

A seller entered into a written contract to sell a tract of land to an investor. The contract made no mention of the quality of title to be conveyed. The seller and the investor later completed the sale, and the seller delivered a warranty deed to the investor.

Soon thereafter, the value of the land increased dramatically. The investor entered into a written contract to sell the land to a buyer. The contract between the investor and the buyer expressly provided that the investor would convey a marketable title. The buyer's attorney discovered that the title to the land was not marketable and had not been marketable when the original seller had conveyed to the investor. The buyer refused to complete the sale.

The investor sued the original seller for breach of contract, claiming damages from the seller's failure to convey marketable title, which resulted in the investor's loss of the sale to the subsequent buyer.

Who is likely to prevail on this count?

- A. The investor, because the law implies in such a contract a covenant that the title will be marketable.
- B. The investor, because the original seller is liable for all reasonably foreseeable damages.
- C. The original seller, because her contract obligations as to title merged into the deed.
- D. The original seller, because she did not expressly agree to convey marketable title.

**Explanation:**

All contracts for the sale of land, unless otherwise stated, *impliedly* warrant that the seller will convey **marketable title** to the buyer upon closing **(Choices A & D)**. However, once a deed is delivered to and accepted by the buyer, the **doctrine of merger** provides that all obligations contained within the land-sale contract **merge into the deed**. Those obligations can **be enforced** thereafter only if they are **incorporated into the deed**.

Here, the investor has sued the original seller for breach of contract, claiming damages from the seller's failure to convey marketable title. Although the investor's allegations appear to be true, he can only seek a remedy that arises from the deed—not the contract that merged with the deed. As a result, the original seller is likely to prevail.\*

\*The investor likely would have prevailed had he instead sued the original seller for breaching a **covenant of title** contained within the warranty deed that he received.

**(Choice B)** A seller may be liable for reasonably foreseeable damages that arise from a breach of a warranty in the deed or from fraudulent assertions in the land-sale contract. But neither ground has been asserted by the investor in this case.

**Educational objective:**

Under the doctrine of merger, all obligations contained within the land-sale contract merge into the deed and can be enforced thereafter only if they are incorporated into the deed.

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