

In order to raise revenue, a city required home-repair contractors who performed work within the city limits to pay a licensing fee to a city agency. A contractor who was unaware of the fee requirement agreed to perform home repairs for a city resident. After the contractor completed the work, the resident discovered that the contractor had not paid the licensing fee, and she refused to pay for the repairs, which were otherwise satisfactory.

If the contractor sues the resident for breach of contract, how is the court likely to rule?

- A. Although the contract violates the law and is void, the court will require the homeowner to pay the contractor the reasonable value of the work accepted.
- B. Although the contract violates the law, the court will find that public policy does not bar enforcement of the contract, because the purpose of the fee is merely to raise revenue.
- C. Because the contract violates the law and is void, the court will not enforce it.
- D. Because the purpose of the fee is merely to raise revenue, the court will find that the contract does not violate the law but will allow the contractor to recover his costs only.

Explanation:

Weighing public policy v. Interest in enforcing illegal contract

Public policy

- Strength of policy as shown by legislature or courts
- Likelihood nonenforcement will further policy
- Seriousness and/or deliberateness of misconduct
- Connection between misconduct & contract

Interest in enforcing

- Parties' justified expectations
- Forfeiture that would result from nonenforcement
- Special public interest in enforcement

Illegal contracts are generally **void** as against public policy. But if a contract is illegal solely because a party does not have a required license, then the **enforceability** of the contract depends on whether the **purpose** behind the **licensing requirement** is:

- **economic** (eg, raise revenue) – in which case the contract is **enforceable** *or*
- **regulatory** (eg, protect public health or safety) – in which case the contract is **unenforceable** if the **public policy** behind the requirement **clearly outweighs** the **interest in enforcing** the contract.

Here, the contract between the contractor and resident was illegal because the contractor had not paid the required licensing fee to the city agency. But since the purpose of this fee is merely to *raise revenue* for the city, the court will likely find that public policy does not bar enforcement of the contract **(Choice C)**.

(Choice A) Had the contract been void on public-policy grounds, then the court may have required the homeowner to pay restitution damages (ie, the reasonable value of the work accepted) to avoid unjust enrichment.

(Choice D) The contract *does* violate the law. But public policy does not bar its enforcement, and the contractor is entitled to recover the full contract price—not his costs only.

Educational objective:

When a party does not have a required license, the enforceability of the contract depends on whether the purpose behind the requirement is (1) economic, in which case the contract is enforceable, or (2) regulatory, in which case it is unenforceable if the public policy behind the requirement clearly outweighs the interest in enforcement.

References

- Restatement (Second) of Contracts § 181 (Am. Law Inst. 1981) (when failure to comply with licensing requirement makes contract unenforceable).

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