

statement that “all the claims asserted in Case 3 may be treated as claims for resolution in the liquidation process of the Partnership pursuant to the Plan adopted in Case 370.”

On January 8, 2013, United filed a complaint against Waleed Hamed (“Waleed”) alleging that he misappropriated and converted the assets of United doing business as the Plaza Extra Stores. United’s complaint sought damages from Waleed for, among other things, breach of fiduciary duties, conversion, breach of contract, and a full accounting of the misappropriated assets.

Waleed has myopically fixated on the fact that after Case 3 was filed, Yusuf conceded the existence of a Partnership with Mohammad Hamed and, pursuant to a summary judgment entered in Case 370 on November 7, 2014, the Court declared that a Partnership was formed in 1986 by the oral agreement between Hamed and Yusuf for the ownership and operation of the Plaza Extra Stores, with each partner having a 50% ownership interest in all of the Partnership assets and profits, and a 50% obligation as to all losses and liabilities.

The Supreme Court gave short shrift to the argument of Waleed’s brother, Waheed Hamed (“Waheed”), “asserting that United lacks standing to bring this action in the first place because it never had an ownership interest in Plaza Extra.” *United Corporation v. Hamed*, 2016 V.I. Supreme LEXIS 1, at *4 (Jan. 12, 2016). Of course, this is the same argument Waleed is now reserving in the motion for summary judgment attached as an exhibit to his Opposition.

The Supreme Court roundly criticized Waheed for making this 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.

Id. at * 7-8.

Waleed claims that Case 3 is already subject to a dispositive motion for summary judgment, attached as an exhibit to his Opposition, “in which the following issues are undisputed:

1. United admitted that never has been the owner of the Plaza Extra Stores.²
2. United admitted that a partnership between Hamed and Yusuf existed.
3. Thus, the only real party in interest is Fathi Yusuf – already a party here.
4. Thus, Yusuf’s claims are already before this Court without consolidation.”

Opposition at p. 2.

Although Waleed may have attached copies of motions for summary judgment as exhibits to his Opposition, those motions are clearly noncompliant with LRCi 56.1(a)(1) in that they are devoid of a supporting brief, affidavits, and a statement of material facts about which the movant contends there is no genuine issue. Since Waleed did not include the required separate statement of material facts, he also failed to comply with the requirement that he “affix to the statement copies of the precise portions of the record relied upon as evidence of each

² Neither the Opposition nor the motions for summary judgment attached as exhibits bother to point to any such admission.

material fact.” See LRCi 56.1(a)(1). Even if Waleed’s summary judgment motion was compliant with LRCi. 56.1, it simply raises the same lack of standing argument already rejected by the trial court in *United Corporation v. Waheed Hamed*, Civil No. ST-13-CV-0000101, and twice rejected by the Supreme Court. Clearly, this half baked motion attached as an exhibit to the Opposition provides no impediment to consolidation.

Incredibly, Waleed claims that “the only real party in interest is Fathi Yusuf – already a party here.” Waleed’s claim that Yusuf is already a party to Case 3 is demonstrably false. See docket sheet attached as **Exhibit 1**. Accordingly, his additional claim that “Yusuf’s claims are already before this Court without consolidation” is also demonstrably false.

United’s claims against Waleed in Case 3 were obviously asserted before any concession or determination regarding the Partnership’s ownership of the Plaza Extra Stores. The real party in interest now is the Partnership from which Waleed is alleged to have misappropriated funds and assets. Yusuf, as the Liquidating Partner of the Partnership “with the exclusive right and obligation to wind-up the Partnership pursuant to this Plan and the provisions of the V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master,” has determined that the Partnership’s “claims asserted in Case 3 may be treated as claims for resolution in the liquidation process of the Partnership pursuant to the Plan adopted in Case 370.” Motion at ¶ 5. Nothing Waleed has presented to this Court in the Opposition or the exhibits to the Opposition establishes otherwise. Since Case 370 and Case 3 clearly “involve a common question of law or fact,” see Fed. R. Civ. P. 42(a), these cases are unquestionably suited for consolidation.

