

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

MANAL MOHAMMAD YOUSEF,
Plaintiff

v.

SIXTEEN PLUS CORPORATION,
Defendant.

and

SIXTEEN PLUS CORPORATION,
Counter-Plaintiff

v.

MANAL MOHAMMAD YOUSEF,
Counter-Defendant,

and

SIXTEEN PLUS CORPORATION,
Third-Party Plaintiff

v.

FATHI YUSUF,
Third-Party Defendant,

CIVIL NO. SX-2017-CV-00342

**ACTION FOR DEBT AND
FORECLOSURE**

**COUNTERCLAIM FOR
DAMAGES**

THIRD PARTY ACTION

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-2016-CV-00065

**ACTION FOR
DECLARATORY JUDGMENT,
CICO and FIDUCIARY DUTY**

COUNTERCLAIM

JURY TRIAL DEMANDED

SIXTEEN PLUS CORPORATION,
Plaintiff,

v.

MANAL MOHAMMAD YOUSEF,
Defendant.,

and

MANAL MOHAMMAD YOUSEF,
Counter-Plaintiff.,

v.

SIXTEEN PLUS CORPORATION,
Counter-Defendant.

**NOTICE OF
SIXTEEN PLUS CORPORATION'S
FIRST SUPPLEMENTATION
OF DISCOVERY RESPONSES**

COMES NOW Sixteen Plus Corporation and provides NOTICE of the following as to prior discovery responses herein.

In Manal Yousef's two discovery requests to Hisham Hamed (her interrogatories and RFPD, dated June 19, 2018), she defined the term "Note" but then proceeded to inquire about the "Promissory Note" (capital letters in the original.)¹

In both Manal's inquiries here and in those of Yusuf in the 650 action, the parties use the terms "note" and "promissory note" interchangeably. In Manal's inquiries, she states "'Note' and/or 'Mortgage' refers to the note and mortgage between Manal Yousef and Sixteen Plus Corporation as to the property known as Diamond Keturah on St. Croix, USVI." Similarly, in 650, Yusuf defines only "Note" and states: "'Note' – the Note executed by Waleed Hamed, on September 15, 1997, on behalf of Sixteen Plus to Manal Yousef in the amount of \$4,500,000.00."

Sixteen Plus gives notice to all persons and parties as to all such inquiries of, and responses to discovery requests, with regard to that September 15, 1997 document captioned "Promissory Note" which is at issue here, as follows:

To the extent that the document executed by Waleed Hamed on September 15, 1997, is referred to in this matter, including in discovery, as the Note, note, Promissory Note or promissory note, Sixteen Plus disagrees with and disputes any characterization of that document due to its caption; and makes it clear that notwithstanding that caption, the document is, by the

¹ Similarly, in the 650 action, Fathi Yusuf's inquiries of September 15, 2022 (interrogatories, RFPD and RFA) define a note, but then inquire about various formulations.

explicit terms on its face, a "contract under . . .the laws of the United States Virgin Islands." Thus, also by its explicit terms, it is to be interpreted according to the contract law of the USVI.

Moreover, Sixteen Plus gives notice that it will assert at trial in these matters the positions, views, defenses and affirmative defenses that:

- A. The subject document was not and is not a promissory note
- B. Sixteen Plus Corporation is a distinct corporation and is not bound by the statements, representations, responses or positions of Hamed as to this matter, discovery here, legal positions, factual assertions or otherwise.
- C. Whether it is characterized as a contract or promissory note there was a *Failure of Consideration* with regard to the subject document, to wit:
 1. Failure of consideration renders a contract unenforceable when, "because of supervening events, the promised performance fails"
 2. Failure of consideration renders a promissory note unenforceable when, "because of supervening events, the promised performance fails"
 3. When there is failure of consideration, a contract . . . becomes unenforceable because the performance bargained for has not been rendered.
 4. When there is failure of consideration, a promissory note . . . becomes unenforceable because the performance bargained for has not been rendered.

5. A failure of consideration serves as a complete defense to the enforcement of a contract against the non-breaching party if the failure has been complete.
 6. A failure of consideration serves as a complete defense to the enforcement of a promissory note against the non-breaching party if the failure has been complete.
 7. Rescission is available when there is a substantial failure of consideration affecting an entire contract.
 8. Failure of consideration is a valid defense to the enforcement of a promissory note by a non-holder-in-due-course.
 9. A note maker is not estopped from claiming failure of consideration with regard to a promissory note
 10. Under the UCC a non-holder-in-due-course is subject to the defense of failure of consideration. *See generally* 3 Williston on Contracts § 7:11 (4th ed. & Supp. 2008) (describing failure of consideration under the Uniform Commercial Code).
- D. Whether contract or promissory note there was also a *Want of Consideration*
11. Failure of consideration is distinct from the concept of lack or want of consideration, which describes an absence of consideration to support a contract that renders it invalid from the beginning.

12. Failure of consideration is distinct from the concept of lack or want of consideration, which describes an absence of consideration to support a promissory note that renders it invalid from the beginning.

Counsel for Sixteen Plus Corporation

Dated: December 7, 2022

/s/ Carl J. Hartmann III

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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **December 7, 2022**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties to:

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Courtesy copy to Kevin Rames, Esq.

/s/ Carl J. Hartmann III