**UPA Import Corporation Inc.** thru its President Eric G. Passewe of the City of Monrovia, Liberia RESPONDENT/APPELLANT VERSUS **Citizen of Bokomu District** represented by the Five Men-Citizen empowerment Committee thru Rev. Alfred G. Reeves et al of the City of Monrovia, Liberia
PETITIONERS/APPELLEES

PETITION FOR CANCELLATION OF FOREST MANAGEMENT AGREEMENT. RULING REVERSED

HEARD: MAY 3, 2005 DECIDED: SEPTEMBER 14 20

MADAM JUSTICE COLEMAN DELIVERED THE OPINION OF THE COURT

The Appellees/Petitioners are members of a five-man citizen endorsement Committee representing the citizens of Bokomu District, who filed a petition for the cancellation of a Forest Management Agreement in the Six Judicial Circuit Law Court, against Appellant/Respondent UPA Import Corporation , Inc.

After pleadings rested, a trial was conducted with the production of both oral and documentary evidences and ended with the judge ruling in favor of Appellees/ Petitioners granting the Petition for the Cancellation of the Forest Management Agreement, to which ruling the Appellant/Respondent excepted, and duly appealed to the Full Bench of the Supreme Court.

The fact taken from the record shows that the citizens of Bokomu District, represented by live-man citizen empowerment committee, through Rev. Alfred G. Reeves, John M. Cooper, Hilary Gayflor, Henry F. Stewart and John Goliah, entered into a Forest Management Agreement on the 1St day of November, 1997, with UPA Import and Export Management Corporation, under which Agreement the Appellant leased from Appellee 250,000 (Two Hundred Fifty Thousand) acres of land for the purpose of operating a forestry business or said process, for the term of 20 (Twenty) years certain, commencing from the day of November, 1997, up to and including the I' day of November 2017. The parties also executed an Addendum to the Forest Management Agreement dated December 31, 1 997. The Addendum only amended the description of the Metes and Bounds of the property leased, in order to correctly' reflect the 250,000:acres of land. granted.

The Petitioners, in their 7-Count Petition requested the Court to cancel the Forest

Management Agreement dated 1st day of November, A.D. 1997. Petitioners alleged in Count 3 of the Petition that Respondent agreed to pay rental of US$ .30 (U.S. thirty cents) per acre for the exploitation of the 250,000 acres of Forest land and the amount of US$25,000.00 United States Dollars Twenty-Five Thousand ) per annum as royalty, during the life span of the Agreement. The rental and royalty were to be paid on March 31 of each year commencing March 31, 1998. The Agreement also provides that Respondent will construct roads within the concession area. Petitioner further alleged that notwithstanding the provisions of the Agreement, Respondent failed, neglected and refused to comply with the terms thereof and that said failure constituted a breach of the Forest Management

Petitioners also alleged that on January 29, 1998 they wrote to Respondent calling its attention to the breach of the Agreement, requesting said Respondent to pay the rental fee of US$ 75,000.00 (United States Dollars Seventy-Five Thousand), but that Respondent failed and refused to pay this amount, on ground that it had not commenced forest operations on the leased premises and had ninety days to do so. Petitioners submit that the failure of Respondent as stated herein constitutes ground for the cancellation of the Agreement, according to Clause 10 of the Forest Management Agreement.

Clause 10 of the Forest Management Agreement provides that the Agreement can be cancelled on any of the following grounds:

"(a) that the Lessee fails to start operation within 90 days as of the signing date of this lease agreement.

(b) That the stipulated payment terms are not met by the Lessee within 90 days.

(c) That the concession areas are found to be non productive for logging purposes

(d) That the Government of Liberia obstruction which could result to making the production of logs impossible."

Petitioners also alleged in the 'Petition that prior` to instituting this cancellation proceedings, Petitioners, through their Counsels, the Law Chambers of Gausi & Partners Inc., wrote Respondent and notified said Respondent of Petitioners' decision to cancel the agreement; that following their letter, Respondent through its President, held a conference jointly with the Petitioners, and Respondent conceded its liability, admitted that it Had violated the agreement, and requested an extension of

time up to April 10, 1998, to enable said Respondent to pay U.S.$ 20,000.00(United States Dollars Twenty Thousand) of the U.S.$75,000.00 (United States Dollars Seventy-five Thousand) that was due. That request for time was denied and Respondent was informed that Cancellation Proceedings would be initiated.

