

FILED

June 06, 2024 09:46 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.

Civil Case No. SX-2016-CV-650

DERIVATIVE SHAREHOLDER SUIT,
ACTION FOR DAMAGES AND CICO
RELIEF

JURY TRIAL DEMANDED

CONSOLIDATED CASES: Civil Case No. SX-2017-CV-342; Civil Case No. SX-2016-CV-065; Civil Case No. SX-2016-CV-650

ORDER OF THE SPECIAL MASTER¹

THIS MATTER came before the Special Master (hereinafter “Master”) on the recent documents filed by Plaintiff Hisham Hamed’s (hereinafter “HH”), individually and on behalf of Sixteen Plus Corporation (hereinafter “SPC”), in response to the May 9, 2024 order.²

BACKGROUND

On October 31, 2016, HH, derivatively on behalf of SPC, file a verified complaint against Defendants Fathi Yusuf (hereinafter “FY”), Isam Yousuf (hereinafter “IY”), and Jamil Yousef (hereinafter “JY”) and Nominal Defendant SPC in this derivative shareholder action. On December 23, 2016, HH, individually and derivatively on behalf of SPC, filed a first amended

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 (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”)—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 As the caption above indicates, this Order is specific to the 650 Case, and thus, unless specified otherwise, all the filings and orders referenced herein pertain only to the 650 Case.

verified complaint (hereinafter “FAC”) against FY, IY, and JY, and Nominal Defendant SPC. In the FAC, HH alleged the following six counts: Count I-Civil Violation of the Criminally Influenced and Corrupt Organizations Act (against all defendants), Count II-Conversion (against all defendants), Count III-Breach of Fiduciary Duties (against FY), Count IV-Usurping of Corporate Opportunity (against FY), Count V-Civil Conspiracy (against all defendants), Count VI-Tort of Outrage (against all defendants). (FAC.) Thereafter, a plethora of motions were filed in connection with the FAC, including HH’s July 26, 2017 motion to amend the FAC, HH’s February 6, 2023 motion for leave to file a supplemental complaint, and HH’s February 28, 2023 motion for leave to file a supplemental complaint. On May 9, 2024, the Master entered an order whereby the Master, *inter alia*, ordered as follows:

ORDERED that HH’s July 26, 2017 motion to amend the FAC and HH’s December 19, 2022 motion to amend the FAC are **GRANTED**, however the proposed second amended complaints attached thereto **ARE NOT ACCEPTED**. It is further:

ORDERED that HH’s February 28, 2023 motion for leave to file a supplemental complaint is **GRANTED**, however the proposed second amended and supplemental complaint attached thereto **IS NOT ACCEPTED**. It is further:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, HH shall **FILE**:

- (i) **A NEW PROPOSED SECOND AMEND[ED] COMPLAINT** to “eliminate[] two counts Count II (Conversion) and Count V (Civil Conspiracy) against each Defendant [and] correct[] the caption to correct the spelling of the name of the Jamil Yousef to Jamil Yousuf” and to add [Manal Mohammad Yousef] as a defendant, with the factual allegations added therein confined to events that occurred **BEFORE** the action was commenced, and
- (ii) **A SEPARATE SUPPLEMENTAL COMPLAINT** with the factual allegations therein confined to events that occurred **AFTER** the action was commenced.

(May 9, 2024 Order.)

In response to the May 9, 2024 order, HH filed the following documents: (i) a clean version of the new proposed second amended complaint titled “REVISED PROPOSED SECOND

AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” filed on May 11, 2024; (ii) a redline version of the new proposed second amended complaint reflecting changes made to the FAC, filed on May 12, 2024; and (iii) a clean version of the supplemental complaint titled “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” filed on May 11, 2024.

