

A landowner advertised a proposed sale of standing timber on a choice 2,000-acre tract. A construction enterprise offered a fair price for the timber rights in question. The landowner accepted the offer and the parties entered into a written contract.

Later, without legal excuse and over the landowner's strong objection, the construction enterprise repudiated the contract before commencing performance. The landowner could not afford to hire a lawyer and take legal action, and he made no attempt to assign any cause of action he might have had against the construction enterprise.

If the construction enterprise is sued for breach of the contract by the landowner's next-door neighbor, whose view of a nearby lake is obscured by the standing timber, will the neighbor prevail?

- A. No, because the neighbor is a maintainer of nuisance litigation.
- B. No, because the neighbor is only an incidental beneficiary, if any, of the contract.
- C. Yes, because the neighbor is a surrogate for the landowner in view of his inability to enforce the contract.
- D. Yes, because the neighbor is a third-party intended beneficiary of the contract.

Explanation:

A **third-party beneficiary** is a nonparty to a contract who receives some advantage or benefit from that contract. Unlike *intended* beneficiaries, **incidental beneficiaries**—ie, those whom the contracting parties did not intend to benefit directly—have **no right to sue** under the contract.

Here, the neighbor is at most an *incidental* beneficiary of the contract between the landowner and the construction enterprise since there was no contractual intent to benefit the neighbor (eg, improve the neighbor's view of the lake). As an incidental beneficiary, the neighbor has no right to sue under the contract. Therefore, the neighbor will not prevail in a breach-of-contract suit against the construction enterprise **(Choice D)**.

(Choice A) The neighbor would not be accused of maintaining nuisance litigation (ie, bringing a bad-faith claim to harass someone) since the neighbor presumably believed (incorrectly) that he/she had the right to enforce the contract.

(Choice C) A surrogate is one who acts on behalf of another party. But here, the neighbor has no right under the contract or otherwise to enforce the contract on the landowner's behalf.

Educational objective:

An incidental beneficiary—ie, a nonparty to a contract who receives some advantage or benefit from that contract even though the contracting parties did not intend to benefit him/her—has no right to sue under the contract.

References

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended & incidental beneficiaries).

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Third-party beneficiaries

Nonparties who benefit from contract

Intended beneficiaries

- Receive direct benefit because parties intended to benefit them
- Eg, A promises to paint B's house if B promises to pay \$500 to C

Right to enforce contract

Incidental beneficiaries

- Receive indirect benefit even though parties did not intend to benefit them
- Eg, A promises to buy B a car manufactured by C

No right to enforce contract