On April 1, the owner of a house and a real estate investor signed a writing in which the owner, "in consideration of $100 to be paid to the owner by the investor," offered the investor the right to purchase the house for $100,000 within 30 days. The writing further provided, "This offer will become effective as an option only if and when the $100 consideration is in fact paid."

On April 20, the owner, having received no payment or other communication from the investor, sold and conveyed the house to the investor's business rival for $120,000. On April 21, the owner received a letter from the investor enclosing a cashier's check for $100 payable to the owner and stating, "I am hereby exercising my option to purchase the house and am prepared to close whenever you're ready."

Which of the following, if proved, best supports the investor's suit against the owner for breach of contract?

A. On April 15, the investor decided to purchase the house, and applied for and obtained a commitment from a bank for a $75,000 loan to help finance the purchase.

B. The investor was unaware of the sale to his business rival when the owner received the letter and check from the investor on April 21.

C. The owner and the investor are both professional dealers in real estate.

D. When the April 1 writing was signed, the owner said to the investor, "Don't worry about the $100; the recital of '$100 to be paid' makes this deal binding."

Explanation:

Irrevocable offers

	Type	Description	Consideration	Duration
UCC	**Firm offer**	Merchant gives written & signed assurance that offer will remain open	Not required	Specified or reasonable time
Common law	**Option contract**	Offeror promises to keep offer open in exchange for consideration	Required	
	Partial performance (unilateral contracts)	Offeror invites acceptance only by performance & offeree begins to perform		Reasonable time for full performance
	Promissory estoppel*	Offeror could reasonably foresee reliance on offer & offeree reasonably relies to his/her detriment	Not required	Reasonable time

UCC = Uniform Commercial Code.

*Also referred to as "detrimental reliance."

An **option** is a contract in which the offeree gives consideration (eg, money) in exchange for the offeror's promise to keep an outstanding **offer open** for a **specified period of time**. An offer to form an option is **revocable prior to acceptance** of the option. Revocation occurs when:

the offeror **directly communicates** the revocation to the offeree *or*

the offeree **learns information** from a reliable source that **reasonably indicates** the offer was revoked (eg, house sold to another buyer).

Here, the owner offered the investor the option to purchase the house for $100,000 within 30 days. The investor had to pay $100 to accept this option, which the owner received on April 21.* Although the owner had already sold the house to someone else, he had not told the investor that the offer to form an option was revoked. So if the investor was *unaware* of the other sale, there was no revocation prior to his acceptance and exercise of the option on April 21, and the owner breached the resulting sales contract.

*Under the mailbox rule, acceptance of an offer is generally effective upon dispatch. However, one exception to the mailbox rule applies to option contracts, where acceptance is effective upon receipt.

(Choice A) An offer may become irrevocable under the doctrine of promissory estoppel (also called detrimental reliance) if the offeree reasonably and detrimentally relied upon that offer. But here, it was unreasonable for the investor to obtain a loan before paying the $100 required to keep the offer open.

(Choice C) Under Article 2 of the Uniform Commercial Code, a firm offer from a merchant is binding. But this only applies to contracts for the sale of goods, not real property.

(Choice D) A binding option requires actual consideration—not sham consideration (eg, a recital of consideration that is not intended to be paid). Here, the investor's statement ("Don't worry about the $100") would show that the consideration was not intended to be paid.

Educational objective:

An offer to form an option contract is revocable before the option is accepted. Revocation occurs when (1) the offeror directly communicates the revocation to the offeree or (2) the offeree obtains reliable information that reasonably indicates the offer was revoked.

References

Restatement (Second) of Contracts §§ 42–43 (Am. Law Inst. 1981) (direct and indirect communication of revocation).