

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

HISHAM HAMED , individually, and)	
Derivatively, on behalf of SIXTEEN)	
PLUS CORPORATION ,)	CIVIL NO. SX-16-CV-650
)	
Plaintiff,)	DERIVATIVE SHAREHOLDER
)	SUIT, ACTION FOR DAMAGES
vs.)	AND CICO RELIEF
)	
FATHI YUSUF, ISAM YOUSUF and)	JURY TRIAL DEMANDED
JAMIL YOUSEF ,)	
)	
Defendants.)	
)	
and)	
)	
SIXTEEN PLUS CORPORATION ,)	
)	
a nominal Defendant,)	
)	

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

COMES NOW, MANAL MOHAMMAD YOUSEF, through her undersigned Attorney, James L. Hymes, III, and respectfully opposes the Motion of Hisham Hamed to amend his *First Amended Complaint* dated December 23, 2016, to join MANAL MOHAMMAD YOUSEF as a name party defendant. The law in the Virgin Islands is clear regarding amendments to pleadings. 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. The exceptions to that rule include the futility of the amendment. *Davis v.*

UHP Projects, Inc., 74 VI 525536–37 (2021) citing *Basic Services, Inc. vs. Government of the Virgin Islands*, 71 VI 652, 667 (VI 2019), *Reynolds vs. Rohn*, 70 VI 887, 900 (VI 2019) citing *Folman v. Davis*, 371 US 178, 182 (1962).

The Sixteen Plus Corporation and its token shareholder, Hisham Hamed, have filed various motions to, among other things, (1) compel Isam Yousuf to authorize the prosecutors and police in St. Maarten to conduct a search of the bank records of the company he once owned and operated; (2) compel Manal Mohammad Yousef to provide information regarding her agent, accounting records, and income tax information; and (3) to add Manal Mohammad Yousef as a named party defendant to a declaratory judgment action. All of these are opposed for the reasons that they constitute impermissible discovery requests and seek irrelevant information by impermissible means. In order to further understand the opposition to these motions it is necessary to understand the factual background and litigation history of the parties.

Factual Introduction:

The Sixteen Plus Corporation, in multiple civil cases, on its own behalf and derivatively through a token stockholder, Hisham Hamed, is attempting to relitigate a failed attempt by its stockholders for an accounting. These civil lawsuits have a common theme espoused by the Sixteen Plus Corporation, that \$60 Million was skimmed from the United Corporation and its three Plaza Extra stores, and the skimmed money was diverted to St. Maarten, and elsewhere, to avoid taxes, and for other nefarious purposes. In 2012, and 2014, civil actions were filed by and between Waleed Hamed and Fathi Yusuf, the two men who formed the Sixteen Plus Corporation to

purchase the Diamond Keturah property. These civil actions were designed to obtain a dissolution of their partnership and a distribution of partnership assets related to and derived from the business of the Plaza Extra stores. The plaintiff, Waleed Hamed, retained the services of an expert witness who based his opinion on the 2003 third superseding indictment in the matter captioned *United States of America and Government of the Virgin Islands vs. Yusuf, et al.*, No. 2005 – 15F /B (DVI February 26, 2010). Although various individuals were charged in the indictment, only the United Corporation pled guilty to Count No. 60, by which it admitted that \$10 Million of gross receipts were skimmed and mis-accounted to avoid taxes. In his opinion letter, the expert stated, as reported by Judge Brady in his Opinion:

“The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact cannot, accurately reflect the amount of cash taken in. No proper accounting can be determined from the company's financial records because the gross receipts have been intentionally misapplied and documented. The very purpose of this sort of scheme is to render any accounting inaccurate. It is critical that the parties have both admitted that many records of transaction that should have gone into accurate accounting were not kept, or mutually and intentionally destroyed. Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting, it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining records can never be legitimately credited or debited against the unknown amounts.... The court is not called upon to express any opinion, as to the criminal nature of the conduct of the individual defendants named in the criminal matter except to the extent that such conduct demonstrates both the impossibility of reconstructing financial records or conducting, at present, an accurate accounting, and the partner's knowledge of the state of affairs. However, United's guilty plea as to Count 60 establishes

that United, which as a corporation, must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursements thereby rendering impossible any accurate reconstruction of accounts." *Hamed, et al. vs. Yusuf*. P.17-18 op. 7/21/17 2017 V.I. LEXIS 114.

The trial judge found that

"...at a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able after the fact to ascertain the amount taken, as the total amount of cash in the store safes was intentionally omitted from any record-keeping." P.21. loc. cit.

The court went on to state that

"...the policy of RUPA prevents both Hamed and Yousuf from imposing upon the court the great burden of sorting through the ramshackle patchwork of evidence supporting their claims, to reconstruct decades worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct which they now belatedly complain." P.21. loc. cit.

