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200L

 LAW OF CONTRACT

1. 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 exchanged is not honored by one or more of the parties to the contract by non- performance or interference with the other party performance. A breach occurs when a party to a contract fails to fulfill its obligation under the contract where there is breach of contract, which resulting to damages will have to be paid by the party breaching the contract to the aggrieved person party. A breach can occur when a party fails to perform on time, does not perform in accordance with terms of agreement, or does not perform at all. Accordingly, a breach of contract will usually be categorized as either a “material breach” or an “immaterial breach” for the purpose of determining the appropriate legal solution or “remedy” for the breach.

Material breach of contract i.e. failure of one party to perform his obligations under the contract in such a way that the value of the contract is destroyed, exposes that party to liability for breach of contract damages. For example, if the contractor in the above example had used thin plastic not intended for the rigors of maintaining a pond which could not be expected to last as long as the pond liner, the homeowner might recover the actual cost to correct the material breached, which would include removing the pond and replacing the liner. A material breach of contract may relieve the aggrieved party of his own obligations under the contract, and give him the right to sue for damages. Such a total breakdown of the material provisions of a contract may be referred to as a “fundamental” or “repudiatory”.

Fundamental breaches also often end up in the court, as this kind of violation allows the aggrieved individual to stop performance of the contract and sue for damages. For example, if u signed a lease for a new apartment, but showed up on moving day only to find out someone else living there, your landlord is in fundamental breach of lease contract. You could sue for damages and to make him rent the apartment to you under the original agreement.

An anticipatory breach allows one person to say the contract is broken when it becomes evident the other party will not execute his or her end of the contract within the allotted time. Let’s say your neighbor hires you to paint her house, for example, and she liked the job completed by October 1. If u hasn’t started by September 30, she could try to collect monetary damage because there is no way you could get the job done in time.

A minor breach is a partial breach. For instance let’s say u hire a friend to build a website for your business. He gets the site done in time, but there are few errors. While u can’t sue for actual performance (he finishes the job after all) rather you might have the option to sue for monetary damages or force him to make corrections.

When a party claims a breach of contract, the judge must answer to the following questions:

* Did a contract exist?
* If so, what did the contract require of each of the parties?
* Was the contract modified at any point?
* Did the claimed breach of contract occur?
* If so, was the breach material to the contract?
* Does the breaching party have legal defense to enforcement of the contract?
* What damages were caused by the breach?

Differences between a material and a minor breach of contract

A breach is material if, as a result of the breaching party’s failure to perform some aspect of contract, the other party receives something substantially different from what the contract specified. For example, if the contract specifies the sale of a box of tennis balls and the buy receives a box of footballs, the breach is material. When a breach is material, the no breaching party is no longer required to perform under the contract and has the immediate right to all remedies for breach of the entire contract.

Factors that the courts consider in determining materiality include:

* The amount of benefit received by the nonbreaching party;
* Whether the non breaching party can be adequately compensated for damages
* The extent of performance by the breaching party
* Hardship to the breaching party
* Negligent or willful behavior of the breaching party and
* The like wood that the breaching party will perform the reminder of the contract.
* A breach is minor if, even though the breaching party failed to perform some aspect of the contract the other party still recives the item or service specified in the contract. For example, unless the contract specifically provides that “time is of the essence” or give a specific delivery date of goods, a reasonable delay by one of the parties may be considered only a minor breach of contract. When a beach is minor, the non breaching party is still required to perform under the contract, but may recover damages resulting from the breach. For example, when a seller delay in delivering goods is a minor breach of contract, the buyer must still pay for the goods but may recover any damages caused by delay.

Breach of contract elements

To be successful in a breach of contract lawsuit, there are certain breaches of contract element which must exist:

Existence of a valid contract to prove the existence of a valid contract, however three elements must be established:

* Offer: there must have been intentions to enter such agreement.
* Acceptance: such agreement must be written contracts make proving such term easier, as they document specific terms to which the parties have agreed.
* Consideration: in a valid contract each party has something to gain. In addition, an agreement written to cover the provision of goods or services that occurred in the past is not valid contract. a contract must be entered into before exchange takes place, to show there was an agreement, or “meeting of the minds.”

