

IN THE MAGISTRATES' COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT SMALL CLAIMS COURT 2, PORT HARCOURT

BEFORE HIS WORSHIP COLLINS G. ALI, ESQ.,¹ TODAY WEDNESDAY, THE 30TH

DAY OF AUGUST, 2023.

SUIT NO.:PMC/SCC/94/2023.

BETWEEN:

THE INCORPORATED TRUSTEES OF ZIGBE GOOD
ETHICS INITIATIVE

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CLAIMANT

AND

1. ABIGAIL ELISHA GREEN
2. MR. JOHN OTOBONG NSE
3. MR. SAMSON ORJI

}

DEFENDANT

Case called.

Parties absent.

JUDGMENT

The Claimant commenced this case against the Defendants on the 7th July 2023 after serving demand letters and claimed as per its claim attached to the summons as follows:-

1. Debt/Amount Claimed - ~~₦~~1,200,000.00
 2. Fees (accrued interest)- ~~₦~~374,300.00
 3. Costs - ~~₦~~300,000.00
- Total = ~~₦~~1,874,300.00

The Defendants were served with the summons and claim by substituted means on the 27th July 2023 in compliance with the Order of this Honourable Court made on the 14th day of July 2023. The Defendants failed to appear in Court to answer to the summons despite been served. Following the non-appearance of the Defendants, plea of not liable was entered for them and the Claimant proceeded to prove its case through Mr. Ogonna Okechukwu Emmanuel who testified as CW1. The Claimant through the CW1

¹ LL B, LL M, BL, A. IDRI, Chief Magistrate Grade I, and the Presiding Magistrate, Small Claims Court 02, Port Harcourt, Rivers State.

tendered Business Loan Application Form dated 04/08/2022 as Exhibit A, Guarantors Form filled by the 2nd and 3rd Defendants as Exhibits B and B1 respectively. The Claimant also tendered Demand Letters dated 16th June 2023 and issued on the Defendants as Exhibits C, C1 and C2 respectively.

The Claimant testified through Mr. Ogbonna Okechukwu Emmanuel that the 1st Defendant vide Exhibit A on the 16th August 2022 applied for and was granted a business loan of ₦1,200,000.00 on a monthly interest of 7% which is ₦84,000.00 only. The duration of the loan facility according to the CW1 was four (4) months and the 1st Defendant agreed to a weekly repayment sum of ₦96,000.00 to defray the principal sum and interest. The 2nd and 3rd Defendants signed as guarantors for the 1st Defendant before the loan was disbursed to the 1st Defendant. The 1st Defendant defaulted in the loan agreement as he only paid ₦85,000.00 as part of the monthly interest throughout the duration of the loan. The 1st Defendant according to the CW1 had a total savings of ₦240,000.00 in her savings scheme with the Claimant which was also accessed to reduce the accumulated interest of ₦336,000.00 for the duration of the loan to ₦11,000.00 only. At the termination of the loan tenor on the 16th December 2022, the 1st Defendant had unpaid balance of ₦1,200,000.00 which is the principal sum and interest of ₦11,000.00 making up a total of ₦1,211,000.00 only. The Claimant reduced the interest on the loan to 5% effective from the 16th December 2022 but the 1st Defendant failed to repay the loan and accrued interest despite repeated demands. As at time of filing the claim after serving demand letters on the Defendants, the unrepaid loan and accumulated interest stood at ₦1,574,000.00. The evidence of the CW1 is unchallenged and therefore deemed admitted.

The 1st Defendant's loan liability to the Claimant which she has failed to offset was guaranteed by the 2nd and 3rd Defendants in Exhibits B and B1. It is now settled law that where a person personally guarantees the liability of a third party by entering into a contract of guarantee as the 2nd and 3rd Defendants have done in the instant case, a distinct and separate contract from the principal debtor is thereby created between the guarantors and the creditor. Indeed, the contract of guarantee so created can be

enforced against the guarantors directly or independently without the necessity of joining the principal debtor in the proceedings to enforce same. A guarantor is fully bound by his guarantee. See the cases of *Chami v UBA Plc [2010] LPELR-841 (SC)* and *UBA Plc v Kasapreko (Nig.) Co. Ltd & Anor. [2019] LPELR-47887 (CA)*.

The law is also settled that a cause of action in a suit for recovery of debt accrues when a debtor fails to pay his debt after a demand to pay the debt has been made. See *Akinsola & Anor. v Eyinnaya [2022] LCN/16153 (CA)*. CW1 testified that demands were made on the Defendants including service of the demand letters (Exhibits C, C1 and C2) but they failed to respond. The Defendants were equally served with the Court summons and claim but they failed to appear in Court. I hold that the Claimant has proved its case and is entitled to the reliefs sought.

Judgment is hereby entered for the Claimant and against the Defendants jointly and severally as follows:

1. The Defendants are hereby ordered to pay the sum of ₦1,200, 000.00 (One Million, Two Hundred Thousand Naira) only which is unrepaid loan to the Claimant forthwith.
2. The Defendants are ordered to pay the sum of ₦374,300.00 (Three Hundred and Seventy-Four Thousand, Three Hundred Naira) only as accrued interest on the loan to the Claimant forthwith.
3. The Defendants are also ordered to pay the sum of ₦300,000.00 (Three Hundred Thousand Naira) only as cost to the Claimant forthwith.



C. G. Ali Esq.
Chief Magistrate Grade 1
30/08/2023

LEGAL REPRESENTATIONS:

1. O. C. Udensi, Esq. for the Claimant.
2. Defendants not represented.

