IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
FILED
September 06, 2022 02:46 PM
SCT-Civ-2021-0032
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

THARSIS VLAUN, Appellant/Plaintiff, v. **DR. WARREN BRISCOE and GOVERNMENT OF THE VIRGIN ISLANDS through the JUAN F. LUIS HOSPITAL,** Appellees/Defendants.	**S. Ct. Civ. No. 2021-0032** Re: Super. Ct. Civ. No. 174/2017 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Douglas A. Brady

Argued: May 10, 2022
Filed: September 6, 2022

Cite as: 2022 VI 18

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

APPEARANCES:

Lee J. Rohn, Esq.
Rhea R. Lawrence, Esq. (Argued)
Lee J. Rohn and Associates, LLC
St. Croix, U.S.V.I.
Attorneys for Appellant,

Ian S.A. Clement, Esq.
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Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Appellant Tharsis Vlaun appeals from several orders entered by the Superior Court which collectively denied her requests to assess pre- and post-judgment interest against Appellees Dr. Warren Briscoe and the Government of the Virgin Islands. For the reasons that follow, we reverse.

I. BACKGROUND

¶ 2 On April 10, 2017, Vlaun filed a complaint against Briscoe and the Government, alleging that Briscoe, a physician at the Governor Juan F. Luis Hospital, engaged in medical malpractice while performing a hysterectomy on her on February 17, 2016. After proceedings not relevant to this appeal, a court-appointed mediator advised the Superior Court that Vlaun entered into a mediated settlement agreement with Briscoe and the Government on June 7, 2019, in which they agreed to pay Vlaun "the total sum of $170,000.00 United States Dollars in full settlement of all claims within (90) ninety days" and to forgive her hospital bill in full in exchange for her release of all claims. (J.A. 51.)

¶ 3 The Superior Court then entered an order on June 19, 2019, directing the parties to file a stipulated agreement or notice of dismissal within 90 days. But the parties did not file such a stipulation or notice. Rather, on October 9, 2019, Vlaun filed a motion to enforce the mediated settlement agreement as well as for entry of judgment and an award of pre-judgment interest. In the motion, Vlaun asserted that Briscoe and the Government had not paid the monies owed to her under the agreement, and requested that the Superior Court enforce the agreement as well as order that she be awarded pre-judgment interest in the amount of $41.92 per day until judgment would be entered. Briscoe and the Government filed an opposition to that motion on October 11, 2019, stating that Vlaun had not executed a release of claims until July 23, 2019, that the payment was being processed, and that they intended to comply with the agreement. However, they asserted that Vlaun was precluded from obtaining pre-judgment interest by virtue of title 5, section 426(b) of the Virgin Islands Code. Vlaun filed a reply out of time on November 19, 2019, which asserted that Briscoe and the Government had still not paid the monies due under the settlement agreement, and further maintained that section 426(b) did not preclude an award of pre-judgment interest.

¶ 4 The Superior Court did not immediately rule on the motion. Instead, in a May 18, 2020 order, it requested that Briscoe and the Government provide proof of payment in full or, in the alternative, show cause as to why a judgment should not be entered. Briscoe and the Government did not file any documents in response to the May 18, 2020 order, and on June 1, 2020, Vlaun filed a notice with the Superior Court that she had not received any payment, and again requested entry of judgment, enforcement of the agreement, and an award of pre-judgment interest from September 7, 2019, until the date of judgment at $41.92 per day. The Superior Court, however, again took no immediate action. Therefore, on November 5, 2020, Vlaun filed another motion, this time requesting enforcement of the May 18, 2020 order, and also requesting an attorney's fees award in addition to pre-judgment interest. Shortly thereafter, Briscoe and the Government filed an opposition to that motion, which in pertinent part again asserted that section 426 precluded an award of pre-judgment interest. Vlaun filed a reply on November 6, 2020, asserting in relevant part that a failure to permit pre-judgment interest would provide no incentive for the Government to ever pay settlements in a timely manner.

