

SAMPLE CONTRACTS II EXAM

Prof. Morris

QUESTION 1

(40 Points)

Tri-State Homes, Inc. is a home building and remodeling company in Dayton, Ohio. In fact, Tri-State is widely considered the best home builder in the area. Its homes are regularly featured in “designer showcase” displays, and Tri-State has the area’s highest volume of homes being built in the range of \$750,000 and above for the past eight years.

Over the past three years, Tri-State’s sole shareholder and CEO, Ed Ziegler, has noticed a disturbing trend. More and more of his customers have been having Tri-State build homes, but they have had a number of “extras” added to the homes shortly to almost immediately after Tri-State has completed the job. For example, on one recent project, the homeowner specifically set out in his contract with Tri-State that the basement of the home would not be “finished.” Instead, the basement was left without any interior partitions or even walls along the outside foundation. This is somewhat unusual for a high end home, though it is not unheard of in the industry. What was particularly galling to Ed, however, was that almost immediately after the job was completed by Tri-State, the homeowner on the project entered into a contract with the plumbing and drywall subcontractors on the main job to install a full bathroom and to finish the basement by installing walls along the inside of the foundation as well as interior walls so that the basement was completely finished. Ed guesses that the two subs that he had used on the job were contacted by the homeowner some time during the initial construction phase of the home and were asked about doing the extra work to finish the basement. They were more than glad to get the job, and in less than two weeks after the main job was finished and Ed turned the keys over to the homeowner, the two subs were back at the house fast at work in the basement.

Ed had been faced with a few other similar instances of subs “finishing off jobs” at other projects. Ed decided to do something about it, and as the leading home builder in the area, he had the ability to do so. On August 1, 2008, Ed began gathering signatures of the different subcontractors that he had used on projects over the past three years. Their signatures were affixed to a contract that Ed proposed. The contract recited that Tri-State was a leading home building contractor in the area, and it then described the other signatory to the agreement as a subcontractor on prior jobs in which Tri-State had been the general contractor. The contract then provided that “for and in consideration of Tri-State accepting bids from the undersigned subcontractor on future jobs, the subcontractor agrees that it will not accept any remodeling or repair job on any building that had been constructed by Tri-State as the general contractor and on which subcontractor worked for a period of one year from the date of completion of the building contract.” Ed figured that this limitation on the subs would keep them from being able to make side deals with Ed’s customers. Tri-State has entered into identical contracts with over 40 area subcontractors as of November 19, 2008. These contracts are annual contracts that are automatically renewable for another year unless either party gives written notice to the other of an intention to terminate the contract at least 90 days prior to the end of the term of the contract.

On February 22, 2010, Tri-State and Celeste Levesque entered into a home building contract. Under that agreement, Tri-State would build a 3,200 sq. ft. home for Celeste. It was to be her “dream home.” The total price for the job was \$670,000. The contract included provisions for the completion of the job according to the architectural plans prepared by Celeste’s architect, it required the job to be completed by a date certain, and it included progress payment provisions and a retainage that would be paid over to Tri-State when Celeste’s architect issued a certificate of completion. The contract between Tri-State and Celeste also included the following provision:

22. Celeste agrees that she will not employ any person, company or other entity that has performed work on the building for a period of six (6) months after the issuance of the certificate of completion.

As it happened, Celeste decided during the construction of her dream home that she probably should have included a separate pool house that would be situated adjacent to the pool and hot tub located behind the house. She wanted the pool house to be a “miniature version” of the main house. It was too late to change the plans, so she just decided that she would wait a bit and then go forward with the pool house as a separate project. The dream house was completed and the architect issued the completion certificate on September 14, 2010.

Knowing that she could not immediately hire any of the subs from the dream house job, Celeste contacted several other plumbing and construction companies to obtain bids for the pool house construction. After meeting with several of them over the next two months, she was just not as comfortable as she had been with the folks who had worked on her house. She decided to contact one of the subcontractors from the dream home construction to see if they were interested in building her pool house. She was particularly interested in hiring Historic Reproductions, Inc. (HRI) to take on the job. HRI had done considerable work on the dream home, and Celeste was very comfortable with the quality of their work.

