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Governing Law

A contractual agreement for the sale of goods (a moveable item) is governed by the UCC while a contractual agreement regarding services or for the sale of land such as land sale contract are governed by the common law.

Here, Perry entered into an agreement with Denise regarding baseballs. Although baseballs are a tangible, moveable good, Perry entered into agreements with his niece Denise to sell the baseballs. Perry contracted to have Denise sell each of the baseballs. Thus, the common law would govern this contract because under the predominant purpose test; this contract is mainly for Denise's services as opposed to the sale of the goods themselves.

Therefore, the common law governs this contractual agreement.

Formation

A valid contractual agreement is formed when there is offer, acceptance, and consideration. Additionally, there must be a bargained for exchange that induces a detriment. Consideration may be nominal for a contract to be formed.

Here, Perry purchased two baseballs years ago that were each autographed by members of championship teams. At the time, Perry understood the baseballs to be validly autographed although he did not know anything about the value of the baseballs. Thus, he entered into two agreement with his niece, Denise to sell each of them. Thus, there are a valid contractual agreements between Perry and Denise regarding the sale of the baseballs.

Therefore, a valid contractual agreement exists.

1) Perry's Recovery

Defenses to Formation

Here, the court found in favor of Perry regarding his cause of action for fraud. Perry may argue that the breach and fraud occurred at contract formation, thus rendering the contract unenforceable. Thus, Perry's damages may be different depending on where the court determines the breach occurred.

Statute of Frauds

Under the Statute of Frauds, contracts for the sale of land, marriages, services to be performed for longer than on year, the sale of goods for greater than \$500 in value and suretyships must be in writing.

Here, Perry may argue that both of his contract agreements with Denise violate the SOF because the agreement was not in writing. Because there was no time duration in place, Perry may argue that the two contractual agreement violate the SOF because they must be in writing. Additionally, under SOF, Perry may argue that the contractual agreement is missing crucial elements such as time duration, price,

and other key terms. These missing terms are material and may render the contract invalid and thus a violation of the SOF.

Therefore, Perry may successfully assert that no contractual agreement exists since they would violate the SOF.

Fraudulent Misrepresentation

Fraudulent Misrepresentation occurs when one party knowingly and intentionally mischaracterizes a crucial term of the contractual agreement. For a defendant to be liable of fraudulent misrepresentation, the plaintiff must show that the defendant was aware of the misunderstanding and that the defendant intentionally used this misunderstanding to induce the plaintiff into a contract.

Here, Denise was aware of Perry's naivety regarding baseball and sports memorabilia. The original purpose of this contract was to have Denise sell both baseballs because of Perry's lack of knowledge in this area. However, Denise used this lack of knowledge to fraudulently misrepresent the true value of these baseballs. Here, Denise wrongfully stated that the Jaguars baseball was a counterfeit and worth only \$20. However, the true fair market value of the baseball was \$5,000 on the market. Additionally, Denise misrepresented the second baseball's true value after she sold it by declaring the value as \$2,000 when she actually sold it for \$10,000. Thus, Denise fraudulently misrepresented both values of the baseballs and relied on Perry's lack of knowledge to induce him into a contract.

Therefore, Perry may successfully claim that Denise fraudulently misrepresented the value of the baseballs and this action rendered the contract invalid.

Unilateral Mistake

A unilateral mistake occurs when one party of the contract is mistaken regarding a material element or term of the agreement and the other party has reason to know of this mistake or is already aware of the mistake. A unilateral mistake may render a contract unenforceable when the defendant acts with knowledge of the mistake.

Similar to fraudulent misrepresentation, Perry may argue that the unilateral mistake induced him into the contractual agreement with Denise.

Therefore, Perry may successfully assert that the contract is invalid due to unilateral mistake.

Overall, Perry may succeed on having the court determine that no valid contract exists between him and Denise. Even if the court determined that a contract existed, Perry would be entitled to damages because Denise will be unable to rebut the claims above that a valid contract exists.

Damages

A plaintiff's damages are limited by causation, foreseeability, certainty, and mitigation. The plaintiff must thus prove that the defendant's actions caused him injury, the damages were foreseeable at contract formation, and the plaintiff can claim with certainty what damages he incurred. Additionally, the plaintiff has a duty to mitigate these damages. A plaintiff's damages will be reduced by their inability to mitigate

damages.

Restitution Damages

Restitution places the plaintiff in the same position it would be as if the contract had never been formed.

Because Perry may successfully argue that no contract exists

Therefore, Perry would be entitled to damages.

Expectation Damages

Expectation damages place the plaintiff in the position as if the contract had been performed and no breach occurred. Thus, expectation damages are calculated as the value the plaintiff would have received.

2) Perry's Remedies

Temporary Restraining Order (TRO)

A court may grant a TRO during an ex parte hearing when the plaintiff can show that they will suffer irreparable harm or injury, there is a likelihood of success on the merits, and lastly, they provide the court with a security. Generally, TRO's are valid for fourteen days, however a court may extend them for another fourteen days under extraneous circumstances. However, a TRO cannot exceed 28 days.

Here Perry would be entitled to TRO because there is irreparable harm to him and the sale of the baseballs have not taken place. A TRO could prevent the sale and allow for him to retain the baseballs.

Therefore, he should be granted TRO.

Preliminary Injunction

The plaintiff may be granted a preliminary injunction if the plaintiff can show that 1) they will suffer irreparable harm, 2) there is a high likelihood of success on the merits, 3) they have given notice to the opposing party, 4) they provide a security to the court and 5) balancing public policy shows a preliminary injunction would be necessary. A preliminary injunction generally lasts throughout the trial and until a verdict is reached.

Specific Performance

Specific Performance is an equitable remedy that may be granted when 1) there is a valid contract, 2) there is an inadequate remedy at law, 3) the non-breaching party is willing to perform, or has already begun performance, 4) the remedy would not be unduly burdensome, and 5) specific performance would be feasible to enforceable by the court. Generally, specific performance is available in land sale contracts because land is characterized to be unique and is generally not available as a remedy under a contract governed by the UCC. However, specific performance may be granted when a good is extremely unique and deprivation of it will result in unjust enrichment to the breaching party.

Here, SP would be appropriate due to the extremely unique nature of the goods.

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Replevin

Replevin is an equitable remedy that allows the non-breaching party to recapture any goods surrendered to the breaching party during and prior to the breach such as money, equipment, or any item that is wrongfully held by the defendant. In order for replevin to apply, the plaintiff must prove that the defendant 1) does not hold legal title to the item(s), and 2) the defendant's retainment of the item would likely result in unjust enrichment.

Equitable Lien

The court may order an equitable lien and order a defendant create a trust with the plaintiff as the sole, intended beneficiary. The court will thus order a defendant to place the value of the property wrongfully obtained into the trust when the plaintiff can trace the value of a property and show that the defendant would be unjustly enriched by keeping the property.

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