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

MANAL MOHAMMAD YOUSEF a/k/a MANAL MOHAMAD YOUSEF, Plaintiff, v. SIXTEEN PLUS CORPORATION, Defendant.	CIVIL NO. ST-17-CV- 342 **ACTION FOR DEBT AND FORECLOSURE** **COUNTERCLAIM FOR DAMAGES** **JURY TRIAL DEMANDED**
SIXTEEN PLUS CORPORATION, Counterclaim Plaintiff, v. **MANAL MOHAMMAD YOUSEF a/k/a MANAL MOHAMAD YOUSEF and FATHI YUSUF,** Counterclaim Defendants.	

SIXTEEN PLUS' OPPOSITION TO COUNTERCLAIM DEFENDANT FATHI YUSUF'S MOTION TO DISMISS

The Counterclaim Defendant Fathi Yusuf ("Yusuf") has moved to dismiss the claim filed against him, pursuant to Rule 12(b)(6). For the reasons set forth herein, it is respectfully submitted that the motion can be summarily denied, as it totally ignores all of the standards for addressing such motions, as adopted by the V.I. Supreme Court.

I. The Relevant Facts To Consider (in addressing this Rule 12 motion).

To try to prevail on this motion, Yusuf injects **multiple** new factual assertions into the record, ignoring the facts alleged in the counterclaim against him and Manal Yousef.

However, as the V.I. Supreme Court has made clear, in addressing a Rule 12 motion, **only the facts alleged in the complaint are considered, which must be taken as true at this juncture.** *See, e.g., Brady v. Cintron,* 2011 WL 4543906, at *9 (V.I. 2011).

Thus, all of these argumentative "new facts" raised in Yusuf's motion are irrelevant in a Rule 12(b)(6) motion. Instead, the facts alleged in ¶¶ 5-34 of the counterclaim are the only facts this Court can consider in addressing this motion, which are to be taken as true at this juncture:

5. On February 10, 1997, Sixteen Plus was formed as a corporation to purchase a 300 plus acre parcel of land on the South shore of St. Croix, often referred to as Diamond Keturah (hereinafter referred to as the "Land") from the Bank of Nova Scotia ("BNS"), which had obtained its ownership interest subject to rights of redemption through a foreclosure sale conducted on February 13, 1996.

6. A contract to buy the Land subject to the rights of redemption was then entered into between Sixteen Plus and BNS on February 14, 1997.

7. At the time it was formed and at all times up to the present, all of Sixteen Plus' stock has been owned 50% by family members of Fathi Yusuf and 50% by family members of Mohammad Hamed.

8. At the time Sixteen Plus was formed, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.

9. Fathi Yusuf and Mohammad Hamed decided to buy the Land in question by providing the necessary funds to Sixteen Plus -- using only proceeds from the grocery store they owned – which they did as described below.

10. Yusuf, acting for the partners, then undertook the business arrangements regarding the purchase of the Land.

11. Yusuf made these business arrangements as to the purchase of the Land on behalf of the partnership rather than involving Hamed because, as both the Court in *Hamed v. Yusuf* and Fathi Yusuf himself have stated -- Fathi Yusuf was "in charge" of the business transactions for the partnership and they were under his "exclusive ultimate control". (*See, Hamed v. Yusuf*, 2013 WL 1846506 (V.I.Super. April 25, 2013)(para. 19 at page *6, "Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business. . . ." and Yusuf's May 9, 2013, *Motion to Stay the Preliminary Injunction* in that same action -- where Yusuf admitted

"[Hamed] never worked in any management capacity at any of the Plaza Extra Stores, which role was under *the exclusive ultimate control of Fathi Yusuf.*")

12. All funds used to buy the Land came from the Plaza Extra Supermarkets partnership – and thus from Yusuf and Hamed as the only two partners.

13. However, Fathi Yusuf did not want either the Government of the Virgin Islands or BNS to know the source of the funds he was using to buy the Land, as he did not want them to know he was secretly diverting unreported cash from the Plaza Extra Supermarket to Sixteen Plus as part of a criminal money laundering effort.

14. As such, Fathi Yusuf conspired with Isam Yousuf, his nephew who lived on St. Martin, to launder in excess of $4,000,000 in unreported, untaxed partnership funds to St. Martin from the Plaza Extra Supermarket operations -- so that they could then wire these funds back to a Sixteen Plus account at BNS in order for Sixteen Plus to use these 'laundered' funds to purchase the Land.

