

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 33
CASE NUMBER: SUIT NO. FCT/HC/CV/2316/19
DATE: 17TH JULY, 2020

BETWEEN:

BARRISTER JOSHUA ELAIGWU MOSES.....APPLICANT

AND

ABUJA ELECTICITY DISTRIBUTION COMPANY PLC (AEDC).....RESPONDENT

APPEARANCE

*J. O. Okete Esq for the Defendant.
Claimant absent.*

RULING

By a preliminary objection/motion on notice brought pursuant to order 43 Rule (1) of the High Court of the Federal Capital Territory (Civil Procedure) Rule 2018 and under the inherent Jurisdiction of the Honourable Court, The Defendant/Applicant herein prayed the court for the following orders:-

- 1. An order dismissing this suit in its entirety for lack of jurisdiction.*

2. An order dismissing this suit in its entirety for lack of capacity to sue being a stranger to the contract between the known customer and the defendant in this suit.
3. An order dismissing this suit in its entirety for being incompetent and premature having failed to comply with the laid down statutory procedure for dispute resolution between the contracting parties.
4. And for such order(s) as the Honourable Court may deem fit to make in the circumstance.

Filed in support is an affidavit of 16 paragraphs deposed to by one Elias Omoben, the marketing Officer of the Defendant. Attached to the supporting affidavit are annexures marked as Exhibits A to D respectively. Also filed is a written address in support dated 5th day of March, 2020.

In the said written address learned counsel to the defendant/Applicant, Kevin Emeka Okoro Esq, formulated four issues for the determination of this court as contained in the said written address.

In arguing the issues counsel submitted on issue one which is whether the Claimant has the locus standi or capacity to institute the suit against the Defendant, having regard to his status and the apparent lack of nexus with the customer in the record of the defendant, that there is no where on the surface of the bills issued on the premises purportedly occupied by the claimant that the name of the Claimant appears.

The learned counsel stated moreso that the defendant's actions being complained about by the claimant were directed to one Ngidi Ruth Magu, being the known customer whose name appears on the bills served on the premises. As such, counsel submitted that the claimant has no legal capacity or locus standi to institute this action against the defendant without joining the customer or coming in a representative capacity or by express authority of the landlady.

In another submission, counsel stated that legal capacity to institute an action in court is fundamental to any suit of this nature and the apparent lack of it is fatal in the eyes of the law.

It is the learned counsel contention that a litigant must first and foremost establish by factual circumstances encapsulated in his/her cause or action, that his/her legal rights have been breached. Seriously jeopardized and/or are about to be infringed upon either by a contractual party or by a citizen or a public servant. In this respect, counsel cited the cases of FAWEHINMI VS I. G. P (2003) 7 NWLR (PT. 767) 606. SHIBKAU VS A.G ZAMFARA STATE (2010) 10 NWLR (PT. 1202) 388.

Consequently, counsel urged the court to hold the claimant lacks the legal capacity to institute this action.

On issue two which is whether this suit ought to have come by mode of writ of Summons and not originating Summons in view of the numerous arguable and contentious facts contained therein, the learned counsel contended that the averments in the originating Summons, affidavit and further Affidavit in support vis-à-vis the Defendants counter affidavit, substantially raised disputable and arguable facts that can only be exhaustibly dealt with by calling for oral testimonies of relevant witness, to enable the court arrive at a fair and just decision in the case-Reference was made to paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 15, 16, 17, 18 20, 21. Paragraphs 4, 6, 7, 8, 10, 11, and 12 of the further Affidavit in support of the originating Summons.

In another submission counsel stated that it is only where construction or interpretation of constitution, statutes or any law or contract are in issue and there is no likelihood of the presence of arguable and contentious issues of facts that originating Summons can be used to commence an action. Reliance was placed on order 2 Rule 3 (1) and (2) of the Rules of this court, 2018.

It was the learned counsel's further submission that the claimant's Affidavit vis-à-vis the defendant's Counter Affidavit contains arguable and disputable facts that are apparently contentious and cannot be adequately determined by way of affidavit evidence alone, without pleadings and opportunity given to the respective parties to examine and cross examine witnesses, in order to arrive at a just and fair determination of this matter. Counsel cited the case of BARR.

