

July 2007 Bar Examination

Question 1.

On January 16, 2007, Murphey's Painter Co., known as "Murphey's," filed a claim of lien against real property on which a restaurant was being built. Under Georgia law, (O.C.G.A. §44-14-361), a subcontractor who has furnished labor, services or supplies for the improvement of real estate has a special lien which may attach to the real estate of the owner for which the labor, services or supplies are furnished, if they are furnished at the instance of the owner or the general contractor. Murphey's lien was for painting services which were provided on October 1, 2006, at the request of the general contractor. Among the requirements which must be met in order to make this lien enforceable is the requirement that a claim of lien be filed within three months after the subcontractor has furnished his labor, services or supplies.

In February, 2007, Murphey's attorney, Wayne Partner, wrote a letter to the Owner of the real property on which the restaurant was located demanding payment of Murphey's painting bill of \$40,000. Wayne Partner further stated that Murphey's had filed a claim of lien against the Owner's property but upon receipt of payment, Murphey's would deliver a lien release. The Owner forwarded this demand to the general contractor on this job, Ben's Contracting ("Ben's"), which had contracted with the various suppliers and subcontractors. In this letter, Owner advised Ben's that the Owner expected the matter to be resolved right away so that there would be no liens against Owner's property.

Ben's, the general contractor, was aware that Murphey's had rendered painting services to the construction project, but he contested the quality of some of the work. Therefore, he had his attorney, G. C. Lawyer, contact Wayne Partner and offer a reduced amount of \$34,000 in full settlement of Murphey's lien claim. Wayne Partner countered, stating that Murphey's would take \$36,000 in full acceptance of its claim. After some discussion between the two lawyers, G. C. Lawyer believed he had reached an oral agreement to settle Murphey's claim for \$36,000 in exchange for a release of all claims, and advised Ben's to cut the settlement check. Wayne Partner sent a letter to G. C. Lawyer purporting to confirm the agreement and its terms.

Before settlement documents were exchanged, however, G. C. Lawyer checked the courthouse records and realized that the lien filed by Murphey's was not timely and was therefore ineffective. When the settlement check from Ben's was not received, Wayne Partner called G. C. Lawyer who then denied the existence of a complete settlement agreement, and followed up with a letter which stated in part:

While an amount for which my client, Ben's, would be willing to compromise the claim of lien was discussed, various items, including the forms of the release documents, the release of Murphey's claim of lien, etc., related to the resolution of this matter remained unresolved. Of particular significance is that throughout our various discussions, it was the understanding of Ben's and myself that Murphey's had recorded a valid claim of lien on the real property in question. Further investigation has concluded that the January 16, 2007, claim of lien was untimely.

Murphey's sued Ben's for breach of contract and to enforce the settlement agreement in the amount of \$36,000. Ben's defended the suit claiming that no enforceable contract was reached because of:

- a. A lack of consideration;
 - b. No meeting of the minds; and
 - c. Misrepresentations by Murphey's.
1. Discuss in detail the merits of each of the defenses set forth above as it applies to the facts of this case. Limit your discussion to these three defenses only.
 2. For purposes of answering this question only, assume that after the alleged oral settlement, counsel for Ben's provided a written release to Murphey's, that the release was never signed, and that it contained the following provision: ". . . this agreement shall be binding upon the parties when each of the parties shall have signed the agreement." In what way, if any, would these facts change your analysis of this case?
 3. State what recourse, if any, Murphey's has against Owner.

Question 2.

Frankie and Johnny were married but Johnny was unfaithful. He had been carrying on an affair with Babe for several years. Johnny and Babe planned on getting married after she divorced her husband and Johnny obtained a divorce from Frankie. To show his affection for Babe and in contemplation of their future marriage, Johnny gave Babe a diamond ring which cost him \$10,000 and which Babe happily accepted.

Also, in preparation for the divorce action he was planning to file, Johnny executed and delivered a warranty deed to Billy Bob transferring a 500-acre farm he and Frankie purchased and paid for early in their marriage (over 15 years ago). Each of them paid one-half the costs of the farm. Johnny, however, without Frankie's knowledge had the seller of the farm make the deed in his name only. Frankie found a copy of the deed in a dresser drawer one month after the purchase of the farm, but when she mentioned the deed to Johnny, he explained that it was necessary in order to protect her in case they had "bad luck" with the farming operation. Billy Bob agreed to hold title to this property until the divorce proceedings were over and then transfer the farm back to Johnny. Johnny figured this transaction would keep the farm from being involved in the divorce. Trusting Johnny, Frankie did not mention the farm again to him until Johnny approached her about filing for divorce. Johnny told Frankie that he had to transfer the farm to Billy Bob to pay a debt he had incurred with him.

Johnny explained to Frankie that he had simply fallen out of love with her. He told her that they would need to get a divorce. He also persuaded her that they could keep living together as man and wife until the divorce was final since the divorce was just going to be a formality. Frankie agreed with Johnny and signed the divorce papers which provided that she would keep their residence and all the furniture and furnishings.

