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1. What equitable remedies does Steve have against Barbara?

Applicable Law

The UCC governs the sale of goods while the common governs the sale of services and property.

Here, the common law applies because Barbara (B) and Steve (S) entered into a land sales contracts.

Thus, the common law applies.

Valid Contract

A valid contract requires offer, acceptance, consideration, and no defenses.

Here, there was an offer between S and B to purchase S's property and B accepted this offer. Furthermore, consideration requires a bargained for exchange and here there is adequate consideration because S offered to purchase the home for \$500,000 whereas B would be giving up his properties.

Thus, there is a valid contract.

The Statute of Frauds

The statute of frauds requires certain contracts to be in writing and be signed by the party that is being charged. These contracts include suretyship contracts, land sale contracts, marriage contracts, contracts for goods worth over \$500, and contracts that require performance for over a year.

Here, the statute of frauds is satisfied because both B and S signed the land sale contract.

Thus, there is a valid contract.

Condition Precedent

A condition precedent is a condition that must occur before the contract can be accepted or performed and is a defense to performance if it is not satisfied.

Here, there was a condition precedent within the contract between B and S that S would retain the mineral rights and have access to the land even after he sold it to S and that B must have her attorney prepare the necessary papers for this. However, B misrepresented this fact when asked by S if she had prepared the papers and she stated that she did but in fact she had not.

Thus, B did not satisfy a condition precedent to contract.

Misrepresentation

Misrepresentation is when an individual knowingly and voluntarily misrepresents a fact that induces reliance and this can be done through fraud in the factum or fraud in the inducement.

Here, when asked by S if B had her attorney prepare the necessary papers for the land sale contract so that S could still retain his mineral rights in the land and have access to the land B knowingly told and assured S that she had complied with the condition precedent even though she had not and went a step further by adding barricades to prevent S from accessing the property. Furthermore, B engaged in fraudulent behavior that induced S to comply with the contract because if he had known that B did not satisfy the condition precedent he would not have signed the papers.

Thus, S can seek remedies under a contract formation defense.

Equitable Remedies

Preliminary Injunction

A preliminary injunction is occurs before or during trial and is effective until there has been a final judgment on the merits and it is issued for the purpose of maintaining the status quo. The requirements for a preliminary injunction are the plaintiff must suffer (1) irreparable harm, (2) balancing of the hardships, (3) a likelihood of success on the merits, and (4) enforcement.

Here, S will ask the court to order a preliminary injunction by showing that he has met the requirements necessary.

Irreparable Harm

Here, S will argue that he has suffered irreparable harm by not being able to access his property and that the barricades on his property should be removed immediately. However, B will argue that he did not suffer irreparable harm as the barricades can be removed to give him access to the property again and a new contract can be entered into that would allow him access to the mineral rights and the land.

Thus, S has not shown that he has suffered irreparable harm.

Balancing of the Hardships

Here, S will argue that the hardship on him is greater than it is on B by not having access to the mineral rights and land. Since the facts state that S went to go inspect with the land with a geologist and that S made it a point to continue to have access to this land even after he sold it B, this land and the possible research being done there or value of it is greater for S than it is for B. B will try and counter-argue that she would also face a hardship by continuously allowing access to S on the land but B will counter this with the fact that this was a known condition at the time of signing.

Thus, the hardship on S is greater.

Likelihood of Success on the Merits

Here, S can show that he will be successful under this enforcement because B engaged in fraudulent behavior and knew that it was important for S to have access to the land.

Thus, S can show a likelihood of success on the merits.

Enforcement

Here, S can show that the court can enforce a preliminary injunction for S to access the land until there is a final judgment on the merits because it is important for him to have this access and have B remove the barricades.

Thus, S will prevail in seeking a preliminary injunction.

Specific Performance

Specific performance is afforded when there is a (1) a valid contract between the parties, (2) the terms of the contract are clear to seek enforcement. (3) money damages are inadequate, (4) the non-breaching satisfied any condition precedent so now the breaching parties performance is due, (5) the court can supervise and enforce the performance, and (6) there are no defenses.

