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Breach of Contract

Breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained-for exchange is not honoured by one or more of the parties to the contract by non-performance or interference with the other party's performance. Breach occurs when a party to a contract fails to fulfil its obligation(s), whether partially or wholly, as described in the contract, or communicates intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract[1]. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party. If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

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. Only after this can a judge make a ruling on the existence and classifications of a breach. Additionally, for the contract to be breached and the judge to deem it worth of a breach, the plaintiff must prove that there was a breach in the first place, and that the plaintiff held up his side of the contract by completing

1. Wema Bank Plc V. Alhaji Sola Oloko (CA/I/88/2009)[2014]NCGA 3 (27 February 2014)

Everything required of him. Additionally, the plaintiff must notify the defendant of the breach prior to filing the lawsuit.

A breach of contract may take place when a party to the contract:

- fails to perform their obligations under the contract in whole or in part
- behaves in a manner which shows an intention not to perform their obligations under contract in the future or
- The contract becomes impossible to perform as a result of the defaulting party's own act.

The general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a:

- breach of warranty;
- breach of condition; or
- Breach of an in nominate term, otherwise known as an intermediate term.

There is no “internal rating system” within each of these categories (such as “a serious breach of warranty”. It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or in nominate term. In terms of priority of classification of these terms, a term of a contract is an in nominate term unless it is clear that it is intended to be a condition or a warranty.

Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfil their end of the contract agreement. Breach of contract is the most common reason contract disputes are brought to court for resolution.

General Requirements; A breach of contract suit must meet four requirements before it will be upheld by a court.

- The contract must be valid. It must contain all essential contract elements by law. A contract isn't valid unless all these essential elements are present, so without them, there can be no lawsuit.
- The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.
- The plaintiff must have done everything required of them in the contract.
- The plaintiff must have notified 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.

Types of Breach of Contract

Breach of contract can be material, partial, or anticipatory.

A **material breach** is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract.

A **partial breach** is not as significant and does not normally excuse the aggrieved party from performing their duties.

An **anticipatory breach** is one where the plaintiff suspects that the offending party might breach a contract by doing or failing to do something that shows their intention not to complete their duties. Anticipatory breaches can be very difficult to prove in court.

Defences to a Breach of Contract Lawsuit [2]

As in all lawsuits, the defendant—the party being sued—has a legal right to offer a reason why the alleged breach is not really a breach of contract or why the breach should be excused. In legal terms, this is called a defence. Common defences against a breach of contract include:

Fraud[3]: This means "knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." When a defendant presents this defence, they're saying that the contract isn't valid because the plaintiff failed to disclose something important or because they made a false statement about material or important fact. The defendant must establish that the fraud was deliberate.

Duress: This occurs when one person compels another to sign a contract through physical force or other threats. This, too, can invalidate a contract because both parties did not sign from their own free will, which is a standard contractual prerequisite.

Undue influence: This is similar to duress. It means that one party had a power advantage over the other and that they used that advantage to force the other to sign the contract.

Mistake: An error committed by the defendant can't invalidate a contract and take away a breach of contract case, but if the defendant can prove that both parties made a mistake about the subject matter, it might be enough to invalidate the contract and this would serve as a defence.

Statute of Limitations[2]: Many types of cases have time limits imposed by law, deadlines by

2. Statutes of Limitation to Breach of Contract

3. Statutes of Fraud

which a case must be brought and filed. A breach of contract case can be thrown out of court if the defendant can show that the statute of limitations has expired. The Statute of limitations case has a basis on time frames that are set by individual state law so they can vary. They average from three to six years for a written contract.

The remedies available for a contract breach include[4]:

- **Monetary damages**. The party who breached the contract can be held responsible for the losses caused by the breach. Both general or expectation damages and consequential damages can result from a breach of a contract. General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause. For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work.
- **Specific performance.** In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer

4. Hadley V Baxendale

got the unique one-of-a-kind painting that he contracted for[5].

Rescission. Rescission allows the non-breaching party to essentially be released from performance obligations. Recession 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.

- **Liquidation damages.** Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. These clauses will be upheld as long as they are fair.

5. Victoria Laundry (Windsor) Ltd v Newman Industries Ltd

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