The **William E. Dennis**, **Sr. Realty Trust Estate**,Represented by its Trustee, Hilary A. Dennis, Lessor Of the City of Monrovia, Liberia Respondent and **Mr. Hilary Dennis** for himself also of the City Of Monrovia, Liberia APPELLANT VERSUS **K AND H Construction Company**, represented by Its Authorized representatives, Abdel Kamand, Lessee of the City of Monrovia, Liberia APPELLEE

APPEAL. JUDGMENT AFFIRMED WITH MODIFICATION

HEARD: May 13, 2008 DECIDED: June 27, 2008

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

Determination of the rights and obligations of the adversary parties under two agreements of lease constitutes the core of contention of these appeal proceedings.

In consideration of the controversy on appeal, the following issues have been determined by this Court as dispositive thereof:-

(1) Whether the optional period provided under article IV of *the Agreement of Lease satisfies the legal requirements for enforceability?*

(2) Whether the right to *re-entry and re-possession granted to a party under an agreement of lease is exercisable outside a court of law?*

(3) Whether non-payment of rental constitutes legal ground for cancellation of an Agreement of *Lease?.*

As culled from the records certified to this Court, the facts indicate that on December 4, 2006, the appellee, petitioner below, filed a petition for Declaratory Judgment against the appellants, respondents, at the Sixth Judicial Circuit Court, Montserrado County, sitting in its December Term A.D. 2006.

In the twenty-two count petition, the appellee, K & H Construction Company, averred that on September 8, 1983, it entered into a real estate lease partnership agreement with the appellant for twenty (20) years certain with an option of renewal for additional ten (10) years. Article II of the 1983 agreement of lease provides:

"The lessee shall have and hold the premises together with the building, usements, easements, hereditaments and appurtenances thereto belonging for a period of twenty (20) calendar years certain,

commencing: from the first day of October, 1983, up to and including the 30th day of September 2003."

While article IV thereof stipulates: "The lessee is hereby granted an option to a further term of ten (10) calendar years, commencing from the 1 st day of October, 2003, up to and including the 30th day of June, 2013, upon the expiration of the term herein granted. During the optional term of Ten (10) years, all income will be divided on a 50150 basis after all expenses. However, both parties have to agree to the rental terms and sign all contracts together as well as agree to all expenses. K & H Construction Company [the appellee] will prepare semi-annual financial statements and operation statements."

The petition further averred that the parties also entered a second agreement on July 22, 1985 for twenty (20) years certain with ten years, option. Articles II and IV contained in the 1985 agreement of lease are a verbatim reproduction of similar articles provided under the 1983 agreement of lease heretofore quoted.

Appellee claimed that pursuant to the execution of the above agreement of lease, which involved eight lots or two acres of land lying and situated in Sinkor, Monrovia, and relying on the honesty of the appellant, appellee was induced to, and did borrow large sums of money from a bank and did erect various buildings; that just about the completion of the construction exercises in 1989 and as tenants started moving in the unfortunate civil crises in Liberia erupted. The crisis, according to appellee, resulted to serious disruption of every activity and implementation of the terms and conditions of the agreement of lease including the regular lease rental payments by tenants to appellant. Appellee further explained that notwithstanding, its representatives arrived in Liberia in 1996 and carried out renovation work on some of the damaged structures. Following renovation, appellee averred that it was requested by appellant due to some emergency problem it was faced with at its Mamba Point office, to be permitted to occupy one of the units covered by the lease agreement and the rent thereof to be negotiated. To this request, appellee said it agreed to in consideration of acting in good faith. Appellee further contends that no sooner had appellant moved on the premises then he began to write eviction notices to all of appellee's tenants informing them that appellee having defaulted in rental payment, he, the appellant, had annulled the lease agreement and re-entered the premises. According to the appellee, all efforts to resolving this matter short of litigation failed as appellant was determined to set the agreement aside.

