

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI**

THIS THURSDAY THE 13TH DAY OF JANUARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1884/2020

BETWEEN:

1. GRADES & GREAT CONSULTING LTD

**... CLAIMANT/
RESPONDENTS**

2. DAVIES ADEJO

AND

1. CRYSTAL THORPE LIMITED

2. CHIJOKE OHUOCHA

DEFENDANTS/

3. TRAUMA & MULTI-SPECIALIST CENTRE LTD

APPLICANTS

RULING

By a Notice of Preliminary Objection dated 23rd „ of Cy 2020

2. There is no privity of contract between the Plaintiffs and the 3

4. Whether the Claimants statement of claim is what determines reasonable cause of action against the Defendants?

Submissions were equally made in respect of the above issues which forms part of the Record of Court. I shall refer to the submissions were necessary in the course of this Ruling

At the hearing counsel to the plaintiffs/respondents, I.U. Agbala relied on the paragraphs of the counter affidavit and adopted the submissions in the written address in urging the court to dismiss the application. Counsel during the oral administration agreed that the extant application is a form of demurrer which is not allowed under extant provision of Order 23 of the Rules of Court. In reply on this point of law on the issue of demurrer, counsel to the Applicants contends the question of a proper party is a jurisdictional point in that without proper parties, the court will lack jurisdiction to entertain the matter and that the issue of jurisdiction has nothing to do with demurrer.

I have carefully considered the submissions of learned counsel on both sides of the aisle and the narrow issue revolves around the propriety of joinder of the 2nd and 3rd defendants to this action. The Applicants contends that by the contractual documents vide Exhibits A and B, the contract the subject matter of this case is solely and only between 1st plaintiff and 1st defendant and that 2nd defendant is only a Director in 1st defendant and that in the circumstances, the 2nd defendant is only an agent of a disclosed principal and cannot be joined. The Applicants equally contend that since the 3rd defendant is not a party to the contract between 1st plaintiff and 1st defendant, it cannot equally be said along with the 1st defendant. The Respondents on their part posit that the 2nd and 3rd defendants are all on the facts of this case proper and necessary parties in the circumstances and thus competent parties.

Now it is not in doubt that parties are an integral part of any proceedings. It is not out of place to hold the view that "no parties, no action" in court. If there are no proper parties in any action pending in court, the court will have no jurisdiction to try the case. See Awoniyi V Reg. Trustees of AMORC (2000) 10 NWLR (pt.676) 522 at 533.

The presence of proper parties before the court is not limited to the Plaintiffs; it extends to the defendants. In Olariede V Oyebe (1984) 1 SCNLR 390 at 406, the Apex Court stated thus

“... I am in full agreement that a person who asserts the right claimed or against whom the right claimed is exercisable must be present to give the court the necessary jurisdiction.”

The above provides legal basis to address the preliminary complaint by respondent that the present application is a demurrer and not contained under the Rules of court

Let me point or underscore that the relationship between jurisdiction and demurrer must not be confused as they are distinct legal processes. Proceedings by way of demurrer may have been abolished under the new Rules of Court but it is imperative to understand the difference between jurisdiction and demurrer since proceedings in lieu of demurrer are still available. The Supreme Court in NDIC V CBN (2002) 7 NWLR (pt.766) 272 at 296 – 297 instructively brought out the dichotomy between the two concepts thus

“The tendency to equate demurrer with objection to jurisdiction could be misleading. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or, where appropriate, no locus standi.... But as already shown, the issue of jurisdiction is not a matter for demurrer proceedings. It is much more fundamental than that and does not, entirely depend as such on what a plaintiff may plead as facts to prove the reliefs he seeks. What it involves is what will enable the plaintiff to seek a hearing in court over his grievance, and get it resolved because he is able to show that the court is empowered to entertain the subject matter. It does not always follow that he must plead first in order to raise the issue of Jurisdiction.”

Therefore in demurrer, now abandoned application in lieu of demurrer, parties to an action must file their pleadings, the statement of claim and defence. Then the defendant is entitled to raise his point of law which may include but not limited to the issue of jurisdiction as a preliminary issue in his statement of defence. Whereas if the important issue of jurisdiction is raised, the parties need not plead nor the defendant is promptly required to raise the jurisdictional issue in his statement of defence, such a defendant is free to file a preliminary objection to the jurisdiction of the court with the writ of summons as the only process before it, that is without pleadings. See Elabanjo V Dawodu (2006) 15 NWLR (pt.1001) 76; Akintaro V Egungbohum (2007) 9 NWLR (pt.1038) 103.

