The Management of City Builders, by and thru its authorized Corporate Agent, **Mme, Fatu Kiazolu**, of the City of Monrovia, Republic of Liberia, APPELLANT Versus **The Purported City Builders**, represented by and thru All of its Corporate Executive Officers, Incorporators, Shareholders, and **Mr. Ezzat N. Eid**, its President, all of the City of Monrovia, Montserrado County, Republic of Liberia, APPELLEES

LRSC 37

APPEAL

HEARD: May 22, 2013 DECIDED: July 15, 2013

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

The genesis of this case derived from two domestic corporations contesting the common name assigned to them by the Ministry of Foreign Affairs. The name in contention is 'City Builders Incorporated'.

On March 13, 2009, the management of City Builders Incorporated, the plaintiff/appellant, by and thru Madam Fatu Kiazolu filed a sixteen-count complaint in an action of damages for wrong in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against the other City Builders Incorporated, defendants/appellees by and thru its President, Mr. Ezzat Eid, alleging that the latter corporation had unauthorizedly used the name City Builders Incorporated, the name under which the plaintiff/appellant was incorporated in 1968. We consider counts 1, 2, 3, 9, 13, and 14 of plaintiff/appellant's complaint relevant for the disposition of this case, and therefore quote same herewith:

1. Plaintiff says that she is the duly and authorized agent of City Builders Corporation whose power and authority was given to her by Mr. Yves Ofri, the single surviving and majority shareholder of City Builders Incorporated. Attached as Exhibit P/1 is a photostat copy of the Power-of-Attorney, duly appointed her as agent of the aforesaid Corporation.

2. Plaintiff says that City Builders Inc. was genuinely and legally established under the laws of the Republic of Liberia in 1968 by three (3) corporate officers namely: John Dimacopoulous 98%, Rene Schneider I% and Cllr. Victor D. Hne 1%. Subsequently in 1982 by an amendment of a special meeting of the Board of Directors, a Resolution was passed with Mr. Yves Ofri, holding a 50% share in the corporation. Attached as plaintiffs exhibit P/2 are the Articles of Incorporation and Amendment of the Certificate of Incorporation of City Builders to form a significant portion of Plaintiffs' complaint.

3. Plaintiff says that in furtherance of its legality, it obtained a Declaratory Judgment from the Civil Law Court which confirmed and affirmed the legal status of City Builders that was registered and duly authenticated by the Ministry of Foreign Affairs in 1968. Attached as Exhibit P/3 is a copy of Court's Ruling of His Honor Judge Yussif D. Kaba during its 15th day's jury session, December A.D. 2008 Term at the Civil law Court.

9. That notwithstanding the vandalizing of the corporation's assets as stated above, the defendant, Mr. Ezzat Eid, being a close acquaintance of Mr. John (Jean) Dimacopoulous, did not only take on to himself the tangible properties of the corporation, but that just within five to six months after the death of the decedent, assumed the name of the corporation without the knowledge, consent and approbation of the Board of the corporation through a resolution by it, which is in flagrant violation of our Association Law which prohibits two corporations from operating under the same name, proceeded and registered, 'City Builders Inc' thereby bringing to two corporations bearing the same name 'City Builders Inc' which serves great damage and injury to plaintiff.

13.Plaintiff further says that as a direct consequence of the interference, illegal and unprecedented act of the defendants against the plaintiff corporation, major and potential customers of plaintiff have, in misbelieve that they were dealing with plaintiffs corporation, the City Builders of 1968, have continued to patronize in financial terms, millions of United States Dollars to defendants purported 'City Builders Inc'. Plaintiff suffered irreparable damage and injury also in that in view of all these corruptible and unfriendly business manner of the defendants in the affairs of plaintiffs corporation, plaintiff has been unable to pay salaries, benefits and arrears owed to more than twenty three (23) members of its employees dating as far back from 1978 to the present.

14.Plaintiffsays also that of the total number of working staff of the corporation those who are at present available have, and by sworn oath declared their salaries, benefits and arrears to the tune of United States Dollars Two Hundred Sixty Three Thousand One Hundred Twenty (US$ 263,120.00). Attached as P/7 are sworn statement of Applicatory Affidavit obtained from five of Plaintiffs former staffs and gives notice that during trial the other employees shall testify to claims of salaries and other benefits owed them by management.

