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18/SMS13/002.

LAW OF CONTRACT (LPB202)

1. BREACH OF CONTRACT

Breach of contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part. Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfill their end of the contract agreement. The innocent party can make a choice as he is not bound to treat the contract as discharge where the injured party repudiates or in breach of fundamental terms. He may choose to sue for damages instead and keep the contract alive in certain circumstances. The methods of breach can have a decisive effect on the right and liabilities of the innocent party. It is important to consider, where the contract is repudiated, or there is fundamental breach as some breaches entitle the innocent party to sue for damages, and more serious breaches entitles the innocent party, in addition to damages, to treat himself as discharged from the contract. Serious breaches are generally described as "repudiatory breaches" where the innocent party can make an election either to repudiate or affirm the contract. In a deposit account, what constitutes a breach is the failure of a bank to pay money due to the deposit account on demand by the operator of the account. Thus in *Nigerian Merchant Bank Plc. V. Aiyedun investment Ltd. (1998).*[1] *the court held that such a breach will justify a claim for compensation. It does not matter if the compensation claimed is described as interest or damages. In UBN Plc v. Jeric (Nig.) it was held that in a contract on goods imported the respondent did not pay for the value*

[1] (1998) 2 NWLR.

*of the goods and other expenses incurred by the appellant, the appellant did not breach any terms of its agreement by withholding on to the goods. The appellant has to option than to hold on to the goods and this cannot be a breach of contract.* Also *In the case of Tewogbade & Sons Ltd v. Funso Adeolu.*[2] *the defendant agreed to supply steel water tanks and pipe to the plaintiff. There is a condition in the agreement that the defendant must deliver within ten weeks of the signing of the agreement. The contract is N200, 147.88, the plaintiff paid 50% N100, 73,94k, the balance to paid on delivery. Eleven weeks after, the defendant informed the plaintiffs that he could not procure the material from London and purpose to procure in Nigeria for N561, 599,48k. Three times the contract price the plaintiff rejected and demanded a refund. The plaintiffs brought an action for a refund and damages for breach of contract. The defendants agreed that it is the plaintiffs who terminated the contract despite the fact that the defendant is willing to perform. Adeyemi J held that "the defendant by his words spoken or written and conduct repudiation the agreement by way of anticipatory breach and the plaintiff was obliged to choose to accept the repudiation and treat the contract as at end and immediately sue. The plaintiff has there accepted to opt for treating the contract as end and is covered by the law".* 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 meanwhile 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

[2] Suit No: 1164/80 High Court of Oyo State, Ibadan delivered June 25, 1981q Adeyemi J.

prove in court. 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.

1. REMEDIES FOR BREACH OF CONTRACT

When a contract is broken, the injured party may have several courses of action open to him, namely:

i. To refuse further performance of the contract, i.e., rescission

ii. To bring an action for damages

iii. To sue on quantum meruit

iv. To sue for specific performance

v. To sue for an injunction.

**RESCISSION**: The right of rescission is an equitable and exists in a number of circumstances. By way of illustration, we mention three of those circumstances: First, the right is available to a party injured by breach of a fundamental term in a contract, e.g. a condition. Secondly, it is available to a party injured by the misrepresentation of the other party. Thirdly, it is available where a contract is vitiated by mistake. The effect of rescission in the case of misrepresentation and mistake is to terminate the contract ab initio as if it never existed. As stated *by Lord Atkinson, in Abram Steamship Co. v. Westville Steamship Co. (1923).*[3] *Such rescission terminates the contract, puts the parties in status quo ante and restores things, as between them, to the position in which they stood before the contract was entered into.* On the other hand, rescission in the case of breach of a condition only terminates the contractor from the moment of rescission. Rights and obligations that have already matured are therefore not affected. Whereas the right of rescission for misrepresentation and mistake is lost if restitution in interim (full restoration) is no longer possible between the parties, no question of restoration arises in the case of rescission on grounds of breach. However, if in the latter case, the rescinding party is able to make restoration, the court will, in the interest of justice, require him to do so. Thus, where a buyer of goods rightfully rejects the goods for breach of a condition as to quality, the ownership of goods vests in the seller. Furthermore, where the seller of goods rescinds the contract because of the buyer's default, he must, without prejudice to his right to damages, return any part of the purchase price that has been paid before the rescission of the contract.

**DAMAGES**: Whenever a party to a contract is in breach of it, the other party has a right of action for damages. Therefore, an action for damages is the one remedy which is available in

[3] A.C 773, at p.781.

every breach of contract. The object of awarding damages for breach of contract id to put the injured party, so far as money can do it, in the same position as if the contract had been performed. In other words, the aim of damages is to compensate the innocent party to the contract and place him in the position that he would have been had contract been performed. Action for damages is a common law remedy. In the award or assessment of damages, the court may ensure that the loss was occasioned by the breach and that it was not too remote. The *leading case of Hadley v Baxendale (1854).*[4] *laid the common law foundation for the assessment of damages arising from a contractual breach. Hadley was a mill operator who contracted with Baxendale to have the latter deliver a broken mill shaft to the manufacturer for repair. The term of the contract was that Baxendale was to transport the shaft the next day. He delayed several days, so Hadley's mill remained closed for a longer period of time. Hadley claimed damages for the profit the mill would have made had it been delivered on time. The only information Baxendale received was related to carrying the shaft on the Plaintiff's behalf. He had not been told that the mill would be closed until the shaft was returned. Furthermore, Hadley may well have had a spare shaft, as is common practice in the business (do you recall trade usage: see earlier?). Hadley's action failed and Baxendale was not liable for the loss of profit. The principle arising from that decision is now the basis for the concept of remoteness in damages, which lays down two categories of compensation which can be recovered, and which are often described as the 'first' and 'second' limbs of the Hadley v Baxendale rule: a) Losses which arise in the normal course of things and are a natural consequence of the breach. b) Losses which arise as the result of special circumstances (not being natural consequences) which were either known to the parties or may reasonably be supposed to have been in the contemplation of the parties when the contract was made.*

[4] (1854).

