

**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 YOUSEF**

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal defendant.

Case No.: 2016-SX-CV-650

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

JURY TRIAL DEMANDED

PLAINTIFF'S OPPOSITION TO YUSUF'S MOTION TO DISMISS

The Plaintiff filed a First Amended Complaint (hereinafter referred to as "FAC") on December 23, 2016. On January 9, 2016, one of the Defendants, Fathi Yusuf ("Yusuf"), filed a Motion to Dismiss the Amended Complaint based on Rule 12(b)(6) and Rule 19. For the reasons set forth herein, it is respectfully submitted the motion should be denied, although the Plaintiff hereby withdraws two counts (Counts II and V).¹

One preliminary comment is in order. When addressing a Rule 12(b)(6) motion in this jurisdiction, it is necessary to perform a *Banks* analysis to determine whether the cause of action is recognized in this jurisdiction, and if so, what its elements are. As Yusuf did not perform such an analysis, the Plaintiff will do so as to each common-law

¹ Yusuf's motion exceeded the permissible 20-page limit, so it should not even be considered. A motion to strike Yusuf's Rule 12 motion is pending for this reason, which if granted, moots this motion.

count. As these counts sound in tort, the admonition set forth by V.I. Supreme Court in *Walters v Walters*, 2014 WL 1681319 (V.I. Apr. 28, 2014), in adopting the “soundest rule” is helpful. There, the Supreme Court stated that courts must be mindful that “**Tort law serves two fundamental purposes: ‘deterrence and compensation’.**” *Id.* at *5.

I. Factual Background

Yusuf has misstated the facts underlying the FAC, requiring a response before addressing his motion. As was done in the FAC, this will be broken down into several time periods. As this Court knows, under the applicable Rule 12 standard, **all facts pled in the FAC are deemed to be true for the purpose of this Rule 12(b)(6) motion.** See, *Brady v. Cintron, M.D.*, 2011 WL 4543906, at *9 (V.I. Sept. 27, 2011).

A. The Purchase of the Diamond Keturah property by Sixteen Plus: 1997-1999

In 1997, Mohammad Hamed and Fathi Yusuf decided to purchase 300 acres on the south shore of St. Croix, generally known as “Diamond Keturah,” for \$4.5 million from the Bank of Nova Scotia (“BNS”). To do so, they formed a corporation, Sixteen Plus, which they owned 50/50 through their respective family members. They agreed to pay for the purchase with profits from the Plaza Extra Supermarket, which they also jointly owned as 50/50 partners. FAC ¶¶ 12-19.

Yusuf decided he did not want the Government or BNS to know the source of the funds being used to buy the property, as he was diverting unreported cash from Plaza Extra to use for this purchase. Thus, he arranged to have the funds laundered by having cash taken to St. Martin and then sent back by wire transfer by his nephew, Isam Yousuf (“Isam”), into the account of Sixteen Plus at BNS. To further hide the source of

the funds, Yusuf and Isam decided to create a sham mortgage for \$4.5 million in the name of another Yusuf relative in St. Martin, Manal Yousef ("Manal"). FAC ¶¶ 21-23.

Yusuf explained to the Hameds that Manal would never enforce the mortgage, but that it would be executed and recorded to make it look like a valid mortgage, which was done. FAC ¶¶ 24-31. Indeed, while the mortgage was recorded in 1999, two years after it was executed (FAC ¶ 31), Yusuf signed the corporate tax return for 1999 (filed in 2000) under oath verifying that the mortgage was owed to the shareholders (the Hameds and Yusufs). FAC ¶ 75 and Exhibit 9 thereto.

As specifically stated on page 3 of the FAC, **the crimes committed during this time period are not part of the criminal conspiracy pled in the CICO count**, which only involves acts that began to occur in 2010.

B. The Federal Indictment and Prosecution: 2003-2009

In 2003, the Federal Government indicted Fathi Yusuf and several others, including Isam and Wally Hamed, for money laundering and tax evasion. As part of the criminal prosecution, the Government filed a lien against all assets purchased with laundered funds, including Diamond Keturah. FAC ¶¶ 32-35.

While the criminal case was pending, various third parties made offers to buy Diamond Keturah at a price well in excess of its purchase price—with one offer exceeding \$22 million. The Government had no problem with the sale so long as the proceeds were escrowed. However, Yusuf would not agree to any sale unless the Manal mortgage was paid at the closing. As the Government recognized this was a sham mortgage, it refused to agree to allow the payment to be made. Thus, no sale ever took place. FAC ¶¶ 37-43.

The Government eventually agreed to a plea agreement that resulted in a \$10 million tax payment, along with a \$1 million fine. The criminal case was then dismissed, with the lien on Diamond Keturah being removed since all of the taxes had now been paid on these laundered funds. FAC ¶¶ 52-54. As part of the dismissal, Yusuf and Wally Hamed (who had signed the mortgage) were given immunity for the tax evasion and money laundering activities that took place between 1997-1999. FAC ¶ 54.

C. The Manal Yousef Power of Attorney

Recognizing the significant increase in the value of Diamond Keturah in just the last 10 years (from \$4.5 million to over \$20 million), Yusuf and Isam decided on a covert plan that would give them control of the property to the exclusion of Sixteen Plus and the Hamed shareholders. In this regard, Yusuf had a real estate Power of Attorney ("POA") drawn up for Isam to have Manal sign—giving Yusuf full control over the mortgage. FAC ¶¶ 45-51. The POA, **Exhibit 1** to the FAC (also attached to this motion as **Exhibit 1**), gave Yusuf full authority to execute any and all documents related to the mortgage. The POA also incorporated the language in 15 V.I.C. § 5-604 (a copy of which is attached as **Exhibit 2**) that allowed Yusuf **to release the mortgage or change the name on the mortgage**. See **Exhibit 2** (subsections 4 and 8). Incredibly, the POA signed by Manal then added the following broad language:

I hereby agree to release, indemnify, defend and hold my attorney-in-fact harmless for all claims arising by reason of his acts he so performs in accordance with this instrument and the law. (Emphasis added).

Thus, Yusuf could now put his own name on the mortgage or completely release it. To understand what this meant, just imagine a bank giving a similar POA to a borrower so the borrower could just release it without incurring any liability to the bank.

D. The Execution of the Hidden Plan: 2012-Present

On September 14, 2012, Yusuf filed the 2011 corporate tax return for Sixteen Plus, again verifying that \$4.5 million note was owed to the Hamed and Yusuf shareholders (FAC ¶ 75 and FAC Exhibit 8), also attached hereto as **Exhibit 3**. In short, the corporate tax return showed a debt to the shareholders, not to Manal, .

Notwithstanding this verified filing, in December of 2012, Yusuf began to try securing the property as his own through the POA by having a St. Martin lawyer send a demand letter to Sixteen Plus (c/o Wally Hamed) to collect the note secured by the mortgage, claiming a debt due of \$14,612,662.23 plus \$3,000,000 in late fees. FAC ¶ 55 That letter and the response from Hamed's counsel explaining Yusuf's fraudulent conduct are attached to the FAC. They are also **Exhibits 4 and 5 hereto**. As would be expected, the lawyer from St. Martin was never heard from again. FAC ¶¶ 56-58.

Despite filing sworn tax returns denying the existence of the alleged Manal debt (FAC ¶ 75), Yusuf then engaged in a series of additional acts in 2012 through 2016 to try to collect the sham mortgage, such as filing verified answers to interrogatories in the Superior Court claiming the debt was valid (FAC ¶¶ 65-66). He also tried to keep the POA secret by denying its existence under oath (FAC ¶¶ 61-66), while using it to retain local counsel to defend the declaratory judgment action filed against Manal by Sixteen Plus to have the mortgage declared void. FAC ¶¶ 77-78.

