Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

MARIA TURNBULL, Appellant/Defendant,	)	**S. Ct. Civ. No. 2009-0092** Re: Super. Ct. Civ. No. 622/2007
v.	)	
SHELDON TURNBULL, Appellee/Plaintiff	)	

On Appeal from the Superior Court of the Virgin Islands,
Considered: October 5, 2010
Filed: March 1, 2011

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **ADAM G. CHRISTIAN**, Designated Justice.[1]

ATTORNEYS:

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Pro se

OPINION OF THE COURT

Hodge, Chief Justice.

In a September 3, 2009 Judgment, the Superior Court awarded Sheldon Turnbull $117,679.81 in an action for debt based on breach of contract that Sheldon brought against his mother, Maria Turnbull. Maria appeals the Superior Court's Judgment on the grounds that the court erred by (1) failing to enter sufficient findings of fact and conclusions of law; (2) finding

[1] Justice Ive Arlington Swan is recused from this matter. The Honorable Adam G. Christian, Superior Court Judge, has been designated in his place pursuant to title 4, section 24(a) of the Virgin Islands Code.

that Maria breached a contract with Sheldon; and (3) including expenses Sheldon incurred after a May 27, 2007 stop work order in its damages award. Because the Superior Court's factual findings and conclusions of law show the basis for its finding of liability, and the evidence sufficiently supports its finding, we will affirm the September 9, 2009 Judgment with respect to liability. We will reverse the damages award, however, and remand the matter to the Superior Court because the factual findings and conclusions of law are insufficient to review the court's damages award.

I. FACTUAL AND PROCEDURAL BACKGROUND

This action arises out of an oral agreement made during 2003 between Maria and her son Sheldon. Under that agreement, Sheldon would finance the renovation of Maria's home, located at 209 Anna's Retreat, and Maria would reimburse Sheldon for the renovation expenses once the renovations were complete by obtaining a bank loan secured by a mortgage on the property. There is no indication that the parties established a timeframe for the project's completion.

The renovations to Maria's property were ongoing from June 2004 through early December 2007. On May 27, 2007, Sheldon suggested to Maria that she transfer the house to him by gift or sale so that he could receive tax benefits for the renovation expenses. Maria, however, was noncommittal. Sheldon then demanded to be reimbursed for the renovation expenses, and Maria responded by telling him to stop all renovations. Sometime after their May, 27, 2007 meeting, Sheldon heard rumors that Maria intended to sell her house. When Sheldon confronted her about the rumors on December 5, 2007, she confirmed her decision to sell her home. At that time, Sheldon insisted that Maria should not sell the house to an outside buyer given the money spent on renovating the property; instead, he suggested that Maria sell the house to him. Maria, however, did not agree to transfer the property to Sheldon, desiring instead to go

through with the sale that was planned. On December 10, 2007, Sheldon initiated an action for debt against Maria in the Superior Court. On March 28, 2008—while Sheldon's lawsuit remained pending—Maria sold her house, with the proceeds from that sale remaining in Maria's personal bank account.

After various proceedings not relevant to this appeal, the Superior Court held a bench trial on April 8, 2009, in which it considered Sheldon's claims for unjust enrichment, breach of contract, and equitable estoppel, as well as Maria's counterclaims for slander of title and intentional interference with contract. At trial, Sheldon testified that he had an oral agreement with Maria to finance the rebuilding of her house and that upon completion of the renovations Sheldon would be repaid for his expenses from the proceeds of a loan secured by a mortgage on the newly renovated house. Sheldon also testified that he never received funds from Maria.

Maria testified that Sheldon demanded reimbursement for the renovation expenses on May 27, 2007. Maria also testified that on that same day, she told Sheldon to stop all work on the house. Importantly, Maria testified that she had never refused to pay Sheldon and that she was and remains willing to pay Sheldon the $66,000.00 she owes him. Maria also stated that she received a list of expenses from Sheldon totaling $83,487.44 two weeks after his demand that she repay him. Maria testified that she noticed several duplicate expenditures on the list of expenses, which when deducted, left a balance of $66,000.00. Maria further testified that later, in preparation for mediation, she was given another list of expenses, this time totaling just under $120,000.00.

