

MIDDLE EAST TRADING CORPORATION, (METCO), by and thru its President,
ELI G. HAIKAL, Appellant, v. **THE CHASE MANHATTAN BANK, N.A.**, by and
thru General Manager, ROBERT FAIRALL, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
COURT, MONTSERRADO COUNTY.

Heard: January 11, 1984. Decided: February 9, 1984.

1. A point of contention in a pleading which raises a question of law and requires no evidence in order to decide in favour of one side or the other is a legal issue.
2. As the joining of factual issues requires a determination by the triers of the facts, so also the joining of legal issues mandatorily requires a determination by the trier of the law in favour of one side or the other.
3. All questions of law raised in the pleadings must first be disposed of by the court before the trial of the issues of fact.
4. Where the law issues in the pleadings have not been determined and passed upon by the trial court, a reversible error is committed and the case is properly remanded with instructions in this respect.

Appellant, Middle East Trading Corporation, filed an action of damages for wrong before the People's Sixth Judicial Circuit Court during its December, 1981, Term, against appellee, the Chase Manhattan Bank, N. A., a banking institution operating within the Republic of Liberia. In its complaint, appellant prayed for judgment in the amount of Four Hundred Sixty Two Thousand Six Hundred Eighteen Dollars and Forty-Two Cents (\$462,618.42) as special damages, and a sufficient amount to be awarded by the jury as general damages. Pleadings progressed and rested with the reply of the plaintiff, now appellant.

Following the hearing of arguments on the issues of law raised in the pleadings, the trial judge dismissed the complaint and ruled the appellant to costs on the ground that there was no basis for the complaint to go to a jury for trial. The appellant excepted to the ruling and announced an appeal to the 707 Honourable Supreme Court on a three-count bill of exceptions.

The Supreme Court reversed the judgment of the lower court and the remanded the case, noting as the basis therefor that the trial judge had failed to pass upon all of the issues of law raised in the pleadings by the parties, and that with respect to those issues upon which he had ruled and dismissed the complaint, the same contained mixed issues of law and facts which should have gone to the jury for a trial.

P. Amos George of the P. Amos George Law Firm appeared for the appellant. Christian D. Maxwell and H. Varney G. Sherman of the Maxwell & Maxwell Law Firm appeared for the appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

During the December 1981 Term of the People's Sixth Judicial Circuit Court, the plaintiff, now appellant, filed an action of damages for wrong against the Chase Manhattan Bank, N. A., Monrovia, Liberia, praying for judgement in the amount of \$462,618.42 as special damages, and an amount sufficient to be awarded by the jury as general damages. Pleadings were exchanged and they progressed and rested at the reply of the appellant. The case was duly assigned for argument on the issues of law raised in the pleadings during the said term of court, following which the trial judge dismissed the complaint and ruled the appellant to costs on the notion that there was no basis for the complaint to go to a jury for trial. The appellant excepted to this ruling and announced an appeal to this forum on a three-count bill of exceptions which we shall quote for the benefit of this opinion, as follows:

1. "That the plaintiff having instituted an action against defendant in damages, the defendant filed an answer in which he denied illegally withdrawing from plaintiff's account the sum of \$137,091.00 yet in the self-same answer it attempted to justify her reason for its refusal to credit plaintiff's account with said amount. Plaintiff submits that the issues of law raised in its reply, Your Honour omitted ruling on same but elected to pass on the issue of addendum which Your Honour aver releases the defendant Bank from all claim of action whatsoever.
2. And also because plaintiff submits that under the mode of pleadings and practice, an answer which both denies and justifies is bad and must therefore be dismissed. Plaintiff contends that it was error when Your Honour failed to rule on the issues of law raised in its reply.
3. And also because plaintiff avers that according to law extent, the court must, before passing on any issue of fact, determine the issues of law raised in the pleadings. If Your Honour had passed on the issues of law raised in counts 1 and 2 of the plaintiff's reply, Your Honour should have, in consonance with numerous decisions of the Honourable Supreme Court, dismissed defendant's answer and rule plaintiff's complaint and reply to trial of the facts raised therein. Yet Your Honour dismissed plaintiff's complaint and plaintiff then and there excepted and complained to the People's Supreme Tribunal."

As culled from the records certified to this Court, the appellant, in count one of its reply to the answer of the appellee, raised the legal issue that the answer was contradictory and evasive, in that although the appellee unauthorizedly withdrew from appellant's account, yet, in the same answer she attempts to set up a jurisdiction by alleging that appellant should have examined its statement of account and appraise appellee of any inconvenience,

forgeries and matters of that nature in order to avoid possible losses. In count two, the appellant contended that the answer was further contradictory and evasive in that while the appellee denied unauthorizedly withdrawing from appellant's account the amount of \$137,091.00, yet, at the same time it alleged in count three of the answer a justification that it had discovered an intended withdrawal of \$100,000.00 from appellant's account without showing any color. That in order for the appellee to set up a justification, it must show color by acknowledgment of the fact before setting up a justification.

In their respective briefs filed and argued before us, the appellant on its part maintained that the trial court committed a reversible error when it omitted the issues of law and dismissed the case on its merits. The appellee on the other hand strongly contended that the trial court did settle and pass upon the issues of law and correctly dismissed the case. This, indeed, is the principal issue for our consideration in the determination of this case, and in order to pass on this issue with legal certainty, we shall now take recourse to the ruling on the law issues wherein the trial court dismissed the complaint when passing upon the law issues.

