IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON WEDNESDAY, THE 14TH DAY OF JUNE, 2023 BEFORE HER LADYSHIP JUSTICE AKUA SARPOMAA AMOAH (MRS.)

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SUIT NO. GJ/1935/2019

SADIQ BRAIMAH ABDUL-SAMED … PLAINTIFF

VRS.

NAA ADZORKOR ADDO …

DEFENDANT

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PARTIES: - ABSENT

COUNSEL: - SELALI WOANYAH WITH CECILIA OTOO FOR PLAINTIFF – PRESENT

PUUMAYA FAREEDAH ATTA HOLDING BRIEF FOR SEAN POKU FOR DEFENDANT – PRESENT

JUDGMENT

The Plaintiff in this suit describes himself as a citizen of Ghana resident in Accra. Defendant on the other hand is described as a broadcast journalist in the employment of an Accra Radio station.

Plaintiff by his amended Writ and Statement of Claim filed on the 14th of January, 2020 prayed for the following reliefs from this Court;

a) *Recovery of the sum of* ***Two Hundred and Fifty-Three Thousand Five Hundred and Ninety -Nine Ghana Cedis (GH¢ 253,599.00.)***
b) *Interest on the amount above from the 18th of February, 2019 to the date of final payment.*
c) *Recovery of the amount of* ***Ten Thousand Nine Hundred and Nineteen Ghana Cedis Eighty-Five Pesewas (GH¢ 10,919.85)*** *being interest accruing on the loan facility taken out by the Plaintiff.*
d) *Interest on the amount mentioned in (c) from the 18th of February, 2019 till date of final payment.*
e) *Recovery of the amount of* ***One Hundred and One Thousand Four Hundred and Forty Ghana Cedis (GH¢ 101,440.00)*** *representing 40% of the total amount spent by the Plaintiff as severance fee.*
f) *Interest on the amount above from the 28th day of February, 2019 till date of final payment.*
g) *General Damages for breach of Contract*

The Plaintiff's case in sum is this;

In or about October 2017, he entered into discussions with the Defendant with the intention of developing a parcel of land situate at East Legon Accra into an events center for hosting parties, weddings, and other like social

events (the Project). The parties agreed that the Project would be christened "Park Place".

The land on which the Project was to be developed belonged to the Defendant's mother, Cordelia Addo, who Plaintiff was made to understand had given her consent for the land to be used as agreed.

The Project was to comprise 2 phases; Phase 1 was to consist mainly of the development of areas for outdoor events including a grass field for outdoor events, a pergola lounge, a cocktail bar, bathrooms, offices and a children's play area, whilst Phase 2 was to be an indoor club space, an event dome, an open roof top referred to "as speak easy entry".

The Parties agreed that after the completion of the first Phase, a limited liability company to be known as Park Place Ltd was to be incorporated for the purposes of operating the said events centre.

The equity in the said Company was to be held as follows 50% for Defendant 48% for Plaintiff and 2% for Cordelia Addo.

Pursuant to these discussions, the Parties completed and executed the required forms for the incorporation of the said company. The said partnership was to last a period of 15 years.

Pursuant to the Parties' agreement, Plaintiff says he caused his solicitors to prepare an agreement, capturing the essential terms of the Parties' discussions, which agreement was sent to the Defendant for her perusal.

One salient term of the agreement, according to Plaintiff was that if the Defendant terminated the agreement prior to the incorporation of the company, she will pay a break-up fee of the 40% of the total cost incurred by Plaintiff on the Project. Interest was to be exigible on the said amount if the Defendant failed to pay same within 10 days of the termination of the agreement.

Even though the agreement had not been executed, the Plaintiff says he advanced an amount of ***Twenty-One Thousand Ghana Cedis (GH¢ 21,000.00)*** to Defendant for the purpose of roofing the offices to be completed under Phase 1 of the Project.

After further discussions with Defendant, the initial agreement was amended. The proposed share structure was changed from the previous 50% for Defendant 48% for Plaintiff and 2% for Cordelia Addo to 45% to Defendant, 45% to Plaintiff and 10% to Cordelia Addo. The term of the agreement was also reduced from 15 years to 10 years.

The Defendant however persisted in her refusal to sign the agreement reached. This fact notwithstanding the Plaintiff continued to fund the Project.

