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For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

MURPHY RIGGING & ERECTING, INC.,) **S. Ct. Civ. No. 2021-0054**
Appellant/Plaintiff,) Re: Super. Ct. Civ. No. 661/2019 (STT)
)
v.)
)
VIRGIN ISLANDS WATER & POWER)
AUTHORITY,)
Appellee/Defendant.)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas-St. John
Superior Court Judge: Hon. Sigrid M. Tejo

Argued: March 8, 2022
Filed: March 22, 2022

Cite as: 2022 VI 5

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

APPEARANCES:

Karin A. Bentz, Esq.
Law Offices of Karin A. Bentz, P.C.
St. Thomas, U.S.V.I.
Attorney for Appellant,

Aysha R. Gregory, Esq.
Deputy General Counsel
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Appellant Murphy Rigging & Erecting, Inc., (“Murphy”) appeals from the Superior Court’s August 30, 2021 order, which granted a motion by Appellee Virgin Islands Water & Power Authority (“WAPA”) to quash a writ of execution. For the reasons that follow, we declare the

entirety of the underlying Superior Court proceedings a nullity because they were initiated in contravention to the prohibition on the unauthorized practice of law. As a result, we dismiss the underlying petition and vacate all orders issued pursuant to it.

I. BACKGROUND

¶ 2 On July 24, 2015, WAPA executed a contract with Murphy—a Minnesota corporation—to unload and store equipment that it had transported from California to Minnesota as part of a purchase of a used water treatment plant. Pursuant to the agreement, WAPA was to pay to Murphy a sum of \$10,995.00 per month for these services. While WAPA initially made payments under the contract, it stopped doing so in May 2017, and failed to make any arrangements to pick up the equipment or to store it elsewhere. For approximately two years, Murphy continued to store the equipment for WAPA without payment but continued to bill WAPA monthly for \$10,995.00 plus finance charges.

¶ 3 Murphy sued WAPA in the Minnesota State District Court for Hennepin County for breach of contract and served its complaint on WAPA on August 3, 2018. However, WAPA did not file an answer or otherwise appear in the Minnesota action. On October 18, 2018, Murphy filed a motion for default judgment in the Minnesota court, and on October 30, 2018, that court granted the motion and issued a judgment against WAPA and in favor of Murphy for \$248,294.55. WAPA did not appeal the October 30, 2018, default judgment or file any motion to set it aside.

¶ 4 On December 2, 2019, a petition for domestication of the Minnesota judgment was filed in the Superior Court of the Virgin Islands, purportedly on behalf of Murphy. However, the petition had not been filed or signed by an attorney admitted to practice law in the Virgin Islands. The petition was signed by D. Thomas Griepe—identified as the Chief Financial Officer of Murphy—and was accompanied by a cover letter signed by Timothy J. Grande—a Minnesota lawyer not

admitted to practice in the Virgin Islands—addressed to the Clerk of the Superior Court stating that the petition and supporting documents were for filing. The signed petition also gave Grande’s law office address underneath Griepe’s name in the signature block. Neither Griepe nor Grande were then admitted to practice law in the Virgin Islands, and neither has since been admitted to practice in the courts of the Territory.

¶ 5 The Clerk of the Superior Court docketed the petition. WAPA did not file an opposition or any other document in response to this petition. The Superior Court ultimately addressed the petition in a March 13, 2020 order. In that order, the Superior Court acknowledged in a footnote that “counsel not admitted to the Virgin Islands Bar may not represent Plaintiff before the courts of the Virgin Islands unless admitted *pro hac vice* by the Supreme Court of the Virgin Islands upon the recommendation of and in association with a member in good standing of the Virgin Islands Bar.” (J.A. 48.) Yet despite acknowledging this prohibition, the Superior Court did not strike the petition, refer Griepe and Grande to the Office of Disciplinary Counsel, the Board on the Unauthorized Practice of Law, or the Board on Professional Responsibility, or take any other action to address the unauthorized practice of law that it observed. Rather, it simply granted the petition and ordered the Minnesota judgment domesticated.

