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===== Start of Answer #3 (1998 words) =====

**1. LIKELIHOOD THAT RICK WILL OBTAIN A TEMPORARY RESTRAINING ORDER**

A temporary restraining order (TRO) is a stop gap measure which holds the status quo until a court can have a chance to hold a hearing on the issues. A TRO maybe obtained Ex Parte, if notification of obtaining the TRO would frustrate the purpose. A TRO is not however effective until the opposing party is made aware of the TRO. Typically TRO's expire within 10 days.

Because Sam threatened to sell the queen to another collector, Rick, may be able to get a court to issue a TRO that would allow time to put Sam on notice, and prevent Sam from selling the queen to another person, until after the matter was sorted out in the lawsuit for breach of the contract.

Generally TRO's issue to prevent irreparable harm, that legal damages can not remedy. Here Rick would need to prove to the court that he would suffer the irreparable harm due to the sale of the piece to another dealer. (as Sam has threatened to do) His best argument here would be that there are only a handful of Queens worldwide, and that most of them are not available for purchase, and as such this Queen is so unique, that until the court has the opportunity to hear the matter fully, a TRO would be appropriate to preserve his interest in purchasing the Queen.

The court is likely to grant the TRO, as it doesn't substantially interfere with Sam's rights. He would still be able to sell it after the 10 period providing that a PIJ isn't granted.

**2. LIKELIHOOD THAT RICK WILL OBTAIN A PRELIMINARY INJUNCTION (PIJ)**

A Preliminary Injunction (PIJ) functions much like a TRO, however it may continue for a longer period of time, until a full hearing on the issues may be heard. Often PIJ hearings follow TRO's and give both sides a chance to be heard.

To obtain a PIJ, Rick must show the court that a legal remedy is insufficient. He will also have to show that without it, future harm will occur. Further, he must show that he has a substantial likelihood to win on the merits. Rick will likely be required to post a bond, to pay damages to defendant if he is wrong, and the PJ issued without proper cause.

Here Rick's best argument, again is that the Queen is unique, most of all rarely / or not available for purchase (discussed supra) of why a legal remedy would be insufficient. The future harm that would occur is that he would lose the opportunity to purchase this one, and that Sam may sell it to another, and potentially another opportunity may never arise.

Rick would likely have to post the bond to pay damages to Sam if he doesn't win. Although, it's unclear how much that would need to be given the rareness of the item, and how long Sam maybe refrained from selling it, and what damages Sam would incur by not being able to sell it.

The greatest hurdle that Rick will need to over come is that he needs to prove that he has a substantial likelihood to win on the merits of the case. As discussed below, there is evidence of fraud in the making of the contract with Sam, as well as unilateral mistake by Sam as to the value of the piece, due to relying on fraudulent information and information concealed by Rick. Sam will also have a chance to present evidence at the hearing, and these issues will

likely come to light quite quickly.

As such, it is less likely that the court would grant the PIJ in Rick's favor the granting of the TRO.

It should be noted that TRO's and PIJ's may be appealed.

### **3. LIKELIHOOD THAT RICK WILL OBTAIN SPECIFIC PERFORMANCE FOR BREACH OF CONTRACT**

#### The Contract

Although the contract is for the sale of goods, it does not appear that Seller is a merchant, although Rick Retailer likely is. Many things, such as the sophistication of the parties, and the nature of how they do business can often provide further insight, however the facts are predominately silent to this. As such, both Common Law (CL) and UCC will be discussed if applicable to the issues.

Here the facts state that R and S entered into a 'valid written contract'. A contract is an agreement including an offer and acceptance with consideration (bargain for exchange of legal detriment) Here the contract, was for Sam to hand over the Queen the next day in exchange for \$450.

#### Adequate Consideration

Courts typically do not get into the issue of whether the amount of consideration adequate. A 'peppercorn' could suffice as consideration. However, there appears to be an issue of fraud in the inducement of the consideration. Rick knew, that 30 + years ago a queen sold for \$175k. He knew that the queen was worth substantially more than \$450. Here, he brought the piece to Rick, and asked if it was worth anything. Although Rick first asked what Sam wanted, and Sam offered \$450, to which Rick's response, was that would be fair (i.e. to Rick, but

put Sam at a bargaining disadvantage) . Here Rick went so far as to offer to pay the \$450 on the spot to hand over the queen. Subsequently came the valid written contract.

### Defenses to Breach of the Contract by Sam

Although the facts state that a valid contract was entered into by the parties. Defenses to Breach or excuses to performance may still be at issue.

