

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/517/18
DATE: : TUESDAY 12TH MAY, 2020

BETWEEN:

DR. IBRAHIM JALO HASSAN..... CLAIMANT

AND

BUILDOPTIONS LIMITED DEFENDANT

RULING

The Claimant herein approached this Honourable Court vide a writ under the undefended list procedure pursuant to Order 35 of the Rules of this Honourable Court.

The Claim of the Claimant as endorsed on the writ is for the following:-

- a. The sum of N39,000,000.00 (Thirty Nine Million Naira) only representing the total sums paid to the Defendant.
- b. 10% interest on the Judgment sum monthly till same is liquidated.
- c. Any other order or Orders as the Honourable court may deem fit to make in the circumstances.

In support of the writ is an affidavit of 28 paragraphs duly deposed to by the Claimant himself.

It is the deposition of the Claimant that sometime in July, 2016 he applied for a house with the Defendant and an offer of house number A19 -02 Buildoptions apartments phase 19, Plot 1194 Guzape was offered to him at the consideration of N39,000,000.00 (Thirty Nine Million Naira) only.

That he commenced an installmental payment on the 21st July, 2016 with (Twenty Million Naira) only was paid leaving a balance of N19,000,000.00 vide Exhibit "A" that he made further payment of the sum of N8,883,060.00, N4,700,000.00 and N1,000,000.00 vide Exhibits "B", "C" and "D" respectively.

The Claimant further avers that he paid the sum of N1,589,000.00, N1,402,000.00 and N1,476,000.00 vide Exhibit "E", "F" and "G" respectively.

It is further the deposition of Claimant that he paid the total sum of (Thirty Nine Million Naira) only representing the full and total payments for the allocation and with the

promise to deliver the house within five months from the date of the letter of offer annexed as Exhibit “H”.

That after the expiration of five months and failing to deliver the house as promised, Exhibit “I” was served on the Defendant the Defendant replied vide Exhibit “K”

That due to failure of the transaction, demand notice was served on the Defendant vide Exhibit “L” and that it will be in the interest of Justice to grant the application.

Upon service, the Defendant filed a Notice of Intention to defend the action on merit.

In support of the application is an affidavit of Beaut Momoh. A litigation secretary in the law firm of the Defendants counsel.

It is the deposition of the Defendant that the Claimant paid all the said installmental payments through Aliyu Hammadu and the excess of N50,000.00 referred to in 14

of the Claimant's affidavit was refunded to the Claimant through the said Aliyu Hammadu.

Defendant also averred that the Claimant knew that the payments he made to the Defendant were expended on the construction of his unit of terrace duplex, and that as part of its source of revenue, He has to sell all the units of houses due to it from the project to third parties in order to raise money to complete the project.

That this suit was filed on 12th December, 2018 even before the delivery date of 31st December, 2018 suggested in the Defendant's letter of 3rd September, 2018, and that it will be in the interest of justice to transfer this case to the general cause list.

Court:...I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of

Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand see *UBA PLC VS JARGABA (2007) 5 SC1*.

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. *ATAGUBA & CO. VS GURA (2005) 2 SC (Pt. 11) 101*.

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which disclose no defence shall certainly not sway the

Court into transferring the matter to general cause list for trial.

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will not suffice as facts, which will throw doubt on Plaintiff's claim. ***UBA PLC VS JARA GABA (Supra)***.

It is the law that for a claim to be heard under the undefended list, it must firstly be for a liquidated money demand, including account stated to cognizable under the

undefended list procedure thus excluding for e.g. unliquidated damages as in claim in Torts and special damages arising howbeit from any cause of action as they must be specially pleaded and proved strictly.

Secondly, the claim for a debt or liquidated money demand must be supported by an affidavit verifying the claim, and thirdly the affidavit must contain a deposition to the effect that in the belief of Plaintiff, Defendant does not have any defence to the claim.

See *A. S T C VS QUORUM CONSORTION (2009) 9 NWLR (Pt. 1145)*.

The general rule is that where the parties have embodied the terms of their agreement or contract in a written document as it was done in this case, extrinsic evidence is not admissible to add or vary, subtract from or contradict the terms of the written instrument.

See ***LAGARDE VS PANALPINA WORLD TRANSPORT NIG. LTD (1996) 6 NWLR (Pt. 456) 544.***

The law is trite regarding the bindingness of terms of agreement on parties. Where parties enter into an agreement in writing, they are bound by the terms thereof.

