

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT IKEJA JUDICIAL DIVISION
TODAY WEDNESDAY THE 9TH DAY OF OCTOBER 2024
BEFORE HON. JUSTICE Y. R. PINHEIRO
SITTING AT COURT 38 GENERAL CIVIL DIVISION IKEJA

SUIT NO: ID/7480GCM/2023

BETWEEN:

- 1. HON. ABAYOMI ODE
- 2. MRS. HENRIETTA ODE

APPLICANTS

AND

- 1. LEKKI GARDENS LIMITED
- 2. MERIDIAN PARK ESTATE


RESPONDENTS

JUDGEMENT

The Applicants commenced this suit vide an Originating Summons dated 28th September 2023. Additionally, the Applicants filed a Motion on Notice for an Order of Interlocutory Injunction also dated 28th September 2023. In response, the Respondents filed a Motion on Notice for an Order striking out the name of the 1st Respondent from the suit dated 6th February 2024. As directed by the Court, all the applications were taken simultaneously.

I shall proceed with the Respondents/Applicants' Motion on Notice dated 6th February 2024 as it pertains to the parties in this suit.

By the said Motion, the Respondents/Applicants are seeking an Order of this Honourable Court striking out the name of the 1st Defendant/Applicant from this suit on the ground that this action discloses no reasonable cause of action against the 1st Defendant.

004
HIGH COURT OF LAGOS STATE

Sign: _____ Date: 5-10-2024
CASH OFFICE, IKEJA.

In support of the Motion on Notice is an 8-paragraph affidavit dated 6th February 2024. In compliance with the Rules, is a written address dated 6th February 2024. In response, the Applicants/Respondents' Counsel filed a 14 paragraphed counter-affidavit dated 12th April 2024, and a written address also dated 12th April 2024.

I have given due consideration to the averments made by the parties in their affidavits and also the submissions made by both Counsel in their respective written addresses. I have distilled a sole issue for determination to wit: -

WHETHER THE SUIT AS IS CONSTITUTED, DISCLOSES A REASONABLE CAUSE OF ACTION AGAINST THE 1ST RESPONDENT?

A cause of action connotes the fact or combination of facts that gives to a party the right to sue or institute an action in a Court of law. It has two elements: the wrongful act of the defendant which donates to the plaintiff his cause of action and the consequent damage. See **DANGOTE CEMENT PLC & ORS V TSWAKPE & ORS (2016) LPELR-42972(CA)**.

The law is sufficiently settled that in determining whether the Claimant's action discloses any cause of action or the nature thereof, the Court will necessarily restrict itself to the Originating Processes without recourse to the Defendant's Defence. See **MULINA VS USMAN (2014) 16 NWLR PART 1432 PAGE 160; MODIBBO VS. USMAN (2020) 3 NWLR PART 1712 PAGE 470**.

A cursory examination of the Originating Summons particularly paragraphs 3 – 8 and Exhibits HA01 reveals that the transaction upon



which the suit is predicated was between the Applicants and the 2nd Respondent. In effect, I find that the Claimant has no cause of action against the 1st Respondent. Having found that the Applicants has failed to establish any reasonable cause of action against the 1st Respondent, the name of the 1st Respondent is hereby struck out.

I shall now move on to the Originating Summons dated 28th September, 2023.

By the Originating Summons, the following questions are for determination:

1. Whether the 1st & 2nd Respondents who after giving an offer letter dated 26th February 2021, to the Applicants to pay N30,490,000 for the purchase of a 4-bedroom terrace duplex at Paradise Estate Lekki Peninsula and receiving the full payment within the specified period of payment can cancel the agreement on ground of non-payment?
2. Whether it is lawful for the 1st & 2nd Respondents to refuse to hand over the said 4-Bedroom terrace duplex after receiving the full purchase price in accordance with the offer letter?
3. Whether it is lawful for the 1st & 2nd Respondents to deprive the Applicants from the use of their 4-Bedroom terrace duplex for many months for no lawful reason?
4. Whether in the circumstances of this case it would not be proper for this Honourable Court to hold that the Respondents have continued to grossly breach the sale Agreement and violated the provisions of Laws regulating right to own property?

