

### **Abstract**

*It is undoubtedly that banks have played significant roles in the development of Nigeria's economy through their multifarious services rendered to their customers including the general public. The key factor in the performance of these multifarious services is the consideration of the various legal relationships that exist between a bank and its customers as well as third parties is what? It is therefore imperative to appraise the nature of the legal relationships of banks and their customers as well as third parties. In the midst the legal relationship that exist between bankers and their customers, there are liabilities of bankers to their customers and third parties. The aim of this research is mainly to undertake an overview of the liabilities that exist between bankers and their customers as well as third parties in the banker-customer legal relationship. This research work also, examines the liabilities of Bankers to their Customers and third Parties in the course of their rendering banking services and proffers suggestions. The researchers adopted doctrinal legal research methodology with the use of analytical approach through primary and secondary sources such as statutes, case law, textbooks, journal articles, internet materials. The research found among other things that the relationships between bankers and their customers are largely contractual and tortious with reciprocal rights and duties inuring to both parties and third parties. The research concluded inter alia that the liabilities of bankers extend beyond mere custodianship of funds. Banks are entrusted with the duty of care, confidentiality, and competence in managing customer accounts and transactions. These duties form the foundation of trust and confidence between banks and their customers. Also, as the banking industry in Nigeria becomes increasingly digital, the responsibilities of banks to safeguard customers' funds and information become more complex. The research therefore, recommended the need for robust regulatory frameworks to enforce accountability and mitigate risk arising from banker-customer relationship so as to minimize the liabilities.*

**Keywords:** Bankers, Liabilities to Customers and Third Parties, Bankers-Customer Relationship, Nigeria  
**Nigeria**

### **1. Introduction**

There is no gainsaying the fact that Bankers services to the development of Nigeria's economy cannot be overemphasized. Without a customer's deposit in banks, it will be difficult if not impossible for banks to function effectively. However, in the course of their banking services, banks incur a lot of liabilities to their customers including third parties. In order to qualify a person as a customer, there must be some sort of account, either a deposit or current account or some similar relations.<sup>1</sup> In view of the 'debtor-creditor' relationship between the customer and the bank, the bank accepts deposits from its customer and becomes a debtor to the customer. On the other hand, where the bank lends money to customers, it becomes the creditor<sup>2</sup> while the customer becomes the debtor.<sup>3</sup> This work is therefore an examination of the liabilities of bankers to their customers vis-a-vis third parties. Even though the relationship between a bank and its customer is both contractual and tortious, banks ought to be care and cautious not be liable to their customers.

### **2. Liabilities of Bankers to their Customers**

The liabilities in banker-customer relationship are both a contractual and tortious. It consists of general and special contracts arising from the particular requirements of the banking business.<sup>4</sup> It is said to revolve between that of a 'principal and agent', 'trustee and beneficiary' but fundamentally, that of a 'debtor-creditor' relationship,<sup>5</sup> wherein the banker is the debtor and the customer is the creditor, with the roles sometimes reversed.<sup>6</sup> In *Okobiemen v. U.B.N Plc*<sup>7</sup>, it was held that the relationship between a banker and customer remained fiduciary and sometimes called confidential relationship. It is equally contractual; hence a banker has the duty in contract to exercise reasonable care and skill in carrying out its part with regard to transaction within its contract with customers.

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\*By **Uwadineke C. KALU, LLB, BL, LLM, PhD**, Professor of Law, Department of Property and Industrial Law, Faculty of Law, Nnamdi Azikiwe University, Awka. Tel: 08037727063, E-mail: uc.kalu@unizik.edu.ng.

\***Matthew Izuchukwu ANUSHIEM, LLB, BL, LLM, PhD**, Senior Lecturer, Department of Human Rights Law, Faculty of Law, Nnamdi Azikiwe University Awka. Tel: 08032641757. E-mail: mi.anushiem@unizik.edu.ng; and

\***Titus Onyekachi UGWUANYI, LLB, BL, LLM Candidate**, Faculty of Law, Nnamdi Azikiwe University Awka. Tel: 08033978089. E-mail: onwajesus@gmail.com.

