

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

ELBE V. BRATHWAITE,	)	S. Ct. Civ. No. 2017-0037
Appellant/Plaintiff,	)	Re: Super. Ct. Civ. No. 375/2013(STT)
	)	
v.	)	
	)	
PHILLIP XAVIER d/b/a	)	
GARY'S MARINE SERVICE,	)	
Appellee/Defendant.	)	
	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Renee Gumbs Carty

Considered and Filed: August 27, 2019

Cite as: 2019 VI 1U

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

APPEARANCES:

Dana M. Hrelac, Esq. (Argued)
Horton, Dowd, Bartschi & Levesque P.C.
Hartford, CT

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The Pate Law Firm
St. Thomas, U.S.V.I.
Attorneys for Appellant,

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Attorney for Appellee.

OPINION OF THE COURT

CABRET, Associate Justice.

¶ 1 This matter is before the Court on Appellant’s post judgment motion for clarification of this Court’s July 16, 2019 opinion, filed July 26, 2019, and Appellee’s response to that motion, filed August 6, 2019. Specifically, Appellant seeks clarification as to whether the new trial ordered in this matter is limited to the issue of damages.

I. MOTION FOR CLARIFICATION

¶ 2 There is no provision in our rules authorizing motions for clarification; rather, if a party believes that the Supreme Court has “overlooked or misapprehended” any “points of law or fact,” the appropriate remedy is a petition for rehearing under Rule 31 of our Rules of Appellate Procedure. V.I. R. APP. P. 31(a). However, courts in other jurisdictions regularly consider motions for clarification to provide parties with a remedy, short of pursuing additional litigation, in the case of ambiguity in a judgment. *See U.S. Equities Corp. v. Ceraldi*, 200 A.3d 747, 750 (Conn. App. Ct. 2018) (“Motions for interpretation or clarification, although not specifically described in the rules of practice, are commonly considered by trial courts and are procedurally proper.” (internal citations omitted)); *Duquesne Light Co. v. EPA*, 481 F.2d 1, 2 (3d Cir. 1973) (providing clarification of a prior Third Circuit decision when the judgment was “enigmatic”); FLA. R. APP. P. R. 9.330(B). Motions for clarification can be used to clarify either the words or the intent of a decision; for example, a motion for clarification might be appropriate to explain the purpose and specific requirements of a remand when such were not clear from the original order. *See St. Joe Minerals Corp. v. EPA*, 508 F.2d 743, 745 (3d Cir. 1975); *C.C. v. Dep’t of Children & Families*, 946 So. 2d 548 (Fla. App. 5th 2006); *White v. Principi*, No. 00-1062, 2001 U.S. App. Vet. Claims LEXIS 142 (Ct. Vet. App. Feb. 28, 2001) (unpublished). Motions for clarification may be considered in the limited circumstances in which a party is justifiably unclear as to this Court’s

meaning and we can appropriately answer the question without considering additional arguments, thus avoiding the burdens of additional litigation.

¶ 3 A motion for clarification may not, however, be used to substantively modify a judgment or to protest new proceedings in the lower court. *U.S. Equities*, 200 A.3d at 750. Similarly, if a lower court has begun procedures that a party feels are not consistent with the appellate court's judgment, the appropriate remedy is to seek a writ of mandamus rather than to file a motion for clarification. *Venda Co. v. Lektro-Vend Corp.*, 434 U.S. 425, 427-28 (1978).

¶ 4 In this case, Appellant seeks to clarify the scope of a new trial on remand as well as the identities of the parties, before any additional procedures in the Superior Court. As regards a new trial, Appellant argues that this Court's July 16, 2019 opinion is ambiguous because the direction for remand specifically notes that the errors could affect only damages calculations, but the order for a new trial does not expressly limit the trial to the issue of damages. This question is appropriate for a motion for clarification because it seeks solely to define the parameters of the remand. Moreover, requiring Appellant to pursue this question through the means explicitly granted in our rules, a Rule 31 petition for rehearing, would impose substantial, disproportionate, and unnecessary burdens on the parties and on the judicial system. Thus, in these limited and exceptional circumstances, we will grant the motion for clarification on the scope of the new trial. We will also address the question of the identities of the parties, although in general this is not an appropriate question for a motion for clarification; the parties bound by a civil judgment are the parties named in the case. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) (“[O]ne is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.”) (internal quotation marks omitted).

II. SCOPE OF REMAND

¶ 5 Our July 16, 2019 opinion identified three errors committed by the Superior Court in entering its April 5, 2017 judgment: (1) the court’s failure to conduct the requisite Banks analysis before dismissing Appellant’s claim for gross negligence and accompanying request for punitive damages; (2) the court’s exclusion of portions of the expert testimony of Dr. Weisher; and (3) the court’s decision to instruct the jury on comparative negligence in the absence of any supporting evidence. And while we concluded that the first of these errors was ultimately harmless, the second and third errors both constituted grounds for reversal.

¶ 6 With respect to the exclusion of Dr. Weisher’s testimony, we explained that the Superior Court’s April 5, 2017 judgment would be vacated, and the matter remanded for a new trial “because we cannot say with any degree of certainty how the inclusion of testimony from Dr. Weisher about additional injuries suffered by Brathwaite may impact the jury’s verdict with respect to damages.” *Brathwaite v. Xavier*, 2019 VI 26 ¶ 13 (emphasis added). Thus, because the excluded portions of Dr. Weisher’s testimony concern only the extent of the injuries suffered by Brathwaite and bear no relevance to the issue of Xavier’s liability, the Superior Court’s error in excluding this testimony warrants a new trial only as to the issue of damages. Likewise, the Superior Court’s error in instructing the jury on comparative negligence could only have impacted the jury’s verdict with respect to damages, and therefore constitutes grounds for ordering a new trial solely as to this issue.

¶ 7 In his response, Appellee seeks further clarification “as to whether the claims are limited to Gary Xavier d/b/a Gary’s Marine Service, and not Mr. Xavier individually, as the Superior Court’s dismissal of claims against Mr. Xavier was not appealed.” Appellee’s request is somewhat

perplexing as we cannot find, and Appellee has failed to indicate, any part of the record before us identifying claims against either “Gary Xavier d/b/a Gary’s Marine Service” or “Phillip Xavier, individually” as parties to this matter. However, we note that both the Superior Court’s April 5, 2017 judgment and the Appellant’s Notice of Appeal identify the sole defendant in this matter as Phillip Xavier d/b/a Gary’s Marine Service. Thus, our July 16, 2019 opinion and accompanying order concern only claims between Elbe Brathwaite and Phillip Xavier d/b/a Gary’s Marine Service, as these are the only two parties identified in this appeal.

III. CONCLUSION

¶ 8 For the reasons discussed above, we grant Appellant’s motion for clarification and order that the new trial in this matter required by this Court’s July 16, 2019 order shall be limited in scope to damages.

Dated this 27th day of August, 2019.

BY THE COURT:

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

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