

**Mansour Khoueri**, a Lebanese national of Monrovia, Liberia APPELLANT Versus  
**West Africa Contractors Corporation (WACCO), International Road  
Construction Corporation (IRCC), and Civil Construction Corporation (CCC)**,  
by and through their President, Joseph Younnes of Monrovia, Liberia APPELLEES

ACTION OF DAMAGES FOR WRONG. JUDGEMENT REVERSED

HEARD: MAY 4, 2004 DECIDED: SEPTEMBER 15, 2005

MR. JUSTICE GREAVES DELIVERED THE OPINION OF THE COURT

This Action of Damages for Wrong was filed by Appellees at the Civil Law Court for the Sixth Judicial Circuit against Appellant; and after a jury trial, a verdict in the amount of US\$1,326,500.00 (One Million Three Hundred Twenty-Six Thousand Five Hundred United States Dollars) was brought down against Appellant as special damages. The jury also awarded as general damages an additional amount of US\$8,000,000.00 (Eight Million United States Dollars). The trial judge entered judgment confirming the verdict; and from that judgment, Appellant excepted and announced an appeal to this Honorable Court for review.

The genesis of this case is a Power of Authorization dated the 15th day of May, A.D. 1991, issued by Mr. Joseph Younnes, who is either the major or sole shareholder (not clear from the records) of the three corporations, which are Appellees in this case. Here is the language of the Power of Authorization, as follows:

"1, the undersigned, JOSEPH H. YOUNNES, President and owner of West African Contractors Corp., Civil Construction Corp., IRCC, Liberia, hereby authorize M. MANSOUR KHOUEIRI, to supervise, control, rent or sell, all or any of the equipment belonging to mw companies named above.

"Also, I authorize him to instruct my employees in LIBERIA on all matters regarding the best interest of my, interest."

The Power of Authorization was issued to Appellant in Beirut, Lebanon and signed by Mr. Joseph Younnes, the sole or majority shareholder of -Appellees when Appellant was about to return to Liberia after cessation of hostilities in the civil conflict of 1990 and after the Interim Government of National Unity (IGNU) had taken over the governance of Liberia, with an ECOWAS Peace Keeping Force (ECOMOG) providing security. The evidence at the trial revealed that Appellant

accepted the authority of the Power of Authorization and when he returned to Liberia took possession of certain equipment; but that he never gave to Appellee or made any inventory of what he took possession of. The evidence also revealed that after Appellant took possession of these equipment but before this case was filed, two major resurgences in the civil conflict took place and they were the Octopus Invasion of Monrovia in October, 1992 and the April 6 Fracas of Monrovia in April, 1996. On both occasions, properties of many persons and companies, especially moveable properties, were generally the subject of massive looting and destruction in Monrovia and its immediate environs.

The evidence at the trial revealed that Joseph Younnes actually returned to Liberia in March, 1992 and on this visit, he alleged that he terminated the Power of Authorization relationship with Appellant by a memo dated the 28th day of March, A.D. 1992; but Appellant denied that the Power of Authorization was ever terminated before 1997, when Appellees took a series of legal actions against him. The reason for termination of the Power of Authorization, according to Joseph Younnes when he took the stand as witness for the Appellees, is that Appellant told Joseph Younnes at a meeting in Liberia in March, 1992, that all of Appellees' equipment had been looted in the wake of the 1990/1991 civil crisis. Joseph Younnes said that this information was not true and that is why the Power of Attorney was terminated. However, Appellees did not institute any legal action against Appellant in 1992; instead, Joseph Younnes returned to Lebanon that same 1992. It was in 1997, after the Special Elections were conducted, that Joseph Younnes returned to Liberia; and it was then, according to the evidence, that, in the name of Appellees, Joseph Younnes instituted legal proceedings against Appellant. The first was a criminal investigation at the Ministry of Justice; the second was an action for proper accounting in respect of the purchase price of a PH Crane, which is still pending; and the third is this Action of Damages for Wrong, which was filed in the Civil Law Court, Sixth Judicial Circuit, Montserrado County on the 2nd day of October, A. D. 1999 (six years ago).

That records further show that after Joseph Younnes' returned to Lebanon in 1992, he sent to Appellant some spare parts for the repair of a PH Crane, one of the equipment which Appellant says that he had taken custody of under the Power of Attorney. This PH Crane, according to the evidence, was eventually sold by Joseph Younnes in 1994 under a bill of sale written in Arabic. This bill of sale was not recognized by the Liberia Government authorities because it was written in Arabic; and it was Appellant, upon the request of Joseph Younnes, who issued a bill of sale in English for the purchaser of the PH Crane to be able to register it in his own name.