<sup>1</sup> *Great Western Railways v London and Country Banking Co.* (1901) AC 414, per Lord Davy.

<sup>2</sup> *Foley v Hill* (1848) 2 HL Cas. 28 where this creditor and debtor relationship was clarified.

<sup>3</sup> ML Ahmadu, *The Law of Banking in Fiji* (London: Avon Books, 1998), p. 33.

<sup>4</sup> K Igweike, *Law of Banking and Negotiable Instruments* (Onitsha: Africana First Publishers Ltd, 2005) p. 73.

<sup>5</sup> K Muhammad, 'An Appraisal of the Relationship between Banker and Customer in Nigeria', <<http://www.iiste.org/Journals/index.php/EJBM/article/viewFile/20255/20619>> accessed on 12 August 2021.

<sup>6</sup> O Adeniji, *The Law and Practice of Banking in Nigeria* (Ile-Ife: Obafemi Awolowo University Press Ltd, 1988) p. 37.

<sup>7</sup> (2019) 4NWLR (Pt. 1662) 267, page 280 paras E-F, F-G, G-H (CA).

### **Banker's Liability for Failure to Honour Customer's Cheque**

With respect to the duty to pay customer's cheques, Lord MacNaughten, in *Bank of England v Vagliano Brothers*<sup>8</sup> held that a banker must pay off-hand as a matter of course, bills<sup>9</sup> presented for payment, duly accepted and regular, and complete on the face of them. As a general rule, this doctrine would appear to apply with equal force to cheques presented for payment and so does the obligation extend to any agreed overdraft,<sup>10</sup> provided that such an instrument is properly drawn by the customer and presented during banking hours at the branch where the account is kept or elsewhere as may be agreed and also has no legal bar prohibiting payment. As amply stated by Salvage, J. in *Aderibigbe v National Bank of Nigeria Ltd.*<sup>11</sup>

It is well known that the primary function and duty of any bank is to honour the cheques of his customer, provided that the state of the customer concerned is such as to warrant the bank doing so, and there is no legal reason or excuse to the contrary. The obligation of the bank to pay therefore is only subject to the condition that there are funds of the customer sufficient and available for the purpose.<sup>12</sup>

The Court of Appeal in the case of *Citi Bank Nigeria Limited v. Gratis Properties Limited*<sup>13</sup> held that a cause of action will accrue where a bank refuses to pay a customer's cheque, when in fact he has to his credit at least an equivalent to that endorsed on the cheque he issued on his account. The act of dishonouring a cheque in such circumstances constitutes a breach of contract for which the bank is liable in damages. It is therefore implicit that where a banker wrongfully dishonors a customer's cheques in spite of the fact that there are sufficient funds in the customer's account, the bank will be liable for breach of contract<sup>14</sup> and/or libel in tort where the notice of dishonour of the cheque is defamatory.<sup>15</sup> This action is predicated on the principle that the bank cannot without any valid reason dishonor a cheque drawn by its customer.<sup>16</sup>

