

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 21ST DAY OF JANUARY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/1711/21

BETWEEN:

PAN OROBICA STRUCTURES LIMITED-----PLAINTIFF

AND

- 1. MORENO GROUP PLC..... DEFENDANTS**
- 2. TRINACRIA STAR AND COMPANY (NIG) LTD**
- 3. KMF CIVIC & INDUSTRIAL BUILDING NIG LTD**

JUDGMENT

In a Writ of Summons dated 12/5/16 and filed on 16/5/16 the Plaintiff claimed the following.

1. The sum of N16,202,075.90 only being the balance of the cost various steel pipe and steel moulds supplied by the Plaintiff to the Defendants throughout the 1st Defendant at 1st Defendant's request.
2. 10% interest on the said sum of N16,202,075.90 per annum with effect from 9th March, 2012 until the Final Liquidation of the Claim.

3. Cost of this Suit.

In this case the Plaintiff Pan Orobica Structures Limited claims that the Defendants Monero Group Plc, Trinicia Star and Company Nig. Ltd and KMF Civic & and Industrial Building Nig. Ltd were jointly indebted to it to the tune of N16,202,075.90 for the supply of fabricated steel pipes and mould, severally undertaken on request by 1st defendant through its M.D Nicola Bussacca on behalf of all the Defendants. That request made by the 1st Defendant was verbal. So also was the negotiations. It also claimed that the supplies were all invoiced and the goods way billed to the respective Defendants. It attached several of the invoices and way bills it called 2 witnesses – PW1&PW2. The 1st Defendant denied owing the Plaintiff and 2nd & 3rd Defendant denied having any business with the 1st Defendant and also denied writing any letter to pay the alleged money owed by the 1st Defendant to the Plaintiff.

Plaintiff called one witness while the 1st Defendant called 2 witnesses and the 2nd & 3rd Defendants jointly called one witness. Plaintiff tendered 10 documents; the 1st Defendant tendered one document while 2nd & 3rd Defendants tendered 2 documents –subcontract agreement.

In the written Address filed by the 2nd & 3rd defendants jointly they raised a sole issue for determination which is:

“Whether or not from the totality of facts pleaded by the Claimant and evidence in support thereof has proved its case to be entitled to the claims contain in its Statement of Claim?”

Counsel on their behalf submitted that they are different entity from the 1st Defendant. That they are subcontractors to Moreno Marinas Lagoon Plc which is a group member of the 1st Defendant at its Construction site in Lagos. They attached the 2 separate sub-Contract agreement dated 17/7/08 and 15/4/08 admitted and marked as Exhibit 12 & 13 respectively.

That the 2nd Defendant wrote a letter to Moreno Marinas Lagoon Plc to assist Moreno to pay the Plaintiff because of the Plaintiff inability to meet its financial obligation. That Plaintiff was Pa. but the company-1st Defendant denied ever receiving any other letter of demand from the Plaintiff to pay any other money thereafter. That they made it clear to the Plaintiff that issuance of LPO for the supplies was dependent on receipt of funds from their employer-the Lagos State Government. They submitted that Exhibit 9- Statement of Account

shows different balance –as at 8/3/12 is at N16,202,075.90 which is what the Plaintiff Claims is being owed to it by the Defendants and that as at 14/8/12 the balance is N6,990,872.88 all shows disparities. That neither PW1 nor PW2 alluded to the fact of joint Contract between the Defendants and the Plaintiff resulting to the Claim. That Plaintiff witness never stated which Defendant paid the sum of N8,972,239.62 or N83,313,145.89 credit in the credit balance of the statement of account.

Again that there was no distinction in line with the various invoices indicating the supplies made to each of the Defendant or who paid what and there is no specified liabilities of the Defendant.

In the Written address the 2nd & 3rd Defendants submitted the only document that shows that there was a transaction between the parties is **Exhibit 8-Bundle of Invoices and way bills**. That under cross-examination the PW1 stated that sometime the Defendants issue LPO and other times they did not.”

That he also said that he cannot remember if they did as it was a long time ago. That when the PW2 was asked whether the transaction was in writing or through phone call he answered that all the transactions was with the M.D and he does not

know whether it was by LPO or through verbal discussion. That it was his M.D that discussed with the people. That there was always a verbal discussion/agreement even before the LPO was issued.

That their M.D knows how about the Contracts. That the Defendant have separate legal entities who are individually capable of entering into contract and who are responsible for their liabilities.

That the Plaintiff could not distinctively state which Defendant owed them what amount in the N16,202,075.90 they claimed in this case. That the Plaintiff could not state the amount that is entitled to from each Defendant.

