

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

BETWEEN:

WINCHESTER PROCUREMENT LIMITED - PLAINTIFFS  
& ANOTHER  
NO.10 WALLACE JOHNSON STREET  
FREETOWN

AND  
EMPRESS COLLECTIONS LIMITED - DEFENDANTS  
& ANOTHER  
NO.65 SPUR ROAD  
FREETOWN

**JUDGEMENT DELIVERED BY THE HONOURABLE JUSTICE M.P. MAMI J.A**  
**DATED 12<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**COUNSEL**

R.B. KOWA & ASSOCIATES - SOLICITORS FOR THE PLAINTIFFS

SERRY-KAMAL & CO - SOLICITORS FOR THE DEFENDANTS



By a writ of summons dated the 28<sup>th</sup> day of February, 2022, the plaintiff's instituted this action against the defendant seeking the following reliefs:

1. Recovery of the sum of Le557,336,000 (Five Hundred and Fifty-seven Million Three Hundred and Thirty-six Thousand Leones) being money owing and due to the plaintiffs by the defendants, effective from the 28<sup>th</sup> Feb to the 31<sup>st</sup> of April
2. Recovery of the sum of USD\$46,616 (Forty-six Thousand Six Hundred and Sixteen United States Dollars) or its Leones equivalent as at the date of judgement being money owing and due to the plaintiff by the defendants.
3. Interest at the rate of 10% on the said sums pursuant to Section 4(1) of the Law Reform (Miscellaneous Provisions) Cap. 19 of the Laws of Sierra Leone per annum till date of judgement.
4. Damages for breach of contract
5. Any further or other order(s) that this Honourable court would deem fit and just in the circumstances
6. costs

The facts of this case is as glared from the writ of summons intituled FTCC 012/22 NO.1.

### **Facts**

That the plaintiff is a registered company in Sierra Leone and the 2<sup>nd</sup> defendant is its executive director.

That sometimes in late 2020 the 1<sup>st</sup> defendant won a contract to supply office equipment to Statics Sierra Leone but was financially incapable to finance and to effect the supplies as demanded by the contract.

The plaintiff claims that as a result of the 1<sup>st</sup> defendant's inability to provide sufficient funds to perform it obligations in accordance with the terms of the contract aforesaid, the 2<sup>nd</sup> defendant acting for and on behalf of the 1<sup>st</sup> defendant requested for a loan from the 1<sup>st</sup> plaintiff through the 2<sup>nd</sup> plaintiff who on the 2<sup>nd</sup> day of December, 2020, orally agreed to provide the required office equipments and companies on credit to the 1<sup>st</sup> defendant represented by the 2<sup>nd</sup> defendant.

The plaintiff further claim that it was further agreed that the plaintiffs should commence the supply of items and later send the written agreement that will be signed by the defendants.

That based on the oral agreement reached, the plaintiffs subsequently in four tranches provided and supplied the defendants with the following items now consolidated below in the corresponding quantities and prices.

	Description	Qty	Unit price	total
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That sometimes in December, 2020, the 1<sup>st</sup> defendant issued two cheques respectively in the sums of Le38,000,000 (Thirty-eight Million Old Leones) One dated the 29<sup>th</sup> December 2020 and the other undated. These two (2) cheques were rejected and referred to drawer

That as a result of difficulties encountered in receiving payment from the defendants the plaintiffs halted suppliers, some stakeholders from statics Sierra Leone, on behalf of the defendants, pleaded with the plaintiff to continue to make the remaining suppliers to enable the defendant to fulfil their obligations to statistics Sierra Leone, since the items were very important for the conduct of the pilot census process. The plaintiff claimed that thereafter they continued to make supplies of items as requested by the defendants.

That as advised and directed by defendants herein, the plaintiff further directly transferred the sum of USD\$40,000 (Forty Thousand United States Dollars) plus charges in the sum of USD1,250 (One Thousand Two Hundred and Fifty United States Dollars) amounting to the total sum of USD41,250 (Forty-one Thousand Two Hundred and Fifty United States Dollars) being part payment for the supply of 750 Samsung tablets to the bank account with details to wit:

Bank NAME: Emirates Islamic Bank

Account Number: 37083 3778901

Account Name: Royal Max Trading Mobile LLC

IBAN: AE63 034000708335886901

Swift Code: Mebelead

Bank Add: All Nakheel Road, Branch Dubai

The plaintiff further claim that on the request of the 2<sup>nd</sup> defendant the plaintiff bought a business class ticket at an increased cost of USD5,366 (Five Thousand Three Hundred and Sixty-six United States Dollars) for the 2<sup>nd</sup> defendant to trip to Dubai mainly to procure the Samsung tablets. the 2<sup>nd</sup> defendant encountered difficulties resulting to three different changes she made which attracted three charges made thereby leading to the increased cost aforesaid.

That on the 15<sup>th</sup> day of January, 2021, the 2<sup>nd</sup> plaintiff sent via email the terms of the agreement to the 2<sup>nd</sup> defendant, who on the same date replied to wit "will sign and return later."

The 2<sup>nd</sup> defendant also confirmed receipt of the said agreement through the social media outlet called "Whatsapp" where she promised to sign same, scan and resend to the 2<sup>nd</sup> plaintiff but she never did.



That the items listed and described earlier were accordingly delivered to the 1<sup>st</sup> defendant for which a consolidated invoice dated the 26<sup>th</sup> January, 2021 was forwarded to the 1<sup>st</sup> defendant herein.

That despite several oral and written demands for the repayment of the money owing and due to the plaintiffs the defendants have refused, failed and or neglected to do same. That they have suffered severe loss and damages and therefore the claims listed out interalia.

