

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 HISHAM HAMED'S OPPOSITION TO DEFENDANTS
ISAM AND JAMIL YOUSUFS' MOTION TO DISMISS**

On December 23, 2016, Plaintiff filed his First Amended Complaint ("FAC"). Defendant Fathi Yusuf filed a motion to dismiss on January 9, 2017, which is briefed.

On June 4, 2017, Defendants Isam and Jamil Yousuf ("Yousufs") sought permission to file their own motion to dismiss in excess of the 20-page limit, which this Court granted on July 7th, deeming that motion filed as of that date. The Plaintiff will now address the Yousufs' Rule 12 motion.¹

One preliminary comment is in order. The Yousufs began their motion with a long dissertation of the alleged "facts." However, Plaintiff will address the salient 'facts' as they are relevant in response to each issue raised in Yousufs' Rule 12 motion.

¹ An unopposed motion to amend Jamil's last name to "Yousuf" is being filed.

I. Personal Jurisdiction and Service

The Yousufs first argue that this Court has no personal jurisdiction over them. Alternatively, they argue that they were not properly served. In support of these arguments, the Yousufs fail to cite several applicable court holdings and statutes that govern these issues in the USVI, instead arguing matters that are irrelevant when these correct legal standards are applied.

A. The Yousufs' Waived Objections to *In Personam* Jurisdiction

After the FAC was filed on December 23, 2016, the Yousufs' initial counsel, Kye Walker, entered a general notice of appearance in this case on March 13, 2017 -- on behalf of both Isam and Jamil Yousuf, stating as follows (See **Exhibit 1**):

COMES NOW Kye Walker, Esq. of The Walker Legal Group, and enters her appearance as counsel for Defendants, Isam Yousuf and Jamil Yousef, in the above captioned matter. Please direct copies of all future proceedings, pleadings, briefs, correspondence and other papers filed in this proceeding prior to and subsequent to this date to the undersigned counsel at 16A8 Church Street, 2nd Floor, Christiansted, St. Croix, USVI 00820.

In addressing the effect of such a general entry of appearance, the V.I. Supreme Court held in *In re Najawicz*, 52 V.I. 311 (V.I. 2009) that **such a general appearance waives any objection to personal jurisdiction, service and service of process**, stating in depth as follows, *id.* at 338-339:

The record reveals that Miller's attorney, Attorney Glore, appeared at the August 18, 2008 hearing on the motions filed by Najawicz and Carty. Importantly, the record reveals that Miller's attorney entered a general appearance rather than a special or limited appearance. See, e.g., *Williams v. Williams*, 266 S.E.2d 25, 28 (N.C.Ct.App.1980); ("**[A] general appearance by a party's attorney will dispense with process and service**"); *Springs v. Springs*, 651 N.Y.S.2d 579, 579 (N.Y.App.Div.1996) ("[T]he attorney's appearance without asserting the defense of lack of personal jurisdiction conferred personal jurisdiction over his client."); *Nixon v. Rowland*, 63 S.E.2d 757, 759 (Va.1951) ("**[A] general appearance in a case is a waiver of process, equivalent to personal service**

of process, and confers jurisdiction of the person on the court; but to have this effect the appearance must have been authorized”); 7A C.J.S. *Attorney & Client* § 239 (Westlaw 2009) (“While the general appearance by an attorney submits his or her client to the jurisdiction of the court if the appearance has been authorized, it has also been held that no specific authority to enter a general appearance is necessary, and that a client may be bound by his or her attorney’s general appearance although the authority actually granted was to make only a special appearance. The general rule is that an attorney is presumed to have authority to appear and act on behalf of his or her client unless it is shown conclusively that the attorney was not authorized to do so.”). (Emphasis added).

Thus, this Court need go no further, as *Najawicz* is dispositive since it holds that all of the defenses raised by this motion—personal jurisdiction, service and service of process—are waived once Defendants’ counsel entered a general appearance, as she did on March 17, 2017.

B. Even beyond *Najawicz*, as a matter of law, there was good service

While no longer needed to resolve this issue in light of the V.I. Supreme Court’s holding in *Najawicz*, *supra*, 5 V.I.C. §115, also provides in part:

A voluntary appearance of the defendant shall be the equivalent to personal service of the summons on him. (Emphasis added.)

