

**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

SIXTEEN PLUS CORPORATION,
Plaintiff,
v.
MANAL MOHAMMAD YOUSEF,
Defendant,

and
MANAL MOHAMMAD YOUSEF,
Counter-Plaintiff,
v.
SIXTEEN PLUS CORPORATION,
Counter-Defendant.

CIVIL NO. SX-2016-CV-00065

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

COUNTERCLAIM

JURY TRIAL DEMANDED

**SIXTEEN PLUS CORPORATION'S
REPLY
AS TO ITS MOTION TO COMPEL MANAL YOUSEF
FOR ADDRESS, AGENT'S INFORMATION, ACCOUNTING AND TAX INFORMATION**

COMES NOW Sixteen Plus Corporation, through undersigned counsel and submits the following in reply to Manal Yousef's opposition to its motion to compel.

I. Introduction

As this is a reply, Sixteen Plus Corporation responds directly to all of the statements, *verbatim*, from Manal Yousef's ("Manal's") opposition of February 3, 2023. First, however, this introduction discusses how her opposition conflates concepts from various matters and other actions—with a number of confusing results.¹

¹ One type of Manal's continuing confusion arises from her repeated insertion of Hisham Hamed into her opposition. In fact, she has still taken discovery here only from Hisham Hamed, but has not yet directed any written discovery to the actual party—Sixteen Plus. This was pointed out to her both in Hamed's discovery responses and in later notices to the Clerk and parties. As discussed below, this mixup was then addressed by both the parties and the Clerk months ago. Sixteen Plus still expects either a request or a motion to re-open written discovery—and, along with Fathi Yusuf's counsel, has offered to do so on a reciprocal basis; which has been refused by Manal. She repeatedly makes argumentative reference to Hisham.

A second type of this confusion is created because Manal steadfastly and repeatedly refuses to make reference to (and thus adhere to or even acknowledge) Rule 26 of the V.I. Rules of Civil Procedure or V.I. case law. In one example, at 6 of the opposition, she argues against routinely providing her own address, despite the language of that Rule, which in its very first sentence requires: "(a) Required Disclosures. (1) *Initial Disclosure*. (A) *In General*. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties: (i) the name and, if known, **the address** and telephone number of each individual likely to have discoverable information..." As is true throughout the opposition, in making this argument there is no mention of either that rule or argument as to why it should be ignored. As another example of her refusing to cite to the language of Rule 26, the opposition is written under the strong assertion (set out in detail) that the federal "proportionality" language of Fed.R.Civ. P. 26 applies here—quoting the federal rule and a federal case instead of any VI law.

In a third type, at 5, without reference to the rule, Manal appears to predicate the need for her to respond to discovery here on whether: (1) she is "named as a defendant" (presumably in a different case) and (2) Sixteen Plus (though not served with discovery) responds first.

before [Manal] is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that Sixteen Plus Corporation should be ordered to produce documentary proof [that it gave the \$4.5 million to purchase the land to Isam and Manal]....(Emphasis added.)

The instant motion to compel deals solely with Manal's failure to respond to discovery in the two consolidated cases here: (1) Sixteen Plus Corporation's 2016 suit against Manal Yousef to void the note and mortgage ("65"), and (2) Manal's 2017 suit against Sixteen Plus for foreclosure and a deficiency judgment ("342"). Thus, despite some earlier procedural disorientation, the opposition should accept that Hisham Hamed was not a party in either case—nor is he a party in this resultant, consolidated case.² After a full discussion of this before all parties, the errors were corrected by the Clerk and the Court. Nor is there even a suggestion in the record (or elsewhere) that was Hisham Hamed was involved in the laundering of funds in 1996-2003, the 1997 note and mortgage or any of the other issues before the Court. He is a shareholder in Sixteen Plus who has brought a derivative action under CICO. Thus, first, discussions in the opposition about Hisham Hamed are misplaced.

