

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his)
authorized agent, WALEED HAMED,)
)
Plaintiff,)
)
v.)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants.)
_____)

CIVIL NO. SX-12-CV-370

**DEFENDANTS' MOTION TO PROCEED ON PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION AS
A MOTION FOR PRELIMINARY INJUNCTION AND FOR ENLARGEMENT OF
TIME TO RESPOND TO SAME**

Defendants Fathi Yusuf and United Corporation (collectively, "Defendants"), pursuant to Super. Ct. R. 7, Local Rule 7.1(e)(1) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, Rule 65 of the Federal Rules of Civil Procedure and otherwise, jointly request that this Court proceed on the Motion for a Temporary Restraining Order and/or a Preliminary Injunction (the "TRO Motion") filed by Plaintiff Mohammad Hamed as a motion for a preliminary injunction and grant Defendants an enlargement of seven days, *through and including October 9, 2012*, within which to respond to the TRO Motion. In support of this motion, Defendants state the following:

1. Plaintiff initiated this action, a commercial dispute, on or about September 17, 2012, the date of the Complaint.
2. Plaintiff also filed a Motion for a Temporary Restraining Order and/or a Preliminary Injunction and an accompanying Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction, both dated September 18, 2012 (collectively, the "TRO Motion").

CIVIL NO. SX-12-CV-370

3. Defendants were served the Complaint and TRO Motion on September 18, 2012. (Sept. 19, 2012 Notice of Service).

4. On September 20, 2012, Plaintiff filed a Proposed Order for Temporary Restraining Order and/or a Preliminary Injunction (the “Proposed TRO Order”). (Sept. 20, 2012 Notice of Filing).

5. Defendants promptly engaged the undersigned counsel, who entered an appearance in the matter on September 21, 2012. (Sept. 21, 2012 Notice of Appearance).

6. The Complaint, while both legally and factually deficient, is apparently premised on the naked assertion that, “[i]n the mid-1980’s, Hamed and Yusef formed a partnership to operate” three commercial supermarket businesses, which are located on properties operated by United Corporation. (Complaint ¶¶ 5-6).

7. Plaintiff alleges that “Yusef has engaged in and continues to engage in numerous acts in breach of his obligations as [an alleged] partner in [the alleged] partnership with Hamed,” including an alleged wrongful conversion of \$2.7 million from certain commercial accounts at issue. (Complaint ¶¶ 19-20). This alleged conduct, even if properly plead and proven, does not support injunctive relief.

8. Among other preliminary injunctive relief, Plaintiff requests that “Yusef [be enjoined] from withdrawing any funds from any [alleged] partnership bank accounts or brokerage accounts without the consent of Hamed—a stranger to the corporation—and directing both defendants to immediately return the \$2.7 million [allegedly] improperly withdrawn from the bank accounts of the three Plaza Extra supermarket accounts by Yusuf.” (TRO Motion at 11; see also Proposed TRO Order at 2-3).

CIVIL NO. SX-12-CV-370

9. Notwithstanding the allegations involving economic harms of, at a minimum, \$2.7 million dollars, Plaintiff incredibly proposes to post a bond of merely “\$10,000 as security” to compensate Defendants if they are incorrectly enjoined. (TRO Motion at 3).¹

10. Defendants bitterly dispute the allegations in the Complaint, including the existence and scope of the alleged “partnership” that serves as the foundation of Plaintiff’s Complaint and TRO Motion.

11. Defendants likewise believe that the Complaint and TRO Motion are legally and factually baseless.

12. As a threshold procedural matter, at issue is whether the Court should proceed on Plaintiff’s TRO Motion as request for a temporary restraining order or a preliminary injunction.

13. “An injunction is an ‘extraordinary remedy which should be granted only in limited circumstances.’” *Barclays Bus. Credit, Inc. v. Four Winds Plaza P’ship*, 938 F. Supp. 304, 307 (quoting *American Telephone & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-27 (3d Cir. 1994) (citation omitted)).

14. “This proposition is particularly apt in motions for preliminary injunctions, when the motion comes before the facts are developed to a full extent through the normal course of discovery.” *Barclays*, 938 F. Supp. at 307 (quoting *American Telephone*, 42 F.3d at 1427).

¹ See Fed. R. Civ. P. 65(c) (“The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”). “An incorrect interlocutory order may harm defendant[s] and a bond provides a fund to use to compensate incorrectly enjoined defendants. Such protection is important in the preliminary injunction context, for because of attenuated procedure, an interlocutory order has a higher than usual chance of being wrong.” *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 210 (3d Cir. 1990) (internal quotation and citation omitted).

