

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

SIXTEEN PLUS CORPORATION, Plaintiff,)	
)	CASE NO.: SX-2016-CV-00065
vs.)	
)	ACTION FOR DECLARATORY JUDGMENT
MANAL MOHAMMAD YOUSEF, Defendant,)	
)	JURY TRIAL DEMANDED
)	
and)	
)	CASE NO.: SX-2017-CV-00342
)	(CONSOLIDATED)
MANAL MOHAMMAD YOUSEF, Counter-Plaintiff,)	
)	
)	ACTION FOR DEBT AND FORECLOSURE
vs.)	
)	JURY TRIAL DEMANDED
SIXTEEN PLUS CORPORATION, Counter-Defendant.)	

**PLAINTIFF/COUNTERCLAIM DEFENDANT MANAL MOHAMMAD YOUSEF’S
MOTION FOR SUMMARY JUDGMENT IN
ACTION FOR DEBT AND FORECLOSURE OF REAL PROPERTY MORTGAGE**

COMES NOW, Plaintiff/Counterclaim Defendant Manal Mohammad Yousef a/k/a Manal Mohamad Yousef (“Yousef”), by and through her undersigned counsel, and respectfully moves the Court pursuant to V.I.R.Civ.P. Rule 56 for an Order granting her Motion for Summary Judgment against defendant/counterclaim plaintiff Sixteen Plus Corporation (“Sixteen Plus”). Yousef further seeks foreclosure of its first priority mortgage and an Order of foreclosure. The undisputed facts will demonstrate Yousef is entitled to summary judgment because she can establish a case for her debt and foreclosure cause of action and there is no defense to the

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foreclosure cause of action. In support of her Motion, Yousef relies on her Statement of Facts, promissory note, mortgage, exhibits, other supporting documents, and the following:

I. STATEMENT OF REASONS

Manal M. Yousef loaned Sixteen Plus the principal sum of \$4,500,000.00 evidenced by a promissory note secured by a first priority mortgage. Sixteen Plus failed to pay back the loan in accordance with the promissory note. Specifically Sixteen Plus defaulted under the terms and conditions of the promissory note and mortgage for failure to make an annual interest only payment when due in 2001. Sixteen Plus has failed to pay all subsequent payments. To date, the default has not been cured despite the default itself and notice of the default. Yousef is the holder of those instruments and entitled to enforce them. Yousef seeks to collect the debt and to foreclose on the mortgage securing the note. Stated succinctly, the mortgage obligation exists and is proved, and there was an undeniable default on the mortgage. Yousef is entitled to her remedy of foreclosure. Judgment for the debt and for foreclosure should be granted on summary judgment because there are no genuine issues of material fact and Yousef is entitled to judgment as a matter of law.

II. STATEMENT OF UNDISPUTED FACTS

Yousef submits this statement of undisputed material facts pursuant to V.I.R.Civ.P. 56(c) in support of her Motion for Summary Judgment. The facts listed below are undisputed by Yousef for the purposes of this motion only, and she reserves the right to contest any of the facts at any later state of this action if this motion should not be granted.

1. Sixteen Plus is owner of record of the Mortgaged Property described below as those parcels and remainders of parcels, and road plots set forth and described in

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seventeen (17) separate listings in Exhibit A to the mortgage, and commonly known as the Estate Diamond Keturah (“Diamond Keturah”) located in St. Croix, U.S. Virgin Islands. [A copy of the Marshal’s Deed is attached as **Exhibit 1.**]

2. Sixteen Plus, through its President Waleed Hamed, was authorized to borrow \$4,500,000 from Yousef and to execute a promissory note and a mortgage. [A copy of Unanimous Consent of Directors in Lieu of a Meeting dated September 15, 1997, is attached as **Exhibit 2.**]

3. Sixteen Plus borrowed \$4,500,000 from Yousef to purchase property, Diamond Keturah, located on St. Croix, U.S. Virgin Islands. [A copy of Promissory Note is attached as **Exhibit 3.**]

4. On September 15, 1997, Sixteen Plus Corporation, via its President Waleed Hamed, executed and delivered a Promissory Note (“Note”) to Yousef in which it promised to pay Yousef the principal sum of Four Million Five Hundred Thousand Dollars (\$4,500,000) together with interest at a rate of 8% per annum in payments of interest only (\$360,000 per year) on the anniversary of the promissory note for five (5) years with payment of full principal due five (5) years from the date of the promissory note. [Exhibit 3 (Note).]