That the documents tendered-invoices, waybills and Statement of Account are all not self reconcilable.

That Exhibit 9 –Statements of Account and demand notices where self- conflicting and misleading having shown different figures at closing balance. That the Statement of 8/3/12 has N92,524,348.91 DR and N83,313,145.89 CR with a balance as of the claimed sum N16,202,075.90. That the Claimant failed to show their evidence the nexus between the document, they also could not explain why the demand letter for a debt to their

supposed debtor bearing the same date had two separate balances due to them.

That there is ambiguity in the said account and the document presented. That Plaintiff failed to give any oral testimony to clarify the said ambiguity as required by law. They referred to the case of:

**BUNGE VS.GOVERNOR RIVERS STATE (2006)
ALL FWLR (PT.325) 1 @37 S.C**

That there several inconsistencies on the evidence of the Plaintiff on Exhibit 8 & 9. They referred to the case of:

**ETA & ORS VS ITAM & ORS (2016) LPELR-
41239 (CA)**

That from the content of the said Exhibits and the testimony made under Cross-examination, no form of liability could reasonably be ascribed to any of the Defendants.

That Plaintiff failed to establish their claims against the Defendants. That Plaintiff failed to place any material facts to be entitled to the Judgment of this Court in their favour. That Plaintiff to adduce credible evidence to prove its case and defendants cannot be called to give evidence to rebut same. They referred to the case of:

NWAGA VS. REGD. TRUSTEES OF RECREATION CLUB(2004) ALL FWLR (PT.190) 1360 RATIO 2-6

They urged the Court to hold that there is no debt being owed by the 1st & 2nd Defendant to the Claimant. That there is also no evidence placed before the Court by the Plaintiff to sustain the Reliefs sought in this case.

On their own the 1st Defendant filed their Written Address on the 18/12/20 and they raised one issue for determination which is:

“Whether the Claimant has proved his case on preponderance of evidence”.

He submitted that the 1st Defendant had contended that it is not a necessary party in this suit as there was no cause of action nor did they consummate any contract with the Claimant and that Court should therefore dismiss the Plaintiff’s case.

In the said Written Address the 1st Defendant submitted facts admitted need no further proof. That Plaintiff tendered LPO evidencing instruction issued by the 3rd Defendant. That the 1st Defendant never awarded contract or supplied various steel pipes and mould. That it is never indebted to the Claimant. That the Claimant

admitted those facts in paragraph 10 Statement of Claim. Again that the letter of the 2nd Defendant is very instructive. That letter was dated 23/7/15.

That the LPO and Exhibit 8 and the sub-contract Agreement Exhibit 11 & 13 show that the fabrication of the steel was done in Kaduna and were required in Lagos for the 2 cohort as shown by the bill of quantities attached. The sub-contracts shows the parties to which and that the 1st Defendant is not one of them as shown in EXH 8,11,12&13. That the invoices were never acknowledged by the customer. That the name of 1st Defendant not in any of the document. That the 1st Defendant has stated that it is a holding copy and never received any still pipes and never issued any or executed of any contract with the plaintiff that plaintiff never controverted of that facts throughout this trial of this case. He referred to the case of:

**IBRAHIM V. ABDULLAH & ORS
(2019)LPELR-48984(SC)**

That his only invoices and document from the Clamant that has the name of the 1st Defendant that 2-3 Defendant confirmed makeup requests for Moreno to help meet up with its financial obligation to the claimant as seen in paragraph 8 of the 2&3 defendant point statement of defence.

That the document tendered by the claimant were dumped of the court especially the statement of account of 14/8/12 as they are not call witness to speak to the document. He refers and he lied on the case of:

**UBN V. MURTALA AIYELABOWO (2020)
20WRN104 @116-117.**

**SAMABEY INTERNATION V. CELTEL (2013)
LPELR 20758(CA).**

That they did not lead oral evidence to show how they said sum of ₦16,202,075.90 accident on the pent of the 1st defendant. That PW2 admitted preparing the statement of account on the on the instruction of clamant PW1.by that they said statement and evidence is a hear say evidence that if when prepaid by exhibit was prepaid according PW2 testimony but that it was for worded to the 1st defendant. But that under cross examination he said that it was to be for worded to the defendant by officer of PW2.that the fault was never corroborated at any time by PW1 and that no document evidence was tendered to show the service of that said Exhibit G on the 1st defendant. That plaintiff not in this case established be for the cannot how where and at what instance the 1st defendant on behalf of the other defendant made the request to witness of the said some in issue as

outstanding become owed to the claimant. He relied on the case of:

