

The owner of an undeveloped city lot and a developer executed a written document in which the owner agreed to sell the lot to the developer and the developer agreed to buy the lot for \$100,000. The document did not provide for an earnest money down payment. The owner recorded the document, as authorized by statute. The owner orally gave the developer permission to park his car on the lot without charge prior to the closing. Thereafter, the developer frequently parked his car there.

Another property came on the market that the developer wanted more than the owner's lot. The developer decided to try to escape any obligation to the owner. The developer had been told that contracts for the purchase and sale of real property require consideration and concluded that because he had made no earnest money down payment, he could refuse to close and not be liable. The developer notified the owner of his intention not to close and, in fact, did refuse to close on the date set for the closing.

The owner brought an appropriate action to compel specific performance by the developer.

If the owner wins, what will be the likely reason?

- A. General contract rules regarding consideration apply to real estate contracts.
- B. The developer's use of the lot constitutes part performance.
- C. The doctrine of equitable conversion applies.
- D. The document was recorded.

Explanation:

A **land-sale contract**, like any other contract, is **legally enforceable** only if it is **supported by valuable consideration**. Valuable consideration is evidenced by a **bargained-for exchange** of legal positions between the parties. This requires that each party:

perform, or promise to perform, some act that is not legally required *or* refrain, or promise to refrain, from performing some legally permissible act.

Land-sale contracts are supported by valuable consideration because the **seller promises to convey title** to the buyer, and in exchange the **buyer promises to pay** the seller the purchase price. A buyer can make an earnest money down payment to show a good faith intent to complete the purchase, but this is not needed to form a valid contract. Therefore, the reason the owner will win is that the contract meets the general contract rules regarding consideration.

(Choice B) Part performance allows a buyer to enforce an *oral* agreement if the buyer has taken possession of the property, made substantial improvements to it, and/or paid some or all of the purchase price. However, this exception to the [statute of frauds](#) does not apply here because the parties executed a *written* contract.

(Choice C) The doctrine of [equitable conversion](#) governs the ownership of property and risk of loss during the period between contract formation and closing. However, it has no relevance to whether a land-sale contract is valid and enforceable upon closing.

(Choice D) [Recording acts](#) protect buyers from subsequent purchasers claiming superior title to the property, but they have no bearing on whether the owner can compel specific performance by the developer under this land-sale contract.

Educational objective:

Land-sale contracts are supported by valuable consideration because the seller promises to convey title to the buyer; in exchange, the buyer promises to pay the seller the purchase price.

References

77 Am. Jur. 2d Vendor and Purchaser § 24 (2020) (consideration).

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Bargained-for exchange



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