

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE DAY OF 11TH NOVEMBER, 2020.

SUIT NO: FCT/HC/CV/2600/18

BETWEEN:

EJUTO NIG LTD ----- CLAIMANT

AND

- 1. REGISTERED TRUSTEES OF EFAB MALL
ANNEXE STAKEHOLDERS ASSOCIATION**
- 2. ABDULRAHMAN MADAKI**
- 3. MBX ESTATE SERVICES LTD**
- 4. MR. BEN ACHIATAR**
- 5. BARR. ITABO OCUNTIBI**
- 6. AIGBE NNEKA**

}----- **DEFENDANTS**

NNAMDI MBA U. for the Claimant.

M. F. AGBO for the 1st, 2nd, 4th, 5th and 6th defendant.

JUDGEMENT

The Claimant in an originating summons dated the 14th of August 2018 seeks for the following questions:

1. Whether the defendants, their agents or any occupant of the office spaces, shops in Efab Mall Extension located at Plot 850 measuring 1.26 hectares area 11 Abuja have power to appoint Facility Managers for Efab Mall by virtue of page 3 paragraph 5 of the Deed of Assignment executed between the claimant and the 2nd – 6th defendant and the Claimant and all the assignees of office spaces and shops in the Efab Mall.
2. Whether any of the purchasers or assignee of the said office space can challenge the authority of the claimant to appoint Facility Managers for the Mall by virtue of the provision of page 3 paragraph 5 of the Deed of Assignment.

3. Whether the defendants, their heirs or any occupant of the office spaces/shops Efab Mall has authority to terminate or sack Facility Manager appointed by the claimant by virtue of page 3 paragraph 5 of Deed of Assignment signed by all assignees.
4. Whether any person or group of persons other than the claimant has right to appoint, terminate or enter agreement with Facility Managers for the management of Efab Mall.
5. Whether the 1st defendant or any of its agent has power to direct any occupant of office space in Efab Mall not to pay Facility Management fee to the Facility Manager appointed/approved by the claimant on the ground that the manager so appointed has no authority to so act viz a viz the provision of page 3 paragraph 5 of the Deed of Assignment signed by all assignees of shops and office space in the mall.

And if the questions are answered in the affirmative, claimant asked for the following reliefs:

1. A declaration that no assignee, person or group of persons other than the claimant has power to appoint facility managers of Efab Mall or terminate such appointment by virtue of the provision of page 3 paragraph 5 Deed of Assignment executed between the claimant and defendants and all other assignees of office space and shops Efab Mall.
2. A declaration that by virtue of page 3 paragraph 5 Deed of Assignment signed by all assignees , no assignee or any of the defendants has right to challenge the authority of the claimant to appoint facility manager for the purpose of management of Efab Mall.
3. A declaration that the defendants or any other person other than the claimant has no right to direct the occupant of Efab Mall not to pay facility management fee to facility managers appointed by the

claimant viz a viz page 3 paragraph 5 deed of assignment executed by claimant and all defendants and assignee in the mall.

4. An order of perpetual injunction restraining the defendants and any person claiming through them from challenging the authority of the claimant to appoint facility managers for the Efab Mall.
5. An order restraining the defendant or any of their agents from disrupting the peaceful management of Efab Mall by FGC Properties Management or any other facility management that may be appointed by the claimant.
6. An order mandating the defendants, all the assignees and their agents in Efab Mall to continue to recognize FGC Properties Management or any other facility managers the claimant may appoint in future as the lawful managers of the mall in line with page 3 paragraph 5 of Deed of Assignment signed by assignee of office spaces and shops in the mall.
7. An order directing the defendant to pay the sum of 20 million naira damages for directing occupants of the mall not to recognize or pay facility management fees to the facility manager appointed by the claimant.
8. Cost of this action

In the accompanying affidavit in support of the Originating Summons, the deponent one **Ajibo Kenneth Ugochukwu**, a legal practitioner in the law firm of counsel representing the claimant averred that one of the Directors of the claimant informed him in the course of his duty on the 14th of A, 2018, and he verily believed him that:

