**RAJCO INTERNATIONAL LIMITED**

**V.**

**LE CAVALIER MOTELS AND RESTAURANTS LIMITED AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 1ST DAY OF MARCH, 2016

CA/L/912/2009

**LEX (2016) - CA/L/912/2009**

OTHER CITATIONS

2PLR/2016/53 (CA)

(2016) LPELR-40082(CA)

**BEFORE THEIR LORDSHIPS**

JOSEPH SHAGBAOR IKYEGH, J.C.A

SAMUEL CHUKWUDUMEBI OSEJI, J.C.A

YARGATA BYENCHIT NIMPAR, J.C.A

**BETWEEN**

RAJCO INTERNATIONAL LIMITED - Appellant(s)

AND

1. LE CAVALIER MOTELS AND RESTAURANTS LIMITED

2. GHASSAN A CHIEAIB

3. ALI FAWAZ - Respondent(s)

**REPRESENTATION**

EMMANUEL ACHUKWU with N. Azih - For Appellant

AND

O. C. AGBAFOR - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMPANY LAW – TRANSFER OF SHARES:- How proved – Burden of proof Plaintiff must discharge where corporate entities are the only parties to the alleged transaction - Share purchase agreement – Requirement of Board Resolution by the Directors of the vendor Company to sell and transfer the allotment of shares following upon the receipt of consideration for same – Effect of failure thereto

CAPITAL MARKET LAW – CONTRACT FOR TRANSFER OF SHARES:- Agreement for sale of company shares - Transfer of shares between corporate entities – Key elements of a valid contract for transfer of shares between corporate bodies – Need to comply with the Articles of the vendor’s company relating to sale of shares including Resolutions of the Board – Effect of failure thereto

COMMERCIAL LAW – CONTRACT:- Agreement for transfer of shares between two corporate entities – How proved – What conditions must be satisfied

LEISURE – HOSPITALITY – SPORTS – ENTERTAINMENT LAW:- Contract for transfer of shares in a hotel/hospitality business – How constituted – Need to satisfy applicable statutory provision – Effect of failure thereto

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PLEADINGS: Whether pleadings must be supported by evidence; Effect of pleadings not supported by evidence

APPEAL - ISSUE(S) FOR DETERMINATION: Whether respondent's issues must arise from appellant's ground of appeal

COURT - DUTY OF COURT: Duty of trial Court to ensure that plaintiff discharges the burden to prove its case

COURT - SPECULATION: Whether Courts are allowed to speculate

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF: On whom lies the burden of proof in civil cases - Standard of proof - Where evidence of plaintiff is unchallenged and uncontroverted – Duty to meet minimum standard required to prove case

EVIDENCE - UNCHALLENGED/UNCONTROVERTED EVIDENCE: Rule that unchallenged evidence needs no further proof – Effect - Whether it is in every case where evidence is uncontradicted that judgment must be given to the plaintiff – Where unchallenged evidence called in support of a plaintiffs case is insufficient to sustain the plaintiffs claims – Duty of court thereto

PLEADINGS:- Principle that pleadings, however strong and convincing the averments may be without evidence in proof goes to no issue – Need for evidence to be led to prove the facts relied on by the party or to sustain allegations raised in the pleadings – Whether pleading not supported by evidence either oral or documentary is deemed to have been abandoned.

**MAIN JUDGMENT**

SAMUEL CHUKWUDUMEBI OSEJI, J.C.A.: (DELIVERING THE LEADING JUDGMENT)

This appeal challenges the judgment of the Federal High Court, Lagos Division delivered on the 15th day of June, 2009 by Hon. Justice C.E. Archibong, wherein the plaintiff’s (now appellant’s) suit was dismissed on the ground that there was no share purchase agreement or a Board Resolution by the Directors of the 1st Defendant (now 1st Respondent) company for the allotment of shares to the Appellant upon payment of N1,500,000 as claimed.

The Appellant herein had by a writ of Summons and statement of claim both dated 19-8-2004 claimed against the three Appellants as defendants in the lower Court as follows:-

WHEREOF the Plaintiff claims from the Defendants jointly and/or severally as follows:

1. A declaration that it is entitled to be allotted, issued and/or transferred 1,500,000 ordinary shares of N1.00 each, making up 30% of the authorized share capital of the 1st Defendant Company.

