**18/Law01/088**

**Zabrina Elisha**

**LPB 202**

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:

Breach of contract

What are the remedies available for breach of contract.

Once a party to a contract establishes to the satisfaction of the court that the other party has committed a breach of contract. A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation such as the failure to deliver a promised asset.

A contract is binding and will hold weight if taken to court. To successfully claim a breach of contract, it is imperative to be able to prove that the breach occurred.

Where two parties have made a contract which one of them has broken the damages which the other party ought to receive in respect of such a breach of contract should be such as fairly and reasonably be considered a either arising naturally.

breach of contract is when one party breaks the terms of an agreement between two or more parties. This includes when an obligation that is stated in the contract is not completed on timeSometimes the process for dealing with a breach of contract is written in the original contract.

A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.

A breach of contract can happen in both a written and an oral contract.

The parties involved in a breach of contract may resolve the issue among themselves, or in a court of law.

There are different types of contract breaches, including a minor or material breach and an actual or anticipatory breach.

**Possible Reasons for the Breach**

The court will assess whether or not there was a legal reason for the breach. The defendant might claim that the contract was fraudulent because the plaintiff either misrepresented or concealed material facts. The defendant might claim that the contract was signed under duress from the plaintiff, who applied threats or used physical attacks to compel the defendant to sign the agreement. Or there might have been errors made by both the plaintiff and the defendant that contributed to the breach.

The most common claim is that for damages, and certainly it is the most readily granted type of remedy by courts. Only in specific circumstances will the equitable remedies of specific performance and injunction be granted by courts. The underlying basis for the common law remedy of damages was laid down by *Parke. B in Robinson v. Hartman as follows;*

*The rule of the common law is that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation with respect to damages, as if the contract had been performed.*

An unqualified application of a wild principle will prove too harsh until the modern rule was finally crystallized in this classic passage from that judgement of *Alderson. B in Hadley v. Baxendale.*

The rule in *Hadley v.Baxendale* *Supra* has been divided into two parts or branches, the first dealing with the normal damage that occurs in the usual course of things and the second with abnormal damage that arises because of special or exceptional circumstances.

Further elaboration and clarification of the rule in *Hadley v.Baxendale* was given by *Asquith, L.J, in Victoria Laundry v. Newman Industries which came up in 1949, almost a hundred years later.*

*failing to perform any term of a contract, written or oral, without a legitimate legal excuse. This may include not completing a job, not paying in full or on time, failure to deliver all the goods, substituting inferior or significantly different goods, not providing a bond when required, being late without excuse, or any act which shows the party will not complete the work.*

The remedies are:

1. Suit for rescission,

2. Suit for damages,

3. Suit for quantum meruit,

4. Suit for specific performance,

5. Suit for injunction.

**1. Suit for Rescission**

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e. cancellation, of the contract. This will enable him to be free from his own obligations under the contract.

In contract law, the term “rescission” refers to the undoing, or “unmaking” of a contract between parties. Rescission of a contract may be ordered by a court as an equitable remedy in a civil lawsuit, and is intended to bring the parties as close to the same position they were in before they entered into the contract as possible. While there are a number of reasons for which a contract may be cancelled, not all contracts may be rescinded. To explore this concept, consider the following rescission definition.

Use and Effect of Contract Rescission

Contract rescission requires that all parties give back any benefits they have received while the contract was in force, and be returned to their original states, as though the contract had never been formed in the first place. While some jurisdictions use the words rescission and cancellation interchangeably, others use the term rescission to refer to making something void, or for reversing a contract or a judicial decision. For example, a higher court can rescind a judgment based on errors made by the court during a criminal trial.

Typically, contract rescission can only be effected through equitable or legal means. When effected through equitable means, a judicial decree voids the contract and returns the parties immediately to the state in which they were before they entered into the contract. The court does not award either party damages. In this case, rescission prevents either party from taking any future action regarding the contract. As a legal remedy, the rescinding party provides the other party with notice of rescission or cancellation, and returns any monies or other benefits received from the contract.

**2. Suit for Damages**

The word ‘damages’ means monetary compensation for loss suffered. Whenever a breach of contract takes place, the remedy of ‘damages’ is the one that comes to mind immediately as the consequence of breach.

A breach of contract may put the aggrieved party to some disadvantage or inconvenience or may cause a loss to him. The court would desire the guilty part to accept responsibility for any such loss of the aggrieved party and compensate him adequately.

The quantum of damages is determined by the magnitude of loss caused by breach

Types of Damages (Sec.73)

When the aggrieved party claims damages as a consequence of breach, the court takes into account the provisions of law in this regard and the circumstances attached to the contract. The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach.

The court would first identify the losses caused and then assess their monetary value.

Sec.73 of the Act lays down the basic guidelines.

Keeping in view the provisions of Sec. 73 of the Act and the court judgments, the aggrieved party would be entitled to one of following types of damages, depending upon the circumstances of the case:

a. General or ordinary damages.

b. Special damages.

c. Exemplary or vindictive damages. d. Nominal damages.

1] Ordinary damages

On the breach of a contract, the suffering party may incur some damages arising naturally, in the usual course of events. Even if the suffering party knew about the likely damages if the contract was breached, he can claim compensation for such losses.

