

R.NO. 15

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)
FAST TRACK COMMERCIAL COURT

BETWEEN:

ROKEL COMMERCIAL BANK (SL) LIMITED
25/27 Siaka Stevens Street
Freetown

- PLAINTIFF

AND

CHRISTIAN OGOO
T/A Datatel Connections
39 J Wilkinson Road
Freetown

- DEFENDANT

COUNSEL

O. JALLOH ESQ

- PLAINTIFF

B. E. JONES ESQ

E. E. SHEARS – MOSES

- DEFENDANT

BEFORE THE HON. LADY JUSTICE F. BINTU ALHADI J.

JUDGMENT DELIVERED ON THE JULY 2019

JUDGMENT

The Plaintiff's action commenced by Writ of Summons filed on the 21st of July 2014 against the Defendants claiming the following:

1. Recovery of the sum of Le 6,768,646,723.00 (Six Billion Seven Hundred and Sixty Eight Million Six Hundred and Forty Six Thousand Seven Hundred and Twenty Three Leones).
2. Further and/or in the alternative an Order be granted for the mortgages in respect of properties situated at Wilberforce Motor Road, Congo Cross, Freetown as shown on survey plan L.S.103/95 and at Kissy Dockyard, Backwind Road, Freetown as shown on survey plan LOA 797A dated 1st September 2006 respectively to be enforced by the sale of the mortgage.
3. Further and/or in the alternative delivery of possession to the Plaintiff by the Defendant of the said mortgaged properties.
4. Further or other relief.
5. Costs.

Appearance was entered and filed by the Defendant on the 1st of April 2015. Defence and Counter-Claim were filed on the 14th of April 2015. Whilst a Reply and Defence to Counter-Claim were filed on the 8th of June 2015.

Pleadings were closed on the 29th of July 2015 and Alternative Dispute Resolution (ADR) commenced on 16th September 2015. ADR failed on 16th September 2015.

Trial commenced on 3rd October 2015 and ended on the 24th of April 2017.

The issues in dispute are as follows:

1. Whether the Defendant is indebted to the Plaintiff in the sum of Le 6,768,646,723.00 (Six Billion Seven Hundred and Sixty Eight Million Six Hundred and Forty Six Thousand Seven Hundred and Twenty Three Leones) by virtue of banking facilities granted to the Defendant and his businesses by the Plaintiff?
2. Whether the Defendant stood as surety and mortgaged his freehold properties in regard all loan facilities granted himself and his businesses by the Plaintiff, is liable to repay the sum due and owing to the Plaintiff or deliver possession of the said mortgaged properties to the Plaintiff?

3. Whether the Plaintiff by their actions encouraged and supported the sale of Datatel GSM Licence thereby causing the business to collapse and a loss of US\$ 17,000,000 to the Defendant.
4. Whether any breach of agreements and/or confidentiality was caused or occasioned by any act of the Plaintiff to confer on the Defendant a right to claim damages notwithstanding the Defendant express consent for the Plaintiff to disclose information relating to the same and his businesses?

SUMMARY OF CROSS-EXAMINATION OF THE 1ST WITNESS FOR THE PLAINTIFF, MS. HENRIETTA KARGBO.

Under cross-examination by Mr. Shears-Moses, Ms. Kargbo testified that she could vouch for the accuracy of the accounts of the bank. She submitted that the defendant owes the bank Le 6,000,000,000 (Six Billion Leones) plus. She said that at some point, Le 3,000,000,000 (Three Billion Leones) would have appeared to be reducing, but that in actual fact the interest was accruing so he could not have paid the initial Le 3,000,000,000 (Three Billion Leones) owed. She confirmed that the monthly standing order of Mr. Ogoo was Le 140,412,813. 00; and that it was 36 monthly instalments standing order that was agreed.

She said, inter alia, that at some point Mr. Ogoo started paying off the loan. That although on the face of the statement, it shows that the standing order was effected, it becomes clear later that some payments were reversed. She made reference to the exhibits and explained to the Court.

