

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

SIXTEEN PLUS CORPORATION,)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff,)	
	)	ACTION FOR DECLARATORY
vs.)	DECLARATORY JUDGMENT
)	
MANAL MOHAMMAD YOUSEF,)	JURY TRIAL DEMANDED
)	
Defendant.)	
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MANAL MOHAMMAD YOUSEF,)	
)	
Counter-Claimant,)	COUNTERCLAIM
)	
vs.)	
)	
SIXTEEN PLUS CORPORATION,)	
)	
Counter-Defendant.)	
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**YOUSEF’S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION,
INSUFFICIENT PROCESS, AND INSUFFICIENT SERVICE OF PROCESS OR,
IN THE ALTERNATIVE,
MOTION TO QUASH SERVICE AND MOTION TO STAY**

The Defendant **Manal Mohammad Yousef** (“**Yousef**”), by and through her undersigned counsel, moves for an Order granting her motion to dismiss complaint pursuant to V.I. R. Civ. P. 12(b)(2) for lack of personal jurisdiction, V.I. R. Civ. P. 12(b)(4) for insufficient process, V.I. R. Civ. P. 12(b)(5) for insufficient service of process, and V.I. R. Civ. P. 4(f) or, in the alternative, to quash service by leaving it at an address not the residence of Yousef’s in Sint Maarten and to quash service by publication, without submitting herself to the jurisdiction of the Court, without waiving her jurisdictional defense and defenses to process and service of process, and without

voluntarily appearing in this action. This Motion is based upon Yousef not being subject to personal jurisdiction in this Court because she did not act within this territory and because of the failure of plaintiff Sixteen Plus Corporation ("SPC") to effectuate service upon Yousef in compliance with Rule 4(f) and 5 V.I.C. § 4911. A motion to stay proceedings until a decision is rendered on jurisdiction is also requested.

Yousef is not an owner of the subject property but rather a mortgage holder. The mortgage is a lien, a mere security for debt without a conveyance of title to the land mortgaged. The underlying source of the controversy is not the land itself. The claim of plaintiff simply does not arise from any forum related activities of Yousef. A summons and complaint was not properly served upon Yousef. Service of process may be insufficient if it is not reasonably calculated to give actual notice of the lawsuit particularly when it is made at a location where the defendant no longer resides. Plaintiff attempted to serve process at a location where Yousef no longer resides. Service is defective when plaintiff left it at an address on an island wherein Yousef no longer has a residence and has not lived on the islands of Sint Maarten for seven (7) years. Substituted service by publication is not proper when plaintiff has not made diligent efforts to serve Yousef as prescribed in Rule 4 of Federal Rules of Civil Procedure, and has not set forth all information required in the summons published. The summons and complaint was not delivered to Yousef in accordance with V.I. R. Civ. P. 4. Alternatively, the Court should quash the improper service of process by nailing at an address not Yousef's usual place of abode and by publication on islands wherein Yousef does not reside. The Court should stay the matter in its entirety until it issues a ruling on the jurisdictional issues raised herein.

I. INTRODUCTION

Yousef submits the Court should grant her motion to dismiss because she did not perform conduct or activities within the U.S. Virgin Islands. Dismissal is also appropriate because of insufficient service of process due to plaintiff's failure to comply with the procedural requirements set forth in Rule 4 of the Virgin Islands Rules of Civil Procedure. Service of process is not reasonably calculated to give actual notice when service is made at an address wherein the person does not, and did not, reside at the time of service. Yousef does not reside in Sint Maarten and has not resided there for approximately seven (7) years. Plaintiff failed to deliver process to Yousef as prescribed by Rule 4(f). Plaintiff further failed to satisfy the service by publication requirements. The motion to serve defendant by publication of plaintiff does not indicate due diligence or any efforts or attempts to locate Yousef to serve her pursuant to Rule 4 of Federal Rules of Civil Procedure. 5 V.I.C. § 112(a). There is no evidence in the record that plaintiff met the content requirements of the summons published in accordance with 5 V.I.C. § 112(b). There is no indication the summons published set forth the following: a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint. 5 V.I.C. § 112(b). If a plaintiff fails to perfect service, the complaint should be dismissed pursuant to Rule 4(f).

The complaint was filed with the Court on February 12, 2016. The record indicates a summon was issued to Yousef on April 4, 2016, with an address of 25 Gold Finch Road, Pointe Blanche, St. Martin. [See summons.] An Affidavit of Service indicates process was purportedly accomplished on April 5, 2016, by leaving (effectively nailing) it at 25 Gold Finch Road, Pointe Blanche, St. Martin. [See Affidavit of Service of Solange Monique Apon, which is attached as Plaintiff's Exhibit A to plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016.]

