

FILED

June 04, 2024 10:47 AM

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.

SIXTEEN PLUS CORPORATION,
PLAINTIFF/COUNTER-DEFENDANT,

v.

MANAL MOHAMMAD YOUSEF,
DEFENDANT/COUNTER-PLAINTIFF.

MANAL MOHAMMAD YOUSEF,
PLAINTIFF/COUNTER-DEFENDANT,

v.

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

v.

FATHI YUSUF,
THIRD-PARTY DEFENDANT.

Civil Case No. SX-2016-CV-650

DERIVATIVE SHAREHOLDER SUIT,
ACTION FOR DAMAGES AND CICO
RELIEF

JURY TRIAL DEMANDED

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

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

JURY TRIAL DEMANDED

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 came before the Special Master (hereinafter “Master”) on the recent filings—in all three cases—in connection with Christopher Allen Kroblin, Esq. and Marjorie Whalen, Esq. of Kellerhals Ferguson Kroblin PLLC’s (hereinafter “Attorney Kroblin” and “Attorney Whalen,” respectively) substitution as counsel of record for Manal Mohammad Yousef’s (hereinafter “MY”), Jamil Yousuf (hereinafter “JY”), and Isam Yousuf (hereinafter “IY”) in his/her respective cases in place of James L. Hymes, III, Esq. of Law Offices of James L. Hymes, III, P.C. (hereinafter “Attorney Hymes”).

BACKGROUND

At the time of the Master’s appointment to 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”)—Attorney Hymes was the counsel of record for MY in the 065 Case and the 342 Case and the counsel of record for JY and IY in the 650 Case, and Attorney Hymes has remained as their counsel of record in his/her respective cases to date. But additionally, since the Master granted plaintiff Hisham Hamed’s (hereinafter “HH”) July 26, 2017 and December 19, 2022 motions to amend the first amended complaint to add MY as a defendant in the 650 Case, Attorney Hymes is now also counsel of record for MY in the 650 Case.²

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 On December 23, 2016, HH, individually and derivatively on behalf of Sixteen Plus Corporation, filed a first amended complaint in the 650 Case, and he subsequently filed the July 26, 2017 and December 19, 2022 motions to amend the first amended complaint in the 650 Case.

In an order entered on May 9, 2024, the Master pointed out that Attorney Hymes has voluntarily appeared on behalf of MY in the 650 Case when he filed—on behalf of MY—an opposition to HH’s December 19, 2022 motion to amend the first amended complaint in the 650 Case, and that “[a] voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.” Title 5 V.I.C. § 115. (May 9, 2024 Order.)

Ever since the Master entered—in all three cases—an order on November 20, 2023 whereby the Master ordered the parties to meet and confer in connection with the outstanding discovery issues and to jointly file a proposed amended scheduling order, Attorney Hymes had repeatedly indicated to the parties and to the Master that he has difficulty communicating directly with MY.³

On March 13, 2024, upon learning from Attorney Hymes' March 8, 2024 notice—filed in all three cases, in response to the February 27, 2024 order directing Attorney Hymes to advise the Master of his attempts to contact MY, Attorney Hymes—that JY is MY's power of attorney with respect to the pending litigation in the Virgin Islands,⁴ the Master entered an order whereby the Master again ordered the parties—in all three cases—to meet and confer in

³ In their respective December 20, 2023 filings—filed in all three cases: Sixteen Plus Corporation in the 065 Case and the 342 Case and Hisham Hamed, individually and derivatively on behalf of Sixteen Plus Corporation, and Fathi Yusuf in the 650 Case—the parties 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—filed in all three cases—to extend the deadline to meet and confer, the parties indicated:

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.

(Jan. 23, 2024 Parties' Joint Motion.)

In Attorney Hymes' February 22, 2024 notice—filed in all three cases—in response to the January 24, 2024 order directing Attorney Hymes to advise the Master of his contacts with MY, 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.)

In Attorney Hymes' March 8, 2024 notice—filed in all three cases—in response to the February 27, 2024 order directing Attorney Hymes to advise the Master of his attempts to contact MY, Attorney Hymes advised, *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 Hymes' Notice.)

