For Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:	)	**S. Ct. Civ. No. 2020-0018**
	)	Re: Super. Ct. Civ. No. 111/2019 (STT)
JERRY A. HAILEY, JR.	)	
Petitioner.	)	
	)	

On Petition for Writ of Mandamus

Superior Court Judge: Hon. Michael C. Dunston

Considered: July 14, 2020
Filed: August 19, 2020

Cited as: 2020 VI 14

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

APPEARANCES:

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OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 This matter comes before the Court pursuant to a petition for writ of mandamus, filed by Jerry A. Hailey, Jr. on February 28, 2020, which requests that this Court issue a writ compelling the Superior Court judge presiding over the underlying matter (the "Nominal Respondent") to vacate a March 29, 2019 order staying the proceedings. For the reasons that follow, we deny the

petition.

I. BACKGROUND

¶ 2 Tropic Leisure Corp. and Magens Point, Inc., acting through their manager, John Jureidini (collectively the "respondents"), sued Hailey in the Small Claims Division of the Superior Court of the Virgin Islands and obtained a default judgment on April 2, 2014, in the amount of $5,764. Hailey did not appeal the default judgment, nor did he file a motion to have the judgment set aside.

¶ 3 On February 17, 2015, the respondents domesticated the Virgin Islands judgment in North Carolina by filing it in the Wake County District Court. Hailey appeared in the North Carolina proceeding and moved for relief from the judgment because it was purportedly entered in violation of his constitutional rights. On September 10, 2015, the Wake County District Court denied Hailey's motion and entered an order domesticating the judgment. However, on February 7, 2017, the North Carolina Court of Appeals vacated the September 10, 2015 order, after concluding that Hailey did not have the right to be represented by counsel in the Small Claims Division.

¶ 4 While the domestication proceeding was pending, Hailey filed suit against the respondents in the Superior Court of Johnston County, North Carolina on May 4, 2015. In his lawsuit, Hailey alleged that the respondents had violated his due process rights by filing a complaint against him in the Small Claims Division of the Virgin Islands Superior Court because the statute creating the Small Claims Division states that attorneys may not participate in the proceeding. The Johnston County court entered summary judgment in favor of Hailey on the question of liability, and the lawsuit proceeded to a jury trial solely on the issue of damages, with the following question submitted to the jury: "Did the defendants, under color of law, subject the plaintiff to a deprivation of a right secured by the United States Constitution?" The jury answered "Yes" and awarded Hailey compensatory damages in the amount of $29,311, but declined to award any punitive

damages. The jury verdict was later memorialized in a June 28, 2018 judgment, which was amended on August 16, 2018. The Johnston County court entered an additional judgment against the respondents on November 20, 2018, for $182,070.70, representing Hailey's attorney's fees for prosecuting the North Carolina action. On September 12, 2018, the respondents appealed the judgments to the North Carolina Court of Appeals, and that appeal remains pending.

¶ 5 On March 4, 2019, Hailey filed a petition with the Superior Court of the Virgin Islands to domesticate the North Carolina judgments pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), codified at 5 V.I.C. § 551 *et seq*. Although the respondents entered their appearance on March 18, 2019, the Nominal Respondent issued a March 21, 2019 order domesticating both judgments without a response from the respondents. The next day, the respondents moved to stay enforcement of the judgments or, in the alternative, for relief from the judgments on the grounds that the North Carolina judgments were invalid and void as repugnant to Virgin Islands public policy. Without waiting for Hailey to file a response, on March 27, 2019, the Nominal Respondent entered an order granting the stay pursuant to the Uniform Foreign Money-Judgments Recognition Act ("UFMJRA"), codified at 5 V.I.C. § 567 *et seq*., without requiring the respondents to post a bond or security as a condition of the stay. However, the Nominal Respondent did not rule on the respondents' request to set aside the March 21, 2019 domestication order.

¶ 6 On April 23, 2019, Hailey filed a motion for reconsideration of the March 27, 2019 order, in which he argued that domestication had been sought pursuant to the UEFJA and not the UFMJRA and asserted that the UEFJA only authorizes a stay "upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state or territory in which it was rendered." 5 V.I.C. § 555(a). According to Hailey, the rendering state—North

Carolina—mandates the posting of a bond to stay a monetary judgment, and the respondents had failed to furnish such security.

