APPENDIX TO PETITION

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For Publication

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS

SAVE CORAL BAY, INC. Appellant/Plaintiff, v. **ALBERT BRYAN, JR., IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE VIRGIN ISLANDS and SUMMER'S END GROUP, LLC,** Appellees/Defendants.	)	**S. Ct. Civ. No. 2021-0017** Re: Super. Ct. Civ. No. 298/2020 (STT)

On Appeal from the

Superior Court of the Virgin Islands
Division of St. Thomas-St. John

Superior Court Judge: Hon. Renée Gumbs Carty

Argued: November 10, 2021
Filed: March 30, 2022
Cite as 2022 VI 7

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

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OPINION OF THE COURT

HODGE, Chief Justice.

¶1 Save Coral Bay, Inc. ("SCB") appeals from the Superior Court's May 12, 2021 order, which dismissed its request for a declaratory judgment and injunctive relief with respect to a Coastal Zone Management ("CZM") permit issued to Summer's End Group, LLC ("SEG"). For the reasons that follow, we affirm.

I. BACKGROUND

¶2 On April 4, 2014, SEG applied for a CZM permit to construct a new harbor development in Coral Bay, St. John, on seven land parcels, which would include a commercial marina, restaurants, retail establishments, and offices. SEG also applied for a water permit to develop 27.5 acres of submerged lands for a 145-slip

marina, a 75-mooring mooring field, a pump-out station, and a fuel station, all seaward of the land parcels. The CZM Commission issued a letter of completeness on June 18, 2014, and the Commission's St. John Committee (the "Committee") collected public comments and held a public hearing on August 20, 2014.

¶3 The Committee ultimately approved both the water and land permits on October 24, 2014. However, two organizations—the Virgin Islands Conservation Society ("VICS") and the Moravian Church Conference of the Virgin Islands—filed appeals challenging the permits with the Board of Land Use of Appeals ("BLUA"). The BLUA subsequently affirmed the Committee's approval of the permits in a June 6, 2016 order, but ordered that the separate water and land permits be consolidated into a single permit. The VICS and the Moravian Church filed petitions for writs of review with the Superior Court challenging the BLUA's order, which currently remain pending.

¶4 Apparently recognizing that the Committee never transmitted any of the previously approved permits to the Governor of the Virgin Islands for approval pursuant to the CZM Act, *see* 12 V.I.C. § 911(e), the Chair of the Committee forwarded the water permit to Governor Albert Bryan, Jr. on March 27, 2019. Although Governor Bryan approved the water permit, the Legislature did not immediately take action to ratify it as required by the CZM Act, *see id.* While the approved permit was being considered by the Legislature, SEG wrote a letter to Governor Bryan, dated December 3, 2019, which noted that the BLUA

had ordered the water and land permits consolidated into a single permit, and requested that he modify the water permit to reflect this. In addition, SEG requested that Governor Bryan further modify the permit to reflect changes that had been made to the proposed project in the intervening years, including the removal of two of the seven parcels, a reduction of parking spaces, the removal of a 56-seat restaurant and one mega-yacht slip, and the inclusion of a shoreline boardwalk.

¶5 Before Governor Bryan acted on SEG's request for modification, the Legislature, through its Senate President, issued a December 10, 2019 letter returning the permit to him. In his letter, the Senate President explained that he believed the permit was "improperly before the Legislature" since it had been transmitted to Governor Bryan by the Committee Chair unilaterally without a vote of the entire Committee, and because "the project described and approved in 2014 is no longer the project the applicant intends to develop today." (J.A. 53.) However, the Senate President "assure[d]" Governor Bryan that the Legislature "will act promptly" once "a new, valid, consolidated land and water permit for the marina project is transmitted for the Legislature's ratification." (*Id.*)

¶6 On December 16, 2019, the Committee consolidated the water and land permits in a manner consistent with the BLUA order, and transmitted the consolidated permit to Governor Bryan, who approved the consolidated permit on December 18, 2019. However, concurrent with his approval, Governor Bryan modified the consolidated permit, *see* 12 V.I.C.