¶ 6 On August 25, 2020, an attorney admitted to the Virgin Islands Bar entered an appearance on behalf of Murphy in the Superior Court proceeding and requested issuance of a writ of execution, seeking to collect the remainder of the monies due under the default judgment. The Superior Court issued the writ on May 17, 2021. On July 1, 2021, WAPA filed a motion to quash the writ of execution, relying exclusively on title 30, section 111(a) of the Virgin Islands Code, which provides in pertinent part that “[a]ll property including funds of the Authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process

shall issue against the same nor shall any judgment against the Authority be a charge or lien upon its property.” Murphy filed an opposition to the motion to quash on July 21, 2021, noting that WAPA was not entitled to sovereign immunity and that the only cases to apply section 111(a) have arisen in the context of personal injury judgments and claiming that “following [WAPA]’s interpretation to its logical conclusion . . . would mean that WAPA could breach every contract and never pay a bill.” In its August 4, 2021 reply, WAPA conceded that it “cannot and has not asserted a claim of sovereign immunity or governmental immunity from lawsuits or damages,” recognized that any sovereign immunity it could exercise under the Revised Organic Act had been “categorically waived.” Nevertheless, it asserted that the plain text of section 111(a) “places a limitation on the enforcement of a judgment or [w]rit of [e]xecution against WAPA” and that this “clear restriction” applies to both tort and contract claims.

¶ 7 The Superior Court granted WAPA’s motion to quash in an August 30, 2021 order. The Superior Court agreed with WAPA that section 111(a) precluded the use of a writ of execution or other judicial process to enforce a monetary judgment against it and noted that while prior cases applying section 111(a) had occurred in the personal injury context, no case had actually held that section 111(a) was inapplicable to contract cases as well.

¶ 8 Murphy timely filed a notice of appeal with this Court on September 17, 2021. *See* V.I. R. APP. P. 5(a)(1). After Murphy filed a brief raising constitutional challenges to section 111(a), this Court, in a February 3, 2022 order, notified the Attorney General of the Virgin Islands in accordance with Rule 22(n) of the Virgin Islands Rules of Appellate Procedure that the constitutionality of a Virgin Islands statute had been drawn into question in a case where neither party was represented by the Virgin Islands Department of Justice. On February 14, 2022, the Attorney General filed a response with this Court concurring with the arguments made by WAPA

in its brief and advising that it would not file a separate brief and did not wish to participate in oral argument.

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 9 Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over “all appeals from the decisions of the courts of the Virgin Islands established by local law[.]” 48 U.S.C. § 1613a(d). Title 4, section 32(a) of the Virgin Islands Code vests this Court with jurisdiction over “all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court.” Because the Superior Court's August 30, 2021 order resolved all of the claims between the parties, it is a final judgment under section 32(a). *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012). In addition, this Court possesses the constitutional, statutory, and inherent authority and jurisdiction to regulate the practice of law in the Virgin Islands, including enforcing the prohibition against the unauthorized practice of law. *In re Kershaw*, 70 V.I. 859, 861 (V.I. 2019).

¶ 10 This Court exercises plenary review over all questions of law. *Brathwaite v. People*, 60 V.I. 419, 426 (V.I. 2014).

B. The Unauthorized Practice of Law

¶ 11 The prohibition on the unauthorized practice of law in the Virgin Islands is codified in both Rule 211.5.5 of the Virgin Islands Rules of Professional Conduct and title 4, section 443 of the Virgin Islands Code. *In re Jindal*, 69 V.I. 942, 948 (V.I. 2018). Rule 211.5.5 provides that

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An individual who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by section 443 of title 4 of the Virgin Islands

Code or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that he or she is admitted to practice law in this jurisdiction.

Title 4, section 443 of the Virgin Islands Code further provides, in pertinent part, that

Except as otherwise provided by law or rule of the Supreme Court, and excepting court personnel acting in the performance of their court duties, the unauthorized practice of law shall be deemed to mean the doing of any act by a person who is not a member in good standing of the Virgin Islands Bar Association for another person usually done by attorneys-at-law in the course of their profession, and shall include but not be limited to:

the appearance, acting as the attorney-at-law, or representative of another person, firm or corporation, before any court, referee, department, commission, board, judicial person or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation and/or filing of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the same.

