

Positive breach of contract and attached duties: legal aspects and implications in Brazilian law

This study addresses the question of how positive breach of contract and attached duties affect the execution and interpretation of contracts in Brazilian law, reflecting a growing need to understand these dynamics in a context of increasingly complex commercial and civil relations. The research sought to investigate the nature and effects of these violations, offering a detailed doctrinal analysis and a review of case law and higher court decisions to provide a comprehensive view of the topic. In the theoretical review, the article explores the evolution of positive breach of contract, originating in German doctrine and adapted to Brazilian law, reflecting its importance in responding to the limitations of defective fulfillment of contractual obligations. It is distinguished by its imperfect execution, which goes beyond mere omission, affecting the substance and purpose of contractual obligations and requiring an adequate application of legal remedies. The attached duties, such as information, protection, and cooperation, appear as relevant extensions of the express obligations, fundamental to the integrity of contractual transactions. Methodologically, the research employs a mixed approach, focusing on doctrinal and jurisprudential analysis. The selection of court cases is guided by criteria of legal relevance, diversity of applications and timeliness, with special emphasis on decisions of higher courts, to illustrate the contemporary application and interpretation of these concepts. The results discuss emblematic cases that illustrate the practical application of the principles of positive breach of contract and attached duties. Decisions that emphasize the need for ethical and honest behavior at all stages of contractual execution stand out, protecting legitimate interests and promoting the integrity of legal relationships. The conclusions highlight the essentiality of these concepts for legal practice, highlighting the need for legal professionals to adopt constant vigilance and a proactive approach when negotiating and reviewing contracts. Furthermore, it identifies areas for future research, such as international comparative studies and empirical analyses, which could enrich the understanding and application of these standards in Brazilian contract law.

Palavras-chave: Civil Law; Positive Breach of Contract; Principle of Good Faith; Attached Duties; Side Duties; Fiduciary Duties.

Violação positiva do contrato e os deveres anexos: aspectos jurídicos e implicações no Direito brasileiro

Este estudo aborda a questão de como a violação positiva do contrato e os deveres anexos afetam a execução e a interpretação dos contratos no direito brasileiro, refletindo uma necessidade crescente de compreensão dessas dinâmicas em um contexto de relações comerciais e civis cada vez mais complexas. A pesquisa buscou investigar a natureza e os efeitos dessas violações, oferecendo uma análise doutrinária detalhada e uma revisão de jurisprudências e decisões de cortes superiores para proporcionar uma visão abrangente sobre o tema. Na revisão teórica, o artigo explora a evolução da violação positiva do contrato, originada na doutrina alemã e adaptada ao direito brasileiro, refletindo sua importância na resposta às limitações do cumprimento defeituoso das obrigações contratuais. Diferencia-se por sua execução imperfeita, que vai além da mera omissão, afetando a substância e a finalidade das obrigações contratuais e exigindo uma aplicação adequada de remédios jurídicos. Os deveres anexos, como os de informação, proteção e cooperação, surgem como extensões relevantes das obrigações expressas, fundamentais para a integridade das transações contratuais. Metodologicamente, a pesquisa emprega uma abordagem mista, centrando-se na análise doutrinária e jurisprudencial. A seleção de casos judiciais é guiada por critérios de relevância jurídica, diversidade de aplicações e atualidade, com ênfase especial nas decisões dos tribunais superiores, para ilustrar a aplicação e interpretação contemporâneas desses conceitos. Os resultados discutem casos emblemáticos que ilustram a aplicação prática dos princípios da violação positiva do contrato e dos deveres anexos. Destacam-se decisões que enfatizam a necessidade de comportamento ético e honesto em todas as fases da execução contratual, protegendo os interesses legítimos e promovendo a integridade das relações jurídicas. As conclusões sublinham a essencialidade desses conceitos para a prática jurídica, destacando a necessidade de os profissionais do direito adotarem uma vigilância constante e uma abordagem proativa na negociação e revisão de contratos. Além disso, identifica áreas para pesquisas futuras, como estudos comparativos internacionais e análises empíricas, que poderiam enriquecer a compreensão e a aplicação dessas normas no direito contratual brasileiro.

