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1. Did Bath and Scents have a binding contract, and if so, did either party breach the contract?

Applicable Law

All contracts are governed by common law, except sale of goods which is governed by the U.C.C.. Goods are tangible chattels at the formation of the contract.

Here, the transaction is for candles which are goods. Therefore, the UCC applies.

Candles are tangible therefore considered as goods.

Merchants

Merchants are those who hold themselves to specialized knowledge and skills about the goods involved in the transaction, and are subject to high standard of good faith and fair dealing.

Here, B is a retailer and S is an importer. Therefore, they are merchants.

Valid Contract

A valid contract requires mutual assent (offer and acceptance) and consideration.

Offer

An offer is an outward manifestation by the offeror to be bound to an agreement, with uncertain and definite terms communicated to the offeree

Here, Bath (B) sent Scents (S) a signed offer which shows his desire to enter into an agreement. The terms must include time, parties, price, and quantity. The terms of the offer here, included 1000 (quantity), individually wrapped candles (subject), price for \$10,000, free on board

Acceptance

An acceptance is an unequivocal assent to the offer.

Counteroffer/ B's silence

Under the UCC, an acceptance does not have to be a 'mirror image' of the offer.

Here, Scents promptly sent Bath a signed acknowledgment accepting the offer. However, Bath

did not respond to the acknowledgment with the extra language stating that the boxes have external water damage but the contents are guaranteed to have no damage. B' silence may not be significant have refused the acknowledgment but did not. The court could consider this and modify the K if it was done in good faith.

Consideration

A consideration is a bargained for exchange of legal detriment/benefit.

Here, B is sending wrapped 1000 individually wrapped candles in exchange for Scentis' \$10,000. Therefore, there is a bargain for exchange.

Therefore, there is a valid contract.

Modification

Modification under the UCC does not require a consideration as long as the parties performed in good faith.

Here, S extra language that "some shipping boxes have external water damage. Contents of shipping boxes guaranteed to have no damage">

B would claim that S modified the original terms of the contract, and lacks consideration.

Under the UCC, a modification does not need new consideration. S acceptance with the language warned B that the external water damage might occur during the normal shipping of the boxes which was done in good faith.

Therefore, if the extra language constitutes a modification, then under the UCC, it is acceptable because it was done in good faith.

Non-conforming goods

A merchant can treat nonconforming goods by accepting all, rejecting all or accepting a specific unit, then rejecting the rest. The seller must be notified within a reasonable time of the rejection

Here, B's employees noticed the water damage on some of the shipping boxes, and they immediately rejected the shipment without even opening any of the boxes. They rejected the goods and notified S of their rejection. Even though they did what is required of a merchant who received a nonconforming good, the issue is whether S sent nonconforming

goods in the first place. It appears the candles were all undamaged, only the boxes. By not opening the boxes to confirm the nonconformation, B's employees failed act in good faith.

Conditions

Conditions are events that must occur before obligation

s or performance from the parties matures

Here, B will argue that the condition to the contract that the boxes would have no external damage and the candles ready for retail sale.

If the modification stating what the condition of the goods to expect, by S was done in good faith, then S performed according to the contract.

The facts state that one-quarter of the shipping boxes showed sings of water damage which is what S had anticipated ("some shipping boxes have external water damage",. However, each of the shipping containing the boxes were individually wrapped and undamaged. Therefore, the condition according to the agreement were satisfied.

Substantial Performance

A breach is not material if the parties have substantially performed. The court will look at the follow factors:

- 1) if the nonbreaching party had received a substantial benefit.
- 2) extent of the partial or fully performance
- 3) willfulness of the breaching party
- 4) hardship to the breaching party

Here, B has received the goods (candles) undamaged even though the shipping boxes were damaged, the goods were not. S did not willfully breach the contract, in fact, he gave B a warning that the normal course of shipping may result in boxes being damaged. The hardship to S would be significant if the court considers this a material breach. Therefore, S did not materially breach

Breach

A breach is the nonperformance of an obligation according to the contract terms.

Here, B received the goods agreed upon, if the modification is valid, and S substantially performed. Because B refused to pay any amount.

B is in breach of Contract.

Damages

Compensatory Damages

Compensatory damages are damages that gives the nonbreaching (NB) party the benefit of the bargain, and give him the profit if the contract had been performed.

Here, the contract was for \$10,000. S performed and shipped the full amount and is entitled to be paid. B refused to pay any amount. S also incurred a freight cost of \$400 to ship via the common carrier.

Free on Board

Because S had placed the goods on the carrier already, the liability shifts to buyer, B. Therefore B will be liable for the freight cost because of its breach.

To give S the benefit of the bargain he is entitled to \$10,000 minus the amount of mitigated damages and \$500 of compensatory damages.

Consequential Damages

Consequential damages are those that are the natural consequences of the breach, and must be foreseeable, unavoidable and certain.

Here, S had to pay Truck co \$500 to ship the candles back to Sunville, after noticing B of his intent to resell. Therefore, S will be entitled for \$500 of consequential damages because B breached.

Duty to Mitigate

S solicited bids for customers as a way to mitigate his damages from B's refusal to pay. He was able to get \$9000 for the candles refused by B.

Therefore, S would be entitled to the amount left after subtracting \$9000 from the \$10,000 or \$1000 as consequential damages.

Inc mages

Incidental damages are those incurred for storing, shipping for looking for other buyers.

Here, S might also be entitled for incidental damages for solicitations, shipping the candles back to the new buyer, and other expenses he incurred to resell the candles.

2. Has B Ath or Hot breached their contract?

B v. Hot Candles

Applicable Law

The UCC applies here as well because it is the same goods, candles. They are both merchants, HC is also an importer.

Valid Contract.

defined supra

Here, the facts state that B and Hot Candles (HS) entered into a 'valid' contract' which means it satisfies the elements of mutual assent and consideration.

therefore, there is a valid contract.

Free on Board

defined supra.

Since HC sent it free on board. The liability will shift to B. HC might be able to recover for the value of the replacement candles \$12000.

Impossibility

An unforeseen, supervening event has made the contract objectively impossible to perform. Truckco contracted to take the candles from hatville to Betaville but the lightning destroyed the candles, making its job impossible to perform. B cannot raise any arguments to contend about an Act of God, even though it can try. Therefore, HC did not breach its contract.

Impracticability

An unforeseen, supervening event has made the contract commercially and unconscionably difficult to perform and the event is the basic assumption of the contract.

He the transport of the candles from Hatville to betaville,, the truck was hit by lightning during a storm and all the candles melted (unforeseen event). FOR HC to Having to pay

\$12,000 for the candles would be unconscionable since the storm and the lightning was so unforeseen that would cut off from his liability

Frustration of Purpose

An unforeseen, supervening event has made the contract has destroyed the value of the contract and completely frustrated its purpose. Here, the purpose is to transport the candles to Betaville. Because of the destruction of the candles, the purpose has been frustrated. It is not HC's fault that an act of God intervened. Therefore, HC will not be liable for the destruction of the candles.

Damages.

Compensatory Damages

defined supra

Here, because of the defenses listed above (impracticability, impossibility, frustration of purpose), B will not be likely to recover any compensatory damages. HC might be likely to recover compensatory damages of \$12000, since the liability shifted to B when HC put the product on the carrier as FOB.

Consequential Damages

defined supra

Here, the damages must be foreseeable, since the lightning and storm were not, B cannot recover because of this. HC may recover if there are any have consequential damages.

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END OF EXAM