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18/LAW01/091

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LAW OF CONTRACT (LPB202)

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.

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. Breach occurs when a party to a contract fails to fulfill its obligations, whether partially or wholly, as described in the contract, or communicates an 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.

A business contract creates certain obligations that are to be fulfilled by the parties who entered into the agreement. Legally, one party's failure to fulfill any of its contractual obligations is known

as a "breach" of the contract. A breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement. Or does not perform at all.

TYPES OF CONTRACT BREACHES

1. **Anticipatory Breach**: Where there is a contract between two parties to be performed at a future date, and one party declares his intentions not to perform his own side of it, this act is known as "renunciation" or "repudiation". Although this last term has often been described as "misleading "on the ground that a contract cannot be capable of breach before the time for its performance has arrived.[1] However, what is important is that this terms is understood to mean that the guilty party has shown either by words or conduct that he has no intention of performing his own part of the contract whenever the time of performance arrives. As stated by Coker, J. (as he was then) in *Solomon Nassar v. Oladipo Moses.*[2]

> 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.

The true meaning and effect of an anticipatory breach were stated by Lord Esther, M.R., in *Johnstone v. Milling* thus:[3]

> When one party assumes to renounce the contract, that is, by anticipation refuses to perform it, he thereby, so far as he is concerned, declares his intention then and there to rescind the

[1] Cheshire and Fifoot, p. 484.

[2] (Unreported) High Court, Lagos, Cooker, J. Suit No. LD/222/222/58 delivered on May 20, 1960. Casebook, p. 448.

[3] (1886) 16 Q. B. D 460 at 467.

> contract. Such a renunciation does not of course amount to a rescission of the contract, because one party to it by himself cannot rescind it, but by unlawfully making such a renunciation of the contract he entitles the other party to bring an action in respect of such wrongful rescission.

Such repudiation may be express or implied, or be in words or by conduct. Thus, in *Hochester v. De la Tour,*[4] the defendant actually wrote to the plaintiff stating that he was no longer going to perform his part of a contract under which he agreed to employ the plaintiff as a courier during a foreign tour commencing at future date. The plaintiff immediately sued for breach of contract, even though the date of performance was still nearly a month. The facts of *Nigerian Supplies Manufacturing Co. ltd v. Nigerian Broadcasting Corporation.*[5] Represents a classic case of express anticipatory breach. On the other hand, repudiation may be implicit. Where there is reasonable interference that the defendant no longer to perform his own part of the contract. *In Frost v. Knight.*[6], the defendant having agreed to marry the plaintiff on the death of his father, broke off the engagement during the father's lifetime. It was held that the plaintiff was immediately entitled to sue for breach of contract. There are other cases like in *Johnson Bekederemo v. Colgate-Palmolive (Nig.) Ltd.*[7] Also the case of *Rank Xerox (Nig.) Ltd. V. Centrex (Nig.) Ltd.*[8]

2. **Material Breach:** 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.

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[4] (1853) 2 E. & B. 678.

[5] (1967) 1 All N.L.R 35.

[6] (1872) L.R Exch. 111.

[7] (Unreported) High Court of Midwestern State, Benin Judicial Division, Ogbobine. J., Suit No. B/47/73 delivered on June 14. Casebook, p. 436.

[8] (1995) 1 NWLR (Pt. 374) 703 at 717.

This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and go to court in order to collect damages from the breaching party. Failure of one party to perform his obligations under the contract in such a way that the value of the contract is destroyed, exposes that party to liability for breach of contract damages. In *C.A Tewogbade & Sons Ltd. V. Funso Adeolu,*[9] it is an example of material breach.

3. **Fundamental Breach:** A fundamental breach of contract is essentially same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of breach. The difference is that a fundamental breach is considered to be much more egregious than a material breach. It is when the person that has had the contract breached against can sue the breaching party for damages incurred as well as terminate the contract if they wish to do so. A party is entitled to treat himself as discharged from further obligations in the contract is where the co-contractor, without expressly or implicitly repudiating the contract, commits a fundamental breach of contract. In *Smeaton Hanscomb & Co. Ltd. V. Sassoon I. Setty Son & Co. (No.),*[10] Delvin, J. defines a fundamental term as something which underlies the whole contract so that if not compiled with, the performance becomes totally different from what the contract contemplates. As Lord Abinger stated in *Chanter v. Hopkins*[11]. One problem about basing the discharge of a contract solely on the breach of a fundamental term is the rather subjective nature of that concept. A breach of a fundamental term will itself be a fundamental breach.[12]

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[9] (1957) 2 Q.B. 401 at p. 437.

[10] [1953] 1 W.L.R 1468 at p. 1470.

[11] (1838) 4 M. & W. 399 AT p. 404, 150 E.R. 1484.

