

A homeowner entered into a contract with a builder under which the builder was to install two new bathrooms in the homeowner's house. The stated price for the first bathroom was \$30,000, and the price for the second bathroom was \$35,000. The builder, without justification, left the job after completing the \$30,000 bathroom. The homeowner found another contractor to complete the second bathroom for \$35,000 and has suffered no losses as a result of the builder's breach.

The builder has sued the homeowner for the \$30,000 contract price of the first bathroom, which remains unpaid.

What is the most likely result of the builder's suit?

- A. The builder will recover nothing, because he materially breached the contract.
- B. The builder will recover the reasonable value of his work.
- C. The builder will recover in restitution the amount by which the bathroom increased the value of the homeowner's house, not to exceed \$30,000.
- D. The builder will recover \$30,000, because the contract is divisible into two parts.

Correct

Collecting Statistics

01 min, 19 secsTime Spent

2023Version

Explanation:

Divisible contracts

Definition	Contract composed of multiple bargained-for exchanges that can be separately enforced
Recovery after breach	Breaching party entitled to return performance for any completed or substantially performed promise Nonbreaching party entitled to damages stemming from breach

When a party performs one part of a **divisible contract**, that party is generally entitled to the agreed equivalent for that part—even if the party fails to perform the other part(s) of the contract. In other words, that party's **performance of the entire contract** is generally **not a condition precedent** to the other party's duty to perform its agreed equivalent. A contract is divisible if:

the parties' duties can be broken down into at least **two corresponding pairs of performances** *and*

those pairs of performances can fairly be regarded as **agreed (ie, bargained-for) equivalents**.*

Here, the parties' duties can be broken down into two corresponding performances that can fairly be regarded as agreed equivalents. That is because the builder was to install two bathrooms in the homeowner's house. The price for completing the first bathroom was \$30,000 (which the builder completed), and the price for completing the second bathroom was \$35,000 (which the builder failed to complete). As a result, the contract is divisible into two parts. And since the builder completed the first bathroom, he will most likely recover \$30,000 from the homeowner.

*Courts prefer to interpret contracts as divisible for reasons having to do with fairness. However, courts will not do so if the contract expressly states that it is indivisible or payment is due upon completion of the entire contract (neither seen here).

(Choice A) Although the builder materially breached the contract by failing to complete the second bathroom, he can recover \$30,000 for the completion of the first bathroom since the contract is divisible.

(Choices B & C) A party who materially breaches an *indivisible* contract may only recover restitution damages—ie, the reasonable value of the breaching party's work conferred on the nonbreaching party. But a party who breaches part of a *divisible* contract (as seen here) can recover the agreed equivalent for the completed part.

Educational objective:

When a party performs one part of a divisible contract, that party is generally entitled to the agreed equivalent for that part. A contract is divisible if (1) the parties' duties can be

broken down into at least two corresponding pairs of performances and (2) those pairs of performances can fairly be regarded as agreed equivalents.

References

Restatement (Second) of Contracts § 240 (Am. Law Inst. 1981) (defining divisible contracts).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.