5. To secure Sixteen Plus’s obligation to repay Yousef under the Note, Sixteen Plus, through its President Waleed Hamed, executed and delivered to Yousef a First Priority Mortgage (“Mortgage”) encumbering the following real property described as those parcels and remainders of parcels, and road plots set forth and described in seventeen (17) separate listings in Exhibit A to the mortgage, and commonly known as the Estate Diamond

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Keturah located in St. Croix, U.S. Virgin Islands (“Mortgaged Property”). The Mortgage dated September 15, 1997, was recorded at the Office of Recorder of Deeds for the District of St. Croix on February 22, 1999, in Book 679 at Page 33 as Document No. 768/1999. [A copy of the First Priority Mortgage is attached as **Exhibit 4.**]

6. The Promissory Note signed by Sixteen Plus and Yousef dated September 15, 1997, states in particular part:

FOR VALUE RECEIVED, **Sixteen Plus Corporation (“Maker”)** promises to pay to the order of **Manal Mohamad Yousef (“Holder”)** ... the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) together with interest at 8% per annum in lawful money of the United States of America.

Such indebtedness shall be paid as follows:

Payments of interest only (\$360,000 per year) will be made on the anniversary of the date of this note for five years, with payment of the full principal due five years from the date of this note.

This Note is secured by a first priority mortgage (“Mortgage”), dated of even date, in favor of the Holder encumbering certain real property known as: [Diamond Keturah Property.]

...

It is hereby expressly agreed that should any default be made in the payment of principal and interest as stipulated above, and if such monetary default remains uncured for a period of fifteen (15) days, or if there is any default in any of the terms and conditions of the Mortgage, subject to the Notice provision, if any, in said instrument, then a default shall exist hereunder, and in such event the principal indebtedness evidenced hereby, and any other sums advanced or due hereunder or under the Mortgage, at the option of the Holder without notice or demand, at once become due and payable and may be collected forthwith, and the entire unpaid principal balance of this Note shall thereafter bear interest at a per annum rate equal to eighteen percent (18.0%) per annum simple interest. A default shall be cured hereunder only upon the occurrence of the following:

- Payment of the sum and/or performance of the obligation which was the basis of the default; and
- Payment of all sums (including late fees and subsequent installments) and/or performance of all obligations which have become due hereunder as of the date of cure.

In the event this Note, or any part thereof, is collected by or through an attorney-at-law, Maker agrees to pay all costs of collection including, but not limited to, attorney’s fees and court costs. Any notice sent in connection with this Note shall be sent in compliance with the notice provisions contained in the Mortgage.

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Presentment for payment, demand, protest, notice of demand, protest and non-payment are hereby waived by Maker.

[Exhibit 3 (Note).]

7. The First Priority Mortgage signed by Sixteen Plus and Yousef, dated September 15, 1997, states in pertinent part:

THIS MORTGAGE ("Mortgage") is made this 15 day of September, 1997, between Sixteen Plus Corporation ... ("Borrower") and Manal Mohamad Yousef ("Lender")

W I T N E S S E T H:

A. Borrower is justly indebted to Lender in the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) or so much thereof as shall have been advanced and remains unpaid, which indebtedness is evidence by a Promissory Note in such principal amount, dated of even date herewith and hereinafter referred to as the "Note" and bears interest at the rate or rates and under the terms set forth in the Note, (said Note is incorporated herein by reference and made a part hereof); and

B. Borrower wishes to secure the full and punctual payment of the Note and the indebtedness evidenced thereby, and interest thereon, and the full performance of all the provisions, conditions, covenants and agreements herein contained or in any other document executed in connection herewith, and also to secure the reimbursement to the Lender for any and all money which may be advanced as herein provided for, and for any and all costs and expenses herein provided for or which may arise in respect of this Mortgage or the indebtedness hereby secured or the Property herein mentioned (collectively "Obligations").

NOW THEREFORE, the Borrower does hereby grant, convey and give to the Lender a first priority mortgage on the following described property (collectively "Property") to secure the full and punctual payment and performance of the Obligations: [Diamond Keturah Property.]

...

