FTCC.214/18 2018 G. NO.7

IN THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

FAST TRACK COMMERCIAL COURT

BETWEEN:

GUARANTY TRUST BANK (SL) LTD - PLAINTIFF

AND

PATRIOT GROUP (SL) LTD - DEFENDANT

JUDGMENT DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 9TH OCTOBER 2020

The Plaintiff approached this court by writ of summons dated 18th October 2018 praying for recovery of the sum of Le 250,567,518.09 from the defendant, interest thereon at the rate of 22% per annum from the 24th August 2017 until judgment as well as solicitors' costs. That Plaintiff's claim is on the 24th August 2016 it availed the Defendant a time loan facility in the sum of Le 200,000,000 for the period of 1 year to enable the defendant meet its monthly business administrative expenses. The sum together with the interest that had accrued thereon was not paid as and when was agreed thus leading to the present action before this court.

On the 23rd September 2019, the defendant filed its defence in which its claimed that the loan had been paid in full and that it was in fact the Plaintiff whose records are unclear and inaccurate and that the several demands by the defendant for an explanation of how its account with the plaintiff have been managed have so far failed.

Directions were given and both parties served on each other documents they intend to rely on at trial as well as witness statements of their respective witnesses and the trial process was eventually commenced and subsequently concluded.

At trial, the Plaintiff called 2 witnesses and the defendant called 1.

The Plaintiff's witnesses testified and tendered their respective witness statements which were marked PWS1 and PWS 2 respectively. Both these statements are pretty much the same in every material particular.

The Plaintiff's case is that the defendant was availed a term loan facility of Le 200,000,000 for a period of 12 months to meet his monthly administrative business expenses. The terms of this relationship are contained in Exhibit E 1-5 which is an offer letter dated 24th August 2016 addressed to the defendant. Both principal and interest were to be paid in 12 equal instalments over a period of 12 months. This offer was accepted and signed by the defendant on the 30th August 2016. On the 31st August 2016 as shown in the first page of Exhibit N 1-13 which is the statement of account of the defendant the sum of Le 200 million was disbursed to the defendant and credited into its account with the Plaintiff.

By the 18th July 2017, the Defendant had fallen back on servicing the facility. As a result, the Plaintiff made him another offer as contained in Exhibit F 1-3. The debt of the defendant was restructured into the sum of Le 250 million Leones and was spread over a period of 49 months. The said offer letter indicated that the purpose was to enable the customer pay overtime in order to avoid default. At this point it is worth noting that as per the previous offer of 24th August 2016, should the defendant default in making payments as agreed, the Plaintiff was to make late payment charges of 37% on any unpaid sum. As such when the facility was restructured in 2017, this was done with the intention of ensuring that the defendant did not fall into the category of a default customer thus exposing him to the liability of paying the extra charges. Under the restructured offer, the late fee was also reduced to 12% per annum. The defendant also signed the restructured offer on the 19th July 2017.

By the 2nd July 2018, the defendant was again in default of the restructured facility. The Plaintiff wrote to the defendant by letter dated 2nd July 2018 and demanded that the defendant pays in full the whole sum owing to it before the end of August 2018. This letter is before this court as Exhibit G. On the 31st July 2018, the Plaintiff sent the defendant another letter demanding payment of the full sum due and owing and threatened legal action. This letter is marked Exhibit H. in response to these letters, the defendant sent Exhibit I the contents of which is to the effect that the defendant has paid the debt in full and was therefore demanding a meeting to review its account with the Plaintiff. On the 11th September 2018, the defendant sent the Plaintiff Exhibit J which is a letter of even date and in which he thanked the addressee for the meeting held and stated that it was facing challenges getting renewals of contracts. He further requested that the Plaintiff restructures the outstanding loan to enable him pay the sum of Le 3,500,000 monthly starting from the 30th September 2018. By the 3rd

October 2018, solicitors for the Plaintiff wrote to the defendant and demanded payment of the full sum due and owing. This letter id marked Exhibit K. This situation continued until the 3rd May 2019 when the defendant wrote to solicitors for the Plaintiff making certain commitments to satisfy the debt. This letter is before this court as Exhibit L 1-2 . Again on the 11th July 2019, the defendant also sent another letter to the Plaintiff requesting that the payment of the loan be restructured to enable him pay the sum of Le 5 million monthly but this request received no response from the Plaintiff. It must be noted that in all these recent letters after the meeting, the defendant no longer raised the issue of errors in his account. Rather, they were all focused on seeking to re-negotiate the payment terms. This however runs contrary to the defence filed by the defendant.

