

Fayah J. S. Gbollie of the City of Monrovia, Liberia APPELLANT VERSUS **Free Democratic Party (FDP)**, by and thru its Standard Bearer, David Farhart and Chairman Ciapha Gbollie, all of the City of Monrovia, Liberia APPELLEES

APPEAL

HEARD: MARCH 27, 2007 DECIDED: AUGUST 9, 2007.

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

This case is before us based on an appeal taken from a ruling by the Debt Court of Montserrado County, denying a petition for garnishment filed by Fayah J.S. Gbollie, Appellant/Petitioner, against the Free Democratic Party of Liberia (FDP), Appellee/Respondent.

The records show that on June 7, 2004, Madam Betty Tarloe Chea filed an Action of Debt against the Gbollie Brothers & Associates Company, represented by its President, Fayah J. S. Gbollie, claiming the amount of Fifteen Thousand Two Hundred United States Dollars (US\$15,200.00), representing outstanding balance of unpaid rental for certain premises on Center Street, Monrovia.

On May 20, 2005, the Debt Court of Montserrado County, then presided over by Her Honour Amymusu K. Jones, entered ruling finding the Gbollie Brothers & Associates Company liable to Madam Betty Tarloe Chea in the amount of Fifteen Thousand Two Hundred United States Dollars (US\$15,200.00) plus 6% interest per annum. Cost was also ruled against the Appellant/Petitioner. Following the ruling, the Gbollie Brothers & Associates Company began to satisfy the judgment through several installment payments as indicated by receipts on the file of the Debt Court.

On March 16, 2006, almost a year after the ruling adjudging the Gbollie Brothers & Associates Company liable, Mr. Fayah J. S. Gbollie, in his private capacity, filed garnishment proceedings against the Free Democratic Party praying court to cite that Party to show cause, if any, why the money judgment "against him" cannot be satisfied by the Appellee/Respondent.

We quote verbatim the three-count petition:

REPUBLIC OF LIBERIA IN THE DEBT COURT OF MONTSERRADO
MONTSERRADO COUNTY COUNTY SITTING IN ITS A.D. 2006 MARCH
TERM.

BEFORE HIS HONOUR JAMES JONES DEBT COURT JUDGE

Fayah J.S. Gbollie of the City of Monrovia PETITIONER Versus Free Democratic
Party (FDP) Thru its Standard Bearer, David Farhart & Chairman, Ciapha Gbollie, all
of the City of Monrovia, R.L. RESPONDENT/GARNISHEE

ACTION GARNISHMENT PROCEEDINGS

GROWING OUT OF THE CASE: Betty Tarloe Chea of the City of Monrovia, R. L.
PLAINTIFF Vs. Fayah Gbollie of the City of Monrovia, Liberia DEFENDANT

ACTION OF DEBT

PETITIONER'S PETITION

And now comes, Petitioner in the above entitled cause and most respectfully pray this Honorable court to issue an order of garnishment against the Respondent/ Garnishee herein and showeth reasons therefor, to wit:

"1. That Petitioner is a Judgment Debtor against whom a money judgment was rendered by this Court in the sum of US\$17,000.00 (seventeen thousand United States dollars).

Petitioner requests Court to take judicial notice of the record in the Debt Case.

2. That at the rendition of the judgment, Petitioner/Judgment — Debtor was and is still without any money or asset sufficient to satisfy said judgment. Petitioner submits that the Action of Debt grew out of an accumulated rent for a building which Respondent/ Garnishee occupied from 1991 up to and including February, 2006.

3. That the money due representing rental arrears for the subject building is actually owed by Respondent/ Garnishee who rented same from Petitioner at the rate of US\$800.00 (eight hundred United States dollars) per month from 1991 up to and including February, 2006, making a total of US\$12,800.00 (twelve thousand eight hundred United States dollars), as will evidentially appeared from photocopy of a letter of commitment and acknowledgment duly written by Respondent/ Garnishee and signed by its Secretary General, hereto annexed as exhibit "A", forming a cogent part hereof.

Petitioner submits that the only money available to him for satisfaction of the Judgment is the amount owed to him and in possession of Respondent/ Garnishee.