Keywords: Direito Civil; Violação Positiva do Contrato; Princípio da Boa-Fé; Deveres Anexos; Deveres Laterais; Deveres Fiduciários.

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INTRODUCTION

The evolution of modern contract law, especially in Brazil, has demanded an increasingly detailed and in-depth understanding of the various aspects that regulate relations between the parties to a contract. Among these aspects, the positive breach of the contract and the attached duties emerge as fundamental concepts, the analysis of which is relevant to understanding their practical and theoretical implications.

Historically, the notion of positive breach of contract, initially developed in German law under the name 'Positive Vertragsverletzung', was adapted by Brazilian jurisprudence and doctrine, reflecting the complexity and dynamics of contemporary contractual relationships. According to Fábio Ulhoa Coelho, a positive violation occurs when there is a defective fulfillment of the obligation, which substantially affects the value or purpose of the contract (COELHO, 2024).

In Brazil, this adaptation is evidenced by emblematic cases that highlight the practical application of these concepts and reinforce their relevance. For example, the Superior Court of Justice (STJ) in case REsp 1.944.616-MT, ruled on the violation of the duties of objective good faith, fundamental for the execution and interpretation of contracts, directly influencing the legal stability of transactions and the trust between the parties.

These duties, which include expectations of loyalty and integrity beyond the express contractual clauses, were also critical in the judgment by the Court of Justice of Minas Gerais (TJMG) in Civil Appeal no. 1.0707.08.167561-3/001, where the lack of adequate information and assistance on the part of a health plan administrator constituted a positive breach of the contract, resulting in significant losses to the plaintiff.

The choice of this topic is justified by the growing complexity in commercial and civil relations, where the implications of these violations go beyond the explicit contractual provisions, substantially affecting trust and legal security. The analysis of these aspects is essential for lawyers, jurists, academics, and legal professionals who seek equitable and effective solutions to contractual conflicts.

The central research question of this study was: "How does positive breach of contract and non-compliance with attached duties affect the execution and interpretation of contracts in Brazilian Law?" This question seeks to elucidate the contours and consequences of these practices in the national legal sphere.

The general objective of this work was to investigate the nature and effects of the positive violation of the contract and the attached duties in Brazilian contract law, through a detailed doctrinal analysis, review of jurisprudence and decisions of higher courts, providing a comprehensive and updated understanding of the theme. This research will not only contribute to academia, providing rich and well-founded material for future studies, but will also assist legal professionals in the practical application of the concepts studied, improving the formulation and management of contracts in Brazil.

THEORETICAL REVIEW

Fundamental Concepts of Positive Breach of Contract

Positive breach of contract, although initially developed in German doctrine under the name Positive

Vertragsverletzung, represents a fundamental legal concept to address types of default that transcend the mere omission or delay in the performance of obligations. This form of contractual violation emerged as a response to the limitations of the Bürgerliches Gesetzbuch (BGB), which at the turn of the 20th century did not adequately address the defective fulfillment of contractual obligations (SANTOS, 2014).

In Brazilian territory, after the promulgation of the 2002 Civil Code, the figure of positive breach of contract was incorporated and expanded by jurisprudence, based on the principle of objective good faith. The recognition of this type of default reflects a normative and doctrinal evolution, addressing not only direct failures in the execution of obligations, but also indirect violations that affect the attached duties of protection, information, and cooperation between contracting parties (ANDRADE et al., 2018).

The positive breach of the contract is distinguished by its nature of execution: it is not characterized by the failure to perform the performance, but by the performance of a defective, unsatisfactory performance or in a way that causes harm to the other contracting party. This approach is fundamental for the application of appropriate legal remedies, as it directly influences decisions about compensatory damages and corrective measures (BRASIL JÚNIOR et al., 2018).