15. **EVENTS OF DEFAULT; DECLARATION OF NOTICE DUE.** If one or more of the following events (herein referred to as "Events of Default") shall occur:

(a) if the Borrower shall fail to pay any principal of or interest, if any, on the Note when the same becomes due and payable (whether at maturity or on a date fixed for any interest payment, any installment payment, any prepayment or otherwise) and such default is not cured within fifteen (15) days after the payment due date; or

(b) if the Borrower shall fail to perform or comply with any of the other terms of this Mortgage and such default is not cured within thirty (30) days after the effective date of written notice from Lender to Borrower; or

(c) if the Borrower shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a

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petition seeking any arrangement, composition, readjustment or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee or receiver; or

(d) if, within sixty (60) days after the commencement of any proceeding against the Borrower with seeks any arrangement, composition or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee or receiver of the Borrower, without the consent or acquiescence of the Borrower, such appointment shall not have been vacated; or

(e) if the Borrower assigns or sells, or further encumbers, its interest in all or any part of the Property of if the Beneficial Ownership Borrower shall change in violation of paragraphs 30, 31 and/or 32;

Then and in any such event (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of the Mortgage), the Lender may at any time, without notice to declare the entire unpaid principal balance and all other indebtedness evidenced by the Note and/or secured by this Mortgage to be immediately due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

16. **REMEDIES OF THE HOLDER OF THE NOTE.**

16.1 Legal Proceedings. If an Event of Default shall have occurred, the Lender may proceed to foreclose this Mortgage and to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

16.2 Cost of Enforcement. The Borrower shall pay on demand all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by or on behalf of the Lender in enforcing this Mortgage, the Note, or any of the other documents executed in connection herewith, or occasioned by any default hereunder or thereunder. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

16.3 No Waiver. Neither failure or any delay on the part of the Lender to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

...

18. **FORECLOSURE.** If an Event of Default shall have occurred, the Lender may at any time proceed at law or in equity or otherwise to foreclose the lien of this Mortgage as against all or any part of the Property. Borrower hereby expressly waives all rights to require Lender to first resort to the sale of any portion of the Property before foreclosing upon and/or selling any other portion(s) of the Property which is subject to this Mortgage and Borrower hereby agrees that Lender, at Lender's sole

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discretion, may elect to sell any one or more portion of the property in one or more Marshal's sales.

...

29. **NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed to have been given when hand delivered or mailed by first class certified mail, postage prepaid, return receipt requested, to the address given at the beginning of this Mortgage or at such other address as a party may have furnished to the other party by written notice.

...

34. **MISCELLANEOUS.** This Mortgage may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage shall be governed by and construed in accordance with the laws of the United States Virgin Islands.

[Exhibit 4 (Mortgage).]

8. Yousef is a holder of the Note and Mortgage and is entitled to enforce those instruments. [Exhibits 3 (Note) and 4 (Mortgage).]

9. The Note provides that Sixteen Plus will be in default by failing to pay an installment. [Exhibit 3 (Note).]

10. The Mortgage authorizes Yousef to foreclose in the event of a default. [Exhibit 4 (Mortgage).]

11. On or about September 15, 2001, Sixteen Plus failed to pay an annual interest only payment on the Note when it became due and every subsequent payment principal and interest thereafter. [A copy of Manal Mohammad Yousef's Response to Plaintiff/Counterclaim Defendant Sixteen Plus' First Set of Interrogatories to Defendant/Counterclaim Plaintiff Manal Mohammad Yousef is attached at **Exhibit 5** at Interrogatory No. 11 in matter styled as *Sixteen Plus Corporation v. Manal Mohammad Yousef*, Civ. No. SX-16-CV-65; see also **Exhibit 6**, Fathi Yusuf's Certified Second Supplemental and Amended Responses to Defendant Waleed M.

Hamed's First set of Interrogatories in the matter styled *Fathi Yusuf v. Peter's Farm Investment Corporation, Sixteen Plus Corporation, Mohammad A. Hamed, Waleed M. Hamed, Waheed M. Hamed, Mufeed M. Hamed, and Hisham M. Hamed*, Case No. ST-15-CV-344.]

12. Notice of the default was sent to Sixteen Plus at its address (corporate address) of 4C & D Sion Farm, Christiansted, St. Croix, via courier, on behalf of Yousef in a letter dated December 12, 2012. [A copy of letter from Jelmer G. Snow, of BZSE, to Sixteen Plus Corporation dated December 12, 2012, is attached as **Exhibit 7**.]

13. Sixteen Plus made no further payments on the Note. [Exhibit 5 (Yousef's Response to Sixteen Plus' First Set of Interrogatories at Interrogatory No. 11); Exhibit 6, Fathi Yusuf's Certified Second Supplemental and Amended Responses to Defendant Waleed M. Hamed's First set of Interrogatories.]

