IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2018

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 HER HONOR: SIE-A-NYENE G. YUOH ....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE........ ....ASSOCIATE JUSTICE

Ecobank Liberia Limited Monrovia, Liberia ....APPELLANT)	
Versus)	APPEAL
Consolidated Group, Inc., of the City of Monrovia, Liberia................................APPELLEE)	
GROWING OUT OF THE CASE:)	
Consolidated Group, Inc., of the City of Monrovia, Liberia..................................PLAINTIFF)	ACTION TO RECOVER MONEY WRONGFULLY WITHDRAWN FROM ECOBANK ACCOUNT
Versus)	
Ecobank Liberia Limited Monrovia, Liberia ....DEFENDANT)	

Heard: November 3, 2014 Decided: December 20, 2018

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

An inspection of the records certified to this Court reveals that this dispute derives from a banking transaction entered into on February 12, 2010, when Radacon Liberia Limited ("the obligor"), a company duly incorporated and registered under the laws of the Republic of Liberia concluded and executed with Ecobank, the appellant/defendant herein, a facility letter wherein the appellant/defendant extended a credit facility or medium term loan (MTL) to Radacon Liberia Limited in the amount of three hundred thousand United States Dollars (US$300,000.00) for acquisition of machinery and equipment. This MTL was subject to certain terms and conditions spelt out in a Facility Letter dated February 12, 2010.

In satisfaction of the conditions precedents to drawdown of the loan facility which was signed by the Managing Director and Finance Manager of the obligor, Rodacon Liberia Limited, and based on the Security/Support, a condition of the Facility Letter which required Joint and Several Guarantees of the Company's principal shareholders, to be supported by their personal Net Worth Statement, to include an undertaking not to dispose of assets during the period of the facility, Mr. S. Blidi Elliott, Managing Director, Radacon Liberia, Limited, Mr. Simeon Freeman, Chief Executive Officer (CEO), Consolidated Group, Inc. and the Appellee Consolidated Group, Inc., all issued irrevocable and unconditional guarantees in favor of Ecobank for the loan amount of THREE HUNDRED THOUSAND UNITED STATES DOLLAR (USD300,000.00). Mr. Simeon Freeman issued a personal guarantee in his own name with a statement of personal net worth, and the Appellee Consolidated Group, Inc. issued a Corporate Guarantee, by and through its Chief Executive Officer (CEO), Mr. Simeon Freeman.

On March 1, 2010, Ecobank credited Radacon's account with the amount of three hundred thousand United States Dollars (US$300,000.00) which was required to be paid within twenty-four (24) months as of disbursement, with an installment payment of US$15,000.00 plus interest accruing after a four (4) month moratorium period.

Radacon (the obligor) having defaulted in the payment of the loan payments, appealed to the Appellant bank for a restructuring of the loan. The Appellant bank accepted to Radacon's request to restructure the loan and predicated thereupon another facility letter was entered into by Rodacon and the Appellant bank for the outstanding amount of Three hundred fifty-eight thousand, four hundred fifty-eight United States Dollars (US$358,458.00) which included the principal loan of February 12, 2012, and interest thereon. In consideration of the restructuring of the loan facility of February 12, 2010, a leasehold mortgage agreement was executed on August 31, 2011, by and between the Appellee Consolidated Group, Inc., represented by Simeon Freeman as mortgagor, and the Appellant bank as mortgagee.

The leasehold mortgage agreement guaranteed the restructured credit facility issued in the amount of Three hundred fifty-eight thousand four hundred fifty-eight United States Dollars (US$358,458.00).

On September 5, 2011, a facility letter/restructured medium term loan was issued to Rodacon, wherein was contained a clause that in the event of default, and if Rodacon failed or was unable to remedy the default within thirty (30) days of receipt of written notice thereof from the Appellant bank, the bank reserved the right to call in the facility.

Subsequently, on November 10, 2011, Rodacon provided a Certificate of Resolution, signed by its Secretary and the Chairman of the Board, Mr. Simeon Freeman, authorizing Rodacon's General Manager and Finance Manager to sign the restructured loan document.

Again Rodacon failed to honor its obligation under the Medium Term Restructured Loan. As a result, several letters were exchanged between the Appellant bank, Radacon lawyer, and Simeon Freeman in an attempt by the Bank to collect the outstanding loan of Rodacon.

On July 30, 2012, an amount of US$499,968.00 was transferred into the account of Consolidated Group, Inc. held with the appellant bank. The appellant bank with no previous notice to the appellee of its intention, or agreement by the appellee, decided to set-off the outstanding loan amount plus interest, totaling US$422,741.65, against the appellee's account. It thereby debited the account of the appellee, Consolidated Group, Inc. in the amount of US$435,476.97.

The Appellee Consolidated Group, Inc. contested the setoff and debit of its account by the Appellant bank, and on August 22, 2012, instituted legal action against the appellant bank, under the caption, "Action to Recover Money Wrongfully Withdrawn from Bank's Account". This Action was filed before the Commercial Court of Liberia, which, under the Act establishing the Commercial Court, is clothe with the jurisdiction over such matter. For the benefit of this Opinion, we herewith quote verbatim the complaint, answer and reply filed by the parties in the court below:

PLAINTIFF'S COMPLAINT

"Plaintiff in the above entitled cause of action respectfully complains to Your Honors and this Honorable Court against the defendant for the following legal and factual reasons to wit:

1. On February 12, 2010, the Defendant extended a credit facility – Medium Term Loan – (the "US$300.000.00 Facility") to Rodacon Liberia Limited, the Obligor, upon the following terms and conditions: (i) a loan amount of US$300.000.00; (ii) an interest rate of 13% per annum; (iii) a repayment schedule for the Loan ending January 2012; (iv) the obligor to maintain active accounts with the defendant; (v) insurance coverage over the stock and assets of the Obligor, with the defendant as loss payee; (vi) restriction on the obligor incurring additional debts, without the consent of the defendant; (vii) Mr. Simeon Freeman provided a personal guarantee; and, (viii) the plaintiff provided a corporate guarantee; among others. Copy of the Facility Letter is hereto attached as Plaintiff's Exhibit "A."

2. On February 24, 2010, the plaintiff issued a corporate guarantee, committing to liquidate the US$300,000.00 Facility, in the event that the obligor failed to liquidate the amount. Copy is hereto attached as Plaintiff's Exhibit "B."

3. Count 2 of this complaint notwithstanding, on September 5, 2011, with the obligor having apparently defaulted under the US$300,000.00 Facility, the defendant, without the consent of the plaintiff, entered into a new credit facility agreement (the "US$358,458.00 Facility") with the obligor, pursuant to a Restructured Medium Term Loan and upon different terms and conditions than those guaranteed by the plaintiff: (i) a loan amount of US$358,458.00; (ii) an interest rate of 13.25% per annum; (iii) a repayment schedule for the loan ending August 30, 2013; (iv) no requirement of the obligor to maintain active bank accounts with the defendant; (v) no requirement for insurance coverage over the stock and assets of the obligor, with the defendant as loss payee; and; (vi) no restriction on the obligor incurring additional debts; (vii) Mr. Simeon Freeman provided a personal guarantee; and, (viii) the plaintiff did not provide a corporate guarantee; among other differences. Copy of the Restructured Medium Term Loan is hereto attached as Plaintiff's exhibit "C."

4. That as a matter of law, the plaintiff was discharged and released of all of its obligations under the corporate guarantee when the defendant, on September 5, 2011, entered into a new agreement – the US$358,458.00 Facility – with the obligor, materially changing the terms and conditions of the US$300,000.00 Facility agreement, without the consent of the plaintiff.

5. On June 26, 2012, the defendant, through its legal counsel, wrote to Simeon Freeman, with regard to the personal guarantee that Mr. Freeman had issued for an amount of US$353,000.00, stating that the obligor had liquidated the amount, except for a balance of US$153,893.66. The defendant gave Mr. Freeman seven days "to pay the amount of United States One Hundred Fifty-Three Thousand, Eight Hundred Ninety Three Dollars, Sixty Six Cents (US$153,893.66), or make alternative arrangement as to payment to avoid litigation." Copies of the lawyer's letter and the statement of account are hereto attached and marked together, as Plaintiff's Exhibit "D."

6. Upon Mr. Freeman's receipt of plaintiff's Exhibit "D," he immediately wrote to the obligor, inquiring as to whether it was in default with its obligation to the defendant, and attached to his said letter copies of Plaintiff's Exhibit "D." On June 29, 2012, the obligor responded to Mr. Freeman, stating that it was in a state of total confusion, because on the same date of Plaintiff's Exhibit "D," June 26, 2012, the obligor had also received a notice from the defendant's lawyer, except that the defendant was demanding payment of US$422,741.66 plus 15% attorney fee, aggregating to US$486,152.90. Upon receipt of the obligor's letter to him, Mr. Freeman telephoned Tayo Adekoya of the obligor and advised that the obligor reconciled its account with the defendant or else he would be constrained to take legal action against the obligor, if his personal guarantee is called upon by the defendant. Copies of Mr. Freeman's letter to the obligor and the obligor's response thereto are hereto attached and marked together as Plaintiff's Exhibit "E."

7. On June 28, 2012, the obligor wrote to the defendant seeking explanation as to how its indebtedness to the defendant increased from

US$153,893.66 to US$422,741.66, and for the necessary supporting documents, in order to reconcile its account with the defendant. Copy of said letter is hereto attached as Plaintiff's Exhibit "F."

8. On July 6, 2012, Mr. Freeman received yet another letter from the defendant, through its lawyers, informing Mr. Freeman that the defendant's June 26, letter was in error, that the total obligation of the Obligor was US$422,741.66, and that the US$153,893.66, which was demanded in the June 26, letter, was the amount due on May 31, 2012, but the debt had subsequently increased. Copy of said letter is hereto attached as Plaintiff's Exhibit "G." However, the defendant still refused and failed to explain and/or show how the obligor's indebtedness grew from US$153,893.66 to US$422,741.66 over a period of two months – May 31, 2012 to July 6, 2012.

9. Following a meeting with the defendant's lawyer, Mr. Freeman wrote the defendant's lawyer also requesting documentation in support of its claim of US$422,741.66 against the obligor, requesting a period of ten days to reconcile the account, before his personal guarantee was called upon. Copy of said letter is hereto attached as Plaintiff's Exhibit "H."

10.That the defendant being cognizant that the plaintiff was completely discharged and released from the corporate guarantee, which was issued to secure payment of the US$300,000.00 Facility, neither gave the plaintiff notice of the obligor's alleged default nor made any demand on the plaintiff for payment of the obligor's debt.

11. On July 30, 2012, US$500,000.00 was transferred into the plaintiff's account #0011014700245901 from Multichoice Africa Limited for the purpose of investing in manufacturing mineral water, which would have yielded the plaintiff returns on its investment in the amount of US$1,000,000.00.

12. The interaction among the obligor, the defendant, and Mr. Freeman, as detailed in Count 3 and counts 5 thru 9 of this complaint to the exclusion of the plaintiff notwithstanding, once the defendant realized that the plaintiff had received into its account the amount of US$500,000.00, as indicated in Count 11 of this complaint, the defendant stealthily withdrew the amount of US$435,476.97 from the plaintiff's account. Then on July 31, 2012, the defendant shamelessly wrote the plaintiff, informing the plaintiff that because of the corporate guarantee, which the plaintiff issued on February 24, 2010 to guarantee the US$300,000.00 Facility, the defendant was "...pleased to advise you that Ecobank Liberia Ltd. has enforced the corporate guarantee and set-off the current outstanding total obligation by debiting the account of Consolidated Group Inc. for a total sum of US$435,476.97... representing principal, interest and penalties on the loan and credited same to the account of Rodacon Inc." Copy of said letter is hereto attached as Plaintiff's Exhibit "I."

13 On August 10, 2012, the plaintiff, through its lawyer, wrote to the defendant, requesting the defendant to credit the plaintiff's account for the full amount that was wrongfully withdrawn by the defendant. The plaintiff further asked the defendant to provide any documents that would evidence the plaintiff's guarantee of the new credit facility agreement of September

5, 2011, between the obligor and the defendant. The plaintiff solicited the cooperation of the defendant to avoid unnecessary litigation, but to no avail. The defendant failed to provide any document evidencing that the plaintiff issued a corporate guarantee for the new credit facility agreement of September 5, 2011. On the contrary, the defendant, implicitly conceding that the plaintiff did not guarantee the new credit facility agreement, sent to the plaintiff's lawyer only the corporate guarantee relating to the US$300,000.00 Facility. Copy of said letter and the attachments are hereto attached as Plaintiff's Exhibit "J."

14 The plaintiff prays that the defendant be ordered to pay to the plaintiff the total amount of US$602,046.21, representing the amount of US$435,476.97, which was wrongfully withdrawn from the Plaintiff's account; plus an amount of US$57,700.70, representing 13.25% interest, the defendant's current interest rate on loan, and an amount of US$108,869.24, representing 25% interest, the defendant's current penal interest rate that is levied against a loan, when the borrower fails and neglects to pay the defendant. The plaintiff requests Your Honors to take judicial notice of the Plaintiff's Exhibits "A" and "C" in support of its claim for commercial and penal interests against the defendant.

WHEREFORE, and in view of the forgoing, plaintiff prays that Your Honor will enter judgment in favor of the plaintiff and against the defendant, in the amount of US$601,346.91, and to grant unto the plaintiff any and all further relief, as may be deemed just, right and legal, with costs against the defendant."

