

Protection of Hotel Guests in Nigeria: Remedies without Redress?

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Abstract

A hotel guest injured or who has his property damaged or stolen within the *hospitium* of the hotel expects some form of redress, particularly, through the civil law mechanism. Primarily, civil proceedings is driven to ensure that such persons are compensated for the damaged suffered. Such compensation is directed at restoring the victim to the position he would have been but for the injury. This is captured in the maxim, *ubi jus ibi remedium*.¹ Besides criminal liability, the liability of service providers in the hospitality services in Nigeria is largely contract-based. Legislative intervention provides protection for injured consumers of hospitality services in Nigeria. This paper critically analyses these remedies to discover whether indeed they effectively redress the injury suffered by consumers.

Keywords: Consumer protection, remedies, compensation, hospitality services, damages.

1. Introduction

The focus of consumer protection in the hospitality services is the adjustment in the relationship between the consumer and the service provider, in the face of the power imbalance in favour of the latter. The hotel guest in this paper is basically the consumer of hospitality services, while the hoteliers are the service providers, and they shall be so referred herein. This paper focuses on the remedies for ensuring the protection of consumers of hospitality services in Nigeria. The assumption underlying this paper is that the law provides rights, enforceable as remedies by consumers of hospitality services for defective goods or deficient services supplied to them. These rights, which are intended to assuage such consumers for injuries or inconveniences caused, are referred to herein as consumers, remedies. This paper examines the civil remedies available to a consumer of hospitality services who has been injured by the act or omission of unscrupulous service provider. These remedies are appraised with a view to discovering their potency in meeting the aims of the law, which is, assuaging, restoring and redressing the consumer. The examination of these remedies in relation to meeting the consumer's expectation in Nigeria viz-a-viz international standard is the focal point of this paper.

2. Truth about Consumer Remedies in Nigeria

Generally, the liability rule in a consumer claim determines the remedy the consumer expects. Thus, it is important how the liability rule is stated. The range of rules covers contract, torts, criminal law² and administrative regulation.³ Basically, the rules governing liability of service providers in the hospitality industry in Nigeria has been identified to be contract based.⁴ Aside from the difficulties faced by consumers as a result of the contract-based liability regime,⁵ certain other factors inhibit the consumer of hospitality services from accessing the remedies available to him. These factors include the consumer's otiose perception, level of literacy and access to information. For instance, the consumer who has been supplied deficient service, but is not aware of the rights available to him, will seldom feel aggrieved enough to think of enforcing such rights. It is only a man that knows about the existence of a right that perceives a wrong flowing from the infraction of that right. Knowledge of right comes from information. The consumer needs to first have information about the goods or services supplied, to perceive a wrong done to him when there is a breach, be aware of available remedies, before redress can be sought. With information the consumer knows what to expect and whose conduct has caused him injury. Therefore, the issue of redress can hardly be raised by one, where the (aggrieved) consumer is unaware that he has been wronged, and that there exists a remedy.

Ben-Shahar asserts that vital to the consumers are; information about the service, access to courts, and

¹ That is, no injury without a remedy.

² Criminal liability of the service provider is not within the purview of this paper as this writer has considered this elsewhere, see Ekanem, E. E. (2013), "Criminal Law: What Remedy for the Consumer of Hospitality Services?" *Judicial Review*, vol. 11, pp. 1-18.

³ Kanyip, B. B. "Consumer Redress" (1998), *Modern Practice Journal of Finance and Investment Law*, vol. 2, No. 2, p.76 at 78.

⁴ Ekanem, E. E. and Eseyin, M. (Sep. 2015), "No Longer at Ease: The Contract-Based Liability Posture of the Nigerian Law toward Consumers of Hospitality Services" *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Volume 20, Issue 9, Ver. VI pp. 10-19 e-ISSN: 2279-0837, p-ISSN: 2279-0845, available at <http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue9/Version-6/C020961019.pdf> (accessed September 30, 2015).

⁵ Ibid.

remedies for wrongs done to them.¹ A consumer cannot compete with large corporations without these vital components; otherwise such a duel can only be likened to one between a David and a Goliath, where in the absence of divine intervention, Goliath would always triumph.²

3. Remedies

3.1 Civil Remedies

Civil remedies symbolise the substantive remedies that an aggrieved consumer of hospitality services can personally pursue.³ The commonest of civil remedies for consumers of hospitality services seems to be claim for damages.⁴ Apart from damages, there are other types of civil remedies that may avail a hotel guest who has been adversely affected by defective goods or deficient services rendered by a hotelier or other service providers. These include specific performance, refund, replacement and repair.

a. Damages:

At common law, damages are the common remedy available to an aggrieved consumer who has been a victim of the provision of poor hospitality service. Damages are paid to compensate an aggrieved consumer for loss, injury, or harm suffered as a result of another's breach of duty. Generally, the guiding principle in the award of damages is *restitutio in integrum*, that is, to restore the injured person to his original position. The aim of damages in contract is to restore the plaintiff in as good a position as he would have been if the contract had been performed,⁵ while in tort, it is designed to put the plaintiff in as good a position as he would have been if the tort had not been committed against him.⁶ Damages offer an aggrieved consumer of deficient hospitality service, or one who has suffered loss or injury from the consumption of such deficient service an opening to be compensated.