Wherefore and in view of the above, plaintiff prays your honor and this honorable court to adjudge defendants liable in damages and to enjoin [them] as follows:

a) United States Dollars, Five Million (US$5,000,000.00) as punitive/exemplary damages for the good will, fame and respect generated by the plaintiffs corporation during its long period of operations in Liberia and elsewhere around the world,

b) United States Dollars Two Hundred Sixty Three Thousand, One Hundred Twenty Dollars (US$ 263,120.00.00) as special damages,

c) That defendant be forthwith enjoined, prohibited, stopped, restrained and forever be prevented from using the trade name of plaintiffs company 'City Builders Inc',

d) And grant unto plaintiff, any and all other further relief as your honor may deemed just, legal, feasible and equitable in matter such as this.

The defendants/appellees filed a twenty seven-count answer denying the averments in the complaint. We quote counts 1, 2, 5, 8, 11, 21, 22, 24 and 26 of the answer which we have deemed germane to the determination of this case:

1. That as to the caption of the case, naming co-defendant as purported 'City Builders', defendants say that co-defendant City Builders Inc. is not a 'purported City Builders', but rather City Builders Inc., a legal entity under our law. Defendants submit that under the Liberian law, specifically section 4.7 of the Associations Law of Liberia, the existence of a corporation commences as of the date of filing of Articles of Incorporation with the Ministry of Foreign Affairs as indicated thereon. The filing date on co-defendant City Builders Inc.'s Articles of Incorporation is January 22, 2001. Accordingly, co defendant is an entity dejure, organized and existing under the laws of the Republic of Liberia, and therefore cannot be said to be 'purported City Builders'. Attached hereto and marked as defendants' Exhibit D/1 is a copy of co-defendant City Builders Inc.'s Articles of Incorporation filed with the Ministry of Foreign Affairs, m substantiation of the averment contained herein.

2. That also as to count one (1) above, defendants say that the operation of co-defendant City Builders Inc. is in keeping with its Articles of Incorporation and its business Registration Certificate issued annually by the Ministry of Commerce & Industry from the year of its incorporation, up to present. Attached hereto in bulk and marked as defendants' Exhibit D/2 are copies of co-defendant City Builders Inc.'s Annual Business Registration Certificate issued by the Ministry of Commerce & Industry, in substantiation of the averment contained herein.

5. That specifically traversing count two (2) of the complaint, defendants say that assuming without admitting, that plaintiff was incorporated in 1968, as alleged, plaintiffs existence ended, terminated and expired by its failure to pay annual business registration fee and maintain a registered agent since 1990. Defendants submit that section 11.3 of the Business Associations Law of Liberia requires a corporation to pay annual business registration fee and obtain certificate therefor, and to maintain a registered agent; and that failure to pay annual business registration fee and to maintain a registered agent for a period of two (2) years [are] grounds for revocation of the Articles of Incorporation. The intent of this law is to prevent the use of the name of an existing company by another and to afford the opportunity to the existing company to protect the use of its name by another. If there were a corporation in existence prior [to], during, and subsequent to the incorporation of

co-defendant, named City Builders Inc., it would have paid annual business registration fee and obtained certificate therefor for the past years, and its agent would have protested the registration and use of its name by co-defendant City Builders Inc.; and the Ministry of Commerce & Industry could not have issued

Business Registration Certificate, and if it had already issued one to co-defendants City Builders Inc., it would have revoked same. Defendants submit that there was no corporation in existence prior to, during and subsequent to the filing of its Articles of Incorporation at the Ministry of Foreign Affairs and obtaining Business Registration Certificate from the Ministry of Commerce & Industry. Defendants challenge the plaintiff to produce any Business Registration Certificate issued by the Ministry of Commerce & Industry in favor of a corporation known and styled as 'City Builders' from 1990 up to and including the date of the incorporation of co-defendant City Builders Inc.