SUMMARY OF CROSS-EXAMINATION OF THE 2ND WITNESS FOR THE PLAINTIFF, MR. MUSA NUR KAMARA.

Mr. Kamara informed the Court that he was the Director of Legal and Licences Department at the National Telecommunications Commission (NATCOM) and that he was the custodian of all legal instruments, all correspondences relating to legal issues and that he was au fait with all the happenings of the commission.

He told the Court that NATCOM does not sell licences but assign them for a specific period of time. He said that based on correspondences between Cellcom and Datatel and when they became aware of the asset purchase agreement between Datatel and Cellcom, the commission allowed Cellcom to use the Defendant's licence and frequencies. He maintained that the asset

purchase agreement between the two companies amounted to a transfer of the license held by Datatel to Cellcom. He said that prior to theaforestated, meetings were held between NATCOM and Datatel and Cellcom. He made references to the minutes of the meeting which were exhibited. He said that the transfer was done on the pre-condition that Cellcom then, was interested in having a licence and spectrum on condition that debts are paid. He re-emphasised that the Commission does not sell but assigns.

Mr. Kamara testified that in the end the Commission cancelled the licence of Datatel and its frequencies were retrieved. He said that prior to this, Datatel was not in operation for a period exceeding two years; hence a retrieval meant that the Commission took over ownership. The licence and frequencies become property of the Commission. He said that the Commission was not acting as an agent of the Plaintiff bank.

Under re-examination, Mr. kamara testified that if an amount of US\$ 3.8 Million was paid as had been offered, the Commission would have benefitted; since Datatel then as an operator was holding on to the resources of the Commission; and the said offer would have relieved Datatel of their debt. He submitted that Datatel was holding on to the licence and were not utilizing it.

Summary of Cross-Examination of the Defendant – Mr. Christian Ogoo

Mr. Ogoo inter alia told the Court that Datatel Network GSM is the owner of the licencethat formed part of the agreement between Datatel and Cellcom; and that Datatel GSM Network is a company with shares. He said that he had shares in Datatel GSM company but that he does not know how many shareholders there were; and that there was no resolution for the sale of DatatelLicence.

He denied that the reason for the execution of the asset purchase agreement was to off-set the debt to Rokel Commercial Bank; and that he remember attending meetings at NATCOM for various reasons. He said that he could not remember that the debt to Rokel Commercial Bank was discussed at the meetings.

In reference to a supplemental affidavit in opposition , in which he deposed to the fact that Datatel Connection was a partnership (Exhibit A45), Mr. Ogoo denied that Datatel was a partnership between him and ArinaOgoo.

SUMMARY OF SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF – MR. BERNARD JONES

In his closing submissions to the Court, Mr. Jones inter alia, informed the Court that the Plaintiff, on the application by the Defendant, granted the latter and his businesses banking facilities in consideration of which the Defendant granted the Plaintiff collateral and executed legal mortgages. He said that, having utilized the funds provided to him by the Plaintiff, the Defendant refused to repay the same and has made unfounded and baseless claims against the Plaintiff for the sum of US\$17,000,000 (Seventeen Million United States Dollars).

Mr. Jones submitted that the evidence before the Court overwhelmingly and unequivocally shows that the Plaintiff granted the Defendant and his businesses banking facilities to the tune of Le 6,768,646,723.00 (Six Billion Seven Hundred and Sixty Eight Million Six Hundred and Forty Six Thousand Seven Hundred and Twenty Three Leones.)

He asked the Court to dismiss the counter-claim made by the Defendant, based on the evidence adduced before the Court with particular reference to the testimony of PW1, the varied and inconsistent testimony of the Defendant and his claim for US\$17,000,000 (Seventeen Million United States Dollars) against the Plaintiff.

Mr. Jones pleaded with the Court to uphold the Plaintiff's claim and grant the Orders as prayed for.

