

July 1974
QUESTION NO. 6

Seller and Buyer entered into a written contract for the sale of Lot 1, an unimproved lot in a large subdivision owned by Seller. During the course of the negotiations leading up to the contract, Buyer asked Seller if Lot 1 included all of a small pond which was actually located partly on Lot 1 and partly on the adjoining Lot 2, still owned by Seller. Seller, knowing his statement was false, told Buyer that the entire pond was located on Lot 1, and Buyer signed the contract on this assumption. In the contract, Seller promised that within one year from the contract date he would install streets, sidewalks, and water lines along the frontage of Lot I and throughout the subdivision, as set forth on a plat of the tract attached to the contract.

Several weeks after he had paid the entire purchase price and received his deed, Buyer discovered that Lot 1, as described in the deed, included only one-half of the pond. Believing that there was nothing that the law could do for him, Buyer took no action at that time. Shortly thereafter, Seller sold Lot 2 to Smith, a bona fide purchase for value.

Seller has sold several lots in the tract but still retains title to all of the area designated for streets or sidewalks in the plat. Seller has not installed any streets, sidewalks or water lines. Buyer has asked Seller on numerous occasions about the improvements and each time was told that Seller would keep his promise. Two years have now elapsed since Buyer acquired Lot I and Buyer has lost patience and sought legal assistance.

Assume that any rights Buyer may have are not barred by the statute of limitations and that Buyer is not guilty of laches.

What equitable remedies are available to Buyer in connection with the pond and the improvements? Discuss.

Pond

Both reformation and rescission are possible remedies concerning Buyer's expectations in the pond.

For reformation there must be a valid underlying contract. There is a written signed contract. There is adequate consideration and specific terms. Buyer is to pay the purchase price and Seller is to convey the lot, including the pond, and put in the improvements within one year.

There are grounds for reformation in that Seller misrepresented intentionally a material fact. Seller made the intentional false statement that the pond was entirely on lot 1. Buyer relied on this intentional statement. Since the contract that the parties actually contemplated was one where lot 1 included the pond, the contract should be reformed to include the pond.

However, Smith has since purchased lot 2 and would cut off any equities that Buyer would have in the lot. Smith is a bona fide purchaser for value and as such takes the lot 2 free of any possible equitable claims by others. Since Smith did not know of the misrepresentation to and claim by Buyer, an equity could will not infringe on his interest. He has the higher equity.

Reformation would not lie.

Recession probably would lie.

The legal remedy is inadequate since land is considered unique. In this case the lot with a pond on it probably is unique. It would be very hard to find another such lot and pond. Damages could only be estimated since it would be hard to find such a lot with pond.

There are grounds for rescission in the intentional material representation of fact, that the lot included all the pond. Since it was an intentional misrepresentation, the actual reliance of Buyer is enough for relief.

There are no defenses and Buyer could *maintain* an action for rescission of the contract and restitution of his purchase price.

Improvements

If buyer decides he wants to keep the lot he could bring an action to specifically enforce Seller's promise to put in the improvements.

There is a valid underlying contract as discussed above under reformation.

The legal remedy is inadequate. What Buyer wants is streets, sidewalks and water lines. No law court can give him this. Damages could not provide a substitute for streets, sidewalks and a water system. Even if the damage award was enough to put in the water & street system in the entire subdivision, Buyer does not want to perform the job himself.

Because the installation job is fairly complex older equity courts would have shied away from enforcing it. But a modern equity court would today find specific enforcement the only reasonable route and would set up some standards for the installations and would avoid too much supervision responsibility by simply enjoining Seller from not meeting those Standards.

Mutuality of remedy would be a problem under the Fry, Pomeroy and Ames views, since the legal remedy of damages would be adequate against Buyer and Seller could not specifically enforce Buyer's promise to pay. Under the restatement view there would be no problem since Buyer has already performed.

Buyer has performed the implied condition to the contract that he pay the purchase price.

Specific performance would lie in a jurisdiction following the restatement view of mutuality of remedy.