DISCUSSION

1. The New Proposed Second Amended Complaint Titled “REVISED PROPOSED SECOND AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024”

Upon review of the new proposed second amended complaint titled “REVISED PROPOSED SECOND AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” the Master will order HH to make the following amendments to cure the defects contained therein and re-file a new proposed second amended complaint. *See* V.I. R. CIV. P. 15-2 (“The court may amend any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial.”). First, for the sake of consistency in the three cases,³ amend the caption of this document by replacing “Manal Yousef” with “Manal Mohammad Yousef.” Second, amend the title of this document by replacing “REVISED PROPOSED SECOND AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024” with “Second Amended Complaint.”⁴ *See* V.I. R. CIV. P. 15-1(b) (“A proffered amended pleading must note prominently on the first page the numbered amendment it represents; e.g., FIRST AMENDED COMPLAINT, SECOND AMENDED COMPLAINT, FIRST AMENDED ANSWER, etc.). Third, include the correct exhibit cited in paragraph 11 of the document, which states:

³ “Manal Mohammad Yousef” is used in the caption of the 065 Case and the 342 Case.

⁴ HH has already made it very clear in paragraph 1 of the document that it was filed pursuant to the May 9, 2024 order.

11. Fathi Yusuf and Waleed Hamed and their families are in intractable litigation in several other matters. Both have acknowledged this to be the case, and have filed papers in other proceedings before the Superior Court attesting to this. Moreover, the Superior Court (Willocks, J.) has entered an Order stating that the Hamed and Yusuf families could file a derivative action as to another jointly controlled corporation for the same reason. See Exhibit A.

However, “Exhibit A” is not a copy of the Superior Court Order referenced in paragraph 11. Instead, “Exhibit A” is an unsigned copy of Waleed Hamed’s statement in support of HH’s reply to MY’s opposition to HH’s motion to compel Fathi Yusuf as to the Fifth Amendment, dated February 21, 2023. Fourth, include the exhibits cited in paragraphs 76a, 76e, and 77 of the document. While these paragraphs cited “Exhibit 8,” “Exhibit 9,” “Exhibit 10,” and “Exhibit 11,” no such exhibits were attached to the document. Fifth, reproduce all factual allegations if HH—by stating “See Exhibit A with regard to the factual allegations herein” in paragraph 13 of the document—intended to incorporate the factual allegations of “Exhibit A” into the new proposed second amended complaint. The Master finds that it would not be procedurally sound to permit HH to incorporate the factual allegations of “Exhibit A” by reference—especially without any specificity as to the portion of “Exhibit A” that HH intended to incorporate—and thereby allowing HH to circumvent the requirement of Rule 15-1 of the Virgin Islands Rules of Civil Procedure to “reproduce the entire pleading as amended specifically delineating the changes or additions and... not incorporate any prior pleading by reference.”⁵ *See* V.I. R. CIV. P. 15-1(a). Sixth, remove

⁵ Rule 15-1 of the Virgin Islands Rules of Civil Procedure provides in its entirety:

A party moving to amend a pleading shall attach a complete -- and properly signed -- copy of the proposed amended pleading to the motion papers. Except as otherwise ordered by the court, any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended specifically delineating the changes or additions and may not incorporate any prior pleading by reference.

V.I. R. CIV. P. 15-1(a).

Notably, “Exhibit A” is not even a prior pleading, but simply Waleed Hamed’s statement and thus it may not be compliant with the form of pleadings. *See* V.I. R. CIV. P. 10(b) (“A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number

“Exhibit A” to the document, which as noted above, is an unsigned copy of Waleed Hamed’s statement in support of HH’s reply to MY’s opposition to HH’s motion to compel Fathi Yusuf as to the Fifth Amendment, dated February 21, 2023. As the Master previously pointed out in the May 9, 2024 order, “the factual allegations ended with the commencement of the action—to wit, the filing of the initial complaint” and “a supplemental pleading is a separate pleading that sets out any events that occurred after the commencement of the action,” and referenced Rule 15(d) of the Virgin Islands Rules of Civil Procedure.⁶ (May 9, 2024 Order.) Thus, it is improper for the new proposed second amended complaint to reference a document that was created after the commencement of this matter—to wit, the initial complaint was filed in 2016 and “Exhibit A” is a document created and filed in 2023. Lastly, the new proposed second amended complaint must be verified. *See* V.I. R. CIV. P. 23.1 (“The complaint [in a derivative action] must be verified...”).

