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 REPLY TO MANAL YOUSEF'S OPPOSITION TO HAMED'S MOTION TO AMEND THE FAC TO JOIN MANAL YOUSEF AS A DEFENDANT

I. Introduction

Several of Manal's arguments in her February 3, 2023 opposition must be summarily denied on procedural grounds. Hamed will address those first and then reply to her other arguments.

II. Procedural Bases for Denying the Opposition Arguments

First, Manal is not a party to this proceeding. She has not intervened in this matter. Her attorney has not made an appearance for her here. Thus, the opposition should be denied.

Second, as to her discussions of several *potential, hypothetical* affirmative defenses the parties *might* raise—statute of limitations, unclean hands, *in pari delicto*, and laches—none of these defenses has been asserted—no answers have been filed. Manal seeks, in effect, an advisory opinion on what the Court might determine based on what defendants might plead. Worse yet, what she is really seeking is a sort of advisory

summary judgment—asserting hypothetical affirmative defenses absent a factual record. This may be why she, not the parties, Isam and Jamil, filed this motion. In addition, an affirmative defense is a matter for the trier of fact, and usually is not adjudicated or disposed of in a summary manner unless there is a full and unchallenged factual record. *See Sun Life Assurance Co. of Canada v. U.S. Bank Nat'l Ass'n,* No. 14-CIV-62610-Bloom/Valle, 2016 U.S. Dist. LEXIS 4732, at *67 (S.D. Fla. Jan. 13, 2016)("A district court should not grant summary judgment where genuine issues of material fact exist about an affirmative defense." *Bryant v. Rich*, 530 F.3d 1368, 1380 (11th Cir. 2008) (*citing* Fed. R. Civ. P. 56(c)) (further citations omitted); and *Singleton v. Dep't of Corr.*, 277 F. App'x 921, 923 (11th Cir. 2008) ("Summary judgment is not appropriate where a genuine issue of material fact exists about an affirmative defense.")

Third, as to the discussion of the remaining issue, "Conspiratorial Conduct," the allegations are incomprehensible, erroneous and raise no basis for denial of a motion to amend under *Davis*. They are discussed in some detail due to their nature.

III. Hamed's Responses to the Verbatim Statements in the Opposition

A. Futility

Manal's futility argument is predicated on two facts. First, at 6, that in a derivative action the plaintiff stands in the shoes of the corporation. This is correct. Second, also at 6, she alleges that with regard to her 342 foreclosure action,

> 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 <u>not</u> done*. (Emphasis added.)

Manal is incorrect. On October 12, 2017, Sixteen Plus *did file a counterclaim in 342*. In it, at paragraphs 33 and 34, it alleged the *identical* conspiracy that it alleges in this action:

> 33. Sometime in 2017, Fathi Yusuf arranged with Manal Yousef to now claim the Note and Mortgage were valid so she could attempt to foreclose on it, even though she knew it was a fraudulent mortgage, so they could improperly take control of the primary asset of Sixteen Plus, Inc., defrauding it and the Hamed family members who own 50% of the stock in Sixteen Plus, Inc.
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> 34. As part of this agreement, Fathi Yusuf and Manal Yousef agreed to split the proceeds of any foreclosure sale between themselves and other members of their families, despite knowing that such conduct would defraud Sixteen Plus of its primary asset.

Sixteen Plus also 'third-partied' Fathi Yusuf in that same document and alleged:

> 4. At all times relative hereto, Manal Yousef has acted at the direction and under the control of Fathi Yusuf regarding the allegations herein, *working in concert with him to try to defraud Sixteen Plus, Inc. and the Hamed family members who own 50% of the stock in Sixteen Plus, Inc.*

Thus, Sixteen Plus did file suit against Manal and Fathi as to the acts in concert within two years. Moreover, for the very reason Manal raises here (two cases with different mixes of the parties hearing the same conspiracy facts and issues) on January 2, 2019, Hamed/Sixteen Plus moved to consolidate that 342/65 case with the instant 650 case—also *within two years of her filing of that 342 action*. As Hamed has previously stated, this motion to amend is simply a belt and suspenders in the event the consolidation is denied.[1]

B. Expiration of the Statute of Limitations

Manal argues two points under this heading: (1) limitations and (2) law of the case; relying on Judge Brady's decisions in *Hamed v. Yusuf* (370).

