

2)

Choice of Law

Contracts law is governed by two areas of law, the common law and Article 2 of the Uniform Commercial Code (UCC). The common law governs the sale of services and real property, and Article 2 of the UCC governs the sale of goods. The tractor mower at issue here is a good, so the UCC will govern the contract.

Valid Contract

A valid contract requires offer, acceptance, bargained-for consideration, and no defenses to contract formation. Here, the facts state that there was a contract and there is nothing to suggest that there was not a valid offer, acceptance, and bargained-for consideration.

Merchants

A merchant under the UCC regularly buys or sells the good at issue, and is not a one-time seller or purchaser.

Both Bright (B) and SM are merchants under the UCC. Bright is an agricultural services business that employs 10 people and has over 100 clients. As an agricultural services business, B likely regularly uses tractor mowers in its day-to-day operations. B purchased a commercial mower, not suitable for personal or household purposes, from SM so B is a merchant using the tractor mower for commercial use in its business operations.

SM is a merchant who sold the commercial tractor mower to B. There are no facts present to show that SM is not a merchant of commercial tractor mowers. Moreover, a commercial tractor mower is likely not an item that can be casually sold by anyone, and probably requires special knowledge or skill in order to sell. SM sold the tractor mower to B, so SM is a merchant under the UCC.

Statute of Frauds

The Statute of Frauds necessitates that a contract for UCC sale of goods over \$500 must be in writing and signed in order to be a valid contract.

Here, the tractor mower was sold for \$15,000, which is well over the \$500 threshold for UCC sale of goods. SM presented a one-page contract for the sale, which satisfies the requirement for a written agreement. The contract was signed by authorized representatives of both Bright and SM. The Statute of Frauds is satisfied.

1. IS BRIGHT LIKELY TO PREVAIL IN ITS SUIT AGAINST SM?

Breach of Contract

Perfect Tender

A party has breached a contract for goods under the UCC when it does not deliver "perfect tender." Perfect tender requires perfect goods and perfect delivery.

SM breached the contract because it did not deliver "perfect tender." SM did not deliver "perfect goods" because the mower malfunctioned repeatedly and B had to return it for repairs 12 times in the first six months after purchase. The mower had major problems that caused its complete non-use. Several times the mower would not start due to various electrical faults and could not be used at all. The mower broke under normal usage and the steering wheel came off during a job.

SM will be held liable for breach of contract because it did not deliver perfect tender in the mower.

Breach of contract warranty clause

In its contract, SM stated that the mower was "free of defects in material and workmanship at the time of its delivery." SM materially breached this clause of the contract because it did not deliver a mower that was free of defects. For the same reasons as listed above, the mower had major problems and was not free of defects.

Warranty

There is a warranty of merchantability among merchants that

The contract states that "There are no warranties expressed or implied and particularly, there are no warranties of merchantability or fitness for a particular purpose made by SM in connection with the sale of this mower." A court will likely find it unreasonable for SM not to be held liable for the warranty of the mower. SM is a merchant and is in the regular business of selling tractor mowers. Even though SM included in the contract that there is no warranty of merchantability or fitness, a court will still find that SM is liable and responsible for the goods that it regularly sells. B repeatedly communicated to SM regarding the mower's defects, and twelve times in six months B returned the mower to SM to be repaired. B notified SM of B's

desire to return and be refunded, and SM unreasonably refused.

A court will likely find that SM's breach of warranty was unreasonable, and find in B's favor.

2. IF BRIGHT PREVAILS, WHAT REMEDIES WOULD LIKELY BE AVAILABLE?

Legal Remedies

Compensatory damages

Compensatory damages include expectation damages.

Expectation Damages

Expectation damages seek to grant to the plaintiff the benefit of the contract. Expectation damages seek to place the plaintiff in the same position as if the contract had been performed.

Here, B's expectation damages would be \$15,000 which is the amount that B paid for the mower. B expected to receive a mower that is worth \$15,000. Assuming that this is the fair market value of the mower, B should be able to recover \$15,000 for the faulty mower.

Consequential Damages

Consequential damages are damages that seek to remedy the harm that the plaintiff suffered as a foreseeable consequence of the breach of contract.

Here, B would be able to recover consequential damages for the loss of clients and the \$5000 in profits lost because B had to cancel planned jobs due to the mower not starting. B will be able to show business records or contracts with those clients to show the exact amount that the planned jobs were worth, showing the \$5000 in profits lost.

SM will argue that the loss of clients is too speculative to be included in consequential damages. However, B will argue that it should recover for future loss of business due to having to cancel planned jobs because its clients that were canceled are likely to think less of B as a result. B will argue that clients are unlikely to continue to do business with an agricultural services company that cancels at the last minute, and that clients were likely to lose faith in B as a result of the faulty mower. B will argue the importance of reliability in professional companies, and that the faulty mower resulted in damage to B's business reputation among its clients.

B will likely be successful in arguing consequential damages for \$5000 in profits lost and the

loss of clients and future profits.

Nominal damages

Bright will be able to recover more than just nominal damages because there was actual injury to Bright.

Reliance damages

Reliance damages seek to make the plaintiff whole as though the contract never existed in the first place. Reliance damages put the plaintiff in the place they were before the contract. A plaintiff may seek to recover either reliance damages or compensatory damages, but not both.

B will be able to recover reliance damages in the amount of \$15000 which is the amount B paid for the mower. If there were no contract, B would have no mower but would have its \$15,000. B can choose to recover this through reliance damages or expectation damages, with the same result.

Duty to Mitigate

A plaintiff has a duty to mitigate expenses.

Here, B had a duty to mitigate expenses. B will argue that they mitigated expenses by timely contacting SM on all of the occasions when the mower broke and having SM fix the mower.

SM will argue that B had a duty to mitigate its lost profits by finding another tractor mower with which to do the job. However, this argument is unlikely to be successful because a tractor mower is an item that costs \$15,000 and therefore it is unreasonable to expect B to find another at the last minute.

SM will be unsuccessful in arguing that B did not mitigate its expenses.

Equitable damages

TRO

A temporary restraining order, or TRO, would not apply in this case because legal remedy, or money damages, will satisfy the plaintiff.

Preliminary Injunction

A preliminary injunction would not apply in this case because legal remedy, or money damages, will satisfy the plaintiff.

Specific Performance

Specific performance is an equitable remedy wherein a court grants an injunction that orders the defendant to perform or restrain from performing.

The contract states that SM shall repair or replace the mower or any component part at its own cost or expense. If a court found that B was not entitled to money damages, the court could potentially order SM to specifically performance by repairing or replacing the mower under the contract terms.

However, while this is a possible remedy, it is unlikely to be a remedy because a court will likely find that money damages are more appropriate to satisfy B's harm.

Equitable Restitution

Replevin

Replevin is the return of a piece of personal property. As B is not asking for the mower to be returned, replevin would not be applicable here.

Defenses

Laches

Laches is a defense to damages and occurs when a plaintiff waits too long to bring a claim, making it prejudicial to the defendant.

Laches does not apply in this case because Bright communicated to SM that it wished to return the mower at the beginning of the seventh month after purchase. This was well within the one year warranty provided in the contract, and

Unclean hands

Unclean hands is a defense to damages and occurs when the plaintiff has used fraud or deceit or otherwise behaved wrongly.

There is nothing to suggest that Bright has behaved wrongly or unfairly in the facts, and therefore unclean hands will not be a defense to damages.

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END OF EXAM