To accomplish their goal of obtaining control of Diamond Keturah, Yusuf and Isam got Jamil Yousef, Isam's son, to join in the conspiracy by allowing Fathi Yusuf to provide Jamil's name to the Superior Court in 2016 as the alleged contact for Manal in St. Martin, thus trying to further hide their involvement in this plan. FAC ¶ 67-74. This

conspiracy continues to this day, as none of the Defendants have recanted any of the false statements made to this Court as they still continue their plan to steal the Diamond Keturah property from the Plaintiff and the Hamed shareholders. FAC ¶ 79.

With the foregoing facts in mind, **taken as true at this juncture**, it is now appropriate to address Yusuf's Rule 12 and Rule 19 motions.

II. The Rule 12(b)(6) Motion

While Yusuf cited cases from various federal courts regarding the applicable Rule 12(b)(6) standard, the Supreme Court of the Virgin Islands stated the applicable standard in this jurisdiction in *Brady v. Cintron, M.D.*, 2011 WL 4543906, at *8:

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to have a claim dismissed "for failure to state a claim upon which relief can be granted." The adequacy of a complaint is governed by the general rules of pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. In *Bell Atlantic Corp. v. Twombly and Ashcroft v. Iqbal*, the United States Supreme Court interpreted Rule 8 to require a complaint to set forth a plausible claim for relief, and articulated the proper standard for evaluating motions to dismiss for failure to state a claim: "a claim requires a complaint with enough factual matter (taken as true) to suggest the required element." (citations omitted)

The V.I. Supreme Court then described the correct analysis as follows:

First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. *Id.* at *9 (citations omitted).

Finally, the Supreme Court held that a court must look for the well-pleaded facts, not just unsupported conclusions ("hype"), and thereafter proceed as follows:

Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible. *Id.* (citations omitted).

In short—are there sufficient facts pled to make the claim plausible based on the elements of the claim?

A. The Statute of Limitations: All Counts

Yusuf first argues that the CICO count in the FAC is barred by the applicable statute of limitations (hereinafter “SOL”), which he concedes is 5 years for a CICO claim under 14 V.I.C. § 607(h). He further concedes the statute commences from the date of discovery, citing the applicable law, so that issue will not be briefed further here.

Based on the express wording of § 607(h), the CICO statute of limitations has not run. As alleged in ¶ 45 of the FAC, the wrongful conduct began sometime in 2010, but was intentionally hidden by Fathi Yusuf. The first suggestion of any wrongdoing took place in late 2012 when the letter from the lawyer in St. Martin was received. FAC ¶ 55. However, the predicate acts in furtherance of this hidden plan have continued to take place since then, with specific predicate acts in furtherance of this plan occurring each year since 2012 through the current date. (FAC ¶¶ 55-79). Thus, the CICO limitations period has not even begun, much less run.²

Moreover, Yusuf repeats this SOL argument as to each other count in his motion, but each one can be summarily rejected for the same reason, as the FAC alleges that the wrongful conduct occurred in each year since 2012 as to each remaining count (breach of fiduciary duty, usurpation of corporate opportunity and the tort of outrage). FAC ¶¶ 55-79. For example, his breach of fiduciary duty continues through the filing of the FAC, as alleged therein.

² To assist this Court in addressing this motion, the key allegations from ¶¶ 45-79 are attached as **Exhibit 6**.

Moreover, as the Virgin Islands Supreme Court recently held in another case between the Yusuf/Hamed parties, whenever there is **any** factual dispute as to the application of the SOL discovery rule in a case where a jury demand has been made, **those facts must be resolved by the jury**. See *United Corp. v. Waheed Hamed*, 2016 WL 154893, at *7 (V.I. Jan. 12, 2016)(reversing a SOL summary judgment ruling).

Thus, Yusuf's SOL arguments as to each Count can be summarily denied, as at the very least there are sufficient facts pled to create a factual issue as to when the wrongful conduct was **discovered** and whether the SOL has even started to run since the Defendants' wrongful acts are continuing.

B. Count I-CICO

Count I is a statutory claim based on the CICO statute permitting civil CICO claims, 14 V.I.C. § 607, so that no *Banks* analysis is required. To plead a claim under § 607, one needs only to allege facts sufficient to support a finding that the Defendants have violated one of the subsections under 14 V.I.C. § 605, which provide in part:

(a) It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.

(b) It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, **any interest in, or control of, any enterprise or real property**. (Emphasis added.)

Violations of all sections are pled as part of the Plaintiff's claim. FAC ¶¶ 81-83.³

On page 9 of his motion, Yusuf first attacks the § 605(b) claim, arguing that there is supposedly no factual assertion that **Yusuf has obtained any interest in real property**, a key element of § 605(b). However, the FAC clearly states facts, taken as

³ While FAC ¶ 81 also references ¶ 605 (c), the Plaintiff withdraws any such claim.

true at this juncture, that Yusuf did acquire a controlling interest in real property through the POA that allows, inter alia, Yusuf to put his own name on the Manal mortgage. Thus, the FAC does contain factual allegations addressing Yusuf's sole objection to the § 605(b) claim, warranting a denial of the Rule 12(b)(6) motion to dismiss as to this CICO claim pled of Count I.

Yusuf next challenges three specific aspects of the sufficiency of the pleadings as to the Plaintiff's § 605(a) CICO claim. After one wades through all of the general rhetoric in Yusuf's motion, his first legal argument is summarized on page 12—that the Plaintiff failed to properly plead a CICO conspiracy under § 605(a) because: (1) there is no allegation of a manifest agreement to participate in the conspiracy by the Defendants (2) through the commission of two or more predicate acts. That argument is without merit, as the FAC alleges both a manifest agreement to participate in the conspiracy, starting in 2010 and continuing through 2016. FAC ¶¶ 45, 51,55, 71-73 and 77-78. The FAC also alleges two (or more) specific predicate acts, including mail fraud, perjury and attempted theft. FAC ¶¶ 55, 59, 61-66, 68-70, 74, 75, 78-79).

A plain reading of the referenced paragraphs in the FAC confirms that these CICO elements were properly pled. Thus, once the specific factual allegations are reviewed, Yusuf's first Rule 12 objection to the § 605(a) claim fails, as sufficient facts, deemed to be true at this juncture, have been pled.

Yusuf' second objection to the § 605(a) claim is found on page 12, arguing that the Plaintiff failed to allege the existence of a criminal enterprise, as required by § 605(a). While Yusuf notes that the three Defendants are not a separate legal entity like a corporation, § 605(h) allows a criminal enterprise to be an "association in fact." Yusuf

concedes this point, but argues that the allegations in the FAC fail to meet that classification as defined by *Boyle v. United States*, 556 U.S. 938, 946 (2009) which requires “at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”

However, those elements are all pled in detail in the FAC—the purpose (to steal Diamond Keturah from Sixteen Plus and the Hameds) is repeatedly pled (¶¶ 45,50-51, 55, 66, 79), as is the relationship between the three family members working together in St. Martin and St. Croix to accomplish this goal (¶¶ 45, 55, 69-73, 77). Likewise, this sustained and continuous effort has extended over six years from 2010 to 2016 (¶¶ 45, 55, 69-73, 77-79), which is enough time to satisfy the “longevity” requirement.⁴ Thus, Yusuf’s second Rule 12 objection to Count I is equally without merit once the facts as pled in the FAC, again taken as true at this juncture, are reviewed.

Yusuf’s last objection, articulated first on page 14, asserts that the Plaintiff has not alleged a proper “Pattern of Criminal Activity.” However, as Yusuf concedes, this element required by § 605(a) defines this pattern as “two or more occasions of conduct”

⁴ Indeed, as alleged in the FAC, both Isam and Yusuf were part of the initial money laundering scheme to divert cash to St. Martin and then wire it back to St. Croix. Thus, they both knew that when they had Manal execute the POA in St. Martin to gain control over the mortgage, they were now beginning a criminal enterprise. The subsequent acts that have taken place in St. Martin over the last five years, orchestrated by Yusuf and performed by Isam with his son (the letter from the St. Martin lawyer, diverting the complaint filed against Manal in St. Martin, hiding the present location of Manal despite a court order that they provide her contact information, filing directly contrary verified tax returns and interrogatory responses, etc.)—all show a purpose, a relationship between the parties and longevity. Clearly, the facts show a very persistent and continuing criminal enterprise.

that is further described in § 604(j) that "(A) constitutes criminal activity, (B) are related to the affairs of the enterprise, and (C) are not isolated."

