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===== Start of Answer #4 (1148 words) =====

(1)

Joinder of Claims

A claimant may join however many claims he has against the defendant so long as subject matter jurisdiction exists for each claim. Moreover, the claimant has the option of joining the claim or filing a separate claim later but this could be problematic due to issue preclusion. Therefore, a claimant would be acting in his best interest if he brings forth his claims together in order to not be barred from bringing them at a later date.

Here, Buyer is bringing forward two suits against the Seller: fraud and breach of contract. If the claims have proper subject matter jurisdiction (discussed below) they will be allowed to be joined.

(2)

Sufficient Pleadings

Pleadings must state (1) grounds for Subject Matter Jurisdiction (SMJ); (2) plausible claim; (3) damages. If the issue in the case is fraud, it must be plead with particularity.

Here, the Seller alleged in his complaint only that the Seller committed "fraud in the supposed value" and that he sought damages of \$1 million. The court will likely find this to not be enough for a fraud claim. There is no discussion of SMJ in the pleading and the fraud claim is not plead with enough particularity. Therefore, the allegation is not sufficient to state a claim for fraud involving the painting.

As a side note, Seller should bring a 12(b)(6) motion for failure to state a claim upon which relief can be granted, since there are issues with the pleading.

(3)

Subject Matter Jurisdiction

In order to properly be in federal court, one must have either federal question jurisdiction or diversity jurisdiction.

Federal Question

For federal question the claim must arise under federal law. Here, there are two claims: fraud and breach of contract. Nothing in the facts show that there is a federal law that would be implicated. Therefore, there is no federal question.

Diversity Jurisdiction

For diversity jurisdiction the parties must be diverse from one other, meaning that they are from different states, and meet the amount in controversy requirement which is over \$75,000.

Citizenship of Parties

_____ An individual's citizenship is determined by where they are domiciled and their intent to stay. A corporation's citizenship is determined by where their principal place of business is and where they were incorporated.

Here, we have two individuals. Buyer is living in New York while Seller is living in California. Therefore, Buyer would be a citizen of New York while Seller would be a citizen of California. There is nothing in the facts that show that either buyer or seller intended to move. Although Buyer was going to purchase a property in California and that could give an inference that he intended to move to California, there is nothing in the facts to support this. Thus, since Buyer is living in New York and presumably has the intent to stay there, while Seller lives in California, diversity of citizenship exists between the parties.

Amount in Controversy

_____ The amount in controversy requirement must be over \$75,000. In order to meet this amount, a plaintiff can aggregate his claims against the defendant.

Here, Buyer has two claims: fraud and breach of contract. In regards to

the fraud claim, Buyer is alleging damages of \$1 million. This itself is sufficient for the amount in controversy requirement. Therefore, the fraud claim will be allowed under diversity jurisdiction. In the breach of contract claim, Buyer is asking for specific performance which is an equitable remedy. Although the property in question is worth \$5 million, the buyer is not asking for monetary damages. Therefore, the breach of contract claim will not be found to have diversity jurisdiction.

Supplemental Jurisdiction

There will be supplemental jurisdiction over a claim if it arises out of the common nucleus of operative fact, which is basically the same transaction or occurrence. Here, there was a separate valid contract made between Buyer and Seller. Buyer will claim that it arises out of the same transaction or occurrence because they are both contracts between the same parties. Yet, this argument might not succeed because the facts state that there are two separate valid contracts. Buyer can claim that they arise from the same transaction or occurrence because he bought the painting from Seller and when he later found out it was not an original Rothko and instead a fraudulent painting and confronted Seller about it, Seller told Buyer that he would not go through with the sale of the property. Therefore, supplemental jurisdiction could go either way but it is likely a court might not find that there is a common nucleus of operative fact that would allow the case to fall under supplemental jurisdiction.

Conclusion: In the fraud suit there is diversity jurisdiction and in the property suit there is no diversity jurisdiction or federal question and it is likely that there is no supplemental jurisdiction.

(4)

Erie Doctrine

A court sitting in diversity will apply the state substantive law of where it sits and federal procedural law.

Here, as discussed above, there is diversity jurisdiction over the parties.

Therefore, the court will apply California's state substantive law and Federal procedural law. If by chance there is a clause in the contracts between the parties that state that a particular forum will exist if a lawsuit were to arise, then it is likely that that clause would dominate. Moreover, the property is located California which would create an interest in having California substantive law apply. But, since there are no additional facts here to raise the previously mentioned scenarios, the court here will apply California substantive law and federal procedural law.

(5)

Jury Trial

The 7th amendments grants the right of a jury trial. A jury trial is available for claims of law but not for equity claims, those will be tried by the judge. Moreover, a jury trial must be requested within 14 days of the last pleading or else it is waived.

Fraud

In regards to the fraud claim, the Buyer is requesting damages of \$1 million. Since these legal and not equitable damages, Buyer will be allowed a jury trial. Moreover, since the facts show that the Buyer demanded trial by jury on all issues and this was done in his initial pleading, he requested in the jury trial in the proper amount of time. Therefore, Buyer will get a jury trial for the fraud claim.

Breach of Contract

If the breach of contract claim will be allowed under supplemental jurisdiction, the court will first hear the fraud claim with the jury and after the judge will deal with the equitable remedy that Buyer is requesting which is specific performance.

This is due to the fact that the court is sitting in diversity and is applying federal procedural law. If the court was applying California procedures, the Judge would hear the equity claim first and the jury would hear the fraud claim.

Question #1 Final Word Count = 1148

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