For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

EMMANUEL ETIENNE, EMMENTINA ETIENNE and FIRST PENTECOSTAL CHURCH, INC., Appellants/Defendants, v. **JOHN ALEXANDER, as personal representative of the ESTATE OF VERONICA ALEXANDER; and MEMBERS OF THE FIRST PENTECOSTAL CHURCH,** Appellees/Plaintiffs.	**S. Ct. Civ. No. 2018-0004** Re: Super. Ct. Civ. No. 197/2007 (STX) Consolidated Cases: S. Ct. Civ. No. 2018-0004 S. Ct. Civ. No. 2018-0005
EMMANUEL ETIENNE and FIRST PENTECOSTAL CHURCH, INC., Appellants/Plaintiffs, v. **JOHN ALEXANDER,** Appellee/Defendants.	**S. Ct. Civ. No. 2018-0005** Re: Super. Ct. Civ. No. 241/2017 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Jomo Meade

Considered: March 12, 2019
Filed: July 21, 2020

Cite as: 2020 VI 12

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

APPEARANCES:

Anthony R. Kiture, Esq.

Kiture Law Firm
St. Croix, U.S.V.I.
Attorney for Appellant,

John Alexander
St. Croix, U.S.V.I.
Pro Se Appellee (Individually and as Personal Representative of the Estate of Veronica Alexander)

OPINION OF THE COURT

CABRET, Associate Justice.

¶ 1 Appellants Emmanuel Etienne, Emmentina Etienne and First Pentecostal Church, Inc. appeal from two orders of the Superior Court, entered December 28, 2017, one from each of two related actions—*Alexander, et al. v. Etienne, et al.,* SX-07-CV-197 and *Etienne, et al. v. Alexander,* SX-17-CV-241—that have since been consolidated for the purposes of this appeal. The order being appealed in the first action (SX-07-CV-197) requires the parties to fulfill their obligations under a mediated settlement agreement executed between the parties on February 1, 2008. The order being appealed in the second action (SX-17-CV-241) dismissed that matter in its entirety based upon the Superior Court's finding that all issues and claims in the second action had been resolved by its order mandating compliance with the mediated settlement agreement in the first action. For the reasons discussed below, we conclude that the Superior Court was divested of its jurisdiction over the first action in April 2008, and therefore the court's subsequent orders entered in that matter, including the order being appealed, are void. In turn, because the Superior Court erred in dismissing the second action as effectively moot, we reverse the court's December 28, 2017 order in that matter and remand the case for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 These consolidated matters both arise from a dispute concerning windows purchased for First Pentecostal Church, Inc., a Virgin Islands corporation with churches located in Frederiksted, St. Croix and in St. Thomas. Emmanuel Etienne is the bishop of First Pentecostal and the primary pastor of the church located in St. Croix. Emmentina Etienne is Emmanuel Etienne's wife, and is the primary pastor of the church located in St. Thomas. Veronica Alexander was a former member of First Pentecostal, and the former Secretary/Treasurer and former assistant pastor of the St. Croix location.

¶ 3 In 2006, First Pentecostal executed a contract for the purchase of windows, at a cost of $26,034.63, to install in its new church building under construction in Frederiksted. The Women's Auxiliary Group of the First Pentecostal Church provided an initial payment of $11,000. The remainder of the purchase money was paid by Veronica Alexander who, in turn, received contributions from the Women's Auxiliary and other members of First Pentecostal who are not parties to this action. According to Appellants, when the windows arrived on St. Croix, First Pentecostal was not yet ready to install them, and therefore Emmanuel Etienne asked Alexander to store the windows at her residence, where they remain to this day.

¶ 4 On May 8, 2007, Veronica Alexander and unnamed members of the First Pentecostal Church initiated the first of these consolidated matters by filing a complaint against Emmanuel Etienne, Emmentina Etienne and First Pentecostal Church, Inc., requesting, among other things, monies which were allegedly owed by the Appellants to both Mrs. Alexander and the other unnamed parishioners for expenditures made on behalf of the church for the purchase and development of the church property, including the windows. In their answer, Appellants denied the allegations and raised several affirmative defenses.

¶ 5 Subsequently, pursuant to an order of the Superior Court, the parties settled the case in mediation and executed a mediation agreement. The parties submitted a mediation report to the court, and the court entered an order on February 21, 2008, dismissing the case with prejudice, but retaining jurisdiction for sixty days in the event that the terms of the settlement were not fulfilled.

¶ 6 On December 29, 2009, well after the expiration of the sixty-day period specified by the court, Veronica Alexander filed a motion to enforce the terms of the settlement agreement between the parties. In February 2010, the court granted the parties' stipulated request for a stay of proceedings on the motion to provide the parties with an opportunity to fully comply with the mediation agreement. Ultimately these efforts were unsuccessful, and the Appellants filed their opposition to Alexander's motion in September 2013, after which this case appears to have languished until 2017.