¶ 7 In an April 26, 2019 order, the Nominal Respondent directed the respondents to address the reconsideration motion by May 17, 2019, which they did. In their opposition, the respondents alleged that the reconsideration motion was untimely and argued that a bond was not required even if the UEFJA applied because that statute further provides that "[i]f the judgment debtor shows the Superior Court of the Virgin Islands any ground upon which enforcement of a judgment of the Superior Court would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period upon requiring the same security for satisfaction of the judgment which is required in the United States Virgin Islands." 5 V.I.C. § 555(b). According to the respondents, Rule 62(d) of the Virgin Islands Rule of Civil Procedure grants the Superior Court the discretion to stay a monetary judgment without the posting of a bond or other security, and therefore the March 27, 2019 stay order comported with the UEFJA. Moreover, the respondents renewed their argument that the March 21, 2019 domestication order should be set aside because the North Carolina judgments were unenforceable as repugnant to the public policy of the Virgin Islands. Hailey filed a reply to the respondents' opposition on May 28, 2019.

¶ 8 On August 14, 2019, Hailey filed a motion requesting a hearing on the reconsideration motion. The respondents filed an opposition to that motion on August 21, 2019, and Hailey replied on September 3, 2019. The Nominal Respondent, in a November 14, 2019 order, *sua sponte* directed the parties to advise it as to the status of the proceeding in the North Carolina Court of Appeals but did not rule on or even reference the reconsideration motion or the motion for a hearing.

¶ 9 Hailey filed a petition for writ of mandamus with this Court on February 28, 2020. In his

petition, Hailey asserts that the Nominal Respondent's failure to rule on either the reconsideration motion or the motion for a hearing is tantamount to a failure to exercise jurisdiction, and he requests that this Court order the Nominal Respondent to both rule on the pending motions and order the respondents to post security. This Court, in a March 4, 2020 order, directed the respondents to file an answer to the petition and also ordered both Hailey and the respondents to brief the issue of whether the North Carolina judgments are void, thus depriving the Superior Court of jurisdiction. The respondents filed their response with this Court on March 17, 2020, and Hailey filed a reply on March 24, 2020.

II. DISCUSSION

¶ 10 This Court possesses jurisdiction over original proceedings for extraordinary writs, such as a writ of mandamus. *See* 4 V.I.C. § 32(b) ("The Supreme Court's authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction."). To obtain a writ of mandamus, a petitioner must establish that there is no other adequate means to attain the desired relief and that his or her right to the writ is clear and indisputable. *In re Le Blanc*, 49 V.I. 508, 516 (V.I. 2008). Furthermore, even if those two prerequisites are met, the issuing court must also be satisfied that the writ is appropriate under the circumstances. *In re Morton*, 56 V.I. 313, 319 (V.I. 2012).

A. Hailey Lacks Other Adequate Means to Attain the Desired Relief

¶ 11 As to the first factor, we agree that Hailey lacks other adequate means to attain his desired relief. Because the gravamen of his claim is that the Nominal Respondent has failed to issue a ruling on the reconsideration motion, Hailey cannot obtain redress from this Court by taking a direct appeal after entry of an appealable final judgment. *In re Fleming*, 56 V.I. 460, 464 (V.I. 2012) (citing *In re Elliot*, 54 V.I. 423, 425 (V.I. 2010)). Moreover, there do not appear to be any

practical avenues for attaining relief that have been untried, *see In re People of the V.I.*, 55 V.I. 851, 858 (V.I. 2011). Hailey filed a motion for a hearing which has also not been ruled on, despite having been fully briefed by the litigants, and the only meaningful action by the Nominal Respondent has been the issuance of the November 14, 2019 order requesting, *sua sponte*, that the parties provide an update on the status of the North Carolina appeal, which did not take any action on the reconsideration motion or the motion for a ruling. Accordingly, we conclude that Hailey has satisfied the first factor.

