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1.

Governing Law

For contracts that involve moveable goods, UCC applies. For all other contracts, such as those that involve real estate or services, common law applies.

Here, the contract is regarding the painting of the public areas of a lobby inside the building.

Thus, common law applies.

Contract Formation

A valid contract is formed when there is a mutual assent (offer and acceptance) and consideration.

Offer

An offer is a manifestation of present intent to enter into an agreement with definite terms and that is clearly communicated to the offeror.

Here, there was a present intent by E to enter into a painting agreement that was clearly communicated in the form of a mutually handwritten contract.

Thus, there was a valid offer.

Acceptance

An acceptance is the offeree's unequivocal acceptance of the terms of the agreement. Common law requires the mirror image rule, which requires the acceptance terms as is.

Here, S signed a mutually drafted handwritten contract.

Thus, there was an unequivocal acceptance.

Consideration

Consideration is a bargain for exchange, and the courts focus on the legal detriment but sometimes also requires legal benefit.

Here, the terms of the mutually drafted handwritten contract stated that S will paint the lobby, while B will pay 75k upon completion of the work. There was a bargain for exchange and legal detriment.

Thus, consideration was met.

In conclusion, there was a valid contract formation, subject to defenses.

Statute of Frauds Defenses

When a contract involves marriage, contract that requires for more than a year, land, goods over \$500, suretyship, then the contract has to be in writing to be enforceable.

Here, the contract was mutually drafted and handwritten. If this were within SoF, then there will not be a SoF defense because it was written and signed by both parties, containing material terms of the agreement.

Thus, there was no SoF defense and there was a valid contract.

Impossibility

Impossibility is when it is physically impossible to perform a service.

Here, S may argue that once he had found out that the plaster ceiling in the lobby had not been sanded and sealed, it amounted to impossibility.

However, this is not true because the facts state that S did the surface preparation on his own and continued with the project. It was not impossible.

Thus, the impossibility defense will not work.

Impracticability

Impracticability occurs when an event makes it unreasonably or excessively more expensive to perform.

Here, when S discovered that there was no surface preparation, he spent four days for preparation and spent additional 3000. However, this is unlikely to be unreasonably or

excessively more expensive considering the amount that he had contracted for. 3000 compared to 75k is not that significant and additional three days is not major.

Thus, impracticability defense will not work.

Frustration of Purpose

Frustration of purpose is when the basic assumption of the agreement is not possible.

Here, the basic assumption of the agreement was painting the entire ceiling on all public areas of the lobby. Despite the fact that the surface was not prepared, it did not nullify the basic assumption of the contract--the painting of the lobby. In fact, it was cured within three days of the S's work.

Thus, frustration of purpose will not be a defense.

Modification

Under common law, a modification of the contract requires consideration, which is different from UCC rules, in which only good faith is required.

Here, S complained when he found out that surface preparation was not included in the contract and complained to E. S expressed his desire to modify the contract by complaining, but E dismissed the efforts to modify by stating that the preparation was part of his responsibilities. There was no meeting of the minds regarding the modification of terms.

Furthermore, there was no consideration between the parties to change the terms of the contract. No bargain for exchange had taken place, and it was only S who had to incur additional cost and services. Essentially, his decision to continue with the performance and to finish painting serves as an implied acceptance.

Since there was no change in the terms of the contract, accord (which replaces the existing obligation) and satisfaction (performance of the accord) will not be discussed.

Thus, there was no valid modification that had taken place.

Parol Evidence Rule

Parol evidence rule bars bringing in any prior oral or written discussion that had taken place before the written contract. It also bars bringing in any contemporaneous discussion that took place during the formation of the contract. It is said to be integrated when the terms of the contract are final. While a merger clause may not be definitive evidence, it serves as evidence that the parties intended the terms to be final and binding, and the courts will take the experience of the parties in deciding whether the contract is fully integrated.

There are some instances when extrinsic evidence may be brought in, such as trade usage and custom to interpret the meaning of the contract. However, if the extrinsic evidence that is trying to be brought in is directly contradictory to the terms of the contract, then it will NOT BE admitted in.

Here, E will argue that he had spoken with other artists who stated that surface preparation was typically the responsibility of the artist. He will use this as evidence that it is trade usage and custom, and that it should be used to interpret the meaning of the contract which stated "entire ceiling border." As a result, E is arguing that public restrooms were part of the terms of the contract that should be brought in under trade usage or custom under parol evidence rule.

