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June 13, 2017

James Hymes, VI Bar No. 264
P.O. Box 990
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Re: *Sixteen Plus v. Manel Yousef*

Dear Attorney Hymes:

I write in response to your letter dated June 9th, and your transmittal email with the two case citations. You need to re-read V.I.R. Civ. P. 11, as a Rule 11 issue can only be raised by sending a proposed motion pursuant to subsection (c)(2). The manner in which you have raised it is a "threat" of Rule 11 sanctions, which "threat", in and of itself, has been held to be improper.

Moreover, even a properly filed motion does not stay the case, so **the refusal to respond to requested deposition dates until after a response to the motion is filed is likewise improper**. In short, a Rule 11 motion does not stay the case, nor does a "threat" of such a motion do so.

As for your suggestion that there is no authority for the corporation to proceed with this case, that is incorrect. Indeed, under your theory the corporation could not even defend the counterclaim you have filed.

As for the actual facts, the suit was authorized by Mohammad Hamed, the President of Sixteen Plus, who did so after consulting his son, who is the Vice President and was also on the Board of Directors when he did so. At that time the Hameds held a majority of the board. Under the By-Laws of Sixteen Plus, the President is given the following express authority:

> Section 3.2. **Powers and Duties of the President.** The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. . . .

Thus, it is clear that the President has been given express authority under the By-Laws to take whatever action is needed to clear title to the property in question, the primary asset of the company.

As for the cases you referenced, they are clearly distinguishable for several reasons, each of which independently would defeat either a Rule 11 motion or a Rule 12 motion to dismiss. First, those holdings are not binding on the Superior Court. Indeed, the Third Circuit opinion expressly stated that it was not precedential, so it is not binding on any VI court.

Second, and dispositive of this issue, the Third Circuit noted on page 6 that this question involved the legal issue regarding a party's "lack of standing" to bring the suit. However, the Supreme Court of the Virgin Islands has expressly held that this doctrine is not applicable in our jurisdiction, holding in *United Corporation v. Hamed,* 2016 WL 154893 (2016):

> We have reaffirmed this abrogation numerous times since, stating most recently that "**standing is at best a non-jurisdictional claims-processing rule in Virgin Islands courts**, since Article III of the United States Constitution does not apply to local courts and no provision of Virgin Islands law includes a case-or-controversy requirement."
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> We therefore take this opportunity to reaffirm that **"standing"—as that concept is understood in federal constitutional law—does not exist *in any form* in Virgin Islands courts.** Although this Court has discussed issues of "standing" in recent cases, those discussions took place in the context of statutes granting rights to particular individuals in various contexts. See, e.g., Rennie v. Hess Oil V.I. Corp., 62 V.I. 529, 547 (V.I. 2015) (holding that an employment-discrimination statute conferred "standing" on an employee to bring a private cause of action); Hansen v. O'Reilly, 62 V.I. 494, 511 (V.I. 2015) (holding that a write-in candidate had "standing" to seek a recount under the election statutes); Haynes v. Ottley, 61 V.I. 547, 556 n.4 (V.I. 2014); Mapp v. Fawkes, 61 V.I. 521, 534 n.11 (V.I. 2014); Bryan v. Fawkes, 61 V.I. 201, 222–23 n.12 (V.I. 2014); V.I. Narcotics Strike Force, 60 V.I. at 212. Thus, these standing discussions did not involve the Superior Court's subject-matter jurisdiction, but instead went to whether the party bringing suit had a right to the relief it was seeking. This, of course, goes to the merits of the cause of action–not the Superior Court's authority to hear the case in the first place. Hamed, 2015 WL 4400738, at *1 n.2.

In short, should your client file a motion to dismiss challenging the Plaintiff's "standing" to bring this suit, the motion would be summarily denied.

Third, even if standing could still be raised, the District Court failed to do a proper *Banks* analysis. Had it done so, it would have found that the better view (and the majority view) is that a corporate president has authority to authorize the filing of lawsuits. *See, e.g., Aurora Med. Park, LLC v. The Kidney & Hypertension Ctr., PLC*, 2010 ND 122, ¶ 9, 784 N.W.2d 151, 154, 2010 WL 2606340 (N.D. 2010)("In the absence of proof to the contrary, a corporate president's authority to institute litigation will be presumed, so that a mere demurrer or exception raised in the pleadings and questioning such authority will not of itself put the matter in issue." 18B Am.Jur.2d Corporations § 1361, at 361 (2004)

(footnote omitted); see also 9 William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations § 4216, at pp. 14-16 (2008 Rev. Vol.) ("Absent a contrary provision in the corporate charter or bylaws or in a resolution of directors, the president may have presumptive authority to institute and defend suits in the corporate name....").

Finally, as noted, even the cases you cite defer to contrary authority found in the company's by-laws. As noted above, the By-Laws of Sixteen Plus give the President "general charge and control of all its business affairs and properties," which clearly includes filing suit if needed to clear title to such property, as is the case here. Moreover, under section 3.3 of the By-Laws, the Vice President has the authority to act as the President if the President cannot act. Finally, defending the counterclaim seeking to foreclose the property is likewise within this power given to the company's President, or Vice President in the President's absence.

In short, your client's position does not support the filing of either a proper Rule 11 motion or a Rule 12 motion.

Cordially,

Joel H. Holt
JHH/jf

cc: Mark Eckard