B. Hailey Does Not Have a Clear and Indisputable Right to the Relief Requested

¶ 12 We disagree, however, that Hailey has a clear and indisputable right to the relief sought in his petition. "A party possesses a 'clear and indisputable' right when the relief sought constitutes a 'specific, ministerial act, devoid of the exercise of judgment or discretion.'" *Fleming*, 56 V.I. at 464; *In re People of the V.I.*, 51 V.I. 374, 387 (V.I. 2009) (quoting *Dunn-McCampbell Royalty Interest, Inc. v. Nat'l Park Serv.*, 112 F.3d 1283, 1288 (5th Cir. 1997)). In his petition, Hailey characterizes the breach of duty as "not merely a delay in ruling" but as "a refusal to rule" and asserts that the Nominal Respondent has made a "conscious decision to not exercise jurisdiction." (Pet. 14.) To support his claim, Hailey cites to several rulings of this Court in which it has granted mandamus relief upon finding that the failure to issue timely rulings was "tantamount to a failure to exercise jurisdiction." *See, e.g.*, *Elliot*, 54 V.I. at 429.

¶ 13 However, Hailey does not simply request that this Court direct the Nominal Respondent to rule on the reconsideration motion; rather, he maintains that "mandamus is needed here to not only compel a ruling, but also to ensure the correct ruling requiring adequate security pursuant to UEFJA." (Pet. 15.) To support his claim that this Court should mandate that the Nominal Respondent grant the reconsideration motion and vacate the March 27, 2019 stay order, Hailey

cites to numerous cases in which "[m]any courts have similarly invoked mandamus to correct plain errors in stay orders." (Pet. 15.) In effect, Hailey asserts that the Nominal Respondent has through his inaction deliberately refused to enforce the North Carolina judgments, and thus purportedly has breached a ministerial duty by failing to issue a legally-correct decision. In his view, "mandamus is [thus] . . . appropriate 'to correct judicial action that is clearly contrary to well-settled law.'" *In re People*, 51 V.I. at 387 (quoting *State ex rel. Healey v. McMeans*, 884 S.W.2d 772, 774 (Tex. Crim. App. 1994)). Thus, Hailey essentially argues that he has a clear and indisputable right to have the North Carolina judgments enforced in the Virgin Islands under the UEFJA, rather than merely domesticated. For the reasons that follow, we conclude that he does not have a clear and indisputable right to enforcement of the judgments under the UEFJA.

¶ 14 The UEFJA is a uniform law drafted by the National Conference of Commissioners on Uniform State Laws for the stated purpose of "achieving uniformity" with respect to how foreign judgments are enforced within the enacting jurisdictions. REVISED UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT, PREFATORY NOTE (1964). Consistent with this purpose, the UEFJA requires that its provisions "be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states and territories which enact it." 5 V.I.C. § 558. Therefore, this Court must, to the extent possible while remaining faithful to the statutory language, construe the UEFJA in harmony with the constructions given to it by other jurisdictions.

¶ 15 Courts in other jurisdictions that have enacted the UEFJA have consistently drawn a distinction between domesticating a foreign judgment under the UEFJA and enforcing such a judgment after it has been domesticated. *See Mike Smith Pontiac, GMC, Inc. v. Mercedes-Benz of N.A., Inc.*, 741 A.2d 462, 472 (Md. 1999) (noting that the UEFJA was enacted as a "facilitating device" to simplify the procedure for the domestication of foreign judgments, but "was not

intended to alter any substantive rights or defenses which would otherwise be available to a judgment creditor or judgment debtor in an action for enforcement"); *see also Guinness PLC v. Ward*, 955 F.2d 875, 889 (4th Cir. 1992) ("[Q]uestions of whether a court should recognize a foreign decree, and whether it should go further and use equitable remedies to enforce a decree once recognized are, of course, two separate and distinct lines of inquiry."); *Sun First Nat'l Bank of Orlando v. Gainesville 75, Ltd.*, 270 S.E.2d 293, 296 (Ga. Ct. App. 1980) ("[D]omestication in this state of a foreign judgment is a separate issue from the extent to which enforcement of that domesticable judgement will be authorized."). Importantly, "the UEFJA is not intended to give holders of foreign judgments greater rights than holders of domestic judgments," but rather is only intended "to give the holder of [a] foreign judgment the same rights and remedies as holders of domestic judgments." *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 736 (Tex. App. 2008) (quoting *Redondo Constr. Corp. v. United States*, 157 F.3d 1060, 1065 (6th Cir. 1998)); *see also Pope v. Gordon*, 922 So.2d 893, 897 (Ala. 2005) (quoting 30 AM. JUR. 2D *Executions and Enforcement of Judgments* § 778 (2005)); *Sunrise Turquoise, Inc. v. Chemical Design Co., Inc.*, 899 S.W.2d 856, 857 (Ky. Ct. App. 1995). Thus, courts have held that statutes of limitations for enforcement of judgments and similar statutes and court rules apply with equal force to an action under the UEFJA as they would to an action to enforce a domestic judgment. *See Abba Equipment, Inc. v. Thomason*, 517 S.E.2d 235, 237 (S.C. Ct. App. 1999) ("The purpose of the UEFJA is to provide a simpler, more expedient procedure to enforce foreign judgments; it is not to endow foreign creditors with substantive rights not otherwise available in the forum state."); *see also Fairbanks v. Large*, 957 S.W.2d 307, 308 (Ky. Ct. App. 1997); *Lawrence Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 208 (Tex. App. 1994). Similarly, courts have held that void foreign judgments are not entitled to enforcement under the UEFJA on the same basis that a void domestic

