

3750 DAMAGES: BREACH OF CONTRACT BY PURCHASER

The questions that you will be required to answer inquire as to the money damages sustained by the plaintiff-seller because of the defendant-buyer's refusal to carry out his or her part of the contract. Answer these questions with only the accompanying explanation to each individual question in mind. The court will determine from your answers the amount of damages due the plaintiff.

(If no resale by plaintiff)

Question 1: What is the difference between the contract price—what the defendant had agreed to pay for the goods—and the fair market value of such goods at the time when and place where the goods were to have been delivered?

Fair market value is that sum of money which the goods would have brought if sold by an owner, willing but not required to sell, to a buyer, willing but not required to buy.

Question 2: What incidental damages, if any, did the plaintiff-seller suffer because of the defendant-buyer's (failure to accept) (repudiation)?

Incidental damages include any commercially reasonable charges, expenses, or commissions the plaintiff-seller incurred in stopping delivery, in transporting, or in caring for the goods as a result of the defendant-buyer's breach.

Question 3: What expenses, if any, did the plaintiff-seller save because the contract was not fulfilled by the defendant-buyer?

Question 4: What is the profit which the seller would have made from full performance by the buyer?

(If resale by plaintiff)

If the evidence in this case satisfies you that the price obtained by the plaintiff on the resale was a fair price, or if you are not so satisfied as to that fact but are satisfied that the plaintiff used all reasonable efforts to secure the best price obtainable, then you must answer the following questions:

Question 1: What is the difference between the resale price and the contract price?

Question 2: What incidental damages, if any, did the plaintiff-seller suffer because of the defendant-buyer's (failure to accept) (repudiation)?

Question 3: What expenses, if any, did the plaintiff-seller save because the contract was not fulfilled by the defendant-buyer?

(If action for price by seller—goods have been accepted or conforming goods have been lost or damaged after risk of their loss has passed to the buyer.)

If you find that the buyer failed to pay the price of the goods as agreed upon in the contract as the price became due, the seller may recover the price as agreed upon in the contract if:

- (1) The seller has been unable after reasonable effort to resell them at a reasonable price; or
- (2) Such a resale effort would not be reasonable under the circumstances of this case.

In addition to the price of the goods, the plaintiff-seller may recover incidental damages. Incidental damages include any commercially reasonable charges, expenses or commissions the plaintiff-seller incurred in stopping delivery, in transporting, or in caring for the goods as a result of the defendant-buyer's breach.

COMMENT

This instruction and comment were originally published in their present form in 1977. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Wis. Stat. §§ 402.708, 402.710, 402.706(1).