An owner of land contracted to sell it to a buyer for $100,000, its fair market value at that time. After an unanticipated zoning change increased the land's fair market value to $150,000 during the executory period, the owner refused to close.

Wishing to avoid a lawsuit, the buyer assigned the contract (which the contract did not forbid) in an arm's-length transaction to an investor, who is experienced in buying and selling real estate. The investor paid the buyer $25,000. The investor knew of the owner's refusal to close, and the owner continued to refuse to close despite the investor's demand that he do so.

The investor has sued the owner for specific performance.

Who will likely prevail?

A. The investor, because an assignee of the original party purchaser in a real estate contract is entitled to specific performance under these circumstances.

B. The investor, because she has elected to waive the owner's lack of marketable title caused by the zoning change.

C. The owner, because the investor is not a bona fide assignee without notice, and thus does not have clean hands.

D. The owner, because the investor, who is experienced in buying and selling real estate, is entitled to money damages but not to specific performance.

**Explanation:**

**Buyer's remedies**

| | |
|---|---|
| **Rescission & restitution** | Rescind (ie, cancel) agreement<br>Seek return of paid deposits & other restitution |
| **Specific performance** | Seek injunction ordering seller to transfer title with abatement of purchase price<br>Generally available since property is considered unique (ie, money damages would not make buyer whole) |
| **Damages** | Loss of bargain = market value at time of breach − contract price<br>Liquidated damages = amount designated in sales contract as compensation for breach<br>Incidental & consequential damages that were contemplated during sales contract or reasonably foreseeable |

In a contract for the sale of real property, the buyer promises to pay the agreed purchase price and, in exchange, the seller promises to transfer marketable title. The parties can **assign** (ie, transfer) their respective **contractual rights** to a third party—even without the other party's consent or consideration*—***unless*** the assignment would:

***materially*** **change or increase** the obligor's **duty or risk** *or*

***materially*** **impair or reduce** the obligor's chance of obtaining **return performance**.

Here, the buyer assigned his contractual rights to the investor (third party). Since there is no indication that this assignment would impact the owner's contractual duties, it was permissible. As a result, the investor now stands in the buyer's shoes and can **enforce the sales contract** accordingly.

If a seller refuses to perform, the buyer can (1) rescind the contract and seek restitution, (2) seek specific performance, or (3) sue for damages. **Specific performance** is only available when money damages are inadequate. Since land is considered unique and money damages cannot compensate for the loss of unique property, this remedy is **generally available to buyers (Choice D)**. Therefore, the investor will likely prevail.

*Although consideration is not required for an assignment, it is required to make the assignment irrevocable.

**(Choice B)** Real estate contracts are typically conditioned on the seller's ability to convey marketable title—ie, title that is reasonably free from doubt and under no threat of litigation such that a reasonable person would accept and pay for it. Since the zoning change *increased* the land's fair market value, it did not render title unmarketable. And there is no evidence that the investor waived this condition.

**(Choice C)** The investor *is* a bona fide assignee since there is no indication that she acted in bad faith. If she had, the owner could raise unclean hands as a defense to preclude her from obtaining specific performance and other equitable remedies.

**Educational objective:**

A buyer can generally assign a contract for the sale of real property to a third party (same as the seller). The third party can then enforce the contract to the same extent as the buyer—eg, by seeking specific performance.