

3)

1. Is Dirt likely to prevail in its suit:

Dirt v. Builder

Governing Law

The common law (CL) governs all contracts, not includes contracts for sales of goods. Here, the K between Builder (B) and Dirt (D) is a service contract. Thus, it is governed by the CL.

Valid K

A valid K requires a valid offer, valid acceptance, consideration, and no viable defenses. Here, the facts indicate the parties entered into a valid written contract. Thus, there is a valid K between the parties.

Bilateral K

A bilateral K is when two parties to a K make a promise for a promise.

Here, D will argue that the parties have entered into an enforceable K, which D has promised to perform, and B has promise to pay the agreed upon price for D's services, which is written in the K. Moreover, D promises to complete the assignment on or before Sept. 1, which indicates time is of essence to the K. Thus, this is a bilateral K.

A bilateral K is not revocable once preparation has begun by one party.

Further, D has not begun any preparations at this time. However, he may argue that the K provided that D would refrain from undertaking all other jobs for the duration of the contract. This shows that D may have declined some job offers from May 1 until the time B terminated the K on June 4. Thus, although D has not begun any preparation for the work he has promised to take on for B, him

declining other work within that time period is not preparation, however it may constitute reliance of the K (discussed further down).

Thus, the bilateral K is essentially revocable, minus any damages caused.

Breach

A breach is when a party does not fulfill their obligations under the agreed upon K, which causes major, minor, or material damage to the non-breaching party.

Here, D has sued B for terminating the K, suggesting B breached the K. The parties had entered into a valid written K, and thus enforceable, as there are no viable K formation defenses applicable here.

Thus, B has breached the K by terminating the K he entered into with D.

Performance Issues:

Was B's performance excused•

A party's obligations under the contract may be excused for a variety of reasons, such as waiver, anticipatory repudiation, and prevention.

Waiver

Here, B will argue that D waived B's contractual obligations under the K when he told him switching equipment would add \$500K and B refused to increase expenses. This may be a viable excuse since D had offered to change up the equipment per B's request, but informed him it would cost more. When B declined to pay the increase, B may have reasonably presumed that D waived the enforceable contract.

Anticipatory Repudiation

Here, B will try to establish that D made an unambiguous statement that he

would be unable or unwilling to do the work they had agreed upon. However, on June 2, D informed B of the ban due to the weather, which may constitute an anticipatory repudiation, however since D was willing to switch up the equipment nor could foresee such events occurring, D was still willing to perform his obligations, after the ban was lifted.

Moreover, he provided assurances that he would not accept other work and keep his equipment (diesel-powered) available for all of B's needs. He did not promise to keep his gas-power equipment available, since those were in storage at the time.

Thus, D did not anticipatory repudiate the K.

Prevention

Here, B will argue that D prevented the work from beginning since he could have done the work with the gas-powered equipment, but prevented the performance by not being willing to switch without increasing the costs. However, this is also a weak argument since the new equipment was more efficient, suggesting that the gas-powered would in fact cost more, and D would incur a detriment had he switched without new consideration.

Therefore, B's obligations may have been excused under W, although D bringing suit against B will strongly suggest that D did not waive B's contractual obligations.

Was B's performance discharged•

Impracticability

Impracticability is when a party cannot perform their obligations without substantial burden and hardships. Costs and profits cannot be used as an reason for impracticability. Here, B will suggest that it was substantially

burdensome to pay an additional \$500,000 just to switch equipment. However, since expenses cannot be an impractical reason as unexpected costs are reasonably foreseeable in such service Ks, this will not discharge B's obligations. Thus, impracticable will not discharge B.

Impossibility

Impossibility is similar to the above rule, however, in this case, no one is able to perform the obligations. Here, B will not have an argument, since he quickly hired another company 4 days later on June 8th, which clearly shows the performance was possible, and it was even possible for him to increase the costs. Thus, this will not discharge B.

Frustration of Purpose

Here, B will argue that the K has a time is of the essence clause and D was aware of it and agreed to it, which shows that if the K was not performed on or before Sept 1, then the K would be frustrated of its purposes. However, this will also fail because although no other work could begin until completion of the site preparation was done, there are no facts to indicate that the entirety of the project had to be done by a certain time and that if D was late in his timeline, then it would cause some sort of damage or frustrate the essence of the K.

This is not viable grounds for discharge.

In conclusion, B was not excused nor discharged of his obligations. Thus, his termination constituted a breach of K, and for these reasons, D will likely prevail in its suit against B.

2. Is B likely to prevail in its countersuit?

Did D satisfy his obligation to perform?

Here, D had not begun any preparation or performance, thus he could not have

satisfied his obligations under the K.

Was D excused from performing?

Impossibility - Illegal

Rule for impossibility above. Here, unusual high pressure weather system settled over the state, which is viable grounds for impossibility, since it is an act of God, and thus unforeseeable at the time of formation.

Illegal: Moreover, the next day, on May 30, the state banned use of all diesel powered equipment, which creates impossible grounds for D to perform his obligations within the time frame agreed upon, as he did not know when the ban would be lifted.

For these reasons, no one would be able to perform the work with diesel powered tools since there was a ban put in place, and would make such performance illegal. Thus, D's performance was excused due to unforeseeable events, rendering his obligations impossible.

Estoppel

Here, D may argue that although he had not begun preparation or performance yet, he may be able to prove that he declined other jobs within the time period of entering the K with B and until June 4, which shows D relied on the K with B, which caused damages and losses to D by B's termination.

Thus, D's obligations will be excused under estoppel.

Was D discharged of his duties?

Impossibility

Rule and analysis above. D will be discharged of any obligations or damages

incurred by B on the grounds of impossibility.

Modification

Under the CL, a modification made to a K required new consideration. Without new consideration, the modification is unenforceable.

Here, when B asked D to switch tools, and B refused to pay the new consideration for such a switch, the modification to the K rendered unenforceable, as there was no new consideration made.

Thus, D is discharged for any obligations for the modification of using the gas-powered equipment.

Rescission

Here, D will establish that B canceled the K on June 4, well before the Sept. 1 deadline, which was not reasonable of B, as the state could have lifted the ban within the next few days. This is a reasonable argument since the unusual high pressure weather system is likely only to last up to a few days to weeks, since weather is not a permanent circumstance. Even more so, since it was unusual weather.

Thus, since B canceled the K without any sign of D not being willing to complete the work under the agreed upon terms, this will be viable grounds to discharge D of any obligations owed to B.

Expectation Damages (ED)

ED puts the non-breaching party in the same position he would have been in had the K been fully completed.

Here, B expected to pay \$1,500,000, but instead made 1800,000, however, since D had not breached the K, and instead B terminated the K without

reasonable excuse, he may not claim the incurred expenses, since D had not caused the incurrence of additional expenses.

Thus, B may not claim the \$300K.

In conclusion, it is unlikely that B will prevail in his countersuit against D for the difference in K prices.impossible

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END OF EXAM