

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE  
7<sup>TH</sup> DAY OF SEPTEMBER, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH  
(MRS)

CASE NO. C2/145/2022

1. ALI TRABOULSI }  
2. SYLVIA TRABOULSI } PLAINTIFFS

VRS  
TURKISH AIRLINES } DEFENDANT

MR EMMANUEL SELASI ASAMOAH FOR THE PLAINTIFFS

MR. J. OPOKU ADJEI FOR THE DEFENDANT

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## JUDGMENT

- The parties entered into a tenancy agreement and it is the case of the plaintiffs that, as part of the terms, they entered into a barter arrangement where the defendant was to issue plane tickets to defray part of the rent. They stated that the defendant breached the contract, having failed to issue the tickets after persistent demands. The Defendant denied the claim and pointed out that business-class tickets were issued to the Plaintiffs as part payment of the rent.

- The plaintiffs, in their statement of claim, asserted that they are the lawful owners of residential apartments known as 'Jasmine' and 'Gardenia' located at Meridian Apartments, plot number 2 Alema Avenue, Airport Residential Area, Accra. On 1st June 2017, the parties entered into a one-year tenancy agreement with the Defendant who was

represented by Mr. Ferhat Yerli, the General Manager of the defendant to rent the furnished apartment known as Jasmine apartment described as No. 351 on the 5th floor of Meridian apartment Block E located at No. 351 Alema Avenue, Airport residential area for use as residential purposes only thereby paying US\$ 36,000 as rent. Per the terms of the agreement, the tenancy was to commence from 1st June 2017 to 1st June 2018.

Before the expiration of the tenancy, the defendant acting through Mr. Ferhat Yerli, the General Manager of the defendant, approached the plaintiffs and requested that the General Manager be relocated to a more spacious apartment belonging to the plaintiff to accommodate his family- which is described as the 'Gardenia' apartment No. 241 on the 4th floor block D at Meridian apartment. Mr Ferhat Yerli moved into the 'Gardenia' apartment on 24th September 2017 pursuant to an oral agreement. As evidence of his relocation from the Jasmine to Gardenia apartment, the defendant signed an inventory declaration on 15th September 2017 prior to moving into the Gardenia property. The defendant confirmed the arrangement to compensate for the difference in rent by two emails dated 2nd and 23rd November 2017.

- According to the plaintiff, they entered into an oral agreement with the defendant through Mr. Yerli for the payment of the increase in the rent of US\$ 4,250 for the eight and half months remaining with two business class air tickets to offset the increased cost of rent. The parties agreed that the defendant be issued with two return business class air tickets from Frankfurt to Accra. The defendant consequently issued two return air tickets as requested by the plaintiff on 4th December 2017. Though the tickets were issued in December 2018 in respect of the 1st June 2017 tenancy agreement, the two tickets were used in early February 2019 in fulfillment of the arrears in rent and not any other tenancy agreement.

Upon the expiration of the tenancy agreement dated 1st July 2017, the defendant entered into another tenancy agreement effective 1st June 2018 to 1st June 2019 in respect of the Gardenia apartment for a total rent of \$39,600.00. Per clauses 7 and 8 of the 2018 tenancy

agreement, the defendant was to pay part of the rent by cash US\$ 27,600.00 and the difference of US\$ 12,000 was to be credited to the account of the “ Ali Traboulsi for the purchase of an airline ticket of Turkish Airline .” That he has failed to meet the terms of the said agreement by crediting the plaintiff’s account with the value of the air ticket despite repeated demands. All attempts to get the defendants to pay the said outstanding rent or issue Turkish Airlines tickets in lieu of same has been deliberately and contemptuously ignored by the defendant. The plaintiffs claim the following reliefs:

- a. A declaration that the defendant breached the contract when they failed to issue the tickets in the sum of US\$12,000- representing the outstanding rent in favour of the plaintiff.
- b. An order directed at the defendant to pay US\$12,000 or its cedi equivalent at the prevailing exchange rate, being the outstanding rent per the tenancy agreement dated 1st June 2018.
- c. Interest on the said US\$ 12,000 its cedi equivalent at the prevailing exchange rate from 1st June 2019 till the date of final payment at the prevailing commercial bank rate.
- d. Alternatively, an order directed at the defendant to issue the tickets in favour of the plaintiffs in lieu of the outstanding amount of US\$ 12,000.
- e. General damages against the defendant for breach of contract
- f. Any other orders as the court may deem fit
- g. Cost, including cost of filling and legal fees.

