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

| | |
|---|---|
| **MOHAMMAD HAMED**, by his authorized agent WALEED HAMED,<br><br>*Plaintiff/Counterclaim Defendant*,<br><br>vs.<br><br>**FATHI YUSUF** and **UNITED CORPORATION,**<br><br>*Defendants and Counterclaimants.*<br><br>vs.<br><br>**WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,**<br><br>*Counterclaim Defendants*, | Case No.: SX-2012-cv-370<br><br>**ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF**<br><br>JURY TRIAL DEMANDED |
| **MOHAMMAD HAMED**,<br><br>*Plaintiff*,<br><br>vs.<br><br>**FATHI YUSUF,**<br><br>*Defendant.* | Case No.: SX-2014-CV-278<br><br>**ACTION FOR DEBT AND CONVERSION**<br><br>JURY TRIAL DEMANDED |

## OPPOSITION TO MOTION TO DISQUALIFY COUNSEL

The Plaintiff hereby responds to and opposes the Defendants' motion to disqualify Joel H. Holt as counsel in this case. For the reasons set forth herein, it is respectfully submitted that the motion should be denied.

One preliminary comment is in order. The sworn statements of Attorney Hodges regarding the gist of his conversations with Joel Holt are untrue, as discussed below. However, that exchange is irrelevant to the core issue before the Court, as is also discussed herein.

## I. The employment of former Law Clerks is not a basis for disqualification

Contrary to Defendants' assertions, there is no *per se* basis for disqualifying a lawyer or law firm for hiring a former law clerk. To the contrary, the question is controlled entirely by an applicable rule adopted in this jurisdiction **which expressly allows such employment so long as certain guidelines are followed**, as set forth in V.I. S. Ct. R. 211.1.12, which provides in relevant part as follows:

> (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a . . . law clerk to . . . .
>
> (b) . . . . A lawyer serving as a law clerk . . . may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge . . . .
>
> (c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:
>
> (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
>
> (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

Thus, this is a "safe harbor" -- so long as there is compliance with this rule, it is perfectly acceptable for a law firm to continue handling a case that the law clerk may have worked on. In short, there is no per se disqualification for a firm that hires a former law clerk, so long as *defined* steps have been taken to *screen* the law clerk from participation in the matter.[1]

---

[1] As discussed herein, the term "screened" is a defined term in the V.I. Supreme Court Rules as well.

The rule, like V.I. S. Ct. R. 211.1.11, which does the same for former government lawyers, contemplates law firms hiring law clerks without fear of being disqualified so long as the required screening mechanism is promptly put into place. *Delaware River Port Auth. v. Home Ins. Co.*, No. CIV.A. 92-3384, 1994 WL 444710 (E.D. Pa. Aug. 17, 1994) (explaining why ABA Rule 1.11 abandoned the rigid mandates of ABA Rule 1.9 by implementing a screening standard to continue to attract competent lawyers to the government without the fear of not being employable in private practice when they leave government service); *Rennie v Hess Oil Corporation,* 981 F. Supp. 374, 378 (D.V.I. 1997)("The Model Rules specifically provide for screening as an exception to vicarious disqualification. In Formal Opinion 342, the ABA ruled that the blanket rule of imputed disqualification with regard to a government attorney entering private practice may be obviated by effective screening mechanisms or "Chinese Walls.").

Moreover, in adopting this rule, **the V.I. Supreme Court made no distinction between small or large law firms**, so that distinction is irrelevant to V.I. S. Ct. R. 211.1.12. Indeed, if the size of the law firm mattered, V.I. S. Ct. R. 211.1.12 would be meaningless, as no law firm in the Virgin Islands has 35 lawyers, the definition of a "small firm" as cited by the Defendants on page 5 of their memo.[2]

Thus, all of the cases cited by the Defendants discussing the size of the law firm are easily distinguishable, as they did not address Rule 1.12. Instead, Yusuf's cases dealt with a different rule entirely—one dealing with the duties owed a former client where a lawyer with knowledge of a **client's** thinking has switched law firms--adopted in

[2] While this is a non-issue where Rule 211.1.12 is concerned, courts have rejected such arguments where there is only a two-person law firm (like here), contrary to the cases cited by the Defendants. *See, e.g., Radford v. Radford*, 371 P.3d 1158, 1162, 2016 WL 1586372 (OK Civ. App. 2016). *See also, See, e.g., People v. Najawicz*, 2014 WL 905798, at *3 (V.I. Super. Feb. 27, 2014)(Chinese walls can be effectively implemented even in small firms.)

