

# JOEL H. HOLT, ESQ. P.C.

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July 19, 2017

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**Re: *Hamed v Yusuf et al.* STX Civ No. 2016-SX-650**

Dear Attorney Hymes:

This letter and the attached unsigned motion are being sent to you pursuant to V.I.R. Civ. P. 11 because of the Rule 12 filing you submitted in *Hamed v Yusuf and Yousuf*, Case No. SX-16-CV-650. In this regard, this letter places you on notice that my client intends to file the attached motion for Rule 11 Sanctions, unless you take the appropriate steps to comply with the "safe harbor" provisions of Rule 11(c)(2) within 21 days from today.

The factual and legal basis for sending this Rule 11 letter is set forth in the attached draft pleadings, which are incorporated herein by reference. If you need the referenced attachment (Exhibit 1), please let me know.

If you have any questions, or do not understand anything, please give me a call.

Cordially,

  
Joel H. Holt  
JHH/jf  
Enclosure

**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**

**MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR RULE 11  
SANCTIONS AGAINST JAMES L. HYMES, III, ESQUIRE**

The Complaint in this case alleges certain claims against several defendants, including, Isam and Jamil Yousuf, who are both represented by James L. Hymes (“Attorney Hymes”).

The Plaintiff seeks Rule 11 sanctions against Attorney Hymes pursuant to V.I.R.Civ.P. 11 based on the Defendants’ Rule 12 Motion to Dismiss the Complaint for, among other things, lack of personal jurisdiction and improper service. The pleading was deemed filed on July 7, 2017, and was signed by Attorney Hymes. See **Exhibit 1**. For the reasons set forth herein, it is respectfully submitted that sanctions should be entered against him for filing this pleading in violation of the requirements of Rule 11.

**I. Rule 11 Standard**

Rule 11 authorizes this Court to enter sanctions against counsel under certain circumstances. Rule 11(b) provides in part as follows:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;

(5) that the applicable Virgin Islands law has been cited, including authority for and against the positions being advocated by the party.

In short, these sections require a reasonable inquiry into the facts before filing the document and require a party to cite all applicable Virgin Islands law. A violation of either subsection (b)(3) or (b)(5) triggers the sanction provisions of this rule. Regarding sanctions, Rule 11(c) (1) then provides as follows:

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11 has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Subsection 11(c)(4) then lists a series of sanctions a court might consider. As stated in *Hilmon Co. v. Hyatt Int'l, S.A.*, 138 F.R.D. 66, 69 (D.V.I. 1991):

"Rule 11 ... is intended to discourage pleadings that are 'frivolous, legally unreasonable, or without factual foundation....' " *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151,

157 (3d Cir.1986) (quoting *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir.1986)). “The standard for testing conduct under Rule 11 is reasonableness under the circumstances.” *Teamsters Local Union No. 430 v. Cement Express, Inc.*, 841 F.2d 66, 68 (3d Cir.1988). **It is an objective test with subjective good faith being insufficient to avoid sanctions.** *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 482 (3d Cir.1987). (Emphasis added).

See also, *M&T Mort. Corp. v White-Hamilton*, 49 F. Supp. 2d 802, 805 (D.V.I. 1999)

(The test for imposing Rule 11 sanctions is “reasonableness under the circumstances”).

Before Rule 11 sanctions can be sought, a party must comply with Rule (c)(2), giving the opposing party and his counsel 21 days to withdraw the offending pleading, which has been satisfied. See **Exhibit 2**.

## **II. Attorney Hymes’ Offending Rule 11 Conduct**

The Motion to Dismiss signed by Attorney Hymes violated Rule 11(b)(3) for the following reasons:

- 1) Attorney Hymes failed to notify the Court that the Defendants’ initial counsel had entered a general notice of appearance that waived the defenses raised in this motion.

Further, the Motion to Dismiss signed by Attorney Hymes violated Rule 11(b)(5) for the following reasons:

- 1) Attorney Hymes argued that this Court did not have personal jurisdiction over his client and that service was improper, but he failed to cite to this Court the applicable Virgin Islands law regarding the fact that a general appearance by counsel waives all of the affirmative defenses being raised in the motion he filed, as the Virgin Islands Supreme Court addressed this issue in *In re Najawicz*, 52 V.I. 311 (V.I. 2009), which Attorney Hymes did not cite.
- 2) Attorney Hymes argued that service in this case was improper, but he failed to cite to the Court the applicable Virgin Islands statute on point, 5 V.I.C. § 115, that provides in part that “A voluntary appearance of the defendant shall be the equivalent to personal service of the summons on him.”

- 3) Attorney Hymes argued that this Court did not have personal jurisdiction over his client, but he failed to cite to this Court the applicable Virgin Islands law regarding CICO claims which addresses personal jurisdiction in 14 V.I.C. § 607.

In short, before filing the Rule 12 Motion in this case, defense counsel was required to investigate the facts as well as to cite the Virgin Islands law applicable to the issues he was raising, which he failed to do. As such, sanctions are warranted for these multiple violations that have unnecessarily burdened the Court and counsel in having to deal with these violations.

### **III. CONCLUSION**

For the reasons set forth herein, it is respectfully requested that this Court enter appropriate sanctions pursuant to Rule 11 against Attorney Hymes for these clear violations of Rule 11.

**Dated:** \_\_\_\_\_, 2017

**Joel H. Holt, Esq. (Bar # 6)**  
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**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 \_\_\_\_\_, 2017, I served a copy of the foregoing by email, as agreed by the parties, as well as a copy hand delivered to James Hymes at the address below, on:

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