

**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,**

**YODA FATHI YUSUF HAMED,**

**Intervenor.**

**Case No.:2012-CV- 370**

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

**JURY TRIAL DEMANDED**

**PLAINTIFF'S RESEPOSE TO MOTION TO INTERVENE**

Comes now the plaintiff, by counsel, and hereby responds to the motion to intervene filed by Yoda Fathi Yusuf in order to make a "limited" appearance in this case. For the reason set forth herein, it is respectfully submitted that the motion can be summarily denied.

While Yoda Fathi Yusuf seeks intervention as a matter of right pursuant to Rule 24(a) as well as permissive intervention pursuant to Rule 24(b), the criteria for granting the motion under either rule both include one requirement that is identical. In this regard, to prevail under either rule, Yoda Fathi Yusuf must show that the interests she seeks to protect are not adequately protected by one or more of the current parties. See generally, *Anthony v Independent Insurance Advisors, Inc.*, 2012 WL 1313413 (VI Sup. Ct. 2012); *Mountain To Condominium Assoc. v. Dave Stabber Master Builder*, 72 F.3d 361 (3<sup>rd</sup> Cir. 1995). Indeed, Yoda Fathi Yusuf concedes this point.

This Court has previously addressed a similar issue regarding a motion to intervene in this case, so it is familiar with the applicable standard. See **Exhibit 1**.

In this case, the proposed intervener alleges that she has a claim to a parcel of property that was accepted by this Court to secure the bond in this case, Plot 100 Eliza's Retreat, which she claims is part of the marital homestead. There are several meritorious defenses to this claim, including (1) it has already been determined that Yoda Fathi Yusuf was not married to Hisham Hamed and (2) no stay of that final order of the Superior Court has ever been requested. In fact, in her affidavit filed with her motion (¶5 of Exhibit 5), she admits she never even asserted that Plot 100 was part of the marital homestead in the divorce proceeding.

However, this Court need not address this issue in resolving this motion to intervene, as it is clear that there are parties to this litigation that can and have certainly tried to adequately represent her interest in this alleged marital homestead. In this regard, Hoda Fathi Yusuf is the daughter of Fathi Yusuf, a defendant in this case. Fathi Yusuf has already raised all of the issues raised by Hoda Fathi Yusuf, as he attached her motion to intervene as an exhibit to his March 12<sup>th</sup> reply memorandum on the bond issue, incorporating it by reference. Hence there is nothing new being raised by Yoda Fathi Yusuf that is not already before this Court.

As such, it is respectfully submitted that the intervener's Rule 24 motion should be denied, as her interests are already being adequately protected in this litigation. A proposed Order is being submitted with this response.

Dated: March 17, 2014



---

**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
2132 Company Street,  
Christiansted, VI 00820  
[holtvi@aol.com](mailto:holtvi@aol.com)  
340-773-8709

**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Est. Coakley Bay, L6  
Christiansted, VI 00820  
[Carl@carlhartmann.com](mailto:Carl@carlhartmann.com)  
340-642-4422

### CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of March, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

**Nizar A. DeWood**  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

**Gregory H. Hodges**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
ST. Thomas, VI 00802  
[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

**and by email and hand delivery to:**

**Kye Walker, Esq.**  
The Walker Legal Group  
16AB Church Street  
2<sup>nd</sup> Floor  
Christiansted, VI 00820

**Mark Eckard, Esq.**  
Eckard, PC  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)



---

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.

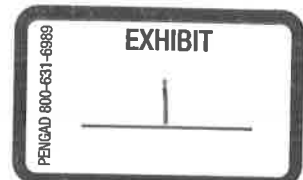
Dated: June 12, 2013

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Superior Court

By:   
ROXANNE SERRANO

Court Clerk Supervisor



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  
 )  
Defendants. ) JURY TRIAL DEMANDED

---

**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

5/11/13

CERTIFIED TO BE A TRUE COPY  
This 10th 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**, by his )  
authorized agent **WALEED HAMED**, )  
)  
*Plaintiff/Counterclaim Defendant*, )

vs. )

**CIVIL NO. SX-12-CV-370**

**FATHI YUSUF** and )  
**UNITED CORPORATION**, )  
)  
*Defendants/Counterclaimants*, )

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

vs. )

**JURY TRIAL DEMANDED**

**WALEED HAMED, WAHEED** )  
**HAMED, MUFEED HAMED,** )  
**HISHAM HAMED,** )  
and **PLESSEN ENTERPRISES, INC.**, )  
)  
*Counterclaim Defendants*. )

**ORDER**

This matter is before the Court on the motion of Hoda Fathi Yusuf to intervene in this case. Upon consideration of the matters before me, it is hereby Ordered that the motion is **Denied**, as her interests and the arguments in support of it are already being adequately represented by her father, Fathi Yusuf, who is a party defendant and who has raised all of the legal issues Hoda Fathi Yusuf seeks to raise by intervention in previous pleadings filed by him with this Court.

Dated:

\_\_\_\_\_  
DOUGLAS A. BRADY,  
JUDGE OF THE SUPERIOR COURT

A T T E S T: ESTRELLE GEORGE, ACTING  
Clerk of the Court

BY: \_\_\_\_\_  
Deputy Clerk

Dist: Joel H. Holt, Gregory Hodges, Nizar DeWood, Mark Eckard, Carl Hartmann  
And Kye Walker