IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION DIVISION, COURT 12) ACCRA, HELD ON FRIDAY THE 22ND DAY OF APRIL 2024 BEFORE HIS LORDSHIP JUSTICE AYITEY ARMAH-TETTEH

SUIT NO: GJ/0632/2022

MOCHCOM GHANA LIMITED - PLAINTIFF

VRS

GUARANTY TRUST BANK (GHANA) LIMITED - DEFENDANT

PARTIES: - PLAINTIFF ABSENT
DEFENDANT REPRESENTED BY MAVIS OPOKU
COUNSEL: - EDEM MENKAH FOR ALFRED BANNERMAN- WILLIAMS FOR PLAINTIFF
PASCAL KONNEY FOR FRANK DAVIES FOR DEFENDANT

JUDGMENT

INTRODUCTION

[1] The Plaintiff, Mochcom Ghana Limited (Mochcom) is a limited liability company registered under the laws of Ghana. The Defendant, Guaranty Trust Bank (Ghana) Limited is a limited liability company incorporated in Ghana and licensed by Bank of Ghana to offer banking services to the general public. Plaintiff has been a customer of Defendant bank since 2011 when it opened two corporate accounts, a cedi current account

and a United States of America dollar account. Links Procurement & Development Ghana Limited (Links Pro), a sister company of the Plaintiff is also a customer of the Defendant Bank. Mr. Charles Kofi Mochiah is the sole shareholder of both Companies and also the Managing Director for both Companies. He is also the sole signatory to the accounts of both companies domiciled in Defendant's bank. Links Pro obtained an Invoice Discounting line (availed as a Time loan) of GH¢1,593,000.00 per an offer letter dated 27 July 2020. Links Pro defaulted in the repayment of the facility. Defendant used an amount of USD 102,230.54 standing to the credit of Plaintiff to repay part of the loan of the Links Procurement & Development Ghana Limited.

[2] The case raises a couple of questions including the competence or otherwise of the instant action and the capacity or authority of the Plaintiff's representative to testify on behalf of the Plaintiff. Also, the question of a separate legal personality of a corporate entity arises and whether the Managing Director of Plaintiff instructed Defendant to use the credit balance in Plaintiff's account to defray part of the indebtedness of Links Pro.

PLAINTIFFS' PLEADINGS

[3] The Plaintiff in its pleadings avers that on 17th January 2022 through its Managing Director Mr. Charles K. Mochiah instructed its Relationship Manager with the Bank to pay out the sum of $80,000.00(Eighty thousand United States Dollars) from its dollar account number 202111377220 with the Defendant to one Bilal Hamza. According to Plaintiff at the material time, the said account was funded with a credit balance of $103,874.95 (One Hundred and Three Thousand, Eight Hundred and Seventy-Four United States Dollars, Ninety-Five Cents). However, the Defendant refused to honour the said payment instructions.

[4] It is the further case of Plaintiff that Defendant subsequently without any justification put a restraint on its account and thereby disabled Plaintiff from transacting on the said

account. According to Plaintiff later without its express instructions or consent, the Defendant caused to be debited from Plaintiff's Dollars account the sum of $102,230.54 (One hundred and Two Thousand, Two Hundred and Thirty United States dollars, Fifty-four cents). In its reply, Plaintiff denied that it had any discussions with Defendant or its officers about inflows from Christie's Limited and claimed that it did not commit to use part of the funds to pay down the loan of Links Pro. The Plaintiff is therefore claiming against the Defendant the following reliefs:

1. Recovery of the sum of $102,230.54 (One Hundred and Two Thousand, Two Hundred and Thirty United States Dollars, Fifty-Four cents against the Defendant.

2. Interest on the said sum of $102,230.54(One Hundred and Two Thousand, Two Hundred and Thirty United States Dollars, Fifty-Four cents at the defendant's dollar lending rate from 17th January 2022 till date of final payment against the Defendant.
3. Damages for breach of contract.

DEFENDANTS' PLEADINGS

[4] In its pleadings and in response to the claim and allegations set above, the Defendant bank denies the claim of the Plaintiffs. Defendants contend that Mr. Mochiah is the sole shareholder and signatory to the Plaintiffs' accounts with the bank and also the sole signatory to Links Pro's accounts. It is the case of Defendant that Links Pro on request to Defendant Bank obtained an Invoice Discounting Line (availed as a time Loan) of GH¢1,593,000 (One million, five hundred & ninety-three thousand Ghana cedis) per an offer letter dated 27 July 2020. The loan agreement was executed between Defendants represented by its Managing Director of one part and Links Pro represented by its Managing Director Mr Mochiah of the other part.

[5] According to Defendant Links Pro defaulted on the repayment of the loan on two occasions and the loan was rescheduled on the request of Mr. Mochiah. It is the further case of Defendant that Links Pro later paid an amount of GH¢1,100,00.00 with the last instalment on 19 July 2021 which elicited a demand notice from Defendant bank. It is the further case of the Defendant that, in the Defendant's engagement with Mr. Mochiah he informed the Defendant that he was expecting some funds from Christie's Limited that would be used to settle the obligations owed by Links Pro to the Defendant bank. It is the further case of Defendants that on 17 January 2021, Plaintiff received an inflow of USD103,080.00 into its account but contrary to the Defendant bank's expectation that these lodged funds would be used to liquidate and or set off Link Pro's outstanding obligations, Mr. Mochiah instructed the bank to pay out $80,000.00 to one Hamaza Bilal.

[6] It is the further case of the Defendant that according to Mr. Mochiah, Bilal Hamza was to bring the cedi equivalent of the USD80,000.00 to the Defendant bank in partial settlement of Link Pro's obligations, however, the said Bilal Hamza tendered GH¢300,000.00 and not the equivalent of USD80,000.00 as expressly communicated to the Bank. According to Defendant, owing to the continuous failure, refusal and or neglect of Links Pro to honour its obligations as mutually agreed upon, the Bank on 27 January 2922 exercised its discretion and converted the sum of USD102,230.54 to liquidate and/or set-off Link Pro's outstanding balance aggregating the sum of GH¢664,498.49 as at the due date.

ISSUES FOR DETERMINATION

[7] At the close of pleadings and on 22 November 2022 the following issues were settled for the determination of the suit.

