IN THE CHIEF MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA

BEFORE HIS WORSHIP B.H. ABE (MRS) ESQ., SITTING AT THE CHIEF MAGISTRATE COURT 2 RUMUODOMAYA ON TUESDAY THE 17TH DAY OF OCTOBER, 2023

RMC/SCC/10/CS/2023

BETWEEN

GUARANTY TRUST BANK LTD. - **CLAIMANT**

VS.

1. **ZITIMIYOLA ARMSTRONG W.** - **DEFENDANTS**
2. **ALPHA SPHINX NIG. LTD.**

Matter for Judgment

Parties; O.Q. Agbai (Mrs.) for the claimant

No appearance for the defendant.

JUDGMENT

The Claimant claims as follows:

1. The sum of N2,195,665.00 (Two Million, One Hundred and Ninety-Five Thousand, Six Hundred and Sixty-Five Naira) only, from the defendant, being part of the loan sum and accrued interest on the loan sum obtained by the defendant on the 24th of August, 2022.

2. 10% post-judgment sum monthly from the date of judgment.

3. N200,000.00 (Two Hundred Thousand Naira) only, as cost of this suit.

Facts

The claimant via a complaint form RSSC 2, a summons RSSC3, filed this suit against the Defendant, the defendant was served personally by the court bailiff via form RSSC6 on the 21/7/2023.

Cw 1 gave evidence, on the 3/8/2023, the claimant's counsel entered a plea of not liable for the defendants first. She gave her name as Vanessa Enujuwa with office address at Infinite Law Attorneys at Eneka-Link Road, Port Harcourt. She informed the Court as follows; I am a litigation officer, we were instructed by the claimant to recover the money owed by the defendants, they are debtors to the bank.

The 1st defendant has always acted on behalf of the 2nd defendant. The claimant is claiming ₦2,195,655.00 (Two million one hundred and Ninety-five thousand, six hundred and fifty-five naira) only and 10% monthly interest rate on the said loan sum, the defendants have not paid the above sums.

The claimant sent an email to the defendant, regarding the loan sum, the defendant acknowledged and asked for more time, the claimant contacted her office to recover the loan sum, they called the defendant who promised to pay, sent an email to him before filing this case in Court.

The documents tendered by CW1 were admitted in the evidence as exhibits A-F respectively, originals with the defendant.

In conclusion she prayed the Court to grant all her claims, with the loan sum and interest.

Cw1 was foreclosed from cross examination by the absent defendant in line with the rules of Court 2007.

The defendants were foreclosed from defending this suit on the 11/9/2023 due to their consistent absence. The case was adjourned for address.

The claimant's counsel adopted her final written address submitting as follows:

The law is trite that a customer(s) has the duty to meet up with their financial obligations… and customers must always repay the loans extended to them.

Once a customer has approached a financial institution to seek for a credit facility and same granted, the customer is duty bound to repay the said loan. See **Banks and Other Financial Institutions Act (BOFIA), 2020.**

By Exhibit A, being a Demand letter of 25/11/2022 sent to the defendants and Exhibit B being an acknowledgment on the same 25/11/2022 of indebtedness and acceptance of a drawdown of the loan sum, the defendants are duly bound to repay same and there is an implication of a contract/obligation which must be upheld.

My Lord, we humbly state that by the Defendants drawing on the sum of ₦3,000,000.00 (Three million naira) only credit facility of the claimant, and subsequently refusing, neglecting and or failing to repay the entire loan sum have led to the defendants breach of their financial obligation.

This breach now entitles the claimant to demand for an immediate liquidation of the entire outstanding loan sum.
The law is well settled that a debtor who benefitted from a loan facility from a bank has both moral and legal duty and obligation, express or implied, to repay the loan.

SEE: AFRIBANK vs. ALADE (2000) 13 NWLR (PT. 685) 591. NATIONAL BANK vs. SHOYOYE (1977) 5 SC 181 AND FCMB vs. ROPHINE NIG. LIMITED & ANOR (2017) LPELR42704 (CA)

Your Worship, we humbly submit that the issuance of Exhibit A, C, D and E from the claimant to the Defendants, and the response of Exhibit B, the claimant has satisfied the requirements of the law on this claim and the right to recover the substantial claim entitling it to the reliefs sought and the right to recover the outstanding loan sum of ₦2,195,655.00 (Two million one hundred and Ninety-five thousand six hundred and fifty five naira) only claimed with accruing interest and cost.

