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

SIXTEEN PLUS CORPORATION, Plaintiff,	)	CASE NO.: SX-2016-CV-00065
vs.	)	ACTION FOR DECLARATORY JUDGMENT
MANAL MOHAMMAD YOUSEF, Defendant,	)	JURY TRIAL DEMANDED
and	)	CASE NO.: SX-2017-CV-00342 (CONSOLIDATED)
MANAL MOHAMMAD YOUSEF, Counter-Plaintiff,	)	ACTION FOR DEBT AND FORECLOSURE
vs.	)	JURY TRIAL DEMANDED
SIXTEEN PLUS CORPORATION, Counter-Defendant.	)	

RESPONSE OF MANAL YOUSEF TO SIXTEEN PLUS CORPORATION'S MOTION TO AMEND ITS TWO ANSWERS TO ADD ONE SENTENCE TO CLARIFY AN AFFIRMATIVE DEFENSE

COMES NOW, MANAL MOHAMMAD YOUSEF, by her undersigned attorney, James L. Hymes, III, and respectfully opposes the motion filed by Sixteen Plus Corporation to amend its two answers to add a sentence to clarify an affirmative defense, for the reasons set forth below.

I. LACK OF CORPORATE AUTHORITY

This entire cause of action has been improperly instituted and should be dismissed, rather than amended. A corporation may only be managed by its Board of

Directors. T.13 VIC §61. The Sixteen Plus Corporation only has two directors, Waleed Hamed and Fathi Yusuf. They do not agree with each that the Corporation borrowed $4.5 Million from Manal Mohammad Yousef and issued her a note and mortgage to secure the repayment of this loan. Fathi Yusuf believes that the note and mortgage are valid and should be honored and paid. (*See* Exhibit 7 to Third Party Defendant Fathi Yusuf's Brief in Opposition to Sixteen Plus Corporation's Motion to Amend Answer, attached hereto as **"Exhibit 1"**). Waleed Hamed contends that the money was skimmed from the United Corporation, sent to St. Maarten, and returned to the Sixteen Plus Corporation to purchase the Diamond Keturah property. This activity caused the United States Attorney in the Virgin Islands to prosecute Waleed Hamed and others for this illegal activity.

Because Waleed Hamed and Fathi Yusuf do not agree on this issue, a resolution by the Board of Directors of the Sixteen Plus Corporation could never have been obtained to authorize the institution of this lawsuit, or to oppose the action to foreclose the mortgage filed by Manal Mohammad Yousef. Even more central, without a board resolution authorizing the Corporation to do so, counsel could never have been retained to institute litigation in its name, and therefore this case. As a consequence, this action for declaratory judgment and the counterclaim filed against Manal Mohammad Yousef by Sixteen Plus Corporation are unauthorized by its Board of Directors and should be considered a nullity, and this motion to amend its two answers should be denied for lack of corporate authorization.

II. *IN PARI DELICTO* IS NOT AVAILABLE AS A DEFENSE

The motion to amend its two answers by the Sixteen Plus Corporation seeks to add the affirmative defense of *in pari delicto*. As will be shown hereafter this defense is not available to this Corporation due to the fact that Waleed Hamed has unclean hands based on his admission that he participated in a criminal conspiracy to skim $60 Million from the United Corporation.

A. Common Law Doctrine Of Unclean Hands/Clean Hands Doctrine

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, *in pari delicto* bars a party from recovering damages if its losses are substantially caused by its own forbidden actions.

The clean hands doctrine, sometimes referred to as the doctrine of unclean hands, stands for the proposition that one who comes into equity must come with clean hands. 30A C.J.S. Equity § 111; and 27A AmJur2d Equity § 19. This principle reflects the equitable maxim that one who seeks equity must do equity. 30A C.J.S. Equity § 112; and 27A AmJur2d Equity § 19. The equitable doctrine of unclean hands applies equally to plaintiffs and defendants. 30A C.J.S. Equity § 114; and 27A AmJur2d Equity § 19.

The clean hands maxim is applied in the interest of the public and to protect the court and preserve its dignity by preventing the court from becoming a participant in inequitable conduct (from having to endorse or reward inequitable conduct). 30A C.J.S.