14. The cure period expired and the money defaults were not cured. The total debt is due. All pre-conditions to the receipt of the debt owed and to foreclosure have been met under the Note and Mortgage. There is now justly due and owing to Yousef from Sixteen Plus the principal balance on the mortgage (\$4,500,000) and interest from the date it is to be computed and accrued late charges to the date of payment as well as reasonable attorney's fees, costs and expenses in accordance with the Note and Mortgage. [Exhibits 5 and 6.]

III. ARGUMENT

1. The Standard for Summary Judgment

Under the Virgin Islands Rules of Civil Procedure 56, summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.I.R.Civ.P. 56(a); *Rymer v. Kmart Corp.*,

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68 V.I. 571, 575-76 (V.I. 2018); *Brouillard v. DLJ Mortgage Capital, Inc.*, 63 V.I. 788, 792 (V.I. 2015) (citing *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379-80 (V.I. 2014)); and *Daximus Enters., LLC v. Rollins*, 2018 V.I. LEXIS 50, *3 (V.I. Super. Ct. May 2, 2018). Material facts are facts “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *Daximus Enters., LLC v. Rollins*, 2018 V.I. LEXIS 50, *3-*4 (V.I. Super. Ct. May 2, 2018) (“As to materiality, only those facts that ‘might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.’”); and *Reed v. V.I. Water & Power Auth.*, 2018 U.S. Dist. LEXIS 55534, *7 (D.V.I. March 30, 2018). A factual dispute is genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Reed v. V.I. Water & Power Auth.*, 2018 U.S. Dist. LEXIS 55534, *7 (D.V.I. March 30, 2018); and *Daximus Enters., LLC v. Rollins*, 2018 V.I. LEXIS 50, *3-*4 (V.I. Super. Ct. May 2, 2018). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (citation omitted); and *Reed v. V.I. Water & Power Auth.*, 2018 U.S. Dist. LEXIS 55534, *7-*8 (D.V.I. March 30, 2018).

The initial burden of proof for summary judgment lies with the moving party to demonstrate that there is no genuine issue of material fact in dispute. *Daximus Enters., LLC v. Rollins*, 2018 V.I. LEXIS 50, *3-*4 (V.I. Super. Ct. May 2, 2018). Then the burden shifts to the non-moving to establish specific facts (affirmative evidence) showing a genuine issue for trial. *Rymer v. Kmart Corp.*, 68 V.I. 571, 576 (V.I. 2018); and *Daximus Enters., LLC v. Rollins*, 2018

V.I. LEXIS 50, *4 (V.I. Super. Ct. May 2, 2018). In determining whether a genuine issue exists, the Court must resolve all reasonable doubts in favor of the nonmoving party. *Rymer v. Kmart Corp.*, 68 V.I. 571, 576 (V.I. 2018); and *Daximus Enters., LLC v. Rollins*, 2018 V.I. LEXIS 50, *4 (V.I. Super. Ct. May 2, 2018).

2. Elements for a debt and foreclosure cause of action

Title 28 V.I.C. § 531(a), a Virgin Islands' debt and foreclosure statute, provides in its entirety:

A lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature. In such action, in addition to the judgment of foreclosure and sale, if it appears that a promissory note or other personal obligation for the payment of the debt has been given by the mortgagor or other lien debtor, or by any other person as principal or otherwise, the court shall also adjudge a recovery of the amount of such debt against such person or persons, as the case may be, as in the case of an ordinary judgment for the recovery of money.

28 V.I.C. § 531(a).

To prevail on a debt and foreclosure cause of action a plaintiff must establish three (3) elements: 1) debtor executed a promissory note and mortgage, 2) debtor is in default under the terms of the note and mortgage (obligation has not been fulfilled or debtor failed to repay the sums due under the agreement), and 3) lender is authorized to foreclose on the property mortgaged as security for the note (legal authority of the lender to foreclose or entitled to collect all sums due under the governing loan instruments (as possessor of the Note and holder of the Mortgage)). *Brouillard v. DLJ Mortgage Capital, Inc.*, 63 V.I. 788, 793 (V.I. 2015) (a debt and foreclosure action) (citing *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2011) (citing *Thompson v. Fla. Wood Treaters, Inc.*, 52 V.I. 986, 995 (D.V.I. 2009), aff'd 405

