

CONTRACTS QUESTION

On January 2, a boat builder and a sailor entered into a contract pursuant to which the builder was to sell to the sailor a boat to be specially manufactured for the sailor by the builder. The contract price was \$100,000. The written contract, signed by both parties, stated that the builder would tender the boat to the sailor on December 15, at which time payment in full would be due.

On October 15, the builder's workers went on strike and there were no available replacements.

On October 31, the builder's workers were still on strike, and no work was being done on the boat. The sailor read a news report about the strike and immediately sent a letter to the builder stating, "I am very concerned that my boat will not be completed by December 15. I insist that you provide me with assurance that you will perform in accordance with the contract." The builder received the letter on the next day, November 1.

On November 25, the builder responded to the letter, stating, "I'm sorry about the strike, but it is really out of my hands. I hope we settle it soon so that we can get back to work."

Nothing further happened until December 3, when the builder called the sailor and said, "My workers are back, and I have two crews working overtime to finish your boat. Your boat is task one. Don't worry; we'll deliver your boat by December 15th." The sailor immediately replied, "I don't trust you. As far as I'm concerned, our contract is over. I am going to buy my boat from a shipyard." Two days later, the sailor entered into a contract with a competing manufacturer to buy a boat similar to the boat that was the subject of the contract with the builder.

The builder finished the boat on time and tendered it to the sailor on December 15. The sailor reminded the builder about the December 3 conversation in which the sailor had announced that "our contract is over," and refused to take the boat and pay for it.

The builder has sued the sailor for breach of contract.

1. What was the legal effect of the sailor's October 31 letter to the builder? Explain.
2. What was the legal effect of the builder's November 25 response to the sailor's October 31 letter? Explain.
3. What was the legal effect of the sailor's refusal to take and pay for the boat on December 15? Explain.

Question Presented

On January 2, a boat builder and a sailor contracted for the builder to sell a boat to be specially manufactured for the sailor, price \$100,000; a signed writing set tender and payment for December 15.

← sale of GOODS → UCC Article 2 governs

On October 15 the builder's workers went on strike with no replacements. By October 31 they were still out and no work was being done on the boat.

← reasonable grounds for insecurity

The sailor wrote to the builder (received Nov 1): I am concerned the boat will not be done by December 15. I insist that you provide me with assurance that you will perform.

← written demand for adequate assurance (§ 2-609)

On November 25 the builder replied: I'm sorry about the strike, but it is really out of my hands. I hope we settle it soon so we can get back to work.

← no actual assurance, and about a month late → repudiation (§ 2-609(4))

On December 3 the builder called: my workers are back, two crews on overtime, your boat is task one; we'll deliver by December 15.

← retraction of the repudiation (§ 2-611)

The sailor immediately replied: I don't trust you. our contract is over. I'll buy from a shipyard.

← attempted cancel, but was it already too late?

Two days later, the sailor contracted with a competing manufacturer for a similar boat.

← reliance came AFTER the Dec 3 retraction → too late to defeat it

The builder finished on time and tendered the boat on December 15; the sailor refused to take it and pay. The builder sued for

← refusal after a valid retraction = breach

breach.

1. What was the legal effect of the sailor's October 31 letter?

← → *demand for adequate assurance*

2. What was the legal effect of the builder's November 25 response?

← → *repudiation?*

3. What was the legal effect of the sailor's refusal on December 15?

← → *breach?*

Question 1: The Sailor's October 31 Letter

Issue. Whether the sailor's October 31 letter was a legally effective demand for adequate assurance of the builder's performance.

Goods → UCC. Is a demand for assurance justified?

Rule. Because the contract is for the sale of goods (a boat), it is governed by UCC Article 2. When reasonable grounds for insecurity arise about a party's performance, the other party may make a written demand for adequate assurance of due performance and may suspend its own performance until assurance is received (§ 2-609).

Reasonable grounds for insecurity → written demand for assurance; may suspend performance (§ 2-609).

