IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION DIVISION, COURT 12) ACCRA, HELD ON THURSDAY THE 28TH DAY OF MARCH 2024 BEFORE HIS LORDSHIP JUSTICE AYITEY ARMAH-TETTEH

SUIT NO: GJ/0651/2021

CITY FACILITIES MANAGEMENT LIMITED - PLAINTIFF

VRS

1. **COMLAND GHANA LIMITED**
2. **SLOAN HOME OWNERS ASSOCIATION LBG**
3. **SIMBA GATE SECURITY - DEFENDANTS**
4. **HUSSEIN ALAWIYEH**
5. **JOSEPH KLALIL**

PARTIES: PLAINTIFF ABSENT

DEFENDANTS ABSENT

COUNSEL: ALLOTEY FOR MARI-GOLD ALLOTEY FOR PLAINTIFFS

FOR BOBBY BANSON FOR DEFENDANT

JUDGMENT

INTRODUCTION

[1] The Plaintiff in this suit is a Limited Company engaged in among others facility management services 1st Defendant is a body corporate and is into acquisition of leases and provides estate management services among others. The Plaintiff and 1st defendant on 29 October 2018 entered into a Facility Management Service Agreement (FMSA) for it

to provide reception, cleaning, security landscaping services and other maintenance services for a building known as Sloane House. The events which seem to have provoked the Plaintiffs' present action are the allegation of breach of the FMSA and the failure of the 4th Defendant to pay for services rendered to him by the Plaintiff and an alleged breach of contract between the Plaintiff and the 3rd Defendant.

Plaintiff's Pleadings

[2] The case of the Plaintiff as can be gathered from its pleadings is that on 29 October 2018 1st Defendant engaged Plaintiff to provide reception, cleaning, security, landscaping and maintenance services for a building known as Sloane House located at East Airport Accra. The plaintiff was also to provide a swimming pool for the use of the occupants of that House. According to Plaintiff on 5 March 2020, Plaintiff engaged the 3rd Defendant to provide security services for the said House at a monthly fee of GH¢14,000.00. Plaintiff contends that the FMSA between Plaintiff and 1st Defendant was for two years and after its expiration, it was renewed for a further two years.

[3] It is the case of the Plaintiff that after the renewal it continued to work in Sloane House and per the said agreement invoiced homeowners the quarterly invoice for November 2020 and January 2021 including 4th and 5th Defendants. According to Plaintiff the 5th Defendant paid for the services but 4th Defendant refused to pay for all services rendered from 1 November 2018 to 26 February 2021.

[4] It is the further case of Plaintiff that Defendants have frustrated the contract between Plaintiff and 1st Defendant. Plaintiff contends that 5th Defendant is an officer of 1st Defendant company that entered into the FMSA with Plaintiff and irrespective of the existence of the said agreement, and together with 3rd and 4th Defendants formed 2nd Defendant company and joined forces with 3rd and 4th Defendants to prevent Plaintiff

from entering into the premises of carry out its business and has frustrated existing contracts between Plaintiff and 1st Defendant up till date. According to Plaintiff when it demanded payment of 4th Defendant's indebtedness, 4th Defendant threatened to cause Plaintiff's contract to be terminated. That true to his words 4th and 5th Defendants with others immediately formed the 2nd Defendant Company and on 17 February 2021and at its general meeting purportedly terminated the agreement between Plaintiff and 1st Defendant.

[5] According to Plaintiff on 29 February 2021 4th and 5th defendants frustrated Plaintiff from conducting their services by informing the 3rd defendant who had been employed by Plaintiff that the 2nd Defendant had terminated their non-existent contract with Plaintiff and so the 3rd Defendant could only work at Sloane House as the employees of 2nd Defendant. It is the further case of Plaintiff that without 3rd Defendant communicating with Plaintiff about this development and without reference to the existing agreement between Plaintiff and 3rd Defendant, 3rd Defendant on the instructions of 2nd, 4th and 5th Defendants, changed the security guards at post who knew all officials of Plaintiff. According to Plaintiff 3rd Defendant upon the instructions of 2nd, 4th and 5th Defendants refused to allow the employees of Plaintiff into Sloane House thereby frustrating Plaintiff in the performance of the duties.

[6] On 17 March 2021, Plaintiff sued out Writ of Summons and Statement of Claim against the defendants jointly and severally the following reliefs:

a. Declaration that 2nd Defendant's purported termination of the agreement between Plaintiff and 1st Defendant is unlawful.
b. Damages against 1st Defendant for breach of contract.
c. Damages against 2nd, 3rd, 4th and 5th Defendants for frustrating the Agreement between Plaintiff and 1st Defendant.

d. Declaration that 3rd Defendant purportedly working for the 2nd Defendant on the 26th of February when 3rd Defendant had an existing contract with Plaintiff is unlawful.
e. Damages against 3rd Defendant for breach of contract.
f. An order for the immediate return of Plaintiff's assets/properties unlawfully taken by 2nd defendant in the state in which they were before taken by 2nd Defendant.
g. Recovery of an amount of USD10,080.00 owing by 4th Defendant to Plaintiff as at 26th February, 2021.
h. Interest on USD10,080.00 from 27th February 2021 till date of final payment.
i. Cost inclusive of lawyers cost.

Defendants' Pleadings

[7] The defendant filed a Statement of Defence and denied the claim of the Plaintiff. They did not file a counter claim. Although the Defendants admitted that 1st Defendant had a contract with Plaintiff to provide certain services for Sloane House, they contend that the agreement was for 2 years and after its expiration 1st Defendant did not extend it. The Defendants also denied that they owe Plaintiff an amount of USD10,080 for services Plaintiff allegedly rendered to only 4th Defendant. Defendant admitted that 4th and 5th Defendants are directors of the 2nd Defendant but denied that the 2nd Defendant was incorporated to frustrate the contract between 1st Defendant and Plaintiff.

ISSUES FOR DETERMINATION

[8] At the close of pleadings the Plaintiff filed Application for Directions and raised 15 issues for trial. But in my view the following issues out of the 15 are the relevant issues for the determination of the suit.

