**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS AND ST. JOHN**

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| **HASSAN ABDALLAH,**<br><br>Plaintiff,<br><br>v.<br><br>**HASAN ABDEL-RAHMAN, MALEA KIBLAN RAHMAN, ABDUL SAMAD, FOAD SAMAD, and AYMAN ABDEL-SAMAD,**<br><br>Defendants.<br><br>**HASAN ABDEL-RAHMAN, MALEA KIBLAN RAHMAN, ABDUL SAMAD, FOAD SAMAD, and AYMAN ABDEL-SAMAD,**<br><br>Counter-Plaintiffs,<br><br>v.<br><br>**HASSAN ABDALLAH, and AHMAD ABDALLAH.**<br><br>Counter-Defendants. | **CASE NO. ST-13-CV-227**<br><br>**ACTION FOR ACCOUNTING, DEBT, BREACH OF CONTRACT and FRAUD**<br><br>**JURY TRIAL DEMANDED** |

**MEMORANDUM OPINION**

Pending before the Court is Defendants' June 11, 2015, Motion for Leave to File Second Amended and Supplemental Answer and First Amended and Supplemental Counterclaims,[1] through which Defendants seek to add Falaheen Enterprises, Inc., ("Falaheen"), Dockside Convenience, LLC, ("Dockside"), Giant Market, LLC, ("Giant Market"), and Petroleum Brokers, LLC, ("Petroleum Brokers"). For the following reasons, Defendants' Motion will be granted.

[1] Plaintiff responded on July 2, 2015, and Defendants replied on July 13, 2015. Defendants previously filed a pleading entitled Second Amended Answer and Counterclaim on February 7, 2015.

## FACTUAL AND PROCEDURAL HISTORY

On May 16, 2013, Plaintiff filed this action, amended on May 22, 2013, against Defendants' Hassan Abdel-Rahman, Malea Kiblan Rahman, Abdul Samad, Foad Samad and Ayman Abdel-Samad seeking an accounting and alleging debt, breach of contract, and fraud. The parties' main dispute concerns control over a gas station, convenience store, and undeveloped property located at Parcels Nos. 6&9 Remainder Estate Thomas.[2] The parties executed agreements concerning the property whereby, once certain pre-conditions were met, Falaheen would merge into Dockside. These agreements were ratified and memorialized in two documents known as the "February 2011 Agreement" and "Company Resolution #2".[3]

The initial complaint sought to enforce the Certificate of Merger issued by the Office of the Lt. Governor on May 13, 2013.[4] Defendants filed an answer on October 28, 2013. On February 25, 2014, Defendants' sought leave to amend their answer to allege counterclaims for fraudulent misrepresentation, breach of duty, and to pierce the corporate veil of Dockside and Giant Market. The Defendants were granted leave to amend and to add additional parties by Order dated July 18, 2014. On September 18, 2014, Defendants sought leave to implead Ahmad Abdallah as a third-party defendant and to file a third-party complaint. The Court granted Defendants' motion and gave the parties until March 15, 2015, to serve Ahmad Abdallah with the amended pleadings. The

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[2] Dockside is currently a tenant of Plessen Enterprises, Inc. (Landlord), for Parcels Nos. 6&9 Remainder Estate Thomas. The Lease was executed on June 1, 2010, and requires an operating gas station, construction of a convenience store and a second commercial structure. The Lease is personally guaranteed by Defendant Hasan Abdel-Rahman and Plaintiff Hassan Abdallah.

[3] The parties to the "February 2011 Agreement" include Falaheen, the shareholders of Falaheen, individually, and Hassan S. Abdallah, and the Agreement was signed by Hasan Abdel-Rahman; Hussein Abdel-Samad; Hassan S. Abdallah; Abdul Samad; and Ayman Abdel-Samad. The parties to "Company Resolution #2" are Hassan Abdallah, Hasan Abdel-Rahman, and Foad Samad.

[4] Plaintiff took control of Parcels Nos. 6&9 Remainder Estate Thomas, and in March 2013, Plaintiff filed articles of merger for Falaheen and Dockside. On June 2, 2014, the Office of the Lt. Governor declared the merger to be invalid.

