

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

MOHAMMAD HAMED , by his)	CIVIL NO. SX-12-CV-370
authorized agent WALEED HAMED ,)	
)	ACTION FOR DAMAGES,
Plaintiff/Counterclaim Defendant,)	INJUNCTIVE RELIEF
)	AND DECLARATORY RELIEF
vs.)	
)	JURY TRIAL DEMANDED
FATHI YUSUF and UNITED CORPORATION,))	
)	
Defendants/Counterclaimants,)	
)	
vs.)	
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEEED HAMED, HISHAM HAMED, and)	
PLESSSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants.)	
<hr/>)	
UNITED CORPORATION,)	CIVIL NO. ST-13-CV-0000152
)	
Plaintiff,)	
)	Action for Damages
v.)	
)	JURY TRIAL DEMANDED
WADDA CHARRIEZ,)	
)	
Defendant.)	
<hr/>)	

REPLY TO OPPOSITION TO MOTION TO CONSOLIDATE CASES

Fathi Yusuf (“Yusuf”), as the Liquidating Partner of the Plaza Extra Partnership, respectfully submits this Reply to “Wadda Charriez’ Opposition to Plaintiff United’s Motion to Consolidate Her Case with Mohammad Hamed’s Case, SX-12-CV-370” filed in the captioned cases on March 30, 2016 (Case 370¹) and March 30, 2016 (Case 152) (the “Opposition”). It is noteworthy that the Opposition does not dispute a single allegation or representation set forth in

¹ All capitalized terms not otherwise defined in this Reply shall have the meaning provided for in Yusuf’s Motion to Consolidate Cases filed on March 17, 2016 (the “Motion”).

the Motion including the statement that “all the claims asserted in Case 152 may be treated as claims for resolution in the liquidation process of the Partnership pursuant to the Plan adopted in Case 370.”

On May 3, 2013, United filed a complaint against Wadda Charriez (“Wadda”) alleging that she falsified her work hours as an employee of the Plaza Extra Stores and thereby fraudulently obtained money from United.² The complaint sought damages from Wadda for, among other things, fraud, breach of fiduciary duties, and conversion. Thereafter, Wadda filed a counterclaim against United and a third-party complaint against Yusuf for intentional infliction of emotional distress, tortious interference with contract, civil extortion, civil conspiracy, and defamation.

Wadda has myopically fixated on the fact that after Case 152 was filed, Yusuf conceded the existence of a Partnership with Mohammad Hamed and, pursuant to a summary judgment entered in Case 370 on November 7, 2014, the Court declared that a Partnership was formed in 1986 by the oral agreement between Hamed and Yusuf for the ownership and operation of the Plaza Extra Stores, with each partner having a 50% ownership interest in all of the Partnership assets and profits, and a 50% obligation as to all losses and liabilities.

The Supreme Court gave short shrift to the argument of Waheed Hamed (“Waheed”) “asserting that United lacks standing to bring this action in the first place because it never had an ownership interest in Plaza Extra.” *United Corporation v. Hamed*, 2016 V.I. Supreme LEXIS 1, at *4 (Jan. 12, 2016). Of course, this is the same argument Wadda is now reserving in

² Oddly, in the caption and at page two of her Opposition, Wadda incorrectly represents that she is the plaintiff in Case 152.

the motion for summary judgment attached as an exhibit to her Opposition. The Supreme Court roundly criticized Waheed for making this argument:

However, Hamed cites none of this controlling authority [cited in the preceding paragraph] in making his standing argument, despite being required to do so under this Court's rules. V.I.S.C.T.R. 15(b) (“[I]n accordance with ethical standards, any attorney who . . . does not present otherwise controlling contrary law, will be subject to sanctions as the Court deems appropriate.”); *Hamed v. Hamed*, S.Ct. Civ. No. 2014-0008, _____ D.I. ____, 2015 V.I. Supreme LEXIS 21, at * 5 n. 7 (V.I. July 20, 2015); *Percival v. People*, 62 V.I. 477, 491 (V.I. 2015). And despite the fact that we denied the motion to dismiss on the ground that standing is not a jurisdictional doctrine in the Virgin Islands, Hamed reasserted his standing argument at oral arguments before this Court.