¶ 7 On May 25, 2017, Emmanuel Etienne and First Pentecostal Church, Inc. initiated the second of these consolidated matters by filing a Complaint against John Alexander,[1] alleging theft and conversion of property, negligent infliction of emotional distress and damages, and seeking a declaratory judgment against John Alexander for refusing to turn over possession of the windows that allegedly belong to the church. In response, John Alexander filed a Motion to dismiss the complaint on the grounds that it failed "to satisfy the Rule 8 requirements of pleading," arguing that the "new action (is) based on the same or similar set of facts as set forth in the pending action (*Alexander, et al. v. Etienne, et al.*)" and the complaint is "seeking relief for the same dispute that has previously been disposed of by a mediated settlement agreement…."

[1] John Alexander is the husband of the deceased plaintiff, Veronica Alexander.

¶ 8 On November 16, 2017, the Superior Court issued an order scheduling a status conference to address the issues in both pending actions because the parties had "apparently come to an impasse with respect to fulfilling their various obligations under the [mediation] agreement." The court further ordered that the parties present an evidentiary record, including the "testimony of all factors that restrict the parties' performance under the mediation agreement."

¶ 9 Following the status conference, the Superior Court entered an order in each of the two matters on December 28, 2017. As to the first action, the court's order required the parties to "fulfill their obligations as initially memorialized in the Mediation Agreement executed on February 1, 2008… [including that] any outstanding balance" on the $16,480.63 that the Mediation Agreement required the Defendants to pay to Veronica Alexander be paid instead to "the representative of the estate of Veronica Alexander,"[2] due to her death in 2015. With respect to the second action, the court's order found "that the facts and issues underlying the claims and dispute in the case [of *Etienne, et al. v. Alexander*] have been resolved by the Parties' compliance with the terms of a Mediation Agreement resolving . . . *Alexander, et al. v. Etienne, et al.*," and therefore dismissed the second action as effectively moot. Appellants timely filed their notice of appeal in each of the two cases on January 19, 2018, which were subsequently consolidated for appeal.

II. JURISDICTION AND STANDARD OF REVIEW

¶ 10 "The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court." V.I. CODE ANN. tit. 4, § 32(a). Because the Superior

[2] The court's order also denied, as moot, defendants' November 27, 2017, motion to dismiss, which requested that the case be dismissed because the plaintiff failed to file a motion to substitute the personal representative of the estate of Veronica Alexander within two years of her death.

Court's December 28, 2017 orders each constitute final judgments resolving all issues in their respective cases, the appeals were properly filed with this Court.

¶ 11 "This Court exercises plenary review of the Superior Court's application of law." *Edward v. GEC, LLC*, 67 V.I. 745, 752 (V.I. 2017). "Moreover, we exercise plenary review over questions relating to the Superior Court's subject matter jurisdiction." *Drayton v. Drayton*, 65 V.I. 325, 332 (V.I. 2016)

III. DISCUSSION

A. Superior Court Jurisdiction in *Alexander, et al. v. Etienne, et al.*

¶ 12 Before addressing the merits, we must first determine whether the Superior Court had jurisdiction to issue its December 28, 2017 order in the first action. *See, e.g.*, *Willis v. People*, 71 V.I. 789, 795 (V.I. 2019) ("[I]t is well-established that prior to reaching the merits of a case, we must determine whether we have subject matter jurisdiction over the dispute, including whether the Superior Court properly exercised jurisdiction over th[e] case in the first instance."); *Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 304 (V.I. 2014) (noting that this Court possesses "an independent obligation to determine that the Superior Court properly exercised jurisdiction"). Appellants argue that because Mrs. Alexander's estate failed to effect a substitution of a personal representative in Mrs. Alexander's stead within two years of her death, the court was "divested of its jurisdiction on July 12, 2017, and… should not have proceeded with the December 19, 2017, hearing nor . . . its[ ] order dated December 21, 2017…." However, for the reasons discussed below, we conclude that the Superior Court was divested of jurisdiction in April 2008 for a more fundamental reason.

¶ 13 As we have previously explained, "when a trial court dismisses a case because the parties have settled, the court does not have jurisdiction to enforce the terms of the settlement agreement

simply because it had jurisdiction to decide the underlying action." *Judi's of St. Croix Car Rental v. Weston*, 49 V.I. 396, 402 (V.I. 2008). Rather, we have only recognized narrow exceptions allowing the Superior Court to exercise jurisdiction to enforce a settlement agreement in such cases, including: (1) where the Superior Court has "an independent basis for jurisdiction;" (2) where the settlement contract is "embod[ied] in the dismissal order;" or (3) where the Superior Court expressly retains jurisdiction to enforce the agreement. *Id.* (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994)). In the instant case, there is no indication or argument that there is an independent basis for the Superior Court's continued jurisdiction in this dismissed matter. Similarly, the settlement agreement was not incorporated into the dismissal order in this case. Finally, the Superior Court only expressly retained jurisdiction to enforce the agreement for sixty days.

