

**SUPREME COURT OF NIGERIA**

1ST JULY, 2005. SC. 192/2000

**CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU, D. MUSDAPHER, G. A. OGUNTADE, S. A. AKINTAN, JJSC**

G. CHITEX INDUSTRIES LTD. .... APPELLANT

AND

OCEANIC BANK INTERNATIONAL ..... RESPONDENT  
(NIG.) LTD.

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APPEALS - Issues - It is not the number of issues for determination that is formulated - That guarantees the success of an appeal - But the contents and quality (H1)

CONTRACTS - Damages - Award of - Amount of damages for breach of contract - Is the amount it will entail to put that person - In the position he would have been - If there had been no breach of contract (H2)

CONTRACTS - Breach of contract - Damages - The terms 'special' and 'general' damages - Are not appropriate in an action for breach of contract - But where parties bind themselves knowingly under special circumstances - It would attract damages - Which parties agreed at the time of the contract (H3)

DAMAGES - Special claim - Proof of - Where plaintiff fails to prove the special claim - The plaintiff will not be entitled to such damages (H4)

EVIDENCE - Documents - Authenticity of - Where a document is challenged as not authentic - The maker of the document should be called to support the document - Otherwise no weight should be attached to it (H5)

CONTRACTS - Agreements - Banking - Transfer of money - Court is right - Where it held that the liability of the respondent - Was only to pay the differences in the exchange rate - When the respondent failed to

transfer the money (H6)

### **FACTS**

Before the High Court of Anambra State in the Onitsha Judicial division, the plaintiff/appellant made the following claims against the defendant/respondent : (1) Damages for loss occasioned by depreciation of Naira (2) Damages for credit facilities, goodwill profit and future prospects estimated at N3,500,000.00. The appellant was a customer of the respondent bank. In the course of its business with the bank, it approached the bank with a request to assist it in raising and remitting a total sum of US \$12,000 to a company based in Taiwan.

The appellant deposited the Naira equivalent with the bank at its Onitsha branch. The Lagos headquarters of the bank tried to source for the required US Dollars but failed. The appellant was therefore informed, and the Naira equivalent was returned to him. The appellant eventually raised the needed Dollars from outside the banking system but it was at a higher rate of N38.00 to the Dollar. The appellant therefore instituted this action claiming a shortfall of N66,000 it incurred as extra cost in the exchange rate, and another N3.5million as damages. The trial Court held that the respondent was liable for the breach of contract and awarded the damages in toto. The respondent felt aggrieved and appealed to the Court of Appeal where his appeal was allowed in part. Dissatisfied with the judgment the appellant has now appealed to the Supreme Court.

### **ISSUE FOR DETERMINATION**

What is the measure of damages in an action for a breach of contract and whether there is the need to prove damages in such an action and if so whether the appellant had satisfactorily proved the damages he claimed.

**HELD** (Unanimously dismissing the appeal per **MUSDAPHER, JSC**)

### **APPEALS - Issues**

1. It has been stated on a number of occasions by this court that it is not the number of issues for determination formulated that guarantees the success of an appeal but the contents and quality. It is undesirable to formulate an issue for each of the grounds of appeal. See *Oyekan v.*

Akinrinwa (1996) 1 NWLR (Pt.459) 128. Any unnecessary prolixity will be discountenanced. An issue for determination in a brief is a point which is so crucial that if it is decided one way or the other it affects the fate of the appeal, it is a point which is so critical that if it is decided in favour of a party, he is entitled to win the appeal.

The essence of formulating issues for determination in an appeal is to condense the grounds of appeal into a compact issue or issues which are critical for the determination of the appeal. The appellant in the instant case has submitted four issues for the determination of the appeal, in my view they are prolix and repetitive. (p. 2396 F)

***Amount of damages for breach of contract***

2. Now, in the case at hand, the respondent had defaulted and breached the contract to transfer money to the business associates of the appellant in Taiwan. The amount to be transferred was 12,000 US Dollars. The appellant was put into an extra expense of N66,000.00 by securing the 12,000 US Dollars from elsewhere. He was awarded damages in the said sum of N66,000.00 for the breach of contract, the question is - is the appellant entitled to a further sum of N3.5 million naira as “damages for the loss of credit facilities, goodwill, profits and future prospects”? I shall now consider the measure of damages in a case of a breach of contract. Now, generally the amount of damages to be paid to a person for breach of contract is the amount it will entail to put that person in the position he would have been if there had not been any breach of contract. In the case of Omonuwa v. Wahabi (1976) 4 S.C. (Reprint) 62; (1976) 4 S.C. 37, this court, per Idigbe JSC, said:

*“It is Settled that the governing purposes of damages Is to put the party whose rights have violated if the same position, so far as money can do, as if the rights have been observed.*

*In cases of breach of contract the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach. What was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or, at all events by the party who later commits*

*breach of contract.*

In cases of breach of contract a plaintiff is only entitled to damages naturally flowing or resulting from the breach. The measure of damages in such cases of breach of contract, is in the terms of the loss which is reasonably within the contemplation of the parties at the time of contract. When considering damages arising from a breach of a contract, there is no room for damages which are merely speculative or sentimental unless these are specifically provided for by the express terms of the contract.