§ 911(g), largely in the manner requested by SEG and the Senate President. In a letter transmitted to SEG and the Senate President, Governor Bryan provided numerous reasons for making these modifications, which included reducing the size of the project and the time period of construction, reducing seafloor disruption, preserving potential historical resources, reducing runoff, utilizing improved water quality, and eliminating the common practice of noncompliant boaters dumping untreated wastewater and solid waste into the harbor.

¶7 Governor Bryan thereafter transmitted the consolidated permit, as modified, to the Legislature for ratification. The Senate President sponsored a bill, docketed as Bill No. 33-0428, for approval of the consolidated permit as modified, and the Legislature held a hearing on the bill on July 7, 2020, where it heard extensive testimony from interested parties, including opponents of the project.

¶8 On July 21, 2020, while the consolidated permit, as modified, was still being considered for ratification by the Legislature, SCB initiated an action for declaratory and injunctive relief against SEG and Governor Bryan, seeking to prohibit SEG from conducting any actions pursuant to the unratified permit. While that litigation was pending, the Legislature passed Bill No. 33-0428 on December 21, 2020, which ratified the consolidated permit. The Legislature transmitted Bill No. 33-0428 to Governor Bryan, which became Act No. 8407 when signed by Governor Bryan on December 31, 2020.

¶9 Based on this ratification, on January 8, 2021, SEG filed a motion to dismiss SCB's complaint for failure to

state a claim and as moot, which Governor Bryan joined on the same day. SEG opposed the motion, contending that Governor Bryan lacked the statutory authority to modify the permit before it was ratified by the Legislature.

¶10 The Superior Court granted the motion to dismiss in a May 12, 2021 order, on the ground that the Legislature's ratification of the consolidated permit, as modified, rendered SCB's complaint moot.[1] SCB timely filed a notice of appeal with this Court on May 22, 2021. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶11 This Court has jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d). This Court likewise has jurisdiction over cases that arise from a final order issued by the Superior Court. 4 V.I.C. § 32(a) ("The Supreme Court shall have jurisdiction over all appeals arising from final

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[1] In his brief, Governor Bryan characterizes the Superior Court as having dismissed SCB's complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Virgin Islands Rules of Civil Procedure. However, as this Court has previously explained, "the mootness doctrine in the Virgin Islands is a non-jurisdictional claims-processing rule that has been incorporated into Virgin Islands law only as a matter of judicial policy." *Mapp v. Fawkes*, 61 V.I. 521, 530 (V.I. 2014) (collecting cases). As such, by dismissing SCB's complaint as moot, the Superior Court in effect dismissed it for failure to state a claim pursuant to Virgin Islands Rule of Civil Procedure 12(b)(6).

judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law."). This is one such case because the Superior Court's dismissal of SCB's entire complaint constituted an appealable final judgment. *Grisar v. Am. Fed'n of Teachers*, 73 V.I. 491, 494 (V.I. 2020).

¶12 This Court exercises plenary review over applications of law and reviews findings of fact for clear error. *See St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

B. Legislative Ratification

¶13 In its appellate brief, SCB asserts that the Superior Court erred when it dismissed its complaint as moot due to the passage of Act No. 8407. Relying on case law from other states, SCB maintains that the Legislature cannot ratify an action by the Governor which is contrary to statute. However, none of the cases SCB cites relate to ratification by the Legislature — rather, all involve ratifications of statutory violations made by municipalities, school boards, and other government entities, without any action by the jurisdiction's legislature. But this is not a case where Governor Bryan acted contrary to a statute and then he or another Executive Branch entity attempted to retroactively ratify his own conduct. Instead, this is a case where the Legislature ratified an action taken by Governor Bryan. Therefore, the proper inquiry is not into the power of Governor Bryan or the Executive Branch, but the power of the Legislature itself to excuse violations of the statutory law.

