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18/LAW01/052

1. **BREACH OF CONTRACT**

A breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. A breach also occurs when a part communicates his/her 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. The failing party commits a breach when he fails to carry out his obligation either partially or fully. Basically, a contract can be breached 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 the future or the contract becomes impossible to perform as a result of the defaulting party's own act.

To determine whether or not a contract has been breached, a judge needs to examine the contract. The judge examines, the existence of a contract, the requirements of the contract, and if any modifications were made to the contract.[[1]](#footnote-1) Only after this can a judge make a ruling on the existence and classifications of a breach. Also, for the contract to be breached and the judge to deem it worth of a 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 carrying out his obligation in concern of the contract. Additionally, the plaintiff must notify the defendant of the breach prior to him/her filing the suit.

There generally are three categories of breach of contract which measure the seriousness of the breach which are breach of warranty, breach of condition or breach of an innominate term as an intermediate term.

**Fundamental Breach**

A fundamental breach of contract occurs when a previously agreed upon contract is canceled entirely, due to what a party does or does not do. A fundamental breach refers to one of the parties to a contract not keeping to their part of the contract by failing to complete a contractual term that was essential to the agreement so much so that another party could not complete their own responsibilities in the contract. It is a type of breach that is critical to the contract being carried out, it is often grounds for the aggrieved party to cancel the contract entirely. In the case of *Adecentro (Nigeria) Ltd v Council of Obafemi Awolowo University*,[[2]](#footnote-2) the appellant, a building contracting company, was the plaintiff in this case instituted at the Ile-Ife High Court, then in Oyo State but now in Osun State. The respondent was the defendant. The dispute that led to the institution of the claim was over the failure of the appellant to promptly execute the construction of a building contract awarded the plaintiff by the defendant. The defendant had to terminate the contract after the plaintiff failed to complete the building despite the extended time given to the contractor. The plaintiff then instituted this action and his claim, as set out in paragraph 32 of its further amended statement of claim is, inter alia, for declaration that the plaintiff was entitled to 67 weeks extension of time to complete the job; claims for various sums of money as amounts due on various heads of claims such as on the certificate of work done issued by the defendant's supervising architect, damages for breach of the contract, return of plaintiff's detained equipment at the building site, among others. The defendant denied the claim and counter-claimed for N12, 746,616.54 (Twelve million seven hundred and forty six thousand, six hundred and sixteen naira fifty four kobo) being extra-expenses incurred by the defendant in completing the job among others. At the conclusion of the trial, the learned trial Judge, Sijuade J, granted only the sum of N102,743.75 (One hundred and two thousand, seven hundred and forty three naira seventy five kobo) already due on the certificate No. 35 which had earlier been issued by the defendant as due on the contract work done. In this case, the aggrieved party had canceled the agreement due to the inability of the defendant to carry out his end of the contract.

**Anticipatory Breach**

Anticipatory Breach or Renunciatory breach or breach by anticipatory repudiation is an unequivocal indication that the party will not perform when performance falls due, or a situation in which future non-performance is inevitable. An anticipatory breach gives the innocent party the option to immediately terminate the contract and sue for damages, or wait for the time of performance, if the party required to perform does not perform when required by the contract, the innocent party can terminate then. Anticipatory breach may not be considered a breach till the date for the performance of the contract. Anticipatory Breach of contract was brought before a court in the case *of Babatunde Ajayi v Texaco Nigeria Limited & ORS*,[[3]](#footnote-3) the plaintiff, an employee of the defendant brought an action for declaration that he is the company's operation manager of the defendant; any breach of the contract of employment between the plaintiff and them, defendant was illegal, invalid, null and void; an injunction restraining the defendant or his agent from breaching the contract of employment or interfering with the plaintiff in the performance of his duties as operations manager. In the alternative, the plaintiff claimed against the defendant's company, N634.833 special and general damages for anticipatory breach of contract. The defendant counter-claimed that plaintiff give up possession of apartment allocated to him for his use and occupation and the Toyota car allocated to him. Whilst dismissing the plaintiff's claim for declaration of an order of injunction, learned trial Judge granted the alternative claim for damages assessed at N34, 212.50. Defendants appealed and Court of Appeal allowed the appeal. The plaintiffs appealed against the judgment of the Court of Appeal, Supreme Court dismissed the appeal.

1. **Remedies available for breach of contract**

When one of the parties that had broken the term and condition that had been agree by two parties in a contract, breaching of a contract takes place. By this, the other parties can voice out to pursue for remedies in order to cover the losses that is faced by him or her. These remedies will be given to the plaintiff according to the losses that he or she had faced.