8. That as to count three (3) of the complaint, defendants say that the legal existence of a corporation is not to be declared by the court. Defendants submit that the existence of a corporation is provided for by law. Section 4.7 of the Associations Law of Liberia provides that the corporate existence begins upon filing of the Articles of Incorporation effective as of the filing date stated thereon. The endorsement by the Minister of Foreign Affairs, as required by section 1.4 of the Associations Law of Liberia, constitutes conclusive evidence that all conditions required to be performed by the incorporators have been complied with, and that the corporation has been incorporated under the Associations Laws of Liberia. Accordingly, a corporation does not need court's declaration as to its existence. Hence, the Ruling of His Honor Yussif D. Kaba is of no legal effect.

11. That also traversing count eight (8) of the complaint, co-defendant, Ezzat N. Eid says that he has knowledge that Mr. John (Jean) Dimacopoulous died sometime in 2000, but denies that he and other Lebanese nationals invaded and vandalized any physical assets, machineries as well as tangible assets, such as leasehold rights and other pertinent documents, as averred by the plaintiff in count eight (8) of the complaint. Co-defendant, Ezzat N. Eid says that he is a law-abiding businessman within the Republic of Liberia, and has conducted all his business activities with dignity and integrity. Co-defendant Ezzat N. Eid submits that all wealth he has accumulated in Liberia was through hard work and that he is not a criminal, as plaintiff is trying to impress upon this court. Accordingly, co-defendant, Ezzat N. Eid says that the averment contained in count eight (8) of the complaint is scandalous and should therefore be stricken from the record of this case.

21. That further traversing count sixteen (16) and the prayer of the complaint defendants say that plaintiff alleged that it is entitled to special damages in the amount of US$263,120.00 as salary arrears for its staff for over the past twenty-five (25) years. Defendants say that the Supreme Court of Liberia defined "damages as pecuniary compensation or indemnity which may be recovered in the court by any person who has

suffered loss, detriment, or injury, whether to his person, property or rights through the unlawful act or omission or negligence of another. It is, in contemplation, recompense or satisfaction for an injury done or a wrong sustained as a consequence of either a breach of contract or tortious act. In the case at bar, defendants say that the plaintiff has not suffered loss, detriment or injury either to its person, property through the unlawful act, omission or negligence of the defendants. Hence, an action of damages will not lie against the defendants.

22.Also as to count twenty-one (21) above, defendants submit that special damages must be specifically pleaded and proved, and that uncertain, contingent or speculative damages cannot be recovered. (Franco-Liberia Transport Company versus John W. Bettie, 13 LLR 318). The Supreme Court of Liberia also held in the case, Brant, Willig & Company (BRAWICO) versus Ralph Captan, 23 LLR 96, that special damages must be specifically pleaded and proved, and that damages recoverable in any case must be susceptible of ascertainment with a reasonable degree of certainty, or must be certain both in nature and in respect to the cause for which they proceed. Therefore, uncertain, contingent or speculative damages cannot be recovered either in action, ex contractu or in action ex delicto. In the instant case, the claim of the plaintiff is not only speculative, contingent and uncertain, but it has no bearing or relations with defendants; and accordingly not recoverable under our law.

24.That as to plaintiffs claim of US$ 5 Million as punitive/exemplary damages, defendants say that the naming of a definite amount as punitive/exemplary damages constitutes special damages under our law. Defendants say that the Supreme Court of Liberia held in the case Sinkor Supermarket versus Boimah Vaye 31 LLR 286, that where a definite sum is prayed for in the complaint or is prayed for as damages, it falls within the category of special damages; and where special damages are alleged, they must be proved as laid down in the pleadings with some degree of certainty. The plaintiff having named the amount of US$5 million as punitive/exemplary damages same constitute special damages and governed by the rules of evidence governing special damages; that is to say, they should have been pleaded with certainty and specificity. Plaintiff not having pleaded the US$5 Million with specificity and certainty, same cannot be recovered.

26.That with respect to plaintiffs prayer that the defendants be enjoined, prohibited, stopped, restrained, and forever prevented from the use of the name City Builders by co-defendant City Builders Inc., defendants say that this court lacks jurisdiction to do so, as under our law only the agency granting a right and privilege has the authority to revoke or restrain, enjoin or prohibit the entity exercising such rights from doing so. Accordingly, the prayer requesting this court to enjoin, prohibit, stop and restrain co-defendant City Builders Inc. from using its name (City Builders) has no basis in law and fact.