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Fed.Appx. 610 (3d Cir. 2010)); *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 674 (V.I. 2015) (citing *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2013) (debt and foreclosure action) (citing *Thompson v. Fla. Wood Treaters, Inc.*, 52 V.I. 986, 995 (D.V.I. 2009)); *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2013) (claim for debt collection (debt secured by the Note/claim for debt on the Note) and foreclosure) (citing *Thompson v. Fla. Wood Treaters, Inc.*, 52 V.I. 986, 995 (D.V.I. 2009)); *Clearview Fin. Servs., LLC v. Jim Tillett Caribbean, Inc.*, 2015 V.I. LEXIS 109, *4 (V.I. Super. Ct. September 14, 2015) (citing *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2011) (citing *Thompson v. Fla. Wood Treaters, Inc.*, 52 V.I. 986, 995 (D.V.I. 2009)); *Bayview Loan Servicing, LLC v. Curran*, 2018 U.S. Dist. LEXIS 202390, *9-*10, *10 fn.6 (D.V.I. November 29, 2018) (sets forth three (3) elements to succeed on debt and foreclosure claims in a motion to dismiss pursuant to Federal Rules of Civil Procedure Rule 12(b)(6)); *U.S. Postal Serv. Fed. Cred Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328, *9-*10 (D.V.I. January 31, 2018), modified on other grounds, 2018 U.S. Dist. LEXIS 31531 (D.V.I. February 27, 2018) (debt and foreclosure action); *Bank of Nova Scotia v. Clarke*, 2017 U.S. Dist. LEXIS 207118, *9-*10 (D.V.I. December 18, 2017) (debt and foreclosure action); *Kennedy Funding, Inc. v. Oracle Business Developments, LLC*, 2017 U.S. Dist. LEXIS 66358, *13-*14 (D.V.I. May 2, 2017); *Central Mortgage Company v. Powers*, 2017 U.S. Dist. LEXIS 47755, *17 (D.V.I. March 30, 2017) (debt and foreclosure action); *Central Mortgage Company v. Crosier*, 2016 U.S. Dist. LEXIS 62701, *12 (D.V.I. May 12, 2016) (debt and foreclosure action); *Bank of Nova Scotia v. Christian*, 2015 U.S. Dist. LEXIS 99325, *15 (D.V.I. July 30, 2015) (debt and foreclosure action); and *Arrow-Pocono Lines, Inc. v. Lowell Land, LLC*, 2015 U.S. Dist. LEXIS 77677, *11-*12 (D.V.I. June 16, 2015) (debt and foreclosure

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causes of action). See also Am.Jur.2d Mortgages § 633 (2008) (“foreclosure requires valid mortgage, default on part of mortgagor, and foreclosure in compliance with terms of contract”) (cited by *U.S. Postal Serv. Fed. Cred Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328, *10 (D.V.I. January 31, 2018); *Bank of Nova Scotia v. Clarke*, 2017 U.S. Dist. LEXIS 207118, *10 (D.V.I. December 18, 2017); *Kennedy Funding, Inc. v. Oracle Business Developments, LLC*, 2017 U.S. Dist. LEXIS 66358, *14 (D.V.I. May 2, 2017); *Central Mortgage Company v. Powers*, 2017 U.S. Dist. LEXIS 47755, *17 (D.V.I. March 30, 2017); *Central Mortgage Company v. Crosier*, 2016 U.S. Dist. LEXIS 62701, *12 (D.V.I. May 12, 2016); *Bank of Nova Scotia v. Christian*, 2015 U.S. Dist. LEXIS 99325, *15-*16 (D.V.I. July 30, 2015); and *Arrow-Pocono Lines, Inc. v. Lowell Land, LLC*, 2015 U.S. Dist. LEXIS 77677, *12 (D.V.I. June 16, 2015)). See also 55 Am.Jur.2d Mortgages §§ 575 fn.4 and 604.

3. Yousef Satisfies the Requirements for a Debt and Foreclosure Cause of Action and Summary Judgment in Favor of Yousef is Appropriate

It is well settled in the U.S. Virgin Islands that summary judgment may be granted in a foreclosure action where the pleadings and other documents indicate the maker/borrower is in default under the terms and conditions of the mortgage and on payment of the indebtedness. It is commonly understood that lawsuits to enforce promissory notes (debt actions) are well suited for summary judgment due to well-established legal principles, simplicity of the issues involved, and often uncontested facts. In the matter at hand, the uncontroverted facts reflect Sixteen Plus executed a promissory note secured by a mortgage in favor of Manal M. Yousef, and Sixteen Plus is in default of the Note and Mortgage because it failed to pay the indebtedness under the promissory note. Consequently Yousef is entitled to summary judgment on her foreclosure

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action - Yousef has the right to foreclose the mortgage when Sixteen Plus is in default - in accordance with U.S. Virgin Islands caselaw including *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 675 (V.I. 2015) (citing *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2013)).