Equity §§ 111, 120 and 121; and 27A AmJur2d Equity §§ 19 and 20. It is not applied for the protection of the parties. 27A AmJur2d Equity § 19. The clean hands principle is subject to reasonable limitations/exceptions. 27A AmJur2d Equity § 19. The clean hands maxim is invoked only to prevent affirmative relief (as against a litigant seeking affirmative relief). 27A AmJur2d Equity § 19.

The complainant seeking to invoke the doctrine of unclean hands bears the burden of proof and the initial burden of production by having to demonstrate a prima facie case that the elements of the doctrine have been met.

Pursuant to the Corpus Juris Secundum, the party alleging unclean hands must establish the other party is guilty of fraud or bad faith toward the entity making the assertion. To prove an unclean hands defense a party must show that: 1) the other party perpetrated some wrongdoing, and 2) the wrongful act related to the subject matter of the action. 30A C.J.S. Equity § 111. The wrongdoing of the litigant includes conduct that is inequitable, unfair and dishonest, or fraudulent and deceitful, or when the litigant acted unconscionably or in bad faith. In other words, the court will not aid a litigant who is guilty of fraudulent, illegal or inequitable conduct. 30A C.J.S. Equity § 111.

The American Jurisprudence 2d states, a claim is barred under the doctrine of unclean hands when: 1) the party seeking affirmative relief 2) is guilty of conduct involving fraud, deceit, unconscionability, or bad faith 3) directly relating to the matter in issue 4) that injuries the other party and 5) affects the balance of equities between the litigants. 27A AmJur2d Equity §§ 19 and 21. The hands of a litigant are deemed unclean by conduct that is "condemned and pronounced wrongful by honest and fair-minded people"

including that which is "inequitable, unfair, dishonest, fraudulent, unconscionable, in bad faith, willful, grossly negligent, unrighteous, unconscientious, or oppressive, or reprehensible. Mere stupidity or negligence is not sufficient, nor is mere ignorance or inappropriateness." 27A AmJur2d Equity § 21. A court will deny equitable relief where the right the complainant asserts arises from a wrong, a breach of duty, or a violation of law. 27A AmJur2d § 21.

There is a presumption that the hands of the litigant seeking equitable relief from the court are clean until the contrary appears. 30A C.J.S. Equity § 111. Pursuant to the doctrine of clean hands the litigant must establish that his conduct was fair, equitable and honest as to the particular matter in litigation. 30A C.J.S. Equity § 111; and 27A AmJur2d Equity § 19. It is impermissible for the party to take advantage of his own wrong or claim the benefit of his own fraud, 30A C.J.S. Equity § 111; and 27A AmJur2d Equity § 19, or that of his privies, 27A AmJur2d Equity § 19.

A litigant injured by his own conduct is addressed by 27A AmJur2d Equity § 22: "Equity will not aid one who consciously invites the wrong complained of. A person cannot aid, encourage, or solicit the commission of a wrong and then complain to equity that he or she has been injured by the same act. Thus, a party may be denied relief where the result induced by his or her conduct will be unconscionable either in the benefit to him, or herself or the injury to others." 27A AmJur2d Equity § 22.

B. In Pari Delicto

In pari delicto principle/doctrine is a corollary of the clean hands maxim. 30A C.J.S. Equity § 113; and 27A AmJur2d Equity § 24. Its translation is *"in equal fault." In pari*

delicto doctrine defense operates to bar a litigant's claim if he bears responsibility for his injury. 27A AmJur2d Equity § 24. The *in pari delicto* doctrine focuses on the transaction as a whole so the real disapproval is not to one party's unclean hands but to the whole unlawful enterprise. Conservation of judicial resources by not hearing disputes among wrongdoers, and deterring unlawful conduct by denying relief to entities who broke the law are policies undergirding the *in pari delicto* doctrine. 27A AmJur2d Equity § 24. The court will deny relief where it has been established the parties are *in pari delicto* or to have acted with the same degree of knowledge as to the illegality of the transaction. Stated differently, there is no bar to apply the cleans hands doctrine where plaintiff and defendant are both parties to a fraudulent transaction. 30A C.J.S. Equity § 113; and 27A AmJur2d Equity § 24. In matters involving moral delinquency or turpitude, all parties partaking are deemed to be *in pari delicto*. 30A C.J.S. Equity § 113. "When the doctrine of *in pari delicto* is applied, the result is to render transaction between the parties absolutely without any force or effect whatever, and the court leaves the parties just in the condition in which it finds them. In other words, courts decline to resolve one side's claim over the other where the claim arises from both parties' wrongdoing. Where the parties appear not to have been *in pari delicto*, however, the one whose wrong is less than that of the other may be granted relief. The doctrine is often applied as between the parties to a fraudulent or illegal transaction." 27A AmJur2d Equity § 24. "[W]here the fault of the parties is mutual the law will leave the case as it finds it." 30A C.J.S. Equity § 113.