**Orok & Or V. Ikpeme & Ors
(2017) LPELR – 43493 (CA)**

On the interest claimant (10% per annum) with effect from 9/3/12 with final liquidation the 1st document submitted that no evidence was lead at any parts as to the significant of 9/3/21 date which the plaintiff put for word that interest in a comment transaction in based on agreement on parties or custom of such business. he referred to.....**DANA AIRLINE LTD V.AHUH @ (2019)LPELR 48954(CA).**

The IDC further submitted that defendant in jump issues, denied any form or relationship with claim and that claimant has neither been able to put forward document evidence shoe up any form of agreement/LPO or understanding with the 1st Defendant. He urged Court to dismiss the suit with substantial cost. Upon receipt of 1st -3rd Defendants' Final Addresses. The Plaintiff, Pan Orobica Structures Ltd. On their part, filed their Final Address on the 8/3/20.

It raised a sole Issue for determination which is:

“Whether the Plaintiff has proven its case to warrant Judgment in its favour?”

The Plaintiff submitted that it has proven its case through the testimonies of its 2 witnesses PW1 & PW2 and the credible documents it tendered as Exhibits 1-10 in support of their claims that the documents so tendered clearly reveals the true facts in their transactions between the Plaintiff and the Defendants showing that the sum in issue is owed to the Plaintiff. That Exhibit 7 the letter in response to the Plaintiffs Solicitor's Letters of demand for payment of the said sum which are Exhibit 5 & 6. That the said Letter –Exhibit 7 is from Moreno Group Plc has its logoed in the ...its letter head. The letter was signed by the Legal Officer of the same Moreno Group-Ami Sesso That 2nd & 3rd Defendants witness DW1 admitted under cross-examination in chief and cross-examination that he knows Ami Sesso and that he is also the legal officer or internal Solicitor of the Moreno Group Plc. He also stated that the said document emanated from them. That since the Defendant has admitted that fact, it needs no further prove. He relied on:

**OWENA TRANSPORT CO.LTD VS. OKONOGBO
(2018) LPELR-45221(CA)**

That in paragraph 20 of the oath of DW2, he denied the signatory of the Exhibit 7 but the DW1 stated clearly before this Court and admitted in his testimony in chief and cross examination that the

signatory was a staff and legal officer of the 1st Defendant. He urged Court to hold that the testimony of DW2 should not be relied on since he testified falsely in a bid to evade liability and deceive the Court. The same DW2 had also under cross examination denied that several documents emanated from Moreno all in a bid to exculpate the 1st Defendant. Such documents are Exhibit 2 which were all signed by the procurement Manager Itodo who is the DW1 in this case. Incidentally the same DW1& DW2 had in the respective paragraph of their oath affirmed the same Exhibit 2. That the clear contradiction of the DW2 testimonies and his Oath supports the claims of the Plaintiff.

He further submitted that it is trite law that evidence elicited from the cross examination is evidence in support of the party cross-examining. He relied on the case of:

AKOMOLAFE & ANOR VS. GUARDIAN PRESS LTD & 3ORS (2010) 1 SC 58@74

TALE & ORS VS. JANG (2011) LPELR-9231(CA)

He urged Court to discard the evidence. He also relied on the case of:

UKAEGBU VS. NWOKOLO (2009) 3 NWLR (PT.1127) 194@209

That the DW1 & DW2 also contradicted themselves in their testimony with respect to Exhibit 4 which is a response letter from Defendant to Plaintiff's Exhibit 3 dated 7/7/15 acknowledged by Monica Yarosou. That letter of Exhibit 3 was addressed to Moreno Group Plc and was received by Monica Yaroson. In this testimony DW1 admitted under cross-examination that the said Monica Yaroson is the protocol officer in the office of the M.D of the Moreno Group - 1st Defendant.

The DW2 in his evasive denial stated and contradicted himself by saying that Monica is with prequalification unit working directly with Bassey Ekanem in the same Moreno Group. He submitted that regardless of the different testimonies, the letters the responses emanating from the Defendants via Exhibit 4b is a clear admission of the Defendants indebtedness to the Plaintiff going by the content of the said Exhibits- Exhibit3.