2. An Order directing the Defendants to allot, issue and/or transfer 1,500,000 ordinary shares of N1.00 each or shares making up 30% in the authorized share capital of the 1st Defendant Company to the Plaintiff and to issue it a Share Certificate accordingly and file the necessary returns and/or instruments of transfer at the Corporate Affairs commission.

3. An Order appointing or permitting the appointment of a firm of Chartered Accountants/Auditors to do a comprehensive up to date audit of the Statement of Affairs of the 1st Defendant Company and the AL BASHA RESTAURANT in Abuja since 18th of March 2003.

4. Following the account aforestated an Order directing the Defendants to pay to the Plaintiff 30% of all profits so far made by the 1st Defendant Company and the AL BASHA RESTAURANT in Abuja.

5. An injunction restraining the Defendants whether by themselves agents and/or by whomsoever from dissipating the assets and good will of the 1st Defendant company and/or in any way putting the asset, business and/or good will of the 1st Defendant company in jeopardy pending the hearing and determination of the suit herein.

6. An Order appointing a Manager to take over the affairs/running of the 1st Defendant company either alone or in conjunction with the current Directors of the company pending the hearing and determination of the suit herein.

7. Damages and costs.

The Respondents eventually entered an appearance in the suit and filed an amended statement of defence dated 7-10-2005.

Hearing of the suit commenced on 14-12-05 wherein the Appellant called one witness as PW1 but was not cross-examined by the Respondents who did not also lead evidence in support of their pleadings in defence. The same scenario was re-enacted when the matter was tried de novo before Justice C.E. Archibong who concluded the hearing of the suit and delivered Judgment on 15-6-2009 dismissing the claim of the Appellant against the Respondents. The Appellants case in a nutshell was that sometime in 2003, the 2nd and 3rd Respondents approached one Mr. Raji Punjabi who is the Managing Director of the Appellant, and requested him to invest in the 1st Respondent Company in the sum of N1, 500,000. Based on the said request the said Mr. Raji Punjabi issued a cheque for the said sum of N1,500,000 to the 1st Respondent company in 2003 and his expectation was to get the value of his N1,500,000 in shares of the 1st Respondent which stood at N5millon then therefore entitling him to about 30% of the shares of the company and consequently returns on investment at the said percentage but the 2nd and 3rd Respondents who runs the 1st Respondent refused to allocate the shares to him or put him in the Board of the 1st Respondent. Though the Respondents did not lead any evidence in defence of the claim even though an amended statement of defence was filed, the trial Court all the same dismissed the Appellants claim.

Hence it filed a notice of Appeal dated 1-9-2009 but filed on 24-11-09. It contains one ground of Appeal.

Briefs of argument were subsequently filed and served in accordance with the Rules of this Court. The said brief of argument was adopted at the hearing of this appeal on 1-2-2016.The Appellant’s brief of argument was filed on 23-12-2009 and a sole issue was formulated therein for determination as follows:-

“Whether the learned trial Judge was right (in law) in dismissing the Appellant’s suit on the ground that there was no share purchase agreement to evidence an intention by the parties for the Appellant Company to invest and participate in the business of the 1st Respondent company.”

In the Respondents brief of Argument filed on 21-2-2014 but deemed properly filed on 1-2-2016 a sole issue was also distilled for determination as follows:-

"Whether there is any feature in the judgment appealed against by reason of which this Honorable Appellate Court can justly interfere with the decision of the trial Court in this case”

The Appellant also filed a Reply brief on 7-3-4 but deemed properly filed on 1-2-2016.

The sole issue formulated in the Appellant’s brief of Argument is quite apt for the proper resolution of this appeal and I accordingly adopt same.

Arguing on the said sole issue, learned counsel for the Appellant submitted that where a plaintiff adduces evidence in terms of his pleadings and in proof of it and the evidence is not rebutted, the plaintiff would be entitled to judgment. He cited the cases of INEC v. ACTION CONGRESS (2009) 2 NWLR (pt 1126) 524 and SPDCN v. EDAMKUE (2009)14 NWLR (PT 1160) 1 AT 15.

