

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

FATHI YUSUF,

Plaintiff,

v.

PETER'S FARM INVESTMENT  
CORPORATION, SIXTEEN PLUS  
CORPORATION, MOHAMMAD A.  
HAMED, WALEED M. HAMED,  
WAHEED M. HAMED, MUFEED M.  
HAMED, AND HISHAM HAMED,

Defendants,

Case No.: 2015-ST-CV-344

**ACTION FOR DISSOLUTION  
AND OTHER RELIEF**

**JURY TRIAL DEMANDED**

**MOTION TO COMPEL DISCOVERY AND MEMORANDUM IN SUPPORT THEREOF**

Defendants hereby move to compel discovery in this case regarding one issue that the parties could not resolve. Attached is the Rule 37.2 stipulation confirming the parties have met and conferred on this item without reaching a resolution on it.

Defendants sent an interrogatory #5 requesting the name, address and phone number of any party who claimed to hold a mortgage against any of the properties involved in this dissolution proceeding.<sup>1</sup> The Plaintiff provided just the name and last known address of one such person, Manal Yousef who allegedly resides in St. Martin, regarding an alleged mortgage involving real property owned by Sixteen Plus, but objected to producing the phone number for the following reason (see **Exhibit 1**):

2. I stand by my **objection to providing a phone number for Manal Yousef**, and rely on what I stated in the objection and the decision in Nathaniel v. American Airlines, 2008 U.S. Dist. LEXIS 95336 (D. V.I. 2008). (Emphasis added.)

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<sup>1</sup> Aside from the fact that the discovery request sought this phone number, it should be noted that Rule 26 (a) also requires the production of such information.

It is respectfully submitted that this objection is without merit, so that the Plaintiff should be compelled to produce this information.

In this regard, the Plaintiff's reliance on *Nathaniel v. American Airlines*, 2008 WL 5046848 (D.V.I. 2008) is misplaced. In that case, the defendant argued that plaintiff was prohibited from contacting its **employees** identified in the defendant's initial disclosures for a very limited reason, citing Model Rule of Professional Conduct ("MRPC") 4.2, because the statements of the employees might be imputed to the defendant for the purposes of determining liability against it.

That case is easily distinguishable for multiple reasons. First, that case dealt with the very limited exception for providing contact information for certain managerial employees. However, **Manal Yousef is not an employee of the Plaintiff**. Indeed, the Plaintiff makes no such claim of her being his employee, agent or having any other such relationship.

Second, Manal Yousef is an alleged mortgage holder of certain real property owned by Sixteen Plus, **whose statements therefore cannot be used against the Plaintiff**, who is trying to dissolve Sixteen Plus.

Third, her contact information is not being sought to impute liability against the Plaintiff, but to determine if certain property that may be subject to a final dissolution order has any valid liens. Thus seeking this information is clearly "discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."

Indeed, in the case upon which *Nathaniel* relies, *Mendez v. Hovensa LLC*, 49 V.I. 849, 2008 WL 906768 (DVI 2008), the District Court wrote a much more extensive

opinion, explaining why neither MRPC 4.2 or any other rule of law prohibits contacting employees and agents of opposing parties in most cases. In fact, as that Court noted, there are many reasons for requiring this information to be produced, as required by Rule 26, so as to allow an opposing party access to addresses and phone numbers of all potential witnesses. As the Court stated in *Mendez*:

Failure to permit *ex parte* communication with the employees of corporate adversaries “closes off avenues of informal discovery of information that may serve both the litigants and the entire justice system by uncovering relevant facts.” *Niesig v. Team I*, 558 N.E.2d 1030, 1034 (N.Y.1990). Given the potential impossibility of substantiating a claim against the corporation without the assistance of its employees, denial of informal access to such employees might preclude adequate investigation of a claim. Confidential interviews with witnesses are necessary “to ascertain what, if any, information the witness may have relevant to his theory of the case, and to explore the witness’ knowledge, memory and opinion.” *Id.* at 1034 (quotation omitted).

Finally, depositions are expensive. As the court noted in *Chancellor v. Boeing Co.*, 678 F.Supp. 250, 252 (D.Kan.1998), “formal discovery of a large number of potential witnesses may well frustrate the right of an individual plaintiff with limited resources to a fair trial and deter other litigants from pursuing their legal remedies.” (quotation omitted). Thus, “[t]he broader the definition of ‘party’ in the interests of fairness to the corporation, the greater the cost in terms of foreclosing vital informal access to facts.” *Id.* at 1033.

