

Presented on.....

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15/7/2019
ADDL REGISTRAR

IN THE HIGH COURT OF SINDH AT KARACHI
[ORIGINAL CIVIL JURISDICTION]

SUIT NO. 1336 OF 2019

1. **SAAD AHMED MADANI**
S/o Hassan Madani, Muslim, adult,
resident of House No. 45/2,
Khayaban-e-Amir Khusro, D.H.A,
Phase VI, Karachi (South).

2. **ADNAN NASEEM**
S/o Naseem ul Haq Siddiqui,
Muslim, adult, resident of House No.,
97/1, 8th Commercial street, Phase
IV, D.H.A, Karachi (South).

(1336)

.....**PLAINTIFFS**

VERSUS

1. **SHAZIA ARIF**
W/o Arif Elahi, Muslim, adult,
carrying out business as sole
proprietor of the firm Zafar
Agencies at H/3A, Sector 5,
Korangi Industrial Area, EBM
Causeway, Karachi.

2. **DANISH ELAHI**
S/o Arif Elahi, Muslim, adult,
carrying on business as sole
proprietor of the firm Elahi Group of
Companies at H/3A, Sector 5,
Korangi Industrial Area, EBM
Causeway, Karachi.

3. **MSA INDUSTRIES (PRIVATE)
LIMITED**
A private limited company, duly
incorporated under the laws of
Pakistan, having office at
Showroom No. A and B, Al Haroon
Chamber, Aga Khan III Road,
Saddar, Karachi, through its Chief
Executive Officer.

4. **SIGMA REFRIGERATION LIMITED**

A public limited company, incorporated under the laws of Pakistan, having office at 7th Floor, Lakson Square Building, Sarwar Hussain Saheed Road, Saddar, Karachi through its Chief Executive Officer.

5. **ARIF ELAHI**

S/o not known, Muslim, adult, carrying out business at H/3A, Sector 5, Korangi Industrial Area, EBM Causeway, Karachi.

.....DEFENDANTS

SUIT FOR DECLARATION, CANCELLATION AND INJUNCTION UNDER THE SPECIFIC RELIEF ACT, 1877 AND OTHER RELIEF

It is most respectfully submitted on behalf of the above-named Plaintiffs as follows:

1. That the Plaintiff No. 1 is a law-abiding citizen of Pakistan and was previously employed at Bank Islami Pakistan Limited ("**Bank**") in the capacity of Head of Corporate Banking.
2. That the Plaintiff No. 2 is a law-abiding citizen of Pakistan and was previously employed at the Bank in the capacity of Corporate Head (South).
3. That the Defendants No. 1 and 2 are the proprietors of the business concerns, Zafar Agencies and Elahi Group of Companies respectively, which are in the business of importing, exporting, commissioning agents and contractors as well as an associated

business concern namely Blue Ex Logistics, a logistics company that makes international and as well domestic shipments.

4. That the Defendant No. 3 is a private limited company in the business of importing and distributing electronic appliances, and the Defendant No. 4 is a company in the business of manufacturing and selling home appliances.
5. Defendant No. 5 is the father of Danish Elahi, Defendant No.2 and husband of Shazia Arif, Defendant No.1 and effectively controls the various businesses of the family, including those of Zafar Agencies and Elahi Group of Companies.
6. That Defendants No. 1 and 2 have obtained finance facilities from the Bank for their businesses namely Elahi Group of Companies and Zafar Agencies which facilities were operative in the year 2016 and have been operative till present. That the Plaintiffs in their capacity as employees of the Bank had been dealing with the Defendants No. 1 and 2 in respect of these finance facilities. That during the aforesaid period of time, the Defendant No. 1 used to send instructions to the Bank in respect of the facilities pertaining to Zafar Agencies as its proprietor.
7. The Defendants No. 3 and 4 are also customers of the Bank as they have also obtained certain finance facilities from the Bank and had

given various securities against such finance facilities to the Bank including but not limited to pledge of stocks of goods.

8. That the Defendants No. 1 and 2 and the Defendant No. 3 have business dealings together and in the year 2016 it was agreed between the Defendants No. 1 and 2 on one part and the Defendant No. 3 on the other part that Zafar Agencies would lend up to Rs. 500 Million to Defendant No. 3.