"To apply the maxim, the illegal transaction must have been entered into voluntarily and the fault of the parties must have been equal. Thus, whether the *in pari delicto* doctrine should be applied at all depends on the relative culpability of the plaintiff and the defendant; unless the degrees of fault are essentially indistinguishable or the plaintiff's responsibility is clearly greater, the *in pari delicto* defense should not be allowed." 27A AmJur2d Equity § 24.

"Even though the parties are *in pari delicto*, equity may intervene where public policy dictates such a course of action. Thus, although the parties are shown to have been *in pari delicto*, the court will grant relief to one of them if its forbearance will be productive of an offense against public morals or good conscience, or be a reflection on the integrity of the court, or productive of perjury." 27A AmJur2d Equity § 24.

"Where the party seeking relief consented to an illegal transaction because of duress, menace, or undue influence, that party is not regarded as *in pari delicto* with the person obtaining that consent by the employment of such means and will not be precluded from invoking affirmative relief in equity to set aside contracts or instruments so executed or to defeat an attempted enforcement of them." 27A AmJur2d Equity § 24.

"The traditional principle that a corporation is liable for the acts of its agents and employees applies with full force to the *in pari delicto* analysis. The 'adverse interest exception' to the doctrine of *in pari delicto* applies when an agent is defrauding the principle exclusively for the agent's own benefit and to the detriment of the principal." 27A AmJur2d Equity § 24.

C. Discretion Of Court To Apply Doctrine Of Unclean Hands/Doctrine Of Clean Hands

The Superior Court has discretion to fashion an equitable remedy. V.I.R.Civ.P. 2 ("There is one form of action -- the civil action."); *People of the Virgin Islands ex rel. Chapman v. Blyden*, 69 V.I. 243, 253, 253 fn.8 (V.I. Super. Ct. 2018); and *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44 (V.I. Super. Ct. July 21, 2017). An application of the doctrine of unclean hands lies in the sound discretion of the court. 30A C.J.S. Equity § 123; 27A AmJur2d §§ 19 and 21; *Bishop v. Bishop*, 3 V.I. 655, 665, 257 F.2d 495, 500 (3d Cir. (V.I.) 1958) (court has "discretion in refusing to aid the unclean litigant"); and *Carroll v. Prosser (In re Prosser)*, 2012 Bankr. LEXIS 5872, *63 (Bankr. D.V.I. December 20, 2012) (the trial court has discretion to apply the doctrine of unclean hands). The party's misconduct need not be punishable as a crime or to justify legal proceedings of any nature. *Bishop v. Bishop*, 3 V.I. 655, 665, 257 F.2d 495, 500 (3d Cir. (V.I.) 1958). "Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim" by a court. *Bishop v. Bishop*, 3 V.I. 655, 665, 257 F.2d 495, 500 (3d Cir. (V.I.) 1958).

In *Preiss v. Severe*, 22 V.I. 433 (D.V.I. App. Div. 1986), the Appellate Division of the District Court of the Virgin Islands addressed the defense of *in pari delicto*. Preiss asserted he raised the estoppel defense (of *in pari delicto*) but the District Court Appellate Division found he did not and thereby waived the defense. *Preiss v. Severe*, 22 V.I. 433, 435 (D.V.I. App. Div. 1986).

In pari delicto is a companion axiom to the unclean hands maxim. *Preiss v. Severe*, 22 V.I. 433, 435 (D.V.I. App. Div. 1986). The object of the common law doctrine of *in pari delicto* is to prevent profits from one's wrongful acts. *Preiss v. Severe*, 22 V.I. 433, 435 (D.V.I. App. Div. 1986). *In pari delicto* means "in/of equal fault." *Preiss v. Severe*, 22 V.I. 433, 435, 436 (D.V.I. App. Div. 1986). The common law rule requires the "guilt of the party asserting fraud must be 'substantially equal to that of the defendant.'" *Preiss v. Severe*, 22 V.I. 433, 435 (D.V.I. App. Div. 1986). The *in pari delicto* defense is a common law doctrine designed to ensure transgressors are not permitted to profit from their own wrongdoing. Consequently "a party is barred from recovering damages if his losses are substantially caused by 'activities the law forbade him to engage in.'" *Preiss v. Severe*, 22 V.I. 433, 436 (D.V.I. App. Div. 1986) (*in pari delicto* applied to unlawful acts). *In pari delicto* will be applied to bar or preclude recovery only where the plaintiff's fault is substantially equal to that of the defendant and when there is a direct relationship (conduct associated with the subject transaction). *Preiss v. Severe*, 22 V.I. 433, 436 (D.V.I. App. Div. 1986).