Also, according to Joseph Younnes, as witness for Appellees, the equipment entrusted to Appellant's care under the Power of Authorization were sixteen (16) heavy duty machines, six (6) trucks, (1) Six cylinder perkins generator, one (1) engine Deutz, two (2) water pumps, three (3) concrete mixers, and two (2) Damper compressor frames. Other materials, which Joseph Younnes testified to had were allegedly entrusted to Appellant, were polyfelt materials adequate to cover about 2.5 miles of a four-lane road and assorted windows and glasses.

According to the records, Appellees presented no evidence to show that they had in their possession in 1990 all the items claimed to have been entrusted to Appellant's care under the Power of Authorization. No official document from the Ministry of Finance was presented to show that any of the equipment, which should have been registered with the Ministry of Finance pursuant to SECTIONS 1.1 (e), 3.1, 3.3 and 3.5 of the VEHICLE AND TRAFFIC LAW, had been registered at that agency of the Liberian Government. Documentary evidence was, however, presented by Appellees to show the sale of three equipment by Appellant. The first was a yellow machine for the price of US\$80,000.00 under a bill of sale dated March 3, 1992; the second was a receipt for two yellow machines for US\$10,000; and the third was a bill of sale for a compactor for the amount of US\$2,500.00. On each of these papers, Appellant wrote that the item was "old, second hand", "scraps", "not in running condition", "most of the main parts have been looted and stolen". The other documentary evidence presented was an invoice, from a car dealership in Europe, for used equipment.

In his defense to the Action of Damages for Wrong, Appellant first contended that he is a gratuitous bailee under the Power of Authorization, as he got no compensation for his services. He claimed that his duty was to give to the items that he recovered or which came into his possession in the exercise of the authority of the Power of Authorization the same care and protection that he would give to his own property. Appellant also claimed that given that there had been only a cessation of hostilities in the civil crisis in Liberia when the Power of Authorization was issued to him and considering that there was at least a second, and a third major resurgence of hostilities during which massive looting and destruction of properties, occurred, especially moveable properties, he performed his duty properly under the law by securing some of the items that came into his possession.

Appellant then denied that he received or recovered all the items which were listed by Appellees; Appellant even challenged Appellees to present evidence that it had all

those items in its possession as at the time the civil conflict reached Monrovia in 1990. Appellant insisted that even assuming that Appellees had possessed these items before the civil crisis reached Monrovia in 1990, in view of the fact that massive looting and destruction of moveable properties was common in the wake of the civil crisis, Appellees could not claim that they continued to have all 'those equipment and other properties after the cessation of hostilities.

Appellant admitted to the sale of some of the items which came into his custody and possession under the Power of Authorization, but he also presented evidence to show that he used the proceeds to pay wages and salaries of Appellees' employees since such outstanding wages and salaries constituted a priority lien against Appellees' assets pursuant to SECTION 1511 (13) of the LABOR PRACTICES LAW. Two employees of Appellees corroborated Appellant's testimony that wages and salaries were paid. Appellant also presented evidence that it is because these payments were made, no employee of Appellees ever instituted any action for redundancy or severance pay since Appellees ceased doing business as a consequence of the civil crisis.

Appellant produced documentary evidence to substantiate his claim that some of the proceeds from the sale of equipment was used to pay rent for storage of the same equipment; some of the proceeds from the sale of equipment was also used to settle personal obligations of Joseph Younnes to a Eugene Cooper, a James Paye and Adnam Alauie. Some of the proceeds from the sale of certain equipment were paid directly to Joseph Younnes; an example of this was the payment of US\$40,000.00 by KLC directly to Joseph Younnes' account at Metropolitan Bank of Lebanon for equipment sold by Appellant as per directive of Appellees,

On the basis of these defenses, Appellant requested the trial court to dismiss Appellees' claim.

From the evidence adduced at the trial, three material issues have been presented for disposition by this Honorable Court, as follows:

1. Whether or not the facts and circumstances support a cause of action in damages, as claimed by Appellees, or a cause of action for proper accounting, as claimed by Appellant?
2. Whether or not proof of special damages in the amount of US\$1,326,500.00 was established by Appellees by a preponderance of evidence?