That the letter headed paper in the said Exhibit 4 is noteworthy. That Exhibit 3 was clearly addressed to 1st Defendant but was received by said Monica- Protocol officer and that the response to the Exhibit 4 seemed to have emanated from the 2nd Defendant curiously. That in Exhibit 4, the inscription of Moreno Group is clearly revealed and underneath same is Trinacria Star & Company (Nig) Ltd was written in bold letters. That the whole

evidence in that Exhibit 4 clearly shows and confirm the relationship between the Defendants especially showing that 2nd Defendant is part of Moreno Group and has close connection as per the Exhibit 4. He urged the Court to so hold.

That in further prove of its case the Plaintiff tendered Exhibit 8 waybills and Invoices. It proves the supply of steel pipes and maulds as claimed by the Plaintiff. It proves the supply of steel pipes and maulds as claimed by the Plaintiff. That the waybills and invoices all has the names of the Truck Drivers their No. and signature. Those facts were not controverted. That Plaintiff made the supplies to the Defendants who equally received same as instructed by the 1st Defendant. They urged Court to so hold. He urged the Court to hold that Exhibit 7 & 4 confirmation of these transaction of the supply and the indebtedness. That the whole Exhibit 4 and the inscription showing names of 1st Defendant and 3rd Defendant shows that there is clear evidence of relationship between 1st & 2nd Defendant. He urged Court to so hold.

They urge Court to confirm that Exhibit 4 &

That at page 60 of Exhibit 8-LPO shows it emanated from 3rd Defendant approved by 1st Defendant who is also DW2 who signed the

document as well as the Director at the 3rd Defendant. That in the top right of the Exhibit 8 was written “required by Stelle” who the DW1 confirmed to be Mario Stella who the DW1 confirmed to be the head of Technical Dept. of Moreno Group who is also found to be the head of the 3rd Defendant as testified by the 2nd & 3rd Defendants witness and head of the 3rd Defendant as per the LPO. That DW2 also stated that the same Stella is the M.D of the 2nd Defendant.

That the above shows a trinity between the 1-3 Defendants in their Operation in this case. Hence it proves the claim of Plaintiff and its assertion for the joint and several claims against the 1st -3rd Defendants.

That Exhibit 10 clearly evidence payment from the 1st -3rd Defendant as regards the transaction as captured in Exhibit 9. Where the goods supplied were itemised, invoices No., payment made and the outstanding balance stated in respect to the Contract.

That all those exhibits were never controverted by the Defendants. That Exhibit 7 alone signed by legal officers of the 1st Defendant confirmed and admit the claims of the Plaintiff. That the attempt by the 1st Defendant to excruciate itself from the indebtedness and the antics of the DW2 to deny

knowledge of Exhibit 7 cannot award it in the face of the fact that the legal officers role in the said ordeal as per the letter headed paper.

The Plaintiff submitted that the denial by the Defendants in the face of Exhibits 4,7,8,9 &10 falls flat and cannot avail the Defendant jointly and severally. Evidence of payments by the 1st Defendant for the transaction are clear as highlighted in Exhibit 10.

That 2nd & 3rd Defendants admitted that they wrote to the 1st Defendant subsidiary requesting to make payments to the Claimant due to lack of fund. They never placed any such letter before the this Court. The DW1 said he had no such letter. He urged Court not to accept the said averments by the 1st & 2nd Defendant. They did not also show documents to support their claim, that Lagos State has been owing them or that the Contract was even awarded as they claimed to subsidiary of the 1st Defendant. He referred to the case of:

OLUWASEGUN OGUNLANA & ORS VS. TALAMU FASANYA & ORS LPELR (2019) CA/L/110/2016

As it pertain to Exhibit 9 and in response to the page 4 and 5 line 4.4 at page 6 in the Final Address of the 2nd & 3rd Defendants. The Plaintiff Counsel submitted therein no ambiguity in Exhibit 9. That the said content of the document is for

pipes and moulds all of which made up the contract of supply. That the amount of both pipes and moulds were stated in paragraph 5 & 6 of the DW2 Statement of Oath which are N9,211,203.62 and N6,990,872.88 totalling N16,202,075.90 which is the sum in issue claimed by the Plaintiff.

That the 1st Defendant requested for the supplies hence the claim for the joint responsibility against the Defendants. That since all requests were lumped together and no specific items were made for individual Defendants, the contract cannot be split per defendant and specific amount cannot be apportioned. These requests were made by the 1st Defendant through DW2.

That the PW2 had in his testimony stated that he had a contract through the M.D Nicola Busacca and had his instruction at point of supply to deliver same to the respective defendants sites. He referred to Exhibit 7 that Exhibit 4 bears name of 1st & 2nd Defendants on the letter head Exhibit 8 – waybills and invoices bearing the signature of DW2 who was director in the said company at the time of the Contract.

