IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
MARCH TERM, A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III .....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE YUOH.....ASSOCIATE JUSTICE

50-50 Incorporated, represented by its Authorized Officer, Mrs. Vivian J. Bhatti, of the City of Monrovia, Liberia .....Appellant	
Versus	APPEAL
The Management of Ecobank Liberia Limited, represented by its Managing Director, Comptroller and all other Officers operating under its control, also of the city of Monrovia, Liberia..... Appellee	
GROWING OUT OF THE CASE	
50-50 Incorporated, represented by its Authorized Officer, Mrs. Vivian J. Bhatti, of the City of Monrovia, Liberia ..... Plaintiff	
Versus	ACTION OF DAMAGES FOR WRONG
The Management of Ecobank Liberia Limited, represented by its Managing Director, Comptroller and all other Officers operating under its control, also of the city of Monrovia, Liberia..... Defendant	

HEARD: July 12, 2016 DECIDED: September 8, 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal is from the final judgment in an action of damages for wrong instituted by the appellant/plaintiff, 50-50 Incorporated, represented by its authorized officer, Mrs. Vivian J. Bhatti of the City of Monrovia, Liberia, rendered by His Honor Yussif D. Kaba, Resident Circuit Judge of the Sixth Judicial Circuit.

The case commenced with the filing of a complaint in the circuit court for the Sixth Judicial Circuit, sitting in its September Term, A.D. 2013, wherein allegations were made that the appellant, which is a legally registered Liberian business entered into a loan agreement with the appellee's bank sometime in 2011. The loan agreement, the complaint alleged, culminated into the opening of a United States Dollar account as required per the loan arrangement for the making of deposits and/or payments against the loan directly to said account. Appellant alleged that it did not default in payment

of the loan; that all payments of the loan were made in accordance with terms and conditions of the loan arrangement; that the last deposit amount of five United States Dollar put into its account with the bank was on the 17th day of April 2013, and against which amount the appellee bank debited appellants balance debt owed of US$0.52, indicating that the bank now had a balance of US$4.48 credited to the appellant's account. With this last payment of US$0.52 representing the appellant's entire loan transactions with the appellee, the appellee issued the appellant a clearance dated April 22, 2013. The appellant alleged in the complaint that notwithstanding the payment and the issuance of the clearance by the appellee acknowledging the complete settlement of the loan, the appellee bank submitted the name of appellant as a non-compliant delinquent borrower, and by this, it prevented several business institutions from doing business with appellant, the latest being a US$33,408.68 loan application made by appellant to the International Bank (Liberia) Limited (IBLL). In that situation, the appellant said it had requested a transfer of this said amount to appellee's partners for business purposes but the said application for loan, dated June 5, 2013, was denied by the IBLL on grounds that appellant was listed on the Central Bank of Liberia (CBL)'s website as a delinquent borrower. The appellant said it then went to the CBL's website of delinquent borrower, dated June 7, 2013, and saw that its name was indeed noted therein as number 3125 "50-50 Liberia Limited Vivian Bhatti"; that this act of placing appellant's name on the website, internationally denied appellant of all business opportunities and created a serious setback affecting the appellant monthly income of approximately US$60,000. The appellant therefore prayed the court below to grant it judgement and order the appellee bank to pay to appellant general damages of US$500,000.00 for illegally and internationally publishing its name on the internet and thereby denying appellee of all financial business transaction with financial institutions in and out of the Republic of Liberia, resulting in damage to its business reputation and credit rating for the period of April 13, 2013, up to the period of filing its complaint. The appellant also prayed for damages of approximately US$60,000.00 for the financial setback affecting its monthly income during this period.

