

SCAD 2021 DISPUTE SCENARIO

Unyime, Hadiza, and Nnanna (‘the developers’) were Computer Engineering classmates at a Nigerian University. They jointly developed a payment processing software that accelerates electronic transactions. The software was named *yihadna*. However, the developers did not have the capital required to take *yihadna* to the market. Harteg Limited ‘Harteg’ is a venture capital company that invests in Fintech Start-Ups. It agreed to invest in *yihadna*’s commercial optimization. A special purpose vehicle, Tekhabud Ltd (*Tekhabud*), was registered. The developers and Harteg negotiated, agreed, and executed a Shareholders’ Agreement (SHA). Clause 3.3 of the SHA specifies that:

i) The Parties agree that yihadna shall be notified and registered with the Nigerian Copyright Commission under the Nigerian Copyright e-registration System (NCeRS).

ii) The Parties agree that Tekhabud shall hold all intellectual property rights in yihadna without any adverse claim from third parties and/or the developers.

As part of its first expansion steps, *Tekhabud* licensed *yihadna* as a commercial off-the-shelf software (COTS) to Fugit Technologies (*Fugit*) for five (5) years. *Fugit* is a Fintech Company incorporated in South Africa but carrying on payment processing in Nigeria. *Tekhabud* and *Fugit* executed an Exclusive Licensing Agreement with the following clauses:

Clause 4.3 – Indemnification

Tekhabud shall indemnify Fugit against any losses from third-party claims to the extent arising from:

- a. A breach by Tekhabud of any of its representations, warranties, or obligations under this agreement*
- b. Any representations, express, implied, or statutory, made by Tekhabud or its agents as to the efficacy, reliability, or safety of yihadna.*

Notwithstanding the foregoing, Fugit shall not be entitled to indemnification under this paragraph against (i) any losses arising out of Fugit’s negligence or wilful misconduct or (ii) a breach by Fugit of any of its representations, warranties, or obligations under this agreement.

Clause 5.5 - Dispute Resolution

Suppose any dispute arises out of or in relation to this agreement, or the breach thereof, and the dispute cannot be settled through negotiation within 14 days of notification of such breach, parties shall resort to arbitration administered under the Arbitration and Conciliation Act. A sole arbitrator appointed by the Chairman of the Nigerian Institute of Chartered Arbitrators (“the appointing authority”) shall determine the dispute. The seat of arbitration shall be Lagos, Nigeria, and the language of the Arbitration shall be English.

Meanwhile, Enrem Transport Limited (*Enrem*), a Lagos-based ride-hailing company, intends to expand its business and has engaged *Fugit* to provide online payment services. *Fugit* designed its services to *Enrem* to go through the following processes:

- (i.) *yihadna* generates an automated e-bill at the end of a customer’s trip through its Application Program Interface (API).
- (ii.) *Fugit*’s role is to act as the payment gateway and without it, payments cannot be remitted to *Enrem*.

Enrem’s privacy policy, as communicated in writing to its customers, states that it collects:

- (a.) *Data provided by users of Enrem during account creation or modification;*
- (b.) *Data created during use of services, such as location, applications usage and device data;*
- (c.) *Data from other sources such as Enrem’s partners and third parties that use Enrem’s API.*

Provided always that the data collected through any of the modes listed above may be shared with business affiliates or other entities for application development, promotion, information, marketing, and advertising purposes.

To further facilitate their business relationship and the payment process, *Enrem*, *Fugit*, and Space Bank Plc (*Space Bank*) executed a **Payment Processing Agreement** with the following relevant terms:

Clause 1: Fugit’s Services

Online Payment Functionality

1.1 Services: *Fugit* agrees to provide *Enrem* with the services which will enable an *Enrem* Customer (user) to:

- a. *Make payments from the user’s Space Bank Account via a web browser;*

- b. *Receive payments from the Space Bank Accounts of other users;*
- c. *Manage the user's Space Bank Account using a web browser interface.*

Clause 6: Data Security

6.1 *Enrem agrees to ensure that any card data permitted to be stored or processed by itself or through Fugit on your behalf is held securely.*

6.2 *Without limiting the generality of the foregoing, Enrem agrees to use information obtained from a cardholder in connection with a card transaction solely to process a transaction with that cardholder or attempt to present a chargeback with respect to such transaction.*

6.3 *Enrem and Fugit agree to provide quarterly reports on the quantum of data transferred amongst each other.*

6.4 *Enrem agrees to timeously notify Space Bank of any data breach that may occur in this agreement's performance.*

On 7th December, 2020, *yihadna* suffered a malware attack resulting in unauthorized 3rd party access to the personal and financial information of *Enrem's* customers. Following this breach, unauthorized debits were made from several accounts domiciled in *Space Bank* and belonging to *Enrem's* customers. The affected *Space Bank* customers have respectively demanded reversals of the unauthorised transactions. To protect the Bank's reputation, the Directors of *Space Bank* agreed to compensate the affected customers for the losses suffered and accordingly reversed the unauthorized debits. The decision was made following a deposit insurance claim presented by the Directors to the Bank's non-statutory Insurers.

