

QUESTION 4

Steve owned two adjoining improved tracts of land, Parcels 1 and 2, near a lake. Parcel 1 bordered the lake; Parcel 2 bordered Parcel 1, and was adjacent to an access road. Steve decided to sell Parcel 1 to Belle. Belle admired five 100-year-old oak trees on Parcel 1 as well as its lakefront location.

On February 1, Steve and Belle executed a contract for the sale of Parcel 1 at a price of \$400,000. The contract specified that the conveyance included the five 100-year-old oak trees. In addition, the contract stated that Belle was to have an easement across Parcel 2 so that she could come and go on the access road. Although the access road was named Lake Drive, Steve and Belle mistakenly believed that it was named Top Road, which happened to be the name of another road nearby. The contract referred to the access easement as extending across Parcel 2 to Top Road, which would not have been of any use to Belle. The contract specified a conveyance date of April 1.

Later in February, Steve was approached by Tim, who offered Steve \$550,000 for Parcel 1. Steve decided to breach his contract with Belle and agreed to convey Parcel 1 to Tim. Despite Belle's insistence that Steve honor his contract, he told her that he was going ahead with the conveyance to Tim in mid-April, and added, "Besides, our contract is no good because the wrong road was named."

In March, Belle learned that, in April, Steve was going to cut down the five 100-year-old oak trees on Parcel 1 to better the view of the lake from Parcel 2.

1. What equitable remedies can Belle reasonably seek to obtain Parcel 1? Discuss.
2. What legal remedies can Belle reasonably seek if she cannot obtain Parcel 1? Discuss.

QUESTION 4: SELECTED ANSWER A

1. What equitable remedies can Belle reasonably seek to obtain Parcel 1? Discuss.

Equitable Remedies

Remedies are ordinarily split into two categories, equitable remedies and remedies at law. Equitable remedies are only available where a remedy at law is inadequate to repair the harm. Equitable remedies are decided by the judge whereas legal remedies are usually decided by a jury. Unlike legal remedies that usually only declare damages owed from the defendant to the plaintiff, equitable remedies are backed by the contempt power of the court. If a defendant fails to comply with an equitable order, she can be held personally in contempt of court. There are several equitable remedies that Belle may seek to protect her rights with respect to the land sale contract for Parcel 1 with Steve.

Temporary Restraining Order (TRO)

A temporary restraining order is a stop gap measure wherein a court can order a defendant not to act, or occasionally to act affirmatively, in order to preserve the status quo until a hearing on a preliminary restraining order can be heard. A temporary restraining order will only be granted where the plaintiff can demonstrate that (1) she will suffer irreparable harm without the order, (2) the balance of the equities between the plaintiff and defendant favors the order, (3) the plaintiff is likely to prevail on the merits of her claim. A temporary restraining order can be heard ex parte if the plaintiff demonstrates a good faith attempt to give notice or demonstrates good cause for not giving notice. A temporary restraining order is a time-limited measure, typically limited to ten days. In this case, Belle might seek a TRO to stop Steve from cutting down the trees on Parcel 1 and not to sell Parcel 1 to Tim or any other buyer.

Irreparable Harm

First, Belle must demonstrate irreparable harm. In other words, she must show that a remedy at law would be inadequate and, without this order, any further remedy would be inadequate. Belle can demonstrate irreparable harm with respect to the cutting down of trees because her contract specifically protects her right to the 100-year-old oak trees and the trees were important to her decision to purchase the property. If Steve cuts down the trees, they cannot be replaced by damages. It would take another 100 years to grow similar oak trees. Belle likely also can show irreparable harm regarding Steve's selling of the property. Belle seeks to enforce her contract to purchase the property. If Steve sells the property to another bona fide purchaser in the meantime, she will not be able to seek specific performance. Steve may argue that he is not planning to sell to Tim until mid-April; therefore a TRO is not necessary. However, Belle can reasonably argue that Steve is not acting in good faith and there is a possibility that he will expedite the sale in order to deprive Belle of her right to specific performance. Therefore, Belle can demonstrate irreparable harm.

