

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

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

**DEFENDANTS/COUNTERCLAIMANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO DISMISS
DEFENDANT PLESSEN ENTERPRISES, INC.**

Defendants/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Counterclaimants"), through their undersigned counsel, respectfully submit this Opposition To Plaintiff's Motion To Dismiss Plessen Enterprises, Inc. (the "Motion to Dismiss").

I. Plessen Is A Proper Party.

Plaintiff/Counterclaim Defendant Mohammad Hamed ("Hamed") attempts to argue that Plessen Enterprises, Inc. ("Plessen"), an additional counterclaim defendant, cannot be joined by Counterclaimants pursuant to their First Amended Counterclaim ("FAC") as a permissive party and, therefore, should be dismissed from this suit. Hamed contends that Plessen should be dismissed because the relief sought, i.e., dissolution of Plessen, does not arise out of the same facts at issue in this case and does not implicate questions of law or

fact common to all parties. Hamed also argues that the claims for dissolution of Plessen as a result of stalemate amongst the shareholders are duplicative of a prior pending shareholder derivative suit for conversion. For the reasons set forth below, none of Hamed's arguments have merit and the Motion to Dismiss must be denied.

A. Hamed Does Not Speak For Plessen And Has No Standing To Seek To Dismiss It.

As counsel for Hamed is well aware, "it is elementary that if a plaintiff does not have standing" a court is without subject matter jurisdiction to address the merits of the case. *Holt v. United States IRS*, 2006 U.S. Dist. LEXIS 82948 (D.V.I. 2006). Here, Hamed is not seeking to pursue a claim, but rather to prevent a claim from being pursued against a separate party. This is analogous to a party seeking to quash a subpoena served upon a third party. In such circumstances, a party has no standing to do so. "Generally, 'a party does not have standing to quash a subpoena served on a third party.'" *Galloway v. Islands Mech. Contr., Inc.*, 2013 U.S. Dist. LEXIS 5232, 9-10 (D.V.I. Jan. 14, 2013), citing *Savant Sys., LLC v. Crestron Elecs., Inc.*, 2012 U.S. Dist. LEXIS 39871, *7 (E.D. Pa. Mar. 22, 2012) (quoting *Thomas v. Marina Assocs.*, 202 F.R.D. 433, 434 (E.D. Pa. 2001))¹.

Hamed lacks standing to seek dismissal of Plessen or to unilaterally speak on its behalf. Rather, Plessen was required to secure its own counsel, who, theoretically, could

¹ See also, *Langord v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975)(opining that a motion to quash may be made only by the party to whom the subpoena is directed); *In re Grand Jury Matter*, 770 F.2d 36, 38 (3d Cir. 1985)(holding that non-party who had no personal property right or privilege at stake had no standing to pursue appeal).

have moved to dismiss it from the suit. However, such action could only have occurred *if* the shareholders or management of Plessen had so agreed and directed in a timely manner. Neither occurred, because the Hamed and Yusuf families, which each own 50% of the stock of Plessen, have been at an impasse for years. Hence, Hamed has no standing to seek to dismiss Plessen on any basis and, therefore, the Motion to Dismiss is not properly before the Court and should be denied.

B. Plessen Is In Default.

Even if Hamed's arguments had been made by Plessen directly, they are too late since Plessen is in default. Although Plessen was properly served with the FAC on February 11, 2013, it has not yet entered an appearance or filed any responsive pleading. See, Exhibit A - Return of Service for Plessen. As a party in default, Plessen has forfeited its right to defend the claims made against it.

Moreover, the fact that Plessen has not taken the measures to timely respond to the FAC is further evidence of the complete break-down in the effective management of Plessen and the need for its dissolution - the exact remedy which has been sought in the FAC.

C. Contrary To Hamed's Arguments, Plessen Is A Proper Party.

Notwithstanding the fact that Hamed lacks standing to raise *any* arguments on Plessen's behalf, Counterclaimants submit that Plessen is a proper party to this litigation as the facts and circumstances resulting in the current controversy between Hamed and Yusuf, which are the subject of this suit, are the same facts and circumstances that have led

to the stalemate in the operations of Plessen, requiring its dissolution. Therefore, the claims made against Plessen and the relief sought arise out of common questions of fact and law.

