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Law

Sale of goods contracts (K) are governed by UCC Article 2. All other k's, including service k's, are governed by common law.

Here, Sam and Barn entered into a k, for Sam to paint a unique design on the first floor lobby of Barn's building in exchange for \$75,000. This is a k for Sam's services. Because it is a service k, it will be governed by common law.

Thus, the k will be governed by common law, because it is a k for services.

Valid K Formation

For a valid k formation, it requires an offer, acceptance and consideration. An offer is a present manifestation to be bound by an agreement, with definite and certain terms and communicated to the offeree. An acceptance is an intent to be bound by terms of an agreement. Consideration is a bargained for exchange of legal value, where a promise induces a detriment, and detriment induces a promise.

Here, there was an offer and acceptance, because Sam and Barn agreed that Sam would paint the border of the ceiling in Barn's new building lobby, for \$75,000. There was consideration, because Sam is giving up his time and additional costs to work on this project, and Barn is giving up \$75,000.

Thus, there is a valid offer, acceptance and consideration.

For a k to be valid, it also must not be subject to any defenses to formation. Such defenses include Statute of Frauds, undue influence, duress, incapacity, mistake, and illegality. Here, this k may be subject to Statute of Frauds. Under Statute of Frauds, certain k must be subject to a writing requirement to be valid. These k's are marriage k, service k's that cannot be performed within 1 year, land sale k, suretyship k, executor k, and sale of goods for \$500 or more. Those k must be in writing signed by the party to be charged to be valid.

Here, Barn and Sam signed a mutually drafted handwritten k. This was a k for services. However, the terms do not indicate a time for completion. However, it may be argued that that the k cannot be completed within 1 year, given the size of the lobby and how long it would take Sam to come up with a one of a kind design. However, the facts are silent as to the size of the lobby and complexity of Sam's designs. Without knowing this, it may also be assumed that this k may be performed within 1 year. However, regardless of whether this service k can be

performed within 1 year, we are told that there is a "signed" handwritten k formed between Barn and Sam. Thus, this k is valid whether or not it falls under the Statute of Frauds writing requirement.

Thus, the k is valid written k, whether it is subject to the Statute of Frauds writing requirement.

Modification

The parties to a k may make modifications to the existing k, by introducing additional terms or change or waive the terms altogether. For common law k's, the parties must exchange consideration for the modification to be valid. For UCC k's, no consideration is required, but only a good faith by both parties is required. However, there is no consideration if the parties were bound to a pre-existing duty to perform.

Here, after the k was formed, Sam learned that the new plaster ceiling in the lobby had not been sanded and sealed. When Sam complained, Ed, the president of Barn told him that preparation was Sam's responsibility. Even if Sam disagreed, he spent 4 days sanding and sealing the ceiling. The sanding and ceiling was not explicitly stated in the written k. Sam will argue that there was a valid modification of the k, because he gave consideration by spending an extra 4 days to sand and seal the ceiling and incurred an additional \$3,000 for labor and supplies to prepare the ceiling. However, Barn will argue that there was no modification because there was no consideration exchanged. Barn will also argue that since it is typically the artist's responsibility to "surface preparation," Sam had a pre-existing duty to prepare the surface, so he would not have given consideration for the surface preparation. Thus, Barn will argue that it will not amount to a valid modification of the k. In addition, if the court finds that "surface preparation" is typically the responsibility of the artist, then the courts will likely rule that there was no valid modification, since Sam had a pre-existing duty to perform under the k.

Thus it is likely that there was no valid modification, because Sam had a pre-existing duty to perform and his surface preparation will be not be supported by consideration.

Parol Evidence

Under the Parol Evidence Rule (PER), any extrinsic evidence or oral statements made during negotiations that are not part of the final integrated writing will not be admissible to contradict the final written k. However, there are exceptions to the rule. Extrinsic evidence is admissible if it is a condition to the k's enforceability, the written k is only partially integrated, and the terms are used to explain or supplement any ambiguities. However, any oral statements or extrinsic evidence made after the formation of the final written agreement is not subject to the PER and is admissible.

Here, Sam argued that before the k was signed, he told Ed that the restrooms could not be included in painting because his paints were not suitable for the high humidity of the bathrooms. However, this term is not included in the written k, where it states that Sam shall paint "along the entire ceiling border of all public areas of the first floor lobby." Whether Sam's oral statements made re. the bathrooms would depend on whether bathrooms are considered "public area." If the court rules that bathrooms in the building are considered "public areas", Sam's statement will not be admissible under PER because it would contradict a written term of the k, which would read "all public areas" to include the bathrooms. However, if the court reads "all public areas" to exclude bathrooms, then Sam's oral statement is admissible as a supplementary term. However, it is likely that the court will rule the "public areas" include bathrooms, so Sam's statement will not be admissible under PER, as it would contradict the terms of the k.

Thus, it is likely that Sam's statement will not be admissible under PER.

Barn will likely introduce its letter it sent to Sam re. "surface preparation" was typically responsibility of the artist and that Barn had spoken to several artists who perform similar work. Since the letter was written after the written k was formed, it will not be subject to the PER, and will be admissible to show that "surface preparation" is the artist's job.

Breach of K

A K is breached when a party to the k does not perform his duties under the k, time for performance has arrived and the duty to perform has not been excused. Under common law, there must be a material breach for a plaintiff to successfully claim for damages. Breach is material if the non-breaching party has substantially performed and the other party failed to perform his duties.

Here, Sam will argue that Barn materially breached the k because Sam had prepared and sanded the ceiling, and was entitled to be paid \$78,000 when he submitted the bill. However, Barn will argue that there is no material breach because under the written k, Barn was only required to pay Sam \$75,000 upon completion of the work. Barn will argue that not paying Sam before he even started painting the ceiling is not a breach because there was no modification of time for payment.

Thus, it is likely that Sam will not be successful in his breach of k suit against Barn because Barn did not commit a material breach by refusing to pay Sam before completion of performance.

Sam's Damages

However, if Sam is successful in a breach of k suit, then he can seek the following damages.

Expectation Damages

For expectation damages, the plaintiff must prove the damages are foreseeable, certain, causal and unavoidable. Here, Sam will argue that he is entitled to the \$78,000 in damages, including his surface preparation. However, if the courts deem that the modification was valid then, Sam would be entitled to the difference between the k price and the actual fair market price (including surface preparation), which would be \$3,000.

Restitutionary Damages

Restitutionary damages are to prevent unjust enrri

Incidental Damages

Consequential Damages

Barn's Damages

Specific Performance

Specific performance is an equitable remedy that requires that legal damages be inadequate, it is feasible to enforce, plaintiff can perform and there is a valid k with definite and certain terms.

Here, Barn will argue that legal damages are inadequate because Sam's services are unique in nature, since his art was covered in Modern Buildings Magazine. Barn will argue that it would be feasible to enforce performance, but the courts will likely rule that it would be difficult to ensure that S would perform. Barn is ready to perform because he is willing to pay Sam to paint the designs. Also, we have established that there is a valid k with definite and specific terms (see valid k formation above). Because it would not be feasible for courts to enforce specific performance, then B will not prevail in its lawsuit for specific performance against Sam. Also, doing so on a service k would amount to indentured servitude under 13th Amendment violation, and the courts will not allow this as a public policy violation.

Thus, Barn will not prevail in obtaining specific performance against Sam

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