On the 5th of January, 2019, the Defendant unilaterally amended the agreement and sent same to Plaintiff via email. By the said "unilaterally amended" agreement, Defendant described the Plaintiff as "The Investor," herself as "The Supervisor" and Cordelia Addo as "The Land Contributor"

By the new terms unilaterally introduced by the Defendant, the Plaintiff this time was to incorporate a sole proprietorship for the purpose of managing the Project with profits to be shared as follows: 45% to Plaintiff and 55% to Cordelia Addo.

According to Plaintiff, even though he rejected these newly introduced terms, he agreed to meet with Defendant as he still maintained the desire to proceed with the Project.

On the 18th of February, 2019, whilst the parties were still in discussions, Plaintiff received an email from Defendant informing him of the unilateral termination of their oral agreement reached with regards to the Project on grounds that she did not want to continue with same and had found a new investor to buy out the Plaintiff.

Plaintiff says he had invested an amount of ***Two Hundred and Fifty-Three Thousand Five Hundred and Ninety-Nine Ghana Cedis (GH¢ 253, 599.00)*** in the Project at the time. Defendant however disputed the said amount and asserted that Plaintiff had only invested an amount of ***Two Hundred and Twenty-Four thousand Eight Hundred Eighty-Four Ghana Cedis (GH¢ 224,884.00.).***

Plaintiff further avers that he, with the knowledge and consent of the Defendant applied for and obtained a loan of ***Thirty-Seven Thousand Ghana Cedis (GH¢ 37, 000.00.)*** from the GCB bank for the purpose of roofing part of the project structure. The said loan, according to Plaintiff attracted interest of 26% per annum. The interest accruing as at the date the instant Writ was issued stood at ***Ten Thousand Nine Hundred and Nineteen Ghana Cedis and Eighty Five Pesewas (GH¢ 10,919.85)***

Plaintiff says that the Defendant, even though she continues to enjoy the fruits of his investment has failed to refund his money. He therefore seeks the intervention of this Court.

The Defendant filed an amended Statement of Defence on the 17th of March, 2021. She does not deny Plaintiff's averments regarding the Parties' plans to develop the Project and to incorporate Park Place Ltd. She also admits refusing to sign the series of agreements said to have been reached between the parties even though the Plaintiff had provided funding for the Project. She however describes the Plaintiff's contribution as a paltry ***One Hundred Thousand Ghana Cedis (GH¢ 100,000.00.)*** as compared to Defendant's investments which was given in bits and pieces.

Significantly, her account of events leading up to the present suit are substantially different. According to her she had already commenced development of Park Place before Plaintiff came on board. This accounted

for the initial equity which was supposed to be as follows 48% for Defendant, 42% for Plaintiff and 10% for Cordelia Addo.

However, Plaintiff in an attempt to force her into signing an agreement which he had unilaterally and "fraudulently" prepared, threatened on a number of occasions to abandon the Project if the Defendant did not sign the agreement.
Defendant says the Plaintiff, true to his word, abandoned the Project because she would not accede to his request.

She maintains that the Plaintiff neither contributed an amount of ***Two Hundred and Fifty-Three Thousand Five Hundred and Ninety-Nine Ghana Cedis (GH¢ 253,599.00)*** nor applied for a loan with her knowledge and/or consent. She states that the Plaintiff instead had assured her that he has several debtors and would serve as his source of funding the Project.

Having been abandoned by Plaintiff, Defendant says she was solely responsible for the construction of the Project to near completion, at an extra cost as it now included areas chosen and designed by the Plaintiff. She accuses the Plaintiff of seeking to benefit in equal measure from the Project but insisting that she alone bear the liabilities or losses incurred even though the same arose through to no fault of hers. Her case appears to be that the Plaintiff had a hidden agenda in his dealings with her as he had misrepresented certain facts with the ultimate aim of defrauding her.