¶ 5 On December 30, 2020, the Superior Court issued an order scheduling the matter for a hearing on January 19, 2021, which was later continued to January 28, 2021. After hearing arguments from the parties, the Superior Court orally announced at the conclusion of the hearing that it would defer a ruling on Vlaun's motions and would deny them and dismiss the case with prejudice if the defendants paid the outstanding amount of $170,000 no later than February 5, 2021. The Superior Court memorialized its oral order in a written order entered later that day.

Vlaun filed a motion for reconsideration on February 3, 2021, to which Briscoe and the Government never filed a response.

¶ 6 On February 11, 2021—six days after the Superior Court's deadline—Vlaun ultimately received $170,000 from the defendants. In a February 19, 2021 order, the Superior Court denied virtually all of the requests for relief that Vlaun made in her various motions, including denying entry of judgment and any award of interest. However, the Superior Court stated that it would award Vlaun the sum of $3,600 to compensate her for the costs incurred with obtaining the defendants' compliance with the settlement agreement, and would retain jurisdiction for 60 days, following which the action would be dismissed with prejudice and the matter closed.

¶ 7 On June 1, 2021, Briscoe and the Government filed an affirmation that they had paid the $3,600 assessed by the February 19, 2021 order. The Superior Court issued an order on July 22, 2021, which dismissed Vlaun's complaint with prejudice. Vlaun timely filed a notice of appeal with this Court on August 19, 2021. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 8 Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d). Title 4, section 32(a) of the Virgin Islands Code vests this Court with jurisdiction over "all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court." Because the Superior Court's July 22, 2021 order resolved all claims between all the parties , it is a final judgment within the meaning of section 32(a). *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012).

¶ 9 This Court exercises plenary review over all questions of law. *Brathwaite v. People,* 60

V.I. 419, 426 (V.I 2014).

B. Applicability of Statutory Bar on Pre-judgment Interest Against the Government

¶ 10 In her appellate brief, Vlaun asserts that the Superior Court erred when it denied her request to award 9% interest on the $170,000 due under the June 7, 2019 mediated settlement agreement. Briscoe and the Government, however, renew their argument that such an interest award is precluded by title 5, section 426(b) of the Virgin Islands Code, which provides that "[n]otwithstanding the provisions of title 11, section 951(a)(1) and title 33, section 3408(a), of this code, or any other law, pre-judgment interest shall not be charged against the Government of the Virgin Islands on any judgment or decree for the payment of money by the Government."

¶ 11 We conclude that the Superior Court erred when it held that section 426(b) precludes an award of interest in this case. "When interpreting the meaning of a statute, we first look to its plain text." *Haynes v. Ottley*, 61 V.I. 547, 561 (V.I. 2014) (citing *Murrell v. People*, 54 V.I. 338, 352 (V.I. 2010)). "This is because courts, as a general rule, should not adopt an interpretation of a statute that contradicts its plain text." *Id.* Thus, courts may not effectively impose their own policy preferences or judicial gloss on the otherwise unambiguous language of a statute by giving it a broader or narrower construction than the words chosen by the Legislature. *See, e.g.*, *Fahie v. Gov't of the V.I.*, 2020 VI 6 ¶¶ 13-14; *Bryan v. Fawkes*, 61 V.I. 416, 462 (V.I. 2014).

¶ 12 Throughout their briefs, the parties refer to the 9% interest rate provided for in title 11, section 951(a) as "pre-judgment interest." But as this Court has previously explained, "[t]he term 'judgment' . . . is defined as '[a] court's *final determination* of the rights and obligations of the parties in a case,'" *Rohn v. People*, 57 V.I. 637, 644 (V.I. 2012) (quoting BLACK'S LAW DICTIONARY 918 (9th ed. 2009) (emphasis in original)), while a "decree" refers to "a judicial decision in a court of equity, admiralty, divorce, or probate—similar to a judgment of a court of law." *Penn v. Mosley*, 67 V.I. 879, 891 n.4 (V.I. 2017) (quoting BLACK'S LAW DICTIONARY 180 (2d pocket ed. 2001)). Although the parties signed a mediated settlement agreement on June 7, 2019, that act—without more—did not result in a judgment or decree. This is because Rule 41(a) of the Virgin Islands Rules of Civil Procedure only permits the voluntary dismissal of a case without court approval if either (1) the plaintiff signs a notice of dismissal before the opposing party serves an answer or a motion for summary judgment, or (2) all parties who have appeared sign a stipulation of dismissal; otherwise, a dismissal is effective only when approved by the court. V.I. R. CIV. P. 41(a)(1)-(2). Here, the parties never filed such a notice or stipulation of dismissal with the Superior Court; in fact, in its June 19, 2019 order, the Superior Court directed the parties to file such a notice or stipulation within 90 days, which they never did. Nor did the Superior Court ever issue a judgment or decree—in fact, it expressly denied Vlaun's motion requesting that it do so. And while the Superior Court had issued a May 18, 2020 order requesting that Briscoe and the Government provide proof of payment, that order expressly stated that it was not entering a judgment, and in fact gave Briscoe and the Government an alternative to providing proof of payment by instead showing cause as to why a judgment should not be entered.

