

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT GUDU - ABUJA
ON THURSDAY THE 24TH DAY OF OCTOBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/CV/228/2024

BETWEEN:

GENNY'S CATERING COMPANY LIMITED -----CLAIMANT

AND

1. REFORM LUXURY HOMES LIMITED

2. MR. MIKE ADAMU ----- DEFENDANTS

RULING

The Claimant took out a Writ of Summons on the Undefended List, claiming against the Defendants praying for the following;

1. The immediate refund of the sum of N10,000,000.00 (Ten Million Naira) which the claimant paid the defendants since 2015 towards the rents of five (5) shops at the Defendants' Plaza, and which Shops the Defendants failed to rent to the Claimant.
2. The sum of (One Million Naira) being the cost of maintaining this action.
3. Post-judgment interest at the rate of 10% per annum on the total judgment sum from the date of judgment till its liquidation.

Along with the writ filed is an affidavit of 30 paragraphs deposed to by one Ugochukwu Mbegbu, the Chief executive officer/managing director of the Claimant. Claimant attached the following documents;

1. Tenancy agreement between REFORM LUXURY HOMES LIMITED and GENNY'S CATERING COMPANY LIMITED marked Annex A.
2. Letter addressed to managing director of GENNY'S CATERING COMPANY LIMITED dated 11th July, 2016 titled "DEMAND FOR PAYMENT OF THE BALANCE OF YOUR RENT" in the letter head paper of "LAW BOND SOLICITORS" marked Annex B.
3. Letter addressed to LAW BOND SOLICITORS dated 19th July, 2016 titled "RE: YOUR LETTER TO OUR CLIENT GENNY'S CATERING COMPANY LIMITED CAPTIONED: DEMAND FOR PAYMENT OF THE BALANCE OF YOUR RENT" marked Annex B1.

4. Letter addressed to managing director of GENNY'S CATERING COMPANY LIMITED dated 7th October, 2017 titled "OFFER FOR SPACE AT PLOT 103 ADEMOLA ADETOKUNBO WUSE 11, ABUJA" marked Annex C1.
5. Letter addressed to managing director of GENNY'S CATERING COMPANY LIMITED dated 10th October, 2018 titled "OFFER FOR SPACE AT PLOT 103 ADEMOLA ADETOKUNBO WUSE 11, ABUJA" marked Annex C2.
6. Letter addressed to managing director of REFORM LUXURY HOMES LIMITED dated 15th May, 2023 titled "DEMAND FOR REFUND OF MONEY PAID BY GENNY'S CATERING COMPANY LIMITED TOWARDS THE AGREED RENT FOR 5 (FIVE) NOS, SHOPS OFFERED IT AT PLOT 103, ADETOKUNBO ADEMOLA CRESCENT, WUSE 2, ABUJA" marked Annex D.
7. Letter addressed to the principal partner RHEMALAW PARTNERS dated 29th September, 2023 titled "DEMAND FOR REFUND OF MONEY PAID BY GENNY'S CATERING COMPANY LIMITED TOWARDS THE AGREED RENT FOR 5 (FIVE) NOS, SHOPS OFFERED IT AT PLOT 103, ADETOKUNBO ADEMOLA CRESCENT, WUSE 2, ABUJA" marked Annex D1.
8. Letter addressed to the principal counsel LAWBOND SOLICITORS dated 29th September, 2023 titled "DEMAND FOR REFUND OF MONEY PAID BY GENNY'S CATERING COMPANY LIMITED TOWARDS THE AGREED RENT FOR 5 (FIVE) NOS, SHOPS OFFERED IT AT PLOT 103, ADETOKUNBO ADEMOLA CRESCENT, WUSE 2, ABUJA" marked Annex D2.
9. Cash receipt of RHEMALAW PARTNERS dated 10/10/2023 for N1,000,000.00 (One Million Naira) marked Annex E.

The Defendants has now filed a notice of intention to defend with a 27 paragraph affidavit deposed to by Mr. Mike Adamu, the managing director/chief executive officer of the 1st Defendant. Defendants attached the following documents:

1. Letter addressed to managing director of GENNY'S CATERING COMPANY LIMITED dated 7th July, 2017 titled "OFFER FOR SPACE AT PLOT 103 ADEMOLA ADETOKUNBO WUSE 11, ABUJA" marked Annex D1.
2. Letter addressed to managing director of GENNY'S CATERING COMPANY LIMITED dated 10th October, 2018 titled "OFFER FOR SPACE AT PLOT 103 ADEMOLA ADETOKUNBO WUSE 11, ABUJA" marked Annex D2.

I have examined the claim of the Claimant as well as the affidavit and documents attached to the affidavit filed as argument in support of the Undefended list claim. I have also examined the Defendants' notice of intention to defend as well as the affidavit attached. The issue to be determined in the circumstance is;

“Whether the notice of intention to defend has disclosed a defence on merit vis a vis the claim of the Claimant”.

In an action brought under the Undefended List Procedure, the Court is required to consider only the evidence contained in the Affidavit filed by the Defendants in support of the Notice of Intention to Defend the Suit. The law is trite that the defendants' affidavit must condescend upon particulars and should as far as possible, deal specifically with the plaintiff's claim and affidavit and state clearly and concisely what the defence is and what facts and documents are relied on to support it. Then once the Court comes to the conclusion that the Affidavit does not disclose a defence on the merit on a triable issue, the Court is to proceed with the hearing of the Suit as an Undefended Suit and enter Judgment. But where there is a triable issue, the suit is transferred to the general cause list as held in **DEUTES HAUS (NIG) LTD & ANOR V. UNION HOMESSAVINGS AND LOANS PLC(2020) LPELR-50221(CA)**. The pertinent question at this juncture would be whether the notice of intention to defend and the affidavit attached by the Defendants established a defence on the merit. In determining whether a defendant has a good defence to the action brought against him or if he has disclosed such facts as may be deemed sufficient to defend the action, this Court will look at the facts deposed to in the affidavit attached to the notice of intention to defend and see if the facts stated therein can afford a defence to the action. In this instant case, it is the case of the Defendants that there is a breach of contract by the Claimant in paragraphs 10, 11, 12, 13, 14, 15 and 16 of their affidavit. In actual sense both parties are claiming breach of contract. Therefore, there is serious contention that needs to be resolved at trial.

I have considered the defence set out by the Defendants, the law is trite that the defendant's affidavit must condescend upon particulars and should as far as possible, deal specifically with the Claimant's claim and affidavit and state clearly and concisely what the defence is and what facts and documents are relied on to support it. Having scrutinized the processes and exhibits before me, I am unable to resolve the issues one way or the other. Rather, I am of the candid

opinion that the parties have only succeeded in joining issues on the point.

In the circumstance, the defendants are entitled to defend the action. Leave is hereby granted to the defendants to defend the suit. The action shall henceforth be heard on pleadings under the general Cause List. Parties are hereby ordered to file and exchange pleadings within 14 days from today the 24th Day of October, 2024.

Parties: Absent

Appearances: A. E. Adeyeye appearing for the Claimant. V. M. Ati holding the brief of Chukwuma Nwachukwu appearing for the defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
29/10/2024**