

A famous musician entered into a written agreement with an interior decorator, who was well known for his avant-garde designs, to design and decorate the musician's recording studio. The agreement was silent as to assignment or delegation by either party.

Before beginning the work, the interior decorator sold his decorating business to a man under an agreement in which the interior decorator assigned to the man, and the man agreed to complete, the recording-studio contract. The man, a world-renowned decorator of excellent repute, advised the musician of the assignment, and supplied her with information confirming his financial responsibility and past commercial success all over the world.

If the musician allows the man to perform and approves his design plan, but the man fails without legal excuse to complete the decorating as agreed, against whom does the musician have an enforceable claim for breach of contract?

- A. Either the first interior decorator, because his agreement with the man did not discharge his duty to the musician; or the man, because the musician was an intended beneficiary of the agreement between the first interior decorator and the man.
- B. The first interior decorator only, because his agreement with the man did not discharge his duty to the musician, and the man made no express promise to the musician.
- C. The man only, because the first interior decorator's duty to the musician was discharged when he obtained a decorator of excellent repute (the man) to perform the recording-studio contract.
- D. The man only, because the musician was an intended beneficiary of the agreement between the first interior decorator and the man, and the interior decorator's duty to the musician was discharged when she permitted the man to do the work and approved his design.

Explanation:

Nondelegable contractual duties

Delegation not permitted when:

- other contracting party has substantial interest in having delegating party perform (eg, in personal-services contract involving taste or special skill) *or*
- delegation is prohibited by contract

Obligations under a contract can generally be **delegated unless**:

- the other party to the contract has a **substantial interest** in having the **delegating party perform** (eg, in a personal-services contract involving taste or a special skill) *or*
- the delegation is prohibited by the contract (eg, the contract says "this contract may not be assigned").

However, a party may **consent** to a delegation that would otherwise be prohibited. After a successful delegation, the **delegator remains liable** under the contract unless the other party agrees to a release.

Here, the famous musician had a substantial interest in having the interior decorator perform the recording-studio contract—particularly since the interior decorator was well known for his avant-garde designs. As a result, the interior decorator cannot delegate his duties to the man without the musician's consent. And even if the musician does consent, the interior decorator will *not* be released from liability. Therefore, if the musician consents to the delegation and the man fails to complete the job, the musician can sue the *interior decorator* for breach.

When, as here, a contracting party (the interior decorator) **delegates** his/her duties by forming a **separate contract with the delegatee** (the man), the other party to the original contract (the musician) becomes an **intended beneficiary** of that separate contract. The intended beneficiary can then **sue the delegatee** (in addition to the delegator) in the event of a breach. The musician, as the intended beneficiary of the agreement between the interior decorator and the man, can therefore sue the *man* for breach as well (**Choices B, C & D**).

Educational objective:

Delegation of contractual obligations is permitted unless (1) the other party to the contract has a substantial interest in having the delegating party perform or (2) the delegation is prohibited by the contract. After a delegation, the delegating party remains liable under the contract unless the other party agrees to a release.

References

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended and incidental beneficiaries).
- Restatement (Second) of Contracts § 318 (Am. Law Inst. 1981) (delegation of performance of duty).

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