Ordinarily, damages appear to be a satisfactory remedy to the consumer of shoddy and deficient hospitality services. In reality however, damages can hardly be said to be a satisfactory remedy to a hotel guest who has sustained injuries or incurred losses as a result of poor services rendered to him in all circumstances,⁷ as the effectiveness of the damages is whittled down by a number of reasons⁸ discussed herein.

Measure of Damages

One problem the aggrieved consumer of services may have to contend with in accessing damages as a remedy is that of the measure of damages. Sometimes, even where the injury suffered by the plaintiff has been adjudged not too remote, the quantum of compensation awarded to the plaintiff may be affected by the principle of measure of damages. The principle of measure of damages is concerned with how damages will be assessed in each case. The law restricts the limit of liability of a hotel proprietor to the consumer, in respect of loss or damage to the latter's goods. Section 6 of the Innkeepers and hotel Proprietors Law of Akwa Ibom State limits the liability of the service provider with regards to the property of the guest lost or damaged within the *hospitium* of the hotel to an amount not exceeding the sum of N50,000.00 in respect of any one article or N200,000.00 in the aggregate.⁹ Liability would not however be limited in the following instances;

- Where the property was stolen, lost or damaged through the default, neglect or wilful act of the hotel proprietor or his servant's,
- Where the property was deposited by or on behalf of the guest expressly for safe custody with the hotel proprietor or his servant, authorized or apparently authorized for such purpose, or
- At a time after the guest had arrived at the hotel, either the property was offered for deposit as

¹ Ben-Shahar, O. (2009), "The Myths of Consumer Protection Law," being the text of a paper presented at the Annual Ronald H. Coase Lecture for First Year Law Students of the University of Chicago Law School held on Thursday, February 26, 2009, can be sourced online, and available at http://www.facebook.com/note.php?note_id=64284252287 (accessed January 20, 2015).

² *Ibid.*

³ Kanyip, "Consumer Redress", *op cit.*, at p. 81.

⁴ For instance ss. 4 - 6 of the Innkeepers and Hotel Proprietors Law of Cap. 63 Laws of Akwa Ibom State of Nigeria 2000; ss. 6 - 8 of the Innkeepers and Hotel Proprietors Edict No. 12 Laws of Imo State of Nigeria 1994; ss. 7- 9 of the Innkeepers and Hotel Proprietors Law Cap 76 Laws of Kaduna State of Nigeria 1990; and ss. 4 - 6 of the Innkeepers and Hotel Proprietors Law Cap. 71 Laws of Rivers State of Nigeria 1999.

⁵ *Robinson v Harman* (1848) 1 Exch. 850; (1843-60) All E. R. 383 at p. 385.

⁶ *Ebe v Nnamani* [1997] 7 WLR (pt. 513) 482; *First Bank Nig. Plc. v Ibenah* [1996] 5 NWLR (pt. 451) 728; Birks, P. (1985), "Restitution: A View of the Scott Law" *Current Legal Problems*, 57, at pp. 74-75.

⁷ Treitel, G. H. (1967), "Some Problems of Breach of Contract" *Mich. L. R.* 30, p. 139.

⁸ Burrow, A. S. (1987), *Remedies For Torts and Breach of Contracts*, London: Butterworths, at p. 34; Yagba, T. A. (2000), "Consumer Redress", a paper presented at the National Workshop on Consumer Protection, held at the Nigerian Institute of Advanced Legal Studies, Lagos between June 27 and 29.

⁹ S. 8 of the Innkeepers and Hotel Proprietors Law of Imo State; s. 9 of the Innkeepers and Hotel Proprietors Law of Kaduna State; and s. 6 of the Innkeepers and Hotel Proprietors Law of Rivers State.

aforesaid and the hotel proprietor or his servant refused to receive it, or the guest or his agent wished to offer the property but through the fault of the hotel proprietor or servant, was unable to do so.¹

The limitation on the amount payable as damages does not appear to advance the consumer's interest. The intention of the law seems to be to encourage the consumer to be cautious in the handling of his valuables. To obviate the effect of the limitation provisions, the consumer has to prove any of the exceptions.

