

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 20TH DAY OF MARCH, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/8007/2023

MOTION NO.: FCT/HC/M/7087/2024

BETWEEN:

POLARIS BANK LTD

CLAIMANT

AND

1. FIDELITY BROKERS LIMITED

2. JULIUS ATOROUGH

3. AGBOOLA OMOJUWA

DEFENDANTS

RULING

This is a Ruling on the Notice of Preliminary Objection brought by the Defendants challenging the suit of the Claimant and urging the Court to strike out the names of the 2nd and 3rd Defendants.

The Claimants commenced this suit by way of a Writ of Summons seeking the following reliefs against the Defendants:-

1. A Declaration that the Defendants are in breach/default of the loan facility granted them by the Claimant.
2. An Order of this Honourable Court directing the Defendants jointly and severally to pay to the Claimant the sum of ~~N~~297,120,404.00 (Two Hundred and Ninety-Seven Million, One Hundred and

Twenty Thousand, Four Hundred and Four Naira) only being the total sum owed the Claimant.

3. An Order of this Honourable Court directing the Defendant to pay 10% post-judgement sum *per annum* to the Claimant until the sum is finally liquidated.
4. The sum of ₦5,000,000.00 (Five Million Naira) only as cost of this action.
5. And for such further Orders as this Honourable Court may deem fit to make in the circumstance of this suit.

The 1st and 2nd Defendants who have addresses outside the jurisdiction of this Court were served with the originating processes on the 27th of March, 2024 subsequent to the Order of this Court granting leave to the Claimant to issue and serve the Writ of Summons on the Defendants outside the jurisdiction of this Court. The 3rd Defendant was not served because, according to the 2nd Defendant, the 3rd Defendant had traveled out of the country. On the 19th day of April, 2024, however, *vide* a Memorandum of Conditional Appearance dated the 17th of April, 2024, Bem Atetan, Esq. entered appearance for all the Defendants in this suit.

The Defendants, through their Counsel, presented a single issue for determination by the Court, namely, whether the 2nd and 3rd

Defendants, being mere agents of a disclosed principal (the 1st Defendant), could be sued alongside the 1st Defendant.

In advancing their argument, the Defendants' Counsel submitted that, based on the well-established legal principle dating back to the landmark decision in ***Salomon v. Salomon & Co. Ltd (1897) A.C. 22***, a company is a distinct legal entity separate from its officers, employees, and owners. This principle, they argued, forms the bedrock of corporate liability, as reiterated in ***IGWEM CO. LTD & ANOR v. IGWEBE (2009) LPELR-8712(CA)***. The Court in that case, citing ***Agbenelo v. UBN (2000) 7NWLR Pt. 666 at 559-560***, analogized a company to a human body, wherein some individuals serve as mere hands executing instructions, while others, such as directors and managers, constitute the company's directing mind. Thus, the state of mind of these officers is imputed to the company itself.

The Defendants' Counsel contended that, given this separation, the officers of a company cannot, as a general rule, be held personally liable for corporate actions unless in cases involving tortious conduct. Relying on ***Bebeji Oil Allied Prod. Ltd. v. Pancosta Ltd. (2007) 31 WRN 163***, the Counsel asserted that corporate officers are shielded by the company's veil of incorporation and cannot be personally liable for corporate obligations. This position, they noted, aligns with the statutory

provisions of the Companies and Allied Matters Act (CAMA), 2020, particularly Section 65, which attributes acts of the company's board or management to the company itself.

Further citing ***FBN PLC v. Excel Plastic Industry Limited (2002) LPELR-10280(CA)***, Counsel emphasized that an agent acting for a disclosed principal incurs no personal liability. They referred to ***Niger Progress Ltd. v. N.E.L. Corporation (1988) 3 NWLR (Pt. 68) and Carlen (Nig.) Ltd. v. UNIJOS (1994) 1 NWLR (Pt. 323) 631*** to reinforce the principle that only the principal is liable for contracts entered into by an agent acting within the scope of authority.

Consequently, the Defendants' Counsel urged the Court to declare the suit incompetent or, at the very least, strike out the 2nd and 3rd Defendants' names.

In response, the Claimant's Counsel opposed the Preliminary Objection by filing a counter-affidavit and a further counter-affidavit with exhibits. The deponent, John Isaac, asserted that the 2nd and 3rd Defendants had personally executed guarantees securing the loan advanced to the 1st Defendant.

The Claimant's Counsel formulated a sole issue for determination—whether the reliefs sought by the Defendants were grantable. Conceding that a company is distinct from its directors, Counsel argued that where

a director guarantees a loan, personal liability attaches, as affirmed in **INDIC v. RABO FARMS LTD (2016) LPELR-42032(CA)**. Further reliance was placed on **AFRIBANK MG. LTD v. MOSLAD ENTERPRISES LTD (2007) LPELR-5126(CA)**, where the Court held that a director who guarantees a company's debt assumes a distinct contractual obligation enforceable independently of the principal debtor.