1. Whether or not there was an existing contract between Plaintiff and the 1st Defendant as of 26 February 2021.

2. Whether or not 2nd Defendant Company was set up by, 4th and 5th Defendants as a vessel to solely terminate the existing contract between the Plaintiff and 1st Defendant.
3. Whether or not the termination of the contract between the 1st Defendant and Plaintiff by the 2nd, 4th and 5th defendants was unlawful.
4. Whether or not 2nd, 3rd, 4th and 5th Defendants frustrated the existing contract between the Plaintiff and 1st Defendant.
5. Whether or not there was an existing contract between 3rd Defendant and Plaintiff for the provision of security services by 3rd Defendant for Sloane House at the time 3rd Defendant was engaged by the 2nd, 4th and 5th Defendants to provide the same service for Sloane House.
6. Whether or not 3rd Defendants frustrated the contract between plaintiff and 3rd defendant.
7. Whether or not 3rd Defendant breached the contract existing between Plaintiff and 3rd Defendant by 26 February 2021.
8. Whether or not Defendants must indemnify Plaintiff for all payments due Plaintiff under the existing agreement between Plaintiff and 1st Defendant.
9. Whether or not Plaintiff is entitled to an immediate recovery of the sum of USD 10,80.00 owing by the 4th defendant to plaintiff as at 26 February 2021.

In proof of its case, its Chief Executive testified and called one witness. The defendants testified through 4th Defendant and no witnesses were called.

Examination of issues

ISSUE 1: *Whether or not there was an existing contract between Plaintiff and the 1st Defendant as of 26 February 2021.*

[9] On the evidence, there is no doubt that there was a contract between Plaintiff and 1st Defendant for the rendering of certain services by Plaintiff to Sloane House. The Plaintiff claim that there was a Facility Management Service Agreement between it and 1st Plaintiff.

[10] The Defendants do not deny that there was a contract between the Plaintiff and 1st Defendant. What they deny is that the contract was renewed after its expiration in October 2020. In these circumstances where the Defendants deny that the contract between the Plaintiff and 1st Defendant was renewed, it is the Plaintiff who alleges that the contract was renewed after the initial 2 years that has the burden of proof on that issue. Failure to discharge that evidential burden, a ruling would be made against it on that issue.

[11] Section 17(1) of the Evidence Act, 1975 (NRCD 323) states the position as follows:

> Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof.

[12] The law is that a person who raises an issue essential to the success of his case assumes the burden of proof. See **Bank of West Africa Ltd.v. Ackun** [1963]1 GLR 176.
Plaintiff pleaded at paragraph 7 and 8 of its Statement of Claim as follows:

7. Plaintiff further avers that the agreement between 1st Defendant and the Plaintiff was for a period of 2 years so on October 12, 2020 this Facility Management Service Agreement was renewed in accordance with clause 2.1 of schedule 1 of the agreement for another 2 years.

8. Plaintiff avers that after this renewal, Plaintiff continued to work in Sloane House and per the said agreement invoiced to all home owners the quarterly invoice for the months of November 2020 to January 2021 including, the 4th and 5th Defendants but although the 5th Defendant paid for services, 4th Defendant refused to pay for all services rendered from 1st November, 2018 to 26th February, 2021.

[13] The Chief Executive Officer of Plaintiff in her testimony repeated these averments and said the agreement was for an initial two years and after its expiration in October 2020, it was renewed for a further 2 years. Plaintiff tendered in evidence Exhibit C. Exhibit C is a *Facility Management Service Agreement Between Comland Ghana Limited For Sloane House Project (Client) And City Facilities Management Limited. (Contractor).* Exhibit C is dated 1st November 2018 and clause 2 provides the commencement date as 01 November 2018 and it is for 2 years. A look at Exhibit C shows that it was signed by the Chief Executive Officers of the Parties. The Chief Executive Officer who signed for 1st Defendant, Comland Ghana Limited was Mr. Darren Spencer. He signed it together with 5th Defendant an officer of the 1st Defendant. The Chief Executive Officer of the Plaintiff Kafui A. Salford also signed for the Plaintiff.

The email sent on 12 October 2020

[14] Plaintiff tendered in evidence Exhibit D. Exhibit D is an email sent by Mr. Darren Spencer the CEO of 1st Defendant Company to Mrs. Kafui A. Salford CEO of Plaintiff on October 12, 2020. The email which had "Service Agreement – Sloane House Accra" as its subject was in the following terms.

To:

C/o CEO

City Facilities Management Ltd

Address Office: Madina Estate, Dodowa Road, Accra

Correspondence Address: PO Box VV034, Dodowa,

Accra

REF: Facility Management Service Agreement for Sloane House, Accra

As per the Facility Management Service Agreement for Sloane House dated 1 November 2018, and in accordance with clause 2.1. of SCHEDULE 1

TERMS AND CONDITIONS FROM FM SERVICES, **this email serves as confirmation that the services provided by City Facilities Ltd under this agreement will continue for a further minimum of 2 years**. (Emphasis mine)

All terms and conditions will remain the same.

Thank you for your service and diligent commitment to the services you continue to provide

Your Sincerely

Darren Spencer

Facility Management Service Agreement Representative.

[15] In response to the email of Mr. Spencer on the renewal of the facility agreement, the Chief Executive Officer of the Plaintiff company Kafui A. Salford in an email on same day accepted the renewal and replied in the following terms:

Dear Sir,

Thanks very much for the mail.

We are greatly honoured to be serving the House and would continue invest wisely in performance to bring out the best service by all standards.

Have a great week.

Kind regards

Kafui Salford

CEO.

[16] Even though in their Statement of Defence and in the testimony of 4th Defendant the Defendants never alleged that Mr. Spencer was not in the employment of 1st Defendant at the time Exhibit D was sent, under of cross-examination of the Plaintiff's representative, it was suggested to him by Counsel for the Defendants that Mr. Spencer was not in the employment of the 1st Defendant at the time Exhibit D was sent. What Defendants are driving at by this suggestion is that the 1st Defendant did not author or cause to be authored Exhibit D because Mr. Spencer who sent Exhibit D was not an employee of the 1St Defendant and had no authority to act on behalf of 1st Defendant. Even though I find this claim of Defendants as an afterthought, I will nevertheless examine it.

