

**THE LIBERIA BANK FOR DEVELOPMENT AND INVESTMENT
(LBDI),** represented by its President, Appellant, v. **JOSEPH ISAAC ANTHONY ,**
Executor of the Estate of the late ISAAC ANTHONY, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: December 8, 1993. Decided: February 18, 1994.

1. An action of debt is the proper action to recover on a rent due for a sum certain after the expiration of the term and not an action of damages.
2. Debt is defined as a sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it.
3. In an action of debt for rent due, the lessee need not be in actual possession of the property. All that is required is that he must have control of the premises.
4. An action of debt is commenced by the filing of a complaint, and where the plaintiff notices that he has sued for an amount less than the amount legally due him, the appropriated remedy is to withdraw and re-file.

The appellee entered into a lease agreement with the appellant for the ground floor of his property located on Randall Street for a period of five years, effective April 26, 1983, for an annual rental of LD\$7,000.00. After the expiration of the lease, it was renewed for an additional one year (April 26, 1988-April 25, 1989) for the amount of LD\$8,500.00, following which the appellant informed appellee that it had no intention to further renew the lease. Notwithstanding, the appellant failed to take possession of its equipment and machineries from the premises until September 30, 1992. Consequently, appellee instituted an action of debt against appellant for the amount of LD\$12,000.00, which amount appellee contended represented rental he would have received had appellant removed its equipment and machineries from the premises. During the course of the trial, the appellee filed a motion to increase the claim from LD\$12,000.00 to LD\$29,042.00. The appellant contended that the action of debt cannot be maintained because it was not indebted to the appellee, and that it was not in actual possession of the property after the expiration of the renewed lease. The trial court ruled for the appellee. On appeal, the Supreme Court held that the action of debt was the proper action to recover on a rent due for a sum certain after the expiration of the lease and not an action of damages; and that the lessee need not be in actual possession of the property. The Court also opined that where the lessor

discovers that the amount sued for is less than the amount owed, the remedy is to withdraw and refile, and not by motion to increase the amount originally sued for as was done in the instant case. The judgment was therefore *affirmed* with modification.

Jamesetta Howard appeared for appellant/defendant. *Toye C. Barnard* appeared for appellee/plaintiff.

MR. JUSTICE MORRIS delivered the opinion of the Court.

According to the history of this case, the late Mr. Isaac Anthony, leased to the Liberian Bank for Development and Investment, now referred to as the Development Bank, the ground floor of his building located on Randall Street, Monrovia, consisting of a one door store room. The lease was for five years effective from April 26, 1983 to April 1988 for the amount of Seven Thousand (\$7,000.00) Liberian Dollars per annum. The parties renewed this lease agreement for an additional year, April 26, 1988 to April 25, 1989 with an annual rental of Liberian Eight Thousand Five Hundred (L\$8,500.00) Dollars payable in advance. The appellant bank wrote Isaac Anthony on April 25, 1989 informing him that the bank did not intend to renew the lease for the premises again and that he should take possession of the said premises. However, the bank did not remove the laundry equipment and the machineries that were stored in the leased premises.

The records reveal that in 1980, Mr. Warren Cooper borrowed Seventy Three Thousand Four Hundred Ninety (\$73,490.00) Dollars from the Development Bank to finance the purchase of the Quick Service Laundry equipment. In order to secure the loan, the bank entered into a chattel mortgage with Mr. Cooper on October 31, 1980. The mortgage was foreclosed by the Bank and it entered into a 5-year lease agreement with Mr. Isaac Anthony. Even though the bank wrote Mr. Isaac Anthony on April 25, 1989, stating that it was not interested in renewing the lease, and that Mr. Isaac Anthony should take possession, yet, it did not remove the equipment and machineries from the building until September 30, 1992. Hence, plaintiff/ appellee is contending that the defendant/appellant should pay the amount of Eight Thousand Five (L\$8,500.00) Liberian Dollars per annum up to and including September 30, 1992 when the equipment and machineries were removed.

