

Brief of *Groves v. John Wunder Co.* (1939), 286 N.W. 235 (Minn. S.C.), Boyle & Percy 858

This is one possible brief of *Groves v. Wunder*, as excerpted in the Boyle & Percy casebook. It's almost exactly 600 words. Some comments have been added to the right of most of the items.

1. P's predecessor (Groves Co.) owned 24 acres of suburban real estate that had a sand and gravel deposit and a plant to excavate and screen gravel. P leased the property for seven years to D, a competitor. D agreed to remove the sand and gravel and leave the property at a uniform grade, substantially the same as the grade of an existing roadway. D paid \$105,000 up front, apparently as the full cost of the lease. D deliberately removed only the best gravel and surrendered the premises without attempting to leave the property at a uniform grade. To do that would have cost \$60,000 because a large quantity of overburden needed to be removed. Even if that had been done, the value of the property would have only been \$12,160.

The fact that it was suburban real estate is relevant because the prospect of future development factored into the majority decision. The finding that the breach was deliberate is also key to the majority view. The fact that D was a competitor may explain why P pursued this action as it did.
2. P sued D for breach of the obligation to leave the property at a uniform grade, claiming \$60,000 as the cost of doing so.

We don't know from the extract whether that was the whole of P's claim but it's the only part that the court discusses (aside from interest).
3. D argued that P's only loss from D's breach was that its property was not worth \$12,160, so this sum should be its maximum claim.

D may have argued the damages should be even less than this amount, on the basis that the land, even in its unimproved state, had some value, so the damages should be only the difference between that value and the value the property would have had if the contract had been performed.
4. Issue: Where a breach consists of failure to do work on an asset, is the measure of damages the cost of doing the work or the amount of value the work would have added?

The brief expresses this in terms of doing work on "an asset," because there's no requirement that the property be land. But the judges discuss it solely in terms of improvements to land and in fact the problem arises almost exclusively in relation to such contracts.
5. Trial judge awarded \$12,160 as the lost value of the property, plus interest.

The trial judge apparently found that the land had effectively zero value in its unimproved state, so the entire value of the land, as improved, should be awarded as damages. Stone J says the judgment was the difference between the value *before the contract* and the hypothetical value after performance, but it would be more logical to use the value *after the breach* as the basis for calculation.

HELD by Minn. S.C. (?-2), new trial ordered.

The casebook incorrectly names the court as the Court of Appeal; in fact, it was the Supreme Court of Minnesota. The reason why there had to be a new trial was—though our extract doesn't say so—that the trial judge never found as a fact exactly what the contract obliged D to do, and thus never definitively found the cost, either. The judge didn't need to find those things because he didn't think that was the measure of damages. Since an appellate court cannot generally hear new evidence, a new trial is the only way to get new evidence in.

6. **Stone J. (majority)** The proper measure of damages was the cost of doing the work. D's breach was willful, and to award only the difference in value of the property was handsomely to reward bad faith and deliberate breach. Damages for breach of a construction contract aim to give P what P was promised, as far as money will do. It had never been suggested that lack of value in the land to be improved justified allowing D to escape from the ordinary consequences of a breach. The land's value was no proper part of any measure of damages for willful breach of a building contract. To go by the value of the land would reward the faithless contractor and defeat P's right to build for the future, especially important given it was trackage property on the margins of the Twin Cities. A comment to *Restatement, Contracts*, § 346, to the effect that damages for building defects are not the cost of remediation if that would be economic waste, was not based on the value of the land but on the waste of demolition and reconstruction.

7. **Olson J. (dissent)** To award five times the property's value would have gone beyond anything the parties contracted for. Nothing showed this property to be unique, specially desirable for personal use, or of special value compared with neighboring property. The "cost of performance" rule was limited to cases where the property was unique or personal rather than governed by market values. The claim was for damages, not specific performance. The parties could have stipulated the value of performance in the contract but didn't. P had a right to hold the land for future development but that didn't justify awarding more than the value the land would have had.

One problem with the majority judgment is that it isn't clear which factors were critical to the reasoning (i.e. would have changed the result if they were absent) and which were just makeweights. See further comments below. The *Restatement* is not a statute but an authoritative, annotated "codification" of the common law by the American Law Institute. Professor Corbin had a large part in the preparation of the first *Restatement*. The current one is the *Restatement 2d, Contracts*.

Essentially, the majority and the dissent differ on whether P had legitimate reason in claiming the cost of doing the work rather than the "lost" value of the land. The majority focuses on the willful nature of D's breach, and on P's "right" to get the improvement to the property that it bargained for, irrespective of whether the improvement was "economic" in terms of the increase in current market value of the land (the right to "build for the future"). Even the fact that D prepaid the rent for the full term (omitted from the brief) seems to have weighed with Stone J. as militating in favour of awarding the cost of remediation. The dissent sees P's claim as analogous to a claim for specific performance. The rule for that remedy is that it is only available if damages are inadequate to compensate the plaintiff

for the lost performance. Where the contract is to acquire or to improve an asset whose only value to the plaintiff is commercial, the plaintiff's loss is seen as purely a monetary issue. It is fully compensable by awarding the boost in market value that full performance would have provided. The "extra" remedy of getting actual performance, or the money to buy actual performance from somebody else, is therefore unjustified in Olson J.'s eyes. He thinks such an award should require, as specific performance does, that P show that performance would have delivered a benefit so unique or individual to P that damages based solely on market value would not truly reflect what P has lost by the failure of performance.

8. Damages for breach of a contract to do work on an asset, at least where the breach is deliberate, are the cost of having the work done even if it's more than the immediate increase in value from the work.

The majority leaves the limits of the principle quite unclear. In some places Stone J. seems to confine it to willful breaches; in others, he seems to treat it as one of general application. The exact significance of the fact that the land had potential for future development is also not spelled out. Obviously, any statement of principle is going to have to refer at least to the willfulness aspect, even if it isn't certain whether a later court would limit the principle to willful breaches.

9. (Your view.) I prefer the dissent because there was no evidence that P's land was anything more than a commercial commodity and so the value of performance to P was the value of the land. (Or you may prefer the majority view, in which case you should say why.)

English and Canadian law on this point hasn't focused on whether the breach was willful but on whether the work was actually going to be done or already had been done, as in *Nu-West Homes* (casebook at 863), and whether P had legitimate reasons—not necessarily economic—to have it done.