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1. Temporary Restraining Order

A temporary restraining order may issue when the moving party can show immediate, irreparable harm, likelihood to prevail on the merits, and reasonable efforts to notify the party to be enjoined.

Immediacy

In order to show the immediacy of a TRO, the moving party must demonstrate the opportunity and likelihood that the equitable relief sought may no longer become possible after spending time serving the summons and subsequently requesting a preliminary injunction hearing.

Here the party to be enjoined, S, has expressly stated he is going to sell the queen to another collector. If another bona fide purchaser obtained the queen soon thereafter, the relief sought would no longer be available to R. Although S may argue that 5 other identical queens exist, R will counter that their owners have refused to sell since 1983.

Thus, R may be able to show the requisite immediacy for a TRO.

Irreparable Harm

For purposes of a contract, irreparable harm can be shown if the substance of the contract is rare and unique, such that no substitute performance could be considered reasonably available to the moving party.

Here, the substance of the contract is a famous chess piece of which 6 remain. The current owners refuse to sell, and the last one was sold in 1983 for \$175,000. Accordingly, this rare and unique chess piece cannot reasonably be replaced with substitute performance, and meets the irreparable harm standard for equitable relief in contract.

Although R speculates that he could draw people worldwide if he could complete a chess set, this is not a part of the contract, and not an expectation to which he is entitled relief. This factor is not dispositive to irreparable harm and would not be relevant to a legal damages claim.

Thus, there is irreparable harm.

Merits

Applicable Law

The Uniform Commercial Code applies to transactions for goods, or tangible, movable property. Common law applies to all other contracts.

Here, the substance of the contract is a chess piece.

Thus, the UCC applies.

Valid Contract

In order for a contract to be enforceable, there must be a valid offer, acceptance, consideration, and no defenses to formation.

Offer

An offer must be a manifestation of the offeror's present intent to enter into a binding contract with definite terms of the contract substance. Contracts for goods greater than \$500 must be in writing. However, the only required terms for a UCC contract are price and quantity.

Here, S asked R if the chess piece was worth anything. Then, R asked S what S wanted for the queen. S asked if \$450 was fair. R said \$450 was fair and offered to write a check immediately.

In any event, the facts state that R and S entered into a valid contract.

Thus, there was a valid contract with no defenses to formation.

Breach of Contract

A party has a claim for breach of contract when the conditions obligating the claimant are met or excused and the other party has failed to fulfill their conditional obligations. Parties may also bring a breach of contract claim when the other party actually repudiates the contract, or unequivocally states that they will not perform their obligation.

Here the relevant conditions are that R was to pay S \$450, which was tendered and satisfied, and that S was to tender the Anituck queen chess piece. When a UCC contract is silent as to time for performance, performance is due in a reasonable amount of time after payment has been tendered. After the parties entered into the contract, S agreed to tender the queen the following day.

S will argue that no novation or consideration created an obligation for the subsequent agreement to tender the queen the following day. But in any event his total and actual repudiation of performance makes R's breach of contract claim ripe.

Thus, there was a valid breach of contract claim either under time for performance due or actual repudiation.

2. Preliminary Injunction

Irreparable Harm

See above

Likelihood of Prevailing on Merits

See above

3. Specific Performance/Replevin

When the substance of the contract and the requested relief is a unique good specified in the contract, and substitute performance is unavailable, a non-breaching party may seek replevin, or equitable relief by the court transferring goods to the nonbreaching party.

Unclean Hands

Here R negotiated in bad faith and relied on S's unilateral mistake in

Question #3 Final Word Count = 735

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