

Chapter 5

Hadley v. Baxendale
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Hadley v. Baxendale

Court of Exchequer

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

At the trial before the Crompton, J., at the last Gloucester Assizes, it appeared that the plaintiffs carried on an extensive business as millers at Gloucester; and that, on the 11th of May, their mill was stopped by a breakage of the crank shaft by which the mill worked. The steam engine was manufactured by Messrs. Joyce and Co., the engineers at Greenwich, and it became necessary to send the shaft as a pattern for a new one to Greenwich. [T]he plaintiffs sent one of their servants to the office of the defendants, who are well-known carriers for the purpose of having the shaft carried to Greenwich. On the following day the shaft was taken by the defendants, before noon, for the purpose of being conveyed to Greenwich, and the sum of 2*l.* 4*s.* was paid for its carriage. The delivery of the shaft at Greenwich as delayed by some neglect, and the consequence was, that the plaintiffs did not receive the new shaft for several days after they would otherwise have done, and the working of their mill was thereby delayed, and they thereby lost the profits they would otherwise have received.

On the part of the defendants, it was objected that these damages were too remote, and that the defendants were not liable with respect to them.

Alderson, B.— We think that there ought to be a new trial in this case; but in so doing, we deem it expedient and necessary to state explicitly the rule which the Judge, at the next trial, ought, in our opinion, to direct the jury to be governed by when they estimate the damages.

Now we think the proper rule in such a case as the present is this:—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 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 special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known by both parties, the damages resulting from the breach of such a 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. But on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at most, could only be supposed to have had in his contemplation the amount of injury, which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them. Now, in the present case, if we are to apply the principles above laid down, we find that the only circumstances here communicated by the plaintiffs to the defendants at the time the contract was made, were, that the article to be carried was the broken shaft of a mill, and that the plaintiffs were the millers of that mill. But how do these circumstances show reasonably that the profits of the mill must be stopped by an unreasonable delay in the delivery of the broken shaft by the carrier to a third person? Suppose plaintiff had another shaft in their possession. Or, again, suppose that, at the time of the delivery to the carrier, the machinery of the mill had been in other respects defective, then, also, the same results would follow. It follows, therefore, that the loss of profits here cannot reasonably be considered such a consequence of the breach of contract as could have been fairly and reasonably contemplated by both the parties when they made this contract. Thus, there must be a new trial in this case.

Peevyhouse v. Garland Coal & Mining Co.

382 P.2d 109, *cert. denied*, 375 U.S. 906 (Okla. 1963)

Jackson, J. In the trial court, plaintiffs Willie and Lucille Peevyhouse sued the defendant, Garland Coal Mining Company, for damages for breach of contract. Judgment was for plaintiffs in an amount considerably less than was sued for. Plaintiffs appeal and defendant cross-appeals.

Briefly stated, the facts are as follows: plaintiffs owned a farm containing coal deposits, and in November, 1954, leased the premises to defendant for a period of five years for coal mining purposes. A “strip-mining” operation was contemplated in which the coal would be taken from pits on the surface of the ground, instead of from underground mining shafts. In addition to usual covenants found in coal mining leases, defendant specifically agreed to perform certain restorative and remedial work at the end of the lease period. It is unnecessary to set the details of the work to be done, other than to say that it would involve the moving of many thousands of cubic yards of dirt, at a cost estimated by expert witnesses at about \$29,000.00. However, plaintiff only sued for \$25,000.00.

During the trial, it was stipulated that all covenants and agreements in the lease contract had been fully carried out by both parties, except the remedial work mentioned above; defendant conceded that this work had not been done.

Plaintiffs introduced expert testimony as to the amount and nature of the work to be done, and its estimated cost. Over plaintiffs’ objections, defendant thereafter introduced expert testimony as to the “diminution of value” of plaintiffs’ farm resulting from the failure of defendant to render performance as agreed in the contract—that is, the difference between the present value of the farm, and what its value would have been if defendant had done what it agreed to do.

At the conclusion of the trial, the court instructed the jury that it must return a verdict for the plaintiffs, and left the amount of damages for jury determination. On the measure of damages, the court instructed the jury that it might consider the cost of performance of the work defendant agreed to do, “together with all of the evidence offered on behalf of either party.”

It returned a verdict for plaintiffs for \$5,000.00—only a fraction of the “cost of performance,” *but more than the total value of the farm even after the remedial work is done.* [emphasis in original]

On appeal, the issue is sharply drawn. Plaintiffs contend that the true measure of damages in this case is what it will cost the plaintiffs to obtain performance of the work that was not done because of defendant’s default. Defendant argues that the measure of damages is the cost of performance “limited, however, to the total difference in the market value before and after the work was performed.”

It is highly unlikely that the ordinary property owner would agree to pay \$29,000 (or its equivalent) for the construction of “improvements” upon his property that would increase its value only about (\$300) three hundred dollars. The result is that we are called upon to apply principles of law theoretically based upon reason and reality to a situation, which is basically unreasonable and unrealistic.

We therefore hold that where, in a coal mining lease, lessee agrees to perform certain remedial work on the premises concerned at the end of the lease period, and thereafter the contract is fully performed by both parties except that the remedial work is not done, the measure of damages in an action by lessor against lessee for breach of contract is ordinarily the reasonable cost of performance of the work. However, where the contract provision breached was merely incidental to the main purpose in view, and where the economic benefit which would result to lessor by full performance of the work is grossly disproportionate to the cost of performance, the damages which lessor may recover are limited to the diminution of in value resulting to the premises because of the non-performance.

We are of the opinion that the judgment of the trial court for plaintiffs should be, and it is hereby, modified and reduced to the sum of \$300.00, and as so modified it is affirmed.

Irwin, J. (dissenting). Defendant admits that it failed to perform its obligations that it agreed and contracted to perform under the lease contract and there is nothing in the record, which indicates that defendant could not perform its obligations. Therefore, in my opinion defendant’s breach of contract was willful and not in good faith.

Although the contract speaks for itself, there were several negotiations between the plaintiffs and defendant before the contract was executed. Defendant admitted in the trial that plaintiffs insisted that the above provisions be included in the contract and that they would not agree to the coal-mining lease unless the above provisions were included.

In the instant action defendant has made no attempt to even substantially perform. There are no conditions existing now which could not have been reasonably anticipated when the contract was negotiated and executed. The defendant could have performed the contract if it desired. It has accepted and reaped the benefits of its contract and now urges that plaintiffs’ benefits under the contract be denied. If plaintiffs’ benefits were denied, such benefits would inure to the direct benefit of the defendant.

Therefore, in my opinion, the plaintiffs were entitled to specific performance of the contract and since defendant has failed to perform, the proper measure of damages should be the cost of performance.