EXAMINERS' ANALYSIS OF QUESTION NO. 14

1. Buddy's claim

Unambiguous contracts must be interpreted and enforced as written.

> Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement. When interpreting a contract, our primary obligation is to give effect to the parties' intention at the time they entered into the contract. To do so, we examine the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written . . . . [*Innovation Ventures, LLC v Liquid Mfg, LLC*, 499 Mich 491, 507 (2016) (quotation marks and citations omitted) (ellipses in original).]

See also *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 85-86 (2016) (same). "[A]n unambiguous contract reflects the parties' intent as a matter of law." *Phillips v Homer (In re Egbert R. Smith Trust)*, 480 Mich 19, 24 (2008) (footnote omitted).

Buddy's contract with Farmer unambiguously gave Buddy an irrevocable option to purchase.

The plain language of the contract between Farmer and Buddy demonstrates the parties' intent that Buddy had an irrevocable option to purchase the farm for $100,000 between January 1 and March 31, 2018. Buddy timely exercised his option by informing Farmer on February 1 that he wished to purchase the farm for $100,000. The fact that Farmer made other plans for the farm, and that Farmer informed Buddy of such plans before Buddy exercised his option, is irrelevant in interpreting the plain language of the contract.

Some applicants may raise an issue of consideration for Buddy's option. However, this is not the correct analysis.

This question raises no issue of consideration. Because Farmer and Buddy had a "valid" contract, the contract was supported by consideration. Consequently, Farmer should not argue that the contract lacked consideration. Moreover, the question asks applicants to evaluate Buddy's and Farmer's arguments, and Farmer did not raise lack of consideration for the option as an argument. Answers that make such an argument thus do not receive full credit on this issue.

The court should grant Buddy specific performance of the contract:

"Land is presumed to have a unique and peculiar value, and contracts involving the sale of land are generally subject to specific performance." *Phillips*, 480 Mich at 26 (footnote omitted). Consequently, "[o]ptions for the purchase of land, if based on valid consideration, are contracts which may be specifically enforced." *Bd of Control v Burgess*, 45 Mich App 183, 185 (1973). "In order to be entitled to the remedy of specific performance of an option contract, the option must be accepted unequivocally in order to convert the option into a binding contract for the sale of the subject property. 71 Am Jur 2d, p 188." *Bowkus v Lange*, 196 Mich App 455, 460 (1992), *rev'd on other grounds*, 441 Mich 929 (1993).

> [T]he power to grant specific performance rests within the sound discretion of the court. The court, however, is not justified in withholding a decree for specific performance merely because of the exigencies of a case. . . . [S]pecific performance of a contract for the purchase of real estate may not be arbitrarily refused, but in the exercise of sound legal discretion should be granted, in the absence of some showing that to do so would be inequitable. [*Zurcher v Herveat*, 238 Mich App 267, 300 (1999).]

See also *Wilhelm v Denton*, 82 Mich App 453, 455 (1978); *Foshee v Krum*, 332 Mich 636, 643 (1952).

Here, Buddy unequivocally accepted the option on February 1, thereby converting the option into a binding contract for the sale of the farm. Because the contract created an "irrevocable" option, it is irrelevant that Farmer notified Buddy of her

intention to sell to her niece before Buddy informed Farmer that he was exercising his option; or that market conditions changed during the option period; or that Farmer preferred to keep her farm in the family. Buddy contracted for the option to purchase any time before March 31, and when he exercised that option on February 1, it became a binding sale of the farm.

There is no showing that a grant of specific performance under these circumstances "would be inequitable." Consequently, the court should grant specific performance and order Farmer to sell the farm to Buddy for $100,000.

2. Mover's claim

Under the doctrine of anticipatory breach/repudiation, Mover has a valid claim against Farmer for breach of contract:

"Under the doctrine of anticipatory breach, if a party to a contract, prior to the time of performance, unequivocally declares the intent not to perform, the innocent party has the option to either sue immediately for the breach of contract or wait until the time of performance." *Paul v Bogle*, 193 Mich App 479, 493 (1992) (quotation marks omitted); see also *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 555 (2017) (same). "Regarding oral repudiation, 'a party's language must be sufficiently positive to be reasonably interpreted to mean that the party will not or cannot perform' . . . ." *Paul*, 193 Mich App at 494 (quoting Restatement (Second) Contracts § 250 cmt. b).

Here, Farmer told Mover on February 2 that she no longer needed Mover's services and would not pay for them. This oral repudiation was given prior to the time of performance (March 1) and unequivocally indicated Farmer's intent to breach the contract. See *Woody v Tamer*, 158 Mich App 764, 771 (1987) (stating that "a breach of contract occurs when a party fails to perform its contractually required duties" and that "anything short of full performance is a breach" (quotation marks omitted)); see also *Bd of Trs of Pontiac Police v City of Pontiac*, 309 Mich App 590, 607 (2015), *vacated on other grounds*, SC: 151717, 2016 Mich LEXIS 877 (May 18, 2016). Consequently, Mover had the option to either sue Farmer immediately for breach of contract or wait until March 1 to bring suit.

A court should grant Mover $200 for Farmer's breach:

"The remedy for breach of contract is to place the nonbreaching party in as good a position as if the contract had been fully performed." *Corl v Huron Castings, Inc*, 450 Mich 620, 625 (1996) (footnote omitted). See also *Frank W Lynch & Co v Flex Techs*, 463 Mich 578, 586 n 4 (2001) ("Damages awarded in a common-law breach of contract action are 'expectancy' damages designed to make the plaintiff whole."). "Under the rule of *Hadley v Baxendale*, the damages recoverable for breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made." *Kewin v Mass Mut Life Ins Co*, 409 Mich 401, 414 (1980) (citation omitted). See also *Frank W Lynch*, 463 Mich at 586 n.4 (same).

Here, the remedy is to place Mover, the nonbreaching party, in as good a position as if the contract had been fully performed. Under the contract, Mover would have received $1,000 to perform services that would have cost $800 to perform, giving Mover a profit of $200. Consequently, a court should grant Mover $200 for Farmer's breach of their contract.