

**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 ISAM AND JAMIL YOUSUF’S OPPOSITION  
TO HAMED’S MOTION TO SUPPLEMENT THE FAC**

**I. Introduction**

The two Yousuf Defendants (“Isam” and “Jamil,” or, collectively “The Defendants”) raise five arguments in opposition.

1. They re-argue their motion to dismiss<sup>1</sup>—refusing to accept Hamed’s averment in the FAC that he does not base his causes of action on any acts in 1997—or prior to the statute of limitations.<sup>2</sup>

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<sup>1</sup> The Defendants filed their 48-page motion to dismiss on June 14, 2017—as an attachment to their motion to exceed the page limit.

<sup>2</sup> At page 29 of that motion to dismiss, they state:

Importantly, this is a CICO conspiracy claim—a claim for a plan to embezzle, not a claim for actually embezzling-money from Sixteen Plus. 5 Assuming, arguendo, plaintiff properly alleged a CICO conspiracy to embezzle funds by getting a "sham mortgage" on the Property, **that entire conspiracy was completed in September 15, 1997** when Sixteen Plus passed its Corporate Resolution to borrow four and a half million dollars from Mana! Yousef to purchase the Property, . . . (Emphasis added.)

2. They persist in the logic of that same contention, that the causes of action were “completed in September [of] 1997,” by arguing that because Hisham Hamed was not a shareholder in 1997, he could not have brought this derivative action in 2016.
3. They argue that because Hamed's proposed Second Amended Complaint (“SAC”) is not changed by this motion to supplement, this motion adds nothing and is, therefore, of no effect.
4. They argue that the “new” facts alleged in this motion by Hamed: (a) are not new, and (b) are unsupported by sufficient evidence.
5. They argue that for Hisham Hamed to assert that *Sixteen Plus* “takes the official position that the note and mortgage [are] a sham” is improper—and that “the Court should require Mr. Hamed to produce a corporate resolution authorizing the Corporation to take this position.” They also argue that in the absence of such a writing, the motion should be denied.

## **II. Hamed's Arguments as to Each of Defendants' Five Positions**

1. *Defendants incorrectly re-argue their motion to dismiss—refusing to accept Hamed's averment in the FAC that he is not basing his causes of action on any acts in 1997—or prior to the statute of limitation*

In the FAC, Hamed begins his averments of the “Predicate Criminal Acts” at page 12, paragraph 55.

- a. Paragraphs 55-58 aver an initial letter sent from St. Martin to the USVI (which Manal and Jamil have since admitted in discovery they caused to be drafted and sent into the USVI.) That letter (Exhibit 2 to the original) shows the letter was sent on December 12, 2012—well within the statute of limitation.

b. Paragraph 59 avers that thereafter:

In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud. . . .

All of these acts were after the December 2012 date of that letter, and were, therefore, within the statute of limitation.

c. Paragraphs 60-74 aver the specific post-2011 acts of Fathi Yusuf, with the assistance of the other defendants, including the bringing of litigation in the Superior Court on St. Thomas and various felonious acts regarding testimony and evidence therein. That litigation was brought in 2015, and the described acts continued thereafter—all within the statute of limitation.

d. Paragraph 75 avers that:

During this time period, **including in 2012**, Fathi Yusuf personally arranged for and signed, under the penalty of perjury — tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by - and was due to - the shareholders, Hamed and Yusuf, (Emphasis added.)

There is no dispute that the 2012 tax and corporate filings were false (Fathi has since stated they were false, because of errors on his accountants' part) and within the statute of limitation.

e. Paragraph 76 describes how Fathi attempted to fraudulently obtain and utter a corporate filing—and it now appears he did actually file that document. This was also within the statute of limitation.

Thus, none of the operative averments relate to acts prior to the beginning of the statute of limitations period in 2011. Nor do the Defendants here address these facts individually or contend that this is not the case.

2. *Defendants incorrectly persist with the logic of that contention, that the causes of action were “completed in September [of] 1997”, by arguing that because Hisham Hamed was not a shareholder in 1997, he could not have brought a derivative action in 2016.*

Hisham Hamed has averred, and it is true, that he was a shareholder of Sixteen Plus Corporation at all times within the statute of limitation—and, thus, at all times when the acts alleged to have caused injury here occurred. Thus, Defendants' position is without merit. Nor do the Defendants here address this fact individually or contend that this is not the case.

3. *Defendants incorrectly argue that because Hamed's proposed Second Amended Complaint is not changed by this motion to supplement, this motion is of no effect.*

The motion to amend the FAC to create a SAC is pending. It could be denied and this motion could be allowed. Thus, this argument is both hypothetical and untimely.

In any case, although these two Defendants did not oppose Hamed's motion to amend, Fathi Yusuf did so—noting that a number of the facts raised were after the FAC. Thus this motion to supplement was filed with regard to those post-FAC facts alluded to in the motion to amend—out of an abundance of caution.

4. *The Defendants incorrectly argue that the “new” facts alleged by Hamed are: (a) not new, and (b) are unsupported in the factual record.*

Here is the Defendants' position, verbatim:

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. (Emphasis added.)