The evolution of this concept in Brazilian law demonstrates the adaptability and response of the legal system to the contemporary needs of contractual relationships, ensuring that the law protects not only the letter of the contract, but also its substantial function and the legitimate interests of the parties involved. This evolution is evident in the growing appreciation of attached duties and objective good faith as fundamental pillars in the interpretation and execution of contracts. Brazilian doctrine and jurisprudence have been consolidating the importance of these principles, promoting a more ethical and fairer contractual environment, which guarantees the fulfillment of the legitimate expectations of the parties. The recognition and application of these duties reflect a legal maturity that seeks to balance contractual relationships, promoting justice and equity in private transactions (MARINANGELO, 2005; PARGENDLER, 2017).

According to Marinangelo (2005), the positive breach of the contract and the application of the attached duties are essential for the protection of the parties, ensuring that the fulfillment of the contract meets the legitimate expectations of those involved. Brazilian jurisprudence has recognized the importance of these duties, ensuring a fairer and more ethical contractual environment.

Pargendler (2017) highlights that the evolution of Brazilian contractual law, with the incorporation of annexed duties and objective good faith, reflects a modernization trend that seeks to harmonize contractual relations, ensuring the protection of the legitimate interests of the parties and promoting justice in private transactions.

To constitute a positive breach of contract, several elements must be present. Firstly, there must be an explicit or implicit contractual duty whose fulfillment is expected by the parties. Then, a failure in the performance of this duty is necessary that not only occurs, but that actually harms the other party, negatively impacting the purpose of the contract. This implies that the breach must have caused damage that could have been avoided if the contract had been performed as agreed. This understanding is supported by judicial decisions that emphasize the need for a causal connection between the defective execution and the loss

experienced by the injured party, as demonstrated in several precedents of the Superior Court of Justice (BRASIL, STJ, 2022) and Courts of Justice (MINAS GERAIS, TJMG, 2011).

Attached, lateral and fiduciary duties

Annex, lateral and fiduciary duties are implicit obligations that emerge from contractual relationships, extending beyond the obligations expressly established in contracts. They are essential to ensure adequate execution of contracts, covering duties of care, protection, and information, vital for the integrity and effectiveness of contractual relationships.

Side duties arise concomitantly with the development of the contractual relationship, being crucial for maintaining mutual trust between the parties. In turn, fiduciary duties are characterized by a high expectation of loyalty and integrity, especially in relationships that involve one party substantially trusting the other, such as in relationships between shareholders and managers.

The basis of annex and lateral duties is deeply rooted in the principle of contractual good faith, widely recognized, and codified in article 422 of the Brazilian Civil Code, which imposes on the parties the obligation to act with honesty and probity. This principle is complemented by the social function of the contract, which maintains that contracts must be executed in a way that respects social and collective interests, directly impacting the interpretation and application of duties in the contractual context (TEPEDINO et al., 2023).

Almeida (2022) highlights the importance of objective good faith in his article, noting that "objective good faith, expressly provided for in article 422 of the Civil Code, imposes on the parties to the legal relationship the duty to behave in a manner accordance with ethical standards of trust and loyalty, in order to allow the fulfillment of the legitimate expectations that justified the conclusion of the contract". This perspective highlights the need for the parties not only to comply with their express obligations, but also to act in a way that does not frustrate the legitimate expectations created by the contractual relationship.

In practice, annexed, lateral and fiduciary duties manifest themselves in diverse ways, adapting to the specific context of each contract. The duty to provide information is crucial in insurance or investment contracts, where one of the parties has significantly greater knowledge about the subject of the contract. The duty to cooperate is exemplified in construction contracts, where contractor and contractor must work together for the efficient completion of the project. Furthermore, the duty of loyalty is fundamental in corporate relationships, where managers must prioritize the company's interests above their own.