The central core allegation by the Sixteen Plus Corporation is that the money used to purchase the Diamond Keturah property was money skimmed from the United Corporation by Wally Hamed, which was somehow sent to St. Maarten and redirected back to St. Croix to buy the property. In all of these presently pending civil actions the Sixteen Plus Corporation is asking this Court to find now what it could not find in 2017, namely what money was skimmed from United Corporation and what was done with it, and by whom. Since it has been found beyond question that Waleed Hamed and Fathi

Yusuf cannot account among themselves as to how the money skimmed from United Corporation could be accounted for, it should be axiomatic that they should be foreclosed from attempting to contend in this case, and others presently pending, that an accurate accounting can now be made to find conclusively that the \$4.5 Million used to purchase Diamond Keturah came from money skimmed from the three Plaza Extra stores, and not from money loaned to Sixteen Plus Corporation by Manal Mohammad Yousef.

Accordingly, before Sixteen Plus Corporation is given unfettered access to search the bank records of the business Isam Yousuf used to own and operate, and before Manal Mohammad Yousef is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that Sixteen Plus Corporation should be ordered to produce documentary proof that the money it admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. This is the only relevant factual issue in this case.

Futility of Amendment:

The motion claims to address each of the factors permitting an amendment. However, with respect to futility, the motion only claims that Manal Mohammad Yousef is central to the legal issues. This assertion belies the essential facts of the case as presented by the motion. The motion asserts in paragraph 25 of the Second Amended Complaint that in 1997 Manal Mohammad Yousef *“agreed to create a sham note and*

mortgage...". Accordingly, Hisham Hamed is charged with the knowledge that the corporation which he represents, Sixteen Plus Corporation, executed a Note and Mortgage on September 15, 1997, securing the repayment of \$4.5 Million loaned to it by Manal Mohammad Yousef.

Hisham Hamed is a nominal owner of stock in the Sixteen Plus Corporation which was formed in February, 1997, by Waleed Hamed and Fathi Yusuf, and is therefore charged with the knowledge both of them had in 1997 regarding the execution of a Promissory Note to Manal Mohammed Yousef.

The Sixteen Plus Corporation executed a Note and Mortgage to secure the repayment of \$4.5 Million, plus interest, to Manal Mohammad Yousef. In 2017, when the payments due under the note and mortgage were not made, Manal Mohammad Yousef instituted a civil action to foreclose her mortgage. The foreclosure action was filed against, and was served upon, Sixteen Plus Corporation. Based on the allegations contained in this motion the Sixteen Plus Corporation had knowledge of all of the facts and circumstances surrounding the issuance of the said note and mortgage as of 1997. Accordingly, when the Sixteen Plus Corporation was sued by Manal Mohammad Yousef to foreclose her mortgage, it had two years from the date of service of the Complaint to foreclose the mortgage to file a counterclaim against Manal Mohammad Yousef, which was not done.

Expiration of the Statute of Limitations:

As a consequence, the Statute of Limitations has long since expired for claims to be filed against Manal Mohammad Yousef for tortious participation in a so-called fraud,

violation of CICO, and tortious outrage. As a consequence, the prosecution of the proposed Second Amended Complaint is futile, and the motion to amend to add Manal Mohammad Yousef must, of the matter law, be denied.

In addition to the foregoing, the proposed Second Amended Complaint essentially seeks an accounting for the alleged criminal acts of Fathi Yusuf, and now Manal Mohammad Yousef. To the extent this complaint seeks an accounting and recovery of money, it is barred by the opinion of Judge Brady in *Hamed v. Yousuf*, Civil No. SX-2012-CV-00370, Civil No. SX-2014-CV-00287, and Civil No. SX-2014-CV-00278, decided July 21, 2017, which constitutes the rule of the case as it relates to the claims to be asserted by and between these two parties. The Opinion of Judge Brady restricts the scope of the accounting so as to consider only those claims that are based upon transactions occurring no more than six (6) years prior to the September 17, 2012 filing of the First Amended Complaint. The factual allegations which seek to bring Manal Mohammad Yousef into this case far exceed and extend beyond the six year limitation, and therefore make this attempt at a claim against her futile.

Unclean Hands:

Furthermore, it is respectfully submitted that this claim is barred by the doctrine of unclean hands. *"The unclean hands doctrine is an equitable defense that bars relief to a party who engaged in inequitable conduct (including fraud, deceit, unconscionable or bad faith) related to the subject matter of the litigation. The doctrine of in pari delicto is a defense whereby a party may not recover after participating equally in the alleged*

wrongdoing. That is, it bars a party of recovering damages if its losses are substantially caused by its own forbidden actions.” This pronouncement by Judge Brady further supports the contention in this case that the motion to add Manal Mohammad Yousef as a party is futile, and, therefore, the motion must be denied.

