

First International Bank Liberia Limited, by and thru its General Manager,
operating under the Management of FIB, of the city of Monrovia
Defendant/Appellant VERSUS **William Saba** of the City of Monrovia, Liberia
Plaintiff/Appellee.

APPEAL FROM FINAL JUDGMENT ACTION OF DAMAGES FOR WRONG
CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT MONTSERRADO COUNTY.

Argued. March 23, 2009. Decided. July 24, 2009.

MR. CHIEF JUSTICE LEWIS delivered the opinion of the Court.

William Saba, the appellee, opened a United States dollar checking account, #00.112-001245-01, with the appellant Bank on October 31, 2006. From the record certified to this Court, transactions commenced with the initial deposit of US\$4,000.00 (four thousand United States dollars) on October 31, 2006. Thereafter, the account shows the following transactions.

The month of November 2006.

November 3, 2006, deposit of US\$2,000.00 (two thousand United States dollars); November 6, 2006, debit of US\$10.00 (ten United States dollars) representing commission on check book; November 7, 2006, debit of US\$4,000.00 (four thousand United States dollars); November 11, 2006, debit of US\$305.00 (three hundred five United States dollars); November 13, 2006, deposit of ECOBANK check #460068 in the amount of US\$991.00 (nine hundred ninety-one United States dollars); November 30, 2006, debit of US\$1,500.00 (one thousand five hundred United States dollars); November 30, 2006, debit of US\$5.00 (five United States dollars) representing ledger fee. As at November 30, 2006, the balance in the account was US\$1,166.00 (one thousand six hundred sixty-six United States dollars).

The month of December 2006.

December 1, 2006, debit of US\$250.00 (two hundred fifty United States dollars); December 2, 2006, debit of US\$750.00 (seven hundred fifty United States dollars); December 2, 2006, deposit of ECOBANK check #495705 in the amount of US\$4,500.00 (four thousand five hundred United States dollars); December 7, 2006, debit of US\$4,500.00 (four thousand United States dollars); December 7, 2006, deposit of IBL check #000851 in the amount of US\$2,000.00 (two thousand United States dollars); December 8, 2006, debit of #US\$4,500 (four thousand five hundred United States dollars) representing ECOBANK check #495705 returned; December

14, 2006, deposit of US\$2,000.00 (two thousand United States dollars); December 26, 2006, deposit of US\$2,000.00 (two thousand United States dollars). As at December 31, 2006, the closing balance was US\$1,666.00 (one thousand six hundred sixty-six United States dollars).

On February 7, 2007, the appellee filed in the Civil Law Court a nine-count action of damages for wrong against the appellant growing out of the appellant's handling of his account. Specifically, the appellee alleged that he was never informed by the appellant Bank that ECOBANK check #495705 which he deposited into his account on December 2, 2006 had been dishonored. Having deposited into his account two amounts of US\$2,000.00 each on December 14, 2006 and December 26, 2006, the appellee on December 14, 2006 and December 25, 2006, respectively, issued two checks, #000515759 and #000515762 in the amounts of US\$290 (two hundred ninety United States dollars) and \$3,500.00 (three thousand five hundred United States dollars), payable to Alex Azar and Sampon Alexander, respectively, which when presented to the appellant Bank were dishonored.

The notice given to the respective payees, but not to the appellee, did not indicate that the checks were returned for "insufficient funds," although slot #1 on the return form had provision for "insufficient funds; rather, the appellant Bank elected to choose slot #08, "refer to maker."

The appellee complained that notwithstanding the reason the appellant Bank had indicated on the notice to the respective payees was "refer to maker," the appellant Bank, in the presence of several customers in the Bank, accused the appellee of "issuing worthless checks."

The appellee complained further that as a result of the appellant Bank's unwarranted acts, he has been brought into public ridicule, and is now being considered one who engages in issuing worthless checks, thereby bringing his hard-earned reputation questionable among his business peers to the extent that no one now trusts the appellee to supply him with goods on credit, as was previously done.

In count nine of the complaint, the appellee complained: "Plaintiff avers and says that because the defendant has brought shame and disgrace [to] his reputation, and presenting him as one who is not credit worthy, he has brought this suit in damages for wrong against the defendant and therefore requests Your Honor and this Honorable Court and the jury to award the plaintiff US\$150,000.00 (one hundred fifty thousand United States dollars), for the inconvenience suffered by the plaintiff

as a result of the defendant's direct conduct."