On 18th December, 2020, and upon the reversal of the wrongful debits, *Space Bank* made a criminal complaint to the Economic and Financial Crimes Authority against *Enrem & Fugit* to investigate the fraud committed on *Space Bank* customers' accounts. On the same day, *Space Bank* also instituted an action against *Enrem* and *Fugit* at the High Court of Lagos State. Through its Writ of Summons, *Space Bank* sought the following reliefs:

- a. A Declaration that *Enrem* and *Fugit* have breached the Payment Processing Agreement by failing to provide to *Space Bank* a complete report of the quantum of data transferred between each other.
- b. A Declaration that *Fugit* has breached an implied term in the Payment Processing Agreement by using defective software to implement the payment processing.
- c. A declaration that *Enrem* and *Fugit* breached the data privacy rights of *Space Bank's* Individual Customers.

- d. An Order mandating disclosure by *Enrem* and *Fugit* of the quantum of data transferred to unauthorised 3rd Parties.
- e. An Order for special and general damages against *Fugit* and *Enrem* in the quantum of *Space Bank's* losses.

Upon service of the Originating processes on the Defendants, the following ensued:

- (i.) *Enrem* presented Defences on points of law regarding each of the reliefs sought against it by *Space Bank*, in addition to factual denials.
- (ii.) *Fugit* filed a Preliminary Objection challenging *Space Bank's* claim for breach of *Space Bank's* individual customers' data privacy. *Fugit* also filed a substantive Defence denying all allegations of data privacy breach. Additionally, *Fugit* filed a Counter-Claim against *Space Bank* and also joined *Tekhabud* to the Counter-Claim for the following reliefs:
 - a. A declaration that *Tekhabud* has breached the Exclusive Licensing Agreement by licensing a defective software to *Fugit*.
 - b. A Declaration that *Space Bank* has unlawfully interfered with *Fugit's* Economic interests by the Bank's lack of reasonable care and contributory negligence which purportedly exposed the Bank's customers to the unauthorized debits.
 - c. An Order for General Damages respectively against *Tekhabud* and *Space Bank* for breach of contract and unlawful interference with *Fugit's* economic interests.

In its response to *Fugit's* Counter-Claim, *Space Bank* presented Defences on points of law regarding the reliefs sought against it. It also factually denied all allegations made against it by *Fugit*. *Tekhabud* filed a Preliminary Objection to assert that the court lacks jurisdiction to entertain *Fugit's* counter-claim because, among other reasons, there is an arbitration agreement earlier executed between *Tekhabud* and *Fugit*. Meanwhile, *Fugit* had earlier given a Notice of Arbitration to arbitrate its claim against *Tekhabud's* alleged licensing of a defective software to it, and which *Fugit* considered a breach of the Exclusive Licensing Agreement. *Fugit* had also paid its required costs of the Arbitration as fixed by the sole arbitrator appointed by the appointing authority. The Notice of Arbitration was dated and sent to *Tekhabud* on 16th December, 2020. *Tekhabud* neither responded to the Notice of Arbitration, nor paid the required arbitral proceedings' costs as fixed.

INSTRUCTIONS

- A. You are required to either represent (Space Bank & Tekhabud) **OR** (Fugit & Enrem) in the respective claims, counter-claims, and defences.
- B. Arguments for the respective Defences should first address the jurisdiction of the High Court of Lagos State before addressing the dispute's substance.
- C. Arguments for the respective Claimants should first respond to the Defendants' anticipated preliminary objections/arguments before providing arguments to the substance of the dispute.
- D. Submit your Brief incorporating all arguments for the respective parties you have chosen to represent following the mandatory options in (A) above. Your Brief must be submitted on or before the deadline of 11.59 pm of 31st March, 2021 by email to scadcompete@scp-law.com.
- E. Your Brief must also be accompanied with a scanned coloured copy of your School ID Card on or before the deadline of 11.59 pm of 31st March, 2021 by email to scadcompete@scp-law.com.
- F. No facts outside the dispute scenario are to be assumed.

WRITING GUIDELINES

- i. The Brief must be written in size 12 point and in either Times New Roman or Arial font.
- ii. The Brief must be spaced on 1.5 paragraphed lines.
- iii. The Brief should not exceed 20 pages. The 20page requirement does not include the Cover Page, Table of Contents, and List of Authorities.
- iv. The Cover Page must have the following personal details: Full Name, School, Matriculation/Registration Number, Phone Number(s), Email Address, Level, Gender, Permanent Home Address, and Law School Campus (for Nigerian Law School Students).
- v. The text of your Brief must be justified in word or PDF document.
- vi. Additionally, the Brief must conform to the stipulated structural layout of an introduction, statement of facts, issues for determination, argument, conclusion, and list of authorities.

*****Disclaimer: The SCAD Dispute Scenario is fictional and designed solely for legal training purposes.***