Moreover, the claims asserted and the relief sought in this case directly relate to Plessen's interests. Although Hamed would like to argue that Plessen and its interests are completely unrelated to the issues in this case, Hamed acknowledged the interrelated interests of Plessen in his First Amended Complaint ("Complaint"). If Plessen was not intertwined in the facts and circumstances of this lawsuit, why did Hamed prominently mention Plessen in his Complaint? Hamed identified Plessen as one of the entities jointly owned by members of the Hamed and Yusuf families. See, Complaint, ¶20(c). Hamed explained that Plessen owns, among other properties, "over 100 acres on the west end of St. Croix where the Plaza Extra West store is located (and does not charge any rent to Plaza Extra West, which store was constructed at a cost of millions of dollars, also from the profits made from the Partnership in the supermarket accounts)" Id.

In the FAC, Counterclaimants joined Plessen as an additional counterclaim defendant alleging, *inter alia*, that "the current controversy between the Hamed and Yusuf families has negatively impacted the ability of Plessen to function and operate" and that "the stalemate between the Yusuf and Hamed families has resulted in deadlock as to the operations of Plessen." See, FAC, ¶¶115-16.

Counterclaimants submit that Plessen's interests not only satisfy the requirements for inclusion in this case under the rules related to "permissive" joinder but that Plessen is

actually a party satisfying the requirements for "necessary" joinder. Pursuant to Fed. R. Civ. P. 19(a)(1)(A) and (B):

a person...must be joined as a party if:

- (A) in that person's absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - (i) as a practical matter impair or impeded the person's ability to protect the interest; or,
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest."

At paragraph 7 of the Memorandum In Support Of Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership, Yusuf conceded that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores, which include the store located on the land owned by Plessen. Given Plessen's ownership of the land upon which the Plaza Extra - West store was constructed, the obligation of Plaza Extra - West to Plessen for rent, and the impact that liquidation of the Plaza Extra - West store may have upon Plessen, Plessen is a necessary party for this Court to be able to provide complete relief among Hamed and Yusuf concerning matters relating to Plaza Extra - West.

D. The Derivative Suit Against Plessen Is Not Duplicative.

Lastly, Hamed's arguments that the litigation styled, Yusuf Yusuf, derivatively on behalf of Plessen Enterprises, Inc. v. Waleed Hamed, et al., Civil Action File No. SX-13-CV-120 (the "Derivative Suit") is somehow duplicative of the claims in this suit seeking dissolution of Plessen are wrong. The Derivative Suit seeks redress on behalf of Plessen as a result of the misappropriation of Plessen's funds for the benefit of the individual defendants. See Exhibit 1 to the Motion to Dismiss. The claims asserted on behalf of Plessen in the Derivative Suit arising out of the misappropriation of Plessen's funds are completely separate from the claims asserted against Plessen in this case for its dissolution. Therefore, the claims asserted in the Derivative Suit are not duplicative of the claim for dissolution asserted in the FAC. Accordingly, the Motion to Dismiss must be denied.

II. Conclusion

Hamed has no standing to seek dismissal of Plessen from this suit. Hamed does not speak for Plessen and cannot contest its inclusion in this proceeding. Only Plessen can seek to dismiss itself from the case. Plessen, however, has not acted in a timely manner and, instead, has defaulted further demonstrating that it suffers from dysfunctional management and should be dissolved. The facts and circumstances that give rise to the need for a dissolution are the same as those being litigated in this suit. Further, the interests of Plessen are directly impacted by the liquidation of the Plaza Extra Stores, one of which is located on land owned by Plessen, making Plessen a necessary party to this litigation. For all of the foregoing reasons, Counterclaimants respectfully request this

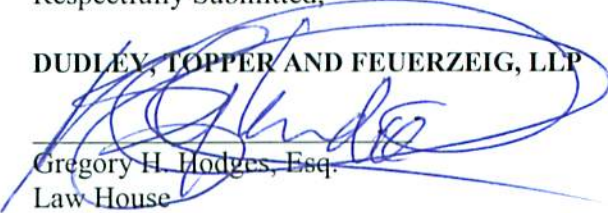
Court to deny the Motion to Dismiss and provide Counterclaimants with such further relief
as is just and proper.