Again, the factual allegations in the FAC, taken as true, meet this test. The Plaintiff has alleged more than two criminal acts of mail fraud and many such acts of perjury and obstruction of justice (¶¶ 55, 59, 61-66, 68-70, 74, 75, 78-79), not to mention attempted conversion. The FAC also alleges that each act within this criminal activity is specifically related to the enterprise (¶¶ 59, 61-66, 68-70, 74, 75, 78-79), and were done with the common purpose of stealing Diamond Keturah from Sixteen Plus. Finally, the FAC alleges that these acts have been continuous over the past six years (¶¶ 45, 55, 69-73, 77-79), so they are not isolated.⁵ Thus, this third Rule 12 objection to Count I is also meritless.

In summary, under the applicable Rule 12 standard set in *Walters, supra*, it is respectfully submitted the none of Yusuf's objections to the Count I warrant dismissal, as the well-pled facts meet each of the required CICO criteria under § 605 (a) and (b).

C. Count II: Conversion

Count II is a claim for conversion which the Plaintiff believes have been properly pled. However, to simplify this case, the Plaintiff withdraws this Count.

D. Count III: Breach of Fiduciary Duty

Count III is a claim for breach of fiduciary duty by a corporate officer and director, as Yusuf now has a POA that he is using contrary to the interests of Sixteen Plus.

⁵ A review of the cases cited on pp. 15-16 in support of this issue reveals one thing—whether pleadings are sufficient are fact dependent to each RICO (i.e., CICO) case.

Counsel could not find a V.I. Supreme Court or Superior Court case that has done a *Banks* analysis regarding the breach of fiduciary duties by a corporate officer-director – although two recent VI cases have addressed the elements of a claim of breach of fiduciary duty. In *Roebuck v. V.I. Housing Authority*, 2014 WL 2109066, at *6 (V.I.Super. Ct. May 7, 2014), Judge Brady held as follows:

“[T]o establish a claim for breach of fiduciary duty: (1) there must be a fiduciary relationship, (2) the fiduciary must have breached its duty imposed by such relationship, (3) the plaintiff must have been harmed, and (4) the fiduciary's breach must be a proximate cause of the plaintiffs harm.” *Watts v. Blake–Coleman*, Civil No. 2011–61, 2012 WL 1080323, at *4 (D.V.I. March 29, 2012). Courts in the Virgin Islands have described a fiduciary relationship existing between two persons when “one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.” *Guardian Insurance Co., v. Hani Khalil*, 2012 WL 3114601, at *7 (V.I.Super. Ct. July 26, 2012).

In addition, Judge Dunston cited *Roebuck* in *Walsh v. Daly*, 2014 WL 2922302, at *7 (V.I. Super. June 18, 2014), listing these same four elements. Yusuf does not dispute this point, as he cites the holding in *Guardian Insurance Company v. Hani Khalil*, 61 V.I. 3, 2012 WL 3114601 (Super. Ct. 2012) that listed these same exact elements for this tort (also cited by Judge Brady in *Roebuck*).⁶

⁶ As noted in *Airlines Reporting Corp. v. Belfon*, 2010 WL 3664065, at *29 (D.V.I. Sept. 16, 2010):

In general, the standard used to determine whether an officer or director breached his or her fiduciary duty is whether he or she performed “his or her duties in good faith and in a manner reasonably believed to be in the best interest of the corporation.”

See also, RC Hotels V.I., Inc. v. B&T Cook Family Ptnrs., 57 V.I. 3, 11 (Super. Ct. 2012)(A fiduciary is a “person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor”).

Thus, it is clear that a *Banks* analysis leads to adopting this tort and these four elements as the soundest view in establishing a claim for breach of a fiduciary duty. All four elements are alleged in Count III. FAC ¶¶ 95-98. Reviewing the factual allegations in the FAC confirms that each element is supported by well pled, specific facts, as required by the applicable Rule 12(b)(6) standard.

First, it alleges that Yusuf was an officer-director of Sixteen Plus at all times relative hereto (FAC ¶¶ 3, 96), which establishes a fiduciary duty. The FAC then alleges that after he was the officer-director who originally arranged for this “sham” mortgage to be given to Manal (FAC ¶¶ 23-28, 31), he breached this duty by gaining the sole right to enforce and collect the mortgage for himself pursuant to the 2010 POA. FAC ¶¶ 45-51, 96.

The FAC then alleges that this act has harmed the Plaintiff, particularly since it is alleged that Yusuf is now using this POA to *covertly* defend the direct action by Sixteen Plus against Manal Yousef to void the sham mortgage, as alleged in ¶¶ FAC 72, 77-78, 96-98. Finally, the FAC alleges in ¶¶ 77-78, 98 that this conduct in retaining counsel to defend that action is causing direct harm to the company, as it provides a bogus defense in the lawsuit filed by Sixteen Plus to have the sham mortgage declared void. Finally, it is alleged that Yusuf's acts are the proximate cause of the current harm being suffered by Sixteen Plus, as he agreed to this “sham” mortgage and now is resisting its release. FAC ¶¶ 23-28, 78-79.

Thus, it is clear that the pleadings in the FAC meet the Rule 12(b)(6) requirements for stating a claim for breach of fiduciary duty.

E. Count IV-Usurpation of Corporate Opportunity

Count IV is a claim for *Usurpation of Corporate Opportunity*, which is similar to the breach of fiduciary claim, with a slight variation. Although one court in the Virgin Islands has referenced such a claim in passing,⁷ counsel could not find any case that has done a *Banks* analysis of this tort. However, it is based on the common-sense theory that the corporate opportunity doctrine prohibits a corporate fiduciary from placing his own interests ahead of the interests of the corporation.

Indeed, Yusuf does not question the basis for this tort, citing the Third Circuit holding in *Borden v. Sinsky*, 530 F. 2d 478 (3rd Cir. 1976) that discussed this tort and describes its parameters as follows:

Briefly stated, the doctrine of 'corporate opportunity' precludes a corporate fiduciary from acquiring for himself a business opportunity that his

'corporation is financially able to undertake, and which, by its nature, falls into the line of the corporation's business and is of practical advantage to it, or is an opportunity in which the corporation has an actual or expectant interest.' *Id.* at 489-490.

Other courts agree as to the elements of the "Corporate Opportunity Doctrine." See, e.g. *Broz v. Cellular Info. Sys., Inc.*, 673 A.2d 148, 154-155 (Del. 1996).⁸ See also, *Maryland Metals, Inc. v. Metzner*, 382 A.2d 564, 572 n.5 (1978) ("Under the "corporate

⁷ See, *Abdallah v. Abdel-Rahman*, 2015 WL 5121403, at *5 (V.I. Super. Aug. 20, 2015).

⁸ To help further understand this rule, the *Broz* Court noted that "a corollary which states that a director or officer *may* take a corporate opportunity if: (1) the opportunity is presented to the director or officer in his individual and not his corporate capacity; (2) the opportunity is not essential to the corporation; (3) the corporation holds no interest or expectancy in the opportunity; and (4) the director or officer has not wrongfully employed the resources of the corporation in pursuing or exploiting the opportunity." *Id.* at 155.

opportunity” doctrine, corporate personnel are precluded from diverting unto themselves opportunities which in fairness ought to belong to the corporation”).

Thus, it is respectfully submitted that the “soundest view” for the Virgin Islands is to recognize this tort under the parameters set forth by the Third Circuit in *Borden*. The allegations in the FAC certainly meet the required Rule 12(b)(6) standard for this Court.

