

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

FATHI YUSUF,)	
)	
Plaintiff,)	CASE NO. ST-15-CV-344
)	
v.)	ACTION FOR DISSOLUTION
)	AND OTHER RELIEF
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.)	
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**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION
TO TRANSFER THIS ACTION TO DIVISION OF ST. CROIX**

Defendants ask that this case be transferred to the St. Croix Division. They cite no cases whatever to support their argument. A careful consideration of the factors for deciding those motions shows that Defendants have not carried their burden of showing that the private and public interest factors weigh in favor of transfer of this matter to St. Croix. Accordingly, the Motion should be denied.

There is a dearth of Superior Court case law (and no Virgin Islands Supreme Court case law) addressing convenience-based motions to transfer venue from one division of the Superior Court to another.¹ There are, however, numerous federal

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¹Most of the local court authority regarding venue transfer, including Virgin Islands Supreme Court authority, deals with venue transfer motions in criminal cases that are predicated on the contention that adverse publicity requires a venue change from one division to another. See, e.g., *Melendez v. People of the Virgin Islands*, 2012 V.I. Supreme LEXIS 8, *38 (V.I. 2012). The venue statute in the Virgin Islands is codified at 4 V.I.C. § 78. It provides for transfer of cases for the convenience of witnesses and

district court cases in the Virgin Islands that discuss the standards for deciding such motions, and those cases lay out general concepts that should apply to venue transfer motions filed in the Superior Court. *Borghi v. Purple Group, Inc.*, 2009 U.S. Dist. LEXIS 42101 (D.V.I. 2009) is illustrative of the federal cases. As the Court stated in *Borghi*, a key part of the analysis is that there is a “strong presumption” in favor of the convenience of the plaintiff’s chosen forum. *Id.* at *9. As such, “[t]he burden is on the moving party to establish that a balancing of proper interests weigh in favor of the transfer, and unless the balance of the convenience of the parties is strongly in favor of defendant, the plaintiff’s choice of forum should prevail.” *Id.* at *9. Indeed, “[i]t is black letter law that a plaintiff’s choice of a proper forum is a paramount consideration of a transfer request, and that choice should not be lightly disturbed.” *Id.* at *10 (internal quotation marks and citation omitted).

The factors relevant to the venue transfer analysis are categorized either as private interest or public interest factors. The private interest factors include: 1) Plaintiff’s forum preference; 2) the defendant’s preference; 3) whether the claim arose elsewhere; 4) the convenience of the parties as indicated by their relative physical and financial condition; 5) the convenience of the witnesses and 6) the location of books and records, but only to the extent that the files could not be produced in the forum where the case was brought. *See Borghi*, *supra* at *8-*9.

Defendants cite a number of facts which they say support venue transfer. They note that “Plaintiff resides on St. Croix,” and hence that the St. Thomas forum is inconvenient to him. But since Plaintiff wants to litigate in St. Thomas, his choice is “paramount” and cannot be overridden by his place of residence. Defendants next parties, and in the interests of justice, but only with the “approval of the presiding judge” of the court.

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assert that both corporations named in the Complaint (Peter's Farm Investment Corporation and Sixteen Plus Corporation) maintain their offices in St. Croix at the locations shown in the articles of incorporation, and keep their corporate records at those office locations. (Defendants' Brief at 1). In fact, there is no day-to-day business conducted by the the two companies, and Defendants are mistaken to imply that either has a dedicated office location where business is conducted. The office address shown in the Peter's Farm articles of incorporation (5 King Street, Christiansted) is not a location where the business of Peter's Farm is conducted. And notwithstanding the address shown in the articles for Sixteen Plus (which is the address for the United Shopping Center in St. Croix, where the Plaza Extra East store is located), there was no office there dedicated for use by Sixteen Plus. On those occasions when business had to be conducted, the practice in the past was that Plaintiff, Fathi Yusuf, and (usually) Waleed Hamed, would talk in person or by telephone whichever Plaza Extra store either of them happened to be at on that day. The records of the two businesses are minimal. Copies of all or most of these records are in the possession of Plaintiff's attorney, Dudley, Topper and Feuerzeig, LLP, in their St. Thomas offices. (See Declaration of Fathi Yusuf, attached hereto, on all of these points). Insofar as Dudley, Topper and Feuerzeig is missing any records, "there is nothing . . . to suggest that [the corporations' respective] book and records could not be copied and transferred to St. Thomas." *Borgh*, 2009 U.S. Dist. LEXIS 42101 at *13.

