THELMA GOLL, Appellant, *v.* **SERVICETECNIC CORPORATION (SERVO**), by and through its General Manager, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: March 27, 1984. Decided: May 11, 1984.

1. In an action of debt, the declaration in the complaint must allege all the facts necessary to show an obligation on the part of the defendant to pay plaintiff a sum certain, or one which may be readily reduced to a certainty.

2.It is required by law that the sum or amount of debt due be alleged with a degree of certainty, precision and consistency so as to enable the court to render final judgment thereon on demurrer or default, and the necessity does not then exist for the taking of extensive evidence. Where this is not done, any matter showing the non-existence of a debt in a sum certain is a good defense.

3. A declaration in debt must show that the sum due has not been paid.

4. To arrive at the point of making a demand for payment of debt, the obligation, the sum due, and the breach must have first been averred or established. A demand for payment is void *ab initio* when conditions precedent to such demand do not exist

5. For a judgment to be comprehensive and binding upon the parties for and against whom it is made, it must rest firmly upon clear proof of allegations made by the party claiming the affirmation.

6. Restricting the defendant to a bare denial of the facts alleged by the plaintiff does not shift the burden of proof to a defendant who is adjudged by default. The plaintiff still has the burden to establish his allegations by a preponderance of evidence.

On May 25, 1982 plaintiff/appellee, Servicetecnic Corporation (SERVO), instituted an action of debt against appellant/ defendant, Thelma Goll, to recover the sum of $6,315.00, maintaining the amount

item for which the amount was owed was not mentioned. Plaintiff/appellee also presented four pieces of communication from defendant, each remitting $500.00 to plaintiff without specifically stating why the amount was being paid. The lower court, nevertheless, found the defendant liable and ordered her to pay the full amount of $6,315.00 plus 6% interest. The attorney appointed by the court, in defendant's absence, excepted to the ruling and announced an appeal.

After carefully reviewing the records from the lower court, the Supreme Court reversed the decision of the judge, holding that the plaintiff had failed to establish the liability of the defendant by a preponderance of evidence as required by law. The plaintiff, it held, had failed to show "value received and a promise made to pay." Essentially, the Supreme Court concluded that since the basis of an action of debt had not been established, the lower court judge had erred in finding the defendant liable. The judgement of the lower court was therefore *reversed.*

Alfred B. Curtis appeared for appellant. *J. Emmanuel Berry* appeared for appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

On May 25, 1982, Servicetecnic Corporation (SERVO), plaintiff/appellee, instituted in the Debt Court of Montserrado County, an action of debt against Thelma Goll, defendant/ appellant herein, to recover the sum of Six Thousand Three Hundred Fifteen Dollars ($6,315.00), an amount which it is alleged the defendant justly owed the plaintiff. Pleadings progressed and rested at a three-count reply to the answer. Because of the importance we attach particularly to the complaint and the two exhibits thereto which served as the basis of this action, we have decided to quote same below for the benefit of this opinion:

1. Because plaintiff says that defendant is justly and legally indebted to it in the sum of Six Thousand Three Hundred Fifteen ($6,315.00) Dollars, representing the amount due plaintiff by defendant, and despite plaintiff counsel's request to defendant to settle her obligation as will more fully appear from copy of a letter addressed to defendant, hereto annexed and marked exhibit "A' to form a part of this complaint, defendant has flagrantly refused so to do.

2. And plaintiff further submits and says that although defendant has made several promises to pay,

Respectfully submitted
The above named Plaintiff,
By and thru Its Counsel:
THE BERRY LAW OFFICE
J. Emmanuel R. Berry
COUNSELLOR-AT-LAW. .
Dated in Monrovia this
25th day of May, A.D., 1982."

EXHIBIT "A".

Mrs. Thelma Goll
c/o LAMCO Office
Freeway, Monrovia, Liberia,

Dear Mrs. Goll:

Our client, Messrs. Servicetecnic Corporation, has informed us that you are indebted to it in the sum of Six Thousand Three Hundred Fifteen ($6,315.00) Dollars and, although repeated demands have been made for settlement of said amount, you have failed and neglected to honor your obligation. We have therefore been requested to proceed to institute legal action against you, through court, for the recovery of said amount.

