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UCC or CL? CL, the primary purpose of the contract is service of Max's car.

Do Carl and Max have a valid K?

Max and Carl appear to have a valid contract because there was an identifiable offeree that was vested with the power of acceptance by the offeror, subject matter (car), time (year 2012), quantity (not quite as defined, "necessary repairs"), price (100/mo). The only possible issues might be the Statute of Frauds because the contract appears to be made orally. However, it appears possible to perform in a year, assuming they agreed to the contract on January 1st.

The contract is valid and does not fall within statute of frauds.

What is the Impact of Carl not paying the full 100.00 for the month of January?

Carl was dissatisfied with some of Max's work so he sent a 50.00 check instead of paying the 100.00, Max cashes the check and says nothing about it at that time. If Carl thinks that Max has performed only 50% of the required repairs for the month of January then Carl might be correct only sending him 50.00 and so Carl would be substantially performing for that month of the contract. They have a constructive condition (implied by law, not expressly agreed upon when the contract was made) where they would alternate performance with payment, so if Max does not perform substantially then Carl's duty to pay does not kick in until he has performed substantially.

Carl may owe Max 50.00 if he has substantially performed the repairs for January, but Max may be waiving his rights by cashing the 50.00 and not saying anything, however he crosses out the words "January payment in full" which suggests he does not agree and still thinks he is entitled to the 50.00

What is the significance of Max selling his business to AI and not notifying his customers? Is there a valid assignment/delegation?

Max (assignor/delegator) has assigned his present rights and delegated his duties to AI (assignee/delegatee), which means that all of Max's customers (including Carl (obligor/obligee)) will have to pay AI for services rendered (once they learn of the assignment.) Since there is no anti-assignment clause, and it will not materially increase Carl (obligor)'s duty, materially increase the risk of Carl not receiving return performance (facts state AI has maintained the same crew/equipment) this is a valid assignment. The delegation is a little more iffy because if Carl really liked Max he could argue that he had a personal interest in having Max perform the repairs on his car, but it appears the Max has already not performed very well so he might end up in a better situation having AI take over those duties. If AI fails at the repairs, Max is still on the hook unless Carl gave a novation to Max stating he discharged him of his duties.

There is a valid assignment and delegation from Max to AI.

What is the significance of Carl refusing to pay AI? Tire Co's assignment of Max's account to Carl? (see infra)

Carl has his car repaired on February 15, 5 days after the assignment/delegation of his contract

with Max to AI. On March 1 AI sends Carl a bill, and this is the first time he learns of the assignment/delegation. Carl refuses to pay AI the 150.00 stating that he paid Tire Co \$100.00 and in exchanged they gave him there 200.00 claim against Max for an account they had never been paid for. The real question is can Carl Offset this 200.00 against his obligation to AI? The Tire Co/Carl contract is a seperate contract that is not related to the contract Carl had with Max that is now assigned to AI, therefore in order to do an Offset the claim must have arised before Carl had knowledge of the assignment. Carl only finds out about the assignment when he receives the bill (March 2) wheras the assignment of TireCo's outstanding debt from Max to Carl arose Feb 5.

excellent!

Therefore Carl will be able to use the 200.00 to offset what he owes against AI, which is 150.00, because it arose before he found out there was an assignment. However, Max asserts the defense that half of TireCos retreads were defective, reducing the paymt owed by half and so only entitling Carl to 100.00, making Carl still owe AI 50.00.

Is there a valid assignment of Max's debt between Tire Co and Carl?

Carl paid TireCo 100.00 and in return it assigned Max's account (his 200.00 debt for paymt they did not received from Dec 2011) See valid assignment described supra. (Carl v. TireCo)

There is a valid assignment, however, TireCo has breached its warrenty not to make an assignment if there is a possible defense to it outstanding. Here, Carl can sue TireCo for the difference between what they promised him 200.00 and 100.00 that Max says is not owed because of defective tires. Carl is entitled to 100.00 from TireCo.

good!

Max v. Carl

Again, Carl stands in the shoes of TireCo, so any defenses that Max can raise against TireCo it can raise against Carl. Max will state the tires were defective and so he only owed 100.00 to tireCo and so Max can subtract that from his obligation to Carl as the assignee, but not use it as an affirmative defense

Significance of Carl taking his car elsewhere for repairs and refusing to pay? (AI v. Carl)

Carl, begining in March starts taking his car elsewhere when it needs repairs. This would be okay if AI had breached the contract first and Carl was attempting to mitigate damages by covering, having someone else repair his car. Unfortunatley, AI has not materially breached the contract and so Carl has instead breached the contract when he stops paying and says he will never come to the shop again-- this can be interpreted as a repudiation because it appears to be very final. AI states his bill is 250, 150 past due, and 100 for March, this is incorrect. Because of the assignment from TireCo, Carl really owes 50 dollars, so if AI does not rely on his repudiation, (most likely sue for material breach) he might be able to rescind it and pay the 50.00. If not, AI may cancel the contract and sue for expectation damages which would be the entire K worth \$1200.00 minus the expsense he saved not actually having to repair Carl's car.