In the circumstances, the question of proper parties as raised by Applicants is undoubtedly a jurisdictional point and it is not predicated on the filing of pleadings

Now to the substance, in resolving the present or extant application, we must take our bearing from the statement of claim of claimants which denotes their cause of action. The relevant paragraphs of the statement of claim of claimant are contained in the following paragraphs

- “3. The 1st Defendant (Crystal Thorpe Limited) is a Limited Liability Company with principal corporate office address at 5A Kenneth Odidika Close, Off Lekki-Epe Expressway, Lekki, Lagos outside the jurisdiction of the Honourable Court and operating Trauma Multi-Specialist Centre at the premises and complex of University of Abuja Teaching Hospital, Gwagwalada, Abuja within the jurisdiction of this Honourable Court.**
- 4. The 2nd Defendant (Chijioke Ohuocha) is the majority shareholder and Chairman/Executive Director of the 1st Defendant with address and operating Trauma Multi-Specialist Centre at the premises and complex of University of Abuja Teaching Hospital, Gwagwalada, Abuja within the jurisdiction of this Honourable Court.**
- 5. The 3rd Defendant (Trauma & Multi-Specialist Centre Limited) is a Limited Liability Company with corporate office address at No 4 Peka Close, Off Buchanan Crescent, Wuse II, Abuja within the jurisdiction of this Honourable Court and operating Trauma Multi-Specialist Centre at the premises and complex of University of Abuja Teaching Hospital, Gwagwalada, Abuja within the jurisdiction of this Honourable Court.**
- 6. The Claimants avers that the Claimants are based in Lagos and carrying on business of accounting and management consulting services for organizations, corporations, firms and individuals that engage her services within Nigeria.**
- 7. The Claimants avers that sometime in November 2016, the 2nd defendant representing the 1st Defendant approached the Claimants to provide accounting services for the Defendants.**

- 8. The Claimants avers that during the initial negotiations for professional fees, the Claimants rejected the offer because the offer made by Defendants was unacceptable.**
- 9. The Claimants avers that sometime, in January 2017. The Defendants further approached the Claimants again to provide the same services but this time around offering a better deal in the sum of Two Million Seven Hundred and Fifty Thousand Naira Only (N2,750, 000.00) net of taxes to which both parties agreed and engagement letters signed by both parties dated 8th June, 2017. The services cover the period from 2012 to 2016 of accounting and advisory services performed for the 1st Defendant. The said engagement letter is hereby pleaded and shall be relied upon at the trial of this suit.**
- 10. The Claimants avers that the Defendants further retained the services of the Claimants for accounting and advisory services performed for the 1st Defendant for the year 2017 to 2018 in the sum Two Million Four Hundred Thousand Naira (N2, 400, 000.00) net of taxes to which both parties agreed and engagement letters signed by both parties. This is contained in the engagement letter dated 5th July, 2018. The said engagement letter is hereby pleaded and shall be relied upon at the trial of this suit.**
- 14. The Claimants avers that the full sets of the financial statements for years 2012 to 2017 prepared by the Claimants was signed off by the 2nd Claimant and delivered to the Defendants. The said financial statement are hereby pleaded and shall be relied at the trial. Notice is hereby given to the Defendants to produce the said originals at the trial.**
- 15. The Claimants avers that the Claimants sent two invoices to the Defendants dated 11th March, 2019 for the services rendered to the Defendants. Photocopy of the said invoices are hereby pleaded and shall be relied upon at trial.**
- 16. The Claimants avers that the Claimants sent two letters both dated 11th March, 2019 titled "Gentle reminder- Invoice for the provision of Accounting services" addressed to the Defendants, demanding for their professional fees. Photocopy of the said letter is hereby pleaded and**

shall be relied upon at the trial. Notice is hereby given to the Defendants to produce the original copy of the said letter at the trial.

