

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

<b>UNITED CORPORATION,</b>	)	CASE NO. 13-CV-03
	)	
<i>Plaintiff,</i>	)	
	)	
V.	)	ACTION FOR DAMAGES
	)	
<b>WALEED HAMED,</b>	)	
	)	
<i>Defendant</i>	)	
_____	)	

**PLAINTIFF’S RESPONSE TO DEFENDANT  
WALEED HAMED’S MOTION FOR SUMMARY  
JUDGEMENT**

**INTRODUCTION**

Plaintiff United Corporation (“Plaintiff” or “United”), by counsel, respectfully files its Response<sup>1</sup> to Defendant Waleed Hamed’s (“Defendant” or “Hamed”) Motion for Summary Judgment dated March 23, 2016. Defendant’s summary judgment motion should be denied because 1) it fails to comply with LRCi 56.1, 2) because the argument that United has no “standing” is similar to an argument presented to and twice rejected by the Virgin Islands Supreme Court in *United v. Wabeed Hamed*,<sup>2</sup> and 3) because even if United is deemed to not have “standing,” the appropriate course is to replace United by substituting Fathi Yusuf (the court appointed liquidating partner) as the real party in interest pursuant to Fed. R. Civ. P 17(a)(3).

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<sup>1</sup> Defendant’s Motion was filed on March 23, 2016, and served by email. Because Plaintiff did not receive that email, and became aware of the Motion on April 6, 2016. The parties stipulated to a May 2, 2016 extension date for Plaintiff to file its Response.

<sup>2</sup> See *United Corporation v. Hamed*, 2016 V.I. Supreme LEXIS 1, at \* 7-8 (Jan. 12, 2016).

## **DISCUSSION**

### **A. Defendant Hamed's Motion Fails To Comply With LRCi 56.1**

LRCi 56.1(a)(1) provides:

Each summary judgment motion shall be accompanied by a brief, affidavits and/or other supporting documents, including a separate statement of the material facts about which the movant contends there is no genuine issue. Each fact paragraph shall be serially numbered and shall be supported by specific citation to the record. The movant shall affix to the statement copies of the precise portions of the record relied upon as evidence of each material fact.

Clearly, Defendant Hamed failed to comply with the rule since he submitted no affidavits or separate statement of the material facts about which he contends there is no genuine issue. Defendant's motion failed to advise the court and Plaintiff of Defendant's version of the undisputed facts. Accordingly, Defendant's Motion must be denied for failing to comply with LRCi 56.1.

### **B. United has Standing**

Defendant's entire Motion is predicated on the single assertion that United has no standing to represent the interests of the Plaza Extra Supermarkets because Fathi Yusuf conceded "partnership" with Mohammed Hamed to split profits. However, Fathi Yusuf is the Court appointed liquidating partner in *Hamed v. Yusuf* (SX-12-CV-370), and Yusuf could replace United as the Plaintiff to prosecute this matter on behalf of the partnership. It should be noted that Defendant's brother Waheed Hamed made an identical argument before the Virgin Islands Supreme Court in *United Corporation v. Waheed Hamed*. In that case, Waheed sought to dismiss the appeal on grounds that Fathi Yusuf conceded a partnership with Mohammed Hamed, and therefore United lacked standing. The Virgin Islands Supreme

Court disagreed, and roundly criticized Waheed Hamed for making the same” standing” 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.

2016 V.I. Supreme LEXIS 1, at \* 7-8.

Fed. R. Civ. P. 17(a)(3) states, in relevant part, “[t]he **court may not dismiss an action** for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join or be substituted into the action.” (emphasis supplied). Defendant concedes that the party with an ownership interest in the business, i.e., the partnership, would have standing. Currently, the partnership is being liquidated and wound up by Fathi Yusuf as the liquidating partner in a separate Superior Court case (*Yusuf v. Hamed*, SX-12-CV-370). Assuming that this Court concludes that United lacks standing, the Court can simply order the substitution of Yusuf as the real party in interest in his capacity as liquidating partner.


## CONCLUSION

Defendant Hamed’s summary judgment motion should be denied first because it fails to comply with LRCi 56.1, and second because United has standing to sue Defendant as his

previous employer for the relevant period pleaded in this matter. Finally, even if this Court were to excuse Defendant's inexcusable failure to comply with LRCi 56.1, and even if the Court deems United is no longer the party in interest, the proper course is to substitute Fathi Yusuf in lieu of United pursuant to Fed. R. Civ. P. 17(a)(3).

**Dated:** May 2, 2016

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2016 day, I served a copy of the foregoing Response to be served by email, as agreed by the parties, on:

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