Gustave Dowling, Maria's brother, testified that Maria told him about the agreement between Sheldon and herself for Sheldon to finance the renovation of her home, but that she told Sheldon to stop all work on the house in either May 2007 or 2008. Dowling testified that Maria

told him that despite the stop work order, Sheldon continued to work on the property. Also, Dowling testified that on several occasions Maria told him she wanted to pay Sheldon the amount she owed him and be done with the situation.

The Superior Court, relying on Maria's admission that she owed Sheldon money, orally dismissed Maria's counterclaims and ruled in favor of Sheldon on his breach of contract claim on the basis that there was an oral agreement between Maria and Sheldon under which Maria would reimburse Sheldon for the renovations to Maria's property. However, the Superior Court stated that it could not determine the reimbursement amount due to Sheldon at that point, but would shortly calculate the damages in a written judgment.

The Superior Court issued a written order on May 4, 2009, in which it held that Maria and Sheldon had an enforceable oral agreement for Sheldon to improve Maria's property, but that the agreement ended on May 27, 2007, when Maria instructed Sheldon to cease all work on her house. Based on this conclusion, the Superior Court noted that Sheldon may not be entitled to reimbursement for any expenses after May 27, 2007, except for those that represented payment for work performed prior to that date. The Superior Court found that it could not enter a judgment without knowing the "purpose of payments made after May 27, 2007," and because it could not ascertain whether the reimbursements Sheldon sought after May 27, 2007 represented work that had been done before Maria instructed him to stop improving her property. Accordingly, the court gave the parties the option to provide additional testimony by requesting in writing that the court reconvene or, if no request was made, to supplement the record by affidavit.

In a July 21, 2009 Order, the Superior Court, after characterizing both parties' supplemental materials as non-responsive, again, ordered Maria and Sheldon to submit

additional evidence, including evidence that specifically indicated for every reimbursement request "when the work or materials were contracted for, when the work was done, or when the materials were delivered." The July 21, 2009 Order, stated that expenses associated with the work concluded after May 27, 2007, could be included in the judgment "depending on whether they were essential to properly completing or protecting work in progress on May 27, 2007."

On September 3, 2009, the Superior Court entered a written opinion and judgment, which awarded Sheldon $117,679.81 in damages for his breach of contract claim. Maria filed a *pro se*[2] "Motion for Extension of Time to File Memorandum of Appeal" on September 23, 2009, which this Court treated as a timely filed[3] notice of appeal. *See* V.I.S.CT.R. 4(g) ("The Superior Court shall deem a paper filed by a *pro se* litigant after the decision of the Superior Court . . . to be a notice of appeal despite informality in its form or title if it evidences an intention to appeal.").

II. DISCUSSION

A. Jurisdiction and Standard of Review

The Supreme Court has jurisdiction over this appeal, which arises from a final judgment of the Superior Court, pursuant to title 4, section 32 of the Virgin Islands Code. The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

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[2] Although Maria was represented by counsel at the April 8, 2009 bench trial and is presently represented by counsel on appeal, Maria's trial counsel filed a motion to withdraw as counsel on September 18, 2009, which the Superior Court granted in an order entered on the same day. Thus, when Maria filed her September 23, 2009 motion with the Superior Court, she had been proceeding *pro se*.

[3] *See* V.I.S.CT.R. 5(b)(1) ("In a civil case, . . . the notice of appeal . . . shall be filed with the Clerk of the Superior Court within thirty days after the entry of the judgment or order appealed from.").

B. The Superior Court Entered Sufficient Findings of Fact and Conclusions of Law and Did Not Err in its Liability Analysis

Maria, as her primary issues on appeal, contends that this Court cannot review the Superior Court's September 3, 2009 Judgment because the Superior Court failed to adequately enter its factual findings and legal conclusions as required by Federal Rule of Civil Procedure 52[4] and that the Superior Court erred when it found that Maria breached a contract with Sheldon. Specifically, Maria contends that "absent speculation, one cannot discern the basis for the determination of the purported breach or for the finding of liability." Sheldon, on the other hand, argues that the September 3, 2009 Opinion, when read in conjunction with the Superior Court's oral findings at the April 8, 2009 bench trial, indicates the basis of the Superior Court's decision and sets forth an evidentiary and legal basis for its conclusion that a breach of contract occurred.

