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Question 1

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Have Marta or Don Breached the Contract?

Applicable Law

In order to determine whether there was a breach of contract, we must first determine which body of law applies. Article II of the Uniform Commercial Code governs contracts for the sale of goods. Goods are defined as tangible, movable items. The common law governs contracts for services and land. According to the facts, Marta has entered into a contract with Don to purchase a Bait Mate cooler and because a cooler is a good, this contract will be governed by the UCC.

Parties

In order to determine whether there are any special rules that pertain to the parties, each must be examined. Here, Marta would be considered a "merchant" because she operates a successful fishing shop. A merchant is one who deals regularly with the type of goods or services involved and holds themselves out as having expertise in the area. The facts state that Marta's has sought out a new bait cooler to be in place for the first day of fishing season and therefore, entered into a contract with Don to purchase a cooler for her store. For these reasons, Marta can be classified as a merchant in regards to fishing stores and merchandise.

There are not enough facts to classify Don as a merchant. The facts do not state that he owned a cooler supply store, or a fishing store or provide any indication that he is a merchant, other than the fact that the brand of cooler he is

selling has a specific brand name, "Bait Mate". Despite this, Don will not be considered a merchant for the purposes of this analysis.

Valid Contract

According to the facts, on February 1, Marta entered into a valid written contract with Don to purchase a Bait Mait cooler for \$5,500 to be delivered no later than April 15. A valid contract requires an offer, acceptance and consideration. There do not appear to be any formation problems here. It should be noted that in contracts, time is usually not of the essence. This means, although there is a date for performance due set in the contract, the contract will not be breached if performance is not tendered on that exact day. This is especially true in contracts for the sale of land. Nevertheless, the April 15 due date does appear to be an express contract term.

Defenses to Formation

As mentioned above, the parties entered into a valid contract, so none of the defenses to formation apply. If the contract turns out to be invalid, the breaching party can later try to assert one of these defenses where applicable: illegality, fraud, lack of capacity, Statue of Frauds, lack of consent, unconscionability, mistake or misrepresentation.

Don's February 15, Phone Call

According to the facts, Don told Marta that he was having trouble procuring a Bait Mate cooler and Marta reminded him that meeting the April 15 deadline was "imperative". This phone conversation, coupled with the express term in the contract serves the purpose of putting Don on notice the importance of the contract, the purpose of the contract and sets the stage for Marta to receive consequential damages (damages that are foreseeable and flow

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naturally from the breach) if in fact, Don is unable to deliver as originally promised.

Don's Statement in a Somewhat Doubtful Tone- Anticipatory Repudiation?

Here, Don told Marta that he would "see what's possible" after she informed him that it was imperative that he perform under the terms of the contract. This would not constitute an anticipatory repudiation in itself. An anticipatory repudiation is an unequivocal, refusal to perform under the contract. When one party informs the non breaching party they are refusing or will not perform under the contract the non breaching party may: 1) encourage the party to perform and not sue until the contract becomes due; 2) sue immediately; 3) do nothing; or 4) treat it as a breach, but if the breaching party changes their mind and tries to perform as originally planned, the non breaching party may refuse to accept if she has justifiably relied on the breach. At this point, Marta has elected not to treat Don's statement as an anticipatory repudiation and this was correct. His statement was not an unequivocal, refusal to perform.

Marta's Demand for Assurances- Proper?

When a party indicates that they might encounter a problem performing or that they might not be able to perform, the other party has a right to demand adequate assurances. However, the demand must be appropriate. The party who makes the demand must truly have a reason to anticipate the other party will breach. For example, if one party discovers the other is insolvent. Here, Marta, sent Don a fax stating, "I am worried that you will not deliver a Bait mate cooler by April 15. Please provide your supplier's guarantee that the unit will be available by our contract deadline. I want to have plenty of time to set it up." Marta will argue that the demand was proper. Don told her that he would "see what's possible" when she reminded him that he had to perform by a certain date and he used a doubtful tone with her. Don will argue that Marta's worries were

overblown and that he just told her he was having trouble procuring a Bait Mate cooler on February 15, two months before she actually needed it. Despite this, according to the facts, Don did not respond to her fax and cited that he did not want to reveal his supplier's identify. Therefore, Marta interpreting Don's actions to be an anticipatory repudiation at this point, went out and purchased another Bait Mate from a seller on April 14. She spent \$7,500 which was \$2,000 more than the contract price. And Don attempted to deliver the Bait Mate cooler on April 16, to which, Marta refused delivery.

Breach

Marta will properly assert that she made a proper demand for assurances on Don after his previous conversation, where by his own admission, he was having trouble procuring a Bait Mate cooler. Marta's demand for assurances was faxed immediately after their conversation, on February 15. Don failed to respond for two months. Don showed up one day after performance was due, on April 16 and attempted to deliver the cooler. Don will assert that the her demand was made too early, two weeks after contracting and two months before performance was due. Despite this, Don should have responded. He expressed doubts of performing by the deadline and Marta informed him of the importance of the April 15 deadline, in the contract as an express term and over the phone. Therefore, Don breached the contract.

What Damages May be Recovered?

Monetary Damages

There are four types of monetary damages that are available in contract: compensatory, liquidated, nominal and punitive. Each will be discussed below.

Compensatory Damages

There are four types of compensatory damages: reliance, expectation, incidental and consequential. These must be foreseeable, unavoidable, causal and certain in order to be recovered. Each will be discussed below. Compensatory damages work to compensate the non breaching party for their loss. Here, Marta will argue that Don owes her \$7500 because she had to seek substitute goods, and "cover". Therefore, she will want to be reimbursed the full amount. Don will argue that she could have mitigated by not paying a \$2k premium, or by calling him first before seeking another cooler, but Marta did not have to. He was in breach on February 15.

Reliance

These damages are for when the damages are not certain. Here, the damages are certain, they are \$7,500. Therefore, Marta can recover clearer on a compensatory damage theory.

Expectation

These damages are called "basis of the bargain damages". These damages seek to put the non breaching party in the position they would have been in had the contract fully been performed. Here, Marta will argue she needed a Bait Mait cooler, so she ordered one from someone in time for performance. Don will argue that she should only be able to recover \$5500 because the \$2k could have been avoided. Marta will still prevail because Don breached the contract.

Incidental

These damages are available for the damages that are incurred as a result of covering. Marta will argue that the \$2k premium for one day delivery

was an incidental cost.

Consequential

These damages flow naturally from the breach. As discussed above, Don was aware of the April 15 contract date. Time was an express term in the contract and it was reinforced via phone call on 2/15. Therefore, cover costs should be awarded to Marta. \$2k plus the Bait cooler.

Liquidated Damages

Not here. They were not discussed in contract.

Nominal Damages

Not here. She wants \$7500.

Punitive Damages

Not for breach of contract absent another tort.

Equitable Remedies

Restitution: Quasi Contract

Not available here. Don performed too late.

Rescission

Not available. Time for performance has passed.

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Reformation

Not available. Time for performance has passed.

Specific Performance-

Not available. Time for performance has passed.

Inadequate Remedy

Definite and Certain Terms

Feasibility of Enforcement

Mutuality of Performance

Defenses

Laches, unclean hands

Question #1 Word Count = 1533