

FILED

March 13, 2024 01:09 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 v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342—whereby the Court appointed the undersigned as

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”).

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 various parties to meet and confer and ordered the parties in all three cases to jointly file a proposed amended scheduling order. (Nov. 20, 2023 Order.)

In response to the November 20, 2023 order, the parties made various filings as ordered, including but not limited to Sixteen Plus Corporation’s (hereinafter “SPC”) December 20, 2023 proposed fourth amended scheduling order in the 065 Case and the 342 Case, Hisham Hamed, individually and derivatively on behalf of SPC (hereinafter “HH”) and Fathi Yusuf’s (hereinafter “FY”) December 20, 2023 proposed fourth amended scheduling order in the 650 Case, and the parties’ January 23, 2024 joint motion to extend the deadline to meet and confer in all three cases. In the aforementioned filings, the respective parties of all three cases indicated that MY’s counsel—in the 065 Case and the 342 Case—James L. Hymes, III, Esq.² (hereinafter “Attorney Hymes”) represented that he has not been able to communicate with MY for several weeks and have lost contact with Manal Mohammad Yousef’s (hereinafter “MY”), who resides in Palestine, due to the war between Israel and Palestine.³

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 MY is not currently a party to the 650 Case, though there are pending motions to include MY as a defendant therein.

³ In their respective December 20, 2023 filings—SPC in the 065 Case and the 342 Case and Hisham Hamed, individually and derivatively on behalf of SPC (hereinafter “HH”), and FY in the 650 Case—they 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.” (Dec. 20, 2023 Proposed Fourth Amended Scheduling Orders.) In their January 23, 2024 joint motion, the parties noted that “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.” (Jan. 23, 2024 Motion.)

On January 24, 2024, the Master entered an order in all three cases whereby the Master noted several issues raised as the result of the Attorney Hymes' representation regarding MY.⁴ (Jan. 24, 2024 Order.) To get a better idea of how to proceed, the Master ordered Attorney Hymes to file a notice regarding his last contact with MY and attempts thereof. (Id.)

On February 22, 2024, Attorney Hymes filed a notice in all three cases in response to the January 24, 2024 order.⁵ In his notice, Attorney Hymes indicated that he has been unable to contact MY but Jamil Yousuf has been in contact with MY.⁶ (Feb. 22, 2024 Hymes Notice.)

On February 27, 2024, the Master entered an order in all three cases whereby the Master noted that “[w]hile some delay due to unforeseen circumstances, such as in this instance, is certainly understandable and expected, the Master must ask Attorney Hymes to explore all possible options for him to make direct contact with MY to minimize potential prejudice to other parties and unwarranted burdens on the court from such delay,” and ordered Attorney Hymes to file a notice advising: (i) what method(s) did Jamil Yousuf use to contact MY, (ii) whether Attorney Hymes can contact MY by using same method(s) Jamil Yousuf used to contact MY, and if yes, has Attorney Hymes made any attempts by using such method(s) to contact MY, and if yes, was Attorney Hymes successful in making direct contact with MY. (Feb. 27, 2024 Order.)

⁴ The issues are as follows:

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. 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 has been impossible due to the conflict between Israel and Palestine.

(Jan. 24, 2024 Order.)

⁵ In his notice, Attorney Hymes advised, *inter alia*, that his “last personal contact with Manal Yousef was on Monday, September 18, 2023,” that his “contacts with Jamil [Yousuf] to try and find out how Manal was doing were made on October 15, 2023, November 22, 2023, and February 8, 2024, which was my last attempt,” that MY must “stay at home to be safe” which means “she cannot travel to her lawyer's office which is in another city, and her ability to be deposed will depend on whether or not she has utility power and Internet service,” and that “Jamil [Yousouf] has been in contact with his aunt [MY] in February, 2024, on the 5th and 8th, and has discussed issues which have come up involving the cases with her.” (Feb. 22, 2024 Hymes Notice.)

⁶ Attorney Hymes represents Isam Yousuf (hereinafter “IY”) and Jamil Yousuf (hereinafter “JY”) in the 650 Case.