[1] In addition, the 342 case is really subsumed into Hamed's 65 case by the fact that 65 was first-filed. It is unclear why Manal, having filed the exact case as her countersuit in 65, then went on to file the identical claims in 342. However, as they've been consolidated that issue seems, like the alleged lack of a counterclaim, to have been obviated.

i. Statute of Limitations

First, the affirmative defense of the statute of limitation has not been pled. Second, this theory is addressed in the existing defendants' motions to dismiss and need not be rehashed here. Third, in their 2017 motions to dismiss, while the defendants all argued that the SOL ran long before this litigation began—it was "complete in 1997", Hamed noted then that he was not pursuing the original 1997 creation of a sham note and mortgage here. Rather, he stated he was alleging ***new acts*** in which defendants used, within the SOL, documents known by them to falsely state the consideration—to commit a new series of illegal and tortious acts intended to defraud, steal from and bankrupt Sixteen Plus. The documents being used for litigation of the CICO conspiracy from 2015 to the present could be *any* documents—of *any* date, of *any* origin—so long as the defendants knew them to contain false information *when they were used*. That Fathi, Wally, Isam and Manal created them (and the dates they were created) are immaterial to the SOL. Thus, Manal is accused of ***presently*** being a co-conspirator in a ***present*** conspiracy to use documents that she and the other CICO conspirators ***know*** (albeit from their historical involvement) falsely recite consideration she never provided.

Indeed, one of the new (post-FAC) facts is that Manal filed her own foreclosure action in 2017 using those documents that falsely related that the funds used to buy the land were hers—*and continues to press the litigation every day*.[2] It is alleged in the

[2] Nor is the concept of litigation being one of the acts in a CICO conspiracy a novel one, even in this case. One of the primary, original acts in furtherance of the conspiracy, alleged in the December 23, 2016 FAC, was Fathi's bringing of the 2015 litigation to terminate Sixteen Plus and trigger the foreclosure—with Manal's participation. On July 27, 2015, Fathi Yusuf filed ST-2015-CV-000344. 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. . . .

Second Amended Complaint ("SAC") that the present, ***continuing*** prosecution of this post-FAC litigation is an ongoing, central act in furtherance[3]. Such allegations are the province of the plaintiff, and his well-pleaded averments control at this stage of the proceedings.[4] Sixteen Plus ***alleges*** present and continuing acts well within the SOL.

Neither continuing litigation in furtherance of a conspiracy nor false discovery responses within such litigation are exempt from being considered continuing acts in furtherance of that conspiracy. *See e.g., Burns v. C.R. England, Inc.*, No. 3:04-cv-304-GPM, 2007 U.S. Dist. LEXIS 27088, at *6 (S.D. Ill. Apr. 12, 2007):

> On January 26, 2006, Plaintiffs filed their Motion for Leave to File a Third Amended Complaint (Doc. 71). This time, Plaintiffs sought "to add additional charging allegations as to the conspiracy counts." (Doc. 71, P 2). On February 23, 2006, the Court granted the motion, finding that the additional claim is related to those made in the Second Amended Complaint (Doc. 72). Plaintiffs then filed their Third Amended Complaint, alleging that Defendants, in furtherance of the conspiracy:
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> > Filed a false sworn answer to an interrogatory asserting Leonard Ray Karnes had "slept 8 hours or greater in Effingham, Illinois" when they knew such answer was false and fraudulent as evidenced by the vehicles Qualcomm software program, information they had in their possession when the answer was filed, but withheld from plaintiffs.

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[3] *In Microsoft Corp. v. Damphu's, Inc.* it was held that the conspiracy remains ongoing throughout the pendency of the lawsuit. C.A. No. 8092-VCP, 2013 Del. Ch. LEXIS 263, 2013 WL 5899003, at *12 (Del. Ch. Oct. 31, 2013)("Microsoft alleges that St. Clair commenced its patent infringement suit in Delaware in furtherance of its conspiracy.")

[4] Under the well-pleaded-complaint rule, the plaintiff is 'the master of the complaint'. *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1763 (2019). More importantly "[a]t this stage, Plaintiffs' allegations must be taken as true and they [should] be allowed discovery into" the allegations in the complaint. *See, e.g., Hogan v. Cleveland Ave Rest., Inc.*, 2018 U.S. Dist. LEXIS 49587, at *10-11 (S.D. Ohio Mar. 26, 2018).

