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COMMERCIAL DIVISION OF THE
HIGH COURT, ACCRA

IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE

COMMERCIAL DIVISION 4

ACCRA - A.D. 2020

SUIT NO. CM/MISC/1033/20

**IN THE MATTER OF THE MORTGAGES ACT, 1972 (N.R.C.D. 96)
SECTIONS 15 (B) AND 18**

- AND -

**IN THE MATTER OF AN APPLICATION BY A MORTGAGEE FOR AN ORDER
FOR JUDICIAL SALE OF THE MORTGAGE PROPERTIES ONE OF WHICH IS
SITUATED ON THE SPINTEX ROAD AND THE OTHER IN THE FREEZONE
ENCLAVE ALL IN THE GREATER ACCRA REGION OF THE REPUBLIC OF
GHANA**

-AND-

**IN THE MATTER OF ENFORCEMENT OF MORTGAGES USED AS SECURITY
FOR THE FACILITIES TAKEN BY UNITED STEEL COMPANY AS PRINCIPAL
DEBTOR FROM FIRST ATLANTIC BANK**

=

FIRST ATLANTIC BANK LIMITED
ATLANTIC PLACE
#1 SEVENTH AVENUE
RIDGE WEST
ACCRA

APPLICANT

AND

RABIH MIKATI
TEMA

1ST RESPONDANT

ATLANTIC FOODS LTD
TEMA

2ND RESPONDENT

WORLDWIDE HEALTHCARE LIMITED

CLAIMANT/APPLICANT

AFFIDAVIT IN OPPOSITION TO MOTION FOR AN ORDER FOR ACCESS

I, MARK OFORI-KWAFO of House No. 3, Elim Christian Link, New Residential Area, Boi near Abokobi in Accra, do hereby make oath and say as follows:

1. That I am the Deponent herein.

2. That I am the Head of Legal for the First Atlantic Bank herein (hereafter referred to as 'Respondent') and have the Respondent's authority to swear to this affidavit in opposition, the facts of which are well within my personal knowledge.
3. That the Respondent has been served with an application filed by the Claimant/Applicant (hereafter referred to as 'Claimant') for an Order for Access, and same is vehemently opposed by the Respondent as same is not warranted by any substantive law or rule of law and has been founded on a process that cannot invoke the jurisdiction of this court, which jurisdictional issue shall be raised as a preliminary point of law at the hearing of this application.
4. That at the hearing of this Application, Counsel for Respondent shall seek leave of this Honorable Court to refer to the processes so far filed.
5. That this Suit No CM/MISC/1033 with a fresh title being a fresh suit cannot be sustained to invoke the jurisdiction of this honourable court as same is not one of the known three (3) means of initiating an action in our jurisprudence; the initiating process not being a Writ, neither a Petition nor an Originating Motion.
6. That prior to the filing of the initial process, there had not been any judgment or execution process on file as to have the new suit commenced in the manner as deposed and therefore the jurisdiction of this court has not been properly invoked by the initiating process.
7. That following the wrong initiation of this Suit, the Applicant on 14th August 2020 filed a "NOTICE OF MOTION APPLICATION FOR STAY OF EXECUTION AND AN ORDER TO SET ASIDE WRIT OF POSSESSION" which was also incompetent for the simple reason that no judgment or execution had been initiated in this suit prior to the filing of the unknown originating process to entitle the Applicant to file a Motion for Stay especially so when he is not a party to the suit he alleges to have been filed by the Respondent.

