

Blue Book

NAME

SUBJECT *Remedics*

INSTRUCTOR *Tinney*

EXAM SEAT NO. SECTION *Q1*

DATE *12/12/11* GRADE

10 7/8 x 8 1/4

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Quasi-Contract; Unjust Enrichment

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Quasi-Contract is not really a contract. It is used to cure an unjust enrichment. When a party receives an unjust enrichment the court of equity will impose a duty to pay. In this case we have an improvement made on the wrong property by mistake. Under these circumstances, the court of equity has dealt with the remedy different ways. 1) Common Law - the innocent party gets to keep the property 2) Removal - the improver is entitled to remove the ~~pro~~ improvement if it does not injure the other's land 3) Pay for the value of the improvement, whereby the innocent party pays the improver for the amount by which his property has increased in value by the improvement; and 4) hot line Adjustment - the innocent party conveys that portion of his land which has been improved to the improver, and the improver pays the party the value of the land less the improvement.

In CA there is a Good Faith Improver Statute. This statute is very broad and the court may use any of the above remedies as it sees fit under the circumstances of the case. However, the improvements in these cases must be by an honest mistake and not mere negligence.

In this case Con was not negligent in his placement of the detached garage. He had hired Sur to survey the lot to make sure it was correct. Sur measured incorrectly but Con was not aware of that. Therefore, one of the four options would be available to the CA court of equity.

Although Nay is innocent in the transaction, he did not even discover the mistake until after the garage was finished, he has been unjustly enriched. The lot line adjustment won't work because ~~he~~^{Nay} needs the land for his two acre minimum.

The common law ~~won't~~ approach won't work because Con does not have the funds to build another garage to satisfy the contract he is in with Cust.

Paying for the improvement isn't a good alternative because Nay doesn't want it, it will be in the way of his dream house. ~~Therefore, the court of equity in balancing the equities among the parties will instruct removal of the detached garage.~~ Removal of the detached garage will be very costly to Con and he won't be able to afford the \$100k in permit costs & refiguring the driveway, etc.

All of these possible remedies have their problems. The best approach may be removal of the detached garage saving as much of the material as possible.

It most likely will not harm Noy's property as he is going to build a home there anyway. Con may still have a remedy at law against Ser for damages resulting in the incorrect survey.

Contract between Con and Cust.

Reformation does not apply as there was no error between the parties when reduced to writing as to what their true agreement was.

Mutual mistakes may be rescinded due to there never having been a meeting of the minds. In this case Con can not get rescision on the contract based on mutual mistake. They both mistakenly believed the garage was being built on Con's land but there was no mistake as to what the contract agreement was.

A unilateral mistake is harder to rescind. The party wanting rescision must show he was not negligent, sought rescision promptly & both parties can be restored to their original position. This is the traditional view. Furthermore, the rescision will not be allowed if the other party did not share in the mistake, had no reason of knowing or should have know of the mistake and was not guilty of fraud or inequitable

conduct.

Modernly, the courts will allow rescission if it would be unconscionable to enforce the contract, it would not unduly harm the other party & both parties could be ~~put back~~ restored to their original positions.

In this case Con was not negligent and assuming he sought rescission properly he could ^{not} restore both parties back to their original position. Con would be caught the \$30k of garage cost. Even if that would not stop rescission the fact that Cust did not share in the mistake would keep rescission from occurring along with the fact she wasn't fraudulent, & should have known of the mistake.

Modernly Con might have a better chance but he most likely would still not succeed.

Specific Performance

Specific performance may be granted when the remedy at law is inadequate. Land is prime for specific performance because it is unique.

In this case Cust will seek to get specific performance on the contract. A contract has to be specific enough for the ct. to enforce, which this one is. However, generally courts

do not enforce specific performance of personal service contracts. There are the problems with involuntary servitude and supervision issues.

Construction contracts are different in that theoretically, the service can be delegated to contractors. Historically, ct of equity wouldn't enforce such a bldg contract because of supervision issues but modernly they will.