Also, the defendants never appeared in Court from the inception of this suit till date nor were they represented, despite being served the claim and the notice served on them by the order of this Honourable Court.

Consequently, this Honourable Court after the time afforded the Defendants to cross examine Cw1 and upon application by the claimant's counsel, foreclosed the defendant from defending this suit on 11th September, 2023.

We humbly submit that the Defendants have by their conduct waived their right to defend this suit and by so doing, admitting to the evidence of the claimant, as the law is trite that facts admitted need no further proof.

SEE: JOHN ANDY SONS & CO. LTD V. MFON (2006) 12 NWLR (PT.995) 461 AT 478 PARA N

"Where a party in a legal duel receives a hearing notice but decides to be absent, the obvious conclusion is that he does not intend to contest the case or he has chickened out or he has abandoned it".

SEE: NEWSWATCH COMM. LTD V. ATTA (2006) 12 NWLR (PT. 993) 144 SC BANNA V. TELE POWER (NIG) LTD (2006) 15 NWLR (PT. 1001) 198 SC.

We humbly submit further also that a fact and or evidence neither denied nor challenged are deemed admitted and needs no further proof.

SEE: SECTION 123 EVIDENCE ACT, 2011. OGOLO V FUBARA (2003) 11 NWLR (PT. 198) SC

My Lord, we humbly submit that the claimant has proven on the preponderance of evidence that the defendants are liable to the claimant in the reliefs sought. It is in consideration of the totality of these facts, circumstances and decided authorities that we submit that the claimant has proven their case as required by law and in this entitled to their claim as represented in the particular of claims.

Issue for determination

Whether the claimant is entitled to his reliefs from the Defendant?

COURT

I have considered the facts of the case as presented by Cw1 and also the fact that the defendants failed, neglected and refused to appear before this Court to defend the suit against them, especially after the bailiff of Court, Uchendu Chinedu had served them with the summons for small claims Court personally on the 21/7/2023.

The Supreme Court has held in a plethora of cases that once the defendant in a suit is served with the Court's processes that is the Ordinary summons and its particulars of claim, they both suffice as sufficient notice on the defendant of the case instituted against him.

The defendants were also served with a Hearing Notice as ordered by this Court.
The claimant in proof of its case, tendered through Cw1, the litigation officer at Infinite Law Attorneys, the Claimant's Counsel, Exhibits A-F respectively.

The Court will now take a cursory look at the exhibits;

1. Exhibit A - a letter of indebtedness to the defendant dated 25/11/2022 from the claimant to the defendants. The defendants were advised in that letter to liquidate the sum of N2,580,588.53 as at 25/11/2022, being the total outstanding sum owed to the claimant, within 14 days of the receipt of the said letter, it was signed by the Account officer and the relationship manager of the claimant.

2. Exhibit B - the 2nd defendant responded to the above letter Exhibit A, via a letter dated 25/11/2022, stating herein that they acknowledge the loan of N3,000,000.00 (Three million naira) only given on the 24th of August 2022. They stated therein that it was due to the flood in October that brought their businesses to a standstill. They promised to make efforts to repay the loan facility. The letter is signed by the 1st defendant, the director of the 2nd defendant, Zitimitola Armstrong W.

3. Exhibit C - A 2nd letter of indebtedness written to the 2nd Defendant dated 10/11/2023, reminding the 2nd defendant of the loan debt, demanding that the 2nd defendant pays the outstanding of N1,590,654.42 (One million, five hundred and ninety thousand, six hundred and fifty four thousand, forty two naira) only with accrued interest, within seven(7) days from the date of this letter, failing which they will take steps to recover the loan from the company, signed by two members of the legal group

4. Exhibit D - on the 12th June 2023, the Claimant's Counsel, O.Q. Agbai, wrote to the 2nd Defendant demanding for the payment of the sum of ₦2,195,655.00 (Two million one hundred and Ninety-five thousand, six hundred and fifty-five naira) only, being the loan facility and accrued interest owed to GTB Limited. It was stated therein that the Defendants had been reminded severally of their increasing debt and their promises to repay the loan which has not since being fulfilled. They were also informed that the bank had mandated them to collect/recover the debt on behalf of the Claimant.