On January 19, 2007, appellant answered by filing eighteen-count returns, substantially denying therein the existence of any partnership relationship between

the parties. Appellant contended that what existed was simply a landlord and tenant relationship between the parties; that the lease agreement between the parties, which is the basis of appellee's petition for declaratory judgment, terminated *ipso facto* prior to the commencement of the said optional, period; and as such, whatever joint venture or partnership the parties may have anticipated forming, appellant further contended, did not become a reality; that the optional period, if it ever existed, was vague and therefore unenforceable under the law; that assuming without admitting that appellant had taken over the premises due to the failure of appellee to pay rent, that act should not have come as a surprise to appellee as same is clearly provided for under article XII of the agreement of lease.

The said Article XII of the agreement of lease, upon which appellant relied for its action to reenter and repossess the demised premises, provides as follows:

"And the Lessee, hereby covenant and agree with the lessor that they will well and truly pay the rents and perform the other covenant herein stipulated and provided, failing which and after thirty (30) days notice in writing, the lessor shall have the right to re-enter and re-possess the said demised premises, and collect all unpaid rents... **"** [emphasis supplied].

On January 29, 2007, appellee-filed a reply to appellant's returns substantially restating its complaint as contained in the petition. Appellee further emphasized that having invented a Million dollar in constructing the property, he was in no position nor did he ever abandon the demised premises; that the optional period in the lease agreement was clear and unambiguous and became binding on the parties immediately at the expiry of the period certain.

To testify on its behalf at the trial, appellee produced two witnesses including its General Manager, Najib Kammand and one ,employee, Randolph -Jallah, In their testimonies in chief, appellee's witnesses, supported by documentary evidence; detailed the undertakings made by the appellee, to resolve the controversy at bar ,short of litigation, that the appellant has been determined and unchanging in its, insistence that the failure of appellee to pay rental justified appellant to re-enter and re-possess the demised premises; that appellant has referred to article XII of the agreement of lease as the legal basis for its action; that appellant has also argued that the very agreement, the basis of the appellee's, complain, in fact had expired and that the optional, period provided under Article 4 of the agreement was vague and uncertain; that appellant had taken over the property in order to deprive the appellee its rights under the agreement, all to the unjust enrichment of the appellant; that although appellant claimed that appellee's failure to pay rent led him to re-entry and

repossession. Yet the very appellant has been occupying three of the 9 (nine) houses between 2002 and 2003, each at 15,000 annual rental, and has also not paid any rentals for said property to the appellee.

For its part, the appellant, the William E. Dennis Sr. Realty Estate paraded two witnesses including its Trustee Hilary A. Dennis. In his testimony in chief, Witness Hilary Dennis told the court that he made repeated demands were made, but appellee regularly failed to settle its rental obligations in keeping with the terms of the-agreement. Answering to a question whether on the alleged violation of the lease agreement, appellant personally entered and repossessed the property without recourse to the law, Witness Hilary Dennis, as if to sum up its contention, answered in the following words:

"Your Honor, I have given you a background and now I will leave you with> what I consider the main issue. When.. I found out K and H Construction Company once has a problem and the family [members] are split and the chance of me collecting any money from them was slim, I then informed K and H Construction that we were to re-possess our property and/or take back our property, as of the terms and conditions to which they did not object; on April 29, 2002, I wrote the Human Rights Commission with CC *to K and H Construction Company that we were re-possessing the property due to non-payment of rent. I pray this be part of the records. Again on May 21, I again wrote to the Human Rights Commission giving them two months to vacate said property with CC to K and H Construction Company. Again on October 14, 2002, I wrote the Chairman of the Human Rights Commission and I quote, "please be advised, we shall commence renovation on our property, on October 16, 2002, in order to occupy the three* (3) *buildings, we have been informed by K and H Construction that offered to put your furniture in storage, free of charge for the time letter was signed by me with* CC *.to K and H Construction and CC to d Togbah Law Firm. Again I pray that this forms part of the records rental obligation by 2003 was in excess* of *USD90.00 plus interest."*

"As per my testimony it was very clear in my communication with K and H Construction Company that we were invoking article number 12, as per the agreement. If the learned Counsel read the agreement, I can tell him now, that nearly all of the articles therein were not complied with. I only raised 7 and 9, because those were the two important articles to preserve and protect our Property"

Appellant's other witnesses, including None Henry Dennis, corroborating the first witness, Hilary Dennis, also told the court that on several occasions, appellee collected outstanding rentals from its tenants including the European Union but repeatedly failed and neglected to pay its rental obligations to the appellant.

