

**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 YOUSUF,

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal Defendant.

Case No.: SX-2016-CV-00650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

**HISHAM HAMED'S
MOTION TO AMEND HIS *FIRST AMENDED COMPLAINT*
TO JOIN MANAL YOUSEF AS A DEFENDANT**

I. Introduction

Plaintiff Hisham Hamed moves the Court, pursuant to V.I. R. CIV. P. 15(a)(2), to allow him to amend his *First Amended Complaint* ("FAC") dated December 23, 2016, to join Manal Yousef as a defendant. As discussed below, while Hamed originally believed that Manal was a knowing and active participant in the original acts that led to the creation of the sham note and mortgage at issue (1995-2003)—he also felt that thereafter she was a straw-man and dupe who was not involved in the later conspiracy at issue. As the creation of those documents is not part of the instant complaint she was not named. However, following initial discovery in this action, Hamed now believes he can prove that she is, and has been, fully participatory with the defendants in the present conspiracy.

As an explanation of why this was not determined previously, Hamed notes that this action has been effectively stalled since 2017 due to a number of procedural

issues discussed below. No answers have been filed yet, and no depositions have been taken or are presently noticed. However, after discovery re-started this summer, Hamed's view changed significantly. The discovery responses of the other defendants here, and further investigation by counsel have resulted in Hamed ascertaining significant proof that she has been an active, fully participatory co-conspirator in the alleged CICO conspiracy.

While Rule 15(a) of the Virgin Islands Rules of Civil Procedure provides that the Court should freely give leave to amend when justice so requires, appropriate justifications for deviating from that norm include undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of the amendment. *Davis v. UHP Projects, Inc.*, 74 V.I. 525, 536-37 (2021) *citing Basic Services, Inc. v. Gov't of the V.I.*, 71 V.I. 652, 667 (V.I. 2019) (*quoting Reynolds v. Rohn*, 70 V.I. 887, 899-900, 2019 VI 8 (V.I. 2019)). Thus, Hamed will address each of these factors.

Before proceeding, Hamed again notes that none of the primary defendants have yet answered. This is restated because the reason for their non-filing is very important. It is because they have all submitted motions to dismiss predicated on the absolute *need to have Manal joined as a party here*, described below. Thus, Hamed expects no oppositions will be filed. Moreover, the time for depositions has just been enlarged.¹ Finally, there is a pending, fully briefed motion to consolidate this action with the two companion actions described below.

¹ As set forth below, (1) Manal is an active litigant in the two companion cases, one of which she brought, (2) she has USVI counsel who also represents two of her family members who are defendants here—and who, therefore, has been copied on, and is fully informed as to these proceedings, (3) she has not deposed witnesses yet, (4) nor has she yet been deposed herself—and (5) although not a U.S. citizen, she is fully subject to the jurisdiction of this Court.

II. Procedural Posture of the Three “Diamond Keturah” Actions

A number of cases have been filed regarding the note and mortgage relating to the 1997 purchase of the “Diamond Keturah” property by Sixteen Plus—and the present efforts of members of Fathi Yusuf’s family to wrest that property from Sixteen Plus and the Hameds. Three of those actions remain active² and are relevant.

First, on February 12, 2016, Sixteen Plus Corporation filed a declaratory judgment action against Manal Yousef, Fathi Yusuf’s niece. *Sixteen Plus v. Manal Yousef*, SX-2016-CV-00065 (“65 action”). Though Manal was the defendant (sued for declaratory judgment as to the invalidity of the note and mortgage) she countersued, also for a declaratory judgment, alleging:

6. The First Priority Mortgage is valid and enforceable pursuant to the terms and conditions set forth therein, and the plaintiff/counter-defendant is contractually obligated to fulfill all of the terms and conditions of the Promissory Note and First Priority Mortgage and to make the payments due in accordance to the terms and conditions to which it agreed to be legally bound and obligated.

WHEREFORE, the defendant/counter-claimant respectfully requests this Court enter an order declaring the Promissory Note and First Priority Mortgage executed by the plaintiff/counter-defendant valid and fully enforceable, together with interest due and owing and further awarding the defendant/counter-claimant her costs including an award of attorney's fees, for being required to defend the Complaint and to bring this counterclaim.

² The additional cases are no longer relevant to these three remaining actions. For example, on July 27, 2015, Fathi Yusuf filed ST-2015-CV-000344, an action against Sixteen Plus Corporation....Mohammad A. Hamed, Waleed M. Hamed, Waheed M. Hamed, Mufeed M. Hamed, and Hisham M. Hamed. That action sought:

3. An order dissolving...Sixteen Plus and directing the windup of the corporation[]; [and]
4. An order appointing a receiver for...Sixteen Plus to sell the real estate holdings of both corporations. . . .

Hamed believes that 2015 action was intended to force the issue of the note and mortgage in St. Thomas, and led to the remaining cases—but was dismissed without prejudice on the joint motion of the parties on November 15, 2016.

On June 7, 2017, Sixteen Plus answered Manal's amended counterclaim, asserting several affirmative defenses including, at 2, failure of consideration and "*in pari delicto*":

1. The sham note and mortgage referred to in the Amended Counterclaim are unenforceable because there was no consideration paid or otherwise given by Defendant in exchange for the sham note and/or mortgage.

* * * *

7. Defendant is barred from the relief sought in the Amended Counterclaim because the sham note and mortgage referred to in the Amended Counterclaim are unenforceable because the sham note and mortgage were procured *as part of and in furtherance of a fraudulent criminal conspiracy in which Defendant was an active participant*. (Emphasis added.)

Second, on October 31, 2016, Hisham Hamed filed the instant action individually and derivatively, on behalf of Sixteen Plus Corporation, against Fathi Yusuf, his nephew (Isam) and Isam's son (Jamil)—as well as nominal defendant Sixteen Plus. *Hisham Hamed v. Fathi Yusuf et al.*, SX-2016-CV-00650 ("650 Action"). Hamed alleged that Fathi and his family members were engaged in a CICO conspiracy to use the sham note and mortgage to fraudulently obtain half of the Diamond Keturah property belonging to Sixteen Plus—in derogation of Fathi's fiduciary duties to Sixteen Plus and its shareholders as a director and officer.

As noted above, the primary defendants³ have not yet answered. Rather, on December 5, 2016, Fathi Yusuf filed a motion to dismiss which is pending—based in part on the Hamed's failure to join his niece (Manal) as a defendant here. On June 14, 2017, Isam (Manal's brother) and Jamil (Isam's son) filed a 48-page memorandum in support of a motion to dismiss based on a number of issues, including "[the FAC] fails to join an indispensable party, namely, Mana! Yousef." Nominal defendant Sixteen

³ Hamed uses the term "primary defendants" to mean Fathi, Isam and Jamil—as Sixteen Plus is a nominal defendant in the derivative action. Moreover, to avoid confusion, Hamed uses the first names for those three related defendants rather than their last names because, although they are all family, they use different spellings of the last name: Fathi YUSUF, Manal YOUSEF and Isam/Jamil YOUSUF.

Plus, through independent counsel, filed an answer essentially stating the requisite neutrality.

Third, on September 31, 2017, Manal filed an action on the same note and mortgage—again alleging an identical breach as she alleged in the counterclaim to the 65 action. *Manal Yousef v. Sixteen Plus*, SX-2017-CV-00342 (“342 Action”). However, as she had sought only declaratory relief in 65, in 342 she sought foreclosure and a deficiency judgment. Sixteen Plus answered and filed a counterclaim, as well as a third-party action against Fathi Yusuf.

On December 16, 2018, Judge Willocks consolidated the 65 and 342 cases, and assigned them to Judge Meade. Thereafter, all three cases fell down a hole of no one person's making, as follows:

- A. Having been assigned the two consolidated companion cases 65 and 342, Judge Meade, *sua sponte*, attempted to refer those two cases to the Complex Litigation Division.
- B. Less than 3 weeks later, Hamed filed his brief in support—and suggested that this (650) case be included.
- C. Less than 3 weeks later, both Manal and the defendants here filed oppositions.
- D. On March 16, 2020, Judge Malloy denied the motion, stating:

It might be just, efficient, and cost-effective to reassign all the cases to the same judge. But only the Sixteen Plus Cases were referred to this Court to determine whether they are complex. And for that reason, the Court concludes that transferring fewer than all the cases to the Complex Litigation Division would not be "the most just, efficient, and cost-effective for the Court, counsel, and the parties."
- E. That, of course, is exactly when COVID struck. And it was not until July 27, 2022, that the parties jointly filed their *Joint Report and Motion for Scheduling Order*.
- F. Since then, the parties have proceeded with surprising alacrity.

III. Facts

As set forth in *Hamed's Second Motion to Compel: As to Banking Records of Isam Yusuf*,⁴ there are two starkly different factual views here. At page 6,

Hamed will seek to argue that the central factual issue in this series of cases is starkly black and white: Whose funds were really provided to Sixteen Plus? Did Manal Yousef's father deposit \$4.5 million into Isam Yusuf's BFC accounts over a seven-year period as he alleges, or was the money in those accounts simply skimmed funds put there by Wally and Fathi over a very short period from April 1996, onwards? In other words, were Manal's funds loaned to Sixteen Plus to buy the subject land, or were only Hamed's and Yusuf's funds being deposited and transferred to Sixteen Plus to buy the land? If these were not Manal's funds, there was "fraud, coercion or other nefarious inducement into the [mortgage] contract." *Celestin v. LLP Mortg., Ltd.*, No. 2007-014, 2007 VI Supreme LEXIS 6, at *5 (Nov. 9, 2007)(citing *Restatement (Third) of Property (Mortgages)* §§ 1.1 and 1.2.)⁷[⁵] The V.I. Supreme Court having adopted it, Hamed will contend that *Restatement 3d of Property: Mortgages*, § 1.2, is clear—that where sham notes and the associated mortgages arise without any real value having been provided by the putative loaning party (i.e., undertaken without actual funding for some other purpose.* * * *At trial, Hamed will seek to prove that the two \$2 million tranches of funds transmitted by Isam Yusuf to Sixteen Plus were solely monies belonging to the Hamed and Yusuf families: "The sole purpose of the mortgage [from Manal was] to. . ." change the apparent owner of the funds and to "establish a lien priority superior to the claims of possible future creditors." *Id.* But Isam Yusuf will counter that this was a real loan—that these were separate, unrelated funds coincidentally in his same 1995 Isam BFC accounts—funds his father (Mohammad) had deposited into Isam's accounts slowly, in smaller deposits over a long period—as a gift to Manal Yousef. These are two radically different stories.

