

IN THE HIGH COURT OF JUSTICE GHANA AUTOMATED COURT
2, HELD IN ACCRA ON THURSDAY THE 11TH DAY OF
DECEMBER 2014, BEFORE HIS LORDSHIP JUSTICE K.A.
OFORI ATTA

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SUIT NO: AB 129/2012

AKWASI BOAKYE OSEI

}

PLAINTIFF

=VRS=

STANDARD CHARTERED BANK GHANA LTD }

DEFENDANT

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PLAINTIFF

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PRESENT

DEFENDANT REPRESENTED BY ANGELA OKAI

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PRESENT

J.K. AGYEMANG ESQ., FOR THE PLAINTIFF

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PRESENT

ATTA AKYEA ESQ FOR THE DEFENDANT

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PRESENT

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BY COURT:

JUDGMENT

The Plaintiff claims that the Defendants wrongfully dishonoured cheques drawn upon them as his bankers and accordingly prays for special and general damages for the wrongful acts. His writ of summons issued together with a statement of claim (subsequently amended) has been endorsed with the following reliefs:



- “(a) US\$2,182,968,791.65 being special damages.
- (b) US\$16,278,974,245.00 being general damages for wrongfully refusing to honour cheques drawn upon the Defendant as his bankers when at all material times the Plaintiffs accounts with the Defendant were in credit.
- (c) Damages for conspiracy.
- (d) Interest at the prevailing bank rate from 16th day of July 2012 to date of final payment”.

From the statement of claim the Plaintiffs case is that he was at all material times a businessman and Chief Executive of Companies including Ghana Heights Limited of No. 84 Oxford Street, Adwoa Adjeiwaa Building, Osu, Accra. The Plaintiff kept accounts with the Osu and Madina Accra branches of the Defendant bank. He operated the accounts at all material times for the purposes and in connection with his business. The accounts were at all times in credit.

It has been alleged that in breach of contract and their duty to the Plaintiff the Defendants wrongfully failed or refused to honour five cheques drawn upon them.

Two of the cheques in favour of two religious organizations namely The Agape House New Testament Church and the Holy Ghost Temple were dishonoured and marked "Drawer's confirmation not Received" when in fact he had confirmed same to the Defendants on 16th July 2012. Upon being informed of the development by the payees, Plaintiff proceeded to the Defendants' office at Opeibea House, Accra to demand the reason for dishonouring the cheques. Whereupon Defendants' officers admitted their fault and profusely apologized to the Plaintiff. They thereupon called the payee bank to represent the cheques for clearance which was done.

It has further been alleged that in breach of contract and their duty to Plaintiff the Defendants wrongfully refused to honour a cheque payable to the Accra Metropolitan Authority (AMA) being payment for general rates on the Adwoa Adjeiwaa Building. The AMA had in a demand notice, threatened to take legal proceedings to have the said Building auctioned if payment was not effected on or by 26th July 2012. At the material time the account was in credit.

A fourth cheque drawn in favour of Messrs DDP Outdoors Limited (DDP) for satisfaction of a trade debt was also not honoured together with the AMA cheque and marked "Refer to Drawer" even though at all material times the account was in credit.

It is the case of the Plaintiff that the AMA 'Demand Notice' got to the notice of the lessees of the Adwoa Adjeiwaa Building comprising high profile companies some of whom had refused to renew their tenancies while others have vacated the premises.

The last cheque was drawn in favour of the Internal Revenue Service (IRS) which was also wrongfully dishonoured even though at all material times the account was in credit. It has been alleged that as a result the Service had withdrawn the exception from withholding tax of 5% granted to one of the Plaintiff's companies, Ghana Heights Limited.

The Plaintiff maintains that the Defendants deliberately and maliciously dishonoured the cheques with a view that he would fall foul of a Bank of Ghana circular of 17th September 1999 so that he would be banned from operating any

account with any bank in Ghana for a minimum of three years thereby leading to the collapse of his business and injuring his credit, character and reputation and bring him to public scandal, ridicule and contempt.

It has also been alleged that the Defendants' conduct exposed Plaintiff to prosecution under the Criminal Code (Amendment/Decree 1973, NRCD 160 for issuing bad/dud cheques. If found guilty the Plaintiff could be sanctioned by a fine or imprisonment of up to five years.

Based on the foregoing the Plaintiff caused the writ of summons to be issued seeking the reliefs endorsed on the writ of summons.