● The defendant, in the statement of defence, admitted that Mr. Ferhat Yeli moved into the Gardenia apartment. It was a term of the executed agreement that part of the rent should be paid by the issue of tickets to the plaintiffs as part payment of rent and that the defendant issued business class tickets to the plaintiffs. The issued tickets in December

2018 were for the part payment of the rent due on the tenancy agreement entered into in June 2018. That the plaintiffs are not entitled to their claim.

The issues, as stated in the application for direction, are as follows:

- I. Whether or not Mr. Ferhat Yerli, the General Manager of the defendant, requested to be relocated to a more spacious 'Gardenia' apartment Nr. 241 at Meridian Apartment, Alema Avenue Airport Residential Area- Accra
- II. Whether or not Mr. Ferhat Yerli, the General Manager of the defendant, moved into the 'Gardenia' apartment No. 241 at Meridian Apartment, Alema Avenue Airport Residential Area- Accra
- III. Whether or not there was an agreement that the plaintiffs be issued with two return business class air tickets from Frankfurt to Accra in satisfaction of the increase in rent from the defendant movement in the 'Gardenia' apartment Nr. 241 at Meridian Apartment, Alema Avenue Airport Residential Area- Accra.
- IV. Whether or not the tickets issued in December 2018 were in respect of the tenancy agreement executed on the 1st of June 2017 in fulfillment of the arrears in rent due to the upgrade into the larger 'Gardenia' apartment
- V. Whether or not the defendant breached the tenancy agreement dated 1st June 2018 when they failed to issue the tickets in the sum of US\$ 12,000
- VI. Whether or not the defendant is liable to pay an amount of US\$ 12,000 or its cedi equivalent at the prevailing exchange rate, being the outstanding rent per the tenancy agreement dated 1st June 2018.
- VII. Any other issue arising out of the pleadings

#### Issues I and II

- *Whether or not Mr. Ferhat Yerli, the General Manager of the defendant, requested to be relocated to a more spacious 'Gardenia' apartment Nr. 241 at Meridian Apartment, Alema Avenue Airport Residential Area- Accra*
- *Whether or not Mr. Ferhat Yerli, the General Manager of the defendant, moved into the 'Gardenia' apartment Nr. 241 at Meridian Apartment, Alema Avenue Airport Residential Area- Accra*

In the case of **A.R. Duodu-Sakyiama v. TDC [2016] DLSC 2826**, the Supreme Court, Justice Pwamang JSC stated:

*"...The literal English meaning of *expressum facit cessare tacitum* is; "what has been expressed makes what is implied silent."... we need to consider the totality of the circumstances under which the writing was signed. The critical issue would be whether what has been expressed was intended to be the exclusive agreement of the parties.*

*It is a common law rule which states that when two parties have made a contract and have expressed it in writing to which they have both assented as an expression of their intentions, oral evidence is not admissible to add to, vary, or contradict the written agreement... The policy behind the parole evidence rule is that human memory is slippery and oral testimony, which is usually given sometime after a transaction, is not as reliable as documentary proof. What is more, the spoken word was viewed with skepticism. For these reasons, the rule was invented to ensure certainty and finality of transactions which is in the public interest. But it was long ago conceded that there are instances where the strict application of the rule can result in injustice and lead to the enforcement of contracts that the parties really did not make or exclude oral terms that were intended by the parties to be binding".*

