IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA

ON WEDNESDAY, 24TH FEBRUARY, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2008/2016

BETWEEN

STANBIC IBTC BANK PLC. --- CLAIMANT

AND

1. **PINNACLE INTERNATIONAL ACADEMY LTD.**
2. **MR. ASIBOR VICTOR**
3. **MRS. ASIBOR MARTHA EHINOMEN**

DEFENDANTS

JUDGMENT

Theplaintiff [claimant]filed the writ of summons in this suit on 20/6/2016. Its claims were the sum of N16,679,222.19being the defendants' indebtedness as at 31/3/2016; andinterest on the said sum at the rate of 36% per annum until same is paid.TolulopeTobun filed an affidavit in support of the claims. I entered the suit for hearing in the Undefended List. On 18/11/2016, defendants filed a notice of intention to defend the suit together with the affidavit of Barrister Yusuf AdamuMamza. On 24/11/2016, the Court granted leave to the defendants to defend the suit and transferred the case to the general cause list for hearing. The Court directed the parties to file their pleadings.

The pleadings in this case are: [i] the plaintiff's statement of claim filed on 6/2/2017; [ii] the defendants' statement of defence filed on 31/1/2018, and [iii] the plaintiff's reply to the statement of defence filed of 9/3/2018.

In paragraph 15 of the statement of claim, the plaintiff claims against the defendants as follows:

1. The sum of N16,679.222.19[sixteen million, six hundred and seventy nine thousand, two hundred and twenty two Naira, nineteen Kobo] being the defendants' indebtedness to the plaintiff as at 31/3/2016.

2. Interest at the rate of 36% per annum on the said sum of N16,679,222.19 [sixteen million, six hundred and seventy nine thousand, two hundred and twenty two Naira, nineteen Kobo] from 31/3/2016 until the execution of the Judgment of this Honourable Court [in this Suit] or payment of the defendants' indebtedness to the plaintiff.

3. Cost of this action.

At the trial, TolulopeTobun, a staff of the plaintiff, gave evidence as PW1. He adopted his statement on oath filed on 6/2/2017 and his further statement on oath filed on 9/3/2018. PW1 tendered Exhibits A, B1, B2, C, D1, D2, D3, E1, E2, F, G, H, J1, J2 & J3. Plaintiff closed its case on 8/6/2020. On that day, learned counsel for the defendant informed the Court that: *"We do not intend to call any witness. We rest our case on the plaintiff's case."*

Evidence of the plaintiff:

The evidence of TolulopeTobun, a staff of the plaintiff at its Maitama, Abuja branch, is that the 1st defendant is a company registered to provide academic and scholarly services. 1st defendant's office is located at Plot 43, Okeho Close, off Oduduwa Crescent, 2/2 Kubwa, Abuja. 2nd& 3rd defendants are directors of the 1st defendant.On 19/7/2013, the 1st defendantsecured from the plaintiff a Term Loanof N14,622,390.00. The said Term Loan was granted for the purpose of financing the purchase of various boarding items for the 1st defendant's School. The Term Loan was duly accepted by the 1st defendant on 22/7/2013.The 1st defendant defaulted in the repayment of the said facility. At the request of the 1st defendant, the plaintiff re-scheduled its indebtedness by means of an Amendment of Banking Facility: Variation Letter dated 18/8/2014 to a limit of N12,921,249.01, which was duly accepted by the defendants on 22/8/2014. The 1st defendant took and utilized the said Term Loan.

The Term Loan received by the 1st defendant was respectively guaranteed byits directors i.e. the 2nd&3rd defendants. The 1st defendant severally defaulted in the repayment of the facility and has failed or refused to effect repayments in instalmentsor repayment of the entire loan facility as agreed. The plaintiff served on 1st defendant a final demand notice dated 10/11/2015 for repayment of N15,552,426.85 being the outstanding sum on the facility as at 9/11/2015. In response, the 1st defendant wrote an undated letter to the plaintiff pleading for a moratorium of 5 years to start the repayment of its indebtedness.The plaintiff

by its letter dated 17/11/2015 refused the 1st defendant's request. Due to the 1st defendant's refusal or failure to liquidate its indebtedness, plaintiff served respective notice of demand dated 13/11/2015 on 2nd& 3rd defendants made in pursuance of their respective Personal Guarantee to repay the 1st defendant's said indebtedness.

