

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

SIXTEEN PLUS CORPORATION,)	
)	CIVIL NO. SX-16-CV-65
Plaintiff,)	
)	ACTION FOR DECLARATORY
vs.)	DECLARATORY JUDGMENT
)	
MANAL MOHAMMAD YOUSEF,)	JURY TRIAL DEMANDED
)	
Defendant.)	
<hr style="width: 100%;"/>		
MANAL MOHAMMAD YOUSEF,)	
)	
Counter-Claimant,)	COUNTERCLAIM
)	
vs.)	
)	
SIXTEEN PLUS CORPORATION,)	
)	
Counter-Defendant.)	
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DEFENDANT MANAL MOHAMMAD YOUSEF'S
MOTION FOR PROTECTIVE ORDER

COMES NOW, Manal Mohammad Yousef (hereinafter “Manal Yousef”), by and through her undersigned counsel, and pursuant to Rule 26(c) of the V.I. Rules of Civil Procedure requests the Court grant her motion for protective order as to the place and manner of taking her deposition. The Notice of Deposition With Accompanying Rule 34 Request dated June 14, 2017, imprudently seeks to depose nonresident defendant Manal Yousef on July 14, 2017, in St. Croix, U.S. Virgin Islands. Manal Yousef seeks a protective order to prevent undue burden, oppression, and inconvenience.

I. Introduction

The deposition of Manal Yousef should not proceed in St. Croix because she resides in Palestine. Presently Manal Yousef does not have permission to exit Palestine, and does not have a visa to enter the United States. There is no guarantee Manal Yousef will be able to obtain a visa for international travel and she has concerns for her safety should she be required to travel to the U.S. Embassy in Tel Aviv, Israel to participate in the U.S. visa procurement process. In addition, Manal Yousef would be unduly burdened by the St. Croix deposition due to her inability to care for her three (3) children during the time of the taking of her deposition because she is their primary caretaker. Although convenience of counsel is a factor in determining location the where depositions will take place, it does not weigh as much when compared to the inconvenience to a witness since the convenience of counsel is less compelling than any hardship to the witness. The bases provided by Manal Yousef are sufficient to constitute undue hardship, oppression, and inconvenience for the purpose of obtaining a protective order against her deposition in St. Croix.

II. Factual background

Manal Yousef is a nonresident defendant who does not live and never has lived in the U.S. Virgin Islands. Manal Yousef has resided in Palestine for approximately the past seven (7) years. Manal Yousef does not often travel from Palestine. Manal Yousef has never traveled to the U.S. Virgin Islands. Manal Yousef does not currently possess a visa to travel abroad to the United States. Obtaining a visa is a difficult and dangerous process. Israeli officials would need to grant permission for Manal Yousef to travel outside the Palestinian Territory to visit the U.S. Embassy in Tel Aviv, Israel. Obtaining permission to exit Palestine to visit the U.S. Embassy

can be hard to get. Traveling to the U.S. Embassy in Israel is risky. Manal Yousef has sole responsibility for her three (3) children ranging from age twelve (12) to nineteen (19) years old.

Although plaintiff is aware Manal Yousef does not reside in the United States, it nevertheless unilaterally noticed the deposition of Manal Yousef in St. Croix, U.S. Virgin Islands on July 14, 2017. [See Notice of Deposition with Accompanying Rule 34 Request to Manal Yousef dated June 14, 2017.]

III. Argument - The Court should Grant Manal Yousef's Motion for Protective Order

A. Standard for entering protective order

A Court has authority to grant a protective order under Rule 26(c) of the V.I. Rules of Civil Procedure. Rule 26(c) states in pertinent part,

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense

V.I. R. Civ. P. 26(c). A party seeking a protective order has the burden of demonstrating good cause pursuant to Rule 26(c). Good cause exists when justice requires protection of a person or entity from annoyance, embarrassment, oppression, or undue burden or expense. Courts consider the relative convenience and hardships to the parties when determining whether there is good cause to grant a protective order. A person seeking a protective order must show good cause and a specific and compelling need for protection. *Glenmede Trust Co. v. Thompson*, 56

F.3d 476, 483 (3d Cir. 1995) (applying Fed.R.Civ.P. 26(c), which contains language similar to V.I. R. Civ. P. 26(c)).

