

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. 13
CASE NUMBER : SUIT NO: CV/3048/2019
DATE: :WEDNESDAY 6TH NOVEMBER, 2024

BETWEEN:

1. EMINENCE TRAVEL AND TOURS LTD. } PLAINTIFFS
2. SIR EMMANUEL EDOZIE }

AND

1. ROUNDBOOKING LIMITED } DEFENDANTS
2. MR. PHILEMON USMAN }

JUDGMENT

The Plaintiff approached this Honorable Court vide Writ of Summons dated 26th of September, 2019 and filed on same day.

Statement of Claim was filed on 21st of September, 2020.

The claims of the Plaintiff against the Defendants jointly and severally are as follows:

- a. Payment of the sum of N7,608,333.33 (Seven Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) made up as follows:
 - i. N5,000,000.00 (Five Million Naira) being the outstanding debt arising from the sale agreement dated 18th April, 2018 between Plaintiffs and the Defendants.
 - ii. N1,608,333.33 (One Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) being the agreed liquidated damages of 30% interest on the above debt from 21st July, 2018 to 20th September, 2019.

- iii. N1,000,000.00 (One Million Naira) being legal fees Plaintiff paid for recovery upon default by the Defendant.
- b. 30% interest on the above sums from 21st September, 2019 until judgment is delivered and thereafter until final liquidation of same.
- c. Cost of this action.

Pleadings were exchanged and the matter was set down for hearing.

The case of the Plaintiffs as distilled from Statement of Claim and Witness Statement on Oath of Sir Emmanuel Edozie, (the Managing Director of the 1st Plaintiff and also the 2nd Plaintiff in this suit)...is, that sometime in March, 2018 the Plaintiffs bought Direct Travels Ltd. Shares and International Air Transport Association (IATA) license No. 59-211460 subject to payment of outstanding sum of N4,000,000.00 to the Direct Travels Ltd with a view to reselling same. Copy of the sale agreement dated 6th March, 2018 is attached and marked annexure A.

Plaintiffs aver, that on the 18th April, 2018 Plaintiffs resold the said shares and International Air Transport Association (IATA)

license to the Defendants for N12,000,000.00 (Twelve Million Naira) only to be paid in terms set out hereunder:

- a. N7,000,000.00 upon documentation and exchange of title documents.
- b. N3,000,000.00 on or before 20th July, 2018
- c. N2,000,000.00 on or before the 20th November, 2018. Copy of the Agreement between 1st Plaintiff and 1st Defendant dated 18th April, 2018 is attached and marked annexure B. Defendants are hereby put on notice to produce the original at the trial.

Plaintiffs aver that on the 21st April, 2018 a Tripartite Agreement was duly made between the 1st Plaintiff, 2015, Defendant and Direct Travels Ltd after which the Defendants paid the agreed first installment of N7,000,000.00 (Seven Million Naira) and all original title documents were handed over to the Defendants. The said first installment of N7,000,000.00 (Seven Million Naira) was made by the Defendants in the following terms:

- a. N150,000.00 (One Hundred and Fifty Thousand Naira) on 17th April, 2018 through their lawyer, Okon E. Ita, Esq.

- b. N80,000.00 (Eighty Thousand Naira) on 18th April, 2018 through their lawyer, Okon E. Ita, Esq.
- c. N2,770,000.00 (Two Million, Seven Hundred and Seventy Thousand Naira) on 21st April, 2018 by the 1st Defendant.
- d. N4,000,000.00 (Four Million Naira) on 21st April, 2018 to Direct Travels Ltd. by the Defendants in liquidation of the outstanding sums due to Direct Travels Ltd from the Plaintiffs.

The Plaintiffs aver that the payment referred in paragraph 5(c) and (d) above were made by the 1st Defendant via transfer from her Guaranty Trust Bank account to the respective bank accounts of the 1st Plaintiff and Direct Travels Ltd. The Defendants are hereby put on notice to produce their Guaranty Trust Bank Statement of Account showing all transactions of 21st April, 2018. Copy of 1st Plaintiff's Access Bank Statement of Account No. 0013525221 covering the period 15th April, 2018 – 30th April, 2018 is attached and marked annexure "C".

