IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF CROIX

UNITED CORPORATION,	)	**CIVIL NO. SX-13-CV-152**
	)	
Plaintiff,	)	ACTION FOR DAMAGES INJUNCTIVE
	)	RELIEF AND DECLARATORY RELIEF
	)	
v.	)	
	)	
WADDA CHARRIEZ,	)	
	)	
Defendant.	)	
	)	

DEFENDANT WADDA CHARRIEZ'S
OPPOSITION TO UNITED CORPORATION'S MOTION
TO SUBSTITUTE FATHI YUSUF

United has moved to substitute Fathi Yusuf as the real party in interest in this case pursuant to Rule 17(a)(3), which provides in part:

> (3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, **a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action.** (Emphasis added).

United's instant motion has not been timely filed within "a reasonable time" and should be denied for two separate, independent reasons.

I. The Motion Is Untimely

First, there is a pending summary judgment motion which has been fully briefed and is pending before the Court, well before this motion was filed.[1] Once again on the verge of losing, United seeks to avoid that judgment by trying to "skip forward" past that

[1] The motion for summary judgment was filed on March 24, 2016 and has been fully briefed. The Opposition was filed on May 2, 2016, with the reply filed on May 9, 2016.

fully briefed motion. In short, if United is not a party in interest, it cannot obtain relief, so that **its case** should be dismissed on summary judgment.

Based on the Committee Notes, courts have made it clear that in addition to the reasonable amount of time requirement embedded in the Rule in the abstract, as a test of reasonableness, "a plaintiff must have a reasonable basis for naming the wrong party to be entitled to ratification, joinder, or substitution." *Magallon v. Livingston*, 453 F.3d 268, 273 (5th Cir. 2006) *(citing Wieburg*,[2] 272 F.3d at 308). The mistake must be "understandable," arising out of difficulty in determining under whose name to prosecute the action. *Wieburg*, 272 F.3d at 308.

Charriez's first objection was first made in 2013 – three years ago. Charriez then filed a motion to dismiss on the identical basis—that United had no standing to sue her, as she worked for the partnership -- in 2014. That was two years ago. It was again ignored. Now, United seeks to substitute Yusuf as a party, clearly in an effort to avoid summary judgment and dismissal. Thus, "a reasonable time" has long passed.

A court clearly has the discretion to refuse substitution where there was no reasonable basis for the naming of an incorrect party. *See generally* 6A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1555, at 415 (2d ed.1990). Here the naming was clearly NOT a mistake, it was a specific tactical decision. In other words, United, knowing fully the arguments, elected not to move to substitute Yusuf for YEARS. It is now too late to force a defendant, an innocent witness in larger proceeding to start this litigation all over again after three years of litigation.

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[2] *Wieburg v. GTE Sw. Inc.*, 272 F.3d 302 (5th Cir. 2001.)

II. Charriez's Counterclaims

Second, **and equally important,** this proposed substitution fails to note that Wadda Charriez has completely valid counterclaims against United, so that "substitution" would be totally improper. As both Judge Douglas Brady and the V.I. Supreme Court have found,[3] United Corporation did everything it could to fire and otherwise harass Wadda Charriez. Thus, when United filed this case, she filed the appropriate counterclaims against United to seek compensation for United's misconduct.

These counterclaims are based on United's own post-dispute actions, not "United as the agent for the partnership." It was United and its officers that attempted to interfere with her contractual relationship *with the partnership* – not Fathi Yusuf or the partnership. It was United, acting for its own interests and against those of the partnership and the Hameds, that defamed her. It was United that, for its own corporate reasons, tried to attack her and interfere by forcing the partnership to fire her. The specific acts of United's president and officers averred in the counterclaim would be effectively dismissed if Fathi Yusuf were substituted at this late date.

Thus, substituting Yusuf for United would not be proper, as United is the real party against whom Charriez's counterclaims seek relief, not Fathi Yusuf individually or as a representative of the partnership.

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[3] *Hamed v. Yusuf*, 58 V.I. 117, 127, 2013 WL 1846506, at *5-9 (V.I. Super. Apr. 25, 2013), *aff'd in relevant part* 59 V.I. 841, 2013 WL 5429498 (V.I. Sept. 30, 2013).

III. Conclusion

It is respectfully submitted that the Rule 17(a)(3) motion to substitute is improper at this time for two independent reasons. Indeed, the facts set forth above show that United is an abusive, litigious party who used this litigation as a weapon of scorched-earth tactics against a witness. It tried to fire her, it tried to have her thrown out by the police and it tried to have her arrested for trespass. Failing that, it then sued her. It has now cost her years of worry in having to defend against United's claims in this litigation.

In short, Charriez's is entitled to have her summary judgment motion addressed and her counterclaims against United heard. Thus, the motion to substitute Yusuf for United should be denied. If Fathi Yusuf wishes to bring such a suit – he should do so in another filing.

Dated: July 19, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2016, I served a copy of the foregoing Reply Memorandum by email, as agreed by the parties, on:

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