**Review Case Problems**

**Chapter 19**

\* You are **not** required to submit answers for these case problems. These questions provide you with the opportunity to practice critical legal thinking and review the chapter materials.

\*When answering a question, you should identify the issue, state the relevant rule of law, apply the law to the facts, and then reach a decision. I will post the answers at the end of each week. Contact me if you wish to discuss an answer.

**1.** Murphy Construction Co. agreed to build a house for Lester in accordance with certain specifications. The price stipulated was $345,000. The contract provides that the house was to be completed and ready for occupancy by June 1, 2010. Murphy wrongfully refused to perform and repudiated the contract before anything was done there under. Lester, after some trouble, located another contractor who built the house, according to the same specifications, for $378,000. The house was built and completed on September 1, 2010. Lester then sued Murphy Construction to recover damages for breach of contract. What is the measure of damages recoverable by Lester?

1. *Issue:* Are Lester’s damages reasonably foreseeable, and can he prove them with reasonable certainty? *Law:*  The breaching party is liable for damages that are a reasonably foreseeable consequence of the breach of contract. The non-breaching party must prove damages with reasonable certainty and has the obligation to mitigate damages. *Decision:* After Murphy breached the contract, Lester mitigated damages by finding another contractor to complete the construction. Lester is entitled to recover $32,000, the increased cost incurred to complete the house because of the breach. Lester is also entitled to recover the increased cost of living expenses (hotel, apartment rent, storage of furniture, etc.) from June 1 to September 1. Lester will be able to prove the damages with reasonable certainty by using the receipts and bills as proof. These damages could be reasonably foreseen by Murphy – if Murphy leaves the construction job, the cost to complete the house may increase and completion may be delayed beyond June 1, and Lester would incur the costs of living in another place because his new house is uncompleted.

**2.** Myers operated a grocery store in Glassboro, New Jersey, and sold to consumers throughout Glassboro. He sold the business to Battavio and agreed as part of the consideration for the contract of sale, not to engage in the grocery business in Glassboro for three years. Two years later, Myers opened a new grocery store in Glassboro in competition with Battavio, who sued to obtain an injunction against Myers. Will the injunction be granted?

**2.** *Issue:* Is specific performance the appropriate remedy for breach of this contract? Specific performance is ordered by the courts when the subject matter of the contract is unique and money damages are inadequate. Specific performance is used to prevent irreparable harm to the non breaching party. *Decision:* Battavio will succeed in obtaining an injunction against Myers. The court will order Myers to close his competing grocery store and to adhere to the terms of the non competition clause. A business with its related good will is deemed to be unique. The purpose of the non competition clause is to provide the buyer of the business with a period of time in which to build up good will between the customers and the new owner. If Myers continues to operate a competing store in violation of the non competition clause, Battavio will suffer irreparable harm. Battavio paid for the good will when purchasing the store and now would not be receiving the basis of the bargain. Suing for lost profits would be an inadequate remedy for Battavio, since it is usually difficult to prove lost profits with reasonable certainty. Because this grocery store plus its good will is unique, and money damages would be inadequate, Battavio will be granted specific performance.

**3.** Brady owned a schooner which broke from its moorings during a gale. She located the boat which was leaking and took it to the nearest available place, a stone quarry dock, and fastened it with rope, a chain, and two pieces of cable. This, of course, was insufficient protection against damage, but was the best that she could do under the circumstances. Brady therefore immediately informed Weichert of these facts and Weichert contracted to tow in the schooner to a designated place. Calm weather prevailed for a few days, but Weichert failed to tow in the schooner. A storm broke out and the schooner was completely wrecked. Brady sued Weichert to recover the value of the schooner. Will Brady succeed?

**3.** *Issue:* Could Weichert reasonably foresee that the schooner would be destroyed if he breached the contract? The breaching party is liable for damages that are a reasonably foreseeable consequence of the breach of contract. The non-breaching party must prove damages with reasonable certainty. *Decision:* Brady will recover the value (in its damaged condition when fastened to the dock) of the schooner from Weichert. Weichert breached the contract by failing to tow the schooner to a safer location within a reasonable time. Since Brady informed Weichert of the insufficient protection of the boat, Weichert could reasonably foresee that if he did not tow the boat in prior to the next storm, it could break loose and be destroyed.

**4.** Fleming was the owner and manager of the Fleming Theater. She entered into a contract with Gerard, whereby Gerard agreed to play the leading part in a certain drama in the Fleming Theater for a stated period of weeks. Prior to the expiration of the term of this contract, Gerard refused to continue playing the part. Fleming brought a bill in equity for specific performance. Will the court grant the decree?

**4.** *Issue:* Is specific performance the appropriate remedy for breach of this contract? Specific performance is ordered by the courts when the subject matter of the contract is unique and money damages are inadequate. Specific performance is an inappropriate remedy for personal service contracts. *Decision:* No, the court will not order Gerard to continue acting at Fleming Theater. Although personal services are unique, it is unconstitutional (13th amendment violation which prohibits involuntary servitude) for the courts to use specific performance to order people to continue to provide personal services under a contract. Fleming could successfully sue Gerard for money damages (any increased cost for hiring a replacement actor, new advertising, reprinting the programs and posters, ticket refunds, etc. – all of these are reasonably foreseeable consequences of the breach), so long as Fleming mitigated his damages.