the Virgin Islands as V.I. S. Ct. R. 211.1.9. That rule has no such screening provision, although it should be noted that even in that situation courts have agreed that a "Chinese Wall" will obviate the harsh rule of disqualification, which is disfavored. *See, e.g., Cubica Grp., LLLP v. Mapfre Puerto Rican Am. Ins. Co. (MAPFRE)*, No. 3:11-CV-108, 2012 WL 5331257, at *3 (D.V.I. Oct. 29, 2012)("Motions to disqualify are viewed with disfavor and disqualification is considered a drastic measure which courts should hesitate to impose except when absolutely necessary.")[3]

In short, the cases cited by the Defendants do not deal with V.I. S. Ct. R. 211.1.12, which expressly allows the hiring of a law clerk by the use of screening without making any distinction regarding the size of the firm. Thus, this Court need not address those cases applicable only to another rule.

One final comment is in order. While Attorney Seila confirmed that she stopped working on any cases involving Attorney Holt when their negotiations began in early June 2017 (See **Exhibit 1**), this issue is moot, as there is a rule that covers that issue too. In this regard, Rule 11.4.3 of the Internal Operating Rules of the V.I. Supreme Court states in part:

> **11.4.3 Disqualification**. There is no disqualification *per se* for a law clerk to work on a case involving the firm from which the law clerk has accepted a job offer. Those assignments will be left to the discretion of the individual Justice.

Thus, Yusuf's suggestion that inquiry is needed into to whether the Court permitted Robin Seila to work on any Yusuf/Hamed case after she accepted a job with Attorney Holt can be summarily dismissed, as clearly this rule applies as equally in the Superior Court as it does in the V.I. Supreme Court.

---

[3] The Defendants' law firm, Dudley, Topper and Feuerzeig (DTF), did not cite this case, but certainly knows about it, as that case involved an attempt to disqualify DTF.

## II. The guidelines for employing a former law clerk *were* followed

There was full compliance with Rule 211.1.12. First, prior to negotiating with Robin Seila for a position in his firm, Joel Holt contacted Judge Brady's chambers, disclosed the situation before *anything* had occurred, and was informed that the Judge had no objection to such negotiations taking place. See **Exhibit 1**. Thus, there was compliance with Rule 211.1.12(b) even before such negotiations began.

Second, when Attorney Holt and Attorney Seila signed their contract on July 10, 2017, this conflict issue was specifically addressed in that contract as follows:

> Conflicts
> Attorney has been a law clerk for Superior Court Judge Douglas Brady for the past several years. As such, the Attorney not only cannot work on any such cases, but the Attorney and the Firm shall establish a "Chinese Wall" regarding all communications, client contacts and all related activities involving any such files. Both the Firm and the Attorney shall make sure all appropriate safeguards are in place to avoid any the breach of any confidential information of the Firm, the clients involved or the Court.

Third, well before Robin Seila left her employment with the Court on August 11, 2017, counsel for the Defendants admits he was fully informed by email on July 26, 2017, that she had accepted employment with Joel Holt on July 9, 2017. See **Exhibit 1**. That same email, also attached as part of Exhibit A to Defendant's motion, responded to Hodges' specific question in his July 26 email as to what screening measures Holt intended to use, stating as follows (See **Exhibit 1**):

> As for the "screening measures" going forward, that process is still being developed, but will include blocking her access to the office files, making sure she has no contact with the clients and having her only use the office gmail account, while I will continue to only use my AOL account for this case, which she will not have access to, so she will have no access to my emails (past or future).

That email ended with this comment (See **Exhibit 1**): **"I welcome any other suggestions you might have."** Of course, no such suggestions were forthcoming, nor

do the Defendants suggest in their motion that additional screening measures should have been adopted.

Fourth, while implementation of these procedures would have been enough under the rule, Joel Holt then expanded this list in his letter dated October 27, 2017, as follows (See **Exhibit 1**):[4]

> I am setting up a "Chinese Wall" between her and every Hamed/Yusuf case, no matter what the designation may be (Plessen, Sixteen Plus, Manal Yousef, etc.). In this regard, my plan is as follows:
>
> - Before she starts work, I will educate my office on what this entails to ensure full compliance;
>
> - We have already taken steps to secure the current files in locked cabinets so that Robin cannot access them;
>
> - I am setting up a separate email for those cases (holtvi.plaza@gmail.com ) that I will start using on Monday, October 30th, which she will not have access to. In that case, we need to communicate through that email on the Hamed/Yusuf cases going forward, which I will inform other counsel as well as the Court to use;
>
> - I have also taken steps to block off and password protect the portion of the office server regarding all of these cases so she cannot access anything on it.
>
> - To the extent we still exchange paper documents, my staff will be instructed to put all such correspondence and pleadings directly on my desk so I can then make sure they are securely filed;
>
> - Once Robin starts, she will be instructed not to discuss these cases with anyone in my office, including me, or with anyone outside of the office, including other counsel in that case as well as anyone at the Court.

