IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO

ON THURSDAY

THE 23RD DAY OF JULY, 2026.

BETWEEN: ***SUIT NO. B/888/2023***

IMAGUERO MULTIPURPOSE
CO-OPERATIVE SOCIETY -------------------------------CLAIMANT

AND

MRS HELEN OGUNBOR -- DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim, filed on the 13th of October 2023. However, the Claimant's extant Statement of Claim is their Amended Statement of Claim filed on the 9th of December 2024 wherein they are seeking the following reliefs:

(i) ***A DECLARATION of this Honourable Court that the Claimant is entitled to the sum of Sixteen Million Five Hundred Thousand Naira (N16, 500, 000: 00K) from the Defendant being the sum the Defendant owe the Claimant as at the 30th of September, 2023, upon the loan transaction between both parties, and the Defendant shall pay an interest***

rate of 10% per annum on the sum outstanding owed during the pendency of this suit.

(ii) ***A DECLARATION of this Honourable Court that the Claimant suffered needless pain and harm also, to wit; cheating, deceit, fraud, malicious hurt, negligence; in the hands of the Defendant and the Claimant is entitled to claim for damages, without more, from the Defendant for these unconscionable, wrongful and unlawful acts visiting hurt, trauma, loss of esteem on the Claimant which said acts are continuing.***

(iii) ***AN ORDER of this Honourable Court directing the Defendant to pay to the Claimant the sum of Sixteen Million Five Hundred Thousand Naira the Defendant owes the Claimant as at the 30th of September, 2023, and the Defendant shall pay an interest rate of 10% per annum on the outstanding balance, during the pendency of this suit.***

(iv) ***Post-judgment interest on the sum outstanding at the rate of 10% per annum from the date of the judgment until the entire debt is fully paid.***

(v) ***GENERAL, PUNITIVE and EXEMPLARY DAMAGES of One Hundred Million Naira (N100,000,000:00k) only for the unconscionable wrongful and unlawful acts wrought on the Claimant by the Defendant on trial.***

The originating processes in this suit were served on the Defendant by substituted service, but she failed to enter any appearance or file any Statement of Defence. When the suit became ripe for hearing, Hearing Notices were served on her, but she also failed to show up in Court to defend the suit.

Consequently, the Claimant was granted leave to lead evidence in proof of their case. At the hearing, one Mr. Oghogho Omere who is the President of the Claimant testified as the CW1 and tendered the following documentary exhibits:

(i) Exhibit “A” – The Claimant’s Byelaws made pursuant to the provisions of the Co-operative Societies Law;

(ii) Exhibit "B" – The Defendant's alleged written application to the Claimant dated for a loan;

(iii) Exhibit "C" – The Claimant's letter dated the 27th of June 2023 to the Office of the Director of Co-operatives, Edo State, the Claimant's Supervisor-at-law, informing them of the Defendant's default in meeting her loan repayment obligations to the Claimant;

(iv) Exhibits "D" and "D1", letters of demand, allegedly written by the Claimant's Solicitors to the Defendant;

(v) Exhibit "E" – The alleged response of the Office of the Director of Cooperatives, Edo State to the Claimant's earlier Letter (Exhibit "C").

Upon the conclusion of the evidence in chief of the C.W.1, the Court adjourned the matter for the Defendant's cross-examination of the CW1 and ordered Hearing Notice to be issued and served on the Defendant.

The Hearing Notice was served on her and on the next date, the Defendant failed to come to Court to cross-examine the C.W1, so the Court foreclosed her cross-examining the C.W.1 and the witness was discharged from the witness box.

On the next date, a staff of Ecobank Ltd, bankers to the Defendant testified on Subpoena and tendered the Defendant's Statements of Account of the 5th of July, 2021 and the 13th of August, 2021 as Exhibits "G1" and "G2" to show the alleged payments of the loan from the Claimant to the Defendant.

From the evidence adduced by the Claimant at the hearing, the Claimant testified that they are a multipurpose Cooperative Society registered under Edo State Co-operative Law.

