

A tenant rented a commercial building from a landlord and operated a business in it. The building's large front window was smashed by vandals six months before expiration of the tenant-landlord lease. The tenant, who was obligated thereunder to effect and pay for repairs in such cases, promptly contracted with a window store to replace the window for \$2,000, due 30 days after satisfactory completion of the work. The landlord was then unaware of the tenant-store contract. The store was aware that the building was under lease but dealt entirely with the tenant.

Sixty days after the store's satisfactory completion of the window replacement, and prior to the expiration of the tenant's lease, the tenant ceased doing business and vacated the building. In so doing, the tenant forfeited his right to the return of a \$2,000 security deposit with the landlord under the lease provisions. The deposit had been required, however, for the express purpose (as stated in the lease) of covering any damage to the leased property except ordinary wear and tear. The only such damage occurring during the tenant's occupancy was the smashed window. The window store's \$2,000 bill for the window replacement is wholly unpaid.

Assuming that the window store has no remedy quasi in rem under the relevant state mechanic's lien statute, which of the following would provide the store's best chance of an effective remedy in personam against the landlord?

- A. An action as third-party intended beneficiary of the tenant-landlord lease.
- B. An action based on an implied-in-fact contract.
- C. An action based on promissory estoppel.
- D. An action in quasi-contract for the reasonable value of a benefit non-gratuitously conferred on the landlord.

Explanation:

Implied contracts

Implied-in-fact Formed when party manifests assent by conduct rather than spoken or written words

Eg, contractor mistakenly paves driveway & owner does not object

Implied-in-law* Constructed by court to prevent unjust enrichment when party receives benefit from another who reasonably expects compensation

("quasi") Eg, physician treats unconscious person

*Implied-in-law contracts are not true contracts since they lack mutual assent.

An "in personam" remedy is effective against a particular defendant, as opposed to the world at large. In personam remedies are available in most causes of action, including quasi-contract. A plaintiff can recover in **quasi-contract**—despite having **no contractual relationship** with the defendant—if the plaintiff conferred a **non-gratuitous benefit** on the defendant that resulted in **unjust enrichment**.

Here, the tenant hired the window store to replace a broken window for \$2,000 but failed to pay the bill. Although the landlord had no contractual relationship with the window store, he benefited from the window replacement in his building. This unjustly enriched the landlord since the tenant had forfeited his \$2,000 security deposit and there was no other damage during the tenant's lease for which the landlord had to use the deposit. Therefore, quasi-contract provides the store's best chance for an effective in personam remedy against the landlord.

(Choice A) An intended **third-party beneficiary** is a nonparty to the contract whom the contracting parties intended to benefit directly. Intended beneficiaries have contractual rights and may sue to enforce them. But here, the landlord and tenant had no intent to benefit the window store when they entered the lease agreement.

(Choice B) Implied-in-fact contracts are formed when the parties manifest assent by conduct rather than spoken or written words. But the landlord and window store could not have formed one here since the store dealt entirely with the tenant.

(Choice C) **Promissory estoppel** provides a basis for a party to enforce a promise on which it relied when no valid contract was formed. But promissory estoppel would be ineffective here since the landlord never promised to pay the window store's bill.

Educational objective:

A plaintiff can recover under a quasi-contract theory—despite having no contractual relationship with the defendant—if the plaintiff conferred a non-gratuitous benefit on the defendant that resulted in unjust enrichment.

References

Restatement (Third) of Restitution and Unjust Enrichment § 1 (Am. Law Inst. 2011) (explaining that a party is subject to liability for restitution when he/she is unjustly enriched at the expense of another).

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