

A business contracted with a shareholder to purchase all of the shareholder's stock in a corporation at a specified price per share. At the time this contract was executed, the business's financial officer said to the shareholder, "Our commitment to buy is conditioned on our obtaining approval of the contract from our parent company." The shareholder replied, "Fine. No problem." The shareholder subsequently refused to consummate the sale on the ground that the business had neglected to request the parent company's approval of the contract, which was true. The parent company's chief executive officer, however, is prepared to testify that the parent company would have routinely approved the contract if requested to do so. The business can also prove that it has made a substantial sale of other assets to finance the stock purchase, although it admittedly had not anticipated any such necessity when it entered into the stock-purchase agreement.

If the business sues the shareholder for breach of contract, is the business likely to prevail?

- A. No, because obtaining the parent company's approval of the contract was an event within the business's control and the business's failure to obtain it was itself a material breach of contract.
- B. No, because the express condition of the parent company's approval had not occurred prior to the lawsuit.
- C. Yes, because the business detrimentally relied on the shareholder's commitment by selling off other assets to finance the stock purchase.
- D. Yes, because the condition of the parent company's approval of the contract, being designed to protect only the business and the parent company, can be and has been waived by those entities.

## Explanation:

### When nonoccurrence of condition is excused

<b>Waiver</b>	Party waives condition by words or conduct
<b>Wrongful interference</b>	Party wrongfully prevents or interferes with condition's occurrence
<b>Estoppel</b>	Party indicates condition will not be enforced AND Other party reasonably & detrimentally relies on belief that condition has been waived
<b>Disproportionate forfeiture</b>	Party substantially performed & will be significantly harmed if condition is enforced

A party may generally avoid performance if a **condition precedent**—ie, an uncertain future event that must occur before either or both parties' performance becomes due—has not occurred. The **nonoccurrence of a condition** may be **excused**, however, if the party who benefits from the condition **waives it by words or conduct**. The waiving party may retract the waiver unless the other party has detrimentally relied on it.

Here, the business's obligation to buy the shareholder's stock was conditioned on obtaining the parent company's approval (condition precedent). Although the business neglected to obtain that approval (nonoccurrence), the parent company's CEO is prepared to testify that the company would have routinely approved the contract if requested to do so (waiver). Because the condition protected the business and parent company and they waived it, the shareholder was required to perform by selling the stock (**Choice B**). Therefore, the business will likely prevail.

**(Choice A)** Obtaining the parent company's approval was *not* an event within the business's control because the parent company could have refused to approve the contract.

**(Choice C)** Under the doctrine of **promissory estoppel**, a party can enforce a promise on which it reasonably and detrimentally relied when *no* valid contract was formed. But this doctrine does not apply here because a contract *was* formed, and performance became due when the condition precedent was waived.

### Educational objective:

Nonoccurrence of a condition may be excused if the party who benefits from the condition waives it by words or conduct.

### References

Restatement (Second) of Contracts §§ 224–25 (Am. Law Inst. 1981) (conditions and effect of nonoccurrence).

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