

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

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

---

**PLAINTIFF'S SECOND REQUEST TO TAKE JUDICIAL NOTICE  
AND REQUEST TO SUPPLEMENT THE HEARING RECORD**

Plaintiff respectfully requests leave to supplement the TRO/Preliminary Injunction ("TRO/PI") record with additional exhibits 28, 29 and 30.

First, at the preliminary injunction hearing, counsel jointly requested leave to supplement the hearing record with any documents which could be located that had been exhibits to Plaintiff's Hearing Exhibit #1. (Exhibits to the February 2, 2000 deposition of Fathi Yusuf.) To locate such documents, undersigned counsel went to the Superior Court in St. Thomas to review the archived court file for the case in which the deposition took place. In addition to locating two deposition exhibits, which are being submitted separately (as this Court permitted at the conclusion of the hearing) counsel located two additional documents in the same file, excerpts of which the Court is asked take judicial notice -- pursuant to Rule 201:<sup>1</sup>

- 1) Interrogatory Responses #2 and #6 verified under oath by Fathi Yusuf for himself and for United, filed in that case, attached as proposed Plaintiff's Hearing Exhibit # 28;

---

<sup>1</sup> The relevant portions are attached as the proposed exhibits. Full copies of each document can be submitted if requested.

- 2) Summary Judgment Motion of Fathi Yusuf filed in that case (pages 1, 15 and 18), attached hereto as proposed Plaintiff's Hearing Exhibit # 29.

As these are documents filed by United Corporation (United) and Fathi Yusuf (Yusuf) in the St. Thomas division of this Court, it is respectfully submitted that these documents are proper documents for taking Judicial Notice. Regarding the specific item relevant to the issues before this Court, interrogatory #2 asked United and Yusuf to explain Mohammed Hamed's relationship to the Plaza Extra supermarket business, to which United and Yusuf answered, in part, as follows:

Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's.

See Exhibit 28. Interrogatory # 6 asked for the names of all partners Yusuf had had in the past, to which Yusuf answered, in part,

with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yousuf, Mohamed Hamed, and Defendant Yusuf. **By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.**, and joined Ahmad Idheileh in a joint venture for the St. Thomas Plaza Extra in 1992. (Emphasis added).

*Id.* With respect to the summary judgment pleading, defendants stated (p. 15):

Again, the opening of Cost-U-Less and an economic tide on St. Thomas away from Plaza Extra certainly was not the fault of Defendants. **The Hameds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.** (Emphasis added)

See Exhibit 29. These pleadings are directly relevant to the TRO/PI issues now before this Court.

Second, Plaintiff's Hearing Exhibit # 15 (three checks paid from supermarket accounts to counsel here) was admitted at the TRO/PI hearing to show that the

defendants were using partnership funds to pay their lawyers, even though the plaintiff had not agreed to this disbursement from the Plaza Extra Supermarket account. Subsequent to the hearing, the plaintiff discovered that the defendants had made two additional such payments in excess of \$223,000 from a Plaza Extra Supermarket account, one paid just before the first hearing and one paid two weeks after the second hearing was concluded. The plaintiff wishes to supplement the record with these two checks, attached as proposed Plaintiff's Hearing Exhibit # 30.

For the reasons set forth herein, it is respectfully requested that Plaintiff's Exhibits 28, 29 and 30 be admitted as part of the TRO/PI record.

**Dated:** February 19, 2013

A handwritten signature in black ink, appearing to read "Joel H. Holt", with a horizontal line underneath it. To the right of the signature is a small, stylized mark that looks like "for".

