

On July 1, a man and a developer contracted in writing for the sale and purchase of the man's farm, and to close the transaction on December 1.

On September 1, the developer unequivocally repudiated the contract. On September 15, the man urged the developer to change her mind and proceed with the scheduled closing on December 1. On October 1, having heard nothing further from the developer, the man sold and conveyed his farm to a farmer without notifying the developer. On December 1, the developer attempted to close under the July 1 contract by tendering the full purchase price to the man. The man rejected the tender.

The developer sued the man for breach of contract.

Will the developer likely prevail?

- A. No, because acceptance of the purchase price by the man was a concurrent condition to the man's obligation to convey the farm to the developer on December 1.
- B. No, because the developer did not retract her repudiation before the man materially changed his position in reliance thereon by selling the farm to the farmer.
- C. Yes, because the man failed seasonably to notify the developer of any pending sale to the farmer.
- D. Yes, because the man waived the developer's September 1 repudiation by urging her to retract it on September 15.

Explanation:

The doctrine of **anticipatory repudiation** applies when a contracting party **clearly and unequivocally** repudiates (ie, indicates an **unwillingness to perform**) a promise before the time for performance arises or elapses. A **repudiation can be retracted** if the nonrepudiating party receives notice of the retraction **before**:

canceling the contract

materially changing position in reliance on the repudiation *or* indicating that he/she considers the repudiation to be final.

If the repudiation is not retracted, the nonrepudiating party may (1) treat the repudiation as a breach or (2) ignore it and demand performance pursuant to the contract.

Here, the developer unequivocally repudiated the contract for the sale of the farm on September 1. One month later, the man sold and conveyed the farm to the farmer because the man had heard nothing from the developer. Since the developer did not retract her repudiation before the man materially changed his position in reliance thereon, the developer has no recourse for breach of contract. Therefore, the developer likely will not prevail.

(Choice A) The fact that the man did not accept the purchase price when the developer tendered it on December 1 is not the reason the developer will lose. Instead, the developer will lose because she repudiated the contract on September 1 and the man materially changed his position in reliance thereon by selling the farm to someone else.

(Choice C) The nonrepudiating party need not notify the repudiating party that the nonrepudiating party materially changed his/her position in reliance on the repudiation.

(Choice D) The fact that the man urged the developer to retract her repudiation did not waive the repudiation because only the developer can retract it.

Educational objective:

A party who anticipatorily repudiates a contract may retract the repudiation if the nonrepudiating party is notified of the retraction before (1) canceling the contract, (2) materially changing position in reliance on the repudiation, or (3) indicating that he/she considers the repudiation final.

References

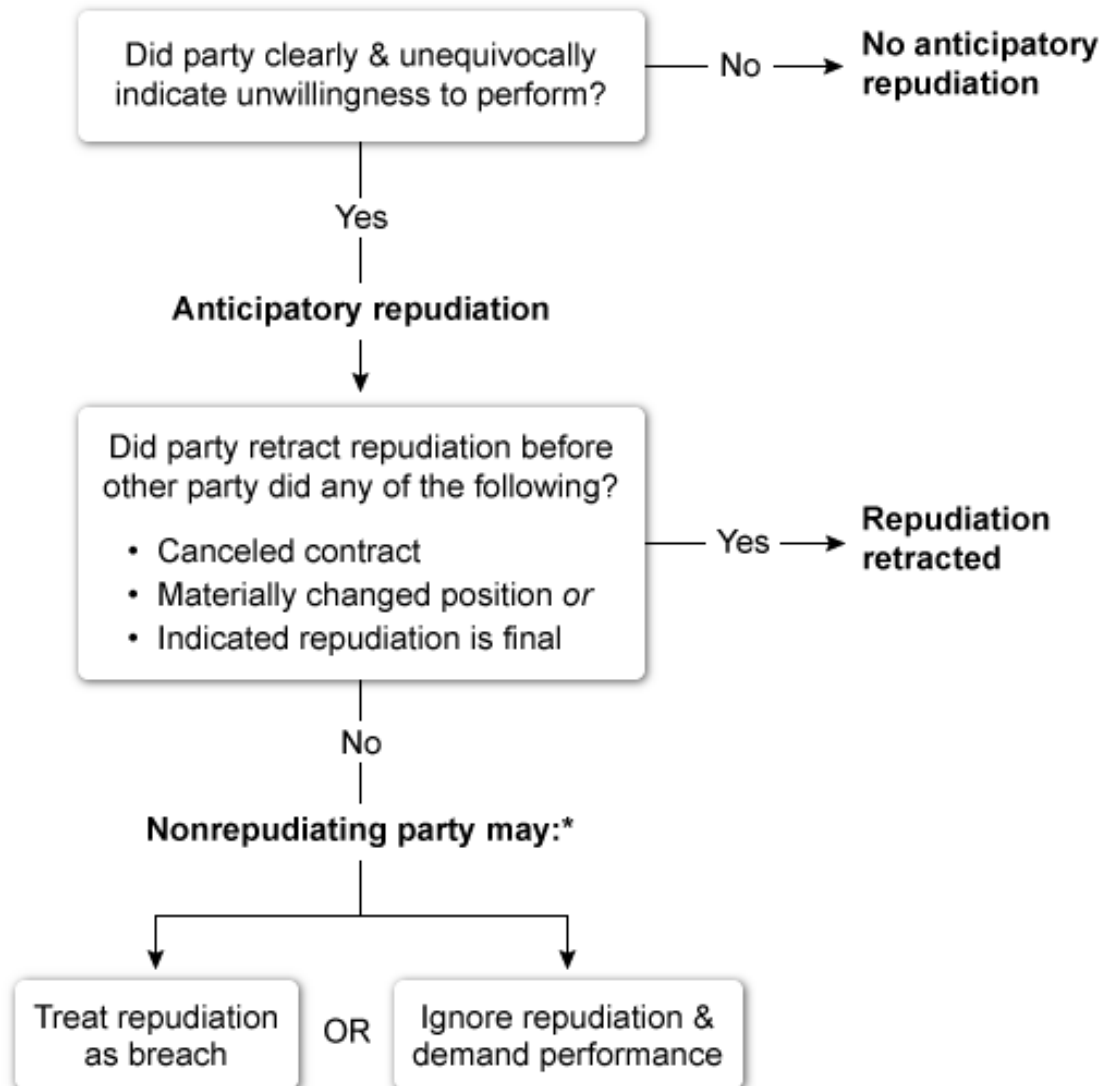
Restatement (Second) of Contracts § 253 (Am. Law Inst. 1981) (effect of an anticipatory repudiation).

Restatement (Second) of Contracts § 256 (Am. Law Inst. 1981) (retraction of repudiation).

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The doctrine of anticipatory repudiation



*The nonrepudiating party may also suspend its performance if commercially reasonable