On the 1st Defendant claiming that it ought not to be made a party in this suit, the Plaintiff Counsel referred the Court to the documents tendered in

Evidence as exhibit especially Exhibit 7. He referred the testimony of DW1.

That Exhibit 8 & 10 were never dumped on the Court. That Defendants were all given a chance to contract Exhibit 10 and they did. Reference were made to same to indicate payments from Defendants with respect to the transaction. This was also captured in Exhibit 9. It was for the Defendant to cross examine the PW1 & 2 on the documents if they so wish. He urged the Court to reject the assertion that Exhibit 8 & 10 were dumped on the Court. He urged Court to enter Judgment in favour of the Plaintiff having proved its case with evidence & documents against the Defendants jointly and severally.

The 1st Defendant file a Reply on points of law to the Plaintiff's Final Address. The reply is on Exhibit 7 vis a vis the testimony of DW1 and lack of evidential proof on subcontract Agreement-Exhibit 11-13.

He submitted that admissibility of a document is one thing and attaching weight to document submitted is another and commends the testimony of DW1 & DW2 to the Court. That it is the duty of the Court to evaluate evidence like Exhibit 4 and the others. That on assent on Exhibit 4 by Monica Yaroson is an admission of indebtedness to

Plaintiff; the 1st Defendant Counsel stated that burden of proof is on preponderance of evidence.

On the 2nd Defendant testimony as referred by the Claimant, the Plaintiff Counsel referred to S.132 & 133 Evidence Act. He referred to the case of:

JONAC (NIG) LTD VS. FBN (2018) LPELR-46982 (CA)

ONYEKWUSI & OR VS. REGD. TRUSTEE OF CHRIST METHODIST ZION CHURCH (2011) LPELR-2702(SC)

That Plaintiff has tried to underplay the evidence and Exhibit 11-13. That Plaintiff did not file Reply to the defence of 1st Defendant Statement of Defence and cannot use the Final Address to address the issues. He referred to case of:

BABYARO VS. LABILE & ORS (2020) LPELR-51465 (CA)

He urged Court to dismiss the Claim of the Claimant as no evidence is placed before the Court.

COURT:

Having summarised the respective stances of the parties as stated in their respective Final Addresses for and against and the Plaintiffs Reply, it is the humble decision of this Court that the

Plaintiff has proven its case to warrant the Judgment in their favour.

The Plaintiff has proved its case on preponderance of evidence it presented before this Court. Again from the totality of the facts pleaded by the Claimant and the evidence laid in support the Claimant has proved his case and is entitled to the Claims/relief as contained in the Statement of Claim. So this Court holds.

The decision of this Court is based on the following grounds/reasonings:

There is no doubt that there existed a contract Agreement between the parties. It is imperative to state that a Contract Agreement need not be in writing. It can be deciphered from the action or inaction of the parties, their relationship as it concerns the Res in issue and even their body language. After all, no person can rise up and make monetary Claims against another person out of the blues if there was no relationship between such parties. Contract Agreement and relationship between parties must not only be in writing for it to be valid or for a contract relationship to have legitimacy. The body language of parties in relation to issue in dispute can culminate into a valid contract so also correspondences between them.

More so, where goods and money have changed hands and where they have exchange of correspondence and documents to show for it. It is not until the terms and conditions of a contract is penned down in black and white/in paper and dotted lines signed that it can be said that there is a valid contract. The commercial worlds have long moved beyond that level with all the E-transactions.

In this case there is a valid contract Agreement entered into between the parties- 2nd & 3rd Defendants. Those documents were tendered as Exhibit 11, 12 & 13. Exhibit 11 & 13 are exactly the same. But they were tendered by the 2 different parties Plaintiff and Defendant. The said Exhibit 11 & 13 were an undated subcontract Agreement between Moreno Marinas Lagoon Plc and Trinacia Star Nig Ltd from the contract of 15/4/08, signed earlier by the parties. Though the name of the Plaintiff did not appear in the Agreement yet it puts no one in doubt that it is the said contract agreement that gave birth to the supply of the items in issue in this case.

It is not in doubt that the contract between the Plaintiff and the Defendant existed; notwithstanding that the Plaintiff is not party to the documents attached-Exhibit 8- which are invoices and waybills of goods supplied by the

Plaintiff to either the 1st Defendant or to the 2nd or 3rd Defendant as the circumstance warranted.