15. To accomplish this, Fathi Yusuf had large sums of cash delivered to Isam Yousuf in St. Martin, who thereafter deposited those funds into various accounts in St. Martin. Fathi Yusuf and Isam Yousuf then transferred the partnership's funds by wire to an account in the name of Sixteen Plus at BNS on St. Croix. The transfers (which exceeded $4,000,000) to Sixteen Plus' account at BNS took place between February 13th and September 4th of 1997.

16. To further cover up the partnership source of these funds, as well as to try to shelter Isam Yousuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership's supermarkets, Fathi Yusuf and Isam Yousuf agreed to create a sham note and mortgage for the transaction, naming Fathi Yusuf's niece who lived in St. Martin, Manal Mohammad Yousef ("Manal Yousef"), as the sham mortgagee.

17. Fathi Yusuf explained the note and mortgage to his partner, Mohammad Hamed, as well as the various Hamed shareholders of Sixteen Plus as being a business transaction to protect the property, that Manal Yousef could never actually enforce the mortgage, and that he could get it discharged at any time.

18. Fathi Yusuf then caused a sham note and mortgage in the amount of $4,500,000 to be drafted by Sixteen Plus' counsel in favor of Manal Yousef, dated September 15, 1997, even though she had no such funds, and had never advanced any funds to Sixteen Plus -- as those funds belonged 50/50 to the Hameds and Yusufs.

19. At Fathi Yusuf's direction, that sham note and mortgage in the amount of $4,500,000 were then executed by Sixteen Plus in favor of Manal Yousef on

September 15, 1997, even though the Land in question had actually not been purchased yet.

20. On December 24, 1997, BNS finally was entitled to a conveyance of the Land from the Marshal of the Territorial (now Superior) Court, as the rights of redemption in the foreclosure sale had expired.

21. As per the contract between them, instead of taking title, BNS assigned its right to this conveyance from the Marshal to Sixteen Plus. Sixteen Plus paid for this assignment with the funds from the partnership.

22. On February 22, 1998, Sixteen Plus finally received and recorded the deed to the Land. On that same day, Sixteen Plus also recorded the sham mortgage (dated September 15, 1997) in favor of Manal Yousef.

23. In 2003, the Federal Government filed felony money laundering and tax evasion criminal charges against Fathi Yusuf and Isam Yousuf, among others. [It should be noted that Isam, unlike the other defendants, avoided capture and arrest.]

24. The felony case included criminal charges related to the aforementioned laundering of funds by diversion from the partnership's Plaza Extra supermarkets to St. Martin to buy the Sixteen Plus Land.

25. Pursuant to those charges, the Federal Government placed a lien against various real property owned by Fathi Yusuf's United Corporation as well as corporations also owned jointly by the Yusuf and Hamed families -- including the Land owned by Sixteen Plus.

26. As part of its investigation and the charges, **the FBI retrieved the bank records from St. Martin showing the diversion of the funds from the partnership's Plaza Extra supermarkets to St. Martin -- and subsequent transfer of those laundered funds back to the bank account of Sixteen Plus in order to purchase this Land.** (Emphasis added.)

27. By May of 2010 it was clear that a settlement and plea would eventually be reached in the criminal action.

28. In May of 2010, without the knowledge of the Hameds, Fathi Yusuf took steps to obtain a "Real Estate Power of Attorney" from "Manal Mohammad Yousef Mohammad" **that gave Fathi Yusuf, *personally*, the power to do whatever he wished with the mortgage**, including releasing the mortgage or foreclosing on the Land for his own benefit, even though the Hamed family had actually paid 50% for the Land.

29. This power of attorney gave no rights or benefits to Sixteen Plus, even though Fathi Yusuf was an officer and director to the corporation, as well as a shareholder.

30. In 2013, the Federal Government reached a settlement in the criminal case, which included *inter alia* a lump sum $10 million payment of taxes to the Government of the Virgin Islands for previously unreported income from the Plaza Extra Supermarkets.

31. In addition to this large payment for back taxes, a fine in excess of $1,000,000 was also paid to the Government, along with a plea of guilty to the pending felony charge of tax evasion by the corporate defendant, who subsequently was determined to be the partnership.

