IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

FATHI YUSUF, Plaintiff, v. **PETER'S FARM INVESTMENT CORPORATION, SIXTEEN PLUS CORPORATION, MOHAMMAD A. HAMED, WALEED M. HAMED, WAHEED M. HAMED, MUFEED M. HAMED**, and **HISHAM M. HAMED**, Defendants.	)	**CASE NO. ST-15-CV-344** **ACTION FOR DISSOLUTION AND OTHER RELIEF**

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR SEVER FOR MISJOINDER OF PARTIES

This case concerns two Virgin Islands corporations that are owned 50-50 by members of two families – the Yusufs and the Hameds – that at one time were partners in two Plaza Extra supermarkets in St. Croix and another Plaza Extra supermarket in St. Thomas. The Yusuf and Hamed partners have been involved in litigation in St. Croix[1] to wind up their partnership for the past few years. As part of that wind up, the ownership and operation of each supermarket has been transferred to one or the other partner.

This case involves not the partnership but instead two corporations that are owned 50-50 by members of the Yusuf and Hamed families – namely, Peter's Farm Investment Corporation, and Sixteen Plus Corporation. Each of these companies owns undeveloped land in St. Croix and St. Thomas.

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[1]The case in St. Croix in which the partnership wind up is proceeding is styled *Hamed v. Yusuf, et. al.*, STX-2012-CV-370. The Honorable Douglas A. Brady is presiding over that case.

The Complaint seeks identical relief as to the two corporations. Count I seeks an order compelling a shareholder's meeting to elect directors of Peter's Farm and Sixteen Plus, under a Virgin Islands statute that provides for that summary relief where there has been a failure to hold an annual meeting of the shareholders to elect directors. Plaintiff alleges that there have been no such annual meetings of the shareholders since the corporations were formed many years ago. (Complaint, ¶ 26).

The Complaint also seeks dissolution and appointment of a receiver as to both corporations. The lynchpin for that relief is the state of shareholder dissension and deadlock within the two companies. (See Complaint, ¶¶ 29, 31). The Complaint avers that the "Hamed and Yusuf families are and have been in a state of irreconcilable conflict and dissension regarding the operation of businesses jointly owned by the families (or members of the families)." (Complaint, ¶ 21). It goes on to allege that "[t]he acrimony between the two families has become intensified in the partnership litigation such that members of the two families do not speak to one another, and a physical altercation between the Hameds and the Yusufs occurred earlier this year in St. Croix." (*Id.* at ¶ 22). And it avers that "[t]he chronic strife, deep mutual distrust, and dissension between the Hamed and Yusuf families make it impossible for them to jointly manage and operate any business they jointly own." (*Id.* at ¶ 22).

Defendants make the peculiar argument that the Court cannot entertain the relief being sought against the two corporations in one lawsuit, and that Plaintiff instead must seek that relief in separate actions. Defendants cite no cases on point in support of this utterly impractical result, and they fail to show why this Court should eschew economy and efficiency in favor of diseconomy and inefficiency. Defendants' motion is also

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contrary to the purposes of the applicable federal rules. For of these reasons, Defendant's motion to dismiss or sever for misjoinder of parties should be summarily denied.

ARGUMENT

Defendants concede that whether two claims have been misjoined under Fed.R.Civ.P. 21 is determined by reference to Fed.R.Civ.P. 20, Permissive Joinder of Parties. Rule 20 determines when two parties may be joined as either plaintiffs or as defendants in the same lawsuit. (Defendants' Brief at 2). *Moore's Federal Practice* states that "the permissive joinder rule emphasizes pragmatism; joinder is not based on arcane formulations of legal relationships, but on common sense, fact-based considerations." *Moore's Federal Practice*, ¶ 20.02. The Rule serves several important policies:

> This pragmatic rule serves several related purposes. It is efficient: all interested parties may be joined in a single proceeding which encourages a comprehensive resolution of the dispute and avoids overlapping litigation. All interested parties are bound by a single judgment, thereby avoiding inconsistent outcomes. ...[P]ermissive party joinder [also] promotes trial convenience for the court and parties. ...Accordingly, the permissive party joinder rule is liberally construed to entertain a broad scope of litigation.

Id. at ¶ 20.02.

Defendants assert that the two corporations "have different owners, own different assets and are not part of "one transaction," because they were formed "at different times to engage in separate business transactions." The argument that the two corporations have different owners does not change the central fact that ties them together, which is that each corporation is 50% owned by one or more Yusuf family members and 50% owned by one or more Hamed family members. The fact that, as

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between the two corporations, different Yusuf and Hamed family members comprise each of those 50% ownership groups is not relevant for the purposes of the relief sought in the Complaint.

