Question 3 -- Contracts

BAKERY v. APPLE

U.C.C.

A contract involving a transaction in goods is governed by the U.C.C.

Since the transaction involved the sale of apples, the transaction would qualify as a transaction of goods. Therefore, the transaction would be governed by the U.C.C.

Merchants

A merchant is a person who deals in the kind of goods involved in the transaction or otherwise holds himself out as having special knowledge and skill peculiar to the goods involved in the transaction.

Apple grows apples. Thus, it deals in the kind of goods involved in the transaction.

Bakery purchases apples in order to make bakery goods. Thus, Bakery holds itself out as having special knowledge and skill peculiar to the goods involved.

Thus, both parties are merchants under the U.C.C.

Valid Contract

A valid contract requires a showing of mutual assent and consideration.

Apple, an apple grower, entered into a written contract with Bakery for the supply of all of Bakery's apple requirements for a one-year period. Since the parties entered into a written agreement, there was mutual assent.

Therefore, mutual assent existed.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

Apple bargained for payment from Bakery in exchange for Apple's return promise to deliver all of Bakery's apple needs for one year. Bakery bargained to purchase from Apple all its apple needs for baking purposes for the next year in exchange for Bakery's return promise to pay $5,000 per month to Apple.

Thus, Apple incurred a legal detriment – delivering all of Bakery's apple needs – in exchange for a legal benefit – receiving $5,000 a month payment from Bakery for their apples. Conversely, Bakery incurred a legal detriment of making payments to Apple in exchange for the benefit of having all its apple requirements delivered by Apple for a one-year period.

However, Apple will argue that it does not have to supply any particular number of apples and thus the agreement is illusory and unsupported by consideration.

<u>Requirements Contract</u>

A requirements contract is one in which a buyer agrees to purchase all of its product requirements from the seller, in an unspecified amount, and the seller agrees to sell or supply that product, in the amount of the buyer's requirements.

Since Apple agreed to provide all of Bakery's apple requirements, Apple was obligated to deliver all of Bakery's monthly apple requirements for a one-year period. Bakery agreed to order from Apple all the apple supply they needed from Apples for a one-year period. Apple agreed and thus Apple must perform and supply Bakery with all Bakery's apple requirements for a one-year period even though the specific amount of apples needed is not stated.

Apple will argue that it was obligated to supply all of Bakery's apples. The courts will deem this to be a requirements contract and look to Apple and Bakery's intent to exercise good faith. Thus, there is consideration.

Therefore, this is a valid contract.

Having found a valid contract, Apple is contending that it assigned the contract to FruitCo which thereby released Apple from liability to Bakery.

<u>Assignment</u>

An assignment is a transfer of an existing right under the terms of an existing contract.

<u>Are the Rights Assignable?</u>

Contract rights are assignable if they are not too personal in nature, prohibited by contract, or prohibited by law.

Apple will contend the contract right to be assigned was the right to receive $5000 a month from Bakery. The assignment of receiving money is not too personal in nature to assign. On the other hand, Bakery will argue that the contract for the supplying of apples was entered into with Apple, and in return they promised to pay the money to Apple, not FruitCo. If they were required to pay a different party, their performance would be altered. However, payment to FruitCo instead of Apple would not materially alter the performance under the terms of the contract. The price for the apples and the time of payment would remain unchanged.

Therefore, the right to collect $5000 a month is not too personal in nature. Further, there are no facts that state the contract prohibited the assignment of the contract. In addition, the assignment of receiving money is not prohibited by law.

When Tom received notice of the assignment on 5/1/79 but failed to protest, he implicitly assented to the transfer and, thus, waived his right to enforce the clause.

Therefore, Apple had the power to assign its rights to FruitCo although it would remain liable for damages resulting from any breach under the terms of the contract.

Has There Been a Valid Present Assignment?

An assignment requires a present intention to transfer existing rights from the assignor to the assignee.

When Apple assigned its contract with Bakery to FruitCo, FruitCo undertook to deliver the requisite quantities for the remainder of the contract period. The act of FruitCo undertaking delivery, and actually delivering apples to Bakery shows that Apple, the assignor, had the present intent to transfer its existing right to receive Bakery's $5000 per month payment to FruitCo, the assignee. Bakery's act of notifying Apple and FruitCo, and asking them to guarantee they would still receive the quantity of apples they require each month indicates Bakery's present intent to allow an effective assignment.

Based on FruitCo's conduct of delivering apples and Bakery's conduct of accepting them extinguished Apple's right to the money and transferred the existing right to FruitCo. FruitCo has stepped into Apple's shoes and assumed all the rights of enforcement that Apple had prior to the transfer.

