

**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
RULE 56(d) MOTION
TO DEFER CONSIDERATION OF MANAL YOUSEF'S
APRIL 19, 2023 MOTION FOR SUMMARY JUDGMENT**

COMES NOW Sixteen Plus Corporation, through undersigned counsel, and submits the following pursuant to V.I. R. CIV. P. Rule 56(d) and asks the Court to defer consideration of Manal Yousef's motion for summary judgment of April 19, 2023. That rule provides:

(d) When Facts Are Unavailable to the Nonmovant.

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order. (Emphasis added.)

Attached as **EXHIBIT A** is the *Declaration of Carl J. Hartmann*, co-counsel to Sixteen Plus Corporation, setting forth the specific reasons it cannot present facts essential to its opposition at this time. The reasons fall into four categories:

1. The lack of any depositions
2. The failure to mediate as required by the statute, 28 V.I.C. §531.
3. The agreement(s) of the parties, and
4. The outstanding procedural and discovery motions.

I. Lack of Depositions

Despite repeated efforts by Sixteen Plus Corporation in this action, and Hisham Hamed in the parallel CICO/Breach of Fiduciary Duty action (#650), the depositions of the three most important witnesses have not been taken:

- A. Manal Yousef
 - a. The initial Notice of Deposition with an accompanying Rule 34 request in Hamed's then unconsolidated Declaratory Judgment Action (#65) was filed and served on June 14, 2017.

- b. On July 11, 2017, Attorney Hymes filed a Rule 56(c) motion in that #65 action for a protective order for Movant--in it, Manal stated:

The deposition of Manal Yousef should not proceed in St. Croix because she resides in Palestine. Presently Manal Yousef does not have permission to exit Palestine, and does not have a visa to enter the United States. There is no guarantee Manal Yousef will be able to obtain a visa for international travel and she has concerns for her safety should she be required to travel to the U.S. Embassy in Tel Aviv, Israel to participate in the U.S. visa procurement process. In addition, Manal Yousef would be unduly burdened by the St. Croix deposition due to her inability to care for her three (3) children during the time of the taking of her deposition because she is their primary caretaker. Although convenience of counsel is a factor in determining location the where depositions will take place, it does not weigh as much when compared to the inconvenience to a witness since the convenience of counsel is less compelling than any hardship to the witness. The bases provided by Manal Yousef are sufficient to constitute undue hardship, oppression, and inconvenience for the purpose of obtaining a protective order against her deposition in St. Croix.

- c. Manal also raised a second basis for the protective order:

The deposition of Manal Yousef should not proceed in St. Croix because she resides in Palestine. Presently Manal Yousef does not have permission to exit Palestine, and does not have a visa to enter the United States. There is no guarantee Manal Yousef will be able to obtain a visa for international travel and she has concerns for her safety should she be required to travel to the U.S. Embassy in Tel Aviv, Israel to participate in the U.S. visa procurement process. In addition, Manal Yousef would be unduly burdened by the St. Croix deposition due to her inability to care for her three (3) children during the time of the taking of her deposition because she is their primary caretaker. Although convenience of counsel is a factor in determining location the where depositions will take place, it does not weigh as much when compared to the inconvenience to a witness since the convenience of counsel is less compelling than any hardship to the witness. The bases provided by Manal Yousef are sufficient to constitute undue hardship, oppression, and inconvenience for the purpose of obtaining a protective order against her deposition in St. Croix.

- d. When her motion for a protective order was not ruled on, she failed to appear as per the notice. In response, Sixteen Plus filed a July 19, 2017 motion for sanctions for non-appearance—and sent a Rule 37 letter to Attorney Hymes.
 - e. However, on September 31, 2017, Manal filed her own complaint in another, new action--the Foreclosure Action (#342) —becoming a plaintiff in this same USVI court--obviating her argument that she need not appear here because she was a non-local defendant.
 - f. Judge Willocks consolidated the #65 and #342 actions.
 - g. Then, on September 1, 2022, Manal was sent the first notice of deposition in the instant, consolidated case.
 - h. On September 26, 2022, Manal was served with the second notice of deposition in the consolidated action.
 - i. On October 17, 2022, Manal was served with the third notice of deposition in the consolidated action.
 - j. Movant has been unable to attend because of scheduling, Covid, travel in other reasons.
- B. Fathi Yusuf (Uncle of Isam and Manal)
- k. The second most important witness, Fathi Yusuf, has asserted his Fifth Amendment rights against self-incrimination. On December 2, 2022, Sixteen Plus filed its motion to compel--to address this assertion, which is fully briefed and pending. Hamed will not even know what facts can and cannot be gotten from Yusuf, the central actor, until that motion has been decided.