4 V.I.C. § 443(a).

¶ 12 In this case, the December 2, 2019 petition, ostensibly filed on behalf of Murphy, had been signed by Griepe—a layman—with the knowledge and assistance of Grande, who mailed it to the Clerk of the Superior Court and whose law firm address appeared under Griepe’s signature on the petition. The signing of a pleading on behalf of another person by an individual who is not a member in good standing of the Virgin Islands Bar is a textbook example of conduct that constitutes the unauthorized practice of law in the Virgin Islands, *see In re Application of Nevins*, 60 V.I. 800, 803 (V.I. 2014) (collecting cases), and an individual who assists in this conduct has violated the prohibition on aiding and abetting the unauthorized practice of law, *see In re Joseph*, 60 V.I. 540, 554 (V.I. 2014).

¶ 13 Ordinarily, claims that an individual has violated the prohibition on the unauthorized practice of law are in the first instance investigated by the Office of Disciplinary Counsel and adjudicated by the Board on the Unauthorized Practice of Law or—if the violation occurred by a

lawyer admitted in any jurisdiction—the Board on Professional Responsibility. *See* V.I. S.Ct.R. 207.5(a); 212. This authority, however, is not exclusive, for the powers these entities exercise have been delegated by this Court, which always remains the ultimate authority on such matters. *In re Burns*, 2020 VI 16, ¶ 11. Importantly, this Court has already held that “Superior Court judges and magistrates play a critical role in enforcing, in individual cases, the legal ethics and bar admissions rules promulgated by this Court, as well as the prohibition on the unauthorized practice of law.” *In re Campbell*, 59 V.I. 701, 727 (V.I. 2013). As such, “[i]ndividual judges and magistrates are, among other things, expected to . . . refer professional misconduct that occurs in their presence to [disciplinary authorities] and—of course—only allow appearances by members of the Virgin Islands Bar Association.” *Id.* The requirement that the Superior Court act when such misconduct occurs before it is further codified in Rule 213.2.15 of the Virgin Islands Code of Judicial Conduct, which requires that judicial officers take appropriate action to respond to ethical misconduct of which they have knowledge, or which has otherwise been brought to their attention.

¶ 14 In taking such actions, the Superior Court is not expected to transform otherwise ordinary judicial proceedings into a disciplinary proceeding. Rather, in addition to reporting the misconduct to the pertinent disciplinary authorities, the court must take whatever action it deems necessary to remedy or prevent actual or potential harm to the administration of justice stemming from the misconduct. *See Norton v. Tallahassee Memorial Hosp.*, 689 F.2d 938, 942 (11th Cir. 1982). For example, if the Superior Court has reason to suspect that a lawyer’s representation of a client in a matter before it may run afoul of the provisions of the Virgin Islands Rules of Professional Conduct pertaining to conflict of interest, the Superior Court is required to conduct an appropriate inquiry and, if necessary, enter an order disqualifying the lawyer. *See In re Drue*, 57 V.I. 517, 523-24 (V.I. 2012). The purpose of such steps is not for the court to discipline the attorney or for the court

to displace the Office of Disciplinary Counsel, but to ensure the integrity of the case before it. *Id.*

¶ 15 Here, the Superior Court recognized in a footnote to its March 13, 2020 order that the petition had been filed on behalf of Murphy by individuals who were not members of the Virgin Islands Bar, whether *pro hac vice* or otherwise. In accordance with our precedents and conduct rules, the Superior Court was required to prohibit such an appearance. *Campbell*, 59 V.I. at 727. Nevertheless, the Superior Court ignored the unauthorized practice of law that it observed, and instead granted the petition anyway.

