

503.39 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 AFTER
THE CONTRACTOR DELIVERS PARTIAL PERFORMANCE.

Direct damages are the economic losses that usually or customarily result¹ from a breach of contract. In this case, you will determine direct damages, if any, by subtracting from the price² specified in the contract the amount it would have cost the plaintiff to complete [construction of the improvement] [the repairs] [(*describe service*)] in conformity with the requirements of the contract³ (less any previous payments by the defendant to the plaintiff under the contract)⁴.

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. Note that in the absence of a stipulated price, when services are rendered under an agreement that compensation is to be paid, the measure of recovery is the reasonable value of the services rendered. *Thormer v. Lexington Mail Order Co.*, 241 N.C. 249, 251, 85 S.E.2d 140, 142 (1954). The reasonable value of the services is based on the time and labor expended, skill, knowledge and experience involved, and other attendant circumstances, rather than on the use to be made of the result or the benefit to the party for whom the services are rendered. *Turner v. Marsh Furniture Co.*, 217 N.C. 695, 697, 9 S.E.2d 379, 380 (1940).

3. 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)).

4. *McCullen v. Wel-Mil Corp.*, 23 N.C. App. 736, 209 S.E.2d 507 (1974); *Meares v. Nixon Constr. Co.*, 7 N.C. App. 614, 173 S.E.2d 593 (1970).