suffer an irreparable harm if the preliminary injunction is not granted to stop S from selling the queen during the case. If the preliminary injunction is not granted, it is possible for S to sell the queen to the other collector while the parties are still litigating the case.

Thus, if the preliminary injunction is not granted, then R will likely suffer irreparable harm.

Balancing of Hardships

A court must balance the hardships of the parties if the preliminary injunction is granted.

Here, the court must balance the hardship to R and S if the preliminary injunction is granted. R can argue that the hardship to him would be substantial because it is unlikely that he would be able to obtain another queen if S does not sell to him. Further, the queen is unique and R is seeking to obtain this specific queen for his set. However, S will argue that he will suffer a hardship if not allowed to sell to the other collector because he will be out a potentially lucrative sale. But, the facts state because the queens are in such high demand and there is not a lot of supply, S would not have a problem waiting until after the litigation of the case to find another seller.

Thus, the court will find that the balance of hardship weighs in favor of R.

Probability of Success on the Merits

The court will look to see if there is a probability of success on the merits of the case for R to grant the preliminary injunction.

Here, the facts state that R and S entered into a valid contract for the sale of the queen. S will likely argue that R misrepresented the fact that the queen was worth more than it really was. However, courts are unlikely to look at the amount of consideration to determine if it is sufficient unless it appears nominal. While the value of the queen was worth a lot more than S knew, R did not induce or misrepresent any part of the deal because he asked S what he would like for it. Because S proposed the price, R did not make any material misrepresentation regarding the true value of the queen.

Thus, because there is a valid contract, and S cannot show that R misrepresented the value of the queen, R will likely win on the merits.

Feasibility of Enforcement

Courts will enforce a preliminary injunction if it is likely feasible they can supervise enforcement.

Here, the issue is the sale of the queen that R and S contracted for. R is seeking a preliminary injunction to prevent S from selling the queen to someone else. The only enforcement that the court would be required is to ensure that S does not sell the queen to anyone else.

Thus, there enforcement is feasible for the court.

Equitable Defenses

A preliminary injunction will not be granted if there are equitable defenses.

Unclean Hands

The equitable defense of unclean hands prevents equitable relief if the plaintiff's wrongdoing arose from the cause of action. This would include any fraud, or illegal acts on the part of the plaintiff.

Here, S can argue the defense of unclean hands because R supposedly "defrauds people out of antiques all the time". However, R will argue that this transaction S proposed the price and R merely accepted. Further, even though S asked if \$450 was fair to R, R can argue that it was very fair for him to pay \$450 for the price. There is no evidence that R misrepresented or sought to defraud S by telling him the queen was not worth that much.

Thus, because S proposed the price and R accepted, S will be unable to use the unclean hands defense.

Conclusion

Based on the above analysis, the court should grant R a preliminary injunction during trial to prevent S from selling the queen to another collector.

Specific Performance

For a plaintiff to obtain specific performance they must show (1) there is a valid contract (2) plaintiff has met conditions precedent to performance (3) legal remedies would be inadequate (4) mutuality of performance (5) feasibility of enforcement and (6) no equitable defenses.

Valid Contract

For specific performance, there must be a valid contract.

Here, the facts state that there was a valid contract between R and S for the queen.

Thus, there is a valid contract.

Conditions Precedent Have Been Met

A plaintiff must show they have fulfilled all the conditions precedent to defendant's performance of the contract.

Here, the contract was a sale of the queen for \$450. The facts state that after agreeing on the price, R tendered a check for \$450 immediately. This would be R's condition precedent to S's performance of bringing the queen over the next day.

Thus, R has met the conditions precedent for S's performance.

Inadequate Legal Remedies

A plaintiff can seek specific performance if legal remedies would be inadequate. This is usually the case in either land sales, or special or unique goods.

Here, R will argue that the legal remedy of returning his \$450 for the queen would be inadequate for several reasons (1) the speculation of how much a complete set is worth and (2) the uniqueness of the good.

Speculation of Complete Set Value

Here, R will argue that a complete set of Antituck chess pieces would be an enormous value to a collector like him. While there is no complete set that exists

in the world, the speculative measure is that a complete set would be worth up to \$1 million. Since R is only missing the queen, then a complete set would be of enormous value to him because it would draw numerous collectors to purchase memorabilia from R. To award R the \$450 from the sale would be inadequate, because the real value of the queen is the fact that it completes the set. Further, even without the complete set, a queen was previously sold for \$175,000, which shows the true value of the piece.

Thus, because of the enormous value of the complete set and the fact that a queen piece was once sold for \$175,000, the legal remedy of \$450 would be inadequate to R.

Uniqueness of Good

Here, R can argue that the uniqueness of the good would make legal remedies inadequate. Since there are only 15 full sets in the world, and there are only six queens in the world, the queen is very unique. To award R \$450 would be inadequate because the value comes from the fact that there are so few of these pieces, and no collectors are willing to sell them.

Thus, because of the uniqueness of the good, legal remedies would be inadequate.

Mutuality of Performance

A court will grant specific performance if there exists a mutuality of performance of the parties. The court will look to see if the only factor holding back performance is the defendant's refusal to perform. If there are issues of impracticality, impossibility, then the court will likely find there is not mutuality of performance.

Here, R has already paid S for the queen. The only thing left for the completion of the contract is to have S deliver the queen.

Thus, there is mutuality of performance.

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Feasibility of Enforcement

See rule above for feasibility.

Here, the only enforcement the court would be required to oversee is to ensure that S turns over the queen to R.

Thus, it is feasible for the court to supervise enforcement of the contract.

No Equitable Defenses

See rule above.

Unclean Hands

See rule above.

Here, S will likely argue that same argument from the preliminary injunction. However, as analyzed above, it was S who proposed the price, not R. Regardless of what other people may have said about R, that does not pertain to this transaction specifically.

Thus, there are no equitable defenses to R's claim for specific performance.

Conclusion

Thus, based on the above analysis, the court should grant R specific performance and require S to turn over the queen.

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