IN THE HIGH COURT OF THE FEDERAL CAPITAL TERITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI – F.C.T. – ABUJA

CLERK: CHARITY ONUZULIKE

COURT NO. 10

SUIT NO: FCT/HC/CV/2401/2019
DATE: 15/3/2024

BETWEEN:

CHASEBOND GLOBAL SERVICE LIMITED & 1 OR. …… PLAINTIFF

AND

RESORT SAVINGS & LOANS PLC…….…… .....DEFENDANT

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Claimants/Applicants in this case vide a Motion number M/8897/2022 prays this Court for a principal order to wit:

> ***"An Interim Order compelling the defendant to release to the Claimants/Applicants the comprehensive list of the remaining 59 subscribers to the Chasebond Estate and indicating what amount each subscriber is entitled to from the sum of N64,869,000.00 to enable the 1st Claimant raise bank draft in the respective names of each subscriber in order to refund them their money."***

In support of this application is a 26 paragraphs affidavit and a written address.

Counsel to the applicants relied on the contents of the supporting affidavit and as well adopted his written address as his oral argument in support of granting the application.

On the other hand, Counsel to the Defendant/Respondent submitted that they have filed a counter-affidavit of 19 paragraphs dated 31/10/2022. Attached are Exhibits RSL1 – RSL4 and a written address.

He adopted his written address as his argument and urges the Court to refuse this application and strike it out.

The applicant's Counsel raised a sole issue for determination in his written address. The issue is this;

> ***"Whether in the circumstances of this case, the Applicant is entitled to the grant of an interim Order compelling the defendant to release to the Claimants/Applicants the comprehensive list of the remaining 59 subscribers to the Chasebond Estate and indicating what amount each subscriber is entitled to."***

On his part, the Respondent's Counsel submitted two issues for determination. They are:

(a) Whether the application is incompetent and liable to be struck out.

(b) Whether the grant of an interim order will not amount to an order in vain.

With due respect to the two learned Counsel, I think the issue or question to be answered here is:

"Whether a Court can at a preliminary stage decide an issue in the substantive case".

I think it will be apposite to state briefly the relevant facts of this case as could be garnered from the affidavit in support and counter-affidavit. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 19 of the supporting affidavit are found to be relevant. They are as follows:

Paragraph 9:

> ***"That the 1st Claimant/Applicant was allocated a parcel of land measuring approximately 532138.79 square metres and situate at Idu Sabo within the jurisdiction of this Honourable Court."***

Paragraph 10:

> ***"That the 1st Claimant/Applicant desirous of using the said parcel of land for mass housing project which is referred to as CHASEBOND ESTATE entered into a Tripartite Memorandum of Understanding with Bstan Construction Limited and Resort Savings and Loan Plc (Defendant)."***

Paragraph 11:

> ***"That the said Tripartite Memorandum of Understanding dated 6th November, 2014 was to market the sale of plots of land in the Chasebond Estate and provide Mortgage Banking Services to the subscribers of the aforesaid Chasebond Estate at the instance of Bstan Construction Limited while Bstan Construction Ltd was to market and sell certain numbers of plots for construction of 3 bedroom detached bungalows and 4 bedroom duplexes to prospective subscribers. The***

subscribers are to open account with the Defendant, make payments in respect of plots subscribed into their respective accounts with the Defendant. Thereafter, the Defendant will transfer the said funds being what is due to the 1st Claimant/Applicant through the account of the 2nd Claimant/Applicant via Bstan Construction Ltd's account with the Defendant. The Tripartite Memorandum of Understanding is herein attached and marked as Exhibit CG 1."

Paragraph 12:

"That based on the Tripartite Memorandum of Understanding, the Defendant collected various sum of money from 62 subscribers who wanted to purchase various plots in Chasebond Estate totalling the sum of N141,325,000.000."

Paragraph 13:

"That the Defendant transferred the sum of N100,667,023.80 into the 2nd Claimant/Applicant's account where the 2nd Claimant/Applicant accessed the account and withdrew the sum of N73,669,000.000 out of the N100,667,023.80 credited into the 2nd Claimant/Applicant's account by the Defendant.

