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QUESTION

A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing. (Treitel 2007, para 17-049)

Discuss the following:

1) Breach of contract
2) What are the remedies available for breach of contract?

ABSTRACT

The aim of this paper was to discuss extensively an area of the Law of contract called "Breach of contract." This paper defines the term, explains situations where an act committed by an alleged breaching party could be classified as a breach of contract. This paper elaborates on all the types of breach of contract known to Contract Law. This study was carried out using the doctrinal method of legal research. The study found that there are four types of breach of contract which are namely; Anticipatory breach of contract, Actual breach of contract, Minor breach of contract and lastly, Material breach of contract. This paper also further examined the remedies available for when a breach of contract is committed and elaborated well on them through the use of case

law. This paper ended with a conclusion on the topic of breach of contract and its present remedies and how the court process can be amended to be fair on both parties.

INTRODUCTION

The history of breach of contract is not one that one will have to think hard about.it obviously began amongst humans. It began from people not holding up to the end of a bargain amongst them and someone else or a juristic person.

Before we quickly delve into what a breach of contract is, let this writer give an insight of the terms surrounding it and what they mean. We have the terms; Breach, Contract and Remedy.

A breach according to the ***Black's Law Dictionary*** exists where one party to contract fails to carry out term, promise, or condition of the contract.[1]

A contract according to **Niki Tobi J.C.A** a contract can be defined as "an agreement between two or more parties which creates reciprocal legal obligations to do or not to do particular things".[2]

Our last definition here is the word 'remedy'. A remedy can be simply defined as an action employed to mitigate a situation of something that has already deteriorated.

A breach of contract according to the ***Black's Law Dictionary*** can be defined as the failure, without legal excuse, to perform any promise which forms the whole or part of a contract. "Breach of contract" is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement.

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[1] 6th edition p.188

[2] *Orient Bank (Nig.) Plc v. Bilante International Ltd*. [1997] 8 NWLR (pt. 515) 37 at 76

Sometimes it involves interfering with the ability of another party to fulfill his duties. It is also important to note that a contract can be breached in whole or in part.

A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing[3]

To determine whether or not a contract has been breached, a judge needs to examine the contract. To do this, they must examine: the existence of a contract, the requirements of the contract, and if any modifications were made to the contract.[4] In order to fully understand this topic, one needs to understand the requirements a case must meet for it to be considered a breach of contract some of these will be explained below;

1) The contract must be valid. It must contain all essential contract elements by law. These elements are; a valid offer, a valid acceptance, and a clear intention on the part of the parties to create binding legal relations; the existence of Consideration, and the capacity to enter into the contract. A contract isn't valid unless all these essential elements are present, so without them, there can be no lawsuit.

2) The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms by bringing forth proof to the court.

3) The plaintiff must have done everything required of them in the contract. In other words, the party claiming breach of contract must have carried out all of his or her obligations in the contract and not breached the contract in any way possible.

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[3] GH Trietel, *The Law of Contract* (10th Edition, S&M 2010)
[4] "Breach of Contract — Judicial Education Center". jec.unm.edu

4) The plaintiff must have notified or made known to the defendant of the breach before proceeding with filing a lawsuit. A notification made in writing is better than a verbal notification because it offers more substantial proof when the case may be taken to court and evidence is needed.

Moving on, there are four (4) types of breach of contract which may affect an agreement they are;

1) Anticipatory breach: An anticipatory breach can be very difficult to prove in court and this is because of its nature. An anticipatory breach of contract can be seen as one where the plaintiff suspects that the other party might breach a contract or will fail to perform his or her part of the contract in the future by doing or failing to do something that shows their intention not to complete their duties when the plaintiff senses this, he/she and can terminate the contract and sue for damages before the breach happens.
2) Actual breach: An actual breach of contract takes place when one party to a contract refuses to fulfill his or her side of the bargain on the due date or performs their obligations incompletely. This type of breach of contract refers to a breach that has already occurred, meaning the breaching party has either refused to fulfill their obligations by the due date or they have performed their duties incompletely or improperly.
3) Minor breach: A minor breach of contract can also be referred to as a partial or immaterial breach. In many cases, a minor breach means a situation where one party failed to perform some part of the contract even through the specified item or service was ultimately delivered. In such cases, the party that suffered the breach may only be able to pursue a legal remedy if they can prove that the breach resulted in financial losses. A late

delivery, for example, may not have a remedy if the breached party cannot show that the delay resulted in financial consequences.