### **Banker's Liability to Customer for Honouring a Defective Cheque**

Section 59(1) and (2) of the Bills of Exchange Act provides that 'a bill is discharged by payment in due course by or on behalf of the drawee or acceptor; 'payment in due course' means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.' It can be construed from the above provision that where the banker pays on an order that proves to be invalid, he will not be entitled to debit the customer's account with the amount paid out,<sup>17</sup> unless the circumstances are such that any reasonable man in his position ought not to know of any defect in title. Defect in title before payment may be in the form of an irregularity on the face of the instrument, for example: (a) where the drawer's signature is absent; (b) where the drawer's signature on the mandate is irregular; (c) where the drawer's signature on the mandate does not correspond with that in the bank's database; (d) where the mandate is insufficient (e.g., a 2<sup>nd</sup> or 3<sup>rd</sup> signature is required); (e) where there is an alteration that requires the drawer's confirmation (e.g. alterations as to date, or amount in words differing from the amount in figure, or crossing, or payee's name, etc); (f) where the cheque is mutilated thus requiring the drawer's confirmation; (g) where the cheque is out of sequence (for instance, if the number of the cheque presented is too far from the number of the last one presented); (h) where the cheque is 'out of date' or 'stale' (i.e. if the cheque is more than six months old from the date thereof); (i) where the endorsement on the cheque is irregular; etc. In the case of *Donasulu Brothers (Nig) Ltd v. Zenith Bank*<sup>18</sup>, the bank was held liable for negligence in payment of defective cheque.

<sup>8</sup>(1891) AC 107 HL; *Gaylord Restaurants Ltd v United Bank for Africa Ltd*, (Unreported) Judgment of the Lagos State High Court in Suit No. ID/46/77.

<sup>9</sup>Section 2(1) of the Bills of Exchange Act, Cap. B8 *Laws of the Federation of Nigeria* 2004 defines the term 'bill' to mean 'bill of exchange'. The same statute defines 'bill of exchange' as an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer. See *ibid*, Section 3 (1). Note that section 73 defines a cheque as a bill of exchange drawn on a banker payable on demand, and the provisions applicable to a bill of exchange payable on demand equally apply to a cheque.

<sup>10</sup> *Rause v Bradford Banking Company* (1848) AC 586.

<sup>11</sup> (1977) 7 CC 1401/1404.

<sup>12</sup> *Royal Petroleum Co. Limited v First Bank of Nigeria Limited* (1997) 6 NWLR (pt. 510) 584.

<sup>13</sup> (2015) LPELR-24817 (CA)

<sup>14</sup> *Marzetti v Williams* (1824-34) All ER 150; *EO Eyo v Bank of West Africa* (1964) LR 34.

<sup>15</sup> *Citibank Nigeria Ltd v Martins Ikediashi* (2014) LPELR-22447(CA). Note that proof of actual damages in such cases is not necessary since libel is a tort actionable *per se*. See *Balogun v NBN Ltd* (1978) NSCC 13. Such terms like 'refer to drawer', 'present again', or 'insufficient funds' have been held to be defamatory. See *Davidson v Barclays Bank Ltd* (1940)1 All ER 316; *Allen v County & Westminster Bank* (1915)31 TLR 210. Indeed, where the words used in dishonour of the cheque are contrary to the circumstances or false, an action in libel can properly lie. See *FBN Ltd v AP Ltd* (1996)4 NWLR (pt. 443) 438.

<sup>16</sup> *Gray v Johnson* (1968) LR 1. See A Adebayo, 'Definition of Banker and a Bank Customer Confirmed', <[https://www.academia.edu/5778055/DEFINITION\\_OF\\_A\\_BANKER\\_AND\\_A\\_BANK\\_CUSTOMER\\_CONFIRMED](https://www.academia.edu/5778055/DEFINITION_OF_A_BANKER_AND_A_BANK_CUSTOMER_CONFIRMED)>, Last accessed on 27<sup>th</sup> June 2021.

<sup>17</sup> *Ashubiojo v African Continental Bank* (1966)2 All NLR 203.

