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ABEL V. BAKER

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BODY OF LAW.

The contract is for a service. Baker is to repair damages to Abel's residence. Although part of the contract is for the supplies needed, the primary purpose of the contract is for a service. The common law applies.

IS THERE A VALID CONTRACT?**Telephone call from Baker to Abel - Offer?**

An offer is the manifestation of willingness to enter into a contract which gives the power of acceptance to the offeror. The terms of the offer must be certain and definite. The phone call from Baker to Abel contains several definite terms including, the promise to repair all of the damage, a price, length of time to complete contract, and a start date. Baker is manifesting his willingness to enter into the contract by stating he will start within a week. Baker is giving the power of acceptance to Abel when he asks him "what he thinks." There is a valid offer.

Telephone conversation from Abel to Baker - Acceptance?

An acceptance is the manifestation of assent to the terms of the contract given in the manner required. An acceptance is valid upon delivery if given in the manner required. Here, Abel is manifesting an assent to the terms of the contract when he states "that is a great price" with the knowledge that he had received other bids and this was the lowest bid. He was giving his acceptance in the manner required because Baker asked him for a response during a conversation. The acceptance would be valid upon Abel's statement. There is a valid acceptance.

Consideration?

Consideration is the act or forbearance (or promise thereof) given for a bargained for exchange. Here Abel is promising to pay Baker for his services of fixing his house. Baker is promising to fix Abel's house for the money Abel will pay him. There is valid consideration.

There is an offer, acceptance, and consideration, therefore there is a valid contract.

ARE THERE ANY DEFENSES TO THE FORMATION OF THE CONTRACT?**Statute of Frauds.**

Baker could raise the defense of statute of frauds because the contract is not in writing. Under the statute of frauds, a contract must have a writing covering the terms of the agreement with enough particularity to show the terms of the contract if the contract cannot be completed within 1 year of the formation of the contract. Here, Baker is promising that the work will be completed in 12 months. However, he is not starting immediately, therefore the contract, by its terms, will not be completed within 1 year. There needs to be a writing for the contract to be enforceable. There are no facts to show that Baker ever sent a written contract to Abel after the oral contract was formed in the telephone conversation. Therefore, the statute of frauds defense would be a valid defense to the enforceability of the contract. Baker would not be held liable for the performance of his duty.

Good use of facts

Mistake.

Baker could try to raise the defense of mistake either based on the mistake in the bid that he solicited from Suppliers or on the grounds that he did not include the foundation into his offer.

Mistake in underlying bid. A mistake is a defense to a contract when there is a mistake as to a material fact of the formation of the contract and the mistaken party would suffer a detriment because of that mistake. The risk must not be allocated to the mistaken party. Here, there was a mistake in the numbers he was provided which he relied on, to his detriment. However, a court may find that the risk was allocated to Baker because ultimately, he would be making a profit and the increase in material cost would only decrease his profit. Therefore, he could not claim the defense of mistake.

Mistake in foundation See definition for mistake above. One cannot claim mistake if they are relying on their own lack of knowledge. Here, Baker was relying on his visual inspection with the knowledge that he was not a licensed structural engineer and that he would not be able to check the structural soundness of the foundation. Because he was aware of his lack of knowledge in the subject area and chose to rely on it anyway, his claim of mistake as a defense would not be valid.

Because there would be a successful defense to the enforceability of the contract asserted by Baker through the Statute of Frauds, there is not an enforceable contract between Abel and Baker and Baker would not be required to perform the repairs to Abel's house.

BAKER V. SUPPLY**BODY OF LAW**

Here, the contract is for goods - the supplies needed to perform the repairs on Abel's house. The UCC governs the sale of goods and would apply here.

IS THERE A VALID CONTRACT?

Was the fax from Supply a valid offer?

See definition of offer above. Here, Supply is manifesting an willingness to enter into a contract by providing the prices of the items requested along with a cover page stating that the prices are good for 30 days. However, the terms of the offer are not definite or certain, the only term discussed is price - no delivery, no method of acceptance, etc. Further, nothing in the fax gives the power of acceptance to Baker. This is not a valid offer, it is a mere quote.

Was the fax from Baker to Supply an offer?