¶ 13 That the Superior Court did not issue a judgment or decree in this case is critical because section 426(b) does not ban all interest against the Government—rather, it only provides that "[n]otwithstanding the provisions of title 11, section 951(a)(1) and title 33, section 3408(a), of this code, or any other law, pre-judgment interest shall not be charged against the Government of the Virgin Islands on any judgment or decree for the payment of money by the Government." (emphases added). 5 V.I.C. § 426(b). As noted above, the words "judgment" and "decree" are legal terms of art, referring to specific judicial actions taken by a court. *See* 1 V.I.C. § 41 ("Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to their peculiar and appropriate meaning."). As this Court has previously held, "[a] mediated settlement agreement is an enforceable contract governed by basic contract principles," and the Superior Court has "inherent power to supervise and enforce settlement agreements" when such agreements are entered as part of pending litigation before it. *Boynes v. Transp. Servs. of St. John, Inc.*, 60 V.I. 453, 460-61 (V.I. 2014). This is true even if the Superior Court has not taken formal action to approve the agreement or dismiss the case. *Id*. Nevertheless, while the Superior Court may supervise and enforce a mediated settlement agreement, that agreement, standing alone, is not a judgment until and unless the Superior Court "incorporate[s] the terms of the settlement agreement" into a formal judgment. *Judi's of St. Croix Car Rental v. Weston*, 49 V.I. 396, 404 (V.I. 2008). Therefore, the question in this case is not whether Vlaun is entitled to "pre-judgment interest," but whether she is entitled to interest on the amount stated in the mediated settlement agreement at the 9% rate provided for in title 11, section 951(a) despite the failure of the Superior Court to enter judgment.

¶ 14 Thus, section 426(b), by its own terms, only precludes the assessment of pre-judgment interest on a judgment or decree against the Government but does not preclude the assessment of any and all interest at the 9% rate against the Government—including assessment of interest for failing to pay monies due under a contract. It is evident that the Legislature intended to only preclude pre-judgment interest on a judgment not just from the language it chose—"pre-judgment interest shall not be charged against the Government of the Virgin Islands on any judgment or decree for the payment of money by the Government"—but also from its decision to expressly state that this was to be "[n]otwithstanding the provisions of title 11, section 951(a)(1) and title 33, section 3408(a), of this code, or any other law." 5 V.I.C. § 426(b). Title 11, section 951(a) provides, in its entirety, that

> (a) The rate of interest shall be nine (9%) per centum per annum on-
>
> (1) all monies which have become due;
>
> (2) money received to the use of another and retained beyond a reasonable time without the owner's consent, either express or implied;
>
> (3) money due upon the settlement of matured accounts from the day the balance is ascertained; and
>
> (4) money due or to become due where there is a contract and no rate is specified.

Moreover, title 33, section 3408(a) of the Virgin Islands Code is a cross-reference to the portion of the Virgin Islands Tort Claims Act which conditionally waives the Government's immunity from tort suits and provides for it "to have its liability determined in accordance with the same rule of law as applied to actions in the courts of the Virgin Islands against individuals or corporations."