Laches:

The Motion to Amend alleges that Manal Mohammad Yousef was a knowing participant in the creation of a sham note and mortgage in 1997. The Sixteen Plus Corporation has never raised this issue before despite being a knowing participant in the creation of the note and mortgage documents. Accordingly, it is respectfully submitted that the Sixteen Plus Corporation has knowingly sat on its rights with respect to this claim for the last 28 years or so. As a consequence, the Court is respectfully requested to invoke the doctrine of laches and prevent the Sixteen Plus Corporation from now asserting a claim which it has allegedly known about for decades and not otherwise exercised its rights, if any it had, to pursue same.

Conspiratorial Conduct:

As explained in the Factual Introduction section, Judge Brady has found that the partners of the Sixteen Plus Corporation are unable to prove the means by which partnership assets are to be distributed as between themselves as they have participated in intentional criminal conduct, the destruction of records, and money laundering to facilitate the avoidance of paying taxes. Judge Brady found that the

partners of the Sixteen Plus Corporation are possessed of unclean hands and cannot come to the Court to ask for equity.

Faced with this dilemma, the Sixteen Plus Corporation has apparently adopted a litigation strategy to achieve its goals outside of the courtroom by alleging the existence of a conspiracy between the Sixteen Plus Corporation, its founders, its token stockholder, Manal Mohammad Yousef, and her attorneys. As part of this litigation strategy the Sixteen Plus Corporation has threatened the persons it has sued with criminal prosecution in various jurisdictions in and outside of the Virgin Islands, either for violation of banking laws and related criminal statutes, or for the nonpayment of taxes. The strategy has been punctuated with demands for production of income tax returns in a mortgage foreclosure case, and noticing the deposition of Isam Yousuf, a foreign national and resident of St. Maarten, at the St. Croix law office of plaintiff's counsel. The single most illustrative example of this litigation strategy is the demand that Isam Yousuf give permission to the prosecutors and police in St. Maarten to conduct a bank records search of corporate records dating back to 1995 and 1996.

The undersigned has been defending civil litigation in the United States Virgin Islands since the 1970s. Never in the experience of the undersigned has anyone used prosecutors or the police to conduct a record search for a private attorney, or been involved in the production of documents in a civil case. Review of documents produced in civil cases are customarily performed by the attorneys in the litigation or by persons retained by them to act on their behalf to look at the documents. Those persons have never been prosecutors or police.

The final attempt by the Sixteen Plus Corporation to avoid the doctrine of unclean hands is the newly espoused theory that Manal Mohammad Yousef was a knowing participant in the fraud and criminal conduct of the persons who formed the Sixteen Plus Corporation when \$60 Million of assets were skimmed from the United Corporation and the three Plaza Extra stores in St. Croix. By creating this alleged conspiracy the Sixteen Plus Corporation is permitting themselves to call Manal Mohammad Yousef a co-conspirator which allows them to drag her into their criminal morass. This conspiratorial theory has been verbalized for the very first time in 2022. It was never raised as a compulsory counterclaim in the mortgage foreclosure action. The United States attorney did not allege that Manal Mohammad Yousef was a participant in the criminal conduct by which \$60 Million was skimmed from the United Corporation and its three Plaza Extra stores. Furthermore, the St. Maarten prosecutors and police made no such finding either after they conducted their search of bank records in St. Maarten.

The threatening and bullying conduct of the litigation strategy of the Sixteen Plus Corporation has now taken a new turn by attacking the lawyer who represents Manal Mohammad Yousef, asserting without proof that his fees are being paid by others. This allegation is made not only without proof, but also without even the offer of proof which permits it to stand as a matter of record in this case. The allegation that counsel is part of a criminal conspiracy stands as a threat of criminal prosecution and further extends into the realm of unethical professional misconduct potentially putting at harms risk the livelihood of the lawyer representing Manal Mohammad Yousef in this case.

HISHAM HAMED, Individually, and derivatively, on behalf of
SIXTEEN PLUS CORPORATION vs. FATHI YUSUF, ISAM YOUSUF and JAMIL YOUSEF
SCVI/STX Civil No. SX-16-CV-650
MANAL MOHAMMAD YOUSEF'S RESPONSE TO HISHAM HAMED'S
MOTION TO AMEND HIS FIRST AMENDED COMPLAINT TO JOIN MANAL YOUSUF AS A DEFENDANT

WHEREFORE, Manal Mohammad Yousef respectfully requests that the Court deny the Motion to Amend the First Amended Complaint to join Manal Mohammad Yousef as a defendant for the reasons set forth above.

Respectfully Submitted,

DATED: February 3, 2023.

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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(3). I hereby further certify that on this the 3rd day of February, 2023, as an approved C-Track filing on behalf of James L. Hyems, III, I caused an exact copy of the foregoing "**MANAL MOHAMMAD YOUSEF'S RESPONSE TO HISHAM HAMED'S MOTION TO AMEND HIS FIRST AMENDED COMPLAINT TO JOINT MANAL YOUSUF AS A DEFENDANT**" to be served electronically through the C-Track system, upon the following counsel of record:

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