At the rest of production of evidence by both sides, final argument was entertained by the trial court. By a final ruling dated February 15, 2007, the Presiding Judge, His Honor Emery Paye adjudged that the lease agreement was in full force and effect and that the appellant, under the two lease agreements, had the right and duty as stipulated therein.

It is to this final ruling appellant excepted, appealed and has placed before this Court of final adjudication a fourteen- count bill of exceptions.

We consider count 1 part i, ii, iii, iv, v, vi, and count 6 Of this bill of exceptions, quoted hereunder as follows:-

i. "Respondent submits that it entered into a Lease Agreement with Petitioner, K. & H. Construction Company in 1983 and 1985 respectively. Said Agreements expired on October 1, 2003 and July 31, 2005 respectively, prior to the institution of the Action in December 4, 2006. Consequently, from the date of the expiration of the contracts and the date of the filing of the suit, there exists no contract between the parties, since the contracts had expired prior to the commencement of the aforementioned action....."

ii. "Under non-existing contract, there cannot be a sequestration of rents; as there is no contractual relationship between the parties to provide for rental relationship between the lessor and the lessee".

iii. According to Article III of the Lease Agreement, "The Lessee shall pay unto the Lessor a rent as follows, per annual payable yearly in advance on the 1st day of each Lease yearly therefore." In the instance case, this Article of the Lease Agreement was violated by the Lessee, as Petitioner up to date has continued to violate said provision of the Lease Agreement thereof y non-payment of the rent."

iv. "Respondent says that Petitioner abandoned the property in issue, and same was deteriorating which is one of the reasons that necessitated the re-possession, Petitioner facilitated the re-possession by providing paints to re-paint the premises, and relocating the personal effects of Sub-Lessee of Petitioner, the Human Right Commission, to afford the opportunity for Respondent to safely move into the properties without objection on the part of Petitioner. Moreover, the notice for the re-possession was in 2002, but the re-possession action was effected after the expiration of the Lease Agreement in October 1, 2003."

v. "Respondent says that under the contract, Article XII provides the followings, "And the Lessee hereby covenant and agree with the Lessor that they will well and truly pay the rents and perform the other covenant herein stipulated and provided, failing which and after thirty (30) days notice in

writing, the Lessor shall have the right to re-enter and re-possess the said demised premises, and to collect all unpaid rents. And the Lessee also covenants that at the expiration of the period herein granted, they will quietly and peaceably yield up and surrender to the Lessor the said demised premises in as good a condition as reasonable wear and tear will permit, the acts of God and lose by fire not traceable to the conduct of the Lessee nor any of their Agents or servants excepted". In the instance case, Petitioner has failed to live up to this provision of the Lease Agreement, which is one of the reasons that has ,necessitated the re-possession of the demised premises by Lessor, after all efforts on the part of Lessor to amicably settle this matter, by Lessee performing its portion of the Lease Agreement. Moreover, in a communication testified to and read in the minutes of this Court by witness Hilary Dennis of Respondent, un-rebutted by Petitioner, Petitioner in their communication to Respondent dated November 6, 2003, clearly requested 'a new Lease Agreement as Respondent had exercised his right to re-possess the property for the aforementioned reasons under Articles III and XII of the Lease Agreement dated 1983 and 1985 respectively."

vi. "OPTIONAL PERIOD. With respect to optional period, Respondent says same is not compulsory, and in the two Lease. Agreements under Article IV, there are preconditions to be met by the parties in writing and signed. In the cases at bar, the Lessee has failed to meet up with the requirements of the first Lease. Agreement, such as paying rent on time, Article III, violation of Article IX,.....". "Consequently, Lessee is not qualified for the optional period provided by the Lease Agreement."

