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NEWSLETTER

**EXTENT OF LIABILITY IN THE EXECUTION
OF BANK REFERENCE FORMS**



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EXTENT OF LIABILITY IN THE EXECUTION OF BANK REFERENCE FORMS

Introduction

One of the criteria for opening a current account in any Bank in Nigeria is the requirement that at least two referees must recommend the prospective account holder to the Bank. The Referees are expected to execute Reference Forms recommending the persons believed to be well known to them.

Reference Forms of different banks contain some conditions conspicuously written on them. The purpose of executing Reference Forms by Referees however appears to be a mere act of introducing persons whom, in their estimation, are reputable and capable of operating or maintaining current accounts with the Bank without more. However, there is a recent practice on the part of some Banks in Nigeria to attempt to hold referees liable where a customer defaults in the payment of a loan facility obtained in the in the ordinary course of his banking relationship.

In this article, emphasis is on the extent of the liability of Referees in executing Reference Forms. Can a Referee be held liable for all subsequent action of the referenced customer particularly in the event of default in repayment of a loan facility as described above?



In other words, does a mere reference of a customer as a fit and proper person to operate a current account with a Bank translate to a guarantee agreement between the Referee and the Bank?

A typical Reference Form for account opening is usually couched in the following words:

"I/We wish to confirm that I/We have known the above named individual(s) for years and would like to comment on their suitability for the purpose of maintaining a current account with yourselves as follows:....."

I have deliberately underlined the phrase- "*suitability for the purpose of maintaining a current account*" to show in clear terms and typically too the meaning and sense of a Reference Form as a document which only speaks to the suitability of a prospective customer to maintain a current account with a Bank and no more.

Further, a critical look at a Reference Form of most banks in Nigeria would show that nowhere is it specifically stated in the Reference Form that a Referee will be held responsible for subsequent transactions such as a loan obtained by the referenced customer from the Bank.



It is beyond peradventure that most persons may not execute a Reference Form for account opening if they are made aware or expressly informed that they will be bound by subsequent transactions such as a loan agreement between the Bank and the customer.

The current practice by some banks to attempt to make recourse to Referees where there is a default on the part of a customer to liquidate a loan facility to which the Referee is not a guarantor, in the writer's opinion, will not stand judicial scrutiny because it will be difficult for the Bank to elevate the mere recommendation under a Reference Form to a liability under a subsequent loan transaction which forms the subject of a distinct and separate contract.

A loan facility constitutes a separate contract between the Bank and the Customer on one hand and the Bank and a Guarantor of the loan facility on



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the other hand. There is usually an offer with conditions made by the Bank to the customer upon the customer's request for a loan facility. The customer, on being satisfied with the terms of the offer made by the Bank, accepts the offer and a loan agreement is subsequently drawn up and signed by the parties. The offer of facility made by the Bank will normally contain a requirement for the customer to provide a Guarantor for the loan. To this end, two separate and distinct contracts are made between the three parties or in most cases a Tripartite Loan Agreement is made between the parties.

According to the **Black's Law Dictionary**,¹ guarantee is defined as "*a collateral agreement for performance of another's undertaking. An undertaking or promise that is collateral to primary or principal obligation and that binds guarantor to performance in event of non-performance by the principal obligor*". In other words, it is a promise to answer for payment of debt or performance of obligation if the person liable in the first instance fails to make payment or perform the obligation or a promise to answer for the debt, default or miscarriage of another person.



In the case of **SALAWAL MOTOR HOUSE LTD. V. LAWAL**,² it was held that where a borrower failed to pay an outstanding debt, a guarantor of the debt is liable. See also the case of case of **EBONI FINANCE & SEC. LTD. V. WOLE-OJO TECH SERVICES**.³ This is so because of the principle of privity of contract which binds the Bank, the account holder and the guarantor who is fully aware of his obligations, rights and liabilities in the contract.

A Referee on the other hand is a person willing to testify in writing about the character or ability of someone, especially an applicant for a job.⁴ A community reading of this definition *vis-à-vis* the conditions contained in account opening reference forms would easily suggest that a referee is just a person who introduces a prospective customer to a Bank and is willing to testify to his character and capacity to hold and maintain a current account with the Bank. This therefore does not legally cover all subsequent transactions between the Bank and the customer in question especially a loan transaction which was never contemplated at the time the Reference Form was signed by the Referee.

Thus, liabilities arising from operation of a customer's account cannot successfully be imposed on the Referee as the terms and conditions for the grant of loans are contained in a different contract other than the Reference Form executed by the Referee. If a Referee is dragged into a dispute arising from a loan agreement, the principles of privity of contract will definitely prevail in his favour.



This is because a loan agreement does not contemplate the existence of a Referee and he is never part of the agreement. The notion of privity of contract is always between the contracting parties who must stand or fall together, benefit or lose from the provisions of their contract. Their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit there-under. See **OGUNDARE V OGUNLOWO**.⁵

A Referee, except where he is also a guarantor in a specific loan contract, can never be said to be bound by such contracts as he is never a party to the agreement simply by virtue of being a Referee during the account opening process. At most, assistance of Referees could be sought to trace the whereabouts of customers they introduced since those persons are believed to be well known to the Referees. However, this may only work in few instances where, for example, the referenced customer commits fraud or other criminal offence but not with respect to loan facilities which is a separate and distinct contract.



Note: This is Article is intended to stimulate further discussion on this subject following the practice of some Banks in Nigeria to attempt to hold Referees laible where a customer defaults in the payment of a loan facility extended to him. Comments from readers will therefore be appreciated.

REFERENCES

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