<sup>18</sup> (2019) LPELR-48605 (CA)

### **Banker's Liability to Customer on Crossed Cheques**

A cheque may be crossed generally or specially.<sup>19</sup> A cheque is generally crossed when it bears on its face an addition of the words '& Co.' or any abbreviation thereof between two parallel transverse lines with or without the words 'not negotiable' or where it simply bears on its face two parallel transverse lines with or without the words 'not negotiable'.<sup>20</sup> A cheque is specially crossed where it bears on its face an addition of the name of a banker with or without the words 'not negotiable'.<sup>21</sup> Where a cheque is crossed, irrespective of the nature of the crossing, it is mandatory that it should be paid through an account and not across the counter, in addition to any other instructions that may be embodied in the crossing; otherwise the banker may be liable to the owner of the cheque for any loss occasioned by such default.<sup>22</sup> Under section 81(1) of the Bills of Exchange Act, it is the duty of a banker to refuse payment of a cheque crossed specially to more than one banker unless the cheque is crossed to an agent who is a banker for collection.

### **Banker's Liability to Customer for Breach of Duty of Secrecy**

Further, the banker's implied duty of secrecy towards its customer, otherwise known as the 'duty of non-disclosure', presupposes that the banker has a duty to maintain secrecy in respect of the state of a customer's account<sup>23</sup> and will not divulge it to any person, not even the customer's spouse.<sup>24</sup> It is implicit that where the banker breaches this duty and without just cause, the banker will be liable to the customer for the breach, such that the customer can sue the banker for breach of contract.<sup>25</sup> In *United Bank for Africa Plc (UBA) v. Vertex Agro Ltd*<sup>26</sup>; when the bank cannot show that the MD of Vertex Agro Ltd received any One Time Password (OTP) SMS on the hardware token or his designated telephone number in respect of the unauthorized transactions; an evidence of Fraud Analyst called by Vertex was believed by the Court to the effect that Vertex's phone number was taken off the UBA data base at the time the fraudulent transactions were done to avoid detection of the transactions at the time they were being done. The Court of Appeal held that the bank was indeed liable in negligence for failure to safeguard the company's account. The Court of Appeal held that only persons that have access to banks database can take off a number from it and restore it later to avoid detection of such unauthorized withdrawals and the identity of the person that did it. It is obvious that only the bank's staff can have such access.

### **Banker's Liability to Customer for Breach of Duty to Exercise Due Care and Skill**

With respect to the banker's duty to exercise a duty of care and professional skill in his dealings and relationship with his customer, the law expects a banker to exercise a due care and professional skills in its dealings and relationship with his customer.<sup>27</sup> The law sets and expects from a banker a reasonable standard of care in the conduct and performance of his activity and in executing its services. Where there is a shortfall from this standard in the course of executing a service, the tort of negligence becomes relevant and if the banker is found careless in dealing with the affairs of his customers, he is liable for breach of his contractual duty. Thus, in *Akwara v IBWA Ltd*,<sup>28</sup> the court of appeal awarded the customer N4.5 million as damages for negligence misstatement on a sum of N21, 717,480 lodged with the bank. Section 37 (3) of Cybercrimes Act<sup>29</sup> provides that a financial institution that makes unauthorized debit on a customer's account shall upon written notification by the customer, provide clear legal authorization for such debit within 72 hours without delay. The section made it an offence punishable by a fine of Five million naira<sup>30</sup>. In *Royal United (Nig) Ltd v. Sterling Bank*<sup>31</sup>, the Court of Appeal found the respondent bank liable in negligence when the bank issued a cheque meant for one entity to another entity.

### **Banker's Liability to Customer for Breach of Duty to Render Statement of Account**

With respect to the banker's duty to render statement of account implied from the banker-customer relationship, it is the duty of the banker to give periodic statement of the account to the customer within reasonable intervals. Breach of this duty makes the banker liable to the customer for damages, usually nominal damages depending on the time lapse. In the case of *SUDAIS Oil & Gas Ltd & Anor v. GTB*<sup>32</sup>, the Court of Appeal relying in the Supreme

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<sup>19</sup> Section 79(1) of Bills of Exchange Act

<sup>20</sup> Section 78(1), *Ibid*

<sup>21</sup> Section 78(2), *Ibid*

<sup>22</sup> Section 81(2), *Ibid*. Also see *Ladipo v Standard Bank of West Africa* (1968)3 ALR Comm 287.

