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**ABSTRACT**

 This paper refers to a breach of contract which means failure to keep the promises or agreements of a contract and as a result of that breach, the one party suffers damage.

This paper seeks to explore breach of a contract, types of a breach, it’s requirement, defenses that can be used and remedy available for a contract when it has been breached. Remedies are awarded by calculation on the basis of looking at what the position of the plaintiff would have been if the Contract had been properly performed

**INTRODUCTION**

What is a Contract?

A contract is essentially a set of promises. A contract is an agreement between two private parties that creates mutual legal obligations. It is a legally binding agreement that states the duties and obligations of the parties involved. A contract can be either oral or written.

 WHAT IS A BREACH OF CONTRACT?

A breach of contract law claim is a common type of civil law suit. The law offers a variety of remedies for each such breach, designed to make the injured party whole. Court-ordered remedies for breach of contract cases are not meant to punish the breaching party, but to return the injured party to the position he would be in if the breach had not occurred.

 A Breach of Contract is the existence of agreement where there is a failure to keep the promises or agreement or failure to live up to his or her responsibilities of a contract. The whole contract or part of the contract may be breached. There are three important remedies available in a contract which is damages, specific performance and injunction.

**TYPES OF BREACH OF CONTRACT**

**Partial Breach**

A partial breach, or failure to perform or provide some immaterial provision of the contract, may allow the aggrieved party to sue, though only for “actual damages.” A partial breach gives the aggrieved party a right to damages by a small reduction in payment or other adjustment. Partial breach is a failure to meet a provision in a contract; however, it is so minimal that it does not cause the contract to be cancelled.

**Material Breach of Contract**

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 breach, 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” breach.

**Anticipatory Breach of Contract**

Anticipatory breach, also known as “anticipatory repudiation,” occurs when one party to a contract stops acting in accordance with the contract, leading the other party to believe he has no intention of fulfilling his part of the agreement. In this case, the breaching party may give such an impression by his actions, or failure to act, such as failing to produce an ordered item, refusing to accept payment, or somehow making it obvious that he cannot or will not fulfill the terms of the contract. An anticipatory breach of contract enables the non-breaching party to end the contract and sue for breach of contract damages without waiting for the actual breach to occur.

**Specific Performance**

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-ordered 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 an unusual or rare item of personal property.

**A case in relation to the breach of contract**

*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 the deal, J.C. Penney had purchased a minority stake in Steward’s company for $38.5 million. 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 grand 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.

**BREACH OF CONTRACT ELEMENTS**

To be successful in a breach of contract lawsuit, there are certain breach of contract elements that must exist:

EXISTENCE OF A VALID CONTRACT

To claim breach of contract, there must be an actual, valid contract in place. It is not necessary for a contract to be put in writing, as oral contracts are enforceable by the court system. To prove the existence of a valid contract, however, three elements must be established:

Offer – Some discussion and an agreement to the provision of goods or services in exchange for something of value must have been made. There must have been the intention to enter into an agreement or contract.

Acceptance – An agreement to the essential terms for the exchange of goods or services for something of value must be entered into. Written contracts make proving such terms easier, as they document specific terms to which the parties have agreed.

Consideration – Each party to an oral or written contract must have received something of value. In other words, in a valid contract, each party has something to gain. A promise by one party to provide a good or service without receiving anything in return looks a great deal like a gift, which is not enforceable.

**DEFENSES TO A BREACH OF CONTRACT LAWSUIT**

In a law suit a defendant 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 and this is called a defense. Common defenses against a breach of contract include:

1.FRAUD: 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 submits this defense, he or she is 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.

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

3.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.

4.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 defense.

5.STATUTE OF LIMITATIONS: Many types of cases have time limits imposed by law, deadlines by 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.

**REMEDIES FOR BREACH OF CONTRACT**

The five types of remedies for breach of contract are:

1.Money damages. 2.Restitution 3.Rescission 4.Reformation 5.Specific Performance

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1.MONEY DAMAGES

Money damages refer to the monetary payments which a breaching party has to make for violating the terms of contract. The type of breach determines the extent of the damages. If it is a total breach, then the plaintiff can recover the sum or value which the plaintiff would have received had the contract been fully performed by the defendant and this includes lost profits.

There are different types of money damages such as:

**Compensatory Damages:** This is meant to cover the loss incurred by the non-breaching party because of the breach of contract. The breaching party will have to pay an amount which replaces the loss incurred by the other party

**Punitive Damages**: This is rarely awarded for breach of contract cases. Unlike compensatory damages which are meant to cover the actual loss, punitive damages are awarded to punish the wrongdoer for egregious behavior and to deter others from committing similar acts. Punitive damages are given in addition to compensatory damages.

Keep in mind that punitive damages are requested and it is up to the court to decide if they wish to award them and the amount.

2. RESTITUTION

Restitution is a remedy which is used to restore the injured party to the position occupied before the contract. Under the principle of restitution, the defendant is supposed to give back any money or property received from the plaintiff under the contract and restitution is not used to compensate the plaintiff for lost profits or other earnings because of the breach of contract.

Restitution is typically used in cases where the contract is voided by the court because the defendant lacked the competence or capacity necessary to enter into a contract.

3.RESCISSION AND REFORMATION

Sometimes, the contractual duties of both parties may be terminated by the court and when this happens, it is called rescission. This remedy is used in certain cases such as when the partiesenter into a contract because of mistake, fraud, undue influence or duress and the only way to do justice is to terminate the contract.

However, sometimes the remedy of reformation may be used which is when a court reforms or changes a contract to correct any inequities. In these cases, instead of setting aside the entire contract, the terms of the contract may be rewritten to do justice.

4.SPECIFIC PERFORMANCE

Under specific performance, the breaching party has to perform their duties as specified by the contract and it is used when money damages are not adequate to compensate the plaintiff. Specific performance is used in cases which involve giving a piece of land or a valuable item to the plaintiff.

While the legal system frowns upon forcing individuals to do something against their will, if a person signed a contract selling the item but had the intent to defraud the other party, then the court can force them to sell the item. So long as the other party was willing to pay the contracted amount and was ready to do so.

**CONCLUSION**

A contract is an agreement or promise made between two or more parties that the courts will enforce. In some cases, the agreements and promises made in a contract are not kept by a party or more parties. Therefore, this situation called breach of contract which means failure to keep the promises or agreements of a contract.

 It is important to have a detailed and clear contract being made so that the breach of contract could be prevented.

**BIBLIOGRAPHY**

https://www.researchgate.net

https://www.scribd.com

https://www.ssrn.com

https://www.lawteacher.net

https://www.legalmatch.com

https://www.legalmatch.com/law-library/article

 https://legaldictionary.net