6."That earlier; the petitioner filed a Motion for sequestration of rent to which Respondent resisted inter alia that the Motion should be denied because the Petitioner has failed to file an indemnity bond to the effect that Petitioner will indemnify the Respondent if the Court finally decide that Petitioner is not entitled to such a relief Moreover, Respondent by that Motion was been deprived of the right to receive and collect rent and without indemnity bond. Respondent has no remedy as provided by law. Further, in this jurisdiction, in the absence of the statute, the common law is applicable and under the common law provision, the Movant for Sequestration of rent must file approved indemnity bond. Notwithstanding, Your Honor ruled that an indemnity bond was not applicable and granted the Motion for Sequestration of rent to which exception was noted. For reliance see court's Minutes sheet two dated Wednesday, April 11, 2007."

To address the first issue, whether the optional period provided under article IV of the agreement of lease satisfies the legal requirements for enforceability, we revert to the certified records before us.

Both in its brief and during argument before this Court, counsel for appellant first maintained the position that the two agreements of lease it entered with the appellee in 1983 and 1985 respectively expired on October 1, 2003 and on July 31, 2005

respectively; that the said two agreements expired long before the appellee filed a petition for declaratory judgment on December 4, 2006; that there exist no contract between the parties consequential of expiration, there was therefore no basis to commence an action against the appellant. Appellant has also contended that the agreements in controversy have no such option due to the uncertainty of the provision which provided for the parties to agree on the rent and other provision. Its appellant's contention also that under the law, any optional provision that contains uncertainty is not enforceable in this jurisdiction.

This Court accepts that in this jurisdiction, a condition for enforceability by a court of law of an optional clause is conditioned on the clarity and certainty of its "terms. To-enforce an optional clause cannot be dependent on future negotiations between the parties. Where the terms of an option lack such certainty, or where such a clause carry cloud of uncertainty, courts of law have been reluctant to enforce them. This is the controlling principle of law adopted in this jurisdiction.

This Court held in **Mirza V. Crusoe et al, 14 LLR 95, 98 (1960):**

"Like other contracts or agreements for a lease, the provision for a renewal must be certain in order to render it binding and enforceable. Indefiniteness, vagueness, uncertainty in the terms of such a provision will render it void unless the parties by their subsequent conduct or acts supplement the covenant and thus remove an alleged uncertainty. The= certainty that is required is such as will enable a court to determine what has been agreed upon. A covenant to re-new upon such terms as may be agreed upon is void for uncertainty.. " The Supreme Court has also held in **Reeves — Gibson Vs. Johnson 15 LLR 612 625(1964)** as follows:

"Uncertain agreements are unenforceable as contracts; they have no legal or equitable effect; in order words, the certainty of the terms of an agreement is a condition of its enforceability."

This Court affirms the principle of law holding that uncertainty in the terms of optional clause renders said provision unenforceable, as invoked by the appellant, this law is however not applicable to the case at bar. Neither the facts in this case nor the applicable laws support reliance by appellant on this principle of law.

The records certified before us are irrefutably clear that the parties herein entered in two agreements of lease. The first agreement was for twenty years certain, commencing on *October 1, 1983 and ending on September 30, 2003*. The second agreement of lease for twenty years certain began from August 1, 1985 up to and including July 31, 2005. The optional period granted under both the 1983 and 1985

agreements is ten (10) years each. The language of the clause providing for the option is clear and far from being ambiguous by any reasonable standards. The substantive language of article IV of the September 8, 1983 agreement, states:

"The lessee is hereby granted an option to *a further term of Ten (10) calendar years, commencing from the 1 St day* of *October, 2003, up* to *and including the 30th day* of *June, 2013, upon the expiration of the term herein granted. During the optional term of Ten (10) years, all income will be divided on a 50/50 basis after all expenses. However, both parties have* to *agree to the .rental terms and sign all contracts together as well as agree to all expenses. K &* H *Construction Company will prepare semi-annual financial statements and operation statements.*

