

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED 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.,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

REPLY TO OPPOSITION TO MOTION TO INTERVENE

COMES NOW Proposed Intervenor Hoda Fathi Yusuf Hamed, by and through her undersigned counsel, and hereby files this Reply to Plaintiff's Opposition to her Motion for Leave to Intervene. Plaintiff contends that Mrs. Hamed's interest in Plot 100 Eliza's Retreat ("the property") is adequately represented in this litigation by Defendant Fathi Yusuf because Mr. Yusuf has also objected to the posting of the property as partial satisfaction of the requisite bond. Plaintiff relies on this Court's prior denial of a motion to intervene in this matter, although the facts of that motion are inapposite as the proposed intervenors and Mr. Yusuf shared an identical interest in the litigation. In this instance, Mr. Yusuf does not claim an interest in the property and therefore does not



share the same interest Mrs. Hamed has in the property such that Mrs. Hamed's interest is not represented at all in the current litigation. See *generally*, 7C WRIGHT, MILLER & KANE, Federal Practice & Procedure, § 1909 (explaining that the Court must look to how the interest of the proposed intervenor compares with the interest of the present parties); see also, *Hoots v. Pennsylvania*, 672 F.2d 1133, 1135 (3d Cir. 1982)(stating “[t]he applicant may demonstrate that its interest, though similar to those of an existing party, are nevertheless sufficiently different that the representative cannot give the applicant’s interest proper attention.”). Mrs. Hamed cites the following points and authorities in support of this motion.

DISCUSSION

The extent of a proposed intervenor’s burden is not concretely established, but varies according to the circumstances. *Kleissler v. United States Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998). To determine the adequacy of representation issue, the Court must focus upon “a comparison of the interests asserted by the applicant for intervention and the existing party.” *Pierson v. United States*, 71 F.R.D. 75, 78 (D. Del. 1976). If the existing party’s interest is **adverse** to the proposed intervenor, intervention will ordinarily be granted assuming compliance with the other requirements of Rule 24(a)(2). If the applicant’s interest is considered **similar** to that of the existing party, intervention will be granted unless it is clear that the existing party will provide adequate representation. *Id.* Finally, if the interests of the applicant and existing party are deemed **identical**, the applicant must make a compelling showing why representation by the existing party is not adequate. *Id.*

The prior motion for intervention filed by Yusuf Yusuf, Zayed Yusuf, Fawzia

Yusuf, and Zeyad Yusuf involved an “**identical**” interest. See, Order dated June 10, 2013, at p. 2. In that instance, the Court determined that the proposed intervenors’ individual interests as shareholders of United were identical to the interest of Mr. Yusuf who was also a shareholder of United. *Id.* As such, the proposed intervenors had a high burden to “make a compelling showing why representation by the existing party is not adequate.”

In this instance, Mrs. Hamed and Mr. Yusuf do not share an identical interest in Plot 100 Eliza’s Retreat. At most, they share a similar interest in challenging the posting of Plot 100 Eliza’s Retreat as bond in this matter, but do not share Mrs. Hamed’s interest in protecting her share of the property, whether the property is treated as a marital home or a property held in joint tenancy by Mrs. and Mr. Hisham Hamed. Because the interest of Mrs. Hamed and Mr. Yusuf are, at most, similar, the Court must determine whether any existing party will adequately represent Mrs. Hamed’s interests in Plot 100 Eliza’s Retreat. It is not clear that any existing party will adequately represent Mrs. Hamed’s interest in Plot 100 Eliza’s Retreat because no existing party benefits from any attempt to protect the property from being encumbered or otherwise lost in the current litigation.

WHEREFORE, and for the foregoing reasons, Proposed Intervenor, Hoda Fathi Yusuf Hamed, respectfully requests that her Motion to Intervene be **GRANTED**.

REPLY TO OPPOSITION TO MOTION TO INTERVENE

Respectfully Submitted,

THE WALKER LEGAL GROUP
Counsel for Intervenor

DATED: March 27, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 27, 2014, a true and correct copy of **REPLY TO OPPOSITION TO MOTION TO INTERVENE** was served upon the following parties or their counsel via email:

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