That letter also, again ended with a request for Attorney Hodges to indicate if he thought anything else should be done. See **Exhibit 1**. Of course, no issues were raised, no such suggestions were ever received, **nor do the Defendants suggest in their motion that**

[4] This letter was also attached as Exhibit B to Defendant's motion.

**additional screening measures should have been adopted.**[5] Thus, the Defendants cannot now complain about the specific measures that they were told would be implemented.

> As for screening, V.I. S. Ct. R. 211.1.0 (k) states:
>
> (k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

When counsel for the Defendants was informed of the proposed screening measures in writing on two separate occasions, there was no objection to them, nor were any additional measures suggested. Under the circumstances, it is respectfully submitted that the proposed measure set forth in the attached October 27th letter were more than "reasonably adequate" to insure compliance with Rule 211.1.2.

Finally, Attorney Holt then implemented all of these procedures prior to Seila commencing work. See **Exhibit 1**. After Seila began to work, those procedures have remained in place. See **Exhibit 1**. Thus, there has been compliance with the screening provisions of Rule 211.1.2 (d).

Moreover, contrary to the Defendants assertions, the two cases the Defendants cited on pages 12-13 **did not allow discovery on the issues** in question.[6] In *Fredonia Broadcasting Corp., Inc. v. RCA Corp.,* 569 F.2d 251 (5th *Cir.* 1978), the issue dealt with a recusal of a Judge. While the case was remanded for further findings, there is no

---

[5] The Dudley firm knows about such procedures, as it offered to implement a "Chinese Wall" in *Cubica, supra,* at *2. This offer was made after the conflict issue was raised, as was the case in virtually every case cited by the Defendants. Indeed, counsel could not find any case where a Chinese Wall was challenged when it was set up prior to the lawyer beginning to work for the firm, much less when there was advance notice to opposing counsel.

[6] Deposing a former law clerk, counsel or his staff would certainly be demeaning to the judicial process and is clearly unwarranted on this record.

reference to discovery being ordered (or even suggested).[7] Similarly, in *P.M. v. N.P.*, 116 A.3d 1078, 1088-89 (N.J. App. Div. 2015), which is also a recusal case, the court again remanded the case for specific, limited disclosure--without any reference to actual discovery being taken by the opposing party.

To the extent this Court believes this representation needs verification, Joel Holt would be glad to submit declarations from Robin Seila and/or his office staff. Likewise, if more is needed, this Court can hold a hearing or direct the Special Master to confirm compliance.

Indeed, the actions taken by Holt are far greater than those taken in the only case counsel could locate where the use of a specific "Chinese Wall" was discussed, *Lamb v. Pralex,* 333 F. Supp. 2d 361, 366 (D.V.I. 2004), which noted:

> [Rohn] further state that upon Combie's disclosure of the conflicted cases, "they advised her that were an offer of employment extended, she would be prohibited from and have no access to the electronic or physical files for those cases on which she would be conflicted." A list of the cases was circulated to all employees and posted in common areas; Combie has not been near the files and does not know their location; the employees have been instructed not to discuss the cases in her presence; and she has been locked out of the electronic filing system with regard to those cases.

The court then went on to approve this "Chinese Wall":

> The evidence of screening provided by Rohn was not directly contradicted by Rames. Although the Court understands his chagrin, more is required before a court will be forced to relieve a litigant of his counsel of choice. **A majority of courts have endorsed screening procedures similar to the ones implemented in this case, under similar circumstances.** *Id.* (Emphasis added).

Moreover, the court then found this **proffer** sufficient to find that the "screening" process satisfied the court that appropriate precautions were in place, stating:

---

[7] That 1978 case predates ABA Model Rule 1.12 (adopted by the V.I. Supreme Court as V.I. S. Ct. R. 211.1.12) by over 25 years.

> The Court is satisfied that the procedures employed by Rohn's office to shield Combie from the files, supports a finding that any information obtained at the Rames law firm will not be disclosed. *Id.*

Indeed, that court rejected Rames challenge to this "Chinese Wall" due to the fact that his objections were no different than those raised by the Defendants here:

> **The evidence of screening provided by Rohn was not directly contradicted by Rames.** Although the Court understands his chagrin, **more is required before a court will be forced to relieve a litigant of his counsel of choice.** *Id.* at 366. (Emphasis added).

Therefore, the screening procedures set up in this case are far more extensive than those found to be acceptable in *Lamb* and elsewhere.