judgment would not be enforced, and that a court therefore lacks subject matter jurisdiction if the foreign judgment sought to be domesticated and enforced under the UEFJA is void. *See Domus, Inc. v. Signature Bldg. Sys. of Pa., LLC*, 224 A.3d 31, 36 (Pa. Super. Ct. 2019) ("Our case law interpreting the UEFJA also states that a foreign judgment entered without jurisdiction is a nullity and, thus, void," and therefore a claim that the foreign judgment is void "speaks to the subject matter jurisdiction of the trial court to hear the controversy in the first instance").

¶ 16 As in other jurisdictions, it is well-established in the Virgin Islands that a court lacks jurisdiction to enforce a void judgment or to take any action with respect to the void judgment other than declaring it void. *SBRMCOA, LLC v. Beachside Associates, LLC*, S. Ct. Civ. No. 2015-0053, 2015 WL 9581398, at *2 (V.I. Dec. 28, 2015) (unpublished) (quoting *United States v. Carroll*, No. 10–1400, 2012 WL 1570386, at *1 (6th Cir. Apr. 27, 2012) (unpublished)). While a judgment will most commonly be declared void if it was entered by a court without subject matter jurisdiction, *see Bryan v. Fawkes*, 61 V.I. 416, 441 (V.I. 2014), or without personal jurisdiction over the defendant, *see Estate of Skepple v. Bank of Nova Scotia*, 69 V.I. 700, 725-26 (V.I. 2018), judgments that have been entered in violation of the First Amendment[1] or other fundamental constitutional rights are also void, *see Crucians in Focus, Inc. v. VI 4D, LLP*, 57 V.I. 529, 538 (V.I. 2012). In this sense, Virgin Islands law is consistent with the laws of other United States jurisdictions, which also treat unconstitutional judgments as void rather than merely voidable.[2]

[1] The First Amendment of the United States Constitution is applicable to the Virgin Islands pursuant to section 3 of the Revised Organic Act. *See* 48 U.S.C. § 1561 ("The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States . . . the first to ninth amendments inclusive . . . .").

[2] In his reply, Hailey asserts that "Respondents have waived their right to bring a defense under

See Ex parte Siebold, 100 U.S. 371, 376–77 (1879) ("An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void. . . . [I]f the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes."); *In re Oliver*, 452 F.2d 111, 115 (7th Cir. 1971) (holding that a judgment restricting the speech of a lawyer in violation of the First Amendment "is null and void"); *Phoenix Newspapers, Inc. v. Superior Court*, 418 P.2d 594, 596-97 (Ariz. 1966) (order infringing on First Amendment rights is void).

¶ 17 The Supreme Court of the United States has repeatedly held that the Petition Clause of the First Amendment "protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011); *see Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-97 (1984) ("[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government."); *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983) ("[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances."); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972) ("Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.") (citing *Johnson v. Avery*, 393 U.S. 483 (1969)). Importantly, the United States Supreme Court has emphasized that

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the First Amendment as no First Amendment issue was raised by Respondents in the courts of North Carolina." (Reply Br. 4.) However, as we explain above, the issue of whether the North Carolina judgments unconstitutionally violate the First Amendment goes to the question of subject matter jurisdiction, in that judgments violative of the First Amendment are void, and the Superior Court cannot order enforcement of a void judgment. Consequently, the issue may be raised by the respondents or this Court *sua sponte* at any stage of the proceeding. *In re Guardianship of Smith*, 54 V.I. 517, 527 (V.I. 2010).

the First Amendment protects "even unsuccessful but reasonably based suits." *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 532 (2002).