Articles IV of the second agreement of lease entered on July 22, 1985 provides as follows:-

"The lessee is hereby granted an option to a further term of ten (10) calendar years, commencing from the 1st day of August, 2005, up to *and including the 31st day of July, 2015, upon the expiration of the term herein granted during the optional term of ten (10) years, income will be divided on a 50/50 basis after all expenses. K & H Construction Company will prepare semi-annual financial statement and operation statements."*

To the mind of this Court, not only is the language of article IV contained in the two agreements identical, but they both carry exact wordings. Per the language of the clause, the appellant clearly intended and did convey the demised premises for the optional period of ten (10) years to commence immediately as at the expiration of the periods certain. Clearly, not only the parties agreed on the appellee taking possession of the demised premises for ten years, but they also obligated themselves by stipulating that during the life of the ten year optional period, they will share the rental proceeds on a fifty- fifty basis; that expenses on the demised premises will be deducted from the rentals subject to verification by the two parties; that the two parties will sign all agreement of lease for The premises,. etc. These terms were clear and unambiguous.

Contrary to what the appellant attempted to impress upon this Court, the required certainty under the applicable principle of law is one that will enable a court to determine the "agreement" between the parties in definite and certain terms. To the mind of this Court, the parties in the case at bar agreed in clear terms, to ten year option and that rental proceeds will be shared on fifty- fifty basis. To apparently ensure transparency in the process, the parties further accepted that the appellee will make two financial reports on the transactions relating to the demised premises. This

Court also notes that these requirements, as contained in the optional clause, such as dividing the proceeds from the rentals on a fifty-fifty basis, are not found or stipulated in the provisions of the first twenty years certain of either the 1983 or the 1985 agreement of lease, The rights and accompanying obligations of the parties in the optional clause were clear, certain and therefore enforceable

Also, the word "GRANT" as contained and usually employed in agreement of lease is defined in the Black's Law Dictionary, Eight Edition as giving or conferring with or without compensation; to formally transfer (real property) by deed or other writing. See text at page 720.

To the mind of this Court, the vagueness and uncertainty in the terms of a contract that will render it void, unless the parties by their subsequent conduct or acts supplement the covenant and thus remove such uncertainty does not arise in the case before us.

Therefore, appellant's claim that the optional clause is vague and uncertain is not supported by both the facts obtaining and the laws applicable. The contention of appellee stressed before this bar with forensic eloquence, being void of legal merits, is dismissed for all intents and purposes. And we so hold.

We now travel to the second legal question, whether the right to re-entry and re-possession of the demised premises granted appellant under Article XII of the agreement of lease is exercisable outside a court of law.

Appellant has strenuously argued that under the contract, appellee obligated itself in writing and granted unto appellant that it shall have the right to re-enter and re-possess the said demised premises, and to collect all unpaid rents. Appellant further averred that this stipulation binding the parties notwithstanding, yet appellee failed to live up to this provision of the Lease Agreement, which is one of the reasons that has necessitated the repossession of the demised premises by the appellant, after all efforts on its part to amicably settle this matter. Appellant also maintained that appellee abandoned the demised premises which operated as surrender. Under these circumstances, it is appellant's argument that it had the right under the law to re-enter and repossess its property to mitigate damages.

From the onset, it must be clearly stated in this Opinion that the Supreme Court is under a duty to recognise, protect and preserve the sanctity of valid and enforceable contract. ***Meridien Biao Bank Liberia Limited Vs. Andrews et al.*** **40 LLR 111,**

123 (2000). This principle that has always been held as sacrosanct is articulated in our organic law. Article 25 (twenty five) of the Liberian Constitution (1986) states: "Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right."

Consonant with the above, let's examine Article XII of the September 8, 1983 agreement of lease which provides as follows:

"And the Lessee hereby covenant and agree with the Lessor that they will well and truly pay the rents and perform the other covenants herein stipulated and provided, failing which and after thirty (30) days notice in writing, the Lessor shall have the right to *re-enter and re-possess the said demised premises, and to collect all unpaid rents "*

Article XII of the second agreement of lease dated 22nd July, 1985 repeats verbatim the wording of Article XII of the 1983 agreement of lease quoted supra.