That the Claimant is the beneficial owner of Plot 850 measuring about 1.26 hectares situate at Area 11, Garki Abuja. That the Claimant after the allocation of the Plot to it by the Minister of the Federal Capital Territory Abuja developed the property into over 400 shops and office spaces. That upon the development of the plot into a Mall containing about 400 office spaces all ensuite, appointed the F. G. C Properties Management and Consulting Ltd to manage, sell, rent and also lease the shops to intending

buyers and tenants. That the Law Firm of **Obinna Ajoku & Co.** was retained by the Claimant to prepare Deed of Assignment to all purchasers of shops in the Mall. That some of the shops were sold to intending purchasers and a Deed of Assignment was executed by the Claimant and all the purchasers.

He also averred that some members of the 1st defendant, 2nd to 6th defendants purchased some of the shops in the Mall and also signed the Deed of Assignment. That the claimant made it clear to all purchasers that for the smooth running of the Mall, that the Claimant shall have unfettered rights to appoint a Facility Manager for the management of the common arrears and for the provision of such other services as the Assgnor deem necessary for the proper management of the Efab Mall Extension Area 11, Abuja. That all the purchasers and tenants in the Efab Mall Extension agreed to the terms and conditions that the Efab Mall shall be managed by a facility manager to be appointed by the Claimant before purchasing any shop or office space or renting a space in the Mall. That the defendants agreed also to the terms and condition in Exhibit **Ejuto 1A-1F** before purchasing the shops and offices assigned to them. That the provision of page 3, paragraph 5 of Exhibit **Ejuto 1A-1F** spelled out the power of the Claimant to appoint facility managers.

He further averred that sometimes in 2012, 2nd to 6th Defendants engineered the registration of the 1st defendant Efab Mall Annex Stakeholders Association. And upon the registration of the 1st Defendant, the Defendants started challenging the authority of the facility manager appointed by the Claimant. The deponent annexed a copy of the notice to all shop owners and occupiers by the 1st Defendant as Exhibit '**Ejuto 2**'. The Managing Director of FGC Properties Management and Consulting Ltd briefed the Management of the Claimant on the 8th day of August 2018 of the plan of the Defendants to usurp the power of the Claimant and take over the management of the Mall. The following documents were also made available to the Management of the Claimant on the 8th day of August, 2018:

- i. A letter from the 1st Defendant dated 21st day of March 2011 titled Facility management of Efab Mall, wherein the defendants alleged that the FGC Properties has no authority from Claimant to Manage the Mall. Exhibit '**Ejuto 3**'.
- ii. A letter from the 1st defendant to FGC Properties to sign an agreement dated 19th July, 2012, Exhibit '**Ejuto 4**'.
- iii. A reply from FGC Properties to the 1st Defendant dated 20th July 2012, Exhibit '**Ejuto 5**'.
- iv. A reminder letter from the 1st Defendant to the FGC Properties, dated 24th August 2012, Exhibit '**Ejuto 6**'.
- v. A letter from FGC Properties to the 1st defendant dated 27th August 2012, wherein FGC Properties made it known to the defendants that it cannot sign a new management agreement with the 1st defendant since Claimant has granted it the authority to manage the property, Exhibit '**Ejuto 7**'.
- vi. A Resolution passed by the defendants wherein they advised shop owners and tenants to stop payment of facility management fees to FGC Properties, Exhibit '**Ejuto 8**'.
- vii. A letter from the FGC Properties dated 7th September, 2012 to the Defendants reacting to Exhibit '**Ejuto 8**' above, Exhibit '**Ejuto 9**'.
- viii. A letter from FGC Properties to all shop owners and occupiers dated 7th September, 2012 informing them that all issues raised by the 1st defendant has been resolved save for the issue of who is to appoint facility managers, Exhibit '**Ejuto 10**'.
- ix. A letter from FGC Properties to defendants dated 2nd July 2013, wherein it proposed for a meeting to resolve the crisis it was having with the association, Exhibit '**Ejuto 11**'.
- x. A reply from 1st Defendant dated 12th July 2013 wherein they requested that the Claimant must be part of the meeting for them to sign any agreement, Exhibit '**Ejuto 12**'.
- xi. A reply from FGC Properties to Exhibit Exhibit '**Ejuto 11**' above dated 15th July 2013 wherein it suggest that the issue of

appointment should be set aside and other issues discussed, Exhibit '**Ejuto 13**'.