1. Whether or not the refusal by Defendant to act on Plaintiff's instructions on 17 January 2022 to pay out the sum of $80,000.00 to Bilal Hamza did not amount to a breach of contract with Plaintiff.

2. Whether or not the denial of access to the Plaintiff of its funds in its dollar account held with the Defendant was consistent with the terms of its contract with the Plaintiff.

3. Whether or not the Defendant was justified when it (defendant) unilaterally debited an amount of $102, 230.54 from Plaintiff's Dollar account.

4. Whether or not there was a verbal agreement between Charles K. Mochiah and the Defendant to use monies standing to the credit of Plaintiff to offset debt of Links Procurement and Development Limited.

[8] However, in the written address, Counsel for the Defendant raised preliminary issues. First, with the Plaintiff's representative, Mr. Mochiah's capacity to testify on behalf of the Plaintiff and second, the competence of the present action. Counsel submitted that from the outset Plaintiff's representative, throughout the length of the trial, did not produce any authorisation from the Plaintiff's company and/or board of directors to testify on its behalf or a resolution to that effect. Counsel posited: *"The question, whether a single director, even a Managing Director can institute and/or defend legal action in the name and on behalf of a company without the authority of the board of directors or the general meeting, entails a consideration of the allocation of powers within a company between a general meeting and the board of Directors and between the board and the Managing Director.*

[9] The preliminary issues raised by Counsel for Defendant in his written address entail two issues. First, there is no board resolution authorising the institution of the present

suit and second, Mr Mochiah had no capacity to testify on behalf of Plaintiff in this suit as there was no board resolution authorising Mr Mochiah to testify for and on behalf of Plaintiff.

[10] Since the competence of the suit and the capacity or authority of Plaintiff's representative Mr. Mochiah to testify in for and on behalf of the Plaintiff in this suit goes to the root of the action I will have to determine them as preliminary issues before I can proceed to determine the other issues.

[11] I will first deal with the competence of the suit. In his written address Counsel for the Defendant submitted that under Section 144 of The Companies Act, 2012 (Act 992), the primary organs of the company are the members in general meeting and the board of directors and an act of either organ constitutes acts of the company. He submitted further that officers and agents of a company through whom the company may act and whose acts may bind the company must be authorised by or derive their authority from the members in general meeting or the board of directors.

[12] Counsel submitted further that Act 992 reserves certain powers to the board of directors and one of such powers is the power to institute legal proceedings in the name of and on behalf of the company. According to Counsel, Plaintiff's representative in his testimony, asserted that he is a Director and Chief Executive Officer of both Plaintiff company and Links Pro so he takes instructions from the Board of Directors to operate. Counsel then contended that this implied that, Mr. Mochiah had instructions from the Board of Directors from a meeting convened for the purpose of instituting the instant suit in court, but there was no resolution whatsoever passed at the said meeting authorising him to represent the company in court and to testify on its behalf. Counsel referred me to Section 144 of Act 992 in support of his argument.

[13] Counsel then submitted that Plaintiff's representative did not have authorisation from the board of directors of the Company to act on its behalf and neither was any resolution to that effect produced. Counsel then submitted that Mr. Mochiah did not have the requisite capacity, and was equally incompetent to represent Plaintiff and disqualified as a witness to testify in the trial.

[14] In response to the lack of capacity of Plaintiff's representative to testify Counsel for the Plaintiff contended that the right to call a witness to testify in a civil suit is entirely and exclusively the right of the disputants in the matter. He further contended that the right to testify in a matter cannot be claimed by or exercised by a non-party and that no witness can arrogate to himself the right to testify for a disputant. He can only testify for a party if he is invited by the party to do so. He then submitted that any person fielded by a disputant to give evidence/testify for or on its behalf inherently has the consent and authority of the said disputant to do so. He further submitted that Every disputant is such a case is at liberty to invite any witness to testify in support of his case and the only limitations placed on a party in its choice of a witness are those set out in the Evidence Act.

[15] The requirement of a board resolution authorising the institution of legal proceedings on behalf of the company was the decision in **Foss v Harbottle** (1843) 2 Hare 461, 67 ER 189 where the court among others held to the effect that in an action in which a wrong is alleged to have been done to a company, the proper claimant is the company itself. That such claims are initiated by a company after passing a resolution to that effect.

[16] This position was emphasized in the Ugandan case of **Bugerere Coffee Growers Ltd v Sebadduka & Anor** [1970] 1EA 147, where the court observed that:

> When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors' meeting and recorded in the minutes.

[17] In the Ghanaian case of **Golden Gate Ghana Services Ltd & 2 Ors** v **Ghana Ports & Harbours Authority & 2 Ors** SUIT NO MISC 4/09 DATED THE 17TH OF MARCH, 2009 the High Court in holding that a company needs the authorisation of the board to institute legal proceedings opined as follows:

> In the peculiar situation of a limited liability company, being an artificial person, such consent can by law only be given either by a resolution of the board or the members in general meeting and ought to be contained in some form of writing. Counsel for the Respondents urged me to hold that in the absence of such consent by the 1st Applicant as provided by law, it would be wrong for the 1st Applicant to purport to institute and maintain this action. ..... The basic principles codified in Section 137 of Act 179 are clear; The primary organs of the company are the members in general meeting and the board of directors. An act of either organ constitutes an act of the company for which it is directly and not vicariously liable….
>
> Among these powers of the board is the power to institute legal proceedings in the name and on behalf of the company. This is the effect of reading together subsections 3 and 5(b) of section 137. In any case, the institution of legal proceedings is an act of management for which the board is primarily responsible. It is only when the board of directors refuse or neglect to institute proceedings that the members in general meeting may do so.....It is therefore the duty of the directors to institute or discontinue legal proceedings..... As was held in the

English case of JOHN SHAW & SONS (SALFORD) LTD. VRS. SHAW 1935 2KB 113, PER GREER CJ at p.134.

If the members in general meeting cannot direct or instruct the board as to how to exercise their powers to institute or discontinue legal proceedings, a single member qua member cannot obviously do so. It follows logically therefore, that neither an individual director managing or otherwise, nor any group of directors has any powers conferred on him or them and it would be correct to state that in the absence of an express authorization in the regulation or other appropriate company document, the board cannot delegate such powers.....

