

3052 SUBSTANTIAL PERFORMANCE

Each party to a contract has a duty to perform his or her obligations under the contract.

Evidence has been received that (defendant) may not have completely performed his or her obligations. A failure to complete performance under a contract, or a defective performance, does not prevent recovery if you find that there was substantial performance of the contract. You must first find that there was a good faith effort to perform; if you find that a good faith effort was made, you will then proceed to determine whether the performance was, in a legal sense, substantial.

Performance may be substantial even though every detail is not in strict compliance with the terms of the contract; something less than perfection is required. Some measure of nonperformance will be tolerated if (defendant) has received, with relatively minor and unimportant deviations, what he or she bargained for. But if the defect or uncompleted performance is of such extent and nature that there has been no practical fulfillment of the terms of the contract, then there has been no substantial performance.

COMMENT

This instruction and comment were approved by the Committee in 1975. Editorial changes were made in 1993 to address gender references in the instruction. No substantive changes were made to the instruction. An editorial correction was made in 1994.

Substantial performance: theory of recovery; what is substantial performance: Kreyer v. Driscoll, 39 Wis.2d 540, 159 N.W.2d 680 (1968); Plante v. Jacobs, 10 Wis.2d 567, 103 N.W.2d 296 (1960); 17 Am. Jur. 2d Contracts §§ 631, 632, 633, and 634; Corbin on Contracts §§ 700-705; 5 Williston on Contracts § 805, et seq.

Good faith effort: Nees v. Weaver, 222 Wis. 492, 269 N.W. 266 (1936). See Wis JI-Civil 3044 - Good Faith.

As to sale: contracts, see Wis. Stat. § 402.601, as modified by Wis. Stat. §§ 402.612, 402.508, 402.608, 402.614(1), 402.504(2), 401.203.

Notwithstanding the inability of the plaintiff to show substantial performance, plaintiff may be entitled to compensation under a quantum meruit theory. Kreyer, supra.

A finding that plaintiff substantially performed does not insulate plaintiff from a claim for damages for the unfulfilled or defectively performed obligations under the contract. DeSombre v. Bickel, 18 Wis.2d 390, 118 N.W.2d 868 (1963); Corbin on Contracts § 702.

There are other situations in which the substantiality of the performance of one party to a contract may have important legal consequences. Corbin on Contracts § 700.