32. As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf and several of the other defendants in the criminal were given personal immunity from criminal prosecution for pre-2002 acts of tax evasion and money laundering.

33. Sometime in 2017 Fathi Yusuf arranged with Manal Yousef to now claim the Note and Mortgage were valid so she could attempt to foreclose on it, even though she knew it was a fraudulent mortgage.

34. As part of this agreement, Fathi Yusuf and Manal Yousef agreed to split the proceeds of any foreclosure sale between themselves and other members of their families, despite knowing that such conduct would defraud Sixteen Plus of its primary asset.

These are the relevant facts before this Court, taken as true at this juncture, which Yusuf cannot "wish" away in a Rule 12 Motion by simply trying to ignore them. Nor can Yusuf argue with them or insert his own facts. With these well-pled facts in mind, a review the standard for addressing Rule 12 motions is in order.

II. The Rule 12(b)(6) Standard

To compound matters, Yusuf then tries to impose an outdated and now rejected standard for deciding Rule 12 motions, oddly chastising the new V.I. Rules of Civil Procedure while **failing to cite the V.I. Supreme Court's recognition of this new Rule**

12 standard in *Mills-Williams v. Mapp,* 2017 WL 2998939 at *4 (V.I. St. No. 2016-0054) (July 14, 2017):

> Significantly, Virgin Islands Rule of Civil Procedure 8 expressly states that the Virgin Islands "is a notice pleading jurisdiction," V.I. R. CIV. P. 8(a), and the Reporter's Note eliminates any doubt that this language is calculated to "apply[] an approach that declines to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief." V.I. R. CIV. P. 8 Reporter's Note (emphasis added); see also Brathwaite v. H.D.V.I. Holding Co., Super.Ct. Civ. No. 764/2016 (STT), __ V.I. ___, 2017 WL 2295123, at *2 (V.I. Super. Ct. May 24, 2017) (acknowledging that Virgin Islands Civil Procedure Rule 8(a)(2) **eliminates the plausibility standard and instead will permit a complaint so long as it "adequately alleges facts that put an accused party on notice of claims brought against it**"). (Emphasis added.)

Indeed, the rules were obviously amended to try to relieve this Court of unfettered use of such dilatory, burdensome motions at the outset of every case.

In short, the only question before this Court in this Rule 12 motion (under the actual applicable version of the Rule) is whether Counts I and II **adequately alleges facts that put Yusuf on notice of claims brought against him**. With this "notice pleading" standard in mind, each count will be analyzed.

III. Count I states a cause of action.

Count I is a claim alleging a tort known as the "Prima Facie Tort, which is a distinct cause of action, well recognized in its own right. As noted by Judge Dunston in *Edwards v. Marriott Management Corp. (Virgin Islands), Inc.,* 2015 WL 476216, at *6 (V.I. Super. Ct. Jan. 29, 2015), a "prima facie tort is a general tort." Judge Dunston recently reiterated this point again in *Bank of Nova Scotia v. Boynes,* 2016 WL 6268827, at *3 (V.I.Super. Ct. 2016)("[i]n the Virgin Islands, prima facie tort is recognized as a cause of action").

Both *Edwards* and *Boynes* cited *Glenn v. Dunlop,* 423 Fed. Appx. 249, 255 (3d Cir. 2011), which analyzed Virgin Islands law in recognizing this tort in the Virgin Islands.

Judge Dunston noted in footnote 15 of *Boynes* that the Third Circuit did not do a real *Banks* analysis, so he stated at the end of that footnote he would do one in footnote 16, which he then did:

> While the Supreme Court of the Virgin Islands has not yet weighed in on the issue, the Third Circuit, the District Court of the Virgin Islands, and the Superior Court have all recognized prima facie tort as a viable cause of action. In addition, many other jurisdictions also recognize prima facie tort as actionable. See, e.g., *The Modern Prima Facie Tort Doctrine*, 79 Ky. L.J. 519, 525–27 (1990/1991) ("twenty-one states, including New Jersey, plus the Virgin Islands and District of Columbia recognize prima facie tort"). Given that prima facie tort fills in gaps in the law and grants relief where there may not be any available, the Court finds that recognition of prima facie tort as a cause of action represents the soundest rule for the Virgin Islands and is in accord with local public policy. *Id.* at n.16

In short, this tort *has* been recognized within the Virgin Islands.[1] It has also been recognized by most other jurisdiction as well. Moreover, the Prima Facie Tort serves the two goals of tort law—"deterrence and compensation"—which is the guiding principle in establishing the soundest rule for the Virgin Islands under the Supreme Court holding in *Walters v Walters,* 2014 WL 1681319, at *5.