On March 19, 2007, the appellant filed a twelve-count answer. The delay was occasioned by the non-service of the writ of summons, which necessitated the issuance and service upon the defendant of a writ of re-summons. For the purpose of this opinion, we quote counts two thru seven of the answer.

"2. That as to count two of the complaint, defendant says that on December 2, 2006, plaintiff deposited an ECOBANK check bearing #00495705 into his account with defendant, FIB International Bank Liberia, Limited, for US\$4,500.00 (four thousand five hundred United States dollars), and his account was immediately credited. . . .

"3. That as to count three of the complaint, defendant says that as a result of the plaintiffs check deposited having been immediately credited on the same day, same being December 2, 2006, plaintiff could and did withdraw the same amount, US\$4,500.00 (four thousand five hundred United States dollars), on December 7, 2006.

"4. That as to counts four and five of the complaint, defendant says that when plaintiff's ECOBANK check was presented for clearing, it was returned stamped 'insufficient funds'. . . .

"5. Further to count four of this answer, defendant says that because plaintiffs account had been credited on the basis of the check which was later returned stamped 'insufficient funds,' defendant reversed the credit and informed plaintiff immediately.

"6. Further to count five of this answer, defendant says that after defendant reversed the credit and informed plaintiff immediately, instead of plaintiff retrieving the check which was returned to defendant marked 'insufficient funds,' plaintiff elected to write two checks on his account with defendant, based on the credit earlier passed, and because the credit earlier passed was reversed, defendant attached a note to each of the two checks, 'return to maker,' and redelivered both the checks and the note to the payees. The payees left defendant's premises with the checks and the notes, 'return to maker'. . . .

"7. That as to count six of the complaint, defendant says that when it discovered that plaintiff had insufficient funds to cover the checks, defendant simply notified and advised the payees to 'return the check[s] to maker,' in keeping with good banking

practice" (emphasis supplied).

On March 23, 2007, the plaintiff filed a seven-count reply. For the purpose of this opinion, we quote counts three and four of the reply.

"3. That as to counts four and five of the defendant's answer, plaintiff says, granted but not admitting that said averment is true and correct, the principal issue at bar is whether or not defendant informed the plaintiff of the insufficiency of funds as alleged? The response is negative. Plaintiff says further that he made deposits with the defendant's bank [subsequently] on diverse occasions up to and including December 26, 2006, as such, in the event plaintiff's ECOBANK check was returned to and received by the appellant Bank, stamped 'insufficient funds,' [the defendant] was under an obligation to inform plaintiff immediately, but to sit supinely and receive more than two deposits from plaintiff without any reservation, suggests that the check was worthy, and the defendant therefore suffers waiver and lashes. Hence, count four of the defendant's answer should be dismissed.

"4. That as to counts six and seven of the defendant's answer, plaintiff says, granted but not admitting that each of the genuine checks issued by the plaintiff to his clients was dishonored marked 'return to maker,' same is unfortunate and only intended to black-mail plaintiff whose [account] was credited, without reservation, and defendant received additional deposits from plaintiff for the same account, even after the alleged date of copy of the notice of presentation and the notice by ECOBANK that the check was returned unpaid because of 'insufficient funds.' *Plaintiff maintains that because of the bad business practice meted out against plaintiff by the defendant bank which was under an obligation to duly notify the plaintiff that his ECOBANK check had been dishonored and returned, plaintiff has decided to take advantage of the law controlling.* Hence counts six and seven of the defendant's answer should be dismissed" (emphasis supplied).

When the case was called for the disposition of law issues on April 18, 2007, counsel for the plaintiff submitted that the pleadings presented mixed issues of law and facts, and requested the court to rule the same to trial on its merit. Counsel for the defendant interposed no resistance. The trial judge ruled.

"Counsel for the plaintiff having submitted to court, indicated that the pleadings in this [case] consist of both law and facts, and that the case be ruled to trial on its merits. Counsel for the defendant having conceded, this court says the pleadings in these proceedings being mixed issues of law and facts, the main suit is hereby ruled to trial on its merits, with a trial by jury sitting as trier of the facts under the

supervision of the trial judge. It is so ordered."