See also Correia v. Town of Framingham, No. 12-10828-NMG, 2013 U.S. Dist. LEXIS 116282, at *3-4 (D. Mass. July 24, 2013):

> That conspiracy, the plaintiffs suggest, continued during the litigation of this case. The plaintiffs cite an interrogatory response, signed by Carl, denying that Brown had asserted his Fifth Amendment rights when questioned about the incident by internal affairs investigators. Doc. No. 52 at 6-7. Pointing to the testimony of other police department witnesses that Carl was present when Brown did, in fact, assert his right to remain silent (and, further, that Carl personally instructed investigators to communicate directly with Brown's attorney), the plaintiffs allege Carl's interrogatory response was a lie intended to further the conspiracy to protect Brown.

Nor does Manal address the historical or other contexts for her *sub voce* proposition that maintenance of litigation should not be considered a component of a conspiracy—or would have no tolling effect by its continuation. Since the 1950's it has been widely accepted that litigation can be a component act in a conspiracy—threatening it, bringing it, *maintaining it on a daily basis for the wrongful ends of the conspiracy* and making false statements therein in furtherance of the conspiracy have all been accepted as individually actionable ever since the *Borax* cases. From that time on, there have been many, many cases where litigation has been accepted as a significant act in furtherance of the conspiracy. *See, e.g.*, *Benoit v. Burlington Indus.*, No. 74 Civ. 441 (WCC)., 1974 U.S. Dist. LEXIS 6470, at *13-14 (S.D.N.Y. Oct. 2, 1974); *Dean v. Town of Hempstead*, 527 F. Supp. 3d 347, 435 (E.D.N.Y. 2021)("Defendants acted in furtherance of the conspiracy by: enacting specific litigation to target [Plaintiffs]. . . ."); *Microsoft Corp. v. Amphus, supra*., at *39-40 (Del. Ch. Oct. 31, 2013)("Microsoft's conspiracy claims against St. Clair can be characterized as "arising from" St. Clair's attempt to achieve the conspiratorial goal by filing a patent lawsuit to enforce the Vadem Patents in the Delaware District Court; and *United States v. Mitan*, No. 08-760-1, 2009 U.S. Dist. LEXIS 101213, at *1 (E.D. Pa. Oct. 30, 2009)(evidence of

defendants' purported use of actual or threatened litigation to further their conspiracy was similarly deemed admissible.)

In addition to the filing and continuation of the foreclosure action itself, Manal has undertaken a large number of other recent, additional acts in furtherance of the conspiracy. New statements from her and her counsel, as to facts previously unknown to Hamed, clearly show her acts in concert.[5] Within just the past few months she has been active in, and given significant support to the conspiracy, to wit:

1. With no documentation she has *made extensive new* statements concerning the million dollars she has allegedly received in interest. She, within the SOL, has for the first time, admitted *she paid no taxes* on those alleged funds, and she has also *recently* refused to supply critical tax returns that are relevant to those payments and the alleged gifts at the center of this case. *See* Exhibit 1 to the motion to amend, Letter from Atty. Hymes to Atty Hartmann, dated November 7, 2022. ("My client has indicated that she has not paid taxes on any interest payments paid to her by your clients. Therefore, I see no need for you to obtain copies of her tax returns for the years 1990 - 2000.")
2. She has repeatedly—up to the filing of this reply (since agreeing to do so beginning in 2017) failed to provide her passports, which would show travel related to facts in this action during both the original formation of the note and currently. That is a new act in support of the conspiracy. Not only were these agreed to in 2017,[6] but again in November of 2022, by her counsel in his referenced letter (Exhibit 1 to the motion.) But they still have not been provided.
3. She alleges (and the defendants very much rely on the fact) that she has received that million dollars in interest, but *in 2022* she refused to provide the basics that would allow this claim to be investigated:
    i. Contrary to the opening language of Rule 26, she has recently refused her address, which prevents Hamed from investigating ownership status, value and credit basics. *See* Exhibit 1 (Atty Hymes: "You indicated to me that you

[5] Thus the filing of Hamed's February 6, 2023 motion for leave to supplement.