Clearly, the wordings of these two but similar articles, seek to grant the Lessor the right to take over the demised premises on failure by the lessee to pay rentals. *It is appellant's argument that Article III of the agreement of lease providing: "The Lessee shall pay unto the Lessor a rent as follows, per annual payable yearly in advance on the 1st day of each Lease yearly...." was violated by the lessee by non-payment of the rent.* It is the contention of the appellant further, that appellee having failed in its contractual obligation to pay rentals, expressly gave the appellant the right to re-enter and re-possess the demised premises. Based on this expressed understanding and agreement between the parties, it is appellant's contention that it was granted the right to re-entry and repossession of the demised premised, a right, according to appellant, is expressly exercisable without recourse to the court.

This Court disagrees. We hold that where a-contract specifically grants a party the right of re-entry and re-possession, said stipulated and expressed right is not exercisable without recourse to a court of law.

As early as 1900, this Court, in **Tubman versus Westphal, Stavenov & Co.,** 1 LLR 367,368-9 (1900), held:

"After a careful survey of the circumstances in connection with the case, this court says that appellant was wrong to order appellees to vacate the said premises and to give them notice that he would eject them if they failed to comply with the order to vacate said premises within fifteen days; for if appellees had violated the terms of

agreement, he, appellant, should enter an action against appellees for breach of contract. Appellant neglected to enter such an action, which he had a legal right to enter if proof was manifest that the appellees had violated the terms of the agreement; but instead, he took and unjustifiable course. Therefore, this court says, that to secure themselves against unlawful ejectment, appellees were justified in enjoining appellant.

"Reviewing all the circumstances that govern the case, this court further says that the court below did not err in rendering judgment to perpetuate the injunction; for it is equitable and just that men should do unto others as they would have others do unto them. The perpetuating of the injunction simply enjoins appellant from further molesting appellees by unlawful ejectment in this particular case, and does not vitiate and make void the terms of the agreement made and subscribed to by the contracting parties. And the court further says that it is unwilling, as the last legal and equitable resort for justice, to lay a precedent on account of technicalities that will prevent all men [women] from enjoying their full rights under the law of the land, be they Liberians or foreigners. The court knows no north, no south; no rich, no poor; no Liberian, no foreigner; and it can guarantee no rights or privileges other than what the Constitution and the laws of the land guarantee to each. Its motto is 'Let justice be done to all men [women]. And the court will not lend its aid to men who seek to take advantage of others by evading a righteous and equitable course of conduct, however adroitly they may endeavour to cover their intentions, for equity is righteousness."

In 1977, this principle was held and affirmed in: **Anandani V. Massaquoi, 26 LLR 286, 2:93-4 (1977).** On the issue on re-entry, Mr. Chief Justice Pierre speaking for this Court observed as follows:-

"With respect to *Massaquoi's right to re-enter upon and repossess real property which he had leased* to *informants, before the term of the said lease agreement had expired, we cannot agree that he had any such right, unless it had been given him by a court of competent jurisdiction. One of the two agreements involved, does not expire until September 1981. There:* were *several remedies available to the lessor, if he felt that any particular term of the agreement had been breached or violated; and no one* of *these several remedies could have authorized him to abrogate his own agreement for the lessee to occupy the premises for a specific term of years...."*

"Respondents have said in their return that the lessor re-entered upon the leased property before expiration of the term of the lease because the lessee had failed to pay the annual rental in advance, as is stipulated in the agreement. At the hearing before us, counsel for respondents argues this point

with marked emphasis and impressive oratory. But the question here is: Did *his client have the competence to decide cancellation of the lease agreement under which the lessee held the property, outside a court of competent jurisdiction? Could he legally constitute himself a court of equity to cancel the agreement?..."*

"According to our legal system, all cancellation of documents and all enforcement of the terms and performance of an agreement are cognizable before a court of equity. If the failure to have satisfied the agreement for payment in advance of the annual rental was regarded by the lessor as a breach of the terms, this was clearly a matter for the courts to say whether or not this breach amounted to ground for setting the agreement aside. Neither of the parties had legal authority or competence to stop enforcement of the terms of a valid agreement; and this can only be accomplished by due process of law."

