

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX

MAUDE CORNELIUS,	)	
	Plaintiff)	CASE NO.: SX-18-RV-008
	Appellant,)	
v.	)	Appeal from Magistrate Division
	)	(SX-17-SM-122)
HOME DEPOT,	)	
	Defendant)	
	Appellee.)	2019 VI Super U98

MEMORANDUM OPINION

¶ 1 THIS MATTER is before the Appellate Division on Plaintiff Appellant Maude Cornelius’ Petition for Review from a Judgment of the Magistrate Judge in the Small Claims Division, entered September 13, 2018. Petition for Review was timely filed September 27, 2018.¹ Counsel for Defendant Appellee Home Depot has noted an appearance but has filed no other response to the Petition for Review. For the reasons that follow, the Judgment will be affirmed.

BACKGROUND

¶ 2 This matter arises from Cornelius’ purchase and installation from Home Depot of an allegedly defective granite countertop in March 2012. The record includes no original documents of the purchase. However, a Product Specification Sheet typically given to and signed by Home Depot customers of granite countertops was introduced into evidence, with the following language: “Sealing: All countertops are sealed twice prior to installation. Annual sealing is recommended to enhance continued stain resistance,” and “Staining: Granite countertops are stain-resistant when properly sealed and maintained.”

¶ 3 The parties both estimate that Cornelius paid approximately \$3,000 for the countertop, including installation. Following the purchase, during installation, the installer informed Cornelius how to maintain the countertop. Sometime during the following year, Cornelius called Home Depot to complain about staining on the countertop. On March 18, 2013, Jack Bishop, an independent contractor in charge of installing the countertop, had an installer visit Cornelius’ home to remove stains. During this visit and

¹ Superior Court Rule 322 was amended effective December 1, 2018, requiring the filing of a notice of appeal within 14 days of entry of the judgment or order from which the appeal is sought. Except in “highly extraordinary and unusual cases” where ordered by the reviewing court, no separate brief is required, and the appeal is determined based upon the notice of appeal (here “Petition for Review”) and the record below. (*Cf.*, Rule 322(c)(5)(ii) and Rule 322.1(i)(A).)

subsequent visits, installers advised Cornelius again regarding care and maintenance of the countertop. On one visit the installer resealed the granite himself and again explained to Cornelius the sealant procedure and how to care for and maintain the countertop.

¶ 4 In March 2016, Cornelius visited Home Depot without a receipt and showed an employee, Tammeka Navarro Osario, photos of the countertop that showed rust. Navarro testified that Cornelius' request for relief from the store was denied because her warranty had expired two years earlier. The same month, Cornelius filed a consumer complaint with the Virgin Islands Department of Licensing and Consumer Affairs. On April 6, 2016, the Department closed the complaint file because "the investigation indicated no violation or illegal conduct of the Virgin Islands Code taking place."

¶ 5 On April 24, 2017, Cornelius filed a Complaint in the Small Claims Division for damages, alleging that "Home Depot installed complete kitchen with granite countertop that is ineffective." With the Complaint, Cornelius submitted photographs of the countertop, and asked for judgment in the amount of \$10,000.

¶ 6 While the case was pending, Home Depot hired Stoneworks Granite and Marble del Caribe, Inc. to complete a report of the state of the countertop. The report, dated July 19, 2017, concluded: "The top was not sealed periodically... The surface of the counter tops is very stained. Our opinion is that this could be the result of a poor maintenance by the customer after the installation. The periodic sealing is very important to avoid the liquid absorption and the stains."

¶ 7 At the Small Claims hearing July 25, 2017, Cornelius testified that Home Depot sent a specialist to her home to view the countertop. Cornelius discussed the problem with Home Depot's corporate office and was advised that because her one-year warranty had expired, Home Depot could not replace the countertop at no cost. However, the corporate office offered to replace the countertop at a discounted rate.

¶ 8 After hearing from both parties, the Court requested that Home Depot provide the names of the installers who would be subpoenaed to testify at a second hearing to be set, and to provide a copy of the agreement signed by Cornelius which set forth the warranty and its expiration date. At the subsequent hearing on February 20, 2018, after testimony from both sides, the parties agreed in open court to resolve the dispute. They agreed that independent contractor Jack Bishop would replace the existing granite countertop with a new quartz countertop, to be provided by Bishop's company, at an estimated value of approximately \$6,800. The parties agreed that Cornelius would be responsible to pay \$5,000 for the

countertop and its installation cost directly to Bishop. Home Depot would cover all costs in excess of \$5,000. The parties further agreed that Home Depot would supply to and install for Cornelius a new sink and faucet at no charge. In furtherance of that agreement, the Court stated that it would “enter a judgment in favor of Ms. Cornelius and against Home Depot and fashion my order to accommodate the new countertop, the new sink and new faucet...” Hearing Tr. Feb. 20, 2018, p.35: 9-12. The Court set a follow-up hearing for May 1, 2018 (later continued to May 29, 2018) “just to keep tabs on it” and in order that the parties’ agreement “won’t slip through the cracks.” *Id.* p. 34: 1, 19-20.

