

MEE Question 5

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.
3. If the painter paints the neighbor's house and the neighbor does not pay the \$6,000 contract price, would the painter succeed in a contract claim against the neighbor? Against the homeowner? Explain.

5) Please type your answer to MEE 5 below

⌂

⌂

When finished with this question, click ⌂ to advance to the next question.

(Essay)

===== Start of Answer #5 (541 words) =====

Question 5

1. If Painter refuses to paint Neighbor's house, would Neighbor succeed in a breach of contract action?

Neighbor likely would succeed in a breach of contract action against Painter. The issue is whether the attempted assignment is enforceable. Since this is a contract for services, we apply common law. The general rule is that parties to a contract are permitted to assign the performance they would receive under the contract to a third-party. This is true even when the contract prohibits assignments (although the assignor may be liable for breach). There are three main exceptions to this rule: if the performance is personal to the obligor, if the assignment would materially alter the obligee's burden under the contract, or if the assignment is against public policy. Once

assigned, the assignee steps into the obligor's shoes, and is entitled to the performance, and can sue for breach if the obligee fails to perform.

Here, Painter, the obligee, cannot lawfully object to the assignment. For one, there is no indication that the contract between Painter and Homeowner prohibits assignments. Even if it did, none of the exceptions apply--it isn't against public policy, the task does not appear to be of a personal nature, and the facts specify that the difficulty in painting Neighbor's house as compared to Homeowner's house is negligible. The assignment here appears to be valid - consideration was given and both parties assented. Thus, Neighbor steps into Homeowner's shoes, and would likely succeed in a breach of contract action

2. Assuming Neighbor would succeed in a breach of contract action against Painter, would Retiree?

Retiree likely would not succeed against Painter. Although third-party beneficiaries are sometimes permitted to recover under contracts to which they are not a party, this type of action depends on whether the contracting parties intended to benefit the third party. If they intended to benefit the third party, then the third party can sue under the contract. If the third party is merely an incidental beneficiary, however, the third party cannot recover.

Here, it does not appear that Retiree is an intended beneficiary of the contract between Painter and Neighbor (or Homeowner, for that matter). Neighbor's intent is to have his

house painted before his parents come to visit, and Painter's intent is to get paid. Neighbor's knowledge that Retiree will appreciate the benefit is irrelevant.

3. If Painter paints Neighbor's house, and Neighbor does not pay the contract price, would Painter succeed in a contract claim against Neighbor? Against Homeowner?

Painter could likely recover against Neighbor if Neighbor fails to pay. The facts do not give rise to any plausible defenses, and both the contract and the assignment appear to be validly entered and supported by consideration. Because there has not been a novation (a three-way agreement in which the contracting parties agree with a third party that the third party will take the place of one of the contracting parties and become liable on the contract in place of the contracting party), Painter is also entitled to pursue a cause of action against Homeowner as well, because the two remain in privity of contract. Given the possibility of double-recovery, however, some jurisdictions may limit Painter to only suing one or the other.

=====
===== End of Answer #5 =====