

The manager of a state fair contracted with a renowned hog breeder to exhibit the breeder's only world-champion hog for the three weeks of the annual fair. At the conclusion of the fair the breeder would receive \$300. Two days before the opening of the fair, the hog became sick with a communicable disease among swine and, under the applicable state quarantine law, could not be exhibited for at least a month.

Upon learning this, which of the following courses of action can the manager legally pursue with respect to his contract with the breeder?

- A. Suspend his own performance and recover damages from the breeder for breach of contract unless the breeder at once supplies a healthy hog of exhibition quality as a substitute for the world-champion hog.
- B. Suspend his own performance, demand assurances from the breeder, and treat a failure by the breeder to produce the hog as an actionable repudiation.
- C. Terminate his own performance and treat the hog's illness as discharging all remaining duties under the contract.
- D. Terminate the contract, but only if the manager promptly seeks to obtain for the exhibit a suitable substitute for the world-champion hog from another hog owner.

Explanation:

When an **unanticipated event** makes a party's **contractual duties impracticable** to perform, those duties will be **discharged if**:

nonoccurrence of the event was a **basic assumption** of the contract *and* the **party seeking discharge** is **not at fault**.

Here, the manager contracted to exhibit the breeder's only world-champion hog at the annual state fair. Two days before the fair opened, the hog became sick. That unanticipated event rendered performance impracticable since the hog could not be exhibited for at least a month under state law. And since the hog's ability to be exhibited was a basic assumption of the contract and the manager was not at fault, the manager can terminate his own performance and treat the hog's illness as discharging all remaining duties under the contract.

(Choice A) If possible, a party must render a reasonable substitute performance in place of the impracticable part. But a healthy hog of exhibition quality is not a reasonable substitute for the breeder's only world-champion hog.

(Choice B) If reasonable grounds arise to believe that a party will not perform because of impracticability, the other party *cannot* demand assurances of performance and treat a failure to give them as a repudiation. That is because the prospective nonperformance would not be a breach.

(Choice D) The manager's right to terminate his performance under the contract does not depend on whether he first seeks to obtain a suitable substitute for the world-champion hog from another hog owner.

Educational objective:

When an unanticipated event makes a party's contractual duties impracticable to perform, those duties will be discharged if (1) nonoccurrence of the event was a basic assumption of the contract and (2) the party seeking discharge is not at fault.

References

Restatement (Second) of Contracts § 261 (Am. Law Inst. 1981) (impracticability).

Restatement (Second) of Contracts § 278 (Am. Law Inst. 1981) (substituted performance).

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Examples of impracticability



Incapacity or death



Destruction of thing needed
for performance



Prohibition or law