IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
FILED
09/10/2018
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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

IN Re: GOVERNMENT OF THE VIRGIN ISLANDS AND THE VIRGIN ISLANDS ATTORNEY GENERAL,	**S. Ct. Civ. No. 2018-**
	Re: Sup. Ct. Civil No. SX-16-CV-025
Petitioners.	

PETITION FOR WRIT OF MANDAMUS

COME NOW, Government of the Virgin Islands and the Virgin Islands Attorney General (collectively, the "GVI"), by and through undersigned counsel and petitions this Honorable Court to issue a Writ of Mandamus to the Superior Court of the Virgin Islands, Division of St. Croix, directing it to rule on Petitioners' case on the merits. In support thereof, GVI states as follows:

STATEMENT OF FACTS

1. Petitioners are Plaintiffs in an action styled *Government of the Virgin Islands and the Office of the Attorney General v. V.I. Casino Control Commission*, Civil No. SX-16-CV-025 in the Superior Court of the Virgin Islands in the Division of St. Croix.

2. The Honorable Robert A. Molloy presides over the matter.

3. In that action, the GVI sought a temporary restraining order, preliminary injunction and declaratory relief restraining and enjoining any and all disbursements from the V.I. Casino Control Commission's Revolving Fund special checking account, authorized, created and established by V.I. Code Ann. tit. 32, § 514, without the joint authorization of the Chairman of the V.I. Casino Control Commission ("VICCC") and the Attorney General of the Virgin Islands.

4. The VICCC is an independent agency of the Government of the Virgin Islands. V.I. Code Ann. tit. 32, § 404.

5. The Division of Gaming Enforcement is a division with the Department of Justice. V.I. Code Ann. tit. 32, § 409. The Director of the Division of Gaming Enforcement must be sworn as an Assistant Attorney General and administer the work of the Division under the direction and supervision of the Attorney General. The Attorney General is responsible for the exercise of the duties and powers assigned to the Division of Gaming Enforcement. *Id.*

6. Both the Virgin Islands Attorney General, through the Division Gaming Enforcement and the Virgin Islands Casino Control Commission ("VICCC") share responsibilities with respect to the enforcement of the Casino and Resort Control Act ("CRCA"). *See* 32 V.I.C., Chapter 21.

7. Generally, the VICCC regulates casino gaming in St. Croix. Its duties include conducting hearings with respect to the granting, suspension, revocation and renewal of all license, registration, certificate, and permit application relating to casino gaming, conducting hearings relating to the civil violation of the Casino and Resort Control Act ("CRCA") and the conduct of gaming and gaming operations, collecting license and registration fees and taxes imposed by the CRCA, levying and collecting penalties for violation of the CRCA, referring to the Division of Gaming Enforcement for investigation and prosecution violations of the CRCA, and promulgating rules and regulations to effectuate the objectives of the CRCA. V.I. Code Ann. tit. 32 §415.

8. The duties of the Division of Gaming Enforcement includes enforcing the provisions of the CRCA, and investigating all applications relating to casino gaming and the qualifications of applicants seeking a license, certificate, or permit issued under the CRCA. The Division of Gaming Enforcement also prosecutes before the VICCC all proceeding for violation of the CRCA, inspects gaming devices, equipment, casino gaming facilities, and casino operations through on-site observations and other means to ensure compliance with the CRCA, and prosecutes in the courts of the Virgin Islands

criminal violations of the CRCA. 32 V.I.C. §§ 428.

9. Title 32, Section 514 of the Virgin Islands Code establishes the Casino Control Revolving Fund. Section 514(a) specifically requires that all "license, registration, permit, fines, penalties, and other fees, all sums appropriated thereto by the Legislature of the Virgin Islands, and all donations, gifts and bequests" shall be deposited into the fund.

10. Consistent with the joint responsibilities of the VICCC and the Division of Gaming Enforcement under the CRCA, the CRCA mandates that all monies in the Casino Control Revolving Fund must be used "exclusively for expenditures by the Casino Control Commission and the Department of Justice, Division of Gaming Enforcement respectively, as established under [the CRCA], for all operating costs, expenses associated with the investigation of applicants, organization of the Division of Gaming Enforcement, and for any other operating cost and expenses related thereto. Eighty percent of funds deposited in the special checking account must be allocated to the Casino Control Commission, and twenty percent to the Division of Gaming Enforcement." 32 V.I.C. § 514(c).

