

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

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

CIVIL NO. ST-16-CV- 0065

**ACTION FOR
DECLARATORY JUDGMENT**

JURY TRIAL DEMANDED

MOTION AND MEMORANDUM FOR SANCTIONS FOR NON-APPEARANCE

The Plaintiff filed a Rule 30 deposition notice of the Plaintiff on June 14, 2017, a copy of which is attached as **Exhibit 1**. Despite the fact that the notice set the deposition for 30 days later, the Defendant waited until three days before the deposition to file a motion for a protective order.¹ As the Court file will confirm, no protective order was ever entered. Notwithstanding this fact, neither the Defendant nor her counsel appeared for the properly noticed deposition, as the transcript reflects. See **Exhibit 2**.

As the Court noted in *Sheen et al v. The Continental Insurance Co.*, 18 V.I. 164, 165-66 (Terr. Ct. 1982), it is black letter law in this jurisdiction that the **filing of a protective order does not excuse one from appearing for a deposition if the motion is not ruled upon prior to the deposition**, stating:

As this Court pointed out in its memorandum opinion of February 19, 1982, the proposed deposition was properly noticed. See Fed. R. Civ. P. Rule 30(b)(1). No protective order was ever granted. No legal basis for failure to attend the deposition has ever been advanced. The entire process of filing the motion for a protective order flies in the face of good faith effort to comply with the Rules of Civil Procedure. The Court makes this determination in light of the fact that the motion was filed on February 12, 1982, and related to a deposition to be taken on February 16, 1982. The intervening three days were, respectively, a Saturday,

¹ The Plaintiff will respond to that motion by filing a formal opposition to it.

Sunday and Monday legal holiday. This conclusion is driven home with greater force when one recognizes that the notice of deposition was served upon local counsel on January 26, 1982, **a full 16 days before the return date**. It has never been appropriate for counsel to assume the grant of a protective order merely as a result of filing a motion therefore. . . . On the contrary, **it has always been the rule that until the Court actually grants the requested relief, no excuse for failure to attend a deposition exists.** *Id.* (Citations omitted) (Emphasis added).

Other jurisdictions routinely agree with this common sense holding. See, e.g., *Stephen L. LaFrance Holdings, Inc. v. Sorensen*, 278 F.R.D. 429, 436, 2011 WL 6176589 (E.D. Ark. 2011) (“the filing of a motion to quash does not automatically stay a deposition.”); *Batt v. Kimberly–Clark Corp.*, 438 F.Supp.2d 1315, 1317–18 (N.D.Okla. 2006) (motion to quash does not automatically stay a deposition); *Sutherland v. Mesa Air Group, Inc.*, No. 98–10061–CIV2003, 2003 WL 21402549, at *5 and n. 10 (S.D.Fla. June 6, 2003) (The filing of a motion for protective order alone would not have relieved counsel of obligation to attend the depositions; the obligation to comply dissipates only when court grants the motion.) and *Hepperle v. Johnston*, 590 F.2d 609, 613 (5th Cir. 1979) (The court's inaction on plaintiff's motion for a protective order to postpone the taking of his deposition did not relieve plaintiff of the duty to appear for deposition).

In *Sheen, supra*, the court awarded fees and costs. Thus, it is respectfully submitted that this Court should enter sanctions against the Defendant and order fees and costs to be paid, which the Court should direct the parties to try to resolve without the Court's involvement if possible. A proposed Order is attached.

Dated: July 19, 2017



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Telephone: (340) 514-2690
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CERTIFICATE OF SERVICE

I certify that this filing complies with the page and word limitations of the VI R Civ P 6(e). I further certify that on the 19th day of June, 2017, I caused a true and correct copy of the foregoing document to be served upon James Hymes III by mail, hand delivery and email as follows:

Email/Hand Deliver

jim@hymeslawvi.com
rauna@hymeslawvi.com

James Hymes, VI, Esq.
1131 King Street
Suite 309
Christiansted, VI 00820




EXHIBIT 1

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

SIXTEEN PLUS CORPORATION, ,

Plaintiff/Counterclaim Defendant,

v.