#### Unilateral Mistake

Sam may have grounds to have the contract rescinded on the fact of unilateral mistake. Here, as the seller, Sam had no idea what the piece was worth, and as stated above, he is likely not considered a merchant so the 'sometimes you make a profit and sometimes you take a loss, benefit of the bargain in business rule would not apply. The court would likely rescind the contract. based on the fact that Rick had substantial knowledge regarding the value of the Queen that he did not share with Sam.

#### Fraud

Rick, fraudulently concealed information and facts to Sam to convince him that the piece was worth substantially less. Further, because money did not change hands. the contract at this time was still in the executory phase. If the contract is held to fall within the UCC, then the rule of dealing in good faith would automatically be read into their agreement. If the court finds that Fraud was used by Rick to create the contract, the Court may also void/rescind the contract based on fraud.

#### Concealment of Facts

Here in negotiations with Sam, Rick concealed facts regarding the value of the piece to Sam, to get the best deal possible, which was unfair, and would breach the implied good faith and fair dealings that the court reads in to such contracts.

The Statute of Frauds (SOF) governs contracts for the sales of goods that are in excess of \$500. Here the facts state that the parties agreed to a price of \$450. Which would not likely rise to the requirements of needing a written contract, but none the less there appears to be a written contract.

Statement regarding selling to another buyer

As stated above, the contract was still executory at this time. There do not appear to be any conditions precedent, only that the following day, that Sam would deliver the queen, for the payment from Rick. As Such, this contract appears to have concurrent conditions. Here, Sam's telephone call, letting Rick know that he is now aware of the unilateral mistake, maybe a good defense for Sam to argue that the contract should be rescinded.

Sam's statement that Rick defrauds people out of expensive antiques all the time

Sam's statement is troubling. Here is infers wonder if another dealer has put the idea into Sam's head that Rick is a cheat (given the \$450 offer, it doesn't bode well for Rick) however, that a third party may be interfering with Rick's economic prospective advantage. Rich as a lot to gain by acquiring the piece for his set (value of a complete set + the amount of money just exhibiting it could potentially bring him.) Rick may be able to use this information, to at least bid him some time, until the court adjudicates the matter on it's merits to learn who the other party is that has given Sam this information, and allow for Rick to enjoin them in the action, for interference with the contract. (again, Rick would need to surmount the issues of concealment of the actual value of the piece from Sam, and Sam's unilateral mistake) This information would not likely give rise to a level to allow Rick to win on the merits for the PIJ to be granted.

### **Likelihood of Granting of Specific Performance**

Specific Performance is also an equitable remedy, that is typically granted when legal (money) damages are not sufficient in the circumstances. Courts are hesitant to grant SP orders, because it requires the courts to continue to maintain jurisdiction and to monitor the case until completion.

Specific Performance is usually granted in disputes regarding Real Property, as it is considered unique. Sometimes items of personal property may also qualify. As Specific Performance, like Injunctions, and TRO's are matters that are not heard before a jury, but rather decided by a judge.

The Queen chess piece, may be considered unique enough to qualify, however that would be up to the Judge to decide as a legal question. Rick may argue that due to the rarity that money damages could would not be adequate compensation at law, and the only actual way to cure the breach of the contract is through specific performance.

Due to the fraud/concealment of Facts and unilateral mistake of Sam. It is not likely that the court will rule in favor of Rick for Specific Performance, because such a ruling would be contra to public policy for fairness and being just.

### **Possible other remedies/Outcomes**

Typically in remedies for Contracts, the court seeks to put the parties back into the positions they would be 'but for the breach as if the contract had occurred'. Here Rick will argue, that through specific performance, he can hand Sam the \$450, and Sam can give him the Queen, and all will be cured.

However, due to the potential fraud by Rick, and the unilateral mistake of Sam regarding the value of the piece, the court is likely to order rescission of the contract, as if it's never happened. It would be too much for the court to reform

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the contract, because the Court would then have to decide what the proper and fair price of the Queen is at current market value.

If Rick had already provided Sam the payment of the \$450, the court likely would require Sam to refund the money to Rick (restitution)

Further, the facts state that Rick was hoping to have a complete full chess set, to use it to draw visitors from around the world, to purchase memorabilia /pictures of the full chess set. The facts state that it is impossible to know the true worth of what that business proposal would be, and further, the set itself would then be worth in excess of a million dollars. Here it would be rather speculative of the court to try to award money damages to Rick, regarding what his expectancy was based on the contract for a legal remedy, had Sam performed and sold him the piece (although in the alternative of receiving the specific performance, Rick, may try to argue that as an appropriate remedy - or that because it is so speculative, that the only, appropriate remedy would be the specific performance.

It is also unlikely due to the variables that the court would take to reform the contract price, and then enforce it between the parties.

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