The further evidence of PW1 is that the defendants have refused to liquidate their indebtedness to the plaintiff, which is the sum of N16,679,222.19 as at 31/3/2016. The statements of the 1st defendant's accounts with the plaintiff show the defendants' indebtedness to the plaintiff.

In hisfurther statement on oath filed on 9/3/2018, PW1 gave evidence in response to the averments in the statement of defence. Part of his evidence is that the plaintiff shall rely on the 1st defendant's Fixed Term Loan accounts numbers 0008707883 and 0006776788. The plaintiff only gave the 1st defendant a loan facility to purchase boarding house items as stated in the Term Loan Letter.The defendants did not inform the plaintiff at any time material to the grant of the loan that the loan facility would be utilized for the lease of any property including the property at No. 6 Kubwa District Extension, Abuja.

PW1 tendered the following documents:

1. Term Loan Letter dated 19/7/2013 from the plaintiff addressed to the directors of the 1st defendant and the attached documents: Exhibit A.

2. Personal Guarantee of the 2nd defendant dated 19/7/2013: Exhibit B1; Personal Guarantee of the 3rd defendant dated 19/7/2013: Exhibit B2.

3. Plaintiff's letter dated 18/4/2014 to the directors of the 1st defendant titled: Amendment of Banking Facility: Variation Letter: Exhibit C.

4. Plaintiff's letter to the managing director of the 1st defendant dated 10/11/2015: Exhibit D1; the plaintiff's letter to the 2nd defendant dated 13/11/2015: Exhibit D2; the plaintiff's letter to the 3rd defendant dated 13/11/2015: Exhibit D3.

5. Letters from Thames Partners to M/S Collins A. Aimuan& Co. dated 22/3/2017 and 9/5/2017: Exhibits E1 & E2 respectively.

6. Letter from Thames Partners to the Registrar of the Court dated 4/4/2017: Exhibit F.

7. 1st defendant's undated letter to the plaintiff signed by the 3rd defendant: Exhibit G.

8. Plaintiff's letter to the 1st defendant dated 17/11/2015: Exhibit H.

9. Statement of account of the 1st defendant in the plaintiff from 27/12/2013 to 8/5/2016 for account number 0008707883: Exhibit J1; Statement of account of the 1st defendant in the plaintiff from 6/8/2013 to 8/5/2016 for account number 0006776788: Exhibit J2; Certificate in support of reliance on computer generated documents -Section 84[4] of the Evidence Act signed by PW1 on 20/6/2016: Exhibit J3.

When PW1 was cross examined, he stated that the loan was granted from Maitama Branch of the plaintiff. On 19/7/2013 when the letter of offer of the loan was granted, he was in Kubwa Branch. Obi Iheanacho and Ogbodo Peter were respectively the branch manager and account officer who signed the offer letter for the loan. He did not participate in the loan transaction and he did not sign any document. He is in Court to represent the plaintiff; he researched and studied the papers before he deposed to his statements on oath. He did not know if the defendant's school has been closed down but he visited the school in 2016.The defendants made some payments as reflected in the statement of account.

The cross examiner [Collins A. Aimuan Esq.] suggested toPW1 that before the suit was filed, defendants paid N4,743,765.70 which is principal repayment. In response,the PW1 said from his rough estimate having gone through the statement of account, the payment of about N4 million was made. 4 accounts were opened for the customer in respect of the loan. Out of the 4 accounts, 2 are the business accounts while 2 were created for the fixed loan account. Out of the 2 accounts created for the fixed term loan, only one was running when the suit was filed. He is aware of the loan account called *"non-chequeing account"*, which means that defendants cannot withdraw from the account. From paragraph 9.3 of the loan letter, a *"non-chequeing account"* was created to warehouse the tuition fees and other fees. The amount in that account as at 6/2/2017 was N670,000.