The Defendant filed a statement of defence wherein the material allegations of facts in the statement of claim were denied.

In specific reference to the cheques to the religious bodies it has been pleaded that the Defendant did not honour them because the necessary confirmation from the Plaintiff could not be obtained as attempts to reach him on his phone

proved unsuccessful. And that was in accordance with industry practice, custom and trade. It was also to protect the bank and customers from fraudsters.

Accordingly, the Defendant's Officers recorded "Drawers Confirmation not Received" on the cheques and returned to the payee bank. It was thereafter that the Plaintiff called to confirm the payment which payment was made on 18th July 2012. The Defendants therefore state that the Plaintiff's reputation could not have been dented in any way.

In respect of the AMA and DDP cheques the Defendant has averred that the respective sums exceeded the credit balance on the Plaintiffs account. As a result the two cheques were returned to the payee bank. Subsequently, however the Defendants claims, upon consultation with the presenting bank exercised its discretion to honour the cheque with the bigger sum. The cheque with the smaller sum could not be honoured due to the poverty of the account at the material time.

The allegations in respect of the cheque to IRS were

all denied.

From the foregoing the Defendants have alleged in paragraph 20 of the statement of defence that the Plaintiff's case lacked integrity and the allegations of loss and damage fanciful, unreasonable and unrelated to Plaintiffs transactions with the Defendants.

Further, the Defendants maintains that the Plaintiff's personal account have no bearing on the corporate undertakings and business venture of his companies namely Ghana Heights Limited, Accra Business Bay Ltd and One World Real Estate Management Ltd of which he is the Chief Executive Officer.

The Defendants claimed the Plaintiff was not entitled to the claim for damages.

The Plaintiff filed a reply wherein the material allegations in the statement of claim were reiterated. At the close of pleadings issues and additional issues were agreed and the suit set down for determination. The first issue is:

“Whether or not the Defendant at all material times

knew that the Plaintiff was a businessman and Chief Executive Officer of Ghana Heights Company and the owner of Adwoa Adjeiwaa Building”.

The issue as formulated assumes that the Plaintiff was a businessman, the Chief Executive Officer of Ghana Heights Company and the owner of the Adwoa Adjeiwaa Building.

The Plaintiff pleaded the capacities above in paragraph 3 of the statement of claim as follows:

- “3. The Plaintiff was at all material times a businessman and Chief Executive of Ghana Heights Ltd No. 84 Oxford Street, Adwoa Adjeiwaa Building Osu, Adwoa Adjeiwaa Building was a property of Plaintiff of Accra as the Defendant at all material times well knew”.

In response it was pleaded in the amended statement of defence filed in 14th May 2014 that:

- “3. In answer to paragraph 3 of the Amended Statement of Claim the Defendant avers that the Plaintiff’s office and property ownership have no correlation with his bank balance with which the Defendant holds in trust for the Plaintiff”.

In paragraph 3 of the amended statement of claim above quoted the Plaintiff averred that he had

sued in three capacities namely:

- (i) as businessman
- (ii) the Chief Executive of Ghana Heights Limited and
- (iii) owner of the property known as Adwoa Adjeiwaa Adjei Building, Osu.

From the response thereto in paragraph 3 of the amended statement of defence supra the Defendant did not specifically deny any of the positions pleaded in the statement of claim. It is however clear that the Defendants intended that the positions of the Plaintiff had no bearing on the balances on his accounts which are held in trust by the Defendants. The fact that the Defendant was at all material times the banker of the Plaintiff is on the pleadings not in dispute.

Order 11 rule 13 (1) of the High Court Rules 2004, C.I 47 states that any allegation of fact made by a party in the party's pleading shall be deemed to have been admitted by the opposite party unless it is traversed by that party in pleading or a joinder of issue under rule 14 operate as a denial of it.

From the rule therefore I hold that not having traversed or joined issue on the capacities in which

the Plaintiff instituted the action Defendants have admitted same.

The foregoing have become necessary because learned Counsel for the Defendant has made a gallant and spirited effort in his written submissions to deny the Plaintiff's capacity to institute the action.

He has stated in paragraph 47 of his address that:

“The Plaintiff's issue (a) raises a very fundamental legal question as to whether the Plaintiff has the requisite capacity to bring this action having regard to his own lack of appreciation of what reliefs an individual is entitled to and that of a company limited by shares. All the authorities converge on the point that where a party has not the requisite capacity to bring an action his claim must fail.....”