Generally, for breach of contracts, the measure of damages is as agreed by the parties or the estimated loss directly and naturally resulting in the ordinary course of events from the breach.² While damages can be awarded for personal injuries and damage to property, in tort, the position is different for purely economic loss not accompanied by injuries to the person or to the person's property.³ In the absence of injuries to the consumer,⁴ loss or damage to property, awarding damages for purely economic losses seems very remote in tort. Generally, where a consumer suffers injuries to his person, or loses his property as a result of deficient services, damages avail him.⁵ The assessment of damages recoverable by a consumer for non-financial losses seems to be at the discretion of the court and not based on any mathematical formula.⁶ It would appear that where, as a result of the use of deficient hospitality service, the consumer sustains injury which results in loss of earnings by the consumer, damages should be awarded for loss of earnings. A case has been made for damages to be awarded for loss of earnings, future earnings, loss of earning capacity, and lost years where there has been injury to the person.⁷

Where the property is merely damaged, and not lost or destroyed, the measure of damages will be the amount by which the value of the property is diminished, being, the cost of repair or the difference between the market value of the property at the time of the damage plus, in proper cases, loss of use or earnings during the period of repair or replacement, plus compensation for the loss of the damaged property.⁸ Where the property is lost or destroyed, the market value of the property at the time and place of the loss or damage would be the measure of damages.⁹ In the Nigerian case of *Hill Station Hotel Ltd. v Adeyi*,¹⁰ the respondent's 504 saloon car was stolen from the appellant's hotel premises where the former was a guest. On March 4, 1996 the Court of Appeal entered judgment for the respondent and awarded him the sum of N100,000.00 as the cost of the vehicle. At the time, the sum awarded could not have been said to represent the market value of the car in Nigeria, which was N1,200,000.00.¹¹ In the circumstance of that case, the sum of N100,000.00 awarded to the respondent as damages for the loss of his car could hardly be said to have been sufficient to restore the respondent to the position he was before the loss occurred. Also, the respondent was not awarded damages to compensate him for the loss of use of the car during the period between the loss and the replacement. In this case, as in many others where the consumer's claim never saw the light of day,¹² the principle of *resitutio in integrum* was called to question.¹³ To this extent, damages, it appears, fail to effectively redress the consumer of hospitality services,

¹ S. 6(a) - (c) of the Innkeepers and Hotel Proprietors Law of Akwa Ibom State; s. 8 (a) - (c) of the Innkeepers and Hotel Proprietors Law of Imo State; s. 9(a) - (c) of the Innkeepers and Hotel Proprietors Law of Kaduna State; and s. 6(a) - (c) of the Innkeepers and Hotel Proprietors Law of Rivers State.

² Ukwueze, F. O. (October, 2007), "Consumer Redress in Nigeria," an unpublished LL. M. Seminar paper presented at the University on Nigeria, Enugu Campus, at p. 34.

³ Chritou, R. (2007), *Sale and Supply of Goods and Services* London: Sweet & Maxwell, at pp. 1103-1105; *Architects Planners & Engineers v Ocean Front Pte Ltd.* (1996) S. L. R 113; *Rashid v Jurisan Maysian Consultants* (1997) 3 M. L. J. 546; and *Muirhead v Industrial Tank Specialties Ltd.* (1986) Q. B. 509. However, in *Junior Books Ltd v Veitci Co. Ltd.* (1983) 1 A. C. 520; and *Okeowo v Sanyaolu* [1980] 2 NWLR (pt. 23) 471, recovery of pure financial losses were allowed.

⁴ The assessment of damages for non-economic losses includes such elements as pain and suffering, *UBA Plc. v Achoru* (1990) 6 NWLR (pt. 156) 254.

⁵ Ss. 4 - 6 of the Innkeepers and Hotel Proprietors Law of Akwa Ibom State; ss. 6- 8 of the Innkeepers and Hotel Proprietors Law of Imo State; ss. 7- 9 of the Innkeepers and Hotel Proprietors Law of Kaduna State; and ss. 4- 6 of the Innkeepers and Hotel Proprietors Law of Rivers State.

⁶ *Soremi v Nigerian Bottling Co. Ltd.* [1977] 12 CCHCJ; and *Solu v Total (Nig.) Ltd.*, (unreported) judgment of the Lagos High Court in Suit No. ID/619/85 delivered on March 25, 1988.

⁷ The method usually used by the court in assessing the loss of earning is what is described as "the multiplier" approach. The estimated income per annum less the cost of earning the income (multiplier) is multiplied by the expected number of years by which the plaintiff life or productive life has been reduced. Kodilinye, G. and Aluko, O. (1982), *The Nigerian Law of Torts*, Ibadan: Spectrum Law Books, at pp. 267-269.

⁸ *Lagos City Council v Unachukwu* [1978] 1 LRN142; [1978] 3 SC 199.

⁹ *Liesbosch Dredger v SS Edison* (1933) A. C. 449; and *Cross Lines Ltd. v Thompson* [1993] 2 NWLR (pt. 271) 74, AC.

¹⁰ [1995] 10 SCNJ 1 SC; [1995] 9 NWLR (Pt. 419) 1 SC.

