

IN THE -SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON THE 28TH DAY OF NOVEMBER, 2022 BEFORE HIS LORDSHIP JUSTICE JUSTIN KOFI DORGU

SUIT NO: CM/BDC/0630/2021

MILLENIUM INSURANCE COMPANY LTD } PLAINTIFF

VRS.

NDK FINANCIAL SERVICES LTD } DEFENDANT

PARTIES: PLAINTIFF ABSENT

DEFENDANT REPRESENTED BY DERICK NAI

JUDGMENT

On or about the 28th May, 2021, the Plaintiffs herein, a limited liability company incorporated under the Laws of Ghana and engaged in the business of insurance instituted this action per its Lawful Attorney, Questions + Answers against the Defendants, also a limited liability company engaged in the business of granting loans, undertaking investments and offering business solutions to its clients for the following reliefs;-

- (a) Recovery of the total sum of GH¢15, 025, 674.55 from Defendant being principal sum and interest on investment made by the Plaintiff with the Defendant Company which said sums Defendant has refused and or neglected to pay to the Plaintiff
- (b) Interest on the total sum of GH¢15, 025, 674.55 at the prevailing bank lending rate from the 28th May, 2021 till date of final payment
- (c) Cost including Lawyers' fees

At the close of pleadings and after the case failed settlement at the pretrial stage, the following were set down as the issues for the determination by the Court. They are;-

- (1) Whether or not the Plaintiff made various financial investments with the Defendants Company
- (2) Whether or not the Defendant is indebted to the Plaintiff to the tune of GH¢15, 025, 674.55 as at May 28th 2021
- (3) Whether or not Defendant has paid to Plaintiff its investment amount together with accrued interest totaling the of GH¢15, 025, 674.55"

Whilst the case was proceeding, the Plaintiff on the 22nd March, 2022 filed an application under Order 14 rule of the C.I 47 for summary judgment against the Defendant in terms of the reliefs endorsed on the Writ and as recounted above. The Plaintiff supported their application with a 17 paragraph Affidavit in Support with Exhibits attached. For purposes of emphasis, I will reproduce only two of the paragraphs for consideration in the application.

Paragraph 2

"2. The Plaintiff engaged the services of Questions + Answers Ltd, a debt Recovery Company with its registered office at Kokomlemle as its Lawful Attorney

to recover the debt owed the Plaintiff by Defendant, the subject matter of the above entitled action with a copy of the Power of Attorney authorizing Questions + Answers Ltd on the matter deposited therein exhibited hereto and marked as Exhibit K.A1

“12. That as at 10th May, 2021, Plaintiff’s total principal sum value for six (6) separate investments with Defendant stood at GH¢13, 444, 829.79 with interest amount of GH¢1, 893, 834.53 bringing the total sum owed to GH¢15, 025, 674.55 as contained in Plaintiff’s Statement of Account with Defendant with evidence of same exhibited hereto and marked as Exhibit KA7”.

The Defendant in turn filed a 14 paragraph affidavit in opposition in which it denied the liability as contained in the Plaintiff’s Statement of Account and further challenged the capacity of the Plaintiff to mount the instant action. In particular, I refer to paragraphs 4 and 5 of the Affidavit in Opposition filed on the 5th of April, 2022

“4. I am informed and believe same to be true that paragraph 3 of the Affidavit in support is untrue and that the said Exhibit KA1 is contrary to statute

5. I am informed and believe same to be true that given the fact that Exhibit KA1 is contrary to Law, no such authority has been conferred on the said Attorney as deposed to in paragraph 4 of the Affidavit in Support.”

On the 24th October, 2022, the Parties were given the opportunity to argue the application which they did. It is the case of the Plaintiff/Applicant that there is no dispute as for the total amount of investment outstanding which is the GH¢15, 025, 674.55. This according to him is so because the Statement of accounts was issued just two (2) weeks before the commencement of the action. It is the case of the Plaintiff/applicant that their paragraph 10 of the Affidavit in support has taken care of payments made subsequent to the preparation of the Statement of Account and as alluded to in the paragraph 7 of the

Affidavit in Opposition. For the avoidance of doubt, let me reproduce the said paragraph 10 of the Affidavit in Support.

“10. That Plaintiff has till date only received the cumulative total sum of GH¢500, 000.00 from Defendant as interest on its (Plaintiff’s) investments with Defendant which said sum was paid in four (4) different instalments as follows:-

“GH¢100, 000.00 on 15th September, 2019

GH¢200, 000.00 on 15th October, 2019

GH¢100, 000.00 on 21st November, 2019 and

GH¢100, 000.00 on 27th March, 2020 respectively”

The Plaintiff/Applicant further responded to the legal arguments of the capacity of Plaintiff and the Power of Attorney exhibit KA1. It is the submission of the Plaintiff that the Power of Attorney executed for Questions + Answers Ltd was valid as it was properly made in accordance with Section 1(1) of Act 549 of 1998, the Power of Attorney Act. The Plaintiff finally submitted that in the absence of any valid defence to the action which the Defendant failed to produce, Summary Judgment be granted them to avoid unnecessary waste of time

The opposition to the application is essentially technical by my understanding. The Defendant/Respondent argued that the Power of Attorney, Exhibit KA1 was defective as it sinned against the Statutory Provisions of the Power of Attorney Act, Act 549 of 1998. Learned Counsel submitted that no signature whatsoever is on the document as demanded by Section 1(1) and (2) of the Act. Since this offends the clear provision of the Act which demands a signature of the donor to make valid the document, Exhibit KA1 did not clothe the Plaintiff with any power to institute this action. It is therefore fatally flawed and cannot ground any action against the Defendant let alone this application.