The president of HRI was surprised to hear from Celeste, and he initially asked if she had some problem with HRI’s work on the dream house. Celeste, of course, said no, and told the president of HRI that she wanted to get a bid on building a pool house to service the pool and hot tub area at the dream house. The president of HRI told Celeste that he was flattered that she had called HRI about the job, but he said, “We can’t do anything at your place until September of 2011 because of our contract with Tri-State.” Celeste was surprised by this, and she said to the president of HRI that under her contract with Tri-State, she could not enter into a contract with any sub who worked on the dream house until six months after the certificate of completion was issued. She concluded by saying, “I want you to do the job, assuming you can do it for \$75,000 or less. It’s March 1, 2011. By the time you review the plans for the pool house and prepare a bid, it’ll be March 15 and you can take on the job.” The HRI president told Celeste that while he would love to build her pool house, he could not risk violating his agreement with Tri-State because Tri-State would have many future projects on which he could bid, and the pool house was probably the last significant building project that Celeste would have.

Celeste was more than disappointed, she was down right angry. She called Ed from Tri-State and told him that she wanted to hire HRI to build her pool house. Ed said, “that’s fine by

me, just pay me 15% of the total contract price and I will waive my contractual rights with HRI to otherwise prevent them from working on the project.” This only made Celeste more angry, and she told Ed that her contract only limited subs for six months and not a year. Ed’s reply was that the six month limit in his contract with Celeste was not at issue. Instead, he asserted that his contract with HRI and other subs in the area limited them to working on previously completed projects for a year not six months. Celeste replied, “we’ll see about all this. I’m getting HRI on the job as of March 15, and I expect to have my pool house completed by the 4th of July for my annual family reunion.”

Celeste called HRI and offered to pay them \$75,000 to build the pool house. She told the HRI president that her contract with Tri-State restricted work for her for only six months, and six months had passed. Convinced by Celeste that they could take on the job, HRI agreed to build the pool house.

When Ed from Tri-State heard that HRI was going to build Celeste’s pool house, he was irate. In fact, he called his attorney and directed her to bring an action against HRI and Celeste to enjoin HRI from building the pool house. You are counsel for Celeste. What response would you make to Tri-State’s complaint for injunctive relief? Set out in detail the positions of Tri-State and Celeste, and be sure to include both affirmative and defensive arguments for the parties. Who do you believe has the better argument(s)? Why? Be sure to support your statements with appropriate discussion, analysis, and legal and factual support.

QUESTION 2

(40 Points)

Crump owned some real estate that he intended to develop as a shopping center. VonAhn was an architect who specialized in the design of shopping centers. VonAhn was well known for his work, some of which was quite unusual, and he was very busy with a number of projects. Crump wanted to hire VonAhn to design “CrumpWorld”, a futuristic shopping center to be built on the property that Crump owned. VonAhn and Crump negotiated for a period of time regarding VonAhn’s employment as the architect for the project. During the negotiations, VonAhn wrote a letter to Crump confirming an earlier telephone conversation between the two in which VonAhn stated that he was very busy with other projects and that he (VonAhn) would have to use other associates in his office to do some of the design work if he were to take on the project.

After further discussions, the parties agreed that VonAhn would design the shopping center for a fee of \$750,000. The design was to be acceptable to Crump and the cost to build the structure and related matters could not exceed \$14 million. The agreement further provided that VonAhn personally would design the entire building and that other designers in VonAhn’s employ could design the parking lots and exterior landscaping. Finally, the agreement, signed by both parties, stated that “This agreement is the full agreement of the parties and cannot be modified or amended without the written consent of each party.” The parties signed the

agreement on April 16, 2010. The agreement provided that time was of the essence, and that the plans being prepared by VonAhn were to be delivered to Crump not later than July 22, 2010.

