

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

BETWEEN:

GUARANTY TRUST BANK (SL) LIMITED - PLAINTIFF

AND

SIERRA BIRDS (SL) LIMITED & OTHERS - DEFENDANTS

RULING OF THE HONORABLE JUSTICE LORNARD TAYLOR DELIVERED
ON THE 20TH JULY 2020

The Plaintiff has come before this court by Judge's Summons dated 25th March 2019, seeking the leave of the court to enter final judgment against all 7 defendants as per the claims prayed for in the writ of summons which is exhibited in the affidavit attached to and in support of the application as Exhibit AT14.

The Plaintiff's complaint is that it is in the business of banking offering banking services generally while the 1st, 3rd, and 6th defendants were its customers. It maintains that on the 30th July 2015, 2 facilities of Le 6 billion and Le 4 billion respectively were granted to Sierra Airlines. The Le 6 billion Leones was a time loan facility for the period of 12 months while the Le 4 billion was also a time loan facility for a period of 6 months. An offer letter was drawn up and the offer accepted by Sierra Airlines (SL) Limited and this document was exhibited as Exhibit AT1.

The purpose was to finance the purchase of mini buses, Toyota Hilux, Generators, Ford Rangers, Delivery vans, assorted furniture and various office equipment as well as to finance the purchase of bulk airline tickets from Icelandic air.

The facility was to be secured by a tripartite legal mortgage on property situate at 117 Wilkinson Road, a tripartite legal mortgage of property situate at Bellair Park, the personal Guarantees of the 2nd and 4th Defendants and the corporate guarantee of the Security Support Group International (SSGI).

In view of the above, a tripartite legal mortgage with the date 27th November 2015 between Sierra Bird (SL) Limited as Borrower, Jihad Saleh and Batulle Jawad as Surety/Mortgagor and Guarantee Trust Bank (SL) Limited as Lender is marked and exhibited to the application as Exhibit AT2. The collateral therein is property situate at Wilkinson Road, Murray Town.

Also exhibited in the said Affidavit as Exhibit AT3 is a tripartite legal mortgage with the date 27th November 2015 between Sierra Bird (SL) Limited as Borrower, Houssein Bazzy as Surety/Mortgagor and Guarantee Trust Bank (SL) Limited as Lender. This is for property situate at No. 4 George Brook Road, Bellair Park, Freetown.

When Sierra Airlines (SL) Limited failed to comply with the terms of the facilities, the 4th and 5th Defendants approached the Plaintiffs and requested that the facility be restructured.

According to exhibit AT4 which is a letter dated 31st March 2016, a term loan (restructure) was addressed to the Managing Director Sea Bird (SL) Limited. This facility was in the amount of Le 7.9 billion and the purpose was to re-finance the outstanding term loan facility which was used to make deposit of US\$ 800,000 for the release of one Boeing 747-200 aircraft seating 182 passengers from Icelandic air and to finance the purchase of bulk airline tickets stock from Icelandic Airlines totalling US\$ 200,000. This facility was for a 12 months period with a 3 months moratorium period. This was also accepted and signed by the 1st Defendant.

The facility was to be secured by a tripartite legal mortgage on property at 117 Wilkinson Road belonging to Jihad Saleh and WussamJawari. It was also to be secured by a tripartite legal mortgage on property situate at Bellair Park belonging to Ibrahim Bazzy

According to the deponent, the restructured facility referred to above was again further restructured as shown in exhibit AT5 which is a letter dated 5th January 2017, which is an offer for a term loan (restructure/reduction) and was addressed to the Managing Director Sea Bird (SL) Limited. This facility was in the amount of Le 5.6 billion and the purpose was to finance Le 5.6 Billion matured term loan This facility was for a 36 months period with a 3 months moratorium period. This was also accepted and signed by the 1st Defendant.

This facility was to be secured by a tripartite legal mortgage on property at 117 Wilkinson Road belonging to Jihad Saleh and WussamJawari. It was also to be secured by a tripartite legal mortgage on property situate at Bellair Park belonging to Ibrahim Bazzy, personal guarantees of the 2nd and 4th Defendants as well as the corporate guarantee of Security Support Group International Limited (SSGI).

The 6th Defendant also as is shown in Exhibit AT6 obtained a facility from the Plaintiff in the sum of Le 5.5 billion. The facility was a revolving time loan for 365 days with 90 days clean up cycle. The purpose for which the facility was granted was to make payment to local suppliers for building materials, import duties, port levies, taxes, etc. The facility was to be secured by a tripartite legal Mortgage on property situate Upper Pipe Line, Off Wilkinson Road, Freetown belonging to the 4th Defendant. It was also to be secured by the personal guarantees of the 4th and 5th defendants as directors of the 6th Defendant. The Guarantee and indemnity of the 4th Defendant is exhibited as Exhibit AT7.