The appellee filed a three count answer which it subsequently withdrew and amended. In its amended answer, the appellee bank countered that while it is true that the appellant settled its loan obligation to the bank on April 17, 2013, and was issued a clearance in respect thereof on April 22, 2013, the payments mentioned were made subsequent to the appellant's name being sent to the Central Bank of Liberia (CBL) as a delinquent borrower; that

after the settlement of the appellant's obligation to the appellee bank on April 17, 2013, the bank, on May 13, 2013, emailed the CBL informing it that it was forwarding its list of borrowers, including the name of appellant, who had settled or restructured their loan obligations with the bank. On said listing, the appellant's status was made clear, indicating that appellant had settled its obligation to the appellee bank; that having timely informed the CBL of the settlement by the appellant of its obligation to the appellee bank, the appellee said, it was the obligation and duty of the CBL to have removed the appellant's name from its list of delinquent borrowers. The failure and neglect by the CBL to have removed the appellant's name from its list of delinquent borrowers cannot be attributed to the appellee. The appellee argued that had it not informed CBL of the liquidation by appellant of its loan obligation to appellee, then and in that case the appellee would have been held liable to appellant for any damages or injury said failure may have caused appellant. But this, it said, not being the case, it did no wrong to appellant for which an action of damages would lie against the bank. Appellee stated further that the so-called list of delinquent borrowers exhibited by the appellant to its complaint, being on the letterhead of the IBLL, cannot be said to be the list of delinquent borrowers of the CBL and as such could not be used in substantiation of the appellant's claim. But assuming without admitting, appellee said, the appellant's exhibit was the listing of delinquent borrowers published by the CBL, the sheet bearing the name of appellant, same being page 58 of 94, is dated June 7, 2013, whereas appellee, by an email dated May 13, 2013, informed the CBL that appellant had cleared or settled its obligation to appellee. Hence, appellee said, it cannot be held liable for the failure and neglect of the CBL to remove appellant's name from its list of delinquent borrowers, the CBL having been duly and timely informed of the settlement by the appellant of its obligation to the appellee. The appellee attached a copy of its email of May 13, 2013, sent to the CBL.

The appellant, in its reply to the appellee's answer, averred that it had never defaulted in its payment terms to the appellee bank, contrary to the bank's claim; that forwarding its name to the CBL as a delinquent borrower was illegal and unprofessional on the part of the appellee bank, and hence, damages will lie; and that the purported email and attachment of cleared delinquent borrowers update list alleged by the appellee to have been sent to the CBL, on its face, appeared to be self-manufactured by the appellee bank because the hard copy of the list allegedly attached to the email, dated May 13, 2013, did not carry the heading of the appellee bank, but rather a

plain white sheet with a listing of names which did not specify which entity it originated from. Further, the appellant said, the CBL cannot be held liable because the appellee bank had no right to have sent the name of appellant as a delinquent borrower when the appellee bank had knowledge, information and records that appellant had never defaulted in the payment terms of her loan obligation and had been consistent in the payment arrangement of said loan with appellee bank. It reiterated and confirmed the averment contained in its complaint.

Pleading having rested, the case was called for disposition of the law issues. Thereafter, with the consent of the parties and on application to the trial court requesting waiver of jury trial, the case was ruled to trial on its merits with the Judge presiding as both judge and jury.

Mrs. Vivian J. Bhatti took the stand as the appellant/plaintiff's first witness. She testified that she was the CEO of the appellant which operated two stores at Waterside, Monrovia; that she did business with the appellee bank from 2002 to 2012; that when the appellant started its business, it had its own resources but as the business improved, a loan was needed to improve the business so the appellant went to the appellee bank to take a loan for forty thousand United States Dollars (US$40,000.00) to be paid in ninety days. Said loan, according to the witness, was paid back in thirty days. Because of the appellant's prompt payment, before the loan period ended, the appellee's account officer requested from the witness whether the appellant wanted another loan and she replied, "yes" and proposed for another loan of US$45, 000.00, but the bank augmented the amount to US$55,000.00, in apparent appreciation of good customership.

