

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED CORPORATION,)	CIVIL NO. ST-13-CV-0000101
)	
Plaintiff,)	
)	
v.)	
)	
WAHEED HAMED,)	
)	
Defendant.)	
)	

PLAINTIFF’S MOTION TO DISMISS COMPLAINT WITHOUT PREJUDICE

Plaintiff United Corporation (“United”), through its undersigned counsel, respectfully moves this Court, pursuant to Fed. R. Civ. P.41(a)(2) made applicable to proceedings in this Court by Super. Ct. R. 7, to dismiss this case for the following reasons:

1. The complaint was filed in March 2013 against Defendant Waheed Hamed (“Waheed”) for damages, an accounting, and other relief arising out of his employment with United. The matter is currently before this Court on remand from the Virgin Islands Supreme Court. *See United Corp. v. Hamed*, 2016 V.I. Supreme LEXIS 1. Several motions are currently pending before this Court, including United’s Motion to Consolidate filed on March 17, 2016. With the filing of United’s “Reply to Opposition To Motion To Consolidate Cases” filed on April 15, 2016 (the “Reply”), that motion was fully briefed and awaiting disposition by this Court.

2. The Motion to Consolidate sought to consolidate this case with an earlier filed case captioned *Hamed v. Yusuf*, SX-12-CV-370 (the “370 Case”) currently pending before the Hon. Douglas A. Brady in the Superior Court of the Virgin Islands, St. Croix Division.

3. In the 370 Case, Waheed is an Additional Counterclaim Defendant, subject to the same claims asserted in this action. Because the claims asserted in this case are duplicative of the claims asserted in the 370 Case, and because both matters involve the same core facts, this

Court should dismiss this matter without prejudice to streamline the litigation involving the Hamed-Yusuf parties, and to avoid duplicative or inconsistent judgments.

4. Recently, in a parallel proceeding involving one of Waheed's brothers, *United Corporation v. Waleed Hamed*, SX-13-CV-003, Judge Brady granted United's Motion to Dismiss that matter (with the parties bearing their own costs) because Defendant Waleed Hamed was also a party in the 370 Case, subject to the same claims. *See* August 5, 2016 Order, attached as **Exhibit 1**.¹ For the same reasons provided by Judge Brady in Exhibit 1, United respectfully submits this Court should dismiss this case with both parties bearing their own fees and costs.

Accordingly, United respectfully requests this Court to dismiss this case without prejudice and with the parties responsible for their own fees and costs. In the alternative, the Court should consolidate this action with the 370 Case for the reasons set forth in the Reply and the underlying Motion to Consolidate.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: September 13, 2016

By: 

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and

¹ No appeal from this Order has been filed.

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Attorneys for United Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2016, I caused a true and exact copy of the foregoing **Motion To Dismiss Complaint Without Prejudice** was served on the Defendant via his counsel at the below address via Email as stipulated to by the parties.

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED CORPORATION **Plaintiff**)

)

)

)

vs)

)

)

)

WALEED HAMED AKA WALLY,
WALLY HAMED, JOHN DOE

Defendant

CASE NO. SX-13-CV-0000003

ACTION FOR: DAMAGES - CIVIL

**NOTICE OF ENTRY OF
ORDER OF DISMISSAL**

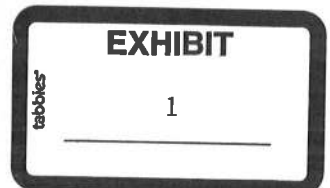
TO: NIZAR DEWOOD, ESQ.; GREGORY HODGES, ESQ.;
JOEL HOLT, ESQ.; CARL HARTMANN III, ESQ.;
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, ESQ.;
HON. EDGAR A. ROSS (edgarrossjudge@hotmail.com)

Please take notice that on August 05, 2016 a(n) ORDER OF DISMISSAL
dated August 05, 2016 was entered by the Clerk in the above-entitled matter.

Dated: August 05, 2016

Estrella H. George
Acting Clerk of the Court

IRIS D. CINTRON
COURT CLERK II



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

UNITED CORPORATON,)	
	Plaintiff,)
v.)	CIVIL NO. SX-13-CV-003
)	
WALEED HAMED,)	ACTION FOR DAMAGES,
)	INJUNCTIVE RELIEF and
	Defendant.)	DECLARATORY JUDGMENT

ORDER DISMISSING COMPLAINT

Before the Court is Plaintiff United Corporation's Motion to Dismiss without Prejudice, filed September 8, 2014. The following fully briefed motions are also pending: Defendant's Motion for Judgment on the Pleadings, filed April 12, 2013; Defendant's Rule 12(c) Motion to Dismiss for Lack of Standing, filed April 23, 2014; Defendant's Motion and Memorandum for Summary Judgment, filed March 23, 2016; and Plaintiff's Motion to Substitute Necessary Party, filed July 11, 2016. This matter is also the subject of a Motion to Consolidate Cases, filed by Defendant/Counterclaimant Fathi Yusuf in Case No. SX-12-CV-370 (*Mohammed Hamed by his authorized agent Waleed Hamed v. Fathi Yusuf and United Corporation v. Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed, and Plessen Enterprises, Inc.*)

Plaintiff and Fahti Yusuf, the "necessary party" who is the subject of Plaintiff's Motion to Substitute, are named Defendants and Counterclaimants in Case No. SX-12-CV-370. Therein, they are prosecuting their Counterclaim against, among others, Defendant herein. By its Motion to Dismiss, Plaintiff correctly notes that as Counterclaim-Defendant in that case, Defendant Waleed Hamed is subject to the same claims as are asserted in this matter by the same party(ies). Accordingly, to avoid duplicative litigation in the interests of judicial economy, Plaintiff's Motion to Dismiss will be granted. Since those same claims are being actively prosecuted in a separate action involving the same parties, this matter will be dismissed with prejudice.

In light of the volume of litigation in other matters now pending, filed by and against the parties to this case and their families, wherein all parties will continue to incur substantial litigation

costs including attorney's fees, the Court will exercise its discretion and decline to award attorney's fees in this matter.¹ In light of the foregoing, it is hereby

ORDERED that Plaintiff's Motion to Dismiss without Prejudice is GRANTED, in part. It is further

ORDERED that Plaintiff's Complaint is DISMISSED WITH PREJUDICE. It is further

ORDERED that each party shall bear its own costs, including attorney's fees. It is further

ORDERED that Defendant's Motion for Judgment on the Pleadings is DENIED, as moot. It is further


ORDERED that Defendant's Rule 12(c) Motion to Dismiss for Lack of Standing is DENIED, as moot. It is further

ORDERED that Defendant's Motion for Summary Judgment is DENIED, as moot. It is further

ORDERED that Plaintiff's Motion to Substitute Necessary Party is DENIED, as moot. It is further

ORDERED that Fahti Yusuf's Motion to Consolidate Cases is DENIED, as moot.

August 5, 2016


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

¹ Although no motion seeking attorney's fees has been filed, in his Response to Plaintiff's Motion to Dismiss without Prejudice, Defendant states that an award to Defendant of his attorney's fees incurred should accompany an order of dismissal. This Order denies Defendant's request for an award of fees to eliminate the need to address that issue in subsequent filings. *See Mahabir v. Heirs of George*, 63 V.I. 651, 665-66 n.7 (V.I. 2015).