- xii.A letter from FGC Properties dated 22nd July, 2013 to the Defendants wherein it complained about the deployment of cleaners by the Defendant in the Mall, Exhibit '**Ejuto 14**'.
- xiii. Notice from Defendants to the owners of shop and occupiers informing them of the change of management dated 18th September, 2013, Exhibit '**Ejuto 15**'.
- xiv. Facility Management agreement between the 1st Defendant and the FGC Properties Management and Consulting Limited dated 25th day of September, 2014, Exhibit '**Ejuto 15**'.

The management of the Claimant was shocked to see all the correspondences between the Defendant and the FGC Properties without the consent of the Claimant. That the Defendants have no right discuss the issue of the appointment of Facility Management of the Mall. That all the assignees in the Mall have agreed and consented before purchasing any shop in the Mall that the Claimant shall have an unfettered power to appoint facility managers. That the action of the Defendants is ultra vires their power and an attempt to usurp the power of the Claimant.

That the action of the Defendants has seriously affected the payment of the facility management fees. That the total debt owed to the Claimant from 2013 to date is about **₦19,000,000.00 (Nineteen Million Naira)** only due to the action of the defendants in discouraging occupants from payment of facility management fee despite the provision of services by the appointee of the Claimant. The list of those owing the facility management fee from 2013 to date is annexed as Exhibit '**Ejuto 16**'.

The deponent stated that he know as fact that the Defendants will not suffer any injustice if the reliefs sought by the claimant in this suit are granted for it will rather uphold the rule of law and proper and effective management of the Mall. That he knows as fact that the interest of

justice and fairness will be well served if the reliefs of the Claimant are granted.

In response, the Defendants filed a counter-affidavit of one **Abdulrahman Madaki** the 2nd Defendant wherein all the claims of the claimant were denied. He deposed to the counter-affidavit on the authority and consent of the 1st – 6th Defendants. He averred that **Mr. Nnamdi Tochukwu** is not one of the Directors of the Claimant as he resigned from the company since 2007.

That the Claimant's title is being challenged in **Suit No. FCT/CV/532/14** pending before **Honorable Justice Oriji S. C.** of High Court of the Federal Capital Territory No. 10 Apo by Abuja Urban Mass Transport Company (UMTCO) with Statutory Right of Occupancy and Certificate of Occupancy evidencing same which was earlier in time. And that the defendants with the owners of the shops at the Mall have filed an application to be joined as defendants to protect their interest and investment. And that the claimant built the Mall without an approved building plan by the Department of Development Control and Statutory notices served on the claimant such as quit notice, stop work notice and demolition notice but went ahead to complete the building while the suit filed by the Claimant in the High Court of FCT in **Suit No. FCT/HC/194/07** was still pending until it was struck out on 21st October, 2013.

He also claimed that there is no evidence that claimant ever appointed any facility manager before this honorable court. That the said Deed of Assignment were not registered in the Deed Registry of Department of Land Administration Federal Capital Territory Administration, Abuja. And that many members of the 1st Defendant and tenants did not sign the Deed of Assignment because the claimant inserted a clause to reserve right to appoint facility manager in the Deed of Assignment. That the said clause is of no moment as same has been overtaken by events. That the Claimant and Facility Manager's conduct of participating in meeting held with the Defendants on appointment of facility manager and thereafter

conceded the right to appoint facility manager to Defendants and entered Facility Management Agreement annually for a period of five (5) years from September, 2013 to 31st August 2018. Copies of minutes of the said meeting, correspondences exchanged and Facility Management Agreement signed by both parties are attached as **Exhibit C,C1,C2,C3,C4,C5,C6,C7** and **C8**.

