

A dealer needed a certain rare baseball card to complete a set that he had contracted to assemble and sell to a collector. On March 1, the dealer obtained such a card from a woman in exchange for \$1,000 and a written promise to redeliver to the woman "no later than December 31 of this year" a comparable specimen of the same kind of card. On March 2, the dealer consummated the sale of the complete set to the collector.

On September 1, the market price of rare baseball cards suddenly began a rapid, sustained rise. On September 10, the woman wrote the dealer for assurance that the dealer would timely meet his card-replacement commitment to her. On September 15, the dealer telephoned the woman and said, "I absolutely will not replace your card until the market drops far below its present level."

The woman sued the dealer on October 15 for the market value of a comparable replacement-card.

If the dealer moves to dismiss the woman's complaint, which of the following is the woman's best argument in opposing the motion?

- A. The dealer breached an implied warranty by failing to supply the baseball card.
- B. The woman complied with her duty to mitigate her losses by promptly suing when the market rose.
- C. The woman may resort to any appropriate remedy for breach of contract because the dealer repudiated his performance.
- D. The woman may treat the dealer's anticipatory repudiation as an immediately actionable tort.

### Explanation:

A contract for the sale of goods (eg, a baseball card) is governed by the Uniform Commercial Code (UCC). Under the UCC, a party with **reasonable grounds for insecurity** about the other party's performance has the **right to make a written demand for assurances** that the other party will perform the contract. A **failure** to provide those assurances within 30 days after a valid demand constitutes an **anticipatory repudiation**. The nonrepudiating party may then treat the repudiation as a breach or ignore it and demand performance pursuant to the contract.

Here, the woman had reasonable grounds for insecurity about the dealer's promise to replace the rare baseball card since the market price of rare cards had begun a rapid, sustained rise. The dealer then failed to provide adequate assurance and explicitly repudiated his performance by stating, "I *absolutely* will not replace your card until the market drops far below its present level." As a result, the woman's best argument in opposing the dealer's motion to dismiss is that the woman may resort to any appropriate remedy for breach of contract.

**(Choice A)** The dealer did not breach any **implied warranty** by failing to supply the card. However, the dealer anticipatorily repudiated the contract by failing to provide adequate assurance that he would perform.

**(Choice B)** Although the woman had the *right* to bring an immediate suit once the dealer repudiated, she was not *required* to mitigate her losses by promptly suing when the market rose.

**(Choice D)** The woman may treat the dealer's anticipatory repudiation as an immediately actionable breach of contract, not a tort—ie, a wrongful or injurious act, other than breach of contract, subjecting the actor to civil liability.

### Educational objective:

Under the UCC, a party with reasonable grounds for insecurity about the other's performance may make a written demand for assurances that the other party will perform. Failure to provide assurance within 30 days after a valid demand constitutes an anticipatory repudiation, which the nonrepudiating party may treat as a breach or ignore.

### References

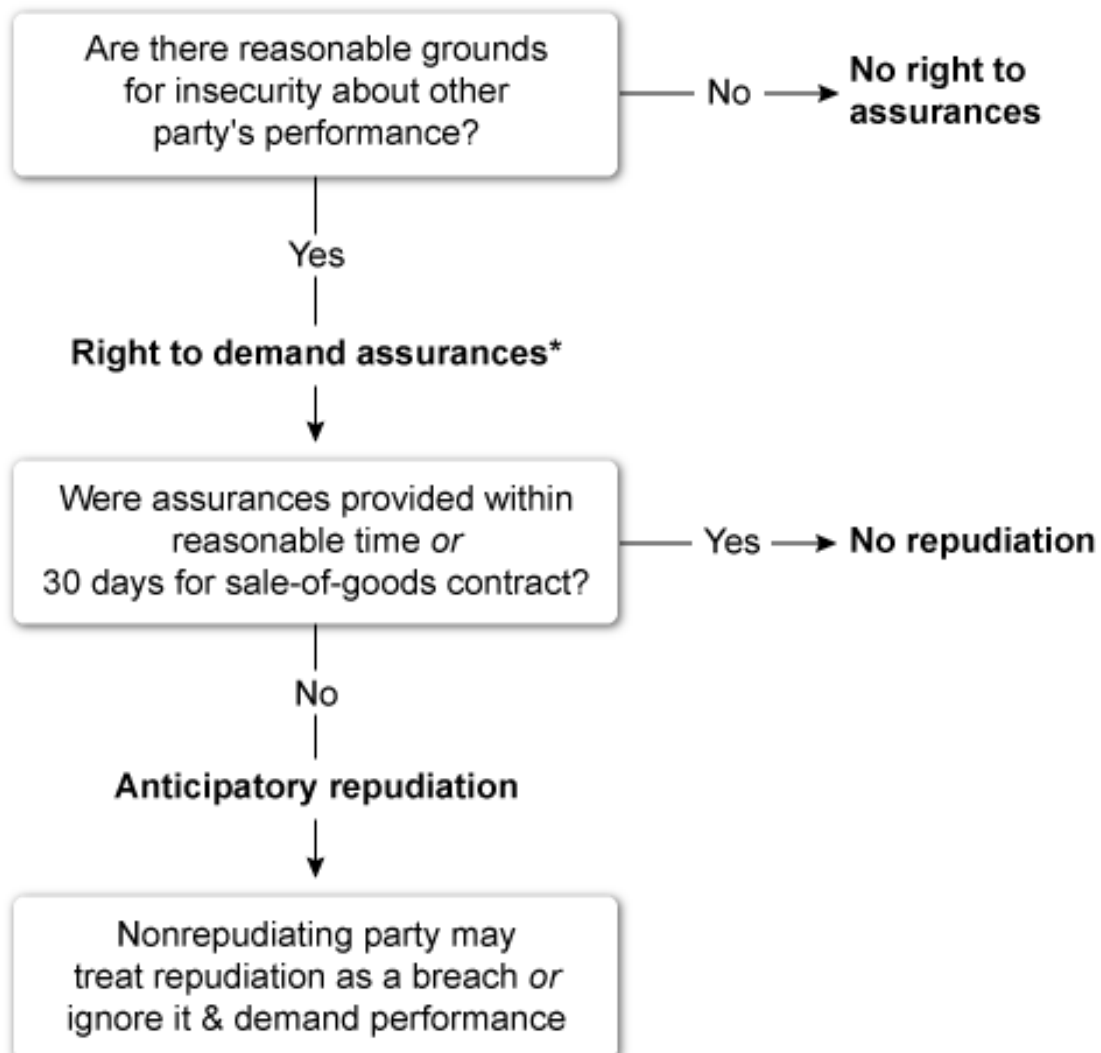
U.C.C. § 2-609 (Am. Law Inst. & Unif. Law Comm'n 2020) (right to adequate assurance of performance).

U.C.C. § 2-610 (Am. Law Inst. & Unif. Law Comm'n 2020) (anticipatory repudiation).

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## Right to adequate assurances



\*The demand must be in writing if the contract is for the sale of goods.

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