



Supreme Court of Virginia.
 ROANOKE HOSPITAL ASSOCIATION
 v.
 DOYLE & RUSSELL, INCORPORATED,
 and Federal Insurance Company.
Record No. 740212.

April 28, 1975.

In its motion for judgment, hospital association sought damages for contractor's alleged failure to complete hospital addition within the time stipulated and elected to recoup sum held as retainage. The contractor counterclaimed for the retainage. The Circuit Court, City of Roanoke, Frederick, L. Hoback, J., awarded the association damages for added interest costs during period of unexcused delay and awarded association for expenses incurred for utilities, storage costs, and insurance premiums and awarded the contractor the retainage, and association brought writ of error and contractor brought writ of cross error. The Supreme Court, Poff, J., held that added interest costs during construction period arising from longer term of borrowing necessitated by contractor's unexcused delay were direct damages; that added interest costs during construction period attributable to higher interest rates during the extended term were consequential damages; that verdict awarding damages for added interest costs during construction period attributable to higher interest rates during extended term but denying award for added interest costs for permanent loan attributable to higher interest rates was irreconcilably inconsistent and would be overturned; and that award of contract retainage to contractor was not prejudicially erroneous.

Affirmed in part, reversed in part and remanded.

West Headnotes

[1] Appeal and Error 30 ↪999(1)

30 Appeal and Error

30XVI Review

30XVI(I) Questions of Fact, Verdicts, and Findings

30XVI(I)2 Verdicts

30k999 Conclusiveness in

General

30k999(1) k. In General.

Most Cited Cases

In action for breach of construction contract, jury finding that contractor's delay in completion was culpable, which finding was not challenged, was binding on the parties on appeal.

[2] Damages 115 ↪16

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k16 k. Direct or Indirect Consequences. **Most Cited Cases**

Damages 115 ↪22

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k21 Natural and Probable Consequences of Breaches of Contract

[115k22 k. In General.](#) [Most Cited Cases](#)

There are two broad categories of damages ex contractu: direct damages and consequential damages.

[3] Damages 115 ⚡16

115 Damages

[115III](#) Grounds and Subjects of Compensatory Damages

[115III\(A\)](#) Direct or Remote, Contingent, or Prospective Consequences or Losses

[115III\(A\)1](#) In General

[115k16 k.](#) Direct or Indirect Consequences. [Most Cited Cases](#)

“Direct damages” are damages which arise naturally or ordinarily from breach of contract; they are damages which, in ordinary course of human experience, can be expected to result from breach.

[4] Damages 115 ⚡22

115 Damages

[115III](#) Grounds and Subjects of Compensatory Damages

[115III\(A\)](#) Direct or Remote, Contingent, or Prospective Consequences or Losses

[115III\(A\)1](#) In General

[115k21](#) Natural and Probable Consequences of Breaches of Contract

[115k22 k. In General.](#) [Most Cited Cases](#)

“Consequential damages” are damages which arise from intervention of special circumstances not ordinarily predictable.

[5] Damages 115 ⚡16

115 Damages

[115III](#) Grounds and Subjects of Compensatory Damages

[115III\(A\)](#) Direct or Remote, Contingent, or Prospective Consequences or Losses

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[115III\(A\)1](#) In General

[115k16 k.](#) Direct or Indirect Consequences. [Most Cited Cases](#)

Damages 115 ⚡23

115 Damages

[115III](#) Grounds and Subjects of Compensatory Damages

[115III\(A\)](#) Direct or Remote, Contingent, or Prospective Consequences or Losses

[115III\(A\)1](#) In General

[115k21](#) Natural and Probable Consequences of Breaches of Contract

[115k23 k.](#) Under Circumstances Within Contemplation of Parties. [Most Cited Cases](#)

If damages are determined to be direct, they are compensable; if damages are determined to be consequential, they are compensable only if it is determined that special circumstances were within the contemplation of both contracting parties.

[6] Damages 115 ⚡208(1)

115 Damages

[115X](#) Proceedings for Assessment

[115k208](#) Questions for Jury

[115k208\(1\) k. In General.](#) [Most Cited Cases](#)

Whether damages for breach of contract are direct or consequential is a question of law.

