

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

GN Bank (Liberia) Limited, represented by its Managing Director/)
CEO, Mr. Joseph K. Anim, of the City of Monrovia, Liberia)
.....Appellant)

Versus)
)

Young Philip Business Center, represented by its Proprietor/CEO,)
Mr. Philip Gayetay, of the City of Monrovia, Liberia.....Appellee)

APPEAL

GROWING OUT OF THE CASE :

Young Philip Business Center, represented by its Proprietor/CEO,)
Mr. Philip Gayetay, of the City of Monrovia, Liberia.....Plaintiff)

Versus)

ACTION OF
DAMAGES FOR
WRONG

GN Bank (Liberia) Limited, represented by its Managing Director/)
CEO, Mr. Joseph K. Anim, of the City of Monrovia, Liberia)
.....Defendant)

Heard: November 24, 2020

Decided: August 20, 2021

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

This case, action of damages for wrong, is before this Court en banc on appeal from the final ruling of Her Honor Ceaineh D. Clinton Johnson entered on August 29, 2019, when she presided over the Civil Law Court “B”, Sixth Judicial Circuit, Montserrado County, by assignment. The trial Judge adjudged the appellant, G N. Bank, liable to the appellee, Young Philip Business Center, in the amounts of Two Hundred Seventy-Two Thousand, Eight Hundred Fifty-Nine United States (US\$272,859.00) Dollars, Seven Million, Six Hundred Fifty-One Thousand, Nine Hundred Seventy-Five Liberian (L\$7,651,975.00) Dollars

and Fifty Thousand United States (US\$50,000.00) Dollars for specific and punitive damages, respectively.

The undisputed facts in this case culled from the transcribed records set forth the following: On December 6, 2016, the appellant bank granted to the appellee, the Young Philip Business Center, located in Ganta City, Nimba County, an overdraft credit facility of Fifteen Thousand United States (US\$15,000.00) Dollars to enhance the appellee's business operations; that because the appellee defaulted in the timely repayment of the loan despite efforts exerted by the appellant bank to have the appellee honor its obligation, the appellant bank instituted an action of debt by attachment before the Commercial Court in Montserrado County to recover the amount of Nineteen Thousand United States (US\$19,000.00) Dollars; that the case was heard on its merits and thereafter, the trial court adjudged the appellee liable to the appellant bank and ordered the business center closed until full settlement of the amount owed the appellant bank was made. The records further reveal that on the day of the closure, the court's officers requested that an inventory be taken on the merchandise inside the business center, but the wife of Mr. Philip Gayetaye, the proprietor of the Young Philip Business Center, showed no interest in the inventory, rather, instructed her son to transfer those items that were outside of the business center into the store; hence, no inventory was taken and the court's officers closed the store.

The transcribed records also reveal that the Commercial Court having taken custody of the store, requested the appellant bank to provide security for the business center pending the auction of the goods or payment of the judgment sum; that predicated upon the request from the Commercial Court, the appellant bank, on May 21, 2018, hired the

services of the Alarm Response Security Guard Services to provide security for the business center; that on July 13, 2018, approximately seven and half weeks after, the business center was reportedly burglarized by unknown persons by way of the roof while it was under the watch and control of the Alarm Response Security Guard Service. The day following, that is, on July 14, 2018, the appellant bank wrote and informed the police that burglary had taken place at the Young Philip Business Center and requested the police to conduct an investigation into the incident; that the police investigation found the Alarm Respond Security Guard Service liable due to the negligence of its officers who were on duty when the alleged burglary occurred; however, the police did not make arrest of any suspect, but when Philip Gayetaye, the proprietor of the business center, heard of the burglary he proceeded to the Commercial Court and made a partial payment of Five Thousand United States (US\$5,000.00) Dollars against the judgment amount; that the Commercial Court vacated the attachment and ordered the business center opened for the conduct of an inventory; that at the conduct of the inventory in the presence of the appellee's representative, the appellant bank's representative, court officers, the police and Mr. Philip Gayetaye, the proprietor of the appellee himself, no issue was raised relative to stolen items that could warrant a detailed criminal investigation which could have led to the arrest of a suspect, given the volume of money and goods that were allegedly stolen from the business center (appellee); to the contrary, the appellee compiled invoices for transactions long before the burglary and made a long list of items which appellee claimed were in the business center but were stolen by an unknown person whom the police are yet to arrest as a suspect; that notwithstanding the uncertainty of the claim, the appellee, through its counsel, on August

29, 2018, filed with the Commercial Court a bill of information bringing to the attention of the Commercial Court the extent of damage the appellee suffered as a result of the burglary and claiming therefore, the amounts of Two Hundred Seventy-Four Thousand, Two Hundred Twenty-Four United States (US\$274,224.00) Dollars and Seven Million, Nine Hundred Six Thousand, Two Hundred Twenty-Five Liberian (L\$7,906,225.00) Dollars, respectively, as damages for the loss sustained relying on a self-prepared list as inventory of cost of goods but the police report made no reference to the so-called loss allegedly sustained; that said bill of information was heard and dismissed by the Commercial Court for lack of merit. The appellee noted exception and announced an appeal to the Supreme Court.

On January 15, 2019, the appellee, while the appeal filed before the Supreme Court growing out of its bill of information was yet to be perfected, filed before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, an action of damages for wrong against the appellant bank for losses it sustained as a result of the burglary of its business center on July 13, 2018. The appellee alleged essentially in its complaint that a significant portion of assorted goods including stock valued at Two Hundred Fifty Thousand, Four Hundred Nineteen United States (US\$250,419.00) Dollars, two gold chains valued at Two Thousand, Two Hundred United States (US\$2,200.00) Dollars and a gold bracelet at the cost of Nine Hundred Fifty United States (US\$950.00) Dollars; three hundred forty-eight (348) grams of raw gold valued Fifteen Thousand, Six Hundred Sixty United States (US\$15,660.00) Dollars, New Tab Air 7 Phone at the cost of Four Hundred Twenty United States (US\$420.00) Dollars, cash of Three Thousand, Two Hundred United States (US\$3,200.00) Dollars and Two Hundred Fifty-Four Thousand, Two Hundred Fifty Liberia (L\$254,250.00) Dollars

representing the total sales from May 11 to May 15, 2018, prior to the closure of the business center were stolen.

The appellee further alleged in its complaint that the proprietor, Mr. Philip Gayetaye, as a reputable business man, was engaged in a daily and weekly susu activities and funds generated from the susu kept in a safe situated in the business center, including other money he had in safe keeping for individuals and money from the sale of gasoline were stolen. The appellee presented the following breakdown to justify the extent of the losses sustained:

- a. Cash from the sale of ten thousand gallons of gasoline at the rate of L\$500.00 per gallon L\$5,000,000.00
- b. Customers physical cash kept in the safe for weekly susu.....L\$ 440,000.00
- c. Customers physical cash kept in the safe for daily susu.....L\$1,711,975.00
- d. Customer Jeff Loryee’s cash for safe keeping.....L\$ 500,000.00

The appellee put total cost of loss sustained at Two Hundred Seventy-Two Thousand, Eight Hundred Forty-Nine United States (US\$272,849.00) Dollars and Seven Million, Six Hundred Fifty-One Thousand, Nine Hundred Seventy-Five Liberian (L\$7,651,975.00) Dollars, respectively, and prayed the trial court to hold the appellant bank liable for same as specific damages and Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars as general and punitive damages for the loss incurred under the doctrine of respondeat superior because it is the appellant bank that hired the services of the Alarm Response Security Guard Service to provide security coverage for the appellee when the Commercial Court issued the closure order and did close down the business center.