Therefore, there was a valid present assignment.

Delegation of Duty

A duty may be delegated unless the duty is too personal in nature, prohibited by contract, or prohibited by law.

Apple will contend the contractual duty to be delegated was the duty to deliver all Bakery's apple requirements for a period of one year, which was not too personal in nature to delegate.

Bakery will argue that the contract for the supplying of apples was entered into with Apple. FruitCo supply of apples are from a different orchard, and hence the apples would not be the same grade, texture, or taste. Thus, since the contract was entered into between Apple and Bakery the delegation of the duty to FruitCo alters the performance under the terms of the contract.

However, in this instance apples are essentially apples. Bakery has never complained about the quality or other attributes of the apples delivered by FruitCo. Thus, the delegation of the duty would not be a material alteration under the terms of the contract.

Therefore, the delivering of apples was not too personal to delegate to FruitCo.

Further, there are no facts stating that the contract prohibited the delegation of the duty or that the assignment of an apple supply contract is prohibited by law. Therefore, the contract was properly delegated to FruitCo.

Was the Duty Assumed by FruitCo?

An assumption of a duty takes place if a promise is given for consideration to perform another's duty.

Apple assigned its contract with Bakery to FruitCo. Fruit started to make deliveries to Bakery. Thus, by FruitCo's performance it has promised to perform under the terms of the Apple and Bakery contract. Therefore, the duty was assumed.

Demand of Adequate Assurances

Under the U.C.C. either party is entitled to demand adequate assurance in writing that performance will be forthcoming when due, if there is reasonable grounds that the other party is not going to perform.

Bakery sent a written demand for adequate assurance to both Apple and FruitCo asking then to guarantee that Bakery would receive the quantity of apples that they required each month. Since Apple delegated their duty to FruitCo, Bakery had some doubts about FruitCo's reliability because in the first two months FruitCo's deliveries were "substantially short of the quantity that Bakery required." Thus, Bakery's demand for assurance from Apple and Fruitco that a sufficient quantity of apples would be delivered every month was made in good faith. Neither party replied to the demand. Thus, Bakery may treat the failure to reply as a breach.

Apple will contend that although neither it nor FruitCo replied to the demand, Bakery accepted deliveries from FruitCo. However, while Bakery accepted the apples after sending the demand, any acceptance of delivery does not prevent the party form receiving an assurance for performance for future deliveries.

Therefore, the demand for adequate assurances is enforceable.

Breach

A breach is an unjustified failure to perform which goes to the essence of the bargain.

Bakery will argue that Apple's unjustified failure, albeit through FruitCo's failure upon delegation since , to supply the required amount of apples that Bakery needed in order to make their bakery goods went to the essence of the bargain.

Therefore, Apple's refusal to deliver the required quantity of apples that Bakery needed was a material breach of Apple's duty to perform.

Damages

Breach of contract entitles the non-breaching party to the expectancy under the terms of the contract.

Bakery will seek cover damages, which is the difference between the contract price and the fair market value. Based on the facts the contract price was $5,000 a month. Bakery had to contract for the supply of apple in the amount of $7,500 a month. Thus, the difference $2500 a month in extra charges to cover is Bakery's expectancy under the contract. In other words, Apple would have to pay Bakery the $2500 in excess charges so that Bakery would only incur $5000 per month in apple costs, the amount of its expectancy.

Hence, damages will be awarded to Bakery.

2. Bakery vs. FruitCo?

Having Found a Valid Assignment between Apple and FruitCo, Does It Raise Rights in Bakery as a Third Party Beneficiary?

Third Party Beneficiary

A third party beneficiary contract is one wherein performance by the promisor will benefit a third party. His status arises at the formation stage of the contract.

As part of its assignment and delegation with Apple, FruitCo agreed to deliver the monthly requirements of apples to Bakery. The performance of this promise was meant to fulfill FruitCo's pledge which would act to the benefit of Bakery, the third party.

Bakery's rights were created at the time that Apple assigned the contract to FruitCo. Bakery's status arose at the formation stage of the contract, i.e., the assignment and delegation.

Therefore, Bakery may have enforceable rights as a third party beneficiary.

Privity of Contract

Privity of contract is the interest or relationship which exists between two or more contracting parties.

FruitCo will assert that Bakery was not a party to the assignment and delegation and, therefore, has no interest or relationship in that contract upon which to sue since FruitCo made its promise to deliver apples to Apple, not Bakery.

