

Opposition to the motion on July 31, 2014 and Defendants filed their Reply on August 4, 2014. Accordingly, Defendants' motion is fully briefed and awaiting this Court's disposition.

3. On August 1, 2014, Hamed filed a document entitled "Notice of Intent to Serve Subpoena Duces Tecum" with a document entitled "Subpoena Duces Tecum (Records Only)" attached as Exhibit A to the "Notice," which is the same Subpoena attached as Exhibit A to this motion. Pursuant to the Subpoena, Hamed is purportedly obligating Seaside to produce, among other things, all documents pertaining to Seaside's interaction with Associated Grocers of Florida, Inc. from January 1, 2013 to date, all loans received by Seaside from January 1, 2013 to date, a list of all employees of Seaside from March 1, 2014 to date, and all bank statements of Seaside from January 1, 2013 to date.

ARGUMENT

A. THE SUBPOENA IS VOID SINCE COUNSEL FOR PLAINTIFF CLEARLY HAS NO AUTHORITY TO ISSUE IT.

The Subpoena falsely represents that the command to appear and produce documents is "pursuant to Rule 45 of the Federal Rules of Civil Procedure." Superior Court Rule 11(a) governs the form and issuance of a subpoena in this Court, not Fed. R. Civ. 45.¹ On July 20, 2011, the Virgin Islands Supreme Court made it crystal clear that Federal Rule of Civil Procedure 45 has no application in this Court. See Terrell v. Coral World, 55 V.I. 580, 590 (2011) ("Superior Court Rule 11 governs subpoenas in the Superior Court, and thus application of Federal Rule of Civil Procedure 45 would render Rule 11 'wholly superfluous . . .'). Indeed,

¹ This is not the first time Hamed has improperly issued subpoenas "pursuant to Rule 45." After Defendants filed a similar Motion To Quash Subpoenas And For Sanctions on March 14, 2014, Hamed promptly withdrew four improper subpoenas. Even if Fed. R. Civ. P. 45 did have some relevance to proceedings in this Court, which it does not, the Subpoena clearly fails to comply with that rule because, among other things, it does not correctly "set out the text of Rule 45(d) and (e)," as required by Fed. R. Civ. P. 45(a)(1)(A)(iv).

the Terrell Court rejected any notion that Fed. R. Civ. P. 45 could be treated as “supplementing” Superior Court Rule 11. Id. at n. 12.

Accordingly, since the Subpoena was neither issued nor in the form as required by Super. Ct. R. 11(a), it should be treated as a nullity and quashed.

B. THE SUBPOENA IMPOSES AN UNDUE BURDEN ON DEFENDANTS AND SEASIDE, A NON-PARTY, AND CONSTITUTES AN IMPROPER ATTEMPT TO CONDUCT DISCOVERY BEYOND THE COURT IMPOSED DEADLINE.

Super. Ct. R. 11(c) provides in relevant part: “The judge, on motion made promptly, may quash or modify the subpoena if compliance would be unreasonable or oppressive.” The Subpoena purportedly requires Seaside to produce all records concerning Seaside’s interaction with another non-party, Associated Grocers of Florida, Inc., as well as Seaside’s loans, bank statements, and employees. In his July 31, 2014 Opposition to the Emergency Motion To Further Extend Discovery Deadlines, Hamed argued that “[t]he failure to reach an agreement on any extension has resulted in fact discovery now being ended on July 11th” See Opposition at p. 3. Yet the very next day, Hamed issued the Subpoena as if the fact discovery deadline did not also apply to him. In this case, there is no question that by purportedly mandating Seaside to produce documents including sensitive financial and business information after the expiration of the fact discovery deadline, the Subpoena is patently “unreasonable and oppressive.”

Hamed now unilaterally seeks to extend fact discovery beyond the July 11, 2014 deadline currently in place pursuant to this Court’s Fourth Amended Scheduling Order. This unilateral effort is clearly improper because Hamed never sought or obtained leave of this Court to pursue late discovery and his attorney certainly did not seek any agreement from counsel for Defendants. Indeed, Hamed has filed an Opposition to the Emergency Motion to Further Extend

Hamed v. Yusuf, et al.
Motion to Quash Subpoena and for Sanctions
Civil No. SX-12-CV-370
Page 4

Discovery Deadlines claiming that fact discovery ended on July 11, 2014.

