

A seller agreed in writing to specially manufacture a machine for a buyer for \$100,000, with payment due on delivery. The seller expected to make a profit of \$10,000 on the sale. After the seller had spent \$30,000 on production of the machine and before the machine was complete, the buyer repudiated the contract. After the repudiation, the seller reasonably believed that if it completed the manufacture of the machine, it would be able to sell the machine to a third party. The seller completed the machine and sold it to a third party for \$92,000.

If the seller sues the buyer for breach of contract, how much, if anything, should the seller recover as damages?

- A. \$8,000, the amount of the seller's lost profit after selling the completed machine to the third party.
- B. \$10,000, the seller's anticipated profit had the buyer not repudiated.
- C. \$40,000, the amount the seller spent on production of the machine before the buyer's repudiation plus the seller's anticipated profit.
- D. Nothing, because the seller had a duty not to complete the manufacture of the machine after the buyer repudiated.

Incorrect

Correct answer A

Collecting Statistics

01 min, 27 secsTime Spent

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Explanation:

Under the UCC, when a **buyer repudiates** (ie, refuses to perform) a contract to purchase **unfinished goods**, the **seller**, in the exercise of reasonable commercial judgment, **may either**:

cease manufacture of the unfinished goods and resell the unfinished goods for scrap or salvage *or*

complete manufacture of the unfinished goods and **resell the finished goods** to a third party.

The seller may then recover damages from the buyer. The standard measure of damages is the **difference between** the **contract price** and the **resale price** plus incidental damages, less any expenses saved.

Here, the buyer repudiated the contract before the seller finished manufacturing the machine. The seller had the right to complete the manufacture of the machine to sell it to a third party and reasonably did so (**Choice D**). The seller may then recover the difference between the contract price (\$100,000) and the resale price (\$92,000), which equals the seller's lost profit in this instance. Therefore, the seller should recover \$8,000 in damages from the buyer.

(Choice B) The seller may recover from the buyer the difference between the contract price and the resale price (\$8,000, which equals the seller's lost profit here)—not the full amount of its *anticipated* profit (\$10,000).*

*Since the seller sold the completed machine to the third party for \$92,000, the seller needs only \$8,000 to realize its \$10,000 anticipated profit. Any additional recovery (eg, recovering \$10,000 instead of \$8,000) would give the seller a windfall.

(Choice C) Since the seller chose to complete the machine and sell it to the third party instead of leaving it unfinished, the seller can recover the difference between the contract price and the resale price (\$8,000)—not the amount the seller spent on production (\$30,000) plus its anticipated profit (\$10,000).

Educational objective:

Under the UCC, when a buyer repudiates a contract to purchase unfinished goods, the seller may (1) cease manufacture and resell the unfinished goods for scrap or salvage or (2) complete manufacture and resell the finished goods—in which case it may recover the contract price minus the resale price plus incidental damages.

References

U.C.C. § 2-704(2) (explaining the seller's options when a buyer repudiates a contract for unfinished goods).

U.C.C. § 2-706 (setting forth the seller's right to resell goods and recover the difference between the contract price and the resale price).

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UCC seller's damages (from buyer's nonacceptance or repudiation)

$$\begin{aligned} \text{Default rule} &= \boxed{\text{Contract price}} - \boxed{\text{Market or resale price}} + \boxed{\text{Incidental damages}} \\ \text{Lost-volume seller} &= \boxed{\text{Lost profit}} + \boxed{\text{Incidental damages}} \end{aligned}$$

UCC = Uniform Commercial Code

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