Defendants' argument that the two corporations do not evince "one transaction" because they were formed at separate timex for separate reasons is based on an incorrect supposition of what is required to satisfy what the cases and treatises call "transactional-relatedeness." The first thing to note is that, contrary to Defendants' "one transaction" formulation, Rule 20(a)(2)(A) specifically states that parties may be joined as defendants if the claims against them arise "out of the same transaction, occurrence, *or series of transactions or occurrences*." (emphasis added).[2] In addition, all that is required for "transactional-relatedness" is that there be a "logical relationship" between the two claims. *Moore's Federal Practice*, ¶ 20.05[2]. *See*, *e.g.*, *Dougherty v. Mieczkowski*, 661 F. Supp. 267, 268 (N.D. N.Y. 1995) (logically related events comprise a transaction or occurrence); *Parks v. District of Columbia*, 275 F.R.D. 17, 18-19) (D.D.C 2011) ("same transaction or occurrence" requirement is satisfied if claims are "logically related:; this is a flexible test which leans toward entertaining broadest possible scope of action consistent with fairness to parties).

The transactions or occurrences that underlie the dissolution and receivership counts in this case have nothing to do with when the corporations were formed and the purposes for which they were formed (though they happen to be very similar). Instead, they have everything to do with the allegations of irreconcilable conflict between the

[2]As *Moore's* notes, the reference to a "series of transactions or occurrences" along with the reference to a "transaction or occurrence" makes Rule 20 more expansive in scope than the rule governing compulsory counterclaims and crossclaims. *See Moore's Federal Practice*, ¶ 20.05[2].

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Yusufs and the Hameds, which make it impossible for them to conduct business jointly. That deep-seated conflict and mutual antagonism, and the resulting shareholder deadlock is the predicate for the relief sought as to both corporations in the dissolution and receivership counts.

As for the count seeking an order compelling each corporation to hold an annual meeting, the claims as to the two corporations are at the very least logically related. In each case, shareholder deadlock is preventing the holding of annual meetings to elect directors. If the Yusuf and Hamed factions were not in a state of shareholder deadlock, surely they would be able to comply on their own with the elementary statutory requirement to hold annual shareholder meetings for both corporations for the purpose of electing directors.

Defendants do not cite even one case involving claims seeking to dissolve more than one corporation or partnership in which the court held that the claims violated the permissive joinder rule, and Plaintiff has found none. There are numerous federal cases entertaining dissolution and receivership relief as to more than one entity, all of which implicitly treated the claims as properly joined. *See Belcher v. Grooms*, 406 F.2d 14, 15(5th Cir. 1968) (declining to grant writ of mandamus in case involving "dissolution of two partnerships"); *Miller v. Up in Smoke, Inc.*, 738 F. Supp. 2d 878, 886 (N.D. Ind. 2010) (concluding that it has jurisdiction over a shareholder's direct claims for appointment of a receiver and judicial dissolution as to "two corporations," Up in Smoke, and CR Smoke); *Stainton v. Tarantino*, 637 F. Supp. 1051, 1055 (E.D. Pa. 1986) (after a trial denying claims for "dissolution of two partnerships" and for appointment of a receiver to wind up the affairs of those partnerships).

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Defendants' strange argument that this case needs to be brought as two separate cases seeking the same relief – one against Peter's Farm and one against Sixteen Plus – is not only at odds with the case law, but also contravenes all of the pragmatic considerations discussed above that underlie Rule 20. There is absolutely nothing to be gained by forcing this case to be litigated as two cases in this Court, and the only result of doing so would be to create a needless waste of judicial resources and the parties' resources.[3]

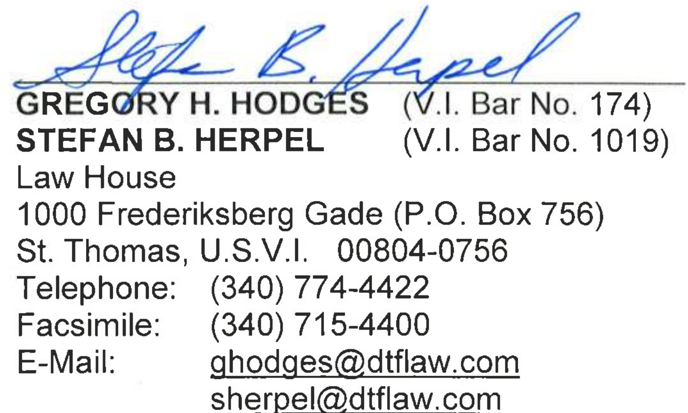
CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, Defendants' Motion to Dismiss or Sever for Misjoinder of Parties should be denied.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: October 2, 2015 By:



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[3]Defendants request that the Court either dismiss one of the corporations from this case, or alternatively sever one of the claims. (Defendants' Brief at 3). If the Court were to dismiss one of the two corporations, that dismissal would have to be without prejudice, and Plaintiff would simply re-bring the claim as a separate lawsuit in the Superior Court. *See Moore's Federal Practice*, ¶ 21.03 ("Dismissal of a misjoined party under Rule 21 is without prejudice; a claim by or against such a party may be refiled as a separate suit"). If the claim against one of the corporations were severed, there would be no re-filing of either lawsuit; instead this Court would preside over two separate suits. *See id.* at ¶ 21.03. *See also Wallace v. Johnson*, 2012 U.S. Dist. LEXIS 113168, *16-*17 (S.D. Ill. 2012) (ordering a claim severed from the main case, and directing the Clerk to "open a new case with a newly assigned number" for the severed claim).

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CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of October, 2015, a true and extract copy of the foregoing **PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR SEVER FOR MISJOINDER OF PARTIES** was served by email, as agreed by the parties.

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