

## Rights of unpaid seller

Man has been conducting business since time immemorial. It is an important tool for the development of economy. However, in order to ensure free and fair trade, certain laws have to be followed. In order to know about the rights of an unpaid seller we first need to recognize who fits the category of an unpaid seller. An unpaid seller is anyone who has sold some goods and he has not got his price in return. Although it might seem extremely simple but on the ulterior there are lot of complicated laws which govern the rights of an unpaid seller.

The definition of an unpaid seller as defined by the Sale of Goods Act 1930 is a person:

- To whom whole half the price of the article he sells has not been paid. How is well is part of the price also has not been paid by the buyer then also we can call the seller and unpaid seller.
- If the transaction has been done through non-cash Negotiable Instruments like cheques, bill of exchange, promissory notes, etc, and the instrument has got dishonored.

Now this unpaid seller is left without proper payment of his goods therefore he should have certain rights and remedies against the customer who has not paid him his due amount. This is also in line with the principle of equity or principle of unjust enrichment according to which nobody should unduly become rich at other peoples expenses. In case of unpaid seller the buyer is getting unjust enrichment which the law will not allow and it will give some rights and remedies to the seller.

The rights of unpaid seller are divided into two broad categories:

- Against goods - *Jus in Rem* ( Latin ) these are the rights of the seller with regard to the goods that he has sold.
- Against buyers - *Jus in Personam* ( Latin ) these include the actions that seller can take against the buyer for non payment.

### **Rights against the Goods**

If the goods have been passed on to the buyer:

- Lien - this means that the seller has the right over the custody or possession of goods. The Sailor claim she's right to the goods for which payment has not been made by the buyer. In this case however he is in continuous position of the goods and not for even

once the goods has been physically transferred to the buyer. This right can only be exercised is the price is unpaid and not for other expenses, claims or interests that has not been paid. However in the salaries in curing certain recurring cost like the preservation cost of warehouses when he cannot apply for lien. Then damage charges has to be leveled against the buyer. Write to lien is available only is the goods are sold without credit. Even if the goods have been sold on credit and the credit period has expired this right is available to the seller. this right is also available to the seller is the buyer has become insolvent irrespective of whether the credit period has expired or not. Sellers lose the right to lien if he delivers to career for transmission without reserving the right to disposal.

- Stoppage in Transit - this is the right of the seller to abrupt the delivery process of the goods either himself or by asking the logistics handler. The right to stoppage in transit is available after Lien gets over. Only when the buyer is insolvent and goods is still in transit, this instrument is useful or else the seller cannot tell the logistics handler to stop the courier. The purpose hair is to regain possession of the goods rather than to retain them. The position of the goods for the maximum time is with the career in this case. An unpaid seller is right to stoppage in transit is not affected by any sale or pledge by the buyer except if it is done with the consent of the seller or sale is carried out by document of title and the buyer sells it to someone with good faith and value.
- Resale - if due payment has not been made by the buyer the seller has the right to sell the goods away in order to recover his costs. However the seller cannot send the goods right away and this right to resale is available only if the seller gives a notice of reasonable time to the buyer. Also this right is applicable if the goods are of perishable nature then no notice is required to resell the goods.

If the goods if not been passed on to the buyer and an agreement to sale has been reached. In this case there is no transfer of title, property or goods or ownership. Here to the seller has the rights to lien, stoppage in transit and resale the goods. Along these rights you will also have the right to with hold the delivery of the goods.

### **Rights against the Buyer:**

- Sue for price - in this situation the seller may initiate legal proceedings against the seller for non payment and the court will make sure that the seller can recover the price of goods the price of goods from the buyer.
- Sue for damages - often situation so arises that the seller in curd certain damages or losses during the sale of goods. In this situation it is the liability of the buyer to pay for those damages or else court shall initiate legal proceedings against the buyer. For example if the delivery of the goods has been stopped in transit the seller has to incur

certain loss as such as packaging and transportation costs. These can be recovered as per the rights of unpaid seller if he sues the buyer for damages.

- Sue for Interest - is the seller has not been able to recover the full payment of his goods from the buyer then he may ask co to recover the interests that he incurred during the period of non payment from interests that he incurred during the period of non payment.

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