The appellant's witness further stated that the appellant's loan was used to import used clothes which normally got an influx of customers because its consignments were of a high grade. So the second loan was used to import two containers instead of one which it had previously been importing. Unfortunately, when the containers came, the clothes were not of a good grade and the customers kept returning the clothes bought. As a result the appellant closed its store and tried to get in touch with its supplier. Also, the witness stated that the appellant then wrote to the appellee bank to come and see the damaged goods, as the appellee's money loaned to the appellant was stocked up in the damaged goods. The witness said that the appellant also contracted a firm that deals with cases regarding such goods and appellant was advised not to sell any of the goods until a full investigation was held. Because of the failure of the supplier to respond to

appellant's claim, appellant had to hire a lawyer in the United States to follow up its claim and the case lasted two years. In the meantime, the appellee bank insisted that appellant make good its payments due on the loan. So the appellant began to make payment from the proceeds from its other store in which it sold general merchandise. The appellant subsequently ordered a consignment of used clothes from its previous supplier, and, still willing to do business with the bank, it deposited all its daily sales with the bank; that the first one to two weeks, the appellant raised and deposited US$25,000.00 into its United States Dollar account and L$500,000.00 into its Liberian Dollar account, all of which were debited by the bank against the appellant's outstanding loan. With this debit, again the appellant's used clothes business could not survive. In 2012, the witness said, appellant began to again make payments on its loan which was by then US$30.000.00. By April 17, 2003, the entire loan amount was paid off and a clearance presented to appellant. The witness averred that the appellee bank had promised appellant that upon completion of its loan payment it would give appellant a further loan of US$75,000.00; but that upon completion of the loan, the appellee told the witness that because her husband and the it were involved in a court litigation, appellee could not further give the appellant a loan. According to the witness, she said she left disappointed because her husband's dealing with the bank had nothing to do with the appellant. Appellant therefore went to the IBLL to request for a loan. The witness stated that IBLL seemed disposed to grant appellant the loan and had appellant fill up and signed all the paper works, but that when the papers were taken up for risk approval, the IBLL informed appellant that IBLL could not give it the loan as appellant was still obligated to Ecobank, the appellee bank, and that appellant's name was placed on the CBL delinquent borrower listing. The witness said that she went to the website and indeed the CBL had on its listing the appellant as a delinquent borrower.

The appellant next witness was its Operation Officer, Michael Joe, whose testimony was basically in regard to the financial transactions of the appellant's businesses. He testified how the first witness and CEO of the appellant entity usually sent him to take checks to various entities such as Beer Factory and ISI, and to make various deposits into appellant's account with the appellee bank. Accordingly, his testimony to the court was irrelevant as to the matter before the court.

After the testimony of the appellant's second witness, appellant rested evidence and put into evidence the following documents testified to: **(1)**

P/1-3 - Appellant's Articles of Incorporation and other business registry documents, **(2)** P/4-5 - Appellant's cash deposit slips and "Statement of Account", **(3)** P/6 - Clearance document of payment of loan given to appellant by the appellee bank, **(4)** P/7 in bulk - Transfer code, a wired transfer in favour of the appellant, bank details of appellant's oversee supplier, Central Bank regulation given to appellant, and a listing dated 6/7/2013 on an IBLL letterhead carrying the name of appellant as a delinquent borrower.

The appellant having rested with evidence in toto after its two witnesses, the appellee moved the court for judgment during trial, contending that from the evidence adduced by appellant, the following facts were admitted: i) that appellant obtained a loan of USD55,000.00 from the appellee bank to be repaid in six (6) months; ii) that appellant's business went bad due to the defective nature of the consignment of clothing which was imported by appellant to be sold and which made it impossible for appellant to settle its obligation to the bank within the six (6) months period granted for the repayment of said loan; iii) that up to 2010, the loan which should have been paid in 2008, had not been liquidated, which justified the submission to CBL appellant's name as a delinquent customer; iv) that in April, 2013, appellant completed the repayment of the loan of USD55,000.00 and was accordingly issued a clearance by the bank, certifying that appellant was no longer indebted to the bank; v) that the so-called list said to have been published by the CBL was on the letterhead of the IBLL and therefore said list of delinquent borrowers was not published by the CBL; vi) that appellee did not established or produce any evidence to indicate when its name was submitted to the CBL as a delinquent customer; whether prior to liquidation of its obligation to appellee or subsequent thereto; that appellant cannot be entitled to damages against the appellee bank unless it had shown that the appellee had wrong it.

