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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,	**CIVIL NO. SX-12-CV-370**
Plaintiff,	**ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF**
v.	
FATHI YUSUF and UNITED CORPORATION,	**JURY TRIAL DEMANDED**
Defendants.	

NOTICE OF FILING SUPPLEMENTAL DEPOSITION EXHIBITS

Attached hereto are the following two deposition exhibits to the February 2, 2000, deposition of Fathi Yusuf -- which was marked as Plaintiff's Hearing Exhibit 1 at the TRO/preliminary injunction ("TRO/PI") hearing on January 25th:

Deposition Exhibit 6- Affidavit of Fathi Yusuf

Deposition Exhibit 7- Joint Venture Agreement

At the end of the January 31st hearing, this Court indicated that any exhibits to that deposition the parties submitted would be added to Exhibit 1. Defendants stated they wanted to submit deposition Exhibit 7, which is attached. The plaintiff wishes to submit deposition Exhibit 6, which is an affidavit of Fathi Yusuf containing the following statements/admissions relevant to the issues now before this Court:

> 2. My brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.
>
> 3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.
>
> 4. Mohamed Hamed gave his eldest son, Walleed (a/k/a Wally), power of attorney to manage his interests for the family.

5. We negotiated a lease for the St. Thomas store with Tutu Park Ltd. and executed the agreement on May 30, 1991.

7. Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.

13. United realized that more than one key person was necessary so, in addition to providing Willy Hamed, United assigned Walleed (a/k/a Wally) Hamed and myself to work in the store for free. None of us received any salary for our services and we all worked 18 - 20 hours a day, seven (7) days a week.

41. The Hameds and I were able to turn the store around by the last part of 1994.

Thus, pursuant to this Court's directive at the end of the January 31st hearing, these two deposition exhibits 6 and 7 should now be appended at the end of Plaintiff's Hearing Exhibit #1, as part of that exhibit -- although counsel will submit a separate Order directing that be done if the Court would prefer.

Dated: February 19, 2013

Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Christiansted, VI 00820

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2013, I served a copy of the foregoing motion by hand on:

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

And by email (jdiruzzo@fuerstlaw.com) and mail to:

Joseph A. DiRuzzo, III
Christopher David, Esq.
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

for
Joel H. Holt

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILEH, Plaintiff, vs. UNITED CORPORATION and FATHI YUSUF, Individually Defendant.	CIVIL NO. 156/1997 ACTION FOR RECESSION BREACH OF CONTRACT and ACCOUNTING

AFFIDAVIT OF FATHI YUSUF

I, Fathi Yusuf, being first duly sworn, do hereby depose and state as follows:

1. I am an adult resident of the Virgin Islands.

2. My brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.

3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.

4. Mohamed Hamed gave his eldest son, Walleed (a/k/a Wally), power of attorney to manage his interests for the family.

5. We negotiated a lease for the St. Thomas store with Tutu Park Ltd. and executed the agreement on May 30, 1991.

6. On or about September, 1992, Ahmad Idheileh approached me wanting to invest in the St. Thomas Store.

7. Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.

8. On October 16, 1992, a Joint Venture Agreement was entered into between United and Plaintiff. *See* **Exhibit A.**

EXHIBIT
6

Defendant's Exhibit
F

9. Shortly after signing the agreement, Ahmad asked to go to Jordan and he stayed approximately 5 months while Wally and I worked diligently, at no cost to the venture, on the lease amendments, reviewing and verifying the lease agreement, ordering all the necessary equipment and construction materials for the Tutu Park Store. My son, Maher, flew from St. Croix to St. Thomas to install a steel structure for a 8,400 sq. ft. mezzanine, also at no cost to the venture.

10. Under the Joint Venture Agreement, Mr. Idheileh was responsible for, among others, hiring all employees, writing all checks, counting all money, general supervision of all employees, and stocking the store.

11. Under the Joint Venture Agreement, United was to provide a key person to assist Mr. Idheileh in the operation of the store, and United had final say in how things were run. United provided Willy Hamed as the key person.

12. Plaintiff had no background in running a supermarket and that became apparent in the first weeks of operations.

13. United realized that more than one key person was necessary so, in addition to providing Willy Hamed, United assigned Walleed (a/k/a Wally) Hamed and myself to work in the store for free. None of us received any salary for our services and we all worked 18 - 20 hours a day, seven (7) days a week.