AMANDA PETERS PAMS & 1 OR VS NASIRU MUHAMMED & 1 OR (2008) 35 NSCSR.
Page 123 at 205 paragraphs C-H.

Finally on issue two, counsel submitted that this suit ought not to have come by the mode of originating Summons and urged the court to so hold.

On issue three which is whether due process of law was followed and exhausted by the claimant before instituting this suit. Counsel submitted that the claimant who is very much aware of these provisions i.e Section 24(1) of the Independent Electricity Distribution Networks (IEDN) Act, 2012 and Electric Power Sector Reforms Act, No. 6 of 2005, deliberately ignored and refused to even approach the customer complain unit office (CCU) of the defendant to explore redress for his complaint.

Therefore, counsel stated that the apparent failure of the claimant to comply with the said statutory provisions has rendered this suit premature and incompetent and urged the court to so hold.

On issue four which is whether in the light of issues 1-3, this Honourable Court has jurisdiction to entertain this suit, counsel submitted that it is trite law that the issue of jurisdiction is fundamental to the court in playing its role of dispensing justice to the citizens. In this respect counsel cited the cases of MADUKOLU VS NKEMDILIM (1962) 2 SCNLR 341, A-G OYO STATE VS NLC (2003) NWLR (PT. 821)1.

Consequently, counsel stated that it is clear that the claimant ignored, refused and neglected to fulfill the condition precedent in failing to comply with the laid down rules of dispute resolution as provided in Section 96 (2) (c) and (d) of the Electric Power Reform Act, 2005 (Act No. 6 of 2005). Reliance was equally placed on the case of KAYILI VS YILBUK & ORS (2005) 2 SC 161.

To this extent, counsel submitted that the claimant's failure to comply with the provisions of the Act has robbed the court of its jurisdiction to entertain this suit and urged the court to so hold.

In opposition to the defendant's preliminary objection/motion on notice, the Claimant/Respondent filed an 8 paragraphed counter Affidavit deposed to by one

Joshua Elaigwu Moses Esq, the claimant in this matter. Attached to the counter Affidavit is an annexure marked as Exhibit 1. Equally filed in support of the counter affidavit is a written address dated 13th day of March, 2020.

In the said written address, the claimant who is representing himself adopted the four issues for determination formulated by the defendant/Applicant in this written address in support of the preliminary objection.

In response to the issues, counsel submitted on issue one which is whether the Claimant has the locus standi or capacity to institute this suit against the defendant, having regard to this status and the apparent lack of nexus with the customer in the record of the defendant, that the claimant has the locus standi to institute this action even though the Electricity bills issued by the defendant does not bear the name of the claimant.

He stated that it is the claimant (and not Ngidi) that is actually occupying the house in question that is being supplied with Electricity and is the claimant that has suffered losses and injury by the act of the defendant. Therefore, he submitted that it is the claimant that has locus standi to sue and not Ngidi Ruth Magu. Reference was made to Exhibits A, C and I as well as paragraph 6 of the Defendant's preliminary objection.

In his further contention, the claimant stated that the Defendant by their conduct made the claimant to believe that he is their customer in respect of bills and other documents bearing the name of Ngidi Ruth Magu and by such conduct the defendant is by the doctrine of Estoppel precluded from not regarding the claimant as their customer. Reliance was placed on the cases of NNENAKAYA VS NNENAKAYA (1996) 9 NWLR (PT. 472) 256 at 293 paragraph D-F. UKAEGBU VS UGOJI (1991) 6 NWLR (PT. 196) 127, IKPUKU VS IKPUKU (1991) 5 NWLR (PT. 193) 57.

On definition of a customer, the court was referred to section 3 of the Nigerian Electricity Regulatory Commission (MERC) methodology for estimated billing 2012.

Consequently, it was submitted that even if the claimant is not a customer registered with the defendant, the claimant is a customer of the defendant by virtue of being disconnected from his light and also he is a customer by virtue of being a person who has applied for service but yet to receive the service. That for a person to qualify as a customer of the defendant, he needs not be a registered customer of the defendant.