In summary, screening was discussed with opposing counsel on several occasions prior to Seila's employment. It is respectfully submitted that these proffered measures are far beyond the "reasonably adequate" standard under the circumstances. Finally, this "Chinese Wall" was promptly set up and implemented prior to Seila's commencement of work.

Two final comments are in order. First, while not raised as an issue by the Defendants, Seila does not have receive any part of any fees from the Hamed/Yusuf litigation.[8] Second, while the Defendants complain about not sending the October 27th letter directly to Judge Brady, the rule only requires notice to be sent to "appropriate tribunal to enable them to ascertain compliance with the provisions of this rule." As noted in the comments to ABA Model Rule 1.12:

> [5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

---

[8] The rule requires notice to any appropriate tribunal to see if there has been compliance with this rule. As Judge Brady was aware of the fact that Robin Seila had been hired by Joel Holt, while the Special Master was not, the October 27th letter was only copied to Special Master Ross.

Here, the notice was promptly sent.[9] Moreover, Judge Brady was aware that Seila was going to work for Joel Holt, so the October 27th notice was only sent to opposing counsel and Special Master Ross. In any event, as the Defendants have not suggested that any further screening measures be adopted, they cannot now argue that there are other screening measures that the Court should have or would have imposed.

In summary, it is respectfully submitted that the requirements of V.I. S. Ct. R. 211.1.12 have been met in this case, warranting a denial of the Defendants' disqualification motion.

## III. The Defendants waived any objections to disqualification

While it is respectfully submitted that the demonstrated compliance with V.I. S. Ct. R. 211.1.12 resolves this motion, if the Court does not agree, then this Court needs to address two remaining issues: express waiver and judicial waiver. The Defendants' law firm, DTF, is quite familiar with these concepts, as they were discussed in detail in *Cubica, supra,* a case involving DTF:

> Defendant contends plaintiffs have waived their right to seek disqualification on grounds of undue delay and the "resultant prejudice" that would befall MAPFRE if DTF was disqualified. Def.'s Resp. at 11–12. Courts have held that a party may waive its objection to a conflict of interest by failing to file timely a motion to disqualify. *See Alexander,* 822 F.Supp. at 1115 (stating "[w]aiver is a valid basis for the denial of a motion to disqualify"). In determining whether the moving party has waived its right to object to the opposing party's counsel, the following factors should be considered: "(1) the length of the delay in bringing the motion to disqualify, (2) when the movant learned of the conflict, (3) whether the movant was represented by counsel during the delay, (4) why the delay occurred and (5) whether disqualification would result in prejudice to the non-moving party." *Id.* (citations omitted). "The essence of this analysis is whether the party seeking disqualification appears to use the disqualification motion as a tactical maneuver." *Rohm & Haas Co. v. Am. Cyanamid Co.,* 187 F.Supp.2d 221, 229–30 (D.N.J. 2001). *Id.* at *4.

---

[9] As noted, the Defendants had this notice on July 26, 2017, long before Seila came to work with Joel Holt, so its argument that this notice was not timely has no merit, to say the least.

With this standard in mind, each type of waiver will be discussed separately, either of which warrants denying the disqualification motion.

### A. Express Waiver

The facts before this Court regarding express waiver are partially disputed, but when viewed in their entire context, it is clear the Defendants have expressly waived any objection to Plaintiffs' counsel continuing in this litigation. At the outset, it must be noted that the averments in Attorney Hodges' declaration are false, as noted in the following excerpts from the attached declaration of Joel H. Holt (See **Exhibit 1**):

> 5. I called Attorney Hodges on June 2, 2017, to ask him to consult with his client, Fathi Yusuf, as to whether Mr. Yusuf would have any objection to my continuing in the Yusuf/Hamed litigation if I were to reach an agreement with Judge Brady's then law clerk, Robin Seila, to work for my firm. **I specifically told Attorney Hodges that I would not pursue hiring her if his client had any such objection, as my fiduciary duties to represent the Hamed family might be compromised if my representation of them was questioned**, particularly in light of the extensive work on this case over the last four plus years. In short, I wanted to know his client's position, not his, as Attorney Hodges could not waive any objection his client might have.(Emphasis added.)

Indeed, why would Attorney Holt call Attorney Hodges if not to obtain such permission?

> 6. Attorney Hodges agreed to speak with his client and call me the following Monday, June 5, 2017.
>
> 7. When I had not heard from him by mid-afternoon on June 5th, I sent him an email, stating in part as follows: "Once you have a response to my call last week, let me know." Hodges responded that same day as follows: "Will do. Instead of today, may I call you tomorrow afternoon?"