He added that the learned trial Judge entered into the realm of speculation when he held that the plaintiff has not discharged the onus that its witness unchallenged and uncontroverted testimony is likely to be the state affairs between the parties, given the evidence of PW1 that the appellant issued a cheque to the Respondent and that the said cheque for which the Respondent got value was in consideration of investment for shares in the 1st Respondents company and the testimony was unchallenged and uncontroverted.

He added that the onus of disproving that the N1,500,000 paid by the Appellant to the 1st Respondent was for the allotment of shares by the Respondents which onus was not discharged by them. That is to say that the Respondents did not lead evidence to show that the sum of N1,500,000 paid by the Appellant to the 1st Respondent was in respect of another transaction other than investment for shares.

Therefore, it was not for the trial Judge to speculate on what other state of affairs that might have existed between the parties.

It was also contended that there is no legal authority stipulating that an agreement to invest in shares of a company must be in writing. This Court was then urged to dismiss the appeal.

Replying in their own sole issue for determination, learned counsel for the Respondents listed the peculiar features of the Appellant’s case at the lower Court as follows:-

(1) Total absence of contractual relation.

On this he argued that the case as framed in the lower Court and the evidence led in support thereof did not disclose the existence of any contract or intention to enter into any contract of sale or transfer of shares between any of the parties. Secondly, there is no written memorandum of an offer and acceptance between or amongst the parties for the sales of shares or for the doing of anything.

Thirdly, that there was no memorandum of any meeting between the parties at which the purported approach was made to a certain Mr. Raji Punjabi by the 2nd and 3rd Respondents who were said to have asked Mr. Raji Punjabi to invest on the 1st Respondent company.

2. There is no evidence of the existence of facts or circumstances from which a contract can be inferred. This is so because the case as canvassed by the Appellant in the lower Court neither disclosed in the pleadings or evidence, any facts, sets of facts or circumstances from which any reasonable person could infer the existence of any intention to create a contract of share allotment or sale.

3. That the evidence in Court did not link the 1st Respondent with the Appellant. This is given that there was no piece of correspondence, memorandum, agreement, receipt of payment, invoice on other documents to link the 1st Respondent with the Appellant except the wildest suggestion that whenever a company is issued a cheque, that cheque must be for payment for its shares.

4. That the Appellants evidence at the lower Court has no probative value. Thus going by the testimony of Mr. Raji Punjabi (PW1), if there was any transaction, it was between him and the 2nd and 3rd Respondents and therefore had nothing to do with the Appellant or the 1st Respondent.

It was further submitted by learned counsel that a plaintiff must always succeed on the strength of his own case, and not the weakness of the Defendants case. Therefore, if the evidence of the plaintiff is in itself worthless, improbable and totally lacks probative value, there will be nothing for the Defendant to rebut.

Learned counsel further contended that the absence of a transactional nexus between the Appellant and the 1st Respondent renders the action totally unfounded, there being no offer or acceptance. He cited the cases of AJAYI-OBE v. (EPC OF NIGERIA) (1975) NSCC (VOL.9)61; AFOLABI POLYMERS (AUD) (NIG)LTD (1967) NSCC 158) at 160.

On the legal effect of the copy of a cheque for the sum of N1,500,000 he relied on OKUOTA v. ISHOLA (1982) NSCC (VOL .13) 280 to submit that such payment without more cannot create a contract between the parties. He added that in the absence of any evidence linking the cheque of N1, 500,000 to any particular transaction, the Court cannot or create any contract between the parties. Vide ONYIUKE v. OKEKE (1976) NSCC 146.

This Court was then urged to dismiss the appeal for lacking in merit.

The Appellant’s reply brief of argument, filed on 7-3-14 but deemed properly filed on 1-2-16 was virtually hinged on the contention that the sole issue for determination formulated in the Respondents brief of argument is not derived from the ground of Appeal and the arguments in support is aimed and indirectly urging this Court to affirm the decision of the lower Court on other grounds, when in fact the Respondents did not file any respondent’s notice.