The question which naturally arises is whether the 2nd Applicant as Managing Director of the 1st Applicant has the power to add the 1st Applicant in commencing these proceedings in the name of and/or on behalf of the 1st Applicant Company without the authorization of the board or members in general meeting?

From the entirety of the affidavit evidence before me and the legal submissions of Counsel for the 1st and 2nd Applicants, I find that ….. 2nd Applicant as Managing Director instituted these proceedings jointly in the name of the 1st Applicant and himself without the authorization of the board of directors or the members in general meeting..... In the light of my finding earlier in this ruling that the 1st Applicant has not been properly joined as an Applicant in initiating these proceedings. I shall strike out its name as 1st Applicant hereof and I so order.

[18] There however, seems to be a drift from this legal position in **Foss v Harbottle**, **Bugerere Coffee Growers,** Golden **Gate Ghana Services Ltd & 2 Ors** v **Ghana Ports & Harbours Authority & 2 Ors** (supra) where courts have observed that the failure to take out such resolution prior to commencement of the suit does not render the same a nullity.

In, **Money Lenders Association Uganda Limited & Anor v Uganda Registration Services Bureau** HCMC No. 11 of 2019 (unreported), it was held inter-alia that: "It is indeed a settled position of the law in this jurisdiction, that Resolution to commence a suit is not a necessary pre-requisite….."

[19] Again, in **United Assurance Co. Ltd v Attorney General**, Civil Appeal No. 1 of 1986 15 (unreported) which was cited with approval in Civil Appeal No. 10 of 1994, **Navichanda Kakubhai Radia v Kakubhai Kalidas & Co**. Ltd, it was observed thus:

> "Every case must be decided on its own facts. Looking at the various authorities and the law, I would say that one way of providing a decision of the board of directors is by its resolution in that behalf. But I would not go so far to say as suggested in Bugerere Coffeee Growers Ltd v Sebanduka supra, unless of course the law specifically requires a resolution as appears to be the case in instances specifically provided for in the Companies Act, an authority to bring action in the names of the company is not one of those instances where a resolution is required."

[20] In **Haston (Nigeria) Limited v African Continental Bank Plc**, SC 109, 1998 (2002) LPELR) 1359 (SC) the Nigerian Supreme also in deciding on the subject stated inter alia:

> "It has been the rule for a long time now since Foss v. Harbottle (supra) was decided that the proper plaintiff in an action for a wrong done to a company is the company itself. **The contention of the defendant in the two courts below and in this court is that the company by a resolution of her board of directors, must authorise that an action be taken. But this must be presumed until the contrary is proved by the party that asserts the contrary**. **The defendant has not led a shred of evidence to support its contention that the action here was not authorised by the plaintiff's board of directors**. In any event section 279 (3) of Companies and Allied Matters Act enjoins a director (and the chairman of the

board is a director) to "….act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purpose for which it was formed, and in such manner as a faithful, diligent, careful and ordinary skilful director would act in the circumstances." What is involved in this case is the assets of the plaintiff. Victor Ndoma Egba was not only the chairman of the plaintiff company but also the sole signatory to its current account with the defendant bank. Who is best in the position to act in the circumstances of this case where the company's account had been debited with fraudulent withdrawals other than the chairman and sole signatory of the account. By describing Victor Ndoma Egba as its chairman in exhibit 2 and holding him out as sole signatory of its account, the plaintiff has expressly or impliedly authorised him to act in the matter concerning her account see section …….65 of Companies and Allied Matters Act …" (emphasis mine)

[21] In **Haston (Nigeria) Limited v African Continental Bank Plc** (supra) the court held that until the contrary is proved it must be presumed that the company by her board of directors has authorised that an action be taken. And the rebuttal of this presumption is on the defendant who alleges that no such authorisation has been given.

[22] I am persuaded by the decision in the Haston (Nigeria) Limited v African Continental Bank Plc (supra) on the subject and in my view when a company institutes a legal action until the contrary is proved it should be presumed that the board of directors authorised same**.**

[23] The division of powers between the general meeting and the board of directors of a company is provided for by **Section 144 of Companies Act 2019 (Act 992) in the following terms**:

(1) A company shall act through the members of the company in general meeting or the board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.

(2) Subject to this Act, the respective powers of the members in general meeting and the board of directors may be determined by the constitution of a company.

(3) Except as otherwise provided in the constitution of a company, the business of the company shall be managed by the board of directors who may exercise the powers of the company that are not by this Act or the constitution required to be exercised by the members in general meeting.

(4) Unless the constitution of the company otherwise provides, the board of directors when acting within the powers conferred on them by this Act or the constitution of the company, are not bound to comply the directions or instructions of the members in general meeting.

(5) Subject to section 145, the members in general meeting may

(a) act in a matter if the members of the board of directors are disqualified or are unable to act by reason of a deadlock on the board or otherwise;

(b) institute legal proceedings in the name of and on behalf of the company if the board of directors refuse or neglect to do so;

(c) ratify or confirm an action taken by the board of directors; or

(d) make recommendations to the board of directors regarding an action to be taken by the board.

(6) An amendment of the constitution of a company shall not invalidate a prior act of the board of directors which would have been valid if that amendment had not been made.

[24] Per **section 144 (1), (3) and (5)(b) of the Act,** one of the powers of the directors of a company is to institute legal proceedings in the name of and on behalf of the company. It is only when the board of directors refuse or neglects to do so to institute the legal proceedings that the members in general meeting may decide to institute legal proceedings in the name of and on behalf of the company.

[25] Section 146 permits the Board of Directors to appoint one of their members to the office of Managing Director and in doing so may delegate all or any of the powers of the Board of Directors to that Managing Director.

[26] **Sect. 146 of Act 992** provides as follows:

Except otherwise provided in the constitution of a company, the board of directors may

(a) exercise their powers through committees consisting of a member or members of the board as the board of directors think fit, and

(b) from time to time appoint one or more of the members of the board to the office of managing director and may delegate all or any of the powers of the board of directors to that managing director.

Section 383 of the Act defines a managing director as:

Means a director to whom has been delegated the powers of the board of directors, to direct and administer the business of the company.

Section 147 also provides as follows:

(1) An act of the members in general meeting, of the board of directors, or of a managing director while carrying on in the usual way the business of the company, is the act of the company; and accordingly, the company is criminally and civilly liable for that act to the same extent as if the company were a natural person.

