

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

UNITED CORPORATION,)	CIVIL NO. SX-13-CV-152
)	
<i>Plaintiff,</i>)	
)	ACTION FOR DAMAGES
V.)	
)	
WADDA CHARRIEZ,)	
)	
<i>Defendant</i>)	
_____)	

**PLAINTIFF’S RESPONSE TO DEFENDANT
CHARRIEZ’S MOTION FOR SUMMARY JUDGEMENT**

INTRODUCTION

Plaintiff United Corporation (“Plaintiff” or “United”), by counsel, respectfully files its Response¹ to Defendant Wadda Charriez’s (“Defendant” or “Charriez”) 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*,² 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).

Last but not least, the Honorable Douglas Brady, in *Hamed v. Yusuf* (12-cv-370) expressly rejected Defendant’s previous attempt to enjoin United from prosecuting this litigation, and noted that any recovery in this suit would benefit the partnership.

¹ 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.

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

DISCUSSION

A. Defendant'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 failed to comply with the rule since she submitted no affidavits or separate statement of the material facts about which she contends there is no genuine issue. Thus, Defendant's motion cannot possibly 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.

i. Defendant Charriez's "Lack of Standing" Argument is Similar to One Previously Rejected by the Virgin Islands Supreme Court In A Related Case.

Defendant's entire Motion is predicated upon the single suggestion that United has no "standing" to continue this suit because United "conceded in judicial pleadings filed in another case that Fathi Yusuf and Mohammad Hamed were the only partners, and not United." Defendant cites the summary judgment entered by Judge Brady on the issue of partnership. Defendant's "lack of standing" argument is without merit, as the trial court found in *United Corporation v. Waheed Hamed*, Civil NO. ST-13-CV-101, and the Supreme Court twice found on appeal. Indeed, the Supreme Court 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.

United employed Defendant Charriez at all times stated in this complaint. In fact, for the last 31 years, United operated the partnership's three Plaza Extra Supermarket stores. Not a single payroll check was ever issued by a “Partnership” to Defendant Charriez. Only United issued checks to all employees, including Defendant Charriez. Defendant did not submit her false hours to a “partnership.” Instead, Defendant submitted false hours to United, and obtained payment from United. Thus, even if United is deemed procedurally no longer a party in interest because of Fathi Yusuf's concession, the correct course is to replace United with Fathi Yusuf as the court appointed liquidating partner of the partnership.

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 would

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'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 her 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:

Hon. Edgar Ross, Special Master
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