

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. 14
CASE NUMBER : SUIT NO. CV/131/2023
DATE: : WEDNESDAY 13TH DECEMBER, 2023

BETWEEN:

DJAVU GENERAL MERCHANDISE LTD. CLAIMANT

AND

CLOVERHEDERA CONSULTING LTD. DEFENDANT

JUDGMENT

This is Undefended List matter brought pursuant to order 35 of the Rules of this Honourable Court. The writ was marked undefended on the 10th February, 2023.

The Claimant claims against the Defendant as follows:-

1. The sum of N12,000,000.00 (Twelve Million Naira) only being money paid by the Claimant to the Defendant for the purchase of a unit of three Bedroom apartment in the Defendant's estate situate, lying and being on Block A second floor, Hedera Court, Federal Housing Authority Resettlement section, Lugbe, which the Defendant failed and neglected to deliver as agreed.
2. The sum of N3,000,000.00 (Three Million Naira) being amount the Defendant offered and agreed to pay to the Claimant as compensation for failing to pay and deliver the property referred to in (1) above to the Claimant within the agreed period.
3. Cost of action as assessed by the court.

In support of the application, is an affidavit of 12 paragraphs duly deposed to by one Makinde Ayodeji Emmanuel, Managing Director of the Claimant.

It is the deposition of the Claimant; that sometime between October, 2022 and November 2022, the Claimant paid the sum of N12,000,000.00 (Twelve Million Naira) only to the Defendant for the purchase of a three Bedroom apartment on second floor, Block "A" Hedera Court Federal Housing Authority Resettlement Section, Lugbe as an off- taker. Proof of payment by the Claimant is herewith attached and marked as Exhibit "MY1".

That the Defendant received the money and issued a letter of allocation to the Claimant and subsequently executed a sale agreement with the Claimant. The Defendant was to develop and hand over the property to the Claimant within 6 months.

That Allocation letter dated 25th October, 2021 and contract of sale agreement between Claimant and Defendant are herewith attached and marked as Exhibit "MY2" and "MY3".

That despite receiving full payment, failed to develop and deliver the property to the Claimant.

That after several appeals by the Claimant to have the property delivered to it, the Defendant strangely volt faced and offered to refund the Claimant's money with interest of N3,000,000.00 (Three Million Naira).The Claimant magnanimously agreed for the money to be paid in three installments commencing from 30th November, 2022 to January, 2023. Correspondence between the Claimant through its solicitors and Defendant's Managing Director Mr. Peter Ugochukwu Justice and Defendant's group Admin. Staff are herewith attached as Exhibit "MY4" series.

That despite several demands and reminder notices sent to the Defendant and its continued promise to pay the money, the Defendant has failed completely to refund the Claimant's money not even a single tranche of payment to show good faith.

That the Defendant has no genuine defence to the Claimant's suit.

That the email and whatsapp correspondence attached to this affidavit were generated by its Lenovo Ideapad lislilim design at the time the computer was functioning properly and in used. The computer was also used in the ordinary course of business.

That the document were printed with its laserjet color HP printer with several numbers VBNL 14FPW printer and compared with the original copy and the copies were the same.

The Defendant on its part, did not file notice of intention to defend the action in line with the provision of Order 35 of the Rules of this Court.

By the records of the court, the Defendant was served hearing notice on the 12th day of October, 2023 as per the proof of service.

On the 23rd November, 2023 which was scheduled for hearing, neither the Defendant nor its counsel were present in court.

With the leave of court by learned counsel to the Claimant, the application was set down for hearing.

COURT:-

The law with respect to Order 35 of the Rules of this court is trite. Only matters for liquidated money demand are filed under the said order. Once a writ is marked undefended and served on a named Defendant, he shall deliver to the registrar of the court notice of intention with affidavit showing defence on merit five days to the date fixed for the hearing of the matter.

The court shall only consider the affidavit in support of such notice to see whether there are triable issues and transfer same to the general cause list. If not, judgment shall be entered as undefended list.

I have carefully read and digested the claims of the Claimant and the corresponding evidence.

