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CASE DIGEST

COMMERCIAL LAW: COMMERCIAL TRANSACTION; BUSINESS TRADE; INTERESTS SHOULD BE PAID WHERE A PERSON DEPRIVES A BUSINESS/TRADE OF THE USE OF ITS MONEY.

UNITS ENVIRONMENTAL SCIENCE LTD. v. REVENUE MOBILIZATION ALLOCATION & FISCAL COMMISSION.

(ARIWOOLA; OKORO; AUGIE; ABOKI; AGIM, JJ.SC)

Units Environmental Science Ltd (Appellant) and Revenue Mobilization Allocation & Fiscal Commission (Respondent) herein, entered into a Consultancy Agreement sometime in the year 2001 with respect to the Respondent's Staff Housing Development project, situate at Mabushi, Abuja. By Section 15 of the Consultancy Agreement, any dispute arising from the consultancy Agreement shall be resolved through Arbitration. Pursuant to a dispute arising out of the Consultancy Agreement, An Arbitrator was appointed as Sole Arbitrator, who after the arbitration proceedings, published an Award. The Respondent herein was aggrieved by the published Arbitral Award and applied to the Federal High Court, contending inter alia that the Sole Arbitrator went outside of what was agreed or contemplated by the parties in the Consultancy Agreement, in computing what the Appellant (as Claimant) was entitled to. The Appellant disagreed with the Motion for setting aside the Arbitral Award and filed its own motion seeking for the recognition and enforcement of the published Award by the Sole Arbitrator. The Federal High Court in its judgment struck out the Respondent's Motion for setting aside, and granted the Appellant's motion for the recognition and enforcement of the published Award, by the Sole Arbitrator. Aggrieved, the Respondent appealed to the Court of Appeal (Lower Court), and the Lower Court allowed the appeal, and set aside the decision of the trial Court. It also held that there was merit in the application and set aside the Award.

Dissatisfied by the decision of the Lower Court, the Appellant appealed to the Supreme Court. One of the issues for determination is: *Whether the Court of appeal decided and acted erroneously when it set aside the Judgment of the Federal High Court as well as the Arbitral Award on the ground that pre-award Interest was neither claimable or awardable in the total circumstances of the appeal before it.*

Learned Counsel argued for the Appellant that from the evidence, it is evident that the Appellant was entitled to his claim of interest having been denied access to the money that was sought as damages arising naturally in the course from the Respondent's breach of the contract, and that the Court of Appeal's decision that the trial court's award of pre-award of contract interest has no factual and legal foundation is perverse and incorrect. Counsel stated further that damages for willful, deliberate retention of monies due to another by a party to a contract, whether or not containing an agreement as to interest will attract damages usually by the way of interest by mercantile custom, that in the case before the Sole Arbitrator, this case was made, pleadings specifically put out and evidence led, and that there was evidence and a specific finding that the respondent received the full range of services that the Appellant had offered, but when it came time to pay, the Respondent paid a pitiful sum and then tried to escape its obligations by blaming the Political, Public and Judicial Office Holders (Salaries and Allowances, etc.) Act No. 6, 2002. This was a fruitless attempt to claim frustration by government action.

Counsel for the Respondent on the other hand contended that the Sole Arbitrator exceeded his jurisdiction by making a pre-Award interest in favour of the appellant, and this interest awarded is what formed the plank upon which the respondent challenged the published Arbitral Award at the trial Court and the lower Court. Arguing further, Counsel stated that the parties to the Consultancy Services Agreement did not contemplate any form of pre-award interest hence it was not embodied in the Agreement, and that there was no evidence in support of the award of pre-award interest. Counsel thus submitted that the pre-award interest had no basis and its award was correctly set aside by the lower Court, which rightly held that there was misconduct on the part of the Sole Arbitrator in the Published Award in that he exceeded his authority by awarding pre-award interest that the parties did not contemplate in their Agreement.

In resolving the issue, the Supreme Court held as follows:

The court has held that the parties to the contract would be presumed to have reasonably contemplated that interest or penalty can be charged on the payment delayed in violation of the contract in cases where the party deprived of the use of its money is a bank, finance house, or business enterprise that ordinarily or customarily charges interest or penalty for default in paying its money. The courts have held that the parties would be presumed to have reasonably contemplated that interest or penalty would be paid on money not paid as and when due in breach of the contract if it is customary or the usual and generally accepted practice in contractual transactions of that nature. Contracting parties must be imputed with knowledge and understanding of the ordinary practices and usages of each other's trade or business.

Issue resolved in favour of the Appellant.

Olumide Ayeni SAN., with Olutunde Abegunde Esq., Olawale Oyebode Esq., Mrs. Favour Leonard Goin Esq., and Adeniyi Olominu Esq., for the Appellant.
P. Y. Garba Esq., with Austin Mwana for the Respondent.

This summary is fully reported at (2002) 10 CLRN