In his final submission on issue one, it was stated that once a party can show that his personal interest has been adversely affected by an action of the defendant or that he has sustained or is immediately in danger of sustaining some direct injury or loss to himself, then he has the locus standi to sue. He cited in support the case of *AMADI VS ESSIEN* (1994) 7 NWLR (PT. 354) 91 at 115 paragraph D-E.

On issue two which is whether this suit ought to have come by mode of writ of Summons and not originating Summons in view of the numerous arguable and contentious facts contained therein, in response, claimant submitted that this suit was rightly commenced by originating Summons. He refused the court to order 2 Rule 3 (1) and (2) of the Rules of this Court and the case of *ETIM VS OBOT* (2010) 12 NWLR (PT. 1207) 108 AT 156, paragraphs B-C.

In another submission, the claimant stated that the questions before this court is not one of construction of a will, it is also not of construction of a deed but it is one of construction of an enactment and other written documents and it is clear on the questions the court is called upon to determine.

As such claimant referred the court to the affidavit evidence before it and the two questions that the court is called upon to determine and submitted that the court can resolve the two questions for determination before it on the documentary evidence available before the court without the need to call for oral evidence as contended by the defendant/Applicant because the two questions are questions of law which borders on construction or interpretation of documents. In this respect, he cited the cases of *OSSAI VS WAKWAH* (2006) 4 NWLR (PT. 969) 208; *O.A.U ILE-EFE* (2011) 14 NWLR (PT. 1269) 193.

Moreso, the claimant referred to the supporting affidavit to the originating Summons particularly paragraphs 1, 2, 8, 9, 12, 13, 14, 15, 16 and 17 and 18 and submitted that these paragraphs vis-à-vis the questions for determination are based on interpretation of a written law and documents. Reliance was placed on the case of KANKARA VS. C.O.P (2002) 13 NWLR (PT. 785) 596.

The claimant stated that while they maintain that there is no dispute in the facts of this case, he submitted that disputed facts that will make an action incompetent by way of originating Summons must be real dispute, must be substantial dispute and not a sham. In this respect, reliance was placed on the cases of PAM VS MOHAMMED (2008)16 NWLR (PT. 112)1 at 88, paragraph E; ASOGWA VS P.D.P (2013) 7 NWLR (Pt. 1353) 207 at 284, paragraph A-B; JIMOH VS OLAWOLE (2003) 10 NWLR (PT.828)307 at 346 paragraph G.

Consequently, claimant submitted that these paragraphs 1, 2, 8, 9, 12, 13, 14, 15, 16, 17 and 18 are not contentious to resolve the questions before the court. He further submitted that mere filing of a counter affidavit in response to the supporting affidavit of an originating Summons does not automatically make the matter one that is contentious in which oral evidence must be adduced and thereby necessitating the ordering of pleadings. That where the conflicts in the affidavit evidence of the parties are not material to the case, the court is not saddled with the responsibility of calling oral evidence. In this respect, reliance was placed on the case of A.G ADAMAWA STATE VS A.G OF THE FEDERATION (2005) 18 NWLR (PT. 958) 581 at 621, paragraph D.

Finally on issue two, Claimant submitted that the two main issues before this Honourable Court and the facts that are material in resolving them which are paragraphs 1, 2, 8, 9, 12, 13, 14, 15, 16, and 17 of the claimant's Affidavit supporting the originating Summons are not in substantial dispute or in controversy even though the Defendant/Applicant apparently argued otherwise. Therefore, Claimant urged the court to so hold that the two questions before the court and the material facts supporting them can be successfully resolved based on the available documentary evidence before the court without the need for calling of oral evidence.

On issue three which is whether due process of law was followed and exhausted by the claimant before instituting this suit, in responding to this issue, the claimant submitted that Section 24 (1) of the IEDN regulation, 2012 does not prevent a party from invoking the jurisdiction of a court of competent jurisdiction.

The claimant submitted moreso that the procedures laid down in the NERC Customer complain handling standard and procedures, 2016 are optional not mandatory. The Court was referred to Section 13 of the NERC'S complains handling standards and procedures, 2016. Also referred is Section 6 (6) of the 1999 Constitution (as amended).