Why would Attorney Hodges need to call back if he was not trying to reach his client?

> 8. When we spoke the next day, Attorney Hodges said **his client** would not object if I hired Judge Brady's law clerk.
>
> 9. At no time did Attorney Hodges say or suggest that he would be "displeased" if I hired Judge Brady's law clerk. Had he said any such thing, I would not have proceeded further.

> 10. To the contrary, the only point Hodges noted was to make sure I implemented appropriate screening measures.

Thus, this was not one phone call, but a series of phone calls and emails.

> 11. **I relied on this waiver**, calling Judge Brady's chambers the same day, or shortly thereafter, to obtain his permission to discuss employment with Seila. Judge Brady's secretary answered the phone when I called his chambers and asked to speak with Judge Brady. She asked what I wanted to discuss with the Judge. After I told her, she put me on hold and then came back a few minutes later, informing me that Judge Brady said I had his permission to speak with his law clerk. (Emphasis added.)

While it is unknown why Attorney Hodges now avers otherwise, that is not the end of this record. On July 26, 2017, Attorney Hodges emailed, asking about the status of the employment discussions with Seila, as well as about the screening measures Holt intended to implement. That response, contained in the email chain attached to **Exhibit 1**, began as follows: "Greg-**I cleared all of this with you first**, as you know."

In short, Attorney Holt had now sent written confirmation of where things stood, as Attorney Hodges' prior verbal word agreement appeared to be wavering. While Hodges now labels this statement as "self-serving," the simple fact remains that it accurately described the situation and Hodges never responded to it, much less denied that Holt had cleared the conflict issues with him. Indeed, why did Hodges ask about screening measures in the first place if his client now intended to object to Holt hiring Seila no matter what was implemented?

The failure to respond to such a concise statement—"I cleared all of this with you first"—confirms that Hodges had informed Holt that his client would not object to Holt's continued representation of the Hameds even if he hired Seila. Therefore, based on this record, there was an express waiver of any objection to Holt continuing to represent the Hameds even if he hired Judge Brady's law clerk so long as screening measures were implemented.

### B. Judicial Waiver

Even if there had not been an express waiver, there has been a waiver of any such objection based on the factors set forth above in *Cubica, supra,* which will be discussed in the order listed by that court:

(1) The length of the delay in bringing the motion to disqualify—Defense counsel knew that negotiations with Seila would begin in early June. Defense counsel then knew she had been hired during the email exchange on July 26, 2017, **while Seila was still working for the Court.** Thus, there has been a delay of over five months since defense counsel first learned that Holt might hire Seila and well over four months since defense counsel learned Holt had hired Seila, which is long enough to find an undue delay. *See, e.g.,* (finding movant waived issue where motion filed nine months after learning of potential conflict); *In re Modanlo*, 342 B.R. 230, 237 (D. Md. 2006)(finding movant waived issue where there was a five month delay).

(2) When the movant learned of the conflict—The movant learned of the "conflict" no later than July 26, 2017.

(3) Whether the movant was represented by counsel during the delay—Counsel represented Yusuf throughout the "delay" period.

(4) Why the delay occurred—The Defendants offered no reason for the delay in bringing this motion, even they could have raised it in July or August, well before Hurricane Irma or Hurricane Maria, as well as in October before Seila started working. The only explanation is that they are using the disqualification motion as a tactical maneuver, which is one of the main considerations in denying such motions.[10]

(5) Whether disqualification would result in prejudice to the non-moving party—There is no dispute that the Hameds would be prejudiced by losing their lead counsel after over four years of litigation, particularly with the critical accounting hearings just now starting before the Special Master. Indeed, in the *Cubica, supra,* case involving DTF, the court found such prejudice after just one year of litigation.

In short, these factors all weigh in favor of finding waiver here on this record.

---

[10] In fact, the abrupt July 26, 2017 email inquiry from Attorney Hodges about the status of Seila's hiring came just after this Court entered several orders, including the "laches" opinion that the Defendants asked this Court to reconsider. It appears the Defendants are on a fishing expedition, hoping to find a procedural way to have that order set aside, such as trying to have the Court recuse itself or be disqualified. Such conduct is reprehensible and should not be permitted—indeed, it would be equally abhorrent if the Plaintiff had tried to use Seila's employment as a way to undo the denial of a jury trial, which was a ruling against the Plaintiff at that same time.

## IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that the motion to disqualify Plaintiffs' counsel should be denied.