### **Background**

On the 7<sup>th</sup> day of April this Honourable court based on an application by notice of motion ordered as follows:

1. That leave is hereby granted to the plaintiffs/applicants to dispense with personal service of the writ of summons dated 28<sup>th</sup> day of February, 2022 Intituled FTCC 2022 W. No.1 between Winchester Procurement Limited & Another Vs. Empress Collection Limited & Patricia Monde Sesay
2. That service of the writ of summons dated 28<sup>th</sup> day of February, 2022 intituled FTCC 012/22 W. No.1 Winchester Procurement Limited & Another Vs. Empress Collection Limited & Patricia Monde Sesay be effected on the defendant/respondent herein by substituted means by two (2) publications of same in a widely read newspapers in Sierra Leone
3. That the plaintiffs/applicants are further directed to explore the email of the 2<sup>nd</sup> defendant/respondent and same be included in the publication.

On the 10<sup>th</sup> of day of May, 2022 Messrs. Gevao & Associates entered appearance and notice of the said effect to counsel for the plaintiff.

On the 18<sup>th</sup> day of May, 2022 a defence was filed for the defendants containing eight (8) paragraphs all of which I will repeat herein.

paragraph 1- The defendant admits paragraphs 1 of the plaintiff's particulars of claim.

paragraph2 - "the 1<sup>st</sup> defendant admit paragraphs 2 of the plaintiff's particulars of claim in so far as the winning of a contract from statistics Sierra Leone and denies the part of the said paragraph that states that the said 1<sup>st</sup> defendant was at the point of executing the contract referred to above incapable to finance same.

Paragraph 3- "The defendant denies paragraph 3 of the plaintiff's particulars of claim and avers that at no point in time did the 2<sup>nd</sup> defendant request for a loan from the 1<sup>st</sup> plaintiff.



The 2<sup>nd</sup> defendant further aver that as, at 2020 herself and the 1<sup>st</sup> plaintiff had a very strong intimate relationship led to the both rendering administrative assistance to each other's business, but that there was never a situation where both of them loaned monies to each other be it for personal use or for the use of their respective companies

Paragraph 4 - "The defendant denies paragraph 5 of the plaintiff's particulars of claim and will never had an agreement be it oral or written for the 1<sup>st</sup> plaintiff to supply materials for and on behalf of the 1<sup>st</sup> defendant.

Paragraph 5 - "The defendants deny paragraph 7 of the plaintiff's particulars of claim and avers that she never issued a cheque to the 1<sup>st</sup> & 2<sup>nd</sup> plaintiffs in respect of payment of loan as alleged or in settlement of the value materials supplied on her behalf as alleged. The 2<sup>nd</sup> defendant further avers that the 1<sup>st</sup> plaintiff would have been in possession of her business cheques and that he is using same to support his frivolous allegation levied against her

Paragraph 6 - "The defendants deny paragraphs 8&9 of the plaintiff's particulars of claim and avers that the monies transferred to her were her personal business monies and that she instructed the plaintiff s to transfer her monies to her which said monies were in the possession of the plaintiff whiles she was out of the country on business trip.

Paragraph 7 - "The defendant denies paragraph 11 of the plaintiff's particulars of claim and will aver that the reply to the email referred to above was never sent by her. The 1<sup>st</sup> plaintiff been her love partner (boyfriend) had access in the form of password to both her email and whatsapp phone, the plaintiff insisted then he must be in possession of both passwords mentioned above in the bid for the plaintiff to prove to him that she was in love communication with any other man besides him.

The defendant will reply to mails sent to the plaintiff whiles both of them were in a relationship. The defendants will reply to mails sent to the plaintiff whiles both of them were in a relationship.

The defendants could not have sent a reply to an email appertaining to the signing of a contract when no contract ever existed between the two.

Paragraph 8 "Save as herein before expressly admitted or not admitted, the 1<sup>st</sup> and 2<sup>nd</sup> defendants denies each and every allegation contained in the plaintiff's particulars of claim, as if the same had been set out and traversed seriation.

Seemingly, after the close of pleading, counsel for the plaintiffs filed an undated notice of motion (interpartes) requesting for the reliefs prayed for to wit:

1. That this application be heard notwithstanding that two clear days' notice have net been given



2. That this honourable court grants an order directing Statistics Sierra Leone not to pay any money owing and due Empress Collection Limited and Patricia Monde Sesay the 1<sup>st</sup> and 2<sup>nd</sup> defendants herein either directly or indirectly into any bank account (s) that may have been submitted to it by the said defendants/respondents pending the hearing and determination of this action.
3. That this honourable court grant an order directing both solicitors of the plaintiffs/applicants and the defendants/respondents herein to open an Escrow bank account with any recognised bank within Sierra Leone to which both solicitors shall serve as mandatory signatories pending the hearing and determination of this action.
4. Court grants an order directing Statistic Sierra Leone to pay any money owing and due the defendants/respondents herein into the said Escrow bank account that shall be communicated to it by the plaintiffs/applicants solicitors endorsed by the defendants solicitors pending the hearing and determination of this action.
5. Any other or further orders to follow as the justice of the case may demand.

The undated notice of motion filed by counsel for the plaintiff praying for the following orders:

1. That this application be heard notwithstanding that two clear days' notice have not been given
2. That this honourable court grants an order directing Statistics Sierra Leone not to pay any money owing and due Empress Collection Limited and Patricia Monde Sesay the 1<sup>st</sup> and 2<sup>nd</sup> defendants herein either directly or indirectly into any bank account (s) that may have been submitted to it by the said defendants/respondents pending the hearing and determination of this action.
3. That this honourable court grant an order directing both solicitors of the plaintiffs/applicants and the defendants/respondents herein to open an Escrow bank account with any recognised bank within Sierra Leone to which both solicitors shall serve as mandatory signatories pending the hearing and determination of this action.
4. Court grants an order directing Statistic Sierra Leone to pay any money owing and due the defendants/respondents herein into the said Escrow bank account that shall be communicated to it by the plaintiffs/applicants solicitors endorsed by the defendants solicitors pending the hearing and determination of this action.
5. Any other or further orders to follow as the justice of the case may demand.
6. Costs in the cause.



5. Endorsed by the defendants solicitors pending the hearing and determination of this action.
6. Any other or further orders to follow as the justice of the case may demand.
7. Costs in the cause.

