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Sen Yer and Sharp entered into a land sale contract. However, Sen Yer refuses to complete the sale. There are 5 general requirements for equitable enforcement of a contract: There must be 1) no adequate remedy at law, 2) contract is specific as to its terms, 3) all conditions precedent have been performed by the party seeking to enforce the agreement, 4) there should be a balance of the equities, where the harm to the defendant should not vastly outweigh the benefit to the plaintiff, and 5) the equitable remedy should have a strong probability of succeeding. Here, all of the requirements are met, and there is the possibility of a court of equity to issue a decree regarding the property. RE. 1) since land is unique, damages available at law are not an adequate remedy; RE. 2) the contract was sufficiently specific to warrant an enforcement; RE. 3) Sharp, seeking to enforce the contract, has met all of the conditions precedent (deposit, etc.); RE 4) the hardship to Sen Yer if he were forced to sell his ranch does not vastly outweigh the hardship Sharp would suffer if the land sale did not go through; and RE 5) there is a strong probability that a decree of specific performance or rescission of the contract (depending which way the court decides regarding the equitable enforcement of the contract) will succeed.

There was arguably an absence of the meeting of the minds in the formation of this otherwise valid contract. Sen Yer was mistaken as to the size of his land; he imagined his 2-acre parcel, worth \$75K, was NOT included in the deed to Sharp. Sharp, on the other hand, was absolutely convinced that he was buying the land in gross. Sen Yer refuses to convey due to this mistake.

The first question to ask is whether the mistake concerns a MATERIAL element of the contract. If it is not a material element, the court will be more hesitant to grant rescission. As this is a land sale contract, and the mistake is regarding the size of the lot (2% of the whole, or 2/100 of an acre), it is arguably a material element. Although it represents only 2% of the entire ranch, it deals with the quantity of land, and as all land is unique and irreplaceable, the term is material. Note that it does not become material just because it is Sen Yer's home; that is not a factor of materiality.

If there is any evidence of fraud or misrepresentation on the part of the buyer in inducing the seller to convey his ranch, it would be strong grounds for the court refusing to decree specific performance. Here, evidence of inadequate consideration as to the ranch could supply circumstantial evidence of fraud or representation. However, mere inadequacy of consideration is not enough; it must be such that it would 'shock the conscience' of the Court. Although Sharp believes that the price of the ranch is 'very attractive', he is paying a price similar to what Sen Yer wanted, \$1000 per acre. Since Sharp is meeting Sen Yer's price as quoted to a realtor, it is hard to argue that the consideration is inadequate or shocking to the conscience.

The next question to consider is the type of mistake that occurred. A unilateral mistake as to a material element of the contract will NOT usually be grounds for rescission of the contract, absent misrepresentation or fraud on the part of the party seeking to enforce it. Here, there is no evidence that either Sharp or Sen Yer used surreptitious means to enter into the contract. There is no evidence of fraud or representation, but rather this is a case of mutual mistake. When both

parties are mutually mistaken as to a material part of a contract, the contract is voidable and rescission is appropriate. Hence, at first glance, Sen Yer is entitled to exercise his option to void the contract and not proceed with the sale.

However, it is uncertain whether the sale of land was per acre or in gross. If the sale was per acre, then the mutual mistake regarding the 2 acres of land is sufficient grounds for rescission. There was not a meeting of the minds as to what quantity of land should be conveyed, and it would be unjust to enforce a contract (absent any wrongdoing) in which one party would stand to convey more land than they intended. In this way, the court would be sanctioning the unjust enrichment of Sharp at the expense of Sen Yer. However, the land sale contract was 'an agreement for the RANCH' and the contract included both parcels. It was not a per-acre sale, but rather referred to the entire ranch as a whole. Where a conveyance of land is in gross, and there is a mistake as to the acreage, the risk of loss is on the seller if the land turns out to be larger than he expected. This is because the mistake involved is not MUTUAL, as to a sale per acre, but rather UNILATERAL, since only one party had different expectations. Here, Sen Yer arguably conveyed his land in gross and thus cannot argue that there was a mistake as to the size of the ranch because size, when land is sold in gross, is deemed irrelevant by the terms of the contract. Therefore, the ground for rescission would not exist, as this was a unilateral mistake of one party, and Sharp would be able to specifically enforce the contract. The balance of hardships to Sen Yer would not outweigh that of refusing to enforce the contract as to Sharp, because Sen Yer stands to receive a substantial amount of money and can easily purchase another home.

Therefore, there are 2 potential equitable decrees which a court might issue. The first is to declare that the land was sold in gross and that therefore the entire title to the land was conveyed to Sharp. Sen Yer received the benefit of the bargain and therefore has no other remedies. The Court would issue a decree of specific performance and pass title to Sharp. If this were to occur, Sen Yer would have no further remedy against Sharp. However, he might be able to argue that the realtor breached his fiduciary duty to him in failing to adequately represent his interest. A fiduciary is a trustee of the beneficiary (Sen Yer) and must at all costs protect his interest. Breach of fiduciary duty is a tort independent of any breaches of contract, and even a negligent breach of the duty is actionable. In the event that the realtor failed to adequately apprise Sen Yer of the terms of the contract, whether intentionally or through negligence, there was a potential breach. This is arguable due to Sen Yer's low level of education and advanced age; perhaps a realtor should have taken extra steps to assure that the contract was completely understood by Sen Yer.

Another possible holding is for the court to declare that because of an innocent mutual mistake of both parties, there was a misunderstanding regarding a material element of the contract, and that therefore the contract never achieved a meeting of the minds and is thus voidable by either party. Since Sen Yer is exercising his option to void the agreement, Sharp must abide by Sen Yer's rescission of the contract.