The PW1 further testified under cross examination that from the statement of account attached to the letter [Exhibit E2], the amount received from 21/8/2013 to 19/1/2017 is N2,286,650.38; the account number is 0006836099. This is the *"non-chequeing account"*because no cheque passed through the account. He admitted that the plaintiff caused the 1st defendant to take insurance policy on the transaction to the tune of N15 million in line with clause 7.1.2 of the offer letter and the 1st defendant paid the premium stated in clause 5.3.3 thereof. PW1 was asked whether plaintiff has demanded the amount of the insurance policy from the insurance company that gave insurance cover since its case is that the 1st defendant has not repaid the loan. PW1 said insurance on assets can only be claimed when such asset has issues for which a claim can be made. There is no insurance on the transaction. The insurance is on the assetsof the borrower in clause 7.1.1 of the offer letter.

The payment of N1,159,599.63 on 30/9/2013 into the non-chequeing account is for principal and interest. The payment of N763,166.76 on 2/10/2013 was principal loan repayment. On 9/2/2016, the 1st defendant paid back N351,000; that was the unsatisfied demand of principal and interest on the loan. The sum of N100,000 paid by the 1st defendant on 29/1/2015 is interest payment for the loan. He is not aware that Pinacle International Academy was closed down by FCDA on 23/10/2013. He maintained that the sum claimed in this action is the sum owed by the defendants as at 31/3/2016. The transaction was not a partnership.

Issues for determination

When trial ended, Marcel Osigbemhe Esq. filed the plaintiff's final address on 29/6/2020. Collins A. Aimuan Esq. filed defendants' final address on 21/9/2020. On 28/9/2020, Marcel Osigbemhe Esq. filed the plaintiff's reply on points of law. The final addresses were adopted on 3/12/2020.

In the plaintiff's final address, Marcel Osigbemhe Esq. formulated one issue for determination, to wit:

> Whether the plaintiff is not entitled to the judgment of this Honourable Court given the uncontroverted, unchallenged evidence of the plaintiff, inclusive of the clear admission by the 1st defendant that it is indebted to the plaintiff.

For his part, Collins A. Aimuan Esq. distilled four issues for determination. These are:

1. Whether the testimony by TolulopeTobun, the plaintiff's sole witness as contained in his statement on oath, amounts to hearsay as PW1 was not a party to the loan transaction in question and was only informed of the facts which he has deposed to before this Court; and whether failure to call the two signatories to the term loan letter does not amount to a presumption that the evidence they would have given would not be in favour of the plaintiff.

2. Whether the plaintiff ought to have sued the insurance company or joined the insurance company to this suit as co-defendant when it discovered that the purported loan granted to the defendants had failed, having made the defendants to take an insurance coverage of N15,000,000 [Fifteen Million Naira] at the beginning of the transaction for which premium was paid by the defendants in accordance with the *"term loan letter"* [Exhibit A].

3. Whether the plaintiff has proved the claim of N16,679,222.19 [[Sixteen Million, Six Hundred and Seventy Nine Thousand, Two Hundred and Twenty Two Naira, Nineteen Kobo] debt against the defendants having regard to the inability of the plaintiff to disclose the actual payment lodgments of the defendants in the non-checking account number: 0006836099 - plaintiff's Exhibit E2 - and other payments made by the defendants to the plaintiff as evidenced in the various statements of accounts of the defendants.

4. Whether the transaction between the plaintiff and the 1st defendant evidenced by a *"term loan letter"* can be held to be obligatory against the defendants since a *"letter"* addressed to an individual does not convey an enforceable legal obligation on the addressee.

From the evidence before the Court and the submissions of learned counsel for the parties, I am of the considered opinion that there are three issues for determination in this action. These are:

1. Whether the evidence of TolulopeTobun [the PW1], an officer of the plaintiff, is hearsay evidence and therefore inadmissible.

2. Whether the plaintiff ought to have sued the insurance company which issued *"Comprehensive all risk insurance cover on the assets pledged as security"* for the loan facility by the 1st defendant in compliance with Clause 7.1.2 of the Term Loan Letter.

3. Is the plaintiff entitled to its reliefs against the defendants?

ISSUE 1

Whether the evidence of TolulopeTobun [the PW1], an officer of the plaintiff, is hearsay evidence and therefore inadmissible.

