

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: January 12, 2012)

**In re GTE REINSURANCE COMPANY
LIMITED**

:
:

C.A. No. PB 10-3777

DECISION

SILVERSTEIN, J. Before this Court is Clearwater Insurance Company's (Clearwater) Motion to Partially Vacate Decision and Order with Respect to Clearwater Insurance Company to Effectuate Settlement. Clearwater urges the Court to partially vacate its Decision and Implementation Order (collectively, Decision) pursuant to Super. R. Civ. P. 60(b) in order to permit settlement of the matter. The Motion is presently before this Court pursuant to an Order from the Rhode Island Supreme Court, dated November 30, 2011, remanding the matter for ruling on said Motion. Upon this Court's ruling on the Motion, the papers are to be returned to the Rhode Island Supreme Court.

I

Facts and Travel

GTE Reinsurance Company Limited (GTE RE) entered into several reinsurance contracts with both Clearwater and Hudson Insurance Company (Hudson) (collectively, Odyssey Insureds) between 1980 and 1986. (Decision 8, Apr. 25, 2011 (hereinafter, Dec.)) Later, GTE RE sought to implement a proposed commutation plan (Plan) pursuant to the Voluntary Restructuring of Solvent Insurers Act (Restructuring Act), codified at G.L. 1956 § 27-14.5-1 et seq. The Restructuring Act, effective in 2004 and amended in 2007, sets forth a scheme by which a solvent insurance or reinsurance company in run-off may propose a commutation plan

extinguishing its liabilities for past and future claims of its creditors and then terminate its business.

GTE RE followed the appropriate procedures in submitting its Plan to the Rhode Island Department of Business Regulation (DBR) for review, revising the Plan based on the DBR's comments, filing a petition for implementation of the Plan in this Court, and holding a Meeting of Creditors as ordered by this Court. (Dec. 9-11.) The overwhelming majority of creditors voted in favor of the Plan at the meeting, and on December 2, 2010, GTE RE filed a motion in this Court to confirm the vote and implement the Plan. (Dec. 11.) The Odyssey Insureds filed an objection to the Plan, challenging the constitutionality of the Restructuring Act on contract clause and due process grounds. (Dec. 11-12.)

This Court held a hearing March 16, 2011 and rendered its Decision to confirm the vote and implement the Plan on April 25, 2011. The Court ruled that the Odyssey Insureds failed to establish beyond a reasonable doubt that the Restructuring Act and the Plan violate the Contract Clause of the United States and Rhode Island Constitutions. (Dec. 44.) The Court likewise denied the Odyssey Insureds' due process challenge, holding that the Odyssey Insureds failed to establish beyond a reasonable doubt that the Restructuring Act and the Plan were not rationally related to a legitimate legislative purpose. Id.

The Decision was rendered and effective against the objections of both Odyssey Insureds: Clearwater and Hudson. Clearwater and Hudson filed a timely appeal of the Decision on May 2, 2011. (Mot. to Partially Vacate Decision and Order with Respect to Clearwater Ins. Co. to Effectuate Settlement (hereinafter, Clearwater Mot.) 2.) This Court entered a partial stay of its Implementation Order on July 12, 2011, pending the appeal before the Rhode Island Supreme Court. (Clearwater Mot. 2.) Since filing the appeal, Clearwater and Hudson resumed settlement

negotiations with GTE RE. Id. According to Clearwater at oral argument, a dollar settlement between all three parties has been reached, subject to the condition that Clearwater's rights to contest the constitutionality of the Restructuring Act and any future commutation plans arising under it are preserved. See id.

Clearwater now requests this Court partially vacate its Decision with respect to Clearwater only. Clearwater brings this Motion in order to prevent the Decision from having a preclusive effect on Clearwater's ability to contest the Restructuring Act or proposed commutation plans in the future. If this Court were to grant Clearwater's motion to partially vacate, the Court's original Decision—and any associated preclusive effect—would stand as against Hudson.

Neither Hudson nor GTE RE object to this Motion. See Clearwater Mot. 1. However, on December 19, 2011, the DBR, as Intervenor, submitted an opposition to Clearwater's Motion. See Mem. in Opp'n of Intervenor Dep't of Bus. Regulation (hereinafter, DBR Mem.). This Court heard the arguments of Clearwater and the DBR on January 4, 2011.

II

Discussion

Clearwater moves this Court to partially vacate its Decision in order to facilitate settlement of the matter. Clearwater argues that partial vacatur and subsequent settlement would benefit both the public interest and the parties of the instant matter. (Reply Mem. in Supp. of Mot. to Partially Vacate Decision and Order with Respect to Clearwater Ins. Co. to Effectuate Settlement (hereinafter, Clearwater Reply) 1.) Further, partial vacatur would leave this Court's Decision and the reasoning underlying it intact. (Clearwater Reply 3-5.) The DBR, oppositely, contends that vacatur would counter public interest by allowing Clearwater to “buy off” a

judicial decision on which significant public time and resources were expended and would undermine the effect of the Decision. (DBR Mem. 2, 6.)