Trial by a jury commenced on December 7, 2007. Two witnesses testified for the appellee: William Saba, the appellee, and Rashad Alaouie. We quote the direct testimony of the appellee.

"I opened my account with the First International Bank on October 21, 2006. I did business with [the Bank], and on December 2, 2006, I came to the Bank with [an ECOBANK] check in the amount of US\$4,500.00 (four thousand five hundred United States dollars) which I deposited into my account. On December 7, 2006, I withdrew US\$4,500.00 (four thousand five hundred United States dollars) from my account to continue my business with them. On the same day, I deposited a check in the amount of US\$2,000.00 (two thousand United States dollars). On December 26, 2006, I deposited another check in the amount of US\$2,000.00 (two thousand United States dollars). During the period I had obligations to meet, and I issued a check for US\$290.00 (two hundred ninety United States dollars) to Alex Azar, and another to Sampon Alexander for US\$3,500.00 (three thousand five hundred United States dollars). All I knew was that I had money in my account to cover the two checks. On December 28, 2006,

I was on Broad Street, in my car, when I received a telephone call from Sampon Alexander in whose favor I had issued the check for US\$3,500.00 (three thousand five hundred United States dollars) who informed me that the Bank had refused to honor my check. I told him that was impossible because I had money in my account. I turned around and went immediately to the Bank. I found Sampon Alexander in the Bank, making noise, and demanding his money. As soon as I entered, he started insulting me, saying that I had cheated him. I told him to hold on, and I would find out everything. I approached the lady who was at the counter, and asked her why my check had been [dishonored]. She was confused. I was in high temper. I was angry. I was embarrassed. Realizing that I suffer from high blood pressure, I thought I was going to drop. They told me to sit down, and that they would sort everything out. I noticed that they were going up and down, and were dodging me. Nobody invited me to an office to accord me any respect. All of the customers in the Bank were trying to console me, but no staff of the Bank showed any interest in me. I demanded my statement to know what was going on. The lady at the desk then contacted me, with some big people in the Bank. They told me that the ECOBANK check which I had deposited was returned. They then tried to give it to me, but I refused to accept it.

"I insisted that I wanted a copy of my statement, but they informed that the machine

had broken down. I sat for a hour and a half, and then they gave me my statement. According to the statement, the ECOBANK check was deposited on December 2, 2006 and returned on December 7, 2007. I *then asked why was I not informed on December 8, 2007 that the check had been returned dishonored. Had this been done, I would have contacted the maker of the check. They said they tried to call me, but they could not get me.* I told them, however, that I was in the Bank on December 14, 2007 transacting business, but they did not give me the returned check. They then left me, still sitting on the bench, where I remained unattended for over two hours. I then left the Bank and up until now the check is still with the Bank. This is all I know about this case" (emphasis supplied).

We quote, also, the direct testimony of appellee's second witness, Rashad Alaouie.

"I remember that day it was on December 28, [2006]. I was with Mr. William Saba in his car, and he received a phone call and I overheard the conversation on the side of William Saba saying that it cannot be so, that is impossible. He then said I am coming there, and when we got on Broad Street, we proceeded to the Bank. When he arrived at the Bank, a gentleman approached Mr. William Saba with high tension, demanding that he wants his money today. Mr. William Saba said but I am supposed to have money in my account, and it is for this reason that I issued you the check drawn on [my account at] this Bank. Mr. Saba said further, let me look into the matter and enquire from the officials of the Bank. No reason was given to [Mr. Saba] by the people at the Bank who informed him that the computer was down. The gentleman who was to encash his check kept talking bad language, telling Mr. William Saba how he is not a good old man, that he will see to it that he spoils his name, and was still demanding that he wants his money. I observed all of this happening, and noticed that Mr. Saba's tension was getting hard. He started to shake terribly, putting his hand on his head. I went to him, and cooled him down. I said please, Mr. William Saba, cool yourself down and have a seat. He insisted to know what actually was happening at the Bank. All of this time we were at the Bank for more than two hours; yet, noone respond to him. After a little while, a lady came to him, and they went inside and she told him to sit by the desk. She talked to him and he asked for the bank statement. It took a little while, and then I saw him coming out with an envelope that he had received from her. The gentlemen who went to encash his check continued to shout remarks [at Mr. Saba]. I then went over to him and asked him to please give the oldman a chance to resolve the matter. He abused me, also, and demanded that I move from here. This is all I know about what happened at the Bank. Mr. William Saba then told the gentlemen to have a little patience. Mr. Saba was not feeling well, as I know that he suffers from pressure. My main aim was to bring the situation

down."

