

1994 Contracts Mid-term Exam--Professor Russell

QUESTION ONE

MEMORANDUM

TO: Law Clerk

FROM: Judge Richard Posner

DATE: 15 November 1994

SUBJECT: Chronister v. Unocal

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Although I am an appellate judge, sometimes I like to preside over trials in the district court. I have recently taken such an assignment.

Below please find the details of Chronister v. Unocal. I would like you to write an efficient

memo to me that evaluates each party's claim that the other party breached. In this memo, I would also like you to determine what amount in damages each party should receive if it prevails in showing that the other party breached.

Chronister Oil Company has filed suit for breach of contract against Union Oil Company (Unocal). Unocal has counterclaimed, charging that it was Chronister, not Unocal, that broke their contract.

There is no dispute that the contract, made 9 February 1990, is enforceable. The contract provided that Chronister, an oil trader, would deliver the 25,000 barrels to Colonial Pipeline (for shipment to Unocal) between the 2d and 6th of March 1990. To fulfill the contract, Chronister on 1 March 1990 made a contract with another oil trader, Enron, to deliver the 25,000 barrels to Colonial Pipeline's pipeline at Pasadena, Texas for shipment east and north to terminals from which Unocal would deliver the gasoline to its dealers. Enron decided to have the gasoline delivered to Colonial's pipeline on 5 March. But when the day arrived and Colonial tested the gasoline preparatory to taking it into its pipeline, Colonial found that Enron's gasoline contained too much water, so Colonial refused to take it.

Unocal was informed on the morning of 6 March and immediately called Chronister and demanded assurances that Chronister would comply with the contract. Chronister got in touch with Enron, which agreed to supply another 25,000 barrels, but not until the next pipeline cycle, which would be the period 12-16 March. Unocal gave Chronister until the end of the following day (7 March) to deliver a conforming product.

Later the same day (6 March), Chronister, despite Unocal's adamant refusal to accept gasoline after 7 March, accepted Enron's offer of gasoline to be delivered 12-16 March and again offered this to Unocal. Unocal once more insisted on delivery by 7 March. With Unocal unwilling to accept the 25,000 barrels for delivery between the 12th and 16th of March, Chronister sold this gasoline to another company, Aectra Refining, at 55 cents a gallon. (By the first week of March, the price of gasoline for delivery to the Colonial Pipeline had fallen to the neighborhood of 55 cents per gallon. It is not argued that Chronister could have gotten a higher price for its sale of gasoline to Aectra. Uncontradicted evidence revealed that there had been a similar sale at a similar price on March 2.)

While Chronister was trying to solve the problem, Unocal took the precaution of diverting 25,000 barrels of gasoline from a storage facility in Baton Rouge. At the time, Unocal described its diversion of gasoline as "provisional cover"; in effect. Unocal informed Chronister that Unocal's action in "covering" its loss out of inventory was provisional until March 7 and would be rescinded if Chronister could deliver 25,000 barrels of gasoline to the pipeline by then. The Baton Rouge storage facility contained 300,000 barrels of gasoline. Unocal knew that an impending change in pressure by Colonial Pipeline was going to make this storage inventory unshippable. This pressure change was scheduled to occur in April.

Chronister filed suit for damages, claiming that by refusing to accept the substitute performance, Unocal had broken the contract. Chronister argues that if Unocal hadn't pulled the plug on it on March 6, Chronister would have found a way to meet its contractual obligations, whether by draining the excess water from Enron's gasoline, or by delivering gasoline to entry points to the pipeline closer to Unocal's terminals, or even by buying gasoline from Unocal!

Unocal counterclaimed, contending that it was Chronister that had broken the contract and seeking damages based on the average cost of the gasoline that it had drawn from its inventory. This average price was 63 cents a gallon.

END OF QUESTION ONE

QUESTION TWO

Consider the following newspaper story:

Transcripts suggest contract between ex-mayor Lincoln and former mistress

United Press International

COLUMBUS -- Tape-recorded telephone conversations between Bud Lincoln, ex-mayor of Columbus, Ohio, and his ex-mistress Linda Apple bolstered her legal claims that the former mayor agreed to pay her \$4,000 per month until her teen-age daughter finishes college, Apple's lawyers claimed yesterday in court documents. Apple and her attorneys contend that Lincoln made a legally binding contract to financially support her and her daughter.

Their affair ended in 1990. Apple has indicated that Lincoln made payments to her between 1990 and December 1993 totaling more than \$100,000. Lincoln's lawyers say that the total amount of the payments did not exceed \$17,000.

Apple has asked for damages totaling \$256,000. For payments missed between January 1994 and July 1994, when the suit was filed, Apple seeks damages of \$28,000. In addition, Apple asks for damages of \$4,000 per month through August 1994 until May 1999, when her daughter will graduate from college.

For the first time, transcripts of phone conversations between Lincoln and Apple were made part of the record in a Buckeye County state district court, where Apple last July filed suit against Lincoln.

In the suit, Apple charged that Lincoln made a legally binding contract to provide financial support for her and her daughter. Apple alleges that Lincoln agreed to make payments until Apple was able to get and keep a job in her field--fundraising and public

relations--or, in the event she was unable to get and keep such a job, to continue the payments until her daughter was out of school and college.

Apple's lawyer, Sheryl Barley countered with a plea seeking to have District Judge Bob Vize dismiss Apple's claims.

Barley argued that Apple claimed only a verbal contract beginning in 1990 and that Ohio law required terms of such contracts be fulfilled within one year.

Ms. Barley claimed further there wasn't a contract because state law required that both parties give something of value to the other party.

Barley claimed that Apple had not agreed to do anything in return for the payments Apple said Lincoln was obligated to make.

Apple lawyer Lloyd Folder countered Tuesday, contending that taped phone conversations between Lincoln and Apple "constituted a writing" and were evidence that a binding contract existed.

He claimed also that Apple, for her part of the contract, had agreed not to file a lawsuit against Lincoln over his having divulged private details to news reporters about his adulterous relationship with her.

Barley was not available for comment, but in a document filed earlier with the Washington court, she dismissed Apple's assertion that Apple had a claim against Lincoln because their affair was made public.

"There is no evidence to support [Apple's] wholly unfounded claim for public disclosure of private facts," Barley asserted on behalf of Lincoln.

In an affidavit filed in Buckeye County court yesterday, Apple swore excerpts from taped conversations filed to support her claims "are true and correct portrayals of the conversations between Mr. Lincoln and I."

Transcriptions entered in the court record were from several phone conversations between March 1990 and November 1993.

In a purported phone conversation Nov. 22 1992, Lincoln allegedly pledged to Apple that he would continue sending her money.

Evaluate what rights Apple may have against Lincoln based upon the promises and remarks that she alleges Lincoln made to her. Be sure to include in your discussion any defenses that Lincoln might make.

If Apple has rights against Lincoln, what remedies are available to her?

END OF QUESTION TWO

END OF EXAMINATION