The defendant stated that the 2nd, 3rd and 6th defendants were not registered trustee of Efab Mall Stakeholders Association and did not engineer the registration of the association. A copy of the registration of the Association is attached as **Exhibit D**. That the defendants became dissatisfied with the services of the Facility Manager FGC with regards to electricity supply to the Mall, exorbitant charges on illegal meters fixed by them, security problem. Copies of the correspondences on issues electricity, complaints by members of breakages and theft are attached as **Exhibits E, E1, E2, E3, E4, E5, E6** and **E7**. That the Facility Managers proceeded to institute an action against the 1st and 2nd Defendant in **Suit No. FCT/CV/260/2012**, abandoned same, and opted for settlement with the Defendants. A copy of the Writ is attached as **Exhibit F**. That the defendants wrote the National Electricity Commission as a result of the perennial blackout in the Mall. They also complained about over charging members by the FGC, the Facility Manager to the Power Holding Company. That the Facility Manager FGC, failed to comply with the Facility Management Agreement entered with the 1st Defendant and letters were written to them to this effect. Copies of the correspondences attached as **Exhibits H, H1, H2** and **H3** respectively.

The deponent further stated that the Claimant is aware since 15th August, 2013 that the Defendant have been appointing FCG as Facility Manager and never raised any objection. That the Claimant and the Facility Manager FGC were present at the meeting of 15th August, 2013 where the issue of legal right of the Defendants to appoint facility manager was discussed and concluded and one **Sir Gabriel Ugwuzor** of FGC promised to come out with particular position on how to accommodate the two

parties and forwarded same to the Chairman which was conveyed on 19th August, 2013. That the Claimant was represented by Abua Magdalene A. at the meeting of 15th August, 2013 where the issues of appointment of facility manager was discussed and concluded. That the Defendants have equitable rights and were presently in possession of the Mall subject of litigation at the High Court of Federal Capital Territory.

The Defendant also averred that there is nothing to show that the Defendants discouraged occupants of the Mall from paying facility fee and when the facility managers are not serious in enforcing the payment by occupants, the Defendants set up a committee to help in collection of facility fee for them. Evidence of same attached as **Exhibit J**. That many members and occupants have suffered losses due to non-performance of FGC and agreed to terminate their service. Copies of minutes of the meeting and correspondences are attached as **Exhibit K, K1, K2 and K3**. That it will serve the interest of justice if the averment in paragraphs 3,3(a)-3(o)(i-xx) is expunged as **Mr. Nnamdi Tochukwu** who claimed to be one of the Directors of the Claimant resigned from the company on the 3rd September, 2007 and was removed. That the list of those owing the facility fee exhibited as Ejuto 16 came as surprise as they are seeing such for the first time before this Honorable Court and none of the Defendants are owing.

The 3rd Defendant in an 18 paragraph Counter-affidavit deposed to by one **Hauwa Halidu** a Litigation Officer in the Law office of **Henry T. Ebu & Associates** counsel to the 3rd Defendant wherein she stated that she have the consent of her employers and that of the 3rd defendant to depose to the affidavit. She also stated that she was informed by **Henry T. Ebu** of counsel to the 3rd Defendant on the 21st day of September, 2018 at their office while reviewing the case of the following facts which she verily believe them to be true. That the 3rd Defendant was not convinced that the clamant is the legitimate owner of all that plot of land particularly known as plot 350 measuring about 1.26 Hectares of land which lie and is situate at Area 11 Garki, Abuja. And that the Claimant produced a

comprehensive plan of the Mall to enable interested members of the public understand the nature of the development since the intention of the Claimant was to sell the shops outright. That the Claimant commenced the marketing of the proposed shops in sizes of 17.5sqm, 25sqm, 50sqm and such other sizes as were proposed by the Claimant prior to commencement of development. And that at no point was the company FGC Properties Management & Consulting Ltd appointed to manage, sell, rent, and or carryout any services on behalf of the Claimant. That at the point of the commencement of the sale of the shops up till when the 3rd defendant bought Efab Properties Ltd was rather the company which carried out the marketing and sale of the shops until its development was fully completed. And that the receipts of payment were in the name of Efab Properties Limited. That it was only at the completion of the development in 2009 when the purchasers were agitated for transfer documents that they as well as the 3rd defendant were presented with the Deeds of Assignment to be signed by various purchasers, assignees et al.