I think this issue of a company limited by shares having a separate legal existence from its members and/or shareholders need not detain us. In this case no company has sued the Defendant.

There is overwhelming evidence that the Plaintiff was at all times material to the action an employee of the company Ghana Heights. He does not

purport to have brought the action on behalf of the company. Were that so I should have had no difficulty in sustaining the objection by defence Counsel.

In this case the Plaintiff purports to have issued the writ as a businessman, owner of Adwoa Adjeiwaa house and the Chief Executive Officer of Ghana Heights Limited.

To succeed in setting aside the entire suit for want of capacity, the Defendant should be able to show that the action is not sustainable on all three grounds.

In this case the Plaintiff tendered Exhibit Z62 being copies of the forms he filled when opening his personal account with the Defendant. The account was for an individual. In the column for "Employers Name and Address he stated: Ghana Heights Ltd, Suit 601 84 Cantonments Road, Osu, Accra. He also gave Commercial Real Estate Developers as the employer's business. It was also stated that he was the CEO of the company. His sources of income were "from business/salary". Neither the forms nor the information provided in Exhibit Z62 were

challenged. I accordingly hold that from the exhibit the Plaintiff was an account holder of the Defendant in which he described himself as the C.E.O of Ghana Heights Ltd. The nature of his business was also stated to be commercial estate developer. Accordingly, as such businessman and C.E.O of Ghana Heights he could prosecute or defend cases in those capacities. I accordingly hold that the Plaintiff has the requisite capacity to institute the present action. By so saying I should not be understood that Plaintiff and the company are one and the same person. The capacity to issue a writ does not necessarily entitle one to make all manner of claims.

The account so opened with the Defendant was said to be a Transactional Banking Account which account was accepted by the Defendant.

It is noteworthy that Ghana Heights Ltd had its own accounts namely :

- (a) Ghana Cedi Account number
0100-1347936-00.
- (b) US Dollar Account No (Forex)
87015-347936.
- (c) US Dollar Account Number (Special)

87002-347936-00.

From Exhibit Z62 I hold that the Defendant at all material times knew that the Plaintiff was a businessman and the Chief Executive Officer of Ghana Heights Ltd.

In respect of the ownership of the Adwoa Adjeiwaa Building the Plaintiff in his pleadings averred that it belonged to him. He repeated same in his examination in chief. In answer to a question in cross examination he said:

“My Lord the property Adwoa Adjeiwaa Building and also the Tema Warehouse are my personal properties and the only source of income for my personal account”.

Exhibit U is a letter written by the Chief Registrar of the High Court to the Chief executive Officer OAB and Sons Accra to pay the purchase price of Kadmus House being US\$400,000.00 into a designated account of the Judicial Service at the Bank of Ghana. On the evidence the Chief Executive Officer of Messrs OAB and Sons was at all times material the Plaintiff. Exhibit V is a letter accepting the offer made by Messrs OAB and Sons Ltd for the building, Kadmus House.

Exhibit W is an order of the High Court directing the Chief Registrar of the High Court who at the time was the Administrator of the Estate of Gershon Nani Zormelo to conclude the sale of Kadmus House to Stanbic Bank. It is dated 22nd March 2004. For reasons not discernible from the record the property was sold to Messrs AOB and Sons Ltd.

By exhibit Y the said House was conveyed absolutely to Osei Akwasi Boakye Jnr, therein described as the purchaser. Further, in exhibit Z2 the Lease Agreement between Ghana Telecommunications Limited on the one part and Ghana Heights Ltd and Osei Akwasi Boakye Jnr on the other part the House bought in Exhibit Y is the same as the present Adwoa Adjeiwaa Building. Accordingly in the absence of any evidence to the contrary I conclude that the Plaintiff was at all material times owner or at least part owner of the said Building.

The sources of the Plaintiffs funds when he opened his account vide Exhibit Z62 were stated to be his business and salary. The Defendants on the evidence could not be said to have known that the

sources were from the Adwoa Adjeiwaa Building I therefore find and hold that the Plaintiff could not prove that the Defendant knew that he owned the Adwoa Adjeiwaa Building.

Issue (b) is formulated as follows:

“Whether or not at all material times the Defendant knew that the Plaintiff operated his account with the Defendant for the purpose and in connection with his trade or business”.

From Exhibit Z62 the Plaintiff had stated that the sources of funding of his individual account were from his business and salary as the CEO of Ghana Heights Ltd. It seems to me therefore that in respect of that account the Plaintiff made it clear to the Defendant that it was in connection with his business. To this limited extent the issue is answered in the positive. It was to this extent that the purpose of the account was stated to be “transactional”.