On January 24, 2019, the appellant bank filed its answer to the appellee’s complaint, but on February 7, 2019, withdrew its answer of January 24, 2019, and simultaneously filed a twenty-one (21) count amended answer in which it denied the appellee’s allegations and

questioned the factual and legal sufficiency of the appellee's complaint. We recite counts 7, 8, 9, 10, 11, 12, 13, 14, 18 and 20 from the amended answer for their relevance to this Opinion.

"Count 7. That as to count four (4) of the plaintiff's complaint, defendant submits that the averments therein contained do not support the plaintiff's claim of damages against defendant. This is so because the communications referenced to and exchanged between defendant and Alarm Respond Security Guard Services were intended to consummate a security guard services contract between the contracting parties without either party assuming the liability of the other. Moreover, the plaintiff's business center located in Nimba County being in the constructive possession of the Commercial Court in Monrovia, the court saw the need to have the defendant contract the services of a security firm to aid the court to provide security support to the plaintiff's business center; hence, in the absence of any showing of a nexus between the defendant and the burglary committed, count four (4) of the plaintiff's complaint should be overruled".

"Count 8. That as to count five (5) of plaintiff's complaint, defendant submits that the averment contained therein relative to the plaintiff's business center being under the full possession and control of the defendant when the property was said to have allegedly been burglarized, is indeed false and misleading. Defendant denies ever being in possession and control of plaintiff's business center when same was ordered closed by the Commercial Court; hence, count five (5) of the complaint should be overruled".

"Count 9. That further to count seven (7) hereof, defendant submits that it is without information sufficient to deny or affirm the averment contained in count five (5) of the complaint relative to the presence of the Liberia National Police for the purpose of assessing the extent of the alleged burglary with respect to property loss; hence, count five (5) of the plaintiff's complaint should be overruled".

"Count 10. That further to count eight (8) hereof, defendant denies that portion of the averments contained in count five (5) of the complaint regarding the observation of plaintiff's accountant which states thus:

“Plaintiff says that at the point of the assessment, as per original records, that a significant portion of the plaintiff’s assorted goods including stock value at including stock value at Two Hundred Fifty Thousand, Four Hundred Nineteen United States (US\$250,419.00) Dollars, two gold chains and gold bracelet worth Two Thousand, Two Hundred United States (US\$2,200.00) Dollars and Nine Hundred Fifty United States (US\$950.00) Dollars, respectively, three hundred forty-eight grams of raw gold worth Fifteen Thousand, Six Hundred Sixty United States (US\$15,660.00) Dollars, New Tab Air 7 Phone worth Four Hundred Twenty United States (US\$420.00) Dollars, cash of Three Thousand, Two Hundred United States (US\$3,200.00) Dollars and Two Hundred Fifty-Four Thousand, Two Hundred Fifty Liberia (L\$254,250.00) Dollars representing the total sales for May 11 to May 15, 2018, prior to the closure of the business center were stolen”.

Further to count 10 the defendant submits that this averment cited herein is “tainted with fraud, as same is purposely designed to defraud defendant. Defendant says that prior to the closure of plaintiff’s business center by the Commercial Court, full disclosure of the items and cash alleged to have been stolen was never made to the Commercial Court through the Court’s Officer and the Alarm Respond Security Guard Services firm to establish the existence of the items and cash prior to the alleged burglary; hence, count five (5) of the plaintiff’s complaint should be overruled”.

“Count 11. That as to count six (6) of plaintiff’s complaint, defendant denies the legation therein contained as quoted below:

“Plaintiff was saving money in a safe situated in its business center, including other money that he was keeping for individuals and money for the sale of gasoline in the following breakdown were all stolen:

- a. Cash from the sale of ten thousand gallons of gasoline at the rate of L\$500.00 per gallon L\$5,000,000.00
- b. Customers physical cash kept in the safe for weekly susu.....L\$440,000.00

- c. Customers physical cash kept in the safe for daily
susu.....L\$1,711,975.00
- d. Customer Jeff Loryee's cash for safe
keeping.....L\$500,000.00"

Defendant submits that the plaintiff's claim of damages is speculative; in that, had there been such huge sums of money available in plaintiff's business center when the Commercial Court through its officer went on the premises to enforce the court's order, the above stipulated amount would had been disclosed. Since nothing of such was available in the store of plaintiff, plaintiff waited until the alleged burglary occurred before he decided to raise this baseless and unfounded alarm; hence, count six (6) of the complaint should be overruled".

"Count 12. That as to count seven (7) of the plaintiff's complaint, defendant denies the allegation contained therein; in that, plaintiff's nondisclosure of cash and items at the time of closure of plaintiff's business center to the court for the proper inventory to be done prior to the closure of the business center, it is indeed untrue that such huge sums and items were kept in the store; hence, count seven (7) of the plaintiff's complaint is tainted with falsehood and should therefore be overruled".

"Count 13. That as to count eight (8) of the plaintiff's complaint, defendant says it denies the averments therein contained relative to Alarm Respond Security Guard Services being an agent of defendant G.N. Bank (Liberia) Limited. Defendant denies the authenticity of the police report because following the burglary on July 13, 2018, the police report was never presented to the Commercial Court when the plaintiff filed his bill of information against defendant, although said police report was requested by the Commercial Court by letter dated July 13, 2018, the same day of the burglary but same was never presented. Copy of said letter is hereto attached as defendant's exhibit D/1 to form a cogent part hereof to substantiate defendant's contention. The bill of information filed was denied by the Commercial Court absent the police report. How can the backdated report now surface to be presented at the filing of this suit of damages in this Civil Law Court? The police report being prepared under dubious circumstances, same should be accorded no credence".

“Count 14. That as to count nine (9) of the plaintiff’s complaint, defendant submits that the averments contained therein are false and misleading relative to the application of the doctrine of respondeat superior. Defendant says the doctrine is not applicable in the instant case for the alleged act of Alarm Respond Security Guard Services to bind the defendant G.N. Bank (Liberia) Limited, the said Alarm Respond Security Guard Services not being an agent of defendant rather an independent contractor. Defendant says that under the law extant, an agent is one over whom the principal exercises control and supervision in the performance of the services for which he was hired by the principal. In the case of an independent contractor, the principal does not exercise control and supervision over him in the performance of services for which he was hired by the principal. Alarm Respond Security Guard Services has its own staff and pays them for services rendered to the security firm; the firm hires and fires its staff and does not need the approval of the defendant. Alarm Respond Security Guard Services is an independent contractor, and therefore, the doctrine of respondeat superior is not applicable. Defendant denies being obligated to plaintiff for damages as claimed; hence, count nine (9) of plaintiff’s complaint should be overruled”.

“Count 18. That as to counts thirteen (13) and fourteen (14) of plaintiff’s complaint, defendant denies the allegations therein contained, in that, defendant has done nothing indicative of wrongful conduct against the plaintiff to sustain the allegations that has caused the plaintiff serious economic and mental inconvenience as misleadingly contained in counts 13 and 14 of the complaint. Defendant submits that it is false and misleading that it has done acts that have caused the plaintiff unbearable economic hardship and mental hardship; that it is false and misleading that defendant is calculative and unremorseful in showing any interest in the economic and mental recovery of plaintiff; that all that defendant did was to proceed to the Commercial Court to recover monies owed defendant by plaintiff; hence, counts 13 and 14 of plaintiff’s complaint should crumble”.

“Count 20. That further to count twelve (12) hereof, defendant submits that the issuance of the writ of execution that led to the closure of the plaintiff’s business center was the result of the “action of debt by attachment” instituted by defendant in

the Commercial Court which action on the part of defendant is indeed a legal thing to do. Defendant submits that as a result of the court's judgment rendered in its favor against plaintiff and the subsequent closure of plaintiff's business center to enforce satisfaction of the court's judgment, the plaintiff's business center was indeed under the custody of the Commercial Court (whether actual or constructive); hence, defendant denies the stay of plaintiff's business center in its custody."