[27] In my view, the combined effect of sections 144(1), (5)(b),146 and 147 is that it is the board of directors that has the power to institute legal proceedings in the name of the company and the board of directors may delegate the power to institute legal proceedings to the Managing Director when he is appointed and the acts of the Managing Director if he so acts, his actions bind the company.

[28] Per the provisions of Act 992, the Board of Directors of a Company is ultimately responsible for administering and directing the company. So, they have residual responsibility for authorising suing in the name of the company. But when the board appoints a Managing Director it vests in him some of their powers to be able to run the company effectively, usually including the power to authorise the institution of legal proceedings in the company name. Section 147(1) says that acts of a Managing Director, exercising powers in the usual way, are acts of the Company. Therefore, where a director authorizes the commencement of a suit, it must be presumed that the authority was given by the company. In any event, there is no specific requirement in the Act for a board resolution to authorise the institution of legal proceedings. A resolution is only evidence that a certain decision has been taken by the board so if in particular circumstances it can be inferred that the board has authorised the institution of legal proceedings, the absence of a written resolution would not be fatal to the action.

[29] It is worth noting that sections 144, 146, 147 and 190 of Ghana's Companies, Act 992 are *in pari material* with sections 63, 64, 65 and 279 of Nigeria's Companies and Allied

Matters Act upon which the **Haston (Nigeria) Limited v African Continental Bank Plc** (supra) was decided by the Nigerian Supreme Court.

[30] In the present case, there is no doubt that Mr Mochiah is one of the Directors of two Directors of the Plaintiff company. There is also no doubt that he has been appointed the Managing Director of the Company. There is also no doubt that Mr Edem Menkah the legal representative of the Plaintiffs is the board secretary of the Plaintiff Company. The Defendants in their pleadings admitted that Mr. Mochiah is the sole shareholder, Managing Director and sole signatory to the Company's account with Defendant Bank and they have worked with him in that capacity. In fact, under cross-examination of Mr. Mochiah Counsel for Defendant described him concerning Plaintiff Company in the following terms:

> Q. You will not disagree with me that you are the alter ego of Mochcom Ghana Limited and Links Pro. You are the father, the mother, the uncle, the brother, the sister etc
>
> A. Yes. I am the director and founder of the company.

[31] If Mr Mochiah has been appointed by the Board of Directors as the Managing Director and he has been acting as such to the knowledge and acceptance of the Defendant Bank, then it will be presumed that the Board has delegated all or part of its powers including the power to institute legal proceedings in the name of and on behalf of the company and as a consequence has authorised the institution of the present action. In the circumstances of this case, as has been said earlier Mr Mochiah is one of the two Directors of the Plaintiff company and Mr Edem Menkah who is the Plaintiffs' legal representative in these proceedings prosecuting Plaintiff's case is the Board Secretary then unless the contrary is proved by the Defendant it would be deemed that the Board of Directors have authorised the institution of the present legal proceedings.

[32] The law is that the person against whom a presumption is invoked is the one who is entitled to lead evidence to refute the presumption. It is the Defendants who the presumption is against who have to provide the evidence to rebut it. Defendants have not provided any evidence to rebut the presumption. The effect is that the Board of Directors of the Plaintiff Company authorised the institution of the legal proceedings. As things are the board has taken no steps to revoke the court action, it is deemed to have been authorised**.**

[33] In any event, the defendant never challenged the competence of the instant suit the capacity or authority of Mr Mochiah to testify. Under cross-examination of Mr. Mochiah, learned Counsel for Defendant only sought to elicit information as to the composition and membership of the board of directors of the Plaintiff company from him. This is what transpired under cross-examination of Mr Mochiah on 25 April 2023

> Q. You are the directing mind of Mochcom Ghana Limited and Links Procurement and Development Ghana Limited
>
> A. I am the CEO of both companies so I take instructions from the board to operate.
>
> Q. Can you kindly furnish the court the names of the members of your Board of Directors.
>
> A. The Chair of Mochcom, Dr. Kwesi Botchway has passed on. Beatrice Mochiah and the board secretary is Edem Menkah and my good self, Charles Mochiah.
>
> Q. What about Links Pro
>
> A. Myself, as board member, Stephen Musa, also a board member, board secretary is Israel Ackah and Mr. Benjamin Addae.

Q. We all know Dr Kwesi Botchway passed on painfully in not the too distant past. Has he been replaced on your board attendant to his death

A. No

Q. Have you notified the Registrar of companies of the unfortunate death.

A. No

And on 12 December 2023 the following took place;

Q. You are the directing and controlling mind of Mochcom Ghana Limited and Links Pro.

A. Yes but I have a board. When I have issues, I run to the board on anything that is above my control

Q. The last time I checked you told this court truthfully that you are in sin with the Companies Act because you are the sole shareholder and only director of both companies.

A. I am not the only director

Q. Who are the other directors

A. Beatrice Mochiah and board secretary, Edem Menkah

Q. And you

A. Yes

Q. Do you have any evidence to that effect as the listed directors of the company.

A. Yes only Mochcom

Q. What about Links Pro

A. Links Pro the directors are myself and Stephen Musah

Q. You will not disagree with me that you are the alter ego of Mochom Ghana Limited and Links Pro. You are the father, the mother, uncle, brother, the sister etc

A. Yes. I am the director and founder of the company.

[34] From the extensive cross-examination of the Plaintiff's representatives, nowhere was the competence of the present action challenged on the basis that no board resolution authorised the institution of the present legal action, nor was there any challenge to the capacity or authority of the Plaintiff's representative to testify on behalf of the Plaintiff.

Challenged has been defined by *Online Dictionary definitions from Oxford Languages* as

> *"a call to prove or justify something."* And as a verb given as *"dispute the truth for validity of.*

All that Counsel for Defendant sought to do and did was to seek information about the composition of the Board of Directors of Plaintiff Company.

[35] Again, **Section 190** (2) also enjoins a director to always act in what the director believes is in the best interest of the company including preserving the assets of the company.