[7] Damages 115 ⚡208(1)

115 Damages

[115X](#) Proceedings for Assessment

[115k208](#) Questions for Jury

[115k208\(1\) k. In General.](#) [Most Cited Cases](#)

Whether special circumstances, which

would justify award of consequential damages in action for breach of contract, were within contemplation of parties is question of fact.

[8] Damages 115 ☞23

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k21 Natural and Probable Consequences of Breaches of Contract

115k23 k. Under Circumstances Within Contemplation of Parties. **Most Cited Cases**

Generally, contemplation of special circumstances which would justify award of consequential damages in action for breach of contract must exist at the time the contract was executed.

[9] Damages 115 ☞22

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k21 Natural and Probable Consequences of Breaches of Contract

115k22 k. In General. **Most Cited Cases**

Where alleged breach of construction contract is an unexcused delay in completion, if completion date has been altered by consensual amendment, contemplation of special circumstances, which would warrant award of consequential damages, is to be determined as of the date of amendment.

[10] Damages 115 ☞45

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k41 Expenses

115k45 k. Breach of Contract. **Most Cited Cases**

In action for breach of construction contract, added interest costs during construction period arising from longer term of borrowing necessitated by contractor's unexcused delay were compensable direct damages.

[11] Damages 115 ☞122

115 Damages

115VI Measure of Damages

115VI(C) Breach of Contract

115k122 k. Delay in Performance. **Most Cited Cases**

Measure of direct damages caused by unexcused delay in contract completion is either rental value of completed structure for period of delay or reasonable return on completed structure treated as an investment for the period of delay.

[12] Damages 115 ☞45

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k41 Expenses

115k45 k. Breach of Contract. **Most Cited Cases**

In action for breach of construction con-

tract, added interest costs during period of delay in completion of contract, which costs were attributable to higher interest rates during the extended term, were not direct damages but rather were consequential and not compensable unless special circumstances were within contemplation of parties.

[13] Damages 115 ↪23

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)1 In General

115k21 Natural and Probable Consequences of Breaches of Contract

115k23 k. Under Circumstances Within Contemplation of Parties.

Most Cited Cases

Where there was no evidence of meeting of minds upon an amendment altering completion date first fixed in construction contract, consequential damages resulting from contractor's unexcused delay in completion of contract would be compensable only if special circumstances from which they would result were contemplated by parties on the date contract was executed.

[14] Damages 115 ↪221(7)

115 Damages

115X Proceedings for Assessment

115k219 Verdict and Findings

115k221 Special Interrogatories and Findings by Jury

115k221(7) k. Sufficiency of Verdict or Findings. [Most Cited Cases](#)

In action for breach of contract wherein jury awarded consequential damages representing added interest costs during construction period arising from contractor's

unexcused delay, which costs were attributable to higher interest rates during the extended term, but jury denied owner any consequential damages for added interest costs for the permanent loan attributable to higher interest rates, thus indicating that special circumstances were not within the contemplation of the parties, verdict was irreconcilably inconsistent and would be overturned.

[15] Appeal and Error 30 ↪1073(7)

30 Appeal and Error

30XVI Review

30XVI(J) Harmless Error

30XVI(J)23 Judgment or Order

30k1073 Judgment or Order

30k1073(7) k. Amount.

Most Cited Cases

Award of contract retainage, with interest from date of actual completion, to contractor, whose unexcused delay in completion was a breach of construction contract, was not prejudicially erroneous, although contractor did not deliver release of claims as required under construction contract, where time for filing mechanic's liens had expired, where there was nothing in the record concerning an unsatisfied lien or unsecured claim against the owner and where performance surety, a party litigant, did not file a counterclaim or a cross claim. [Code 1950, § 43-1](#) et seq.

****157 *797** Wilbur L. Hazlegrove, Roanoke (W. A. Dickinson, Hazlegrove, Dickinson, Smith & Rea, Roanoke, on briefs), for plaintiff in error.

Lewis T. Booker, Richmond (Joseph C. Kearfott, Hunton, Williams, Gay & Gibson, Richmond, on briefs), for defendants in error.

Before CARRICO, HARRISON, COCHRAN, HARMAN, POFF and

COMPTON, JJ.