They alleged that initially, the Co-operative Society was formed by Imaguero College teaching staff, but it was later expanded to include non-teaching staff of the college.

They alleged that members contribute monthly subscriptions (thrift savings), forming a pool for loans which run for 12 months at the rate of 10% interest per annum.

They alleged that the Defendant joined the society sometime in 2016 and on the 5th of July 2021, she applied for a ₦21million (Twenty-One Million Naira) loan but only ₦15million (Fifteen Million Naira) was approved for her and disbursed in two tranches of ₦11million (Eleven Million Naira) on July 5, 2021, and ₦4million (Four Million Naira) on August 12, 2021. At the trial, the Claimant tendered the Defendant's Statements of Account of the 5th of July, 2021 and the 13th of August, 2021 as Exhibits "G1" and "G2" to show the alleged payments of the loan into the Defendant's Ecobank account.

They alleged that the loan was released to the Defendant on the ground that the Defendant will repay the money within six months at the interest rate of 10% per annum.

They alleged that the Defendant stopped paying her monthly subscriptions after receiving the loan and she failed to repay any part of the ₦15 million thereafter. They said that at the end of the year 2022, the sum of ₦1.5million interest was deducted from her special savings, reducing her cumulative savings to ₦5.7million.

They alleged that they put in several calls and reminders to the Defendant, but she ignored all their demands for the repayment of loan.

They alleged that the Defendant flaunted her opulent lifestyle through the purchase of a new Lexus SUV while dismissing the debt as "chicken money."

The Claimant reported the matter to the Director of Cooperative, Edo State, who authorized recovery vide Exhibit "E".

The Claimant caused a demand letter to be issued by their Solicitors, "Honoursworth Lawyers" dated 1st of September 2023 (Exhibit "D").

The Defendant received the letter but remained defiant hence they instituted this suit against her to seek redress.

Thereafter, the Claimant closed their case, and the matter was adjourned for the Defendant to open her defence. Again, hearing notice was issued and served on the Defendant, but she did not turn up to defend the suit, so the Claimant was directed to file their final written address.

In his final written address, the learned counsel for the Claimant, ***Eromosele Igbegu Esq.*** formulated a sole issue for determination as follows:

"Whether the Claimant has sufficiently made out its case against the Defendant to warrant this Court finding for the Claimant as it prays for per the reliefs sought by the Claimant in the extant Statement of Claim, being the amended Statement of Claim."

Opening his arguments on the sole issue for determination, the learned counsel submitted that the Claimant is a co-operative society regulated by the provisions of the ***Co-operative Societies Law, Cap. 45, Laws of Bendel (defunct) State, 1976***, as applicable to Edo State of Nigeria. He referred to ***Section 4*** of the Law which states that a Co-operative Society: "…***has as its object the promotion of the economic interests of its members in accordance with co-operative principles…"***

He submitted that the promotion of the economic interests of members of the Claimant is further amplified by ***Section 4 of the Claimant's Byelaw*** which was admitted as Exhibit "A" which include thrift and credit operations.

He maintained that in carrying out its objectives as spelt out under Section 4 of Exhibit "A" the Claimant is bound by the rules. In support of the foregoing contention, he posited that the Claimant is bound by the provisions of ***Section 13 of the Co-operative Societies Law*** and by its own **Byelaw,** Exhibit "A".

He submitted that the Defendant being a member of the Claimant is bound by the same Rules herein aforesaid. He said that the Defendant entered a loan contract with the Claimant as reflected in Exhibit "B". He referred to the second sentence in Exhibit "B" where the Defendant stated that she is a member of the Defendant.

He referred the Court to Exhibits "G1" and "G2" to show how the loan was released in two tranches into the Defendant's account with Number 24411092838 which said account is domiciled with Ecobank.

He referred to the Supreme Court decision in the case of ***ARTRA INDUSTRIES (NIG.) LTD vs. NIGERIAN BANK FOR COMMERCE AND INDUSTRY (1998) 4 NWLR (Part 546) 357 at 379 para E*** where they held that: "***Parties to an agreement are bound by the terms of the agreement they enter into freely***".