On January 30, 2019, the appellee filed reply to the appellant's January 24, 2019 amended answer and confirmed therein all the averments contained in its complaint; raised the liability for general and punitive damages from Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars demanded in its complaint to Five Hundred Thousand United States (US\$500,000.00) Dollars in the reply. However, the certified records are void of any evidence that could indicate why the appellee raised the amount for the general and punitive damages from Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars to Five Hundred Thousand United States (US\$500,000.00) Dollars in its reply.

At the call of the case on February 19, 2019, for the disposition of law issues, the appellant bank's counsel moved the trial court that the complaint of the appellee be dismissed for reason that the appellee did not file reply to its amended answer. The appellant bank further contended that the averment/allegations contained in the appellee's reply did not address all of the issues, whether on law or facts; hence, the appellant bank prayed the trial court to deny the appellee's complaint. The appellee resisted the request and insisted that the averments contained in its reply of January 30, 2019, attacked/addressed all of the issues, whether of law or facts, raised by the appellant bank in its amended answer; hence, requested the trial court to deny the application made by the appellant bank and have the

case proceeded with on the disposition of the law issues. On the selfsame day, the court denied the application made by the appellant bank and heard argument on the law issues. The counsels for the parties raised and argued the following issues:

Counsel for the appellee:

1. “Whether or not an answer that admits and avoids is considered double pleading and if so whether such answer is dismissible as a matter of law? Yes;
2. Whether or not an agent’s tortious action during the course of official duty is attributable to the employer/principal? Yes; and
3. Whether or not a party’s wrongful act which injures another person, can the victim claim damages against the tortfeasor and prevail as a matter of law? Yes”

Counsel for the appellant bank:

1. “Whether or not there is another action pending between the same parties for the same cause of action for which the doctrine of *lis pendens* will lie? We say yes; and
2. Whether or not there exists an agent/employer relationship between the defendant and the security company in the instant case for which the defendant can be held liable for the action of the security firm? We say no.”

On March 6, 2019, the trial court ruled on the law issues cited supra by the parties and held that “the appellant bank cannot plead *lis pendens* in the instant case because a bill of information pending before the Commercial Court was to bring to the attention of the Commercial Court that appellee had suffered injury as a result of the negligence of the security firm hired by the appellant bank, whereas the action of damages for wrong instituted in the Civil Law Court by the appellee against the appellant bank is to demand compensation for the injury/loss suffered as a result of the negligence of the security firm hired by the appellant bank when its business center was burglarized; hence, *lis pendens* will not lie”. As to the issue of the security firm being

an independent contractor, the Judge held that “the appellee had no privity of contract with the security firm, instead, it was an obligation conferred upon the appellant bank by the Commercial Court to provide protection for the assets of the appellee; hence, the relationship that existed between the appellant bank and the security firm was that of an agent/principal relationship, not an independent contractor and therefore, the appellant bank cannot absolve itself of the responsibility”.

Thereafter, on March 19, 2019, the appellant bank filed a four-count motion to join the security firm as a party defendant in the case contending essentially that consistent with clause 14 of the security contract that exists between the appellant bank and the Alarm Respond Security Guard Services, the security firm is an independent contractor whose wrongful act cannot legally bind the appellant bank; hence, if complete relief is to be accorded the parties, the security firm should be joined as a matter of law. The motion was resisted by the appellee, argued and the trial court denied the motion. Further, the trial Judge held that for a party to be joined in a suit as contemplated by Section 5.51(1) of the Civil Procedure Law, there must exist a controversy between the plaintiff and the party sought to be joined; but as in the instant case, there is no dispute between the appellee and the security firm. The appellee has no dealing with the security firm in respect to the assets allegedly destroyed or stolen. The trial Judge also averred that his colleague, His Honor Yussif D. Kaba, (now an Associate Justice of the Supreme Court), had earlier ruled on the issue and His Honor Scheaplor Dunbar, being a judge of concurrent jurisdiction, could not review or vacate his former colleague’s decision, citing the case: *Emirates Trading Agency Company v. Global Africa Import & Export Company*, 42 LLR 204 (2004), as his reliance. The counsel for the

appellant bank noted exception and gave notice that it would take advantage of the statute controlling.

On April 18, 2019, the appellant bank filed before the Chambers Justice, His Honor Joseph N. Nagbe, a petition for a writ of Certiorari praying the Chambers Justice to grant the alternative writ so as to review and correct the erroneous and prejudicial ruling of the trial judge, His Honor Scheaplor Dunbar. Following a conference with the parties on April 30, 2019, the Chambers Justice declined to issue the alternative writ prayed for by the appellant bank and instructed the trial court to resume jurisdiction over the case and proceed according to law. Subsequently, on July 9, 2019, the trial commenced in earnest following all of the pretrial formalities. The appellee produced five witnesses, including a subpoenaed witness, namely: Philip G. Gayetaye, Darlington L.A. Sawh, Jackson K. Souh, God's Willing and Cpl. Redeemer J. Toe, Police CSD Commander.

The appellee's first witness, Philip G. Gayetay, proprietor of the Young Philip Business Center, took the stand and testified as follows:

Q. "Young Philip Business Center has sued GN Bank, the defendant in this case in an action of damages for wrong. Please say for the benefit of this court and the jury all that you know"

A. "I started the business in 2013 with two separate accounts with the GN Bank, both Liberian and U. S. Dollars; from 2013 to 2016. It was my first time to take an overdraft in 2016. In 2016 I took an overdraft of US\$11,000.00 with added interest and I paid. In the same year, December 6, 2016, I took an overdraft in the amount of US\$15,000.00 for the purpose to free my goods and transport them to Nimba County.

Right after I transported all of my goods to Nimba County, we entered in 2017. Because of the heat of the elections in the country everywhere, my goods were stocked in the store. No sale, people were after elections and what I sell are freezers,

computer laptop, cell phones of all kinds, electrical wires and all electronic materials. Because of the heat of the elections, I slowed down in the payment of the loan. I informed the GN Bank for the incurrence situation. Right after the elections in 2017, the same year, the business was booming, my two accounts with GN Bank , US\$ and Liberian Dollars, the US Dollars was low in terms of purchasing power, my liberty (Liberian Dollar) account went up to Liberian Dollars ten (10) million in the same GN Bank.

At the same time, I was still paying my liability with the overdraft that I took up to 2018 I was still paying in the same Bank in my account. I will go in the same bank in my liberty account and withdraw some money to change, I will change and pay my liability and at the same time send for goods and stock in my store at which time I build another store in Karnplay, Nimba County. While paying my debt, I planned to open another store in Karnplay; I had over 12,000 gallons of gas for my gas station. I sold 10,000 gallons and the money was in the store because there where I sleep with my family. Changing to order another gas from Petro Trade, Vai Town, Monrovia, I came to Monrovia to meet my client for the new store that was about to open in Karnplay, Nimba County, GN Bank left me here in Monrovia and went behind me with Court Order in Nimba and ordered my wife who is pregnant for eight (8) months and put her out of the store and locked the store.

