

**Mr. Toni Harouni, ADI Contractors**, of the City of Monrovia, Liberia  
APPELLANT VERSUS **Mr. Joe Griegre** of the City of Monrovia, Liberia  
APPELLEE

LRSC 21

HEARD: MAY 2, 2011 DECIDED: JULY 21, 2011

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On November 18, 2009, Toni Harouni, plaintiff/ appellant, filed an action of debt against Joe Greigre, defendant/appellee, in the Debt Court of Montserrado County. He withdrew the complaint and filed an amended complaint on December 10, 2009. We quote the amended complaint:

"1. That plaintiff complains the within named defendant and says that, on November 11, 2008 through July 19, 2009, the within named defendant hired the services of the plaintiff for the purpose of renovating defendant's Embassy Night Club lying, situated and located at Congo Town, Monrovia, for the amount of Eighty Five Thousand Eight Hundred Ninety Sixty United States Dollars and Seventy Cents, (US\$85,896.70)."

"2. That plaintiff further complains defendant and says that the said defendant requested plaintiff to pre-finance the entire renovation project and submit the bill at the completion of the renovation work and assured [plaintiff] that the amount expended by plaintiff will be repaid by the defendant. Plaintiff says that upon completion of said renovation work, he requested the defendant to pay him but the said defendant has refused, neglected and failed to make payment."

"3. That plaintiff also further complains the within named defendant and says that based on the arrangement in paragraph two hereinabove, the bill of quantities for the renovation work for the existing building of the Embassy Night Club was done from November 11 to December 1, 2008 and from January 21-July 19, 2009, all of which were submitted to the within named defendant who approved the same."

"4. That plaintiff further complains and says that because he did not have all the materials needed for the entire renovation, plaintiff sub-contracted some business houses to supply the needed materials for which plaintiff made payments and said payments form part of the money owed plaintiff by the defendant. Additionally, plaintiff took pictures at the work site of the Embassy Night Club during and after the renovation and also plaintiff did sketch drawing of the said Embassy Night Club before the renovation and after the renovation. Attached hereto and marked exhibit "R1" in bulk are the photos taken of the Embassy Night Club during and after renovation, and invoices with delivery notes paid by plaintiff and sketches of the Embassy Night Club before and after the renovation to form a cogent part of plaintiff's complaint..."

"5. That further to counts one (1), two (2), three (3), and four (4) hereinabove, plaintiff says that he completed the renovation work on defendant's Embassy Night Club and thereafter requested for full payment of the contract amount of Eighty Five Thousand Eight Hundred Ninety Six United States Dollars and Seventy Cents (US\$85,896.70), but the within named defendant has refused and neglected to pay. Attached and marked Exhibit "R/2" in bulk are copies of the bill of quantities for the renovation work on the existing Embassy Night Club and also construction permit issued to plaintiff by the Monrovia City Corporation as condition precedent to the renovation to form a cogent part of this complaint."

"6. That plaintiff says that due to the refusal and neglect of defendant to pay the amount owed plaintiff, plaintiff was left without any option, but to refer the matter of defendant's indebtedness to [plaintiff s] counsel, the Century Law Offices, who, through telephone conversation, invited the defendant to its offices with the view of having defendant to make said payment save of long and expensive litigation, but the defendant did not honor said invitation."

"7. That plaintiff says that subsequent to defendant's failure to honor an invitation from plaintiff's counsel, the said counsel was instructed by plaintiff to write and

demand the indebted amount of Eighty Five Thousand Eight Hundred Ninety Six United States Dollars and Seventy Cents (US\$85,896.70). Attached and marked Exhibit "R13" is a photo copy of counsel for plaintiff's letter demanding from the within named defendant...."

