

Admitted Facts – Effect on the Burden of Proof on the Other Party

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 21st Day of June, 2024

Before Their Lordships
Uwani Musa Abba Aji
Helen Moronkeji Ogunwumiju
Chidiebere Nwaoma Uwa
Stephen Jonah Adah
Abubakar Sadiq Umar
Justices, Supreme Court

SC/CV/88/2020

Between

ANTONIO OIL COMPANY LTD

APPELLANT

And

**ASSETS MANAGEMENT CORPORATION
OF NIGERIA (AMCON)**

RESPONDENT

(Lead judgement delivered by Honourable Stephen Jonah Adah, JSC)

Facts

Sometime in 2008, the Appellant entered into a loan contract with Intercontinental Bank, wherein the bank granted the Appellant an overdraft facility of ₦100,000,000.00 (One Hundred Million Naira) for a period of 180 days. As at 27th of May 2008 the Appellant had overdrawn its account to the tune of ₦97,421,614.09. On the 13th and 14th of January 2009, The Appellant paid the sum of ₦30,000,000 (Thirty Million Naira) in part liquidation of the debt owed to the bank. As of 31st October 2009, the debit balance of the Appellant stood at

~~N~~61,255,923.97 which comprise of principal, interest and charges. The Appellant made a profit of ~~N~~23,271,107.04 by trading with the facility granted by the bank within 77 days. At the end of the tenor of the facility, the bank wrote several demand letters to the Appellant for repayment of the loan to which the Appellant responded by seeking indulgence to pay the debt owed in installment. The loan was subsequently taken over by the present Respondent.

When the Appellant defaulted in repayment of the loan sum, the Respondent instituted an action against the Appellant under the Undefended List Procedure. The Appellant filed a Notice of Intention to Defend, and the trial court ordered that the suit be transferred from the Undefended List to the General Cause List to be heard on merit. The suit was heard, and the trial court entered judgement in favour of the Respondent for the sum of ~~N~~61,255,923.79 being the amount owed as of 31st October 2009. The Appellant's Counterclaim was also dismissed by the trial court. Aggrieved by the decision of the trial court, the Appellant appealed to the Court of Appeal, which court also dismissed the appeal. The Appellant appealed further to the Supreme Court.

Issues for Determination

The Supreme Court adopted the issues for determination as distilled by the Appellant for the determination of the appeal, thus:

- 1. Having regard to the wordings of paragraphs 19 and 20 of the Appellant's Statement of Defence and Counterclaim whether it can be said that same amounts to admission such as to discharge the burden on the Respondent of proving the alleged indebtedness of the Appellant in the amount of ~~N~~61,255,923.97 alleged to comprise of principal, interest and charges.*
- 2. Whether the Court of Appeal was right in holding that Exhibit F, G and J were not made on the understanding that the said exhibits will not be used by the Respondent to support her case in court when same (the exhibits) were letters exchanged between parties in the course of finding an amicable settlement of the parties' difference and contained offers of compromise.*
- 3. Whether the lower court was right in holding that Clause 7 of Exhibit A (under the heading "other terms and conditions") gives the Respondent the liberty to call*

in the facility at any time before the expiration of its tenor of 180 days and in effect breaching the contract.

4. *Whether upon a proper evaluation of the pleading and credible evidence adduced by the parties at the trial court, the lower court was right in holding that the Appellant did not prove her counter claim of loss of profit.*

Arguments

On issue one, counsel for the Appellant argued that the Appellant in its pleadings never admitted its indebtedness to the Respondent but rather expressly denied being indebted to the Respondent. Counsel argued further that the admission must be clear, direct, and unequivocal, and not based on misapprehension. He contended that paragraphs 19 and 20 of the Appellant's Statement of Defence and Counter claim are not unequivocal and so clear and direct as to amount to admission of indebtedness to the Respondent. That what is clear from the paragraphs is that the Appellant acknowledged exchange of communication with the Respondent with a view to finding an amicable settlement of the dispute. Conversely, counsel for the Respondent argued that the Appellant in paragraph 19 of the Statement of Defence and Counter claim admitted paras 12, 13, 14, 15, 17, 18, 19, 20 and 23 of the Statement of Claim. Counsel argued that the position of the law in this regard is that once a Defendant admits the receipt of a loan or overdraft, the burden of proof as to the repayment or non-repayment of same is on the Defendant - **KENFRANK (NIG.) LTD v UBN PLC (2002) 15 NWLR (PT. 789) 46**. Counsel submitted that the Respondent led evidence and tendered documents to establish the agreed rate of interest and also led evidence on the sum of ~~N~~61,255,923.79 owed the Respondent by the Appellant.