In its ruling, the trial court firstly referred to violation by the parties of the principles of pleading. In that, the court maintained that although our civil statute provides for short form in civil pleadings with a view to eliminating the act of extensive pleadings which heretofore existed in our civil practice and involved repetition and cumbersome representation of the issues, yet such method of pleading still exists in our jurisdiction. That, in the legal opinion of the trial court, where such situation exists, it is necessary for the trial judge to take the pain to examine the pleadings so as to detect the relief sought and the reaction of the opposite party to determine whether there is any triable issue or there is no basis at all for the civil action.

Predicated upon this view, the trial court proceeded to consider count nine of the answer and counts 12 and 13 of the reply and dismissed the complaint on the holding that there is no basis for the complaint to go to the jury for trial.

With this conclusion of the trial court, the appellant disagreed, maintaining that the trial court omitted passing upon the law issues in the case and instead dismissed the complaint on issues of fact which should have gone to the jury.

Recourse to count nine of the answer, we observe that it raises matters of fact concerning an addendum signed by the appellant and to the terms of which the appellee was calling appellant's attention, particularly to the binding clause on the parties. The appellee contended in this count that by virtue of the addendum, the appellant had released the appellee of all claims and actions of whatever nature contemplated in any court of law or equity in connection with the amount of \$137,091.00 or any

part thereof and that the appellant could not invalidate or repudiate its own act since the addendum was a contractual agreement and was binding on all parties thereto.

In count 12 of the reply, appellant denied any direct violation of the term of the addendum by any indecent, mischievous or fraudulent means but that it was the appellee who was attempting to cheat and defraud the appellant of its legitimate money. In count 13 of the reply, the appellant admitted signing the addendum but claimed to have done so under duress and only to have his place of business opened.

These three counts in the pleadings, i.e., count 9 of the answer and counts 12 & 13 of the reply are counts which embraced mixed issues of fact and law. Count 12 of the reply raised the issue of fraud being perpetrated on the appellant by the appellee while count 13 raised the issue of the addendum being signed by appellant under duress, which is also a plea of fraud. Hence, both counts raising the issue of fraud could not have been legally and judicially considered and passed upon by the court without the aid of a jury. The complaint could also not be legally and judicially dismissed on the strength of count 9 of the answer which embraced the issues that the appellant had signed an addendum discharging the appellee from all claims, actions and course of actions and that the appellant was estopped from repudiating its own act, purely mixed issues of fact and law. On the contrary, the issue raised in counts one and two of the appellant's reply, which the trial court decided not to treat at all, is purely legal, in that, the appellant's contention that the answer was evasive and contradictory could never be decided by a jury even where the case was ruled to trial on other counts in the pleadings. It could not be legally concluded that the trial court had passed upon all of the issues of law raised in the pleadings, as required by law, prior to dismissing the case as it did, without passing on this legal contention that the answer is evasive and contradictory. A point of contention in a pleading which raises a question of law and requires no evidence in order to decide in favour of one side or the other is a legal issue. As the joining of factual issues requires a determination by the trier of the facts, so also the joining of legal issues mandatorily requires a determination by the trial of the law in favour of one side or the other. Where the court which is required to settle the issues of law in a pleading in favour of one side or the other remains silent on such issue when raised by a party, it cannot be concluded, as contemplated by law, that such issue has been determined by the court.

In the instant case, the court traversed the issues raised in count 9 of the answer and counts 12 & 13 of the reply and concluded that the other counts in the answer and reply were mere technicalities designed to cover up the truth of the matter and defeat transparent justice and hence said counts were ruled out. This conclusion, in the opinion of this Court, was not tantamount to 'a settlement or determination of the issues raised in the rest of the counts in the answer and reply, especially where the trial court had not shown by any means or degree where laid the technicalities. Further, if as claimed by the trial court that the other counts in

the answer and reply were mere technicalities designed to cover up the truth of the matter and that this claim of the court was genuine, then whatever truthfulness of the matter the court was claiming to have existed, should have gone to the jury for determination. For, truth, is either a pure issue of fact or mixed issue of fact and law which must be determined only by a jury under the direction of the court. This not having been done, it is our holding that the law issue as raised in counts one and two of the Reply were not disposed of and determined.

In numerous opinions, this Court has consistently held that all questions of law raised in the pleadings must firstly be disposed of by the court before the trial of the issues of fact. For reliance: *Wolo v. Wolo*, 8LLR 36 (1942); *Geeby v. Geeby and Witherspoon*, 12 LLR20 (1954); *Wright v. Richards*, 12 LLR423 1 (1957) and *Moore, et. al v. Dayiell*, 15 LLR304 (1963).

Disposition by definition is the arrangement or settlement of something. FUNK AND WAGNALLS STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 368 (Intl. ed.) Vol. 1 (1956). In order to have rightly concluded that the law issues had been disposed of in the instant case, a settlement should have been made by the trial court of the legal issues so raised by one party and joined by the other in favour of one party and against the other. This not having been done, it is our considered opinion that the issues of law have not been disposed of. Where the issues of law raised in the pleadings have not been determined and passed upon by the trial court, as in the instant case, a reversible error is committed and the case will be properly remanded with instructions in this respect.

Wherefore and in view of the facts, circumstances and legal authorities cited, it is our opinion that the judgement of the lower court should be and the same is hereby reversed and the case is hereby remanded with the following instruction: (1) that the trial court resumes jurisdiction and dispose of all the issues of law raised in the pleadings before ruling the facts to trial. Costs ruled against the appellee. And it is hereby so ordered.

Judgment reversed; case remanded.