When PW1 was cross examined, he stated that the loan facility was granted from the plaintiff's Maitama Branch. On 19/7/2013 when the letter of offer for the loan [Exhibit A] was granted, he was in Kubwa Branch. Obi Iheanacho and Ogbodo Peter were respectively the branch manager and account officer who signed the letter of offer for the loan. The PW1 further testified that he did not participate in the loan transaction and he did not sign any document in respect thereof. He is in Court to represent the plaintiff; he researched and studied the papers before he deposed to his statements on oath.

Based on the above evidence, learned counsel for the defendants stated that hearsay evidence is evidence by a witness of what other people have said or

what other people have experienced; and not evidence of what the witness did or experienced personally. The general consequence is that hearsay testimony is not considered as evidence and should be disregarded. It was submitted that the law will not allow PW1 to rehearse the facts of the transaction conducted by Mr. Ogbodo Peter and Mr. Obi Iheanacho. The PW1 did not tell the Court why Mr. Ogbodo Peter and Mr. Obi Iheanacho, who, by his admission, still work with the plaintiff or any other person who participated in the transaction were not called to give direct evidence about the transaction.

Collins A. Aimuan Esq. urged the Court to hold that the reason why Mr. Ogbodo Peter and Mr. Obi Iheanacho or any other person who participated in the transaction were not called to testify is that their evidence would have been injurious to the plaintiff's case. He referred to section 167[d] of the Evidence Act, 2011; and the case of **Friday Smart v. The State [2016] NGSC 77.** He stressed that case law has shown that it is important that key witnesses that participated in a transaction in question must be called to enable the court determine the truth or otherwise of the facts brought before it.He referred to **Chief Igbodim&Ors. v. Chief UgbedeObianke [1976] 9-10 SC 187**and **Kate Enterprises Ltd. v. Daewoo [Nig.] Ltd. [1985] 2 NWLR [Pt. 5] 116**. Learned defence counsel concluded that it would occasion gross injustice to use the hearsay evidence of PW1 to put a financial burden on the defendants.

In the plaintiff's reply on points of law, Marcel Osigbemhe Esq. argued that PW1 is competent to testify about the loan transaction even though he was not

one of the officials who negotiated same. The position of the law is that any agent or servant can give evidence to establish any transaction on behalf of a company whether or not the agent or servant took part in the transaction. He relied on **Kate Enterprises Ltd. v. Daewoo Nig. Ltd. [supra],Ishola v. SGB Nig. Ltd. [1997] 2 NWLR [Pt. 488] 405**, **Ogbaji v. Arewa Textile Company Plc. [2000] FWLR [Pt. 24] 1493** and other cases. Learned plaintiff's counsel submitted that in the instant case, the transaction between the parties was documented and any employee or officer of the plaintiff can give evidence of the transaction.

In the case of**Saleh v. Bank of the North Ltd. [2006] 6 NWLR [Pt. 976] 316,** the Supreme Court held that a company is a juristic person and can only act through its agents or servants. Consequently, any agent or servant can give evidence to establish any transaction entered into by a juristic personality. Even where the official giving the evidence is not the one who actually took part in the transaction on behalf of the company, such evidence is nonetheless relevant and admissible and will not be discountenanced or rejected as hearsay evidence. See also **Kate Enterprises Ltd. v. Daewoo [Nig.] Ltd. [supra].**

The above decision resolves this issue against the defendants without further assurance. In line with the above principle, I hold that PW1, as an employee or officer of the plaintiff, is competent to testify on behalf of the plaintiff in respect of its loan transaction with the defendants notwithstanding that he did not personally participate in the loan transaction.Thus, theevidence of PW1 in

proof of the plaintiff's case is not hearsay. To my mind, the insistence of learned defence counsel that Mr. Ogbodo Peter and Mr. Obi Iheanacho who signed the Term Loan Letter [Exhibit A] or any other officer of plaintiff who participated in the transaction must be called as a witness instead of PW1 will negate or undermine the very essence of the plaintiff's juristic personality.

