

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

MOHAMMAD HAMED, by his)
 authorized agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
 vs.)
)
 FATHI YUSUF and)
 UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
 vs.)
)
 WALEED HAMED, WAHEED)
 HAMED, MUFEED HAMED,)
 HISHAM HAMED,)
 and PLESSEN ENTERPRISES, INC.,)
)
Counterclaim Defendants.)
)
 _____)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

**PLAINTIFF HAMED'S OPPOSITION
TO UNITED'S MOTION TO RECONSIDER ORDER OF ENCUMBRANCE
AS TO SHAWN HAMED'S PLEDGE OF PLOT NO. 100 ELIZA'S RETREAT**

The Court is asked to decide two overlapping *Defense pleadings* regarding the posting of alleged "marital property" as a bond in this cause (posted in response to an Order requiring the positing of additional bond dated January 15, 2014.) Defendants called one a "motion" and the other an "objection." The timeline is set forth in Plaintiff's response to the objection filed on February 18, 2014, which is incorporated herein by reference. See **Exhibit 1** (without attachments).

As set forth in that February 18th Response to the "objection," Shawn Hamed's posting of *Plot 100 Eliza's Retreat* is valid for several different reasons: (1) a prior Hoda

Fathi Yusuf *lis pendens* listing the marital property did not list Plot 100, but instead listed another plot, (2) Plot 100 is an empty lot, and cannot be a marital homestead, (3) Shawn Hamed's pledge to this Court was filed/made on January 31st and thus predates the new *lis pendens* and (4) the divorce action in which the *lis pendens* was filed had been dismissed prior to the filling of the new *lis pendens*.

Additionally, to add to these reasons is a new development, as the appeal has also now been dismissed. See **Exhibit 2**. Thus, there is no case pending at the appellate level either, although even if there were a pending appeal (or this appeal is reinstated), the first four reasons support denying the motion for reconsideration.

Finally, Defendants' February 24, 2014 response raises a new argument that should be briefly addressed. Defendants argue that **EVEN THOUGH THE DIVORCE ACTION HAD ALREADY BEEN DISMISSED BEFORE THE NEW *LIS PENDENS* WAS FILED**, the divorce court must address and decide whether to release the new *lis pendens*, meaning this Court should not consider the issue. What Defendants overlook is that one cannot file a *lis pendens* in a dismissed case. 28 V.I.C. § 130 provides:

§ 130 Recording of notices of **pending actions** and judgments

Notices of **pending actions** affecting title to real estate, and judgments of courts in the Virgin Islands requiring the execution of a conveyance of real estate within the Virgin Islands, shall be entitled to be recorded in the office of the recorder in like manner and with like effect as conveyances of land duly acknowledged, proved, or certified. (Emphasis added.)

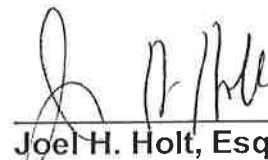
Once the original divorce proceeding (SX-13-DI-42) was "dismissed" for lack of jurisdiction (with no motion for reconsideration filed), the case was no longer *pending* before the Superior Court. See, e.g., *In re Burke*, 50 V.I. 346, 351 n.1 (V.I. 2008) (notice of appeal of a final order divests the trial court of jurisdiction.)

In short, not only is it not possible file a *lis pendens* in a non-existent case, a Court that no longer has the case before it -- and no longer has ANY jurisdiction over the case -- cannot hear a motion to vacate an erroneously filed *lis pendens* under that case caption.

Moreover, this Court certainly has the authority to address the validity of the *lis pendens* even though filed under the caption of another case, as the issue is whether the improperly filed *lis pendens* affects the validity of the property being posted as part of the bond in this case. Aside from the points already raised, it is clear this belated effort to challenge the bond is just part of the litigation strategy in this case to unduly burden the Plaintiff, as it is clearly was not a justifiable concern when the divorce action was pending, as evidenced by the prior *lis pendens* filed in that case last year.

In summary, while Fathi Yusuf prevailed upon his daughter to try to help him in this case, the it is respectfully submitted that the *lis pendens* is not a proper cloud on title for the reasons noted herein.

Dated: February 26, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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A handwritten signature in black ink, appearing to read "G. H. Hodges", is written over a horizontal line.

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

MOHAMMAD HAMED, by his
authorized agent WALEED HAMED,

Plaintiff/ Counterclaim Defendant

v.

FATHI YUSUF and
UNITED CORPORATION

Defendants/ Counterclaimants,

v.

WALEED HAMED, WAHEED
HAMED, MUFEED HAMED,
HISHAM HAMED,
and PLESSEN ENTERPRISES, INC.,

Counterclaim Defendants.