What is more confusing about Manal's refusal to respond to basic discovery is that the specific discovery at issue in *this* instant motion pertains primarily to two specific averments in Manal's *own* 342 complaint. At page 4, paragraphs 9 and 10, *she* makes the following allegations of fact as a central part of her action:

9. The defendant Sixteen Plus made three (3) payments of interest only in the amount of \$360,000.00 each in 1998, 1999, and 2000, but otherwise failed to comply with the terms and conditions of the Note and First Priority Mortgage (the "loan documents"), and is in default under those instruments, despite demand for payment for failing to pay principal and interest. . . .

² As the Court is aware, there *is* litigation between Fathi Yusuf and the heirs of his partner in the Plaza Extra Supermarket partnership—Mohammad Hamed. *Hamed v. Yusuf*, SX-2012-CV-370 ("370"). However, that case involves the dissolution of a partnership and the reciprocal claims between the two partners for the purpose of the valuation of the two partnership accounts under RUPA. Sixteen Plus Corporation is not a party there, nor is Manal Yousef. Neither has ever appeared, been deposed, filed papers or otherwise participated in 370. Certainly Manal would have been furious and would have appealed if that court had somehow adjudicated her rights under the note and mortgage in her absence.

10. The three (3) interest only payments made by the defendant Sixteen Plus to the plaintiff Yousef in the amount of \$1,180,000.00, *is an acknowledgment by Sixteen Plus of the validity of the Note and First Priority Mortgage executed by it*, and the defendant Sixteen Plus *is estopped to deny its obligation to make payment in full* of all of the principal and interest due by it to the plaintiff as set forth therein. (Emphasis added.)

By raising this legal point and stating these facts she supports the primary contention of her 342 complaint that the mortgage is valid. It is a legal and factual assertion of 'the doctrine of partial performance' designed to prove the validity of the documents upon which she relies. She expressly avers that her receipt of over a million dollars in three interest payments "is an acknowledgment by Sixteen Plus of the validity of the Note and First Priority Mortgage executed by it." She also goes on to invoke estoppel on the same factual basis.

Yet, the majority of the discovery she has refused to answer is about the averments in those two paragraphs of her own complaint. Much of the discovery she refuses to answer has nothing to do with Fathi, Wally, the supermarket partnership (or its accounts) or the crimes she discusses. To the contrary, except for some discovery as to the alleged "gift" from her father, she mostly refuses discovery responses about her contemporaneous income and spending—and her related banking and taxes—for the period of her alleged receipt of that million dollars.³ What is most perplexing is the fact that In Rule 34 discovery she has produced not one single document showing she:

- (1) actually received the alleged interest funds, or
- (2) ever deposited those funds in any bank or other account.

³ Because Manal she pleads these pre-SOL facts in support of her claim, Sixteen Plus is not time-limited as to its discovery—and even if this were the case, its affirmative defenses are not limited in any case, as it is the defending party. By the temporal scope of factual allegations in her complaint, Manal has fully opened the door to financial and tax discovery regarding that period.

Indeed, so far there are:

(3) no documents as to assets purportedly purchased with the money, despite the fact she states that it has all been spent.

Moreover:

(4) she contends, again without documents, that neither she nor Isam ever paid taxes on the alleged interest income—three payments in three different years of more than a million dollars—and she further states,

(5) that she refuses to do so now—until this litigation is over.

Finally, and most inconsistently:

(6) she has repeatedly refused to supply her address and passports for the purpose of investigation by Sixteen Plus into her assets, spending of that million dollars, movement and credit history.

Thus, *this* case and *this* motion involve Manal filing a complaint to foreclose a note and mortgage from Sixteen Plus where the land has been valued by Fathi as being worth \$30 million—and her claim of three payments of a third of a million dollars as partial performance—with no documentary proof whatsoever.

She goes on to argue that discovery should be limited because there is only one “relevant factual issue in this case”: it is whether “the money [Sixteen Plus] admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia.” See page 5 of the opposition:

before Manal Mohammad Yousef is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that Sixteen Plus Corporation should be ordered to produce documentary proof that

the money it admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. *This is the only relevant factual issue in this case.* (Emphasis added.)

But while that is certainly one critical issue, another one is whether she actually received a million dollars in partial performance of the central note. This is crucial for two distinct reasons: (1) if she did not, there was no supporting partial performance she can put before the trier of fact, and (2) it would mean she is lying about one of the major issues of evidence. The fact that would she lie about the alleged partial performance of the central document in the case would also be highly probative as to her reliability as a witness in the trial.