However, specific performance may not be awarded when it causes an undue hardship on the party. Generally the hardship must exist at the time the contract is made. Here, Con has a hardship possibly in that it will cost him another \$100,000 to build a new garage. The court of equity may find this hardship substantial and decline to award specific performance.

Adequate Damages at law

Cust could bring suit for a breach of contract and be awarded damages. However, the damages may be very small if at all, so she would rather have specific performance.

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Preliminary Injunction

A party who seeks injunctive relief must show
 1) some likelihood of succeeding on the merits 2) remedy at law is inadequate 3) suffer irreparable harm if the injunction is not issued.

If the person meets this threshold the courts will balance the harm to the non-moving party against the harm to the moving party of either an injunction or no injunction. The court must then look at the public interest of either granting or denying the injunction.

If granted the preliminary injunction will last until further court order which is usually trial. Notice must be given and a bond issued. The bond is to protect the defendant in case the injunction was improperly issued. Once the preliminary injunction has been properly issued, one disobeying the injunction will be held in contempt and could be subject to fines or criminal punishment. The injunction must clearly state what the party is to abstain from ^{act}.

This would be a temporary solution, until trial, for Olbg. The problem is it takes a few weeks to take effect.

- ~~to~~ A party must obey the injunction, with the exception of whether the court has jurisdiction. In

This case they are both within the same jurisdiction so Bee would be bound by the order.

Olbaq would be able to show irreparable damage in that he would not be able to sell his home for the price he paid for it because of the animal problem. There would not be an adequate remedy at law because it is a continuing trespass & a nuisance. Furthermore, he has some likelihood of succeeding on the merits because Bee is breaking the law not following the ordinances.

Under the Sliding Scale approach, the more the plaintiff is likely to succeed on the merits, the less the courts will weigh the irreparable damage suffered, and vice versa.

Balancing the equities the court would most likely issue the preliminary injunction because the harm to Olbaq in not issuing it outweighs the harm to Bee if it is issued.

The public interest factor also weighs in favor of issuing the injunction.

Temporary Restraining Order

A temporary restraining order is the same as a preliminary injunction except that it is issued right away due to immediate harm & it only lasts for 10 days. Notice must still be given unless there is danger to the person or property if notice is given. In CA, no bond is required. In Fed Ct, in non-family situations (such as this) a bond would be required.

In this case, Mr. Olbag could probably ~~not~~ succeed in obtaining the TRO because of the urgency of the situation. His vegetables are being eaten which he sells for his livelihood.

Quia Timet is stopping something before it happens.

This form of relief does not apply in the present case because the problem is already happening.

Court of Equity & Torts

Trespass - A court of equity will enjoin a trespass when there is no adequate remedy at law. This is generally the case when there are a multiplicity of lawsuits in the legal remedy because of a continuing trespass. This is such the case here.

The turkeys keep flying into the yard & eating the vegetables. His remedy at law would be to seek damages each time which would be inadequate

Nuisance - a court of equity will enjoin a nuisance.

The court will balance the equities between the parties. May Bee might argue that Olbay

essentially came to the nuisance when he first agreed that the birds would not bother him.

This argument would not fair well. In CA and most states it is not a defense anyway.

Turkey Shelter - ~~tests~~ Clean Hands Doctrine

After Olbay brings action for enjoining Bee's activities she will sue for damages regarding the turkey shelter based upon reliance. She will have to get rid of the birds & have no use for the shelter at a cost of \$12K. ¶ In CA the clean hands

doctrine applies to legal actions as well as equity.

Bee was breaking the law going over the ordinance limit. Law ~~with~~ or equity will not aid one

who comes to court with unclean hands regarding

the same matter for which they bring suit.

In this case it is the same matter for the

to have had by law, she now

wants damages for.

Clean Hands Doctrine - Olbag

Olbag is not an innocent party. He has trespassed on Bee's chattel by killing one of her turkeys. He also did this in front of her which, probably caused her emotional distress. Even so, the clean hands doctrine would not apply here. ~~They are not~~ ~~independent~~ ~~and~~ ~~not~~ ~~trespasses~~. They are two separate transactions. ~~They are~~ - TIME -