C (p. 2399 B)

***Breach of contract - Damages***

3. In my view, the only damages recoverable within the contemplation of the parties was the difference in the rate of exchange the appellant was obliged to pay, i.e., the sum N66.000.00 which was the presumed and normal consequence of the respondent's breach, see *Kufas* case *supra*. To ask the respondent to pay or any further sum would amount to double compensation. Although the terms "*special*" and "*general*" damages are not appropriate in an action for breach of contract, but there are special circumstances where the parties do make contracts and bind themselves knowingly that a breach of contract under the special circumstances would also attract damages which the parties agreed at the time of the contract.

F (p. 2400 E)

***Where plaintiff fails to prove the special claim***

4. There is no doubt that on its face, "Exhibit H", which was pleaded as proof of the above pleading, does not show any connection with the transaction nor does it show who sent it. It is elementary law that, he who asserts must prove. The appellant was duty bound to prove that it was the breach that caused the losses. There was no evidence whatever adduced to do so. In such a circumstance where the plaintiff failed to prove the special claim, the plaintiff will not be entitled to such damages.

H (p. 2401 C)

***Documents - Authenticity of***

5. Exhibit H” which was offered as proof of the loss of N3.5 million is not an authentic document to entitle the appellant to claim such damages. Where a document is challenged and impugned as unauthentic, the maker of the document should be called to support the document, otherwise no weight should be attached to it. Where such damages are suffered and claimed in an action for breach of contract, there must be convincing evidence to prove the damages. (p. 2401 E)

***Agreements - Banking - Transfer of money***

6. It is clear that Exhibit J is the bed rock of the agreement between the parties and showed that the obligation was only the transfer by telex of 12.000 US Dollars to Hua Nan Commercial Bank in favour of Chih Jung Ind. Co. Ltd., the purpose of which had not been spelt out. The consequences of the non-transfer, though not stated, but can be presumed. In my view, the Court of Appeal is right to have held that the liability of the respondent under the circumstances was only to pay the difference in the exchange rate when the respondent failed to transfer the money agreed in Exhibit J.

It is for these reasons that I find the appeal unmeritorious and is dismissed by me. (p. 2401 G)

**CASES REFERRED TO**

Swiss Nigerian Wood Industries Ltd. v. Bogo (1971) 1 UILR 337

Agbaje v. National Motors (1971) UILR 119

Jammal Engineering v. Wrought Iron (1970) NCCR 295

Alraine v. Eshiett (1977) 1 S.C. (Reprint) 59; (1977) 1 S.C. 89.

A-G of Anambra State v. Onuselegu Ent. Ltd. (1987) All NLR 579

Idahoan v. Ornate (1959) 4 FSC 166

Omonuwa v. Wahabi (1976) 4 S.C. (Reprint) 62; (1976) 4 S.C 37

Oyekan v. Akinrinwa (1996) 1 NWLR (Pt.459) 128

Onifade v. Olayiwola (1990) 7 NWLR (Pt.161) 130

Okoye v. Nigerian Construction and Furniture Co. Ltd. (1991) 6 NWLR (Pt.199) 501.

**REPRESENTATION**

Mr. C. Uzoigwe, for the Appellant.

Mr. C. J. Asiegbu, for the Respondent.

B

**STATUTEREFERREDTO**

Contract Law of Anambra State ss. 412(1) & 423(4)

**LEADJUDGMENTBY MUSDAPHERJSC**

C

In the High Court of Justice of Anambra State of Nigeria, in the Onitsha Judicial Division and in Suit No.0/234/93, the plaintiff as per paragraph 16 of the Statement of Claim claimed against the defendant as follows:-

D

*“Whereof the plaintiff claims against the defendant as follows:*

*(1) Damages for loss occasioned by depreciation of Naira (N456,000.00 - N360,000)*

*xxxxxxxxxxxxxx N66,000.00*

E

*(2) Damages for the loss of credit facilities, goodwill, profits and future prospects estimated at xxxxxxxxxxxx N3,500,000.00.*

*Total: N3,566,000.00.”*

F

At the hearing of the matter on the pleadings filed by the parties, two witnesses testified for the plaintiff while an officer of the defendant testified on its behalf. In this judgment delivered on the 5th day of March, 1998, the learned trial Judge held that the defendant was liable for breach of contract and awarded the damages recited above in toto. The defendant felt aggrieved and appealed to the Court of Appeal. The Court of Appeal in its judgment delivered on the 6th day of March, 2000, allowed the appeal in part.

