

983 So.2d 1203, 33 Fla. L. Weekly D1368
(Cite as: 983 So.2d 1203)

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District Court of Appeal of Florida,
Third District.
FISHER ISLAND HOLDINGS, LLC, a limited li-
ability company organized under the laws of the State
of Florida, Appellant,
v.
Joel COHEN and Rita Cohen, his wife, Appellees.
No. 3D07-144.

May 21, 2008.
Rehearing Denied July 11, 2008.

Background: Homeowners filed lawsuit against con-
tractor, alleging breach of contract, arising out of the
construction and purchase of their home. The Circuit
Court, Miami-Dade County, [Mindy S. Glazer](#), J.,
directed verdict in favor of homeowners as to liability
for delay in construction, and, thereafter, entered
judgment on jury verdict awarding homeowners
\$708,147 in damages for the delay in construction
and \$144,000 for alternate living arrangements. Con-
tractor appealed.

Holding: The District Court of Appeal, Cortiñas, J.,
held that damages awards for delay in construction of
home and alternate living arrangements were not
impermissibly duplicative.

Affirmed.

West Headnotes

[1] Damages 115 🔑208(1)

115 Damages

115X Proceedings for Assessment

115k208 Questions for Jury

115k208(1) k. In General. [Most Cited](#)

[Cases](#)

It is within the province of the jury to determine the
amount of damages to be awarded to an aggrieved
party.

[2] Damages 115 🔑122

115 Damages

115VI Measure of Damages

115VI(C) Breach of Contract

115k122 k. Delay in Performance. [Most](#)

[Cited Cases](#)

Damages for delay in construction are measured by
the rental value of the building under construction
during the period of delay.

[3] Appeal and Error 30 🔑223

30 Appeal and Error

30V Presentation and Reservation in Lower Court
of Grounds of Review

30V(B) Objections and Motions, and Rulings
Thereon

30k223 k. Judgment. [Most Cited Cases](#)

Contractor failed to preserve for appeal issue of the
proper measure of damages arising from delay in
construction of home for homeowners, in context of
homeowners' breach of contract action against con-
tractor, as contractor did not object at trial to the
proper measure of damages.

[4] Damages 115 🔑15

115 Damages

115III Grounds and Subjects of Compensatory
Damages

115III(A) Direct or Remote, Contingent, or
Prospective Consequences or Losses

115III(A)1 In General

115k15 k. Nature and Theory of Com-
pensation. [Most Cited Cases](#)

Damages awards of \$708,147 for the delay in con-
struction of home and \$144,000 for homeowners'
alternate living arrangements were not impermissibly
duplicative, in context of homeowners' breach of con-
tract action against contractor, as timeframe for each
award did not overlap, and there was no double re-
covery for any one period of time.

[5] Damages 115 🔑15

115 Damages

115III Grounds and Subjects of Compensatory
Damages

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[115III\(A\)](#) Direct or Remote, Contingent, or Prospective Consequences or Losses

[115III\(A\)1](#) In General

[115k15](#) k. Nature and Theory of Compensation. [Most Cited Cases](#)

A party may not receive double recovery for the same breach of contract.

*1203 Greenberg Taurig and [Alan T. Dimond](#) and [Elliot H. Scherker](#) and [Elliot B. Kula](#), Miami, for appellant.

Hall, Lamb and Hall and [Andrew C. Hall](#), Miami, and [Lindsey H. Lamchick](#), for appellees.

Before GREEN, [RAMIREZ](#), and CORTIÑAS, JJ.

*1204 CORTIÑAS, J.

Joel and Rita Cohen (the “Cohens”) sued Fisher Island Holdings, LLC (“Fisher Island”) alleging breach of contract arising out of the construction and purchase of their Fisher Island home. The jury awarded the Cohens \$708,147 in damages for the delay in construction and \$144,000 for alternative living arrangements. Fisher Island appeals the jury's award of damages for alternative living arrangements. We affirm.

The construction of the Cohens' home was to be completed no later than two years from the signing of the Agreement for Sale on December 4, 2002. Thus, the closing should have occurred shortly after December 2004. As a result of substantial delays in construction, sometime in late 2006 the Cohens entered into a nine-month lease (“Lease”) in the amount of \$144,000 for alternative living arrangements commencing in January 2007 and ending September 2007. ^{FN*} During trial, the court granted the Cohens' directed verdict as to liability for the delay in construction, leaving it to the jury to determine the amount of damages the Cohens were to receive.

^{FN*} Fisher Island did not object to this evidence and also did not object to the verdict form allowing damages for alternative living arrangements.

[\[1\]\[2\]](#) Fisher Island argues that the jury's award of damages for the delay and alternative living arrangements constitutes impermissible double recovery. We

disagree. It is within the province of the jury to determine the amount of damages to be awarded to an aggrieved party. [Kaine v. Gov't Employees Ins. Co.](#), [735 So.2d 599, 600 \(Fla. 3d DCA 1999\)](#). Damages for delay in construction are measured by the rental value of the building under construction during the period of delay. [Russo v. Heil Constr., Inc.](#), [549 So.2d 676, 677 \(Fla. 5th DCA 1989\)](#); [Vanater v. Tom Lilly Constr.](#), [483 So.2d 506, 508 \(Fla. 4th DCA 1986\)](#).

[\[3\]](#) The jury calculated the delay damages based upon the fair market net rental value of the home and awarded delay damages through December 2006. Fisher Island objected only on grounds that the damages proposed by the Cohens were duplicative. Importantly, Fisher Island never objected to the proper measure of damages and, thus, did not preserve this issue for appeal. [Tribble & Stephens Co. v. Consol. Servs., Inc.](#), [744 S.W.2d 945, 949 \(Tex.App.1987\)](#) (“Appellants failed to raise the issue of an improper measure of damages in the trial court and thus waived review of their complaint.”). Damages for alternative living arrangements, based on the Cohens' lease, were awarded from January 1, 2007 through September 2007.

[\[4\]\[5\]](#) We address the only issue preserved on appeal. While we agree that a party may not receive double recovery for the same breach of contract, we find that the damages awarded did not constitute impermissible double recovery. See [Tillman v. Howell](#), [634 So.2d 268, 271 \(Fla. 4th DCA 1994\)](#) (stating that recovery for the cost of moving, storage, and living quarters plus an award for the fair rental value of a home under construction constituted double recovery). Because the timeframe for each award of damages did not overlap and there was no double recovery for any one period of time, the damages awarded to the Cohens are not duplicative. Accordingly, we uphold the jury's award of damages for alternative living arrangements.

Affirmed.

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