

503.70 CONTRACTS - ISSUE OF COMMON LAW REMEDY - INCIDENTAL DAMAGES.

To the amount of direct damages add all incidental damages,¹ if any, sustained by the plaintiff.

Incidental damages include

[[costs] [obligations] reasonably incurred by the plaintiff in preparing to perform the plaintiff's responsibilities under the contract]

[[costs] [obligations] reasonably incurred by the plaintiff prior to being able to respond to defendant's breach]

[[costs] [obligations] reasonably incurred by the plaintiff in response to the defendant's breach]

[[costs] [obligations] reasonably incurred by the plaintiff for the purpose of minimizing the injury resulting from the defendant's breach].²

In this case, the plaintiff contends, and the defendant denies, that the plaintiff sustained the following incidental damages (*here enumerate the type(s) of incidental damages contended by the plaintiff and supported by the evidence*):

1. Generally, for a breach of contract, the injured party is entitled as compensation to be placed, insofar as this can be done by money, in the same position he would have occupied if the contract had been performed. *Pleasant Valley Promenade v. Lechmere, Inc.*, 120 N.C. App. 650, 665, 464 S.E.2d 47, 59 (1995); *First Union Nat. Bank v. Naylor*, 102 N.C. App. 719, 725, 404 S.E.2d 161, 164 (1991) (*quoting Perfecting Serv. Co. v. Product Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963)). See also *Fulcher v. Nelson*, 273 N.C. 221, 226, 159 S.E.2d 519, 523 (1968) (*quoting Perkins v. Langdon*, 237 N.C. 159, 169, 74 S.E.2d 634, 643 (1953)). An injured party has a right to damages . . . measured by:

(a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus

(b) any other loss, including incidental or consequential loss, caused by the breach, less

(c) any cost or other loss that he has avoided by not having to perform.

Pleasant Valley at 665, 464 S.E.2d at 59 (*quoting First Union* at 725, 404 S.E.2d at 164). The right to incidental damages applies in almost every breach of contract setting (*e.g.*, construction contracts, contracts for the purchase of real estate, etc.).

2. *Smith v. Martin*, 124 N.C. App. 592, 600-03, 478 S.E.2d 228, 233-34 (1996).