

503.03 CONTRACTS - ISSUE OF COMMON LAW REMEDY - SPECIFIC PERFORMANCE.

*NOTE WELL: Specific performance is a remedy available to a party aggrieved by a breach of contract. However, at common law, the decision to decree specific performance is addressed to the sound discretion of the court. Hutchins v. Honeycutt, 286 N.C. 314, 210 S.E.2d 254 (1974); Harborgate Property Owners Ass'n., Inc. v. Mountain Lake Shores Development Corp., 145 N.C. App. 290, 551 S.E.2d 207 (2001); Munchak Corp. (Delaware) v. Caldwell, 46 N.C. App. 414, 265 S.E.2d 654, review allowed, 301 N.C. 94, modified and affirmed, 301 N.C. 689, 273 S.E.2d 281 (1980).<sup>1</sup> It is not a matter of right in equity. Tillery v. Land, 136 N.C. 537, 48 S.E. 824 (1904). While one seeking specific performance must allege and prove certain predicate facts such as the formation of a valid contract, a breach of that contract by the other party and performance (or readiness and ability to perform) by the party seeking specific performance, these facts are found by the jury pursuant to the 501.00 and 502.00 series. Once those predicate facts are determined, whether specific performance will be decreed is a non-jury question. This note is inserted in the remedy series to prevent the court from inadvertently instructing the jury on this remedy.*

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1. The **Uniform Commercial Code** rule for buyers is similar (see N.C.P.I.-Civil 504.21) but different for sellers (see N.C.P.I.-Civil 504.42 and 504.45).