Balance of the Equities

Next, Belle must demonstrate that the balance of equities tips in her favor. In other words, Belle must prove that the hardship on her of not receiving the TRO is greater than the hardship to Steve of the TRO. Belle will argue that if the trees are cut down or the property is sold, she will forever lose the benefit of her contractual bargain. Therefore, there is a strong equitable argument in favor of granting Belle the TRO. Steve will argue that a TRO is inequitable because he will lose the right to an improved view of the lake on his property and might lose his interested buyer. However, a TRO will only interrupt Steve's view for a short time if he is able to prevail later and Steve is unlikely to lose his buyer based on this short time-limited order and if he does, there are likely other buyers available. The court may also disfavor Steve's arguments because he is breaching his contract with Belle and therefore his equitable arguments are not as strong. As such, the balance of the equities tips in favor of Belle.

Likelihood of Success on the Merits

Belle must demonstrate that she is likely to succeed on the merits. Belle will be able to prove a likelihood of success on the merits. A valid contract requires offer, acceptance, and consideration and must not be subject to any valid defenses. The land sale contract signed by both parties demonstrates offer and acceptance and satisfies the Statute of Frauds. The contract provides for the exchange of \$400,000 for a parcel of land, which satisfies the bargained-for exchange requirement. The contract requires Steve to transfer the land to Belle and specifically protects Belle's rights to the five oak trees. Nonetheless, Steve has unequivocally plans to cut down the trees and sell to another buyer. As such, he has anticipatorily breached. If Steve receives notice, he may argue that the contract is not valid because of the mistake in the contract with respect to the name of the road. Such a mutual mistake, however, does not invalidate the contract. Therefore, Belle can establish a likelihood of success on the merits.

Preliminary Injunction

A preliminary injunction is a longer lasting pre-judgment equitable remedy. A preliminary injunction is a court order restraining the defendant from action (or more rarely, requiring the defendant to affirmatively act) to preserve the status quo. It lasts until there is a final judgment on the merits. The requirements for a preliminary injunction are identical to those for a temporary restraining order: (1) irreparable harm, (2) balance of the equities and (3) likelihood of success on the merits. However, a preliminary injunction requires notice to the defendant and a hearing.

As discussed above, Belle can demonstrate irreparable harm, balance of the equities, and likelihood of success on the merits. To receive a preliminary injunction, Belle will have to give Steve notice and the court must hold a hearing. Steve will argue that the contract is invalid because of the mistake regarding the name of the road for the easement and therefore, Belle is unlikely to succeed on the merits. But Belle can seek

reformation of the contract to correct that error. Even if she could not prevail on reformation, the mistake is only harmful to Belle; therefore Steve cannot void the contract on the basis of this mistake, only Belle can. Therefore, Steve's argument will not be successful. Belle will likely be successful in receiving a preliminary injunction pending the court's determination of Belle and Steve's right to Parcel 1.

Contract Reformation

Contract reformation is an equitable remedy wherein the court will correct an error in a written contract in order to conform the contract with the actual agreement of the parties. Reformation is most often available where there is an error in the contract on the basis of a mutual mistake or scrivener's error. A mutual mistake occurs where both parties intend the contract to reflect an agreement between them but, due to a mistake by both parties, the contract does not properly reflect this agreement.

Belle can argue that the land sale contract should be reformed to include an easement over Parcel 2 to reach Lake Drive rather than Top Road. She can demonstrate to the court that both she and Steve intended the contract to include an easement over Parcel 2 to reach the access road adjacent to Parcel 2, which is Lake Drive. Both Steve and Belle mistakenly thought that the adjacent access road was called Top Road. Therefore, she can demonstrate the proper elements of mutual mistake to justify the reformation.

Steve will argue that the parol evidence rule bars extrinsic evidence related to the contract where there is a written contract. This argument will not be successful because the parol evidence rule does not apply in cases related to contract reformation. Belle can successfully seek reformation of the contract.

