

SIERRA LEONE CC:

325/15

2015

B.

NO.22

TO WIT

(LS)

IN THE HIGH COURT OF SIERRA LEONE

(CIVIL JURISDICTION)

BETWEEN:

BSP ATTUNE INTERNATIONAL (SL) LTD - PLAINTIFFS
50 VICTORIA STREET
FREETOWN

AND

GUARANTY TRUST BANK (SL) LTD - DEFENDANT
SPARTA BUILDING
12 WILBERFORCE STREET
FREETOWN

MR. BOISY-KAMARA FOR THE PLAINTIFF

MR. T.A.Q. HARDING FOR THE DEFENDANT

Judgment delivered this 19th Day of November 2019

THE PLAINTIFF'S CASE

The Plaintiff's claim against the Defendant was for the following:-

1. Recovery of the sum of Le 95, 207, 471.37 (Ninety-Five Million, Two Hundred And Seven Thousand, Four Hundred And Seventy-One Leones, Thirty-Seven Cents).
2. Interest pursuant to section 4 of the Law Reform (Miscellaneous Provision) Act of the Law of Sierra Leone 1960.
3. General Damages for breach of contract.
4. Special Damages in the sum of USD\$20,500.00 (Twenty thousand Five Hundred United States Dollars).
5. Any further order (s) that this Honourable Court may deem fit and just.
6. Costs.

The particulars of claim stated as follows

- 1) The Plaintiff is and was at all material times to this action a company registered under the laws of Sierra Leone doing business in clearing and forwarding.
- 2) The Defendant is and was at all material times to this action a client to the Plaintiff.
- 3) It was agreed that the Plaintiff was to clear six (6) Automated Teller Machine (ATM) and One (1) Box of Accessories for and on behalf of the Defendant.
- 4) It was a term in the agreement that upon delivering of the said goods to be Defendant, the Plaintiff was to receive the sum of Le 95, 207, 471.37 (Ninety-Five Million, Two Hundred And Seven Thousand, Four Hundred And Seventy-One Leones, Thirty-Seven Cents) within 24 hours as payment for the clearing and delivering of the aid good.
- 5) In compliance with the aforementioned agreement the Plaintiff delivered the ATM's and one box accessories as agreed by the Defendant.
- 6) The Defendant promised to effect payment of monies expended by the Plaintiff in clearing the machines in 24 hours after delivery.
- 7) In breach of the agreement, the Defendant has refused to pay the agreed sum to the Plaintiff.

- 8) By letter dated 16th June, 2015, solicitors for the Plaintiff reminded the Defendant to honour his own part of the agreement and pay the agreed sum but to no avail.
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- 9) The Defendant is determined not to pay the Plaintiff unless ordered by the court.
- 10) As a result of the conduct of the Defendant the Plaintiff have suffered special damages, to wit, **PARTICULARS OF SPECIAL DAMAGES** were as follows
- i. The Plaintiff at all material times to this action commenced payment for two (2) containers of flour from KARAHAM DEGIRMENCILIK the sum of USD 18,500.00 (Eighteen Thousand Five Hundred United States Dollars).
 - ii. on the strength of the aforesaid payment the said KARAHAM DEGIRMENCILIK ship the two (2) containers of flour which are presently at the Quay.
 - iii. In a meeting held at the premises of the Plaintiff company on the 4th day of May, 2015, the Defendant promised that they will pay the sum due and owing to them in twenty-four hours. The Plaintiff indicated to the Defendant that they needed the payment to clear two containers of flour from the Quay.
 - iv. At the expiration of the twenty-four hours the Plaintiff approached the Defendant and demanded the payment as promised. But the Defendant neglected to pay up.
 - v. When the Defendant refused to pay the Plaintiff, the Plaintiff could no longer clear the aforesaid flour from the Quay.
 - vi. That the flour at the Quay had now gone bad considering that it had been in the containers for more than three (3) months.
 - vii. That the flour has also been at the Quay since the 16th day of May, 2015 and have accumulated demurrage charges for more than the cost of the flour and its clearing from the Quay.
 - viii. That this loss is due in whole to the Defendants refusal to pay the Plaintiff the sum due and owing him in the said contract within the stipulated time frame.

DEFENDANT'S CASE

The defendant defended the action by filing a defence .The same is produced verbatim here as follows

1. The Defendant cannot deny or admit paragraph 1 of the Plaintiff's Particulars of Claim and put the Plaintiff to strict proof thereof.