He submitted that the terms of the contract, under reference, are verily reflected in Exhibits "A" and "B" particularly under ***Sections 52 to 59*** of Exhibit "A". He reproduced ***Section 59*** which provides thus: ***"Interest on loan to members shall be charged at a rate to be fixed by the Committee annually and approved by the***

General meeting but shall not exceed 15% per annum. In case of default in repayment penal interest shall be charged at twice the nominal rate".

He also referred to the case of ***CANNITEC INTERNATIONAL COMPANY LTD. Vs. SONEL BONEH NIG LTD (2017) 10 NWLR (Part 1572) 66 at 79 para C-D*** where ***Rhodes-Vivour, JSC*** as he then was, stated thus: "***Where the terms of a written contract are clear, effect must be given to it. It is not the function of the court to re-write the contract for the parties. In the absence of fraud or misrepresentation, the parties are bound by its terms***".

He submitted that in the instant case the contract between the Defendant and the Claimant, including the terms attaching to the contract are as set out in Exhibits "A", "B" and "F", read together. He relied on the case of ***MEKWUNYE vs. WAEC (2020) 6 NWLR (Part 1719) 1 at 38 para D-E*** where the apex Court exposited thus: "***Where a contract consists of a series of documents, the court has a duty to scrutinize and examine closely all contractual documents admitted as exhibits to determine whether there exists a contract between the parties and the issue(s) in controversy between them. The documents must be read together***."

Furthermore, learned counsel submitted that a party will be entitled to claim interest where the claim is as of right, for example by agreement or where it is supported by Statute or mercantile custom or convention and he relied on the case of ***EKWUNIFE vs. WAYNE (WEST AFRICA) LTD (1989) 5 NWLR (Part 122) 422***.

He submitted that the Claimant is entitled to claim interest from the Defendant in accordance with the agreement between the parties evinced in Exhibit "A".

He submitted that the Defendant being a member of the Claimant is bound by the provisions of ***Section 52*** of Exhibit "A" which states that: "***Loans may be granted to members only for purposes which in the opinion of the Committee are productive, or necessary and in the best interest of the borrower***". He contended that the Defendant being the borrower herein is under an obligation to apply the funds productively and repay back.

He submitted that the Defendant is in breach of the contract and has defrauded the Claimant. He submitted that it is settled law that when evidence open to being controverted by an adverse party is not so controverted the court should take the evidence as unchallenged and established. For this submission, he relied on the case of ***INSURANCE BROKERS OF NIGERIA vs. ATMN (1996) 8 NWLR (Part 466) 316 at 327 para G***.

Again, he submitted that the Claimant apart from breaching the contract also acted in deceit against the Defendant. He submitted that Deceit is a tort and that from the facts before this court the Defendant deceived the Claimant when he stated in Exhibit "B" that he would repay the loan in ***six months' time***. He contended that the Defendant fraudulently misrepresented her true intention and promised to pay back within six months. He posited that from the evidence before this Court, the Defendant stopped communicating with the Claimant after obtaining the loan.

He maintained that the Defendant's conduct amounts to deceit and fraudulent misrepresentation and he relied on ***BLACK's LAW DICTIONARY, 8th edition*** where Deceit as defined as: "***A tort arising from a false representation made knowingly or recklessly with the intent that another person should detrimentally rely on it***".

He also relied on the book: ***TORT LAW, 7TH edition, by Catherine Elliot and Frances Quinn, a Pearson Longman publication, at page 217*** where the learned authors stated as follows: "***1. That the Defendant made a false representation (in other words, that he or she lied); 2. That the representation was one of fact; 3. That the Defendant knew the representation was false, or at least had no genuine belief that it was true; 4. That the Defendant intended the Claimant, or a group of people which includes the Claimant, to act on the false representation; 5. That the Claimant acted on the representation; 6. That acting on the representation caused the Claimant damage***". Furthermore, he relied on the cases of ***ODOGWU vs. OKI (1990) 5 NWLR (Part 153) at 721*** and ***FIRST BANK OF NIGERIA LTD. Vs. PRISCILLIA OGWEMOH (2023-04) Legalpedia 75323***.

