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TEMPLARS ThoughtLab

Termination of Contracts under Nigerian Law: Dos and Don'ts

Introduction

At the outset of most commercial relationships, two or more parties negotiate and agree to certain terms and conditions, usually laid out in a document known as a contract. A contract is, therefore, the oral or written expression of the rights and obligations of parties in their relationship. These are usually mutually enforceable by law. Relatedly, the termination of a contract is the process of ending the parties' commercial relationship before an agreed end date. The legal effect of validly terminating a contract is that the respective obligations of the parties under the contract are discharged.¹ However, when the contract is wrongfully terminated, it can lead to a dispute between the parties. This note presents brief practical perspectives on the termination of contracts under Nigerian law, focusing on the grounds and process for termination, and the implication of wrongful termination.

Grounds for terminating a contract:

Ordinarily, a contract automatically ends when the parties fully and completely perform their respective obligations.² However, even without the performance of a contract, there are different ways that a contract may be cut short through termination. These are categorised into two broad categories: **(i)** those set out in the contract itself (i.e., the express right to terminate) and **(ii)** those implied into the contract by law (i.e., the implied right to terminate).

¹ Note that a mutual agreement for the termination of a part-performed contract must be under seal or supported by a fresh consideration to be valid. See: *Chieke v. Olusoga & Anor* (1997) LPELR-845 (SC).

² *Achonu v. Okuwobi* (2017) LPELR-42102 (SC).

Express right to terminate:

Usually, the parties would either agree on the modalities for terminating the contract or agree to terminate the contract after the occurrence of an event. The express right to terminate under most contracts is often categorised into three headings: **(i)** termination for cause/default, **(ii)** termination for convenience, and **(iii)** termination due to circumstances beyond the parties' control.

Termination for cause/default, as the name implies, relates to the right of a party to terminate the contract where an event has occurred, such as a breach of the contract by the other party/parties,³ insolvency or liquidation, assignment of rights, and so on. *Termination for convenience* gives a party the right to terminate the contract with or without reasons, provided that the party gives the other the requisite notice of termination. The third category, *termination due to circumstances beyond the parties' control*, relates to the right to terminate a contract when an event beyond the parties' control and which makes it impossible or difficult to perform the contract, occurs. These events, usually referred to as force majeure events, include pandemics, natural disasters, changes in law, or civil actions.⁴

Implied right to terminate:

Nigerian law recognises the right to terminate a contract, even if the relevant contract is silent on that subject matter. It includes the right to terminate a contract where the other party has breached a fundamental term of the agreement,⁵ or where an unforeseen event has frustrated the performance of the contract.⁶ The primary difference between a frustrating event and a force majeure event is that, while the force majeure event is expressly set out by the parties in the contract, the frustrating event can be relied on as a basis for terminating a contract, even in the absence of any express agreement between the parties.⁷

Consequence of wrongful termination:

If the conditions for termination are not strictly complied with, such termination will likely be considered invalid, wrongful, and ineffective.⁸ One implication of wrongful termination is that the terminating party may be deemed to have breached the contract and could be liable to pay the other party compensation to either cover losses they have suffered as a result of the wrongful termination or to put them in the position that they would have been if the contract had not been wrongfully terminated.⁹ It is therefore pertinent for parties to abide by the express procedures in a contract when terminating. Indeed, the terms of a contract would typically set out the steps to take towards the termination of the contract, including notice requirements, recipient of the notice of termination, and so on.¹⁰

³ A breach of contract occurs where either of the parties failed or neglected to perform its obligations in accordance with the terms of the contract.

⁴ *Globe Spinning Mills (Nig) Plc v. Reliance Textile Industries Ltd* (2017) LPELR-41433(CA).

⁵ A fundamental term of a contract is regarded as a term of the contract that is so important to the performance of the contract that a failure to comply with it would affect the entire basis of the contract. See: *Oceanic Bank Intl (Nig.) Ltd. v. G. Chitex Ind. Ltd.* (2000) 6 NWLR (Pt. 661) 464 (CA).

⁶ In *Nwaolisah v. Nwabufoh* (2011) LPELR-2115(SC), the Supreme Court held that: "Frustration occurs wherever the law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it radically different from what was undertaken by the contract".

⁷ *Addax Petroleum Development (Nig) Ltd v. Loycy Investment Co. Ltd & Anor* (2017) LPELR-42522(CA).

⁸ *Warner & Warner International Associates (Nig) Ltd v. FHA* (1993) LPELR-3471(SC).

⁹ *A. Savoia Ltd. v. Sonubi* (2000) 12 NWLR (Pt. 682) 539 (SC).

¹⁰ *Balogun v. Union Bank* (2016) LPELR-41442(CA).

Conclusion

The termination of contract is a complex, delicate and nuanced process which demands careful consideration of the contractual terms and the applicable legal principles. A party wishing to terminate must therefore ensure that it strictly complies with the termination procedure set out in the contract. As noted, the wrongful termination of a contract can result in significant legal and financial consequences for the terminating party. Accordingly, it is important for parties to not only familiarise themselves with the essential terms of the relevant contract but also seek legal advice before termination to ensure that it is effective and valid and minimise the risk of unintended liabilities.