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Valid contract

Must contain offer, acceptance, and consideration timely communicated to offeree

Here the facts state there was a valid contract

Therefore the contract is valid

UCC sale of goods

Sale of goods of \$500 or more must be evidenced by writing

The facts state the contract was in writing

Therefore the UCC is satisfied.

Breach of contract

Failure to perform the duty under a contract when performance is due

Best and Stan each claim the other failed to perform their duty when it was due, thus the determination who if either breached would turn on when performance was actually due by each of the parties.

Best claims Stan breached May 22 by stating he would not know if he could deliver the Tomatoes until June 10.

Stan claims Best breached May 27 when Stan failed to provided adequate assurances by May 27.

Therefore who breached depends on when performance is due under the contract

Modification of Contract

Changing of the terms of a contract after contract if formed. Common law requires new consideration, UCC allows for modification without new consideration. Written contract must be modified in writing absent exception.

The contract called for delivery of the tomatoes on July 1 however due to slow

ripening Stan write an email to Best that the delivery would be two weeks late, thus a written proposal for the modification of a contract making the delivery date July 15.

Best replied "Okay" indicating an acceptance to the modification of the delivery date for the tomatoes.

Therefore, on May 15, the date on which Stan was due to delivery the tomatoes is now July 15.

Third Party Repudiation

If one learns from a reliable third party performance would not be possible they can take this as a repudiation of the contract.

Best learned from Delta on May 22 that Stan would not be able to fulfill the contract with Stan, thus learning from a third party Stan would not perform.

In addition Delta was an employees of a bank in which Best and Stan both banked, thus in a position to be considered reliable.

Therefore, Best has reason to believe Stan may breach the contract.

Adequate assurances

One who has reason to believe the other party will breach may demand adequate assurances of performance

Best contracted Stan for assurance that Stan would deliver the tomatoes per their agreement, thus adequate assurances of performance.

Stan responded he would not know if he could perform until June 10, thus no assurances could be given until that date.

Best demanded assurances by May 27 of performance which Stan did not provide by that time.

Therefore, assurances were not given on May 22 nor May 27 but would be determined June 10.

Anticipatory Repudiation - Stan

Unequivocal notice one will not perform on a future date.

Best argues that Stan failing to give adequate assurances on May 27 was a repudiation by Stan of the contract and a statement he would not perform.

However, the statement that Stan would not be able to determine if he would be able to perform is not a repudiation nor an assurance.

Failure to provide adequate assurances by be considered a repudiation of an agreement for which the non breaching party could then seek to cover.

Stan did specify to Best the assurances could not be made before June 10, 5 days prior to date of performance.

Additionally, demanding assurances by May 27 for a delivering on July 15, after the modification of two weeks already accepted by be considered unreasonable in light of type of goods, perishable nature, and ability to obtain from other sources on short notice.

Therefore, Stan's statement was not an anticipatory repudiation and Best's treatment of failing to provide assurances by May 27 may be unreasonable.

Anticipatory Repudiation - Best

defined supra

Here Stan did not repudiate the contract prior to performance becoming due July 15, stated assurances would be given by June 10, and so provided such assurances June 6.

In contrast, Best contracted with another supplier on June 3 to purchase the tomatoes from another provider and stated refusal to accept delivery from Stan. By seeking to cover before the date Stan told Best the Stan would know if Stan would perform when due Best risked Stan being able to perform under the contract. Moreover, Best did not notify Stan of Best's agreement with Agro-Farm to cover the anticipatory breach by Stan thus exposing risk of waste of a perishable product intended for delivery to Best

Therefore, Best did anticipatory repudiate the contract.

Mitigation of Damages

A nonbreaching party must take reasonable steps to mitigate damages.

After learning Best would not accept delivery per the contract Stan contacted to sell the tomatoes to another party for \$5 less per bushel, thus reasonable steps to mitigate damages

Best will argue that he spend \$10 more per bushel and should be compensated for what he is out over the contract price as a result of covering the breach.

However, as discussed supra, Best's treatment of Stan's notice as an anticipatory repudiation is unreasonable and Best reasonably should have either waited until June 10 for assurances or immediately treated Stan's failure to provide assurances as a breach and so notified Stan at that time.

Therefore, Stan mitigated his damages

Damages

The placing a party in as good a position as if the breach had not happened measured by the difference between the contract price and the mitigation.

Here the contract was to sell 5,000 bushels for \$100 each making the contract price \$500,000.

After learning Best would not perform Stan was able to sell to another buyer for \$95 per bushel for \$475,000

Therefore, Stan is entitled to recover from Best \$25,000 in damages

Question #1 Final Word Count = 960

END OF EXAM