Breaches of contract can be classified into three categories which are in the absence of a contractual or statutory provision. They are

* Breach of warranty
* Breach of condition or
* Breach of an innominate term, otherwise known as an intermediate term.

2 WHAT ARE THE REMEDIES AVAILABE FOR BREACH OF CONTRACT?

The remedies available for breach of contract include:

1. 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 breach of 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 paid for the machine. The consequential losses could include the loss of business caused by the fact u did not have the machine you needed to do your work. Another example, if the plaintiff agreed to pay the defendant #200,000 to build a house, but the defendant only completed 90 percent of the work contemplated by the contract, a court might be inclined toward #20,000 in damages if it would cost the plaintiff twice as much to hire someone else to finish the last 10 percent. The same principles apply to damages sought for contracts that are fully performed, but in a defective manner. But if the defect is minor, the plaintiff may be limited to recovering the difference between the values of the good or service actually received and the value of the good or service contemplated by the contract. If the defect is significant, the plaintiff can recover the cost repair.
2. Rescission: this allows the non- breaching party to essentially be released from performance obligation. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to failure of the other party to perform.
3. 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 damages clauses. Essentially, these clause specify that the non- breaching party will be awarded a specific amount of money in the event a breach occurs. These clause will be upheld as long as they are fair.

 IV Restitution is a remedy designed to restore the injured party to the position occupied prior to the formation of the contract. Parties seeking restitution may not request to be compensated for lost profits or other earings caused by a breach. Instead, restitution aims at returning to the plaintiff any money or property given to the defendant under the contract. Plaintiffs typically seek restitution when contracts they have entered are voided by courts due to a defendant incompetent or in capacity. The law allows incompetent and incapacitated persons to disavow their contractual duties but generally only if the plaintiff is not made worse off by their disavowal. Cases CORP V COLD BROOK SAND & GRAVEL CORP., 151 MISC 2D 457, 573 N.Y.S.2D382 (N.Y.CO.CT.1991)

1. In certain cases, an aggrieved party may not be made whole through the award of monetary damages. He may instead request the court to order “specific performance” of the terms of the contract. Specific performance may be any court order action, forcing the breaching party to perform or provide exactly what was agreed to in the contract. Specific performance is most often ordered in a contract involving something for which a value is difficult to determine, such as land or unusual or rare item of personal property.

CASES WHERE BREACH OF CONTRACT CAN BE SEEN AND DAMAGES AWARDED

1. REVELATIONS PERFUME AND CONSMETICS INC V PRINCE ROGERS NELSON.

in 2008, the revelations perfume and cosmetics company sued the famous musician “ prince” and his music label, seeking $100,000 in damages for reneging on an agreement to help market their perfumes. The flamboyant pop star had promised to personally promote the company’s new perfume named after his 2006 album “3121” and to allow his name and likeness to be used in the perfume’s packaging. Prince refuse interviews related to the project, and refuse to provide current photograph for a press release. In its breach of contract complaint revelation asked the court to award more than $3 million in lost profits, as well as “punitive damages”. The judge found no evidence, however, that the pop star acted with malicious intent, and ordered him to pay nearly $4million for the cosmetics company’s out of pocket expenses. Revelations’ request for punitive and loss of profits damages was denied.

1. MACY’S V. MARTHA STEWART LIVING

Macy’s department stores filed a breach of contract complaint against Martha Stewart living omnimedia for making an agreement with J.C. Penney for the creation of Martha steward retail stores within their retain stores beginning February 2013. Prior to deal, J.C. Penney had purchased a minority stake in steward’s company for $38.5million. The mini-retail stores were to carry Martha Stewart home goods; however Macy’s argued they had been granted an exclusive right to make and sell certain Martha steward living products in an agreement signed in 2006.

Macy’s asked the court to grant a preliminary injunction to stop steward from breaching the contract while the court considered the matter. Twelve years later, in June 2014, a New York judge ruled that J.C. Penney had indeed stepped over Macy’s contract with the domestic diva in its attempt to sell products bearing her name. While the J.C. Penney contract has been nullified, monetary breach of contract damages were not immediately decided, and may be limited to the legal fees and costs of the lawsuit, as the judge decided the case did not warrant punitive damages.