Hamed v. Yusuf, et al.
Civil No. SX-12-CV-370
Page 5

For all of the foregoing reasons, as well as the reasons set forth in the Motion, Yusuf respectfully requests this Court to consolidate Case 3 with Case 370 for final disposition.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: April 15, 2016

By: 

Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf, the Liquidating Partner

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016, I caused the foregoing **Reply To Opposition To Motion To Consolidate Cases** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
CIVIL DOCKET

UNITED CORPORATION		Plaintiff)
))
Vs.))
))
WALEED HAMED AKA WALLY, WALLY HAMED, JOHN DOE)) Defendant)

CASE NO: SX-2013-CV-0000003
FILING DATE: January 08, 2013
JUDGE: Hon. Douglas A. Brady
CASE TYPE: DAMAGES - CIVIL
SECONDARY null
PETITION

<u>PARTY NAME</u>	<u>LITIGANT</u>	<u>PARTY TYPE</u>
UNITED CORPORATION ,	P001	PLAINTIFF
DEWOOD , NIZAR A.	P001	ATTORNEY FOR ANY OTHER PARTY
WALEED HAMED AKA WALLY, WALLY HAMED, JOHN DOE ,	D001	DEFENDANT
DIRUZZO, III ESQ., JOSEPH A.	D001	ATTORNEY FOR DEFENDANT OR RESPONDENT



DOCKETS ENTERED ON THIS CASE:

<u>DOCKET DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
10/24/2014	PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE FILED BY ATTORNEY NIZAR DEWOOD	
10/17/2014	NOTICE OF STIPULATION EXTENDING TIME TO FILE PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE SUBMITTED BY NIZAR DEWOOD, ESQ.	
10/06/2014	NOTICE OF STIPULATION EXTENDING TIME TO FILE PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE FILED BY NIZAR DEWOOD, ESQ.	
09/17/2014	WALEED HAMED'S RESPONSE TO UNITED CORPORATION'S MOTION TO DISMISS WITHOUT PREJUDICE SUBMITTED BY MARK ECKARD, ESQ.	
09/08/2014	PLAINTIFF UNITED'S MOTION TO DISMISS WITHOUT PREJUDICE FILED BY NIZAR A. DEWOOD, ESQUIRE PROPOSED ORDER ATTACHED	
06/04/2013	WALEED HAMED'S REPLY TO PLAINTIFF'S OPPOSITION TO WALEED HAMED'S MOTION FOR JUDGMENT ON THE PLEADINGS SUBMITTED BY MARK ECKARD, ESQ.	
05/09/2013	FILE FORWARDED TO JUDGE BRADY'S CHAMBER WITH MOTION FOR JUDGMENT ON THE PLEADINGS AND RESPONSE	
05/01/2013	PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S RULE 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS SUBMITTED BY NIZAR DEWOOD, ESQ.	
04/12/2013	MOTION FOR JUDGMENT ON THE PLEADINGS, MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND ORDER SUBMITTED BY MARK W. ECKARD, ESQ.	
04/11/2013	NOTICE OF APPEARANCE AND LETTER RECEIVED SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.	
02/11/2013	ANSWER FILED BY MARK ECKARD, ESQ.	
01/10/2013	FEE RECEIVED RECEIPT # - 00079129	75.00
01/08/2013	VERIFIED COMPLAINT RECEIVED	
01/08/2013	FILING FEE ASSESSED	
01/08/2013	DIRECT JUDGE REASSIGNMENT FROM: FJD TO: DAB	
01/08/2013	SUMMONS RECEIVED/ISSUED ON WALEED HAMED	
01/08/2013	CIVIL LITIGANT PERSONAL DATA FORM	
01/08/2013	DOCKET LETTER PROCESSED	
01/08/2013	TRIAL BY JURY DEMANDED	

TOTAL NUMBER OF ENTRIES: 19

PREPARED BY: JANEEN

*****END OF REPORT*****