¶ 9 At the hearing on May 29, 2018, Cornelius appeared personally and Home Depot appeared through its representative Tammeka Navarro Osorio. Independent contractor Jack Bishop and Home Depot’s representative advised that they were having difficulties communicating with Cornelius, who had yet to approve the written agreement for the replacement of the countertop. Accordingly, pursuant to V.I. R. Civ. P. 58, Home Depot moved for entry of written judgment, asking the Court to uphold the February 20, 2018 agreement as recited by the parties and approved by the Court.

¶ 10 By Judgment entered September 13, 2018, the Court granted Home Depot’s motion, stating “as per the agreement made between the parties on February 20, 2018, the Plaintiff shall be responsible for paying \$5,000 directly to Mr. Jack Bishop for a Quartz countertop. The balance of the payment for the countertop will be paid by the Defendant directly to Mr. Bishop; and it is further ordered that the Plaintiff shall meet with Jack Bishop within (15) days of receipt of this Judgment and finalize the contract for the replacement of the countertop.” On September 27, 2018, Cornelius timely filed her Petition for Review.

JURISDICTION AND STANDARD OF REVIEW

¶ 11 A final judgment of the Magistrate Division that resolves completely the merits of a small claims case over which it has original jurisdiction pursuant to 4 V.I.C. § 123(a)(4) is immediately appealable to the Appellate Division in accordance with Super. Ct. R. 322(a). The original case file, including all exhibits and evidence taken by the Magistrate Judge in consideration of the case, including the written transcript of proceedings, constitutes the record on appeal. Super. Ct. R. 322(b)(6)(i). No additional evidence shall be taken or considered. Super. Ct. R. 322.3(a). Because the record is deemed to be sufficient, there is no need on this appeal to schedule and hear oral argument of the parties. *See* Super. Ct. R. 322(c)(1).

¶ 12 Factual determinations are reviewed for clear error, and legal findings, statements of law, and the application thereof, are to be afforded plenary review. Super. Ct. R. 322.3(b)(1) and (2).

DISCUSSION

¶ 13 The Court applies a deferential standard to the Magistrate Judge's findings of fact that will only be overturned for clear error. "Clear error is a very deferential standard; an appellate court should only reverse a factual determination as being clearly erroneous if it is 'completely devoid of minimum evidentiary support or ... bears no rational relationship to the supportive evidentiary data.'" *In re Estate of Small*, 57 V.I. 416, 430 (V.I. 2012) (citing *Rainey v. Hermon*, 55 V.I. 875, 880 (V.I. 2011) (quoting *Hodge v. McGowan*, 50 V.I. 296, 316 (V.I. 2008))).

¶ 14 The Magistrate Judge determined as a finding of fact that there was a binding settlement agreement of the parties, as follows: "On February 20, 2018, the parties agreed in court that Mr. Bishop would replace the Plaintiff's countertop with a quartz countertop with an estimated cost of approximately \$6,800.00. The Plaintiff would be responsible for paying \$5,000.00 directly to Mr. Bishop and the Defendant would be responsible for paying the balance of the cost to Mr. Bishop."

¶ 15 In her instant petition, Cornelius states she "did not make any agreement with Jack Bishop." Further, the petition states that "I filed for [recovery from Home Depot for] \$10,000 not to pay \$5,000." The February 20, 2018 hearing transcript includes the following colloquy between Cornelius and the Magistrate Judge:

MS. CORNELIUS: So, your honor, I'll deal with him with \$5,000 business?

THE COURT: Yeah. Well, Jack Bishop has given a estimate that the replacement of the countertop would be worth \$6,800. That's his bill. You're going to pay \$5,000 for that new countertop and Home Depot will –

MS. CORNELIUS: Who do I pay to, Jack Bishop or Home Depot?

THE COURT: I believe Jack Bishop.

MS. CORNELIUS: Okay.

THE COURT: You pay Jack Bishop \$5,000.

MS. CORNELIUS: Thank you, sir.

THE COURT: Anything else?

MS. CORNELIUS: No, sir.

Hearing Tr. Feb. 20, 2018, p.35: 18- p.36: 6.

The finding of the Magistrate Judge that the parties entered into an enforceable agreement to settle the dispute at the February 20, 2018 hearing is not clearly erroneous.

¶ 16 The petition also claims that “Jack Bishop’s contract with Home Depot was no longer valid one year later.” The purpose for and the meaning of this claim is unclear and unexplained. Nonetheless, that alleged fact has no bearing on the Magistrate Judge’s finding of fact that the parties reached an agreement to settle their dispute at the February 20, 2018 hearing.

