

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--BROKER'S MEASURE OF RECOVERY FOR SELLER'S BREACH OF AN EXCLUSIVE LISTING CONTRACT.

Direct damages are the economic losses that usually or customarily result<sup>1</sup> from a breach of contract. In this case, you will determine direct damages, if any, by multiplying the [price for which the defendant sold [(describe property)] [price offered by (name offeror)] [price for which the defendant would have sold (describe property) had there been no breach of the exclusive [listing agreement] [contract]] by the commission percentage which you find that the parties agreed upon in the exclusive [listing agreement]<sup>2</sup> [contract].<sup>3</sup>

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

<sup>2</sup>*Beasley-Kelso Associates, Inc. v. Tenney*, 30 N.C. App. 708, 719, 228 S.E.2d 620, disc. rev. denied, 291 N.C. 323, 230 S.E.2d 675 (1976). Note the distinction between an "exclusive agency" listing and an "exclusive right to sell" listing. In case of the former, the owner may sell his own property without liability to the broker, but he may not use another agent. In case of the latter, the owner who sells the property himself without a broker is nevertheless liable. *Peeler Ins. & Realty, Inc. v. Harmon*, 20 N.C. App. 39, 42, 200 S.E.2d 443, 444-45 (1973).

<sup>3</sup>Where an owner breaches an exclusive listing contract, he is liable to the broker for the commission which would have accrued if the broker had obtained a purchaser during the period of the listing, and the broker need not show that he could have performed by tendering an acceptable buyer, or that he was the procuring cause of the sale. *Joel T. Cheatham, Inc. v. Hall*, 64 N.C. App. 678, 681-82, 308 S.E.2d 457, 459 (1983).