With regard to convenience of the parties, St. Thomas and St. Croix are hardly "distant locations," and "[l]itigating the matter in St. Thomas simply does not pose the same sort of inconvenience as litigating the matter in a forum outside of the territory." *Borgh*, *supra*, at *11. Defendants note that "four of the five named [individual]

defendants reside on St. Croix.” (Defendants’ Brief at 1). Waheed Hamed resides in St. Thomas, as alleged in the Complaint. But Waleed Hamed, who is Mohammad Hamed’s designated agent in the partnership litigation in St. Croix, has important business interests in St. Thomas. He now owns the Plaza Extra store in St. Thomas as well as a grocery store on the East End known as “Moe’s.” He is frequently in St. Thomas to attend to this business interests, and will not be inconvenienced by having this litigation proceed in St. Thomas. Defendants also point out that Mohammad Hamed “is in ill health,” but his ailments are not described in Waleed Hamed’s affidavit. If he needs to give a deposition, or attend a mediation, and his health is a genuine issue, then arrangements can be made to hold the mediation in St. Croix and take his deposition there.²

Next, Defendants point out that Peter’s Farm has significant landholdings on both St. Thomas and St. Croix. They argue that the St. Croix tract is larger in acreage than the St. Thomas tract, but this does not change the venue analysis. All that matters for venue purposes is that Peter’s Farm and for Sixteen Plus each have some landholdings on St. Thomas. Defendants’ suggestion that the St. Croix division is better suited to oversee the sale of corporate real estate holdings in a dissolution, because the holdings in St. Croix are larger in size, is unpersuasive. The Superior Court in St. Croix that is presiding over the dissolution and wind up of the Plaza Extra stores oversaw the disposition of both the St. Thomas and St. Croix stores. This Court is equally capable of overseeing the sale of land regardless of whether the land is located on St. Croix or St. Thomas.

²Defendants do not describe any other party or witness who would be inconvenienced in any material way by having to come to St. Thomas.

Finally, Defendants argue that the existence of two lawsuits involving the Hameds and Yusufs in St. Croix is another factor militating in favor of transfer. But it is also the case that a Yusuf-owned corporation, United Corporation, has been litigating a claim against Waheed Hamed in the St. Thomas Division of the Superior Court that is related to the Plaza Extra supermarkets once owned by the Yusuf-Hamed partnership.³ The fact that some lawsuits involving disputes between the Hameds and the Yusufs have been filed in St. Thomas, and some, in St. Croix does not tilt the scales in either direction. If anything, having this Yusuf-Hamed case proceed in the St. Thomas and St. John Division makes more sense administratively, because there is no reason to burden a single division with all commercial disputes between these two parties, especially since they involve business interests in both islands.

The “primary public interest factors” in the venue transfer analysis are “the choice of law to be applied and the relationship of the courts and jurors to the case.” *Borghi, supra*, 2009 U.S. Dist. LEXIS 42101, at *13. The choice of law factor simply does not apply to a “transfer . . . to another Division within the U.S. Virgin Islands.” Moreover, “[i]n light of both divisions’ strong local interests in litigating this matter, . . . [neither] division has a stronger stake in the just and fair resolution of this case than the other.” *Id.* at *15. For that reason, this is not a situation where jury duty would be imposed on citizens in cases with only a marginal connection to the jurisdiction.⁴ *See id.* at *15.