5. Exhibit E - email sent to the 2nd Defendant by the Claimant's counsel dated 14/6/2023, referring them to their letter earlier sent to the 2nd Defendant dated 12/6/2023.

6. Exhibit F - An email from the claimant (GTB) to the claimant's counsel dated 15/5/2023, instructing the claimant's counsel to recover the indebtedness of under listed customers to GTB with the 2nd Defendant as no 4 on the list, outstanding debt being ₦2,195,655.00 (Two million one hundred and Ninety-five thousand, six hundred and fifty five naira) only, they were further authorized to institute recovery actions against the customers including the 2nd Defendant and take all recovery steps which may appear expedient to secure the recovery of the underlying debt.

Despite the service of all the above letters/email to the Defendants consistently reminding them especially the 2nd defendant to repay the loan facility granted them by the claimant GTB, they failed and refused to repay the loan.

Documents tendered as Exhibits do not embark on falsehood like some mental beings, see Olujinle Vs. Adeagbo (1988)2 NWLR (Pt. 75) 238 and BFI Group Corporation Vs. Bureau of Public Enterprises.

Once documentary evidence supports oral evidence, oral evidence becomes more credible, as documentary evidence always serves as a hanger from which to assess oral testimony. See Kimdey Vs. Military Governor of Gongola State (1988) 5 SCNJ 28.

An aggrieved party to a contract has the right to seek for redress before a Court for the restitution of his legal right in a contract.

The aggrieved party can sue the defaulting party for breach of contract, where a valid contract has been entered into by both parties; a legal right has to be established.

In this case, the claimants have established their legal right and indeed are entitled to the loan sum from the defendants.

In the case of Dodo Vs. Salanke (2006) 9 NWLR, Pp. 472-473, Para H-B, per Alagoa, JCA commented on the bindingness of contents of document on a party who signs same. Where a person signs documents, he authenticates his full agreement to their contents and must be bound by their terms.

A document tendered in Court is the best proof of the contents of such document, and no oral evidence will be allowed to discredit or contradict the contents thereof except in cases where fraud is pleaded. See A-G., Bendel State Vs. U.B.A. (1986)4 NWLR (Pt. 37) 547 referred to. Pp. 472, Para F. All the Exhibits are the best proof of the claimant's case. The claimants have made their case credible on the preponderance of evidence before the Court.

It is trite that a valid contract exists where offer (being certain) from an offeror is accepted by the offerree. Moreso, where there is a consideration from a party to a valid contract, such a party can successful sue the party in breach. Furthermore, a contract is an agreement between two or more parties which creates reciprocal legal obligation or obligations to do or not to do a particular thing. See Omega Bank Plc. Vs. O.B. Ltd. (2005) 1KLR (Pt. 189) 157.

In Ogundalu Vs. Macjob (2015) 3 S.C.N.J. page 98, the Court held that:

"A person seeking to enforce his right under a contractual agreement must show that he has fulfilled all the conditions precedent and that he has performed all those terms which ought to have been performed by him". The claimants have indeed fulfilled all the conditions precedent for recovery of their money from the failed contract entered into with the defendants by proof of documentary evidence. See Exhibits A-E.

In a civil case, the burden of proof rests upon that party, whether claimant or defendant, who substantially asserts the affirmative before evidence is gone into. In other words, the burden of proof lies on the person who will fail, assuming no evidence has been adduced on either side.

The burden of proof rests on the claimant in this case.

Further, in respect of particular fact, this burden rests on the party against whom judgment will be given if no evidence were produced in respect of those facts. Once the party produces the evidence that will satisfy the Court, then the burden shifts on the party against whom judgment will be given if no more evidence were adduced. Tewogbade Vs. Akande (1968) NMLR 404; Oyovbiare Vs. Omamurhomu (1999) 10 NWLR (Pt. 621) 23 referred to, P. 427, paras. A-D.

A contract is an agreement between two or more parties, which creates reciprocal legal obligation or obligations to do or not to do a particular thing. For a valid contract to be formed there must be mutuality of purpose and intention. The two or more minds must meet at the same point, event or incident. Where or when they say different things at different times, they are not ad idem and, therefore, no valid contract is formed. The meetings of minds of the contracting parties are the most crucial and overriding factor or determinant in the law of contract.