Bakery will rebut that although it was not a party to the Apple-FruitCo assignment and delegation, privity is not required for it to assert its rights as a third party beneficiary under **Lawrence v. Fox**.

Thus, the lack of privity will not bar Bakery from asserting its rights.

Intent to Benefit

Intent to benefit is defined as the promisee's intent to extract a promise from the promisor to benefit a third party.

Bakery will contend that when Apple extracted FruitCo's promise to deliver all Bakery's apple requirements to Bakery, Apple intended to benefit Bakery. This promise was made at the time of the Apple-FruitCo contract which further demonstrates Apple's beneficial intent.

Classification - Creditor Beneficiary

If the promisee's primary intent is to discharge a duty owed to the third party, the third party is a creditor beneficiary.

Bakery will argue that Apple's assignment of the rights under the terms of the Apple-Bakery contract created a debt owed to Bakery. Apple believed the obligation to supply Bakery with all their apple requirements had to be satisfied as demonstrated by their agreement with FruitCo. When Apple contracted to have FruitCo supply all of the apples to Bakery, Apple intended to discharge its obligation actually owed to Bakery under the terms of the Apple-Bakery contract.

Therefore, Bakery would be classified as a creditor beneficiary.

Vesting

The Restatement Second states that the rights of any intended beneficiary vest when it has notice of and assents to the promise, or brings suit to enforce the promise or materially changes position in justifiable reliance thereon.

If the court should rule that Bakery was a creditor beneficiary, Bakery will argue that although it had no notice and did not assent to the Apple-FruitCo assignment contract, when it tendered a demand for adequate assurance from both Apple and FruitCo, such action caused a material change by which its rights vested as a third party creditor beneficiary.

Hence, Bakery can still sue Apple under the original obligation.

Conditions

Implied-In-Law – Constructive Condition Precedent

A condition is a fact or event the happening or non-happening of which either creates or extinguishes an absolute duty to perform.

FruitCo must supply Bakery with all of the apple requirements they need each month before Bakery's duty to pay arises.

Therefore, FruitCo's duty was a constructive condition precedent to Bakery's duty to pay.

Waiver

Waiver is a voluntary relinquishment of a contractual right.

Bakery will content that FruitCo was not supplying bakery with all of their apple requirements that were needed in order for them to fulfill their baking needs.

FruitCo will argue when it made substantially short quantity deliveries to Bakery, that Bakery accepted them. Hence, Bakery waived its right to the full amount of its apple requirements.

However, Bakery had no choice. Each month they had a required amount and FruitCo was not fulfilling that amount. Bakery had commitments and needed the apples that were supplied, although substantially less. Moreover, in demanding a guarantee that FruitCo would deliver the full amount of Bakery's requirements, it indicated that it was not waiving full quantity deliveries. Thus, no waiver occurred.

Anticipatory Repudiation

Anticipatory repudiation is an unequivocal expression repudiating the intent to perform a contract.

Bakery wrote a letter to Apple and FruitCo informing them that Bakery would no longer accept any apple shipments. Bakery's language is an unequivocal expression repudiating its intent to perform.

Therefore, Bakery's anticipatory repudiation would excuse Apple's or FruitCo's condition to supply the apples.

Voluntary Disablement

Voluntary disablement is an anticipatory repudiation through conduct.

When Bakery notified Apple and FruitCo they would not accept any more shipments of apples, and by its act of entering into a contract with Davis Farms to supply Bakery with its requirements for apples such conduct, demonstrated their anticipatory repudiation through conduct.

Therefore, Bakery's conduct would excuse Apple and FruitCo's condition to continue delivering the apples.

Breach

A breach is an unjustified failure to perform which goes to the essence of the bargain.

When Bakery wrote FruitCo telling them they would not accept any more apple shipments, it establishes an unjustified failure to perform going to the essence of the contract.

However, Bakery will contend that neither Apple nor FruitCo complied with the terms of the contract once the Apple-FruitCo assignment and delegation occurred. Therefore, it was FruitCo's major breach that gave rise to Bakery seeking a reliable source through Davis Farms.

Therefore, there was no major breach by Bakery.

General Damages

General damages are damages that flow from a breach of the contract. The non-reaching party is entitled to expectancy damages under the contract.

Bakery will seek cover damages, which is the difference between the contract price and the fair market value. Based on the facts the contract price was $5,000 a month. Bakery had to contract for the supply of apple in the amount of $7,500 a month. Thus, the difference is $2500 a month which is its expectancy under the contract.