

ESSAY QUESTION NO. 8

Answer this question in booklet No. 8

Stella owns an undeveloped piece of property located adjacent to Goodnews Bay, in Alaska. Ben tells Stella that he is interested in purchasing the property in order to build a summer cabin, so that he has a place where he can commune with nature and get away from city life. Stella is hesitant about selling the property, but agrees to travel to Goodnews Bay with Ben to discuss the potential sale. Upon their arrival, Stella hikes with Ben to her favorite spot on the property, and explains that she owns all of the land along the spit (which is surrounded on three sides by water) up to a boundary line marked by an old fence that separates her land from village corporation lands.

Ben senses that Stella really enjoys hiking on the property and that is why she is unsure about selling it. In an effort to persuade her, Ben asks, "What would you say if I told you I'd give you unrestricted access to the property? You'll hardly even notice that I'm here ... I'm only building a cabin after all." Stella pauses for a moment, and tells Ben that she will sell him the property for \$500,000 total. After further discussion, Stella and Ben agree that Ben will give Stella \$100,000 in cash as a down payment, and that Ben will pay the remaining balance, plus accrued interest at 4.5 percent per year, at any time within the next two years. A few days later, Ben gives Stella the down payment, and Stella gives Ben a written, dated receipt that states: "This receipt acknowledges that Ben gave me \$100K as a down payment on all my Goodnews Bay land adjacent to the village corp. land. Total price is \$500K, and I can access property at my leisure." Stella signs the receipt and hands it to Ben.

A few months later, Ben moves out to the property to begin building his cabin. Ben discovers a valuable platinum deposit on the land, abandons his cabin, and begins making plans to develop a full-scale mine on the property. Stella reads about Ben's discovery and mining plans in the newspaper, calls Ben, and says, "There's no way I'm selling you the Goodnews Bay property. It'll be a warm day in Barrow before you ever get title to my land!"

1. Ben brings an action for specific performance of the land sale contract, and Stella argues that the contract is unenforceable under the Statute of Frauds. Discuss the merits of the parties' arguments.
2. Alternatively, Stella seeks to rescind the land sale contract, alleging that she was induced to enter into the contract based on an alleged material misrepresentation by Ben. Discuss the merits of Stella's claim.

GRADER'S GUIDE

*** QUESTION NO. 8 ***

SUBJECT: CONTRACTS

1. General Discussion of Contract Formation (10 points)

This question involves a contract to sell Stella's land to Ben, with some oral terms and some terms that are described in a written receipt. Under Alaska law, the following are required to form a valid contract: (1) an offer including all essential terms; (2) an unequivocal acceptance of those terms by the offeree; (3) consideration; and (4) intent to be bound by the contract. *Young v. Hobbs*, 916 P.2d 485, 488 (Alaska 1996). See also *Ford v. Ford*, 68 P.3d 1258 (Alaska 2003).

The basic contract elements were satisfied, in that Stella made an offer to sell her land, Ben accepted the offer without changing any of the terms, and Ben provided a down payment and a promise to pay the remaining balance as consideration in exchange for the land. Stella and Ben have mutually agreed on all of the material terms of the land sale contract, including the price, the payment terms and interest rate, and described the land that was sold. Nothing in the question suggests that either Stella or Ben lacked the capacity to contract based on age, mental incompetence or other factors. Thus, the basic elements of a valid contract appear to be satisfied.

Therefore, the issue in dispute is likely to be whether Stella's receipt is an adequate writing to satisfy the statute of frauds.

2. Ben brings an action for specific performance of the land sale contract, and Stella argues that the contract is unenforceable under the Statute of Frauds. Discuss the merits of the parties' arguments. (50 points)

Stella will argue that the statute of frauds bars an action for specific performance of the land sale contract by Ben. AS 09.25.010(a) provides that in the following cases and under the following conditions an agreement, promise, or undertaking is unenforceable unless it or some note or memorandum of it is in writing and subscribed by the party charged ... (1) an agreement that by its terms is not to be performed within a year from the making of it; ... [and] (6) an agreement ...for the sale of real property....

Stella's agreement with Ben may not comply with the statute of frauds under AS 09.25.010(a)(1) because it may not be performed within one year or AS 09.25.010(a)(6) because it involves the sale of real property, and Stella's receipt may not be an adequate written document. However, exceptions exist that take an oral contract out of the statute of frauds and, if they apply, can make the contract enforceable.

a. Contracts that may take more than one year to perform.

