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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. (Treitel 2007, para 17-049)

Discuss the following:

a. Breach of contract

b. What are the remedies available for breach of contract.

ANSWERS

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. To explore this concept, consider the following breach of contract definition.

DEFINITION OF BREACH OF CONTRACT

1). An unjustifiable failure to perform terms of a contract.

2). A violation of contract through failure to perform, or through interference with the performance of the contractual obligations

With the above said , a breach of contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part.Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to

completely fulfill their end of the contract agreement. Breach of contract is the most common reason contract disputes are brought to court for resolution.

A proper example of a case on breach of contract is Hadley v Baxendale (1854) 9 Exch 341 where the claimant, Hadley, owned a mill featuring a broken crankshaft. The claimant engaged Baxendale, the defendant, to transport the crankshaft to the location at which it would be repaired and then subsequently transport it back. The defendant then made an error causing the crankshaft to be returned to the claimant a week later than agreed, during which time the claimant's mill was out of operation. The claimant contended that the defendant had displayed professional negligence and attempted to claim for the loss of profit resultant from the unexpected week-long closure. The defendant retorted that such an action was unreasonable as he had not known that the delayed return of the crankshaft would necessitate the mill's closure and thus that the loss of profit failed to satisfy the test of remoteness.

The Court found for the defendant, viewing that a party could only successfully claim for losses stemming from breach of contract where the loss is reasonably viewed to have resulted naturally from the breach, or where the fact such losses would result from breach ought reasonably have been contemplated of by the parties when the contract was formed. As Baxendale had not reasonably foreseen the consequences of delay and Hadley had not informed him of them, he was not liable for the mill's lost profits.

GENERAL REQUIREMENTS

A breach of contract suit must meets some requirements before it will be upheld by a court;

o The contract must be valid. It must contain all essential contract elements by law. A contract isn't valid unless all these essential elements are present, so without them, there can be no lawsuit.

o The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.

o The plaintiff must have done everything required of them in the contract.

o The plaintiff must have notified the defendant of the breach before proceeding with filing a lawsuit. A notification made in writing is better than a verbal notification because it offers more substantial proof.

TYPES OF BREACH OF CONTRACT

Breach of contract can be material, partial, or anticipatory.

1. A material breach as its name implies, or total breach, is a serious violation of the terms of a contract. While it usually only causes harm to one of the parties to the contract, it oftentimes can hurt both parties because it typically makes fulfilling the terms of the contract extremely difficult to almost impossible.A material breach is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract

2. A partial breach is not as significant and does not normally excuse the aggrieved party from performing their duties.A party involved in a contract may sometimes fail to uphold a portion of the contract, but still perform enough of their duties so that the main root of the agreement may still be fulfilled. This is known as a partial or immaterial breach of contract. As opposed to a material breach, partial breaches are often negligible in nature and do not give parties the right to terminate their agreement.

3. Where there exist a contract between two parties which is slated to be performed at a future date and one party clearly declares his intention not to perform his own obligation under the contract is popularly referred to as anticipatory breach

This notion of anticipatory breach was well captured in the case of Solomon Nassar v Oladipo Moses where Coker, J, said emphatically thus: "It is open to a party to a contract to sue the other party for breach of same even in anticipation of the time agreed upon for performance, if it is manifest by his conduct and his acts that the defaulting party had made himself unable to fulfill his part of the contract at the agreed time."

4. A fundamental breach of contract is generally known to occur when a previously agreed upon contract is canceled entirely, due to the other party's actions (or, inactions, in some cases). While with most breaches of contract, the early termination could be considered a breach of contract, which is not the case with a fundamental breach and therefore, does not provide both parties the right to take legal recourse; that right exists only to the wronged party.

QUESTION 2

DAMAGES.

Damages in contract law are a legal remedy available for breach of contract, the most common claim that is given as compensation and is mostly readily granted by courts once a party to a contract is able to prove to the satisfaction of the court that the other party has committed breach of contract. The primary purpose of damages in contract law is to place the injured party in the position they would have been in had the contract been performed

The underlying basis for the common law remedy of damages was laid down by Parke .B in Robinson v Harman where it was said;

" The rule of common law is that where the party sustains a loss by reason of

a 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"

However,since the application such a principle was proven too harsh" on a contract breaker in making him liable for unforeseen circumstances," it was limited in various ways until the modern rule from the judgement of Alderson,B in Hadley v Baxendale where the rule was divided into

two branches, the first dealing with normal damages that occur in normal course of things and the second with abnormal damages that arise because of special or exceptional circumstance

The principles applicable to the assessment of damages for breach of contract were also explained by Karibi-Whyte, J.S.C in the Ijebu-Ode L.G v Adedeji Balogun & Co. Where the court had no difficulty holding the bank guilty of breach of contract. Where the issue was in the commissions.

Whenever it has to consider a claim for damages,a court must first resolve the issue whether the defendant is liable for any damage at all,and if so the nature and extent of such damages or losses. This is known as the issue of remoteness of damages. The question of remoteness of damages in contract was given detailed consideration by the House of Lords in Koufos v C. Czarnikow Ltd known as The Heron II,on October 15,1960.

McNair, J. following the decision in The Parana decided the case in favour of the appellant, holding that:

In those circumstances, it seems to me almost impossible to say that the ship

owner must have known that the delay in prosecuting the voyage would probably

result or to be likely to result,in this kind of loss.

The Court of appeal held that The Parana laid down no such rule ,and applying the rule in Hadley v Baxendale, explained in Victoria Newman Industries Ltd, held that the loss due to the fall in market price was not too remote to be recoverable as damages.

RESCISSION:

This is an equitable remedy available to an injured party for a breach of condition where there is a mistake or misrepresentation. Rescission terminates the contract. In London Assurance v. Mansell, where a man did not disclose the material facts on his life on a proposal form by concealing that he had been refused insurance by other companies, it was held that the company could rescind the contract. A similar case is Dantata v. Mohammed

INJUNCTION:

This is also an equitable remedy. It is an order by the court ordering a person not to do a certain act. It is used in restraining a person from committing a breach of contract. In Akenzua II v. Benin Divisional CouncilsPlaintiffs had sought damages, injunction or specific performance from defendant council withdrawing the concession given to him to exploit timber; it was held that since he offered no consideration, the remedies sought could not be granted. Also the case of Gbadamosi v. AG Lagos state (2001) 6 NWLR (Pt. 709) 437 CA.

SPECIFIC PERFORMANCE:

This is also an equitable remedy. It is an order issued by the court, ordering a defendant to perform the promise he had made. The granting of the request for specific performance by the court is discretionary and is not available in the case of contract of personal service. The Court will grant an order of specific performance where an order of monetary compensation will not be a remedy to the injured party. Thus, the basis for granting of this remedy by the common law judgement doe damages

The courts considersin each case whether damages would be in fact be an adequate compensation, and if not whether specific performance "will do more and complete justice than an award of damages"In the case of Fakoya v. St. Paul's Church (1966) 1 All N.L.R. 68. Appellant sold land to the Respondent. He took the price but refused to execute the conveyance. The respondents sued for specific performance. It was granted. Another case is Balogun v. Alli-Owe

.QUANTUM MERUIT:

This is a sort of part- performance in which a party claims “as much as he deserves” Quantum meruit is a claim where work done is in partial performance especially where the contract is severable or divisible or can be separated. In Ekpe v. Mid- Western Nigerian Development Corporation where the plaintiff sued for the payment of his salary for the period he worked for the defendant, it was held that even where a contract was void, the party who worked can sue on a quantum meruit (that is, for work done). Also Cutter v. Powell