Specific Performance

Next, Belle will seek specific performance of the contract. Specific performance requires the defendant to actually perform under the contract rather than pay legal damages for the breach. Specific performance is available where there is (1) a valid contract, (2) that is sufficiently definite in its terms, (3) all conditions have been met for defendant's performance, (4) that there is no adequate remedy at law, (5) enforcement is feasible and (6) it is not subject to any equitable defenses.

As discussed above, Belle has a valid contract for the sale of the land for \$400,000. There are no valid defenses as Steve's theory on the basis of mutual mistake fails because Belle can reform the contract and he cannot invalidate the contract on the basis of a mutual mistake that only injures Belle. The contract is sufficiently definite. The contract clearly describes the parcel of land to be sold (with the oak trees intact), the parties, and the price and payment information. Finally, Belle must be prepared to pay the purchase price to satisfy the condition of Steve's performance.

Belle has no adequate remedy at law. Every piece of land is unique. Therefore, land sale contracts are per se unique and damages are per se inadequate for a buyer (and seller under the theory of mutuality of remedies). As such, Belle can easily establish inadequate remedy at law. The enforcement of specific performance here is certainly feasible because it only requires a single transaction. Courts are hesitant to grant specific performance for repeated transactions and will never allow specific performance for personal services. But these concerns are not present; enforcement is feasible.

Finally, there must be no equitable defenses, specifically the defenses of laches and unclean hands. The defense of laches bars specific performance or other equitable remedies where the plaintiff has unjustifiably delayed in bringing the action and the delay prejudices the defendant. There is no indication that Belle has delayed since she will bring this action before the closing of the contract was even due. There is no prejudice to Steve. The defense of unclean hands bars specific performance where the plaintiff is guilty of some wrongdoing, even if not technically a breach or illegal act, in

relation to the transaction. In this case, there is no suggestion of any wrongdoing by Belle. The only mistake she made with respect to the contract was entirely unintentional and innocent. This defense does not apply. Belle can seek specific performance of the contract.

If Steve cuts down the trees, Steve may argue that he is excused from specific performance of the contract because it would be impossible for him to perform the contract. However, where complete performance is not possible, a plaintiff seeking specific performance can still seek specific performance of the contract to the extent possible and seek abatement of the purchase price based on the damages from incomplete performance. Therefore, even if Steve cuts down the trees, if Belle still wants the property, she can seek specific performance and request that the court value the trees and abate the price accordingly. Of course, Belle will have to establish the value of the trees with reasonable certainty, which may be difficult given the intangible aesthetic benefit of the trees.

2. What legal remedies can Belle reasonably seek if she cannot obtain Parcel 1?

Expectation Damages

If Belle does not obtain Parcel 1, she can seek legal remedies instead. A land buyer's legal remedy for the seller's breach of contract is ordinarily expectation damages. Expectation damages seek to put a non-breaching party in the same position they would be in but for the breach. In land sale contracts they are calculated by the difference in the fair market value of the land and the contract price for the land. In this case, Belle needs to establish the fair market value of the land. A reasonable estimate for that might be the recent offer from Tim for \$550,000. Therefore the difference would be \$150,000 (\$550,000-\$400,000). Belle is entitled to the return of any deposit and \$150,000 in damages, that will put her in the same legal position as if the contract was performed.

Belle may also seek consequential damages that arise from the breach if they were reasonably foreseeable. Since it is unclear what Belle bought the property for, it is unclear whether or not she could prove any consequential damages. If she was purchasing for a business purposes, she may seek to prove lost profits from the delay in finding a new property. Any lost profits claim would be limited by a defense of foreseeability and reasonable certainty.

Reliance or Restitution Damages

Where a buyer is unable to prove expectation damages, perhaps because the market price is below the contract price, a buyer can seek reliance damages for the breach. Reliance damages seek to put the buyer in the same place she was before the contract was made. Most often in land sale contracts, the reliance damages are the out-of-pocket expenses including any down payment or earnest money paid to the seller. Where a seller breaches in good faith, for example because he is unable to deliver marketable title due to no fault of his own, a buyer may also be limited to her reliance damages. In this case, expectation damages are appropriate because Belle can prove that the fair market value is greater than the contract price and Steve's breach was not in good faith.

