

**Not For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**IN RE: RODNEY E. MILLER, SR.,**

Petitioner.

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) **S. Ct. Civ. No. 2008-080**  
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) Re: Super. Ct. ML No. 003/2008  
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On Petition for Writ of Mandamus  
Considered and Filed: November 17, 2008

**BEFORE: RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and  
**IVE ARLINGTON SWAN**, Associate Justice.

**ATTORNEYS:**

**Adriane J. Dudley, Esq.**

Dudley, Clark & Chan

St. Thomas, U.S.V.I.

*Attorney for Petitioner*

**Denise George-Counts, Esq.**

Assistant Attorney General

St. Thomas, U.S.V.I.

*Attorney for Respondent Government of the Virgin Islands*

**ORDER OF THE COURT**

**PER CURIAM.**

**THIS MATTER** is before the Court on Rodney E. Miller, Sr.’s (hereafter “Petitioner”) Petition For Writ of Mandamus filed with this Court on October 17, 2008. Petitioner primarily argues that the Superior Court exceeded the lawful exercise of its subject matter jurisdiction when it issued an August 5, 2008 Temporary Restraining Order (“TRO”) pursuant to title 14, section 606(h) of the Virgin Islands Code. The TRO restrained activity on several enumerated stateside and Virgin Islands bank accounts and real properties owned by Petitioner, among

others. Petitioner requests that this Court issue a writ of mandamus “to confine the lower court to its lawful exercise of jurisdiction within the territory of the Virgin Islands.” (Petition at 31.)

In our Opinion and Order entered on September 26, 2008, when this Court denied Petitioner’s earlier request for a writ of mandamus on mootness grounds, we wrote that “[a] writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances.” *In re: Rodney E. Miller, Sr.*, Civ. No. 2008-074, slip op. at 3 (V.I. Sept. 26, 2008). We further stated that “[a] petitioner must establish that he has no other adequate means to attain the relief requested and that his right to the writ is clear and indisputable.” *Id.* (citing *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34, 101 S.Ct. 188, 190, 66 L.E.2d 193 (1980)). Notably, we held that “we may not issue a writ of mandamus if Petitioner can obtain the relief sought by bringing an appeal in this Court.” *Id.* (citing *In re: Le Blanc*, Civ. No. 2007-079, 2008 WL 2625225, at \*3 (V.I. June 26, 2008)). We concluded by informing Petitioner that if he “[sought] to challenge the merits of the TRO, he may do so only by following the normal appellate process.” *Id.*

In this case, Petitioner requests a writ of mandamus on the grounds that the Superior Court purportedly lacks subject matter jurisdiction over property located outside of the Virgin Islands. Because one may appeal, as of right, a Superior Court order “granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions,” an interlocutory appeal—not a writ of mandamus—is the appropriate vehicle for the relief Petitioner seeks.<sup>1</sup> *See* V.I.S.C.T.R. 5(a)(2); 4 V.I.C. § 33(b)(1). Accordingly, it is hereby

**ORDERED** that the Petition for Writ of Mandamus is **DENIED**. It is further

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<sup>1</sup> As a general rule, temporary restraining orders are not appealable interlocutory orders. *See Vuitton v. White*, 945 F.2d 569, 573 (3d Cir. 1991). However, temporary restraining orders that are continued, without the consent of the parties, for a substantial length of time past the period typically permitted by statute or court rule become, in effect, appealable preliminary injunctions. *See Connell v. Dulien Steel Products, Inc.*, 240 F.2d 414, 417 (5th Cir. 1957). Here, although 14 V.I.C. § 606(h) states that a temporary restraining order shall expire within sixty days absent an extension for good cause, the Superior Court has extended the August 5, 2008 TRO beyond the typical sixty day period. Accordingly, the TRO has effectively become an appealable preliminary injunction.

**ORDERED** that copies of this Order be served on the parties' counsel.

**SO ORDERED** this 17th day of November, 2008.

**ATTEST:**

**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**