<sup>23</sup> *Savannah & Chemical Ind. v. EFCC & Anor* (2020) LPELR-51398 (CA)

<sup>24</sup> *Tournier v National Provincial Board Union Bank of England* (1924) 1 KB 461. Detailed discussion on the extent and qualifications to this rule was done in pages 124 – 128 *ante*.

<sup>25</sup> *Foster v Bank of London* (1862)3 F & F 214.

<sup>26</sup> (2020) 17 NWLR (Pt. 1754) 467.

<sup>27</sup> *Selangor United Rubber Estates v Cradock* (1968)2 All ER 1073.

<sup>28</sup> (2000) FWLR (pt. 11) 1766.

<sup>29</sup> (2000) FWLR (pt. 11) 1766

<sup>30</sup> *United Bank for Africa Plc (UBA) v. Vertex Agro Ltd* (supra).

<sup>31</sup> (2018) LPELR-50839 (CA)

<sup>32</sup> (2022) LPELR-57512 (CA)

Court case of *Huston (Nig) Ltd v. A.C.B Plc*<sup>33</sup>, held that it is the duty of the bank to send statement of account to the customer at regular intervals or on demand.

### **3. Liabilities of Bankers to Third Parties**

In some cases where a person who is not a party to the contract subsisting between a banker and his customer suffers an infringement of his own personal rights by the banker, he may have a remedy at common law for any damage occasioned by such infringement of his personal rights. The rationale behind this can be explained by the maxim *ubi jus, ibi remedium* (literally meaning that 'where there is a right, there is a remedy').<sup>34</sup> First, where a banker negligently gives a status report or confidential opinion or banker's reference on his customer to a third party with knowledge that such third party may rely on the said status report, confidential opinion or banker's reference and that damages may ultimately occur to such third party placing reliance on the advice, the banker will be liable to such third party for any loss he might have suffered as a result of such negligent misstatement. This rule of law was laid down in the famous case of *Hedley Byrne & Co. Ltd v Heller & Partners*<sup>35</sup> where the court held that where a banker replies to a credit inquiry, it may be liable for negligence unless he includes an express disclaimer in the recommendation.

Second, a bank could be open to liability to a third party where he acts negligently as a collecting banker. For example, in the case of *Agbonmagbe Bank Ltd v CFAO*,<sup>36</sup> a customer of the respondent gave them a number of cheques drawn on the appellant bank in settlement of her account with them. The cheques were sent to the appellant bank by the respondent bank for clearance. They were not cleared and a notice of dishonor was not given within reasonable time. The respondent bank thinking that the cheque had been cleared continued to grant credit to the customer who issued those cheques. Two months later, the cheques were all returned as dishonored. The respondent obtained judgment against their customer for the full amount owed to them but were only able to recover a small portion of it. They then sued the appellants to recover the balance contending that they had suffered loss by reason of the appellant's negligence in not sending prompt notice of dishonor of the cheques. The appellant contended that they owed no duty of care to the respondent. The Supreme Court rejected the appellant's claim and held that a person must take reasonable care to avoid acts or omissions reasonably foreseeable as being capable of causing injury to persons so closely and directly affected by such acts or omissions that he ought to have them in contemplation. It was further held that bankers may in certain cases be liable to persons who are not their customers for negligence which causes them pecuniary damage. The appellants were thus held liable to the respondents.

Third, a banker may also be held liable for the financial loss suffered by a prospective customer if such a loss is derived out of the banker's negligence. In *Woods v Martins Bank Ltd*<sup>37</sup> the bank was held liable for the financial loss suffered by a party who had relied on the negligent advice given to him by the bank manager regardless of the fact that he was not yet a customer of that bank at the time the advice was given. Indeed, a banker who negligently collects a stolen or forged cheque on behalf of a person without title to same may be liable to the owner of the stolen or forged cheque even when he is not a customer of the bank.<sup>38</sup> Also, where a third party obtains a garnishee order from Court directing a banker to repay the third party from its customer's account, the banker is under obligation to pay to the third party the exact sum as ordered by the court<sup>39</sup>.