[17] This is what transpired when Plaintiff's representative was cross-examined.

> Q. From Exhibit D did you see anywhere written Comland Ghana Limited.
>
> A. No I do not see it.
>
> Q. The 1st Defendant Company, Comland Ghana Limited did not author or cause to be authored Exhibit D. I put that to you.
>
> A. I do not agree because Darren Spencer who is the authorized representative of Comland Ghana in this agreement was the author of the email.
>
> A. The purported author of Exhibit D was not an employee of the 1st Defendant as at 2:42 am of October 12, 2020. I put that to you.
>
> A. I do not agree as Darren Spencer who answered all questions concerning the contract and copied in the operational documents or reports did not at any point inform City Facilities Management that he was not a staff of Comland as per October 12. 202 at 2:42. On the contrary, he asked for the continuation of our work and thereby having to send the email.

[18] From the above questions, the Defendants are alleging that Mr. Spencer was not in the employment of the 1st Defendant Company. The Plaintiff denied this assertion of Defendant and it was incumbent on the Defendants to prove the claim. It is not in doubt that Mr. Spencer signed Exhibit C as the Chief Executive Officer of the 1st Defendant. The defendant has not denied that at the time Mr. Spencer signed Exhibit C he was not in the employment of the 1st Defendant. If it is the defence of Defendants that subsequent to the signing of Exhibit C and at the time the email was sent Mr. Darren was no more in the employment of the 1st Defendant a claim the Plaintiff denies, the burden of proof lies on the Defendants to prove that Mr. Spencer was not an employee of 1st Defendant at the time the 12 October 2020 email was sent. It is within the knowledge of the 1st Defendant to know who are its employees at any particular point in time.

[19] This position is supported by Section 14 of the Evidence Act, which 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 party is asserting.

[20] There is no evidence on record that at the time the email was sent Plaintiff had actual or constructive notice that Mr. Spencer was not in the employment of the 1st Defendant and as a consequence had no authority to act on behalf of the 1st Defendant. Any transaction entered into by Plaintiff and 1st Defendant at the time will not be affected unless Plaintiff's actual or constructive knowledge that Mr. Spencer was not an employee of 1st Defendant is proved. The Defendants did not produce any evidence to establish that on 12 October 2020 when the email was sent, Mr. Darren was not in the employment of the 1st Defendant. The effect is that the Defendants have failed to prove the allegation that at the time Mr. Darren sent the email he was not in employment of the 1st Defendant.

I find and hold that Mr. Darren was in the employment of the Plaintiff on 12 October 2020 when the email was sent.

[21] The Defendants do not contend that Mr. Darren did not send this email. They also do not contend that the terms of the email are themselves insufficient to constitute a valid notice of renewal of the FMSA. Their contention is that the agreement was not renewed after its expiration on 31 October 2020. In his written address Counsel for the Defendants submitted that Exhibit C did not include sending notices through electronic mail service and as such the email sent by Mr. Spencer to the Chief Executive Officer of the Plaintiff was in breach of the terms of Exhibit C and as a consequence it did not constitute a renewal of the FMSA.

[22] Clause 9.11 of Exhibit C contains provisions concerning notices and it provides as follows:

> *"**Notices**: Any notice under the Comland FM Services Agreement shall be in writing and sent by hand, first class post or facsimile to the correspondence address of the Contractor or Client set out in the Comland Services Agreement (or such other address as the party shall notify to the other in accordance with this Clause). Notices shall be deemed to have been received in case of notice by hand, on delivery, by post, on the second day after the day of posting, and by facsimile, on completion of uninterrupted transmission.''*

[23] Contractual notices are generally served in accordance with the notice provision in the contract in question. Typically, where a notice clause is included in an agreement it will be mandatory, meaning that the provision must be complied with to effect valid service under the contract. **Based on the facts of the current case, can we consider the email sent on October 12, 2020, which renewed the FMSA, as a violation of the method for sending notices stated in Exhibit C? Can it be argued that Mr. Darren's email did**

not comply with the terms of the FMSA, making it void and therefore not renewing the agreement? In my view the email sent was valid and constituted a notice renewing the agreement. My reasons for saying so are as follows.

[24] It has been held that an email constitutes a written notice. See the New South Wales Supreme Court case of **Kavia Holdings Pty Ltd v Suntrack Holdings Pty Ltd** [2011] NSWSC 716 at [33] where the Court held that an email was a valid medium for the notice under a lease and the email satisfied the primary contractual formality required by the lease, which was that the notice be in writing. In my view, I consider the email sent Mr. Spencer on 12 October 2020 to constitute a notice in writing under Clause 9:11.

[25] In **HOE International Ltd v Andersen** [2017 SC] 313 the Supreme Court of Scottland decided that in the absence of prejudice, the Court would be slow to hold that a notice which was not issued in strict compliance with an agreement was invalid. In the **Our Generation Limited v Aberdeen City Council** [2019] CSIH 42 CA3/18 the Scottish Inner House, Court of Session citing with approval **HOE International Ltd v Andersen** (supra) held that:

> In *HOE International v Andersen* 2017 SC 313 it was observed (Lord Brummond Young, delivering the opinion of the court at paras [16] and [17]) that, in determining the validity and effect of a notice, two distinct types of questions may arise. First, are the terms of the notice sufficient to convey the necessary information to the recipient? This turns largely on a construction of a notice. Secondly, has the notice been issued in accordance with the contractual provisions? That may turn on whether strict compliance is required, having regard to the context of the term in the contract and the context of the contract generally. A purposive construction was appropriate and commercial common sense should be applied. The more drastic the consequences of the notice, the

> greater the need for strictness……. If the email were capable of being construed as a notice, then it would have been issued within the terms of the contractual provisions, on the assumption that the pursuers are able to prove that the defenders were aware that Effective Energy were acting as agents for the pursuers…..However, the email is in writing and it was sent to the defenders. Clause 12 contains deeming provisions in relation to service, where a notice is delivered, faxed or posted in a particular way to a specified officer (Head of Legal and Democratic) of the defenders at their principal Aberdeen address. Such methods are not mandatory. All that is needed is proof that the notice was in writing and was received by the other party; in this case the defenders. It was not argued that the email was not received by the defenders, nor was it contended (as it might have been) that there was any prejudice to the defenders by its transmission to an employee of the defenders, who appears to have been involved in the financial mechanics of the ongoing contract rather than the consequences of a failure to pay under its terms.

