NAME: Ben-ibezim chinenye

MATRIC NUMBER: 18/LAW01/056

COURSE: NIGERIAN LAW OF CONTRACT

COURSE CODE: LPB 202

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 honored 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 fulfill its obligations, whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract. 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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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 made to the contract. Only after this that the judge can 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 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 everything required of him.

A breach of contract may take place when a party to a 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 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 which are: breach of warranty, breach of condition, and a breach of innominate terms.

The facts of *Nigerian supplies manufacturing co ltd v Nigerian broadcasting corporation*1 represents a classic case of express anticipatory breach.

 **REMEDIES FOR BREACH OF CONTRACT**

 **QUANTUM MERUIT**

Where one person has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstance of the request imply that the service is to be paid for, there is implied a promise to pay *quantum merit*, i.e., so much as the party doing the service deserves. The term itself literally means as much as he has earned. Further, if a person by the terms of a contract is to do a certain piece of work for a lump sum, and he does only part of the work, or something different, he cannot claim under the contract, but he may be able to claim on a *quantum meruit*, as, e.g., if completion has been prevented by the act of the person to the contract2.

In *warner and warner v F.H.A3*, where the respondent wrongfully terminated a building contract which was already partly completed, the supreme court held that the injured contractor had the option of either suing for damages where the damages is normally the loss of profits for the unfinished balance, plus the value of work done at contract prices, or ignoring the contract and claiming a reasonable price for work and labor done in **quantum meruit.**

As Alderson, B, declared in *bernardy v harding4*, where one 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 merit for the work actually done.

Thus, in *olaopa v obafemi awolowo university5*, the plaintiff’s claim in contract was rejected by the trial court because the existence of an offer from the defendant was not established.[[1]](#footnote-1) Nevertheless the trial court went ahead to award sum in quantum meruit for the unsolicited performance of the plaintiff

In *ekpe v Midwestern Nigeria development corporation6*, the appellant who was a daily paid worker of the respondent corporation applied to be put in permanent staff. He was then given a form to fill, containing conditions of service for permanent employees. He filled the form and submitted it. But for six months after that, he was neither made a permanent member of staff nor paid any salary. He brought this claim for the payment of his salary for six months. The claim was dismissed at the magistrate court, and on appeal to the high court, held, applying the principles of *bernady v Harding* that the respondents had been guilty of a breach of contract, and that the appellant was entitled either to sue for a breach and claim damages, or to rescind the contract and sue on quantum meruit for the work he has done.

 **DAMAGES**

Once a party to a contract establishes to the satisfaction of the court that the other party has committed a breach of contract, the most common claim is that for damages, and certainly it is the most readily granted type of remedy by courts. Only in special circumstances will the equitable remedies of specific performance and injunction can be granted by courts. The underlying basis for the common law damages was laid down in *Robinson v harman7* which says that ‘the rule of common law is that where a party sustains a loss by reason of 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 has been performed.

In *kusfa v united bawo construction co8,* the respondent who had earlier awarded a building contract to the appellant, wrongly terminated it. The trial court not only awarded damages amounting to the unpaid work done by the appellant, but also general damages of N10,000 for the hardship and inconvenience caused the appellant by the breach of contract. The court of appeal rejected this head of damages, and the appellant appealed to the Supreme Court. In dismissing the appeal, by majority, the Supreme Court held that the inconvenience and hardship alleged were considered along with the appellants claim for special damages and there was no evidence of hardship which may have resulted to a breach of contract.

 **INJUNCTION**

If a contract contains an express negative stipulation obliging one of the parties not to act inconsistently with the positive contract, an injunction may be granted against a breach of that negative stipulation. An injunction is an order or decree by which one party to an action is required to do or refrain from doing a particular thing, injunctions are either restrictive (preventive) or mandatory (compulsive) 9

In the case of *warner bros pictures v nelson10,* a film actress signed an undertaking with the plaintiffs, her employers, not to act for any other organization. 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.[[2]](#footnote-2)

Also in *African songs ltd v Sunday adeniyi11*, 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 not merely preventive. It directs the defendant to undo what he has already done in 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 rarely granted.

The court will not grant specific performance to compel an unwilling party to remain in a contract for personal service. [[3]](#footnote-3) However, the court will be prepared to grant an injunction restraining the servant from performing a similar service for anyone else, provided that this does not force him into a position where he will either have to remain in his master’s service unwillingly or remain idle or starve.