She further averred that the issues of discrepancies relating to the marketing company and the Assignor were raised at that point of signing the Deed of Assignment was presented. That the marketing processes were all carried out at Syndicate Plaza at the office of Efab Properties Ltd where **Chief Fabian Nwaorah (CON)** is the Chairman of several companies. Businesses of these companies were carried out at the same office including the claimant. That at the particular office, there was none and there is still no sign of the presence of Ejuto Nigeria Ltd, except for the fact that all transactions, collection of monies, issuance of receipt for the development in reference for purchases to interested members of the public were carried out at the said office.

That the issue of management of the common areas in the deed of assignment was never contemplated when the offer to purchase the said shop was made. That there was no particular time there was any form of conveyance of any directive, communication, appointment of any person,

body corporate appointed to manage the facility up till the time of filing this suit. And that the registration of the Efab Mall Annex Stakeholders Association was just a general agitation from members to take care of the interest of owners of shops (including the 3rd defendant) and tenants carrying on business at the mall especially with reference to the security of their properties and the depreciation that is bound to happen resulting from usage.

That the entire communication as exhibited between the Efab Mall Annex Stakeholders Association and FGC Properties Management & Consulting Ltd as indicated in Paragraphs O(i-xiv) only showed that the Claimant had stayed aloof and allowed the shop owners, tenants and all other members of the association to take their fate into their hands and that the Claimant was not available at any time during crisis, negotiations, appeals, or any of the issues on the subject matter until when the PHCN installed the regular meters for electricity. Furthermore she stated that since the development of the Mall, the Claimant had abandoned the mall and had not carried out any repair work till date at the expense of the shop owners and tenants alike.

These are relevant facts in the affidavit as contained in paragraph 1-6 thereof. Other paragraphs dwell on the alleged despair state of the mall.

The Claimant filled a further and better affidavit in opposition to the defendants' counter-affidavit. It is also on record that the counsel to the respective parties supported the Originating Summons and the replies thereto with counsel final written submission. In the written address of the claimant, Learned counsel formulated a sole issue for determination to wit:

Whether the Defendants or any other person(s) other than the Claimant has power to appoint Facility Managers for Efab Mall, Garki, Abuja by virtue of paragraph 8, page 3 of the Deed of Assignment executed by the Claimant and all the assignees of shops in the mall.

The paragraph 5 of page 3 of the Deed of Assignment signed by the 2nd to 5th Defendants and other assignees reads; ***“That the assignor shall throughout the duration of the terms of the terms hereby created reserve unfettered rights to appoint a facility manager for the management of the common area and for the provision of such other services as the assignor deem necessary for the proper management of the Efab Mall and the assignee undertake to abide by the terms and conditions to be stipulated by the facility manager.”***

On the interpretation of written contract, the Learned Counsel relied on the case of **AFROTEC TECHNICAL SERVICES NIG LTD V MIASONS LTD (2000) NSCQCR 2014** where the Supreme Court held:

“The law is long settled that in interpreting the provision of a written contract, no addition thereto or subtraction therefrom is permissible. The words used must be given effect to and no word should be ignored in the interpretation of the intention of the parties, otherwise the court will be seen as rewriting the agreement between parties.”

The Counsel further cited the case of **OGUN STATE GOVERNMENT V DALANU (2007) NSCQR RO129, PG 6763 @ 785, LARMIE V DATA PROCESSING MAINTENANCE & SERVICES LTD (2005) NSCQR RO124 PG 320 @ 337 WSN Onoghen JSC** where the Supreme Court further held:

“It is the law that where parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument. Where there is any disagreement between parties to a written on any particular point as in the present case, the authoritative and legal source of information for the purpose of resolving that disagreement or dispute is the written contract executed by the parties, which in the present case is exhibit B. it is always not the business of the court to make contract for the parties before it or rewrite the one already made by them. Once the conditions precedents to formation of contract are fulfilled by the parties thereto, they are bound by it.”