> (1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in a transaction with or on behalf of the company.
>
> (2) A director shall always act in what the director believes is the best interest of the company as a whole so as to preserve the assets, further the business, and

promote the purposes for which the company was formed, in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances and in doing so shall have regard to

[36] Mr Mochiah is the sole shareholder of the Plaintiff company; he is also the Managing Director of the Company and the sole signatory of its bank accounts with the Defendant bank. By the instant action, he seeks to act under section 190(2) of the Act to protect the assets of the company, which is money standing in the balance of the company which has been transferred by the bank without the Plaintiff's instructions. He is the best person to do so. He is acting in the interest of the Company and his acts bind the company. In the normal course of his duty, as a Managing Director, he enjoined to protect the assets of the company. Protecting an asset of the company may entail instituting legal action to do so.

[37] The second argument raised by Counsel for Defendant is that Mr Mochiah was not authorised by Plaintiff to testify which authority must be in the form of a resolution. This objection is partly settled by my analysis of the first concern above. It is settled law that a company is an artificial person without hands, a heart or a body to execute its day-to-day calls. Therefore, the company transacts through its directors who are its soul and mind behind its operations.

[38] Mr. Mochiah is an officer of the Plaintiff Company and he testified in that capacity and testified to facts within his knowledge as a witness. It is once again presumed that he had the authorisation of the Board of Directors to testify for and on behalf of the Plaintiff company and without any evidence to the contrary he is deemed to have been authorised by the Board of Directors to testify. When Mr. Mochiah mounted the witness box to testify he offered to rely on his witness statement as his evidence in chief and prayed the court to adopt same as his evidence in chief. At that point, Defendants did not challenge the

capacity of the Plaintiffs' Managing Director to testify and as such did not object to the witness statement being adopted as his evidence in chief.

[39] This is what happened on 25 April 2023

Q. Kindly give your name to this court

A. My name is Charles Kofi Mochiah

Q. You caused to be filed a witness statement in the matter. Is that correct.

A. Yes

Q. Kindly take a look at the witness statement and turn to the fith page and tell this court if that is signature.

A. Yes

Q. And you intend to rely on this witness statement as your evidence in chief in this matter,

A. Yes

Counsel for Plaintiff: We pray that the witness statement of Charles Kofi Mochiah is adopted as his evidence in chief in this matter.

BY COURT: Any objection with respect to the exhibits attached to tyeh witness statement of Plaintiff's representative

Counsel for Defendant: no objection

BY COURT: Any objection with respect to the contents of the Witness statement of the Plaintiff's representative

Counsel for defendant: No objection

BY COURT: The witness statement of the Plaintiff's representative is adopted as his evidence in chief and all the exhibits attached admitted in evidence.

[40] In the absence of evidence to the contrary, it will be deemed that Mr. Mochiah, the sole shareholder and the Managing Director of the Plaintiff acted with the authority of the company when he mounted the witness box to testify for and on behalf of the Plaintiff. I have also considered the provisions of the Companies Act, 2019, Act 992 and I have not found any provision that specifically says that before a Director of a company testifies on behalf of the company in legal proceedings, he needs a written board resolution to do that.

[41] Any legal obstacle that a person who testifies in court as a witness may face is as provided for in section 59 of the Evidence Act, 1975 (NRCD) 323. I think in terms of Sections 58 and 60 of the Evidence Act Mr Machiah a Director, sole shareholder and Managing Director was a competent witness to testify in this matter.

[42] For the above reasons, I will overrule the preliminary point raised by Counsel for Defendants and proceed to consider the merits of the substantive case before me.

[43] **I will first examine the 4 issue which is** *Whether or not there was a verbal agreement between Charles K. Mochiah and the Defendant to use monies standing to the credit of Plaintiff to offset debt of Links Procurement and Development Limited*.

The issue is not whether an oral agreement is as effective and binding as a written contract. It is trite law that an oral agreement or contract is as effective and enforceable as a written agreement or contract if all requirements for a valid agreement are met. The issue in this matter is whether there was an oral agreement.

[44] I will start by saying that it is a well-established principle of Company law that a Company is a separate legal entity from its shareholders.

This principle was applied in the case of **Morkor v Kuma** (1998-99) SC GLR 620 at page 632 where the Supreme Court per Sophia Akuffo JSC (as she then was) stated as follows:

> A company is, thus a legal entity with a capacity separate, independent and distinct from the persons constituting it or employed by it. From the time the House of Lords clarified this cardinal principle more than a century ago in the celebrated case of Salomond v Salomond & Co [1897] AC22, it has, subject to certain exceptions, remained the same in all common law countries and is the foundation on which our Companies Code, 1963 is grounded.

[45] In this regard, even though Mr. Mochiah is the sole shareholder and the Managing Director for the Plaintiff Company and Links Pro, the two companies have two distinct legal personalities and are separate from their sole shareholder. As a general rule, Mochcom is not liable for the actions and omissions of Links Pro. As a consequence, the Plaintiff Company even though it has the same shareholder as Links Pro, the Plaintiff company is not liable for the financial liabilities of its sister company Links Procurement.

[46] It is pleaded at paragraphs 6, 7 and 8 of the Statement of Defence as follows:

6. As it turned out Links Pro paid GH¢1,100,000.00, with the last instalment on 19/07/21, which elicited a demand notice from defendant bank dated 27/12/21, to be served on Links Pro to take immediate steps to settle its obligations owed to the Bank, and that in the bank's engagements with Mr. Charles Mochiah (sole shareholder & signatory to both Links Pro and Plaintiff's accounts with the bank) he informed the defendant that he was expecting some funds (from Christie's Limited) that would be used to settle the obligations owed Links Pro to the defendant bank.
7. On 17/01/21, Plaintiff received an inflow of USD103,080.00 into its account, but contrary to the defendant's bank's expectation that these lodged funds would be

used to liquidate and/or set off Links Pro's outstanding obligations, Mr. Charles Mochiah instructed the Bank to pay out an amount of $80,000.00 to a certain Bilal Hamza. According to Mr. Charles Mochiah, the said Bilal Hamza, was to bring the cedi equivalent of the USD80,000.00 to the defendant bank in partial settlement of Links Pro's obligations, however, the said Bilal Hamza tendered GH¢300,000.00, and not the equivalent of USD80,000.00, as expressly communicated to the defendant Bank.

8. Defendants' aver that, owing to the continuous failure, refusal and/or neglect of Links Pro to honour its obligations as mutually agreed upon, the bank on 27/01/22 exercised its discretion and converted the sum of USD102,230.54, to liquidate Link's Pro's outstanding balance aggregating the sum of GH¢664,498.49, as at the due date.