¶14 The Revised Organic Act of 1954 vests the

"legislative power and authority of the Virgin Islands" in the Legislature, 48 U.S.C. § 1571, which "shall extend to all rightful subjects of legislation not inconsistent with [the Revised Organic Act] or the laws of the United States made applicable to the Virgin Islands." 48 U.S.C. § 1574(a). This is consistent with the well-established principle that the power to make the law is the quintessential legislative power. *See, e.g.*, *Patchak v. Zinke*, 138 S. Ct. 897, 905 (2018) ("[T]he legislative power is the power to make law . . . ."); *see also Barrett v. Indiana*, 229 U.S. 26, 30 (1913) ("It is the province of the legislature to make the laws . . . ."); *see also Municipality of St. Thomas & St. John v. Gordon*, 78 F. Supp. 440, 443 (D.V.I. 1948) ("Legislative power. . . is the authority to make laws . . . . ").

¶15 The Revised Organic Act prescribes a specific procedure for how a bill becomes a law, requiring that a bill be passed by the affirmative vote of the majority at a meeting of the Legislature with a quorum and either be signed by the governor or, if vetoed, over-ridden by a vote of two- thirds of the Legislature's members. *See* 48 U.S.C. § 1575. But outside of this express procedure, the Legislature possesses exceptionally broad discretion in determining how it will exercise its power and authority to make the law. *See Mapp v. Lawaetz*, 882 F.2d 49, 54 (3d Cir. 1989).

¶16 This extraordinarily broad discretion includes how much deference—if any—the Legislature gives to existing laws when enacting new ones. It is well-established, both in the Virgin Islands and throughout the United States that, in the absence of a

constitutional restriction,[2] "one legislature cannot abridge the powers of a succeeding legislature" by passing a law, adopting a rule, entering a contract, or taking some other action that irrevocably "surrenders an essential attribute of its sovereignty." *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 23 (1977) (quoting *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810)). In other words, "one legislature cannot enact irreparable legislation or limit or restrict its own power or the power of its successors," and "succeeding legislatures may repeal or modify acts of a former legislature." 82 C.J.S. *Statutes* § 337 (collecting cases); *see also Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938) ("The principal function of a legislative body is . . . to make laws which declare the policy of the state and are subject to repeal when a subsequent Legislature shall determine to alter that policy.").

¶17 This discretion also includes the form taken by the laws enacted by the Legislature. Many laws enacted by a legislative body take the form of codified statutes which are compiled and published—such as the United States Code or the Virgin Islands Code—often "featuring a systematic arrangement into chapters or articles and sections with subheads, table of contents, and index for ready reference." 82 C.J.S. *Statutes* § 321. But these codes, while representing an

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[2] For instance, although the Legislature possesses the authority to confirm a judge of the Superior Court, a subsequent legislature cannot remove a judge from office because doing so would be contrary to the separation of powers principles of the Revised Organic Act. *Kendall v. Russell*, 572 F.3d 126, 136 (3d Cir. 2009).

extraordinarily convenient method to access and cite to the laws contained therein, are precisely that—a convenience—since statutes included in a code "have no higher standing or sanctity" than any other law passed by the legislature of that jurisdiction. *See Los Angeles County v. Payne*, 66 P.2d 658, 664 (Cal. 1937); *see also Cohhn v. Maryland-National Capital Park & Planning Comm'n*, 2017 WL 4711944, at *5 (Md. Oct. 18, 2017) (unpublished) ("[P]rovisions of the law need not be codified in order to have legal effect.") (citing *Doe v. Roe*, 20 A.3d 787 (Md. 2011)). The same holds true for repeal or amendment of a law, for "[i]n the absence of any constitutional restraint, a state legislature may exercise the power of repeal in any form in which it can give a clear expression of its will." 82 C.J.S. *Statutes* § 338 (collecting cases). Thus, the Legislature may repeal or amend a law codified in the Virgin Islands Code by enacting a law which is not codified in the Virgin Islands Code. *See, e.g.*, *Simmonds v. People*, 59 V.I. 480, 493 (V.I. 2013) (recognizing the legislative repeal of the Uniform Rules of Evidence, which had been codified in title 5, chapter 67 of the Virgin Islands Code, and their replacement with the Federal Rules of Evidence, with such replacement not codified in the Virgin Islands Code).