Particulars of the said fraud were given as follows;

i. *"Plaintiff misrepresented and or coerced Defendant into signing a document which he (Plaintiff) made Defendant believe was to confirm how much he had invested in the project upon the project kick starting or another person coming on board, only for Plaintiff to use same as an admission of the Defendant's liability to him.*

ii. *Plaintiff at all times knew that he did not have enough funds for the project but intentionally invested some monies with the ultimate intention of taking over the land and the project from the land owner and Defendant."*

At the close of pleadings, the following were settled as issues for determination at the trial:

1) *Whether or not the Plaintiff invested an amount of* ***Two Hundred and Fifty-Three Thousand Five Hundred and Ninety-Nine Ghana Cedis (GH¢ 253,599.00.)*** *into the project pursuant to the agreement of the parties.*
2) *Whether or not the Defendant admitted to or agreed that the Plaintiff had invested in amount of* ***Two Hundred and Twenty-Four Thousand Eight Hundred and Eighty-Four Ghana Cedis (GH¢ 224, 884.00.)*** *into the project.*
3) *Whether or not the Defendant unilaterally terminated the contract between the parties.*
4) *Whether or not the parties agreed a breakup fee of 40% of the total amount invested by the Plaintiff in the event of the Defendant terminating the agreement.*

5) *Whether or not the Defendant was aware and agreed to the Plaintiff securing a facility from the bank for the purpose of financing the project.*
6) *Whether or not the Plaintiff invested in the project prior to the agreements being drafted unilaterally by the Plaintiff.*
7) *Whether or not the Defendant agreed to the terms in the unexecuted draft agreements forwarded to her by Plaintiff.*
8) *Whether or not Defendant should be held personally liable for monies invested into the joint project by Plaintiff-*
9) *Any other issues arising from pleadings*

One hackneyed principle of our jurisprudence is that the primary legal burden of proof lies on the assertor, not the one who denies the assertion. This is because a negative assertion is not capable of proof.

It is also important to emphasize that in civil suits, the burden of proof does not remain static but continues to shift from party to party depending on the fact asserted. See the case of ***IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU AND OTHERS v KOTEY &OTHERS [2003-2004] 420 @ 464*** and ***465***

Consequently, in the instant case, the onus rests on each party to prove on a balance of probabilities, the facts asserted by that party, as far as it relates to the central issues before this Court.

It is also settled law that facts admitted by a Party's opponent require no further proof. Consequently, it is my view that determining ***issue 3*** becomes otiose in light of the admissions made by Defendant in her pleadings.

Additionally, except for the issues central to the resolution of the dispute, I do not deem it necessary to consider every issue in respect of which evidence has been led in this suit. It is against this backdrop, that I proceed to resolve the issues set down for determination.

The first two issues will be taken together as they both relate to exactly how much the Plaintiff invested in the Project. In proof of his assertion that he had invested an amount of ***Two Hundred and Fifty-Three Thousand Five Hundred and Ninety-Nine Ghana Cedis (GH¢ 253,599.00)*** the Plaintiff tendered ***Exhibit K*** at the trial.

This is email correspondence between the Parties regarding the amount invested by Plaintiff, together with a breakdown of same. The correspondence shows that the Defendant disputed ***Twenty-Eight Thousand Seven Hundred and Fifteen Ghana Cedis (GH¢ 28,715.00)*** out of the said amount.

Resolving this particular issue should ordinarily not present much difficulty as there is no evidence that the Plaintiff's conclusion in his email dated the 27th March, 2019, that the amount of ***Two Hundred and Twenty-Four Thousand Eight Hundred and Eighty-Four (GH¢ 224, 884.00)*** was undisputed, elicited any denials or challenges from the Defendant.

Indeed, Defendant's ***Exhibit 5*** confirms that she acknowledged the fact that she was indebted to the Plaintiff in the sum of ***Two Hundred and Twenty-Four Thousand Ghana Cedis (GH¢ 224, 000.00.)***. This fact is clear as the Defendant in the said exhibit, makes proposals for the repayment of the said amount.

It however appears to be her testimony that ***Exhibit 5*** was written without prejudice as it was only aimed at resolving the dispute between the Parties and did not amount to admission of liability.

Section 105 of the **Evidence Act, 1975 (NRCD) 323** states;

> ***(1) A person has a privilege to refuse to disclose and to prevent any other person from disclosing to the tribunal of fact information concerning the furnishing, offering or accepting by such person or his authorized representative of valuable consideration in compromising a claim which was disputed either as to its validity or amount and information concerning conduct or statements made of such compromise negotiations.***

In the case of ***WOODE v AGGREY AND ANOTHER [1992] 1GLR 102-105*** ***Benin J*** (as he then was) cited with approval the English case of ***WALKER v WILSHER [1889] 23 QBD 335*** where the phrase "without prejudice" was defined to mean "*without prejudice to the position of the writer of the letter if the terms he proposes are not accepted*" .