¶ 18 The Supreme Court of the United States has held that an administrative agency or court violates the First Amendment when it imposes civil liability on a litigant for filing a non-frivolous lawsuit, even if the lawsuit is ultimately not successful. In *BE & K Construction Co.*, the National Labor Relations Board initiated enforcement proceedings against an employer based solely on the employer filing and maintaining an unsuccessful federal lawsuit against several unions, which the Board believed had been filed with the intent to interfere with the unions' organizing and collective-bargaining activities. 536 U.S. at 522. The Board found the employer to have committed an unfair labor practice by filing and prosecuting the lawsuit, ordered the employer to pay the unions' legal fees and expenses incurred in defense of that lawsuit, and succeeded in having its order enforced by the United States Court of Appeals for the Sixth Circuit. *Id.* at 523-24. The United States Supreme Court reversed, concluding that the judgment holding the employer liable for the mere act of filing and prosecuting an unsuccessful but non-frivolous lawsuit violated the First Amendment:

> [W]hat is at issue here are suits that are not baseless in the first place. Instead, as an initial matter, we are dealing with the class of reasonably based but unsuccessful lawsuits. . . .
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> First, even though all the lawsuits in this class are unsuccessful, the class nevertheless includes a substantial proportion of all suits involving genuine grievances because the genuineness of a grievance does not turn on whether it succeeds. Indeed, this is reflected by our prior cases which have protected petitioning whenever it is genuine, not simply when it triumphs. Nor does the text of the First Amendment speak in terms of successful petitioning-it speaks simply of "the right of the people . . . to petition the Government for a redress of grievances."
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> Second, even unsuccessful but reasonably based suits advance some First Amendment interests. Like successful suits, unsuccessful suits allow the public airing of disputed facts, and raise matters of public concern. They also promote the evolution of the law by supporting the development of legal theories that may not

> gain acceptance the first time around. Moreover, the ability to lawfully prosecute even unsuccessful suits adds legitimacy to the court system as a designated alternative to force.
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> Finally, while baseless suits can be seen as analogous to false statements, that analogy does not directly extend to suits that are unsuccessful but reasonably based. For even if a suit could be seen as a kind of provable statement, the fact that it loses does not mean it is false. At most it means the plaintiff did not meet its burden of proving its truth. That does not mean the defendant has proved-or could prove-the contrary.
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> . . . .
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> The Board also claims to rely on evidence of antiunion animus to infer retaliatory motive. Yet ill will is not uncommon in litigation. Disputes between adverse parties may generate such ill will that recourse to the courts becomes the only legal and practical means to resolve the situation. But that does not mean such disputes are not genuine. As long as a plaintiff's purpose is to stop conduct he reasonably believes is illegal, petitioning is genuine both objectively and subjectively.
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> Even in other First Amendment contexts, we have found it problematic to regulate some demonstrably false expression based on the presence of ill will. For example, we invalidated a criminal statute prohibiting false statements about public officials made with ill will. Indeed, the requirement that private defamation plaintiffs prove the falsity of speech on matters of public concern may indirectly shield much speech concealing ill motives.

BE & K Const. Co., 536 U.S. at 531-34 (internal citations omitted). *See also Professional Real Estate Investors, Inc. v. Columbia Pictures*, 508 U.S. 49, 62 (1993) (holding that the Petition Clause confers absolute immunity from antitrust liability for a civil lawsuit brought with probable cause, regardless of whether that lawsuit was brought for an improper or malicious purpose).

¶ 19 The rules announced by the Supreme Court of the United States in *BE & K Construction, Professional Real Estate Investors*, and other cases are not limited just to claims brought under labor or antitrust law. *See CSMN Investments, LLC v. Cordillera Metropolitan Dist.*, 956 F.3d 1276, 1285-86 & n.13 (10th Cir. 2020) (granting Petition Clause immunity in an action brought pursuant to 42 U.S.C. § 1983, after holding that *BE & K. Construction* and *Professional Real Estate Investors* apply to all cases in which civil liability is sought based on filing a lawsuit); *Real Estate Bar Ass'n for Mass., Inc. v. Nat'l Real Estate Info. Servs.*, 608 F.3d 110, 124–25 (1st Cir.