The application is supported by the affidavit of Dr. Claudius Williams Tucker, the managing director of Winchester Procurement Limited at No.10 Wallace Johnson-Street, with the following exhibits

"CWT1" – a copy of the said writ of summons

"CWT2<sup>1-6</sup>" – a copy of the said ex-parte notice of motion together with its supporting affidavit

"CWT3" – a copy of the perfected order

"CWT4<sup>1-4</sup>" – copies of the pages 8 & 9 of the publication in the Global Times Newspaper

"CWT5" – Copy of the email message together with the scanned copy of the writ of summons dated 28<sup>th</sup> day of February, 2022

"CW6" – a copy of the affidavit of service

"CWT7" – copy of the said memorandum of appearance.

"CWT8" – copy of the said defence.

"CWT9<sup>1-29</sup>" – threads of whatsapp communication between the plaintiff and the 2<sup>nd</sup> defendant.

"CWT10<sup>1-2</sup>" – copies of the said cheques.

"CWT11<sup>1-11</sup>" – are whatsapp communication between the plaintiff and two stakeholders from Statistics Sierra Leone.

"CWT12" – is a copy of the undertaking.

Former solicitors of the defendants filed an affidavit in opposition with the following exhibit:

"PMS1" – A photostat copy of the writ of summon instituting the action

"PMS2&3" – A photostat copy of the memorandum of appearance and notice of appearance.

"PMS4" – A photostat copy of the defence

"PMS5" – A photostat copy of the contract between the defendants/respondents



There is a notice and change of solicitors dated 19<sup>th</sup> day of December 2022 signed by the 2<sup>nd</sup> defendant and notice of appointment of solicitors by Messrs. Serry Kamal & Co. as the duly appointed solicitors dated 19<sup>th</sup> day of December 2022.

On the 17<sup>th</sup> of January, 2023 Messrs Serry-Kamal & Co. filed a notice of motion for and unbehalf of the defendants for the following orders:

1. That leave be granted to the defendants/applicants to amend their statement of defence in this matter dated 18<sup>th</sup> day of May 2022 in the manner underlined in the proposed amended defence exhibited to the affidavit in support.
2. An enlargement of the time within which Appellant/applicant should comply with this order for directions.
3. That this Honourable court makes consequential orders as deems necessary
4. that the costs of and incidental to this application be costs in the cause.
5. there is an affidavit in support dated 17<sup>th</sup> day of January, 2023 sworn to by the 2<sup>nd</sup> defendant with the following exhibits:
6. "PMS1" – A true copy of the said writ of summons
7. exhibit "PMS2" – A true copy of the statement of defence
8. exhibit "PMS3" – A copy of the memorandum with notice of change of solicitors

There is an affidavit in opposition filed by A.B. Moisia Esq. with the following exhibits

""- A copy of the proposed defence. the proposed amended defence the extent of the Amendment of the defence is comprehensively and wholistic details of which I will recant herein.

Paragraph 1 – "The defendants can neither admit no deny paragraph 1 of the plaintiff's particulars of claim, and put them to strict proof thereof.

Paragraph 2 – "The defendants admit paragraph 2 of the Plaintiff's particulars of claim.

paragraph 3 – "The defendants admit paragraphs 3 of the plaintiff's particulars of claim in so far as winning of a contract from Statistics Sierra Leone and deny the part of the said paragraph that states that the said 1<sup>st</sup> defendant was at the point of executing the contract referred to above incapable to finance same. In any case, the defendants put the plaintiff to strict of the allegation therein.



Paragraph 4 "The defendants deny paragraph 4 of the plaintiff particulars of claims and aver that at no point in time did the 2<sup>nd</sup> defendant request for a loan from the 1<sup>st</sup> plaintiff as alleged or at all. the 2<sup>nd</sup> defendant further avers that she did not at any point request for a loan from the 1<sup>st</sup> plaintiff through the 2<sup>nd</sup> plaintiff or through any other person at all.

Paragraph 5- "In further response to paragraph 4 of the plaintiff's particulars of claim, the 2<sup>nd</sup> defendant denies any knowledge of the 2<sup>nd</sup> plaintiff's particulars of claim, the 2<sup>nd</sup> defendant denies any knowledge of the 2<sup>nd</sup> plaintiff's agreement, orally or at all, to provide office equipment and compatriots or credit to the 1<sup>st</sup> defendant represented by her as alleged or at all.

Paragraph 6 - "The defendants deny paragraph 5 of the plaintiff's particulars of claim and will aver that they could not have agreed to have the plaintiff's particulars of claim and will aver that they could not have agreed to have the plaintiff's commenced supply of items and later sign an agreement in respect of the said supplies because there was no agreement in the first place.

Paragraph - "The defendants deny paragraph 6 of the plaintiff's particular of claim as agreed or at all. The only item the 2<sup>nd</sup> plaintiff paid for in the list presented is the Techno Tablets. He paid for them and the 2<sup>nd</sup> defendant issued two cheques as refund.

Paragraph 8 - "The defendants admit paragraph 7 of the plaintiffs of claim but deny any suggestion that the cheques were issued in respect of payment for the items referred to in paragraph 6 of the particulars of claim other than the techno tablets referred to in paragraph 7 herein

Paragraph 9 - "The defendant deny that the plaintiff halted supplies to Statistics Sierra Leone as alleged in paragraph 8 or at all as there were no supplies to halt. The 2<sup>nd</sup> defendant admits pleading with the 2<sup>nd</sup> plaintiff to plead with Statistics Sierra Leone to give her more time to comply with the terms of the contract as there was delay in delivery of goods ordered by her on behalf of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> plaintiff did this for the 2<sup>nd</sup> defendant because of the erotic relationship between them, prior to the 1<sup>st</sup> defendant winning a contract from Statistics Sierra Leone, the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant had been in a sexual relationship for about ten years."