The refusal on the part of the defendants to pay back the loan sum of the claimant is indeed a breach of contract. A breach of contract occurs when one of the parties in breach has acted contrary to the terms of the contract. See F. B. N. Plc. Vs. Immason & Sons (Nig.) Ltd., (2014) All FNLR (Pt. 724) P. 344.

The Court is always expected to arise at the correct decision or findings based on the evidence before it, See FBN Plc. Vs. Imasuen & Sons Nig. Ltd. (2004) All FWLR (Pt. 125) pg. 342.

I agree with the claimant's counsel that the law protects the financial institution. A customer who obtains a loan from a financial institution is mandated to fulfill his

obligations to the financial institution by repaying the loan facility with accrued interests as at when due and not renege on his promise to repay the said loan. See Banks and other Financial Institution Act, BFA, 2020.

The Defendants have breached the contract entered into by both the Defendants and the claimant by defaulting in the repayment of the loan facility granted to them graciously by the claimant.

The claimant in proof of his claim against the Defendants tendered Exhibits A-F as listed above and in compliance with S. 133/134 of the Evidence Act 2011.

Civil cases as we know are decided upon the preponderance of evidence and the balance of probability.

The Defendants are expected to rebut, challenge or discredit the claims of the claimant by defending this suit filed against them, but they chose not to by refusing to defend this suit by entering an appearance and getting a defence counsel to defend them.

The defendants are expected to repay the loan, this places a moral and legal duty and obligation on them as posited by the claimant's counsel in her final written address.

Admitted facts need no further proof, the refusal on the part of the Defendants to defend, challenge, controvert or rebut the claims against them, such claims are deemed to be admitted by the Defendants.

See Iluyomade vs Ogunsade (2001) 8 NWLR (pt. 716), p 559.

The defendants were never in Court to challenge, controvert or discredit the evidence of the claimants, neither were they in Court to enter a defence. They were foreclosed from cross examination of the claimants and from defending this suit.

The claimant's counsel also stated in her written address that she wrote to them to inform them of the case coming up before me, the letter is before me dated 3rd March, 2023.

I also concede to the submission of the claimant's counsel, wherein she posited that; the defendants' failed to defend the suit when called upon to defend this suit. On the 11th day of September, 2022, the matter was scheduled for defence, but unfortunately and regrettably, the defendants were not in Court. The claimant's counsel made an application for the defendants to be foreclosed from defending this action, the Court, graciously granted the claimant's application. The grant was in accordance with the provision of Order 11 rule 16(1) of the Magistrates' Court (Civil Procedure) Rules, 2007, as cited earlier.

The Court has given the defendants sufficient and ample opportunity to defend this action, but they chose to neglect or rather waive their right. In the case of Mil Gov., of Lagos State Vs. Adeyiga (2012) 5 NWLR page SC 291 Pp. 338-339, paras. H – E, Ratio 4, the Supreme Court held:

“When a party has been given ample opportunity to ventilate his grievances in a Court of law but chooses not to utilize same, he cannot be heard to complain of breach of his right to fair hearing, as what the Court is expected to do by virtue of section 36 of the 1999 Constitution is to provide a conducive atmosphere for parties to exercise their right to fair hearing. Hence a party who refuses or fails to take advantage of the fair hearing process created by the Court cannot turn around to accuse the Court of denying him fair hearing, because equity aids the vigilant and not the indolent”.

It is a trite principle of the law of evidence that “he that asserts must prove”. This was given statutory sanction in section 131(1) of the Evidence Act 2011 which states:

“Whoever desires the Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts shall prove that those facts exist”.

Furthermore, section 132 of the Evidence Act provides thus:

“The burden of proof in any suit or proceeding lies on the person who would fail if no evidence at all were given on either side”.

In Ojeh Vs. Corporate Affairs Commission (2010) All FWLR (Pt. 542) 1723 at 1736, paras. B-C the Court reiterated this principle of law thus: “It is trite law that in civil cases, the burden of proof of asserted facts lies on him who asserts same”.

In civil cases, the burden of proof is discharged on the balance of probabilities. See 134 of the Evidence Act 2011 and Omotoye Vs. ABC (Transport Co.) Ltd. All FWLR (Pt. 531) 1540 at 1560.

Consequently, where as in the instant case, only one party calls evidence, minimum proof is required of him in order for his claims to succeed; see Monkom & Ors. Vs. Odili (2010) All FWLR (Pt. 536) 22 at 30 paras. F-G.

