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Assignment

1. Breach of contract

Breach of contract is an unjustifiable failure to perform terms of a contract. It is also a violation of contract through failure to perform, or through interference with the performance of the contractual obligation. It 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 provision of the agreement, a contract can be breached in a whole or in part. The law offers variety of remedies for each such breach designed to make the injured party whole.

Repudiation

Repudiation is also known as anticipatory breach also occurs when one party to a contract stops acting in accordance with the contract, leading to the other party to believe he has no intention of fulfilling his part of the agreement. Repudiation enables the non-breaching party to end the contract and sue for breach of contract damages without waiting for the actual breach to occur.

Fundamental breach

The breach of a fundamental term will also give rise to the innocent parties right to terminate the contract. A breach of fundamental term will itself be a fundamental breach. It is a breach which has the effect of depriving the injured party of achieving the main purpose for which to be contracted

2. Remedies for Breach of Contract

A) Damages

1) Introduction

It is trite law that where there is a wrong, there must be a remedy. Thus, where a party to a contract establishes by evidence before the court that the other party has committed a breach of contract, he is entitled to claim damages. The main object of awarding damages for breach of contract is to ensure that the injured party is compensated and put back in the position he would have been, if the contract had been performed.

Also once a party to a contract establishes to the satisfaction of the court that the other party has committed breach of contract, the most common claim is that for damages and certainly it is the most readily granted type of remedy by the courts.

The basis for the common law remedy of damages was laid down by Parke B in the case *Robinson v Harman* as follows: “the rule of common law is that where a party sustains a loss by 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

In the case of *Umudge and Anor v Shell Bp Petroleum Dev Company of Nigeria Limited* (1975) 9-11 SC/(1975) LPELR 3375, the court held that damages after all, have been defined, “as the pecuniary compensation which law awards to a person for the injury he has sustained by reason of the act or default of another, whether that act or default is a breach of contract or tort” or put more shortly, “damages are the recompense given by process of law to a person for the wrong another has done to him”

Also in the case of *Gari v Seirafina (Nig) Ltd* (2008) 2NWLR (Pt 10700, the court defined “damages generally is money claimed by or ordered to be paid to a person as compensation for loss or injury”. In other words, “damages are the sum of money which a person wronged, is entitled to receive from the wrong doer as compensation for the wrong.”

2) Measurement of Damages

The measure of damages in contract is the loss directly flowing naturally from one breach and incurred in direct consequence of breach, and not one arising out of conjectures and speculations of a party. It can also be a way to compute damages that are to be awarded to an

injured person. It is also the method under applicable principles of law estimating or ascertaining with reasonable certainty the damages sustained by any part in litigation.

The aim of awarding damages is to place the injured party, so far as money can do it, in the situation as if the contract had been performed. The general rule with regard to the time of assessment is that damages should be assessed as at a time when the cause of action arose namely the date of breach.

Situations in which the the court will not apply the date of breach include:

- Where the innocent party refuses to treat the breach as terminating the contract.
- Where the plaintiff did not know until later that a breach had occurred

The case of NMA v MARINE MANAGEMENT ASSOCIATES INC & ANOR (2008)

3) Damages For Non- Pecuniary Losses Or Pecuniary

In certain circumstances, damages may be recovered from the defendant for non- pecuniary losses if they were within the contemplation of the parties as not unlikely to result from the breach. The principle of law which relates to claim for pecuniary loss is that of restitute integrum which means that the party to be damnified is entitled to such such sum of money as would put him in a good position if the contract has not been breached.

Prospective pecuniary losses is concerned with the amount of compensation that can be accessed with a degree of accuracy which will go towards putting the injured person in the same position as he would have been if he had not sustained the wrong.

Non-pecuniary losses are difficult to estimate. The major examples of non-pecuniary losses are, being the injury to reputation, defamation, and the pain and suffering in cases of personal injury, loss of quality of life, future wages. Case => IBOK v Spring Bank Plc (2012)

4) Mitigation of Damages

Lord Haldane described a mitigation of damages as the “fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach but this first principle is qualified by a second which imposes on a plaintiff the duty of taking all reasonable steps to

mitigate the loss consequent on the breach and debars him from claiming any part of the damages which is due to his neglect to take such steps.