Another critical "fact" is that the defendants have stated that Manal *should be* joined. As stated above, none of the primary defendants have answered here—filing motions to dismiss instead. In Fathi's January 9, 2017 motion to dismiss the FAC, he states the following, at 26:

⁴ Filed November 23, 2022.

⁵[Footnote in the original.] 7. Hamed contends in this action that Fathi's family members, including his niece, Manal Yousef, planned these documents to eventually take the Hamed half. . . .Despite the various spellings, Mohammad Yusuf, who also goes by the last name Hamdan, is Fathi Yusuf's brother. Isam Yusuf and Manal Yousef are Mohammad's children. Thus, Fathi is their uncle. Defendant Jamil Yusuf is the brother of Manal, the son of Mohammad and the nephew of Fathi.

it is clear Manal Yousef has an interest relating to the subject of the action-her First Priority Mortgage on the Property which Plaintiff seeks to have invalidated-and, plainly, disposing of the action in her absence may, as a practical matter, impair or impede her ability to protect the interest. Therefore, Manal Yousef is a necessary party and should be joined.

Isam and Jamil expressed the *identical* thought on the subject in their June 14, 2017, 48-page memorandum in support of their motion to dismiss, at 45-46:

it is clear Manal Yousef has an interest relating to the subject of the action-her First Priority Mortgage on the Property which plaintiff seeks to have invalidated-and, plainly, disposing of the action in her absence may, as a practical matter, impairs or impedes her ability to protect the interest. Therefore, Manal Yousef is a necessary party and should be joined.

This coincidental commonality of thought completely supports this amendment.

IV. Applicable Law

Rule 15(a)(2) provides:

(a) Amendments Before Trial.

* * * *

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent⁶ or the court's leave. The court should freely give leave when justice so requires.

Despite the provision in the Rule that “[t]he court should freely give leave when justice so requires,” amendments are within the sound discretion of the Superior Court⁷—and, as a result, the Superior Court may deny a request to amend so long as it articulates a sound justification—a “justifying reason”. See *Reynolds v. Rohn*, 70 V.I. 887, 899-900 (2019 V.I. Supreme LEXIS 15 (V.I. 2019)); see also *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 534 (V.I. 2012). The V.I. Supreme Court has addressed

⁶ Hamed has simultaneously sought consent from the other parties and will withdraw this motion if it is granted.

⁷ The V.I. Supreme Court has observed that it “ordinarily reviews the denial of a motion to amend an answer or other pleading only for abuse of discretion. *Harvey v. Christopher*, 55 V.I. 565, 577 (V.I. 2011). However, review is plenary when the Superior Court exercises its discretion based on the interpretation of application of a legal precept. *Corriette v. Morales*, 50 V.I. 202, 205 (V.I. 2008).” *Stiles v. Yob*, 65 V.I. 234, 239 (2016).

the meaning of the phrases “should freely give leave” and “sound justification” in two recent decisions. In 2019, it affirmed the denial of a motion to amend for futility. *Basic Servs., Inc. v. Gov't of the V.I.*, 71 V.I. 652, 667 (2019)(“the Superior Court's futility justification was sound.”) More recently, in 2021, the Court addressed the denial of a proposed amendment due to the movant's alleged delay in bringing the motion—reversing the lower court regarding a fourteen-year delay—after an extensive analysis.

Davis v. UHP Projects, Inc., 74 V.I. 525, 537-38 (2021):

the Superior Court determined “that an amendment would require additional discovery because the lack of prior legal notice of the negligence claim means [that UHP Projects] may not have utilized the discovery process to its full potential,” and further noted that “the Motion comes one year after the Court decided to disregard the ill-formed negligence claim.” (J.A. 35.)

We conclude that the Superior Court abused its discretion when it denied the motion to amend. This Court has characterized prejudice to the opposing party or the trial court as “the most important factor in determining whether leave to amend should be freely given,” and has expressly held that “**passage of time, without more, does not require that a motion to amend a complaint be denied.**” *Toussaint*, 67 V.I. at 949-50;^[8] see also *Stouffer v. Commonwealth*, 127 Pa. Commw. 610, 562 A.2d 922, 923 (1989) (“[A] trial court's refusal to allow amendment solely on the basis of unreasonable delay and nothing more is an abuse of discretion.”).

[12-14] ¶20 While the Superior Court determined that UHP Projects lacked prior notice of the claim, this is belied by the fact that UHP Projects briefed the equipment issue on the merits as part of its summary judgment briefing and has not asserted any *particularized* prejudice that it would suffer if the amendment were permitted. Importantly, the prejudice cannot simply be that UHP Projects may lose the case on the merits if the amended pleading is allowed; rather, “**[t]o constitute prejudice, the amendment must compromise [the defendant's] ability to present [its] case.**” *Philadelphia v. Spencer*, 139 Pa. Commw. 574, 591 A.2d 5, 7 (1991). Although the litigation had already been pending for approximately 14 years at the time the motion had been filed, Davis clearly believed that this claim had been pled in the original complaint at the start of the litigation and did not know that it was not until the Superior Court issued its October 28, 2015 opinion holding otherwise. And while the Superior Court placed significant weight on the fact that Davis did not file the motion to amend until nearly a year after the Superior Court issued its October 28, 2015 opinion, Rule 15 permits

⁸ In *Toussaint v. Stewart*, 67 V.I. 931, 947 (2017), the Court quotes the U.S. Supreme Court for the further proposition that: “In keeping with the intent and spirit of the rules of the Superior Court governing pleadings and amendments, decisions on the merits are favored, and dismissal of claims “on the basis of such mere technicalities” are to be avoided. *Foman*, 371 U.S. at 181.”

an amendment at any time — even during trial — and as noted above, unreasonable delay, without more, is not sufficient grounds to deny leave to amend. See *Toussaint*, 67 V.I. at 949-50; *Stouffer*, 562 A.2d at 923. **Moreover, though the litigation had been pending for 14 years, the parties remained engaged in motion practice and other pre-trial matters at the time the motion had been filed, with trial not imminent.** See *Selcke v. Bove*, 258 Ill. App. 3d 932, 629 N.E.2d 747, 752, 196 Ill. Dec. 202 (1994); *Leslie v. Hymes*, 60 A.D.2d 564, 400 N.Y.S.2d 350, 351 (1977). Significantly, the fact that the **Superior Court did not rule on the motion to amend until nearly three years after it was filed** — a period in which discovery could have occurred had the motion been granted in a timely manner — demonstrates that permitting the amendment would not have unnecessarily prolonged the proceeding. Therefore, we also reverse this aspect of the judgment under the September 6, 2019 opinion, and direct the Superior Court on remand to permit the amendment. (Emphasis added.)

V. Argument

A. Davis factor 1 — undue delay

As was the case in *Davis*, the two motions to dismiss were timely filed in January and June of 2017—and were fully briefed thereafter. Because there was no decision, the defendants did not file answers. Because the case was transferred and subject to several procedural issues discovery was almost completely delayed until 2022. Thus, the cases did not get back onto the rails until the unprompted filing of that Joint Report on July 22nd of this year. Thus, the entirety of the current litigation of this case has taken place in less than five months!

As was the case in *Davis*, trial is not imminent. At 74 V.I. 538, that Court noted “though the litigation had been pending for 14 years, the parties remained engaged in motion practice and other pre-trial matters at the time the motion had been filed, with trial not imminent.” The same is true here.

As was the case in *Davis*, “[t]o constitute prejudice, the amendment must compromise [the defendant's] ability to present [its] case.” That is absolutely not the case here. As noted above in the footnote, Manal is not prejudiced and the primary defendants are actually on records as being *enthusiastic* about her being joined.

B. Davis Factor 2 — bad faith or dilatory motive on the part of the movant

There has been no bad faith in Hamed's actions or prosecution of this action. To the contrary, it was Hamed's counsel that contacted the other parties to suggest the filing of the Report and moving the case along. All delays were caused by procedural matters not caused by any party, and COVID. The docket reflects that Hamed has always responded to filings in a rapid and timely manner and has sought to move the case to the best of his ability under difficult circumstances.

C. Davis factor 3 — repeated failure to cure deficiencies
by amendments previously allowed

The complaint in this action was amended once within the permissive time period allowed by part (a) of the Rule, primarily to add the conversion and civil conspiracy counts. In addition, Hamed voluntarily withdrew those two additional counts after initial briefings revealed them to be duplicative. No other amendments have been sought to cure deficiencies.

D. Davis factor 4 — undue prejudice to the opposing party
by virtue of allowance of the amendment

In *Toussaint* the V.I. Supreme Court stated that the "trial court's reliance on Toussaint's delay in seeking leave to amend and Stewart's supposed lack of opportunity to respond as justification for striking Toussaint's amended answer and counterclaim was an abuse of discretion." There, as here, the movant was already involved in and fully informed as to the issues presented, albeit in the same case. Because no depositions have begun here, "it is difficult to conclude that allowing the amendment would [] even remotely disrupt[] the trial court's procedure. . . ." *Id.* at 949. Moreover, because of the existing, extensive involvement of Manal's counsel with Jamil and Isam, the amended allegations are factually similar and not a surprise nor are they prejudicial.