Cw1 gave her evidence with regards to the loan facility obtained by the Defendants from the claimant and the claimant’s authorization to cw1 to recover the said loan sum plus accrued interests from the Defendants; relying on Exhibits A to F in proof of her evidence/claims of the claimant, which the Court is satisfied with.

The Court has also clinically perused via exhibits A-F, and is satisfied that they indeed prove or substantiate the claims of the claimant against the Defendants.

Both parties willing entered into a loan agreement, which has been breached by the Defendants. It is trite law that the parties are bound by their agreement entered into freely, See Ukoro vs. Ukoro (2018) NWLR (pt 16) 46 at 575.

They are governed by their own contract made by them, see the Court’s position in Atiba Iyalawu Savings and Loans Ltd vs Ajala Suberu & Anor (2018) 13 NWLR (Pt 163) page 387.

The Defendants were foreclosed from defending this suit due to the consistent absence of the Defendants. They never appeared before this Court despite being served with the Court's summons and Hearing Notice from the commencement of this case till date.

This Honourable Court is clothed with the powers to in addition to the judgment sum award such damages as the justice of this case may require or make an order which it considers necessary for doing justice; whether such an order has been expressly asked for by the party entitled to the benefit of the order or not. It has also been held that damages arising from breach in paying money due to a claimant as at when due, is the interest on the amount due. This was held by the Court of Appeal (Port Harcourt Division) in SPDC Ltd. Vs. Nnabueze (2014) AFWLR (pt. 724) pg. 117 at 138 paras. E-G when it sated as follows:

"Damages arising from a breach in paying money due to a plaintiff at the time it was due, is the interest on the amount due. The reason is that such interest will place the plaintiff on the financial strength he would have been if he was paid as at when due in a situation arising from commercial matters, party holding on to the fund of another, for so long without justification ought to pay compensation for so doing. In the instant case where the defendant withheld the plaintiff's money for contract executed, the interest claimed thereon by the plaintiff was rightly awarded by the trial Court".

The claimant's counsel in her final written address had prayed the Court for 10% post-judgment interest on the judgment sum from the date of judgment till the judgement sum is liquidated.

As regards which involves the claim of post judgment 10% interest, against the defendants by the claimants, it is trite that monetary judgment attracts appropriate interest even when none is claimed or proved. The Supreme Court in the case of NPA Vs. Aminu Ibrahim & Co. (2018) 12 NWLR (pt. 1632) 62 at 87-88 held as follows:

"However, a Court can still grant pre judgment interest on a monetary or liquidated sum awarded to a successful party, even in a situation where such a party did not plead or adduce evidence in proof of such claim. Such interest naturally accrues from the use of and/or enjoyment of the sum involved which is the fruit of judgment. In this case, the respondents had for quite a long time, submitted their report to the appellant but the latter refused or neglected to pay them their entitlement as agreed upon".

In line with the Supreme Court decision, the Court of Appeal per Tobi JCA in the case of Dana Airlines Ltd. Vs. Aikhomu (2020) AFWLR (pt. 1043) pg. 503 paras. B-C made it very clear when it held as follows:

"The purpose of pre-judgment or post-judgment interest is to made parties in a case to be responsive or alive to their responsibility. If a party looks beyond legality and do the right thing according to conscience, some cases would not need to be decided by Court taking all the time and resources. Failure to be alive to civil responsibility and to punish people for oppressive act, a party is allowed in law, to avoid pre-judgment and post-judgment interest".

Consequently, the Court enters judgment in favour of the claimant and hereby orders as follows;

1. That the defendants pay the claimant, the sum of N2,195,665.00 (Two Million, One Hundred and Ninety-Five Thousand, Six Hundred and Sixty-Five Naira) only, being part of the loan capital and the subsequent accrued interest on the said loan, obtained by the defendants, from the claimant on the 24th August, 2022.

2. That it is also ordered, the defendants pay to the claimant, 10% post judgment sum or interest monthly from the date of judgment till the judgment sum is fully liquidated by the defendants to the satisfaction of the claimant.

3. That is finally ordered, the defendants pay to the claimant, the sum of N200,000.00 (Two Hundred Thousand Naira) as cost of this suit.

This is the judgment of the Court.

MRS BARIYAAH .H. ABE
Chief Magistrate
17th October, 2023.

Mrs B H Abe
CHIEF MAGISTRATE
Sign:
Date: 17/10/23