Answer B to Question 6

The most likely equitable remedies available to Buyer in connection with the pond would be rescission or reformation of the land sale contract.

Rescission

Where the buyer enters into a contract to purchase land in reliance upon fraudulent misrepresentation by the seller the equity court may act to rescind the entire contract and return the buyer to status quo. The equity court derives its jurisdiction over such matters because land is unique, and because it is unique, money damages may not be an adequate remedy, where purchaser did not get what he bargained for. In this case Buyer expected the entire pond to be on lot #1 and relied upon Seller's oral promise that it was. At the time of the representation by Seller he knew his statement was false, therefore a fraudulent representation to Seller.

Under the circumstances Buyer should be allowed to rescind the contract, and in addition be entitled to punitive damages, based upon the fraudulent conduct of Seller.

Reformation

In some instances the equity court will change the terms of the contract to agree with the intent of the parties. This usually occurs where there is a mutual mistake of fact which if known at the time the contract was entered into would have been changed by the parties.

In this instance there was no mistake, but rather a deception by the Seller, and the only detriment is to the Buyer. What can the court do to cure the wrong without rescinding the agreement? Since lot #2 has already been sold to a BFP, there is no way to correct the deed so as to give the entire pond to Buyer as part of lot #1.

The rights of a BFP are superior to Buyers, because the BFP had no notice, therefore had no way to protect himself.

The only other solution would be for the court to reform the selling price of lot #1 to make up the loss of one half of the pond to Buyer. Such a method would not effect the rights of the BFP, yet would give Buyer an equitable remedy against Seller.

The most likely equitable remedy available to Buyer in connection with the improvements, would be an action for specific

performance.

It appears that Buyer has an adequate remedy at law, since he could get money damages to compensate himself for doing the improvements, however, Seller has retained the title to the area designated for streets or sidewalks. Therefore, even if Buyer were to get a money judgment for breach of contract, he could not legally improve the streets and sidewalks without sellers permission.

Under these circumstances the court of equity may try to specifically enforce the terms of the contract.

Feasibility of Enforcement

Would the court be able to command Sellers compliance, and properly supervise the activity to see that he complies with the order. Although this method of enforcement may not be feasible there is a growing trend towards such enforcement. Another alternative available would be to have the court compel Seller to convey the land to a trustee and thereafter order the payment of damages equal to the amount necessary for the improvements.

In such a way the court could easily supervise the improvements in accordance with the terms of the original agreement.

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QUESTION NO. 14

(Answer this question in Book No. 14)

Quick entered into a written contract with Hospital, the only hospital in the community, in which he agreed "to install and service 12 vending machines for the dispensing of drinks, sandwiches, candy,, cigarettes and other similar merchandise, all of good quality, at competitive prices." for a 4-year period, with a right to terminate on 10 days notice at Quick's option. In return, Hospital agreed that Quick should have "exclusive vending rights" at the hospital and promised to furnish space for the machines. The contract also provided that Hospital had the right to terminate after 90 days notice in the event of a breach by Quick. Pursuant to the contract Hospital was to be paid 15% of the gross receipts from the machines.

Quick thereupon installed 12 new machines ordered especially for the job, and incurred plumbing and wiring costs of \$4,000. Operations progressed at a continuously improving rate, and by the sixth month Quick was making a small current operating profit.

After the machines had been installed for seven months, Self-Serv, a competitor of Quick, offered to pay Hospital 17% of the gross receipts, if it were given the exclusive right to install and maintain its own machines. Hospital informed Quick that, commencing with the next succeeding month, it wanted 17% of the gross receipts. When Quick refused to pay more than the 15%, provided in his contract, Hospital gave Quick written notice of termination of his contract, 90 days from date of notice, stating that this was done "because his merchandise was inferior."

At the same time as the notice was sent, Hospital and Self-Serv entered into a written contract identical with the one between Hospital and Quick, except that SelfServ agreed to pay 17% of the gross receipts and to hold Hospital harmless from ally liability to Quick.

