



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

Case No: FTCC 120/15

THE MATTER BETWEEN:

CHINA HENAN INTERNATIONAL
CO-OPERATION GROUP CO. LTD

-PLAINTIFF

AND

SIERRA WIFI LIMITED

-DEFENDANT

REPRESENTATION

W. NICOL ESQ.

-COUNSEL FOR THE PLAINTIFF

WRIGHT & CO

-COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.A.

RULING DELIVERED ON THE 29TH, JUNE 2016

1. This is an Application by way of Notice of Motion dated the 15th day of April, 2016 for the following Orders:-

1. That this Honourable Court assesses the damages due to the Plaintiff/Applicant pursuant to the Judgment in default of Defence dated 7th day of December, 2015.
2. That this Honourable Court assesses the interest due to the Plaintiff by the Defendant on the sum of Le 27,481, 855/23 pursuant to the Judgment in default of Defence dated the 7th day of December, 2015.
3. Any further orders that this Honourable Court may deem fit and just.
4. Costs.

2. The Application is supported by the Affidavit of Walter Nicol sworn to on the 15th day of April, 2016 together with the Exhibits attached thereto.

3. After several adjournments at the instance of Counsel who informed the Court that they were trying to reach a settlement, the Application was moved by Ms. Strasser-King on the 24th June, 2016. The Defendant was not only unrepresented at the hearing of this Application, but did not attend these proceedings; even though records proved that he had knowledge of them.

4. In her submission, Ms. Strasser-King relied on the entirety of the Affidavit in Support particularly Exhibit WN4 which is the Judgment

in default entered against the Defendant dated the 7th December, 2015. This was both a final Judgment for the sum of Le 27,481,885.23 and Interlocutory Judgment for interest to be assessed and damages to be assessed. Counsel referred the Court to the Writ of Summons in which interests and costs were claimed and also paragraph 6 of the Affidavit in Support where it was averred that “as a direct result of the Defendant’s breach of contract, the Plaintiff had to go without required internet services for several days thereby causing it great inconvenience and severely affecting its business.” Ms. Strasser-King also referred to Exhibit “WN 8” which is the receipt issued by the Defendant to the Plaintiff acknowledging receipt of the sum Le 32,978,262.00 with nil balance due. On this point, Counsel relied on Order 22, Rule 3 of HCR, 2007.

5. With regards interest, Ms. Strasser-King referred this Court to Section 4 of the Law Reform (Miscellaneous Provisions Act,) 1960-Cap 19. From information received, various commercial banks had 13 percent per annum as base interest rate and the average lending rate of between 18 percent and 22 percent. The time frame must be from the date the cause of action accrued to the date of Judgment, in this case from 21st September 2015.

Counsel applied for costs of Le 10,000,000/00 as they had filed papers and always attended Court whilst the other party did not. On this point, she relied on Order 57 Rule 1 of the HCR, 2007.

6. I have listened to Counsel and note that there are three aspects of this Application, damages, interest and costs. I shall deal with them in that Order.

DAMAGES

7. Contracts bind the parties of a contract to the terms of the agreement. As such, contracts form the basis of many business transactions and if one party breaches the agreement, the other party can be severely injured. In order to discourage people from breaching a contract and also to compensate the injured party for any losses, the law provides several remedies for breach of contract: damages, specific performance, contract recession and contract modification. In the instant case, the Plaintiff is claiming damages for breach of contract.
8. What type of damages would the Plaintiff be entitled to? In paragraph 6 of the Affidavit in Support of the Application, Walter Nicol swore that he was informed by the Administrative Manager of the Plaintiff that they went without internet services for several days thereby causing great inconvenience and severely affecting its business. There is already an interlocutory Judgment for damages to be assessed so the question of proof does not arise only that of assessment.
9. From the Affidavit evidence, the damages that could be paid to the Plaintiff is compensatory damages under the head: consequential

damages. Consequential damages are intended to reimburse the injured party for indirect damages other than contractual loss. In order to recover, the injuries must "flow from the breach" i.e. direct result of the breach, and be reasonably foreseeable to both parties when they entered into the contract.