The defendant/appellee filed an answer to the complaint which he withdrew and amended; the amended answer, along with a motion to dismiss, was filed on December 17, 2009. We quote counts 1-12 of the amended answer:

"1. That as to the entire amended complaint, defendant says that same is a fit and proper subject for dismissal because, though the caption of the case is "Action of Debt," the averment of the amended complaint failed to establish the essential and requisite elements of a valid action of debt. Defendant submits, as a matter of law, that the complaint in an action of debt must aver

(a) a written obligation or promise to pay an amount loaned or due for services rendered or goods sold and delivered upon a promise to pay, and (b) the refusal to pay same; or it must state that the defendant owes the plaintiff money upon account made in the normal course of business transaction, in which case the plaintiff must annex to his complaint the account made, stating distinctly and intelligibly the articles with which the plaintiff intends to charge the defendant, so as to give the defendant due notice of the facts the plaintiff intends to prove."

"2. Further to count one (1) herein above, defendant says that in the instant case, the plaintiff has not exhibited a scintilla of evidence to show that the defendant obligated himself to the plaintiff. Hence, in the absence of a contract or any documentary evidence showing an obligation assumed or a promise made by the defendant to pay the plaintiff, an action of debt cannot lie and, therefore, plaintiff's action must be dismissed as a matter of law."

"3. Further to count two (2) herein above, defendant submits that the Honourable Supreme Court of Liberia has held that it is not the title of the action which is

controlling, but rather, it is the averments in the complaint which determine the form of action and not the mere caption of the case."

"4. Further to count three (3) herein above, defendant says that our Supreme Court has held that in every action, it is from the averments of the complaint that the cause of action is determined, and it is from the cause of action that the subject matter, over which the court has jurisdiction in order to render a valid judgment, is determined. Furthermore, the jurisdiction of a court over the subject matter of the action may be determined from both the caption of the action, as well as the averments in the complaint, provided, however, that the averments correspond to and are consistent with the captioned title of the action. Defendant submits that where there is a conflict between the title of the action and the averments of the complaint, the averments will be given precedence and thus will prevail over the captioned title, and that in such instance, jurisdiction over the subject matter will be determined, not from the caption of the action, but rather from the averments of the complaint. The plaintiff's complaint should, therefore, be dismissed for lack of subject matter jurisdiction because of its failure to meet the essential and requisite elements of a valid action of debt. *Blamo v. His Honour Charles B. Zulu, Toe and Topor*, 3OLLR, 586 (1983)."

"5. Further to count four (4) herein above, defendant says that nowhere in the amended complaint did plaintiff make proffer any written instrument executed by the defendant, in which defendant admitted being indebted to the plaintiff and made an unconditional promise to pay or repay a sum certain to plaintiff at a definite future date and that the defendant breached this promise. Our Supreme Court has held that an action of debt is an action to enforce the payment of a debt, and that the complaint in a debt action must aver a written obligation or promise to pay a sum certain."

"6. Defendant says that plaintiff, having woefully failed to proffer any written instrument in which defendant promised to pay the sum of United States Dollars (Eighty Five Thousand Eight Hundred Ninety Six United States Dollars and

Seventy Cents, (US\$85,896.70) for whatever reason(s), an action of debt will not lie. Plaintiff's action should, therefore, be dismissed for lack of subject matter jurisdiction as a matter of law."

"7. That as to counts one (1), two (2), three (3), four (4), five (5), six (6), seven (7) and the prayer of the amended complaint, defendant says that contrary to the allegations of the plaintiff, plaintiff has woefully failed to exhibit any contract document, document of hire, engagement or commitment executed by the defendant, as evidence to substantiate the averments contained in the said counts."

"8. Further to count seven (7) herein above, defendant says that Exhibit "R/1", attached in bulk, are simply photos and invoices with delivery notes, which could be obtained by anyone, and do not satisfy the requirements of debt. Our Supreme Court has held that an action of debt is an action to enforce the payment of a debt, and that the complaint in a debt action must aver a written obligation or promise to pay a sum certain."