The case of *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670 (V.I. 2015), is illustrative of the elements to establish a debt and foreclosure causes of action. *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 675 (V.I. 2015). Citi (holder/lender) proffered evidence to support its cause of action for debt and foreclosure when it provided a copy of the original note and mortgage with Fidelity Union, copies of subsequent loan modifications executed by Carrillo, and documents depicting how Citi became holder and owner of Carrillo's loan, note and mortgage. Carrillo (maker/borrower) admitted she executed and delivered to Citi a note wherein she promised to pay Fidelity the principal sum of money together with interest at a certain rate per annum, and executed and delivered to Fidelity a mortgage on her property to secure the indebtedness of the note. Pursuant to the modification agreement, Carrillo agreed to a pay a monthly payment. The modification agreement and note included an acceleration clause, triggered upon default, where the entire principal sum and all accrued interest become immediately due. The acceleration clause specified, "if any monthly installment under th[e] Note is not paid when due and remains unpaid after a date specified by a notice to [Carrillo], the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder." *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 675 (V.I. 2015). Citi presented evidence that Carrillo defaulted under the terms of the mortgage and note. An employee of Citi attested that Carrillo was in default under the note and mortgage for failing to pay the principal and interest as due under the note as modified. Citi, as owner of Carrillo's mortgage and note, elected to exercise its

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right under the note to accelerate the debt and declare the entire unpaid principal and all accrued interest immediately due and payable. Citi satisfied the three (3) requirements for debt and foreclosure claim. *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 675 (V.I. 2015).

After holder/lender establishes no genuine issue of material fact regarding its action for debt and foreclosure, the burden shifts to maker/borrower to identify specific areas in the record setting forth affirmative evidence that a genuine issue of material fact exists from which a jury may reasonably return a verdict in his favor. *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 675 (V.I. 2015) (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013)).

In *U.S. Postal Serv. Fed. Cred. Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328 (D.V.I. January 31, 2018), the District Court held U.S. Postal Service Federal Credit Union was entitled to summary judgement because it met all the requirements for its debt and foreclosure causes of action. U.S. Postal Service Federal Credit Union demonstrated the Edwins executed the promissory Note and Mortgage to satisfy the first prong. *U.S. Postal Serv. Fed. Cred Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328, *10 (D.V.I. January 31, 2018), modified on other grounds, 2018 U.S. Dist. LEXIS 31531 (D.V.I. February 27, 2018). U.S. Postal Service Federal Credit Union established the Edwins were in default by failing to make payments due under the promissory Note and Mortgage by proffering a copy of a letter of default (notice of default via letter) sent to the Edwins and a copy of the loan payment history to comply with the second element. *U.S. Postal Serv. Fed. Cred Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328, *11 (D.V.I. January 31, 2018), modified on other grounds, 2018 U.S. Dist. LEXIS 31531 (D.V.I. February 27, 2018). In other words, the Edwins were in default because they failed to pay the amounts due in accordance with the governing loan documents (Note and Mortgage) despite the

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letter of default/notice of default. U.S. Postal Service Federal Credit Union was authorized to foreclose on the real property, to satisfy the third prong, because the Mortgage provided, “[i]f the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument ... and may foreclose this Security Instrument by judicial proceeding.” *U.S. Postal Serv. Fed. Cred Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328, *11 (D.V.I. January 31, 2018), modified on other grounds, 2018 U.S. Dist. LEXIS 31531 (D.V.I. February 27, 2018). Furthermore U.S. Postal Service Federal Credit Union showed its damages by quantifying them: the amount due and owing in principal and in interest (unpaid principal balance plus accrued interest), with interest continuing to accrue at a specified rate per diem. *U.S. Postal Serv. Fed. Cred Union v. Edwin*, 2018 U.S. Dist. LEXIS 15328, *11 (D.V.I. January 31, 2018), modified on other grounds, 2018 U.S. Dist. LEXIS 31531 (D.V.I. February 27, 2018).