Dated: April 14, 2014

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

By:


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Counsel for Defendants/Counterclaimants


CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing DEFENDANT/COUNTERCLAIMANTS' OPPOSITION TO MOTION TO DISMISS PLESSEN ENTERPRISES, INC. was served via electronic mail on the 14th day of April, 2014 to:

Joel H. Holt, Esq. (V.I. Bar No. 6)
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Counsel for Waleed Hamed, Mufeed Hamed and Hisham Hamed



Cordelia L. Jones
Certified Paralegal, CLA

SUMMONS

(CIVIL-ORIGINAL)

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,)
 MUFEEED HAMED, HISHAM HAMED, and)
 PLESSEN ENTERPRISES, INC.,)
)
 Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370 14 JAN 29 P2:27
 ACTION FOR DAMAGES,
 INJUNCTIVE RELIEF
 AND DECLARATORY RELIEF
 JURY TRIAL DEMANDED

TO: Plessen Enterprises, Inc., ADDITIONAL COUNTERCLAIM DEFENDANT
 c/o Fathi Yusuf, Resident Agent
 ADDRESS: St. Croix, Virgin Islands

You are hereby summoned and required to serve upon Dudley, Topper and Feuerzeig, LLP, defendants/counterclaimant's attorney, whose address is shown below, an answer to the first amended counterclaim which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the first amended counterclaim

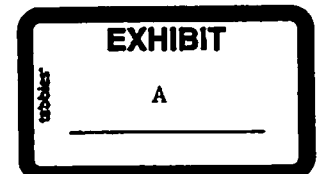
Witness my hand and Seal of this Court this 29 day of Jan, 2014.

Estrella George, Acting Clerk of the Court

By: Deputy Clerk

Gregory H. Hodges
 (Attorney for Defendants/Counterclaimants)
 Gregory H. Hodges, Esq.
 Address: DUDLEY TOPPER AND FEUERZEIG, LLP
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 P. O. Box 756
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 Telephone: (340) 715-4405

NOTE: The defendant, if served personally, is required to file his/her answer or other defense with the Administrator/Clerk of this Court, and to serve a copy thereof upon the defendants' attorney within twenty (20) days after service of this summons, excluding the date of service. If served by publication or by personal service outside the jurisdiction, the additional counterclaim defendant is required to file his/her answer or other defense with the Clerk of this Court, and to serve a copy thereof upon the attorney for the defendants within thirty (30) days after the completion of the period of publication or personal service outside of the jurisdiction.



RETURN OF SERVICE

I hereby certify that I received this summons on the 29 day of January 2014 and that thereafter, on the 11 day of February 2014, I did serve the same on the above named defendant, FATHI YUSUF by showing him/her this original and by then delivering to him/her a copy of the complaint and the summons which were forwarded to me attached thereto.



Marshal

Deputy

RETURN OF SERVICE

I hereby certify that I received this summons on the _____ day of _____, 2014, and that after making a careful, diligent search the defendant cannot be found in this jurisdiction.

Marshal

Deputy

14 JAN 29 P2:27
THE VICTIM
ST. CROIX

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOUNTAIN AND HAMED
 v.
 FATHI YUSUF AND UNITED CORPORATION
 v.
 WALEED HAMED ET AL

) CASE NO: SC 12 CV 370
) ACTION FOR:
)
)
)
)

TERRITORY OF THE VIRGIN ISLANDS)
 DISTRICT OF ST. CROIX) SS:

I, FELIPE TORRES, JR., being duly sworn according to law upon my oath depose and state:

1 That I am a citizen of the United States and a resident of St. Croix, Virgin Islands and I am a process server duly appointed by the Courts of the Virgin Islands.

2. That I received copies of () summons and complaint, () subpoena, () citation, () letters, () order, () request for admission, () request for production, () other

In the above matter and served the same as follows:

RECEIVED: JANUARY 29 2014 SERVED: FEBRUARY 11 2014
 PERSON SERVED: FATHI YUSUF, AGENT PLACE SERVED: GACLOWS BAY

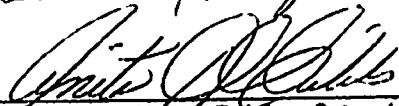
3. That such service was personally made by delivering to and leaving with the person, who was properly identified to be the person mentioned and described in said process or authorized according to law to receive such process true copies of the above-mentioned document(s).

4. That I made diligent search and inquiry in St. Croix for the person to be served but have been unable to find or learn of the whereabouts of the person and thus have been unable to serve process on the said person. Locations endeavors are: _____



 FELIPE TORRES, JR.

SUBSCRIBED AND SWORN to before me this 27th day of February 2014.



 Notary Public
 Name: Anita S. Gibbs
 Notary No: _____
 Commission Expires: 04-01-2015