DEFENDANT'S ANSWER

"Defendant, Ecobank Liberia, Limited in the above entitled cause of action denies the legal and factual sufficiency of plaintiff's complaint to warrant the relief sought and most respectfully prays your Honor and this Honorable court to deny and dismiss plaintiff's complaint for the following legal and factual reasons to wit:

1. that as to counts one (1) and two (2) of plaintiff's complaint, defendant acknowledges that it did, on February 12, 2010, conclude and execute with Rodacon Liberia Limited (Obligor), a facility letter wherein defendant's bank extended a credit facility of medium term loan to Rodacon in the amount of US$300.000.00 on certain terms and conditions, one of which was the execution by Mr. Simeon Freeman and Mr. S. Blidi Elliot of a joint and several irrevocable and unconditional guarantee to the value of US$300.000.00, and the other, a corporate guarantee from the plaintiff, Consolidated Group Inc. also to the value of US$300,000.00. Defendant says that consistent with the mentioned arrangement, a condition for the extension of the loan facility to Rodacon, Mr. Simeon Freeman and Mr. S. Blidi Elliot did, on February 15, 2010, issue a joint and several guarantee in favor of defendant in the amount of US$300,000.00 guaranteeing thereby the loan extended to Rodacon by the defendant. Defendant says further that also consistent with the condition of the loan facility extended to Rodacon, Mr. Simeon Freeman, on February 24, 2010, provided a statement of net worth in support of the joint and several guarantee he and Mr. Elliot had issued as guarantor for Rodacon in favor of defendant. Defendant attaches hereto copies of the

facility letter and the joint and several irrevocable unconditional guarantee issued by Mr. Simeon Freeman and Mr. S. Blidi Elliot marked exhibit D/1 and D/2 to form a cogent part of this answer.

2. Defendant says further as to the above, and traversing counts one and two of the complaint, it avers that consistent with the obligation undertaken by the plaintiff, a shareholder of Rodacon, to guarantee the loan being extended to Rodacon by the defendant, did on February 24, 2010, issue a corporate guarantee, duly signed by its Group CEO, Mr. Simeon Freeman, the same person who had also provided personally an unconditional and irrevocable guarantee for the loan facility extended to Rodacon. Defendant says that as clearly shown from the wording of the corporate guarantee, no conditions were set that if the loan facility was extended because of the failure of Rodacon to meet the loan obligation and commitment, the plaintiff guarantor would be relieved or discharged from any further obligation under the loan. Rather, the corporate guarantee provided by the plaintiff was fully and completely open ended, stating in the broadest term that Consolidated Group, Inc. hereby guarantees that it will absorb any impact resulting from Rodacon's inability to liquidate the US$300,000.00 facility provided by Ecobank Liberia. Defendant attaches hereto copy of the corporate guarantee issued by the plaintiff in favor of the defendant, marked exhibit D/3.

3. Defendant says further to the above, plaintiff, Consolidated Group, Inc., was and is more than just a corporate guarantor for Rodacon, for it was upon the persuasion of the plaintiff who, with holding of fifty percent (50%) of the shareholdings in Rodacon Lib. Ltd., and another member of the corporate group, Rodacon, Lib. Ltd., who also with a holding of the remaining fifty percent (50%) of the shareholdings in Rodacon, Lib. Ltd., both of which are owned substantially by Simeon Freeman, who, in addition to the corporate guarantee executed by the plaintiff for the extension of the credit facility to Rodacon Lib. Ltd., also executed a personal irrevocable and unconditional guarantee, that defendant extended the credit and loan facility to Rodacon, Lib. Ltd. Defendant says that it was under this complex corporate set-up by Simeon Freeman, who substantially owns and manages the plaintiff, that the plaintiff undertook to execute the corporate guarantee in favor of defendant; otherwise, defendant would not have extended the said credit to Rodacon, Lib. Ltd., since Rodacon, Lib. Ltd. only came into existence late January 2010, when its articles of incorporation were filed with the Minister of Foreign Affairs of Liberia. Defendant says that the corporate guarantee and the personal guarantee of Mr. Simeon Freeman were particularly important as the articles of incorporation of Rodacon did not show any stated initial capital other than to state that of the five hundred authorized share of the company, two hundred and fifty (250) were fully subscribed to and paid for by Mr. Freeman's other member of the corporate group, Rodacon Lib. Ltd. Defendant attaches hereto, in substantiation of the averments made herein copies of the articles of incorporation of Rodacon, Lib. Ltd. and Consolidated Group, Inc., marked exhibits D/4 and D/5, to form a cogent part of this answer.

4. Defendant says also that further to the above, it respectfully prays this Honorable Court to take judicial notice of the contents of the articles of incorporation of the plaintiff, Consolidated Group, Inc. and Rodacon, Lib. Ltd., particularly of the fact that both corporations were incorporated by Mr. Simeon Freeman, that he served as the registered agent for both corporations, and that as shown by article III of Rodacon, Lib. Ltd., he specifically states his title that as he serves as the registered agent for Rodacon Lib. Ltd., he was doing so also in his capacity as Executive Officer/President, Consolidated Group, Inc. Moreover, as clearly evidenced by plaintiff's exhibit "H" Mr. Freeman, the President and CEO of Consolidated Group Inc., a fifty percent (50%) shareholder of Rodacon, Lib. Ltd., and in that capacity also spoke for Rodacon in the dispute over the loan, not questioning at any time the repositioning of the credit facility by the defendant to prevent having to call the corporate guarantee or the personal guarantee of Mr. Freeman. Defendant submits that at all times, plaintiff was and remains the sole or substantial majority shareholder of Rodacon, both of which corporate bodies are owned and controlled by Simeon Freeman who, therefore, in addition to having plaintiff, Consolidated Group Inc., put up a corporate guarantee for Rodacon, also executed an irrevocable and unconditional guarantee, using his own personal assets and that of Consolidate Group, Inc., not only to guarantee the loan for Rodacon but also to collateralize guarantees. Defendant says that these averments are clearly verified by the letter of Mr. Simeon Freeman, referred to herein. Defendant attaches hereto copy of plaintiff's exhibit "H" as defendant's exhibit D/6, forming a cogent part of this answer.

5. Defendant says that as to counts three (3) and four (4) of plaintiff's compliant, defendant says that plaintiff has admitted that the obligor defaulted or never paid on the loan amount of US$300,000.00 as stipulated in the facility letter. Defendant says that immediately upon the default by Rodacon, Lib. Ltd., it (defendant), was vested with the right to immediately call the corporate guarantee of the plaintiff and the personal guarantee of Mr. Simeon Freeman to the value of the full amount of the loan, plus interest and penalties. Defendant says that rather than pursuing such a course, which would have seriously affected the plaintiff and its substantial shareholder, it commenced, on the plea of Rodacon, Lib. Ltd., negotiations for the restructuring and extension of the facility. As a result, a new credit facility agreement was entered into between defendant and Rodacon, the amount of which was an increase of US$358,458.00 from the initial facility, thus making the total amount of the extended credit facility US$358.458.00. Defendant says that the sureties remained the same and plaintiff's allegation that it did not consent to the new credit facility is untrue and intended to mislead this Honorable Court. Under the new facility letter, plaintiff, Consolidated Group, Inc. is listed as number 8 under the existing security/support and conditions precedent to drawdown for the restructured medium term loan. Defendant says that if plaintiff's consent was not given, its name would not have appeared on the restructured medium term loan document or its name would have been removed by those that signed said document. Defendant requests Court to take judicial notice of the fact that the

finance manager that signed the medium term loan is the one and the same finance manager that signed the restructured medium term loan and he was aware that the plaintiff's name was included as guarantor. Attached are the medium term loan and the restructured medium term loan documents marked exhibit D/7.

6. Defendant says that further to count 5 above, it denies that the plaintiff was unaware of the extension of the credit facility or that it did not consent to the extension of the facility. Defendant says that under the credit facility letter (defendant's exhibit D/1), executed between the defendant and Rodacon, Lib. Ltd., and regarding which the plaintiff put up a corporate guarantee and Mr. Simeon Freeman put up a personal guarantee in favor of the defendant in the event of a default by Rodacon Lib. Ltd., a company owned substantially by the plaintiff, which in turn is owned substantially by Mr. Freeman, a moratorium period of four (4) months was accorded Rodacon Lib. Ltd., after which Rodacon was to commence payment of the loan over a period of twenty-four (24) months at the rate of US$15,000.00 per month. The borrower, Rodacon Lib. Ltd. had defaulted, and this was known to the plaintiff. Indeed, the President and Chief Executive Officer and substantial owner, holding control of the plaintiff, was fully aware of the state of affairs of the default by Rodacon as he issued additional personal guarantees to facilitate the extension of the credit facility and avoid the defendant calling the personal guarantee executed by him and the plaintiff which enabled Rodacon secure the loan from the defendant in the first place. Given the intricacies of the corporate set-up by Mr. Freeman, which involved the plaintiff, Rodacon, Rodacom, Lib. Ltd., and where Mr. Freeman served in executive roles in each of the corporations, no legal assertion can be made, as attempted herein by plaintiff; to the effect that notice or consent was not given for the extension of the loan facility. Defendant says that had plaintiff not consented to the extension, defendant would not have agreed to the extension requested by Rodacon but would have proceeded to call the guarantees. Defendant therefore prays that the complaint be dismissed.

7. That further as to count 6 above, defendant says that it is impossible for plaintiff to be discharged from all of its obligations under the corporate guarantee when the first loan was not paid off as was stipulated in the credit facility agreement of February 12, 2010. Defendant avers that plaintiff was still obligated as a corporate guarantor under the first loan, both as a matter of law and as per the guarantee letter dated February 24, 2010. Defendant says that according to the referenced letter, plaintiff, Consolidated Group, Inc. guaranteed that it will absorb any impact from Rodacon's inability to liquidate the US$300,000.00 facility provided by defendant, Ecobank Liberia. Defendant says that plaintiff, knowing that the obligor had defaulted on the medium term loan, consented to guarantee for the restructuring medium term loan and this is why plaintiff's name was included number 8 on the list of existing surety/support and conditions precedent to drawdown. Defendant states further that plaintiff, besides the corporate guarantee that remains in effect for the restructuring loan, issued another guarantee on 31st August 2011 in the form of a leasehold mortgage agreement for the restructuring

medium term loan. Why would plaintiff have executed such instruments in favor of the defendant if it did not consent to the restructured loan facility? Hence, the allegation contained in the complaint that plaintiff was discharged and released from all of its obligations under the corporate guarantee is untrue and intended to mislead this Honorable Court. Copy of the leasehold mortgage agreement is attached marked exhibit D/8.

8. Defendant says further as to count 7 hereinabove that clause 1 of the leasehold mortgage agreement executed on 31st August, 2011 provides that "the mortgagor (Consolidated Group, Inc.) agrees and hereby undertakes to pay the mortgagee the indebtedness in accordance with the terms of the promissory note and other collateral documents, without any deduction or credit for any amount paid in taxes, assessments or other impositions assessed upon the demised promises". Further, defendant says that in the said agreement, paragraphs three and five state as follows:

   "WHEREAS, mortgagee has granted a credit facility to the mortgagor in the amount of Three Hundred Fifty Eight Thousand United States Dollars (US$358,000.00) comprising a medium term loan".

   "WHEREAS, the indebtedness is further evidenced by a promissory note and other collateral documents executed by the mortgagor, which are incorporated herein by reference to constitute an integral part of this agreement".

9. Defendant says as to count 8 hereinabove, that plaintiff is misleading this Honorable Court by alleging that it was discharged and released from all obligations and that it did not give its consent to the new terms and conditions in the restructuring medium term loan when plaintiff represented by its CEO, Simeon Freeman executed not only a leasehold mortgage agreement on behalf of plaintiff but also a personal guarantee. Attached is a copy of the personal guarantee marked exhibit D/9 and defendant respectfully requests that this Honorable Court takes judicial notice of its exhibit three attached to its answer. Further, defendant says that plaintiff has not exhibited any documents to substantiate its allegation that it was discharged and released of all of its obligations under the corporate guarantee and that it did not give its consent. Defendant says it is very clear that plaintiff was a part of the restructuring medium term loan and that the terms and conditions were never changed except to include plaintiff's name as guarantor and this was signed by the Managing Director and Finance Manager who one will assume that they being educated individuals read said document before affixing their signatures to same.

10. Further as to count 9 above, defendant says that the leasehold mortgage agreement executed by plaintiff represented by Simeon Freeman who also executed the personal guarantee included the restructuring loan amount which was US$358,000.00. Defendant says that the leasehold mortgage agreement was executed by plaintiff on 31st August, 2011; the facility

letter for the restructuring loan was executed on September 5, 2011. On October 31, 2011, the personal guarantee was executed by Mr. Simeon Freeman, the same person who signed the leasehold mortgage agreement on behalf of plaintiff (being its President and Chief Executive Officer), and on November 10, 2011, a resolution was passed at a Board of Directors' meeting authorizing the same Finance Manager and the General Manager to restructure the loan and sign on behalf of Rodacon. Defendant says that Mr. Freeman who issued a leasehold mortgage agreement as CEO of Consolidated Group and a personal guarantee to include the restructuring amount was aware of the terms and conditions and therefore cannot now allege that he did not give his consent to the changes in the restructuring agreement. Hence, plaintiff is intentionally trying to mislead this Honorable Court and therefore said complaint should be dismissed.