9. That therefore in the year 2016, the Bank received a letter dated 04.10.2016 from the Defendant No. 1 wherein the Defendant No. 1 **instructed** the Bank to use the credit line of either Elahi Group of Companies or Zafar Agencies to an aggregate amount of Rs. 500 Million to provide short term financing to the Defendant No. 3. The Defendant No. 1 also **instructed** the Bank to, in case of default; adjust any liability of the Defendant No. 3 towards the Bank against pledge of stock and securities of the Defendant No. 3 and its sponsors till its logical conclusion. This letter was addressed to the Plaintiff No. 1. This letter had been sent as a formal intimation of instructions to the Bank after various other meetings in this regard had already been held. Various drawdowns took place by using the credit line of Zafar Agencies during the period 2016-2018 which aggregated to Rs. 300 Million. All such disbursements made into the account of Zafar Agencies were then transferred to the bank account of MSA Industries as per instruction of Defendant No. 1.

**TRUE COPY OF LETTER DATED 04.10.2016 IS ATTACHED
HEREWITH AND MARKED AS ANNEXURE 'A'**

10. That in the year 2018, the Bank decided to proceed with security rationalization of the credit line of Defendant No. 3 and letter dated 05.07.2018 was issued to the Defendants No. 1 and 2 informing them that the existing pledged stock having value of approximately Rs. 600 Million, being the security on the loan, would be transferred to the possession of the Elahi Group of Companies and/or Zafar Agencies in accordance with the instructions that were received by the Bank from the Defendant No. 1 through her letter dated 04.10.2016. The Bank informed the Defendants No. 1 and 2 that the pledged stock would be transferred net of adjustment of up to Rs. 250 Million accounting for the Defendant No. 3's liability towards the Bank (under Defendant No. 3's own credit line taken from the bank as mentioned in paragraph 7 herein above).

**TRUE COPY OF LETTER DATED 05.07.2018 IS ATTACHED
HEREWITH AND MARKED AS ANNEXURE 'B'.**

11. That subsequently in order to clear its liability of Rs. 390 Million towards the Bank (under Defendant No. 3's own credit line taken from the bank as mentioned in paragraph 7 herein above), the Defendant No. 3 through letter dated 31.10.2018 requested the Bank to adjust this amount of Rs. 390 Million from its pledged stock of Rs. 812 Million and transfer the net pledged stock after adjustment to Blue Ex Logistics on account of Zafar Agencies. Through letter dated

08.11.2018 sent to the Bank (in pursuance of its letter dated 31.10.2018) and addressed to the Plaintiff No. 1 in his capacity as an employee of the Bank, the Defendant No. 3 authorized the Bank to issue delivery order of the pledged stock of Rs. 812 Million in favor of Zafar Agencies after adjusting the Defendant No. 3's liability towards the Bank

TRUE COPIES OF LETTERS DATED 31.10.2018 AND 08.11.2018 ARE ATTACHED HEREWITH AND MARKED AS ANNEXURES 'C/1' AND 'C/2'.

12. It is pertinent to note that the letters which were exchanged amongst the Defendants No.1, Defendant No.2, Defendant No. 3, Defendant No.4 and the Bank prove the legitimacy and existence of the short-term financing provided to the Defendant No. 3 by the Defendants No. 1.

13. That pursuant to the above, the Bank issued a letter dated 11.12.2018 to M/s. Moghal & Sons, who were acting as its *muqadam*, requesting them to release the pledged goods of Rs. 200 Million to Zafar Agencies as per the instructions received from the Defendant No. 3.

TRUE COPY OF LETTER DATED 11.12.2018 IS ATTACHED HEREWITH AND MARKED AS ANNEXURE 'D'.

14. That on 15.04.2019, Defendants No. 3 and 4 were sent a letter from the Defendant No. 1 signed off by the Defendant No. 1 asking

Defendants No. 3 and 4 to **irrevocably instruct** the Bank to release the pledged goods of the Defendant No. 4 to Zafar Agencies after adjusting all liabilities of the Defendant No. 4 towards the Bank.