Citing Supreme Court precedent in **R.E.A.N. v. ASWANI TEXTILE LTD (1992) 3 NWLR (Pt. 227) 1**, Counsel defined a guarantee as a written undertaking ensuring performance by a third party. Thus, under **NATIONAL TRUCKS MANUFACTURERS LTD v. BOI & ANOR (2021) LPELR-56967(CA)**, the Claimant argued that a guarantor is independently liable and can be sued jointly and severally with the principal debtor.

In conclusion, the Claimant's Counsel contended that the 2nd and 3rd Defendants were necessary parties to the suit due to their contractual obligations as guarantors. Counsel urged the Court to dismiss the Preliminary Objection for lacking merit.

In the determination of this Notice of Preliminary objection, this court hereby nominates the following issue for determination: ***“Whether considering the facts and circumstances of this case this suit as***

presently constituted is not incompetent by reason of the joinder of the 2nd and 3rd Defendants?”

I must preface the resolution of this issue by a brief consideration of the nature of corporate identity of an incorporated entity. A company is a body corporate incorporated under the Companies and Allied Matters Act for the purposes of carrying on the business delineated in its memorandum of association. Upon being so incorporated, a company becomes a legal personality capable of suing and being sued in its own name. It enjoys perpetual succession and possesses a personality distinct from its directors, shareholders and officers. See ***Royal Pet. Co. Ltd. v. F.B.N. Ltd. (1997) 6 NWLR (Pt. 510) 584 CA at 599, para E; New Res. Intl Ltd. v. Oranusi (2011) 2 NWLR (Pt. 1230) 102 CA at 125, paras B-D.***

Because a company is not a natural person, though vested with legal personality, it acts through human agents. These human agents are described as the directing mind of the company. In ***MTN Nigeria Communications Ltd v. Mr Akinyemi Aluko & Anor (2013) LPELR-20473(CA)*** the Court of Appeal held *inter alia* that:-

“...a company is recognized as a corporate body that can sue or be sued. Admittedly, it is a legal fiction that exists only in the eyes of the law. This is due to the fact that a company has no brain, eyes or

hands of its own. It acts through human beings/natural persons such as its Directors or Shareholders whose actions are invariably binding on it. See Ladejobi v. Odutola Holdings Ltd. (2002) 3 NWLR (Pt.753) 121.”

Similarly, in the case of ***Saleh v. B. O. N. Ltd (2006) NWLR (Pt.976) 316 at 326 – 327*** where the Supreme Court held thus: ***“A company is a juristic person and can only act through its agents or servants.”***See ***Melrose General Services Ltd. v. E.F.C.C. (2025) 1 NWLR (Pt. 1972) 1 SC at 130-131, paras. H-B; Ogbaji v. Arewa Textiles Plc. (2000) 11 NWLR (Pt. 678) 322 CA at 337, paras C-E; Olawepo v. S.E.C (2011) 16 NWLR (Pt. 1272) 122 CA at 145, paras F-G.***

The Court of Appeal was more lucid in the case of ***Dike v. Key Key Constr. Ltd (2017) 14 NWLR (Pt. 1584) 1 CA at 126-132, paras. F-E*** where it held thus:-

“A corporation is an abstraction. It has no mind of its own any more than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. The doctrine attributes

to the company the mind and will of the natural person or persons who manage and control its actions. Their minds are its mind; their intention its intention; their knowledge its knowledge. Those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles are entrusted with the exercise of the powers of the company.”

For this reason, therefore, the acts of the directors of the company are deemed acts of the company. See sections 87 and 89 of the Companies and Allied Matters Act, 2020. The sections provide thus:

Section 87:

(1) A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.

(2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company’s articles.

(3) Except as otherwise provided in the company’s articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

(4) Unless the articles otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, is not bound to obey the directions or instructions of the members in general meeting provided that the directors acted in good faith and with due diligence.

(5) Notwithstanding the provisions of subsection (3), the members in general meeting may—

(a) act in any matter if the members of the board of directors are disqualified or unable to act because of a deadlock on the board or otherwise;

(b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;

(c) ratify or confirm any action taken by the board of directors; or

(d) make recommendations to the board of directors regarding action to be taken by the board.

(6) No alteration of the articles invalidates any prior act of the board of directors which would have been valid if that alteration had not been made.”

Section 89

Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person:

Provided that—

(a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of their irregularity; and

if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum.

