
505.25 CONTRACTS - ISSUE OF REMEDY - MINOR'S CLAIM FOR
RESTITUTION WHERE CONTRACT IS DISAVOWED - MEASURE OF
RECOVERY.

The (*state number*) issue reads:

"What amount is the plaintiff entitled to recover from the defendant?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff,¹ the plaintiff is entitled to recover nominal damages even without proof of actual damages.² Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by the plaintiff.

The plaintiff may also be entitled to recover actual damages. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual damages due from the defendant.

The plaintiff's actual damages equal

[the amount of the plaintiff's³ money paid by the plaintiff to the defendant pursuant to the contract before the plaintiff attained the age of eighteen]⁴

(plus)

[the value as of the date of the contract of the (*name property*) delivered by the plaintiff to the defendant]⁵

(less)⁶

[the value of any other property owned or controlled by the plaintiff

which he subsequently acquired with [money] [property] furnished by the defendant pursuant to the contract. However, you may reduce the plaintiff's award only by the value of the property he continues to own or control which was subsequently acquired with the [money] [property] furnished by the defendant pursuant to the contract.⁷ (You may not reduce the plaintiff's award by the [amount of any money] [value of any property] no longer in the plaintiff's possession or control, even if the plaintiff lost or destroyed [it] [them] through carelessness, intemperance or stupidity.)⁸ (You may not reduce the plaintiff's award for any [damage inflicted on] [depreciation to] any property delivered by the defendant to the plaintiff pursuant to the contract.)⁹ (You may not reduce the plaintiff's award by the value of the plaintiff's use of [money] [property] furnished by the defendant while in the possession of the plaintiff.)¹⁰

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages owed by the defendant to the plaintiff, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

1. This phrase would be changed to "If you have answered the (*state number*) issue "No" in favor of the plaintiff "in the event the defendant puts on evidence of one of the defenses available to him. See note 1 in N.C.P.I.-Civil 505.20 (Contracts-Issue of Minor's Claim for Restitution Where Contract is Disavowed).

2. In a suit for damages for breach of contract, proof of the breach entitles the plaintiff to at least nominal damages. *Tillis v. Calvine Cotton Mills, Inc.*, 251 N.C. 359, 363, 111 S.E.2d 606, 610 (1959); *Bowen v. Fidelity Bank*, 209 N.C. 140, 144, 183 S.E. 266, 268 (1936); *Cook v. Lawson*, 3 N.C. App. 104, 108, 164 S.E.2d 29, 32 (1968).

3. The plaintiff, upon disavowal, is entitled to recover only his money. If the money paid belonged to another, it may not be recovered by the plaintiff. *Fisher v. Taylor Motor*

Co., 249 N.C. 617, 107 S.E.2d 94 (1959).

4. *Collins v. Norfleet-Baggs, Inc.*, 197 N.C. 659, 150 S.E. 177 (1929).

5. The actual value of the property as of the date of the contract is what is to be recovered. *Id.* The parties are not bound by the price fixed by the contract, for the actual value could be more or less. *Id.*

6. The relevant cases provide that while the disavowing party must actually "restore" to the defendant any of the money or original property received from the defendant and still on hand, he must only "account" to the defendant for the value of other property acquired with the money or property originally obtained from the defendant. *Id.*; *Hight v. Harris*, 188 N.C. 328, 330, 124 S.E. 623, 624 (1924). The obligation to "account" may also extend to insurance proceeds received by the minor in the event the property is destroyed. See *Greensboro Morris Plan Co. v. Palmer*, 185 N.C. 109, 116 S.E. 261 (1923). Thus, the "restoration" obligation is treated as an element to be proved as a precondition of recovery (see N.C.P.I.-Civil 505.20) while the "accounting" obligation is treated as an item of credit in calculating net damages.

7. *Collins*.

8. *Fisher*, 249 N.C. at 620, 107 S.E.2d at 97.

9. *Id.*; *Hight*, 188 N.C. at 330, 124 S.E.2d at 624.

10. *Greensboro Morris Plan Co.*, 185 N.C. at 118-19, 116 S.E. at 265.