**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
2132 Company Street,  
Christiansted, VI 00820

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

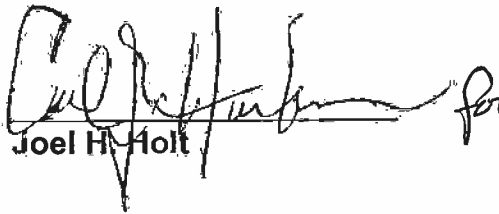
### CERTIFICATE OF SERVICE

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 ([idiruzzo@fuerstlaw.com](mailto:idiruzzo@fuerstlaw.com)) and mail to:

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



Joel H. Holt



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

RECEIVED  
19 OCT 1997 04 35  
TERRITORIAL COURT OF  
THE VIRGIN ISLANDS

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

PLAINTIFF'S SECOND SET OF INTERROGATORIES TO DEFENDANTS

TO: UNITED CORPORATION and  
FATHI YUSUF  
c/o Bryant, Barnes & Simpson, P.C.  
47 King Street, 2nd Floor  
Christiansted, St. Croix 00820

The following interrogatories are propounded by plaintiff AHMAD IDHEILEH to UNITED CORPORATION and FATHI YUSUF, pursuant to Rule 33 of the Federal Rules of Civil Procedure. These Interrogatories shall be answered separately and fully in writing, under oath, and shall be signed by the person or persons making such answers, and served on the Law Office of Elmo A. Adams, PO Box 623, St. Thomas, VI 00804, within THIRTY (30) days from receipt hereof.

Please note that:

- (A) These interrogatories are continuing in character so as to require the filing of supplementary answers if further information or different information is obtained before trial.
- (B) Where the name or identity of a person is requested, please state full name, home address and business address, if known.

Blumberg No. 5216  
EXHIBIT  
28

2. State herein the length of employment, job description and duties, rate of pay and other emoluments of Mr. Mohammed Hammad.

**Response to Interrogatory No. 2:**

**Objection. Not reasonably calculated to lead to the discovery of admissible evidence. Further, not reasonably tailored as to time period. Without waiving said objection, Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's. Objection as to "rate of pay and other emoluments of Mr. Hamed" as it is irrelevant to the disputes in this case which specifically concern Plaintiff's termination agreement.**

6. Please provide the names and addresses of any and all individuals who have entered into joint venture or partnership agreements with defendant Yusuf.

**Response to Interrogatory No. 6:**

**Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without limiting or waiving said objection, with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yousuf, Mohamed Hamed, and Defendant Yusuf. By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp., and joined Ahmad Idheileh in a joint venture for the St. Thomas Plaza Extra in 1992.**



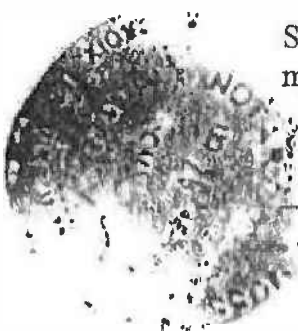
VERIFICATION OF RESPONSES


I, HEREBY VERIFY that the foregoing statements made by me to the foregoing interrogatories are true, correct and complete to the best of my knowledge.

Dated:

  
\_\_\_\_\_  
Officer, United Corporation

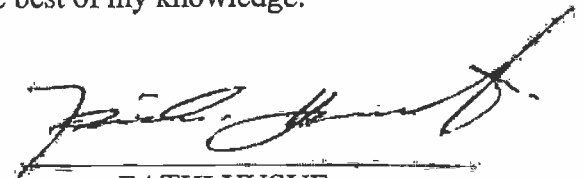
Subscribed and sworn to before me this 4th day of Oct 1999.



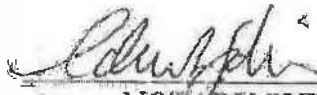
  
\_\_\_\_\_  
NOTARY PUBLIC  
C. Beth Moss, Notary Public  
District of St. Croix, U.S. Virgin Islands  
LNP-2697

I, HEREBY VERIFY that the foregoing statements made by me to the foregoing interrogatories are true, correct and complete to the best of my knowledge.

Dated:


  
\_\_\_\_\_  
FATHI YUSUF

Subscribed and sworn to before me this 30th day of Sept 1999.