In this regard, Count IV alleges that Yusuf failed to disclose this opportunity and took it for himself, even though the corporation would clearly want to have such a POA involving its only asset—Diamond Keturah. FAC ¶¶ 45-51. Had the corporation known of this opportunity and obtained this POA, it could have released Manal Yousef's mortgage recorded against its only asset. Moreover, Yusuf's actions to deprive Sixteen Plus of this opportunity continues, as Yusuf has retained counsel to oppose Sixteen Plus's efforts to have this “sham” mortgage voided. FAC ¶¶ 72, 74, 77-79. Thus, Count IV properly pleads a claim for *Usurpation of Corporate Opportunity*.

F. Count V: Civil Conspiracy

Count V is a claim for civil conspiracy. While the Plaintiff believes this Count was properly pled, to simplify this case, the Plaintiff withdraws this Count.

G. Count VI: The Tort of Outrage—Prima Facie Tort

Count VI alleges the *Tort of Outrage*, also referred to as the *Prima Facie Tort*. Contrary to Yusuf's argument, this is absolutely **not** an alternate way of pleading a claim for emotional distress. Yusuf cites *Diaz v Ramsden*, 2016 WL 5475994 (Super. Ct. Sept. 22, 2016) in support of his argument, but that case **makes no reference** to this tort, as it only addressed claims for negligent and intentional infliction of emotional distress.

Despite Yusuf's efforts to re-characterize this tort, the *Prima Facie Tort* is well recognized in its own right. As noted by Judge Dunston in *Edwards v. Marriott Management Corp. (Virgin Islands), Inc.*, 2015 WL 476216, at *6 (V.I. Super. Ct. Jan. 29, 2015), a "prima facie tort is a general tort." Judge Dunston recently reiterated this point again in *Bank of Nova Scotia v. Boynes*, 2016 WL 6268827, at *3 (V.I. Super. Ct. 2016)("[i]n the Virgin Islands, prima facie tort is recognized as a cause of action").

Both *Edwards* and *Boynes* cited *Glenn v. Dunlop*, 423 Fed. Appx. 249, 255 (3d Cir. 2011), which analyzed Virgin Islands law in recognizing this tort in the Virgin Islands. Judge Dunston noted in footnote 15 of *Boynes* that the Third Circuit did not do a real *Banks* analysis, so he stated at the end of that footnote he would do one in footnote 16, which he then did:

While the Supreme Court of the Virgin Islands has not yet weighed in on the issue, the Third Circuit, the District Court of the Virgin Islands, and the Superior Court have all recognized prima facie tort as a viable cause of action. In addition, many other jurisdictions also recognize prima facie tort as actionable. See, e.g., *The Modern Prima Facie Tort Doctrine*, 79 Ky. L.J. 519, 525–27 (1990/1991) ("twenty-one states, including New Jersey, plus the Virgin Islands and District of Columbia recognize prima facie tort"). Given that prima facie tort fills in gaps in the law and grants relief where there may not be any available, the Court finds that recognition of prima facie tort as a cause of action represents the soundest rule for the Virgin Islands and is in accord with local public policy. *Id.* at n.16

In short, this tort has been recognized within the Virgin Islands.⁹ It has also been recognized by most other jurisdiction as well. Moreover, the Prima Facie Tort serves the two goals of tort law—"deterrence and compensation"—which is the guiding principle in establishing the soundest rule for the Virgin Islands under the Supreme Court holding in *Walters v Walters*, 2014 WL 1681319, at *5.

⁹ See, e.g., *Government Guarantee Fund of Finland v Hyatt Corporation*, 955 F. Supp. 441, 463 (D.V.I. 1997) (Prima Facie tort is recognized in the Virgin Islands).

The cases citing this tort generally all reference § 870 of the Restatement (Second) of Torts, which provides:

One who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability.

Indeed, the United States Supreme Court cited § 870 with approval in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 657, 128 S.Ct. 2131, 2143, 170 L.Ed.2d 1012 (2008) (“the Restatement (Second) of Torts sets forth as a “[g]eneral [p]rinciple” that “[o]ne who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances”).

As for damages, while Yusuf did cite one case which limited the damages for this tort to emotional damages under the law of Kansas, *Hill v. McHenry*, 211 F. Supp. 2d 1267, 1284 (D. Kan. 2002), it is clear that the majority of *Prima Facie Tort* holdings do not include any such limitation. For example, none of the Virgin Islands cases cited in this memorandum contained any such limitation. Likewise, the U.S. Supreme Court holding cited above, *Bridge, supra*, involved a claim for financial losses, not emotional distress. Indeed, *Comment m.* to § 870 provides:

m. Damages. With the exception of established torts deriving from the action of trespass, proof of actual harm is required. (See § 907). This would certainly be true of any new tort arising under this Section. The harm need not be pecuniary in nature. On damages in general, see Chapter 47. On punitive damages, see §§ 908 and 909.

Thus, contrary to Yusuf's assertions, the damages can be pecuniary (or not).

Applying the elements of this tort to Count VI, the Plaintiff has described conduct alleging that Yusuf has engaged in intentional conduct that is both “generally culpable

and not justifiable under the circumstances” that caused injury to Sixteen Plus.¹⁰ FAC ¶¶ 107-109. Yusuf engaged in such unjustifiable conduct to steal the Diamond Keturah property from Sixteen Plus. FAC ¶¶ 45-51. He then tried to conceal his plan to steal the value of the property from the Hamed shareholders, such as *inter alia* (1) hiring a lawyer in St. Martin to try to collect this sham mortgage from Sixteen Plus without disclosing his involvement (FAC ¶¶ 55-58), (2) filing false sworn statements in court to cover up the critical facts about his involvement, including denying the existence of the critical POA (FAC ¶¶ 65-66,70), (3) submitting tax filings to the Government of the Virgin Islands that contained sworn statements identifying the \$4.5 million mortgage as being due the Sixteen Plus shareholders, not Manal Yousef (FAC ¶ 75) and (4) hiring a lawyer to defend the action filed by his own corporation to have the Manal mortgage declared void (FAC ¶¶ 78-79). Such conduct is defined by the terms “culpable and unjustified.”

One final caveat is in order. The cited Virgin Islands cases have generally held that the “prima facie tort claims typically provide relief only where the defendant's conduct ‘does not come within the requirements of one of the well-established and named intentional torts.’” *Edwards*, 2015 WL 476216, at *6. *Edwards* then cites three cases from the Virgin Islands, in footnote 43, supporting this qualification, adding an additional comment as follows:

This is also in line with our jurisdiction's recognition of the gist of the action doctrine, which “is designed to maintain the conceptual distinction between breach of contract claims and tort claims” and that, “[a]s a practical matter, the doctrine precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims.” *Pediatric Screening, Inc. v. TeleChem Intern., Inc.*, 602 F.3d 541, 548 (3d Cir. 2010) (quoting *eToll, Inc v. Elias/Savion Adver., Inc.*, 811 A.2d

¹⁰ Indeed, Yusuf did not even argue otherwise, as he simply (and erroneously) argues the tort is really just a claim for emotional distress.

10, 14 (2002)). The doctrine prevents parties from unfairly seeking a second bite at the same apple.

However, this Court need not decide whether this qualification is required in adopting the *Prima Facie Tort* here, as it is clear that Count VI as alleged is distinctly different from the other remaining Counts in the FAC.

In this regard, these acts are all distinct from the acts that form the basis for the other claims alleged in the FAC, which includes a CICO statutory claim (requiring a criminal enterprise of two or more persons) and two corporate governance claims (breach of fiduciary duty and usurpation of corporate opportunity claims). Thus, there is no duplication of the other torts in the FAC in Count VI, which properly alleges culpable and unjustified conduct.

Thus, Count VI satisfies the Rule 12(b)(6) standard in pleading the tort of outrage, warranting a denial of Yusuf's motion to Count VI.

III. The Rule 19 Motion

Yusuf cites Rule 19 and claims that Manal Yousef is a necessary party because the validity of her mortgage is the "crux of this action," so that proceeding without her may "impair or impede her ability to protect that interest." This "throw in the kitchen sink argument" is without merit for several reasons.