The plaintiff/appellant, in its reply, confirmed and reaffirmed the averments in its complaint. This Court takes particular note of counts three (3) and four (4) of the reply which raise a number of salient points regarding the automatic dissolution of the plaintiff/appellant corporation for failure to pay the required annual registration fee. We quote herewith counts three (3) and four (4) of the reply:

3. As to count five (5) and six (6) of defendants' answer, plaintiff submits that under our law, a corporation which has failed to pay its annual registration fee is not automatically dissolved, nor does it automatically lose its corporate status. Quite to the contrary, plaintiff says that until a corporation's articles of corporation are formerly annulled by the Minister of Foreign Affairs for failure to pay its annual registration fee, the company continues to be a bona fide company under Liberian law. Under our law, on failure of a corporation to pay the annual registration fee or to maintain a registered agent for a period of one year, the Minister of Foreign Affairs shall cause a notification to be sent to the corporation through its last recorded registered agent that its Article of lncorporation will be revoked unless within 90 days of the date of the notice, payment of the annual registration fee has been received or a registered agent has been appointed. See 5 LCLR, Association Law, section 11.3. Plaintiff says that as far as it is concerned, its Articles of Incorporation were never annulled or revoked by the Minister of Foreign Affairs. Hence, it was a glaring violation of Liberian law for defendant to assume plaintiff's business name and goodwill while plaintiff's corporation was still in existence.

4. Further to count three (3) above, plaintiff says that the sole evidence of a corporation's existence is its Articles of Incorporation and not its annual business registration certificate. Under our law all certificates issued by the Minister of Foreign Affairs shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated and of the execution of such instruments. 5 LCLR, Associations Law, section 1.5. If as contended by defendant, plaintiff was dissolved for its alleged failure to pay its annual registration fee or maintain a registered agent m Liberia, a proclamation to that effect would have been made by the Minister of Foreign Affairs. Since this was never done, defendants cannot justify [their] illegal act by contending that plaintiff ceased to be a valid Liberian corporation prior to the incorporation of defendant. What evidence has defendant presented to substantiate its allegation that plaintiff was dissolved? Absolutely nothing. In any event, plaintiff submits that the law in this jurisdiction is that only the Minister of Foreign Affairs or the shareholders of a Liberian company have the authority to question the corporate status of a Liberian company. Karen Maritime Ltd. vs. Omar International, Supreme Court Opinion March Term A.D 2004. Since defendants [are] not shareholder of

plaintiff, nor assuming the functions of the Minister of Foreign Affairs, [they have]absolutely no standing to question or challenge the corporate status of plaintiff.

Pleadings having rested, the trial judge on July 6, 2009, listened to arguments on the issues of law raised by the parties in their respective pleadings and ruled the case to trial.

The records show that the parties, thru their legal counsels, agreed to a bench trial which was presided over by His Honor Judge Yussif D. Kaba.

During the trial, the plaintiff/appellant produced three (3) witnesses: Fatu Kiazolu, Joseph Bendu and Moses Teah. They all testified that they were employees of the City Builders Inc. established in 1968. They informed the court that as the result of the operation of the new City Builders Inc. by Ezzat N. Eid, many stores in the name of City Builders Inc.. were seen all around the City of Monrovia, and that they lost business, as a consequence of which they could not be paid their salaries and benefits.

The defendants/appellees took the witness stand and produced four witnesses, namely: Ezzat N. Eid, Mawan Eid, G. Moses Paegar and Foday Kiatamba. Messrs Ezzat N. Eid and Mawan Eid. They testified that City Builders Inc. was duly established in 2001; that the name City Builders In. was proposed by Mawan Eid, the son of Ezzat N. Eid and that at the time the articles of incorporation [were] filed with the Ministry of Foreign Affairs, they were not informed of the existence of any other corporation called City Builders Inc.

More specifically, G. Moses Paegar testified that he served as legal counsel to Ezzat N. Eid; that he prepared the articles of incorporation of City Builders Inc., after conducting enquiries at the Ministry of Foreign Affairs, through Mr. Foday Kiatamba, an employee of that Ministry assigned in the legal department where articles of incorporations are filed; and that he was informed by Mr. Kiatamba that no other company existed with the name City Builders Inc. at the time the articles of incorporation were filed.