**Dated:** December 14, 2017

**Joel H. Holt, Esq.**
*Counsel for Plaintiff*
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: joelholtpc@gmail.com
Tele: (340) 773-8709
Fax: (340) 773-8677

**Carl J. Hartmann III, Esq.**
*Co-Counsel for Plaintiff*
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**
Special Master
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**
**Stefan Herpel**
**Charlotte Perrell**
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

**Mark W. Eckard**
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

**Jeffrey B. C. Moorhead**
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com

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

| | |
|---|---|
| **MOHAMMAD HAMED**, by his authorized agent WALEED HAMED,<br><br>*Plaintiff/Counterclaim Defendant*,<br><br>vs.<br><br>**FATHI YUSUF** and **UNITED CORPORATION,**<br><br>*Defendants and Counterclaimants.*<br><br>vs.<br><br>**WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.**,<br><br>*Counterclaim Defendants*, | Case No.: SX-2012-cv-370<br><br>**ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF**<br><br>JURY TRIAL DEMANDED |
| **MOHAMMAD HAMED**,<br><br>*Plaintiff*,<br><br>vs.<br><br>**FATHI YUSUF,**<br><br>*Defendant.* | Case No.: SX-2014-CV-278<br><br>**ACTION FOR DEBT AND CONVERSION**<br><br>JURY TRIAL DEMANDED |

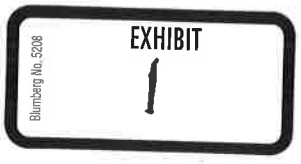
## DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am counsel for the Plaintiff and am personally familiar with the facts set forth herein.

2. I made a decision to look into the possibility of hiring Robin Seila in June of 2017.

3. I first discussed this with Waleed ("Wally") Hamed, who agreed for me to do so as long as I cleared it with Fathi Yusuf.



4. In this regard, by that date I had represented the Hamed family in this litigation for over five years and neither Wally nor I wanted to do anything that would jeopardize my ability to represent the Hameds.

5. I called Attorney Hodges on June 2, 2017, to ask him to consult with his client, Fathi Yusuf, as to whether Mr. Yusuf would have any objection to my continuing in the Yusuf/Hamed litigation if I were to reach an agreement with Judge Brady's then law clerk, Robin Seila, to work for my firm. I specifically told Attorney Hodges that I would not pursue hiring her if his client had any such objection, as my fiduciary duties to represent the Hamed family might be compromised if my representation of them was questioned, particularly in light of the extensive work on this case over the last four plus years. In short, I wanted to know his client's position, not his, as Attorney Hodges could not waive any objection his client might have.

6. Attorney Hodges agreed to speak with his client and call me the following Monday, June 5, 2017.

7. When I had not heard from him by mid-afternoon on June 5th, I sent him an email, stating in part as follows: "Once you have a response to my call last week, let me know." Attorney Hodges responded that same day as follows: "Will do. Instead of today, may I call you tomorrow afternoon?" All emails referenced herein are attached hereto as **Exhibit A**, which are identical to the emails produced by the Defendants with their motion.

8. When we spoke the next day, Attorney Hodges said his client would not object if I hired Judge Brady's law clerk.

9. At no time did Attorney Hodges say or suggest that he would be "displeased" if I hired Judge Brady's law clerk. Had he said any such thing, I would not have proceeded further.

10. To the contrary, the only point Hodges noted was to make sure I implemented appropriate screening measures.

11. I relied on this waiver, calling Judge Brady's chambers the same day, or shortly thereafter, to obtain his permission to discuss employment with Seila. Judge Brady's secretary answered the phone when I called his chambers and asked to speak with Judge Brady. She asked what I wanted to discuss with the Judge. After I told her, she put me on hold and then came back a few minutes later, informing me that Judge Brady said I had his permission to speak with his law clerk.

12. Shortly thereafter, I began to negotiate with Robin Seila about the possibility of working as an associate in my firm.

13. At the very outset, Robin Seila agreed she would cease work on all cases before Judge Brady where I was counsel of record.

14. A formal agreement was reached on July 10, 2017. The signed contract contained this provision:

> Conflicts
> Attorney has been a law clerk for Superior Court Judge Douglas Brady for the past several years. As such, the Attorney not only cannot work on any such cases, but the Attorney and the Firm shall establish a "Chinese Wall" regarding all communications, client contacts and all related activities involving any such files. Both the Firm and the Attorney shall make sure all appropriate safeguards are in place to avoid any the breach of any confidential information of the Firm, the clients involved or the Court.

15. Indeed, Robin Seila confirmed she had stopped all such work as soon as our employment negotiations began.

16. On July 26, 2017, Attorney Hodges emailed me asking about the status of my negotiation with Robin Seila, as well as what screening measures I planned to implement. My email response, included in **Exhibit A**, began with a reminder to Attorney Hodges that I had cleared all of this with him first. I then provided the information he requested, confirming that I had hired her and then listing a set of proposed screening measures. I also invited him to suggest any others he had in mind.