¶ 15 That the Legislature chose in section 426(b) to only reference 11 V.I.C. § 951(a)(1)—and not 11 V.I.C. §§ 951(a)(2)-(4)—as well as 5 V.I.C. § 3408(a)—providing for liability for tort claims—provides powerful evidence that the Legislature intended for the language "pre-judgment interest shall not be charged against the Government of the Virgin Islands on any judgment or decree for the payment of money by the Government" to mean precisely what it says, and no more: that is, pre-judgment interest shall not be assessed against the Government on a judgment or decree, as would otherwise be authorized under section 951(a)(1), but other types of interest may be assessed against the Government at the 9% rate set forth in section 951(a)(2)-(4), such as on "money due or to become due where there is a contract and no rate is specified."[1] 11 V.I.C. §

[1] While section 426(b) uses the phrase "or any other law" after the phrase "[n]otwithstanding the provisions of title 11, section 951(a)(1) and title 33, section 3408(a), of this code," under traditional rules of English grammar the phrase "or any other law" refers to the postcedent phrase "pre-judgment interest shall not be charged against the Government of the Virgin Islands on any judgment or decree for the payment of money by the Government." In other words, the phrase "or any other law" refers only to other laws that would permit pre-judgment interest to be charged against the Government on a judgment or decree for payment of money, and not laws that assess interest on the Government more generally.

951(a)(4). Accordingly, the Superior Court erred to the extent it held that section 426(b) precluded an assessment of interest at the 9% rate against the Government pursuant to section 951(a)(4) for its failure to pay its obligations under the mediated settlement agreement.[2]

C. Assessment of Interest on Mediated Settlement Agreement Amount

¶ 16 That title 5, section 426(b) does not preclude the Superior Court from assessing interest against Briscoe and the Government on the mediated settlement agreement amount does not fully resolve the issues raised in this matter. Vlaun maintains that the plain language of section 951(a) of title 11 mandates the Superior Court to award such interest in every case, relying exclusively on the construction of the statute by the United States Court of Appeals for the Third Circuit in *Addie v. Kjaer*, 836 F.3d 251 (3d Cir. 2016). But in their appellate brief, Briscoe and the Government maintain that such an interest award "is left to the sound discretion of the Superior Court." (Appellees' Br. 6.) Whether section 951(a) provides for mandatory or discretionary interest therefore directly affects the remedy this Court may provide Vlaun on appeal, for if Vlaun is not entitled to interest as of right, the appropriate remedy for the Superior Court's erroneous reliance on section 426(b) would be to remand the matter to the Superior Court to properly exercise its discretion.

¶ 17 Recently, this Court concurred with the reasoning in *Addie* that section 951 "is broader than similar statutes in other states limiting prejudgment interest to contractual damages only" but rather permits interest "to ascertainable sums." *R.J. Reynolds Tobacco Co. v. Gerald*, 2022 VI 14 ¶ 133. This Court, however, did not consider the other question the Third Circuit addressed in

[2] Given our holding that section 426(b) does not preclude an award of 9% interest against the Government on the mediated settlement agreement pursuant to section 951(a)(4), we need not address Vlaun's alternate argument that Briscoe is not entitled to claim the same immunity as the Government under section 426(b).

Addie: whether an award of interest under section 951(a) is mandatory or discretionary. In *Addie*, the Third Circuit interpreted section 951(a) to mandate interest at the 9% rate in all instances that satisfy the criteria set forth in sections 951(a)(1)-(4). In doing so, the Third Circuit expressly characterized as "mistaken" those decisions of the Superior Court and the United States District Court of the Virgin Islands which held that the award of pre-judgment interest is discretionary rather than mandatory.[3] It did so by holding that in those cases the Superior Court and the District Court had disregarded the plain text of section 951(a)—which "is worded in mandatory terms"—and instead erroneously relied upon inapplicable federal and state case law that interpreted different statutes containing different language than that found in section 951(a). *Addie*, 836 F.3d at 451-52 & n.6.

