

**Willie Peevyhouse And Lucille Peevyhouse, Plaintiffs In Error, V.
Garland Coal & Mining Company, Defendant In Error**

Supreme Court of Oklahoma
382 P.2d 109 (1962)

[Peevyhouse entered into a contract with Garland Mining that permitted the mining company to extract coal from his land in exchange for royalties on the extracted coal and a promise to restore the land to its previous state when the mining was completed. Essentially, Garland reneged on its promise to restore the land. Since Garland admitted that it had breached the contract the only issue for the court to decide was the proper amount of damages. The cost of restoring the land is much greater than the value of the restored land. Should damages equal the cost of reclamation or the diminution in the value of the land?]

Syllabus by the Court

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 damages for breach of contract is ordinarily the reasonable cost of performance of the work; however, where the contract provision which was 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 in value resulting to the premises because of the non-performance.

OPINION: JACKSON, Justice.

In the trial court, plaintiffs Willie and Lucille Peevyhouse sued the defendant, Garland Coal and 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.

In the briefs on appeal, the parties present their argument and contentions under several propositions; however, they all stem from the basic question of whether the trial court properly instructed the jury on the measure of damages.

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 mine shafts. In addition to the usual covenants found in a coal mining lease, defendant

specifically agreed to perform certain restorative and remedial work at the end of the lease period. It is unnecessary to set out 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, plaintiffs sued for only \$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 in 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 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 thus appears that the jury was at liberty to consider the 'diminution in value' of plaintiffs' farm as well as the cost of 'repair work' in determining the amount of damages.

It returned a verdict for plaintiffs for \$5000.00 -- only a fraction of the 'cost of performance', but more than the total value of the farm even after the remedial work is done.

On appeal, the issue is sharply drawn. Plaintiffs contend that the true measure of damages in this case is what it will cost 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 appears that this precise question has not heretofore been presented to this court. In *Ardizzone v. Archer*, 72 Okl 70, 178 P. 263, this court held that the measure of damages for breach of a contract to drill an oil well was the reasonable cost of drilling the well, but here a slightly different factual situation exists. The drilling of an oil well will yield valuable geological information, even if no oil or gas is found, and of course if the well is a producer, the value of the premises increases. In the case before us, it is argued by defendant with some force that the performance of the remedial work defendant agreed to do will add at the most only a few hundred dollars to the value of plaintiffs' farm, and that the damages should be limited to that amount because that is all plaintiffs have lost.

...

... The primary purpose of the lease contract between plaintiffs and defendant was neither 'building and construction' nor 'grading and excavation'. It was merely to accomplish the economical recovery and marketing of coal from the premises, to the profit of all parties. The special provisions of the lease contract pertaining to remedial work were incidental to the main object involved.

....

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 damages 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 in value resulting to the premises because of the non-performance.

...[It] should be noted that the rule as stated does not interfere with the property owner's right to 'do what he will with his ... , or his right, if he chooses, to contract for 'improvements' which will actually have the effect of reducing his property's value. Where such result is in fact contemplated by the parties, and is a main or principal purpose of those contracting, it would seem that the measure of damages for breach would ordinarily be the cost of performance.

...

Under the most liberal view of the evidence herein, the diminution in value resulting to the premises because of non-performance of the remedial work was \$300.00. After a careful search of the record, we have found no evidence of a higher figure, and plaintiffs do not argue in their briefs that a greater diminution in value was sustained. It thus appears that the judgment was clearly excessive, and that the amount for which judgment should have been rendered is definitely and satisfactorily shown by the record.

....

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.

WELCH, DAVISON, HALLEY, and JOHNSON, JJ., concur.

WILLIAMS, C. J., BLACKBIRD, V. C. J., and IRWIN and BERRY, JJ., dissent.

DISSENT: IRWIN, Justice (dissenting). By the specific provisions in the coal mining lease under consideration, the defendant agreed as follows:

* * * '7b Lessee agrees to make fills in the pits dug on said premises on the

property line in such manner that fences can be placed thereon and access had to opposite sides of the pits.

'c Lessee agrees to smooth off the top of the spoil banks on the above premises.

'7d Lessee agrees to leave the creek crossing the above premises in such a condition that it will not interfere with the crossings to be made in pits as set out in 7b.

'7f Lessee further agrees to leave no shale or dirt on the high wall of said pits. * *

Following the expiration of the lease, plaintiffs made demand upon defendant that it carry out the provisions of the contract and to perform those covenants contained therein.

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 the 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 of the action, 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 consideration for the lease contract, plaintiffs were to receive a certain amount as royalty for the coal produced and marketed and in addition thereto their land was to be restored as provided in the contract.

Defendant received as consideration for the contract, its proportionate share of the coal produced and marketed and in addition thereto, the *right to use* plaintiffs' land in the furtherance of its mining operations.