Finally, restitution damages are available where other remedies are inappropriate and inadequate and the defendant has been unjustly enriched by this action. In this case, restitution damages would include the return of her down payment. If Steve actually sells to Tim, they may also include the additional \$150,000 in profits that Steve gained from breaching his contract with Belle and selling to Tim.

The most typical defenses available to damages in contract cases are failure to mitigate damages or uncertainty. In this case, neither will apply. There is no evidence that Belle failed to act in any way that ran up her damages and by seeking the difference in fair market value and the contract price, the damages are reasonably foreseeable.

QUESTION 4: SELECTED ANSWER B

1. Equitable Remedies

The issue here is what equitable remedies Belle may seek to obtain Parcel 1.

Temporary Restraining Order

A temporary restraining order ("TRO") is an order from the court requiring, or forbidding, the nonmoving party to take an action, while the nonmoving party seeks a preliminary injunction. The purpose is to preserve the status quo pending a decision on the motion for a preliminary injunction. To obtain a TRO, a plaintiff must show (1) that, without the TRO, she will suffer imminent irreparable harm, as balanced against the hardship that the defendant will suffer from the issuance of the TRO, and (2) a likelihood of success on the merits. A plaintiff may seek a TRO *ex parte* - that is, without notice to the nonmoving party - if, in addition to showing a likelihood of irreparable harm, the plaintiff shows a strong showing for why notice could not be practically provided, or why it should not have to be provided (for example, if issuing notice would cause the defendant to take the action causing irreparable harm). A TRO is only available for up to 10 days (or 14 days, under the Federal Rules of Civil Procedure).

Irreparable Harm

Here, Belle purchased the property from Steve in part because they contained the five 100-year-old oak trees. If Steve cut them down, it would prevent Belle from enjoying their presence on the property. Because they are so old, they could not be readily replaced; instead, should she have to plant new ones, she would need to wait 100 years to have comparable trees on the property. Thus, she would suffer irreparable harm should Steve cut them down.

Moreover, Belle would suffer irreparable harm if Steve sold the property to Tim. If Tim did not know about the prior contract (that is, if he was a bona fide purchaser for value), and Steve sold him the property, the sale would be valid, and Belle would not be able to recover the property. Even though the conveyance to Tim will not occur until mid-April - and thus, is not scheduled to occur until after the 10-day TRO would dissolve - Belle would successfully argue that the TRO is still necessary to prohibit Steve from accelerating the sale in light of the pending litigation.

In contrast, there is no similar risk of harm to Steve. Regardless of the outcome of the litigation, Steve is either going to sell the property to Belle or to Tim in April. Preventing him from cutting down the trees will only obstruct his view of the lake for a period of less than two months, which is a minor inconvenience at most. Moreover, he will not suffer irreparable harm if he cannot convey the property immediately to Steve.

Thus, Belle would show the irreparable harm required for a TRO.

Likelihood of Success on the Merits

Belle would also be able to show a likelihood of success on the merits. Steve and Belle appear to have a valid contract, and Steve has breached the contract. Moreover, Steve's defenses here are limited.

First, under the Statute of Frauds, contracts for the conveyance of land must be in writing and signed by the party against whom enforcement is sought. The facts suggest that the contract was in writing, but they do not say so expressly. To the extent that the contract was not in writing or signed, Steve might raise the Statute of Frauds as a defense. But, because the facts suggest a writing, this is unlikely to be successful.

Second, Steve might argue that the contract is void because of the parties' mutual mistake. A contract is void for mutual mistake if both parties were mistaken to a material fact and the party seeking to invalidate the contract did not bear the risk of

mistake. Here, even though the parties made a mistake in the writing, they both subjectively understood which road was meant to be included in the contract; and, in any event, as the property owner with superior knowledge, Steve likely bore the risk of mistake. Thus, Steve's defense would likely fail. Belle would likely succeed on the merits.

