

A real estate developer solicited bids from general contractors to build residences on 50 lots owned by the developer. A general contractor, in turn, solicited bids from subcontractors for the various aspects of the construction process. A company submitted a bid of \$1 million for performing the electrical work. This bid was based on a careless omission of the cost of an electrical component called for in the specifications prepared by the developer. The other bids received by the general contractor for the electrical work ranged from \$1.25 million to \$1.3 million, which were in line with the general contractor's own estimate for the electrical work. The general contractor used the company's bid of \$1 million for performing the electrical work in submitting its bid to the developer.

After the general contractor's bid was accepted by the developer and the general contractor, in turn, accepted the company's bid, but before any work on the residences began, the company discovered its error. Although the company will make no profit from the job instead of the \$100,000 profit it would have made had it correctly read the specifications, enforcement of its contract with the general contractor would not be unconscionable.

Is it likely that the company can avoid the contract?

- A. No, because the company's bid was based on its own carelessness in computing its bid.
- B. No, because the enforcement of the contract would not be unconscionable.
- C. Yes, because the general contractor had reason to know of the mistake.
- D. Yes, because there was a misunderstanding that prevented the formation of the contract.

Explanation:

A **valid contract** is generally formed when a mutual agreement is supported by adequate consideration, such as when the general contractor accepted the company's bid of \$1 million for performing the electrical work. Although the company omitted the cost of an item when computing its bid, its **unilateral mistake** is *not grounds to avoid* the contract **unless**:

- the mistake would make **enforcement** of the contract against the nonmistaken party **unconscionable** (eg, due to a substantial difference between contract price and actual value) *or*
- the **nonmistaken party caused, or knew or had reason to know** of, the mistake.

Here, the facts stipulate that enforcement of the contract would not be unconscionable **(Choice B)**. But the other bids received by the general contractor ranged from \$1.25 million to \$1.3 million—a 25% to 30% discrepancy from the company's bid. Since the other bids were in line with the general contractor's own estimate for the electrical work, the general contractor had *reason to know* that the company's \$1 million bid was based on a mistake. As a result, the company can likely avoid the contract.

(Choice A) The mistaken party's negligence with regard to its mistake (eg, the company's careless computing of its bid) does *not* prevent that party from avoiding the contract.

(Choice D) A **misunderstanding** occurs when the parties attach different meanings to the same material term (eg, price). Here, the erroneous \$1 million bid did *not* create a misunderstanding that would prevent contract formation since "\$1 million" has just one meaning.

Educational objective:

Unilateral mistake is not grounds to avoid a contract unless (1) the mistake would make enforcement of the contract unconscionable or (2) the nonmistaken party caused, or knew or had reason to know of, the mistake.

References

- Restatement (Second) of Contracts § 153 (Am. Law Inst. 1981) (when unilateral mistake makes a contract voidable).