If the latter holding was enforced by the Court, there is an issue of the \$50,000 in lost wind turbine equipment and the loss of potential profits that Sharp stood to earn from the development of Sen Yer's ranch. Sharp could argue that there was partial performance of the contract on his

part (deposit of the purchase price) and detrimental reliance based on the validity of the conveyance. The equipment installed is arguably an unjust enrichment for Sen Yer and he must account for it. Since Sharp had no title to the property, he can be seen as a trespasser and a trespasser who improves the land is not entitled to any remedy if he does so without the authorization of the owner. Here, Sen Yer did not authorize the installation of the wind turbine. However, equitable decrees are discretionary and it is likely that a court would declare that Sharp is entitled to SOME remedy. After all, to leave Sharp without any remedy seems to harsh of a result. He would likely be given the opportunity to remove the turbine, at his own cost, provided that the Sen Yer's land would not be permanently damaged in the process. If removal was too expensive or difficult, Sen Yer would probably be given an opportunity to purchase the turbine from Sharp, thus preventing any unjust enrichment.

Nevertheless, the mere potential for profitability that the ranch has is not something that is measurable or actionable. Just because Sharp stood to profit from developing a wind farm, and now it seems that Sen Yer will step in his shoes and profit from the mistake, there was no causation here. The mistake was, arguably, mutual, and thus Sharp's mistake is just as much a cause as Sen Yer's in his loss of profits from the wind farm. Although this is not exactly a case of 'unclean hands', where one who is equally responsible for wrongdoing cannot seek equity against a partner in the same transaction, arguably Sharp bears some responsibility for the events and thus cannot seek a remedy against Sen Yer.

2)

Question 2

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Equity will allow a remedy for unjust enrichment.

A.

What are the equitable rights and remedies of the parties?

When a party is unjustly enriched, a court of equity will impose a constructive trust over the property at issue. By doing this, the Defendant (Dee) will be held as a trustee over the property, and the rightful owner (HDL) will be the beneficiary. In this case, Dee was unjustly enriched and he knew it. H, D, and L (HDL) are all the rightful owners of the property, so will become the beneficiaries of the constructive trust.

Dee knew he was not entitled to the money but he took it anyway. He converted it to his own. At this point, a constructive trust could be established and HDL may impose a constructive trust and follow the property. Dee then commingles the \$100k with his \$250k and invests it into his own business and makes more money with it.

Once Dee converts the property, mingles it with his own money and then makes more money on it, HDL are entitled to the proportional amount of that money.

Dee then sells 1/2 of the business to T for \$500k. Essentially, a portion of that business belonged to HDL, so once Dee sold the property and converted it to his money, HDL has an option to have a constructive trust placed over that sold portion of the company, or even an equitable lien, which would let them have that property sold so they could collect their portion of the proceeds. HDL could try to have the trust imposed over T's portion of the company, but T had no idea of the "inconsistency" and was a bona fide purchaser for value. Because of this, HD and L don't have much of a chance of getting that portion of the company (although some jurisdictions do not treat BFP's the same, so there could be a better chance if in one of those jurisdictions for HDL).

HDL's best option would be to continue following (tracing) the property. Dee still has 1/2 the company and now has \$500 k in proceeds which he then invests in stock. Again, HDL have a choice of a constructive trust or an equitable lien. This should all be in proportion to their original investment. (Dee invested his own \$250k, meaning the rest of the \$250k came from investing HDL's money). Some of the stocks go up, and some go down. HDL will try to get a constructive trust over the stocks that went up. Of course Dee will try to have the trust placed over the stocks that have gone down, so he can benefit from the other high stocks himself. The courts will have discretion over how to award the trust. They may just apply it across all the stock funds proportionally. The whole fund is "now worth about the same", meaning \$500k, \$250 of which should be HD and L's portion.

HDL could also go the route of having an equitable lien placed on the portion of Dee's company. They would be able to force Dee to sell that part of the company and HDL would get the

proceeds to reimburse them for their loss.

(There is always the chance that the court will have the trust split at the point where Dee sells half his company. SO part of the trust will follow money to the company and the other part will follow money to the profits made on the sale of 1/2 the company, leading to the stocks... This is all at the court's discretion).

HDL also have a claim against Dum. Although Dum did not know she wasn't entitled to the money, she was still unjustly enriched. This is another situation where a constructive trust may be applied. If so, the entire amount is not available anymore for HDL to collect, and it is impossible for them to trace the money, since it went to the care of Dum's elderly mother. They would trace the left over \$25k to the investment in Palin Books, which grew to \$50k, and put the trust or lien on that investment. Either way, they don't have all their money returned.

There is also the chance that due to the circumstances a court of equity would not apply a constructive trust. Dum committed no fraud and was given that money. The court may allow her to keep the money because of her undue hardship.

Dum may have a defense against HDL's claim.

B.

Defenses to the equitable remedies.

Laches - "Equity aids the Vigilant". Dum can claim that the suit against her was not brought in a timely manner (we only know enough time has passed for Dee to make money in a business, sell it, then invest it and make more money in stocks) and because of that, Dum's position changed, and if the equitable relief is imposed, it will be to her detriment and an undue hardship. She was unaware of Fee's mistake. She paid for her sick mom, and only has a portion of the money left. She doesn't have funds of her own, so will be unable to re-pay the amount given to her by P. In this case, laches may apply and Dum may not have to give the portion of money she has left back to H, D, and L.

There is no unclean hands claim.

As a trustee, Fee has a fiduciary duty to H, D, and L. The duty requires that Fee have manage the trust with the utmost faith and honesty. He breached that duty when he did not pay attention to who the proper beneficiaries of the trust were. H, D, and L may make a claim against Fee's estate. Unfortunately he has given all his money to the SSF Org. The org received \$100k, which was Fee's own inheritance money, not HDL's.

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