2. The Supplemental Complaint Titled “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024”

Upon review of the supplemental complaint titled “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” the Master will order HH to make the following amendments to cure the defects contained therein and re-file a new supplemental complaint. *See* V.I. R. CIV. P. 15-2. First, for the same reasons stated above, amend the caption of this document by replacing “Manal Yousef” with “Manal Mohammad Yousef.”

to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence -- and each defense other than a denial -- must be stated in a separate count or defense.”).

⁶ Rule 15(d) of the Virgin Islands Rules of Civil Procedure provides:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

V.I. R. CIV. P. 15(d).

Second, amend the title of this document by replacing “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024” with “Supplemental Complaint.”⁷ *See* V.I. R. CIV. P. 15-1(b). Lastly, the supplemental complaint must be verified. *See* V.I. R. CIV. P. 23.1 (“The complaint [in a derivative action] must be verified...”).

CONCLUSION

Based on the foregoing, the Master will not accept the new proposed second amended complaint titled “REVISED PROPOSED SECOND AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024” and the supplemental complaint titled “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” filed on May 11, 2024, and strike from the record all the documents filed on May 11, 2024 and May 12, 2024 in the interest of preventing an unnecessarily convoluted docket. Accordingly, it is hereby:

ORDERED that the new proposed second amended complaint titled “REVISED PROPOSED SECOND AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024” and the supplemental complaint titled “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” filed on May 11, 2024, **ARE NOT ACCEPTED**. It is further:

ORDERED that all the documents filed on May 11, 2024 and May 12, 2024—to wit, the clean version of the new proposed second amended complaint titled “REVISED PROPOSED SECOND AMENDED COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” filed on May 11, 2024; (ii) the redline version of the new proposed second amended complaint reflecting

⁷ This is the only supplemental pleading filed to date—since the Master already rejected the proposed second amended and supplemental complaint previously filed with HH’s February 6, 2023 motion for leave to file a supplemental complaint—and HH has already made it very clear in paragraph 1 of the document that it was filed pursuant to the May 9, 2024 order.

changes made to the FAC, filed on May 12, 2024; and (iii) the clean version of the supplemental complaint titled “REVISED FIRST SUPPLEMENTAL COMPLAINT PER THE COURT’S ORDER OF MAY 9, 2024,” filed on May 11, 2024—are **STRICKEN FROM THE RECORD**.

And it is further:

ORDERED that, on or before **July 12, 2024**, HH shall **FILE**:

- (i) A clean version of the **NEW PROPOSED SECOND AMENDED COMPLAINT** consistent with this Order,
- (ii) A redline version of the **NEW PROPOSED SECOND AMENDED COMPLAINT** specifically delineating the changes or additions; and
- (iii) A **NEW SUPPLEMENTAL COMPLAINT** consistent with this Order.

DONE and so **ORDERED** this 5th day of June, 2024.

ATTEST:

Tamara Charles
Clerk of the Court

By:



Court Clerk ~~Supervisor~~ II

Dated: June 6, 2024


EDGAR D. ROSS
Special Master

FILED

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SX-2016-CV-00650
TAMARA CHARLES
CLERK OF THE COURT

IN 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.

Charlotte Kathleen Perrell, Esq.

:

Carl Joseph Hartmann, III., Esq.

Stefan B. Herpel, Esq.

Christopher A. Kroblin, Esq.

Marjorie Beth Whalen, Esq.

Kevin A. Rames, Esq.

Please take notice that on June 06, 2024
a(n) _____ Order of the Special Master
dated June 5, 2024 was/were entered
by the Clerk in the above-titled matter.

Dated June 06, 2024

Tamara Charles

:

Clerk of the Court

By:



Brianna Primus
Court Clerk II