

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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	
)	
Plaintiff/Counterclaim Defendant,)	CIVIL NO. SX-12-CV-370
)	
vs.)	ACTION FOR DAMAGES,
)	INJUNCTIVE RELIEF
)	AND DECLARATORY RELIEF
FATHI YUSUF and UNITED CORPORATION ,)	
)	
Defendants/Counterclaimants,)	
)	
vs.)	JURY TRIAL DEMANDED
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES,)	
)	
Additional Counterclaim Defendants.)	
)	
)	

REPLY TO
PLAINTIFF'S OPPOSITION TO DEFENDANTS'
MOTION TO FURTHER EXTEND SCHEDULING ORDER DEADLINES

Defendants/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), through their undersigned attorneys, respectfully submit this Reply to Plaintiff's Opposition to Defendants' Motion to Further Extend Scheduling Order Deadlines ("Motion") and in support, state as follows:

I. Early Filings Created a Procedural Anomaly and Disjointed Discovery

What Plaintiff tries to characterize as "delay" is simply Defendants' efforts ensure an orderly and comprehensive development of the relevant evidence - for all parties. Not once have Defendants sought an extension of the scheduling order where all pending dispositive motions had been ruled upon, where all the necessary parties to the suit had been joined, where all the parties had the opportunity to engage in discovery or where all the known documents, directly relevant to the issues in the case were available for production. Instead, all of these impediments

have existed and some continue to exist which have necessitated an extension of the applicable deadlines.

Similarly, Plaintiff cannot argue that the time that has lapsed since the filing of the suit is indicative of delay caused by Defendants. Rather, it has been the unique procedural developments in the case which created the delay. The case was removed to the District Court and then later remanded. The case also involves an injunction. Rulings on injunctions give rise to direct interlocutory appeals. Hence, a trip to the Supreme Court and back further disrupted the regular and orderly progression of the case and resulted in delay. Lest it be forgotten, Plaintiff's failure to post the reduced bond "forthwith," as ordered by this Court on December 5, 2013, further delayed matters and the adequacy of the security posted by Plaintiff still has not been finally determined. All of these procedural hurdles created a disjointed start to the discovery process. As a result, Defendants have filed two motions seeking to extend the scheduling order so as to accommodate the unique procedural circumstances and impediments which existed and continue to exist as of the filing of the Motion.

While some of the procedural barriers have resolved themselves, others have not. Rather, certain scheduling problems (i.e. newly added counterclaim defendants and relevant documents held by the Department of Justice which remain unavailable) persist and, thus, present the same procedural impediments requiring further extension of the scheduling order. However, this is not as a result of any delay on the part of Defendants. To the contrary, what could be done, has been done and, in fact, much has been done. However, until parties were added and relevant documents are made available, there are limits to what can be done.

II. Department of Justice Documents Are Not Available Until Sentencing in the Criminal Case and Hamed Family Members Have Held Up Sentencing by their Failure to Pay Taxes.

Plaintiff argues that nothing remains outstanding from Department of Justice (“DOJ”), that to contend otherwise is “pure speculation,” and that the documents could have been secured at any time. All of these contentions are wrong. Rather, there are a significant number (perhaps hundreds of thousands) of documents at the DOJ which were seized as part of the federal criminal case (V.I. Dist. Ct. Case No. 1:05-cr-00015-RLF-GWB)(the “criminal case”) to which neither of the parties have been given access. While much has been provided previously from the criminal case, the documents which are unavailable are even more voluminous than what has been produced. See Exhibit A - Declaration of Joseph A. DiRuzzo. These remaining documents are believed to include documents that reflect the unauthorized withdrawal of funds by Waleed Hamed and scores of financial transactions relating to the Plaza Extra Stores. Hence, these documents are quite relevant to the issues presented in this case and, therefore, their production is imperative.

Contrary to Plaintiff’s unsupported assertion, the documents are not currently available or subject to subpoena. Rather, pursuant to an agreement in the criminal case, the documents will be released from the custody of the DOJ after the sentencing takes place. See Exhibit A. In fact, an entire mechanism has already been put into place for a neutral party (Joyce Bailey, CPA, located in St. Thomas) to act as an “escrow type” agent to receive the documents and serve as the official custodian given the animosity of the parties. See Exhibit A. However, members of Plaintiff’s family have held-up the sentencing because they have failed to pay their respective outstanding personal tax liability, a condition precedent to the sentencing. See Exhibit A. Hence, Plaintiff’s family has successfully kept the incriminating documents from being turned

over by simply choosing not to pay an undisputed, outstanding tax obligation. Clearly, Plaintiff seeks to delay or avoid altogether discovery of these important documents. All the while, Plaintiff seeks to rush this case to conclusion so that these documents are not allowed to surface in time to be effectively used in this case. At present, all efforts to facilitate the final tax payments have been coordinated and, therefore, this impediment should dissipate soon thereby opening up the opportunity to receive these important documents. See Exhibit A.