The cases citing this tort generally all reference § 870 of the Restatement (Second) of Torts, which provides:

> One who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability.

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[1] See, e.g., *Government Guarantee Fund of Finland v Hyatt Corporation,* 955 F. Supp. 441, 463 (D.V.I. 1997) (Prima Facie tort is recognized in the Virgin Islands). Indeed, *Edwards* went on to cite *Quinones v. United States,* 492 F.2d 1269, 1278 n.15 (3d Cir. 1974), which stated "[w]hen it becomes clear that the plaintiff's interests are entitled to legal protection against the conduct of the defendant, the mere fact that the claim is novel will not of itself operate as a bar to the remedy."

Indeed, in 2008, the United States Supreme Court cited § 870 with approval in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 657, 128 S.Ct. 2131, 2143, 170 L.Ed.2d 1012 (2008)("the Restatement (Second) of Torts sets forth as a "[g]eneral [p]rinciple" that "[o]ne who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances").

In short, this tort is well recognized within the Virgin Islands and elsewhere. *See, e.g., The Modern Prima Facie Tort Doctrine*, 79 Kentucky Law Journal 519, 525 (Spring 1990/1991) (showing clear majority of states recognize this tort). As noted by the V.I. Supreme Court in *Walters v Walters,* 2014 WL 1681319 (V.I. 2014), in adopting the "soundest rule," a court must be mindful that "Tort law serves two fundamental purposes: 'deterrence and compensation.'" *Id.* at *5 (citations omitted). Clearly the Prima Facie tort serves these two goals.

This tort has two key elements. First, there must be an intentional act that arises to conduct that is "generally culpable and not justifiable under the circumstances." Second, there must be damages. Based on the allegations in this case, it is clear that such elements have been clearly pled, as the counterclaim **adequately alleges facts that put Yusuf on notice of this claim being brought against him**. Indeed, trying to steal the only major asset of the corporation, in which one is an officer and a director, by trying to have a niece foreclose a mortgage created by one's own fraud certainly rises to this level.

Thus, the Rule 12 motion as to Count I can be denied based on the pleadings in the complaint, as the facts, taken as true at this juncture, certainly state a claim for damages based on this Prima Facie Tort.

IV. Count II states a cause of action.

Count II is a claim for Declaratory Relief and residual damages due to the Defendants' conduct. Yusuf does not argue that Count II fails to state a claim regarding the validity of the mortgage, but instead argues it does not state a claim against him because he did not file the foreclosure complaint. However, that argument overlooks these two key allegations in the counterclaim:

> 33. Sometime in 2017 Fathi Yusuf arranged with Manal Yousef to now claim the Note and Mortgage were valid so she could attempt to foreclose on it, even though she knew it was a fraudulent mortgage.
>
> 34. As part of this agreement, Fathi Yusuf and Manal Yousef agreed to split the proceeds of any foreclosure sale between themselves and other members of their families, despite knowing that such conduct would defraud Sixteen Plus of its primary asset.

Based on these facts, which must be taken as true at this juncture, Count II certainly states a claim against Yusuf. It alleges Yusuf is really the one behind the filing of this bogus foreclosure complaint, seeking a declaratory finding as to this point along with appropriate relief based on such a finding. In short, Count II **adequately alleges facts that put Yusuf on notice of this claim being brought against him**.

V. The counterclaim is not barred under the "first filed" doctrine.

Yusuf also argues that the counterclaim is barred by the "first filed" doctrine, as there is another lawsuit involving several defendants, including Yusuf, where damages are being sought for the same type of tort. However, as Yusuf concedes, that case involves different defendants and different allegations. For example, this counterclaim includes allegations not found in the other referenced case, such as:

> 33. Sometime in 2017 Fathi Yusuf arranged with Manal Yousef to now claim the Note and Mortgage were valid so she could attempt to foreclose on it, even though she knew it was a fraudulent mortgage.