[47] By way of reply Plaintiff denied that it had any discussions with the defendant or its officers about inflows from Christie's Limited and that it did not commit to use part of any such funds to pay down the loan on Links Pro.

[48] It is pleaded at paragraphs 2 and 3 of Plaintiff's reply as follows:

2. The Plaintiff denies the averments contained in paragraph 6 of the Defendant's Statement of defence and says that the Plaintiff's account held with Defendant's Bank is an operational account and receives various inflows from varied sources.

3. The Plaintiff in further denial of paragraph 6 of the Defendant's Statement of defence says that it did not have any discussions with the Defendant or its officers about inflows from christie's limited let alone commit to use part of any such funds to pay down the loan on Links Procurement.

[49] Since it is the Defendant Bank that asserts that Mr Mochiah, the Managing Director of Plaintiff Company informed and agreed with the Defendant Bank that he was expecting some funds from Christie's Limited which would be used to settle the obligations owed by Links Pro to the Defendant bank a claim the Plaintiff deny, it behoves the Defendant to prove that assertion failing which a ruling will be made against it on this issue.

[50] Section 14 of the Evidence Act, 1975, (NRCD) 323 provides as follows: -

> Except as otherwise provided by law, unless 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 that he is asserting

Section 17 of the Evidence Act, NRCD 323 provides as follows:

> Except as otherwise provided by law
>
> (a) The burden of producing evidence on a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;
> (b) The burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.

And Section 10 (1) of the Act explains 'burden of persuasion" as follows:

> For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

[51] In **Wrangler Ghana Ltd v. Spectrum Industries Pvt. Ltd, Lands Commission** [2023] DLSC 16164 the Supreme Court per Asiedu JSC on the subject of standard of proof held as follows:

> Thus, within the meaning of sections 12,13,14 and 17 of NRCD 323 as quoted above, whenever a party to a civil suit makes positive averment which is crucial to a claim or defence which he had asserted in his pleading and which had been denied by his opponent and the party wishes to succeed on that claim or defence, then the law enjoins that party to adduce that kind of credible evidence, in relation to the assertion made, within the meaning of section 17 as quoted above, which will establish that degree of belief in the mind of the court, in accordance with the provision contained in section 12 of NRCD 323, that the existence of the fact(s) which he had been asserted (but which had been denied by his opponent) is more probable than its non-existence.

[52] In the present case, the defendant said there was an oral agreement between Mr. Mochiah and the Defendant for the Defendant to use the Plaintiffs' funds to satisfy Links Pro's financial obligation. Apart from their only witness mounting the witness box to repeat what they pleaded on oath no positive evidence was provided in proof of this assertion**.** The Defendants' claim was a bare assertion and a bare assertion on oath in the witness box does not amount to proof in law.

[53] In **Mojalagbe v Larbi & Ors [1959] GLR 190** the court defined proof in the following terms:

> Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.

[54] The Defendants' only witness Mr Stephen Nartey, the Relationship Manager of Plaintiff's accounts with Defendant Bank just mounted the witness box and repeated the allegations that Mr. Mochiah agreed to use Plaintiff's funds to pay the financial obligations of Links Pro and nothing more. The date and time of the said oral agreement was not given. Defendant would be deemed not to have proven the allegation that there was an oral agreement between the Mr Mochiah and Defendant that funds from Christie's Limited paid into Plaintiffs' account would be used to pay the indebtedness of Links Pro.

[55] Again, under cross-examination of Defendants' representative, he testified that he could not confirm if there was such an oral agreement between Plaintiff and Defendant to use the funds sitting in the accounts of Plaintiff to repay the facility of Links Pro. This is what transpired on 20 February 2024.

> Q. I suggest to you that all your allegations of an oral agreement with links procurement and Mochcom are an afterthought.
>
> A. That is not so
>
> Q. But you will agree with me that your agreement does not allow for oral notices
>
> A. The mode of communication to the customer is prescribed by the bank
>
> Q. I also suggest to you that there was no agreement with Mochcom for the sum of USD 102,230.54 to be used to offset the debt of links pro.
>
> A. I am unable to speak to the communication in relation to that.
>
> Q. I also suggest to you that the bank acted without authority when it used the said USD102,230.54 to pay off the loan of Links Pro
>
> A. I am unable to speak to that.

[56] This is a witness who had earlier under cross-examination testified to the court that the oral agreement was between him and Mr. Mochiah. This is what happened on 15 February 2024:

> Q. It is your case that prior to 17th January, 2022 Mr. Charles Mochiah had indicated to you that he was expecting funds from Christie's into Mochcom's account which he indicated to use to pay down the Links Pro account. Is that correct.
>
> A. That is correct.
>
> Q. And it also your case that this communication was oral.
>
> A. That is correct.

[57] From the evidence of the Defendants' representative Defendant could not confirm whether there was an oral agreement between Plaintiffs and Defendants for Defendants to use an amount of USD102,230.54 sitting in the account of Plaintiffs' Account with the Defendant bank to pay off the loan of Links Pro. It corroborates the evidence of the Plaintiff that there was no such oral agreement

[58] The law is that, where the evidence of one party on an issue in a suit is corroborated by the witness of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his own witness, a court ought not to accept the uncorroborated one unless for some good reason (which must appear on the face of the judgment) the found the uncorroborated version incredible or impossible. See

[59] In the case of **Agyeiwaa** v **P & T Corporation** (2007 -2008) SCGLR 985 at 990 Georgina Wood CJ had this to say on the rule:

"The law is that where the evidence of an opponent corroborates the evidence of the opposite party, and that opponent's remain uncorroborated, the court is bound to accept the corroborated evidence unless there are compelling reasons to the contrary."

[60] Further, the Plaintiffs' representative testified that he informed the Plaintiffs' Relationship Manager who happened to be the Defendants' only witness that he wanted to withdraw USD80,000 from the Plaintiffs' dollar account with the Defendant bank, and in that regard had a WhatsApp communication with the RM of the Plaintiffs' account. The RM, Mr. Stephen Nartey forwarded to him via WhatsApp a draft authorisation letter to be sent to him via email for the release of the funds. If indeed there was an oral agreement between Plaintiffs and Defendants for the money to be used to repay the loan of Links Pro why would the RM be willing to assist the Plaintiff to withdraw the same funds? My conclusion from that is that there was no agreement between the Plaintiffs and Defendants for Defendants to use the amount of USD102,230.54 sitting in the account of the Plaintiffs' account with the Defendant bank to pay off the loan of Links Pro.

