

A famous chef entered into a written agreement with a well-known interior decorator, who was respected for his unique designs, to design the interior of the chef's new restaurant and, upon the chef's approval of the design plan, to decorate and furnish the restaurant accordingly. 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 new decorator under an agreement in which the interior decorator assigned to the new decorator, and the new decorator agreed to complete, the chef's contract. The new decorator, also an experienced decorator of excellent repute, advised the chef of the assignment, and supplied him with information confirming both the new decorator's financial responsibility and past commercial success.

Is the chef obligated to permit the new decorator to perform the agreement?

- A. No, because the interior decorator's duties were of a personal nature, involving his reputation, taste, and skill.
- B. No, because the interior decorator's purported delegation to the new decorator of the interior decorator's obligations to the chef effected a novation.
- C. Yes, because the agreement contained no prohibition against assignment or delegation.
- D. Yes, because the chef received adequate assurances of the new decorator's ability to complete the job.

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

Although public policy favors free assignment of contractual rights and free delegation of contractual duties, **delegation is not permitted** when:

- 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").

Here, the well-known interior decorator, who was respected for his unique designs, agreed in writing to design the chef's new restaurant. Although the agreement was silent as to assignment or delegation, the chef had a substantial interest in having the interior decorator perform. That is because the interior decorator's duties were of a personal nature, involving his reputation, taste, and skill. Therefore, the interior decorator could *not* delegate his duties, and the chef is not required to permit the new decorator to perform the agreement **(Choice C)**.

(Choice B) A novation is a substituted contract in which the parties agree to replace an original contracting party with a new party. Here, the interior decorator's purported delegation to the new decorator was *not* a novation since the chef never agreed to replace the interior decorator with the new decorator.

(Choice D) The fact that the chef received adequate assurances of the new decorator's ability to complete the job (eg, information regarding the new decorator's past commercial success) is irrelevant.

Educational objective:

Delegation of contractual duties is not permitted when (1) the other party to the contract has a substantial interest in having the delegating party perform or (2) the contract prohibits delegation.

References

- Restatement (Second) of Contracts § 318 (Am. Law Inst. 1981) (delegation of performance of duty).

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