The Counsel submitted that the totality of the pronouncement of the Supreme Court in the aforementioned case is that the court is bound to interpret the intention of the parties in a contract without any reference to an oral or extrinsic document or evidence. He urged the court to look at the paragraph 5 page 5 at Exhibit A1-1F and hold that the Claimant reserves the right to appoint the Facility Managers of the Efab Mall.

On the other hand, the Learned Counsel to the 2nd defendant in his written address argued that the Claimant's right to appoint Facility Manager has been relinquished to the Defendants since 2013. He argued that at the meeting of the 1st Defendant with the Claimant and the Facility Manager FGC, the issue of the right of the Defendants to appoint Facility Manager for the Mall was discussed and agreed. That the Facility Manager FGC conveyed same on their letter dated 19th August 2013. The Claimant he argued cannot approbate and reprobate. He relied on the case of **YUSUF V OBASANJO (2005) 18 NWLR (PT. 956) 96 @ 165 Par C**. He further argued that the Facility Manager FGC and the claimant conceded to allowing the Defendants to appoint Facility Manager and took further steps to enter into Facility Management Agreement annually for a period of five (5) years from the 1st September, 2013 to 3rd August 2018. The Claimant he submitted is indolent, and equally helps only the vigilante. The Counsel relied on the case of **OLALEYE V TRUSTEES OF FCWA (2011) 2 NWLR (PT. 1230) 1 @ 30 PAR B** where the Court held thus:

“Acquiescence occurs when a person abstains from interfering when his legal rights are violated. He will therefore given a normal situation be forbidden from asserting that legal right. The law aids those who are vigilant and not those who sleep upon their right.”

The Claimant he stated slept over their right for the past five (5) years the Defendants have been appointing and engaging the services of the FGC as Facility Manager since 2013. That also in the affidavit in support of the Originating Summons, the information given to the deponent **Mr.**

Nnamdi Tochukwu who claimed to be one of the Directors of the Claimant was false and to be expunged. The Counsel argued that the said **Mr. Nnamdi Tochukwu** is no longer one of the Directors of the Claimant having resigned from the Company on the 3rd of September, 2007 and was removed. He referred the Court to Exhibit A attached to the 2nd Defendant's counter-affidavit. He urged the court to dismiss the suit for lacking in merit.

Similarly the 3rd Defendant in its written address formulated two (2) issues for determination to wit;

- 1. Whether the Deed of Assignment given by the Claimant on the face of it is a valid contract.***
- 2. Whether after the sale of all the shops to the Stakeholders and or Shop Owners, the Claimant can retain the Power to appoint the Facility Manager taken into effect the unavailability of the Claimant to attend to the problems facing the Mall.***

With respect to issue No. 1, the Counsel to the 3rd Defendant argued that what was transferred by the Claimant to all the Defendants and other purchasers of shop from the mall was the expired residue of the Term of Lease granted the Claimant by the Federal Capital Development Authority over the property. And that the law construe the property to include the appurtenances, like the parking lots, drive ways, veranda etc. that the insertion of the contentious paragraph 5 to the supposed contract of sale makes it an onerous contract or lease as it is against the interest of the purchasers who are supposed to be the future possessors of the shops as at the time of contracting. He argued that paragraph 5 of the purported Deed of Assignment kills the intention of the Deed and makes it an illegal contract and therefore unenforceable. On the illegality of the contract the 3rd Defendant relied on the case of **AJAYI V TOTAL (NIG) PLC (2018) 45 WRN PG 1-22 @ PG 5.**

With respect to issue 2, the counsel for the 3rd defendant argued that there was no communication emanating from the Claimant that anybody

was appointed as Facility Manager pursuant to paragraph 5 of the Deed of Assignment. That the Claimant having accepted consideration as shown in the Deed of Assignment, its interest on the property became extinguished. He referred the court to various exhibits attached to the affidavit of the 3rd Defendant which he said showed the deplorable condition of the mall. That since the mall was completed in 2009 and business activities stated, no attempt has been made to carry out any repair works at the mall. That if the entire property has been sold as averred by the Claimant, the Claimant cannot sit back and appoint a Manager. That the appointment of Manager is the duty of the owner of the properties.

