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R V. W

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NUISANCE: Legal or equitable

A nuisance is interference with the enjoyment of use of your land done by another person. A nuisance is a tort that can provide a legal remedy (for damages to property and lack of use of enjoyment) or can be provide an equitable remedy (injunction from the nuisance) An equitable remedy is available where the legal remedy would be inadequate and the Plaintiff (P) would suffer harm. Here the facts indicate that West Ink, (W) operates a charcoal plant and the wind blows the smoke on to the neighboring property. By the facts the operation is continuous and causes smoke damages to plants and odors 40% of the time. Here Rose (R) who purchased a neighboring property for the purpose of operating a nursery can sue in a court of equity because she has a continuing nuisance which by the facts demonstrate that a legal remedy may be inadequate.

INJUNCTION:

An injunction is an equitable remedy where a person is told to act (which is mandatory) or refrain from acting (which is prohibitory), or it can be in the form of specific performance of a K.. A prohibitory injunction is usually easier to obtain from the court. A court standing in equity may enforce the injunction through its contempt powers. An injunction can either be asked by the court in the form of a Temporary Restraining Order (TRO) or a Preliminary Injunction. A TRO requires the P to have an emergency situation which is beyond such control that the harm be extremely great. (otherwise it requires the same elements of a Prelim injunction, discussed infra) In the case of a TRO a court could grant a 10 day TRO and enjoin the Defendant (D) from the behavior. A TRO does not require notice to the D when the facts indicate that it would be difficult, or has been tried by the P or it would cause the P harm.

Here, the facts indicate that R waited two years- obviously she was not in a state of emergency so it was proper for her to file for a preliminary injunction against W. A preliminary injunction (Prelim) requires irreparable harm, balancing of equity in favor of the P (P would have greater harm than D if the court did not grant), likely to succeed on the merits, lack of legal remedy or inadequate legal remedy, a bond and requires notice to the D. Here Rose sues W for a prelim due to the reoccurring harm to her business. The facts indicate that she obtained a judgment against W because of a default therefore the facts are silent as to whether she complied with the necessary showing 'on the merits'. However, the facts do indicate that she sued in the neighboring state where she lived rather than the state where the Corporation did business. Also she gave notice to an independent contractor rather than notice to the actual place of business. These are potential defenses to the Corp. discussed infra.

DEFENSES OF WEST INK.

Improper jx. improper notice:

A prelim requires proper notice to the party. Notice must provide the name of the individuals to be enjoined, must state exactly the behavior that must be stopped, and if not stopped, it must provide the punishment for the 'contempt of court' or not following the courts order. A notice to the Corp was given to a 'sales outlet' in the state of Flux where R lived. The facts are silent as to whether R also sued Mr. Sharp who owned the 'sales outlet'. An injunction will serve to enjoin all the persons who have fiduciary relations and agency relationships with the person enjoined. Here, however the facts indicate that Sharp was a 'independent contractor' which by

definition is not an employee of West. Rather it appears by the facts he is simply in sales and sells the product that the corporation manufactures. This is not even related to the manufacturing of the charcoal. For the state of Flux to have jx. the corporation must have contacts within the state and simply having the charcoal for sale in the state may not be enough for jx unless the person filed in a federal court where the parties are diverse. The charcoal itself is not the reason for the tort it is the smoke coming from the factory which is located in the state of Woe. Therefore the jx would likely be held improper if filed in a state court.

Furthermore, notice to the D was improper because Sharp notice is proper where the corporation is incorporated, or where the management is. Sharp is not even an employee.

LACHES:

laches is a defense available when a P fails to bring a suit within a reasonable time and because of the delay the D is unduly prejudiced. Here W could claim that R 'sat on her rights' by not filing and waiting 2 years. The facts indicate she started her business and two years later she filed a lawsuit. The D would have to prove that the delay prejudiced his available defenses or somehow caused him other prejudice. Here W could not prove this. In fact because the zoning changed- it was to his benefit for her not file.

FAILURE TO POST BOND:

a bond is required when a person sues for injunction to protect the D from any potential damages if the injunction is later reversed due to the court finding it was not proper. It is also to prevent a D from bringing a frivolous lawsuit. Further it gives the P notice of the potential damage he will be liable for. The D must prove his damages. In some jx. the damages awarded are only the amount of the bond, in others it can be actual proven damages. (Ca awards the bond), the court decides the amount of the bond. It is usually required in a TRO but if not ordered for the TRO it will be necessary for a prelim. Here the facts indicate that R posted a bond in the amount of 25K. The facts further provide she initially did not post the bond. W may assert that the injunction was not legal because she did not post the bond. However, an injunction by the court must be followed until the court either changes or removes it. Here W could not rely on the fact that she did not post the bond.

