

A rental company contracted to lease a collapsible sports dome to a private tennis club. The dome would be used to cover the club's outdoor tennis courts so that the courts could be used for the club's Annual Winter Tennis Tournament beginning on November 16. The contract required the rental company to finish installing the dome no later than November 15.

On November 10, the installation crew arrived to lay out the anchoring system required for the dome. However, the crew did not have enough anchors to secure the dome. The club's owner overheard a crew member say that the rental company had forgotten to order the rest of the anchors and that he did not expect them to arrive for at least a month. That same day, the club owner canceled the contract and leased an indoor space near the club. The rental company has sued the tennis club for breach of contract.

Will the rental company likely prevail?

- A. No, because the crew member's November 10 statement was an anticipatory repudiation that gave the club owner the right to cancel the contract.
- B. No, because the rental company's failure to order the remaining anchors made it impossible to finish installing the dome by November 15.
- C. Yes, because the club owner failed to seasonably notify the rental company of his intention to cancel the contract before leasing the indoor space.
- D. Yes, because the club owner never demanded and did not obtain the rental company's assurance of due performance under the contract.

Explanation:

Anticipatory repudiation occurs when one party to a contract unequivocally communicates to the other party that it will not perform under the contract. This gives the other party the **right to cancel** the contract and **sue for breach**.^{*} In contrast, **prospective inability to perform** involves words or conduct that create reasonable grounds for insecurity that a party will perform. This gives the other party the **right to demand assurance** of performance. **Failure to provide** adequate assurance **within a reasonable time** is an **anticipatory repudiation**.

Here, the club owner overheard the crew member say that he did not expect the remaining anchors to arrive for at least a month. This was not an unequivocal statement by the rental company that it would not perform (no anticipatory repudiation) **(Choice A)**.

However, the statement gave the owner reasonable grounds for insecurity about the company's ability to install the dome by November 15 (prospective inability to perform). But since the owner never demanded and did not obtain the company's assurance, the owner's cancellation of the contract on November 10 was premature. Therefore, the company will likely prevail.

^{*}Alternatively, the other party may ignore the repudiation and demand performance pursuant to the contract.

(Choice B) A repudiation can be communicated through words or through conduct that renders due performance impossible. Here, although the lack of anchors made it impossible to install the dome on November 10, the rental company still had five days to perform.

(Choice C) Had the rental company repudiated the contract, it could have retracted the repudiation by notifying the club owner of the retraction before he (1) cancelled the contract, (2) materially changed position in reliance on the repudiation, or (3) indicated that he considered the repudiation to be final. But the club owner would not have been required to notify the rental company before doing any of those things.

Educational objective:

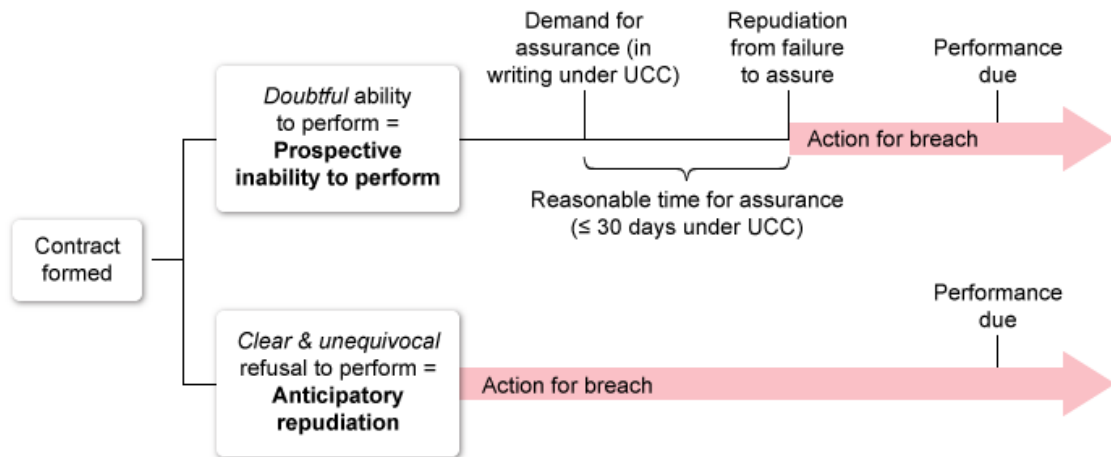
A contracting party's prospective inability to perform entitles the other party to demand assurance of performance. Failure to provide such assurance within a reasonable time is an anticipatory repudiation that justifies canceling the contract.

References

Restatement (Second) of Contracts § 250 (Am. Law Inst. 2020) (repudiation).

Restatement (Second) of Contracts § 251 (Am. Law Inst. 2020) (failure to provide assurance as repudiation).

Prospective inability to perform v. Anticipatory repudiation



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