

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

MOHAMMAD HAMED, by his
authorized agent, WALEED HAMED,

Plaintiffs,

v.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

**DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO STRIKE
SELF-APPOINTED REPRESENTATIVE**

Defendants hereby reply to the Hameds' Response dated December 4, 2012 ("Response") to Defendants' Motion to Strike Self-Appointed Representative under Rule 17(c)(1) of the Federal Rules of Civil Procedure ("Motion to Strike").

Introduction

The Hameds raise two assertions in opposition to Defendants' Motion to Strike: (a) because the caption of this action identifies Mohammed Hamed as the nominal plaintiff, then, according to the Hameds, there can be no Rule 17 violation; and alternatively, (b) even if they have violated Rule 17, a declaration "confirming and ratifying" the violation somehow "moot[s]" the violation. As set forth below, both assertions are fundamentally flawed, as courts must look beyond form to address the substance of a claim; and the alternative attempt to "ratify[]" the instant Rule 17 violation is misplaced, as Defendants seek to strike Waleed Hamed as Plaintiff Mohammad Hamed's self-appointed representative or "authorized agent" under *Rule 17(c)(1)*, not dismiss the action under *Rule 17(a)(3)* for failure to join a real party in interest.

A. Substance and Intent, Not Form, Control

In attempting to elevate form over substance, the Hameds assert that, because “the plaintiff is listed in the caption and described in the amended complaint as Mohammad Hamed,” then, according to the Hameds, “[t]here is no attempt to make Waleed Hamed the Plaintiff.” (Response at 1). However, “[a] pleading will be judged by its substance rather than according to its form or label . . .” *Lewis v. AG of the United States*, 878 F.2d 714, 722 n.20 (3d Cir. 1989). Indeed, “[c]ourts must look beyond form to address the substance of a claim.” *Knapper v. Bankers Trust Co.*, 407 F.3d 573, 585 (3d Cir. 2005) (citing *Lewis*); see also *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1259 (3d Cir. 1977) (“Substance and intent, not mere form, are [the] critical factors”).

Here, irrespective of the form of the caption, the *substance* and *intent* of the amended complaint reflect Mohammad Hamed’s clear desire to prosecute this action by and through a self-appointed representative, *i.e.*, “his authorized agent Waleed Hamed,” his son. (Comparison Doc. at ¶ 2). Mohammad Hamed also attributes the allegations in this action to certain unnamed additional “authorized agents” acting “from time to time.” (*Id.*). Thus, in seeking to prosecute this action by and through a representative and other agents acting “from time to time,” Mohammad Hamed has triggered Rule 17(c)(1) but otherwise failed to comply with the requirements thereunder. See Fed. R. Civ. P. 17 (limiting litigation by incompetent persons through a representative to a properly appointed “general guardian,” “conservator” or “like fiduciary”).

B. The Purported Ratification is Misplaced

Alternatively, the Hameds submit a “declaration” by Mohammed Hamed purporting to “confirm[] and ratify[]” the instant Rule 17 violation “pursuant to Rule 17(a)(3),” and then assert that Defendants’ Motion to Strike is somehow “mooted by the filing of this declaration.” (Response

at 2 (citing *ICON Group, Inc. v. Mahogany Run Dev. Corp.*, 829 F.2d 473, 477 (3d Cir. 1987))). The Hameds' reliance on the declaration is entirely misplaced.

Significantly, Defendants have not moved to dismiss this action "for failure to prosecute in the name of the real party in interest" under Rule 17(a)(3). *See* Fed. R. Civ. P. 17(a)(3) (providing that "[t]he court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action."). Rather, as set forth in the Motion to Strike, Defendants have moved to strike Waleed Hamed as Plaintiff Mohammad Hamed's "authorized agent." (*See* Motion to Strike at 4). The motion is brought pursuant to Rule 17(c)(1) regarding representation of incompetent litigants – not Rule 17(a)(3) regarding ratification, joinder, or substitution of real parties in interest. (*Id.*).


The subject declaration, which the Hameds have submitted "pursuant to Rule 17(a)(3)" (Response at 2), is therefore irrelevant to a resolution of the Motion to Strike. *ICON*, the only case on which the Hameds rely, is likewise easily distinguished on this basis. *See ICON*, 829 F.2d at 477 (remanding dismissal for failure to join interested parties under Rule 17(a) and Rule 19).

Moreover, even if the declaration were relevant, which it is not, the document – as with the entire record – is devoid of any facts regarding Mohammad Hamed's competency to either "confirm" or "ratify" the requirements of Rule 17(c)(1), including, but not limited to, facts addressing his competency to proceed with or without a representative and otherwise supporting a claim that Waleed Hamed has been properly appointed as a "general guardian," "conservator" or "like fiduciary," as required by the Rule. The declaration's admissibility is also highly dubious, as it lacks material information regarding its preparation and execution, including, among other evidentiary issues, identification of *when* and *where* it was signed.

Conclusion

Based on the foregoing, and on the underlying Motion to Strike, Defendants pray that the Court – prior to resolving any other substantive motions – 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.

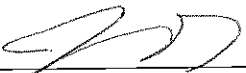
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2012, a true and accurate copy of the foregoing was forwarded via USPS and email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; and *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com.



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