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT – MR. E. E. SHEARS – MOSES

Mr. Shears-Moses submitted to the Court inter alia that, there is a question over whether Mr. Christian Ogoo should be the proper Defendant considering the evidence before the Court. He argues that if the Court decides that the wrong person has been brought before the Court, then the action must fail. He said that there must be credible evidence that Datatel Connection is the business name of Christian Ogoo. He suggested that if it was a partnership, it is the partnership that should have been brought to Court.

He maintained that the Plaintiff's unilateral suspension of the loan was a repudiation or rescission of its contract with Datatel. He also stated that when

the repayment of the loan and interests were calculated over a 24 months period, it showed that there had been full repayment.

Counsel for the Defendant opined that the loss incurred by the actions of the Plaintiffs working with NATCOM, amounted to over US\$17,000,000,000. That this loss crippled his business activities. He submitted that the Plaintiff's claim is lacking in merit and should be dismissed with costs; since there has been substantial evidence in furtherance of the counterclaim.

FINDINGS AND ANALYSIS OF THE COURT

What is the status of Datatel Connections? From the exhibits presented in Court, there is a partnership agreement between Christian Ogoo and LerinaOgoo. I also note that Datatel Connections was registered as a business of general information technology and tv media services under the Business Registration Act No. 17 of 1972. Furthermore, another letter written by DatatelGSM International Limited to the Plaintiff bank informing it that Datatel Connections, Datatel Network GSM Limited and Datatel GSM (SL) were all companies owned by the group. It thus very clear how muddled the status Datatel Connections is. What is clear however, is that the way the Defendant was operating the group of accounts was as if it was his personal property.

From all indications, Datatel Connections was registered as an ordinary business enterprise. It was not registered as a limited liability company in Sierra Leone even though he referred to himself and the bank did as well as a managing director and Chief Executive Officer (CEO). No evidence was adduced to show resolutions of board meetings of the shareholders nor was any board authority shown giving him permission to take out loans and banking facilities on behalf Datatel Connections.

I am also surprised that the Plaintiff bank in line with its corporate governance code, due diligence and duty to its shareholders and customers, did not ensure that the distinctions were drawn in the operation of the bank accounts. Instead the bank allowed Mr. Ogoo to operate the various accounts as his personal business; hence Mr. Ogoo will have to take personal responsibility.

Did the Defendant, Christian Ogoo trading as Datatel Connections apply for a loan? E.P. Ellinger et al, 'Ellinger's Modern Banking Law' [2011] 5th edition, Oxford University Press Publishers at 773 defines a loan as the act of lending, especially a sum of money lent, often at interest and for temporary use. It is a commitment to providing finance when the borrower wishes to draw on it. The amount so lent is debited to a loan account opened in the borrower's name. Interest is charged on the debit balance entered in the loan account. Repayments have to be made according to a fixed repayment schedule. Many doctrines applying to loans, fall within the domain of general contract law; Ellinger's (supra) at 773.

An overdraft on the other hand, is to draw on in excess of the amount credited to the drawer. It is the amount overdrawn. It also involves the extension of credit to a customer for a relatively short period of time. A fee is usually charged for the facility and where such an agreement exists, the customer is given a ceiling defining the maximum amount he is allowed to overdraw on his account at any given time. A bank is not obliged to allow its customer to overdraw an account unless it is contractually committed to doing so; Cunliffe Brooks & Co. v Blackburn and District Benefit Building Society (1884). Where the customer's account becomes overdrawn or exceeds its overdraft limit without the bank's prior consent, the bank may charge the customer a higher rate of interest and potentially additional bank charges; Lloyds Bank plc v Voller [2000] 2 All E R (Comm). Interest is calculated on the daily balance and is debited to the account periodically, usually monthly in arrears; Ellinger's (supra) at 753. As a matter of lending practice, a bank is required to inform a customer that the overdraft is repayable on demand. Whilst the customer can expect to utilize the overdraft for the nominated period, the bank can, under the standard formulation, demand immediate repayment if there are unfavourable developments; Re Morris, Mayhew v Halton [1922] 1 Ch. 126, 133 (CA).