However, we deem it proper to invite you to our office on or before Thursday, April 22, 1982, to make settlement of said account.

Your failure to appear would leave us no choice but to proceed to institute legal action against you to recover said amount through court without further notice.

Kindest regards,
Very truly yours,
THE BERRY LAW OFFICE,
J. Emmanuel R. Berry
COUNSELLOR-AT-LAW."

STATEMENT

Gentlemen/Madam,

Please find below an extract of your account. The amount due us is shown as the last item in the balance column. Your prompt remittance will oblige.

Date	Description	Debit	Credit	Balance
1 Jan. 82	Balance B/F from 1981	$6,315.00		$6,315.00

Following an assignment which was duly issued, served and returned served on the parties, a trial was held wherein the defendant was adjudged by default upon the invocation of the applicable rule, as she had failed to attend upon the assignment for which she had been duly informed by the notice of assignment. Pursuant to a default judgment, the plaintiff was afforded the opportunity to present and to prove its side of the case as the law requires. The irony in this case lies in the desperate effort by appellee to comply with this legal requirement to establish its case by a preponderance of evidence in the absence of the defendant. We shall specifically address later in this opinion.

To establish its case, the plaintiff produced two witnesses: (1) Mr. James A. Onumah and (2) Mamadee Sando. We attach much importance to the total evidence produced by these two witnesses, upon the strength of which a judgment was entered against the defendant. Hence, we have decided to quote and include their entire testimonies in this opinion:

"Q. Please state your name and place of residence?

“A. My name is James A. Onumah and I live in Barnersville, Montserrado County.

“Q. Are you acquainted with the defendant, Thelma Goll?

“A. Yes

“Q. Say also whether you are employed and, if so, by whom?

"A. Mrs. Thelma Goll, the defendant, purchased a Chevrolet Caprice Classic car in the year 1978, January 18, at the cost of $13,915.00, and since then she has only paid a portion of the value ($7,600.00), leaving a balance of $6,315.00. We have been demanding said payment of the balance which she has not paid. We have on several occasions contacted her through our lawyer and, irrespective of her several notes written asking for time to settle the balance, she has not paid. I have the documents showing her balance and the note that she wrote. That is all I know"

At this stage, plaintiff prays the court to place a mark of identification on the instruments just identified by the witness. And submits.

THE COURT: The clerk is hereby ordered to place on the faces of the documents just identified and testified to by the witness now on the stand court's identification marks of CM/"1 thru CM/"9. And it is hereby so ordered.

DIRECT EXAMINATION:

"Q. I then pass you court's mark CM/'1 to CM/'9, and ask you to look at them and say, if you can, whose signature appears thereon?

"'A. CM/2 bears the signature of Mrs. Thelma Goll; CM/3 is signed by Mrs. Thelma Goll; CM/5 is signed by Mrs. Thelma Goll; CM/6 is a receipt signed by Mrs. Jamil Rajeh; CM/7 signed by Mrs. Thelma Goll; CM/8 is a letter addressed to Mrs. Thelma Goll dated March 11, 1981 and signed by Counsellor T. Edwin Swen; CM/"9 dated January 18, 1978 is invoice No. 1112 for one Caprice Classic; CM/1 is a statement of accounts showing the balance Thelma Goll owes to SERVO.

Plaintiff prays the court for confirmation of its exhibits marked CM/1 to CM/9. And submits.

THE COURT: Documents with court's identification marked CM/"1 through CM/"9 are hereby confirmed by court. And it is hereby so ordered.

Plaintiff rests with the witness with the usual reservation. And submits.

THE COURT: The plaintiff is hereby ordered to display the exhibits to the body of the court. And

"Q. Are you employed, and if so by whom, and in what capacity?

"A Yes, I am employed by the SERVO Company as assistant general manager.

"Q. Are you acquainted with Thelma Goll, the defendant in this case?

"A Yes, I know Thelma Goll.