In another submission, Claimant stated that where there are two plausible interpretations, one aiding access to court and the other infringing on access to court, the court should adopt the interpretation that aids judicial access. Reliance was placed on the cases of EMUZE VS V.C UNIVERSITY OF BENIN (2013) 10 NWLR (PT. 828) 378 at 396, paragraph G-H; BARCLAYS BANK OF NIGERIA. LTD VS CBN (1976) 1 ALL NLR (PT. 1) 409.

Finally, the Claimant submitted that this Honourable Court has jurisdiction to hear this matter and urged the court to so hold and dismiss the Defendant/Applicant's preliminary objection with substantial cost.

On the other hand, the Defendant/Applicant filed a reply to claimant's Counter Affidavit dated 15 day of May, 2020 and filed same day. It has 15 paragraphs deposed to by one Elias Omoben the marketing officer of the Defendant Company. Also filed is a written reply on points of law.

In his reply on point of law, counsel to the defendant/Applicant maintained in his submission that the claimant does not have the locus standi as no electricity Bill was ever issued in his name as claimant falsely represented.

The counsel stated moreso that where the claimant was not an applicant and never applied for meter or metering services to the Defendant as a customer, he cannot be said to have a locus standi in view of meter assets provider regulations 2018 pursuant to Section 96 of Electric Power Sector reform Act, 2005.

In another reply on points of law, learned counsel submitted that Claimant cannot maintain action against Defendant without the authority of the owner of the premises/Meter, Ngidi Ruth Magu. Reference was made to the case of ADMINSTRATOR/FEXECUTORS OF THE ESTATE OF GENERAL SANI ABACHA (DECEASED) VS EKE-SPIFF & ORS (2009) 7 NWLR (PT. 1139)97.

Moreso, the counsel submitted that the claimant in this case has ab initio lacked the locus standi to institute this action, having sued the Defendant with the name “Barr. Joshua Elaigwu Moses” counsel cited the case of NBA VS OFOMATA (2017) 5 NWLR (PT. 1557) 128 at 133 and Section 22 (1) (b) of the legal practitioners Act 2004.

On whether following the due process of law is optional, learned counsel in replying, referred the court to Electric Power Sector Reform Act 2005, Section 50 of EPSR Act, 2005, Chapter ii of Nigerian Electricity Regulatory Commission Business Rules 1 2000, Section 45, 62 (4) of EPSR Act, 2005, Nigerian electricity Regulatory Commission Meter Asset provider Regulations 2018, regulation No: NERC-R-112 and submitted that the claimant having failed to take the necessary pre-action steps and also failed to exhaust the procedures laid down by the statute that regulates relationship between claimant and defendant, the best to do in the circumstances of this matter is to dismiss this suit with substantial cost. Counsel referred the court to the case of KENNETH NSUR & 1 OTHER VS ABUJA ELECTRICITY DISTRIBUTION COMPANY, SUIT NO: FCT/HC/CV/1590/2017 (not reported, a copy of judgment attached) Judgment delivered on the 18th day of October, 2019 per his Lordship Hon. Justice H.B Yusuf.

In further submission, counsel stated that where statute provides a particular method of performing a duty, that method and no other must have to be adopted. Reliance was placed on the cases of COSMAS EZE & ORS VS DONATUS OKECHUKWU, SUIT NO: CA/K/298/2020, BUHARI VS INEC (2008) 4 NWLR (PT. 1078) at 583: SLB CONSORTIUM LTD VS NNPC (2011) NWLR (PT. 1252) Paragraph 317 at 323.

Finally, counsel submitted that this suit of claimant is bad and incurably bad and the best to do in the circumstance of this matter is to dismiss same with substantial cost.

Now, I have carefully perused the preliminary Objection/Motion on notice, the reliefs sought, the supporting affidavit together with the annexures attached therewith and the written address in support of same. I have gone through the counter affidavit in opposition to the preliminary objection/motion on notice, the exhibits attached therewith and the written address. In the same vein, I have considered the reply to the counter affidavit and the reply on points of law.

It is instructive to note that the claimant/respondent did not formulate fresh issues for determination in his written address instead he adopted those formulated (four issues) by the defendant/applicant and respondent accordingly. I will equally adopt those issues for determination however, I will instead narrow down the four issues to a single issue to wit:-

Whether or not the Claimant/Respondent has the locus standi to institute this action.