Plaintiff then requested to serve Yousef by publication. [See plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016.] Suspecting defective service of process upon Yousef at an address listed nearly twenty (20) years ago and having no basis to believe she still resided therein, plaintiff requested to serve by publication. [See plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016.] The Court granted service by publication by Order dated May 27, 2016. [See Order of Judge Robert A. Molloy dated May 27, 2016.] The record is void of any evidence that service was effectuated by publication.

Yousef is a nonresident of the U.S. Virgin Islands. Yousef does not have an interest in, use, or possess real property in the U.S. Virgin Islands. Yousef does not currently reside in Sint Maarten. Plaintiff's so-called service of process by leaving a copy of process at an address that is not and was not the residence of Yousef in April 2016 and seven (7) years prior thereto, and publishing some but not all mandated information about the lawsuit in a newspaper in Sint Maarten is insufficient.

Effective service was not accomplished by what appears to be nailing the process in Sint Maarten on April 5, 2016, or by substituted service by publication in June of 2016. Service of process outside this territory is proper when the service is reasonably calculated to give actual notice. 5 V.I.C. § 4911(a). Plaintiff's attempt to serve the Yousef with a copy of the summons and complaint by leaving it at an address, 25 Gold Finch Road, Pointe Blanche, St. Martin, N.A., wherein she does not reside is defective service. The address in St. Martin, N.A., which is referenced on the First Priority Mortgage from September of 1997, is from nearly twenty (20) years ago, is outdated and does not reflect Yousef's current residence. The Sint Maarten address is simply not Yousef's dwelling or usual place of abode. V.I. Civ. P. 4(f); and 5 V.I.C.

§ 4911(a). Service of process at a location wherein a person does not reside is not reasonably calculated to give actual notice of the action.]

The record is absent of any efforts made by plaintiff to locate Yousef to effectuate service pursuant to Rule 4 of the Federal Rules of Civil Procedure. Even the plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016, does not indicate any attempt to determine the whereabouts of Yousef. Without diligent efforts to locate Yousef, service by publication pursuant to 5 V.I.C. § 112(a) is improper and negates service by publication in a newspaper granted by Order dated May 27, 2016. 5 V.I.C. § 112(a). There is no evidence on the record of plaintiff complying with the content requirements of the summons published in accordance with 5 V.I.C. § 112(b). There is no indication the summons published set forth the following: a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint. 5 V.I.C. § 112(b).

The undersigned has no knowledge if process in this matter has reached Yousef. The record establishes service of process is insufficient. Accordingly, Yousef requests the Court dismiss the complaint against her for failure to comply with Rule 4(f) because plaintiff failed to properly serve Yousef with process.

II.

STATEMENT OF FACTS

1. The complaint was filed with the Court on February 12, 2016. [See Complaint.]
2. The record indicates a summon was issued to Yousef on April 4, 2016, with an address of 25 Gold Finch Road, Pointe Blanche, St. Martin. [See Summons.]
3. An Affidavit of Service indicates process was purportedly accomplished on April 5, 2016, by nailing, leaving, it at 25 Gold Finch Road, Pointe Blanche, St. Martin. [See

plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016, Affidavit of Service of Solange Monique Apon attached as Plaintiff's Exhibit A.]

4. Plaintiff then requested to serve Yousef by publication. [See plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016.]

5. The Court ordered service by publication on May 27, 2016. [See Order dated May 27, 2016.]

6. Plaintiff made no diligent effort to locate the current address of Yousef to effect service of process. [See plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016, including the attached exhibits.]

7. Manal Mohammad Yousef ("Yousef") has a First Priority Mortgage dated September 15, 1997, on certain real property in St. Croix, U.S. Virgin Islands owned by plaintiff Sixteen Plus Corporation. [See Complaint.]

8. Yousef was domiciled in Sint Maarten in 1997 when the First Priority Mortgage was executed by plaintiff. [See Complaint.]

9. Yousef is not currently domiciled in Sint Maarten, was not residing in Sint Maarten in April of 2016, and has not lived in Sint Maarten for approximately seven (7) years. [Affidavit of Jamil Yousuf at ¶¶ 2 and 3 attached as **Exhibit "A."**]

10. A review of the record reflects service of process was not made upon Yousef. [See plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016; and Exhibit A (Affidavit of Jamil Yousuf) at ¶¶ 2 and 3.]