Defendants filed their Second Amended Answer and Counterclaims on February 6, 2015.[5] Both parties agreed to an amended scheduling order approved and adopted on June 1, 2015, which gave the parties until June 15, 2015, to amend the pleadings and to add additional parties. Therefore, the current motion filed on June 11, 2015, is timely.

## STANDARD

An answer may be amended "for any omission or defect therein."[6] In the absence of a local statute, case law, or Superior Court rule addressing the issue adequately, the Federal Rules of Civil Procedure are applicable to the Superior Court by Superior Court Rule 7.[7] Under Fed. R. Civ. P. 15(a)(2), pleadings may be amended and supplemented even after the 21 day period to file responsive pleadings has passed. The Court "should freely give leave when justice so requires."[8] When considering whether to exercise its discretion and give leave to amend, a court should be "guided by the policy that a party ought to be afforded the opportunity to test the claim on the merits."[9] The factors courts consider when evaluating a motion to amend include: delay in bringing the motion, prejudice to the opposing party, and futility of the amendment.[10] An amendment can

[5] Defendants do not acknowledge the February 6, 2015, Second Amended Answer and Counterclaims in their current motion.

[6] "[Superior Court] Rule 8 governs amendments to pleadings in Superior Court proceedings." *Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 275 (V.I. 2012). When Rule 8 does not address a question regarding amendments, the Court looks to "doctrines developed under [Fed. R. Civ. P. 15] in determining [the] issue." *Id.* at n. 11.

[7] *See Vanterpool v. Gov't of the V.I.*, __V.I.__, __, 2015 V.I. Supreme LEXIS 23, *16 (VI. 2015)(citing *Sweeney v. Ombres*, 60 V.I. 438, 442 (V.I. 2014))("[T]he Federal Rules of Civil Procedure, ... should represent rules of last resort rather than first resort, and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and *precedents from this Court* reveals the absence of any other [applicable] procedure." (emphasis added)).

[8] *Island Green, LLC v. Querrard*, 429 Fed. Appx. 90, 92 (3d Cir. V.I. 2011)(*quoting* FED. R. CIV. P. 15(a)(2) (edits removed)).

[9] *Anthony v. Independent Insurance Advisors, Inc.*, 56 V.I. 516, at *9 (V.I. 2012) (citations omitted); *Daniel v. Government of the Virgin Islands*, 30 V.I. 134, 140 (D.V.I. 1994).

[10] *Peters v. WAPA*, 58 V.I. 49, at *1 (V.I. Super. 2013) (citing *Newfound Mgmt. Corp., Gen. Partner of Newfound Ltd. P'ship v. Sewer*, 34 F. Supp. 2d 305, 317 (D.V.I. 1999)). *But see Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 275, n. 11 (V.I. 2012)(" Superior Court Rule 8, and not Federal Rule of Civil Procedure 15, should govern amendments to complaints, even if Superior Court Rule 8 provides a less comprehensive framework than Federal Rule of Civil

be considered futile if the proposed amendment is frivolous, would be barred by the statute of limitations, or would otherwise not survive a motion to dismiss.[11]

## ANALYSIS

Defendants seek to add Falaheen and Dockside (derivatively) as counterclaim-plaintiffs, and Giant Market and Petroleum Brokers as counterclaim-defendants. Defendants assert that the counterclaims involve Hassan and Ahmad Abdallah's breaches of contract, fiduciary duties, fraud, and self-dealing through the illegal use of Giant Market to convert leasehold rights belonging to Falaheen and Dockside, including unauthorized use of the premises to operate Petroleum Brokers.[12] Defendants' counterclaims also seek to pierce the corporate veil of Giant Market and request the imposition of a constructive trust and appointment of a receiver.[13] Defendants' believe that their amendments are timely, the additional parties are required under Fed. R. Civ. P. 19(a), 20, and 23.1(a) and the new claims are all compulsory counterclaims. Plaintiff asks the Court to deny joinder of the parties because Defendants' amendments are not compulsory or permissive counterclaims, joinder of the parties would prejudice Plaintiff, and because of delay and futility.