It is imperative to point out that these waybills and invoices were mostly addressed to the 1st Defendant, specifically who is the parent company of the 3rd Defendant. Some were also addressed to the 3rd Defendant who is the Contractor in the said sub-contract Agreement. The 2nd Defendant did not deny that fact. They did not successfully challenge or rebut Exhibit 8, all of which were Tendered in their raw Original Form. Those invoices and waybills were all duly signed. The waybills show that the goods were all received in good condition. The authorized person signed each and every one of them and the drivers who delivered the goods also signed. The waybills also have clearly written on them numbers of the vehicles that delivered the goods. Each of those waybills were duly dated and stamped by the Plaintiff as can be visibly seen in the face of the waybills. Most of the waybills were addressed to and bear the name of the 1st Defendant. The said waybills had the name, and the description and quantity of the goods supplied and duly received by the 1st Defendant. So also those invoice and waybills addressed to the 2 & 3 Defendants all as shown in Exhibit 8. Those bundle of invoices and

Exhibits were all tendered in their raw original form.

Given the nature of the goods supplied and received in good order by the Defendants it puts no one in doubt that the said goods were for the construction works covered in the sub-contract Agreement Exhibit 11, 12 & 13. They further confirm that the 1st Defendant is part and parcel of the 2nd & 3rd Defendants; otherwise they would not have received and accepted the supply. Again the Plaintiff would not have ordinarily supplied the 1st Defendant the goods and the 1st Defendant receive them if there was no agreement to supply the goods made between the parties to that effect. It is the humble view of this Court that by Exhibit 8, there was an oral Contract Agreement between the 1st Defendant and the Plaintiff as confirmed by the said Exhibit 8.

After all the 1st Defendant accepted and acknowledged the receipt of those goods in good condition severally as shown in the same Exhibit 8. Those Contracts are valid and the 1st Defendant is bound by that Contract. So this Court holds.

To further buttress its claim and establish its case against the Defendants the Plaintiff had tendered Exhibits 5, 6 & 7. Exhibit 5 is a letter written by the Plaintiff Counsel Guardian Chambers dated

December 17th 2012, on the instruction of the Plaintiff, formally demanding for the payment of the sum in issue- N16,202,075.90k, which is the sum total of various steel products supplied by the Plaintiff. That letter was rightly addressed to the M.D of the 1st Defendant. The said letter showed in paragraph 2, that the Plaintiff supplied the goods based on the instruction, agreement and at the instance of the M.D of the 1st Defendant. It showed that the 1st Defendant deposited the sum of N5 Million to the Plaintiff. It confirmed that the goods were supplied to the Defendant and were initially partly paid for by the 1st Defendant before they started to renege. Hence accumulation of debt of N9,211,203.03 as at 8/3/12. The letter also showed that based on Invoice No. 01146 the 1st Defendant ordered for 5 steel moulds. That a new Account was opened on behalf of the 1st Defendant on 31/1/09 and moulds supplies were made from then till 2012 and the Balance stood at N6,999,872.88 now making the total indebtedness of the Plaintiff to N16,202,075.90 which is the sum in issue in this case. In the same letter the Plaintiff even suggested to meet the 1st Defendant in Order to discuss on how the debt will be settled.

The Plaintiff as law-abiding citizen wrote another letter to the 1st Defendant dated 25/1/13 since they did not receive any response from the 1st

Defendant on the letter of 17/12/12. That letter was written as the last formal Demand for the payment of the Debt. The Plaintiff also notified the 1st Defendant that they have no option but to seek redress in Court if the Defendant failed to pay the money. Hence this present Suit. That letter was admitted as Exhibit 6.

Exactly 48 days after, the 1st Defendant responded to the said Letter. The Plaintiff attached that response written by the 1st Defendant as Exhibit 7. It was addressed to the Counsel to the Plaintiff. It was dated 29/1/13.

The said letter was written in the Letter Head of the 1st Defendant. By its content it referred to the 2 letters by Plaintiff Counsel-Guardian Chamber, written on 17/12/12 & 25/1/13. Of utmost importance is the content of the 2nd paragraph. It is imperative to state the said paragraph verbatim for clarity and posterity.

Paragraph 2 of Exhibit 7 letter dated 29/11/13.

“We wish to express our deep appreciation to your Client(-the Plaintiff) first for their support on supplies made to OUR COMPANY and secondly for their Patience. Kindly note that we equally understand the inconveniences occasioned by the delay in payment to your client is neither intentional nor deliberate.”

