NAME: OGUNGBANGBE BOWOFOLA DRAKE

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A BREACH OF CONTRACT IS COMMITTED WHEN A PARTY WITHOUT LAWFUL EXCUSE FAILS OR REFUSES TO PERFORM WHAT IS DUE FROM HIS 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 AVALIABLE FOR BREACH OF CONTRACT?

**BREACH OF CONTRACT**

Breach of contract occurs where one of the parties seeks to reside from the contract or refuse to perform his part of the obligation arising from the contract. A party who seeks remedy on grounds of breach of contract seeks to enforce his rights under the contractual obligations, as such must first establish that he has fulfilled all the condition precedent and that he has performed all the terms which ought to lie upon his shoulders for performance or that no obligation whatsoever arising from the contract lies within his domain for performance. If any default leading to the breach of contract is traceable to such party, then he cannot succeed in the enforcement of the breached contract.[[1]](#footnote-1)

**REMEDIES FOR BREACH OF CONTRACT**

The following remedies are available to a contractual party against whom a breach has occurred in law of contract.[[2]](#footnote-2)

1. Specific Performance
2. Injunction
3. Award of damages
4. Quantum merit

**SPECIFIC PERFORMANCE:**

This is basically an equitable remedy which enables court to order the defaulting defendant to implement his part of the undertaking arising from the contract exactly as to the terms originally agreed upon. Specific performance is usually granted where claim for damages will not adequately take care of loss suffered by the innocent partly due to the breach. A plaintiff relying on this remedy must show good faith in the sense that he has dealt fairly and equitably in the contract with the defaulting party.

However, under Contract of service or Service contract there can’t be specific performance[[3]](#footnote-3) and the master can terminate such contract with his servant at any time and for any reason or for no reason at all except such contract is one with statutory flavour.[[4]](#footnote-4)

If, however the terminates contract in an unwarranted manner then the remedy lies in damages for breach of contract. In the celebrated case of ***NIGERIA TELECOMMUNICATIONS PLC V. I.A. OCHOLI [2001] F.W.L.R. (pt7) p.254 act 289.***[[5]](#footnote-5) The plaintiff now respondent was employed by the defendant now appellant as an assistant technical officer and received several promotions until he was accused of illegal transfer of telephone lines for which accusation he received and answered query. Subsequently and within 24 hours of received of his promotion, the plaintiff was served a letter terminating his appointment on the grounds that his services were no longer needed. The plaintiff sued successfully at the trial court but upon appeal to the court of appeal Jos division appellant court was of the view that specific performance in contract of service against the master is not tenable as such, set aside the orders of the lower trial high court. This is in compliance with the cardinal principal of common law which is also well rated in Nigerian Law that the remedy in such circumstances lies in damages for breach where same is proved. This position has been re-echoed and reaffirmed by the supreme court in the acknowledge case of ***OLARENWAJU V. AFRIBANK NIGERIA PLC [2001] F.W.L.R. (pt72).*** Where the appellant who was deputy manager with the respondent bank was dismissed from service after being issued with the written query and subsequent suspension. He sought am order of reinstatement or specific performance of contract of service. His claim for reinstatement was granted by the trial high court but on appeal, both the Court of Appeal and the Supreme Court re-echoed the solid position of our law as they assert that specific performance in contract of service are untenable by the servant against the master.

**INJUNCTION**

This is another form of equitable remedy available to an innocent party which is to prevent or restrain party from breaching a contract or to enable court compel a party to refrain from doing a specific act which amount to or result in breach of contract. In the case of ***WANER BROS. PICTURES INC.V. NELSON***, a film actress signed an undertaking which the plaintiff, her employers, not to act for any other organisation. An injunction was issued to restrain her from committing a breach of this stipulation when she attempted to enter the employment of a third party. Also the case of ***AFRICAN SONGS LTD. V. SUNDAY ADENIYI***, a musician who undertook to perform and record solely for the plaintiff company, was restrained for the remaining period of the contract from recording for himself or for any other company.

On the other hand, where the injunction is mandatory, it is restorative in its effect and nor merely preventive. It directs the defendant to undo what he has already done in a breach of contract. For example, he may be compelled to demolish a building which he has erected in contravention of the contract. It should, however, be stated that this type of injunction is very rarely granted.

**AWARD OF DAMAGES**

Damages of breach of contract are compensation to the plaintiff for contractual damage, loss, or injury suffered as a result from the breach of contract. It is meant as far as money can do it, for plaintiff to be placed in the same position as if the contract has been performed otherwise technically as *restitutio in interegnum.*

An innocent party against whom a breach of contract occurs may also exercise the right to sue claiming damages for breach of contract.

An action for damages on a breach of contract may come as follows;

1. Liquidated damages
2. Unliquidated damages
3. Compensatory damage
4. Expectation damages
5. Consequential damages
6. Punitive or Exemplary damages
7. Nominal damages
8. Restitution

Liquidated Damages:

This arises where there had been a mutual knowledge of amount of assessment of loss due to a breach. The anticipated loss must have been assessed earlier by the parties and agreed upon that in the event of breach then the defaulting party will be required to pay for the loss as earlier agreed.

Unliquidated Damages:

Under this aspect of damages, the amount to be paid by the defaulting is not foreseeable and cannot be calculated. E.g. is a tortuous liability. {Tort Law}

Unliquidated damages also arise in order to compensate the innocent party for the loss he suffers due to the defendant’s breach or tort feasors act.