CIVIL NO. SX-12-CV-370

15. Rule 65 of the Federal Rules of Civil Procedure governs preliminary injunctions and temporary restraining orders. *See* Fed. R. Civ. P. 65(a) (preliminary injunctions) and 65(b) (temporary restraining orders).

16. The primary difference is that a temporary restraining order may be issued “without written or oral notice to the adverse party or its attorney” and without affording the adverse party an opportunity to “be heard in opposition.” Fed. R. Civ. P. 65(b)(1) (setting forth the requirements for the issuance of a temporary restraining order).

17. In the present action, although Plaintiff seeks “a temporary restraining order, pursuant to Rule 65(b), or a preliminary injunction, pursuant to Rule 65(a),” Plaintiff concedes that the matter should appropriately “just proceed as a preliminary injunction” under Rule 65(a). (TRO Motion at 1; *see also* Proposed TRO Order at 1).

18. Indeed, even assuming Plaintiff could satisfy the requirements for a temporary restraining order under Rule 65(b), which he cannot do, a temporary restraining order would be improper as Plaintiff has failed to “certify[] in writing . . . the reasons why [notice to Defendants] should not be required” prior to the issuance of any such relief or why Defendants should not “be heard in opposition” prior to any ruling in the matter. *See* Fed. R. Civ. P. 65(b)(1).

19. As a separate procedural matter, pursuant to Local Rule 7.1(e)(1) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, Defendants’ response to the TRO Motion, assuming the Court proceeds on the motion as a motion for a preliminary injunction, is currently due on October 2, 2012. LRCi 7.1(e)(1).

20. Defendants’ counsel, as noted above, appeared in the matter on September 21, 2012, three days after service of process.

CIVIL NO. SX-12-CV-370

21. Defendants thus respectfully request an enlargement of one (1) week, through and including October 9, 2012, within which to prepare and finalize their joint response to the TRO Motion.

22. The enlargement of time is requested simply to afford Defendants, including United Corporation, which, as alleged, “currently employ[s] in excess of 600 employees” in the businesses at issue (Complaint ¶ 6), sufficient time to consult with their counsel, key corporate personnel and witnesses, and to fully investigate Plaintiff’s legal and factual claims.

23. The relief requested in this motion is made in good faith and not for any dilatory tactic.

24. Moreover, because “[a]n injunction is an ‘extraordinary remedy which should be granted only in limited circumstances,’” *Barlays*, 938 F. Supp. at 307, and because “an interlocutory order has a higher than usual chance of being wrong,” *Hoxworth*, 903 F.2d at 210, no party will be unduly prejudiced or harmed by the grant of this motion.

25. Undersigned counsel conferred on this motion with Plaintiff’s counsel, who expressed no position as to proceeding on the TRO Motion as a preliminary injunction and who indicated that Plaintiff opposed the requested enlargement.

WHEREFORE, Defendants Fathi Yusuf and United Corporation respectfully request that this Court proceed on Plaintiff’s Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a motion for a preliminary injunction, and thereby afford Defendants an opportunity to be heard in opposition, and grant Defendants an enlargement *through and including October 9, 2012*, within which to file their joint response to the TRO Motion.

A proposed such Order is attached hereto.

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CIVIL NO. SX-12-CV-370

Respectfully Submitted,

Dated Sept. 28, 2012

By:


Joseph A. DiRuzzo, III

USVI Bar #11114

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on September 28, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

By:


Joseph A. DiRuzzo, III

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED, by his)	
authorized agent, WALEED HAMED,)	
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Plaintiff,)	
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v.)	CIVIL NO. SX-12-CV-370
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FATHI YUSUF and UNITED CORPORATION,)	
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Defendants.)	
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**ORDER GRANTING DEFENDANTS’ MOTION TO PROCEED ON PLAINTIFF’S
MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY
INJUNCTION AS A MOTION FOR PRELIMINARY INJUNCTION AND FOR
ENLARGEMENT OF TIME TO RESPOND TO SAME**

AND NOW, this matter is before the Court on Defendants’ Motion to Proceed on Plaintiff’s Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a Motion for Preliminary Injunction and for Enlargement of Time to Respond to Same. Upon consideration of Defendants’ Motion, and being otherwise fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that:

1. Plaintiff’s Motion for a Temporary Restraining Order and/or a Preliminary Injunction shall proceed as a motion for a preliminary injunction.
2. Defendants shall file their response to Plaintiff’s Motion for a Temporary Restraining Order and/or a Preliminary Injunction by October 9, 2012.

CIVIL NO. SX-12-CV-370

DONE AND ORDERED this ____ day of _____, 2012.

Judge of the Superior Court

ATTEST: VENETIA VELAZQUEZ
Clerk of the Court

By: _____
Deputy Clerk

cc: Joel Holt, Esq.
Joseph A. DiRuzzo, III, Esq.