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**1) Steve (S) v. Barbara (B)**

**Temporary Restraint Order (TRO) Injunction: Property**

A TRO Injunction can be given to plaintiff with given notice to a defendant if they can show that there would be (A) irreparable harm to them, (B) plaintiff will likely win on the merits and (C) balancing the hardships

**A) Irreparable Harm**

In order to show irreparable immediate harm, the plaintiff can show that there is inadequate remedy at law and no monetary damages would help in recovery to the plaintiff.

Here, because the contract (K) does involve a piece of property, there seems to be an inadequate remedy at law as land is unique. Further, because there is irreparable harm as B could have fraudulently had made a contract with S with ought disclosing her financial situation of embezzlement with Acme (A).

Thus, there is irreparable harm to S if the the TRO injunction is not granted.

**B) Balancing the Hardship**

In balancing the hardships the court will balance the hardships of the defendant against the hardships on the plaintiff in order to ensure the defendant would not be prejudiced by the TRO injunction.

Here, there there are no facts facts indicating that B would face any hardships by having the B would suffer any hardships by havint the TRO given to S as S is being heavily prejudiced by not having the TRO granted. As discussed below, there there would be a significacnt hardship on S instead of B as S is most likely going to win on the merits.

Thus, the hardship balances weighs heavier and in more favor of S if the TRO Injunction is not granted.

**C) Likelihood of Winning on the Merits**

**Applicable Law**

Common Law (CL) governs all contracts (K) that are involve services and land sale contract.

Here, because the contract between S and B involves the property int the state of Columbia, CL will be govern.

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## **Valid K Formation**

In order to have a valid K formation, there must be offer, acceptance, and consideration.

### ***Offer—From B***

An offer is a manifestation from the offeror to the offeree to enter to the terms of the offer.

Here, B offered to buy the property for \$500k. Thus there was a valid offer.

### ***Counter Offer—From S***

Under the mirror image rule, the offer must mirror the terms of the agreement, any conditional acceptance is considered to be a counteroffer and a rejection at the same time.

Here, S accepted B's offer, provided that he retained the mineral rights and had access to the land, thus, this is considered to be an conditional acceptance, rejection of B's offer and a counter offer.

### ***Acceptance***

An acceptance is a unequivocal statement from the offeree that they are willing to enter into agreement and the terms offered from the offeror.

Here, B later accepted Steve's conditions and said she would prepare the necessary papers.

### ***Consideration***

For there to be consideration there must be a legal detriment (dollar amount) or forbearance (to do something or not to do something) imposed on both parties.

Here, there is consideration as S would have to give up his property rights to own the land and there is a legal detriment to B to pay for the land of \$500k.

Thus, there is consideration.

Thus, for all discussed above there is a valid K.

### **Breach of K**

In order to prevail for breach of K, the breach must be material and substantially in breach in the offer agreed upon.

Here, there is a material breach as after S decided to investigate whether his former property had mineral deposits. B refused to let S and his geologist on the property and erected barricades to prevent their access. It was then S had realized that documents that S and A agreed to were committed.

Thus, there is a material breach of K.

### **Reformation**

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A plaintiff could request a reformation and rewrite the contract to meet the the original intent of both parties before they had contracted. One ground for reformation is unilateral mistake which is discussed below.

***Unilateral Mistake***

There is a unilateral mistake when only the innocent party that was mistaken as to the terms of the agreement and the non-innocent party knew or should have reasonably known that the other party would greatly harmed by the mistake.

Here, when S met with B to sign the K, S asked if the documents included his condition and B assured him that they did. In fact, B did not tell her attorney of S's condition and they were not in the K. B knew that S would rely on her statement because the relied on entering int the K solely based on his the condition he had set.

Thus, because there is unilateral mistake, S would recover for reformation.

***Specific Performance***

In order t prevail for specific performance, the non-breaching aprty must prove, that there is a valid contract, the conditions by the non-braching party are met, there is a inadequate remedy at law, mutuality of preforamnce can be done by both party, feasibility of the court to enforce, and there are no defenses.

***Valid K***

See above, valid K formation, thus there is a valid K.

***Condtions By Non-Breaching Party Are Met***

Here, the condition of given the property to B is met by S, thus, this requirement is met.

***Inadequate Remedy at Law***

Due to the fact that the K involves a property which contains minerals specific to this property, monetary damages would not remedy S's damages. Thus, there is inadequate remedy at alw as land is unique.

***Mutuality of Performance***

It would be feasible for B to preform her end of the bargain by allowing S to enter the land and geologist on the property and require her to pay the purchase price of the property. Thus, this element is met.

***Feasibility of the Court***

It would not waste the court's time ro resources to ensure that B would be able to preform her duties under the K, thus, it would be feasible for the court to enforce.

***No Defense***

Typically the defenses for specific performance are laches and unclean hands which do not

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apply here. Thus, there are no defenses that B could reasonably raise.

Thus, all in all, there is a likely chance that S would be successful in obtain specific performance to enforce the conditions that they had agreed upon.

**Conclusion:** All in all for all discussed above, there is a very likely high chance that D will win on the merits and be successful in getting a TRO injunction.

## **2) Acme (A) v. Barbara (B)**

### **TRO Injunction: Bank Account**

See rule above.

#### **A) Irreparable Harm**

See rule above.

Similar to the argument presented with S, there is most likely irreparable harm if the TRO injunction is not given to A as B has stolen embezzled \$250k from A which involves the land property.

#### **B) Balancing the Hardship**

See rule above.

Again, similar to S, in balancing the hardships, there hardship is most likely going to favor in A's favor rather than in B's favor.

Thus, this requirement would be met by A.

#### **C) Likelihood Winning on the merits**

##### ***Embezzlement***

Embezzlement is the trespassory taking of another's property that they were originally entrusted with.

Here, there is a strong argument that A would win on the merits as B has embezzled \$250k, \$20k, and \$25k from A which she was entrusted by them to use. Thus, there is a likelihood of success on the merits as there would prevail against B in a case against embezzlement.

All in all for all discussed above, A will most likely receive a TRO against B for her bank account.

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**END OF EXAM**