This is a concept in contract law that requires that a victim in a contract dispute to minimize the damages that result from a breach of contract. Under the mitigation of damages doctrine, a person who has suffered an injury or loss should take responsible action, where possible, to avoid additional injury or loss. The failure of a plaintiff to take protective steps after suffering an injury or loss can reduce the amount of the plaintiff's recovery.

The plaintiff cannot therefore recover loss which he could have avoided by taking reasonable steps.

5) Penalty and Liquidated Damages

Liquidated damages are types of damages where the parties to a contract as part of the agreement between them fix the amount payable on the default of one of them or in the event of breach by way of damages.

Penalty damages are liquidated damages which exceed reasonable compensatory damages making them invalid under common law.

The parties to a contract may agree in advance to fix the sum payable as damages by either of both parties in the breaches of contract.

6) General and Special Damages

General damages represent the type of damages that cannot easily assigned a monetary value, such as pain and suffering, loss of consortium and emotional trauma.

Special damages are awarded in a civil law suit in order to compensate the plaintiff for his financial losses that directly result from action or injury. Examples are the refer to the loss of earnings, medical expenses and repair bills. In addition to being injured and incurring medical bills for treatment, a person may also have to be off work while he recovers. In this case, special damages may be awarded to compensate him for his direct financial loss. Loss of irreplaceable items.

7) Nominal Damages

Nominal damages refers to a damage award issued by a court when a legal wrong has occurred but where there was no actual financial loss as a result of that legal wrong. Whenever a party has committed a breach of contract which does not result in actual damage to the other party, the injured party is entitled to damages known as nominal damages notwithstanding that he suffered no actual loss or injury.

8) Punitive Damages

Punitive damages can also be called exemplary damages. Punitive damages are the only method the civil courts have to protect the society from the most dangerous and deceptive business practices.

B) Specific Performance

- Introduction

A degree 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.

The basis for the granting of this remedy by the common law judgement for damages. The court considers in each case whether damages would infact be an adequate compensation and if not whether specific performance “will do more and complete justice than an award.”

- Situations Which Readily Attract the Remedy .

The type of contract in which the remedy of specific performance is most readily granted by courts is a contract in which a vendor refuses to convey land sold. Even where the purchaser has bought the land in order to resell it, specific performance may be available to him. A vendor is also entitled to specific performance.

Specific performance will aslo be more readily granted in cases where damages are considered to be in adequate remedy because of the difficulty of quantifying them, or because the plaintiff’s loss is difficult to prove. Examples include a sale of debts proved in bankruptcy.

- Contracts not specifically enforceable.

There are some types of contracts in which the doctrine of specific performance does not apply. A contract of personal service will not be specifically enforced at the suit of either party

i) Contract of service

It is trite law that the court will not grant specific performance of a contract service. This is because it would be undesirable and almost impossible to compel an unwilling party to remain in close personal relations with each other

ii) Contract which involves supervision of the court.

the court does not enforce the performance of contract which involves continuous acts and requires the watching and supervision of the court.

iii) Where the plaintiff is guilty of delay in performing his own part of the agreement.

Before specific performance can be declared in the plaintiff's favor, he must show that he has performed all his own obligations under the contract or has tendered performance.

Injunction

These equitable remedies are multifarious. An injunction is an order or decree of the court by which one party to an action is required to do or refrain from doing a particular thing.

Quantum meruit

Quantum meruit means "as much as he has earned". Quantum meruit determines the amount to be paid for services when no contract exists or when there is doubt as to the amount due for the work performed but done under circumstances when payment could be expected.

If a person by the terms of a contract is to do a certain piece of work for a lump sum and he does only part of the work or something different he cannot claim under the contract but he may be able to claim on a quantum meruit

C) Extinction of remedies

- Effect of fraud
- Disability
- Payment of debt