¹¹ "Peugeot Automobile Nigeria Price Lists". This can be sourced online, it is available at <http://www.nairaland.com/202287/peugeot-automobile-nigeria-price-list> (accessed on February 17, 2012).

¹² *Anyah v Imo Concorde Hotel Ltd. & 2 Ors.* [2002] 12 NSCQR 231; *Ibidapo v Lufthansa Airline* [1997] 4 NWLR 124 SC.

¹³ In *G. M. O. Nworah & Sons Co. Ltd. v Akputa* [2010] 24 NSCQR (pt. 1) 302, the Supreme Court held that in contract only such interest as made recoverable by the terms of the contract or the operation of law can be awarded.

who apparently, left the court not fully restored to the position he was before the loss occurred. It is recommended that if effect is to be given to damages as a potent remedy to meaningfully redress the hotel guest for a defective hospitality services, the quantum of damages should at least be such as to replace whatever material had been lost, considering that the service provider is the better risk bearer. It is recommended further that for remedy to make meaning to the consumer, it must as much as possible restore all the ascertainable losses he had incurred, such as loss earnings, loss of use, and where possible, lost profit.

A consumer, guilty of contributory negligence may not be completely denied of damages. The law imposes a duty on parties, including the consumer to take reasonable steps to mitigate their loss. Therefore, a consumer may not be able to recover any loss where he could have avoided harm by taking reasonable care but failed to do so.¹ This duty is to awaken the consumer's consciousness to take reasonable care to reduce the loss by not throwing caution to the winds. This rule, which is to mitigate loss, is aimed at encouraging economic efficiency by insisting that the consumer must take every reasonable step to moderate loss arising from the breach, by attempting to find some substitute performance.² This rule on mitigation of loss appears apt in situations involving goods as the consumer can easily reach out to substitute performance to lessen the loss. With respect to services however, it is doubtful if this rule will apply in every circumstance. Where for instance, a guest's car is stolen within the premises of the hotel,³ the consumer's chattel handed over to the service provider is stolen,⁴ or the consumer consumes food or drink that is harmful,⁵ one wonders what step the consumer would have taken in these circumstances to mitigate his loss. In *Oluigbo & 2 Ors. v Umeh*,⁶ the respondent was a passenger travelling from Minna, Niger State to Lagos, all in Nigeria, in the appellants' commercial vehicle. As required by the appellants, the respondent handed over the sum of N300,000.00 in two packs to the appellants to be kept safe in the vehicle, as other passengers did. On arriving at the destination, Lagos, the appellants failed to return the respondent's money claiming that the safe was broken in, although the monies of other passengers were returned. The Court of Appeal held the respondents liable. In the circumstances of this case, it is doubtful if there is anything the consumer would have done to mitigate his loss. In relation to hospitality services, mitigation may be rather difficult to require.

b. Specific Performance:

Specific performance is one of the equitable remedies evolved by the Courts of Equity in cases where the common law remedy of damages would be inadequate.⁷ It is a remedy that avails a party to a contract where the other party is in breach of the performance of a specific duty. But specific performance would hardly be ordered where it would be impossible to carry out the duty in question, or where the order would create hardship, where there has been substantial delay,⁸ and where it would call for constant supervision by the court.⁹

This equitable remedy has now been given statutory flavor in Nigeria.¹⁰ Specific performance is resorted to where damages, as a remedy, is considered inadequate because of the difficulty of quantifying the loss, or because the plaintiff's loss is difficult to prove,¹¹ or where award of damages would defeat the just and reasonable expectation of the parties.¹²

It would appear that for contract for the supply of services, other than personal services, the notion is

¹ *Payzu v Saunders* [1919] 2 K. B. 581.

² Kanyip, "Consumer Redress", *op cit.*, at p. 82.

³ As was the case in *Anyah v Imo Concorde Hotel Ltd. & 2 Ors.*

⁴ *Oluigbo & 2 Ors. v Umeh* (2004) All FWLR (pt. 196) 823.

⁵ *Okwejinor v Gbakeji & Anor.* [2008] 33 NSCQR (Pt. II) 863; [2008] 5 NWLR 172.

⁶ (*Supra*).

⁷ Horvath, A. Villafranco, J. and Calkins, S. "Consumer Protection Law Development", American Bar Association, Section on Antitrust Law, at pp. 430, available at http://books.google.com.ng/books?id=9dT7jteyraUC&pg=PA435&lpg=PA435&dq=specific+performanc+in+consumer+protection&source=bl&ots=Ioz7Q_hNm0&sig=InyG9frKN5WW8O8Rjcc97HQA42w&h=en&ei=RmlQTaDfH8SfOtKp9fcP&sa=X&oi=book_result&ct=result&resnum=5&ved=0CC8Q6AEwB#v=onepage&q=specific%20performance%20in%20consumer%20protection&f=false (accessed on January 20, 2015).

⁸ *ASHDC v Emekwue* [1996] 1 NWLR (pt. 426) 503 at p. 542.