On the resting of oral testimony on December 14, 2007, the appellee offered into evidence three documents: the appellant Bank's statement of account for the period October 31 2006 through December 28, 2006, and the two checks drawn by the appellee in favor of Alex Azar for US\$290 (two hundred ninety United States dollars) and Sampon Alexander for US\$3,500.00 (three thousand five hundred United States dollars), respectively, with the attached notices "refer to maker." The trial Judge granted the request, and the documents were admitted into evidence.

On December 18, 2007, the appellant Bank filed a nine-count motion for judgment during trial. The appellee, in a five-count resistance, on the minutes of court, prayed for the denial of the motion. The trial court entertained arguments *pro et con*, and on the same day ruled, denying the motion.

The appellant introduced two witnesses: Patrick L. Sarwea, Head of Banking Operations at the appellant Bank, and Daniel K. Wollor, Jr., Funds Transfer Officer in the Operations Department of the appellant Bank.

We quote the direct testimony of witness Sarwea.

"Mr. William Saba has a personal checking account with the First International Bank, Limited. On December 2, 2006, Mr. Saba deposited an ECOBANK check in the amount of US\$4,500.00 [four thousand five hundred United States dollars] into his account. His account was immediately credited, which was reflected in his statement of account. On December 6, 2006, the ECOBANK check [which had been deposited into Mr. Saba's account] was presented for clearance through the clearinghouse at the Central Bank of Liberia. On December 7, 2006, Mr. Saba withdrew US\$4,500.00 [four thousand five hundred United States dollars], and on the same day he deposited US\$2,000.00 [two thousand United States dollars] into his account, which are all reflected in the statement of account of Mr. Saba. *On December 8, 2006, the ECOBANK check was returned by ECOBANK for reason of 'insufficient funds.'* *The Bank immediately contacted Mr. Saba about the returned check, and debited his account with the value of the returned check.* Mr. Saba did not come to the Bank to retrieve the returned check, which is still in our possession. On December 14, 2006, Mr. Saba deposited US\$2,000.00 [two thousand United States dollars] into his account. On December 19, 2006, one Alex Azar presented a check issued by Mr. Saba for payment. The check in the amount of US\$290 (two hundred ninety United States dollars) was returned by the Bank [with the notation] '*refer to maker.*' On December 26, 2006, Mr.

Saba deposited a check in the amount of US\$2,000.00 [two thousand United States dollars] into his account. On December 29, 2006 one Mr. Sampon Alexander presented a check issued to him by Mr. Saba for payment. The check in the amount of US\$3,500.00 [three thousand five hundred United States dollars] was returned [with the notation] *'refer to maker.'* "This is all I know" (emphasis supplied).

We have emphasized two sentences from the direct testimony of witness Sarwea, and one sentence of an answer on the cross-examination which we shall revert to later in this opinion.

"On December 8, 2006, the ECOBANK check was returned by ECOBANK for reason of 'insufficient funds.' The Bank immediately contacted Mr. Saba about the returned check, and debited his account with the value of the returned check."

Following the direct testimony of witness Sarwea, he was cross-examined, among which were the following questions and answers.

"QUESTION. Mr. witness, as Head of Banking Operations in defendant's Bank, I believe that you are acquainted with banking rules, procedures and practice, especially those governing submission of checks to the clearinghouse, and that you know the reason for which financial institutions are required to submit checks to the clearinghouse. If so, what is the reason?"

"ANSWER. The reason for which financial institutions are required to submit checks to the clearinghouse is for clearing of those checks in specific periods by the clearing house at the Central Bank of Liberia, so that the checking accounts of depositors are credited with the value if those checks are cleared, but debited if those checks are returned.

"QUESTION. Mr. witness, please state the specific period of time, as you said, is required for submitting a check to the clearinghouse, and what is the maximum [number of] days or months?"

"ANSWER. Under our clearance guidelines, established by the clearinghouse, through the Central Bank of Liberia, a clearance instrument presented for clearance takes a maximum of three days to clear.