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Procedure 15. However, since Superior Court Rule 8 does not address the standard for the relation back of amendments, we may consider the doctrines developed under the federal rule in determining this issue.").

[11] *Peters,* 58 V.I. at 53-54; *Choate v. Skinner*, 19 V.I. 399, 407 (Terr. Ct. 1983); *see also Rodriguez v. U.S.*, 286 F. 3d 972, 980 (7th Cir. 2002).

[12] Defendants, Falaheen, and Dockside, through its member Hasan Abdel Rahman, contend that: "(1) Hassan Abdallah has, individually and through Giant Market, breached and repudiated the February 2011 Agreement and Company Resolution #2; (2) Hassan Abdallah, as a majority member of Dockside, has breached fiduciary duties to the company and its minority members; (3) Ahmad Abdallah has breached his fiduciary duties to Falaheen under the POA; (4) the Abdallahs and Giant Market have converted assets, rents, profits, contracts, permits and other rights belonging to Falaheen and/or Dockside; (5) PB LLC has been operating a business on property leased to Dockside without providing any accounting, rents or compensation to Dockside; and (6) Defendants, Falaheen and Dockside, are entitled to a full accounting of all rents, profits, expenses and income from Giant Gas and all other businesses operated on the property, imposition of a constructive trust over all such rents and profits in the possession of the Abdallahs, Giant Market and Petroleum Brokers, damages, including punitive damages, declaratory and injunctive relief and appointment of a receiver to manage and protect the businesses and the assets during the pendency of this action." Defendants' June 11, 2015, Second Amended and Supplemental Answer and First Amended and Supplemental Counterclaims, paragraph 11.

[13] The Court will address Defendants motion for appointment of a receiver in a separate memorandum opinion.

### A. Compulsory Counterclaims

Plaintiff's Complaint seeks to enforce the terms of the Agreements made between the parties in February of 2011, whereby Falaheen would merge into Dockside, and the membership shares in the merged entity would be allocated among the shareholders of Falaheen and Dockside.[14] A compulsory counterclaim is defined as, "any claim that...the pleader has against an opposing party if the claim... arises out of the transaction or occurrence that is the subject matter of the opposing party's claim."[15] Further,

> where multiple claims involve many of the same factual and legal issues or are offshoots of the same basic controversy between the parties, fairness and considerations of convenience and economy require that counterclaimant be permitted to maintain the cause of action, but the doctrine of *res judicata* compels the counterclaimant to assert his claim in the same suit for it would be barred if asserted separately.[16]

Defendants maintain they could be prejudiced by the doctrine of res judicata if their counterclaims are not asserted within the current suit. The amended counterclaims include claims brought by Falaheen and derivatively by Defendant Hasan Abdel-Rahman on behalf of Dockside for the members and shareholders of both entities against Plaintiff and his brother Ahmad Abdallah and the companies they own and control for repudiation and breach of the February 2011 contracts.[17]

Additionally, Defendants' assert that Falaheen, Dockside, Market, and Petroleum Brokers, are all required parties. Under Fed. R. Civ. P. 19(a)(1)(A)[18], a party is required to be joined if the

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[14] Compl., at ¶¶ 9, 10, 35-41, 47, 71, 80-88 and 97 (d).
[15] In the absence of a local statute, case law, or Superior Court rule addressing the issue adequately, the Federal Rules of Civil Procedure are applicable to the Superior Court by Superior Court Rule 7. While Superior Court Rule 34 governs counterclaims, the rule does not adequately define the scope of compulsory counterclaims, and the Court looks to doctrines developed under Fed. R. Civ. P. 13(a) in determining [the] issue. *See Santiago,* 57 V.I. at 275, n. 11.
[16] *Seales v. Devine*, 2008 V.I. Supreme LEXIS 23, *8 (V.I. 2008)(unpublished) (citing *Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F.2d 631, 634 (3d Cir.1961)).
[17] "February 2011 Agreement" and the companion agreement "Company Resolution #2".
[18] Currently, the Superior Court does not have a rule addressing the issue of required joinder of parties and the Court looks to doctrines developed under Fed. R. Civ. P. 19(a)(1) to determine the issue.