AI v. Max

AI cannot sue Max for breach of warrenty because the assignor never gurantees the solvency or willingness of the obligor to perform.

2)

UCC or CL? CL, the primary purpose of the K was the service of building a house.

Was there a valid K between O and C?

Yes, and it is fully integrated containing a no oral modification provision. There is also an express condition that does not appear divisible because progress payments although they are split up for construction jobs do not imply that if C stops work that O will be okay and be able to use what C has built (in this case a house, you cannot use/enjoy a partially built house only 1/4 complete)

The express condition is "IF each month's construction work...1/4 of total work necessary on the residence...is completed in a workmanlike manner, at the end of each calendar month...O will pay 250k for work..."

This means that the court will interpret strictly the necessary requirement that 1/4 work be done in order for O's duty to kick in to have to pay C. If C does not do 1/4 work a month then O's duty to pay him does not kick in.

There is an express condition of payment and fully integrated contract between O and C.

Significance of C not removing all the trees?

C refuses to remove all the trees because he says that based on some other jobs he performed his understanding was that he had to only clear what was necessary. O was under a different impression that all trees would be cleared if the contract states clearing meant all C would remove all trees. C can use as a defense to the Parol Evidence rule that it was industry standard that the tree's not be cleared if O does not want to pay him on the contract and so he is still entitled to payment. Unfortunately this will probably not hold up because it does not appear to be industry standard/custom and is only something C has seen based on some other jobs.

Potential unsuccessful defense to ambiguity of promise to clear the trees, see Parol evidence discussed infra

What is the significance of the modification of the K increasing price by 100k?

The contract contains a no oral modification clause so would appear to at first strike down this modification as being invalid. However C will argue the impracticality which would discharged him from the previous contract and allow him to create a new contract. Impracticability is a form of impossibility that requires a material changed affect a base part of the contract (here the new zoning code will require numerous changes to the construction of the house), was something that the party arguing the impossibility (C) had not assumed the risk of, and was not the fault of C. However, if it just a price increase on a construction project the court might argue that this does not make the house impossible to build, just not at a profit and that C could possibly recover in quasi-K for unjust enrichment. It might also be argued that O has waived his rights

when he agreed, however it appears that he may have been under duress because he had already signed a sales agreement with a buyer for his present residence and so needed the contract completed on time.

The modification is valid because of the ^{good!} unforeseeable changes to the zoning, making it impracticable for the C to make a profit, suffering instead a loss. O has waived his rights to the anti-oral agreement.

What is the significance of O stopping payment to C?

In the beginning of July, O observes that the plans are not quite to his specifications, the living room wall was misplaced, etc... O demands that C fix these "defects" and C refuses and demands his 3rd progress payment. Since C's performance was defective, O had the right to suspend performance and give C the chance to cure the defects. C's refusal to do this is a breach, minor or major depending on how much of the house is complete and depending on if the payment/work arrangement was really an express condition.

C then stops work on the house and walks off the job despite O's pleading that he continue and saying that he would pay the instant the omissions were fixed. Because O is making an effort to work with C and he is refusing it appears that C has repudiated and cancelled the contract and sues O for breach of contract.

O has not breached, C has breached because he refused to cure the problems with the house and because it's an express condition, O's duty does not kick in until C has performed.

O v. C / C v. O

O is correct in stating that C has breached because as previously discussed he does not have a duty to pay until C has fixed the issues with the house. However, if it was not an express condition that C finish 1/4 the house before he can be paid 250k at the end of the month then O may have breached first because then it would have been a constructive condition that C work and then O pays, a constructive condition only requires substantial performance. Here, if it was a constructive condition then C has substantially performed because the house is mostly finished (if its suitable for its purpose to be lived in) and O has breached because he has yet to pay. In that case C would be entitled to 550k, again if the modification was valid.

However if it was an express condition then he might be entitled to NOTHING because he has not strictly conformed to the condition by placing the downspouts, clearing the land, placing the wall in the right place, etc... A court would not like this because it would be a huge forfeiture to C when he has performed the essence of the contract and would most likely still say he had substantially performed. In that case he would be entitled to unjust enrichment from O, most likely for the 550K, and O would have a counterclaim for the damages caused by the defects to the house. O would also have a claim for consequential damages that might arise from him already selling his house previously and the house potentially not being finished on time.

END OF EXAM