**QUANTUM MERUIT**: Quantum Meruit means 'as much as he has earned'. A claim for a quantum meruit arises where there is an agreement for services or for supply of goods and no

price or remuneration has been fixed for the goods or work done. The claim is contractual in nature and it implies the payment of a reasonable sum. *In Warner & Warner International V. F.H.A (1993).*[5]*, the court held that a claim on quantum meruit means that no specific sums can be claimed or proved. If they can, then each items stands on fails on the basis of evidence.*

*In Ekpe v. Midwestern Nigerian Development Corporation (1967).*[6] *the appellant, a daily paid worker applied to be put on a permanent staff. He was given a form to fill and filled from and submitted six months after, he was neither a permanent member nor paid any salary. He brought a claim for the payment of salary for 6 months. The Court of Appeal held that where work has actually been done by one party under a void contract, the party who did the work can sue on quantum meruit to recover his remuneration for the work done provided he did the work in good faith and without the knowledge that the contract was void.*

*In Kuku v. Permaroof Contractors Ltd. (1969).*[7] *the plaintiff agreed to do certain building work stated, the defendant repudiated the contract and before the plaintiff knew, he has caused some work to be done and sued to recover for the work done. Taylor C.J. held that where one party to a contract has repudiated a contract, or disabled himself from performing it, the other party may treat it as at an end and if he has performed his part of the contract wholly or in part, he has a right to sue on quantum meruit for what he has done. Where the price to a contract is not fixed the employed can sue on a quantum meruit to recover what he has earned, that is the reasonable amount to be paid for this service.*

[5] (1993), 6 NWLR.
[6] (1967). NWLR 407.
[7] (1969) NCLR 334.

**SPECIFIC PERFORMANCE AND INJUNCTION**: Specific enforcement of contractual obligation was not available at common law except under equity. In equity too, the enforcement of contractual obligation is subject to many restrictions, based on the character of the remedy. One restriction is where the contract calls for personal performance. Other restrictions are impracticability to perform specifically or the form of relief which does not lend itself to specific performance or the form of relief may be unnecessary and undesirable.

The law takes the view in respect of a contract for sale of land or of a house. Other instances where specific performance can be ordered are contracts to execute a mortgage where, money is paid in advance, to pay or sell annuity, or were a loss is difficult to prove or contracts are not legally enforceable.

Specific performance is a decree, which is ordered by the court, which directs a contracting party to perform the contract which he has promised to do. It is an equitable relief and alternative remedy to damages in appropriate cases. It is an example of equity acts in personal which is granted at the discretion of the court. It is not granted as of right, but granted judiciously by the court. The court considers in all the cases, whether specific performance will create hardship for the party. *Thus in Taylor v. H. B. Russet (1947).*[8] *the court refused to grant specific performance for a contract for the sale of land because at the time the land had been sold to someone else, who had in turn sold it to another person and the buyers were not aware of their earlier agreement. In refusing the application, the court observed; a) That the title to the property had passed and it would be impossible for him to carry out the order. b). To grant specific performance would result in fostering two or more further actions. c). The doctrine of specific, performance is an equitable relief. It will not be granted where it will cause hardship to third*

[8] (1947).

*parties unless it is shown that the third parties were aware of the evidence of the contract. d)That the person seeking to enforce a contract must show that all conditions precedent has been fulfilled and the party is ready and willing to perform all the terms which ought to be performed.*

*In the Supreme Court decision of Incar (Nig.) Plc. V. Bolex Ent (Nig.) (2001).*[9] *on the nature of contract enforceable by specific performance, the court restated that only a valid contract, which has given right to a legal or equitable interest is capable of being enforced by an order of specific performance. In this case the appellant desired to sell his properties in Port Harcourt, Lagos and Ibadan and invited estate agents to get buyer. Sunbo Onitirir was the one of them who received this assignment. Onitirir got a buyer who is interested and duly acknowledge receipt of N4m cheque. Onitirir informed the appellant of its transaction and forwarded the cheque. The appellant rejected the offer of N4m, the appellant received other offers eventually sold the property to the 2nd appellant for N4.25m and put the 2nd appellant in possession. Having failed to secure the property the respondent commenced an action against the 1st appellant joining 2nd appellant to claim: A declaration that the plaintiff is the equitable owner of the premises and an order of specific performance against the 1st defendant compelling him to honor the contract.* Upon the facts disclosed, it is clear that the respondent paid the sum of N4m to the firm of Sunbo Onitirir but it is also manifest that the action of the firm was in excess of the willingly allowed the purported agreement to sell the disputed property cannot bind the 1st appellant as to enable the respondent to obtain any interest, legal or equitable in the disputed property.

As the respondent is not in possession of any legal or equitable interest, he cannot be the beneficiary of the equitable over of specific person. A person claiming specific performance must have legal or equitable interest in the property.

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[9] (2001) 12 NWLR (pt.728) 646.

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