

JUDGMENT ORDER

PER CURIAM

The Government of the Virgin Islands and Hyde Park/Perini [collectively referred to as "appellants"] initiated this appeal to determine whether the trial court erred in refusing to vacate or dissolve its February 12, 1999 memorandum opinion and order upon C&C/Manhattan's failure to pay the requisite bond of One Million Five Hundred Thousand Dollars (\$1,500,000.00). Appellants argued that because the lower court's Memorandum Opinion found that the government violated its procurement laws and should be enjoined, appellants were "forced to proceed under a cloud of legal uncertainty." (Joint Appendix at 21.) C&C argues that there was no abuse of discretion, and because there is no evidence that the trial court erred, this Court may not vacate the judgment of the injunction. (Brief of Appellee at 5.)

This Court has appellate jurisdiction to review judgments and orders of the territorial court in all civil cases. V.I. CODE ANN. tit. 4, § 33 (1997 & Supp. 1999); Section 23A of the Revised Organic Act of 1954.² Section 33 has been interpreted, with few exceptions, to mean "final decisions". *Government of the Virgin Islands Ex Rel. A.A.*, 34 V.I. 158, 166-67 (D.V.I. App. Div. 1996);

² The Revised Organic Act of 1954 is found at 48 U.S.C. § 1613a (1994), reprinted in V.I. CODE ANN., Organic Acts, 73-177 (codified as amended) (1995 & Supp. 1998) (preceding V.I. CODE ANN. tit. 1) ["Revised Organic Act"].

Government of the Virgin Islands v. DeJongh, 28 V.I. 153, 163-64 (D.V.I. App. Div. 1993).

This Court lacks jurisdiction to hear this appeal for three reasons: (1) there is no case or controversy as the construction of the prison is 90-95% complete as of the date of oral argument, August 25, 2000; (2) Virgin Islands Rule of Appellate Procedure 6(a)(i) is inapplicable as a reason for permission to seek an interlocutory appeal because no bond was posted, and as a result, no injunction was ever issued; and (3) the Territorial Court never certified the appeal of this interlocutory order pursuant to V.I. R. APP. P. 6(a)(iii), as requested.

The Court also takes this opportunity to admonish counsel on their failure to disclose pertinent facts, and warn that such conduct will not be tolerated in the future. First, counsel failed to disclose that during the pendency of this appeal, the Territorial Court dismissed this action with prejudice when it ruled that C&C/Manhattan had no standing to bring suit as an unsuccessful bidder.³ Second, counsel failed to disclose that the construction of the prison was proceeding to completion during the pendency of the appeal. This second non-disclosure was particularly important because the basis for seeking permission to

³ C&C/Manhattan's motion for reconsideration of the dismissal is still awaiting disposition in the Territorial Court.

appeal, namely that the government was forced to proceed under a "cloud of legal uncertainty" as a result of the trial court's finding that the government had violated its procurement laws, no longer existed. The Court cautions that

counsel have "a continuing duty to inform the Court of any development which may conceivably affect an outcome" of the litigation. *Fusari v. Steinberg*, 419 U.S. 379, 391, 95 S.Ct. 533, 540, 42 L.Ed.2d 521 (1975) (Burger, C.J., concurring). This is so, even where the new developments, new facts, or recently announced law may be unfavorable to the interests of the litigant. Cf. Model Rules of Professional Conduct, Rule 3.3 (1983) (candor toward tribunal).

Universal Minerals, Inc. v. Greenley Energy Holdings of Pennsylvania, Inc., 755 F.2d 309, 312-313 (3d Cir. 1985), see also L.R.Ci. 83.2(a)(1) (The ABA Model Rules of Professional Conduct govern the conduct of attorneys who appear before the District Court of the Virgin Islands).

Accordingly, it is hereby

ORDERED that this appeal is **DISMISSED without prejudice.**

DONE AND SO ORDERED this 29 day of September 2000.

A T T E S T:
ORINN ARNOLD
Clerk of the Court

/s/

By: _____
Deputy Clerk

Copies to:
Judges of the Appellate Panel
Judges of the Territorial Court

Honorable Jeffrey L. Resnick
Honorable Geoffrey W. Barnard

Iver A. Stridiron, Attorney General, V.I. Department of Justice
Pamela Tepper, Solicitor General
Michael Law, AAG
W. John Amerling, Esq.
Lee J. Rohn, Esq.
K. Glenda Cameron, Esq.

Tracy Lynch Bhola, Esq.
Julieann Dimmick, Esq.
Jeffrey Jordan, Esq.
Jennifer Coffin, Esq.
Nydia Hess

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