11. To ensure joint oversight over the Casino Control Revolving Fund by the two entities responsible for enforcement of the provisions of the CRCA,

proper disbursement of funds, internal controls and apportionment of funds as required by the statute, Section 514(c) specifically directs that "[a]ll monies in the special checking account shall be disbursed by the Chairman of the Casino Control Commission *and* the Attorney General of Virgin Islands." (emphasis added). No law in the Virgin Islands allows for the VICCC to open a bank account or credit card account without the authorization of the Attorney General, and without both the Chairman of the VICCC ***and*** the Attorney General being signatories to that account.

12. The Attorney General learned on or about January 11, 2016 that, contrary to the clear and unambiguous mandates of Section 514, the VICCC has bank and credit card accounts at Banco Popular which do not have the Attorney General as a signatory to those accounts.

13. The Attorney General wrote to the members of the VICCC and informed them that the current VICCC accounts at Banco Popular, or any other banking institution must be modified immediately making the Attorney General a joint signatory with the Chairman of the VICCC on the accounts.

14. At the time, the Attorney General also informed the Commissioners that until such time as the accounts are modified, monies may continue to be

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
FILED
09/10/2018
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

deposited into the accounts but all expenditures must be approved by him and the Chairman.

15. VICCC refused to add the Attorney General as a signatory on the accounts, contrary to clear and unambiguous law.

16. On January 27, 2016, Petitioners instituted an action against VICCC in the Superior Court and filed, *inter alia*, a Motion for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief.

17. On January 28, 2016, The Superior Court denied the request for a temporary restraining order and scheduled a preliminary injunction hearing in the matter for February 2, 2016.

18. On January 29, 2016, Petitioners filed a Motion to Consolidate Preliminary Injunction Hearing with the Trial on the Merits.

19. The preliminary injunction hearing proceeded on February 2, 2016, where both parties called witnesses, entered exhibits, and argued their respective positions. At the evidentiary hearing, the Superior Court granted Petitioners' Motion to Consolidate Preliminary Injunction Hearing with the Trial on the Merits. The Superior Court, however, did not rule on the merits and instead took the matter under advisement.

20. On February 19, 2016, having not received a ruling on the matter and the GVI's continued harm in being denied access to the special checking account to carry out its functions, Petitioners filed an Informational Motion. In the Informational Motion, Petitioners ask that the Superior Court rule on the matter.

21. To date, the Superior Court has not issued a ruling on the merits of this time-sensitive case.

22. Until there is a resolution of this matter by the Superior Court, the Attorney General continues to be denied access to Section 514 funds in the special checking account and the Division of Gaming and Enforcement continues to be hampered and frustrated in the performance of its statutory duties.

STATEMENT OF ISSUES PRESENTED

Whether more than a two year delay in ruling on a time-sensitive case on the merits, after the matter has been fully brief and an evidentiary hearing, constitutes a clear and undisputed right to a writ of mandamus.

STATEMENT OF RELIEF SOUGHT

Petitioners seek an Order from this Honorable Court directing the Superior Court to rule forthwith on the pending case or explain why it does not do so.

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
FILED
09/10/2018
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

REASONS WHY THE WRIT SHOULD BE ISSUED

The law and the underlying circumstances supports granting the writ of mandamus. Currently the VICCC has been audited by the Virgin Islands Inspector General and the findings indicate that there has been rampant misuse and misappropriation of funds which directly relates to this case.

ARGUMENT

A. PETITIONERS HAVE NO OTHER ADEQUATE MEANS TO SECURE A RULING ON THEIR MOTION.

Petitioners simply request a judgment on the matter. "The ordinary appeals process would not represent a practical avenue for obtaining comparable relief, since a failure to rule–by its very nature—'would preclude entry of an appealable final judgment' that is a prerequisite to an eventual direct appeal." *In re Bank of Nova Scotia*, S. Ct. Civ. No. 2013-0033, 2013 V.I. Supreme LEXIS 52, *4-5 (V.I. Sept. 13, 2013)(citing *In re Elliot,* 54 V.I. 423, 428 (V.I. 2010)).

