

A general contractor agreed to build a refrigerated storage facility for a company that transports perishable food. A subcontractor agreed with the general contractor to install the facility's refrigeration system. Their agreement included the express condition that all pipes for the refrigeration system were to be made of solid steel. However, the subcontractor completed the job using galvanized steel pipes that he had on hand. Unlike solid steel, the galvanized steel degrades quickly upon coming into contact with the type of refrigerant used in the refrigeration system.

The general contractor discovered the substitution after the job was completed. The subcontractor, who was fully engaged out-of-state on another company's job site, declined to replace the pipes. The general contractor subsequently refused to pay the subcontractor pursuant to the contract and hired another subcontractor to replace the pipes so that the facility could be made operational.

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

- A. The subcontractor can recover in quantum meruit despite his failure to comply with an express condition in the contract.
- B. The subcontractor cannot recover damages under the contract because he committed a material breach.
- C. The subcontractor is entitled to damages for services performed because the use of a different type of pipe was a minor breach.
- D. The subcontractor is entitled to the full contract price because he substantially performed.

Explanation:

Factors considered to determine material breach

Extent to which nonbreaching party will suffer loss

Extent to which nonbreaching party can be adequately compensated for loss

Extent to which breaching party will suffer forfeiture

Likelihood of cure by breaching party

Absence of good faith or fair dealing by breaching party

A **material breach** is the absence of substantial performance. Stated differently, it is a breach so serious that it **defeats the contract's purpose** or deprives the nonbreaching party of the substantial benefit of its bargain. Unlike a party who has substantially performed, a party in material breach **cannot recover damages** under the contract. Additionally, the material breach discharges the other party's duty to perform and entitles that party to **terminate the contract** if the breaching party is **unwilling or unable to cure** its breach in a reasonable time.*

Here, the subcontractor ignored the express condition that the pipes were to be made of solid steel and instead installed galvanized steel pipes. This was a material breach because it defeated the purpose of the contract by making the facility's refrigeration system entirely nonoperational **(Choice C)**. And the subcontractor declined to cure this breach by replacing the pipes. Therefore, the court will likely find that the general contractor had the right to terminate the contract due to the subcontractor's material breach so the subcontractor cannot recover damages.

*If the breach is not material, then the nonbreaching party is limited to a claim for damages and cannot terminate the contract.

(Choice A) Quantum meruit entitles a party who has conferred a benefit on another in a [quasi-contractual](#) relationship to damages for the reasonable value of that benefit. But this doctrine does not apply when, as here, there is an express contractual relationship.

(Choice D) An express condition must be fully complied with unless excused (not seen here), so substantial performance will not suffice. But had the subcontractor substantially performed, he could have recovered the full contract price *minus* any amount that it will cost the general contractor to obtain the promised full performance.

Educational objective:

A party in material breach cannot sue to recover contract damages. Additionally, a material breach discharges the other party's duty to perform and entitles that party to terminate the contract if the breaching party is unwilling or unable to cure the breach.

References

Restatement (Second) of Contracts § 241 (Am. Law Inst. 1981) (factors used to determine whether a breach of contract is material).

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