

CONTRACTS--ISSUE OF COMMON LAW REMEDY--CONSEQUENTIAL DAMAGES.

To the amount of direct damages add all consequential damages, if any, sustained by the plaintiff.<sup>1</sup>

Consequential damages include any loss<sup>2</sup> resulting from the plaintiff's circumstances of which the defendant knew or should

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<sup>1</sup>Generally, for a breach of contract, the injured party is entitled as compensation to be placed, insofar as this can be done by money, in the same position he would have occupied if the contract had been performed. *Pleasant Valley Promenade v. Lechmere, Inc.*, 120 N.C. App. 650, 665, 464 S.E.2d 47, 59 (1995); *First Union Nat. Bank v. Naylor*, 102 N.C. App. 719, 725, 404 S.E.2d 161, 164 (1991) (quoting *Perfecting Serv. Co. v. Product Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963)). See also *Fulcher v. Nelson*, 273 N.C. 221, 226, 159 S.E.2d 519, 523 (1968) (quoting *Perkins v. Langdon*, 237 N.C. 159, 169, 74 S.E.2d 634, 643 (1953)). An injured party has

a right to damages . . . measured by:

- (a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus
- (b) any other loss, including incidental or consequential loss, caused by the breach, less
- (c) any cost or other loss that he has avoided by not having to perform.

*Pleasant Valley* at 665, 464 S.E.2d at 59 (quoting *First Union* at 725, 404 S.E.2d at 164). The right to consequential damages applies in almost every breach of contract setting where an adverse impact arising from the breach should have been anticipated (e.g., construction contracts, contracts for the purchase of real estate, etc.).

<sup>2</sup>Where a breach of contract has occurred, the party injured is entitled to recover all the damages, including gains prevented as well as losses sustained, as were fairly within the contemplation of the parties and capable of being ascertained with a reasonable degree of certainty. *Nance v. Western Union Tel. Co.*, 177 N.C. 313, 317, 98 S.E. 838, 839 (1919). The injured party may also recover damages incident to the loss of bargains to sell or purchase property and the profits which would have arisen therefrom, not only those growing out of the principal contract, but from collateral agreements connected therewith, when they were in the reasonable contemplation of the parties and capable of being ascertained with reasonable certainty from the facts properly in evidence. *Gardner & Clark v. Postal Tel. & Cable Co.*, 171 N.C. 405, 407, 88 S.E. 630, 631 (1916).

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(Continued).

have known at the time the parties entered into the contract,<sup>3</sup>  
and which the plaintiff could not reasonably have prevented.<sup>4</sup>

In this case, the plaintiff contends, and the defendant  
denies, that the plaintiff sustained the following consequential  
damages (*here enumerate the type(s) of consequential damages  
contended by the plaintiff and supported by the evidence*):

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<sup>3</sup>"In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury.'" *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979) (quoting the RESTATEMENT OF THE LAW OF CONTRACTS, § 330, p. 509).

<sup>4</sup>*Johnson v. Atlantic C. L. R. Co.*, 184 N.C. 101, 104-07, 113 S.E. 606, 607-09 (1922).