See, e.g., *In re Catalyst Litigation*, 2015 WL 9851055, (V.I. Super., 2015) (Third party defendant waived service pursuant to 5 V.I.C. § 115 by entering a voluntary appearance).

Thus, the defense of service is also waived under 5 V.I.C. § 115.

C. Beyond even *Najawicz*, there is personal jurisdiction

Finally, while no longer needed to resolve this issue in light of the V.I. Supreme Court’s holding in *Najawicz*, *supra*, while the Yousufs fail to cite the applicable V.I. law

on personal jurisdiction for CICO claims, the appropriate statute, as alleged in the FAC, is the jurisdiction provision in the CICO statute, 14 V.I.C. § 607, which states:

(j) Personal service of any process in a proceeding or action under this section may be made upon any person outside the Territory of the Virgin Islands if the person was a principal in any conduct constituting a violation of this chapter in this Territory. **The person shall be deemed, by having engaged in such conduct within this Territory, to have thereby submitted himself to the jurisdiction of the courts of this Territory for the purposes of this section.** (Emphasis added.)

The allegations of the FAC allege specific acts of a CICO conspiracy against both Yousuf defendants.² Thus, 14 V.I.C. § 607(j) creates personal jurisdiction over the Yousufs *in addition to the holding* in *Najawicz* that a general notice of appearance also waived the defense of personal jurisdiction.

D. Summary of Service and Personal Jurisdiction

Thus, there is no need to analyze the factors found in 5 V.I.C. § 4903, as these defenses have been waived under the V.I. Supreme Court's holding in *Najawicz*.³

² See, e.g. FAC ¶¶ 55-79, particularly 55, 59, 69, 71, 72, 73 & 77. Indeed, it is black letter law that mail, telephone, and e-mail communications, even without a physical presence, can be sufficient to establish the necessary minimum contacts to support CICO jurisdiction. See, e.g., *Grand Entmt' Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 482-83 (3d Cir. 1993).

³ Interestingly, Isam did not sign a verified statement saying he had no contacts here. In fact, he has been in the Virgin Islands repeatedly since 1997, including as late as 2014 when he came to try to close a brokerage account at Merrill-Lynch in St. Thomas. See **Exhibit 2**. As for Jamil, he has been actively involved in multiple activities in this jurisdiction since 2012. Most significantly, Manal Yousef has now verified that Jamil Yousef had been helping her defend her own case in this jurisdiction (2016-SX-CV-65), using a power of attorney to do her business here. Likewise, he **recently signed an affidavit that was submitted to this Court as evidence** in another case to try to further perpetrate the fraud that is being committed on this Court. See **Exhibit 2**. In short, both Yousufs had *repeated* contacts with this jurisdiction, easily satisfying the personal jurisdiction requirements of §4903, even if that defense had not been waived

Likewise, even if they had not been waived when their counsel filed a general NOA, the defense of service and personal jurisdiction are governed by 5 V.I.C. § 115 and 14 V.I.C. § 607(j), both of which moot the issues raised under 5 V.I.C. §4903.

II. The allegations in the FAC are not barred by the SOL

The Yousufs argue next that the allegations against them are barred by the statute of limitations ("SOL"). Like Fathi Yusuf, the Yousufs concede that there is a five year limitations period for a CICO claim under 14 V.I.C. § 607(h). They further concede the statute runs from the date of *discovery*, citing the applicable law, so that issue will not be briefed further here.

What the Yousufs ignore is that the acts giving rise to this CICO criminal conspiracy are still continuing, so that the SOL is still being triggered each day a new act occurs. Therefore, while the SOL for a cause of action does not accrue until the wrong is discovered, the commencement of the SOL is started all over again each time a new "act" in furtherance of the criminal conspiracy is committed, as noted by the V.I. Supreme Court in *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 230–31, 2013 WL 211707, at *3 (V.I. Jan. 17, 2013), *as amended* (June 21, 2013) ("When courts apply the continuing violation doctrine, the claim will not be barred provided that at least one wrongful *act* occurred during the statute of limitations period and that it was committed in furtherance of a continuing wrongful act or policy or is directly related to a similar wrongful act committed outside the statute of limitations.") *See also, Goelet Dev. Inc. v. Kemthorne, Sec'y of the Interior*, No. CV 07-50, 2016 WL 7015629, at *6 (D.V.I. Nov.

under *Najawicz*, in addition to the specific "personal jurisdictional" provisions of 14 V.I.C. § 607(j) that clearly supplement the §4903 factors.