The motion for judgment during trial was denied by the trial Judge and the appellee ordered to proceed with its presentation of evidence. The appellee bank qualified two of its employees to testify on its behalf.

Ms. Doreen McIntosh, the appellee's Risk Manager, and Mr. Mohammed Dukuly, appellee's Chief Financial Officer, took the witness stand and testified that the appellant did take a first loan of US$40,000.00 in 2007, which it paid back in six months as agreed. The second loan of US$55,000.00 was disbursed to the appellant's account with a two month moratorium and payment thereafter to be made over a six month period.

The appellant defaulted in payment of the second loan, and in 2009, the bank decided to restructure the loan which had gone up to 42,000.00, to be settled in a period of six months. However, the appellant also defaulted on the restructured payment, and it was not until April 2013, that appellant finally settled its outstanding payments. As is the bank's practice, the appellant was given a clearance on April 22, 2013, and on May 13, 2013, the appellee reported to the CBL that the appellant had liquidated its loan. The delinquent borrowers' listing sent to the CBL in April of 2013 did not include the appellant's name as the final payment was made on April 17, 2013, after the required CBL reporting period for the month.

In her testimony, the appellee's first witness denied that the appellant met up with its payment with the appellee bank. She explained that it is a mandate of the CBL, as regulator of all commercial banks, that the listing of delinquent borrowers be submitted to CBL by the 10th of each month. However, the second witness explained that because of the several reports required to be made to the CBL, which includes the listing of delinquent borrowers, normally allowance is made for reports to be submitted between the 10th to the 13th of each month and the report, including the appellants payment, was forwarded to CBL on May 13, 2013.

The appellee's witnesses testified that such monthly reports to CBL is a normal practice by all commercial banks and was not specifically aimed at the appellant. Restructuring the appellant's loan was a way to manage how the loan could be paid and did not stop the appellant from being a delinquent customer and or be included on the appellee's report to the CBL, unless and until the loan was completely settled. Upon the appellant's final payment of the loan on April 17, 2013, the report of delinquent borrows sent by the appellee in the succeeding month did not include appellant's name. The appellee put into evidence the clearance notice and the reports forwarded to CBL in which the appellant name was deleted from the delinquent borrowers' list and the CBL informed of appellant settlement of its loan obligation to the appellee bank.

The trial court, after the parties rested evidence, culled two issues, and in its final judgment held that Ecobank, the appellee, was not liable to the appellant in damages.

Regarding the issue of whether the appellee bank committed a wrong against the appellant for which appellant was entitled to damages, the trial court held that the appellant did not present any evidence which showed that after the appellant completed the payment of its loan obligation, the

appellee bank thereafter submitted its name as a delinquent borrower which instructed other financial institutions not to do business with the appellant. Citing the case *Frankyu et al v. Action Contre la Faim*, 39 LLR 289, 296 (1999), the trial court held that allegations are intended to set forth in a clear and logical manner the points constituting the cause of action for which relief is prayed, and if not supported by evidence, can in no case amount to proof.

As to the trial court's second issue, whether the appellant proved the amount of damages prayed for as required by law, the court held that section 25.5 of the Civil Procedure Law provides that the burden of proof rests on the party who alleges a fact. Therefore a party who alleges a fact must prove it at trial by the preponderance of evidence where the fact is denied by the opposing party and the appellant cannot be entitled to damages unless it proved that a wrong was done against him. The trial court held that the appellant failed to present evidence in support of any of the forms of damages claimed and that in the absence of any evidence, the court could not enter judgment for the appellant.

