

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

UNITED CORPORATION)	CIV. NO. SX-13-CV-
)	
Plaintiff)	ACTION FOR DAMAGES
)	CIVIL ACTION
VS.)	
)	AMENDED COMPLAINT
)	
WAHEED HAMED)	
<i>(a/k/a Willy, Willy Hamed)</i>)	JURY TRIAL DEMANDED
)	
Defendant)	
_____)	

AMENDED COMPLAINT

Plaintiff United Corporation, hereinafter (“United”), and by and through its undersigned counsel complains of Defendant Waheed Hamed, hereinafter (“Hamed”) as follows:

I. BACKGROUND

1. This is a civil action for damages (both compensatory and punitive) recoupment, conversion, accounting, constructive trust, breach of contract, and breach of various fiduciary duties against Defendant Waheed Hamed, an employee of Plaintiff United. This complaint includes causes of action against Defendant Waheed Hamed for defalcating, and misappropriating significant funds belonging to Plaintiff United, arising out of Defendant Hamed’s tenure as manager of the operations of the Plaza Extra Supermarket store in St. Thomas, V.I. as well as other locations. Further, this civil action names John Doe 1-10 as persons who have worked knowingly, and jointly with Waheed Hamed in the commission of each of the causes of action alleged herein.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has personal jurisdiction, subject matter jurisdiction, and the amount in controversy is satisfied, pursuant to 4 VIC §76.

3. Venue is proper in the District of St. Thomas because the defendant is a resident of St. Thomas, Virgin Islands, and the facts underlying the causes of action arose in said District, pursuant to 4 VIC § 78.

4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Plaintiff is owned completely in various shares by Fathi Yusuf, Fawzia Yusuf, Maher Yusuf, Nejeah Yusuf, Zayed Yusuf, and Yusuf, hereinafter collectively referred to as the “Yusuf Family”.

7. Defendant Waheed Hamed is a natural person and is a resident of St. Thomas, U.S. Virgin Islands. At all times relevant to this action, Defendant Hamed has been an employee of Plaintiff United.

8. Defendants John Doe 1 to 10, upon information, are employees, family, friends, and agents of Defendant Hamed who have participated and/or assisted defendant Waheed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Doe 1 to 10 may be both natural persons and/or incorporated or unincorporated associations/entities. Each is *sui juris*.

IV. FACTS

9. In 1992, Plaintiff United hired Waheed Hamed as an employee, and assigned him managerial duties at the Plaza Extra supermarket located in Tutu Park, St. Thomas, U.S. Virgin Islands. Defendant Hamed managed and collected significant cash and other assets on behalf of Plaintiff United during the course of his employment.

10. In 2003, Plaintiff United, Fathi Yusuf, Maher Yusuf, and Defendant Waheed Hamed, and the Defendant's brother Waleed Hamed, among others, were indicted in the case of *U.S. v United Corporation*, case no. 15-cr-2005 (D.V.I.).

11. During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered *significant financial documents*, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2010 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct, financial affairs, or tax returns.

12. During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, including but not limited to Defendant's tax returns for the years

13. With the exception of his salaried position with United Corporation, Defendant Waheed Hamed never had any other significant source of income from business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

14. Defendant Waheed Hamed owed an absolute duty of loyalty and care to United Corporation to act in its best interest and not to usurp any of Plaintiff's assets and business opportunity that would otherwise inure to Plaintiff's benefit.
15. A further review of Defendant Waheed Hamed's tax returns, including Defendant's 1992 Tax Return, obtained from the United States Government also revealed that Defendant Hamed had engaged in a separate and secretive wholesale grocery business called 5 Corner's Mini Mart.
16. Defendant Waheed Hamed was never permitted to acquire, engage, or manage any business that may compete with the operations of the Plaza Extra Stores. Defendant Hamed never disclosed to his employer that he was operating a separate wholesale grocery business called "5 Corner's Mini Mart."
17. Defendant Hamed's sole income in 1992 did not exceed \$35,000, and Defendant Hamed never had any other businesses or employment to produce additional revenue to purchase and sell grocery inventory to other retailers.
18. The scale and scope of the wholesale business as indicated in Defendant Hamed's tax returns demonstrates substantial inventory, upon information, belonging to Plaintiff United were misappropriated by Defendant Hamed to operate his wholesale business.
19. To date, Defendant Waheed Hamed refuses to explain and account to Plaintiff United for any of the aforementioned funds, inventory, and the business opportunities Defendant Hamed diverted to his personal benefit.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF FIDUCIARY DUTIES

20. Plaintiff incorporates paragraphs 1 through 20 inclusive as if fully set forth verbatim herein.

21. As an agent and employee of Plaintiff United, a corporate entity, Defendant Waheed Hamed owes fiduciary duties to the entity. Included in the fiduciary duty is the duty of loyalty. Not only is it Defendant Waheed Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, he is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

22. Defendant Waheed Hamed has breached the following duties (the list of duties violated by Defendant Hamed, below is not intended to be an exhaustive or exclusive list):

- a. Duty of Loyalty
- b. Duty of good faith and candor;
- c. Duty to manage the day-to-day operations of Plaintiff United's Plaza Extra supermarket for the benefit of United;
- d. Duty of full disclosure of all matters affecting his employer Plaintiff United;
- e. Duty to refrain from self-dealing, and/or general prohibition against the fiduciary using his relationship to benefit his personal interest; and
- f. Duty to manage any funds, assets, and/or property belonging to Plaintiff United by virtue of its operation of the Plaza Extra Supermarket stores in accordance with applicable laws.

