

Three months ago, a buyer agreed in writing to buy a seller's single-family residence for \$110,000. The buyer paid the seller a \$5,000 deposit to be applied to the purchase price. The contract stated that the seller had the right at his option to retain the deposit as liquidated damages in the event of the buyer's default. The closing was to have taken place last week.

Six weeks ago, the buyer was notified by his employer that he was to be transferred to another job 1,000 miles away. The buyer immediately notified the seller that he could not close, and therefore he demanded the return of his \$5,000 deposit. The seller refused and waited until after the contract closing date to sell the residence to a real estate broker for \$108,000. The broker paid the full purchase price and immediately recorded his deed. The broker knew of the prior contract with the buyer.

In an appropriate action, the buyer seeks to recover the \$5,000 deposit from the seller.

What is the most probable result?

- A. The seller may keep the \$5,000 deposit, because the buyer breached the contract.
- B. The seller must return \$3,000 to the buyer, because the seller's damages were only \$2,000.
- C. The seller must return the \$5,000 to the buyer, because the buyer was legally justified in not completing the contract.
- D. The seller must return the \$5,000 to the buyer, because the seller can no longer carry out his contract with the buyer.

## Explanation:

### Seller's remedies

#### Rescission & restitution

Rescind (ie, cancel) agreement & recover possession of property  
Rental value & physical damages are recoverable  
Buyer not liable for purchase price

#### Specific performance

Seek an injunction ordering buyer to pay agreed purchase price  
May be unavailable if money damages provide adequate compensation & property is not unique  
eg, condominium identical to other units in complex

#### Damages

Loss of bargain = contract price – market value at time of breach  
Liquidated damages = amount designated in the sales contract as compensation for breach  
Retain buyer's deposit (up to amount of seller's actual damages)  
Incidental & consequential damages that were contemplated during sales contract or reasonably foreseeable

Land-sale contracts can include a **liquidated damages provision**, which allows a seller to recover a certain sum in the event of the buyer's breach. These provisions are **enforceable** if the liquidated amount bears a **reasonable relation** to **anticipated damages**. Courts have consistently held that an amount **less than 15%** of the **purchase price** is reasonable. However, an amount that exceeds this percentage may constitute an unenforceable penalty.

Here, the buyer breached the contract when he notified the seller that he could not close. The land-sale contract allows the seller to recover the \$5,000 deposit as liquidated damages in the event of the buyer's breach. Since this amount is around 5% of the \$110,000 purchase price, the liquidated-damages provision is reasonable and will likely be enforced. Therefore, the most probable result is that the seller will be permitted to keep the \$5,000 deposit.

**(Choice B)** Had the liquidated-damages provision been unenforceable, the seller would have been required to return the deposit and could only recover his actual damages, which amounted to \$2,000.

**(Choice C)** Changed circumstances may provide legal justification for not completing a contract if those circumstances make performance impossible or impracticable. However, the buyer's job transfer does not make it impossible or impracticable to purchase the residence since he can later sell the home.

**(Choice D)** The seller could have carried out the contract with the buyer at the time of *closing* since he still had title to the residence at that time. The fact that he cannot carry out his contract with the buyer at this time is irrelevant.

**Educational objective:**

A liquidated damages provision is enforceable if the amount bears a reasonable relation to anticipated damages. An amount less than 15% of the purchase price is likely reasonable.

**References**

77 Am. Jur. 2d Vendor and Purchaser § 478 (2020) (seller's recovery of liquidated damages).

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