

In a writing signed on February 1, a buyer agreed to purchase a specified quantity of lumber from a seller for \$12,500, delivery to be made on July 1. Thereafter, the market price of lumber increased significantly. Due to this price increase, on June 14 the seller told the buyer that it would not deliver the lumber unless the buyer agreed to a purchase price of \$14,500 and agreed to waive any claim for damages against the seller. The buyer refused and told the seller that she would purchase lumber elsewhere. On June 18, after a reasonable search for alternative sources, the buyer purchased lumber from another supplier for \$15,500.

If the buyer sues the seller for breach, will the buyer be likely to prevail?

- A. Yes, and the buyer will recover damages of \$3,000, because that is the difference between the cost of cover and the contract price.
- B. Yes, but the buyer's damages will be limited to \$2,000, because she could have obtained the lumber from the seller for \$14,500.
- C. No, because the seller's request for a price increase was made in good faith and as a result of market forces.
- D. No, because the buyer breached her duty to mitigate her damages when she purchased replacement lumber at a price higher than that offered by the seller.

Incorrect

Correct answer A

Collecting Statistics

01 min, 34 secsTime Spent

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Explanation:

UCC damages for seller's breach when buyer covers

Cost of cover	Difference between contract price & cost of purchasing substitute goods*
Incidental damages	Reasonable expenses incurred in inspection, receipt, transportation & care of goods rightfully rejected Commercially reasonable charges, expenses, or commissions incurred in connection with effecting cover Other reasonable expenses incident to delay/breach
Consequential damages	Losses resulting from buyer's particular circumstances that: seller had reason to know at time of contracting <i>and</i> could not reasonably be prevented Injury to person/property proximately resulting from breach of warranty

UCC = Uniform Commercial Code.

*The substitute goods must have been purchased promptly & in good faith.

Under the UCC, if a **seller breaches a contract** by failing to deliver the goods or by [anticipatory repudiation](#), the **buyer can choose to cover** by reasonably purchasing substitute goods. The **buyer can then recover** the following:

Cost of cover – the difference between the contract price and the cost of purchasing substitute goods

Incidental damages – includes commercially reasonable charges, expenses, or commissions incurred in effecting cover (eg, transportation costs)

Consequential damages – includes losses resulting from the buyer's particular circumstances that (1) the seller had reason to know of at the time of contracting and (2) could not reasonably be prevented by cover or otherwise (eg, business losses)

Here, the seller repudiated and breached the contract by telling the buyer that it would not deliver the lumber unless the buyer agreed to an increased purchase price and a waiver of any claim for damages. As a result, the buyer had a right to cover by purchasing substitute lumber from another supplier after a reasonable search. The buyer can now recover the difference between the contract price (\$12,500) and the cost of the substitute lumber (\$15,500). Therefore, the buyer will likely prevail in her breach-of-contract suit and will recover damages of \$3,000.

(Choice B) Although the buyer could have obtained the lumber from the seller for \$14,500, the buyer was not obligated to do so. Instead, the buyer properly covered by purchasing substitute lumber from another supplier and can recover \$3,000.

(Choice C) Even if the seller's request for a price increase was made in good faith and as a result of market forces, the buyer was free to reject that request and purchase lumber elsewhere.

(Choice D) The buyer did not have to mitigate her damages by purchasing from the seller, especially since the seller conditioned its offer on the buyer agreeing to waive any claim for damages against the seller.

Educational objective:

When a seller breaches a contract by failing to deliver the goods or by anticipatory repudiation and the buyer chooses to cover, the buyer can recover the cost of cover, incidental damages, and consequential damages.

References

U.C.C. § 2-711 (buyer's remedies in general).

U.C.C. § 2-712 (buyer's procurement of substitute goods).

U.C.C. § 2-715 (buyer's incidental & consequential damages).

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