ISSUE 2

> ***Whether the plaintiff ought to have sued the insurance company which issued the "Comprehensive all risk insurance cover on the assets pledged as security" for the loan facility by the 1st defendantin compliance with Clause 7.1.2 of the Tem Loan Letter.***

Clause 7 of the Term Loan Letter [Exhibit A] provides for *"Security Required"* for the facility or security for the borrower's indebtedness to the Bank. Clause 7.1.2 thereof provides:

> *Comprehensive all risk insurance cover on all assets pledged as security to the tune of N15,000,000 [fifteen million Naira] and life cover on Mrs. Asibor Martha Ehinomen by the Bank's approved insurance company through the Bank's Bancassurance Unit with the Bank noted as "First Loss Payee".*

Clause 5.3.3 of Exhibit A provides that *"Upon acceptance of the Term Loan Letter a Keyman Insurance Premium fee of 0.8% flat of the Loan limit will be debited into the Borrower's current account held with the Bank."*

Learned counsel for the defendants referred to Black's Laws Dictionary for the definition of *"Insurance"* as a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent event. He stated that the defendants were made to insure the*"purported loan agreement"* for which they paid premium to the plaintiff as at when due in line with the provisions of Clause 7 of the Term Loan Offer. From Clause 7, the plaintiff selected the insurance company. It was contended that from the evidence of PW1, the plaintiff never found any problem with the insurance policy of the defendants but when the purported loan had a challenge, the plaintiff never called on the insurance company to pay up or make good the insurance policy.

Mr. Collins A. Aimuantherefore urged the Court to hold that: [i] it would amount to double payment or double jeopardy to call upon the defendants to be responsible for the purported debt in the plaintiff's claim; or [ii] the failure of the plaintiff to sue the insurance company to recover the insurance policy sum or to join the insurance company as co-defendant in this suit renders the plaintiff's case ineffectual and incompetent; or [iii] the plaintiff has recovered the amount claimed from the insurance company without informing the defendants.

The viewpoint of Mr. Marcel Osigbemhe in the plaintiff's reply on points of law is that the plaintiff is not compelled to join the insurance company as a party in this suit because there is no privity of contract between it and the insurance company. He referred to **Ikpeazu v. African Continental Bank Ltd.**

[1965] N.L.R. 374 to support the principle that generally a contract cannot be enforced by a person who is not a party to it, even if the contract is made for his benefit and purports to confer the right to sue upon him.

Now, part of the argument of learned defence counsel is that the defendants were made to insure the *"purported loan agreement"*. With profound respect, this is a clear misconception of Clause 7.1.2 of the Term Loan Letter, which required a comprehensive insurance on the *"assets pledged as security"* for the loan to the tune of N15,000,000. The Court accepts the evidence of PW1 that insurance on the asset[which belongs to the defendants] can only be claimed when such asset has issues for which a claim can be made; and there is no insurance on the loan transaction.

There is no evidence that the asset pledged by the defendants as security for the loan has any issue for which insurance claim can be made. Even if there is such evidence, my humble view is that such claim can only be made by the defendants who are parties to the contract with the insurance company. I agree with learnedplaintiff's counsel that there is no privity of contract between the plaintiff and the insurance company. It follows that the plaintiff could not have sued the insurance company for the claims in this case. The Court rejects the submission of learned defendants' counsel that the failure of the plaintiff to sue the insurance company to recover the insurance policy sum or to join the insurance company as co-defendant in this suit renders the case ineffectual and incompetent.Issue No. 2 is therefore resolved against the defendants.

ISSUE 3

Is the plaintiff entitled to its reliefs against the defendants?

The claims of the plaintiff are predicated on the Term Loan Letter dated 19/7/2013 [Exhibit A]. By Exhibit A, the sum of N14,622,390.00 was granted as loan to the 1st defendant, which was varied to a limit of N12,921,249.01 by a letter titled: *Amendment of Banking Facility: Variation Letter*dated 18/8/2014 [Exhibit C].

Let me first consider - as a preliminary issue - the argument of learned counsel for the defendant under his Issue No. 4 that the Term Loan Letter [Exhibit A] does not constitute an enforceable contract document in law. He submitted that Exhibit A is not a mutual contract formulated and signed by the plaintiff and the defendants. It is a letter addressed to the 1st defendant; and in law, the contents of a letter are not binding on the recipient and cannot be enforced in court against him.

