

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO: CV/2194/2020
DATE: : TUESDAY 14TH DECEMBER, 2021

BETWEEN:

F & V LIGHT LIMITED CLAIMANT

AND

1. AMARACHI C. IWUANYANWU } DEFENDANTS
2. SUN GOLD ESTATE LIMITED }

RULING

The Claimant approached this Court vide a writ of summons brought pursuant to Order 35 of the Rules of this Court Claiming the following from the Defendants;

1. The sum of N40,642,900.00 (Forty Million, Six Hundred and Forty Two Thousand Nine Hundred Naira) only being the outstanding balance of the purchase price paid for shops S.A. 2.1 and S.A 2.2 by the Claimant to the 1st and 2nd Defendants.
2. 10% interest on the judgment sum from the date of judgment till liquidation thereof.

3. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstance.

In line with law and procedure, the said writ was marked undefended and the 14th January, 2021 was fixed for hearing.

The Defendant upon service of the marked writ filed his notice of intention to defend the action on merit.

Parties relied on their respective affidavits before me on the 14th October, 2021 in urging the court to enter judgment on one hand and transfer the matter to general cause list, on the other hand.

The case of the Claimant as distilled from the affidavit in support of the writ is that the Claimant

was pursuant to his Tenancy, made an offer by the 1st and 2nd Defendants for purchase/acquisition of the shops S.A 21 and 22 she was renting at Heroes plaza.

That the offer for purchase of the shops made to the Claimant by the 1st and 2nd Defendants was in respect of shop S.A 2.1 and S.A 2.2 she was renting for a total purchase price in the sum of N30,195,000.00 (Thirty Million, One Hundred and ninety Five Thousand Naira only) and N26,280,000.00 (Twenty Six Million, Two Hundred and Eighty Thousand Naira only) respectively.

It is the deposition of the Claimant that further to the issuance of the said allocation, the Claimant through its C.E.O and managing Director Mr.

Victor ChidiEzeibeam in several tranches paid the full purchase price of shop S.A 2.1 in the sum of N30,195,000.00 (Thirty Million, on Hundred and Ninety Five Thousand Naira) only and part payment of the purchase price of shop S.A 2.2 in the sum of N13,447,900 (Thirteen Million, Four Hundred and Forty Seven Thousand Nine Hundred Naira) only. Copies of some of the receipts of payment made to the 1st and 2nd Defendant were attached and marked as Exhibit “B”.

That the total sum pursuant to the allocation paid by the Claimant in respect of shops S.A 2.1 and S.A 2.2 she was renting at Heroes plaza was N43,642,900.00 (Forty Three Million, Six

Hundred and Forty Two Thousand Nine Hundred Naira) only.

That on the 15th of December, 2018, the Claimant received a solicitor's letter from **Messrs Yakubu, Gana & Co.** demanding for the payment of rent for shops S.A 2.1 and 2.1 which she had purchased from the 1st and 2nd Defendants acting as facility managers and agents of Heroes Properties Ltd, the owners of the said plaza.

That the Claimant made several demands to the Defendants to resolve the matter which failed. Claimant petitioned the Economic and Financial Crimes Commission (EFCC) over the 1st and 2nd Defendants conduct which is akin to cheating, criminal breach of trust, fraud and obtaining by false pretense.

That as a result of the petition, the 1st Defendant was picked by EFCC for interrogation.

Subsequently, the 1st Defendant deposited a Bank draft of N3,000,000.00 (Three Million Naira) only as part payment of the outstanding sum. 1st Defendant further pleaded and offered to the Claimant in lieu of cash a three bedroom apartment located at Wuye District Abuja valued at N32, 000,000.00 (Thirty Two Million Naira) only.

That till date the 1st Defendant failed and continued to fail, neglected, ignored and declined to transfer the title deed to the property he pleaded at EFCC Custody as agreed, and that the 1st and 2nd Defendants are still indebted to the Claimant to the sum of N40,642,900.00 (Forty Million, Six

Hundred and Forty Two Thousand Nine Hundred Naira) only being the outstanding balance of the purchase price paid by the Claimant for shops S.A 2.1 and S.A 2.2 at Heroes plaza Abuja.