E. Davis factor 5 — Futility

The futility discussed in *Basic Servs.* was legal impossibility because of the controlling law.⁹ There simply was no legal theory by which the movant could prevail, thus the motion was legally futile. No such futility exists with regard to Manal here. As all of the opposing parties here have stated, Manal is central to the legal issues which have been joined. Any insufficiency in the legal theories will be tested elsewhere, in the pending motions to dismiss.

VI. Conclusion

Based on the liberal text of the Rule, the early stage of the proceedings, the prior statements of all of the defendants that Manal should be a party here and the commonality of the related defendants and their counsel, this appears to be a perfect situation for amendment.

The proposed *Second Amended Complaint* is attached as **Exhibit A**,¹⁰ and the redline of that document is attached as **Exhibit B**. A proposed order is attached as **Exhibit C**.

⁹ The Court stated “[b]ecause unjust enrichment [*i.e. quantum meruit*] is an equitable remedy, it — like all equitable remedies — is inappropriate where a legal remedy is available.”). Thus, the Superior Court's futility justification was sound. *Id.* at 71 V.I. 652, 667 (2019).

¹⁰ Letter designations are used for exhibits here to differentiate them from exhibits to the FAC.

Counsel for Hisham Hamed

Dated: December 18, 2022



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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **December 18, 2022**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties, to:

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Case No.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE
RELIEF AND INJUNCTION**

JURY TRIAL DEMANDED



SECOND AMENDED COMPLAINT

The Plaintiffs, by counsel, hereby allege as the basis of their First Amended Verified Complaint against the Defendants as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76 and 14 V.I.C. §607.
2. Individual Plaintiff Hisham Hamed, ("Hamed") is an adult resident of St. Croix and is now and at all times relevant to this Complaint has been an owner of stock in nominal defendant Sixteen Plus Corporation ("Sixteen Plus").

3. Defendant Fathi Yusuf is an adult resident of St. Croix who was at all times relevant to this Complaint (and still is) a shareholder, officer and director of Sixteen Plus.
4. The Defendant Isam Yousuf is an adult resident of St. Martin and has been at all times relative hereto.
5. The Defendant Jamil Yousef is an adult resident of St. Martin and has been at all times relative hereto.
6. The Defendant Manal Yousef is an adult resident of Palestine (West Bank).
7. The Individual Plaintiff also brings a shareholder's derivative action on behalf of Sixteen Plus Corporation ("Sixteen Plus"), a Virgin Islands corporation that was formed in February of 1997, which is joined as a nominal defendant, as the cause of action belongs to the corporation, but its Board of Directors is such that the Board cannot be reasonably expected to bring suit in the name of the corporation.
8. Individual Plaintiff Hamed was at all times relevant to this Complaint (and still is) a shareholder of Sixteen Plus at all times relative hereto, as he was an initial shareholder when the corporation was formed and has continuously remained a
9. shareholder during all times relevant.
10. The Plaintiff can bring the derivative claim on behalf of the corporation pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, which is applicable to this cause of action.
11. The Board of Directors of Sixteen Plus currently consists of two directors, Fathi Yusuf, a named defendant, and Waleed Hamed. An original third director

voluntarily withdrew from the Board before the acts complained of here when he sold all of his stock in the corporation to the Hameds and Yusufs.

12. Fathi Yusuf and Waleed Hamed and their families are in intractable litigation in several other matters. Both have acknowledged this to be the case, and have filed papers in other proceedings before the Superior Court attesting to this. Moreover, the Superior Court (Willocks, J.) has entered an Order stating that the Hamed and Yusuf families could file a derivative action as to another jointly controlled corporation for the same reason.

13. Thus, Plaintiff Hamed has not made a demand on the Board of Directors, as it would be futile to make a demand on them to bring this suit on behalf of Sixteen Plus. As was true in the same situation before Judge Willocks, there would be no reasonable expectation that Fathi Yusuf would agree to have Sixteen Plus sue him for embezzlement, fraud and a violation of Section 605 of Title 14 of the Virgin Islands Code

FACTS

a. Background History – 1997-1999: Prior to the Alleged Conspiracy and Alleged Predicate Criminal Acts

14. 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.

15. 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.
16. At the time it was formed and at all times up to the present, all of the stock of Sixteen Plus has been owned 50% by family members of Fathi Yusuf and 50% by family members of Mohammad Hamed.
17. At the time Sixteen Plus was formed in the late 1990's, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.
18. 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 stores they owned -- which they did as described below.
19. Yusuf, acting for the Plaza Extra partners, then directed the business arrangements regarding the purchase of the Land, some of which were also carried out under that instruction by Waleed Hamed and Maher Yusuf.
20. Yusuf directed these business arrangements for the partnership as to the purchase of the Land using partnership funds rather than his partner Mohammad Hamed (or his son, Waleed) directing the purchase 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.*”]

21. All funds used to buy the Land came from funds removed from the Plaza Extra Supermarkets partnership by the Hamed and Yusuf families, 50/50.

22. However, Fathi Yusuf decided he did not want either the Government of the Virgin Islands or BNS to know the partnership source of the funds he was using to buy the Land, as he did not want them to know the two families were secretly diverting unreported cash from the Plaza Extra Supermarket to Sixteen Plus as part of a money laundering effort. The following details of that 1996-1997 effort are presented here as background information to the later predicate criminal acts and are not the subject of this Complaint.

23. Fathi Yusuf and Waleed Hamed acted with Isam Yousuf (his nephew who lived on St. Martin) Manal Yusef (his niece) who lived on St. Martin, and Yussra Yusuf (his daughter who was married to one of Isam’s brothers, Ayed Yousuf) who lived on St. Martin, to launder in excess of \$4,000,000 in unreported, untaxed partnership funds removed by the two families from the Plaza Extra Supermarkets, to St. Martin -- so that they could then wire these funds back to a Sixteen Plus account at BNS on St. Croix, in order for Sixteen Plus to use these ‘laundered’ funds to purchase the Land.

24. To accomplish this, Fathi Yusuf had large sums of cash delivered to Isam Yousuf in St. Martin, who thereafter directed and coordinated, with the assistance of Manal and Yussra, the deposit of those funds into various accounts in St. Martin.

Fathi Yusuf then directed the process by which he, Waleed Hamed and Isam Yousuf 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.

25. To further cover up the source of these funds, as well as to try to shelter Isam Yousuf, Manal Yousef and Yussrah Yusuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership's supermarkets, Fathi Yusuf, Waleed, Isam Yousuf and Manal Yousef agreed to create a sham note and mortgage for the transaction, naming Manal Yousef, as the sham mortgagee.

26. Fathi Yusuf explained the note and mortgage to his partner, Mohammad Hamed, as well as Waleed Hamed and shareholders of Sixteen Plus as being a business transaction to protect the property, that Manal Yousef would never actually enforce the mortgage, and that Yusuf could get the note and mortgage discharged at any time. The purpose of the mortgage was to change the change the apparent owner of the funds to evade taxes, and at the same time to establish a lien priority superior to the claims of possible future creditors—including USVI tax authorities.

27. To demonstrate the long-term effectiveness of this arrangement to his partner, Fathi Yusuf stated to Mohamad Hamed and his son Waleed Hamed that all of the financials of the corporation, USVI tax filings and annual USVI corporate filings would, in the future, **accurately reflect that the funds came from Hamed and**

Yusuf as Sixteen Plus shareholders – and would not reflect the note and mortgage as a valid corporate debt to Manal – as further described below.

Thus, he explained, no USVI laws would be broken by making it appear that Manal Yousef had provided funds or was the holder of an enforceable claim. Once the statute of limitations ran out on the tax evasion, all of the actual corporate filings of Sixteen Plus would be completely accurate and free from criminal liability. Nor could the tax authorities or other entities seize the land without having to fight about Manal's claims.

28. Fathi Yusuf then caused a corporate resolution, 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.

29. The note and mortgage exceeded the amount transferred from St. Martin by \$500,000. The additional \$500,000 came from funds that Fathi Yusuf caused to be deposited directly into Sixteen Plus' St. Croix bank account. Thus, \$500,000 of the \$4.5 million used to buy the land was directly provided by the Hamed and Yusufs without going through St. Martin..

30. 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 transferred yet – and the amount transferred through St. Martin was only \$4 million.

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

32. 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.

33. On February 22, 1999, Sixteen Plus finally received and recorded the deed to the Land. On that same day, Sixteen Plus also recorded the sham mortgage (as originally dated September 15, 1997) in favor of Manal Yousef.

a. The Money Laundering Charges-2003

34. In 2003, the Federal Government filed felony money laundering and tax evasion criminal charges against Fathi Yusuf, Waleed Hamed and Isam Yousuf, among others.

35. The felony case included criminal charges related to the aforementioned laundering of funds to St. Martin to buy the Sixteen Plus Land. *That case and those criminal charges are not the subject of the CICO case here – or claimed as predicate acts.*

36. 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 at issue here, by then owned by Sixteen Plus.

37. The Government also identified the money laundering through St. Martin and the fact that \$500,000 in currency was deposited with funds from the supermarkets to make up the difference.

38. As part of its investigation and the charges, the FBI retrieved and documented the bank records from St. Martin showing the diversion of the \$4 million in 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. It also documented the deposits of \$500,000 directly into the St. Croix account by the partnership. Two French investigative reports were provided that tracked the accounts of Isam, Hamdan Diamond, Waleed Hamed and Fathi Yusuf—to show the flow of the \$4 million in laundered funds into the Sixteen Plus account.

b. The Value of the Sixteen Plus Property Dramatically Increases-2005

39. While the criminal case continued over the next years, various third parties attempted to buy the Land from Sixteen Plus at substantially higher prices than was paid for the property, with the highest offer reaching \$30 million.

40. Recognizing this substantial increase of 500% in value in less than 10 years, Fathi Yusuf began to try to figure out how to pocket these funds for himself.

41. In this regard, the Federal Government agreed that it would remove its lien and the Land could be sold – but **only** if the proceeds of any such sale were escrowed pending the outcome of the criminal case and not paid to Manal Yousef.