The Appellant/Respondent filed Returns to the Petition, conceded the fact that it had entered a Forest Management Agreement for the lease of. 250,000 (Two Hundred Fifty Thousand) acres of land for the purpose of forest operations thereon, but contended that said forest operation was delayed and frustrated by a third party, which is the Forestry Development Authority (FDA), that is responsible for the granting of forestry permit; and that FDA's granting of the permit was a condition precedent to any performance under the Agreement by Appellant/Respondent.

The Appellant/Respondent contended that the institution of a cause of action by Petitioners/Appellees was pre-mature, in that, said Action for Cancellation could be commenced only upon Respondent's failure to operate the forest land and make payment as scheduled within 90 days from the date the grant to operate was obtained. But Appellant/Respondent says that it has not ,failed to begin operation and make payment within 90 days and that the agreement took effect on February 18, 1998, the day on which FDA granted it a permit to operate.

Appellant/Respondent also says that assuming that Appellees/Petitioners had good grounds for cancellation of the Agreement, they should have first exhausted the arbitration remedies in Clause 9 of the Agreement, which provides that "In the event of dispute, either party will be given 90 days notice to the other party of his intension to nullify the contract. Win this period, effort should be made to correct or solve the problem. In the event the dispute is not resolved a Board of Arbitrators comprising of five (5) persons will be set up, comprising of two representatives from each parties and chairman selected by both parties, die decision from the board shall be final."

The Appellees/Petitioners filed a Reply to the Respondent/Appellant's Returns stating in substance that performance by Appellant/Respondent under the Forest Management Agreement was not based upon any precondition on the part of a third party, such as the granting of the permit to it by FDA. Appellees/Petitioners also denied that the commencement of the cause of action was premature, because the 90-day period for payment by Respondent started to run from the date the Agreement was signed, that is, November 1, 1997, and ended on January 30, 1998, hence the allegation of premature filing of the action is without merit.

Petitioners further contended that the provision for cancellation under Clause 10 of the Agreement is not contingent upon Clause 9, which requires arbitration.

Petitioners contended that where an agreement specifically provides a mode of cancellation and conditions of cancellation, the provision for arbitration does not become a precondition for cancellation. In the instant case, Petitioners alleged that the conditions for cancellation specifically agreed upon by the parties are stated in Clause 10 of the Agreement.

Along with the Returns, the Appellant/Respondent also filed a Motion to Dismiss the petition on grounds that the cause of action was premature, and that the remedy available before the institution of law suit was not exhausted. These were the same issues raised in the Returns, by the Appellant.

The Trial Court consolidated the Motion to Dismiss and Law Issues and in a consolidated ruling rendered on May 23, 1998, denied the Motion to Dismiss stating that none of the statutory grounds for the dismissal of an action or proceedings were mentioned and established.

On the issue of granting of permit by Forest Development Authority (FDA) as a condition precedent to performance, the Lower Court ruled that it is without authority to extrapolate or suggest by ,implication any word or phrase in the agreement and that performance by Appellant/Respondent was unconditional; further, that there was no provision in the agreement that indicated that the granting of a permit from FDA was a pre-condition to the commencement of forest operations.

Concerning the issue of arbitration which is contained in Clause 9 of the Agreement, the court below held that since Clause 10 is Subsequent to Clause 9, that means that its enforcement is not conditioned upon arbitration and that grounds for cancellation was properly evoked against Appellant/Respondent. The Judge thereafter overruled Counts 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 of the Returns, sustained Counts 1 to 14 of the Reply and ruled to trial the Petition and those Counts of the Reply and Returns not overruled.