¶18 This is precisely what the Legislature did in this case. Pursuant to the Revised Organic Act, a bill becomes a law if it is passed by the Legislature and signed by the Governor. 48 U.S.C. § 1575. The Senate President sponsored and introduced Bill No. 33-0428, and it was passed by the Legislature on December 21, 2020. Bill No. 33-0428 was transmitted to Governor Bryan, who signed it into law on December 31, 2020, as

Act No. 8407. Even if this Court were to assume—without deciding—that this procedure differs from that set forth in the CZM Act, the passage of the CZM Act by an earlier legislature could not deprive the 33rd Legislature and Governor Bryan of their constitutional authority to change that law in the manner provided for in the Revised Organic Act. Whatever the merits of SCB's claims under the law as it existed at the time it filed its complaint, the subsequent enactment of Act No. 8407 rendered those claims moot. Therefore, we affirm the Superior Court's May 12, 2021 order.

III. CONCLUSION

¶19 The Revised Organic Act sets forth a procedure for how a bill becomes a law, and that procedure was followed with respect to Act No. 8407. Because one legislature cannot bind a subsequent legislature by enacting unrepealable or unmodifiable super-legislation, it is irrelevant whether the procedure set forth for modification of permits in the CZM Act was followed, since the 33rd Legislature was entitled to pass, and Governor Bryan entitled to sign into law, new legislation, whether generally or limited to a specific permit. Accordingly, we affirm the Superior Court's May 12, 2021 dismissal order.

Dated this 30th day of March, 2022.

BY THE COURT:

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

For Publication

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS

SAVE CORAL BAY, INC. Appellant/Plaintiff, v. ALBERT BRYAN, JR., IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE VIRGIN ISLANDS and SUMMER'S END GROUP, LLC, Appellees/Defendants.	)	S. Ct. Civ. No. 2021-0017 Re: Super. Ct. Civ. No. 298/2020 (STT)

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JUDGMENT

HODGE, Chief Justice.

AND NOW, consistent with the Opinion of even date, it is hereby

ORDERED that the Superior Court's May 12, 2021 order dismissing Save Coral Bay Inc.'s complaint is **AFFIRMED**. It is further

ORDERED that copies be directed to the appropriate parties.

SO ORDERED this 30th day of March, 2022.

BY THE COURT:

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

[FILED May 12, 2021]

IN THE SUPERIOR COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SAVE CORAL BAY, INC. Appellant/Plaintiff, v. ALBERT BRYAN, JR., IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE VIRGIN ISLANDS and SUMMER'S END GROUP, LLC, Appellees/Defendants.	)	CASE N0. ST-20-CV-298 **ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF**

ORDER

THIS MATTER is before the Court on Defendants' second joint "Motion to Dismiss for Mootness and Failure to State a Claim" filed on January 7, 2021. Plaintiff Save Coral Bay, Inc. filed an "Opposition to Second Motion to Dismiss" on February 10, 202 l, and Defendants filed their Reply on February 24, 2021. A hearing was held on March 18, 2021. For the reasons set forth below, Defendants' motion will be granted.

Factual and Procedural Background

This case is about a proposal to build a large-scale

commercial marina with restaurants, office spaces, retail spaces, and other shore facilities in the harbor of Coral Bay, St. John, Virgin Islands. On or about April 4, 2014, the project's proponent, Summers End Group, LLC (SEG) sought approval from various territorial and federal agencies for construction of the marina. SEG was successful in obtaining both land and water permits. Save Coral Bay, Inc. (Save Coral Bay) is a citizens' group that opposes the project for several reasons, but primarily for environmental concerns of construction and operation having a negative impact on the Coral Bay harbor. Specifically, Save Coral Bay posits that Governor Albert Bryan Jr.'s Modification of Consolidated Major Coastal Zone Management Permit dated December 18, 2019, is improper because it was done prior to the Virgin Islands Legislature's ratification without the review of the Commission for a proper environmental assessment.