Another, equally confusing assertion in Manal's formulation of 'the' issue here lies in the first part of that same proffered tautology—an argument that makes no sense under the basic discovery rules or the rulings she quotes from the 370 case.

Accordingly, . . . **before** Manal Mohammad Yousef is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that **Sixteen Plus Corporation should be ordered to produce documentary proof** that the money it admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. This is the only relevant factual issue in this case. (Emphasis added.)

As Manal points out in her opposition, it is clear that the books and records of United and the Partnership were so altered that prior to 2006 they were totally unreliable. Of course this is the case, as the Hamed and Yusuf families sent Isam large envelopes (and mattresses) full of hundred-dollar bills—thus the transfer of funds *in cash* to Isam would be hard to document even if their accounts were otherwise pristine. That is exactly why the tracing of the 1996-1997 land purchase funds and the alleged 1998-2000, million dollars in interest can only be

proved through testimony supported by the contemporaneous bank transfers, tax records, income, spending and bank records of the other alleged co-conspirators—Manal and Isam. Their records should be trustworthy, as those accounts (1) have been kept by banks and tax authorities, (2) St. Martin officials also were given unaltered copies (with documents already in hand showing they were provided under subpoena) and (3) the two of them obviously never thought their records and transactions would be discovered and used to prove the note and mortgage are shams. That is why they felt so free in the 2016-2017 pleadings about making up the wild stories about their impoverished father “gifting” Manal \$4.5 million through Isam’s STM laundering account and Manal receiving a million dollars in interest—*without a single document as proof!* Who thought a US court could get a look at those records? Little did they seem to recall that two French investigations had noted what was happening, and that broad discovery would be available once Manal brought a case in a US court?

That is exactly why these discovery responses are so important—they will show whether the fanciful stories about a phantom “gift” and a million in “interest received” are true. Did Isam’s father deposit \$4.5 million before 1996 as averred? Or, did those funds come from Wally and Fathi in stacks of 100’s in 1996 and 1997 as other investigative documents already show? Did Manal receive \$1 million—in 1998 to 2000, and if so, when and how—and where did it go? And what Sixteen Plus must *first* produce requires discovery requests.

Thus, in a way, Manal is entirely correct when she argues in the opposition that the Court must determine whether the subject \$4.5 million did flow into Isam’s laundering accounts from April of 1996 to September of 1997, or it did not. As she says:

[Was] the money it admits it skimmed from the United Corporation and its three Plaza Extra stores [] given to Isam Yousuf and [] sent by him to the Sixteen

Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia.

The irony is that her and Isam's testimony and documents, their bank records, their tax records and the transfer orders from their banks will provide further evidence to substantiate the French investigations and documents, to allow the Court to make that determination.

The controlling question of law is: What support in the VI Rules or caselaw does Manal put forth to suggest the idea that if Wally and Fathi cannot FIRST come up with the relevant or trustworthy documents about the flow of those funds, then Manal and Isam should be free from discovery? No law is cited for this extraordinary claim. Instead, what the relevant law does say, as addressed below, is that all reasonable facts averred by Sixteen Plus in its complaint in the 65 Action are taken as true at this stage,⁴ and those allegations are the starting point for determining what discovery should be allowed—not whether the Yusuf and Hamed books were falsified or whether they made their production of accounts "first."

⁴ It is axiomatic that CICO conspiracies rely on hidden information—almost always in the hands of some of the conspirators. But even if this were not the case, under the well-pleaded-complaint rule, the plaintiff is 'the master of the complaint'. *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1763 (2019). More importantly "[a]t this stage, Plaintiffs' allegations must be taken as true and they [should] be allowed discovery into" the allegations in the complaint. See, e.g., *Hogan v. Cleveland Ave Rest., Inc.*, No. 2:15-CV-2883, 2018 U.S. Dist. LEXIS 49587, at *10-11 (S.D. Ohio Mar. 26, 2018), stating:

As detailed above, Plaintiffs allege that BACE and OC, acting in concert with BACE-members, conspired to agree to set the price of "rent" and "damage" resulting in Plaintiffs being paid less than they would have been in a competitive market. *At this stage*, Plaintiffs' allegations must be taken as true and they will be allowed discovery into the specific conduct of BACE and OC. (Emphasis added.)