8. That on the face of the "NOTICE OF MOTION APPLICATION FOR STAY OF EXECUTION AND AN ORDER TO SET ASIDE WRIT OF POSSESSION" the Applicant shows that it became a tenant of the Spintex Road Property near the Coca Cola and described as '*all that piece or parcel of land in extent 0.559 hectares (1.380 acre) more or less situate in the Tema Motorway Industrial Area in the Greater Accra Region of the Republic of Ghana as described in Land Title Certificate No: TDA. 2200'* not from Rabih Mikati the mortgagor but United Steel Company Ltd, which is neither the occupant nor owner of the property in respect of which the Applicant is seeking a Stay of Execution after the rights of the Respondent Lender as mortgagee has been exercised in accordance with law. (Attached is a copy of the Legal Mortgaged marked as 'Exhibit FAB 1').
9. That not only is this honourable court's jurisdiction being improperly invoked but the Applications resting on the wrong originating procedure also lack merit.
10. On the basis of this wrong process, the Applicant got this honourable court to make interim orders on the 19th of August 2020 to give the Applicant access to remove all their Pharmaceutical Drugs and moveable properties from the property in question, which order has not been appealed upon, nor set aside even though the jurisdiction of this honourable had not been invoked by the known processes in law thus constituting it into abuse of process.
11. That it is in perpetuation of this abuse of process that the Applicant filed this new "NOTICE OF MOTION APPLICATION FOR AN ORDER FOR ACCESS" with such misrepresentations as to the fact that there exists a motion for Judicial Sale in this suit.
12. That I verily believe that not only is this instant application frivolous, vexatious and an abuse of the Court process; but also it is the Respondent's case that same is founded on an Originating process which in itself cannot invoke the jurisdiction of this honourable court and therefore procedurally flawed.

13. That I am informed by Counsel and verily believe same to be true that the depositions made by the Claimant in paragraphs 19 to 22 of the Claimant's affidavit in support of the application were the same arguments made by the Claimant in court on the 19th August 2020 which led the court to grant the Claimants the said Access into the mortgaged property.
14. That I verily believe that if the Claimant was dissatisfied with the said Order for Access to remove its properties, the Claimant should have acted properly by either Appealing against the said Order or applying for a variation of the said order. But the Claimant instead chose to bring this application after having been given access to the Mortgage Property by the Respondent as ordered by the Court.
15. That I verily believe same to be true that by filing this instant application for Access during the lifetime of the said Exhibit FAB 7, and with the Claimant having enjoyed the outcome of the Order for Access is an abuse of the Court Process which should not be taken lightly by this Honorable Court.
16. Further, I verily believe same to be true that this instant application has been brought by the Claimant not only to intercept the outcome of the Application for Stay Execution and an Order to set aside the Writ of Possession; but also it has been brought in a guise to set aside the Respondent's legitimate claim of possession as can be seen in paragraph 39 of the affidavit in opposition where the Claimant is asking to put them in possession.
17. That I verily believe that the Claimant's interest and right being claimed which is derived from a Tenancy Agreement from an entity which does not own the said property Applicant claims was let to it, as stated in the Claimant's paragraph 7 of its affidavit in support and also its Exhibit WWHL1 is misplaced, and that the Respondent contends that the Claimant has no legitimate interest in the Mortgage property from the owner of the said property.

18. Again, I verily believe that the Claimant's claim that they should have been given notice of the creation of the mortgage, the default of the principal debtor and the possession of the mortgage property is not only misconceived, but that the Respondent in law, is not enjoined to have notified the Claimant when exercising its right of possession.
19. That I verily believe that as the Claimant have failed to show any interest in the Mortgage Property stemming from any of the Mortgagors, and with access having been granted to the Claimant per their own request, this instant application should not succeed even if this honourable court's jurisdiction had been properly invoked, which is denied.
20. That I verily believe that should this instant application be granted; it would seek to dispossess the Respondent who have been legitimately put into possession by law.

WHEREFORE I swear to this Affidavit in opposition to Motion for access.

SWORN AT ACCRA THIS 27
DAY OF AUGUST, 2020

I
.....
DEPONENT

BEFORE ME

COMMISSIONER FOR OATHS

JOHN AHETOH

COMMISSIONER FOR OATHS

P. O. BOX MP 1896

ACCRA

Exhibit "FAB1"



LWDEGAST 287832018P

"A"

This Legal Mortgage is made the day 19th of June , 2018 BETWEEN RABIH MIKATI of P. O. Box SK 1070, Sakumono Accra (hereinafter called "the Mortgagor") of the First part and UNITED STEEL COMPANY LIMITED of P. O. Box SK 1070, Sakumono, Tema (hereinafter called "the Customer") of the second part and FIRST ATLANTIC BANK LIMITED a company incorporated under the laws of Ghana and having its registered office situate at Atlantic Place Number 1 Seventh Avenue Post Office CT1620 Cantonments Accra in the Greater Accra Region of Ghana.