G

The judgment of Fabiyi, JCA., concurred to by Ubaezonu and Mohammad, JJCA., at page 127 of the record contains the following:-

H

*“xxxxxxxx The claim of the respondent in respect of the alleged loss of credit facilities and the like, to say the least, appears gold-digging and speculative. The award of N3.5 million appears, in the same view, is capricious and arbitrary. ‘Gold diggers’ should keep off from courts of*

*law as well as that of equity. And the courts should always be wary of “gold diggers” and not allow the institution to be used unwittingly as instrument for attaining their nefarious and mundane desires. xxxxxxxxxx”.*

The plaintiff felt unhappy with the turn of events and has now appealed to this court. The Notice of Appeal contains the following B grounds of appeal :-

“(A) ERROR IN LAW

(i) *The learned Justices of the Court of Appeal erred in law when after holding that the respondent was liable in breach of a fundamental C term of contract proceeded to disallow the award in general damages made by the trial court.*

(ii) *The court below erred in law by accepting the evidence of the respondent and wrongly rejecting the appellant’s evidence regarding Exhibit “H” on oral testimony not based on expert evidence of NITEL D thereby wrongly shifting burden of proof on the appellant as to the probative value of Exhibit “H”.*

(iii) *The court below erred in law by not considering the provisions of Sections 412(1) and (2) and 423(4), Contract Law (Cap.30), Laws of E Anambra State in relation to the award of general damages, as distinct from special damages under the said Contract Law.”*

(B) MISDIRECTION IN LAW

(i) The Justices of the court below misdirected themselves when F they held that the trial court failed to make finding on the probative value of Exhibit “H” when indeed, it made the said finding by preferring in entirety the evidence of P.W.1 to that of D.W.1, wherever they differed.

(ii) The court below misdirected itself when in relation to Exhibit G “H” it considered actual loss rather than general loss of opportunity and enhanced reputation in the appellant’s business and trade flowing from the respondent’s breach of fundamental terms as set out in Exhibit “J”.

(iii) The court below misdirected itself when it totally set aside the entire award in general damages, refusing to exercise its jurisdiction H judiciously and judicially in respect of quantum of general damages awarded by the trial court, after resolving issues 2.01 and 2.02 in the brief, as formulated at the court below, in favour of the appellant.”

In compliance with the provisions of the Rules of this court, briefs of argument were filed and exchanged and at the hearing of the appeal, learned counsel adopted their respective written briefs. Before the consideration of the issues submitted to this court for the determination of the appeal, it is appropriate at this stage to state the background facts of the dispute between the parties.

On the 3rd of June, 1993, the plaintiff paid into the defendant's bank the sum of N390,000.00 and in consideration of a remitting fee of N2,000, the defendant agreed to remit the United States Dollar equivalent to the plaintiff's business associates - Messrs Chin Jung Industry Co. Ltd., in Taiwan. At the material time, rate of exchange was N32.50 to one United States Dollar.

The equivalent in Dollar was 12,000 United States Dollars. Fund Transfer Form, Exhibit J, was completed by P.W. 1 on behalf of the plaintiff and the money was to be transferred by what was described as the fastest method of transfer, "*Telegraphic Transfer*" P.W. 1 said the defendant's manager informed him that the transfer would take four days as the defendant's headquarters was in Lagos and this transaction took place at Onitsha. When there was delay in the transfer and when P.W.1 did not receive confirmation of the transfer from the aforesaid beneficiary in Taiwan, he went to the defendant to find out the reason for the delay. The defendant's manager told P.W.1 that the telegraphic transfer could not be effected because the defendant's bank head office did not have the dollar equivalent to transfer. The plaintiff then briefed counsel who wrote Exhibit C on the 16/6/1993 complaining against the breach of contract to transfer the money as agreed. The defendant later returned the money deposited with it to the plaintiff. The plaintiff purchased the said sum of 12,000 United States Dollars from open market and this was at the rate of N38 to the Dollar. The plaintiff was obliged to pay N456,000.00 thus encountering an extra payment of N66,000.00.

The plaintiff further claimed that he had been doing business with his Taiwanese associates on credit basis for the past 12 years and as per Exhibit F, the plaintiff owed them the sum of 54,186 United States Dollars. The plaintiff also alleged that because of the failure to transfer the 12,000



Dollars aforesaid, the business associates not only withheld all the credit facilities hitherto enjoyed by the plaintiff, the plaintiff was also branded a liar and a cheat in a telex message, Exhibit “H”. The plaintiff also claimed that his turnover at the relevant time in his business with the Taiwanese associates was in the region of 300,000 United States Dollars, about N8.7 B million, and since this incident he had been in trouble with his business associates and they no longer shipped goods to the plaintiff on credit. The plaintiff, in addition to the N66,000.00 he was forced to pay for the purchase of the Dollars in the market mentioned above, also claimed C “damages for the loss of credit facilities, goodwill, profits and future prospects estimated at” N3.5 million.

The defendant, on the other hand, claimed that it agreed to remit the money at the rate on the condition contained in Exhibit J, the Funds D Transfer Form. The words contained in the form. “FOR MY ACCOUNT AND RISK”, showed that the transfer was subject to the availability of foreign exchange. It was also a condition that if there was any fluctuation in the foreign exchange rate before the transfer, the plaintiff shall bear the extra cost. And that the defendant was not liable to the plaintiff for the E breach of contract.

As mentioned above, the trial court found the defendant liable for the breach of the contract and the court awarded against it the entire claims of the plaintiff. On appeal, the Court of Appeal set aside the award for “loss F of credit facilities, etc.,” hence the appeal by the plaintiff (hereinafter referred to as the appellant and the defendant as the respondent.)