11. Defendant says further to the above that even had there been no further guarantees by the plaintiff to supplement the corporate guarantee, given the requirement of the defendant in the face of the default by Rodacon and the defendant's desire for full protection of the loan and the repayment obligations of Rodacon, a guarantor is not, as a matter of law, discharged or released from a guaranty by the mere fact that the loan facility which it had guaranteed was extended close to the original terms of the credit facility or loan, done in the interest of the guarantor and as would have the guarantor avoid the calling of the guaranty. Defendant says that the law has been and remains that a guarantor is still bound by a guarantee given in respect of a loan where there is a default which necessitates the extension of the loan, and which secures the guarantor from the calling of the guaranty. Defendant therefore prays for the dismissal of the complaint.

12. Defendant says that further to the above, even had the plaintiff not given its consent, which is not the instant case as indeed the plaintiff did give its consent to the extension, it could only seek value in excess of the guarantee, since as a matter of law the guaranty remained in effect.

13. That as to counts five (5), six (6), seven (7), eight (8), nine (9) and ten (10) of plaintiff's complaint, Defendant says that one of its legal counsels did write Simeon Freeman as CEO of Consolidated Group, one of the guarantors for Rodacon and as personal guarantor for Rodacon, informing him that the obligor had defaulted and was owing the defendant on said loan up to the time of the writing of the letter regarding US$353,983.66. Defendant also requested that said amount be liquidated or arrangement be made as to how this amount would be paid. Instead of contacting defendant to see how best Rodacon's indebtedness could be liquidated, Mr. Freeman wrote to Rodacon to confirm its indebtedness urging Rodacon to settle its liability which one will assume that plaintiff, through its CEO knew or had reason to know that Rodacon was indebted to defendant but did nothing to ensure that said indebtedness was liquidated. Defendant says that plaintiff as guarantor should have ensured that Rodacon settled its indebtedness. In the said communication by Mr. Freeman, nowhere did he challenge the defendant's right to recover on the corporate guarantee or assert that the restructured facility did not

meet the plaintiff's consent. Indeed, given that Mr. Freeman served as Chief Executive Officer and President of the plaintiff, had put up additional guarantees, had responded to the defendant's communications as if he was acting for the plaintiff (as indeed he was since he was its President), the plaintiff cannot now pretend that it had no knowledge of Rodacon's liability to defendant or that its guarantee was no longer binding on it. Black law dictionary defines a guarantor as "one who makes a guaranty or gives security for a debt and a guarantor's liability does not begin until the principal debtor is in default". Defendant says that plaintiff had knowledge or reason to believe that the obligor had defaulted on its loan and therefore should have made all effort to ensure that said default is clear especially since plaintiff was a guarantor.

14. Defendant says that further to the above, the latter mortgage instruments executed by the plaintiff to further secure the extension of the credit facility granted Rodacon by the defendant clearly recognized that they were in addition to other existing guarantee instruments executed by plaintiff. Clearly, one such instrument was the corporate guarantee, for what other instruments could the new mortgage document have referred to, with reference to the plaintiff. The document does not state "or other collateral document"; it states "and other collateral documents". Defendant respectfully requests this Honorable Court to take judicial notice of paragraph 1 of the leasehold mortgage agreement executed by plaintiff and defendant on August 31, 2011. Defendant says that as it had granted the plaintiff no facility other than that granted to Rodacon, and the instance of the plaintiff, it is only that credit facility that the document refers to. Hence, defendant says that the plaintiff, being fully aware of the default by Rodacon, and having given its consent in leasehold mortgage agreement and recognizing therein the existence of other collateral documents, which is inclusive of the corporate guarantee, plaintiff's claim is without merit and should be dismissed; and defendant so prays.

15. Defendant says further that plaintiff being a shareholder of Rodacon, and Mr. Freeman being an officer, shareholder and incorporator of both corporations, knew that Rodacon had no intention of repaying the restructuring medium term loan because it made no effort to make any payment on the first medium term loan and even after the loan was restructured giving the facts and circumstances.

16. Defendant says further as to the above that plaintiff knew of the risk as guarantor and agreed to undertake payment of the indebtedness in accordance with the terms of the promissory note and other collateral documents and even in the corporate guarantee document which was incorporated as a part of the leasehold mortgage agreement, plaintiff guarantee that it will absorb any impact from Rodacon's inability to liquidate its indebtedness or liability. Plaintiff apparently in its effort to relieve itself of all obligations as guarantor pretended as if it had no knowledge of the obligor's liability by writing to the obligor; requesting for documentation and alleging that it was not a guarantor. Defendant says that even after plaintiff received the second letter from defendant's

counsel at the time and did not deny its obligation under the guarantee document; instead plaintiff elected to again write requesting and demanding documentations in support of defendant's claim and obligor's liability. Defendant says that plaintiff as guarantor should have requested for all documentations from the obligor instead of defendant and to do otherwise leaves one to assume that plaintiff was aware of obligor's delinquency or that obligor had not alleviated its obligation to defendant and rather than encouraging obligor to pay defendant, plaintiff decided it needed documentation. Defendant says that plaintiff owed itself a duty to make sure that the obligor's account was corrected by visiting defendant's bank and pursuing all of the documents and even if documentation had been provided by defendant that does not relieve plaintiff of its obligation as guarantor under the guarantee documents executed. The main issue here is that plaintiff was obligated to defendant at the time when defendant elected to exercise its right under the guarantee agreement to debit plaintiff's account to offset Rodacon indebtedness to defendant.

17. That as to counts eleven (11), twelve (12), thirteen (13) and fourteen (14) of plaintiff's complaint, defendant says that while it is true that the amount of US$499,968.00 was transferred on July 30th, 2012 to plaintiff's account in defendant's bank but cannot confirm that said amount was intended for investment in mineral waters which would have yielded one million for plaintiff. Defendant says that plaintiff has not and cannot produce any evidence to substantiate its allegation that one million would have been yielded on its investment and assumption is not the reality. Hence plaintiff's allegation is untrue and intended to mislead this Honorable Court.

18. Defendants says further as to count above, that when the amount mentioned hereinabove was transferred to plaintiff's account, defendant decided, as it had every legal and authority to do under the circumstances and the default by Rodacon, to exercise its right under the terms and conditions of the agreement by debiting plaintiff/guarantor's account in the amount of US$431,709.60 representing principle, interest and penalties to fully liquidate the outstanding balance on Rodacon's obligation to defendant. It was then that plaintiff became concerned and requested documentations evidencing that it provided guarantee of the restructuring medium term loan even though plaintiff knew it had issue such documents and had same in its possession. Defendant respectfully requests court to take judicial notice of its exhibits attached to its answer. And further, defendant never conceded directly or indirectly that plaintiff did not guarantee the new credit facility agreement since it had in its possession the leasehold mortgage agreement executed by plaintiff which carries the new facility loan amount and which document was signed by Mr. Simeon Freeman on behalf of plaintiff. Further, defendant says that plaintiff's counsel cannot claim that plaintiff was discharged and released from the corporate guarantee relating to the US$300.000.00 when he had seen the new credit facility letter and plaintiff's name as guarantor.

19. Further to the above, defendant says that counsel for plaintiff should have inquired from plaintiff whether there were other documents executed

relating to the new facility agreement because he would have taken note of and seen that the amount in the new facility agreement was in both plaintiff's leasehold mortgage agreement and the personal guarantee signed by the one and only Simeon Freeman. Plaintiff never solicited the assistance or cooperation of defendant and in fact practically ignored defendant's communication relating to Rodacon's default. Defendant challenge plaintiff to deny that it was not a part of the new facility letter as evidenced by the documents attached to this pleading and defendant requests court to take judicial notice of all of its exhibits attached to its answer.

20. Defendant says that plaintiff's request for the total amount of US$602,046.21 representing the loan amount withdrawn, interest, penal rate levied against the loan is absurd and plaintiff is the one that should be penalized for not living up to its liability under the agreement. Defendant says further that it was its money that plaintiff deliberately guarantees to pay in the event its subsidiary company or sister company failed to pay. Plaintiff is intentionally trying to defraud defendant of its depositors money by setting up bogus companies to apply for loans itself cannot obtain due to reason best known to plaintiff and to for this Honorable Court to even think of awarding such an amount will be tantamount to a miscarriage of justice. Defendant says that plaintiff should be made to pay all monies due defendant in keeping with the terms and conditions of the agreement.

WHEREFORE, and in view of the foregoing laws, facts and circumstances, defendant most respectfully prays that your Honor and this Honorable Court will deny plaintiff's baseless and unfounded complaint and grant unto your humble defendant all monies due and 25% of the total amount as successful attorney fee and any and all other relief that may be just, legal and equitable under the law."

PLAINTIFF'S REPLY

Plaintiff in the above entitled cause of action denies the legal and factual sufficiency of the answer for the following reasons to wit:

1. Because as the entire answer, the plaintiff confirms and affirms its complaint in its entirety.

2. Further to the entire answer, the plaintiff says that the defendant unlawfully withdrew funds from the plaintiff's account with the defendant, under the pretense of the plaintiff being a corporate guarantor for obligations of the obligor, although the defendant had failed to present or otherwise exhibit a "stated account" between the obligor and the defendant evidencing a balance of US$435,476.97, which the defendant has withdrawn from the plaintiff's account. Your Honors are respectfully requested to take judicial notice of the fact that even the answer that the defendant, a financial institution, has filed in defense of its unlawful action contains no statement of account or otherwise makes reference to a statement of account, evidencing credit and debit transactions between

the defendant and the obligor, and the resulting balance of the account in favor of the defendant, if any. The plaintiff submits that the settled principles of law in this jurisdiction are as follows: an account is a detail statement of the mutual demands in the nature of debits and credits between parties arising out of contracts or some fiduciary relation between the parties; an account stated is an agreed statement between persons who have had previous transactions, fixing the amount due in respect of such transactions, and promising payments; and, only when a current account shall have become an account stated may the creditor act on the balance.

3. Still further to the entire answer, the plaintiff says that the only statement of account that the defendant has presented as to the transaction between the defendant and the obligor for which the defendant unlawfully withdrew US$435,476.97 from the plaintiff's account with the defendant, is a statement of account covering the period September 1, 2011 to June 27, 2012, which statement of account was sent by the defendant's lawyer to Mr. Simeon Freeman as a personal guarantor of the obligor's obligation to the defendant. Your Honors are respectfully requested to take judicial notice of the plaintiff's exhibit "D" attached to the complaint.

4. Also because as to count 1 of the answer, the plaintiff says that same presents no triable issue. The plaintiff, therefore, confirms and affirms counts 1 and 2 of its complaint.

5. And also because as to count 2 of the answer, the plaintiff says that there is no denial that the plaintiff's obligation to the defendant was full and complete, as to the obligor's inability to timely liquidate the US$300,000.00 credit facility, which was extended by the defendant to the obligor upon terms and conditions stipulated in the facility letter for the US$300,000.00. The plaintiff submits that the discharge and release of the plaintiff of its obligation under the corporate guarantee, as the result of the defendant entering into a new and different agreement with the obligor is a matter of law.

6. Further to count 2 of the answer, the plaintiff says that the broad language of the plaintiff's corporate guarantee must be construed in accordance with the usage and trade and customs and practices of the banking industry, as conceded by the defendant in count 5 of its answer to the effect that plaintiff's obligation was for the "value of the amount of the loan plus interest and penalties". That is, the broadness of the wordings of the plaintiff's corporate guarantee notwithstanding, the plaintiff's obligation under the first facility letter, (the only obligation, which has since been extinguished), was limited to repayment of the full amount of the loan that was guaranteed, plus interest and penalties.

7. And also because of counts 3 and 4 of the answer, the plaintiff says that there is no complex corporate arrangement or complicated commercial transaction, as the defendant would have it appear. It was a very simple banking transaction–the defendant loaned US$300,000.00 to the obligor, which the plaintiff guaranteed. Subsequently, the defendant and the

obligor entered into a new and different agreement by which the defendant loaned the obligor an amount of US$358,458.00 upon terms and conditions different from those of the US$300,000.00 loan; and, the US$358,458.00 loan was neither guaranteed by the plaintiff nor did the plaintiff consent to any restructuring of the loan. Therefore, the defendant may not now conveniently pretend not to understand this simple banking transaction, which it, as major banking institution in Liberia, structured.

8. Further to count 3 of the answer, the plaintiff says that it is a shame that the defendant, a public banking institution, would state that it extended credit to the obligor "upon the persuasion" of a third party- the plaintiff, as opposed to having its decision based on sound banking principles and good business judgment. The plaintiff denies ever pressurizing, influencing, or otherwise persuading the defendant to extend any loan or credit facility to the obligor.

9. Further count 4 of the answer, the plaintiff says that the defendant's exhibit "D/6", which is exhibit "H" to the complaint has no connection to or bearing upon the corporate guarantee that was issued in connection with the US$300,000.00 loan. The plaintiff submits that the defendant's exhibit "D/6" was strictly and exclusively in connection with the personal guarantee of Mr. Simeon Freeman, as explained in the letter from the defendant's lawyer of June 26, 2012, copy of which is attached to the complaint, as exhibit "D" of which Your Honors are respectfully requested to take judicial notice.

. And also because as to count 5 of the answer, the plaintiff says that the defendant should not confuse "apparent" - according to appearances, initial evidence, incomplete result ostensible rather than actual-with actual knowledge of the truth.

10. Further to count 5 of the answer, the plaintiff says that only if the obligor had indeed defaulted, and the obligation of the obligor had been settled, would the defendant had been "vested with the right to immediately call the corporate guarantee of the plaintiff ... to the value of the full amount of the loan, plus interest and penalties," but only as to the first facility letter. By the defendant's own admission," a new credit facility agreement was entered into between the defendant and the obligor. So once the defendant entered into a new and different loan agreement with the obligor, without the consent of the plaintiff and without obtaining a new different corporate guarantee from the plaintiff, the plaintiff was immediately discharged of any further obligation under the extinguished previous loan agreement, in accordance with law.