[26] Again, in the case of **UKI (Kingsway) Limited v Westminster City Council** (2018) UKSC 67, a local authority issued a property company with a completion notice in respect of a newly redeveloped building under the Local Government Finance Act 1988. The effect of that notice was that the building would be deemed to be completed and that it would on a particular date appear on the rating list and be subject to non-domestic rates. The notice was addressed to the building and delivered by hand to a receptionist who worked for agents who were managing the building under contract with the company. The agents were not authorised to accept service of the notice on the company's behalf, but the receptionist scanned and emailed it to the company. That was done before the date specified as the deemed completion date in the notice. Email was not one of the modes of serving the notice.

The Court set out to determine the issues in the following terms:

> The issue for this court, as identified in the agreed statement of facts and issues, is whether the completion notice was validly served on the date that it was received by UKI, in circumstances where: i) it was not delivered directly to UKI by the council, but passed through the hands of the receptionist employed by Eco, who was not authorised for that purpose by either party; ii) it was received by UKI in electronic rather than paper form.

The Supreme Court found that valid service by email had been achieved that the means of service prescribed by the Act were not exhaustive, and the real issue was therefore whether the council had caused the company to receive the notice. The Court then held that:

> In this case the notice was received by UKI and served its statutory purpose of communicating to UKI the completion date proposed by the council, and it was acted upon by UKI

[27] The decisions in **HOE International Ltd v Andersen Our Generation (supra)Limited v Aberdeen City Council** (supra) and **UKI (Kingsway) Limited v Westminster City Council** (supra) are to the effect that notice clauses only impose one absolute requirement that the notice be in writing. The other aspects of the typical notice clause, such as those relating to how it is served, are usually not exhaustive and are optional. And, in determining the validity and effect of a notice, two distinct types of questions may arise. First, are the terms of the notice sufficient to convey the necessary information to the recipient? This turns largely on the construction of a notice. Secondly, has the notice been issued in accordance with the contractual provisions? That may turn on whether strict compliance is required, having regard to the context of the term in the contract and the context of the contract generally. In

determining the validity and effect of the notice a purposive construction was appropriate and commercial common sense should be applied. The more drastic the consequences of the notice, the greater the need for strictness, but formal requirements may not be important if no prejudice followed.

[28] In my view Clause 9:11 does not impose conditions that must be satisfied in order to exercise the option to renew. My understanding of the clause is that it is mandatory for the notice to be in writing. *'Any notice under the Comland FM Services Agreement* ***shall be in writing…"*** The modal verb *'shall''* in my view refers to the substance of the notice and does not refer to the mode notice must be sent. Per Clause 9:11 it is mandatory that any notice that is sent must be in writing.

[29] If a notice is sent by email by the authorized representative of a party to an agreement and received by the intended or authorised recipient of the other party who acknowledges receipt, did not object to it being sent by email and accepts the renewal notice, the sending party cannot turn round and say the agreement was not renewed simply because it was sent by email instead of the contractual methods of by hand, post or facsimile. The purpose of the notice is to bring whatever is in the notice to the attention of the other party. A document which arrives in the hands of the intended recipient by a mode not specified in a contract has still been served especially when it will cause no prejudice**.**

[30] The 1st Defendant's Chief Executive Officer Mr. Darren sent the 12 October 2020 email renewing the FMSA to the Plaintiff's Chief Executive Officer Mrs. Kafui Salford who acknowledged it and responded by sending an email accepting the renewal, the 1st Defendant cannot turn round and say the agreement was not renewed simply because

the notice of renewal sent by email instead of the contractual mode by sending it by hand, post or fascmile.

[31] Again, in terms of Section 23 of the Electronic Transactions Act, 2008 Act 772 the email sent by Mr. Darren cannot be said to be invalid and does not renew the facility management agreement. Section 23 of the Act provides as follows:

Formation and validity of agreements

> *23. An agreement is valid even if it was concluded partly or in whole through an electronic medium*.

[32] The Plaintiff's representative testified that after the renewal Plaintiff continued to work in Sloane House. She further testified that the 2nd Defendant which was formed by 5th Defendant an officer of the 1st Defendant purported to terminate the contract between the 1st Defendant and Plaintiff. Plaintiff tendered in evidence Exhibit G series. Exhibit G series are a letter written by 2nd Defendant and a board resolution of 2nd Defendant. The Board of 2nd Defendant resolved to terminate the contract between Plaintiff and 1st Defendant. The Board resolution is dated 22 February 2021 and the letter is dated 26 February 2021. Both the 4th and 5th defendants are signatories to both the letter and the board resolution.

[33] The question is, if the agreement was not renewed and was not in existence as at 26 February 2021 what agreement were they purporting to terminate? The defendants do not deny the existence and authenticity of Exhibit G and do not also deny authoring those documents. The defendants had acknowledged and acted in a manner that suggest positively that the agreement was in existence at of 26 February 2021.

[34] Section 26 of the Evidence Act 1975 (NRCD 323) provides as follows:

> *26. "Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally, and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between*
>
> *(a) that party or the successors in interest of that party, and*
>
> *(b) the relying person or successors in interest of that person."*

[35] By the contents of Exhibit G and their conduct, the Defendants made Plaintiff to believe that the contract was renewed and existed up until 26 February 2021 when it was terminated and the Plaintiff acted upon it and accepted the renewal, the Defendants will be estopped from denying the truth of the contents of the email.

[36] Under cross-examination of the 4th Defendant he testified that at the time of service of the notice terminating the agreement on the Plaintiff, there was an existing contract between Plaintiff and the 1st Defendant.

> Q. When was Sloane House Association LBG formed.
>
> A. The certificate was issued on 17th February, 2021.
>
> Q. And on the 17th February, 2021 2nd Defendant i.e. your association supposedly held a general meeting and resolved to terminate the contract between Plaintiff an d1st Defendant. Is that correct.
>
> A. Yes. We terminated any existing contract.