From the facts of the case, I note from Exhibit A, attached to the affidavit of Lemuel B. Cole sworn to on the 10th day of December 2013, a Credit Analyst in the Plaintiff bank, that an ordinary loan of Le 3,000,000,000 (Three Billion Leones) was granted to Mr. Christian Ogoo as the Managing Director of Datatel Connections on the 11th of May 2005. The purpose of the loan was to finance in the medium term, the settlement of the second instalment payment to Huawei Technologies Corporation Limited; for the supply of communication equipment and for other implementation costs.

It was a term of the agreement that, the facility was repayable on demand but subject to the overriding condition, was to expire on the 31st of December 2008. The security for this loan was that, the bank will take legal mortgage over a property situate at No. 144 Backwind Road, Kissy Dockyard. It was also agreed that interest on the loan will be charged to the loan account at 2 % above the bank's prime lending rate, which was at 25% per annum.

It was also stated in the agreement, to which Mr. Ogoo accepted and signed, that there were other conditions, such as other outstanding facilities in the name of the business and that they stood as: Overdraft at Le 250,000,000 and Discounted Loan at Le 145,000,000. It was further stated that the Plaintiff bank held an existing mortgage over the property at Signal Hill, registered and stamped to cover Le 250,000,000.

From Exhibit 46 (3) which is a statement of account at page 1, a credit amount of Le 3,000,000,000 (Three Billion Leones) and exhibit 46 (2) a credit entry made on the 13th of May 2005 to Datatel Connection.

Prior to the facilities agreement of the 11th of May 2005, I note exhibit 2 in the Plaintiff's bundle "A", a discounted loan application dated the 31st of January 2003 for the business expansion of "Datatel Connections" requesting an amount of Le 600,000,000 (Six Hundred Million Leones). On the 7th of February 2003 the requested facility was granted and on the 10th of February 2003, Mr. Christian Ogoo as Managing Director of Datatel Connections accepted and agreed to the terms of the Discounted Loan facility by appending his signature; Exhibit 4 of the said Plaintiff's bundle.

On the 12th of May 2003 the Plaintiff bank wrote a letter addressed to Mr. Christian Ogoo as the Managing Director of Datatel Connections confirming "a formal overdraft facility limit of Le 250,000,000 (Two Hundred and Fifty Million Leones) in favour of Datatel Connections and to expire on the 19th of August 2003. In the same vein, the bank stated that it awaits a pending valuation report on a Signal Hill property in order for it to proceed with securing a legal mortgage on the property as security for the borrowings. The Defendant was reminded that the overdraft facility remained repayable on demand and at an annual interest rate of 3% above the bank's prime rate. On the 15th of May 2003 Mr Christian Ogoo sent a reply agreeing to the offer and the terms of the offer; Exhibit 7 of the Plaintiff's "A" bundle.

Furthermore, I note that on the 5th of July 2004, the Managing Director of Datatel Connection applied for a loan for "Datatel GSM (Mobile Phone) Project." The requested amount was US\$ 500,000 (Five Hundred Thousand United States Dollars) in order "to address some inland and unbudgeted expenditures towards the launching of the first phase of our GSM operation which will cover the whole of the inhabited areas of Greater Freetown." I did not see a response to this request and as such it is not clear whether this facility was availed; Exhibit 8 of the said Plaintiff's Bundle "A".

Exhibit 14 of the said Plaintiff's bundle "A" is a letter dated 12th December 2005 from the Plaintiff to the Defendant in his capacity as Managing Director of Datatel Connections, availing him additional banking facilities comprising of : Existing overdraft to the tune of Le 250,000,000 and an additional overdraft granted of Le 500,000,000; bringing it to a total of Le 750,000,000. The letter stated that the overdraft is repayable on demand but that subject to that, it expires on the 3rd of May 2006. He was reminded that the loan account of the business stands at Le 3,485,000,000 and that it was to expire on the 31st of December 2008.

In the said letter of 12th December 2005, the Plaintiff bank stated that as an additional security for the increased overdraft granted, it would require a debenture charge over the fixed and floating assets of the company. This offer letter was agreed to by Mr. Ogoo and he signed it on the 4th of January 2006.