11. Still further to count 5 of the answer, the plaintiff says that it is preposterous for the defendant to allege that the plaintiff guaranteed the US$358,458.00 loan because, "under the [new] facility letter, plaintiff, Consolidated Group, Inc. is listed as number 8 under the existing security/support and conditions precedent to drawdown for the restructured medium term loan". The plaintiff submits that it cannot be bound by the terms and conditions of the new facility letter between the

defendant and the obligor, to which the plaintiff is neither a party nor a guarantor. The defendant goes on to say that, "if plaintiff's consent was not given its name would not have appeared on the restructured medium term loan document or its name would have been removed by those that signed said document." To contend that the defendant may prepare a document (the new facility letter), subsequently signed it along with the obligor, without the signature of the plaintiff, and use such document as evidence of an alleged obligation of the plaintiff thereunder defies the principle of "burden of proof."

12. Still further to count 5 of the answer, the plaintiff says the law is that if the agreement as to the extension of time is binding on the creditor and debtor and if the time specified extends beyond the original due date of the debt as guaranteed by the guarantor, further agreement between the debtor and the creditor that the guarantor will not be released is ineffective and does not prevent the guarantor from being discharged.

13. And also because as to count 6 of the answer, the plaintiff says that apart from attempting to negate the principle of corporate separateness—generally considered to be the most distinct attribute of the corporation—which is hoary with age, usage, and acceptability not only in this jurisdiction, but also in most common law jurisdictions, the defendant makes the plaintiff's case. As stated by the defendant, the plaintiff did give a corporate guarantee for the US$300,000.00 loan and Mr. Simeon Freeman also gave a personal guarantee for the US$300,000.00. But as to the US$358,458.00 loan, only Mr. Freeman gave a new personal guarantee, the plaintiff did not give a new corporate guarantee, a point that the defendant concedes. Your Honors are respectfully requested to take judicial notice of exhibit "D/9" attached to the defendant's answer. A fortiori: Mr. Freeman was required by the defendant to issue a new personal guarantor because his obligation under the previous personal guarantee was discharged with the signing of new facility letter; the obligations of the plaintiff under its corporate guarantee were likewise discharged with the signing of the new facility letter but the plaintiff did not give a new corporate guarantee. Therefore, the plaintiff is discharged of any and all responsibilities to the defendant.

14. And also because as to count 7 of the answer, the plaintiff confirms and affirms counts 12 to 14 above of this reply.

15. Further to count 7 of the answer, the plaintiff says that the defendant is frantically trying to complicate a rather simple matter by attempting to confuse the issues. The US$358,000.00 credit facility granted by the defendant to the plaintiff, which was secured by the leasehold mortgage, was a transaction completely different from US$358,458.00 loan transaction between the defendant and the obligor. A comparative analysis of exhibit "D/7" of the answer (which is also exhibit "C" of the complaint) and exhibit "D/8" of the answer reveals the following: (i) the leasehold mortgage states that the plaintiff was the primary obligor under the US$358,000.00 credit facility, which was secured by the mortgage: but the obligor is the primary obligor under the US$358,458.00 loan

transaction; (ii) the mortgage expressly secures the credit facility between the plaintiff and the defendant; it neither secures nor even mentions the restructured medium term loan/second facility letter between the defendant and the obligor; (iii) the mortgage agreement was signed on August 31, 2011, to secure a credit facility that had already been granted to the plaintiff: the US$358,458.00 loan transaction for which the defendant withdrew funds from the plaintiff's account, although dated September 5, 2011, was not accepted by the obligor until November 28, 2011, meaning that the proceeds of the US$358,458.00 loan was disbursed to the obligor more than three months after the plaintiff had concluded its US$358,000.00 credit facility, as secured by the mortgage. Your Honors are respectfully requested to take judicial notice of exhibit "D/8" of the defendant's answer.

16. Still further to count 7 of the answer, the plaintiff says that assuming arguendo that the mortgage did not secure the plaintiff's then obligation to the defendant, but instead secured the obligor's obligation to the defendant under the new facility letter, the recourse of the defendant would have been to foreclose the mortgage, as provided in the leasehold mortgage agreement (section 5 of the mortgage agreement), and not to unlawfully withdraw funds from the plaintiff's account.

17. And also because as to count 8 of the answer, the plaintiff confirms and affirms counts 13 and 14 of this reply: the plaintiff submits that the defendant clearly and correctly outlines that the leasehold mortgage agreement relates to indebtedness of the plaintiff to the defendant but by some twist of reasoning the defendant would have the mortgage instead secure the obligations of the obligor under the new facility letter.

18. And also because as to count 9 of the answer, the plaintiff confirms and affirms counts 5 to 16 of this reply. The plaintiff says that during the process of moving records from one office to another some of its files were missing, and the plaintiff cannot locate some of its bank's records. The plaintiff has written the defendant repeatedly to retrieve documents in an attempt to reconstruct it files, but to no avail. Copies of three of such letters are hereto attached together, as the plaintiff's exhibit "R-1." The plaintiff submits that the defendant should at least have exhibited the promissory note referenced in the leasehold mortgage agreement.

19. And also because as to count 10 of the answer, the plaintiff confirms and affirms counts 12 to 18 of this reply.

20. And also because as to count 11 of the answer, the plaintiff says that it is rather interesting that the defendant was convinced that the terms and conditions of the original facility letter and the new facility letter were sufficiently different (resulting in them not being one and the same agreement) that in order to secure the new facility letter the defendant requested a new and different personal guarantee from Simeon Freeman, whose beneficial interest in both the plaintiff and the obligor, the defendant has detailed in its answer; that the defendant even though it was absolutely necessary to extract a leasehold mortgage from the plaintiff (for the sake of argument), which was not granted for the original

facility letter, as additional security for the new facility letter; but the defendant would still contend that it did not have to obtain a new and different corporate guarantee from the plaintiff.

21. Further to count 11 of the answer, the plaintiff says that in addition to the material differences between the first facility letter and the new facility letter, as stated in counts 1 and 3 of the complaint, the defendant also elected not to require the use of a reputable insurance company like Omega Insurance to provide a credit insurance bond, which the plaintiff as a corporate guarantor, had insisted upon for the first facility. Instead the defendant allowed the engagement of some unknown insurance company, thereby significantly increasing the burden of a guarantor under the second facility letter. Your Honors are most respectfully requested to take judicial notice of counts 1 and 3 of the complaint and exhibits "A" and "C" attached thereto. The plaintiff, therefore, denies that the terms of the second loan transaction were "close" to the terms of the first loan transaction, which the plaintiff guaranteed. And the plaintiff submits that the law is where the creditor, having had other security for payment of the debtor's obligation release or diverts that security, the guarantor is generally discharged to the extent of the value of the collateral released or diverted.

22. Still further to the count 11 of the answer, the plaintiff says that the new facility letter between the defendant and the obligor embraces all the essentials of a binding contract, preventing the defendant from enforcing payment of the debt under the first facility letter until after the date of maturity, thereby terminating the liability of the plaintiff under the first facility letter.

23. And also because as to the first count 12 of the answer, the plaintiff says that notwithstanding the defendant' admission that there is a limit of the plaintiff's exposure under its corporate guarantee, as the first facility letter, the plaintiff says that it can and intends to legally recover the entire amount that was unlawfully withdrawn by the defendant from plaintiff's account.

24. And also because as to the second count 12 of the answer, Your Honors are respectfully requested to take judicial notice of exhibit "D" of the complaint, to which the defendant refers. The letter written by the defendant's lawyer specifically and expressly referred to the "personal guarantee" that Simeon Freeman issued in favor of the defendant on October 31, 2011 for the restructured loan. Your Honors will note that at no time did the defendant make mentioned of or refer to the personal guarantee that Mr. Freeman issued for the original loan; the defendant also did not call upon the plaintiff's corporate guarantee that was also issued for the original loan. Although both Mr. Freeman's original personal guarantee and the plaintiff's corporate guarantee had expired, the defendant secured a new and different personal guarantee from only Mr. Freeman but did not require a corporate guarantee from the plaintiff.

25. Further to the second count 12 of the answer, the defendant has correctly quoted the definition of a guarantor, which also provides that "a guarantor's liability does not begin until the principal debtor is in

default." Assuming arguendo that the plaintiff was a guarantor by the restructured loan, the new facility letter, was the obligor in default. And if yes how much did the obligor owe for which the guarantor would be responsible? A review of the exhibit to the complaint, none of which have been contradicted by the defendant, reveals the followings: (i) on June 26, 2012, the defendant's lawyer wrote the personal guarantor, Simeon Freeman, stating that the obligor owed the defendant US$153,893.66 (exhibit "D") and attached to that letter was a statement of account from the defendant confirming the amount of the obligor's indebtedness in the amount of US$153,893.66 as of June 2012; (ii) on June 28, 2012, the obligor wrote the defendant seeking explanation as to how its indebtedness to the defendant increase from US$153,893.66 to US$422,741.66 within a single month—the month of June 2012 (exhibit "F"); on July 6, 2012, the defendant's lawyer again wrote Mr. Freeman, stating that the defendant was in error as to the amount that the obligor owed the defendant, that the obligor owed the defendant US$422,742.50, but that the obligation of Mr. Freeman, as a personal guarantor was US$353,000.00 (exhibit "G") - no new statement of account has since been proffered, not even as part of the defendant's answer; on July 20, 2012, Mr. Freeman as personal guarantor, wrote the defendant requesting the bank to provide the obligor with the necessary documents evidencing the amount that the obligor was said to have been owning in order for the account to be reconciled. The plaintiff submits that without the account between the defendant and the obligor being reconciled and amount of indebtedness determined a guarantee cannot be called upon to settle an uncertain amount of debt. The plaintiff, therefore, confirms and affirms counts 2 and 3 of this reply.

26. Still further to the second count 12 of the answer, assuming arguendo that the plaintiff was a guarantor of the restructured loan, the new facility letter, in order for the plaintiff to be held accountable for the debt of the obligor, the "debt" would have had to be for a fixed and definite sum of money or one that could readily be made fixed and definite, either from fixed data or agreement, which certain sum the defendant has failed to establish, making the entire answer a fit subject for dismissal, and the plaintiff so prays.

27. And also because as to count 13 of the answer, the plaintiff confirms and affirms counts 16, 17, and 19 of this reply.

28. Further to the count 13 of the answer, the plaintiff says that the statement of the defendant to the effect that it had granted the plaintiff no facility other than that granted to Rodacon, is completely untrue, as there have been several credit facilities and loan transactions between the plaintiff and the defendant, all of which the plaintiff have fully liquidated without any problem. Attached hereto, as exhibit "R-2," are copies of statements of one of the plaintiff's account with defendant, showing two of such credit facilities of US$400,000.00 and US$190,000.00, respectively, extended by the defendant to the plaintiff. The plaintiff, therefore, submits that the maxim, falsus in uno, falsus in omnibus, is applicable to this matter; and the plaintiff so prays.

29. And also because as to count 14 of the answer, plaintiff dismisses the same with a simple denial, as said count is now worthy of further response in the law.

30. And also because as a count 15 of the Answer, the plaintiff confirms and affirms counts 5, 7, 12, 14, and 16 of this reply.

31. Further to count 15 of the answer, the plaintiff says that the right to set-off was made a subject of negotiations and specifically included in the first facility letter, the obligations of which the plaintiff was a guarantor. But as a result of apparent negotiations of the second facility letter between the defendant and the obligor, the set-off provision as contained in the first facility letter, was not included in the second facility letter: Your Honors are most respectfully requested to take judicial notice of counts 1 and 3 of the complaint and exhibits "A" and "C" attached thereto. Also, attached hereto as the plaintiff's exhibit "R-3" is a copy of the undertaking by the obligor, pursuant to its contractual commitment under the first facility letter, authorizing the defendant to debit the obligor's account. The obligor made no such undertaking for the second facility letter. The plaintiff submits the defendant having contracted away the set-off provision, it was without the authority to apply set-off again the plaintiff's account, even if the plaintiff were a guarantor under the second facility letter. The facility letters listed those rights and obligations that were bargained and therefore constituted the terms and conditions of the contract between the defendant and the obligor. The maxim expression unius est exclusion alterius, "the expression of one thing is the exclusion of another" is determinant of the issue; and, the plaintiff so prays. The plaintiff submits that the obligations of one that is secondarily liable under a contract cannot be greater than those of the primary obligor.

32. And also because as to count 16 of the answer, the plaintiff hereby notice that it shall present the necessary financial projections to show that it would have made about US$1,000,000.00 from its mineral water business, but for the unlawful act of the defendant.

33. And also because as to count 17 of the answer, the plaintiff confirms and affirms counts 16, 17, 18, and 31 of this reply.

34. And also because as to count 18 of the answer, counsel for the plaintiff says that the content thereof is unbecoming of our profession, where one lawyer attempts to demean another lawyer, as oppose to traversing issues of law and facts in the pleadings. Howbeit, out of deference for the court, counsel for the plaintiff shall not respond in kind. Suffice it to say that a review of exhibit "J" of the plaintiff's complaint (the plaintiff's letter to the defendant, requesting any document that the defendant may have had so that litigation could be avoided, and the defendant's response to the plaintiff, transmitting the plaintiff's corporate guarantee of February 24, 2010 and the new facility letter), addresses the issues of this case if indeed the defendant had any document evidencing that the plaintiff had guaranteed the second facility letter, the defendant would had provided it, as requested. Even if the defendant had believed that the leasehold mortgage, exhibit "D/8" of the defendant's answer, did secure the obligation of the obligor, the defendant would had forwarded same in

response to the plaintiff's said letter. But the plaintiff submits that no such document existed then, and none exists now!