⁹ Ss. 446-448 of Contract Law of Anambra State. *Flint v Brandon* (1808) 3 Ves 159 cited by Ukwueze, "Consumer Redress in Nigeria", *op cit.*, at p. 38.

¹⁰ For instance, s. 573(2) of the Contract Law of Enugu State which empowers the courts in any action for breach of contract to deliver specific or ascertained goods, to direct that the contract be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. S. 60 of the Sale of Goods Law Cap 2000 Laws of Akwa Ibom State, 2000; s. 63 of the Sale of Goods Edict No. 15 Laws of Kaduna State, 1990; s. 60 of the Sale of Goods Law Cap 115 Laws of Rivers State 1999; s. 52 of the Sale of Goods Law 1958 Cap 174 Laws of Lagos State, 1994.

¹¹ For example, contract to buy or sell an annuity; *Swiss Bank Corp. v Lloyd's Bank Ltd.* [1980] 2 All ER 419 at p. 429; *Whitwood Chemical Co. v Hardman* [1891] 2 Ch 416 CA.

¹² *Paye v Gaji* [1996] 5 NWLR (pt. 450) 589 .

that the courts would be constraint to order specific performance for the supply of such services.¹ This is premised on the reasoning that such supply was a continuing obligation which would require continuous supervision by the court and such supervision was impracticable.² In *Ryan v Mutual Tontine Westminster Chambers Association*, Lopes, L. J. Said:

What was contracted for was not the mere appointment of a porter who might be useless, but the employment of a competent porter who should perform the specified duties. I think it is an entire contract. If that be so, it is clear that it is such a contract that, in order to give effect to it by an order for specific performance, the court would have to watch over and supervise its execution. But it is a recognised rule that the court cannot enforce a contract by compelling specific performance, where the execution of the contract requires such watching over and supervision by the court.³

Although the point was well made in the above dictum, in *Posner v Scott-Lewis*,⁴ the court held to the effect that a breach of contract for the supply of services could be remedied by an order of specific performance. It seems that the real basis of the decision by Mervyn Davies J., was that the law had moved on from the nineteenth century cases to an extent which gave it sufficient flexibility to treat *Ryan's case* as decided on the particular facts of the case rather than laying down any absolute rule. Though the persuasive effect of the *ratio decidendi* of His Lordship in this case has been said to be shrouded in doubt,⁵ what was achieved by the case was to set a tone that it was possible for specific performance to be ordered in contract for the supply of services, particularly, when Lord Wilberforce in *Shiloh Spinners Ltd. v Harding*,⁶ seemed to have descended on the reason courts were shying away from ordering specific performance in breach of contract for the supply of services, when he said; “the impossibility for the courts to supervise the doing of work ...” may be rejected as a reason against granting relief.

The discourse on damages has revealed the existence of factors that weaken the efficacy of damages as an adequate remedy to compensate the hotel guest for the supply of deficient or questionable hospitality services. In the light of this, and the *dicta* of their Lordships in *Posner* and *Shiloh Spinners Ltd*, it becomes necessary to consider the making of an order for specific performance in cases involving the supply of hospitality services. Where a deficient hospitality service is supplied, specific performance may be impossible in such situations. Where however, reservation for a particular class of hotel accommodation, or reservation for a particular facility, for example, a beach-side space for a wedding reception, had been made and the service provider breached, an order of specific performance may lie.

The order of specific performance should be such that if the service provider/ defendant fails to comply, the consumer should be able to take appropriate enforcement proceedings against the defendant. Expressing on this, Megarry J., in *C. H. Giles & Co. Ltd. v Morris*,⁷ said:

... there is normally no question of the court having to send its officers to supervise the performance of the order Performance ... is normally secured by the realization of the person enjoined that he is liable to be punished for contempt if evidence of his disobedience to the order is before the court

The court needs not send its officers to police and supervise the enforcement of its orders. Usually, supervision takes the form of contempt proceedings where there has been a breach of the order of court.⁸

Furthermore, where in the opinion of the court no hardship would be occasioned the service provider from the order, or where refusal of the order would prejudice the interest of the consumer, one would think that the court should be inclined to ordering specific performance. Where the service provider would be performing what he should under the contract and nothing more, then it would be both reasonable and judicious to order specific performance. Thus, in *Trackman v New Vistas Ltd.*,⁹ where the contract with the service provider specified accommodation in a hotel for the guest, and the guest was however given a room in an annexe of the

¹ Christou, R. (2007), *Sale and Supply of Goods and Services*, London: Sweet & Maxwell, at p. 1040.

² *Ryan v Mutual Tontine Westminster Chambers Association* [1893] 1 Ch. 116 CA; and *Powell Duffryn Steam Coal Co. v Taff Vale Railway Co.* (1873-74) L. R. 9 Ch. App. 331.

³ (*Supra*) at p. 121.

⁴ [1987] Ch. 25.