14. Plaintiff was using the fact that there were three key people from United, as opposed to "a key person" as stated in the Joint Venture Agreement, as an excuse to get out of the partnership, but in fact he was afraid of losing money and that is why he wanted to get out of the venture. He wanted Wally to return to St. Croix, and kept repeating that demand over and over and even refused to shave until he succeeded in getting Wally out of the store.

15. The parties could not resolve their differences, so on approximately December 15, 1993, Wally and I left the St. Thomas store and returned to St. Croix because Plaintiff refused to work with Wally.

16. When we left, we kept our entire investment in Plaintiff's hands with him retaining all control over the operations of the store.

17. Wally and I went back to St. Croix and within a week to ten (10) days, Ahmad called me because he realized he could not run the store without our assistance. Plaintiff was unable to order properly because our weekly orders fluctuate significantly from week to week. It is necessary to order in expectation of future needs approximately ten days in advance. The vendor relied upon my personal guaranty, but since I was not in that store anymore, vendors would have to look to the store as their sole source of payment.

18. One vendor apparently did not feel secure and would not ship to the store. This situation came at the worst time as it was during the Christmas season. The store's difficult circumstances were brought about by Plaintiff's stubborn refusal to work with Wally, an experienced supermarket manager.

19. Plaintiff's St. Thomas store had run out of critical merchandise and he called for a meeting of the Arab community to mediate the parties disputes on December 25, 1993 at the Sea Mart store on St. Croix. This is common in our way of solving disputes amongst ourselves.

20. From the large group of businessmen, Plaintiff selected a smaller panel of men to review our differences and to try to resolve them.

21. That panel included, both Plaintiff and Defendant Yusuf and Hassan Rahman, Khalid Ali, Saleh Dawood, Fahri A. Mustafa, Moses Sharmouj, and Plaintiff's older brother Mahmud who acted as an observer. Ali Idheileh came to the meeting later in the negotiations and acted as observer.

22. I did not threaten to wipe Ahmad out, to make him leave the store, nor did I threaten to burn down the store. It would have been to my serious disadvantage for any of that to occur because we had a substantial investment in that store and obviously I wanted it to be profitable.

23. That panel negotiated for many hours and got the parties back together to forget about our differences, to work together to make the store profitable, and gave me the job of store manager, with Plaintiff being given any department of his choosing.

24. After this resolution, we all went back to St. Thomas and noticed that there was no variety of produce an dairy products. Even though Ahmad continually made errors we continued to work well together for approximately two weeks. Eventually the relationship broke down and Idheileh insisted on terminating the joint venture. Idheileh was not entitled to leave the joint venture until five years had passed and there was no provision in the contract that he could terminate the joint venture just because it was experiencing losses.

25. At that time, Mr. Abdel Suid, a very religious and highly respected businessman on St. Thomas, came to me to find out if all the rumors in our community about the parties' difficulties were true. Mr. Suid wanted to act as mediator of our disputes and both Ahmad and I accepted his offer.

26. I showed Mr. Suid our Joint Venture Agreement which stated that Ahmad would be our partner for five (5) years and share 1/3 in both profits and losses and receive a salary of $50,000 per year.

27. I told Mr. Suid that I did not want to let Ahmad out of the business because he is afraid of losing his investment yet my investment was approximately eight (8) times larger than his. I also wanted to give the store more time to turn itself around and wanted all of us to work toward that goal. I did not want to lose money either but I could not just stop business and both of us get out, so I wanted to wait for a buyer and had even put the word around with intention of getting out of the business and even put it in the newspaper after Idheileh left and received several inquiries, but none resulted in an offer to purchase.

28. Mr. Suid told me he thought it was best if I let Ahmad out of the business. We had many meetings with Mr. Suid about our relative positions, and Mr. Suid kept pressuring me to let Ahmad out of the business.

29. During these negotiations Ahmad and I were in the office and while he was walking down the stairs he emphasized to me that he wanted to get out of the business and would give my his conditions. He walked out. Later I called him up to the office and we discussed that the business was losing money, he agreed, and I told him that whatever money we get has to pay our suppliers and the store is not covering those expenses. I then told Ahmad that we must gross between $270 to $275,000 per week just to break even and pay all the store's expenses. I then told him that any week where we gross more than $275,000 I would give him 30% of everything in excess of $275,000.00. Idheileh asked how he could trust me to pay that, and I told him it is all computerized and I would even give him a first mortgage on my family home and a second mortgage on United Shopping Center on St. Croix with the condition that he pay the expenses of doing the mortgages and releases upon final payment. I told him that if he goes and if I eventually lose the business, he would still be safe with the mortgages I would give him. At first, he thought the deal was good, but finally said no to my offer. At that time I told him that he has to stay to turn things around.