They never communicated with me nor do they even give document for the closure of my store. My wife was confused at that time and she called me daddy and said that the bank people came here and asked me where your husband is and she told them my husband left for Monrovia two days ago. Right after that a pregnant woman in eight (8) months crying and rolling, people over the place. Someone took her phone and communicated with me that what we are seeing is terrible we saw the people putting your wife outside and locking the store. From that point, I communicated to the manager in Ganta GN Bank why are you locking my store? The manager said to me that the solution is above me so I cannot do anything; and I told him that I took an overdraft and paying why you people locking my store, I got money, I got people money and pay people every day not less than seven to eight hundred thousand. I was confused and crying and lost hope. The good thing I was in Monrovia. I drove from Du-port Road

junction to GN Bank headquarters to the manager himself, the distance from Du-port Road junction to Broad Street was like from Monrovia to Gbarnga, I was very confused and could not drive. When I went to the bank I met the receptionist in person of Cynthia and asked her where the manager office is, she went inside and said that the manager was not in the office, I immediately communicated to the other manager in person of Ambrose. He and the manager talked and he asked me to come to the bank the next morning.

When I went back to the manager's office the next morning, he said to me that I am not paying their money at all this is why he send court order to Nimba to close my store and placed his security that he hired to mind (man) my store the only way he will open the store through court order. I should pay their money, and to me I am paying their money so I left because I cannot argue with him at the bank. After few weeks I carried L\$7,000,000.00 to the same to change at the rate equivalent to US\$5,000.00 they said no. The rate that they will offer me will only sum to US\$4,000.00 and I said no.

I took the money with me to Monrovia to talk with money exchanger in the street to enable me pay the money to court and have my store opened. After few weeks while looking for exchange rate, the police in Nimba placed a call to me and told me that my store had been burglarized by the letter the GN Bank manager wrote to the police and I told them that is the right person that called you because my place had been closed by the bank. Right after that to be honest to the bank with my sweat in the rain looking for money to reach at that level and see yourself in that condition and knowing me as Young Philip in Nimba is not just a name but is a household name in Nimba which I cannot pay that US\$5,000.00 because my store had been burglarized, I prove to the bank that I am a businessman, I live by what I do. I took that US\$5,000.00 and pay to the court and the court turn it over to the bank. My counsel sent a bill of information to the court informing them about what happened in Nimba.

The court sent us to Nimba with the bank manager, the police, the sheriff plus me and my accountant to do an inventory to know what lost in the store because during the closure by law they never conducted any inventory. After the inventory we found out all of the losses in the store including all of my

phones, computer laptop, money and my safe looking like small suitcase and they looted the whole store. When the store was burglarized first, the police came and asked the manager to buy zinc and put it on top of the store and the police also asked the manager to buy locks and the locks was placed on the store. Right after the inventory, we all came to Monrovia. My lawyer wrote GN Bank manager a letter of demand to pay all the damages that I and my family suffered. This is a country of law, I am a regular businessman in this country, I pay taxes to government every year. I have no option but to run to the justice; since we sued GN Bank I cannot sleep, I cannot even go back to Nimba because people are looking for me, and my children are out of school. My wife and children don't have food in the home, everything gone and I am no longer respected in the community. My wife gave birth in the hospital 8-1/2 months because of the tension. As we speak, the whole last night we were just crying; friends all around are appealing to me. My car I bought for US\$5,000.00 I sold it for small money just to feed my family".

The plaintiff's subpoenaed witness, Redeemer J. Toe, Commander, Crime Services Division, Liberia National Police, testified thus:

"On July 13, 2018, at 0800hrs while sitting in my office in Ganta, one Mr. Abraham Lincoln, acting head of operations, GN Bank, reported a case of burglary that took place on the Ganta Seclapea Highway to a business called Young Philip Business Center. Predicated upon his complaint, a team of police headed by patrolman, Amos Wonsia dispatch on the crime scene, during their return from the crime scene they reported that one sheet of zinc was removed from the building of Young Philip Business Center, the back door lock was damaged where a piece of steel rod laying on the ground and the wooden door in the hallway he saw keys inserted in the lock and the iron door to the store was damaged Road where they saw dirt bricks. Therefore, the two security officers that were on duty that night in persons of, Junior Vaye and Kelvin Zigbo, were called for investigation. During the investigation, both of the security officers could not tell the investigation the crime burglary how it occurred but they were on duty when the crime took place. In conclusion of the investigation, the entity of the security firm (Alarm Respond Security Guard Services) was held liable on ground that GN Bank hired the entity to provide security for that business center".

Plaintiff's second witness, Darlington L.A. Sawh provided the following testimony:

"The plaintiff in question Mr. Philip G. Gayetay, I know him for the past fifteen years...I know the Young Philip Business Center to be one of the biggest electronic stores in Nimba County. He is also involved in daily, weekly and monthly susu and he also keeps some valuables for other people who are business people and passers-by...since the burglary in July last year, the plaintiff in question Mr. Philip G. Gayetay has been walking talking by himself on so many occasions, he even attempted to take away his own life. Philip has no access to his own family on ground that he owed so many people, he do not go to Ganta where his family are now, the worst of all is that when the burglary occurred his wife was pregnant at the time, she went off and stayed in the hospital for months where Philip had no money to reach her and his children are out of school; he has no idea of their day-to-day activities.

Mr. Philip G, Gayetay is one of the senior business tycoons in Nimba and he keeps so many people money like I said in my testimony earlier and after the burglary, people have been going to Philip for their money, their goods and other valuables that he had been keeping in his safe. Because all of these things were taken away during the burglary, down to the susu money, the news has been it is Philip who has their money they do not care whosoever took their money, all that they know is the Philip is the one that has their money. Philip is responsible to give their money so Philip should produce their money. Some of them sent to the police station with complaint, some of them were disturbing at his home and he was left with no alternative but to leave Ganta and pursue the case. One of the major reasons to answer your question was shame and disgrace. And the last one was frustration".

Plaintiff's third witness, Jackson K. Souh, also testified:

"I got to know Philip G. gayetay first as a childhood friend and later a waiter market seller which grew into a shop and later a store and finally an incorporation. So I knew him to be one of the renowned businessmen in Ganta. On the 14th of July I heard through a local radio talk show that the Young Philip Business Center had been burglarized by unknown persons and at that

time I was in Lofa on an assignment and having heard that, I took an excuse from my boss to come to Ganta to see Mr. Philip G. Gayetay himself and understand from him the news that I heard. When I got in Ganta I could not see Philip and what I saw was men in their private security uniform posted in front of the store and I left. I asked people around where Philip G. Gayetay was and why his store is now guarded by private security.

On the 15th of July, when I got to the main street in Ganta to locate Philip and understand from him the information that I heard through the radio talk show, Philip could not be seen around as I earlier said, but what I saw was group of people crying and saying that they saved their money with Philip and where they use to do the transaction which is the store is now under a Security custody and Philip himself is not seen to give account to them for their money or pay their money. Some were even grouping to leave Ganta and go into any area that Philip name will be mentioned to get their money from him. Some were even swearing him to God that he took their money in a false pretense in the name of daily, weekly and monthly susu and he is no more seen around to pay those who are qualified”.

Plaintiff’s fourth witness, Oldpa Karnue, alias God’s Willing, provided testimony as follows:

“I know Philip Gayetay as a businessman in Ganta and also a susu father...I know him to be our susu father, we are 44 persons that put our money to him on a daily basis with the amount L\$10,000 per hand. So it had been quite a long time, few months ago that I stop seeing him and later I got to realize that his place was closed by the bank. He is the one that keep our money. The status of the susu now is that it has not ended yet because some members, including myself we are not able to get our money”.

On July 22, 2019, the plaintiff rested with the production of both oral and documentary evidence and presented its side of the case for argument. Subsequently, the defendant, GN Bank (Liberia) Limited, produced five (5) witnesses, namely: Molley Kolleh, Abraham Lincoln, Joseph Twoe, Joseph J. Nyengar and Perry S. Gbeyai.