"Q The plaintiff has instituted a debt action against the defendant and you have been brought in as a witness for the plaintiff. Would you please tell the court all you know about this case, especially in support of the complaint?

"A Yes, I know Thelma Goll, who credited a car from us (SERVO), a Chevrolet Caprice Classic. We have made repeated demands for payment, but to no avail. We handed the matter to our legal counsel, who also wrote her demanding payment, but she failed to pay. Also, we have several notes from her making promises to pay. Having failed to pay, we instituted this action against her. That is all I know.

Predicated upon this evidence, the court entered the below quoted final judgment against the defendant following the denial of a motion for a new trial.

"COURT'S FINAL JUDGMENT

"This Honourable Court is convinced from the evidence adduced at the trial of this case (both oral and written) that the defendant herein is indebted to the plaintiff in the sum of $6,315.00 sued for by the plaintiff.

"In view of the foregoing, this court has no other choice but to adjudge the defendant liable to pay plaintiff the amount of $6,315.00 same being the principal amount sued for by the plaintiff plus the interest of 6% including the costs of these proceedings. The clerk is hereby ordered to prepare the necessary bill of costs and place same in the hands of the sheriff of the court to be served on both plaintiff and defendant or their counsels for taxing. And it is hereby so ordered.

Given under my hand and seal of this Honourable Court this 14th day of March A.D. 1992

exceptions upon which the defendant/appellant based her appeal and argued before this Court in a three-count brief are herein below quoted for the benefit of this opinion:

'BILL OF EXCEPTIONS

The defendant in the above entitled cause of action being dissatisfied with Your Honour's final judgment submits this bill of exceptions for your approva1 to enable her to appeal to the Honourable Supreme Court for a review:

1. That although plaintiff instituted an action of debt against defendant for $6,315.00, plaintiff did not intelligibly state in its complaint what value was received and promised to pay plaintiff. Plaintiff only attached to its complaint exhibit "A", being a letter dated April 1982, addressed to defendant, and exhibit "B", a statement of account for $6,315.00, representing the amount allegedly due plaintiff, without any explanation. Defendant vigorously denied that she owed plaintiff the amount but the plaintiff, contrary to the rules of notice, made profert of documents it elected to attach to its reply, documents in defendant's handwriting, such as exhibits "B" and "C" which were not pleaded in his complaint and inconsistent under the law but Your Honour, being prejudicial and detrimental to defend-ant's interest committed a eversible error when in your final judgment rendered thereon, on the 14th day of March, A. D. 1983 that the defendant is indebted to the plaintiff in the sum of $6,315.00 sued for by the plaintiff. To which judgment defendant excepted and announced an appeal on sheet two of the minutes of court recorded on March 14, 1983. *See* court's final judgement.

2. Defendant respectfully contends that after the trial, Your Honour rendered an imperfect judgment, which judgment is by default under the control of the court, until rendition of final judgment. Your Honour ingloriously committed a lega1 blunder by allowing plaintiff to exhibit and introduce instruments not pleaded in his complaint to give defendant due and timely notice and admitted the following:

1.CM/3 =	$500.00	5/3/79
2.CM/4 =	500.00	5/3/79 receipt No.8538
3.CM/5 =	500 00	4/1/80
4.CM/6 =	500.00	4/1/80 receipt No.10017
5.CM/7 =	--	

of this case when plaintiff introduced new evidence which it did not plead and could not have introduced. Yet Your Honour rendered a default judgment admitting the instruments which were not pleaded against the principle of admissibility.

4. Defendant respectfully submits and contends that the plaintiff did not prove the case as laid in the complaint by quantum and preponderance of evidence as to how much defendant paid on the Caprice Classic Car costing $13,915.00 upon receipts. This the plaintiff failed to do, yet Your Honour rendered final judgment adjudging defendant liable in the sum of $6,315.00, to which she excepted and appealed to the Supreme Court for a review of the case.

WHEREFORE, in view of the foregoing defendant submits this bill of exceptions for your kind approval to enable her to appeal to the Supreme Court to render a legal judgment thereon.
Respectfully submitted,
Thelma Goll by & thru her Counsel:
Sgd.
ATTORNEY-COUNSELOR AT-LAW
APPROVED:_____THE TRIAL JUDGE, DEBT COURT, MO. CO.
MARCH 21, 1983."