30, 2016) (“The NPS regularly locked and unlocked the gate. Each time that the NPS locked the gate could be viewed as a recurring act.”); *Bluebeard's Castle, Inc. v. Hodge*,⁵¹ V.I. 672, 685 (D.V.I.App.Div.2009) (continuing tortious conduct, such as trespass, extends the time in which a claim need be filed). This concept is simple, black letter law. See, e.g., *Udolf 631, LLC v. Select Energy Contracting, Inc.*, No. HHD CV 09 5032387 S, 2012 WL 386633, at *6 (Conn. Super. Ct. Jan. 12, 2012) (“continued to make misrepresentations and to conceal facts from the plaintiff”).

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 actionable wrongdoing took place in late 2012 when the letter from the lawyer in St. Martin was received (FAC ¶ 55), which is why the verified complaint states that his criminal conspiracy was not discovered until 2012.⁴ FAC ¶ 49. Moreover, 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).

Indeed, the filing of the affidavit by Jamil Yousuf in an effort to defeat service and jurisdiction over Manal Yousef in another case, Civil No. 16-SX-65, is an additional wrongful act in this criminal conspiracy, as he filed an affidavit to suggest Manal was not

⁴ While Fathi Yusuf may have decided years ago to try to use the Manal Yousef mortgage to keep the entire funds for himself, the Hamed shareholders thought they would always receive 50% of any such funds until receiving the letter in 2012, referenced in the FAC (¶55) and attached hereto as **Exhibit 3**, no one had previously suggested that this heretofore bogus mortgage was now supposedly valid and enforceable.

subject to the jurisdiction of this Court. See **Exhibit 2**. Of course, Manal Yousef herself did not file an affidavit making any such absurd claim. See **Exhibit 2**. Likewise, Jamil's affidavit saying Manal Yousef has not been in St. Martin for years is directly contradicted by a prior **sworn** statement by another co-conspirator, Fathi Yusuf, who stated in 2016 in documents filed in another case against him in the Superior Court as follows (See **Exhibit 2**):

Manal Yousef's current address to the best of my knowledge is 25 Gold Finch Road, Pointe Blanche, St. Martin.

Thus, the acts to perpetrate this criminal fraud on the Plaintiff, as well as this Court, still continue so that the CICO limitations period has not even begun, much less run.⁵

Finally, 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 absolutely 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.)

In summary, Yousufs' 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.

⁵ Likewise, while the Yousufs repeat this SOL argument as to the only other remaining count alleged against them—the tort of outrage—that argument can be summarily rejected for the same reason, as the FAC alleges that this wrongful conduct occurred each year since 2012. See FAC ¶¶ 55-79.

III. The FAC states a CICO cause action against the Yousuf Defendants

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. It is respectfully submitted that Count I as alleged in the FAC satisfies the relevant pleading requirement of the new civil rule V.I. R. CIV. P. 8(a), which has changed the applicable pleading standard in the Virgin Islands, now stating:

(a) Claim for Relief. Except as otherwise provided in these Rules, a pleading that states a claim for relief must contain:

....

(2) a short and plain statement of the claim showing that the pleader is entitled to relief — **because this is a notice pleading jurisdiction** — and the pleading shall be set forth in separate numbered paragraphs

As recently noted by the Virgin Islands Supreme Court in *Mills-Williams v. Mapp*, ___ V.I. ___ at p. 9 (slip opinion) (V.I. St. No. 2016-0054) (July 14, 2017):

Significantly, Virgin Islands Rule of Civil Procedure 8 expressly states that the Virgin Islands “is a notice pleading jurisdiction,” V.I. R. CIV. P. 8(a), and the Reporter’s Note eliminates any doubt that this language is calculated to “apply[] an approach that declines to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief.” V.I. R. CIV. P. 8 Reporter’s Note (emphasis added); see also *Brathwaite v. H.D.V.I. Holding Co.*, Super.Ct. Civ. No. 764/2016 (STT), ___ V.I. ___, 2017 WL 2295123, at *2 (V.I. Super. Ct. May 24, 2017) (acknowledging that Virgin Islands Civil Procedure Rule 8(a)(2) **eliminates the plausibility standard and instead will permit a complaint so long as it “adequately alleges facts that put an accused party on notice of claims brought against it”**). (Emphasis added.)

Further V.I. R. CIV. P. 1-1(c) makes these new rules applicable to all pending cases.