35. And also because as to count 19 of the answer, the plaintiff confirms and affirms count 14 of the complaint.

36. Further to count 19 of the answer, the plaintiff is constrained to reiterate that it does nothing good for the legal profession when lawyers facilitate name-calling of party-litigants especially when the matter before the count is a civil matter. The plaintiff can only ask that the parties remain civil! Name callings tend to divert from the primary duty of lawyers, as officers of the court, to seek the application of the rule of law to vindicate the rights of party-litigants. Notwithstanding, the plaintiff submits that defendant has always withdrawn money from the plaintiff's account without any authority or overcharged the plaintiff's account as is more fully shown by copies of letter, exchanged between the plaintiff and the defendant hereto attached in bulk as exhibit "R-4." This is also not the first time that the plaintiff's had been compelled to institute a legal action against the defendant to recover funds that the defendant has illegally taken from the plaintiff's account. For example, the plaintiff had to institute legal action against the defendant to recover a meager amount of US$3,004 before the defendant credited the plaintiff's account for the US$3,004.00 which the defendant had illegally withdrawn from the plaintiff's bank account. Copies of the plaintiff's complaint and its statement of account, showing the credit of the amount are hereto attached together as exhibit "R-5". In spite of the defendant's not so wholesome way of conducting banking business, the plaintiff has not and would not accuse the defendant of "intentionally trying to defraud" the plaintiff. But borrowing from the law of torts, one may say, *resipsa laquitur*.

37. And also because as to the entire answer, the plaintiff denies all and singular the allegations contained in the answer, which have not been made a subject of special traverse herein.

38. The plaintiff prays that the defendant be ordered to pay to the plaintiff the total amount of US$602.046.91, representing the amount of US$435,476.97 which was wrongfully withdrawn from the plaintiff's account; plus an amount of US$57,700.70, representing 13.25% interest, the defendant's current interest rate on loan, and an amount of US$108,869.24 representing 25% interest, the defendant's current penal interest rate that is levied against a loan when the borrower fails and neglects to pay the defendant. The plaintiff requests your Honors to take judicial notice of the plaintiff's exhibits "A" and "C" of the complaint in support of its claim for commercial and penal interests against the defendant.

WHEREFORE, and in view of the foregoing, plaintiff prays that Your Honor will enter judgment in favor of the plaintiff and against the defendant, in the amount of US$602,046.91, and to grant unto the plaintiff any and all further relief, as may be deemed just, right and legal with costs against the defendant."

Pleadings having rested, the commercial court conducted a hearing, entertained arguments pro et con, and on the 29th of January 2014, rendered its final judgment in favor of the appellee/plaintiff. The concluding paragraph of the court's final judgment reads as follows:

> *"Based on the facts and laws stated, the court holds as follows:*
>
> *1) That awareness and knowledge of restructured facility to Obligor due to additional collaterals executed by Plaintiff CGI is not consent by the plaintiff/CGI to the restructured loan, this being an arrangement between obligor/borrower and obligee/lender;*
>
> *2) That even where there is consent to have a corporate guarantee transferred, carried forward, continued from a previous loan to a restructured one, a right of set-off cannot be inferred;*
>
> *3) That defendant Ecobank had a right to call, and should have called the Corporate Guarantee upon default of the Obligor in keeping with the agreement or as otherwise provided by law;*
>
> *4) That absent an expressed agreement between the parties reserving unto the defendant Ecobank the right of set off against the plaintiff CGI/guarantor, the debit of said account was illegal.*
>
> *Accordingly, defendant Ecobank is adjudged liable to plaintiff CGI for the unauthorized withdrawal of USD435,476.97, statutory interest on money judgment, plus cost of these proceedings. The Clerk is ordered to prepare a bill of cost to be taxed by the parties and for subsequent approval by Court.*
>
> *IT IS SO ORDERED."*

To the foregoing ruling of the trial judge, the appellant/defendant excepted, announced an appeal to this court of denier resort for an appellate review, and as required by law, filed within the time allowed by law, its bill of exceptions. The 19-count bill of exceptions reads as follows:

<u>APPELLANT/DEFENDANT'S BILL OF EXCEPTIONS</u>

"The defendant, ECOBANK Liberia Limited in the above entitled cause of action, being dissatisfied with the ruling of Your Honor handed down on January 29, 2014, believing said ruling to be erroneous, against the law and without legal basis, and having excepted thereto and announced an appeal to the Honorable Supreme Court of Liberia sitting in its March Term, A. D. 2014, herewith submits the following exceptions, and praying Your Honor's approval of this bill of exceptions which as per law is required to file with the Clerk of Court.

1. Defendant says that Your Honour erred in your ruling when you completely distorted, misrepresented and chose to ignore the key facts in the case and to predicate your ruling on those distortions of the facts. Thus, for the purpose of this bill of exceptions, we believe it important to highlight the

major facts presented in the case, critical to a legal determination of the case, but which Your Honour chose to ignore:

1.1 The facts presented in the case reveal that Mr. Samuel Freeman, embarked on a scheme whereby he formed a number of companies, including the plaintiff, wherein he owned a majority of the shares in the plaintiff company and other companies formed by him, and/or had the plaintiff company hold majority of the shares in such other companies formed by him or the plaintiff company. Using this scheme, Mr. Freeman then approached Ecobank, and on February 12, 2010, had Rodacon Liberia Limited, the plaintiff, one of Mr. Freeman's companies, conclude and execute with Ecobank, the defendant, a facility letter wherein Ecobank extended a credit facility or medium term loan to Rodacon in the amount of US$300,000.00 on certain terms and conditions among which was that the loan was to be paid in 24 months from the date of disbursement and the execution of a corporate guarantee. On February 15, 2010, Simeon Freeman, CEO of Consolidated Group Inc., executed a joint and several guarantee in favor of Ecobank in the amount of US$300,000.00 guaranteeing the Radacon loan. On February 24, 2010, Simeon Freeman again provided a statement of net worth in support of Radacon's loan and agreeing to act as guarantor and on the same February 24, 2010, Consolidated Group Inc., a shareholder of Radacon issued a corporate guarantee signed by its Group CEO, Simeon Freeman guaranteeing the obligation of Radacon to Ecobank for the granting of the loan facility. On March 1, 2010, Ecobank disbursed the US$300,000.00 into Rodacon's Account.

1.2 When Radacon could not pay on its loan in keeping with the facility letter; it requested for a restructuring of the loan which was agreed to by Ecobank to avoid Radacon being listed as delinquent. On August 31, 2011, a leasehold mortgage agreement was executed by and between Consolidated Group Inc., (Plaintiff) represented by Simeon Freeman as mortgagor and Ecobank, (defendant) as mortgagee guaranteeing the credit facility issued to the mortgagor in the amount of US$358,000.00 compromising a medium term loan. On September 5, 2011, the facility letter/restructured medium term loan was issued to Radacon on the same terms and conditions as the first medium term loan and with the existing sureties remaining the same including the guarantee from Consolidated Group Inc which is one of the conditions precedent for the restructured facility and additional guarantee be issued as a condition precedent to the drawdown.

1.3 On October 31, 2011, Simeon Freeman the very same individual who signed all of the guarantees for Consolidated Group,Inc. issued a personal guarantee in favor of Ecobank for the restructured loan amount of US$358,000.00 guaranteeing the obligation of Rodacon to Ecobank for the granting of the restructure facility and on November 10, 2011, Rodacon provided a certificate of resolution, co-signed by its Chairman, Simeon Freeman authorizing the current General Manager and Finance Manager to sign the restructured loan document. On July 30, 2012, an amount of

US$499.968.00 was transferred into the account of Consolidated Group,Inc. and Ecobank decided to exercise its right under the Consolidated Group, Inc., guarantee by debiting Consolidated Group's account following the default on the restructured loan by Radacon and which default plaintiff was informed. But the fact also revealed that even if the plaintiff claims that it was not informed in writing of the default on the first loan facility, it had constructive notice that a default had occurred, and that in fact such formed the basis upon which it majority shareholder, chairman and chief executive officer proceeded to have the defendant execute with Radacon the restructured or extended loan facility. These were the facts and circumstances upon which the case was ruled to trial, after a pretrial conference and the submission of documentary evidence by the parties.

1.4 The foregoing, defendant submits, formed the basis for the suit commenced by the plaintiff. Defendant says that at the end of the production of evidence, both oral and documentary, Your Honour, on January 29, 2014, handed down what defendant views as an erroneous ruling alleging that: 1) the awareness and knowledge of the restructured facility to obligor due to additional collaterals executed by plaintiff CGI is not consent by the plaintiff/CEO to the restructured loan, this being an arrangement between obligor/borrower and obligee/ lender; 2) that even where there was consent to have a corporate guarantee transferred carried forward, continued from previous loan to a restructured one, a right of set-off cannot be inferred; 3) that defendant Ecobank had a right to call, and should have called the corporate guarantee upon default of the obligor, in keeping with the agreement or as otherwise provided by law; and 4) that absent an expressed agreement between the parties, reserving unto the defendant Ecobank the right of set-off against the plaintiff CGI/guarantor, the debit of the guarantor's account was illegal. Defendant says that in ruling as you did, Your Honour failed to fully capture, or chose to ignore, or determined to distort the facts, the evidence and the underlining principles universally governing such matter. Defendant says that all of these constituted reversible error, and hence it excepted to the mentioned ruling and announced an appeal therefrom to the Honorable Supreme Court of Liberia sitting in its March Term, A. D. 2014.

2. Defendant Ecobank says and submits also that Your Honor seriously erred in ignoring the main issues raised by and in defendant's answer and choosing instead to raise issues that are irrelevant to the case and the contentions of both the plaintiff and defendant. Defendant says that the issues raised by Your Honor has nothing to do with the contentions of both parties because Plaintiff's contention was that it had no knowledge of the restructured loan and that as it did not give its consent it therefore could not be bound by the terms of the restructured loan; whereas the defendant contended that plaintiff had knowledge of the restructured loan and did guarantee the said loan, and that as such plaintiff was bound by the restructured loan and the terms thereof. Yet, Your Honour chose to distort or redesign the issue, or to raise a new

issue which you stated to be: "What is a loan restructure? Defendant says that none of the parties to the suit disputed that the loan was restructured or extended. Indeed, the both parties clearly knew what a restructuring is and the plaintiff did not claim that there was no restructured or extended loan. What was in dispute was whether the plaintiff consented to the restructuring or the extension. Thus, the issue not having been raised by the parties, but yet used by Your Honor as a basis for Your Honour's ruling, renders the said ruling erroneous and therefore a fit subject for reversal. Therefore, defendant noted exception to the said ruling and announced an appeal to the Honorable Supreme Court for its review of the ruling. Hence, this bill of exceptions, submitted for Your Honour's approval.

3. Defendant Ecobank says further that Your Honour either misunderstood the issues raised by the parties or distorted and raised issues that failed to resolve the case, and which was not only clearly but attributed immensely to the erroneous ruling made by Your Honour. Defendant says that from the facts and the evidence presented by the parties, the first issue was not "What is a loan restructure?" but rather where a majority stockholder of a company, which owns a majority of the shares of a subsidiary, and which shareholder serves as chairman and CEO of both companies, and who using the two companies secures a loan for the subsidiary company, guaranteed by the parent company and himself (the shareholder), and who himself guarantees a restructuring of the loan where the subsidiary defaults, providing the consent of the board of the parent company and the subsidiary and himself, the parent company can be said to have consented to the restructuring, and therefore is precluded from claiming that the restructuring was done without its consent and hence it was not bound by the restructuring agreement? This, defendant submits was a clear error and resulted in an erroneous decision by Your Honour. Hence, this bill of exceptions, submitted for Your Honour's approval.

4. Defendant says that a further issue presented was whether a parent company, under the circumstances narrated in the case where the shareholder of the parent company, which parent company is the majority shareholder of the subsidiary company, claims that its consent was not given for the restructuring of a loan accorded to the subsidiary where the original loan was guaranteed by the parent company, the said parent company is relieved from its guarantee and responsibilities under the original loan such that it has no further guarantee obligations for the loan which was extended and under which the debtor/subsidiary had defaulted on the original loan and continued to default even under the restructured loan? Yet, Your Honour chose to ignore this issue and to deviate by addressing and focusing on issues that were irrelevant to the resolution of the claim and the contentions of the parties, resulting in reversible error in the ruling and the decision made therein by Your Honour. Defendant says that had Your Honour focused on this issue, with all of the surrounding fact presented, you would not have made a ruling that was clearly in error, for you would have seen that the plaintiff

was still a guarantor of the loan. Hence, this bill of exceptions, submitted for Your Honour's approval.

5. Defendant says also that the court was called upon to address the issue of whether under the circumstances of the case, where the majority shareholder, Chairman of the Board and Chief Executive Officer of the parent company (the plaintiff) under authority of the board of the parent company and in his personal name causes a loan to be secured for the subsidiary company of the parent company, also in which the majority shareholder of the parent company, which is the majority shareholder of the subsidiary company, and who also serves as Chief Executive Officer of the subsidiary company (the debtor), the parent company can assert that its guarantee was transferred without its consent, especially where the activities of the two companies were hardly distinguishable? These were the issues of the court to address. Instead, Your Honour chose to address issues with no relevance to the case, such as (a) "what is a loan restructure" and "are third party guarantees transferrable without consent. Defendant says that for the misstatement of the issues, which resulted into the erroneous conclusions made and reached in the ruling, it noted exceptions and prayed for an appeal to the Supreme Court. Hence, this bill of exceptions, submitted for Your Honour's approval.