42. Contrary to the best interests of Sixteen Plus and its shareholders, Fathi Yusuf began to formulate a plan to embezzle from and defraud Sixteen Plus of the value of the Land, and thus rejected offers for the Land unless the sham Manal Yousef note and mortgage were paid -- so he could then get sole control of these funds.
43. The Federal Government refused to agree to the request that the Manal Yousef mortgage be paid first, asserting its own doubts about the validity of the sham mortgage.
44. The US Marshal suggested Fathi Yusuf could also have had Manal Yousef agree to an escrow of the sales proceeds while preserving her alleged mortgage rights, which would have allowed the sale to take place and fully protect the debt allegedly owed to her, but this would have necessarily involved her in the on-going criminal prosecution since the Land was actually purchased with laundered funds, so that suggestion was rejected. Indeed, once the funds were escrowed, Fathi Yusuf would lose his opportunity to keep the funds for himself pursuant to his Plan.
45. As such, Sixteen Plus lost then, and is continues to lose the benefit of such sales at the highest and best amount of \$30 million because of Fathi Yusuf's insistence that the sham mortgage be paid upon the sale of the property -- which payment the Federal Government refused to allow.

c. The Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy

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

47. In May of 2010, without the knowledge of the Hameds or disclosure of either their acts or the related documents, Defendants began to implement the *Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy* (the "Hidden Plan") by first obtaining 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% of the purchase price to buy the Land. See **Exhibit 1**. Isam Yousuf, Manal Yousef and Jamil Yousuf ("the St. Martin Defendants") were central to this effort to embezzle the Sixteen Plus funds.

48. This power of attorney Fathi Yusuf supplied and Manal Yousef executed, gave no rights or benefits to Sixteen Plus or the Hameds and thus usurped the corporate opportunity, despite the fact that Fathi Yusuf was an officer and director of the corporation, owing it fiduciary and statutory duties, as well as a shareholder.

49. Additionally, this undisclosed power of attorney specifically stated that Fathi Yusuf was given total power over what to do with the Land and foreclosure proceeds -- as he was also released and indemnified as to all actions he might

take in regard to his broad, personal power of attorney—which further demonstrated that the mortgage and note were a sham, as no bona fide lender gives a principal of the borrower a full power of attorney to discharge the debt without requiring payment.

50. Upon information and belief, the power of attorney was drawn up by a Virgin Islands lawyer retained by Fathi Yusuf and executed by Manal Yousef on St. Martin.

51. The existence and purpose of this power of attorney were not disclosed to the Hameds – and they did not learn of it or the Hidden Plan until after Yusuf attempted to steal all of the assets of Sixteen Plus, as he did with the Plaza Extra Supermarkets partnership in 2012 – all of which occurred well within the period of the statute of limitations applicable here.

52. That execution of the undisclosed, exclusive power of attorney in favor of Fathi Yusuf personally was orchestrated by Isam Yousuf, Jamil Yousuf and Manal Yousef in furtherance of the Plan with Fathi Yusuf to steal half of the value of the Land, then in excess of \$30 million, from Sixteen Plus and the Hamed shareholders.

53. The Defendants planned to use the sham mortgage to allow Fathi Yusuf to foreclose of the Land *for his own and his family's personal benefits*, and to thus deny Sixteen Plus the value of the Land.

54. 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.

55. 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, United Corporation, which subsequently was determined to be Yusuf's agent for the partnership.

56. As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf, Waleed Hamed and several of the other defendants—but not Manal Yousef--were given personal immunity from criminal prosecution for the acts of tax evasion and money laundering described above.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

57. After the criminal case was dismissed, the Fathi Yusuf and the St. Martin Defendants, in furtherance of the Hidden Plan, arranged for counsel on St. Martin to send a demand from Manal Yousuf to Sixteen Plus – for payment of the sham note and mortgage Sixteen Plus allegedly owed to Manal Yousef. See **Exhibit 2**.

58. That St. Martin counsel did not disclose to Sixteen Plus or the Hameds that Fathi Yusuf was also involved in the demand.

59. A response was made to that demand, to Manal Yousef, by Hamed's counsel on behalf of Sixteen Plus, which was reduced to writing -- pointing out that the mortgage was not valid for the reasons stated herein. See **Exhibit 3**.

60. While counsel on St. Martin promised to get a response to that letter after discussing the matter with his client (see **Exhibit 4**), he never did so.

61. In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others.
62. In 2015, Fathi Yusuf filed a civil lawsuit in the Superior Court as part of the Hidden Plan; seeking to dissolve Sixteen Plus in an attempt to, *inter alia*, dispose of the Land and trigger payment of the sham mortgage.
63. In the course of that litigation, Fathi Yusuf was required to produce all documents he had exchanged with Manal Yousef, including any powers of attorney.
64. When Fathi Yusuf did supply what he represented to be all such documents on July 26, 2016, the power of attorney was not disclosed.
65. Hamed's counsel wrote to Yusuf's counsel pursuant to Fed. R. Civ. P. 34 and 37 (**Exhibit 5**), specifically asking for verification under the Rules that there was no such "power of attorney":

Stefan - I reviewed these new responses and there are still several deficiencies:

* * *

Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else—**please confirm** there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), **powers of attorney**, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent. (Emphasis added.)

66. On August 5, 2016, Fathi Yusuf's counsel responded that he had initiated a "reasonable search" as to his client and his client's documents, and falsely represented – on behalf of Fathi Yusuf -- there was no such power of attorney.
- See **Exhibit 5**.

Joel, . . . Here are my responses to your numbered paragraphs:

* * *

I stand by my statement in the supplemental Rule 34 response that ***based on a reasonable search there are no other documents responsive to your request.*** I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail. (Emphasis added.)

67. During the same Superior Court litigation, Fathi Yusuf was also required to answer an interrogatory about the note and mortgage on the Land. To falsely make it appear that Manal Yousef was a *bona fide* mortgagee, hide the undisclosed personal power of attorney and protect the Hidden Plan – Fathi Yusuf stated under oath as follows (See **Exhibit 6**):

- a. That Manal Yousef loaned the full \$4.5 million on September 15, 1997, for the purchase of the Land;
- b. That Manal Yousef was paid three interest only payments on the mortgage between 1998 and 2000;
- c. That Manal's last known address is 25 Gold Finch Road, Point Blanche, St. Martin, N.A.;
- d. That he did not recall the last time he spoke with her;
- e. That Manal Yousef had retained counsel in the Virgin Islands;
- f. That he would not provide a phone number for Manal Yousef because she had counsel in the Virgin Islands.

68. All of the foregoing statements made by Fathi Yusuf in his interrogatory response are false, and were made in furtherance of the Hidden Plan to steal half of the value of the Land from Sixteen Plus and its other shareholders, the Hameds, by

a foreclosure -- as Fathi Yusuf committed perjury under oath before the Court in furtherance of the Plan when he made these statements.

69. Yusuf then filed a motion for a protective order to avoid providing Manal Yusuf's phone number.

70. After the Court denied Yusuf's motion and ordered Fathi Yusuf to provide the phone number of Manal Yousef, he then repeated the false statements above -- and **now** stated that he did not have her phone number despite his motion to protect that exact information -- but that she could be reached through her nephew, Jamil Yousef. See **Exhibit 7**.

71. However, the location given by Fathi Yusuf as Manal Yousef's address is actually in the possession of and used by Isam Yousuf, which is where he and his son, Jamil Yousef, reside.

72. Yusuf knew, when he falsely certified to the contrary, that this was not the location where Manal Yousef resided. It has since been learned that she returned to Palestine in 2010.

73. The purpose of this false representation in response to the Court's Order being that the would keep Manal's address and contact information from Sixteen Plus and the Hameds..

74. Indeed, when service of process in another pending Superior Court action was left at that address for Manal Yousef, Isam and Jamil Yousef intercepted the summons.

75. Upon information and belief, Jamil Yousef then agreed to further participate in this fraudulent Plan by allowing Fathi Yusuf to provide his name to the Court as

the alleged contact for Manal Yousef, to hide the truth that she had returned to Palestine.

76. Fathi Yusuf thereafter represented to the Superior Court, without the necessary identification of his role with his relatives, that he had been contacted by Manal Yousef's "agent.

77. During this time period, including in 2012, Fathi Yusuf personally arranged for **and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by – and was due to – Sixteen Plus' shareholders, the Hameds and Yusufs,** as follows:

- a. To conceal the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf filed tax returns for Sixteen Plus during this time period, including 2012. See **Exhibits 8** and **9**.
- b. In those filings he, personally signed and swore under oath and penalty of perjury that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and there was no loan or mortgage to a third person. *Id.*
- c. This comported with his repeated representations to the Hameds intended to keep the Hidden Plan hidden.
- d. To hide the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012.

- e. In those filings he stated that the \$4.5 million held by Sixteen Plus was received from Sixteen Plus' shareholders and due to them – and was not a loan or mortgage to a third person. See **Exhibit 10**.
 - f. This comported with representations to the Hameds.
78. In furtherance of this scheme, in 2013 Fathi Yusuf also created and requested Waleed Hamed sign an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. See **Exhibit 11**.
79. Indeed, the Fathi Yusuf and the other Defendants were wrongfully attempting to hide the fact that Fathi Yusuf and his family members were trying to steal the Land.
80. To further this Plan, Fathi Yusuf provided Manal Yousef and Isam Yousuf with funds to pay USVI counsel to represent the interests of the conspiracy..
81. Notwithstanding all of these facts being disclosed to Yusuf and the St. Martin Defendants, they have not recanted any of his false statements or filings -- and continue to pursue their Hidden Plan to steal the Land, the real property at Diamond Keturah, from Sixteen Plus without any payment to the company or its shareholders, as they continue to try to divert all such funds through Manal Yousef.

COUNT I - CICO

82. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

83. Section 605 of Title 14 of the Virgin Islands Code provides in part as follows:

- a. It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.
- b. It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
- c. It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, to use or invest, directly or indirectly, any part of the proceeds thereof, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise. . . .