"9. Further to count eight (8) herein above, defendant says and respectfully request court to take judicial notice of the fact that the delivery notes bear several other names, including Total 6 th Street, Harbel Supermarket, Total Duala, 13 th Street, Roxy Building, Ecobank Zwedru, Rehab Sayon Town, Lott Carey, Total Congo Town, Mamba Point, etc. Definitely, they do not satisfy the requirements of debt. Our Supreme Court has held that an action of debt is an action to enforce the payment of a debt, and that the complaint in a debt action must aver a written obligation or promise to pay a sum certain."

"10. Further to count nine (9) herein above, defendant says Exhibit "R/2" comprises a bill of quantities unilaterally prepared by the plaintiff and the permits accompanying same are self serving; they do not, and cannot, constitute in any way, shape or form, evidence of defendant's promise to pay plaintiff the sum of United States Dollars Eighty Five Thousand Eight Hundred Ninety Six United States Dollars and Seventy Cents (US\$85,896.70). Definitely, they do not satisfy the

requirements of debt. Our Supreme Court has held that an action of debt is an action to enforce the payment of a debt, and that the complaint in a debt action must aver a written obligation or promise to pay a sum certain."

"11. Further to count ten (10) herein above, defendant says our Supreme Court has held that "a defendant is not compelled to take the witness stand or compelled to place a witness on the stand. Hence, the failure to do so does not shift the burden of proof in an action of debt from the plaintiff." *Boakai v. Zayzaboy*, 32LLR 171 (1984)."

"12. Further to count eleven (11) herein above, defendant says plaintiff should establish debt before defendant is called upon to answer... the [defendant's failure to take the witness stand] does not shift the burden of proof in an action of debt from the plaintiff."

The defendant/appellee filed a motion to dismiss the complaint, relying on *section 11.2, Civil Procedure Law* which provides that at the time of service of his responsive pleading a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim. The 12- count motion filed by the defendant/appellee virtually recounted all of counts 1-12 in the amended answer and contended that the facts alleged in the complaint did not support an action of debt, therefore, the debt court lacked jurisdiction of the subject matter of the action; that the complaint lacked the essential and requisite elements of a valid action of debt such as: a written obligation or promise to pay a certain amount loaned or due for services rendered; goods sold and delivered upon a promise to pay and refusal to pay; or money owed on account made in the normal course of business transactions, in which case the plaintiff must annex to his complaint the account made, stating distinctly and intelligently the articles with which the plaintiff intends to charge the defendant. The defendant/appellee further contended in his motion to dismiss that it is the averment in the complaint and not the caption of the case that determines the cause of action; that since the averment in the complaint failed to show the subject matter of debt, the debt court should dismiss

the case for lack of subject matter jurisdiction.

On December 23, 2009, the plaintiff/appellant filed a reply confirming the averments in his amended complaint. He further stated in count 7 of his reply that the course of dealing between him and the defendant/appellee had been so cordial that in November 2006 thru July 2007, defendant/appellee hired him to renovate the same Embassy Night Club under the same arrangement as was done in the instant case; that after the completion of the required renovation work, the defendant/appellee paid him US \$78,000; that at the time, the defendant/appellee never demanded a written contract before making payment to him as is being done in this case. Along with his answer, the plaintiff/appellant filed a resistance to the motion to dismiss and prayed the Debt Court not to dismiss his case.

On July 8, 2010, the Debt Court of Montserrado County, after hearing argument pro et con, made a ruling granting the motion and dismissed the case. We quote excerpts from the trial court's ruling:

"...for such a major work, i.e. the renovation of a building for more than US\$80,000.00 and lasting several months, plaintiff cannot proffer any written commitment whatsoever from defendant regarding payment for the work."

"Plaintiff's only evidence are invoices and delivery notes, many of which show that the material listed thereon, were delivered to persons other than defendant, or for purposes other than the Embassy Night Club."

