

CONTRACTS QUESTION

A homeowner and his neighbor live in houses that were built at the same time. The two houses have identical exteriors and are next to each other. The homeowner and his neighbor have not painted their houses in a long time, and the exterior paint on both houses is cracked and peeling. A retiree, who lives across the street from the homeowner and the neighbor, has complained to both of them that the peeling paint on their houses reduces property values in the neighborhood.

Last week, the homeowner contacted a professional housepainter. After some discussion, the painter and the homeowner entered into a written contract, signed by both of them, pursuant to which the painter agreed to paint the homeowner's house within 14 days and the homeowner agreed to pay the painter \$6,000 no later than three days after completion of painting. The price was advantageous for the homeowner because, to paint a house of that size, most professional housepainters would have charged at least \$8,000.

The day after the homeowner entered into the contract with the painter, he told his neighbor about the great deal he had made. The neighbor then stated that her parents wanted to come to town for a short visit the following month, but that she was reluctant to invite them. "This would be the first time my parents would see my house, but I can't invite them to my house with its peeling paint; I'd be too embarrassed. I'd paint the house now, but I can't afford the going rate for a good paint job."

The homeowner, who was facing cash-flow problems of his own, decided to offer the neighbor a deal that would help them both. The homeowner said that, for \$500, the homeowner would allow the neighbor to take over the homeowner's rights under the contract. The homeowner said, "You'll pay me \$500 and take the contract from me; the painter will paint your house instead of mine, and when he's done, you'll pay him the \$6,000." The neighbor happily agreed to this idea.

The following day, the neighbor paid the homeowner \$500 and the homeowner said to her, "The paint deal is now yours." The neighbor then invited her parents for the visit that had been discussed. The neighbor also remembered how annoyed the retiree had been about the condition of her house. Accordingly, she called the retiree and told him about the plans to have her house painted. The retiree responded that it was "about time."

Later that day, the homeowner and the neighbor told the painter about the deal pursuant to which the neighbor had taken over the contract from the homeowner. The painter was unhappy with the news and stated, "You can't change my deal without my consent. I will honor my commitment to paint the house I promised to paint, but I won't paint someone else's house."

There is no difference in magnitude or difficulty between the work required to paint the homeowner's house and the work required to paint the neighbor's house.

1. If the painter refuses to paint the neighbor's house, would the neighbor succeed in a breach of contract action against the painter? Explain.
2. Assuming that the neighbor would succeed in the breach of contract action against the painter, would the retiree succeed in a breach of contract action? Explain.

Question Presented

A homeowner and a painter signed a contract: the painter would paint the homeowner's house within 14 days for \$6,000 (a bargain; most painters would charge \$8,000).

← valid K: painter owes a duty to paint the homeowner's house

The homeowner told his neighbor she could take over the contract: for \$500 the painter would paint her house instead and she would pay the \$6,000. She paid the \$500 and he said, the paint deal is now yours.

← assignment of the homeowner's rights to the neighbor

There is no difference in magnitude or difficulty between painting the homeowner's house and the neighbor's house.

← key fact: no material change to the painter's duty

Told of the deal, the painter objected: you can't change my deal without my consent; I won't paint someone else's house.

← obligor's consent needed only if the duty materially changes

A retiree across the street had complained that the peeling paint hurt property values; told of the plan, he said it was about time.

← intended or merely incidental beneficiary?

1. If the painter refuses to paint the neighbor's house, would the neighbor succeed in a breach action?

← → valid assignment of rights?

2. Would the retiree succeed in a breach action?

← → intended vs. incidental beneficiary

Question 1: Assignment of the Homeowner's Rights to the Neighbor

Issue. Whether the homeowner validly assigned his contract rights to the neighbor, so that she can enforce the painting contract against the painter.

Can the neighbor enforce the painter's promise?

Rule. A party may assign its contract rights to a third party without the obligor's consent, and the assignee may then enforce the contract, unless the assignment would materially change the obligor's duty, materially increase the obligor's burden or risk, or is

Rights are freely assignable unless the assignment materially changes the obligor's duty or burden.

barred by the contract or by law.

Analysis. Here, the homeowner assigned his right to the painter's performance to the neighbor. Although the painter would paint a different house, the facts state there is no difference in magnitude or difficulty, so the substitution does not materially change the painter's duty or increase his burden. The painter's refusal to consent is therefore irrelevant, and the assignment is effective, giving the neighbor the right to enforce it.

Conclusion. Therefore, the neighbor would succeed against the painter for refusing to paint her house.

Same magnitude/difficulty → no material change → the painter's consent is not required.

Yes: valid assignment; the neighbor can enforce.

Question 2: The Retiree as a Third-Party Beneficiary

Issue. Whether the retiree can enforce the painting contract as a third-party beneficiary.

Rule. Only an intended third-party beneficiary, one to whom the promisee meant to give the benefit of the bargained-for performance, may enforce a contract. An incidental beneficiary, who merely happens to benefit in fact, has no enforceable rights.

Analysis. Here, the retiree is not a party and took no assignment. Nor is he an intended beneficiary: nothing shows the homeowner or neighbor contracted in order to confer a benefit on him. He merely stands to gain indirectly from improved neighborhood property values, which makes him at most an incidental beneficiary.

Conclusion. Therefore, the retiree could not succeed in a breach action against the painter.

Can the retiree sue on a contract he isn't a party to?

Only intended beneficiaries can enforce; incidental beneficiaries cannot.

No intent to benefit him; just indirect gain from property values = incidental.

No: incidental beneficiary, no right to enforce.

Step-by-Step: Assignment & Third-Party Beneficiaries

Separate the person claiming an assigned right from the stranger claiming a benefit; they are governed by different rules.

1. Did a party transfer its contract RIGHTS to a third party (an assignment)?

→ If yes, is it effective? An assignment is effective unless it materially changes the obligor's duty, materially increases the burden or risk, or is barred. **Q1: same work → effective**



2. Effect of a valid assignment?

→ The assignee may **ENFORCE** the contract against the obligor; the obligor's consent is not required. **neighbor can enforce**



3. A non-party seeking to enforce (no assignment): intended or incidental beneficiary?

- Intended (the promisee meant to benefit her): may enforce once rights vest.
- Incidental (merely benefits in fact): **CANNOT enforce.** Q2: retiree → incidental