This court, and indeed any other court will not allow anything to be read into such agreement, terms on which the parties were not in agreement or were not ad- idem.

See ***LARMIE VS DATA PROCESSING MAINTENANCE & SERVICES (D.P.M.) LTD (2005) 12 SC (Pt. 1) 93 at 103.***

In deciding the terms of a contract or what was agreed by the parties, it is always better to look at all the documents passing between the parties and glean from them or from the conduct of the parties whether they were ad-idem on all material points or how they expected their relationship to be maintained.

Per *RHODES VIVOUR CA in the case of DIAMOND BANK PLC VS UGOCHUKWU (2008) 1 NWLR (Pt. 1067) 1 at pages 23 – 24 paragraphs H-A.*

I shall for ease of reference reproduce Exhibit “H” and “I” issued by the Defendant to the Plaintiff.

Exhibit “H”

“Update on the status of your house: No A19-02 buildoptions Apartments Phase 19, plot 1194 Guzape Abuja.

The above subject matter refers.

Further to your request for an update on the status of the above mentioned property, please find same below.

Via allocation letter from our company dated July 14th, 2016, House No. A19 – 02, BuildOptions Apartments Phase 19, Plot 1194, Guzape Abuja

FCT was offered to you at the cost of N39,000,000.00 (Thirty Nine Million Naira) only.

We have since the allocation received the sum of N39,000,000.00 (Thirty Nine Million Naira) only.

We have since the allocation received the sum of N39,000,000.00 (Thirty Nine Million Naira) only from you spread over six instalments. (Please find attached six copies of receipts issued). The amount represents complete payment for the property.

To enable us issue you a letter of final allocation, a legal fee in the sum of N390,000.00 (Three Hundred and Ninety Thousand) representing 1% of the purchase price must be paid to the company. (Please refer to clause 3 of the Offer Letter). The amount can be paid anytime before the completion of the project.

Sir, as at today, the project is at finishing stage and the by the grace of the Almighty, we hope to complete the project within the next five months.

We wish to use this opportunity to express our sincere appreciation to you for your patronage and assure you that we will deliver to you the standard and quality we promised.

While thanking you most profoundly, please accept the assurances of our most esteemed company.”

Exhibit I

“Re: Delivery of house No. A19-02 Buildoptions Apartments Phase 19, Plot 1194 Guzape Abuja.

The above subject matter refers.

Further to your meeting with our company secretary on July 6th, 2017 at our head office on July 6th, 2017, we write to once again sincerely apologize for the delay in delivering your house.

We are unable to deliver the project in July 2017 as earlier expected due to delay in receiving our finishing materials from overseas.

As I expect you have visited the site, I am sure you must have noticed that much work is left to complete the project.

Sir, we expect delivery of the materials we purchased for the project by the end of this month and by the grace of God we will take not more than 3 Months to complete your house.

In furtherance of this therefore, we will deliver your house on or before 25th November, 2017.

While thanking you most profoundly for your patience and understanding, please accept the assurances of our most esteemed company.”

A party who obviously benefits from a given state of affairs, like the Defendants in this case, must not be allowed to shirk from its obligations.

This should not just be a matter of convenience, but I dare say a moral duty or obligation and a matter of conscience. Any agreement is useless if one party does not respect it. I won't say more.

The contents of Exhibits "H" and "I" have clearly betrayed Defendant.. Defendant is running from pillar to post and merely changing goal post to avoid allowing the goal into the net.

Defendant has no defence to the claim of Claimant.

I have not seen the issues fit to be tried that have been raised or any substantial question of facts which ought to be tried by full contest.

This is not a game of chess or draft, what the craftiest wins.

A Defendant who has no defence to the claim of Claimant shall not be allowed to dribble and cheat such a Claimant out of judgment.

That is exactly what the Defendant in this matter seeks to do. God forbid.

On the whole, Claimant is deservedly entitled to judgment granting his reliefs..Judgment is hereby entered in favour of Claimant, as follows;

- i. The Defendant is hereby Ordered to pay Plaintiff the sum of N39,000,000.00 (Thirty Nine Million Naira) only representing the total sums paid to the Defendant.
- ii. 10% interest on the Judgment sum is hereby awarded.

Justice Y. Halilu
Hon. Judge
12th May, 2020

APPEARANCES

I. J MBATSAVDUE – for the Claimant.

S.O OKPANACHI – for the Defendant.