person is "[s]ubject to service of process...whose joinder will not deprive the court of jurisdiction... [and in] that person's absence, the court cannot accord complete relief to the existing parties".[19] A party can also be required under Fed. R. Civ. P. 19(a)(1)(B)[20], where "that [party] claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the [party]'s ability to protect the interest or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Whereas permissive joinder for Defendants premised on Fed. R. Civ. P. Rule 20(a)(2)[21], allows a person to be joined if "any right to relief is asserted against [him] jointly, severally or in the alternative with respect to or arising out of the same transaction ... and any question of law or fact common to all defendants will arise in the action." At issue is whether each of the proposed new parties are required or permissive parties for the compulsory counterclaims.

## I. Falaheen Enterprises, Inc. (Falaheen)

Falaheen[22] is owner of the trade name "Giant Gas", a party to the February 2011 Agreement, and the holder of the Terminal Facility License issued by DPNR that permits Falaheen to operate a gas station on Parcels Nos. 6&9 Remainder Estate Thomas. Plaintiff Hassan Abdallah believes he owns forty percent (40%) of the shares in Falaheen. Defendants disagree and believe

[19] Fed. R. Civ. P. 19(a)(1) states that a party is required if: "(A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest."

[20] *See supra*, at n. 18.

[21] In the absence of a local statute, case law, or Superior Court rule addressing the issue adequately, the Federal Rules of Civil Procedure are applicable to the Superior Court by Superior Court Rule 7. Currently, the Superior Court does not have a rule addressing the issue of permissive joinder of parties and the Court looks to doctrines developed under Fed. R. Civ. P. 20 to determine the issue.

[22] Falaheen Enterprises, Inc., is a Virgin Islands corporation formed in January 2009 and is subject to service of process and within the court's jurisdiction.

that he is only a potential future shareholder, but recognize that the ownership interests are irrelevant in terms of the compulsory counterclaims. Instead Defendants list Abdul Samad, Ayman Samad, Hasan Abdel-Rahman, and Malea Kiblan Rahman[23] as shareholders, officers, and directors of Falaheen. Considering that Falaheen is a party to the February 2011 Agreement and the parties' main dispute concerns control of the gas station and property under the lease for Parcels Nos. 6&9 Remainder Estate Thomas, the Court finds that any counterclaims by Falaheen relating to that Agreement are sufficient to satisfy the requirements for a compulsory counterclaim. Additionally, the Court finds Falaheen to be a required party in that, without them, the court cannot accord complete relief to the existing parties.

## II. Dockside Convenience, LLC ("Dockside")

Dockside[24] is a tenant of Parcels Nos. 6&9 Remainder Estate Thomas, and a party to the February 2011 Agreement. Plaintiff Hassan Abdallah owns fifty-one percent (51%) of the voting membership units in Dockside. The other members include Hasan Abdel-Rahman as a thirty-nine percent (39%) owner and Foad Samad as a ten percent (10%) owner. As the majority member, Plaintiff did not file his original compliant as a derivative action in the name of Dockside, but instead as an individual member of Dockside, seeking to force the individual shareholders of Falaheen and the other individual members of Dockside to recognize the merger between Falaheen and Dockside. Now, Defendant Hasan Abdel-Rahman asserts that he is an appropriate person to bring a derivative action in the name of Dockside. The derivative action includes claims for

[23] Malea Kiblan Rahman as the wife of Hasan Abdel-Rahman, is a joint owner of his shares.
[24] Dockside Convenience, LLC, is a Virgin Islands limited liability company organized in April 2010 and is subject to service of process and within the court's jurisdiction.

breaches of fiduciary duty, contract, fraud, and self-dealing against Plaintiff, and claims for conversion and damages against Giant Market and Petroleum Brokers.

