

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

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<b>FATHI YUSUF,</b>	)	<b>CASE NO. ST-2015-CV-0000344</b>
	)	
<b>Plaintiff,</b>	)	<b>ACTION FOR DISSOLUTION</b>
<b>vs.</b>	)	<b>AND OTHER RELIEF</b>
	)	
<b>PETER'S FARM INVESTMENT CORPORATION,</b>	)	
<b>SIXTEEN PLUS CORPORATION, MOHAMMAD A.</b>	)	
<b>HAMED, WALEED M. HAMED, WAHEED M.</b>	)	
<b>HAMED, MUFEED M. HAMED and HISHAM M.</b>	)	
<b>HAMED,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**ORDER**

**THIS MATTER** is before the Court on Defendants' Motion to Compel Discovery and Memorandum in Support Thereof, filed on August 22, 2016; and Plaintiff's Brief in Opposition to Defendant's Motion to Compel, filed on September 7, 2016.<sup>1</sup>

**BACKGROUND**

This case involves the dissolution of two corporations: 1) Peter's Farm Investment Corporation ("Peter's Farm") and 2) Sixteen Plus Corporation ("Sixteen Plus"). In a three-count Complaint, Plaintiff Fathi Yusuf seeks the following: Count I (Order Compelling Shareholders Meeting to Elect Directors of Peter's Farm and Sixteen Plus); Count II (Dissolution of Peter's Farm and Sixteen Plus); Count III (Appointment of a Receiver for Peter's Farm and Sixteen Plus).<sup>2</sup> Plaintiff argues that the Hamed and Yusuf families have been in a state of irreconcilable conflict and dissension regarding the operation of businesses jointly owned by the families.<sup>3</sup> Plaintiff and Defendant Mohammed Hamed<sup>4</sup> were partners for many years in a partnership that owned and operated three supermarkets in St. Croix and St. Thomas.<sup>5</sup> However, the partnership is being wound up because of "deep acrimony" and "distrust between the partners."<sup>6</sup>

At issue, in Defendants' Motion to Compel, is discovery related to Sixteen Plus. Specifically, Defendants sent Plaintiff Interrogatory No. 5 requesting the name, address and phone number of any party who claimed to hold a mortgage against any of the properties involved in this dissolution proceeding.<sup>7</sup> Plaintiff provided the name and last known address of one such person, Manal Yousef, who allegedly resides in St. Martin, but objected to producing the phone number

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<sup>1</sup> Plaintiff is represented by Attorneys Gregory H. Hodges and Nizar A. Dewood, and Attorneys Joel H. Holt and Carl J. Hartmann III are counsel for Defendants.

<sup>2</sup> Complaint for Dissolution and other Relief, July 27, 2015.

<sup>3</sup> Compl. ¶ 21.

<sup>4</sup> Defendant Mohammad Hamed died in June of 2016. *See* Pl. Brief in Opp. to Def. Mot. to Compel, 2, September 7, 2016.

<sup>5</sup> Compl. ¶ 21.

<sup>6</sup> Compl. ¶ 21.

<sup>7</sup> Defs. Mot. to Compel Discovery and Mem. in Supp. Thereof, 1, August 16, 2016.

for the following reason:

2. I stand by my **objection to providing a phone number for Manal Yousef**, and rely on what I stated in the objection and the decision in *Nathaniel v. American Airlines*, 2008 U.S. Dist. LEXIS 95336 (D.V.I. 2008).

Thereafter, Defendants filed the instant Motion compel the telephone number of Manal Yousef.

### MOTION TO COMPEL STANDARD

The Supreme Court of the Virgin Islands recognizes, “[a] motion to compel is controlled by Federal Rule of Civil Procedure 37(a), which permits the Superior Court to compel any person to answer objected to or inadequately answered discovery so long as it is within the permissible scope of discovery . . . .”<sup>8</sup> Further, under Local Rules of Civil Procedure 37.1 and 37.2, a moving party must closely follow the procedural and filing requirements prior to filing a motion to compel.<sup>9</sup> These rules require parties to at least meet and confer in a “good faith effort to eliminate the necessity for the motion or to eliminate as many of the disputes as possible.”<sup>10</sup> If the parties are unable to “resolve all of their differences, they shall formulate and sign a written stipulation to that effect, expressly certifying their compliance with LRCi 37.1.”<sup>11</sup> Alternatively, if the parties fail to sign a written stipulation, the moving party may resort to the procedures set forth in Rule 37.2(c) of the Local Rules of Civil Procedure, which allows counsel for the moving party to file a declaration indicating that opposing counsel refused to cooperate.<sup>12</sup>