* Damages: In courts of limited jurisdiction, the main remedy is an award of damages. For an innocent party to obtain substantial damages he must show that he has suffered loss as a result of the breach and the amount of his loss. It is up to the party in breach to argue that the innocent party has failed to mitigate his loss. The aim of damages is to put him in the position he would have been had the contract been properly performed. The case of *Hadley v Baxendale,[[4]](#footnote-4)* provide that the following losses are recoverable:
* All loss which flows naturally from the breach
* All loss which was in the contemplation of the parties at the time the contract was made as a probable results of the breach.

The rule in *Hadley v Baxendale* has been interpreted to mean that only loss which are within the reasonable contemplation of the parties may be recovered.[[5]](#footnote-5)

General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.

Special damages (also called consequential damages) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the non-breaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made. In the case of *Kusfa v United Bawo Construction co*.[[6]](#footnote-6) Olatawura JSC, pointed out that a claim of damages based on hardship and inconvenience could not possibly be classified as a claim for special damages. It was more in the realm of general damages for the anguish or pain suffered by the appellant as a result of the respondent’s breach. There was therefore no need to prove it strictly.

* Specific Performance: Specific performance is a decree by the court to compel a party to perform his contractual obligations. It is usually only ordered where damages are not an adequate remedy for example where the subject matter of the contract is unique but not if a replacement of the subject matter could be obtained even after a long delay. A decree of specific performance is one by which the court directs the defendant to perform the contract which he has made in accordance with its terms. Damages would on other cases be probably the best remedy but there are some cases where damages cannot suffice. Like in cases involving contracts to covey land or sell a famous painting or an antique, in these cases, the remedy of damages will be inadequate.

As Kay L.J. decleared in *Ryan v. Mutual Tontine Assosiation*,[[7]](#footnote-7) “This remedy by specific performance was invented, and has been cautiously applied, in order to meet cases where the ordinary remedy by action in damages is not an adequate compensation for breach of contract. The jurisdiction to compel specific performance has always been treated as discretionary, and confined within well-known rules”.

The remedy of specific performance is a discretionary on end the plaintiff is not entitled to it as a matter of right. In the case of *Rainbow Estates Limited v Token hold Limited[[8]](#footnote-8)*. The judge in this case concluded that the old law of refusing specific performance if it would involve constant supervision was no longer good or that there were exceptions. It may be that only in the most exceptional circumstances specific performance will be available to the landlords; however the arguments advanced indicate that it should be available in other situations. Specific performance was ordered requiring tenants to spend £300,000 on repairs to the flats. Factors militating in favor of this remedy were that the landlord had no right of entry to repair in default of the tenant; that the lease had no forfeiture clause and that the building was listed so that repair as distinct from redevelopment was the most appropriate outcome.

* Injunction: Injunction can be said as a remedy that is equitable that the court requires the party to do something or to stop him/her from doing something. There are three types of injunction which is interlocutory injunction, mandatory injunction and also prohibitory injunction.

Interlocutory injunction can be made to maintain the status quo of something in a pending suit. Basically, interlocutory injunction means to stop the action from being done. Interlocutory injunction is applied in before the starting of something or stops something for being continued. For example, when there are 2 parties fighting over the ownership of a property, interlocutory injunction is applied to this case.

Mandatory injunction means that the court enforces something or some action to be done. In other words, when one of the parties refuse to do their obligations that had been stated in the contract, the other parties can request the court to apply the mandatory injunction on the parties to finish the action. For example, when a contractor refuses to finish the construction of a property on the date given, the owner can request the court to apply the mandatory injunction to the contractor to finish the work.

Prohibitory injunction can be defined as to stop something or some action from being done. When the two parties had sign a contract, and one of the parties decided to sign the same contract with others, the other parties can request the court to apply the prohibitory injunction to the parties that want to sign the other contract.

***Bibliography***

en.m.wikipidia.org/wiki/fundamental\_breach

nigeria-law.org

Sagay: Nigerian Law of Contract

concordnow.com/blog/fundamental-breach-of contract/

lawpavilionpersonal.com/lawreportsummary.jsp

uk.practicallaw.thomsonreuters.com

lawteacher.netjec.unm.edu

1. “Breach of Contract- Judicial Education Centre” .jec.unm.edu [↑](#footnote-ref-1)
2. (2005) 15 NWLR (Pt.948)290. (2005) 5 S.C (Pt1) [↑](#footnote-ref-2)
3. (1987) LPELR-SC.230/1985 [↑](#footnote-ref-3)
4. [1854] 9 Exch. 341 [↑](#footnote-ref-4)
5. The Heron II(1969) 1 AC 350 [↑](#footnote-ref-5)
6. (1994) 4 NWLR (Pt.336) 1. 2, [↑](#footnote-ref-6)
7. (1893) 1 Ch. 116 at p. 126 [↑](#footnote-ref-7)
8. (1998) Cases 33 [↑](#footnote-ref-8)