When deciding a motion to amend to add a counterclaim, the Court considers whether the proposed claim is futile. In determining if a claim is futile, the Court considers if the proposed amendment is frivolous, would be barred by the statute of limitations, or would survive a motion to dismiss. The Court must consider two factors when deciding a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure.[25] First, "all well-pleaded allegations of the [claim] must be taken as true and interpreted in the light most favorable to the [movant], and all inferences must be drawn in favor of them."[26] Second, the Court must decide whether the claim is plausible "on its face."[27]

A member of a limited liability company may maintain an action against that company or another member for legal or equitable relief, to enforce the member's rights under the operating agreement.[28] A member can also bring a derivative action against the company if the members or mangers having authority to do so have refused to commence the action.[29] Leave to amend for a derivative action is freely given. In a derivative action, the complaint must set forth with

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[25] Since the Superior Court does not have a rule addressing a motion to dismiss, the Court looks to doctrines developed under Fed. R. Civ. P. 12(b), pursuant to Superior Court Rule 7.
[26] *Kiskidee, LLC v. Certain Interested Underwriters at Lloyd's of London Subscribing To Policy No. NB043060b*, Civil Action 2009-07, 2012 WL 952752, at *2 (D.V.I. Mar. 21, 2012) (quoting *McTernan v. City of York*, 577 F.3d 521, 526 (3d Cir.2009)); see also *Matheson v. Virgin Islands Cmty. Bank, Corp.*, 297 F. Supp. 2d 819, 825 (D.V.I., App. Div. 2003) ("In considering whether a complaint should be dismissed for failure to state a claim upon which relief can be granted, the Court must consider only those facts alleged in the complaint and accept all of the allegations as true, drawing all reasonable inferences in the [movants]'s favor") (citations omitted).
[27] *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlanta Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "The adequacy of a complaint is governed by the general rules of pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. In *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*, the United States Supreme Court interpreted Rule 8 to require a complaint to set forth a plausible claim for relief, and articulated the proper standard for evaluating motions to dismiss for failure to state a claim". *Brady v. Citron*, 55 V.I. 802, at *8 (V.I. 2011) (citations omitted).
[28] 13 V.I.C. § 1410.
[29] 13 V.I.C. § 2101.

particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.[30] If a derivative action for a limited liability company is successful, any resulting award after expenses belongs to the LLC.[31]

Defendants rely on financial records produced on May 20, 2015, to establish that the Abdallahs failed to operate Dockside and meet the obligations of the February 2011 Agreement. Defendants claim that Dockside does not have individual business licenses, bank accounts, employees, or income and instead diverted all of the revenues from the business operations on the property leased to Dockside to Falaheen's corporate bank accounts. Further, in November 2011, Plaintiff Hassan Abdallah, acting on behalf of Dockside, subleased a portion of Parcels Nos. 6&9 Remainder Estate Thomas to Giant Market.

Here, Defendants maintain that Hasan Abdel-Rahman, as a current member of Dockside and a member at all relevant times, is an appropriate individual to bring a derivative suit. Defendants assert that a derivative action is necessary because many of the claims concern Dockside and not the individual members. Nevertheless, as the controlling member of Dockside, Plaintiff is not an appropriate representative for a derivative suit since the claims are based in part on actions by him through Giant Market and Petroleum Brokers.[32] Taking the counterclaims proposed by Defendants as true and interpreted in the light most favorable to them, the Court finds their claims to be plausible and not frivolous. Therefore, any counterclaims by Defendant Hasan Abdel-Rahman on behalf of Dockside in a derivative suit are sufficient to satisfy the requirements for a compulsory counterclaim, and the Court will permit the parties to amend their claims

[30] 13 V.I.C. § 2103.
[31] 13 V.I.C. § 2104.
[32] Hasan Abdel Rahman verified the Second Amended Response, in compliance with Fed. R. Civ. P. 23.1.

accordingly. Additionally, since the Court has determined that a derivative suit is appropriate, Dockside must be added as a required party in that without them, the court cannot accord complete relief to the existing parties.

