

A buyer and a seller entered into a written contract for the sale of an identified parcel of land. The contract expressly provided that the buyer was to pay \$150,000 cash for the land at the time of the closing but did not state the closing date. The parties had not agreed on the closing date because the buyer was not sure at the time the contract was signed how she would raise the cash.

Fifteen days after the contract was signed, the seller learned that he could sell the land to a third party for \$200,000. The seller asked the buyer if she would agree to rescind the contract. The buyer refused. The seller then told her that he would not complete the transaction, contending that the contract was unenforceable under the statute of frauds because an essential element (time for performance) was not agreed upon by the parties and was not expressly stated in the written agreement. The seller sold the land to the third party.

The buyer brought an appropriate action against the seller for breach of contract.

For which party is the court likely to find?

- A. The buyer, because of the doctrine of unjust enrichment.
- B. The buyer, because the court will infer that performance within a reasonable time was intended.
- C. The seller, because the contract is unenforceable under the statute of frauds.
- D. The seller, because time of performance is presumed to be of the essence.

Explanation:

Contracts for the sale of land are enforceable only if they comply with the **statute of frauds**. This statute requires that these contracts be in **writing**, be **signed** by the party against whom enforcement is sought, and contain all **essential terms**. Essential terms often include:

the identity of the parties

words of intent to buy or sell

a description of the property *and*

the sales price.

However, **time for performance** is **not an essential term**. Instead, courts will **infer** that performance **within a reasonable time** was intended. And since the contract here satisfies all the aforementioned requirements, it is enforceable under the statute of frauds (**Choice C**).

(Choice A) Unjust enrichment does not apply when, as here, the claimant has not given anything of value. Therefore, the buyer will not prevail on this basis.

(Choice D) Time is *not* presumed to be of the essence unless it is expressly stated in the contract (not seen here).

Educational objective:

Under the statute of frauds, contracts for the sale of land must be in writing, be signed by the party against whom enforcement is sought, and contain all essential terms. Time for performance is *not* an essential term, and courts will presume that performance with a reasonable time was intended if no time is listed.

References

73 Am. Jur. 2d Statute of Frauds §§ 289, 305, 325, 329 (2020).

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Essential terms for real estate contracts