11. A summons and complaint was not delivered to Yousef in accordance with V.I. R. Civ. P. 4(f) or Rule 4 of the Federal Rules of Civil Procedure. [See plaintiff's Motion to Serve

Defendant by Publication dated May 9, 2016; and Exhibit A (Affidavit of Jamil Yousuf) at ¶¶ 2 and 3.]

12. Yousef does not have an interest in, own, use, lease, or possess real property in the United States Virgin Islands. [See Complaint at ¶¶ 7 and 8; and Exhibit A (Affidavit of Jamil Yousuf) at ¶ 4]

13. Yousef is not licensed to and does not do business, does not solicit business, and does not have any offices or places of business in the U.S. Virgin Islands. [See Complaint at ¶ 4; and Exhibit A (Affidavit of Jamil Yousuf) at ¶ 5.]

14. Yousef does not contract to supply services or things in the U.S. Virgin Islands. [See Complaint at ¶ 4; and Exhibit A (Affidavit of Jamil Yousuf) at ¶ 6.]

15. Yousef has not sought to participate in any business activity in the U.S. Virgin Islands and does not receive substantial revenue from any such activity. [See Complaint at ¶ 4; and Exhibit A (Affidavit of Jamil Yousuf) at ¶ 7.]

16. The claim of plaintiff does not arise from any U.S. Virgin Islands forum related activities of Yousef. [See Complaint at ¶¶ 7 and 8; and Exhibit A (Affidavit of Jamil Yousuf).]

17. Yousef does not write insurance policies in the U.S. Virgin Islands. [See Complaint at ¶ 4; and Exhibit A (Affidavit of Jamil Yousuf) at ¶ 9.]

18. Yousef has no agents, offices, bank accounts, or post offices boxes in the United States Virgin Islands. [See Complaint at ¶ 4; and Exhibit A (Affidavit of Jamil Yousuf) at ¶¶ 10 and 11.]

II.

ARGUMENT

1. THE COURT LACKS PERSONAL JURISDICTION OVER YOUSEF

A federal court sitting in diversity may exercise personal jurisdiction over a non-resident defendant if it comports with the long-arm statute of the forum and with the Due Process Clause of the United States Constitution. *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 904-05, 910 (D.V.I. 2007); *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *3-4 (D.V.I. July 9, 2004); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 584 (D.V.I. 2000). *In personam* jurisdiction is the power of a court to enter judgment against a person. A statute, such as a state's long arm statute, must authorize the court's coercive authority. The requirement that a court have personal jurisdiction is a restriction on judicial power as a matter of individual liberty. If the court finds that a defendant is not subject to the court's jurisdiction under the state's long-arm statute, the court need not conduct a due process analysis because a valid assertion of personal jurisdiction must satisfy both the state long-arm statute and constitutional due process requiring minimum contacts. *The Mandarin Group LLC v. Mandarin Oriental Services B.V.*, 49 V.I. 814, 817, 818 (D.V.I. 2008); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 586 (D.V.I. 2000).

The plaintiff has the burden of establishing personal jurisdiction. *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n. 9 (3d Cir. 1984); *Francis v. Bridgestone Corporation*, 2011 U.S. Dist. LEXIS 72804, *7 (D.V.I. July 6, 2011); and *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 49 V.I. 1002, 1006 (D.V.I. 2008). Plaintiff must prove by a preponderance of the evidence that jurisdiction is proper. However, if the Court does not hold an evidentiary hearing, plaintiff need only establish a prima facie case of jurisdiction, and the court

will accept all of the factual allegations as true and resolve all factual disputes in favor of the plaintiff. *Francis v. Bridgestone Corporation*, 2011 U.S. Dist. LEXIS 72804, *7 (D.V.I. July 6, 2011); and *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 49 V.I. 1002, 1007 (D.V.I. 2008). Once defendant has properly raised a jurisdictional defense, plaintiff cannot rely on allegations in the complaint alone but instead must establish that the Court has jurisdiction through affidavits and other competent evidence. *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n. 9 (3d Cir. 1984); and *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 49 V.I. 1002, 1007 (D.V.I. 2008). It is essential that the plaintiff proves the existence of a sufficient nexus between the defendant, the forum, and the litigation.

This Court may not exercise personal jurisdiction over Yousef unless jurisdiction is permitted under the U.S. Virgin Islands' long arm statute, 5 V.I.C. § 4903, and comports with the Due Process Clause of the Fourteenth Amendment. The Due Process Clause permits the exercise of *in personam* jurisdiction provided the defendant in a lawsuit has sufficient contact with the forum jurisdiction such that maintaining the lawsuit does not offend "traditional notions of fair play" and "substantial justice." *International Shoe v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *The Mandarin Group LLC v. Mandarin Oriental Services B.V.*, 49 V.I. 814, 818 n. 4 (D.V.I. 2008); *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906, 911 (D.V.I. 2007); *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *5 (D.V.I. July 9, 2004); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 586 (D.V.I. 2000).

