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**1. Joining B's claims for fraud and breach of contract (K) in the same suit against seller.**

Prior to determining if the claims may be brought together, it is important to note personal jurisdiction.

PJ

Federal courts can only exercise jurisdiction over those who they have in PJ over. A court can have PJ over an individual/corp through: traditional processes (service in forum state, domicile in state, or presence in state) and/or a state's long arm-statute if it is constitutionally sound to do so. To be constitutionally sound one must have such minimum contacts with the forum state, including foreseeability and purposeful availment, so as not to offend the traditional notions of fair play and substantial justice.

Here, B is a resident of NY and S is a resident of CA. The claims are being brought in CA and the land claim concerns a parcel of land located in CA. These facts indicate that S is domiciled in CA. If S is domiciled in CA, then the court would have general jurisdiction over S. Further, even if the court only has specific jurisdiction, the land claim concerns a piece of property, so in rem jurisdiction would apply.

Thus, there is PJ over S.

joinder of claims

A P may aggregate his claims against a single D. Further, D may assert different counterclaims against P. under the FRE, if a claim arises out of the same transaction or occurrence it is compulsory. If it is not related to the same transaction or occurrence, then the party may assert the claim if the court allows for such.

Here, the issue is not one of a counterclaim, it is aggregation. B and S have entered into two valid separate K's. These claims do not arise from the same transaction, but because a P can make multiple claims against a single D it is fine to join them. In some instances, it may be more efficient to separate the claims, especially if they involve other parties. However, B is alleging fraud under the painting contract and breach of K for the land contract. The breach of contract claim happened only 15 days after the fraud incident, thus there appears to be no issues with a statute of limitations. While these are two separate causes of actions, there seems to be no apparent reason why the court should disallow both claims.

**2. is B's allegation sufficient to state a claim for fraud involving the painting?**

pleading requirements

Under the FRE, notice pleading is required. Essentially, this means that a complaint should be plead well enough to put the defendant on notice of the reasons why they are being sued. After *Towombly*, federal courts now requires complaints to be well pleaded. This means that they must be plausible and non-conclusory. Further, certain allegations must be plead with more certainty than others. Fraud is one that must be plead more throughly.

Here, B and S entered into a valid K to convey a painting claimed to be an original Rothko. The original painting is supposedly worth 1 million dollars. The parties entered into a K for the amount of 1 million dollars. However, the painting conveyed by S turned out to be a fake and only worth \$200. B knows this because upon finding out that the painting was fake he sold it to someone for that price (he mitigated his damages). B is suing S for fraud based on the fact that S claimed that the Rothko painting was real. Importantly, when B filed suit in

a CA federal court he claimed fraud as to the painting, alleging that S committed "fraud in the supposed value" and sought 1 million dollars. Absent facts to the contrary, this language is not enough to meet the FRCP pleading requirements for fraud. B must specify that S meets each element of fraud in the complaint so that it is plausible.

#### amending complaint

A complaint may be amended once within 21 days of filing and may be amended after that time if the party seeks approval from the court to do so. Here, it is unclear how long it has been since the complaint was filed, but if it was within 21 days B should request time to amend the complaint and re-plead the fraud claim correctly.

### **3. Fed Court Subject matter jurisdiction (SMJ)**

fed courts are not courts of general jurisdiction. Cases must meet SMJ requirements to be held in federal court. The case must either 1) arise from a federal question or 2) meet diversity and amount in controversy requirements.

#### federal q

Here, the case concerns fraud and breach of K, which are not federal. Thus, no federal q SMJ.

#### Diversity

in order to have complete diversity each party must be diverse from the parties on the other side of the "v". Diversity is based on domicile. A person's domicile is where they live or where they intend to live indefinitely.

Here, B is living in NY. The facts do not indicate whether B is domiciled elsewhere. It is assumed that he is domiciled in NY. If he is not domiciled in NY, Diversity may still be met as long as he is not domiciled in CA. S lives in CA. Further, S is attempted to convey (until he breached) a piece of land in CA.

These facts indicate that S is domiciled in CA. Thus both parties are domiciled in different areas and diversity is met.

Thus, there is complete diversity.

Amount in controversy

After diversity requirements are met, the next hurdle to SMJ is the amount in controversy requirement. The plaintiff must allege in good faith damages of over \$75,000.

Here, B alleged that the painting is worth 1 million. He mitigated his damages, so it will actually be 200 less than that, but either way, 1 million is well over the 75k requirement for the fraud requirement. Thus, the amount in controversy is met.

aggregation of claims

A p may aggregate their claims against a single D to meet the amount in controversy requirements. Here, B meets the requirement separately with both claims. However, since the claims are combined he alleges approx 6 million in damages. The parcel of land is worth 5 million and they contracted for that price. Thus, the amount in controversy is 6 million. Thus, if B were to request 6 million in damages, then the amount in controversy would be satisfied. However, B is requesting equitable relief for the land and not damages. Equitable relief for purposes of the amount in controversy is provided an estimated value. Here, the conveyance of the parcel of land may be estimated around 5 million, it is difficult to tell. Regardless, B meets the amount in controversy requirement.

In sum, the federal court has SMJ over the suit.

**4. Applying CA law to the breach of K claim involving the parcel of land in CA**

Federal courts apply the FRCP and federal common law when deciding cases. More particularly, if there is a conflict of law, the federal court will apply federal procedural law and state substantive law. Law that is determined to be substantive includes a statute of limitation, choice of law provisions, and land claims. First, the court will look to see if there is a FRCP on point regarding the issue, if so, then it is procedural and the FRCP will apply. If there is no FRCP on point, the court will look to the state supreme court in which the fed court is sitting, to determine if they have spoken to the issue. The substantive law must be balanced between the interests of fairness and the issue of forum shopping.

Here, if the K had a choice of law provision that indicated that california law should apply, then the federal court will likely apply californai law to the contract. THis is because contracting parties should be able to determine what law applies to their contract. Here, we do not have facts that state there was a choice of law provision. However, this contract is for a piece of land located in california. California has a substantial interest in legislation that affects its land. Further, there are no FRCP provisions which would be on point for this issue. So, because this issue involves land in CA, the federal court will deem it to be substantive and will apply it to the breach of contract claim involving real property. It does not seem like there is an issue with forum shopping since the land in question is in CA and S is a resident of CA. it seems quite fair to apply CA law.

Thus, the court will apply CA law to the breach of K claim involving the parcel of land in CA.

**5. Jury trial.**

The right to a jury trial is enumerated in the 7th amendment of the US constitution. The 7th amendment is inaplicable in state court cases. Under Federal law, Jury's determine equitable damages and the judge determines legal issues. Further, if one party requests a jury trial, it must be provided to them

regardless of whether the other party wants one or not.

Here, B is seeking damages as to the fraud claim and specific performance as to the second. Specific performance is an equitable remedy (valid K, conditions met, inadequate legal remedy, mutuality, feasibility, and defenses). Accordingly, B is entitled to have this issue submitted to a jury. However, the fraud claim might be better left to the judge, but since B requested it, he is entitled to have it heard by a jury.

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