

In a written contract, an architect agreed to draw up the plans for and to supervise construction of a client's new house. In return, the client agreed to pay the architect a fee of \$10,000 to be paid upon the house's completion. After completion, the client claimed erroneously but in good faith that the architect's plans were defective. The client orally offered to pay the architect \$7,500 in full settlement of the claim for the fee. The architect orally accepted that offer despite the fact that the reasonable value of his services was in fact \$10,000. The client paid the architect \$7,500 pursuant to their agreement.

The architect subsequently sued the client for the remaining \$2,500. In a preliminary finding, the trier of fact found that there were no defects in the architect's plans.

Will the architect be likely to prevail in his action against the client for \$2,500?

- A. No, because the architect's acceptance of partial payment constituted a novation.
- B. No, because the architect's promise to accept \$7,500 became binding when the client made the payment.
- C. Yes, because payment of \$7,500 cannot furnish consideration for the architect's promise to surrender his claim.
- D. Yes, because the oral agreement to modify the written contract is not enforceable.

Explanation:

Exceptions to preexisting-duty rule

Main rule		Promise to perform (or performance of) preexisting duty is not consideration
Common-law exceptions	New/alterd consideration	New duty added or preexisting duty altered (eg, acceleration of due date)
	Ratification of voidable duty	New promise to perform voidable duty (eg, upon reaching age of majority)
	Honest dispute	Scope of duty honestly disputed
	Unexpected event	Fair & equitable modification in view of unanticipated circumstances
	Renewed promise	Renewed promise to pay preexisting debt despite technical defense (eg, statute of limitations, bankruptcy) if written or partially performed
	Third party	Third party offers additional promise that is contingent on performance of preexisting duty
UCC exception	Modification	Modification sought in good faith—ie, honesty and observance of reasonable commercial standards of fair dealing

UCC = Uniform Commercial Code.

A **settlement agreement** must be supported by **consideration**. There is **no consideration** if one party merely promises to perform or performs a **preexisting duty**. But there *is* **consideration** if the **scope** of that duty is **disputed in good faith**. For example, a creditor can promise to settle an honestly disputed debt for a lesser amount than billed. If the debtor then pays that lesser amount, the creditor's promise becomes binding and the creditor cannot sue for the remainder of the billed amount even if it was actually owed.

Here, the architect contracted to draw up the plans for and supervise the construction of the client's house for \$10,000. After completion, the client claimed that the plans were defective and offered to settle for \$7,500. Although there were no defects in the plans, the architect's promise to surrender his claim in exchange for \$7,500 *was* supported by consideration since the client disputed the architect's performance in good faith (**Choice C**). And since this promise became binding when the client made the payment, the architect is unlikely to prevail.

(Choice A) The architect's acceptance of partial payment was *not* a novation—ie, a new contract that substitutes a new party for one of the original parties. Instead, it was an accord and satisfaction—ie, the tender and acceptance of an alternate performance that discharges a contractual obligation.

(Choice D) The architect and client were attempting to settle a dispute, not modify their contract. Oral settlement agreements are generally enforceable if their terms are sufficiently precise. And even when a writing is required under the [statute of frauds](#), an oral settlement becomes enforceable when one party performs (eg, by making the settlement payment—as seen here).

Educational objective:

A claim can be settled by entering a settlement agreement as long as it is supported by consideration. There is no consideration if one party merely promises to perform (or performs) a preexisting duty. But there is consideration if the scope of that duty is disputed in good faith.

References

- Restatement (Second) of Contracts § 74 (Am. Law Inst. 1981) (settlement of claims).

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