¶ 16 In their appellate briefs, neither Murphy nor WAPA addresses the effect of (1) the initiating petition in the underlying case being filed by individuals not authorized to practice law in the Virgin Islands; or (2) the Superior Court’s decision to ignore the unauthorized practice it expressly recognized and instead grant the petition anyway. When asked at oral argument about these issues, counsel for Murphy stated that this Court should deem the unauthorized practice of law issue waived because it was not asserted by WAPA in the underlying proceeding or on appeal. But it is obvious that “one cannot consent to the unauthorized practice of law or waive the requirement that all parties other than natural persons be represented by licensed attorneys,” *Naylor Senior Citizens Hous., LP v. Side Constr. Co.*, 423 S.W.3d 238, 250 (Mo. 2014), for doing so would render the prohibition on unauthorized practice wholly ineffective and more akin to mere suggestions. For this reason, this Court has recognized, in a long line of cases, that it may both recognize and enforce the prohibition on the unauthorized practice of law *sua sponte*, at any stage of the proceeding in which it comes to this Court’s attention, even in the absence of a motion or other request by a party. *See, e.g., Kershaw*, 70 V.I. at 861-62; *Mitchell v. Mullgray*, S. Ct. Civ. No. 2015-0038, 2015 WL 6736789, at *2 (V.I. Nov. 4, 2015) (unpublished); *Nevins*, 60 V.I. at 804; *In re Gonzalez*, 59 V.I. 862, 865 (V.I. 2013). When the conduct constituting the unauthorized practice of law

included the filing of a brief or other document, this Court has ordered that document rejected -- in addition to any other sanctions or remedies imposed. *See, e.g., Mitchell*, 2015 WL 6736789, at *3; *Nevins*, 60 V.I. at 805. This is consistent with the constitutional, statutory, and inherent authority and jurisdiction of this Court to regulate the practice of law in the Virgin Islands, as well as overwhelming case law from other jurisdictions characterizing documents filed by individuals in contravention to the prohibition on the unauthorized practice of law as being nullities with no legal effect whatsoever. *See, e.g., Kelly v. Saint Francis Medical Ctr.*, 889 N.W.2d 613, 618-20 (Neb. 2017) (holding that a legal proceeding initiated by a complaint filed by an individual not licensed to practice law “is a nullity and is subject to dismissal”); *6226 Northwood Condo. Ass’n v. Dwyer*, 330 S.W.3d 504, 506 (Mo. App. 2010) (“[W]here a representative engages in the unauthorized practice of law, the proper remedy is to dismiss the cause or treat the actions taken by the representative as a nullity.”); *Davenport v. Lee*, 72 S.W.3d 85, 87 (Ark. 2002) (“[W]e cannot say that the unauthorized practice of law simply results in an amendable defect. Where a party not licensed to practice law in this state attempts to represent the interests of others by submitting himself or herself to jurisdiction of a court, those actions such as the filing of pleadings, are rendered a nullity.”); *Ex parte Ghafary*, 738 So. 2d 778, 779 (Ala. 1998) (justifying the rule declaring documents filed by non-attorneys void ab initio as “serv[ing] to protect the public” in various ways); *Turkey Point Prop. Owners’ Ass’n v. Anderson*, 666 A.2d 904, 909 (Md. 1995) (declaring petition filed by non-attorney a nullity because “[t]he goal of the prohibition against unauthorized practice is to protect the public from being preyed upon by those not competent to practice law—from incompetent, unethical, or irresponsible representation”); *Expressway Assocs. II v. Friendly Ice Cream Corp. of Conn.*, 642 A.2d 62, 67 & n.10 (Conn. 1994); *Gazdo Props.*

Corp. v. Lava, 579 N.Y.S.2d 305, 306 (N.Y. App. Div. 1991).¹

¶ 17 For these reasons, we hold that the domestication petition filed with the Superior Court on December 2, 2019, purportedly on behalf of Murphy, was a nullity with no legal effect whatsoever because it was signed and filed by individuals who lacked the authority to practice law in the Virgin Islands.² When it recognized that the petition sought to vindicate the rights of a corporation

¹ We acknowledge that a minority of courts have departed from this majority rule and held that pleadings violative of the unauthorized practice of law are not void *ab initio*, but merely voidable, and that a court possesses the discretion to permit a party to cure the pleading rather than treating it as a nullity. See, e.g., *Bishar v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 396-97 (Pa. 2021); *Rental Prop. Mgmt. Servs. v. Hatcher*, 97 N.E.3d 319, 329 (Mass. 2018); *Torrey v. Leesburg Reg'l Med. Ctr.*, 769 So. 2d 1040, 1041 (Fla. 2000). “[J]urisdictions rejecting the void *ab initio* approach largely do so by deeming the bright-line approach too harsh.” *Bishar*, 265 A.3d at 403.