⁴ See *supra*, footnote 3.

connection with the outstanding discovery issues and to jointly file a proposed amended scheduling order. In the March 13, 2024 order, the Master pointed out that “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” and that “JY knows how to contact and converse with MY if Attorney Hymes has questions that need to be directly answered by MY.” (March 13, 2024 Order.)

Thereafter, on April 1, 2024, Attorney Hymes filed—in all three cases—a motion to withdraw as counsel for MY, JY, and IY in his/her respective cases, with his statement in lieu of affidavit, dated April 1, 2024, attached thereto. In response, Sixteen Plus Corporation (hereinafter “SPC”) filed a notice of no objection in the 065 Case and the 342 Case, and HH filed a notice of no objection in the 650 Case. On April 16, 2024, Attorney Hymes filed—in all three cases—a supplement to his statement in lieu of affidavit, dated April 16, 2024.

On May 9, 2024, the Master entered an order whereby the Master denied without prejudice Attorney Hymes’s April 1, 2024 motion to withdraw as counsel of record for MY, JY, and IY in his/her respective cases. In the May 9, 2024 order, the Master explained:

Attorney Hymes currently represents MY in the 065 Case and the 342 Case and JY and IY in the 650 Case. Additionally, in an order entered contemporaneously herewith, the Master pointed out that Attorney Hymes has voluntarily appeared on behalf of MY in the 650 Case when he filed—on behalf of MY—an opposition to HH’s December 19, 2022 motion to amend the first amended complaint in the 650 Case,² and ordered Attorney Hymes to accept service—on behalf of MY—of the second amended complaint and the supplemental complaint in the 650 Case.

Pursuant to Rule 211.1.16 of the Virgin Islands Rules of Professional Conduct (hereinafter “Rule 211.1.16”), a lawyer may withdraw from representing the interests of the client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client...” V.I.S.C.T.R. 211.1.16(b)(1). Furthermore, Rule 211.1.16 directs that “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation [and] [w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” V.I.S.C.T.R. 211.1.16(c). As the moving party,

Attorney Hymes has the burden to show that withdrawal can be accomplished without material adverse effects on the interest of his clients. The Master finds that this burden has not been met. In fact, based on Attorney Hymes's own representations in this instant motion and his recent filings, it is clear that his withdrawal cannot be accomplished without material adverse effect on MY, JY, and IY's interests—to wit, Attorney Hymes indicated that MY is currently enduring various hardships—including but not limited to difficulty in maintaining a steady means of communication with the outside world—due to the war between Israel and Palestine,³ and that JY insisted that Attorney Hymes continue to represent them in these cases.⁴ Attorney Hymes's motion does not identify substitute counsel or otherwise show how MY, JY, and IY will continue in the present proceedings if his motion is granted. Thus, allowing Attorney Hymes to withdraw as counsel for MY, JY, and IY will preclude these parties from further appearances in these proceedings, at least until substitute counsel can be identified, and thereby causing material adverse effects to MY, JY, and IY's interests. Furthermore, in ruling on the instant motion, the Master may also consider the procedural posture of the case. *See Cianci v. Chaput*, 64 V.I. 682, 695 (V.I. 2016) (“We agree with the Superior Court that granting Walker's motion to withdraw so late in the proceedings would have resulted in prejudice to both parties and unnecessarily delayed the conclusion of the matter, contrary to the interests of judicial economy.”). Allowing Attorney Hymes to withdraw as counsel for MY, JY, and IY will certainly result in prejudice to the other parties and impede judicial efficiency by preventing the orderly administration of these proceedings, which commenced more than eight years ago. *Cf.* V.I.S.Ct.R. 211.8.4(d) (“It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice.”). As such, the Master will deny without prejudice Attorney Hymes's motion. Upon the appearance of substitute counsel for MY, JY, and IY, Attorney Hymes may move again to withdraw.

² MY's February 7, 2023 opposition provided:

COMES NOW, MANAL MOHAMMAD YOUSEF, through her undersigned Attorney, James L. Hymes, III, and respectfully opposes the Motion of Hisham Hamed to amend his First Amended Complaint dated December 23, 2016, to join MANAL MOHAMMAD YOUSEF as a name party defendant.

