

FILED

September 16, 2024 06:58 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,)

and)

SIXTEEN PLUS CORPORATION,)

a nominal defendant.)

CASE NO.: SX-2016-CV-00650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

CONSOLIDATED CASES:

**Civil Case No. SX-2016-CV-650; Civil Case No. SX-2016-CV-00065;
Civil Case No. SX-2017-CV-342**

**FATHI YUSUF’S ANSWER AND AFFIRMATIVE
DEFENSES TO SUPPLEMENTAL DERIVATIVE COMPLAINT**

Defendant **FATHI YUSUF** (“Yusuf” or “Defendant”), through his attorneys, **DUDLEY
NEWMAN FEUERZEIG LLP**, hereby submits his Answer and Affirmative Defenses to Plaintiff’s
Supplemental Derivative Complaint.

ANSWER

JURISDICTION AND PARTIES

1. Admitted.

2. Admit that Plaintiff is a resident of St. Croix but neither admit nor deny the remaining allegations of this paragraph, for the reason that Yusuf is without sufficient information to form a belief as to their truth or falsity.

3. Admitted.

4. Neither admitted nor denied for the reason that Yusuf is without information sufficient to form a belief as to the truth or falsity of this allegation.

5. Neither admitted nor denied for the reason that Yusuf is without information sufficient to form a belief as to the truth or falsity of this allegation.

6. Neither admitted nor denied for the reason that Yusuf is without information sufficient to form a belief as to the truth or falsity of this allegation.

7. Denied.

8. Neither admitted nor denied for the reason that Yusuf is without information sufficient to form a belief as to the truth or falsity of this allegation.

9. Neither admitted nor denied for the reason that this allegation is a purported statement of law that does not require an answer.

10. Denied in the form alleged.

11. Denied in the form alleged.

12. Admit that Plaintiff failed to make demand on the Board of Directors, but deny the remaining allegations in the form alleged.

NEW FACTS

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admit that the action was filed, but deny any remaining allegations to the extent that they characterize the motives of Plaintiff in making this filing.

18. Admit only that Sixteen Plus purported to file the 65 action on or about February 12, 2016, but neither admit nor deny the paraphrasing of the contents of some of the allegations made or relief sought in that action, because the Complaint in that action speaks for itself.

19. Neither admit nor deny allegations about what Hisham Hamed knew or did not know, being without sufficient information as to form a belief as to the truth of those allegations; and deny allegations of a “conspiracy between Yusuf and his family members to try to take the Diamond Keturah land” or any other implication of alleged wrongdoing by Yusuf.

20. Admitted.

21. Admit that Hamed’s First Amended Complaint was filed on or about December 23, 2016.

22. Neither admitted nor denied, because this paragraph asserts a legal conclusion to which no response is required.

23. Denied.

24. Neither admitted nor denied, because this paragraph fails to specify which allegations of the action brought by Manal Yousef are allegedly false and therefore cannot be meaningfully answered.

25. Denied.

26. Neither admitted nor denied, because Yusuf is without information sufficient to form a belief as to what Plaintiff learned and when he learned it.

27. Denied.

28. Denied.

29. Denied.

30. Neither admitted nor denied, because Yusuf is without information sufficient to form a belief as to the truth or falsity of these allegations.

31. Neither admitted nor denied, because Yusuf is without information sufficient to form a belief as to the truth or falsity of these allegations.

32. Neither admitted nor denied, because Yusuf is without information sufficient to form a belief as to the truth or falsity of this allegation.

33. Neither admitted nor denied, because Yusuf is without information sufficient to form a belief as to the truth or falsity of these allegations.

34. Neither admitted nor denied, because Yusuf is without information sufficient to form a belief as to the truth or falsity of these allegations.

COUNT I – CICO

35. Yusuf incorporates his responses to the preceding paragraphs.

36. Admit that Plaintiff has quoted from part of 14 V.I.C. § 605.

37. Neither admitted nor denied, because the actual terms of the statute speak for themselves and should be quoted rather than paraphrased.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT II (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

47. Yusuf incorporates his answers to the preceding paragraphs.

48. Admit only that the note and mortgage “protect[] the corporation’s principal asset,” but deny all remaining allegations of this paragraph, including the allegations that he procured the power of attorney and that he has used the power of attorney to “tak[e] [Sixteen Plus] benefits as his own.”

49. Denied.

50. Denied.

COUNT III (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

51. Yusuf incorporates his answers to the preceding paragraphs.

52. Denied.

53. Denied.

54. Denied.

COUNT IV – TORT OF OUTRAGE

55. Yusuf incorporates his answers to the preceding paragraphs.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiff’s claims fail to state a claim for which relief can be granted.

2. Plaintiff’s claims are barred by the statute of limitations.

3. Plaintiff’s claims are barred by the doctrine of laches.

4. Plaintiff’s claims are barred by the doctrine of unclean hands.

5. Plaintiff's claims are barred by the doctrine of *in pari delicto*.

6. Plaintiff's claims are barred by the doctrine of estoppel.

7. Plaintiff's claims are barred by waiver.

8. Sixteen Plus has brought a direct action involving the same alleged acts, and if a direct action by the corporation is maintainable, then this derivative action cannot be maintained as a matter of law.

9. The instant derivative action is barred by Plaintiff's failure to make a demand on the Board of Directors of Sixteen Plus to bring the action.

Wherefore, Defendant Fathi Yusuf requests that this Court dismiss this case and all claims asserted against him with prejudice, and that the Court award him his attorney fees wrongfully incurred in the defense of this case.

Respectfully Submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: September 16, 2024

By: /s/ Charlotte K. Perrell
CHARLOTTE K. PERRELL
(V.I. Bar No. 1281)
STEFAN B. HERPEL
(V.I. Bar No. 1019)
Law House - 1000 Frederiksberg Gade
St. Thomas, VI 00802-6736
P.O. Box 756
St. Thomas, VI 00804-0756
Telephone: (340) 774-4422
E-Mail: cperrell@DNFvi.com
sherpel@DNFvi.com

CERTIFICATE OF SERVICE

It is hereby certified that on the 16th day of September, 2024, the foregoing **FATHI YUSUF'S ANSWER AND AFFIRMATIVE DEFENSES TO SUPPLEMENTAL DERIVATIVE COMPLAINT**, which complies with the page and word limitations set forth in Rule 6-1(e), with the Clerk of the Court with the electronic filing system, and served same upon opposing counsel by means of the electronic case filing system addressed to:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
Quinn House - Suite 2
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: holtvi@aol.com

Christopher Allen Kroblin, Esq.
Marjorie Whalen, Esq.
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
9053 Estate Thomas, Suite 101
St. Thomas, VI 00802-3602

E-Mail: ckroblin@kellfer.com
mwhalen@kellfer.com

Carl J. Hartmann, III, Esq.
5000 Estate Coakley Bay – Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: carl@carlhartmann.com
carl@hartmann.attorney

Kevin A. Rames, Esq.
LAW OFFICES OF K.A. RAMES, P.C.
2111 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: kevin.rames@rameslaw.com

/s/ Charlotte K. Perrell