6. Defendant says further that Your Honor also seriously erred when in your ruling; you give the definition of loan restructure which failed to speak to the contentions of the parties raised in the case. Nowhere in the pleadings or in the evidence presented at the trial did the parties state that they had a misunderstanding about the definition of loan restructure and therefore Your Honor's definition had no relevance to the issues raised by the Plaintiff and the defendant. What the plaintiff claimed was that it did not consent to the restructuring or extension of the loan facility when the first default occurred and that the defendant could not debit its account growing out of the second or even the original default. Instead, Your Honour chose to discuss the definition of a loan restructure, which was not only completely irrelevant to the case, but even if there was, Your Honor failed to show or discuss its relevance; and even after asking a second question "did the restructuring of the previous facility create new obligations for the third party guarantor"?

7. Defendant Ecobank says that Your Honor erred when Your Honor still did not discuss said question to show its relevance to the contentions of the parties which makes said ruling erroneous and reversible. What the facts and the contentions of the parties showed was that Mr. Simeon Freeman had set up a scheme by which he used or intended to use certain companies owned by him, along with their subsidiaries, to secure a loan from the defendant, guaranteed by him and the plaintiff, but with the intent, by all indications, to have debtor default, and still assert that under those circumstances the defendant should have no access or right to debit the plaintiff's account in respect of the loan defaulted on. This Your Honour erred in addressing, but instead concentrated on defining

loan restructure which was clearly irrelevant to the issues presented. Hence, defendant excepted to Your Honour's Ruling and announced an appeal to the Supreme Court of Liberia. Hence, this bill of exceptions, submitted by the defendant for Your Honour's approval.

8. Defendant says further that Your Honour erred in ruling that the restructuring evinced the plaintiff from any further discharge of the loan, a statement tantamount to condoning of an attempt by the plaintiff and its majority shareholder to commit a fraud against the defendant. Defendant says that even if the plaintiff could successfully argue, and it could not under the circumstances presented in the case, especially where it had guaranteed a loan secured by its subsidiary, with the approval of its board and majority shareholder as well as its chief executive officer, this would not have relieved the plaintiff or its majority shareholder of the obligation for the repayment of the loan secured for the plaintiff's subsidiary. Hence, defendant says that such statement by Your Honour, upon which you proceeded to render your ruling was an error, rendered the entire ruling being also made in error and therefore reversible. Hence, this Bill of Exceptions, submitted for Your Honour's approval.

9. Defendant submits that in Your Honor's erroneous ruling, Your Honor was aware of the contentions of the plaintiff and defendant but yet decided to raise issues that had nothing to do with the allegations of the parties and being aware of the allegations, one would have thought that the proper issues would have been raised by Your Honor to address the allegations of both plaintiff and defendant, which did not happen, thereby making said ruling erroneous and reversible. Defendant submits further that Your Honor made a grave and reversible error in deciding that defendant must first pass the test. What test is Your Honor referring to because the main agreement relied on by Your Honor is the 2010 agreement instead of the restructure agreement of 2011? Defendant never said or inferred that the facility letter named CGI as a party obligee but as a guarantee in both the 2010 and 2011 facility letters. Where did Your Honor get the erroneous idea and fact from that the facility letters named plaintiff as an obligee to include same in said erroneous ruling? The fact that Your Honor's facts are distorted makes such ruling erroneous.

10. Further, Your Honor stated on page 2 of said erroneous ruling that "moreover, the leasehold mortgage agreement and the personal guarantee aforementioned plus a certificate of resolution signed by Simeon Freeman, obligor's chair of the board, show clearly that plaintiff/CGI had knowledge and was aware of the USD358, 000.00 extension of credit to the obligor, same being the restructured amount" and "for that reason, defendant Ecobank suggests that the personal guarantee, the leasehold mortgage agreement, Mr. Simeon Freemen's overt participation in some of the negotiations for the restructure facility, the board resolution under his signature directing officers of obligor to secure the restructure facility; and particularly the corporate guarantee issued by plaintiff CGI, and signed by its CEO, Mr. Simeon

Freeman are indicative not only of knowledge and awareness, but consent and authorization by plaintiff CGI to debit its account for the restructured facility. We are not persuaded" is very contradictory. Defendant says that Your Honor seriously erred when in said ruling Your Honor stated that CGI had acknowledge, was aware and did sign documents for the restructuring of the loan, yet Your Honor ruled that "We are not persuaded" by Defendant's allegations. What kind of persuasion is Your Honor speaking about, the facts or the law? Defendant says that a court is bound by the law and must apply same to the facts presented in a case. Yet, Your Honour cited not a single law in support of the conclusion that "we are not persuaded" since indeed the laws are to the contrary. Defendant says that this ruling was clearly in error and is reversible. Hence, this bill of exceptions, submitted for Your Honor's approval.

11. Defendant says that in Your Honor's erroneous ruling you made mention of the leasehold mortgage agreement which plaintiff alleged it had no knowledge of and did not sign same but that the "signature appears to be his signature", but did not take into consideration the provisions of said leasehold agreement. It would appear that Your Honor did not read or digest the leasehold mortgage agreement; otherwise Your Honor would not have made such an erroneous ruling which must be reversed. Your Honor instead relied on the 2010 facility letter which is not in question to rule the way Your Honor did, and which is a grave error and renders same reversible by the Honorable Supreme Court. Defendant says that if Your Honor was confused as stated in said erroneous ruling, why didn't Your Honor seek clarification rather than stating that because the debt owed by obligor was indeterminable, defendant had no right to debit plaintiff's account. Plaintiff did not deny that it did not serve as guarantor for the restructured loan; instead it contended that it had no knowledge and did not give its consent to said loan, in regard to that contention, Your Honor stated that CGI did have knowledge and was aware and did sign several documents, including the leasehold mortgage agreement, yet you stated that because the leasehold mortgage agreement did not say anything about the right-to-set-off, you were not persuaded. Thus, Your Honor's ruling is erroneous and should be reversed. Hence, this bill of exceptions, submitted for Your Honour's approval.

12. Defendant says that with specific reference to Your Honour ruling that defendant could not set-off the loan, under the circumstances of the case, was clearly erroneous and not supported by any law. Indeed, that is why Your Honour cited no law in support of Your Honour's position on the issue. Defendant submits that once the default had occurred, the obligation of the guarantor was triggered and the funds of the guarantor could be applied towards the liquidation of the debt. This is the tenet of banking practice accepted universally. It was therefore error for Your Honour to rule otherwise. Hence, this bill of exceptions, submitted for Your Honour's approval.

13. Defendant says that Your Honor gravely erred when you did not take into account existing securities/support under the 2011 facility letter which included the corporate guarantee from Consolidated Group, Inc. and the conditions precedent to drawdown which included executed corporate guarantee from Consolidated Group, Inc. and all collateral documents that were previously executed by plaintiff and this is why in the 2011 facility letter it was specifically stated corporate guarantee from consolidated Group, Inc. and the conditions precedent to drawdown. This Your Honor did not take into consideration. Instead, Your Honor, in said erroneous ruling, elected to accept everything said by the plaintiff except the corporate guarantee from Consolidated Group, Inc. under existing/support and the corporate guarantee from Consolidated Group, Inc. under conditions precedent to drawdown which makes said ruling strongly erroneous and reversible. In that connection, defendant also submits that Your Honor erred further when you did not take into consideration the provision of the leasehold mortgage agreement which is part of plaintiff's guarantee and collateral documents for the restructured loan, instead, Your Honor elected to rule erroneously based on the 2010 facility letter which ruling should be reversed.

14. Defendant submits and says that Your Honor erred when in said ruling you quoted a provision from the 2010 facility letter which was transferrable to the restructured loan under the 2011 restructured facility letter. Your Honor stated that "Consolidated Group, Inc. hereby guarantees that it will absorb any impact resulting from Radacon's inability to liquidate the US$300,000.00 facility provided by Ecobank Liberia". This guarantee was transferred to the restructured loan under existing securities/support which Your Honor did nor even address or discuss or take into consideration, even though it was an issue raised by you; thus, making said ruling erroneous. Defendant says that it is strange that Your Honor will rule based on specific wording especially when the wording is very clear and distinct. To conclude that the wording in the corporate guarantee does not suggest a right of set-off is erroneous, considering the fact that Your Honor agreed that the original guarantee did continue to the restructured agreement. Yet, Your Honor ruled based on what Your Honour termed was the language in the guarantee rather than on the law. Hence, to conclude that the corporate guarantee proffered by Plaintiff CGI did not provide to Defendant Ecobank an automatic right to debit plaintiff CGI's account was erroneous. Was this issue raised by Your Honor supported by law? Why was such law not stated in the ruling?

15. Defendant submits that there is no such law that supports the position taken by Your Honour. The said ruling is therefore erroneous and should be reversed. Further, Plaintiff has not denied that it did not guarantee the restructured loan; it only contended that in the face of all the evidence in the case that it had no knowledge or did not give its consent. Your Honour acknowledged these to be untrue. But moreover, Your Honor did not interpret the leasehold mortgage agreement to ascertain whether Plaintiff obligated itself? The facts and resolution of

the case imposed such obligation upon Your Honour. Yet, Your Honour failed to meet that obligation in making your ruling, unsupported by any cited law. Hence, said ruling is subject to reversal by the Supreme Court. Hence, this bill of exceptions, submitted for Your Honour's approval.

16. Defendant submits and says that while it seeks to comply with Article IV (APPEALS) of the act establishing the commercial court so that it is not adjudged to be in violation of the appeal process as would expose its appeal to challenge or violation of the Act, or place its appeal at risk or jeopardy, defendant challenges the constitutionality of the provision of the act establishing the commercial court which requires that in addition to posting an amount equivalent to the value of the judgment, it must also submit and file an appeal bond which shall be exclusive of the amount of the judgment paid and which amount similarly covers the judgment. Defendant says that the net effect of Article IV of this statute is that defendant is required to cover the judgment twice. This requirement, defendant says, does not only violate the constitution of Liberia but is also in direct conflict with section 51.4 (Requirements for Completion of an Appeal) of the Civil Procedure Law. Defendant says that the statute establishing the commercial court is also at variance with PRC Decree governing appeals in actions of debt. Thus, ruling as you did in the face of the two conflicting statutes, makes Your Honor' ruling erroneous and reversible. Hence, defendant's submission of this issue of a constitutional challenge of the specific provision of the act establishing the commercial court for a declaration of unconstitutionality by the Supreme Court of Liberia.

17. Defendant says further that the statute is unconstitutional and should be stricken down for the fact that the Constitution of Liberia under Article 20(b) provides that "The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal". Based on this provision, the legislature passed laws with respect to the appeal process. Part IV (Appellate Procedure), Chapter 51 (APPEALS FROM COURTS OF RECORD), Sections 51.2 (Judgment subject to review) provides: "Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the court except from that of the Supreme Court. The decision of the Supreme Court shall be absolute and final'. Section .01.4 (Requirements for completion of an appeal) provides also that "The following acts shall be necessary for the completion of an appeal" (1). Announcement of the taking of an appeal; (ii) Filing of the bill of exceptions; (iii) Filing of an appeal bond; (iv) Service and filing of notice of completion of the appeal". Further, Appellee says the law provides that "Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal". Finally, Section 51.8 (Appeal Bond) provides that "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally sureties, to the effect that he with

indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment".

18. Defendant says that Article IV of the Act Establishing the Commercial Court provides that: 1) An appeal from a final judgment of the Commercial Court shall lie directly with the Supreme Court of Liberia; 2) An appeal from a judgment of the Commercial Court shall serve as a stay on enforcement of the judgment, provided that the amount of the judgment paid shall be placed in an interest-bearing escrow account with a commercial bank to be designated by the Commercial Court pending disposition of the appeal and 3) Payment of the full amount of judgment shall be a condition precedent for the completion of an appeal from the judgment of the Commercial Court, but the appeal bond, which maybe required of the appellant, shall be exclusive of the amount of the judgment paid. This law is not only in contradiction of the Constitution and Civil Procedure Law, but derives an appellant from exercising his/her right to an appeal as provided for under the Constitution and Statute and hence said law should be stricken down and declare unconstitutional and defendant so prays.

19. Defendant says that the entire ruling of Your Honor is erroneous and contrary to law, because Your Honor ignored all the facts and laws presented in defendant's answer thereby concluding and ruling on only the issues raised by plaintiff which is unfair, unjust and a miscarriage of justice. Hence, defendant ECOANK excepted to Your Honor's ruling and announced an appeal to the Honorable Supreme Court of Liberia sitting in its March Term, A.D. 2014.

WHEREFORE, defendant submits this bill of exceptions containing the exceptions taken to Your Honor's ruling for Your Honor's approval so that it may complete its appeal process to the Honorable Supreme Court of Liberia as required by law."

From the foregoing facts and circumstances as outlined in the pleadings, we see that the issue this Court is called upon to resolve is whether appellant Ecobank Liberia Limited acted legally and properly in setting off the deposit account held by Appellee Consolidated Group, Inc. with the appellant bank in satisfaction and liquidation of the loan obligation of Radacon Liberia Limited.

