503.36 CONTRACTS - ISSUE OF COMMON LAW REMEDY - DIRECT DAMAGES - CONTRACTOR'S MEASURE OF RECOVERY FOR AN OWNER'S BREACH OF A CONSTRUCTION, REPAIR OR SERVICES CONTRACT WHERE THE CONTRACTOR HAS NOT BEGUN PERFORMANCE.

Direct damages are the economic losses that usually or customarily result[1] from a breach of contract. In this case, you will determine direct damages, if any, by subtracting from the price specified in the contract the amount it would have cost the plaintiff to [construct the improvement] [perform (*describe services or repairs*)] in conformity with the requirements of the contract[2] (less any previous payments by the defendant to the plaintiff under the contract.)[3]

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1. "'In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury.'" *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979) (*quoting* the RESTATEMENT OF THE LAW OF CONTRACT, § 330, p. 509). The foreseeability limitation on recovery was first enunciated in *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854).

2. In a suit for damages arising out of a breach of contract the party injured by the breach is entitled to full compensation for the loss and to be placed, to the extent possible, in the position which he would have occupied had the contract not been breached. *Harris & Harris Constr. Co. v. Crain & Denbo, Inc.*, 256 N.C. 110, 123, 123 S.E.2d 590, 600 (1962) (*quoting Troitino v. Goodman*, 225 N.C. 406, 412, 35 S.E.2d 277, 281 (1945)).

3. *Cf. McCullen v. Wel-Mil Corp.*, 23 N.C. App. 736, 209 S.E.2d 507 (1974).