

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF and UNITED CORPORATION,

Appellants/Defendants,

v.

S. Ct. Civ. No. 2013-0040

Re: Super. Ct. Civ. Co. 370/2012 (STX)

MOHAMMAD HAMED by his
authorized agent WALEED HAMED,

Appellee/Plaintiff.

**APPELLANTS' MOTION TO STRIKE SELF-APPOINTED REPRESENTATIVE FOR
LACK OF STANDING**

COMES NOW Appellants/Defendants Fathi Yusuf and United Corporation, hereby jointly move, pursuant to VISCR Rule 21, to strike Waleed Hamed as Appellee Mohammad Hamed's self-appointed representative or "authorized agent," for lack of prudential standing.

Introduction

"The doctrine of standing is comprised of both constitutional and prudential components." *Mariana v. Fisher*, 338 F.3d 189, 204 (3d Cir. 2003). Here, although Waleed Hamed seeks to assert the claims of his father Mohammad Hamed as Mohammad's self-appointed "authorized agent," Waleed Hamed, has failed to establish any valid basis to do so. Accordingly, Appellants move to strike Waleed Hamed as Mohammad Hamed's putative representative or agent.

Relevant Procedural Background

1. This appeal addresses the Superior Court's extraordinary and drastic grant of an equitable preliminary injunction in this commercial dispute regarding an alleged *de jure* partnership.
2. The Superior Court (the Honorable Douglas A. Brady) entered the subject injunction on or about April 25, 2013. [JA-005].
3. The injunction is plainly mandatory in nature, requiring, among other things, the following relief: that (i) a Hamed and a Yusuf signature must be on every check from all Plaza Extra

Supermarket operating accounts; (ii) “no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s))”; and (iii) the Hameds and Yusufs must “jointly manage[e] each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operation.” [JA-027].

4. On May 9, 2013, Appellants filed three substantive motions with the Superior Court relating to the injunction: a Motion to Reconsider and to Modify Preliminary Injunction to Terminate Employees [JA-1725 to JA-1791]; an Emergency Motion for Reconsideration of Preliminary Injunction Order and for Stay of Same Pending Posting of Adequate Bond [JA-1792 to JA-1817]; and an Emergency Motion to Stay Preliminary Injunction Order [JA-1818 to JA-1885].

5. Appellants timely noticed this appeal on May 13, 2013. [JA-001].

6. On May 28, 2013, Appellants filed in this Court a motion to stay the injunction order pending appeal; and, concurrently therewith, a separate motion for an expedited review of the appeal. At the time of those May 28, 2013 appellate motions, the Superior Court had not yet rendered a ruling on any of the May 9, 2013 trial court motions referenced above.

7. Given the Superior Court’s inaction, on May 31, 2013, this Court denied Appellants’ motion to stay *without prejudice* to renew the motion if “the Superior Court denied their requested relief.” (May 31, 2013 Order at 1). Via a separate Order on the same date, this Court also granted Appellants’ request for an expedited review of the appeal. (May 31, 2013 Order and Expedited Briefing Schedule).

8. The Superior Court then ruled on two of the May 9, 2013 trial court motions, *denying* the Emergency Motion for Reconsideration of Preliminary Injunction Order and for Stay of Same Pending Posting of Adequate Bond and *denying* the Emergency Motion to Stay Preliminary

Injunction Order. (See May 31, 2013 Order Denying Bond Modification [JA-1969 to JA-1970] (“Bond Modification Order”); May 31, 2013 Order Denying Motion to Stay [JA-1971 to JA-1972] (“Stay Order”).

9. On June 13, 2013, as noted above, Appellants filed their substantive Opening Brief in this appeal, together with a Joint Appendix consisting of five volumes.

10. On June 24, 2013, Appellants filed their Renewed Motion to Stay Preliminary Injunction Order Pending Expedited Appeal.

11. On June 25, 2013, this Court entered its Order ordering Appellee to respond to Appellant’s Renewed Motion to Stay on or before June 27, 2013.

12. On June 27, 2013, Appellee filed his Opposition to Appellants’ Renewed Motion to Stay. Concurrent with the filing of his Opposition, Appellant filed his Answer Brief.