Defendant SEG applied for a Major Coastal Zone Management permit CZM-003-14(L) for the redevelopment of seven (7) adjacent parcels in Estate Carolina consisting of 10-17, 10-18, 10- 19, 10-41 REM, 13A, 13B, and 13 REM. Simultaneously, SEG filed a separate application CZM- 004-14(W) - for the development of the seaward area consisting of approximately 27.5 acres of submerged lands to build a 145-slip marina and other facilities.

On June 18, 2014, Coastal Zone Management (CZM) issued a Letter of Completeness to SEG. Thereafter, SEG availed themselves to the public for comments between June and August 2014. On August 20, 2014, the St. John Committee of the CZM

Commission conducted a public hearing regarding the permits. In 2014, the Virgin Islands Conservation Society[1] (VICS) and the Moravian Church Conference of the Virgin Islands (Moravian Church) filed appeals with the Board of Land Use Appeals (BLUA), which BLUA affirmed the approval of the CZM committee. VICS and the Moravian Church subsequently filed for writs of review in the Superior Court challenging BLUA's Decision and Order of June 6, 2016. Almost three years later, on March 27, 2019, the committee chairman re-signed CZM-004-14(W) and forwarded the Consolidated Permit to Governor Bryan for his approval in accordance with 12 V. I. C. § 911(e). In 2019, Governor Bryan approved the permit and forwarded it to the Legislature for ratification. On December 10, 2019, the president of the Legislature disapproved the permit and returned it to the Governor. On December 16, 2019, the CZM Commission St. John Committee chairman signed the consolidated permits CZJ-003-14(L) and CZJ-004-14(W) consistent with the Board of Land Use Appeals 2016 Decision and Order, thereby administratively re-affirming the consolidation of the land and water permits.

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[1] The Virgin Islands Conservation Society is the petitioner in another pending action (writ of review) before the Superior Court. Virgin Islands Conservation Society, In c. v. Virgin Islands Board of land Use Appeals, Case No. ST- 16-CV-395. Similar issues have been raised in that case as stated herein. Defendants have referred to Petitioner as the alter ego of the named Plaintiff herein, Save Coral Bay, Inc. Moravian Church Conference of the Virgin Islands has also joined in that suit.

On December 18, 2019, Governor Bryan approved and modified the Consolidated Permit by, *inter alia*, removing Parcels 13A and 138, removing a mega-yacht slip, and allowing for the construction of a community boardwalk that was currently under federal permitting review. The Consolidated Permit and Modification of December 18, 2019, delineating all the changes and the environmental impacts were re-submitted to the Legislature for approval. In January 2020, VICS filed a second appeal to BLUA. On July 7, 2020, the Legislature conducted an extensive hearing allowing testimony from several interested parties including opponents of the project.[2] On December 21, 2020, the Legislature ratified the Consolidated Permit and the Governor's Modification.

Plaintiff contends, *inter alia*, the modification applies only to submerged lands permits; applies only to issues that arise necessitating preventative measures to protect the environment after the permit has been issued, and the Governor failed to fully disclose the environmental impacts of the modifications before the Legislature. They further argue the subject Modification was done during the permitting/approval process to purposely circumvent the requirements of§ 911(g), which allows for modification only if it "is in the public interest and necessary to prevent significant

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[2] The Court takes judicial notice pursuant to V.I.R.E. 201(b)(2) of the V. I. Legislature's Committee of the Whole's hearing where the proponents, opponents, and respective counsel appeared and testified. Notably, the hearing lasted about seven (7) hours. Prior to the July 2020 hearing, the Legislature held another hearing on October 18, 2019, also lasting approximately seven (7) hours.

environmental damage to coastal zone resources and to protect the public health, safety and general welfare." By modifying the plans after the project has been approved, but prior to construction, and without engaging in the coastal zone management committee review process, Save Coral Bay contends the modification escapes without a proper environmental assessment. Consequently, because an updated environmental assessment report was not done, the Legislature was not fully informed of any adverse impact that may occur, hence, the Governor's Modification is not in compliance with the law. To ferret out these concerns, Save Coral Bay argues discovery should be allowed and, at the appropriate time, summary judgment should be considered as Defendants have raised issues beyond the scope of the pleading.

