

A homeowner and a contractor entered into a contract under which the homeowner agreed to pay the contractor \$50,000 for remodeling the homeowner's basement according to a set of plans.

After the work was completed, the homeowner honestly believed that there were defects in the contractor's work as well as departures from the plans. In fact, the contractor had fully performed. The homeowner offered to pay the contractor \$35,000 in full settlement in exchange for the contractor's promise to surrender his entire claim. The contractor accepted the homeowner's offer, and the homeowner paid the contractor \$35,000. The reasonable value of the work was \$35,000.

Is the contractor likely to succeed in an action challenging the validity of the settlement agreement?

- A. No, because the homeowner honestly disputed the amount he owed the contractor.
- B. No, because the reasonable value of the work was only \$35,000.
- C. Yes, because the contractor reasonably relied on the homeowner's contractual promise to pay the full \$50,000, and that promise should be enforced to avoid injustice.
- D. Yes, because the homeowner's payment of \$35,000 cannot furnish consideration for the contractor's relinquishment of a claim for \$50,000.

## Explanation:

### Ways to discharge contractual obligations

Full performance of contractual obligations

Impossibility, impracticability, or frustration of purpose

Release (in writing only)

Mutual rescission

Substituted contract

Contract or covenant not to sue

Accord & satisfaction

Novation

Mnemonic: **FIRM SCAN**

One method of discharging contractual obligations is by an **accord** (new contract) **and satisfaction** (performance of the accord). An accord is created when the parties to a contract agree to give and accept **something different** in **satisfaction of** their **existing contractual obligations**. Since an accord is a new contract, it must be supported by **consideration**. Where the new consideration is **worth less** than what was agreed to in the original contract, it will only be **sufficient if**:

there is a **good-faith dispute** as to the amount owed *or*

the new consideration is of a **different type** than what was owed under the original contract (eg, goods in lieu of cash).

Here, the homeowner offered to pay the contractor \$35,000 in full satisfaction of his contractual obligation to pay the contractor \$50,000. The contractor agreed to that lesser amount (accord), and the homeowner paid it (satisfaction). Since the homeowner *honestly* believed that there were defects in the contractor's work and departures from the plans (good-faith dispute), the homeowner's payment of \$35,000 furnished sufficient consideration to form a valid accord (**Choice D**). Therefore, the contractor will likely not succeed.

**(Choice B)** The fact that the reasonable value of the work was only \$35,000 does not excuse the homeowner from his obligation to pay the \$50,000 contract price. Instead, the homeowner's obligation was discharged by an accord (new contract for \$35,000) and satisfaction (payment of the \$35,000).

**(Choice C)** The doctrine of **promissory estoppel** enables a party who reasonably and detrimentally relied on a promise to enforce that promise even though *no* valid contract was formed. But here, the contractor's reliance on the homeowner's *contractual* promise is irrelevant.

**Educational objective:**

An accord requires consideration to be valid. That consideration can only be worth less than what was agreed to in the original contract if (1) there is a good-faith dispute as to the amount owed or (2) the new consideration is of a different type than what was owed under the original contract.

### **References**

Restatement (Second) of Contracts § 281 (Am. Law Inst. 1981) (accord and satisfaction).

Restatement (Second) of Contracts § 74 cmt. c (Am. Law Inst. 1981) (explaining that payment of a disputed amount is consideration for a return promise).

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