Now, in his brief for the appellant, the learned counsel has identified, formulated and submitted to this court the following issues G arising for the determination of the appeal:-

*“1. Whether the Justices of the Court of Appeal were right in setting aside the award by the trial court in general damages, rejecting Exhibit “H” for being “a farce and ruse” when fraud was neither specifically pleaded and particularized nor made ground and issue in the appeal. H*

*2. Whether putting aside Exhibit “H” in considering appellant’s case for award in general damages, the court below could be right in requiring proof of actual as against imputed damages was flowing from*

*the appellant's case whereby its reputation in trade and goodwill were impeached through the conduct of the respondent.*

B 3. *Whether after affirming the trial court's decision on breach of fundamental and mandatory term of the contract as in Exhibit J, the court below was right setting aside in its entirety the trial court's award of general damages saying that the appellant was engaged in "gold digging."*

C 4. *Whether setting aside the trial court's award in general damages, the learned Justices of the court below were right in exercising the court's jurisdiction of review of quantum of damages."*

For his own part, the learned counsel for the respondent has formulated and submitted the following issues arising for the determination of the appeal:-

D "1. *Whether the Court of Appeal was not right in dismissing the claim of the appellant in respect of the alleged loss of credit facilities as "gold digging" and "speculative" and accordingly set aside the N3.5 million in damages awarded thereto by the learned trial Judge as no*

E *credible evidence was led in proof of the same.*

F 2. *Whether the lower court was not right in assuming the role of the trial court in making a finding of fact and evaluation of evidence of witnesses with regard to Exhibit "H" when the trial court failed to do so and whether the finding of fact by the lower court was perverse which entitles the Supreme Court to interfere."*

**It has been stated on a number of occasions by this court that it is not the number of issues for determination formulated that guarantees the success of an appeal but the contents and quality. It is undesirable to formulate an issue for each of the grounds of appeal. See Oyekan v. Akinrinwa (1996) 1 NWLR (Pt.459) 128. Any unnecessary prolixity will be discountenanced. An issue for determination in a brief is a point which is so crucial that if it is decided one way or the other it affects the fate of the appeal, it is a point which is so critical that if it is decided in favour of a party, he is entitled to win the appeal. See Onifade v. Olayiwola (1990) 7 NWLR (Pt.161) 130; Okoye v. Nigerian Construction and Furniture Co. Ltd. (1991) 6 NWLR**

The essence of formulating issues for determination in an appeal is to condense the grounds of appeal into a compact issue or issues which are critical for the determination of the appeal. The appellant in the instant case has submitted four issues for the determination of the appeal, in my view they are prolix and repetitive. The fundamental, crucial and critical issue is, what is the measure of damages in an action for a breach of contract and whether there is the need to prove damages in such an action and if so whether the appellant had satisfactorily proved the damages he claimed. In my view, the issues formulated by the respondent are also not in line with the rules of court. I shall in this appeal consider the issue as formulated by me above which covers all the relevant and critical points raised in this appeal.

Argument on the Issue

It is submitted by the learned counsel for the appellant that Exhibit “H” was wrongly rejected by the Court of Appeal and that the evidence of D.W.1 upon which the court relied to reject Exhibit “H” was neither credible nor probative. The respondent should have called NITEL to give expert evidence on the matters D.W.1 testified. Thus, the court below was in error to have inferred fraud by holding that Exhibit “H” “is a farce and a ruse.” The issue of fraud was not specifically pleaded and nor was it particularized. Thus, the evidence of D.W.1 in relation to “Exhibit H” ought to be discountenanced, and in that case, the evidence in Exhibit “H” remains unchallenged and learned trial Judge was therefore right to have used the evidence to find damages proved. It is also submitted by Sections 412(1) and (2) and Section 423(4) of the Contract Law of Anambra State, Cap. 30, the Court of Appeal was in error to have required the appellant to prove actual loss accruing from the breach of contract in terms of Exhibit “J”. See *Kusfa v. United Bawo Construction Ltd.* (1994) 5 KLR 55, the appellant’s presumed loss to its reputation and goodwill in its trade required no proof. Section 423(4) Contract Law (supra).

It is again argued that the Court of Appeal was in error after finding the respondent liable for breach of contract of a fundamental term to turn round and to term the claim for damages as “gold digging” and “specula-

tive”. It was evident that the appellant was a serious minded business company and has even led evidence in proof of its losses.

It is finally submitted that the Court of Appeal was in error to have set aside the claim for damages as awarded by the learned trial Judge when the claim was not excessive. The Court of Appeal was in error in not applying the dictum *jus res jus remedium* in its consideration of the award of general damages. The court below was also in error to have contrasted “general” and “special” damages as the distinction is inappropriate in actions for breach of contract, but is only relevant in a claim in tort. See *Hadley v. Baxendale* 1854.