15. The letter dated 15.4.2019 was followed by a letter dated 16.04.2019 sent to the Bank by the Defendant No. 4 wherein the Defendant No. 4 requested the Bank to issue a delivery order of its pledged goods in favour of Blue Ex Logistics/Zafar Agencies, after adjusting its liabilities under its own credit line taken from the Bank as mentioned in paragraph 7 herein above.

TRUE COPIES LETTERS OF DATED 15.04.2019 AND 16.04.2019 ARE ATTACHED HEREWITH AND MARKED AS ANNEXURES 'E/1' AND 'E/2'.

16. The Plaintiff No.1 and Plaintiff No. 2 handed over charge of their offices on May 2, 2019, and May 13, 2019 respectively and proceeded on leave to serve their respective notice periods. Currently the Plaintiffs are no longer employees of the Bank however throughout their employment with the Bank, their individual relationships with customers inclusive of the Defendants No. 1 and 2 were always cordial and the Plaintiffs consistently provided them the highest standard of service. The outstanding facilities of Rs. 300 Million of Zafar Agencies (taken for Defendant No. 3) became due for payment in May 2019 and were adjusted by Defendant No. 1 in tranches and subsequently a facility of the same amount was again availed by Defendant No. 1 and all necessary transaction

documentation was signed by Defendant No. 1. The re-availing of this facility is evidenced by the (i) the Asset Purchase Declarations (ii) Purchaser's (Bank's) Acceptances (iii) Assets Receiving Notes and (iv) Letters of Agency which are attached herewith.

TRUE COPIES OF I) THE ASSET PURCHASE DECLARATIONS (II) PURCHASER'S (BANK'S) ACCEPTANCES (III) ASSETS RECEIVING NOTES AND (IV) LETTERS OF AGENCY ATTACHED AS ANNEXURES 'F/1' TO 'F/9'.

17. That the lines of credit availed by the Defendants No. 1 and 2 with the Bank are operative till date as per its own 'Statement of Stock Position' dated 31.05.2019 in which Zafar Agencies (through Defendant No. 1) acknowledges that an amount of Rs. 979 Million is outstanding towards the Bank on account of Zafar Agencies. As per this statement the pledged stock has a book value of Rs. 1.2 Billion which is held by the Bank as collateral for the liability of Rs. 979 Million admitted by the Defendants No. 1 and 2.

TRUE COPY OF STATEMENT OF STOCK POSITION DATED 31.05.2019 IS ATTACHED HEREWITH AND MARKED AS ANNEXURE 'G'.

18. That as per the information of the Plaintiffs an amount of Rs. 300 Million is still outstanding and payable by Defendant No. 1 to the Bank and this amount of Rs. 300 Million is reflected in the Rs. 979 Million acknowledged as outstanding by Zafar Agencies (Defendants No. 1).

19. It is clarified here that since the Bank finance facilities have been sanctioned to Zafar Agencies and the credit lines extended to the Defendants No. 1 has been used, on their instructions, to transfer funds to Defendant No. 3; it is the Defendant No.1 who is liable to pay the said finance back to the Bank.
20. That on 05.07.2019 the Plaintiff No. 1 received a call from Defendant No. 5 to visit the office of the Defendant No. 5 along with Plaintiff No. 2 to discuss the exposure of Zafar Agencies towards Defendant No. 3. The Plaintiff No. 1 asked the Plaintiff No. 2 to also accompany him to the meeting as he had information regarding the dealing of the accounts. During the meeting, the Defendant No. 5 placed before the Plaintiff's a draft of an undertaking pre-prepared by Defendant No. 5 dated 05.07.2019 a true copy of which is annexed hereto as Annexure H ("**Undertaking Draft**") and demanded that the Plaintiffs sign the Undertaking Draft, failing which the Plaintiffs were threatened with dire consequences, including immediate arrest for which it was indicated that the DIG Police would be happy to oblige on a single call. While the Undertaking Draft speaks for itself, it may be summarized that in the Undertaking Draft it is written that Zafar Agencies has nothing to do with respect to the liabilities of the Defendants No. 3 and 4, and that any reflection of Rs. 300 Million in the finance/credit line of Zafar Agencies is wrong for which the Plaintiffs are responsible. That it is further alleged within the Undertaking Draft that the said mistake is based on a misunderstanding on the part of the Plaintiffs and that the Plaintiffs