The appellant noted its exceptions to the trial court's final judgment and announced an appeal therefrom. In its bill of exceptions, the appellant states that the trial court erred when it held that the appellee bank committed no wrong against it and that the appellant had failed to prove the cause of action and the damages prayed for against the appellee; that the appellee's first witness, Doreen McIntosh, in her testimony, stated that the appellant's report to CBL of delinquent borrowers is expected to be submitted to the CBL on or before the 10th day of the month, but appellee's 2nd witness, Mohammed Dukuly, testified that the report to the CBL is sent from the 10th thru the 13th of a succeeding month, and that the appellant having completed all payments of the loan on the 17th of April, after the reporting period, the next reporting period was due in May and the appellant name was submitted on May 13 along with other delinquent borrowers that had settled their loan obligations. The trial Judge, the appellant said, should have been able to determine the weight and credibility of the conflicting and inconsistent testimonies of the appellee's two witnesses as the CBL regulation guidelines for Management of the Credit Reference System, CBL/SD/003/2009, sections 2 and 9 provide that (sect. 2) *"All banks are required to submit monthly data of borrowers to the CRS in a format as prescribed by the CBL on the 10th day of the new month ....."* section 9 also provides that *"The banks are required to ensure that data provided to*

the CRS is accurate and updated on a regular basis consistent with CBL regulation regarding asset classification and the format submission of data to the CRS. Where necessary, a bank may provide an updated report on the credit status of a borrower prior to the reporting date". The bill of exceptions alleged further that the trial Judge ignored the fact that the appellee bank consciously, deliberately and in reckless disregard of its legal duty failed to remove appellant's name from the delinquent borrowers list within the time prescribed by the CBL regulation mentioned supra; that as a consequence of the appellee bank gross negligence, appellant business reputation suffered and for which it is entitled to damages; and that the trial Judge committed reversible error in his final judgment when he ruled that the appellee bank committed no wrong when the bank failed to timely submit to the CBL appellant's name when it completed payment of said loan on the 17th day of April A.D. 2013, but waited until the 13th day of May, 2013, thus violating the CBL regulations, quoted supra, which constitute neglect and as such damages will lie.

The appellant having fully paid her loan on April 17, 2013, the key issue for our consideration is whether from the facts and circumstances in this case, the appellant proved that by the appellee bank sending its report to the CBL on May 13, 2013, instead of May 10, 2013, as required by the CBL regulation, caused damages to appellant's business reputation and credit rating?

The Judge in his ruling held, and with which we concur, that:

> "It is undisputedly clear and the appellant does not deny that appellant contracted a loan from the appellee, and that appellant defaulted on the repayment of the loan. The appellee witness testified that as part of appellee's reporting requirement to the CBL, appellee is obligated to CBL on a monthly basis to report on borrowers of appellee who have defaulted in the repayment of their loans and have thereby become delinquent. Accordingly, for as long as the appellant's loan obligation remained outstanding and unpaid, the appellant was reported as a delinquent borrower. However, after the appellant had fully settled its loan obligation to the appellee and appellee had issued a Clearance Letter, the appellee sent the information to the CBL that appellant had cleared its loan obligation. This testimony of appellee's witness was never denied or rebutted by the appellant and this court upholds that maxim in law that **"what is not denied is deemed admitted".** Appellant further relied upon a listing said to have been printed off the website of the CBL, which contained the name of the appellant as a delinquent borrower. To the mind of the court, because the period in contention is the period after the appellant had settled its loan obligation, which was April 17, 2013, and publication which would have been injurious to the appellant would have to have been made after the repayment date and after the communication to the CBL. The listing admitted by the

appellant does not give this court any indication as to the date of its publication; neither does it give any information as to the scope of said listing. In the absence of this vital information, this court cannot rely on such listing as a basis to hold the appellee liable. This court therefore holds that appellant has not produced any evidence of wrongful conduct by the appellee and this court therefore answers the issue in the negative".