For the respondent, it is submitted that the appellant failed to prove by credible and sufficient evidence its claim to purported ‘loss of credit facilities, goodwill, profits and future prospects. “The appellant in attempting to prove such loss merely tendered “Exhibit H”, the telex. The telex had no number, no date nor country of origin. The respondent argued that the Court of Appeal was right to have held that the telex in Exhibit “H” was “a farce and a ruse and a make-believe xxxxxxxx”. No credible evidence was adduced in proof of the head of claim. It is again submitted that by its pleadings, the respondent made it clear in the Statement of Defence paragraphs 15, 16 and 17 that Exhibit “H” and other documents relied upon by the appellant were made up for the purposes of the case. The respondent gave evidence that Exhibit “H” was from Nigeria and not from overseas and the appellant did not deem it fit to dislodge the evidence adduced by D.W.1 on this issue. It is argued further that Exhibit F which the trial court wrongly used was a statement of account dated 26/4/1993 made before the transaction between the parties. Exhibit G, the sales agreement was also made in 1991. Exhibits F and G were therefore irrelevant. It is submitted that only Exhibit “H” could be said to be relevant to the claim and it was clear that Exhibit “H” was not properly evaluated by the trial court and the Court of Appeal was justified in critically examining it and rejecting it as proof of the purported loss or damage.

It is again submitted that the facts of this case are different from the facts in *Kusfa* case *supra*. But it is urged that this court should adopt the principle of law enunciated in that case in that having been awarded the



**In cases of breach of contract a plaintiff is only entitled to damages naturally flowing or resulting from the breach.** See Swiss Nigerian Wood Industries Ltd, v. Bogo (1971) 1 UILR 337, Agbaje v. National Motors (1971) UILR 119. **The measure of damages in such cases of breach of contract, is in the terms of the loss which is reasonably within the contemplation of the parties at the time of contract.** See Jammal Engineering v. Wrought Iron (1970) NCCR 295. **Alraine v. Eshiett (1977) 1 S.C. (Reprint) 59; (1977) 1 S.C. 89. When considering damages arising from a breach of a contract, there is no room for damages which are merely speculative or sentimental unless these are specifically provided for by the express terms of the contract.** See P. Z. v. Ogedengbe (1972) 3 S.C. (Reprint) 94; (1972) 3 S.C. 98. ‘The appellant’s claim for N3.5 million naira for “loss of credit facilities, goodwill, profits and future prospects” Was clearly not specifically spelt out at the time of the contract of only transferring N12.000 US Dollars to the business associates of the appellants; the claim is sentimental and speculative. The respondent did not specifically undertake any obligation to indemnify the appellant for the conduct of the third party in relation to their business with the appellant as there was no provision of such a claim in the contract. There was no mention of any loss of credit facility, goodwill, profits or future prospects at the time of contract. The loss, if any, was not within the contemplation. In my view, the only damages recoverable within the contemplation of the parties was the difference in the rate of exchange the appellant was obliged to pay, i.e., the sum N66.000.00 which was the presumed and normal consequence of the respondent’s breach, see Kufas case supra. To ask the respondent to pay or any further sum would amount to double compensation. Although the terms “special” and “general” damages are not appropriate in an action for breach of contract, but there are special circumstances where the parties do make contracts and bind themselves knowingly that a breach of contract under the special circumstances would also attract damages which the parties agreed at the time of the contract. See Agbaje v. National Motors (supra).

The claim of N3.5 million in this circumstances even if it was within the contemplation of the parties “*as a special case*,” which it was not, was not satisfactorily proved. The appellant pleaded under paragraph 14 of the Statement of Claim thus:-

*“The plaintiff’s Taiwan suppliers were furious when the money the plaintiff paid the defendant failed to arrive and immediately issued sanctions on the plaintiff and rejected as incredible the reason that a bank paid to transfer money failed to do so. They stopped credit sales to the plaintiff and demanded payment of all outstanding debts and that no further sales would be made to the plaintiff without payment in advance. Telex from the Taiwans to the plaintiff to this effect dated 18/6/1993 is hereby pleaded and shall be founded at the hearing.”*

**There is no doubt that on its face, “Exhibit H”, which was pleaded as proof of the above pleading, does not show any connection with the transaction nor does it show who sent it. It is elementary law that, he who asserts must prove. The appellant was duty bound to prove that it was the breach that caused the losses. There was no evidence whatever adduced to do so. In such a circumstance where the plaintiff failed to prove the special claim, the plaintiff will not be entitled to such damages. See Agbaje v. National Motors supra. Shell B.P. v Jammal supra. A-G of Anambra State v. Onuselogu Ent. Ltd. (1987) All NLR 579, Exhibit H” which was offered as proof of the loss of N3.5 million is not an authentic document to entitle the appellant to claim such damages. Where a document is challenged and impugned as unauthentic, the maker of the document should be called to support the document, otherwise no weight should be attached to it. Where such damages are suffered and claimed in an action for breach of contract, there must be convincing evidence to prove the damages.**

**It is clear that Exhibit J is the bed rock of the agreement between the parties and showed that the obligation was only the transfer by telex of 12.000 US Dollars to Hua Nan Commercial Bank in favour of Chih Jung Ind. Co. Ltd., the purpose of which had not been spelt out. The consequences of the non-transfer, though not**

**stated, but can be presumed. In my view, the Court of Appeal is right to have held that the liability of the respondent under the circumstances was only to pay the difference in the exchange rate when the respondent failed to transfer the money agreed in Exhibit J.**

**B It is for these reasons that I find the appeal unmeritorious and is dismissed by me.** The respondent is entitled to costs assessed at N10.000.00.

