WHAT DOES THE LAW SAY ABOUT TERMINATION OF A CONTRACT WHEN OVERCHARGED?

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"Against the backdrop of the principle of freedom of contract, however, a contracting party is at liberty to set the rate and prices of goods it is selling as it behoves the other contracting party to do its proper due diligence before entering into a contract in order to be certain it is making the best business decision."

Sometimes buyers execute contracts with sellers where prices and rates for goods or services are agreed and then the buyers realise the prices agreed on for such good or service are higher than what obtains in the market. At that point, the buyer may attempt to terminate the contract with the seller on the basis of being charged a higher price or try to get damages for same. The principles of contract and termination thereof according to the governing laws of the executed contract will determine the remedies available to the buyer.

A contract is a legally enforceable agreement between two or more parties for goods and services. Contracts can be oral or written though it is generally recommended that contracts be in writing and signed by both parties. A contract is formed when there is an offer to do something, acceptance of that offer, and consideration (the agreed upon exchange between the parties). For example, when a person contracts with a carpenter to build a bed, the carpenter builds a bed in exchange for payment at the agreed upon price. Once the parties have come to an agreement regarding the terms of the contract, they are both legally bound to fulfil their obligations under the contract. Failure of any party to fulfil their contractual obligations exposes such party to liability in a court of law. By virtue of the principle of freedom of contract, parties are free to enter into contracts and determine their content. Together with the principle of sanctity of contracts, this principle constitutes a core pillar of transactional contract law. The parties' freedom relates to both their decision whether and with whom to enter into a contract ("positive" and "negative" party autonomy) and how the contents of that contract should be.

The Court of Appeal[1] on the duty of court to respect the expressed intention of the parties to the contract held that there is no doubt that parties to a contract are allowed within the law to regulate their rights and liabilities themselves.[2] The courts do not make contracts for the parties. The duty of the court is to give effect to the intention of the parties as it is expressed in and by their contract.[3] The intent of Parties to be bound by the terms of the contract is given considerable weight and ensures that the Parties do not renege on their contractual obligations.

The Principles of European Contract Law[4] state that this freedom is subject to the requirements of good faith, fair dealing and the mandatory rules established under the Principles. Accordingly, the law has intervened to guide parties as to which terms they can contract on to effectively balance the inequality in their bargaining power, and ensure optimum protection for the consumer who, most times, has limited expertise in the field.

English contract law possesses a very restricted law of vitiation of a contract on the ground of mistake. In principle, a single party's mistake ('unilateral mistake') is not a ground of invalidity and both the parties' mistake is only exceptionally a ground of invalidity. This position which side-lines the poor quality of a party's consent is explicitly justified by the courts on the ground that it promotes certainty of contract, and this in turn reflects a concern that the law should be posited in a way which best facilitates private transactions.

Terminating a contract means legally ending the contract before both parties have fulfilled their obligations under the terms of the contract. There are a variety of reasons why a party can terminate a contract. When and how the contract is terminated will determine whether either party has any liability for breach of the contract before it was terminated.

[1] LIGNES AERIENNES CONGOLAISES v. AIR ATLANTIC NIGERIA LTD (2005) LPELR-5808(CA) Per OGUNBIYI, J.C.A. (Pp. 42-43, paras. C-C)
[2] See the case of GOTT v. GANVY 2 E & B 845 at p.847 per Erle, J.
[3] See Bramwell B. in Stadhard v Lee 3 B & S 364 at p 372.
[4] https://www.trans-lex.org/400200/_/pecl/

Parties to a contract can legally terminate their agreement for several reasons including:
1. Impossibility of Performance or Frustration;
2. Fraud, Misrepresentation, or Mistake;
3. Illegality;
4. Breach of Contract; and
5. Prior Agreement.

When a party terminates a contract wrongfully, it amounts to breach in law and the innocent party is entitled to claim for damages. The quantum of damages therefore is to restore the innocent party to the position he would have been assuming the breach had not occurred. From the above, a party seeking to terminate a contract on the basis of overbilling might have a claim of fraud against the other party.

Fraud is defined as a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed that deceives and is intended to deceive another so that the individual will act upon it to his or her legal injury. Fraud must be proved by showing that a party's actions involved five separate elements, which contain nuances that are not all easily proved. These elements are:

1. A false statement of a material fact;
2. Knowledge on the part of the defendant that the statement is untrue;
3. Intent on the part of the defendant to deceive the alleged victim;
4. Justifiable reliance by the alleged victim on the statement; and
5. Injury to the alleged victim as a result.

To be fraudulent, a false statement must relate to a material fact. It should also substantially affect a person's decision to enter into a contract or pursue a certain course of action. A false statement of fact that does not bear on the disputed transaction will not be considered fraudulent.

Second, the defendant must know that the statement is untrue. A statement of fact that is simply mistaken is not fraudulent. To be fraudulent, a false statement must be made with intent to deceive a party. This is perhaps the easiest element to prove, once falsity and materiality are proved, because most materially false statement are designed to mislead.

Third, the false statement must be made with the intent to deprive the buyer of some legal right.

Fourth, the party's reliance on the false statement must be reasonable. Reliance on a patently absurd false statement or price, in the case of a B2B contract, generally will not give rise to fraud, especially when the buyer is free and under no duress to get the best possible sales rate.

Finally, the false statement must cause the party some injury that leavesher or him in a worse position than she or he was in before the fraud.

Against the backdrop of the principle of freedom of contract, however, a contracting party is at liberty to set the rate and prices of goods it is selling as it behoves the other contracting party to do its proper due diligence before entering into a contract in order to be certain it is making the best business decision. By the definition and implication of the word "fraud", the buyer could argue that the seller was fraudulent by selling the goods at a higher price than the market price, however, the seller could rightly argue that the buyer did not negotiate the price of the goods nor contest the price at which they were sold at.

Therefore, in the event of a default on the agreed terms, the contract might outline how and when notice must be given and the steps to take. Hypothetically, if parties had taken into the consideration the possibility of overpricing and set it as a default event, only then would the innocent party be able to terminate the contract on that ground.

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