Here, there is additional documentary and investigative evidence already in support of those averments, but even if this were not so, discovery would be entirely appropriate.

Therefore, rather than cut off the discovery before Sixteen Plus first “proves” something by reference to the accounts of the Hameds and Yusufs—at this point Manal must allow (and should welcome) discovery to fully illuminate exactly where those funds came from—whatever the source of that information. If the information now exists only in the records of Isam, Manal, their banks and their tax officials and are available to them on demand—then what possible rule of law would suggest this information not be brought before the Court?

II. Yusuf's Specific Assertions, *Verbatim*, and the Sixteen Plus Responses

1. At 1-2, “The Sixteen Plus Corporation and its token^[5] shareholder, Hisham Hamed, have filed various motions to, among other things, (1) compel Isam Yousuf to authorize the prosecutors and police in St. Maarten to conduct a search of the bank records of the company he once owned and operated.” (Emphasis added.)

This is a misstatement. In another action (650) Hamed individually and derivatively for Sixteen Plus, did file a motion to compel. However, it was properly directed at Isam and primarily sought to compel Isam to provide his own, personal bank records by compelling him to request them from his own bank. There is no request for a police or prosecutorial search, only for those authorities to turn over those same records *already collected and supplied to those authorities*. Moreover, there has been no proof adduced there that these laundering accounts were entity accounts much less corporate accounts,⁶ and Isam has refused to answer qualifying inquiries about both the accounts and the alleged entity. To the contrary,

⁵ Sixteen Plus does not understand the implication of the use of the term “token” in reference to Hisham Hamed. He holds a proportionate share of the stock in comparison to the other Hamed and Yusuf family members, and has for decades.

⁶ The exhibits there show the four STM laundering accounts were opened in 1996 by Isam, Wally and Fathi based solely on *their personal documents* and were not in the name of any entity.

French investigative records show this to have been opened as personal accounts with no entity records mentioned with regard to opening or ownership. Thus, that inquiry is consistent with the Rule 26 concept of discoverability of information “controlled” by a party—as argued there. In any case, it is not discovery in this action, and Isam can always file a motion for a protective order there to show Sixteen Plus and the French authorities were wrong—by supplying the entity and account opening documents and showing he didn't control it.⁷

2. At 2, “The Sixteen Plus Corporation, in multiple civil cases, on its own behalf and derivatively through a token stockholder, Hisham Hamed, is attempting to relitigate a failed attempt *by its stockholders* for an accounting.” (Emphasis added.)

This is simply not true. Sixteen Plus Corporation's stockholders have *never* litigated to obtain an accounting.

To the contrary, Fathi Yusuf brought a 2015 action on St. Thomas trying to obtain dissolution and an accounting of Sixteen Plus, in an attempt to trigger the sale of the subject land. *See, Fathi Yusuf v. Peter's Farm, et al.*, ST-2015-CV-00344. But neither Hisham Hamed nor any of the other shareholders countersued or sought any such accounting, and the action was not actually litigated, as it was quickly dismissed on a motion joined in by Fathi Yusuf, and all of the pending motions were deemed moot. This all occurred and was over before Manal ever brought her 342 action. *See*, Order dated December 15, 2016 (Francois, J.) There

⁷ That motion also notes that because, under French law, Isam has the right to demand COPIES of those identical personal bank account statements that were provided by the bank to French investigators, he must make that demand. They are not investigative or police records—they are simply officially identified copies of Isam's own bank statements previously sent from his bank to the police in response to a subpoena. That motion is supported by extensive citation to exhibits, the applicable rules, and caselaw—making it clear that where a party can demand his own documents, he controls them and must produce. Finally, French investigative reports provide detail as to the accounts, the fact that they are Isam's personal accounts, and the fact that the French authorities received copies of Isam's statements.

is no other case in which either Sixteen Plus or its shareholders sought or were denied an accounting. Nor are Sixteen Plus and Manal parties to the *Hamed v. Yusuf* 370 action.

