



LAW ADVOCATE GROUP, LLP

9701 Wilshire Blvd. Suite 1000 Beverly Hills, CA 90212

Phone: 310-651-3065 Fax: 310-601-7110

www.LawAdvocateGroup.com

Doron F. Eghbali Litigation Law

What Are Breach of Contract Damages in California?

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Breach of Contract damages in California are primarily either General Damages (sometimes called Direct Damages) or Special Damages (sometimes called Consequential Damages). General Damages are direct result of the breach i.e. general damages flow directly and necessarily from the breach of contract. On the other hand, Special Damages are damages that are not directly and necessarily result from the breach. In this article, we explore general principles of breach of contract damages in California and further expound upon General Damages and Special Damages.

INTRODUCTION

Breach of Contract in CA is generally governed by Civil Code Sections 3300-3302 and 3353-3360. The objective of the law of damages for breach of contract is to put the aggrieved party in the same position had the contract not been breached. The general measure of damages for breach of contract in California is enunciated in CA Civil Code Section 3300:

"For breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result from."

In fact, the general principle governing measure of damages for a breach of contract in CA was recently enunciated in a Supreme Court case, Lewis Jorge Construction Management, Inc. v. Pomona Unified School Dist. (2004) 34 C4th 960:



"Damages awarded to an injured party for breach of contract "seek to approximate the agreed-upon performance." (Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) [7 Cal.4th 503](#), 515 [28 Cal. Rptr. 2d 475, 869 P.2d 454] (Applied).) The goal is to put the plaintiff "in as good a position as he or she would have occupied" if the defendant had not breached the contract. (24 Williston on Contracts (4th ed. 2002) § 64:1, p. 7.) In other {Page 34 Cal.4th 968} words, the plaintiff is entitled to damages that are equivalent to the benefit of the plaintiff's contractual bargain. (Id. at pp. 9-10; 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 813, pp. 732-733; Peterson v. Larquier (1927) 84 Cal.App. 174, 179 [257 P. 873] [breach of lease permits injured party to recover difference between rental value at date of breach and rent specified in lease for its term].)

The injured party's damages cannot, however, exceed what it would have received if the contract had been fully performed on both sides. (Civ. Code, § 3358.) This limitation of damages for breach of a contract "serves to encourage contractual relations and commercial activity by enabling parties to estimate in advance the financial risks of their enterprise." (Applied, *supra*, 7 Cal.4th at p. 515.)

Exemplary or punitive damages are not recoverable in a breach of contract action, even if the defendant's act was malicious, willful or fraudulent, unless a an independent tort is involved. (See, Cates Construction, Inc. v. Talbot Partners (1999) 21 C4th 28).

1. FORESEEABILITY OF DAMAGES

As the Civil Code Section 3300, states, "the measure of damages,, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby....".

The case which enunciates and sheds light on determining reasonable foreseeability at the time of entering into a contract is Hadley v Baxendale (1854) 9 Ex 341, 156 Eng Rep 145:

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated."

2. REASONABLENESS OF DAMAGES

Civil Code Section 3359 provides: "Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered."



3. REASONABLE CERTAINTY

Civil Code Section 3301 provides: "No damages could be recovered in a breach of contract which are not clearly ascertainable in both their nature and origin." This means no speculative damages. In the case, Erlich v. Menezes (1999) 21 C4th 543, the Court held damages for emotional distress were speculative and non recoverable as special or consequential damages in a breach of contract action to build a house.

Albeit speculative damages are prohibited i.e. damages must be "clearly ascertainable", the amount of damages need not be proven with absolute certitude, IF the damage is clear. In fact, the Court in Acree v. General Motors Acceptance Corp. (2001) 92 CA4th 385 stated that: "The law requires only that some reasonable basis of computation be used, and the result reached can be a reasonable approximation."

GENERAL AND SPECIAL DAMAGES

1. GENERAL DAMAGES

General damages flow directly and necessarily from breach of contract. In other words, general damages are deemed to have been contemplated by the parties at the time of entering into the contract since their occurrence is deemed predictable if contract is breached.

2. SPECIAL DAMAGES

Special damages, on the other hand, do not necessarily flow from breach of contract. Special damages arise from particular circumstances of the parties or of the particular contract. To recover special damages, the special circumstances must have been communicated to or known by the defendant, or the defendant should have become aware of such special circumstances when the contract was entered into.

The premise of defaulting party's knowledge of any special circumstances for plaintiff to be able to recover special damages is predicated upon the principle that the defaulting party should be able to evaluate the risks inherent in entering into the contract, if it breaches the contract.

LOST PROFITS RECOVERABLE IN BREACH OF CONTRACT

Lost profits are recoverable, IF lost profits' extent and occurrence could be proven. Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes (2010) 191 CA4th 435.

To prove this, plaintiff must prove such profits are the direct and natural consequence of a specific breach of contract. Postal Instant Press, Inc. v. Sealy (1996) 43 CA4th 1704.

If the fact of damages is certain, then the trial court has discretion to determine the measure of damages. Greenwhich S.F. v. Wong (2010) 190 CA4th 739. Lost profits could be measured by "the



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past volume of business and other provable data relevant to the probable future sales." Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc. (2000) 78 CA4th 847.

DORON EGHBALI is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. Doron Primarily Practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More information, Please, Visit: HERE.