Sally is negotiating the purchase of a condo. The condos are under construction; the architect and developer is Ed, and this project is his first construction project. The unit that Sally is interested in has not yet been built, and she discussing the design of that unit with Ed. They orally agree that Ed will make the wall that divides the bedroom from the rest of the unit a curved wall instead of a straight one. This is a very important aesthetic consideration for Sally. (1) *Sally is an artist and she plans to paint a mural on the curved wall, and (2) the curve is essential to the overall aesthetic effect of the mural.* **She explains both points to Ed in detail, and Ed acknowledges that part of the reason Sally is entering into the contract with him is to get the custom designed curved wall.**

When Ed breaches the contract by not making the wall curved, does Sally’s ***aesthetic loss*** arise

1. in the normal course of things
2. as a result of special circumstances.

Did Ed have reason to know of the special circumstances?

1. Yes
2. no

After making this agreement, Sally and Ed sign a written contract under which Sally agrees to purchase and Ed agrees to build the condo and transfer ownership to Sally in six months. The written contract says nothing about the curved wall, and it contains the following clause: “This contract represents the complete and final statement of the party’s obligations to each other; neither party is relying on any oral or written representations that are not a part of this contract.” The contract is a standard form contract; neither Ed nor Sally is a lawyer, and neither has much experience with real estate contracts. Ed got the form from a real estate agent who is a friend of his. She told him, “This contract is the one you use.” Neither Ed nor Sally has a detailed understanding of what the contract says. In particular, neither understands the legal effect of the entire agreement clause.

About a month later, Ed discovers that the four-story condo structure he designed and is building violates city zoning ordinances. **In a completely unexpected move**, the city passed an ordinance that limits condo buildings to three stories in the particular residential area in which Ed is building. The city passed this ordinance just before Ed started building, and Ed was unaware of it. It takes Ed three months to secure a variance from the zoning regulations that allows him to construct his four-story building. As a result, he is two months late completing Sally’s unit. In the confusion, Ed forgets to make the bedroom wall curved.

The delay imposes a considerable loss on Sally. Sally runs an apartment decorating business (she did not mention this to Ed). She paints murals and various other sorts of paintings and decorations on the walls of apartments. She promotes this service over the Web and planned to use pictures and videos of her own apartment as samples. She lost three jobs as a direct result of the lack of samples. There is indisputable evidence that, had the condo been completed on time, Sally would have executed three contracts for apartment decoration.

Sally can only recover the lost profit from the three jobs if the that loss was reasonably foreseeable by Ed at the time of contracting as probable result of the breach of the contract.

1. Yes
2. no

What can Sally collect in damages from Ed?In answering this question, be sure you consider and evaluate all relevant arguments that might show Ed did not breach any contractual obligation to Sally. You may assume that Ed does not deny the existence of the oral agreement to make the curved wall, and you may assume that the agreement to make the wall curved need not, under the Statute of Frauds, be in writing to be enforceable. Other relevant facts: The condo has the same market value with or without a curved bedroom wall. It would cost $30,000 to tear out the existing bedroom wall and make it curved (the amount includes construction costs, moving costs, and rental costs for Sally). Just at the time the condo was supposed to be ready for her to move in, Sally had completed an apartment decorating job for Catherine. Catherine was so pleased that she told Sally she could come and take photos and videos of her condo any time she wanted if Sally would like to use the photos and videos as samples of her work. Sally never took Catherine up on this offer.