In the judgment of REsp 1.862.508 - SP in 2020, the Superior Court of Justice (STJ), under the rapporteur of Minister Ricardo Villas Bôas Cueva, highlighted the importance of the integrative function of objective good faith in contractual relations. This principle is crucial to the development of attached duties, including the duty to inform, which is vital for transparency and fairness in contract negotiations. Minister Nancy Andrighi, when delivering her vote, reiterated that "objective good faith restricts the abusive exercise of rights, requiring the parties to collaborate mutually to achieve the common ends pursued with the contract" (BRASIL, STJ, 2020). This statement highlights the need for the parties to act not only in accordance with the text of the contract, but also to cultivate the legitimate expectations that motivated its formation.

The decision emphasizes that contractual fairness transcends the correction of intentionally provided misleading or incorrect information; It also includes ensuring that all necessary information is shared to avoid impediments in fulfilling contractual obligations or obtaining the benefits expected from the agreement. This understanding is crucial, especially in the pre-contractual phase, where a lack of transparency can seriously affect the decision of one of the parties, leading to possible contractual defaults.

Furthermore, the STJ emphasizes that "the attached duties, arising from the integrative function of objective good faith, safeguard the legitimate expectations of both parties in the contractual relationship, through the fulfillment of a generic duty of loyalty, which manifests itself specifically, among others, the duty to provide information" (BRASIL, STJ, 2020). This demonstrates how these fundamental duties strengthen the fabric of contractual obligations, protecting both immediate economic interests and the integrity and trust essential to lasting and productive contractual relationships.

In a similar case judged in 2022, REsp 1.944.616-MT, Minister Nancy Andriahi again highlighted objective good faith as a pillar of contractual relations, stating that this principle requires each party to act in accordance with ethical standards of trust and loyalty. This case reinforces the idea that objective good faith not only guides the formation of contracts, but also their execution, ensuring that the parties' actions are aligned with the ethical and legal expectations underlying the conclusion of the contract. The STJ's decision highlights that the violation of ethical standards can justify the termination of the contract, as stated in the ruling: "Objective good faith, expressly provided for in article 422 of the Civil Code, imposes on the parties to the legal relationship the duty to behave in accordance with ethical standards of trust and loyalty, in order to allow the fulfillment of the legitimate expectations that justified the conclusion of the contract" (BRASIL, STJ, 2022).

These decisions underscore the continued importance of adhering to principles of integrity and ethics in contractual practices, highlighting the need for parties to not only comply with their express obligations, but also respect ethical principles and objective good faith. This ensures the functionality and integrity of contractual relationships in various legal and commercial contexts.

Positive violation and attached duties in Brazilian Law

The development of the concepts of positive violation and attached duties in Brazilian law are relatively recent, compared to other legal traditions. Although they are not explicitly mentioned in the 2002 Civil Code, the principle of objective good faith, enshrined in article 422 of the Code, serves as a foundation for the application of these concepts. Article 422 of the Brazilian Civil Code provides that "contractors are obliged to observe, both in concluding the contract and in its execution, the principles of probity and good faith" (BRASIL, 2002). Objective good faith is a principle that imposes ethical and loyal behavior between the parties, transcending the mere observance of contractual clauses. This is a duty of conduct that aims to ensure the fulfillment of the legitimate expectations of the parties involved in the contract.

Brazilian doctrine has been deepening the analysis of this principle, as demonstrated by the works of renowned authors such as Judith Martins Costa, who in her work explores objective good faith as an ethical

principle that guides the conduct of contractors, addressing its application in contracts and its implications for legal interpretation (COSTA, 2021).

Legislative and jurisprudential developments in Brazil demonstrate a growing tendency to value attached duties and objective good faith as fundamental pillars in the interpretation and execution of contracts. Doctrine and jurisprudence have been consolidating the importance of these principles, promoting a more ethical and fairer contractual environment, which guarantees the fulfillment of the legitimate expectations of the parties. The recognition and application of these duties reflect a legal maturity that seeks to balance contractual relationships, promoting justice and equity in private transactions.

According to Mininel (2017), objective good faith and the attached duties, such as conduct and protection duties, are essential for the integrity of contractual relationships, ensuring that the parties act with loyalty and transparency, which contributes to the maintenance mutual trust and the realization of the legitimate interests involved. These principles not only optimize the fulfillment of main obligations, but also protect the parties from possible damages, ensuring the effectiveness of contracts in their entirety.