The above shows clearly that the Plaintiff and the supplies it made were not strange to the 1st Defendant. The indebtedness is equally not strange and the sum in issue is equally not in doubt or challenged by the 1st Defendant. This further confirms that the 1st Defendant is part and parcel of the business. It confirms that the same 1st Defendant is totally involved in the business of supply of steel products in issue. 1st Defendant is no stranger to the contract and its name as a Defendant in this suit is very proper as the issue in this dispute cannot be completed and fully determined if it is not a Defendant in this Suit. So this Court holds.

A look at the same Exhibit 7 paragraph 3 further confirm the reasoning of the Court and its decision. That the 1st Defendant role in this case was paramount and fundamental. The said paragraph shows that-

“Moreno-(the 1st Defendant) is vigorously pursuing the disbursement of funds/payments on certificate from our employers to enable prompt payment. We shall do our best to close all outstanding with your client (the Plaintiff) without further delay and hereby invite you to communicate our request to your Client to kindly exercise patience while we expedite your matter.” (all emphasis mine)

The above need no further interpretation. It further showed the willingness of the 1st Defendant to pay the said sum. It showed their request for extension of time to pay. They did not challenge the amount. They did not deny being part of the business of supply of the materials in issue. It confirms the willingness of the 1st Defendant to pay. It did show that the 1st defendant and the 2nd & 3rd Defendants were one and the same person. They are like a judicial trinity with the 1st Defendant as business god-head of the Trinity. Any reasonable man knows that the 1st Defendant would not have responded to the said letters of 17/12/12 and 25/1/13 if it had no business relationship with the Plaintiff as the same 1st Defendant is claiming in this. The submission of the Defendants in that regard is belated. The DW2 was copied the said exhibit 6 where Plaintiff demanded for payment of the money a 2nd time.

The Plaintiff as a very law-abiding Company which has respect for law and legal procedure had written another letter to the 1st Defendant asking for the Defendant to pay its debt after the Defendant failed to live up to its promises made in the letter of 29/1/13-Exhibit 7. The plaintiff in that letter acted in accordance with a procedure permitted by law. That letter was tendered and admitted in evidence and marked as Exhibit 1. It

was written by the new Counsel to the Plaintiff on the 11/6/15. That is about 2 years and 5 months after the 1st Defendant appealed to the Plaintiff to give it time to pay.

In a twist the 1st Defendant in response to Exhibit 1 wrote to Counsel to the Plaintiff stated that they had not seen any Local purchase Order issued by them in favour of Plaintiff. Strangely they sought for direction. Meanwhile the 3rd Defendant presented by the Plaintiff all were not strangers to the issues in dispute. Meanwhile the DW2 had stated under cross-examination that he does not about the said letter which is marked as Exhibit 2 meanwhile both DW1 & DW2 admitted in paragraph 7 and 22 of their respective statements on oath affirmed the said Exhibit 2. The Statement and testimonies of the DW1 & DW2 are contradictory and those contradictory statements of the witnesses have no weight and probative value. So this Court holds.

Their evidence in that regards are discountenanced. The DW2 had state concerning the said document thus:

“I don’t know about Exhibit 2. It is signed by the procurement manager who (incidentally is the DW1) I believe it is a wrong letter and not on the scope of the business.”

(Emphasis mine)

The contradictory submission and testimonies and denials of the Defendant witness on that Exhibit 2 have no probative value and are dismissed.

The Plaintiff further tendered the document letter of 7/6/15 which is a response to the 1st Defendants letter- Exhibit 2. That letter is marked as Exhibit 3. The Defendants did not deny the receipt of that letter though they attempted to do so. But it did not hold water. It is evidently clear that the letter Exhibit 3 was acknowledged by an officer of the 1st Defendant who the DW1 said that he knows as their protocol officer working in the office of the M.D Moreno Company-the 1st Defendant. By that there is no doubt that the 1st Defendant received the said letter address to it. Exhibit 4 confirmed the receipt of the document too. It further confirmed that the indebtedness of the Defendant are really in existence and not challenged. The letter confirmed that the 1st and 2nd Defendants are one and the same persons as it were. To start with the Exhibit 4 is a letter written in response to letter of Plaintiff Counsel dated 11/6/15 and 7/6/15. Those letters were not copied to the 2nd Defendant yet the 2nd Defendant responded directly. Beside the content of the said exhibit 4 says it all. It stated thus EXHIBIT 4

“we refer to your letter dated 11th June & 7th July, 2015.....on the above subject matter.

Be informed that the Contract between us and your client that led to the above debt....has NEVER BEEN DENIED BY US.....your recent threat beats our mind and violates our understanding with your client on the subject. We have long understanding relationship with your client which we do not want to jeopardise.