Paragraph 10 - "Save that the 2<sup>nd</sup> defendant admit that the 2<sup>nd</sup> plaintiff transferred to her USD \$10,000/00 whilst she was in Dubai in January, 2021, the 2<sup>nd</sup> defendant denies that the said money was for the purchase of 750 Samsung tablets, the 2<sup>nd</sup> defendant further denies any insinuation or suggestion that, the said money was a loan to her and the 1<sup>st</sup> defendant jointly or severally from either the plaintiff either jointly or severally, the 2<sup>nd</sup> defendant would further aver that during their love



relationship spanning over ten years, the 2<sup>nd</sup> defendant would give her a lot of money, buy her expensive things, pay her rent which was expensive, pays her son's school fees in a private school in the UK which runs into lots of monies, take her on expensive holidays in the United States, Spain, South Africa and many other countries.

Paragraph - "In further answer to paragraph 9 of the particulars, the 2<sup>nd</sup> defendant avers that during the pendency of their love relationship between 2010 and 2021, the 2<sup>nd</sup> plaintiff brought her a total of 5 vehicles. The cost of the said vehicle ranges from USD\$15,000 to USD\$35,000, sometimes in 2019, the 2<sup>nd</sup> plaintiff gave the 2<sup>nd</sup> defendant USD\$50,000 United States Dollars for the construction of the building. In December, 2019, they opened the restaurant along Lumley beach. Things were going well until the Covid pandemic hit, due to the restriction and lock down business was very slow.

Paragraph 12 - "Save that the 2<sup>nd</sup> defendant admits that the 2<sup>nd</sup> plaintiff paid a total of USD\$5,366 for a return air ticket to Dubai for her as stated in paragraph 20 of the particulars of claim, she denies the insinuation that this was a loan to her that she must pay back. As stated in some of the preceding paragraphs herein, not only that it was never agreed between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant that the cost of the said air ticket was a loan, there has never been an instance since their long period of sexual relationship where the 2<sup>nd</sup> defendant has paid for her air ticket abroad.

Paragraph 13 - "Save that the 2<sup>nd</sup> defendant admits receipts of a draft contract by email from the 2<sup>nd</sup> plaintiff as stated in paragraph 11 of the particulars of claim, she denies the contents of the said draft contract. She avers that the first time the 2<sup>nd</sup> defendant talks about a contract was when she was in Dubai, and it was because he thought she was cheating on him with one of the customer Joe boy. The 2<sup>nd</sup> defendant assured him, that she was not in a love relationship with the said Joe boy, he did not give her. At that point the 2<sup>nd</sup> defendant threatened that he would not send the USD\$40,000 he had promised to give her as a gift to enable her pay for the goods. In a state of distress, and in order to persuade him to send the money, she agreed to sign a contract with the 2<sup>nd</sup> plaintiff.

Paragraph 14 - "The 2<sup>nd</sup> defendant further avers that she honestly thought that the 2<sup>nd</sup> plaintiff insisted on an agreement and di email one of her out of jealousy that, is why she did not even sign it because he believed that she was no longer cheating on him.

**"Save that the defendants admit receipt of an invoice from the 1<sup>st</sup> plaintiff, the as averred in paragraph 12 of the particular of claim, they deny the contents of the said invoice and puts the plaintiff to strict proof thereof."**



Paragraph 17 "Save as herein expressly admitted or not admitted, the 1<sup>st</sup> and 2<sup>nd</sup> defendant deny each and every allegation contained in the plaintiff's particulars of claim as if the same had been set out and traversed seriation.

counsel for the plaintiff filed a reply to the defence on the 13<sup>th</sup> of February, 2023 and the matter was set out down for trial on the 15<sup>th</sup> of February, 2023.

### **Issues in Contention**

- i. Whether the 2<sup>nd</sup> plaintiff is an agent of the 1<sup>st</sup> defendant, and whether the 2<sup>nd</sup> defendant is an agent of the 1<sup>st</sup> defendant herein?
- ii. Whether based on the facts and evidence before this Honourable court, there is a valid contractual relationship between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant herein, and the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant?
- iii. whether the 1<sup>st</sup> plaintiff is lawfully entitled to the reliefs prayed for as contained in the statement of claim of the writ of summons commencing this action?

### **Evaluation and Analysis of the Evidence**

The 2<sup>nd</sup> plaintiff, himself being PW1 testified, and started by identifying himself as the managing director/CEO of the 1<sup>st</sup> plaintiff, which he said is a registered company in Sierra Leone. He identified exhibit A2 as the initial certificate of registration of the 1<sup>st</sup> plaintiff which name was later changed to its present name consistent with exhibit "A1"

The 2<sup>nd</sup> plaintiff also recognised the 1<sup>st</sup> defendant as a company, owned by the 2<sup>nd</sup> defendant, Miss Patricia Sesay, who he said he had a 'private relationship with before'

The 2<sup>nd</sup> plaintiff further testified that he used to communicate issues relating to the said agreement to the 2<sup>nd</sup> defendant through email message and whatsapp conversation. he further recognised and tendered exhibit A10<sup>1-29</sup> which are threads of whatsapp between him and the 2<sup>nd</sup> defendant touching and concerning the agreement.

The 2<sup>nd</sup> plaintiff also told this court that he recalls sometimes in late 2020, the 1<sup>st</sup> defendant won a contract to supply office equipments to Statistic Sierra Leone, but that the 1<sup>st</sup> defendant hadn't the financial capacity to finance the said contract. so the 2<sup>nd</sup> defendant approached him and she requested the 2<sup>nd</sup> plaintiff to assist the 1<sup>st</sup> defendant to discharge its obligation and the profit realised shall be shared between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant at 60% to 40% i.e. the 1<sup>st</sup> defendant shall be



defendant to the 2<sup>nd</sup> plaintiff wherein the 2<sup>nd</sup> defendant made reference to the method of sharing the profit.

He also intimated to this court that they both agreed that while the suppliers are being made, that the 2<sup>nd</sup> plaintiff shall draft the agreement. He further intimated that he insisted that this was strictly a business transaction.

He also told the court, that he later prepared a loan agreement as was agreed between representation of the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant, same of which he recognised as exhibit 4<sup>1-3</sup>, this loan agreement he said was sent to the defendant through her email address.