Q. And based upon that resolution, you served the Plaintiff with notice of termination dated 26th February, 2021. Is that correct.

A. Yes

Q. And the notice is exhibit G

A. Yes, that is that one.

Q. So, at the time of service of this notice on the Plaintiff there was an existing contract between Plaintiff and the 1st Defendant. Is that correct

A. Yes

[37] Defendant admits that the FMSA between Plaintiff and 1st Defendant was in existence on 26 February. The law is that where the evidence of an opponent corroborates the evidence of the opposite party, and that opponent remains uncorroborated, the court is bound to accept the corroborated evidence unless there are compelling reasons to the contrary. From the totality of the evidence on this issue, there is no compelling reason for me not to accept the corroborated evidence of the Plaintiff that as of 26 February 2021 FMSA was in existence between the Plaintiff and 1st Defendant.

[38] On the evidence I am satisfied that the 12 October 2020 email was sent by Mr. Spencer on behalf of 1st Defendant and the same was received by Mrs. Kafui Salford on behalf of Plaintiff who sent an email the same day accepting the contents thereof. I find that the email constitutes a written notice under Clause 9:11 of exhibit C and sent in an electronic form instead of by post, hand or facsimile was valid in renewing the Facility Management Service Agreement between the Plaintiff and 1st Defendant and hold that the agreement was in existence on 26 February 2021.

[39] I will now examine issues 2 and 3. I will examine them together as they are related.

2. Whether or not 2nd Defendant Company was set up by 2nd, 4th and 5th Defendants as a vessel to solely terminate the existing contract between the Plaintiff and 1st Defendant.
3. Whether or not the termination of the contract between the 1st Defendant and Plaintiff by the 2nd, 4th and 5th defendants was unlawful.

[40] It is the case of the Plaintiff that the 2nd,3rd and 5th Defendants unlawfully terminated the contract between the Plaintiff and 1st Defendant.

It is pleaded at paragraphs 15, 22 and 23 of the Statement of Claim as follows:

> 15. Plaintiff avers that indeed 4th and 5th Defendants with others immediately formed the 2nd Defendant on 17th February [2021] and at its general meeting purportedly terminated the agreement between Plaintiff and 1st Defendant.
>
> 22. Plaintiffs avers that since the 26th February 2021, 2nd Defendant claims to have terminated the existing agreement between Plaintiff and 1st Defendant by a supposed board meeting minutes (board meeting held by 2nd defendant on 22nd Defendant).
>
> 23. Plaintiff avers that on 26th February 2021 an official notice terminating the existing agreement between the Plaintiff and 1st Defendant was served by 2nd Defendant on Plaintiff via email.

[41] The Plaintiff's representative testified that on 26 February 2021, an official notice to terminate the existing agreement between the Plaintiff and 1st Defendant dated 26 February 201 was served by 2nd Defendant on Plaintiff via email.

[42] The 4th Defendant in his evidence under cross-examination admitted 2nd Defendant terminating the agreement between the Plaintiff and 1st Defendant. This is what transpired under cross-examination.

> Q. And on the 17th February, 2021 2nd Defendant i.e. your association supposedly held a general meeting and resolved to terminate the contract between Plaintiff an d1st Defendant. Is that correct.
>
> A. Yes. We terminated any existing contract.
>
> Q. And based upon that resolution, you served the Plaintiff with notice of termination dated 26th February, 2021. Is that correct.
>
> A. Yes
> On the evidence I am satisfied that the agreement between the 1st Defendant and the Plaintiff was terminated on 1 March 2021.

[43] From the evidence, there is no doubt that the 2nd Defendant purported to terminate the agreement between the Plaintiff and the 1st Defendant See Exhibit G series. The question is can the 2nd Defendant not being a party to the FMSA between the Plaintiff and 1st Defendant purport to terminate the agreement. Even though the parties to the agreement i.e. Plaintiff and 2nd Defendant can terminate the contract under section 7 of Schedule I of Exhibit C, I do not think a non-party to a contract can terminate a contract in the absence of a specific provision to do so. Only the parties that have signed the contract can terminate the contract.

[44] In fact, under cross-examination of Plaintiff's representative this is what ensued:

Q. Therefore the 2nd Defendant could not have been a party to Exhibit C. I put that to you.

A. Officially, no.

Q. Since the 2nd Defendant was not a aprty to Exhibit C, 2nd Defendant cannot be said to have terminated Exhibit C

A. Yes.

[45] Christine Dowuona- Hammond in her book, *The law of Contract in Ghana*, at page 175 of her book stated as follows:

> The common law position on privity of contract since the middle of the nineteenth century is that a person cannot be entitled to enforce or be bound by the terms of a contract to which he is not a party. The doctrine of privity of contract stipulates that only persons who are parties to a contract are entitled to take action to enforce it. Thus, under the common law doctrine of privity of contract a contract cannot, as a general rule, confer rights or impose obligations arising under it on any person except the parties to it. Only those parties to the contract are bound by it and are able to enforce the contractual obligations under the contract. This means that a person who stands to gain a benefit from the contract (a third-party beneficiary) is not entitled to enforce the contract even if he or she is denied the promised benefit. The rule on privity is based not only on the fact that there is no contractual relationship or privity between the third-party plaintiff and the defendant, but also on the fact that the third-party plaintiff has not provided any consideration for the promise which he seeks to enforce

[46] So, generally a party not being a party to contract has no right under the agreement to terminate it and also a third person cannot sue or be sued on a contract for which he is not a party.

[47] In the present case the 2nd Defendant is not a party to Exhibit C and the agreement did not confer any right on it to terminate the agreement. Exhibit G series purporting to terminate the FMSA between Plaintiff and 1st Defendant was therefore of no consequence and the Plaintiff was required to ignore it.

[48] The letter of termination written on 26 February 2021 purporting to terminate the agreement between the Plaintiff and 1st Defendant is of no consequence as the 2nd Plaintiff has no right under Exhibit C to terminate the agreement. The Plaintiff should have refused to accept the purported termination and treated it as inoperative. The contract remained in these circumstances.