[6] *Letter* from Atty. Holt to Atty. Hymes, dated August 1, 2017. ("In follow up to our Rule 37 conference, I want to memorialize what I understand we agreed on. . . . Regarding Manal's passports, you are obtaining copies as promptly as you can, which you will then file under seal with the Court, notifying me when you do.")

> required a description of the present address for my client so that you may serve her with process. I will not provide you with that address. If you need to serve her with process, it may be done through me.")[7]

ii. Although the "gifts" she presently alleges she received from her father are a central factual issue here (also relied on heavily by the other conspirators) she has refused to provide any banking information directly related. (Atty. Hymes: "Access to the financial records of Island Appliances and my clients will not be granted. **Your clients have denied making any payments of interest. Therefore, they have no reason to look in bank accounts for those funds**.") (Emphasis added.)

iii. She has, recently asserted a new, preposterous story to explain why she has no documents or proof of receiving a million dollars in untaxed income—and at the same time, she has stated that she neither has of had bank or other accounts of any type.

This motion and Hamed's motion to compel Isam's banking records both demonstrate the existence of significant factual and documentary support for these allegations—far exceeding the low bar of notice pleading.

ii. Law of the Case

The law of the case doctrine does not bind this Court to the decisions in *Hamed v. Yusuf* (370). Sixteen Plus was not a party there, nor were Manal, Isam and Jamil. That was an equitable action determined under RUPA, completely dependent on the specific facts which are not of record here. That decision was based on laches, which (again) has not been asserted here. Moreover, that case did not involve an accounting of Sixteen

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[7] In his letter, Manal's counsel incorrectly characterized this as solely being about the ability to ***file suit*** in Palestine. However the record is clear. Atty. Hymes initially stated, in the Rule 16 conference, it would be provided—and this was almost entirely discussed as a standard request to any party where financial matters are involved, *to do credit and other financial investigation—as well as a possible Hague Convention process for discovery assistance*. At 2 of Hartmann's letter to Hymes, dated October 20, 2022.

> Item 8: We asked for her present address, and if it was not a place with valid physical addresses, that it be described by route and physical appearance. You asked why I would want that. I responded that *(1) it is a standard discovery inquiry of a party*, and (2) I intend to have or may have process served on her locally. You said you would provide this. (Emphasis added.)

Plus, but rather of the Hamed Yusuf supermarket partnership—and as such Sixteen Plus' records were not in evidence. Sixteen Plus did not give or have an opportunity to take testimony (to cross-examine) and it cannot, therefore, be bound by that decision.

C. Unclean Hands (and In Pari Delicto)

Manal makes the following assertion about two distinct affirmative defenses, 'unclean hands' and 'in pari delicto', at 7-8:

> 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. (Bold added.)

First, neither affirmative defense has been pled. Second, this again relies on a decision in 370, and for the reasons set forth directly above, that decision is not controlling here. Third, "unclean hands" is unilateral and would not be applicable here. Because she states that "in pari delicto" (the multilateral defense) should apply to the issues surrounding the conspiracy alleged in all of these Diamond Keturah cases, Hamed notes that he has already raised this issue, and that application of that doctrine to these cases would wipe out her foreclosure action as well. If all of these parties are *in pari delicto*, the Court would abstain and they would be left to their own solutions. Hamed voiced support for this idea in an earlier reply here (to Isam's Opposition to Hamed's Motion to Compel Bank Records, dated December 26, 2022):

> Instead of addressing Hamed's motion, Isam largely substitutes the suggestion that because he alleges that principals of Sixteen Plus (Fathi and Wally) had unclean hands in 1996-2004, he should be free of any discovery responsibilities in this case. He ignores the 95% of the facts (as

to his and Manal's extensive wrongdoing) alleged in the actual complaint—in an effort to seek ***unilateral*** discovery sanctions against just Hamed. He does so under the rubric of the affirmative defense of *unclean hands*—which is not applicable at this stage[8] and is certainly ***not yet*** applicable in any manner that would block discovery. He has, however, raised the issue and Hamed must, therefore, respond.