He also referred the court to exhibit A3 same of which contains the email message he sent which state "Revised as requested" "sign and return back" in reply thereto, the 2<sup>nd</sup> defendant this email message, the 2<sup>nd</sup> defendant promised to wit 'I will sign and return later tonight' as per the email message.

That in furtherance to the proof of the loan agreement and the intention of the parties, the 2<sup>nd</sup> plaintiff referred the court to exhibit A10<sup>1-29</sup> at page 11 lines 16-17 where the 2<sup>nd</sup> defendant wrote "Ave received the agreement, will go and check whether the shop is open today to sign, scan and send back to you, otherwise tomorrow morning."

The 2<sup>nd</sup> plaintiff further stated that after making he supplies of the office equipment, he sent a consolidated invoice for all items supplied including 5% GST. He further referred the court to exhibit A5 being the said consolidated invoice, and referred the court to exhibit A10<sup>1-29</sup> at page 25 at the penultimate line dated 27<sup>th</sup> January, 2021 at 19:59 to wit: "Will send one invoice for all and a delivery not as well."

The 2<sup>nd</sup> plaintiff also further referred the court to exhibit A10<sup>1-29</sup> at page 26 lines 3-6 dated 27 January, 2021 wherein the 2<sup>nd</sup> plaintiff informed the 2<sup>nd</sup> defendant that he was sending the consolidated invoice referred to supra and that he will require her to deposit cheques to that value.

The 2<sup>nd</sup> plaintiff further informed the court, that he notified the 2<sup>nd</sup> defendant, that he was working on the withdrawal of \$40,000 from the bank. when he got the said \$40,000 he informed the 2<sup>nd</sup> defendant about it and she was appreciative of the news. He referred the court to exhibit A10<sup>1-29</sup> at page 16 lines 7&8 dated 11<sup>th</sup> January, 2021 at 13:32 lines 10, 11, 12 and 14 which touches on the \$40,000 sent to the 2<sup>nd</sup> defendant and how she appreciated it.

The case for the plaintiff.

The case for the defendants.



The 2<sup>nd</sup> defendant in her testimony before this court same of which is as contained in their statement of defence, admitted winning a contract for the supply of office equipment to statistics Sierra Leone, which occurred during the pendency of an intimate love relationship between herself and the 2<sup>nd</sup> plaintiff and that at the time her restaurant business was not doing badly, and that the 2<sup>nd</sup> plaintiff opted to assist her as he normally does, this she intimated the court was how the \$40,000 came about. She admitted that the \$40,000 was sent to the supplier in Dubai on her instruction.

The defendant also in their amended state of defence established the defence of intimate love relationship for a period of ten (10) years. She averred that the allegations of facts relied on by the plaintiffs took place during the subsistence of the said relationship.

Consequent upon the defence of "love relationship" the USD\$40,000 (Forty Thousand United States Dollars) the 2<sup>nd</sup> defendant averred was a gift to her by the 2<sup>nd</sup> plaintiff and was never a loan intended to be repaid.

The 2<sup>nd</sup> defendant while admitting to the purchase of the flight return ticket at the cost of USD\$5,366 (Five Thousand Three Hundred and Sixty-six United States Dollars)

She denied that same was in accordance with the agreement claimed to be between the parties with the intention to be repaid on the ground that the 2<sup>nd</sup> defendant used to buy her ticket for expensive vacation to the South African Spain, London and the United States of America etc. reference to difference hotels and flight tickets and reservations to exhibit B4-15 which one Airtime tickets and reservations.

The 2<sup>nd</sup> defendant also admitted during evidence-in-chief to receiving the agreement contract, but that she refused to sign it, because she was of the view that the 2<sup>nd</sup> plaintiff was not serious about it and that the 2<sup>nd</sup> plaintiff had given her money that she intimated thus "I thought he was not serious."

Further in her evidence, the 2<sup>nd</sup> defendant admitted that she promised to sign the loan agreement, because she was under the promise to supply the tablets, power banks and in fear of not losing the contract with statistics Sierra Leone.

When confronted with exhibit A10<sup>1-29</sup>, the Whatsapp communication between her goodself and the 2<sup>nd</sup> plaintiff, she confirmed and admitted to have had Trisha was her goodself, as she admitted to have had those communications with the 2<sup>nd</sup> plaintiff.

Also when confronted with exhibit A7-8, she admitted issuing a dishonored cheques with the intention to pay for the 7 tablets paid for by the 2<sup>nd</sup> plaintiff on her behalf.



She confessed that there weren't any money therein to value since her company was financially doing bad.

The 2<sup>nd</sup> defendant recognised exhibit A5 as the invoice sent to her by the plaintiffs but denied that the items stated therein were supplied except the tablets and she did not honor the invoice because she supplied the items to statistics Sierra Leone.

She refers the court to exhibit B20-34.

The 2<sup>nd</sup> defendant further referred this Honourable court to exhibit B34-43 which she said were her medical bill, prescriptions, invoices used when she was pregnant in 2017 for the 2<sup>nd</sup> plaintiff.

During cross-examination, the 2<sup>nd</sup> defendant told this Honourable court via email address and she further admitted to her promising to sign same, she admitted the content of exhibit 10<sup>1-29</sup> page 21 lines 11,12, and 13 dated 15 January, 2021, sent at 16:49.

she however did not sign it because she had though the 2<sup>nd</sup> plaintiff was not serious about it.

she also admitted receiving a consolidated invoice from the 2<sup>nd</sup> plaintiff but that the said invoice was in respect of some other transaction. she admitted to enquiring about the agreement as contained in exhibit A10 at page 11 lines 16&17 wherein she enquired "what about the agreement have you drafted it?"

DW2- Brenda Bangura having been sworn in oath, she testified to the effect of been aware of the love relationship that existed between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant, but nothing much of the relevance to the case. When cross-examined as to whether she knows why the defendants and the plaintiffs are in court, she intimated that because the love relationship between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant.