17. The Claimants avers that irked by the failure of the defendants to pay the professional fees of the Claimant, the Claimant instructed the law firm of Probity Solicitors LLP, Legal practitioners and Consultants sometime on April, 29th 2019 to effect the service of a letter titled "Demand Notice" of which the said letter was received by one Adetunke on behalf of the defendants. Photocopy of the said letter is hereby and shall be relied upon at the trial. Notice is hereby given to the Defendants to produce original copy of the letter at the trial.

18. The Claimants avers that the refusal by the defendants to pay the Claimants their professional fees has greatly jeopardized the Business Empire and living condition of the Claimants.

19. The Claimants avers that they briefed the law firm of Agala & Agala Chambers, their solicitors to initiate this suit against the defendants jointly and severally.

20. The Claimants avers that the law firm of Agala & Agala Chambers charged them the sum of One Million Naira Only (N1, 000, 000.00) of which they have paid. Receipt of payment is hereby pleaded and shall be relied upon at the trial."

The facts on which the claimants have perished its right to the reliefs claimed against defendants is without doubt predicated on the contractual agreement steamlined above under paragraphs 9 and 10 above

The contractual documents embodying the terms of the relationship and executed by parties as pleaded above in paragraphs 9 and 10 and filed by claimants as dated 8th June, 2017 and 5th July, 2018

These documents were vide paragraph 9 of the affidavit in support of the preliminary objection annexed as Exhibits A and B. As a lawyer in law is a duty to controvert facts in an affidavit, otherwise it is regarded as established See Long John V Blakk (1998) 6 NWLR (pt.555) 524 at 547. From the entirety of the counter-affidavit filed by the plaintiffs/respondents to the affidavit in support of the extant preliminary objection, this paragraph 9

asserting that Exhibits A and B constitutes the basis of the contractual relationship of parties was not denied, challenged or impugned

It is the law that uncontradicted depositions in an affidavit are deemed to be correct and admitted and the court is bound to accept those facts as established. See Honda Place V Globe Motor Holdings Nig. Ltd (2005) 14 NWLR (pt.945) 273 at 293 – 294.

It is therefore established fact that the contractual relationship between parties is clearly defined by Exhibits A and B. These exhibits or contract documents are binding on the parties and situate the basis for the mutual reciprocity of legal obligations. And where there is any disagreement between parties to such written agreements, on any particular point, the authoritative and legal source of information for the purpose of resolving this disagreement or dispute is the written contract executed by both parties. See Section 132 (1) of the Evidence Act. See Larmie V D.P.M & Services Ltd (2005) 18 NWLR (pt.958) 68 at 496 A-B.

Now I have carefully gone through both Exhibits A and B and it is clear that the contract engaging the 1st Claimant as a consultant to render Accounting Services was between 1st claimant and 1st defendant.

In paragraphs 1 and 3 of the statement of claim, both 1st claimant and 1st defendants are described as Limited Liability Companies and in paragraph 4 of the statement of claim, the 2nd defendant is said to be the majority shareholder; Chairman, Chief Executive of 1st defendant and operating ‘Tiana Multi-Specialist’ at the premises of University of Abuja Teaching Hospital.

The 2nd defendant however in paragraph of his affidavit in support of the preliminary objection indicated clearly that he is a Director of both 1st and 3rd defendants. This paragraph was again not challenged or denied by respondent so it is deemed as admitted. In the clear context of the facts as set out in the pleadings of claimant and robustly supported by Exhibits A and B, the contractual agreement was clearly two (2) Limited Liability Companies to wit: 1st plaintiff and 1st defendant.

The 2nd defendant may have been described as a majority shareholder and Chief of Executive of 1st defendant but the law is settled that 1st defendant a limited liability company is a distinct legal and juristic personality from the majority shareholder or Chief Executive.

The principle is settled that once a company is incorporated under the relevant laws, as is apparent in the case of 1st defendant, it becomes a separate person from the individuals and may be its members. It has capacity to enjoy legal rights and is subjected to legal duties which do not coincide with that of its members, such a company is said to have legal personality and is always referred to as an artificial person. Consequently, it can sue and be sued in its own right; and its assets, liabilities, rights and obligations are distinct from that of its members and it has perpetual succession. See New Res. Int'l Ltd V Oranusi (2011) 2 NWLR (pt.1230) 102.

