Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JANET DEFRAITES-BERGIN and BENSON BERGIN, Appellants/Plaintiffs, **v.** **BOARD OF DIRECTORS OF BURNETT TOWERS CONDOMINIUM ASSOCIATION, LEONARD FINLEY, EDWARD LEWIS, DONALD MORRIS, ANGEL BONELLI AND CHARLES HOBSON,** Appellees/Defendants.	**S. Ct. Civ. No. 2007/81** Re: Super. Ct. SM No. 317/2003

On Appeal from the Superior Court of the Virgin Islands
Considered: June 6, 2008
Filed: August 14, 2008

BEFORE: Maria M. Cabret, Associate Justice; **Ishmael A. Meyers,** Justice *Pro Tem*, and **Thomas K. Moore,** Justice *Pro Tem*.[1]

APPEARANCES:

John L. Maduro, Esq.
St. Thomas, USVI
Attorney for Appellants

Pedro K. Williams, Esq.
Law Offices of Pedro K. Williams
St. Thomas, USVI
Attorney for Appellees

OPINION OF THE COURT

PER CURIAM.

Janet DeFraites-Bergin and Benson Bergin ("Appellants") filed the underlying action for damages against the Board of Directors of Burnett Towers Condominium Association (the

[1]Chief Justice Rhys S. Hodge and Associate Justice Ive Arlington Swan were recused from this matter. Justice *Pro Tem* Ishmael A. Meyers and Justice *Pro Tem* Thomas K. Moore, retired judges of the Superior Court of the Virgin Islands and District Court of the Virgin Islands respectively, sit in their place by designation pursuant to title 4, section 24(a) of the Virgin Islands Code.

"Association"), Leonard Filey, Edward Lewis, Donald Morris, Angel Bonelli, and Charles Hobson ("Appellees") alleging that Appellees unlawfully turned off the utilities in the condominium unit owned by Appellants resulting in cleaning, hotel, and food expenses, as well as pain, stress and mental anguish. Appellees filed a counterclaim against Appellants alleging nonpayment of common charges pursuant to the By-Laws of Burnett Towers Condominium Association (the "By-Laws"). Following a bench trial, the trial court granted judgment in favor of Appellees on Appellant's complaint and awarded Appellees judgment on their counterclaim against Appellants in the amount of $24,340.00 plus fees of $8,625.00 and costs of $200.00. Appellants subsequently filed the instant appeal asserting that the trial court should be reversed because: (1) the trial court erred in failing to enter findings of fact, (2) Appellees failed to give Appellants proper notice of termination, (3) Appellants did not refuse to pay common charges, and (4) the testimony of the president of the Condominium Association was not credible. For the reasons which follow, we affirm the judgment of the Superior Court.

I. JURISDICTION AND STANDARD OF REVIEW

As a threshold matter, this Court has jurisdiction to review the trial court's judgment pursuant to title 4, section 32(a) of the Virgin Islands Code, which vests the Supreme Court with jurisdiction over "all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court."

> The standard of review for this Court in examining the Superior Court's application of law is plenary. Findings of fact are reviewed on appeal under a clearly erroneous standard of review. The appellate court must accept the factual determination of the fact finder unless that determination either (1) is completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data.

St. Thomas-St. John Board of Elections v. Daniel, S. Ct. Civ. No. 2007/96, 2007 WL 4901116, at *4 (V.I. Sept. 17, 2007) (citations omitted).

II. DISCUSSION

Appellants argue that the trial court failed to place its findings of fact and conclusion of law on the record either orally from the bench or in a written memorandum. Rule 52(a) of the Federal Rules of Civil Procedure provides in pertinent part:

> In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court.