The issues are not whether Rodacon was a separate and distinct entity with a separate corporate existence from Appellee Consolidated Group, Inc. and its other shareholder, Simeon Freeman; or whether Rodacon secured from the Appellant bank a loan in the amount of US$300,000.00; or whether Rodacon defaulted in repayment of the loan; or whether a second facility letter was executed by the lender and the borrower wherein the payment by Rodacon of the loan amount of

US$300,000.00, plus interest, was extended such that the new loan amount became US$358,458.00, with a number of new terms added and others eliminated by the appellant bank seemingly to secure a more adequate security for the new Facility letter, and that the records reveal that these were agreed to and accepted by the parties, including the guarantor, Consolidated Group Inc.

We see in the records, for example, that whereas the original or first facility letter required as a condition precedent to the disbursement of the facility or loan amount the execution of a right of set off (presumably limited to Rodacon since only Rodacon executed such document), that condition was completely eliminated from the requirement and the condition to any disbursement. Similarly, the first Facility letter did not require the execution of a Leasehold Mortgage Agreement over commercial property, but the second Facility Letter required as security and a condition precedent to any drawdown the execution of a Leasehold Mortgage Agreement over commercial property to the value of US$500,000.00. Also, the first Facility Letter made reference only to the appellant having charge over the property (fixed and floating assets) of the borrower, without stating the extent of the value of the charge, but the second Facility Letter specifically placed the value of the charge up to US$1,000,000.00. Additionally, the original Facility Letter required as security from the Consolidated Group Inc. a corporate guarantee for the loan to Rodacon Liberia Limited and made the execution of the said corporate guarantee a condition precedent to the disbursement of the facility or loan amount to Rodacon, which corporate guarantee was executed by Consolidated Group Inc. in order to facilitate the disbursement. Yet, although the second Facility Letter required the execution of a corporate guarantee as a condition precedent to a drawdown by Rodacon, the records do not reveal that there was any such execution by Consolidated Group, Inc. although other documents which were required to be reissued (such as the personal guarantee of Simeon Freeman, Certificate of Resolution of Rodacon, Statement of net worth of Simeon Freeman, etc.) were in fact reissued as condition to the execution of the facility Letter and the drawdown of the facility. We wonder how the latter facility letter was even executed or any drawdown allowed without that critical corporate guarantee being executed by Appellee Consolidated Group Inc.

Appellee Consolidated Group Inc. argues that because the loan was restructured without the execution by it of a new corporate guarantee it was therefore no longer obligated to pay the loan or the restructured loan. We are not persuaded by the argument of the appellee Consolidated Group, Inc. that the restructuring of the loan discharged it of its obligation as a guarantor under the Medium Term Loan (MTL) as a result of the restructured Medium Term Loan (RMTL). A restructured credit facility is not *ipso facto* a re-finance of the customer; it is only intended to review the terms of repayment set by the original facility and prescribe new terms which are more flexible to the borrower and the creditor. In the case of a restructured loan facility, all of the security guarantors remain in full force and their obligation under the original credit facility remain as such unless expressly discharged by the new agreement. This is so because the guarantor agreement, although serving as security to the loan facility of the borrower, is a separate agreement executed by the guarantor and the Bank for the sole purpose of obligating to off-set the borrower's liabilities in the instance the latter fails to meet up with its obligation to the Bank. A restructured loan facility being merely a mode of repayment by the borrower to the crediting Bank does not necessarily require the involvement of the guarantor since as a matter of law, the guarantor's obligation only sets in at such time when the borrower defaults and it becomes impossible for the Bank to recover against the borrower.

The parties have not disputed, and the records in the case reveal, that in fulfillment of one of the conditions of the first Facility Letter for the disbursement of the loan under the Facility Letter, Appellee Consolidated Group Inc. did execute a corporate guarantee, signed by Mr. Simeon Freeman as CEO. That corporate guarantee read as follows: "Consolidated Group Inc. hereby guarantees that it will absorb any impact resulting from Rodacon inability to liquidate the US$300,000.00 facility provided by Ecobank Liberia". We do not see in the records any instrument evidencing that the "Corporate Guarantee" was renewed under the second Facility Letter. However, the records before us overwhelmingly show that the appellee, Consolidated Group Inc. was involved in the restructuring process and even executed a Leasehold Mortgage Agreement with the Appellant bank in respect of the said restructured loan. In our opinion, that act was tantamount to not only giving consent to the restructured loan, but also amounted to a guarantee. In fact, it was in the interest of the Appellee, Consolidated Group Inc. to have the loan restructured by Rodacon and the Appellant bank since it effectively prevented or postponed execution against it, the appellee, as guarantor to the original loan extended by the Appellant bank to Rodacon, and regarding which Rodacon had defaulted. It has been held that if a guarantor consents to an extension in time for payment of the principal obligation, the guarantor is not discharged by the extension. Consent may be given at the time of the extension, or the guaranty itself may give advance consent to the extensions of time for performing the principal contract (38 Am Jur. 2d, Guaranty, Section 93 (1999).

Contrary to the lower court's ruling, the records of the case show that when Rodacon failed to meet up with its loan obligation, it approached the Appellant bank for a restructuring of the loan, which the Bank agreed to, and on September 5, 2011, the parties further entered an understanding to restructure the loan balance of US$358,458.00 being the principal amount made available to Rodacon plus interest thereon; that as a security to the restructured loan facility, the appellee, Consolidated Group Inc., through its Chairman Mr. Simeon Freeman, and the appellant, EcoBank Liberia Limited, executed a leasehold mortgage agreement wherein the appellee represented itself as the mortgagee guaranteeing the repayment of the restructured credit facility to the mortgagor, the Appellant EcoBank in the amount of US$358,000.00.

Here is how the Mortgage Agreement reads:

> "THIS LEASEHOLD MORTGAGE AGREEMENT is made and entered into this 31st day of August, A.D. 2011, by and between Consolidated Group Inc., represented by Mr. Simeon Freeman, of the City of Monrovia, Republic of Liberia (hereinafter referred to as "mortgagor") and ECOBANK Liberia Limited, a financial institution organized and existing under the laws of the Republic of Liberia, by and through its duly authorized officers Mr. Kola Adeleke of the City of Monrovia, Liberia (hereinafter referred to as "mortgagee") hereby;
>
> WITNESSETH:
>
> WHEREAS, the mortgagor is the lessee under the provisions that for and in consideration of a lease agreement dated 6th day of February 2006 to take effect on the 17th of February 2007 probated and registered in Vol. 04-06, pages 180-183 of the National Achieves, (the "lease agreement")under which the below described premises are leased to the mortgagor for a term of ten (10) years, commencing on the 17th of February, A.D. 2007 and ending the 16th of February, A.D. 2017.
>
> WHEREAS, mortgagee has granted a credit facility to the mortgagor in the amount of Three Hundred Fifty Eight Thousand United States Dollars (USD358.000.00) comprising a medium term loan.
>
> WHEREAS, mortgagee desires to secure the repayment of all advances to be made under the credit facility (hereinafter referred to as the "Indebtedness") and,
>
> WHEREAS, the indebtedness is further evidenced by a promissory note and other collateral documents executed by the mortgagor, which are incorporated herein by reference to constitute an integral part of this agreement.
>
> Together with all and singular the tenements, hereditament and appurtenances, thereunto belonging or in any wise appertaining, and all the rights and interest of the mortgagor in and to any and all equipment, fixtures now used or hereafter to be used by the mortgagor in connection with the operation or enjoyment of the subject leasehold.
>
> PROVIDED ALWAYS, and these presents are upon this express condition,

that if the mortgagor shall have well and truly pay to the mortgagee all moneys secured hereby when the same shall become due and payable, without deduction or credit for any amount payable for taxes, assessments or other impositions whatsoever, then these presents and the estates and interest hereby granted shall cease, terminate, and be void.

AND THE MORTGAGOR COVENANTS WITH THE MORTGAGEE AS FOLLOWS:

> "1. The mortgagor agrees and hereby undertakes to pay to the mortgagee the indebtedness in accordance with the terms of the promissory note and other collateral documents, without any deduction or credit for any amount paid for taxes, assessments or other impositions assessed upon the demised promises….."

We see that during the hearing of the case, the appellee's CEO, Mr. Freeman, tried to disassociate Appellee Consolidated Group Inc. from the Leasehold Mortgage Agreement, stating that the Leasehold Mortgage Agreement did not show that it was probated and registered and thus raised serious and material doubt as to the genuineness of the said agreement; that he could not remember executing the said Leasehold Mortgage as alleged by the Appellant bank, insinuating that the document was fraudulent. This Court observes further that Mr. Freeman did not out-rightly deny that the signature on the Leasehold Agreement was not his signature, but only that he could not remember signing the document. One not remembering signing a document is not strong enough evidence to deny a document where the person said to have executed said document should know his signature. The trial court rightly ruled that the inference of fraud relative to the agreement since it had failed to meet the probation and registration test was untenable and unsustainable as the issue can only be raised by a third party and that the failure of the appellant to probate and register the document does not of itself show or constitute fraud; besides, the issue of fraud should have been flagged at the admission of the document into evidence at the pre-trial conference. This document was not objected to at the pretrial conference and was agreed to form part of the documentary evidence to be presented at trial. Hence, we reject any argument that the document was not a valid instrument binding on the appellee or that it did not render the appellee a guarantor to the Facility Letter or restructured loan.

Further, the Leasehold Mortgage agreement concluded between the Appellant bank and the Appellee Consolidated Group Inc. makes a clear reference to the restructured loan between the appellant bank and Rodacon. In the mind of this Court, this is a clear indication that the restructuring of the loan was with the consent or acquiescence of the appellee. This Court is of the opinion that Appellee Consolidated Group Inc. further confirmed its consent to the restructuring of the loan by the Board of Rodacon Resolution authorizing the restructuring. The Court takes note of the fact that Consolidated Group Inc. is a fifty percent shareholder of the shares of Rodacon, and hence the Board of Rodacon could not have passed such resolution authorizing its General Manager and Finance Manager to enter the restructured loan (RMTL) which included the existing security support such as the corporate's guarantee from the Appellant Consolidated Group Inc. without the knowledge and consent of Consolidated Group, Inc. In addition, the resolution was signed by Mr. Simeon Freeman who is the Chairman of the Board of Rodacon and CEO of Appellee Consolidated Group Inc.

The Appellee Consolidated Group, Inc., further contended in its complaint before the court below that by the Appellant bank restructuring the loan with Rodacon, Consolidated Group, Inc., was released from its previous obligation and guarantee given for the initial loan of US$300,000.00.

We find this assertion made by the appellee to be in bad faith since Appellee Consolidated Group, Inc., had, in fulfilment of one of the preconditions to the execution of the second Facility Letter that dealt with the restructuring of the loan had in fact guaranteed in the Leasehold Mortgage Agreement to pay back the loan in the event that Rodacon defaulted in such repayment. The corporate guarantee wherein Appellee Consolidated Group, Inc., undertook to absorb any impact resulting from the US$3000,000.00 loan facility, was more of a supplement instrument, and as stated earlier, given the fact that the restructuring was to the benefit of Appellee Consolidated Group, Inc., it could not legally assert the claim that it was relieved of the corporate guarantee because it had not executed a new corporate guarantee document. If a guarantor consents to an extension, as is inferred from the circumstances in the instant case by the execution of a comparable instrument, the Leasehold Mortgage Agreement, relative to the principal obligation, the guarantor is not discharged by the extension (38 Am Jur 2d Guaranty, Sections 92 and 93). As stated before, the execution of several instruments by Consolidated Group Inc. was tantamount to consent to the restructuring of the loan and hence it cannot legally claim that the corporate guarantee originally issued by it was not extended by its conduct in regard to the extension of the original loan or the restructuring thereof, which was in and to the best interest of the Appellee.

We have found that the Appellant Consolidated, Inc. did consent to the loan and the release or discharge of the guarantor was limited to the amount of the debt for which the time of payment was extended. Under what parity of reason can the appellee believe it could be absolved having failed to liquidate this previous debt to the appellant bank which loan amount was restructured from a monthly payment of fifteen thousand United States Dollars (US$15,000.00) to a repayment of fourteen thousand, nine hundred and thirty five dollars and seventy three cents (US$14,935.73) in order to accommodate the Obligor Rodacon who seemed to be in some financial difficulty and which loan was restructured based on the influence and consent of the Appellee Consolidated Group, Inc. by and through its CEO? The record further reveals that when Rodacon again failed to meet up with its obligation under the restructured loan, there were exchanges between the parties regarding Rodacon's outstanding obligation to the Bank, like the letter of demand to the Appellee Consolidated Group, Inc. written by the legal counsel of the appellant bank, dated July 6, 2012, and the appellee's CEO, Mr. Simeon Freeman response in a letter dated July 20, 2012, in which he informed the appellant's lawyer, that he met the Management of Rodacon, and Rodacon's Board had reached a decision that the Appellant bank should declare how the amount of US$422,741.66 was arrived at. This Court has observed that the issue of the Appellant bank's demand from the Appellee Consolidated Group, Inc. for the loan payment under the restructured loan was never an issue between the parties; what seemed to have been an issue was how the Appellant bank arrived at the outstanding loan amount of US$422,742.65. Where the loan is restructured by the Rodacon, the Appellee Consolidated Group, Inc., the major guarantor of the loan consented and initiated the restructuring of the loan amount, the guarantor cannot claim discharged and released of its obligation under its corporate guarantee which in this case was put up for the initial loan obligation of US$300,000.00; and further in the Leasehold Mortgage Agreement for restructuring of the loan, where the appellee itself admitted that it was being granted a credit facility in the amount of Three Hundred Fifty Eight Thousand United States Dollars (358,000.00). Under our law, an admission of a party itself is admissible (1LCL revised, section 25.8.1).

