

ZAKARIA BROS., by and through its manager,
MOUNIR ZAKARIA, Appellant, v. PANNELL,
FITZPATRICK, GRAHAM, and GREWDSON,
chartered accountants, by and through their
representative, MR. PIERSON, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTSEERRADO COUNTY.

Argued October 22, 1968. Decided February 6, 1969.

1. In ruling upon the pleadings in an action, the trial court must make its ruling so comprehensive as to embrace all the material issues raised by the pleadings, and where this has not been done, the case will be remanded for proper disposition in the lower court.

In the course of an action for damages, the trial court dismissed the complaint, but failed to address itself to all the material issues of law raised by the pleadings. The plaintiff appealed from the court's judgment. The *judgment was reversed*, and the *case remanded*, for all the material issues to be passed upon by the trial court.

Lawrence Morgan for appellant. *Maxwell and Maxwell* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the court.

We gather from the record before us that in 1966, Zakaria Brothers, plaintiff-appellant in the above entitled cause, a Lebanese firm doing business in Gbhan, Nimba County, and elsewhere in Liberia, instituted an action of damages of wrong against defendants-appellees herein.

Plaintiff entered into an insurance contract with Ia Fondiaria Fire Insurance Company, acting through its general representative in Liberia, The Liberia Trading and Development Company, Ltd., for the insurance of a

store and its contents against fire, explosion, riots, strikes, and other losses.

The agreement was concluded under policy no. 150-109 and payment of the required premium by the insured. The insurer covenanted, agreed, and contracted to pay to the insured the value of the property described in the policy in case of damage by fire and/or lightning, provided that in any event liability of the insured would in no case exceed \$50,000.00. Upon a written reminder from the insurer, the insured renewed the policy in February 1966.

Shortly after the renewal of the policy, a fire broke out in the insured's store, at Bahn, Nimba County, on February 13, 1966, resulting in the alleged destruction of his entire stock of the value of approximately \$54,000.00.

This damage was immediately brought to the attention of the insurance company and a claim made for the sum of \$50,000.00, under the policy.

A dispute arose between the insured and the insurance company, and the books of account of the insured were resorted to. The insurance company suggested that the appellees, supposedly chartered accountants, be brought in to inspect and examine the books of the insured. Appellant, being anxious to get the claim attended to, agreed, and submitted all his documents together with all other evidence of his stock in trade and business assets to the appellees for the proposed inspection, to be returned to him. After taking in hand all of appellant's aforesaid books and documents, appellant was told that his claim was rejected because it was not supported by the proper documentation. Appellant then called upon appellees to return his documents to him but they refused, maintaining that they had been employed by the insurance company as independent contractors and that any demand for the return of the documents should be made to the insurance company. When the company was approached for the documents, it is alleged they treated the question

with indifference. This alleged unlawful conduct of the defendants-appellees compelled appellant, in an effort to retrieve this vital evidence of his claim, to institute an action of replevin in the office of the Justice of the Peace for the County of Montserrado, for the recovery of said documents. Upon the service of the writ, defendants-appellees still refused to release the documents or to disclose their whereabouts, whereupon the action of replevin was immediately converted into an action of damages in the sum of \$25.00, being the sum fixed as the value covering the cost of the account books and papers involved. Judgment in this suit was rendered against defendants-appellees, without appeal.

Because of the loss to appellant of his vital evidence in support of his claim of \$50,000.00 against the insurance company, growing out of the alleged unlawful conduct of the defendants-appellees, appellant instituted an action of damages for a wrong against defendants-appellees in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. This constitutes the background of these proceedings. This action is based upon a complaint in which it is substantially averred:

"1. That as a part of their business in Liberia, they are proprietors and owners of a store situated in Bahn, Nimba County, in which they buy and sell dry goods, produce, and merchandise of all kinds, which store and all of the goods and wares therein were destroyed by fire on the 13th day of February, 1966.

"2. That plaintiff had insured his above-described store together with the goods and wares against fire, riot, and strike, explosion, and other loss, in the total amount of \$50,000.00, and that the insurance was carried by the La Fondiaria Fire Insurance Company, Ltd., represented in Liberia by the Liberia Trading and Development Company, Ltd.

