MARTHA L. TARWON, Appellant, *v.* SAMUEL K. WILLIAMS and ROGER K. MARTIN, Appellees.

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

Heard: May 5, 1993. Decided: July 23, 1993.

1. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall deemed denied or avoided.
2. An agreement is a contract entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do or omit some act in consideration that the other party shall give or has given some valuable thing, or shall do, or omit, or has done or omitted some act.
3. An oral gift of land, or promise to give land followed by the vendee's taking possession of the land in pursuance of the promise and making valuable permanent improvements in reliance thereon, may be enforced by the court of equity against the donor or his heirs or grantees with notice.
4. Where the promise to give is conditioned on the vendee's making improvements, compliance with the condition furnishes the consideration for the transaction, and it not necessary that there be a technical consideration.
5. Where the promise to give is wholly unconditional, the doctrine of *estoppel* will apply against the donor in favor of the donee because of the change of condition as in the case of a parol sale possession and improvements. The making of the improvements is both an act of part performance and the equivalent, in the view of equity, of actual consideration.
6. Equity will lend its aid to the enforcement of a promise to make a gift of land where the donee in reliance on the gift has taken possession pursuant thereto and erected valuable and permanent improvements.
7. The assent of the offeree may be inferred from circumstances and acts, as well as from words. If the parties have not stipulated otherwise, the acceptance need not be in the particular form nor evidenced by express words. The subsequent acts of the party to whom the offer is made constitute a sufficient assent so as to make a perfect mutuality of agreement and obligation between the parties.

The crux of this petition is that appellant, defendant in the trial court, and her partner entered into a lease agreement for a period of twenty calendar years certain with an optional period of five years. Although appellant did not personally sign the lease agreement as lessee, due to unavoidable circumstances, she initiated the negotiation and paid the amount due on the

lease from 1983 up to the institution of this action in 1989. In 1983, appellant's partner left the premises but appellant remained thereon and paid the annual rental up to and including 1989. Thereafter, appellant entered into an oral agreement with appellee, which provided that upon the expiration of the original lease and its optional period, appellant would lease the premises for an additional twenty-five years. Based on the oral agreement, appellant developed the premises by erecting additional improvements thereon.

Notwithstanding this oral agreement, the co-appellant filed summary proceedings to recover possession of real property against appellant, alleging that lessee, who signed the original lease, did not assign the lease to her when he left in 1983. Consequently upon its expiration, appellant became a tenant at will. The trial court ruled in favor of appellee. The Supreme Court *reversed* the trial court, holding that the appellant was a lessee by implication and therefore still had the optional five years. The Court further held that appellee could elect to extend the lease for twenty-five years after the expiration of the five years.

Frederick D. Cherue and Frank W. Smith for appellant and *Roger K. Martin* for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellant Martha L. Tarwon, was the fiancee and business partner of one Mr. John B. Johnson in Bong Mines. The appellant decided to extend their business in Monrovia, and therefore came to Monrovia to investigate the possibility of leasing a vacant lot to build on for their business. When she got to Monrovia, a friend took her to Mr. Samuel K. Williams, the appellee, who consented to lease the vacant lot for Two Hundred Forty ($240. 00) Dollars annually. She then brought in her business partner, Mr. John B. Johnson, whom she introduced to the appellee. Unfortunately for her, when the time came for the preparation of the lease agreement, she had to

leave the city to go see her sick mother in Grand Gedeh County. Upon her return, the lease agreement had been executed and signed between Mr. Samuel K. Williams, as lessor, and Mr. John B. Johnson, as lessee for ten calender years certain with an optional period of five (5) years. This was January 24 1979. After building the house on the land, the appellant and her fiancee, John B. Johnson, lived on the premises until 1983, when they separated. Mr. John B, Johnson left the premises and went back to Bong Mines while the appellant remained on the land. The appellant's arguments are evidenced by receipts on records showing that she paid the annual lease of Two Hundred forty ($240.00) Dollars from 1983 to 1988/89.

According to the appellant's testimony, which was corroborated by witness Zack Johnston, the appellee found a Lebanese merchant who wanted the premises and therefore he asked the appellant to leave the premises claiming that she has not been forthcoming with payment of the lease.

