

Alabama

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A. Adoption of the UCC

In 1967, Alabama began to codify and adopt various sections of the Uniform Commercial Code to resolve commercial disputes amongst parties.¹

B. Compensatory Damages

In Alabama, compensatory damages are intended only to reimburse persons for the losses suffered by reason of an injury to person or property.² In cases involving breach of contract, the measure of these damages is commonly referred to as a party's expectation interest, which means

that sum which would place the injured party in the same condition he would have occupied if the contract had not been breached.³ The calculation for these damages is normally the difference between the market price at the time and place for tender and the unpaid contract price, together with any incidental damages,⁴ less any expenses saved in consequence of the buyer's breach.⁵

C. Consequential Damages

In Alabama, consequential damages are available to buyers of goods.⁶ The UCC defines consequential damages as "[a]ny loss

¹ ALA. CODE §7-1-101, *et seq.*

² *Youngblood v. Bailey*, 459 So. 2d 855, 861 (Ala. 1984); *see also Pullman Co. v. Lutz*, 45 So. 675, 676 (Ala. 1908).

³ *Goolesby v. Koch Farms, LLC*, 955 So. 2d 422, 427 (Ala. 2006).

⁴ ALA. CODE § 7-2-710.

⁵ ALA. CODE § 7-2-708.

⁶ ALA. CODE § 7-2-715.

resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and injury to person or property proximately resulting from any breach of warranty.”⁷

Consequential damages are more likely to be recoverable for contracts involving the sale of goods and services, rather than contracts for the sale of real property, because contracts for real property do not typically include the type of damages expected for consequential damages to be awarded.⁸

D. Incidental Damages

In Alabama, the UCC defines both buyer’s and seller’s incidental damages.⁹ For sellers, incidental damages for a buyer’s breach includes any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care, and custody of goods after the

buyer’s breach, in connection with return or resale of the goods, or otherwise resulting from the breach.¹⁰ For buyers, incidental damages from the seller’s breach includes expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercial reasonable charges, expenses, or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.¹¹

E. Punitive Damages

Punitive damages are not designed to compensate the plaintiff; rather, punitive damages are awarded to punish the wrongdoer and deter them from committing similar wrongs in the future – “the award ought to sting.”¹² In Alabama, punitive damages are available for wrongful death¹³ and torts actions where it is proven by clear and convincing evidence that the defendant consciously or

⁷ *Id.*; see also *Volkswagen of Am., Inc. v. Harrell*, 431 So. 2d 156, 163 (Ala. 1983) (affirming a jury award of consequential damages which included “motel bills, food bills, rental car expenses, taxi fares, and other charges”).

⁸ The Alabama Supreme Court acknowledged that most consequential damages are claims for lost profits. See *Cooper v. Durham*, 390 So. 3d 552, 562 (Ala. 2023). For the sale of real estate, the court has limited consequential damages (i.e. lost profits) to damages that were the “natural

and proximate consequence of the breach.” *Id.* In doing so, the court found that the increase in the value of a home over a two-year span was not a natural and probably consequence of the breach of contract. *Id.*

⁹ ALA. CODE §§ 7-2-710, 7-2-715.

¹⁰ ALA. CODE § 7-2-710.

¹¹ ALA. CODE § 7-2-715.

¹² *Ex parte Vulcan Materials Co.*, 992 So. 2d 1252 (Ala. 2008) (quoting *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989)).

¹³ ALA. CODE §§ 6-5-391, 6-5-410.

deliberately engaged in oppression, fraud, wantonness, or malice.¹⁴ Punitive damages are not available, however, for breach of contract claims.¹⁵ In awarding punitive damages, the reprehensibility of the defendant's conduct is an important factor for the jury to consider.¹⁶ Other factors can include the duration of the defendant's conduct, the degree of the defendant's awareness of any hazard his conduct either caused or is likely to cause, the defendant's concealment or covering up any hazard, the existence and frequency of the defendant's similar past conduct, and the quality of rights of other that were disregarded by the defendant.¹⁷

The Alabama legislature has capped punitive damages to be no greater than three times the amount of compensatory damages, fifty-thousand dollars (\$50,000) for small businesses,¹⁸ five-hundred thousand dollars (\$500,000) in non-

physical-injury cases, and one million five-hundred thousand dollars (\$1,500,000) in physical-injury cases.¹⁹

F. Liquidated Damages

Liquidated damages are certain damages which are reasonably ascertainable at the time of breach, measured either by a fixed or established external standard, or by a standard apparent from documents upon which plaintiffs based their claims.²⁰ In Alabama, liquidated damages are most frequently seen in breach of contract claims where the contract at issue contains a liquidated damage clause.²¹ The jury will decide as a question of fact whether liquidated damages should be awarded based on the parties' actions, and the court will decide as a question of law whether liquidated damages are invalid as a penalty, or valid as a contractual provision.²²

¹⁴ ALA. CODE § 6-11-20.

