

CASE DIGEST

COMMERCE: BANK TRANSACTIONS; INTEREST IS AWARDED AGAINST A BANK FOR MONIES OF A CUSTOMER HELD UNTO OVER A PERIOD OF TIME

FIRST BANK OF NIGERIA PLC v. STANDARD POLYPLASTIC INDUSTRIES LTD.

SUPREME COURT OF NIGERIA

(MUHAMMAD; NWEZE; OGUNWUMIJU; ABUBAKAR; AGIM, JJ.SC)

In 1983, Standard Polyplastic Industries Ltd. (The Respondent) applied for letters of credit to be opened on its behalf by First Bank of Nigeria Plc (The Appellant) to import industrial spare parts and two sets of mould for the production of beer crates with electric control cabinets. For this purpose, the Appellant debited the account of the Respondent domiciled with it and further applied to the Central Bank of Nigeria (CBN) for allocation of foreign exchange which was duly approved and the forms returned to the Appellant who gave same to the Respondent. However, the Appellant failed to remit the dollar sum debited from the Appellant account, to the corresponding bank for onward payment to the Respondent's customer in London. The Appellant did not also credit back the respondent's account for the Naira equivalent. Due to the inadvertence of the Appellant, the Respondent had to source for foreign exchange at a higher rate, travelled to London and paid the customer wherein it was issued with receipts by the customer for the sum of \$129,150.00 and \$5,430.00. Despite repeated complaints and request made by the Respondent, the Appellant continued to utilise the respondent's money in its business since 1983. On this note, the Respondent instituted an action against the Appellant for a refund of the unremitted sum, as well as interest on the said sum. At the conclusion of trial before the trial Court, a considered Judgment was delivered in favour of the Respondent. Dissatisfied with the judgment of the trial court, the Appellant appealed to the Court of Appeal (lower Court). The lower Court dismissed the appeal and affirmed the judgment of the trial court. Further dissatisfied by the judgment of the lower Court, appealed to the Supreme Court. One of the issues for determination is: *Whether the court below was right when it upheld the interest awarded to the Respondent by the trial court?*

Learned Counsel for the Appellant argued that that the lower Court was wrong to have awarded the interest which the Respondents claimed. Counsel pointed out that the Respondent did not plead the basis of its entitlement to the pre-judgment interest awarded to it, as required by law, nor did the Respondent plead or proved any banking system principle of equity as the basis for the interest claimed at the trial court. He further contended that the lower court, in granting the interest claimed by the Respondent, also awarded it on the basis of "unjust enrichment" which was never raised before the lower court. He concluded by stating that respondents did not set out the facts in their pleadings on how they arrived at the computation of interest set out in their annexures, and urged the Court to resolve in their favour.

Learned Counsel for the respondent contended that the Appellant did not deny the Respondent's entitlement to interests, and opined that the action of the Appellant in failing to either remit the foreign exchange or refund the Respondent's money since 1983 amounted to a breach of fiduciary relationship by the Appellant which attracts interest. According to Counsel, the Appellant has taken massive benefits of the Respondent's foreign exchanges for decades by using same to run her businesses, and should not be allowed to benefit from its own wrong. He added that the Appellant cannot withhold the Respondent's money for years and turn around to argue that interest should not be paid. In conclusion, he stated that the court has the inherent and unfettered power to award interest notwithstanding that no interest was pleaded or claimed, and thus urged the Court to resolve in the Respondent's favour.

In resolving the issue, the Supreme Court held that:

Where a bank, which is a trading company, takes credit by way of deposit from its customers, the court takes judicial notice of the fact that either the bank or its customer is entitled to interest. It is this interest that the Central Bank of Nigeria, by the provision of section 15 of the Central Bank Act, attempts to control. Further to this, in purely commercial transactions, a party who holds on to the money of another and keeps it for a long time without any justification and thus deprives that other of the use of the funds for the period should be liable to pay compensation by way of interest. Thus, the court is entitled, in appropriate cases, to award interest in the form of consequential order, even where interest is not claimed.

Fred Onoobia, SAN for the Appellant
C. N. Nwokolie, Esq., for the Respondent

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