Indeed, the contentions before this Honourable court could be grouped and analysed under the following heads:

- (i) Whether the 2<sup>nd</sup> plaintiff is an agent of the 1<sup>st</sup> plaintiff and whether the 2<sup>nd</sup> defendant is an agent of the 1<sup>st</sup> defendant herein.
- (ii) Whether, based on the facts and evidence before this Honourable court, there is a valid contract between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant herein?
- (iii) Whether the 1<sup>st</sup> plaintiff is lawfully entitled to the reliefs prayed for as appeared in the statement of claim of the writ of summons commencing this action?



Whether the 2<sup>nd</sup> plaintiff is an agent of the 1<sup>st</sup> plaintiff and whether the 2<sup>nd</sup> defendant is an agent of the 1<sup>st</sup> defendant

In the totality of facts and evidence hereinbefore set out before this court, it is incontrovertible that the 2<sup>nd</sup> plaintiff is the managing director of the 1<sup>st</sup> plaintiff, while the 2<sup>nd</sup> defendant is the executive director of the 1<sup>st</sup> defendant. All this was established by both the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant in their respective examination in chief.

It is also incontrovertible that as directors of their company, they are also agents of the company. They indeed bear the duty and have the general superintending duty over their restive principals. it is also without any doubt, and no contention raised thereunder that of the general business and affairs of same. Reference to Halsburys Law of England 3<sup>rd</sup> Edition Volume 6 is indeed apt where it clearly states:

**“The directors are agents of the company. whenever an agent is liable they are liable and where the liability would attach to the principal, and the principal only, the liability is the liability of the company.”**

Apt reference is also made to No.596 under the heading “Powers and duties of directors” under the Rubric “positions of directors general” at page 293-294 of Halsbury Laws of England 3<sup>rd</sup> Edition Volume 6 which reads:

**“The true position of Directors is that of agents for company. as such they are clothed with the powers and duties of carrying out the whole of its business subject however, to the restriction imposed by the Articles and any statutory provisions.”**

In the circumstances, it is tenable to submit that both the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant where at whatever stage of this agreement between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant, they were conducting the affairs of their respective principal.

Whether based on the facts and evidence before this Honourable court, there is valid agreement between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant herein.

A contract simpliciter is an agreement that is legally enforceable. Contract law requires objectivity, whilst not ignoring subjectivity as well.

In Smith V. Hughes (1871) L.R. QB 597 Blackburn J. remarked:

**“If whatever a man’s real intentions maybe, he so conducts himself, that a reasonable man would believe that he was assenting to the terms proposed by the other party and that other party upon the belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party’s terms.”**



**Robert Goff L.J in Allied Marine Transport Ltd v. Vale Da Rio Duce Navegacao SA. The Leonidas D. (1985) 1 WLR 925** put the matter thus:

**“If one party O, so acts that his conduct, objectively considered, constitutes an offer, and the other party A believing that, the conduct of O represents his actual intention, accepts O’s offer, then a contract will come into existence and on those facts it will make no difference, if O did not infact intend to make an offer, or if he misunderstood A’s acceptance, so that O’s state of mind is, in such circumstances irrelevant.”**

Traditionally the courts have required that agreement be demonstrated by an offer made by one party and by complete acceptance of that offer by the other party.

However, Lord Denning in particular, took the view that the circumstances as a whole should be examined in an attempt to discover whether there was agreement (Butler Machine Tool Co. Ltd V. Ex-Cell Corporation (England) Ltd (1979) 1 WLR 401, page 36)

From the pleadings before this court, the 1<sup>st</sup> plaintiff represented by the 2<sup>nd</sup> plaintiff entered into an oral agreement with the 1<sup>st</sup> defendant represented by the 2<sup>nd</sup> defendant for the provisions of office equipment and computers on credit to the 1<sup>st</sup> defendant. it is further averred that the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant through their respective agents aforesaid did agree that the 1<sup>st</sup> plaintiff should commence supply of items and later send the written agreement that commence supply of items and later send the written agreements that will be sign by the defendants.

That in return for the services of the 1<sup>st</sup> plaintiff, the profit realised from the contract awarded to the 1<sup>st</sup> defendant shall be shared at 60/40. It is uncontroverted that the 1<sup>st</sup> plaintiff through its agent herein, the 2<sup>nd</sup> plaintiff provided and supplied the items as listed, in a consolidated invoice as was unambiguously listed under paragraph 6 of the plaintiff’s particulars of claim.

It is also uncontroverted that the plaintiff in reliance of the collateral oral agreement further transferred the sum of \$40,000 (Forty Thousand United States Dollars) through the Emirates Islamic Bank with account number 37083, 33778901 with account name Royal Max Trading Mobile LLC or IBAN AE 6303400037 08335886901 on swift code MEBLAEAD.

This bank transfer attracted transfer charges in the sum of \$1,250 (One Thousand Two Hundred and Fifty United States Dollars) amounting to the total sum of \$41,250 (Forty-one Thousand Two Hundred and Fifty United States Dollars). The 1<sup>st</sup> defendant unambiguously admitted same, but she claims that it was a gift to her by



the 2<sup>nd</sup> plaintiff because they (the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant) were in an intimate love relation:

The plaintiffs have averred and testified that a business class flight ticket was bought for the 2<sup>nd</sup> at an increased cost of \$5,366 (Five Thousand-three Hundred and Thirty-six United States Dollars) so that the 2<sup>nd</sup> defendant could travel to Dubai mainly to purchase the Samsung tablets. The 2<sup>nd</sup> defendant admitted acting for the 1<sup>st</sup> defendant but she claimed that same was done exgratia without any intent to be repaid albeit she was in an intimate relationship with the 2<sup>nd</sup> plaintiff for over a period of 10 years.

The pivotal issue which is to be resolved and possible question to be raised is "whether there are any documentary evidence to prove such claims that could lead to the conclusion that there was a collateral oral agreement (which was reduced in writing) between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant represented by the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant herein.

The court may in certain circumstances hold that there are 2 contracts- the written contract to which the parol evidence rule applies, and the oral contract (Without which the main written contract would not have been made) to which the rule does not apply.