He maintained that it is settled law that the same facts which constitute a breach of contract may give rise to a claim in tort. Both causes of course must however be pleaded and he relied on the case of ***MAKWE vs. NWAKOR (2001) 14 NWLR (Part 733) 356 at 373 para A – B*** .

He posited that in this suit, both causes of action were pleaded, and he relied on the extant Statement of Claim.

He submitted that failure to file pleadings or to lead evidence to challenge the case of the Claimant inures in favour of the Claimant as the Claimant's case stands unchallenged and he relied on the case of ***OKOEBOR vs. POLICE COUNCIL (2003) 12 NWLR (PT. 834) 444.***

He submitted that the Defendant is deemed to have admitted the case of the Claimant before this Honourable Court, and particularly the reliefs sought by the Claimant.

In conclusion, he urged the Court to enter judgment for the Claimant as per the reliefs and damages claimed.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the Claimant.

As I have already observed, the Defendant did not put up any defence to this suit. Thus, the evidence of the Claimant against her remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: ***Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.***

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendants, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See*: **Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24***.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See***: Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341***.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: ***Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650***.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

In a case of a breach of contract such as in the instant suit, it is settled law that the burden is on the Claimant to prove that there was a contract between him and the Defendant and that the contract was breached to his disadvantage. See: ***Orji Vs Anyaso (2000)2 NWLR (part 643) page 1; and RFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS & ANOR (2018) LPELR-46711(CA) (PP. 23 PARAS. B)***

Essentially, the Claimant's case is founded on Contract and Torts to wit: the alleged breach of the contract of loan between the Claimant and the Defendant and for the tort of deceit allegedly committed by the Defendant.

As the learned counsel for the Claimant rightly posited, the same facts may in some cases amount to a breach of contract and a claim in tort. See the cases of ***I.M.N.L V. NWACHUKWU (2004) LPELR-1526(SC) (PP. 14 PARAS. C)*** and ***MAKWE V. NWUKOR & ANOR (2001) LPELR-1830(SC) (PP. 17-18 PARAS. G).***

The first point to be determined at this stage is whether there was any valid contract of loan between the Claimant and the Defendant which was allegedly breached by the latter.

It is settled that in loan recovery cases, the lender, like all claimants in civil cases, has the legal burden of establishing his case, as well as the first evidential burden of establishing that he indeed granted and disbursed the loan which he asserts to the borrower. In other words, apart from the legal burden of all claimants to establish their cases which does not shift, the evidential onus of proof is first on the lender who asserts that he had granted loan to the borrower, to establish that he indeed granted and disbursed the loan to the borrower. Once the lender has discharged this evidential burden of proof placed on him, the burden then shifts and oscillates to the borrower to prove that he had repaid the loan as agreed by the parties. See: ***SECTIONS 131-134 OF THE EVIDENCE ACT, 2011*** and the cases of ***UNION BANK V RAVIH ABDUL & CO. LTD. (2018) LPELR-46333(SC); FBN V NWOKOLO (2021) LPELR-55480(CA); NEJO V ACCESS BANK & ORS (2019)***

LPELR-47960(CA); and ***FBN LTD V. ROYAL PAVILION (NIG) LTD & ANOR (2022) LPELR-57742(CA) (PP. 38-39 PARAS. B-B).***

In the instant case, the Claimant led unchallenged evidence to show how the Defendant who is a member of the Claimant Co-operative Society sometime in 2016 applied for a loan in the sum of ₦21million (Twenty-One Million Naira) and the sum of ₦15million (Fifteen Million Naira) was approved for her and paid to her in two tranches of ₦11million (Eleven Million Naira) on July 5, 2021, and ₦4million (Four Million Naira) on August 12, 2021. At the trial, the Claimant tendered the Defendant's Statements of Account of the 5th of July, 2021 and the 13th of August, 2021 as Exhibits "G1" and "G2" to show the alleged payments of the loan into the Defendant's Ecobank account.

