

Not For Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

ROLANDO REMAK, as the personal	)	S. Ct. Civ. No. 2017-0067
representative of the deceased	)	Re: Super. Ct. Civ. No. 662/2015 (STT)
ORLANDO REMAK,	)	
Appellant/Plaintiff,	)	
	)	
v.	)	
	)	
VIRGIN ISLANDS WATER AND	)	
POWER AUTHORITY a/k/a WAPA and	)	
GREGORY THYMER,	)	
Appellees/Defendants.	)	
	)	

On Petition for Permission to Appeal

Considered and Filed: June 12, 2020

Cite as: 2020 VI 2U

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

ORDER OF THE COURT

PER CURIAM.

¶ 1 **THIS MATTER** comes before the Court pursuant to Appellant’s petition for permission to appeal, as well as Appellee’s opposition. According to the petition, the Superior Court certified the following question for immediate appeal: “What are the elements of a claim for breach of the implied duty of good faith and fair dealing, and is ‘detrimental reliance’ an element of such a claim?”

¶ 2 This Court possesses the discretion to grant a petition for permission to appeal when the Superior Court has certified that “the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may

materially advance the ultimate termination of the litigation.” 4 V.I.C. § 33(c). Having reviewed the parties’ filings and the underlying Superior Court decision, this Court concludes that answering the question certified would not materially advance the ultimate termination of the litigation. In its July 21, 2017 opinion certifying this matter for interlocutory appeal, the Superior Court indicated that it dismissed Appellant’s claim for a breach of the implied covenant of good faith and fair dealing “based on the heightened pleading standard of *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007).” (Op. 1 n.1). Although the Superior Court acknowledged that the Virgin Islands Rules of Civil Procedure went into effect on March 31, 2017, and that Rule 8 of the Virgin Islands Rules of Civil Procedure rejected the heightened plausibility standard in favor of restoring notice pleading, it nevertheless concluded that it was required to apply the old pleading standard to Appellant’s cause of action based on this Court’s decision in *Mills-Williams v. Mapp*, 67 V.I. 574 (V.I. 2017), which declined to apply the Virgin Islands Rules of Civil Procedure retroactively to a judgment that became final on August 31, 2016. However, unlike *Mills-Williams*, a final judgment was never entered in the underlying case. Consequently, because the underlying matter was “pending on the effective date” of the Virgin Island Rules of Civil Procedure, Rule 1-1(c) requires that the Virgin Islands Rules of Civil Procedure apply to the underlying matter unless “the Superior Court makes an express finding that applying them . . . would be infeasible or would work an injustice.” V.I. R. CIV. P. 1-1(c)(2)(B). The Superior Court made no such finding in its July 31, 2017 opinion, apparently because of its mistaken belief that it was required to apply the old heightened pleading standard. Therefore, it is possible that Appellant’s claim for breach of the implied duty of good faith and fair dealing would survive dismissal under Rule 8 of the Virgin Islands Rules of Civil Procedure. If that is the case, this Court’s resolution of the certified question at this stage of the proceedings would not materially

advance the ultimate termination of underlying litigation. Accordingly, it is hereby

ORDERED that the petition for permission to appeal is **DENIED**. It is further

ORDERED that copies be directed to the appropriate parties.

SO ORDERED this 12th day of June, 2020.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Jessica Grant
Deputy Clerk

Dated: June 12, 2020