

FILED

January 24, 2024 04:46 PM
SX-2016-CV-00650
TAMARA CHARLES
CLERK OF THE COURT

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,

v.

SIXTEEN PLUS CORPORATION,
NOMINAL DEFENDANT.

Civil Case No. SX-2016-CV-650

DERIVATIVE SHAREHOLDER SUIT,
ACTION FOR DAMAGES AND CICO
RELIEF

JURY TRIAL DEMANDED

SIXTEEN PLUS CORPORATION,
PLAINTIFF/COUNTER-DEFENDANT,

v.

MANAL MOHAMMAD YOUSEF,
DEFENDANT/COUNTER-PLAINTIFF.

CONSOLIDATED WITH
Civil Case No. SX-2016-CV-065

ACTION FOR DECLARATORY
JUDGMENT, CICO, AND FIDUCIARY
DUTY; COUNTERCLAIM

JURY TRIAL DEMANDED

MANAL MOHAMMAD YOUSEF,
PLAINTIFF/COUNTER-DEFENDANT,

v.

SIXTEEN PLUS CORPORATION,
DEFENDANT/COUNTER-PLAINTIFF/
THIRD-PARTY PLAINTIFF

v.

FATHI YUSUF,
THIRD-PARTY DEFENDANT.

CONSOLIDATED WITH
Civil Case No. SX-2017-CV-342

ACTION FOR DEBT AND
FORECLOSURE; COUNTERCLAIM
FOR DAMAGES; THIRD PARTY
ACTION

JURY TRIAL DEMANDED

ORDER OF THE SPECIAL MASTER¹

¹ On August 10, 2023, the Court entered an order in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065, *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650, and *Yousef*

THIS MATTER is before the Special Master (hereinafter “Master”) for review *sua sponte* in furtherance of the Master’s duty to address all pretrial matters and any other matters agreed upon by the parties in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065 (hereinafter “065 Case”), *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650 (hereinafter “650 Case”), and *Yousef v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342 (hereinafter “342 Case”).

BACKGROUND²

On November 20, 2023, the Master entered an order (hereinafter “November 20, 2023 Order”) whereby the Master addressed the outstanding issues in the 065 Case and the 342 Case, which were consolidated in 2019, along with some overlapping issues in the 650 Case, which was not consolidated with the 065 Case and the 342 Case until 2023. In the November 20, 2023 Order, the Master, *inter alia*, ordered several motions denied or denied as moot or denied without prejudice, ordered the parties in the 065 Case to meet and confer in compliance with rule 26(c) and Rule 37-1 as to the issues raised in Manal Mohammad Yousef’s (hereinafter “MY”) July 11, 2017 motion for protective order and MY to file a supplemental certification to her July 11, 2017 motion (within 60 days), ordered Sixteen Plus Corporation’s (hereinafter “SPC”) January 1, 2023 motion for leave to amend its answer in the original, pre-consolidation 065 Case and 342 Case granted and SPC to file a clean copy of its first amended answer to the counterclaim in the 065 Case and a clean copy of its first amended answer to the complaint in the 342 Case (within 30 days), ordered the parties in the 065 Case and the 342 Case to meet and confer in good faith in compliance with the procedural and substantive aspects of the good

v. Sixteen Plus Corp., Civil Case Number SX-2017-CV-342—whereby the Court appointed the undersigned as the special master in these consolidated cases to address all pretrial matters and any other matters agreed upon by the parties. (Aug. 10, 2023 Order.)

² This section does not include the full factual and procedural background of the three consolidated cases; rather, it provides an overview and highlights various outstanding issues that the Master will address in this Order.

faith negotiation requirement of Rule 37 and Rule 37-1 as to the discovery issues raised in SPC's January 3, 2023 first motion to compel discovery responses from MY and SPC to file a supplemental certification to its January 3, 2023 motion (within 60 days), ordered all future motions to compel to include a certification that explicitly state the movant's compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1, and ordered the parties in all three cases to jointly file a proposed amended scheduling order (within 30 days). (Nov. 20, 2023 Order.)

On November 21, 2023, SPC filed—in the 065 Case—its first amended answer to MY's April 6, 2017 amended answer to complaint and counterclaim against SPC. On the same date, SPC also filed—in the 342 Case—its first amended answer to MY's complaint.

On November 23, 2023, SPC re-filed—in the 342 Case—its third-party complaint against Fathi Yusuf (hereinafter "FY") in light of the November 20, 2023 Order.

On December 20, 2023, SPC filed—in the 065 Case and the 342 Case—a proposed fourth amended scheduling order and noted that "Attorney Hymes indicated that he could not agree to anything as he has lost contact with his client due to the current conflict in the Middle East."³ On the same date, Hisham Hamed, individually and derivatively on behalf of SPC (hereinafter "HH"), and FY filed—in the 650 Case—a proposed fourth amended scheduling order and noted that "Attorney Hymes indicated that he could not agree to anything as he has lost contact with his client due to the current conflict in the Middle East."⁴

On January 23, 2024, the parties in all three cases filed—in the 065 Case, the 342 Case, and the 650 Case—a joint motion to extend the deadline for the parties to meet and confer as ordered in the November 20, 2023 Order. In the joint motion, the parties stated:

³ Attorney Hymes represents MY in the 065 Case and the 342 Case.

