

February 1990 Question 6

Joe had a wealthy brother, Steve, who owned an aging, unoccupied house situated on a large tree-covered lot. Joe asked Steve if he would sell the property and, if so, at what price. Steve replied that he would not sell, but would let Joe have possession of the property free of charge if Joe would maintain it. A few days later, Joe wrote Steve and asked permission to go on and take possession of the property for the purpose of making the substantial repairs and renovations necessary to make the house habitable and to take up residence there. Steve wrote back: "Of course you may go on the property we discussed. I promise that if you make the house habitable, it is yours for at least the next ten years."

Over the next several months, Joe spent more than 300 hours of his free evenings and weekends working on the house, expended \$6,000 for materials, and paid out another \$5,000 for plumber and electrician help. Joe often slept overnight at the house on occasions when he worked late.

Just as the house became habitable and ready for Joe to take up permanent residence on the property, Steve told him that Buyer had offered \$200,000 for the house for immediate possession, that Steve had accepted Buyer's offer, and that Steve would compensate Joe for his out-of-pocket expenses (\$11,000) but not for his time and labor. The rental value of the property, as restored by Joe, is \$800 per month, and Joe's time is worth \$15 an hour.

What are Joe's rights and remedies? Discuss.

I. Valid Contract

The first issue to decide is whether a valid and enforceable contract was entered into by Steve and Joe. To have a valid contract there must have been mutuality of assent, an offer communicated to an identified person, creating the power to accept and the other person executing that power, all for valuable consideration.

A. The first contact between Joe and Steve was an inquiry by Joe to see if Steve's land was for sale. There was no offer to buy, merely an inquiry.

Steve replied that he would give Joe the property if he would maintain it. This was an offer of the property in exchange for Joe's promise to maintain.

Joe, without expressly accepting, asked if he could go on the property.

Steve then wrote that he could and further promised that if Joe made the house habitable, it would be Joe's for at least 10 years.

This was a unilateral contract offer that if and when Joe made the house habitable, he could live there for free for 10 years.

Joe did not accept by promise, rather he chose to accept by performance. He then moved on the land and made the house habitable.

Rule:

At this point there is a valid contract with Steve's duty to perform matured. No notice is necessary to accept a unilateral contract unless the offeror would not know of the acceptance. Here Steve would probably know so Joe would not have to give him notice of acceptance.

Consideration

There is valuable consideration if both parties incur a legal detriment - do something they are not legally obligated to do.

Here both Joe and Steve incurred legal detriments. Steve did not have to give the land to Joe and Joe did not have to work to make the house habitable.

Since both parties incurred a detriment, there was valuable consideration. Statute of Fraud

Steve may claim that the contract was not enforceable because this is a contract involving an interest in real property and such contracts must be in writing and signed by the party against whom the contract was to be enforced.

To satisfy the Statute of Frauds the writing must contain the subject matter of the contract, here a description of the land, the name of the parties, the consideration and be signed by Steve.

The consideration was in writing in Steve's letter. Any writing will suffice. Additionally,

the parties are identifiable.

Assuming that the letter was signed by Steve, only a specific description of the property was not included. However, both parties knew what was being referred to, so this should not be a problem.

Promissory Estoppel

Even if the writing did not satisfy the Statute of Frauds, a party is estopped from asserting it as a defense if the other party has detrimentally, foreseeably and reasonably relied on the promise.

With land that is satisfied by possession and improvements, it would seem that Joe satisfied that by putting in 300 hours and occasionally sleeping there.

Remedies v. Steve

Assuming there is a valid and enforceable contract, what are Joe's remedies?

A. Damages - Expectation - Breach

By failing to deliver the land for at least ten years, Steve has breached the contract. In a contract case damages seek to place a party in as good a position as if the contract had been performed. That is expectation damages.

If the contract had been performed, Joe would have lived rent-free for at least 10 years. The current rental value is \$800 a month. That would mean 12 months x \$800 x 10 years = \$96,000 of expectation damages for Joe.

For damages to be recoverable they must be certain, foreseeable, caused by the breach and unavoidable.

Here the damages are certain and not too speculative. They were caused by Steve's sale of the land which prevented Joe from living there. They were also foreseeable as Steve knew that Joe would live there for at least 10 years rent-free. They were foreseeable at the time of the contract.

The only issue is unavoidability. Joe has a duty to mitigate these damages. It would be unlikely, however, that he would find another place to live rent-free - so he couldn't mitigate these damages.