Foday Kiatamba, the last witness for the defendants/appellees, testified that at the time the articles of incorporation for the City Builders belonging to Ezzat N. Eid were filed, he searched and the records showed that between 1989 to 200 I, no other company was on the books of the Ministry of Foreign Affairs with the name City Builders Inc. He explained on the cross-examination that after every two or three years, articles filed with the Ministry of Foreign Affairs are transferred to the National Archives due to inadequate space.

On April 30, 2010, after both parties had rested with the production of witnesses and documentary evidence, the trial court rendered final judgment in favor of the defendants/appellees. The court dismissed the action of damages for wrong on the ground that the defendants/appellees could not be held liable for the use of the same corporate name as the plaintiff/appellant. The trial court sustained the argument of the defendants/appellees, relying on the Associations Law, Chapter 4, Sections 4.2(b),4.3 and

4.7, that corporate existence commences as of the filing date with the Minister of Foreign Affairs and that the endorsement by the Minister of Foreign Affairs was conclusive evidence that all requirements had been complied with by the incorporators. The trial judge held further that when the defendants/appellees filed their articles of incorporation and obtained the endorsement and approval by the Minister of Foreign Affairs, [they] had met the requirements of the law for incorporation; that the Minister of Foreign Affairs should be blamed for failure to prevent the occurrence of the existence of two corporations with the exact name, because the Minister had a duty under the law to keep an alphabetical index of all domestic corporations; that if there was any infringement or violation, the Ministry of Foreign Affairs, and not the appellees, was the party violating the law; and that until the Ministry of Foreign Affairs ordered the defendants/appellees to change the name of the corporation, or the defendant corporation was enjoined by a court from using the same name as the plaintiff/appellant Corporation, the corporation had vested right to continue to operate under the name stated in its articles of incorporation filed in 2001.

The trial judge further held that the facts before him showed that the 1968 and 2001 companies were not providing the same services since the former was engaged in the construction business while the latter was involved with the importation and sale of building materials. He concluded that the name of a corporation is not a trademark and therefore the court could not order an accounting of profit[s] made by a company authorized by the state to conduct business under a given name. Accordingly, he rendered final judgment dismissing the action of damages for wrong and holding that the defendants/appellees could not be held liable for the use of the same corporate name as the plaintiff/appellant, and that the court could not order the appellees to account for profits. Therefore, we said, the plaintiff/appellant's prayer for specific and punitive damages was denied.

It is from this ruling that the plaintiff/appellants excepted, announced and perfected an appeal to the Honorable Supreme Court.

Having perused the records in this case, including the complaint, the answer, the reply and the issues raised in the briefs and the arguments presented before us, we have determined that the lone issue for the determination of this case is whether or not the acts of the defendants/appellees constitute a wrong for which damages, special, general or punitive, will lie. In other words, are the defendants/appellees liable for the use of the name City Builders, Inc., because said name had previously been assigned to the plaintiff/appellant?

We hold that it was wrong for the defendants/appellees to have filed articles of incorporation carrying the name City Builders Inc., when that same name had previously been accepted by the Ministry of Foreign Affairs for another corporation by its filing of the Articles of Incorporation by said corporation. We note the argument of the

defendants/appellees that it was more or less the Ministry of Foreign Affairs that should be blamed for accepting the name proposed by the defendants/appellees, which name had already been proposed by the plaintiff/appellant and accepted by the Ministry while some blame can be attributed to the Ministry of Foreign Affairs for the error, we do not accept that the defendants/appellees are without blame also. The statute states very clearly that one desiring to incorporate a business entity must ensure that the name selected is not identical to or so clearly similar to a name already carried by another business entity the confusion could be generated thereby. This requirement imposes on the incorporators the outmost due diligence. We do not see in the records any certification from the Ministry of Foreign Affairs that such due diligence was carried out by the defendants/appellees, except for the statement of one of counsel for the defendants/appellees that he had asked someone at the Ministry to conduct the due diligence for him and that the person had verbally reported to him that there did not exist any other corporation by the same name. Even more important, the defendants/appellees did not deny that on January 7, 2008, the trial court entered ruling in a petition for declaratory judgment clearly holding that the defendants/appellees had no right to the use of the name City Builders Inc. and that its use of the name was in violation of the law. From that decision, the defendants/appellees took no exceptions and announced no appeal therefrom. As at that time, the defendants/appellees knew, or ought to have known, by virtue of the trial court's ruling, that the defendants/appellees were in the wrong for the use of the name City Builders, Inc. This meant that the defendants/appellees should have taken step(s) to (a) either proceed to the Ministry of Foreign Affairs to amend their articles of incorporation with respect to the corporation's name, or (b) enter into negotiations with the plaintiff/appellant for the acquisition of the name City Builders Inc., which by then had been declared to rightfully belong to the plaintiff/appellant.

