YABA COLLEGE OF TECHNOLOGY

Law of Contract

(COM 425)

Topic

ORIENT BANK OF NIGERIA PLC V. BILANTE INTERNATIONAL LIMITED

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ORIENT BANK OF NIGERIA PLC V. BILANTE INTERNATIONAL LIMITED

CASE CITATION

ORIENT BANK OF NIGERIA PLC V. BILANTE INTERNATIONAL LIMITED (1997) 8 N.W.L.R (PT 515) 37 (NIGERIA).

THE DECIDING COURT

The Case of dispute between ***Orient bank of Nigeria Ltd and BILANTE international Ltd*** was resolved at the Supreme Court at Abuja, Nigeria by Justice Olufunlola Oyetola Adekeye.

THE DISPUTE

Some terms which may be used below are defined as follows:

- ***Plaintiff:*** A person who brings a case against another person to court.
- ***Defendant:*** An Individual, company or institution sued or accused in a court of law
- ***Appellant:*** a person who applies to a higher court for a reversal of the decision of a lower court.
- ***Ad idem:*** A Latin phrase to mean ''meeting of minds''. It is used to indicate when two parties have /are on the verge of coming to an agreement.

The respondent (BILANTE) as plaintiff had sued the appellant (ORIENT BANK) as defendant at the High court Enugu, claiming the sum of ₦75, 684,741.52 as special and general damages for breach of contract. In 1990, the Anambra state Government awarded a contract to **BILANTE INTERNATIONAL LIMITED** for road construction. In order to raise initial funding for the execution of the contract, the respondent (BILANTE) wrote a letter (exhibit 1) dated 28th, November, 1990 to ORIENT bank requesting a loan facility of 18 million for the project.

The following day, ORIENT bank replied the letter making counter proposals to the terms suggested in the respondent's letter, requesting additionally, that **BILANTE LTD** sends a copy of the contract between them and the Anambra state Government. After receiving O**RIENT BANK's** letter (exhibit 2) with the new conditions, BILANTE (the respondent) on the 30th of November, wrote a letter in response to ORIENT's without accepting/conceding to the terms made in exhibit 2 but rather, making further proposals. This latest response from BILANTE being exhibit 3.

ORIENT BANK also did not accept the terms stated by BILANTE in exhibit 3 but responded with another letter (exhibit 4), clearly stating its terms and concluding as follows: "Kindly confirm the above agreement reached at today's meeting by signing and returning a duplicate copy of this letter".

BILANTE in response to exhibit 4, wrote exhibit 5 which still contained further proposals different from the contents of exhibit 4. There also was no evidence that BILANTE signed and returned to **ORIENT bank**, a duplicate copy of exhibit 4 as required. In addition to the above stated, other correspondence were exchanged by the parties running into almost 26 exhibits

(letters and responses) wherein the respondent (BILANTE) made other loan requests of ₦6million, ₦18.5million, ₦20million amongst others.

Based on disagreements arising among the parties, the respondent the sued as aforesaid. The appellant counter-claimed for the sum of ₦13,050,002 as loan granted to the respondent. In the course of the hearing, the respondent, BILANTE, called a witness through which a total of 47 documents were tendered as exhibit for the respondent as against 1 document tendered by the appellant, however, the judge observed on the record that the parties agreed not to call oral evidence.

In determination of the appeal, the court of appeal considered the provisions of the following statutes; Contract law Cap 30, law of Anambra state, 1986, S. 109(1): ***"Where an offeror prescribed a method by which acceptance of his offer is to be communicated to him, that method shall be adopted by the offeree, and acceptance which fails to comply with such requirement shall be ineffective".***

THE ARGUMENT OF THE PARTIES AND RESULTANT VERDICT

The case between ***ORIENT BANK and BILANTE INTERNATIONAL LIMITED*** was initially ruled in favour of the respondent due to presentation of more evidence to back up their claims in court as against the sparing amount of evidences tendered by the appellant to back up their argument. The Learned trial judge, Edozie J, at the lower court therefore ruled that the appellant (ORIENT BANK) was to pay the respondent (BILANTE) the claimed sum of ₦75,684,741.57 as damages for breach of contract. The learned trial judge was inclined to awarding more, but for the law that a court cannot award what is not claimed. However, dissatisfied with the judgement, the appellant on 6th of November, 1994 filed a notice of appeal consisting of six grounds of appeal. On 3rd May, 1995, the appellant filed another notice of appeal, this time consisting of 10 grounds of appeal. The second notice of appeal was also filed within time.