4) Material breach: A breach of contract could be said to be is material if one party to the contract ends up with something significantly different than what was specified in the contract. When a material breach occurs, it means the non-breaching party is no longer required to perform his or her end of the deal and has a right to remedies. This means that he/she is excused from performing their obligations in the contract.

REMEDIES AVAILABLE FOR BREACH OF CONTRACT

Remedy in Contract Law can be seen as a court-ordered resolution to one party's breach of contract. According to ***Treitel***, in his book ***The Law of Contract*** he stated; "The victim of a breach of contract may resort to one or more of four remedies: specific enforcement, compensation, refusal to perform, and termination. The availability of these remedies may depend on the fault of the party alleged to be in breach."[5] Once a party has been able to establish to the court that the other party has committed a breach of contract, the most common claim is that for damages and certainly it is the one most readily granted by courts. Only in special circumstances will the equitable remedies of specific performances and injunction be granted by courts.[6]

There are some remedies available for when a party commits a breach of contract which will be explained below;

1) Rescission: In contract law, rescission is an equitable remedy which allows a contractual party to cancel the contract. Parties to a contract may rescind if they are the victims of a

[5] GH Trietel, *The Law of Contract* (10th Edition, S&M 2010)
[6] I.E Sagay, *Nigerian Law of Contract* (2nd edition, Spectrum Books 2000) p.618

vitiating factor, such as misrepresentation, mistake, duress, or undue influence.[7] In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist. Rescission gives room to the non-breaching party to essentially be released from performance of contractual obligations. Rescission is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.

2) Restitution: This in contract law simply means the process of the court restoring both parties to the state they were in before there was a contract creation. It is a remedy designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff. This can be more understood in the case of ***Bush v Canfield***[8] in this case, the plaintiffs contracted with the defendant to purchase and get a delivery of flour and the defendant did not hold up the end of the bargain the court held that the remedy of restitution should be applied to the case and that the money should be returned to the plaintiffs.

3) Specific Performance: An order of specific performance can be seen as an equitable remedy where a court issues an order requiring the breaching party to perform their contractual obligations. Specific Performance is only available in certain circumstances like when money damages are inadequate to compensate the plaintiff for a breach. This remedy is typically used when the goods or services are so unique that no other remedy

[7] *Abdallah Inc. v. Martin*, 242 Minn. 416 (Minn. 1954)
[8] 2 Conn. 485 (1818)

could suffice. In the case of ***Beswick v Beswick***[9] PB was in poor health and made an agreement with the defendant his nephew, that would continue to be in place after he died which involved the defendant paying money to PBs wife but the defendant no longer carried out his contractual obligations upon the death of PB. PBs widow brought an action as administrator of PB's estate and also in her personal capacity claiming for specific performance. The court granted the claim.

4) Compensatory Damages: The award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit (consideration) of the agreement they entered, or the net gain they would've accrued had it not been for the breach. This type of remedy is known as "compensatory damages."

5) Punitive Damages: Punitive damage is a type of damage remedy also known as "exemplary damages", it is awarded to punish or make an example of the wrongdoing of a party that acted wilfully, maliciously or fraudulently. The court wards this kind of damage when the breaching party in question premeditatedly breached the contract with an ulterior motive to get away with it. Punitive damages are usually awarded in addition to compensatory damages. However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal.

CONCLUSION

In summary, we should once again note that a breach of contract is a legal cause of action in which a binding agreement is not honored by one or another more of the parties. In the remedy aspect when it comes to breach of contract, there are other different remedies that

[9] [1968] AC 58

can be applied to different cases such as liquidated damages, injunction and so on. It is the opinion of this which suggests that the court should investigate more on the claims of alleged breach of contract to ensure fair judgement.

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