What Isam is confusing in his opposition are "unclean hands" and "in pari delicto." Unclean hands is a *unilateral* affirmative defense based in equity. If, as alleged in the complaint—which still controls at this point—ALL of the parties have unclean hands, both here and in the companion foreclosure action (consolidated 342/65),[9] then the Court is presented with bilateral (or more accurately, multilateral) wrongdoing. One factual issue for the future is not, therefore, whether *just one of the alleged wrongdoers should be singled out and denied basic discovery responses*[10]—but rather: Should they ***all*** be affected in some manner by this revelation? Although Hamed shows that this isn't yet the time to apply the doctrine, as not enough facts are of record—he responds, nonetheless.

Indeed, Hamed has, himself, also given notice of the issue of relative and mutual wrongdoing in both the companion foreclosure action and here.[11] He has also raised the doctrine of *in pari delicto*, which has been

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[8] "The Supreme Court of the Virgin Islands has stated . . .an affirmative defense involving issues of fact, typically cannot be decided on the pleadings alone." *Fahie v. Bank of Nova Scotia*, No. ST-16-CV-646, 2019 V.I. LEXIS 34, at *7-8 (Super. Ct. Mar. 19, 2019) *see also Decatur Ventures, Ltd. Liab. Co. v. Stapleton Ventures, Inc.*, No. 1:04-cv-0562-JDT-WTL, 2006 U.S. Dist. LEXIS 55512, at *1 (S.D. Ind. Aug. 8, 2006)(The court would only apply an affirmative defense such as the doctrine of in pari delicto in the future if the facts demonstrated that the applicants bore at least substantially equal or mutual responsibility for the violations they sought to redress.)

[9] Hamed is cognizant that an affirmative defense cannot be asserted by him here, where he is the plaintiff. However, it is clear that whether the companion (65/342) foreclosure case is consolidated 'officially' or not—the foreclosure is the *sine qua non* of many matters here. Thus the motion to consolidate and the defense of 'in pari delicto' are pervasive as to the relations of these various parties. And now Manal states she will raise it!

[10] As to the instant discovery inquiries, there is certainly sufficient evidence already to satisfy the low-bar of the Rule 26 standard set forth above—enough to allow the requested discovery into whether she was and is *also* a wrongdoer.

[11] Foremost, the individual plaintiff, Hisham Hamed, is not alleged to have participated in any act or wrongdoing with regard to this case or the companion foreclosure. The clean hands doctrine does not apply to him in his individual capacity. (He was in school when the 1996-1997 acts occurred.) Moreover, this is notice pleading. The complaint alleges Manal was clearly involved then and in 2015 on. For her to raise the involvement of ***just*** Sixteen Plus and ignore the actions of herself, Isam, Fathi, Jamil, Yussrah Yusuf and others is disappointing. What Manal is actually arguing is: because Sixteen Plus did wrong in 1996-2003, she, Isam and Fathi should (a) avoid discovery now, and (b) get a

> recognized in almost all jurisdictions and provides that a party may not assert a position against another if the party complaining bears fault for the claim. *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 354 (3d Cir. 2001). In 1985, the U.S. Supreme Court applied it, stating: "The entire phrase *in pari delicto potior est conditio defendantis* translates literally to mean, "[i]n a case of equal or mutual fault. . .the position of the [defending] party. . .is the better one" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306 (1985) (*citing Black' s Law Dictionary* 711. (5th ed. 1979)). As an equitable doctrine, *in pari delicto* applies to prevent culpable parties[12] from benefitting from their wrongdoings, *Official Comm. at* 437 F.3d 1145, 1152, and to ensure that courts do not "lend their good offices to mediating disputes among wrongdoers." *Bateman* at 306.
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> Moreover, *the application of the doctrine here would not reward or favor either side*.[13] The refusal of this Court to participate would not end up with one or the other of the families in control of the land—it would leave them in a deadlock—with the property still subject to Manal's mortgage, but with no way to resolve the situation without *mutual* agreement. The Court would, in the very truest meaning of the phrase, "leave the parties to their own solutions." They could then solve the problem by immediate settlement, or, for the time being, leave it deadlocked with a 50/50 ownership. Nor could the Hameds and Yusufs end the dispute without Manal's lifting of the lien of the mortgage—making her a fully involved participant in any solution.

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default award of what Fathi says is $30 million worth of real estate. This is legally incorrect and lacks a certain moral equivalency.

