

2) Please type the answer to Question 2 below.

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When finished with this question, click to advance to the next question.
(Essay)

===== Start of Answer #2 (1580 words) =====

Given that we have a valid written contract for the conveyance of land, we know that Betty can sue and recover remedies for a breach of that contract. However, here, the facts tell us that Betty is specifically suing Steve for fraud, and thus we analyze whether Betty can prove Steve's fraud, and what remedies are available to her as a result.

PARKING SPACE AGREEMENT

Steve made representations in the contract that although the parking space was not part of the deed, he believed that she would be able to park there for free.

Fraudulent Misrepresentation

Fraudulent misrepresentation may be brought in a landsale contract when a plaintiff has reasonably and justifiably relied to their detriment, on a fraudulent statement of the conveying party, meant to induce reliance, where the land conveyer knew or had reason to know that the representation was fraudulent. However, full disclosure of all issues related to a land sale conveyance is not always required. Material concealment of a condition is only fraudulent when the conveyer of the land either knew or had reason to know of the fraud causing detrimental reliance by the other party, or where a condition that is not disclosed is material to the bargain.

Here, Steve deeded the condo to Betty without an express promise of the right to park in the adjoining lot. However, he did materially represent to Betty before the conveyance that he was allowed to park his car in that lot for \$50/month, and that he had "no reason to believe that Betty would not be able to continue that

arrangement." The facts also tell us that parking is an important and material aspect of the deal given then shortage of parking. Later, the facts indicate that Betty learned of the lot's owner's intention to construct an office building on the parking lot, and to discontinue renting parking spaces (to Betty). Moreover, Betty learns that Steve was aware of the owner's plans prior to the condo sale. Accordingly, Steve knew of a material fact that Betty justifiably relied upon given Steve's affirmative statement that he has "no reason to believe" Betty couldn't continue the parking arrangement. In fact, Steve specifically knew Betty would not be able to continue to arrangement, and made false representations to the contrary, which he knew Betty would rely on in deciding to purchase the condo, and which she reasonably and justifiably did. Thus, Betty would be successful in showing that Steve committed fraud in inducing her to rely on his statement and purchase the condo despite his knowledge to the contrary regarding the ability to park in the adjacent lot.

Duty to Disclose

Generally, land sale contracts do not require the disclosure of minor or immaterial issues related to a land sale conveyance. Where fraudulent representation (i.e., misrepresenting a material fact -- as seen above) is always improper, not disclosing certain information about a land sale is not per se improper.

Here, the fact that parking was not a part of the written contract might have otherwise made it immaterial to the contract itself, despite Betty claiming it was important. If it was an important element, she could have argued to have it placed in the deed itself. Thus, absent Steve's affirmative misrepresentation of facts he knew were contrary to the truth, it is debatable whether Steve would have been legally bound to disclose the parking lot situation. Nonetheless, he will be found liable for fraud.

Thus, it is likely that Betty will prevail on the action for fraud vis-a-vis Steve's

statements regarding the parking space and will be able to seek remedies as a result.

MURDER NON-DISCLOSURE

Steve did not make any representations about the murder, but he also failed to disclose this information to Betty prior to the sale.

Fraudulent Misrepresentation

The rule for fraud is the same as above. Here, while Steve did fail to disclose to Betty that the previous owner had been murdered, he did not offer any material misrepresentation to that effect either. Steve's silence cannot be construed as a misrepresentation when the issue was not discussed with he and Betty, and nothing in the facts indicate that she asked about any issues with the house or that she inquired about why he is selling. Moreover, without any of this discussion, Steve could not have meant to induce her to justifiably rely on any misrepresentation. Accordingly, although this may be a pertinent fact relevant to the sale and price of the home, it will not satisfy a court that Steve has committed fraud.

Duty to Disclose

The duty to disclose a material issue with a piece of property is inherent when the condition is material. Here, it is questionable whether Steve has an affirmative duty to inform Betty of the preceding murder, particularly where the facts don't indicate whether or not she inquired. There is nothing inherently unsafe or material to the premises themselves about a murder taking place in the home. If the neighborhood has a high crime rate or there is something inherently unsafe about the house or some function of its security, Steve might be required to disclose that, but nothing in the facts suggests that. Moreover, Steve bought the house himself subsequent to the murder, and there's nothing to indicate this is why he was selling it or that there were any issues inherent to the house as a result. Thus, it is unlikely, given the limited facts available, that Steve

had an affirmative duty to disclose the previous murder.

REMEDIES

Betty may be entitled to both legal and restitutionary remedies as a result of the fraudulent misrepresentation by Steve.

Legal Damages

Betty can claim legal compensatory damages for her justified reliance on Steve's misrepresentation. She has a right to both expectation damages (i.e., damages resulting from her lack of receiving the full benefit of the bargain) as well as consequential damages, or damages that resulted from Steve's conduct that were reasonably foreseeable and justifiable based on her reliance on Steve's misrepresentation. Moreover, damages must be pled as exactly as possible and with particularity, and anyone seeking damages has a duty to mitigate their own damage and may be limiting in claiming damages that were not properly mitigated.

Expectation Damages

Betty has a right to be compensated for damages resulting from her not receiving the benefit of the bargain. When a contract has been performed on both sides, usually expectation damages will come in the form of diminished value to the buyer, and she may be able to recover the difference in the reduction.

Here, Betty has been unable to sell the house or obtain offers greater than \$160k. She bought the house for \$200k. Therefore, she may argue that her expectation in the amount of her home has been diminished as a result in the amount of \$40k, owing to both the lack of parking and the previously undisclosed murder. Betty would likely be able to recover the loss of value for Steve's fraud regarding the parking situation. However, it seems less likely she will be able to seek damages for Steve's non-disclosure of the previous murder. It is unclear how Betty would prove the amount of these damages vis-a-vis both factors, but

is she can show with some exactness what portion of the diminished value is a result of one or both of these factors, she may be able to recover their value from Steve assuming she can prove the underlying legal theories above.

Consequential Damages

Consequential damages result from any foreseeable damages that a plaintiff must take as a result of a breach, that the defendant was aware of or ought to have been aware of as a result of the breach. A plaintiff is also required to mitigate their damages.

Parking

Here, Betty paid Steve the full \$200k contract price despite the fraud perpetrated by Steve. She was also forced to locate her own parking space at a cost of \$100/month as a result of losing access to the \$50/month space that Steve has materially misrepresented the state of. Accordingly, Betty mitigated her damages by finding a nearby, most likely comparably priced parking space in her neighborhood. Thus, Steve would likely be liable to Betty for her additional \$50/month costs for monthly parking.

Improvements

Here, Betty made approximately \$22K in improvements to the home after purchasing from Steve. These improvements included painting the house, replacing windows and adding a deck. These would likely all be considered improvements and under normal circumstances should have added value to the overall price of the house. Her expenditure of \$2k for the removal of the bathtub may or may not constitute an improvement. If it increased the value of the home, she may be entitled to recover for the difference of this and any loss in value, but this would not be established at trial. The rest of the improvements would likely be added to the \$200k contract price which would then be subtracted by the \$160k diminished value, or whatever value is ultimately established at trial.

Accordingly, Betty will be able to establish both expectation and consequential damages for at least on of Steve's transgressions, and the amount of the established diminished market value of the house as a result of any liability by Steven would be subtracted from the contract amount plus the increased value of the home based on reasonable and foreseeable consequential improvements and additions to the value of the home made by Betty based on the contract.

Question #2 Final Word Count = 1580

===== End of Answer #2 =====