The rule therefore entitles a party to refuse to disclose or to prevent an adversary or any other person from disclosing or tendering in evidence, documents marked "without prejudice" in proof of any assertion which that party made out of Court, in the course of negotiation or settlement. But can the Defendant in this case seek shelter under this rule?

It is settled law that a party cannot approbate and reprobate. As is apparent from the record, it is the Defendant and not the Plaintiff who tendered these "without prejudice" documents in evidence (***Exhibits 4*** and ***5***). This conduct of the Defendant, in my view should reasonably be understood to amount to a waiver of her rights under ***Section 105*** (supra). In other words, the act of producing the said documents in evidence, is sufficient to disentitle her from relying on the said rule, as it suggests that she agrees that the contents of the said exhibits are worthy of consideration by this Court.

What I glean from the Defendant's Witness Statement is that, ***Exhibits 4*** and ***5*** were only tendered in evidence to show the efforts made by Defendant at salvaging the Parties' damaged relationship.

The dictates of justice and fair play should however preclude a party who tenders a document in evidence from turning around to challenge its admissibility because certain portions of the document are not favourable to his case.

Once in evidence, a Court is not constrained to consider solely, portions of the document that are advantageous to the case of the tendering party but

has the right and duty to refer to any portion that enables it arrive at a fair and just determination of the suit.

A careful reading of ***Exhibits 4*** and ***5*** leave me in no doubt that the Defendant acknowledged being indebted to the Plaintiff and proposed ways of settling her indebtedness. Even though it may appear insignificant, it seems unclear whether the amount admitted was ***Two Hundred and Twenty-Four Thousand Eight Hundred and Eighty-Four Ghana Cedis (GH¢ 224, 884.00.)*** or ***Two Hundred and Twenty-Four Thousand Ghana Cedis (GH¢ 224, 000.00.).*** I propose to deal with this minor issue later on in this judgement.

But the fact still remains that the Defendant conceded that the Plaintiff was entitled to a refund of his investments and that it was her personal responsibility to make good the said amount. The most damning piece of evidence to the Defendant's claim that she was not to be held responsible for the repayment of the said amount lies in her own email dated the 5th of January, 2019 ***(Exhibit F)*** where she states as follows in the 3rd paragraph:

"In case something goes wrong, I am solely responsible for refunding your investment since I brought you into this transaction"

Clearly, the evidence on record supports the Plaintiff's assertion that the parties agreed that he would be entitled to a refund of his investment should things go awry and that Defendant would be liable for the said refund.

The pertinent question is, why did Defendant feel obliged to make proposals for the refund of Plaintiff's investment if she did not consider herself liable for the repayment of same?

This Court is not in the least persuaded by the Defendant's claim that she was coerced or deceived or defrauded into admitting liability. Additionally, her claim that the Plaintiff haboured the intention of ultimately taking over her mother's land is as spurious as it is unsupported.

It should be remembered that fraud borders on criminality and the burden of proving same like every other crime is on the person who asserts its commission. It is also trite that the same ought to be proven beyond reasonable doubt (See ***Section 13*** of ***NRCD 323***).

In my view, the shift by the Defendant from her previous position admitting liability (as is borne out by the evidence on record), to now allege coercion and fraud is clearly an attempt to throw dust into the eyes of this Court. It is purely an afterthought and I so hold.

Turning now to the disputed ***Twenty-Eight Thousand, Seven Hundred and Fifteen Ghana Cedi*****s** (***GH¢ 28, 715.00.)*** claimed by Plaintiff, I think he presented a poor as far as the said amount is concerned.

As held in the case of ***KLAH V PHOENIX INSURANCE CO LTD [2012]2 SCGLR 1139*** where a fact is capable of positive proof and the same is

denied, a party does not prove same by mounting the witness box and merely repeating his averments on oath. He does so by producing cogent and credible evidence to satisfy the Court that the averments are true.

