

A testator, whose nephew was his only heir, died leaving a will that gave his entire estate to charity. His nephew, knowing full well that the testator was of sound mind all of his life, and having no evidence to the contrary, nevertheless filed a suit contesting the testator's will on the ground that the testator was incompetent when the will was signed. The testator's executor offered the nephew \$5,000 to settle the suit, and the nephew agreed.

If the executor then repudiates the agreement and the foregoing facts are proved or admitted in the nephew's suit against the executor for breach of contract, is the nephew entitled to recover under the prevailing view?

- A. No, because an agreement to oust the court of its jurisdiction to decide a will contest is contrary to public policy.
- B. No, because the nephew did not bring the will contest in good faith.
- C. Yes, because the agreement was a bargained-for exchange.
- D. Yes, because the law encourages the settlement of disputed claims.

Explanation:

A contract is generally formed when a mutual agreement is supported by valuable consideration—ie, a bargained-for exchange of promises or performance. A **promise to surrender a claim or defense** can serve as **consideration for a settlement agreement** so long as:

the claim or defense is **valid or subject to a good-faith dispute** *or*

the **surrendering party honestly believes** that the claim or defense **may be valid**.

If the surrendering party knows that the claim or defense is invalid, an agreement to surrender it lacks consideration and is therefore unenforceable.

Here, the nephew agreed to settle his suit contesting the testator's will in exchange for \$5,000. But the nephew did *not* honestly believe that his claim was valid (ie, he did not bring the will contest in good faith) since he knew that the testator was of sound mind his whole life and had no contrary evidence. Therefore, the nephew's settlement agreement with the executor is unenforceable for lack of bargained-for consideration, and the nephew is not entitled to recover **(Choice C)**.

(Choices A & D) The law *does* encourage the settlement of legal claims—but not those brought in bad faith. Had the nephew brought the will contest in good faith, there would have been no issue with settling out of court.

Educational objective:

A promise to surrender a claim or defense constitutes consideration for a settlement agreement so long as (1) the claim or defense is valid or subject to a good-faith dispute or (2) the surrendering party believes that the claim or defense may be valid.

References

Restatement (Second) of Contracts § 74 (Am. Law Inst. 1981) (settlement of claims).

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Consideration for settlement agreements