¶ 14 Thus, under the rule articulated in *Judi's*, the Superior Court retained jurisdiction over the first action for only sixty days following the entry of its February 21, 2008 dismissal, after which it was automatically divested of its jurisdiction over the case. *See Judi's of St. Croix,* 49 V.I. at 404 (holding that after the sixty-day period expired in that case, absent an independent jurisdictional basis, "the Superior Court was without jurisdiction to enforce the settlement agreement, despite an alleged breach by the Appellants, because the court did not explicitly retain enforcement jurisdiction or incorporate the terms of the settlement agreement in its dismissal order"). Because Alexander did not file her motion to enforce the settlement agreement until February 2009, well past the expiration of the sixty-day period prescribed in the February 2008 dismissal order, and because none of the exceptions for continued jurisdiction apply in this case, we conclude that the

Superior Court lacked jurisdiction to enforce the settlement agreement after April 2008.[3] Consequently, all orders issued by the Superior Court in the first action after the expiration of the sixty-day period, including the court's December 28, 2017 order being appealed here, are void. *See In re Guardianship of Smith,* 54 V.I. 517, 526 (V.I. 2010) ("[I]f a court lacks jurisdiction, its order and all subsequent orders are void and need not be followed."). In turn, because we conclude that the order being appealed is void and without effect, we need not reach the Appellants' arguments on the merits with respect to the first action.

B. Dismissal of *Etienne, et al. v. Alexander*

¶ 15 Next, we consider whether the Superior Court erred in dismissing the second action. Appellants argue that because the Superior Court lacked jurisdiction to issue its final order in the first action, it had no basis for dismissing the second action. We agree.

¶ 16 In its dismissal order, the Superior Court found that the facts and issues underlying the claims in the second action—*Etienne, et al. v. Alexander*—had been "resolved by the parties' compliance with the terms of the mediation agreement" resolving the first action—*Alexander, et al. v. Etienne, et al.*[4] Although the order dismissing the second action provides little explanation, the Superior Court apparently concluded that because it entered an order in the first action

[3] After the sixtieth day, the dismissal order ripened into a final order which would have been appealable to this court. *See Judi's of St. Croix,* 49 V.I. at 400 ("[O]rders that dismiss an action pending settlement automatically ripen into final orders if the parties fail to reopen the matter within the timetable provided for in the order.") (citing *Berke v. Bloch*, 242 F.3d 131, 135 (3d Cir. 1990) (emphases omitted).

[4] Although it is not mentioned in its order dismissing the second action, the Superior Court, in its order scheduling the status conference immediately preceding the dismissal, required the parties to present oral argument as to why the second case should not be dismissed as *res judicata*. To the extent this issue arises on remand, the Superior Court must expressly determine whether: "(1) the prior judgment was valid, final, and on the merits; (2) the parties in the subsequent action are identical to or in privity with parties in the prior action; and (3) the claims in the subsequent action arise out of the same transaction or occurrence as the prior claims." *Stewart v. V.I. Bd. of Land Use Appeals*, 66 V.I. 522, 532 (V.I. 2017) (quoting *Cacciamani & Rover Corp. v. Banco Popular de P.R.*, 61 V.I. 247, 255 (V.I. 2014). The court may only dismiss the matter under the doctrine of *res judicata* if all three elements of the test are satisfied. *Id.*

mandating compliance with the terms of the settlement agreement, the second action, concerning the same underlying issues, was effectively rendered moot.[5]

¶ 17 However, as discussed above, the Superior Court was divested of jurisdiction over the first action beginning in April 2008, nearly a year before Alexander filed her motion to enforce the settlement agreement. And, because the Superior Court lost jurisdiction over the matter before the issue of compliance with the settlement agreement had ever been raised, all subsequent orders of the court addressing that issue, including its final order mandating compliance with the settlement agreement, are void *ab initio* and need not be followed. Thus, even to the extent that an order mandating compliance with the settlement agreement in the first action could render the second action moot, it did not have that effect in this case because the order mandating compliance was, itself, void for lack of jurisdiction. Accordingly, we conclude that the Superior Court erred in dismissing the second action based on its finding that the second action had been rendered moot by void orders entered in the first action, and therefore reverse the court's December 28, 2017 order dismissing *Etienne, et al. v. Alexander* and remand the case for further proceedings.

IV. CONCLUSION

¶ 18 Because the Superior Court was divested of jurisdiction over the first action— *Alexander, et al. v. Etienne, et al*.—in April 2008, all subsequent orders entered in that matter, including the court's December 28, 2017 order mandating compliance with the settlement agreement, are void. Consequently, the Superior Court erred in dismissing the second action based upon its finding that

[5] On its face, the Superior Court's order dismissing the second action could be read as suggesting that the court dismissed the case because the parties have fully complied with the terms of the settlement. However, that suggestion is directly contradicted by the court's own order in the first action, entered on the same date, which clearly establishes that the parties have not yet fully complied and expressly orders the parties to fulfill their obligations under the settlement agreement. Thus, the only remaining plausible interpretation of the Superior Court's reasoning in dismissing the second action is that the court believed that the entry of its order requiring compliance with the terms of the settlement agreement in the first action was, itself, sufficient to render the second action moot.

all issues had been resolved by the void order mandating compliance. Accordingly, we reverse the Superior Court's December 28, 2017 order dismissing *Etienne, et al. v. Alexander,* and remand this case to the Superior Court for further proceedings consistent with this opinion.

Dated this 21st day of July, 2020.

BY THE COURT:

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court