We affirm the principle of law in both the **Tubman** and **Anandani** cases above referenced as well as the case, ***Meiridien Biao Bank Liberia Limited Vs. Andrews et a1..*** **40 LLR 111, 126 (2000),** *recognizing the principle of law that non-payment of rent is not a remedy for summary ejectment."*

Further on this issue, a review of: **Rached Vs. Knowlden 13 LLR 68, 73 (1957),** is quite instructive. It shows that the plaintiff/appellee sued to eject the defendant/appellant for violating terms contained in a lease agreement. The plaintiff/appellee in said case claimed that the defendant/appellant violated certain terms thereby granting the plaintiff/appellee the right to re-enter and repossess the demised premises, hence the suit in ejectment.

In the said case, the provision upon which the appellee/plaintiff relied and sued on is analogous to the Article XII of the case now before this Court. The relevant analogous provision in the Rached case is as stated:

"….if the rent above reserved, or *any part thereof, shall be in =arrears or unpaid after the expiration of ten days, whereas the same ought to paid as aforesaid, or if any default shall be made in any of the covenants herein contained on the part or behalf of the lessee to be paid, kept or performed, then and thenceforth it shall and may be lawful for the said lessor* to *enter into and upon the said premises and every part thereof, wholly to re-enter and the same to have again, repossess and enjoy as in his or their former estate, hereinbefore contained to the contrary thereof in any wise notwithstanding…"*

The said stipulation notwithstanding, the Supreme Court upheld the principle that ejectment will not lie to re-dress a breach of contract. The Supreme Court also observed that:

"In an action of ejectment brought by the landlord against his tenant for the violation of the covenants and agreements of the lease, in which he sought to eject the lessee, it was held that an action for the violation of contract was the proper action, and an injunction on the ejectment suit .was sustained." Ibid.

"Ordinarily the landlord may not re-enter for breach of covenant unless the covenant is valid and enforceable, and there is a stipulation that the breach shall work a forfeiture or termination of the tenant's interest, or confer on the landlord the right of , re-entry, or there is a statute conferring that right." (our emphasis). Ibid.

But even in such a case, the law frowns on a party interpreting re-entry and re-possession provision in an agreement of lease as an automatic right without invoking the intervention of a court of law.

In ***Grant Vs. The Foreign Mission Board of the National Baptist Convention, U.S.A. 10 LLR 209, (1949), the Supreme Court held that*** no agreement in this jurisdiction can oust court's jurisdiction. Or in the case of disagreement between the parties one may elect to exercise extra judicial means to unilaterally interpret, and enforce a decision against the will and concern to the other parties to the agreement. Moreover, there is no article, clause, phrase, within the very Lease Agreement that tend to enhance the prospect of a party to an agreement helping itself to enforce an allege ambiguity in agreement without recourse to the court.

The principle of law adopted in **La Fondiaria Insurance Companies, Ltd. V. Heudakor 22 LLR 10, 22 (1973),** reaffirms the Grant case decided in 1949 on the duty to seek judicial *remedies for wrongs. It is a.... a general principle that the form and extent* of *the* remedy which every person shall have for injuries are necessarily subject to the legislative power. Moreover, in spite of the broad recognition of the principle that the law will imply a remedy whenever necessary, there much legal authority to the effect that tie constitutional provision that every man shall have a certain remedy for all injuries or wrongs done to his person, property, or, character is not self-executing.... " (emphasis supplied).

Going back to the case, the language of article XII of the re-entry clause contained in the agreement under review *"...Lessee hereby covenant and agree with-the Lessor that they will*

well and truly pay the rents and perform the other covenants herein stipulated and provided, failing which and after thirty (30) days notice in writing, the Lessor shall have the right to re-enter and re-possess the said demised premises, " (emphasis supplied) would appear to put the parties in the position where they have agreed to close their doors against the courts of justice; that if there is dispute the parties would discountenance judicial litigation.