We, therefore, take this opportunity to reaffirm that “standing” – as that concept is understood in federal constitutional law – does not exist in any form in the Virgin Islands Courts.

Id. at * 7-8.

Wadda claims that Case 152 is already subject to a dispositive motion for summary judgment, attached as an exhibit to her Opposition, “in which the following issues are undisputed:

1. United admitted that never has been the owner of the Plaza Extra Stores.³
2. United admitted that a partnership between Hamed and Yusuf existed.
3. Thus, the only real party in interest is Fathi Yusuf – already a party here.
4. Thus, Yusuf's claims are already before this Court without consolidation.”

Opposition at p. 2.

³ Neither the Opposition nor the motions for summary judgment attached as exhibits bother to point to any such admission.

Although Wadda may have attached copies of motions for summary judgment as exhibits to her Opposition, those motions are clearly noncompliant with LRCi 56.1(a)(1) in that they are devoid of a supporting brief, affidavits, and a statement of material facts about which the movant contends there is no genuine issue. Since Wadda did not include the required separate statement of material facts, she also failed to comply with the requirement that she “affix to the statement copies of the precise portions of the record relied upon as evidence of each material fact.” *See* LRCi. 56.1(a)(1). Even if Wadda’s summary judgment motion was compliant with LRCi. 56.1, it simply raises the same lack of standing argument already rejected by the trial court in *United Corporation v. Waheed Hamed*, Civil No. ST-13-CV-0000101, and twice rejected by the Supreme Court. Clearly, this half baked motion attached as an exhibit to the Opposition provides no impediment to consolidation.

While it is true that Wadda is not a party to Case 370, she has been intimately involved in it from the outset. As she pointed out in her counterclaim and third-party complaint filed in Case 152, she testified at the preliminary injunction hearing in Case 370 on January 25, 2013. Significantly, she is represented by Joel H. Holt, who has been lead counsel to the plaintiff in Case 370 from its inception. Although she may not have participated directly in the discovery and limited depositions taken to date in Case 370, her attorney has certainly been involved in all such discovery. Wadda points out that her counterclaims sound in tort and are not “commercial.” To the extent this distinction has any significance, and Wadda has not seen fit to explain why it should, there is no doubt that her counterclaims arise out of and relate to the underlying claim that Yusuf submits should be addressed as part of the Partnership accounting, namely, that she effectively stole from the Partnership by falsifying her time. Finally, the fact

that Wadda, like Waleed and Waheed, chose to file a completely unsupported motion for summary judgment based on the failed argument that United lacks standing is inconsequential to the issue of consolidation.

United's claims against Wadda in Case 152 were obviously asserted before any concession or determination regarding the Partnership's ownership of the Plaza Extra Stores. The real party in interest now is the Partnership from which Wadda is alleged to have misappropriated funds by falsifying her hours worked. Yusuf, as the Liquidating Partner of the Partnership "with the exclusive right and obligation to wind-up the Partnership pursuant to this Plan and the provisions of the V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master," has determined that the Partnership's "claims asserted in Case 152 may be treated as claims for resolution in the liquidation process of the Partnership pursuant to the Plan adopted in Case 370." Motion at ¶ 5. Nothing Wadda has presented to this Court in the Opposition or the exhibits to the Opposition establishes otherwise. Since Case 370 and Case 152 clearly "involve a common question of law or fact," *see* Fed. R. Civ. P. 42(a), these cases are unquestionably suited for consolidation.

For all of the foregoing reasons, as well as the reasons set forth in the Motion, Yusuf respectfully requests this Court to consolidate Case 152 with Case 370 for final disposition.

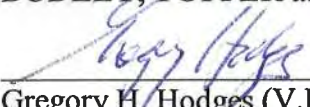
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Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: April 15, 2016

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016, I caused the foregoing **Reply To Opposition To Motion To Consolidate Cases** to be served upon the following via e-mail:

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