84. Pursuant to 14 V.I.C. §607(a), any aggrieved party may institute civil proceedings against any persons to obtain relief from a violation of §605.

85. Sixteen Plus and its shareholders are such aggrieved parties under subsection in that:

- a. All Defendants are “person[s]” who through a pattern of criminal activity set forth in paragraphs 55 through 79, have “acquire[d]. . . directly or indirectly” an “interest in” the Land which is “real property” within the meaning of the statute.
- b. All Defendants are “person[s] who have received. . .proceeds derived, directly or indirectly, from a pattern of criminal activity in which [they] participated as. . .principal[s], to use or invest, directly or indirectly,. . .part of the proceeds thereof. . .in the acquisition of. . .[a] right, interest, or equity in” the Land, which is real property as set forth above.

86. Defendants acted in concert with one another in conspiring together in a pattern of activities to embezzle funds from and criminally defraud Sixteen Plus and its

shareholders, which is expressly prohibited by 14 V.I.C. §834, causing damages to Sixteen Plus and its shareholders.

87. Defendants conspired together within the statutory limitations period to accomplish this goal by using unlawful means, including the use of knowingly false court filings in two different cases, tax and corporate filings, use of the mail and wires -- and by perjured testimony in violation of 14 V.I.C. §1541 and §1548.

88. This was criminal activity as defined by Title 14, Chapter 41 (giving false statements), Chapter 75 (obstruction of justice) and Chapter 77 (perjury) as well as various reporting, wire fraud and other crimes.

89. Such criminal conduct by the Defendants was undertaken in a years long pattern as set forth in Chapter 30 of Title 14 of the Virgin Islands Code, as the Defendants acted in concert as a group in association with one another in carrying out their goal of embezzling funds from and otherwise defrauding Sixteen Plus and its shareholders, with each of the named Defendants being a Principal in this enterprise within the statutory limitations period. Indeed, the criminal enterprise is still on-going.

90. These were not isolated acts, and were all done with the intent to embezzle from, defraud and otherwise injure Sixteen Plus, file tax and corporate information with the USVI government and give perjured documents and testimony to the Courts of the Virgin Islands.

91. Pursuant to 14 V.I.C. §605, it is unlawful for the Defendants to engage in such a criminal activity, as was done here.

92. Sixteen Plus has been injured by this criminal activity targeting the enterprise, already subjecting its real property to a sham mortgage in a present value in the millions of dollars and by loss of value from the time the Land could have been sold or could now be sold for peak value.

93. As such, Sixteen Plus is entitled to all civil remedies permitted an aggrieved party by 14 V.I.C. § 607, **including statutory treble damages**, for all damages caused by Defendants' unlawful criminal enterprise.

~~COUNT II—CONVERSION [Withdrawn]~~

COUNT III (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

94. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

95. The acts alleged herein constitutes breach of fiduciary duty and self-dealing by Fathi Yusuf, an officer and director of the corporation, in that:

- a. Fathi Yusuf is and has been a director of Sixteen Plus,
- b. In that capacity, he negotiated the note and mortgage with Manal Yousef for the purpose of protecting the corporation's principal asset, the Land, for the benefit of Sixteen Plus.
- c. He later obtained a power of attorney from Manal Yousef giving himself control of and all rights in those assets, and denying them to the corporation.
- d. He did this without (1) offering the power of attorney or (2) disclosing it to Sixteen Plus,
- e. In violation of his duty as an officer and the negotiating official to do so,

- f. And has taken those benefits as his own
96. The corporation has been injured thereby.
97. The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT IV (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

98. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.
99. The acts alleged herein in paragraph 96 constitutes usurping of a corporate opportunity by Fathi Yusuf, an officer of the corporation acting in that capacity in dealing with Manal Yousef.
100. The corporation has been injured thereby.
101. The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

~~**COUNT V – CIVIL CONSPIRACY [Withdrawn]**~~

COUNT VI – TORT OF OUTRAGE

102. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.
103. The actions of the Defendants were intentional, wanton, extreme and outrageous.

104. The actions of the Defendants were culpable and not justifiable under the circumstances.

105. The actions of the Defendants caused injury to Sixteen Plus.

106. As such, the Defendants are liable for said injuries suffered by Sixteen Plus as a result of their intentional and unjustifiable misconduct.

WHEREFORE, the Plaintiffs seek:

- A. an award of compensatory damages of multiple loses of the sale of the Land at the highest and best sales value of \$30 million as stated by Fathi Yusuf, including treble damages where permitted by law,
- B. equitable orders with regard to the acts.
- C. consequential damages against the Defendants, jointly and severally, in an amount as determined by the trier of fact, along with any other relief the Court deems appropriate,
- D. Punitive damages if warranted by the facts and applicable law.
- E. Any and all other damages, fees, costs or other relief the Court may deem appropriate.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES

Dated: December 18, 2022

/s/ Carl J. Hartmann III
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CERTIFICATION

Counsel hereby certifies that he has affixed his signature hereto pursuant to the requirements of 14 V.I.C. §607(d) and has sent a true copy of the original complaint to the Attorney General as required by § 607(f). See Exhibit 1.

Dated: December 18, 2022

/s/ Carl J. Hartmann III
Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
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Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2022, I served a copy of the foregoing by the Court's E-File System and email, as agreed by the parties, on:

Charlotte Perrell
Stephen Herpel
Counsel for Defendant Fathi Yusuf

James Hymes
Counsel for Defendants
Manal Yousef
Jamil Yousuf
Isam Yousuf

Kevin Rames
Counsel for Nominal Defendant
Sixteen Plus Corporation

/s/ Carl J. Hartmann III

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

**HISHAM HAMED, on behalf of himself
and derivatively, on behalf of SIXTEEN
PLUS CORPORATION,**

Plaintiffs,

v.

**FATHI YUSUF, ISAM YOUSUF,
JAMIL YOUSUF, and
MANAL YOUSEF,**

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal defendant.

Case No.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE
RELIEF AND INJUNCTION**

JURY TRIAL DEMANDED

FIRST SECOND AMENDED VERIFIED COMPLAINT

The Plaintiffs, by counsel, hereby allege as the basis of their First Amended Verified Complaint against the Defendants as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76 and 14 V.I.C. §607.
2. Individual Plaintiff Hisham Hamed, ("Hamed") is an adult resident of St. Croix and is now and at all times relevant to this Complaint has been an owner of stock in nominal defendant Sixteen Plus Corporation ("Sixteen Plus").

3. Defendant Fathi Yusuf is an adult resident of St. Croix who was at all times relevant to this Complaint (and still is) a shareholder, officer and director of Sixteen Plus.

4. The Defendant Isam Yousuf is an adult resident of St. Martin and has been at all times relative hereto.

5. The Defendant Jamil Yousef is an adult resident of St. Martin and has been at all times relative hereto.

~~5-6.~~ The Defendant Manal Yousef is an adult resident of Palestine (West Bank).

6-7. The Individual Plaintiff also brings a shareholder's derivative action on behalf of Sixteen Plus Corporation ("Sixteen Plus"), a Virgin Islands corporation that was formed in February of 1997, which is joined as a nominal defendant, as the cause of action belongs to the corporation, but its Board of Directors is such that the Board cannot be reasonably expected to bring suit in the name of the corporation.

8. Individual Plaintiff Hamed was at all times relevant to this Complaint (and still is) a shareholder of Sixteen Plus at all times relative hereto, as he was an initial shareholder when the corporation was formed and has continuously remained a

7-9. shareholder during all times relevant.

8-10. The Plaintiff can bring the derivative claim on behalf of the corporation pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, which is applicable to this cause of action.

~~9-11.~~ The Board of Directors of Sixteen Plus currently consists of two directors, Fathi Yusuf, a named defendant, and Waleed Hamed. An original third director voluntarily withdrew from the Board before the acts complained of here when he sold all of his stock in the corporation to the Hameds and Yusufs.

~~10-12.~~ Fathi Yusuf and Waleed Hamed and their families are in intractable litigation in several other matters. Both have acknowledged this to be the case, and have filed papers in other proceedings before the Superior Court attesting to this. Moreover, the Superior Court (Willocks, J.) has entered an Order stating that the Hamed and Yusuf families could file a derivative action as to another jointly controlled corporation for the same reason.

~~11-13.~~ Thus, Plaintiff Hamed has not made a demand on the Board of Directors, as it would be futile to make a demand on them to bring this suit on behalf of Sixteen Plus. As was true in the same situation before Judge Willocks, there would be no reasonable expectation that Fathi Yusuf would agree to have Sixteen Plus sue him for embezzlement, fraud and a violation of Section 605 of Title 14 of the Virgin Islands Code

FACTS

a. Background History – 1997-1999: Prior to the Alleged Conspiracy and Alleged Predicate Criminal Acts

~~12-14.~~ 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.

~~13-15.~~ 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.

~~14-16.~~ At the time it was formed and at all times up to the present, all of the stock of Sixteen Plus has been owned 50% by family members of Fathi Yusuf and 50% by family members of Mohammad Hamed.

~~15-17.~~ At the time Sixteen Plus was formed in the late 1990's, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.

~~16-18.~~ 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 stores they owned -- which they did as described below.

~~17-19.~~ Yusuf, acting for the Plaza Extra partners, then directed the business arrangements regarding the purchase of the Land, some of which were also carried out under that instruction by Waleed Hamed and Maher Yusuf.

~~18-20.~~ Yusuf directed these business arrangements for the partnership as to the purchase of the Land using partnership funds rather than ~~involving~~ his partner Mohammad Hamed (or his son, Waleed) directing the purchase 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.*")

~~19-21.~~ All funds used to buy the Land came from ~~funds removed from~~ the Plaza Extra Supermarkets partnership ~~by the Hamed and Yusuf families, 50/50—and thus from Yusuf and Hamed as the only two partners.~~

~~20-22.~~ However, Fathi Yusuf decided he did not want either the Government of the Virgin Islands or BNS to know the partnership source of the funds he was using to buy the Land, as he did not want them to know ~~he—the two families werewas~~ secretly diverting unreported cash from the Plaza Extra Supermarket to Sixteen Plus as part of a money laundering effort. The following details of that ~~1996-1997~~ effort are presented here as background information to the later predicate criminal acts and are not the subject of this Complaint.