- In this case, the first plaintiff, in his witness statement asserted that the parties entered into a year tenancy agreement with the defendant represented by Mr. Ferhat Yerli, the General Manager of the defendant to rent the furnished apartment Known as Jasmine for residential purposes and paid an amount of USD 36,000 as rent. Before the expiration of the tenancy, the General Manager of the defendant approached him and requested a location to a more spacious apartment- Gardenia apartment. That the General Manager moved into the Gardenia apartment with his family on 15th September 2017. The defendant issued a cheque on 30th May 2017 in respect of the rent of USD 36,000. The General manager signed Exhibit B- an inventory declaration on 15th September 2017 prior to moving into the Gardenia apartment.

Exhibit C is an email, dated 21st and 23rd November 2017 between the first Plaintiff and the General Manager. The subject is - RE: Inventory for your Gardenia flat. The 1st plaintiff attached a draft inventory to the mail and requested the General Manager to *'kindly check the draft inventory and let me if there are any mistakes so we can sign it before I fly out'*

- The evidence reveals that the General manager of the defendant moved into the Gardenia apartment in 2017. The defendant in the witness statement indicated that the defendant did not request for a change of the flat or an amendment in the contract with the plaintiff. He added that the company operates with budgets and had no budget for increased rent for a new apartment and that any agreement to change the flat was a private arrangement between Mr. Yerli and the plaintiffs. The defendant admitted that Mr. Yerli was the General Manager of the company and that Turkish Airlines assigned the flat to Mr. Yerli.

***Robert Wood Vs. OxyAir Limited Kwabena Darko*** -Supreme Court Civil Appeal No. J4/35/2004 dated 27th April 2005 -- Justice Date-Bah opined:

*"...On the facts of this case, the second defendant admitted that he was the managing director of the first defendant. Accordingly, he was, in law, one of the*

*organs of the company, able to bind the company in terms of the provision set out above.... This provision implies that at the time that the plaintiffs entered into their parol contract with the defendants, they had no constructive notice of the contents of the Regulations of the company. Accordingly, any restrictions on the authority of the managing director contained in the Regulations do not affect the validity of the contract entered into by him, unless the plaintiffs' actual knowledge of such restriction is proved. Thus, an outsider, such as the plaintiffs were when they entered into the oral agreement with the second defendant, is entitled to assume that all the internal rules of the company have been complied with..."*

Mr. Ferdinand D. Adadzi in his book: ***Modern Principles of Company Law in Ghana- 2022 Revised Edition***- page 293 stated:

*"It will be quite burdensome for a person to walk into the office or commercial centre where a company is engaged in a business and demand to read the constitution of the company prior to engaging in business with the company...The common law rule on the presumption of regularity is, therefore, for business convenience and efficacy. In other words, a party entering into a transaction or contract with the company should not be burdened to meticulously examine the internal rules of the company to determine that the company has the capacity to enter into the transaction or contract and in entering into the contract or transaction, has complied with such rules. That is, to find out whether the transaction to be carried out falls within the authorized business of the company or is being carried out in a manner stated in its constitution or persons acting on behalf of the company is so authorized in the constitution to act..."*

The defendant representative, during cross-examination, admitted that Mr. Yerli the General Manager was responsible for entering into agreements on behalf of the company,

with terms and conditions. The facts establish that the defendant duly acted through its General Manager who negotiated and executed the contract for and on behalf of the company. Mr. Yerli, acting on behalf of the defendant, requested and moved into the Gardenia apartment.

