

On November 15, a carpenter in a signed writing contracted with a homeowner for an agreed price to personally remodel the homeowner's kitchen according to specifications provided by the homeowner, and to start work on December 1. The carpenter agreed to provide all materials for the job in addition to all of the labor required.

On November 26, the carpenter without legal excuse repudiated the contract. After a reasonable and prolonged effort, the homeowner could not find anyone to remodel his kitchen for a price approximating the price agreed to by the carpenter. One year later, the homeowner brings an action for specific performance against the carpenter.

Which of the following will provide the carpenter with the best defense?

- A. An action for equitable relief not brought within a reasonable time is barred by laches.
- B. Specific performance is generally not available as a remedy in the case of an anticipatory repudiation.
- C. Specific performance is not available as a remedy to enforce a contractual duty to perform personal services.
- D. Specific performance is not available as a remedy where even nominal damages could have been recovered as a remedy at law.

Explanation:

Personal-services contracts

Definition Contract involving party's personal taste, skill, or talent—eg, entertainer, designer, lawyer, architect

Enforcement Nonbreaching party entitled to compensatory damages stemming from breach

Specific performance *not* available

Specific performance is an **equitable remedy** whereby a court orders a breaching party to perform a contractual duty when monetary damages would be inadequate—eg, breach of contract for the sale of land. However, this remedy is **not available** to enforce a contractual duty to **perform personal services** because courts are unwilling to compel personal associations after a dispute.

Here, the contract provided that the carpenter would *personally* remodel the homeowner's kitchen. When the carpenter repudiated the contract, the homeowner brought an action for specific performance. Therefore, the carpenter's best defense is that this remedy is not available for breach of personal-services contracts.

(Choice A) The equitable defense of laches is commonly asserted in specific-performance actions. To prevail on this defense, the breaching party must show that the enforcing party's unreasonable delay in bringing the claim has resulted in prejudice—ie, substantially increased the cost or difficulty of performance. Here, the homeowner reasonably delayed suit while looking for a similarly priced carpenter and no prejudice to the carpenter is shown.

(Choice B) Specific performance *is* available as a remedy in cases of anticipatory repudiation—ie, where one contracting party unequivocally indicates prior to the time for performance that he/she will not perform.

(Choice D) Specific performance, like other equitable remedies, will not be granted where monetary damages are adequate. But nominal damages (eg, \$1) alone are typically *not* an adequate remedy.

Educational objective:

Specific performance—ie, court-ordered performance of a contractual duty—is not available as a remedy to enforce a contractual duty to perform personal services.

References

Restatement (Second) of Contracts § 367 (Am. Law Inst. 1981) (explaining that specific performance is not available to enforce personal contracts).

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