3. Whether or not general damages in the amount of US\$8,000,000.00 was justified, supported by law, and the evidence?

As to the first issue, the name of the instrument issued to Appellant by Joseph Younnes speaks loudly as to the cause of action, which is supported by the evidence. That instrument is entitled a "Power of Authorization"; from the plain language of the instrument, it clearly and unequivocally created a principal-agent relationship. In the case, *ANDREA MERZARIO S.A.R.L. v. KAMAL*, 34 LLR 316 (1987) this Honorable Court held that an agency may be defined as "a fiduciary relationship by which a party confides to another the management of some business to be transacted in the former's name or on his account, and by which the former assumes to do the business and renders an account of it".

Now, as between the principal and agent, the agent is liable to the principal only when he acts outside of the scope of his agency or against his fiduciary duties to his principal, or when even within the scope of his agency, he is negligent. 3 AM JUR 2D, AGENCY, SECTION 203. Also under the law, where the agency involves personal services, as in this case, error of judgment not due to want of care or diligence, or to fraud or unfair dealing, are not actionable. 3 AM JUR 2D, AGENCY, SECTION 204.

There is no evidence that Appellant acted outside of the scope of his agency since the Power of Attorney authorized him to sell the equipment. If anything, there was some evidence that some of the equipment was undersold; but again there was no evidence of fraud or unfair dealing. Given that Appellant had no experience with such equipment as he is engaged in the printing business, and considering their condition (used, looted and scraped), at the most, there may have been error of judgment in deciding the price for some of the equipment. However, under the law, error of judgment by the agent is not actionable in favor of the principal. The evidence shows no unfair or fraudulent dealing by Appellant; to the contrary, two years after the Power of Authorization was allegedly terminated by Appellees, they were still dealing with Appellant in respect of the disposition of some of the equipment, e.g. obtaining a bill of sale in English for the PH Crane. This means that they continued to trust Appellant.

As a witness for Appellee, Joseph Younnes' account of the termination of the Power of Authorization in March, 1992, was inconsistent with the clear, un rebutted and uncontradicted evidence at trial. After he returned to Lebanon in 1992, the records show, he sent Appellant some spare parts for the repair of a PH Crane, one of the

equipment which Appellant had taken custody of under the Power of Authorization. This PH Crane, according to the evidence, was eventually sold by Joseph Younnes in 1994 under a Bill of Sale written in Arabic. This Bill of Sale was not recognized by the Liberia Government Authorities because it was written in Arabic; and it was Appellant, upon the request of Joseph Younnes, who issued a Bill of Sale in English for the purchaser of the PH Crane to be able to register it in his own name. So it is clear that the Power of Authorization was not terminated at the time that Appellees claimed it was terminated.

This is a case where no evidence was produced to establish what equipment actually came into the possession of Appellant under the Power of Authorization as the instrument itself did not list the equipment, which Appellant was to take possession of and to assume custody over. On the other hand, after returning to Liberia and assuming authority over certain equipment recovered under authority of the Power of Authorization, Appellant never gave an inventory to Appellees and there is no evidence that Appellees ever demanded an Inventory. Under such circumstances, no court of law can hold Appellant liable for anything until it has established the quantity, kind and value of equipment which Appellant actually took possession of or received in his custody. It is only an action for proper accounting, not an action in damages for wrong, which can establish that essential fact. So, therefore we hold and rule that instead of an action of damages, Appellees should have instituted an action of proper accounting in the court below to make Appellant account for his stewardship under the Power of Authorization.

As to the second issue of special damages in the amount of US\$1,326,500.00, it should first be noted that Appellant has claimed that he was a gratuitous bailee. Now, while agency is distinctly different from bailment, a person can be both an agent and a bailee at the same time. 28 AM JUR 2D, BAILMENTS, SECTION 28. In the instant case, the Power of Authorization provides for no compensation for services to be provided by Appellant; but in addition to placing equipment under the custody of Appellant, the Power of Authorization also authorized Appellant to dispose of same through rent or sale. So both agency and bailment were created by the same instrument.

Now, the law provides that where the bailment is for the sole benefit of the bailor, as in the instant case, the standard of care, duty and diligence are slight 28 AM JUR 2D, BAILMENTS, SECTION 217. The gratuitous bailee is required to give only the standard of care to the property that he would give to his own property. 28 AM JUR: 2D BAILMENTS, SECTION 225, 229. He is not required to do more, especially

when the property is a subject of theft or destruction by third parties, which could not be prevented by him. 28 AM JUR 2D, BAILMENTS, SECTION 216.