I note that on the 9th of January 2006, the Plaintiff bank wrote a letter in reply to the Chief Executive Officer of Datatel Connections, Mr. Christian Ogoo, who was asking for a deferment of loan repayment and to which an extension of one month to the repayment of the loan was given. The repayment was to commence on the 31st of January 2006; exhibit 16 of the Plaintiff's Bundle "A".

In another development, exhibit 18 of the said bundle, shows a letter dated 29th May 2006 asking for another deferment of loan repayment for a period of three (3) months, effective May 2006, June and July 2006.

On the 19th of September 2006, the Plaintiff bank wrote a letter to Mr. Christian Ogoo, Managing Director of Datatel Network GSM advising him of his overdrawn positions on the banking facilities that had been offered to him; Exhibit 19 of the said bundle. The letter stated the overdrawn positions of Datatel Network GSM as: Account No. 1115665 – Expired overdraft limit of Le 175,099,823.71 debit; Account No. 1116300 – expired overdraft limit of Le

885,914,214.18 debit: and Account No. 1114871 – ordinary loan of Le 3,491,578,511.96 debit.

The said letter (exhibit 19) also points out that the loan repayment was not resumed at the end of August 2005, after a period of three months moratorium; since there were insufficient funds in account no. 1115665.

I note that exhibit 22 of the said bundle not only deals with the mortgage of the Kissy Dockyard property; but also about possibilities of partnership with other telecommunication companies in a bid to address the indebtedness of Datatel.

From the above mentioned facts, none of the above were controverted during cross-examination. Also, considering when the deferments of payments of loans were made, I take it that interest continued to run at above the prime lending rate; because no reference was made to deferments of interest payments. It is clear that indeed loans and overdraft facilities were given to the Defendant as the Managing Director of Datatel Connections. However, what is not clear to the Court, is whether Datatel Connections is a limited liability company, a partnership or a sole proprietorship; given that Mr. Ogoo has been referred to as 'Managing Director.'

I also note from the Plaintiff's Bundle "A", exhibit 12, which is a letter written by the Business Centre Director of the Plaintiff bank, dated the 7th of June 2005; captioned "Datatel Group of Accounts" requesting that the Defendant, Mr. Christian Ogoo as Managing Director of Datatel Connections, do take active steps to bring the accounts of "Datatel Internet Account" and "Christex Commercial Bureau" into credit as they were overdrawn without the authority of the bank. In other words, he had no overdraft facilities on these accounts and these accounts were part of the "Datatel Group of Accounts."

Another question that therefore arises, is whether Mr. Ogoo was operating these accounts as his own personal business enterprise account or whether they were company accounts? As it stands right now from my analysis, it appears that no distinction was being made in the operation of the accounts under the "Datatel Group of Accounts" by the Plaintiff bank. The bank was allowing him to operate the group accounts as his personal accounts; and this calls into question the operation of the Plaintiff bank. The bank should know the implications of liability when it comes to dealing with different personalities.

Is the indebtedness up to Le 6,768,646,723.00 (Six Billion Seven Hundred and Sixty Eight Million Six Hundred and Forty Six Thousand Seven Hundred and Twenty Three Leones)?

The Court is of the view that it is; since it comprises the principal debt and the interest accrued over the period of time on the debt and the remainder being interest accrued on the debt at the rate of 27% per annum. The defendant raised a number of issues about the indebtedness and the standing orders and the witness for the Plaintiff answered under cross-examination. She explained that " yes the defendant owes Le 6 Billion plus and that at some point the Le 3 BN would have appeared to be reducing, but in actual fact the interest was accruing so he could not have paid the Le 3 BN.

At some point he started paying off the loan; although on the face of the statement, it shows that the standing order was effected and later some payments were reversed. She referred the Court to page 142 of the defendant's bundle showing a standing order on 30th January 2008; and a reversal on 1st February 2008. As at 31st December 2007 the bank decided to classify these groups of accounts to the non-operations category and at this point the debt for all the 3 accounts that are before this Court, were crystallised as at the balance for 31st December 2007. These standing orders were system originated so as to the respective dates, the system dropped the standing order and many were subsequently reversed. So actually if we take all the three (3) accounts as at 31st December 2007 when the debt was crystallised, we will have a debt account of Le 6,768,646,723.45.