The legal personality of 2nd director; a director is not therefore the same or coterminal with that of 1st defendant. Indeed, from the contents of Exhibits A and B, the attention of 2nd defendant on the face of the documents may have been called to the contract documents but the contractual agreement still remains and/or is between two (2) limited liability companies. A perusal of their documents does not show where the 2nd defendant executed or signed any of the contractual documents and nowhere was any relationship between 2nd defendant and 1st defendant in terms of contractual duties or obligations streamlined in the agreements vide Exhibits A and B.

As a logical corollary, based on the und challenged avowment of 2nd defendant that he is only a Director in both 1st and 3rd Defendants, it follows that this does not without more make him a party to Exhibits A and B.

A Director of a company is an agent of the company. Thus where the Director enters into a contract in the name of or purporting to bind the company, it is the company, the principal and not the Director that is liable. See Okolo V Union Bank Ltd (2004) 3 NWLR (pt.859) 87 at 119 – 120 F-D.

Indeed, it is now settled principle that an agent is not liable for and cannot be sued or joined in a suit for the wrongs of his principal where the principal as in this case, the 1st defendant is disclosed. In such a case as here bordering on a clear streamlined contractual dispute, only the disclosed principal can be sued to determine whether he is liable. See Oforkaja V Taraba State Govt. (2003) FWLR (pt.178) 1036.

On the basis of the facts of this case, particularly the contents of Exhibits A and B which clearly involves only 1st plaintiff and 1st defendant and which also situates the basis for the mutual reciprocity of legal obligations between them, it will be legally futile to sue 2nd defendant alongside 1st defendant which is the

disclosed principal on the simple basis that he is a Director and no more. The 2nd defendant can certainly not in the circumstances be held liable for his acts of agency on behalf of a known and disclosed principal. See Paul V UBN Plc (1999) 1 NWLR (pt.588) 631 at 636.

Flowing from the above, it is equally difficult again on the basis of Exhibits A and B to situate how the 3rd defendant features in the extant case. I have again carefully perused these documents and the 3rd defendant is no party to the agreement and it is difficult to situate how plaintiffs can at this point introduce, expand or alter the contents of Exhibits A and B to suit a particular purpose. The principle is settled that Agreement binds only parties to the Agreement and not 3rd parties. See Agbareh V Mumra (2008) 2 NWLR (pt.1011) 378 at 412.

Indeed, a contract affects only the parties thereto and cannot be enforced by or against a person who is not a party to it. Only a party to a contract can sue or be sued on it. A stranger can neither sue or be sued even if it is made for his benefits and purports to give him the right to sue or make him liable upon it. Exceptions do exist to this principle but they have no application here. See Makwe V Nwakor (2001) 14 NWLR (pt.733) 356 at 372; Kano State Oil & Allied Products Ltd V Kofa Trading Co. Ltd (1996) 3 NWLR (pt.436) 244 at 522.

As demonstrated above, the 3rd defendant cannot by any stretch of the imagination be considered a party to the Agreement specifically identified as between 1st plaintiff and 1st defendant and it certainly will be a redundant exercise to have joined him to this action.

As a logical corollary, having regard to this clearly established contractual relationship between 1st plaintiff and 1st defendant, and most importantly the facts streamlined in the statement of claim which has precisely framed the dispute around breach of these contract agreement, it is clear that the dispute presented by plaintiff can be effectively and completely adjudicated or resolved without the presence of both 2nd and 3rd defendants. They are clearly on the clear facts of this case not necessary parties as conceived by law. Necessary parties are those in whose absence, the proceedings could not be fairly dealt with i.e the question(s) to be settled cannot be properly settled unless they are parties. See OK. Contact Point V Progress Bank (1999) 5 NWLR (pt.604) 631 at 634. This certainly is not the situation here.

On the whole, the application clearly has considerable merit. It does not appear to be fair or right to have joined the 2nd and 3rd defendants to this action. I accordingly strike out the names of 2nd and 3rd defendants from this action. The plaintiff is ordered pursuant to the provisions of Order 25 Rule 5 of the Rules of Court to amend the originating process reflecting the proper parties now in the action.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. I.U. Agala Esq., for the Claimant/Respondent with Bamaiyi Adejo, Esq.**
- 2. P.U. Ogbadu, Esq., for the Defendants/Applicants.**