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## Contractual Limitations on Remedies Will Be Enforced on Motions to Dismiss, Unless the Seller Does Not Provide a Remedy at All



Sellers of goods often will include an exclusive remedy provision in their purchase agreements, which (1) limits the seller’s liability to a buyer to either repair or replace the purchased goods, or refund the purchase price, and (2) waives all other available remedies. When a dispute between a seller and buyer arises, how certain can a seller be that its exclusive remedies provision will be enforced, and how early in the litigation can such enforcement be sought? According to one recent decision, the answers to these questions may lie in how the parties’ dispute unfolds pre-litigation. Unless a plaintiff can plausibly allege that he pursued and was refused every remedy available under the contract, an exclusive remedy provision that limits him to a repair or refund will be enforced on a motion to dismiss.

### **The Case: *President Container Group 11, LLC v. Systec Corp. d/b/a Systec Conveyors***

In *President Container Group 11, LLC v. Systec Corp. d/b/a Systec Conveyors*, the plaintiff alleged that it purchased a defective conveyor belt system from the defendant. The purchase contract contained an exclusive remedy provision, which limited the plaintiff to repair of the system or a refund of the purchase price. The plaintiff brought suit for breach of contract alleging the defendant sold the plaintiff a defective conveyor belt system and failed several attempts to repair and address the system’s deficit performance. In its complaint, in addition to a refund of the purchase price, plaintiff sought more than \$1.5 million consequential and special damages. The defendant moved to dismiss for failure to

state a claim under FRCP 12(b)(6), seeking, among other grounds, to enforce the exclusive remedy provision and limit the plaintiff's damages.

Judge Nelson S. Roman, applying New York law and the Uniform Commercial Code, explained that contracting parties may restrict a buyer's remedies to a refund of the purchase price or repair of the goods and that such restrictions will be enforced unless the agreed-upon remedy "fails of its essential purpose." While this determination is typically a jury question, Judge Roman concluded courts can dismiss other remedies on a Rule 12(b)(6) motion when a plaintiff cannot plausibly allege that "enforcement of the limited remedy clause would effectively deprive them of a remedy."

On the merits, Judge Roman found that the plaintiff sufficiently alleged the "repair or replacement" provision of the parties' agreement failed of its essential purpose but reached the opposite conclusion with respect to the provision restricting the plaintiff's recovery to a refund. In its motion to dismiss, the defendant contended that it had not refused to honor the refund provision but rather was awaiting the outcome of the litigation on the issue of whether it was obligated to provide a refund. Judge Roman agreed with the distinction posited by the defendant and so found the plaintiff did not plausibly allege it demanded and was refused a refund from the defendant. Based on that analysis, Judge Roman found the exclusive remedy provision in the parties' contract enforceable and dismissed the remedies sought by the plaintiff other than a refund of the purchase price. Interestingly, the court noted that "[i]f the breach of contract claim is resolved in Plaintiff's favor, and Defendant continues to refuse to issue a refund to Plaintiff, Plaintiff may then have a colorable claim that the exclusive remedy clause fails of its essential purpose." While that comment seems to leave open the possibility that the plaintiff could overcome the damages limitations in the parties' contract if the defendant eventually refuses to honor the refund provision, it is unclear how this possibility could materialize given the additional damages sought were already dismissed from the case.

#### **Takeaway**

Courts will enforce an exclusive remedy provision in contracts for the sale of goods so long as, among other things, the provision has not failed of its essential purpose and still provides the buyer with a remedy. Before filing a breach of contract claim asserting damages beyond the exclusive remedy provision in the parties' contract, attorneys representing buyers should consider whether every form of relief offered by the contract's exclusive remedy provision has been demanded and refused. If it has not, any additional remedies sought may be subject to early dismissal. On the other hand, attorneys representing sellers in receipt of a demand for relief based on a contract's exclusive remedy provision must respond with care so as not to inadvertently frustrate the purpose of the exclusive remedy provision and risk its non-enforcement.