He further argued that the said paragraph 5 infringes on the right to ownership of property on the part of the 3rd Defendant which is a fundamental right as enshrined in Section 43 of the 1999 Constitution as amended. He further argued that it would be absurd for the Claimant to appoint a Facility Manager as his whims and caprices without the inputs of the owner of the shops and allow the Manager to dictate the terms and conditions. That the intention of the Claimant is already very obvious looking at the deplorable state of the Mall and the nonchalance, casualness and indifference being exhibited over the state of the mall. That the Claimant has nothing to lose whatever happens to the mall but the stakeholders and the assignees are already losing in the circumstances. He urged the court to dismiss the suit of the Claimant for lacking in merit.

I have calmly considered the averments in support of the originating summons and the attached exhibits filed by the Claimant. All the written arguments and submissions of Learned Counsel for the Defendant in support of their respective counter-affidavits have equally been considered. The issue for determination is very narrow and that is; ***whether any other person apart from the Claimant can appoint a Facility Manager for Efab Mall by virtue of the Provision of Page 3 Paragraph 5 of the Deed of Assignment.***

The law is trite that in interpreting or construing the provision of a document, the court must accord it its plain and natural meaning to give effect to the wishes of the parties as expressed in the document. The court and the parties are not allowed to read into the document or an agreement any extraneous matter that does not form part of the document or agreement. See the case of **ADETONU OLADEJI NIG LTD V NIGERIAN BREWERIES PLC (2007) LPELR 160 (SC)** where the Supreme Court **Per Tobi JSC** of blessed memory held:

*“The one thing to be placed on a contract is that which is plain and clear and obvious result of the terms used in the agreement. See **ALLOND V LESSRAWANI (1956) NSCC 33 1956 IFSC 35, SCNLR 83**. When construing document in dispute between the parties, the proper course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document. See **AMANDIN V THOMAS APHN CO. LTD (1972) 4 SC 228 1972 7 NSCC 262**. Where there is a contract regulating any arrangement between the parties, the main duty of the court is to interpret that contract to give effect to the wishes of the parties as expressed in the contract document. See **ODUYE V NIGERIA AIRWAYS LIMITED (1987) 2 NWLR (PT. 55) 126**. In the construction of documents, the question is not what the parties to the document may intend to do by entering into that document but what is the meaning of the words used in the document. See **AMIZU V DR. NZERIBE (1989) 4 NWLR (PT. 118) 755**. However where the meaning of words used are not clear, the court will fall back on the intention behind the words. Above all, it is not the function of a court of law to make agreements for parties or to change their agreement as made. See **AFRICA REINSURANCE CORPORATION V FANTOYE (1986) 1 NWLR (PT.14) 133**.”*

See **BABATUNDE & ANOR V BANK OF THE NORTH LTD & ORS 2011 LPELR 8249 SC**; Where parties enter willingly and freely with into an agreement, they are bound by the terms and conditions stated in the agreement. The content of a written agreement freely entered into by a party cannot be

altered, subtracted or added by extrinsic or oral agreement. See the case of **UBA PLC V AJABULE & ANOR (2011) LPELR 8239 SC**. Furthermore a written agreement or contract which confers obligation on any of the parties can only be extinguished by another written agreement. See the case of **GROVER V INTERNATIONAL TEXTILE INDUSTRY (NIG) LTD (1976) LPELR 1342 SC, RABIU V ZARA (2018) LPELR 46556 CA, GTB V OGBOJI (2019) LPELR 47642 CA**. It is evident that the 2nd-6th Defendants signed the Deed of Assignment attached to the Originating Summons as **Ejuto 1A-1F** with the information in Paragraph 5 @ Page 3 embedded therein. It therefore means that all the Defendants are bound by the provision of Paragraph 5 @ Page 3 of the Deed of Assignment.