The law is that "a name 1s important as necessary to the very existence of a corporation. The general rule is that each corporation must have a name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person, and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted." 18A Am Jur 2d, Corporate Name, Seal, Domicil, and Place of Business, section 228, page 105.

Under common law, parties organizing a corporation must choose a name at their peril; the use of the same name as, or a name similar to one adopted by another corporation, whether in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having prior right, by a suit of injunction against the new corporation to prevent use of the name.

"Protection of a corporate name may be sought and will be given without regard to the existence of a technical trademark where the name chosen by a defendant is the same as, or deceptively similar to one already in use. The right of a corporation to the exclusive use of its name includes the right to prohibit or restrain anyone else from using a name similar to the corporate name as to be calculated to deceive the public." 18A Am Jur 2d, Section 243, pp 119-120 Remedies against wrongful use of Name.

When a suit is brought to enjoin a corporation from the wrongful assumption of a corporate name to the injury of an individual or of another company, it is not necessary to show actual damages or that there was a fraudulent intent to deceive."18A Am Jur 2d, Remedies against wrongful use of Name Section 244 page 120.

Chapter 4 section 4.2,l(b) of the Association Law of Liberia provides that: "except as otherwise provided in paragraph 2 of this section, the name of a domestic or authorized foreign corporation...shall not be the same as the name of a corporation of any type or kind, [emphasis ours] as such name appears on the index of names of existing domestic and authorized foreign corporations in the Ministry of Foreign Affairs or a name so similar to any such name as to tend to confuse or deceive. [emphasis ours]

It is very clear from the laws cited above that when one corporation uses a name which has already been in use by another corporation, the former corporation shall be held to be in the wrong. And where a wrong is committed in such manner and form, damages will attach.

The question that arises then is what damages are the plaintiff/appellant entitled to in these proceedings, special, general and/or punitive? We should state outright that with regards to whether the plaintiff/appellant is entitled to special damages, we think not.

Firstly, the plaintiff/appellant merely demanded the amount of USD$ 263,120.00 (Two Hundred Sixty Three Thousand One Hundred Twenty United States Dollars) as special damages and the astronomical amount of USD$ 5,000,000.00 (Five Million United States Dollars) as punitive damages. No proof sufficient in law, was presented in support of the demand for special damages. It is trite law that he who alleges a fact must prove it, and that an averment in the complaint no matter how meticulously made does not amount to proof. Civil Procedure Law Section 25.5 Burden of Proof.

Although the plaintiff/appellant alleged in its complaint that the defendant/appellees' use of its name had rendered it unable to pay its employees, the records before us are devoid of any evidence showing the correlation between the plaintiff/appellant's failure to pay its employees and the defendants/appellees' use of plaintiff/appellant's name. There is no evidence of a payroll, the names of the employees, individual salary levels, or the mathematical premise on which the plaintiff/appellant derived its calculations for specific damages, besides the mere assertion made in the affidavits tendered by purported

employees of the 1968 City Builders incorporated. No instruments were presented showing the income of the plaintiff/appellant. But even more than that, other than showing that the defendants/appellees' had used an identical name, the plaintiff/appellant failed to show how or the extent to which the defendants/appellees' use of the name had damaged the plaintiff/appellant. The law requires that there should be such showing in order for special damages to be awarded.

This Court has continuously supported the statutory rule on the best evidence and held in countless opinions that the best evidence which the case admits of must always be produced and no evidence is sufficient which presuppose the existence of better evidence. In Re: Massaquoi et al v. Dennis 40 LLR 704 (2001).

