MISC APP. 011/21 2021 S. NO. 8

IN THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

FAST TRACK COMMERCIAL COURT

IN THE MATTER OF THE CONVEYANCING ACT OF 1881

AND

IN THE MATTER OF A DEED OF MORTGAGE BETWEEN SIERRA LEONE COMMERCIAL BANK AND ALKA TRADING CO. (SL) LIMITED AND TOM OBALEH KARGBO AND MARY OBALEH KARGBO

BETWEEN

SIERRA LEONE COMMERCIAL BANK -PLAINTIFF

AND

ALKA TRADING CO. SL LIMITED AND OTHERS -DEFENDANT

JUDGMENT DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 22ND JUNE 2022

S. NICOL -COUNSEL FOR THE PLAINTIFF

The plaintiffs have come before this court by originating summons dated the 22nd day of June 2021, praying for the following;

1. That the defendants do immediately pay all monies due to the plaintiff under the covenants in a deed of mortgage dated 30th November 2016 and duly registered as number 157/ 2016 at page 10 in volume 96 of the record book of mortgages kept in the Office of the Registrar-General in Freetown, in which the defendants are the borrower and surety for the repayment of the principal sum and interest totalling Le 1,654,382,987(One billion, six hundred and fifty-four million, three hundred and eighty-two thousand, nine-hundred and eighty-seven Leones and nineteen cents)as at the 28th of May 2018 and payment in the meantime of interest at the rate of 25% per annum.

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2. Or in the alternative, an order that the said mortgage be enforced by foreclosure or sale
3. Delivery of possession of the mortgaged property situate at Milton Margai College Rd, College, Freetown, in the Western Area of the Republic of Sierra Leone delineated on survey plan numbered LS 2170/89 and measuring 1.4815 acres, which was mortgaged by the defendant to the plaintiff.
4. That the honourable Judge grants any further or other relief that may be necessary in this action.
5. That the cost of this action be borne by the defendants.

The plaintiff's case is that on the 20th of October, 2016, the first defendant by letter of the said date requested an overdraft facility from the Plaintiff in the sum of Le 800 million. By letter dated 5th December 2016, the plaintiff approved the said request as a temporary overdraft facility and same was to expire on the 5th of June 2017. Interest on the said facility was to be charged at 25% per annum and the said facility was to be secured by a legal mortgage over property of the 2nd defendant which was situate at Milton, Margai College Road, Goderich, Freetown. On the 13th of December 2016, the 1st defendant again by letter of the same date requested a further overdraft facility from the Plaintiff in the sum of Le 350 million. This further overdraft facility was also granted and approved by the Plaintiff, and it was for a tenure of six months, to expire on the 5th of July 2017. Interest was to be charged on the said overdraft facility at the rate of 25% per annum and the facility was also to be secured by a legal mortgage over the same property of the 2nd defendant, situate at Milton, Margai College Road, Goderich, Freetown.

In making its case the Plaintiff tendered a number of documents on which it relied. Exhibits ADK1 and ADK 3 are requests for overdraft facility in the sum of Le 800,000,000 (Eight hundred million Leones) and Le 350,000,000 (Three hundred and fifty million Leones) respectively. Exhibits ADK2 and ADK 4 are proof of the terms pursuant to which Exhibits ADK 1 and ADK 3 were approved by the Plaintiff.

These facilities were secured by a legal mortgage which was tendered before this court as Exhibit JKJ 1. As shown on Exhibit ADK 9 the account of the 1st Defendant with the Plaintiff was between the period 13th December 2016 and 29th May 2018, overdrawn in the amount of Le 1,325,207,153.99.

The defendants did not appear, neither was a defence filed on their behalf. In effect there is no evidence before this court that they are denying the claims of the plaintiff. In the circumstances, the role of the court is to

examine the evidence presented before it with a view to determining whether the plaintiff have discharged its legal burden on the requisite standard.

The relationship between the parties is defined and regulated by the letter dated 5th December 2016 from the Plaintiff to the 1st Defendant. This letter which is before this court as Exhibit ADK2 contains the terms of their arrangement as agreed between the Parties. Proof of acknowledgment of same is evidenced by the signatures of the Plaintiff and both Defendants. Where a contract is wholly in writing, the courts have long insisted that the parties are confined to the four corners of the document and that the interpretation of what is written is exclusively within the jurisdiction of the judge. **Bentsen v Taylor, Sons & Co. (No. 2) (1893) 2QB 274.**As such in reaching a decision on this matter, the authority of this court cannot extend the parameters of the terms agreed between the parties.

Having established that this court can only enforce the agreement as agreed between the parties, I must now consider who in the light of the present circumstances bears the burden of proving its case and the standard expected of this court. Without doubt and at the risk of belabouring on the point, I must state that it has become trite law that in civil proceedings, the rule is that he who asserts an issue bears the burden of proving same on a balance of probabilities. See the cases of **Joseph Constantine Steamship Line V Imperial Smelting Limited (1942) AC pg 154** and **Miller v Minister of Pensions (1947) 2 AER pg 372.**

In discharging its burden, the Plaintiff has shown that the 1st Defendant applied for the banking facility by **Exhibit ADK1**. The terms pursuant to which the 1st Defendant's application was approved, and the 2nd defendant agreeing to be bound as surety to same are contained in **Exhibit ADK2**. **Exhibit ADK 3** is a request for additional overdraft facility which was also approved by the plaintiff on terms assented to by the defendants as contained in **Exhibit ADK4**. **Exhibit ADK 9** is the statement of account showing that the aforementioned sums approved by the Plaintiff were made available to the 1st Defendant and that same were utilized accordingly without being paid back as agreed between the parties. Exhibit JKJ1 is a deed of mortgage executed by the parties to this action by which the 2nd defendant stood as surety for the banking facilities as highlighted above. A mortgage was placed on his property situate at Milton Margai College Road, Goderich more particularly shown on survey plan numbered LS 2170/89 dated 3rd November 1989 for the aforementioned banking facility.

I have no doubt in my mind that the Plaintiff have based on the above discharged its burden of proving its case on a balance of probabilities and is

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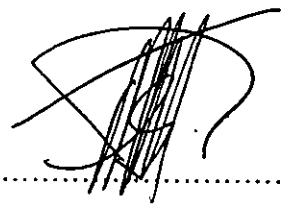
therefore entitled to judgment in this matter. in the circumstances, I make the following orders;

1. The 1st Defendant is indebted to the Plaintiff in the sum of Le 1,654,382,987.19 (One billion, six hundred and fifty-four million, three hundred and eighty-two thousand, nine-hundred and eighty-seven Leones and nineteen cents).
2. Property of the 2nd defendant situate at Milton Margai College Road, Goderich more particularly shown on survey plan numbered LS 2170/89 dated 3rd November 1989 is security for the aforementioned debt.
3. The Plaintiff is entitled to immediate possession of the said property situate at Milton Margai College Road, Goderich more particularly shown on survey plan numbered LS 2170/89 dated 3rd November 1989 pursuant to the deed of mortgage dated 30th November 2016 registered as No. 157/2016 at page 10 in volume 96 of the record book of mortgages kept in the office of the Administrator and Registrar-General in Freetown.
4. The cost of this application is assessed at Le 100 Million Leones.



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HONORABLE JUSTICE LORNARD TAYLOR

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