While an examining party is typically free to choose its method of discovery, it does not have an absolute right to do so. When a dispute arises as to a deposition, the Court retains substantial discretion in designating the method by which a deposition can be taken. Upon a showing of good cause, the court may modify the manner, time, and place of discovery as it deems appropriate. V.I. R. Civ. P. 26(c)(1).

Ordinarily, the deposition of a nonresident defendant should be taken near the defendant's residence absent plaintiff showing exceptional circumstances for conducting deposition in the forum. *O'Sullivan v. Rivera*, 229 F.R.D. 187, 189 (D.N.M. 2004); *Rapoca Energy Company, L.P. v. Amci Export Corporation*, 199 F.R.D. 191, 193 (W.D.Va. 2001) (initial presumption that defendant's deposition occurs where he resides or has his principal place of business is not rebutted by filing a permissive counterclaim); and *Buzzeo v. Board of Education, Hempstead*, 178 F.R.D. 390, 392 (E.D.N.Y. 1998) (a general presumption exists that the deposition of a defendant will be held near the locale where he resides). There is a rebuttable presumption that, absent special circumstances, the deposition of a defendant will be held where the defendant resides. Factors guiding the court's discretion in determining the site of a deposition include the cost, convenience, and litigation efficiency of the designated location.

Taking the defendant's deposition in Palestine where she is a resident is as problematic for the parties and their counsel as taking it in the Virgin Islands is to her. It is for this reason an alternative method of taking her deposition by written questions pursuant to V.I. R. Civ. P. 31, is proposed as a reasonable alternative.

B. Nonresident Manal Yousef submits she is entitled to have her deposition taken by written questions pursuant to V.I. R. Civ. P. 31

Travel from Palestine to St. Croix, U.S. Virgin Islands for a deposition is impossible at this time. Therefore Manal Yousef respectfully submits she is entitled to a protective order directing that her deposition be conducted in a manner which does not require her to travel to the U.S. Virgin Islands. The basis for this request is that Manal Yousef has no visa to enter the United States or U.S. Virgin Islands, she presently is ineligible to be admitted to the United States. Moreover it is commonly understood by persons with knowledge of relations between Israel and Palestinian territories that Israel controls the border and movement of persons from the Palestinian territory, where Manal Yousef resides. Manal Yousef does not have permission to and cannot exit the Palestinian territory at this time to travel to the U.S Embassy to seek a visa. Furthermore, Manal Yousef has genuine concerns for her physical safety should she be required to obtain a travel visa at the U.S. Embassy in Tel Aviv, Israel. It would be quite dangerous for Manal Yousef to travel to apply for a travel visa. Since Manal Yousef is unable to leave the Palestinian territory to travel to St. Croix due to restrictive travel policies, the Court should exercise its discretion to grant her motion for protective order from appearing for deposition in St. Croix.

Based on the foregoing it is respectfully submitted that the court should order the attorneys for the plaintiff to take the deposition of Manal Yousuf by written questions pursuant to the provisions of V.I. R. Civ. P. 31. The attorneys for the plaintiff have already propounded a set of interrogatories to Manal Yousuf together with a set of requests for admissions and a request for production of documents. The request for production of documents is identical, word for word, to the Rule 34 Request made a part of her Notice of Deposition by the attorneys for

plaintiff. With answers to this written discovery and a deposition on written questions, the attorneys for the plaintiff should have an ample opportunity to obtain all information known by her relevant to this case which they could otherwise obtained from her in an oral deposition.