The Defendants only take issue with facts prior to the FAC that Hamed later learned of. They do not address or oppose the entirety of Hamed's Section IV, entitled "Alleged Acts in Furtherance of the Conspiracy after the FAC was Filed." In that section, at pages 4-5, Hamed lists the following facts which are uncontrovertibly "post-FAC":

A. Manal Yousef Filed a USVI Action in 2017 and Continues to Press it

Having initially contested USVI jurisdiction, on September 31, 2017, Manal Yousef instead filed a foreclosure action against Sixteen Plus on St. Croix. SX-2017-CV-00342 ("342 action"). In it she made the following statements relevant to this action:

- i. \* \* \* \*
- ii. At paragraph 9, she falsely stated that "[t]he defendant Sixteen Plus made three (3) payments of interest only to her in the amounts of \$360,000.00 each in 1998, 1999, and 2000.

At paragraph 1, Hamed also learned that Manal was, and had been at times relevant to this amendment, a resident of Ramallah, West Bank, Palestine, not St. Martin. It is also clear that the bringing and continued prosecution of Manal's 342 action are substantial parts of the conspiracy and—Hamed alleges based on substantial post-FAC discovery testimony that she has no bank accounts or significant funds—she is being financed and directed by the other defendants herein.

B. Manal Gave False Discovery Responses in Furtherance of the Conspiracy

Manal's many, allegedly false discovery responses fall into two groups: (1) untruths, and (2) calculated evasions. Hamed's motion to amend relates the following:

1. In a new act in furtherance of the conspiracy, she continues to allege (and the defendants very much rely on the fact) that she has received that million dollars in interest, but recently has begun to refuse to provide the basics that would allow that income and resultant assets to be investigated:

- i. She has refused her address, which prevents Hamed from investigating ownership status, value and credit basics. See Exhibit 1 to Hamed's Motion to Amend (Atty. Hymes: "You indicated to me that you 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.")<sup>1</sup>
- ii. Although the "gifts" she presently alleges she received from her father are the central factual issue here (also relied on heavily by the other conspirators) she has refused to provide any banking information directly related to the alleged interest she received. See Exhibit 1 to Hamed's Motion to Amend, Letter to Atty Hartmann, dated November 7, 2022 ("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.)<sup>2</sup>
- iii. She has, recently, newly asserted a preposterous story to explain when she has no documents or proof of receiving a million dollars in untaxed income— and at the same time stated she has no bank or other accounts of any type.

Thus, the opposition ignores these clearly post-FAC facts and moves on to *Section V*, the pre-FAC acts about which Hamed avers he *learned of after* the FAC was filed.

The Defendants argue that Hamed does not PROVE by sufficient evidence exactly when he learned of these facts. That is true. This is a motion to supplement a complaint— not a motion for summary judgment. There is no requirement whatsoever that a plaintiff "recite the factual basis from which he is now learning new information." Hamed does not state or suggest that he learned of the entire 'sham note and mortgage' as new information—only that the specific new information he discusses, which is clearly relevant

to the action, has come to light. He describes the specific instances of such new information. These are merely new items of relevant information that Hamed seeks to make as additional AVERMENTS—not matters of fact he must prove at this stage.

Even given that, in *Section V*, Hamed references facts provided to him in discovery or by opposing counsel about which he could have had no prior knowledge—and for each, he provides the source of those facts. At 5-6 Hamed notes facts related to Manal's new assertions about the million dollars (which all of the defendants assert under the rubric of the *doctrine of partial performance*, in support of the note)—and Hamed gives citations to, and attaches the source—opposing counsel's own letter. As to a second point, Manal's refusal regarding her passports, the citation and source are also given. Again, it is opposing counsel's chain of letters and representations.

The Defendants complain that Hamed presents “a conclusion without a factual basis” and then suggests “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.” However, as noted above, the Defendants do not address or contest (1) the bulk of the new facts that demonstrably occurred AFTER the FAC and (2) therefore could not have been known before—and (3) it is clear where the pre-FAC facts came from and when.

Thus, if Hamed is incorrect, that the *Section IV* pre-FAC items he has subsequently learned of should not be in a supplementation, he has already included them in the motion to amend. In that case, only the *Section V* post-FAC information need be supplemented.

5. *The Defendants incorrectly argue that for Hisham Hamed to assert that Sixteen Plus “takes the official position that the note and mortgage of Manal Yousef is a sham” and 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.*

At 4-5 of the opposition, the Defendants again state their *corporate control* argument—that there must be a written corporate resolution allowing Hisham Hamed to make assertions as to what positions Sixteen Plus ‘officially’ takes.

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

(Emphasis added.) This has been raised by various of the Yusuf parties in both this case and the companion 65/342 foreclosure action.

However, in this motion to supplement the FAC, Hamed has simply repeated, *verbatim*, assertions of Sixteen Plus Corporation in its 65 action against Manal—now consolidated 65/342. He recites that corporate position by rote. Defendants do not dispute this, nor can they, as this is a matter of the written record.