(Feb. 7, 2023 Opp.)

³ *See* Jan. 23, 2024 Joint Motion, Exhibit A; Attorney Hymes's Feb. 22, 2024 Reply; Attorney Hymes's March 8, 2024 Notice; and Attorney Hymes's March 25, 2024 Notice.

⁴ *See* April 1, 2024 Motion.

(May 9, 2024 Order.)

On May 21, 2024, Attorney Hymes and Attorney Kroblin filed a stipulation for substitution of counsel indicating that they had “stipulated and agreed that the law firm Kellerhals Ferguson Kroblin PLLC shall be substituted as the attorneys of record in the above referenced civil cases [the 065 Case, the 650 Case, and the 342 Case] for the Law Offices of

James L. Hymes, III, P.C., and James L. Hymes, III, and that said law firm shall be responsible to the Court and counsel for all matters relating thereto, relieving the Law Offices of James L. Hymes, III, P.C., and James L. Hymes, III, from any duty and/or responsibility as attorney of record for Manal Mohammad Yousef, Jamil Yousuf, and Isam Yousuf in the cases referenced above.” (May 21, 2024 Stip.) (emphasis omitted).

On May 24, 2024, “Defendant and Counter-Plaintiff Manal Mohammad Yousef” filed—in the 065 Case—a notice of appearance of counsel advising that “Kellerhals Ferguson Kroblin PLLC is appearing as Counsel for Defendant and Counter-Plaintiff in [the 065 Case].” (May 24, 2024 MY Notice); “Plaintiff Manal Mohammad Yousef” filed—in the 342 Case—a notice of appearance of counsel advising that “Kellerhals Ferguson Kroblin PLLC is appearing as Counsel for Plaintiff and Counter-Defendant in [the 342 Case].” (May 24, 2024 MY Notice); and “Defendants Jamil Yousuf and Isam Yousuf” filed—in the 650 Case—a notice of appearing of counsel advising that “Kellerhals Ferguson Kroblin PLLC is appearance as Counsel for Defendants in [the 650 Case].” (May 24, 2024 JY and IY Notice.)

On May 29, 2024, Attorney Kroblin and Attorney Whalen filed—in the 065 Case—an amended notice of appearance of counsel advising that “Kellerhals Ferguson Kroblin PLLC is appearing as Counsel for Defendant and Counter-Plaintiff Manal Mohammad Yousef in [the 065 Case].” (May 29, 2024 Kroblin and Whalen Notice); Attorney Kroblin and Attorney Whalen filed—in the 342 Case—an amended notice of appearance of counsel advising that “Kellerhals Ferguson Kroblin PLLC is appearing as Counsel for Plaintiff and Counter-Defendant Manal Mohammad Yousef in [the 342 Case].” (May 29, 2024 Kroblin and Whalen Notice); and Attorney Kroblin and Attorney Whalen filed—in the 650 Case—an amended notice of appearance of counsel advising that “Kellerhals Ferguson Kroblin PLLC is appearing

as Counsel for Defendants Jamil Yousuf and Isam Yousuf in [the 650 Case].” (May 29, 2024 Kroblin and Whalen Notice.)

DISCUSSION

The Master notes at the outset that the initial notices of appearance filed by MY in the 065 Case and the 342 Case and by JY and IY in the 650 Case were improper—to wit, MY, JY, IY, as parties in his/her respective cases, had already appeared therein, and it was their new counsel of record Attorney Kroblin and Attorney Whalen that need to appear and give notices of appearance therein. Nevertheless, this defect was cured by the amended notices of appearance filed by Attorney Kroblin and Attorney Whalen—on behalf of MY in the 065 Case and the 342 Case and on behalf of JY and IY in the 650 Case.