“[A] motion to vacate a judgment is left to the sound discretion of the trial justice.” Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 187 (R.I. 2008) (citing Greenfield Hill Invs., LLC v. Miller, 934 A.2d 223, 224 (R.I. 2007)); see Brown v. Amaral, 460 A.2d 7, 11 (R.I. 1983 (acknowledging Superior Court’s “broad power to vacate judgments whenever that action is appropriate to accomplish justice”); see also Chase v. Almardon Mills, Inc., 102 R.I. 579, 580, 232 A.2d 390, 391 (1967) (“courts have an inherent power to . . . vacate their judgments”). However, a court should also consider that “judgments, once entered, are not to be disturbed without substantial reason.” Chase, 102 R.I. at 581, 232 A.2d at 391-92. Under Super. R. Civ. P. 60(b), “[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for . . . (6) any other reason justifying relief from the operation of the judgment.” Rule 60(b)(6) vests this Court with its broad power to vacate a decision when appropriate to effectuate justice. See Bendix Corp. v. Norberg, 122 R.I. 155, 158, 404 A.2d 505, 506 (1979); see also U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship, 513 U.S. 18, 25 (1994) (noting “equitable tradition of vacatur”). The burden is on the moving party to show the motion to vacate is justified. Iddings v. McBurney, 657 A.2d 550, 553 (R.I. 1995).

A trial justice may vacate a decision, at his or her discretion, to accomplish justice in the eyes of the court. See Super. R. Civ. P. 60(b)(6); Brown, 460 A.2d at 11. “It is very much an important part of the policy of the courts of Rhode Island (and courts in general) to encourage the amicable settlement of disputes” Ryan, 941 A.2d at 186. Courts in this state have unwaveringly noted that “[o]ur policy is always to encourage settlement.” Homar, Inc. v. N. Farm Assocs., 445 A.2d 288, 290 (R.I. 1982). Among other benefits, encouraging settlement

“lessen[s] the strain on scarce judicial resources and prevent[s] the parties from incurring significant litigation costs.” Ryan, 941 A.2d at 186.

Here, partial vacatur of this Court’s Decision would facilitate settlement of the matter. The parties have indicated that a dollar settlement has been agreed to, subject to the condition that the Decision is partially vacated as to Clearwater. Rather than continuing with the appeal in the Rhode Island Supreme Court—which appeal is at its earliest stages—partial vacatur would allow settlement and completion of the commutation process.¹ The immediate winding up of GTE RE would allow it to pay dividends to its creditors under the Plan in the very near future. GTE RE, the Odyssey Insureds, the DBR, other governmental agencies, and the courts would avoid the time and expense of the current appeal. Granting the motion for partial vacatur is therefore in the interest of the parties and of judicial efficiency. See Ryan, 941 A.2d at 186 (explaining benefits of permitting settlement as lessening strain on judicial resources and preventing additional litigation costs).

Any future challenge of the Restructuring Act by Clearwater or any other litigant would be heard on the Superior Court Business Calendar, where the reasoning and weight of the Court’s Decision would be accorded its appropriate due. Clearwater moves not to vacate the entire Decision, but only to substitute “Hudson” alone for the “Odyssey Insureds.” This Court cannot see how modifying the Decision in the manner indicated clouds or casts doubt on it as suggested by the DBR.

Further, cases relied on by DBR in support of denying a motion to vacate on the basis of settlement are largely off-point. See U.S. Bancorp, 513 U.S. at 29 (holding settlement does not justify vacatur of Court of Appeals judgment by Supreme Court of the United States).

¹ Parties indicated at oral argument that only pre-briefs have been filed in the appeal at the Rhode Island Supreme Court.

Particularly, in U.S. Bancorp, the Supreme Court applied the standard that a party seeking complete vacatur of a lower court's opinion in facilitation of settlement must demonstrate "exceptional circumstances" in favor of the equitable remedy. Id. Notably, the party in U.S. Bancorp was seeking complete vacatur of a lower court's decision, eliminating any precedential value. See id. at 20. Here, in contrast, Clearwater seeks only partial vacatur of this Court's decision. As discussed above, any judicial precedent here would remain intact, and it is squarely within this Court's discretion to vacate its own Decision. See Brown, 460 A.2d at 11 (providing Superior Court's broad power to vacate its own judgments). The U.S. Bancorp decision even acknowledged that an alternative to the "exceptional circumstances" standard it applied would be to remand the motion to vacate, allowing the lower court to consider it under Federal Rule of Civil Procedure 60(b). 513 U.S. at 29. In essence, that is exactly what has transpired in the case at bar.²

Accordingly, this Court under its broad power to vacate its own judgments under Rule 60(b) grants Clearwater's Motion. See Bendix Corp., 122 R.I. at 158, 404 A.2d at 506 (stating Rule 60(b)(6) vests Superior Court with broad power to vacate judgments to accomplish justice). Equitable considerations and the interests of justice favor settlement of disputes and judicial efficiency, each of which will be accomplished by granting the Motion. The Court finds these arguments to be an adequately substantial reason to exercise its discretion to partially vacate the Decision. See Chase, 102 R.I. at 580-81, 232 A.2d at 391-92 (stating courts have inherent power to vacate their decisions for substantial reason).

² Rhode Island Rules of Civil Procedure are modeled off the Federal Rules, and in particular, Super. R. Civ. P. 60(b) is nearly identical to its federal counterpart. See Allen ex rel. Allen v. S. County Hosp., 945 A.2d 289, 293 (R.I. 2008) (citing Hall v. Ins. Co. of N. Am., 727 A.2d 667, 669 (R.I. 1999)). Here, the Rhode Island Supreme Court remanded the matter for this Court's ruling on the partial vacatur under Super. R. Civ. P. 60(b).

III

Conclusion

After due consideration, this Court grants Clearwater's Motion to Partially Vacate Decision and Order with Respect to Clearwater Insurance Company to Effectuate Settlement. The interests of the parties and the judiciary will be best served by this partial vacatur. This Court's Decision will remain in full effect as against Hudson and to the full limit of its authority. Prevailing counsel may present an Order and modified Decision consistent herewith which shall be settled after due notice to counsel of record.