Yousef is entitled to summary judgment because no genuine issue of material fact exists in that Sixteen Plus executed, acknowledged, and delivered a promissory note and mortgage (SOF ¶¶ 2, 3, 4, and 5), a default occurred under the terms and conditions of the promissory note and mortgage on September 15, 2001, for failing to make an annual interest only payment when due (SOF ¶¶ 11, 12, 13 and 14), and Yousef is a holder of those instruments entitled to enforce them (SOF ¶¶ 8, 9 and 10). See *Carrillo v. Citimortgage, Inc.*, 63 V.I. 670, 675 (V.I. 2015) (citing *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 232 (V.I. 2013)).

The first requirement is satisfied by establishing Sixteen Plus executed a Promissory Note and Mortgage on September 15, 1997. It is incontrovertible that Sixteen Plus executed, acknowledged, and delivered a Note promising to pay Yousef, the payee/holder, the principal

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sum of \$4,500,000 together with interest at the rate of 8% per annum payable in interest only (\$360,000 per year) for five years with payment of the full principal due in the fifth year. [SOF ¶¶ 3, 4 and 6; and Exhibit 3 (Promissory Note).] Its promise to pay was secured by a Mortgage in the principal sum of \$4,500,000 encumbering the Mortgaged Property described as those parcels and remainders of parcels, and road plots set forth and described in seventeen (17) separate listings in Exhibit A to the mortgage, and commonly known as the Estate Diamond Keturah located in St. Croix, U.S. Virgin Islands. [SOF ¶¶ 5 and 7; and Exhibit 4 (Mortgage).] Succinctly stated, on September 15, 1997, Waleed Hamed, as President of Sixteen Plus, executed, acknowledged, and delivered to Yousef a Promissory Note obligating Sixteen Plus to pay the principal amount of \$4.5 million, together with interest at a rate of 8 % per annum. [SOF ¶¶ 2, 3, 4 and 6.] Repayment of the loan (Promissory Note) was secured by a first priority mortgage on the Property (Diamond Keturah) also executed by Sixteen Plus, through its President Waleed Hamed, on September 15, 1997. [SOF ¶¶ 2, 5, and 7.]

Yousef satisfies the second requirement (debtor/Sixteen Plus is in default for failing to make payments due under the governing instruments) and third requirement (Yousef is authorized to foreclose on the Mortgaged Property) of a foreclosure claim. Yousef presents evidence that Sixteen Plus was in default under the Note and Mortgage for failing to make payments of principal and interest due under each document. Some of the salient paragraphs of the Note are:

It is hereby expressly agreed that should any default be made in the payment of principal and interest as stipulated above, and if such monetary default remains uncured for a period of fifteen (15) days, or if there is any default in any of the terms and conditions of the Mortgage, subject to the Notice provision, if any, in said instrument, then a default shall exist hereunder, and in such event the principal indebtedness

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evidenced hereby, and any other sums advanced or due hereunder or under the Mortgage, at the option of the Holder without notice or demand, at once become due and payable and may be collected forthwith, and the entire unpaid principal balance of this Note shall thereafter bear interest at a per annum rate equal to eighteen percent (18.0%) per annum simple interest. A default shall be cured hereunder only upon the occurrence of the following:

- Payment of the sum and/or performance of the obligation which was the basis of the default; and
- Payment of all sums (including late fees and subsequent installments) and/or performance of all obligations which have become due hereunder as of the date of cure.

[SOF ¶ 6; and Exhibit 3 (Note).] The Mortgage states in relevant part:

15. ... If one or more of the following events (herein referred to as "Events of Default") shall occur:

(a) if the Borrower shall fail to pay any principal of or interest, if any, on the Note when the same becomes due and payable (whether at maturity or on a date fixed for any interest payment, any installment payment, any prepayment or otherwise) and such default is not cured within fifteen (15) days after the payment due date; or

(b) if the Borrower shall fail to perform or comply with any of the other terms of this Mortgage and such default is not cured within thirty (30) days after the effective date of written notice from Lender to Borrower;

...

Then and in any such event (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of the Mortgage), the Lender may at any time, without notice to declare the entire unpaid principal balance and all other indebtedness evidenced by the Note and/or secured by this Mortgage to be immediately due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

[SOF ¶ 7; and Exhibit 4 (Mortgage) at ¶ 15.]