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**C BELGORE JSC**

The award of damages for breach of contract is never arbitrary. It is always based on what naturally flows from that breach and is in contemplation of the parties. Thus, the damages to be awarded must not  
D be speculative or based on mere sentiment: of course it is always on the plaintiff after proving the breach to further give evidence of what damages he has suffered. (Swiss Nigerian Wood industries Limited v. Bogo (1970) 1 UILR 119; Jammal Engineering Company Limited v. Wrought Iron  
E Limited (1970) NCCR 295; Alraine v. Eshiett (1977) 1 S.C (Reprint) 59; (1977) 1 S.C. There are however, some contracts of service in which case court will award what is reasonable and not punitive. <sup>6</sup> What the appellant claims in this suit now on appeal is very strange to the agreement between  
F it and the respondent bank. The appellant asked for N3.500.000.00 (Three Million Five Hundred Thousand Naira) which cannot by any imagination be contemplated by the parties when the contract to transfer and 12.000,00 I U.S. dollars was agreed. “The loss or credit facilities, goodwill, profits and future prospects” are not only alien to the contract  
G but are also speculative.

In contract cases, the pleadings must reasonably be relevant to the contract between the parties so that when proving averments by evidence the parties will rely on relevance of the case to the contract whose breach  
H is in issue. The plaintiff had to raise funds to obtain foreign money for his overseas suppliers when value of Naira had depreciated. The appellant will certainly be entitled to what he paid as extra Naira due to depreciation and no more.



I am therefore of the firm belief that this appeal has no merit, and for fuller reasons in the judgment of Musdapher, JSC., with which I am in entire agreement. I dismiss this appeal with N10,000.00 costs to the respondent.

B

### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment delivered by my learned brother, Musdapher, JSC. I entirely agree with it and, for the reasons stated in it. I also dismiss the appeal with N10,000.00 costs in favour of the respondent.

C

### **OGUNTADE JSC**

D

The appellant was the plaintiff at the Onitsha High Court of Anambra State, where it claimed against the respondent as the defendant for:

"(1) *Damages for loss occasioned by depreciation of Naira (N456,000.00 - N360,000) = N66,000.00*

E

(2) *Damages for loss of credit facilities, goodwill, profits and future prospects, = N3,500,000.00. estimated at*

F

*Total N3,566,000.00"*

The parties filed and exchanged pleadings after which the suit was tried by Amaizu, J., (as he then was). On 5/3/98, the trial Judge in his judgment awarded to the plaintiff the totality of its claim stated above. Dissatisfied, the defendant brought an appeal before the Court of Appeal sitting at Enugu (hereinafter referred to as 'the court below'). On 6/3/2000, the court below in its judgment allowed the appeal. It set aside the sum of N3.5 million awarded as general damages, leaving the plaintiff/appellant the sum of N66,000.00 awarded as special damages. Dissatisfied with the judgment of the court below, the plaintiff has brought this appeal. In its appellant's brief, the issues for determination in the appeal were stated to be the following:

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H

“2.01 Whether the Justices of the Court of Appeal were right in setting aside the award by the trial court in general damages, rejecting Exhibit “H” for being ‘a farce and ruse’ when fraud was neither specifically pleaded and particularized nor made a ground and issue in the appeal.”

2.02 Whether putting aside Exhibit “H” in considering the appellant’s case for award in general damages, the court below could be right in requiring proof of actual as against imputed damages was flowing from the appellant’s case whereby its reputation in trade and goodwill were impeached through the conduct of the respondent.

2.03 Whether after affirming the trial court’s decision on breach of fundamental and mandatory term of the contract as in Exhibit J, the court below was right, setting aside in its entirety that trial court’s award of general damages saying that the appellant was engaged in ‘gold digging’.

2.04 Whether setting aside the trial court’s award in general damages, the learned Justices of the court below were right in exercising the court’s jurisdiction of review of quantum of damages.”

My learned brother, Musdapher, JSC., has in his lead judgment set out the facts leading to the dispute out of which this appeal arose. I respectfully adopt those facts so succinctly set out in the lead judgment. Put simply, the defendant had in breach of its agreement with the plaintiff failed and or neglected to transmit to the plaintiff’s overseas suppliers the dollar equivalent of N390,000.00 which was US \$12,000.00 on the due date. As a result of the default, plaintiff sourced for the US \$12,000.00 from an alternative source, for which the plaintiff paid N456,000.00 which was N66,000.00 more than it would have cost, had the defendant complied with the agreement between parties.

The trial court awarded to the plaintiff the excess it paid to source for US \$12,000.00. This was N66,000.00. It also awarded the sum of N3.5 Million as general damages. In making the award, the trial Judge said at pages 39-40 of the record:

“The plaintiff claims N3,500,000 as damages for loss of credit facilities, goodwill etc. Generally, general damages may be awarded to assuage such a loss which flows naturally from the defendant’s act. The

*evidence before me is that the plaintiff and his associates in Taiwan have been trading together for 12 years. Exhibits E1 to E7 show that the two have been trading together for a long time. Exhibit "F" confirms that the plaintiff has credit facility with Chi Jung Ind. Co. Ltd of Taiwan. The P.W. I gave evidence that the plaintiff has lost all the facilities.*

B

*Goodwill is a great asset in business. In business, it is capitalized. It may be difficult for the plaintiff to build such a goodwill with any other company in Taiwan. This is more so as the associates cannot be ascertained. In the light of the above, I hold that the claim for N3,500,000.00 is not excessive."*

C

The court below in its judgment was of the view that the sum of N3.5 million awarded as damages for loss of credit facilities, goodwill etc., was speculative and amounted to "gold-digging". It therefore set aside the award. Was the court below right to do so?