"QUESTION. Mr. witness, the plaintiff deposited the check in question on December 2, 2006, and according to you [the] check was submitted for clearance on

December 6, and the plaintiff withdrew the value of the check on December 7, 2006, while it was still in the clearinghouse. Please state whether the plaintiff, as your customer, has overdraft facilities at your Bank?

"ANSWER. I said to this Honorable Court that the check in question, ECOBANK check in the amount of US\$4,500.00 (four thousand five hundred United States dollars) was presented on December 6, 2006 to the clearinghouse. You observe the check was returned on December 8, 2006, which falls within the guidelines of the clearinghouse. You will also recall, this Honorable Court, that upon the return of the said check, *the Bank informed the customer immediately*, and proceeded to debit his account in the [amount] of the check. You will also recall that I told this Honorable Court that Mr. William Saba did not come to receive the returned check, which is still in our possession today, to request the [drawer] to pay to him the value [of the check since the drawer had issued] a worthless check" (emphasis supplied).

The second witness for the appellant Bank was Daniel K. Wollor, Jr., Funds Transfer Officer in the Operations Department of the appellant Bank. We quote the direct testimony of witness Wollor.

"On December 2, 2006, Mr. Saba, who had a personal checking account with the Bank deposited to his account an ECOBANK check of US\$4,500.00 (four thousand five hundred United States dollars). His account was immediately credited with said amount. On December 6, 2006, the check was presented to ECOBANK for clearance. On December 7, 2006, Mr. Saba withdrew the amount of US\$4,500.00 (four thousand five hundred dollars), and also deposited a check for US\$2,000.00 (two thousand United States dollars). The following day, December 8, 2006, ECOBANK returned the check of the amount of US\$4,500.00 that [the appellee] had earlier deposited, and the reason for which the check was returned was for 'insufficient funds.' *I immediately contacted Mr. William Saba, telling [him] that he had a returned check and that I had debited his account for that amount.* Mr. William Saba refused to collect his check which is still in the possession of the Bank. On December 14, 2006, Mr. Saba deposited a check in the amount of US\$2,000.00 (two thousand United States dollars), which is reflected on his Statement of Account. On December 19, 2006, a check that he had issued to one Alex Azar for US\$290.00 (two hundred ninety United States dollars) was returned to Mr. Azar as unpaid, and record was 'refer to maker.' Mr. Saba, again, deposited another check in the amount of US\$2,000.00 on December 26, 2006, which is also reflected in his Statement of Account. Two days later, which is December 28, 2006, and FIB's check for the amount of US\$3,500.00 which he had issued to Mr. Sampon [Alexander] was also

unpaid for the notation 'refer to maker.' 'This is all I know" (emphasis supplied).

We have emphasized one sentence of the direct testimony of witness Wollor which we shall revert to later in this opinion.

"I immediately contacted Mr. William Saba, telling [him] that he had a returned check and that I had debited his account for that amount."

Following the direct testimony of witness Wollor, he was cross-examined. We quote the questions and answers from the cross-examination.

"QUESTION. Mr. witness. Did I understand you to say that immediately when the US\$4,500.00 [four thousand five hundred United States dollars] was returned by ECOBANK, you informed Mr. Saba?"

"ANSWER. Yes. Mr. Saba was informed."

"QUESTION. What was his reply?"

"ANSWER. His response was I will come there to pick up the check."

"QUESTION. Mr. witness. Please state, if you know, the method of communication that was applied when you allegedly informed Mr. Saba. Was it in writing or by a telephone call?"

"ANSWER. It was by way of a telephone call."

"QUESTION. Which telephone company did you use, and can you subpoena that company?"

The question was objected to, but the trial judge overruled the objection.

"ANSWER. I do not remember the company, that is to say GSM company, but I dialed the telephone number that he provided the Bank when he opened his account with the Bank."

"QUESTION. Mr. witness. Is that telephone number of Mr. William Saba on his Statement of Account?"

"ANSWER. What I know is that his telephone number is part of his records supplied to the Bank."

"QUESTION. Mr. witness. According to you, Mr. Saba promised he would pick up the check [after it had been] returned. In your testimony [you mentioned] he made several deposits. Please state if during the several deposits, he was ever approached to take delivery of the returned check?"

The question was objected to, but the trial judge overruled the objection.