¶ 17 Finally, the petition claims that “Jack Bishop and Home Depot acknowledge the fact that the granite and work is defective.” This claim is not borne out by the testimony and evidence in the record. In fact, at the May 29, 2018 hearing, Cornelius acknowledged the contrary. “I know Home Depot does not want to acknowledge that their product is inferior nor does Jack Bishop want to acknowledge that his work is bad.” Hearing Tr. May 29, 2018, p.7: 19-22. Further, even if either party did acknowledge that the product or workmanship were inferior, it would have no effect on the validity of the Magistrate Judge’s finding regarding the agreement between the parties achieved on February 20, 2018. The Magistrate Judge found as a matter of fact the existence of an agreement between the parties to settle their dispute. Based upon the evidentiary record, the Court cannot determine this finding to be clearly erroneous.

¶ 18 The Court applies plenary review concerning legal findings. Super. Ct. R. 322.3(b)(2). “‘Plenary’ means ‘full; complete; entire,’ and with the power to conduct plenary review goes the responsibility to conduct it. The [court] must provide sufficient analysis to demonstrate that it has truly performed a full review of the record, including the evidence.” *Browne v. Gore*, 54 V.I. 195, 202-03 (V.I. Super. 2011) (citing *Huang v. Attorney General of the United States*, 620 F.3d 372, 388 (3d Cir. 2010) (quoting BLACK’S LAW DICTIONARY 1273 (9th ed. 2009))).

¶ 19 It is a question of law whether the February 20th agreement is a binding contract of the parties. “A trial court has ‘inherent power to supervise and enforce settlement agreements entered into by parties to an action pending before the court.’” *Boynes v. Transp. Servs. of St. John*, 60 V.I. 453, 459 (V.I. 2014) (citing *Dankese v. Defense Logistics Agency*, 693 F.2d 13, 16 (1st Cir. 1982); *Therma-Scan, Inc. v. Thermoscan, Inc.*, 217 F.3d 414, 419 (6th Cir. 2000) (“This circuit has long recognized the broad, inherent authority and equitable power of a [trial] court to enforce an agreement in settlement of litigation pending before it. ...” (citation omitted))); *Autera v. Robinson*, 419 F.2d 1197, 1200 n.9 (D.C. Cir. 1969) (collecting cases). Here, upon finding the existence of an agreement between the parties, as a matter of law the trial court determined that the agreement was binding upon both parties, and the Court had the inherent power to enforce that settlement agreement.

¶ 20 “A consent judgment would assist both parties in enforcing the terms of the agreement through the Court, if either party fails to comply with its terms. ‘A trial court retains jurisdiction to enforce consent decrees.’” *Govia v. Burnett*, 45 V.I. 235, 245 (V.I. 2003) (citing *Floyd v. Ortiz*, 300 F.3d 1223, 1226 (10th Cir. 2002)). See *Beckett v. Air Line Pilots Ass’n*, 995 F.2d 280, 286 (D.C. Cir. 1993).

A consent [judgment or] decree is a hybrid of a contract and a court order. A decree embodies the agreement of the parties and as such is in some respects contractual in nature; however, a decree is also in the form of a judicial order that the parties expect will be subject to the rules generally applicable to other judgments and orders.

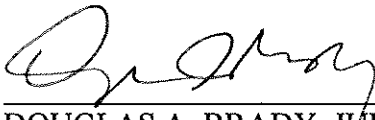
Id. (citing *Holland v. New Jersey Dept. of Corrections*, 246 F.3d 267, 276 (3d Cir. 2001)).

¶ 21 On February 20, 2018, the Magistrate Judge found that Cornelius and Home Depot entered into an agreement to resolve the dispute between them, by which independent contractor Bishop would replace Cornelius’ countertop with a new quartz countertop, for which Cornelius would pay \$5,000 dollars of the \$6,800 cost directly to Bishop with the balance to be paid by Home Depot. Home Depot would also provide to Cornelius a new sink and faucet without cost to Cornelius. This finding by the trial court was not clearly erroneous.

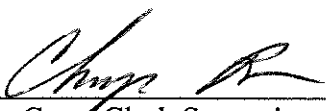
¶ 22 The Magistrate Judge determined that the agreement was binding upon both parties and entered Judgment on September 13, 2018, on Home Depot’s motion, to “assist both parties in enforcing the terms of the agreement through the Court” when Cornelius “failed to comply with its terms.” *Govia v. Burnett*, 45 V.I. at 245. The Magistrate Judge committed no error in determining that the agreement was binding upon the parties and entering Judgment thereon.

¶ 23 Because the Magistrate Judge did not commit clear error in finding that the parties entered into a settlement agreement and did not err in the determination that the terms of the agreement were binding on both parties, as incorporated into the Judgment entered September 13, 2018. Accordingly, the Judgment will be affirmed by Order entered herewith.

DATED: July 26, 2019.


DOUGLAS A. BRADY, JUDGE

ATTEST: ESTRELLA H. GEORGE
Clerk of the Court

By: 
Court Clerk Supervisor
7/26/2019