COMING TO THE NUISANCE/FRUSTRATION OF PURPOSE

Coming to the nuisance may be asserted when a person moves to an area where industrial plants are operating and a court in equity may say that an injunction is not proper rather a legal remedy is proper. Here R moved to the area where the plant was. W has been in that location for many years, a court standing in equity will balance the equity and consider the damages to each when deciding a case. Here W would be forced to 'shut down' because he cannot control the direction of the wind. On the other hand, R can relocate her nursery and maybe get \$ damages for her losses and expenses of having to relocate. To order an injunction would frustrate the purpose of the company and likely the Corp has many employees that would be out of work this affects the public at large and therefore is a good defense against an injunction

ZONING:

A corporation that is complying with a zoning ordinance can use the ordinance as a defense. Here the facts state that the zoning is for light clean industry. Originally the plant was operating and a few neighbors are bothered. Later after the complaint from R the facts indicate they doubled their production and this may be a violation of that ordinance. However, the facts then state that the ordinance changed to light smelly industry which allows for heavier use if it will not

unduly damage neighboring property. Here, R would have to prove that the Corp is violating the ordinance by unduly damaging her property.

SISTER STATE INJUNCTIONS:

A sister state is required to enforce the legal remedies of another state because of the full faith and credit clause. However, it is not required to enforce an equitable remedy. Here if R wants to enforce she must file in the sister state. That state would be required to follow the facts of the case but not necessarily the remedy. Here the facts indicate she did not provide adequate service and may have filed in the wrong jx. Likely with all the defenses avail. the sister state would deny the injunction. Further they would likely also deny because it would be against their public policy because it would remove jobs in that area.

2)

Question 2:

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Contract: A written agreement showing the manifested intent of both parties to enter into a

bargain for exchange has been drawn up. The E's were going to give Ark money for him to design, build, and sell to them a house in which they could live. These issues present themselves in the fact pattern:

Capacity: A person may not enter into a contract when they lack capacity. The fact pattern states that Ark is eccentric. Though this trait is seemingly common amongst artists, it is doubtful that this eccentricity is sufficient to find that Ark lacked the capacity to contract.

The E's wish to force Ark to follow through with his original performance agreement. They wish to do so by asking a court of equity for specific performance. There are some issues:

Time of the essence: The fact pattern says that "they were to get their financing within 45 days." they did not. At no point did Ark agree to an extension. In the world of real estate construction time is important. However, unless the court implies that in real estate time is ALWAYS of the essence it is unlikely that the court will find that in this case the E's breach was a sufficient enough breach to avoid the contract. Generally, if a contract is to be read strictly as applying to time and dates required, a time-of-the-essence clause must be placed in the contract. The fact pattern does not say that such a clause existed. That being the case, it is likely that the court will find that the 20 day extension asked for is reasonable under the circumstances and that Ark is experienced enough in this area of business that he knew or should have known that such a clause was required.

Substantial performance: Another argument is that the E's substantially complied with the performance required under the contract. And, therefore their breach was not substantial enough to completely void the contract. However, it does not appear that the E's gave Ark any of the money asked for, not even the deposit. That being the case, I find it doubtful that the court would find that the E's substantially performed.

Good faith and fair dealing: Implicit in every contract is a promise to act in good faith and deal fairly with the other parties to the contract. In this case, after speaking with Cher, Ark decided that he was going to purposely attempt to evade his responsibilities under the contract, and give the benefit of it to Cher. Ark was not attempting to make the contract work, or fulfill his end fairly, instead he was interested in ditching the E's and entering a new (more lucrative deal) with Cher. If the good faith and fair dealing doctrine means anything, it means that you cannot actively attempt to subvert the wishes of your fellow contractors, it also means you cannot set out to abandon the contract from which the duty is implied. The E's under this theory would be able to recover not only the worth of the contract.

Ark wishes to avoid fulfilling the contract either through Specific performance (The court ordering him to do it) or through damages. his arguments are:

Ark seeks to escape the performance promised in the contract by claiming that a mistake was made.

Specific performance for sales of land: Courts of equity will almost always grant specific performance for sales of real property. it is a maxim of law that, real property is always unique. Uniqueness is often a requirement for specific performance. However, this house was not yet built, and therefore specific performance must be examined from a different perspective.