2. The Defendant denies paragraph 2 of the Plaintiff's Particulars of Claim and states that it is not a client of the Plaintiff.
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3. The Defendant denies paragraph 3 of the Plaintiff's Particulars of Claim and states that there was no agreement between the Defendant and the Plaintiff to clear six (6) Automated Teller Machines (ATM) and one (1) box of accessories for an on its behalf.
 4. The Defendant denies paragraph 5 and 6 of the Plaintiff's Particulars of Claim and states that it did not enter into an agreement with the Plaintiff at any material time.
 5. The Defendant denies paragraph 5 and 6 of the Plaintiff's Particulars of Claim and would aver that it entered into contract with and paid SPL International Group Limited (based in Nigeria) for end to end delivery of six (6) refurbished ATM Machines and their keypads. SPL International Group Limited in turn sub-contracted Bigtex International (also based in Nigeria) through their local agent to deliver same.
 6. The Defendant denies paragraph 7 of the Plaintiff's Particulars of Claim and states that there is no privity of contract between itself and the Plaintiff because it did not contract the Plaintiff to clear any ATM Machine on its behalf.
 7. In answer to paragraph 8 of the Plaintiff's Particulars of Claim, the Defendant respondent to the Plaintiff's solicitor by a letter dated 2nd July, 2015 disproving the allegations made on behalf of the Plaintiff.
 8. Save as is hereinbefore or hereinafter expressly admitted and not admitted the Defendant denies each and every allegation contained in the Plaintiff's Particulars of Claim as they were herein set out and specifically traversed seriatim.
 9. Paragraph of the Particulars of Claim stated it was agreed that the Plaintiff was to clear 6 Automated Teller Machines ATM and one (1) Box of accessories for and on behalf of the Defendant.
 10. Paragraph 4 also stated "upon delivery of the said goods to the Defendant, the Plaintiff as to receive the sum of Le 95,207,471.37 within 24 hours as payment for the clearing and delivery of the said goods.

EVIDENCE

Witnesses were called by both the plaintiff and the defendant. The same could be noted from the Judges notes 1-52 inclusive and the same have been carefully taken into consideration. The Pit and Marrow of the Plaintiff's case is that there was a contract between his company and the defendant GT BANK..

This case started as an order 16 application for summary judgement and later this court having refused the application gave directions for trial to prove whether there was indeed contract to clear the 6 ATM Machines and 1 accessory or not.

CONSIDERATION OF THE ISSUE

For there to be a contract there must be offer and acceptance which constitutes an Agreement- consensus ad idem, consideration and intention to create legal relationship. There is however none here. There is no proof of such agreement whether in writing, orally or by conduct; and similarly so, no consideration or intention to create legal relations.

The Defendant on the other hand was able to prove that they had an agreement with SPL Limited for the clearing of 6 ATM machines and one Accessory. See Exhibit E 1 & 2 and that it was by virtue of that Agreement that the ATM Machines were shipped to Freetown and cleared whereupon they received same.

They therefore had an arrangement with SPL Limited and SPL Limited alone whereby BSP Attune the plaintiff herein was not a party. There was therefore no privity of contract between them and BSP Attune the Plaintiff herein.

Privity of Contract means that only the parties to a contract are allowed to sue on the contract.

In **PRICO v EASTON (1833) 4 B & Ad 433** it was held that the Plaintiff being no party to the contract was unable to recover and it was said that an action for breach of contract must be brought by the person from whom consideration moved. This decision was followed in **TWEDDLE V ATKINSON (1861) 1 B&S 393**, In the case of **DUNLOP PNEUMATIC TYRE CO LTD V SELFRIDGE & CO LTD** the rule that no one except a party to contract should enforce it was re-enforced by the House of Lords. Lord Haldane LC had this to say.

“Under the Laws of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property as for example under a trust but it cannot be conferred on a stranger to a contract as a right to enforce the contract in person.”

This same Law is applicable here. The Plaintiff nonetheless appears to be saying consideration moved from him by his clearing. To this, this court says he only cleared which is not enough to cover the contract price and for whom and under whose behalf is uncertain from the evidence. Certain facts as proved does not help their case.

- a) The amount of money Le 95, 207, 471.37 (Ninety-Five Million, Two Hundred And Seven Thousand, Four Hundred And Seventy-One Leones, Thirty-Seven Cents) was for the shipment and delivery, not just for delivery.
- b) Whereas it could not be doubted that BSP Attune did deliver-on whose behalf were they doing this?
- c) It is clear that SPL entered into contract with GTB the defendant herein who in turn subcontracted to a company called Bigtech. This however did not change GTB's obligation to SPL with whom they had contracted and for whom there were no complaints. The contract sum was therefore paid to SPL

There is a possibility that Bigtech sub-contracted to BSP Attune. But this is not BSP Attune's case neither is there evidence of this before this court. Even if there were BSP Attune's remedy will be against Bigtech Company for whom they served as contractor and agent. The involvement of GTB the Defendant in this debate becomes uncalled for and unnecessary.

The most important issueis that when the Defendant received the goods they received same supposedly from SPL limited with whom they had contracted even if same was not specifically delivered by SPL. BSP Attune the plaintiff was a complete stranger to that contract. They were a complete stranger because BSP Attune the plaintiff was not acting as agent of SPL with whom it had no business. Under the law on Doctrine of Privity of contract there is an exception which says that If A had made a contract with B, C may intervene and take A's place provided it can be shown that A was acting throughout as C's Agent . This right of intervention is known as the doctrine of the undisclosed principal . But such is inapplicable in the current state of affairs in this case where A – SPL was acting solely on its own and not as agent of BSP attune.

GTB the defendant having paid SPL cannot now be made to pay BSP attune for the same thing twice and or to pay an amount of Le95, 207, 471.37 (Ninety-Five Million, Two Hundred And Seven Thousand, Four Hundred And Seventy-One Leones, Thirty-Seven Cents). for just the delivery which seemed to have been carried out by BSP Attune instead of Bigtech

The case against the Defendant therefore fails.

I order costs against the plaintiff. Costs to be taxed


Justice Desmond B. Edwards

20/11/2014