

B700.07V Question for Verdict Form (Excuse of Performance--Prior Material Breach)

[--] Did [defendant's name] prove that [plaintiff's name] committed a prior material breach of contract?

YES ___ NO ___

If your answer to question _____ is YES, then your deliberations are complete. You should disregard the remaining numbered questions, and go to Verdict Form B at the end of this verdict and sign it. If your answer to question _____ is NO, you should then answer question _____.

Issue Raised by Plaintiff in Defense to Counterclaim

[--] Did [plaintiff's name] prove that [defendant's name] committed a prior material breach of contract?

YES ___ NO ___

If your answer to question _____ is YES, then your deliberations on the counterclaim are complete. You should disregard the remaining numbered questions, and go to Verdict Form _____ at the end of this verdict and sign it. If your answer to question _____ is NO, you should then answer question _____.

Verdict Form, Notes on Use and Comment Revised May, 2016.

Notes on Use

Use this verdict form if one party claims it is excused from performing its obligations under the contract due to the other party's prior material breach of contract, or where it is claimed the other party is prevented from enforcing the terms of the contract due to that party's prior material breach. This verdict form should be given with B700.07.

It is expected that each question will have its own number and they will be arranged logically and numbered in sequence. Each issue to be decided by the jury will have a question (found in those instructions with a "V" in the number) which must be included in the single verdict form to be constructed by court and counsel. The logical sequence of these instructions should result in a complete general verdict. The set of instructions must end with IPI 700.18V.

Comment

In *Goldstein v. Lustig*, 154 Ill. App. 3d 595, 507 N.E.2d 164, 168, 107 Ill. Dec. 500, 504 (1st Dist. 1987), the court held that a party who materially breaches a contract cannot take advantage of the terms of the contract that benefit that party, nor can that party recover damages

from the other party to the contract, citing *Robinhorne Constr. Corp. v. Snyder*, 113 Ill. App. 2d 288, 297, 251 N.E.2d 641, 645 (4th Dist. 1969) *affirmed* 47 Ill.2d 349, 265 N.E.2d 670 (1970). Subsequent appellate court decisions have applied this doctrine. *James v. Lifeline Mobile Medics*, 341 Ill. App. 3d 451, 792 N.E.2d 461, 275 Ill. Dec.230 (4th Dist. 2003), *Dubey v. Public Storage, Inc.*, 395 Ill. App. 342, 918 N.E.2d 265, 335 Ill. Dec. 181 (1st Dist. 2009) and *MHM Services, Inc. v. Assurance Co. of America*, 2012 IL App. (1st) 112171, 975 N.E.2d 1139, 363 Ill. Dec. 830.

In certain factual settings, each party may claim that the other party has committed a material breach of contract. If the jury finds that both parties are in default under the contract, neither can recover. *Ross v. Danter Associates, Inc.*, 102 Ill. App. 2d 354, 242 N.E.2d 330, 333 (3d Dist. 1968), citing *Cincinnati, Indianapolis & Western Ry. Co. v. Baker*, 130 Ill. App. 414 and 17 Am. Jr. 2d Contracts, Sec. 358, p. 797.