Analysis. Here, the **specialty manufactured boat** is a sale of goods, so the UCC governs. When the sailor learned that the builder's workers had been on strike since mid-October with no work being done on the boat and no replacements, he had reasonable grounds to feel insecure about timely completion by December 15. His written letter **insisting that the builder assure performance** was therefore a justified demand for adequate assurance, and it entitled the sailor to suspend any performance of his own pending a response.

Strike + no work = reasonable insecurity. The letter is a proper written demand.

Conclusion. Therefore, the October 31 letter was a valid, justified demand for adequate assurance of due performance under the UCC.

Valid demand for adequate assurance.

Question 2: The Builder's November 25 Response

Issue. Whether the builder's November 25 response provided adequate assurance, and if not, its legal effect.

Did the reply actually give adequate assurance?

Rule. After a justified demand, the party must provide adequate assurance of due performance within a reasonable time, not to

Must assure within a reasonable time (not over 30 days) or it is repudiation (§

exceed thirty days. Failure to provide adequate assurance within that time is itself a repudiation of the contract (§ 2-609(4)).

Analysis. Here, the builder's reply came on November 25, nearly a month after the demand, and even setting timing aside it gave no assurance at all: it only expressed regret and a hope that the strike would settle, saying the matter was out of the builder's hands. Because that was not adequate assurance of due performance and was not provided within a reasonable time, the builder is treated as having repudiated the contract.

Conclusion. Therefore, the builder's failure to give adequate assurance operated as a repudiation of the contract, which gave the sailor the right to cancel.

2-609(4)).

'Out of my hands' = no assurance, and about a month late. → repudiation.

Repudiation by the builder.

Question 3: The Sailor's December 15 Refusal

Issue. Whether the sailor's refusal to take and pay for the boat on December 15 was a breach, given the builder's repudiation and later conduct.

Rule. A repudiating party may retract its repudiation at any time before its next performance is due, unless the aggrieved party has, since the repudiation, cancelled, materially changed position in reliance, or otherwise indicated that it treats the repudiation as final. An effective retraction reinstates the contract (§ 2-611).

Analysis. Here, the builder repudiated by failing to assure, but on December 3, before performance was due, the builder retracted by saying the workers were back and the boat would be delivered by December 15. At that moment the sailor had not yet cancelled or relied: his contract with a competing manufacturer came two days later, on December 5, too late to defeat the retraction. The sailor's statement that our contract is over did not prevent the retraction and, if anything, was itself a repudiation by the sailor. Because the retraction reinstated the contract and the builder tendered a conforming boat on time, the sailor's refusal to take and pay was a breach.

Conclusion. Therefore, the sailor's December 15 refusal to accept and pay for the boat was a breach of the contract.

After the retraction, who actually breached?

Repudiation can be retracted before performance is due, unless the other side already cancelled or relied (§ 2-611).

Dec 3 retraction came BEFORE any reliance (competitor deal was Dec 5). Retraction good → the sailor's refusal is the breach.

The sailor breached.

Step-by-Step: Adequate Assurance & Repudiation (UCC Article 2)

Walk the demand, the response, and the retraction in order; each answer sets up the next.

1. Is the contract a sale of goods?

→ Yes (a boat): **UCC Article 2** governs, including the assurance and repudiation rules. **goods**



2. Are there reasonable grounds for insecurity about the other party's performance?

→ Yes: the insecure party may make a written demand for adequate assurance and suspend its own performance. **Q1: strike → justified demand**



3. Did the other party give adequate assurance within a reasonable time (not over 30 days)?

→ Yes: the contract continues.

→ No: the failure is a **REPUDIATION**; the aggrieved party may cancel, suspend, or sue. **Q2: vague, late reply → repudiation**



4. Did the repudiating party retract before performance was due AND before the other party cancelled or materially relied?

→ Yes: the retraction reinstates the contract; the aggrieved party must perform. **Q3: Dec 3 retraction before the Dec 5 reliance**

→ No: the repudiation stands and the aggrieved party is excused.



5. After a valid retraction, does the aggrieved party still refuse to perform?

→ Yes: that refusal is a **BREACH**. **Q3: sailor refuses on Dec 15 → breach**