LIBERIA REALTY MANAGEMENT CORPORATION, represented by its Managing Director**,** ALFRED W. MORGAN, Appellant, *v.* **ELIZABETH MONTGOMERY**, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: March 18, 1985. Decided: June 21, 1985.

1. Public policy is defined as the principle of law which declares that no person can lawfully do that which has the tendency to be injurious to the public or against the public good, and which may be designated as the policy of the law or policy in relation to the administration of the law.
2. An agreement voluntarily made between competent persons will not be set aside on the ground of public policy or because it has turned out unfortunately for one party.
3. The question of whether a contract is void as against public policy must be determined from the terms of the contract itself; and in considering the ends to which it leads, the courts are not privileged to ascribe illegal purposes where there is nothing in the contract from which such conclusion may be reasonably drawn.
4. Law and public policy permit and require the outmost freedom of contract between competent parties, and it is only where a contract expressly contravenes the law as to the known public policy of the state that courts will hold it void.
5. An agreement is not void as against public policy unless the agreement itself requires that something be done which adversely affects the public welfare or is forbidden by law, or the consideration is illegal or immoral.

The appellee filed an action of debt in the Debt Court for Montserrado County against the appellant whom the former alleged owed him $12,570.00. The appellee having admitted that $8,000.00 of the amount sued for was not due at the time of the filing of the suit, the trial court, after hearing the evi-dence, entered judgment in favor of the appellee in the amount of $4,170.00. From this judgment, the appellant excepted and announced an appeal to the Supreme Court.

In its argument against the trial court's judgment, the appel-lant contended that the trial court had erred in characterizing appellant's defense of appellee's violation of public policy as a mixed issues of law and facts. The appellant had argued that in the course of its leasehold it had received a letter from the Liberian Industrial Development Company (LIDCO) asserting leasehold right to the identical property being leased by appellant from the appellee. The appellant's contention was that by this dual lease, the appellee had violated public policy, and that the violation relieved from payment of the rent.

The Supreme Court held the appellee's action not to be in violation of public policy,

noting that there were no provisions in the lease which violated the law. The Court, after defining public policy, opined that it had seen no violation of any public policy by the appellant's execution of two agreements for the same premises. The writing of the letter by LIDCO, the Court said, was of itself insufficient to constitute a violation of the law or an injury to the appellant, especially as the appellant continued to enjoy the use of the premises unmolested and undisturbed. The Court therefore *affirmed* the judgment of the trial court.

Daniel Draper of the Philip J. L. Brumskine Law Chambers appeared for defendant/appellant. *James Bull* of the Bull Law Firm appeared for plaintiff/appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellee herein entered an action of debt for $12,570.00 against the appellant in the Debt Court for Montserrado County. The records reveal that the appellee, Elizabeth Montgomery, leased her premises containing a four apartment concrete building on Ashmun Street, Monrovia, with all the appurtenance appertaining thereto, to the Liberia Realty Management Corporation, the appellant herein, for $8,400.00 per annum. According to the statement of account attached to defendant/appellant's answer, the appellant made the following payments: $8,400.00 for the period April 1, 1981 to March 31, 1982; $8,400.00 for the period April 1, 1982 to March 31, 1983; and $4,230.00 against the period April 1, 1983 to March 31, 1984, $4,230.00. A balance of $4,170.00 remained for the period April 1, 1983 to March 31, 1984. In respect of the foregoing therefore, appellant denied that he owed the plaintiff $12,570.00.

In her reply, the plaintiff conceded appellant's contention, acknowledging the because the $8,400.00 for the period April 1, 1984 to march 31, 1985 was not yet due at the time of the complaint, the real and actual amount owing the plaintiff at the time of filing of the complaint was $4,170.00, which was the balance due for the period April 1, 1983 to March 31 , 1984, after deduction of the part payment of $4,230.00 made against the $8,400.00 agreed to by the parties in the lease agreement. The defendant/appellant did not dispute the amount due the plaintiff as being $4,170.00, but it contended that the plaintiff violated the public policy of the nation by leasing to it the same premises which was leased to the Liberia Industrial Develop-ment Company (LIDCO). In this connection, appellant intima-ted that it was surprised to receive a letter from LIDCO advising it that at the time of the execution of the lease agreement between plaintiff and defendant, LIDCO had already leased the premises in question from the plaintiff. Copy of said letter and lease agreement were attached as exhibits "L" and "A".

