

A buyer agreed to purchase a seller's house for \$250,000 "on condition that the buyer obtain mortgage financing within 30 days." Thirty days later, the buyer told the seller that he would not purchase the house because he had not obtained mortgage financing. The seller asked the buyer where he had tried to obtain mortgage financing, and the buyer responded, "I was busy and didn't have time to seek mortgage financing."

If the seller sues the buyer for breach of contract, is the court likely to find the buyer in breach?

- A. No, because the buyer's performance was subject to a condition that did not occur.
- B. No, because the promise was illusory since the buyer was not obligated to do anything.
- C. Yes, because a promise was implied that the buyer had to make reasonable efforts to obtain mortgage financing.
- D. Yes, because a reasonable interpretation of the agreement is that the buyer had an obligation to purchase the house for \$250,000 in 30 days.

Explanation:

A **binding contract** is formed when one party makes an offer and the other party accepts. Performance is generally due once the contract is formed but performance can be **contingent upon** the occurrence of a **condition**. There are two types of conditions:

condition precedent* – **delays performance** until a specified event occurs

condition subsequent – **excuses performance** once a specified event occurs

If a party whose duty to perform is subject to a condition precedent **wrongfully prevents** the condition from occurring—eg, by breaching the implied duty of good faith and fair dealing—then the **condition will be excused**. In other words, the condition no longer needs to occur for that party's performance to become due.

Here, the agreement to purchase the house was conditioned on the buyer's ability to obtain financing within 30 days. The implied duty of good faith and fair dealing required the buyer to make reasonable efforts to secure financing. But since the buyer breached that duty by making *no* effort to obtain financing, the condition precedent was excused and his performance became due. Therefore, the court is likely to find the buyer is in breach **(Choice A)**.

*A condition concurrent arises when each party's obligation to perform is a condition precedent to the other party's obligation to perform (ie, when performance is due simultaneously).

(Choice B) A promise is illusory, and therefore unenforceable, if the promisor can choose whether to honor it—eg, had the buyer promised to purchase the house "if I want to." Here, however, the buyer's promise was not illusory because it implicitly obligated him to make efforts to obtain financing within 30 days.

(Choice D) The duty of good faith and fair dealing did *not* require the buyer to purchase the house but rather to make a reasonable effort to obtain financing within 30 days.

Educational objective:

If a party whose duty to perform is subject to a condition precedent wrongfully prevents that condition from occurring—eg, by violating the implied duty of good faith and fair dealing—the condition will be excused and that party must perform.

References

Restatement (Second) of Contracts § 225 (Am. Law Inst. 1981) (effect of a nonoccurrence of a condition).

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Delay or discharge of performance