Under cross-examination, the witness for the plaintiff bank, said that the loan facility was granted to Datatel on the account no. 1116300 and credited with the proceeds of the loan. Under normal circumstances, servicing of the loan facility would have come from this account except otherwise requested by the customer and in light of the matter before us, the bank started to service the loan in December 2005 from this current account 1116300. However, as mentioned earlier, there were insufficient fund in account no. 1116300 and the customer was invited by Management to inform him that the account no. 1116300 cannot service the loan account and it was decided at that meeting that the loan will be serviced by the Datatel GSM account no. 1115665. Eventually, since this account was servicing it, it turned into a debit balance because of insufficient funds in the account."

During re-examination, Ms. Kargbo further clarified the indebtedness when she referred to exhibit B39 of the plaintiff's bundle and exhibit 13 and 142 of the plaintiff's bundle and exhibit 46 (3) and 46 (4) showing the closing balance. The closing balances were the same. The balance in exhibit B39 was subsequently reversed. It did not change the defendant's indebtedness to the bank in any way. Since if one adds up the balances on exhibit B39, it would be the same balance if you add up the balances as at 31st December 2007, it would be the same. The reasoning for that is the standing order that went through for January of 2008 increased the balance on the account ending 4871 loan account, whilst it reduced the outstanding balance on the other account. This was reversed, the position did not change.

On the question on how was the standing order figure of Le 142,813,000 arrived at? The interest from the granting of the Le3BN loan in May 2005 was consolidated with the debt of Le 3BN at the end of the 6 months period i.e. November 2005. That amount of Le 3,485,000,000 was consolidated and imputed into the bank's amortization template. The template then consolidated that amount at the rate of 26% interest rate over a period of 36 months. Thus all things being equal, meaning if there had been no further moratorium as we could see from the months of December 2007 and 3 months in 2008 and reversals due to insufficient sums, the repayment amount to Le 142, 813, 000 paid over a period of 36 months would have been payment of the amount of Le 5,054,861,253.75 cents which the total amount of the interest that would have been paid to the bank and the consolidated amount of Le 3,485,000,000."

In support of the above, the Court was referred to exhibit letter dated 12th December 2005 in which the Defendant acknowledged his indebtedness of Le 3, 485,000,000 and Le 750,000,000. The letter was executed by the Defendant and the Business Centre Director. The letter stated thus: Subject: Datatel Connections. 'we refer to your company's recent written request for additional overdraft facility of Le 1.5 Billion and convey the bank's approval of the following facilities: 1. Existing overdraft of Le 250,000,000 and 2. Additional overdraft granted of Le 500,000,000 totalling Le 750,000,000. The overdraft remains payable on demand by the bank.....additionally an ordinary loan of Le 3,000,000,000 was approved on 5th May 2005. The balance of the loan account after 6 months moratorium now stands as Le 3,485,000,000 and it is payable at Le 140,412,813 per month with effect from 31st December 2005 to 31st December 2008. The defendant claims to have paid all debt as at 2005 but several

correspondences show the contrary. The correspondences span from 2005 to 2008.

Did the Defendant mortgage his freehold properties in exchange for the loan facilities being granted to him and his businesses by the Plaintiff? If so, is the Defendant liable to repay the sum due and owing to the Plaintiff or deliver possession of the said mortgaged properties to the Plaintiff?

From the facts and analysis of the case and cross-examination of the Plaintiff's witness, it is confirmed that in consideration of the grant of the lending facilities to the defendant and his businesses, the defendant stood as a mortgagor and put up his freehold properties and executed two legal mortgages in favour of the plaintiff. That in consideration of the grant of the said facilities the Defendant put up his freehold properties situated at No. ??? Wilberforce Motor Road, Congo Cross, Freetown as shown on survey plan L.S. 103/95 and at Kissy Dockyard, Backwind Road, Freetown as shown on survey plan LOA 797A dated 1st September 2006 respectively as collateral and executed legal mortgages in favour of the Plaintiff.

