A manufacturer contracted in a signed writing to provide a company with industrial ceiling tiles for its new production facility. The contract specified that the manufacturer would deliver the tiles by third-party carrier, "F.O.B. the company's production facility."

While in transit to the production facility, one-third of the tiles fell off the carrier's truck and were destroyed. The manufacturer subsequently emailed the company that it did not intend to replace the tiles. The company sent a letter to the manufacturer that read in relevant part: "You are not responsible for replacing the damaged tiles. We will sue the carrier." The company signed the letter. Shortly thereafter, the carrier filed for bankruptcy and the company decided to sue the manufacturer for breach of contract.

Will the company be likely to prevail?

A. No, because the company's signed letter operated as a release and discharged the manufacturer from its remaining contractual duties.

B. No, because the tiles were specifically identified goods that were destroyed through no fault of either party.

C. Yes, because the manufacturer bore the risk of loss when the tiles were destroyed and breached the contract by refusing to replace the tiles.

D. Yes, because there was no new consideration to support the release of the manufacturer's remaining contractual duties.

Explanation:

Under the **UCC**, which governs contracts for the sale of goods, the risk of loss generally passes to the buyer when the buyer receives the goods. But if the contract requires the **seller to deliver** the goods by **third-party carrier**, then the **risk of loss passes to the buyer** at different times depending on whether the contract is a:

shipment contract – does *not* require delivery at a particular location, so the risk of loss passes to the buyer when the goods are properly **delivered to the carrier** *or*

destination contract – *requires* delivery at a particular location, so the risk of loss passes to the buyer when goods are **delivered at the named location**.

Destination contracts are often identified by the letters "F.O.B." (free on board) followed by a location (as seen here). And since the ceiling tiles were in transit to the company's production facility when they were destroyed, the risk of loss was with the *manufacturer* at that time. Therefore, the manufacturer was in breach when it informed the company that it did not intend to replace the tiles **(Choice C)**.

However, the company then sent the manufacturer a letter stating that the manufacturer was not responsible for replacing the damaged tiles. This operated as a **release**—ie, a writing that manifests an intent to **discharge another party** from an **existing duty**. The **UCC requires** that a release be **signed by the releasing party** (as the company did here), but **no consideration** is needed **(Choice D)**.* Therefore, the company is *unlikely* to prevail in its suit against the manufacturer.

*For common-law contracts, the release must be supported by consideration or a consideration substitute (eg, detrimental reliance) to be effective.

(Choice B) A seller's performance is excused if specifically identified items of inventory are destroyed through no fault of either party before the risk of loss passes to the buyer. Since the tiles here were general inventory items, the manufacturer's performance was not excused on this basis.

Educational objective:

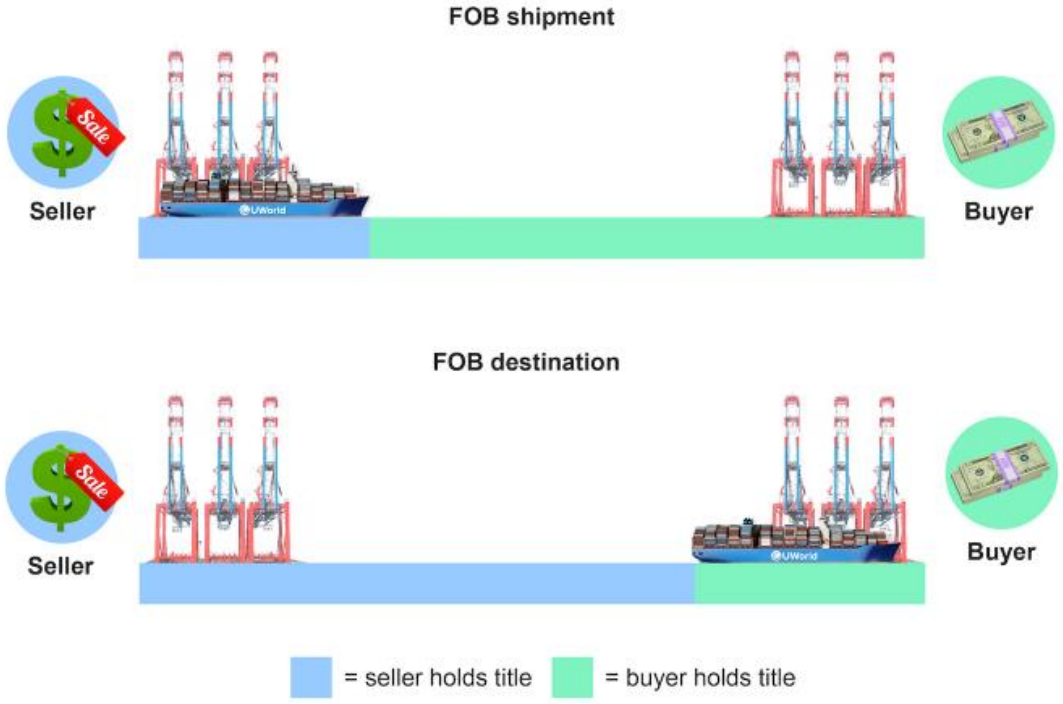
A release is a writing that manifests an intent to discharge another party from an existing duty. The UCC requires the release to be signed by the releasing party, but new consideration is not required for the release to be effective.

References

U.C.C. § 1-306 (Am. Law Inst. & Unif. Law Comm'n 2020) (waiver or renunciation of claim or right after breach).

Restatement (Second) of Contracts § 284 (Am. Law Inst. 1981) (release).

Titleholder's risk of loss during transport
(UCC sale of goods)



UCC = Uniform Commercial Code