The 2nd defendant also obtained a facility from the Plaintiff. Exhibit AT8 is the offer letter granting the 2nd Defendant the sum of Le 7.6 billion for a period of 12 months. The purpose was to part-finance the importation of building materials and the facility was to be secured by a tripartite legal mortgage on property situate at Upper Pipe Line, Off Wilkinson Road belonging to the 4th Defendant. The offer was accepted by the 2nd defendant. Exhibit AT9 is a Guarantee and Indemnity signed by the 2nd and 5th Defendants. This document is marked Exhibit AT9.

The 3rd defendant also obtained two facilities from the Plaintiff in the sum of Le 2.4 billion and Le 1.5 billion respectively. Both facilities were for 12 months but the 1st facility's tenure was inclusive of a 2 months moratorium. The purpose of the first facility was to finance the purchase of 3 Buses, Electronics and other accessories and the 2nd facility had as its purpose, the augmentation of the working capital of the 3rd defendant. This offer is contained in Exhibit AT10

The facilities were to be secured by a tripartite legal of property situate at Olivia Street, Aberdeen belonging to the 7th Defendant, a debenture on all assets of the 3rd defendant and a personal guarantee of the Director of the 3rd defendant. This offer was also accepted by the 3rd defendant. The debenture is before this court as Exhibit AT11.

On the 29th June 2018, the Plaintiff agreed with the 6th Defendant to consolidate the matured and outstanding loans of the 1st, 2nd, 3rd and 6th, Defendants and according to Exhibit AT 12 which is the letter of offer for the said consolidation, the amount which was formerly Le 38.2 billion was reduced to Le 25.6 billion and the 6th Defendant was given 36 months to pay. This facility was to be secured by;

1. tripartite legal mortgages of properties situate at;
 - a. Upper pipe line Off Wilkinson Road, Freetown belonging to the 4th Defendant

- b. Upper pipe line Off Wilkinson Road, Freetown belonging to the 4th Defendant
 - c. Property situate at Olivia Street, Off Sir Samuel Lewis Road, Freetown belonging to the 7th Defendant
2. All assets debenture on the 6th defendant's floating assets
 3. Personal guarantee of the Jihad Saleh as Director of the 6th Defendant.

This document was signed by the 6th Defendant in acceptance of its terms and conditions.

The allegation of the Plaintiff is that as at the inception of this matter, the 6th defendant have not made good on its promise to pay the restructured sum of Le 25.6 billion.

This court took the liberty of perusing the defence of the 1st, 3rd, 4th, 6th, and 7th Defendants and it is clear from same that they have put the Plaintiff to strict proof of virtually every material fact pleaded. The Defence of the 2nd Defendant is to the effect that the loan had been paid in full together with interest and there is no sum due and owing. The 5th defendant on the other hand admitted executing the mortgage deed but the pith and marrow of his defence is that he was absolved of all liability when the Plaintiff consolidated the outstanding indebtedness of the 1st, 2nd, 3rd and 6th Defendants and created a fresh term loan facility without their consent and participation.

The law with respect to Summary Judgment in our jurisdiction has long been well settled and these established principles have been applied in a plethora of cases to suit their respective facts. The principles applied in *AminataConteh v The All People's Congress Civ. App. 4/2004* have gained footing in our practice and has been successfully applied by several tribunals in the determination of Summary Judgment Applications. For an application for summary judgment to be granted, the Plaintiff must prove his case thereby discharging the burden placed on him at the standard set by the law. For the application to fail thereafter, the defence of the defendant must raise triable issues which have a reasonable chance to succeed at trial. This same test was used in the case of *Marie Stopes (SL) Limited v Gloria Mc Conteh SC 6/2010*.

The defence in opposing the application raised several issues. They contend firstly that the writ of summons by which this action was commenced is most confusing and as a result the matter should proceed to trial. They state that the Plaintiff by the writ of summons have not made clear the difference between the principal and the interest and as such this court cannot be sure at this stage, what the Plaintiff is entitled to specifically with respect to the principal and how the interest was calculated. The case of **Rokel Commercial Bank v Hassan Nasser** was cited and relied on in this regard. Added to this,

the properties claimed to be mortgaged were not mortgaged and that the 3rd Defendant does not have a loan facility but rather hold a revolving overdraft facility. They also maintain that according to Exhibit AT 10, the respective sums are claimed individually while at the same time maintaining that the debt has been consolidated. As a result, the defendants were hamstrung in answering to the Plaintiff's particulars thus resulting in a series of denials and non-admissions of the claims set out in the writ.

The 2nd and 5th Defendants in opposing the application maintained in their affidavit in opposition that they are no longer indebted to the Plaintiff. As is evident in their defence filed, they are arguing that they have been absolved of liability when the Plaintiff consolidated the facility and placed the burden on the 6th Defendant and its sureties. As such they argue, the Plaintiff has no case against them let alone judgment summarily.