The court in *Preiss v. Severe*, 22 V.I. 433 (D.V.I. App. Div. 1986), found *in pari delicto* inapplicable because the parties' guilt was not equal. Severe's requisite culpability was composed of an accusation that he brought Preiss' business with the intent to commit tax fraud. *Preiss v. Severe*, 22 V.I. 433, 436 (D.V.I. App. Div. 1986). *In pari delicto* applies "only where plaintiff's illegal conduct occurred in the course of the transaction that is the basis of the fraud claim." *Preiss v. Severe*, 22 V.I. 433, 437 (D.V.I. App. Div. 1986). The sole concurrent act of which Severe was accused was of "formulating the intent to hide

some business income." *Preiss v. Severe*, 22 V.I. 433, 437 (D.V.I. App. Div. 1986). The Appellate Division noted a "passing thought is not illegal conduct." *Preiss v. Severe*, 22 V.I. 433, 437 (D.V.I. App. Div. 1986). Assuming for the sake of argument the court deemed Severe's "act" to be unlawful, "guilt that is unproven and merely inferred cannot be 'substantially' equated with the fraud actually perpetrated by Preiss." *Preiss v. Severe*, 22 V.I. 433, 437 (D.V.I. App. Div. 1986). The Appellate Court found that had the *in pari delicto* defense (an affirmative defense) been timely raised, which it was not, it would still be inapplicable here. *Preiss v. Severe*, 22 V.I. 433, 437 (D.V.I. App. Div. 1986). "The defense of *in pari delicto* may only be asserted against a party of comparable guilt." *Preiss v. Severe*, 22 V.I. 433, 438 (D.V.I. App. Div. 1986).

The doctrine of unclean hands has been acknowledged and applied in the Superior Court of the Virgin Islands beginning in the 1970s.

The case of *Hamed v. Yusuf*, 2017 V.I. LEXIS 114 (V.I. Super. Ct. July 21, 2017), is illuminating on the clean hands maxim. Only the corporate defendant United Corporation plead guilty to the indictment – convicted of a crime – prosecuted by the United States of America ("United States") and Government of the Virgin Islands ("GVI"). United Corporation plead guilty via a plea agreement to Court 60 tax evasion by willfully preparing and presenting a materially false corporate income tax return for the year 2001 by reporting gross receipts as $69,579,412 knowing the true amount was approximately $79,305,980. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *32-*33, *32 fn.27 (V.I. Super. Ct. July 21, 2017).

Individuals charged in the criminal indictment by the United States and GVI were Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeh Yusuf, Waleed Hamed, and Waheed Hamed. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *32 fn.27, *32 fn.28 (V.I. Super. Ct. July 21, 2017). The United States and GVI alleged United Corporation evaded reporting gross receipts by employing a cash diversion/money laundering scheme by which United Corporation, through its officers and employees including Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeh Yusuf, Waleed Hamed, and Waheed Hamed, conspired to withhold from deposits substantial amounts of cash received through sales. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *33, *33 fn.28 (V.I. Super. Ct. July 21, 2017) (referencing Indictment (2003 Third Superseding Indictment) at ¶ 1). The Indictment further alleged that "instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *33 (V.I. Super. Ct. July 21, 2017) (referring to Indictment (2003 Third Superseding Indictment) at ¶ 12). According to plaintiff Hamed's expert, Lawrence Shoenbach, "those acting on behalf of the company [United Corporation] took cash out of sales before the Company could properly account for them." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *33, *33 fn.26 (V.I. Super. Ct. July 21, 2017).