The above provisions have been construed and given effect to in a number of judicial authorities such as: ***Bank PHB V. CBN & Ors (2019) LPELR-47383(CA); Odutola Holdings Ltd Vs Ladejobi 2006 12 NWLR Pt 994 pt. 321; Adegbenro Vs Akintilo (2010) 3 NWLR Pt 1182 p.541 at 562; Plateau State Government v. Crest Hotel & Garden Ltd (2012) LPELR-9794(CA); African Continental Bank Plc v. Haston Nigeria Limited (1997) LPELR-5218(CA); United Investments Limited v. The Registrar Of Titles, Lagos State & Ors (2016) LPELR-41406(CA); The Attorney General Of Lagos State v. Eko Hotels Limited & Anor (2006) LPELR-3161(SC) and Citec International***

***Estates Limited & Ors v. Josiah Oluwole Francis & Ors (2021)
LPELR-53083(SC).***

It is against the foregoing statutory provisions and judicial reasoning that the preliminary objection of the Defendants can be appreciated better. Since the 2nd and 3rd Defendants are directors of the 1st Defendant and acted on behalf of the 1st Defendant, the Defendants have contended, they ought not to have been made parties to this suit, since they were agents of a disclosed principal. The Claimant, on the other hand, maintained that the 2nd and 3rd Defendants are liable, having executed a guarantee agreement wherein they undertook to be liable for the debt which the 1st Defendant took from the Claimant's predecessor in interest.

I agree with the learned Counsel for the Defendants that the general principle of the law of agency is that the agent of a principal cannot be joined in the same suit as the principal. It is either the agent is sued or the principal is sued. Where the principal is disclosed, the proper person to sue and be sued is the disclosed principal. See ***Adenipekun v. Adeparusi (1994) 2 NWLR (Pt. 329) 705 CA at 715, para A; Ukpanah v. Ayaya (2011) 1 NWLR (Pt. 1227) 61 CA at 88, paras B-C; Balogun v. Panalpina W.T. (Nig.) Ltd. (1999) 1 NWLR (Pt. 585) 66 CA at 76, paras. E-F; 83, paras. C-E.*** In the case of ***Ogbe v. Ojo (2024) 18 NWLR (Pt. 1969) 33 SC at 49-50, paras. F-B***, the court held that:-

“Where an agent enters into a contract on behalf of a disclosed principal, the law generally treats the principal as a party to the contract. The principal assumes all rights and obligations arising from the transaction, and the agent is merely a conduit through which the principal’s intentions are executed. This principle is rooted in the fundamental doctrine of the law of agency that an agent, acting within the scope of his authority, does not become personally liable for actions taken on behalf of a disclosed principal.”

The joinder of the agent to a suit in which the disclosed principal is already a party does not render the suit incompetent; it merely makes the joinder unnecessary. See ***Ogbe v. Ojo (2024) supra at 48, paras F-H.***

However, the Claimant’s contention that the 2nd and 3rd Defendants are liable to the Claimant under a contract of guarantee cannot be ignored. This is because under a contract of guarantee, the guarantor can be liable to the creditor for the debt the debtor took from the creditor; and the creditor is at liberty to proceed against the guarantor. See ***Nwankwo v. E.D.C.S.U.A. (2007) 5 NWLR (Pt. 1027) 377 410, paras F-G; Trade Bank Plc. v. Chami (2003) 13 NWLR (Pt. 836) 158 SC.***

Besides, considering the facts and circumstances of this case, there are issues inherent in this suit that can be disposed of only at the substantive stage. The Courts have been counseled against determining substantive issues at the interlocutory stage. see the cases of ***Tabiowo v. Disu (2008) 7 NWLR (Pt. 1087) 533 CA at 546, paras. D-G; Glomite (Nig.) Ltd. v. Shellborn Marine Co. Ltd. (2004) 10 NWLR (Pt. 880) 92 CA 103, paras, D-F; A.-G., Kwara State v. Lawal (2018) 3 NWLR (Pt. 1606) 266 SC at 295, paras A-C.***In view of the foregoing, therefore, this court will be acting in haste if it grants the reliefs sought by the Defendants in this Notice of Preliminary Objection.

Moreover, by virtue of Order 13 Rule 18(1), (2) and (3) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2025 provides that no action shall be defeated by reason of joinder or misjoinder. Specifically, the Rule provides thus:-

(1) No proceedings shall be defeated by reason of misjoinder or nonjoinder of parties, and the Court may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may

appear to the Court to be just, order that the names of any parties improperly joined be struck out.

(3) The Court may order that the names of any party who ought to have been joined or whose presence before the Court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.

For the above reasons, therefore, I find no merit in this Notice of Preliminary Objection. Same is hereby dismissed. I make no order as to costs.

This is the Ruling of this Honorable Court delivered today, the 20th of March, 2025.

**HON. JUSTICE A. H. MUSA
JUDGE
20/03/2025**