This Honorable Court takes judicial notice that in the wake of the civil conflict, looting and destruction of properties, especially moveable properties, were commonplace. Appellees may have known what equipment they left in Liberia when they shut down their operation in 1990 as the civil conflict approached Monrovia; but they certainly could not have known what equipment was left behind after the cessation of hostilities later that year or in May, 1991 when the Power of Authorization was issued to Appellant unless an inventory was taken before the Power of Authorization or after its issuance. In the absence of an inventory of the equipment which may have come into Appellant's possession after the issuance of the Power of Authorization, it does not seem possible to establish satisfactorily the quantity, kind and value of equipment, if any, to hold Appellant responsible for. Of course, with the resurgence of hostilities in October, 1992, there was another round of looting and destruction of properties. Appellant could not be expected, under the law, to give more protection to Appellees' properties than he could give to his own. Appellant testified that his own properties, like Appellees' properties which still remained under his control, were looted; he, like most foreign businessmen, had to flee Liberia during the October Invasion of Monrovia in October, November and December, 1992.

It was sufficient, under the circumstances, for Appellant to claim that the properties in his custody were looted in the wake of the civil conflict as that was the experience of most people during that time. The burden was on Appellees to show that the properties were not looted or that Appellant did not give the properties the standard of care that he gave to his own properties, as required by law. Appellees did not carry that burden. And so there was no basis for special damages.

This Honorable Court has held that in order to recover special damages, the proof must be certain both in the nature of the damages and in respect of the cause from which they claim to proceed. BRANT, WILLIG & COMPANY v. CAPTAN, 23 LLR 98 (1974).. In addition this Honorable Court has also ruled that for loss of personal properties, it is the market value that constitutes special damages. LIBERIA MINING COMPANY v. ZWANNAH, 19 LLR 73 (1968). And this Honorable Court has further held and ruled that the method of determining the market value of vehicular properties, such as the equipment in this case, is by showing the manufacturer, year of manufacture and model, date of purchase and purchase price, and a deduction of depreciation. VIANINI LIMITED v.

MCBOUROUGH, 19 LLR 39 (1968). Alternatively, the claimant for damages to personal property imported into Liberia may show market value by presenting the official valuation documents at the Ministry of Finance (Bureau of Customs) when the personal properties were imported into Liberia unless the depreciation, if any. MESSRS. CMB TRANSPORT OF BELGIUMI v. FAMILY TEXTILES CENTER, 37 LLR 733 (1995).

None of these standards of proving damages for loss or injury to personal properties, especially vehicular properties, were adhered to or complied with by Appelles at trial. Obviously, there was no basis for awarding any special damages to Appellees.

As to the issue regarding general damages in the amount of US\$8,000,000.00, this Honorable Court has held that general damages are those which are the natural' and necessary result of the wrongful act or omission asserted as the foundation of liability. LEVIN v. JUVICO SUPERMARKET, 24 LLR 187 (1999). More recently, this Honorable Court has ruled that while general damages are not required to be pleaded specially, there must be evidence at the trial to sustain an award by the jury. A.D.C. AIRLINES v. SANNOH, 39 LLR 431 (1999).

For the loss or destruction of personal property, after proving special damages in terms of the market value of the property, less depreciation, general damages could be proved by evidence showing the use to which the property was put before the loss or destruction and the income that it generated to the claimant. By such evidence, the claimant would be showing the kind of income he is losing or has lost as a consequence of the lost or destruction of his personal property. This would then form the basis for general damages. In the absence of evidence of income generated from the lost or destroyed personal property, the claimant could show the expenses he has had to undergo or the opportunities that he has lost or foregone as a consequence of the loss or destruction of the personal property. Specifically, in the case of vehicular property, the claimant should be able to at least show that he has had to rent or otherwise pay for the use of substitute vehicular property to carry on the same kind of business or activity that he lost or destroyed vehicular activity did for him. The cost of renting or use of this substitute vehicular property/ would then constitute the basis for general damages.

In the instant case, not a scintilla of evidence was produced at the trial to prove any general damages. For Appellees, it was enough to merely say that they had suffered inconveniences and embarrassments, without giving any details of the inconveniences; and embarrassments. And on the basis of this, the jury awarded US\$8,000,000.00 as



general damages. Here again, the appellees have not carried the burden of proof required by law for awarding general damages. We hold that general damages was not proven and the jury verdict is not supported by the evidence.

WHEREFORE and in view of the foregoing, the final judgment of the trial court is reversed and this case is dismissed. The Clerk of Court is hereby ordered to send a mandate down to the court below to resume jurisdiction and give effect to this opinion. Costs ruled against Appellees. AND IT IS HEREBY SO ORDERED.