Did the Defendant and his businesses as a result of a breach of duty of confidentiality and purported sale of its GSM licence suffer a loss of US\$17,000,000?

It is the position of the Defendant that the Plaintiff by its action encouraged and supported the sale of Datatel GSM Licence, thereby causing his business to collapse and lose US\$ 17,000,000. That the Plaintiff held negotiations with various potential buyers of Datatel GSM Licence and assets without the consent of the Defendant and passed on vital information that affected future negotiations with other potential buyers. However, in a letter dated 15th February 2008 from the Defendant which stated inter alia, " I am pleased to convey my written letter of consent as a result of a meeting held with shareholders of Celcom Telecommunication (SL) Limited at Country Lodge in Freetown. It was agreed that the company lawyer Mr. F. C. Margai assume the responsibility to negotiate with creditors and thereafter advise the outcome." "This letter now formalized my verbal instruction to the bank and requests the full disclosure of Datatel total liabilities with the bank, in view to negotiate and to seeking an amicable solution for final settlement."

From the aforementioned evidence, the Court is of the view that Mr. Ogoo gave his tacit consent to the Plaintiff bank to negotiate with potential buyers of his business in order to settle his liability with the Plaintiff bank.

Did the bank disclose information relating to the Defendant to 3rd parties? Yes the bank did, based on the consent and knowledge of Mr. Ogoo. Exhibit 26 dated 28th January 2008 and Exhibit 27 – letter of consent. In: Tournier v National Provincial and Union Bank of England [1924] 1 KB 461 Lord Justice Bankes recognized that disclosure of confidential information by a bank was permitted 'where the disclosure is made by the express or implied consent of the customer.' Establishing the existence of a customer's express consent is largely a factual question and its scope depends upon whether the customer consented to disclosure generally or whether the consent was limited to a particular occasion or particular information; Murano v Bank of Montreal (1988) 41 OR (3d) 222; and Ellinger at p 194. Halsbury's Laws of England 3rd edition, vol. 2 at page 241, paragraph 455 under the rubric: 'Extent of Obligation to Secrecy': " it is an implied term of the contract between the banker and his customer that the banker will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account or any of his account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a court, or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interest requires it."

Under cross-examination the Plaintiff's witness, MsKargbo, disclosed that the bank made disclosures to 3rd parties and it was with the consent of the Defendant. She said that it was NATCOM in its role as regulator which introduced interested parties to the Defendant to solve the Defendant's indebtedness. Also, that NATCOM introduced the interested parties to the bank and that Mr. Ogoo was aware at all times. She said that the sale of the licence originated from Mr. Ogoo and that he was in the picture from the very start. That to her knowledge, Datatel was looking for someone that would buy the debt and pay off Rokel Commercial Bank, the Plaintiff herein. Ms. Kargbo opined that the bank did not benefit anything at all from any sale, if there was one at all. She concluded that the bank did not receive anything for the liabilities of Datatel.

In his testimony as 2nd witness for the Plaintiff and representative of NATCOM, Mr. Musa NuirKamara, testified that NATCOM was not an agent for Rokel Commercial Bank or for any other institution, in so far as the licence granted to Datatel GSM was concerned. He said that the Commission became aware of the dealings between Datatel and Cellcom in May 2007; See Exhibit 28. He confirmed that at the end of August 2007 when the commission realized that there was no end in sight between Datatel and Cellcom, the licence was assigned. He said that the Commission does not sell licences, but assigns them. Mr. Kamara testified that in all the meetings, Mr. Ogoo or his representative was present and that at no time did Mr. Ogoo raise an objection to the presence of the banks; see Exhibit 49 of the Plaintiff's bundle, which is a copy of the minutes of a meeting on the transfer of the GSM licence.