Hovensa has produced no evidence to show that Hodge had either express authority or implied authority to obligate Hovensa with respect to any matter. Hodge’s statements concerning the daily logs and the incident report practice are not binding on Hovensa. They may be refuted. Hovensa may present evidence to contradict Hodge’s statements. Indeed, his job title and status show that he did not have sufficient authority to make any binding admissions. Therefore, Hodge cannot be deemed to be represented by Hovensa’s counsel as an employee with authority to obligate Hovensa.

*Id.* at 867-68, \*\*9-10. In short, a party should be permitted to interview an opposing party’s employee or agent who is not a managerial employee without the need to having to depose the witness.

In summary, there is no authority in *Nathaniel* that allows the Plaintiff to withhold the phone number of Manal Yousef. To the contrary, there are a plethora of reasons for requiring this information to be produced, particularly since the witness is allegedly in St. Martin. Thus, for the reasons set forth herein, it is respectfully submitted that this Court should compel the Plaintiff to produce this phone number.

**Dated:** August 16, 2016



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*Counsel for Defendants*  
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*Co-Counsel for Defendants*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com

#### CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2016 a true and accurate copy of the foregoing was served by email, as agreed by the parties, on:

**Gregory Hodges**  
**Stefan B. Herpel**  
Dudley, Topper and Feuerzeig  
1000 Frederiksberg Gade – Box 756  
St. Thomas, VI 00804

**Nizar A. DeWood**  
The Dewood Law Firm  
Eastern Suburb, Suite 101  
Christiansted, VI 00820



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**From:** Stefan B. Herpel <sherpel@dtflaw.com>  
**To:** Joel Holt <holtvi@aol.com>  
**Cc:** nizar <nizar@dewood-law.com>; carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>  
**Subject:** RE: Supplemental Discovery Responses  
**Date:** Fri, Aug 5, 2016 4:09 pm

Joel,

I am on vacation through part of next week. Here are my responses to your numbered paragraphs:

1. I will supplement with the nature of the conversation with the agent.

2. I stand by my objection to providing a phone number for Manal Yousef, and rely on what I stated in the objection and the decision in Nathaniel v. American Airlines, 2008 U.S. Dist. LEXIS 95336 (D. V.I. 2008).



3. I stand by my statement in the supplemental Rule 34 response that based on a reasonable search there are no other documents responsive to your request. I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail.

4. Mr. Yusuf is returning imminently to the islands and I should be able to get a scanned signature page to you by Tuesday, along with the supplemental information I described in interrogatory 1.

Regards,

Stefan

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From: Joel Holt [holtvi@aol.com]  
 Sent: Monday, August 01, 2016 7:23 AM  
 To: Stefan B. Herpel  
 Cc: nizar@dewood-law.com; carl@carlhartmann.com; kimjapinga@gmail.com  
 Subject: Re: Supplemental Discovery Responses

Stefan-can you respond to the email below?

Joel H Holt  
2132 Company St.  
Christiansted, VI 00820  
340-773-8709



On Jul 26, 2016, at 4:21 PM, Joel Holt <holtvi@aol.com<mailto:holtvi@aol.com>> wrote:

Stefan-I reviewed these new responses and there are still several deficiencies:

1) Interrogatory Response #5-The original interrogatory response indicated the last communication was with the agent for Manal Yousef—thus, we had expected supplementation to deal with communications with that agent. As the supplemental response deleted references to this agent, can you please provide the name and

address of the agent and describe the communications with this agent.

2) Supplemental Interrogatory Response #5-I appreciate the supplementation of this response, but your client is still required to produce Manal Yousef's phone number under Rule 26 as well as this request— please provide it.

3) Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else — please confirm there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), powers of attorney, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent

4) Interrogatories-I still need a verification page from your client.

Please get back to me as soon as possible so we can resolve these last few issues.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

-----Original Message-----

From: Stefan B. Herpel <sherpel@dtflaw.com<mailto:sherpel@dtflaw.com>>

To: 'Joel Holt' <holtvi@aol.com<mailto:holtvi@aol.com>>

Cc: Nizar A. DeWood, Esq. (nizar@dewood-law.com<mailto:nizar@dewood-law.com>) <nizar@dewood-law.com<mailto:nizar@dewood-law.com>>

Sent: Thu, Jul 21, 2016 8:14 pm

Subject: Supplemental Discovery Responses

Joel,

Attached are the supplemental responses to the interrogatories and documents requests in the Sixteen Plus/Peter's Farm case. I appreciate your patience in waiting for this supplementation.

I believe that these supplementations address the issues raised in our meet and confer, and that they will moot the need for you to file the motion to compel alluded to in your email of this morning.

I still owe you a certification page. Mr. Yusuf is out of town, and I will provide that to you as soon as he returns. I don't have a secretary at this hour, and will send the originals of these attachments by mail tomorrow.

Regards,

Stefan