First, Yusuf has a POA that allows him to fully represent her interests, *without any risk of incurring any liability*. Thus, her "interests" in this sham mortgage are fully protected here. Second, Manal Yousef is a defendant in another action pending in this Court regarding the validity of the mortgage, as noted, at Civil No. 16-SX-65, so she can always have her lawyer (hired by Yusuf) request to consolidate these cases.

Most importantly, however, is the fact that the gist of this case is about the outrageous conduct of Yusuf (and those in his criminal enterprise) that have resulted in substantial damages to the Plaintiff, **well beyond the mortgage simply being declared invalid**. The Plaintiff has filed a motion in the action pending against Manal for partial summary judgment--seeking an order that will allow this mortgage to be released. However, even if granted, **the damage claims sought herein will not be resolved or mooted by the mortgage being declared invalid or released**.

In short, Manal Yousef is not a necessary party. Certainly, to the extent she might otherwise be, her interests are fully protected by Yusuf who has an unrestricted POA to fully represent her interests in the alleged mortgage.¹¹ Thus, the Rule 19 motion should be denied as well.

IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that Yusuf's Rule 12(b)(6) and Rule 19 motions should be denied. Moreover, if the FAC were deficient in any way, leave to amend should be freely granted at this juncture. *See, e.g., Fowler v. UPMC Corp.*, 578 F.3d 203, 212 n. 6 (3rd Cir. 2009) (a party should be given "an opportunity to amend" their complaint so as to provide "further specifics" in the event the Court found such details needed.)

¹¹ Yusuf's suggestion that joining her as a party may not be possible, warranting dismissal if she is a necessary party, is consistent with the extreme efforts taken by all of the Defendants to hide her presence from the court of the Virgin Islands, as alleged herein. FAC ¶¶ 67-74, 77.

Dated: January 20, 2017



Joel H. Holt, Esq. (Bar # 6)
Counsel for Defendants
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Defendants
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2017, I served a copy of the foregoing by mail and email, as agreed by the parties, on:

Gregory H. Hodges
Stephen Herpel
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com



REAL ESTATE POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that I, Manal Mohamad Yousef, of 25 Gold Finch Road, Pointe Blanche, St. Martin, N.A., have made, constituted and appointed and by these presents do make, constitute and appoint Fathi Yusuf, of P. O. Box 503358, St. Thomas, VI 00804, my true and lawful attorney ["Attorney"], for me and in my name, place and stead, and on my behalf, and ~~for my use and benefit~~:

To do and perform all and every act and thing whatsoever requisite and necessary to be done in relation to my interest as a Mortgagee/Lender in the real property located on St. Croix, U.S. Virgin Islands, the legal description of which is attached hereto as Exhibit A.

Said acts and things include, but are not limited to all of those powers enumerated in Title 15 Virgin Islands Code, Uniform Power of Attorney Act § 5-604, the execution and delivery of any and all documents such as a Release, Ratification, Assignment, Closing Statement, contracts, affidavits, and any other documents necessary to do all acts related to my interest in said property, including prosecuting foreclosure in my name, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying all that my said attorney shall lawfully do or cause to be done by virtue thereof.

The rights, powers and authority of said attorney-in-fact granted in this instrument shall commence upon the date of execution of this instrument and shall be in and remain in full force and effect until terminated by me in writing and filed in the Recorder of Deeds office wherein said property is situated. I hereby agree to release, indemnify, defend and hold my attorney-in-fact harmless for all claims arising by reason of his acts he so performs in accordance with this instrument and the law.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2010.

WITNESSETH:

[Handwritten signatures of witnesses]

[Handwritten signature of Manal Mohamad Yousef]
MANAL MOHAMAD YOUSEF



EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0967 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 57B of Company Quarter and Peter's Bridge, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Grand, of approximately 41.0736, U.S. Acres.
9. Parcel No. 40, Estate Grand of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8561 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2558 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.3484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4251 U.S. Acres.
16. Road Plot No. 41, Estate Grand, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.



20th Feb
 2:51
 and Entered in Recorder's Book for the
 District of El Paso, Texas, Volume of the U.S.A. 22
 Page 11871993 and record in Real Property Book No.
 II: 57; 166, 167, 168; 304; 305 & 306
 F. E. Gibberna
 Notary Public



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RENEWALS

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توقيع صاحب الجواز
SIGNATURE OF HOLDER

THE HASHEMITE KINGDOM OF JORDAN المملكة الأردنية الهاشمية

 جواز سفر
Passport

TYPIC#	Country Code / دولة	Passport No. / رقم جواز سفر
P	JOR	T518558

Name / اسم
MANAL MOHAMMAD YOUSEF MOHAMMAD

Date of Birth / تاريخ الميلاد
1968

Place of Birth / مكان الميلاد
AMMAN

Sex / جنس
F / أنثى

MASOUBEH

Valid Until / صالح حتى
21 MAY 2008

Place of Issue / مكان الإصدار
AMMAN

Valid From / صالح من
20 MAY 2013

Holland

Non Machine Readable

غير مقروء آليا



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317.

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ttorney are similar or overlap, the

attorney is exercisable with respect
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nds.

pursuant to a power of attorney has
fit of and binds the principal and the
if the principal had performed the
1, Sess. L. 2009, pp. 666-667.

DRY

a heading for Part 6. A heading was provided
the National Conference of Commissioners on

bed in this article if the power of
th respect to the descriptive term for
hrough 5-617 or cites the section in

ey to general authority with respect
in sections 5-604 through 5-617 or a
hrough 5-617 incorporates the entire
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y incorporated by reference.—Added
009, p. 667.

Generally

e power of attorney, by executing a
by reference a subject described in
rants to an agent authority to do all
ant to section 5-601(c), a principal
that subject, to:

by litigation or otherwise, money or
rincipal is, may become, or claims to
urse, or use anything so received or

(2) contract in any manner with any person, on terms agreeable to the
agent, to accomplish a purpose of a transaction and perform, rescind,
cancel, terminate, reform, restate, release, or modify the contract or
another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, deliver, file, or record any instrument
or communication the agent considers desirable to accomplish a purpose of
a transaction, including creating at any time a schedule listing some or all
of the principal's property and attaching it to the power of attorney;

(4) initiate, participate in, submit to alternative dispute resolution,
settle, oppose, or propose or accept a compromise with respect to a claim
existing in favor of or against the principal or intervene in litigation relating
to the claim;

(5) seek on the principal's behalf the assistance of a court or other
governmental agency to carry out an act authorized in the power of
attorney;

(6) engage, compensate, and discharge an attorney, accountant, dis-
cretionary investment manager, expert witness, or other advisor;

(7) prepare, execute, and file a record, report, or other document to
safeguard or promote the principal's interest under a statute or regulation;

(8) communicate with any representative or employee of a govern-
ment or governmental subdivision, agency, or instrumentality, on behalf of
the principal;

(9) access communications intended for, and communicate on behalf of
the principal, whether by mail, electronic transmission, telephone, or other
means; and

(10) do any lawful act with respect to the subject and all property
related to the subject.—Added Oct. 1, 2011, No. 7150, § 1, Sess. L. 2009, pp.
667-668.

§ 5-604. Real Property

Unless the power of attorney otherwise provides, language in a power of
attorney granting general authority with respect to real property autho-
rizes the agent to:

(1) demand, buy, lease, receive, accept as a gift or as security for an
extension of credit, or otherwise acquire or reject an interest in real
property or a right incident to real property;

(2) sell; exchange; convey with or without covenants, representations,
or warranties; quitclaim; release; surrender; retain title for security;
encumber; partition; consent to partitioning; subject to an easement or
covenant; subdivide; apply for zoning or other governmental permits; plat
or consent to platting; develop; grant an option concerning; lease; sublease;
contribute to an entity in exchange for an interest in that entity; or



otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;

(5) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(A) insuring against liability or casualty or other loss;

(B) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(C) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(D) purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) selling or otherwise disposing of them;

(B) exercising or selling an option, right of conversion, or similar right with respect to them; and

(C) exercising any voting rights in person or by proxy;

(8) change the form of title of an interest in or right incident to real property; and

(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.—Added Oct. 1, 2011, No. 7150, § 1, Sess. L. 2009 pp. 668-669.

