



SPECIFIC PERFORMANCE OF CONTRACT

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Introduction

In contract law, particular performance is an equal remedy in which a court requires a party to execute a specified act, such as finishing the contract's performance. Specific performance is commonly used to obtain injunctive relief comprising sensitive information or real property. Calabresi and Melamed separate two alternative strategies for safeguarding legal claims in an important study. One is referred to as a "property" regulation, while the other is referred to as a "liability" rule. According to Calabresi and Melamed, a property regulation protects a right or entitlement when it may only be seized by a non-owner after purchasing permission from the right's owner. When a right is safeguarded by a legislation of this kind, anybody who obtains it without the owner's consent faces a particular penalty—usually a fee or jail time.' A non-owner who unilaterally appropriates a right protected by a responsibility rule must only reimburse the owner for any harm experienced as a result of the appropriation. In a consensual transaction between owner and taker, the amount of compensation that a nonowner must pay for taking a right protected by a liability law is decided by a representative of the state rather than the owner of the right.

Calabresi and Melamed try to explain why some legal rights are protected by a property rule, while others are protected by a liability rule. They argue that the expense of

negotiating a voluntary transfer of a right may be high enough in some situations to stymie the transfer. When this is the case, a property law designed to incentivize such transfers is likely to promote wasteful resource allocation. Automobile accidents and pollution torts are examples of this. A voluntary transfer of entitlements is almost certain to be prohibitively expensive in both cases: in an automobile accident due to the cost of identifying the victim in advance, and in pollution torts due to free-rider and hold-out complications that will make any negotiated settlement extremely difficult and time-consuming.

In contract law, specific performance is a popular alternative to monetary damages. The promise is considered to be exactly enforceable when the law gives the promisee, the promisee's owner, the ability to seek the real (or "specific") fulfilment of the promise. The right to positively enjoin a promise, akin to the right to negatively enjoin a nuisance, might be a property rule-protected rights. In any event, the right owner can compel the would-be taker to negotiate a voluntary surrender of the specific claim. If the taker acts unilaterally (by simply refusing to perform or continuing to pollute), he may be forced to honour the owner's entitlement through an injunctive order; if he then refuses to honour the injunction, he may be forced to make a payment (not necessarily monetary) to the state or the promisee that is greater than the amount necessary to compensate the promisee for his loss. If performance is still a possibility, a second injunction will very



definitely be granted, with civil and criminal contempt penalties.¹

A court may provide specific performance to a promisee whose money damages remedy is insufficient in its sound judgement." In a number of instances, courts are willing to compel specific performance. This form of contract includes contracts for the sale of land, heirlooms, antiques, and certain licences and patent rights that can only be obtained from the promisor; contracts for the selling of a majority of a corporation's shares; and long-term production and demand contracts. An employment or construction contract may be specifically enforced on rare instances.

Research Methodology

This research began with a thorough literature review to identify the important aspects of essential human capacity knowledge and abilities, as well as the primary orientations of a needed strategy. This paper made use of secondary research method that is it relied on already existing data.

Literature Review

1. Kronman, A. T. (1977). In his paper Specific performance highlighted that while the distinction between liability rules and property rules (and the underlying distinction while a rigid commitment to the difference (between compensation and punishment) is important as a beginning point for research, it obscures the reality that certain remedies display aspects of both types of laws and straddle the boundary.

Calabresi and Melamed's effort to explain why some legal rights are protected by a property rule while others are protected by a liability rule was also scrutinised. They believe that the cost of negotiating a voluntary transfer of a right may be sufficient to hinder the transfer in some circumstances.

2. Schwartz, A. (1979). In his paper The case for specific performance highlighted that the goal of contract remedies is to put a disappointed promisee in the same position he would have been in if his promisor had kept his word.' This "compensation goal" can be met in two ways: by requiring the breaching party to pay damages, either to enable the promisee to purchase a substitute performance or to replace the net gains generated by the promised performance, or by requiring the breaching party to render the promised performance. According to this article, the remedy of specific performance should be as widely available as the damages remedy. The first portion looks at the current legal framework that controls certain performances. Part II argues that damage remedies are usually undercompensatory, and that promisees have economic incentives to avoid choosing a certain performance unless the damage remedy is likely to provide adequate compensation.

Findings

The purpose of contract remedies is to put a dissatisfied promisee in the same situation as if his promisor had fulfilled his word.' This "compensation goal" can be met in two ways:

¹ Herman, S. (2003). Specific Performance: A Comparative Analysis (1). *Edinburgh Law Review*, 7(1), 5-26.



by requiring the breaching party to pay damages, either to enable the promisee to purchase a substitute performance or to replace the net gains generated by the promised performance, or by requiring the breaching party to render the promised performance. Despite the fact that a disappointed promisee is always entitled to damages under current law, the remedy of special performance is only available at the court's discretion. Furthermore, courts seldom enforce contract clauses that specifically provide for specific performance in the event of a breach. The remedy of particular performance, according to this article, should be as widely available as the damages remedy.²

I. The Current Law Regarding Specific Performance

Courts give specific performance under present law when they believe damages will be insufficient recompense. Specific performance is a rare remedy that can only be granted at the discretion of the court.