3. At 2, "**These civil lawsuits** have a common theme **espoused by the Sixteen Plus Corporation**, that \$60 Million was skimmed from the United Corporation and its three Plaza Extra stores, and the skimmed money was diverted to St. Maarten, and elsewhere, to avoid taxes, and for other nefarious purposes. In 2012, and 2014, civil actions were filed by and between Waleed Hamed and Fathi Yusuf, the two men who formed the Sixteen Plus Corporation to purchase the Diamond Keturah property. **These civil actions were designed to obtain a dissolution of their partnership and a distribution of partnership assets related to and derived from the business of the Plaza Extra stores. . . .**

This assertion conflates two completely different actions about two different subjects and then draws a truly odd conclusion. In 2012, Mohammad Hamed sued Fathi Yusuf seeking a declaratory judgment as to the existence and effect of the Plaza Extra Supermarket partnership. Yusuf later sought dissolution therein, as well as a RUPA division of its assets into the two partnership accounts. Neither Sixteen Plus nor Manal were ever joined—nor did they appear or were they deposed. Moreover, the note and mortgage at issue here are not in the name of that partnership, the Hameds or the Yusufs.

4. At 2-3, "The plaintiff, Waleed Hamed, retained the services of an expert witness who based his opinion on the 2003 third superseding indictment in the [criminal] matter Although various individuals were charged in the indictment, only the United Corporation pled guilty to Count No. 60, by which it admitted that \$10 Million of gross receipts were skimmed and mis-accounted to avoid taxes* * * [Judge Brady held] "the policy of RUPA prevents both Hamed and Yousuf from imposing upon the court the great burden of sorting through the ramshackle patchwork of evidence supporting their claims, to reconstruct decades worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct which they now belatedly complain." P.21.

Manal is correct. The expert and Judge Brady both stated the partnership's accounting was falsified and entirely unreliable prior to the September 2006 cutoff date. That has nothing to do with this action. First, holdings there do not control here, and even if they did Sixteen

Plus *does not seek to rely on any such pre-2006 accountings*—to the contrary, it relies solely on the bank transfer documents and the financial accounts of the 650 action defendants. Moreover, Judge Brady's decision would not estop Sixteen Plus from defending from a foreclosure based on the theories of: (1) the falsity of the note, (2) Manal's unclean hands or (3) the "pari delicto" status of Manal—as (1) neither it or Manal were parties there, (2) Sixteen Plus is in defense here in regard to Manal's 342 foreclosure action, (3) 370 is an equitable action and the relief by the Court was equitable relief specific to those facts, which are not of record here, and (most importantly) (4) affirmative defenses (including those as to foreclosure) are definitely not subject to statutes of limitations.

Finally. to return to the point of this particular motion, these are all unproven facts outside of the complaint, and have no place at this stage—especially in a discussion seeking to limit discovery..

5. At 4, "Since it has been found beyond question that Waleed Hamed and Fathi Yusuf cannot account among themselves as to how the money skimmed from United Corporation could be accounted for, it should be axiomatic that they should be foreclosed from attempting to contend in this case, and others presently pending, that an accurate accounting can now be made to find conclusively that the \$4.5 Million used to purchase Diamond Keturah came from money skimmed from the three Plaza Extra stores, and not from money loaned to Sixteen Plus Corporation by Manal Mohammad Yousef."

As stated in the introduction, this both misstates the law and is simply illogical.

i. Logic

Fathi and Wally may not be able to accurately account on paper for all of the funds—but they certainly can testify to the fact that they personally gave \$4.5 million in 100's to Isam to provide to Sixteen Plus for the land. The bank records of Isam, the transfers from Isam, the lack of any funds traceable to Manal's father, and the bank/tax records of the other Isam-controlled laundering accounts are also highly probative. Even if Wally, Isam and Fathi cannot

prove their testimony with their own records, it is still testimony. If their own records don't show the actual movement of the laundered cash to Isam, Wally and Isam can still testify and Isam can be impeached (Fathi has taken the Fifth). If the records of the funds flowing into Isam's account in 1996-1997 do not exist in Hamed or Yusuf records, they certainly do in Isam's and Manal's bank and tax records. Manal either did not file taxes in 1998 through 2000, or she did...and swore under oath that she did NOT receive a million dollars in interest income. In addition, foreign government records, testimony of bank and other officials and inferences derived from the operation Isam ran in St. Martin and Jordan can be sufficient for a trier of fact to make the necessary factual findings.