§ 5-605. Tangible Personal Property

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to

(1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;



BZSE
Attorneys at Law | Tax Lawyers

Sixteen Plus Corporation
4 C & D Sion Farm
Christiansted
St. Croix 00820, U.S.V.I.

Par Courier

St. Maarten, December 12, 2012

Ref: **Manal Mohamad Yousef / Collection loan**

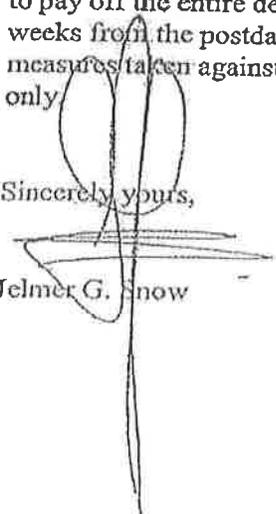
Dear Sir, Madame,

My client Manal Mohamad Yousef requested me to inform you of the following.

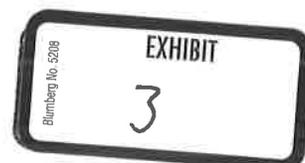
As it appears from documents in my possession your company owes client an amount of no less than US\$ 14,612,662.23 (Fourteen Million Six Hundred Twelve Thousand Six Hundred Sixty Two United States Dollars and Twenty Three Dollar Cent), for both principle and interest, based on a promissory note between client and your company dated September 15, 1007 and a First Priority Mortgage dated February 22, 1999. Apart from this your company owes client at least an amount of US\$ 3,000,000.00 for late penalties.

Client is no longer willing to accept your negligent payment behavior and hereby summons you to pay off the entire debt mentioned, to the total of US\$ 17,612,662.23, to client within two (2) weeks from the postdating of this letter. Failure to comply therewith shall result in legal measures taken against your company forthwith, the costs of which will be for your account only.

Sincerely yours,



Jelmer G. Snow



JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

December 24, 2012

Jelmar G. Snow, Esq.
BZSE
Kudu Driver #2, Bel Air
P.O. Box 373, Philipsburg
Sint Maarten

Via fax 599-542-7551 and mail

Re: Manal Mohamad Yousef/Sixteen Plus, Inc.

Dear Mr. Snow:

I understand why you rudely hung up on me on Friday, as you now obviously realize that you should have never sent the letter in question to Sixteen Plus, Inc. Aside from the fact that you are effectively practicing law in a jurisdiction where you are not admitted, you sent a letter on behalf of a person, Manal Mohamad Yousef, whom you have apparently never met or spoken with--and who appears to never have authorized you to send that letter.

Indeed, I do not understand why a lawyer in Sint Maarten would not question the propriety of being asked by someone from the Virgin Islands to send a demand letter to someone in the Virgin Islands involving real property located in the Virgin Islands. It is hard to believe that this scenario did not make you suspicious when you were retained by Mr. Yusuf to send this letter.

I suspect Mr. Yusuf assured you it was proper, but in my view you have an independent duty to verify certain basic facts about the matter before sending such a letter under the questionable circumstances in question. Had you inquired further, you would have found that Mr. Yusuf's family owns one-half of Sixteen Plus, Inc. Obviously he appears to be using your services to try to obtain the other 50% shareholder's interest. Of course, if the mortgage were valid, your alleged client, Manal Mohamed Yousef, would be adverse to your actual client, Mr. Yusuf.

If you had inquired further you would also have discovered that Mr. Yusuf, along with the United Corporation and others, was indicted by the taxing authorities in the Virgin Islands in 2003. While the case against Mr. Yusuf (and others) was finally dropped in



2010, the United Corporation, whom I suspect actually paid for your services, remains under indictment.

Finally, if you had inquired further, you would have discovered that Mr. Yusuf is involved in civil litigation with his partner here, which indirectly involves the asset owned by Sixteen Plus, Inc. Had you known this, you might have thought to ask him why he did not use any of the multiple lawyers he has already retained (who are admitted here) to send the letter you sent.

In due course, the mortgage will be proven to be invalid in my opinion, but I question whether you should remain involved any further in this matter in this jurisdiction unless (1) you can produce something in writing demonstrating that you have authorization to represent Manal Mohamed Yousef which (2) also waives any conflict you appear to have in representing Mr. Yusuf at the same time. I would be very interested in seeing such a document. If you do decide to become involved further here, you might also look into the law in the Virgin Islands regarding what should be included in a demand letter.

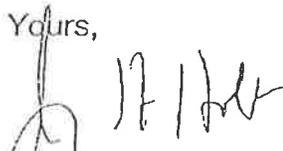
You also commented on the timing of my call, as the holidays are here, but you are the one who dictated the timing by requesting a response by December 26, 2012. I had called twice earlier in the week, as I had hoped a phone call would resolve this matter, but since you requested a written response when we finally spoke on Friday, please consider this letter as that response.

Finally, as for your comment about "American" lawyers, if you take the time to check me out, you will find I have an excellent reputation as well, despite what Mr. Yusuf might say. Indeed, Mr. Yusuf would do far better trying to amicably resolve these matters with his partner than resorting to such tactics like having a Sint Maarten Lawyer send a demand letter to a company in which his family has a 50% interest. In any event, while I do not like sending letters like this one, neither you nor Mr. Yusuf has left me any other alternative.

Please let me know if you have any questions or if you think there is additional information I should know. I am always glad to discuss anything you think I may have misunderstood or overlooked. However, if you wish to communicate with Sixteen Plus, Inc., please do so in writing sent to my attention at the above address.

Enjoy the rest of the holidays.

Yours,



Joel H. Holt
JH/jf

Form **1120S**

U.S. Income Tax Return for an S Corporation

OMB No. 1545-0030

2011

Department of the Treasury
Internal Revenue Service (77)

Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.

For calendar year 2011 or tax year beginning

A S election effective date 10/28/1997	TYPE OR PRINT	Name SIXTEEN PLUS CORPORATION	D Employer identification number 66-0540661
B Business activity code number (see instructions) 531390		Number, street, and room or suite no. If a P.O. box, see instructions. P.O. BOX 763, CHRISTIANSTED1	E Date incorporated 10/28/1997
C Check if Sch. M-3 attached <input type="checkbox"/>		City or town, state, and ZIP code ST. CROIX, VI 00821-0763	F Total assets (see instructions) \$ 4,828,625.

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No If "Yes," attach Form 2553 if not already filed

H Check it: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year **12**

Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1 a Merchant card and third-party payment for 2011, enter -0-	0	b Gross receipts or sales not reported on line 1a	c Total Add lines 1a and 1b	1c
	d Returns and allowances plus any other adjustments (see instrs)		e Subtract line 1d from line 1c		1e
	2 Cost of goods sold (attach Form 1125-A)				2
	3 Gross profit. Subtract line 2 from line 1e				3
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)				4
	5 Other income (loss) (attach statement)				5
6 Total income (loss). Add lines 3 through 5				6	
Deductions (See instructions for limitations)	7 Compensation of officers				7
	8 Salaries and wages (less employment credits)				8
	9 Repairs and maintenance				9
	10 Bad debts				10
	11 Rents				11
	12 Taxes and licenses				12
	13 Interest				13
	14 Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)				14
	15 Depletion (Do not deduct oil and gas depletion.)				15
	16 Advertising				16
	17 Pension, profit-sharing, etc., plans				17
	18 Employee benefit programs				18
	19 Other deductions (attach statement)				19
	20 Total deductions. Add lines 7 through 19				20
	21 Ordinary business income (loss). Subtract line 20 from line 6				21
Tax and Payments	22 a Excess net passive income or LIFO recapture tax (see instructions)	22a			22c
	b Tax from Schedule D (Form 1120S)	22b			
	c Add lines 22a and 22b				
	23 a 2011 estimated tax payments and 2010 overpayment credited to 2011	23a			23d
	b Tax deposited with Form 7004	23b			
	c Credit for federal tax paid on fuels (attach Form 4136)	23c			
	d Add lines 23a through 23c				
24 Estimated tax penalty (see instructions). Check if Form 2220 is attached				24	
25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed				25	
26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid				26	