Even though the plaintiff's proof demonstrates a contract enforceable at law and adequate for the recovery of damages, it must be recalled that particular performance is not a matter of right. Ordering particular contract enforcement is a matter for the court's competent judicial judgement. ... The plaintiff was expected to demonstrate the good faith and equities of its own position, and the trial chancellor was allowed to assess whether a decree of particular performance would provide the plaintiff an unconscionable advantage or result in unfairness in balancing the equities. Sales of

"unique things," in which substitutional damages are difficult to quantify; sales of property, since land is assumed unique; and, more recently, long-term needs contracts, for which damages from violation are difficult to calculate.

Even if a disappointed promisee can establish that he has no competent legal remedy, achieving particular performance is not guaranteed. Inadequacy of consideration; lack of security for the promisee's performance; the promisor's unilateral mistake; and the difficulty a court would have in supervising a specific performance decree are all defences that promisors can raise against specific performance that are not available against a damages award." These arguments serve to narrow the scope of the specific performance remedy even further. Furthermore, courts are presently refusing to enforce contracts that provide for different types of remedies than those that they would provide. Because the costs of breach would always exceed the costs of performance, liquidated damage clauses with sufficiently large damage provisions would effectively guarantee performance by the promisor. Courts, on the other hand, will not enforce such terms; liquidated damage clauses will only be enforced if they represent a "reasonable" estimate of "actual" losses—the damages that would be awarded if the contracts did not include liquidated damage clauses.' Furthermore, courts seldom enforce contract terms that require particular performance in the case of a violation.³

² Szladits, C. (1955). The Concept of Specific Performance in Civil Law. *Am. J. Comp. L.*, 4, 208.

³ Kronman, A. T. (1977). Specific performance. *U. Chi. L. Rev.*, 45, 351.



II. Contract Remedies and the Compensation Goal

Because it provides the promisee with the precise performance that he purchased, specific performance is the most accurate means of attaining the compensating aim of contract remedies. The obvious issue is why particular performance data isn't readily available. There are three probable explanations for the law's constraints on particular performance. First, the law's commitment to the compensation aim may be partial; limiting particular performance may represent an unspoken aversion to fully pursuing the compensation goal. Second, damages may be completely compensatory in most cases. In such case, increasing the availability of particular performance would allow promisees to take advantage of promisors by threatening or actually forcing performance without promoting the compensation purpose.

In terms of the second rationale, present law allows for particular performance where courts are unable to determine compensatory damages with even a smidgeon of precision.¹⁷ Expanding the availability of special performance is evidently unneeded if the class of circumstances in which calculating damages is difficult matches roughly to the class of cases in which specific performance is presently provided. Furthermore, such an extension would allow promisees to take advantage of promisors. However, the category of circumstances in which damage judgments fail to sufficiently compensate promisees is wider than the category of cases in which particular performance is currently awarded. As a result, the compensation aim encourages the removal rather than the retention of current limitations on the availability of specific performance. It's a

good idea to start by looking at the paradigm case for providing specified performance under present law: unique products. When a promisor fails to perform and the promisee can make a transaction that replaces the performance that the promisor failed to do, the promisee will be fully rewarded if he receives the additional money required to acquire the substitute plus the expenses of completing a second transaction. However, in other circumstances, such as those involving pieces of art, courts are unable to determine which transactions the promisee would consider replacements because such knowledge is frequently in the promisee's sole possession. Furthermore, judging the correctness of a promisee's claim is challenging for a court. Furthermore, a court's capacity to investigate the validity of a promisee's claim is troublesome if the promisor, for example, breaches a promise. If a promisor fails to fulfil a promise to sell a rare emerald, the promisee may argue that only the Hope Diamond would please him equally, and sue for the difference in price between the two. This allegation would be difficult for a court to determine whether or not it is true. If the court decides to award money damages, it can do so in one of three ways: it can award the price differential, which may overcompensate the promisee; it can award the dollar value of the promisee's foregone satisfaction, which may overcompensate or undercompensate the promisee; or it can award restitution of any sums paid, which may undercompensate the promisee.

If the remedy of particular performance is accessible to the promisee and its exercise is supported by the theory that losses must be predictable and definite, the promisee is fully



reimbursed without risk of overcompensation or undercompensation.⁴

Second, where losses are anticipated to be fully compensated, promisees have economic incentives to suit for damages. A promisor who has broken his or her promise is hesitant to perform and may be angry. Because the promisor is more likely to produce a faulty performance when pressured, particular performance is an undesirable remedy in circumstances when the promisor's performance is complicated, and the defectiveness of complex performances can be difficult to show in court. Furthermore, it is costly for the promisee to monitor a hesitant promisor's conduct when the promisor's performance must be delivered over time, as in construction or requirements contracts. The promisee would like to avoid these monitoring expenditures if the harm remedy is compensating. Finally, given the length of time it takes to complete a case, promisees would often prefer to conduct substitute transactions right now and claim for damages later rather than wait for equitable remedy. The mere fact that a promisee asks for particular performance suggests that damages are insufficient compensation.²⁴ The third reason why courts should allow promisees to frequently chose particular performance as a remedy is because promisees have a greater understanding of both the sufficiency of damages and the challenges of coercing performance than courts.