Having quoted the two-count complaint *supra* in this opinion, in which it is clearly shown that no basis exists for an action of debt, the contention of the appellant in counts one and two of the bill of exceptions are well grounded. There is no showing in the said complaint of an obligatory contract between the plaintiff and defendant. There is no showing of a value received and a promise made to pay. The letter written to the defendant by the plaintiff's counsel demanding payment of the amount of $6,315.00 and the statement of account reflecting the same amount established no obligation on the part of the defendant to the plaintiff to warrant an action of debt. Debt is defined as a form of action which lies at law to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty. 26 C. J. S., *Debt*, § 1(a), at 18, states:

There are two essentials to an action of debt:

(1) certainty of sum, and (2) medium of payment.

Particular averments in an action of debt are: (a) the obligation, (b) the sum due, (c) the breach, (d) the demand, (e) special averments and (f) damages. 26 C. J. S., *Debt,* § 10 (b) at 25. For the purpose of this opinion, we shall deal with the obligation, the sum due, the breach, and the demand.

(1) The obligation: In an action of debt, the declaration in the complaint must allege all facts necessary to show an obligation on the part of the defendant to pay plaintiff a sum certain, or one which may be readily reduced to a certainty. Thus where the action is brought on a statutory obligation, all the facts necessary to the incurring of the liability or penalty must be alleged. Where the declaration is on a judgment or an instrument in writing, it is usually sufficient to declare on it according to its legal effects, provided the declaration, when necessary, also states any matters of inducement to explain the contract, avers that defendant agreed to pay, and shows an interest in the plaintiff in the cause of action.

Where the action is for rent in arrears, plaintiff needs not declare on the deed, but the declaration is sufficient if it states the substance of the demise. If the obligation has been assigned, the declaration must show that payment has not been made to the assignor and if the liability of the defendant is conditional on the performance of acts by plaintiff, a performance of such conditions or a tender thereof must be alleged. Where the obligation of payment arises from some matter dehors the instrument on which suit is brought, it is necessary to show the connection by apt language.

(2) The sum due: The declaration must allege with certainty the amount of debt due, but it is sufficient if the amount is alleged with such precision and consistency as will enable the court to render final judgment thereon on demurrer or default.

(3) The breach: A declaration in debt must show that the sum due has not been paid. The form of the allegation of the breach must be governed by the nature of the defendant's obligation. Thus, a declaration on written obligation should aver the breach in the words of, or in terms coextensive with the contract.

(4) The demand: Where the obligation on which a suit is brought evidences an indebtedness known to defendant, it is unnecessary, from the nature of the case, to allege in the declaration that any

counsel, attached to the complaint as exhibit "A," wherein the plaintiff demands payment of $6,315.00, cannot under the legal citations herein above quoted, constitute the basis or foundation of an action of debt. Since it is merely asking the defendant for payment, the letter falls squarely into the category of a demand. To arrive at the point of making a demand for payment of debt, however, the obligation, the sum due and the breach must have first been averred or established. A demand for payment is void ab *initio* when conditions precedent to such demand do not exist. The complaint therefore should have been dismissed upon the strength of count three of the answer, where the defendant argued that there was no showing in the complaint of the existence of defendant's indebtedness to the plaintiff. It is required by law that the sum or amount of debt due is alleged with a degree of certainty, precision and consistency so as to enable the court to render final judgment on demurrer or default, and the necessity does not then exist for the taking of extensive evidence. Where this is not done, any matter showing the nonexistence of a debt in a sum certain is a good defense. 26 C. J. S., *Debt,* §1, at 23.

In count four of the answer, the defendant contended that exhibit "B" proferted with the complaint was a void instrument since it did not indicate in any degree defendant's obligation to the plaintiff. In reviewing the said instrument, we observed that it is a statement of account written on the plaintiff's business letterhead, possibly done by the plaintiff, and showing what appears to this Court an unintelligible and incomprehensible account. Exhibit "B," as already quoted in this opinion, supports the contentions of the appellant in count one of the bills of exceptions, as well as count two of the brief. The said exhibit reveals nothing that obligates or connects the defendant to the plaintiff for the alleged debt obligation.