Conclusion

Belle can seek a TRO to stop Tim from cutting down the trees and conveying the property to Tim.

Preliminary Injunction

A Preliminary Injunction ("PI") is an order from the court requiring, or forbidding, the nonmoving party to take an action, in order to preserve the status quo pending trial on the merits. The test for a PI is similar to that for a TRO. A plaintiff must show (1) that, without the PI, she will suffer imminent irreparable harm, as balanced against the hardship that the defendant will suffer from the issuance of the PI, and (2) a likelihood of success on the merits. Unlike a TRO, however, a PI may not be issued ex parte.

For the same reasons described above, the court would grant Belle a PI pending trial.

Specific Performance

Specific performance is an equitable remedy that requires the breaching party to perform his or her obligations under the contract. To obtain specific performance, a plaintiff must show (1) that there was a valid contract with sufficiently certain terms, (2) that the plaintiff performed or was able to perform her obligations under the contract, (3) no adequate remedy at law, and (4) feasibility of enforcement. Also, specific performance is not available if the defendant has any equitable defenses.

Valid Contract

To be sufficiently definite, a land sale contract must identify the parcel to be conveyed, the purchase price, and the parties. Here, the contract specified all three. Moreover, as described above, the contract appears to be valid and Steve does not appear to have any defenses to formation. Thus, the first prong is met.

Performance

Even though Belle has not yet paid the purchase price, there is nothing in the facts to suggest that she is not able or willing to fulfill her obligations and pay the contract price. Thus, the second prong is met.

Inadequate Remedy at Law

Under the law, all land is considered unique. Moreover, here, the parcel had unique features - it was near a lake and had 100-year-old oak trees. It would be impossible for Belle to obtain another identical parcel. Thus, simply awarding her monetary damages would not be an adequate remedy. She has no adequate remedy at law.

Feasibility of Enforcement

Requiring specific performance here would be feasible. It is not clear whether the parcel is in the same state as the court but, in any event, the court has personal jurisdiction over Steve and can require him to convey the property to Belle. Thus, enforcement is feasible.

Defenses

In some cases, a court will not award specific performance if it will result in undue hardship to the defendant, resulting from the plaintiff's sharp practices. Here, Steve

might argue that he would suffer undue hardship if he cannot obtain the value of his separate bargain. But he has not shown any sharp practices by Belle, and simply forgoing another opportunity is not a sufficient hardship to constitute a defense to specific performance. Thus, Steve does not have any defenses to specific performance.

Conclusion

Belle can obtain specific performance and require Steve to sell her the property.

Reformation

Reformation is an equitable remedy where the court will reform the terms of the agreement to reflect the true understanding of the parties. It requires (1) a showing of the mutually-understood contractual terms and (2) valid grounds, such as a mistake in rendering the contract to writing. Parol evidence may be used to show the existence of such a mistake.

Here, even though the contract identified the easement as giving Belle access to "Top Road," this was plainly not the true understanding of the parties. The parties both believed that the contract was giving Belle an easement to access the road known as "Lake Drive." Thus, there was a true meeting of the minds here and a court would be able to use parol evidence to determine that this was the true intent of the parties. Thus, the court would reform the contract to substitute "Lake Drive" for "Top Road."

2. Legal Remedies

The issue here is what is the appropriate measure of damages, should Belle not be able to obtain equitable relief.

The standard measure of contract damages is the expectancy measure. The purpose of contract damages is to put the non-breaching party into the same position she would have been in had the contract been fully performed. In a land sale contract, the expectation measure is the difference between the contract price and the fair market value of the property at the time of sale.

Here, Tim offered to purchase the property for \$550,000. The fact that a buyer was willing to pay this price is strong evidence that it is the fair market value. Accordingly, should Belle not be able to obtain specific performance, she would be able to obtain monetary damages from Tim totaling \$150,000 - the difference between the contract price and the fair market value. She would also be able to obtain any incidental damages resulting from the breach (for example, the transaction costs of cancelling the sale).