The principle of law on specific damages continues to be upheld by this Court, that is, specific damages must be specially pleaded and established at trial. We have seen no such proof in the records. Accordingly based on these principles of law and given that the plaintiff/appellant proffered no evidence whatsoever to show or be entitle to recover special damages in the amount prayed for, we hold that specific damages cannot lie.

As to whether the plaintiff/appellant is entitled to general damages, this Court has held that "Where no wrong is established, no general damages will lie". GENNADY F. MEDVEDEV v NPA, decided 2007. Hence, by propriety of logic it can be deduced that where wrong is established general damages will lie. "Damages are pecuniary compensation or indemnity which may be recovered by any person who has suffered a loss, detriment, or injury, whether to his person, property or rights, through the unlawful act or omission or negligence of another. In legal contemplation, it is the sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction for an injury done or a wrong sustained, as a consequence of either a breach of contract or a tortuous act. Intrusco Corp. v Osseily 32LLR.571 (1985).

In the case before us, the plaintiff/appellant is claiming general damages on the assertion that it suffered loss of business occasioned by the defendants/appellees' use of its corporate name. In that connection we should note that other than claiming loss of income due to the illegal conduct of the defendants/appellees, plaintiff/appellant failed to clearly demonstrate any of the business opportunities it claimed to have lost. There was equally no specific showing of any monetary value for the loss or any such opportunities plaintiff/appellant reportedly forfeited as a result of the illegal conduct of the appellees in using the plaintiff/appellant's name.. In our mind, as to the particular claim set out by the plaintiff/appellant regarding loss of business, there was a major failure, for this Court has held that "where the party seeking the award of general damages fails to illustrate these consequential relationships as a reasonable basis to infer the quantum (our emphasis)of the

award, the Supreme Court will decline to affirm the award."Firestone v. Galimah Kollie, decided Aug 17, 2012. In that case, Galimah Kollie, the appellee, failed to show the relationship between the half million United States dollars awarded as general damages and the humiliation, mental anguish and social humiliation he claimed to have suffered for which the jury granted the quantum of award. Consequently, this Court substantially modified the award of general damages under the facts of the case. In the instant case, as noted before, the plaintiff/appellant did not show a loss of business. However, we have indicated that the defendants/appellees, by their use of a corporate name identical to that of the plaintiff/appellant did infringe upon the plaintiff/appellant's right for which general damages will lie. Thereby while this Court is unable to confirm any huge amount claimed as general damages, we do hold that the plaintiff/appellant is entitled to some measure of general damages. The use of the name, in and of itself entitles the plaintiff/appellant to damages. But more than that, the records reveal that the defendants/appellees persistence in retaining the name of the plaintiff/appellant despite being placed on notice by the 2008 Declaratory Judgment, constitute an infringement of the rights of the appellant, thus establishing a wrong and therefore appellant is entitled to appropriate redress. In this instance we have determined that general damages should be awarded the plaintiff/appellant contrary to the determination of the trial Court. We therefore hold that the plaintiff/appellant is hereby awarded the amount of US$50,000.00 (Fifty Thousand United States Dollars) as general damages an amount we have determined is reasonable given the facts and circumstances of this case.

We now turn to the issue of punitive damages. Punitive damages are those awarded to serve as deterrent against the repetition or occurrence of the same acts by other parties.

In the case INTRUSCO v Osseily 32 LLR 573-574 (1985) punitive damages are defined as, damages which are given in enhancement merely of the ordinary damages of the wanton, reckless, malicious, or oppressive character of the acts complained of Such damages go beyond the actual damages suffered in the case; they are allowed as a punishment of the defendant and as a deterrent to others.

In most jurisdictions punitive damages are followed and awarded as a punishment to the defendant and as a warning and example to deter him and others from committing like offenses in the future. Under this theory such damages are allowed on grounds of public policy and in the interest of society and for public benefit, not as compensatory damages, but rather in addition to such damages.