¹⁵ *Exxon Mobil Corp. v. Alabama Dep't of Conservation & Nat. Res.*, 986 So. 2d 1093, 1117 (Ala. 2007) ("The prohibition against punitive damages for breach of contract, even where the breach seems particularly egregious, often results in framing complaints as asserting fraud so that punitive damages will be available.").

¹⁶ *BMW of N. Am., Inc. v. Gore*, 701 So. 2d 507, 512 (Ala. 1997) (citing *Green Oil Co.*, 539 So. 2d at 223 (Ala. 1989); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996)).

¹⁷ *Id.*

¹⁸ A "small business" is defined as one with a net worth of two million dollars (\$2,000,000)

or less at the time of the occurrence made the basis of the suit. ALA. CODE §6-11-21(c).

¹⁹ ALA. CODE § 6-11-21.

²⁰ *United States Fidelity and Guaranty Co. v. German Auto, Inc.*, 591 So. 2d 841, 843 (Ala. 1991).

²¹ *Ray Sumlin Const. Co., Inc. v. City of Mobile*, 519 So. 2d 511, 512 (Ala. 1988); *Cove Creek Dev. Corp. v. APAC-Alabama, Inc.*, 588 So. 2d 458, 462 (Ala. 1991).

²² *Cove Creek Dev. Corp.*, 588 So. 2d at 462; *Camelot Music, Inc. v. Marx Realty & Improv. Co.*, 514 So. 2d 897 (Ala. 1987) ("Liquidated damages are a sum to be paid in lieu of performance, while a penalty is characterized as a security for the

G. Pre- and Post-Judgment Interest

Pre-judgment interest is only available if damages were reasonably certain at the time of the breach.²³ Under Alabama law, “all contracts, express or implied, for the payment of money, or other thing, or for the performance of any act or duty bear interest from the day such money, or thing, estimating it at its money value, should have been paid, or such act, estimating the compensation therefore in money, performed.”²⁴ The Alabama Supreme Court has interpreted this statute to mean that in contract cases, where an amount is certain or can be made certain as to damages at the time of breach, the amount may be increased by the addition of legal interest from the time until recovery.²⁵

Post-judgment interest is compensation for the loss of use of money as a result of the

nonpayment of a liquidated sum for which liability has already determined.²⁶ Post-judgment interest is not a punishment inflicted on a judgment debtor for exercising the right of appeal.²⁷ Rather, like pre-judgment interest, post-judgment interest is simply compensation for a judgment creditor’s lost opportunity to invest the money awarded as damages at trial.²⁸ Therefore, post-judgment interest accrues between the date of judgment and the date of final payment.²⁹ The statutory provision that authorized post-judgment interest is set at a rate of seven and one half percent (7.5%) per annum,³⁰ and only applies when the judgment is one for the payment of money.³¹

H. Attorney’s Fees

Alabama generally follows the American Rule, which requires the parties to a lawsuit to bear the

performance of the agreement or as a punishment for default.”).

²³ *Goolesby*, 955 So. 2d at 429 (citing *Continental Cas. Co. v. Plantation Pipe Line Co.*, 902 So. 2d 36 (Ala. 2004)).

²⁴ ALA. CODE § 8-8-8.

²⁵ *Miller & Co. v. McCown*, 531 So. 2d 888, 889 (Ala. 1988) (citing C. GAMBLE, ALABAMA LAW OF DAMAGES, § 8-3 (2d. ed. 1988); *Tennessee Coal, Iron & R. Co. v. Jourdan*, 128 So. 132 (Ala. 1930); *Jefferson County v. City of Birmingham*, 178 So. 226 (Ala. 1938); *Roe v. Baggett Trans. Co.*, 326 F. 2d 298 (5th Cir. 1963); and *Belcher v. Birmingham Trust Nat’l Bank*, 488 F. 2d 474 (5th Cir. 1973)).

