Adanalwo O. Anuoluwapo

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Law of Contract ii

LPB202

BREACH OF CONTRACT

Question:

A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing.

Discuss the following:

1. Breach of Contract
2. What are the remedies available for Breach of Contract?

Answer 1:

Breach of Contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfil its promises according to the provisions of the agreement.

Sometimes it involves interfering with the ability of another party to fulfil his duties. A contract can be breached in whole or in part. A breach of contract occurs where a party fails to perform one or more of the obligations lay upon by the contract. Thus failure to perform the terms of a contract constitutes a breach.Repudiation occurs before an actual breach of contract.

Repudiation occurs where there is a contract between two or more parties to be

performed at a future date and one party declares an intention not to perform his own

side. Repudiation is sometimes described as ‘anticipatory breach’ or renunciation,

whatever ever language repudiation is described, a guilty party indicates by words or

conduct that he is no longer interested in performing his own side of the contract, whenever the time for performance arrives

Answer 2:

In contact law “a remedy” is a court ordered resolution to one party’s breach of contract. The law provides several remedies to the innocent to the innocent party who has suffered loss as a result of other parties’ breach of the contract, once a party has been able to establish that the other party has breached the contract, some of the remedies includes:

1. Damages
2. Specific performance
3. Injunction
4. Damages: The course frequently adopted by an injured party to a breach of contract is to bring an action for damages. The main purpose of awarding damages for breach of contract is to put the injured party, i.e, innocent party, as far as money can do it, in the same position as if the contract had been performed. The injured party is not expected to get more in damages than the loss which he really suffered. In ***Ecobank Nigeria*** *p****lc V* *Elder Dominic Ekperikpe*[[1]](#footnote-1)** the court of appeal made the following striking submission regarding damages, namely that (i) the object of damages of contract is to put the claimant in the position he would have been in if the contract had been satisfactorily performed and in order to enable judicious assessment, the particulars and evidence in support of awards are required (ii) The general rule for measuring damages for breach of is that the party in breach in liable in damages in the amount which flows directly and naturally from his failure to keep his own part of the contract or bargain provided that such damage could reasonably have own part of the contract or bargain provided that such damage could reasonably have been within the contemplation of the parties at the time when the contract was made. The Supreme court in ***Beta Glad plc V Epaco* *Holdings Ltd[[2]](#footnote-2)*** defined damages as “Pecuniary compensation obtained by a successful party in an action for a wrong which is either of tort or a breach for a contract.

The supreme Court also articulated the principle guiding award of damages in ***G.K.F.I. (Nig)* *Ltd. V NITEL Plc*[[3]](#footnote-3)** when it stated thus: Damages recordable against the party in breach are such loss within the reasonable contemplation of the parties. The duty of the court in instances of breach is based on an evidence led by a claimant to restore an injured party as far as it is monetarily practicable to the position he would have been put but for the breach. There must be conspicuous relation between the award made and the injury suffered by the beneficiary award.

Further, the court stated that: Award of damaged is at the discretion of a judge. Such discretion must be exercised with considerable degree of circumspection. Discretion must not only be exercised judicially means to be discreet and circumspect in balancing two competing interests in a given situation.

Kinds of Damages:

1. Exemplary Damages
2. Nominal Damages
3. Compensatory Damages: Compensatory damages (also called “actual damages”) cover the loss the non-breaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach. There are two (2) types of compensatory damages that a non-breaching party may be entitled to recover: General Damages and Special Damages.
4. Special Performance: Special performance is an equitable remedy in law of contract, whereby a court issues an order requiring a party to perform a specific act, Such as to complete performance of the contract. Specific performance is a remedy contrived in England by Courts of Equity in a system of law administered by the Court of Chancery as against that administered by common law courts. Its exceptional nature is dictated by English History. Special Performance is particularly appropriate in the case of contracts for the sale and/or leasing of land or contracts for sale for rare or unique goods, e.g. rare works of art. This is because a substantial equivalent will involve difficulty, delay and inconvenience. So, a work of art is considered unique, compensation being unascertainable. In addition, it is difficult to assess compensation in such cases because there may not be similar objects in the market to compare the work of art and estimate a value. In ***Ohiaeri v. Yusuf[[4]](#footnote-4)*** the Supreme Court stated this much when it declared that: An action for specific performance arises once there exist a contract couple with circumstances which makes it equitable to grant a decree of same. A contract for sale of land attracts a greater justification for a decree of specific performance because as opposed to other types of contract, the land may have a special and peculiar value to a purchaser. In ***PAYE V Gaji[[5]](#footnote-5)*** the Court of Appeal granted an order of specific of performance even though the family representatives (owners of the land) were prepared to refund the purchase price. Here, the assignor of a piece of family land refused to execute the conveyance of the property after the conclusion of the agreement and payment of sale of land, damaged cannot be an adequate remedy and the purchaser is entitled to have the contract specifically performed.
5. Injunction: The remedy of injunction is an equitable remedy which may be granted at the discretion of the court. Its principle uses as a private law remedy is to restraint a wrongful act, such as the commission of a tort or the breach of a contract. Where a tract provides hat one party was to restrain from doing a particular thing, an injunction may be granted against a breach of that negative stipulation. For example, if in a contract of employment, the employee covenants that after leaving his employment, he would not take up employment with another rival firm, this negative stipulation can be enforced by an injunction. In ***LUMLEY V. WAGNER[[6]](#footnote-6)*** the defendant covenanted that for three months she would sing at the plaintiff’s theatre on two nights a week and that she would not during the three months use her talents at any other theatre without the plaintiff’s written consent. The defendant later agreed to sing at Covent Garden for a large sum of money, in breach of her covenant with the plaintiff. The court granted an injunction to restrain the defendant from breaching the agreement with the plaintiff. ***Warner Brothers Pictured v Nelson[[7]](#footnote-7),*** this case has been criticized in relation to contracts of employment. It is argued, that granting an induction may put too much economic pressure part of the contract.

Types of Injunction includes:

1. Ex parte Injunction: This is the type of injunction which is made to the court in litigation without the other party or parties in litigation being put on notice. It is an exceptional but essential procedure whereby the other party to a case is unheard.
2. Interlocutory Injunction: This is the type of injunction that is not only ordered after a full contest between the parties but also ordered to last until the determination of the man in suit. Applications for interlocutory injunctions are properly made on notice to the other side to keep matters in *statu quo* until the determination of the suit
3. Mareva Injunction: The essence of remedies is to restore the plaintiff, prevent breach of contract and at times to maintain *statu quo* while the merit of the case is being considered. Substantive remedy, like damages, will be of no practical benefit if the plaintiff cannot enforce such judgement.

1. (2013) LPELR- 20327(CA); for a similar principle, Afribank Nig Plc vs. A.I investment Ltd (2002) 7 NWLR (PT. 765) 40 OF 71-72 [↑](#footnote-ref-1)
2. (2011) 4 NWLR (Pt. 1237) 223 [↑](#footnote-ref-2)
3. (2009) 13 NWLR (Pt. 1164) 305 [↑](#footnote-ref-3)
4. (2009) 6 NWLR (Pt. 1137) 207 at 229 [↑](#footnote-ref-4)
5. (1966) 5 NWLR (PT. 450) 589 at 605 [↑](#footnote-ref-5)
6. (1852) 1 D.M. & G. 604 [↑](#footnote-ref-6)
7. (1937) 1 KB 209 [↑](#footnote-ref-7)