13. This Motion follows.

Relevant Factual Background

14. The central allegation in the case below is a purported “50/50 at-will oral partnership” between Mohammad Hamed and Fathi Yusuf.

15. Yet, Waleed Hamed, Mohammad Hamed’s self-appointed “authorized agent” seeks to prosecute the action on Mohammad’s behalf.¹

16. There is nothing in the record to establish that Waleed Hamed has been properly appointed as a general guardian, committee, conservator or like fiduciary for his father or his father’s affairs. Rather, Mohammad Hamed merely asserts that he has provided Waleed Hamed with “a

¹ It must be noted that within the Complaint below, Waleed Hamed also attributes the allegations in the action below to certain unnamed additional “authorized agents” acting “from time to time” on Mohammad Hamed’s behalf – *i.e.*, alleging that “[t]he acts referenced [in the First Amended Complaint] attributable to Mohammad Hamed are acts done either directly by Mohammad Hamed or for him by his authorized agents, all of whom are family members acting as his authorized agent, from time to time.”

power of attorney to act on [his] behalf in all aspects of the Plaza partnership business . . . with Fathi Yusuf.” (Sept. 17, 2012 Aff. of Mohammad Hamed at ¶ 4) [JA-094].

17. Significantly, the record before this Court is want of the details of Mohammad Hamed’s competency, including the purported basis, if any, supporting his desire to proceed through a representative or “authorized agent.”

18. The record is also devoid of any details regarding the scope of Waleed Hamed’s supposed authorization to represent Mohammad Hamed in this action; and devoid of any details regarding the unnamed additional “authorized agents” representing Mohammad Hamed from “time to time.”

19. Moreover, the record is lacking any evidence that Waleed Hamed has sustained any direct injury as a result of the Appellants/Defendants actions.

20. Thus, Appellants – and this Court – are left guessing as to the competency of Mohammad Hamed and the scope of any supposed authority bestowed upon Waleed Hamed by his father vis-à-vis this action.

Argument

A. Legal Standard

The “[s]tanding doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction. . . .” *Allen v. Wright*, 468 U.S. 737, 751 (1984). These “prudential standing” requirements must be met even when standing otherwise exists. *The Township of Lyndhurst, New Jersey v. Priceline.com, Inc.*, 657 F.3d 148, 154 (3d Cir. 2011).

The Third Circuit has made clear that prudential standing requires:

- (1) that a litigant assert his or her own legal interests rather than those of a third party;

(2) that the grievance not be so abstract as to amount to a generalized grievance; and

(3) that the Plaintiffs' interests are arguably within the 'zones of interests' protected by the statute rule, or constitutional provision on which the claim is based.

Lewis v. Alexander, 685 F.3d 325, 340 (3d Cir. 2012) (citing *Mariana v. Fisher*, 338 F.3d 189, 205 (3d Cir. 2003)). Additionally, the requirements of standing, both constitutional and prudential, "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1996).

Although this Court is not an "Article III court[]", Article III's requirement that a litigant have standing to invoke a court's authority has been incorporated into Virgin Islands jurisprudence." *Arlington Funding Services, Inc. v. Geigel*, 51 V.I. 118, 124 (V.I. 2009), *overruled in part in Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 564-565 (V.I. 2012). This Court has refined and re-incorporated the standing requirement as "a claims processing rule that is subject to waiver should the party asserting the issue fail to raise it in a timely manner." *Benjamin*, 56 V.I. at 564-65. Appellants recognize that "prudential standing' is a judicially created doctrine that neither the Revised Organic Act of 1954 nor any statute adopted by the Virgin Islands Legislature has mandated that this Court apply." *In re Guardianship of Smith*, 54 V.I. 517, 526 (V.I. 2010).

In *In re Guardianship of Smith*, this Court required the assertion of claims-processing rules to be made "at the first opportunity prior to the case becoming fully briefed." *Id.* Here, because the case has yet to be fully briefed, the Appellants' assertion that Waleed Hamed lacks prudential standing is timely, and this Court should consider this motion on the merits.