In similar cases, a party's failure to honor scheduling orders and, instead, unilaterally extend discovery has been rejected by Virgin Islands courts and other courts. See Giddings-Slaven v. MVM, Inc., 2008 U.S. Dist. LEXIS 95847 at *3 (D.V.I. 2008) (denying extension of time to conduct discovery because the movant did "not present any reason why she could not have obtained the discovery she now seeks during the almost two years this matter was pending prior to the close of discovery"); Unlimited Holdings, Inc. v. Bertram Yacht, Inc., 2008 U.S. Dist. LEXIS 82142 at *22-23 (D.V.I. 2008) (declining to extend discovery); United States v. Compaction Sys. Corp., 2000 U.S. Dist. LEXIS 14362 at *10 (D.N.J. July 11, 2000) ("Rule 45 subpoenas 'are encompassed within the definition of 'discovery,' as enunciated in Rule 26(a)(5) and, therefore, are subject to the same time constraints that apply to all of the other methods of formal discovery"); Leach v. Quality Health Servs., 162 F.R.D. 40, 42 (E.D. Pa. 1995) (same).

CONCLUSION

For all the foregoing reasons, Defendants respectfully request this Court to enter an order quashing the Subpoena, imposing appropriate sanctions for Hamed's gross violation of Superior Court Rule 11, and granting such further relief as is just and proper.

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

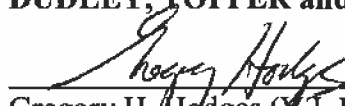
St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

Dated: August 13, 2014

By:

DUDLEY, TOPPER and FEUERZEIG, LLP


Gregory H. Hodges (V.I. Bar No. 174)

1000 Frederiksberg Gade - P.O. Box 756

St. Thomas, VI 00804

Telephone: (340) 715-4405

Telefax: (340) 715-4400

E-mail: ghodges@dtflaw.com

Hamed v. Yusuf, et al.
Motion to Quash Subpoena and for Sanctions
Civil No. SX-12-CV-370
Page 5

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2014, I caused the foregoing **MOTION TO QUASH SUBPOENA AND FOR SANCTIONS** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com



DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

R:\DOCS\6254\1\DRFTPLDG\15A0095.DOC

PLEASE TAKE NOTICE that pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are hereby commanded to appear at the **Law Office of Joel H. Holt, located at 2132 Company Street, Christiansted, VI 00820 on Thursday, August 14, 2014 at 10:00 a.m.** and to have with you at that time and place the following documents which can be sent by mail prior to said date, as follows:

- 1. Any and all invoices, statements, checks, deposits, wire transfer receipts or documentation, records of disbursements or loans, lines of credit and any other evidence of activity pertaining to Seaside Market and Deli's interaction with Associated Grocers of Florida, Inc. or any of its affiliates or subsidiaries from January 1, 2013 to the current date.**
- 2. Any and all correspondence between Seaside Market and Deli and any of its officers, employees, agents, attorneys, accountants or banks and Associated Grocers of Florida, Inc. or any of its affiliates or subsidiaries from January 1, 2013 to the current date.**
- 3. Any and all correspondence between United Corporation and any of its officers, employees, agents, attorneys, accountants or banks and Associated Grocers of Florida, Inc. or any of its affiliates or subsidiaries from January 1, 2013 to the current date.**
- 4. Any and all correspondence between Fathi Yusuf and any of his family members, their agents, attorneys, accountants or banks and Associated Grocers of Florida, Inc. or any of its affiliates or subsidiaries from January 1, 2013 to the current date.**
- 5. All loans received from any third party by Seaside Market and Deli from January 1, 2013 to the current date.**
- 6. A list of all employees of Seaside Market and Deli from March 1, 2014, to the present date.**
- 7. Copies of all bank statements of Seaside Market and Deli from January 1, 2013, to the present date.**

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by giving legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may

condition to preparation of the copies upon the payment in advance of the reasonable costs of preparation. **You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above.**

This subpoena is issued pursuant to Rule 45 of the Federal Rules of Civil Procedure. Pursuant to Rule 45(a)(1)D, you are hereby advised that Rule 45(c) and (d) provide as follows:

(c) Protection of Persons Subject to Subpoenas

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena


- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When the information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim

Dated: August 1, 2014



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

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
(340) 719-8941
carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2014, I served a copy of the foregoing by email, as agreed by the parties, on:

Nizar A. DeWood

The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
dewoodlaw@gmail.com

Gregory H. Hodges

Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST.Thomas,VI 00802
ghodges@dtflaw.com

Mark W. Eckard

Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B. C. Moorhead

1132 King Street
Christiansted, VI 00820
email : jeffreym1aw@yahoo.com