Thus, the illogic lies in the fact that almost all criminal CICO conspiracies involve the records of various participants. If Mr. A and Mr. B destroyed or falsified their records—how could that possibly mean that the records of co-conspirators Mr. Yousuf and Ms. Yousef cannot be obtained and used instead?

ii. Law

V.I.R. CIV.P. RULE 26

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, **the address** and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

(ii) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, **or control** and may use to support its claims or defenses,

unless the use would be solely for impeachment, unless it would be unduly burdensome to produce a copy of an item, in which case each item must be clearly identified, along with a statement as to why each cannot readily be copied, and including a description of the location where each can be reviewed. (Emphasis added.)

V.I.R. CIV.P. Rule 34

Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, **or control**: (Emphasis added.)

V.I.R. CIV.P. Rule 26(b)(1)

(b) Discovery Scope and Limits.

(1) *Scope in General.*

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding **any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

6. At 5-6, Manal's long statement of the law applicable to the scope and proportionality of discovery are partially correct and partially wrong.

Sixteen Plus largely agrees with Manal's formulation of the scope of discovery but disagrees with her interpretation and, most particularly, her discussion of the USVI rule as to proportionality. She cites a federal rules case, *Westhemeco Limited*. This references the 'new' federal standard, as described by Jason Stach in "*Effect of 'New' Proportionality Limits in Amended FRCP 26*", IP Litigator, January-February 2016.⁸

On December 1, 2015, with Congress's consent the Supreme Court amended the Federal Rules of Civil Procedure (FRCP) . . . Under amended Rule 26(b)(1), information is discoverable if it is relevant to any party's claim or defense and proportional to the needs of the case, *with several proportionality factors now*

⁸ Accessed February 4, 2023 at: <https://www.finnegan.com/en/insights/articles/effect-of-new-proportionality-limits-in-amended-frcp-26.html>

stated in the rule. [Id. at 12.] . . . Despite all the press about the significance of the proportionality amendments, these proportionality factors are not new. Rather, most of the factors were added to Rule 26(b)(1) in 1983. [Memorandum from Hon. David G. Campbell to Hon. Jeffrey Sutton at 7 (June 14, 2014).] They were later moved to Rule 26(b)(2)(C) in 1993 as part of dividing Section (b)(1). [Id.] The Advisory Committee recently indicated that its “purpose in returning the proportionality factors to Rule 26(b)(1) is to make them an explicit component of the scope of discovery, requiring parties and courts alike to consider them when pursuing discovery and resolving discovery disputes.” [Id. at 8.]

Because the proportionality factors are not new, it is unclear whether the amendments will result in any change in practice. For example, before the 2015 amendments to Rule 26, it was common for parties to challenge discovery requests on the ground that they were unduly burdensome. Although this terminology differs from proportionality, the ultimate inquiry was the same—given the needs of the case and the relative burdens on the parties, is this discovery request more burdensome than warranted?

However, the VI Supreme Court did not adopt the federal proportionality standard in the USVI when the rules were revised in 2017. To the contrary, it expressly retained full and open discovery after being fully aware of the federal change.⁹ But even that is really irrelevant here,

⁹ Compare V.I.R. CIV.P. Rule 26(b)(1):

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General.*

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery *regarding any nonprivileged matter that is relevant to any party's claim or defense.* Information within this scope of discovery need not be admissible in evidence to be discoverable.

with Fed.R.Civ.P. Rule 26(b)(1):

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

as Sixteen Plus has made it clear that it will pay for all identification, location, copying, transport and presentation of documents for Isam, and will do the same for Manal. There will be no costs. The only additional interrogatory requests are about Manal's basic financial information—disclosing her own banking and tax information is not burdensome (or disproportionate) in an action where a party is a plaintiff seeking a \$30 million payday.

