

A painter contracted with an apartment manager to paint three identical apartment units for \$1,000 each. The contract provided for the manager's payment of \$3,000 upon the painter's completion of the work on all three units. The painter did not ask for any payment when the first unit was completely painted, but she demanded \$2,000 after painting the second unit. Assume that the manager rightfully refused the painter's demand for payment.

If the painter immediately terminates the contract without painting the third unit, what is the painter entitled to recover from the manager?

- A. Nothing, because payment was expressly conditioned on completion of all three units.
- B. The amount equal to the increase in the combined value of the two painted units resulting from the painter's work.
- C. The painter's expenditures plus anticipated "profit" in painting the first two units, up to a maximum recovery of \$2,000.
- D. The reasonable value of the painter's services in painting the two units, less the manager's damages, if any, for the painter's failure to paint the third unit.

Explanation:

Restitutionary damages

- Definition** Damages awarded to restore to claimant the value of whatever benefit was conferred upon recipient
- Purpose** Prevent unjust enrichment
- Measure** Reasonable value of work performed or services rendered (ie, cost of recipient obtaining comparable performance)
If applicable, extent to which recipient's property has increased in value or recipient's other interests have been advanced

In the event of breach, the **breaching party** can recover **restitutionary damages** for the **reasonable value** of the **work performed** before the breach, **less any damages** suffered by the **nonbreaching party**. Restitutionary damages ensure that the nonbreaching party is not unjustly enriched by the work performed by the breaching party prior to the breach.

Here, the painter breached the contract by immediately terminating the contract after the apartment manager *rightfully* refused the painter's early payment demand. As the breaching party, the painter is entitled to the reasonable value of her services in painting the two units, less the manager's damages, if any, for her failure to paint the third unit (eg, the increased cost of another painter) **(Choices A & B)**.

(Choice C) A *nonbreaching* party who has partially performed can generally recover for the costs of the work performed plus expectation damages (ie, anticipated profits). But here the painter is the *breaching* party and so is not entitled to recover this amount.

Educational objective:

The breaching party can recover restitutionary damages for the reasonable value of the work performed before the breach, less any damages suffered by the nonbreaching party.

References

Restatement (Second) of Contracts § 371 (Am. Law Inst. 1981) (measure of restitution interest).

Restatement (Second) of Contracts § 374 (Am. Law Inst. 1981) (restitution in favor of breaching party).

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