

Essay Question No. 3

Answer this question in booklet #3

Homes, Inc. builds houses in Anchorage on undeveloped lots that it owns. Able Excavating Company (“Able”), which has its only office in Anchorage, prepares the building sites for Homes, Inc. by excavating the lots and filling them with enough gravel to support the house foundations and thereby prevent the houses from settling into the ground. Some of the house buyers complain to Homes, Inc. that their houses are settling excessively and causing major structural damage.

Homes, Inc. repairs the damaged houses at considerable expense, and hires an international expert in northern building construction to examine the building sites. The expert concludes that Able used an insufficient amount of gravel and that the settling would not have occurred if the proper amount had been used. Homes, Inc. sends Able a letter demanding reimbursement for the house repairs, which Able ignores.

Within the time period for bringing a lawsuit, an attorney files a complaint on behalf of Homes, Inc. against Able, alleging negligence in the preparation of the building lots. The complaint is filed in Fairbanks, which is in a different judicial district than Anchorage. Homes, Inc.’s law firm, which is located in Fairbanks, believes that judges in Fairbanks are more knowledgeable concerning construction matters and especially the structural damage that can occur to houses with improper site preparation. Also, Homes, Inc.’s expert witness, as well as some of its key employees expected to testify at trial, live in Fairbanks.

After Able answers the complaint, Homes, Inc. serves interrogatories, document requests and requests for admission to Able, including a request to admit that Able used an insufficient amount of gravel to prevent the houses from settling. Able fails to respond within the time period required by the relevant court rules. In a subsequent deposition, Able’s general manager denies that the company used insufficient amounts of gravel, and claims that based on his 5 years of construction experience, mostly in Florida, the building sites were adequately prepared.

1. What motion or motions could Able have filed at the beginning of the suit based on the location of the court in which Homes, Inc. chose to file its complaint? Explain how likely Able would be to succeed in those motions.

2. (a) What relief could Homes, Inc. seek from the court relating to Able's failure to respond to the requests for admission and other information requests? Explain.

(b) If Able persists in not responding, discuss the factors the court would consider in awarding further relief to Homes, Inc., and the form of the relief that the court could award.

3. If Homes, Inc. brings a motion for summary judgment against Able, is Homes, Inc. likely to prevail? For the purposes of this question only, assume that Able has fully responded to all of Homes, Inc.'s information requests, and that Able denies that it used an insufficient amount of gravel in preparing the building lots. Discuss and explain your answer.