WHEREAS:-

- a. The Customer has applied for an Overdraft facility and a Term Loan from the Bank to support their working capital needs specifically for the purchase of local scrap metal.
- b. The Bank has approved the Customer's application subject to the use of the Mortgagor's Property as security.
- c. The Mortgagor has consented to the use of his Property (more particularly described in the schedule) as security for the Facility.
- d. The Parties have agreed that prior to the disbursement of the Facility; the Mortgagor will lodge original title documents covering the Property with the Bank until the full liquidation of the Facility.

NOW THIS DEED WITNESSETH and is hereby agreed as follows:-

1. The Mortgagor and the Customer covenant with the Bank as follows:-

THIS IS EXHIBIT / DOCUMENT

MARKED **FAB1** REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA

THIS 27th DAY OF Aug 2018

BY
BEFORE ME
M O Kwafio

.....
COMMISSIONER FOR OATHS

- a. To pay to the Bank on demand all such sums as now are or from time to time shall become owing to the Bank from the Mortgagor on the balance of its current account and/or its loan account and/or any other account with the Bank (including in such account interest as hereinafter mentioned usual Bank charges and commission) whether in respect of moneys advanced or paid to or for the use of the Customer or charges incurred on its account or in respect of letters of hypothecation or negotiable instruments drawn accepted or endorsed by or on behalf of the Customer and discounted or paid or held by the Bank either at its request or in the course of business or in respect of any guarantee or guarantees now or hereafter given by the Customer to the Bank or in respect of moneys which the Customer shall become liable to pay to the Bank in any manner whatsoever and whether any such moneys shall be paid or incurred on behalf of the Customer alone or jointly with any other person or persons corporations or company and whether as principal or surety AND also as well after as before any judgment to pay interest on the balance of the said current account and/or loan account and/or any other account and on all moneys whatsoever at any time owing to the Bank at the rate as agreed in the offer letter dated 4th June, 2018 per annum in equal monthly or at such other rate and at such other times as the Bank may from time to time determine PROVIDED ALWAYS that if the interest or any interest payable on any arrears of interest capitalized under this present proviso shall remain unpaid the day on which the same ought to have been paid then in every such case the interest so in arrears shall as from the day on which the same ought to have been paid be added for all purposes to the balance of moneys hereby secured (unless the Bank shall otherwise elect) and shall thenceforth bear interest payable at the rate and on the days aforesaid and all the covenants and provisos contained in these presents and rules of law or equity in relation to interest on the said balance shall equally apply to interest on such arrears.

- b. All costs charges and expenses properly incurred hereunder by the Bank and all moneys properly paid by the Bank including the costs of and incidental to the negotiations for the preparation completion realization and enforcement of this security which if not agreed shall be taxed on the basis of indemnity shall on the same being paid be repaid on demand by the Mortgagor to the Bank with interest thereon from the time of payment at the rate aforesaid and until such demand shall be made and complied with the Mortgagor shall pay to the Bank interest at the rate aforesaid on the moneys so paid and for the time being not yet repaid on the respective days hereinbefore appointed for payment of interest PROVIDED that the charge hereinafter conferred in respect thereof shall be in addition to and without prejudice to any and every other remedy lien or security with the Bank may or apart herefrom would have for the moneys so paid or any part thereof.
- c. At all times during the continuance of this security to keep all buildings for the time being comprised in the mortgaged premises (and in the case of leaseholds whether required by the provisions of the Lease or not) in good and substantial repair and condition and will also keep such buildings insured against loss or damage by fire earthquake storm tempest tornado and aircraft or things dropped from aircraft riots and civil commotions in an Insurance Office approved by the Bank in the full value thereof and will make all payments required for the above purpose not later than one week after the same small be due and will cause the Insurance Office to endorse on the Policy or Policies a note of the Bank's interest in a form acceptable to the Bank and on demand will produce to the Bank the policy or policies of such insurance and the receipt for each payment PROVIDED ALWAYS that if the Mortgagor shall make default in any of the above matters the Bank may at its discretion repay and insure and keep insured all or any of the said buildings to the amount aforesaid and that its expenses of so doing shall be repaid to it by the Mortgagor on demand and until so repaid shall be

a charge on the mortgaged premises and be added to the moneys hereby secured and bear interest accordingly.

