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Answer-to-Question-_1_

Essay Answer: Remedies

Specific performance:

Let's say that it is Anne's desire to live and remain in the house--after all, Earl's parents did agree that she and her soon to be ex-husband could live in that house for as long as they wished.

In order to even get to specific performance, a contract would have to exist in the first place. The parents would argue that any agreement they had could not stand because the agreement to use the land was an oral agreement in violation of the statute of frauds. Thus, the agreement would be void. However it is true that the agreement violates the statute of frauds, Anne could argue that promissory estoppel had come into play in this situation. Estoppel will occur where a promisor made a promise or set of promises, and the promisee reasonably relied on the promise. Since execution of the agreement had already taken place with Anne living there with her husband, Anne reasonably relied on the promise made by Earl's parents that she could stay in the house for as long as desired. The parent's could likely argue that even if promissory estoppel comes into play, it was not reasonable for Anne to believe that she could live on our property and in that home if she were to get a divorce with Earl. Parent's may likely win on this point because it is probably unreasonable for Anne to believe she could just keep living there after divorcing Earl. The reasonableness though is a fact question, and evidence may be brought to sway the reasonableness

of this belief.

If there is at least a contract under a theory of promissory estoppel, Anne may try to move to have the execution of the contract be done by specific performance. Specific performance is an extraordinary remedy that should be used only with great caution by a court of equity. It is not the norm, and generally will only be awarded where there is not an adequate remedy at law. Generally, courts do not love ordering people to execute an agreement by specific performance because often a losing party may not execute their bargain faithfully if forced by a court, and courts generally do not like restraining someone's personal liberty in such a manner to force them to do something.

Specific performance in this instance is highly unlikely. Though land, property, and its inherent uniqueness is sometimes a way to push the court to be more open for specific performance. However, Anne does not own this home free and clear in the first place. Second, she likely has an adequate remedy at law by receiving the value of the home and the labor she put into erecting this structure on the parent's land. plus, the it would be unreasonable for a court to let Anne stay on the land of Earl's parents. Such an action would be an abuse of discretion in equity because Anne would not be a pleasant co-tenant to have on Earl's parents land.

Though Anne cannot likely stay there forever, Anne has a good shot of getting some preliminary relief and perhaps some temporary injunctive relief to stay in the house for a reasonable amount of time.

Anne might ask for a preliminary injunction in order to allow her to stay in the house until the litigation is all said and done. In order to get a preliminary injunction, Anne must prove that she has a substantial likelihood of success on the merits, that without it she would suffer irreparable harm, the court must

balance the hardships of both parties, and the court must examine what effect the preliminary injunction would have on the public interest.

Anne has a substantial likelihood of success on the merits to recovering a fifty percent interest in the house she built with Earl. Not only did she build it, but she also has a fifty percent community property interest in the land. Though the parent's might concede that, the parent's may argue that despite her interest, she does not have free and clear title on that house-- the house clearly sits on our land and she does not have the house totally to herself--- she kicked out our poor son after all! Considering the preliminary stages we are in and the temporary nature of the preliminary injunction, the court may rule that though she does not have a substantial likelihood of success on the merits of winning the house outright, she has a substantial likelihood of getting a temporary injunction to stay in that house for a reasonable amount of time. Therefore, it is likely she could win a temporary injunction, and therefore stay in the house within reason until the litigation is done.

what is permanent relief? who does permanent relief, cannot get temporary relief.

The next prong that she will have to come is the irreparable injury. The injury must be substantial and real and imminent and not too speculative. Anne has a very good irreparable injury argument because she could make the argument that she would be thrown on the street if I do not have a house to live in. Let's assume she has no friends or relatives, then the harm would be even greater. Parents would come back with evidence that she could stay at the Flying J, or she actually does have family members to stay with. However, I think Anne's argument of irreparable injury is high because she should not have to be homeless until we are trying to figure out how much money Anne could receive from this divorce.