17. Attorney Hodges never responded to this July 26th email verbally or in writing.

18. Prior to the commencement of Robin Seila's employment on October 30, 2017, I took the following steps to set up the screening process, commonly known as a Chinese Wall:

- I removed over 95% of the Hamed files from the office and placed them in storage so they would not be in the office.
- I then placed the remaining files in my office, as opposed to the file cabinets in the common areas of my office where files are normally kept, which I then locked so they could not be accessed without my knowledge.
- I had an IT person then remove all of the Hamed files from the office public server and place them on a separate server so they could not be accessed by Robin Seila once she began work.
- I set up separate email accounts to use for the Hamed cases so they could not be accessed by Robin Seila. I also made sure she would not have access to any passwords for my email accounts.
- I then met with my office staff, which consists of three people, and discussed what a Chinese Wall meant and how they should coordinate

those efforts by making sure she did not see any new pleadings or correspondence, and could not access any old files. They were also instructed not to discuss the Hamed case with her at any time.

- I made it clear to the staff and the client that there was to be no communications between the client and Robin Seila whatsoever.

19. On October 27, 2017, I sent a list of these items to Attorney Hodges. The letter is attached hereto as **Exhibit B**, which is the same letter produced by the Defendants with their motion.

20. Attorney Hodges never responded to this October 27th letter verbally or in writing.

21. I made sure all of the referenced procedures were in place when Robin Seila began work on October 30, 2017, and have continued to monitor full compliance by my staff and Attorney Seila since that time.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 14th day of December, 2017.

Joel H. Holt

**Gregory Hodges**

**From:** Joel Holt <holtvi@aol.com>
**Sent:** Wednesday, July 26, 2017 4:15 PM
**To:** Gregory Hodges
**Subject:** Re: Law clerk

Ok-if you think of any, let me know

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

-----Original Message-----
From: Gregory Hodges <Ghodges@dtflaw.com>
To: Joel Holt <holtvi@aol.com>
Sent: Wed, Jul 26, 2017 4:13 pm
Subject: RE: Law clerk

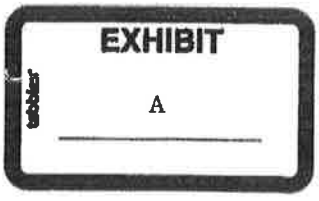
Joel,
Thanks for your response. Since I have no recent personal experience with screening measures, I am in no position to offer suggestions.

Gregory H. Hodges
Dudley, Topper and Feuerzeig, LLP
Law House, 1000 Frederiksberg Gade
St. Thomas, VI 00802
Direct: (340) 715-4405
Fax: (340) 715-4400
Web: www.DTFLaw.com





**From:** Joel Holt [mailto:holtvi@aol.com]
**Sent:** Wednesday, July 26, 2017 2:26 PM
**To:** Gregory Hodges <Ghodges@dtflaw.com>
**Subject:** Re: Law clerk



Greg-I cleared all of this with you first, as you know. I then called Judge Brady's chambers, either on the same day we spoke or the day after you confirmed you had no problem with my speaking with his law clerk. His secretary, Ms. Krind, asked why I was calling, which I told her. She put me on hold and then came back and said Judge Brady had no objection to my talking to her. I then asked Ms. Krind to let the clerk know I would be calling, which she did. In short, I have never spoken directly with Judge Brady about her, nor anyone else at the Court other than the brief call with Ms. Krind.

I then spoke with the law clerk several times in June. I do not know which of my pending cases she has worked on, as we did not discuss any pending cases, but she assured me during our first call that she would immediately stop all work on any such files (I do have more than one case before Judge Brady). I told her in late June that I planned on extending an offer to her and sent her a written offer on June 30, which she accepted. The final contract was signed July 9th.

As for the "screening measures" going forward, that process is still being developed, but will include blocking her access to the office files, making sure she has no contact with the clients and having her only use the office gmail account, while I will continue to only use my AOL account for this case, which she will not have access to, so she will have no access to my emails (past or future). I welcome any other suggestions you might have.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

-----Original Message-----
From: Gregory Hodges <Ghodges@dtflaw.com>
To: Joel Holt <holtvi@aol.com>
Sent: Wed, Jul 26, 2017 11:48 am
Subject: RE: Law clerk

Would you please let me know when you offered her a job, when she accepted, whether Judge Brady was advised of these events and, if so, when? Also, please advise what screening measures will be implemented.