⁵ Christou, *op cit.*, at pp. 1041-1043.

⁶ [1973] A. C. 691, at pp. 724C-D.

⁷ [1972] 1 WLR 307, at p. 318.

⁸ Christou, *op cit.*, at p. 1046.

⁹ [1959] C. L. Y. 527; *Oluigbo v Umeh (supra)*; *Cook v Spanish Holiday Tours (London) Ltd.* (1959) 103 Sol. J. cited in Cranston, R. (1978), *Consumers and the Law*, London: Weidenfeld & Nicolson, at p. 133; *Anglo-Continental Holidays v Typaldos (London)* [1967] 2 Lloyd's R. 61; *Stedman v Swan's Tours* (1951) 95 Sol. J. 727 (where promise of rooms with sea views were unfulfilled); and *Jackson v Horizon Holidays Ltd.* [1975] 1 W. L. R. 1468; [1975] 3 All E. R. 92.

hotel about 200 yard away, the Court of Appeal expressed to the effect that a hotel meant not only sleeping facilities, but also other amenities like meals, sitting rooms *etcetera*. The court held to the effect that the hotel guest was entitled to the specified accommodation he contracted for, in the absence of which he was entitled to move to another hotel nearby and charge the travel agency with the difference.

c. Injunction:

Closely related to specific performance is injunction, which is another form of equitable remedy. It is an order applied to achieve the performance mainly in the negative. Therefore, where a party to a contract undertakes not to perform an act, a court order prohibiting the doing of that act is a negative way of enforcing the contract.¹ Injunction is used to direct the defendant to undo what he had already done in breach of the contract; it is directed at restraining the commission or continuance of some wrongful act or omission. Like specific performance, an order of injunction is granted at the discretion of the court, and both remedies would only avail a plaintiff, where the award of damages cannot adequately compensate for the loss suffered.² It must be noted that whenever a service provider breaches the terms of his contract, apart from the court ordering performance, the consequentially losses by the consumer should not be ignored.

It is recommended that in appropriate cases, where it appears to the court that the award of damages will not adequately compensate the consumer, the equitable relief of specific performance or injunction may be ordered by the court in addition to damages, particularly, as there seems to be nothing inhibiting the court from making such order. From the consumer standpoint, for any meaningful protection to avail the consumer of hospitality services, whatever remedy made to compensate him must achieve at least the objective of restoring or restituting the consumer to the position he was before the loss occurred.

d. Refund, Replacement and Repair:

Generally, under law of contract, the payer may recover any amount of money paid in furtherance of the contract, where the consideration for the payment has failed.³ Refund involves the payer recovering the money paid or deposited by him under a contract for total failure of consideration, where he made payment or deposit, and before he receives the benefit of the contract, he rescinds it due to a breach by the other party.⁴ It would appear that refund is premised on repudiation. Refund does not seem to be a remedy that can effectively redress injuries and inconveniences caused to disappointed hotel guest. Where for instance an accommodation has been reserved by a guest, even if for a few minutes with deposit paid, and only for the guest on turning up to check in to be told, "sorry, we have ran out of space." It is doubtful if in such circumstance refund would be an adequate redress to the guest. Refund does not in any way provide the consumer with the facility, goods or services for which payment was made as at when due.

The inadequacy of refund as a satisfactory remedy to the consumer can further be gleaned from the provisions of section 54 of the Sale of Goods Act⁵. The section does not seem to have in it any provision, expressed or implied, for the recovery of interest on the payment made and held by the service provider.⁶ Thus, the consumer can hardly recover interest on the money paid to the service provider, no matter how long the latter held on to the money. In *Oluigbo & 2 Ors. v Umeh*,⁷ for instance, where the sum of N300,000.00 was handed over to the service provider, the Court of Appeal held the appellants liable for the refund of the said sum, no order was made for the payment of interest on the sum for the period the respondent had been deprived of the said sum. Since counsel did not canvass for payment of interest on the sum in that case, it is not clear if the court would have awarded interest if it were canvassed by counsel. Truth is that if the money were to be invested by the consumer, it would have yielded some returns. Since an order for refund is an equitable remedy, one is unable to lay hands on anything inhibiting the courts from making a consequential order awarding interest on the sum to the consumer. It is the position of this writer, that in appropriate cases, in addition to the order for refund, order for the payment of interest at the prevailing interest rate, by service providers would to a large

¹ S. 449 of Contract Law of Anambra State; *African Song Ltd. v Sunday Adeyemi* (Unreported) Suit No. LD/1300/74 of High Court of Lagos, 14/2/75; and *Warners Bros. Pictures Inc. v Nelson* [1937] 1 KB 209.

² *Union Beverages Ltd. v Pepsi Cola International* [1994] 3 NWLR (pt. 330) 1; and *Seven Up Bottling Co. Ltd. v Abiola* [1995] 4 NWLR (pt. 389) 287.