²⁶ *Elmore County Comm’n v. Ragona*, 561 So. 2d 1092, 1093 (Ala. 1990) (citing ALA. CODE § 8-8-10).

²⁷ *Birmingham Pain Ctr., Inc. v. Cosgrove*, 896 So. 2d 538, 543 (Ala. Civ. App. 2004) (quoting *Miga v. Jensen*, 96 S.W.3d 207, 212 (Tex. 2002)).

²⁸ *Id.*

²⁹ *Alabama Dept. of Conservation and Natural Resources v. Exxon Mobile Corp.*, 11 So. 3d 194, 203 (Ala. 2008).

³⁰ This is a default rate that can be altered by contract.

³¹ *Alabama Dept. of Conservation and Natural Resources*, 11 So. 3d at 203; ALA. CODE § 8-8-10.

responsibility of paying their own attorney's fees.³² However, Alabama recognizes certain exceptions to this rule, including when fees are recoverable as authorized by statute, when provided by contract, or when justified by special equity.³³ For special equity, attorney's fees may be awarded where the plaintiff's efforts are successful in creating a fund out of which the fees may be paid, or when the efforts of the plaintiff's attorney render a public service or result in a benefit to the general public in addition to service the interests of the plaintiff.³⁴ This is termed the "common fund" and "common benefit" exception to the American Rule.³⁵ Ultimately, the award of attorney's fees, under either of the exceptions, is at the discretion of the trial court, and the ruling on that question will not be reversed on appeal absent a showing of abuse of discretion.³⁶

³² *Ex parte Horn*, 718 So. 2d 694, 702 (Ala. 1998).

³³ *Id.* (citing *Blankenship v. City of Hoover*, 590 So. 2d 245 (Ala. 1991); *Reynolds v. First Alabama Bank of Montgomery, N.A.*, 471 So. 2d 1238 (Ala. 1985)).

³⁴ *Id.* (citing *City of Ozark v. Trawick*, 604 So. 2d 360 (Ala. 1992); *Brown v. State*, 565 So. 2d 585 (Ala. 1990); *Bell v. Birmingham News Co.*, 576 So. 2d 669 (Ala. Civ. App. 1991)).

³⁵ *Id.*

³⁶ *Id.* (citing *Battle v. City of Birmingham*, 656 So. 2d 344 (Ala. 1995); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 632 So. 2d 442 (Ala. 1993)).

I. Reliance Damages

Generally, reliance damages are the actual expenditures made either in preparation of or in performing the work which has been induced by the defendant's promise.³⁷ In Alabama, reliance damages are generally awarded in lieu of, not in addition to, expectation damages for breach-of-contract claims.³⁸ For promissory estoppel, however, Alabama courts have held reliance damages to be the preferred remedy.³⁹

J. Unjust Enrichment

The doctrine of unjust enrichment is an equitable remedy that permits the court in equity and good conscience to disallow one party from being unjustly enriched at the expense of another.⁴⁰ The Alabama Supreme Court uses a two-

³⁷ *Wyatt v. BellSouth, Inc.*, 18 F. Supp.2d 1324, 1327 (M.D. Ala. 1998) (citing *Cyberchron Corp. v. Calldata Systems Development, Inc.*, 47 F.3d 39, 46 (2d Cir. 1995)).

³⁸ *Goolesby*, 955 So. 2d at 429.

³⁹ *Sykes v. Payton*, 441 F. Supp.2d 1220, 1223-1227 (M.D. Ala. 2006) ("Alabama therefore appears to have completed the transition from using promissory estoppel as a substitute for consideration in a contract action to treating promissory estoppel as a claim independent of contract (a quasi-contractual action) to recover damages for detrimental reliance.") (discussing *Wyatt*, 757 So. 2d 403).