CERTIFIED TRUE COPY

W

CERTIFIED TRUE COPY

5. Whether the Applicants are not entitled to damages for the breach of the sale Agreement and deprivation of the economic benefits of the 4bedroom terrace duplex at Paradise Estate, Lekki Peninsula, Lagos by the Respondents?

Consequent upon the above questions, Applicants therefore seek the following reliefs: -

1. An Order of the Honourable Court quashing the Respondents letter to the Applicants dated 7th August 2023, for being mischievous, illegal and a nullity,
2. An Order of this Honourable Court ordering the Respondents to deliver a unit of 4-bedroom terrace duplex with 1 room boy's quarter (Off Plan Basis) at The Paradise Court by Chevron for having received the full agreed purchase price,
3. An Order of this Honourable Court ordering the Respondents to pay N40,000,000.00 (Forty Million Naira) being general/exemplary damages, and
4. The Cost of this suit.

In support of the application is a 17 paragraphed Affidavit and attached thereto are:

1. A copy of the 2nd Respondent's Offer letter dated 26th February 2021, marked as **Exhibit HAO 1**,
2. Copies of the FCMB deposit slips dated 2nd March 2021, marked as **Exhibit HAO 2**,

CERTIFIED TRUE COPY

CERTIFIED TRUE COPY



3. A copy of the 2nd Respondent's letter of Provisional Allocation dated 28th June 2021, marked as Exhibit HAO 3,
4. Copy of the 1st Applicant's First Bank statement of account marked as Exhibit HAO 3,
5. Copy of the email dated 3rd June 2022, marked as Exhibit HAO 4,
6. A copy of the 2nd Respondent's letter dated 7th August 2023, marked as Exhibit HAO 5,
7. A copy of the hand written narration of payments marked as Exhibit HAO 6,
8. A copy of the Applicants' Solicitor's letter dated 18th August 2023, marked as Exhibit HAO 7,
9. A copy of the 2nd Respondent's letter dated 22nd August 2023, Exhibit HAO 8,
10. Copies of the payment receipts issued by the 2nd Respondent marked as Exhibit HAO 9,
11. Copy of the Applicant's Solicitor's letter dated 6th September 2023, Exhibit HAO 10.

In compliance with the Rules of Court, Counsel filed a written address also dated 28th September, 2023.

The Respondents filed a counter-affidavit to the Originating Summons dated 6th February 2023, and attached thereto are:

CERTIFIED TRUE COPY



CERTIFIED TRUE COPY

1. A copy of the 2nd Respondent's Offer letter dated 26th February 2021, marked as **Exhibit A**,
2. A copy of 2nd Respondent's letter dated 7th August 2023, marked as **Exhibit B**,
3. A copy of the Applicants' Solicitor's letter 18th August 2023, marked as **Exhibit C**,
4. A copy of the 2nd Respondent's letter dated 22nd August 2023, marked as **Exhibit D**, and
5. A copy of the Sale Agreement marked as **Exhibit E**.

There is also a written address dated 6th February 2024.

Thereafter, the Applicants filed a 21 paragraphed further affidavit and a reply address dated 1st March 2024.

At the hearing of the Originating Summons, the Applicants' Counsel, **ABIOLA OGUNLEYE** adopted the written address and the reply address dated 28th September, 2023 and 1st March, 2024 respectively. The Respondents' Counsel, **O. M. ADENIYI** adopted the written address dated 6th February, 2024.

I have given due consideration to the affidavits for and against the application and the submissions made by both Counsel in their respective written addresses. I find that the sole issue which goes to the root of the matter is thus: -

WHETHER IN THE CIRCUMSTANCE OF THIS CASE, THE APPLICANT IS ENTITLED TO THE RELIEFS SOUGHT?



CERTIFIED TRUE COPY

Before I delve into the issue, it is imperative to determine the competency of the further affidavit and the reply address dated 1st March 2024, on the grounds that the same processes were not regularized having been filed out of the time prescribed by the Rules. In resolving the preliminary issue, relevance is placed on **ORDER 7 RULE 1(2) of the HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2019**, which entitles the Court to treat the failure to file a process within the time prescribed by the Rules as a mere irregularity. In the circumstance, I find that the failure to regularize the process does not render same incompetent. And I so hold.