The Appellant/Respondent excepted to the judge's ruling on law issue and gave notice to take advantage of the statute. When the case was called for trial on June 22 1998, Counsel for Appellant/Respondent requested, on the minutes of court, to have a Jury trial, since he is entitled to a trial of the facts by a Jury. Appellees/Petitioner

requested 'the court to deny the motion for Jury trial on ground that under 1 LCLR Civil Procedure Law Sections 22.1 (2) & 22.1 (4) a demand for a Jury trial of any issue must be made at any time after the commencement of the action but no later than ten (10) days after service of , responsive pleading; and that since the Respondent's pleading was served on the 23r d day of April, the 10 day period for demand for Jury trial had lapsed and they failure of Respondent to timely demand a Jury trial, constituted a waiver of its right to Jury trial.

The court denied the request for Jury trial, on grounds that the Respondent/Appellant had failed to make a timely request for Jury trial, thus, waiving his rights to trial of the facts by a Jury. The Court then ruled the case to trial without a Jury.

A trial was duly conducted during which the Appellees/Petitioners produced three (3) witnesses and admitted into evidence four (4) species of documentary evidence consisting of The Forest Management Agreement, and several letters written to UPA/Appellant.

Subsequently the Appellant/Respondent in his defense produced two (2) witnesses and admitted into evidence four (4) species of documentary evidence consisting of The Forest Management Agreement, a permit granting permission to TJPA to begin operation and several letters exchanged between the parties.

Final argument was heard on July 14, 1998 and the trial court rendered Final Judgment on July 20, 1998, granting the Petition for Cancellation of the Forest Management Agreement, on ground that Respondent failed to live up to the terms and conditions of the agreement. To this Final Judgment, Appellant/Respondent excepted and announced an appeal to this Honourable Court for a review of the alleged errors committed by the trial Judge.

The Respondent/Appellant filed a 6-Count Bill of Exceptions alleging that the judge committed reversible error. We herewith quote counts 1, 2, 3, and 4 of the Bill. o Exceptions which we consider relevant.

"1. That the Judge erred by denying Respondent/Appellant's request for jury trial-when Respondent/Appellant's Counsel demanded same at the commencement of the trial and before the taking of evidence on the 22" d day of June, A. D. 1998, that is to say the 7th day jury session; thereby depriving Respondent/Appellant of its constitutional right to jury trial"

"2. That even though, Respondent/Appellant pleaded and argued that since FDA's signing or attestation of the Forest Management Agreement was required in order to make same operational and therefore enforceable, and that FDA having attested to or signed-the said Agreement on the 17th day of February, A.D. 1998, the Forest Management Agreement only became operational and enforceable and/or that the ninety (90) day period within which Respondent/Appellant was to perform under the Agreement commenced following the said 17th day of February, A.D. 1998 the date of FDA's attestation for the Agreement and granting of permission to Respondent/Appellant to start operation of the leased forest land; that the Judge erred in the Final Judgment when he indicated therein that if the parties intended FDA's approval of the Agreement, then they would have included such a provision in the said Forest Management Agreement"

"3. That the Judge erred in the Final Judgment in construing and interpreting Clause 9 of the Forest Management Agreement requiring Respondent/Appellant and Petitioners/Appellees to first submit their disputes to board of arbitration; where in the Judge stated in the said Final Judgement that Respondent/Appellant should have evoked Clause 9 of Agreement"

"That in the entire Final Judgment, there is not a single law or legal citation relied upon to form the basis of the Honor's Final Judgment, failing to realize that decision and judgments of courts of law must be based on the law."

There were several issues that were raised in the pleading by both parties but we concluded that the following issues are determinative of this matter. They are:

1. Whether or not the trial judge erred in denying a request for jury trial?

2. Whether or not the granting of a permit by the Forest Development Authority (FDA) was a condition precedent for the performance of the Forest Management Agreement?

3. Whether or not Petitioner's cause of action for cancellation of the Forest Management Agreement was prematurely filed?

4. Whether or not the parties should have exhausted the arbitration remedy pursuant to the agreement-before seeking legal redress?

