

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

HISHAM HAMED, derivatively, on behalf)
of **SIXTEEN PLUS CORPORATION**,)

Plaintiff,)

vs.)

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,
CICO RELIEF, EQUITABLE RELIEF
AND INJUNCTION

JURY TRIAL DEMANDED

DEFENDANT FATHI YUSUF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Fathi Yusuf ("Mr. Yusuf"), through undersigned counsel, hereby provides notice of the recent decision of *In re Rohn*, __ V.I. __, 2017 WL 3282901 (V.I. Aug. 1, 2017), where the Supreme Court of the Virgin Islands explicitly held that Federal Rule of Civil Procedure 11(c)—on which Plaintiff predicated his Motion for Rule 11 Sanctions ("Motion for Sanctions")—never applied in the Superior Court. Accordingly, Federal Rule of Civil Procedure 11(c) cannot be used to support an award of sanctions against Mr. Yusuf, or counsel, and Plaintiff's motion must be denied.

1. On February 9, 2017, in response to a Motion for Partial Summary Judgment filed by Plaintiff before discovery even commenced, Mr. Yusuf filed an opposition to the same pursuant to Federal Rule of Civil Procedure 56(d), which argued, among several other things,

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that discovery was needed before Mr. Yusuf could fully or substantively respond to the same (“Opposition”).

2. On March 14, 2017, as a result of the Opposition, Plaintiff filed a Motion for Rule 11 Sanctions against Mr. Yusuf and his counsel of record, Stefan B. Herpel, Esq. and Lisa Michelle Kömives, Esq., citing Federal Rule of Civil Procedure 11(c) as the legal basis of the request for sanctions. *See* Motion for Sanctions, p. 2.

3. However, the Supreme Court of the Virgin Islands in *In re: Rohn* held that Federal Rule of Civil Procedure 11(c) has never applied in Superior Court proceedings, explaining:

This Court has repeatedly observed that the incorporation of federal procedural rules by reference may constitute an unlawful delegation in violation of the Revised Organic Act of 1954. *See, e.g., Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563, 578–79 (V.I. 2015); *Percival v. People*, 62 V.I. 477, 486 n.1 (V.I. 2015). But even if this Court were to assume—without deciding—that a Superior Court rule may incorporate a federal procedural rule by reference, Superior Court Rule 29, by its own explicit terms, only incorporates Federal Rule 11 “as to form, signing and verification of pleadings and other papers.” It is not clear how this limited reference to Federal Rule 11 could be construed to incorporate the entirety of Federal Rule 11, including provisions that do not relate to form, signing, and verification of pleadings.

For similar reasons, Federal Rule 11(c) cannot be incorporated through Superior Court Rule 7. Because Superior Court Rule 7 provides that “[t]he practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by ... the Federal Rules of Civil Procedure,” when a Superior Court Rule incorporates only a portion of a federal rule, “[t]he only reasonable explanation for the omission ... is that the drafters of [the Superior Court Rule] intended to dispense with the previously incorporated federal rule.” *Corraspe v. People*, 53 V.I. 470, 482–83 (V.I. 2010). Significantly, because Superior Court Rule 29 states—in its entirety—that “Rules 10 and 11 of the Federal Rules of Civil Procedure as to form, signing and verification of pleadings and other papers shall apply to the Superior Court,” a holding that the sanctions provisions of Federal Rule 11 nevertheless apply to the Superior Court would render Superior Court Rule 29 wholly superfluous and without any meaning. *Corraspe*, 53 V.I. at 482 (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)).

In re Rohn, __ V.I. __, 2017 WL 3282901 at *2-3.

4. Since the Supreme Court of the Virgin Islands has now determined that Federal Rule of Civil Procedure 11(c) has never been applicable in the Superior Court of the Virgin Islands, it is plainly not a viable basis on which to request or award sanctions against Mr. Yusuf or his counsel¹.

5. Accordingly, Plaintiff's Motion for Sanctions should be summarily denied.

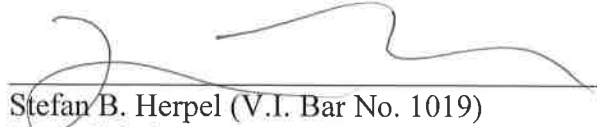
WHEREFORE, on the basis of the foregoing, Defendant Fathi Yusuf respectfully requests that the Court deny Plaintiff's Motion for Rule 11 Sanctions, and award Defendant all such other and further relief as the Court deems just and proper.

Respectfully Submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: August 9, 2017

By:



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¹ On March 31, 2017, the new Virgin Islands Rules of Civil Procedure went into effect in the Superior Court of the Virgin Islands, and Virgin Island Rule of Civil Procedure 11(c) is analogous to Federal Rule of Civil Procedure 11(c). However, the allegedly sanctionable conduct took place on February 9, 2017, and the Motion for Sanctions was filed on March 14, 2017, both prior to the enactment of the Virgin Islands Rules of Civil Procedure.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2017, that I served a true and correct copy of the foregoing, *DEFENDANT, FATHI YUSUF'S NOTICE OF SUPPLEMENTAL AUTHORITY*, which complies with the word or page limitations of Rule 6.1(e), via e-mail addressed to:

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