



contribution to the investment proposal, and the said post-dated check would be cashed three (3) years after the date of the investment proposal. However, this was contingent on the investment proposal materializing and been successful.

The parties contention arises from the fact that the appellant, who is the plaintiff in the lower court, filed his complaint alleging that, he accepted the appellee's proposal in consideration for a quarterly interest of four percent (4%), because the Euros Financial Investment attracted an interest of sixteen percent (16%) payable annually with an annual commission charge of Twelve Thousand Five Hundred Euros (Euros 12,500), for which, he the appellant was supposed to receive interest payments of Fifty Five Thousand Six Hundred Ninety Five Dollars and Twelve Cents (US\$55,695.12).

The appellant has alleged that he invested a total of Three Hundred and Fifty Thousand Euros (Euros 350,000) into the said agreement and that the said agreement has matured; appellant has further alleged that appellee made partial payments against the sixteen percent (16%) interest totaling the amount of United States Dollars One Hundred Sixty-Five Thousand Six Hundred Ninety-Five Dollars and Twelve Cents (US\$165,695.12) for a period covering March 2017 to March 2019, leaving an outstanding amount of United States Dollars One Thousand Three Hundred Ninety Dollars and Twenty-Four Cents (US\$1,390.24) for the said period. The appellant further alleged that the appellee had failed and refused to pay, despite several requests from him (appellant) to the appellee for the outstanding total amount of United States Dollars Four Hundred and Forty-Eight Thousand Nine Hundred Ten Dollars and Thirty-Six Cents (US\$448,910.36) several months after the said financial instrument executed between them had matured.

The appellee, defendant below filed his answer conceding that he invited and engaged the appellant on to join him into a proposed Financial Scheme valued at Seven Hundred Eighty-Three Thousand Six Hundred and Fifty United States Dollars (US\$783,650.00), on an interest and commission basis but on the condition that the said financial scheme had to materialize before any party could be entitled to whatever benefits they had under the said arrangement; however, the said investment proposal did not materialize and was unsuccessful as Unicredit Banca Italy did not provide the loan of Seven Hundred Eighty-Three Thousand Six Hundred and Fifty United States Dollars (US\$783,650.00) as contemplated by the investment proposal.

The appellee further argued that the appellant is fully aware that the investment proposal did not materialize and was not successful and the appellant being fully aware of the fact that the

investment proposal did not materialize and was unsuccessful proceeded to deposit appellee's guarantee check of United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) with the deliberate intent of securing the said funds from appellee and unjustifiably enriching himself at the expense of the appellee, but the said check was returned by the bank; the appellee further argued that the appellant, still in his attempt to unjustifiably enrich himself at the expense of the appellee, after failing to cash appellee's check, instituted an action of debt by attachment against him (appellee) alleging that he (appellee) is indebted to him in the amount of Four Hundred Forty-Four Thousand Nine Hundred and Ten Dollars and Thirty-Six Cents (US\$448,910.36), which is totally against the agreement signed by the parties.

The case was ruled to trial by the Debt Court for Montserrado County, and the appellant presented his side of the case and paraded his witnesses, at the close of evidence presented by the appellant and after the appellant had rested, the appellee filed a motion for judgment during trial arguing that: the appellant miserably failed to present any evidence to prove the allegations as contained in his complaint by the preponderance of the evidence; that the agreement between the parties was clear, that if the investment proposal did not materialize, the financial investment would become moot, and since the investment proposal did not materialize, the said proposal became moot and the appellant was not entitled to any commission whatsoever from the said investment proposal; that the check issued by the appellee to the appellant should have been cashed three (3) years after the proposal materialized and since the proposal did not materialized, the same should not have been deposited or cashed by the appellant; that the issuance of the United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) to the appellant did not and could not give rise to a debt and the proposed commission was neither a debt nor evidence of payment of a debt; that since the records confirm that Unicredit Bank of Italy did not provide the financing of Seven Hundred Eighty-Three Thousand Six Hundred and Fifty United States Dollars (US\$783,650.00) as contemplated, the appellant did not contribute United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) as proposed; that there is nothing in the certified records to show that the parties entered into any agreement for payment by the appellee of a specific sum that is due and that since there is no evidence of such, his (appellee) motion should be granted and the complaint should be denied and dismiss according to law.

The appellant filed his resistance to the appellee's motion for judgment during trial contending that the said motion as filed by the appellee failed to prove any concession by him (appellant); that the said amount as sued for by him (appellant) is a debt within the contemplation of the law; that the agreement entered into by the parties clearly provides that the appellee was responsible to pay the appellant interest and commission based upon his (appellant) investment; that he (appellant) re-affirms that he and the appellee entered into a financial agreement since June 2017 and that he performed when he borrowed the appellee the sum of United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) and since the appellee has failed to settle his financial obligations, contrary to the terms and conditions of the said agreement, the said action of debt will lie.

The appellant then prayed that the said motion for judgment during trial be dismissed and that the matter be proceeded with.

The trial court entertained arguments on the motion for judgment during trial and ruled granting the said motion on grounds that the appellant did not prove its case by the preponderance of the evidence. The appellant, totally dissatisfied with the said ruling of the trial court excepted and announced an appeal to this Court.

The appellant in its bill of exceptions argues that the trial judge erred when he granted the appellee's motion for judgment during trial despite the overwhelming prima facie evidence adduced by the appellant and confirmed by the lower court; that the trial court erred when it overlooked the evidence adduced by the appellant that contradicts the assertion of the appellee that he (appellee) relied upon to file the said motion for judgment during trial; that the said agreement that was executed between the parties creates a loan under our laws and that the non-payment of the said amount under the agreement by the appellee amounts to a debt owed the appellant by the appellee.

