

IN THE CIRCUIT COURT “A”, TEMA, HELD ON MONDAY, THE 27TH DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO. C11/118/21

CONTINENTAL BLUE INVESTMENTS LTD ---- PLAINTIFF/APPLICANT

VRS.

SENTUO OIL REFINERY LIMITED ----- DEFENDANT/RESPONDENT

PARTIES ABSENT

JASMINE ADJEI-MENSAH, ESQ. FOR THE APPLICANT PRESENT

KWASI BLAY, ESQ. FOR THE RESPONDENT ABSENT

RULING ON SUMMARY JUDGMENT

FACTS

The plaintiff/applicant (hereinafter called the “the applicant”) caused a writ of summons with an accompanying statement of claim to be issued and served on the defendant/respondent (hereinafter called “the respondent”), claiming the following reliefs;

(a) Recovery of the sum of Three Hundred and Fifty-Four Thousand, Three Hundred and Forty-Eight Ghana Cedis Forty-Seven Pesewas (GH¢354,348.47), being the total payment of cement delivered to the Defendant.

(b) Interest on the sum of Three Hundred and Fifty-Four Thousand, Three Hundred and Forty-Eight Ghana Cedis Forty-Seven Pesetas (GH¢354,348.47) at the prevailing bank rate.

(c) Costs, including Solicitor’s fees;

(d) Any other relief (s) raised by the pleadings.

It is instructive to note that the applicant, apart from the endorsement on the writ of summons, in the statement of claim included a claim of damages for breach of contract. In the case of **Unilever Ghana Ltd. v. Kama Health Services Ltd [2013-2014]** 2SCGLR 861, the Supreme Court held in its holding 4 that:

“The reliefs which were stated in the statement of claim and on which facts have been pleaded, would supersede the endorsement on the writ. The statement of claim would normally give the particulars of the reliefs sought and would also state the grounds upon which the plaintiff was before the court. That would enable the defendant to plead, and any objection was to be raised by the defendant at that point or he would be deemed to have waived it. A case was to be contested on the basis of the pleadings; hence the relief endorsed on the writ which had been varied in the statement of claim, would stand as amended to the extent of the variation. That was distinguishable from the situation where a relief endorsed on the writ has not been repeated in the statement of claim, in which case the party would be deemed to have elected to abandon that relief.”

Therefore, the applicant in this case having included damages for breach of contract in the statement of claim, the reliefs endorsed on the writ of summons are varied by the reliefs contained in the statement of claim. Therefore, the reliefs being claimed by the applicant against the respondent are as follows;

- (a) Recovery of the sum of Three Hundred and Fifty-Four Thousand, Three Hundred and Forty-Eight Ghana Cedis Forty-Seven Pesewas (GH¢354,348.47) being the total payment of cement delivered to the Defendant.
- (b) Interest on the sum of Three Hundred and Fifty-Four Thousand, Three Hundred and Forty-Eight Ghana Cedis Forty-Seven Pesewas (GH¢354,348.47) at the prevailing bank rate.
- (c) Damages for breach of contract.
- (c) Costs, including Solicitor’s fees;
- (d) Any other relief (s) raised by the pleadings.

The applicant avers that it is a limited liability company duly registered under the laws of Ghana and engaged in the business of cement production in Ghana and the respondent is also a limited liability company registered under the laws of Ghana and undertaking business in Ghana. The applicant further states that on the 13th and 15th July, 2022, it supplied the respondent with nine (9) trucks of cement worth Three Hundred and Fifty-Four Thousand, Three Hundred and Forty-Eight Ghana Cedis Forty-Seven Pesewas (GH¢354,348.47). However, the respondent, after accepting the goods failed, neglected and or refused to make payments for same. The applicant says that the respondent did not honour its obligations under the agreement to pay for the goods delivered to it and that all attempts to get the respondent to pay for the goods delivered to it have proven futile. The plaintiff contends that by the respondent's conduct, it is clear that the respondent has evinced a clear intention not to pay the amount owed to the applicant. Additionally, by the conduct of the respondent, it has caused the applicant loss of income and profits.

