

504.24 CONTRACTS - ISSUE OF UCC REMEDY - SELLER'S REMEDY (OR DEFENSE¹) OF STOPPING DELIVERY OF GOODS.

The (*state number*) issue reads:

"Did the plaintiff rightfully stop delivery of the (*name good*) to the defendant?"

(You will answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the plaintiff.)

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the plaintiff rightfully stopped delivery of the (*name good*) to the defendant.

The law provides that when the seller discovers that the buyer is insolvent, the seller may

[refuse to deliver the goods except for cash (including payment for all goods theretofore delivered under the contract)]²

[stop delivery of goods in the possession of a [carrier] [bailee]³ by timely notification⁴ [before the goods are received by the buyer]⁵ [before the [carrier] [bailee] passes legal control over the goods to the buyer]⁶].

(A person "discovers" a fact when *he* obtains actual knowledge of it.⁷) (A person is "insolvent" when [*he* ceases to pay *his* debts in the ordinary course of business] [*he* cannot pay *his* debts as they become due] [*his* liabilities exceed *his* assets].)⁸

Finally, as to this (*state number*) issue upon which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that

the

plaintiff rightfully stopped delivery of the (*name good*) to the defendant, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. This instruction may be modified and given as a defense in the event the seller is a defendant in a given action. The references to "plaintiff" and "defendant" will need to be reversed.

Note that this remedy is not generally available to sellers except in the instance of the buyer's insolvency. There is a narrow exception which makes this remedy available where the buyer repudiates the contract, fails to make a payment due before delivery or has some independent right to withhold delivery or reclaim the goods. That exception involves "big lots" such as a carload, truckload, planeload or larger shipment. Under those circumstances, a seller may stop delivery by a carrier or bailee.

N.C. Gen. Stat. § 25-2-705(1).

2. N.C. Gen. Stat. § 25-2-702(1).

3. N.C. Gen. Stat. § 25-2-705(1).

4. The Court may need to supplement this portion of the instruction to explain when notification to a carrier or bailee is timely. In general, "the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods." N.C. Gen. Stat. § 25-2-705(3)(a). For other rules regarding notification, see N.C. Gen. Stat. § 25-2-705(3)(b), (c) and (d).

5. N.C. Gen. Stat. § 25-2-705(2)(a). "Receipt" means taking physical possession of the goods. N.C. Gen. Stat. § 25-2-103(1)(c).

6. N.C. Gen. Stat. § 25-2-705(2). In isolated cases, the Court may need to supplement this instruction to explain when a carrier or bailee passes legal control over the goods to a buyer. Those rules may be found at N.C. Gen. Stat. § 25-2-705(2)(b), (c) and (d).

7. N.C. Gen. Stat. § 25-1-201(25).

8. N.C. Gen. Stat. § 25-1-201(23) and 11 U.S.C. § 101(32).