Reference would first to Lord Monltons statement in **Helbut, Symons & Co. V. Buckleton (1913) AC 30** relating to collateral contracts is deemed restrictive and confusing because the distinction between a collateral warranty and a collateral contract is not preserved:

(T) There may be a contract the consideration for which is the making of some other contract. 'If you will make such and such a contract I will give you one hundred pounds, is in every sense of the word a complete legal contract. It is collateral to the main contract, but each has an independent existence and they do not differ in respect of their possessing to the full character and status of a contract. But such collateral contracts must form their very nature be rare. The effect of a collateral contract as that which I have instanced would be to increase the consideration of the main contract by 1001 and the more natural and usual way to carrying this out would be to so modifying the main contract and not by executing a concurrent and collateral contract. They must be proved strictly, not only the terms of such contracts but the existence of an animus contratendi on the part of all the parties to them must be clearly shown. Any laxity on these points would enable parties to escape from the full performance of the obligation of contract unquestionably entered into them and more particularly so would have the effect of lessening the authority of



written contracts making it possible to vary by suggesting the existence of verbal collateral agreements relating to the same subject-matter.

However, Lord Denning's adoption of the device is what this court adopts fully in **J. Evans V. Andrea Merzario.**

### **Facts**

(T) he forwarding agents said there was no contractual promise that the goods would be carried under deck.

Alternatively, if there was they relied on the printed terms and conditions, the judge held there was no contractual promise and these containers should be carried under dock. He thought that in order to be binding the initial conversation ought to be contemporaneous; and that here it was too remote in point of time from the actual transport, furthermore, that viewed objectively it should not be considered binding. The judge quoted largely from the well-known case of Heilbut Symons & Co. V. Buckleton (1913) AC30 in which it was held that a person is not liable in damages for an innocent misrepresentation; and that the courts should be slow to hold that there was a collateral contract. I must say that much of what was said in that case is entirely out of date. . ."

Was there an oral agreement?

Exhibit A10<sup>1-29</sup> with reference to page 11 lines 16&17 are whatsapp communication between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant relating to the agreement. At the aforesaid reference, the 2<sup>nd</sup> defendant enquired, "What about the agreement?" have you drafted it" In reply to the immediate preceding questions, the 2<sup>nd</sup> plaintiff answered.

"Will send it tonight" page 11 Line 18 dated 8<sup>th</sup> January, 2021 sent at 19:09 and line 19 dated 08<sup>th</sup> January, 2021 sent at 19:48.

On the 15<sup>th</sup> day of January, 2021 at 11:29, the 2<sup>nd</sup> plaintiff sent an email on the subject "loan agreement" to the 2<sup>nd</sup> defendant stating briefly "Revised as requested. sign and return back": Reference will also be to exhibit A9, there was a reply to this email message dated the 2<sup>nd</sup> defendant sent an email message on Friday 15<sup>th</sup> January 2021 at 16:49 where she wrote

"Will sign and return later tonight" and to further confirm receipt of the loan agreement, the 2<sup>nd</sup> defendant sent a Whatsapp message dated 15<sup>th</sup> January, 2021 at 16:49 whence she wrote

**"Ave received the agreement. Will go and check whether the shop is open today to sign, scan and send back to you, otherwise tomorrow morning" This also brings into a sharp focus of exhibit A10<sup>1-29</sup> at page 21**



**line 11 and 12. The 2<sup>nd</sup> defendant replied the 2<sup>nd</sup> plaintiff at line 13 of the same page 21 "Thanks again, appreciated"**

An indepth look at the content of the loan agreement which the 2<sup>nd</sup> defendant promised to sign, scan and return to the 2<sup>nd</sup> plaintiff all of which is contained in the referred communication.

Another question this court will ask itself whether the exchanges listed above amounted to oral agreement?

Reference is made to Cheshire & Fifoot on contracts 6<sup>th</sup> Edition at page 104, same of which is referenced in the Supreme Court case intituled S.C. Civ. App. No.4/8/ Between Falkenberg & Brun Ltd & E Schmidli Vs. Florence Mcgauran at page 61/66 which states:

**"The exclusion of oral evidence is clearly inappropriate where the document is designed to certain only part of the terms where, in otherwords, the parties have made their contract partly in writing and partly by words of mouth. The situation is so comparatively frequents as in effect to deprive the ban on oral evidence law which has been attributed to it. It will be presumed in the words of a learned author**

**"that a document which looks like a contract is to be treated as the whole contract." But this presumption though strong is not irrebutable. In each case the court must decide whether the parties have or have not reduced their agreement to the precise terms of an all-embracing written formula. If they have oral evidence will not be admitted to vary or contradict it; if they have not, the writing is but part of the contract, and must set by side with the complimentary oral term..."**

This court adopt wholesale the submission of counsel for the plaintiff to the extent that the email and Whatsapp conversation between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant relating to the loan agreement and the practical impossibility of signing same as agreed by the parties.

This court cannot exclude the oral evidence as it should add to, the written agreement (unsigned)

It will also be unappropriate to exclude oral evidence.

This court mindful of the difficulties the courts have encountered over the period where the contract is not wholly committed to writing, the three (3) stage test have been wholly adopted herein to wit:



At what stage of the transaction was the crucial statement made? the answer to this is in the opinion of this court designed as a term of the contract and not merely be an incident in the preliminary negotiation.

In Baunerman V. White A prospective buyer, in the course of negotiating for the purchase of haps asked the seller if any Sulphur had been used in their treatment, adding that if it had, he would not even trouble to ask the price, the seller answered that no Sulphur had been used. the negotiations thereupon proceeded and resulted in a contract of sale. It was later discovered that Sulphur had been used into

cultivation of a portion of the haps-5 acres out of 300- and the buyer when sued for the price, claimed that he was justified in refusing to observe the contract. the buyer's claim could not be upheld unless the statement as to the absence of Sulphur was intended to be part of the contract, for the jury found that there was no fraud on the part of the seller. The buyer contended that the whole interview was due transaction, that he declared the importance he attached to his inquiry, and that the seller must have known that if Sulphur had been used there could be no further question of a purchase of the haps.