Case No.: SX 2012-CV- 370

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

RESPONSE TO DEFENDANTS' OBJECTION RE BOND

Defendants belatedly object on February 12th to the use of property that this Court already approved as part of the bond, Parcel 100 Eliza's Retreat, referencing a *lis pendens* filed by Fathi Yusuf's daughter against this property. The timeline of the *lis pendens* is instructive:

- **March 22, 2013** - Hoda Fathi Yusuf files a *Lis Pendens* against Plot No. 65 Estate Eliza's Retreat (owned by Shawn Hamed), noting the property is subject to a "marital homestead" in an action for divorce filed by her against Shawn Hamed. See **Exhibit 1**.
- **January 30, 2014** - Shawn Hamed pledges Parcel 100 Eliza's Retreat, a different plot of unencumbered, unimproved land titled in his sole name, as part of the bond required by this Court. See **Exhibit 2**.
- **January 31, 2014** - Superior Court (Family Division) dismisses the divorce action filed against Shawn Hamed by Hoda Fathi Yusuf for lack of subject matter jurisdiction on the grounds that the parties were never married. See **Exhibit 3**.



- **February 7-10, 2014** - This Court approves property (Parcel 100 Eliza's Retreat) as part of bond, docketing the order and directing counsel to record the Order See **Exhibit 4**.
- **February 12, 2014 (2:36 p.m.)** - Plaintiff's Counsel records Court Order at 2:36 PM as directed. See **Exhibit 4**.
- **February 12, 2014 (4:36 p.m.)** - Defendants file an objection to use of property, referencing a February 5, 2014, *lis pendens* recorded (without notice) against Parcel 100 Eliza's Retreat (**Exhibit 5**), alleging that the subject property is "the marital homestead" that is the subject of litigation in the (dismissed) divorce. **Exhibit 6**.

As can be seen, the *lis pendens* was not recorded until (1) after notice was given to the Yusufs of the pledging of this property and (2) after the underlying action for divorce was dismissed for lack of subject matter jurisdiction *because the parties were never legally married*.

Thus, there are two separate reasons why the *lis pendens* incorrectly states that Parcel 100 Eliza's Retreat is the subject of pending litigation as a "marital homestead."

First, it is an unimproved parcel of land, which by definition cannot possibly be a homestead. See, e.g., *Garcia v. Garcia*, 2013 WL 5304643, *4 (V.I. September 20, 2012) ("a 'marital homestead' is any 'homestead' in which a husband and wife both reside during the marriage"). Indeed, Hoda Fathi Yusuf and her lawyer both know this, as they recorded a *lis pendens* against what they alleged was the "marital homestead" last April and did not include this unimproved Parcel 100 Eliza's Retreat in that *lis pendens*.¹

¹ Pursuant to 16 V.I.C. §62, a spouse has no interest in property owned by the other spouse. See *Dyndul v. Dyndul*, 541 F.2d 132 (3rd Cir. 1976) (Virgin Islands is not a community property jurisdiction).

Second, the order dismissing the divorce action is a final order. No motion for reconsideration was filed. While an appeal has been filed, there has not been an application for or issuance of an order staying the effect of the final dismissal. Hence, even if unimproved real property *could* be considered to be a marital asset that could be at issue in a divorce action, the order dismissing the divorce case is a final order, so the recording of the *lis pendens* against this additional piece of property after the final order was improper.

Thus, the *lis pendens* is both untimely and inaccurate, and should not be considered by this Court as a proper basis for an objection to the pledging of Parcel 100 Eliza's Retreat as partial security for the bond, which this Court has already approved.

Dated: February 18, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

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IN THE SUPREME COURT OF THE VIRGIN ISLANDS

HODA FATHI YUSUF HAMED,
Appellant/ Plaintiff,

v.

HISHAM MOHAMMED HAMED,
Appellee/Defendant.

S. Ct. Civ. No. 2014-0008
Re: Super. Ct. DI. No. 42/2013 (STX)

2014 FEB 25 PM 3: 14

On Appeal from the Superior Court of the Virgin Islands

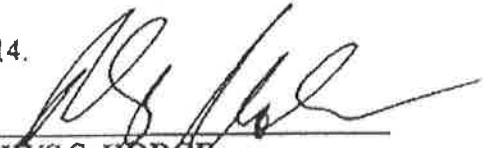
ORDER

THIS MATTER is before the Court *sua sponte* on Appellant's failure to comply with Rule 3(a), which requires appellants to pay the docketing fee or file a motion to proceed in form pauperis within 14 days after the date that an appeal is docketed. The docketing order was issued on February 4, 2014, and the Virgin Islands Supreme Court Electronic Filing System confirm that the parties were served. If an appellant fails to comply with Rule 3(a) the Court "authorized to dismiss the appeal without further notice." Accordingly, pursuant to Rule 3(a), it herby

ORDERED that this matter is **DISMISSED**; and it is further

ORDERED that copies of this Order shall be issued to the parties

SO ORDERED this 25th day of February, 2014.



RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.,
Clerk of the Court

EXHIBIT
2
Bloomberg No. 5208

By: 
Deputy Clerk H

Dated: 2/25/2014

F

Hamed v. Hamed
S. Ct. Civ. No. 2014-0008
Order
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Kye K. Walker, Esq.
Carol Ann Rich, Esq.
Veronica J. Handy, Esq., Clerk of the Supreme Court
Estrella George, Acting Clerk of the Superior Court
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