"Plaintiff has alleged in count 4 of his resistance [to the defendant's motion to dismiss] that the parties undertook an implied contract (not written) in the past for the renovation of the same Embassy Night Club, and he was paid by defendant; implying that his performance without any written obligation or commitment from defendant was common practice between him and defendant; yet, he attached nothing to his pleading like a previous receipt, or the copy of a check etc., by which he was paid in the past to support this allegation."

"In the mind of this Court, plaintiff has labored but without success, to show two important prerequisites to a valid debt action... 1) that the defendant is indebted to him and 2) the sum certain of the alleged indebtedness."

WHEREFORE and in view of the foregoing, the motion to dismiss must be and is hereby granted."

The plaintiff/appellant has come to us on regular appeal to review the ruling of the Debt Court.

We shall address two issues in the determination of this case:

1. Whether the averments in the plaintiff/appellant's complaint showed that he made a valid contract with the defendant/appellee for the renovation of the latter's Embassy Night Club?
2. Whether the averments in the plaintiff/appellant's complaint showed a cause of action in debt?

On the first issue, we hold that the plaintiff/appellant failed to show that a valid contract existed between him and the defendant/appellee. The plaintiff/appellant filed this action alleging that the defendant/appellee hired or contracted his services to renovate his Embassy Night Club in Congo Town, Monrovia for the agreed amount of Eighty Five Thousand Eight Hundred Ninety Sixty United States Dollars and Seventy Cents, (US\$85,896.70). He said the defendant/appellee requested him to pre-finance the entire renovation project and submit the bill on completion and the defendant/appellee assured him that the amount expended would be paid. He maintained in count 3 of his amended complaint that he submitted the bill of quantities covering the renovation work to the defendant/appellee; that even though the defendant/appellee approved the bill of quantities, he refused to pay the total amount of Eighty Five Thousand Eight



Hundred Ninety Sixty United States Dollars and Seventy Cents, (US\$85,896.70) contained in the bill of quantities despite repeated demands.

But the plaintiff/appellant failed to show that a valid contract existed between him and the defendant/appellee. A contract is defined as an agreement upon a sufficient consideration to do, or to refrain from doing a particular lawful thing. A contract is also defined as an agreement, obligation, or legal tie by which a party is bound, expressly or impliedly, to pay a sum of money or to perform or omit to do some certain act or thing. The elements of a valid contract are an offer, acceptance, contractual capacity, consideration, a manifestation of mutual assent, and legality of the object and of the consideration. *Section 19, 17A Am Jur 2nd Elements.*

In the case before us, no contract document, document of hire, engagement or commitment executed by the parties was annexed to the complaint as evidence to indicate that the defendant/appellee offered to hire the services of the plaintiff/appellant and the plaintiff/appellant accepted to perform services for the defendant/appellant for a certain consideration. So it is clear that there was no express or written contract between the parties.

In his reply, however, the plaintiff/appellant contended that in November 2006 thru July 2007, defendant/appellee hired his services to renovate the same Embassy Night Club under the same arrangement as was done in the instant case; that after the completion of the required renovation work in 2007, defendant/appellee paid him US \$78,000; that at the time, the defendant/appellee never demanded a written contract before making payment as is being done in this case. This averment of the plaintiff/appellant suggests that there was an implied contract between him and the defendant/appellee and that his performance without any written contract or commitment from defendant/appellee was common practice between him and defendant/appellee. An implied contract is one in which the terms are not so stated. In an implied contract, the terms are inferred from the conduct of the parties and the circumstances of the case. *Section 12, 17A AM Jur 2nd Express, Implied, or Constructive Contract.*

But the plaintiff/appellant failed to show any conduct of the defendant/appellant based on which an inference can be made that the parties had entered an implied contract. Even though he alleged that the defendant/appellee paid him US \$78,000 in 2007 for similar renovation work on the same Embassy Night Club, no document, i.e. copy of a check or payment receipt was annexed to his complaint to give an inference that the parties had entered an implied contract in the past for the renovation of the same premises under which the plaintiff/appellant was paid.