We agree with Sheldon that the Superior Court's oral findings at the April 8, 2009 bench trial provide this Court with sufficient information to review its holding with respect to liability. Rule 52 of the Federal Rules of Civil Procedure requires, in pertinent part, that "the court [in a bench trial] must find the facts specially and state its conclusions of law separately," either "on the record after the close of the evidence or . . . in an opinion or a memorandum of decision filed by the court." Fed. R. Civ. P. 52(a)(1). Although neither the September 3, 2009 Judgment nor the Opinion explain how the Superior Court concluded that Maria breached a contract, the Opinion states that the court "made findings of fact and conclusions of law on the record" at the April 8, 2009 bench trial, and that those findings and conclusions "are incorporated herein by reference." As Sheldon correctly notes, the Superior Court stated at the conclusion of the April 8, 2009 bench trial that: "Sheldon . . . undertook to remove the debris from the previous

[4] *See* Super. Ct. R. 7 ("The practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by . . . the Federal Rules of Civil Procedure . . . .").

construction" and to "beg[i]n reconstruction of [Maria's] home;" that "[Maria] acknowledged that she was willing to pay [Sheldon] for the work that he had done;" that "there was a verbal agreement between the parties that [Sheldon] would undertake the the reconstruction of the home, and that he would be reimbursed for monies expended;" and thus, that "[Sheldon] is entitled to recover based upon the verbal agreement that he had with [Maria]." (J.A. at 258-59.) Therefore, the record sufficiently provides the basis of the trial court's decision on the issue of liability in this case and affords us the ability to review the issue on appeal based on the record before us. *See Spencer v. Navarro*, S. Ct. Civ. No. 2007-0069, 2008 WL 6054262, at *2 (V.I. June 27, 2008) (unpublished) (quoting 9C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2577 (1998)) ("[A]ppellate courts '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.'").

Moreover, the Superior Court's factual findings are clearly erroneous only when they are completely devoid of minimum evidentiary support or bear no rational relationship to the supporting evidence. *Peppertree Terrace v. Williams*, 52 V.I. 225, 230 (V.I. 2009) (citing *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007)). We find no error in the Superior Court's holding that the testimonial evidence, especially Maria's trial testimony that she owes Sheldon money for the home renovations, established that Maria entered into an oral agreement with Sheldon to reimburse him for improvements made to her property and that she failed to reimburse him.[5] Accordingly, we affirm the September 9, 2009 Judgment with respect

[5] The agreement between Maria and Sheldon involved complete renovations to the 209 Anna's Retreat property by Sheldon, after which he would be reimbursed for the renovation expenses. Sheldon demanded, however, to be reimbursed for renovation expenses on May 27, 2007, before the project was complete. Maria agreed, inquired about the deadline to reimburse Sheldon, and testified that the deadline was the end of 2007. Although the Superior Court did not analyze Sheldon's demand and Maria's response as a possible modification of the agreement or a new

to the issue of liability.

C. The Superior Court Did Not Enter Sufficient Findings of Fact and Conclusions of Law With Respect to Damages

As noted above, Maria contends that we cannot review the Superior Court's September 3, 2009 Judgment because the court did not enter sufficient factual findings and legal conclusions as required by Federal Rule of Civil Procedure 52. Maria also contends that the Superior Court acted contrary to law when it allowed Sheldon to recover for work performed on the property after she instructed him to cease work on May 27, 2007. Sheldon, however, argues that the Superior Court did not err in its damages award because all expenses incurred after May 27, 2007 represent either (1) installment payments for services rendered and materials purchased prior to May 27, 2007, but not paid for until after that date; or (2) expenses for work done after May 27, 2007, that was necessary to preserve work that had already begun prior to that date. We agree that the Superior Court's factual findings and conclusions of law with respect to damages are insufficient for this Court to review Sheldon's damages award; and, to the extent that the Superior Court included expenses incurred after May 27, 2007, in its damages award to Sheldon, the court erred.

The Superior Court's September 3, 2009 Opinion states that the court "will allow [Sheldon] recovery for a substantial majority of the expenses incurred after May 27, 2007," because "[i]n the absence of the completion of the roof structure, the interior and exterior walls would suffer a degradation of their structural integrity over time . . . and the construction that had been completed would remain exposed to the elements, and . . . would face the near certain possibility of damage and deterioration through exposure to the elements." (J.A. at 7-8.)

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agreement, such analysis was obviated by, or its omission rendered harmless because of, Maria's admission that she owed Sheldon money for the renovations and was willing to pay the amount she owed him.