MANAL MOHAMMAD YOUSEF

Defendant/Counterclaim Plaintiff

CIVIL NO. ST-16-CV- 0065

**ACTION FOR
DECLARATORY JUDGMENT**

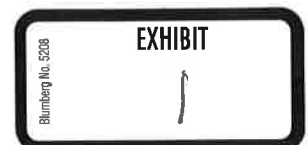
JURY TRIAL DEMANDED

NOTICE OF DEPOSITION WITH ACCOMPANYING RULE 34 REQUEST

PLEASE TAKE NOTICE that pursuant to V.I. R. Civ. P. 30(a), the Plaintiff/Counterclaim Defendant will take the videotape deposition of the Defendant/Counterclaim Plaintiff, Manal Mohammed Yousef, at 9:00 AM on Friday, July 14, 2017, at the Law Office of Joel H. Holt, 2132 Company Street, Christiansted, USVI. (340) 773-8709.

Pursuant to V.I. R. Civ. P. 30(b)(2) as well as V.I. R. Civ. P. 34, the Defendant shall produce the following documents in her possession or under her control at her deposition:

- 1) All documents evidencing the source of any and all funds used by Defendant to loan any money to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as **Exhibit 1**.
- 2) All documents showing the transfer of any and all funds from Defendant to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as **Exhibit 1**.




- 3) All documents evidencing Defendant's ownership of any funds loaned to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as **Exhibit 1**.
- 4) All documents evidencing Defendant's control over any funds loaned to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as **Exhibit 1**.
- 5) All documents evidencing the consideration you provided in exchange for the Promissory Note regarding the property known as Diamond Keturah as stated in the Counterclaim paragraph 4 in the Civil 65 (*Sixteen Plus v. Manal Yousef*) action, to wit: "On September 15, 1997, [you] **for good and valuable consideration**, executed a Promissory Note secured by a First Priority Mortgage. . . ."
- 6) All documents evidencing or discussing any agreement between the Defendant or any of her agents and Sixteen Plus Corporation to loan it the funds leading up to the execution of the Promissory Note attached hereto as **Exhibit 1**.
- 7) All documents showing the negotiations for the amount of interest to be paid the Defendant by Sixteen Plus Corporation leading up to the execution of the Promissory Note attached hereto as **Exhibit 1**.
- 8) All closing documents for loan transaction involving the Promissory Note attached hereto as **Exhibit 1** and the mortgage secured by it.
- 9) All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

- 10) All demands for payment made by the Defendant on Sixteen Plus to pay the Promissory Note attached hereto as **Exhibit 1**.
- 11) All payments received by Defendant from Sixteen Plus Corporation regarding the Promissory Note attached hereto as **Exhibit 1**.
- 12) All documents showing the deposit into any bank or brokerage account of any payments received by Defendant from Sixteen Plus Corporation regarding the Promissory Note attached hereto as **Exhibit 1**.
- 13) All written communications with any lawyer regarding the preparation of the Promissory Note attached hereto as **Exhibit 1**, as well as the mortgage securing this Note.
- 14) All written communications with Defendant's uncle Fathi Yusuf since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.
- 15) All written communications with any family members of Fathi Yusuf since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.
- 16) All written communications with Defendant's brother Isam Yousef since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.
- 17) All written communications with Defendant's nephew Jamil Yousef since 2009 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.

- 18) All written communications with any person affiliated with or representing Sixteen Plus since 1996.
- 19) All written communications with anyone regarding the preparation and execution of the Power of Attorney attached hereto as **Exhibit 2**.
- 20) All communications with any attorney in St. Martin regarding the collection of the Promissory Note attached hereto as **Exhibit 1**, including but not limited to the attorney who sent the letter attached hereto as **Exhibit 3**.
- 21) All communications with Kye Walker since 2015.
- 22) All communications with any lawyer working for the law firm of Dudley, Topper and Feuerzeig, the law firm representing Plaintiff's uncle, Fathi Yusuf, since 2012.
- 23) All communications with James Hymes since 2016.
- 24) Complete copies of all passports issued to you by any country since 1996, whether current or expired.
- 25) All documents showing residential addresses you physically resided at for more than 1 month from 1996 to present.

Said deposition will be taken before a Notary Public commissioned by the Government of the Virgin Islands or other person qualified to administer the oath and take depositions. Said deposition is being taken for use as evidence and for purposes of discovery of evidence and may be continued from day to day until completed.

Dated: June 14, 2017



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Christiansted, VI 00820-4692
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Email: meckard@hammeckard.com

CERTIFICATE OF SERVICE

I certify that his filing complies with the page and word limitations of the VI R Civ P 6-1(e). I further certify that on the 14th day of June, 2017, I caused a true and correct copy of the foregoing document to be served as follows.