The plaintiff/appellant alleged, also, that he submitted the bill of quantities covering the renovation work he did on the Embassy Night Club in 2009 to the defendant/appellee; that the defendant/appellee approved the bill of quantities but refused to pay the total amount of Eighty Five Thousand Eight Hundred Ninety Sixty United States Dollars and Seventy Cents, (US\$85,896.70) contained in the bill of quantities despite repeated demands. This is an important allegation of the plaintiff/appellant's complaint. In the absence of a written contract, a reasonable inference could be made that the parties had agreed on an implied contract, where the party defendant, as alleged in this case, approves a bill of quantities for work that is said to have been done by the party plaintiff. But the plaintiff/appellant did not annex to his complaint, a copy of the bill of quantities which he said the defendant/appellant had approved in support of this important allegation. Under the circumstances enumerated above, there is no way of knowing that the parties truly entered an implied contract under which the plaintiff/appellant performed, creating an obligation in debt which binds the defendant/appellee to pay a certain sum of money to the plaintiff/appellant. This Court has held that where in a suit for debt the declaration fails to state the contract, the suit will not be sustained. *M Dinklage vs. Edward W. Liles*, 1 LLR 382 (1901.)

On the second issue, whether the averments in the plaintiff/appellant's complaint showed a cause of action in debt, we hold that the facts alleged in the complaint did not support an action of debt. An action of debt must be for a fixed and definite sum of money, or one that can readily be made fixed and definite either from fixed

data or agreement, or by mathematical computation or operation of law. Thus, an action of debt does not lie to recover unlimited or unascertained damages. *Section 1, 26 CIS Definitions.*

The plaintiff/appellant attached a huge quantity of invoices and delivery notes to his complaint in an attempt to establish an action of debt. We see that some of the invoices and delivery notes carry the name of the Embassy Night Club, while others carry names such as: Total, 6 th Street; Harbel Supermarket; Total Duala; Roxy Building; Ecobank Zwedru; Rehab., Sayon Town; Lott Carey; Total Congo Town; and Mamba Point etc. Clearly, these invoices and delivery notes have no bearing whatsoever on the alleged renovation work which the plaintiff/appellant claims he performed for the defendant/appellee. How can a delivery note or invoice not made in the name of the defendant/appellee or his business place be attributable to him? This is a complete anomaly. So, it would be wrong to proceed on the assumption that the total amount contained in all the invoices and delivery notes constitute the amount of debt which the defendant/appellee owes the plaintiff/appellant.

An action of debt as defined must be for a fixed and definite sum of money, or one that can readily be made fixed and definite either from fixed data or agreement, or by mathematical computation or operation of law. Some of the delivery notes and invoices annexed to the plaintiff/appellant's complaint show that the materials contained in them were purchased for other entities other than the plaintiff/appellant's business place. So, the sum total of these delivery notes and invoices do not contain a fixed and definite sum or one that can readily be made fixed and definite either from fixed data or agreement, or by mathematical computation or operation of law as debt owed by the defendant/appellee.

We therefore hold that the averments in the plaintiff/appellant's complaint did not show a cause of action in debt. The purpose of a pleading is to "develop and present the precise points in dispute between parties, to facilitate a proper decision of the dispute by the court on the merits of the facts in issue, so that it may declare the law, and to inform the opposing parties, so that they know what to meet by their

proof..." *Section 4, 61A AM Jur 2d, Purpose of Pleading.*

During argument before us, the counsel for plaintiff/appellant relied on and urged us to apply the principle of law in the case: *The Intestate Estate of the Late Peter Dinsea vs. Ital Timber Corporation* decided during the March, 2006 term of this Court. In the Dinsea case which also involved a debt action, this Court, speaking through Madam Justice Gladys K. Johnson, quoted the broad meaning of "debt" from Corpus Juris Secundum as follows:

"Although the word 'debt' is usually limited to liabilities arising out of contract, and in its common signification imports the money obligation to a person incurred in its private capacity, or from his individual acts, and no such obligations are imposed upon him by law in his public relations, or in common with all other citizens, yet it need not be confined to obligation for the payment of money arising on contract; but in particular connections, it has been defined as any just claim, or demand, for the recovery of money; every obligation by which one is bound to pay money; a liability to pay a sum certain, it makes no difference how the liability arises, whether by contract or imposed by law without contract, for it has been said that having money that rightfully belongs to another creates a debt, and, whether a debt exists without an express promise to pay, the law implies a promise; and so the term[debt] has been construed to include all kinds of obligations, such as obligation arising from implication of law"

We affirm the principle of law in the *Dinsea* case and hold that the facts therein are not analogous to the case at bar. In *Dinsea*, the appellant meticulously laid out averments in support of its action of debt. The appellant presented a claim for the sum of USD 224,690.00 representing the value of logs extracted from its land by the appellee. The Forestry Development Authority (FDA) was involved in determining the species of logs extracted and the value assessed. The appellee did not deny, or challenge the validity of the appellant's claim. Instead, the appellee requested for reduction in the amount of the claim and made part payments to appellant. In the case at bar, the plaintiff/appellant failed to meticulously lay out

averments in his complain, in support of his claim of debt.

It has been held that the complaint must "define and isolate the issues for the parties and the trial court, and to inform the defendant and the court of the relief that the plaintiff desires - that is, to put the defendants on notice of the claims made against them, including nature, extent, and character of the claims being asserted against him or her, the material facts upon which the plaintiff rests his or her action, and the relief demanded, and it is sufficient if [the] pleader identifies the transaction which forms the basis of the claim. However, the character of cause of action must be determined from facts stated in the [complaint or] petition and not by the prayer or name given the action by the pleader." *Section 113, 61A-AM Jur2d, Purpose of Complaint or Petition.*

"The test for determining the adequacy of pleading is whether the cause of action is suggested by the fact. Generally, complainant's allegations are sufficient if they put a reasonable person on notice as to why the plaintiff is suing. For example, a complaint is sufficient if a cause of action or defense may reasonably be inferred from the recounted facts, and a person of common understanding could know what was intended..." *Ibid, Section120, Sufficiency of Statement of Claim.*

This court has held that it is not the title or caption of an action which is controlling but rather the averments in the complaint that determines the cause of action. *Mathies and Fima Corp. Ltd. vs. Alpha International Investment Ltd., 40 LLR, 561 (2001).*

This Court has also held that it is from the cause of action that the subject matter, over which the court has jurisdiction in order to render a valid judgment, is determined. The jurisdiction of a court over the subject matter of the action may be determined from both the caption of the action as well as the averments in the complaint, provided, however, that the averments correspond to and are consistent with the caption of the action. But where there is a conflict between the caption of the action and the averments of the complaint, the averments will be given precedence and will prevail over the caption, and that in such instance, jurisdiction

over the subject matter will be determined, not from the caption of the action, but from the averments of the complaint. *Blamo v. His Honour Charles B. Zulu, Toe and Topor*, 30 LLR, 586 (1983)."

We hold that even though the plaintiff/appellant sued out in an action of debt, the averments contained in his complaint do not support an action of debt.

WHEREFORE, the ruling of the Debt Court dismissing the plaintiff/appellant's complaint for failure to state a cause of action in debt is hereby confirmed with modification, however, that the dismissal is without prejudice.

The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this case and give effect to this judgment. Costs are ruled against the plaintiff/appellant. It is so ordered.

*Appeal denied*

COUNSELLORS F. MUSA DEAN, JR. AND NECULAR Y. EDWARDS  
APPEARED FOR APPELLEE.

COUNSELLOR LAVELA KOBOI JOHNSON APPEARED FOR  
APPELLANT.