

Determining Damages in Contract Cases

Monetary Damages

A party to a contract who is injured by another's breach of the contract is entitled to recover from the latter damages for all injuries and only such injuries as are the direct, natural, and proximate result of the breach or which, in the ordinary course of events, would likely result from a breach and can reasonably be said to have been foreseen, contemplated, or expected by the parties at the time when they made the contract as a probable or natural result of a breach.

Lamm v. Shingleton, 231 N.C. 10 (1949).

Liquidated Damages

Liquidated damages are a sum which a party to a contract agrees to pay or a deposit which he agrees to forfeit, if he breaks some promise, and which, having been arrived at by a good-faith effort to estimate in advance the actual damage which would probably ensue from the breach, are legally recoverable or retainable if the breach occurs. A Penalty is a sum which a party similarly agrees to pay or forfeit but which is fixed, not as a pre-estimate of probable actual damages, but as a Punishment, the threat of which is designed to prevent the breach, or as Security to insure that the person injured shall collect his actual damages. (citations omitted).

Whether a stipulated sum will be treated as a penalty or as liquidated damages may ordinarily be determined by applying one or more aspects of the following rule: '(A) stipulated sum is for liquidated damages only (1) where the damages which the parties might reasonably anticipate are difficult to ascertain because of their indefiniteness or uncertainty and (2) where the amount stipulated is either a reasonable estimate of the damages which would probably be caused by a breach Or is reasonably proportionate to the damages which have actually been caused by the breach.

Knutton v. Cofield, 273 N.C. 355, 361, 160 S.E.2d 29, 34 (1968)

Nominal Damages

Nominal damages are small trivial sums awarded where legal rights have been invaded but no actual loss or substantial injury has been sustained . . . awarded in recognition of the right and the technical invasion resulting from a violation of it.

Woodlief, NC Law of Damages, §3.1 (2015).

Punitive Damages

North Carolina follows the general rule that punitive or exemplary damages are not allowed for breach of contract, with the exception of breach of contract to marry. . . .The general rule in most jurisdictions is that punitive damages are not allowed even though the breach be willful, malicious or oppressive. . . . Nevertheless, where there is an identifiable tort even though the tort also constitutes, or accompanies, a breach of contract, the tort itself may give rise to a claim for punitive damages.

Newton v. Standard Fire Ins. Co., 291 N.C. 105 (1976).

Duty to Mitigate

The rule in North Carolina is that an injured plaintiff, whether his case be tort or contract, must exercise reasonable care and diligence to avoid or lessen the consequences of the defendant's wrong. If he fails to do so, for any part of the loss incident to such failure, no recovery can be had. This rule is known as the doctrine of avoidable consequences or the duty to minimize damages. Failure to minimize damages does not bar the remedy; it goes only to the amount of damages recoverable.

Oakes v. Wooten, 173 N.C. App. 506 (2005).

Rescission

A rescission implies the entire abrogation of the contract and a restoration of the benefits received from the other party. . . . [It] is not merely a termination of contractual obligation. It is abrogation or undoing of it from the beginning. It seeks to create a situation the same as if no contract ever had existed. . . .

Rescission may be by mutual agreement or one party may rescind because of a substantial breach by the other. . . . In either case, a rescission of the contract entitles each party to be placed in Statu quo ante fuit.

Brannock v. Fletcher, 271 N.C. 65 (1967)

The true rule appears to be that rescission or cancellation may properly be ordered where that which was undertaken to be performed in the future was so essential a part of the bargain that the failure of it must be considered as destroying or vitiating the entire consideration of the contract, or so indispensable a part of what the parties intended that the contract would not have been made with that condition omitted.

Jenkins v. Myers, 209 N.C. 312 (1936).

Allowable Interest

Nothing else appearing, the amount of interest that may be legally charged in North Carolina is 8%. GS 24-1. Charging more interest than is legally allowed results in adverse consequences to the seller/lender, which vary depending upon the particular statute involved.

Pre-Judgment & Post-Judgment Interest

See Handout *infra*.

Attorneys' Fees

In an action based on contract, attorneys' fees may be awarded only if (1) the contract so provides and (2) attorneys' fees are authorized by statute. In most small claims cases, the authorizing statute is GS 6-21.2.