Email/Hand Deliver/Mail

jim@hymeslawvi.com
rauna@hymeslawvi.com

James Hymes, VI, Esq.
1131 King Street
Suite 309
Christiansted, VI 00820

James Hymes VI, Esq.
P.O. Box 990
St. Thomas, Virgin Islands 00804

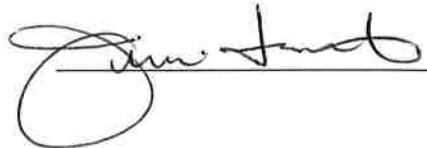


EXHIBIT 2

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

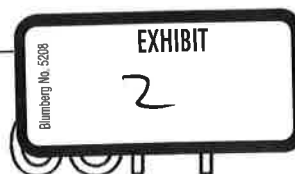
DIVISION OF ST. CROIX

SIXTEEN PLUS CORPORATION,)
)
Plaintiff/Counterclaim Deft.,)
)
vs.) Case No. SX-16-CV-0065
)
MANAL MOHAMMAD YOUSEF,)
)
Defendants/Counterclaim Plf.)

THE ATTEMPTED ORAL DEPOSITION OF MANAL MOHAMMED YOUSEF
was taken on the 14th day of July, 2017, at the Law Offices
of Joel H. Holt, 2132 Company Street, Suite 2,
Christiansted, St. Croix, U.S. Virgin Islands, at the hour
of 9:00 a.m. pursuant to Notice and Federal Rules of Civil
Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161



APPEARANCES**A-P-P-E-A-R-A-N-C-E-S****For Plaintiff/Counterclaim Defendant:**

Law Offices of
Joel H. Holt
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Joel H. Holt

COLLOQUY

1 **MR. HOLT:** This is Joel Holt. I am counsel
2 for the Plaintiff, Sixteen Plus Corporation versus Manal
3 Mohammad Yousef.

4 A deposition notice of the defendant/
5 counterclaim plaintiff, Manal Mohammad Yousef, was served on
6 her lawyer on June 14th, 2017, 30 days ago, for 9 o'clock
7 this morning.

8 Her lawyer did file a motion for protective
9 order two days ago, which has not been addressed by the
10 Court, thus we're going on record to start this deposition.

11 Prior to the commencement of the deposition,
12 I did contact Attorney Hymes and he indicated he was not
13 going to be here, thus that concludes this deposition for
14 now.

CERTIFICATE

C-E-R-T-I-F-I-C-A-T-E

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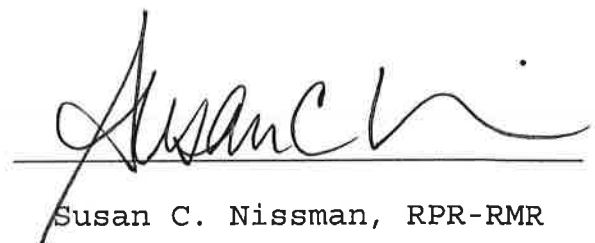
I, SUSAN C. NISSMAN, REGISTERED MERIT REPORTER,
Christiansted, St. Croix, U.S. Virgin Islands, do
hereby certify that I did report the foregoing proceedings
in Stenotype on July 14, 2017.

That the foregoing 3 pages of transcript constitutes
a true and accurate transcription of my Stenotype notes;

That I am not counsel to, nor related to any of the
parties involved herein; nor am I otherwise interested in
the outcome of this proceeding.

IN WITNESS WHEREOF I have affixed my signature hereto
this 14 day of July, 2017.

CERTIFIED TRUE COPY



Susan C. Nissman, RPR-RMR

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

SIXTEEN PLUS CORPORATION, ,

Plaintiff/Counterclaim Defendant,

v.

MANAL MOHAMMAD YOUSEF

Defendant/Counterclaim Plaintiff

CIVIL NO. ST-16-CV- 0065

**ACTION FOR
DECLARATORY JUDGMENT**

JURY TRIAL DEMANDED

ORDER FOR SANCTIONS

This matter is before the Court on the Plaintiff's motion for sanctions due to the failure of the Defendant to show up for her duly noticed deposition. While the Defendant filed a belated motion for a protective order, that does not excuse one's appearance at the deposition unless the motion has been addressed by the Court, which counsel needs to bring to the Court's attention is the deposition is imminent. Thus, upon consideration of the matters before me, it is hereby Ordered that sanctions are granted. Counsel are to confer are on amount, but if no agreement can be reached, the Court will address that issue once notified of the impasse.

Dated:

HONORABLE HAROLD WILLOCKS
Judge, Superior Court

ATTEST:

ESTRELLA GEORGE
Clerk of Court

By: _____
Deputy Clerk

Cc: Joel Holt, Mark Eckard, Jim Hymes