

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON
TUESDAY, THE 25TH DAY OF APRIL, 2023 BEFORE HER LADYSHIP
JUSTICE AKUA SARPOMAA AMOAH (MRS.)

SUIT NO. CM/RPC/0919/2021

LEGACY FINANCIAL SERVICES LTD ... PLAINTIFF

VS.

OSEKWAP COMPANY LIMITED ... DEFENDANT

PARTIES: - ABSENT

COUNSEL: - KOFI BENTIL FOR PLAINTIFF/APPLICANT – PRESENT

NO LEGAL REPRESENTATION FOR DEFENDANT

J U D G M E N T

By a Writ dated the 20th of December, 2022, the Plaintiff, Ghanaian registered limited liability company that offers asset management, private wealth, investment advisory and research services to cooperate and private clients sought inter alia the following reliefs against the Defendant, also a Ghanaian registered company;

- a) An order directing the Defendant to pay the total outstanding loan amount of Two Million Eight Hundred and Seventy-One Thousand Seven Hundred and Eighty Ghana Cedis Forty Pesewas (GH¢ 2, 871,780.40)*
- b) Interest on the sum of Two Million Eight Hundred and Seventy-One Thousand Seven Hundred and Eighty Ghana Cedis Forty Pesewas (GH¢ 2, 871,780.40) at the agreed rate of 6% per month from the 14th of January, 2020 to date of final payment.*
- c) General damages for breach of contract.*
- d) Any further order(s) as this Court may deem fit.*

The record shows that the Defendant was duly served with Plaintiff's Writ by post on the 6th of July, 2020.

Following the failure of Defendant to enter appearance to the Plaintiff's Writ, this Court on the 1st of December, 2023 entered Judgement in default of appearance against the Defendant in respect of reliefs (a) and (b).

In respect of relief (c), Interlocutory Judgement was entered in favour of the Plaintiff in accordance with *Order 10 Rules 2 and 5 of the High Court Civil Procedure Rules, 2004 (CI 47)* and a date fixed for the assessment of damages in accordance with *Order 40 of the High Court Civil Procedure Rules,* *2004*
(CI 47) .

It is trite learning that general damages will normally be inferred once a breach of contract has been established. This will mean that unlike situations where a claim is made for special damages, strict proof may not be required in a claim for general damages.

This fact notwithstanding, there is little doubt that calling evidence even in a claim for general damages serves as a useful guide for determining what will be a fair and reasonable amount to award. See the case of *TEMA OIL REFINERY v AFRICA AUTOMOBILE LTD [2011] 2 SCGLR, 907 @ 923 - 935*.

Paa Kwesi Afful, the Head of Corporate Finance of the Plaintiff Company testified on its behalf. His evidence was that in or about the 17th of July, 2015 the Parties entered into a contract evidenced by a Commercial Paper Term Sheet which he tendered as *Exhibit A*.

Pursuant to this Agreement Plaintiff agreed to advance to Defendant an amount of *Four Hundred Thousand Ghana Cedis (GH¢ 400,000.00)* as

working capital for its Defendant's business. It was agreed that the Defendant will pay back this amount over a period of 6 months at 6% interest per month.

Defendant however failed to honour its repayment obligations as stipulated in the repayment schedule attached to *Exhibit A*.

According to the witness, the Plaintiff was gravely inconvenienced by the failure of the Defendant to make good its obligations.

He testified further that due to the Defendant's default, Plaintiff was unable to meet its obligations towards other investors. This resulted in the Securities and Exchange Commission (SEC) revoking its licence. The revocation was subsequently commuted to a suspension as evidenced by *Exhibit B*.

Plaintiff maintains that it would not have found itself in this precarious position had it not been for the Defendant's default. Owing to Defendant's conduct, Plaintiff was compelled to seek what it termed "fresh funds" to settle the Plaintiff's indebtedness to the other investors.

The Plaintiff also incurred additional expenses in its attempt to convince SEC that the Plaintiff could recover the said debts. It was indeed these efforts that according to Plaintiff, led to SEC commuting the revocation of Plaintiff's licence to Suspension.

Plaintiff therefore prays for an amount of *One Hundred Thousand Ghana Cedis (GH¢ 100,000.00.)* as damages for the inconvenience and financial difficulties suffered as a result of the Defendant's failure to honour its contractual obligations.

As already observed, general damages unlike special damages, need not be proved strictly. However, like special damages, general damages must not be arbitrary. All the surrounding circumstances of the case must be taken into account in awarding general damages and it must be awarded as the natural and probable consequence of the wrong or breach suffered by Plaintiff.

I would note that, even though the issue of the Defendant's indebtedness stands unchallenged, there is no clear evidence that the Plaintiff's licence was revoked solely as a result of the Defendant's default.

First, a reading of *Exhibit B* discloses that the reasons behind the revocation of Plaintiff's licence were:

- a) Significant related party exposure*
- b) Use of client funds for operational expenditures*
- c) Significantly impaired portion leading to customer complaints*

Plaintiff failed to give details or particulars of the above listed reasons. This makes it difficult for this Court to conclude that the revocation or suspension of its licence was caused by Defendant solely.

Additionally, some proof of the additional expenses allegedly incurred in securing funds to make up payments to investors and to persuade SEC to restore Plaintiff's licence would have been a helpful guide in determining whether or not Plaintiff is indeed entitled to the amount of *of One Hundred Thousand Ghana Cedis (GH¢ 100, 000.00.)* claimed as damages for breach of contract.

That said, there is no doubt that the Plaintiff is entitled to damages for the Defendant's breach. The purpose of the award of damages is not to punish the Defendant but to place the Plaintiff as far as money could do it, in the same position as Plaintiff would have been had the Defendant performed its side of the bargain.

The record shows that the amount of *Two Million Eight Hundred and Seventy-One Thousand Seven Hundred and Eighty Ghana Cedis Forty Pesewas (GH¢ 2, 871,780.40)* has been due and owing since the year 2015. The fact that keeping the Plaintiff out of its money would certainly affect its financial fortunes could not have been lost on the Defendant. In the *African Automobile* case (supra), the Court held that;

"...in awarding damages for breach of contract, a court of law must not only take into consideration the prevailing economic forces that were at play in the global economic order, but also consider the net effect of the defendant's conduct and its negative effect on the financial fortunes of plaintiff company...".

In assessing how much to award I have taken into account the fact that the Plaintiff has already been awarded interest in the amount owed.

Having carefully considered the entire circumstances of this case, I am of the view that an award of *Fifty Thousand Ghana Cedis (GH¢50,000.00)* should be a fair and reasonable.

In the premises, I award Plaintiff damages of *Fifty Thousand Ghana Cedis (GH¢50,000.00)*.

I further award costs of *Five Thousand Ghana Cedis (GH¢5,000.00)* in favour of Plaintiff against the Defendant.

(SGD)

MRS. AKUA SARPOMAA AMOAH
JUSTICE OF THE HIGH COURT

Cases referred to:

TEMA OIL REFINERY v AFRICA AUTOMOBILE LTD [2011] 2 SCGLR, 907 @ 923 -935.

Statute referred to:

The High Court Civil Procedure Rules, 2004 (CI 47)

