FTCC 085/12 2012 R. NO. 95

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

BETWEEN: -

ROKEL COMMERCIAL BANK (SL) LTD -PLAINTIFF

AND

FREETOWN CITY COUNCIL -DEFENDANT

C. V. V. Taylor Esq. for the Plaintiff
M. Garber Esq. for the Defendant

RULING DELIVERED THE 28th DAY OF November 2013

The Plaintiff herein filed a Notice of Motion dated 11th February 2013 in which they are seeking the following Orders

1. That the statement of defence dated 10th January 2013 filed on behalf of the defendant be struck out on the grounds that it discloses no reasonable defence to the action and consequently that judgment be entered for the Plaintiff against the defendant upon the terms prayed for in the statement of claim in this action or as the court may deem fit and just.

2. Alternatively, that paragraphs 1 and 3 of the statement of defence dated 10th January 2013 be struck out on the grounds that these paragraphs are frivolous or vexatious and consequently that judgment be entered for the plaintiff against the defendant for such relief as is prayed for in the writ of Summons in this action or as the court may deem fit or just.

3. Further and/or alternatively an Order that paragraph 3 of the statement of defence dated 10th January 2013 is an admission of the defendant's indebtedness to the plaintiff and that the plaintiff shall enter judgment against the defendant upon its admission as per the reliefs claimed for in the statement of claim in this action pursuant to the provisions of Order 21 rule 13 and Order 34 respectively of the High Court Rules 2007.

4. Further or other reliefs

5. That the costs of this application be borne by the defendant.

In support of the application is the affidavit of C.C.V. Taylor Esq. Solicitor. He deposed therein that a writ of Summons dated 12th October 2012 was issued by the Plaintiff against the Defendant for the recovery of the respective sums of Le 4, 083,333,333 and Le 2, 194, 293, 482. The Defendant entered appearance thereto on 20th December, 2012 and filed a statement of defence dated 10th January 2013.

The deponent opined that the said statement of defence does not reveal a reasonable defence to the action and that the same will serve only to delay the trial and the Plaintiff's right to recover the debt due them.

He deposed further that the defendant operates a current account and a loan account with the plaintiff bank and that it was granted overdraft facilities at the said bank in March 2010 which overdraft were at the request of the defendant converted to a loan in December 2010.

The defendant failed to meet its obligations under the loan and its total indebtedness as at 31st August 2012 stood at Le, 6, 277, 626, 814.

The deponent as solicitor for the Plaintiff wrote a letter of demand dated 28th September 2012 to the defendant. The Defendant failed to adhere to the demand and settle its indebtedness consequently the action herein was instituted against it.

The Defendant opposed the application and an affidavit in opposition sworn to by **JOHN AMADU CONTEH,** Chief Administrator of the defendant was filed on its behalf. He deposed that the defendant in January was granted a term loan of Le 5 billion which also amalgamated and converted various overdraft and other accounts held with the bank by the defendant. The loan was to be repaid over a 5 year period at an annual rate of Le 1 billion per year. The defendant started making repayment but was unable to continue for various reasons.

The deponent went on to state that the defendant does not dispute owing the plaintiff some money but disputes the quantum as being excessive, unconscionable and unreasonable and gave his reasons therefor, chief of which is that the interest being charged on the loan is excessive.

He stated that it is within the discretion of the court to award such interest as are reasonable in the circumstances for payment on judgment debts. He relied on Order 43 rule 18(b) of the High Court Rules 2007.

He concluded by stating that the Defendant may be willing subject to clearance to pay the sum of Le 4 billion as a judgment debt or such other amount as this court may find just and proper. He however implored the court that the said judgment debt should be payable over a 5 year period or other reasonable time consistent with the period originally agreed upon by the parties.

From the facts before the court, it is not in dispute that the Defendants took out a loan from the Bank which they have not liquidated. Their contention is the quantum of the amount due to Plaintiff. Counsel for the Defendant has argued that the bulk of the debt is made up of the interest charged and submitted that the rate is excessive and punitive. He therefore contended that evidentiary hearing is necessary to enable the Plaintiff to explain to the court how much of the total debt is comprised of the principal amount and how much is the amount of interest accrued. He maintained that in the absence of an evidentiary hearing he does not believe that the Plaintiff has established that they are entitled to the sum claimed only by producing bank statements as canvassed by counsel for the Plaintiff, who submitted that the Plaintiff has produced sufficient documentary evidence to prove the amount owed by the Defendant.

Counsel for the Plaintiff further submitted that there is therefore no need for any further evidentiary hearing. He referred the court to all the documents exhibited to his affidavit in support which have sufficiently established the amount owed by the Defendant.

It seems to me that this matter principally hinges on whether or not the Plaintiff has satisfactorily established that the Defendant's defence lacks merit and ought to be struck out. What is clear from the defence and from the submissions of counsel is that they are contesting the amount claimed by the Plaintiff.

Counsel for the Plaintiff has relied on a number of authorities which show that pleadings which show no reasonable cause of action or where the defence is evasive ought to be struck out without extrinsic evidence. He contended that the Defence filed herein is such a defence and should be struck out and judgment entered for the Plaintiff accordingly.

Counsel further submitted that alternatively the court could consider these evasive denials as admissions. In the case relied upon by counsel for Plaintiff, **Thorp vs. Holdsworth** {1876} 3 Ch. D. 637, Jessel, MR stated at page 640 as follows:

> *"When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money it shall not be*

sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received."

In this case the Defendant has merely stated that they "cannot admit or deny paragraphs 3-6 of the Plaintiff's particulars of claim and will put the Plaintiff to strict proof." They have not denied receiving the amount claimed or any part thereof nor have they set out how much they received. Their defence is in essence evasive.

Counsel for the Defendant in opposing the application has relied on a number of authorities to establish that the court can exercise its summary power to strike out a pleading for failure to disclose a reasonable action or defence only where the alleged cause of action on consideration only of the allegations in the pleading were certain to fail.

Counsel for the Defendant has relied on the case **Drummond Jackson vs. B. M. A.** {1970} 1 All E. R. 1094 where Lord Pearson quoting Salmon L. J. in the case **Nagle vs. Feilden** said at page 1101.

"It is well settled that a statement of claim should not be struck out and the Plaintiff driven from the judgment seat unless the case is unarguable."

I shall now refer to the affidavit in opposition to the present application where the Chief Administrator has deposed to the constraints faced by the Defendants in liquidating the debt.

He has therein set out the amount of the loan which he states is Le 5 billion. The deponent has proposed to pay the sum of Le 4 billion as a judgment debt payable over a 5 year period.

Having listened to all the submissions of both counsel herein and taking all the circumstances of this case into consideration, I believe there are issues to be tried. The Defendant has admitted owing the Plaintiff the sum of Le 4 billion and judgment can therefore be entered by the Plaintiff for that amount. The issue of interest accrued on the loan, the balance amount, if any, owed are matters to go to trial.

In sum I make the following Orders

1. That judgment be entered against the Defendant by the Plaintiff for the recovery of the sum of four billion Leones (Le4, 000,000,000/00) owed by the Defendant to the Plaintiff on a term loan.

2. The said amount be repaid in two equal instalments within 2 years from the date of this Order.

3. The issues of the balance amount due and owing on the said loan and the interest payable on the said loan are to go to trial.

4. Costs in the cause.

5. Summons for directions to be taken out by either party.

A. Showers

HON. MRS. JUSTICE A. SHOWERS
Trial Judge

28/11/2013