

Not for Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

DAVID GOULD,) **S. Ct. Civ. No. 2010-0098**
Appellant/Plaintiff,) Re: Super. Ct. Civ. No. 587/2008 (STT)
)
v.)
)
MOHAMMED S. SALEM and)
ZAINA Z. SALEM,)
Appellees/Defendants.)
)
)
)
_____)

On Appeal from the Superior Court of the Virgin Islands
Considered: June 14, 2011
Filed: May 31, 2012

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

APPEARANCES:

James M. Derr, Esq.,
St. Thomas, U.S.V.I.
Attorney for Appellant

Kyle R. Waldner, Esq.,
Smock & Moorehead
St. Thomas, U.S.V.I.
Attorney for Appellees

OPINION OF THE COURT

CABRET, Associate Justice.

David Gould appeals from the Superior Court’s December 7, 2010 post-judgment order requiring him to release money, which Gould’s attorney had held in escrow, to Mohammed S. Salem and his wife Zaina Z. Salem. In his appeal, Gould argues that the Superior Court erred by requiring him to release the money, because it lacked the authority to alter its earlier final judgment. Because we cannot determine what authority the Superior Court relied upon to order

the release of the money, we remand the case to the Superior Court to clarify the basis of its order.

I. FACTS AND PROCEDURAL HISTORY

On July 5, 2000, Gould sold three parcels of land¹ to the Salems. In exchange, the Salems promised to pay Gould a total of \$100,000 plus interest. According to the note governing the payment schedule, the Salems agreed to pay Gould by making monthly payments for fifteen years. Gould secured the Salems' promise to pay with a mortgage on the properties. At some point during the fifteen year payment period, the Salems fell behind on their mortgage payments and defaulted on the note.

On December 3, 2008, Gould filed an action in the Superior Court against the Salems to foreclose on the properties and collect the unpaid balance of the note. Then, on February 12, 2009, Gould moved for summary judgment. The Salems did not oppose Gould's motion, and, on December 16, 2009, the Superior Court entered an order granting summary judgment in favor of Gould. However, the Superior Court "stayed execution on said judgment for a period of one hundred and twenty (120) days to allow [the Salems] time to pay the entire balance due under the Note and Mortgage." (App. 51.) The Salems did not pay the balance due within that period, and, on June 3, 2010, Gould filed a motion for entry of judgment. On June 18, 2010, before the Salems responded to Gould's motion, the Superior Court issued a judgment against the Salems in the amount of \$83,936.18. The judgment also foreclosed on the properties, ordered the properties to be sold at a Marshal's sale, and ordered that if the properties sold for less than the

¹ The three parcels of land are: (1) Parcel 4D-5B Estate St. Joseph and Rosendahl, No. 4 Great Northside Quarter, St. Thomas, Virgin Islands, (2) Parcel 4D-5A Estate St. Joseph and Rosendahl, No. 4 Great Northside Quarter, St. Thomas, Virgin Islands and (3) Parcel 4D-4A Estate St. Joseph and Rosendahl, No. 4 Great Northside Quarter, St. Thomas, Virgin Islands.

amount of the judgment, Gould would have a deficiency judgment against both of the Salems for the remaining balance.

Three days later, the same day the Superior Court entered the judgment, the Salems filed an opposition to Gould's motion for entry of judgment, arguing, among other things, that (1) if the properties sold for less than the amount of the proposed judgment, Gould should have a deficiency judgment against Mohammed Salem only and not his wife Zaina, because Zaina did not sign the promissory note, and (2) Gould erred in calculating the proper amount of the proposed judgment by not including a June 1, 2009 check in the amount of \$6,084, which the Salems paid toward the balance of the loan and by including unbilled past property taxes.² Despite the fact that the Salems filed their opposition on the same day the Superior Court entered the judgment, the Superior Court nevertheless responded to the Salems' opposition by entering an order and amended judgment recalculating the amount of the judgment as \$74,681.69, which still included the amount of the unbilled property taxes, but was reduced to recognize the payment of \$6,084 represented by the June 1, 2009 check. The order also indicated that any deficiency judgment resulting from a sale of the properties for less than the amount of the judgment would be against only Mohammed Salem, and not his wife Zaina. The Salems did not appeal the amended judgment and a Marshal's Sale of the properties was scheduled for October 20, 2010.

² In 2003, the Government of the United States Virgin Islands was temporarily barred from issuing real property taxes and subsequently forced to issue real property taxes at the 1998 assessment level for taxes assessed from tax year 1999 until tax year 2009. *See Berne Corp. v. Gov't of the V.I.*, Civil Nos. 2000-141 *et seq.*, 2011 WL 182862, at *1-3, *9 (D.V.I. Jan 20, 2011) (unpublished). Litigation over this issue continued for the next eight years, resulting in great delays in the government's issuance of tax bills on real property. Due to these delays, the Salems had yet to receive tax bills for tax year 2004 through tax year 2009 at the time of the judgment.

At some time prior to the Marshal's Sale, the Salems located a financial backer, a relative, enabling them to redeem³ the properties. On October 18, 2010, the Salems filed a motion for relief from judgment pursuant to Rules 60(b)(5) and (6) of the Federal Rules of Civil Procedure. Gould opposed that motion. On the day of the scheduled sale, the Salems tendered the entire amount of the amended judgment, but the parties agreed that the amount of the disputed property taxes would be escrowed until the Superior Court took further action. The Salems then filed a "Motion for Release of Funds in Excess of Judgment," renewing their Rule 60(b) motion and also seeking relief from the amended judgment pursuant to 28 V.I.C. § 538 and the Superior Court's inherent authority. Gould opposed this motion.