The defendant's first witness, Molley Kolley, the head of recovery department of the appellant bank, testified that "Young Philip is a customer of the bank, acquired a US\$15,000.00 loan in December 2016 for a period of ninety (90) days; that is to say, three (3) months, but defaulted and the bank filed a law suit against it; that he and the sheriff from the Commercial Court travelled to Ganta to serve Young Philip Business Center but when they arrived, Philip Gayetay, the proprietor of the Young Philip Business Center, was not around but met his wife in the store; that they spoke with Young Philip who informed them that he was in Guinea and pleaded with them to hold on so as to contact his lawyer or the judge of the Commercial Court but after a couple of hours, the sheriff did not get a call from the judge; that the sheriff requested that they and Young Philip's wife conduct an inventory before they could close the store but she responded that she was tired and wanted to close the store and leave; that she packed the goods that were outside the store back into the store and locked it with her lock while the sheriff placed his lock on the store as well".

The witness also testified that "the sheriff requested and the bank provided security for the store through its contractor, the Alarm Respond Security Guard Services; that 7-1/2 weeks later, the bank received a call of an alleged burglary of the Young Philip Business Center and upon instruction from the bank, the branch manager for Ganta reported the case to the police; that while the police investigation was ongoing, Philip Gayetay, the proprietor of the Young Philip Business Center, proceeded to the Commercial Court, made payment of US\$5,000.00 against the debt and the Commercial Court ordered that the business center be reopened, inventory conducted; that the sheriff, along with bank staff, in the presence of Philip Gayetay, the proprietor, and some of his family members, counted the

goods/conducted the inventory; that during the conduct of the inventory, the proprietor did not raise any qualm indicating missing items from the store but a few weeks later, the lawyers for the bank informed them that Young Philip has sued the bank at the Commercial Court, nonetheless, they were informed that the case was dismissed by the Commercial Court; that subsequent thereto, they were informed again that Young Philip had instituted an action in the Civil Law Court”.

The defendant’s second witness, Abraham Lincoln, Head of Operations, Ganta Branch, GN Bank, testified that “on July 13, 2019, about 9:0’clock a.m. he was called by the security firm that an alleged burglary had taken place at the Young Philip Business Center; that he proceeded to the scene and observed that the back of the building (store) was opened and at the top of the building a sheet of zinc removed; that he immediately proceeded to the police station, made a verbal complaint and predicated on the complaint, the police accompanied him on the scene; mandated the supervisor of the security firm to work along with the police to conduct an investigation and after which he returned to his office”.

The defendant’s third witness, Joseph G. Twoe, Jr., one of the branch managers assigned in Greenville, Sinoe County, testified “that Mr. Philip Gayetay owed the bank and defaulted for which he was taken to the Commercial Court; that the court adjudged him liable and ordered the Young Philip Business Center closed; that after 7-1/2 weeks while he was on break, he received a call from the security supervisor of the Alarm Respond Security Guard Services that there was an alleged burglary at the business center of Mr. Philip Gayetay; that he immediately informed his administration through the deputy managing director for administration who instructed him to proceed to Ganta but when he arrived Abraham Lincoln had already informed the police

verbally. The witness also informed the trial court that the Commercial Court also wrote a formal communication to the police instructing the bank to seal up the area that was broken into and when they arrived at the scene along with a police officer, they noticed a key inserted into the inner entry leading to the warehouse and a broken padlock at the back door; that with the consent of the police, they sealed the broken area with a sheet of zinc, locked the inner door with the identical key they saw inserted in the door, bought a new padlock and placed it on the back gate, turned the keys (both the new keys and the one that was inserted in the door) over to the police and departed. The witness further informed the trial court that few days later, on July 19, 2018, at about 5:0'clock a.m., the security guards reported to him that they saw Mr. Philip Gayetay disembarked from an unidentified car using his phone light going toward the front gate of the store; that when the Alarm Respond Security inquired from him what he was doing there he responded that he wanted to know the date and when they further inquired from him, he did not respond, got into the identical vehicle and left the scene; that he attached this complaint to a written complaint and submitted it to the police on July 20, 2018".

Defendant's fourth witness, Joseph J. Nyengar, bailiff of the Commercial Court, testified that "on May 17, 2018, he was sent to Ganta to serve the writ of execution on the Young Philip Business Center and when he arrived at the business center along with a representative from the bank, they met Young Philip's wife and son who informed them the Philip Gayetay had travelled to Guinea to purchase goods; that when he spoke with Philip, he confirmed his presence in Guinea but requested time to speak with the judge; that after several hours he could not get a word from the judge, he asked Philip's wife that they should check the goods in the store but the wife

indicated that she did not have the time; hence, the store was closed and a set of the keys for the locks was given to the wife and another set given to the sheriff. The witness said that he requested and the bank provided security to man the business center before he departed for Monrovia". The witness further informed the court "that 7-1/2 weeks later, Judge Paegar called and informed him that the business center was burglarized; therefore, the Commercial Court immediately ordered the attachment vacated on August 2, 2018; that when he (witness) arrived on the scene along with the police, the key that was earlier used to lock the iron door could not open the door so they had to force the door open, conducted inventory of the goods in the store in the presence of Philip Gayetay without any reservation from him, neither did he indicate all that got missing from the store, and that copies of the inventory were distributed with the police, Young Philip Business Center and the original copy taken to the Commercial Court.

Defendant's fifth witness, Perry S. Gbeyai, Operations Manager and Training Commander for the Alarm Respond Security Guard Service, testified that "on July 13, 2018, he was informed by his guards assigned at the Young Philip Business Center in Ganta that they observed an opening in the roof at the back and that the iron door was also opened; that he instructed the guards to contact the police to investigate the incident and that the following morning he visited the crime scene in order to conduct his own assessment and investigation; that from his investigation and observation, the police report holding his guards responsible for the incident was very faulty in that the police investigation was not professionally done; that all the evidence observed on the crime scene and persons of interest were never considered in the police investigation".

The witness further testified that “given the condition of the environment and other pieces of evidence gathered from the crime scene, coupled with the volume of items allegedly stolen from the store, the alleged burglary could not have occurred with the narrow opening of the iron door which measures 2ft, 9 inches in width and 4ft, 11 inches in height; hence, the alleged burglary is a make-believe”.

The defendant produced two subpoenaed witnesses, namely: Odysseus Saye Dolo and Kou Dokie wleyon. The two subpoenaed witnesses confirmed that they were members of the plaintiff’s susu club but that “the susu has since ended and that to the best of their knowledge, all the members of the susu were paid their respective entitlements and that no member of the susu was in search of the plaintiff for susu money”.

At the close of the production of evidence and arguments heard *pro et con*, the petit jury was duly charged and instructed by the trial court to deliberate on the evidence adduced and the testimonies given by the parties and their witnesses during the trial to determine whether or not the plaintiff proved its case and that the defendant should be held liable as the law requires. Following the deliberation, the petit jury returned a verdict of liable against the defendant.

On August 19, 2019, the appellant bank filed a motion for new trial as required by law wherein it contended principally that the verdict of the petit jury should be set aside and a new trial awarded because witnesses of the movant/defendant testified to the existence of a contractual relationship between the movant/defendant and the Alarm Respond Security Guard Service; that when the witnesses were asked on the direct to identify same, it was denied on ground that previous judges had passed on the issue of law declaring the security firm as an

agent of the defendant; that the judge's charge to the jury in which she indicated that "if it was proven to your belief that the wrongful conduct complained of by the plaintiff during normal scope of work, and in the ordinary and normal course of duty of the defendant's agent, then the plaintiff is entitled to damages" constitutes a misdirection of the jury in that the issue of agency was without hearing as evidence; that the principal witness, Philip Gayetay, testified to a receipt of exchange of generator and other items given to Mr. Anthony Duo for 348 grams of gold which, by that exchange, the original copy should have been in the possession of Anthony Duo but instead it was in the possession of Philip Gayetay, the issuer, which clearly manifests fraud and falsehood but the jury ignored same.