Nevertheless, even these jurisdictions agree “that a court cannot ignore the unauthorized practice of law and must intervene.” *Id.* at 406; see also *Hatcher*, 97 N.E.3d at 329 (“[W]here a court learns that a person is engaged in the unauthorized practice of law, the court is obligated to take corrective action, regardless of whether the adverse party requests such action. A court has no discretion to tolerate the unauthorized practice of law, and may not allow a person to engage in the unauthorized practice of law simply because the adverse party does not object.”). Here, even though it recognized that a petition had been filed on behalf of a party by an individual not licensed to practice law, the Superior Court took no corrective action—not even a modest action such as striking the petition and permitting its refile by a Virgin Islands attorney. Rather, it simply granted the relief sought in the petition by domesticating the Minnesota judgment. Consequently, even if we were inclined to adopt the minority rule and treat the petition as merely voidable—which we do not do—vacatur of the March 13, 2020 and August 30, 2021 orders would remain warranted.

² We emphasize that this is not a holding that the Superior Court lacked subject matter jurisdiction over the domestication petition. That the domestication petition had been filed on behalf of Murphy by an individual not licensed to practice law in the Virgin Islands does not affect the adjudicatory capacity of the Superior Court or its authority to hear the case. *First Am. Dev. Group/Carib, LLC v. WestLB AG*, 55 V.I. 594, 611 (V.I. 2011). Nevertheless, the prohibition on an unlicensed individual filing a pleading on behalf of another represents a non-waivable claims-processing rule for it is a rule that “implicates judicial interests beyond those of the parties.” *Ottley v. Estate of Bell*, 61 V.I. 480, 495 (V.I. 2014) (quoting *Mustafa v. Camacho*, 59 V.I. 566, 571 n.2 (V.I. 2013)). Thus, as with other non-waivable claims-processing rules, both this Court and the Superior Court possess the obligation to raise and enforce the prohibition on the unauthorized practice of law, even *sua sponte*. Cf. *Peters v. People*, 60 V.I. 479, 484 (V.I. 2014).

but had not been filed by a licensed Virgin Islands attorney, the Superior Court was obligated to treat the petition as a nullity, which would require dismissing the case. Consequently, we vacate the Superior Court's March 13, 2020 order granting the void petition, as well as the subsequent August 31, 2021 order which would not have been entered had the domestication petition been dismissed, and further direct the Superior Court on remand to dismiss the domestication petition. We also refer Griepe and Grande to the Office of Disciplinary Counsel, the Board on Professional Responsibility, the Board on the Unauthorized Practice of Law, and the Virgin Islands Department of Justice, for such entities to take any appropriate further action.³

III. CONCLUSION

¶ 18 The Superior Court erred when it recognized that the petition for domestication of the Minnesota judgment had been signed and filed on behalf of Murphy by individuals not authorized to practice law in the Virgin Islands, yet nevertheless granted the petition. Because the petition was a legal nullity, the Superior Court's March 13, 2020 order purporting to grant the petition, as well as all other documents filed and orders entered in the proceeding, were also nullities without any legal effect. Accordingly, we vacate the March 13, 2020 order as well as the later August 30, 2021 order as nullities and direct the Superior Court on remand to dismiss the petition for domestication. In addition, we refer Griepe and Grande to the Office of Disciplinary Counsel, the Board on Professional Responsibility, the Board on the Unauthorized Practice of Law, and the Virgin Islands Department of Justice for any other appropriate action with respect to their

³ Given our holdings that the domestication petition had been a nullity, that the Superior Court committed error by granting it, and our directive that the petition be dismissed on remand, it is not necessary for us to consider any of the other issues that the parties have raised as part of this appeal.

unauthorized practice of law.

Dated this 22nd day of March, 2022.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Natasha Illis
Deputy Clerk

Dated: March 22, 2022