According to plaintiff Hamed's expert Lawrence Schoenbach, the gross receipts of United Corporation were intentionally misapplied and documented. The aim of the scheme was to render any accounting inaccurate. As per Mr. Schoenbach, "the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed." *Hamed v.*

Yusuf, 2017 V.I. LEXIS 114, *34 (V.I. Super. Ct. July 21, 2017) (quoting Mr. Schoenbach's Opinion Letter at 6-7)). The Superior Court did not express any opinion as to the criminal nature of the conduct of the individual defendants named in the criminal action except that their conduct shows not only "the impossibility of reconstructing financial records or conducting … an accurate accounting" but also "the partners' knowledge of this state of affairs." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *34 fn.29 (V.I. Super. Ct. July 21, 2017). The Superior Court acknowledged that United Corporation's "guilty plea as to Count 60 established that United [Corporation], which as a corporation must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursement thereby rendering impossible any accurate reconstruction of accounts." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *34 fn.29 (V.I. Super. Ct. July 21, 2017).

As per deposition testimony of Maher Yusuf dated April 3, 2014, immediately prior to an FBI raid of the Plaza Extra stores in 2001, Waheed Hamed, Waleed Hamed and Maher Yusuf collectively "decided to destroy some of the receipt, because they were all in cash." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *34-*35 (V.I. Super. Ct. July 21, 2017) (referencing Opinion Letter of Mr. Schoenbach at 7 n.5). Maher Yusuf stated at his deposition, he and Mufeed Hamed "pulled out a good bit of receipts from the safe in Plaza East," estimated the withdrawals attributable to the Hamed family members and the Yusuf family members, and each family purged their own receipts. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *35 (V.I. Super. Ct. July 21, 2017) (referencing Opinion Letter of Mr. Schoenbach at 7 n.5). At a March 6-7, 2017 hearing, plaintiff Hamed's sons confirmed

this narrative along with many of the allegations of the 2003 Third Superseding Indictment. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *35 (V.I. Super. Ct. July 21, 2017). "Evidence presented at the [March 6-7, 2017] hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *35 (V.I. Super. Ct. July 21, 2017).

The Superior Court found Hamed was "no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour." Hamed, despite not being the managing partner, was aware of the lack of any formal record keeping since the 1993 "true-up" of the partnership business in 1993, which itself was an informal reconciliation, if not from the beginning of the partnership. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *38, *38 fn.31 (V.I. Super. Ct. July 21, 2017). Hamed acknowledged that "reliable books have only been attempted since an order from the District Court in the criminal case requiring an accounting." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *38 fn.31 (V.I. Super. Ct. July 21, 2017) (quoting Plaintiff's Comments Re Proposed Winding-Up Order, filed October 21, 2014, at 11). Because the partners (Hamed and Yusuf) did not conduct the one and only complete reconciliation/"true-up" of partnership accounts until 1993, seven (7) years after the partnership was founded in 1986, it establishes that Hamed was "equally content with this practice of informal and sporadic accounting." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *38-*39 (V.I. Super. Ct. July 21, 2017).

The doctrine of unclean hands has been described by the Superior Court as follows: "It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing." *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205-06 (V.I. Super. Ct. 2015) (citing *Sunshine Shopping Ctr., Inc. v. Kmart Corp.*, 42 V.I. 397, 407, 85 F.Supp.2d 537, 544 (D.V.I. 2000)). The Superior Court acknowledged that plaintiff COA's position, for (equitable) preliminary injunctive relief, is weakened by defendants' argument that plaintiff COA had unclean hands. *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 206 (V.I. Super. Ct. 2015). Mr. Craig Cerny, ostensibly a person affiliated with plaintiff COA, testified "he broke into the area at the pool deck, destroyed barriers, trespassed on [defendant] Beachside's property, and removed Beachside's personal property." *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 206 (V.I. Super. Ct. 2015).

When a party seeks equitable relief, a maxim of equity applies: He who seeks equity must come with clean hands. *Benjamin v. Board of Trustees of the V.I. Government Employees Retirement System*, 25 V.I. 102, 107 (V.I. Terr. Ct. 1990). A party who does not come to court with clean hands cannot be afforded the equitable relief sought. *Benjamin v. Board of Trustees of the V.I. Government Employees Retirement System*, 25 V.I. 102, 107 (V.I. Terr. Ct. 1990). The misconduct of plaintiff in the case is that it is a transaction prohibited by law (it violates statutes), is a transaction tainted by a conflict of interest and therefore impermissibly indicative of self-dealing. *Benjamin v.*

Board of Trustees of the V.I. Government Employees Retirement System, 25 V.I. 102, 107 (V.I. Terr. Ct. 1990). The Territorial Court applied the doctrine of unclean hands in this instance due to the misconduct that is related to the subject matter of the litigation. *Benjamin v. Board of Trustees of the V.I. Government Employees Retirement System*, 25 V.I. 102, 107 (V.I. Terr. Ct. 1990).