POFF, Justice.

In 1967, Roanoke Hospital Association (the owner) advertised for bids on construction of a fourteen-story addition to its facilities. Bids were received upon a commitment for completion by January 1, 1970, and upon the condition that a bid could not be withdrawn for 30 days after submission. Bids were opened on July 17, 1967, and on July 27, 1967, the owner entered into an \$11 million 'lump sum' contract with Doyle & Russell, Inc. (the contractor). Federal Insurance Company was the performance surety.

Before bids were opened, the owner had obtained a loan commitment at 6 1/4% Interest. When the bids showed that the commitment was insufficient, the owner obtained, on the date the contract was signed, a letter of commitment for a \$5.5 million, 15-year loan at 6 3/8% Interest, contingent upon completion by June 30, 1970. The completion date in the commitment was later changed to October 31, 1970. In addition to the loan, financing arrangements included a \$3 million Hill-Burton grant and funds provided by the owner.

Witnesses for the contractor testified that the contractor had no knowledge of the details of the owner's financing arrangements when the contract was executed and acquired none for more than three years. Mr. Flannagan, the hospital administrator, testified that he told the contractor's representatives when the bids were opened 'that the building must be completed by the date specified in the contract or else our financial arrangements would have to be redone or rearranged and would cost . . . the hospital a higher rate of *798 interest', but that he told them nothing about the details of the arrangements**158 because he 'didn't

think it was their business.'

For various reasons, including the need to redesign the foundation, See [Doyle & Russell v. Roanoke Hospital](#), 213 Va. 489, 490-91, 193 S.E.2d 662, 664 (1973), construction progress was delayed, and in October, 1969, the contractor issued a revised progress schedule projecting completion by September 30, 1970. Progress lagged behind the revised schedule, and on January 17, 1970, the architect wrote to the contractor advising it that the lending agency, which had accepted the new projected completion date, had notified the Board of Trustees that it would grant no further extensions of that date.

The letter further said:

'Now the agency states that any delay beyond that date will mean an increase in the interest rate from six and three-eighths to eight and one-half percent. This will mean, throughout the life of the loan, an increased interest cost to the hospital of just under \$1,000,000. Needless to say, the Trustees are most concerned; and knowing these gentlemen as I do, I am sure that they will use every legal means at their disposal to see to it that the hospital does not suffer this loss.

'Let me iterate that progress can be upgraded, and please know that we stand ready to do anything in our power to assist in meeting this completion date.'

Three days later, the owner, contractor, engineer, and architect held a meeting to devise a plan to expedite progress. Pursuant to the contractor's suggestion, the owner paid some \$10,000.00 in overtime wages to assure an adequate force of electricians on the job. Shortly thereafter, the owner paid an additional \$6,500.00 to replace certain

non-union workers with union members in order to settle a general construction strike.

In April, 1970, the owner, fearing that completion would not be accomplished by the October 31, 1970, deadline fixed in the outstanding loan commitment, obtained from an insurance company two separate options for permanent financing. Both options were set to expire on October 30, 1970.

On June 29, 1970, the contractor wrote to the architect stating in part:

‘It is apparent from your letter of June 25, 1970, that you *799 have misunderstood my letter of June 24, 1970. No reference was made in my letter to the requirements of the contract documents relative to completion, acceptance, and final payment by the Owner. What we are concerned with, insofar as my letter is concerned, is what requirements have to be met to protect the loan commitment which the hospital has for permanent financing. The requirements for the loan commitment and the contract completion and acceptance may be the same, but, if they are, this has never been made clear to us.

‘We were given to understand sometime ago that it was very important to the hospital to protect that commitment and that, if this entailed extraordinary expense, the hospital was willing to stand the extra costs as long as they were kept within prescribed limits. This is what has been done to date, and it has contributed substantially to the overall progress, however, the steps taken to date will not, in our opinion, insure final completion by October 1, 1970.

