

A lumber supplier agreed to sell to a furniture manufacturer all the lumber that the manufacturer required over a two-year period. The sales contract provided that payment was due 60 days after delivery, but that a 3% discount would be allowed if the manufacturer paid within 10 days of delivery. During the first year of the contract, the manufacturer regularly paid within the 10-day period and received the 3% discount.

Fifteen days after the supplier had made its most recent lumber delivery to the manufacturer, the supplier had received no payment from the manufacturer. At this time, the supplier became aware of rumors from a credible source that the manufacturer's financial condition was precarious. The supplier wrote the manufacturer, demanding assurances regarding the manufacturer's financial status. The manufacturer immediately mailed to the supplier its latest audited financial statements as well as a satisfactory credit report prepared by the manufacturer's banker. The rumors proved to be false. Nevertheless, the supplier refused to resume deliveries. The manufacturer has sued the supplier for breach of contract.

Will the manufacturer likely prevail?

- A. No, because the contract was unenforceable, since the manufacturer had not committed to purchase a definite quantity of lumber.
- B. No, because the supplier had reasonable grounds for insecurity and was therefore entitled to cancel the contract and refuse to make any future deliveries.
- C. Yes, because the credit report and audited financial statements provided adequate assurance of due performance under the contract.
- D. Yes, because the supplier was not entitled to condition resumption of deliveries on the receipt of financial status information.

Explanation:

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 insecure party may also suspend its own performance until assurance is provided. Between **merchants**, the reasonableness of insecurity and the adequacy of assurance are determined by **commercial standards** (eg, financial status information). Failure to provide adequate assurance within 30 days after a valid demand constitutes an anticipatory repudiation.

Here, the supplier had reasonable grounds for insecurity about the manufacturer's ability to pay after being told by a credible source that the manufacturer's financial condition was precarious. As a result, the supplier was entitled to condition resumption of deliveries on the receipt of adequate assurance **(Choice D)**. The manufacturer provided adequate assurance with its audited financial statements and credit report. Therefore, the supplier was not entitled to cancel the contract, and the manufacturer will likely prevail in its breach-of-contract suit **(Choice B)**.

(Choice A) Contracts for the sale of goods (eg, lumber) must contain a [quantity term](#). Here, the contract did not specify a definite quantity of lumber. But the quantity could be made certain under this [requirements contract](#) because the supplier agreed to deliver all the lumber the manufacturer required over a two-year period.

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. Between merchants, the reasonableness of insecurity and the adequacy of assurance are determined by commercial standards.

UCC = Uniform Commercial Code

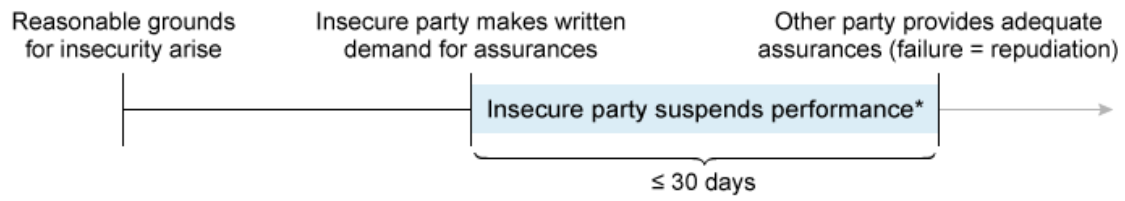
References

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

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UCC timeline for demanding assurances



*Performance may be suspended only if commercially reasonable

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