B. Waleed Hamed lacks prudential standing

As explained above, "[o]ne well-established prudential-standing limitation is the principle that a litigant cannot sue. . .to enforce the rights of third parties." *Rawoof v. Texor Petroleum Co., Inc.*,

521 F.3d 750, 757 (7th Cir. 2008). As a litigant in this case, Waleed Hamed has attempted to the legal interests of a third party, Mohammad Hamed, rather than his own. Thus, this Court should strike Waleed Hamed as Mohammad Hamed's putative representative or "authorized agent."

Here, in seeking to prosecute this action on behalf of Mohammad Hamed, Waleed Hamed filed his complaint and amended complaint within the court below and has filed his Opposition to Appellants' Renewed Motion to Stay and his Answer Brief. However, as explained above, the record is also devoid of material details regarding the scope of Waleed Hamed's supposed authorization to represent Mohammad Hamed in this action. The record also lacks any facts to support a claim that Waleed Hamed has been properly appointed as a "general guardian," "conservator," or "like fiduciary," on behalf of Mohammad Hamed as required by Fed. R. Civ. P. 17(c)(1).² Further, the record is lacking any evidence that Waleed Hamed has sustained any direct injury as a result of the Appellants/Defendants actions.

The only document addressing Waleed Hamed's authorization to prosecute the instant case (and the case below) on behalf of his father is a mere one (1) page undated declaration that perfunctorily states that:

1. I am the Plaintiff in the captioned action before th[e] [Superior] Court.
2. If there is any doubt with regard to my status as the Plaintiff and real party in interest in this action, I hereby confirm and ratify that I am the Plaintiff pursuing the claim against the Defendants.
3. I also confirm that my son Waleed Hamed is not the Plaintiff.

A copy of the undated declaration of the Appellee is attached hereto as Exhibit A.

Thus, with neither proper authorization to proceed under the Federal Rules of Civil Procedure nor direct legal injury, Waleed Hamed lacks the prudential standing necessary to proceed

² Some courts have described Rule 17's real-party-in-interest requirement as essentially a codification of the principle that a litigant cannot sue to enforce the rights of third parties. *See Rawoof*, 521 F.3d at 757; *In re Rodeo Canon Dev. Corp.*, 362 F.3d 603, 607-608 (9th Cir. 2004) (withdrawn on other grounds); *Ensley v. Cody Res., Inc.*, 171F.3d 315, 320 (5th Cir. 1999).

in defending the legal interests of Mohammad Hamed. *See Mariana*, 338 F. 3d at 205 (finding appellants lacked prudential standing because they did not allege a personal injury and were thus asserting the legal interests of third parties); *The Township of Lyndhurst, New Jersey*, 657 F.3d at 160 (finding appellant lacked prudential standing to sue defendants for failure to pay occupancy taxes because although appellant was granted authority to enact taxes, the authority to collect the tax was granted solely to New Jersey's Director of Taxation; thus, appellant was asserting the legal interests of a third party); *Hill v. Pennsylvania Department of Corrections*, 2013 U.S. App. LEXIS 6685, *4 (3d Cir. April 3, 2013) (finding that appellant wife, who filed suit on behalf of her inmate husband, under 42 U.S.C. § 1983, lacked prudential standing because "the complaint primarily alleged violations of Mr. Hill's constitutional rights; thus insofar as Mrs. Hill sought to assert Mr. Hill's right's, the District Court correctly concluded that she lacked standing.").

"Recognition of standing in such circumstances would transform the . . . courts into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.'" *Allen*, 468 U.S. at 756 (quoting *United States v. SCRAP*, 412 U.S. 669, 687 (1973)). As such, Waleed Hamed should be stricken as Mohammad's "authorized agent."

Conclusion

WHEREFORE, for the foregoing reasons, Appellants pray that the Court enter an Order striking Waleed Hamed as Mohammad Hamed's self-appointed representative or "authorized agent"; and granting any additional relief that the Court deems appropriate and just under the circumstances.

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Respectfully submitted,

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Dated: July 3, 2013

Counsel for Appellants/Defendants Fatbi Yusuf and United Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on VISCEFS on July 3, 2013, and, pursuant to Rule 15(d), that the Clerk will electronically serve the foregoing on:

Joel H. Holt, Esq., counsel for Appellee/Plaintiff, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; and

Carl J. Hartmann III, Esq., counsel for Appellee/Plaintiff, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com.

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