

**Not For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>IN RE: FIRSTBANK PUERTO RICO as</b>	)	<b>S. Ct. Civ. No. 2008-051</b>
<b>successor in interest to THE CHASE</b>	)	Re: Super. Ct. Civ. No. 924-1997
<b>MANHATTAN BANK</b>	)	
	)	
	)	
	)	
Petitioner.	)	
_____	)	

On Appeal from the Superior Court of the Virgin Islands  
Considered: July 25, 2008  
Filed: October 3, 2008

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

**APPEARANCES:**

**William J. Glore, Esq.**  
Dudley, Clark & Chan, LLP  
St. Thomas, U.S.V.I  
*Attorney for Petitioner*

**JUDGMENT ORDER**

**PER CURIAM.**

Before the Court is Petitioner FirstBank of Puerto Rico’s Petition for Writ of Mandamus to direct the Clerk of the Superior Court of the Virgin Islands to issue a writ of execution. For the reasons stated below, we will deny the petition.

**I. BACKGROUND**

The following background is taken from Petitioner’s petition. In April, 1995, Orpah Barbel (“Barbel”) entered into a loan agreement, including a note and mortgage, with The Chase Manhattan Bank (“Chase”) in the amount of \$376,000.00. The note was secured by mortgages encumbering real property described as Parcel No. 19F Estate Solberg and Parcel No. 23 Crystal Gade, St. Thomas, United States Virgin Islands (“Subject Properties”). When Barbel defaulted on payments

under the note, Chase commenced foreclosure proceedings. *See Chase Manhattan Bank v. Barbel*, No. 924-1977 (V.I. Super. Ct. 1997). On February 5, 1999, the Territorial Court, now known as the Superior Court, granted Chase summary judgment in the amount of \$444,536.56. The trial court further ordered that the Subject Properties be sold by the court marshal and that the proceeds from the sale be applied toward satisfying the judgment.

Before a marshal's sale could be conducted, Barbel filed a voluntary Chapter 13 bankruptcy petition on March 22, 1999. By filing the bankruptcy petition, Barbel invoked the automatic stay provisions contained in section 362 of the Bankruptcy Code. *See* 11 U.S.C. §362. In April of 2001, the Bankruptcy Court lifted that portion of the automatic stay which prevented enforcement of the debt against one of the two Subject Properties, Barbel's residence located at No. 19F Estate Solberg. *See In Re Barbel*, 183 Fed. Appx. 227, 228 (3d Cir. 2006). On October 15, 2002, while the bankruptcy action was still pending, Chase sold its loan assets, including Barbel's loan, to FirstBank of Puerto Rico ("FirstBank"), the petitioner herein. The Bankruptcy Court dismissed Barbel's Chapter 13 petition on November 14, 2003.

Barbel appealed the dismissal to the District Court of the Virgin Islands and the Third Circuit Court of Appeals, both of which denied her any relief. *See In re Barbel*, No. 03-0082, 2004 WL 2203446 (D.V.I. Sept. 22, 2004), *In re Barbel*, 183 Fed. Appx. 227. During her appeal to the Third Circuit Court of Appeals, Barbel raised, for the first time, the question of whether her debt to FirstBank had been forgiven. In support of her argument that FirstBank's predecessor, Chase, had discharged the debt, Barbel relied on Chase's issuance of an Internal Revenue Service Form 1099A, on January 16, 2002. On the form, Chase checked a box indicating that the "borrower [was not] personally liable for repayment of the debt[.]" (Pet. Ex. 6.) The Third Circuit rejected Barbel's argument that the 1099A form resulted in her debt being "written off." *See In Re Babel*, 183 Fed.

Appx. at 229. Specifically, the court found that because Barbel knew about the 1099A form, but had not properly raised the issue before the Bankruptcy Court, she waived any arguments concerning the form. *See id.* at 229-30. The court also found that, although a box was checked on the 1099A form indicating that Barbel was *not personally liable* for repayment of the debt, “neither party disputes the fact that the bank has a securitized interest in the properties regardless of Barbel’s personal liability.” *Id.* at 229 n.4 (emphasis added).

While Barbel’s appeals from the dismissal of her first bankruptcy petition were pending, she filed a second bankruptcy petition on October 12, 2004. The Bankruptcy Court dismissed this second petition, on March 3, 2005, lifting the stay and barring Barbel from filing any further bankruptcy petitions for 180 days. Barbel appealed this dismissal order, but the District Court of the Virgin Islands and the Third Circuit Court of Appeals again rejected her appeals. *See In re Barbel*, 212 Fed. Appx. 87 (3d Cir. 2006).

On December 6, 2006, FirstBank filed its Sixth Amended Praeceptum and Writ of Execution. On February 15, 2007, the Superior Court ordered FirstBank to show cause why the Clerk of the Court should enter the writ of execution in light of Barbel’s claims that the debt had been discharged as evidenced by the 1099A form. FirstBank responded to the Superior Court’s show cause order on March 5, 2007. On March 8, 2008, FirstBank filed its Seventh Amended Praeceptum and Writ of Execution, showing that the amount of the original judgment against Barbel had swollen to nearly \$544,000.00 in principal, accrued interest, fees and expenses. It does not appear that the Superior Court has acted on FirstBank’s response to the show cause order. FirstBank filed the instant Petition for Writ of Mandamus with this Court on June 17, 2008, asking that we direct the Clerk of the Superior Court to issue the Seventh Amended Writ of Execution.

