

ler has resorted to a remedy which is inconsistent with such requirement.

PRIOR UNIFORM LAW

ULIS, articles 61 and 62 (1).

Commentary

1. Article 58 describes the seller's right to require the buyer to perform his obligations under the contract and this Convention.

Failure to pay the price

2. This article recognizes that the seller's primary concern is that the buyer pay the price at the time it is due. Therefore, if the price is due under the terms of articles 54 and 55 and the buyer does not pay it, this article authorizes the seller to require the buyer to pay it.

3. Article 58 differs from the law of some countries in which the seller's remedies in respect of the price are restricted. In those countries, even though the buyer may have a substantive obligation to pay under the contract, the general principle is that the seller must make a reasonable effort to resell the goods to a third party and recover as damages any difference between the contract price and the price he received in the substitute transaction. The seller may recover the price if resale to a third person is not reasonably possible.

4. However, under article 58, when the buyer has a substantive obligation to pay the price under articles 54 and 55, the seller has available a remedy to require him to pay it.¹

5. The style in which article 58 in particular and Section III on the buyer's remedies in general is drafted should be noted at this point. That style conforms to the view held in many legal systems that a legislative text on the law of sales governs the rights and obligations between the parties and does not consist of directives addressed to a tribunal. In other legal systems the remedies available to one party on the other party's failure to perform are stated in terms of the injured party's right to the judgement of a court granting the required relief.² However, the two different styles of legislative drafting are intended to achieve the same result. Therefore, when article 58 provides that the "seller may require the buyer to pay the price, take delivery or perform his other obligations", it anticipates that, if the buyer does not perform, a court will order such performance and will enforce that order by the means available to it under its procedural law.

6. Although the seller has a right to the assistance of a court or arbitral tribunal to enforce the buyer's obligations to pay the price, take delivery and perform any of his other obligations, article 26 limits that right to a certain degree. If the court could not give a judgement for specific performance under its own law in respect of similar contracts of sale not governed by this Convention, it is not required to enter such a judgement in a case arising under this Convention even though the seller had a right to require the buyer's performance under article 58. However, if the court could give such a judgement under its own law, it would be required to do so if the criteria of article 58 are met.

7. The seller can require performance under this article and also sue for damages. Where the buyer's non-performance of one of his obligations consists in the delay in the payment of the price, the seller's damages would normally include interest.

Failure to perform other obligations

8. Article 58 goes on to authorize the seller to require the buyer to "take delivery or perform his other obligations".³

Article 58

[Seller's right to require performance]

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the sel-

¹ As to the relationship of the principle of mitigation to the right to require payment of the price, see para. 3 of the commentary to article 73.

² See the examples in foot-note 1 to para. 8 of the commentary to article 42.

³ The obligation to "take delivery" is specifically mentioned because it is the second of the two obligations of the buyer set forth in article 49. The definition of taking delivery is found in article 56.

9. In some cases the seller may be authorized or required to substitute his own performance for that which the buyer has failed to do. Article 61 provides that in a sale by specification, if the buyer fails to make the specifications required on the date requested or within a reasonable time after receipt of a request from the seller, the seller may make the specifications himself. Similarly, if the buyer is required by the contract to name a vessel on which the goods are to be shipped and fails to do so by the appropriate time, article 73, which requires the party who relies on a breach of contract to mitigate the losses, may authorize the seller to name the vessel so as to minimize the buyer's losses.

Inconsistent acts by the seller

10. Article 58 also provides that in order for the seller to exercise the right to require performance of the contract he must not have acted inconsistently with that right, e.g. by avoiding the contract under article 60.