It was then submitted that a Respondent who did not cross-appeal or file a Respondent’s notice has no valid reason to go outside the confines of an Appellant’s ground or grounds of appeal. Therefore it is obligatory for the Respondents to either adopt the issue formulated by the Appellant or to formulate their own issues which must relate or derive from the ground of appeal filed by the Appellant. Thus any issue so formulated outside the ground of appeal must be disregarded or struck out by the Court. He relied on the following authorities. OJABO v. INLAND BANK (NIG) PLC (1998) 11 NWLR (PT 574) 433; AT 438; IMONIYAME HOLDINGS v. SONEB ENT. LTD (2002) 4 NWLR (PT 758)618; ODIFE v. ANIEMEKA (1992)7 NWLR (PT. 251) 25; KEBBE v. MAITUMBI (1999)5 NWLR (PT 601) 127, ALATAHA v. ASIN (1999)5 NWLR (PT 601) 32. AFRICAN PETROLEUM LTD v. OWODUNI (1991) 8 NWLR (PT.210)391; UTB LTD v. DOLPHARM (NIG) LTD (2002)8 NWLR (PT 770) 726.

This Court was then urged to discountenance the submissions of the Respondents as per their brief of argument having derived from an issue not related to the ground of Appeal. Firstly, on this issue whether the Respondents went outside the ground of Appeal filed by the Appellant to formulate their sole issue for determination having not filed a cross appeal or Respondent’s notice.

The said ground of appeal as contained in the Appellants Notice of appeal at pages 45 to 46 of the record of Appeal reads thus:-

**GROUND OF APPEAL**

The learned Trial Judge erred in dismissing the Appellant’s suit on the ground that there was no share purchase agreement to evidence an intention by parties for the Appellant Company to invest or participate in the business to invest or participate in the business of the 1st Respondent Company

**PARTICULARS**

(1) The Appellant pleaded and gave evidence that the Appellant was approached by the Respondents to investing, subscribe to the shares in the 1st Respondent’s company, following which the Appellant on the 18th of March, 2003 paid to the 1st Respondent company, the sum of N1,500,000 via a Global Bank Plc cheque dated 18th March 2003.

(2) The Learned Trial Judge found for a fact that the Appellant made a payment of N1,5000,000 in favour of the 1st Respondent.

(3) The Appellant’s evidence was unchallenged and uncontroverted by the Respondents.

(4) The Court held that there was nothing before the Court linking the said payment with any instrument, particular transaction, services or goods had or received or to be had or received.

In the Respondents brief of argument the following sole issue was formulated for determination:-

“Whether there is any feature in the judgment appealed against by reason of which this Honourable Appellate Court can justly interfere with the decision of the trial Court in this case.”

Going by the above set out ground of appeal and particulars of error, I am of the humble view that the issue as formulated by the Respondents is substantially derived from and relates to the said ground of appeal. It must in fact be borne in mind that a Respondent is not obliged to adopt word for word the issue or issues formulated in an appellant’s brief before it can be accepted that it derives or relates to a ground or grounds of appeal. A Respondent is therefore allowed by law to couch an issue or issues for determination in a manner favourable to his case provided it is within the ambit or confines of the ground or grounds appeal. Therefore where a Respondent has not filed a cross Appeal, the issues for determination formulated by him must arise from the ground or grounds of appeal filed by the Appellant. See OGUNDERE v. OGUNLOWO (1997) 6 NWLR (PT 59) 360, PADAWA v. JATAU (2003)5 NWLR (PPT 813) 247.

However, in the instant case, the sole issue as formulated in the Respondents’ brief of argument though couched differently from that of the Appellant, it did not in my view fall outside the ground of appeal as contended by the Appellant. Accordingly the arguments canvassed therefrom remains acceptable to this Court.

On the main issue for consideration as formulated and canvassed on the Appellants brief of argument. The learned trial Judge had in the judgment dismissing the Suit held thus at pages 43-44 of the Record:-

This entire suit fails for one simple reason:

There is no share Purchase Agreement to evidence an intention by the Parties for the Plaintiff Company to invest or participate in the business of the 1st Defendant Company.

The Plaintiff has not discharged the onus that its witness unchallenged and uncontroverted testimony is likely to be the state of affairs between the parties.

There is absolutely no way the Court can grant any of the reliefs the Plaintiff Company seeks in absence of a Share purchase agreement or a Board Resolution by the Directors of the 1st Defendant Company which made the allotment of shares following upon the N1,5000,000 payments by the Plaintiff.

There is nothing before the Court linking the said payment with any instrument, particular transaction, services or goods had or received or to be had or received. Suit dismissed.