- d. That the implied covenants contained in Parts I and II of the First Schedule to the Mortgages Act 1972 shall be deemed to form part with and be incorporated into these presents in so far as the said covenants are not in any way inconsistent with any of the provisions hereof.
 - e. That if default shall be made in the payment of any sum or sums of money due under this security or any part thereof the Bank may after giving thirty (30) days' notice in writing to the Mortgagor of its intention enter into and upon the mortgaged premises or any part thereof the Bank when it enters into possession of the mortgaged premises shall be at liberty to exercise all rights conferred on it in accordance with the provisions of Section 17 of the Mortgages Act 1972 (As Amended by Sections 33 and 34 of the Borrowers and Lenders Act, 2008 (Act 773))
AND THAT IN SUCH EVENT the Mortgagor will effectually free and discharge the mortgaged premises or indemnify and keep the Bank indemnified against all estates encumbrances claims and demands whatsoever.
 - f. That the Mortgagor and all persons having or lawfully or equitably claiming any estate or interest in the mortgaged premises or any of them or any part thereof shall and will from time to time and at all time upon the request of the Bank and at the cost during the continuance of this security of the Mortgagor and afterwards of the person or persons requiring the same do and execute or cause to be done and executed all such acts deeds and things for further or more perfectly assuring the mortgaged premises unto the Bank in manner aforesaid as shall or may be reasonably required.
2. For further securing the payment of all such sums of money as are now due or shall from time to time be due to the Bank the Mortgagor hereby

MORTGAGES unto the Bank ALL the land and hereditaments comprised in and demised by the Lease(s)/Deeds(s) hereinbefore recited TOGETHER with all houses and other buildings now erected and standing thereon and/or to be erected thereon And all rights ways liberties privileges advantages easements and appurtenances whatsoever to the said hereditaments and premises belonging or in anywise appertaining thereto or usually held or occupied therewith or reputed to belong or be appurtenant thereto AND ALL the estate right title interest claim and demand whatsoever of the Mortgagor into and upon the said hereditaments and premises and every part thereto PROVIDED ALWAYS that if the Mortgagor shall on demand or without such demand having been made pay all moneys for the time being owing by it to the Bank then and in such case the Bank will at the request and cost of the Mortgagor duly discharge this Mortgage.

3. AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED as follows:-

- i.(a) The Mortgagor shall not grant any Lease or Agreement for Lease or tenancy or otherwise transfer all or any part of interest in the mortgaged premises or part with possession thereof without the previous consent in writing of the Bank.
- i (b) That the powers rights and remedies conferred on Mortgagees by Section 18 of the Mortgages Act 1972 (As Amended by Sections 33 and 34 of the Borrowers and Lenders Act, 2008 (Act 773) shall apply to this Mortgage.
- i (c) A judicial sale ordered by the Court pursuant to the provisions of Section 18 aforesaid (As Amended by Sections 33 and 34 of the Borrowers and Lenders Act, 2008 (Act 773) may be by public auction or by private contract.
- i (d) That the Bank shall not be answerable for any involuntary loss happening in or about the exercise or execution of any power conferred

upon it by these presents or by statute or ordinance or any trust connected therewith and save as provided and under Section 17 of the Mortgagees Act 1972 (As Amended by Sections 33 and 34 of the Borrowers and Lenders Act, 2008 (Act 773) the Bank shall not be liable to account to the Mortgagor except for such moneys as the Bank shall actually receive.