Next, the court would have to balance the harms. Anne would

present again her substantial injury she would have to face if she were to be kicked on the streets---pretty heavy burden. The parent's will come with how prejudicial it is for them to keep catering to this moocher and it is highly prejudicial and unfair for them to have to house someone on their land they do not want. However, Anne would come back with evidence of the fact that Anne has lived there for a long time and the parent's and I got a long just fine. It is not like Anne lives in the same dwellings, but rather a remote distance away from the parents. Anne might be able to sneak this prong out because of the heavy harm she faces, and the fact that it is more substantial than the harm suffered by earl's parents.

The final prong is the ublic interest prong. The only plausible public interest arguement could come from the parents and the idea that it should be strong public policy to allow tresspassers to be excluded from porpety that is rightfully theirs. However, the court ould limit Anne's little longer extended stay limited to this sitation and these facts.

If Anne is sucessful, she should expect to have to put up some sort of bond unless it is waived or the court feels like no money would be adequate. Anne would likely have to put up some bond money---but the limited relief sought makes this an interesting amunt required for the bond. Perhaps, the fairest bond number would be rent for x amount of months for how long the litigation and preliminary injunciton would last plus costs and interests to the defednant...

If Anne has reason to believe that there is an expectancy that she is going to get kicked out within the next week so by the parents, and there is immediate threat that Anne would be kicked to the street, Anne may want to seek an ex parte TRO or a TRO with notice.

Ex parte TRO's are not the norm because we generally like to give notice of court actions against someone. However, an ex parte TRO can occur where an extraordinary remedy is needed to protect a party's rights.

In order to get an ex parte TRO, the plaintiff must submit a complaint and an affidavit that shows the irreparable harm, the attorney must certify what efforts were made to contact the other party, and the court must give reasons why it is giving the ex parte TRO. See Rule 65(b). An ex parte TRO is probably not likely because I imagine notice would be straight forward. The notice requirement for a regular TRO is very low and only needs to give adequate notice under the circumstances. In other words, a simple phone call and a notice for a hearing in the next few days is enough. Considering that the defendant would be more prejudiced by an ex parte TRO than any benefit Anne could receive from one, an ex parte TRO is not likely.

However, if there still is a need to move quickly and notice can be given, then a regular TRO could be pursued. A TRO is almost exactly like a preliminary injunction, except the hearing is shorter and relief can only be given for up to 14 days including weekends. Generally, after a TRO hearing, the party wanting a preliminary injunction would move for one right after a TRO expires. If Anne could prove the same elements as the preliminary injunction requirements, she could likely get a quick 14 day relief from getting booted out of that house.

permanent injunction:

In order to get a permanent injunction, generally a plaintiff must prove that she will suffer irreparable injury, that there is no adequate remedy at law, balance the hardships of the parties, and analyze the public interests involved. When a plaintiff seeks a permanent/temporary injunction, they should do so by

Balance same as temporary relief.

specifically tailoring the injunction to give enough relief as needed without being greedy and expecting too much. Therefore, I would proclaim that Anne needs to ask for a temporary injunction to stay in the house for a reaonsable amount of time until she can move out, get a job, and collect money from possible allimony coming her way.

In Navajo Academy, a trial court granted the Navajo school a three year perios to vacate the premises in order to let that school find a new shcool elsewhere. It was decision based on promisorry estoppel principles while adhering to principles of equity. Here, Anne has a similar arguemnt to that of Navajo Academy. She was promised to be able to live there for as long as she wanted. But then, a divorce happened and she will have to move out now. it is reasonable for the parents to let Anne stay in that house for six months to a yrea (or whatever may be reaonsable depending on the cirucmstances) in order to find a new place to live. After all, Anne made it her home and put a lot of time money and energy into the building , much like the navajo school did to their building. The beauty of equity is the courts ability to tailor a remedy to the apticular situation. Since six months to a year should not be too burdensome on the parents, Anne should be granted a temporary injunciton that mirrors that of Navajo Academy.

Therefore, Anne should consider backing her bags and wishing that house good bye. However, this does not mean that Anne cannot get some money back from her home on Earl's parents land and some other options to her are available.