Compensatory Damages

These are damages for monetary amount that is intended to compensate the non- breaching party for losses that result from the breach. The aim is to “make the injured party whole again” there are two types of compensatory damages, Namely;

1. Expectance damages:

These are damages that are intended to cover what the injured party expected to receive from the contract. Calculation are usually straight forward as they are based on the contract itself or market values.

1. Consequential Damages:

These are intended to reimburse the injured party for indirect damages other than contractual loss. For example, loss of business profits due to an undelivered machine in order to recover, the injuries must flow from breach” that is, be a direct result of the breach and be reasonably foreseeable to both parties when they enter into the contract.

Note further, an example of Compensatory damages is seen in the case of ***LIEBECK.V. MC DONALDS RESTAURANT.*** In a well public 1992 case, 79-year-old Stella Liebeck spilled a cup of Mc Donald’s Coffee in her laptop sustaining third degree burns to both legs. The severity of the full thickness burn required skin grafts. When Mc Donald’s denied her request to pay her medical bills, she filed a law suit. In the course of the case, it was discovered that Mc Donald’s had received hundreds of other complaints from customers that their coffee had caused severe burns, and that the corporation’s Operations Manual specified the coffee was to be kept at 180 to 190 degree Fahrenheit. It is known that liquid at this temperature. If spilled on a person causes third degree burns in three to seven seconds.

A jury awarded Liebeck $200,000.00 in compensatory damages to pay for medical bills and other related expenses, because it was clear that the company knew their coffee was dangerous and could cause serious injury, yet did nothing to rectify the situation. The jury also awarded Liebeck $2.7 Million in punitive damages, which amounted to the company’s sales revenue from just two days of coffee sales.

Punitive or Exemplary Damages:

These damages are intended to punish the breaching party and to deter him or her from committing any further breaches. These damages are rarely awarded in contract cases, though they may be available in some fraud or tortuous cases that overlap with contract law.

Nominal Damages

These are damages that are awarded when the injured plaintiff does not actually incur a monetary loss, or the economic harm cannot really be calculated, but the judge wants to show that the winning party was in the right. They are typically rarely awarded in contract cases because breaches of contract usually involve sort of loss to one party, however they might be awarded in tort cases that cross over with breach of contract case.

Note that: the plaintiff will still need to prove all the essential elements of a breach of contract claim in order to receive nominal damage

Restitution

Restitution is not really damages per se, but rather is equitable remedy awarded to prevent the breaching party from being unjustly enriched. For Instance, if one party has delivered goods but the other party has failed to pay, the party that delivered the goods may be entitled to Restitution, that is the cost of the delivered goods in order to prevent the unjust enrichment.

**QUANTUM MERIT**

This is also a form of remedy awarded by the court with the aim of compensating the plaintiff to the extent of service rendered before the breach or to qualify or graduate the extent of contractual performance. It occurs to afford reasonable remuneration for part performance and non-completion of the contract which is actually not the fault of the plaintiff.

In every circumstance however, damages in cases of breach of breach of contract are usually determinable in any of the following situations: it must either be;

1. Fairly or reasonably expected to arise naturally that is, according to the unusual course of things from the breach itself; or
2. Reasonably supposed to have been in the contemplation of both parties at the time the contract was made as the probable result of the breach of it.

In the case of ***WANER & WANER.V. F.H.A.[[6]](#footnote-6)*** where the respondent wrongfully terminated a building contract which was already partly completed, the supreme court held that the injured contractor had the opinion of either suing for damages is normally the loss of profits for unfinished balance, plus the value of work done at contract prices, or ignoring the contract and claiming a reasonable price for work and labour done in quantum meruit. Quantum meruit will normally be chosen if a reasonable price is higher that contract prices.[[7]](#footnote-7)

As Alderson, B., declared in ***BERNARDY.V. HARDING***, where on party has absolutely refused to perform, or has rendered himself incapable of performing his part of the contract, he puts it in the power of the other party either to sue for breach of it, or rescind the contract and sue on a quantum meruit for the work actually done.[[8]](#footnote-8)

1. See ***Aderniran. V. Olagunju*** (2002) F.W.L.R. part. 14, 2335; ***Ezenwa. V. Ekong*** (1999) 11 N.W.L.R. part. 649, 478. [↑](#footnote-ref-1)
2. See **Kingsley N. Ogbaegbe Esq**, Fundamentals of Law of Contract. Pg.111 [↑](#footnote-ref-2)
3. See also ***Joseph Ifeta. V. Shell Petroleum Development company of Nigeria Ltd***. (2006) All F.W.L.R. part 314 p. 305 at p. 321 [↑](#footnote-ref-3)
4. See ***Olaniyan. V. University of Lagos*** (1985) 2 N.W.L.R. part 9 p. 599; also ***Shitta-Bey. V. Federal Civil Service Commission*** (1981) IS.C. 40 [↑](#footnote-ref-4)
5. (2001) F.W.L.R. part 74 p. 254 at 289-290; see also ***C.B.N. V. Jidda*** (2001) F.W.L.R. part 47 p. 1065. [↑](#footnote-ref-5)
6. [1995] 4 N.W.L.R (pt. 389) 287 [↑](#footnote-ref-6)
7. See also Law and practice of building contract by Keating 3rd ed., pp. 158-9 [↑](#footnote-ref-7)
8. See ***I. E. Sagay***, Nigerian Law of Contract 2nd Edition Pg. 676 [↑](#footnote-ref-8)