The Due Process Clause shields a person from the judgments of a forum with which he has established no substantial ties or relationship. Accordingly, to be subject to jurisdiction, a defendant's conduct in connection with the forum must be such that he may "reasonably

anticipate” being haled into such forum’s courts. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

The court may exercise personal jurisdiction over a defendant only if there is specific jurisdiction or general jurisdiction. *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001). To establish specific jurisdiction, the plaintiff must prove not only that a non-resident defendant has purposefully directed his activities at a resident of the forum, but also that the plaintiff’s injury arises from such activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182 (1985); and *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001). General jurisdiction requires a plaintiff to prove that the defendant has “continuous and systematic” contacts with the forum state. *Helicopteros Naciondes de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16, 104 S.Ct. 1868, 1872-73 (1984).

Because Yousef is a non-resident that does not have an interest in, use, or possess real property in the U.S. Virgin Islands, plaintiff cannot make the requisite showing. Plaintiff does not assert personal jurisdiction grounded on other types of conduct. It is undisputed by plaintiff that Yousef has not transacted business in the U.S. Virgin Islands, does not contract to supply services or things in the U.S. Virgin Islands, did not cause tortious injury by an act or omission inside the U.S. Virgin Islands, and did not cause tortious injury in the U.S. Virgin Islands by an act or omission outside of the U.S. Virgin Islands.

A. Personal Jurisdiction Is Inappropriate Under Virgin Islands Long-Arm Statute

The Virgin Islands long-arm statute, codified at 5 V.I.C. § 4903, provides:

- (a)** A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's
 - (1)** transacting any business in this territory;

(2) contracting to supply services or things in this territory;

(3) causing tortious injury by an act or omission in this territory;

(4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;

(5) having an interest in, using, or possessing real property in this territory; or

(6) contracting to insure any person, property, or risk located within this territory at the time of contracting.

(7) causing a woman to conceive a child, or conceiving or giving birth to a child; or

(8) abandoning a minor in this Territory.

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

5 V.I.C. § 4903.

Yousef engaged in no activity in this jurisdiction giving rise to plaintiff's claim. Yousef did not transact, solicit, or engage in business, or did not act or fail to act, in the U.S. Virgin Islands thereby eliminating subsections (1)-(4). Subsections (6), (7) and (8) are not an issue. Yousef submits that only subsection (5) could conceivably apply to the instant action. Plaintiff concedes this point in it its Complaint at ¶ 4. Yousef provides the affidavit of Jamil Yousuf in support of her contention that the provisions of § 4903 do not apply to her. [See Exhibit A (Affidavit of Jamil Yousuf).] The Court should find that a mortgage is not a sufficient "interest in ... real property" to establish personal jurisdiction under 5 V.I.C. § 4903(a)(5), the U.S. Virgin Islands long-arm statute.

The nonresident Yousef does not have an interest in real property and does not have sufficient minimal contacts with U.S. Virgin Islands to justify the exercise of personal jurisdiction over her by the Court pursuant to 5 V.I.C. § 4903(a)(5). In determining if a court

may exercise personal jurisdiction in accordance with the U.S. Virgin Islands long-arm statute, the District Court essentially found that having “an interest in ... real property in this territory” is synonymous with owning real property in the U.S. Virgin Islands. 5 V.I.C. § 4903(a)(5); *V.I. Housing Finance Authority v. Joseph*, 2015 U.S. Dist. LEXIS 46885, *14 (D.V.I. April 10, 2015) (court properly exercised personal jurisdiction under U.S. Virgin Islands long-arm statute over defendant pursuant to “an interest in” real property in this territory because he owned real property in the U.S. Virgin Islands at issue). In *Reames v. Dollar Sav. Ass’n*, 519 N.E.2d 175 (Ind. Ct. App. 1st Dist. 1994), the court held a mortgage is not a sufficient interest in real property under the long-arm statute to sustain jurisdiction when the property is not the basis of the action. *Reames v. Dollar Savings Association*, 519 N.E.2d 175, 177 (Ind. Ct. App. 1st Dist. 1994). Yousef is not an owner of the real property. The mortgage is a lien, a mere security for debt without a conveyance of title to the land mortgaged. 28 V.I.C. § 290. In the case at hand the underlying source of the controversy is not the land itself. The record is devoid of any evidence that Yousef acted within the U.S. Virgin Islands. [See Complaint; and Exhibit A (Affidavit of Jamil Yousuf) at ¶¶ 4-11.] Consequently subsection (5) does not establish jurisdiction over Yousef. Yousef submits plaintiff's complaint makes no allegation that any of Yousef's conduct, about which plaintiff complains, took place in the territory or had any territorial connection. The Court must dismiss the complaint for lack of personal jurisdiction over Yousef because the provisions of the long-arm statute have not been satisfied.