[12] See cases like *Harbutt's "plasticine" Ltd. V. Wayne Tank and Pump Co.* [1970] 1 Q.B 447, in which the breach of a relatively minor term had a devastating effect.

4. **Minor/Partial Breach**: is when the non-breaching party of the contract is not entitled to an order for performance of its obligations but only to collect the damages for which they are owned. A partial breach, or failure to perform or provide some immaterial provision of the contract, may allow the aggrieved party to sue, though only for "actual damages". In the case of *Modahl v British Athletic Federation Ltd (1999).*[13]

To claim a 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, acceptance and consideration. A contract must be entered into before the exchange takes place, to show there was an agreement, or "meetings of the minds.

REMEDIES FOR BREACH OF CONTRACT

In *Alhaji Bature Gafai v. United African Company Limited (1962).*[14] The court held that a breach of contract constitutes one cause of action only, which cause of action may give rise to different remedies.

1. **Equitable Remedies**

Equitable remedies are those that are imposed when money damages would not not adequately cure the non-breaching party. The following types of equitable remedies may be available in the given case:

[13] [1999].

[14] [1962] N.N.L.R. 73, (1961) All N.L.R. 814.

a. **Specific performance and Injunction**: Specific performance is an order by the court that requires the breaching party to carry out the contract as it was originally written. This type of remedy is rare. However, it may be ordered in certain circumstances. Specific performance is a decree, which is ordered by the court, which directs a contracting party to perform the contract which he has promised to do. In *Incar(Nig.) Plc. V. Bolex Ent (Nig.) (2001).*[15] The supreme court decision was on the nature of contract enforceable by specific performance, the court restated that only a valid contract, which has given right to a legal or equitable interest is capable of being enforced by an order of specific performance.

A specific performance is not granted as of right, but granted judiciously by the court. The court considers all cases, whether specific performance will create hardship for the party. In *Taylor v. H.B. Russet (1947).*[16] *The* court observed: a) that the title of the property had passed and it would be impossible for him to carry out the order. b) to grant specific performance would result in fostering two or more further actions. c) the doctrine of specific performance is an equitable relief; it will not be granted where it will cause hardship to third parties were aware of the evidence of the contract. d) that the person seeking to enforce a contract must show all conditions precedents have been fulfilled and the party is ready and willing to perform all the terms which ought to be performed.

b**. Rescission**: Rescission of the contract is a remedy that allows the non-breaching party to cancel his or her responsibilities under the contract. this remedy might be available when contract was based on fraud or a mistake by one or both parties. As stated by Lord Atkinson, in *Abram*

[15] (2001) 12 NWLR (Pt. 728) 646.

[16] (1947)

Steamship Co. v. Westville Steamship Co. (1923).[17] Such rescission terminates the contract, puts the parties in status quo ante and restores things, as between them, to the position in which they stood before the contract was entered into. Rescission is also available if both parties prefer to cancel the contract and return any money that had been advanced as part of the contract.

c. **Reformation:** it allows two parties to modify a contract so that it more accurately reflects what the parties intend. This remedy requires that the contract be valid. It may be available when one of the parties had a mistaken understanding about a material term of the contract.

2. **Legal Remedies**

Legal remedies often take the form of monetary damages that are awarded to help make the innocent party whole. Some examples are:

a. **Compensatory Damages:** are those damages that are meant to compensate the non-breaching party for the breach. Expectation damages are those that give the non-breaching party the monetary funds that he or she would have received had the contract been performed. If the contract was for a sale of goods, compensatory damages are usually the difference between the contract price and the market value of the goods.

b. **Liquidation Damages:** in some contracts, specific damages are pre-determined. They are typically part of contract where it would be difficult to determine the actual amount that a party was damaged due to a breach, such as a breach of a contract not to compete. It is necessary to

[17] (1923) A.C 773, at P.781.

examine whether the amount specified is in fact a penalty or liquidated damages. *Robophone Facilities Ltd v Blank [1966]*.[18]

c. **Punitive Damages**: punitive damages are meant to punish a guilty party in order to prevent that party or others from engaging in similar conduct in the future. However, punitive damages usually require a stronger intent than is necessary in standard breach of contract claims.

In *Hadley v. Baxendale (1854).*[19] laid the common law foundation for the assessment of damages arising from a contractual breach.

In Nigeria the court will not award general damages where breach is alleged and proved. The general principles remain that general damages cannot be awarded for injury arising from breach of contract.

Quantum Meruit: means 'as much as he has earned'. The claim is contractual in nature and it implies the payment of a reasonable sum. In *Ekpe v. Mid-Western Nigerian Development Corporation (1967).*[20] The Court of Appeal held that where work has actually been done by one party under a void contract, the party who did the work can sue on Quantum Meruit to recover his remuneration for the work done provided he did the work in good faith and without the knowledge that the contract was void.

[18] [1966] 3 All ER128.

[19] (1854).

[20] (1967) NWLR 407.

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