

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON WEDNESDAY THE 26TH DAY OF JULY, 2023 BEFORE HER LADYSHIP AKUA SARPOMAA AMOAH J. (MRS.) JUSTICE OF THE HIGH COURT

SUIT NO.: CM/RPC/0363/2023

ROOTS CAPITAL INCORPORATED === PLAINTIFF

VRS

ELSSY KESS LTD. === DEFENDANTS

ELSIE DOGBEGAH

IRENE GANU

PARTIES: PLAINTIFF – PRESENT

DEFENDANT REPRESENTED BY JOHN KORLEY SCHALL –
PRESENT

**COUNSEL: JOSEPH KWADJO KONADU WITH BERNICE AMA MORTEY
FOR THE PLAINTIFF – PRESENT**

**VICTOR KWADJOGAH ADAWUDU FOR DEFENDANTS –
PRESENT**

J U D G M E N T

Introduction

By a Writ dated the 21st of March, 2023, the Plaintiff/Applicant (Plaintiff) seeks inter alia the following reliefs against the Defendant;

- a) *An order for the recovery of **One Million Three Hundred and Forty-Four Thousand Five Hundred and Eleven United States Dollars Nine Cens (USD\$ 1,344,511.09)** being the total outstanding amount owed by the Defendants to Plaintiff*
- b) *Interest on the principal sum of **Seven Hundred and Fifty Thousand United States Dollars (USD\$ 750,000.00)** at the contractually agreed rate of 11% per annum from the 11th of February, 2023 until date of final payment.*
- c) *Default interest on the principal sum of **Seven Hundred and Fifty Thousand United States Dollars (USD\$ 750,000.00)** at the contractually agreed rate of 11% per annum from the 11th of February, 2023 until date of final payment.*

On the 26th of April, 2023 the Defendants/Respondents (Defendants) albeit belatedly, entered conditional appearance to Plaintiff's Writ but are yet to file a Defence to Plaintiff's claim.

Application for Summary Judgement

On the 3rd of July, 2023 the Plaintiff filed the instant Motion, premised on *Order 14 of the High Court Civil Procedure Rules, 2004 (CI 47)*, praying for Summary Judgement against the Defendants for the reliefs endorsed on its Writ.

Plaintiff's case in sum is that the Defendants, as evidenced by *Exhibit TAA 13* do not dispute their indebtedness to Plaintiff. According to Plaintiff the Defendants had indeed promised to make payment as far back as August 2018 but had reneged on this undertaking.

Plaintiff maintains that Defendants have no viable defence to its claims for which reason there should be no need for a plenary trial of the suit hence the present Application.

Defendants' Opposition

The Application is vehemently opposed. On the 19th July, 2023 when both parties appeared before this Court. Counsel for Defendants contended that the facts deposed to in the affidavit in support of the Motion were not a true for leave to file a Supplementary affidavit in opposition which was duly granted by this Court.

From a reading of the Defendants depositions, I find that, even though they do not deny being indebted to the Plaintiff, their case is that;

- a) *They have not at any time admitted being indebted to the Plaintiff in the sum endorsed on Plaintiff Writ.*
- b) *They have made several payments to Plaintiff as evidenced by **Exhibit EK 2** series which the Plaintiff has failed to take into account in computing the Defendants' indebtedness.*
- c) *The Original Agreement entered into by the parties was varied to exclude the payment of interest by Defendants. Consequently, the Plaintiff's demand for the payment of interest on the Principal amount raised a triable issue.*
- d) *That the actual amount due the Plaintiff could only be ascertained through a reconciliation of accounts.*

Paragraph 5 of Defendants' Supplementary Affidavit in Opposition

First, I must say that I am persuaded that certain matters deposed to in the Defendants' affidavit require further interrogation by this Court. There is however one paragraph that needs the close attention of this Court as far as the present Application is concerned. It is *Paragraph 5* of the Defendants' Supplementary Affidavit.

By the said paragraph, the Defendants state that they were required to pay an amount of *One Hundred Thousand United States Dollars (US\$100, 000.00)* as pre-condition for the restructure of the loan facility granted the 1st Defendant. Upon payment of the said amount, the parties had, as evidenced by *Exhibit EK 1*, agreed that the Defendants pay a total sum of *Eight Hundred and Fifty Thousand United States Dollars (US\$ 850,000.00)* by equal installments of *Forty-Six Thousand Eight Hundred*

and Seventy-Five United States Dollars (US\$ 46,875.00) without interest. Defendants proceeded to *attach Exhibit EK 2* as evidence of payments so far made but which have not been taken into account by the Defendants.

Now, the relevant portions of *Order 14 rule 5* provide that;

On the hearing of the application the Court may

(a) give such judgement for the plaintiff against the defendant on the relevant claim or part of a claim as may be just having regard to the nature of the remedy or relief sought, unless the defendant satisfies the Court, with respect to that claim or part of it, that there ought for some other reason to be a trial of that claim or part of it.

(b) give the defendant leave to defend the action with respect to the relevant claim or part of it either unconditionally or on terms such as giving security or otherwise; .."

Clearly the said Rule empowers this Court, on an application such as the present, to grant the Plaintiff's claim in whole or in part as it may consider just. Put differently, the Court may grant the portion of the claim that suits summary proceedings and remit for trial questions that can only be resolved through a plenary trial.

In light of Defendants' concession that the parties had agreed that Defendants pay an amount of *Eight Hundred and Fifty Thousand United States Dollars (US\$ 850,000.00)* without interest. I think it is safe for the Court to conclude at this stage of proceedings that the said amount, (less any payments already made) is not disputed by Defendants or that Defendants have no cogent defence to the payment of the amount outstanding

on the said *Eight Hundred and Fifty Thousand United States Dollars (US\$ 850,000.00)* as being due the Plaintiff.

I also note that Plaintiff does not dispute the authenticity of *Exhibit 2 Series* which is evidence of payments already made by the Defendants.

A computation payment so far made by the Defendants in open Court amounted to One Hundred and *Forty-Three Thousand Seven Hundred and Fifty United States Dollars (US\$ 143,750.00)*. This brings the amount outstanding on the undisputed amount to *Seven Hundred and Six Thousand Two Hundred and Fifty United States Dollars (US\$ 706,250.00)*. It is my considered opinion that Plaintiff is entitled to Summary Judgement on the said sum.

Orders

In the premises, the Application succeeds in part. Summary Judgement is hereby entered in favour of the Plaintiff to recover from the Defendants the sum of *Seven Hundred and Six Thousand Two Hundred and Fifty United States Dollars (US\$ 706,250.00)*.

The question of interest payable on the said sum together with the issue of costs are deferred until the final determination of the suit

I also note that the Defendant by an application filed on the 11th of July, 2023 prays for leave to file a defence to the Plaintiff's suit. I do not find an Affidavit in opposition to same on record. Defendants are therefore granted leave to file their proposed defence on or before the 4th of September, 2023. Thereafter the suit is to take its normal course.

(SGD)

AKUA SARPOMAA AMOAH (MRS.)

JUSTICE OF THE HIGH COURT

Statute referred to:

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