ISSUE 4: Whether or not 2nd, 3rd, 4th and 5th defendants frustrated the existing contract between the Plaintiff and 1st Defendant.

[49] It is the case of the Plaintiff that the 2nd Defendant was set up to frustrate the contract between the Plaintiff and 1st Defendant.

The Plaintiff's representative testified as follows:

> My lord, I am aware that Sloane Home Owners Association of which 4th and 5th defendants are directors is a body incorporated on 17th day of February, 2021 was formed purposely to terminate plaintiff contract with 1st defendant and assign Kelm Engineering Ghana ltd to handle the facility management of Sloane House starting 1st March 2021 till 28th February, 2022.
>
> My lord, per Exhibit C, 5th Defendant is an officer of 1st Defendant company that entered into the facility management agreement with Plaintiff and irrespective of the existence of this agreement, and together with 3rd and 4th Defendants formed 2nd Defendant and joined forces with 3rd and 4th Defendants to unlawfully prevent

plaintiff from entering into the premises to carry out its business and has frustrated existing contract between plaintiff and 1st Defendant up till date.

[50] Frustration of contract is a doctrine in the law of contract and occurs in common law when, without fault of either party to a contract, an unforeseen event(s) makes it impossible for the contract to be performed. And the effect of frustration is that it discharges the contract automatically. Rights and liabilities already acquired up to the termination of the contract because of frustration remain intact, only subsequent obligations are discharged**.**

In **Pioneer Shipping Ltd v BTP Trioxide Ltd** [1982] AC 724 Lord Simon stated the test of frustration as follows:

> Frustration of a contract takes place when there supervenes an event without default of either party and for which the contract makes no provision which so significantly changes the nature, not merely the expense or onerousness, of the outstanding contractual rights and or obligations from what the parties could reasonably have contemplated at the time of the execution that it would be unjust to hold the literal sense of its stipulations in the new circumstances; is such a case the law declares both parties to be discharged from further performance.

[51] In the case of **Barclays Bank (Ghana) Ltd v. Sakari** [1997-98] I GLR 746 where the Supreme Court at page 752 held as follows:

> The doctrine of frustration is one of the simplest concepts in the law of contract. But like any simple concept, its application is not as simple as it is understood. In Ghana the doctrine involves a mixture of common law rules and statute (ie the Contracts Act, 1960 (Act 25). The common law rules determine when frustration can be said to have occurred, while Part One of Act 25 deals with the consequence

> of frustration. Briefly, frustration occurs where an external event of some kind, which is not the responsibility of either party, renders further performance of a contract impossible….
>
> Now whether in any particular situation frustration has occurred or not, is a question for the court to determine. And since the event in question must render impossible or radically different, the performance of the contract, there can be no valid finding of frustration in any situation without construing the contract to determine the nature of the obligation created on the parties. For it is not just any even affecting any term of a contract that amounts to frustration.

[52] In the instant case the Plaintiff claims that 2nd, 3rd ,4th and 5th Defendants frustrated the contract between Plaintiff and 1st Defendant and that 2nd Defendant was set up to take over the obligations of Plaintiff under the contract between Plaintiff and 1st Defendant. The Plaintiff gave the particulars of the frustration in paragraphs 9(b), (c), (d), (e), (f), (g), (h), (i), 10 and 26 of the Statement of Claim. Apart from mounting the witness to repeat these allegations, the Plaintiff was not able to provide any evidence to substantiate the claim of frustration.

[53] The Defendants in their Statement of Defence denied all these allegations. The law is that a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. See **Zabrama v Segbedzi** [1991] 2 GLR 221.

[54] 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 10(1) of the Act provides as follows:

> For the purposes of this Act, 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.

Apart from Plaintiff's representative mounting the witness box to repeat what had been pleaded in Plaintiff's pleadings no evidence was led in proof of those allegations.

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

> Proof in law is establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documens, 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.

[56] The Plaintiff's representative and PW1 just mounted the witness box and repeated the allegations that 2nd, 3rd, 4th and 5th Defendants frustrated the contract between Plaintiff and 1st Defendant. The Plaintiff would be deemed not to have proven those allegations.

I agree with Counsel for the Defendants when he submitted that even if all the particulars listed in paragraph 9 of the Statement of Claim are proven it will not constitute frustration qua frustration as a legal term which vests a cause of action in a Plaintiff. As I have stated frustration occurs when an unforeseen event(s) makes it impossible for the contract to be

performed and if the allegation particularized by the Plaintiff if even proved will not satisfy the requirements of the doctrine of frustration in the law of contract.

ISSUE 9: *Whether or not 4th Defendant owed the Plaintiff the sum of USD10,800.00 for services rendered to 4th defendant and if so whether or not the defendants are all liable to pay the said debt*. [57] Relief (g) of the Plaintiff is as follows: Recovery of an amount of USD10,080.00 owing by 4th Defendant to Plaintiff as at 26th February, 2021.

The Plaintiff's representative testified that after the renewal of the agreement, Plaintiff continued to work in Sloane House and invoiced all homeowners their quarterly invoice for November 2020 to January 2021 including the 4th and 5th Defendants but although the 5th Defendant paid for the service, 4th Defendant refused to pay for all services rendered from 1 November 2018 to 26 February 2021. She also testified that 4th Defendant owes Plaintiff utilities user fees and property management fees for the period 1st November 2018 to 26th February 2021. And that he caused its lawyers to write to the 4th Defendant to demand for the outstanding fees of USD9720.00 owing as at 31st January, 2021.

[58] Clause 3.1 of Exhibit C provides as follows:

> Provision: The contractor shall provide the services and the client shall monitor, validate and accept and authorise the payment for the Services, on and subject to the terms of the Comland FM Services Agreement and these terms and conditions.

Clause 5.1 also provides

> Charges: The client shall pay to the contractor the charges for the services, through authorised granted by the client for the contractor to collect all maintenance Fees due by individual Landlords.

Clause 6.1. also provides

Payment terms: The contractor shall be entitled to invoice the Landlords for the charges and the client shall not in any way interfere with such values and or collections of the contractor of the contractor's invoice in accordance with payment terms set out or referred to in the Comland FM Services Agreement as otherwise agreed by the parties.

