

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

HCT - 00 - CC - MA - 0278 - 2014
(Arising out of Civil Suit No. 0230 of 2014)

WEBCOR S.A ::
APPLICANT

VERSUS

JOB COFFEE LTD ::
RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

In these proceedings the Applicant Job Coffee Limited seeks leave to appear and defend the suit filed against it by Websor S.A the Respondent.

The application is grounded on the following

1. That the Respondent hood winked the Applicant, when it led it to believe it was going to prefinance the business and eventually turn into a business partner which it did not.
2. The Respondent company which had promised to venture into a longtime business relationship suddenly turned round and

demanded for the money it had ploughed into it which was prejudicial to the Applicant.

3. The Respondent breached an agreement which was to the effect that the Applicant pays back in installments of \$40- from money that would come from the Respondent buying coffee from the Applicant.
4. The breaches aforementioned greatly negatively impacted on the Applicants business operations and cash flow, leading their bankers to withhold finances from them.
5. That the promissory note was signed under duress and was therefore void.

This application has its background from a business relationship between the Applicant and the Respondent, in which the Applicant would be prefinanced by the Respondent to buy and supply coffee.

Pursuant to their agreement the Respondent advanced the Applicant sums of money as hereunder:

| | | |
|----------|-----|---------|
| 02-07-09 | USD | 200,000 |
| 19-08-10 | USD | 200,000 |
| 26-08-10 | USD | 39,600 |
| 19-10-1- | USD | 140,000 |

Going together with the money were jute bags valued at USD 194,400-.

The Applicant reimbursed the Respondent USD 34,620 which left an indebtedness of USD 739,380-.

The Applicant acknowledged the indebtedness and the two parties entered into a repayment agreement on the 30th September 2011. They agreed as follows:

We duly recognize the above amount and undertake to reimburse WEBCOR S.A under the following schedule;

- Jute bags: USD 100,000- within coming days, and the balance of USD 94,400- to be transferred to Webcor S.A account by October 15th, 2011 at the latest.
- Pre financing of USD 200,000- (02-07-09) as from January 2012 onwards, a monthly payment of USD 7,500- to Webcor S.A until full reimbursement of the USD 200,000-.
- Reimbursement of the balance of USD 379,600- through new purchase contracts to be negotiated between Job Coffee and Webcor S.A.

It is clear from correspondence "B 4" that issues of non reimbursement had begun as early as December 2010. By June 18th, 2012 the Applicant had not paid for the Jute bags and even the USD 7,500- installments as promised in the 20th September, 2011 acknowledgement were not forthcoming, see C4 to the Applicants affidavit.

On 22nd June, 2012 the two agreed that the Applicant would release USD 40- per ton towards his indebtedness to the Respondent. Correspondence attached to the Applicants affidavit shows, that friction arose from delayed supply of coffee. This did not help matters because the Applicants debt only increased (see e-mail of 17th January 2013 from Catherine Konan-Ferrand to Ayub of the Applicant)

Catherine of the Respondent wrote to Ayub;

“Very sorry but we cannot pay these invoices as your open account in our books is about 640k \$.

We have tried to develop business to reimburse this amount, but since now we are only increasing the overdue as you are late in all shipments”

From the correspondence annexed to the affidavit of the Applicant, its clear that the Applicant was in arrears. The Applicant did not controvert this.

During the hearing, counsel for the Applicant submitted that the Respondent had all along not intended to do business and had hood winked the Applicant. That the Applicant failed to reimburse because the Respondent withheld their money. That having been put in such situation, they were forced to sign the Promisory Note. He said this amounted to signing under duress.

In reply counsel for the Respondent submitted that, it was the several correspondence that led to the Promisory Note.

From the Applicants pleading and submission of counsel, the issue for consideration here was whether a triable issue had been established. In this case the triable question was whether the Promisory Note which formed the basis of the suit, was obtained under duress.

I have gone through the pleadings. The various communication clearly show that the Applicant and the Respondent indeed entered into an understanding in which the Applicant would receive financing from the Respondent, ship coffee, and the Respondent would retain a USD 40 per Metic Ton. The Respondent would then refinance the Applicant until the debt of USD 739,380-, acknowledged on 30th September 2011 was exhausted.

Annextures indicate that the Respondent however, failed to fulfill its undertaking. In my view this is what resulted into the Promisory Note. Apart from that, the Applicant does not show any duress being applied. The Applicant must have signed freely and willingly because he followed the execution of the Promisory Note with payment of two installments.

The Applicant undertook to pay in these words;

“Job Coffee Limited ... for value received promise to pay to WEBCOR S.A ... the principal sum of USD 357,742.68 (United States Dollars, Three Hundred Fifty Seven Thousand, Seven Hundred Forty Two Decimal Point Six Eight only)”

The Applicant was to pay in 18 installments. The promisory note also provided for recovery and interest as follows;

“... if the maker fails to pay two installments under this promisory note on the due date, the entire principal amount or the total principal amount remaining unpaid shall immediately become due and the maker shall pay interest on the principal amount remaining unpaid from and including the due date of the second installment at the rate of 24% per annum until the date of actual payment of the principal amount in full.”

The promisory note was clear and unambiguous indicating the liquidated sum and the interest thereof. It deprived the Applicant of a defence. The total result is that this application does not establish any triable issue. It is therefore dismissed with costs.

Judgment is entered in favour of the Plaintiff in the terms prayed.

.....
David K. Wangutusi
JUDGE

Date: 25 - 06 - 2014