Specifically Sixteen Plus defaulted under the terms and conditions of the Note and Mortgage by failing to make payments of interest only in 2001 and 2002 and payment of the full principal in 2002. [SOF ¶¶ 11, 12, 13 and 14.] That is, Sixteen Plus failed to make an interest only payment of \$360,000 in 2001, and each and every payment due thereafter. [SOF ¶¶ 11 and 13; and Exhibits 5 and 6.]

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Sixteen Plus was in default for nonpayment pursuant to the terms of the Note and Mortgage – failure to pay any principal or the interest when due and payable and such default is not cured within fifteen (15) days after the payment due date. [SOF ¶¶ 11, 12, 13 and 14; Exhibit 4 (Mortgage) at ¶ 15(a); and Exhibit 3 (Note).] Sixteen Plus was further advised of the default but it did not cure the default. [SOF ¶¶ 12, 13 and 14; and Exhibit 7 (letter from Mr. Snow to Sixteen Plus Corporation dated December 12, 2012).] By written notice dated December 12, 2012, Yousef declared the note and mortgage to be in default and made demand for payment in full of the entire principal balance of \$4,500,000, together with accrued interest thereof, late charges and all of the sums due and owing under the note and mortgage. That is, Sixteen Plus not only was charged with the default at the time of the default but also was informed of its failure to perform under the Note and Mortgage and that a demand was made for the performance to no avail pursuant to a letter from Mr. Snow. [SOF ¶¶ 11, 12 and 13; and Exhibit 7 (letter from Mr. Snow to Sixteen Plus Corporation dated December 12, 2012).] The Snow letter indicates Sixteen Plus was in default and must pay past due amount stated or legal measures - foreclosure - would be taken. [SOF ¶ 12; and Exhibit 7 (letter from Mr. Snow to Sixteen Plus Corporation dated December 12, 2012).] As a result of the default and since the loan is past maturity (debtor/borrower is past due on all remaining payments of principal and interest), Yousef is due \$4,500,000 in principal plus interest and late charges to the date of payment in accordance with the governing loan instruments. [SOF ¶ 14; and Exhibits 5 and 6.]

The Mortgage allows a lawsuit to enforce its terms including a foreclosure action. The Mortgage authorizes foreclose on the Mortgaged Property upon default, “If an Event of Default shall have occurred, the Lender may proceed to foreclose this Mortgage and to protect and

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enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.” [SOF ¶ 7; and Exhibit 4 (Mortgage) at ¶ 16.1.] The Mortgage further states, “If an Event of Default shall have occurred, the Lender may at any time proceed at law or in equity or otherwise to foreclose the lien of this Mortgage as against all or any part of the Property. ...” [SOF ¶ 7; and Exhibit 4 (Mortgage) at ¶ 18.]

Yousef establishes the three (3) requirements necessary for summary judgment against Sixteen Plus. She presents the Note, Mortgage and evidence of default and therefore establishes a case for foreclosure. The Court should grant Yousef’s motion for summary judgment on the debt and foreclosure claim against Sixteen Plus.

Yousef is permitted to recover legal fees and costs pursuant to the Note and Mortgage. [Exhibit 3 (Note) (“In the event this Note, or any part thereof, is collected by or through an attorney-at-law, Maker agrees to pay all costs of collection including, but not limited to, attorney’s fees and court costs.”) and Exhibit 4 (Mortgage) at ¶ 16.2.] Yousef reserves the right to submit her request for attorney’s fees, costs, and expenses in this matter upon judgment. Yousef will submit an appropriate affidavit to the Court to substantiate her request for attorney’s fees, costs and expenses upon judgment.

WHEREFORE, based upon the foregoing, Plaintiff/Counterclaim Defendant Manal M. Yousef respectfully requests this Court enter an order granting her Motion for Summary Judgement, and dismissing the counterclaim against her in Civil No. SX-17-CV-342.

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Plaintiff/Counterclaim Defendant Yousef further prays that the order contains such other relief as this Court deems just and proper.

Respectfully Submitted,

DATED: April 19, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page limitations set forth in Rule 6-1(e)(3). I hereby further certify that on this the 19th day of April, 2023, as an approved C-Track filing on behalf of James L. Hymes, III, I caused an exact copy of the foregoing **“Plaintiff/Counterclaim Defendant Manal Mohammad Yousef’s Motion For Summary Judgment In Action For Foreclosure Of Real Property Mortgage”** to be served electronically through the C-Track system, upon the following counsel of record:

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