Stella may argue that the contract is not enforceable under AS 09.25.010(a)(1) because Ben may take longer than one year to pay the remaining balance due. However, because Ben can pay the remaining balance within the next year, the statute of frauds will not bar enforcement of the contract. A contract is not governed by the requirements of the statute of frauds unless it contains a negation of the right or capability of performance within the year. *Howarth v. First Nat'l Bank of Anchorage*, 540 P.2d 486, 491 (Alaska 1975) (citations omitted).

If the contract, according to the intentions of the parties as shown by the terms of the contract, *may* be fully performed within a year from the time it is made, it is not within the statute, even though the time of its performance is uncertain, and may probably extend, be expected by the parties to extend, and in fact does extend, beyond the year.

Id. (emphasis added). Ben and Stella agreed that Ben must pay the remaining \$400K balance at any point within the next two years. Because it is *possible* that Ben will complete performance within one year, and there is no provision in the agreement prohibiting Ben from completing payment within one year, the statute of frauds would not bar enforcement of the contract on this basis.

b. The adequacy of the receipt as a writing.

In general, contracts for the sale of land are unenforceable unless the agreement is in writing, or a note or memorandum of it is in writing and signed by the party, or his agent, who seeks to avoid performance. This note or memorandum need not be formal or complete. *Fleckenstein v. Faccio*, 619 P.2d 1016, 1020 (Alaska 1980). As Professor Corbin stated:

[W]e should always be satisfied with 'some note or memorandum' that is adequate, when considered with the admitted facts, the surrounding circumstances, and all explanatory and corroborative and rebutting evidence, to convince the court that there is no serious possibility of consummating a fraud by enforcement.

Fleckenstein, 619 P.2d at 1020 (citing 2A Corbin, Corbin on Contracts § 498 at 681 (1950)).

Ben will argue that Stella's signed and dated receipt is sufficient to satisfy the statute of frauds. Stella may argue that the receipt does not provide a legal description of the property, nor does it provide the payment terms, interest rate, the date the property will be conveyed, or other material information. However, Ben will argue that the description is adequate for the contract to be enforced in that it pertains to all of Stella's land at Goodnews Bay that is adjacent to the village corporation lands. Because Stella's land is surrounded on three sides by water, and the only land border is along the village corporation lands, it is easy to identify the contract property. Also, the receipt provides the amount of the down payment and the total purchase price, and memorializes (at least somewhat) the parties' agreement regarding Stella's access to the property. Under these circumstances, a court could find that the

receipt satisfied the statute of frauds. See *Fleckenstein*, 619 P.2d at 1020-21.

c. Full or part performance of the contract.

Even if Stella does not admit the existence of the agreement, and the court finds that the lack of a written agreement violates the statute of frauds, the agreement may still be enforceable. A party seeking specific performance of an oral contract to convey an interest in real property must first show that the agreement was taken out of the statute of frauds. An oral contract may be taken out of the statute of frauds by full performance or by part performance.

Ben cannot show that he fully performed his contractual obligations because he has not tendered the full purchase price of the property to Stella, even though he has made a down payment. If Stella had accepted the full purchase price, the contract would have been fully performed by Ben, and therefore, the statute of frauds would not bar its enforcement. See AS 09.25.020(1) (contract that violates the statute of frauds but that has been fully performed by one side and accepted by the other is enforceable if otherwise valid); *Dressel v. Weeks*, 779 P.2d 324, 331 (Alaska 1989) (oral agreement to convey real property was enforceable, even though it violated the statute of frauds, because the party seeking enforcement had fully performed).

Ben may be able to show that the oral contract should be taken out of the statute of frauds by presenting evidence that he has partly performed the contract by paying the down payment. *King v. Richards*, 584 P.2d 50, 51 (Alaska 1978); *Jackson v. White*, 556 P.2d 530, 533 (Alaska 1976); *Prokopis v. Prokopis*, 519 P.2d 814, 816-18 (Alaska 1974). The court must first determine whether the oral contract existed and the contract's terms. *Jackson*, 556 P.2d at 532. The receipt for the down payment and Ben's actions with regard to the property indicate that an agreement was made. If the court agrees with Ben, it would next determine whether the contract is specifically enforceable. *Id.* at 533.

d. Specific performance as a remedy.

A party may seek specific performance of a land sale contract. *Currington v. Johnson*, 685 P.2d 73 (Alaska 1984); *Fleenor v. Church*, 681 P.2d 1351 (Alaska 1984). The necessary steps for specific enforcement of an oral contract to convey an interest in real property include (1), that the party seeking enforcement must show part performance, and (2) that the contract was sufficiently definite and certain. *Jackson*, 556 P.2d at 534. Ben must make both showings by clear and convincing evidence. *Id.* at 534. As noted above, Ben has partly performed the contract by making the \$100K down payment, and the terms of the contract are sufficiently definite and certain in that the land is adequately described and the payment terms and access agreement were specified in the receipt. Although some of the payment term information was not in the receipt, the court could consider Ben's oral evidence of such terms. *Fleckenstein*, 619 P.2d at 1020-21 (extrinsic evidence can be considered concerning the contract terms). Thus, the statute of frauds should

not bar Ben's action to seek specific enforcement of the contract.