Wherefore and in view of the foregoing, Petitioner/Judgment-Debtor most respectfully prays that this Court will cite or summon Respondent/ Garnishee to appear and show cause, if any it has, why the money judgment rendered against him cannot be satisfied by said Respondent/ Garnishee, being the amount of US\$12,800 (twelve thousand eight hundred United States) dollars owed Petitioner; and to further grant unto Petitioner such relief justice and right may demand in the premises.

Dated this 14th day of March, A.D. 2006

Respectfully submitted

Petitioner/judgment-Debtor

By & thru his Legal Counsel:

Francis Y.S. Garlawolu

COUNSELLOR-AT-LAW

The Appellee/Respondent filed returns denying the truthfulness of the entire action. Specifically, the Appellee/Respondent denied renting premises from the Appellant/Petitioner as stated in Count 2 of the Petition, or making any commitment to take over and pay rental obligation on behalf of the Appellant/Petitioner. The Appellee/Respondent averred that the building, subject of the debt action, was donated to the Free Democratic Party by its Standard Bearer, Fayah J. S. Gbollie, and in reciprocating the kind gesture, he was designated by the Party to serve and he did serve, as the Party's representative in the National Legislature for two (2) years. The Appellee/Respondent maintained that the portion of the letter attached to the petition which tends to obligate Appellee/Respondent to the payment of rental obligation is fraudulent, as said portion was surreptitiously inserted long after the letter was written and therefore not contained in the copy in Appellee/Respondent's possession.

On June 23, 2006, the Debt Court ruled denying the petition for garnishment. The Court held that the Free Democratic Party was not a party to the lease agreement out of which the action of debt grew. On the issue of the letter which is said to have been written to Appellant/Petitioner by the Appellee/Respondent purporting to undertake the payment of rental obligation, the court observed that the last paragraph of said letter was "irregularly positioned", suggesting some foul play. The court therefore

took the position that the Appellant/Petitioner failed to "show adequate legal and factual reasons for granting him his petition."

The lone issue for the determination of this case is, whether or not under the facts as summarized, garnishment proceeding will lie against the Appellee/Respondent?

Garnishment is "a proceeding by a creditor to obtain satisfaction of the indebtedness out of property or credits of the debtor in the possession of, or owing by, a third person. The person instituting the proceedings is generally referred to as the creditor or plaintiff, the person indebted to the creditor is called the debtor or defendant, and the person holding the property and who is indebted to the debtor is called the garnishee. Garnishment is said to be in effect, an action by the defendant against the garnishee for the use of the plaintiff, or a suit by the defendant in which the plaintiff is subrogated to the rights of the defendant, and it has been termed a compulsory novation." 6 AM Jur 2d, Section 2, Garnishment. Garnishment is ancillary to a main suit and is resorted to as a means of obtaining satisfaction of judgment by reaching credits or property of the judgment debtor in possession of a third party.

Applying the foregoing definition to the circumstance of the case before us, it is clear that garnishment proceeding cannot lie against the Appellee/Respondent.

First of all, the Appellant/Petitioner, Fayah J.S. Gbollie, who filed the proceeding in garnishment did not establish that he is a creditor or plaintiff who has instituted a proceeding to obtain satisfaction of a debt, neither did he establish that he is a defendant in a main suit in court or judgment debtor against whom decision has been made by court. To the contrary, the records before us show that the plaintiff in the action of debt is Madam Betty Tarloe Chea, while the defendant is the Gbollie Brothers & Associates Company, a corporate entity. The fact that the debt action was filed against the company by and through Fayah J. S. Gbollie, its president, does not make him the proper party defendant. Under our law, any corporation, domestic or foreign, has the capacity to sue or be sued in Liberian courts. Section 5.17, 1 LCL Revised, Civil Procedure Law. It is also provided under Section 2.5, of the Associations Law of Liberia that:

"A corporation is a legal entity, considered in law a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation"

We hold that the action of debt filed by Madam Betty Tarloe Chea against the Gbollie Brothers & Associates Company was not against the person of Fayah J. S. Gbollie, therefore, the judgment obtained against the company was not made against Fayah J. S. Gbollie.