B. Yousef's “Minimum Contacts” In The Virgin Islands Does Not Meet The Constitution's Due Process Requirements

The due process clause permits the exercise of *in personam* jurisdiction provided the defendant in a lawsuit has sufficient contact with the forum jurisdiction such that maintaining the

lawsuit does not offend “traditional notions of fair play” and “substantial justice.” *International Shoe v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *The Mandarin Group LLC v. Mandarin Oriental Services B.V.*, 49 V.I. 814, 818 n. 4 (D.V.I. 2008); *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906, 911 (D.V.I. 2007); *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *5 (D.V.I. July 9, 2004); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 586 (D.V.I. 2000). The court determines whether a defendant has had the "minimum contacts" with the forum necessary for the defendant to have reasonably anticipated being haled into court there. *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906 (D.V.I. 2007). Here, Yousef has no contact with the U.S. Virgin Islands. A court may not render a valid judgment in the absence of personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). There are two requirements of due process that must be satisfied: (1) the defendant must have notice of the lawsuit, and (2) the defendant must be subject to the jurisdiction of the court. *World-Wide Volkswagen*, 444 U.S. at 291.

A court may exercise personal jurisdiction over a defendant consistent with due process only if it has certain minimum contacts with the relevant forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. Courts employ a three-part test, derived from the Due Process Clause, that examines the defendant's purposeful conduct towards the forum, the relation between its conduct and the cause of action asserted against it, and the reasonableness of the exercise of jurisdiction. A finding of minimum contacts requires the demonstration of some act by which the defendant purposely availed itself of the privilege of conducting business within the forum State, thereby invoking the protection and benefits of its laws. *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906 (D.V.I.

2007); and *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *5 (D.V.I. July 9, 2004).

The Court should decline personal jurisdiction over Yousef. Yousef has no sufficient contacts with the U.S. Virgin Islands to support a finding of personal jurisdiction. [Exhibit A (Affidavit of Jamil Yousuf).] The contract cause of action sued upon does not relate to Yousef's non-existent activities in the U.S. Virgin Islands. Yousef does no business in the U.S. Virgin Islands and has no registered agent for herself in the U.S. Virgin Islands. *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 587 (D.V.I. 2000). The Court should grant Yousef's motion to dismiss because personal jurisdiction over Yousef cannot be established due to a lack of minimum contacts with the U.S. Virgin Islands.

Plaintiff's Complaint similarly is lacking of any allegations that Yousef has had the "continuous and systematic" contacts with the U.S. Virgin Islands that are necessary to establish general jurisdiction over Yousef - and for good reason. Yousef simply does not conduct any activities within the U.S. Virgin Islands. [Exhibit A (Affidavit of Jamil Yousuf) at ¶¶ 4-11.] Yousef does not own, lease, or rent real property in the U.S. Virgin Islands. Yousef does not maintain any bank accounts, offices, places of business, or post office boxes in the U.S. Virgin Islands. Yousef does not have any agents in the U.S. Virgin Islands. Yousef has no registered agent upon whom process can be served in the U.S. Virgin Islands. Yousef does not transact any business or contract to supply services or things in or to the U.S. Virgin Islands. Moreover Yousef does not solicit business, engage in any persistent course of conduct, or derive substantial revenue from goods used or consumed, or services rendered, in the U.S. Virgin Islands. [Exhibit A (Affidavit of Jamil Yousuf) at ¶¶ 4-11.]

In sum, Yousef has had no contacts with the U.S. Virgin Islands, much less continuous and systematic contacts that would subject her to the general personal jurisdiction of the U.S. Virgin Islands courts.

2. THE COURT SHOULD DISMISS COMPLAINT DUE TO INSUFFICIENT PROCESS AND SERVICE OF PROCESS

A. Standard

Proper service is necessary to establish a Court's personal jurisdiction over a defendant. *Chiang v. U.S. Small Business Association*, 331 Fed. Appx. 113, 115 (3d Cir. May 4, 2009). Under Rules 12(b)(4) and 12(b)(5) of the V.I. Rules of Civil Procedure service of process may be quashed or, and in certain cases, the action dismissed if the process or the service thereof is improper. The process is insufficient if the forms are technically deficient (e.g., wrong name) or not sealed by the clerk. See, *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 569 (3rd Cir. 1996). Service of process under V.I. R. Civ. P. 12(b)(5) may be insufficient if the mode of delivery is invalid, if service is made on an improper person, or if delivery is either never accomplished or not accomplished within 120 days after commencement.