We shall discuss these issues in the order they are listed:

As to issue number one, we are in full agreement with the trial judge when he deme the request for jury trial. A trial by jury is a constitutional right which shall be preserved inviolate, but in exercising such right, the Legislative intent and conditions of the statute must be complied with.

Evn though it is ones Constitutional right to jury trial, however, the Legislature has conditions as to how one can exercise his or her right to jury trial. If one does not follow statute, in exercising that right, said failure is tantamount to waiver of that right. In the instance case, the Action was instituted on the 9th day of April A.D. 1998. Returns were filed on the 23rd day of April A.D. 1998 along with a Motion to Dismiss. A reply was files on May 1, 1998. The law issues having been disposed of, Respondent's Counsel on June 22, 1998 spread on the minutes of court, a request for jury trial, 29 days after pleadings had [illegible].

The law on demand for jury trial as quoted in 1 LCLR Civil Procedure Law Section 22.1 p.182 provides "a demand for jury trial must be made by a party in writing at any time after the commencement of an action but such demand for jury trial must be made riot later than ten days after the service of responsive pleading."(Emphasis ours)

The law further provides that: "The failure of a party to serve a demand for trial by jury of an issue as required by this section and to file it as required by section 8.2 constitutes a waiver by him of trial by jury of such issue unless such a demand has been served by another party" 1 LCLR Civil Procedure Law Section 22.1 (4) pages 182 to 183.

The Respondent having failed to timely make a demand for jury trial as required by law thereby waived the right to jury trial and therefore the Judge did not err when he ruled denying the request for jury trial.

With regards to the second issue, whether or not the granting of a permit by the Forestry Development Authority (FDA) was a condition precedent for the performance of the Forest Management Agreement? We concur with the Trial Court's Ruling that the granting of a permit by FDA was not a condition precedent to the performance of the Forest Management Agreement. Appellant knew or ought to have known that the fundamental prerequisite to forest exploration in Liberia is to obtain a certificate of permit from FDA, which is an entity that has inherent

authority pertaining to matters of Forest Management; and that the obtaining of such a permit involves some bureaucratic processes which require time. it was therefore incumbent upon the Appellant to have included a clause in the Agreement indicating therein that the commencement date of the said Forest Management Agreement shall be predicated upon obtaining a permit from the FDA. But nowhere in the agreement is it mentioned that the granting of permit was a condition precedent to the commencement of the performance of the contract. To the contrary, the Agreement specifically states in Clause 15 thereof that the first payment of the annual land rent shall he effected within 90

Respondent/Appellant in its brief and argument before this Court contended that the agreement rather than being executed was executory and depended upon the approval or attestation of the Forestry Development Authority (FDA), the forest regulatory agency of the Government. Appellant further contended that in computing the 90 days, the computation should have commenced as of the date of approval by the FDA and not the signing date of the agreement by the parties.

Appellant argued that it is common knowledge that the FDA is the Forest regulatory agency of the Government of Liberia responsible for the management and exploitation of the nation's forest resources and as such, all agreements denominated as forest management or related agreements are subject to the approval and/or attestation of the FDA to become effective and operational.

It is a settled principle of law "that the intention of the parties to and the meaning of contract are deduced from the language and content of the contract and where terms are uncertain and unambiguous, the contract is conclusive." 17 A CJS CONTRACT section 296 page 69.

The Petitioner/Appellee argued and we agree that there is nowhere in the agreement which says that the ninety (90) days shall commence on the day FDA would grant permission to Respondent. If such an idea were contemplated by the parties that the granting of a permit by FDA to Respondent was a condition precedent to the performance of the Agreement, it should have been included in the agreement especially since the agreement was drafted and written by Respondent and its legal counsel.

The general rule on contract is that where the language of an agreement is plain and unambiguous, its interpretation shall be based upon its plain meaning, and there shall be no extrapolation or inference as to create variance to the intent of the parties;

hence, if the parties had intended that granting of permit by the FDA was a prerequisite to the commencement of the Forest Management Agreement, this intention should have been reduced to writing in order to form an integral part of the Agreement. In the absence of any revision indicating that the commencement of the Agreement was dependent on the issuance of a permit from FDA, this Court cannot add or subtract from a contract what the parties have not agreed to.