Because promisees are more familiar with the expenses that breach imposes on them, promisees know better than courts whether the damages a court is likely to award are appropriate. Furthermore, promisees have a

greater understanding of their promisors than courts, and hence are better able to forecast if certain performance decrees will compel their promisors to provide sufficient performances. Furthermore, increasing the availability of specific performance would not result in more promisors being exploited. Promisees would seldom misuse their discretion to decide when particular performance should be given since they have substantial incentives to pursue damages even if they are only roughly compensatory.

Case Analysis

In *Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar & Ors.* [SLP (C) No. 31087 of 2014], the Supreme Court reiterated that when a plaintiff wishes to implead certain persons as defendants in a suit for specific performance on the ground that they may be adversely affected by the outcome of the suit, the interest of justice also requires allowing such a prayer for impleadment so that those who may take appropriate defence as suited to their vendors. The court went on to say that the necessary parties in a claim for specific performance of a contract for sale include not only the contracting parties or their legal representatives, but also the person who purchased the contractual property from the vendor.

The Kerala High Court ruled in 2017 that a plaintiff is only entitled to particular performance of a contract if he follows the contract's original provisions. The plaintiff will not be able to demand particular performance if the contract conditions are changed, even if it is for the benefit of the defendant.

⁴ Schwartz, A. (1979). The case for specific performance. Yale LJ, 89, 271.



In *Sucha Singh Sodhi v. Baldev Raj Walia* (Civil Appeal No. 3777 of 2018), the Supreme Court declared that specific performance and permanent/temporary injunctions cannot be sought in the same lawsuit. The following explanations were given for this:

Specific performance and a temporary or permanent injunction cannot be obtained in the same lawsuit since they are unrelated.

When defendant No.1 threatens to remove the plaintiff from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises, the plaintiff has a cause of action to seek a temporary or permanent injunction to prevent the defendants from interfering with his possession of the suit premises. It is controlled by the Code's Order 39 Rule 1 (c), which governs the issuing of an injunction. The time restriction for filing such a lawsuit is three years from the date of the defendant's obstruction of the plaintiff.⁵

The cause of action to initiate a lawsuit for particular performance, on the other hand, derives from the date set for performance or when the plaintiff notices the defendant's non-performance. The time restriction for filing such a lawsuit is three years from the date of the incident.

When neither of the reliefs/claims are satisfied:

When the causes of action to suit are distinct, the situation is similar.

where the essential elements of the separate causes of action for both reliefs/claims disagree;

where the Limitation Act governs both the reliefs/claims separately;

Then claiming both reliefs on the same cause of action in the same suit is impossible.

Another question was whether the plaintiff may bring a new suit for specific performance in the absence of authorization given by the trial court when the earlier complaint seeking permanent injunction was withdrawn. The court stated that it would examine the plaintiff's statement on the withdrawal of the claim and the filing of a new suit, and that this remark would be included in the order.

Suggestions

The purpose of contract remedies, according to the research, is to put a dissatisfied promisee in the same position he would have been in if his promisor had fulfilled his word.' This "compensation goal" can be met in two ways: by requiring the breaching party to pay damages, either to enable the promisee to purchase a substitute performance or to replace the net gains generated by the promised performance, or by requiring the breaching party to render the promised performance. Despite the fact that a disappointed promisee is always entitled to damages under current law, the remedy of special performance is only available at the court's discretion. Furthermore, courts seldom enforce contract clauses that specifically provide for specific performance in the event of a breach.

⁵ Szladits, C. (1955). The Concept of Specific Performance in Civil Law. *Am. J. Comp. L.*, 4, 208.



Conclusion

In contract law, specific performance is a popular alternative to monetary damages. The promise is considered to be exactly enforceable when the law gives the promisee, the promisee's owner, the ability to seek the real (or "specific") fulfilment of the promise. A property rule-protected entitlement might be the right to positively enjoin a promise, similar to the right to negatively enjoin a nuisance. The right owner has the ability to force the would-be taker to negotiate a voluntary surrender of the specific entitlement under any case.

If the taker acts unilaterally (by simply refusing to perform or continuing to pollute), he may be forced to honour the owner's entitlement through an injunctive order; if he then refuses to honour the injunction, he may be forced to make a payment (not necessarily monetary) to the state or the promisee that is greater than the amount required to compensate the promisee for his loss. If performance is still a possibility, a second injunction will very definitely be granted, with civil and criminal contempt penalties.

Bibliography

1. Szladits, C. (1955). The Concept of Specific Performance in Civil Law. *Am. J. Comp. L.*, 4, 208.
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