Gregory H. Hodges
Dudley, Topper and Feuerzeig, LLP
Law House, 1000 Frederiksberg Gade
St. Thomas, VI 00802
Direct: (340) 715-4405
Fax: (340) 715-4400
Web: www.DTFLaw.com

-----Original Message-----
From: Joel Holt [mailto:holtvi@aol.com]
Sent: Tuesday, July 25, 2017 8:16 PM
To: Gregory Hodges <Ghodges@dtflaw.com>
Subject: Re: Law clerk

Yes-she starts Oct 4

Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
340-773-8709

> On Jul 25, 2017, at 7:32 PM, Gregory Hodges <Ghodges@dtflaw.com> wrote:
>
> Anything develop from this?
>
>
> Gregory H. Hodges
> Dudley, Topper and Feuerzeig, LLP
> Law House, 1000 Frederiksberg Gade
> St. Thomas, VI 00802
> Direct: (340) 715-4405
> Fax: (340) 715-4400
> Web: www.DTFLaw.com
>
>
>
> THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.
>
>
>
> -----Original Message-----
> From: Joel Holt [mailto:holtvi@aol.com]
> Sent: Monday, June 05, 2017 3:57 PM
> To: Gregory Hodges <Ghodges@dtflaw.com>
> Subject: Re: Law clerk
>
> Sure-thx
>
> Joel H. Holt
> 2132 Company Street
> Christiansted, USVI 00820
> 340-773-8709
>
>> On Jun 5, 2017, at 3:54 PM, Gregory Hodges <Ghodges@dtflaw.com> wrote:
>>
>> Will do. Instead of today, may I call you tomorrow afternoon?
>>
>>
>> Gregory H. Hodges
>> Dudley, Topper and Feuerzeig, LLP
>> Law House, 1000 Frederiksberg Gade
>> St. Thomas, VI 00802
>> Direct: (340) 715-4405
>> Fax: (340) 715-4400

>> Web: www.DTFLaw.com
>>
>>
>>
>> THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.
>>
>>
>>
>> -----Original Message-----
>> From: Joel Holt [mailto:holtvi@aol.com]
>> Sent: Monday, June 05, 2017 3:19 PM
>> To: Gregory Hodges <Ghodges@dtflaw.com>
>> Subject: Law clerk
>>
>> I did get the full name of Judge Brady's law clerk-Robin Sealey, although I did not learn anything else about her. Once you have a response to my call last week, let me know. Thx
>>
>> Joel H. Holt
>> 2132 Company Street
>> Christiansted, USVI 00820
>> 340-773-8709
>

# *JOEL H. HOLT, ESQ. P.C.*

*2132 Company Street, Suite 2*
*Christiansted, St. Croix*
*U.S. Virgin Islands 00820*

*Tele.* *(340) 773-8709*
*Fax* *(340) 773-8677*
*E-mail:* holtvi@aol.com

October 27, 2017

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802

James L. Hymes, III, Esquire
Law Offices of James L. Hymes, III, P.C.
P.O. Box 990
St. Thomas, VI 00804-0990

Sent by mail and email

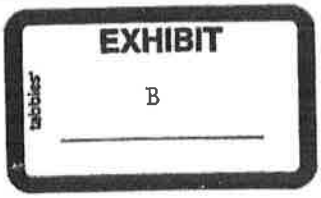
**Re: Plaza Extra Matters**

Dear Counsel:

As I discussed with Greg last June, I have hired Robin Seila, Judge Brady's former law clerk, who is scheduled to finally start next week.

I am setting up a "Chinese Wall" between her and every Hamed/Yusuf case, no matter what the designation may be (Plessen, Sixteen Plus, Manal Yousef, etc.). In this regard, my plan is as follows:

- Before she starts work, I will educate my office on what this entails to ensure full compliance;
- We have already taken steps to secure the current files in locked cabinets so that Robin cannot access them;
- I am setting up a separate email for those cases (holtvi.plaza@gmail.com ) that I will start using on Monday, October 30th, which she will not have access to. In that case, we need to communicate through that email on the Hamed/Yusuf cases going forward, which I will inform other counsel as well as the Court to use;
- I have also taken steps to block off and password protect the portion of the office server regarding all of these cases so she cannot access anything on it.



- To the extent we still exchange paper documents, my staff will be instructed to put all such correspondence and pleadings directly on my desk so I can then make sure they are securely filed;
- Once Robin starts, she will be instructed not to discuss these cases with anyone in my office, including me, or with anyone outside of the office, including other counsel in that case as well as anyone at the Court.

Please let me know if you have any other suggestions for me to implement, as I am glad to consider any input you want to provide to me. Thanks.

Cordially,

Joel H. Holt
JHH/jf

cc: Hon. Edgar Ross