On March 8, 2024, Attorney Hymes filed a notice in all three cases in response to the February 27, 2024 order. In his notice, Attorney Hymes answered the Master’s questions and indicated, *inter alia*, that “[his] only means of communication with Manal Yousef at the present time is through Jamil Yousuf, who has her power of attorney with respect to the pending litigation in the Virgin Islands.” (March 8, 2024 Notice.) In light of this information, it was disingenuous for Attorney Hymes to represent to the other parties and thereby to the Master that “he could not agree to anything as he has lost contact with his client due to the current conflict in the Middle East” and that “he cannot take any positions in a meet and confer.”⁷ JY, as MY’s “power of attorney with respect to the pending litigation in the Virgin Islands,” essentially steps into the shoes of MY and thus allowing MY to proceed in the litigation of the 065 Case and the 342 Case—and the 650 Case in the event that the Master grants HH’s motion to amend and/or supplement the first amended complaint to add MY as a defendant in the 650 Case. In other words, Attorney Hymes can consult with JY, MY’s “power of attorney with respect to the pending litigation in the Virgin Islands,” who has the authority to act on MY’s behalf in these cases, such as stipulating to certain deadlines in a proposed scheduling order—with the parties being mindful of MY’s current situation. Additionally, JY knows how to contact and converse with MY if Attorney Hymes has questions that need to be directly answered by MY. Again, Attorney Hymes is reminded that MY, as the plaintiff in the 342 Case and the counter-plaintiff in the 065 Case, ultimately bears the burden of prosecuting her claims and counterclaims. *See* V.I. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”).

Based on the foregoing, it is hereby:

ORDERED that, **within sixty (60) days from the date of entry of this Order**, the parties in 065 Case shall **MEET AND CONFER** in compliance with rule 26(c) and Rule 37-1 as to the issues raised in MY’s July 11, 2017 motion for protective order—including but not limited to whether the parties are agreeable to taking MY’s deposition by telephone or other remote means, and MY shall **FILE** a supplemental certification to her July 11, 2017 motion that explicitly states her compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 26(c) and Rule 37-1 of the Virgin Islands Rules of Civil Procedure with the following details: (i) whether the parties met and conferred in person,

⁷ *See supra*, footnote 3.

telephonically, or by videoconferencing,” or that the opposing party refused to meet and confer; and (ii) whether the parties are agreeable to taking MY’s deposition by telephone or other remote means. It is further:

ORDERED that, **within sixty (60) days from the date of entry of this Order**, the parties in the 065 Case and the 342 Case shall **MEET AND CONFER** in good faith in compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 of the Virgin Islands Rules of Civil Procedure as to the discovery issues raised in SPC’s January 3, 2023 first motion to compel discovery responses from MY as to address, agent’s information, accounting and tax information, and SPC shall **FILE** a supplemental certification to its January 3, 2023 motion that explicitly state its compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 with the following details: (i) whether the parties met and conferred in person, telephonically, or by videoconferencing, or that the opposing party refused to meet and confer; and (ii) what specific issues were discussed during the conference, how each party believed legal authority applied to the facts before them, and how one or both parties attempted to resolve their impasse on each issue. **And** it is further:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, the parties in all three cases **SHALL** jointly file a proposed amended scheduling order and the proffered amended scheduling order **MUST NOTE** prominently on the first page the numbered amendment it represents—e.g., **FIRST AMENDED SCHEDULING ORDER, SECOND AMENDED SCHEDULING ORDER**, etc.

DONE and so ORDERED this 13th day of March, 2024.

ATTEST:

Tamara Charles
Clerk of the Court

By: 

Court Clerk Supervisor 

Dated: March 13, 2024


EDGAR D. ROSS
Special Master

FILED

March 13, 2024 01:20 PM
SX-2016-CV-00650
TAMARA CHARLES
CLERK OF THE COURT

N THE SUPERIOR COURT OF THE VIRGIN ISLANDS
District of St. Croix

Hisham Hamed on Behalf of Sixteen
Plus Corp.,
Plaintiff

Case Number: SX-2016-CV-00650; SX-
2016-CV_00065; SX-2017-CV-00342
Action: Damages

v.

Fathi Yusuf et al,
Defendant.

NOTICE of ENTRY
of
Order

To Joel H. Holt, esq.

Charlotte Kathleen, Esq.,

:

Carl Joseph Hartmann, III., Esq.

Stefan B. Herpel, Esq.

James L. Hymes, III, Esq.

Kevin A. Rames, Esq.

Please take notice that on March 13, 2024
a(n) _____
Order of the Special Master
dated _____ March 13, 2023 _____
was/were entered
by the Clerk in the above-titled matter.

Dated March 13, 2024

:

Tamara Charles

Clerk of the Court

By:



Brianna Primus
Court Clerk II