

On April 1, a buyer agreed to purchase an electric motor from a seller for \$1,000, delivery to be made on the following June 1. Before signing the agreement, the parties orally agreed that the contract of sale would be effective only if the buyer should notify the seller in writing not later than May 2 that the buyer had arranged to resell the motor to a third party.

On April 15, the buyer entered into a contract with a third party to resell the motor to the third party at a profit. On April 16, the buyer notified the seller by phone of the buyer's resale agreement with the third party and explained that a written notice was unfeasible, because the buyer's secretary was ill. The seller replied, "That's okay. I'll get the motor to you on June 1, as we agreed." Having learned, however, that the motor had increased in value about 75% since April 1, the seller renounced the agreement on June 1.

If the buyer sues the seller on June 2 for breach of contract, which of the following concepts best supports the buyer's claim?

- A. Nonoccurrence of a condition subsequent.
- B. Novation of buyers.
- C. Substantial performance.
- D. Waiver of condition.

Explanation:

When nonoccurrence of condition is excused

Waiver	Party waives condition by words or conduct
Wrongful interference	Party wrongfully prevents or interferes with condition's occurrence
Estoppel	Party indicates condition will not be enforced AND Other party reasonably & detrimentally relies on belief that condition has been waived
Disproportionate forfeiture	Party substantially performed & will be significantly harmed if condition is enforced

A party to a contract may avoid performance if a **condition precedent**—ie, an uncertain future event that must occur before performance becomes due—has not occurred, and the nonoccurrence is not excused. **Nonoccurrence of a condition** may be **excused** if the party who benefits from the condition **waives it by words or conduct**.*

Here, the parties orally agreed that their written contract would be effective only *if* the buyer gave the seller written notice by May 2 that the buyer had arranged to resell the electric motor (condition precedent). Although the buyer notified the seller about the resale agreement by *phone* on April 16 (nonoccurrence), the seller said that oral notice was "okay" and promised to deliver the motor on June 1 as agreed (waiver). Since the seller waived the condition, both parties were obligated to perform. As a result, waiver best supports the buyer's breach-of-contract claim.

*The waiving party may retract the waiver unless the other party has detrimentally relied on it.

(Choice A) The notice requirement was a condition precedent—not a condition subsequent, which *discharges* a party's duty to perform once the specified event occurs.

(Choice B) A novation is a substitute contract in which the parties agree to replace an original contracting party with a new party (not seen here).

(Choice C) Where an agreement makes performance contingent upon a condition precedent (eg, written notice of the resale), substantial performance is *not* sufficient to overcome the condition's nonoccurrence.

Educational objective:

Nonoccurrence of a condition may be excused if the contracting party who benefits from the condition waives it by words or conduct.

References

Restatement (Second) of Contracts § 225 (Am. Law Inst. 1981) (conditions and effect of nonoccurrence).

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