D

In answering his question, I bear in mind that this was a case for breach of contract. In paragraphs 13 to 15 of its Statement of Claim, the plaintiff pleaded the facts upon which it hinged its claim for loss of credit thus:

E

13. The plaintiff's Taiwan suppliers all along had been selling to the plaintiff on credit basis and the plaintiff paid after selling. By April, 1993, the plaintiff was owing the Taiwanese 54, 186 US Dollars. The statement of account dated 26/4/93 is hereby pleaded and shall be relied upon at the hearing.

F

14. The plaintiff's Taiwan suppliers were furious when the money the plaintiff paid the defendant failed to arrive and immediately issued sanctions on the plaintiff and rejected as incredible the reason that a bank paid to transfer money failed to do so. They stopped credit sales to the plaintiff and demanded payment of all outstanding debts and that no further sales would be made to the plaintiff without payment in advance. Telex from the Taiwanese to the plaintiff to this effect dated 18/6/1993 is hereby pleaded and shall be founded upon at the hearing.

G

H

15. The plaintiff, who by the end of April, 1993, had a turnover of up to 230,000.00 U.S. Dollars, equivalent to N8.7 million at the current rate, crashed to the bottom rump, losing a goodwill built up over years and

with prospects of future increase and also all the opportunities open to him for profits and thereby suffered colossal losses and damages ranging in millions of Naira. Hereby pleaded is the statement of account dated 26/4/93.”

B The evidence called by the plaintiff, in support of its case, was that it gave money to the defendant for remittance to its overseas suppliers on 3/6/ 1993. The remittance ought to have been made by the defendant on 7/6/93. It was not so made and the plaintiff only found an alternative on C 22/6/93. In effect, there was a delay of 19 days going by the evidence called by the plaintiff. Ought the defendant be made liable based on the fact that the plaintiff had been receiving goods on credit from his overseas supplier and the delay of 19 days in making the remittance caused the D plaintiff to lose its credit facility with the overseas suppliers?

In P. I. v. Ogedenybe (1972) 3 S.C. (Reprint) 94; (1972) 3 S.C. 98, this court said per Madarikan, JSC

E *“The law with respect to the measure of damages has not changed ever since the famous dictum of Alderson, B., in Hadley v. Baxendale (1854) 9 Exch 341 where at p.354, he observed as follows: -*

F *‘Now we think the proper rule in such a case as the present is this:- where two parties have made a contract which one of them has broken, the damages in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.’*

G In the preparation of the claim for, as well as in the consideration of an award in consequence of a breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the violation. The damages recoverable are the H losses reasonably foreseeable by the parties and foreseen by them at the time of the contract as inevitably arising if one of them broke faith with the other. In the contemplation of such a loss there can be no room for claims which are merely speculative or sentimental unless these are specially

provided for by the terms of the contract. It is only in this connection that damages can be properly described as 'special' in the conception of contractual awards and it must be borne in mind that damages normally recoverable are based on the normal and presumed consequences of the breach complained of (See *Koufos v. C. Czarnikow Ltd.* (1967) 3 WLR B 1491). Thus, the terms 'general' and 'special' damages are normally inapt in the categorization of damages for the purposes of award in cases of breach of contract. We had occasion to point this out before (see *Agbaje if. National Motors Ltd.* (SC. 20/68 dated 13th March, 1970) and we must C make the point that apart from damages naturally resulting from the breach, no other form of general damages can be contemplated.

We think therefore that the argument of learned counsel for the defendants that the further award of £500 as general damages in this case could not be supported as such is well founded and it must be set aside." D

Giving the facts in this case, could it be said that the defendant ought to have foreseen that if it did not make the remittance in accordance with the agreement of parties, the plaintiff/appellant would lose its credit facilities with its overseas suppliers? I think not. There was no evidence E that the plaintiff/appellant had told the defendant, at the time of the transaction, that it dealt with its overseas suppliers on credit; or that a default in sending the remittance timeously would impel the overseas suppliers to cancel plaintiff/appellant's credit facilities. 'The plaintiff/ F appellant pleaded that it had done business with its overseas suppliers for upwards of twelve years. It would not be unreasonable to expect that the plaintiff's overseas suppliers would not elect to cancel a mutually G beneficial business relationship of twelve years, because of a delay of 19 days in getting payment from the plaintiff. It is likely to be more in the contemplation of the defendant that a delay of 19 days in making the remittance might make the overseas suppliers ask for interest on the late payment at the worst. It is also feasible for the defendant or any other H person to believe that the overseas suppliers might elect to show understanding and not take the punitive step of cancelling plaintiff's credit line over a 19 day delay in making the payment. The award of N3.5 million as

damages should not. Therefore, as matter of law, depend on such an uncertain variable as the largeness of heart or understanding nature of the overseas suppliers.