- i (e) The Bank shall be at liberty from time give time for payment of any bills of exchange promissory notes or other securities which may have been discounted for or received on account from the Mortgagor by the Bank or on which the Mortgagor shall or may be liable as drawer acceptor maker endorser or otherwise to any parties liable thereon or thereto as the Bank in its absolute discretion shall think fit without releasing the Mortgagor or affecting its liability under these presents or the security hereby created.
- i (f) That these presents shall constitute and be a continuing security to the Bank notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition to and shall not operate so as in anywise to prejudice or affect the security created by any deposit which may have already been made with the Bank of the title deeds and documents relating to the mortgaged premises or any other securities which the Bank may now or at any time hereafter hold for or in respect of the moneys hereby secured or any part thereof.
- i (g) The Bank shall in the event of it receiving notice that the Mortgagor has disposed of the equity of redemption in the said hereditaments or any part thereof be entitled to close the Mortgagor's then current account or accounts and to open a new account or accounts with the Mortgagor and no money paid in or carried to the Mortgagor's credit in such new account or accounts shall be appropriated towards or have the effect of discharging any party of the amount due to the Bank on the said closed accounts at the time when it received such notice as aforesaid.

- i (h) All moneys received by the Bank from the Customer or any other person may be applied by the Bank to such account or liability of the Customer and/or the Mortgagor as the Bank in its discretion may from time to time conclusively determine and the Bank may at any time and without any prior notice transfer all or any part of any balances standing to the credit of any account to any other account which may be in debit but the Bank shall notify the Customer of the transfer having been made.
- i (i) If at any time the moneys hereby secured shall have become payable and/or the security hereby constituted shall have become enforceable the Bank may apply to the Court for the appointment of a Receiver in accordance with the provisions of Section 16 of the Mortgages Act 1972 (As Amended by Section 29 of the Borrowers and Lenders Act, 2008 (Act 773) and the Receiver appointed by the Court shall perform his duties and exercise the powers conferred upon him in accordance with the said provisions.
- ii (a) In addition to all other protection afforded by law every purchaser or other third party dealing with the Bank or any Receiver appointed by it shall be entitled and bound to assume without enquiry that some moneys are owing on the security hereof and have become payable.
- ii(b) A notice may be served by the Mortgagor upon the Bank by sending it through the post in a prepaid envelope addressed to its Registered Office and any demand or notice to be made or given by the Bank may be made by any Manager or other duly authorized Officer of the Bank sent through the post in a prepaid envelope addressed to the Mortgagor at its last known address or its Registered Office and any notice served by post on the Mortgagor at its last known address or its Registered Office and any notice served by post on the Mortgagor at its last known address or its Registered Office and any notice served by post on the

Mortgagor at its last known address or its Registered Office any notice served by post on the Mortgagor shall be deemed to have been served at the expiration of seven (7) clear days after it is posted in Ghana and in proving such service it shall be sufficient to prove that the notice was so posted.

- 4 (a) As between the Customer on the one hand and the Mortgagor and the mortgaged premises on the other hand the Customer shall be primarily liable for the payment of the moneys hereby secured but this position shall not affect the Bank or in any way preclude the Bank from enforcing or having recourse to all or any remedies or means for recovering payment thereof which may be available under these presents or otherwise at such times and in such order and manner as the Bank shall think fit.
(b) Notwithstanding the fact that as between the Customer and the Mortgagor the Mortgagor is only a surety for the Customer yet as between the Mortgagor and the Bank the Mortgagor shall be deemed to be the principal debtor for the moneys hereby secured accordingly and the Mortgagor shall be deemed to be the principal debtor for the moneys hereby secured accordingly and the Mortgagor and the mortgaged premises respectively shall not be released by time being given to the Customer or any act matter or thing whereby the Mortgagor as surety only or the premises comprised in this security might have been released.
5. This Mortgage or the mortgaged premises or any of them shall remain in full force and effect and the Mortgagor shall not be entitled to have the said mortgaged premises discharged until such time as the whole of the moneys hereby secured shall have been repaid.
6. In these presents unless the context otherwise requires:-
 - (i) The expression "the Mortgagor" shall include the successors and assigns of the Mortgagor.

