

CONTRACTS--ISSUE OF UCC REMEDY--SELLER'S REMEDY (OR DEFENSE<sup>1</sup>) OF RECLAIMING GOODS ALREADY DELIVERED.

The (*state number*) issue reads:

"Did the plaintiff rightfully reclaim (*name goods*) from 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, four things:

First, that the seller did not discover that the buyer was insolvent prior to the buyer's receipt of the goods.<sup>2</sup> (A person "discovers" a fact when he obtains actual knowledge of it.<sup>3</sup>) (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].)<sup>4</sup>

Second, that the goods were received by the buyer on credit.

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<sup>1</sup>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.

<sup>2</sup>N.C.G.S. §25-2-702(2). "Receipt" means taking physical possession. N.C.G.S. §25-2-103(1)(c).

<sup>3</sup>N.C.G.S. §25-1-201(25).

<sup>4</sup>N.C.G.S. §25-1-201(23) and 11 U.S.C. §101(32).

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Third, that the buyer was insolvent at the time the buyer received the goods.

And Fourth, that

[within ten days after the buyer received the goods, the seller made a demand for return of the goods]

[the buyer made a misrepresentation of his solvency to the seller within three months of the buyer's receipt of the goods].<sup>5</sup>

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff rightfully reclaimed (*name goods*) from 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.

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<sup>5</sup>N.C.G.S. §25-2-702(2). Note that successful reclamation of the goods in question excludes all other remedies. N.C.G.S. §25-2-702(3).