### III. Giant Market, LLC ("Giant Market")

In their Amended Counterclaim Defendants declare that Giant Market,[33] through its members, has usurped the rights of Dockside under the June 2010 Lease and the February 2011 agreements. On November 22, 2011, Dockside entered into a sublease with Giant Market. The lease granted Giant Market 6,000 square feet of Parcels Nos. 6 and 9 Remainder Estate Thomas for the duration of the Master Lease[34] in exchange for "rents collected from all tenants on the Demised Property" and any difference "divided equally between the tenant operating the gas station and Sublease".[35] The agreement was signed by Plaintiff Hassan Abdallah for Dockside as the Sublessor, and by Ahmad Abdallah for Giant Market as the Sublessee.[36] Plaintiff Hassan Abdallah claims that he owns one hundred percent (100%) of the voting membership in Giant Market, while Defendants assert that either Hassan Abdallah or Ahmad Abdallah wholly own the company.

Defendants claim that Plaintiff and Giant Market used "fraud and subterfuge to close down Falaheen through an illegal merger... to take control over Falaheen's business...."[37] Defendants rely on documents from Merchants Commercial Bank, the Virgin Islands Government, and Rosh

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[33] Giant Market, LLC, is a Virgin Islands limited liability company organized on or about September 27, 2011, subject to service of process and within the court's jurisdiction as a company operating within the Virgin Islands.
[34] The Master Lease is a lease between Dockside (Tenant) and Plessen Enterprises, Inc. (Landlord), for Parcels Nos. 6&9 Remainder Estate Thomas. The Lease was executed on June 1, 2010, and requires an operating gas station, construction of a convenience store and a second commercial structure.
[35] Plaintiff's July 2, 2015, Opposition to Defendants' Motion for Immediate Appointment of a Receiver, Ex. 1.
[36] *Id.*
[37] Defendants July 10, 2015, Reply to Opposition for Leave to File Amended Pleading, at 8.

Alger, Esq., former counsel for Falaheen, to declare that since 2012 Giant Market has been using Falaheen's trade name "Giant Gas" and Terminal Facility License to operate the gas station, convenience store, and other businesses on the property subject to Dockside's June 2010 Lease. Defendants further assert that Giant Market now has sole control over all of the assets of Falaheen and Dockside.[38]

In their amended counterclaim Defendants ask the Court to pierce the corporate veil of Giant Market. Piercing the corporate veil is "an equitable remedy whereby a court disregards the existence of a corporation... to impose liability on the corporation's shareholders."[39] While sometimes raised as a claim against a party, piercing the corporate veil "is not technically a mechanism for imposing 'legal' liability, but for remedying the 'fundamental unfairness [that] will result from a failure to disregard the corporate form."[40] Further, when deciding a motion to amend to add a counterclaim, the Court considers whether the proposed claim is futile, including if it would survive a motion to dismiss.[41] The Court also must decide whether the claim is plausible "on its face."[42]

Although Giant Market is not a party to the February 2011 Agreements, Giant Market's business operations and members are directly related to the subject matter of Plaintiff's Complaint.

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[38]Previously in a July 18, 2014, memorandum opinion, the Court denied Plaintiff's claim that Defendants failed to assert evidence showing Defendants had authority to control Falaheen or Giant Gas, since Defendants alleged that their authority was wrested away from them via Plaintiff's fraudulent inducement.
[39] *Balbo Corp. v. Enighed Condos.*, LLC, 2011 V.I. LEXIS 11, *5 (V.I. Super. Ct. Feb. 7, 2011).
[40] *Id.*
[41] Under Rule 12(b) of the Federal Rules of Civil Procedure, the Court accepts as true "all well-pleaded allegations of the [claim] and interpret[s the claim] in the light most favorable to the [movant], [with] all inferences drawn in favor of them."
[42] *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlanta Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "The adequacy of a complaint is governed by the general rules of pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. In *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*, the United States Supreme Court interpreted Rule 8 to require a complaint to set forth a plausible claim for relief, and articulated the proper standard for evaluating motions to dismiss for failure to state a claim". *Brady v. Citron*, 55 V.I. 802, at *8 (V.I. 2011) (citations omitted).