What equitable relief, if any, is Quick entitled to against Hospital and Self-Serv, or either of them? Discuss.

Answer A to Question 14

Consider suite against Hospital and Self-Serv separately.

Quick v Hospital - Quick is seeking specific performance of contract--right to sell and no competition.

Is there a contract? There was offer and acceptance and terms are reasonably specific as to time, fees, quantity. Although each party has alternatives to performance, they each incur some detriment and hence there is consideration. There is a writing which satisfies the statute of frauds (contract to be performed in more than 1 yr..)

Did Quick breach so that Hospital could terminate? Contract provided Quick must goods of good quality at competitive price. Since there aren't personal services involved there is an objective standard (reasonableness) and hence there is no reason to conclude Quick breached. Hospital breached or threatened to breach by making contract with Self-Serv.

Is legal remedy inadequate? If Hospital dealing with Self-Serv is a threatened breached then Quick has no legal remedy since not yet injured. But signing contract, at that time infringed on Quick's "exclusive vending right. Since that is the only hospital in the area Quick may not be able to ascertain comparable sales. Hence damages are speculative and can't be determined. This gives inadequate remedy at law.

Is injunction feasible to enforce? Negative injunction enforcing exclusive right is easy to enforce and mandatory aspects, requiring Hospital to permit Quick to remain could even be framed or negative--prohibiting Hospital from evicting. In any event there is no problem in supervision since contract isn't personal and parties before the court.

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In restrictive covenant enforcement Quick must stand ready to comply and covenant have independent significance. Here it has independent significance since even if Hospital lets Quick operate, Quick will lose money.

There is no negative mutuality required with enforcing restrictive covenant and in enforcing contract permitting Quick to operate there is mutuality of remedy at time of contract, suit, and decree since Hospital could get specific performance (even though Quick could cancel after 10 days.) By Rest., Hospital isn't in need of security since it doesn't have to give anything. Hence Rest view (majority) is satisfactory.

Defenses There doesn't seem any defenses such as unclean hands, laches or hardship.

Another equitable remedy is promissory estoppel. Here Hospital made a promise which would reasonably cause reliance, Quick relied and was unjustly impoverished--last \$4,000 of reliance interest. Although in the past, this doctrine was only used in donative transactions, today it is also used in commercial transactions. Then Quick gets \$4,000 from Hospital.

Quick v Self-Serv - Here Quick will sue for the tort of intentional interference with contractual relationship and seeks to enjoin Self-Serv from installing machines. Quick and Hospital had a fixed term contract and Self-Serv must have known of it by inspecting premises. Does Self-Serv have competitor's privilege? Although he agreed to be Hospital's indemnitor which gives Quick more of Hospital's assets to attach and may give Quick an opportunity to sue which would otherwise be precluded by charitable immunity, he still has not right to induce breach of K - especially if damages are inadequate. Hence Self-Serv has harmed Quick.

Is legal remedy inadequate? From before it is inadequate since damages would be difficult to ascertain and hence speculative.

Is decree feasible to enforce? Since the prayer is a negative injunction there are no supervisory problems.

Is there a property right? Although money covits no longer require this for equitable actions today, a property right may be found in the contract.

Defenses - The best defense Self-Serv could advance would be "competitor's privilege." But here there's a contract for a fixed term (rather than terminable at will) and Self-Serv probably knew of contract. Also competitor's privilege is designed to protect the public interest. Here Self-Serv would give more to Hospital and since it is a location monopoly would charge more. Hence public wouldn't benefit by competitor's privilege here. Hence Quick can enjoin both Hospital and Self-Serv.

Answer B to Question 14

Quick v. Hospital

To determine Quicks rights, it must first be determined whether there was an enforceable contract.

Contract?

The argument in question was apparently specific as to the essential terms & there is no apparent problem as to mutual assent.

Considerations - Illusory

It might be contended that the contract was illusory since Quick could terminate with 10 days notice. Thus, no mutuality of obligations existed between the parties.