The defendant entered appearance on 16th December, 2022. Thereafter, the action stalled and on 21st June, 2023, the plaintiff filed a Notice of Intention to Proceed and subsequently filed the instant Motion on Notice for Summary Judgment pursuant to Order 14 of C.I. 47, praying the court to enter summary judgment against the respondent for the following reliefs;

- (a) An Order for the recovery of interests on the sum of Three Hundred and Fifty-Four Thousand, Three Hundred and Forty-Eight Ghana Cedis Forty-Seven Pesewas (GH¢354,348.47).
- (b) Costs including legal Fees.

In the Affidavit in support of the motion, the applicant deposed that after the respondent entered appearance in the suit, the respondent admitted owing the amount claimed by the applicant and on 24th January, 2023, the respondent issued cheque *No. 000034* with a face value of Three Hundred and Fifty-Four Thousand Three Hundred and Forty-

Eight Ghana Cedis and Forty-Seven Pesewas to the applicant in partial satisfaction of its indebtedness to the applicant. In support, the applicant annexed a copy of the cheque as *Exhibit "EB 1"*. The applicant further states that it is apparent from the issuance of *cheque No. 000034* that the respondent admits the debt owed to the applicant and has no defence to the claim. The applicant states further that in the interest of justice and in accordance with the rules of court, summary judgment should be entered against the respondent and that this is a proper case where the court ought to exercise its discretion in favour of the applicant.

On 13th October, 2023, the respondent filed an Affidavit in Opposition to the application for summary judgment and on the same date filed a defence to the action. The gravamen of the case of the respondent as contained in the affidavit in opposition and the statement of defence is that by an agreement between the parties, the applicant was to supply and deliver to the respondent bags of cement equivalent to One Million Ghana Cedis. However, upon the delivery of the quantity of the bags of cement worth the sum of GHC354,348, the respondent realised that the product was not fit for the purpose for which it was purchased. According to the respondent, it realised that the concrete works carried out with the said cement developed serious cracks which were brought to the notice of the applicant. As a result, the defendant had to involve technical experts from the Ghana Standards Authority to do assessment on the quality of the product. The respondent had to also get similar products from Ghana Cement Works Limited for comparative analysis and realised that the applicant's product was of inferior quality.

Upon the advice of its Counsel, the respondent engaged the applicant's lawyers to negotiate on the amount due to the applicant having regard to the alleged inferior quality of the goods. Thus, considering the nature of the goods and the cordial relations between the parties, the respondent agreed to pay to the applicant, the value of bags of cement so supplied and delivered, albeit of inferior quality to terminate the action which was accepted by the applicant. The respondent states that he disagrees that the

amount paid was in partial satisfaction of the respondent's indebtedness to the applicant. Also, by the payment and acceptance of the sum endorsed on the writ of summons, the claim of the applicant is extinguished and the respondent is no longer indebted to the applicant. The respondent therefore prays the court to dismiss the application for summary judgment and grant the respondent unconditional leave to defend the suit.

ANALYSIS

I have determined this application for summary judgment based on the pleadings filed, the application for summary judgment with the supporting affidavit, the annexures, the affidavit in opposition and all processes so far filed in the suit.

Under **Order 14 Rules 1 and 3 of C.I 47**, respectively provides as follows;

“(1) when in an action, a defendant has been served with a statement of claim and has filed appearance, the plaintiff may on notice apply to the court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ or to a particular part of such a claim or that the defendant has no defence to such a claim or part of a claim except as to the amount to any damages claimed.”

(3) A defendant may show cause against the application by affidavit or otherwise to the satisfaction of the Court

The purpose of summary judgment as stated by the Supreme Court in the case of **Sam Jonah v. Duodu-Kumi** [2003-2004] SCGLR page 50 at page 54, is to facilitate the early conclusion of actions where it is clear from the pleadings that the defendant has no cogent defence to the action. It is also intended to prevent a plaintiff from being delayed when there is no fairly arguable defence to the action. It has also been held that the discretion of the court to grant summary judgment must be exercised judiciously and with great circumspection in order not to shut the door of justice on a defendant

unless it is manifestly clear that the defendant has no defence to the action. See the case of **Sheppards & Co. V. Wilkinson and Jarvis** (1889) 6 T.L.R. 13 per Lord Esher.