Learned Counsel further argued that the internal processes needed to be followed before an investment matures for redemption had not been completed and so the action is premature and so unmaintainable.

Now, Section 1(2) of Act 549, the Power of Attorney Act of 1998 provides;-

“Where the instrument is signed by the donor of the power, one witness shall be present and shall attest the instrument

Where it is authorized to be signed by some other person apart from the donor, it shall be signed and attested to by two (2) witnesses”

Signature according to Osborn’s Concise Law Dictionary 8th Edition published by Sweet and Maxwell, is “a document is signed when the relevant person writes or marks something on it in token of that person’s intention to be bound by its contents. It is commonly done by the writing of a name but illiterate people may make a mark”.

I have looked at the Exhibit KA1 attached to the application and which is the Power of Attorney. I have noticed that it was executed by one Oliver Akubia described as the Managing director of Millennium Insurance Company Ltd, the donor and witnessed by two (2) witnesses, Mary Dove and Kennedy Aful. The argument that the Power of Attorney was not signed is therefore untenable and misconceived.

The other argument that the Plaintiff/Applicant did not follow or exhaust the internal procedures to access its investment is irrelevant to whether the Defendant owes the investments or not. That argument is only a diversionary tactics.

In the meantime, paragraph 8 of the Defendant’s Statement of Defence admits the paragraph 12 of the Plaintiff’s Statement of Claim. For clarity sake, I reproduce hereunder the said paragraphs for their full effects;-

Paragraph 12 of the Plaintiff’s Statement of Claim

“Plaintiff avers that Defendant in numerous letters addressed to it (Plaintiff) acknowledged its indebtedness to Plaintiff wherein it (defendant) also promised to fully amortise Plaintiff’s total investment amounts together with the interest accrued thereon but has refused to discharge its (Defendant’s) repayment obligation under the various investments between them to to Plaintiff despite repeated demands and persistent reminders to Defendant to pay same.”

Now, the Defendant responded to the said paragraph as follows in its Statement of Defence;-

“8. The Defendant admits paragraph 12 of the Statement of Claim and states upon receipt of the said request, it (Defendant) responded and informed the Plaintiff that due to the prevailing liquidity crisis in the sector, it would require some time to mobilize funds to meet the Plaintiff’s request.”

This to me is a non-equivocal admission of the claim and any subsequent denials can only be a ruse, for one cannot approbate and reprobate at the same time.

Order 14 rule 1 states:-

“Where 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 any 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 of damages claimed”.

In the case of ATLANTIC TIMBER CO V. VICTORIA TIMBER CO LTD [1962] 1 GLR 222, Charles J stated the purpose of Order 14 in these terms;-

“The purpose of Order 14 rule 1 of the Rules of Court is to enable a Plaintiff to obtain summary judgment without a trial if he can prove his claim clearly”

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.

See also SANUNU V. SALIFU [2009] SCGLR 586@591

I think on the totality of the evidence available to me, this is a proper case that Summary Judgment ought to be granted the Plaintiff as going into full trial in the light of the admissions, will only occasion an unnecessary delay and waste of the Court's time.

This is more so when the whole defence apart from the admission is a vague denial of the obvious on the technicality of the validity of the Power of Attorney granted Questions + Answers raised by the Plaintiff, I hold the view that the said Power of Attorney was regular on the face of it and also stamped. There is therefore no merit in the objection which I hereby overrule. I find and hold that Questions + Answers Ltd had the Capacity to institute the action for and on behalf of their principal Millennium Insurance Co. Ltd.

I therefore enter Summary Judgment for the Plaintiff against the Defendant in the following terms;

The Plaintiff shall recover the amount of GH¢ 15, 025, 674.55 from the Defendant being principal and interest on investment made with the Defendant but which the Defendants failed, refused or neglected to pay back upon request and as at 28th May, 2021.

Interest on the said amount of GH¢ 15, 025, 674.55 calculated at the Commercial Bank Lending (GCB PLC Rate) from 29th of May, 2021 to date of final payment.

Cost of GH¢ 500, 000.00 against the Defendant.

(SGD)

JUSTICE JUSTIN KOFI DORGU

(JUSTICE OF THE HIGH COURT)

LEGAL REPRESENTATION

RICHMOND NUMBO SAAKA FOR THE PLAINTIFF/APPLICANT

ANDREW APPAU OBENG FOR THE DEFENDANT/RESPONDENT