³ Schmitthoff, M. C. and Sarre, D. A. G. (1984), *Charlesworth's Mercantile Law*, 14th ed., London: Oceanic Publication, at p. 132 also available at <http://www.cisg.law.pace.edu/cisg/biblio/enderlein-bib.html> (accessed February 22, 2012).

⁴ S. 54 of the Sale of Goods Act 1893 give a buyer the right to recover money paid where consideration for the payment has failed; s. 62 of the Sale of Goods Law of Akwa Ibom State; and Rivers State; s. 65 of the Sale of Goods Law of Kaduna State; s. 54 of the Sale of Goods Law of Lagos State; and s. 460 Contract Law of Anambra State; Ekanem, E. E. (2007), "The Nature and Scope of Rights and Obligations of Parties in Sale Contracts." An unpublished LL.M. Dissertation, University of Uyo, Uyo, Nigeria, at p. 107; and Ukwueze, "Consumer Redress in Nigeria", *op cit.*, at 39.

⁵ 1893.

⁶ It must be noted that s. 54 contemplates a contractual relationship between the parties, specifically it provisions relates to the buyer and seller. Within the parlance of consumer protection, the consumer may not always be the buyer.

⁷ (*Supra*).

extent assuage the consumer. Such approach would undoubtedly strengthen the protection of the consumer.

Furthermore, where goods or facilities that do not conform to the terms of the transaction are delivered, the consumer has a right to insist that they be replaced or repaired.¹ For example, where a smaller hall is delivered in place of a larger one for a dinner or a conference, or where the bed in a hotel room a guest is checked-in is creaky, a replacement or repair may be an opposite remedy. The problem however is that replacement and repair may only avail a consumer before injury or loss is occasioned from the consumption of such service or goods. In some instances, like in the case of a creaky bed for a male guest who has retained the accommodation to have a short time with a lady and vice versa, or a guest who is using the accommodation with his bride for the first night of their honeymoon, to ask for replacement or repair of the creaky bed may be a very inordinate remedy. Once injury or loss has resulted from the use of a hospitality facility, damages would appear to be the appropriate remedy. It must be noted that replacement and repair as remedies are not usual in judicial circles in the absence of express agreement in the contract. Nigerian courts would hardly make an order of replacement or repair. These remedies appear to be more readily obtained through regulatory agencies, trade associates' codes of practice and manufacturers' warranties.²

The hotel guest may be able to have a particular room reserved for him replaced, or other defective facilities fixed, until that is done, an alternative room may be an immediate remedy. It is not certain whether the right of civil action vested in the consumer on investigation of his complaint by the Consumer Protection Council,³ or the State committee under section 8(b) of the Consumer Protection Council Act includes the remedies of replacement or repair. It is felt that in appropriate instances where the justice of the case demands, the court may invoke section 8(b) of the Act and order for replacement or repair.

In Nigeria the Nigerian Tourism Development Corporation, may in the discharge of its duties require a provider of hospitality services to repair or replace any or some of its facilities after inspection of such facility. However, neither the Nigerian Tourism Development Corporation Act 1995⁴ nor the Hospitality and Tourism Establishments (Registration, etc.) Regulations expressly makes provisions for the Corporation to receive complaints from consumer. Although, there is no law inhibiting consumers of hospitality services or the general public from passing information or making complaint to the Corporation, there is hardly any identifiable mechanism in place where the Corporation receives feedback on the activities of providers of hospitality services from the consuming public. It is therefore recommended that the Act be amended to allow the Corporation or its official to receive complaints and information from the consuming public which it may investigate. Such a provision has the potential of not only bringing the Corporation nearer the consumers, but of enabling it to have a feel of the nature of challenges confronting consumers of hospitality services.

4. The Way Forward

From the forgoing, it can be gleaned that although each of the remedies discussed herein attempts to meet certain needs of the aggrieved or injured consumer of hospitality services, none seems to have effectively met the objective of consumer protection in such circumstance. Any consumer protection policy or mechanism in such circumstance, of where a hotel guest finds himself contending with shoddy and, or deficient service, defective chattel or facility, or delay supply, should be aimed at restoring the consumer to the position he would have been but for such unsatisfactory supply made to him. For it is only when an aggrieved consumer is effectively restored that he can be said that the injury or loss he suffered has been redressed.

Although Nigerian courts in the cases of *Hill Station Hotel Ltd. v Adeyi*⁵ and *Oluigbo & 2 Ors. v Umeh*⁶ entered judgements for the consumers, whether the judgments effectively redressed the losses suffered by the consumer occasioned by the service provider in each case leaves much to be desired. In these cases, the judgment entered for the consumers can be likened to giving the service providers involved a tap on the wrist. In Adeyi's case for instance, beside the award of damages, the court should have taken the bold step of ordering the service provider to replace the stolen car of the guest. In Umeh's case on the other hand, in addition to the order for the refund or return of the said sum of money, interest would have been just and equitable to make an order for the payment of interest at the prevailing rate from the time the money was lost until the entire sum was fully liquidated. These would have had the effect of more effectively redressing the injury or loss suffered by the consumer, and also serving as deterrence to the unscrupulous service provider. Ultimately, the consumer would have been the better for it and a safer market for all.