3. Alternatively, Stella seeks to rescind the land sale contract, alleging that she was induced to enter into the contract based on an alleged material misrepresentation by Ben. Discuss the merits of Stella's claim. (40points)

Stella is claiming that Ben induced her to enter into the land sale contract by assuring her that she would have unrestricted access to the property, and that she would hardly even notice Ben's presence on the land as he was "only building a cabin afterall."

This question tests the examinees' knowledge of the effect of a material misrepresentation on the formation of a contract. As a threshold matter, examinees should discuss whether there has been a misrepresentation at all. The facts indicate that at the time Ben told Stella that he had only planned to build a cabin on the land and that he would grant Stella unrestricted access to the land, Ben did not have any plans to operate a mine on the property. It was only after Ben began building the cabin that he discovered the platinum deposit on the land and the decision to place a mine on the property came about.

After discussing this threshold matter, the examinees should go on to evaluate the elements of a material misrepresentation claim.

a. Material Misrepresentation

If a party is induced to enter into a contract by a fraudulent or material misrepresentation, he may be able to avoid the contract. *Industrial Commercial Elec., Inc. v. McLees*, 101 P.3d 593 (Alaska 2004) (citing *Cousineau v. Walker*, 613 P.2d 608, 612 (Alaska 1980)). In order to rescind a contract on the basis of a material misrepresentation, three elements must be satisfied: (1) it must be determined whether party seeking rescission in fact relied on the misrepresentation; (2) it must be determined whether the misrepresentation was fraudulent or material to the transaction, that is, objectively, whether a reasonable person would have considered the misrepresentation important in deciding whether to complete the transaction; and (3) it must be determined whether the party's reliance was justified. *Cousineau*, 613 P.2d at 612. Innocent misrepresentations may provide a basis for rescission of a contract. *Id.*

1. Subjective Reliance

Stella will argue that she relied on Ben's misrepresentation regarding his intentions to give her unrestricted access to the property, and that Stella would hardly notice Ben's presence on the land because he was only building a cabin, when she decided whether or not to enter into the contract to sell the land. She will argue that she would not have sold the land to Ben if she knew that he would someday develop the land, and therefore impede her access to the land.

2. Fraud / Materiality

A misrepresentation is fraudulent if it is both consciously false and intended to mislead the other party. Restatement (Second) of Contracts § 162 (1981). There is no indication in the facts that, at the time that Ben made the statements to Stella regarding his intentions to build a cabin on the land, this statement was false or made with the intention to mislead Stella.

Stella will argue that Ben's misrepresentation was material. In *Cousineau*, the Alaska Supreme Court reasoned that because proof of materiality is required to ensure stability in contractual relationships, contracts cannot be voided for insignificant discrepancies. *Cousineau*, 613 P.2d at 613. Therefore, the Court defined materiality objectively, in terms of a reasonable person standard. *Id.* The Restatement (Second) of Contracts § 162(2) states: "[A] misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it will be likely to induce the recipient to do so."

Under the Restatement, the materiality of a misrepresentation is determined from the subjective viewpoint of the maker. In other words, a misrepresentation will be deemed "material" if the maker of the statement knows that the misrepresentation is likely to induce the other party to manifest his or her assent. The Restatement comments explain:

There may be personal considerations that the recipient regards as important even though they would not be expected to affect others in his situation, and if the maker is aware of this the misrepresentation may be material even though it would not be expected to induce a reasonable person to make the proposed contract.

Restatement § 162 cmt. c.

Stella will argue that the misrepresentation was material because she would not have entered into the contract but for Ben's assurances that she could have unrestricted access to the property, and that the property would not be significantly altered. Ben will counter that, at the time the alleged misrepresentation was made, he had no intention to do anything but build a cabin on the land, and therefore, he did not make any misrepresentation regarding the land.

3. Justifiable Reliance

Finally, Stella's reliance on the misrepresentation may not have been justified. Although the receipt notes that Stella can access the land at her leisure, there is no indication that this statement is no longer false. Stella's main argument, therefore, is that if mining occurs on the property, she will surely "notice" Ben's presence on the land. Ben will argue that Stella did not have to enter into the contract, he purchased the land, and he should be able to get the full benefit of the land.