VonAhn started work on the project immediately, but his other projects were commanding a significant amount of his time as well. By May 24, 2010, it became apparent that VonAhn would not be able to finish the plans by the end of July, so he asked some other designers in his employ to design the interior landscaping for the common areas of the shopping center, as well as to design the structural support system for the roof of the building. VonAhn sent a letter to Crump on May 28, 2010, noting that he was experiencing some time pressures. The letter stated that “I have taken steps to assure that the plans will be completed on time. I have enlisted the assistance of Marie Tremont to design the entire interior landscaping for the center. Marie is our top designer for these types of projects, and I know she will do a great job. I have also brought into the project Brian Lee. Brian is a first-rate designer/engineer who will be preparing the plans for the structural support of the roof system. This will enable us to meet the July 22 deadline.”

VonAhn presented the plans to Crump on July 20, 2010. Crump was not impressed. He thought that the design, looked more like a carnival tent than a shopping center. When Crump mentioned his objection, VonAhn responded, “Yes, yes. It is like the great trading centers of Europe in the eighteenth century. People will flock to it.” Crump was sure that no one would “flock” to the site, so he rejected the plans. He told VonAhn that the plans were a disaster, they were not to his satisfaction, and were prepared in violation of the agreement that required that the design be by VonAhn and not others who VonAhn employed (with the limited exception of the exterior landscaping and parking lots). Crump refused to pay.

VonAhn has hired you to file suit on his behalf against Crump. Set out in appropriate detail your arguments in support of VonAhn’s claim. What responses would you expect from Crump? What result would a court likely reach in resolving the dispute? As always, be sure to support your arguments, assertions, positions and conclusions with appropriate authority and analysis.

QUESTION 3.

(25 Points)

Ralph Ramsey, purchased homeowner's insurance from Allstate in September of 1993 and renewed the policy annually until his death in April of 2009. Bank of America had a mortgage on the house and paid the insurance premiums and then reimbursed itself from Ralph's account which Ralph has had with the bank since 1993. In 2008, Ralph's son, Douglas, came to live with Ralph. Ralph had suffered some health setbacks, and Douglas returned to his boyhood home to look after his father.

After Ralph died, Bank of America continued to pay the insurance premiums as it had when Ralph was alive, but it did so from Douglas's account which Douglas had set up at the bank in 2008. Douglas had instructed the bank to make the payments from his account after Ralph passed away. Allstate continued to renew the insurance coverage but never named Douglas on

the policy. Douglas never sent any documentation to Allstate informing them of Ralph's death or that Douglas was now the owner of the house.

The insurance policy states in pertinent part:

Policy Transfer

You may not transfer this policy to another person without our written consent.

Continued Coverage After Your Death

If you die, coverage will continue until the end of the premium period for:

- 1) your legal representative while acting as such, but only with respect to the residence premises and property covered under this policy on the date of your death.
- 2) an insured person, and any person having proper temporary custody of your property until a legal representative is appointed and qualified.

The policy was automatically renewed in September of 2009 and September of 2010, but it still listed Ralph as the insured.

A fire destroyed the home on June 26, 2009 Allstate took possession of the home, inspected it, and boarded it up. Allstate put Douglas's salvageable property in storage and paid him \$500 to cover initial expenses. However, on July 20, Allstate sent Douglas a letter stating that it would not cover the loss from the fire. There are no allegations of any improprieties, but Allstate discovered that the policy was still only in Ralph's name. Therefore, Allstate determined that it had no obligation to cover the loss to what was now Douglas's house.

After the fire on June 26, 2009, Allstate took possession of the home, inspected it, and boarded it up. Allstate put Douglas's salvageable property in storage and paid Douglas \$500 to cover initial expenses. However, on July 20, Allstate sent Douglas a letter stating that it would not cover the loss from the fire. There were no allegations of any improprieties, but Allstate discovered that the policy was still only in Ralph's name. Therefore, Allstate determined that it had no obligation to cover the loss to what was now Douglas's house.

Douglas has come to you for assistance. Set out what you believe Douglas's best argument would be to overcome the position of the insurance company that it has no liability because the policy is in the name of Ralph and is not transferable. Describe that argument in appropriate detail, and include the strengths and weaknesses of that argument.