¹ Christou, *op cit.*, at p. 1096.

² Lowe, R. and Woodroffe, G. F. (1999), *Consumer Law and Practice*, 5th ed., London: Sweet & Maxwell, at p. 103; and Ukwueze, "Consumer Redress in Nigeria", *op cit.*, at p. 39.

³ The Consumer Protection Council is the primary agency established by Nigerian law to for the enforcement of consumer protection regulation in country.

⁴ Cap. N137 LFN 2004.

⁵ (Supra)

⁶ (Supra)

It would appear from the foregoing that although none of the afore-discussed remedies can effectively redress the loss of the hotel guest, a combination of the remedies may achieve the desired objective of consumer protection law. Credence is given to this position considering that by adopting a combination of more than one of these remedies no known law would be breached. Indeed, this calls for a judiciary that is awake to its responsibility of protecting both the weak and the strong, and being the hope of the common man.¹ In appropriate cases therefore, judges to make bold to rise to occasion of ordering such award as to effectively compensate the injured consumer. The guiding principle in making such award should be to provide redress to the consumer on the one hand, and deterring the service provider and other businesses from infecting the market with defective products and deficient services on the other hand.

Furthermore, the point has been made above that although the provisions of the Innkeepers and Hotel Proprietors Law limiting the liability of the service provider with regards to the property of the guest lost or damaged within the *hospitium* of the hotel to an amount not exceeding the sum of N50,000.00 in respect of any one article or N200,000.00 in the aggregate appears to call for care and diligence on the part of the consumer, such limitation further widens the gap between service providers and the consumers. The limitation only helps in strengthening the already advantageous position of the producer against the consumer, who is usually in an unequal position with the former in terms of capital, technology and information. More so, considering the exchange rate of about N205.00 (Two Hundred and Five Naira) to USD1, the limited amount appears too meagre. In the circumstances therefore, an amendment of section 6 of the Innkeepers and Hotel Proprietors Law of Akwa Ibom State is hereby recommended. Such amendment should take into cognisance the fact that when the law was enacted several years ago exchange rate of the Naira to Dollar was between N25.00 and N30.00 to USD1.

For these remedies to make any meaning to the consumer, he needs to be armed with information; information about goods and services, information about his right and information about how such rights can be enforced. Consumer education and awareness is required. There is therefore the need to make conscious effort to educate the consumers. The Consumer Protection Council has to intensify its effort at educating the consumers. At present, consumer protection is neither taught as a course of study in the primary or secondary schools in Nigeria, it is not also given any prominence in schools curricula. In several tertiary institutions, consumer protection is not also taught. There is need for policy makers to open up and give the teaching of consumer protection, as one of the basic rights of persons, the prominence it deserves in curricular in schools.

5. Conclusion

This paper focuses on the objective of civil remedies in relation to hospitality services in Nigeria, to wit, to assuage the injured consumer and restore him to the position he would have been but for the injury he has suffered as a result of a defective facility or goods, or deficient and shoddy service supplied. This objective presents itself to the consumer as remedies him to be enforced whenever his rights are infringed. Amongst other inhibiting factors like the contract-based liability regime and the privity of contract hurdle, lack of awareness and information is identified as a serious setback to consumer protection in Nigeria.

In analysing the remedies the law provides for consumers of hospitality services in Nigeria, it is brought to the fore that although these remedies provide a window for which the consumer does not only ventilate his grievance, but provide a tool with which the consumer attempts to enforce his rights. Effort has been made in this paper to identify damages, specific performance, injunction, refund, replacement and repair. Each of these remedies seeks to meet the need of an aggrieved hotel guest in a particular way. To some extent, this gives the consumer some psychological satisfaction that the service provider is not unreachable. However, the discourse here reveals that these remedies as they are applied in Nigeria at present are hardly able to effectively serve as redress to the hotel guest in the sense of meeting the his expectation, which is, restitution. These remedies appear to leave the injured consumer unsatisfied.

A number of recommendations have been suggested in this paper. These recommendations call for legislative intervention, judicial activism, action by policy makers and administrative agencies, amongst others, aimed at potentially leading to a renewed level of consumerism. It is hoped that these recommendations would possibly bring to fruition a new regime which would provide effective redress to an injured hotel guest in Nigeria.

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¹ Oputa, C. A. (2007), "Legal and Judicial Activism in an Emerging Democracy: The Last Hope for the Common Man", in Okeke, C., *Towards Functional Justice: Seminar Papers of Justice Chukwudufu A. Oputa*, Ibadan, Gold Press Ltd., at p. 12.

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