

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 SECOND AMENDED DERIVATIVE COMPLAINT

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

ANSWER

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.

FACTS

A. Background History – 1997-1999: Prior to the Alleged Conspiracy and Alleged Predicate Criminal Acts

13. Denied in the form alleged.
14. Denied in the form alleged.
15. Denied in the form alleged.
16. Admitted.
17. Denied.

18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied in the form alleged.
29. Denied.
30. 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.

31. Deny that Sixteen Plus paid for an assignment with funds from the partnership, and 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.

32. Admit only that the deed and mortgage were recorded, but deny that the mortgage was a “sham.”

a. The Money Laundering Charges-2003

33. Admitted.
34. Denied.
35. Denied in the form alleged.
36. Denied.

37. Denied.

b. The Value of the Sixteen Plus Real Property Dramatically Increases-2005

38. Denied in the form alleged.

39. Denied.

40. Denied in the form alleged.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

c. The Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy

45. Denied in the form alleged.

46. Denied.

47. Denied.

48. Denied in the form alleged.

49. Denied.

50. Denied. By way of further answer, Yusuf asserts that Wally Hamed procured this instrument and hence was aware of its existence.

51. Denied.

52. Denied.

53. Admitted.

54. Neither admit nor deny the characterization of the guilty plea by United Corporation, for the reason that this legal document speaks for itself, and deny as inaccurate the

characterization that “United Corporation...subsequently was determined to be Yusuf’s agent for the partnership.”

55. Denied in the form alleged.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

56. Admit only that the demand letter was sent, but deny all remaining allegations of this paragraph.

57. Denied in the form alleged.

58. 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.

59. 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.

60. Denied.

61. Admit only that Sixteen Plus filed an action for dissolution to dissolve Sixteen Plus, and deny the remaining allegations of this paragraph.

62. Denied in the form alleged.

63. Admit only that Yusuf did not produce a power of attorney.

64. Admitted.

65. Admit that the email from his counsel was written, but deny Plaintiff’s characterization of that email and deny any implication that counsel made any misrepresentations about his belief that he had complied with the document request, or that he knowingly withheld any requested documents he knew to exist.

66. Denied.

67. Denied.

68. Denied in the form alleged.

69. Denied in the form alleged.

70. 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.

71. Denied.

72. Denied.

73. 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.

74. Denied.

75. Denied in the form alleged.

76. Denied.

77. Denied in the form alleged.

78. Denied.

79. Denied.

80. Denied.

81. Admit that this action was originally filed on or about the date alleged.

COUNT I – CICO

82. Yusuf incorporates his answers to the preceding paragraphs.

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

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

85. Denied.

86. Denied.

87. Denied.

88. Denied.

- 89. Denied.
- 90. Denied.
- 91. Denied.
- 92. Denied.
- 93. Denied.

COUNT II (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

94. Yusuf incorporates his answers to the preceding paragraphs.

95. 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.”

- 96. Denied.
- 97. Denied.

COUNT III (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

- 98. Yusuf incorporates his answers to the preceding paragraphs.
- 99. Denied.
- 100. Denied.
- 101. Denied.

COUNT IV – TORT OF OUTRAGE

- 102. Yusuf incorporates his answers to the preceding paragraphs.
- 103. Denied.
- 104. Denied.
- 105. Denied.
- 106. 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 equitable 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 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 SECOND AMENDED 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