Secondly, we observe that the garnishment proceeding was not filed by the Gbollie Brothers & Associates Company against whom the money judgment was entered by the Debt Court. Instead, the garnishment proceeding was filed by Fayah J. S. Gbollie in his personal capacity. The question is: What standing did the Appellant/Petitioner have to file the garnishment proceeding? We hold he had none, whatsoever.

Standing to sue, by definition, is the party's right to make a legal claim or seek judicial enforcement of a duty or right. Black's Law Dictionary, Standing to sue, 7th edition (2001). The purpose of the law of standing is to protect against improper parties. The doctrine of standing ensures that the court will have the benefit of real adverse parties in cases. The question whether a party has standing to participate in a judicial proceeding is therefore not simply a procedural technicality but, rather involves the remedial rights affecting the whole of the proceeding. 59 Am Jur 2d, Standing, Section 30. And it has been held that one must not only have an interest, he must be the real party in interest.

Under our statute, lack of legal capacity to sue is a ground for dismissal of an action. Section 11.2(e) 1 LCL Revised, Civil Procedure Law.

In counts 1 and 2 of the petition quoted hereinabove, Fayah J. S. Gbollie claims that he is a judgment debtor against whom money judgment was rendered in the Debt Court and that since the judgment was entered he "is without money or asset sufficient to satisfy said judgment." This averment is not true, as the money judgment in question as we have stated, was not made against Fayah J. S. Gbollie, but rather against the corporate person, Gbollie Brothers & Associates Company. The garnishment proceedings instituted by the Appellant/Petitioner therefor has no basis both in fact and in law.

Since the Gbollie Brothers & Associates Company is the proper party defendant in the debt action, it goes without saying that the money judgment against the company must be satisfied by the company's funds and not the funds of its shareholders, directors, or officers. And as a matter of fact, records show that the company has made several part payments in satisfaction of the money judgment against it; we note

that all such payments have been made in the name of the Gbollie Brothers & Associates Company.

The Appellant/Petitioner alleged that the Appellee/Respondent wrote a letter of commitment undertaking to make rental payments to Appellant/Petitioner in the amount of Eight Hundred United States Dollars (US\$800.00) per month. It is on the strength of the said letter that the Appellant/Petitioner now seeks to have the property or credit of the Appellee/Respondent garnished under the assumption that Appellee/Respondent (garnishee) has money for the Appellant/Petitioner (judgment debtor).

We see no evidence of lease between the Appellee/Respondent and Appellant/Petitioner in the records before us. Besides, we fully agree with the Debt Court that the last paragraph of the letter said to have been written by the Appellee/Respondent purporting to obligate Appellee/Respondent is "irregularly positioned".

We observe that the computer print of the paragraph in contention is quite different from the computer print of the rest of the letter. We observe further that the Appellee/Respondent's copy of the letter which is also on the file of the Debt Court does not carry the contentious paragraph, suggesting that there is indeed some foul play somewhere with the letter. We ask, how is it that a copy of the same letter would carry a last paragraph different from other copies with different computer print "irregularly positioned". Such situation can only bespeak of fraud. This Court has held that "[t]o establish fraud, it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient, but in most cases it is the only proof that can be adduced....". *J.A. Watson Vs. A. Dondo Ware* 10 LLR 158, text at 163.

The law is also that "inferences of fraud may be drawn from circumstances; the production of direct evidence is not essential to prove fraud. Moreover, certain circumstances operate to create a presumption or inference of fraud and to cast upon a party charged with fraud the burden of going forward with the evidence to show the absence of fraud. In other words, the burden of repelling presumption of fraud... is upon the party to whom the fraud is imputed." *37 AM JUR 2d Generally; burden of proof, Section 437.*

It is clear that direct proof of fraud in the case before us was not necessary; it is also clear that fraud was imputed to the Appellant/Petitioner who did not overcome or

repel the presumption of fraud. We therefore agree with the ruling of the Debt Court that the Appellant/Petitioner did not establish factual and legal reason to grant his petition for garnishment.

In view of what we have said above, the judgment of the Debt Court is hereby confirmed and the Appellant/Petitioner's appeal is denied and dismissed. The Clerk of this Court is ordered to send a mandate to the Debt Court for Montserrado County to resume jurisdiction over this case and give effect to this opinion. Cost against the Appellant/Petitioner. IT IS HEREBY SO ORDERED.

Appeal denied and dismissed.