That said, it is settled law that parties are bound by the terms and provisions of their contracts and that the Court would as much as possible uphold and enforce the provisions of the contract agreed upon by parties and not allow parties to renege on their undertakings. See **ACCESS BANK PLC V. N.S.I.T.F. (2022) 16 NWLR (Pt. 1855) 143(SC)**, where the Court held thus:

"Parties are bound by their agreements freely entered into and will not be permitted to resile therefrom. That is the essence of the doctrine of sanctity of contract".

See also **G.T.B. V. OGBOJI (2019) 13 NWLR (PT. 1688) 67 (CA)** where the Court held that: -

"When there are terms to a contract, parties to the contract must honour their contractual obligations as the terms of the contract are binding on the parties thereto."

Further, the Courts are confined to the four walls of the agreement voluntarily entered into by the parties. In effect, Courts must adhere to the

CERTIFIED TRUE COPY



CERTIFIED TRUE COPY

terms of the contract as agreed upon by the parties. This principle is clearly established in **FIDELITY BANK PLC V. M. C. IND. LTD. (2022) 7 NWLR (PT. 1829) 351 (CA)**, where the Court held that:

"When parties enter into a contract, they are bound by the terms set out therein. It is not the business of the court to re-write a contract for the parties."

Similarly, in **OVH ENERGY MARKETING LTD. V. MANGAL (2020) 16 NWLR (PT. 1750) 280(CA)** the Court held thus: -

"Parties to a contract are bound by the terms of the contract freely entered into by them. Where the terms of a written contract are clear, effect must be given to it. It is not the function of the court to re-write the contract for the parties. In the absence of fraud or misrepresentation, the parties are bound by its terms. Parties and the courts cannot read into an agreement what was never stated therein or intended."

The Applicants averred in the Affidavit in support of the Originating Summons as follows:

"4. That by the terms of the said offer letter payment was to be concluded in instalments within 24 months; with an initial deposit of N15,990,000.00(Fifteen Million, Nine Hundred and Ninety Thousand Naira only),

5. That the Applicants made the initial deposit/payment of N15,990,000.00(Fifteen Million, Nine Hundred and Ninety Thousand Naira Only) consequent upon which the Respondents wrote another



CERTIFIED TRUE COPY

CERTIFIED TRUE COPY

letter to the Applicants titled "Provisional Allocation for A Unit of 4 Bedroom Terrace Duplex at the Paradise Court (Orchid) Estate" dated 28th June 2021. Attached is a copy of the said letter marked **Exhibit HAO 2,**

6. That the Applicants continued to pay in instalments and paid a total of N30,500,000.00 (Thirty Million, Five Hundred Thousand Naira Only) into the 2nd Respondent's bank account. Attached herewith is the 1st Applicant's bank account showing details of all the said payments same is marked **Exhibit HAO 3,**

7. That the Respondents could not conclude the building within the time promised which prompted the Respondents to write a letter dated 3rd of June, 2023 to the Applicant's apologizing for the delays. A copy of the said letter is herewith attached and marked **Exhibit HAO 4,**

8. That to the shock and chagrin of the Applicants the 2nd Respondent wrote a mail titled " Offer Letter for the Sale of a Unit of 4bedroom Terrace Duplex at the Paradise Court by Chevron on off plan basis-termination and Revocation of Contract" dated the 7th of August 2023; the said letter is attached and marked **Exhibit HAO 5,**

9. That by the above Exhibit 5, the 2nd Respondent purportedly revoked the contract of sake despite receiving full payment before the 24 months' period started in the letter of offer. Attached is a hand written narration of payments made to the 2nd Respondent with dates marked **Exhibit HAO 6,**

10. That prior to the revocation letter the Applicants did not receive any demand for payment letter of the said outstanding balance of N490,000.00 (Four Hundred and Ninety Thousand Naira Only) being the alleged reason for the cancelation of the contract of sale."