C. Isam Yousuf (Fathi's Nephew and Manal's Brother)

- I. The third most important witness, Isam Yousuf, was served with notice of a Rule 31 deposition on written questions on February 27, 2023—after refusing to appear in-person in St. Croix for his properly noticed deposition—despite possessing a US passport and having lived on St. Croix. He is also represented by Attorney Hymes. He has not yet appeared for examination on written questions but has agreed to do so.
- m. These referenced depositions are necessary because the written responses to discovery have been incomplete and evasive. There are motions to compel as to Manal for such basics as her home address, and to Isam for his personal banking records during the applicable period. Also, as noted above, Fathi has refused to answer most written discovery pursuant to the Fifth Amendment.

II. The Failure to Mediate as Required by the Statute

Pursuant to 28 V.I.C. §531, the parties in a foreclosure action must mediate:

Prior to the entry of any judgment of foreclosure, the parties must provide the Court with evidence that a good faith effort was made to settle the matter through mediation.

Unfortunately, the statute is not recited fully in Manal's motion for summary judgment, as she simply left out this requirement to mediate in good faith. There has been no such mediation, as Hamed has repeatedly informed opposing counsel he needs to complete the depositions identified herein and obtain even basic facts to be properly prepared for the mediation.

III. Agreement(s) of the Key Parties

The Parties have discussed the timing of discovery needed in this case and of mediation, agreeing, and filing a joint motion to the Court as follows:

- a. On February 14, 2023, counsel for Manal Yousef, the Movant, along with counsel for Fathi Yusuf, Hisham Hamed and Sixteen Plus, jointly moved the Court for an enlargement of the scheduling order—extending the date for mediation until the end of June, 2023. Even that was predicated on a series of actions which still have not occurred.
- b. Fathi Yusuf is a party to the consolidated action. No mediation request from Movant, Hamed or Sixteen Plus has ever included him. To the contrary, on March 28, 2023, the following exchange between counsel occurred under the subject “**Need to Have 65/342 and 650 Mediation Before EOD March 31st” (emphasis added.)**

From: JOEL HOLT <holtvi@aol.com>
Sent: Tuesday, March 28, 2023 1:00 PM
To: Carl@hartmann.attorney
Cc: Charlotte Perrell <Cperrell@dnfvi.com>; Stefan Herpel <sherpel@dnfvi.com>; Pamela Bayless <Pbayless@dnfvi.com>; Kim Japinga <kim@japinga.com>; Jerri Farrante <jwf@holtvi.com>
Subject: Re: BUMP....RE: Joel / Charlotte -- Need to Have 65/342 and 650 Mediation Before EOD March 31st

I do not think we are ready for mediation as no depositions have been done—I think we just report that fact mediation is premature at this point in time

Joel H. Holt

* * * *

On Mar 28, 2023, at 1:21 PM, Charlotte Perrell <Cperrell@dnfvi.com> wrote:

That's fine with me.

* * * *

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Sent: Tuesday, March 28, 2023 1:23 PM
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Subject: Re: BUMP....RE: Joel / Charlotte -- Need to Have 65/342 and 650 Mediations Before EOD March 31st

Ok

Joel H. Holt

Thus, two of the key Parties to any meaningful mediation, Hamed and Yusuf, agree that this case is not ripe for mediation, and that discovery is still needed--which Movant's counsel seemingly agreed to in joining the motion to extend these time periods in these cases.

IV. The Outstanding Procedural and Discovery Motions

There are extensive procedural and discovery motions outstanding. Resolution of these motions are necessary for Hamed to be able to respond to the motion for summary judgment. These include:

| | | | | |
|-----------------------------|-----------------------------|------------------------|--------------|---|
| 650 | Filed 1/2/2019 | <u>Superior</u> | Hamed | Motion to Consolidate 650 into other 2 Manal Cases |
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| 650 | Filed 2/6/2023 | <u>SuperSTX</u> | Hamed | Hamed Rule 15(d) Motion to Supplement FAC to add new information and acts |
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V. Conclusion

This is a complex mix of three different actions. Manal Yousef has resisted deposition and failed to answer written discovery. There are several motions to compel. Another critical witness has asserted the Fifth Amendment—and that motion to compel remains to be heard. There are many procedural and discovery motions outstanding. As set forth in the attached Rule 56(d) declaration of counsel, it is impossible at this time for Sixteen Plus to adequately respond or defend itself.

Counsel for Sixteen Plus Corporation

Dated: April 22, 2023

/s/ Carl J. Hartmann III

Carl J. Hartmann III, Esq.

(Bar # 48)

Co-Counsel for Sixteen Plus Corp.