Six months after the divorce was final Johnny and Babe had a disagreement and Babe refused to divorce her husband as agreed since he had come into a large sum of money through an inheritance. Johnny was devastated. Not knowing what to do, he confessed everything to Frankie thinking that she would take him back. She refused. Johnny also approached Billy Bob to have the farm transferred back to him as Billy Bob had agreed, only to learn that Billy Bob had sold 250 acres of the farm to Jimmy George for fair market value.

1. Is there a way for Johnny to recover his interest, if any, in the house and furniture? If so,

identify all legal proceedings which could be brought for that purpose? What are the defenses, if any, to such actions?

2. Discuss what civil actions, if any, are available to Johnny to recover his interest in the farm from:
 - a. Billy Bob;
 - b. Jimmy George.

What are the defenses, if any, available to Billy Bob and Jimmy George to such actions?

3. What type civil action, if any, might be available to Johnny to get the ring back from Babe? What defenses, if any, might Babe have available to her?
4. Discuss what civil remedies are available to Frankie to recover her interest in the farm from:
 - a. Billy Bob;
 - b. Jimmy George.

What defenses, if any, might Billy Bob and Jimmy George have?

Question 3.

Building, Inc. sold a building to Mr. Smith and Mr. Jones pursuant to a written contract, which gave them an option to purchase certain equipment located in the building. At the closing, the parties entered into a separate contract whereby Mr. Smith and Mr. Jones exercised the option, agreeing to purchase the equipment for \$10,000, payable in installments of \$1,000 per month commencing in January, 2007.

Mr. Smith and Mr. Jones, after the closing, discovered that Building, Inc. had made certain misrepresentations in connection with the sale of the building which they felt had resulted in actual damages to them of \$100,000.

In view of the alleged damages, Mr. Smith and Mr. Jones did not make any of the installment payments, and they advised Building, Inc. that they would set off the amount which they owed for the equipment against the alleged damages to them.

On May 1, 2007, Building, Inc. brought an action against Mr. Smith and Mr. Jones to recover the purchase price of the equipment. Mr. Smith and Mr. Jones were served with the complaint on the same date.

Mr. Smith and Mr. Jones did not file a timely answer, and the case went into default.

On June 10, 2007, Mr. Smith retained you to represent him in defense of the action brought by Building, Inc. and to pursue his claim against Building, Inc. for the alleged misrepresentation.

On July 10, 2007, Mr. Jones retained you to represent him in defense of the action brought against him and to pursue his claim for the alleged misrepresentation. Mr. Jones advises you that he had delayed retaining an attorney on account of the fact that he had, after being served, made a settlement offer to Building, Inc. which he thought would be accepted. Mr. Jones also advised that he had no complaints about the equipment and that his real dispute with Building, Inc. was on account of the misrepresentations it made about the building which resulted in

significant damages to him.

Address and explain the following:

1. What action do you take on behalf of Mr. Smith?
2. What action do you take on behalf of Mr. Jones?
3. What action would be required of Building, Inc. to obtain a judgment by default against Mr. Jones?
4. The difference in procedure, if any, for obtaining a judgment by default where damages are liquidated as opposed to unliquidated.

Question 4.

Decedent dies in Georgia with a Last Will and Testament ("Will") drawn up in Texas by a Texas lawyer. Decedent was working full time in California under a five-year employment contract, but was at his Georgia residence when he died of a massive coronary.

Decedent did not intend to extend his contract. Decedent was married to his second wife when his Will was executed but was since divorced and was not married at the time of his death. Decedent had two children by his first marriage, none by his second. Decedent's Will provides that one-half of the estate go to his wife (now former second wife) with the remainder to his children. The Will contains an in terrorem clause. Wife (former second wife) was one of the two required witnesses to the Will. The Will appointed his Texas lawyer as the Executor. Harold, one of Decedent's children, has expressed his intent, in writing, to the Texas lawyer that he will file a caveat to the Will, challenging the one-half share that goes to the wife (former second wife) under the Will.

You have been engaged to represent the Executor. Prepare a legal memorandum for the Executor discussing the relevant issues regarding administration of the Decedent's estate.

You may make the following factual assumptions:

- The Will is valid as to execution. There are only two witnesses to the Will and it is not self-proven.
- The Will did not contemplate the eventual second divorce.
- The divorce is final and all property issues relevant thereto have been settled and are now resolved.
- Decedent kept his Georgia voter registration, Georgia driver's license, paid taxes in Georgia, etc., when he took the California job.
- The Will is being offered for probate in Georgia.

Only the following should be discussed in the memorandum:

1. What is the appropriate venue for probate of the will?
2. What is the legal status of the bequest to the second wife?
3. What is the legal status of the bequest to Harold?
4. What, if anything, is the Texas attorney required to do to qualify as Executor in Georgia?