"ANSWER. As Bank officer staff, I first called Mr. Saba to inform him of his returned check, and subsequently informed all USD tellers to let Mr. Saba know that he has a returned check, whenever he was ever in the Bank to deposit or to withdraw. He still refused to collect his check up to this day.

"QUESTION. Mr. witness. Was there any action by which your customer could be forced to take delivery of this check since, according to you, he refused to accept it?"

The question was objected to, and the trial judge sustained the objection.

"QUESTION. Mr. witness. Finally, did you try to send this returned check through registered mail, and you did not succeed.

"ANSWER. No" (emphasis supplied).

We have emphasized certain questions and answers from the cross-examination of witness Wollor, which we shall revert to later in this opinion.

Two issues are determinative of this appeal.

1. Whether the appellee's ECOBANK check was timely presented to the clearinghouse by the appellant Bank?
2. Whether the appellant Bank discharged its obligation to the appellee to timely inform him of the return of the check from the clearinghouse?

The Central Bank of Liberia was established by an Act of the National Legislature approved March 18, 1999, effective October 20, 1999. Section 4(10) the Act creating the Central Bank provides.

"The Central Bank shall have functional independence, power and authority to . . . play an active role in collaboration with bank-financial institutions in the creation and maintenance of efficient and safe mechanisms for payments, clearing and settlements

to meet the needs of the financial markets, commerce, government agencies and the general public. . ."

On establishment of a clearinghouse, section 38(1), (2) and (3) of the Act provides:

"1. The Central Bank may, in consultation with bank-financial institutions and at a time deemed suitable by it, organize a clearinghouse in Monrovia in premises provided by the Central Bank or in such other place as may be determined by the Central Bank.

"2. The Central Bank shall require bank-financial institutions to maintain current accounts with the Central Bank for the purpose of meeting their obligations arising out of the clearing of checks and the settlement of balances among financial institutions.

"3. The Central Bank may periodically consult with financial institutions concerning the policies and the manner of implementing them, and may discuss matters of interest relating to the financial structures and conditions of the Liberian economy."

Under the provisions of sections 4(10) and 38(1), (2) and 3 of the Act, the Central Bank has promulgated Clearinghouse Guidelines to govern operations of the clearinghouse under the supervision of the Central Bank.

The objectives of the clearinghouse are provided for in article 5.0 of the Clearinghouse Guidelines:

"To facilitate the exchange on a *timely basis*, acceptable payment instruments and any other document to be introduced to facilitate the transfer of funds from drawer to payee, drawn on a drawee's financial institution.

"To facilitate the inter-bank's settlement of claims arising from the clearinghouse operations.

"To maintain records of all clearinghouse activities" (emphasis supplied).

In order for the clearinghouse to facilitate the exchange on a *timely basis*, instruments eligible to be accepted for clearance must be presented on a *timely basis*. We hold that the appellee's ECOBANK check was not timely presented to the clearinghouse by the appellant Bank, in violation of article 50 of the Clearinghouse Guidelines.

The certified record before this Court reveals that the appellee deposited ECOBANK check #495705 into his account at the appellant Bank on December 2, 2006. It was not until December 6, 2006, four days after the deposit, that the appellant Bank presented the check to the clearinghouse.

Witness Sarwea, for the appellant Bank, was asked the following question on the cross-examination:

"QUESTION. Mr. witness, please state the specific period of time, as you said, is required for submitting a check to the clearinghouse, and what is the maximum [number of] days or months?"

This was the answer of the witness.

"ANSWER. Under our clearance guidelines, established by the clearinghouse, through the Central Bank of Liberia, a clearance instrument presented for clearance takes a maximum of three days to clear."

This answer was not responsive to the question. The question sought to elicit an answer regarding the appellant Bank's obligation to the appellee in timely presenting the ECOBANK check in question to the clearinghouse, and not the clearinghouse conditions on payment instructions through the clearinghouse as set forth in article 11.10 of the Clearinghouse Guidelines on number of days to clear for both Liberian and United States dollars.

We address next the issue whether the appellant Bank discharged its obligation to the appellee to timely inform him of the return of the check from the clearinghouse?

We have, in this opinion, quoted the direct testimony of witness Sarwea, Head of Banking Operations at the appellant Bank. We have quoted, also, three questions put to him on the cross-examination and his answers to those questions.