Regarding the effect of an injunction on the defendant, especially whether it will in effect force her into specific performance of the contract, the court stated that true to the principle that specific performance of a contract of personal service will never be ordered, it would not grant an injunction in the case of a contract to enforce negative covenants if the effect of doing so would either be to drive the defendant either to starvation or to specific performance of the positive convenants12.

By contrast, in *page one records ltd v britton13*, a case in which the manager of a group of musicians sought an injunction to restrain them from engaging another manager, after dispensing with his services in breach of their contract, the court refused the relief sought on the ground that the defendants would be compelled to continue to employ the plaintiff as their manager and agents.

  **CONTRACTS NOT SPECIFICALLY ENFORCEABLE**

There are certain contracts to which the doctrine of specific performance does not apply. It has been long established, for examples, that a contract of personal service will not be specifically enforced at the suit of either party. It would be undesirable and indeed impossible in most cases to compel an unwilling party to remain in close personal relations with another.

The principle is well[[4]](#footnote-4)summarized in this passage from the judgment of jessel, M.R in *Rigby v conol14*. ‘The courts have never dreamt of enforcing agreements strictly personal in their nature, whether they are agreements strictly personal in their nature, whether they are agreements of hiring and service. Being the common relation of master and servant, or whether they are agreement for the purpose of pleasure, or for specific pursuits, or for the purpose of charity or philanthropy.

Thus, in *chukwu v NITEL15*, where the appellant, whose appointment had been terminated by the respondent in the process of reorganization. Sued the respondent claiming inter alia reinstatement and arrears of salary for the period between the act of termination and judgment of the court, the court of appeal refused to order reinstatement which would have amounted to an order of the specific performance of a contract of employment. Relying on the Supreme Court’s decision in *ondo state university v folayan 16.* orah held that the traditional common law rule which is applicable to this country is that the courts will not grant specific performance in respect of a breach of a contract of service.

In *IIodibia v NCC LTD17*, the appellant who was formerly the general manager of the respondent company, was suspended from the service of the respondent. The appellant instituted a suit in court in which he sought a declaration, inter alia, that he was still the general manager of the respondent and was entitled to all the rights pertaining to that office, including salaries, allowances, benefits, etc.

The Supreme Court held that a [[5]](#footnote-5) court will not make an order of specific performance of a contract of personal service unless it is one with a statutory flavor. This contract not being one with statutory flavor, the application was refused.

It should however be noted that the modern relationship of employer and employee is often much less personal that the old relationship of master and servants. Indeed, an employee of the government or of a university or some other large organization in the private sector, has no personal relationship at all with its employer. The latter, who are either the public service commission, or the university governing council or board of directors, have no personal contact or even awareness of the vast majority of their employees. Thus, the rules on non-enforceability of specific performance do not apply to such relationships, and there are signs that the courts are prepared to qualify the old principle in recognition of modern developments18

Another situation in which the courts will not order specific performance is one in which mutuality is not possible. Thus, if the court would not have been able to grant specific performance at the suit of the defendant, it would not grant it at the suit of the plaintiff. Thus, an infant cannot maintain specific performance because it is not maintainable against him.

REFERENCES

* SAGAY (1985): NIGERIAN LAW OF CONTRACT

1. 1 (1967) 1 All N.L.R. 35

3 (1993) 5 NWLR (PT 298) 148 at 176

4 (1885) 8 EX 822

5 (1997) 7 NWLR (pt 512) 204

6 (1967) N.M.L.R 407

7 (1848) 1 Ex 850 at p 855 All ER 383 at p. 385 [↑](#footnote-ref-1)
2. 8 (1994) 4 NWLR (pt 336) 1

9 C H Giles and co ltd v morris (1972) and olaniyan v university of lagos

10 (1937) 1 k.b 209 [↑](#footnote-ref-2)
3. 11 a case previously mentioned

12 rely a bell burglar and fire alarm ltd v eisler (1962)

13 (1967) 2 All E.R 822 at p. 833 [↑](#footnote-ref-3)
4. 14 (1880) 14 Ch D 482 at p. 487

15 (1996) 2 NWLR (pt 430) 290

16 (1994) 7 NWLR (pt 354) 1 at p. 10 [↑](#footnote-ref-4)
5. 17 (1997) 7 NWLR (pt512) 174 at 198

18 olaniyan v university of lagos [↑](#footnote-ref-5)