## II. DISCUSSION

This Court has “inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands. The Supreme Court's authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction.” V.I. Code Ann. tit. 4, § 32(b)(2008)<sup>1</sup>.

To obtain a writ of mandamus, a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable. *See In re Everett Le Blanc and Lee J. Rohn*, S. Ct. Civ. No. 2007-079 Slip op. at 7 (V.I. June 26, 2008); *In re the People of the Virgin Islands*, S. Ct. Civ. No. 2007-012, 4-5 (V.I. July 6, 2007). Even where a petitioner has met this burden, we are not compelled to issue a writ. “The reviewing court in its discretion must conclude that the writ is appropriate under the circumstances.” *Id.* at 5 (internal quotation marks and citations omitted).

FirstBank has not met its burden in this case because it has not established that it has a clear and indisputable right to mandamus directing the Clerk of the Superior Court to issue the writ of execution. Enforcement of judgments, generally, and issuance of writs of execution, specifically, are governed by title 5, chapter 43 of the Virgin Islands Code. Under these provisions, a money judgment creditor may request a writ of execution, and the clerk is required to issue the writ, subject

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<sup>1</sup> Virgin Islands Supreme Court Rule 13(a) is identical to Rule 13(a) of the Virgin Islands Rules of Appellate Procedure, which is applicable to the remaining cases pending before the Appellate Division of the District Court. *See* V.I.S.C.T.R. 13(a), V.I.R.App.P. 13(a), The Revised Organic Act of 1954, § 23a, 48 U.S.C. § 1613a(d), *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 160 (1995) (preceding V.I. CODE ANN. tit. 1). The Appellate Division of the District Court most recently interpreted its Rules of Appellate Procedure to mean that it does not have jurisdiction to issue a writ of mandamus to the Clerk of the Superior Court. *In re Equivest St. Thomas, Inc.*, D.C. Civ. App. No. 2004-163, 2007 WL 517672, \*3 (Feb. 8, 2007). While both Rule 13(a)'s speak of issuing a writ to judge or judges or the Superior Court we do not interpret our rule to limit our jurisdiction. Rather we defer to the Virgin Islands Code which grants the Supreme Court all inherent powers, including the power to issue all writs necessary to complete exercise of its duties and jurisdiction under the laws of the Virgin Islands.” 4 V.I.C. § 32(b). Under Section 32(b) our jurisdiction is not limited to issuing writs of mandamus to judges of the Superior Court, and our rules cannot limit the jurisdiction granted by statute. *In re Richards*, 213 F.3d 773, 783-84 (3d Cir. 2000).

to any provisions of the Virgin Islands Code, the Federal Rules of Civil Procedure and other applicable laws. See 5 V.I.C. §§471, 473. When the trial court's judgment requires that particular parcels of property be sold to satisfy a judgment, the clerk is required to issue the writ directing the sale of those parcels. 5 V.I.C. §473(1); *see also* 5 V.I.C. §480. But, where more than five years have elapsed since the judgment was entered and no writ of execution has been issued, a judgment creditor must move the clerk for permission to file the writ before the writ may issue. 5 V.I.C. § 488.

In this case, the trial court entered judgment against Barbel in February, 1999. Although Barbel twice filed for bankruptcy protection, and these filings automatically stayed FirstBank's efforts to satisfy the judgment, *see* 11 U.S.C. § 362, at least one of the Subject Properties has been free of any stay for more than five years since the judgment was entered. As stated above, in April of 2001 the Bankruptcy Court lifted the automatic stay prohibiting the sale of Barbel's residence: Parcel No. 19F Estate Solberg. Because this parcel is designated on FirstBank's Seventh Amended Writ of Execution as a property that should be sold to satisfy the judgment, FirstBank was required to seek leave from the clerk before it could file the writ. *See* 5 V.I.C. § 488(1). It does not appear that FirstBank moved for such leave or that the Clerk of the Superior Court has granted leave. FirstBank, therefore, does not have a clear and indisputable right to the requested writ of mandamus.

Furthermore, even if FirstBank was not required to seek leave of the clerk to file its writ of execution, considering that the show cause order is still pending before the Superior Court, we do not believe mandamus would be appropriate. *See In re the People of the Virgin Islands*, S. Ct. Civ. No. 2007-012, at \*5. While it is unclear from FirstBank's petition precisely what prompted the Superior Court to issue the show cause order, we do not consider it appropriate, under the present circumstances, to circumvent the Superior Court's consideration of the issue by directing the clerk

to issue the writ of execution regardless of the trial court's concerns which resulted in the show cause order.<sup>2</sup>

For these reasons, we conclude that FirstBank has not met its burden of establishing that it is entitled to a writ of mandamus. Again, FirstBank has not shown that it has a clear and indisputable right to the relief and this Court does not believe mandamus would be appropriate where the question of whether a writ of execution should be issued is pending before the Superior Court. Accordingly, it is hereby

**ORDERED** that FirstBank's Petition for Writ of Mandamus is **DENIED**.

**SO ORDERED** this 3rd day of October, 2008.

**ATTEST:**  
**GLENDALAKE, Esq.**  
**Acting Clerk of the Court**

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<sup>2</sup> We offer no opinion as to the merits of the Superior Court's show cause order.