IN THE DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his) Case No.1:12-cv-99
authorized agent, WALEED HAMED,)
Plaintiffs,)
v.)
FATHI YUSUF and UNITED CORPORATION,)
Defendants.)))

DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY

COMES NOW Defendants Fathi Yusuf and United Corporation (collectively, "Defendants"), pursuant to Rule 7.1(a) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, respectfully move for leave to file a sur-reply. In support of this motion, Defendants state the following:

- 1. On October 4, 2012, the Defendants' removed the instant case from the Virgin Islands Superior Court to this Court. Doc. # 1.
- 2. On October 11, 2012, the Plaintiffs' moved to remand the case to the Superior Court. Doc. # 13.
- 3. On October 25, 2012, the Defendants responded in opposition to the Plaintiffs' motion for remand. Doc. # 19.
- 4. On October 26, 2012, the Plaintiffs filed their notice of intent to serve subpoena duces tecum. Doc. # 20.
- 5. On November 6, 2012, the Plaintiffs filed their motion for an order to show cause. Doc. # 31.
- 6. On November 12, 2012, the Plaintiffs moved for partial summary judgment. Doc. # 34.

7. It is hornbook law that when a party that engages in affirmative activity in federal

court waives the right to seek a remand. See In re Moore, 209 U.S. 490 (1908) (if a non-removing party

has taken action in federal court, such as amending the complaint, that party has essentially acquiesced in

the federal court's jurisdiction) (emphasis added), overruled in part on other grounds, Ex Parte Harding,

219 U.S. 363 (1911); see also Koehnen v. Herald Fire Ins. Co., 89 F.3d 525, 528 (8th Cir. 1996); Johnson v.

Odeco Oil & Gas Co., 864 F.2d 40, 42 (5th Cir.1989); Riggs v. Plaid Pantries, Inc., 233 F. Supp. 2d 1260,

1271 (D. Or. 2001).

8. Moreover, by proceeding with the merits of the case, a plaintiff waives the

entitlement to remand. 28 U.S.C. § 1447(c); Williams v. Howard Univ., 984 F.Supp. 27, 29

(D.D.C.1997); Koehnen v. Herald Fire Ins. Co., 89 F.3d 525, 528 (8th Cir.1996); Fidelity & Deposit Co. of

Md. v. Burden, 53 F.2d 381, 381 (2d Cir.1931); Medlin v. Andrew, 113 F.R.D. 650, 652 (M.D.N.C.1987).

See also Lapoint v. Mid-Atl. Settlement Services, Inc., 256 F. Supp. 2d 1, 3 (D.D.C. 2003) ("courts have

denied motions for remand when a plaintiff has litigated the substance of its claim via a motion for

summary judgment or a trial.").

9. Absent leave, Local Rule 7.1(a) only permits a motion, a response in opposition, and

a reply.

10. In the present action, because the Plaintiffs' filed their motion for summary

judgment (Doc. # 34), motion to show cause (Doc. # 31) and notice of intent to serve a subpoena

(Doc. # 20) after the Defendants' filed their response in opposition to the Plaintiffs' motion for

remand (Doc. # 19). Accordingly, the additional factual and legal basis for the Defendants'

newfound opposition had not yet come to pass.

11. The Defendants request leave to file a sur-reply of no greater than five (5) pages in

length to address this new issue.

WHEREFORE, Defendants Fathi Yusuf and United Corporation respectfully request that this Court granting them leave to file a sur-reply brief of no more than 5 pages, and granting any further relief that the Court deems just and appropriate.

Respectfully submitted,

/s/Joseph A. DiRuzzo, III
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Dated Nov. 14, 2012

CERTIFICATE OF SERVICE

I hereby certify that, on Nov. 14, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following:

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