RECEIVED
COLLECTIONS & DEPOSIT UNIT
SEP 14 2012
HAWAIIAN ISLANDS BUREAU OF
INTERNAL REVENUE ST. CROIX, VI

STATEMENT 1

STATEMENT 2

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here **Francis [Signature]** 19-5-2012 Secretary & Treasurer

Signature of officer Date Title

May the IRS discuss this return with the preparer shown below (see instr. 7) Yes No

Paid Preparer Use Only

Firm's name **PABLO O'NEILL CPA** Date **06/19/12** Check if self-employed PTIN **P01474673**

Firm's address **O'NEILL & ASSOCIATES, LLC** Firm's EIN **66-0575500**

P.O. BOX 24775 Phone no. **(340) 773-4305**

ST. CROIX, VI 00824

EXHIBIT 8

Form 1120S (2011)

JWA 11201 12-12-11 For Paperwork Reduction Act Notice, see separate instructions. HAMD588585

Blumberg No. 5208

EXHIBIT 5

Schedule B Other Information (see instructions)	Yes	No
1 Check accounting method: (a) <input type="checkbox"/> Cash (b) <input checked="" type="checkbox"/> Accrual (c) <input type="checkbox"/> Other (specify) _____		
2 See the instructions and enter the: (a) Business activity ▶ <u>REAL ESTATE</u> (b) Product or service ▶ <u>SUBDIVIDERS / DEVELOPE</u>		
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) if 100% owned, was a qualified subchapter S subsidiary election made?		X
4 Has this corporation filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, provide information on any reportable transaction?		X
5 Check this box if the corporation issued publicly offered debt instruments with original issue discount <input type="checkbox"/> If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
6 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ▶ \$ _____		
7 Enter the accumulated earnings and profits of the corporation at the end of the tax year ▶ \$ _____		
8 Are the corporation's total receipts (see instructions) for the tax year and its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L and M-1		X
9 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions		X
10 a Did the corporation make any payments in 2011 that would require it to file Form(s) 1099 (see instructions)? b If "Yes," did the corporation file or will it file all required Forms 1099?		X

Schedule K Shareholders' Pro Rata Share Items		Total amount	
	1 Ordinary business income (loss) (page 1, line 21)	1	-2,353.
	2 Net rental real estate income (loss) (attach Form 8825)	2	
	3a Other gross rental income (loss) 3a		
	b Expenses from other rental activities (attach statement) 3b		
	c Other net rental income (loss). Subtract line 3b from line 3a 3c		
	4 Interest income 4		
	5 Dividends: a Ordinary dividends 5a		
	b Qualified dividends 5b		
	6 Royalties 6		
	7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S)) 7		
	8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S)) 8a		
	b Collectibles (28%) gain (loss) 8b		
	c Unrecaptured section 1250 gain (attach statement) 8c		
	9 Net section 1231 gain (loss) (attach Form 4797) 9		
	10 Other income (loss) (see instructions) Type ▶ 10		

JWA

Schedule L	Balance Sheets per Books	Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)
Assets					
1	Cash		9,819.		7,466.
2 a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities				
6	Other current assets (att. stmt.)	STATEMENT 4	225,000.		225,000.
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (att. stmt.)				
10 a	Buildings and other depreciable assets				
b	Less accumulated depreciation				
11 a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)		4,596,159.		4,596,159.
13 a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (att. stmt.)				
15	Total assets		4,830,978.		4,828,625.
Liabilities and Shareholders' Equity					
Accounts payable					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Loans from shareholders		4,710,626.		4,710,626.
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (att. stmt.)				
22	Capital stock		1,000.		1,000.
23	Additional paid-in capital				
24	Retained earnings	STATEMENT 5	119,352.		116,999.
25	Adjustments to shareholders' equity (att. stmt.)				
26	Less cost of treasury stock		()		()
27	Total liabilities and shareholders' equity		4,830,978.		4,828,625.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are \$10 million or more - see instructions

1	Net income (loss) per books	-2,353.	5	Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize):	
2	Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):		a	Tax-exempt interest \$	
3	Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14i (itemize):		6	Deductions included on Schedule K, lines 1 through 12 and 14i, not charged against book income this year (itemize):	
a	Depreciation \$		a	Depreciation \$	
b	Travel and entertainment \$		7	Add lines 5 and 6	
4	Add lines 1 through 3	-2,353.	8	Income (loss) (Schedule K, line 18). Line 4 less line 7	-2,353.

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1	Balance at beginning of tax year	119,352.	
2	Ordinary income from page 1, line 21		
3	Other additions		
4	Loss from page 1, line 21	(2,353)	
5	Other reductions	()	
6	Combine lines 1 through 5	116,999.	
7	Distributions other than dividend distributions		
8	Balance at end of tax year. Subtract line 7 from line 6	116,999.	

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

HISHAM HAMED, on behalf of himself
and derivatively, on behalf of SIXTEEN
PLUS CORPORATION,

Plaintiffs,

v.

FATHI YUSUF, ISAM YOUSUF,
JAMIL YOUSEF,

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal defendant.

Case No.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE
RELIEF AND INJUNCTION

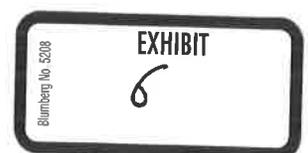
JURY TRIAL DEMANDED

FIRST AMENDED VERIFIED COMPLAINT

The Plaintiffs, by counsel, hereby allege as the basis of their First Amended Verified Complaint against the Defendants as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76 and 14 V.I.C. §607.
2. Individual Plaintiff Hisham Hamed, ("Hamed") is an adult resident of St. Croix and is now and at all times relevant to this Complaint has been an owner of stock in nominal defendant Sixteen Plus Corporation ("Sixteen Plus").
3. Defendant Fathi Yusuf is an adult resident of St. Croix who was at all times relevant to this Complaint (and still is) a shareholder, officer and director of Sixteen Plus.



45. In May of 2010, without the knowledge of the Hameds or disclosure of either their acts or the related documents, Defendants began to implement the *Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy* (the "Hidden Plan") by first obtaining a "Real Estate Power of Attorney" from "Manal Mohammad Yousef Mohammad" **that gave Fathi Yusuf, personally, the power to do whatever he wished with the mortgage,** including releasing the mortgage or foreclosing on the Land for his own benefit, even though the Hamed family had actually paid 50% of the purchase price to buy the Land. See **Exhibit 1**. The St. Martin Defendants were central to this effort to embezzle the Sixteen Plus funds.
46. This power of attorney Fathi Yusuf supplied and they had Manal Yousef sign, gave no rights or benefits to Sixteen Plus or the Hameds and thus usurped the corporate opportunity, despite the fact that Fathi Yusuf was an officer and director of the corporation, owing it fiduciary and statutory duties, as well as a shareholder.
47. Additionally, this undisclosed power of attorney specifically stated that Fathi Yusuf was given total power over what to do with the Land and foreclosure proceeds -- as he was also released and indemnified as to all actions he might take in regard to his broad, personal power of attorney—which further demonstrated that the mortgage and note were a sham, as no bona fide lender gives a principal of the borrower a full power of attorney to discharge the debt without requiring payment.