Anne's unjust enrichment claims:

Since Anne should likely not expect to stay in that house forever, she should seek some money damages for the enrichment

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she gave to the land of Earl's parents.

Earl's parents are claiming that they own the house---that is somewhat true. The house is built certainly on their land, and they can do what they wish with the land. however, due to the actions of Anne (and her ex husband) Anne has enriched the land and it would be unjust for Anne not receive compensation for th work she put into that house.

Enrichment is simply a benefit enjoyed by a defenant that can be attributed to the plaintiff. Earl's parents did in fact recieve a benfit and did not give anything in return. (though they may argue that this was like a landlord tenant relationship, anne could argue that this was not like a L/T relationship because we built the dang house ourselves).

One remedy that could be sought is that similar to Somerville, where a building was mistakenly put on a defednatns land. The court made the remendey where "the defedant coulff either pay the plaintiff the value of the inrease of the land or the painfff could pay the defednat 2000 for the land and then the paitnfff would own the land outright." Here, that would mean that the parents could either buy the house out right for 75,000 and have the land out right with the uilding. Or Anne could buy the land for 25K and keep the house.

Ann & Earl

I do not believe either party would agree. First, Sommerville was an innocent defednat case, whereas here, you have at least arguably a promissory estoppel case where it is claimed that earl's parents breached their promise to anne to stay at that house. Also, Earl would likely object to such an arrangement, unless he could secure 37,500 from anne (half the house worth) so that he can get his share in the divorce. Yet, if you have willing parties, the remedy that was drawn up in sommerville might be an advantageous pick. Anne could buy the land, buy out

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her husband and stay in her house, the partentst could have the house, buy out their son, and have their land with a new home on it.

Anne should argue that new property on the land has increased the value of the land by 75K. Therefore she should be entitled to 75k from earl's parents due to the enrichment they have recieved from the house. however, earl's parents will want to call for an off-set of 50% that goes to Anne since Earl, their son, has a 50% interest and therefore reducing the amount they owe to Anne to \$37,500. This is likely that amount that should be awarded to Anne in an unjust enrichment claim. Even if she proves that the partents were wrongdoers by breaking a promise (whihc in my opinion is unlikely because anne should not have expected reaonsably to stay there after divorcing earl) anne should only receive the services and resources she expended towards the house. The parents would likley only want to pay \$37,500 to Anne even though they were enrchied by 75K, because they would likely reather give their son earl the other \$37,500 rather than all of it to Anne.

Anne would want to go after her \$25,000 in materials she put into building that house as part of her unjust enrchiedment claim. Much like the increase in value of the house, this claim would likley be split in half because Since we are in a community property state, we shall assume that the 25k that was put into the construction of the house was 1/2 of 25 k making it 12,500.

The materials used were likely reaonsable and thus, Anne should entitled to 12,500 unless the parents can prove that the material used was outrageously expensive and were well beyond the aomunt that should have been used to erect the house. Thus, Anne did not do her duty to mitigate ("duty to mitigate is not an artful term because there actually is not a duty on party to mitigate, but rather, an expectancy that if a party does not do

*Just
Denny*

something to lessen the damages, that party should not expect to recover damages they could have mitigated).

Anne should go for the labor she expended into erecting her house with her son. She would have to prove this with reasonable certainty. It is very impressive that Earl and Anne built a house just by themselves, so I am going to assume that Anne is pretty talented in construction/carpentry. Anne should be able to recover the labor and time she put into building this house. She would need to prove how many hours she put into building that house and whether that amount of time is reasonable (likely a high number of hours would be reasonable because only two people built an entire house). Then she would have to show with certainty what normal construction workers in that geographical location would receive as a reasonable salary for such a project. The proof on this seems straightforward, but I wonder if she could be able to prove higher than a regular construction worker on a big crew, because she built this house with one other person, and it seems reasonable to me that a very highly trained skilled worker would be needed to build a house with just one other person. Next, Anne might be able to prove some costs of expenses not associated with construction material (from the 25k). Perhaps she used her own tools and she could recover the rental value, maybe she used a lot of gas in her truck to get to and from home depot. Finally, Anne might be able to prove that she wore the hats of many different types of construction workers. Maybe she did the plumbing, heating, carpets, windows etc. and each of those tasks would normally be conducted by numerous individuals all at different rates. So rather than just giving a simple flat rate, she might be able to increase her rate for hours she spent doing more expensive jobs than others.