We disagree that the payment of the land rental fees should have been made 90 days [illegible] the obtaining of a permit from FDA as argued by Appellant. We hold instead that the first payment of the land rental fee should have been made on January 30, 1998, 90 days after the signing of the Agreement on November 1, 1997, as plainly expressed in Clause 15 of the Agreement. It was understood and agreed by both parties that the payment of the annual land rent 'of US$.30 (.30 cents), per. acre would be done annually in advance and the first-payment shall be effected within ninety (90) days after the signing of the contract. No other understanding between the parties can be inferred.

As to the third issue concerning the pre-mature filing of the suit, we do not agree with the lower court, when it ruled that Petitioners' cause of action was timely filed. Excerpts of Clause 9 says that "in the event of any dispute, either party shall inform the other about his intention to nullify the contract and within 90 days the parties shall employ effort to solve the problem; and if the problem is not resolved, arbitrators shall be set up comprising of two (2) persons from each party and the Chairman shall be selected by both parties. The Agreement took effect as of November 1, 1997 and payment of forest land rental fee of US 0.30 (United States thirty Cent) per acre should have been made in 90 days. Notices of non-compliance to the Agreement were written on January 29, and March 23, 1998, respectively to the Respondent, reminding him about his obligation consistent with the agreement.

We conclude that Respondent's failure to pay forest land rental fee of U.S .30 Cents per acre which would have amounted to U.S. $75,000.00 (United States Dollars Seven Thousand) within 90 days after the signing of the Agreement was a major dispute. Clause 9 of the agreement provides that in the event of dispute, a party shall be given 90 days to solve the dispute. The 90-day period to correct or solve the problem began to run as of January 30, 1998 the date the land rent was due and not paid, that is, the end of the 90-day period after the signing of the Agreement on November 1, 1997 and another 90 period to solve the dispute that would be after April 30, 1998. So, Appellee could only embark on court proceedings after April 30, 1998, if the agreement did not contain an arbitration clause.

The notice of the failure to pay the rent was first communicated to Respondent on January 29, 1998, one day before the 90-day period after the signing of the Agreement and the action was instituted on April 9, 1998 twenty (20) days before the 90-day period that was given either party within which to remedy any dispute as is clearly stated in Clause 9 of the Agreement; and if the conflict was not resolved within the aforesaid period stipulated therein, the next step was for either party to evoke or resort to arbitration. None of these steps was followed by Petitioners. We therefore hold that the suit was untimely and prematurely filed.

In disposing of the fourth issue, whether or not the parties should have exhausted arbitration remedy before seeking legal redress? This court says that the lower court committed a reversible error when it ruled that Petitioners' two letters to the Appellant/Respondent reminding it about theirs intention to nullify the contract was sufficient notice for Respondent to have evoked arbitration. Since the Respondent failed to evoke arbitration, there arose a good ground for granting the Petition to cancel the Forest Management Agreement.

Appellant in its Returns, brief and argument before this Court, contended that even assuming, but not admitting, that Petitioners had any good ground for canceling the Agreement, they should have first of all exhausted the remedy available to them under the Agreement, specifically Clause 9 thereof, which provides that in the event of any disputes between the parties, such disputes should be submitted to arbitration.

The Petitioners/Appellees on their part averred and contended that the cancellation of the agreement as provided for under Clause 10 of the agreement, is not contingent upon Clause 9, which requires arbitration. Petitioners contended that where an agreement specifically provides a mode for cancellation and conditions of cancellation, the provision for arbitration does not become a pre-condition for cancellation. In the instant case the condition for cancellation specifically agreed upon by the parties are stated in Clause 10 of the agreement.

Clause 10 states four conditions upon which the Agreement could be cancelled

" (a) that the LESSEE failed to start operation within ninety (90) days as of the signing date of this agreement.

(b) that the Stipulated payment terms are not met by the LESSEE within ninety (90) days

(c) that the concession areas are found to be non-productive for logging purposes.