30. Finally, in the end of the first week or beginning of the second week of January, Ahmad got very angry about wanting to get out of the venture but Mr. Suid felt he could get us to reach an agreement, so I told Mr. Suid I wanted Ahmad's brothers here to witness our negotiations and any agreement we may reach.

31. Mahmud and Ali Idheileh chartered a plane and flew to St. Thomas that same evening and arrived at the negotiations. These two gentlemen and Mr. Suid kept pressuring me to let Ahmad out of the business, but my position was if he is to leave, he must lose one third of his investment ($250,000) of his investment in the business because he was not only breaking the Joint Venture contract but also because he was forcing me to buy a business that was losing a substantial amount of money weekly.

32. Ahmad, his brothers and Mr. Suid came up with a plan that Mr. Suid, because he was so upright and conscientious, would take over Ahmad's share in the business and work to turn the business around, still allowing Ahmad to receive his 1/3 profits, if any, over the remaining of the five year period as well as sharing 1/3 of the losses over that same period.

33. That solution was agreeable so long as Ahmad realized that once he turned his interest over to Mr. Suid, he is no longer my partner and Mr. Suid would work to earn him profits or to share in losses. Ahmad understood that.

34. That one solution was agreed to by both Ahmad and myself. However, later during our negotiations, Ahmad changed his mind and decided he would get out and lose \$150,000. Ahmad's two brothers felt that was fair.

35. The negotiators pushed me hard to accept that, but I kept telling them I did not have any money to pay him back. Mr. Suid agreed to lend me \$200,000 to pay Ahmad and United could pay the rest in installments of \$100,000 over the next four (4) years.

36. Ahmad agreed to this arrangement because he was anxious to start another business and said he needed \$200,000 to start it.

37. Reluctantly, I agreed to this arrangement. At the time we finalized the agreement, Ahmad demanded that Mr. Suid guaranty my payment and that my older brother also guaranty my payment. Both gentlemen did so.

38. Mr. Suid sent our agreement to his lawyer, Stafford Hillaire, to memorialize the agreement in writing. When I received that document, I took it to my attorneys at Bryant, White & Associates to review. They clarified some of the language and re-typed it making sure the terms were what we agreed upon. That Termination Agreement is attached hereto as **Exhibit B**.

39. Ahmad had this copy for over a week before he signed it and sent it back to me. Mr. Suid gave me the \$200,000 and I gave it to Ahmad.

40. Shortly after this initial payment (\$200,000) under the Termination Agreement, Ahmad continually visited the store several times daily. During one visit Ahmad asked me if I had any objections if he bought the Hometown Convenience Store and Gas Station ("Hometown"). I replied, "I have no objections whatsoever, so go see if you can buy it." Ahmad went to Hometown and negotiated a purchase price. Ahmad came to me excited to purchase Hometown and I encouraged him to proceed with the transaction. Later, Ahmad stopped by the store and told me he was ready to proceed with the purchase of Hometown but was short \$100,000. So, I told him that as soon as I closed my loan from the Bank of Nova Scotia I would give him, \$100,000 as an advance on the following January's payment. Approximately two (2)

weeks later, Ahmad told me the Hometown transaction had fallen through. Later on that same week, Ahmad and I went to Avis on St. Croix to purchase a vehicle for my daughter. During our travels, Ahmad stated he still wanted the first $100,000 installment in advance even though the first installment was not due for approximately nine months later, according to the agreement. Ahmad said "this is my money and I want it to put into a savings account." Since he was not going to put the $100,000 into a business, I saw no reason to pay him ahead of schedule. Ahmad sent several Arab businessmen to me to pressure me to still pay him before it was due. Members of the Arab community, including among others, Ahmad's brothers, Mr. Hannun and Mr. Sharmouj, kept coming to me pressuring me to pay Ahmad the rest of his money in advance. We held yet another meeting at Mr. Hannun's home. Mr. Idheileh had no complaints about the Termination Agreement and the discussions were about United paying Ahmad ahead of schedule. Finally, on or about June 23, 1994, I did pay him his $100,000 (less $7,000 that we had given him to buy a car) in advance of the first payment scheduled for January 20, 1995. I had finally received financing from Scotia and used some of that loan money to pay Ahmad on June 23, 1994.

