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===== Start of Answer #3 (1427 words) =====

1. Temporary Restraining Order (TRO)

In order to prevail on a TRO there must be a likelihood of success on the merits, balance of the hardship, there must be notice given to the affected party and if no notice is given there is a reason as to why the TRO should be granted without notice. Moreover, a TRO will last a maximum of 14 days and the court should set the preliminary hearing at the earliest convenient date in order to not prejudice the affected party.

Likelihood of Success on Merits

Here, Rick will state that he will succeed on the merits of the case because it is a breach of contract case. Rick and Sam had a valid contract, as stated by the facts, and although Rick was more than willing to complete his end of the bargain, Sam was not. Therefore, there was a breach of contract claim and Rick will likely win on the merits of the case.

Balance of Hardships

For balance of the hardships, the party must show that the TRO would not cause any adverse affects. Here, Rick will argue that it is only fair that the TRO be granted because Sam had previously called Rick and told him that he planned to sell the queen to another collector and without the TRO, Sam will indeed sell the Anituck queen. Moreover, Rick will argue that if the TRO is not granted that Sam will sell the Anituck queen and he will have no other way of obtaining another piece like it because they are extremely rare and unlikely to come up for sale, since the last one was sold in 1983 over 30 years ago.

On the other hand, Sam will argue that Rick defrauded him and led him to believe that the value of the Anituck queen was \$450 when instead it was worth a lot more than that, because the 1983 piece sold for \$175,000 and the market likely appreciated in value. This is probably not enough to show that he would

suffer great hardship. Therefore, it seems that the balance of the hardships would tip more in favor of Rick because there had not been a previous Anituck queen up for sale in over 30 years. Moreover, as discussed below, it is likely that if Sam did not sell to the person he stated he was going to sell it to when he phoned Rick, that he would likely find another buyer quickly due to the rarity of the Anituck queen, so he would not suffer immense hardship.

Notice

There is nothing in the facts here that state that Sam will not be present for the TRO hearing. Rick must give him notice or else prove that notice should not be required because it will adversely affect him. Rick could claim that if he gave notice to Sam of the hearing, that Sam would quickly sell the Anituck queen because he will want to make money off of it since it is extremely valuable.

Conclusion: Therefore, the court will likely lean towards granting a TRO because a valid contract existed between the parties making it likely to succeed on the merit of the case. Moreover, even if Sam was to be prejudiced by the TRO, it would be minimal because if he were to end up winning the breach of contract claim and would get to keep the Anituck queen, he will probably be able to find a buyer very quickly given the rarity of the item.

2. A Preliminary Injunction

A preliminary injunction follows the same elements of a TRO except that there is no notice that needs to be made to the affected party since unlike a TRO, a preliminary injunction cannot be granted without their presence.

Likelihood of Success on Merits

See discussion above.

Balance of Hardships

See discussion above.

Conclusion: it is likely that the preliminary injunction will be granted and Sam will not be allowed to sell the Anituck queen to another collector.

3. Specific Performance

Specific performance is an equitable remedy where legal remedies would be inadequate. In order to have specific performance the following elements must be met: (1) valid contract; (2) conditions met; (3) inadequacy of legal remedy; (4) mutuality; and (5) feasibility of enforcement.

(1) valid contract

Here, the facts show that there was a valid contract entered into by Rick and Sam. Sam agreed to give Rick the Anituck queen and Rick agreed to give Sam \$450. Additionally, the UCC governs the sale of goods while the common law governs everything else. Here, the contract is for the sale of the Anituck queen, which is a movable good. Therefore, there was a valid contract and the UCC governs this transaction.

(2) conditions met

Here, the only conditions placed were that Sam would bring him the Anituck queen and Rick would pay him \$450. Rick was willing to pay him and Sam just had to bring the Anituck queen. It does not seem like there were other conditions placed on the purchase. Therefore, the conditions necessary have been met.

(3) inadequacy of legal remedy

Here, Rick will claim that monetary damages are not enough. This is due to the fact that the Anituck chess sets are extremely rare because he only carved 15 chess sets. Moreover, there are only six Anituck queens in existence and they are owned by collectors. Rick will further state that the last time that an Anituck queen was sold was in 1983, which again puts to the rarity of the set and how

unlikely it will be that one will come back up on the market. Moreover, monetary damages would be hard to calculate because of the rarity of the set and how unlikely they are to go on the market because they are held by collectors. Therefore, legal remedy is inadequate.

(4) mutuality

For mutuality one needs to show that both parties are willing to go through with the deal.

Here, the facts show that Rick was willing to pay Sam the \$450 the same day they entered into a valid contract. The issue here lies with Sam because he no longer wants to sell the Anituck queen after finding out the value of the piece. Therefore, because Sam no longer wants to sell the Anituck queen, there is an issue with the mutuality element.

(5) feasibility of enforcement

Generally courts have issues with specific performance because of the issues that come with enforcement. Moreover, specific performance is generally not allowed for employment contracts because of issues with involuntary servitude. Luckily, this is not an employment contract and instead is a contract for sale of goods.

Here, Rick will claim that the courts would not have to worry about that here because the only thing that needs to happen is for Sam to bring the Anituck queen and Rick will pay him the agreed price of \$450 and it will be done quickly.

Sam's Defenses to Specific Performance - Unclean Hands

Here, Sam will argue that the court should not grant specific performance because Rick entered into the contract with unclean hands and those who enter into a contract with unclean hands will not be entitled to specific performance. Sam will claim that he went to Rick and was looking for an honest answer from Rick and instead Rick took advantage of him by giving him a low value for the Anituck queen he knew was worth much more. But, nothing in the facts show

that Rick acted with unclean hands. He will further state that he has no duty to disclose the true value of the things people bring to him. He will state that if he did this, he would no longer be able to get a better deal because of this.

Sam can state that although the above is true, that there is a huge discrepancy between \$450 Anituck queen and the Anituck queen that sold in 1983 for \$175,000. Moreover, the complete set could be worth an excess of \$1 million. This is more likely to be an issue that deals with consideration, and courts generally do not like to get involved with consideration because people should be allowed to contract in a way they see fit. Therefore, it is unlikely that Sam will be able to claim unclean hands to avoid specific performance.

Conclusion: Therefore, although there are issues with the mutuality element, the other elements are satisfied and it is likely that Rick will be granted specific performance and will be able to obtain the Anituck queen.

Question #3 Final Word Count = 1427

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