The said document consists of columns for the date, description, debit, credit and balance, as shown herein below:

Date	Description	Debit	Credit	Balance
1 Jan. 82	Balance B/F from 1981	$6,315.00		$6,315.00

said document is unsigned. The purpose of proferting this instrument with the complaint, therefore, is an exercise in futility.

Upon being attacked by the defendant on the sufficiency or basis of the action of debt and a prayer for dismissal thereof, the plaintiff decided to file a reply in which it grossly violated the fundamental principles of pleading, that of giving one's adversary due and timely notice of what you intend to establish. While the statute generally provides for a complaint, an answer and a reply in a court of record, the legislative act creating the debt court limits and restricts pleadings to a complaint and answer. Not-withstanding, to cure the legal and factual defects of the complaint, the plaintiff filed a three-count reply in which it made profert of several documents. The documents consisted of: (1) Servicetecnic statement of account sheet duplicate No.1112, dated January 18, 1978, showing one Caprice Classic four door sedan for the price of $13,915.00, signed by a personnel of the plaintiff company; (2) a letter dated March 13, 1981 under the signature of Counsellor T. Edwin Swen, addressed to Mrs. Thelma Goll, informing her that her name had been turned over to him for prosecution of a lawsuit should she fail to pay the amount of $6,315.00 by March 27, 1981; (3) a note written on Lamco J. V. Operating Company's memo paper to SERVO, signed by Thelma Goll, acknowledging receipt of a reminder from SERVO, and promising to make every effort to make settlement of an unnamed amount at the end of the month; (4) Receipt No.10017 issued on SERVO official receipt document in favor of Mrs. Thelma Goll for $500.00 on account of what is shown on said document as "B"; (5) a note written on Lamco J. V. Operating Company's memo to SERVO, dated 4/1/80, under the signature of Thelma Goll, requesting that a receipt for $500.00 be given the bearer against her account; (6) a note from Thelma Goll to one Mr. Khalifi informing him of the several attempts she had made to see him but to no avail, and explaining her financial predicaments at the time. In the same note, she promised to make good her overdraft with SERVO between July 31 and August 15, 1978, as soon she got a loan from the bank; (7) a note to SERVO calling the attention of Mr. Faoud to the fact that $500.00 was being dispatched without covering letter and requesting acknowledgment and receipt in favor of Mrs. Thelma Goll's account. This note is written on Lamco J. V. Operating Company's memo and signed by Thelma Goll; (8) receipt No.8538, written on SERVO official receipt paper, dated March 5, 1979, in favor of Mrs. Thelma Goll for the sum of $500.00 on account of “B”.

The purpose for which these documents were proferted with the reply in this action of debt remains

action. (2) A plain and concise statement of the facts constituting a cause of action without unnecessary repetition, and such material allegation shall be distinctly numbered; (3) A demand of the relief to which the plaintiff supposes himself entitled.

An answer is a pleading by which defendant in suit law endeavors to resist the plaintiff's demand by an allegation of facts, either denying the allegations of plaintiff's complaint or confessing them and alleging new matters in avoidance, which defendant alleges should prevent recovery on facts alleged by plaintiff.

Reply, in its general sense, is what the plaintiff, petitioner or other person who has instituted a proceeding, presents as a response to the defendant's case. Its office is to join issue or avoid new matters in the answer, and *not to aid the complaint by supplying omission* or adding new ground of relief. BLACK'S LAW DICTIONARY117-118, 156 & 1464 (4th ed. 1951). (Emphasis ours)

In view of these legal holdings, the questions which germinate therefrom and require answers are: (1) Did the complaint in the case at bar meet its purpose, that of giving defendant information of all material facts on which plaintiff relies to support its demand? (2) Did the plaintiff breach the office of a reply to an answer when it aided the complaint by supplying omission?

