

### MALCOLM COHEN OF STOY HAYWARD LOSSES BATTLE AGAINST AFRIBANK NIGERIA PLC

The Claimant, suing through his lawful attorney one Chief A.B. Alabi alleged that sometime in 1982 Manlon Trading Limited (a United Kingdom based exporter of goods) and its subsidiary Rajjman Limited shipped several items, including helmets, to its customers in Nigeria. These customers include Emmans Business Foundation, Fedutex Commercial Syndicate and Rumico Merchants.

The Claimant in his capacity as liquidator to Manlon Trading Limited and Rajjman Limited commenced the suit before the High Court of Lagos State by way of Writ of Summons and Statement of Claim dated 28<sup>th</sup> November 1990, respectively.

It is the case of the Claimant that the Defendant negligently released the goods to its customers in Nigeria, contrary to the instructions contained in the sight bill, issued by Allied International Bank. The Claimant also alleges that upon negligent release of the goods the Defendant thereafter collected the proceeds of sale of the goods and has refused to forward same.

As a result the Claimant claimed the sum of **USD \$ 652,350.00 (Six Hundred and Fifty Two Thousand Three Hundred and Fifty US Dollars)** and **£ 245,000.00 (Two Hundred and Forty Five Thousand Pounds Sterling)** or their Naira equivalent on grounds of negligence or in the alternative for funds allegedly collected by the Defendant from its customers in Nigeria.

It is important to bear in mind that the Allied Bank International had shortly after the release of the goods to the customers, in Nigeria, issued a fresh 700 day bill in place of the sight bills.

In its Defence the Defendants Counsel raised the following issues:

- The Claimants case is statute barred and in addition the Claimant by issuing the fresh 700 day draft had waived its right to sue on any alleged rights accruing from wrongful actions for negligence on the sight bill.
- Based on both documentary and oral evidence the Claimant had simply not done enough to show that the Defendants collected the proceeds of sale from the customers of Manlon and Rajjman.
- Lastly the Claimant lacked the capacity to sue on grounds of inconsistency in the Power of Attorney document apparently awarded to A.B. Alabi and secondly and most importantly the **Order of the High Court of England dated 4<sup>th</sup> April 1990** did not in any way empower the Claimant to pursue alleged debts relating to specific bills of exchange in this particular suit.

In what is considered to be a most illuminating decision **Honourable Justice Oyebanji** of the High Court of Lagos State determined that having perused the Statement of Claim it was difficult to determine when the cause of action in negligence arose and therefore the Court would be unable to resolve the issue of statute of limitation. However the Honourable Judge did hold that by issuing the fresh 700 day drafts the Claimant had waived its right to claims in negligence based on the sight bills of exchange.

Having opined aforesaid the Court fleetingly determined the issue of the Power of Attorney document in favour of the Claimant but agreed with the Defendant that the Claimant lacked the capacity to sue for alleged debts belonging to Rajjman Limited. The basis for this was quite simply the fact that the **Order of the High Court of England dated 4<sup>th</sup> April 1990 by which the Claimant alleged he was empowered to sue in respect of debts belonging to Rajjman had been significantly and fraudulently altered. During the course of trial the Defendants Counsel had obtained Certified True Copies of the said Order of Court from the United Kingdom Courts and it was therein revealed that the Claimants appointed attorney had fraudulently altered the said Order and presented photocopies to the Courts. The Certified True Copy of the Order related to absolutely different transactions and bills of exchange which were unrelated to this case at hand.**

In addition to the above the Honourable Judge opined that the Claimants had totally failed to discharge the evidential burden required in order to establish that the Defendants had collected the proceeds of sale from the customers.

Finally the suit against the Defendant was dismissed in its entirety with costs.

The decision in this suit is significant in view of the cross-border investigations engaged in discovering the true facts.

We doubt if the Claimants will appeal against the decision of the Honourable Justice Oyebanji. However it will be interesting to assess the grounds of a proposed appeal in the event that a Notice of Appeal is filed.

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