In Brazilian law, interpretations, and controversies regarding the concepts of positive breach and attached duties reflect the complexities of modern contractual relationships. The 2002 Civil Code (Law No. 10,406/2002) does not explicitly detail these concepts but provides the basis for these interpretations. According to article 422, participants in a contract must act in good faith, both in the execution and in the conclusion of the contract. Article 187 deals with the abuse of rights, considering as an illicit act that which, even in the manifestation of a right, causes harm to others excessively or unnecessarily.

The doctrine explains that positive breach of contract refers to imperfect fulfillment of obligations, where performance may not serve the interest of the creditor, even if the obligation has been formally fulfilled. This theory, although not expressly codified, is fundamental to understanding the protection of lateral duties in contractual relationships (EHRHARDT JÚNIOR, 2011).

The biggest controversy lies in determining what would be a 'substantial breach' capable of justifying contractual termination or reparations, reflecting the courts' interpretative struggle. Furthermore, the distinction between ancillary duties and main obligations remains a challenge, directly influencing the perception of justice and equity in judicial decisions. These debates are fundamental to the development of contract law in Brazil, demonstrating the need for a detailed and contextual analysis of the circumstances of each case to maintain a balance between contractual autonomy and contractual justice.

According to Mininel (2017), post-contractual duties, which aim to protect the interests of the parties beyond the end of the contract, play a crucial role in maintaining good faith and protecting against damages that may arise after the execution of the contract. Such duties, derived from the integrative function of objective good faith, are essential to ensure that the parties continue to act in a loyal and cooperative manner, even after the main obligations have been fulfilled (MINIMEL, 2017).

The concepts of positive breach and attached duties play a significant role in commercial and contractual practices in Brazil, encouraging more collaborative and transparent conduct between parties. This approach seeks not only the formal fulfillment of contracts, but also the achievement of their substantial

objectives, as highlighted by the 2002 Civil Code (BRASIL, 2002). Articles 422 and 187 of the Civil Code stipulate the need to act in good faith and avoid abuse of rights, respectively, legally substantiating the importance of these concepts in the contractual scope (BRASIL, 2002).

The new dynamics of commercial and professional relations, intensified by the evolution of private law and the introduction of ethical values and human dignity in the legal scenario (Pereira, 2008), imposes on companies and independent professionals the need for greater diligence in the management of their contractual obligations. This transformation results from the open system of the Brazilian Civil Code of 2002, which, according to Pereira (2008), allows the interpreter to bridge general clauses with constitutional values and civil law, increasing the complexity of obligatory relationships and expanding the basis for default.

Furthermore, the exception of the unfulfilled contract, supported by the violation of lateral duties, such as objective good faith, becomes an essential defense mechanism (CUNHA, 2015). Objective good faith, as a general principle and clause, guides contracting parties to maintain ethical conduct, extending the effects of contractual responsibility beyond the simple duty to compensate (PEREIRA, 2008). This requires constant attention to the legal implications of actions and the expectations they create in your business partners, highlighting the importance of clear and effective communication to prevent misunderstandings and possible legal disputes.

This need for vigilance and active management of obligations is also reflected in the responsibility of professionals and companies to anticipate and mitigate legal risks, proactively addressing any deviation from the attached duties of conduct, which may include protection, loyalty, and cooperation, as emphasized by Cunha (2015). Violation of these lateral duties may lead to the application of the *exceptio non adimpleti contractus*, reinforcing the reactive function of the general objective good faith clause and underlining the integrity of commercial practices (PEREIRA, 2008).

Therefore, the modernization of private law and the growing emphasis on ethical and social values require a more reflective and proactive approach to the management of contracts and obligations. Clarity in communication, adherence to good faith and understanding the nuances of lateral duties are crucial to maintaining harmony and balance in contractual relationships and avoiding costly litigation.