7. Sixteen Plus' responses to Manal's objections to five specific items set out in the motion:

- i. At 6, Her address: "Manal Mohammad Yousef is represented by counsel. Sixteen Plus Corporation has no legal basis to contact her directly and therefore does not need her address. At various times Sixteen Plus Corporation has indicated that it intends to file a lawsuit against her and therefore needs her address. . . ."

This is wrong for three reasons: (1) As discussed above, Rule 26 expressly requires addresses to be provided. (2) Sixteen Plus has repeatedly stated that it needs a home address as it wishes to assess asset values in light of the fact she claims she has no bank accounts, and no documents concerning the receipt and spending of a million dollars in interest central to her case. Also, (3) though counsel for Manal persists in alleging that Sixteen Plus may wish to file suit in Jordan. He has been repeatedly told this is not the case, and the motion expressly states that its interest is in the service of international process under the Hague Convention—for extra-territorial discovery and as a backstop if she does not appear in the US for this action—something she has so far not been able or willing to do. These are things not within the control or remediation of her counsel—and are allowable.

Beyond that, it beggars the imagination that a party alleging in her own complaint that she received and spent a million dollars without a single document or record (of funds coming in or going out) could hope to get a judgment which, with interest and land value could equal \$30 million, without providing even one bank record, her home address, an asset list, her

passports or a single tax record. Counsel has been able to locate no cases where an address of the plaintiff was withheld in a civil damages case absent the allegation of criminal retaliation or protection from violence. Even then, it would first require quite an explanation to the Court.

ii. At 6-7, "Both Manal Mohammad Yousef and Isam Yousuf have responded to written discovery and indicated that they have no documents in their possession responsive to the request for production of documents issued in this case. The production of documents by Isam Yousuf is the subject of a separate motion and need not be addressed further here beyond stating that Isam Yousuf has no documents in his possession custody or control. "

Once again, Manal ignores the extensive discussion by Sixteen Plus about the distinction between documents "in her possession" and documents "in her control." Again she ignores the specific language of the rule. Like Isam, she must either obtain and supply documents within her right to demand them—or give Sixteen Plus a letter of authorization—for her own banking and tax records. Similarly, she again refuses to engage on the fact that Isam was clearly her agent—and the legal requirement that she both inquire into and obtain documents and information "within his control"—regardless of his immediate "possession."

iii. At 7, "The subject matter of this demand for production of documents has been responded to, not with documents, but with a description of how Manal Mohammad Yousef spent the three payments of interest in the amount of \$360,000 she received from the Sixteen Plus Corporation. Neither she nor Isam Yousuf have documents in their possession, custody, or control regarding same." (Emphasis added.)

First, the so-called description is about 1 paragraph of vague musings. More to the point, Sixteen Plus does not want to take the word of Manal or Isam as to these issues. She states she does not have and has never had a bank account—either then or now. He is unclear about when, how much and where his father gifted \$4.5 million. She has refused tax documents where she would have sworn to income in the subject years, as irrelevant. Isam states his father deposited the gift prior to the date the accounts at issue were even open.

She states she never has and does not now have any documents about the receipt, transfer, spending, asset acquisition or asset sale for over a million dollars. There is no list of her assets then or now—did she buy the house with the million she avers she received but cannot detail at all? She has not given over her passports despite repeated agreements to do so. She states that she received a gift of \$4.5 million from her father that went into (*insert a shifting series of descriptions about accounts, funds and other amorphous locations here*) but neither she nor Isam have a single record or any description of when, where and how much. She has been repeatedly asked for approximations, ranges of amounts and other means of approaching such a fantastic story.

