



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

Case No: FTCC 038/14

THE MATTER BETWEEN:

MONZEL PRATT

- PLAINTIFF

AND

NIMO CONSTRUCTION & TRADING
ENTERPRISES LIMITED

- DEFENDANT

SAMUEL T.M. NAVO ESQ.

- COUNSEL FOR THE PLAINTIFF

NICOL WILSON & CO

- COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA JA
JUDGEMENT DELIVERED ON THE 18th OCTOBER, 2016

1. This is an Application by way of Judge's Summons dated the 29th day of February, 2016 for the following Orders:

- 1) That liberty be granted to the Plaintiff/Applicant to enter final/Summary Judgment against the Defendants/Respondents for the recovery of the sum of Le 88,000,000/00 being monies owed by the Defendants/Respondents to the Plaintiff/Applicant.
 - 2) Damages for breach of contract.
 - 3) Interest
 - 4) Costs
 - 5) Any further reliefs that this Honorable Court may deem fit and just.
2. The Application is supported by the Affidavit of Samuel T.M. Navo sworn to on the 29th February, 2016 together with the exhibits attached thereto.

BACKGROUND

3. By a Writ of Summons witnessed on the 22nd October, 2014, the Plaintiff/Applicant (hereafter referred to as "the Plaintiff") claimed against the Defendant/Respondent (hereafter referred to as "the Defendant") the same relief sought in the Judge's Summons herein.

4. The firm of Nicol Wilson & Co. entered appearance in favour of the Defendants on the 3rd November, 2014 and thereafter filed a Defence and counter-claim on the 19th November, 2014.

5. On the 29th February, 2016, the Plaintiff filed the present Application.
6. On the 14th March, the Defendant swore to an Affidavit in Opposition to the Judge's Summons.
7. On the 15th July, 2016, the Plaintiff swore to and filed a Supplemental Affidavit.
8. However, before the Application could be heard, the Court was informed that the parties were negotiating an out of Court settlement and the matter was adjourned on multiple occasions at the instance of both parties. Finally, on the 7th July, 2016, the Court was informed that the negotiations had collapsed as the 2nd Defendant failed to sign the Consent Judgment. The Plaintiff was therefore allowed to move his Application on the next adjourned date.

THE PRESENT APPLICATION

9. The Plaintiff moved his Application on the 8th July, 2016.

At the hearing of the Application, the Plaintiff relied on the Affidavit of Samuel T. M. Navo sworn to on the 29th February, 2016 together with the following affidavits:

- Exhibit "STMN1" –copy of the Writ of Summons
- Exhibit "STMN2" -copy of the contract between the parties
- Exhibit "STMN3"-letter from the Plaintiff's Solicitor to the Defendants dated 18th August, 2014

- Exhibit "STMN4"-letter from the Solicitor for the Defendants dated 26th August, 2014
- Exhibit "STMN5"-letter from the Solicitor for the Defendants terminating Exhibit "STMN2"
- Exhibit "STMN6"-Notice of Appearance filed for and on behalf of the Defendants
- Exhibit "STMN7"-Defence and Counter-claim.

10) In his submission, Mr. Sam T.M. Navo, Counsel for the Plaintiff informed the Court that the Plaintiff and the Defendants entered into a contract for the construction of a warehouse for CAT/MANTRAC at Bumbuna for a consideration of the sum of Le 120,000,000.00.

11) The Plaintiff had completed about fifty percent of the work when he began encountering problems with supplies. As the contract was time-bound, the failure of the Defendants to provide the necessary materials as provided for in the contract made it impossible for the Plaintiff to meet the deadline of four months. As the materials provided by the Defendants only covered the first phase of the project, the time limited for the completion of the second phase elapsed without any further work done.

12) Counsel for the Plaintiff submitted that when the Plaintiff demanded the outstanding contract price, the Defendants terminated his contract. He also submitted that as a result of the illegal termination of his contract, the Plaintiff had suffered loss and damage and was entitled to interest and costs. He finally submitted that the application was made under Order 16 (1) of the High Court Rules, 2007.

ADJOURNMENTS

13) The matter was adjourned to Wednesday, 13th July, 2016 for the Defendants to reply as an Affidavit in Opposition has been filed. The Defendants and their Counsel did not attend on the adjourned date. The matter was further adjourned on five occasions without the Defendants appearing to argue their opposition to the Application. All this while, the Plaintiff was attending Court.