Therefore, Joe should be able to recover \$96,000 from Steve for damages.

B. Restitution - Labor

A court can use several remedies to prevent unjust enrichment. Under the

theory of quantum merit a court could award money to Joe if Steve has been unjustly enriched.

Steve will pay Joe's expenses. However, he has refused to pay the labor and services. Steve worked 300 hours and the cost of his services is \$15 an hour. Steve has been unjustly enriched for $\$15 \times 300 = \$6,000$. Joe should recover that.

In addition, Joe substantially improved the house, thereby increasing the value of the land. Steve was enriched by this when he sold the land to Buyer.

Joe should also receive in restitution the difference between the market value of the house now (\$200,000) and the market value prior to Joe's labor.

C. Specific Performance - Equity

Joe can also seek to have a court order Steve to specifically perform. To obtain specific performance a plaintiff must establish that: (1) Legal remedy is inadequate; (2) the contract was definite; (3) enforcement is feasible; (4) mutuality of performance; and (5) no defenses.

1. Because land is unique, legal damages are per se inadequate. Moreover, Joe has put a lot of effort into this home so it is even more unique for his needs and desires.

2. The contract is definite so as to be enforceable. The terms are that Joe live there for at least 10 years.

3. Enforcement is feasible if the land is in state or if Steve is subject to in personam jurisdiction. There is nothing to indicate that he is not.

4. The traditional requirement was mutuality of remedy; now it is mutuality of performance. The court wants to be sure that if it orders Steve to perform, Joe will also do so. That is not a problem, as Joe has already performed.

5. There are no defenses involved here - no laches or unclean hands. Specific performance of the contract should be available to Joe.

Joe v. Buyer

Joe would want to get an injunction against Buyer to stop him from moving in if there was a valid contract and Joe is legitimately on the premises.

However, an injunction is an equitable remedy and equitable remedies are cut off by bona fide purchaser. A bona fide purchaser is one who buys property for value without notice.

Clearly Buyer paid for the property. The only issue is whether he had notice.

Notice can be either actual, constructive, or inquiry. If Buyer inspected the land he may have had actual or constructive notice that someone other than Steve had rights in the land. However, Buyer may have reasonably thought that Joe was merely a contractor working for Steve.

Inquiry notice arises if there are papers filed or interests noted on deeds. There does not seem to be that here.

It is likely that Buyer bought the land without notice. If he had notice, however, an injunction would issue if certain requirements are met.

1. Inadequate remedy at law. Interest in land is unique and legal remedy is per se inadequate.

2. Property right is involved. While this requirement has eroded, it is met nonetheless here.

3. Feasibility - The court could grant a negative injunction to Buyer not to move in which the court prefers to mandatory injunctions.

4. Balance the hardships - The courts generally do this only in nuisance and encroachment cases.

5. Defenses - There is no laches here as Joe is acting quickly. The injunction, if granted would last ten years.

The activity that Joe would be trying to enjoin would be the tort of trespass. Here it would be trespass by ouster since Joe could not stay in the house if Buyer lived there.

If indeed trespass were found, Joe may be able to get the legal remedy of ejectment. That would seem unlikely here unless Buyer knew of Joe's interest and proceeded in disregard of it.

Another consideration may be that the contract established a landlord-tenant relationship allowing Joe, as tenant, to remain for an estate in years (10).

If so, Buyer would have to honor that tenancy.

ANSWER B TO QUESTION 6

Joe's rights and remedies against Steve depend on whether or not a valid contract existed between them.

VALID
CONTRACT
Statute of
Frauds

A contract which purports to convey an interest in land must be in writing. Joe is trying to claim he has a valid contract granting him an estate for 10 years in Steve's property. Such a contract requires a writing.

Joe wrote to Steve asking permission to go on the property. Steve wrote back telling Joe if he makes the house habitable it is his for the next 10 years. This writing, presumably signed by Steve, the party to be charged, will satisfy the writing requirement.

Possession and Improvements

If this writing is not sufficient, the statute of frauds requirement for land contracts can also be met where the party claiming under the contract can show possession and partial payment or improvements.

Joe spent 300 hours on the premises over a several month period and often slept there overnight. This is sufficient to show possession. He also spent \$11,000 making the aging, unoccupied house habitable. This constitutes improvements.