In respect of this particular claim, Plaintiff tendered no receipts or documentary evidence in support of the alleged payments. Some of the payments were supposed to have been made to Defendant through Plaintiff's brother Abdul Rahman Sadiq but he was never called to corroborate Plaintiff's assertions. It is important to note that it was never the case of Plaintiff that this person was unavailable as a witness within the meaning of ***Section 116 (e)*** of ***NRCD 323.***

What even renders the Plaintiff's evidence on this issue unreliable is the fact of his faulty recollection of events, which compelled him to subsequently withdraw his claim for ***One Thousand, Seven Hundred and Fifteen Ghana Cedis*** (***GH¢ 1,715)*** which he initially alleged was spent on cement.

Relying on the authority of ***OKINE v AMOAH VI [2013-2014] 1358,*** Counsel for Plaintiff has urged upon this Court in his written address that the Court should accept the truth of the Plaintiff's assertions on this matter since he was never cross-examined on same.

I however beg to differ. In my opinion the views of the Supreme Court in the case of ***GHANA PORTS AND HARBOURS AUTHORITY & ANOTHER v NOVA COMPLEX LTD [2007-2008] GLR 806*** still hold good. In that case, the Court said;

"The strict rule in this court's forty-year-old case of Fori v Ayirebi [1966] GLR 627 SC, namely that when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact, was mis-applied by the Court of Appeal. Indeed, from the present state of the law, it is now clear that the full repercussions that ordinarily ought to flow from a party's failure to mechanically and dutifully cross-examine an opponent has gradually been reduced by such factors as illiteracy of the party not represented by Counsel and against whom that fact is alleged in evidence; or even if so represented, by advance notice to the opponent that the allegation is strenuously denied. The rule is therefore clearly subject to exceptions one of them being, if the witness had notice to the contrary beforehand …."

In assessing whether or not a party challenges an assertion, the Court will not only consider whether or not it was disputed under cross-examination but the entirety of the case put forward by the party.

By ***paragraph 17*** of her pleadings the Defendant denies in no uncertain terms, the fact that the Plaintiff invested a total amount of ***Two Hundred and Fifty-Three Thousand Five Hundred and Ninety-Nine Ghana Cedis (GH¢ 253,599.00)*** which obviously includes the disputed amount.

On the totality of the evidence on record, I do not find the Plaintiff's case made out in respect of the disputed amount of ***Twenty Eight Thousand, Seven Hundred and Fifteen Ghana Cedis*** (***GH¢ 28,715.00.).***

The same applies to Plaintiff's claim for recovery of ***Ten Thousand Nine Hundred and Nineteen Ghana Cedis Eighty-Five Pesewas (GH¢ 10, 919.85)*** being interest allegedly accruing on a loan facility he is supposed to have taken to fund the Project.

First, no evidence either documentary or viva voce from other witnesses, was led to prove that such a facility was indeed taken. Needless to say these are facts capable of positive proof.

Second, ***Exhibits M*** and ***N*** do little to help the case of Plaintiff as far as this claim is concerned. I say so because even though ***Exhibit M*** seems to suggest that the Defendant knew of a loan facility taken by the Plaintiff from a bank. There is no evidence before this Court that the same was taken (if at all) with her agreement or that she undertook to be liable for the payment of interest in the event that the Plaintiff defaulted in his repayment obligations.

What I gather from the evidence on record is that, it was the Plaintiff's sole prerogative to decide how and from where he sourced funds to finance the Project. The dictates of justice, equity and good conscience therefore would not permit this Court to hold the Defendant liable for payment of a loan facility which she neither applied for nor negotiated its terms. Consequently, this claim must also fail.

I now turn to the vexed issue of whether or not the parties agreed to a break-up fee of 40% of the total amount invested by the Plaintiff, in the event of the Defendant terminating the agreement.

As should be apparent from what I have said earlier, the fact that the Defendant unilaterally terminated the agreement between the parties is not in dispute, the reasons assigned for same regardless. The question that needs to be answered however, is whether the parties agreed that the Plaintiff would be paid a break-up fee upon such termination and whether the agreed fee was to be 40%.

Let me say at the outset that I find as a fact that the Defendant authored ***Exhibit E1.*** It is to me highly improbable that the Plaintiff who was not party to the discussions between Defendant and her mother, would amend the agreement to reflect matters which were solely within the peculiar knowledge of Defendant and (probably) her mother as disclosed by ***Exhibit F***.

