

A home goods distributor signed a written contract with a nursing home to sell the nursing home 100 identical bathroom sinks, 50 sinks to be delivered on March 1, and the remaining 50 sinks on April 1. The agreement did not specify the place of delivery, or the time or place of payment.

On March 1, the distributor tendered 49 sinks to the nursing home and explained, "One of the 50 sinks was damaged in transit from the manufacturer to us, but we will deliver a replacement within 5 days."

Which of the following statements is correct?

- A. The nursing home is entitled to accept any number of the 49 sinks and to reject the rest, but is not entitled to cancel the contract as to any rejected sinks or the lot due on April 1.
- B. The nursing home is entitled to accept any number of the 49 sinks, reject the rest, and cancel the contract, both as to any rejected sinks and the lot due on April 1.
- C. The nursing home must accept the 49 sinks and is not entitled to cancel the rest of the contract.
- D. The nursing home must accept the 49 sinks but is entitled to cancel the rest of the contract.

Explanation:

Buyer's rights under installment contract

(UCC § 2-612)

Each installment

Buyer *may reject* nonconforming shipment that:
substantially impairs value of installment
cannot be cured

Buyer *must accept*:
conforming shipment
nonconforming shipment if seller promises to cure

Whole contract

Buyer *can* cancel future installments if one or more nonconforming shipments substantially impair value of whole contract

Buyer *cannot* cancel future installments if he/she:
accepts nonconforming shipment without notice of cancellation
brings action only for past installments OR
demands performance of future installments

UCC = Uniform Commercial Code

Article 2 of the Uniform Commercial Code governs contracts for the sale of goods (eg, sinks). Such contracts often call for the delivery of goods in separate lots (ie, **installment contracts**). In that case, the buyer must accept each conforming shipment. But even if a **shipment is nonconforming**, the **buyer must accept** it if the seller gives **adequate assurance** that he/she will **cure** the nonconformity. And the buyer **cannot cancel** the rest of the contract **unless** the nonconforming shipment **substantially impairs** the value of the **whole contract**.

Here, the home goods distributor entered an installment contract for the delivery of 100 sinks in two separate lots. The first delivery was nonconforming since 1 of the 49 sinks was damaged. But the distributor offered to cure by delivering a replacement within five days. Therefore, the nursing home must accept the 49 sinks (**Choices A & B**). And since a short delay in the delivery of 1 sink does not substantially impair the value of the whole contract for 100 sinks, the nursing home is *not* entitled to cancel the rest of the contract (**Choices B & D**).

Educational objective:

In an installment contract for the sale of goods, the buyer must accept a nonconforming shipment if the seller gives adequate assurance that he/she will cure the defect. And the buyer cannot cancel the rest of the contract unless the nonconforming shipment substantially impairs the value of the whole contract.

References

U.C.C. § 2-612 (Am. Law Inst. & Unif. Law Comm'n 2020) (installment contracts).

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