41. The Hameds and I were able to turn the store around by the last part of 1994.

42. As a result of the continuing pressure put upon me by many fellow Arabs, I paid the next installment on May 24, 1995 which was not due until January 20, 1996.

43. The remaining $200,000 for the last two installments was paid to Ahmad on November 23, 1995 even though the last two installments were not due until January 20, 1997 and January 20, 1998.

44. Ahmad never complained to me that he executed the Termination Agreement under duress or as a result of any threats.

FURTHER AFFIANT SAYETH NAUGHT.

DATED: 9-25-1999

FATHI YUSUF

SUBSCRIBED AND SWORN TO
before me this 25th day of September, 1999.

Edwin R. White
Notary Public
Print name: EDWIN R. WHITE
Commission # 41/99
My commission expires: 03/02/03

This is a legally binding contract.
Consult your attorney before signing it.

EXHIBIT
7

JOINT VENTURE AGREEMENT

WHEREAS United Corporation ("United") plans to open and operate a supermarket on St. Thomas, U.S. Virgin Islands at Tutu Park ("the supermarket"); and

WHEREAS, United wishes to secure further investment in the supermarket and the services of a manager for the supermarket; and

WHEREAS Ahmad Idheileh ("Idheileh") desires to act as manager of the supermarket and is willing to invest in the supermarket;

NOW THEN, the parties agree to enter into a joint venture agreement to accomplish the above goals on the following terms and conditions:

1. Idheileh agrees to invest $750,000 in the supermarket. This investment shall be paid to United at least 30 days before the opening of the supermarket; interest shall not be earned or paid on this investment in the supermarket at any time.

2. For so long as this agreement shall exist, Idheileh will receive 33% of the net profit of the supermarket and must pay 33% of the net loss of the supermarket; profits and losses will be calculated after considering all expenses incurred prior to the opening of the supermarket and all expenses incurred in operating the supermarket including loan carrying costs, loan payments, and any other loan expense incurred by United in providing financing (including capital financing) for the supermarket. It is the intent of the parties that distributions or payments will be made at the time payments are made pursuant to paragraphs 7, 8, 9 or 11 of this agreement.

3. United shall retain complete control over all decisions relating to the supermarket except to the extent it may delegate decisions relating to the day-to-day operation of the supermarket to Idheileh. Any such delegation shall be revokable at United's sole discretion at any time. Notwithstanding the aforesaid, distribution of profits from the supermarket may not be made unless both parties to this agreement agree to such distribution.

4. Idheileh agrees to provide personal, professional, management services to the supermarket under the following conditions:

   a. From the date of the signing of this agreement to the date the supermarket opens, United will pay to Idheileh a fee of $25,000 per year (or a pro rata portion of such fee for any part of a year);

   b. From the date of the opening of the supermarket until this agreement terminates, United will pay to Idheileh a fee of $50,000 per year (or a pro rata portion of such fee for any part of a year);

   c. United will provide a key person in its management to assist Idheileh in the operation of the supermarket;

   d. Idheileh personally agrees to work an average of 84 hours per week in the management of the store;

   e. Idheileh shall be entitled to 21 days annual vacation with pay; such vacation may be accumulated, but only to a maximum of 42 days of vacation.

5. Each party agrees that it will not enter into, begin or acquire any other

business (or part of a business or interest in a business) on St. Thomas for so long as this agreement shall be in existence. Idheileh agrees that he will not enter into, begin or acquire any other business (or part of a business or interest in a business) on St. Croix for so long as this agreement shall be in existence.

6. Idheileh agrees that he will not invest in, open, acquire, manage or in any other way participate in or be employed by any supermarket on St. Thomas or St. Croix for a period of seven (7) years after the termination of this contract provided, however, that if United terminates this contract pursuant to the buy-out provisions of the contract, this non-competition agreement shall terminate one (1) year from the date this contract is terminated by the buy-out provision. This non-competition clause shall survive the termination of the contract so as to render it fully enforceable after the contract is terminated.

7. If Idheileh commits any intentional misconduct, criminal conduct, or violations of civil rights, United shall have the right to terminate this contract immediately. In the event of such termination, Idheileh's interest in this joint venture shall be bought out under the payment terms described in paragraph eight of this agreement. Idheileh shall not receive payment under the buy-out until five (5) years from the date the supermarket opens or two (2) years after the date of discovery of the misconduct, whichever comes later. Said payments will be based upon the depreciated value at the time of payment,

not at the time the agreement is terminated. Idheileh shall fully indemnify and defend United from any law suits, claims or action that result from such misconduct.