Upon service, the Defendants filed their notice of intention to defend the action on merit support by affidavit. The Defendants denied all the paragraphs in the affidavit of the Claimant except 1 -5.

It is the deposition of the Defendants that the Defendants on record, do not know the Claimant and did not deal with her in respect of any shop located at Heroes Plaza.

That the 1st Defendant has no dealing, whatsoever with the Claimant, the 2nd Defendant on record had business dealings with one ChidiEzeibeam.

That the averment of the Claimant in paragraph 8 is false, that the purchase/acquisition of the shops was never made to the Claimant, rather to one ChidiEzeibeam. The Defendants shall be relying on Exhibit “A” as annexed by the Claimant.

That the 1st Defendant never issued the Claimant any allocation letter. That the receipts of payment of ChidiEzeibeam made to the 2nd Defendant exhibited and relied upon by the Claimant shall equally be relied upon by the Defendants. The payment of any sort was never made to the 1st Defendant.

The Defendants further aver that what ChidiEzeibeam paid is not up to N43 Million, the various amounts contained in the exhibit receipt is far less as the amount he owed Mr. ChidiEzeibeam not the Claimant.

The Defendants further aver that the Claimant never petitioned Economic and Financial Crimes Commission (EFCC), rather one ChidiEzeibeam petitioned the Defendants. The Defendant shall rely on the Claimant Exhibit “G” as a proof that the Claimant never petitioned Economic and Financial Crimes Commission (EFCC).

That the Defendants offered Mr. ChidiEzeibeam Victor the three – Bedroom apartment in lieu of the money collected by the 2nd Defendant, which

is less than N32 Million. That the offer was never made to the Claimant **F & V Lights Limited**.

The Defendants categorically states that they are not indebted to the Claimant to the tune of N43,000,000.00 (Forty Three Million Naira), rather she is indebted to Mr. ChidiEzeibeam Victor to the amount stated in the receipt issues to him.

That the Defendants have defense on the merit and it will be in the interest of justice to transfer the suit to the general cause list for proper trials.

On the whole, Claimant filed further and better affidavit in support of the Undefended List after being served with notice of intention to defend by the Defendants that the Defendants have no

defence to his action and that the court should enter judgment in his favour.

COURT:-

It is settled law, that undefended list procedure is sui-generis. Being an affidavit bound proceedings, parties shall always ensure strict compliance with the Rules.

It is my observation that the Defendant, who was served the Writ of Summons and statement of claim under the undefended list, filed Notice of Intention to defend with an accompanying affidavit in Support in obedience to the procedure under Order 35 Rules 3(1) & (2) of the High Court of FCT Civil Procedure Rules 2018.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand.

UBA PLC. VS. JAGABA (2007) 5 SC 1.

I have read and assimilated the depositions i.e the evidence of Claimant in the affidavit in support of his claim.

I have equally seen the depositions of the Defendants in the affidavit in support of their Notice of Intention to defend.

An action begun by way of undefended list is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. ***ATAGUBOR & CO. VS. GURA (2005) 2 SC. (Pt. 11).***

Even though the undefended list procedure is a quick way of obtaining Judgment by a Plaintiff, it is not

however designed to shut out a Defendant who can show that there is a triable issue or triable issues.

SCIRROCOCO INT. LTD. VS. UNITY BANK PLC. (2016) CA.

The facts averred in affidavit in support of Plaintiff's case are such that when put side by side with those of the Defendant, certainly the reliefs claimed by Plaintiff cannot be resolved under Order 35 of the Rules of this Court.

Indeed, I am empowered by Order 35 Rule 3(2) High Court Rules (Civil Procedure) to transfer case which though filed under the undefended list procedure, to the general cause list in situations where Defendant is or are able to show that there is or are triable issues to allow the matter go into full trial. I hereby order that evidence be led in prove of

the respective cases of Plaintiff and Defendant in that Order.

I so transfer **Suit No. FCT/HC/CV/2194/2020** to the General Cause List.

Justice Y. Halilu
Hon. Judge
14th December, 2021

APPEARANCES

CHINONSO C.O. Esq. – for the Claimant.

SUNNY ANYANWU, Esq. with NGOZI O., Esq. and ADANNA N., Esq. – for the Defendants.