Ayanlere Oluwapelumi Deborah

18/Law01/050

Law of Contract II

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. (Treitel 2007, para 17-049)

Discuss the following:

Breach of contract

What are the remedies available for breach of contract.

What is Breach of Contract?

A contract is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach. A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfill their agreed upon obligations, according to the terms of the contract. Breaching can occur when one party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails perform at all.[[1]](#footnote-1)

Breach of contract is a legal cause of action and a type of civil wrong , in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. Breach occurs when a party to a contract fails to fulfill its obligation(s), whether partially or wholly, as described in the contract, or communicates 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. If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.[[2]](#footnote-2)

When any party to a contract, whether oral or written, fails to perform any of the contract’s terms, they may be found in breach of contract. While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services. In other words, a breach of contract is a broken promise to do or provide something.[[3]](#footnote-3)

What Constitutes A Breach Of Contract?

To determine whether or not a contract has been breached, a judge needs to examine the contract. To do this, they must examine: the existence of a contract, the requirements of the contract, and if any modifications were made to the contract. [1] Only after this can a judge make a ruling on the existence and classifications of a breach. Additionally, 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 completing everything required of him. Additionally, the plaintiff must notify the defendant of the breach before filing the lawsuit.2

Ways Of Breaching Contracts?

A breach of contract may take place when a party to the 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.2

There are four main types of contract breaches:

Minor Breach: A minor breach of contract occurs when a party fails to perform a part of the contract, but does not violate the whole contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach;

Material Breach: A material breach of contract is a breach that is so substantial, it seriously impairs the contract as a whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;

Fundamental Breach: A fundamental breach of contract is essentially the same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of a breach. The difference is that a fundamental breach is considered to be much more egregious than a material breach; and

Anticipatory Breach: An anticipatory breach occurs when one party lets the other party know, either verbally or in writing, that they will not be able to fulfill the terms of the contract. The other party is then able to immediately claim a breach of contract and pursue a remedy, such as payment. Anticipatory breach may also be referred to as anticipatory repudiation.2

What are the Remedies to a Breach of Contract?

A contract is an agreement between two or more parties which creates certain legal obligations. If one or more parties to a contract do not perform according to the terms of the agreement, then there is a breach of a contract. The five types of remedies for breach of contract are:

* Damages;
* Restitution;
* Rescission;
* Reformation; and
* Specific Performance.1

What are Damages?

Damages for loss in a breach of contract claim are available as of right. An innocent party may claim damages from the party in breach in respect of all breaches of contract. The damages may be nominal or substantial. Nominal damages are awarded where the innocent party has suffered no loss as a result of the other's breach and substantial damages are awarded as monetary compensation for loss suffered as a result of the other party's breach. 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.

Remoteness of damages.

The innocent party may only recover damages for loss suffered as a result of the breach provided it is not too remote. The aim of damages is to put him in the position he would have been had the contract been properly performed. The principles of remoteness are given in *Hadley v. Baxendale ([1854] 9 Exch. 341)* and 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.
* If the loss does not fall within the above categories, then it will be too remote and will not be recoverable.

The rule in *Hadley v Baxendale* has been interpreted to means that only loss which is within the reasonable contemplation of the parties may be recovered. [[4]](#footnote-4)

*Victoria v. Newman Industries*

*Koufus v. C. Czarnikow[[5]](#footnote-5)*

Money damages refer to the monetary payments which a breaching party has to make for violating the terms of contract. The type of breach determines the extent of the damages. If it is a total breach, then the plaintiff can recover the sum or value which the plaintiff would have received had the contract been fully performed by the defendant and this includes lost profits.

However, if it is a partial breach, the plaintiff can recover a sum which equals the amount necessary to hire someone else to complete that part of the contract. However, in some cases of partial breach, the cost of completion can be quite expensive and the portion of the contract which was unperformed may be small. In these cases, a court may only award damages which are equal to the difference between the value of the contract as performed and the full value of the contract which was originally agreed to by the parties.

There are different types of money damages such as:

Compensatory Damages: This is meant to cover the loss incurred by the non-breaching party because of the breach of contract. The breaching party will have to pay an amount which replaces the loss incurred by the other party

Punitive Damages: This is rarely awarded for breach of contract cases. Unlike compensatory damages which are meant to cover the actual loss, punitive damages are awarded to punish the wrongdoer for egregious behavior and to deter others from committing similar acts. Punitive damages are given in addition to compensatory damages.

What are the Different Types of Compensatory Damages?

The two types of compensatory damages are general and special damages. General damages cover the loss which was directly connected to the breach of contract and they are the most common type of damages which are awarded for breaches of contracts.

In contrast, special damages (also referred to as “consequential damages”) cover any loss which was incurred because of special circumstances or conditions which the breaching party knew about when the contract was made.

It is important to note that the non-breaching party has a duty to mitigate. This means that it has to do what is possible and reasonable to minimize or avoid the losses which were incurred because of the breach of contract.

Damages are not awarded for any loss which could have been avoided or substantially reduced if the non-breaching party took reasonable efforts to mitigate. In these cases, the damages will be reduced by the amount which could have been reasonably avoided.

What is Restitution?

Restitution is a remedy which is used to restore the injured party to the position occupied before the contract. Under the principle of restitution, the defendant is supposed to give back any money or property received from the plaintiff under the contract and restitution is not used to compensate the plaintiff for lost profits or other earnings because of the breach of contract. Restitution is typically used in cases where the contract is voided by the court because the defendant lacked the competence or capacity necessary to enter into a contract.

What is Rescission and Reformation?

Sometimes, the contractual duties of both parties may be terminated by the court and when this happens, it is called rescission. This remedy is used in certain cases such as when the parties enter into a contract because of mistake, fraud, undue influence or duress and the only way to do justice is to terminate the contract.

However, sometimes the remedy of reformation may be used which is when a court reforms or changes a contract to correct any inequities. In these cases, instead of setting aside the entire contract, the terms of the contract may be rewritten to do justice.

What is Specific Performance?

Under specific performance, the breaching party has to perform their duties as specified by the contract and it is used when money damages are not adequate to compensate the plaintiff. Specific performance is used in cases which involve giving a piece of land or a valuable item to the plaintiff.

While the legal system frowns upon forcing individuals to do something against their will, if a person signed a contract selling the item but had the intent to defraud the other party, then the court can force them to sell the item. So long as the other party was willing to pay the contracted amount and was ready to do so.1 ]

*Kusfa v United Bawo Constructions*

*Ijebu-Ode L.G v Adedeji Balogun & co*

*Solomon v. Pickering & co. ltd..5*

1. Legal match [↑](#footnote-ref-1)
2. Wikipedia [↑](#footnote-ref-2)
3. Legal Dictionary [↑](#footnote-ref-3)
4. Ukpracticallaw https://uk.practicallaw.thomsonreuters.com/7-101-0603?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 [↑](#footnote-ref-4)
5. Sagay: Nigerian Law of Contract, Second Edition, I.E. Sagay L.L.B., Ph.D.(Cantab.), Former Professor and Dean of the Faculty of Law, University of Benin, Nigeria [↑](#footnote-ref-5)