The Plaintiffs aver that the payments of 17th April, 2018 referred in paragraph 5(a) above was to show commitment by the Defendants and encourage plaintiffs to travel to International Air Transport Association (IATA) office in Lagos on 18th April, 2018 for verification of the International Air Transport Association

(IATA) license and meet with all parties to the tripartite agreement for conclusion of the transaction.

The Plaintiffs aver that on the 18th April, 2018 the 2nd Plaintiff and the 2nd Defendant together with their lawyers met with Mr. George Ashiru, the Managing Director of Direct Travels Ltd. in Lagos where the Defendants and their lawyer Okon Edet Ita, Esq. verified the International Air Transport Association (IATA) license after terms were reviewed and agreed upon at Mr. Ashiru's office and the lawyers were instructed to prepare a Tripartite Agreement capturing the agreement reached in readiness for completion. However, because the lawyers needed time to get the agreement ready, the Defendants again, paid N80,000.00 (Eighty Thousand Naira) referred in paragraph 5(b) to show good faith and encourage plaintiffs to return to Lagos at a later date for completion.

The Plaintiffs aver that upon preparation of the Tripartite Agreement parties and their lawyers returned to Lagos on the 21st April, 2018 where the Defendants completed the first installment of N7,000,000.00 (Seven Million Naira) as referred in paragraph 5(c)(d), consequent upon which all the original title documents were handed over to the Defendants. The 2nd Defendant and

George Ashiru, Managing Director of Direct Travels Ltd duly signed the Tripartite Agreement on behalf of their companies and it was agreed by all parties that Defendants' Lawyer, Okon Edet Ita, Esq., shall forward copy of the agreement to Plaintiff's Lawyer after the other Directors who reside in Abuja have signed. In the interim, photocopy of the agreements duly executed by the 2nd Defendant, George Ashir and Directors of the Plaintiff was made available to the Plaintiffs on 21st April, 2018. Plaintiffs pleads and shall rely on the copy herein attached and marked annexure D. Defendants are hereby put on notice to produce the original at the trial.

The Plaintiffs aver that in line with the agreement Plaintiffs paid Direct Travels Ltd. outstanding annual returns and penalties thereto from 1997 to 2018 to the Corporate Affairs Commission in discharge of Plaintiff's last obligation under the agreement. Remittal payment receipt with **RRR No. 340223209433** dated 11th May, 2018, Sky Bank deposit **Slip No.1254018** and Corporate Affairs Commission acknowledgment letter dated 21st May, 2018 are attached and marked annexure "E1", "E2" and "E3" respectively.

The Plaintiffs aver further that on the 2nd July, 2018 the Plaintiffs caused a solicitor letter to the Defendants through their lawyer, Okon Edet Ita, Esq. reminding them of the 2nd installment due and expected on or before 20th July, 2018 and demanding for original copy of the agreements as agreed on 21st April, 2018. Copy of Ejike Ezema & Associates letter dated 2nd July, 2018 and the postal receipt dated 9th July, 2018 are attached and marked annexure "F1" and "F2" respectively.

The plaintiffs aver that in spite the above reminder, the Defendant willfully refused to pay on or before the agreed date of 20th July, 2018 thereby prompting Plaintiffs to forward another solicitor's letter directly to the Defendant on the 7th August, 2018 demanding for immediate payment. Copy of Ejike Ezema & Associates letter and Tranex Domestic Waybill dated 7th August, 2018 and 8th August, 2018 are attached and marked annexure "G1" and "G2" respectively.

The Plaintiffs aver further that in spite reaping full benefits of the agreement, and coupled with repeated demand and entreaties by the Plaintiffs, the Defendants willfully failed, refused and neglected to pay the outstanding sum of N5,000,000.00 (Five Million Naira) to the Plaintiffs.