[12] Applying the doctrine in a RICO setting, the court in *Bergeron v. Perrilloux*, No. 08-4380, 2009 U.S. Dist. LEXIS 68926, at *9 (E.D. La. Aug. 6, 2009) noted:

> Plaintiffs actively participated in the wrongdoing they now ask a remedy from; plaintiffs are co-conspirators. With regard to the policy goals of RICO, precluded use of *in pari delicto* in this case would do a disservice to the goals of RICO. *Even a minor aged 17 can be held accountable for their illegal activity*, including conspiring to commit a federal offense. See *United States v. DeLeon*, 768 F.2d 629 (5th Cir. 1985). (Emphasis added.)

[13] *In pari delicto* is a common-law affirmative defense mandating that the courts will not intercede to resolve a dispute between two wrongdoers. The *in pari delicto* "doctrine is based on the policy that 'courts should not lend their good offices to mediating disputes among wrongdoers' and 'denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality.'" *Gatt Commc'ns, Inc. v. PMC Assocs., L.L.C.*, 711 F.3d 68, 83 (2d Cir. 2013) (*quoting Bateman at* 472 U.S. 299, 306.)

Thus, once it has been pled by defendants, and once the facts are known and of record, this doctrine may well apply. But to suggest it is applicable here at this stage, or in any way is certain enough now to make the amended complaint futile is wrong..

D. Laches

Again, laches has not been pled. And, like the argument as to the statute of limitations, it is not applicable to a new CICO conspiracy.

E. Conspiratorial Conduct

This section is rife with factual errors and conclusory pronouncements. Because of the inflammatory nature of the statements, Hamed will respond by presenting the opposition language *verbatim*.

> (a) "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 partners of the Sixteen Plus Corporation are possessed of unclean hands and cannot come to the Court to ask for equity*." (Emphasis added.)

The decision in the 370 case says what it says. As Hamed has noted, it does not control here for a number of reasons. However, Hamed also notes that those two partners, not Sixteen Plus, Hisham Hamed or Manal were prevented only from the use of *accountings for a limited number of years* because of their acts—on Hamed's motion for that relief. The Court absolutely did not bar them from "coming to the court for equity"—to the contrary, Judge Brady heard the case, issued many equitable orders and is in the processing of determining the partnership accounts.

> (b) "Faced with this dilemma, the Sixteen Plus Corporation has apparently adopted a litigation strategy to achieve its goals *outside of the courtroom*. . . ." (Emphasis added.)

Hamed has done nothing outside the courtroom. NOTHING. As he has stated to Atty. Hymes in a responsive letter after Atty. Hymes threatened to raise the issue of professional conduct, HAMED HAS NOT CONTACTED ANY PERSON, ENTITY OR OFFICIAL on St. Martin or in the US. NOR HAS HE THREATENED TO DO SO. All of his actions are contained in these pleadings and all relate to acts and records more than two decades old. He has asked the Court for very limited permission and has suggested a jointly drafted and approved authorization letter to Atty, Hymes—by which Isam would ask solely or his own records collected from his bank.

> (c) "by alleging the existence of a conspiracy between the Sixteen Plus Corporation, it's founders, *its token stockholder*, Manal Mohammad Yousef, and her attorneys."

As described above, in paragraphs 4, 33 and 34 of its 2017 counterclaim in 342, Sixteen Plus alleged the *identical conspiracy* Hamed alleges here. There is nothing new or calculated. Nor has Sixteen Plus (through Hamed) recently *changed* its factual recitation to try to fit Manal into the story. Hamed seeks to join her because she was not so much a hapless dupe as he had originally understood. Thus, it has always been alleged that she gave Fathi the ridiculous power of attorney and participated with him in trying to use it in litigation. Nor was that conspiracy allegation about her somehow the result of Hamed's frustration in the 370 action. In 2015 (when Fathi, not Hamed or Sixteen Plus) started this campaign as to the land *outside of 370*, Hamed had mostly prevailed in 370—establishing the existence of the partnership, obtaining two stores and stopping the use of pre-2006 accountings. Thus, to the contrary, it was Fathi Yusuf who started this (extra-370) land litigation with his 2015 action because he and the other conspirators were frustrated with the 370 results. They were the ones who sought to address the land outside of that case. Fathi is and always has been the bully here.