### Issues III and IV

- *Whether or not there was an agreement that the plaintiffs be issued with two return business class air tickets from Frankfurt to Accra in satisfaction of the increase in rent from the defendant movement in the 'Gardenia' apartment Nr. 241 at Meridian Apartment, Alema Avenue Airport Residential Area- Accra.*
- *Whether or not the tickets issued in December 2018 were in respect of the tenancy agreement executed on the 1st of June 2017 in fulfillment of the arrears in rent due to the upgrade into the larger 'Gardenia' apartment*
- The first plaintiff asserted that he entered into an oral agreement with the defendant in respect of the increase in rent of USD 4,250. According to him, they also agreed that two business-class air tickets would be issued to defray part of the rent. In paragraph 12 of his witness statement, he averred that to offset the increased cost of the rent pursuant to the tenancy agreement dated 1st June 2017 with the end date of 1st June 2018, it was agreed that the plaintiff be issued with two business class air ticket from Frankfurt to Accra.

In the case of **Chief Insp. Alhaji Mohammed Alidu (Rtd.) V. M/Gallant Ghana Limited-** High Court Suit No. FTR/15/09 dated\_16th Day of May 2012 Justice N. M. C. Abodakpi J. (as he then was) ruled:

*"...Plaintiff has alleged that there was an agreement between him and the defendant to render certain services, and has not been paid, even though he had performed*



*obligations on him arising out of the contract. He therefore carries the burden of proof, to adduce cogent evidence to support the averments made... The plaintiff is required to discharge the burden of persuasion on it, and adduce evidence to show that there was a valid agreement, made orally... The agreement must be CERTAIN and FINAL... And it becomes binding as soon as it is accepted by the person to whom it is addressed. Again, the objective test is what is adopted by the court to determine whether there is an offer and acceptance; the subjective test may apply in appropriate cases too. For an acceptance to be valid it must be final and unqualified expression of assent of the offer, suffice it to say that parties must agree on same TERMS and it is the duty of this court in this suit to construe what had transpired and to determine whether there was an agreement or otherwise. Furthermore, as a general rule, a promise is not binding as a contract unless it is supported by some CONSIDERATION. This concept of consideration for a valid contract has a purpose, it is meant to provide legal limits on the enforceability of agreements even when they are meant to be legally binding and not vitiated by some factors such as mistake, misrepresentation, duress or illegality. It is accepted that a basic feature of the doctrine is the idea of RECIPROCITY "something of value in the eye of the law", must be given for a promise in order to make it enforceable as a contract.*

- The first plaintiff tendered in evidence a residential lease agreement dated 1st June 2017- between the parties. Paragraph 6 states that: The term of the lease agreement commences at 12:00 noon on June 1st 2018 and ends at 12 noon on June 1st 2019. The agreed rent as stated in Exhibit D is USD 39,600. Paragraph 9 states: the balance of \$ 12,000 is to be credited to Ali Traboulsi's account with Turkish Airlines for the use of purchasing airline tickets on Turkish Airlines. Exhibit D was purportedly signed by the first plaintiff on 30th May 2018.

- The first plaintiff, during cross-examination, admitted that there were mistakes in the agreement concerning the date it was executed, the description of the property, duration of the tenancy, amongst others. He stated: *"It looks like the dates are wrong somehow because this is definitely the first agreement because the flat refers to the Jasmine flat. Sorry, this is the second agreement I just realized. I was just a bit mixed up with the dates. The first agreement, there was no signed first agreement. My brother rented it to Mr. Yerli. It was a verbal agreement for one year. 1st June, 2017 to 1st June, 2018...There were no tickets as part of the oral agreement for the Jasmine flat only payment of the rent. The agreement for the two tickets arose when Mr. Yerli decided to move with his family to the larger Gardenia flat on 15th September 2017."*

Contrary to his pleadings, the first plaintiff contended that he entered into an oral agreement with the defendant regarding the Jasmine apartment and a written agreement in respect of the Gardenia apartment. His evidence was inconsistent.

#### ● **Barter Arrangement**

The plaintiff admitted that he had been issued two tickets by the defendant which he utilized in 2018. The defendant, in paragraph 17 of the witness statement, contended that the defendant was only bound to pay for the period beyond the one year that Mr. Yerli stayed in the plaintiff's flat. That Mr. Yerli stayed in the flat until the end of November 2018 which means he stayed in the flat for 5 months beyond the 12 months in the contract making a total of 17 months and not 24 months and that the plaintiff took 7 months' rent that the defendant did not utilize.