There are other reasons why Manal Yousef is entitled to protection against being required to appear in St. Croix on Friday, July 14, 2017. She has never traveled to the U.S. Virgin Islands and she has sole responsibility for her three (3) children ranging from age twelve (12) to nineteen (19) years old, whose lives would be disrupted by a trip to the United States. It would be a hardship for Manal Yousef to travel several thousand miles from her home in Palestine. It would be an unnecessary hardship for Manal Yousef to travel thousands of miles for a pre-trial deposition. It would be unfair to impose a burden on a nonresident defendant to appear in St. Croix for this purpose long before trial. Manal Yousef has shown a factual basis of undue hardship.

The undersigned respectfully submits that he in good faith conferred with plaintiff's counsel to reach an amicable resolution without court action as to the examination of Manal Yousef. [A copy of letter from James L. Hymes, III, Esquire to Joel Holt, Esquire dated June 26, 2017, is attached as Exhibit "A"] V.I. R. Civ. P. 26(c)(1). Unfortunately plaintiff summarily rebuffed this effort. [A copy of letter from Joel Holt, Esquire to James L. Hymes, III, Esquire dated June 27, 2017, minus the exhibits referred to therein, is attached as Exhibit "B."]

Manal Yousef submits it appears harassment may be one of the purposes of plaintiff insisting on deposing Manal Yousef in St. Croix. This is particularly so when plaintiff's counsel refused the request of the undersigned counsel, based in part on safety concerns, to make alternate arrangements. [Exhibit A (letter from James L. Hymes, III, Esquire to Joel Holt,

Esquire dated June 26, 2017), and Exhibit B (a copy of letter from Joel Holt, Esquire to James L. Hymes, III, Esquire dated June 27, 2017)].

The convenience to plaintiff's counsel should neither override nor overcome the safety concerns of Manal Yousef. Manal Yousef should not be required to subject herself to danger by having to travel to the U.S. Embassy in Tel Aviv, Israel to seek permission to travel abroad. Furthermore plaintiff's attorney's have the resources and experience to take her deposition by written questions.

WHEREFORE, Defendant Manal Mohammad Yousef respectfully requests the Court issue a protective order prohibiting her deposition from proceeding in St. Croix, U.S. Virgin Islands on Friday, July 14, 2017, and barring plaintiff from noticing a deposition of Manal Mohammad Yousef in the U.S. Virgin Islands. In addition, the Court is requested to order the attorneys for the plaintiff to take the deposition of Manal Yousef by written questions pursuant to V.I. R. Civ. P. 31.

Respectfully Submitted,

DATED: July 11, 2017.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
*Counsel for Defendant/Counterclaim Plaintiff –
Manal Mohammad Yousef*

By: 

JAMES L. HYMES, III
VI Bar No. 264
P.O. Box 990
St. Thomas, Virgin Islands 00804-0990
Telephone: (340) 776-3470
Facsimile: (340) 775-3300
E-Mail: jim@hymeslawvi.com;
rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify this document complies with the page or word limitation set forth in V.I. R. Civ. P. 6-1(e) and that on this the 11th day of July, 2017, I caused an exact copy of the foregoing "*Defendant Manal Mohammad Yousef's Motion For Protective Order*" to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

MARK W. ECKARD, ESQ.
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Phone: (340) 773-6955 // Fax: (855) 456-8784
meckard@hammeckard.com
Counsel for Sixteen Plus Corporation

JOEL H. HOLT, ESQ.
VI Bar No. 8
LAW OFFICES OF JOEL H. HOLT
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Christiansted, USVI, 00820
Phone: (340) 773-8709 // Fax: (340) 773-8677
holtvi@aol.com
Co-Counsel for Sixteen Plus Corporation

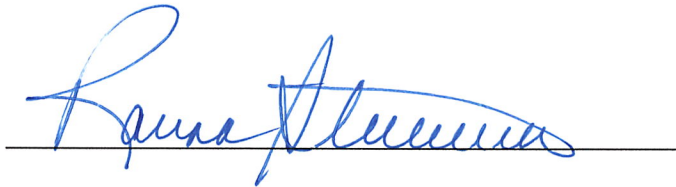


EXHIBIT “A”

LAW OFFICES
OF
JAMES L. HYMES, III, P.C.