Having gone through the respective arguments and the authorities that have been developed on issues surrounding summary judgments, it is my considered view that firstly, this court does not see the several issues raised in the writ of summons as confusing. As has been highlighted above, the historical development of the facts in this matter are quite crystal. Funds were given to some of the defendants which they are not denying. Some mortgages were signed to secure these funds, which also is not in denial. Have the defendants made good on their promise to pay back the said funds as agreed? The answer to this is also in the negative. Even the 2nd and 5th defendants are not maintaining that they have paid the debt in full and as such have not provided deposit slips or bank transfers in that regard. They instead maintain that technically, they have been absolved of their burden by the consolidation of the facility. There is also no denying that the facility was consolidated by either part of the spectrum.

However, despite these facts as highlighted above, this court is regardless, constrained and cannot give judgment for the Plaintiff as prayed in the writ of summons for the following reasons.

Firstly, effort was not made by the Plaintiff to explain the relationship between Sierra Airlines (SL) Limited and Sierra Birds (SL) Limited. It seems that the transaction started with Sierra Airlines (SL) Limited but for some reason, along the line, it was replaced by Sierra Birds (SL) Limited. The absence of documents or deposed facts to explain this dichotomy leaves a gap in the Plaintiff's case which cannot be resolved in his favour on a balance of probabilities.

Secondly, some of the facilities such as Le 5.5 billion Leones to the 6th Defendant, the Le 7.6 billion to the 2nd defendant, the Le 3.9 billion to the 3rd defendant, and even the consolidated facility of Le 25.6 billion were to have

been secured by tripartite legal mortgages. These mortgages were not exhibited in the application. This issue was not addressed by the Plaintiff in this application. This court is left in a vacuum with respect to a determination on the securities provided for these facilities and whether the sureties/owners of these properties referred to in the respective offer letters and who are presently before this court, did consent to their properties being utilized as collateral for these facilities.

Thirdly, it goes without say that at a point in the history of these transactions, the several facilities now sought to be enforced separately were all consolidated into one facility of Le 25.6 billion. This raises several questions which remain unanswered and on which this court was not addressed.

1. If all the facilities have been consolidated and the burden placed on the 6th Defendant, why is the Plaintiff again making separate claims against the other defendants and not just the 6th Defendant?
2. Assuming without conceding that these facilities were all consolidated, why is the plaintiff in Exhibit AT14 (the writ of summons) claiming the consolidated sum added to and not in the alternative to the other claims which were allegedly consolidated?
3. Does consolidating the facilities without recourse to the holders of the earlier facilities mean they are absolved of their indebtedness in the event the 6th defendant does not comply with the terms of same and in the absence of a deed of re-conveyance?

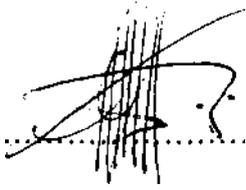
In the absence of answers to these questions, this court cannot with certainty hold that there are no issues to be tried and enter judgment for the Plaintiff. The application by the Plaintiff for leave to enter final judgment against the defendants cannot in the circumstances be granted.

I therefore make the following orders;

1. The application by the Plaintiff for leave to enter summary judgment against the defendants is refused.
2. The Plaintiff is at liberty if he so desires to amend any part or portion of its writ of summons and file and serve same on the defendants' solicitors within 5 days from the date of this order.
3. The defendants shall if they so desire amend any part or portions of their respective defences and file and serve same on solicitor for the

Plaintiff within 5 days after the period limited for the Plaintiff to file and serve its amended writ of summons.

4. Where the any of the Defendants serves the Plaintiff with a counter-claim, the Plaintiff shall file and serve a reply and defence to same within 5 days after the time limited for the serving of the amended defence.
5. Within 14 days after the time limited for the serving of the Defence to counter-claim, all parties shall file and serve on the other copies of all documents to be used and relied on at trial.
6. Where any party has reason to believe that a document he intends to rely on is in the custody of any other party, that party shall make a written request for same before the expiration of 3 days after the time limited for the serving of documents to be relied on.
7. Where a request is made pursuant to paragraph 6 of this order, the party receiving the request shall forward such document or where such document is not in his custody, send a written reply within 3 days of the request.
8. Where a party intends to use and rely on at trial any document forwarded to him pursuant to a request for same, such party shall serve on every other party to this action, a supplemental bundle of document containing the documents forwarded to him within 3 days after the time limited for the reply.
9. Within 5 days after the expiration of the time limited for the filing of the supplemental bundle, the Plaintiff shall compile one comprehensive bundle consisting of all the different documents filed and served by all other parties and shall mark the pages of same serially before filing and serving all parties to this action and such compiled bundle shall be the marked exhibits to be used at trial.
10. That on the adjourned date all parties shall simultaneously in court serve on the court and on each other copies of their respective statements of the witnesses they intend to call at trial.
11. The time for long vacation shall not be reckoned in complying with these orders.
12. All parties shall bear their respective costs of this application.

A handwritten signature in black ink, appearing to read 'L. Taylor', with a horizontal dotted line underneath.

HONORABLE JUSTICE LORNARD TAYLOR