The Respondents on the other hand reacted in their counter-affidavit dated 6th February 2024 as thus: -

"6. That in addition to the contents of paragraphs 3, 4 and 5 of the affidavit in support, I state that the 2nd Defendant and the Claimant executed a Sale Agreement in respect of the property covered under the Offer Letter dated February 26th 2021. A copy of the Sale Agreement is attached as Exhibit A,

7. That I know that Clause 9 of the Sale Agreement signed between parties makes the contents of the offer letter subject to the terms of the Sale Agreement,

8. In respect of the deposition contained in paragraph 6 of the affidavit in support, I know that upon the 2nd Respondent's review of the Claimants' subscription records, prior to its termination and revocation of the Claimants' offer, an outstanding balance of the sum of N490,000.00 was discovered, thereby making the Claimants fail in its obligation with regard to the contract of sale,

9. That pursuant to the review and findings in the records of the 2nd Defendant, the 2nd Defendant which believes that the Claimants had failed to comply with the terms of the Offer and Agreement for Sale of the property wrote the letter dated August 7, 2023 to terminate the

CERTIFIED TRUE COPY



CERTIFIED TRUE COPY

sale in compliance with the terms of the agreement between parties.
A copy of the said letter is attached as Exhibit B,

10. The Defendants deny paragraph 7 and shall put the Claimants to the strictest proof of same; I state further that there was no time the 2nd Defendant wrote any letter to the Claimants pleading that it could not complete the building of the property; the truth is that the property was never constructed."

The terms of the contract agreed by the parties is stated expressly in the 2nd Respondent's offer letter dated 26th February 2021 as thus: -

"Dear Sir/Ma,

**OFFER LETTER FOR A UNIT OF 4 BEDROOM TERRACE
DUPLEX IN THE PARADISE COURT ESTATE, ON OFF - PLAN
BASIS**

The Paradise Court Estate is a Residential Estate Development situated by Orchid hotel road, Eleganza, Lekki, in Eti-Osa Local Government Area, Lagos State.

Pursuant to your application and further inspection of the above Estate, we are pleased to offer you the above subject Property on the following terms and conditions:

Property Location: Paradise Court Estate, Eleganza.

Description of property: 4 Bedroom Terrace Duplex
@N30,490,000.00 All en-suite, shell units
inclusive of all external finishing.

CERTIFIED TRUE COPY



CERTIFIED TRUE COPY

Payment option: 24 Months

Total Amount Payable: Thirty Million, Four Hundred and Ninety Thousand Naira (N30,490,000.00)

Payment terms: Initial deposit of Fifteen Million, Nine Hundred and Ninety Thousand Naira (N15,990,000.00) to be paid now, and the remaining balance of Fourteen Million, Five Hundred Thousand Naira (N14,500,000.00) to be paid in a monthly installment of Six Hundred and Four Thousand, One Hundred and Sixty-six naira, Sixty - Seven kobo (N604,166.67) in 24 months.

Allocation: One (1) month from Initial deposit

Delivery: 3 Months after complete payment

Use: Strictly RESIDENTIAL

Building Specifications: SHELL UNIT means the building structure, plastering, all windows, the two main doors (entrance and exit), plumbing and ceiling. EXTERNAL FINISHING means painting and interlocking of surrounding space, exclusive of internal doors, kitchen fittings, sanitary wares, tiling, furniture and lighting fittings."

Whilst the Applicants insist that the total amount agreed by the parties, i.e. the sum of N30,490,000.00 (Thirty Million, Four Hundred and Ninety Thousand Naira) was fully paid up, the Respondent insist that there was

CERTIFIED TRUE COPY

short fall of N490,000.00 (Four Hundred and Ninety Thousand Naira). On resolving material conflict in affidavit, the Supreme Court in **JAIYESIMI V. DARLINGTON (2022) 9 NWLR (PT. 1835) 335(SC)**), held thus: -

"Generally, a court of law is not competent to resolve conflict in affidavit evidence without calling oral evidence. However, the exception to the rule is that where the court has documentary evidence at its disposal which can aid it to resolve the conflict, it can do so without recourse to oral evidence. Furthermore, the need to call oral evidence would not arise if there are enough documents to assist the court in the resolution of such conflict."

Also, in **UZODINMA V SENATOR OSITA B. IZUNASO & ORS (2011) 17 NWLR (PT. 1275) (CA)** the Court held inter alia: -

"The law is firmly established that where there is enough documentary evidence outside the conflicting evidence, the Court can make use of the documentary evidence in resolving the issue before it. And there will be no need to resort to any oral evidence in such circumstances."

