

A contractor agreed in writing to build a house for a man for \$200,000. The contract stated that the man would pay the contractor \$60,000 when the foundation was laid, \$60,000 when the house was framed, \$60,000 when the walls were completed, and \$20,000 when the house was finished. After the contractor laid the foundation and expended \$50,000, but before the man paid the contractor anything, the contractor quit the project to take a higher-paying job.

Subject to the man's claim for damages for breach, how much is the contractor likely to recover for the work he performed?

- A. \$50,000, on a theory of reliance.
- B. \$60,000, on a theory of divisible contract.
- C. The value of the benefit conferred, on a theory of restitution.
- D. Nothing, because the contractor's breach was willful.

Incorrect

Correct answer C

Collecting Statistics

01 min, 48 secsTime Spent

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Explanation:

A party who substantially, but not fully, performed his/her contractual obligations has committed a **minor breach**. That party can nevertheless **recover on the contract** under the following theories of damages:

Expectancy damages are designed to place the parties in the same position as if the contract had been fully performed.

Reliance damages are designed to put the parties in the same position as if the contract had never been formed (eg, by paying out-of-pocket expenses) and are used when expectancy damages are too speculative **(Choice A)**.

However, a party who **commits a material breach** by failing to substantially perform is **limited to restitution damages**. Restitution damages are designed to ensure that the nonbreaching party is not unjustly enriched by the breaching party's work. As a result, the breaching party is entitled to recover the **reasonable value** of the **benefit conferred less any damages suffered** by the nonbreaching party due to the breach.

Here, the contractor *materially* breached the contract by quitting the project after laying the foundation—ie, before framing the house, completing the walls, or finishing the house. Therefore, the contractor is likely to recover the value of the benefit conferred—subject to the man's claim for damages for breach—on a theory of restitution.

(Choice B) A divisible contract can be separated into distinct performance periods. However, construction contracts (as seen here) typically are not divisible contracts. Instead, they allow progress payments for completion of different stages. And even if the contract was divisible, the contractor could not recover \$60,000 in expectancy damages since he materially breached the contract.

(Choice D) In contract law, it generally is irrelevant why the breaching party breached the contract. As a result, the contractor is not barred from recovery even though his breach was willful.

Educational objective:

A party who substantially but not fully performed his/her contractual obligations (ie, committed a minor breach) can recover expectancy or reliance damages. But a party who failed to substantially perform (ie, committed a material breach) can only recover restitution damages.

References

Restatement (Second) of Contracts § 374 (Am. Law Inst. 1981) (explaining that breaching party can recover restitution damages).

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Damages for substantial performance v. material breach

Substantial performance (recover in contract) = Contract price - Cost to receive full performance

Material breach (recover in restitution) = Benefit conferred - Damages for breach