

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

MANAL MOHAMMAD YOUSEF,
Plaintiff,
v.
SIXTEEN PLUS CORPORATION,
Defendant,

and
SIXTEEN PLUS CORPORATION,
Counter-Plaintiff,
v.
MANAL MOHAMMAD YOUSEF,
Counter-Defendant,

and
SIXTEEN PLUS CORPORATION,
Third-Party Plaintiff,
v.
FATHI YUSUF,
Third-Party Defendant.

SIXTEEN PLUS CORPORATION,
Plaintiff,
v.
MANAL MOHAMMAD YOUSEF,
Defendant,

and
MANAL MOHAMMAD YOUSEF,
Counter-Plaintiff,
v.
SIXTEEN PLUS CORPORATION,
Counter-Defendant.

CIVIL NO.: SX-2017-CV-00342

**ACTION FOR DEBT AND
FORECLOSURE**

**COUNTERCLAIM FOR
DAMAGES**

THIRD PARTY ACTION

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-2016-CV-00065

**ACTION FOR
DECLARATORY JUDGMENT,
CICO and FIDUCIARY DUTY**

COUNTERCLAIM

JURY TRIAL DEMANDED

**SIXTEEN PLUS CORPORATION'S
REPLY
AS TO ITS MOTION TO AMEND ITS TWO ANSWERS
TO ADD ONE SENTENCE TO CLARIFY AN AFFIRMATIVE DEFENSE**

COMES NOW Sixteen Plus Corporation, through undersigned counsel, and submits the following in reply to Manal Yousef's opposition to its motion to amend.

As a preliminary matter, Sixteen Plus will not, again, respond to the corporate control argument—it is misplaced here, and as previously discussed in other filings,¹ it is incorrect.

I. Introduction

Manal Yousef ("Manal") provides the Court with an excellent, scholarly 17-page treatment of the affirmative defenses of *unclean hands* and *in pari delicto*. She presents several interesting and compelling legal views—not the least of which is the view that to analyze "in pari delicto" one can examine the equitable positions of each party separately as one-half of an unclean hands defense.

Impressive as the *Brandeis-brief* quality of the opposition may be, however, the effort is premature at this juncture of the proceedings. In addition, Manal again makes the factual mistake of ignoring Sixteen Plus Corporation's 342 counterclaim in these consolidated cases.

II. Manal's Opposition is Premature

The opposition is an extensive argument that "Manal is innocent and Sixteen Plus (or at least its officers) did wrong". She argues that Wally and Fathi did bad acts, and, critically, that she did not. Thus, she concludes, the Court should not allow the amendment.

But this is a motion to amend. There is no factual record—thus no way yet to show what she did or didn't do. There have been no depositions. Thus, there is no way to determine the basic facts regarding her degree of involvement. To circumvent this lack of facts, she

¹ Manal and Fathi Yusuf have argued this extensively elsewhere. See, e.g., Defendants' oppositions to *Hisham Hamed's Motion to Amend to Join Manal Yousef* in 650. Sixteen Plus references Hamed's replies there.

points to filings by Hisham Hamed in the companion 650 action. Hamed will address that attempt to supply conclusory 'facts' in Section III.

Unfortunately, this means that instead of opposing the instant motion she argues her case-in-chief. This results in an opposition where Manal does not really discuss Rule 15(a)(2), the standard of review regarding that rule under USVI caselaw, or the application of the law to the facts alleged. Thus, there is also no rebuttal of Sixteen Plus Corporation's incorporation of Hamed's analysis in 650 regarding the controlling decision in *Davis v. UHP Projects, Inc.*, 74 V.I. 525, 536-37 (2021).

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

Nor does Manal respond to the recitation of the procedural posture provided or the "critical 'fact' [] that the defendants have stated that Manal should be joined." Finally, there was no attempt to match facts to the *Davis* factors.

Thus, the opposition does not dispute that Sixteen Plus meets the requirements for amendment—a very liberal standard at this point of the action (with no answers filed and no depositions yet taken.) The motion should be deemed conceded and the amendment allowed.

III. Manal's Facts Are Incorrect Because She Again Ignores the 342 Counterclaim

Although this is not the time for it, Sixteen Plus briefly addresses one part of Manal's "proof" of its greater culpability compared to her innocence. In the opposition, Manal points to Hisham Hamed's view of her in his January 23, 2016, First Amended Complaint *in the*

companion 650 action. First, Sixteen Plus has moved to amend that FAC. Second, and much more to the point, that was a complaint filed by a derivative plaintiff (not Sixteen Plus) and is not a pleading in these consolidated actions. Third, Manal once again notes that Hisham Hamed did not dwell on Manal's role in the original actions in 1996 through 2003—treating her more as a secondary, straw-man and viewing her more as a patsy than a prime actor, However, in the Sixteen Plus counterclaim *in these cases* (in 342) *it* alleges her significant, existential involvement in the current conspiracy—the conspiracy which is being litigated in this action.

In *Hisham Hamed's Reply to Manal's Opposition to Amend* in 650 (when Manal incorrectly alleged that Sixteen Plus was raising her significant involvement for the *first time*) Hamed countered that Sixteen Plus, when it filed *its* counterclaim in Manal's 2017 (342) foreclosure action, *did state* her involvement—that it is in no way a “new revelation”.

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.

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. . . .on January 2, 2019, Hamed/Sixteen Plus moved to consolidate that 342/65 case with the instant 650 case. . . .

Thus, she has simply repeated this erroneous view and again ignored the filings in *this* case.

IV. Conclusion

Manal does not address and therefore does not refute the rule, caselaw and arguments in the motion. Thus, the motion should be deemed conceded, and the amendment allowed.

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Dated: February 23, 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 23, 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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