

Contracts II

Milich

(1) SID v. BANK

In January, Sid entered into a lease for 6,000 square feet in a shopping center to be constructed by A&B Partnership, occupancy to begin November 1. Sid planned to operate a dry cleaning store at the location. In July, A&B went bankrupt, leaving the project in the bank's hands. The bank assumed all of A&B's obligations on the leases but somehow got confused and leased Sid's space to someone else. On October 1, the bank notified Sid that it would not honor the lease.

Between January and August, Sid claims the following expenses relating to this deal:

\$2,000 ---	space design
\$ 500 ---	loan costs
\$2,000 ---	preparation of hazardous waste disposal plan required by new state regulations passed in May
\$10,000 --	500 hours of Sid's time; at \$20 per hour

Sid estimates his lost profits at \$2,000 per month. (Gross sales = \$20,000, operating costs = \$18,000).

Questions

- (a) What if the lease stated: "Lessor may terminate this lease at any time, for any reason, in which event Lessee agrees not to seek damages of any kind against Lessor."
- (b) What if the lease stated: "Lessor may terminate this lease at any time, for any reason, prior to occupancy by Lessee, provided that Lessor pays Lessee the sum of \$1,000 at the time of termination which Lessee agrees shall be in full satisfaction of all claims for damages, direct or consequential, due to the termination." (Assume the Bank tendered a check for \$1,000 at the time they informed Sid that it would not honor the lease. Sid refused the check).
- (c) What if the lease stated: "Lessee's damages shall be limited to expenses incurred due to any breach and in no event shall Lessor be responsible for consequential damages or lost profits."

(2) Raptor Shoes

Flo owns a store that sells expensive sport shoes to a rather trend conscious clientele. Flo contracted with Earl to buy 1,500 pairs (assorted sizes) of the madly popular new training shoe known as the Raptor. Earl agreed to sell the 1,500 pairs for \$55,000, FOB Flo's store, for immediate shipment.

Flo sold the Raptor for \$249 a pair. She was nearly sold out of stock of Raptors and would run out entirely in another 2 days. Two days after she ordered her shoes from Earl, he called and "canceled" the shipment. (Earl's own supply of the Raptor had dried up). Flo bought 1,500 pairs of the Raptor from another wholesaler at a total price of \$59,000, FOB Flo's store. It took her

employee, David, 3 hours to find and make the substitute purchase (“cover”) for the shoes. David makes \$25 p/hour.

Despite Flo’s diligence in effecting cover, her store was without the Raptor for 7 days. Flo is certain that she could have sold at least 500 Raptors that week if she had had the shoes in stock. She also says that many customers were angry that she did not have the Raptor and told her they would not shop at her store anymore.

Flo demanded that Earl compensate her for his breach of the Raptor contract. Earl refused. Flo hired an attorney to pursue her breach of contract claim against Earl. The case went to trial three years after the breach of contract.

On the eve of trial, Flo lists the following losses that she has suffered as a result of Earl’s breach:

cover damages:	\$ 4,000
employee’s time	\$ 75
lost profits	\$ 70,000 (what Flo would have cleared as profit on 500 pairs @ \$249 per)
damage to reputation	\$ 50,000
emotional distress	\$ 50,000
att’ys fees	\$ 22,000 (100 hours @ \$220 per)
subtotal	\$196,075
pre-judgment interest (@ 5%)	\$ 9,800
Total	\$ 205,875

How much of this is she likely to get?