

CASE DIGEST

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RBF ENERGY RESOURCES LIMITED v. QUAD MARINE OIL AND GAS LIMITED & 3 ORS.

COURT OF APPEAL (LAGOS DIVISION, NIGERIA)

(OGBUINYA; DANIEL-KALIO; AKINBAMI, JJ.CA)

Background Facts

RBF Energy Resources Ltd. (Cross-Appellant), a dealer in petroleum products especially in the downstream sector of the oil and gas industry, was a high-profile customer of Intercontinental Bank Plc which metamorphosed into Access Bank (4th Cross-Respondent). In 2007, the 4th cross-respondent granted an initial facility of ₦40M, which it later increased to ₦80M, ₦250M and ₦350M, to the Cross-appellant on certain securities. In 2006, at the behest of the 2nd Cross-Respondent, the Cross-Appellant made her a commission agent on the sale of its petroleum products. In 2008, the Cross-Appellant entered into a contract of the supply of petroleum products to the 1st Cross-Respondent through the persuasion of the 2nd and 3rd Cross-Respondents who were the managing director and chairman/major promoter of the 1st Cross-Respondent respectively. The proceeds of the sales were to be remitted to the Cross-Appellant via its account with the 4th Cross-Respondent wherein the 3rd Cross-Respondent doubled as a staff thereof. The Cross-Appellant alleged that between May and July 2008, it supplied the 1st Cross-Respondent with petroleum products to the tune of ₦198M which the 1st – 3rd Cross-Respondents, in collaboration with the officials of the 4th Cross-Respondent, converted to their own use.



The Cross-Appellant further alleged that the 4th Cross-Respondent negligently allowed the 1st – 3rd Cross-Respondents to make massive unauthorised withdrawals from its account with it. It further alleged that the 4th Cross-Respondent was careless, reckless and observed unprofessional conduct in dealing with its account. In reaction, the 1st – 3rd Cross-Respondents and the 4th Cross-Respondent, upon service of the process on them, joined issue with the Cross-Appellant and denied liability by filing their statements of defence. In their defences, they described the action as a gold-digging, vexatious and frivolous matter. Upon conclusion of trial at the lower court, and in a considered judgment, the lower court granted a part of the prayers in the Cross-Appellant's suit.

Dissatisfied with certain parts of the judgment of the lower court, the Cross-Appellant appealed to the Court of Appeal.

At the Court of Appeal, the sole issue raised for determination is: *Whether and having regard to the facts and circumstances of the Cross-Appellant's case, as well as the state of evidence before the Court, the learned trial court was right when it refused to award the Cross-Appellant's claim of damages for negligence against the Cross-Respondent - Access Bank Plc.*

Arguments

The Learned Cross-Appellant's counsel argued that there existed not only a banker/customer relationship but an exclusive written contract between the Cross-Appellant and the Cross-Respondent which was binding on them and cannot be varied/or rewritten by the court. He asserted that the Cross-Respondents, using cheques with forged signatories of Felix Nlewemchi, who was the sole Signatory to the account, withdrew the Cross-Appellant's funds in its account with the 4th Cross-Respondent for purposes other than petroleum transactions contrary to the terms of the agreements, and that the terms of the contracts were unambiguous such that the 4th Cross-Respondent was estopped from adopting other considerations in making payments out of the cross-appellant's account. He further asserted that the cross-respondent failed in its obligations, which it presented itself to be skilled to execute in the contracts when it allowed transactions on the account against the terms of those contracts. Counsel submitted that the 4th Cross-Respondent was not diligent in discharging its duty of care which resulted into financial losses and damages to the Cross-Appellant which it is entitled to following the violation of its rights

Learned Counsel to the 4th Respondent in response argued that the 4th Cross-Respondent was not negligent because withdrawals were made when the sole signatory, had its mandate which it had a duty to obey. He stated further that the 4th Cross-Respondent did not know which cheques to honour or not as all the cheques and withdrawals were signed by the sole signatory based on the instruction and mandate to the 4th Cross-Respondent. Learned Counsel in his submission stated that the 4th Cross-Respondent could only have been liable had the Cross-Appellant proved that it honoured forged cheques. He noted that had the 4th Cross-Respondent not honoured the cheques, signed by the sole signatory, it would have been liable in damages for wrongful dishonour of cheques. He further explained that the cheques, based on the Cross-Appellant's pleading, were not for petroleum transactions but for working and other sundry funds and they were rightly honoured under the common course of business.

Decision of the Court

In resolving this issue, the Court of Appeal held that:

It is the bounden duty of a banker to its customer to honour and pay a cheque drawn on it by the customer so long as the customer has, in its possession at that material time, sufficient and available funds. A banker must pay the value in a cheque to the person entitled to it otherwise it will be guilty of the tort of conversion and liable in damages to the drawer. In this regard, the damages against the bank are at large without proof of actual loss. It is against the backdrop of this legal duty, heaped on the bank, that the law insists that it exercises reasonable care, diligence and overriding caution to process a cheque before payment otherwise it will be enveloped in the intractable web of negligence. The 4th Cross-Respondent, respected and kowtowed to the banking codes and practices before giving value to the sum requested. It was a classic exemplification of keeping faith with its financial obligation in the existential banker-customer relationship, as it took all the necessary precautions expected of a prudent bank before discharging its obligation.

Issue resolved in favour of the 4th Respondent.

Chief Nelson O. Imoh for the Respondent/Cross-Appellant

G.C. Anyafulu, Esq., with C. Nwude, Esq., for the 1st – 3rd Appellants/Cross-Respondents

Ayodeji Ogunlana, Esq., for the 4th Cross-Respondent

This summary is fully reported at (2023) 3 CLRN.

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