In the plaintiff's reply on points of law, learned counsel for the plaintiff stated that the facts presented by PW1 show that there was a loan agreement between the plaintiff and the 1st defendant, which loan was guaranteed by the 2nd& 3rd defendants. He referred to **Biosola Nig. Ltd. &Anor. v. Mainstreet Bank Ltd. &Ors. [2016] NGCA 105**to support the principle that there is a valid contract where there is offer, acceptance and consideration.

The contents of the Term Loan Letter [Exhibit A] areclear and unambiguous. The first sentence in Exhibit A is that Stanbic IBTC Bank Plc. [*"the Bank"*] offers to provide Pinnacle International Academy Limited [*"the Borrower"*] with a Term Loan [*"the Loan"*] subject to the terms and conditions set out in this Term Loan Letter of Offer [*"the Term Loan Letter"*] and on the attached general terms and conditions. The Acceptance column in Exhibit A, which was signed bythe 2nd& 3rd defendants reads:

> *We are pleased to accept the offer for the loan on the terms and conditions contained in this Term Loan Letter and on the attached general terms and conditions.*
>
> *For and on behalf of Pinnacle International Academy Limited.*
>
> *[Sgd. by 2nd& 3rd defendants]*
>
> *This Term Loan Letter is accepted and the authority of the persons executing the Term Loan Letter on behalf of the Company hereto granted pursuant to a Resolution of the Board of Directors of the Company dated 22, July 2013 [Date of Board Resolution].*

From the foregoing, I have no doubt in my mind that the Term Loan Letter constitutes an enforceable contract between the plaintiff and the 1st defendant as there is an offer of a loan facility by the plaintiff, an acceptance by the 1stdefendant and consideration for the contract. The Court hereby rejects the above submission of learneddefence counsel.

I now turn to consider whether the plaintiff is entitled to its reliefs.Learned plaintiff's counsel stated that the evidence of PW1has shown that: [i]in July, 2013, the plaintiff granted a loan facility in the sum of N14,622,390.00 to the 1st defendant, which was variedin August 2014 to a limit of N12,921,249.01; [ii]apart from other charges and fees, the said loan was given at an interest of 24% per annum [which may be varied from time to time]; and a default interest rate of 12%above the interest rate of 24% per annum; [iii] the loan was guaranteed by the 2nd& 3rd defendants vide Exhibits B1 & B2; and [iv] the 1st defendant has severally defaulted in the repayment of the said loan facility and the 2nd& 3rddefendantshave failed in their obligation [as guarantors] to repay the loan.

Mr. Marcel Osigbemhe argued that the statements of Account Numbers 0008707883 and 0006776788 [the Term Loan accounts] - which are respectively Exhibits J1 & J2 -clearly showed the various payments made by 1st defendant and what was outstanding on the loan facility before the plaintiff commenced this action. The statements of the two accounts also show the extent of the 1st defendant's default in repaying the loan facility.It was submitted that another fundamental point in the plaintiff's case is the 1st defendant's admission of its indebtedness in its letter, Exhibit G, where it sought a moratorium from the plaintiff. The 1st defendant's admission placed the burden on it to show that it had liquidated the indebtedness. He relied on **Afribank Nig. Plc. v. Alade [2000] NWLR [Pt. 685] 591**to support the view that a defendant who has

admitted its indebtedness should show how his indebtedness was discharged. He also referred to **Haido&Ors. v. Usman [2004] 3 NWLR [Pt. 859] 65.**

On the other hand, Collins A. Aimuan Esq. stated that when PW1 was cross examined, he [i.e. the learned counsel] ascertained that the 1st defendant repaid the sum of N4,743,765.70 to the plaintiff. PW1 admitted thatthe 1st defendant made certain repayments to the plaintiff and that from the statements of the various accounts of the 1st defendant in the plaintiff, the 1st defendant repaid about N4 million. According to the learned counsel, the question which this admission raises is why the plaintiff did not mention in its pleadings that the defendants made efforts to repay the purported loan.