2010) (applying *BE & K Construction* to grant the defendant Petition Clause immunity from litigation brought pursuant to 42 U.S.C. § 1983 seeking to hold it liable for a prosecuting a "nonfrivolous" but unsuccessful suit); *Bryant v. Military Dep't of Miss.*, 597 F.3d 678, 691–94 (5th Cir. 2010) (applying *BE & K Construction* and *Professional Real Estate Investors* to claims brought pursuant to various civil-rights suits); *White v. Lee*, 227 F.3d 1214, 1231-33 (9th Cir. 2000) (holding that the Petition Clause precedents of the Supreme Court of the United States "appl[y] equally in all contexts" and preclude liability under federal housing discrimination laws premised on the filing of a lawsuit that was not objectively baseless); *Cordova v. Cline*, 396 P.3d 159, 167 (N.M. 2017) (holding that the pertinent decisions of the Supreme Court of the United States "[are] rooted in the First Amendment right to petition and therefore must be applied to all claims implicating that right, not just to antitrust claims").[3]

¶ 20 Here, the two North Carolina judgments impose civil liability on the respondents for filing

[3] Although the Supreme Court of Colorado has recently held that the protections of the Petition Clause of the First Amendment only extend to lawsuits implicating matters of public concern, and therefore do not extend to lawsuits arising from purely private disputes, *see Gen. Steel Domestic Sales, LLC v. Bacheller*, 291 P.3d 1, *as modified* (Colo. 2012), *and Boyer v. Health Grades, Inc.*, 359 P.3d 25 (Colo. 2015), we find the court's reasoning unpersuasive. While the Supreme Court of the United States in *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379 (2011), held that lawsuits filed by government employees against their government employer are only entitled to Petition Clause immunity if they involve matters of public concern, the Court specifically noted that "[o]utside the public employment context, constitutional protection for petitions does not necessarily turn on whether those petitions relate to a matter of public concern." *Id.* at 394. Additionally, as Justice Scalia explained in his separate opinion: "The text of the Petition Clause does not distinguish petitions of public concern from petitions of private concern. Accordingly, there should be no doctrinal distinction between them unless the history or tradition of the Petition Clause justifies it." *Id.* at 406 (Scalia, J., concurring in the judgment in part and dissenting in part). Moreover, analysis of the history of the Petition Clause around the time of the founding reveals that petitions to the government constituted a primary and criminal mechanism for the resolution of private disputes. Indeed, "[t]he primary responsibility of colonial assemblies was the settlement of private disputes raised by petitions." *Id.* at 404 (citing Higginson, *A Short History of the Right to Petition Government for the Redress of Grievances*, 96 YALE L.J. 142, 145 (1986)).

a successful lawsuit against Hailey in the Small Claims Division of the Superior Court of the Virgin Islands resulting in a judgment that, while not enforced by the North Carolina courts,[4] still remains

[4] The correctness of the decision of the North Carolina Court of Appeals to not enforce the April 4, 2014 judgment in North Carolina is not an issue in this case. Hailey nevertheless asserts in his mandamus petition that "[a]fter the N.C. Court of Appeals' decision, procedural rules were promulgated in the Virgin Islands to create an automatic transfer of matters filed in Small Claims Court where an attorney enters an appearance on an individual defendant's behalf," Pet. 3; that "the reality is that, at least partially as a result of the underlying N.C. case . . . this Court amended the V.I. Small Claims Rules to better protect the public's due process right to an attorney by setting forth rules reflective of that important right," Pet. 4; and that "[t]he fact that the Rules had to be promulgated to address this issue supports Hailey's position that there was no formal method in place to protect the due process right to counsel in the Small Claims Division." (Pet. 4.) Based on his apparent belief that he was the cause of the adoption of the Virgin Islands Small Claims Rules, Hailey urges that he should not be "label[ed] . . . as an unwelcome foreign intermeddler in local affairs." (Pet. 4.)

