

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

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|---|---|--------------------------|
| 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, |) | |
| |) | |

ISAM YOUSUF'S RESPONSE TO PLAINTIFF HISHAM HAMED'S
SECOND MOTION TO COMEPL:
AS TO BANK ACCOUNT DOCUMENTS IN THE CONTROL OF ISAM YOUSUF

COMES NOW the Defendant, **ISAM YOUSUF**, through his undersigned Attorney, James L. Hymes, III, and respectfully opposes the Second Motion to Compel for the following reasons.

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 last owned and operated in the mid 1990's; (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. v. 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 in the mid-1990's, 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.

The Law:

Virgin islands Rules of Civil Procedure, Rule 26 and Rule 33, govern the scope of a parties duty to disclose information during discovery. *Cruz v. VI Water and Power Authority*, No. ST-2015-CV00491, 2020 VI Lexis 45 (citing *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, LP*, 2017 VI Lexis 86. Under VIR Civil Procedure Rule 26 (b)(1), “parties may obtain discovery regarding any nonprivileged matter that is relevant to any parties claim or defense. The singular factor for determining whether information is discoverable is its relevance.” *Cruz*, 2020, VI Lexis 45 at 1. Under the standard provided by Rule 401 of the Virgin Islands Rules of Evidence, the Court determines what information is relevant. See *Donastorg v. Walker*, 2019 VI Lexis 66 at 5-6.

Relevant information is that which has the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable that it would be without it. *Donastorg, loc. cit.* When a request for production of documents extends to documents relevant to the claims or defenses in the matter, the request may be overly broad and therefore objectionable and subject to being stricken. See *Westhemeco Limited vs. New Hampshire Insurance Company*, 82 FRD 702 (S.D.N.Y., 1979). *Chambers vs. Capital Cities/ABC*, 154 FRD 63 (S.D.N.Y., 1994). The Court may strike a request that is not proportional to the needs of the case in light of the facts listed in the parties initial Rule 26 Disclosures.

However, the issue of this motion is very simple. Is Isam Yousuf, required to provide an authorization to the prosecutors and police in the island of St. Maarten to release records over which he has no control. The Sixteen Plus Corporation and its derivative token representative Hisham Hamed contend that the funds provided to Sixteen Plus Corporation to purchase the Diamond Keturah property “...*Was the money in those accounts simply skimmed funds put there by Wally and Fathi over a very short period from April, 1996, onwards.*”

Manal Mohammed Yousef contends that the money provided for the purchase of the property was given to Manal Mohammed Yousef by her father. Her father gave the money to Isam Yousuf, who deposited in his St. Maarten account and transferred from that account to Sixteen Plus Corporation. Only one bank account was utilized for these purposes. Isam Yousuf has offered to provide Sixteen Plus Corporation with an

authorization form to permit the bank to conduct a search of his records to verify, confirm, or rebut this allegation.

And, despite denying that it is threatening Isam Yousuf with criminal prosecution, Sixteen Plus Corporation has rejected this offer and demanded that this Court enter an order such as the one attached to its motion (see “**Exhibit A**” attached) directing that *“Isam Yousuf shall provide a letter addressed to the St. Martin Judicial Police, the St. Martin prosecutor's office, and the Banque Francaise Commerciale”* that will give his permission for St. Martin prosecutors and police to review and copy all records of the account of Isam Yousuf and Island Appliances for the period from 1990, to the end of 1997.

It is respectfully submitted that the records in the possession of the prosecutors and the police in St. Maarten are irrelevant to this cause of action. Indeed, the attorneys for Sixteen Plus Corporation appear to already have those records as they are attached as exhibits its motion. Therefore, they do not need permission from Isam Yousuf to review records he has no control or knowledge of. His obligation under the rules governing this case is to “produce and permit the requesting party or its representative to inspect, test, or sample the following items in the responding parties’ possession, custody, or control: (Rule 34 (a)(1)).

Isam Yousuf has responded to the request for production of documents from Sixteen Plus Corporation, and responded that he has no documents in his possession, custody, or control. He has indicated that he will consent to the bank conducting a search of its own records for him and the company which had an account in the bank

from which funds were transferred to Sixteen Plus Corporation on behalf of Manal Mohammed Yousef, which Sixteen Plus Corporation acknowledged receiving as evidenced by the execution of a Note and Mortgage by Sixteen Plus Corporation providing for the repayment to Manal Mohammed Yousef of \$4.5 Million, plus interest, which Sixteen Plus Corporation used to acquire the Diamond Keturah property from the Nova Scotia Bank.

Isam Yousuf has objected to permitting the prosecutors and the police in St. Maarten to conduct a search, which was the original demand by Sixteen Plus Corporation. Isam Yousuf is also objected to providing authorization to the prosecutors and police in St. Maarten to provide Sixteen Plus Corporation with copies of records, and as a since Isam Yousuf has no knowledge of what those records are, and further denies having any knowledge that the records in the possession of the prosecutors and police in St. Maarten are records which are within the possession, custody, or control of Isam Yousuf. If Sixteen Plus Corporation believes that the prosecutor and police in St. Maarten have relevant documents in their possession, then Sixteen Plus Corporation needs to make an application for the production of those documents pursuant to the Rules of Civil Procedure in St. Maarten, not in the Virgin Islands.

WHEREFORE, Isam Yousuf respectfully requests this Court deny the motion as submitted for the reasons stated above.

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
ISAM YOUSUF'S RESPONSE TO PLAINTIFF HISHAM HAMED'S
SECOND MOTION TO COMPEL: AS TO BANK ACCOUNT DOCUMENTS IN THE CONTROL OF ISAM YOUSUF

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 "*ISAM YOUSUF'S RESPONSE TO PLAINTIFF HISHAM HAMED'S SECOND MOTION TO COMEPL: AS TO BANK ACCOUNT DOCUMENTS IN THE CONTROL OF ISAM YOUSUF*" to be served electronically through the Superior Court's C-Track system, upon the following counsel of record:

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