[59] It is not in doubt that Plaintiff provided services as outlined in Exhibit C to the landlords or occupiers of Sloane House. It is also not in doubt that the Plaintiff provided such services under the FMSA from November 2018 to February 2021. The 4th Defendant does not deny he occupies Apartment F4-C in Sloane House. He does not also deny enjoying the services rendered by Plaintiff to all occupiers or landlords of Sloane House. He also does not deny that he has to pay for those services. His defence to the claim of Plaintiff for recovery of monies due Plaintiff for the services rendered is that he paid for those services and he paid to the 1st Defendant because he had an agreement with the 1st Defendant to do so.

[60] Under cross-examination of Plaintiff's representative, the following happened:

Q. Under Exhibit C, the Plaintiff was to collect any accrued fees for services rendered from the Landlords. Is that correct.

A. Yes

Q. And so clearly, if there is any debt due and payable for services rendered, it is only a landlord who owes that must pay and not 3rd Defendant Simba Gate Security.

A. Yes, but Simba Gate Security brought themselves into the mater by executing the wishes of the 2nd Defendant Sloane Home Owners Association.

Further

Q. There is no evidence before this Court that between 1st November 2018 to 31st October, 2020 (the duration of Exhibit C), you requested and received authorization from the client to collect payments from Landlords. I put that to you.

A. Not so. According to the email that was sent to us, all terms and conditions of Exhibit C were holding and some landlords had gone ahead to pay including Joseph Khalil who is a signatory to the contract.

Q. Because you did not request and receive any authorization from the client (1st Defendant) to demand payment from Landlords, the 4th Defendant was right when he wrote Exhibit 8B stating that home owners within Sloane House have a contract with only the 1st Defendant and not the Plaintiff. I put that to you.

A. That is not correct. It is also stated in Exhibit C that Landlords are to pay to the contractor of which Mr. Joseph (5th Defendant) paid and few others also paid up to date but Mr. Hussien has never paid since the day we entered Sloane House from 1st November 208 to 26th February 2021. This we find the reasons he is part of this suit and among other things.

Further

Q. You have not provided before this Court any contract accepted in which the 4th Defendant accepted to receive bills for services rendered priced in US Dollars. I put that to you.

A. No, there isn't any such contract. But as far as City Facilities is concerned Mr. Hussien accepted all services, cleaning, janitorial services, waste management, reception services, and generator maintenance without asking for his lights to be put off for example or his waste to be left when we rendered services.

[61] And under cross-examination of the 4th Defendant, the following ensued :

Q. According to you, the contract between Plaintiff and 1st Defendant was for a period of 2 years, commencing from 1st November 2018 and ending 31st October, 2020. The same paragraph 6.

A. Yes

Q. And pursuant to this agreement Plaintiff contracted 3rd Defendant to provide security services for you and the other Sloane Home Owners. Is that correct.

A. That's normal, yes.

Q. And during the period 1st November 2018 and 31st October you made payments for services rendered you by the Plaintiff. Is that correct.

A. I was paying only utility bills to City Facilities. All service charges were paid directly to Comland.

Further

Q. I put it to you that you refused to make payment for utility bills provided you by the Plaintiff in spite of service of demand notices on you.

A. No, utility services we were paying on time.

[62] The combined effect of clauses 3.1, 5.1 and 6.1 of Exhibit C is that the landlords are expected to pay for services rendered by the Plaintiff and that it is the Plaintiff that is to collect the said fees for the services so rendered and not the 1st Defendant. As I said earlier, the 4th Defendant does not deny he lives in the Sloane House, he has also not denied that the Plaintiff provided service outlined under Exhibit C to occupants and Landlords of Sloane House. He does not also deny that he enjoyed the services rendered Plaintiff in terms of the provisions of Exhibit C. What he denies is that he does not owe the Plaintiff and he has paid for all service rendered to him to the 1st Defendant. In these circumstances the burden of proof on whether the 4th Defendant has paid for the services rendered shifts onto the 4th Defendant.

Section 14 of the Evidence Act (supra) 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.

[63] **Agbosu and Others vs. Kotey and Others** [2003-2005] SC 1 GLR 685 Wood JSC (as she then was) held thus:

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

[64] The 4th Defendant has the burden of proof on the assertion that he has paid for the services rendered by the Plaintiff. 4th Defendant did not lead any evidence that he has paid the fees for the services rendered to the residents of the Sloane House including him. Even if it is true that he paid to 1st Defendant, where are the receipts for the payments? He did not provide them. He was the one who testified for and behalf of all Defendants including the 1st Defendant. He never provided any evidence in the form of payments to the 1st Defendant. In any event per the provisions of Exhibit C payments of the services were to be made to the Plaintiff and not 1st Defendant.

[65] He also mentioned that the homeowners or occupiers of Sloane House had a contract with the 1st Defendant for them to pay fees to the 1st Defendant and not to the Plaintiff. Yet he failed to produce the said contract. Plaintiff's representative also testified that 5th Defendant is an occupant of the Sloane House and also enjoyed services provided by the Plaintiff to occupants of the House in terms of exhibit C.

[66] From the facts and evidence before me it is clear that it is not only the 4th Defendant who occupies Sloane House. The Plaintiff's representative testified that except 4th Defendant all residents especially 5th Defendant paid the fees for the services rendered to the residents to the Plaintiff. This evidence was corroborated by PW1. I do not believe that 1st Defendant will have a separate agreement with the 4th Defendant and ask him to pay the fees for the services to the 1st Defendant whiles all other residents pay to Plaintiff. If there were such an agreement it was not produced by the 4th Defendant. 4th Defendant is just refusing to pay for legitimate services rendered to him by the Plaintiff.

[67] On the evidence I am satisfied that the 4th Defendant did not pay for the services rendered to him by the Plaintiff. The Plaintiff failed to provide evidence of payment of the fees that he alleged he made. It is normal business transaction that if payment is made for services rendered receipts are issued. Receipts are documentary which can be used as evidence of payments made.