With this “notice pleading” standard in mind, it is respectfully submitted that the CICO allegation in Count I easily meets this required standard for pleadings. **This procedural difference from the federal system essentially distinguishes every Rule 12 case cited by the Defendants, as each one is a federal case.**

Moreover, in considering a Rule 12 motion, only the facts alleged in the FAC are considered, which must be taken as true at this juncture. See, e.g., *Brady v. Cintron*, 2011 WL 4543906, at *9 (V.I. 2011) (where there are well-pleaded factual allegations, a court should assume their veracity in considering a Rule 12(b)(6) motion). In this case, a lengthy analysis of the facts as alleged in the FAC has already been made in the January 20, 2017, opposition to Fathi Yusuf's identical motion to dismiss this CICO claim at pages 2-8 of that motion, which statement is incorporated herein by reference, with that excerpt attached hereto as **Exhibit 4** to assist the Court. While some of those facts will be discussed further herein, it is clear that the factual allegations in the FAC properly state a CICO claim against all of the Defendants.

In their motion, after a general discussion of CICO law, the Yousufs challenge the sufficiency of the pleadings as to the Plaintiff's CICO claim, separating their arguments into (1) the alleged failure to plead the elements of a CICO conspiracy, (2) the alleged failure to plead the existence of a criminal enterprise and (3) the failure to properly plead a pattern of criminal activity. Each argument is without merit.

A. The elements of a CICO conspiracy were properly pled as to the Yousufs

As for the first argument, 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 sections (a) and (b) of §605 are specifically pled as part of the Plaintiff's claim, so the elements of a CICO claim have been properly alleged. FAC ¶¶ 81-91.⁶

As for the facts that support these allegations, the Yousufs summarily argue at the bottom of page 33 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 a manifest agreement to participate in the conspiracy, starting in 2010 and continuing through 2016. FAC ¶¶ 45, 51,55, 71-73 and 77-78. Indeed, as for Isam and Jamil Yousuf, the FAC alleges that they helped obtain a power of attorney from Manal Yousef which they planned to use to deprive the Hameds of their 50% interest in the Diamond Keturah property. FAC ¶¶ 45, 51. It then alleges that these two St. Martin defendants agreed to help get a lawyer in St. Martin to send the threatening demand letter to Waleed Hamed seeking to collect this sham mortgage. FAC ¶ 55. The FAC further alleges that the Yousufs then agreed to intercept the foreclosure complaint filed against Manal Yousef and to try to hide her from the Court. FAC ¶¶ 71-73.

The FAC also alleges two (or more) specific predicate acts done by the various members of this criminal enterprise, including mail fraud, perjury and attempted theft, to then perpetrate the goal of this criminal conspiracy, as alleged in FAC ¶¶ 51, 55, 61-66, 68-70, 74, 77-79. Indeed, the sufficiency of the allegations surrounding these predicate acts are all succinctly stated in these referenced paragraphs that speak for themselves.

⁶ While FAC ¶ 81 also references ¶ 605 (c), the Plaintiff withdraws any such claim.

In short, a plain reading of the referenced paragraphs in the FAC confirms that while these CICO elements were properly pled under the more strict *Twombly* standard, they certainly meet the “notice pleading” standard now applicable in this jurisdiction. Thus, the Yousufs first Rule 12 objection to Count I claim fails, as sufficient facts, deemed to be true at this juncture, have been sufficiently pled to put the Defendants on notice of the elements of the CICO conspiracy claims against them.

B. The existence of a criminal enterprise was properly pled as to the Yousufs

The Yousufs second objection to the § 605(a) claim is found on page 34, arguing that the Plaintiff failed to allege the existence of a criminal enterprise, as required by § 605(a). While the Yousufs note 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.” The Yousufs concede this point, but argue 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.

Indeed, as alleged in the FAC, Isam Yousuf was a part of the initial money laundering scheme to divert cash to St. Martin and then wire it back to St. Croix (FAC ¶¶ 21-23), for which he was indicted on St. Croix for this precise conduct.⁷ FAC ¶¶ 32-36. Thus, he knew that when he and Jamil had Manal executed the POA in St. Martin to gain control over the mortgage, he was now beginning a criminal enterprise. FAC ¶¶ 45, 51. The subsequent acts that have taken place in St. Martin over the last five years, orchestrated by Yusuf and performed by Isam with Jamil (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. FAC ¶¶ 69-73, 77-79.