The Plaintiffs aver that the Defendant's refusal and failure to pay the above money has caused Plaintiffs untold hardship, damages and inconveniences personally and to their business and it has made Plaintiffs incur additional expenses by way of professional fees paid to Plaintiffs' lawyers.

The Plaintiffs aver that consequent upon defendants default, the Plaintiff paid their Lawyers N1,000,000.00 (One Million Naira) being professional fees for recovery of the above sums together with accrued interest. Copy of Ejike Ezema & Associates receipt dated 28/6/19 is attached and marked annexure "H".

The Plaintiffs aver that the sum of N1,608,333.33 (One Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) being the agreed liquidated damages of 30% interest on the outstanding N5,000,000.00 from 21st July, 2018 to 20th September, 2019 is also due to the Plaintiffs against the Defendants.

The Plaintiffs aver that by the terms of the Agreement between parties (annexure B) the Defendants are liable to pay the liquidated damages referred to in 16 above together with all legal expenses incurred by the Plaintiff to recover all sums due under the agreement in event of default by the Defendant.

PW1 (Emmanuel Edozie) tendered the following in evidence:

1. Agreement dated 6th March, 2018
2. Agreement dated 18th April, 2018
3. Statement of Account
4. Agreement 21st April, 2018
5. Remita Payment to Corporate Affairs Commission (CAC)
6. Photocopy of Sky Bank teller
7. Acknowledgment of Filing of Annual Returns from Corporate Affairs Commission (CAC) dated 21st May, 2018
8. Solicitor's Letter dated 2nd July, 2018
9. Post Office Acknowledgment of receipt
10. Solicitor's Letter dated 7th August, 2018
11. Acknowledgment of Post Waybill from Tranex
12. Receipt of Payment dated 28th June, 2019.
13. AZMAN Air boarding Pass No. AZM 2318
14. Lusiana Hotel receipt No. 10388 dated 20th April, 2018.

15. Two Medview Airline boarding pass flight no. VL2101
16. Cosmic Guest House receipt dated 21st April, 2018
17. Medview boarding Pass No. VL2108
18. Nigeria Railway Passenger receipt dated 22nd April, 2018
19. Computer Generated document dated 22nd April, 2018
20. Air Flourish Travels and Tours dated 22nd April, 2018.

All admitted and marked Exhibits “1” – “20” respectively.

The Defendants filed their Statement of Defence and Counterclaim. However, they neglected to show up in court to lead evidence in respect of their Defence and Counter claim.

Both Statement of Defence and Counter-claim are in law deemed abandoned.

The right of the Defendants to defend this action was similarly foreclosed.

In line with procedure, Plaintiffs filed final written address wherein sole issue was formulated for determination to-wit;

"Whether the plaintiffs proved their case against the Defendants and therefore entitled to the reliefs sought."

Learned counsel submits, that the Defendants' abandonment of her defence amounted to admission of "Plaintiffs' claim, and admitted facts need no further proof. This Court is referred to ***ODUBAWO VS. FSDH SEC. LTD. (2020)8 NWER (Pt.1725) P1 at 32, PARA. C;*** and

DANIEL VS. INEC (2015)9 NWLR (Pt.1463) P.133 where the Supreme Court of Nigeria held that admission against interest constitutes the best' evidence.

Learned counsel submits further, that what is required of plaintiffs in the circumstance is minimal proof, and PW1 evidence and Exhibits "1" – "20" discharged the minimal standard of proof required of Plaintiffs to establish the existence of the contract reduced in Exhibits "2" and "4".

There is nothing on the other side of the scale at all and/or suggesting otherwise. ***ADEJUMO VS. AYENTEGBE (1989)3 NWLR (Pt.110) at P.417;*** and

LARMIER VS. DPMS LTD (2006)12 WRN 150 at 190 are humbly referred. Thus, Exhibit "2" is binding on the Defendants whose breach thereof entitled Plaintiffs to recover all outstanding sums, 30% thereof annually and all legal cost incurred for recovery.

Reliance is placed on Clause 10 of Exhibit "2" and this Court is urged to so hold.