The Appellant’s main grouse is that given the unchallenged evidence of the PW1 Mr. Raji Punjabi and the fact that the Respondent did not adduce any evidence in their defence, the learned trial ought to have entered judgment in favour of the appellant. This is based on the principle that where a plaintiff adduces evidence in terms of his pleadings and in proof of it and there is no other evidence in rebuttal, the plaintiff would be entitled to judgment.

Records before this Court show that though the Respondents filed an amended statement of defence, they did not however lead evidence in support of same neither did they cross-examine the only witness for the Appellant even though their counsel was present while he was being examined in Chief.

The law is trite that pleadings, however strong and convincing the averments may be without evidence in proof thereof goes to no issue. Evidence is required to be led to prove the facts relied on by the party or to sustain allegations raised in the pleadings. In other words, an averment of facts in a pleading is not an evidence and can never be so construed. The facts so averred must of necessity be proved by evidence except those facts admitted by the adverse party. See UBA v. ASTRA BUILDINGS (WA) LTD (2010) 41 NSCQR (PT 2) 1016; BUHARI v. OBASANJO (2005)2 NWLR (PT 910)241; YESUF v. OYETUNDE (1998) 12 NWLR (PT 579)483.

It follows therefore that pleadings do not constitute evidence and where such pleading is not supported by evidence either oral or documentary, it is deemed to have been abandoned. See NEWBREED ORGANSATION LTD v. ERHOMOSELE (2006)5 NWLR (PT 974) 499; EZEANALI v. ATTAH (2004) 2 SCNJ 200; (2994)7 NWLR (PT 873)468; MAGNUSSON v. KOIKI (1993)12 SCNJ 114; MOHAMMED v. KLARGESTER (NIG) LTD (2002) 14 NWLR (PT 987)335; CHIME v. CHIME (2001) 3 NWLR (2001)3 NWLR (PT 701) 527; GARBA v. LOBI BANKS (2003) FWLR (PT 173) 106.

The consequential effect is that in the instant case, the Respondents, having not at the trial, adduced evidence in support of their pleadings, same is accordingly deemed abandoned.

It is however settled law that in order to succeed in his case a plaintiff must adduce cogent and credible evidence before the Court as civil cases are decided on preponderance of evidence and balance of probability based on the principle of law that he who asserts must prove. See ABUBAKAR v. JOSEPH (2008) 13 NWLR (PT 1104)307. In other words, the onus is on the plaintiff to prove his case in order to obtain judgment in his favour and he must do so on the strength of his own case and not on the weakness of that of the defendant, subject however to some exceptions. See A.I.C. LTD v. NNPC (2005) 11 NWLR (PT 937)563; CARLEN (NIG) LTD v. UNIJOS (1994)1 NWLR (-T 323)631; CHAMBASAYA v. ANWASI (2010) 10 NWLR (PT 1201) 163; HUSSEINI v. MOHAMMED (2005)17 NWLR (PT 954) 393. In ALIBE v. YARO (2001) LPELR (7022) CA this Court per Nzeako JCA held thus at page 20:-

I am guided by another well established principle held to hear by the Court. That is that in all civil cases, it as the plaintiff who must first prove his case and make it strong enough to support his pleadings and any weakness or failure on the part of the defendant cannot alleviate this primary burden on the plaintiff.''

It is also the stance of the Supreme Court that it is not in consonance with the law to say that in every case in which evidence called in support of a plaintiffs case is unchallenged; judgment must be given in favour of the plaintiff. But on the contrary, it is possible that evidence called in support of a plaintiffs case even if unchallenged, may still be insufficient to sustain the plaintiffs claims. See MARTCHEM INDUSTRIES (NIG) LTD v. V.M. F. KENT (WA) LTD (2005) 10 NWLR (PT 934) 645.

I am also not unaware of the position of the law to the effect that where the evidence adduced by a plaintiff is unchallenged and uncontroverted by the defendant, the standard of proof required of the plaintiff becomes minimal. See ODEYEMI v. NITEL PLC (2009) LPELR (4982) CA; ASAFA FOOD FACTORY LTD v. ALRAINE (NIG) LTD (2002)5 SC (PT 1) page 1; BALOGUN v. UBA LTD (1992 6 NWLR (PT 247) 336; CHAMI v. UBA PLC (2910)6 NWLR (PT 1191) 474; FASORO v. BEYIOKU (1988 2 NWLR (PT 76) 263.

