

A landscaper agreed to maintain the yard of a homeowner for six months for a fee of \$300 per month, payable at the end of the six-month period. This amount was the fair market value of the work to be performed. The landscaper performed the work for four months but was then offered another job for \$500 per month and, after notifying the homeowner, stopped doing the promised work and took the other job.

The homeowner refused to pay the landscaper anything. The homeowner could have hired a comparable landscaper to complete the work for \$300 per month.

In a lawsuit between the landscaper and the homeowner, what is the likely result?

- A. Neither the landscaper nor the homeowner will recover, because neither has suffered any loss.
- B. The homeowner will recover \$400, which constitutes the unjust enrichment of the landscaper.
- C. The homeowner will recover \$600, which is the cost of completing the work at prevailing market rates.
- D. The landscaper will recover \$1,200 for the work done before the breach.

Explanation:

Restitutionary damages

- Definition** Damages awarded to restore to claimant the value of whatever benefit was conferred upon recipient
- Purpose** Prevent unjust enrichment
- Measure** Reasonable value of work performed or services rendered (ie, cost of recipient obtaining comparable performance)
If applicable, extent to which recipient's property has increased in value or recipient's other interests have been advanced

A **breaching party** who incurs loss may not sue for compensatory damages for the party's actual losses. However, if the breaching party has **significantly performed**, he/she may recover **restitutionary damages** from the nonbreaching party for the reasonable value of the work performed.* This ensures that the nonbreaching party is not unjustly enriched. The **reasonable value** of the work performed is typically measured by the **cost of obtaining comparable performance**.

Here, the landscaper breached the parties' agreement after maintaining the homeowner's yard for four out of the agreed-upon six months. The landscaper had significantly performed two-thirds of the contract, so the landscaper is entitled to restitution for the reasonable value of the work done before the breach. And since a comparable landscaper could have done the work for \$300 per month, the landscaper will recover \$1,200 (\$300 per month x 4 months) **(Choice A)**.

*The breaching party's restitutionary recovery is limited to the contract price, reduced by any damages that the nonbreaching party incurred as a result of the breach and could not reasonably avoid.

(Choice B) The homeowner (not the landscaper) was unjustly enriched because the homeowner received lawn-maintenance services for four months but paid nothing. The fact that the landscaper will receive an additional \$400 ((\$500-300) per month x 2 months) from a *different* job has no bearing on the outcome of this dispute.

(Choice C) As the nonbreaching party, the homeowner could recover **expectation damages**, measured by the difference between the contract price and the cost of completing the work at prevailing market rates. But the contract and market prices are the same here (\$300 per month), so the homeowner will recover nothing.

Educational objective:

A breaching party who has significantly performed may recover restitutionary damages from the nonbreaching party for the reasonable value of the work performed, as measured by the cost of obtaining comparable performance.

References

Restatement (Second) of Contracts § 371 (Am. Law Inst. 1981) (measure of restitution interest).

Restatement (Second) of Contracts § 374 (Am. Law Inst. 1981) (restitution in favor of breaching party).

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