Modernly, courts find however that the mere fact that a party promised to give a specific length of notice (in this case 10 days) is sufficient consideration to bind the other party's promise. Therefore there is mutuality of obligations & the contract is not illusory.

Breach

Finding a valid contract, Hospital has apparently committed a breach by terminating it without sufficient cause. Hospital contends that the "merchandise was inferior" which, if true, would be a breach by Quick as the contract required "good quality."

However, there are no facts that the merchandise was inferior & since Hospital terminated after Self-Serv. offered 17%, it will be assumed that the termination was wrongful & was a material breach.

Specific Performance

Damages at Law Inadequate: It appears that Quicks remedy at law is inadequate. Hospital is the only hospital in the community. Damages would be very speculative since the court would have to predict Quicks profits for 3 years in the future. Undoubtedly, Quick could not mm prove his loss of earnings with any certainty as is required. Also, the machines were especially ordered for Hospital.

Feasibility: There are really no feasibility requirements problems here as Hospital is only required under the contract to provide space for Quick machines. There is no personal relation between Quick & Hospital.

Negative Mutuality: Quicks biggest problem lies with negative mutuality. Under this theory, the Pl. is not entitled to equitable relief if the Def. would not be entitled to it under converse circumstances.

If Hospital had sought to specifically enforce the contract, Quick could simply exercise his 10 day notice right to cancel & thus the court would be powerless to force Quick to specifically perform.

On the other hand, the Restatement view considered negative mutuality only in terms of whether the Def. will be assured of his counter--performance if he is forced to perform. The court could assure this by issuing a conditional decree compelling Hospital to perform on condition that Quick perform & not exercise his right to counsel. This would satisfy the mutuality problem.

Thus, specific performance should be available to

Quick. Negative Injunctions

If specific performance is not granted, the court should at least enforce the "exclusive vending," rights covenant of the contract.

Such a covenant is traditionally enforced if it has "independent value." Under the facts, it does have independent value since Self-Serv is a competitor of Quick. Therefore, the enforcement of the covenant has independent value to Quick in that it would prevent his competitor from obtaining profits which should have gone to Quick.

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opposite page)
Remedy at Law

Additionally, the remedy at law is inadequate as even if Quick could prove damages & with any certainty (which is doubtful), multiplicity of suits would be required for each breach of the covenant.

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Thus, the court should grant a negative injunction ordering Hospital not to give vending rights to anyone but

Quick.

Quick v. Self-Serv.

Interference with Prospective Advantage

Quick might have an action for this tort if it he can show that Self-Serv, without privilege, interfered with the potential profits it could have obtained from Hospital.

Under the facts, it is clear Self-Serv did interfere with Quicks potential profits from the Hospital. However, Self-Serv.'s action was probably privileged.

Competitors Privilege

A competitor is privileged to induce one to discontinue his business with another to & to buy from him.

So long as Self-Serv.'s motive was competition & not malice against Quick, the offer of Self-Serv. to give Hospital 17% rather than 15% was privileged. Thus Quick would have no 'action against Self-Serv. since the law favors competition over the protection of prospective advantage.

Inducing Breach of Contract

Though a competitor is privileged to interfere with another's pay prospective advantage, he is not privileged to induce a breach of contract.

Under the facts, Self-Serv. was apparently aware of the Hospital-Quick contract since it agreed to hold Hospital harmless from liability to Quick. Thus, Self-Serv.'s actions induced Hospital to breach its contract with Quick & Quick thus has a cause of action.

Remedy at Law

The remedy at law is apparently inadequate for the reasons stated above. Damages could be speculative & difficult for Quick to prove.

Property Right

Additionally, equity traditionally protects property rights. A contract right would seem to be a property right & therefore equity should act to protect it.

Feasibility

There are no feasibility problems here as the court could issue a negative injunction ordering Self-Serv. not to interfere with Quicks contract right. Presumably, the court could enjoin both Self-Selv & Hospital from enforcing the contract between them thus allowing Hospital to maintain its commitment to Quick.