SECOND CAUSE OF ACTION

CONSTRUCTIVE TRUST/RECOUPMENT

23. Plaintiff incorporates paragraphs 1 through 23 as if fully set forth verbatim herein.

24. As an agent and employee of Plaintiff United, Defendant Hamed owes numerous fiduciary duties to Plaintiff United and its shareholders. Not only is it Defendant Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, but Defendant Hamed also is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

25. Defendant Hamed has engaged in misappropriation of substantial and valuable assets of Plaintiff United causing substantial injury to Plaintiff United. As a result, Plaintiff United has sustained significant financial injury.

26. As such, a constructive trust should be imposed to gather and account for all assets misappropriated by Defendant Hamed that belongs to Plaintiff United.

THIRD CAUSE OF ACTION CONVERSION

27. Plaintiff re-incorporates paragraphs 1 through inclusive as if fully set forth verbatim herein.

28. Defendant Waheed Hamed has knowingly converted substantial funds and assets belonging to Plaintiff United. Plaintiff never consented or agreed to Defendant Hamed's unauthorized use of its funds and assets. As such, Defendant Hamed is liable for conversion.

FOURTH CAUSE OF ACTION BREACH OF CONTRACT

29. Plaintiff incorporates paragraphs 1 through 37 inclusive as if fully set forth verbatim herein.

30. Defendant was an at-will employee of Plaintiff United.

31. As an at-will employee of Plaintiff United, Defendant Hamed had a contractual duty to act in good faith, and to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United.

32. Defendant Hamed has breached his contractual duties to Plaintiff United, causing Plaintiff substantial economic and financial harm. As a result, Defendant Hamed is liable to Plaintiff for breach of contract.

SIXTH CAUSE OF ACTION ACCOUNTING

33. Plaintiff incorporates paragraphs 1 through 33 inclusive as if fully set forth verbatim herein.

34. As agent and employee of Plaintiff United, Defendant Hamed was under full contractual obligation and other fiduciary duties to perform his functions as a manager with competence, integrity, and honesty to Plaintiff United Corporation and its shareholders. Defendant Hamed was not permitted to place himself in a position where it would be for his own benefit to violate the duty.

35. Defendant Hamed has breached his employment contractual agreement with Plaintiff United by mismanaging, misappropriating, and converting funds, monies, and other valuables to his personal use. As a result, Plaintiff United has sustained substantial financial damages.

36. As such, Plaintiff United is entitled a full accounting of all monies, funds, and assets unlawfully appropriated by Defendant Hamed.

VI. RELIEF REQUESTED

Wherefore, Plaintiff United Corporation, and its shareholders, respectfully pray for the following relief:

- a. Actual and compensatory damages to be determined at trial.
- b. Punitive damages for the intentional defalcation of funds and damages caused to Plaintiff United Corporation.
- c. A complete accounting and constructive trust of all funds, assets, opportunities, and other valuables converted and or misappropriated by Defendant Hamed.
- d. Costs of all professional fees that may be required for the audit and investigation of this matter.
- e. A return of all documents, including but not limited to electronically stored information, belonging to Plaintiff United in the possession (both actual and constructive) of Defendant Hamed.
- f. A Restraining Order precluding Defendant Hamed from:
 - i. Physically returning, or attempting to return, to any of the Plaza Extra supermarket stores;
 - ii. Accessing, or attempting to access, any bank accounts belonging to United Corporation for any purpose;
 - iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
 - iv. Preclude Defendant Waheed Hamed from contacting any business associates of Plaintiff United;
 - v. Preclude Defendant Waheed Hamed from representing to third-parties that he is an employee of Plaza Extra;

- vi. Accessing, or attempting to access, any of Plaintiff United's, including but not limited to the Plaza Extra Supermarkets, books, records, and information regarding as to location or manner of storage;
- vii. Attorney's fees, court costs, and any other relief the court deems equitable.

Date: July 15, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

By: /s/ Nizar DeWood
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Amended Complaint was served on the Defendant via his counsel at the below address and date via EMAIL AND REGULAR CLASS MAIL.

Date: July 15, 2013

Carl J. Hartmann, III
5000 Estate Coakley Bay, L-6
Christiansted, V.I. 00820

/s/ Nizar DeWood
Nizar A. DeWood, Esq.