Defendants, on the contrary, assert the Complaint should be dismissed because the extensive permitting process has been fully vetted; the Modification was not for the mere appeasement of the permittee or the Legislature, but it was done in accordance with the statutes. The Modification is in the public interest, it mitigates negative environmental impact, and helps to boost economic opportunities and growth. More importantly, Defendants claim the Legislature's ratification of the Consolidated Permit and the Modification has rendered all issues moot and leaves no justiciable issue.

Discussion

Virgin Islands Rule of Civil Procedure 12(b)(1) provides a defendant may challenge the court's ability

to hear a case by asserting lack of subject matter jurisdiction as a defense. The Virgin Islands Supreme Court reiterated in *Martinez v. Columbian Emeralds, Inc.*, 51 V.I. 174, 188 (2009) the framework established by the Third Circuit in *Mortenson v. First Fed. Sav. & Loan Ass'n*, 549 F. 2d 884 (1977). Rule 12(b)(1) motions attacking the court's subject-matter jurisdiction may either be treated as facial or factual. In a facial challenge, the defendant attacks the complaint on its face, specifically "arguing that the complaint on its face does not allege sufficient grounds to establish subject matter jurisdiction." *Racz v. Cheetam*, 2019 V.I. SUPER 99U, 8, 2019 V.I. LEXIS 101, *3, 2019 WL 4855532. In addressing a facial challenge, the court accepts the allegations in the complaint as true viewing the allegations in the light most favorable to the non-moving party. *Id.* Alternatively, in addressing a factual challenge, the court does not presume the plaintiff's allegations as true; because it is based in fact and separate from the pleadings, the court must weigh the evidence to determine its own jurisdiction. *Id.* The factual attack disputes the existence of jurisdictional facts as sufficient to confer subject matter jurisdiction. *See Joseph v. Legislature of the V.I.*, 2017 V.I. Lexis 175, citing *James - St. Jules v. Thompson*, 2015 V.I. Lexis 74.

V.I. R. Civ. P. 12(b)(6) allows a party to move for a dismissal for "failure to state a claim upon which relief can be granted." The sufficiency of a complaint is governed by the rule of pleading in V.I. R. Civ. P. 8(a)(2) which provides this is "a notice pleading jurisdiction and requires that a complaint present a short plain statement of the cause of action and basis

for the claims for relief." The Virgin Islands Supreme Court in *Mills-Williams v. Mapp*, 67 V.I. 574, 585-86 (V.I. 2017) stated the plaintiff must "adequately allege facts that put an accused party on notice of claims brought against it." The proper standard for evaluating motions to dismiss for failure to state a claim requires the plaintiff to provide a basic legal and factual basis for the claim alleged, describe the essence of the claim, and provide facts sufficient to show that the plaintiff is entitled to relief.[3]

In the present case, Defendants claim the Legislature's ratification has rendered all issues moot; the Court lacks subject matter jurisdiction and there is no remaining relief to be granted. Although the Virgin Islands' notice pleading standard is now more lenient than the former *Twombly*[4] plausibility standard, Plaintiff must still allege some factual and legal basis for each count of the complaint. Here, the Plaintiffs claims for declaratory judgment and injunctive relief have dissipated with the passage of Act No. 8407. The claims do not surpass legislative ratification therefore the Complaint does not survive the scrutiny of Rule 8(a). Title 12 V.I.C. § 911(e) provides the Virgin Islands Legislature with the inherent power to confirm the Governor's approval and modification. The Legislature's authority to ratify all prior actions is

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[3] *Greaux v. Freu*, 2019 V.I. Super. 77U, at *4 (V.I. Super. 2019); *Racz v. Cheetam*, 2019 V.I. Super. 99U at *11 (V.I. Super. 2019).