The burden of proof lies with the plaintiff to demonstrate sufficient service. When process or service is challenged, the plaintiff must make a prima facie showing that the court's personal jurisdiction is properly exercised. *Grand Entertainment Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476 (3d Cir. 1993); and *Friedberg v. Barefoot Architect, Inc.*, 2014 U.S. List. LEXIS 178087, *4 (D.V.I. December 30, 2014). The moving party, however, must set forth with specificity the alleged failure of process or service. See, *O'Brien v. R.J. O'Brien & Associates, Inc.*, 998 F.2d 1394, 1400 (7th Cir. 1993) (holding that objections to the sufficiency of process must be specific and must identify how plaintiff failed to satisfy service). The courts

may consider extrinsic materials produced by the parties (affidavits and other materials) when reaching determinations on sufficiency of service and process.

Service of process upon an individual located outside the U.S. Virgin Islands is available under certain circumstances pursuant to Rule 4(f): “Where 5 V.I.C. § 4903 or other applicable law provides for the assertion of personal jurisdiction over a person located outside the Virgin Islands, the provisions and procedures of Title 5 V.I.C. Chapter 503 shall be followed including, but not limited to, the procedures for service and the filing of proof of service set forth in 5 V.I.C. § 4911.” V.I. R. Civ. P. 4(f). In accordance with 5 V.I.C. § 4911(a), service outside the U.S. Virgin Islands may be made under certain conditions when the service is reasonably calculated to give actual notice. 5 V.I.C. § 4911(a). The form of the process must contain certain information.

B. The Action Should Be Dismissed, or in the alternative process quashed, For Insufficient Process and Service Of Process Under V.I. R. Civ. P. 4(f)

Yousef submits that the Court should grant her Motion to Dismiss because of insufficient service of process due to plaintiff's failure to comply with the procedural requirements set forth in V.I. R. Civ. P. 4. Plaintiff failed to deliver process to Yousef as prescribed by V.I. R. Civ. P. 4(f) after filing the complaint. Service of the summons and complaint upon Yousef was not made in accordance to V.I. R. Civ. P. 4 and is insufficient to provide adequate notice that her rights are in controversy and that a court is properly exercising jurisdiction over her.

Yousef moves to dismiss the matter because it was not served with process in accordance with Rule 4(f) and, therefore, the Court lacks personal jurisdiction over her. Rule 4(f) requires service be made under circumstances enumerated in 5 V.I.C. § 4911 under conditions wherein the service is reasonably calculated to give actual notice. Service pursuant to Rule 4(f) is

necessarily grounded on defendant residing in a place where service of process is made to be in compliance with the reasonably calculated to give actual notice requirement. V.I. R. Civ. P. 4(f); and 5 V.I.C. § 4911(a). Service by leaving (nailing) a copy of the summons and complaint at an address wherein defendant does not dwell and has not resided for close to seven (7) is insufficient pursuant to Rule 4(f).

The requirements of Rule 4(f) were not complied with herein. A review of the record reveals service of process was not made upon Yousef. The process server notations reveal process was in essence nailed at the listed address in Sint Maarten. There is nothing in the record to indicate that plaintiff made any diligent efforts to determine where Yousef actually resides so service there would be reasonably calculated to give actual notice. The attempt to serve by leaving the summons and complaint at an address not Yousef's personal residence combined with the fact that she left the island nearly a seven (7) years ago is defective service, and the Motion to Dismiss under V.I. R. Civ. 12(b)(5) should be granted.

Yousef submits the Court should grant her Motion to Quash Service by publication because plaintiff has not presented a sufficient basis that Yousef could not be served with a summons and complaint as set forth in Rule 4 of the Federal Rules of Civil Procedure. The District Court held it was error for the court to order service by publication under § 112 when traditional service could have been made under Rule 4 of the Federal Rules of Civil Procedure. *Kozlow v. Young Bozzo Corp.*, 2003 U.S. Dist. LEXIS 24209, *5 (D.V.I. August 29, 2003) (citing *Kalik Enterprises, Ltd. v. Seaboard Industries*, 20 V.I. 383, 387 (D.V.I. 1983)).

