

RECLAMATION CLAIMS

Definition

A special, though limited, right for vendors to back or "reclaim" certain goods shipped to a customer who subsequently files for protection or who is insolvent

Reclamation Before Bankruptcy

If the customer has not filed, a vendor's rights are governed by the UCC S 2-702 which provides a seller with the right to reclaim goods that a customer received on credit "while insolvent" if the seller make a demand within ten days after the customer received the goods

Insolvent (per the UCC): having generally ceased to pay debts in the ordinary course other than as a result of a good faith dispute, being unable to pay debts as they become due or being insolvent within the meaning of federal bankruptcy law

If the customer misrepresented its solvency in writing during the three months before the delivery of the goods in question, then the 10-day limitation does not apply

To exercise a reclamation right before bankruptcy, the vendor must make a demand

The demand should be in writing, directed to the customer

Identifying which goods are being reclaimed

Include a general statement reclaiming all goods received during the applicable time period

Demand that the goods be segregated

Reclamation After Bankruptcy

BAPCA expands a vendor's reclamation rights

S 546(c) adds a new 45-day reclamation right --> once a petition is filed, a vendor can assert a reclamation demand for goods received within 45 days of the filing vs. the prior 10 days (implied by the UCC)

Goods must have been sold in the "ordinary course" of the vendor's business

Debtor must have received the goods while insolvent using the Code's definition of insolvency

Reclamation demand must be in writing and be made within 45 days of the receipt of the goods by the customer/debtor

If the 45-day period expires after the filing, the vendor must make the reclamation demand within 20 days of the filing

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Reclamation - Issues

A vendor may be forced to seek and obtain a court order preventing further sales of goods while its reclamation claim is pending

BAPCPA removed language from the prior version of S 546(c) that had allowed a bankruptcy court to give a reclaiming vendor an administrative claim in lieu of return of the goods

Both the UCC and the Code require that the debtor itself must have received the goods for them to be reclaimed

Goods that are drop shipped or otherwise delivered first to the debtor's own customer will likely not be reclaimed

If the debtor made a misrepresentation of its solvency and then filed, it is unclear whether the 45-day rule in bankruptcy will govern or whether, like under the UCC, no time limit will apply

A vendor's reclamation right is further limited by the possibility that the debtor may have granted a bank or other creditor a security interest in the goods, which will be senior to the reclamation right

As amended, S 546(c) now expressly makes reclamation rights subject to the the prior rights of a secured creditor with a security interest in goods or their proceeds

A new section of the code, S 503(b)(9) gives vendors an administrative claim for the value of any goods received by the debtor within 20 days prior to the filing if the goods were sold in the ordinary course of the debtor's business --> works for a vendor even if the vendor fails to make a reclamation demand