See definition of offer above. Here, Baker is certainly manifesting a willingness to enter into a contract by stating he wants to order the specified parts. However, again the terms of the offer are not definite or certain, as the only term still discussed is the price (of the original fax.) The fax could be viewed as giving the power of acceptance to Supply, as they could accept the offer by shipping the goods. If the terms of the offer were deemed to be definite enough, there could be a valid offer by Baker to purchase the goods specified.

Is there an acceptance by Supply?

See definition of acceptance above. Here, there is no more action on the part of Supply, there are no facts to show that Supply accepted Baker's offer. There is no acceptance.

Because there is no acceptance to Baker's offer, there is not a valid contract and nothing to be enforced.

Promissory Estoppel?

Since Baker relied on the quote from Supply, can he use promissory estoppel to enforce the promised prices of goods?

Promissory estoppel can be invoked when the promisor (Supply) makes a promise to the promisee (Baker) and can reasonably foresee that the promisee will rely on that promise and the promisee does rely on the promise to his detriment. Here, Supply would have a reason to reasonably foresee that the quote would be relied upon by Baker. Baker states in his request for the quote "I am bidding on a big job" and requests a quote for the items needed. Baker does rely on the numbers provided, to his detriment because he got the job from Abel (assuming there is now an enforceable contract) based on the lower numbers. The court could invoke promissory estoppel based upon the quote given to Baker with the lower prices.

If the fax from Supply could constitute a valid offer because the terms were definite enough and the method of acceptance was implied through course and dealings of contractors purchasing supplies from Supply, is Baker's return fax a valid acceptance?

See definition of acceptance above. Here, Baker manifests his intent to the terms of the original fax when he states he will place his order. There is no required method of acceptance, so Baker can choose his method and does so by sending a return fax. This could constitute a valid acceptance by Baker.

Was there a termination of the power of acceptance by the revocation of the original fax by Supply prior to Baker's above acceptance?

A revocation can terminate the power of acceptance and take the offer away. Here Supply sends a fax which states that the original offer should be disregarded. However, an offer can be irrevocable if it is detrimentally relied on, through a merchant's firm offer, etc. Here, Baker could argue that the original offer was detrimentally relied on because he had already used it to create a bid which was accepted (assuming that there is an enforceable contract). Baker could also argue that the fax with the promise to hold the prices for 30 days was a merchant's firm offer. To be a firm offer, the sale of goods must be done by a merchant, there must be a writing signed or authenticated by the merchant, that promises to hold the offer open for a specified amount of time. A merchant is one who deals in the kind of goods in their field. Supply is a merchant as it deals in building goods. Merchant sent a writing that was authenticated by its cover sheet and magazine pages, and the writing promised to hold the offer open for 30 days. The offer is a firm offer and cannot be revoked. There is no termination of the power of acceptance.

Was there consideration?

See definition above. Here, Baker was promising to pay Supply in order for Supply to provide the goods necessary. There is valid consideration.

If the fax from Supply could constitute a valid offer and Baker's return fax was a valid acceptance of the offer and there was consideration, there is a valid contract.

DEFENSE TO THE ENFORCEABILITY OF THE CONTRACT

Mistake. See definition for mistake above. Supply could argue that it made a mistake in the formation of its offer. It gave

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2)

Applicable Law

UCC-2 governs all contracts that deal with goods, UCC-9 governs all Ks that deal with the assignment of accounts, and the c/l governs all other Ks. The primary purpose of K will determine the applicable law or the gravaman of the action.

Here, the contract is regarding a phone system and the company's service of it. J's main complaints is with T's services so this dispute will be governed by the c/l in that area.

Applicable PEOPLE - John (J), Telecom (T), and Phone World (PW)

Merchant is a person who deals in goods of the kind sold or who by his occupation holds himself out as having special knowledge of such goods. Here, J, T, and PW are all merchants; T and PW deal in the business of selling phone systems and servicing them; J holds himself out as having special knowledge of the goods when he states "that is certainly what would've been standard in the industry".

2/10 Phone Call

OFFER

An offer is the manifestation to enter into a bargain with an identifiable offeree creating in him the power to bind the K. The terms must be certain and definite that the law can determine a breach and remedy.

When J calls T to inquire about a phone system and then has a conversation with the representative an offer was created if he manifested an assent to enter into a bargain with T.

