

3)

Call #1.

Applicable law

UCC governs sales of goods contract. Other contract is governed by the common law.

Since the contract is about painting a unique design, service contract, the common law will apply for the contract.

Formation of a contract

Offer, acceptance, consideration and no valid defense is required for a contract formation.

Barn's president Ed and signed a mutually drafted and handwritten contract that Sam (S) shall paint a unique design along the entire calling border of all public areas of the first floor lobby and Barn (B) shall pay \$75,000 upon completion of the work. Therefore, under the assumption that Ed had valid authority for an agent as the president of B, the contract is valid without a valid defense.

Breach of the contract

Under the common law, defense is valid if there's a material breach.

When S began work, he was surprised that the new plaster ceiling in the lobby had not been sanded and sealed. Sam complained, but was told by Ed that preparation was part of his responsibilities. Even if it could have been a breach of the scope of work, S waived it because although he disagreed, he spent four days sanding and sealing the ceiling.

B urged that he had not painted the borders in the two public restrooms in the lobby, and thus no payment was yet due.

The validity of B's assertion is depend on i) if the not finished work can be justified or ii) if the breach is material, even if it can't be justified

If the not finished work can be justified

Parol Evidence Rule (PER) dictate that in a sales of goods or a (fully) merged contract, a statement made during or before final contract (statement regarding a course of the deal) can not come into the contract. However, it can be used to explain trade customs or regarding a formation of contract.

According to S, before the contract was signed, he told Ed that the restrooms could not be included because his paints were not suitable for the high humidity in those locations. Since it is a service contract rather than a sales of goods contract, and it explains trade customs and thus helpful to interpret the condition of contract, it can be submitted as an circumstantial evidence.

Therefore, it can be justified that S did not painted the borders in the two public restrooms.

If the breach is material

Even though S's unfinished work is not justified by the trade custom, B can't refuse to pay if the breach is not material. For the same reason above, B's assertion that surface preparation was typically the responsibility of the artist is also admissible as an circumstantial evidence. However, S even spent four days sanding and sealing the ceiling which was not on the contract agreement. So, there's no breach on that part.

It is not clear how big is the project and how much is the space of the two public restrooms borders. However, it would be reasonable that unfinished work of two restrooms' borders is not a material breach. Therefore, there's no material breach.

Mistake

If there's a mutual or unilateral mistake that is substantial, it can be a valid defense. However, as discussed above, the misunderstandings are either addressed or not material for the performance of duty.

Other possible defenses

There's no indication of impossibility, impracticability or material misrepresentation. Therefore, the contract is valid. S has a right to be payed by B.

Expectation damage

The original contract amount is \$75,000. Therefore, B has a duty to pay at least \$75,000 if there is no good cause. Before the contract was signed, S told Ed that the restrooms could not be included because his paints were not suitable for the high humidity in those locations. Therefore, it seems that there's no good excuse for B not to pay the amount.

However, if the court found otherwise, B can deduct any cost that will be incurred because of the unfinished part.

Unjust enrichment or incidental damage

A court can reward damages to prevent unjust enrichment. Also, a court can reward a damage incidental to the major damage if it is foreseeable.

Since S spent \$3,000 for the sanding and sealing the ceiling, he can demand the amount if it is reasonable.

B might argue that it is not reasonable because it had spoken of several artists who perform similar work. However, S's painting is a unique design and therefore, it is not proper to compare it to other design work. B's assertion might not prevail.

Therefore, S can be rewarded the additional \$3,000 cost incurred.

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Specific performance

For a court to order a specific performance, there should be a valid contract, every condition satisfied, other legal remedies such as damages are inadequate, mutuality of performance is possible, a specific performance is feasible and there should be no valid defense.

In the case, the contract is valid. And there's no other condition not satisfied other than unfinished borders. Because the work is unique that it is not adequate to paint the borders by other artists, so there's no adequate legal remedy. B can perform by paying the agreed amount.

However, because the contract is a service, and in involves S's personal performance as an artist, it is possible that court might find it not proper to force S to paint the borders involuntarily. On the other hand, S already performed most of his work, and it might not be unreasonable to paint just the borders. All in all, the court can see that S can perform his duty.

In that case, the specific performance is feasible too.

As discussed above, there's no valid defense against the formation or the performance for the contract.

Therefore, B is likely to prevail in its lawsuit seeking specific performance against S.

Question #3 Final Word Count = 979

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