10. I hold that the breach complained of here was reasonably foreseeable. The contract was to provide internet services to the Plaintiff for a fee for a period of 6 months commencing on the 1st September 2015. The Defendant was to also transfer and install its equipments which would have facilitated the internet services. The Defendant failed to do so and only provided services until the 23rd September 2015 on which date without notice the said services were terminated. The Defendant in effect provided services for only 1 month. To my mind, the damages should be what it would cost the Plaintiff to secure alternative internet services for a period of five months. The monthly fee for the services is Le 5,496,377/00 which for the period of five months will amount to Le 27,481,885/23. However taking into consideration the fact that Judgment has been obtained against the Defendant in the said sum of Le 27,481,885/23 and interest will be paid thereon, I shall award damages of 50 percent of that sum that is Le 13,740,942.

INTEREST

11. The award of interest was fraught with contradictions and complications before the enactment of the Law Reform (Miscellaneous Provisions) Act, 1934 (Pari Materia Cap. 19 of the Laws of Sierra Leone, 1960). This provision gave powers to the Court to include in any sum for which Judgment is given interest, at such rate as the Court deems fit or as the rules provide, on all or any part of the debt or damages in respect of which Judgment is given, or payment is made before Judgment, for all or any part of the period between the date when the cause of action arose and-
 - a) In the case of any sum paid before Judgment, the date of the payment, and
 - b) In the case of the sum on which Judgment is given, the date of Judgment. This provision gives a general power to the Court to award interest upon both debt and damages.
12. The purpose of awarding interest under Cap 19 is to compensate the Plaintiff for not having received money when he should have done. This will mean that during the period the Plaintiff had been kept out of his money, he had either had to borrow or use funds available to him which might have been otherwise profitably employed. The award of interest is compensatory and not additional interest. I note that the Applicant pleaded for interest as required by the Rules. Cap 19 imports a discretion “....at any rate as the Court deems just.” The rule is that if the Plaintiff is entitled to interest by

any statute or statutory instrument, or by contract, the Plaintiff is entitled to interest as of right. In other cases, a degree of discretion.... involved, which may be as to whether interest is awarded at all, as to the rate of interest or as to the period it shall run. I must emphasize that the rate and period are generally discretionary. In the instant case, the parties had not agreed on a rate of interest and there is no statutory provision in respect of same. I shall therefore exercise my discretion in favour of awarding interest.

COSTS

13. The award of costs is discretionary. Order 57 Rule 1 sub-rule 1 of the High Court Rules, 2007 provides that “subject to this Order, the cost of and incidental to the proceedings shall be at the discretion of the Court, and the costs shall have full powers to determine by whom and to what extent the costs are to be paid.”

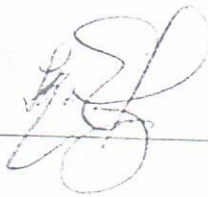
These two broad reasons why costs are awarded are clearly set out in sub-rule 4. All of these are however without prejudice to the discretionary powers of the Court in such matters.

I have studied the progress of this matter since the filing of the Writ of Summons on the 3rd November, 2015. The Plaintiff entered a final and interlocutory Judgment in default of Defence dated 7th December, 2015. Writ of Fieri Facias was also obtained. Several appearances

were made in Court by the Plaintiff without the Defendant appearing. Search fees were paid. From the foregoing; it is only fair that the costs should be awarded.

In the circumstances, I Order as follows:-

1. That the Defendant pays damages in the sum of Le 13,740,942.
2. Interest on the sum of Le 27,481,855/23 from the 24th September 2015 to date of Judgment at the rate of 10 percent per annum.
3. That cost of this action is assessed at 7,000,000/00 to be borne by the Defendant.



THE HON. MR. JUSTICE SENGU M. KOROMA, J.A.

DATED THE 29th JUNE 2016