"3. That in submitting their claim for the loss sustained to the Insurance Company, plaintiff tendered

to the defendants in their capacity as chartered Accountants, complete stock lists and statements of account pertaining to plaintiff's business, which lists show accurately the value of the stock in the store at the time of fire, for defendants' scrutiny, study, and report to the insurance company, said documents to be then returned.

"4. That defendants, notwithstanding the facts stated above, and without any legal color or right whatsoever, unlawfully retained possession of plaintiff's stock lists and statements of account and refused to return them to plaintiff with the view to keep plaintiff from formulating a claim against the insurance company to plaintiff's great loss and damage; and when plaintiff, in a further effort to regain possession of his stock lists and statements of account sued out a writ of replevin, defendants still refused to deliver up his property.

"5. That the stock lists and statements of account, according to plaintiff's best recollection, show that the value of the goods in plaintiff's store was approximately \$54,000.00, but that without the stock lists and statements of account, plaintiff is unable to accurately set out the value of the said stock, and has been prevented on account of his inability to profert these documents from filing suit against the insurance company for the recovery of his loss, and he has thus suffered irreparable and great loss and damages."

The record in this case certified to us further reveals that defendants after being duly summoned, appeared and filed an answer and pleadings progressed as far as the surrejoinder. Plaintiff, in its reply, attacked defendants' answer. For the benefit of this opinion we quote hereunder counts eight and nine of the reply:

"8. And also because plaintiff says that defendants' answer is bad and defective and should be dismissed in that said answer violates the statute relative to con-

sistency, that is to say, in count one of the answer defendants contend that plaintiff should have sued on an action in replevin instead of an action of damages, yet, in count six of the very same answer, admit that plaintiff did sue out an action of replevin but did not recover the property. Plaintiff contends that under the law of pleadings a party may not both deny and admit a fact as defendants have done in the answer. For this vital legal blunder, plaintiff prays the dismissal of defendants' entire answer and that they be made to rest on a bare denial of the facts set forth in plaintiff's complaint.

"9. And also because plaintiff says that the answer of the defendants, besides being evasive and contradictory, is insufficient, in that, it does not sufficiently traverse the facts set out in plaintiff's complaint, that is to say, defendants' contention that the documents were duplicates and not originals is no justification for the illegal withholding and should therefore be dismissed, and plaintiff so prays."

The trial judge having passed on the issues raised by the pleadings, handed down his ruling on the issues of law on February 17, 1967, and abated plaintiff's action and vacated same, to which ruling the plaintiff excepted and prayed an appeal to the Supreme Court, sitting in its October 1967 Term.

Plaintiff-appellant, having excepted to the ruling of the trial judge in these proceedings, has thereby removed his cause to this Court of last resort for review of the appeal, which is based upon a one-count bill of exceptions.

"Because the court in spite of the several cogent issues raised by plaintiff in the written pleadings, and without hearing evidence on the issues of fact, rendered final ruling on the 17th day of February, 1967, dismissing plaintiff's action, to which final ruling of the court the plaintiff then and there excepted and

prayed an appeal to the Supreme Court sitting in its March Term, 1967.”

In count eight of plaintiff's reply, it contends that defendants' answer is bad and defective and should be dismissed because it violated the statute relative to consistency as above related. In count nine of plaintiff's reply it was contended that the answer is not only evasive, but contradictory and insufficient, because it does not sufficiently traverse the facts set out in plaintiff's complaint as above related.

A reading of the lower court's opinion clearly shows that some of the issues of law raised by the pleadings were excluded from consideration.

It is obvious that the trial judge erred in not passing upon all of the material issues, especially the issues embodied in counts eight and nine of plaintiff-appellant's reply.

In *Clark v. Snyder*, 9 L.L.R. 111 (1945), the Court ruled that it is necessary that a judge, in passing upon pleadings in a cause, make his ruling so comprehensive as to embrace every material issue involved.

In view of the foregoing, the ruling of the trial judge in these proceedings is hereby reversed, and the case remanded to be heard and determined, in that the judge is commanded to pass upon all of the material issues raised by the parties through their pleadings as the law directs, and that same should be heard and disposed of without further delay, costs to abide final determination. And it is hereby so ordered.

Reversed and remanded.