Of course, I say all of this with the point of emphasis that all of these need to be proven with certainty and cannot be made by speculation.

Further, Earl's parents will continue to argue that costs could have been avoidable, and things could have been done cheaper. Also, every wage that she claims cannot be the wage of Bob Villa but that of a wage of an average worker in that area. Further, If Anne wants to play the fluctuating wages game, they could show that a lot of clean up work and stuff like that would only be entitled to low skill workers wages during those times.

Further, some damages brought may be considered too remote such as Anne's gas used claim because it would be impossible to improve just exactly how much gas was used for work versus gas used for other things. Thus making that award and similar examples too remote to work for certainty of damages.

Special damages:

If Anne could be successful in her promissory estoppel claim, and that the parents breached their promise to let Anne stay for as long as she wanted, Anne might be able to collect some special damages when she gets booted out of her house. For example, say the injunctons were not successful, so Anne had to go rent a hotel while finding a new home. Though the breach of the promise does not naturally arise to these sorts of damages, these were special damages that the breaching party could have contemplated at the time of the agreement.

In order to get special damages, damages sought must have reasonably been considered and in contemplation of each party at the the time of the contract was entered. Anne might have a heck of a time getting over the Hadley rule. There are three basic tests for the Hadley rule: tacit agreement where the party must almost affirmatively agree to a certain type of damage, the UCC where consequential damages are ok where the seller should have known the buyer could suffer the losses at issue, and the

*Does
Hadley
rule apply
to a prom.
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restatement stance where the plaintiff may not recover consequential damages where the defendant cannot see that the loss was a probable result of the breach.

Of course, the parents would want to argue that the tacit agreement should apply since it is the strictest. Yet, many courts today have rejected such a strict test of foreseeable special damages. Of course, Anne would advocate for the restatement where as the consequential just need to be foreseeable. Generally, more courts take this approach and leave this to a foreseeable test.

Using the restatement test (I'll assume Earl's parents win if the tacit agreement test is used since they no way could have agreed to reasonable lodging for a breach of their promise to let her stay on their land) Anne would argue that it would be foreseeable to imagine that if the parents kicked Anne off the land, Anne would have to seek lodging elsewhere--especially if it is for a reasonable amount of time thereafter the breach. However, the parents will say that at the time of this promise, it was highly unforeseeable that these kids would get a divorce--and even if divorce was foreseeable, it was not foreseeable that Anne would need to seek housing if she was asked to leave. Even if it was foreseeable that kicking her out would lead to lodging damages as consequential damages, Anne could prudently mitigate these damages by staying at her parents house for free--she shouldn't go to hotel after all because sensitive divorced ladies should be around their mothers to complain and not stay alone in weird hotels where they could flirt with creepy guys at the holiday inn hotel bars.

Of course, all this analysis is only supported if Anne somehow pulls off her promissory estoppel claim which is really weak because it is not reasonable for her to expect to stay there after a divorce, and the reliance probably isn't that

detrimental because Anne probably has somewhere else to live like mom's house or something like that.

Summing up, Anne should get 37,500 plus 12,500, plus reasonable labor costs for the unjust enrichment to parents. A temporary injunction may be likely where she is allowed to stay on the land for a little period of time until she can get back on her feet, and she should at least move for prejudgment interests, post judgment interests, costs and any other equitable relief the court may deem fit and proper. she has a so-so chance of a tro if there is a need to move quick, a decent shot at a preliminary injunction if she can prove the elements to be able to stay on the property until the litigation is over.

- constructive trust
- equitable lien
- confusing at times
a little whether discussion
in for deals with
damages or restitution

why both?