Thus, she should be ordered to either provide documents or give a letter of authorization, and RESPOND IN DETAIL to the interrogatory requests for information in this motion. Once she answers those just a little, a further motion to compel can be crafted about those details. Even absent documents, approximately when, in what amounts and how did the \$4.5 from Manal's father go to Isam? Where did he put it—was it into the laundering transfer account from which the money was sent to Sixteen Plus?? Manal also needs to inquire of Isam and he needs to answer for himself, separately. Into which of Isam's accounts did the gift go, and when? Then, on the million in interest, approximately how much did she spend on what items and when—if exact amounts are not known a range or approximation can be given. If it was given to her in cash by Isam, how, when, how much and by what means? How did he keep it, and how did he get it to her if she was thousands of miles away? And, if she says there are no bank accounts, no other records and no way to even approximate—she should deliver letters of authority to allow Sixteen Plus to request such bank and tax records.

iv. At 7, "Manal Mohammad Yousef is not now, nor has she ever been, a resident of the U.S. Virgin Islands, or the United States of America. She has indicated in answers to written discovery that she did not pay income tax with respect to the receipt of the three payments of interest by the Sixteen Plus Corporation to her. Therefore, the production of income tax returns is irrelevant to any pending issue in this case."

This statement is incomplete. What Manal has actually stated is that she did not pay taxes on the million dollars over three years in either St. Martin or Jordan either. She says she never paid taxes on this money. But what DID she state on her tax filings? That will be a major issue of proof in Sixteen Plus' case. For what better proof could Sixteen Plus have that she is not telling the truth than tax filings where she swears to what her income really was and it is a million short. These would be the same returns on which she may have revealed assets purchased with the money.

Already in this case we have Fathi Yusuf swearing under oath and subject to the penalty of perjury—on years and years of USVI tax filings—that *he and Hamed* lent Sixteen Plus the \$4.5 million—not Manal. He also expressly states that there were no third-party loans such as those Manal alleges. And he does some of this within the statute of limitations in this case, after 2010! How then, could Manal's tax returns be any less revealing? And what is the legal basis for not giving up your tax returns in a case you brought where you alleged in your complaint that you received a million dollars from the other side—and it is a central element in the case? Manal was the one who averred, in her complaint at paragraph 10:

10. The three (3) interest only payments made by the defendant Sixteen Plus to the plaintiff Yousef in the amount of \$1,180,000.00, is an acknowledgment by Sixteen Plus of the validity of the Note and First Priority Mortgage executed by it, and the defendant Sixteen Plus is estopped to deny its obligation to make payment in full of all of the principal and interest due by it to the plaintiff as set forth therein. (Emphasis added.)

v. At 7, "5. Manal Mohammad Yousef has provided written answers to written discovery stating that the funds provided by her to the Sixteen Plus Corporation came from her father. The use of the word/term conspirators is that of Sixteen Plus Corporation and not Manal Mohammad Yousef or Isam Yousuf, and is a less than veiled attempt by Sixteen Plus Corporation to white wash his own criminal conduct by attempting to include her in it."

Through United Corporation, \$10 million was paid to the USVI, and another \$1 million to the US. (That is \$11 million more in taxes than Isam and Manal paid. That criminal activity stands acknowledged and the debt and penalty have been assessed and paid.) Not so for Manal. In short, there is no dispute that there was a criminal enterprise in 1996-2003. How this excuses Isam, Manal and others from discovery into their participation in the instant conspiracy is unclear. But now, in this action, in this discovery, the issue is the use of a note that falsely states the source of the consideration to obtain \$30 million in land. If Manal did not provide that consideration she is now knowingly, in association with others, trying to steal that money by embezzlement, fraud and the intentional bankruptcy and destruction of a USVI corporation. The discovery requested will not show that to be true if it is not true—but without the discovery the "association" of those individuals can never be fully understood.

Conclusion

Once again, instead of addressing the content and facts in the motion, the Court has been provided inflammatory, breathless rhetoric about the transgressions of Wally and Fathi in 1997-2003—and a total lack of facts and legal argument about Manal. This is the most basic discovery of a plaintiff as to averments in her complaint brought in a USVI court. There are allegedly no records or other evidence as to the "gift" to Manal used to lend funds to Sixteen Plus, and no records or other evidence as to the \$1 million in interest payments that plaintiff relies on in paragraphs 9 and 10 of her complaint. The motion should be granted.

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Dated: February 5, 2023

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CERTIFICATE OF SERVICE

I hereby certify that, discounting captions, headings, signatures, quotations from authority and recitation of the opposing party's own text, this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **February 5, 2023**, 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.

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