Mr. Collins A. Aimuanfurther posited that the plaintiff merely brought bank statements as alleged evidence of the sum claimed against the defendants and a plethora of cases have held that a bank statement of account is not sufficient evidence of the existence of a debt. He cited the cases of **Wema Bank Plc. v. Osilaru [2007] LPELR-8960 [CA],Alhaji Hassan Bello & Sons Ltd. &Anor. v. Zenith Bank [2018] LPELR-43792 [CA]** and **Stephenson Standard Company Ltd. v. Yifa Nig. Ltd. [2012] LPELR-9797 [CA].** It was submitted that the plaintiff failed to prove how it arrived at the sum claimed.

Learned defence counsel also referred to the non-chequeing account, which was dedicated to the repayment of the loan. He argued that PW1 was not able to state to the Court how much the plaintiff has used this account to recover from the defendants. From the evidence elicited from PW1, it is clear that the

defendants actually paid several monies back to the plaintiff, whichit did not reconcile with the claim of N16,679,222.19 made in this action. Mr. Aimuanthen submitted that the Court cannot be an accountant in the monetary claim of a plaintiff to begin to reconcile accounts. He concluded that the claims of N16,679,222.19 and interest at the rate of 36% per annum do not reflect the true transaction between the plaintiff and the 1st defendant; and it would be unjust and inequitable for the Court to enforce the claims against the defendants.

In the plaintiff's reply on points of law, Mr. Osigbemheemphasized that the PW1 furnished the Court with relevant evidence of what the 1st defendant paid in relation to the loan facility as evidenced by the statements of Account Nos. 0008707883 and 0006776788, which are the Term Loan accounts. PW1 stated that all the payments made by the 1st defendant in relation to the loan facility are stated in the said statements of the two accounts. He submitted that since the defendants did not call any evidence to contradict the testimony of PW1, the Court is entitled to rely on his uncontradicted evidence.Learned counsel relied on **Bernard Okoebor v. Police Council &Ors. [2003] 7 SCM 127.**

In **Wema Bank Plc. v. Osilaru [supra]; [2008] 19 NWLR [Pt. 1094] 150,** it was held that a bank statement of account is not sufficient explanation of debit and lodgments in a customer's account to charge the customer with liability for the overall debit balance shown in the statement of account. Any bank which is claiming a sum of money on the basis of the overall debit balance of a

statement of account must adduce both documentary and oral evidence to show how the overall balance was arrived at. Investigation is not the function of a court. Therefore, it is not the duty of the court to embark on a voyage of discovery. It was further held that it was not sufficient for the DW1 to dump the statement of accounts on the court without explaining clearly the entries therein. See also the case of**Alhaji Hassan Bello & Sons Ltd. &Anor. v. Zenith Bank [supra].**

I agree with the learned counselfor the defendants that the PW1 did not give explanation of the entries in the statements of AccountNumbers 0008707883 and 0006776788 [Exhibits J1 & J2]as stipulated or prescribed in the above judicial authorities. Be that as it may, the critical question is whether the above principle is applicable to this case to defeat the claims of the plaintiff.

As rightly stated by Mr. Marcel Osigbemhe, one fundamental fact in this case is the 1st defendant's admission of indebtednessto the plaintiff in its undated letter, Exhibit G. To my mind, the 1st defendant's admission in Exhibit G that it is indebted to the plaintiff is a major fact that distinguishes this case from the cases where the above principle was applied.

In the letter dated 10/11/2015 [Exhibit D1], the plaintiff demanded the payment of the sum of N15,552,426.85*"being the total outstanding indebtedness under the Facility as at 09 November 2015. Please note that interest continues to accrue on this sum on a daily basis. ... This letter serves as a final demand notice on you to liquidate*

your indebtedness to the Bank. …" In its response vide Exhibit G, 1st defendant explained the reason for its inability to repay the loan and appealed for a moratorium for at least five [5] years without interest.For emphasis, I notethat in Exhibit G, the 1st defendant did not dispute its indebtedness to the plaintiff in the sum of N15,552,426.85. By the plaintiff's letter of 17/11/2015, the request of the 1st defendantfor a moratorium for at least five [5] years without interest was not granted.