2940 Brookwind Dr.

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Email: carl@carlhartmann.com

Phone: 340-642-4422

Joel H. Holt, Esq. (Bar # 6)

Counsel for Sixteen Plus Corp.

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2132 Company Street,

Christiansted, VI 00820

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Fax: (340) 773-8677

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 **April 22, 2023**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties, to:

James Hymes III, Esq.

Counsel for Manal Yousef

LAW OFFICES OF JAMES L.

HYMES, III, P.C.

P.O. Box 990

St. Thomas, VI 00804-0990

Tel: (340) 776-3470

Fax: (340) 775-3300

jim@hymeslawvi.com

Charlotte K. Perrell, Esq.
Stefan B. Herpel, Esq.
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1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804-0756
Tel: (340) 774-4422
cperrell@dnfvi.com,
sherpel@dnfvi.com

With a courtesy copy to Kevin Rames, Esq.

/s/ Carl J. Hartmann III

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**DECLARATION OF CARL J. HARTMANN
IN SUPPORT OF SIXTEEN PLUS CORPORATION'S
RULE 56(d) MOTION
TO DEFER CONSIDERATION OF MANAL YOUSEF'S
APRIL 19, 2023 MOTION FOR SUMMARY JUDGMENT**

I, Carl J. Hartmann, am a member of the Bar of this Court (Bar No. 48) and am co-counsel to Sixteen Plus Corporation in the instant matter. I submit this DECLARATION in support of the motion pursuant to V.I. R. CIV. P. Rule 56(d). The following averments are true to the best of my knowledge after investigation of the facts herein:

1. For the following specified reasons, Sixteen Plus Corporation cannot present facts essential to justify its opposition. The absence of such facts makes it impossible to respond to the motion with regard to (1) acts of the parties, (2) movement of funds, (3) intent of the Movant and other of the defendants—as well as (4) the averments with regard to the subject note and mortgage:
2. Sixteen Plus, through counsel, has made many, repeated reasonable efforts to obtain the written discovery responses and depositions of Movant, and the written discovery of other defendants—as set forth below.
3. The reasons for this inability to obtain the necessary information fall into four categories:
 - a. The lack of any depositions
 - b. The failure to mediate as required by the statute, 28 V.I.C. §531.
 - c. The agreement(s) of the parties, and
 - d. The outstanding procedural and discovery motions.

I. Lack of Depositions

4. Despite repeated efforts by Sixteen Plus Corporation in this action, and Hisham Hamed in the parallel CICO/Breach of Fiduciary Duty action (#650), the depositions of the three most important witnesses have not been taken:

A. Manal Yousef

- a. The initial Notice of Deposition with an accompanying Rule 34 request in Hamed's then unconsolidated Declaratory Judgment Action (#65) was filed and served on June 14, 2017.
- b. On July 11, 2017, Attorney Hymes filed a Rule 56(c) motion in that #65 action for a protective order for the Movant--in it, Manal stated:

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II. The Failure to Mediate as Required by the Statute

5. There has not been adequate mediation. Pursuant to 28 V.I.C. §531, the parties in a foreclosure action must mediate:

Prior to the entry of any judgment of foreclosure, the parties must provide the Court with evidence that a good faith effort was made to settle the matter through mediation.

6. The statute is not recited fully in Manal's motion for summary judgment, as she sleft out this requirement to mediate in good faith. There has been no such mediation.
7. Counsel for Sixteen Plus and Hamed have repeatedly informed opposing counsel they need to complete the depositions identified herein and obtain even basic facts to be properly prepared for the mediation.

III. Agreement(s) of the Key Parties

8. The Parties have discussed the timing of discovery needed in this case and of mediation, agreeing, and filing a joint motion to the Court as follows:
- a. On February 14, 2023, counsel for Manal Yousef, the Movant, along with counsel for Fathi Yusuf, Hisham Hamed and Sixteen Plus, jointly moved the Court for an enlargement of the scheduling order—extending the date for mediation until the end of June, 2023. Even that was predicated on a series of actions which still have not occurred.
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Ok

Joel H. Holt

9. Thus, two of the key Parties to any meaningful mediation, Hamed and Yusuf, agree that this case is not ripe for mediation, and that discovery is still needed.
10. Counsel for Hamed and Sixteen Plus believed Movant's counsel agreed to this need by joining the motion to extend these time periods in these cases.

IV. The Outstanding Procedural and Discovery Motions

11. There are extensive procedural and discovery motions outstanding. Resolution of these motions are necessary for Hamed to be able to respond to the motion for summary judgment. These include:

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So sayeth the Declarant.

s/ Carl J. Hartmann