

A collector bought from a gallery a painting correctly described in the parties' signed contract as a "one-of-a-kind self-portrait" by a famous artist who had recently died. The contract price was \$500,000 in cash, payable one month after delivery of the painting by a truck carrier to the collector.

The painting was damaged in transit. The collector timely rejected it after inspection, immediately notified the gallery of the rejection, and told the gallery that the painting would be available for pickup. The gallery then sold the painting to a third party. It informed the collector that it would pick up the painting within a couple of weeks. Two weeks later, before the gallery picked up the painting, the collector sold and delivered the painting to an art admirer for \$550,000 cash, after notifying the admirer about the damage. The collector sent no money to the gallery.

If the collector's sale of the painting was NOT an acceptance of the goods, what is the maximum amount that the gallery is entitled to recover from the collector?

- A. \$50,000 (the excess of the market price over the contract price).
- B. \$500,000 (the collector-gallery contract price).
- C. \$550,000 (damages for conversion).
- D. Only the allowance of lost profit to the gallery as a volume dealer.

## Explanation:

### Buyer duties regarding rightfully rejected goods

(UCC § 2-602)

Buyer who rightfully rejects nonconforming goods must:

take reasonable care of goods in its possession until seller has had sufficient time to retrieve them *and*

not exercise ownership over rejected goods (eg, by selling them)

**UCC** = Uniform Commercial Code

Under the **UCC**, a seller must deliver goods that conform perfectly to the contract ("**perfect-tender rule**"). A **buyer can reject nonconforming goods** within a reasonable time after delivery by promptly notifying the seller of the rejection. After rejection, the buyer must take reasonable care of any goods in its possession until the seller has had sufficient time to retrieve them. Any **exercise of ownership** over the goods (eg, selling the goods) is **wrongful conversion** and entitles the **seller to recover** the **fair market value** of the goods at the **time of conversion**.

Here, the collector rightfully rejected the damaged painting. But before the gallery could pick up the painting, the collector sold and delivered the painting to the art admirer for \$550,000 cash. That sale constituted wrongful conversion, and the price paid by the art admirer is evidence of the painting's fair market value at the time of the conversion. Therefore, the gallery is entitled to recover \$550,000 in damages for conversion.

**(Choices A & B)** Neither \$50,000 (excess of the market price over the contract price) nor \$500,000 (collector-gallery contract price) would properly compensate the gallery for its loss. Both amounts are less than \$550,000 (damages for conversion).

**(Choice D)** A lost volume seller is one with more goods to sell than customers to buy them. Lost volume sellers can recover lost profits from a breaching buyer because, but for the buyer's breach, the seller would have made two sales (and two profits) rather than one. But the gallery is *not* a lost volume seller because the painting was a one-of-a-kind good.

### Educational objective:

If a buyer wrongfully converts rejected goods (eg, by selling them), the seller is entitled to recover the fair market value of the goods at the time of conversion.

**UCC** = Uniform Commercial Code

### References

U.C.C. § 2-602 (Am. Law Inst. & Unif. Law Comm'n 2020) (rightful rejection).

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