34. As part of this agreement, Fathi Yusuf and Manal Yousef agreed to split the proceeds of any foreclosure sale between themselves and other members of their families, despite knowing that such conduct would defraud Sixteen Plus of its primary asset.

In short, the relief in this case is sought against Yusuf and Manal Yousef "**jointly** and severally," while the other case seeks relief based upon different facts against Yusuf and other parties who are not defendants here.

The only case cited by Yusuf, *Georgia Federal Bank FSB v. Great Cruz Bay Development Co., Inc.,* 1995 WL 18099798 (D.V.I. 1995), is easily and completely distinguishable. In that case, the court was faced with a situation where there were two lawsuits in two different courts *involving the same parties, raising the exact same issues and seeking the same relief against the opposing party,* **leading to a finding that the two lawsuits were identical.** *Id.* at *2. However, here there are different parties as well as additional, new facts, with different relief based on these new facts. Thus, *Georgia Federal* does not support Yusuf's theory that this case is the same as another one against him.

Thus, try as hard as he may, Yusuf cannot demonstrate that this is the same claim as the one pending against him in another case, as this counterclaim involves different factual allegations and different parties.

VI. The counterclaim is not barred by the applicable statute of limitations.

Like the rest of Yusuf's motion, the statute of limitations ("SOL") argument is frivolous. While Count I is a tort, subject to a two year SOL, the counterclaim alleges factual events in support of its claim that happened this year:

35. **Sometime in 2017** Fathi Yusuf arranged with Manal Yousef to now claim the Note and Mortgage were valid so she could attempt to foreclose on it, even though she knew it was a fraudulent mortgage. (Emphasis added).

36. As part of this agreement, Fathi Yusuf and Manal Yousef agreed to split the proceeds of any foreclosure sale between themselves and other members of their families, despite knowing that such conduct would defraud Sixteen Plus of its primary asset.

Thus, the running of the SOL period certainly did not even start until 2017 and in fact is extended each time Yusuf has Manal Yousef take additional actions to steal Sixteen Plus' main asset.[2]

Moreover, Yusuf's argument that the SOL somehow commenced in 2005 based upon an argument he made in another case is ludicrous. First, the SOL could not commence here until **Manal Yousef** began the tortious acts she agreed to do with Yusuf by filing this foreclosure complaint in 2017. Second, the argument that the SOL began in 2005 is just that—a fact-based Rule 56 argument by Yusuf, in another case based on

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[2] As noted by the V.I. Supreme Court in *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 230–31, 2013 WL 211707, at *3 (V.I. Jan. 17, 2013), *as amended* (June 21, 2013):

> When courts apply the continuing violation doctrine, the claim will not be barred provided that at least one wrongful *act* occurred during the statute of limitations period and that it was committed in furtherance of a continuing wrongful act or policy or is directly related to a similar wrongful act committed outside the statute of limitations.

See also, Goelet Dev. Inc. v. Kemthorne, Sec'y of the Interior, No. CV 07-50, 2016 WL 7015629, at *6 (D.V.I. Nov. 30, 2016) ("The NPS regularly locked and unlocked the gate. Each time that the NPS locked the gate could be viewed as a recurring act."); *Bluebeard's Castle, Inc. v. Hodge*, 51 V.I. 672, 685 (D.V.I.App.Div.2009) (continuing tortious conduct, such as trespass, extends the time in which a claim need be filed). This concept is simple, black letter law. See, e.g., *Udolf 631, LLC v. Select Energy Contracting, Inc.*, No. HHD CV 09 5032387 S, 2012 WL 386633, at *6 (Conn. Super. Ct. Jan. 12, 2012) ("continued to make misrepresentations and to conceal facts from the plaintiff").

different pleadings. Moreover, no court has found that date to be the trigger date for the running of any SOL on any claims raised by Sixteen Plus.[3]

In short, the SOL has not expired, as it just commenced.

VII. The Counterclaim is not barred by Judge Brady's "Laches" Order.

Just to make sure the kitchen sink does not go unused, Yusuf throws in an argument as a "Hail Mary" toss; that a current mortgage recorded against real property on St. Croix owned by Sixteen Plus is somehow subject to a laches order entered in an unrelated partnership wind-up accounting. Of course, such an argument is so far afield of what can be considered in a Rule 12 motion—whether the facts as pled put Yusuf on notice of the claims against him—that this Court should just summarily reject it.