~~24-23.~~ Fathi Yusuf ~~and Waleed Hamed~~ acted with Isam Yousuf ~~(—his nephew who lived on St. Martin) Manal Yusef, (his niece) who lived on St. Martin, and Yussra Yusuf (his daughter who was married to one of Isam's brothers, Ayed Yousuf) who lived on St. Martin,~~ to launder in excess of \$4,000,000 in unreported, untaxed partnership funds ~~removed by the two families from the Plaza Extra Supermarkets,~~ 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 on St. Croix, in order for Sixteen Plus to use these 'laundered' funds to purchase the Land.

~~22-24.~~ To accomplish this, Fathi Yusuf had large sums of cash delivered to Isam Yousuf in St. Martin, who thereafter directed and coordinated, with the assistance or Manal and Yussra, deposited the deposit of those funds into various accounts in St. Martin. Fathi Yusuf then directed the process by which he, Waleed Hamed 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.

~~23-25.~~ To further cover up the ~~partnership~~ source of these funds, as well as to try to shelter Isam Yousuf, Manal Yousef and Yussrah Yusuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership's supermarkets, Fathi Yusuf, Waleed, ~~and~~ Isam Yousuf and Manal Yousef agreed to create a sham note and mortgage for the transaction, naming ~~Fathi Yusuf's young niece who lived in St. Martin, Manal Mohammad Yousef~~ ("Manal Yousef"), as the sham mortgagee.

~~24-26.~~ Fathi Yusuf explained the note and mortgage to his partner, Mohammad Hamed, as well as ~~the various Hamed~~ Waleed Hamed and shareholders of Sixteen Plus as being a ~~legitimate~~ business transaction to protect the property, that Manal Yousef ~~could and~~ would never actually enforce the mortgage, and that Yusuf could get the note and mortgage discharged at any time. The purpose of the mortgage was to change the change the apparent owner of the funds to

evade taxes, and at the same time to establish a lien priority superior to the claims of possible future creditors—including USVI tax authorities.

25-27. To demonstrate the long-term legitimacy-effectiveness of this arrangement to his partner, Fathi Yusuf stated to Mohamad Hamed and his son Waleed Hamed that all of the financials of the corporation, USVI tax filings and annual USVI corporate filings would, in the future, accurately reflect that the funds came from Hamed and Yusuf as ~~the Sixteen Plus~~ shareholders – and would not reflect the note and mortgage as a valid corporate debt to Manal – as further described below. Thus, he explained, no USVI laws would be broken by making it appear that Manal Yousef had provided funds or was the holder of an enforceable claim. Once the statute of limitations ran out on the tax evasion, all of the actual corporate filings of Sixteen Plus would be completely accurate and free from criminal liability. Nor could the tax authorities or other entities seize the land without having to fight about Manal's claims.

26-28. Fathi Yusuf then caused a corporate resolution, 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 ~~came solely from the partnership and~~ belonged 50/50 to the Hameds and Yusufs.

27-29. The note and mortgage exceeded the amount ~~laundered through~~ transferred from St. Martin by \$500,000. The additional \$500,000 came from ~~partnership~~ funds that Fathi Yusuf caused ~~the supermarkets to be~~ deposited directly ~~as currency i~~ into Sixteen Plus's St. Croix bank account. Thus,

\$500,000 of the \$4.5 million used to buy the land was directly provided by the ~~Partnership as cash deposits~~ Hamed and Yusufs without going through St. Martin.

~~28:30.~~ 30. 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-transferred~~ yet – and the amount transferred through St. Martin was only \$4 million.

~~29:31.~~ 31. On December 24, 1997, BNS finally was entitled to a conveyance of the Land from the Marshal of the Territorial (now Superior) Court of the Virgin Islands, as the rights of redemption in the foreclosure sale had expired.

~~30:32.~~ 32. 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.

~~34:33.~~ 33. On February 22, 1999, Sixteen Plus finally received and recorded the deed to the Land. On that same day, Sixteen Plus also recorded the sham mortgage (as originally dated September 15, 1997) in favor of Manal Yousef.

a. The Money Laundering Charges-2003

~~32:34.~~ 34. In 2003, the Federal Government filed felony money laundering and tax evasion criminal charges against Fathi Yusuf, Waleed Hamed and Isam Yousuf, among others.

~~33:35.~~ 35. 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. *That case and those criminal charges are not the subject of the CICO case here – or claimed as predicate acts.*

~~34-36.~~ 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 at issue here, by then owned by Sixteen Plus.

~~35-37.~~ The Government also identified the money laundering through St. Martin and the fact that \$500,000 in currency was deposited with funds from the supermarkets to make up the difference.

~~36-38.~~ As part of its investigation and the charges, the FBI retrieved and documented the bank records from St. Martin showing the diversion of the \$4 million in 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. It also documented the deposits of \$500,000 directly into the St. Croix account by the partnership. Two French investigative reports were provided that tracked the accounts of Isam, Hamdan Diamond, Waleed Hamed and Fathi Yusuf—to show the flow of the \$4 million in laundered funds into the Sixteen Plus account.

b. The Value of the Sixteen Plus Property Dramatically Increases-2005

~~37-39.~~ While the criminal case continued over the next years, various third parties attempted to buy the Land from Sixteen Plus at substantially higher prices than was paid for the property, with the highest offer ~~exceeding \$22~~reaching \$30 million.

~~38.40.~~ Recognizing this substantial increase of 500% in value in less than 10 years, Fathi Yusuf began to try to figure out how to pocket these funds for himself.

~~39.41.~~ In this regard, the Federal Government agreed that it would remove its lien and the Land could be sold – but **only** if the proceeds of any such sale were escrowed pending the outcome of the criminal case and not paid to Manal Yousef.

~~40.42.~~ Contrary to the best interests of Sixteen Plus and its shareholders, Fathi Yusuf began to formulate a plan to embezzle from and defraud Sixteen Plus of the value of the Land, and thus rejected offers for the Land unless the sham Manal Yousef note and mortgage were paid -- so he could then get sole control of these funds.

~~41.43.~~ The Federal Government refused to agree to the request that the Manal Yousef mortgage be paid first, asserting its own doubts about the validity of the sham mortgage.

~~42.44.~~ The US Marshal suggested Fathi Yusuf could also have had Manal Yousef agree to an escrow of the sales proceeds while preserving her alleged mortgage rights, which would have allowed the sale to take place and fully protect the debt allegedly owed to her, but this would have necessarily involved her in the on-going criminal prosecution since the Land was actually purchased with laundered funds, so ~~such a request was never made~~ that suggestion was rejected. Indeed, once the funds were escrowed, Fathi Yusuf would lose his opportunity to keep the funds for himself pursuant to his Plan.

43.45. As such, Sixteen Plus lost then, and is continues to lose the benefit of such sales at the highest and best amount of \$30 million because of Fathi Yusuf's insistence that the sham mortgage be paid upon the sale of the property -- which payment the Federal Government refused to allow.

c. The Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy

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

45.47. In May of 2010, without the knowledge of the Hameds or disclosure of either their acts or the related documents, Defendants began to implement the *Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy* (the "Hidden Plan") by first obtaining 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% of the purchase price to buy the Land. See **Exhibit 1. ~~The St. Martin Defendants~~ Sam Yousef, Manal Yousef and Jamil Yousef ("the St. Martin Defendants")** were central to this effort to embezzle the Sixteen Plus funds.

46.48. This power of attorney Fathi Yusuf supplied and ~~they had~~ Manal Yousef ~~executed~~ sign, gave no rights or benefits to Sixteen Plus or the Hameds and thus usurped the corporate opportunity, despite the fact that Fathi Yusuf was an

officer and director of the corporation, owing it fiduciary and statutory duties, as well as a shareholder.

~~47-49.~~ Additionally, this undisclosed power of attorney specifically stated that Fathi Yusuf was given total power over what to do with the Land and foreclosure proceeds -- as he was also released and indemnified as to all actions he might take in regard to his broad, personal power of attorney—which further demonstrated that the mortgage and note were a sham, as no bona fide lender gives a principal of the borrower a full power of attorney to discharge the debt without requiring payment.

~~48-50.~~ Upon information and belief, the power of attorney was drawn up by a Virgin Islands lawyer retained by Fathi Yusuf and executed ~~at the request and direction of the St. Martin Defendants~~ by Manal Yousef on St. Martin.

~~49-51.~~ The existence and purpose of this power of attorney were not disclosed to the Hameds – and they did not learn of it or the Hidden Plan until after Yusuf attempted to steal all of the assets of Sixteen Plus, ~~aslike~~ he did with the Plaza Extra Supermarkets partnership in 2012 – all of which occurred well within the period of the statute of limitations applicable here.

~~50-52.~~ That execution of the undisclosed, exclusive power of attorney in favor of Fathi Yusuf personally was orchestrated by Isam Yousuf, ~~Jamil Yousuf and Manal Yousef~~ in furtherance of the Plan with Fathi Yusuf to steal half of the value of the Land, then in excess of ~~\$25-30~~ million, from Sixteen Plus and the Hamed shareholders.

~~51-53.~~ The Defendants planned to use the sham mortgage to allow Fathi Yusuf to foreclose of the Land *for his own ~~and his family's personal benefits~~*, and to thus deny Sixteen Plus the value of the Land.

~~52-54.~~ 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.

~~53-55.~~ 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, United Corporation, which subsequently was determined to be Yusuf's agent for the partnership.

~~54-56.~~ As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf, Waleed Hamed and several of the other defendants—~~but not Manal Yousef~~—were given personal immunity from criminal prosecution for the acts of tax evasion and money laundering described above.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

~~55-57.~~ After the criminal case was dismissed, the Fathi Yusuf and the St. Martin Defendants, in furtherance of the Hidden Plan, arranged for counsel on St. Martin to send a demand ~~from Manal Yousuf~~ to Sixteen Plus – for payment of the sham note and mortgage Sixteen Plus allegedly owed to Manal Yousef. See **Exhibit 2**.