⁴ Attorney Hymes represents Isam Yousuf (hereinafter "IY") and Jamil Yousuf (hereinafter "JY") in the 650 Case.

2. Attorney Hymes, counsel for Manal Yousef, has advised counsel for the other parties in this matter that his client, who resides in Palestine, has been caught up in the war between Israel and Palestine. Attorney Hymes has indicated that he has been unable to communicate with her for many weeks, and that until he is able to consult with her, he cannot take any positions in a meet and confer that are different from those taken by her in the briefing on these motions. See Exhibit A, Attorney Hymes 1/22/24 Email to counsel.

3. Because extraordinary circumstances make it impossible to conduct a meaningful meet and confer in an attempt to resolve issues raised in the two motions referred to above, the parties jointly request that they be given until March 4 to conduct the required meet and confer. If the circumstances precluding meaningful participation by Manal and her counsel are unchanged by then, the parties will so advise the Court, and the Court will decide on an appropriate course of action.²

² If the circumstances that prompted this motion are unchanged by March 4, the parties respectfully suggest to the Court that the most appropriate way to address this problem may be to relieve the parties of the requirement of a meet and confer.

(Joint Motion.)

DISCUSSION

This Order will address issues raised by the recent filings in all three cases.

1. The 342 Case: SPC's November 23, 2023 third-party complaint against FY⁵

As of the date of this order, FY has not filed a response to SPC's November 23, 2023 third-party complaint in the 342 Case. At this time, the Master will order FY to file—in the 342 Case—its response to SPC's third-party complaint.

⁵ SPC had initially filed-in the 342 Case—a third-party complaint against FY on October 13, 2017, and in response FY had filed a motion to dismiss. The Court subsequently dismissed without prejudice the third-party complaint against FY in the 342 Case and thus, the Master denied as moot FY's motion to dismiss in the 342 Case.

2. **The 065 Case and the 342 Case: SPC's December 20, 2023 proposed fourth amended scheduling order**
The 650 Case: HH and FY's December 20, 2023 proposed fourth amended scheduling order
All Three Cases: Parties' January 23, 2024 joint motion to extend the deadline to meet and confer

In the aforementioned filings, the respective parties of all three cases represented that Attorney Hymes has indicated that he has not been able to communicate with MY for several weeks and have lost contact with MY, who resides in Palestine, due to the war between Israel and Palestine. This raises several issues. First, whether the 065 Case and the 342 Case need to be stayed until Attorney Hymes reestablishes communication with his client. Second, it is unclear why Attorney Hymes indicated that he could not agree to anything in the December 20, 2023 proposed fourth amended scheduling order filed in the 650 Case when MY is not currently a party in the 650 Case. In the 650 Case, Attorney Hymes represents IY and JY, and according to the first amended complaint therein, IY and JY reside in St. Martin. There has been no indication by Attorney Hymes that IY and JY now reside in Palestine and that he similarly has not been able to communicate with them for several weeks and have lost contact with them. Third, how does HH plan on effecting service of process on MY in the event that the Master grants HH's motion to amend and/or supplement the first amend complaint to add MY as a defendant in the 650 Case? There are two pending motions in the 650 Case whereby HH sought to amend or supplement the first amend complaint to, *inter alia*, join MY as a defendant.⁶ Unless MY had previously given authority to Attorney Hymes—MY's counsel in the 065 Case and the 472 Case—to accept service on her behalf if she is brought in as a defendant in the 650 Case, HH has to effect service of process on MY. However, according to Attorney Hymes—MY's counsel in the 065 Case and the 472 Case—communication with MY

⁶ On December 18, 2022, HH filed a motion to amend his first amended complaint to join MY as a defendant.

On February 6, 2023, HH filed a first rule15(d) motion for leave to file supplemental complaint join MY as a defendant.

has been impossible due to the conflict between Israel and Palestine. At this time, to get a better idea of how to proceed, the Master will order Attorney Hymes to file a notice advising: (i) the date of his last contact with MY, and (ii) describe attempts, including date(s), that have been made to contact MY since the date of his last contact.

3. All Three Cases: Captions of Filings

As noted in the November 20, 2023 Order, the consolidation of the 065 Case, the 342 Case, and the 650 Case under Rule 42(a) of the Virgin Islands Rules of Civil Procedure did not result in the merger of the three cases into one but that each case retained its separate identity. *See Hall v. Hall*, 138 S. Ct. 1118 (2018). However, a review of the docket of each of the three cases revealed that since the consolidation of all three cases, every document—whether it pertains to only one case, two cases, or all three cases—is entered on the dockets of all three cases, which is likely because the captions of all three cases were included on the document. For example, SPC’s November 23, 2023 third-party complaint against FY in the 342 Case included the captions of all three cases and was thus entered on the dockets of all three cases when it should have only been entered on the docket of the 342 Case; SPC is not pursuing a third-party action against FY in the 065 Case or the 650 Case and in fact, FY is a defendant in the 650 Case. This results in unnecessary confusion and often inaccurate docketing in all three cases. As such, the Master will order as follows:

