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DAMAGES - BREACH OF CONTRACT - RIGHT TO COMPETE IN A CONTEST

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DAMAGES — BREACH OF CONTRACT — RIGHT TO COMPETE IN A CONTEST — Defendant organized a contest whereby the public was invited to guess the number of beans in a jar, the fifteen persons submitting the answers most nearly correct to be entitled to become participants in a "quiz contest" in which the prize was an automobile to be awarded to "the person who is the last to be eliminated." The participants drew for the order in which they were to be questioned, the plaintiff drawing first position. On the fourth round of questions the plaintiff missed the question put to him, and then the other contestant failed to answer correctly, whereupon the manager declared the latter contestant the winner and awarded him the prize. Plaintiff sued for one-half the value of the prize. *Held*, plaintiff was not entitled to recover even though a breach of contract by defendant be admitted because plaintiff had not won anything, nor was he entitled to the prize, nor was he injured, nor could any damages be proved. *Collatz v. Fox Wisconsin Amusement Corp.*, (Wis. 1941) 300 N. W. 162.[1]

Damages for breach of contract are designed to compensate the plaintiff for the legal injury sustained by reason of the defendant's failure to perform his obligation, thereby putting the wronged party in the position he would have been in had the defendant performed.[2] The injury sustained must be the natural and proximate consequence of the defendant's wrongful act or omission, and further, under the rule of *Hadley v. Baxendale*,[3] the parties at the time of entering into

[1] Parenthetically, the court could have reached the same result by a literal interpretation of the offer and arrived at the conclusion that there was no breach. If the offer to award to "the person who is the last to be eliminated" be taken at face value, the moment the plaintiff missed the question the other contestant would automatically be winner without answering another question.

[2] 5 WILLISTON, CONTRACTS, rev. ed., § 1338 (1937); Fuller and Perdue, "The Reliance Interest in Contract Damages," 46 YALE L. J. 52, 373 (1936).

[3] 9 Ex. 341, 156 Eng. Rep. 145 (1854).

the contract must have contemplated those injuries. In the principal case the injury, the deprivation of the chance to complete the contest, was surely within the contemplation of the parties, since that was the primary motive actuating both parties. It would appear that the court has misconceived the proposition of the plaintiff. The suit is for compensation for the loss of the chance to win the prize which, at the time of the breach, would seem to be admittedly valuable, and plaintiff is measuring his damages by the value of the probability of his winning the automobile had the contest been completed. The court felt that the amount of damages was uncertain and speculative, but the authorities generally hold that this is not of itself sufficient to deny recovery.[4] Speculative damages are rejected only when there is a more certain damage standard available and this policy of adopting the least speculative damage standard operates merely as a limitation on the measure of damages permitted by the rule of *Hadley v. Baxendale*.[5] In other words, where a case presents alternative measures of damages the courts will apply the least speculative.[6] In the principal case there is but one measure of damages. So the only inquiry would seem to be whether the plaintiff has proved substantial damages, and this is a question of evidence.[7] The standard applied in ascertaining the amount of damages is generally the market

[4] 1 SEDGWICK, DAMAGES, 9th ed., § 170a (1912); 1 SUTHERLAND, DAMAGES, 4th ed., § 71 (1916). "It is true that it is difficult to determine the value of this chance, but ordinarily difficulty in ascertaining the amount of damages resulting from the violation of a right is not an insuperable obstacle to recovery." Kansas City, M. & O. Ry. v. Bell, (Tex. Civ. App. 1917) 197 S. W. 322 at 323.

[5] In the case of Chaplin v. Hicks, [1911] 2 K. B. 786, the plaintiff was entered in a contest, the prize being valuable on the basis of salary and a start in the theatrical profession. The defendant breached the contract by denying the right to continue in the contest, and the English court held that it was proper for the jury to assess damages. Wachtel v. National Alfalfa Journal Co., 190 Iowa 1293, 176 N. W. 801 (1921); Hall v. Nassau Consumers' Ice Co., 260 N. Y. 417, 183 N. E. 903 (1933).

Where plaintiff has lost his chance of reward because of defendant's negligence in carrying out a contractual duty, the same rule is applied. McPeek v. Western Union Tel. Co., 107 Iowa 356, 78 N. W. 63 (1899); Stumm v. Western Union Tel. Co., 140 Wis. 528, 122 N. W. 1032 (1909). Cf. Ft. Worth & D. C. Ry. v. Willie S. & J. B. Ikard Co., (Tex. Civ. App. 1911) 140 S. W. 502.

Some courts distinguish between uncertainty as to amount of damage and uncertainty as to whether there would be any damage at all. Bredemeier v. Pacific Supply Co., 64 Ore. 576, 131 P. 312 (1913).

[6] 1 SEDGWICK, DAMAGES, 9th ed., § 171b (1912). The limitation is used for the most part in cases involving a claim for lost future profits which have been denied the plaintiff because of the breach of the contract. 5 WILLISTON, CONTRACTS, rev. ed., § 1346 (1937). In a case where prospective profits were the only basis for recovery for breach of contract, the Iowa court allowed recovery. Hichhorn v. Bradley, 117 Iowa 130, 90 N. W. 592 (1902).

[7] 1 SUTHERLAND, DAMAGES, 4th ed., § 71 (1912). In Phillips v. Pantages Theatre Co., 163 Wash. 303, 300 P. 1048 (1931), the court did not deny the right of the plaintiff to recover but rather went on the theory that because of the contingencies the proof of damages is not satisfied to such an extent that the court would allow the jury to assess the damages. The most the plaintiff could recover is nominal damages. 1 CONTRACTS RESTATEMENT, § 332(a) and comment thereon (1932); Adams Express Co. v. Egbert, 36 Pa. 360 (1860).

value of the right impaired,[8] and if there is no market value, the jury is allowed to impute one to it.[9] Since the right to compete in a contest involves many contingencies, value found by the jury will necessarily be an approximation. It is the opinion of Professor McCormick that where the probabilities of success give less than an even chance of fulfillment, the American courts do not normally allow the jury to guess at the value.[10] In the principal case the contest has narrowed itself to the greatest probability of success possible, and the conclusion reached by the court that no damage could be proved appears to be unwarranted.[11]

[8] On the general subject of valuation and its problems, see Bonbright, "The Problem of Judicial Valuation," 27 COL. L. REV. 493 (1927).

[9] Chaplin v. Hicks, [1911] 2 K. B. 786.

[10] MCCORMICK, DAMAGES, § 31 at p. 118 (1935).

[11] The compensatory theory of the law of damages reaches the opposite result of that reached by this court. However, the further practical problem of attaching a dollar value to such a right, as involved in this case, arises in all fields of valuation, and it is entirely possible that these considerations may in a proper case outweigh a slavish adherence to the damage theory.