In answer to these questions, we say without the slightest degree of reservation that the complaint in the case at bar fell far short of its purpose. It failed to inform the defendant how she incurred the purported debt. It failed to inform the defendant when, and how, she legally obligated herself to the plaintiff in the amount stated in the complaint. The grade of information contemplated by law to be given a defendant against whom a cause of action is brought precluded the two exhibits proferted with the complaint, except such exhibits were only proferted as auxiliary to legally qualified and material information. The statement of account, unilaterally prepared by the plaintiff, with no declaration or obligation signed by the defendant either in the presence of witnesses or otherwise, and the letter written by plaintiff's counsel to the defendant demanding settlement of a non-existing debt, do not rise to the quality of information contemplated by law to establish a debt action against the defendant. Hence the complaint did not meet its required purpose and should have been dismissed against the answer which properly raised this cogent point.

The question that now requires an answer is whether or not this wrong committed by the defendant justifies any right of the plaintiff as regarding the violation of the statute in filing the reply? It is a legal maxim that *injuria non excusat injuriam*, which means that one wrong does not excuse another. RADIN LAW DICTIONARY 401 (1955). We hold that while the court was correct in overruling the motion on the ground stated, the said court should have proceeded further in abating the reply since it also violated the law controlling. By failing to act accordingly, the court committed a prejudicial reversible error.

We shall now proceed to consider the evidence produced by the plaintiff at the trial and decide whether or not it was a preponderance of evidence, sufficient to warrant a judgment in its favor. The defendant, being absent from the trial, did not shift the burden of having the plaintiff prove its case by a preponderance of evidence that convinces a rational mind. Thus, we shall consider the probative value of the evidence produced by the two witnesses who testified for the plaintiff.

While it is true that anyone under oath, and not disqualified to testify, may testify to those facts within his/her certain knowledge touching the cause, the trier of facts must consider all the circumstances surrounding said testimony in giving same a probative evaluation. For example, in the instant case, witness James A. Onumah who was plaintiff's first witness and by whose testimony nine exhibits were proferted with the complaint and reply, identified, marked and confirmed by court, never showed what office he holds with the plaintiff to have properly clothed him with the necessary authority to have given such vital evidence. While it is true that he declared under oath that he is employed with the plaintiff company, this fact alone does not *ipso facto* clothe him with authority to have knowledge of, and give the quality of information he testified to concerning the company's finances. In other words, any Tom, Dick and Harry may not testify to any fact in a case in order for the testimony to have probative value. While James A. Onumah identified himself as an employee of the plaintiff company, an important element lacking in said identity that would have given unqualified credit and probative value to his testimony is that of his failure to establish the office he held in the employment of the plaintiff company. For, unless it is established that the functions of Mr. Onumah in his employment with the plaintiff company connects him directly with the financial office of the company, the evidence given by him as in the instant case has little or no probative value.

The second witness who testified for the plaintiff, identified himself as Mamadee Sando, an employee

it is made, it must meet firmly upon clear proof of allegations made by the party claiming the affirmative. The "dismissa1 of a defendant's pleadings, restricting the defendant to a bare denial of the facts alleged by the plaintiff... does not shift the burden of proof." *Salami Brothers* v. *Wahaab*, 15 LLR 32 (1962). So also the burden of proof does not shift upon a defendant who is adjudged by default, for it is the duty of every party alleging the existence of any fact to prove it. *Twegbey and Teah* v. *Republic*, 11 LLR 295 (1952). This proof is "sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence." Civil Procedure Law, Rev. Code 1:25.5.

Contrary to all of these legal holdings, the plaintiff in this case has not only failed to materially allege the existence of defendant's indebtedness to it, and as to what contract between the parties constituted the incurring of the debt, but the said plaintiff has also flatly failed to establish by a preponderance of evidence even the flimsy allegations laid out in the two-count complaint.

Wherefore and in view of all the facts, legal citations and circumstances surrounding this case, it is our candid opinion that there was no legal and factual foundation for the Action of Debt instituted by the plaintiff, and no proof of defendant's liability was established by a preponderance of evidence as the law requires. The judgment is therefore reversed. Costs disallowed. And it is hereby so ordered. *Judgment reversed.*