³That case is *United Corporation v. Waheed Hamed*, STT-13-CV-101. It was dismissed in 2014, but is currently on appeal to the Virgin Islands Supreme Court and is awaiting decision. The partnership that owned the three Plaza Extra supermarkets in St. Croix and St. Thomas is being wound up in *Hamed v. Yusuf, et al*, STX-13-CV-370.

⁴Moreover, this case seeks equitable relief and, as such, the case will not be tried before a jury.

In short, Defendants have not even come close to the kind of showing that must be made to overcome the presumption in favor of the Plaintiff's choice of forum.

CONCLUSION AND RELIEF REQUESTED


For all of the foregoing reasons, Plaintiff respectfully requests that this Honorable Court deny the Defendants' motion to transfer the venue of this case to the St. Croix Division.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: October 2, 2015

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of October, 2015, a true and extract copy of the foregoing **PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER THIS ACTION TO DIVISION OF ST. CROIX** was served by email, as agreed by the parties.

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A handwritten signature in blue ink, reading "Stef B. Heipel", is written over a horizontal line.

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HAMED, and HISHAM M. HAMED,)	
)	
Defendants.)	
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DECLARATION OF FATHI YUSUF

I, Fathi Yusuf, pursuant to 28 U.S.C. §1746, and Super. Ct. R. 18, under penalty of perjury, hereby state as follows:

1. I am a resident of St. Croix, having lived here since 1960. Over the years, I have spent a great deal of time in St. Thomas because of business interests there, including corporate-owned real estate in St. Thomas and my interest in the Plaza Extra-Tutu Park store, which opened in 1993. I am a 50% shareholder of Peters' Farm Investment Corporation ("Peter's Farm"), with Mohammad Hamed being the other 50% shareholder. My wife, four of my sons, and I together own 50% of the shares of stock Sixteen Plus Corporation ("Sixteen Plus"). Mohammad Hamed and his sons together own the other 50% of shares of stock of Sixteen Plus. The business of both companies is investing in real estate in St. Thomas and St. Croix.

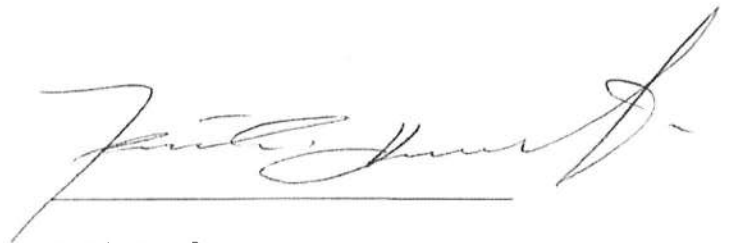
2. My preference is to litigate this case in the St. Thomas and St. John Division. The real estate owned by the two corporations in St. Thomas is more valuable on a square foot basis

than the holdings in St. Croix, and is more marketable, and my attorneys at Dudley, Topper and Feuerzeig are based in St. Thomas, and in a better position to work with a receiver or any special master the Court may appoint to market and dispose of those assets.

3. The "5 King Street" address in Christiansted that is shown in the articles of incorporation for Peter's Farm is apparently the former address of an attorney that I once used, and is not an address where business of Peter's Farm was actually conducted. The Scion Farm address shown in the articles of incorporation for Sixteen Plus is the address for United Shopping Center, where the Plaza Extra East store was (and is) located. There was never a need for day-to-day conduct of the business of Peter's Farm and Sixteen Plus, and hence no need for a dedicated office, with staff. On the occasions when business of either company needed to be conducted, usually by Waleed Hamed and me, it was done either in person or by phone at whatever St. Thomas or St. Croix Plaza Extra store either of us happened to be at that day.

4. The records of both corporations are minimal, and any that are not already in the possession of my attorneys at the Dudley, Topper and Feuerzeig law firm can easily be delivered by me to St. Thomas.

Date: 10-2-2015

A handwritten signature in black ink, appearing to read "Fathi Yusuf", written over a horizontal line.

Fathi Yusuf