III. Newly Added Parties Have Just Been Served and No Discovery Could be Procured From Them.

Plaintiff argues that Defendants could have already pursued discovery against the newly added parties¹. This is incorrect. Under Fed. R. Civ. Pro. 26(d), “[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).” Here, Defendants and the Newly Added Parties clearly have not yet had an opportunity to engage in such discussions and, therefore, no discovery could be pursued against them prior to such a conference.²

Next, Plaintiff argues that discovery procured in other cases between the parties could be used in this case. It is axiomatic that simply because discovery may be available in other matters does not eliminate a right to discovery in this case. Further, Plaintiff suggests that the newly added Parties’ depositions could have been taken prior to their addition to this case. While this raises a host of questions, even if permissible, without having brought them into the action and without their answers and potential defenses, the depositions would need to be retaken after they

¹ Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed, and Plessen Enterprises are referred to collectively as the “Newly Added Parties.”

² Three of the Newly Added Parties only “appeared” in this case on February 18, 2014 and February 21, 2014 by filing answers and motions to dismiss. One of the Newly Added Parties, Plessen Enterprises, Inc., has yet to enter an appearance and is now in default despite Plaintiff’s Motion to Dismiss Plessen Enterprises, Inc. as a counterclaim defendant filed on March 3, 2014.

were added to the suit so as to question them as to their answers and potential defenses, which would not have been possible prior to their entry into the case and the filing of their responsive pleadings. As the Newly Added Parties could not be subject to the current discovery deadlines (nor should the Defendants be inhibited in their ability to pursue discovery from the Newly Added Parties) additional discovery must be allowed as to the First Amended Counterclaim and the Newly Added Parties. Hence, an extension of the discovery period equally benefits all of the parties.

Even Plaintiff's counsel concedes that a "slightly" revised discovery schedule was in order given the current circumstances. Given the continued unavailability of hundreds of thousands of highly relevant documents and the complete absence of any meaningful opportunity to engage in discovery with the Newly Added Parties, Defendants have established good cause for a further extension of the current discovery period. For all these reasons, Defendants respectfully request this Court to further modify the scheduling order by entering the proposed order submitted with the Motion.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: March 5, 2014

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2014, I caused the foregoing Reply to Plaintiff's Opposition to Defendants' Motion To Extend Scheduling Order Deadlines to be served upon the following via e-mail:

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the federal criminal case to which the Parties do not currently have access to. While much has been provided previously from the criminal case, the documents which are currently unavailable are even more voluminous than what has already been produced. These remaining documents are believed to include documents that reflect the unauthorized withdrawal of funds from United by Waleed Hamed and scores of financial transactions relating to the Plaza Extra Stores. Hence, these documents are quite relevant to the issues presented in this case.

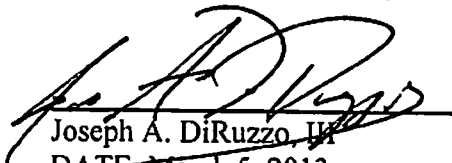
4. Contrary to Plaintiff's assertion, the documents held by the DOJ are not currently available. Rather, pursuant to an agreement in the criminal case, the documents will be released from the custody of the DOJ after the sentencing of United takes place.

5. In fact, an entire mechanism has already been put into place for a neutral party (Joyce Bailey, CPA, located in St. Thomas) to act as an "escrow type" agent to receive the documents from the DOJ and serve as the official custodian of the documents during the pendency of the instant litigation. Indeed, Ms. Bailey has already been paid a retainer for her services.

6. Members of Plaintiff's family have held-up the sentencing in the criminal case because they have failed to pay their respective undisputed, outstanding personal tax liability, a condition precedent to the sentencing.

7. At present, all efforts to facilitate the final tax payments have been coordinated and, therefore, this impediment should dissipate soon thereby opening up the opportunity to receive these important documents.

I declare under the penalties of perjury that the foregoing is true and correct.


Joseph A. DiRuzzo, III
DATE: March 5, 2013