Thus, in considering an application for summary judgment, there is the need for the court to balance the competing interests of the applicant to speedy trial and the need for the defendant to be heard on the merits of the case in order not to shut the door of justice on the defendant. In the case of **Sananu v. Salifu [2009] SCGLR 586 at 591 per Baffoe Bonnie JSC**, the Supreme Court held that;

“A defence set up need only show that there is a triable issue, and leave to defend ought to be given unless there is clearly no defence in law and no possibility of a real defence on the question of fact... Thus, even though a statement of defence may have been filed, the court is not precluded from entertaining an application for summary judgment under Order 14 Rule 1”.

The most important consideration in determining an application on the authorities is whether the applicant’s claim is clear and whether the defendant has any defence to it and the respondent must have entered appearance to the case.

In the instant case, the respondent entered appearance to the case and the endorsement of the reliefs as indicated in the application is clear. The gravamen of the case of the applicant’s case is that the respondent, by paying the principal sum endorsed on the writ of summons admits liability and has no defence to the action and therefore the court ought not to put the applicant through the drudgery of full trial. Indeed from the cheque issued by the respondent, on the face of it, it was in full satisfaction of the principal amount being claimed by the applicant. In support of the argument that the respondent admitted liability, Counsel for the applicant relies on the case of **Windworth Holdings (PTY) Ltd. v. Dupaul Wood Treatment (Gh) Ltd.** [Civil Appeal No. J4/66/2018] delivered on 23rd January, 2019, Gbadegbe JSC (as he then was) stated that:

“The gist of the said grounds is that the statement of defence raised triable issues. In their decision, the learned justices of the Court of Appeal came to the view that having regard to the conduct of the defendant in accepting liability for the debt and not only proposing terms of payment but also making some payment to the plaintiff, she was estopped from denying the existence of the debt. After giving careful and anxious consideration to the issues raised regarding the question of liability under Order 14, I hereby express my agreement with the decision of the learned justices of the Court of Appeal. It is unacceptable that the defendant who accepted absolute liability for the amount in respect of which the writ herein issued and offered to pay the indebtedness in instalments but failed to do so can be said either in conscience or principle to have a defense to the action herein. The acceptance of liability by the defendant in the circumstances of this case created a conclusive presumption under sections 24 and 26 of the Evidence Act, NRCD 323.”

In my considered opinion, the facts of the case in the Windworth Holding case, (supra,) are distinguishable from the case at bar. The respondent in this case maintains that it only accepted to pay the principal amount on condition that the action would be discontinued by the applicant and maintains that the applicant supplied less than the quantity agreed and also found that the product was not fit for the purpose for which it was supplied. The respondent states that he caused experts from Ghana Standard Authority to examine the goods and the expert found the goods supplied by the applicant to be unfit for purpose. Additionally, the respondent maintains that the respondent engaged the applicant’s Counsel to negotiate on the amount due having regard to the supposed inferior quality of the goods and the agreement was for him to pay for the goods supplied albeit inferior, for the applicant to terminate the action and that by accepting payment, the applicant’s action cannot be maintained.

From the pleadings and the affidavit evidence, the applicant supplied the cement on 13th and 15th July, 2022 to the respondent and the writ of summons was filed on 21st November, 2022. The respondent issued cheque *number 000034* for the payment of the

principal amount on 26th January, 2023. The respondent maintains this payment was as a result of an out-of-court settlement between the parties and the effect of the payment was to discontinue the action and that should not be construed by the court as admission.

In my view, the issues raised by the respondent regarding the quality and quantity supplied, the alleged settlement between the parties, are triable issues based on which it should be granted unconditional leave to defend the action. The application for summary judgment is accordingly dismissed. The respondent is granted unconditional leave to defend the action.

No order as to costs since the respondent failed to appear in court at the hearing of the application.

The suit shall take its normal course.

SGD.
H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)