The appellant refused to vacate the premises on ground that she had a leasehold interest. The appellee, however, contended that there was no lease agreement between them nor was she married to Mr. John B. Johnson with whom he executed the lease agreement, and there was no evidence that Mr. John B. Johnson had made an assignment of the lease to her. The appellee, in fact, contended that Mr. John Johnson who leased the premises and built the house turned same over to him on 30th of January 1989. Therefore, the appellant was a tenant at will. The appellant argued vehemently that after the departure of Mr. John B. Johnson from the premises in 1983, she and the appellee came to an agreement that she will remain on the premises and continue to pay the same rent, and that after the expiration of the ten (10) years with the optional period of five (5) years, appellee would enter into another agreement for Twenty-five (25) years with her. Predicated upon this agreement, she built another house on the land making it two houses and paid the two hundred and forty ($240.00) dollars per annum up to the time of filing the complaint against her for summary ejectment by the appellee.

According to the testimony of the appellant as corroborated by her witnesses, she was leasing the land from the petitioner, Samuel K. Williams, predicated upon the agreement signed between him and her partner, John B. Johnson. It was also revealed that this lease agreement was signed in 1979. When Mr. John B. Johnson vacated the leased land, Martha L. Tarwon remained on the premises and paid the same rent of two hundred forty ($240.00) dollars yearly. The appellant paid these annual rents from 1983-1989 when the appellee told the appellant that his daughter had found a Lebanese man who would like to rent the place, and that therefore she should vacate the premises.

Appellant, on the other hand, maintained that she and Johnson, her partner, lived together for eight (8) years and it was during that time that she negotiated with appellee for the premises and invited her partner. However, because she was at home with her sick mother, the lease agreement was concluded between Mr. Samuel K. Williams and her partner. The appellee does not recognize her as a partner, yet, he recognized and requested her to take possession of the premises and pay the same rent from 1983-1989, the period of the first agreement. She even paid the rent for 1990 which amount appellee kept for three (3) days and then returned it.

The appellee maintained that Mr. John B. Johnson, lessee, turned the place over to him on January 30, 1989 and that Mr. John B. Johnson still had the agreement. Yet it was appellant, and not Mr. Johnson, who paid the rent from 1983-1989.

We shall quote for the benefit of this opinion counts four and six of the appellant's answer and counts four and six of the petitioner's reply. Appellant's answer, at counts four and six state:

> "(4) AND ALSO BECAUSE RESPONDENT submits as to count two (2) of the purported petition, the allegations therein are false and misleading and had been asserted only with the sole intent and purpose of cheating respondent and depriving her of her hard earned labor and property right; to the contrary, respondent is not a tenant-at-will as falsely alleged but a lessee occupying the

premises under a valid lease agreement entered into by and between plaintiff as lessor and respondent and her partner and agent, John B. Johnson, for a period of fifteen (15) years, ten (10) years of which has already expired leaving five (5) years more, at an annual rental of Two Hundred Forty ($240.00) Dollars, which respondent has substantially paid annually up to 1989. The petitioner's attempt to oust respondent of possession is therefore malicious, iniquitous, and dishonest. The said lease agreement is in the possession of petitioner and respondent hereby gives notice to petitioner to produce the same at the time of the trial of this case, in the event a trial becomes necessary. Respondent also proferts herewith copies of her rental payment receipts marker "B/4, forming cogent part of this answer".

"(6) AND FURTHER BECAUSE RESPONDENT also submits that petitioners's demand upon respondent to vacate his premises as alleged in count two (2) of the purported petition is ungodly, mischievous, inequitable and dishonest, in that the initial period of the lease has not as yet expired; secondly, both petitioner and respondent agreed that upon expiration of the first term, respondent will enjoy another term of twenty-five (25) years upon terms and conditions to be agreed upon, and in reliance upon these promises, respondent has built two (2) dwelling houses on the premises with total value of more than Fifteen Thousand ($15,000.00) Dollars, which property respondent has not even enjoyed for good five (5) years. Respondent maintains that the entire action is only vexatious and an attempt for petitioner to unjustly enrich himself at the expense of respondent, a conduct which every court of justice frowns upon and should not be countenanced nor condoned by this Honourable Court. Respondent hereby gives notice that at the time of the hearing of this case, she will produce the assessed valuation from the Real Estate Tax Division of the Ministry of Finance, Republic of Liberia."