On whether the Claimant slept over his right as argued by the 3rd Defendant's Counsel in Paragraph 3.2 of his address where he argued;

“Furthermore the Facility Manager FGC and the Claimant conceded to allowing the Defendants to appoint Facility Manager and took step further to enter into Facility Management Agreement annually for a period of five (5) years from 1st September 2013 to 3rd August 2018. The members of the 1st Defendant and 2nd-6th Defendants became dissatisfied with the services and performance of the FGC and agreed to terminate their services. The Claimant failed to raise the issue of right to appoint Facility Manager timeously as the said right has been relinquished to the Defendants since 2013. The Claimant is indolent and equally helps only the vigilante.”

The argument that the Claim of the Claimant was caught by the acquiescence having slept over his right for five (5) years while the Defendant have been appointing and engaging the service of the FGC as Facility Managers since 2013, is not correct. A critical examination of all the correspondences that transpired between the Claimant and the 1st Defendants in particular before the re-appointment of FGC Properties Management & Consulting as the Facility Manager, non was said to have been copied the Claimant in this case. And also there is nothing on record

showing that the 1st Defendant complained to the Claimant, the original appointee of FGC about the performance of FGC Properties Management Consulting Limited. It is trite that the court lacks the power to add to or subtract from the terms of the contract, parties are also not allowed to unilaterally alter the content or terms of a written contract, in this case the Deed of Assignment. This principle is encapsulated in the Latin maxim; '*Pacta sint serranda*' meaning non-fraudulent agreement of parties must be observed.

The 3rd Defendant also argued that the appointment of a Facility Manager by the Claimant is in violation of paragraph 4 of the Deed of Assignment which talked about the Defendants' quiet enjoyment of the property. The import of paragraph 4 of the Deed of Assignment implied covenant for quiet enjoy is to protect the tenants from unnecessary intrusions or invasions of the property by the Landlord, or the Lessor, their agent or any person who deem to be a trespasser in the eye of the law. I do not think a Facility Manager can be labeled a trespasser unless his entry is forceful, malicious or inimical to the interest of the occupants of the premises. The power of the Claimant to appoint a Facility Manager throughout the duration of the term must be extinguished by another agreement.

Consequently, I hold that in the absence of any express modification, alteration, addition or subtraction to provision of paragraph 5, page 3 of the Deed of Assignment of the parties are bound by the express term of the agreement. I hereby resolve the issues formulated by the Claimant in the Originating Summons in its favour and orders as follows:

That no assignee, person or group of persons other than the claimant has power to appoint facility managers of Efab Mall Extension or terminate such appointment by virtue of the provision of page 3 paragraph 5 of Deed of Assignment executed between the claimant and defendants and all other assignees of office space and shops in Efab Mall Extension, Area 11, Garki, Abuja.

That the defendants or any other person other than the claimant have right to direct the occupant of office space in the Efab Mall not to pay facility management fee to facility managers appointed by the claimant viz a viz page 3 paragraph 5 deed of assignment executed by claimant and all defendants and all the assignees of office space in the mall.

Furthermore, the defendants or any of their agents are hereby restrained from disrupting the peaceful management of Efab Mall Extension, Area 11, Garki, Abuja by FGC Properties Management and Consulting Ltd or any other facility management that may be appointed by the claimant.

Also the defendants, all the assignees and their agents in Efab Mall Extension, Area 11, Garki, Abuja are to continue to recognize FGC Properties Management and Consulting Ltd or any other facility managers the claimant may appoint in future as the lawful managers of the mall in line with page 3 paragraph 5 of Deed of Assignment signed by assignee of office spaces and shops in the mall.

The claim of the Claimant for damages is unproven, it is dismissed accordingly.

SIGN

**HON. JUDGE
11/11/2020**