CHAPTER 19

Breach of contract and remedies

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REMEDIES AVAILABLE TO NON-BREACHING PARTY



Damages



Rescission and Restitution



Specific Performance



Reformation

DAMAGES

There are four broad categories of damages:

- Compensatory (to cover direct losses and costs).
- Consequential (to cover indirect and foreseeable losses).
- Punitive (to punish and deter wrongdoing).
- Nominal (to recognize wrongdoing when no monetary loss is shown).

Compensatory Damages:

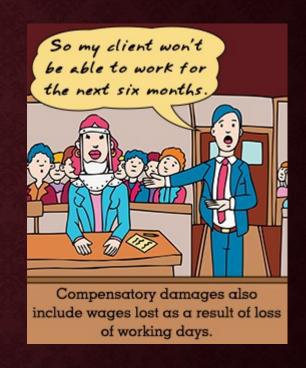
compensate the injured party only for damages actually sustained and proved to have arisen directly from the loss of the bargain caused by the breach of the contract.

Consequential Contracts:

foreseeable damages that resulting from a party's breach of contract.

Punitive Damages:

Generally, are not awarded on lawsuits for breach of the contract. They have no legitimate placed in contract law. The law may compensate no more and no less. However, when a person's actions cause both a breach of contract and a tort (fraud), punitive manages may be available.



Nominal Damages:

When no actual damage for financial loss results from a breach of contract and only a technical injury is involved, the court may award nominal damages to the innocent party.

Liquidated Damages:

Specifies that a certain dollar amount is to be paid in the event of a future default or breach of contract.

RESCISSION AND RESTITUTION

Rescission: is essentially an action to undo, or terminate a contract. Both of the contracting parties are restored to the legal positions they occupied prior to the transaction.

Available for fraud, mistake, duress, and failure of consideration.

Restitution: Generally, to rescind a contract, both parties must make restitution other by returning goods, property, or funds previously conveyed.

If the property of goods can be returned, they must be.

• If the goods or property have been consumed, restitution must be made in an equivalent dollar amount.

\$

Ex.

Tania contracts with Linda to design a house for her. Tania pays Linda \$9,000 and agrees to make two more payments of \$9,000 (for a total of \$27,000) as the design progresses. The next day, Linda calls Tania and tells her that he has taken a position with a large architectural firm in another state and cannot design the house. Katie decides to hire another architect that afternoon. Katie can obtain restitution pf the \$9000.

SPECIFIC PERFORMANCE

An equitable remedy calling for the performance of the act promised in the contract.

- This remedy is attractive to a non-breaching party because it provides the EXACT bargain promised in the contract.
- Specific performance is only available when monetary damages would be inadequate, such as the sale of land or UNIQUE goods.

For instance, paintings, sculptures, rare books or coins are so unique that monetary damages will not enable a buyer to obtain substantially identical substitutes in the market.



REFORMATION

An equitable remedy allowing a contract to be reformed or rewritten, to reflect the parties' true intentions.

- Reformation is available when the parties have imperfectly expressed their agreement in writing.
- When fraud or mutual mistake is present
 - -ex. Critical error
- Written contract incorrectly states the parties' oral agreement
- -ex. Two parties enter into a binding oral contract, but later make an error when they attempt to put the terms into writing.

Thank you!