undertake to rectify the incorrect reflection of an amount of Rs. 300 Million within a period of four (4) weeks. The Undertaking Draft also says that in the circumstances that the said rectification does not take place the undertaking may be shown to the Bank as well the Federal Investigation Agency (FIA) for appropriate legal action against the Bank. The Plaintiffs refused to sign the Undertaking Draft as the contents were not only blatantly false and incorrect, it was purporting to make the Plaintiffs responsible for something that the Plaintiffs had not agreed to at all. After several threats, the meeting ended and the Plaintiffs left with a copy of the Undertaking Draft.

TRUE COPY OF UNDERTAKING DRAFT DATED 05.07.2019 IS ATTACHED HEREWITH AND MARKED AS ANNEXURE 'H'.

21. It has since come into the knowledge of the Plaintiffs that the Defendants No. 5 and/or Defendant No. 1 and/or Defendant No. 2 have forged or procured to be forged the Plaintiffs' signatures on this Undertaking Draft based on specimen signatures available with the said Defendants on past correspondence with the Bank and such forged signed document is hereinafter referred to as "**Impugned Undertaking**" and the Plaintiffs fear mis-use of the Impugned Undertaking to the serious detriment of the Plaintiffs which could jeopardize their careers and destroy their lives..

22. That, the Plaintiffs believe that the Defendants No. 5, 1 and 2 have forged this Impugned Undertaking with a view to disown the liability of Rs. 300 Million towards the Bank created on account of use of

credit line of Defendant No.1 to transfer funds to Defendant No. 3. It is apparent that the Defendants No. 1 and 2 after having the Bank transfer funds of Rs. 300 Million to the Defendant No. 3 through their explicit and express instructions, now want to deny the same so that they don't have to pay the Rs. 300 Million to the Bank.

23. That the Impugned Undertaking is forged and fabricated by the Defendants No. 5, No. 1 and 2 in order to avoid the financial liabilities they have with respect of the Bank in respect of Rs. 300 Million they had instructed the Bank to transfer to Defendant No. 3 through their finance / credit lines. The Defendants No. 1, 2 and 5 are creating false evidence through the Impugned Undertaking that the Plaintiffs have confessed that they made a mistake / an error as a result of which the amount of Rs. 300 Million transferred to Defendant No. 3 is being reflected in the account of Zafar Agencies and that the Plaintiffs are responsible for the same and are to rectify the same, thereby wanting the Plaintiffs to assume the responsibility for the liability of Zafar Agencies owing to the Bank.

24. That apart from it being forged and fabricated, the contents of the Impugned Undertaking are also patently and absolutely false and without any iota of truth. There has been no mistake or error and the amount of Rs. 300 Million transferred to Defendant No. 3 is being reflected correctly in the account of Zafar Agencies as the Bank has transferred the funds to the Defendants No. 3 on the explicit and express instructions of the Defendants No. 1 as evidenced by the

letters annexed herein above. Therefore, the Plaintiffs cannot be held responsible for the same and are under no duty or obligation to the Defendants No. 1 and 2 or 5 in this regard.

25. It is pertinent to note that the receipt of the letters mentioned thus far, specifically the letters dated 31.10.2018 and 08.11.2018 from the Defendant No. 3 itself solidifies the Plaintiffs' contention before this Hon'ble Court in that the alleged transaction being denied through the Impugned Undertaking is being recognized by the party who was to benefit from the same, shedding light on the existence of a separate arrangement/relationship between the Defendants No. 1 and 2 on one hand and Defendants No. 3 and 4 on the other.
26. It is specifically submitted that the Plaintiffs neither took any decisions on their own accord nor mismanaged the credit lines of the Defendants No. 1 and 2 or 3 and 4 while employed at the Bank.
27. That it is the contention of the Plaintiffs that the Impugned Undertaking has been forged or procured to be forged by the Defendants No. 1, 2 and 5 and the contents of the Impugned Undertaking are vehemently contested and denied by the Plaintiffs. That the said Impugned Undertaking is forged and bogus and was never written or signed by the Plaintiffs. It is necessary to bring to the attention of this Hon'ble Court that the original version of the Impugned Undertaking (with the forged signatures of the Plaintiffs) is not in the possession of the Plaintiffs, but rather the Defendants No.