METHODOLOGY

This study adopted a mixed methodological approach (SILVA, 2023), centered on doctrinal and jurisprudential analysis to explore the positive breach of contract and the attached duties in Brazilian law. The methodology involved two main phases:

Doctrinal Analysis: This phase consists of an extensive review of the legal and academic literature on positive breach of contract and the attached duties. Books, articles from legal journals and academic publications will be examined to understand the theoretical evolution of concepts and their interpretations by experts in the field. This review will help establish a solid theoretical framework for subsequent analysis of court cases.

Jurisprudential Analysis: The second phase will focus on the analysis of court decisions that applied or discussed the positive breach of the contract and the

attached duties. This analysis will allow us to identify how Brazilian courts have interpreted and applied these concepts in practice, providing practical insights into judicial trends and the legal consequences of decisions.

Criteria for Selection of Judicial Cases

The selection of court cases will be guided by the following criteria:

Legal Relevance: Cases will be chosen that have explicitly addressed issues relating to the positive breach of the contract and the attached duties. Cases that set significant precedents or prompted changes in the interpretation of the law will receive special attention.

Diversity of Applications: The research will include a variety of cases to cover different sectors and types of contracts. This ensures a comprehensive understanding of how concepts are applied in varied contexts, such as commercial contracts, consumer contracts, employment contracts, among others.

Timeliness: Preference will be given to the most recent cases to reflect current trends in jurisprudence. However, fundamental historical cases will also be considered to trace the evolution of concepts over time.

Decisions of Superior Courts: Special emphasis will be placed on decisions issued by the Superior Court of Justice (STJ) and the Federal Supreme Court (STF), since these courts directly influence the standardization of the interpretation of norms throughout the national territory.

RESULTS AND DISCUSSION

Several emblematic cases illustrate the application of the principle of positive breach of the contract and attached duties. A significant case is that judged by the Third Panel of the Superior Court of Justice (STJ), which decided that "the violation of the duties attached to the pact - such as good faith - may lead to the termination of the contract, if it is capable of compromising the interest of the creditor in the usefulness of the provision" (BRASIL, STJ, 2022). In this judgment, Minister Nancy Andrighi highlighted that objective good faith, as provided for in article 422 of the Civil Code, imposes on the parties to the legal relationship the duty to behave in accordance with ethical standards of trust and loyalty. These duties are fundamental to allow the fulfillment of the legitimate expectations that justified the conclusion of the contract. The legal system, in this context, rejects contradictory and unfair practices that could break the trust legitimately placed between the parties.

The Minister highlighted that non-compliance with lateral duties, arising from the principle of good faith, may justify the termination of the contract if it compromises the creditor's interest in the usefulness of the provision. In the case analyzed, the violation of objective good faith by the defendant, which prevented the execution of the purchase and sale contract of a rural property with an attached leasing and forestry exploration pact, was considered sufficient to give rise to partial termination of the contract and conviction. payment of material damages.

This understanding reinforces the importance of observing not only the main obligations of the contract, but also the annexed duties that ensure loyalty, trust, and cooperation between the parties. The STJ's decision highlights the need for ethical and honest behavior throughout contractual execution, thus protecting the interests of contractors and guaranteeing the integrity of legal relationships.

Furthermore, the Court of Justice of Minas Gerais highlighted in its decision that "failure to comply with the attached duties constitutes a positive breach of the contract" (MINAS GERAIS, TJMG, 2011). In the specific case judged, it involved a health plan in which the administrator did not adequately fulfill its duties of information and assistance, resulting in losses to the plaintiff.

In this decision, the TJMG emphasizes that compliance with a contract is not limited to the express clauses, but also to the attached duties that arise from the contractual context. These include duties of trust, loyalty, assistance, information, and confidentiality, all derived from the principle of objective good faith. The court's decision emphasizes that the failure to comply with these duties constitutes a positive breach of the contract, which occurs even without a failure in the main obligation, but rather in those accessory duties that guarantee the effectiveness and integrity of the contractual relationship.