Additionally, based on the evidence, at the time the Plaintiff gave its consent for the assignment of the license, there was already a court order dated the 8th day of January 2008 in respect of the said license and assets of the defendant's company. The court had ordered an attachment of the said license for the payment of debt. Therefore, the license was technically no longer the asset of the Defendant and his company.

From all the evidence adduced so far, I find it difficult to come to a conclusion that Mr. Ogoo and his business lost US\$17,000,000 as a result of breach of duty of confidentiality and sale of its GSM licence.

Breach of Contractual Agreement/Accounts Operations. The Defence raised issues that the Plaintiff suspended the banking facility on conditions not stated in the contractual agreement dated 5th May 2005 and that the Plaintiff by its acts of suspending the loan caused the business to lose vital technical support and equipment needed from the vendor, Huawei Technology, to sustain the operation of the Defendant's business.

Under cross-examination, Ms. Kargbo, Plaintiff's 1st witness, disagreed with claim by Defendant that as a result of the suspension of the facility the Defendant was deprived by the ability to make payments to Huawei Technology for equipment, thereby occasioning loss to it and Huawei Technology. This is because, at the time of the suspension, the Defendant had utilized most of the facilities granted. She said that the Defendant failed to provide the Plaintiff the debenture promised; and because of his prevarications to put up the property situated at 144 Backwind Road, Kissy Dockyard as collateral for a mortgage as promised, the Plaintiff had cause at some point to suspend the facility granted the

Defendant and his businesses and only lifted the suspension after the Defendant had made arrangements in regard the provisions to secure his obligation to the Plaintiff.

In his cross-examination, the Defendant confirmed that the suspension of the loan was as a result of his breach of the terms of the loan in that he did not hand in the collateral.

In view of the evidence catalogued above, the Court cannot find that a breach of the contractual agreement occurred.

From all the circumstances of the case, Mr. Ogoo is the proper Defendant and bears liability since the loans and overdrafts were given to him personally without any proof of authority from any partner or board. He signed alone for loans and facilities; although I note that he signed as surety and mortgagor together with Lerina Ogoo of the properties situate at Wilberforce Motor Road, Congo Cross and at Kissy Dockyard, Backwind Road, Freetown.

The Plaintiff bank also bears some responsibility for allowing Mr. Ogoo to be using the business accounts interchangeably with his personal accounts. They did not exercise due diligence as would be expected of a corporate entity. The bank has been complicit in this respect.

In the premises therefore, after due consideration of the evidence herein and the law, judgment is entered for the Plaintiff bank in the following terms to wit:-

Conclusion

1. Defendant's counter-claim is dismissed.
2. The Defendant is liable to the Plaintiff for the repayment of the sum of Le6,718,646,723 (Six Billion Seven Hundred and Eighteen Million Six Hundred and Forty Six Thousand Seven Hundred and Twenty Three Leones).
3. The Plaintiff bank is penalized for its lack of due diligence and negligence; it is to forfeit Le 50,000,000 (Fifty Million Leones).
4. The Defendant is hereby given one month statutory notice from today Wednesday 17th July 2019 to Friday 16th August 2019 being notice of intention to sell the mortgaged properties situated at Wilberforce Motor Road, Congo Cross in Freetown and at Kissy Dockyard, Backwind Road, Freetown .
5. That the said Le 6,718,646,723 is to be paid in 24 monthly instalments commencing 31st July 2019.

6. In the event of a default in any one instalment payment, the entire sum becomes immediately due and owing.
7. In the event of a default in repayment as stipulated in Orders 2 and 5 supra, then the Deed of Mortgages in respect of properties situated at Wilberforce Motor Road, Congo Cross, Freetown as shown on survey plan L.S. 103/95 and at Kissy Dockyard, Backwind Road, Freetown as shown on survey plan LOA 797A dated 1st September 2006 respectively are to be enforced by the sale of the mortgage.
8. In the event of compliance with Orders 2 and 5 supra then the said properties mortgaged are to be re-conveyed to the Defendant.
9. Solicitors costs assessed at Le 50,000,000

Hon. Lady Justice F. Bintu Alhadi
Judge of the High Court