~~56-58.~~ That St. Martin counsel did not disclose to Sixteen Plus or the Hameds that Fathi Yusuf was ~~the person also involved in personally directing~~ the demand.

~~57-59.~~ A response was made to that demand, to Manal Yousef, by Hamed's counsel on behalf of Sixteen Plus, which was reduced to writing -- pointing out that the mortgage was not valid for the reasons stated herein. ~~That writing also specifically stated that St. Martin counsel was acting improperly in asserting he was representing Manal Yousef's interests rather than Fathi Yusuf's.~~ See **Exhibit 3.**

~~58-60.~~ While counsel on St. Martin promised to get a response to that letter after discussing the matter with his ~~real "client" client~~ (see **Exhibit 4**), he never did so, ~~strongly indicating to the Hameds that he had never really been retained by Manal Yousef.~~

~~59-61.~~ In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others.

~~60-62.~~ In ~~2016~~2015, Fathi Yusuf filed a civil lawsuit in the Superior Court as part of the Hidden Plan; seeking to dissolve Sixteen Plus in an attempt to, *inter alia*, dispose of the Land and trigger payment of the sham mortgage.

~~64-63.~~ In the course of that litigation, Fathi Yusuf was required to produce all documents he had exchanged with Manal Yousef, including any powers of attorney.

~~62-64.~~ When Fathi Yusuf did supply what he represented to be all such documents on July 26, 2016, the power of attorney was not disclosed.

63-65. Hamed's counsel wrote to Yusuf's counsel pursuant to Fed. R. Civ. P. 34 and 37 (**Exhibit 5**), specifically asking for verification under the Rules that there was no such "power of attorney":

Stefan - I reviewed these new responses and there are still several deficiencies:

* * *

Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else—**please confirm** there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), **powers of attorney**, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent. (Emphasis added.)

64-66. On August 5, 2016, Fathi Yusuf's counsel responded that he had initiated a "reasonable search" as to his client and his client's documents, and falsely represented – on behalf of Fathi Yusuf -- there was no such power of attorney. See **Exhibit 5**.

Joel, . . . Here are my responses to your numbered paragraphs:

* * *

I stand by my statement in the supplemental Rule 34 response that **based on a reasonable search there are no other documents responsive to your request**. I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail. (Emphasis added.)

65-67. During the same Superior Court litigation, Fathi Yusuf was also required to answer an interrogatory about the note and mortgage on the Land. To falsely make it appear that Manal Yousef was a *bona fide* mortgagee, hide the undisclosed personal power of attorney and protect the Hidden Plan – Fathi Yusuf stated under oath as follows (See **Exhibit 6**):

- a. That Manal Yousef loaned the full \$4.5 million on September 15, 1997, for the purchase of the Land;
- b. That Manal Yousef was paid three interest only payments on the mortgage between 1998 and 2000;
- c. That Manal's last known address is 25 Gold Finch Road, Point Blanche, St. Martin, N.A.;
- d. That he did not recall the last time he spoke with her;
- e. That Manal Yousef had retained counsel in the Virgin Islands;
- f. That he would not provide a phone number for Manal Yousef because she had counsel in the Virgin Islands.

66-68. All of the foregoing statements made by Fathi Yusuf in his interrogatory response are false, and were made in furtherance of the Hidden Plan to steal half of the value of the Land from Sixteen Plus and its other shareholders, the Hameds, by a foreclosure -- as Fathi Yusuf committed perjury under oath before the Court in furtherance of the Plan when he made these statements.

67-69. Yusuf then filed a motion for a protective order to avoid providing Manal Yusuf's phone number, ~~as a Sixteen Plus or Hamed discussion with Manal would disclose the power of attorney and the Plan to steal half of the value of the Land in a sham foreclosure.~~

68-70. After the Court denied Yusuf's motion and ordered Fathi Yusuf to provide the phone number of Manal Yousef, he then repeated the false statements above -- and **now** stated that he did not have her phone number despite his motion to protect that exact information -- but that she could be reached through her

nephew, Jamil Yousef, ~~although to date he has repeatedly refused to verify that response.~~ See **Exhibit 7**.

~~69-71.~~ However, the location given by Fathi Yusuf as Manal Yousef's address is actually in the possession of and used by Isam Yousuf, which is where he and his son, Jamil Yousef, reside.

~~70-72.~~ Yusuf knew, when he falsely certified to the contrary, that this was not the location where Manal Yousef resided. It has since been learned that she returned to Palestine in 2010.

~~71-73.~~ The purpose of this false representation in response to the Court's Order being that ~~the St. Martin Defendants had agreed to intercept any mail, service or other communications to Manal before she could receive them~~the would keep Manal's address and contact information from Sixteen Plus and the Hameds.

~~72-74.~~ Indeed, when service of process in another pending Superior Court action was left at that address for Manal Yousef, Isam and Jamil Yousef intercepted the summons, ~~and contacted Fathi Yusuf to further the conspiracy to steal the land from Sixteen Plus, telling him about the suit instead.~~

~~73-75.~~ Upon information and belief, Jamil Yousef then agreed to further participate in this fraudulent Plan by allowing Fathi Yusuf to provide his name to the Court as the alleged contact for Manal Yousef, to hide the truth that she had returned to Palestine ~~— promising to call Fathi Yusuf if he was contacted by anyone, so that her whereabouts would remain secret and she would not learn that "she" alone was allegedly going to get millions of dollars — money which Fathi Yusuf was seeking.~~

~~74-76.~~ Fathi Yusuf thereafter represented to the Superior Court, without the necessary identification of ~~the true party in interest~~this role with his relatives, that he had been contacted by Manal Yousef's "agent"; ~~when he knew in fact that it was he, Fathi Yusuf, who was directing the case and attempting to foreclose the sham mortgage under the undisclosed power of attorney -- for his own benefit.~~

~~75-77.~~ During this time period, including in 2012, Fathi Yusuf personally arranged for **and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by – and was due to –** ~~the Sixteen Plus'~~ shareholders, the Hameds and Yusufs, as follows:

- a. To conceal the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf filed tax returns for Sixteen Plus during this time period, including 2012. See **Exhibits 8 and 9**.
- b. In those filings he, personally signed and swore under oath and penalty of perjury that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and there was no loan or mortgage to a third person. Id.
- c. This comported with his repeated representations to the Hameds intended to keep the Hidden Plan hidden.
- d. To hide the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012.

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e. In those filings he stated that the \$4.5 million held by Sixteen Plus was received from Sixteen Plus' shareholders and due to them – and was not a loan or mortgage to a third person. See **Exhibit 10**.

f. This comported with representations to the Hameds.

~~76-78.~~ In furtherance of this scheme, in 2013 Fathi Yusuf also created and requested Waleed Hamed sign an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. See **Exhibit 11**.

~~77-79.~~ Indeed, the Fathi Yusuf and the other Defendants were wrongfully attempting to hide the fact that Fathi Yusuf ~~was the real plaintiff in interest – and that Manal Yousef had not personally contacted counsel in the USVI to represent her alleged interests and his family members were trying to steal the Land.~~

~~78-80.~~ To further this Plan, Fathi Yusuf ~~retained~~ provided Manal Yousef and Isam Yousef with funds to pay USVI counsel to ~~represent him “acting” as Manal Yousef~~ represent the interests of the – and then ~~represented to the USVI Court that Manal Yousef had retained USVI counsel, when she had not in fact done so.~~ He did not disclose that the suit was ~~actually being brought by him, that he was the true party in interest, or the existence of the wrongfully undisclosed power of attorney conspiracy.~~

~~79-81.~~ Notwithstanding all of these facts being disclosed to Yusuf and the St. Martin Defendants, ~~they have~~ he has not recanted any of his false statements or

filings -- and continues to pursue ~~their Hidden~~his Plan to steal the Land, the real property at Diamond Keturah, from Sixteen Plus without any payment to the company or its shareholders, as ~~they~~he continues to try to divert all such funds through Manal Yousef, ~~which funds he will then take back for himself with a share to Defendants for their assistance.~~

COUNT I - CICO

~~80-82.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~84-83.~~ Section 605 of Title 14 of the Virgin Islands Code provides in part as follows:

- a. It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.
- b. It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
- c. It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, to use or invest, directly or indirectly, any part of the proceeds thereof, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise. . . .

~~82-84.~~ Pursuant to 14 V.I.C. §607(a), any aggrieved party may institute civil proceedings against any persons to obtain relief from a violation of §605.

~~83-85.~~ Sixteen Plus and its shareholders are such aggrieved parties under subsection in that:

- a. All Defendants are “person[s]” who through a pattern of criminal activity set forth in paragraphs 55 through 79, have “acquire[d]. . . directly or indirectly” an “interest in” the Land which is “real property” within the meaning of the statute.
- b. All Defendants are “person[s] who have received. . .proceeds derived, directly or indirectly, from a pattern of criminal activity in which [they] participated as. . .principal[s], to use or invest, directly or indirectly,. . .part of the proceeds thereof. . .in the acquisition of. . .[a] right, interest, or equity in” the Land, which is real property as set forth above.

84-86. Defendants acted in concert with one another in conspiring together in a pattern of activities to embezzle funds from and criminally defraud Sixteen Plus and its shareholders, which is expressly prohibited by 14 V.I.C. §834, causing damages to Sixteen Plus and its shareholders.

85-87. Defendants conspired together within the statutory limitations period to accomplish this goal by using unlawful means, including the use of knowingly false court filings in two different cases, tax and corporate filings, use of the mail and wires -- and by perjured testimony in violation of 14 V.I.C. §1541 and §1548.

86-88. This was criminal activity as defined by Title 14, Chapter 41 (giving false statements), Chapter 75 (obstruction of justice) and Chapter 77 (perjury) as well as various reporting, wire fraud and other crimes.