[61] From the evidence on record, I find that the Defendants have been unable to discharge the evidential burden placed on them to establish that there was an oral agreement between the Plaintiffs and Defendant for Defendants to use the amount of USD102,230.54 sitting in the account of the Plaintiffs Account with Defendants' bank to pay off the loan of Links Pro.

[62] I will examine the first three issues together as they are related.

1. *Whether or not the refusal by Defendant to act on Plaintiff's instructions on 17 January 2022 to pay out the sum of $80,000.00 to Bilal Hamza did not amount to a breach of contract with Plaintiff.*

2. *Whether or not the denial of access to the Plaintiff of its funds in its dollar account held with the Defendant was consistent with the terms of its contract with the Plaintiff.*

3. *Whether or not the Defendant was justified when it (defendant) unilaterally debited an amount of $102, 230.54 from Plaintiff's Dollar account.*

[63] Per the Pleadings of Plaintiff and the reliefs sought, the Plaintiff's claim is based on a contract. It contended that on its instructions the Defendant bank failed and or refused to pay the Plaintiffs' money sitting in its dollar account with the bank to one Bilal Hamza and refused it to access its funds lodged in its dollar account. This is captured in paragraphs 4,5 and 6 of the Statement of Claim.

4. The Plaintiff states that on 17th January 2022, it instructed its relationship manager to pay out the sum of $80,000.00(Eighty thousand United States Dollars) from its dollar account aforesaid to one Bilal Hamza.
5. The Plaintiff says that the said dollar account numbered 202111377220 was at the material time funded with a credit balance of $103,874.95 (One Hundred and Three Thousand, Eight Hundred and Seventy-Four United States Dollars, Ninety-Five Cents), however the Defendant refused unjustifiably to honour the said payment instructions.
6. The Plaintiff says further that without any justification the Defendant put a restraint on its account and thereby disabled the Plaintiff from transacting on the said account.

[64] The Plaintiffs' representative testified as follows:

18. On 17 January 2022, Plaintiff company received an inward transfer of $103,874.95 from Christie's the world leading art and luxury business.

19. On or about the same 17th January 2022, as Managing Director of Plaintiff I informed Defendant's officer in charge of Plaintiffs' accounts and commonly referred to as Plaintiff's relationship manager in the person of Stephen Nartey about Plaintiffs' intention to withdraw $80,000.00 to fund its business expenses.

20. Subsequently, the said Stephen Nortey forwarded to me via WhatsApp a draft authorisation letter to be sent to him (Stephen) via email for the release of the funds.

21. Per the directions above, I instructed Stephen Nortey via email dated 17th January 2022 to pay out the sum of $80,000.00 (Eighty thousand united states Dollars) from Plaintiffs' dollar account domiciled with defendant's bank to a certain Bilal Hamzah.

22. The defendant refused to carry out the instructions contained in the email dated 17th January 2022 to pay out the sum of $80,000.00

[65] It is trite that the relationship between a banker and its customer is founded on a simple contract and the bank-customer relationship is one of debtor and creditor. The bank becomes the agent and the customer becomes the principal when the bank is carrying out instructions of the customer. When a bank accepts a checking account from a depositor the bank either expressly or impliedly assumes the duty to the depositor to pay on demand all cheques which are properly drawn and properly presented to the bank for payment, assuming of course that the drawer has sufficient funds or credit with the drawee bank to cover the sum of the check. If the bank should violate this contractual duty by wrongfully dishonouring the depositor's cheque, the depositor may maintain an

action against the drawee bank for either breach of contract, and (or) in tort for breach of duty arising from the contract of deposit.

[66]. In **Joachim v Swiss Bank Corporation** (1921) 3KB 110 "127 the Court Per Georgewill, JCA in explaining the duty imposed on a bank towards the customer in this banking relationship held as follows:

> The law is well settled that the relationship between a banker and its customer is that of Debtor and creditor as well as Principal and Agent, such that once a customer pays money into his account with the banker, the Bank becomes his debtor, while the customer becomes the creditor of the bank. A bank is also an agent of its customer who in turn becomes the principal and the Bank is thus bound in law and under a duty to carry out the instructions of its customer within the ambit of the law that governs their Banker-Customer Relationship. This duty, I must reiterate is one that carries with it a duty of care and which must therefore, be diligently exercised by the bank since the predominate business of the bank is banking, which in the main consist of receipt of monies on deposits on Accounts of its customers and the payment of cheques drawn on it as well as the collection of cheques paid in by its customer.

[67] The principal obligation owed by the bank is to discharge its debt to the customer when called upon to do so. Thus, the bank is obliged to repay to the customer on demand an equivalent sum to that deposited (plus any agreed interest and less any agreed charges) and also, so long as the account is in credit, to make payments in accordance with the customer's instructions in reduction of its debt to the customer. And the instructions should conform with the mandate the customer has given to the bank when he demands his money.

[68] The duties banks owe their customers can be gleaned from the pronouncement of Lord Atkin in the **Tai Hing Cotton Ltd. Vs**. **Liu Chong Hingbank** [1985] 3 WLR 33: where the Law Lord articulated as follows:-

> "The question seems to turn upon the terms of the contract made between banker and customer in ordinary course of business when a current account is opened by the bank. It is said on the one hand that it is as simple contract of loan; it is admitted that there is added, or superadded, an obligation of the bank to honour the customer's drafts to any amount not exceeding the credit balance at any material time; but it is contended that this added obligation does not affect the main contract. The bank has borrowed the money and is under the ordinary obligation of a borrower to repay. The lender can sue for his debt whenever he pleases. I am unable to accept this contention. I think that there is only one contract made between the bank and its customer. The terms of that contract involve obligations on both sides and require careful statement. They appear upon consideration to include the following provisions. The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them the promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer

> the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept…The result I have mentioned seems to follow from the ordinary relations of banker and customer, but if it were necessary to fall back upon the course of business and the custom of bankers, I think that it was clearly established by undisputed evidence into his case that bankers never do make a payment to a customer in respect of a current account except upon demand.

