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Answer-to-Question-\_1\_

Injunctive relief

A party may get a preliminary injunction to stop the other party from performing some harmful action before the court gives a final judgement. The party seeking the injunction must prove: 1) a likelihood of success on the merits; 2) irreparable injury to the plaintiff; 3) Harm to defendant compared to harm to plaintiff; 4) granting the injunction will not be harmful to the public. The Majority of jurisdictions have adopted a sliding scale test that allows lesser showings of proof on some factors if other factors are very prominent. A minority of the courts and the federal courts have adopted a sequential test in which a plaintiff must show each of the four factors to a certain point.

In this case the test used does not matter. Al will wish to have an injunction stopping Bobbi from selling the house. Because of the obvious breach of contract Al's chance of success on the merits is very high. Al will be irreparably harmed because the selling of the house would harm his resitiutionary recovery. The harm to Bobbi is not so substantial to outweigh the harm to Al. Lastly there is no public interest implicated in this case. Therefore the court should grant the injunction stopping Bobbi from selling the house.

### **Breach of Contract Claim**

#### General Damages

General damages are damages that any plaintiff in the position of the plaintiff would have suffered. When one party breaches a contract the law attempts to put the non-breaching party in the expectancy position, this is considered the rightful position in contracts. The expectancy position is the position the non-breaching party would have been in if the contract had not been breached. Expectancy damages are the difference between the value promised and the value delivered.

In this case the value promised was \$1,000,000. The value delivered was only \$500,000. If the contract had not been breached Al would have recieved a further \$500,000 from Bobbi. Therefore in a contract case the general damages Al should recieve are \$500,000.

#### Consequential Damages

Conseqential damages are damages that this particular plaintiff suffered because of the harm. They are specialized becuase of certain circumstances in which the plaintiff is in. In order for a plaintiff to recover consequential damages the non-

breaching party must have been in the contemplation of the parties at the time of contracting. There are two application of the so called *Hadley* rule. The first is the tacit agreement test. That test requires that the non-breaching party explicitly agree to respond with damages for the particular harm understood to be likely in the event of the breach. The second test is the foreseeability standard. That test only requires that the damages be "reasonably supposed" at the time of contracting.

#### Tacit agreement test

Bobbi was aware that Al intended to use the second payment to invest in New Company stock. However there is no indication that she tacitly agreed to pay damages if because of her breach Al was unable to buy the stock thus suffering loss. Therefore under the tacit agreement test Bobbi would not owe Al any consequential damages.

#### Foreseeability Standard

Bobbi knew that Al intended to use her second payment to invest in New Company Stock. It was then foreseeable that failure to tender that second payment would lead to his inability to buy the stock. In this case Bobbi might be liable for consequential damages.

#### Amount of consequential damages

Had All invested in New Company stock he could have gained a net of \$250,000 from his investment. Therefore he could possibly recover and additioal \$250,000 along with his \$500,000 raising his total recvoery to \$750,000.

Bobbi's potential Arguemtns

Avoidable Consequences

If a non-breaching party could have avoided consequential damages by reasonable action, and fails to do so the amount that could have been avoided are not damages and are not reconverable.

In this case Al had the capital to purchase the New Company stock and did not do so. Bobbi could use this to argue that he had a chance to avoid the consequences of the breach and failed to do so. Therefore he should not recover the consequential damages from the breach. Al might be able to show that without the \$500,000 from Bobbi the the purchase of New Company stock would be far riskier and therefore not reasonable. That would allow him to recover consequential damages.

New Companies

Traditinally investment in new companies was considered to

speculative. Therefore any consequent losses from breach related to new companies was not recoverable. However more and more jurisdictions are now allowing recovery in relation to new companies.

If Bobbi and Al live somewhere that follows the traditional rule then Al will probably not be able to recover for his loss of investment in the New Company. However if they live in a jurisdiction that follows the trending rule then Al will most likely be able to recover for his loss.

Problem with contract damages and insolvency

A judgment is just a creditor interest and gives a plaintiff no right over other creditors when it comes to an insolvent defendant. Therefore a plaintiff who seeks damages from an insolvent defendant will rarely get full recovery.

In this case even if Al does get a \$750,000 judgment Bobbi already had debts in excess of \$150,000. At most Al can be sure to get 1/3 of Bobbi's forecloseable assets which will be far less than the \$750,000 due.

#### Rescission and Restitution Claim

Rescission

In order to get restitution in a contract case the contract must first be rescinded. Without this there is no unjust enrichment and just an on contract damages claim. In order to rescind a contract a party must have a good reason such as fraud or material breach of the contract terms

In this case Bobbi's failure to pay half of the purchase price of the building to Al is a material breach which allows rescission.

#### Restitution

When one party is unjustly enriched by another the enriching party can seek restitution. Unjust enrichment is the unlawful benefit gained by one party at the expense of another. Restitution returns any benefit gained unlawfully and gives it back to its lawful owner. However Al must also pay back the \$500,000 that he was paid by Bobbi.

#### Substitutory restitution

Next a plaintiff can ask for substitutory restitution, and regain the value of the benefit given to the party unjustly enriched.

In this case Bobbi gained a building which she sold for 1,250,000. Because she had been unjustly enriched by \$750,000 this is what she would owe to Al in substitutionary restitution. However Al's net recovery will be \$250,000 after he pays back Bobbi the first payment

#### Costructive Trust

A plaintiff can also seek a constructive trust over the property unjustly gained. In order for a constructive trust to be granted plaintiff must prove that he deserves equitable relief and be able to identify the property. If a constructive trust is gained then the plaintiff can use tracing. This does three things. It gives the plaintiff the right to proceeds or profits created by the property. Allow plaintiff a claim against a third party who obtained the property and is not bona fide purchaser for value. Lastly it give the plaintiff priority over other creditors.

Bobbi will argue that Al's remedy at law is adequate However, because constructive trust gives Al primacy over other creditors while legal remedies do not, legal remedies will be ruled inadequate. The property in this case is easy to identify it is the building sold by AL to Bobbi. The building was sold to a bona fide purchaser for \$1,250,000. Al has no claim against Carmen. This proceeds from the sale are were then used to buy a



home which is now worth \$1,500,000. According to traditional restitution law. Al should get 100% ownership of the Santa Fe House. Further his ownership of the house stops it from being sold and the proceeds distributed to the other creditors. Al has possession of a house worth \$1,500,000 with a net gain of \$500,000.

#### Insolvent Defendants

Modern law does not allow a plaintiff to recover over the original benefit against insolvent defendant. Any remaining claims will be shared with general creditors.

In this case Al will be granted at least a \$1,000,000 secured interest in the Santa Fe house. He may be able to argue that because Bobbi sold the house for \$1,250,000 that he is entitled to that much interest in the house. The remaining \$250,000 or \$500,000 he will get in substitutionary restitution and he will share any recovery of that with Bobbi's other creditors.