### ANALYSIS

Plaintiff refuses to disclose the telephone number of Manal Yousef because there are several pending Superior Court cases involving the same parties.<sup>13</sup> Plaintiff argues that the discovery dispute involves an attempt by one shareholder faction (the Hameds) to obtain discovery in this matter for use in another lawsuit brought by Defendant Sixteen Plus without the approval of another faction (the Yusufs).<sup>14</sup> Plaintiff argues that since this discovery would be barred if it were sought in the other lawsuit, the Hamed defendants (all of whom are shareholders of Sixteen

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<sup>8</sup> *Molloy v. Indep. Blue Cross*, 56 V.I. 155, 169 (V.I. 2012) (recognizing that SUPER. CT. R. 39 makes the Federal Rules of Civil Procedure 26 through 37 applicable for the purposes of discovery).

<sup>9</sup> See *Demming v. V.I. Water & Power Auth. & Regatta Point Watergate Villas Condo. Assoc.*, 2013 V.I. LEXIS 3, \*1-3 (V.I. Super. Ct., Jan. 20, 2013) (citations omitted).

<sup>10</sup> LRCi 37.1.

<sup>11</sup> Since the Superior Court does not have a rule addressing the procedures preceding a motion to compel, the Superior Court has relied on LRCi 37.1 and 37.2. See *Penn v. Whitecap Inv. Corp.*, 2012 V.I. LEXIS 63, \*24 (V.I. Super. Ct., Dec. 12, 2012) (“Here, LOCAL R. OF CIV. P. 37.1 and 37.2 . . . apply because the primary purpose behind LOCAL R. OF CIV. P. 37.1 and 37.2 is in no way inconsistent with the Superior Court Rules. . . . In fact, LOCAL R. OF CIV. P. 37.1 and 37.2 are entirely complimentary with the discovery rules applicable to this jurisdiction under FED. R. CIV. P. 26-37 . . .”).

<sup>12</sup> LRCi 37.2(c) provides that “[t]he Court will not consider any discovery motion in the absence of (1) the signed stipulation and certification required by LRCi 37.2(a), or (2) a declaration from counsel for the moving party establishing that opposing counsel:

(1) failed to confer in a timely manner after receipt of a letter requesting a conference under LRCi 37.1; or  
(2) failed to sign the stipulation and certification required by LRCi 37.2(a).”

<sup>13</sup> See *Mohammad Hamed v. Fathi Yusuf, et al.*, SX-12-CV-370; *Yusuf Yusuf, derivatively on behalf of Plessen Enterprises, Inc. v. Waleed Hamed, et al.*, SX-13-CV-120; and *Sixteen Plus Corporation v. Manal Yousef*, SX-16-CV-65.

<sup>14</sup> Pl. Brief in Opp. to Def. Mot. to Compel, 1, September 7, 2016.

Plus) should not be permitted to circumvent the discovery rules by seeking the same discovery in this lawsuit.<sup>15</sup> Essentially, Plaintiff makes the following arguments: 1) the attempt of the Hamed faction to obtain information in a companion case is just an attempt to make an “end-run” around the prohibition articulated in *Nathaniel v. American Airlines*; and 2) Attorney Kye Walker represents Manal Yousef in “the Manal Yousef case,” and she has advised the attorneys for Plaintiff that she objects to direct telephone contact with her client by any lawyer for the Hameds in any of the various cases involving the two families.<sup>16</sup>

Defendants counter that *Nathaniel v. American Airlines* does not apply to the current case for the following reasons: 1) the case dealt with the very limited exception for providing contact information for certain managerial employees, however, Manal Yousef is not Plaintiff's ; 2) Manal Yousef's statements cannot be used against Plaintiff, who is trying to dissolve Sixteen Plus; and 3) Manal Yousef's contact information is not being sought to impute liability against Plaintiff, but to determine if certain property that may be subject to a final dissolution order has any valid liens.<sup>17</sup>