  
\_\_\_\_\_  
NOTARY PUBLIC  
ANDREW L. CAR DEVILLE  
Notary Public  
Territory of the Virgin Islands U.S.A.  
My Commission Expires February 10, 2001  
LNP-17-97

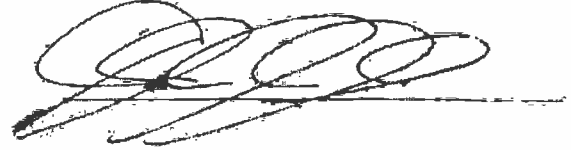
REVIEWED AND APPROVED:

Dated: 10/4/99

  
\_\_\_\_\_  
for Andrew Simpson  
Bryant, Barnes and Simpson, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 1<sup>st</sup> day of June, 1999, I served a true copy of the foregoing Plaintiff's Second Set of Interrogatories on United Corporation and Fathi Yusuf c/o Bryant, Barnes & Simpson P.C., 47 King Street, 2nd Floor, Christiansted, St. Croix 00820, by the U.S. Postal Service, Postage Prepaid.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke at the bottom, positioned to the right of the text.



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

RECEIVED  
23 SEP 29 PM 1:10  
FEDERAL COURT OF  
VIRGIN ISLANDS

AHMAD IDHEILEH,

Plaintiff,

CIVIL NO. 156/1997

vs.

UNITED CORPORATION and FATHI YUSUF,  
Individually

Defendant.

ACTION FOR RECESSION BREACH  
OF CONTRACT and ACCOUNTING

MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants United Corporation ("United" or "Plaza Extra") and Fathi Yusuf, by counsel, and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully submit their Motion for Summary Judgment and Memorandum of Law in support thereof, and state as follows:

BRIEF BACKGROUND

United Corporation owns Plaza Extra Supermarket. For purposes of this motion, United and Plaza Extra Supermarket are used interchangeably. Defendant Fathi Yusuf is the treasurer of United and has been a business man on St. Croix for nearly 40 years. Fathi Yusuf's brother in law, along with United have been the owners of the Plaza Extra Supermarket since its inception<sup>1</sup>. Yusuf and

Defendants have asked for leave of court to amend their answer to ¶ 13 of plaintiff's complaint to deny that paragraph. Wally Hamed is not a third partner to the joint venture but rather is a co-owner of Plaza Extra since the mid-1980's even before the store on St. Croix opened. Wally Hamed was brought to the St. Thomas store as a key person of United, under the Joint Venture Agreement with plaintiff, and provided his services for free.

YANT, BARNES  
SIMPSON, P.C.  
ing St., 2nd Floor  
O. Box 4589  
lansted, St. Croix  
lrgin Islands 00822  
140) 773-2785

EXHIBIT  
29  
Burling No. 208

~~*Whitman*, 75 N.J. Super. 228, 183 A.2d 89, 96 (App. Div. 1962), modified, 39 N.J. 397, 189 A.2d 15 (1963), or that he was placed in "such fear as to preclude him from exercising free will and judgment," (citing Rest. 1st Contr., supra, § 493; Restatement (Second) of Contracts § 492(b), E. Farnsworth, Farnsworth on Contracts § § 4.18 at 440 (1990) and 17 C.J.S. Contracts § 168 at 944, 947-48). See also *New Jersey Hosp. Ass'n v. Fishman*, 238 N.J. Super. 253, 661 A.2d 842, 848 (N.J. Super.Ct. App. Div. 1995)(quoting *Warnaco Inc. v. Farkas*, 872 F.2d 539, 546 (2d Cir. 1989). Fear of losing money does not rise to the level of fear that is required under a duress theory because the possibility of loss was not brought about by Defendants' improper conduct.~~

It is important to note that the joint venture was losing money. That economic circumstance was not the fault of either party, as market forces caused that result. Further, it is not duress if external circumstances cause an agreement to be made that the party may not have otherwise has assented to. See 13 S. Williston, supra, § 1608 at 682 "force of circumstances for which the other party is not responsible" is not duress or undue influence; cf., e.g., *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 911 (3d Cir. 1985) ("economic duress," recognized under Pennsylvania law, is present only if defendant brings about the financial distress), cert. denied, 476 U.S. 1171, 90 L. Ed. 2d 982, 106 S. Ct. 2895 (1986). ~~Again, the opening of Cost-U-Less and an economic tide on St. Thomas away from Plaza Extra certainly was not the fault of Defendants.~~ The Hameds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.