Moreover it is generally recognized that service by publication is considered a method of service least calculated to apprise a potential defendant's of the pendency of judicial proceedings. *Mulrain v. Mulrain*, 15 V.I. 149, 151 (D.V.I. 1979). The plaintiff's motion to serve defendant by

publication does not indicate due diligence or any efforts or attempts to locate Yousef to serve her. 5 V.I.C. § 112(a). Yousef submits because there is no evidence presented in the record that plaintiff made diligent but unsuccessful efforts to locate Yousef at any listed address, service by publication pursuant to 5 V.I.C. § 112(a) was improper and negates service by publication in a newspaper granted by Order dated May 27, 2016. 5 V.I.C. § 112(a).

Moreover there is no evidence in the record of plaintiff complying with the content requirements of the summons published in accordance with 5 V.I.C. § 112(b). There is no indication the summons published set forth the following: a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint. 5 V.I.C. § 112(b). [See plaintiff's Motion to Serve Defendant by Publication dated May 9, 2016, proposed form of summons at plaintiff's Exhibit C.]

IV. GRANTING MOTION TO STAY MATTER PENDING RULING HEREIN IS WARRANTED

The Court has broad discretion to stay the matter pending decisions on other motions. Yousef requests the Court exercise its authority to stay this matter until it issues an order in the matter *sub judice* in the interests of judicial economy, efficiency, and preserving costs and fees to the parties. For instance courts are generally wary of allowing discovery absent some showing of personal jurisdiction facts if a defendant has challenged plaintiff's assertion of personal jurisdiction over him. Plaintiff will not suffer irreparable injury if the civil matter is stayed pending a ruling on this motion to dismiss. Although this matter is in the early stages of litigation, plaintiff has filed a Motion for Summary Judgment dated October 21, 2016. It is widely acknowledged that a court has an obligation to assure itself of its jurisdiction before considering other motions including motions on the merits of the action and motion to dismiss

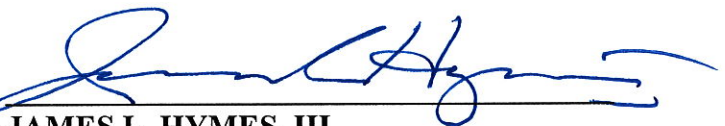
for failure to state a claim. Yousef requests to respond to the motion for summary judgment point by point after the Court renders a decision on the jurisdictional issues raised in the case at hand.

WHEREFORE, Defendant Manal Mohammad Yousef respectfully requests the Court enter an order granting the motion to dismiss on the grounds that there is no *in personam* jurisdiction and the Court lacks jurisdiction because plaintiff failed to serve process upon Yousef as required by V.I. R. Civ. P. 4(f). Plaintiff is unable to meet its burden of establishing that Yousef comes under the local long-arm statute, and any such assertion of jurisdiction violates the due process clause. Yousef was not properly served with process on April 5, 2016 or by publication on or about June 2016. Moreover Yousef requests the Court stay the proceedings pending a ruling herein. Yousef further prays that the order contain such other relief as this Court deems just and proper.

Respectfully Submitted,

DATED: May 4, 2017.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Counsel for Defendant –
Manal Mohammad Yousef

By: 

JAMES L. HYMES, III
VI Bar No. 264
P.O. Box 990
St. Thomas, Virgin Islands 00804-0990
Telephone: (340) 776-3470
Facsimile: (340) 775-3300
E-Mail: jim@hymeslawvi.com;
rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 4th day of May, 2017, I caused an exact copy of the foregoing "*Yousef's Motion to Dismiss for Lack of Personal Jurisdiction, Insufficient Process, and Insufficient Service of Process or, in the Alternative, Motion to Quash Service and Motion to Stay*" to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

MARK W. ECKARD, ESQ.
HAMM ECKARD LLP
5030 Anchor Way, Suite 13
Christiansted, USVI, 00820-2690
Phone: (340) 773-6955
Fax: (855) 456-8784
meckard@hammeckard.com
Counsel for Sixteen Plus Corporation



c:\yousef\2017-05-04....MTD...

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

SIXTEEN PLUS CORPORATION,)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff,)	
	)	ACTION FOR DECLARATORY
vs.	)	DECLARATORY JUDGMENT
)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

AFFIDAVIT OF JAMIL YOUSUF

I, **JAMIL YOUSUF**, being first duly sworn, deposes and states as follows:

1. I am an adult resident of Sint Maarten, and obtained a copy of a Complaint in this matter. As the result thereof, I am familiar with the pleadings and facts concerning this matter, and make this Affidavit in this capacity. I am of legal age and am legally competent.
2. Manal Mohammad Yousef is not currently domiciled in Sint Maarten, N.A., was not residing in Sint Maarten, N.A. in April of 2016, and has not lived in Sint Maarten, N.A. for approximately seven (7) years.
3. Manal Mohammad Yousef was not residing at 25 Gold Finch Road, Pointe Blanche, Sint Maarten, N.A. on April 5, 2016.
4. Manal Mohammad Yousef does not own, use, lease, or rent any real property in the U.S. Virgin Islands.
5. Manal Mohammad Yousef is not licensed to and does not do business, does not solicit business, and does not have any offices or places of business in the U.S. Virgin Islands.
6. Manal Mohammad Yousef does not contract to supply services or things in the U.S. Virgin Islands.