Having perused the record of this case, this Court is convinced that yes indeed the appellee Consolidated Group, Inc., did consent to the restructuring of the loan and the appellee did continue its corporate guarantee for the restructured loan facility.

We therefore do not agree with the trial Judge's ruling that the awareness and knowledge of the restructured facility to Radacon by additional collaterals executed by the Appellee Consolidated Group, Inc. was not consent to by the Consolidated Group, Inc. to the restructured loan.

Having established from the foregoing that Consolidated Group, Inc. was a corporate guarantor under the first Facility Letter and remained a guarantor under the second Facility Letter which restructured the loan, we hold that the contention of Consolidated Group Inc. has no basis in law or in the facts presented. Hence, the said contention is dismissed. We proceed now to the disposition of the core issue in the case, i.e. the legality of the set off.

The Trial Judge ruled that even where there is consent to have a corporate guarantee transferred, carried forward, continued from a previous loan to a restructured one, a right of set-off against the appellee's account cannot be inferred; that the Appellant Ecobank had a right to call, and should have called the corporate guarantor upon default of Rodacon in keeping with the agreement or as otherwise provided by law; that absent an expressed agreement between the parties reserving unto the Appellant Ecobank the right of set-off against the Appellee Consolidated Group, Inc./guarantor's account, the debit of said account was illegal. Accordingly, she ruled adjudging the appellant Ecobank liable to the appellee Consolidated Group, Inc. for the unauthorized withdrawal of USD435, 476.97, statutory interest on money judgment, plus cost of the proceedings.

The trial judge's ruling is not only persuasive but also finds backing in law for several reasons: firstly, there is a distinction between the agreement granting the loan facility and the agreement surrendering collateral or offering guarantee for a credit facility. The former is squarely center on the receipt and repayment of cash facility on specified terms while the latter solely deals with the procedure for recovery by the creditor Bank in situation where the debtor customer fails and or refuses to pay. Secondly, in a loan agreement, the debtor is always a customer of the creditor Bank and is subject to the internal rules and procedure of Banking; whereas, under a guarantor agreement the only relationship between the Bank and the guarantor is the terms and conditions of the agreement under which the security is offered. Thirdly, the general rule under collateral, mortgage or personal guarantee agreement, unless expressly stated otherwise, is to either file a joint action of debt against the principal creditor and personal guarantor, or to foreclose on the collateral or mortgage through a court of competent jurisdiction and not by means of off-setting the amount by an unauthorized withdrawal of monies from the guarantor's account where said account is held by the creditor bank.

We must therefore review the wording of the credit documents including the security instruments executed by the appellee Consolidated Group Inc., to ascertain whether there was an expressed indication that in the case of default by the principal borrower Rodacon, the appellant bank could directly off-set the account of the guarantor appellee.

The Loan Facility Letter of September 5, 2011, reads as follows:

September 5, 2011

"Mr. Thomas Kaydee
Managing Director
Rodacon Liberia Limited
Monrovia, Liberia

Dear Sir,

Re: Facility Letter

We are pleased to advise that Ecobank Liberia Limited has approved your request for financing subject to the following terms and conditions:

Borrower: Rodacon Liberia Limited

Lender: Ecobank Liberia Limited ("the Bank")

Facility: Restructured medium term loan (RMTL)

Amount: US$358.458.00 (Three Hundred Fifth Eight Thousand Four Hundred Fifty Eight United States Dollars)

Purpose: To restructure a total outstanding of US$358,458.00 under an existing approved loan into twenty-four (24) months transactional medium term loan.

Repayment: To be paid in twenty-four (24) equal monthly installments of US$14,935.75 commencing September 30, 2011 and ending August 30, 2013

Expiry: August 30, 2013

Pricing
Facility fee: 1% flat on facility amount payable upfront upon disbursement of facility.

Interest rate: 13.25% per annum payable monthly in arrears.

Existing security/support:

Credit insurance bond covering the total restructured facility amount to be issued by a reputable insurance company acceptable to the bank.

1. Charge over company's fixed and floating assets (excluding landed property) valued over US$1,000,000.00.

2. Initial deposits of US$10,000.00 to be made before booking of restructured [loan].

3. Domiciliation agreement to include an undertaking to channel all of company's business through the bank.

4. General assignment of receivables from company's major clients to include reputable names acceptable to the bank.

5. Leasehold mortgage over commercial property Mr. Simeon Freeman value approximately US$500,000.00.

6. Secured demand promissory note.

7. Personal guarantee of company's principal shareholder, Mr. Simeon Freeman to be supported by his personal net worth statement to include an undertaking not to dispose of any assets without the consent of the bank.

8. Corporate guarantee from consolidated group Inc.

Conditions precedent
To drawdown:

1. Executed credit insurance bond covering the total restructured facility amount to be issued by a reputable insurance company acceptable to the bank.

2. Executed charge over company's fixed and floating assets (excluding landed property) valued over US1,000.000.00.

3. Executed domiciliation agreement to include an undertaking to channel all of company's business though the bank.

4. Executed general assignment of receivables from company's major clients to include reputable names acceptable to the bank.

5. Executed leasehold mortgage over commercial property Mr. Simeon Freeman value approximately US$500,000.00.

6. Executed secured demand promissory note.

7. Executed personal guarantee of company's principal shareholder, Mr. Simeon Freeman to be supported by his personal net worth statement to include an undertaking not to dispose of any assets without the consent of the bank.

8. Executed corporate guarantee from Consolidated Group Inc.

Legal fees: All legal fees, stamp, duties and other expenses associated with the documentation, perfection and administration of the facility including expenses relating to valuation of assets pledged as security and all costs associated with the recovery of the facility in case of default shall be for the account of Rodacon Liberia Limited.

Event of default

1. The following events shall constitute events of default:

a) Non-payment of principal on due dates.
b) Breach of any of the conditions relating to the facility.
c) Material adverse change in the financial position of the borrower.

1. In the event of default as per sub cause 1(a) above, the bank shall, forthwith and without notice to the customer, charge a rate per annum of 25% on the sums outstanding from the date of default up to the date of actual payment (as well after as before judgment).

2. Regarding all events of default, if the Customer shall fail or be unable to remedy such default within thirty (30) days of receipt of written notice thereof from the bank, the bank shall reserve the right to call in the facility.

3. Ecobank may at any time by notice to the borrower suspend the right of the borrower to disbursements or cancel the undisbursed portion of the facility in whole or in part if in the reasonable opinion of the bank an event or condition has occurred which has or can reasonably have a material adverse effect on the facility or its repayment.

Kindly indicate your acceptance of the terms and conditions of this offer by returning to us the attached copy of this offer letter duly signed.

We are delighted to have been able to arrange the facility for you and we trust that this will further strengthen our existing business relationship.

Yours faithfully,

Emmanuel Togba
Head, Local Corporates and SME

Kola Adeleke
Managing Director

Accepted for and on behalf of Rodacon Liberia Limited

Name: Thomas K. Kaydee
Signature:_______________
Title: General Manager
Date: 28th November 2011

Name: Shibi Chandradas
Signature: ____________
Title: Finance Manager
Date: 28th November 2011"

A review of the credit document above did not indicate or authorize the Bank to off-set the appellee guarantor account rather it says that in the 'event of default' (clause 3) the Bank reserved the right to call the facility and further continue the execution of several documents as a security to the loan. Clause 5 & 8 of "Condition Precedent to Drawdown" of the loan which was brought forward was the execution of a leasehold mortgage over commercial property of Mr. Simeon Freeman, value approximately at US$500,000.00 and a corporate guarantee from the Consolidated Group, Inc. which reads as follows: "Consolidate Group Inc. hereby guarantees that it will absorb any impact resulting from Rodacon inability to liquidate the $300,000.00 facility provided by Ecobank Liberia"

We are not inclined to see how the phrase 'reserved the right to call the facility' grants the appellant bank ultimate authority to unilaterally set-off the appellee's account, and as with the trial Court, we are also not convinced that appellee guarantee to absorb any impact as stated in the appellee's guarantee particularly required that the appellant bank could automatically, upon default of the payment of the loan set-off the loan against Consolidated Group, Inc. account. This Court observes that not only did the appellant bank not require authorization to set off the deposit account of the appellee to pay off the loan amount of Rodacon in the event of a default, but the records reveal that the appellant bank instead opted for a different mode to pursue in case of a default by the obligor, Rodacon. The appellant bank required and obtained from Appellee Consolidated Group Inc. a Leasehold Mortgage Agreement, dated August 31, 2011, in support of the new

Facility Letter, and signed by Mr. Simeon Freeman. The conclusion can therefore be reached as a matter of law that there was no such intention of the appellant and the appellee, and hence the appellant bank could not resort to that course in seeking to recover the loan amount. Given that the party, Appellee Consolidated Group Inc., whose deposits account the appellant bank set off, was not the borrower or debtor, but rather only the guarantor, and it had executed an instrument, the Leasehold Mortgage Agreement, signed both by it and the Bank, as the security of the debt, this was the course as to which there was mutuality of assent. Indeed, even in the case where the deposits belonged directly to the debtor or obligor, the law is that there must be mutuality of assent.

Our further review of the leasehold mortgage agreement in order to see whether it is expressly stated that the Bank could set-off the loan against the appellant's account, shows that the controlling clause for default and recovery under the mortgage agreement specifically grant the Bank, the mortgagee, an authority to foreclose the mortgage with or without further notice to the appellee, the mortgagor, should there be a failure on the mortgagor part to perform its obligation as a security under the agreement and nothing more.

Clause 5 of the mortgage agreement reads:

> "5. Should the Mortgagor at any time fail to pay any part of the principal or interest when due, or fail to perform any covenants and agreements mentioned in this mortgage, the entire outstanding amount of principal and interest secured by this mortgage shall become due and collectable at once, at the option of the Mortgagee, and this mortgage may, without further notice, be foreclosed for the whole or any unpaid balance of the debt secured by it, including principal, interest and costs."

It is trite law that loan recovery under a mortgage agreement shall be brought by an action to foreclose mortgage in a court having jurisdiction over the matter in dispute. There being no agreement authorizing the appellant bank to set off the loan amount against the account of the appellee, we uphold the ruling of the lower court that the said action by the appellant bank was illegal and wrongful.

Further, we are in agreement with the appellee that the manner in which the appellant bank proceeded deprived the appellee of the opportunity of the due process of law, especially as the method pursued by the appellant bank was in deviation from the undertakings made by the appellee. We are of the considered view that in entering into the Leasehold Mortgage Agreement and other agreements, the appellant and the appellee clearly contemplated that the parties would take resort to the courts in the event of a default by Rodacon in the payment of the loan amount rather than that the appellant would proceed to set off the deposits in the appellee's account held with the appellant bank. Moreover, had the parties agreed that the appellee's deposit account could be set off by the appellant bank once there was a default in the repayment of the loan amount by Rodacon, the conclusion could be drawn that the appellee had opted to waive the right of due process of law. However, nothing in the records show that the appellee waived the right of due process before the appellant bank could seize and withhold the deposit from the Appellee's account held with the Appellant bank. This Court has held, and we reaffirm that holding, that unless a party waives the right to the due process guaranteed by the Constitution and the statute, it cannot be deprived thereof. Perhaps the lesson from the experience in the instant case is that financial institutions will as a condition for granting loans enshrined in the loan agreement a clause that expressly vest in it's the right to set off the depositor or guarantor's deposits held with the bank without resorting to any court action.

Additionally, as the records reveal that there were some disputes regarding the exact amount due to and recoverable by the appellant bank from Rodacon on the loan, it was more prudent and also legal that the Appellant bank should have embarked on a remedy in a court of competent jurisdiction where the same results could have been achieved and the due process observed.

Our Constitution guarantees that under the facts and circumstances narrated in this case the observance of due process is important, and that could only be assured by the appellant bank resorting to the courts. In deciding as we have, we are showing no sympathy for the appellee. It has an obligation to ensure that the loan is paid in full. All that we state is that the appellant in seeking recovery of the loan amount must also follow the procedure and the process prescribed by or anticipated by the law so that the judicial mechanism and the judicial process, including the constitutional due process, are secured and protected.

WHEREFORE AND IN VIEW OF THE FOREGOING, the trial court's ruling adjudging the appellant Ecobank liable to the appellee Consolidated Group, Inc. for the unauthorized and therefore wrongful withdrawal of USD435,476.97, from the deposit account of the Appellee held with the Appellant bank, is hereby confirmed and affirmed. Our affirmance of the trial court's judgment in no way relieves Rodacon of its obligation to the appellant bank to repay the loan upon which it has defaulted or that it relieves Appellee Consolidated Group, Inc. from absorbing the obligation, as it is legally required to do in good faith as per the undertakings made under the corporate guarantee and the Leasehold Mortgage Agreement. Accordingly, we hold further that the appellant bank is at liberty to use all of the available legal channels to have the appellee, as guarantor under the corporate guarantee and Mortgagor under the Leasehold Mortgage Agreement, as well as Rodacon, jointly and severally, to pay back the entire loan amount owed, plus any and all interests due thereon as per the second Facility Letter.

The Clerk of this Court is ordered to send a mandate to the Court below to resume jurisdiction and proceed to give effect to this Judgment. **AND IT IS HEREBY SO ORDERED.**

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS ROSEMARIE B. JAMES AND EMMANUEL B. JAMES OF THE INTERNATIONAL GROUP OF LEGAL ADVOCATES AND CONSULTANTS, INC. APPEARED FOR THE APPELLANT. COUNSELLOR C. ALEXANDER ZOE OF THE ZOE AND PARTNERS LAW OFFICES APPEARED FOR THE APPELLEE.