Indeed the Defendant's evidence on this issue is fraught with contradictions and inconsistencies that are a clear sign of an untrustworthy witness.

Under cross-examination, Defendant admitted that she sent ***Exhibits E*** and ***F*** to the Plaintiff but was at pains to distance herself from ***Exhibit E1***. Quite curiously, the agreement purportedly referred to in ***Exhibit F*** was never tendered by the Defendant. She also did not venture to explain away her

failure to do so. The only logical conclusion is that no such other agreement exists.

The agreement referred to in ***Exhibit F*** is none other than ***Exhibit E1*** which the Defendant now seeks to distance herself from because ***Paragraph 7.4*** provides for the payment of a break-up fee of 20% in the event that the "Supervisor' terminates the agreement prior to the transfer of the Project to the company.

In respect of this issue, I consider the Plaintiff's testimony that it was the Defendant who drafted and sent ***Exhibit E1*** more probable than that of the Defendant who continued to change her story, obviously in an attempt to lend credence to her defence. The evidence that emerged during cross-examination, especially with respect to her claim that Plaintiff authored her ***Exhibit 1,*** clearly showed that she was not being truthful with this Court.

I therefore find it sufficiently proven that the parties contemplated the payment of a break-up fee to Plaintiff upon the premature termination of the agreement by the "Supervisor.", being the Defendant.

This term to me actually makes a lot of sense, since the Plaintiff was the "stranger' in the whole transaction and could not, in fairness, be placed on an equal footing as the Defendant who had decided to invest in land belonging to her mother. This is why it would not have been reasonable for the Defendant to expect the same treatment if she walked away. The

question that remains to be answered however is the percentage parties agreed on.

Much has been said about the absence of an enforceable agreement because the Parties did not sign any of the draft agreements. It however bears pointing out that oral contracts are recognized and enforceable in this jurisdiction by virtue of ***Section 11*** of the ***Contracts Act , 1960 (Act 25)***. Additionally, as communication between the parties was through email, it will also be helpful to note that by ***Section 23*** of the ***Electronic Transactions Act, 2008 (Act 772)*** a contract is valid even if concluded partly or wholly through an electronic medium.

I find that there was indeed an agreement between the parties and it was pursuant to this that the Plaintiff started and continued to finance the Project. If there was none there would be no basis for the party's accusations and counter-accusations about who unilaterally terminated same. The only difficulty facing this Court is deciphering which of the terms the parties agreed to be bound by. As Defendant rightly pointed out in ***Exhibit G*** the parties "didn't do a sufficient enough job of documentation" which has resulted in the current state of affairs.

In determining whether the parties reached an agreement on the payment *40 %* of the total amount spent by the Plaintiff as severance fee or break -up fee, the Court will lay emphasis on outward appearance rather than actual intent or state of mind of the parties. Put differently, the parties will be

judged by what can be inferred from what they said, wrote or did as regards this particular issue.

If the Court finds ample evidence that the parties were ad idem on the amount payable as break-up fee, it must uphold such agreement even if not reduced into writing and duly signed.

But I think this Court needs look no further than the testimony of the Plaintiff under cross-examination on the 22nd of November, 2021 in ascertaining the true state of affairs between the parties. On that day Plaintiff was asked;

"Q: In your earlier testimony you testified that the agreements were not signed because neither parties [sic] agreed to the terms?

A: That is wrong

Q: And In fact you stated that you yourself did not sign Exhibit E1 which emanated from the Defendant because you did not agree to the terms is that right?
A: That is right. I had an issue with the termination agreement under ***Exhibit E*** *because aside all earlier highlighted changes which was not in my favor ,* ***Exhibit H*** *further reduced the agreed break-up fee from Forty to Twenty percent. Miss Naa also increased repayment days to sixty.*

Q: So none of the agreements was signed because the parties did not agree on the terms. Is that not the case?

A: That is the case...."