Thus, Defendants are really trying, in an opposition to this motion, *to argue for the voiding/negation of what the corporation’s stated position in another action*—one in which they are not parties—and where the interested entity is only a nominal party here. In any case, as Hamed has previously noted, the original filing was entirely proper. Both Sixteen Plus Corporation’s then-president/CEO and its vice-president (Mohammad and Waleed Hamed) retained counsel for the corporation, instructed the counsel as to the corporation’s legal positions, and filed its complaint (in the 65 action) on February 12, 2016.



Thus, the corporation's position regarding the note and mortgage, as set forth therein is accurately related by Hamed in this motion.

What these defendants and the other Yusuf family members are actually trying to argue in various filings (in this action) is that because Mohammad thereafter passed away (on June 16, 2016) one of three things is true:

- i. That 65 action and the corporation's positions in it were invalid BEFORE Mohammad passed away—because there was no pre-death, original written resolution authorizing litigation. But Defendants have not stated where in the By-Laws or the USVI corporate statutes there is a requirement for any such resolution to authorize litigation, much less a written resolution. To the contrary, the By-Laws state the exact opposite. Mohammad was the president and had such authority (and the Hameds had a 2-1 majority on the Board.) And there is no such statute; or
- ii. The 65 action and the positions therein became void AFTER Mohammad passed away because the Board then became deadlocked. But they do not explain how or why this would be the case under either the By-Laws or USVI law. Existing corporate litigation does not stop or somehow become altered on the death of the corporate president or because there is a change in a Board. What all of the various Yusufs really want to do is re-litigate the identical “corporate control” argument that Fathi filed in 2015 on St. Thomas and also lost twice (before Judge Brady and Judge Willocks) with regard to Plessen Enterprises. And they

want to do so without actually filing a corporate control action with all of the bothersome, requisite, attendant filings; or

- iii. The suits became void AFTER Mohammad passed away because (1) after the president/CEO's passing a corporation is required to re-authorize all of its pending litigation by written resolution, and, in addition, even if that were not the case, (2) Waleed, as the vice-president, lacks the present authority to continue to maintain the suits as the new president/CEO under clear language of the By-Laws—absent a new, written Board resolution.

As was stated in Hamed's reply elsewhere, when Fathi made the identical argument:<sup>3</sup>

The [Sixteen Plus Corporation's corporate] documents clearly state in the by-laws that Wally Hamed, then vice-president, became the president on the death of his father on June 16, 2016.

Section 3.3 Powers and Duties of the Vice President. The Board of Directors may appoint one or more Vice Presidents. Each Vice President (except as otherwise provided by resolution of the Board of Directors) shall have the power to sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as from time to time are assigned to that Vice President by the Board of Directors or by the President. **In case of the absence or disability of the President, the duties of that office shall be performed by a Vice President;** the taking of any action by any Vice President in place of the President shall be conclusive evidence of the absence or disability of the President. (Emphasis added.)

Moreover, once he was the president, according to those same by-laws, Wally had "the general powers and duties of supervision and management usually vested in the office of president of a corporation."

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<sup>3</sup> See *Sixteen Plus Corporation's Reply to Fathi Yusuf's Opposition re its Motion to Amend to Clarify the Affirmative Defense of "In Pari Delicto"*, filed in the 65/342 action on February 12, 2023, at pages 5-7.

And more to the point here, he became "Chief Executive Officer of the Corporation and [has] general charge and control of all its business affairs and properties."<sup>7</sup> See **Exhibit 1**, Section 3.2, pp. 5-6.

Section 3.2. Powers and Duties of the President. The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. The President shall preside at all meetings of the Stockholders. The President may be a member of the Board of Directors and, if a member, shall preside at all meetings of the Board of Directors unless the Board of Directors, by a majority vote of a quorum of the Board, elects a Chairman other than the President to preside at meetings of the Board of Directors. The President may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. The President shall have the general powers and duties of supervision and management usually vested in the office of president and of corporation. The President shall be an ex-officio voting member of all standing committees. The President shall perform such other duties as from time to time are assigned to the President by the Board of Directors.

....the correct way for Fathi to argue this issue is to oppose the present motion to amend (as to the instant, wholly unrelated clarification of an affirmative defense, as the rules *require*) and **THEN** file an amended answer to raise whatever corporate or standing issues he pleases. *An even better idea would be for him to join in the pending motion to consolidate. . . .*

### **III. Conclusion**

The instant motion is for supplementation of a complaint. It is not a summary judgment, and it is not corporate control litigation regarding persons or entities not parties here. Hamed has correctly stated the corporation's existing 'official' position. He has correctly averred facts that arose after the FAC. He has correctly shown the relevance of those facts to the instant action. Finally, this supplementation has been shown to support and enhance the motion to amend, not obviate or replace it in some way.

Hamed apologizes for not filing this as a combined “motion to amend and supplement”—but as noted, the need for supplementation became evident after the motion to amend was filed. Other than that, this is not an unusual motion in any way, and should be granted.

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**Dated:** March 7, 2023

### 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 **March 7, 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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