

On June 1, a general contractor and a subcontractor entered into a contract under which the subcontractor agreed to deliver all of the steel joists that the general contractor required in the construction of a hospital building. The contract provided that delivery of the steel joists would begin on September 1.

Although the general contractor had no reason to doubt the subcontractor's ability to perform, the general contractor wanted to be sure that the subcontractor was on track for delivery in September. He therefore wrote a letter on July 1 to the subcontractor demanding that the subcontractor provide assurance of its ability to meet the September 1 deadline. The subcontractor refused to provide such assurance.

The general contractor then immediately obtained the steel joists from another supplier.

If the subcontractor sues the general contractor for breach of contract, is the subcontractor likely to prevail?

- A. No, because the contract failed to specify a definite quantity.
- B. No, because the subcontractor anticipatorily repudiated the contract when it failed to provide adequate assurance.
- C. Yes, because a demand for assurance constitutes a breach of contract when the contract does not expressly authorize a party to demand assurance.
- D. Yes, because the subcontractor's failure to provide assurance was not a repudiation since there were no reasonable grounds for the general contractor's insecurity.

### Explanation:

The Uniform Commercial Code (**UCC**) governs contracts for the sale of goods (eg, steel joists). Under UCC § 2-609, 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. Failure to provide such assurances within 30 days after a valid demand constitutes an **anticipatory repudiation** of the contract. The party that made the demand may then treat the repudiation as a breach of contract or ignore it and demand performance.

Here, the general contractor had *no* reason to doubt the subcontractor's ability to perform pursuant to the contract. As a result, the general contractor had no right to demand assurances, and the subcontractor's failure to provide assurance was not an anticipatory repudiation (**Choice B**). The general contractor then breached the contract by obtaining the steel joists from another supplier. Therefore, the subcontractor will likely prevail.

**(Choice A)** Contracts for the sale of goods must contain a **quantity term**. Here, the contract did not specify a definite quantity of steel joists. But the quantity could be made certain under this **requirements contract** because the subcontractor agreed to deliver all the steel joists that the general contractor required.

**(Choice C)** A demand for assurances does not constitute a breach of contract when the contract does not *expressly* authorize a party to demand assurances. That is because the UCC *impliedly* authorizes a party to demand assurances when reasonable grounds for insecurity exist (not seen here).

### Educational objective:

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. Failure to provide such assurances within 30 days after a valid demand constitutes an anticipatory repudiation.

### References

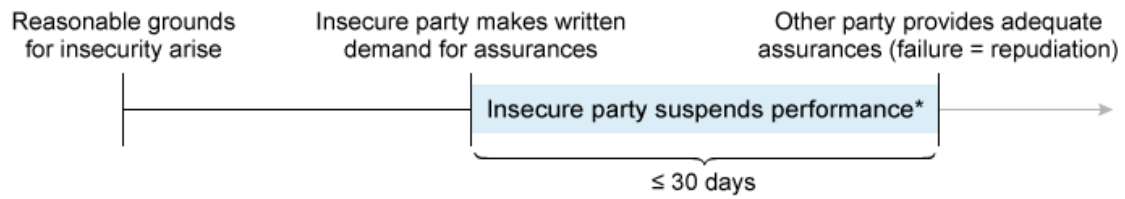
U.C.C. § 2-609 (Am. Law Inst. & Unif. Law Comm'n 2020) (right to adequate assurance of performance).

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

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## UCC timeline for demanding assurances



\*Performance may be suspended only if commercially reasonable

**UCC** = Uniform Commercial Code

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