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**BREACH OF CONTRACT**

A breach of contract occurs when one party fails to fulfill or does not intend to fulfill his obligations under the contract. A breach of contract entitles the innocent party to sue for damages against the guilty party the breach occurs as a result of repudiation of contract obligation or a fundamental breach, the innocent party, may, in addition from further liability to perform his own part of the obligation. The innocent part 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 for 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. Some serious breaches are generally described as repudiatory breaches where the innocent party can make an election either to repudiate or affirm the contract.

In the case of *Nigerian Merchant Bank Plc. V. Aiyedun investment Ltd. (1998) 2 NWLR PT.* *537 221 CA,* 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 the case of *UBN Plc V. Jeric* *(Nig.) 1998 2 NWLR pt. 536 63* it was held that in a contract on goods imported the respondent did not pay for the value of the goods and other expenses incurred by the appellant, the appellant did not breach any terms or its agreements by withholding on to the goods. The appellant had the option to hold on to the goods and this cannot be a breach of contract.

REPUDIATION

The term repudiation is a situation that 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., what ever the 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 arises.

Repudiation is anticipatory, the innocent party prevents further damages by taking an action for breach of the contract. As Lord Esther explained the meaning of anticipatory breach in *Johnstone V. Milling (186) 16 QBD 460 at 467*. Where one party assumes to renounce the contract, that is by anticipation refuses to perform, declares his intention there and then to rescind the contract, the innocent party in most cases adopts the renunciation also known as repudiation he may in turn wait for the arrival time when the courses of action would arise. He must therefore elect the course reorganized by the law which he will pursue in anticipatory breach. In the recent court decision, the court, stated the effect of an unaccepted repudiation of contract. Thus, in *NEPA v.* *Isieveore (1997) 7 NWLR (pt. 511) 135,* the court stated an unacceptable repudiation of a contract is of no value to anybody, it confers no legal right of any kind. This is because repudiation by one party standing alone does terminate the contract. It takes two to end it by repudiation of the one side and acceptance of the repudiation on the other. Further the court stated, where there is a unilateral repudiation of a contract, this is treated as an offer by the guilty party to the innocent party of the termination of the contract. It is the acceptance to the offer by the innocent party which acts as a discharge of contract. It is open to innocent party to sue for damages since the acceptance of the repudiation, the contract comes to an end. There the innocent party refuses to accept the repudiation, the contract remains in existence. This proposition is founded on the elementary principles of the formulation of contract obligation. *Olaniyan v. University of Lagos (1985) 2 NWLR (pt. 9) 599*. Repudiation may be as a result of reasonable inference that the defend no longer intends to perform its part of the contract. The plaintiff is entitled to treat the contract as discharged. In *Frost v. Knight (1872) LR 7 Exch. 117;* See also Federal Commerce Navigation *Co. Ltd. v. Molena Alpa Inc. (1979) AC 757*, K agreed to marry the plaintiff on the death of his father’s. He broke off the engagement during his father’s lifetime.

The court held that the plaintiff was entitled to sue for breach of contract. The promise has an inchoate right to the performance of the bargain, which becomes complete when the time of performance has arrived. In the meantime, he has right to have contract as a subsisting and effective contract.

FUNDAMENTAL BREACH

Another circumstance in which a party to contract can treat himself as discharged for the breach of contract is where a party to the contract commits a fundamental breach.

Lord Diplock in *Photo Productions Ltd. v. Securities Transport Ltd. (1980) AC 827*, defined a fundamental breach of contract as an event resulting from the failure of by one party to perform a primary obligation which has the effect of depriving the party of substantially the whole benefit of the contract which was the intention of the parties that he should obtain from the contract. Before 1966, it was the general belief that a party who is guilty of fundamental breach of contract could not avoid liability by reliance on an exemption clause inserted into the contract. The decision in *Suisse Antlantique case (1967) AC 361*, however, reversed the general opinion. Fundamental breach is a breach which goes to the root of the contract and has the effect of depriving the innocent party of achieving the main purpose of the contract.

