

"The grounds upon which a contract may be forfeited, must be contained in the contract; and a contract will not be extended by constructions to include other grounds than those specified in it."

The again, our Supreme Court in the case of WALKER VS STIMMEL. REP. in 15, N. D. 484, or 107 N.W. 1081, stated.

"Whether stipulations in a contract are conditions precedent, to a right to enforce performance is to be determined, BY THE INTENTIONS OF THE PARTIES, derived from the contract itself, by application of common sense to each particular case, rather than by technical rules of construction."

Not only do the Courts impose upon the litigants that they carry out the conditions precedent necessary, before they can bring the action or set up a defense in case of action or set up a defense in case of action against them, but they must plead and allege performance of the conditions precedent found in the written instrument they executed. The following are authorities on the foregoing statements:

THOMPSON VS KYLE 39 FLA. 592 or 63 AM. ST. REP. 193.

"Substantial performance of conditions precedent is necessary to authorize a recovery for performance of a contract and an allegation that the opposite party refuses to permit it, is not equivalent to an allegation of performance especially where the complaining party does not allege his willingness and ability to perform at the time of such refusal, or at any time prior to the expiration of the period fixed for performance."

NEW YORK -- FLAGG VS FISK 179, N.Y. 589.

MASSACHUSETTS -- NEWCOMB VS BRACKETT, 16 Mass. 161

INDIANA -- WHITE VS MITCHELL, 65 N. E. 1061, or 430, IND. APP. 342.

"Where a note was given in consideration of acts to be done by the payee, a complaint in an action therein must show a substantial compliance with the condition."

INDIANA -- JOHNSON VS BUCKLEN, 36 N. E. 1769, IND. APP. 154.

NEBRASKA --

"In suing on a contract consisting of reciprocal promises, to be concurrently performed, plaintiff must allege either performance of a tender of performance."

BARWELL & ORD IRRIGATION & POWER CO. VS WILSON 77, N.W. 762, 75 NEB. 396

From the above statements, we must logically infer, that the notes must be paid first, before the possible defendant could ask for recourse. Not only that, but a failure to meet the payments of these notes, accrues a right in the Boston Piano & Music Co. to bring suit, and Boston Piano & Music Co. is entitled to recover on these notes. If all notes are unpaid the Boston Piano & Music Co. can bring action against the possible defendant upon the purchase price.

The "Assurance of Trade" clause in your order is good in this that it contains and states justice to both parties.

Respectfully yours,
Harry Lashkowitz.