MAILING ADDRESS: P.O. BOX 990
ST. THOMAS, VIRGIN ISLANDS 00804-0990
PHYSICAL ADDRESS: NO. 33-1 ESTATE ELIZABETH, # 7736
ST. THOMAS, VIRGIN ISLANDS 00802
E-MAIL: jim@hymeslawvi.com
TELEPHONE: (340) 776-3470 FACSIMILE: (340) 775-3300

REPLY TO:
 ST. THOMAS OFFICE
 CHRISTIANSTED OFFICE

OF COUNSEL:
MARK HILLSMAN
mhillsman@hymeslawvi.com

June 26, 2017

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

Re: *Sixteen Plus v. Manal Mohammad Yousef*
SCVI/STX - Civil No. SX-16-CV-65

Dear Attorney Holt:

I am writing to you pursuant to the provisions of Rule 26(c)(1) of the Virgin Islands Rules of Civil Procedure, to ask you to withdraw your notice of deposition of Manal Mohammad Yousef, set to take place in your office on Friday, July 14, 2017, and to withdraw portions of your written discovery to her for the reasons set forth below.

Manal Mohammad Yousef is now and has been for many years a resident of Palestine. As a non-resident of the Virgin Islands, any notice to take her deposition should have noticed it to take place where she lives. Therefore, your notice to depose her in your office is improper on its face. *Rapoca Energy Company, L.P. v. Amci Export Corporation*, 199 F.R.D. 191, 193 (W.D.Va. 2001); and *Buzzeo v. Board of Education, Hempstead*, 178 F.R.D. 390, 392 (E.D.N.Y. 1998).

In addition there are practical reasons why Manal Mohammad Yousef cannot appear in your office in the Virgin Islands on July 14, 2017. In order for her to travel to the United States she would need to obtain a United States travel visa, which she does not have at the present time. In order to get a visa from the United States to permit her to travel here, it would be necessary for her to go to the American Embassy in Israel. Travel from Palestine to Israel is very dangerous and would force her to put her personal safety in jeopardy. There is also no guarantee that the United States Embassy would issue a visa for her to travel. The uncertainty of the issuance of visas to persons in the Middle East is underscored by the Supreme Court decision today which upheld portions of President Trump's travel ban.

CHRISTIANSTED OFFICE:
1138 KING STREET (THE PENTHENY BUILDING), CHRISTIANSTED, ST. CROIX, U.S. VIRGIN ISLANDS 00820-4943
E-MAIL: rauna@hymeslawvi.com
TELEPHONE: (340) 773-1700 FACSIMILE: (340) 775-3300

Furthermore Manal Mohammad Yousef is a mother of three (3) school-aged children between the ages of twelve (12) to nineteen (19). All of them are presently in school, and because of this she cannot leave them alone to travel here even if she could obtain a visa which is problematic as set forth above.

Aside from the Notice of Deposition with Accompanying Rule 34 Request, you have recently issued written discovery to Manal Mohammad Yousef consisting of Requests for Admissions, a set of Interrogatories, and a Requests for the Production of Documents. The Rule 34 Request and the Request for the Production of Documents are identical and, in paragraphs 13, 17, 19, 20, 21, and 23, seek the production of material which is protected by the attorney/client privilege. Accordingly, I respectfully request that you withdraw these requests in both the written discovery and in Rule 34 Request accompanying the Notice of Deposition, as well as the Notice of Deposition itself, and focus on completing the written discovery already commenced. By completing the written and other discovery which you have already commenced, you may find that there is some other method to obtaining the information from others you would otherwise obtain from Manal Mohammad Yousef by taking her deposition.

In an effort to resolve this situation, I will endeavor to provide you with responses to the written discovery which you have issued. However, based on the time and distances involved I request an extension of thirty (30) days for me to provide you with answers and responses to these items. If you agree to this extension, I will agree to provide you with those responses as expeditiously as possible within the extended timeframe.