As stated above, the defence called 1 witness at the trial. He is Mr. Edward Thomas, the Managing Director and Chief Executive Officer of the Defendant. His case is that in 2016, 2 loans were obtained from the Plaintiff and both were paid. However he went on to testify that he later requested a restructure of the remainder of the loan and same was accordingly done by the Plaintiff. For this he relied on the letter of 18th July 2017 which was marked as Exhibit B 24-26 in his bundle of documents. This restructured facility was to be paid in 49 months and was for the sum of Le 250 Million. This sum of Le 250 Million was indeed deposited into his operational account thereby offsetting the negative balance contained therein. He later noticed that the figures claimed by the Plaintiff later were contradictory and as such he sent them a letter. After the said letter, he held a meeting with the bank. According to a letter he sent subsequent to the meeting, his only issue was for the Plaintiff to reduce his payment scheme. Some instalment payments were made and some missed by the defendant. As such the Plaintiff refused to grant his request for a further reduction in the monthly instalments which the defendant was to be paying. He admits that the defendant does owe the Plaintiff but that he does not know how much is owed.

This is clearly a case of a contract gone bad. There is no contention as to whether an offer was made and that offer duly accepted pursuant to law. There is also no doubt that there was an intention to create legal relations between the parties. As such is not a question of whether a contract existed between the parties herein and that both parties had their respective obligations under the contract to be fulfilled. I shall therefore not dwell on law relating to these issues.

As seen above, the contract is in writing and in events such as these, the interpretation of the written document is a matter exclusively within the jurisdiction of the judge. This is the position of the law in **Bentsen v Taylor, Sons & Co (1893)2QB pg. 274.** In this hypothesis, the courts have long insisted that the parties are confined within the four corners of the document(s) in which

they have chosen to enshrine their agreement. The question this court faces in reaching judgment is whether the respective parties, based on the documents before the court have complied with the terms of the contract and executed the responsibilities placed on each party according to same. Where a party is not in compliance with the terms of the contract, he is said to be in breach thereof and therefore liable to an order of specific performance of the terms and or as the case may be, damages for breach of the contract.

To understand the nature of the relationship between the parties, this court examined Exhibit B24-B26 in the defendant's bundle and Exhibit F1-F3 in the Plaintiff's bundle and which is the letter dated 18th July 2017 intituled Offer of Banking Facility. With reference to the above-mentioned facts, the Defendant being unable to service its debt with the Plaintiff, had this debt consolidated into a round figure of Le 250,000,000 and was given 49 months to pay. This offer was accepted by the Defendant and he signed same to confirm this. The conditions pursuant to which the offer was made are also contained in the said exhibit under the rubrics "Conditions Precedent to Drawdown" and "Other Conditions". A number of terms were laid down under the said rubrics but of importance to this court and which draw disagreement during the course of the trial is the last condition under the rubric "Other Conditions". This is so because the Defendant in presenting its case, though not denying that he is indebted to the Plaintiff (though he maintains that he cannot verify the extent of his indebtedness), is holding strongly to the fact that it is a term of the contract between the parties that the defendant was to pay the sum granted in the 49 equal monthly instalments of Le 7,505,974.26 each. As such, they argue that the plaintiff cannot at this stage sue for the whole sum as outstanding and that its right is limited the sums as defaulted to be paid by the Defendant. This they maintain is because the defendant is to have paid the whole of the debt against the end of the 49 months granted by the offer letter which they accepted.

To elucidate on the Court's position with regards to this argument, I must first produce verbatim the condition referred to above. It states thus;

"All other terms and conditions as contained in the facility agreement between the borrower and the Bank shall be binding on the Borrower".

This provision now raises the question of which facility agreement is being referred to in the aforementioned terms and conditions. There is no specific document before the court intituled "Facility Agreement" and the date of the document referred to therein which would have assisted the court in narrowing down the issue is not stated. This court must therefore, based on the facts before

it, decide which agreement is referred to as same is paramount considering the fact that its contents are terms of the agreement of 18th July 2017.