Finally, Hamed has not alleged (as Manal states) that he (as the "token" shareholder) was in any way involved in any conspiracy, nor was he.

> (d) "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."

This is complete and utter nonsense. What Hamed has said, done and written are all fully before the Court in his motions to compel Manal and Isam; and in the correspondence exhibits thereto. As Manal states no examples of what Hamed has done that 'threatens criminal prosecution' outside of his discovery requests, motions to compel and his setting of a deposition in Atty. Holt's office of a US citizen, Hamed assumes Manal's accusations of improper conduct means Hamed has *wrongfully* asked for:

—Isam's personal banking records for the time of Manal's alleged provision of consideration for the note—for his account from which the funds here were transferred. Manal has stated this is where her funds were and she has no accounts.

—from his own STM bank (BFC), and

—from the STM police/prosecutor (who, documents in the record as exhibits show, had an exact copy of what the bank had obtained under subpoena—a subpoena supplied as an exhibit along with an acknowledgment of the transmission of the exact bank documents to authorities in the early 2000's.) Hamed did not ask for any other police or investigative records. Hamed has not asked for the Court to allow him to seek anything from the authorities about any current records.

—Manal's personal bank accounts as to the million dollars she alleges she obtained from Sixteen Plus. Hamed does not believe she never had any such funds, and has the right to investigate this. Hamed did not ask for any police or investigative records. Hamed has not asked the Court for any police investigations or criminal inquiries.

—Manal's personal tax records—as she has averred (as a central point) that she received a million dollars of interest under the subject note and has no records whatsoever. Hamed seeks to show that she made statements whaen filing at that time as to what her income really was.

Moreover, again, as Hamed has repeatedly pointed out—these documents and acts were more than 20 years ago. *There is no criminal jeopardy associated with them any longer*.

(e) "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."

First, although the fact has been well-obscured for a long time, Hamed has determined that Isam Yusuf holds an American passport. Hamed has recently supplied the passport *number* in filings of record. This was found in a French investigative report after Atty. Hymes had repeatedly promised (since 2017) to produce Isam's passports, but has failed to do so. *Apparently* Isam is no more *just* a foreign national than Joe Biden. See statement from the U.S. Department of State:[14]

> Dual Nationality
> *The concept of dual nationality means that a person is a national of two countries at the same time. Each country has its own nationality laws based on its own policy. Persons may have dual nationality by automatic operation of different laws rather than by choice.*
> * * * *
> *Dual nationals owe allegiance to both the United States and the foreign country. They are required to obey the laws of both countries, and either country has the right to enforce its laws.*

He is being sued in a USVI court, over funds from the USVI and allegedly returned there to purchase the subject land—he seems to be a US national being asked to testify in a US court. Hamed has proffered French investigative reports which track the use of these specific accounts to many millions of dollars, as well as bank records showing enormous deposits by the Hamed and Yusuf families into Isam-controlled accounts at the same bank and at same time as the Manal loan.

Fourth. There is nothing objectionable about requiring Isam's USVI presence for deposition—he states in discovery responses that he travels to the USVI and has people he knows and meets with here—a place he lived.

[14] Accessed February 7, 2023, at https://travel.state.gov

Fifth, WHEN ATTY. HYMES ASKED TO HAVE THIS DEPOSITION TAKEN ON ST. MARTIN as a courtesy—HAMED AGREED—in writing and before the opposition.

(f) "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."

This was addressed above. The only reference to police has been for Isam's own documents in their possession—an exact copy of his bank records at his bank.

(g) 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."

This is also incorrect. Copies of documents the police have obtained from individuals are supplied to civil lawyers all of the time. Documents are often located by the police personnel internally, supplied to civil counsel and used in civil cases. The only difference here is that it is in another jurisdiction, and (as is frequently not the case) here Isam has both the legal ability and the DUTY under the "control" requirement of Rule 26 to ask institutions in possession of his own documents to do so. Both US FOIA and EU access to individual documents in governments' possession have been greatly enhanced in just the past few years—making it easier for individuals to demand their own documents or documents which mention them. While police documents are sometimes exempt from those processes, Hamed's counsel, who has also been an attorney for donkey years, has gotten copies of personal documents obtained by the police and prosecutors in personal injury, civil rights and employment discrimination cases. He has also obtained orders from courts to require the police, local prosecutors,