Only the Superior Court can bring this matter to final resolution. This matter became ripe for resolution over two years ago, on February 2, 2016. The Superior Court's lengthy delay in ruling is unreasonable and unjustified. This Court has held that a failure of a trial court to consider a litigant's motion papers in a timely manner gives rise to a clear and indisputable right to mandamus relief. *See In re Elliot*, 54 V.I. at 431. The delay is not attributable to any act or omission of the GVI and there are no other mitigating circumstances which justify or explain the delay, especially in this case where there was an evidentiary hearing on the merits. There is no indication when the Superior Court will issue a ruling. The Petitioners have no other means to obtain relief. The Superior Court's failure to rule on the case for more than two years rises beyond "concern" and ordinary delay, to the level of "extraordinary circumstances" which evinces a clear and indisputable right to mandamus relief.

B. A WRIT OF MANDAMUS IS APPROPRIATE UNDER THESE CIRCUMSTANCES.

"To determine whether a writ of mandamus is appropriate under the circumstances, we consider factors including, but not limited to, the public interest, the importance or unimportance of the question presented, and equity and justice." *In re People*, 51 V.I. 374, 393 (V.I. 2009). "The refusal of a trial court to render *any* decision, on even the most routine motions, for such a long period of time, unquestionably reduces public confidence in the administration of justice and requires corrective action." *In Re Fleming*, 56 V.I. 460, 470 (V.I. 2012) (emphasis in original).

It is clearly in the interest of the residents of the Virgin Islands for the Attorney General to be allowed to carry out his statutorily mandated duties. The CRCA was established to raise revenue for the people of the Virgin Islands. As a source of revenue, the public has a vital interest in maintaining the integrity of casino gaming operations in St. Croix and ensuring that the enforcement responsibilities of the Attorney General are carried out pursuant to statute and without any restrictions. It is also in the interest of the public for the Government to properly manage public funds and ensure their proper use and allocation as intended by the Legislature of the Virgin Islands, especially where there is a deliberate and overt violation of the law.

CONCLUSION

Without a writ of mandamus, this case will continue to languish and continue to cause harm to the Commission's statutory mandate as well as the undeniable statutory authority of the Attorney General in his oversight and enforcement responsibilities over the Commission. For the reasons outlined above, Petitioners have satisfied the requirements for the issuance of a writ of mandamus.

Respectfully submitted,

CLAUDE E. WALKER, ESQ.
ATTORNEY GENERAL

PAMELA R. TEPPER, ESQ.
SOLICITOR GENERAL

DATED: September 10, 2018

BY: ____________________
SU-LAYNE WALKER, ESQ.
Assistant Attorney General
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, USVI 00802

CERTIFICATE OF BAR MEMBERSHIP

Su-Layne Walker, Counsel for the Plaintiff/Interested Party, certifies that she is a member in good standing of the Bar of the Virgin Islands.

/s/ Su-Layne Walker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on, September 10, 2018, a true and exact copy of the foregoing Petition for Writ of Mandamus was filed on the VISCEFS system which will forward to all registered users and an exact copy was mailed U.S. Postal Service First Class Mail, postage prepaid:

Honorable Robert A. Molloy
Superior Court of the Virgin Islands
P.O. Box 929
Christiansted, St. Croix, U.S. Virgin Islands 00850

Estrella H. George
Acting Clerk of the Court
Superior Court of the Virgin Islands
P.O. 929
Christiansted, St. Croix, U.S. Virgin Islands 00850

Andrew Simpson, P.C.
2191 Church Street, Suite 5
Christiansted, St. Croix, U.S. Virgin Islands 00820
Email: asimpson@coralbrief.com

/s/ Su-Layne Walker

CERTIFICATION OF WORD COUNT

Pursuant to V.I. Rule of Appellate Procedure 22, undersigned counsel certifies that this brief complies with the5200 word count limit with 2115 words.

/s/ Su-Layne Walker