- (ii) The expression "the Bank" shall mean the Bank its successors and assigns
 - (iii) The expression "the mortgaged premises" means the hereditaments and premises mortgaged by clause 2 of these presents or expressed so to be.
7. This Instrument shall be construed in all respects according to the laws of the Republic of Ghana.

The Mortgage Amount is

GH¢ 5,000,000.00

IN WITNESS WHEREOF the Mortgagor and the Bank have caused their Common Seals to be hereunto affixed the day and year first above written.

THE SCHEDULE HEREINBEFORE REFERRED TO

The Mortgaged Premises consist of All THAT piece or parcel of land in extent 0.559 hectares (1.380 acre) more or less situate in the Tema Motorway Industrial Area in the Greater Accra Region of the Republic of Ghana aforesaid which said piece or parcel of land is more particularly delineated and egded with pink colour on Survey Plan No. Z18380 annexed to the Land Title Certificate No. TDA 2200 Volume 018 Folio 1062.

SIGNED by the Within-named

RABIH MIKATI

in the presence of:

Name:

Address:

Osi Sarsad
Tema Gr 23
C27

)
)
)
)

[Signature]

The Common Seal of UNITED STEEL CO. LTD)
was hereunto
Affixed in the presence of

Name: RABIATU AWUDU
Address: A.N.T 804

)
.....
DIRECTOR
UNITED STEEL CO. LTD
P. O. Box CT 1070 ACCRA
TEL: +233 (0) 302 873 347/45
FAX: +233 (0) 302 811 658
.....
SECRETARY

The Common Seal of FIRST ATLANTIC
BANK LIMITED was hereunto
Affixed in the presence of

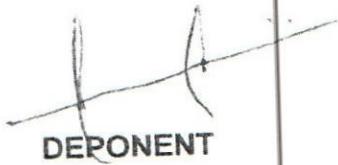
Name: Michael L. Aforlu
Address: P.O. Box CT 1620
Cantonments,
Accra

Rabiatu Awudu
Michael L. Aforlu
.....
DIRECTOR
FIRST ATLANTIC BANK LIMITED
(LEGAL DEPARTMENT)
ATLANTIC PLACE
NO. 1, SEVENTH AVENUE, RIDGE WEST
P. O. BOX CT 1620, CANTONMENTS, ACCRA

SECRETARY

OATH OF PROOF

I, Uset Samuel
of Teme
of June 20, 18... make Oath and say that on the
19th day I was present and saw the Rabih Mikati
duly sign the Instrument now produced before me and marked "A" and that the
said Rabih Mikati can read and write.



DEPONENT

Sworn Before me at Accra this 20th day of June 2018



CERTIFICATE OF PROOF

On the 20th day of June 2018 at 12 o'clock in the noon this Instrument was proved before me by the Oath of the within-named Deponent to have been duly executed by the Mortgagor.



Dated the 19TH day of JUNE 20.18.....

BETWEEN

RABIH MIKATI
P.O. Box SK 1070 SAKUMONO, ACCRA
ACCRA

AND
UNITED STEEL COMPANY LIMITED
P.O. BOX SK 1070
SAKUMONO, TEMA

AND
FIRST ATLANTIC BANK LIMITED
P.O. BOX CT1620
CANTONMENTS
ACCRA

LEGAL MORTGAGE



FIRST ATLANTIC BANK LIMITED
ATLANTIC PLACE
P.O. BOX CT1620 CANTONMENTS
ACCRA

MEMORIALS

Entry No.	Date of Instrument	Date of Registration	Registered No.		Cancellation
4	14.7.2016	11.1.2017	018/Z18380/4	Subject to the reservations, exceptions, restrictions, restrictive covenants and conditions contained or referred to in a lease (a true copy of which is annexed hereto) made between Koala Limited of the one part and Rabih Mikati of the other part.	
5	19.6.2018	4.10.2018	018/Z28380/5	Mortgage to First Atlantic Bank Limited to secure GH¢5,000,000.00 and interest thereon.	