The evidence that emerged from the above exchange is that neither of the parties was prepared to agree on the terms proposed by the other as far as the amount payable as break -up fee is concerned. This makes the Court unable to conclude that an enforceable agreement had been reached by the parties on that particular term. The parties contemplated the payment of a breakup fee to Plaintiff but the same never crystallised into an enforceable agreement. It is for this reason that this particular issue will have to be resolved in favour of Defendant

Now, the issues so far resolved, in my view, sufficiently dispose of the central issues raised in this matter. This makes it unnecessary to consider other aspects of the case. What is left to determine is exactly how much Plaintiff is entitled to as refund on his investment.

I note that even though the parties appear to have agreed in ***Exhibit K*** that the amount outstanding was ***Two Hundred and Twenty-Four Thousand Eight Hundred and Eighty Ghana Cedis (GH¢ 224,880.00)***. The subsequent assertion in Defendant's ***Exhibit 5*** that the amount outstanding was ***Two Hundred and Twenty-Four Thousand Ghana Cedis (GH¢ 224,000.00)*** did not elicit any challenge or denial from the Plaintiff. This, as already noted made it unclear precisely how much was undisputed by Defendant.

Thankfully, any confusion that existed in the mind of this Court was cleared by Plaintiff in his evidence on the 22nd of November, 2021 when he confirmed under cross-examination that the amount due him was ***Two Hundred and Twenty-Four Thousand Ghana Cedis (GH¢ 224,000.00).*** Judgment will therefore be entered for the Plaintiff for the said amount.

With regards to interest, I do not think the Plaintiff should be entitled to the payment of interest on the said amount from the 18th of February, 2019 as claimed and here is why;

A reading of ***Exhibit F*** shows that the Plaintiff, upon Defendant's unilateral termination of the agreement, granted her up to 40 days to refund his investment. By ***Exhibit I,*** he was definite that payment would be expected by the end of May, 2019.

What I glean from ***Exhibits 4*** and ***5*** is that upon Defendant's failure to make good the said amount, Plaintiff wrote formally to demand same. Unfortunately, this Court did not sight the said Demand Notice to enable it ascertain the exact timelines given Defendant. The Defendant in response made certain proposals.

There is no evidence of whether or not Plaintiff responded to same. But it would appear that the Plaintiff was driven to have recourse to legal proceedings on the 19th of July, 2019 following the failure of Defendant to pay up as demanded.

Since the rationale for the award of interest is for the Judgement Debtor to compensate the Judgment Creditor for withholding his money when he was entitled to use of it, it is important to calculate same from the due date. I do not think the evidence before me supports the claim that payment was due on the 18th of February, 2019.

On the totality of the evidence, I consider it safe to order that interest be paid on the amount owed from the 19th of July, 2019 when the writ was issued, as the Defendant who had asked for the Plaintiff's "numbers and terms" as far back as the 18th of February, 2019, ought to have settled her indebtedness by then.

Plaintiff also prayed for damages for breach of contract. I however do not think that relief is deserving due to the nebulous nature of the parties' agreement.

Accordingly, final judgement is hereby entered for Plaintiff to recover from Defendant as follows;

1. The sum of ***Two Hundred and Twenty-Four Thousand Ghana Cedis (GH¢ 224,000.00)*** being the amount invested by Plaintiff in the Project.

2. Interest on the said amount shall be payable at the prevailing commercial bank rate from the 19th of July 2019 until date of full and final payment.

Relif c is dismissed

1. Relief d dismissed

2. Reliefs e dismissed
3. Reliefs f dismissed
4. Relief g is dismissed.

I award Plaintiff costs of ***Thirty-Five Thousand Ghana Cedis (GH¢35,000.00.)***

(SGD)

AKUA SARPOMAA AMOAH (MRS.)

JUSTICE OF THE HIGH COURT

Cases referred to:

WALKER v WILSHER [1889] 23 QBD 335

IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU AND OTHERS v KOTEY &OTHERS [2003-2004] 420 @ 464 and ***465***

WOODE v AGGREY AND ANOTHER [1992] 1GLR 102-105

KLAH V PHOENIX INSURANCE CO LTD [2012]2 SCGLR 1139

OKINE v AMOAH VI [2013-2014] 1358

GHANA PORTS AND HARBOURS AUTHORITY & ANOTHER v NOVA COMPLEX LTD [2007-2008] GLR 806

Statute referred to:

The Contracts Act, 1960 (Act 25)

The Evidence Act, 1975 (NRCD) 323

Electronic Transactions Act, 2008 (Act 772)