IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 17TH DAY OF SEPTEMBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/880/19

BETWEEN:

1. DR. PATRICK STEVENS
2. STEPHENS GLOBAL RECOVERY AND FINANCIAL NETWORK LIMITED ------ PLAINTIFFS

AND

1. CHUKWUDI OLI
2. OLI & PARTNERS ---------- DEFENDANTS

RULING

In a Writ filed on the 25th day of January, 2019 and further renewed on the 25th day of June, 2020 the Plaintiffs claimed the following:

Seven Million, Seven Hundred and Twelve Thousand Naira (₦7, 712,000.00) being 10% commission due to the Claimant on the Debt Recovery Contract entered into with the Defendants.

The Claimants are Dr. O. Patrick Stephens and Stephens Global Recovery and Financial Network Limited. The Defendants are Mr. Chukwudi Oli and Oli & Partners.

The Plaintiffs alleged that the Defendants engaged him to help recover the debt owed to Mr. Ekekwe.

The Defendants issued him a letter of Authority to Zenith Bank to collect a draft of sum of Fifteen Million Naira (₦15, 000,000.00) on his behalf. The sum was contained a Judgement Certificate in the case of FCT/HC/CV264/14. The said money was to be paid to Mr. Osondu Ekekwe.

Claimant wrote a letter to Zenith Bank to place a lien on the said money – the Judgement Debtor's account of Deo Gratias International Schools Limited, Lugbe Abuja. He attached a copy of the letter as EXH 2.

In June 2015 Defendants formally engaged the services of the Claimants to recover for Deo Gratias the sum of One Hundred and Twenty Million Naira (₦120, 000,000.00) due to the same Osondu who is the client of the Defendants. 1st Defendant issued the Claimants a letter authorizing them to engage on the debt recovery and to carry out the said recovery on the condition that they shall be entitled to the 10% of the debt as consideration for the service of Debt Recovery. That is, that he is entitled to 10% of any amount recovered. He attached the copy of the letter as EXH C. He was furnished with the Certificate of Judgement showing how much money is involved. That document was attached and marked as EXH D. He had several meetings with Deo

Gratias on how best to recover the money and how best to pay the money too.

He recovered in the first instance a total of ₦22.5 Million. Defendants issued him a Cheque of ₦2.5 Million which represents 10% of the recovered debt in a GTBank Cheque No: 00000084 dated 31/7/2015. The Cheque was dishonored by the Bank. He attached the Cheque as EXH E: the reason being that the Defendant stopped/cancelled the Cheque. The 1st Defendant pleaded with 1st Plaintiff to exercise patient with him promising to pay the money in the later date. But he never fulfilled that promise.

That notwithstanding that the 1st Plaintiff continue to strive to ensure that more money were recovered. He confirmed from Judgement Debtor – chief Odera Odabi that the School had paid the sum of Seventy Seven Million, One Hundred and Twenty Thousand Naira (₦77, 120,000.00) – part of the Judgement Debt to both the Defendants and Mr. Osondu Ekekwe. It is from the said amount that the Claimants are claiming the present debt – liquidate sum of Seven Million, Seven Hundred and Twelve Thousand Naira (₦7, 712,000.00) from the Defendants, being 10% of the money recovered as promised by the Defendants. But that the Defendants have refused to pay the said 10% of the money recovered.

The Plaintiffs believed that the Defendants have no Defence to the Suit, they urged Court to enter Judgement in their favour.

Because the Writ is predicated on Debt, the Court marked it Undefended. It is a liquidated demand too.

Upon receipt of the Writ which the Court had marked Undefended, the Defendants filed a Notice of Intension to defend on the 24th of June, 2020. They filed an Affidavit of 17 paragraphs and attached 8 documents marked as EXH A – H.

It is the story of the Defendants that they agreed that through a letter dated 24/6/15, they engaged the Claimants to act as their Debt Recovery agents. They issued them a Cheque of Two Million, Two Hundred and Fifty Thousand Naira (₦2, 250,000.00) being 10% of Twenty Two Million, Five Hundred Thousand Naira (₦22, 500,000.00) recovered by the Claimants. But the Defendants said that the Cheque was issued in lieu of the anticipated recovery. The Cheque was according to the Defendants stopped and not that it was dud. That when they discovered that the Claimants did not fulfill their promise to recover the debt as promised and that 1st Claimant is a bosom friend of the CEO of the Judgement Debtor's School – Deo Gratias, the Defendants withdrew the authorization given to Claimants. The Defendants did not attach the letter of withdrawal of the authorization. They claimed that the Claimant was also notified about the withdrawal of authorization via SMS. They did not attach evidence of that too.

The Defendants claimed that it was not the Claimants that recovered the Seventy Seven Million, One Hundred and Twenty Thousand Naira (₦77, 120,000.00). That the Defendants recovered about Sixty Million Naira (₦60, 000,000.00) out of the Seventy Eight Million Naira (₦78, 000,000.00) debt owed to Ekekwe. That the Claimants

are not entitled to any money as the Defendants are not owing them. That they urge Court to transfer this matter to the General Cause List as they have defence on the merit. That they also intend to file a Counter Claim against the Defendants.

After all the summary of the case of the parties the question is, should this Court transfer the matter to the General Cause List as Defendants are postulating in that they have a prima facie defence to the case of the Plaintiffs? Or should the Court grant the Claimants their heart desire by retaining this case under Undefended List and enter Judgement in favour of the Claimants and end the whole matter here and now?