Considering that Dockside subleased a portion of the property to Giant Market, leading to Giant Market allegedly usurping the rights of Dockside, including the rights of Falaheen when it was merged into Dockside, and accepting as true the allegations in the counterclaim, the request to pierce the corporate veil is not frivolous and would survive a motion to dismiss.[43] Also, the Court finds that any counterclaims by Defendants against Giant Market relating to the rights of Dockside and Falaheen are sufficient to satisfy the requirements for a compulsory counterclaim.

The resulting counterclaims by Falaheen and Dockside (derivatively) include claims that Plaintiff, as a shareholder and member, breached and repudiated the agreements from February 2011 by transferring assets and rights belonging to Falaheen and Dockside to Giant Market. As a result, the Court finds that Giant Market is a required party under Fed. R. Civ. P. 19(a)(1)(A) and that Giant Market is so situated that disposing of the action without them may impair or impede their ability to protect their interest under Fed. R. Civ. P. 19(a)(1)(B).

## IV. Petroleum Brokers, LLC ("Petroleum Brokers")

Petroleum Brokers operates a fuel brokering, hauling, and storage business on Parcels Nos. 6&9 Remainder Estate Thomas LLC.[44] Defendants' counterclaims state breaches of contract, fiduciary duties, fraud, and self-dealing by Hassan and Ahmad Abdallah's through the illegal use of Giant Market to convert leasehold rights belonging to Falaheen and Dockside, including unauthorized use of the premises to operate Petroleum Brokers. Defendants further proclaim that Petroleum Brokers has been operating under the tenancy of Dockside through Giant Market, without any written sublease or approval from Dockside or Plessen, and without any compensation

[43] The Court previously addressed the sufficiency of Defendants' counterclaim to pierce the corporate veil of Giant Market in a July 18, 2014, memorandum opinion.
[44] Petroleum Brokers, LLC, is a Virgin Islands limited liability company organized on or about April 11, 2012, subject to service of process and within the court's jurisdiction.

to Dockside. Plaintiff Hassan Abdallah believes he owns twenty percent (20%) of the stock in Petroleum Brokers, while Defendants believe Petroleum Brokers is wholly owned by either Hassan Abdallah or Ahmad Abdallah.

Defendants believe that Petroleum Brokers is a required party because of its business operations on Parcels Nos. 6&9 Remainder Estate Thomas.[45] However, this relationship, in and of itself, is insufficient to support a finding of Petroleum Brokers as a required party under Fed. R. Civ. P. 19(a)(1) since the Court can accord complete relief to the existing parties without Petroleum Brokers' presence. Instead, it appears that Petroleum Brokers is a permissive party under Fed. R. Civ. P. 20. Permissive joinder allows a party to be joined when "any right to relief is asserted against [them] jointly, severally or in the alternative with respect to or arising out of the same transaction … and any question of law or fact common to all defendants will arise in the action." Here, Defendants claim that Petroleum Brokers has diminished the assets of Dockside and that Dockside is entitled to compensation from the alleged sublease between Giant Market and Petroleum Brokers. As a result, Petroleum Brokers may be added as a permissive party, and Defendants claims against Petroleum Brokers may be added as permissive counterclaims.

**B. Defendants' Motion to Amend was not unreasonably delayed and is not futile.**

Plaintiff urges the Court to deny the Motion because of unreasonable delay and futility, regardless of whether Defendants claims are compulsory counterclaims. Plaintiff believes that Defendants' excuses for failing to add the parties in 2013, 2014, and the first half of 2015 are meritless. Although Plaintiff's complaint focused solely on the pre-merger investment between

[45] Defendants allege, without citing to any binding precedent, that their claims are analogous to an action for fraudulent transfer, which requires joinder of both the alleged transferor and the alleged transferee. *See Feldkamp v. Long Bay Partners, LLC*, 773 F. Supp. 2d 1273, 1275 (M.D. Fla. 2011) ("A court cannot set aside a fraudulent transfer when only one side of the transaction is before it as a party." Fed. R. Civ. P. 19(a)-(b)).