The appellant also contended in its motion for new trial that "in spite of the testimonies of witnesses Odysseus Dolo and Kou Dokie Wleyon that the weekly susu ended in November 2018, and that respondent/plaintiff did not owe them or any member of the susu as claimed by the respondent/plaintiff disproving the false allegation that the respondent/plaintiff had susu money in his store at the time of the burglary and that members were in search of him for their money, the empaneled jury disregarded this cogent evidence and found for the plaintiff, which verdict is contrary to the weight of the evidence adduced at the trial; that the defendant's witnesses in persons of Molley Korleh, Joseph Nyengar and Perry S. Gbeyai testified that following the opening of the business center after the alleged burglary, they saw a key inserted in the small iron door leading into the store which was opened and the key was used to lock the iron door leading into the store and same was given to the police but upon their return to conduct an inventory of the goods, the very key could not open the door so the door was drilled opened; that during the closure of the

business center, all the keys to the business center remained in the possession of Philip Gayetay's wife but after the alleged burglary, the police discovered a key inserted in the inner door of the store and same was used by the police to lock the door and remained in the custody of the police; that notwithstanding this clear evidence pointing to their own design to create a make-believe crime scene, the empaneled jury brought a verdict contrary to the weight of the evidence adduced at the trial". Moreover, the appellant's motion for new trial maintained that "the police report relied on by the plaintiff to file the lawsuit is silent on the loss sustained by the plaintiff as a result of the alleged burglary; that the proof of special damages with particularity is wanting in view of the fact that the loss allegedly sustained by the plaintiff is uncertain and speculative insofar the special damage of US\$272,849.00 awarded by the jury is contrary to the amount of US\$171,901.00 as reflected in the plaintiff's singlehandedly prepared inventory as marked p/4 in bulk".

The motion for new trial having been resisted and same argued, the court, on August 29, 2019, ruled, denied the motion and entered on the records its final ruling in the case. In her ruling, the trial judge confirmed the liable verdict of the jury and awarded the plaintiff US\$272,859 and L\$7,651,975.00 as specific damages and US\$50,000.00 as punitive damages. The counsel for the defendant noted exception and announced an appeal to the Supreme Court sitting in its October Term, A.D. 2019.

On September 9, 2019, the appellant bank filed a fifteen count bill of exceptions cataloging several errors allegedly committed by the trial judge. We resubmit counts 6, 8, 9, 10, 11, 13 and 14 thereof for their relevance to this Opinion.

“Count 6. Your Honor and this Honorable Court committed reversible error when Your Honor sustained the argument of the plaintiff/appellee that the Alarm Respond Security Guard Services is an agent void of evidence of any probative value but upon your reliance on the ruling of your predecessor on the issue of law declaring the existence of agency between the defendant/appellant and the Alarm Respond Security Guard Services. Hence, Your Honor final judgment should be reversed.

Count 8. That Your Honor committed reversible error when you ignored the argument of defendant/appellant in its motion for new trial that the police report presented during trial upon which the empaneled jury relied and returned with a liable verdict against defendant/appellant only alleged burglary but did not show the value of items taken from the plaintiff/appellee Young Philip Business Center neither did it show how the items were allegedly taken from the store; that notwithstanding the absence in the report of the value of items allegedly stolen, Your Honor sustained the verdict of liable by the jury which runs counter to the weight of the evidence. Hence, your Honor committed a reversible error for which your final judgment should be reversed.

Count 9. That Your Honor committed reversible error when you ignored the of defendant/appellant in its motion for new trial that the verdict of the empaneled jury should be set aside and a new trial be awarded because during the trial the defendant/appellant’s witness in person of Perry G. Gbeyia testified to the effect that “the police report was faulty because it was not professionally done and all the evidence observed at the crime scene together with all parties that were supposed to be part of the investigation were not considered into the investigation; that the condition to establish the crime elements in professional criminal investigation that will establish the link of the crime scene to the victim or the criminal and many other aspects of criminal investigation were not observed in relation to all of the physical evidence observed at the crime scene; that the alleged burglary could not and cannot be established. Therefore, this is not a burglary, rather an attempt to create a make-believe crime scene”. That notwithstanding this very critical, crucial and key testimony of the witness produced by defendant/appellant remained unrebutted, yet the empaneled jury without the fear of God relied on the make-believe crime scene and returned with a

verdict which is grossly against the weight of the evidence and Your Honor and this Honorable Court sustained the verdict of the empaneled jury. Hence, Your Honor committed a reversible error for which your final judgment should be reversed.

Count 10. That Your Honor committed reversible error when you ignored argument of defendant/appellant regarding setting aside the verdict and awarding new trial; in that, during the trial, three of defendant/appellant's witnesses in persons of Messrs. Molley Korleh, Joseph J. Nyengar and Perry S. Gbeyai testified substantially that following the opening of the plaintiff/appellee's business center after the alleged burglary, there was a key inserted in a small iron door leading to the store and the key was then given to the police; that upon their return to conduct an inventory of the goods, the very key that locked the door could not open the door and so the lock to the door was drilled to have same opened; that Mr. Joseph Nyengar also testified that during the closure of the Young Philip Business Center, all the keys to the Young Philip Business Center remained in the possession of the plaintiff/appellee Philip Gayetay's wife but interestingly after the alleged burglary, the police discovered a key that was left in the inner door of the store and this same key was used by the police to lock the door and remained in the custody of the police after the investigation. Notwithstanding the clear and cogent evidence produced by these witnesses of the defendant/appellant pointing to their own design to create this make-believe crime scene for the purpose of robbing defendant/appellant, the empaneled jury turned blind eyes on the clear and cogent testimonies of the defendant/appellant's witnesses and returned a verdict that is contrary to the weight of the evidence which was sustained by you. Hence, Your Honor committed a reversible error for which your final judgment should be reversed.

Count 11. That Your Honor committed reversible error when you ignored the argument of defendant/appellant regarding the setting aside of the verdict and awarding a new trial; in that, during the trial the defendant/appellant produced two witnesses in persons of Odysseus Dolo and Kou Dokie Wleyon, all of whom testified in substance that the weekly susu ended in November 2018 and that the plaintiff/appellee did not owe them or any member of the susu as the result of the alleged burglary as claimed by the plaintiff/appellee, Mr. Philip

Gayetay in his testimony; that defendant/appellant's witnesses further testified that they are not in search of the plaintiff/appellee, Mr. Philip Gayetay as alleged by him; that after the alleged burglary, plaintiff/appellee personally went to witness Kou Dokie Wleyon's store and purchased goods; that notwithstanding the clear and cogent evidence of the two witnesses of defendant/appellant pointing to the falsehood of the allegation by plaintiff/appellee that he had susu money for his members including susu money for the witnesses kept in his store and that because of the closure of the store by the Commercial Court he lost everything; that although this clear and cogent evidence of the two witnesses of defendant/appellant was accorded no credence, Your Honor sustained the verdict of the empaneled jury contrary to law. Hence, Your Honor committed a reversible error for which your final judgment should be reversed.

Count 13. That Your Honor committed reversible error when you ignored the argument of defendant/appellant in its motion for new trial regarding the setting aside of the verdict of the jury; in that, although the proof of special damages with particularity is wanting in view of the fact that the loss allegedly sustained by appellee/plaintiff is uncertain, speculative and tainted with fraud, Your Honor ruled, sustaining the verdict with prejudice; that Your Honor ignored the argument that the claim of special damages is speculative and uncertain because special damages of US\$272,849.00 awarded by the jury is contrary to the amount of US\$171,901.00 that was reflected in plaintiff /appellee's single handedly prepared inventory listing and marked as p/4 in bulk. Such a showing proves that the special damages claimed by the plaintiff/appellee is uncertain, speculative and cannot be recovered. Notwithstanding, Your Honor, in your final judgment, sustained the verdict of liable contrary to the weight of the evidence produced/ Hence, Your Honor committed a reversible error for which your final judgment should be reversed.