The clean hands doctrine applies to an action in equity. *Bach Enters. v. Frenchtown Civic Org.*, 1990 V.I. LEXIS 6, *3 (T.C.V.I. March 30, 1990). The clean hands doctrine was applied by the Territorial Court to deny petitioner equitable relief of a temporary restraining order. *Bach Enters. v. Frenchtown Civic Org.*, 1990 V.I. LEXIS 6, *4 (T.C.V.I. March 30, 1990). The petitioner and the patrons of petitioner's establishment (bar and restaurant) made excessive late night noise in the neighborhood was the misconduct defendant Frenchtown Civic Organizations claims pursuant to the clean hands doctrine. *Bach Enters. v. Frenchtown Civic Org.*, 1990 V.I. LEXIS 6, *1 (T.C.V.I. March 30, 1990).

The defense of *in pari delicto* is only available if the plaintiff and the defendant have committed crimes or moral transgressions of equal magnitude. This is not the factual case in this instance. Manal Mohammad Yousef contends that her father gave her $4.5 Million which was invested on her behalf through a loan to Sixteen Plus Corporation to purchase the Diamond Keturah property. This investment was secured by a note and mortgage on exceptionally valuable Diamond Keturah property. The consideration for this gift was the natural love and affection which a father had for his

daughter, and his desire to be certain that his daughter and her family would be financially secure after his death.

Manal Mohammad Yousef denies that she in any way participated in the criminal conspiracy to skim $60 Million from the United Corporation and its three Plaza Extra stores and to use a portion of those proceeds to purchase the Diamond Keturah property from the bank of Nova Scotia. Support for her contention is evident from the fact that neither the prosecutors and banking authorities in St. Maarten, nor the United States attorney in the Virgin Islands ever accused her of banking irregularities or charged her as a co-defendant in the criminal action. Her position is also supported by the sworn answers to discovery by Fathi Yusuf that the note and mortgage were valid and should be paid.

More importantly, the Sixteen Plus Corporation itself does not assert that Manal Mohammad Yousef was an equal participant in its First Amended Verified Complaint and the allegations that the note and mortgage were a sham. In paragraph 23 of its First Amended Verified Complaint Sixteen Plus Corporation claims that Manal Mohammed Yousef was involved only as part of an agreement by Fathi Yusuf and Isam Yousuf, not her, to cover up the partnership source of these funds and to try and shelter Isam Yousuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership supermarkets. By its own First Amended Verified Complaint, Sixteen Plus Corporation alleges that Manal Mohammed Yousef was involved only as an unwitting participant. Indeed, by its account, her participation was so de minimis that she was never to receive any of the proceeds of the note and mortgage, or benefit in any way from the acquisition of the Diamond Keturah property.

This eleventh hour, last ditch attempt to drag Manal Mohammed Yousef into the criminal conspiracy is nothing less than a veiled attempt to avoid the stinging opinion by Judge Brady in *Hamed, et al. v. Yusuf* that persons with unclean hands cannot profit from their own misdeeds. The defense of *in pari delicto* is not available to cleanse the dirty hands of those who skimmed $60 Million for illegal and illicit purposes, hands which now seek to profit further from never having to pay for the Diamond Keturah property.

WHEREFORE, for the reasons set forth above, it is respectfully requested that the motion of Sixteen Plus Corporation to amend its two answers be denied, and the Action filed by Sixteen Plus Corporation for Declaratory Judgment, and its Counterclaim, be dismissed for lack of corporate authority.

Respectfully Submitted,

DATED: February 21, 2023.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
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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 21st day of February, 2023, as an approved C-Track filing on behalf of James L. Hymes, III, I caused an exact copy of the foregoing ***"Response of Manal Yousef to Sixteen Plus Corporation's Motion to Amend its Two Answers to Clarify an Affirmative Defense"*** to be served electronically through the C-Track system, upon the following counsel of record:

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