Clearly, the facts show a very persistent and continuing criminal enterprise in which both Isam and Jamil Yousuf actively participated, which they are still doing. See **Exhibit 2**. Thus, the Yousufs second Rule 12 objection to Count I is equally without merit under even the now outdated *Twombly* standard for pleadings. In short, once the facts pled in the FAC are reviewed, taken as true at this juncture, they put the Defendants “on notice” of these relevant CICO assertions, meeting the current “notice pleading” standard that is now applicable in this jurisdiction.

C. A pattern of criminal activity was properly pled as to the Yousufs

The Yousufs last objection, articulated first on page 36, asserts that the Plaintiff has not alleged a proper “Pattern of Criminal Activity.” However, as the Yousufs concede, this element required by § 605(a) defines this pattern as “two or more

⁷ The relevant portions of the indictment are attached as **Exhibit 5**.

occasions of conduct" 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. As already noted in detail, 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). 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) and are continuing, so they are not isolated.⁸

Thus, this third Rule 12 objection to Count I is also meritless, as the facts as pled establish sufficient notice of this required CICO element to survive a Rule 12 motion under the old "*Twombly*" standard, much less the new "notice pleading" standard.

D. Summary of the CICO Count

In summary, it is respectfully submitted the none of Yousuf's objections to Count I warrant dismissal, as the well-pled facts meet each of the required CICO criteria under § 605, **particularly under the Rule 8 "notice pleading" standard** just announced by the V.I. Supreme Court.

⁸ The cases cited by the Yousuf's on pp. 37-39 confirm that whether pleadings are sufficient to support a RICO/CICO claim is a fact dependent question to each case, as no two set of facts are the same. As previously noted, those are federal cases decided under the heightened *Twombly* standard for pleadings, those cases are all distinguishable.

IV. Counts II and V alleged against the Yousufs are withdrawn

Count II, a claim for conversion, and Count V, a claim for civil conspiracy, are in the process of being withdrawn by agreement of the parties. Counts III and IV are only alleged against Fathi Yusuf, not the Yousufs, so there is only one remaining count to discuss, Count VI.

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

Count VI alleges the *Tort of Outrage*, also referred to as the *Prima Facie Tort*. Yousufs' entire argument attacking Count VI is identical to the same argument raised by Fathi Yusuf in his motion to dismiss, which the Plaintiff addressed at pages 15-19 of his January 20, 2017, opposition memorandum (by doing a *Banks* analysis among other things).

As no new argument was raised by the Yousufs in this motion, the Plaintiff's argument in that opposition memorandum is incorporated herein in full by reference to those pages, although now it is undisputed that Count VI need only meet the "notice" requirements of Rule 9, not the more stringent *Twombly* "federal" standard for pleadings that is no longer applicable in this jurisdiction.

For the reasons set forth therein, Count VI satisfies the Rule 12(b)(6) standard in pleading the tort of outrage against the Yousufs, warranting a denial of their motion to dismiss Count VI. However, as noted in that opposition memorandum filed the January 20, 2017, if another tort survives to go to the jury, this tort can be dismissed.

VI. Manal Yousef is not a necessary party

The Yousufs cite Rule 19 and claim that Manal Yousef ("Manal") 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 argument is without merit for several reasons.

First, one Defendant, Fathi 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 has just recently stated that another Defendant, Jamil Yusuf, has a power of attorney to help her defend herself as well as prosecute the foreclosure action, Civil No. 16-SX-65.

Third, counsel for the Yousufs also represents Manal in another action pending in this Court regarding the validity of the mortgage, as noted, in Civil No. 16-SX-65. In that case, she is seeking to foreclose the mortgage. Thus, their joint counsel can fully protect her interest throughout this litigation, as he clearly has a waiver of any conflict. He can also request to consolidate these cases if he feels she needs to be part of this case. Thus, this case should not impair her rights in any way.⁹

Moreover, the gist of this case is about the outrageous conduct of this criminal enterprise that has resulted in substantial damages to the Plaintiff, **well beyond the mortgage simply being declared invalid**. In the case against Manal, the Plaintiff seeks to have the mortgage released. However, even if released, **the damage claims sought herein will not be mooted by the mortgage being declared invalid or released**.

⁹ If Manal's interests are a concern to this Court, it should direct the parties to brief the issue of consolidation of the two pending cases as opposed to dismissing this case.

