**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION, HELD IN ACCRA ON THURSDAY, THE 7TH DAY OF SEPTEMBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.**

**SUIT NO. CM/BFS/0555/2023**

**AGRICULTURAL DEVELOPMENT**

**BANK & 5 ORS --- PLAINTIFFS/APPLICANTS**

**Vs**

**PBC LIMITED - DEFENDANT/RESPONDENT**

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**RULING**

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On 26th June, 2023 the Plaintiffs/Applicants (hereinafter called the Applicants) filed a motion before this court under Order 27 Rule 1 of C.I. 47. The motion is praying the court for an order for the appointment of a receiver to collect revenues which the Defendant/Respondent (hereinafter called the Respondent) would be paid by COCOBOD and other sources pending the determination of the case.

The motion was opposed by the Respondent. The motion was argued for and against on 5th September, 2023.

I have gone through the documents filed in support and in opposition to the application.

Under Order 27 Rule 1 of C.I.47, the court can grant interlocutory order in all cases in respect of an appointment of a receiver pending the determination of a case. Any of the parties in a case can make such application before the court.

In this case, the amount the Applicants are claiming from the Respondent is over Four hundred and ninety-five million cedis (GH¢495,000,000.00) which is quite colossal.

In that case, the Applicants should be assured that in case they get judgment in future, it would not be a pyrrhic victory or would not be rendered nugatory. On the other hand, the

Respondent also needs money to run its activities, and also the fact that judgment has not yet been given in the case.

The parties in this case executed a document in 2019 in respect of the consolidated loans from the Applicants to the Respondent. It has been attached to the application as exhibit CB1. It is the repayment of the consolidated loans which has given birth to this case.

The Respondent in exhibit CB1 agreed to secure the repayment of the loans with monies it would receive from COCOBOD.

There is no evidence before the court that exhibit CB1 was obtained by recourse to fraud or undue influence or duress. There is no evidence before the court that the contents of exhibit CB1 have been vitiated by any of the factors which can vitiate a contract. All the parties' representatives signed exhibit CB1.

The law is settled, that parties to a contract would not be permitted to avoid the contract unless, there are valid lawful reasons to do so. It is not the duty of the court to make contract for parties. Therefore, where the terms of a contract such as exhibit CB1 have been reduced into writing, the court would interpret them to give effect to the intention of the parties.

See: **POKU v GHANA COMMERCIAL BANK [1989-90] 2 GLR 37 CA**

Again, exhibit CB1 was executed by the accredited officers of the parties, of whom some are Managing Directors. They are therefore presumed to be of full age and sound mind.

The law is settled, that a person of full age and of sound mind would be bound by the contents of a document he has signed, whether he read it or not. This is particularly in the absence of any requisite evidence that he was misled to sign it.

See: **INUSAH v D.H.L. WORLDWIDE EXPRESS [1992] 1 GLR 267**

**YAW OPPONG v ANARFI [2011] 32 GMJ 118 SC**

**TWUM v SGS LIMITED [2011] 30 GMJ 92 CA**

Consequently, facts recited in a written document such as exhibit CB1 are presumed to be true as between the parties to the document and their successors, privies, assigns etc. under section 25 of NRCD 323.

See: **ATIA v BOAKYEM [2006] 9 MLRG 1 SC**

**KUSI & KUSI v BONSU [2010] SCGLR 60**

Again, it is the duty of the courts to ensure that the doctrine of sanctity of contract is maintained. The court therefore cannot intervene and substitute any other interpretation of the contractual intention for the parties, but must give effect to what the parties themselves have agreed as for example, the contents of exhibit CB1.

See: **SOFTSHEEN CARSON v WILLIAM – FUGAR [2014] 79 GMJ 162 CA**

The security clause in exhibit CB1 which the Respondent agreed among others, to secure the repayment of the loans with monies from COCOBOD can even be classified or considered as conclusive estoppel against it.

The law is settled under section 26 of the Evidence Act, 1975 (NRCD 323) that; **"Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest."**

See: **AFRIKANIA MISSION CHURCH v SEBA CONSTRUCTION LIMITED [2013] 59 GMJ 194 CA**

**AGO SAI & ORS. v KPOBI TETTEH TSURU III [2010] SCGLR 762**

**OBENG & OTHERS v ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300**

**NARTEY v MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314 SC**

**T.K. SERBEH & CO. LTD v MENSAH [2005-2006] SCGLR 341**

It is also the law, that it is not the function of the court to rewrite an agreement such as exhibit CB1 for the parties by inserting terms that would have been beneficial but were overlooked.

See: **ALLAN SUGAR (PRODUCTS) LTD v GHANA EXPORT CO. LTD [1982-83] 2 GLR 922 CA**

Therefore, in considering every agreement such as exhibit CB1, the paramount consideration is what the parties themselves intended or desired to be contained in the agreement. This intention of the parties should prevail at all times. The general rule is that a document, such as exhibit CB1, should be given its ordinary meaning if the terms used therein are clear and unambiguous. For example, the security clause in exhibit CB1.

See: **P.Y ATTA AND SONS v KINGSMAN ENTERPRISE LTD. [2007-2008] SCGLR 946**

I am therefore of the view, that the security clause in exhibit CB1 binds both parties to the agreement which are the parties in this case.

From the above analysis, I think it would be fair and just and also be in consonance with equity and good conscience to grant the application in part.

I will therefore order, that 50% or half of any money which is to be paid by COCOBOD to the Respondent is to be paid into an interest yielding account of the Judicial Service of Ghana pending the determination of this case, or until otherwise varied by this court. The Registrar of this court is to supervise the payment of the money into the account. The case is to take its normal course. No order as to cost. I order accordingly.

**SGD.**

**FRANCIS OBIRI**

**(JUSTICE OF THE HIGH COURT)**

**COUNSEL**

**EMMANUEL TEI AGBAM HOLDING BRIEF FOR BOBBY BANSON FOR THE PLAINTIFFS/APPLICANTS**

**NANA YAW OSEI FOR THE DEFENDANT/RESPONDENT**

**AUTHORITIES**

1. **POKU v GHANA COMMERCIAL BANK [1989-90] 2 GLR 37 CA**

2. **INUSAH v D.H.L. WORLDWIDE EXPRESS [1992] 1 GLR 267**

**3. YAW OPPONG v ANARFI [2011] 32 GMJ 118 SC**

**4. TWUM v SGS LIMITED [2011] 30 GMJ 92 CA**

5. **ATIA v BOAKYEM [2006] 9 MLRG 1 SC**

**6. KUSI & KUSI v BONSU [2010] SCGLR 60**

7. **SOFTSHEEN CARSON v WILLIAM – FUGAR [2014] 79 GMJ 162 CA**

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**9. AGO SAI & ORS. v KPOBI TETTEH TSURU III [2010] SCGLR 762**

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