(d) the Government of Liberia obstruction, which could result to making the production of logs impossible"

Clause 9 also provides the following conditions:

"That it is agreed upon by both parties that in the event of a dispute between them either party shall be given 90 days notice about his intention to nullify the contract; That within this period efforts should be made to correct the problem; In the event the problem is not solved, board of arbitration shall be set up comprising of five (5) persons; two (2) from each party and a Chairman selected by both parties. "

The real conflict between the parties arose when Respondent did not pay to appellee the forest land rental fee of U.S. $75,000.00 (United States Dollars Seventy-Five Thousand) representing 30 cents per acre for the exploitation of productive forest land of the 250,000 acres as agreed upon by them in Clause 4 & 15 of the contract. Appellee gave notice to the Appellant about his intention to nullify the contract as per January 29, and March 23, 1998 letters. In response the Appellant informed the Appellee that the delay in payment was due to the difficulties in obtaining permit to operate the forest. It is obvious to this Court that a conflict has arisen and the parties do have a remedy under the agreement to arbitrate any dispute. Clause 9 of the Agreement allows a period of 90 days within which effort shall be made to solve the problem; but between March 23 to April 9, 1998 when the action was filed, there is no showing that the parties submitted to a board.

We note that only one of the procedural steps stated in Clause 9 of the agreement was properly followed by the Appellee, which was notification to the Appellant about its intention to nullify the agreement. The other two important procedural remedies of employing efforts for internal settlement of dispute between them, and if that aspect fails, then, the parties must submit to a Board of Arbitrators were not exhausted by the parties.

The decision of the Board would have been final; therefore, there was no room in the agreement for cancellation. Further reading of Clause 10 of the agreement, it is provided that there were conditions that could be considered for cancellation of the agreement. This phrase is not conclusive and definite. It does not state that the

conditions are grounds for the cancellation of the agreement and does not give a party the conclusive right to cancel the agreement. It says that the following conditions could be considered for cancellation.

In any case, the law is that "If the contract on which the cause of action is based provides either expressly or by implication for a submission to arbitration as a condition precedent thereto, such steps must be taken before an action can be maintained on a contract 6 CJS Arbitration "Effect on right to bring action" section 29 (b)p.169.

The law is also that "Where a contract contains a stipulation that the decision of arbitrators on certain question shall be a condition precedent to the right of an action on the contract itself, such stipulation will be enforced and until the method adopted, has been pursued or some sufficient reasons given for not pursuing, no action shall be brought on a contract. Under modern arbitration statute a contract provision making arbitration of any and all differences arising out of a contract a condition precedent to the initiation of the suit will be enforceable 5 Am Jur 2nd "Right to bring action" Section 20 page 535.

The Liberian statute on arbitration states "A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy hereafter arising is valid [illegible].

The Supreme Court has up held these Principles of law in several cases. In the Chicri Brothers Inc. Vs. Isuzu Motors Corp. October Term, A.D. 2000, the Supreme Court held "that where parties to a contract agree to submit any dispute arising out of the contract to arbitration as the means of settling the disputes, our courts will enforce such provision of the contract." See also Messrs EmirateTradine Agency Company Vs. Messrs Global Africa Import and Export Company, March Term, A.D. 2004: Karen Maritime Limited Vs. Omar International, Inc. March Term, A.D. 2004.

Based on these laws cited, this Court has therefore reached the conclusion that the Judge erred in canceling the agreement without the parties having fully exhausted the arbitration remedy provided in the agreement.

Wherefore and in view of the foregoing, the Judgment of the lower court granting the Petition for the Cancellation of the Forest Management Agreement is hereby reversed and case remanded so that parties may take recourse to the arbitration remedy as provided for in the agreement. The Clerk of this Court is hereby ordered

to send a mandate to the court below ordering the Judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs ruled against the Appellee. AND IT HEREBY SO ORDERED.

COUNSELLOR ROLAND F. DARN APPEARED FOR THE APPELLEES/PETITIONERS.

COUNSEL APPEARED FOR THE APPELLANT/RESPONDENT.