However, S will counter that before the contract was signed, S told E that restrooms could not be included because of the high humidity. There was express assertion that the he could not paint the restrooms, which led to the contract terms that specifically limited his services to solely "painting the design along the entire ceiling border."

As such, because what B is trying to bring in (as trade usage or custom) is directly against the terms of the contract, it will not be admissible under the parol evidence rule.

Thus, the court will not use B's assertion to interpret what was stated in the contract.

Breach

A party has to meet all the terms of the contract. If there was a promise to do something, then the parties have to follow it. Breach can be either material or minor. A material breach gives the nonbreaching party the right to treat it as an instant breach and to sue immediately.

Here, given the terms of the contract did not include the public restrooms (see above), this will be a material breach and S will be able to sue immediately.

Damages

(Legal) Compensatory Damages

The purpose of damages is to put the nonbreaching party back to where he would have been had the contract been performed.

Expectation Damages

One way to measure compensatory damages is through expectation damages. Expectation damages recovers the benefit of the bargain, and the fruits of the expectation that would have been received had the contract taken place. It has to be reasonably certain at the time of the formation, foreseeable, caused by the breach, and the nonbreaching party has the duty to mitigate.

Here, S had performed the services that totaled 78k, which was original 75k plus the 3k. Because E had refused to pay claiming that no payment was yet due, S will be entitled to the amount of the benefit of the bargain and the expected amount of 75k. The amount was certain because that was the amount he had expended. It was foreseeable that there would be under the mutually drafted contract that the service would cost 75k. While facts are not clear, S presumably mitigated any costs by minimizing the days and expenses he spent on the surface preparation.

Thus, expectation damages may be recovered for 75k.

Consequential Damages

Consequential damages is the special damages that are over and above the damages. It has to be foreseeable at the time of formation.

Here, it was not foreseeable that there would be dispute regarding the surface preparation. Despite 3k over and above cost, it was not foreseeable when the contract was formed.

Thus, the consequential damages of 3k will not be foreseeable if the court decides that it wasn't foreseeable.

Incidental Damages

Incidental damages are costs that are incident to the breach of the contract. It includes administrative costs, such as transportation costs, logistics costs, storage or overhead costs.

Here, there does not seem to be any incidental damages. Unless S had incurred any other costs because of the delay in payment, no incidental damages will be provided.

Thus, no incidental damages.

In conclusion, if S elects legal damages, S will be entitled to the sum of expectation, consequential, and incidental damages. It could be somewhere between 75k and 78k.

Reliance Damages

reliance damages may be used when compensatory damages is hard to measure and the nonbreacher had detrimentally relied.

Here, it is likely that S had detrimentally relied on the additional payment when he complained about preparation not being his responsibility. However, compensatory damages are reasonably certain and a valid contract was formed.

Thus, it's better to use compensatory damages than reliance damages.

Restitution - Unjust Enrichment

If the breaching party has been unjustly enriched, then the non breaching party will be entitled to restitution.

Here, E had been enriched by 78k, and possibly more if the S's up and coming artistic style appreciates in value. While the appreciation is hard to value, the service itself (78k) is easily ascertainable.

Thus, S can also elect for a restitution of 78k, which is greater than compensatory legal damages. S will be better off with restitution damages.

2.

B's Specific Performance

Specific performance is court order to compel a party to perform the services. It is generally used when the goods are rare (as in land which is one of a kind), but rarely in services, because it invokes the 13th amendment involuntary servitude. Specific performance requires the following: 1. valid contract; 2. conditions fulfilled; 3. inadequacy of legal remedy; 4. feasibility of enforcement; 5. defenses.

1. Here, There was a valid contract formed under the mutually drafted handwritten contract.

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2. Here, presumably conditions were fulfilled because E had the money to pay for S's services and the project was completed.
 3. Here, legal remedy may be inadequate because of the unascertainability of the damages. It's unclear exactly what amount S would be entitled to, especially considering the possibility of his appreciating work as an up and coming artist.
 4. Here, it is not feasible to make someone work because as stated above, it's against the 13 amendment involuntary servitude principle. However, E may argue that because it was a one-of-a-kind artistic design, it was a unique good that may be enforced. Nonetheless, constitutional claims will bar.
 5. No defenses such as laches or unclean hands. S did not unreasonably wait long time to bring to create prejudice (laches) and no illegal act by S in the performance.

Thus, B's claim for specific performance will not be granted.

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END OF EXAM