In short, Manal Yousef is not a necessary party. Certainly, to the extent she might otherwise be, her interests are fully protected by Fathi Yusuf and Jamil Yousef, who both have unrestricted POA's to fully represent her interests in the alleged mortgage, not to mention her counsel, who also represents the Yousufs in this case. Thus, the Rule 19 motion should be denied as well.

VII. Conclusion

For the reasons set forth herein, it is respectfully submitted that Yousufs' 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.)

Dated: July 19, 2017



Joel H. Holt, Esq. (Bar # 6)
Counsel for Plaintiffs
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 Plaintiffs
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e) and that on this July 19 2017, I served a copy of the foregoing by email, as agreed by the parties, as well as a copy mailed to James Hymes at the address below, on:

Greg Hodges, Esq.
Stefan Herpel, Esq.
Lisa Komives, Esq.
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804-0756
Tel: (340) 774-4422
ghodges@dtflaw.com
sherpel@dtflaw.com
lkomives@dtflaw.com

James L. Hymes, III, Esq.
P.O. Box 990
St. Thomas, VI 00804-0990
Tel: (340) 776-3470
jim@hymeslawvi.com

Kevin A. Rames, Esq.
2111 Company Street, Suite 3
Christiansted, VI 00820
Tel: (340) 773-7284
kevin.rames@rameslaw.com



EXHIBIT 1

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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HISHAM HAMED, individually and
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NOTICE OF APPEARANCE

COMES NOW, Kye Walker, Esq., of The Walker Legal Group and hereby enters her appearance as counsel for Defendants, Isam Yousuf and Jamil Yousef, in the above-captioned matter. Please direct copies of all future proceedings, pleadings, briefs, correspondence and other papers filed in this proceeding prior to and subsequent to this date to the undersigned counsel at 16AB Church Street, 2nd Floor, Christiansted, St. Croix, USVI 00820.

Respectfully Submitted,

THE WALKER LEGAL GROUP
*Attorney for Defendants Isam Yousuf
and Jamil Yousef,*

BY: 

Kye Walker, Esq.
VI Bar No. 995
2201 Church Street,

DATED: March 13, 2017


The Walker Legal Group
16AB Church St.
2nd Floor
Christiansted, St. Croix
USVI 00820
Tel: 340-773-0801
Fax: 888-231-0801
kye@thewalkerlegalgroup.com

Blumberg No. 3208

EXHIBIT

1

NOTICE OF APPEARANCE

Page 2

Suite #16AB, 2nd Floor
Christiansted, St. Croix
U.S. Virgin Islands 00820-4611
Telephone: (340) 773-0601
Fax: (888) 231-0601
kve@thewalkerlegalgroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on, a true and correct copy of **NOTICE OF APPEARANCE** was served upon the following parties or their counsel as noted below:

VIA EMAIL AND HAND DELIVERY :

Joel H. Holt, Esq. (Bar # 6)
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street
Christiansted, St. Croix,
U.S. Virgin Islands, 00820
Tel: (340) 773-8709
Fax: (340) 773-8677
holtvi@aol.com

Carl J. Hartmann, III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, St. Croix,
U.S. Virgin Islands, 00820
carl@carlhartmann.com

And via email and U.S. Mail to the following:

Stefan B. Herpel, Esq. (V.I. Bar No. 1019)
Lisa Michelle Komives, Esq. (V.I. Bar No. 1171)
Counsels for Defendant, Fathi Yousuf
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. Virgin Islands, 00804
Tel: (340)774-4422
Telefax: (340)715-4400
sherpel@dtflaw.com
lkomives@dtflaw.com

BY: 

EXHIBIT 2

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

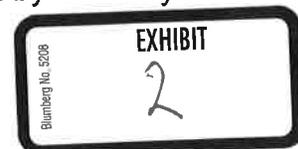
**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am counsel of record for the Plaintiffs and am familiar with the facts set forth herein.
2. In 2014, Isam Yousuf came to the Virgin Islands, meeting with various people trying to cash out a brokerage account here, which he had his lawyer, Nizar Dewood, call me about.
3. Attached hereto as **Exhibit A** is a declaration filed by Jamil Yousuf in another case pending before this Court, Case No.: 2016-SX-CV-65, in an effort to defeat jurisdiction and service on Manal Yousef, even though Manal Yousef herself did not file any such similar declaration in that case.
4. Attached hereto as **Exhibit B** is a sworn interrogatory request filed by Fathi Yusuf in another case in this Court, which contradicts the sworn statements in Jamil's declaration.
5. Manal Yousef has now filed sworn interrogatory responses (attached as **Exhibit C**) stating that she gave Jamil Yousuf a power of attorney in 2012 to put him in charge of the alleged \$4.5 million loan to Sixteen Plus and that he has been the one handling her affairs since then, including having the letter sent by the lawyer in St. Martin in 2013.