[4] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

equivalent to the presence of the original authority. Section 911(e) provides :

> "Any coastal zone permit which the appropriate Committee of the Commission or the Commissioner recommends for approval pursuant to this section, . .. shall be forwarded by the Committee or Commissioner to the Governor for the Governor's approval or disapproval within thirty days following the Committee's or Commissioner's final action on the application for the coastal zone permit or the Board's decision on appeal to grant such a permit. The Governor's approval of any such permit or lease must be ratified by the Legislature of the United States Virgin Islands. Upon approval and ratification of such permit, occupancy and any development proposed in connection therewith shall not commence until the permittee has complied with the requirements of the United States Anny Corps of Engineers pursuant to Title 33 of the United Sates Code."

Further § 911(g) provides "[t]he failure of the Legislature either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's actions." The Governor's approval of the consolidation of major permit CZJ-004-014(W) and permit CZJ-003-14(L); and the Modification Letter to Ms. Chaliese Summers, even without any further action by the Legislature results in ratification. Ratification is the action of signing or giving formal consent to a treaty, contract, or

agreement making it officially valid.[5] To ratify means to confirm by expressing consent, approval, or formal sanction.[6] The Legislature explicitly created and reserved this inherent power to ratify the Governor' s actions under the CZM Act. The language is unambiguous.

Prior to ratification, § 911(g) confers upon the Governor the authority to modify or revoke any coastal permit. Upon modification, § 911(e) grants the Legislature the absolute right to ratify. The Legislature has proscribed the following under Act No. 8407:

> Pursuant to 12 V.I.C. § 911(e), the Legislature of the Virgin Islands ratifies the Governor's approval of the Consolidation of Major Coastal Zone Permit No. CZJ- 04-14(W) and the Letter to Ms. Chaliese Summers, Managing Member of the Summers End Group, LLC, titled Modification of Consolidated Major Coastal Zone Management Permit CZJ-04-14(W) and CZJ-03-14(L), for the operation of a marina in Coral Bay, St. John.

Before the ratification, the Virgin Islands Legislature - Committee of the Whole - conducted an extensive hearing on July 7, 2020, allowing ample opportunity for all concerned parties to raise any, and all issues

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[5] "Ratify", *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam- webster.com/dictionary/ratify. Accessed 6 May 2021.

[6] https://www.dictionary.com

regarding the environmental, social impacts, or any negative impact SEG's project would have upon Coral Bay. On November 19, 2020, the Board of Land Use Appeals, for the second time, dismissed the VICS's appeal that challenged the Governor's Modification and Consolidated Permit. After two full-blown hearings, the Legislature ratified the Governor's approval of the Consolidated Permit, including subsequent modifications.

Plaintiff seeks a declaratory judgment asking this Court to render invalid a Consolidated Permit and its Modification that has undergone the scrutiny of the appropriate committees, board, and respective federal and territorial agencies. The separation of powers doctrine precludes this Court from interfering in the executive and legislative processes unless there is a clear violation of the law. "Unless expressly provided or incidental to the powers conferred . .. the judiciary may not exercise either executive or legislative power." *In re Joseph*, 65 V.I. 217 (20 I6); *see also Bryan v. Fawkes*, 61 V.I. 201 (2014). The Court's role is not to create or modify the law, but to interpret and apply the laws as written. "Ordinarily, when the language of a statute is clear, courts apply the statute as written. Courts also should avoid creating ambiguity in statutes where there is none." *Jones v. Lockheed Martin Corporation*, 68 V.I. 158 (2017). Here, the Court has concluded from the record that SEG has been vetted at all levels of the permitting process as proscribed in the CZM Act. The BLUA, as the reviewing administrative body, has twice dismissed the appeals of the VICS thereby re-affirming the decision of the Commission. The Legislature's ratification has sanctioned the entire permitting

process including the Governor's approval and the Modification.