It is also held that such damages are given on the theory that the injury is greater, and the actual damages are increased by reason of the aggravating circumstances. Thus, it has been

held that they be given as compensation for injuries which cannot be accurately estimated, such as mental distress and vexation, or what in common language is spoken of as "offenses of the feelings, insults, dignity

Still delving into punitive or exemplary damages, this court further held: damages are not fines and penalties in legal contemplation, exemplary damages may be whether basically they are compensatory or punitive in their nature, they are not imposed in the sense of or as a substitute for criminal punishment, but rather as enlarged damages for a civil wrong. They are to be distinguished from a fine that the latter is an amercement imposed on a person for a past violation of the law, while exemplary damages have reference rather to the future of than to past conduct of the offender and are not given as a compensation to the injured party, but as an admonition to the offender not to repeat the offense.

This Court having determined that the defendants/appellees committed a wrong against the plaintiff/appellant's corporation and that the latter is entitled to punitive damages, however we find that appellant's prayer for punitive damage in the amount ofUS$5,000,000.00 is far too excessive, given the facts and circumstances of plaintiff/appellant's inactive corporate operational period; we see no justification for awarding the amount of US $5,000,000.00. Said amount is hereby reduced to US$100,000.00 (One Hundred Thousand United States Dollars).

Having disposed of the merits of the subject appeal, this Court, as the final arbiter of justice and in which the judicial power of this Republic is vested, as well as the regulator of the practice of law in this jurisdiction, deem it a matter of responsibility and of necessity to now delve into the matter of the behavior of the lawyers for the defendants/appellees. This Bench has carefully observed from the certified records before us that the defendants/appellees' legal counsels failed to advise their client that the defendants/appellees had no right to the use of the name City Builders Inc.

This was after the decision in the petition for declaratory judgment. This action is not inconsonance with Rules 32 and 33 of the Code for The Moral and Ethical Conduct of Lawyers which provides, "...The responsibility for advising as to questionable transactions, for bringing questionable suit, for urging questionable defenses is the lawyers' responsibility. He cannot escape it by contending that he is only following his client's instruction ....No client, corporate or individual however powerful, nor any cause, civil or political however important, is entitled to receive any advice involving disloyalty to the state, or to the law whose ministers we are. No lawyer should disrespect the judicial office which we are bound to uphold. For violation of this proviso of the code,

defendants/appellees' lawyers are fined US $200.00 (Two Hundred United States Dollars and are hereby ordered to pay same within 72 hours of rendition of this Opinion.

WHEREFORE and in view of the foregoing, the Judgment of the Sixth Judicial Circuit, Civil Law Court, Montserrado County rendered on April 30, 2010 dismissing the plaintiff/appellant's action of damages for wrong is hereby reversed; the defendants/appellees are estopped and prohibited from using the name of City Builders, Incorporated. We hold that the defendants/appellees committed wrong against the plaintiff/appellant by the use of the name City Builders, Inc., which name had been previously assigned to the plaintiff/appellant.

In consequence thereof the plaintiff/appellee is awarded the amount of US$50,000.00 (Fifty Thousand United States Dollars) as general damages and the amount of US$100,000.00 (One Hundred Thousand United States Dollars) as punitive damages for defendants/appellees flagrant disregard to the order of the lower court, when by its declaratory judgment of January 7, 2008, the court declared the defendants/appellees use of the name City Builders Incorporated as a violation of the law.

This Court observed that the plaintiff/appellant filed its case by and through a designated agent, but owing to the fact that a corporation is a legal entity separate and distinct from its owners or shareholders, the awards for general and punitive damages stipulated are to be paid only in the name of the corporation.

The lawyers for the defendants/appellees, Sherman & Sherman, lnc. are ordered to pay the fine of US$200.00 (Two Hundred United States Dollars) for violation of Rules 32 and 33, of the Code for the Moral and Ethical Conduct of Lawyers. The Code places the responsibility on a lawyer, among other things, to advise his client on questionable defenses, and warns the lawyer against disrespecting the judicial office which all lawyers are bound to uphold on the premise that he is only following his client's instruction. The fine should be paid within 72 hours of the rendition of this Opinion.

The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court commanding the Judge presiding therein to resume jurisdiction over this case and to give effect to this Judgment. Costs are ruled against the defendants/appellees. It is hereby so ordered.

COUNSELLORS COOPER W. KRUAH, MILTON D. TAYLOR AND THEOPHILUS C. GOULD APPEARED FOR THE APPELLANT AND COUNSELLORS GOLDA BONAH ELLIOTT AND MOSES PAEGAR APPEARED FOR THE APPELLEES.