The appellant formulated the following issues for determination:

1. Did the plaintiff prove the alleged contract binding on the defendant to advance money up to ₦56,992,315 for the execution of road construction contracts the plaintiff had with the governments of Anambra state for one year certain?
2. If yes, was the defendant in breach of the contract?
3. Was the defixture of the plaintiff's fixed deposit account unilaterally done and/or wrongful, illegal, null and void and of no effect whatsoever as claimed by the plaintiff?
4. If the answer to (2) or (3) or any of them above is in the affirmative, what damages, if any, flowed therefrom?
5. Did the appellant put the debt claimed by the defendant in its counter-claim in issue to require proof by viva voce evidence?

The respondent formulated the following issues in counter of the appellant for determination:

1. Having regard to the documentary evidence placed before the court, was the learned trial judge not right in finding that a binding contract existed between the parties wherein the appellant was to provide banking facilities to the respondent for the execution of the respondent's road contract with the Anambra state government?

2. Having regard to the documentary evidence placed before the court, was the learned trial judge not right in finding that the said contract between the parties was for a period of 12 months beginning from 4th December, 1990?
3. If the answers to issues Nos 1 and 2 above are in the affirmative, was the learned trial judge not right in holding that the appellant was in breach of contract and wrong in defixing the respondent's fixed deposit account in the sum of ₦40,811,935.44 as at 1st August, 1991 before the stated due date of 4th December, 1991?
4. Is the eventual award of ₦75,684,741.57 in favour of the respondent representing ₦54,108,063.57 as special damages for loss of earnings on the wrongfully defixed fixed deposit account and ₦21,576,678 as special damages for breach of the said contract for banking facilities unproven and perverse in law?
5. Was the respondent required to prove its case and claim only by viva voce evidence when there were credible documentary evidence tendered and admitted in proof of same: was documentary evidence not supportive in the eventual judgement of the court?
6. Did the appellant prove its counter claim of ₦13,050,002.79 as at 29th February, 1992 plus interest thereon against the respondent?

However, after much back and forth by both the appellant's and respondent's counsel at the Enugu court of appeal, the initial judgment of awarding the respondent the sum of ₦75,684,741.57 was upheld by the judge while the appellant was awarded costs of ₦2,000 in its favour.

KEY NOTES TO TAKE FROM THE CASE ABOVE: CONTRACT, ACCEPTANCE, OFFER.

A contract is an agreement between two or more parties which creates reciprocal legal obligation(s) to do or not to do a particular thing. For a contract to be valid, there must be a mutuality of purpose and intention. The two or more minds must meet at the same point, event or incident, they must be saying the same thing at the same time. Where or when they say different things at different time, they are not ad-idem and therefore, no valid contract is formed. It is traditionally said that to bring a contract into being, that is, a situation where the parties to a contract confer rights and impose liabilities on themselves, there must be mutual assent of the parties to it. This is capable of being broken down into offer and acceptance.

An offer is an expression of readiness to contract on terms specified by the offeror which if accepted by the offeree, gives rise to a binding contract. Therefore, an offer, is not in itself a contract, it may mature to a contract where/when the parties become ad idem and the offeree signifies a clear and unequivocal intention to accept the offer.

When we speak on acceptance with relation to law of contract, an acceptance is the reciprocal act or action of the offeree to an offer in which he indicates his agreement to the terms of the offer conveyed to him by the offeror. In other words, it is the act of compliance on the part of the offeree with the terms of the offer. For there to be an acceptance of an offer, there must be external manifestation of assent, some word or act done by the offeree or his authorised agent which law can regard as the communication by the offeree to the offeror. This is because, in order to make a binding contract, it is necessary not only that it should be communicated to the

offeror. Mental or internal acceptance is not enough, hence there must be some sort of written or physical documentation of the acceptance.

When an offer is sent to an offeree, any slight change, no matter how seemingly insignificant, in the offeree's response to the offeror, nullifies the initial offer and makes the response a totally new offer, hereby making the previous offeree, now the offeror. If a particular mode of signifying acceptance is stipulated by the offeror as in the case of **ORIENT BANK** in exhibit 4 where the clause:

"Kindly confirm the above agreement reached at today's meeting by signing and returning a duplicate copy of this letter" was stated, any response deviating from the stipulated mode of acceptance can not stand as a valid indication of acceptance in the court of law. Hence, in a case where the offeror explicitly states the mode of signifying acceptance, the offeree has the duty of indicating his/her acceptance in that very exact manner as stated in the Anambra state contract law cap 30, 1986 as quote: ***"Where an offeror prescribed a method by which acceptance of his offer is to be communicated to him, that method shall be adopted by the offeree, and acceptance which fails to comply with such requirement shall be ineffective".***

The case of ***ORIENT BANK VS BILANTE INTERNATIONAL LIMITED*** shows a scenario where there was officially no contract as both parties continued to make counter offers without accepting each other's terms hence they were not ad idem.