We have emphasized two sentences from the direct testimony of witness Sarwea

"On December 8, 2009, the ECOBANK check was returned by ECOBANK for reasons of 'insufficient funds.' The Bank immediately contacted Mr. Saba about the returned check, and debited his account with the value of the returned check."

The second of the two sentences emphasized from the direct testimony of witness Sarwea is an untruth.

First. There is no evidence in the record certified to this Court that appellee Saba was contacted by the appellant Bank regarding the returned check prior to December 28, 2006 when he was informed, not by the appellant Bank, but by Sampon Alexander in whose favor the appellee had issued a check, drawn on his checking account at the appellant Bank for US\$3,500.00 (three thousand five hundred United States dollars).

Second. Appellee Saba, while on the direct, testified that he had not been contacted by the appellant Bank. This testimony remains unimpeached.

Third. In argument before this Court, counsel for the appellant Bank, in answer to a question from the Bench, indicated that the appellee could not be contacted because his checking account records with the appellant Bank did not include an identifiable address or telephone number.

The third reason indicated above is buttressed by the Statement of Account of the appellee, furnished by the appellant Bank, *where the title of the appellee's account is William Saba ITF Ghassan Saba, and the address TICO, near Bong Mine Bridge, Bushrod Island, Monrovia.*

The best evidence by the appellant Bank that the appellee was contacted following the return of the ECOBANK check would have been that of witness Wollor who on the direct examination had testified that he "immediately contacted Mr. William Saba, telling [him] that he had a returned check and that [he] had debited his account for that amount." Witness Wollor, while on the cross-examination, however, could not say what telephone number he used to contact the appellee.

We note, also, that when the witness was asked, while on the cross-examination, whether the telephone number he allegedly used to contact the appellee appears on the appellee's Statement of Account, this was his answer: "What I know is that his telephone number is part of his records supplied to the Bank." Besides the fact that the answer was not responsive to the question, and the reason is that no telephone number appears on the appellee's Statement of Account, counsel for the appellant Bank did not pursue this answer of witness Wollor, and providing whatever records there allegedly were indicating that the appellee had provided a telephone number to the appellant Bank.

We hold that the burden of proof was on the appellant Bank to produce evidence that it had timely informed the appellee of the ECOBANK check which had been returned. This duty has not been discharged.

"The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies particularly within the knowledge of the other party, the averment is taken as true unless disproved by that party." Civil procedure Law, 1 L.C.L.Rev., tit. 1, § 25.5(1) (1973).

We hold that the appellant Bank did not discharge its obligation to the appellee to timely inform him of the return of the check from the clearinghouse.

On the right of charge-back or refund by a bank, we have the following principle of law:

"If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is liable to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from the customer, but it is liable for the loss resulting from the delay." 11 Am. Jur. 2d, *Banks and Financial Institutions*, § 988.

In *Levin v. Juvico Supermarket*, 24 LLR 187, 194 (1975), in an opinion by Mr. Justice Henries, this court citing 22 Am. Jur. 2d, *Damages*, § 15 held: "General damages are those which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability."

In *Intrusco Corp. v. Osseily*, 32 LLR 558, 571-2 (1985), this Court, in an opinion by Mr. Justice I Koroma, defined damages:

"Damages is a pecuniary compensation or indemnity which may be recovered by any person who has suffered a loss or detriment, or injury, whether to his person, property or rights through the unlawful act or omission or negligence of another. Black's Law Dictionary, *Damages*, 466 (4th. ed. 1951). Further, in legal contemplation,

the term damages is the sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction for an injury done or a wrong sustained, as a consequence either of a breach of a contractual obligation or a tortuous act. Damages, generally speaking, are of two kinds. They are compensatory and punitive damages. 15 Am. Jur., *Damages*, § 2."

In view of the foregoing, the judgment of the Civil Law Court is hereby affirmed, with the modification that the award of damages is twenty five thousand United States dollars (US\$25,000.00). Costs are ruled against the appellant Bank. The Clerk of this Court is ordered to send a mandate to the Civil Law Court for Montserrado County commanding the judge presiding therein to resume jurisdiction over this matter, and to give effect to this decision. It is so ordered.

Judgment affirmed, with modification.

F. Musa Dean, Jr. and *Neculaty Y. Edwards* of Dean and Associates Law Firm for the appellant. *Thompson N. Jargba* for the appellee.