

A seller and a farmer formed a written, signed contract for the sale of a 500-acre tract of farmland. The contract provided for exchange of the deed for \$500,000 in cash on January 15. On January 15, the seller notified the farmer that because the tenant currently residing on the farmland wrongfully refused to quit the premises, the seller could not deliver possession until January 30. On January 30, the farmer accepted the conveyance, paid the \$500,000, and took possession of the farmland while reserving his rights to any damages caused by the seller's breach.

The farmer had purchased 500 head of cattle to be delivered to the farmland on January 15. Because he did not have possession of the farmland on that date, he had to rent another pasture for \$2,000 to graze the cattle for 15 days. The seller had no reason to know the farmer purchased cattle or planned to graze them on the farmland. Throughout January, the farmland's market value was \$510,000 and its fair monthly rental value was \$5,000.

In an action by the farmer against the seller for damages, what is the farmer is entitled to recover?

- A. \$2,500 only (the fair rental value of the farmland for 15 days).
- B. \$2,500 (the fair rental value of the farmland for 15 days), plus \$2,000 (the cost of grazing the cattle elsewhere for 15 days).
- C. Nominal damages only, because the market value of the land exceeded the contract price.
- D. Nothing, because by paying the purchase price on January 30, he waived whatever cause of action he may have had.

## Explanation:

### Alternative bases for recovery when loss in value uncertain

#### Delayed use of property

Fair rental value of property during period of delay  
OR

Interest on value of property made unproductive by breach

#### Defective or unfinished construction

Diminution in market price of property caused by breach  
OR

Reasonable cost of completing performance or remedying defects

A nonbreaching party's recovery is typically based on the loss in value to that party caused by the breach. But if the loss in value cannot be proved with reasonable certainty and there is a reasonable alternative to loss in value, the nonbreaching party may claim damages based on that alternative. For example, if a **breach delays the use of property**, the nonbreaching party may **recover damages based on:**

the **fair rental value** of the property during the **period of the delay** *or*

interest on the value of the property that has been made unproductive by the breach.

Here, the seller breached the land-sale contract by failing to deliver possession of the farmland on January 15 as agreed. On January 30, the farmer accepted the conveyance, paid the purchase price, and took possession of the farmland while reserving his right to sue for any damages caused by the seller's breach **(Choice D)**. As a result, the farmer is entitled to recover \$2,500—the fair rental value of the farmland for the 15-day period during which he was denied possession.

However, the farmer is *not* entitled to recover \$2,000 for the cost of grazing the cattle elsewhere for 15 days. The reason is that **consequential damages** arising from the nonbreaching party's special circumstances are **only recoverable if** the breaching party (1) **knew about the special circumstances** or (2) could have **reasonably foreseen the harm**, in light of those circumstances, that would result from the breach. Here, the seller had no reason to know that the farmer had purchased cattle or planned to graze them on the farmland **(Choice B)**.

**(Choice C)** The fact that the market value of the farmland (\$510,000) exceeded the contract price (\$500,000) does not limit the farmer's recovery to nominal damages only.

**Educational objective:**

If a breach delays the use of property, the nonbreaching party may recover damages based on (1) the fair rental value of the property during the delay period or (2) interest on the value of the property made unproductive by the breach.

### **References**

Restatement (Second) of Contracts § 348 (Am. Law Inst. 1981) (alternatives to loss in value of performance).

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