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Belle v Steve: Parcel 1I. Equitable Remedies

Equitable remedies are available to parties as a means of enabling a fair resolution of a dispute between parties. The court may also grant restitutionary remedies to overcome any unjust enrichment which the breaching party (and, in some cases the non-breaching party) may have obtained. 


The issue here is whether Belle is entitled to any equitable remedies in light of Steve's breach of the contract for the sale of Parcel 1.



Belle has a valid land sale contract for the purchase of Parcel 1. It was executed in good faith and in writing, and identifies the land being sold, thus satisfying the statute of frauds. Pending closing of the sale, Steve has, in bad faith, agreed to convey the same parcel of land to another buyer, Tim.  

Where there has been a breach of a land sale contract, the equitable/restitutionary remedies available are (i) Specific Performance, (ii) Ejectment, (iii) Constructive Trust, (iv) Equitable Lien. 



In circumstances, where the parties behaviour amounts to tortious liability, the court may also impose the equitable remedy of a Temporary Restraining Order and/or an Injunction (either temporary/interlocutory, or permanent, depending on the circumstances). 

To ascertain the best equitable remedy for Belle, I will discuss with each of the above options in turn.

a. Specific Performance

In some circumstances, the Court will grant the remedy specific performance to a party where (i) the contract is enforceable, (ii) the Plaintiff has fulfilled their end of the bargain, and (iii) where legal remedies (namely damages) are an inadequate alternative. If the court grants this remedy, it will also take into account (iv) whether it is feasible to enforce specific performance, and, lastly, (v) whether the opposing party has any valid defenses.

i. Valid Contract

As noted above, Belle has entered into a valid contract with Steve which is enforceable in accordance with the Statute of Frauds.

ii. Performance of Plaintiff satisfied



On the facts provided, it is not clear whether Belle has provided any consideration such as a down-payment in relation to her purchase of Parcel 1. It is arguable that she has relied on the sale, by foregoing to look at other properties in the interim. In most land sale contracts, some form of consideration is required by the buyer in advance of closing. Assuming this to be the case here, Belle has substantially performed her end of the bargain. She will no doubt have arranged for the purchase funds to be available at the time of closing, as there is nothing in the facts to indicate that she will be unable/unwilling to pay for the Parcel at closing. Thus, this element of the test is most likely satisfied.



iii. Inadequate legal alternative remedy

Here, damages would be an inappropriate remedy as land is considered to be unique. In particular, we are told that Belle is very fond of the five 100 year old oak trees which are located on Parcel 1. It would be difficult to compensate Belle for the loss of her bargain in this regard as it would be difficult to evaluate



the inherent value of these trees. In addition, as noted in (ii) above, Belle does not yet appear to have paid for the land, so her actual damages are likely to be limited. Plainly, Belle's primary goal is to get the land, so damages is not going to adequately compensate her for the loss of this objective. Thus, this element is satisfied.

iv. Feasibility of enforcement

The court must evaluate whether it would be feasible to enforce specific performance. In particular, the court is usually unwilling to enforce this remedy in services contracts, as it would amount to tantamount servitude.



Here, we are dealing with a land sale contract. The land is unique, and Steve has already entered into a land sale contract. He is able and willing to sell the land, just not to Belle. Thus, specific enforcement does not appear to be unfeasible. This element is therefore satisfied.

v. Defenses



Steve may wish to say that the specific enforcement of sale to Belle would cause him unfair prejudice. In particular, he would say that the contract is void due to a mistake in the description of the easement appurtenant over Parcel 2. This is a weak defense for number of reasons. Where a mistake is mutual (as it is in this case), it must be material. Here, the identity of the road across Parcel 2 is not a material mistake. The court will no doubt reform the contract so that it conforms to the intent of the parties (amending the road identified to "Lake Drive" rather than "top road").





Steve may also argue that he has already agreed to sell the land to Tim. If there is a valid contract to Tim, and he purchased the land without notice of the contract with Belle, then he is a bona fide purchaser for value and under the

"shelter rule" he would be protected and specific performance for Belle would then be inadequate. On the facts given, it does not appear that Tim has yet executed a land sale contract, so this defense is unlikely to apply here.


In summary, the Court is likely to grant Specific Performance of the land sale contract to Belle.

b. Temporary Restraining Order/Interlocutory Injunction

While the dispute over who gets the land is resolved, Belle may also seek a temporary restraining order in relation to Steve's plan to cut down the oak trees. This is an ex-parte order which is granted in emergency situations (although Belle would have to try to notify Steve and/or explain why she shouldn't have to in the circumstances). If a TRO is granted, then Belle may wish to subsequently obtain an interim injunction preventing Steve from cutting down the trees until the land dispute has been resolved.

 As with specific performance, granting a TRO and/or a preliminary injunction will require the court to consider whether there is  (i) an Inadequate legal alternative remedy, (ii) Feasibility of enforcement, (iii) Balancing of Hardship and (iv) any available Defenses. In the circumstances, Steve could cut down the trees at any moment (we are told he is planning to do so in April), so there is a risk of irreparable harm posed, as these are valuable to Belle. Thus, the Court is likely to grant this interim relief.

II. Legal Remedies

 In order to ascertain what legal remedies are available to Belle, we must first consider the nature of the breach of contract (if any) by Steve.



a. Has the contract been anticipatorily repudiated by Steve?



In contract law, if a party to a contract by words or conduct unequivocally confirms to the other party that they will not perform their contractual obligations, the other party is entitled to treat said confirmation as an anticipatory breach of the contract. As a result that party may either (i) treat the contract as totally breached or rescinded and sue for damages or (ii) wait for the time of performance by the other party to fall due, and then sue for breach if they do not perform. The latter gives the breaching party time to withdraw the repudiation if the non-breaching party has not already acted in detrimental reliance on the repudiation.



Here, it is not clear from the facts provided whether Tim has in fact entered a contract yet with Belle, but he has made his intentions to do so clear to Belle. This confirmation would be sufficiently "unequivocal" for Belle to treat the contract as anticipatorily breached.



Accordingly, Belle is entitled to treat the contract as rescinded (i.e. cancelled) and sue Steve immediately for damages, or she could wait until April 1 (the date of closing) and if the Parcel is not conveyed to her by Steve, then she can sue Steve for breach of contract.



b. Expectation Damages: Actual Damages and Incidental Expenses



It is not clear whether Belle has paid a down payment or any principal yet for the Parcel of land, but if she has, these would be recoverable as actual damages, as they are direct damages flowing from the breach of the contract. In addition, she may be able to recover any incidental expenses she has incurred, such as legal costs associated with preparing the land sale contract, or estate agents' fees.



(Question 4 continued)

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