Hailey is greatly mistaken in his belief that this Court enacted rules directly in response to the North Carolina litigation. Prior to the effective date of Act No. 7888 on July 30, 2016, this Court lacked the statutory authority to promulgate rules for the Superior Court. Although Act No. 7888 provided for the Supreme Court to "adopt rules governing civil and criminal procedure, evidence . . . and the practice and procedure in the courts of the judicial branch," 4 V.I.C. § 32(f)(1), it also authorized the Chief Justice to appoint a committee to study the rules of procedure and recommend the adoption of new court rules. 4 V.I.C. § 32(f)(2). Shortly thereafter, on August 19, 2016, the Chief Justice exercised this authority by establishing the Advisory Committee on Rules. *See In re Establishment of an Advisory Committee on Rules*, S. Ct. Prom. No. 2016-0007, 2016 WL 8679137 (V.I. Aug. 19, 2016). Since its establishment, the Advisory Committee has drafted and recommended for adoption by this Court the Virgin Islands Rules of Civil Procedure, the Virgin Islands Rules of Evidence, the Virgin Islands Rules of Criminal Procedure, the Virgin Islands Habeas Corpus Rules, the Virgin Islands Small Claims Rules, the Virgin Islands Rules for Probate and Fiduciary Proceedings, the Virgin Islands Rules of Family Division Procedure, and the Virgin Islands Traffic Rules. While the Virgin Islands Small Claims Rules were enacted after the North Carolina Court of Appeals issued its February 15, 2017 opinion, their promulgation was not in response to that decision, but rather part of a multi-year rules revision project that had commenced nearly a year beforehand.

Likewise, Hailey is incorrect that individuals were ever systematically denied the opportunity to be represented by counsel when sued in the Small Claims Division. Prior to the assumption of appellate jurisdiction by this Court on January 29, 2007, appeals from decisions of the Superior Court were taken to the United States District Court of the Virgin Islands. *See Hypolite v. People*, 51 V.I. 97, 101 (V.I. 2009). In one of our earliest decisions, this Court held that its creation "did not erase pre-existing case law," and that decisions of the District Court acting in an appellate capacity remained "binding upon the Superior Court" unless and until this Court held otherwise. *In re People of the V.I.*, 51 V.I. 374, 389 n.9 (V.I. 2009). More than four decades ago, the District Court, sitting in its appellate capacity, recognized that depriving a small claims

valid and enforceable in the Virgin Islands.[5] Importantly, this Court has already held that Virgin Islands law does not favor default judgments even in small claims cases, *see Spencer v. Navarro*, S. Ct. Civ. No. 2007-0069, 2009 WL 1078144, at *2 (V.I. Apr. 8, 2009) (unpublished), and that a defendant's failure to appear "does not in itself warrant the court in entering a default judgment"; rather, "[t]here must be a sufficient basis in the pleadings for the judgment entered." *King v. Appleton*, 61 V.I. 339, 346 (V.I. 2014). Therefore, to enter the April 2, 2014 default judgment, the Superior Court necessarily found that the respondents had a sufficient basis for their lawsuit, as well as entitlement to judgment. Thus, the North Carolina judgments effectively punish the respondents for exercising their right under the Petition Clause of the First Amendment to utilize

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defendant of the right to be represented by counsel violated the constitutional right to due process, and held that a matter filed in the Small Claims Division should be transferred to the Civil Division whenever counsel is retained or even just requested. *Carr v. Pena*, 432 F.Supp. 828 (D.V.I. 1977). The *Carr* precedent has been followed as binding precedent in the Virgin Islands, and even prior to the adoption of the Small Claims Rules, cases filed in the Small Claims Division were routinely transferred if counsel was retained or requested or if a jury trial was demanded. *See, e.g.*, *Carbana Ensemble Theater Co. v. V.I. Dept. of Human Service*, ST-2012-SM-414, 2012 WL 12517840, at *1 (V.I. Super. Ct., Oct. 16, 2012); *Inter Ocean Insurance Agency v. Joseph*, SX-2006-CV-177, 2011 WL 13115963, at *1 (V.I. Super. Ct., Sept. 28, 2011); *Horton v. Gov't of the V.I.*, SX-2010-SM-17, 2010 WL 11415023, at *2 (V.I. Super. Ct. June 17, 2010); *McCarthy v. Monte*, ST-1990-CV-63, 1991 WL 138614, at *2 (D.V.I., June 17, 1991); *Regan v. Estate Questa Verde Townhouses*, SX-1988-CV-652, 1988 WL 1628330, at *1 (V.I. Super. Ct. Oct. 4, 1988); *Watlington v. Thompson*, SX-1982-CV-715, 1983 WL 952732, at *1 (V.I. Super. Ct. Jan. 24, 1983). In fact, the Reporter's Note accompanying Rule 2 of the Virgin Islands Small Claims Rules expressly states that the provision requiring transfer when an attorney is requested or enters an appearance or if a jury trial is demanded is not a new requirement, but only codifies the *Carr* precedent.

