

A seller and a buyer entered into a contract obligating the seller to convey title to a parcel of land to the buyer in exchange for \$100,000. The agreement provided that the buyer's obligation to purchase the parcel was expressly conditioned upon the buyer's obtaining a loan at an interest rate no higher than 10%. The buyer was unable to do so but did obtain a loan at an interest rate of 10.5% and timely tendered the purchase price. Because the value of the land had increased since the time of contracting, the seller refused to perform. The buyer sued the seller.

Is the buyer likely to prevail?

- A. No, because an express condition will be excused only to avoid forfeiture.
- B. No, because the contract called for a loan at an interest rate not to exceed 10% and it could not be modified without the consent of the seller.
- C. Yes, because the buyer detrimentally changed position in reliance on the seller's promise to convey.
- D. Yes, because the buyer's obtaining a loan at an interest rate no higher than 10% was not a condition to the seller's duty to perform.

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

Performance is generally due once a contract is formed. However, a party may avoid performance if a **condition precedent**—ie, an uncertain future event that must occur before either or both parties' performance becomes due—has not occurred, and the nonoccurrence is not excused. **Nonoccurrence** of a condition may be **excused by waiver** if the **party who benefits** from the condition **chooses to perform** despite the nonoccurrence.

Here, the buyer's duty to perform under the contract by purchasing the land was expressly conditioned on obtaining a loan at an interest rate no higher than 10% (condition precedent). The buyer was unable to do so (nonoccurrence) but tendered the purchase price anyway (waiver). Since the buyer waived the condition, the seller was also required to perform by conveying title to the buyer. Therefore, the buyer will likely prevail.

(Choice A) It is untrue that an express condition (ie, one that appears in the contract) will be excused *only* to avoid disproportionate forfeiture. There are other excuses, such as waiver.

(Choice B) The buyer's waiver of the condition was *not* a contract modification requiring the seller's consent since it did not alter the material terms of the contract (eg, purchase price).

(Choice C) Under the doctrine of **promissory estoppel**, a party can enforce a promise on which it reasonably and detrimentally relied when *no* valid contract was formed. But here, a valid contract was formed, so the buyer's reliance is irrelevant.

Educational objective:

Nonoccurrence of a condition may be excused by waiver if the party that benefits from the condition chooses to perform despite the nonoccurrence.

References

Restatement (Second) of Contracts § 224 (Am. Law Inst. 1981) (definition of condition).

Restatement (Second) of Contracts § 225 (Am. Law Inst. 1981) (effect of non-occurrence of condition).

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