

A landowner contracted in a signed writing to sell a 500-acre tract of farmland to a farmer. The contract provided for exchange of the deed and purchase price of \$500,000 in cash on January 15. Possession was to be given to the farmer on the same date.

On January 15, the landowner notified the farmer that because the tenant on the farmland wrongfully refused to quit the premises until January 30, the landowner would be unable to deliver possession of the farmland until then, but he assured the farmer that he would tender the deed and possession on that date. When the landowner tendered the deed and possession on January 30, the farmer refused to accept either, and refused to pay the \$500,000. Throughout the month of January, the market value of the farmland was \$510,000, and its fair monthly rental value was \$5,000.

Will the landowner likely succeed in an action against the farmer for specific performance?

- A. No, because the landowner breached by failing to tender the deed and possession on January 15.
- B. No, because the landowner's remedy at law for monetary relief is adequate.
- C. Yes, because the court will excuse the delay in tender on the ground that there was a temporary impossibility caused by the tenant's holding over.
- D. Yes, because time is ordinarily not of the essence in a land-sale contract.

Explanation:

Seller's remedies

Rescission & restitution	Rescind (ie, cancel) agreement & recover possession of property Rental value & physical damages are recoverable Buyer not liable for purchase price
Specific performance	Seek an injunction ordering buyer to pay agreed purchase price May be unavailable if money damages provide adequate compensation & property is not unique eg, condominium identical to other units in complex
Damages	Loss of bargain = contract price – market value at time of breach Liquidated damages = amount designated in the sales contract as compensation for breach Retain buyer's deposit (up to amount of seller's actual damages) Incidental & consequential damages that were contemplated during sales contract or reasonably foreseeable

In a **land-sale contract**, the seller is required to deliver marketable title to the buyer at the closing date. Failure to do so constitutes a breach of the contract. But if the **seller conveys** the land within a **reasonable time** after the **closing date**, the **buyer cannot withhold payment**. That is because **time is ordinarily *not* of the essence** in a land-sale contract unless the circumstances indicate that performance by that date is important.

Here, the landowner breached the contract by failing to tender the deed and possession of the farm to the farmer on January 15 (closing date). But the landowner did so on January 30 (reasonable time after closing). The circumstances do not indicate that time was of the essence, so the farmer breached the contract by refusing to pay the purchase price (**Choice A**).

A seller's potential remedies for a buyer's breach include **specific performance**, which allows the court to issue an injunction that orders the buyer to pay the agreed purchase price. Specific performance is **appropriate when monetary damages are inadequate** (eg, unique land). Farms are unique since each has different characteristics. Therefore, the landowner can obtain specific performance as a remedy against the farmer (**Choice B**).

(**Choice C**) Performance is **discharged** (ie, excused) when an unexpected and extraordinary event beyond the parties' control makes performance impossible. Here, the landowner should have known that the tenant on the farmland could hold over. As a result, the landowner's delay is not excused due to impossibility.

Educational objective:

Time is ordinarily *not* of the essence in a contract for the sale of land, so the buyer cannot withhold payment if the seller conveys the land within a reasonable time after closing. If the buyer breaches by refusing to pay, the seller can obtain specific performance when monetary damages would be inadequate (eg, unique land).

References

Restatement (Second) of Contracts § 242 (Am. Law Inst. 1981) (effect of delayed performance).

77 Am. Jur. 2d Vendor and Purchaser § 445 (2020) (seller's remedies).

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