504.5 Owner’s Damages for Breach of Contract to Construct Improvements on Real Property

**The amount of damages recoverable for breach of a contract to construct improvements on real property is:**

1. *In cases where the defendant does not contend that the damages claimed by the claimant constitute unreasonable economic waste:*

**The reasonable cost to** (claimant) **of completing the work in accordance with the contract less the balance due under the contract.**

1. *In cases where the defendant contends that the damages claimed by the claimant constitute unreasonable economic waste:*

**If construction and completion in accordance with the contract would not involve unreasonable economic waste, the reasonable cost to** (claimant) **of completing the work in accordance with the contract less the balance due under the contract;**

**or**

**If construction and completion in accordance with the contract would involve unreasonable economic waste, the difference between the fair market value of** (claimant’s) **real property as improved and its fair market value if** (defendant) **had constructed the improvements in accordance with the contract, measured at the time of the breach.**

**Unreasonable economic waste occurs when the corrections involve an unreasonable destruction of the structure and cost which is grossly disproportionate to the results to be obtained.**

**SOURCES AND AUTHORITIES FOR 504.5**

1. In *Grossman Holdings Ltd. v. Hourihan*, 414 So.2d 1037, 1039 (Fla. 1982), the Florida Supreme Court adopted Section 346 of the Restatement (First) of Contracts (1932), which provides, in relevant part:

For a breach by one who has contracted to construct a specified product, the other party can get judgment for compensatory damages for all unavoidable harm that the builder had reason to foresee when the contract was made, less such part of the contract price as has not been paid and is not still payable, determined as follows:

(a) For defective or unfinished construction he can get judgment for either

(i) the reasonable cost of construction and completion in accordance with the contract, if this is possible and does not involve unreasonable economic waste; or

(ii) the difference between the value that the product contracted for would have had and the value of the performance that has been received by the plaintiff, if construction and completion in accordance with the contract would involve unreasonable economic waste.

2. *Heine v. Parent Construction, Inc.*, 4 So.3d 790, 792 (Fla. 4th DCA 2009) (“The [Florida] [S]upreme [C]ourt ... adopted section 346(1)(a) of the Restatement (First) of Contracts (1932), as the law for the measure of damages in a claim for breach of a construction contract.”).

3. *Centex-Rooney Construction Co. v. Martin Cnty.*, 706 So.2d 20, 27 (Fla. 4th DCA 1997) (“In a case involving the breach of a construction contract, a recognized measure of damages is the reasonable cost of performing construction and repairs in conformance with the original contract’s requirements.”).

4. *Kritikos v. Anderson*, 125 So. 3d 885 (Fla. 4th DCA 2013), defines economic waste. See also *Temple Beth Sholom & Jewish Center, Inc. v. Thyne Construction Corp.*, 399 So. 2d 525 (Fla. 2d DCA 1981).