The defendant argued further that the plaintiff had filed cancellation proceedings against LIDCO which were still pending before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The defendant has not however indicated that it has been molested or

disturbed by any person, including LIDCO, regarding its use of the premises and it in regard to which it still has the quiet and peaceful enjoyment of the use of said premises, without any molestation or hindrance. The only argument advanced by the defendant was that the judge erred in not passing on the legal issue of public policy. Rather than passing on that issue as a purely legal issue, the trial judge has instead treated the issue as being one of mixed law and facts.

Let us define public policy: "It is not easy to give a precise definition of public policy. It is perhaps correct to say that public policy is that principle of law which holds that no person can lawfully do that which has the tendency to be injurious to the public or against the public good, which may be designated, as it sometimes has been, the policy of the law or public policy in relation to the administration of the law. Where a contract belongs to this class, it will be declared void, although in the particular instance no injury to the public may have resulted. In other words, its validity is determined by its general tendency at the time it is made, and, if this is opposed to the interest of the public, it will be invalid even though the intent of the parties was good and no injury to the public would result in the particular case. The test is the evil tendency of the contract and not its actual injury to the public in a particular instance....." 60.11 9 CYC., *Agreement Contrary to Public Policy,* § 3, pp. 481-482.

Law writers maintain the following view about the phrase public policy:

> "*What is public policy generally; changes in public policy.* From a legal standpoint, the meaning of the phrase "public policy" is vague and variable, and there is no fixed rule or definition applicable to all cases. The courts have, however, frequently approved Lord Brougham's definition of public policy as the principle which declares that no one can lawfully do that which has a tendency to be injurious to the public welfare. This principle, it has been said, may be termed the policy of the law or the public policy in relation to the administration of the law. Public policy comprehends only the protection and promotion of public welfare, including public health and morality." 17 AM. JUR 2d, *Contracts,* pp. 533-534.

It has also been held that:

> "An agreement voluntarily made between competent persons is not lightly to be set aside on the grounds of public policy or because it has turned out unfortunately for one party." 17 AM. JUR 2d, *Contracts*, at 540, note 10.

The defendant/appellant has not shown from the terms of the lease agreement the elements which make the contract to be against public policy, except that the defendant/appellant had received a letter from the Liberia Industrial Development Company stating that it had a leased agreement for the same premises. In spite of the letter from LIDCO, the defendant/ appellant continued to enjoy the quiet and peaceful use of the premises without hindrance or molestations.

On this issue, legal authorities have held that:

> "The question whether a contract is void as against public policy must be determined

from the terms of the contract itself, and in considering the ends to which it leads, the courts are not privileged to ascribe illegal purposes where there is nothing in the contract from which such a conclusion may be reasonably drawn. . . .

Law and public policy permit and require the utmost freedom of contracting between competent parties and it is only where a contract expressly contravenes the law as the known public policy of the State that courts will not hold it void.

An agreement is not void as against public policy unless the agreement itself requires that something be done which adversely affects the public welfare or is forbidden by law, or the consideration is illegal or immoral." 17 AM. JUR 2d, *Contracts,* at 540, note 10.

From the foregoing laws cited and the circumstances surrounding this case, we can safely say that the argument advanced by the defendant/appellant, relative to the phrase "public policy", is not applicable to the case at bar. This issue of public policy, being the only pertinent issue raised in count 8 of the answer and relied upon by the defendant/appellant, our decision rejecting the contentions of the appellant raised in connection therewith means that the appeal crumbles.

The other issues raised in counts 3, 4 and 5 of the bill of exceptions do not warrant reversing the judgment of the trial court and are therefore overruled.

Counsel for defendant/appellant also argued before us that they had scheduled a time for a compromise meeting, but that the case was assigned prior to the time the meeting was scheduled to be held. The Court refrains from commenting on this issue as it is the prerogatives of both parties to compromise any matter before or after judgment in a cause, and the Court has absolutely nothing to do with that phase of the case.

In view of the surrounding circumstances, coupled with the facts narrated and the laws cited, it is our holding that the judgment of the lower court ought to be and the same is hereby affirmed and confirmed with costs against defendant/appellant. And it is so ordered.

Judgment affirmed.