EXAMINERS' ANALYSIS OF QUESTION NO. 4

Written-modification clause

Owen is incorrect that the contract's written-modification clause rendered the oral modification invalid. "Parties to a contract are at liberty to modify . . . the rights and duties established by a contract." *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 102 (2016). Moreover, "it is well established in our law that contracts with written modification . . . clauses can be modified . . . notwithstanding their restrictive amendment clauses." *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 372 (2003). Such modification must be a product of the parties' mutual assent. "The mutuality requirement is satisfied where a modification is established through clear and convincing evidence of a[n] . . . oral agreement . . . establishing mutual agreement to waive the terms of the original contract. . . . [A] party advancing amendment must establish that the parties mutually intended to modify the *particular* original contract, including its restrictive amendment clauses such as written modification . . . clauses." *Id.* at 373.

Here, Abby has offered extrinsic evidence that the parties expressly discussed their agreement to modify the written contract, including the written-modification clause. Such evidence satisfies the mutuality requirement. Consequently, the oral modification was valid.

Alternative credit was given for arguing that 1) the oral modification was valid because Owen waived the written-modification clause; or 2) the modification was valid because the emails constituted a writing sufficient to satisfy the written-modification clause.

Integration clause

Owen is incorrect that the contract's integration clause prevented admission of the extrinsic evidence to prove the oral modification. Under the parol evidence rule, "[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Barclae v Zarb*, 300 Mich App 455, 480 (2013) (internal quotation marks

omitted). Here, however, the extrinsic evidence, emails in which the parties discussed their agreement to modify the written contract, was not evidence of "contract negotiations" for the written contract, nor was it evidence of agreements that were "prior [to] or contemporaneous" with the written contract. Instead, the email evidence was of *subsequent* negotiation and agreement, offered to show that the written contract was modified. Consequently, neither the parol evidence rule nor the written contract's integration clause would prevent admission of the extrinsic evidence of oral modification. *See Rasch v Nat'l Steel Corp*, 22 Mich App 257, 261 (1970) ("[T]he parol evidence rule does not preclude plaintiff from proving a modification so long as it was subsequent to . . . the date on which the original agreement was signed.").

Invalid consideration

Owen is incorrect that the oral modification was not supported by consideration. "An essential element of a contract is legal consideration." *Yerkovich v AAA*, 461 Mich 732, 740 (2000). "To have consideration there must be a bargained-for exchange; [t]here must be a benefit on one side, or a detriment suffered, or service done on the other. Generally, courts do not inquire into the sufficiency of consideration: [a] cent or a pepper corn, in legal estimation, would constitute a valuable consideration." *Innovation Ventures, LLC v Liquid Mfg, LLC*, 499 Mich 491, 508 (2016) (internal quotation marks and citation omitted) (brackets in original); see also *GMC v Dep't of Treasury*, 466 Mich 231, 238-239 (2002) (same). "[R]escission of [a] contract for inadequacy of consideration will not be ordered unless the inadequacy was so gross as to shock the conscience of the court." *Moffit v Sederlund*, 145 Mich App 1, 11 (1985).

Here, Abby and Owen bargained for an exchange: Abby received the benefit of an extra $1,000 per month and incurred the detriment of an obligation to show vacant apartments one more day per week; Owen received the benefit of having vacant apartments shown one more day per week and incurred the detriment of an obligation to pay an extra $1,000 per month. Regardless of whether the extra $1,000 per month was "excessive," as Owen claims, the benefit he received in return would not be so "inadequate . . . as to shock the conscience of the court." Consequently, the consideration for the oral modification was valid.