In the underlying matter, the trial court noted in its written judgment that findings of fact and conclusions of law were made on the record at trial. It is evident from the trial transcript that the court did make conclusions of law on the record. The court concluded that the Association was legally entitled to turn off Appellants' utilities for failure to pay common charges and that Appellees were entitled to payment for the common charges. The trial court failed, however, to make any specific findings of fact on the record. Despite a failure to specifically state findings of fact,

> it is settled that compliance with Rule 52 is not jurisdictional and the appellate court may decide the appeal without further findings if it feels that it is in a position to do so. The appellate court will determine the appeal without further elaboration by the trial judge if the record sufficiently informs it of the basis of the [trial] court's decision of the material issues in the case . . . .

9C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2577 (1998); *accord Hooper's Estate v. Gov't of Virgin Islands*, 427 F.2d 45, 48 (3d Cir. 1970). In the underlying matter, despite the failure of the trial court to detail its findings of fact, the findings relevant to the issues on appeal are evident from the record and the judgment.

Appellants also argue that the trial court erred by not finding that Appellees failed to give Appellants proper notice of the disconnection of utilities by registered or certified mail as required by

Article X, Section 1 of the By-Laws,[2] or through their attorney as requested. At trial, a past president of the Association testified that a notice was sent to Appellants through the United States Postal Service, and that a copy of the notice was also delivered to the door of Appellants' condominium unit. He further testified that at the time notice was given, the parties were not in litigation, and Appellants had not requested that correspondence be sent to their counsel. It is unclear, however, whether the notice sent though the United States Postal service was delivered by registered or certified mail as required by the By-Laws. Appellants, nevertheless, failed to raise that issue before the trial court. "Absent exceptional circumstances, an issue not raised in the trial court will not be heard on appeal." *Daniel*, 2007 WL 4901116, at *8 (citation and brackets omitted). Appellants have not pointed to any exceptional circumstances which would merit review of this issue for the first time on appeal. Therefore, this Court will not consider Appellants' belated contention that service was not effectuated pursuant to the By-Laws.

Additionally, Appellants argue that the trial court erred by not finding that Appellants did not refuse to pay common charges. The Association's president testified at trial, however, that Appellants owed the Association $24,340.00 according to the Association's bookkeeping records. A summary of those records was introduced at trial without objection. Appellants confirmed that they placed funds for payment of the common charges in an account at the Bank of Nova Scotia in an effort to force Appellees to repair damages to their condominium unit. It is evident from the judgment entered that the trial court found that Appellants owed the Association $24,430.00 for common charges. There was clearly sufficient evidence on the record, including an admission by the Appellants, to support the trial

[2] Article X, Section 1 of the By-Laws provides in pertinent part that "[a]ll notices to any unit owner shall be sent by registered or certified mail to the Building or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received." (J.A. at E, Art. X, §1.)

court's finding that Appellants were indebted to Appellees for common charges. Accordingly, this Court can find no clear error in the trial court's determination.

Finally, Appellants assert that the trial court erred in finding the testimony of the Association's president credible with regard to the amount of money paid by Appellants. Appellants argue that they did not receive credit for payments made in 1996. Appellants, however, provide no support for this assertion. The trial court determined the amount owed by Appellants based on the testimony of the Association's president and the account record admitted into evidence without objection. "Credibility determinations are the unique province of a fact finder, be it a jury, or a judge sitting without a jury. Where the record supports a credibility determination, it is not for an appellate court to set it aside." *United States v. Kole*, 164 F.3d 164, 177 (3d Cir. 1998) (citing *Hoots v. Pennsylvania*, 703 F.2d 722 (3d Cir. 1983)). Absent a showing that the trial court based its determination on insufficient, incredible, or unrelated evidence, this Court can find no clear error in the trial court's determination of the amount of Appellants' indebtedness. *See Hoots*, 703 F.2d at 725.

III. CONCLUSION

Accordingly, having found no clear error in the Superior Court's judgment, and that the facts support the court's conclusions of law, we affirm the judgment of the Superior Court.

Dated this 14th day of August, 2008.

ATTEST:
GLENDA L. LAKE, ESQ.
Acting Clerk of the Court