....we sincerely hope that that your client will be paid as soon as our employer is paid by Lagos State government.....

Please bear with us.”

The above need no further explanation. It throws more light in the reality and truth behind the Trinity of the Defendants, the debt they owe to Plaintiff, and the fact 1st Defendant is the patriarch of the Defendant as well as their “god-head”.

To further buttress and confirm the Court reasoning in holding that all the Defendants are one and the same, a look at the letter head of Exhibit 4 shows clearly that it is same and part or subsidiary of 1st Defendant. Clearly written on the top of the name of the 2 Defendant is the words “MORENO GROUP” That settles any doubt in the “trinitiness” of the 1st Defendant and the 2nd & 3rd

Defendants. It confirms that the Plaintiff is right in having the name of the 1st Defendant as a party in this suit. It is further confirms, like Exhibit 8, that the goods were supplied to the 1st Defendant and received as by them and that there was indeed a strong binding Contract between the Plaintiff and all the Defendants and that the 1st Defendant are liable to pay the Plaintiff without any further delay. The relationship between the 2nd & 1st Defendant are one and the same. It cannot be divested by any agreement, as 2nd Defendant is part of the 1st Defendant. Even the address of the 1st -3rd Defendants are same as shown in Exhibit 2, 4 & 7. Exhibit 7 also has the logo of 3rd Defendant on it.

Contrary to the letter of 16/6/15 that there is no trace of a Local purchase Order as alleged. But page 25 of Exhibit 8 further shows that there was a Local Purchase Order issued to the Plaintiff. That document shows the name of the goods to be supplied, the price of the goods, the discount and duration and time of payment. The said LPO was signed by the same person who signed the Contract. It bears the same signature like the signed by the DW2. It was counter signed by the Procurement manager.

Meanwhile the 2nd Defendant witness is well known and aware of everything that transpired in this case. The supplier which is the Plaintiff also

signed the acceptance of the document which was addressed to it. Meanwhile the DW1 had confirmed that Mario Stella who required the goods in the LPO was the Head Technical of Moreno Company the 1st Defendant in this case. He is also the head of the 3rd Defendant. This further confirms that 1-3 Defendants are a Trinity. The 2DW1 also confirmed in his testimony that the same Mario Stella is also the M.D of the 2nd Defendant. Since it is obvious that the 1-3 Defendants operate in a Trinity-like manner they are all jointly and severally liable and indebted to the Plaintiff. So this Court holds. The Plaintiff had strongly established that fact in both the documents tendered and the testimony of its 2 witnesses.

The Statement of Account was tendered as Exhibit 10 by the Plaintiff showing payments made by the 1-3 Defendants at different time as shown therein. Exhibit 9 listed the payment due and paid, showing its Invoice Nos, the amount paid and the balance due and unpaid. The Defendants could not impugn this Exhibit.

All those Invoices were exhibited as Exhibit 8. All the Invoices have the waybills attached to them showing that the goods were all received in good order. The waybills were all signed by the authorised persons. Some by even the DW1 Busacca, himself. The payment made, documents

and outstanding balance were summarized in Exhibit 9.

From all indications those documents tendered by the Plaintiff speak louder than the human voice and clearly show that the Plaintiff had established its case against the Defendant coupled with the testimonies of the PW1 & PW2.

The lone contention and submission of the 1-3 defendants challenging the amount could not stand because they did not tender any document to show that they have another figure different from the figure computed by the Plaintiff.

From all indication it is very obvious that the 1-3 Defendants are one and the same persons. They are all jointly and severally liable and indebted to the Plaintiff. The futile attempt by the 1st Defendant to exonerate itself cannot stand because it is not a stranger to the transaction. As already severally stated above the 1st Defendant is so submerged in the whole transaction that it has no way to get out of it because it is the 1st Defendant that kick started, controlled, directed, received and took delivery of most of the goods supplied. The Invoices and waybills are evidential to the role played by the said 1st Defendant and invariably the 2-3 Defendants.

That is why this Court hold that the case of the Plaintiff is meritorious and well established. Judgment is hereby entered in the Plaintiff's favour to wit:

The Court hereby enter Judgment in favour of the Plaintiff as per its claim as it has laid sufficient evidence in proof of its claims against the 1-3 Defendants jointly and severally to wit:

1. Prayer No.1 granted as prayed

7% interest per annum from date the suit was filed 10/9/15 till final liquidation.

Parties to bear their respective cost.

This is the Judgment of this Court delivered today.....day of2022 by me.

.....

K.N.OGBONNAYA

HON. JUDGE