

3)

Governing law

Contracts involving the sale of goods are governed by the UCC. Goods are moveable objects. All other contracts are governed by the common law.

Here, the contract between R and S is for an Anituck Queen chess piece (Queen). The carving is a moveable object, therefore it is a good.

Thus, the UCC governs this contract (K)

formation

A contract must have terms that are definite and certain. Both parties must enter into a contract with the intention to be bound by the terms of the contract. Here, the facts indicate that S and R entered into a valid contract for the Queen. Thus, the K is valid.

Defenses to formation

if a K is made pursuant to a mistake of one or both parties, misrepresentation, or fraud, the parties may have a viable defense to formation.

Fraud

_____to prove Fraud a plaintiff must prove that: the D intentionally conveyed false information to P, the information concerned a material fact, and the P did in fact rely on this information when entering into the contract. Here, S brought R the Queen and asked him if it was worth anything. S asked R whether he thought 450 was a good price for the queen. Rick replied that it would be a fair price and offered to immediately write a check. However, there are only 6 queens in existence. This means that the piece is incredibly rare. So rare in fact that R believes he can become a millionaire upon completing his set and photographing and selling pictures of the complete set. R knew that 450 was not a fair price, and S in fact relied on this fact when he decided to convey the queen to R.

However, R would argue that 450 is in fact a reasonable cost for the piece. He intended to make money from a complete set, not just the queen, alone the queen might not be worth more than 450. On balance, S will likely be able to avoid the K on the basis of fraud.

If it is not avoidable by fraud, then we would need to determine if S's nonperformance of the K could be remedied by equitable remedies.

Breach

The contract provided that S was going to give R the queen the next day. Instead of conveying the queen, S breached the K when he called R and said "I learned that you defraud people out of expensive antiques all the time and that the queen is worth thousands of dollars. I am going to sell the queen to another collector." This is not an anticipatory repudiation because S explicitly stated that he was not going to perform. Further, this nonperformance took place on the very day it was going to be conveyed.

Thus, S breached the K.

REMEDIES

1. Temporary restraining order

A temporary restraining order is an equitable remedy which orders someone to act either affirmatively or to stop doing something. TRO's usually last 30 days and must be renewed or revoked within that time frame. In order to be eligible for a TRO the P must prove:

- 1) an irreparable harm

The harm must occur as a result of waiting for a trial to happen. This is an imminent harm. Here, R will argue that he will be harmed if S conveys the queen to another seller. If R is allowed to convey the queen, it will be harder for R to regain possession, especially if the new collector obtains the queen without notice of the dispute as an bona-fide-purchaser.

Thus, R will likely be able to prove that he will suffer an irreparable harm if the court does not stop S from selling the queen to another party.

2) likelihood of success on the merits

R must show that he would likely prevail at trial on the merits. Here, it is questionable whether R committed fraud when he told S that the queen was worth 450. Because of the rarity of this item and the large amount of money R hopes to make from having a complete set, a court would likely find that it is worth more.

Thus, it is unlikely that R would succeed on the merits.

3) feasibility of enforcement.

If R hopes to forcing S to convey the queen, then this may not be a feasible option because it is difficult to have an affirmative injunction. If R hopes to prevent S from selling it to another party, it may be more feasible.

In Sum, because R is unlikely to prevail on the merits, this is not a viable remedy for him.

2. A preliminary injunction

3. Specific Performance

Specific performance is an equitable remedy which orders someone to perform or prevents them from performing. In order to obtain specific performance the party must prove the following 5 elements:

Valid Contract

there must be a valid contract with definite terms between the parties. Here, the K is valid. element met

COnditions met

The party must have completed the conditions of the contract or be willing and able to perform them. Here, R was ready to write a check to S for the queen. R is ready and willing to perform the K. Element met.

Inadequate legal remedy

The legal remedies must be inadequate. This is usually demonstrated by a land conveyance or if the item is unique or rare. The queen is extremely rare. it is one of 6 worldwide. This is evidenced by the fact that nobody owns a complete anituck chess set. Thus, a legal remedy would likley be inadequate.

Legal remedies

Legal remedies include compensatory damages which are: Expectation (where the party would be had the breach not occurred), Reliance (damages incurred while relying on the K), and consequential (resulting from the breach in the future). Here, because of the rarity, damages will likely not be adequate.

Further, restitution is not adequate because S is not being unjustly enriched.

Mutuality

Although most modern jurisdictions have abolished this requirement, some jurisdictions require that both parties would be entitled to specific performance. Here it is likely met.

Feasibility of enforcement

an order asking someone to do something is more feasible. Thus this is met.

Defenses

These include Laches, Unclean hands, and undue hardship. unclean hands because of fraude

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