The appellee's first witness stated, "... It is incumbent on every commercial bank to submit [its report] before or by the 10th of the following month". The bank's second witness stated that the report eliminating the name of the appellant from the delinquent listing was sent to the CBL on the 13th of May and that it was a normal procedure to send the several reports required by the CBL between the 10th to the 13th of each month. There is no denial that the appellee admitted to sending the report on May 13, 2016. What the appellant failed to prove is that because of the appellee's failure to meet the CBL's deadline of the 10th, the three day delay contributed to the denial of a loan to the appellant by the IBLL, and that such delay caused injury to appellant's business reputation and credit rating, for which damages would lie.

The appellant's claim which attributed the delay of the appellee's report to the denial of appellant's application for a loan needed to be proved by the preponderance of evidence. The appellant needed to produce a copy of the CBL's website report made for the month of May 2013, setting out the date of its publication. The evidence needed to show whether in fact the CBL had come out with a subsequent listing on its website in May 2013, and if so, whether CBL's report of May listing was done before May 13, 2013. Again, the appellant did not even produce a witness from the CBL to testify that it was because of the appellee bank's delay in sending its May 2013 report to the CBL that the CBL did not consider the appellee's report in its subsequent posting of delinquent borrowers on the CBL's website. More importantly, the appellant did not bring someone from the IBLL to testify that it was the CBL's website listing that ultimately led to the IBLL denying the appellant's application for a loan, especially as the IBLL, in its risk assessment, might not have looked only at the CBL latest report but other reports of the CBL informing it of the appellant's history of loan payments and the length of time it took the appellant to pay off its loan with the appellee bank. To the mind of this Court, the appellant producing into evidence a listing of delinquent borrowers printed on an IBLL letterhead, and said to be taken from the CBL website, was not the best evidence to substantiate that appellee's conduct injured the appellant.

This Court opined in the case *Knuckles v. TRADEVCO, 40 LLR 511, 525 (2001),* that mere allegations of a claim do not constitute proof, but must be supported by evidence so as to warrant a court or jury accepting it as true so as to enable the court to pronounce with certainty concerning the matter in dispute. The Court held also in the cases *Levin v. Luvico Supermarket,* 24 LLR 187, 194 (1985) and *ITC v. Cooper-Hayes, 41 LLR 48, 60 (2002)* that "for damages to be awarded, there must be the natural and necessary result of the wrongful act or omission asserted as the foundation of liability"; therefore, for damages to be awarded to a party it must be directly traceable to the wrongful conduct or act of the alleged wrongdoer; "the onus is upon the injured party to make clean breast of the negligent situation to the court, except where the accused is held liable under straight liability or absolute liability," *Klutsey v. Bong Mining Company, 33 LLR 37, 39 (1985).*

As the appellant's claim of damages for wrong can only be considered by this Court from its review of the case records, and finding therefrom no convincing evidence that the failure of the appellee to make its report to the CBL by the 10th led to the denial of a loan to the appellant, or further caused injury to the appellant's business reputation, the Court is inclined to deny the appellant's claims of damages against the appellee bank. Hence, the final judgment of the trial court denying the appellants claim is therefore upheld.

The Clerk of this Court is ordered to send a mandated to the court below directing it to resume jurisdiction over the case and to enforce its judgment. Costs are ruled against the appellant. **AND IT IS HEREBY SO ORDERED.**

When this case was called for hearing, Counsellor Snonsio E. Nigba of the Stubblefield Nigba and Associates, Inc. appeared for the appellant. Counsellors Golda A. Bonah Elliott and Albert S. Sims of the Sherman and Sherman, Inc. appeared for the appellee.