The appellant then prayed this Court to correct the errors of the trial judge and reverse the judgment of the lower court.

Upon review, there is only one question that we find determinative of this appeal, that is: was the trial judge's ruling granting the appellee's motion for judgment during trial supported by the law and facts of the case?

A motion for judgment during trial may be granted where: after the close of the evidence presented by an opposing party with respect to a claim or issue, or at any given time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to a judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. *Civil Procedure Law Rev. Code* 1. 26:2.

A motion for judgment during trial as provided by the Civil Procedure Law, is a request made by a party asking the judge to rule in their favor on the basis that the opposing party has insufficient evidence to reasonably support their case. Pursuant to Section 26.2 of the Civil Procedure Law, the said motion is applicable in the following instances to wit:

- After the plaintiff's presentation of evidence: the defendant can make this motion, arguing that the plaintiff has not provided enough evidence to support a verdict in their favor;
- After the defendant's presentation of evidence: either party can make this motion on ground that the movant is entitled to a judgment as a matter of law.
- Anytime during trial: either party can make this motion before the case is submitted to the jury, on the basis that the opposing party made an admission to a claim or issue.

In the present case, the appellant pleaded an agreement executed between the parties to establish that there was an issue of debt existing between them. The appellant has argued that the investment agreement signed between he and the appellee had matured under the agreement for him to receive the benefits of the said agreement; moreover, the appellant has also argued that he give the appellant the amount of United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) and that he is entitled to this amount plus applicable interests to be paid by the appellee.

The appellee's major defense is that the financial investment agreement that was executed between him and the appellant did not mature as the Italian Bank did not grant of the loan

and therefore, the appellant is not entitled to benefits under the said agreement; that there was no loan agreement between the parties that would have amounted to a debt as the agreement was an investment proposal and not a loan agreement.

In fact during the appellant's testimony he was asked the following questions:

Q: Do you know the defendant (appellee)?

A: I know the appellee, he borrowed money from me.

Q: For the records, you mentioned in your testimony that he borrowed money from you, please tell us what instrument do you rely on to make such a claim against the appellee in this matter?

A: Diego (appellee) issued me three (3) instruments in regards to the sum of money he borrowed from me. We executed an instrument of agreement in the sum of United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) and he issued me a post-dated cheque of United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00) as guarantee for the loan, with an annual interest of Fifty-Five Thousand Six Hundred and Ninety-Five United States Dollars and Twelve Cents (US\$55,695.12) for the first year interest payment of 2017.

The witness was asked the following questions on the cross and he provided the following answers:

Q: Mr. Witness, you informed this court that the defendant borrowed you the amount of United States Dollars Three Hundred and Ninety-One Thousand Eight Hundred and Twenty-Five Dollars (US\$391,825.00), in substantiation of the claim you proffered to this honorable court a written instrument, evidencing your claim. Am I correct?

A: Yes.

Q: Mr. Witness, amongst those instruments that you just testified to, one of them is a financial investment, do you stand by these terms and conditions of this instrument?

A: Yes, I stand by the terms and conditions.

Q: Mr. Witness, can you please tell this Court by what means did you borrow the defendant?

A: It was thru a written bank instrument done on June 5, 2017.

Q: Mr. Witness, for the benefit of this court, where is that written instruction?

A: The original instruction is with the GT Bank, and a copy has been filed with this court.

A motion for judgment during trial is akin to a motion for directed verdict. It challenges the sufficiency of the opponent's evidence before the case is submitted for final determination.

Such a motion is proper only where, even taking the evidence in the light most favorable to the non-moving party, no prima facie case has been established. It is not a vehicle for the trial judge to weigh credibility, resolve factual disputes, or prematurely terminate proceedings.

This Court has consistently held, that motions for judgment during trial must be sparingly granted and only where the law clearly favors one side. Where material facts remain contested, the motion must be denied and the trial allowed to proceed. as in *Franklin v. CICO Company*, Supreme Court Opinion, 2024; *Golden Veroleum v. Tropical Logistics*, Supreme Court Opinion, 2021.

The records having established that the appellant introduced documentary evidence of the an agreement between the parties and testimony regarding non-payment therefrom and that these allegations raised factual disputes as to the indebtedness and satisfaction thereof by the appellee, the Debt Court, in granting judgment during trial, acted prematurely as it should have allowed the appellee to counter the said allegations of the appellant with evidence and other instruments in order to adequately and properly lay the matter to rest.

This Court believes that there been a clear dispute of the facts in this case, and where material facts remain contested, the motion must be denied and the trial allowed to proceed; therefore, we herewith hold that Section 26.2 of the Civil Procedure Law, "Motion for Judgment During Trial", being inapplicable to the present case since contentious factual issues remained undetermined, the granting of the said motion was untenable, the trial court erred by granting the said motion.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Debt Court granting appellee's motion for judgment during trial is hereby reversed. The case is remanded to the Debt Court for Montserrado County with instructions to conduct a full trial, permitting both parties to present their evidence, so that the rights and obligations of the parties may be properly determined in accordance with law. The Clerk of this Court is ordered to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction and give effect to this ruling. Costs are disallowed. IT IS HEREBY SO ORDERED.

*WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR JONATHAN T. MASSAQUOI OF THE INTERNATIONAL LAW GROUP APPEARED FOR THE APPELLANTS. COUNSELLOR STEPHEN DUNBAR OF THE DUNBAR & DUNBAR LAW OFFICES APPEARED FOR THE APPELLEE.*

*Remanded.*