- (i) A filing that pertains to only one case should include only the caption of said case, with notations underneath that the three cases are consolidated. For example:

<p>MANAL MOHAMMAD YOUSEF, PLAINTIFF COUNTER-DEFENDANT v. SIXTEEN PLUS CORPORATION, DEFENDANT COUNTER-PLAINTIFF THIRD-PARTY PLAINTIFF v. FATHI YUSUF, THIRD-PARTY DEFENDANT.</p>	<p>Civil Case No. SX-2017-CV-342 ACTION FOR DEBT AND FORECLOSURE COUNTERCLAIM FOR DAMAGES, THIRD PARTY ACTION <u>JURY TRIAL DEMANDED</u></p>
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ORDER OF THE SPECIAL MASTER

- (ii) A filing that pertains to only two cases should include only the captions of said two cases, with notations underneath that the three cases are consolidated. For example:

SIXTEEN PLUS CORPORATION, PLAINTIFF COUNTER-DEFENDANT, v. MANAL MOHAMMAD YOUSEF, DEFENDANT COUNTER-PLAINTIFF	Civil Case No. SX-2016-CV-065 ACTION FOR DECLARATORY JUDGMENT, CICO, AND FIDUCIARY DUTY; COUNTERCLAIM <u>JURY TRIAL DEMANDED</u>
MANAL MOHAMMAD YOUSEF, PLAINTIFF COUNTER-DEFENDANT, v. SIXTEEN PLUS CORPORATION, DEFENDANT COUNTER-PLAINTIFF THIRD-PARTY PLAINTIFF v. FATHI YUSUF, THIRD-PARTY DEFENDANT	CONSOLIDATED WITH Civil Case No. SX-2017-CV-342 ACTION FOR DEBT AND FORECLOSURE, COUNTERCLAIM FOR DAMAGES, THIRD PARTY ACTION <u>JURY TRIAL DEMANDED</u>

CONSOLIDATED CASES: Civil Case No. SX-2017-CV-065; Civil Case No. SX-2017-CV-342; Civil Case No. SX-2017-CV-650

- (iii) A filing that pertains to all three cases should include the captions of all three cases.

HISHAM HAMED, INDIVIDUALLY, AND DERIVATIVELY ON BEHALF OF SIXTEEN PLUS CORPORATION, PLAINTIFF, v. FATHI YUSUF, ISAM YOUSUF, AND JAMIL YOUSUF, DEFENDANTS, v. SIXTEEN PLUS CORPORATION, NOMINAL DEFENDANT	Civil Case No. SX-2016-CV-650 DERIVATIVE SHAREHOLDER SUIT, ACTION FOR DAMAGES AND CICO RELIEF <u>JURY TRIAL DEMANDED</u>
SIXTEEN PLUS CORPORATION, PLAINTIFF COUNTER-DEFENDANT, v. MANAL MOHAMMAD YOUSEF, DEFENDANT COUNTER-PLAINTIFF	CONSOLIDATED WITH Civil Case No. SX-2016-CV-065 ACTION FOR DECLARATORY JUDGMENT, CICO, AND FIDUCIARY DUTY, COUNTERCLAIM <u>JURY TRIAL DEMANDED</u>
MANAL MOHAMMAD YOUSEF, PLAINTIFF COUNTER-DEFENDANT, v. SIXTEEN PLUS CORPORATION, DEFENDANT COUNTER-PLAINTIFF THIRD-PARTY PLAINTIFF v. FATHI YUSUF, THIRD-PARTY DEFENDANT	CONSOLIDATED WITH Civil Case No. SX-2017-CV-342 ACTION FOR DEBT AND FORECLOSURE, COUNTERCLAIM FOR DAMAGES, THIRD PARTY ACTION <u>JURY TRIAL DEMANDED</u>

CONCLUSION

Based on the foregoing, it is hereby:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, FY shall **FILE** a response to SPC's November 23, 2023 third-party complaint in the 342 Case. It is further:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, Attorney Hymes shall **FILE** a notice advising: (i) the date of his last contact with MY, and (ii) describe attempts, including date(s), that have been made to contact MY since the date of his last contact. It is further:

ORDERED that for all future filings, the parties shall comply with the following with regards to the captions:

- (i) A filing that pertains to only one case should include only the caption of said case, with notations underneath that the three cases are consolidated.
- (ii) A filing that pertains to only two cases should include only the captions of said two cases, with notations underneath that the three cases are consolidated.
- (iii) A filing that pertains to all three cases should include the captions of all three cases.

And it is further:

ORDERED that the document shall be entered by the **CLERK OF THE COURT** only on the docket(s) of the case number(s) included in the caption(s).

DONE and so ORDERED this 24th day of January, 2024.

ATTEST:

Tamara Charles
Clerk of the Court

By: J. Maranda
Court Clerk Supervisor

Dated: 1/24/2024


EDGAR D. ROSS
Special Master

