

IN THE DISTRICT COURT 1 HELD AT WEIJA ON THURSDAY THE 30TH DAY OF MARCH 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS.), DISTRICT MAGISTRATE

A2/121/17

JAMES LARYEA

PLAINTIFF

VRS

1. TROUSELINA COMPANY LIMITED

2. JOSEPH OSEI

3. GODFRED ASANTE

DEFENDANTS

PLAINTIFF PRESENT AND REPRESENTED BY MICHAEL AKANBEK ESQ.

DEFENDANTS ARE ABSENT

The plaintiff filed a writ of summons in the registry of this court on 17th May 2017 for the following reliefs;

- a. An order directed at the defendants to collect the GHC3,000.00 extra and replace the corrosive zinc roofing sheets supplied by the defendants with an aluminium anti-rust zinc with grooves within two weeks from the date of any such order;
- b. Further or other orders as the honourable court may deem fit.

The plaintiff's case is that around the year 2008, he approached the 1st defendant company to purchase roofing sheets and also to discuss the roofing of his block of apartments at Teshie. Plaintiff avers that defendants confirmed their readiness to supply him with the roofing sheets and also to provide technical staff to do the roofing following the purchase.

He avers further that the 1st defendant's officials or staff also represented to him that they will supply him with the Aluminium Zinc, antirust type of roofing sheets to roof his apartments. According to him, on the strength of these representations and discussions held with 1st defendant, surveyors of 1st defendant were sent to his premises to conduct a survey and also to take measurements of the building in order to determine the quality and quantity of the roofing sheets that will be required.

Plaintiff added that he paid GHC13, 851.95 for the roofing sheets which were supplied to him. After Twelve months, plaintiff noticed that the roofing sheets were corroding and rusting contrary to what he had been informed. Upon his complaint to 1st defendant, the roofing sheets were sprayed by

officials of 1st defendant to rectify the situation however the rust stopped for some few months. It is the case of the plaintiff that around the year 2010 he reported to 1st defendant that the discoloration due to rusting coupled with roof leakage had started again and after several frustrating meetings with 1st, 2nd and 3rd defendants from 2010 to 2012, they decided to replace the entire roofing sheets with what they termed "Aluminium Zinc" with Groves. It is the further case of the plaintiff that defendants told him that the aluminium Zinc with Groves were not part of the initial roofing sheets and as a result, Defendants demanded that plaintiff pays an extra GHC3,000.00 for the cost of the Groves. Plaintiff added that on the day he went to the offices of 1st defendant to make payment of GHC3, 000.00, he was informed that the amount had been increased to GHC5,000.00 which he agreed on.

Plaintiff says that on the day he went back to 1st defendant's office to make the payment of GHC5,000.00 as demanded, he was informed by the staff that they do not know 1st defendant company and that the company they work for now is Troysteel Company Limited which is on the same premises as 1st defendant. From an official search conducted by the plaintiff at the Registrar General's Department, it was confirmed that 1st defendant had changed its name to Troysteel.

According to plaintiff, in the year 2019, he engaged the services of the Ghana Standards Authority to carry out a test on the roofing sheets that had been supplied to him to determine whether or not they are anti rust but the results indicated that they were not.

Plaintiff says that presently, the whole apartment's roofing sheets are discoloured, rusted and parts of the roof of the apartment leaks with little or no rainfall confirming the fact that the roofing sheets were not anti-rust.

Plaintiff concludes by stating that the 1st defendant represented to sell to him anti rust zinc roofing sheets and has failed to do so and when it was later agreed that upon payment of GHC5,000.00 to the defendants, same will be replaced, 1st defendant has reneged on its promise.

It is worthy of note that though there is proof of service of hearing notices on the court's docket dated 8th November 2020 on all three defendants, for unknown reasons, they all failed to attend court on 8th December 2022 when trial begun.

The court therefore proceeded without them pursuant to Order 25 Rule 1 (2) (a) of the District Court Rules, 2009 (C.I.59) which provides as follows;

"Where an action is called for trial and a party fails to attend the trial, the trial magistrate may where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim if any and allow the plaintiff to prove his claim."

The issue set down for determination by the court is whether or not the plaintiff is entitled to an order directed at defendants to collect the sum of GHC5,000.00 from him and replace the corrosive zinc roofing sheets supplied by the defendants with an aluminium anti-rust zinc with grooves.

BURDEN OF PROOF

It is trite that in civil cases, proof is by a preponderance of probabilities. In the case of *Ackah v Pergah Transport Ltd* [2010] SCGLR 728 at page 736, *Sophia Adinyira JSC* (as she then was) delivered herself as follows;

“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.”

This position of the law was re-echoed by *Benin JSC* in the case of *Aryee v Shell Ghana Ltd & Fraga Oil Ltd* [2017-2020] 1 SCGLR 721 at page 733 as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

In the case of *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

“It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.

PLAINTIFF’S EVIDENCE

In support of plaintiff’s claim, he tendered the following exhibits;

A certificate to commence business dated 2nd day of November 2004 and the regulations of the company to show that 2nd and 3rd defendants are both Shareholders and Directors of 1st defendant company, receipts evidencing payment of the sum of GHC13,851.95 made to the 1st defendant, the results of the search from the Registrar General’s Department showing that 1st defendant is the same as Troysteel, the results of the tests carried out by the Ghana Standards Authority on the roofing sheets

and the present state of the roofing sheets on plaintiff's apartments. These exhibits were all admitted in evidence and marked as Exhibits A series, B series, C, D series and E series respectively.

The absence of the defendants in court to refute the allegations made against them by the plaintiff enhanced Plaintiff's chances. This is premised on the principle that the failure to deny an assertion made against a person amounted to an admission.

In the case of *In Re Presidential Election Petition; Akuffo-Addo, Bawumia & Obetsebi-Lamprey (No 4) vrs. Mahama, Electoral Commission & National Democratic Congress (No 4)* [2013] SCGLR (Special Edition) 73 at page 425, Anin Yeboah JSC as he then was held;

"I accept the proposition of law that when evidence led against a party is left unchallenged under cross examination, the court is bound to accept that evidence:"

See *Ayiwa v Badu* [1963] 1GLR 86, SC, *Nartey-Tokoli v Volta Aluminium Co Ltd (No 2)* [1989-90] 2GLR 341, SC and *Takoradi Flour Mills v. Samir Faris* [2005-2006] SCGLR 882 at page 890

I find from the pleadings and evidence of the plaintiff before this court that he has succeeded in establishing his claim against the defendants on the balance of probabilities.

Accordingly, defendants are ordered to collect the sum of GHC5, 000.00 from the Plaintiff and replace the corrosive zinc roofing sheets supplied to him by the defendants with an aluminium anti-rust zinc with grooves within two weeks from the date of judgment.

DECISION

Judgment is hereby entered in favour of the plaintiff against the defendants as follows;

Defendants are ordered to collect the sum of GHC5, 000.00 from the plaintiff and replace the corrosive zinc roofing sheets supplied to him by the defendants within two weeks from the date of this judgment.

Costs of six thousand Ghana cedis (GHC 6000.00) is awarded in favour of the plaintiff against the defendants.

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**H/W RUBY NTIRI OPOKU (MRS)
(DISTRICT MAGISTRATE)**