

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 18TH NOVEMBER, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1687/2018

BETWEEN

**AUTO BILL & BUILDING }
CONSTRUCTION LIMITED } --- CLAIMANT**

AND

**SANSCOM INTERNATIONAL }
PROJECTS LIMITED } --- DEFENDANT**

JUDGMENT

The claimant instituted this suit on 4/5/2018 vide writ of summons. In the statement of claim filed along with the writ of summons, the claimant claims these reliefs against the defendant: [i] the liquidated sum of N5,546,140.00 only being the exact sum owed by the defendant which is remaining unpaid; and [ii] the sum of N500,000.00 only as cost of litigation.

The defendant filed a statement of defence on 29/4/2019. The claimant's reply to the statement of defence was filed on 31/5/2019.

Mr. Jimmy Alo, a director of the claimant, testified as PW1. He adopted his statement on oath filed on 4/5/2018 and tendered Exhibits A, B, C, D, E, F, G & H. The defendant did not cross examine PW1 and did not call any witness.

The evidence of the PW1 is that sometime in 2015, the defendant was awarded a contract of constructing housing units by the Nigerian Navy. The claimant wrote a letter expressing its interest in the construction of a housing unit to the defendant. The defendant sub-contracted the claimant to build one block of 3 bedroom block of flats [consisting of 6 flats] and one block of 2 bedroom block of flats [consisting of six flats] respectively at the plot for the Nigerian Navy Housing Estate Phase II, Karshi at the contract sum of N113,775,567.47 with 20% cost of funds inclusive. The defendant issued the claimant an award letter for the said contract dated 10/6/2016. The duration of the contract was 5 months from the day the contract was handed over to the claimant. The claimant accepted the award through a letter of acceptance dated 14/6/2016.

PW1 further testified that following the acceptance of the said contract, the claimant immediately commenced the execution of same. The agreement of the parties is that the defendant will pay the claimant on the completion of the first stage of the contract. The claimant completed the first stage of the contract as shown in the bill of quantity and work schedule, which it funded to the tune of N5,546,140.00. Since the completion of the first stage, the claimant has written to the defendant requesting for certificate of partial completion and also for payment as agreed but the defendant has refused or

failed to issue a certificate of completion and pay the outstanding sum. The claimant made frantic effort to recover the sum from the defendant and same proved abortive.

PW1 tendered these documents:

1. The defendant's letter of Award of Contract for the Construction of Housing Units at Nigerian Navy Estate Phase II Land Karshidated 10/6/2016 addressed to the claimant: Exhibit A.
2. The claimant's letter of acceptance dated 14/6/2016: Exhibit B.
3. The claimant's letter of request for certificate of partial completion to the defendant dated 28/10/2016: Exhibit C.
4. The claimant's letter for demand of payment of N5,546,140.00 to the defendant dated 20/12/2017: Exhibit D.
5. Bill of Quantity for three bedroom Block of 6 flats: Exhibit E.
6. The claimant's letter to the principal partner of OlasupoAshaolu, SAN & Co. dated 21/12/2017: Exhibit F.
7. Letter of OlasupoAshaolu, SAN & Co. to the claimant dated 22/12/2017: Exhibit G.
8. Letter of demand by the claimant's solicitors [OlasupoAshaolu, SAN & Co.] to the defendant dated 27/2/2018: Exhibit H.

At the end of the trial, Gbenga A. AshaoluEsq. filed the claimant's final address on 29/1/2020, which was served on the defendant on 7/2/2020. The defendant did not file its final address. Smart I. AliyuEsq. adopted the claimant's final address on 6/10/2020.

In the claimant's final address, Gbenga A. AshaoluEsq. formulated three issues for determination, to wit:

1. Whether or not the claimant has discharged her obligations and responsibilities as agreed in the contract and thereby entitled to the sum claimed.
2. Whether the Court can rely on the sole evidence and facts placed before the Court by the claimant in granting the claimant's reliefs.
3. Whether this Honourable Court has the powers to grant the reliefs sought being a liquidated sum and undefended.

As I said before, the defendant did not adduce evidence in support of the averments in the statements of defence. The law is trite that any averment in a pleading which is not supported by evidence is deemed abandoned. See the case of **Ofem&Ors. v. Usang [2017] LPELR-43606 [CA]**. Thus, the averments in the statement of defence are deemed abandoned by the defendant. The effect is that the defendant admitted the evidence of the claimant as true. Therefore, the issue for determination is whether from the evidence adduced the claimant is entitled to its reliefs.

As rightly stated by the claimant's counsel, a contract is formed once there is an offer by the offeror to the offeree which is accepted by the offeree backed by consideration. At that point in time, the parties to the contract are said to be *ad idem* or in agreement and that agreement or contract is binding on both parties and as such enforceable by the court. See **Chief D. S. Yaro v. Arewa Construction Ltd. &Ors.[2007] LPELR-3516 [SC]**.

In the instant case, there was an offer by the defendant to the claimant vide Exhibit A and an acceptance by the claimant vide Exhibit B. There is consideration expressed in the contract as there are obligations to be performed by the claimant and the defendant. The unchallenged evidence of PW1 is that the claimant executed the first stage of the contract as shown in the bill of quantity, Exhibit E, which amounted to the sum of N5,546,140.00. The position of the law is that where evidence by a party to a proceeding was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceeding to act on the unchallenged evidence before it. See the case of **Jacob Omman v. Darlington Ekpe [2000] 1 NWLR [Pt. 641] 365**.

I have also taken into account the claimant's letter dated 20/12/2017 [Exhibit D] for payment of the sum of N5,546,140.00 by the defendant. The letter reads in part:

"... Our company has effectively carried out the completion of the first stage of the contract as is shown in the bill of quantity and work schedule attached to

this letter. It is worthy of note that we agreed that your company was to pay us for the completion of the first stage, wherein we funded the cost and not your company.

We hereby kindly request for the payment of the sum of N5,546,140.00 representing cost and all money expended by our company for the completion of first stage. ...”

The claimant’s solicitors [OlasupoAshaolu, SAN & Co.] also wrote a letter of demand to the defendant dated 27/2/2018 [Exhibit H]. The defendant did not respond to these letters of demand. In the case of **Trade Bank Plc. v. Chami [2003] 13 NWLR [Pt. 836] 158**, it was held that business letters, unlike social correspondences, deserve to be replied. Thus, the court would, unless the circumstance in which a business letter is written shows otherwise, infer that the failure to reply a business letter is an admission of the facts stated in the letter. This is so because what is not denied is deemed admitted. See also the case of **Onuigbo v. Azubuike [2013] LPELR-22796 [CA]**.

In the light of the above principle, the inference to be drawn from the failure of the defendant to deny the contents of the letters of demand is that it admitted the facts stated in the letters.

The decision of the Court is that the claimant has proved its case and is therefore entitled to the sum of N5,546,140.00.

CONCLUSION

I enter judgment for the claimant against the defendant for the sum of N5,546,140.00. I award cost of N200,000.00 to the claimant payable by the defendant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

Smart I. AliuEsq. for the claimant.

