

# Florida Appeals Court Clarifies Timing for Damages in a Breach of a Construction Contract

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In the case of *Bandklayder Dev., LLC v. Sabga*, No. 3D23-1906, 2025 WL 15275 (Fla. Dist. Ct. App. Jan. 2, 2025), a Florida Appeals Court followed established Florida precedent holding that damages for a breach of construction contract claim are to be determined at the time of breach, not at the time of trial. Bandklayder Development, LLC (Bandklayder) was the owner of a property located in Florida on which it was constructing a residential single-family house. In February 2017, while construction was under way, Bandklayder entered into an “As-Is Purchase Contract” with the Sabgas to purchase the house. Thereafter, the As Is Purchase Contract was amended to provide the Sabgas with, among other things, a one-year warranty on the construction of the house and agreement by Bandklayder to complete certain punch-list items. Through March 2018 the parties continued to discuss open issues that Bandklayder was required to resolve. At that time Bandklayder stopped communicating with the Sabgas and the Sabgas subsequently sued Bandklayder for breach of contract and other claims.

The case went to a non-jury trial. At trial the Sabgas' construction expert testified to the damages the Sabgas had allegedly incurred as of January 19, 2022, the date of the litigation expert's report, and as of May 2023, the date of the trial. The trial court found in favor of the Sabgas on the breach of contract claim and awarded them the damages as calculated by their expert as of the time of trial.

On appeal, Bandklayder argued that the trial court applied the wrong measure of damages. Bandklayder maintained that the Sabgas' alleged damages should have been measured at the date of the alleged breach in 2017 or, at the latest, in April of 2018 when the Sabgas first put Bandklayder on notice of a claim. The Florida District Court of Appeal agreed with Bandklayder.

In reaching its decision, the appeals court referred to the general rule in Florida for damages in a construction defect case as: “the reasonable cost of making the performed work conform to the contract.” The appeals court further noted that compensation in this type of case is intended: “to restore the injured party to the condition which he would have been in had the contract been performed.”

Consistent with the intended purpose of a damage award in a construction defect case, the appeals court also held that damages are to be calculated at the time of the breach. Unfortunately for the Sabgas, their damages expert never testified at trial regarding the amount of damages which the Sabgas had allegedly incurred at the date of breach in June 2017 or in April 2018 when the Sabgas transmitted their notice of claim to Bandklayder. The Sabgas' expert instead had provided damage calculations for the much later date of January 19, 2022, when the expert's litigation report was served and in May 2023, when the trial occurred. As the Sabgas had the burden of proving damages and had offered no evidence to support the amount of damages they had incurred at the appropriate point in time, the appeals court held that the Sabgas had failed to meet that burden to establish one of the required elements of their breach of contract claim i.e., damages. As is the case for any breach of contract claim, a plaintiff must establish not only the existence of a valid contract and a material breach, but also the damages that are caused by the breach.

Since the Sabgas failed to establish this necessary element of damages to support their breach of contract claim, the appeals court overturned the trial court Award and remanded the case with directions to enter final judgment in favor of Bandklayder. The Sabgas had argued in their appellate brief that if the appeals court did reverse the trial court's

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award, then the case should be remanded for a new trial whereat they would submit evidence of the proper measure of their alleged damages. This argument was expressly rejected by the appeals court. Although the result entered by the appeals court might appear harsh, the court noted, “the result here is solely attributable to the Sabgas’ failure to prove that which the law clearly requires.”

For those who are involved in a similar circumstance of having to defend against a breach of construction contract claim, it is important to evaluate how the claimant is calculating its alleged damages claim and the point in time at which those alleged damages are being determined and calculated. While this decision stands for the proposition that claimant’s alleged damages are to be determined at the time of the alleged contractual breach and not at the time when the case goes to trial, it is important to keep in mind the fact that interest from the date of breach will be added to any entered judgment. Therefore, there is still a benefit to avoiding delay in litigating these types of disputes.