

The owner of an apartment complex contracted in writing with a landscaper to install a sprinkler system for \$20,000. The contract required the landscaper to install a specific brand of brass sprinkler heads. It also required the landscaper to install a \$500 anti-backflow device, which was required by the city plumbing code but would not affect the sprinkler system's performance.

In order to speed up installation, the landscaper installed the sprinkler system using brass sprinkler heads left over from a previous job that, while not the brand specifically required by the contract, were equal in quality and performance. However, the landscaper did not install the anti-backflow device, even though the city plumbing code required it and the owner could be subject to a fine if the device were not installed.

The landscaper completed the installation work and then sought payment from the owner. The owner refused to pay the landscaper anything on the ground that the work did not comply with the contract.

If the landscaper sues the owner for breach of contract, what is the likely result?

- A. The landscaper will not recover, because he willfully and materially breached the contract.
- B. The landscaper will recover restitution for the cost spent on labor and materials.
- C. The landscaper will recover the contract price less the cost to remedy any defects in performance.
- D. The landscaper will recover the full contract price.

## Explanation:

**Substantial performance** is less than full performance that, while imperfect, **does not defeat the contract's main purpose**. Under the **common law**—which governs contracts for services (eg, installing a sprinkler system)—a party that has substantially performed can recover damages based on the contract if the other party fails to perform.\* Those **damages** are generally equal to the **contract price minus the cost to remedy any defects in performance**.

Here, the landscaper imperfectly performed by using the wrong brand of sprinkler heads and not installing the anti-backflow device. However, this did not defeat the contract's main purpose of providing the owner with a working sprinkler system. That is because the sprinkler heads were equal in quality and performance to the ones called for in the contract and the anti-backflow device did not affect performance. Therefore, the landscaper substantially performed and will likely recover the contract price less the cost to remedy any defects in performance **(Choice D)**.

\*In contrast, the Uniform Commercial Code requires "perfect tender," and substantial performance of a sale-of-goods contract does not allow a party to recover damages based on the contract except for installment contracts or when the parties agree otherwise.

**(Choice A)** The extent to which a party has acted in bad faith (eg, by committing a willful breach) is one of several **factors** that courts consider in deciding whether a breach is material. Here, although the landscaper's breach was willful, it was not material since he fulfilled the contract's main purpose.

**(Choice B)** A party's failure to substantially perform the contract is a material breach. A party in material breach cannot recover on the contract but may be entitled to restitution damages for the reasonable value of benefits conferred on the other party—eg, the cost spent on labor and materials. But here, the landscaper did substantially perform so there was no material breach.

## Educational objective:

At common law, a party that has substantially performed—ie, rendered imperfect performance without defeating the contract's main purpose—can recover the contract price less the cost to remedy any defects in performance.

## References

Restatement (Second) of Contracts § 237 cmt. d (Am. Law Inst. 1981) (effect of substantial performance).

Restatement (Second) of Contracts § 241 (Am. Law Inst. 1981) (factors used to determine whether a breach of contract is material).

### Effect of plaintiff's performance on recovery of contract damages



\*However, the plaintiff may be entitled to restitution damages for the reasonable value of benefits conferred.

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