It is not this Court's responsibility to determine how much testimony before the legislative body is considered "full disclosure". Neither is it the Court's place to substitute its judgment for that of the CZM Commission, the BLUA, the Legislature, or the Governor. Plaintiffs argument that the ratification of the Modification does not necessarily mean that the Modification complied with the law is without merit. In effect, Plaintiff is asking this Court to step into the role of the Legislature and unratify the Governor's actions and declare invalid Act No. 8407 where there is no constitutional violation or other legitimate basis (other than their objection) to do so. Ratification has been addressed by the courts in *Monsanto v. V.I. Housing Authority*, 18 V.1. 113, 118 (1982). "Consequently, the Authority possesses the power to terminate Monsanto's employment so long as the termination was not in violation of any constitutionally protected right, citing *Hodgin v. Noland*, 435 F.2d 859 (4th Cir. 1970)." "Accordingly, the board possessed the power to ratify its decision to terminate Monsanto's employment, and whatever defects with respect to the by-laws occurred at the July meeting were corrected at the October meeting." *Id.* As stated, this Court is not in the position to determine what constitutes full disclosure to the legislative body, but clearly the Legislature was satisfied with the information provided by all interested parties and ultimately, in accordance with their inherent power, chose to ratify the Consolidated Pennit and the Governor's Modification.

Conclusion

The CZM Act is designed for the permit process for review and appeal to be conducted within less than one (1) year. This process commencing seven years ago and having been approved has far surpassed the statutory deadlines. *See Virgin Islands Conservation Society v. Board of Land Use Appeals and Golden Resort, LLP*, D.C. Civ. App. 2006/089 (April 9, 2020), *Cowgirl Bebop, LLP v. Oriol*, 2021 V.I. Lexis 16 (March 5, 2021) speaking to the importance of deadlines. As the only issue before this Court is whether there is a colorable claim of relief that can be granted; this Court cannot find any. There is no justiciable issue for this Court to adjudicate as Act No. 8407 is the law and it is clear. Therefore, Defendants' joint motion for dismissal due to mootness and lack of subject matter jurisdiction will be granted. Accordingly, it is hereby

ORDERED that Defendants' motion is **GRANTED**; and it is further

ORDERED that this matter is **DISMISSED**; and it is further

ORDERED that a copy of this Order be distributed to Andrew C. Simpson, Esquire, Christopher M. Timmons, Esquire, Boyd Sprehn, Esquire, and David J. Cattie, Esquire.

Dated: May 12, 2021

[signed]

Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Supremacy Clause, U.S. Const. art. VI, cl. 2, provides:

> "The Constitution and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

At the time the U.S. Virgin Islands became a territory of the United States in 1917, Section 1891 of the Revised Statutes of the United States provided:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States." Rev. Stat. § 1891 (repealed by Act of Mar. 3, 1933, ch. 202, § 1, 47 Stat. 1429).

The Territorial Clause, U.S. Const. art. IV, § 3, cl. 2, provides:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .."

Section 8(a) of the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1574(a), provides in pertinent part:

> "The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this chapter or the laws of the United States made applicable to the Virgin Islands . . .."

The Territorial Submerged Lands Act, 48 U.S.C. § 1705, provides:

> " . . . all right, title, and interest of the United States in lands . . . covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territor[y] of . . . the Virgin Islands, . . . are hereby conveyed to the government[] of . . . the Virgin Islands, . . . *to be administered in trust for the benefit of the people thereof*." [Emphasis added.]

Act of December 31, 2020, VI LEGIS 8407 (2020), 2020 Virgin Islands Laws Act 8407 (B. 33-0428) provides:

> An Act ratifying the Major Coastal Zone Permits titled The Consolidation of Major Coastal L Zone Management Permit NO. CZJ-04-14(W) AND MAJOR LAND PERMIT CZJ-03-14(L) and the Letter from Governor Albert Bryan, Jr, to Ms. Chaliese Summers, Managing Member, The Summer's End Group titled Modification of Consolidated Major

Coastal Zone Management Permit Nos. CZJ-04-14(W) & CZJ-03-14(L); The Summers End Group, LLC, dated December 18, 2020

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Pursuant to 12 V. I.C. § 911(e), the Legislature of the Virgin Islands ratifies the Governor's approval of the Consolidation of Major Coastal Zone Permit No. CZJ-04-14 (W) and the Letter to Ms. Chaliese Summers, Managing Member of the Summer's End Group, LLC titled Modification of Consolidated Major Coastal Zone Management Permit CZJ-04-14(W) and CZJ-03-14(L), for the operation of a marina in Coral Bay, St. John.