In traversing these issues, the appellee said in his reply:

"(4) As to count four of said purported answer, petitioner says that he reiterates and affirms his petition against respondent in its entirety. Because respondent is a tenant-at-will, does not have any property right on the premises sued for, was given possession with all the structures already built on said premises, and does not have any lease agreement with petitioner for the premises sued, it is inconceivable that respondent will contend that she has a valid lease agreement with petitioner for the premises sued for and lamentably fails to produce same but rather feels satisfied to contend that petitioner has said instrument, which contention is preposterous considering respondent's assertion that she and her partner and agent, John Johnson, entered into said alleged lease agreement with petitioner. It must be a fictitious and concocted lease agreement otherwise, why is it that respondent does not have a copy of same? Why is it that her partner and agent, John Johnson, does not have a copy thereof, including her other agent, Counsellor Alfred B. Flomo? Respondent submits that nowhere among R/4 does the receipt for the payment of rent for the period 1989 appear as is falsely stated in said count 4 of the fabricated answer. Said count four (4) of the unmeritorious answer should therefore be overruled for respondent's failure to produce any document granting her leasehold right on the premises sued for."

"(6) And also because petitioner says that count six (6) of respondent's answer is repetitious of count four (4) of said answer. Petitioner therefore reiterates count four (4) of this reply. Said count six (6) of the unmeritorious answer of respondent should be overruled and dismissed along with the entire answer for bad pleading. For one cannot be dishonest or iniquitous who seeks to recover the possession of his property wrongfully detained by a tenant-at-will".

We do not think that count six (6) of the answer is repetitious of count four (4) of the answer. For count six (6) raises the issue of the oral agreement between appellee and appellant

to enter into another twenty-five (25) years agreement at the expiration of the first term, which appellant said motivated her to build another house, thereby making two (2) dwelling houses on the premises with total value of more than fifteen thousand ($15,000.00) dollars, which property appellant has not enjoyed for good five (5) years were not raised in count four (4):

> "Averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denial or avoided." Civil Procedure Law, Rev. Code 1: 9.8(3)

In count four (4) of the reply, appellee maintained that appellant was given the premises with all the structures already built on said premises. Yet, during the trial, the following questions were posed to the appellee on the cross and these were his answers:

Question: Mr. Witness how long before the defendant rented your premises did you construct a building thereon?

Answer: Yes, I constructed that building myself. It was built by a man. In other words it was built by a man who leased the place from me and turned it over to me.

Question: Thank you, Mr. witness. Would you mind telling the court who is this man who leased your premises, built the house, and turned same over to you, if you know?

Answer: The name of he man is John B. Johnson.

Question: Tell us, Mr. witness, when did this John B. Johnson turn your premises over to you if you can remember?

Answer: He turned the place over to me January 30, 1989.

Question: Mr. witness, when did the defendant Martha Tarwon rent your premises if you can remember?

Answer: She has been renting almost five years now.

Question: Do you normally issue her receipt for such payment of rent?

Answer: Yes, I do give receipt.

Question: Mr. witness, we quote herein one of the receipts issued to Martha Tarwon which reads thus: "Liberia Nov. 6, 1983, Received $240.00 from Miss Martha Tarwon for the payment of land leased from Mr. Samuel Williams for the year A. D. 1983. Signed S. K. Williams." Do you remember issuing such receipt?

Answer: Except I see it and compare it with my receipt books.

Question: Please take this then and compare it with your record and tell the court whether it is the same receipt?

Answer: I have two receipt books in which I wrote receipts for funds received. One of the books is here with me and other is at home and therefore I cannot easily compare it to answer your question correctly.

The answer given to this last question is evasive, for one does not have to compare his writing with a receipt book before admitting whether or not it is his writing.

The following questions were posed to the lone witness of the appellee, John Gonkerwon:

Question: Did we understand you to say also that defendant, Madam Martha Tarwon, is a tenant at will of your father, the plaintiff?

Answer: As far as I am concern, she was a renter.

Question: Mr. witness, tell us how long have you known defendant Martha Tarwon, since you are friendly with her?

Answer: I have known Martha Tarwon since 1981.

We quote the testimony in chief of the appellant's second witness in person of Zack Johnston:

> "Being acquainted with Mr. Samuel K. Williams and Mrs. Martha Tarwon, I am prepared to stand and tell this Honourable Court that when Martha Tarwon took sick last year, I am the one who carried the amount paid as usual, based on the agreement between Mrs. Martha Tar-

won and Mr. Samuel K. Williams. On several occasions, I delivered the amount she usually paid and Mr. Williams issued receipts which I knew to be lease payment between the plaintiff and the defendant. In fact, the last amount that I carried for 1990, as an advance payment, was received by Mr. Samuel K. Williams. He did not issue a receipt, stating that the lady who writes the receipt was not available. Three days later, when I returned there for the receipt, I was told by Mr. Williams that his daughter has gotten luck from one Lebanese Merchant for the premises. Therefore he does not want to keep the money anymore, and so he gave the money back top me".