Learned counsel also submits, that Exhibits "8", "9", "10" and "11" are conclusive evidence that the Defendants received and admitted contents of the demand letters of 2nd July, 2018 and 7th August, 2018 from the Plaintiffs. ***UNILORIN VS. OLAYAN (2018)13 NWLR (Pt.1635) P.72 AT P.81, PARAS. C-D*** was cited.

Learned submits, that relief (a) (i)-(iii) are grantable having been proved by the totality of pleading and evidence on record. Counsel place reliance on paragraphs 4, 11, 13, 14, 15 16 and. 17 of the statement of claim, paragraphs 6, 13, 15, 16, 17, 18 and 19 of PW1 deposition on oath and Exhibits "2" and "12" - Agreement between 1st Plaintiff and 1st Defendant dated 18th April, 2018 and Ejike Ezema. Cash receipt dated 28th June, 2020. Relief (b) being 30% interest on relief (a) from commencement of

this suit until judgment is delivered and thereafter until final liquidation thereof is grantable as of right being expressly agreed upon by the parties. ***STANBIC IBTC BANK PLC VS. L.G.C, LTD (2018)10 NWLR (Pt.1626) P.96 at Pp.166-167, PARAS. H-F*** was cited.

In conclusion; learned counsel, by way of adumbration... makes the following submissions:

1. That Defendant admitted Plaintiffs' claim of the existence of contractual relationship between the parties evidenced in Exhibit "2" dated 18th April, 2018.
2. That the Defendants breached terms of the contract by willfully failing to pay the outstanding purchase price of N5,000,000.00 in July, 2018.
3. That by virtue of the agreement between parties, the Plaintiffs are entitled to the outstanding purchase price and 30% interest thereof annually until fully liquidated.
4. That evidence on record also show that the agreement also entitled Plaintiffs to recover from the Defendants all legal cost incurred to recover the above sums.

This Court is therefore urged to grant Plaintiffs' reliefs in its entirety and enter judgment for the Plaintiffs with substantial cost against the Defendants.

COURT:-

I have carefully read and digested the claims of the Plaintiffs 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 Plaintiffs' 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);***

DJAVU GENERAL MERCHANDISE LIMITED VS. CLOVERHEDERA CONSULTING LIMITED 7

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 document annexed as Exhibits “2” to the affidavit evidence in support of the Plaintiffs’ Writ of Summons, Plaintiffs and Defendants did have a contract or agreement for reselling of shares and International Air Transport Association (IATA) license to the Defendants for N12,000,000.00 (Twelve Million Naira) only to be paid in terms set out as follows:

1. N7,000,000.00 upon documentation and exchange of title documents.
2. N3,000,000.00 on or before 20th July, 2018

3. N2,000,000.00 on or before the 20th November, 2018.
Defendants are hereby put on notice to produce the original at the trial.

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 Exhibit “2” will show that the Defendants who entered into the said agreement with the Plaintiffs are clearly in breach of the terms therein.

Defendants who were served with the Writ of Summons cum hearing notice, filed their response...but refused and or ignored to participate in leading evidence in the 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 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.

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.

The claims of the Plaintiffs are left uncountered.

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

1. An Order of this Court mandating the Defendants to pay the sum of N7,608,333.33 (Seven Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) made up as follows:
 - i. N5,000,000.00 (Five Million Naira) being the outstanding debt arising from the sale agreement dated 18th April, 2018 between Plaintiffs and the Defendants.

ii. N1,608,333.33 (One Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) being the agreed liquidated damages of 30% interest on the above debt from 21st July, 2018 to 20th September, 2019.

iii. N1,000,000.00 (One Million Naira) being legal fees Plaintiff paid for recovery upon default by the Defendant.

2. 10% interest on the above sums from 21st September, 2019 until final liquidation of same is hereby granted.
3. Cost of this action assessed at N250,000.00 (Two Hundred and Fifty Thousand Naira).

Justice Y. Halilu
Hon. Judge

6th November, 2024

APPEARANCES

C.E. Ezema, Esq. – for the Claimant.

Defendants not in Court and not represent.