

A buyer ordered a new machine from a manufacturer. The machine arrived on time and conformed in all respects to the contract. The buyer, however, rejected the machine because he no longer needed it in his business and returned the machine to the manufacturer. The manufacturer sold many such machines each year, and its factory was not operating at full capacity.

In an action by the manufacturer against the buyer for breach of contract, which of the following is NOT a proper measure of the manufacturer's damages?

- A. The contract price of the machine.
- B. The difference between the contract price and the market price of the machine.
- C. The difference between the contract price and the price obtained from a proper resale of the machine.
- D. The profit the manufacturer would have made on the sale of the machine to the buyer.

Explanation:

Seller's action for contract price of goods

(UCC § 2-709)

When buyer fails to pay for goods, seller can recover contract price of goods* if:

buyer accepted goods

goods were lost/damaged within commercially reasonable time after risk of loss passed to buyer *or*

buyer returned or rejected goods & seller was unable after reasonable efforts to resell them

UCC = Uniform Commercial Code

*Seller can also recover incidental damages

Under the **UCC**, when a buyer fails to pay for goods, the **seller can recover the contract price** of the goods under three circumstances:

Where the **buyer accepted** the goods

Where the **goods were lost or damaged** within a commercially reasonable time after the risk of loss had passed to the buyer

Where the **buyer returned or rejected** the goods and the **seller was unable** after reasonable efforts to **resell them**

The seller is also entitled to any incidental damages arising from the transport, resale, or other action taken incident to the buyer's breach.

Here, the buyer rejected the machine (no acceptance) and returned it intact to the manufacturer (no loss/damage). And since the manufacturer sold many of these machines each year and its factory was not operating at full capacity, it should be able to resell the buyer's machine. Therefore, the machine's contract price is *not* a proper measure of the manufacturer's damages.

(Choices B & C) A nonbreaching seller can recover the difference between the contract price and the *market* price of the goods at the time of tender. Alternatively, the seller can resell the goods for a reasonable price and recover the difference between the contract price and the *resale* price. As a result, either could be a proper measure of the seller's damages.

(Choice D) The manufacturer is a lost-volume seller, as evidenced by the fact that it sold many of these machines each year and was not operating at full capacity. **Lost-volume sellers** can recover lost profits because, but for the buyer's breach, they could have made two sales (and two profits) rather than one.

Educational objective:

A seller can only recover the contract price of the goods after the buyer failed to pay if (1) the buyer accepted the goods, (2) the goods were lost or damaged within a commercially reasonable time after the risk of loss passed to the buyer, or (3) the buyer returned or rejected the goods and the seller could not resell them.

UCC = Uniform Commercial Code

References

U.C.C. § 2-708 (Am. Law Inst. & Unif. Law Comm'n 2020) (seller's damages – non-acceptance/repudiation).

U.C.C. § 2-709 (Am. Law Inst. & Unif. Law Comm'n 2020) (action for price).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.