¶ 18 Certainly, decisions of the Third Circuit and other federal courts interpreting Virgin Islands statutory law—including the decision in *Addie*—are not binding on this Court, but are merely persuasive. *See Better Bldg. Maint. of the V.I., Inc. v. Lee*, 60 V.I. 740, 756 (V.I. 2014). Such decisions, however, are nevertheless "entitled to great respect." *Defoe v. Phillip*, 56 V.I. 109, 120 (V.I. 2012). But as with other persuasive authorities, they do not preclude this Court from "conduct[ing] our own independent analysis and adopt[ing] a different interpretation of the local statute." *Id.*

¶ 19 We conclude that the Third Circuit correctly held in *Addie* that interest awards at the 9% rate are mandatory, and not within the discretion of a court. Section 951(a), by its own terms, states that "[t]he rate of interest shall be nine (9%) per centum per annum" for all monies specified in sections 951(a)(1)-(4), which includes "all monies which have become due," 11 V.I.C. § 951(a)(1),

[3] *See Rasmussen v. Dalmida*, 50 V.I. 1032 (D.V.I. 2008); *Dewerd v. Bushfield*, 993 F.Supp. 365 (D.V.I. App. Div. 1998); *Bookworm, Inc. v. Tirado*, 44 V.I. 300 (V.I. Super. Ct. 2002).

as well as "money due or to become due where there is a contract and no rate is specified." 11 V.I.C. § 951(a)(4). While Briscoe and the Government are correct that section 951(a) speaks only of the interest rate, they ignore the fact that interest on monies owed but not paid is a necessary component of the damages incurred for breach of contract due to the time value of money, in that money in hand today is worth more than the same amount of money received at some future date because it can be invested and reap the benefits of compound interest. *See West Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987); *Skretvedt v. E.I. du Pont de Nemours & Co.*, 372 F.3d 193, 208 (3d Cir. 2004); *Chamberlain v. United States*, 401 F.3d 335, 344 n.59 (5th Cir. 2005); *Gore, Inc. v. Glickman*, 137 F.3d 863, 868 (5th Cir. 1998) (collecting cases). In fact, this Court has already held that the closely related concept—reducing a monetary award representing future damages to its present value using a discount rate—is mandatory unless that step is waived by the parties. *See Better Bldg. Maint. of the V.I.*, 60 V.I. at 760-61. To hold that the Superior Court possesses the discretion to refuse to award interest at the 9% statutory rate on "all monies which have become due" or "money due or to become due where there is a contract and no rate is specified" would be tantamount to permitting the Superior Court to exercise discretion to not award damages that were proven by the prevailing party. *Accord, Antilles School, Inc. v. Lembach*, 64 V.I. 400, 438 (V.I. 2016).

¶ 20 In this case, the June 7, 2019 mediated settlement agreement expressly directed Briscoe and the Government to pay $170,000 to Vlaun within 90 days, or September 5, 2019, and at no point whatsoever in the Superior Court proceedings did Briscoe or the Government ever assert that they did not owe this money—on the contrary, they affirmatively conceded that it was due. Since the parties did not negotiate for a different interest rate in the agreement, and section 426(b) is not applicable, Vlaun was therefore entitled, pursuant to sections 951(a)(1) and (4), to interest at a rate of 9% per annum for the period between September 5, 2019, and the date the monies were ultimately paid to her. Therefore, the Superior Court erred when it declined to order Briscoe and the Government to pay such interest.[4]

III. CONCLUSION

¶ 21 The Superior Court erred when it declined to direct Briscoe and the Government to pay interest at the 9% rate for the period from September 5, 2019 to the date they ultimately paid the $170,000 to Vlaun, based on its mistaken belief that title 5, section 426(b) of the Virgin Islands Code precluded an interest award. Accordingly, we reverse the Superior Court's February 19, 2021 order and vacate its July 22, 2021 dismissal order as moot.

Dated this 6th day of September, 2022.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Reisha Corneiro
Deputy Clerk II

Dated: **September 6, 2022**

[4] Because the Superior Court erred when it denied this relief, it is not necessary for this Court to consider whether the Superior Court abused its discretion when it denied Vlaun's motion for reconsideration. Likewise, we decline to consider Vlaun's claim that the Superior Court abused its discretion when it denied her motion for entry of judgment, since our holding that Vlaun is entitled to interest at the rate of 9% per annum on the mediated settlement agreement for the period between September 5, 2019, and the date the monies were ultimately paid to her provides her with equal or greater relief than if judgment were retroactively entered.