I declare under penalty of perjury that the foregoing is true and correct, executed on this
19th day of July, 2017.

Dated: July 19, 2017



JOEL H. HOLT

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.

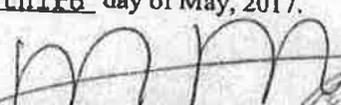
FURTHER AFFIANT SAYETH NOT.

DATED: May 3, 2017



JAMIL YOUSUF

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


Marlene Françoise Mingo

[NOTARY PUBLIC]
Commission Expires: 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.

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

<p>FATHI YUSUF,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>PETER'S FARM INVESTMENT CORPORATION, SIXTEEN PLUS CORPORATION, MOHAMMAD A. HAMED, WALEED M. HAMED, WAHEED M.HAMED, MUFEED M. HAMED, and HISHAM M. HAMED,</p> <p style="text-align: right;">Defendants.</p> <hr style="width: 80%; margin-left: 0;"/>	<p>)</p>	<p>CASE NO. ST-15-CV-344</p> <p>ACTION FOR DISSOLUTION AND OTHER RELIEF</p>
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PLAINTIFF'S SECOND SUPPLEMENTAL AND AMENDED RESPONSES TO DEFENDANT WALEED M. HAMED'S FIRST SET OF INTERROGATORIES

Plaintiff, Fathi Yusuf, through his attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provides its Second Supplemental and Amended Responses to Defendant Waleed M. Hamed's First Set of Interrogatories:

GENERAL OBJECTIONS

Plaintiff makes the following general objections to the Interrogatories. These general objections apply to all or so many of the Interrogatories that, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Interrogatory. The assertion of the same, similar, or additional objections in the individual responses to the Interrogatories, or the failure to assert any additional objections to a discovery request does not waive any of Plaintiff's objections as set forth below:



(Note: Correction page sent by Nizar DeWood on August 10, 2016 via email)

Fathi Yusuf (v. Peter's Farm Investment Corporation, et al.)
Case No. ST-15-CV-344
Plaintiff's First Supplemental Response to Defendant Waleed M. Hamed's Interrogatories
Page 9 of 11

5. Did Sixteen Plus ever borrow funds to help secure the purchase of any property it has owned in the Virgin Islands and if so, please state for each such loan:
- a) The name and location of the lender;
 - b) The property purchased with the loan proceeds;
 - c) The amount of the loan;
 - d) The date of the loan;
 - e) The date of all payments on the loan;
 - f) The current address and phone number of the lender;
 - g) The last date you had any communication with the lender; and
 - h) The current balance on the loan.

AMENDED AND SUPPLEMENTAL RESPONSE:

Yes. The name of the lender is Manal Yousef. The date of the loan was September 15, 1997, and the amount, \$4.5 million dollars. Three interest-only payments were made during the 1998-2000 period to Manal Yousef. I do not recall the last date I had any communication with her. Manal Yousef's current address to the best of my knowledge is 25 Gold Finch Road, Pointe Blanche, St. Martin. She is represented by counsel (Kye Walker, Esq.) in an illegitimate lawsuit that was filed by Sixteen Plus Corporation without my authority or approval, and without consulting with me or any other of the Yusuf shareholders or letting any of us know it would be filed. The lawsuit is pending in the Virgin Islands Superior Court (St. Croix Division), and is styled Sixteen Plus Corporation v. Manal Mohammad Yousef, case no. SX-16-CV-65. Because Manal Yousef is represented by counsel in the lawsuit, and because the lawsuit was brought at the behest of the Hamed shareholder interests in Sixteen Plus Corporation, counsel for any of the Hameds are barred from speaking directly to Manal Yousef. For that reason, Defendant objects to providing her telephone number. You and other attorneys acting for the Hameds are permitted to discuss this matter with her counsel, Attorney Walker, whose phone number is (340) 773-0601. The current principal balance on the loan is \$4.5 million, plus accrued interest. I also spoke to an agent of Manal Yousef named Isam Yousuf, shortly after the service of the lawsuit filed against Manal Yousef. I do not recall the exact date. He telephoned me to tell me about the lawsuit, which I knew nothing about. I told him that the lawsuit was filed without my knowledge or approval, and that it was wrong in claiming that the mortgage given by Sixteen Plus to Manal Yousef was invalid. I have had no conversations with him since that one.