The witness was then cross-examined as follows:

Question: Mr. Witness, in your testimony in chief, you said that you were the one who used to go to the plaintiff to pay the rent for defendant Martha Tarwon, and you stated that you have paid the rent for 1989. Am I correct?

Answer: Yes.

Question: You have identified court's marked D-SE/02, which is dated March 8, 1988. I pass same back to you and request that you look at it and tell this court whether it is this receipt that you referred to as payment for the year 1989.

Answer: Identifying the receipt, I stated that I usually paid in advance. And this receipt is for 1989.

Question: I put to you that the receipt marked by court D-SE/02 identified by you is not for the payment of rent for the year 1989 and that the payment of the rent for the year 1989 has not been made. What do you have to say to that?

Answer: I stated to the court that the lease payment was always in advance, so 1989 the money was paid in 1988. This is how the receipt was prepared.

Question: Mr. witness are you telling this court that when you paid the rent on March 8, 1988 that money for which receipt D-SE/02 was issued was payment in advance not for 1988 but, for 1989?

Answer: It was payment in advance for 1989.

We also quote the testimony of the third witness of the appellant:

> "Some part of 1979, I went to visit Martha in Bong Mines. She told me that she was building in Town here. She said she and her husband John B. Johnson leased a place from Mr. Williams. So while they were building this house she and myself went to Mr. Williams. Then I told her that I know him to be a Gio man but he and I are not that close. I went to him and said thanks, and anytime I wanted to see Martha Tarwon, I will go to the place where she was building. I left and went to Europe. Martha was making business on Carey Street. She and her husband were there, where I left them. After I came back I went there to look for them, at that time Martha Tarwon and John B. Johnson were not together anymore. Then I went to her and asked her about this place that they were leasing. She told me that she was still paying the money: "Johnson is not paying the money again I am the one paying the lease." So she and myself went to Mr. Samuel K. Williams and I told him thanks, and from that time Samuel K. Williams was a brother to us. To my surprise, I heard Sam had taken Martha to Court. That is all I know"

Question: Did we understand you to have told this court that Martha Tarwon, the defendant in this case, is the one who told you that she was building in town here at the intersection of Gardnersville and Barnersville?

Answer: I followed Martha Tarwon to the site where she was building this house.

Question: You also said that John B. Johnson was the husband of Martha Tarwon, tell this court did you attend their wedding ceremony, and if so, please state the city in which they were joined together in holy wedlock.

Answer: John Johnson went to the family and show himself to the family that he was going to marry Martha legally but before marrying her we have to do the

> traditional way first. But I did not say that they were married. Maybe it will happen but so far this is all I know. I never saw them in church.

After the appellee had asked the appellant to move, he also wrote the tenants that were paying to the appellant not to pay anymore money to her. This clearly establishes that the appellant was in charge of the premises, collecting her own rents from the tenants.

The appellant in count six of her answer alleged, among other things, that "both petitioner and respondent agreed that upon the expiration of the first term, respondent will enjoy another term of twenty-five (25) years upon terms and conditions to be agreed upon, and in reliance upon these promises, respondent built two (2) dwelling houses on the premises with total value of more than fifteen thousand ($15,000.00) dollars which property respondent has not even enjoyed for good five (5) years". The appellee did not deny this allegation. Besides, the appellant regularly paid the leased amount up to 1990 when the appellee himself returned the 1990 rent.

> "A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do or omit some act in consideration that the other party shall give or has given some valuable thing, or shall do, or omit, or has done or omitted some act." *Karmo v. Yemgbie*, 13 LLR 84, 86 (1957).

This Court has also held that:

> "Any oral gift of land, or promise to give land, followed by the vendee's asking possession of the land in pursuance to the promise and making valuable permanent improvements in reliance thereon, may be enforced by a court of equity against the donor or his heirs or grantees with notice. If the promise to give is conditioned on the vendee's making improvements, compliance with the condition furnishes a consideration for the transaction. But it is not necessary that there be a technical consideration. If the promise to give was wholly unconditional, the same relief will be given to the donor, based upon the

same reasons of estoppel against the donor and virtual fraud upon the donee because of his change of condition as in the case of a parol sale with possession and improvements. The making of the improvement is both an act of part performance and the equivalent, in view of equity, of an actual consideration." *Pennoh v. Pennoh,* 13 LLR 480, 489-490 (1960).

Further, the authorities on this subject maintain that:

"...equity will lend its aid to the enforcement of a promise to make a gift of land where the donee in reliance on the gift has taken possession pursuant thereto and erected valuable and permanent improvement".

