

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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
 )  
Plaintiff, ) CIVIL NO. SX-12-CV-370  
 )  
v. ) ACTION FOR DAMAGES;  
 ) PRELIMINARY AND PERMANENT  
FATHI YUSUF and UNITED CORPORATON, ) INJUNCTION; DECLARATORY RELIEF  
 )  
 ) JURY TRIAL DEMANDED  
Defendants.)

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**ORDER**

**THIS MATTER** is before the Court on Motion for Leave to Intervene, filed January 24, 2013 (“Motion to Intervene”), and Motion for Expedited Resolution of Prior Motion To Intervene and a Stay of the Court’s Order dated April 25, 2013, filed May 9, 2013, of proposed intervenors Yusuf Yusuf, Zayed Yusuf, Fawzia Yusuf, and Zeyad Yusuf. For the reasons that follow, the Motion to Intervene will be DENIED, and the Court will therefore not address the proposed intervenors’ Motion to Stay, similar to motions to stay filed by the existing Defendants which have been previously denied.

The proposed intervenors seek intervention as of right or permissively under Fed.R.Civ.P. 24.

Rule 24 (a)(2) provides intervention of right to anyone who

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Third Circuit has set forth the test for intervention of right by a non-party, all elements of which must be satisfied, as follows: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter, by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation. *Mountain Top Condo. Ass'n, v. Dave Stabert Master Builder, Inc.*, 33 V.I. 311, 319 (3d Cir. 1995), quoting *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir.1987).

The proposed intervenors must meet all four requirements to be eligible for intervention as of right. The applicant for intervention bears the burden of persuading the court that each element is met. *Anthony v. Independent Insurance Advisors, Inc.*, 56 V.I. 516, 526 (2012).

Notwithstanding the facts that this matter has been removed to and remanded back from the District Court of the Virgin Islands, that Plaintiff's dispositive motion for partial summary judgment is pending and that the existing parties have filed many hundreds of pages in briefing and opposing their numerous motions, it cannot be said that the proposed intervenors' application is untimely, as the litigation is still in its preliminary stages.

It is as to the other three factors where the proposed intervention fails. Movants indicate that they are the owners of 53.5% of the shares of Defendant United Corporation. (Motion to Intervene, at 5, n.2.) They state inaccurately that by this action Plaintiff claims "that he is entitled to 50% of United Corporation because, somehow, it is a 'partnership'..." (Motion to Intervene, at 1.)

To the contrary, Plaintiff's First Amended Complaint alleges that "Mohammad Hamed and Yusuf agreed to enter into a 50/50 partnership... to create, fund and operate this new grocery supermarket business, which they named Plaza Extra Supermarket." (First Amended Complaint,

¶9.) Plaintiff acknowledges that United is a Virgin Islands corporation, (*Id.*, ¶4.) Rather than claiming any ownership interest in United which could dilute the respective interests of the proposed intervenors in United, Plaintiff alleges that, United, then controlled by Yusuf, by contract or agreement of trust or agency, acted to hold funds for the partnership that United now refuses to release to Plaintiff, to which Plaintiff alleges a 50% interest. (*Id.*, ¶¶ 44-46.)

The proposed intervenors have failed to demonstrate that their individual interests, as shareholders of United, constitute a sufficient interest in the litigation that may be affected or impaired by the disposition of the action to permit them to intervene. If the funds held by United are ultimately determined to be held for the benefit of the partnership as alleged by Plaintiff and not owned as an asset of United, the proposed intervenors would be indirectly affected economically. Yet, “[i]n general, a mere economic interest in the outcome of the litigation is insufficient to support a motion to intervene.” *Mountain Top Condo. Ass'n, v. Dave Stabert Master Builder, Inc.*, 33 V.I. at 318,

The proposed intervenors also fail to show that their interests in the litigation will not be adequately represented by an existing party. They have not expressed any manner in which their interests are distinct or different from those of United, only that they fear a dilution of the value of their interests in United. Collectively, as majority shareholders of United, as a practical matter, the proposed intervenors have the right to control and direct the defense of the litigation on behalf of United.

The most important factor in determining adequacy of representation is how the interests of the absentee proposed intervenors compare with the interests of the present parties. 7C Wright, Miller & Kane, *Federal Practice and Procedure* §1909 (3d ed. 2013 updated). If the absentees’ interests are identical to that of one of the present parties, or if there is a party charged

by law with representing the absentee's interest, such as in the case of formal representation by a corporation, then a compelling showing should be required to demonstrate why this representation is not adequate. *Id.*; *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541 (1<sup>st</sup> Cir. 2006).

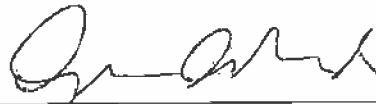
Defendant Yusuf's interests in the litigation as a shareholder of United (except as to percentage of ownership interest in United shares) are identical to those of the proposed intervenors. The proposed intervenors fail to explain how the fact that United is a defendant in a federal criminal tax prosecution subject to criminal liability affects United's ability to defend this action on its own behalf and for the benefit of its shareholders.

For these stated reasons, the proposed intervenors are not entitled to intervention as of right under Fed. R. Civ. P. 24(a)(2).

The proposed intervenors' alternate request for permissive intervention under Fed. R. Civ. P. 24(b) is addressed to the Court's sound discretion. Because the interests of the proposed intervenors are adequately represented by the existing Defendants, and because in the Court's view intervention will further unduly delay the adjudication of the original parties' rights in this already unwieldy litigation, permissive intervention of the proposed intervenors will also be denied,

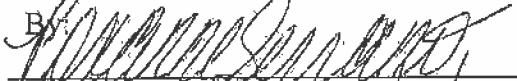
As such, it is hereby **ORDERED** that the Motion to Intervene is **DENIED**.

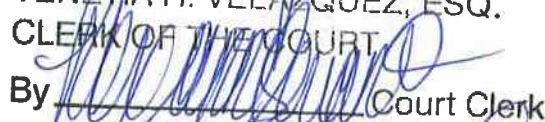
Dated: June 10, 2013

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:

Venetia H. Velazquez, Esq.  
Clerk of the Court

By:   
\_\_\_\_\_  
Court Clerk Supervisor 6/11/13

CERTIFIED TO BE A TRUE COPY  
This 10<sup>th</sup> day of June, 2013  
VENETIA H. VELAZQUEZ, ESQ.  
CLERK OF THE COURT  
By:   
\_\_\_\_\_  
Court Clerk



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

\_\_\_\_\_)  
MOHAMMAD HAMED ET. AL. **Plaintiff**)  
Vs. )  
FATHI YUSUF ET. AL. **Defendant**)

CASE NO. SX-12-CV-370

ACTION FOR: **DAMAGES INJUNCTIVE AND DECLARATORY RELIEF**

**NOTICE  
OF  
ENTRY OF JUDGMENT/ORDER**

TO: NIZAR DEWOOD, Esquire  
✓ JOEL HOLT, Esquire  
JOSEPH A. DIRUZZO, III, Esquire

Please take notice that on JUNE 12, 2013 Order was entered by this Court in the above-entitled matter.

Dated: June 12, 2013

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Superior Court



By: ROXANNE SERRANO

Court Clerk Supervisor