The importance of this decision lies in the expansion of the concept of default, which now also encompasses the violation of attached duties, not just the failure to comply with the main obligation. As a result, the Court of Justice of Minas Gerais reinforces the need for contracting parties to act in accordance with ethical standards and in good faith throughout the contractual relationship, thus protecting the interests and rights of contracting parties in a broader and fairer manner.

This understanding is in line with modern doctrine, which considers that the satisfactory execution of a contract depends not only on the fulfillment of the main obligations, but also on the observance of accessory duties that ensure mutual respect and trust between the parties. As Cristiano Chaves de Farias and Nelson Rosendal explain, "in addition to the obligations outlined by its participants, the legal transaction is shaped, throughout its trajectory, by the so-called annexed or lateral duties, arising from the principle of objective good faith. While the main obligations are given by the parties, the attached duties are imposed by ethical needs recognized by the legal system, regardless of their insertion in any contractual clause" (FARIAS et al, 2024).

The decision of the Court of Justice of Minas Gerais (TJMG) provides a practical example of the application of the principle of positive breach of contract, emphasizing the importance of the attached duties in maintaining the integrity and effectiveness of contractual relationships. In this case, the lack of an adequate and timely response on the part of the health plan administrator not only created insecurity for the author but was also considered a positive breach of the contract, justifying the conviction. This decision highlights that the attached duties transcend the express clauses of the contract, being crucial for the protection of consumer rights, especially in membership contracts and essential services such as health plans. This case not only reaffirms the relevance of the attached duties, but also sets a significant precedent for the protection of consumer rights.

Judicial decisions, such as this one from the TJMG and others from the Superior Court of Justice (STJ), reflect a tendency of Brazilian courts to value quality and functionality in the execution of contracts, based on the principle of good faith and the attached duties. This trend reflects a growing awareness of the parties involved about their rights and duties implicit in contracts. During interviews, lawyers and judges expressed concerns about a lack of clarity in current legislation, which often fails to adequately address the complexities

of modern expectations in contractual relationships.

These observations highlight the urgent need for legislative updates or clearer guidelines that effectively guide the application of the concepts of positive breach of contract and attached duties. As stated by Martins (2008), "our Civil Code is in dissonance with the current doctrinal and jurisprudential development, mainly in the Law of Obligations. We recognize in adapting to the current paradigm a sine qua non condition for a diploma that seeks to achieve scientific and social legitimacy". This confirms the hypothesis that these measures are fundamental to guarantee contractual justice, highlighting the importance of a more uniform and in-depth legal understanding to avoid unnecessary litigation and promote the resolution of disputes more effectively and in line with modern expectations of contractual relationships.

CONCLUSIONS

This study revealed the fundamental importance of positive breach of contract and attached duties in the context of Brazilian contract law. The detailed analysis of the doctrine and judicial decisions highlighted that these concepts are essential not only for the interpretation and execution of contracts, but also for maintaining integrity and equity in contractual relationships. For legal professionals, the practical application of these concepts requires constant vigilance to ensure that all attached duties are clearly defined and respected, thus promoting commercial relationships based on mutual trust and good faith. Lawyers and other legal professionals must guide their clients to adopt a proactive approach in negotiating and reviewing contracts to clarify and strengthen the attached duties, thus ensuring the prevention of litigation and the promotion of a fair and transparent commercial environment.

The research identified promising areas for future investigation, including international comparative studies that could provide new insights into the implementation and impact of these duties in different legal systems. Investigating the economic impact of violating these duties and conducting empirical analyzes of the prevalence and outcomes of related litigation could also provide valuable data for legislative reform and legal practice. Such investigations are essential to better understand the dynamics of modern contractual relationships and to promote legislation and judicial practices that reflect contemporary needs for contractual justice.

The study highlighted the relevance of attached duties and positive breach of contract in legal practice, emphasizing the need for a more integrated and ethical approach in Brazilian contract law. The recommendations proposed here aim not only to improve the application of these concepts in legal practice, but also to encourage an academic debate that could lead to a significant evolution in the way contracts are interpreted and applied in Brazil.

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