The defendant, in paragraph 18 of the witness statement, pointed out that on the expiration of the 2017 contract for the Jasmine apartment, the plaintiff and the defendant then entered into an agreement in respect of the Gardenia apartment and the agreement had provision on tickets as part of the rent. The defendant representative during cross-examination stated that there were no tickets as part of the oral agreement for the Jasmine

flat only payment of the rent. The agreement for the two tickets arose when Mr. Yerli decided to move with his family to the larger Gardenia flat on 15th September 2017.

- Exhibits C (e-mail) and E series (e-mail) attest to the fact that the defendant agreed to issue plane tickets to the plaintiff, regarding the Gardenia apartment agreement and not the Jasmine apartment. Exhibit 3 – a residential agreement tendered in evidence by the defendant which was executed by the parties clearly discloses that the parties indeed entered into a barter agreement for an amount of USD 12,000 to be used to offset part of the rent of the Gardenia apartment.

Exhibit 3 was executed in May 2018. The defendant representative stated: *"At the request of the landlord, Turkish Airlines issued three flight tickets. Two of the flight tickets were issued in December 2018. One was issued in January 2019. – which means the landlord accepted all terms and conditions of the agreement and left the remaining balance in his batter account ... we are extending the deadline before it expires- current deadline is 31st December 2023..."*

Per the arrangement, the defendant issued airline tickets, worth USD 5,060.38, to the plaintiffs in December 2018 and January 2019. The balance left is USD 6,939.62.

#### Issues V and VI

- Whether or not the defendant breached the tenancy agreement dated 1st June 2018 when they failed to issue the tickets in the sum of US\$ 12,000
- Whether or not the defendant is liable to pay an amount of US\$ 12,000 or its cedi equivalent at the prevailing exchange rate, being the outstanding rent per the tenancy agreement dated 1st June 2018.

The plaintiff stated that all attempts to get the defendant to pay the said outstanding rent or issue Turkish Airlines tickets in lieu of same have been ignored by the defendant and that on 25th December 2020, he caused its lawyers to send a final demand notice to the defendant demanding UDS 12,000 which defendant refused or failed to make payment.

Ms. Christine Dowuona- Hammond in her book titled: *The Law of Contract in Ghana* page 142 stated:

*“A condition is a term of a contract which is so essential to the very nature of the contract that its breach entitles the injured party to rescind the contract and sue for damages. Thus, a condition in this sense refers to a term of a contract, which is so essential to the contract, that upon its breach, the innocent party would be entitled to treat the contract as terminated and consider himself discharged from the obligation of further performance of the contract and in addition sue for damages. In Social Security Bank Ltd v. CBAM Inc( [2007-2008] 2SCGLR 894)...The Supreme Court noted that a breach of an obligation in a contract that would, of necessity, call for an election on the part of non-offending party to exercise his right of determination in the contract, must fit into one of the following situations: (i) that which goes to the whole root of the contract and not merely part of it; or (ii) that which makes further performance impossible; or (iii) that which affects the very substance of the contract. In considering the effects of the breach, the court takes into cognizance the consequence of the breach...”*

The impasse in this case concerns the outstanding balance. In Exhibit E, the plaintiff demanded an amount of USD 12,000, in excess of the remaining balance. The parties did not indicate a time limit for the issuance of the tickets. The plaintiff failed to prove that he requested tickets regarding the remaining balance of about USD 6,939.62 and the defendant failed to issue same. Thus, the defendant has not breached the contract. The court hereby enters judgment as follows: the defendant is hereby ordered to issue ticket(s) to the plaintiff in the sum of USD 6,939.62 upon request or in default pay an amount of USD 6,939.62 to the plaintiff. Other reliefs are hereby dismissed.

(SGD)

H/H EVELYN E. ASAMOAH (MRS)

CIRCUIT COURT JUDGE

