

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

MOHAMMAD HAMED, by his)
authorized agent, WALEED HAMED,)
)
Plaintiffs,)
)
v.)
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants.)
_____)

CIVIL NO. SX-12-CV-370

DEFENDANTS' MOTION TO STRIKE SELF-APPOINTED REPRESENTATIVE

Defendants, pursuant to Rule 17 of the Federal Rules of Civil Procedure, hereby move to strike Waleed Hamed as Plaintiff Mohammad Hamed's self-appointed representative or "authorized agent," and request that the Court do so prior to resolving any other substantive motions.

Introduction

Rule 17 provides that an incompetent litigant may sue or be sued through a representative only when the representative is a "general guardian," "committee," "conservatory" or "like fiduciary." Fed. R. Civ. P. 17(c)(1). Here, although Plaintiff Mohammad Hamed seeks to prosecute this action through a self-appointed representative, *i.e.*, "his authorized agent Waleed Hamed," Mohammad Hamed has failed to establish any valid basis to do so under Rule 17 or otherwise. Accordingly, prior to the resolution of any other substantive motions, Defendants move to strike Waleed Hamed as Plaintiff Mohammad Hamed's putative representative or agent.

Relevant Procedural Background

1. Plaintiffs initiated this action on or about September 17, 2012, the date of the Complaint.

Defendants' Motion to Strike Self-Appointed Representative

2. Defendants timely removed the action on October 4, 2012. (Oct. 4, 2012 Notice of Removal, Case No. 1:12-cv-99 (Doc. # 1)).¹

3. On October 11, 2012, among other pleadings and papers filed in the District Court, Plaintiffs filed a motion for remand. (Oct. 11, 2012 Motion for Remand (Doc. # 13); Oct. 11, 2012 Memorandum in Support of Motion for Remand (Doc. # 14)).

4. On October 19, 2012, Plaintiffs subsequently filed a First Amended Complaint, and a separate "Comparison Document," comparing the original Complaint with the First Amended Complaint. (Oct. 19, 2012 First Amended Complaint (Doc. # 15); Oct. 19, 2012 Comparison Doc. (Doc. # 17)).

5. On November 16, 2012, the District Court granted Plaintiffs' motion for remand and remanded the action to this Court. (Nov. 16, 2012 Order (Doc. # 39)).

6. Based on the papers filed in this Court prior to removal, and those filed in the District Court prior to remand, the following substantive motions are pending:

- (a) Plaintiffs' Motion for a Temporary Restraining Order and/or a Preliminary Injunction, and accompanying Memorandum, both dated September 18, 2012 (collectively, the "TRO Motion");
- (b) Defendants' Motion to Proceed on the TRO Motion as a Motion for Preliminary Injunction dated September 28, 2012;
- (c) Defendants' Motion to Strike or, Alternatively, for Leave to File Sur-Reply dated November 2, 2012 (Doc. # 23);
- (d) Defendants' Renewed Motion to Dismiss and accompanying Memorandum, both dated November 5, 2012 (Doc. ## 28 and 29, respectively);

¹ The citation in this motion to any pleadings and papers filed in the District Court refers to docket entries in Case No. 1:12-cv-99, District Court of the Virgin Islands, Division of St. Croix. Defendants hereby adopt and incorporate those pleadings and papers as if they had been filed in this Court, and respectfully request that this Court otherwise give effect to all pleadings and papers filed in the District Court while the action was in federal court.

- (e) Plaintiffs' Motion and Memorandum for Order to Show Cause dated November 6, 2012 (Doc. # 31); and
- (f) Plaintiffs' Motion for Partial Summary Judgment dated November 11, 2012 (Doc. # 34).

7. However, as addressed below, prior to the resolution of any of the foregoing motions, the Court should strike Waleed Hamed as Mohammad Hamed's supposed agent.

Relevant Factual Background

8. Mohammad Hamed's central allegation in this action is a purported "50/50 partnership" between himself and Fathi Yusuf. (Comparison Doc. at ¶ 9).

9. Yet, Mohammad Hamed seeks to prosecute the action by and through a representative, *i.e.*, "his authorized agent Waleed Hamed," his son, without complying with Rule 17 in any respect. (*Id.* at ¶ 2).²

10. There is no record before this Court to establish that Waleed Hamed has been properly appointed as a general guardian, committee, conservator or like fiduciary for his father or his father's affairs. Rather, Mohammad Hamed merely asserts that he has provided Waleed Hamed with "a power of attorney to act on [his] behalf in all aspects of the Plaza partnership business . . . with Fathi Yusuf." (Sept. 17, 2012 Aff. of Mohammad Hamed (Doc. # 1-5) at ¶ 4).

11. Significantly, the record is blank regarding the details of Mohammad Hamed's competency, including the purported basis, if any, supporting his desire to proceed through a representative or "authorized agent."

12. The record is also devoid of any details regarding the scope of Waleed Hamed's supposed authorization to represent Mohammad Hamed in this action; and devoid of any details

² Mohammad Hamed also attributes the allegations in this action to certain unnamed additional "authorized agents" acting "from time to time" – *i.e.*, alleging that "[t]he acts referenced [in the First Amended Complaint] attributable to Mohammad Hamed are acts done either directly by Mohammad Hamed or for him by his authorized agents, all of whom are family members acting as his authorized agent, from time to time." (Comparison Doc. at ¶ 2).

regarding the unnamed additional "authorized agents" representing Mohammad Hamed from "time to time." (Comparison Doc. at ¶ 2).

13. Defendants – and this Court – thus are left guessing as to the competency of Mohammad Hamed and the scope of any supposed authority bestowed upon Waleed Hamed by his father vis-à-vis this action.

Analysis

A. Legal Standards

Federal Rule of Civil Procedure 17 limits litigation through a representative to two types of litigants: minors and incompetent persons. Fed. R. Civ. P. 17(c). When a minor or an apparent "incompetent" plaintiff seeks to prosecute an action through a representative, the rule further requires that the representative be one of the following: "(A) a general guardian; (B) a committee; (C) conservator; or (D) a like fiduciary." Fed. R. Civ. P. 17(c)(1). Federal Rule of Civil Procedure 17 applies to this Court pursuant to SUPER. CT. R. 7.

B. Mohammad Hamed Has Failed to Comply with Rule 17

Here, in seeking to prosecute this action through a representative, Plaintiff Mohammad Hamed has failed to comply with Rule 17. Indeed, as noted above, the record is devoid of any facts regarding Mohammad Hamed's competency to proceed with or without a representative. The record also lacks any facts to support a claim that Waleed Hamed has been properly appointed as a "general guardian," "conservator" or "like fiduciary," as required by Rule 17(c)(1).

Accordingly, under Rule 17, Waleed Hamed should be stricken as Plaintiff Mohammad Hamed's "authorized agent." Because a determination regarding this issue will have significant implications for the subsequent course of proceedings, Defendants seek a ruling on this motion prior to the resolution of any other substantive motions.

Conclusion

For the foregoing reasons, and prior to the resolution of any other substantive motions, Defendants pray that the Court enter an Order striking Waleed Hamed as Mohammad Hamed's self-appointed representative or "authorized agent"; and granting any additional relief that the Court deems appropriate and just under the circumstances.

Respectfully submitted,



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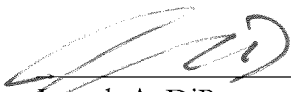
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Dated: Nov. 21, 2012

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2012, a true and accurate copy of the foregoing was forwarded via USPS and email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; and *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com.



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