[5] In his reply, Hailey states that "[t]he Judgments are not violative of Respondents' right to petition under the First Amendment because, among other things, Respondents violated V.I. law when obtaining the Default Judgment in [the Small Claims Division] against Hailey." (Reply Br. 3-4.). However, because Hailey neither moved to set aside the April 4, 2014 judgment nor filed a notice of appeal, the judgment remains valid and in effect in the Virgin Islands. In any case, the Supreme Court of the United States has made clear that even unsuccessful lawsuits are protected by the Petition Clause of the First Amendment. *BE & K Construction Co.*, 536 U.S. at 532.

the courts of the Virgin Islands to obtain redress against Hailey. *Duryea*, 564 U.S. at 387. Consequently, the North Carolina judgments are void *ab initio*. *Crucians in Focus, Inc*, 57 V.I. at 538; *Siebold*, 100 U.S. at 376–77. Because the Superior Court lacks jurisdiction to enforce void Virgin Islands judgments, it likewise lacks jurisdiction to enforce the void North Carolina judgments under the UEFJA. *See Domus, Inc*, 224 A.3d at 36; *Firedoor Corp. of Am. v. Tibshraeny Bros. Const., Inc.*, 616 P.2d 67, 69 (Ariz. Ct. App. 1980). Consequently, Hailey does not have a clear and indisputable right to have the North Carolina judgments enforced in the Virgin Islands[6] under the UEFJA,[7] and we thus deny the mandamus petition.[8]

[6] As noted earlier, Hailey also asserts in his mandamus petition that he has a clear and indisputable right to a ruling on his reconsideration motion and maintains that the Nominal Respondent's failure to rule constitutes a "conscious decision to not exercise jurisdiction." (Pet. 14.) However, because the Nominal Respondent does in fact lack jurisdiction to take any action with respect to the void North Carolina judgments other than issuing an order dismissing Hailey's petition for lack of jurisdiction, we conclude that Hailey does not have a clear and indisputable right to have the Nominal Respondent rule on his reconsideration motion on the merits. In any event, we are confident that the Nominal Respondent will issue a formal ruling consistent with the holding of this opinion.

[7] In his reply, Hailey argues for the first time that the Full Faith and Credit Clause of the United States Constitution—which is applicable to the Virgin Islands through section 3 of the Revised Organic Act—mandates that the Virgin Islands enforce the two North Carolina judgments. Because Hailey only argued in his mandamus petition that he is entitled to enforcement under the UEFJA and raises his Full Faith and Credit Clause argument for the first time in his reply brief, the issue is waived. *See Benjamin v. AIG Ins. Co. of Puerto Rico*, 56 V.I. 558, 567 (V.I. 2012) ("When an argument is raised for the first time on appeal in a reply brief, that argument is deemed waived because the appellee will not get an opportunity to respond to the argument." (citations omitted)). We note, however, that it is well-established that the Full Faith and Credit Clause—like the UEFJA—does not compel recognition or enforcement of void or illegal foreign judgments. *See, e.g.*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *Vaughn v. Love*, 188 A. 299, 284 (Pa. 1936); *Hochstein v. James W. Hill Co.*, 82 A. 171, 173 (N.H. 1912).

[8] Because we conclude that Hailey does not have a clear and indisputable right to the relief requested, we need not consider whether issuance of a writ would be appropriate under the circumstances.

III. CONCLUSION

¶ 21 Since the North Carolina judgments impose civil liability on the respondents solely for filing a successful lawsuit against Hailey in the Small Claims Division of the Superior Court, those judgments are void *ab initio* as violative of the Petition Clause of the First Amendment. Because the Superior Court lacks jurisdiction to enforce void judgments, Hailey does not have a clear and indisputable right to have the Nominal Respondent issue an order lifting the stay and ordering that the void judgments be enforced in the Virgin Islands. Accordingly, we deny the mandamus petition.

Dated this 19th day of August, 2020.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court