[68] In the case of **Ackah v Pergah Transport Ltd & Others** [2010] SCGLR 728 at 736 the Supreme Court per Adinyira JSC opined as follows:

> It is a basic principle of the 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. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind

could conclude that the existence of the fact is more probable than its non-existence. This is a requirement of law of evidence under sections 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

[69] In the instant case the 4th Defendant failed to discharge the evidential burden placed on him to establish that he paid for the services rendered him by Plaintiff as an occupant of Sloane Home and he is liable to pay for the services rendered by the Plaintiff which amounts to USD9,740.00 together with interest at the current commercial rate on the US dollar from January 2021 to date of final payment.

ISSUES 6 AND 7.

6. *Whether or not 3rd Defendants frustrated the contract between plaintiff and 3rd defendant.*
7. *Whether or not 3rd Defendant breached the contract existing between Plaintiff and 3rd Defendant by 26 February 2021.*

[70] It is the case of the Plaintiff that in pursuance of the performance of its obligations under Exhibit C it contracted 3rd Defendant to provide security services to the Sloane House.

It is pleaded at paragraph 4 of the Statement of Claim as follows:

> Plaintiff avers that on the 5th of March, 2020, Plaintiff engaged 3rd Defendant to provide security service for Sloane House apartments at a monthly fee of GH¢14,000.00.

[71] In response to this averment, it is pleaded at paragraph 4 of the Statement of Defence filed on behalf of the Defendants on 4 November as follows:

The Defendants admit the averments contained in paragraphs 4, 5 and 6 of the Statement of Claim.

The Defendants admit that the 3rd Defendant was engaged by the Plaintiff to provide security services for Sloane House on his behalf.

The Plaintiff's representative testified as follows:

My Lord, on the 5th of March, 2020, Plaintiff engaged the 3rd Defendant to provide security service for Sloane House apartments as a monthly fee of Ghc14,000.00.

[72] The Plaintiff's representative tendered in Evidence Exhibit B. Exhibit B is a receipt issued by the 3rd Defendant for payment for security services for January 2021. From the evidence, I am satisfied that the Plaintiff engaged the 3rd Defendant to provide security services to the Sloane House on behalf of the Plaintiff. And I so hold.

[73] It is the case of the Plaintiff that the 3rd Defendant breached this agreement between Plaintiff and 3rd Defendant.

The Plaintiff's representative testified as follows:

21. My Lord, on 29th February 4th and 5th Defendants frustrated Plaintiff from conducting their services by informing the 3rd Defendant who had been employed by Plaintiff that 2nd Defendant had terminated their non-existent contract with Plaintiff and so 3rd Defendant can only work at Sloane House as employees of 2nd Defendant.
22. My Lord, without 3rd defendant communicating to Plaintiff about this development and without reference to the existing agreement between Plaintiff and 3rd Defendant, 3rd defendant on the instructions of 2nd , 4th and 5th Defendants , changed the security guards at post who knew all officials of Plaintiff.

23. My Lord, 3rd Defendant upon instructions of 2nd, 4th and Defendants refused to allow the employees of Plaintiff into Sloane House and thereby frustrating Plaintiff in performance of the duties.
24. My Lord, 3rd Defendant has still [to] date refused to allow Plaintiffs into the building and acted on the instructions of 2nd, 4th and 5th Defendants at a time when 3rd Defendant had an existing agreement with Plaintiff and which agreement had not been terminated by Plaintiff.

[74] Under cross-examination of the Plaintiff's representative, the above material allegations against the 3rd Defendant were not denied or cross-examined upon by the Defendants. Counsel for the Defendants took eight days to cross -examine the Plaintiff's representative and none on these days did the allegations made against the 3rd Defendant were denied by the Defendants. It is worth noting that Counsel for the Defendants under cross-examination of the Plaintiff's representative specifically denied the individual allegations made against the 1st, 2nd, 4th and 5th Defendants but not the ones against the 3rd Defendant in respect of the conduct of 3rd Defendant.

[75] The law is that when a party had given evidence of a material fact and was not cross-examined upon, or no contrary evidence is provided, he need not call further evidence of that fact and the material facts will be deemed to have been admitted. See **Danielli Construction Ltd v. Mabey & Johnson Ltd** [2007-2008] 1 SCGLR where it was held as follows:

> "The Plaintiff company did not cross-examine the witness of the defendant company in the witness box when he gave that evidence; the plaintiff company

did not also tender any evidence to challenge he veracity of the evidence in exhibit 2 and the inference was that it admitted the import of the evidence."

See also Wiafe v Kom [1973] 1GLR 240.

[76] Does the conduct of the 3rd defendant contained in the testimony of the Plaintiff amounts to breach of contract between the 3rd defendant and the Plaintiff?

In contract law, a breach occurs when one party fails to fulfil its obligations as specified in the legally binding agreement or contract. In the instant case the Plaintiff engaged the 3rd Defendant provide security service for the Sloane House on behalf of the Plaintiff but it has refused to perform those duties for the Plaintiff but rather for the 2nd Defendant. I find and hold that the 3rd Defendant breached the contract between it and Plaintiff by refusing to perform its obligation under the contract for the Plaintiff and as a consequence liable for damages.

[77] For the above reasons I enter judgment for the Plaintiff in part as follows:

1. Declaration that 3rd Defendant working for the 2nd Defendant when 3rd Defendant had an existing contract with Plaintiff was unlawful.
2. Declaration that 3rd defendant breached the agreement between it and Plaintiff.
3. I award damages of GH¢25,000.00 in favour of the Plaintiff against the 3rd defendant for breach of contract.
4. Plaintiff to recover an amount of USD9,740.00 owing by 4th Defendant to Plaintiff as of 31st January 2021.
5. Interest on the said amount of USD 9,740.00 in (4) from February 2021 to the date of final payment.
6. I award the Plaintiff costs of GH¢25,000.00 in favour of the Plaintiff and against the 3rd and 4th Defendants.

I dismiss Plaintiff's reliefs (a), (b) and (c).

I award the plaintiff costs of GH¢30,000.00 in favour of the 1st, 2nd and 5th Defendants and against the Plaintiff.

(Sgd.)

Ayitey Armah-Tetteh J.

(Justice of the High Court)