In the instant case, it is clear that the Respondents filed an amended statement of defence but they did not go further at the hearing to lead evidence in support of their pleading in which case it is deemed abandoned. This leaves the Court with only the evidence of the Appellant which though unchallenged must however pass the test of minimal proof.

The learned trial judge however after a review of the said evidence as adduced by the Appellant both oral and documentary found that it did not satisfy the requirement of minimal proof and accordingly dismissed the Appellants claim.

I had earlier in this judgment set out the relevant portion of the finding of the learned trial Judge in this regard and I find it difficult to fault same given the testimony of the Appellants sole witness (PW1) and not even in the pleadings is there any substance to justify the reliefs as claimed, albeit with minimal proof.

To my mind, the mere assertion by the PW1 that the cheque for the sum of N1,500,000 was for the allotment of shares from the 1st Respondent company to the Appellant as agreed between one Mr. Raji Punjabi (PW1) and the 2nd and 3rd Respondents without more cannot support the claim. This stance of mine is strengthened by the fact that both the Appellant and the 1st Respondent are corporate bodies with separate legal identity distinct from that of the said Mr. Raji Punjabi or the 2nd and 3rd Respondents who are individual personalities in their own right. It follows that, for there to be a binding agreement for the transfer of share from the 1st Respondent to the tune of N1, 500,000 as alleged by the Appellant, there must exist an agreement to that effect on behalf of the two corporate bodies and being companies incorporated under the companies and Allied Matters Act with their own memorandum and Articles of Association, a Resolution of the Board of Directors of both companies that there should be a sale and purchase of shares must of necessity be tendered in evidence before the Court and added to this is the share Purchase Agreement as referred to by the learned trial Judge. This requirement is found in clauses 5 and 6 of the 1st Respondent’s Articles of Association tendered in evidence by the Appellant and admitted as Exhibit A. Thus in the absence of any ordinary resolution of the Board of Directors for the issuance of any class of shares to the Appellant or any written instrument for any transfer of shares and approved by the Directors of the said 1st Respondent as required by clause 6, It becomes impossible to justify the Appellant’s claim. Exhibit B, the photocopy of the cheque for the sum of N1, 500,000 drawn in favour of the 1st Respondent does not help matters as it does not lie with this Court to embark on a voyage of speculation or conjecture as to the reason for the issuance of the said cheque in the absence of proof that it was for the purchase of shares from the 1st Respondent or that the said 1st Respondent had in any manner approved or agreed to transfer some of its shares to the Appellant.

A Court of law, it is said, acts on facts and not on guess or speculation. See GEORGE v. UBA LTD (1972) 8-9 SC 4, SEISMOGRAPHIC LTD v. OGBENI (1976) 4 SC 85 AT 101; A.I.C. LTD v. NNPC SUPRA. The end result is that this issue is resolved against the Appellant.

The Appeal is hereby dismissed for lack of merit.

The judgment of the Federal High Court Lagos Division delivered by C. E. Archibong J. on the 15th day of June 2009 is hereby affirmed.

Parties to bear their costs.

**JOSEPH SHAGBAOR IKYEGH, J.C.A**.:

I agree with the judgment written by my learned brother, Samuel Chukwudumebi Oseji, JC.A., which I had the privilege of reading in draft.

**YARGATA BYENCHIT NIMPAR, J.C.A**.:

I was given the privilege of reading in draft the judgment just delivered by learned brother SAMUEL CHUKWUDUMEBI OSEJI, JCA. I agree with the reasoning and conclusions arrived in the judgment.

As rightly held in the lead judgment, the trial Court must ensure that the plaintiff has discharged its primary burden of first of all proving its case even without reference to the defence. It is only after the Court has satisfied itself that the plaintiff has discharged this burden, then, can it proceed to consider the defence of the Defendant, see the case of EGBUCHE v. EGBUCHE (2013) LPELR - 22512 (CA). Without considering the case of the Respondent, the Appellant in this case has failed to prove its case as there was no direct evidence tendered at the trial Court in proof of its claims. According, I find no fault in the decision reached by the trial Court.

For this and other fuller reasons in the lead judgment, I too dismiss the appeal and abide by the consequential orders made therein.