

3)

===== Start of Answer #3 (1579 words) =====1. Rick's likelihood of obtaining a temporary restraining order (TRO)

A TRO is obtained by a party to maintain the status quo in awaiting a preliminary injunction. In order to obtain a TRO, the injured party must show an irreparable harm or injury and a likelihood of success on the merits. The plaintiff may be required to post a bond because in the event he does not prevail, the bond will provide defendant compensation for having to defend the lawsuit.

Irreparable Harm or Injury

Irreparable harm occurs when the injured party suffers a harm and money damages are inadequate to compensate the plaintiff.

Rick (R) will argue that he has suffered irreparable harm because he has entered into a valid contract with Sam (S) about purchasing the Anituck queen to complete his collection. However, the day after the agreement, S contacted R informed S that he will not be selling the queen piece to him. R will contend that there are only six queens out there and the last one was sold in 1983 and currently, owners have refused to sell their queen to anyone. Moreover, no one today owns a complete set of the Anituck chess set. Additionally, R has all the pieces but the queen set and if he can exhibit a complete Anituck chess set, he will be able to draw people from around the world to buy memorabilia with pictures of the full set. The fact that the queen piece is extremely rare and difficult to obtain, shows that R will suffer irreparable harm if S does not sell the piece to him. Additionally, R will demonstrate that money damages are inadequate if the current owners refuse to sell their queens to anyone then even receiving money damages will not provide R the chance of obtaining a queen piece.

Likelihood of Success on the Merits

The second prong that R will have to show is that he has a likelihood of success on the merits for his claim for breach of contract.

It has been found that R and S entered into a valid contract. Here, R is claiming that S has breached the contract by informing R the next day that he does not want to sell the piece to him anymore even though R has paid consideration with a check of \$450 to S. It is likely that there was a valid contract and S breached by not performing his part of performance.

Post Bond

Additionally, to establishing the two prongs, the plaintiff will have to post a bond in the event, he loses and to pay defendant for having to defend the claim.

Here, R will need to post a bond for the amount of fair value that S will need in order to defend the claim. If R is unsuccessful in his claim, then S will receive an award for having to defend the claim.

Conclusion

R will likely be able to obtain a TRO against S. The TRO will only be good to maintain the status quo while awaiting a hearing for the preliminary injunction. During the period of a TRO filed against S, the court will ask that S does not sell the queen to another collector and remains in possession of it while the case is ongoing.

2. Rick's likelihood of obtaining a preliminary injunction

After a TRO, the injured party can obtain a preliminary injunction to ask the court to ask order Defendant to do or not to do something. The TRO is good for fourteen days and can be extended to 28 days. A TRO is similar to a preliminary injunction in that the injured party has to prove an irreparable harm or injury and a likelihood of success on the merits. Additionally, for a preliminary injunction,

the court must balance the harm to plaintiff if the preliminary injunction is not granted against the harm to defendant if the preliminary injunction is granted.

Irreparable Harm or Injury

Irreparable harm occurs when the injured party suffers a harm and money damages are inadequate to compensate the plaintiff.

As discussed above, it is likely that R will suffer an irreparable harm because even if R was awarded money damages, it would not allow him to be able to purchase a queen piece.

Likelihood of Success on the Merits

The second prong that R will have to show is that he has a likelihood of success on the merits for his claim for breach of contract.

As discussed above, it is likely the Court will find that the R has a claim for breach of contract against S and thus, has a likelihood of success on the merits.

Harm to plaintiff if preliminary injunction not granted against harm to defendant if preliminary injunction granted

Court must balance what R will suffer if the preliminary injunction is not granted against S's interest if the preliminary injunction is granted.

Here, if the preliminary injunction is not granted, R will suffer irreparable harm because of the difficulty to obtain a queen piece. R owns all pieces but the queen of a chess set. There are only fifteen chess sets altogether cared by the famous artist, Anituck. Additionally, R has all the pieces but the queen and if he purchases the queen piece, he will be the first person in the world to own a complete Anituck chess set. By owning a complete set, R will be able to draw people from around the world who can buy pictures of the set.

On the other hand, S will suffer harm in that the last queen piece was sold for \$175,000 and here, he has entered into a contract with R to sell the piece for \$450. S will lose a great amount of money for not receiving the fair market value for the queen piece. However, as the parties have entered into a contract, and money damages are inadequate to compensate for R's loss, it is likely that the harm suffered by R will be greater than the harm suffered by S if the preliminary injunction is not granted.

Conclusion

The Court will grant the preliminary injunction against S to order him to not sell the piece to another collector pending the final disposition for specific performance on the queen piece as will be discussed below.

3. Rick's likelihood of obtaining a specific performance

The Court will award specific performance to a party when money damages are inadequate. Money damages are inadequate when the property contracted for is unique. Personal property (goods that are moveable) are considered unique when they cannot easily be found and purchased on the market.

Here, the goods is for the queen piece. As discussed previously, the queen piece is unique in nature due to it being rare and there are only six existing queens owned by collectors. Additionally, the current owners have refused to sell their queens to anyone which further shows that it cannot be purchased on the market easily.

Sam Seler's Defenses

R is bringing a claim for specific performance for a breach of contract. S will defend the claim stating that the contract should be rescinded because it was unconscionable and due to mistake.

Unconscionable

A contract may be valid, entered by both parties in writing but may be found void if unconscionable. It is unconscionable when it "shocks the conscience" in that one party has a substantial bargaining power over the other.

Here, S will argue that the contract is clearly unconscionable because of the value of the queen piece. He would argue that he contracted with R to sell the queen piece for \$450 to him when in fact, the last queen piece sold for \$175,000. There is a huge disparity in what S received from R from what the fair market value is. S will argue that R who collects the chess set is well aware of the high value of the piece when S brought it in. On the other hand, R will argue that S was the one who asked if \$450 would be fair demonstrating that he estimated the value himself to be about \$450. R will further argue there are always risks when entering into contracts and that R simply agreed to the price S asked.

However, the better argument is that it was indeed unconscionable because of the great difference in money that R received compared to the fair value and R had knowledge of the value.

Mistake

A contract may be voided when one party is mistaken and the other party knew or should have known of the mistake.

S will argue that he is the mistaken party because he was unaware of the value of the queen piece. He brought the piece to R and asked if it was worth anything. R did not inform him of the value or rarity of the piece but only asked what S wanted for it. S did not have an idea about the fair market value and asked if \$450 was fair. R, being the collector of the chess pieces, was well aware of the high value. However, R took advantage of S's mistake and rather than informing him it was unique and rare, he quickly accepted R's offer of \$450.

Thus, it is likely he can assert the defense of mistake.

Conclusion

S will be able to raise the defenses of unconscionability and mistake to rescind the contract. Thus, specific performance will not be granted to R.

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