It seems to me therefore, that the reaction of plaintiff's suppliers in jettisoning a business relationship of twelve years over a delay of 19 days in making a payment was an unusual occurrence which the defendant could not have foreseen or contemplated given the fact that it did not even know that the plaintiff was doing business on credit with its overseas suppliers.

The ascertained loss of the plaintiff was the extra N66,000.00, it paid to set the sum of US\$12,000.00 remitted to its overseas suppliers. To have awarded to plaintiff a staggering sum of N3.5 million in addition to the actual loss of N66,000.00 sustained is in my view exploitative and unjustifiable. The claim for N3.5 million for loss of credit facilities is on the facts available too remote. I therefore agree with the conclusion of the court below. To sustain the award would have amounted to double compensation. See *Armels Transport v. Transco* (1974) 11 S.C. (Reprint) 173; (1974) 11 S.C. 237.

I agree with the lead judgment of my learned brother, Musdapher, JSC. I would also dismiss this appeal. I subscribe to the award made by him on costs.

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F

### **AKINTANJSC**

The appellant company in this case was a customer of the respondent bank. It maintained its account with the Onitsha branch of the bank. In the course of its business with the bank, it approached the bank with a request that the bank should assist in sourcing for and remitting a total sum of US \$12,000 to a company based in Taiwan. The company deposited the naira equivalent, at the then prevailing rate, with the bank as its Onitsha branch. The respondent's Onitsha branch had to contact its headquarters in Lagos where such foreign exchange transactions were carried out. The headquarters in Lagos tried to source for the required US Dollars but failed. The appellant was eventually notified of the inability of the respondent to effect the transfer of the required U.S. Dollars to the

Taiwan based company. The Naira equivalent deposited for the purpose was thereafter returned to the appellant.

The appellant eventually sourced for the needed Dollars from outside the banking system. But this was at a higher rate. The difference between the cost of sourcing for the required US \$ 12,000 through the bank and from outside the banking system came to N66,000. The appellant, as plaintiff, therefore instituted this action at Onitsha High Court in which he claimed the N66,000 short fall and another N3.5 million as “damages for loss of credit facilities, goodwill, profits and future prospects.”

The trial High Court granted the two claims. On appeal, the Court of Appeal allowed the appeal in respect of the claim for N3.5 million for damages. The appellant was dissatisfied and the present appeal is against the judgment of the said Court of Appeal.

The main question to be resolved in this appeal is whether the claim for N3.5 million set aside by the court below is remote and was therefore rightly refused. What is to be considered therefore is the doctrine of remoteness of damages in actions for breach of contracts. The position of the law is stated as follows by the authors of Chitty on Contracts, 28th edition, 1999, Vol. 1, paragraphs 27-39, pages 1289-1290:

“The term remoteness of damages refers to the legal test used to decide which types of loss caused by the breach of contract may be compensated by an award of damages. If there is no explicit clause in the contract dealing with the assessment of damages, the law supplies a standard test which specifies the extent of responsibility implicitly undertaken by the promisor. There is a reciprocal allocation of risks..... but it can be said in general terms that the promisor implicitly accepts responsibility for the usual consequences of a breach of the promise in question, while the promisee implicitly accepts the risk of any other consequences. (In other words, the promisee implicitly agrees not to hold the promisor responsible for unusual consequences). The test should ultimately depend on the express or implied intention of the parties. Hence, the promisor may be liable for an unusual type of loss where he is made aware of the risk and thus expressly or impliedly accepts responsibility for

*it.”*

The classic rule on the subject is as long ago stated by Alderson, B., in *Hadley v. Baxendale* (1854) 9 Exch. 341. It is that where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally, i.e., according to the usual course of things, from such breach of contract itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. See also *Obmiami Brick & Stone Nig. Ltd. v. A. C. B. Ltd.* (1992) 3 NWLR (Pt.229) 260; *Omonuwa v. Wahabi* (1976) 4 S.C. (Reprint) 62; (1976) 4 S.C. 37; *Swiss nig. Wood Industries Ltd. v. Bogo* (1971) 1 UILR 337; and *Jammal Engineering v. Wrought Iron Ltd.* (1970) NCCR 295.

In the instant case, the appellant’s claim for N3.5 million for damages for loss of credit facilities, goodwill, profits and future prospects” could not have been reasonably be said to have arisen from a breach of the contract which the appellant had with the respondent for a request to source for US \$ 12,000 and remit same to a company in Taiwan. This is particularly so as it was not shown that there was explicit clause in the contract between the parties dealing with assessment of damages covering such extended losses in the event of a breach. I therefore hold that that item of claim was rightly refused.

I had the privilege of a preview of the leading judgment written by my learned brother, Musdapher, JSC., which has just been delivered. I entirely agree with his reasoning and conclusion that the appeal should be dismissed. For the reasons I have given above and the fuller reasons given in the leading judgment which I hereby adopt, I also dismiss the appeal with N10,000 costs in favour of the respondent.

H