Arguing issue two, counsel for the Appellant submitted that Exhibits F, G and J were letters exchanged by the parties in pursuit of an amicable settlement of their differences and those letters cannot be used as evidence in court - **ASHIBUGWU v ATTORNEY-GENERAL BENDEL STATE & ANOR. (1988) 1 SCNJ 248, 306 - 307**. Counsel contended that those exhibits were written in the process of negotiation for amiable settlement and that regardless of their not being marked

“without prejudice” they cannot be used as evidence by any of the parties involved. He argued further that there is nowhere in those exhibits in question that the Appellant unequivocally, directly, and expressly admitted its indebtedness. That at best what took place can be called informal admission and that informal admission is not conclusive. The Respondent countered the submission above, contending that Exhibit F, G and J were not made in the course of amicable settlement; rather, they were letters written in response to repayment demands by the Respondent and as such, they cannot be regarded as letters written in course of negotiations. Counsel submitted further that those letters were not marked “without prejudice” and were rightly admitted in evidence and relied upon by the court.

On issue three, counsel for the Appellant argued that clauses of an instrument cannot be read in isolation. Counsel submitted that the fragmented interpretation of the said Clause 7 of Exhibit ‘A’ gave the Respondent the liberty to breach the parties’ contract and did violence to the entire contract of the parties. Counsel for the Respondent argued that the facility was repayable on demand as stated in paragraph 7 of other terms and conditions of the facility.

Regarding issue four, it was the submission of counsel for the Appellant that paragraph 12, 17, 18, 23, and 24 of the Statement of Defence and Counter claim, set out the particulars of her claim as it relates to loss of profit. Counsel argued that the Appellant supported its claim with evidence that was not contested by the Respondent, therefore the Respondent admitted the evidence of the Appellant. Counsel for the Respondent argued that the statement of account of the Appellant was tendered by the Respondent as Exhibit K and the Appellant did not query or contest any of the entries therein. That having admitted the debt, the Appellant needs to pay it.

Court’s Judgement and Rationale

Deciding the first issue, the Supreme Court held that litigation is fought on pleadings of the parties, which is the foundation upon which the case is built till judgement. The success or failure of every case is derived from pleadings; it follows therefore, that a party swims or sinks with his pleadings. The basic rule of pleading is that every pleading must contain only a statement of material facts

which a party to an action relies on and not the evidence by which they are to be proved. It is certain that the Plaintiff needs to plead material facts in his pleading, and it is up to the Defendant in the case to admit or traverse those facts. *It is very fundamental to highlight that a fact which is admitted by the Defendant in his pleadings need not be proved by the Plaintiff but should be deemed as established at the trial. Any fact admitted by a party reduces the burden of proof cast on the other party. In fact, the courts do not need proof of fact already admitted.* The Supreme Court, in agreement with the lower courts, held that the Appellant has by its pleadings admitted its indebtedness to the Respondent as the language used in the pleadings of the Respondent is very clear and completely devoid of any ambiguity. It is incumbent on the Appellant to so discharge the burden of showing the facts that they have repaid the money or state the reasons for non-payment. The said indebtedness was therefore, established from the admission of the Appellant.

On issue two, The Supreme Court held that the exhibits which are letters written by the Appellant in response to the Respondent's demand letters are from their wordings very simple and plain and they do not require any interpretation to understand them. The letters clearly admit the indebtedness of the Appellant. The apex court held that *our law of interpretation is very elementary to state that our cardinal rule of interpretation requires that where the language, words and terms used in any section of law or a document are clear and unambiguous, they must be given their ordinary and actual meaning.* A departure from this principle is only allowed where such terms, words or expressions will lead to absurdity. More so, the letters under reference were not marked "without prejudice"; therefore, they were properly admitted in evidence and duly relied upon by the trial court and the lower court to arrive at the decision that the Appellant was indeed indebted to the Respondent as claimed.

In resolving issue three, Their Lordships held that courts do not make agreement for parties. The duty of the court as an arbiter is to carefully look at the agreements of the parties in their contract and determine their rights thereunder. There is no definition clause in the contract document, which means that the parties never desired that special meanings be applied to the words and phrases used in the contract. Parties in that wise intended that the words and terms used

should be given their plain and ordinary meanings. The court held further that there was nothing before the court to show that the Respondent called off or demanded for repayment of the facility before its expiration, and the burden of proving that the facility was called off before due time is on the Appellant.

In resolving issue four, the Supreme Court held that the onus of proof is on a Claimant to establish its anticipated loss of profit which will help the trial court to assess the accuracy of the projected profits. Relying on the case of **UWA PRINTERS LTD v INVESTMENT TRUST LTD (1988) 5 NWLR (PT. 92) 110**, the apex court held that *loss of anticipated profit is in the nature of special damages which has to be particularized and specifically established by quantity*. The Appellant in this case had the burden of proving the loss alleged by putting before the trial court credible evidence in proof thereof.

In conclusion, Their Lordships held that the Appellant failed to convince the court of the need to interfere with the concurrent findings of fact of the lower court and the trial court.

Appeal Dismissed.

Representation:

S.A. Oshodi Esq., for the Appellant.

Nick O. Omeje Esq., with: C.O. Ezugwu Esq., for the Respondent.

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