1, 2 and 5 themselves. If the said Defendants have not created the Impugned Undertaking by forging the signatures of the Plaintiffs, they simply have to confirm the same to this Hon'ble Court and the suit can be disposed off in terms of such confirmation.

28. The Plaintiffs believe that the Defendants No. 1, 2 and 5 have forged the Impugned Undertaking in order to fraudulently circumvent their financial liabilities for their own financial benefit when the factual position is such that they specifically requested the Plaintiffs as employees of the Bank to carry out the very actions which they are denying took place through the Impugned Undertaking.

29. It is submitted that the Defendants No. 1 and 2 apart from relying on this Impugned Undertaking to wriggle out of their financial obligation owed to the Bank, they can also share this Impugned Undertaking with others/third persons in order to cause loss and damage to the Plaintiffs. The Impugned Undertaking will cause serious injury to the Plaintiffs' as the Impugned Undertaking will severely prejudicially affect the Plaintiffs' reputations in the banking industry and affect their current as well as future business/employment. The Plaintiffs being in the financial sector cannot have their reputations tarnished at all and if the same happens the Plaintiffs will suffer irreparable loss and injury.

30. It is thus imperative that this Hon'ble Court cancel the Impugned Undertaking and declare the same to be void, for being wholly forged.

fraudulent, and to circumvent the damage, loss and injury to the Plaintiffs that would arise out of its existence. Hence this suit.

31. That the cause of action accrued to the Plaintiffs on 5.07.2019 when the Plaintiffs were asked to sign the Impugned Undertaking Draft under the threat of coercive action, immediately after that when the Plaintiffs were given to believe that the Impugned Undertaking has been fabricated by the Defendants No. 1, 2 and 5 and this came into the knowledge of the Plaintiffs, and the cause of action continues to arise each day since then as the Defendants No. 1, 2 and 5 have the same in their possession; the cause of action further continues to arise every day as the Defendants No. 1, 2 and 5 are continuing their infringement of the Plaintiffs' rights by having forged the Impugned Undertaking and continue to use it in their mala fide pursuit against the Plaintiffs, and to avoid their financial liabilities with the Bank at the expense of the Plaintiffs.
32. That the Defendants carry on business at Karachi, the Impugned Undertaking is believed to be forged in Karachi, the Plaintiffs were coerced to sign the Undertaking Draft at Karachi and the it first came into the knowledge of the Plaintiffs at Karachi that the Impugned Undertaking has been forged by the Defendants No. 1, 2 and 5 and therefore this Hon'ble Court has territorial jurisdiction in the matter.
33. That for the purposes of valuation, the suit is valued at Rs. 300,000,000/- (Three Hundred Million Pakistani Rupees) for

declaration, cancellation and injunction & other relief and as such the appropriate court fee has been paid.

PRAYER

In view of the foregoing, and in the interest of justice, it is most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to decree the Suit in favour of the Plaintiffs and against the Defendants in the following terms:

A. Declare that the Impugned Undertaking dated 05.07.2019 based on the Undertaking Draft, is forged and fabricated hence void and the same be delivered up to this Hon'ble Court and be cancelled;

OR

Direct the Defendants No. 1, 2 and 5 to deliver to this Hon'ble Court a declaration and confirmation on oath that they are not in possession of any signed version of the Undertaking Draft or any similar document allegedly signed by the Plaintiffs.

B. Permanent injunction restraining the Defendants from in any manner using, relying on or disclosing to any person, the Impugned Undertaking or any version thereof.

C. Any other relief this Hon'ble Court deems fit and proper in the circumstances of the case.

D. Grant costs of the instant Suit.

Karachi.
Dated: ____ .07.2019


PLAINTIFF NO. 1


PLAINTIFF NO. 2


ADVOCATE FOR THE PLAINTIFFS