While the terms of a valid agreement are binding on competent contracting parties, a provision which seeks to usurp the constitutional and statutory functions of a court of law by stipulating that determination and enforcement of stipulated rights and obligations are executed outside the a court of law, is a violation of the law, practice and procedure in this jurisdiction. And we so hold.

The settled law in this jurisdiction, as borrowed from England and the United States is that *"....the jurisdiction* of *the courts cannot be ousted by the private agreements of individuals made in advance, that private persons are incompetent* to *make any such binding contract, and that all such contracts are illegal and void as against public policy... Courts are created by virtue of the Constitution and inhere in our body politic as a necessary part of our system of government, and it is not competent for anyone, by contract or otherwise, to deprive himself of their protection. The right to appeal to the courts for the redress of wrongs is one of those rights which are in their nature under our Constitution inalienable and cannot be thrown off or bartered away." Ibid.*

It is therefore our holding that whatever the alleged wrongs or violations appellants *claimed* were committed by the appellee, only a court of law was competent to so find. The position assumed by appellant in the case at bar to cry violation and quickly re-enter and re-possess the demised premises without any recourse to a court of law, constitutes a flagrant disregard for the rule of law.

But moreover, the alleged breach or failure to pay rentals being the basis for appellant reentering and repossessing the demised premises is totally unsupported by the records.

Certified records to us show separate communications dated April 29, 2002, to the tenants of the demised premises, including Liberia Human Rights Commission, "Occupants of property on the Corner of Warner and 16 th Streets, Subject: Repossession, the tenants were informed as follows:

"Please be advised that your landlord K&H Construction Company have not paid us, the owners, The William E Dennis, Sr., Realty Trust Estate, the rent owed for property on the corner of Warner and 16 th St as per lease agreement. Thus, due to *non-payment we are hereby*

notifying you that we have advised said Lessee *of the immediate annulment of the aforementioned contract. In this respect, the William E. Dennis, Sr., Realty Trust Estate will require that you vacate said premises 3 months from the date above.*" This and similar other communications were signed by Hilary A. Dennis on behalf of the William E. Dennis, Sr., Realty Trust Estate.

Be as it may, it cannot: escape the observation of this Court that at the time of writing of the April 29, 2002 communication, not only the properties were occupied under lease agreements entered by appellee with its tenants as alluded to by the very appellant's letters, but the agreement of lease between the appellant and appellee was still in force. The 1983 agreement of lease entered by the parties providing for twenty (20) years certain was expected to expire on September 30, 2003. The second Agreement of lease between the parties also providing for twenty (20) years certain was expiring on July 31, 2005. At least seventeen (17) months before the expiration of the first agreement of lease entered by the parties, the appellant expressly demonstrated in the April 29, 2002 letter, its intentions as shown, not to abide by the terms of the said agreement of lease. At that time, appellant did not only re-enter and repossess all of the demised premises, but to date, there is no showing that appellant is not in actual possession of the demised premises. Appellant's actions, as detailed herein, are simply illegal.

Without further belaboring the points, and in view of what has already been detailed in this Opinion, this Court holds as in this manner:

(1) The final judgment rendered by the trial court declaring the two agreements of lease of 1983 and 1985 along with their respective optional clauses, valid and enforceable, is hereby affirmed;

(2) The time period of appellant's illegal re-entry and repossession of the demised property, commencing' April 2002 to the date of rendition of this Opinion, said period being six (6) years, is hereby ordered restored and to be exercised by the appellee on each of the two agreements of lease executed between the parties;

(3) Also, an additional one (1) year is ordered added to each six (6) year as imposed penalty to offset for interest on the rentals unlawfully collected during the period of appellant's illegal re-entry and repossession of the demised premises.

THE CLERK OF THIS COURT is hereby ordered to send a mandate to the judge presently presiding in the lower court to resume jurisdiction and give effect to this judgment with costs ruled against the appellant. And it is so ordered.