Instead of suing for of Eight Thousand Five Hundred (L\$8,500.00) Liberian Dollars, appellee sued for Twelve Thousand (L\$12,000.00) Liberian Dollars, which represents the amount a third party had offered for the premises which appellee could not accept because the appellant had not taken delivery of its equipment and machineries.

Mr. Isaac Anthony died during the pendency of this case (April 22, 1992). The counsel for plaintiff/appellee filed a petition on December 22, 1992 informing the court about the death of the plaintiff and also requesting that Joseph Isaac Anthony Isaac, son of the deceased, be substituted for his father since letters testamentary has already been issued in his favor along with Gloria Isaac Moukaddem.

The respondent, in its returns maintained, among other things, that count one of the petition along with the whole petition should be dismissed because under our statute, the application for substitution of a party is made by motion and not by petition.

The petitioner conceded this issue in the returns and withdrew his petition with reservation, paid the costs and filed a motion. In count one of the respondent's resistance to the motion she maintained:

"That as to count one of the motion respondent says that the plaintiff, Isaac Anthony, having died while the action was pending, it has no objection to the substitution of Joseph Isaac Anthony as plaintiff".

The motion was heard and granted by the court and we quote hereunder the ruling of the judge as follows:

"In view of the motion for substitution of party, that is to say, Joseph Isaac Anthony be substituted for Isaac Anthony for the purpose of prosecuting this case as stated in count one of the motion and there being no resistance or objection to the said request of plaintiff, the said Joseph Isaac Anthony is ordered to substitute his late father Isaac Anthony as the plaintiff.

The motion to consolidate the claim of the plaintiff as provided by law is hereby granted with the express proviso that the case be ruled to trial and proof, that is to say, evidence be presented to the court to substantiate the increase in the amount of the action of debt from the original \$12,000.00 to \$29,042.00, all in Liberian dollars. And it is hereby so ordered".

There was no exception taken to the judge's ruling on the motion as quoted above. Even though in ruling on this motion, the judge in accordance with count eleven of the motion granted the request therein by changing the original amount sued for from Liberian twelve thousand (L\$12,000.00) dollars to Liberian twenty nine thousand forty two (L\$29,042.00) dollars, the counsel for respondent did not except

to the ruling as we have said before. Hence, we assumed that she was satisfied with the ruling.

Referable to count one of the bill of exceptions, the court says that the action of debt is the proper action to recover on a rent due for a sum certain after the expiration of the term and not action of damages. 52 C.J.S., *Landlord and Tenant*, § 552(B), pp. 363-365. Debt is also defined among other things as "A sum of money due by certain and express agreement as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it". BLACK'S LAW DICTIONARY 490 (4th ed.)

Count two and three of the bill of exceptions are not conceded, even though the appellant bank may not have taken actual possession, but the equipment and machineries stored in the premises were under its control because they were mortgaged to the said bank. The equipment and machineries were removed according to the records on September 30, 1992 from the premises.

With reference to count four of the bill of exceptions which raises the fact that the plaintiff/appellant sued for \$12,000.00 and while trial was in progress, the judge permitted the plaintiff to increase his claim by way of a motion, the court says that under the practice and procedure hoary with age in this jurisdiction debt actions are commenced by the filing of a complaint and where the plaintiff notices that he has sued for an amount lesser than the one legally due him, he shall withdraw and re-file.

The making of a motion to increase an amount in the debt action, especially so when trial has begun, is too foreign to this jurisdiction and untenable in law. Therefore, the motion made to raise the original amount of Twelve Thousand (\$12,000.00) Dollars to Twenty Nine Thousand Forty Two (\$29,042.00) Dollars is not conceded. However, this Court recognizes the fact from the records that a rental payment was made at the rate of \$8,500.00 Liberian dollars per annum. Hence, instead of \$12,000.00 this Court will award the \$8,500.00 for the one year.

In view of the above, and all that we have said, we hold that the judgment of the lower court be affirmed with modification. That is, the appellant pays an amount of Eight Thousand Five Hundred Liberian Dollars (\$8,500.00) with costs against the appellant. And it is hereby so ordered.

Judgment affirmed with modification