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1. WHAT EQUITABLE REMEDIES DOES STEVE HAVE AGAINST BARBARA?

Applicable Law

All contracts are governed by common law except for contracts for goods which is governed by the UCC. The contract here is for the sale of land, which is governed by common law.

Contract Formation

A valid contract requires offer, acceptance and consideration. Here Steve and Barbara entered into a valid contract, both parties had a signed, written agreement.

Defenses to Formation

Fraud/Misrepresentation

Misrepresentation is the intentional misrepresentation of material facts with the knowledge that the facts were false, and the intent that the other party rely on the misrepresentation and that party reasonably and justifiably relied, and suffered damages.

Here, Barbara (B) misrepresented material facts because she told/assured Steve that her attorney had included Steve's (S) conditions that he retained the mineral rights and have access to the land after the sale. The facts misrepresented are material because S specifically agreed to sell provided that the conditions were in the contract. Barbara had the knowledge and intended that the facts were false, because B did not tell her attorney and the conditions were not in the papers. S relied on the material facts because he signed the documents, and did not realize that the documents he signed omitted the conditions until B erected barricades. S suffered damages because he and his geologist are not allowed access into the property, and he cannot access mineral deposits if there are any. B would probably argue that S was not even sure that his property had any mineral deposits, and that is why he is bringing the geologist. However, by erecting a barricade to prevent access to the property, B has already violated one of the conditions.

Thus, B may be liable for misrepresentation, and S can use this as a defense that a contract was created.

Steve v. Barbara

Equitable Remedies Available to Steve Against Barbara

Rescission

Rescission is the equitable remedy resulting in the cancellation of a contract made between parties if due to mistake or misrepresentation.

Here, B misrepresented the fact that the documents of the contract of sale of Steve's property contained the conditions that Steve provided about retaining mineral rights and having access to the property after sale. Steve can rescind the contract if he can show B's misrepresentation

was intentional and material.

Reformation

Reformation is the equitable remedy resulting in the cancellation of a contract made between parties if due to mistake from a scrivener's error or other cause.

Here, the cause of the error was deliberate exclusion by B of Steve's conditions. S would probably not want to reform the contract as it seems B is unreliable and if not criminal or at least with tortious intent.

Steve would most likely prefer the court to rescind the contract rather than reform it.

Temporary Restraining Order

Steve can ask the court for an injunction, to allow him into the property that B has refused to give access and barricaded. A temporary restraining order requires irreparable harm, likelihood success on the merits, balancing of hardship and inadequate legal remedy.

Irreparable Harm

Steve will argue that allowing B to keep him off the property will produce irreparable harm to him and the geologist. His intent to profit from the mineral deposits would be harmed and he would be deprived of its profits. B would contend that it is not sure that the property contains mineral deposits, that's why the geologist was called to show that.

However, B's argument would not prevail because B misrepresented the fact in the contract. S would have reason to claim irreparable harm if B is allowed to get away with the misrepresentation.

Likelihood of Success on the Merits

S and B had a written signed contract, but the contract does not include the conditions. B would be able to argue that she has a right to deny access to Steve since it is not in the contract of the sale. However, if S can show B's representation and convince the court that a TRO is needed to maintain status quo, S may be able to show that he satisfies this element.

Balancing of the Hardship

S would argue that would be placed in substantial hardship if not allowed access to the property- his property was sold for \$500,000 and he contracted with B in a spirit of fair dealing and highest good faith. B on the other hand acted in bad faith by omitting the condition in the contract. B would argue that she bought the property fair and square and therefore has the rights written in the contract. B's arguments would be unsuccessful especially if S can show that B entered the contract fraudulently

Inadequate legal Remedy

Real property is unique, therefore there is inadequate legal remedy.

Conclusion. S may be able to obtain a TRO from the court to preserve status quo until the court can determine if B is liable for misrepresentation in the formation of the contract.

Preliminary Injunction

A preliminary injunction have the same element requirements as a TRO plus notice and bond must be placed.

If S can obtain a TRO, he needs to provide a notice and post a bond after the TRO expires in 14 days, which will automatically become a preliminary injunction if the extended by the court.

Acme v. Barbara

Equitable Remedies Available to Acme (A) Against Barbara

Constructive Trust

A constructive trust is an equitable remedy to prevent unjust enrichment by a tortfeasor who has acquired a property unjustly or unlawfully and has the title to the property. The court will allow the plaintiff to trace his property to the tortfeasor's property to recover and the plaintiff will be entitled to the increase in value.

Here, B purchased S's property in cash, in which \$250,000 of the funds were embezzled from Acme. B later embezzled another \$20,000. If A can trace the \$20,000 in B's account A can recover this and any interest it accrued if it still exists. However, B paid off her debts using \$20,000 plus the personal money she had in the account, making her balance zero.

A can also trace the \$250,000 used to pay for part of the property that S owned. If S prevails over the contract action against B, Acme can recover the cash B paid S to pay for part of the property value, i.e. \$250,000.

Equitable Lien

An equitable lien is an equitable remedy whereby a lien will be placed on the property unlawfully acquired until the sale of it, and the plaintiff will be given priority to the proceeds of the sale over other creditors. However, the Plaintiff will not be entitled to the increase in value of the property.

Here, the court may be able to place a lien on the property that B sold to S until that cause of action is resolved. If S prevails and the contract is rescinded, Acme can recover the \$250,000 cash (portion of the \$500,000) paid by B to S for the property. The property may not need to be sold if S prevails the action with B.

2. WHAT AMOUNT OF MONEY CAN ACME RECOVER AS PART OF AN EQUITABLE REMEDY FROM BARBARA'S CHECKING ACCOUNT?

If A can trace the \$20,000 in B's account A can recover this and any interest it accrued if it still exists. However, B paid off her debts using \$20,000 plus the personal money she had in the account of \$5000, making her balance zero. The money B deposited (\$10,000) later was her personal property not the property embezzled by her from A. So, A may not be able to recover any of the \$20,000 B *later* embezzled from Acme since the res no longer exists. Acme cannot trace it to the debts that B used the money to pay either, but he may be able to recover the \$250,000 used to pay S property if the contract is rescinded and S gives back part of the purchase price.

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