In any event, the argument is as frivolous from a substantive perspective as it is from a procedural basis, as a quick review of that "laches" opinion confirms:

(1) Sixteen Plus is not a party in that case, nor is it an asset of the partnership being liquidated in that proceeding.

(2) The "Laches" opinion is based on partnership accounting principles involving the winding up of a partnership, as opposed to the legal principles related to this foreclosure proceedings instituted in 2017 to defraud Sixteen Plus.

In short, the counterclaim here is between a corporation, Sixteen Plus, and the counterclaim defendants who are attempting to use this Court to steal the corporation's primary asset, which is not an asset of the partnership. Just like the proverbial "Hail Mary" pass, this one fails as well.

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[3] Indeed, Sixteen Plus has noted that the SOL on the offending conduct in the referenced case is continuing as well, so the SOL in that case has continued to be triggered in 2016 and 2017. See excerpt from SOL pleading in that case, attached as **Exhibit 1.**

VIII. Conclusion

Rule 12(b)(6) motions address the sufficiency of the pleadings as filed. Here, the counterclaim states two causes of action against the counterclaim defendants, so the motion can be denied. Moreover, none of the other arguments raised by Yusuf support a dismissal of the counterclaim.

Dated: January 8, 2018

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CERTIFICATE OF SERVICE

This document complies with the page or word limitation set forth in Rule 6-1 (e). I hereby certify that on this 8th day of January, 2018, I served a copy of the foregoing as agreed by the parties:

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

HISHAM HAMED, individually, and derivatively, on behalf of **SIXTEEN PLUS CORPORATION,** *Plaintiff,* v. **FATHI YUSUF, ISAM YOUSUF** and **JAMIL YOUSEF** *Defendants,* and **SIXTEEN PLUS CORPORATION,** *a nominal Defendant.*	**Case No.: 2016-SX-CV-650** **DERIVATIVE SHAREHOLDER SUIT, ACTION FOR DAMAGES AND CICO RELIEF** **JURY TRIAL DEMANDED**

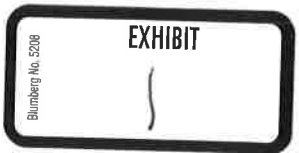
PLAINTIFF HISHAM HAMED'S OPPOSITION TO DEFENDANTS ISAM AND JAMIL YOUSUFS' MOTION TO DISMISS

On December 23, 2016, Plaintiff filed his First Amended Complaint ("FAC"). Defendant Fathi Yusuf filed a motion to dismiss on January 9, 2017, which is briefed.

On June 4, 2017, Defendants Isam and Jamil Yousuf ("Yousufs") sought permission to file their own motion to dismiss in excess of the 20-page limit, which this Court granted on July 7th, deeming that motion filed as of that date. The Plaintiff will now address the Yousufs' Rule 12 motion.[1]

One preliminary comment is in order. The Yousufs began their motion with a long dissertation of the alleged "facts." However, Plaintiff will address the salient 'facts' as they are relevant in response to each issue raised in Yousufs' Rule 12 motion.

[1] An unopposed motion to amend Jamil's last name to "Yousuf" is being filed.



~~Likewise, even if they had not been waived when their counsel filed a general NOA, the~~ defense of service and personal jurisdiction are governed by 5 V.I.C. § 115 and 14 ~~V.I.C. § 607(j), both of which moot the issues raised under 5 V.I.C. §4903.~~

II. The allegations in the FAC are not barred by the SOL

The Yousufs argue next that the allegations against them are barred by the statute of limitations ("SOL"). Like Fathi Yusuf, the Yousufs concede that there is a five year limitations period for a CICO claim under 14 V.I.C. § 607(h). They further concede the statute runs from the date of ***discovery***, citing the applicable law, so that issue will not be briefed further here.