Paragraph 14:

"That the balance of N26,998,023.80 from the N100,667,023.80 and the outstanding sum of N40,647,976.20 being unaccessed balance which the Defendant collected from the subscribers were

demanded from the Defendant by the Claimants/Applicants.

Paragraph 15:

"That the Defendant refused to pay the said N26,998,023.80 and unaccessed N40,647,976.20 both totalling N67,656,000.00 despite several demands from the Claimants/Applicants.

Paragraph 16:

"That the Defendant's refusal to release the said fund to the Claimants/Applicants created an impasse and further led to the termination of the Tripartite Memorandum of Understanding."

Paragraph 19:

"That the Claimants/Applicants alter egos are regularly being dragged to various Police Stations within the jurisdiction of this Honourable Court."

From the facts stated above, there is sharp contradiction from the counter-affidavit of the respondent as it relate to the facts of this case which the Court cannot resolve at this stage without calling evidence. For instance paragraphs 8, 9 and 14 of the counter-affidavit provide. They are as follows:

Paragraph 8:

"The obligation of the Respondent under the MOU was to provide mortgage banking services, including granting of loan facilities under the National Housing Fund Scheme to the subscribers

to the Estate ("subscribers"). Further to the execution of the MOU, the Applicants engaged two other marketing companies apart from the Developer namely, Hills & Plains Construction Limited ("Hills & Plains") and Credible Creations Consult Limited ("Credible Creations") (altogether "marketing companies") for the purpose of advertising subscription to the Estate to the public. The Developer and the marketing companies received payments from persons to whom they successfully marketed the Estate and subsequently remitted same to the 2nd Applicant's account.

Paragraph 9:

"At no material time did any of the subscribers to the Estate open individual accounts with the Respondent. As shown in the 2nd Applicant statement of account between the period 2 February 2015 to 30 July 2016 ("relevant period"), monies paid by subscribers were paid into the 2nd Applicant's account in two ways, namely (a) directly by subscribers into the 2nd Applicant's account, or (b) by the Developer and the marketing companies after first receiving the funds directly from the subscribers. In the result, the Respondent neither directly received the funds generated from subscription to the Estate nor carried out any transfers in respect thereof in favour of the 1st Applicant. The 2nd Applicant's statement of account is hereto attached and marked "Exhibit RSL 2".

Paragraph 14:

"The Respondent could not have responded to any request for the names of subscribers and the amount contributed by each subscriber to the Estate because that information is not within the

> ***Respondent's knowledge. The Respondent did not at any time relate with subscribers to the Estate and the details of subscribers to the Estate were received by the Applicants directly or by the Developer and the marketing companies.***

In the light of the above and more so, that the only relief sought by the Applicants vide this Motion is the main relief sought in the substantive suit.

I think it will be appropriate if I repeat the relief here. It says;

> ***"An Interim Order compelling the defendant to release to the Claimants/Applicants the comprehensive list of the remaining 59 subscribers to the Chasebond Estate and indicating what amount each subscriber is entitled to from the sum of N64,869,000.00 to enable the 1st Claimant raise bank draft in the respective names of each subscriber in order to refund them their money."***

The position of law is clear as enunciated in the case of **EZEILO & ANOR VS. EZEONU (2019) LPELR 48336 (CA).**

> ***".....The trite position of law is that a learned Judge is bound as much as possible to restrain himself from making any pronouncement on the substantive matter before him which was yet to be heard on its merit. .....The Courts have been warned that in dealing with interlocutory issues they should not delve into the substantive matters. Those substantive issues are to be left for the main trial. Courts are enjoined not to resolve issues meant for the substantive suit at interlocutory stage....."***

See **APC & ORS. VS. PDP & ORS. (2022) LPELR – 58317 (CA).**

For the above reasons, this application is lacking in all merit and it is hereby struck out. In view of this ruling I hereby granted accelerated hearing of this case.

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S. B. Belgore
(Judge) 15/3/2024