Not For Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

WORLD FRESH MARKET d/b/a PUEBLO, Appellant/Defendant, v. **P.D.C.M. ASSOCIATES, S.E.,** Appellee/Plaintiff.	)	**S. Ct. Civ. No. 2011-0051** Re: Super. Ct. Civ. No. 161/2010 (STX)

On Appeal from the Superior Court of the Virgin Islands
Considered and Filed: August 25, 2011

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

ATTORNEYS:

Michael L. Sheesley, Esq.
St. Croix, U.S.V.I.
Attorney for Appellant

Mark L. Milligan, Esq.
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Attorney for Appellee

OPINION OF THE COURT

PER CURIAM.

Appellant World Fresh Market appeals from a June 3, 2011 Order denying its motion to stay the underlying Superior Court proceedings pending arbitration. On August 1, 2011, Appellee P.D.C.M. Associates, S.E. filed a motion to dismiss this appeal for lack of jurisdiction. Because section 16 of the Federal Arbitration Act does not apply to Virgin Islands local courts, and the June 3, 2011 Order does not otherwise qualify for an immediate appeal, we grant the motion and dismiss this appeal for lack of jurisdiction.

I. STATEMENT OF RELEVANT FACTS AND PROCEDURAL POSTURE

P.D.C.M. filed suit against World Fresh Market in the Superior Court on April 13, 2010, alleging that World Fresh Market had breached the terms of a lease between the parties by failing to timely pay rent and maintenance fees for common areas. On April 15, 2011, World Fresh Market filed a motion to stay the Superior Court proceedings pending arbitration, on the grounds that section 10(c) of the lease purportedly required disputes concerning computation of common area costs to be submitted to arbitration. In its June 3, 2011 Order, the Superior Court held, because section 10(c) provided that such disputes "shall be submitted to arbitration in accordance with Section 33," and section 33 of the lease only contained the words "Intentionally Omitted," that the parties did not actually agree to arbitrate anything under the lease.

World Fresh Market timely filed its notice of appeal on July 5, 2011. The notice of appeal, however, did not identify the jurisdictional basis for an immediate appeal of the June 3, 2011 Order. P.D.C.M. filed a motion to dismiss on August 1, 2011, which contends that the June 3, 2011 Order is not a final order, and does not fall within the categories of interlocutory appeals authorized by sections 33(b) and (c) of title 4 of the Virgin Islands Code. Although the time to respond to the August 1, 2011 motion has expired, World Fresh Market has not filed an opposition or any other document with this Court.

II. JURISDICTION

"The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees [and] final orders of the Superior Court . . . ." V.I. CODE ANN. tit. 4 § 32(a) (1997). "Section 32 embodies the final judgment rule, which generally requires a party 'to raise all claims of error in a single appeal following final judgment on the merits.'" *Bryant v. People*, 53 V.I. 395, 400 (V.I. 2010) (quoting *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 315

(V.I. 2007)). Since an order denying a motion to stay—by definition—contemplates that additional proceedings will occur in the Superior Court, the June 3, 2011 Order clearly is not final for purposes of section 32. Moreover, the June 3, 2011 Order did not grant or deny an injunction or a receivership, *see* 4 V.I.C. § 33(b), and the record contains no evidence that World Fresh Market requested that the Superior Court certify the June 3, 2011 Order for an immediate appeal by permission, let alone that the Superior Court granted such a request. *See* 4 V.I.C. § 33(c). Finally, courts have consistently held that orders denying motions for a stay pending arbitration do not fall within the collateral order exception to the final judgment rule. *See, e.g.*, *Keauhou v. Evanson*, No. 25120, 2002 WL 31521015, at *1 (Haw. 2002)

But while neither sections 32 nor 33 authorize World Fresh Market's appeal, and World Fresh Market, by failing to respond to P.D.C.M.'s motion to dismiss, has failed to set forth any argument in favor of jurisdiction, this Court still possesses an independent obligation to ascertain whether an alternate basis for jurisdiction may exist. The United States Court of Appeals for the Third Circuit, in its decision in *Gov't of the V.I. v. United Indus. Workers*, 169 F.3d 172 (3d Cir. 1999), has held that the Federal Arbitration Act ("FAA") simultaneously applies to civil actions in Virgin Islands local courts through the Restatement (Second) of Contracts § 345(f), made applicable through section 4 of title 1 of the Virgin Islands Code,[1] and section 2 of the FAA, which the United States Supreme Court has construed as preempting certain state and local laws inconsistent with the FAA. *See Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984). *See also Martinez v. Colombian Emeralds*, Inc., 51 V.I. 174, 185-86 (V.I.