They led evidence to show that the loan was released to the Defendant on the ground that the Defendant will repay the money within six months at the interest rate of 10% per annum.

Thus, the Claimant discharged the burden to prove that they granted and disbursed the loan to the Defendant.

Having discharged the first evidential burden on them, the burden then shifts to the Defendant to prove that she had repaid the loan as agreed by them. See: ***SECTIONS 131-134 OF THE EVIDENCE ACT, 2011*** and the cases of ***UNION BANK V RAVIH ABDUL & CO. LTD. (2018) supra et al.***

At the trial, the Defendant did not lead any evidence to prove the repayment of the loan. Rather, the Claimant adduced evidence to show that the Defendant stopped paying her monthly subscriptions after receiving the loan.

The principle guiding contract was clearly propounded in the case of ***Obajimi v. Adediji (2008) 3 NWLR pp 16-17 para N B***. A breach of contract is committed when a party to the contract without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See also: ***AFOLABI V. GOV OF OYO STATE & ORS (2016) LPELR-41945(CA) (PP. 16-17 PARAS. E).***

Again, in the case of ***UKPONGSON NIGERIA COMPANY LIMITED & ANOR v. BANK OF INDUSTRY LIMITED (2022) LPELR-57927(CA)***, the Court of Appeal exposited thus:

"Breach of contract is no more than a failure, without legal excuse, to perform any promise which forms an integral part of a contract. It also connotes unequivocal and absolute refusal to perform an agreement. In ARE V OWOEYE (2014) LPELR - 41096 (CA), it was held that breach of fundamental terms occurs in a contract when a party fails to carry out the contract in its essential terms such a breach goes to the root of the contract."

In the instant case, the unchallenged evidence before the Court is that the Defendant made a promise to repay the loan within six months at the interest rate of 10% per annum but she failed/refused to fulfil her promise without any explanation whatsoever.

I am of the view that on the authorities already cited in this judgment, the Defendant is in breach of her contract with the Claimant.

In this suit, the Claimant also alleged that the conduct of the Defendant amounts to cheating, deceit, fraud, malicious hurt and negligence for which the Defendant is liable in damages.

In his address, the learned counsel for the Claimant emphasised mainly on the Defendant's liability for deceit.

In the law of tort, deceit is said to have been committed when a person knowingly or recklessly—without caring whether a statement is true or false—makes a false representation of fact to another person, with the intent that the person should act upon it, and the person suffers damage as a result of acting on the falsehood.

The learned author of ***Street on Torts,*** defined the tort of deceit as: ***"A false representation made by the defendant knowingly, or without belief in its truth, or recklessly, careless whether it be true or false, with the intention that the plaintiff should act in reliance upon the representation, which causes damage to the plaintiff in consequence of his reliance upon it."***

The tort of deceit is fundamentally concerned with fraudulent misrepresentation, as distinct from negligent or innocent misstatement.

The origin of the Tort of Deceit dates to the old English case of ***Pasley v. Freeman (1789) 3 TR 51*** where the Defendant falsely represented to the Plaintiff that a man (X) was credit worthy. Relying on this, the Plaintiff sold goods to X on credit and suffered loss. The court held the Defendant liable in deceit. In the said case, ***Lord Kenyon*** exposited on the tort when he stated thus:
"Fraud without damage, or damage without fraud, gives no cause of action; but where these two do concur, there an action lies… If indeed no injury is occasioned by the lie, it is not actionable; but if it be attended with a damage, it then becomes the subject of an action… In this case, two grounds of the action occur; here are both the damnum et injuria (damage and legal wrong)."