Please understand that if you do not agree to withdraw the Notice of Deposition, and paragraphs 13, 17, 19, 20, 21, and 23 of the Rule 34 Request and Request for the Production of Documents, I will have no alternative but to file a motion for protection in accordance with the terms and conditions of Rule 26(c)(1) referred to above.

Thank you for your cooperation, advice, and assistance in these regards.

Sincerely yours,



James L. Hymes, III

JLH:rs

cc: Mark W. Eckard, Esq.
meckard@hammeckard.com

EXHIBIT “B”

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

June 27, 2017

James L. Hymes, III, Esquire
Law Offices of James L. Hymes, III, P.C.
P.O. Box 990
St. Thomas, VI 00804-0990

Sent by mail and email: jim@hymeslawvi.com

Re: Sixteen Plus v Manal

Dear Jim:

In response to your letter dated June 26th, the two corporate-party cases you cite are easily distinguishable. In this case, your client is also a Plaintiff, attempting to foreclose a mortgage on USVI land, recorded in the Virgin Islands, secured by a Note, which her last lawyer who wrote me claimed was now due in excess of \$15,000,000. See **Exhibit 1**. No court would allow **any** off-island lender to avoid being deposed here where the land securing the debt is located and the foreclosure action is taking place.

Moreover, your client is either attempting to defraud a Virgin Islands corporation (based on the same facts that indicted her brother and uncle in 2004, (see **Exhibit 2**) or she is trying to liquidate a very substantial investment on St. Croix, all of which requires her to come here to explain which facts are true.

Indeed, your client had no trouble securing counsel in St. Martin as well as here when she wanted to initiate collection efforts on the debt. Her feigned excuse of it being a hardship on her simply confirms this is a bogus claim.

Finally, Palestine is not one the countries affect by the travel ban you referenced.

As for the discovery requests, they are proper and will not be withdrawn. An assertion of potential privilege does not, as you seem to imply, obviate a request in any way. Moreover, and this is quite important, if a requested item is deemed to be privileged, you *must* list it on a privilege log pursuant to Rule 26(b)(5) which requires not only the list, but also that you:

- (i) expressly make the claim; and

Letter To Hymes

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(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

Please call if you want to discuss this any further.

Cordially,

Joel H. Holt

JHH/jf

Enclosures

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

SIXTEEN PLUS CORPORATION,)	
)	CIVIL NO. SX-16-CV-65
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MANAL MOHAMMAD YOUSEF,)	
)	
Counter-Claimant,)	COUNTERCLAIM
)	
vs.)	
)	
SIXTEEN PLUS CORPORATION,)	
)	
Counter-Defendant.)	
_____)	

ORDER

This matter, having come before this Court upon the Defendant Manal Mohammad Yousef's Motion for Protective Order, and the Court being fully satisfied with the premises contained therein, it is hereby

ORDERED that the defendant's Motion is hereby **GRANTED**; and it is further

ORDERED that the Notice of Deposition with Accompanying Rule 34 Request directed to Defendant Manal Mohammad Yousef is quashed; and it is further

ORDERED that the deposition of Defendant Manal Mohammad Yousef shall not take place in the U.S. Virgin Islands; and it is further

ORDERED that the deposition of Defendant Manal Mohammad Yousef, pursuant to the notice of deposition served by plaintiff on June 14, 2017, to be taken on written questions, and not by oral examination; and it is further

ORDERED that the plaintiff serve on Defendant Manal Mohammad Yousef a copy of the written questions by which it proposes to examine Defendant Manal Mohammad Yousef; and it is further

ORDERED that a copy of this Order be directed to Joel Holt, Esq., Mark W. Eckard, Esq. and James L. Hymes, III, Esq.

ENTERED this _____ day of _____, 2017.

Judge, Superior Court of the Virgin Islands

A T T E S T:

THE HON. ESTRELLA H. GEORGE
Clerk of the Court

By: _____
Deputy Clerk

DISTRIBUTION LIST:

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