87-89. Such criminal conduct by the Defendants was undertaken in a years long pattern as set forth in Chapter 30 of Title 14 of the Virgin Islands Code, as the Defendants acted in concert as a group in association with one another in carrying out their goal of embezzling funds from and otherwise defrauding Sixteen Plus and its shareholders, with each of the named Defendants being a

Principal in this enterprise within the statutory limitations period. Indeed, the criminal enterprise is still on-going.

~~88-90.~~ These were not isolated acts, and were all done with the intent to embezzle from, defraud and otherwise injure Sixteen Plus, file tax and corporate information with the USVI government and give perjured documents and testimony to the Courts of the Virgin Islands.

~~89-91.~~ Pursuant to 14 V.I.C. §605, it is unlawful for the Defendants to engage in such a criminal activity, as was done here.

~~90-92.~~ Sixteen Plus has been injured by this criminal activity targeting the enterprise, already subjecting its real property to a sham mortgage in a present value in the millions of dollars and by loss of value from the time the Land could have been sold or could now be sold for peak value.

~~94-93.~~ As such, Sixteen Plus is entitled to all civil remedies permitted an aggrieved party by 14 V.I.C. § 607, **including statutory treble damages**, for all damages caused by Defendants' unlawful criminal enterprise.

~~COUNT II — CONVERSION [Withdrawn]~~

~~92-94.~~ ~~Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.~~

~~93-95.~~ ~~The acts alleged herein constitute conversion of the corporate assets and corporate opportunities of the corporation, in that:~~

- ~~a. Defendants 'intentionally or wrongfully exercise[d] acts of ownership, control or dominion by the acts set forth in paragraphs 44 through 79,~~
- ~~b. over property, being the \$4.5 million in funds of Sixteen Plus,~~

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~~e. to which they have no right of possession.~~

~~94.96. Plaintiff and the Corporation are injured thereby in loss of value.~~

COUNT III (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

~~95.97.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~96.98.~~ The acts alleged herein constitutes breach of fiduciary duty and self-dealing by Fathi Yusuf, an officer and director of the corporation, in that:

- a. Fathi Yusuf is and has been a director of Sixteen Plus,
- b. In that capacity, he negotiated the note and mortgage with Manal Yousef for the purpose of protecting the corporation's principal asset, the Land, for the benefit of Sixteen Plus.
- c. He later obtained a power of attorney from Manal Yousef giving himself control of and all rights in those assets, and denying them to the corporation.
- d. He did this without (1) offering the power of attorney or (2) disclosing it to Sixteen Plus,
- e. In violation of his duty as an officer and the negotiating official to do so,
- f. And has taken those benefits as his own

~~97.99.~~ The corporation has been injured thereby.

~~98.100.~~ The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT IV (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

~~99.101.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~100.102.~~ The acts alleged herein in paragraph 96 constitutes usurping of a corporate opportunity by Fathi Yusuf, an officer of the corporation acting in that capacity in dealing with Manal Yousef.

~~101.103.~~ The corporation has been injured thereby.

~~102.104.~~ The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

~~**COUNT V – CIVIL CONSPIRACY [Withdrawn]**~~

~~103.105.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~104.106.~~ Defendants entered into a civil conspiracy as follows:

- ~~a. They entered into an agreement and combination~~
- ~~b. to perform a wrongful act, the tort of conversion, as set forth in Count II above,~~
- ~~c. that resulted in damage to the plaintiff.~~

~~105.107.~~ In the alternative, Defendants"

- ~~a. entered into an agreement~~
- ~~b. to do a lawful act, obtaining and prosecuting a power of attorney to control a mortgage~~

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~~e. by unlawful means: perjury and the other criminal acts set forth above.~~

~~106.108. Both the individual plaintiff and the corporation have been injured thereby~~

COUNT VI – TORT OF OUTRAGE

107.109. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

108.110. The actions of the Defendants were intentional, wanton, extreme and outrageous.

109.111. The actions of the Defendants were culpable and not justifiable under the circumstances.

110.112. The actions of the Defendants caused injury to Sixteen Plus.

111.113. As such, the Defendants are liable for said injuries suffered by Sixteen Plus as a result of their intentional and unjustifiable misconduct.

WHEREFORE, the Plaintiffs seek:

- A. an award of compensatory damages of multiple loses of the sale of the Land at the highest and best sales value of \$30 million as stated by Fathi Yusuf, including treble damages where permitted by law,
- B. equitable orders with regard to the acts.
- C. consequential damages against the Defendants, jointly and severally, in an amount as determined by the trier of fact, along with any other relief the Court deems appropriate,
- D. Punitive damages if warranted by the facts and applicable law.
- E. Any and all other damages, fees, costs or other relief the Court may deem appropriate.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES

Dated: December ~~23~~18, 20~~16~~2022

_____ /s/ Carl J. Hartmann III

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Co-Counsel for Plaintiff
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~~Christiansted, VI-00820~~Holland,

Email: carl@carlhartmann.com

62940 Brookwind Dr,

MI 49424

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CERTIFICATION

Counsel hereby certifies that he has affixed his signature hereto pursuant to the requirements of 14 V.I.C. §607(d) and has sent a true copy of the original complaint to the Attorney General as required by § 607(f). See Exhibit 1.

Dated: December ~~23~~18, 20~~22~~16

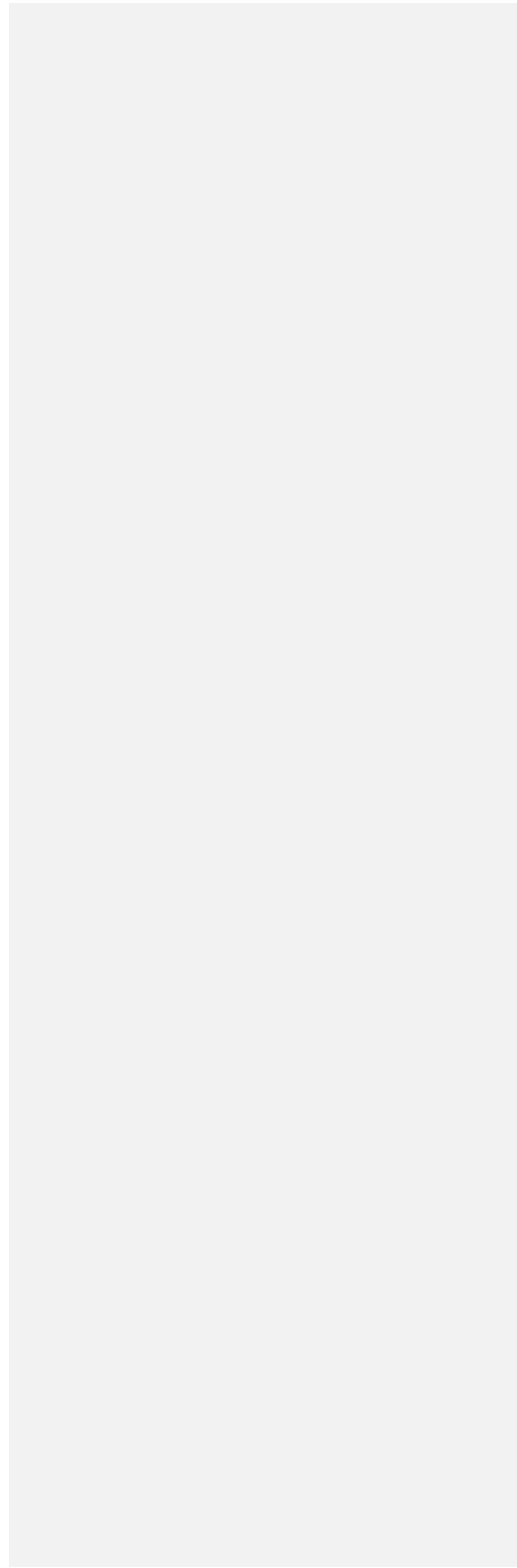
Carl J. Hartmann III

_____ /s/

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VERIFICATION

~~I, Hisham Hamed, do hereby verify that I have carefully read the Complaint and that based upon reasonable inquiry, I believe that the Complaint comports with the requirements set forth in items (1) through (3) of 14 V.I.C. §607(d), which I have read.~~

~~Dated: December 23, 2016~~ _____
_____ **Hisham Hamed**

~~SWORN TO AND SUBSCRIBED
BEFORE ME THIS 31ST DAY
OF OCTOBER, 2016~~

~~NOTARY PUBLIC~~

CERTIFICATE OF SERVICE

I hereby certify that on this ~~23rd~~ 18th day of December, ~~2016~~ 2022, I served a copy of the foregoing by mail the Court's E-File System and email, as agreed by the parties, on:

~~Gregory H. Hodges~~ Charlotte Perrell
~~Stephen Herpel~~
~~Law House, 10000 Frederiksberg Gade~~ Counsel for Defendant Fathi Yusuf

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~~P.O. Box 756~~
~~St. Thomas, VI 00802~~ James Hymes
Counsel for Defendants
Manal Yousef
Jamil Yousuf
Isam Yousuf

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Kevin Rames
Counsel for Nominal Defendant
Sixteen Plus Corporation
ghodges@dtflaw.com

Carl J. Hartmann III /s/

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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 YOUSUF**

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal Defendant.

Case No.: SX-2016-CV-00650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

ORDER

THIS MATTER having come on before the Court on the motion of Plaintiff Hisham Hamed pursuant to V.I. R. CIV. P. 15(a)(2), to allow him to amend his *First Amended Complaint* dated December 23, 2016, to join Manal Yousef as a defendant, and the Court being fully apprised in the premises, it is

HEREBY ORDERED. That the *Second Amended Complaint* as attached to that motion is approved, and shall be filed along with the redline thereof, by Hamed.

It is **SO ORDERED**.

Dated: _____, 20__

ATTEST: TAMARA CHARLES,
Clerk of the Court

Douglas A. Brady
Judge of the Superior Court

By: Court Clerk Supervisor