The cost for performing the contract in question could have been reasonably approximated when the contract was negotiated and executed and there are no conditions now existing which could not have been reasonably anticipated by the parties. Therefore, defendant had knowledge, when it prevailed upon the plaintiffs to execute the lease, that the cost of performance might be disproportionate to the value or benefits received by plaintiff for the performance.

Defendant has received its benefits under the contract and now urges, in substance, that plaintiffs' measure of damages for its failure to perform should be the economic value of performance to the plaintiffs and not the cost of performance.

If a peculiar set of facts should exist where the above rule should be applied as the

proper measure of damages, (and in my judgment those facts do not exist in the instant case) before such rule should be applied, consideration should be given to the benefits received or contracted for by the party who asserts the application of the rule.

Defendant did not have the right to mine plaintiffs' coal or to use plaintiffs' property for its mining operations without the consent of plaintiffs. Defendant had knowledge of the benefits that it would receive under the contract and the approximate cost of performing the contract. With this knowledge, it must be presumed that defendant thought that it would be to its economic advantage to enter into the contract with plaintiffs and that it would reap benefits from the contract, or it would have not entered into the contract.

Therefore, if the value of the performance of a contract should be considered in determining the measure of damages for breach of a contract, the value of the benefits received under the contract by a party who breaches a contract should also be considered. However, in my judgment, to give consideration to either in the instant action, completely rescinds and holds for naught the solemnity of the contract before us and makes an entirely new contract for the parties.

In *Goble v. Bell Oil & Gas Co.*, 97 Okl. 261..., we held:

'Even though the contract contains harsh and burdensome terms which the court does not in all respects approve, it is the province of the parties in relation to lawful subject matter to fix their rights and obligations, and the court will give the contract effect according to its expressed provisions, unless it be shown by competent evidence proof that the written agreement as executed is the result of fraud, mistake, or accident.'

...

In the instant action defendant has made no attempt to even substantially perform. The contract in question is not immoral, is not tainted with fraud, and was not entered into through mistake or accident and is not contrary to public policy. It is clear and unambiguous and the parties understood the terms thereof, and the approximate cost of fulfilling the obligations could have been approximately ascertained. 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 are 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. Any other measure of damage would be holding for naught the express provisions of the contract; would be taking from the plaintiffs the benefits of the contract and placing those benefits in defendant which has failed to perform its obligations; would be granting benefits to defendant without a resulting obligation; and would be completely rescinding the solemn obligation of the contract for the benefit of the defendant to the detriment of the plaintiffs by making an entirely new contract for the parties.

I therefore respectfully dissent to the opinion promulgated by a majority of my associates.

* * *

Questions

1. What is the approximate value of perfect expectation damages, opportunity cost damages and reliance damages. Is breach efficient or inefficient in this factual setting? Does the court's decision create incentives for efficient breach in future cases similar to this one?
2. The court asserts that the diminished-value measure of damages is more appropriate here than the cost-of-performance measure. The reason it gives is that the cost-of-performance measure will lead to something the court calls "economic waste." Do you agree?
3. What about the effect of this decision on future contracting parties in Oklahoma? If you are a coal company that has signed a lease committing you to perform remedial work after surface mining, would you restore the property? What if you were a coal company contemplating signing a lease with private individuals like the Peevyhouse, would you agree to do remedial work after this decision? Would you include a reduction in the price you paid for the lease to cover the anticipated costs of restoration?
4. Suppose that you are a private property owner with a high subjective valuation on your property; perhaps your family has lived on this land for five generations. If a coal company offered to lease a portion of your property for surface mining, what would you do? Might you consider a performance bond? This is a bond issued by an insurance company to guarantee satisfactory completion of a project by a contractor.
5. Would the efficiency problems with the court's decision disappear if the remedy in the case were specific performance rather than damages?
6. What forms of precaution by the promisor (the coal company) and reliance by the promisee (Peevyhouse) might be relevant to this case? What are the incentive effects of the court's decision on precaution and reliance by future contracting parties? Was there over reliance by Peevyhouse?
7. Suppose that the costs of remedial work given in the opinion are accurate. What evidence does the court mention as to the benefits of the remedial work? Is that evidence on the objective (market) value of the farm or on the subjective (personal) value of the farm to the Peevyhouses? Is it possible to find any evidence on the Peevyhouses' subjective valuation on remedial work?
8. How would one measure restitution damages and disgorgement damages in this case?

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Relevant Articles

Maute, Judith L. "Peevyhouse v. Garland Coal & Mining Co. Revisited: The Ballad Of Willie And Lucille," *Northwestern University Law Review*, Vol. 89 (1995), pp. 1341-74.

Yorio, Edward "In Defense of Money Damages for Breach of Contract," *The Columbia Law Review*. Vol. 82 (November 1982), p. 1365-1424.