On December 7, 2010, the Superior Court entered an order requiring Gould to turn over the escrowed property tax monies to the Salems. The court did not specify the basis upon which it entered the order, only writing that "[the] matter [came] before the Court on Defendants' Motion for Release of Funds." (App. ii.) On December 10, Gould filed a timely appeal of the December 7, 2010 Order. *See* V.I. S. CT. R. 5(a)(1). In his appeal Gould argues that the Superior Court erred by granting the Salems' motion for release of the funds, because it did not have the authority to do so under Federal Rules of Civil Procedure 60(b)(5) or 60(b)(6), 28 V.I.C. § 538, or any other legal authority.

II. JURISDICTION

This Court has jurisdiction over this civil appeal pursuant to title 4, section 32(a) of the Virgin Islands Code, which provides that "[t]he Supreme Court shall have jurisdiction over all

³ Redemption, for real estate purposes, is the "payment of a defaulted mortgage debt by a borrower who does not want to lose the property." Black's Law Dictionary 1390 (9th ed. 2009). In the Virgin Islands, the rights of a debtor facing foreclosure of real property are controlled by 28 V.I.C. §§ 531-538. Specifically, 28 V.I.C. § 535 permits a debtor to redeem real property even after the court enters judgment against the debtor and even after the property is sold at a foreclosure sale, so long as the debtor redeems within six months of the confirmation of the sale of the property.

appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.” V.I. CODE ANN. tit. 4 § 32(a). Because the December 7, 2010 order disposed of the last matter that had been submitted to the Superior Court for adjudication, it constitutes a final order for the purposes of this statute. *See e.g., Bryant v. People*, 53 V.I. 395, 401 (V.I. 2010) (explaining that a final judgment is one which ends the litigation on the merits and which disposes of the whole subject of the litigation).

III. DISCUSSION

Gould argues that the Superior Court lacked the authority to order his attorney to release the money set aside for the unbilled property taxes. As Gould points out, the Superior Court’s order requiring Gould’s attorney to release to the Salems the \$13,784.73 set aside for unbilled taxes, does not state the authority giving the Superior Court that power. The order states that the Salems “paid the full amount of the Court’s Judgment in order to prevent the [Marshal’s] sale” and that “[p]ermitting [Gould] to retain the escrowed funds when [he] no longer has an interest in the subject propert[ies] . . . would create a windfall for [Gould] and visit a hardship on [the Salems].” (App. ii.) However, in the Salems’ Motion for Release of Funds in Excess of Judgment, which prompted the Superior Court to issue the order in question, the Salems argued that the Superior Court had the power to order the release based on Federal Rules of Civil Procedure 60(b)(5) and 60(b)(6), 28 V.I.C. § 538, and the court’s own inherent authority. If the Superior Court ordered the release pursuant to Federal Rule of Civil Procedure 60(b)(5) or Federal Rule of Civil Procedure 60(b)(6), we would review that decision for abuse of discretion. *See Budget Blinds, Inc. v. White*, 536 F.3d 244, 251 (3d Cir. 2008) (explaining that “grants or denials of relief under Rule 60(b), aside from those raised under Rule 60(b)(4)” are reviewed for abuse of discretion). *See also Martin v. Martin*, 54 V.I. 379, 387 (V.I. 2010). If the Superior

Court ordered the release pursuant to 28 V.I.C. § 538, we would apply plenary review to that decision. *See V.I. Public Servs. Comm'n v. V.I. Water & Power Auth.*, 49 V.I. 478, 483 (V.I. 2008) (explaining that we apply plenary review to the Superior Court's application of law, including questions of statutory construction). Nevertheless, the Superior Court's order does not refer to any source of authority, either directly or indirectly. Without knowing what source of authority the Superior Court relied upon in ordering the release, or the court's reasoning for acting pursuant to such authority under the facts of this case, this Court cannot determine whether the Superior Court erred in ordering the release of funds set aside for the unbilled taxes. *See Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465, 470 (6th Cir. 2007) (vacating order which set aside a consent judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) and remanding the case to the trial court because "[t]he record before [the appellate court] provide[d] no basis upon which [the appellate court could] hold that the [trial] court acted within its discretion in granting relief from judgment . . ."). Here, we cannot review an order based on Federal Rule of Civil Procedure 60(b)(5), absent an explanation as to how the court's earlier judgment was satisfied. *See Fed. R. Civ. P. 60(b)* ("On a motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged . . ."). Similarly, we cannot review an order based on Federal Rule of Civil Procedure 60(b)(6), without an explanation as to what extraordinary circumstances justified granting this relief. *See Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 273 (3d Cir. 2002) (explaining that Rule 60(b)(6) "provides for extraordinary relief and may only be invoked upon a showing of exceptional circumstances") (quotation marks and citations omitted). And, finally, we cannot review an order based on 28 V.I.C. § 538, without an explanation as to why 28 V.I.C. § 538 applies to this situation and how the court

determined the “amount then due,” such that the judgment was terminated as to that amount. *See* 28 V.I.C. § 538 (explaining that if “the amount then due, with the costs of action, is brought into court, and paid to the clerk . . . after judgment and before sale, the effect of the judgment as to the amount then due and paid shall be terminated”). Accordingly, this case is remanded to the Superior Court for the court to indicate the authority under which it ordered the release.

IV. CONCLUSION

The Superior Court granted the Salems’ Motion for Release of Funds in Excess of Judgment without explaining the source of its legal authority to do so. Absent any explanation grounded in legal authority, we cannot determine whether the Superior Court abused its discretion or erred in granting the Salems’ motion. Accordingly, we remand this matter to the Superior Court for the court to explain the basis of its order.

Dated this 31st day of May, 2012.

FOR THE COURT:

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court