In **Afribank Nig. Plc. v. Alade [supra],** it was held that a party who admits that he is indebted to the other party in a suit has a duty to show how his indebtedness was liquidated. The respondent having admitted the existence of the mortgage and his indebtedness to appellant, he must in order to succeed in his claims show how the mortgage was discharged or how the indebtedness was liquidated. The Courtreiterated the principle that a court can base its judgment on the admission of a party and held that the trial court ought to have found the respondent liable in debt to the appellant on his admission for at least the amount admitted by the respondent.

It is necessary to restate the trite principle that a fact admitted needs no further proof. See **Mr. Sunday AdegbiteTaiwo v. SerahAdegboro&Anor. [2011] 11 NWLR [Pt. 1259] 562.** In the light of1st defendant's admission of indebtedness in Exhibit G, I take the view that the Court can find the 1st defendant liable in debt to the plaintiff on its admission for at least the amount it admitted, which is the sum of N15,552,426.85.

I note the evidence of PW1 under cross examination that the 1st defendant paid back N351,000.00 to the plaintiff on 9/2/2016. It is my considered opinion that since this sum was paid after 10/11/2015 [the date of Exhibit D1] and after the 1st defendant's admission of indebtedness, it ought to be deducted from the admitted sum. This will reduce the 1st defendant's indebtedness to the sum of N15,201,426.85. It is trite law that the Court can grant less than the amount claimed by a party and not more. See the cases of**Ekpenyong v. Nyong&Ors. [1975] 2 SC 71;** and **FBN Plc. v. Oniyangi [2000] LPELR-9130 [CA].**

The plaintiff's claims are also against the 2nd& 3rd defendants. The evidence of PW1 that the 2nd& 3rd defendants respectively guaranteed the repayment of the loan vide Exhibits B1 & B2 was not challenged or controverted by the defendants. In fact one of the conditions for the loan facility in clause 7.1.4 of Exhibit A is: *"Joint and Several Guarantees of Mr. Asibor Victor and Mrs. Asibor Martha Ehinomen for the full Loan amount and any accrued interest thereon respectively supported with notarized statements of each guarantor's net worth."* The decision of the Court is that the 2nd& 3rd defendants are jointly liable with the 1st defendant for the repayment of its indebtedness to the plaintiff.

In relief 2, the plaintiff claims interest at the rate of 36% per annum on the sum claimedfrom 31/3/2016 until the execution of the Judgment of the Court or payment of the defendants' indebtedness to the plaintiff. It seems to me that this claim comprises pre-judgment interest and post-judgment interest.

From Clauses 5.1.1 & 5.2.1 of Exhibit A and the unchallenged evidence of PW1, the interest rate applicable to the loan granted to the 1st defendant is 24% per annum while the interest rate applicable upon default is 12% of the unpaid or outstanding sum per annum. That being the case, the plaintiff is entitled to pre-judgment interest on the judgment sum of N15,201,426.85 at the rate of 36% per annum from 1/4/2016 till today [24/2/2021].

The position of the law on award of post-judgment interest is that it is governed or regulated by the Rules of the Court. See **Berende v. Usman [2005] 14 NWLR [Pt. 944] 1.** By Order 39 rule 4 of the Rules of the Court, 2018, the Court has power to grant post-judgment interest *"at a rate not less than 10% per annum to be paid upon any judgment."* I grant post-judgment interest on the sum of N15,201,426.85 at the rate of 10% per annum from today [24/2/2021] until the judgment sum is paid.

CONCLUSION

From all that I have said, the conclusion of the matter is that the plaintiff's suit has merit. I hereby enter judgment for the plaintiff against the defendants as follows:

1. The sum of N15,201,426.85being the defendants' indebtedness to the plaintiff as at 31/3/2016.

2. Interest at that rate of 36% per annum on the said sum of N15,201,426.85from 31/3/2016 till today [23/2/2021]; and interest at the rate of 10% per annum from 24/2/2021 until the judgment sum is paid.

3. Cost of N100,000.

_____

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. Marcel Osigbemhe Esq. for the claimant.

2. Millicent Aimuan Esq. holding the brief of Collins Aimuan Esq.