Count 14. That Your Honor committed reversible error when you ignored the argument of defendant/appellant in the motion for new trial that the verdict should be set aside and a new trial awarded; in that, from a careful perusal of the inventory list single handedly prepared by plaintiff/appellee, said inventory list contained items which allege disappearance

from the plaintiff's store is yet to be explained; in that, the police report relied on by plaintiff/appellee to file the suit and the empaneled jury reliance on said report to award the claim of plaintiff/appellee is indeed silent on the alleged loss sustained by the plaintiff/appellee and how those items contained in the inventory listing prepared by the plaintiff/appellee disappeared. The failure of plaintiff/appellee to produce evidence to demonstrate that the items for which he is claiming damages were in the store and they were stolen and how they were stolen is a clear manifestation that the plaintiff/appellee failed to prove special damages with particularity, the verdict of the empaneled jury being contrary to the weight of the evidence and same being sustained by Your Honor, constitutes reversible error. Hence, Your Honor committed a reversible error for which your final judgment should be reversed.

Wherefore, and in view of the foregoing, appellant submits this bill of exceptions for Your Honor's approval so that the records in this case would be reviewed by the Honorable Supreme Court of Liberia during its October Term, A.D 2019".

We have painstakingly recorded the facts in this case and thoroughly analyzed the evidence adduced by the parties during trial and the issue determinative of this case is: whether or not the verdict of the trial jury is contrary to the weight of the evidence adduced during trial.

The principal contention of the appellant bank in its bill of exceptions touches on the awards of US\$272,859.00 and L\$7,651,975.00 as special damages and US\$50,000.00 as punitive damages arising from the lawsuit of damages for wrong filed by the appellee against the appellant bank in the Civil Law Court, Sixth Judicial Circuit, Montserrado County. The appellee alleged that while his business center was under the supervision of the Alarm Respond Security Guard Services hired by the appellant bank to provide security for his business center closed down by the Commercial Court of Liberia for the appellee's default in the repayment of the US\$15,000.00 loan procured from the appellant

bank, unknown persons had broken into the appellee's business center and allegedly took away all the goods and cash that were stored therein.

The certified records also reveal that on July 14, 2018, the appellant bank wrote and notified the Liberian National Police of the alleged burglary that occurred at the business center and requested the police to conduct an investigation into the incident. The investigation of the police found the security guard service liable due to the negligence of the officers on duty; that upon hearing that the business center was burglarized, the proprietor, Philip Gayetay, proceeded to the Commercial Court and made a partial payment of US\$5,000.00 against the judgment amount of US\$19,000.00 and by that part payment, the Commercial Court vacated the attachment and ordered the business center opened for the conduct of an inventory in the presence of the appellee or its representative, the security guard service, the sheriff of the Commercial Court, a representative of the appellant bank and the Liberian National Police to determine if goods and cash stored in the business center were stolen by unknown persons. We hasten to note that with the presence of the Liberian National Police at the business center in Ganta, Nimba County, the issue of losses sustained and goods and cash stolen from the business center was never raised by the proprietor, Philip Gayetay, in light of the volume of money and goods that he claimed were allegedly stolen owing to the burglary as there is no evidence in the records to point to that assertion. Moreover, the gravamen of the appellee's action of damages for wrong alleged principally that "a significant portion of its assorted goods including stock valued at US\$250,419.00, two gold chains and a gold bracelet worth US\$2,200.00, 348 grams of raw gold worth US\$15,060., New Tab Air 7 phone worth US\$450.00, cash of US\$3,200.00 and L\$254, 250.00

representing the total sales between May 11 and May 15, 2018, were stolen from the business center of the proprietor. In furtherance thereto, the he presented the following breakdown:

- a. Cash from the sale of ten thousand gallons of gasoline at the rate of L\$500.00 per gallon L\$5,000,000.00
- b. Customers physical cash kept in the safe for weekly susu.....L\$440,000.00
- c. Customers physical cash kept in the safe for daily susu.....L\$1,711,975.00
- d. Customer Jeff Loryee’s cash for safe keeping.....L\$500,000.00”

From a careful review of these huge amounts of physical cash and goods allegedly stored in the business center before its closure, this Court wonders why the proprietor of the appellee was never interested in the conduct of an inventory in the presence of all the parties to have clearly established his losses, if any?

The records further show that the appellee attached to its complaint exhibits that catalogued goods allegedly purchased by the proprietor from three distinct business centers, but strangely with the same business logo on each and every cash receipt issued to the appellee through its proprietor, Philip Gayetay, by these business entities. While this Court cannot pass on the genuineness of these receipts as same were admitted into evidence in the court below; however, the conduct of an inventory in the presence of the parties of interest was absolutely necessary as the only material evidence that could have come in support of these receipts. Besides, a careful review of the receipts issued by the three distinct and separate business entities, namely: New Moon Business Center, Moving Train Business Center and Franc Business Center, which contained the same business logo is contrary to any business practice in this jurisdiction and appellant bank vehemently rejected to the admission of these receipts into evidence.

Further, we have seen from the records that the appellee produced several pieces of documentary evidence which included susu records, receipts from purchases allegedly made prior to the burglary, as well as inventory list containing names of items allegedly stolen on the day of the alleged burglary. These pieces of evidence were challenged or objected to by the appellant as self-serving documents prepared by the appellee to justify that, in deed and in fact, burglary took place and that those items, including physical cash, were stolen from the appellee. Also, during the trial, the appellee's principal witness, the proprietor, Philip Gayetay, testified and maintained that he sold ten thousand gallons of gasoline at the rate of Five Hundred Liberian (L\$500.00) Dollars per gallon thus generating the amount of Five Million Liberian (L\$5,000,000.00) Dollars which money was kept in the business center prior to the alleged burglary and same was also stolen.

The undisputed facts reveal that the appellant bank instituted a debt action by attachment in the Commercial Court against the appellee for its indebtedness to the appellant bank in the amount of Nineteen Thousand United States (US\$19,000.00) Dollars. The Commercial Court found the appellee liable to the appellant bank and ordered the appellee (business center) closed until full settlement is made and the records show that the store was closed for seven and a half weeks before the alleged burglary occurred. The question this Court ponders over is, why the appellee's proprietor, Mr. Philip Gayetay, with this huge sales allegedly made, could not have mustered the courage to repay the loan? Further, the proprietor testified that he had susu money in the amount of Four Hundred Forty Thousand Liberian (L\$440,000.00) Dollars kept in the business center and the susu money was stolen during the burglary.

A review of the records shows that during the trial, two subpoenaed witnesses, Odysseus Saye Dolo and Kou Dokie Wleyon, who were members of the susu, testified and refuted the allegation that the Proprietor had their susu money and that they were in pursuit of him. The subpoenaed witnesses' testimonies were never rebutted. Excerpts from said testimonies are cited below:

Defendant's first subpoenaed witness, Odysseus Saye Dolo...

Q. Mr. Witness, how long is it now since the existence of this susu?

A. The last susu ended and since then we have never established another one; it started last year January and ended last year November.

Q. Mr. Witness, what do you mean the susu ended last year November?

A. In doing this susu Mr. Young Philip and our secretary have the document and we play a ticket; we were 44 members and each of the members was taking the susu according to his hand on a weekly basis, every Saturday.