8. Commencing five (5) years from the date of opening of the supermarket, United shall have a two (2) year option to buy out Idheileh subject to the following terms and conditions:

   a. United shall pay to Idheileh his initial $750,000 investment without interest to which shall be added one-third (1/3) of all net profits or from which shall be deducted one-third (1/3) of all net losses (as defined in paragraph two of this agreement);

   b. United shall pay to Idheileh one-third (1/3) of the "depreciated value" (as defined in paragraph 8(c) of this agreement) of all capital expenditures (such as refrigeration equipment, cash registers, fixtures, shelving, the warehouse extension, and other similar assets other than those intended for retail sale);

   c. Depreciation shall be calculated as follows: the actual cost of all capital expenditures except the cost of building the warehouse extension (of approximately 10,000 sq. feet) shall be totaled and then be reduced by 10% per year (or pro rata portion of a year) from the date the supermarket opens (regardless of when the cost was actually incurred) to the date this agreement terminates. The actual cost to build the warehouse extension shall be reduced by 5% per year (or pro rata portion of a year) from the date the supermarket opens (regardless of when the cost was actual incurred) to the date this agreement terminates. The sum of these two depreciation calculations shall be the "depreciated value" used in paragraph 8(b);

d. United cannot sell the supermarket or any interest in the supermarket for two (2) years after the exercise of the option created in paragraph eight.

9. Commencing five (5) years after the date of opening of the supermarket, Idheileh shall have the right to terminate this agreement and demand that he be bought out by United subject to the following terms and conditions:

a. Idheileh must give 60 days written notice of the intention to terminate the agreement;

b. The agreement shall terminate on the 60th day after receipt of such notice;

c. Idheileh's interest in this joint venture shall be bought out under the payment terms described in paragraph eight of this agreement;

d. Payments due under paragraph 9(c) of this agreement shall not be due until six (6) months from the date of termination of this agreement pursuant to this paragraph.

10. In the event of Idheileh's death, any one of his brothers may assume Idheileh's rights and duties pursuant to this agreement immediately. United shall have the right to exercise the buy-out provisions of this agreement at

any time following Idheileh's death, notwithstanding that Idheileh's death occurs less than five (5) years after the opening of the supermarket. All payments under the buy-out provisions shall be made to Idheileh's estate.

11. Unless terminated earlier pursuant to this contract, this agreement shall terminate seven (7) years from the date the supermarket opens; if the agreement is terminated pursuant to this paragraph, United shall buy-out Idheileh pursuant to paragraph eight of this agreement.

12. To effectuate the purpose of this agreement, separate financial records and bank accounts for the supermarket shall be maintained.

13. Idheileh acknowledges that the Law Offices of Bryant, White and Associates, P.C. acted solely on behalf of United Corporation in the negotiation of this contract.

14. This Contract is the full agreement of the Buyer and the Seller. None of the parties have made any other agreement or promise that is not included in this Contract.

15. The parties may not change this Contract unless the change is in writing and signed by all of the parties. The parties authorize their attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.

16. This Contract is binding on the Seller and the Buyer, and all those who lawfully succeed to their rights or take their places.

This is a legally binding contract. Consult your attorney before signing it.
Joint Venture Agreement
Page 7

In Witness:

Fathi Yusuf

Janette K. Millard

United Corporation
Maher Yusuf, President

ACKNOWLEDGEMENT FOR CORPORATION

TERRITORY OF THE VIRGIN ISLANDS)
)SS:
DISTRICT OF ST. CROIX)

On this 16th day of October, 1992, before me, the undersigned officer, personally appeared Fathi Yusuf, known to me, or satisfactorily proven, and this person acknowledged under oath, to my satisfaction, that:

(a) Fathi Yusuf is the Secretary Treasurer of United Corporation, the corporation named in this Joint Venture Agreement;

(b) he/she is the attesting witness to the signing of this document by the proper corporate officer who is Maher Yusuf, President of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;

(d) he/she knows the proper seal of the corporation which was affixed to this document; and

(e) he/she signed this document to attest to the truth of these facts.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Stacy L. White
Notary Public

In Witness:

Fathi Yusuf

Ahmad Idheileh

ACKNOWLEDGEMENT

TERRITORY OF THE VIRGIN ISLANDS)
)SS:
DISTRICT OF ST. CROIX)

On this 16th day of October, 1992, before me, the undersigned officer, personally appeared **Ahmad Idheileh**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public