⁴⁰ *Battles v. Atchinson*, 545 So. 2d 814, 815 (Ala. Civ. App. 1989).

part test for unjust enrichment.⁴¹ First, a plaintiff must show that the defendant was “enriched.”⁴² A plaintiff establishes “enrichment” by demonstrating that (1) the defendant knowingly accepted and retained a benefit, (2) provided by another, (3) who has a reasonable expectation of compensation.⁴³ Second, a plaintiff must show that the retention of the benefit is unjust.⁴⁴ The Alabama Supreme Court has stated that “retention of a benefit is unjust if (1) the donor of the benefit ... acted under a mistake of fact or in misreliance on a right or duty, or (2) the recipient of the benefit ... engaged in some unconscionable conduct, such as fraud, coercion, or abuse of a confidential relationship.”⁴⁵ “In the absence of mistake or misreliance by the donor or wrongful conduct by the recipient, the recipient may have been enriched, but he is not deemed to have been unjustly enriched.”⁴⁶

⁴¹ *Pentagon Federal Credit Union v. McMahan*, 343 So. 3d 485, 488 (Ala. 2021).

⁴² *Id.*

⁴³ *Matador Holdings, Inc. v. HoPo Realty Investments, LLC*, 77 So. 3d 139, 145 (Ala. 2011) (quoting *Portofino Seaport Village, LLC v. Welch*, 4 So. 3d 1095, 1098 (Ala. 2008)).

⁴⁴ *Matador Holdings*, 77 So. 3d at 145–146 (quoting *Jordan v. Mitchell*, 705 So. 2d 453, 458 (Ala. Civ. App. 1997) (citing

K. Unique Remedies (Plaintiff-Friendly Pre-Judgment Remedy Statutes)

In Alabama, Rule 64(b) of the Alabama Rules of Civil Procedure allows for pre-judgment seizure when the action is for the recovery or possession of specific personal property, as when the action is for detinue.⁴⁷ To do so, the plaintiff must file an affidavit with the court that contains (1) a description of the claimed property that is sufficient to identify the property and its location, (2) a statement that the plaintiff is the owner of the property or is entitled to possession of it, (3) a statement stating specific facts that show the property is wrongfully detained by the defendant, and (4) a statement of risk of injury.⁴⁸

L. Public Policy Prohibitions

Contracts prohibited by law, or the enforcement of which violates a law enacted for the regulation and protection of private citizens, are void and unenforceable as a matter

Restatement of Restitution: Quasi Contracts and Constructive Trusts, § 1, Comment c. (1937)).

⁴⁵ *Id.* at 146 (Ala. 2011) (quoting *Welch v. Montgomery Eye Physicians, PC*, 891 So. 2d 837, 843 (Ala. 2004)).

⁴⁶ *Id.*

⁴⁷ *Jones v. Central Bank of the S.*, 466 So. 2d 932, 933 (Ala. 1985).

⁴⁸ ALA. R. CIV. P. 64(b).

of public policy.⁴⁹ However, the power to declare a contract void based on a violation of public policy “is a very delicate and undefined power and, like the power to declare a statute unconstitutional, should be exercised only in cases free from

doubt.”⁵⁰ For example, Alabama courts have held that penalty clauses within contracts, often disguised as liquidated damages clauses, are void for public policy because they are, in essence, a security for performance that is designed to punish a party for a breach of the agreement.⁵¹

⁴⁹ *Lucky Jacks Entertainment Center, LLC v. Jopat Bldg. Corp.*, 32 So. 3d 565, 570 (Ala. 2009) (finding a lease agreement which required the premises to be used for the operation of a video-sweepstakes center was unenforceable since such operations were unlawful); *Zickler v. Shultz*, 603 So. 2d 916 (Ala. 1992) (contract is void if in restraint of a lawful profession); *Cooper v. Johnston*, 219 So. 2d 392, 397 (Ala. 1969) (a party to an illegal contract cannot recover under a theory of express or implied contract, conversion, or estoppel).

⁵⁰ *Poole v. Prince*, 61 So. 3d 258, 281 (Ala. 2010) (citing *Milton Constr. Co. v. State Highway Dep’t*, 568 So. 2d 784, 788 (Ala. 1990), overruled in part on other grounds by *Ex parte Alabama Dep’t of Transp.*, 978 So. 2d 17, 23 (Ala. 2007)) (quoting 17 Am Jur.2d *Contracts* § 178 (1964)).

⁵¹ *Camelot Music, Inc. v. Marx Realty & Imp. Co., Inc.*, 514 So. 2d 987, 990 (Ala. 1987); *Cook v. Brown*, 408 So. 2d 143 (Ala. Civ. App. 1981).