Indeed, a party who seeks judgment in his favour is required by law to produce evidence to support his pleadings.

Thus, by the depositions in the Claimant's affidavit and evidence on record, it is crystal clear that there was a binding contract between the parties.

What is contract in law?

Legally speaking, a contract generally is an agreement between parties which creates binding obligation on the part of the contracting parties. There shall be offer, acceptance, intention to create legal relationship and the contracting parties must have the desired capacity to enter into such a contract. See ***OJO VS. ABT ASSOCIATES INCORPORATION & ANOR. (2014) LPELR – 22860 (CA).***

The law is now settled beyond peradventure that where the content of a document is clear, express and unambiguous, court should interpret such literally. See ***JOHN VS. UNIVERSITY OF ILORIN (2012) LPELR – 9309;***

DAPIANLONG VS. DARIYE (2007) 8 NWLR (Pt. 1036) at paragraph E pages 25 – 26 were cited.

From the documents annexed as Exhibits “MY1”, “MY2”, “MY3” and “MY4” series to the affidavit evidence in support of the Claimant’s Writ of Summons, Claimant and Defendant did have a contract or agreement for the purchase of a three bedroom apartment on second floor, Block “A” Hedera Court, Federal Housing Authority Resettlement section, Lugbe FCT, Abuja.

There are five ingredients which must be present for a contract to be valid in law, offer, acceptance consideration, capacity to contract and intention to create a legal relationship.

Aforementioned ingredients are indeed autonomous, unequal in the sense that a contract cannot be formed if any of them is absent. All the five ingredients are sine qua non for a valid contract.

See ***ORIENT BANK (NIG.) LTD. VS. BILANTE (1997) 8 NWLR (Pt. 515) 37 per ODILI JCA (as he then was).***

Where parties enter into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is so, because a party cannot resile from a contract or agreement just because he later found that the conditions of the contract are not favorable to them, this indeed is the whole essence of the doctrine of sanctity of contract or agreement.

The court is under an obligation to construe the terms of the contract or agreement, and terms only, in the event of an action arising therefrom.

See ***BOOKSHOP HOUSE LTD. VS. STANLEY CONSULTANTS LTD. (1986) 3 NWLR (Pt. 26) 87 per TOBI JSC (as he then was) page 67 Paragraph A – E.***

A careful study of the said Exhibits "MY1" – "MY4" series will show that the Defendant who entered into the said agreement with the Claimant are clearly in breach of the terms therein.

Defendant who was served with the Writ of Summons cum hearing notice refused and or ignored to participate in the entire proceedings.

In deciding the terms of 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 C.A in the case of ***DIAMOND BANK PLC. VS. UGOCHUKWU (2008) 1 NWLR (Pt. 1067) 1 at pages 23 – 24 Paragraphs H – A.***

A party who obviously benefits from a given affair like the Defendant 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.

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.

Neither the Defendant nor his counsel filed notice of intention to defend and affidavit showing any defence. The claims of the Claimant are left uncountered.

The Claimant is therefore entitled to judgment. Consequently, I hereby enter judgment in favour of the Claimant as follows:-

1. An Order of the Court mandating the Defendant to pay the sum of N12,000,000.00 (Twelve Million Naira) only to the Claimant being money paid by the Claimant to the Defendant for the purchase of a unit of three Bedroom apartment in the Defendant's estate situate, lying and being on Block "A" second floor, Hedera Court, Federal Housing Authority Resettlement section, Lugbe.
2. An Order of this Court mandating the Defendant to pay the sum of N3,000,000.00 (Three Million Naira) only to the Claimant being amount the Defendant offered and agreed to pay to the Claimant as compensation for failing to pay and deliver the property referred to in (1) above.
3. Interest at the rate of 10% post judgment interest in (1) above until full liquidation of the sum is hereby granted.

***Justice Y. Halilu
Hon. Judge
13th December, 2023***

APPEARANCES

Alfred Iortyaver, Esq. with P.T Jirgba, Esq. – for the Claimant.

Defendant not in court and not represented.