

A popular singer expressed interest in performing in a theater producer's musical production. The producer and the singer agreed that there would be no enforceable contractual obligations between them until they had entered into a final, signed contract. Then they began negotiating the terms of the contract.

While the parties were negotiating, the producer began to spend money on the production. When the parties were unable to agree on the terms of a final contract, the producer made reasonable but unsuccessful efforts to hire another singer before abandoning the production.

If the producer sues the singer, what will he likely recover?

- A. Expectation damages in the form of the profits that the production would have made if it had been performed.
- B. Nothing, because it was not reasonable for the producer to expect to be reimbursed for expenses incurred when he knew that the singer was not obligated until there was a final, signed agreement.
- C. Reliance damages in the form of the actual expenses the producer incurred while negotiating with the singer.
- D. Restitution for any harm done to the producer's reputation when the production was abandoned.

Explanation:

Promissory estoppel

Allows enforcement of promise when no valid contract exists if:

promisor reasonably expected to induce reliance on promise

enforcing party reasonably relied on promise

reliance caused enforcing party to suffer substantial detriment *and*

injustice can be avoided only by enforcing promise

Nonperformance of a contractual duty constitutes a breach. This allows the nonbreaching party to seek remedies—including **compensatory damages** (eg, expectation or reliance damages). But even when there is **no valid contract** (as seen here), a party may recover damages under an equitable theory of relief. For example, the doctrine of **promissory estoppel** allows a party to recover damages for **expenses stemming** from another's promise if:

the promisor reasonably expected to induce reliance on the promise

the enforcing party **reasonably relied** on the promise

reliance on the promise caused the enforcing party to suffer substantial detriment *and*

injustice can be avoided only by enforcing the promise.

A successful promissory-estoppel claim often results in an award of **reliance damages**—ie, damages based on the out-of-pocket expenses incurred by the enforcing party. However, in some instances, courts have awarded **expectation damages**—ie, damages intended to put the enforcing party in the same position as if the promise had been performed.

Here, the producer and singer did not enter into a valid contract, so the producer cannot recover compensatory damages for breach. Although the doctrine of promissory estoppel allows for recovery of damages when there is no contract, that doctrine requires *reasonable* reliance on a promise. And since the parties agreed that they would not be obligated until a final agreement was signed, it was *unreasonable* for the producer to incur expenses during negotiations. Therefore, the producer is likely to recover nothing (**Choices A & C**).

(Choice D) An award of restitution is appropriate when one party is unjustly enriched by the other (not seen here). Therefore, the producer's reputational harm is not a basis upon which to claim restitution.

Educational objective:

A successful promissory-estoppel claim (1) most often results in an award of reliance damages (ie, damages based on out-of-pocket expenses) and (2) rarely results in an award of expectation damages (ie, damages intended to put the enforcing party in the same position as if the promise had been performed).

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