

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

HISHAM HAMED , individually, and Derivatively, on behalf of SIXTEEN PLUS CORPORATION ,)	
)	
Plaintiff,)	CIVIL NO. SX-16-CV-650
)	
vs.)	DERIVATIVE SHAREHOLDER SUIT, ACTION FOR DAMAGES AND CICO RELIEF
)	
FATHI YUSUF, ISAM YOUSUF and JAMIL YOUSEF ,)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	
and)	
)	
SIXTEEN PLUS CORPORATION ,)	
)	
a nominal Defendant,)	
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**OPPOSITION OF DEFENDANTS ISAM YOUSUF AND JAMIL YOUSUF
TO HISHAM HAMED'S FIRST RULE 15(d) MOTION
FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

COME NOW Isam Yousuf and Jamil Yousuf, by their undersigned attorney, James L. Hymes, III, and respectfully oppose the motion by Hisham Hamed to supplement his Complaint. Their opposition is based on the plain language of two (2) Rules of Civil Procedure. First, Hisham Hamed cannot bring a derivative cause of action and, second, the motion does not comply with the requirements of Rule 15(d).

Derivative Cause of Action – Non-Compliance:

Hisham Hamed should be disqualified from bringing a derivative cause of action pursuant to the provisions of subsection (b) of Rule 23.1. This subsection requires that he be a shareholder at the time of the transaction complained of.

“Rule 23.1(b) pleading requirements. The complaint must be verified and must (1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of ...”.

The transaction complained of is the alleged so-called issuance of a “sham” note and mortgage to Manal Yousef in 1997. Hisham Hamed was not a shareholder in the Sixteen Plus Corporation at that time, and therefore is disqualified from bringing a derivative cause of action on behalf of the corporation.

Hisham Hamed Should be Disqualified for Other Reasons:

Derivative actions are subject to the provisions of Rule 23.1 of the Virgin Islands Rules of Civil Procedure. This rule states, in pertinent part,

“The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated enforcing the right of the corporation or association.”

The Corporation at issue is the Sixteen Plus Corporation. This Corporation was formed by Waleed Hamed and Fathi Yusuf for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. After the purchase, these two men had a falling out regarding their financial relationship, including the ownership of the Sixteen Plus Corporation. They could not agree on how to manage the corporation. This disagreement persists to the present day. As a consequence, Hisham Hamed cannot

fairly and adequately represent the interests of shareholder Fathi Yusuf, and therefore he is disqualified to bring a derivative cause of action on the Corporation.

Rule 15(d):

Hisham Hamed seeks to supplement his Complaint pursuant to the provisions of Rule 15(d). This Rule of Civil Procedure allows for “a supplemental pleading setting out transactions, occurrences, or events that happened after the date of the pleading to be supplemented.” R15(d). The motion itself cites grounds for denial by the Court. On page 3 of the motion Hamed recites that on February 12, 2016 the Sixteen Plus Corporation filed a declaratory judgment action against Manal Yousef seeking to avoid the sham note and mortgage alleging that the note to Manal made her nothing more than a strawman in a tax avoidance scheme.

The motion to supplement is based on the assertion that Hisham Hamed had no knowledge of this occurrence since he filed his original Complaint on October 31, 2016. However, everything in the motion which alleges that Hisham only learn of certain facts after the filing of his Complaint is bogus. As a derivative stockholder in Sixteen Plus Corporation he is charged with the knowledge of the corporation from day one. It is unreasonable to assume and assert that someone acting on behalf of the corporation doesn't have full knowledge of the history of the business on which he allegedly takes affirmative action. Hisham Hamed would have this Court believe that he is acting on behalf of the corporation with a blind eye to everything it has done in the past, and all

the information it has received as a party defendant in multiple causes of action in this jurisdiction.

On page 1 of the motion Hisham Hamed seeks to make it clear that he does not seek to alter the proposed Second Amended Complaint. Therefore, supplemental pleadings are superfluous since they do not in any way change the Complaint as filed. Furthermore, the assertions by Hisham Hamed that he is only now learning things is preposterous. In addition, his statements of matters only now just learned are conclusory and do not recite the factual basis from which he is now learning new information. The best example of this is the first full paragraph on page three (3) of his motion in which he is asserting that the note and mortgage issued to Manal Yousef by the Sixteen Plus Corporation was a sham note and mortgage. There is no factual connection to this assertion, or the assertion contained therein that Manal was nothing more than a strawman tax avoidance scheme. This entire paragraph is nothing more than a conclusion without a factual basis. And, without a factual basis, the Court should deny the motion to supplement as there is no basis to find that this purported evidence only occurred after the filing of the original Complaint, which on the face of everything which is known in all of this litigation is not true. If true, the Sixteen Plus Corporation and Wally Hamed, Hisham Hamed's father, had knowledge of the purported fact as of 1997, a date which long pre-dates the filing of the Second Amended Complaint. Therefore, this attempt at supplementation is without a legal or factual basis.

In addition to the foregoing, Hisham Hamed, in his motion and in his Complaint, asserts that the Corporation, Sixteen Plus, take the official position that the note and

HISHAM HAMED, Individually, and derivatively, on behalf of
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mortgage of Manal Yousef is a sham. In order to assert this official position, it is respectfully submitted that the Court should require Mr. Hamed to produce a corporate resolution authorizing the Corporation to take this position. In the absence of such official corporate sanctions, this allegation should be stricken as without legal authority.

WHEREFORE, it is respectfully requested the Court deny the motion either for the reason that Hisham Hamed is not qualified to bring any cause of action as a derivative stockholder, or for the reason that the facts requested to be added as supplements to the Complaint occurred years prior to filing of the Complaint and could not have been learned by Hisham Hamed only recently. For either reason, or for both, the Court should not concern itself with requests to amend a Complaint which was filed contrary to law.

Respectfully Submitted,

DATED: March 6, 2023.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
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Isam Yousuf, and Jamil Yousuf

By: */s/ James L. Hymes, III*

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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 6th day of March, 2023, as an approved C-Track filing on behalf of James L. Hyems, III, I caused an exact copy of the foregoing ***“Opposition of Isam Yousuf and Jamil Yousuf to HISHAM HAMED’S FIRST RULE 15(D) MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT”*** to be served electronically through the C-Track system, upon the following counsel of record:

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