Now turning to the May 21, 2024 stipulation of Attorney Hymes and Attorney Kroblin. The Master finds that Attorney Hymes has cured the deficiencies of his withdrawal that the Master had previously pointed out in the May 9, 2024 order. More specifically, the Master finds that Attorney Hymes—by identifying the substitute counsel for his clients and filing the stipulation for substitution of counsel in his clients’ respective cases—has met his burden to show that his withdrawal can be accomplished without material adverse effects on the interest of his clients, will not prejudice the other parties, and will not impede judicial efficiency. At this time, upon review of the filings, the Master will approve the May 21, 2024 stipulation of Attorney Hymes and Attorney Kroblin with minor revisions—namely, rather than approving the proposed substitution of the law firm Kellerhals Ferguson Kroblin PLLC generally without specific counsel identified as the counsel of record for MY, JY, and IY, the Master will instead approve the substitution of Attorney Kroblin and Attorney Whalen as the counsel of record for MY, JY, and IY in place of Attorney Hymes and the Law Offices of James L. Hymes, III, P.C. In other words, the duty to fully represent MY, JY, and IY’s interests and the duty to not impede

with the orderly administration of these proceedings rest with Attorney Kroblin and Attorney Whalen, MY, JY, and IY's counsel of record, and not generally on the law firm Kellerhals Ferguson Kroblin PLLC.

CONCLUSION

Based on the foregoing, it is hereby:

ORDERED that the May 21, 2024 stipulation of Attorney Hymes and Attorney Kroblin is **APPROVED** as to the substitution of Attorney Kroblin and Attorney Whalen of Kellerhals Ferguson Kroblin PLLC as MY, JY, and IY's counsel of record—to wit, as the counsel of record for MY in all three cases and as the counsel of record for JY and IY in the 650 Case—in place of Attorney Hymes and the Law Offices of James L. Hymes, III, P.C. and **NOT APPROVED** as to the proposed substitution of the law firm Kellerhals Ferguson Kroblin PLLC generally without specific counsel identified as MY, JY, and IY's counsel of record in place of Attorney Hymes and the Law Offices of James L. Hymes, III, P.C. It is further:

ORDERED that Attorney Kroblin and Attorney Whalen of Kellerhals Ferguson Kroblin PLLC shall file second amended notices of appearance—as the counsel of record for MY in all three cases and as the counsel of record for JY and IY in the 650 Case—consistent with this Order **on or before June 7, 2024**. **And** it is further:

ORDERED that Attorney Hymes and the Law Offices of James L. Hymes, III, P.C. shall **REMAIN** as MY, JY, and IY's counsel of record in his/her respective cases until Attorney Kroblin and Attorney Whalen **TIMELY FILES** their second amended notices of appearance as ordered above. Attorney Hymes and the Law Offices of James L. Hymes, III, P.C. are **RELEIVED OF ANY FURTHER DUTIES** as MY's counsel of record in all three cases and as JY and IY's counsel of record in the 650 Case without any further action from the Master **ONLY UPON** Attorney Kroblin and Attorney Whalen's timely filing of their second

ORDER OF THE SPECIAL MASTER

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amended notices of appearance as ordered above; otherwise, Attorney Hymes and the Law Offices of James L. Hymes, III, P.C. shall **REMAIN** as MY, JY, and IY's counsel of record in his/her respective cases.

DONE and so ORDERED this 4th day of June, 2024.

ATTEST:

Tamara Charles
Clerk of the Court

By: 
Court Clerk ~~Supervisor~~ II

Dated: June 4, 2024


EDGAR D. ROSS
Special Master

FILED

June 04, 2024 10:48 AM
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
Action: Damages

v.

Fathi Yusuf et al,
Defendant.

NOTICE of ENTRY
of
Order

To Joel H. Holt, Esq.

Christopher A. Kroblin, Esq.

:

Carl Joseph Hartmann, III., Esq.

Stefan B. Herpel, Esq.

Charlotte Kathleen Perrell, Esq.

Kevin A. Rames, Esq.

Please take notice that on June 04, 2024
a(n) _____
Order of the Special Master
dated June 4, 2024 was/were entered
by the Clerk in the above-titled matter.

Dated June 04, 2024

:

Tamara Charles

Clerk of the Court

By:



Brianna Primus
Court Clerk II