In essence, the breach discharges the innocent party from further performance, and lead him to terminate the contract. A breach of essential term in a contract can lead to a fundamental breach. Since the breach of fundamental term is rather subjective in nature, the parties themselves must have regarded the fundamental term as of major importance when the contract was made.

The court is empowered to determine whether the term is major, minor or fundamentally important so as to constitute a breach. It is often observed that there is no difference between the breach of fundamental term and a breach of condition in contract. A condition is an important stipulation in the contract that goes to the root of the contract, the breach of which entitles the innocent party to a discharge or repudiation. In essence a condition is a fundamental term of a contract which has the same effect as a breach of fundamental term. In the Sale of Goods Edict, it was stated that a breach if condition will give rise to a claim for damages but as Sagay righty observed, the right to repudiate does not apply to fundamental breach of fundamental terms.

**EQUITABLE REMEDIES**

As may be gathered from the aforementioned cases, the court may award damages to the injured party depending on the circumstances, apply more equitable considerations. These remedies are briefly outlined in the following ;

In addition to rescission, the other important remedies are specific performance, and the granting of an injunction or restraining order. The former is positive in that the defaulting party may be ordered by the court to complete the sale transaction upon which he intends to default (this remedy to the injured party would be in lieu of damages, if the court considers it equitable that the defaulting party be ordered to complete). This remedy is particularly common with real estate transactions because of the special place land occupies in our economy. *African Songs Ltd v* *Sunday Adeniyi*. On the other hand, an injunction, again ordered by the court, is negative in that the Defendant will be obliged to refrain from some act or conduct which harms the legitimate interest of the Plaintiff. This relief is not easily obtained but it may however be granted quickly; for example, the Defendant opens a business using a name identical with a well- established enterprise in which confusion arises as the result of two businesses conducting similar operations, with the latter suffering immediate financial loss. Often the court will grant an 'interim injunction' (temporary) pending the court allowing the Defendant to be heard, as it is possible to obtain an order on an *ex parte* basis (where the injured party alone requests the order). Consequently, the Plaintiff under these circumstances will have to undertake to pay damages in the event that if and when both parties are heard, the court ultimately decides that granting the injunction was unjustified. parties; for example, if it can be shown that the consideration had not been given when the document indicated that it had. Rectification as a remedy is a device that is an exception to the parole evidence rule. The parole evidence rule, as you have learned, states generally that a contractual document will not be altered or varied by the admission of extrinsic oral evidence.

EXTINCTION OF REMEDIES

The rights of an injured party to sue on a breach contract may be extinguished in any of the following ways:

1. By a discharge or release agreement between the parties. This may be achieved through accord and satisfaction as already discussed.

2. By a court’s judgment which merges the right of action for breach of contract in the decision of the court leaving a contract of record.

3. By the effluxion or lapse of time. In such a situation, the action in relation to such breach of contract is said to be statute-barred.

In Nigeria, the extinction of a right of action by lapse of time is governed by two systems of law:

1. Equity: Claims for equitable relief such as specific performance is limited by the equitable doctrine of laches and acquiescence. Equity refuses to grant relief to statute claims, in accordance with the principles that ‘delay defeats equity’ and ‘equity aids the vigilant and not and not the indolent’. Therefore, a right of action may be lost if the injured party delays too long in enforcing his right.

2. Statutes: Claims for legal remedies such as breach of contract are limited by statutory rules enacted in the Statute of Limitations, 1623 (an English statute) which applies in states in the former Northern Nigeria and Eastern Nigeria, as a statute of general application, and in other limitation statutes which apply elsewhere in Nigeria. Therefore, a right of action will be lost if a statute expressly stipulated the period within which action must be brought and the aggrieved party fails to institute action within that period.

As state above, a right for breach of contract may be extinguished by the effluxions of time in accordance with the provisions of the English Statute of Limitations 1623 (Northern and Eastern States of Nigeria) or the Limitation Act No. 88 of 1966 (Lagos) or the Western Nigerian Limitation Law, 1959 (Lagos, Ogun, Oyo and Bendel States). The three statutes are basically the same in substance, but the Western Nigeria one is obviously more up to date than Statute of Limitation. In Britain, the current law is contained in the Limitation Act, 1980.

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