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Applicable Law

A contract for the sale of goods or between merchants is governed by the UCC. A contract for services or for the sale of real estate is governed by common law. When a contract involves both, the predominant purpose test is used to determine which law governs the contract.

Here, there are two separate contracts between Perry and Denise. Each contract is for Denise's services in selling two baseballs that P owes. Each baseball is autographed by a famous baseball team. P

1) Perry's Damages

Perry (P) may be able to recover restitution damages since Denise (D) was unjustly enriched due to fraud, misrepresentation, and mistake.

Fraud

Occurs when a party intentionally makes a misstatement of a material fact, and the fraudster had specialized knowledge or expertise.

Here, P and D entered into separate contracts with each other. P owned two baseballs autographed by famous teams and D, his niece, was going to help him sell them because D was a sports memorabilia expert. The two baseballs were referred to as the jaguars balls and the sluggers ball. P knew nothing about the value of either ball, and D was aware of P's ignorance as to their value. D had superior knowledge in this area and used it against P when D told him that that jaguars ball was counterfeit and only worth \$20. D defrauded P into subsequently selling her the baseball so she could presumably sell it later on for much more.

Thus, D has committed fraud because she induced P's reliance.

Damages for Misrepresentation

Occurs when a party makes a misstatement of a material fact.

Here, when D told P that the jaguars ball was counterfeit and only worth \$20, this was a material misrepresentation of fact because the ball was actually worth \$5,000.

Thus, engaged in misrepresentation as well.

Damages for Unilateral Mistake

Occurs when one party is mistaken as to a fact, and the non-mistaken party knew or should have know of the mistake, but said nothing.

Here, P was ignorant as to the baseballs' values, and D was aware of this fact. P mistakenly believed D due to her expertise and knowledge about sports memorabilia and D was aware of P's mistake. Thus, P may argue that he mistakenly relied on D's services when she was aware of his ignorance.

Restitution Damages

When a defendant is unjustly enriched from the plaintiffs, the plaintiff may recover restitution damages.

Here, Perry may try to recover restitution damages from Denise since she was unjustly enriched with one baseball and the profits from selling the other.

2) Perry's Equitable Remedies

Perry may be able to obtain either a constructive trust to recover the jaguars baseball and an equitable lien to recover the funds from the sluggers baseball. The grounds for granting either of these equitable remedies is that fraud, misrepresentation, or a mistake by the defendant led to their wrongful acquisition of the plaintiff's property (see above).

Constructive Trust

A constructive trust is an equitable remedy to prevent unjust enrichment. It is a legal fiction created by the court in which they force a defendant to reconvey wrongfully obtained property back to the plaintiff owner. The court essentially makes the defendant hold the plaintiff's property in a constructive trust until it is returned. To obtain a constructive trust (CT) the plaintiff must show: 1) that defendant wrongfully obtained property, 2) the defendant holds title to that property now, 3) the property can be traced back to P (the property must not have changed form), 4) legal remedies are inadequate, and 4) unjust enrichment occurred. A plaintiff may not seek a deficiency judgment following a constructive trust. A constructive trust is best sought when plaintiff's property has increased in value because the plaintiff gets the benefit of any increase in value of their property during the time defendant wrongfully held it.

Here, Denise wrongfully obtained the jaguars ball from Perry through fraud and misrepresentation. After selling P's sluggers ball for \$10,000, D also kept \$8,000 and only gave P \$2,000, telling P that she could only sell the sluggers ball for \$2,000. D subsequently used her wrongfully obtained \$8,000 profit to buy a voy car. D now has owns legal title to both the jaguars ball and the profits from the sluggers balls (which she used to buy the voy car).

Further, Perry will be able to trace the property back to himself. He originally owned the jaguar ball, which he sold directly to D, who now holds title. For the sluggers ball, D was helping P sell it when D sold it to Bob for \$10,000. D only gave P \$2,000 of the \$10,000, and D kept \$8,000. D then used the \$8,000 to buy a voy car. Thus P can trace his property (the sluggers ball) back from the voy car, back to the cash D obtained from Bob, and finally back to the sluggers ball that P used to hold title too.

Moreover, since the value of the voy car increased to \$20,000, P will be able to retain the benefit of this increase in value with a constructive trust, whcih would be his best option. Thus, P will be able to obtain a contrustructive trust.

Equitable Lien

An equitable lien is also an equitable remedy to prevent unjust enrichment, and is very similar to a constructive trust. To obtain an equitable lien, the plaintiff must show: 1) that defendant wrongfully obtained property, 2) the defendant holds title to that property now, 3) the property can be traced back to P (the property does not have to be traced back to its original form), 4) legal remedies are inadequate, and 4) unjust enrichment occurred. A plaintiff MAY seek a deficiency judgment following an equitable lien. An equitable lien is best sought when the plaintiff's property has decreased in value.

Here, P will also be able to seek an equitable lien for the reasons stated above (see constructive trusts analysis). However, an equitable lien is more beneficial to a plaintiff when the value of P's wrongfully obtained property decreases. Thus, P should seek a constructive trust first, and an equitable lien as a secondary option.

Perry may also be able to seek specific performance to recover the jaguars baseball.

Specific Performance

Specific performance is an equitable remedy in which the court requires both parties to a contract to perform under the terms of the contract. The requirements for specific performance include: 1) a valid contract, 2) all conditions satisfied, 3) legal remedies are inadequate, 4) mutuality of performance, 5) enforcement would be feasible, and 6) no defenses exist.

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