The provision is contained in the letter of 18th July 2017. In view of this fact, and based on the construction of the term, it cannot be that the author of the letter was making reference to the same letter otherwise same would have been expressed. He was obviously referring to some other document already in existence as at the date of this letter. As such it is the considered view of this court that the only other document that could reasonably be said to be referenced in the letter of 18th July 2017 is the letter of 24th August 2016 which is the offer letter of the original facility granted to the Defendant which had been renegotiated and agreed upon in the letter of 18th July 2017. As such, it was made a term of the new arrangement the terms as contained in the said letter of 24th August 2016 are to be retained. This I find to be plausible especially considering the fact that certain key provisions such as what happens in the event of default are not contained in the letter of 18th July 2017 but are already provided for in the letter of 24th August 2016 and I so hold accordingly.

It therefore at this stage becomes necessary for this court to examine and determine based on the exhibits and evidence before it, and in view of the fact that the defendant has himself admitted that he is in default of servicing the facility, what the parties agreed to be the consequences in the event of a default. As highlighted above, what happens in the event of a default is not provided for in the letter of 18th July 2017. Rather this document points us in the direction of another document which this court has identified as the letter of 24th August 2016. Contained in the letter of 24th August 2016 is a paragraph intituled "Events of Default". I will take the liberty to reproduce the portion of this provision which I find germane to the issues now being discussed.

"Without prejudice to Guaranty Trust Bank's right to demand the repayment of outstanding amounts under the facility at any time, the occurrence of any of the following events shall cause all outstanding amounts under the facility to become immediately repayable.

1. *If the Company fails to settle when due, any outstanding amount owed to and advised by Guaranty Trust Bank".*

This in effect means that when an outstanding amount becomes due and the defendant fails to settle same, the Plaintiff would then be at liberty to demand the repayment of all outstanding amounts at any time it chooses. In this provision I take solace to hold that it is within the rights of the Plaintiff to make a claim for all outstanding amount under the facility regardless of whether or

not the 49 months period had expired. This argument of the defence is therefore not a valid one and I cannot hold same to be.

The defence in their testimony informed the court that even though he admits owing the Plaintiff, he does not know the size of his debt. This in effect puts the Plaintiff to strict proof thereof.

The facility amount agreed upon by the parties was the sum of Le 250,000,000. The defendant was to be making monthly payments in the sum of Le 7,505,974.25. Paying this sum for 49 months would result in the Defendant paying the total of Le 367,792,726 to the Plaintiff in full settlement of the debt. This sum I understand to comprise principal and interest. I have taken the liberty to examine Exhibit N1-13 which is the statement of account of the defendant. Deposits made into the said account from the 28th August 2017 to date by the defendant amount to the sum of Le 70,900,000. If this sum is deducted from the total sum outstanding leaves a balance of Le 296,892,726. However the Plaintiff's claim is for the sum of Le 250,567,518.09.

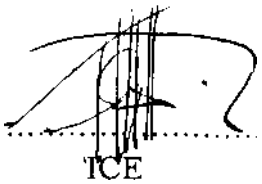
It has become trite law that the parties to an action are limited by their pleadings. As such this court cannot grant the Plaintiff what was not prayed for. As such this court cannot in the circumstances grant the plaintiff more than what was prayed for. It can only in the present circumstance grant the Plaintiff that which was prayed for.

By the same token this court is vested with powers in equity to order that payment of whatever judgment sum is ordered be made in instalments as this court may deem fit. However, this court will not grant equitable remedies as an afterthought of the process. They have to be specifically pleaded, prayed for and proved for it to be considered. The defendant in the present case did not plead for time to discharge his debt. His defence is that the Plaintiff is mistaken in his calculations of the sum owed and that he did in fact not owe the Plaintiff. This court cannot in the present circumstances at this stage extend the olive branch as that would in effect mean that this court is going against the rule of parties being limited by their pleadings. The hands of the court are tied in this regard.

In the circumstances I make the following orders;

1. The defendant is indebted to the Plaintiff in the sum of Le 250,567,518.09. and same shall be paid forthwith.
2. The defendant shall also pay interest on the said sum of Le 250,567,518.09. at the rate of 15% per annum from the 18th October 2018 until the date of this judgment.

3. The defendant shall bear the costs of this action to be paid to solicitors for the Plaintiff assessed at Le 25 million.



HONORABLE JUSTICE LORNARD TAYLOR