It is worthy of note that jurisdiction is intrinsic and paramount and any defect in jurisdiction renders any action that may be taken by the court, no matter how well taken and well intentioned, null and void and of no effect. In this respect see the case of NGERE VS OKURUKET `XIV` (2017) 5 NWLR (PT. 1559) 440 S.C. where it was held thus:-

“Jurisdiction is the pillar upon which an entire case stands. Instituting an action in a court of law pre-supposes that the court has jurisdiction. But once the Defendant shows that the court has no jurisdiction, the case crumbles. In effect, there is no case before the court for adjudication. The parties cannot be heard on the merits of the case..”

See also the case of LADO VS CPC (2011) S.C.NJ 383.

It is equally germane to point out that the question of locus standi is such that is Fundamental in any proceedings as same goes to the root of the

jurisdiction of the court. In other words, locus standi is a jurisdictional issue which has to be resolved before going into the merit of any action. In this regard. See the case of MR, JIMOH OLAOYE & ORS VS JIDE MAKANJUOLA (2017) LPELR-43249 (CA) at page 13, paragraphs A-E where it was held that:-

“.....It is trite that the absence or presence of locus standi in a party will divest or infuse jurisdiction into a court to discountenance or entertain a matter before it.....”

Having said this, the term locus standi was defined in Black’s law dictionary Ninth Edition at page 1026 thus:-

“The right to bring an action or to be heard in a given forum.....”

In the same vein, it was defined in the case of ONYEAMA VS UBODOH (2008) 16 NWLR (PT.1114) 576 at 592-593, paragraphs H-C that:-

“.....It is the legal capacity to institute proceedings in a court of law.....”

Furthermore, on what a court will look at to determine whether a party has locus standi, it was held in the case of NOZIA VS A. G LAGOS STATE (2010) 15 NWLR (PT. 1216)207 at 238, paragraphs F-G thus:-

“.....As alluded to above, in determining whether a plaintiff has a locus standi to institute an action, it is only the originating process, i.e the writ of Summons, originating Summons (motion) or statement of claim (where filed), that the court will have to examine. It is that originating process alone which will determine the plaintiff’s locus standi..”

Now, in the instant case, from the affidavit evidence before the court, particularly, the supporting affidavit to the preliminary objection/motion on notice, it was deposed therein among other things that the claimant did not join the landlady in this suit, nor did he sue in a representative capacity. That the claimant is not a registered customer of Abuja Electricity Distribution Company plc, hence lacks the capacity to sue. That all AEDC Bills to the house purportedly occupied by the Claimant were issued in the known customer’s name Ngidi Ruth Magu, at Symack Extension, Sokale HSE, Dutse, Abuja, FCT and not to the

Claimant. A copy of one of the bills is herewith annexed and marked Exhibit 'A'. That no payment of electricity Bills had ever been received by the Defendant in the name of Ngidi Ruth Magu, the known Customer in the record of the Defendant. A copy of one of such Bills is hereby annexed and marked Exhibit 'C'. That apparently there is no nexus between the Claimant and Ngidi Ruth Magu, the authentic and known Customer of the Defendant either by way of tenancy agreement or by the express or implied authority of the known customer. Finally, that the disconnection notice with notification date 18/6/19 being complained about by the claimant was addressed to Ngidi Ruth Magu and not the claimant. A copy of the said disconnection notification is hereby annexed and marked as Exhibit 'D'.

From the depositions referred above of the supporting affidavit to the preliminary objection vis-à-vis the annexures attached therewith most especially Exhibits A and Exhibit D will leave no one in doubt that the name contained therein is that of one Ngidi Ruth Magu which is clearly different from the name of the claimant in this suit. In other words the contract for the supply of electricity to the property situate at Flat 3 Ngidi Ruth Magu's House Symack Extension Sokole HSE FCT, Abuja is between Ngidi Ruth Magu and the Abuja Electricity Distribution Company plc (ADEC), the Defendant/Applicant and not the Claimant/Respondent.

