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**BREACH OF CONTRACT**

**INTRODUCTION**

It is known that, contract deals with promises, agreements made and entered into by two or more persons who by reason of the terms adopted or written their contract are bound to perform in accordance to the terms of the contract fully. Below I will be discussing on the breach of contract but before that we have to define certain important terms, which are; contract and breach.

**What is a Contract?**

A contract can be said to be an agreement in which one party or each party, gives a promise or undertaken to the other party. Contract is a promise or set of promises for the breach which the law gives a remedy or the performance of which the law recognizes in some way as a duty. It also deals with the obligations that are imposed by the agreement, the laws that are recognized and applicable and the remedies which are available if the obligations agreed on are not performed. Contract imposes a duty of performance on the parties involved. In *Robinet Nig. Ltd v. Shell Nig. Gas Ltd****[[1]](#footnote-1),*** the Court of Appeal defined contract as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

According to the Court of Appeal in *Jegede v. Mayor Engineering Co. Ltd****,[[2]](#footnote-2)*** not everystatement made between persons can be considered as a promise, agreement or contract, therefore it is important to identify the ingredients that are required for parties to believe that a binding contract has been formed, between them. For a valid contract to be said to have been formed, the following must be present – **offer**, **acceptance**, **consideration,** **intention to create legal relations** and **capacity to contract.** Where the listed above are missing then you can’t have a valid contract formed, the contract will be invalid.

**What is a Breach of Contract?**

A Breach can be said to be an act of disregarding laws, rules, contracts, agreements or promises, where a person violates or goes against laws set or promises made that can be said to be a breach. Therefore, a *breach of contract is an act or event resulting from the failure of one contracting party to perform a primary obligation which has the effect of depriving the other contracting party of substantially the whole benefit which it was the intention of the parties that he should obtain from the contract.[[3]](#footnote-3)*

The act of a party to contract without lawful excuse fails or refuses to perform what is due from him under the contract, performs defectively or incapacitates himself from performing. When there is an existing valid contract between two parties, each party to that contract now has a contractual duty of performance to the other contracting party and where one party fails to perform or refuses to perform without having any legally acceptable reason(s) for not carrying out his duty to the contract, or even carries out hi duty but does it not according to the agreement in their contract, it is said that he has breached the existing contract.

Both parties in their contract agreement, must have stated their respective duties and all that their respective duties entail, how it will be carried out, when it will be carried, to what extent or degree it is to be carried out, timeframe for performance etc., these and more depending on the provisions of their contractual agreement serve as guidelines, laws, rules etc. for the contractual parties to follow and abide by to the fullest.

**REMEDIES FOR BREACH OF CONTRACT**

As discussed above, a breach of contract occurs when a party fails to perform all or any of the terms. Once a party top a contract establishes to the satisfaction of the court that the other party has committed a breach, claims sought by the affected is commonly for **damages,** and it will be proper to say it is the most readily granted type of remedy by court. It is only in rare and special circumstances that the court grants equitable remedies such as **specific performance** and **injunction.**

When a contract is breached the injured party has several remedies available to him against the defaulting party. Some of these remedies include: **damages, injunction, specific performance, rescission**, etc.

1. **DAMAGES**

The Supreme Court in *Beta Glass Plc v. Epaco Holdings Ltd*[[4]](#footnote-4), defined damages as:

“Pecuniary compensation obtainable by a successful party in an action for a wrong which is either of tort or a breach of a contract”.

The underlying basis for the common law remedy of damages was stated by Parke .B. in *Robinson v. Harman [[5]](#footnote-5) as follows*

“The rule of 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”.

The main purpose for awarding damages for breach of contract is to put the injured, i.e., innocent party as far as the money can do it, in the same position as if the contract had been performed. The injured party is not expected to get more in damages than the loss which he actually suffered. Therefore, where has suffered no loss he may still maintain his action because there has been a breach, but he will get only nominal damages, i.e., small amount.

In *Hadley v. Baxendale*[[6]](#footnote-6), where the modern rule of the common law of contract was stated, two main criteria for the award of damages was established namely;

1. damages awarded according to the normal damage that occurs in the usual course of things, and
2. damages awarded for abnormal damage that arises because of special or exceptional circumstances.

Generally, damages are awarded for loss that could be reasonably considered as a consequence of the breach of contract such that could have been fairly or reasonably contemplated by both parties. The assessment of damages is calculated on the loss sustained by the injured party which loss was either in contemplation of the contract or is an unavoidable consequence of the breach.