### **4. Liability of Customers to Third Parties**

As a matter of law, a third party to a contract cannot sue on the terms of that contract in view of the common law doctrine of privity of contract.<sup>40</sup> In banking business, the relationship as earlier stated is a contractual one between the banker and the customer. As such, privity of contract tends to apply on the part of the third party to the original contract between the banker and the customer. However, with respect to cheques, the law recognizes that ownership of the rights contained in the instrument can be transferred to and enforced by a third party, referred to as the 'holder'. A 'holder' means the payee or endorsee of a bill or note that is in possession of it, or the bearer thereof.<sup>41</sup> The point must however be made that the mere fact of being a holder of a bill (cheque) may not entitle a person to sue thereon unless he is a holder for valuable consideration.<sup>42</sup> Since a holder for value only acquires the same title as his transferor, this greatly

<sup>33</sup> (2002) 12 NWLR (Pt. 782) 623 SC.

<sup>34</sup> *FBN Plc v Associated Motors Co. Ltd* (1998)10 NWLR (pt. 570) 441.

<sup>35</sup> (1964) AC 465.

<sup>36</sup> (1966)1 All NLR 40.

<sup>37</sup> (1959)1 QBD 55

<sup>38</sup> *Ladbroke v Todd* (1914)30 TLR 433; *Nigerian Breweries Ltd. v Muslim Bank of West Africa Ltd* (1933-1966)1 NBLR 282.

<sup>39</sup> *Fidelity Bank v. Onwuka* (2017) LPELR-42839 (CA).

<sup>40</sup> *Dunlop Pneumatic Tyre Co. v Selfridge & Co.* (1915) AC 847.

<sup>41</sup> Section 2(1) of Bills of Exchange Act.

<sup>42</sup> Valuable consideration for a bill may be constituted by: (a) any consideration sufficient to support a simple contract; or (b) an antecedent debt or liability and such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time. See Bills of Exchange Act, Section 27(1). Note that a party who has not given value for a bill in his possession may nevertheless be regarded as a holder for value where value had been given for the bill by a prior party with

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limits his ability to proceed against the customer who drew the cheque for any loss he suffers in the event that his transferor's title to the cheque is defective.<sup>43</sup> This limitation however, is removed if the person is a 'holder in due course'.<sup>44</sup> Section 38(b) of the Bills of Exchange Act provides that a holder in due course holds the bill (cheque) free from any defect in title of prior parties, as well as from mere personal defenses available to prior parties thereto among themselves, and may enforce payment against all parties liable on thereon. This constitutes an important exception to the privity of contract rule.

### **5. Remedies for the liabilities in Banker-Customer Relationship**

Due to the fact that banker-customer relationship is fundamentally a contractual one, there are a number of remedies available to the banker or customer respectively, some of which arise as of right and others awarded by a competent court in actions for breach of contract for default in execution of either the banker or the customer's duties. Some of these remedies will be considered. In the banker-customer relationship, the bank owes certain fiduciary and contractual duties to its customers, and a breach of these duties can give rise to legal remedies. These are some remedies available to customers for breaches by a bank:

#### **Damages:**

**Compensatory Damages:** Customers may claim compensatory damages to cover the actual losses they suffered due to the bank's breach. For instance, if the bank's negligence led to unauthorized transactions, the customer could recover the lost funds.<sup>45</sup> In *Access Bank v. Petro-Al (NIG) Ltd*, it was held thus: 'The purpose of *compensatory damages* is to compensate the victim of a tort for the injury he has suffered, and it seeks to put him as far as possible in a position he would have been in, had the tort not been committed.' **Consequential Damages:** If the breach caused indirect losses (e.g., lost business opportunities due to wrongful dishonor of a cheque), the customer could seek damages for these foreseeable losses.<sup>46</sup> **Punitive Damages:** In cases where the bank's conduct was particularly egregious, some jurisdictions may allow punitive damages as a deterrent against future misconduct.<sup>47</sup>