governments and US attorneys to search and produce relevant records for civil cases —often personal documents they have obtained by subpoena. See as an example, the series of federal civil rights cases ithe City of Albuquerque, where undersigned counsel obtained his individual defendants' documents from both police and prosecutors in a civil case where the court found that the police had run three covert operations against plaintiff to discredit his case—and both his home and counsel's office were broken into by folks the court described as being aligned with the City. *Jackson v. City of Albuquerque*, 715 F.Supp. 1048 (D.N.M. 1987) and *Jackson v. Albuquerque*, 890 F.2d 225, 228 (10th Cir. 1989) where the Tenth Circuit noted:

> unknown to plaintiff at the time, the defendant [City Department Head] Sedillo attempted to have plaintiff investigated on a personal basis by the city police department at least three times until the police finally refused to cooperate in the matter. [The police were in possession of naked photos from his home of [African-American] plaintiff and his [Caucasian] girlfriend, later his wife]. The subject matter of the investigation was not work related.

So there is no basis for alleging an individual's personal documents in the hands of the police cannot be ordered by a civil court to be produced in civil cases. More to the point, *and what is actually being requested of the Court here* (as discussed at some length in Hamed's motions) is what courts do in civil cases all of the time, including the many cases cited in the motion. Courts frequently order parties to obtain and then produce *their own banking, tax and medical documents* from third-party entities, institutions and individuals *as a matter of course*—which ***any*** reponse or discussion of the extensive analysis of Rule 26 "control" in Hamed's several motions would have revealed.

(h) 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.

As discussed above this is also wrong. Manal's involvement is both patent and was raised by Sixteen Plus in 2017—almost instantly after Manal filed her action to foreclose—in the counterclaim in that very action.

> (i) 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.

Of course this is the case—because Isam did everything for her and she had no bank or other records, and filed no tax returns they could find. Isam WAS indicted but could not be brought before the court. He was also given a 'get out of jail free card" along with the other defendants in the plea agreement. Manal was not. This argument is like shooting your parents and then arguing for mercy as an orphan. The entire point of Manal's involvement was to hide herself, have no bank accounts and shield this asset.

> (j) 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.

This is also untrue. Hamed has alleged ***nothing*** about counsel's involvement—nor does Hamed believe that Atty. Hymes, a highly respected colleague and virtual institution, would knowingly participate in any criminal conspiracy. All Hamed has alleged is that ***Manal has said*** she has no bank accounts and no substantial funds—and that the entire million is gone. She avers that she is a simple housewife of limited means—so that it is a suspicious situation when such a respected (and presumably expensive) lawyer files many, many documents over many years for her in a huge case involving millions of dollars. This is a proper area for inquiry.

Hamed has asked only that civil discovery methods be allowed, he has not done, said, or communicated anything to anyone outside of his filings. Hamed believes Atty. Hymes has no idea where Manal's funds are *originally* coming from —or whether Fathi Yusuf is directing some or all of her interaction with her counsel out of Atty. Hymes' sight. Nor should he have to inquire or investigate this. But since she has made a major point of the fact that she has no bank accounts and never has, there must be records from somewhere other than her bank related to the source and transfers that can be traced. There is another basis for this belief--tif his case proves nothing else, it demonstrates that these are parties who can expertly move and control money outside of the ability for normal institutions and people to even suspect what is going on.

Similarly, Atty. Hymes may not be quite as motivated as Hamed in looking for the footprints of Isam and Fathi in directing this case. Atty. Hymes has no way of knowing the source of Manal's directions to him. Nor should he have had to inquire or investigate this. That is why Hamed has asked the Court to allow someone to review the financial and directive information—if not Hamed, then either the Court by an *in camera review,* or a special master whose fees (and any costs of fees of Atty. Hymes for supplying the information) Hamed will pay. If Hamed is wrong, there will be no cost to Manal or Atty. Hymes--and they will be able to reference Hamed's counsel's baseless paranoia in future arguments.

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Dated: February 8, 2023

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CERTIFICATE OF SERVICE

I hereby certify that, discounting captions, headings, signatures, quotations from authority and recitation of the opposing party's own text, this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **February 8, 2023,** 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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