The two (2) FCMB tellers attached to the affidavit in support of the Motion shows that the Applicants paid a cumulative sum of N16,000,000.00 (Sixteen Million Naira) to the 2nd Respondent's Sterling Bank account on 2nd March 2021. Further, the 1st Applicant's Statement of Account attached to the affidavit in support of the application shows that the Applicants paid a cumulative sum of N14,500,000.00 (Fourteen Million Five Hundred Thousand Naira) to the 2nd Respondent between 7th January 2022, and 25th March 2022. A community reading of the FCMB tellers and the First

CERTIFIED TRUE COPY



CERTIFIED TRUE COPY

Bank Statement of Account, reveals that the total of N30,500,000.00 (Thirty Million, Five Hundred Thousand Naira) was paid. The Exhibits thus resolves the conflict in the respective affidavit evidence. In consequence, I find therefore that the Applicants have met the payment terms of the contract.

It is clear from the foregoing that the 2nd Respondent made an offer for the allocation of a unit of 4-bedroom terrace duplex in the Paradise Court Estate which the Applicants accepted and provided the agreed consideration. The doctrine of estoppel by contract is a bar that prevents a person from denying a term, fact or performance arising from a contract that the person has entered into. See **A.G. NASARAWA STATE V. A.G. PLATEAU STATE (2012) 10 NWLR (PT.1309) 419 (SC)**. In the circumstance, the 2nd Respondent is estopped from reneging from the contract. Having found that the 2nd Respondent is obligated to deliver a unit of 4-bedroom terrace duplex in the Paradise Court Estate to the Applicants, reliefs (1) and (2) are granted.

On the payment for damages, the law frowns against double compensation and will not allow a litigant who made a claim for specific performance or specific losses suffered by him to add another figure under the head of general damages. Indeed, the award of general damages is improper when the quantum of loss is ascertainable as it will amount to double damages or double compensation. See **ADEKUNLE V. ROCKVIEW HOTEL LTD (2004) 1 NWLR (Pt.853) CA**. Having found that the Applicant ^{is} ^{sure} entitled to the allocation of the property, an Order for

CERTIFIED TRUE COPY

damages will amount to double compensation and it is refused. In effect, relief (3) is refused.

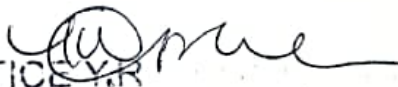
On the award of cost, cost follows event and a successful party is entitled to cost except where there are special reasons for depriving him of such entitlement. See **A.C.B. LTD. V. AJUGWO (2012) 6 NWLR (PT.1295) 97 (CA)**. Having found that the case of the Applicants succeeds, they are entitled to the cost of the action.

Having treated the Originating Summons, the Claimants/Applicants' Motion on Notice dated 28th September 2022, the Motion on Notice for an Order of Interlocutory Injunction pending the determination of the suit becomes spent. It is trite that the court will only deal with live issues that will confer a right or benefit on the successful party. See **EXECUTIVE CHAIRMAN & MGT OF BENUE SUBEB v. NASU (2021) LPELR-55724(CA)**.

Accordingly, IT IS HEREBY ORDERED AS THUS: -

1. The 2nd Respondent's letter to the Applicants dated 7th August 2023, is quashed for being mischievous, illegal and a nullity,
2. The 2nd Respondent shall deliver a unit of 4-bedroom terrace duplex with 1 room boys' quarters (Off Plan Basis) at The Paradise Court by Chevron to the Applicants,

3. The 2nd Respondent shall pay the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) to the Applicants being the cost of the action.





HON. JUSTICE Y. R. PINHEIRO SIGNED
HON. JUSTICE Y. R. PINHEIRO
09/10/2024

CERTIFIED TRUE COPY

Parties: Absent

Appearances: ABIOLA OGUNLEYE, appearing for the Applicants

O. A. ADENIYI with I. A. UMOH, appearing for the Respondents


COURT OF LAGOS STATE
04/11/19
5-11-2024
Sign: _____ Date: _____
CASH OFFICE, IKEJA

Ashola Gaira
COMMISSIONER FOR OATS
HIGH COURT IKEJA


CERTIFIED TRUE COPY