Liquidated damages are damages which the parties to a contract have agreed in advance as payable in the event of a breach. this means that the terms of the contract specify a sum payable for breach. This tends to reduces the likelihood of serious dispute between parties and it saves time which is often a precious valuable commodity in business.

**Kinds of Damages**

1. **General and Special Damages**

In *G.K.F.I. (Nig.) Ltd v. Nitel Plc*[[7]](#footnote-7), the supreme court drew a distinction between General damages and Special damages. According to the court:

“General damages are such as the law will presume to be the direct natural or probable consequence of the act complained of. On the other hand;

Special damages are such as the law will not infer from the nature of the act. They don’t follow in the ordinary course”.

General damages are the actual sum of money necessary to compensate the injured party for the damages sustained as a result of the breach. While Special damages is the amount paid das compensation to the injured party for the loss sustained beyond general damages and this must be specially proved to the satisfaction of the court.

1. **Exemplary Damages**

Exemplary damages are damages on an increased scale over and above special or actual or general damages, awarded in aggravated circumstances. They are punitive in nature.

1. **Nominal Damages**

Nominal damages are damages awarded when the defendants breach has caused no loss to the plaintiff, or where, although he has suffered a loss he is unable to prove any loss flowing the breach of the contract.

1. **INJUNCTION**

Injunction is another remedy available to an injured party in a contract, the is an equitable remedy to a breach of contract. An in junction is an order or decree by which one party to an action is required to do or to refrain from doing a particular thing. Injunctions are either restrictive or mandatory.

In a general sense, every order of a court which commands or forbids is an injunction but in legal sense, *an injunction is a judicial process or mandate operating in persosnam by which upon certain established principles of equity, a party is required to do or restrained from doing a particular thing*[[8]](#footnote-8)*.*

TYPES OF INJUNCTION

1. **Ex parte Injunction:** this is granted and designed to be provisional in nature. It is an application made to the court in litigation without the other party or parties in the litigation being put on notice.
2. **Interlocutory Injunction:** this is application made on notice to the other side to keep the *status quo* until the determination of the suit.
3. **Mareva Injunction:** this is an interlocutory or even an ex parte injunction restraining a defendant in civil litigation from disposing of assets so as to render itself judgement proof. It operates in personam against the defendant and does not confer upon the plaintiff any rights in the assets until judgement is given in favour of the plaintiff.
4. **Perpetual Injunction:** this is a post-trial relief. It is usually grated after a full trial of the case has been done, it is directed towards the final settlement and enforcement of the rights of the parties which are in dispute.
5. **SPECIFIC PERFORMANCE**

Specific performance is a remedy contrived in England by Court of Equity in a system of law administered by the Court of Chancery as against that administered by common law courts. An order of specific performance, is one by which the court directs the defendant to perform the contract according to its terms. This is a Court ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate and inadequate, as when the sale of land or a rare article is involved. Specific performance is an order directed against the defendant personally.

The remedy of specific performance enforces the terms and it may therefore be contrasted with the remedy of damages, which is compensation for non-execution of the terms of the contract. This remedy is not granted as of right but at the discretion of the court, the discretion is exercised if the award of damages will not adequately compensate the injured party for the loss suffered as a result of the breach.

In *Fakoya v. St. Paul’s Church Shagamu* [[9]](#footnote-9)the court stated that:

*“In principle, the basis of the remedy of specific performance is not the conversion of equitable interest to legal interest, but the enforcement of a contract where damages would not afford a complete remedy, and although specific performance is more frequently granted where the contract is for sale of land than in any other case…”*

**CONCLUSION**

Once a breach of contract has occurred whether be it by refusal or failure to perform the terms of a contract or even not performing in accordance to the terms, the injured party in the contract has certain remedies available for him in court to be able to recover to a good extent what he has loosed as a result of the breach by the other party

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2. (2013) LPELR 20284 (CA) [↑](#footnote-ref-2)
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4. (2011) 4 NWLR (Pt. 1237) 223 [↑](#footnote-ref-4)
5. (1848) 1 Ex. 850 at p. 855, [1843-60] All E. R. 383 at p. 385 [↑](#footnote-ref-5)
6. (1843-60) All ER 461 at p. 465, [1854] 9 Ex. 341 [↑](#footnote-ref-6)
7. (2009) 11 NSCR 1 at p. 37 [↑](#footnote-ref-7)
8. Black’s Law Dictionary, p. 800 [↑](#footnote-ref-8)
9. (1966) 1 ALR Comm. 459 [↑](#footnote-ref-9)