

On March 1, an owner entered into a written contract to sell her car to a buyer for \$15,000, with delivery and payment to occur on March 6. The buyer had previously declined to enter into an option contract to hold the owner's offer open until March 6. On March 3, the buyer emailed the owner to say that he might not have the \$15,000 by March 6. The owner did not respond. On March 4, the owner sold the car to her neighbor for \$13,000 and told the buyer that she planned to sue him for breach of contract to recover the difference in the purchase price.

Is the owner likely to succeed in a breach of contract action?

- A. No, because the owner acted in bad faith by failing to respond to the buyer's email. (13%)
- B. No, because the owner anticipatorily repudiated her contract with the buyer. (74%)
- C. Yes, because the buyer anticipatorily repudiated his contract with the owner. (10%)
- D. Yes, because the buyer failed to protect himself when he did not accept the owner's offer to enter into an option contract. (1%)

Correct

74% Answered correctly

35 secs Time Spent

2023 Version

Explanation:

A contracting party who anticipatorily repudiates the contract can be liable for breach of contract—and cannot hold the other party liable for breach of contract. **Anticipatory repudiation** occurs when a contracting party **clearly and unequivocally communicates** (through words or conduct) to the other party that it **will not perform**. In contrast, mere **insecurity** about a party's **prospective ability to perform** is not a repudiation but instead gives the other party the **right to demand assurance** of performance.

Here, the buyer told the owner that he "might not" have the payment by the date it was due. Since the buyer did not unequivocally state that he would not have the money, this did not constitute an anticipatory repudiation **(Choice C)**. It merely provided the owner with reasonable grounds for insecurity about the buyer's ability to pay. But instead of demanding assurances, the owner sold the car to her neighbor. By doing so, the owner anticipatorily repudiated the contract. As a result, the owner is unlikely to succeed in her breach-of-contract action.

(Choice A) The owner did not act in bad faith by failing to respond to the buyer's email stating that he might not have the money by the time for performance. The owner could have waited until that date and demanded payment from the buyer. The buyer's inability to perform on that date would have then constituted a breach, and the owner could have succeeded in a breach-of-contract action.

(Choice D) In an option contract, the offeror promises to keep an offer open for a specified period of time in exchange for consideration. Although an option contract would have made the owner's offer to sell the car to the buyer irrevocable, the parties already had an enforceable contract. As a result, the buyer's rejection of the owner's offer to enter into an option contract is irrelevant.

Educational objective:

Anticipatory repudiation occurs when a party clearly and unequivocally communicates (through words or conduct) that it does not intend to perform. Mere insecurity about a party's ability to perform is not a repudiation, but it allows the other party to demand assurance of performance.

References

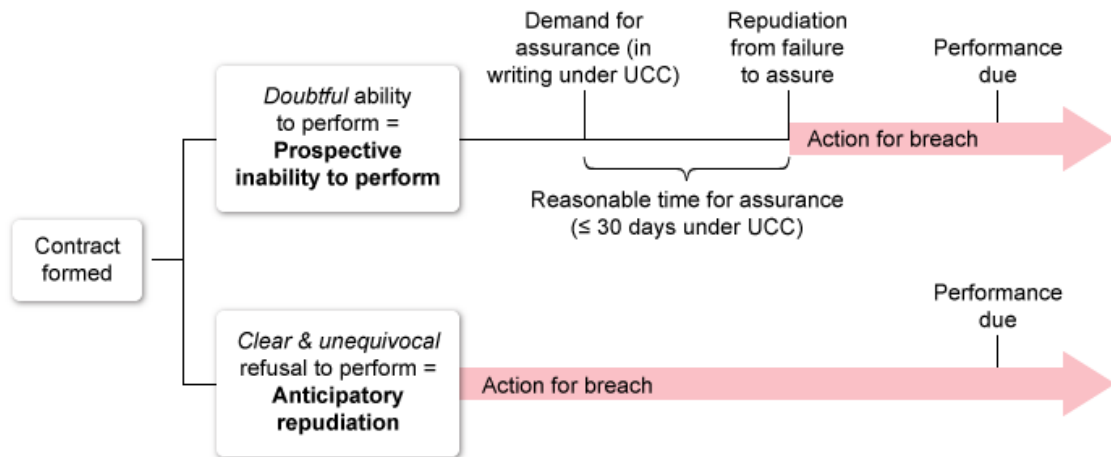
UCC § 2-609 (explaining the right to adequate assurance of performance).

UCC § 2-610 (defining anticipatory repudiation).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Prospective inability to perform v. Anticipatory repudiation



UCC = Uniform Commercial Code.

@UWorld