This statement captures the essence of the tort of deceit to wit: fraud plus loss.
It becomes obvious that fraud is the most essential element of deceit. Absence of fraudulent intent is fatal to any claim founded on deceit. This principle also finds expression in contract law under the head of fraudulent misrepresentation. In the old Nigerian case of ***James v. Mid Motors Ltd (1978) L.R.N 187 SC*** the Plaintiff entered a hire purchase transaction for a motor vehicle. The Defendant's manager insisted that the Plaintiff must insure the vehicle comprehensively with a specific insurance company. The Plaintiff paid the premium and was issued a cover note by the manager—bearing the name of an imaginary insurance company. The Defendant was held vicariously liable for the manager's fraudulent misrepresentation.
For a claim in deceit to succeed, five essential elements must be proved:

1. ***There must be a false representation;***
2. ***The defendant must have known it was false; or made it without belief in its truth, or acted recklessly;***
3. ***There must be intent, that the Claimant (or someone in their class) should act upon the representation;***
4. ***The Claimant must have acted upon it; and***
5. ***The Claimant must have suffered damage as a result.***

See the case of ***Alhaji Abdalla Maradi v. Alhaji Sanda (1958) WRNLR 172.***
The term fraudulent misrepresentation or false representation connotes, a false statement that is known to be false or is made recklessly without knowing or caring

whether it is true or false and that it is intended to induce a party, to detrimentally rely on it. See the cases of ***IKPA V. STATE (2018) 4 NWLR (PT. 1609) 174 @ 208*** and ***FBN LTD V. OGWEMOH (2023) LPELR-60298(CA) (PP. 18 PARAS. A).***

In this suit the Claimant led unchallenged evidence to show that the loan was released to the Defendant on the ground that the Defendant will repay the money within six months at the interest rate of 10% per annum.

The evidence disclosed that the Defendant stopped paying her monthly subscriptions after receiving the loan and she failed to repay any part of the ₦15 million thereafter. They put several calls and reminders across to the Defendant, but she ignored all their demands for the repayment of loan.

They testified that the Defendant flaunted her opulent lifestyle through the purchase of a new Lexus SUV while dismissing the debt as “chicken money.”

From the available evidence it is apparent that the Defendant deliberately obtained the loan from the Claimant under the false representation that she would repay the loan within six months at the interest rate of 10% per annum. However, she stopped paying her subscriptions after collecting the loan. Thereafter, she started to flaunt her opulent lifestyle while refusing to repay the loan. I hold that her conduct amounted to deceit.

In the case of ***Afri Bank vs. Alade (2000) 13 NWLR (685) 591***, it was held that a debtor who benefited from a loan or overdraft from a bank has both the moral and legal duty and obligation, express or implied, to repay it as and when due. See also ***National Bank of Nigeria vs. Shoyoye (1977) 5 SC. 181*** and ***KEMBU V. FCMB PLC (2022) LPELR-58826(CA) (PP. 62 PARAS. C).***

On the claim for the sum of One Hundred Million Naira (N100,000,000:00k) as general, punitive and exemplary damages, it is settled law that the fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant. See the cases of ***G. Chitex Industries Ltd. v. Oceanic Bank International (Nig) Ltd (2005) LPELR-1293(SC);*** and ***Omonuwa v. Wahabi (1976) 4 SC 37 at 41.***

Thus, it is the duty of the Court to assess the damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.***

The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant. From the evidence adduced by the Claimant, I observed that the Claimant did not elaborate on the extent of loss or harm which they suffered as a result of the Defendant's breach of the contract.

In a case of breach of contract, the aggrieved party is only entitled to recover such part of the loss, which was reasonably foreseeable as likely to result from the breach. Thus, a Claimant 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) 1 UILR 119***. The measure of damages, in such cases of breach of contract, is in 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) NCLR 295; Alraine v. Eshiett (1977) 1 SC 89***.