the individual named parties, in July of 2014 Defendants brought a counterclaim expanding the scope of the litigation. While Defendants maintain that they requested financial records as early as May 2014 for "Giant Gas"[46] for the period from June 2010 to June 2013, Plaintiff states that Defendants did not request the records until after the initial fact discovery deadline passed on January 31, 2015. Undisputed is the fact that the parties held a meet and confer in February 2015, and stipulated to an amended scheduling order that led to Plaintiff producing some financial documents on May 20, 2015. While Defendants claim that they relied on the newly produced records to formulate the current counterclaims, Plaintiff maintains that these allegations concerning Giant Market and Petroleum Brokers date back to at least October 2013 and that similar claims were made in the Third Party Complaint filed in September 18, 2014.[47] Nevertheless, in terms of the amended scheduling order, approved and adopted on June 1, 2015, the current motion to amend is timely.

Defendants assert that the primary reason for their inability to file the Second Amended Response and First Amended Counterclaims on an earlier date is because Falaheen did not have a legal existence to assert any rights for the fourteen month period for May 13, 2013, through June 2, 2014.[48] Additionally, Defendants claim they did not have the necessary information about Falaheen to complete its corporate filings until after Plaintiff produced the financial records on May 20, 2015. Defendants maintain that Falaheen had to update its corporate filings for 2012-2013 and file corporate tax returns for 2011-2014 to obtain a Certificate of Good Standing and Tax

[46] Operating under Giant Market.
[47] Defendants' September 18, 2014, Third Party Complaint, ¶¶ 49 and 78.
[48] On June 2, 2014, the Office of the Lieutenant Governor issued a Cancellation of Certificate of Merger, based upon the finding that the Certificate of Merger was defective and not in compliance with the requirements of Title 12 of the Virgin Islands Code.

Clearance in order to assert legal rights to the trade name Giant Gas and its Terminal Facility License. Falaheen received a Certificate of Good Standing on May 22, 2015.

Plaintiff responds that joinder is not feasible at this point because it will indefinitely delay the date of trial. While Defendants believe that the delay will be minimal because the entities are all owned and/or controlled by existing parties to this action, Plaintiff's attorney claims that he has a conflict of interest and is unable to represent Petroleum Brokers. Plaintiff also states that, if Falaheen is added as a party, Plaintiff will assert his own claims against the corporation. Further, Plaintiff refers to Defendants' counter-claims and believes that, if all four entities are added, it is unclear from Defendants' counterclaims who is entitled to compensation. For example, Defendants state generally in numerous paragraphs that all counter plaintiffs were damaged, but only that Dockside and/or Falaheen are entitled to compensation.[49] However, this argument in itself is insufficient to establish futility and prejudice to prevent the Court from allowing the amendments.

While the Court recognizes that some of the amendments could have been filed sooner, based on the recent disclosures by Plaintiff and the Amended Scheduling Order, the Court finds that Defendants did not unduly delay bringing the motion to amend. Further, the Court finds that the amendments are not futile, especially in light of Defendants' valid concerns to protect their interests under the doctrine of res judicata. To ensure that Plaintiff will not be prejudiced by the amended counterclaims and joinder of parties, the Court will issue another amended scheduling order. Therefore, for the foregoing reasons, the counterclaims are permissible and Falaheen, Dockside, and Giant Market may be joined as required parties and Petroleum may be joined as a permissive party.

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[49] The Court recognizes that since Hasan Abdel-Rahman is bringing a derivative action on behalf of Dockside, in regards to claims from the derivative action, any damages belong to Dockside and not Hasan Abdel-Rahman.

## CONCLUSION

Defendants' June 11, 2015, Motion for Leave to file Second Amended and Supplemental Answer and First Amended and Supplemental Counterclaims is granted. Defendants are granted leave to move to add Falaheen, Dockside, Giant Market, and Petroleum Brokers as parties to this action pursuant to Fed. R. Civ. P. 19 or 20. An Order consistent with this Memorandum Opinion shall follow.

Dated: August 20, 2015

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Estrella H. George
Acting Clerk of Court ___/___/___

by: ________________
Lori Boynes-Tyson
Court Clerk Supervisor 8/25/2015