Another question is whether the oral statement of the parties was followed by a reduction of the terms of the writing the answer is certainly in the position. It was clearly from the Whatsapp messages, texts, that the intention of the parties in that regard.

#### In Birch V. Paramount Estates Ltd (1956) 16 Estates Gazette 396

The defendant who were developing an estate offered a house they were then building to the plaintiff, saying it would be as good as the show house? the plaintiff later agreed to buy the house and the written contract of sale contained no reference to this particular representation the house was not good as the show house the court of Appeal treated the defendant's statement as part of the concluded contract and allowed the plaintiff's claim for damages.

Indeed, the email and Whatsapp conversation between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant relating to the loan agreement evidently showing the intention of the parties.

Particular reference is to exhibit A10<sup>1-29</sup>, specifically page 5 lines 1 to 5 excerpts of which

**"It's up to you to keep your promise... just wish you had been honest with me that day I came to your office to ask you that cos I had already spoken to few other people, you were willing to partner with me and split the profit 60/40..."**

This is what the 2<sup>nd</sup> defendant told the 2<sup>nd</sup> plaintiff.



Infact, there is a consistent pattern and discussions of profit sharing.

during the examination in chief the 1<sup>st</sup> time, the 2<sup>nd</sup> plaintiff mentioned any agreement with her was when she was in Dubai.

Reference is to exhibit A1-3, Page 1, No 2, 2.1 under the Rubric "Interest" which states:

**"For the amount of loan advance to procure the tablets amounting to US\$ 40,000 and US\$60,000 the interest shall be 40% of the gain, this only applies for the tablets only.**

Exhibit A10<sup>1-29</sup> specifically page 5 of lines 1 to 5 which is a Whatsapp conversation by the 2<sup>nd</sup> defendant to the 2<sup>nd</sup> plaintiff. The 2<sup>nd</sup> plaintiff mentioned how the profit to be realised was to be shared.

**"Its up to you to keep your promise... just wish u had been honest with me that I came to your office to ask you to cos I had already spoken to few other people, you were willing to partners with me and split the profit 60/40"**

This clearly showed by the 2<sup>nd</sup> defendant and the 2<sup>nd</sup> plaintiff and same agreement was reached. This is quite contrary to the denial of the 2<sup>nd</sup> defendant.

The Whatsapp conversations as to the method of profit sharing between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant point to the fact of parole evidence, same of which incorporated the dealings between the parties.

**In *Simpkins V. Pays (1955) 3 All ER 10***

The defendant owned a house in which she lived with X, her granddaughter and the plaintiff, a paying boarder, the three took part together each week in a competition organized by a Sunday newspaper. the entries were made in the defendant's name, but there was no regular rule as o the payment of postage and other expenses, one week the entry was successful and the defendant obtained a prize of £750, the plaintiff claimed a third of the sum, but the defendant refused to pay on the ground that there was no intention to create legal relations but only a friendly adventure.

Seller J gave judgement for the plaintiff. He agreed that there are many family associations where some sort of rough and ready statement is made which would not establish a contract, but on the present facts he thought that there was a 'mutuality in the arrangement between the parties' It was a joint enterprise to which each contributed in the expectation of sharing any prize that was won.



Infact, this court's position of there been valid agreement between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant is further bolstered by a review of exhibit A7 and A8 which are undated and dated cheques which were returned to drawer by UBA bank Sierra Leone Limited. These cheques were issued by the 1<sup>st</sup> defendant, Empress Collection Ltd, duly signed by the 2<sup>nd</sup> defendant.

Exhibit A5 is a proof that the items herein are office equipments and computers provided and supplied to the 1<sup>st</sup> defendant for onwards supply to Statistics Sierra Leone, detail reference of the communication is exhibit 10<sup>1-29</sup>

Reference particularly to page 26 lines 3 to 4, same dated 27<sup>th</sup> October, 2021 sent at 21:47.

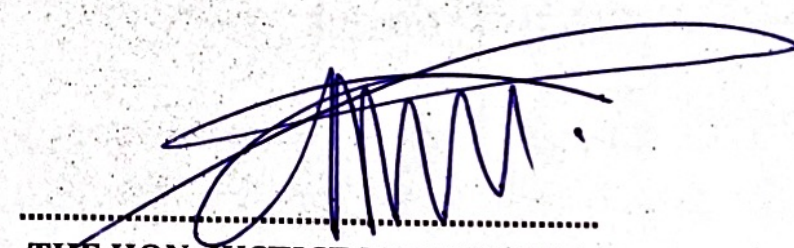
The plaintiff has on a balance of probabilities established the claims as contained on the writ of summons intituled FTCC 012/22 2022 W. No.1 and also established that there was an agreement with legal effect between the 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant for and on behalf of the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant.

Consequently, this court is of the considered view that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are liable jointly and severally to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, and order as follows:

- 1. Recovery of the sum of Le557,336,000 (Five Hundred and Fifty-seven Million Three Hundred and Thirty-six Thousand Leones). Payable in four (4) instalments to wit; effective 29<sup>th</sup> February, 31<sup>st</sup> March, 30<sup>th</sup> April and 31<sup>st</sup> May 2024.**
- 2. Recovery of the sum of USD\$46,616 (Forty-six Thousand Six Hundred and Sixteen United States Dollars) or its Leones equivalent payable within the aforesaid four (4) instalments in (1) above.**
- 3. That in default of 1&2 (above) all of the sums outstanding becomes due and owing and should be paid immediately.**
- 4. Solicitor's costs of Nle40,000 (Forty Thousand New Leones)**
- 5. Costs of the action of Nle30,000 (Thirty Thousand New Leones)**
- 6. Interest at the rate of 5% on the said sums pursuant to Section 4(1) of the Law Reform (Miscellaneous Provisions) Cap. 19 of the Laws of Sierra Leone per annum till date of judgement.**



7. Damages for breach of contract to be assessed.
8. Liberty to apply.



.....  
**THE HON. JUSTICE M.P MAMI J.A.**