‘To date, the target has been beneficial occupancy of the new building. We believe this is the best we can hope for unless an

all-out effort is made. We state again that this calls for two decisions. First, can final completion be achieved by October 1st even with an all-out effort, and, this involves factors over which we have no control, such as the availability of information and the coordination of construction work with hospital activities. Second, if an all-out effort is to be made, it will involve considerable additional costs. The responsibility for this cost must be established. While we will cooperate in every practical **159 way, as we have been doing, which includes making a contribution to extra cost, we do not believe that our contractual responsibility obligates us to accept primary responsibility for it.’

In October, 1970, it was apparent that the project would not be completed by the October 31, 1970, loan commitment deadline.

The two options for the permanent loan commitments were due to expire on October 30, 1970. The owner decided to exercise the option for a commitment for a \$5.5 million, 15-year loan at 8 1/2%, conditioned upon completion by June 30, 1971.

The hospital addition was ready for occupancy on April 14, 1971, and was completed on September 3, 1971.

*800 In its motion for judgment, the owner sought a total of \$3 million in compensatory damages for ‘. . . Defendant's failure or refusal to complete the work within the time stipulated, or within any requested allowable extension of time for completion . . .’ and elected ‘to recoup the sum of \$956,000 held by Plaintiff as retainage’. The contractor filed a counterclaim for the retainage.

The evidence showed that the interest expense the owner will incur over the life of the 8 1/2% Permanent loan will be

\$1,185,159.95 greater than the expense it would have incurred over the life of the 6 3/8% Loan; that the sum of \$832,300.00 invested at 5% Per annum for the period of the loan would generate funds equal to those additional interest costs; and that 5% Was a proper investment factor to be used in computing the return on investment a charitable institution could reasonably expect to earn.

For damages sustained during the period of construction delay, the owner claimed a total of \$730,698.00, including \$690,287.00 for interest expense incurred and interest revenue lost[FN1] and \$40,411.00 for expenses incurred for utilities, storage costs, and insurance premiums.

FN1. The owner's claim included both the interest the owner paid on the loan during the construction period in excess of the interest it would have paid had completion been accomplished timely (including the excess attributable to increased interest rates), and the interest it could have earned at 6% Per annum during the period of delay on the investment of its own funds and the Hill-Burton funds.

[1] The trial court entered final judgment on January 29, 1974, confirming the verdict of a three-man jury.[FN2] The verdict denied the owner's \$832,300.00 claim and allowed the contractor's \$956,000.00 counterclaim, with interest from September 3, 1971. On the owner's \$730,698.00 claim, the verdict awarded \$552,500.00,[FN3] with interest from April 14, 1971. That award included \$522,500.00 for what the verdict termed 'temporary . . . interest costs' and \$30,000.00 for the expenses included in the owner's \$40,411.00 claim.

FN2. See Code s 8-193 (Repl.Vol.1957) (Now Code s 8-208.21(5) (Cum.Supp.1974)). The parties agreed to have the case tried by a three-man jury. The owner and contractor each selected one juror and these two selected a third. Under the statute, the decision of two jurors has the same effect as a unanimous jury verdict.

FN3. This award represents approximately 76% Of the claim. While this may indicate that the jury believed that part of the delay was excusable, the jury's finding that the delay was culpable has not been challenged, and that finding is binding on the parties here.

***801** The questions presented by the owner's assignments of error are:

- (1) Whether the owner is entitled to damages for added interest costs for the permanent loan attributable to higher interest rates;
- (2) Whether instructions 'D' and 'E' erroneously induced the jury to disallow the owner's claim for those damages; and,
- (3) Whether the trial court erred in awarding the contractor the contract retainage, with interest from the date of completion.

The question presented by the contractor's assignment of cross-error is whether the trial court erred in allowing the owner damages for any added interest costs during**160 the period of unexcused delay. On appeal, the contractor concedes liability for the \$30,000.00 award.