However, in the counter affidavit in opposition to the preliminary objection, the Claimant/Respondent deposed therein particularly at paragraph 3 thus:-

"In response to paragraphs 4, 5, 11, 12 and 13 of the Defendant's Affidavit in support of their preliminary objection, though the House Meter No: 54140841492 was registered with the name 'Ngidi Ruth Magu' the truth is that I am the actual person occupying the house in question that is being supplied with electricity who has suffered losses and injury (and not Ngidi Ruth Magu) by the act of the Defendant and as such, I have sufficient interest in this matter and the Defendant has consistently been dealing with me as their customer and has held me as their customer in the following instance.

Nevertheless, it shows from the foregoing that the Claimant/Respondent is not privy to the contract between Ngidi Ruth Magu and the Defendant/Applicant. In this respect, see case of REGISTERED TRUSTEES OF MASTERS VESSEL MINISTRIES (NIG) INCORPORATED VS EMENIKE & ORS. (2017) LPELR-42836 (CA) at pp 14-15, paragraph D-B where it was held thus:-

“The doctrine of privity of contract simply states that as a general rule, a contract cannot confer rights and obligations on persons not party to the contract. A contract is only enforceable at the instance of parties to it and a third party is thus, generally prevented from seeking the enforcement or otherwise of a contract to which is not a party.....”

Similarly, it was held in the case of MAKWE VS NWUKOR & ANOR (2001) LPELR- 1830 (SC) at page 16-17, paragraphs E-F that:-

“.....It is trite law that as a general rule a contract affects only the parties thereto and cannot be enforced by or against a person who is not a party to it. In other words only the parties to a contract can sue or be sued on the contract and, generally a stranger to a contract can neither sue nor be sued on the contract even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. In the same vein, the fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue or to be sued upon the contract...”

See also the cases of MALONE VS LASKEY (1907) 2 K.B 141 CA; FREDERICK OBOYE NEGBENEOR VS EUDORA OMOWUNMI NEGBENEBOR (1971)1 ALL NLR 210; IKPEAZU VS AFRICAN CONTINENTAL BANK LTD (1965)1 N.M.L.R 374 at 379.

At this juncture, it can be deduced from decided authorities cited above that even though the Claimant/Respondent is the one occupying the residence in which Ngidi Ruth Magu entered into a contract with the defendant/Applicant to supply electricity to, in other words, the said contract can be said to have been

entered for the benefit of the Claimant/Respondent the Claimant/Respondent cannot sue in his name being a stranger to the said contract I so hold.

Moreso, I have gone through the affidavit in support of the originating Summons and there's nowhere that it was deposed therein that the Claimant/Respondent has entered into a contract directly with the Defendant/Respondent. Therefore, the contention of the Claimant/Respondent that he is the one that suffered losses and injury by the Act of the Defendant/Applicant as well as that the Defendant/Applicant has dealt with him in so many instances as their customer. I so hold.

To this end and without much ado. I hereby resolve the sole issue for determination in favour of the Defendant/Applicant against the Claimant/Respondent and hold very strongly that the Claimant/Respondent has no locus standi to institute this suit.

In the light of the above, I refer to the case of ONYEAMA VS OBODOH (Supra) at 593, paragraphs G-H where it was held this:-

“.....Where a Plaintiff has no locus standi to sue, the court itself would have no jurisdiction to hear the case and its consequential order will not be a dismissal of the case because if a court has no jurisdiction in a matter it can not enforce a coercive power on the case.....”

Consequently, the sole issue having been resolved in favour of the Defendant/Applicant, this court can not proceed to consider the other issues for determination formulated by the Defendant/Applicant because they are no longer necessary which I believe informed my earlier decision to narrow down the four issues to one in the first place. Also, I will equally not bother myself to consider the second motion on Notice with motion No. M/6078/2020 same having been over taken by events.

In the final analysis, this preliminary Objection/Motion on Notice succeeds and I hold very strongly that this Honourable Court lacks the requisite Jurisdiction to entertain this suit filed by the Claimant/Respondent vide originating Summons as the said Claimant/Respondent lacks the locus standi to institute this suit. In

view of that, this suit with suit No. CV/2316/19 be and is hereby struck out in its entirety. I make no order as to cost.

Signed

Hon. Justice Samirah Umar Bature

17/07/2020

Defendant's Counsel: We are very grateful for this well considered and erudite Ruling.