14) Finally, on the sixth adjourned date, Wednesday, 5th October, 2016, I withdraw the file for Judgment.

ISSUES FOR DETERMINATION

15) The main issue here for determination is issues here for determination whether the Plaintiff has fulfilled the conditions for the grant of Summary Judgment.

THE LAW

16) In respect of this issue, the provision relied on by the Plaintiff is Order 16 of the High Court Rule 2007.

17) Order 16 of the High Court Rule 2007 provided for the preliminary requirements for an application for Summary Judgment. These requirements were clearly spelt out by this Court in YOURS LTD V PAH INTERNATIONAL CO. LTD and PA SANTHIKIE MBAMBAY KANU (FTCC035/16) in a Judgment dated 22/04/2016. I therefore need not repeat them here.

18) Has the Plaintiff fulfilled these requirements? This question can best be answered by looking at the contract signed by the parties.

THE CONTRACT

19) The relevant contract herein, marked Exhibit "STMN 2" was entered into between the Plaintiff and the 1st Defendant on the 8th April, 2014 (The "sub-contract"). The sub-contract amount was Le 120,000,000/00 and was to run for a period of 4 months, that is, from April, 2014 to 6th August, 2014.

20) Under the contract, the sub-contractor was to provide all labour and working tools required and shall always be present at site to supervise the work force or have a supervisor in charge. He was to also purchase and be responsible for all tools needed for the execution of the works on site.

21) The main contractor was to provide heavy duty equipment required for the works.

The scope of the works was:

- a) Construction of concrete foundations of the prefabricated warehouse shed steel buildings.
- b) Construction of the concrete slab on grade of the prefabricated warehouse shed steel building.
- c) Installation supervision for warehouse building and prefabricated steel structure by a nominated sub-contractor by Mancon.
- d) Construction of locker rooms.
- e) Installation of all the architectural and electromechanical works of the warehouse and buildings.
- f) Construction of concrete slab on grade for the warehouse building as per drawings.
- g) Construction of concrete M4 20 nr complete construction of service area caravan foundation bases and stairs.

The method of payment was to be on the following terms:-

- i. 20% down payment as advance for mobilization in two phases:
 - Start of mobilization-Le 10, 0000,000.00
 - After work commences within three weeks-Le 14,000,000.00
- ii. 70% against monthly invoices according to amount of work finished each month.

- iii. –There shall be monthly valuation to determine the amount due to sub-contractor
- iv. 10% retention may be paid to the contractor in 2 steps:
 - 5% after two weeks from the completion of the project (substantial completion of the project)
 - 5% by the end of the defect liability of 180 calendar days.

22) According to the Plaintiff, the 1st Defendant did not provide the necessary materials to enable him complete the works after he had performed 50% of same. The Defendants did not appear at the hearing to challenge this allegation though they had contended in their defence that the Plaintiff had breached the contract by continually absenting himself from the site, maintaining poor working relations with other works and failing to pay his workers.

DECISION

23) A key element to be proved in an Order 16 Application is that the Defendant has no defence on its merits. In the instant case, the Defendants have not only filed a defence and counter-claim but also swore an Affidavit in Opposition to the Application for Summary Judgment. However, before the application could be moved, efforts were made to resolve the matter by Consent Judgment; a Consent Judgment which the Defendant failed to sign.

24) Furthermore, neither the Defendants nor their Counsel failed to appear at the hearing of the Application nor thereafter. The Court therefore had no opportunity to listen to and evaluate the evidence of the Defendants.

25) In this case, there are Affidavits of Service of this Application on the Defendant and for subsequent hearings. In the circumstances, this Court has no alternative but to proceed to pronounce Judgment as follows:-

1. Judgment is hereby given in favour of the Plaintiff.
2. The Defendants are liable to the Plaintiff for the sum of Le 88,000,000.00 being monies due and owing to the Plaintiff by the Defendants.
3. Interest thereon at the rate of 10% per annum from 22nd October, 2014 to date of Judgment.
4. Costs of Le 10,000,000/00 to be borne by the Defendants to the Plaintiff.



Hon. Mr. Justice Sengu Koroma JA