

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

MANAL MOHAMMAD YOUSEF)	
)	
Plaintiff/Counter-Defendant,)	CASE NO.: SX-2017-CV-00342
)	
v.)	ACTION FOR DEBT AND
)	FORECLOSURE; COUNTERCLAIM
SIXTEEN PLUS CORPORATION,)	FOR DAMAGES; THIRD PARTY
)	ACTION
Defendant/Counter-Plaintiff/)	
Third-Party Plaintiff,)	
)	
v.)	
)	
FATHI YUSUF,)	JURY TRIAL DEMANDED
)	
Third-Party Defendant.)	
_____)	

FATHI YUSUF’S ANSWER AND AFFIRMATIVE DEFENSES TO SIXTEEN PLUS CORPORATION’S RE-FILED THIRD-PARTY COMPLAINT

Third Party Defendant Fathi Yusuf, through his attorneys, Dudley Newman Feuerzeig LLP, hereby submits his answer and affirmative defenses to Third Party Plaintiff Sixteen Plus Corporation’s Re-Filed Third-Party Complaint, as follows:

1. Admitted, except that the complaint was filed on August 31, 2017, not September 31, 2017.
2. Admitted.
3. Neither admitted not denied, being without sufficient information to form a belief as to truth or falsity.
4. Admitted.
5. Admitted.

6. Admitted.

7. Denied in the form alleged, and deny any implication that the Special Master, in his November 20, 2023 Order, authorized, let alone ordered the third-party complaint to be resurrected, after its dismissal without prejudice by Judge Brady in a May 8, 2023 order. By way of further answer, Fathi Yusuf (“FY”) states that the Special Master acknowledged in his November 20, 2023 Order that the third party complaint was dismissed without prejudice by Judge Brady in a May 8, 2023 Order. The Special Master accordingly denied as moot Fathi Yusuf’s (“FY”) previously filed motion to dismiss the third party complaint. *See* November 20, 2023 Order at p. 13 (“In light of the May 8, 2023 order dismissing the third-party complaint without prejudice, the Court will deny as moot Third-Party Defendant FY’s motion to dismiss the third-party claims”); *see also id.* at pp. 8, 27. The Court acknowledged Sixteen Plus Corporation’s (“SPC”) Motion to Amend its Answer to Manal Yousef’s complaint in the 342 case “to clarify its affirmative defense of ‘in pari delicto,’ *id.* at p. 17 and then granted the motion. *See id.* at p. 27 (“Ordered [that] SPC’s January 1, 2023 motion for leave to amend its answer in the original, pre-consolidation ... 342 Case is GRANTED , and that, within thirty (30) days from the date of entry of this Order, SPC shall FILE a clean copy of its first amended answer to ... its first amended answer to the complaint in the 342 case”) (bolded emphasis in original omitted).

8. This allegation does not require a response.

9. Denied in the form alleged, and because the claims asserted by SPC are not properly characterized as third-party claims, which are predicated on an alleged indemnity obligation by the third-party defendant to the third-party plaintiff. No such indemnity claims are pled here.

10. Admitted.
11. Denied.
12. Denied in the form alleged.
13. Denied in the form alleged.
14. Admitted.
15. Admitted.
16. Denied.
17. Denied in the form alleged.
18. Denied in the form alleged.
19. Denied.
20. Denied.
21. Denied.
22. Not applicable.¹
23. Denied.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied in the form alleged.
29. Admit only that BNS assigned its rights to the to this conveyance to Sixteen Plus,

but deny the remaining allegations of this paragraph.

¹Due to an apparent typographical error, Paragraphs 21 and 22 each contain different parts of a single sentence. FY's denial to paragraph 21 treats that single sentence as if it were set forth in its entirety in paragraph 21, and treats paragraph 22 as if it contained no allegations whatever.

30. Admit only that the mortgage in favor of Manal Yousef was recorded on or about that date, and deny the remaining allegations of this paragraph.

31. Admitted.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Admitted.

39. Denied in the form alleged.

40. Denied in the form alleged.

41. Denied.

42. Denied.

COUNT I

43. FY incorporates his responses to paragraphs 1 through 42, above.

44. Denied.

45. Denied

46. Denied.

47. Denied.

COUNT II

48. FY incorporates his responses to paragraphs 1 through 47, above.

49. Denied in the form alleged.

50. Denied.

51. Denied.

52. Denied.

Wherefore, Third Party Defendant Fathi Yusuf requests that this Honorable Court dismiss Defendants Sixteen Plus Corporation's claims against him in their entirety with prejudice, and that it award attorney fees against all officers or shareholders of Sixteen Plus Corporation responsible for the bringing of claims against him in this case and the consolidated cases.

AFFIRMATIVE DEFENSES

1. This counterclaim/third party complaint was dismissed without prejudice by order of the Court dated May 8, 2023, and it may not be re-asserted as part of this case without an order of the Court permitting Sixteen Plus leave to amend to re-assert it.

2. In light of the fact that Sixteen Plus Corporation is owned in equal shares by members of the Hamed and Yusuf families, and there has been no resolution of the Board of Directors of the corporation authorizing the bringing of this lawsuit, the Hamed ownership faction had no authority to cause Sixteen Plus Corporation to bring this lawsuit and it has no authority to maintain this lawsuit or to engage counsel for the Hameds to bring the lawsuit.

3. Sixteen Plus Corporation has no standing to bring this suit because of the lack of authority to bring it, as alleged in affirmative defense number 2 and/or because these claims can only be brought, if at all, as a derivative action, as alleged in affirmative defense number 4.

4. The claims by one or more of the Hamed shareholders of Sixteen Plus against Fathi Yusuf alleging injury to the corporation can only be brought as a derivative action, and indeed there is already pending a derivative action against Fathi Yusuf (known as the "640

case”) asserting claims substantially the same as those asserted in this individual action of the corporation, which has been consolidated with this case.

5. The claims asserted against Fathi Yusuf are barred by the statute of limitations and the doctrine of laches.

6. The claims asserted against Fathi Yusuf are barred by the doctrine of unclean hands.

7. The claims asserted against Fathi Yusuf are barred by the doctrine of estoppel.

8. The claims asserted against Fathi Yusuf are barred by waiver.

9. The third party claims against Fathi Yusuf are barred because the claims are not in the nature of indemnity claims.

10. The claims asserted against Fathi Yusuf are barred because the Hameds, who have caused Sixteen Plus Corporation to bring these claims, are *in pari delicto*, with Fathi Yusuf.

Respectfully Submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: March 8, 2024

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CERTIFICATE OF SERVICE

It is hereby certified that on the 8th day of March, 2024, the foregoing pleading was filed with the Clerk of the Court with the electronic filing system, which will serve the pleading upon the following counsel:

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