2] Special Damages

A party to a contract might receive a notice of special circumstances affecting the contract. In such cases, if he breaches the contract, then he is liable for the ordinary damages plus the special damages.

3] Vindictive or Exemplary Damages

There are two scenarios for awarding vindictive or exemplary damages:

Breach of a promise to marry because it causes injury to his/her feelings

Wrongful dishonor of cheque by a banker because it causes loss of reputation and credibility.

In case of a wrongful dishonor of cheque from a businessman, the compensation will include exemplary damages even if he has not suffered any financial loss. However, a non-trader is not awarded heavy compensation unless the damages are alleged and proved as special damages.

4] Nominal Damages

If a party to a contract files a suit for losses but proves that while there has been a breach of contract, he has not suffered any real losses, then compensation for nominal damages is awarded. This is done to establish the right to a decree for a breach of contract.

5] Damages for Deterioration caused by Delay

In cases where goods are being transported by a carrier and he delays the delivery of goods causing them to deteriorate, the affected party can file a suit for damages for deterioration by the delay. Deterioration can mean physical damage to the goods and/or loss of a special opportunity for sale.

6] Pre-fixed damages

During the formation of a contract, the parties might stipulate payment of a certain amount as compensation upon the breach of the contract. This amount can be a reasonable estimate of the likely loss in case of a breach or a penalty.

**Suit for quantum meruit**

The term quantum meruit means ‘as much as earned’. It implies ‘a payment deserved by a person for the reason of actual work done’.

When a party has done some work under a contract, and the other party repudiates the contract or somehow the full performance of the contract becomes impossible, then the party who has done the work can claim remuneration for the work under a suit for quantum meruit.

Likewise, where one party has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied a promise to pay quantum meruit.

Even in the case of where the person who has done the work is the one who is guilty of breach of contract, he too is entitled to be paid quantum meruit. But there is an exception – such a contract must have involved work that was indivisible and it must not have been a contract.

A formal, written agreement is not required for a contractual relationship to exist. When one individual provides services to another, who has either requested those services, or freely accepted them, knowing they are not performed free of charge, a contract is seen to exist. In the event the person receiving services refuses or fails to pay, the provider of services may file a civil lawsuit seeking payment.

The plaintiff (provider) would need to show the court that the defendant (receiver) requested the services, or that he had an opportunity to decline the services if he did not want to pay for them. The rendering of services without giving the defendant an opportunity to decline does not generally constitution acceptance under the theory of quantum meruit.

**Suit for specific performance**

In certain cases of breach of a contract, damages may not be an adequate remedy. Then the Court may direct the party in breach to carry out his promise according to the terms of the contract. This is a direction by the Court for specific performance of the contract at the suit of the party not in breach. But in general, Courts do not wish to compel a party to do that which he has already refused to do.

Chapter 2 of the Specific Relief Act, 1963 lays down detailed rules on the specific performance of Contracts.

**Cases where specific performance may be ordered:**

(i) Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non- performance

(ii) Where monetary compensation will not be adequate relief. Example a contract for sale of a rare antique.

(iii) Where plaintiff’s property is held by the defendant in the capacity of his agent or trustee

(iv) Where the act to be done is in performance of trust

**Cases where specific performance will not be ordered:**

(i) Where monetary compensation is adequate relief

(ii) Where contract is made by the agent or trustee in violation of his powers

(iii) Where the contract is of a personal nature, such as a contract to marry or a contract of service

(iv) Where the court cannot supervise the performance of promise as it involves performance of a continuous duty

(v) Where the contract is in its nature revocable

(vi) Where the contract is made by a company in excess of its powers as laid down in its Memorandum of Association

**Suit for Injunction**

‘Injunction’ is a court order or decree to a person asking him to refrain from doing a contemplated act or from continuing an ongoing act. Such an order of injunction becomes a remedy for the aggrieved party when the court orders the guilty party to refrain from doing precisely that which is causing the breach of contract.

In a way, injunction is a mode of securing the specific performance of the negative terms of a contract. But for the performance of the positive terms of the contract, the aggrieved party may seek other remedies like damages.

for injunction is a very common and effective remedy against any mischief played by a third-party. All the civil courts are empowered to issue injunctions. An injunction may be issued for and against individuals, public bodies or even State. Disobedience of injunction is punishable as contempt of court.In India, some of these points have been incorporated into rules of jurisdiction by being enacted as sections of the Specific Relief Act. In other words civil suit is an effective legal remedy by any person against the other seeking a Leif of restraint under the facts when the person approaching the court is aggrieved by any mischief of the other person.

They may be stated as below:

An injunction will not be issued

(i) where damages are the appropriate remedy,

(ii) where an injunction is not the appropriate relief,

(iii) where the plaintiff is not entitled to an injunction on account of his conduct,

(iv) where the contract cannot be specifically enforced,

(v) where the injunction would operate inequitably.

The cases in which an injunction is to be granted in preference to damages where a property is concerned to have been summarized in Section 38, Specific Relief Act.

1. Kind of injunction: Injunctions are either temporary (interlocutory) or perpetual. They are defined in Section 37, Specific Relief Act, which reads as under:

Reference

Sagay: Nigerian law of contract

Legal helpline

Legal dictionary