On the issue of exemplary damages, exemplary damages are punitive and are awarded where Statutes so prescribe or the action in question is oppressive, arbitrary or unconditional by Government servants to teach the defendant that tort does not pay, or where the defendant's act is held to be tortuous with guilty knowledge. See the cases of ***A. R. E. C. V. AMAYE 1986 3 NWLR 31 653, ONAGORUWA V. IGP 1991 2 NWLR 1930 593*** and ***ETISALAT NIGERIA V. KEN (2022) LPELR-58705(CA) (PP. 30-31 PARAS. D).***

Exemplary damages have been described as an intermix of general and punitive damages. While speaking on the nature of exemplary damages, the Supreme Court in the case of ***Eliochin (Nig) Ltd & Ors v. Mbadiwe (1986) LPELR-1119 (SC)*** held as follows: ***"The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which go by various names to wit; exemplary damages, punitive damages; vindictive damages, even retributory damages can come into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it***

discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like."

The Court in the case of ***Kabo Air Ltd v. Mohammed (2014) LPELR-23614 (CA), (2015) 5 NWLR Pt. 1451, Pg.38 (CA)*** also said: ***"Punitive damages which are also referred to as exemplary damages are intended to punish and deter blame worthy conduct and thereby prevent the occurrence of the same act in the future. They are awarded whenever the conduct of the defendant is sufficiently outrageous to merit punishment as where, for instance, it discloses malice, fraud, cruelty, insolence or flagrant disregard of the law"***

See also the following cases: ***UNIVERSITY OF CALABAR V. ORJI (2012) 3 NWLR (PT. 1288) 418; ZENITH BANK PLC V. EKEREUWEM (2012) 4 NWLR (PT. 1290) 207*** and ***UKPAI V. OMOREGIE & ORS (2019) LPELR-47206(CA) (PP. 25-27 PARAS. F).***

Going through the entire gamut of the Claimant's evidence, there is nothing to show that the conduct of the Defendant is sufficiently outrageous to merit the award of exemplary or punitive damages.

However, from the available evidence, the Claimant is entitled to general damages.

Finally on the award of interest at the rate of 10% per annum on the outstanding balance, during the pendency of this suit and post-judgment interest on the sum outstanding at the rate of 10% per annum from the date of the judgment until the entire debt is fully paid, ***Order 34 Rule 4*** of the Edo State High Court Civil Procedure Rules clearly stipulates that the Court may order interest ***"at a rate not more than 20% per annum to be paid upon any judgment."*** In view of this provision, the Claimant is entitled to the award of 10% per annum on the judgment sum.

On the whole, I hold that the sole issue for determination is resolved in favour of the Claimant and judgment is entered in favour of the Claimant as follows:

(i) A DECLARATION of this Honourable Court that the Claimant is entitled to the sum of Sixteen Million Five Hundred Thousand Naira (N16, 500, 000: 00K) from the Defendant being the sum the Defendant owes the Claimant as at the 30th of September 2023, upon the loan transaction between both parties, and the Defendant shall pay an interest rate of 10% per annum on the sum outstanding owed during the pendency of this suit;

(ii)A DECLARATION of this Honourable Court that the Claimant suffered needless pain and harm also, to wit; cheating, deceit, fraud, malicious hurt, and negligence; in the hands of the Defendant and the Claimant is entitled to claim for damages, without more, from the Defendant for these unconscionable, wrongful and unlawful acts visiting hurt, trauma, loss of esteem on the Claimant which said acts are continuing;

(iii)AN ORDER of this Honourable Court directing the Defendant to pay to the Claimant the sum of Sixteen Million Five Hundred Thousand Naira the Defendant owed the Claimant as at the 30th of September, 2023, and the Defendant shall pay an interest rate of 10% per annum on the outstanding balance, during the pendency of this suit;

(iv)Post-judgment interest on the sum outstanding at the rate of 10% per annum from the date of the judgment until the entire debt is fully paid; and

(v)General Damages of One Million Naira (N1,000,000:00k) only for the wrongful and unlawful acts wrought on the Claimant by the Defendant on trial.

The Defendant shall pay the sum of N200,000,00 (Two Hundred Thousand Naira) as costs to the Claimant.

P.A. AKHIHIERO
JUDGE
23 /07/2026

COUNSEL:

Eromosele Igbegu Esq. --Claimant.

Unrepresented--Defendant.