

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--SELLER'S MEASURE OF RECOVERY FOR A BUYER'S BREACH OF EXECUTORY CONTRACT TO PURCHASE REAL PROPERTY.

Direct damages are the economic losses that usually or customarily result¹ from a breach of contract. In this case, you will determine direct damages, if any, by first determining the fair market value of (*describe real property*) on [the date that (*describe events constituting breach*)] [(*specify date*)]. Fair market value is the amount which would be agreed upon as a fair price by a seller who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.² [If the fair market value is less than the contract price agreed upon by the parties, you will subtract the fair market value from the contract price (however, the defendant is entitled to a credit for any amount already paid under the

¹"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 CONTRACT, § 330, p. 509). The foreseeability limitation on recovery was first enunciated in *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854).

²*Huff v. Thornton*, 287 N.C. 1, 12, 213 S.E.2d 198, 206 (1975).

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--SELLER'S MEASURE OF RECOVERY FOR A BUYER'S BREACH OF EXECUTORY CONTRACT TO PURCHASE REAL PROPERTY. (Continued).

contract).]³ [If the fair market value is equal to or greater than the contract price agreed upon by the parties, you will not award any damages for loss of the value of the contract.]

³The basis upon which damages are to be assessed against a vendee for breach of his executory contract to purchase real estate is compensation to the vendor for the loss or injury sustained by him by reason of the vendee's breach. *Taefti v. Stevens*, 53 N.C. App. 579, 581, 281 S.E.2d 435, 436-37 (1981) (quoting 77 Am. Jur. 2d *Vendor and Purchaser* § 489 (1975)). However, the amount is to be limited to such damages as may reasonably be supposed to have been contemplated by the parties when they made the contract as the probable result of the breach. *Id.* at 581, 281 S.E.2d at 437 (quoting 77 Am. Jur. 2d *Vendor and Purchaser* § 489). Generally, the measure of damages is the difference between the contract price and the market value of the real property at the time of the breach, giving credit to the vendee for any sums he paid on the purchase price. *Id.* (quoting 77 Am. Jur. 2d *Vendor and Purchaser* § 489).