Valid Contract Between the Parties

Here, as stated above there is a valid contract between the parties to purchase S's land and have S retain the rights to the land.

Thus, there is a valid contract.

Terms of the Contract

Here, the terms of the contract are clear that B pay S \$500,000 for the purchase of B's land while S will retain the mineral rights and have access to the land.

Thus, the terms of the contract are clear enough to seek enforcement.

Money Damages are Inadequate

Here, money damages are inadequate because B wants to retain rights to his land and not purchase it back from S.

Thus, money damages are inadequate.

Non-breaching Party Satisfied Condition Precedent now Performance is Due

Here, S is the non-breaching party and he satisfied any conditions precedent which was to meet B and sign the necessary papers for the land sale contract and now performance is due from B to have S retain access to the land.

Court can Supervise and Enforce the Performance

Here, S will argue that the court can supervise and enforce performance because they can have B remove the barricades and let S have access back the land.

Thus, the court can supervise and enforce the performance.

No Defenses

Here, S will argue that there are no defenses to the contract because S did not engage in laches or unclean hands when it came to enforcement of the contract.

Laches

Laches is a defense for a defendant when a plaintiff waited an unreasonably long to seek enforcement and now the defendant will be unfairly prejudiced.

Here, S immediately filed brought suit against B when he came to know that she did not satisfy the condition precedent for the contract.

Thus, the B will not prevail under the defense of laches.

Unclean Hands

Unclean hands is a defense for a defendant when a plaintiff engages in unethical behavior themselves in regards to the contract.

Here, S did not engage in any unethical behavior and mistakenly believed that B had satisfied all conditions precedent before entering into the contract.

Thus, B will not prevail under this defense.

Conclusion

For these reasons, the court can enforce specific performance for S to have access to the land again.

Reformation

Reformation is the rewriting of a contract.

Here, S can ask the court to have the original contract between S and B to be re-written to include all the necessary terms that would allow S to have access to the land again.

Thus, S can seek the equitable remedy of reformation.

Rescission

Rescission is the unmaking of a contract.

Here, S can ask the court to unmake the contract because S would no longer like to give B not only access to his mineral rights and land but does not desire to sell her the property anymore.

Thus, S can seek the equitable remedy of reformation.

2. What equitable remedies does Acme have against Barbara

Restitution

Restitution is an equitable remedy that is granted under an unjust enrichment theory.

Here, Acme will argue that they employed B and through her employment she embezzled \$270,000 from the company and went on to purchase not only a property but also paid off her outstanding debts. Acme will further argue that if B is not held liable for embezzling the money from Acme she will be unjustly enriched because she will no longer have any debts to pay for along with have a property in Columbia all to herself.

Thus, Acme will prevail under the equitable remedy of restitution.

Replevin

Replevin is an equitable remedy that is granted when the defendant unlawfully retains the property of another.

Here, B engaged in embezzlement in acquiring money from Acme she successfully did this by using her position of employment while working under Acme and was able to use the funds for her benefit when she was as trusted employee. Acme will argue to seek replevin for the funds that were embezzled from their account that benefited B in not only purchasing a home but also paying off her debts.

Thus, Acme will prevail under the equitable remedy of replevin.

3. What amount of money, if any, can Acme recover as part of an equitable remedy from Barbara's Checking Account?

Restitution and Replevin

See rule above.

Under these equitable remedies Acme will argue that B used her position to be unjustly enriched which allowed her to purchase a home and pay off debts. The amount that Acme would recover under these theories would be \$270,000 because B first embezzled \$250,000 from Acme and then another \$20,000 after she was able to successful embezzle the first great amount. Acme might also try and argue that they have property rights over the house because their funds were used to purchase the house and B would be unjustly enriched if she were able to keep the house. However, this argument might fail which will result in a sale of the house to retain their funds back.

Thus, Acme will prevail under these equitable remedies and receive \$270,000 and a forced sale of the house if necessary.

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