"...Even a parol gift of land may be rendered enforceable in equity by the donee's acts in taking possession and erecting improvements, on the theory that such acts constitute a party to take the case out of the statute of frauds". *Ibid,* at 490.

After the hearing of the summary proceeding to recover possession of real property in the civil law court, judgment was rendered in favor of the petitioner. The respondent excepted and announced an appeal to the Supreme Court which was granted. The court ordered the issuance of a writ of possession. The respondent then fled to the Chambers Justice with a petition for prohibition. The petitioner now, and respondent in the prohibition, did not contest the petition. Instead, this is what the counsel for respondent said at the call of the case:

"At this stage, counsel for respondent, Counsellor Roger K. Martin of the Martin Law Offices, wishes to inform Your Honour that in order to expedite this matter, and in the interest of justice and fair play, and also in view of the fact that the respondents' counsel withheld the filing of their returns to the petitioner's petition, we therefore requests Your Honour to grant petitioner's petition thereby permitting the petitioner herein to perfect her appeal announced to the full bench since the petitioner has already filed her bill of exceptions on the 18th day of December, A. D. 1989 after the rendition of the final judgment against the petitioner on the 9th day of December, A. D. 1989. And

respectfully submits."

With the above submission, the Chambers Justice, His Honour J. D. Baryogar Junius, then granted the prohibition. The defendant believing that she was still in charge of the premises, wrote one of the tenants, in person of Abraham Jubor, telling him that he has to conform to the new increment of one hundred thirty-five ($135.00) dollars as per our discussion. Failure to do, he will be given fifteen (15) days to leave the premises. This letter was referred to counsel for petitioner, Counsellor Roger K. Martin, who wrote the defendant informing her that the letter has been referred to them and therefore she must desist from tampering with the tenants on the premises otherwise, she will be arrested and that they have instructed all tenants on the premises not to deal with the defendant.

We feel that if the petitioner's counsel decided not to contest the prohibition, then he should have also known that things should have remained in *status quo ante.*

Therefore if the respondent was in charge of the premises prior to the decision, then on the summary proceedings she should have remained in charge of the premises until final judgment because the purpose of the prohibition was to have her remain on the premises until final judgment.

We quote hereunder count 5 of the prohibition:

"THAT following a protracted period of trial, the respondent judge rendered his final judgment on Saturday, December 9, 1989, in which he adjudged your humble petitioner liable and ordered her to be evicted, ousted and vacated from the premises although petitioner set up and proved legal defense of leasehold right and equitable title to said premises, having built the two (2) houses and consistently paid taxes thereon in accordance with the provisions of said lease. In this case, title is at issue and therefore should have been determined by a trial jury under the direction of the court. Thus, the trial and determination of this case without the aid of a jury was contrary to law and those rules which ought to be observed at all times, for which prohibition will issue to restrain such usurpation of power."

The Counsel is hereby seriously reprimanded not to repeat such actions, which we feel is highly contemptuous.

We do not sustain count one of the bill of exceptions because the magisterial court does not have concurrent jurisdiction with the circuit court. With reference to the twenty-five (25) years promised, which led respondent to build another house on the premises, the petitioner may either have the respondent enjoy the twenty-five (25) years or refund the amount she spent in putting up the building.

As to the respondent being a tenant-at-will, we observed that after John B. Johnson, whom petitioner claimed was the lessee, left the premises, the petitioner recognized the respondent as the lessee and continued to receive the lease rents from her from 1983 to 1989. We also observed that from respondent's letter to Abraham Jubor of March 22, 1990 and petitioner's reply, through his counsel, of March 26, 1990, the respondent was in complete charge of the premises, paying the rent to petitioner and collecting her own rents from her tenants.

This is what the authorities have said:

> "The assent of the offeree may be inferred from circumstances and acts, as well as from words. If the parties have not stipulated otherwise, the acceptance need not be in any particular form nor evidenced by express words. The subsequent acts of the party to whom the offer is made may constitute a sufficient assent so as to make a perfect mutuality of agreement and obligation between the parties". 46 AM. JUR., *Sales,* § 48.

In view of the foregoing and the surrounding circumstances, the judgment of the lower court is hereby reversed. We hold that the respondent was a lessee by implication and therefore still has the 5 years optional period. The petitioner may fulfill his promise by extending the lease for 25 years more at the expiration of the 5 years optional or refund the amount the respondent maintains she has spent in the construction of the building predicated upon the oral promise to lease the land for another 25 years as indicated in count 6 of her answer and testimony in chief. Costs in these proceedings are ruled against

appellee. And it is hereby so ordered.

Judgment reversed.