

BRANT, WILLIG & COMPANY (BRAWICO),
Appellant, v. RALPH CAPTAN, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued May 6, 7, 1974. Decided June 14, 1974.

1. Special damages must be specially pleaded and proved at the trial to justify a recovery therefor.
2. Damages to be recoverable must be certain both in their nature and in respect to the cause from which they proceed.
3. Therefore, uncertain, contingent, or speculative damages cannot be recovered.

Appellee purchased photographic equipment from appellant, issuing a series of postdated checks. Appellee claimed that a few months later the seller wrongfully seized the equipment before presenting any of the checks for payment, by reason of which he was deprived of prospective business profits, all of which was denied by appellant. An action in damages was instituted by appellee, and the jury awarded him \$20,000.00. The defendant appealed from the judgment. The Supreme Court held that the only support for the verdict was plaintiff's allegation of damages in his complaint. The judgment was *reversed* and the case *remanded*.

T. Gyibli Collins for appellant. *J. Dossen Richards* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On November 24, 1971, appellee purchased photographic equipment from appellant, and in payment thereof subsequently issued to the seller a series of postdated checks totaling \$4,500.00.

The appellee instituted an action against the seller on August 10, 1972, alleging that appellant had seized the equipment on March 2, 1972, though the postdated checks had not been presented for payment. In consequence thereof plaintiff alleged he had lost over \$26,000 in profits he would have made in the year by his use of the equipment in business.

The defendant, in effect, denied the allegations in the complaint, contending the equipment had been voluntarily surrendered by plaintiff, who thereafter served a reply, concluding the pleadings.

A motion was thereafter made by the defendant, primarily alleging that plaintiff had failed to state a cause of action. The motion was opposed and the judge thereafter denied it, ruling the case to trial.

This matter comes before us on an appeal taken from the judgment entered against defendant, after a jury had returned a verdict for plaintiff.

Even though the judged ruled the case to trial, we wonder why he allowed the case to go to the jury, which awarded \$20,000.00 to the plaintiff, when the only basis therefor was that plaintiff had alleged in his complaint that he had sustained damages of \$26,176.00.

Again and again this Court has emphasized that a jury's award must be based upon the evidence proving the damages alleged to have been sustained. It is our point of view that the trial court should have set aside the verdict of the jury when a motion for a new trial was made on the ground that the verdict was contrary to the evidence adduced at the trial. The judgment rendered confirming the said verdict should be and the same is hereby reversed.

It is a settled principle that allegations of special damages must be specially pleaded and proved. *Lackman v. Johns*, 1 LLR 455 (1905).

Further "The damages recoverable in any case must be susceptible of ascertainment with a reasonable degree

of certainty, or . . . must be certain both in their nature and in respect to the cause from which they proceed. Therefore, uncertain, contingent or speculative damages, cannot be recovered, either in actions ex contractu, or in actions ex delicto. . . . The certainty refers not solely to the amount of damages but to the question of whether they will result at all from the breach.' " *Franco-Liberian Transport Co. v. Bettie*, 13 LLR 318, 328 (1958).

Because of the numerous errors made by the trial judge and the gross irregularities committed at the trial in the conduct of the pleadings and in order to mete out justice to all parties concerned, we see no need to make any further comment and hereby reverse the judgment and remand the case for a new trial, permitting the parties to replead commencing with the complaint. Costs to abide, pending final determination of the case. It is so ordered.

Reversed and remanded.