The Statute of Frauds is

satisfied. Mutual Assent

A contract requires mutual assent by the same parties to the same bargain. While Steve made a promise to Joe, the writings do not reflect that Joe assented to the bargain with Steve. A bilateral contract therefore was not entered into; i.e. the parties did not exchange mutual promises since Joe did not promise to do the work in exchange for Steve's promise.

Unilateral Contract

However, Steve's letter is sufficient to establish an offer to enter into a unilateral contract with Joe. Steve has promised to give Joe an estate for 10 years if he makes the house habitable. Joe can accept this offer only by performance.

Since Joe did make the house habitable, he accepted Steve's offer and a binding contract was formed.

Consideration

It would be difficult to argue that Joe did not give any consideration for Steve's promise since his improvements to the house constitute both his performance and sufficient (i.e. bargained for) consideration, but if that argument (of lack of consideration) is raised Joe can establish a consideration substitute through promissory estoppel.

Promissory Estoppel

Promissory estoppel requires reasonable reliance on another party's promise to one's substantial detriment. Joe can argue that he reasonably relied on Steve's promise to give him an estate for years. (His letter informed Steve of the work Joe proposed to do.) Because of his reliance he spent 300 hours and \$11,000 to improve the house. He therefore meets the requirement of substantial detriment, and consideration for Steve's promise will be found. Therefore a valid contract existed between Joe and Steve once Joe made the improvements.

Remedies

Steve has accepted an offer from Buyer to purchase the house for \$200,000, for immediate possession. Steve has entered a contract with Buyer and intends to breach his promise to Joe.

Joe's preferred remedy would be to enjoin the sale of the house to Buyer and get an order for specific performance from Steve.

Injunction

An injunction is an equitable remedy allowed when legal remedies are inadequate. If Joe can meet the requirements set forth below he can get a court order preventing Steve from selling the property to Buyer.

Legal Remedies Inadequate

Since land is unique, damages are considered to be inadequate in disputes involving land. Property Interest

At common law the dispute had to involve a property interest. Most courts today will grant relief regardless of whether a property or personal right is involved. Here land, a property right, is involved.

Feasible

This requirement involves the court's jurisdiction--can it grant the requested relief, and whether too much court supervision will be required. It should be feasible for the court to grant a negative injunction preventing Steve from consummating the sale.

Balancing Hardships

The court will balance the hardships to the two parties but leans heavily in favor of the plaintiff (here Joe). Since Joe has expended time and effort and Steve is merely aiming to take advantage of Joe's efforts to gain a profit, the balance leans in favor of Joe. (Steve said earlier he would not sell it to Joe.)

Defenses

Laches - No evidence of delay.

Unclean Hands - No evidence that Joe behaved improperly with regard to this

transaction. Sale to Bona Fide Purchaser

A sale to a bona fide purchaser cuts off plaintiff's equities. It is unclear from the facts whether the sale has taken place. If the closing has not occurred and Buyer now has notice of Joe's claim, Buyer will not be a BFP and Joe will win. If the sale has occurred and Buyer had no notice of Joe's claimed interest, Buyer will take the land and Joe will have to collect in damages or restitution.

If Joe can get an injunction he can also ask for specific performance.

Specific Performance (SP)

A valid contract must exist to request SP (see arguments above). Legal Remedy Inadequate - See argument under injunction - land unique. Definite Terms

Steve's letter to Joe gives a definite 10-year term to Joe. Feasibility

The court has jurisdiction and ordering a 10-year term, while it might require some supervision, should be feasible.

Mutuality

At common law mutuality of remedy was required. The court could not order Joe's performance here. Under modern law mutuality of performance is required - Joe has already performed.

Defenses - same as under injunction, turns on whether sale has been consummated. Damages

If Joe can't get an injunction or SP, he can try for damages on a breach of contract theory. He can claim expectation damages, damages which would give him the benefit of his bargain, i.e. a 10-year estate. The rental value is \$800 a month, so Joe could collect:

$\$800 \times 12 = \9600 as rent for the

term. Restitution

Joe can elect to sue for restitution damages, i.e. the benefit conferred on the defendant. Here he will claim either that he deserves the \$11,000 he spent, plus the value of his time

$\$300 \times 15 = \$4500 = \$15,500$

or he will claim the house greatly appreciated due to his work and that Steve therefore is gaining that benefit on the sale. Joe's best recovery after the injunction and SP would be restitution for the increased value of the house which is probably much more than \$15,500.