

The owner of a fleet of taxis contracted with a dealer in petroleum products for the purchase and sale of the fleet owner's total requirements of gasoline and oil for one year. As part of that agreement, the petroleum dealer also agreed with the fleet owner that for one year the petroleum dealer would place all his advertising with the fleet owner's wife, who owned her own small advertising agency. When the wife was informed of the contract, she declined to accept an advertising account from another company because she could not handle both accounts during the same year. The fleet owner performed his contract with the petroleum dealer for six months, and during that time the petroleum dealer placed his advertising with the wife. At the end of the six months, the fleet owner and the wife were divorced, and the fleet owner then told the petroleum dealer that he had no further obligation to place his advertising with the fleet owner's now ex-wife. The petroleum dealer thereupon notified the ex-wife that he would no longer place his advertising with her.

In an action by the wife against the petroleum dealer for breach of contract, will the wife likely succeed?

- A. No, because absent a provision in the contract to the contrary, the promisor and promisee of a third-party beneficiary contract retain by law the right to modify or terminate the contract.
- B. No, because the agency relationship, if any, between the fleet owner and the wife terminated upon their divorce.
- C. Yes, because the fleet owner acted in bad faith in releasing the petroleum dealer from his duty with respect to the fleet owner's wife.
- D. Yes, because the petroleum dealer and the fleet owner could not, without the wife's consent, modify their contract so as to discharge the petroleum dealer's duties to the wife.

Explanation:

Third-party beneficiaries

(ie, nonparties who benefit from contract)

Type	Definition	Right to enforce
Intended	<ul style="list-style-type: none">Receive <i>direct</i> benefit from contract because contracting parties intended to benefit themEg, A promises to paint B's house if B promises to pay \$500 to C	Yes
Incidental	<ul style="list-style-type: none">Receive <i>indirect</i> benefit from contract even though there was no contractual intent to benefit themEg, A promises to buy B a car manufactured by C	No

A **third-party beneficiary** is a nonparty to a contract who receives some advantage or benefit from that contract. If the contracting parties intended for the contract to benefit the third party, the third party is an **intended beneficiary**. Only intended (not incidental) beneficiaries have **enforceable rights under the contract**. Those rights **vest** when the beneficiary:

- **detrimentally relies** on the rights created
- **manifests assent** to the contract at one party's request *or*
- **files a lawsuit** to enforce the contract.

Once this occurs, the original contracting parties are both bound to perform the contract. Any effort to **rescind or modify** the contract **after vesting is void unless the beneficiary agrees** to the rescission or modification.

Here, the wife was an intended beneficiary of the contract between the fleet owner and the petroleum dealer because the contract provided that the petroleum dealer would use the wife's advertising agency for a year. The wife detrimentally relied on the contract when she declined another account because she could not handle two accounts at the same time—vesting her rights. As a result, she will likely succeed because the fleet owner cannot rescind (ie, cancel) or modify the contract without the now ex-wife's consent (**Choice A**).

(Choice B) The fleet owner was *not* acting as an agent for the wife because she did not direct him to enter into the contract on her behalf. Instead, the wife was an intended beneficiary of the contract, and her consent was required to modify the contract—regardless of the divorce proceeding.

(Choice C) Because the wife's contractual rights had vested, the fleet owner could not in good *or* bad faith release the petroleum dealer from his duty with respect to the wife.

Educational objective:

An intended beneficiary's contractual rights vest when the beneficiary (1) detrimentally relies on the rights created, (2) manifests assent to the contract, or (3) files a lawsuit to enforce it. Any effort to rescind or modify the contract after vesting is void unless the beneficiary agrees to the rescission or modification.

References

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended and incidental beneficiaries).
- Restatement (Second) of Contracts § 311 (Am. Law Inst. 1981) (variation of a duty to a beneficiary).

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