48. Upon information and belief, the power of attorney was drawn up by a Virgin Islands lawyer retained by Fathi Yusuf and executed at the request and direction of the St. Martin Defendants by Manal Yousef on St. Martin..
49. The existence and purpose of this power of attorney were not disclosed to the Hameds – and they did not learn of it or the Hidden Plan until after Yusuf attempted to steal all of the assets of Sixteen Plus, like he did with the Plaza Extra Supermarkets partnership in 2012 – all of which occurred well within the period of the statute of limitations applicable here.
50. That execution of the undisclosed, exclusive power of attorney in favor of Fathi Yusuf personally was orchestrated by Isam Yousuf in furtherance of the Plan with Fathi Yusuf to steal half of the value of the Land, then in excess of \$25 million, from Sixteen Plus and the Hamed shareholders.
51. The Defendants planned to use the sham mortgage to allow Fathi Yusuf to foreclose of the Land *for his own personal benefit*, and to thus deny Sixteen Plus the value of the Land.
52. In 2013, the Federal Government reached a settlement in the criminal case, which included *inter alia* a lump sum \$10 million payment of taxes to the Government of the Virgin Islands for previously unreported income from the Plaza Extra Supermarkets.
53. In addition to this large payment for back taxes, a fine in excess of \$1,000,000 was also paid to the Government, along with a plea of guilty to the pending felony charge of tax evasion by the corporate defendant, United Corporation, which subsequently was determined to be Yusuf's agent for the partnership.

54. As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf, Waleed Hamed and several of the other defendants were given personal immunity from criminal prosecution for the acts of tax evasion and money laundering described above.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

55. After the criminal case was dismissed, the Fathi Yusuf and the St. Martin Defendants, in furtherance of the Hidden Plan, arranged for counsel on St. Martin to send a demand to Sixteen Plus – for payment of the sham note and mortgage Sixteen Plus allegedly owed to Manal Yousef. See **Exhibit 2**.

56. That St. Martin counsel did not disclose to Sixteen Plus or the Hameds that Fathi Yusuf was the person personally directing the demand.

57. A response was made to that demand by Hamed's counsel on behalf of Sixteen Plus, which was reduced to writing -- pointing out that the mortgage was not valid for the reasons stated herein. That writing also specifically stated that St. Martin counsel was acting improperly in asserting he was representing Manal Yousef's interests rather than Fathi Yusuf's. See **Exhibit 3**.

58. While counsel on St. Martin promised to get a response to that letter after discussing the matter with his real "client" (see **Exhibit 4**), he never did so, strongly indicating to the Hameds that he had never really been retained by Manal Yousef.

59. In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others.

60. In 2016, Fathi Yusuf filed a civil lawsuit in the Superior Court as part of the Hidden Plan; seeking to dissolve Sixteen Plus in an attempt to, *inter alia*, dispose of the Land and trigger payment of the sham mortgage.
61. In the course of that litigation, Fathi Yusuf was required to produce all documents he had exchanged with Manal Yousef, including any powers of attorney.
62. When Fathi Yusuf did supply what he represented to be all such documents on July 26, 2016, the power of attorney was not disclosed.
63. Hamed's counsel wrote to Yusuf's counsel pursuant to Fed. R. Civ. P. 34 and 37 (**Exhibit 5**), specifically asking for verification under the Rules that there was no such "power of attorney":

Stefan - I reviewed these new responses and there are still several deficiencies:

* * *

Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else—**please confirm** there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), **powers of attorney**, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent. (Emphasis added.)

64. On August 5, 2016, Fathi Yusuf's counsel responded that he had initiated a "reasonable search" as to his client and his client's documents, and falsely represented – on behalf of Fathi Yusuf -- there was no such power of attorney. See **Exhibit 5**.

Joel, Here are my responses to your numbered paragraphs:

* * *

I stand by my statement in the supplemental Rule 34 response that **based on a reasonable search** there are no other documents

responsive to your request. I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail. (Emphasis added.)

65. During the same Superior Court litigation, Fathi Yusuf was also required to answer an interrogatory about the note and mortgage on the Land. To falsely make it appear that Manal Yousef was a *bona fide* mortgagee, hide the undisclosed personal power of attorney and protect the Hidden Plan – Fathi Yusuf stated under oath as follows (See **Exhibit 6**):

- a. That Manal Yousef loaned the full \$4.5 million on September 15, 1997, for the purchase of the Land;
- b. That Manal Yousef was paid three interest only payments on the mortgage between 1998 and 2000;
- c. That Manal's last known address is 25 Gold Finch Road, Point Blanche, St. Martin, N.A.;
- d. That he did not recall the last time he spoke with her;
- e. That Manal Yousef had retained counsel in the Virgin Islands;
- f. That he would not provide a phone number for Manal Yousef because she had counsel in the Virgin Islands.

66. All of the foregoing statements made by Fathi Yusuf in his interrogatory response are false, and were made in furtherance of the Hidden Plan to steal half of the value of the Land from Sixteen Plus and its shareholders, the Hameds, by a foreclosure -- as Fathi Yusuf committed perjury under oath before the Court in furtherance of the Plan when he made these statements.

67. Yusuf then filed a motion for a protective order to avoid providing Manal Yusuf's phone number, as a Sixteen Plus or Hamed discussion with Manal would disclose the power of attorney and the Plan to steal half of the value of the Land in a sham foreclosure.

68. After the Court denied Yusuf's motion and ordered Fathi Yusuf to provide the phone number of Manal Yousef, he then repeated the false statements above -- and **now** stated that he did not have her phone number despite his motion to protect that exact information -- but that she could be reached through her nephew, Jamil Yousef, although to date he has repeatedly refused to verify that response. See **Exhibit 7**.

69. However, the location given by Fathi Yusuf as Manal Yousef's address is actually in the possession of and used by Isam Yousuf, which is where he and his son, Jamil Yousef, reside.

70. Yusuf knew, when he falsely certified to the contrary, that this was not the location where Manal Yousef resided.

71. The purpose of this false representation in response to the Court's Order being that the St. Martin Defendants had agreed to intercept any mail, service or other communications to Manal before she could receive them.

72. Indeed, when service of process in another pending Superior Court action was left at that address for Manal Yousef, Isam and Jamil Yousef intercepted the summons and contacted Fathi Yusuf to further the conspiracy to steal the land from Sixteen Plus, telling him about the suit instead.

73. Upon information and belief, Jamil Yousef then agreed to further participate in this fraudulent Plan by allowing Fathi Yusuf to provide his name to the Court as the alleged contact for Manal Yousef, to hide the truth -- promising to call Fathi Yusuf if he was contacted by anyone, so that her whereabouts would remain secret and she would not learn that "she" alone was allegedly going to get millions of dollars -- money which Fathi Yusuf was seeking.
74. Fathi Yusuf thereafter represented to the Superior Court, without the necessary identification of the true party in interest, that he had been contacted by Manal Yousef's "agent", when he knew in fact that it was he, Fathi Yusuf, who was directing the case and attempting to foreclose the sham mortgage under the undisclosed power of attorney -- for his own benefit.
75. During this time period, including in 2012, Fathi Yusuf personally arranged for **and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by -- and was due to -- the shareholders, Hamed and Yusuf, as follows:**
- a. To conceal the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf filed tax returns for Sixteen Plus during this time period, including 2012. See **Exhibits 8 and 9.**
 - b. In those filings he, personally signed and swore under oath and penalty of perjury that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them -- and there was no loan or mortgage to a third person. *Id.*

- c. This comported with his repeated representations to the Hameds intended to keep the Hidden Plan hidden.
- d. To hide the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012.
- e. In those filings he stated that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and was not a loan or mortgage to a third person. See **Exhibit 10**.
- f. This comported with representations to the Hameds.

76. In furtherance of this scheme, in 2013 Fathi Yusuf also created and requested Waleed Hamed sign an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. See **Exhibit 11**.

77. Indeed, the Fathi Yusuf and the other Defendants were wrongfully attempting to hide the fact that Fathi Yusuf was the real plaintiff in interest – and that Manal Yousef had not personally contacted counsel in the USVI to represent her alleged interests.

78. To further this Plan, Fathi Yusuf retained USVI counsel to represent him “acting” as Manal Yousef -- and then represented to the USVI Court that Manal Yousef had retained USVI counsel, when she had not in fact done so. He did not disclose that the suit was actually being brought by him, that he was the true party in interest, or the existence of the wrongfully undisclosed power of attorney.