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

FATHI YUSUF,

Plaintiff,

v.

PETER'S FARM INVESTMENT
CORPORATION, SIXTEEN PLUS
CORPORATION, MOHAMMAD A.
HAMED, WALEED M. HAMED,
WAHEED M. HAMED, MUFEED M.
HAMED, and HISHAM M. HAMED,

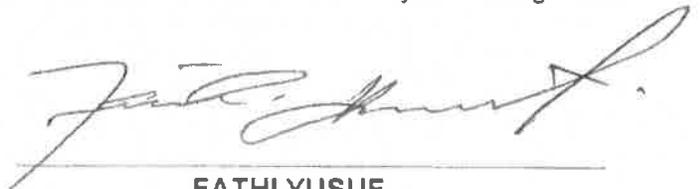
Defendants.

CASE NO. ST-15-CV-344

ACTION FOR DISSOLUTION
AND OTHER RELIEF

CERTIFICATION

I hereby swear and affirm that the factual portions of the Plaintiff's Second Supplemental and Amended Responses to Defendant Waleed M. Hamed's First Set of Interrogatories are true and correct to the best of my knowledge and belief.



FATHI YUSUF

SUBSCRIBED AND SWORN to, before me, this 9th day of August, 2016.



Notary Public

R:\DOCS\6254\10003\PLDG\16Q7596.DOCX

Rupertha A. Andrews
Notary Public
District of St. Croix, USVI
Commission # NP-115-15
Commission Expires October 21, 2019

HAMD633336

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

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

**MANAL MOHAMMAD YOUSEF'S RESPONSE TO
PLAINTIFF/COUNTERCLAIM DEFENDANT SIXTEEN PLUS'
FIRST SET OF INTERROGATORIES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MANAL MOHAMMAD YOUSEF**

The Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, through her undersigned attorney, James L. Hymes, III, hereby responds to Plaintiff/Counterclaim Defendant Sixteen Plus' First Set of Interrogatories as follows:

I. GENERAL OBJECTIONS

Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, incorporates the following general objections into each and every interrogatory response as set forth below, and further, by submitting her responses to Interrogatories, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can



Interrogatory 15:

Regarding any oral communications you have had with Jamil Yousef from 2009 to present that you can recall regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus, please state:

- a) The date and place of each such communication;
- b) The specifics, and if specifics are not recalled, the general nature or gist of each conversation;
- c) For each such communication, state where you were located when it occurred.

Response:

From 2009 to the present, I have not had any conversations with Jamil regarding the United Corporation. In July, 2012, I met him in Jordan. At that time I gave him a General Power of Attorney to be in charge of the loan which I made to the Sixteen Plus Corporation. Since that time we have spoken on the telephone many times regarding the fact that payments of interest and principal have not been made by the corporation on the loan, and what can and should be done to collect payment.

Interrogatory 16:

Regarding the Promissory Note attached as Exhibit 1, have you ever made a demand for payment? If so, please state when such demand was made. If not, please state why not.

Response:

My brother Isam made many personal requests on my behalf to the corporation for payment of interest and principal on the promissory note. At no time was the validity of the loan or the note denied. Excuses for nonpayment were only that the corporation had financial difficulties. More recently my nephew Jamil arranged for a letter to be sent by a lawyer in St. Maarten asking for payment.



Notary Public

IN WITNESS WHEREOF, I hereunto set my hand and official seal

On this, the _____ day of 2017, before me, the undersigned officer, personally appeared Manal Mohammad Youssef, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that she executed the same for the purpose therein contained.

ss

Manal Mohammad Youssef

Dated



information and belief

to being responses to interrogatories are true and correct to the best of my knowledge,

I hereby certify under penalty of perjury that the facts contained in each of the

VERIFICATION

EXHIBIT 3



Sixteen Plus Corporation
4 C & D Sion Fama .
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

Blumberg No. 5208

EXHIBIT

3

EXHIBIT 4

**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.