

The owner of a house and a real estate investor signed a writing in which the owner, "in consideration of \$100 to be paid to the owner by the investor," offered the investor the right to purchase the house for \$100,000 within 30 days. The writing further provided, "This offer will become effective as an option only if and when the \$100 consideration is in fact paid."

Two weeks later, the owner, having received no payment or other communication from the investor, sold and conveyed the house to the investor's business rival for \$120,000. The following day, the owner received a letter from the investor enclosing a cashier's check for \$100 payable to the owner and stating, "I am hereby exercising my option to purchase the house and am prepared to close whenever you're ready."

Assume that, for whatever reason, the investor prevails in a suit against the owner for breach of contract.

Which of the following is the investor entitled to recover?

- A. \$20,000, plus the amount, if any, by which the fair market value of the house on the date of the owner's breach exceeded \$120,000.
- B. Nominal damages only, because the remedy of specific performance was not available to the investor.
- C. The amount, if any, by which the fair market value of the house on the date of the owner's breach exceeded \$100,000.
- D. The fair market value, if any, of an assignable option to purchase the house for \$100,000.

Explanation:

A buyer who enters a **contract for the sale of land** expects to receive the property (worth its fair market value) in exchange for the contract price. If the **seller breaches** by refusing to sell, the **buyer can recover for loss of bargain** (ie, lost expectation), which amounts to the property's **fair market value** on the date of the breach **minus the contract price**.

Here, the real estate investor paid \$100 for the option to buy the owner's house for \$100,000. The investor exercised this option, and the owner breached the resulting land-sales contract since he had already sold the house to the business rival. Therefore, the investor is entitled to recover for his lost expectation, which is the amount, if any, by which the fair market value of the house on the date of the breach exceeded \$100,000.

(Choice A) Although the owner sold the house to the business rival for \$20,000 more than the investor had agreed to pay, the investor cannot automatically recover that \$20,000. This is because the investor's expectation is based on his own contract price—not the business rival's.

(Choice B) Nominal damages (eg, \$1) can be awarded for breach when there was no substantial loss—not because specific performance is unavailable. Here, the investor likely *did* suffer a substantial loss since, based on the business rival's \$120,000 payment, the fair market value of the house likely exceeded \$100,000.

(Choice D) Options are generally assignable (ie, transferable). But the damages for breaching an option are equal to the lost expectation of the nonbreaching party—which is distinct from (and likely greater than) the fair market value of the assignable option itself.

Educational objective:

When a seller breaches a land-sales contract by refusing to sell the property to the buyer, the buyer can recover for loss of bargain—ie, the fair market value of the property on the date of the breach minus the contract price.

References

Restatement (Second) of Contracts § 347 (Am. Law Inst. 1981) (explaining that a nonbreaching party's lost expectation is equal to the loss in value to him/her caused by the other party's failure to perform).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Buyer's recovery of expectation damages