[1] "The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute . . . shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary." 1 V.I.C. § 4. Although the FAA is a federal statute, Restatement (Second) of Contracts § 345(f) expressly contemplated that courts will look to arbitration statutes for guidance in determining how to enforce an arbitration award. Thus, the Third Circuit in *United Indus. Workers* held that the FAA is applicable to all cases in Virgin Islands local courts by virtue of this Restatement provision. 169 F.3d at 177-78.

2009) (recognizing *United Indus. Workers* decision). Although the Superior Court held, in its June 3, 2011 Order, that the FAA was not applicable to this case based on its conclusion that the lease agreement did not contain an arbitration clause, it is important to note that section 16 of the FAA provides that "[a]n appeal may be taken from . . . an order . . . refusing a stay of any action under section 3 of this title." 9 U.S.C. § 16(a)(1)(A). Thus, it is arguable that—if section 16 of the FAA is applicable to Virgin Islands local courts pursuant to either authority—this Court may possess jurisdiction to consider World Fresh Market's appeal on the merits, regardless of whether or not the parties' lease agreement actually contains an arbitration clause.

Because sections 32 and 33 of title 4 place clear limits on this Court's jurisdiction, and do not authorize an immediate appeal, as of right, of an order denying a motion for a stay pending arbitration, "local laws to the contrary" exist that preclude applying section 16 of the FAA through any Restatement provision pursuant to section 4 of title 1. Accordingly, section 16 will only permit an immediate appeal of the June 3, 2011 Order if Congress intended for section 16 to preempt all state and local statutes that preclude immediate interlocutory appeals of such orders.

We cannot conclude that Congress intended section 16 of the FAA to preempt sections 32 and 33 of title 4. While Congress, in enacting the FAA, has clearly adopted a policy favoring arbitration, "[t]here is no federal policy favoring arbitration under a certain set of procedural rules." *Toler's Cove Homeowners v. Trident Const.*, 586 S.E.2d 581, 584 (S.C. 2003). Thus, we agree with the other state appellate courts that have considered this question, which have consistently held that section 16 of the FAA is applicable only to federal courts and does not preempt state or local statutes that provide for a greater or lesser degree of appellate review. *See, e.g., Kremer v. Rural Community Ins. Co.*, 788 N.W.2d 538, 547 (Neb. 2010); *Clayco Const. Co. v. THF Carondelet Dev.*, 105 S.W.2d 518 (Mo. Ct. App. 2003); *Toler's Cove Homeowners*, 586

S.E.2d at 584; *Muao v. Grosvenor Properties Ltd.*, 122 Cal.Rptr.2d 131, 136-37 (Cal. Ct. App. 2002); *Simmons v. Deutsche Financial Services*, 532 S.E.2d 436 (Ga. Ct. App. 2000); *Wells v. Chevy Chase Bank*, 768 A.2d 620 (Md. 2000); *So. Cal. Edison Co. v. Peabody Western Coal*, 977 P.2d 769 (Ariz. 1999); *Superpumper, Inc. v. Nerland Oil, Inc.*, 582 N.W.2d 647 (N.D. 1998). *Cf. Southland Corp.*, 465 U.S. at 16 n.10 ("In holding that the [FAA] preempts a state law that withdraws the power to enforce arbitration agreements, we do not hold that §§ 3 and 4 of the [FAA] apply to proceedings in state courts. Section 4, for example, provides that the Federal Rules of Civil Procedure apply in proceedings to compel arbitration. The Federal Rules do not apply in such state-court proceedings."). Therefore, since section 16 of the FAA does not preempt sections 32 and 33 of title 4, we conclude that we lack jurisdiction over World Fresh Market's appeal of the June 3, 2011 Order.

III. CONCLUSION

The Superior Court's June 3, 2011 Order is not a final judgment pursuant to section 32 of title 4, nor does it qualify for immediate appeal under section 33 of title 4 or the collateral order doctrine. Moreover, section 16 of the FAA cannot apply to Virgin Islands local courts through any Restatement provision due to the presence of contrary local law, and does not preempt local law. Accordingly, we grant P.D.C.M.'s motion and dismiss this appeal for lack of jurisdiction.

Dated this 25th day of August, 2011.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court