constitute new consideration for the modification. The additional terms must furnish consideration for the party seeking to enforce the modification. New financing terms can constitute sufficient consideration to support the modification of a preexisting obligation. Yet, the new financing terms would need to apply to the preexisting obligations under the original agreement to satisfy the consideration requirement needed for the modification that the promisee promise to do something the promisee has no prior legal obligation to do or refrain from doing something that the promisee has a legal right to do.

In this case, all three new financing terms pertained only to the promise made by Artis to pay the additional $30,000. Thus, the new financing terms under the modification were merely part of the new promise by Artis to pay an additional sum of money for the business. The terms did not establish that the Margesons promised to do something they were not otherwise already obligated to do (sell business for $125,000 due at closing) or promised to refrain from doing something they had a legal right to do. Of course, the Margesons would have furnished new consideration for the modification if the financing terms under the modification applied to part or all of the $125,000 due at the time of closing of the original agreement. Under such a case, the Margesons would have furnished consideration because they would have promised to refrain from doing something (giving up the right to receive the original purchase price in a lump sum at the time of closing) that they had a legal right to do.

Consequently, the modification was nothing more than a unilateral price hike. Here, Artis promised additional compensation for the same performance by the Margesons. Thus, the Margesons cannot enforce the promise by Artis to pay more money for the business because they failed to produce any evidence to show they promised to do something more than they had promised to do under the first agreement. The addendum does not reflect independent consideration and the summary judgment record does not demonstrate even a "horse, hawk, or robe" provided by Margesons in exchange for the additional purchase money.

Reversed in favor of Artis.

Margeson v. Artis 776 N.W.2d 652 (Iowa Sup. Ct. 2009)

John and Jennifer Margeson entered into a contract to sell a weight-loss franchise business called "Inches-a-Weigh" to Theresa Artis. The parties signed a written "Asset Purchase Agreement" on October 1, 2004. The purchase price was $125,000, payable at the time of closing. Later, on October 7, 2004, the parties signed a second document entitled "Sales Agreement Addendum." This addendum set the price of the business at $155,000, with $135,000 payable at the time of closing. Of the amount to be paid at closing, $125,000 was identified as the proceeds of a loan secured by Artis from First Bank, and $10,000 to be paid in cash. The remaining portion of the purchase price was to be paid to the Margesons in monthly installments in amounts based on sales. The closing was set for October 18, 2004. On that date, Artis tendered the $125,000 proceeds of the loan from First Bank, together with an additional $10,000 from two personal checks drawn on her bank.

The parties ran into some disputes following the closing. Artis stopped payment on one of the personal checks delivered at the time of the closing and stopped making the monthly payments in March 2005. The Margesons sued Artis for breach of the addendum. The Margesons filed a motion for summary judgment, but Artis asserted that the addendum was not enforceable because it was not supported by consideration. The district court granted summary judgment to the Margesons, and Artis appealed. The court of appeals affirmed the trial court's ruling, and Artis appealed to the Iowa Supreme Court.

Cady, Justice

It is fundamental that a valid contract must consist of an offer, acceptance, and consideration. While the element of consideration can be confusing, it has been an essential part of the development of our contract law and the traditional notion that contract law exists to enforce mutual bargains, not gratuitous promises.

Generally, the elements of consideration ensures the promise sought to be enforced was bargained for and given in exchange for a reciprocal promise or act. Thus, a promise made by one party to a contract normally cannot be enforced by the other party to the contract unless the party to whom the promise was made provided some promise or performance in exchange for the promise sought to be enforced. In other words, if the promisor did not seek anything in exchange for the promise made or if the promisor sought something the law does not value as consideration, the promise made by the promisor is unenforceable due to the absence of consideration. In this way, a promise is supported by consideration, in one of two ways. First, consideration exists if the promisee, in exchange for a promise by the promisor, does or promises to do something the promisee has no legal obligation to do. Second, consideration exists if the promisee refrains, or promises to refrain, from doing something the promisee has a legal right to do. We look for consideration from the language in the contract and by what the parties contemplated at the time the instrument was executed.

The Margesons seek to recover under the terms of the addendum. In doing so, they seek to enforce the promise by Artis to purchase the business for $155,000. Artis argues the terms of the addendum are not a legally binding part of the contract. More precisely, Artis argues the addendum, which was a modification of the original agreement, requires independent [new] consideration to be binding. Artis argues there was no consideration in this case because the Margesons had a preexisting duty under the first agreements to sell the business to her for $125,000. The Margesons do not question the legal requirement of consideration to support the contract modification. Instead, they argue additional consideration was present to support the contract modification.

No consideration exists when the promisee has a preexisting duty to perform because a promisor is already entitled to receive the promise made by the promisee and the promisee has only made what amounts to a gratuitous promise. We have specifically applied this rule to preexisting contractual obligations when parties to an original contract agree to modify that contract. Of course, the law of contracts is not concerned with the actual value of the consideration, only that some new consideration exists. As legal commentators point out, courts often search for even minimal benefit or detriment to satisfy the independent-consideration requirement. The critical inquiry is whether the promisee at least promises to give up something.

Artis argues the addendum was unenforceable because it arose only from a desire by the Margesons to obtain more money for their business than agreed in the original purchase agreement. Although Artis agrees she promised in the addendum to pay $30,000 more for the business, she claims the Margesons did not provide a return promise or performance in exchange for her promise to pay more money. The Margesons argue the independent-consideration requirement is fulfilled in this case. They argue the addendum is supported by three instances of additional consideration: (1) a financing plan, (2) flexibility in payments, and (3) the ability to renegotiate the payment terms. The district court found these provisions to amount to independent consideration, as did the court of appeals.

The three terms of the addendum identified by the Margesons were not part of the original purchase agreement. However, additional terms in a modification agreement do not, alone,