#### **Injunction**

An injunction is a legal order issued by a court that requires a person or entity to either do a specific act or refrain from doing a specific act. It is a type of equitable remedy, often used to prevent harm or to maintain the status quo until the underlying legal dispute can be resolved. A customer may seek an injunction to prevent a bank from continuing or repeating the breach. For example, if the bank discloses confidential information, the customer may obtain an injunction to prevent further disclosures. Injunctions are typically granted when monetary compensation is not sufficient to address the harm or when immediate action is necessary to prevent irreparable damage<sup>48</sup>.

Injunctions can take several forms:

**Prohibitory Injunction:** Prevents a party from performing a specific action. For example, a court may issue an injunction to stop a company from using a trademark that infringes on another company's rights.

**Mandatory Injunction:** Requires a party to take a specific action<sup>49</sup>. For example, a court might order a company to restore a customer's funds that were wrongly taken.

**Interlocutory (or Temporary) Injunction:** Issued as a temporary measure while a case is being decided, to prevent irreparable harm during the legal process.<sup>50</sup>

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regards to the acceptor and all who became parties to the bill prior to such time. See *ibid*, Section 27(2); *Diamond v Graham* (1968)1 WLR 1061. There is a rebuttable presumption that every party whose signature appears on a bill was a party thereto for value. See Bills of Exchange Act, Section 30(1).

<sup>43</sup>Note that the title of a person who negotiates a bill is defective when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. See Section 29(2), *Ibid*.

<sup>44</sup>A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions: (a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact; or (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. See *ibid*, Section 29(1); *Arab Bank Ltd v Ross* (1952)2 QB 216; *Raphael v Bank of England* (1855)17 CB 161. A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor, and all parties to the bill prior to that holder. See Bills of Exchange Act, section 29(3). Every holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill. See section 30(2), *Ibid*.

<sup>45</sup> *Access Bank v. Petro-AL (Nig) Ltd* (2017) LPELR-45198 (CA)

<sup>46</sup> *Amana Solid Poles (NIG) LTD & Anor v. Okafor & Anor* (2021) LPELR-55676 (CA)

<sup>47</sup> *Bernard & ANor v. FCMB LTD* (2022) LPELR-58194 (CA)

<sup>48</sup> *Larabee Enterprises LTD & Anor v. Nexim Bank & Anor* (2022) LPELR-570007 (CA)

<sup>49</sup> *Elias & Anor v. ECO BANK (NIG) PLC* (2015) LPELR-41003 (CA)

<sup>50</sup> *CBN v. System Application Products (NIG) LTD* (2004) LPELR-5432 (CA)

### **Specific Performance**

Specific performance is a legal remedy in contract law where a court orders a party to fulfill their obligations as specified in a contract rather than simply awarding monetary damages for a breach. This remedy is typically granted when monetary compensation would be inadequate to remedy the harm caused by the breach, often in cases involving unique goods, property, or services that cannot easily be replaced or valued in money<sup>51</sup>. Specific performance is an equitable remedy that compels the bank to fulfill its contractual obligations. However, courts are selective in granting this remedy, and it's usually only available when (1) the contract terms are clear, (2) the subject matter is unique, and (3) the court can oversee or enforce the terms without excessive difficulty. This remedy is rare in banker-customer disputes but may apply if monetary compensation is inadequate.

### **Restitution**

This remedy aims to restore the customer to the position they were in before the breach occurred<sup>52</sup>. For instance, if the bank wrongfully withdraws funds from a customer's account, restitution would require the bank to return the exact amount withdrawn.