The Court is unpersuaded by Plaintiff's arguments for three main reasons. First, *Nathaniel v. American Airlines* does not apply to the facts of the instant case. In *Nathaniel*, Defendant American Airlines claimed that it was not required to produce the home addresses and telephone numbers requested by Plaintiff Sherline Williams Nathaniel, insisting that it had complied with Federal Rules of Civil Procedure 26(a)(1)(A) and (B) regarding discovery.<sup>18</sup> The matter involved a Plaintiff who argued that she suffered humiliation and medical injuries as a result of Defendant's failure to accommodate Plaintiff on its flight from St. Croix to Miami.<sup>19</sup> While Defendant named in its Initial Disclosures four flight attendants, an agent responsible for accommodating passengers with disabilities, and the St. Croix operation manager,<sup>20</sup> Defendant argued that Plaintiff was prohibited from contacting the employees identified in its Initial Disclosures pursuant to the Model Rules of Professional Conduct 4.2 because the acts and omissions of the employees identified may be imputed to Defendant for the purposes of determining liability.<sup>21</sup>

MRPC 4.2 prohibits a lawyer from communicating “about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.”<sup>22</sup> The Court held that based on the language of the Complaint, the Plaintiff sought to hold Defendant liable for the alleged actions and omissions of its employees.<sup>23</sup> Therefore, the Court held that counsel for Plaintiff could not contact the employees identified in Defendant's Initial Disclosures.<sup>24</sup>

Unlike in *Nathaniel*, Manal Yousef is not Plaintiff's employee, the acts or omissions of Manal Yousef will not be imputed to Plaintiff, and Plaintiff is not a party to the instant action. The fact that Plaintiff is a party in another lawsuit is of no consequence in the instant case. However, counsel, herein is on notice that Attorney Kye Walker represents Manal Yousef and objects to telephone contact with her client by any lawyer for the Hameds in any of the various cases

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 4.

<sup>17</sup> Defs. Mot. to Compel Discovery and Mem. in Supp. Thereof, 2, August 16, 2016.

<sup>18</sup> *Nathaniel v. Am. Airlines*, Civil No. 2007-0033, 2008 U.S. Dist. LEXIS 95336, at \*8 (D.V.I. Nov. 20, 2008).

<sup>19</sup> *Id.* at \*1.

<sup>20</sup> *Id.* at \*4.

<sup>21</sup> *Id.* at \*8

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at \*11.

<sup>24</sup> *Id.*

involving the two families.<sup>25</sup> Further, such communication by Defendants' counsel is prohibited by Supreme Court Rule 211.4.2.

Second, Plaintiff, Waleed Hamed and Mohammed Hamed are directors of Sixteen Plus. In accordance with Title 13, § 286 of the Virgin Islands Code, upon the dissolution of a corporation, the directors become liquidating trustees with the full power to settle the affairs, which requires the directors to "collect the outstanding debts, sell and convey property and divide the moneys and other property among the stockholders, after paying its debts. . . ." Manal Yousef is an alleged mortgage holder to whom Sixteen Plus owes a debt. Specifically, the date of the loan from Manal Yousef to Sixteen Plus was September 15, 1997.<sup>26</sup> The amount of the loan was \$4.5 million dollars, plus interest.<sup>27</sup> In addition, three interest only payments were made during the 1998-2000 period to Manal Yousef.<sup>28</sup> Therefore, all of the directors need to have an accounting of Sixteen Plus' debts and any other pertinent information regarding those debts.

Third, in accordance with Rule 26(a) of the Federal Rules of Civil Procedure, a party must without awaiting a discovery request, provide to the other parties: the name and if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claim or defenses, unless the use would be solely for impeachment. The telephone number of Manal Yousef would most certainly be necessary as part of a Rule 26(a) mandatory disclosure because Manal Yousef has information on an outstanding mortgage loan.

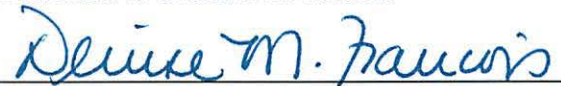
Accordingly, it is hereby

**ORDERED** that Defendants' Motion to Compel Discovery and Memorandum in Support Thereof is **GRANTED**; and it is further

**ORDERED** that, **on or before September 26, 2016**, Plaintiff **SHALL PRODUCE** the telephone number of Manal Yousef; and it is further

**ORDERED** that a copy of this Order shall be directed to counsel of record.

DATED: September 16, 2016



**DENISE M. FRANCOIS**

Judge of the Superior Court of the Virgin Islands

**ATTEST:**

**Estrella H. George**

Acting Clerk of the Court

By: \_\_\_\_\_

**Donna D. Donovan**

Court Clerk Supervisor \_\_\_\_ / \_\_\_\_ / \_\_\_\_

<sup>25</sup> Pl. Brief in Opp. to Def. Mot. to Compel, 4, September 7, 2016.

<sup>26</sup> Pl. Brief in Opp. to Mot. to Def. Mot. to Compel, Ex. C., September 7, 2016.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*