2/10 Fax

Here, when T sent the fax it was not the mirror image of what he had discussed with the sales rep. It contained many terms which he did not have in his original offer. Therefore this was a new offer.

In this case, J received the standard sales form describing the price of the system, the monthly payment, plan, and the terms of the maintenance plan. These terms are certain and definite enough that a remedy and breach can be found at law.

ACCEPTANCE

Acceptance is the power to bind the contract in the manner invited or required by the offer.

When J calls T and gives a verbal OK and then sends the required payments he accepted the offer. A phone call may be an invited manner but by paying his act show his consent to the terms of the agreement.

Consideration

Consideration is an act or forbearance given as part of a bargained for exchange. When J pays for the phone service it is giving consideration in the form of money for the return of a phone system with people who will maintain it.

J will argue that T breached their contract when service was not timely.

A condition is event not certain to occur which must occur before a party is obligated to perform. Express conditions require strict compliance. Constructive conditions are implied at law as mutually dependent promises and are satisfied by substantial performance.

Here, Clause 12 that states that T will be able to keep any pre-paid deposits upon a breach of the customer, is a material alteration. The K states that the price of the phone system is paid with a \$1,000 deposit followed by a \$100 monthly installment. The \$1,000 deposit is about a 3rd of the cost upfront. T may argue that this is a liquidated damages clause because it is a reasonable estimation of the actual costs that it will incur as a result of a breach. However, when J fails to make his first payment of \$100 when he has only had the phone system for one week, keeping the \$1,000 is not a reasonable estimation of their actual damages; it could be deemed punitive and that T would be getting a windfall.

On the otherhand, T may argue that the 1,000 deposit price went to the cost of the physical phones not because of the service contracts. Hence this clause is a reasonable estimation of the actual damages because the \$1,000 was the price of the phone system that J received.

The manifestation of assent by the identified offeree in the manner required by the offer.

Consideration

An act or forbearance as part of the bargained for exchange.

A contract must have an offer, acceptance and consideration to be a binding promise that the law will enforce. Here, all three of those elements were fulfilled.

An assignment is a present transfer of rights. It can be limited by the terms of the K or at law. A right is not assignable at law if it increases the burden or risk to the obligor or impairs the likelihood of reperformance.

A delegation is a transfer of contractual duties. Most duties are delegable unless the obligee has a "substantial interest" in the delegator performing the K. If the delegator does not obtain the obligee's consent before delegating the duty, this act creates reasonable grounds for insecurity and permits the obligee to demand adequate assurances.

When a business sells itself to another business, it is an assignment of its rights and duties. Here, when T sold itself to PW, all of T's rights and duties were now PWs.

When John learns that T got rid of its service rep he demands adequate assurances. An act that is positive and unequivocal that is a failure to perform is an anticipatory repudiation. One may react to an anticipatory repudiation by demanding adequate assurance. Such demand may not be too much and if it is reasonable and the company does not comply with such demand one can prove breach.

Asking for a list of the service representatives qualifications is a bit extreme and unusual in this situation. If T showed him proof that they did hire someone that may be enough to satisfy his demand.

PW will need to sue T for breach of implied warranties of assignment for value. T breached this warranty because it said that the right was not subject to any defenses or claims. Here, T

J v. T

John has a claim against T for failure to timely serve his phones as a breach of their K.

J claims that this is a breach based upon his phone conversation with the T representative. Because this conversation was oral before the form was sent it is a side conversation.

Parol evidence rule bars evidence of side oral or written discussion that occur before the written contract that would conflict with terms in an integrated written contract.

J will try and bring in this conversation as a way to define ambiguous terms in the K which is not barred by Parol Evidence. The ambiguous term in the K is "professional and timely manner." J claims it is within 24 hours while T's clause 12 leaves the time frame open.

J may also try and define the ambiguity of Clause 12 based on trade usage.

more analysis please

T may argue that the conversation about the timeliness of the service agreement should not be let

Merchant's confirming memo is a standard form supplied by one merchant to another, whom the recipient knows of the terms contained in the form, and does not reject the form within a reasonable time not to exceed 10 days. This memo also satisfies the Statute of Frauds requirement which applies here because the phone system is a good costing at least \$500.

END OF EXAM