On the cross examination, the witness responded thus:

Q. Mr. Witness, the payment made to the susu members is not made or paid in the presence of all susu members, am I correct?

A. No.

Q. Mr. Witness, by that answer, please say for the benefit of the court and the jury how do you know or got to know that all of the members in the susu have gotten their money?

A. This is a weekly susu and I am obligated to pay mine until all the 44 members are completed. Therefore, having completed the payment of my obligations and thereby declared that the susu had ended.

Q. Mr. Witness, I want to know if you have any knowledge on any of the susu members looking for Mr. Gayetay that they have not received their money?

A. No. It is in this court that I am hearing the information.

Defendant's second subpoenaed witness, Kou Dokie Wleyon...

Q. Madam Witness, please tell what you know about the susu?

A. What I know the susu is I did weekly susu with him (Philip Gayetay) and the susu ended one and a half years ago and I have nothing to do with the susu anymore. Every Saturday we put, then one person eat.

Q. Madam Witness, by that answer, does Mr. Philip Gayetay owe you regarding the susu?

A. No.

On the cross examination, the witness responded thus:

Q. Madam Witness, what do you mean by past susu father?

A. What I meant is I did the susu, I ate and it ended.

Q. Madam Witness, you and Odysseus Dolo were members of the same susu club, am I correct?

A. Yes, we were members of the same susu club

Q. Madam Witness, you told this court and the jury that you do not remember the last time you paid money to this susu? Please tell the court and the jury how do you know that the susu ended one and a half years ago, say if you know?

A. I said that because the susu was done long time ago so I cannot remember the main date the susu ended.

Q. Madam Witness, please for the benefit of the court and the jury when does the susu end; is it at the time when all of the members have paid or at the time when all of the members have received their hands?

A. When everybody finished paying the reason for which I said it is because I paid all of my money; that it is ticket system when you take the ticket the number fall on, they pay you until everybody eats.

These testimonies, made by the subpoenaed witnesses, intended to impeach and discredit the credibility of the testimonies of the appellee and its witnesses were never rebutted by the appellee. These testimonies not having been rebutted by the appellee, how could the jury, being trier of the facts, reach a verdict of liable against the appellant bank to have awarded the appellee both special and punitive damages?

We have undertaken a thorough scrutiny of the certified records in this case to establish whether the awards of special and punitive damages to the appellee by the petit jury and confirmed by the trial judge are supported by the records and the laws controlling. It is trite law that “when items of special damage are claimed, they shall be specifically stated”. 1 CLCR 9.5(7). To expatiate this statutory provision, the Supreme Court of Liberia has opined in the case: *Zahn Mayson v. Moses Bowen*, 24 LLR 365 (1975) that “allegation of the sum as special damages must be substantially proven by unimpeached evidence; and according to the laws of this country, it is not sufficient to merely allege an injury and claim damages therefor, but the plaintiff must prove the injury complained of and that he has been damaged in a sum commensurate with the amount claimed as damages”.

Traversing the averments contained in the complaint of the appellee filed before the court below, the appellant bank contended that there was never a time the appellee made disclosure of cash and items of goods at the time the business center was closed by attachment by the Commercial Court for inventory to be taken prior to the closure of the

business center. The appellant bank also contended that the inventory that forms the basis for the legal action against it was one formulated and executed by the proprietor, Philip Gayetay, himself, mainly drawn or prepared from purported cash receipts issued to him by three purported distinct and separate business entities with the same logo. This contention by the appellant bank finds its support in the certified records in this case because there is no evidence that shows that the inventory was conducted in the presence of all the parties of interest: the police, the appellee's proprietor, the appellant bank and the commercial court to give account of whatever losses sustained by the appellee as a consequence of the alleged burglary.

This Court further notes from the perusal of the appellee's complaint of action of damages for wrong filed in the court below, the appellee had prayed the court for an award of US\$171,901.00 as special damages, but the petit jury awarded US\$272,849.00 and L\$7,651,975.00 as special damages and US\$50,000.00 as punitive damages without an evidentiary proof to substantiate the special damages of US\$171,901.00 nor did the petit jury justify the dramatic increase of the special damages from US\$171,901.00 to US\$272,849.00.

As we have stated earlier in this Opinion, special damages must be pleaded with particularity or specificity, meaning in straight interpretation that the claim of any amount for special damages must be substantiated by documentary evidence which is lacking in this case. That said, the various amounts awarded to the appellee by the petit jury with the confirmation of the trial judge are not supported by the records in this case.

While the law requires that "when the jury has reached a verdict after having given consideration to the evidence which is sufficient to

support the verdict, the verdict should not be disturbed by the appellate court”, *Liberia Oil Refinery Company v. Mahmoud*, 21 LLR 201 (2001), however, said verdict must be the outcome of the facts and evidence. It is also a principle of law hoary with age that a unanimous verdict of the petit jury should not be set aside, except the evidence adduced during trial runs contrary to the facts in the case. In the instant case, the appellee alleged in its complaint of damages for wrong that huge amounts of money and goods were stolen from the business center as the result of the alleged burglary, but no inventory was taken by the appellee in the presence of interested parties whose presence thereat was an absolute necessity as money and goods allegedly stored in the business center could have been inventoried to establish whether or not such huge amounts of money and goods were stored therein in the first place and stolen during the alleged burglary. The Supreme Court has held in the case: *Ramez Haider v. Aref Kassas and La Fondiara Insurance Company*, 20 LLR 324, 329, (1971) that “where it is clearly shown that the facts presented are insufficient for the jury to arrive at a verdict that in the absence of such sufficiency of evidence the verdict falls within the necessity for granting a new trial”. Given what we have said the motion for new trial filed by the appellant bank was proper and should have been granted by the trial court and the verdict of the petit should have been set aside.

During the argument of the cause of action before this Court, the appellee contended that the appellant bank did not deny that the business center was burglarized but the appellant bank being the principal who contracted the services of the security guard should be held liable to the appellee for all the losses in cash and goods sustained. On the other hand, the appellant bank moved the trial court to allow

the security guard to be joined as a party defendant because the security guard is an independent contractor.

In traversing the contention by the appellant bank stated supra, the trial Judge denied the application to join the security guard in the trial as party defendant and premised his decision on the ground that the appellant bank is the principal and that the security guard is its agent. This Court would have put itself under duty to make a determination of whether or not the appellant bank is the principal and the security guard as its agent and that the appellant bank should be held liable for the alleged losses of goods and cash sustained from the alleged burglary of the business center, but the appellee's failure through its witnesses to establish by the preponderance of the evidence that the huge amounts of money enumerated in his complaint and the goods allegedly stored in the business center were stolen, robs this Court of the opportunity to review and pass on said contention. This Court held in the case: *Liberia Oil Refinery Company v. Mahmoud*, 21 LLR 201 (1972) that "preponderance goes to the quality and not the quantum of the evidence". The Supreme Court also opined that "the preponderance of evidence required to establish proof does not depend on the number of witnesses produced but evidence which is more convincing to the mind", *American Life Insurance Company v. Sandy*, 32 LLR 338 (1984). This Court therefore holds that, the verdict of liable brought by the petit jury against the appellant bank should not be upheld or sustained by it.

WHEREFORE, and in view of the foregoing facts and circumstances, the verdict of the petit jury being contrary to the weight of evidence adduced during trial is hereby set aside and the appeal granted. The Clerk of this Court is ordered to send a Mandate to the court below

commending the Judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors C. Alexander B. Zoe and Mamee S. Gongbah of the Zoe & Partners and the Liberty Law Firm, respectively, appeared for the Appellant. Counsellors Arthur T. Johnson and Samuel S. Pearson of the Consortium of Legal Practitioners, Inc. appeared for the Appellee.