[2][3][4][5][6][7] There are two broad categories of damages Ex contractu: direct (or general) damages and consequential (or

special) damages. Washington & Old Dominion R.R. Co. v. Westinghouse Co., 120 Va. 620, 627, 89 S.E. 131, 133 (1916). See also Sinclair Refining Co. v. Hamilton & Dotson, 164 Va. 203, 209, 178 S.E. 777, 779 (1935). Direct damages are those which arise 'naturally' or 'ordinarily' from a breach of contract; they are damages which, in the ordinary course of human experience, can be expected to result from a breach. Consequential damages are those which arise from the intervention of 'special circumstances' not ordinarily predictable. If damages are determined to be direct, they are compensable. If damages are determined to be consequential, they are compensable only if it is determined that the special circumstances were within the 'contemplation' of both contracting parties.[FN4] Whether damages are direct or consequential is a question of law. Whether special circumstances were within the contemplation of the parties is a question of fact. 5 A. Corbin, Contracts s 1012(89) (1964); C. McCormick, Damages s 140(574) (1935).

FN4. In this context, 'contemplation' includes what was actually foreseen and what was reasonably foreseeable. See Corbin, *Infra* at s 1010(79):

'If there are special circumstances, it is not even necessary that the defendant should have known them; It is enough that a reasonable man in his position would have known them.' (Emphasis added).

See also McCormick, *Infra* at s 138(565), commenting upon the rule in *Hadley v. Baxendale*, 9 Ex. 341 (1854); *duPont Co. v. Universal Moulded Prod.*, 191 Va. 525, 568-69, 62 S.E.2d 233, 253 (1950);

Washington & Old Dominion R.R. Co. v. Westinghouse Co., 120 Va. 633, 635, 91 S.E. 646, 647 (1917).

*802 [8][9] As a general rule, contemplation must exist at the time the contract was executed. Corbin, *Supra* at s 1008(74); *Restatement of Contracts s 330 (1932)*; 11 S. Williston, *Contracts s 1357 (293-94) (1968)*. However, that rule is not absolute. When the breach alleged is an unexcused delay in completion, if the completion date has been altered by consensual amendment, contemplation is to be determined as of the date of amendment.

Here, the damages claimed by the owner involve three types of interest costs: (1) added interest costs (including expenditures on borrowed funds and interest revenue lost on invested funds) during the construction period arising from the longer term of borrowing necessitated by the contractor's unexcused delay (hereafter, 'extended financing costs'); (2) added interest costs during the construction period attributable to higher interest rates during the extended term (hereafter, 'incremental construction interest costs'); and (3) added interest costs for the permanent loan attributable to higher interest rates (hereafter, 'incremental permanent interest costs').

[10][11] The owner argues that all three types of interest costs are direct damages and that instruction 'D',[FN5] insofar as it classified the latter two types as consequential damages, was erroneous. The contractor argues that all three types are consequential damages. We agree with the owner and the trial court that the extended financing costs are direct damages. Customarily, construction contracts, particularly large contracts, require third-party financing.**161 Ordinarily, delay in completion requires an extension of the term of

construction financing. The interest costs incurred and the interest revenue lost during such an extended term are predictable results of the delay and are, therefore, compensable direct damages.[FN6]

FN5. In pertinent part, instruction ‘D’ read as follows:

‘The court instructs the jury that one element of damage for which the Hospital seeks to be compensated is the sum which it contends it has expended for increased interest costs for both construction financing and permanent financing resulting from delay in the completion of the project.

‘The court instructs the jury that the claim of the Hospital for damages resulting from increased interest rates is not a direct damage naturally flowing from Doyle and Russell’s alleged breach of contract in failure to complete the project on time, but is, instead, a consequential damage.’

FN6. The measure of direct damages caused by unexcused delay in contract completion is either the rental value of the completed structure for the period of delay, or the reasonable return on the completed structure treated as an investment for the period of delay. Corbin, *Supra*, at s 1029(177-78); *Restatement of Contracts, Supra*, at s 331(2). The owner elected to seek the latter. Instead of applying an arbitrary interest rate to total value, the jury adopted the owner’s more precise formula and applied the construction loan rate to the loan receipts and an imputed rate to the

Hill-Burton funds and the owner’s funds invested in the project.

***803 [12]** We agree with the trial court that the damages resulting from increased interest rates are not direct damages. Increases in interest rates are not caused by delays in completion of construction contracts. Rather, they are caused by variable pressures and counter-pressures affecting supply and demand in the money market. Although interest rates on short-term borrowings are characteristically more volatile than those on long-term borrowings, both are usually unpredictable. For that reason, increases in interest rates are ‘special circumstances’, and damages resulting therefrom are consequential and not compensable unless such circumstances were within the contemplation of the parties. Instruction ‘D’ correctly advised the jury that both incremental construction interest costs and incremental permanent interest costs are consequential damages.