What the Yousufs ignore is that the acts giving rise to this CICO criminal conspiracy are still continuing, so that the SOL is still being triggered each day a new act occurs. Therefore, while the SOL for a cause of action does not accrue until the wrong is discovered, the commencement of the SOL is started all over again each time a new "act" in furtherance of the criminal conspiracy is committed, as noted by the V.I. Supreme Court in *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 230–31, 2013 WL 211707, at *3 (V.I. Jan. 17, 2013), *as amended* (June 21, 2013) ("When courts apply the continuing violation doctrine, the claim will not be barred provided that at least one wrongful *act* occurred during the statute of limitations period and that it was committed in furtherance of a continuing wrongful act or policy or is directly related to a similar wrongful act committed outside the statute of limitations.") *See also, Goelet Dev. Inc. v. Kemthorne, Sec'y of the Interior*, No. CV 07-50, 2016 WL 7015629, at *6 (D.V.I. Nov.

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under *Najawicz,* in addition to the specific "personal jurisdictional" provisions of 14 V.I.C. § 607(j) that clearly supplement the §4903 factors.

30, 2016) ("The NPS regularly locked and unlocked the gate. Each time that the NPS locked the gate could be viewed as a recurring act."); *Bluebeard's Castle, Inc. v. Hodge,*51 V.I. 672, 685 (D.V.I.App.Div.2009) (continuing tortious conduct, such as trespass, extends the time in which a claim need be filed). This concept is simple, black letter law. See, e.g., *Udolf 631, LLC v. Select Energy Contracting, Inc.*, No. HHD CV 09 5032387 S, 2012 WL 386633, at *6 (Conn. Super. Ct. Jan. 12, 2012) ("continued to make misrepresentations and to conceal facts from the plaintiff").

Based on the express wording of § 607(h), the CICO statute of limitations has not run. As alleged in ¶ 45 of the FAC, the wrongful conduct began sometime in 2010, but was intentionally hidden by Fathi Yusuf. The first suggestion of any actionable wrongdoing took place in late 2012 when the letter from the lawyer in St. Martin was received (FAC ¶ 55), which is why the verified complaint states that his criminal conspiracy was not discovered until 2012.[4] FAC ¶ 49. Moreover, the predicate acts in furtherance of this hidden plan have continued to take place since then, with specific predicate acts in furtherance of this plan occurring each year since 2012 through the current date. (FAC ¶¶ 55-79).

Indeed, the filing of the affidavit by Jamil Yousuf in an effort to defeat service and jurisdiction over Manal Yousef in another case, Civil No. 16-SX-65, is an additional wrongful act in this criminal conspiracy, as he filed an affidavit to suggest Manal was not

[4] While Fathi Yusuf may have decided years ago to try to use the Manal Yousef mortgage to keep the entire funds for himself, the Hamed shareholders thought they would always receive 50% of any such funds until receiving the letter in 2012, referenced in the FAC (¶55) and attached hereto as **Exhibit 3,** no one had previously suggested that this heretofore bogus mortgage was now supposedly valid and enforceable.

subject to the jurisdiction of this Court. See **Exhibit 2**. Of course, Manal Yousef herself did not file an affidavit making any such absurd claim. See **Exhibit 2**. Likewise, Jamil's affidavit saying Manal Yousef has not been in St. Martin for years is directly contradicted by a prior **sworn** statement by another co-conspirator, Fathi Yusuf, who stated in 2016 in documents filed in another case against him in the Superior Court as follows (See **Exhibit 2**):

> Manal Yousef's current address to the best of my knowledge is 25 Gold Finch Road, Pointe Blanche, St. Martin.

Thus, the acts to perpetrate this criminal fraud on the Plaintiff, as well as this Court, still continue so that the CICO limitations period has not even begun, much less run.[5]

Finally, as the Virgin Islands Supreme Court recently held in another case between the Yusuf/Hamed parties, whenever there is ***any*** factual dispute as to the application of the SOL discovery rule in a case where a jury demand has been made, **those facts absolutely *must* be resolved by the jury**. *See United Corp. v. Waheed Hamed*, 2016 WL 154893, at *7 (V.I. Jan. 12, 2016) (reversing a SOL summary judgment ruling.)

In summary, Yousufs' SOL arguments as to each Count can be summarily denied, as at the very least there are sufficient facts pled to create a factual issue as to when the wrongful conduct was ***discovered*** and whether the SOL has even started to run since the Defendants' wrongful acts are continuing.

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[5] Likewise, while the Yousufs repeat this SOL argument as to the only other remaining count alleged against them—the tort of outrage—that argument can be summarily rejected for the same reason, as the FAC alleges that this wrongful conduct occurred each year since 2012. See FAC ¶¶ 55-79.