[69] In **Philipp v Barclays Bank UK PLC** [2023] UKSC 25**,** Lord Leggatt, giving the judgment of the Court also held that:

> "It is a basic duty of a bank under its contract with a customer who has a current account in credit to make payments from the account in compliance with the customer's instructions. This duty is strict. Where the customer has authorised and instructed the bank to make a payment, the bank must carry out the instructions promptly. It is not for the bank to concern itself with the wisdom or risks of its customer's payment decisions."

[70] In the instant case, the Plaintiff through its sole signatory to its accounts Mr Mochiah demanded payment of its money when it instructed Stephen Nortey its Relationship Manager to pay US$80,000.00 to Bilal Hamza. At the time the demand was made there was a credit balance of a credit balance of $103,874.95 (One Hundred and Three Thousand, Eight Hundred and Seventy-Four United States Dollars, Ninety-Five Cents). As a debtor in the bank customer relationship, the defendant was to pay its debt owed to the Plaintiff by carrying on its instructions and paying Bilal Hamza the amount of $80,000.00. This they fail to do and if they do not have any acceptable reason they will be in breach of the contract between the Plaintiff and the Defendant Bank.

[71] It is the case of the Defendant bank that they had sufficient reason not to honour the instructions of the Plaintiff to pay Hamza Bilal the $80,000.00. and the reason was that the Plaintiff through its Managing Director Mr. Mochiah had agreed with the bank to use the money to liquidate the indebtedness of Links Pro.

[72] I have already held that there was no such oral agreement between the Plaintiffs and Defendants for the bank to use Plaintiffs' funds to satisfy the financial obligations of Links Pro. Defendants therefore had no justifiable reason not to honour the instructions of the Plaintiff to its money to it.

[73] The Plaintiff demanded payment of its money when it instructed Stephen Nortey the relationship Manager to pay 80,000.00 to Bilal Hamza. At the time the demand was made there was a credit balance of a credit balance of $103,874.95 (One Hundred and Three Thousand, Eight Hundred and Seventy-Four United States Dollars, Ninety-Five Cents). As a debtor in the bank customer relationship, Defendant was to pay its debt owed to Plaintiff by carrying on its instructions and pay Bilal Hamza the amount of $80,000.00. This they fail to do and they have no justification in not paying the money to the Plaintiff**.** The Defendants were in breach of the contract between the Plaintiff and Defendant bank and thus liable to pay damages to the Plaintiff

[74] In his article *'Remedies for Wrongful Dishonour of A Cheque: Injury to Credit and Reputation*' published in the Cambridge Law Journal Vol. 55 No. 2 (Jul 1996 pp 189) the author Richard Holey stated:

> It is well established that where the customer is a trader he can recover substantial damage for injuries to the credit and reputation without proof of actual loss. This is a clear exception to the general rules applicable to the assessment of damages for breach of contract.

[75] Sir John Paget, in his book *Paget's Law of Banking*, fifth edition at page 173, on the subject stated:

> Substantial damages may be given against the bank without proof of actual loss to the customer, and in many cases large sums have been awarded. So far as a non-trader is concerned, a different rule has been applied. For the legal infringement, the non-trader is awarded nominal damages. But if the non-trader specifically alleges and proves that he has sustained special damages, he would be entitled to recover the same.

[76] In *Hart's Law of Banking*, Edition 4, volume 1, at page 443. The passage is in the following terms:

> Where the Banker, being bound to honour his customer's cheque, has failed to do so he will be liable in damages. If special damage naturally ensuing from the dishonour is proved, it will be properly taken into account in assessing the amount of the damages. If the customer is a trader, the jury may properly award substantial damages, in the absence of proof of special damage. In other cases, the customer will be entitled to such damages as will reasonably compensate him for the injury, which, from the nature of the case, he has sustained. All loss flowing naturally from the dishonour of a cheque may be taken into account in estimating the damages.

[77] In **Wilson v. United Counties Bank Ltd**., 1920 A. C. 102 Lord Birkenhead summed up the law in the following terms at page 112:--

> The ratio decidendi in such cases is that the refusal to meet the cheque, under such circumstances, is so obviously injurious to the credit of a trader that the latter can recover, without allegation of special damage, reasonable compensation for the

> injury done to his credit. The leading case upon this point is that of ROLIN V. STEWARD, (1854) 14 C.B. 595. The direction of Lord Campbell to the jury has been generally accepted and treated as an accurate statement of the law.

[78] In the case of **Justice Y. Abdulai vrs Ecobank Ghana Limited** SUIT NO: H1/229/2020 9th March 2023 (unreported) the Court of Appeal per BARTELS-KODWO J.A. held thus:

> However, on the issue of breach of contract, as stated at the beginning of this judgement, there is a fundamental obligation in contract for a bank to honour a cheque issued by a customer to the limit of the customer's credit. This is implied by law. By failing to honour the cheque, while there were funds standing to the credit of the Appellant, the Respondent breached this fundamental condition of the contract between the parties. Consequently, the Appeal is upheld on that ground. The Appeal thus succeeds in part and nominal damages for the breach of the contract is awarded in the amount of GH¢20,000.00 to the Appellant.

[79] The text writers and the decisional authorities are to effect that where a bank dishonours its customer's cheque without good reason, the customer is entitled to sue the band for damages for breach of contract. The Defendants' Bank failed to honour the instructions of Plaintiff to pay its money standing in its account with the Defendant Bank without any good reasons, Defendant is therefore liable to pay damages to Plaintiff. The Plaintiffs' representative testified that the money was to fund its business expenses but Defendants did not honour its instructions. Certainly, there has been an injury to Plaintiffs' credit.

[80] For the above reasons I will enter judgment for the Plaintiffs as follows:

1. Recovery of the sum of $102,230.54 (One Hundred and Two Thousand, Two Hundred and Thirty United States Dollars, Fifty-Four cents against the Defendant.

2. Interest on the said sum of $102,230.54(One Hundred and Two Thousand, Two Hundred and Thirty United States Dollars, Fifty-Four cents at the commercial interest rate from 17th January 2022 till date of final payment against the Defendant.

3. GH¢100,000.00 general damages for breach of contract.

4. Costs of GH¢55,000.00 in favour of the Plaintiffs and against the Defendants.

(SGD.)
AYITEY ARMAH-TETTEH J.
(JUSTICE OF THE HIGH COURT)