The third issue is:

“Whether or not at all material times when the Plaintiff issued the cheques Plaintiff had sufficient funds in his account to pay for the value of those cheques”.

As noted above five cheques were involved in this

suit. The first two were issued to religious organizations. The evidence is overwhelming that the non-payment of the cheques was because Plaintiffs confirmation was not received. The non-payment was not because there were insufficient funds in the account.

The third and fourth cheques were not paid because according to the Defendant the Plaintiff did not have sufficient funds in the account. The fifth cheque was not honoured because the account was allegedly dormant.

Accordingly, the cheques fall into three main groups namely those not honoured because confirmation was not received: those not honoured for lack of funds and lastly, the one not honoured for the account being dormant.

The determination of the third issue (c) would accordingly be made in relation to the third and 4th cheques namely the AMA and DDP cheques.

Before then however the relevant law on the obligations owed between a paying bank and its customers.

The relationship between the banker and customer is contractual and the classic description of that was stated by Atkin L.J in *Joachimson vrs. Swiss Bank Corporation* [1921] 3KB 110 at 127 as follows:

“The bank undertakes to receive money and to collect bills for the customer’s account. The proceeds so received are not to be held in trust for the customer but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer’s addressed to the bank at the branch and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or facilitate forgery. I think it is necessarily a term of such a contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept”.

Under the contract the banker is under an obligation to repay. That is, where a customer pays money into his account the bank obtains title to the money and assumes a contractual liability to repay an equivalent amount to the customer or to his

order. At any given time the bank is liable to repay to the customer the amount of the credit balance on the account or where the bank has a presently exercisable right of set off, the net balance on one or more accounts.

A lot of changes have gone on in the practices, customs and usages in the banking industry since Joachimson. I think Judicial notice could be taken of the fact that today the order for repayment could be made at any branch of most, if not all, reputable banks and not necessarily at the branch where the account was opened. The learned authors of Pagets Law of Banking 13th edition at page 468 state that the banks obligation to repay is subject to the following qualifications:

- (i) the customer must have funds which are sufficient and available
- (ii) the payment order must be regular and unambiguous in form
- (iii) the banks authority to honour payment orders or a particular payment order must not have been determined.

A customer who operates a current account owes a duty of care to his bank. The duties are:

- (i) to refrain from drawing a cheque in such a manner as may facilitate fraud or forgery; and
- (ii) to inform the bank of any forgery of a cheque purportedly drawn on the account as soon as he becomes aware of it. See Paget *supra* at page 469.

Now, as noted above the cheques which were not honoured because of the poverty of funds in the account were issued to AMA and DDP Ltd.

The evidence shows that the two cheques were presented to the Defendant on 23rd July 2012. According to the Plaintiff the Defendants called him to confirm the two cheques. He said he responded and told the Defendants' official the purpose of the cheques. The opening balance of the account on 23rd July 2012 was GH¢36,115.18. the Plaintiff had withdrawn GH¢6,000.00 through the ATM.

The Plaintiff said the Defendants' representative a Lady, called and urged him to pay into his account an amount of ₵5,000.00 so the cheques could be honoured. The Plaintiff thereupon called his sister-in-law, one Betty Boakye to deposit the GH¢5,000.00 into the account which she did. The payment was reflected in exhibits 6, Z63 and Z64. The AMA cheque was for the sum of

GH¢27,606.49. the DDP cheque was for an amount of GH¢7,176.00. The total was GH¢34,782.49.

From the entries on exhibit Z64 the deposit of GH¢5,000.00 was reflected on the account of the Plaintiff before the two cheques were marked “refer to drawer” were entered and deductions of GH¢2,760.65 and GH¢717.60 respectively representing 10% penalty on each dishonoured cheque were made. The Plaintiff accordingly maintains that at the time the said cheques were dishonoured and marked “Refer to Drawer” he had sufficient funds to meet them.

The Defendants however contend that after the ATM withdrawals the balance was GH¢32,115.18 which sum was significantly less than the sum of the two cheques. Consequently, the clearing department of the Defendant returned them to the presenting banks with the inscription “refer to drawer”. I accordingly find and hold that the cheques were returned with the inscription “Refer to Drawer”.

The issue then is whether or not at the time the cheques were so returned the Plaintiffs account did