SIXTEEN PLUS CORPORATION vs. MANAL MOHAMMAD YOUSEF
SCVI/STX Civil No. SX-16-CV-65
AFFIDAVIT OF JAMIL YOUSUF

7. Manal Mohammad Yousef has not sought to participate in any business activity in the U.S. Virgin Islands and does not receive substantial revenue from any such activity.

8. Manal Mohammad Yousef has not caused tortious injury by an act or omission in the U.S. Virgin Islands, and has not caused tortious injury in the U.S. Virgin Islands by an act or omission outside the U.S. Virgin Islands.


9. Manal Mohammad Yousef does not write insurance policies in the U.S. Virgin Islands.

10. Manal Mohammad Yousef has no agents, offices, bank accounts, or post offices boxes in the United States Virgin Islands.

11. Manal Mohammad Yousef does not have a registered agent upon whom process can be served in the U.S. Virgin Islands.

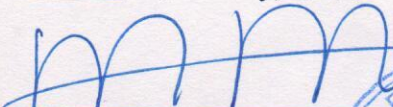
FURTHER AFFIANT SAYETH NOT.

DATED: May 3, 2017



JAMIL YOUSUF

SUBSCRIBED and **SWORN TO** before
me this third day of May, 2017.


Marlene Françoise mMingo

[NOTARY PUBLIC]

Commission Expires: XXXX is for life.

Commission No.: N/A



C:\sixteen\plus\2017-05-03..affidavit...

Seen for legalization of the signature of **JAMIL ISAM YOUSUF**, who identified himself with an identification card, issued by Sint Maarten, under number IJY046649/1984112179, by me, Marlene Françoise Mingo, LL.M., a civil law notary, established on Sint Maarten, on this 3rd day of May, 2017. This declaration for the legalization of the signature, by the civil law notary, contains no opinion as to the contents of this document.

Sint Maarten

National ID / Identiteitskaart

IY046649



Surname / Naam
YOUSUF

Given Names / Voornamen
JAMIL ISAM

Sex / Geslacht Residence Permit / Verblijfsvergunning
M 201523778 PERM

Nationality / Nationaliteit ID No.
USA 1984112179

Place of Birth / Geboorteplaats DOB / GEB
SINT CROIX 21 NOV 1984

Issued / Afgiftedatum Expiry / Geldig Tot
17 MAR 2016 18 FEB 2021

COPY OF ORIGINAL

M.F. MINGO, LL.M.

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

SIXTEEN PLUS CORPORATION,)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff,)	
	)	ACTION FOR DECLARATORY
vs.	)	DECLARATORY JUDGMENT
)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	
)	
MANAL MOHAMMAD YOUSEF,)	
)	
Counter-Claimant,	)	COUNTERCLAIM
)	
vs.)	
)	
SIXTEEN PLUS CORPORATION,)	
)	
Counter-Defendant.)	
_____)	

ORDER

This matter, having come before this Court upon the Defendant Manal Mohammad Yousef's Motion to Dismiss Complaint for Lack of Personal Jurisdiction, Insufficient Process, and Insufficient Service of Process or, in the Alternative, Motion to Quash Service and Motion to Stay, and the Court being fully satisfied with the premises contained therein, it is hereby

ORDERED that the defendant's Motion is hereby **GRANTED**; and it is further

ORDERED that the action of plaintiff Sixteen Plus Corporation is hereby **DISMISSED**; and it is further

ORDERED that a copy of this Order be directed to Mark W. Eckard, Esq. and James L. Hymes, III, Esq.

ENTERED this _____ day of _____, 2017.

Judge, Superior Court of the Virgin Islands

A T T E S T:

THE HON. ESTRELLA H. GEORGE
Clerk of the Court

By: _____
Deputy Clerk

DISTRIBUTION LIST:

MARK W. ECKARD, ESQ. [meckard@hammeckard.com]
JAMES L. HYMES, III, ESQ. [jim@hymeslawvi.com; rauna@hymeslawvi.com]