Before I conclude on the above questions, it is imperative to state that once a Suit is predicated on debt or liquidated money demand and the Plaintiff has in his Affidavit believes that the Defendant has no defence to his Suit, he often in an Affidavit asking for Court to enter Judgement in his favour since he believes that Defendant has no defence to his Suit. Where that is the case the Court, first based on application made Exparte, normally mark the Writ with the word "Undefended" before it is served on the Defendant. This is to alert the Defendant and give them chance to file any intension to defend the Suit if they so wish. Where the Defendant feels it has a prima facie defence, it will file an Affidavit setting out facts why the Court should transfer the case to a General Cause List so that parties can call evidence and matter goes into full hearing.

Where the Court is convinced that there is a prima facie defence on merit, it will transfer the case to a general

cause list: otherwise it will end same and enter Judgement in favour of the Plaintiff and matter will end. In this case the Plaintiff had alleged that they were engaged to act as Debt Recovery Agents for the Defendants via a letter dated 24/6/15.

In the letter written by the 1st Defendant to Zenith Bank dated 23/1/15, the Defendants had in paragraph 4 stated thus that:

> "We have instructed Dr. O. Patrick Stevens to work for us for the purpose of collecting the Draft of the sum of Fifteen Million Naira (₦15, 000,000.00) payable to Oli & Partners".

The 1st Defendant had instructed the Bank to hand over the same Draft to Dr. O. Patrick Stevens who he described thus:

> "He is our agent and has been authorized to collect the said draft".

The above letter was attached by the Defendants in their Notice of Intension to defend.

In the letter of 24th June, 2015 written five (5) months after their instruction to the Zenith Bank PLC on the 23rd of January, 2015 attached as EXH B by the Claimants, the Defendants stated, referring to the Judgement entered into in favour of the Osondu Ekekwe on the 3rd day of December, 2014, thus:

> "I hereby as the principal partner of OLI & PARTNERS authorized you to recover the said Judgement sum [which stood at One Hundred and Twenty Million Naira (₦120, 000,000.00)] in the

above Suit from the Judgement Debtors (Emphasis mine).

The Defendants attached copy of the Certificate of Judgement. The Defendants further stated in paragraph 5 of the said letter of 23rd June, 2015 thus:

> **"I hereby state categorically and unequivocally that you shall be entitled to 10% of all sums recovered as a result of your direct efforts in the above Suit HC/CV/262/14 and No more".**

The Plaintiffs have alleged that they were able to recover about Twenty Two Million, Five Hundred Thousand Naira (₦22, 500,000.00) and the Defendants fulfilled their promise by issuing a Guaranty Trust Bank (GTB) Cheque of Two Million, Two Hundred and Fifty Thousand Naira (₦2, 250,000.00). The Cheque upon presentation was dud according to the Plaintiffs. All effort to recover the money was fruitless. But Plaintiffs continued with the bigger assignment to recover more money. But the Defendants had claimed that the said Cheque was issued in advance. That it was undated and the Plaintiffs were asked not to present the Cheque without first clarifying from the Defendants. They presented the Cheque without clarification and it bounced. The Plaintiffs attached the Cheque as EXH E. The Plaintiffs presented the Cheque on the 11th of August, 2015. A closer look at the Cheque shows that it was dated 31/7/15 contrary to what the Defendants said that it was not dated.

It also shows that contrary to what Defendants are saying the Cheque was issued some weeks after the letter of authorization was issued to the Plaintiffs. There is no

evidence that the authorization has been cancelled or vacated.

From all indication there is no doubt that the Claimants were appointed and authorized by Defendants to act for them as Debt Recovery Agent and Agency. The Cheque was issued not in advance as the Defendants are claiming but after some recoveries were made by the Plaintiffs quite unlike the submission of the Defendants to the contrary. The Cheque was issued in line with the letter of appointment in which the Defendants spelt out in black and white that Claimants are entitled to 10% of whatever amount that they recovered. The Defendants cannot deny that.

This Court does not believe that the Defendants issued a Cheque in anticipation of a recovery yet to be made. Parties are bound by the agreement they made. So Defendants are bound to pay 10% of money recovered as they agreed in the letter of 24th June, 2015. So this Court holds.

It is a known fact that once there is disparity in the amount due and payable in a matter marked Undefended in that the amount of debt is in doubt, the Court does not hesitate to transfer the case to the general cause list so that parties are allowed to call Witnesses after filing the Statement of Claim and defence and exchange same. There is a lot of disparity in the calculation of the amount payable to the Claimants and the amount which the Defendants agreed that is due to be paid.

There is no letter showing that the Defendants have terminated the agreement and authorization given to the Plaintiffs as their Agent to recover the money.

The Defendants has to pay the Plaintiffs all the 10% of the money recovered as agreed. That is the 10% of the ₦22.5 million recovered by the Plaintiff. The Court will transfer and hereby transfer the remainder of the amount in issue to the General Cause List for Hearing in order to determine who is entitled to what.

It is the humble view of this Court that justice will be better done if the matter is transferred to the General Cause List and parties are allowed to call Witnesses. By so doing this Court will be in a better position to determine the whole issues in dispute and come up with its final decision. Parties are to file and exchange their pleading before the next adjourned date.

This is the Ruling of this Court.

Delivered today the ___ day of ________ 2020 by me.

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K.N. OGBONNAYA

HON. JUDGE