[13] Instructions ‘IV’ and ‘D’ told the jury that such consequential damages were compensable if the parties had them in contemplation at the time the contract was executed or when ‘thereafter amended’. The quoted language was inserted by the trial court over the objection of the contractor. We hold that this language was without evidence to support it. Although the record indicates that the parties agreed upon a host of change orders, there is no evidence of a meeting of the minds upon an amendment altering the completion date first fixed in the contract.[FN7] Consequential damages, then, were compensable only if the ‘special circumstances’ from which they resulted were contemplated by the parties on the date the contract was executed, and there is, therefore, no merit in the owner’s complaint that instruction ‘E’ improperly em-

phasized that date.[FN8]

FN7. Our holding in [Doyle & Russell v. Welch Pile Driving Corp.](#), 213 Va. 698, 702, 194 S.E.2d 719, 722 (1973), that change orders issued pursuant to construction contracts were ‘in the nature of’ contract amendments has no relevance here.

FN8. On appeal, the contractor appears to argue that the proper date to determine contemplation was the date it submitted its bid, because, as instruction ‘E’ told the jury, the contractor ‘could not withdraw or otherwise modify its bid for 30 days’. We do not agree. If, as Flanagan testified, the contractor was forewarned when the bids were opened that delay ‘would cost . . . the hospital a higher rate of interest’, the contractor could have insisted upon a protective modification of the contract or refused to execute it on the grounds of a material alteration of the terms of the invitation to bid.

[14] Although we cannot make a reliable computation from the record, it is clear that some portion of the \$522,500.00 award *804 represents incremental construction interest costs which, as we have said, are consequential damages.[FN9] That portion of the award can stand only if the jury made a factual **162 determination that the ‘special circumstances’ from which such damages arose were within the contemplation of the parties. On the other hand, the jury denied the owner any award for incremental permanent interest costs, also consequential damages, and this can only indicate that the jury made a factual determination that the ‘special circum-

stances’ were Not within the contemplation of the parties. Since there is nothing in the evidence to justify such contradictory factual determinations, we hold that the verdict is irreconcilably inconsistent and cannot stand.

FN9. The jury’s verdict, signed by the foremen, expressly awarded \$522,500.00 in damages for ‘temporary’ interest costs. In response to the foreman’s earlier inquiry, the trial court had explained that temporary interest costs included those incurred ‘during the completion of the job.’ Manifestly, temporary interest costs are explained by the trial court and reflected in the language of the verdict included what we have denominated as ‘extended interest costs’ And ‘incremental construction interest costs’. Indeed, from the evidence adduced in support of the owner’s \$690,287.00 claim, it was impossible for the jury to separate the two so as to award one and deny the other.

[15] We find no prejudicial error in the judgment awarding the contract retainage, with interest from the date of actual completion, to the contractor. It is true that the contractor did not deliver the release of claims required under clause 28(E) of the contract. However, the time for filing mechanic’s liens had expired, See [Code s 43-1](#) et seq. (Repl.Vol.1970); there is nothing in the record concerning an unsatisfied lien or unsecured claim against the owner; and the performance surety, a party litigant, did not file a counterclaim or a cross-claim. The owner has enjoyed the usufruct of the retainage fund from the date the contractor discharged its contract duties, and

any error in awarding the retainage before a formal release was delivered is harmless error.

To the extent that the verdict awarded the owner direct damages and the contractor the contract retainage, the judgment is affirmed. To the extent that the verdict awarded the owner consequential damages for incremental construction interest costs and denied the owner consequential damages for incremental permanent interest costs, the judgment is reversed. The case is remanded for a new trial, and the trial court is directed to instruct the jury to fix the quantum of direct *805 damages; to determine whether, at the time the contract was executed, the parties contemplated 'special circumstances' justifying consequential damages; and to award or deny consequential damages accordingly.

Affirmed in part, reversed in part and remanded.

Va. 1975.
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215 Va. 796, 214 S.E.2d 155

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