### **Rescission**

Black's Law Dictionary Ninth Edition, defines the verb rescind as meaning: 'To abrogate or cancel (a contract) unilaterally or by agreement... To make void; to repeal or annul.' A party's unilateral unmaking of a contract for a legally sufficient reason, such as the other party's material breach ... of fraudulent misrepresentation or undue influence by the bank, the customer may rescind (cancel) the agreement, effectively releasing them from obligations under the contract.<sup>53</sup> In a banker-customer relationship, rescission of contract is a legal remedy that cancels or nullifies the agreement between the bank and the customer, returning both parties to the position they were in before the contract was made. Rescission can be sought when there has been a fundamental breach of the agreement or when the contract was formed based on factors like fraud, misrepresentation, undue influence, mistake, or illegality. For instance, if a bank entered into a loan agreement with a customer based on the customer's fraudulent information, the bank may seek rescission to cancel the contract, recover the funds loaned, and avoid further obligations. Similarly, if a customer was pressured or misled into agreeing to unfavorable terms, they might seek rescission to void the agreement. In rescission, the goal is to 'unwind' the contract, effectively undoing it, so neither party benefits from the terms agreed upon. However, rescission may be challenging if the contract has already been significantly acted upon or if it would be inequitable to one of the parties.

### **Complaint to Regulatory Authorities**

Customers may report breaches to banking regulatory bodies, such as the Central Bank or Financial Conduct Authority (FCA) in some jurisdictions. These authorities can investigate, impose fines, or mandate corrective actions by the bank.

## **6. Conclusion and Recommendations**

In the banker-customer relationship in Nigeria, the liabilities of bankers extend beyond mere custodianship of funds. Banks are entrusted with the duty of care, confidentiality, and competence in managing customer accounts and transactions. These duties form the foundation of trust and confidence between banks and their customers. Additionally, banks bear obligations to third parties, often arising from legal mandates to prevent financial crimes, ensure transparency, and respect contractual relationships involving third-party rights. However, instances of breach, negligence, fraud, and mishandling of customer information expose banks to legal liabilities, resulting in potential loss of reputation, customer confidence, and financial penalties. As the banking industry in Nigeria becomes increasingly digital, the responsibilities of banks to safeguard customers' funds and information become more complex, highlighting the need for robust regulatory frameworks to enforce accountability and mitigate risk.

The following measures will be helpful: The Central Bank of Nigeria and other regulatory bodies should strengthen oversight mechanisms to ensure banks comply with their fiduciary duties to customers and third parties. Regular audits, compliance checks, and penalties for breaches could enhance accountability. Banks should invest significantly in advanced cybersecurity infrastructure to protect customer data from breaches. Implementing strong data protection measures will ensure compliance with laws like the Nigeria Data Protection Regulation (NDPR) and reduce liabilities arising from data breaches. Banks should actively educate customers on their rights, responsibilities, and the terms of their banking contracts. Improved customer awareness would empower clients to identify and report bank errors or potential breaches promptly. Banks should ensure that their staff follow transparent, ethical practices, especially when dealing with loans, investments, and other complex financial transactions involving third parties. Training programs on ethics and compliance should be mandatory. Internal risk management systems should be enhanced to prevent incidents of fraud and mismanagement. By implementing stricter internal controls, banks can minimize their liabilities to customers and third parties, fostering a safer banking environment in Nigeria. These recommendations aim to foster a banking sector in Nigeria that prioritizes responsibility, transparency, and protection of customer rights, ultimately enhancing the credibility of financial institutions and supporting economic growth.

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<sup>51</sup> *Rabiu v. ZARA* (2018) LPELR-465556(CA)

<sup>52</sup> *Union Bank v. ESKOL Paints Nig. LTD & Anor* (1997) LPELR -6342 (CA)

<sup>53</sup> *Project Vision Actualizers LTD v. Ilushin Estates LTD & Anor* (2021) LPELR-55629 (CA)