However, it is unclear from the court's discussion of the expenses at issue whether those expenses were paid for after May 27, 2007, but actually incurred before that date. In turn, it is unclear whether the Superior Court actually required Maria to reimburse Sheldon for expenses incurred after May 27, 2007, and—if so—how much of the $117,679.81 damages award is attributable to those expenses.

Although we are unable discern whether the amount of damages is appropriate, we agree that Sheldon can recover expenses that were incurred prior to the May 27, 2007 stop work order—regardless of when payment was actually made—but that he cannot recover for expenses incurred after May 27, 2007. Terminating a contract does not affect obligations that accrued or rights that vested prior to termination. *See Millenium Petro Chems., Inc. v. Brown & Root Holidays, Inc.*, 390 F.3d 336, 340 (5th Cir. 2004) (noting prior holding that termination, without more, does not extinguish rights that vested prior to termination) (applying Texas law); *Hoffman v. McLaughlin Corp.*, 703 A.2d 1107, 1112 (R.I. 1997) (citing A.L. CORBIN, CORBIN ON CONTRACTS § 1266, at 66-67 (1962)) ("the exercise of a reserved power of termination will usually have prospective operation only"); *Boddie Noell Props., Inc. v. 42 Magnolia P'ship*, 574 S.E.2d 726, 729 (S.C. 2002) (holding that appellant can recover for breach of contract after option to terminate exercised).

But, it is equally well established that "[w]hen a contract is terminated, even wrongfully, there is no longer a contract . . . [hence there is] no duty to perform and no right to demand performance, unless specific performance is sought." *Horwitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248, 1251 (7th Cir. 1996) (applying Illinois law). Following termination then, neither party is liable for further transactions under the contract. *See Waterloo Furniture Components, Ltd. v. Haworth, Inc.*, 467 F.3d 641, 646 (7th Cir. 2006) ("[A]n expired contract releases its

parties from their respective contractual obligations.") (applying Michigan law); *NLRB v. Cone Mill Corp.*, 373 F.2d 595, 598 (4th Cir. 1967) (citing Restatement, Contracts § 386 (1932)) ("It is axiomatic in contract law that parties to an agreement are relieved of their mutual obligations upon termination of the agreement."); *Sarasota Cnty. Sch. Dist. v. Sarasota Classified/Teachers Ass'n*, 614 So.2d 1143, 1147 (Fla. Ct. App. 1993) (citation omitted) ("Generally, under contract law, parties to an agreement are relieved of their mutual obligations upon termination of an agreement.").

Here, the Superior Court expressly found that although Maria and Sheldon had entered into an oral agreement, the agreement terminated on May 27, 2007, when Maria told Sheldon to cease all work on her property. Therefore, Maria's May 27, 2007 instructions to Sheldon discharged all of Sheldon's remaining obligations and duties under the agreement, including any obligation to complete on-going work or safeguard work already completed. *See, e.g., NLRB*, 373 F.2d at 598. Likewise, although Maria was responsible for all renovation expenses incurred prior to termination, she was no longer obligated to reimburse Sheldon for work done to the property following her instructions to stop the renovations.[6] *Id.* Accordingly, the Superior Court's decision is reversed, and the Superior Court shall, on remand, enter a new judgment, which may only represent expenses incurred before Maria instructed Sheldon to cease work on May 27, 2007, and shall expressly set forth the factual and legal basis for the damages award as required by Federal Rule of Civil Procedure 52 to enable this Court to review that award in the event there is an appeal following remand.

[6] Further, we note that Maria was selling the 209 Anna's Retreat property in present condition, and therefore, any additional work done to the property would represent costs that Maria may not have been able to pass on to the buyer. Consequently, additional work on the property would not benefit Maria.

III. CONCLUSION

Since the Superior Court articulated its reasons for holding Maria liable for breach of contract and its factual findings are adequately supported by the record, this Court affirms the portion of the September 9, 2009 Judgment ruling in favor of Sheldon on his breach of contract claim. The Superior Court, however, did not enter adequate findings of fact and conclusions of law with respect to damages to allow this court to review its damages award. And, the Superior Court erred when it held that Sheldon could recover expenses associated with work performed after Maria terminated her agreement with Sheldon on May 27, 2007. Therefore, this Court reverses the portion of the September 9, 2009 Judgment that awards Sheldon $117,679.81 in damages and instructs the Superior Court on remand to enter a new judgment that is consistent with this Opinion.

Dated this 1st day of March, 2011.

BY THE COURT:

_____/s/_____
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court