~~Plaintiff does not allege that he was deprived of the exercise of free will. Plaintiff's own business judgment precipitated the termination of the joint venture. Further, Plaintiff got what he~~

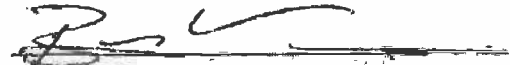
and waited until February, 1997 to complain of duress. The law does not permit a claimant to avoid such contract under these circumstances.

**WHEREFORE**, for all the foregoing reasons, Defendant's respectfully request that this Court grant their motion, dismiss said case with prejudice, award reasonable costs and attorney fees, and grant as such other and further relief as this court deems just and appropriate.

Respectfully submitted,

Bryant, Barnes & Simpson, P.C.  
Attorneys for Defendants

Dated: 9/27/99

  
BETHANEY J. VAZZANA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a true copy of the foregoing **Motion for Summary Judgment** to be mailed prepaid postage to **Elmo Adams, Jr., Esq.**, P.O. Box 623, St. Thomas, VI 00804 on this 22 day of September, 1999.

  
Trudy Phillip



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

**MOHAMMAD HAMED** by His Authorized )  
Agent **WALEED HAMED**, )  
*Plaintiff,* )  
**v.** )  
**FATHI YUSUF** and **UNITED CORPORATION**, )  
*Defendants.* )

---

**CIVIL NO. SX-12-CV- 370**  
**ACTION FOR DAMAGES  
INJUNCTIVE AND  
DECLARATORY RELIEF**  
**JURY TRIAL DEMANDED**


**DECLARATION OF WALEED HAMAD**

I, Walled Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. Attached hereto are two additional checks drawn on the Plaza Extra Supermarket accounts to pay the defendants' counsel (Fuerst Littleman David & Joseph, PL) that were not agreed to or authorized by my father, Mohammed Hamed, as follows:
  - Check 4642-\$111,660.24 dated January 21, 2013
  - Check 4819-\$112,383.82 dated February 13, 2013

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 19, 2012

  
\_\_\_\_\_  
Walled Hamed a/k/a Wally Hamed





Check Amount: \$112,383.32

Item to be Paid - Description	Discount Taker	Amount Paid
39738		7,500.00
39740		104,883.32

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO

101-687216

4819

DATE  
Feb 13, 2013

AMOUNT  
\$ 112,383.32

One Hundred, Twelve Thousand, Three Hundred Eighty-Three and 32/100 Dollars

THE  
ORDER  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo

*[Handwritten Signature]*  
AUTHORIZED SIGNATURE

⑈004819⑈ ⑆021606674⑆ 191⑈ 256269⑈

UNITED CORPORATION DBA PLAZA EXTRA

4819

FUERST ITTLEMAN DAVID & JOSEPH PL

Check Number: 4642  
Check Date: Jan 21, 2013

Check Amount: \$111,660.24  
Discount Taker: \_\_\_\_\_  
Amount Paid: \_\_\_\_\_

Item to be Paid - Description	Amount Paid
9652	31,765.28
9653	79,894.96

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00651

BANCO POPULAR DE PUERTO RICO  
101-667216

4642  
CHECK NUMBER

DATE  
Jan 21, 2013

AMOUNT  
\$ \*\*\*\$111,660.24

One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

THE  
MEMORANDUM  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

*[Handwritten Signature]*  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Memo:  
⑈004642⑈ ⑈021606674⑈ 191⑈256269⑈

UNITED CORPORATION DBA PLAZA EXTRA

4642