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COURSE: Law of Contract

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A.)Breach of Contract

A contract can be described as the legally binding agreement between two or more people which create obligations that when breached can be remedied in damages or by specific performance of the contract. See the Black's Law Dictionary.

A contract only exists when there is an agreement. It is impossible for one or two people to claim that they have a contract when there is no agreement or "mutuality" or the "meeting of the minds" between them.

Once a party to a contract establishes to the satisfaction of the court that the other party has committed a breach of contract, which is usually on the basis of damages. The underlying for the common law remedy for damages was laid by Parke.B, “which is that where a party 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 had been performed”

In the case of *Hadley v Bexendale,* , a rule was identified and has been divided into two parts, the first which deals with the normal damages that occur in the usual course of things and the second with abnormal that arises because of special circumstances. The plaintiffs were miller’s and the defendants were common carriers of goods. The plaintiffs steam engine broke down, causing work on the mill to come to a stand still. They had ordered a new shaft from an engineer in Greenwich and arranged with the defendant to carry the sheet from their mill in Gloucester to the engineer at Greenwich. The defendant did not know that the plaintiff had no spare shaft and that the mill could not operate with out the new one installed1

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The defendants delayed the delivery of the new shaft to the engineer for several days which hindered the plaintiffs in getting their mill back to work. The plaintiff claimed damages for breach of contract. The court was left to determine whether the plaintiffs damages should include loss of profit for the period of time of the defendants delay. The court noted that only facts communicated by the plaintiff to the defendants was that what should be carried was the broken shaft of their mill and that they, the plaintiffs, were miller’s

It was therefore held that in the great multitude of cases of parties in the similar situation, the consequences arising in this case would not in all probably occur and the plaintiffs special circumstances were never communicated to the to the defendants.

In the case of *Relations Perfume and Cosmetics Inc v Prince Rogers Nelson*, in 2008, the RPC company sued the famous musician ‘Prince’ and his music label, seeking $100,000 in damages for reneging on an agreement to help make let their perfumes. The pop star had promised to personally promote the company’s new perfume named after one of his albums ‘’3121’ and to allow his name and likeness be used in the perfumes packaging. Prince then refused to grant interviews related to the project, and refused to provide a current photograph for a press release. In its breach of contract complaint, Revelations 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 $4 million for the cosmetics company’s out-of-pocket expenses. Revelations’ request for punitive and loss-of-profits damages was denied.

In  *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.

In a breach of contract suit, there are certain things that must fully exist in order to have a strong case:

•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: In the early stages of the propositions there must have been an offer been made, either in the exchange or provision of some services.

-Acceptance: there must be consensus adidem between parties. Written contracts makes proving such terms easy, as they document specific terms to which the party’s have agreed.

-consideration: In a contract each party has something to gain. Something of value has to be received by each party.

•Breach of the terms of the contract

A breach of contract occurs if any of the terms are broken. And not every term is taken literally, in order to warrant the filling of a lawsuit, a breach of the terms of the contract must actually detract from the value of the contract, being considered a “material breach.” Alternatively, the breach of contract must change the outcome of the agreement in such a fundamental way, that the aggrieved party has the right to terminate the contract (a “fundamental breach”)

•Actual damages or loss

To be successful in a breach of contract lawsuit, the aggrieved party must prove that they have suffered some type of loss or damages as a result of the breach. Actual damages or loss may be in the form of money lost, time lost, loss of opportunity, or a host of other losses

B.) Remedies available for Breach of Contract.

A contract, being a fountainhead of a correlative set of rights and obligations for the parties, would be of no value, if there were no remedies to enforce the rights arising thereunder.

The party committing breach of contract is called the ‘guilt party’ and the other party is called the ‘injured’ or ‘aggrieved’ party. In case of breach of contract, the aggrieved party would have one or more, but not all, of the following remedies against the guilty party

The remedies include:

•Suit for rescission

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e. cancellation, of the contract. This will enable him to be free from his own obligations under the contract2

2 legaldictionary.net

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The word ‘damages’ means monetary compensation for loss suffered. Whenever a breach of contract takes place, the remedy of ‘damages’ is the one that comes to mind immediately as the consequence of breach. A breach of contract may put the aggrieved party to some disadvantage or inconvenience or may cause a loss to him. The court would desire the guilty part to accept responsibility for any such loss of the aggrieved party and compensate him adequately. The quantum of damages is determined by the magnitude of loss caused by breach

•Suit for Quantum meruit

The term quantum meruit means ‘as much as earned’. It implies ‘a payment deserved by a person for the reason of actual work done’. When a party has done some work under a contract, and the other party repudiates the contract or somehow the full performance of the contract becomes impossible, then the party who has done the work can claim remuneration for the work under a suit for quantum meruit. Likewise, where one party has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied a promise to pay quantum meruit. Even in the case of where the person who has done the work is the one who is guilty of breach of contract, he too is entitled to be paid quantum meruit. But there is an exception – such a contract must have involved work that was indivisible and it must not have been a contract for lumpsum remuneration.

•Suit for Specific Performance:

In certain cases of breach of a contract, damages may not be an adequate remedy. Then the Court may direct the party in breach to carry out his promise according to the terms of the contract. This is a direction by the Court for specific performance of the contract at the suit of the party not in breach. But in general, Courts do not wish to compel a party to do that which he has already refused to do. Cases where specific performance may be ordered:

(i) Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non- performance

(ii) Where monetary compensation will not be adequate relief. Example a contract for sale of a rare antique

(iii) Where plaintiff’s property is held by the defendant in the capacity of his agent or trustee

(iv) Where the act to be done is in performance of trust

Cases where specific performance will not be ordered:

(i) Where monetary compensation is adequate relief

(ii) Where contract is made by the agent or trustee in violation of his powers

(iii) Where the contract is of a personal nature, such as a contract to marry or a contract of service

(iv) Where the court cannot supervise the performance of promise as it involves performance of a continuous duty

(v) Where the contract is in its nature revocable

(vi) Where the contract is made by a company in excess of its powers as laid down in its Memorandum of Association

•Suit for Injunction:

Injunction’ is a court order or decree to a person asking him to refrain from doing a contemplated act or from continuing an ongoing act. Such an order of injunction becomes a remedy for the aggrieved party when the court orders the guilty party to refrain from doing precisely that which is causing the breach of contract. In a way, injunction is a mode of securing the specific performance of the negative terms of a contract. But for the performance of the positive terms of the contract, the aggrieved party may seek other remedies like damages.