Specific performance for personal services contracts: Due to a general distaste for indentured servitude, personal services contracts will not be enforced. with specific performance. However, some courts have found that because of the unique qualities of some architects and builders, courts are more willing to grant specific performance. In this case, Ark is a well know, and award winning designer. The house sought to be built was of his unique design, hand pciked by the E's, the house was to made out of bamboo a rare material. Courts in the past have been retisent to grant such spec. P because of the extensive oversight required to make the contract work as intended. However, recently courts have found that this difficulty can be overcome by having specific terms for the building. This argument of specificity is in away a double edged sword. The more specific a plan is, the easier monitary damages are to calculate. When examining whether to give specific performance, or damages, courts use the following test:

1. The difficulty in determining the damages to be paid instead of spec. p.
2. The difficulty in obtaining those damages from the defendant.
3. The ability for the plaintiff to cover (get the same structure) with those

money damages.

Outcome: I find it likely that the court would grant the E's request for specific performance, given the uniqueness of his structures, the oddity of the building materials required, and the difficulty in ascertaining the amount that would be required to replace Ark's eccentric nature and brilliant architectural mind.

Mutual mistake: It could be argued both parties in this fact pattern were mistaken. Ark thought he was selling them lot A, E's thought they were buying lot B. If such a mutual mistake was found, the court would have the power to void the contract. since however, Ark took the E's to the property, the very property the E's thought they were buying, it would be hard for Ark to argue that he could not have known of the E's mistake. Therefore, I find it unlikely that the court will find that mutual mistake was made.

Different mistakes: Mistakes under the mutual mistake doctrine do not need to be exactly the same. A thought Y, B thought X is fine.

Unilateral mistake: Courts have viewed unilateral mistake in two ways:

Old: In the courts of the past in order for a person to rescind a contract he must have:

1. Acted properly in all ways related to the contract.
2. Not have been neglegent.
3. The party on the other end of the mistake must have played a roll in the mistake, acted fraudulently, misrepresented, or in any other way acted inequitably in regards to the contract.
4. The parties must also be put back in their original positions.
(Where they were before the contract was made)
5. The errant party must notify the other party of their mistake as soon as possible.

Modern:

1. Been only guilty of excusable neglect or less.
2. The parties must also be put back in their original positions.
3. It would be unconscionable to allow the contract to stand.
4. The errant party must notify the other party of their mistake as

(Where they were before the contract was made)

soon as possible.

Analysis Old: Under the old rules, I think that Ark has 0% chance of success. (1) Ark was so blatant in his attempt to find other buyers that he even discussed evading the contract with one of them. His acts bordered on bad faith when coupled with his refusal to extend time to find financing. Therefore, Ark did not act properly in his dealings with the E's. (2) Ark took the E's to the property they thought they were buying, he did so (apparently), without realizing that he had contracted to sell them the wrong lot. This is clearly neglect in some form. (1) This possible bait and switch maneuver is again proof that Ark was not acting properly. (3) In this case, the E's had absolutely nothing to do with the mistake. In fact, Ark's field trip to the wrong lot made sure they could not have known. (4) It would appear that the E's could be placed back in the position they were before, since apart from time spent looking for financing they have not expended any of their performance. (5) Ark did not notify the E's of his "mistake until after the mud had already hit the fan. Therefore, he did not comply with 5.

Analysis modern: (1) It is arguable that Ark's field trip to the wrong lot was excusable neglect, but once coupled with the entirety of his actions and lack of diligence it is clear that Ark acted almost too negligent even for modern courts to excuse. Even though modern courts are more lenient with the negligent requirement, they are not willing to excuse any neglect. I believe the ongoing of Ark's neglect is too heavy for the court to burden, despite their equitable powers. (2) It would appear that the E's could be placed back in the position they were before, since apart from time spent looking for financing they have not expended any of their performance. (3) In my reading, it would seem more unconscionable to allow Ark to evade his half of the bargain. It seemed from the outset that Ark was more concerned with escaping his obligations than fulfilling them. Once he found out about Cher's proposal he intensified this attempted evasion. The E's may have been late on financing, and Ark might have been mistaken about the lot to be sold, but I do not find it unconscionable to enforce this contract. (4) Ark did not notify the E's of his "mistake until after the mud had already hit the fan. Therefore, he did not comply with 5.

Liquidated damages: Are presumptively unenforceable in California. But, can be followed in other states if, they are reasonably calculated to give the parties the amount lost via breach. If the clause is not strongly tied to the amount lost through a breach, then the clause will not be enforced. This is not a replacement for a time is of the essence clause.