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Breach of Contract Law

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To establish its contract claim against the defendant, plaintiff must prove that:

1. The parties entered into a contract containing certain terms.

2. The plaintiff did what the contract required the plaintiff to do.

3. The defendant did not do what the contract required the defendant to do. This failure is called a breach of the contract.

4. The defendant's breach, or failure to do what the contract required, caused a loss to the plaintiff.

1*Weichert Co. Realtors v. Tyan,* 128 *N.J.* 427, 435 (1992) (a contract arises from proper acceptance, and "must be sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty."); *West Caldwell v. Caldwell*, 26 *N.J.* 9, 24-25 (1958); *Friedman v. Tappan Development Corp.*, 22 *N.J.* 523, 531 (1956); *Leitner v. Braen*, 51 *N.J. Super.* 31, 38-39 (App. Div. 1958).

When a party materially breaches the contract but does not indicate any intention to renounce or repudiate the remainder of the contract, the plaintiff can elect to either continue to perform or cease to perform. If the plaintiff elects to perform, plaintiff is deprived of an excuse for ceasing performance. But even if the plaintiff elects to perform, plaintiff can still sue for any injury or damages suffered because of the material breach. *Frank Stamato & Co., v. Borough of Lodi,* 4 *N.J.* 21 (1950).

ANTICIPATORY BREACH

If the defendant clearly indicates through words or conduct before the time for performance arrived, the defendant would not or could not perform the contract; the plaintiff would be entitled to treat that indication as a breach. 1The anticipatory breach must be a "material breach" to discharge the other party. *Ross Systems v. Linden Dari Delite, Inc.,* 35 *N.J.* 329 341 (1961). Whether seller's refusal to perform a contract for sale of retail food business constituted, an anticipatory breach is a fact question for the jury. *Semel v. Super,* 85 *N.J.L.* 101 (Sup. Ct. 1913). To qualify as a breach, the defendant's indication of non-performance must have been definite and clear.

A total breach of contract has occurred when a person who has promised to render performance under a contract thereafter has stated or indicated to the person to whom he/she has promised the performance either that he/she will not or cannot perform that which he/she has promised.

This charge follows the rule set out in *Restatement*, *Contracts* (1932) Sec. 318(a). The Restatement language is similar to that in *Samel v. Super*, 85 *N.J.L.* 101 (Sup. Ct. 1913) in which the court held that whether seller's refusal to perform a contract for the sale of a retail food business constituted an anticipatory breach was a fact question for the jury. In the course of its opinion the court quoted from *O'Neill v. Supreme Council,* 70 *N.J.L.* 410 (Sup. Ct. 1904):

Where a contract embodies mutual and interdependent conditions and obligations, and one party either disables himself from performing, or

repudiates in advance his obligations under the contract and refuses to be longer bound thereby, communicating such repudiation to the other party, the latter party is not only excused from further performance on his part, but may, at his option, treat the contract as terminated for all purposes of performance, and maintain an action at once for the damages occasioned by such repudiation, without awaiting the time fixed by the contract for performance by the defendant. (at p. 103).

See Parker v. Pettit, 43 *N.J.L.* 512 (Sup. Ct. 1881); *Stopford v. Boonton Molding Company, Inc*., 56 *N.J.* 169 (1970); *Scoredisc Service Corp. v. Feldman*, 10 *N.J. Misc*. 228 (Sup. Ct. 1932). Conduct indicating repudiation of a contract has the same effect as language. *Ross Systems v. Linden Dari-Delite, Inc*., 35 *N.J.* 329, 340 (1961); *Ferber v. Cona*, 89 *N.J.L.* 135 (Sup. Ct. 1916), *aff'd* 91 *N.J.L.* 688 (E. & A. 1918); *Stein v. Francis*, 91 *N.J.E.* 205 (Ch. 1919); *Storms v. Corwin*, 7 *N.J. Misc*. 931 (Sup. Ct. 1929).

The anticipatory breach must be a "material breach" to discharge the other party. *Ross Systems*, *supra*, at p. 341; *Restatement*, *Contracts* (1932), Sec. 397.

As to the remedy for anticipatory breach, *see Stopford*, *supra*, (1970) where the anticipatory breach was discontinuance of a pension plan in which plaintiff-employee had vested rights. Discussing the question of damages, Justice Francis said:

"Here, the plaintiff was presented with a clear choice of alternative remedies, *i.e*., specific performance which would produce periodic payments or a lump sum recovery which he chose to pursue." *(*at p. 195)

Where defendant repudiates the contract, after plaintiff has performed, plaintiff may be entitled to restitution of what he gave, as an alternative remedy. *Shea v. Willard*, 85 *N.J. Super*. 446, at 451 (App. Div. 1964).

A plaintiff who is awarded a verdict for breach of contract is entitled to compensatory damages for

such losses as may fairly be considered to have arisen naturally from the defendant's breach of contract. Alternatively, plaintiff may be entitled to such damages as may reasonably be supposed to have been contemplated by both parties, at the time they made the contract, as the probable result of the breach of such contract.

Compensatory damages for breach of contract are designed under the law to place the injured party in as good a monetary position as he/she would have enjoyed if the contract had been performed as promised.

Cases:

525 Main Street Corp. v. Eagle Roofing Co., 34 *N.J.* 251 (1961); *Marcus & Co, Inc. v. K.L.G. Baking Co., Inc.*, 122 *N.J.L.* 202 (E. & A. 1939).

the law provides that the plaintiff is to be reasonably compensated for any damage sustained by him/her which was proximately caused by the defendant's conduct in breach of the contract. In arriving at the amount of the award, you should include all damages suffered by the plaintiff because of lost profits within the reasonable contemplation of the parties at the time of the making of the contract; that is to say, profits which the plaintiff would have made but for the breach of the contract by the defendant.

If you find that the plaintiff has in fact suffered loss of profits as a result of the defendant's breach of contract, then the fact that the precise amount of plaintiff's damages may be difficult to ascertain should not affect the plaintiff's recovery. The plaintiff is to be awarded damages for such loss of profits as is capable of determination with reasonable certainty.

In arriving at the amount of any loss of profits sustained by the plaintiff, you may consider any past earnings of the plaintiff in his/her business, as well as any other evidence bearing upon the issue.

Cases:

Van Dusen Aircraft Supplies, Inc. v. Terminal Const. Corp., 3 *N.J.* 321 (1949); *Feldman v. Jacob Brasfman & Son, Inc.*, 111 *N.J.L.* 37 (E. & A. 1933); *Interchemical Corp. v. Uncas Printing & Fin. Co., Inc.*, 39 *N.J. Super*. 318, 329 (App. Div. 1956) a defendant whose wrongful act creates the difficulty may not complain that the amount of damages cannot be accurately fixed; *Casler v. Weber*, 27 *N.J. Super.* 396 (App. Div. 1953); *De Ponte v. Mutual Contracting Co.*, 18 *N.J. Super.* 142, 147, 148 (App. Div. 1952); *Restatement, Contracts, Sec*. 331 ("Where the evidence does not afford a sufficient basis for a direct estimation of profits, but the breach is one that prevents the use and operation of property from which profits would have been made, damages may be measured by the rental value of the property or by interest on the value of the property.")

the Year and past president of the Middlesex County Municipal Prosecutor's Association.

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Our website provides information on traffic offenses we can be retained to represent people. Our website also provides details on jail terms for traffic violations and car insurance eligibility points. Car insurance companies increase rates or drop customers based on moving violations.

Contact the Law Office of Kenneth Vercammen & Associates, P.C. at 732-572-0500 for an appointment.

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