

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

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

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**REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO  
SUPPLEMENT THE RECORD AND SECOND REQUEST TO TAKE JUDICIAL  
NOTICE**

On February 19<sup>th</sup>, the plaintiff supplemented the record in this case by submitting deposition exhibit #7 to Fathi Yusuf's 2002 deposition (a joint venture agreement), as requested by the defendants. as well as exhibit #6 to the same deposition -- an affidavit of Fathi Yusuf.

At the same time, the plaintiff filed a separate motion to permit supplementation of the record by taking judicial notice of certain documents filed in *Idheileh v. United Corporation and Yusuf*, Superior Court of the Virgin Islands, St. Thomas Division, Civ. No. 156/1997, including Fathi Yusuf's verified interrogatory responses.

The defendants object to the submission of these documents because (1) they claim the evidence should have been produced earlier and (2) the evidence is allegedly not admissible, as it is a "finding" from another case, citing *U.S. v. Jones*, 29 F.3d 1549 (11<sup>th</sup> Cir. 1994).<sup>1</sup>

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<sup>1</sup> The defendants did not object to the submission of the other items (the two checks withdrawing funds from the Plaza Extra accounts without Hamed's consent)

As to the first point, the parties attempted to locate these United Corporation and Yusuf litigation files after the first hearing on January 25<sup>th</sup>, when the defendants pointed out their existence but noted they could not be obtained before the second hearing date on January 31<sup>st</sup>. **See Exhibit 1.** The plaintiff agreed to accommodate the defendants to address this problem by agreeing the record could be supplemented with exhibits from the deposition, which the defendant agreed to and which this Court expressly permitted. *See January 31, 2013 Hearing Transcript* at pp. 129-130, attached as **Exhibit 2**, Thus, the submission of the affidavit of Fathi Yusuf, exhibit #6 to the Yusuf's 2002 deposition (PEX 1), **has already been agreed to by the parties and approved by this Court.**

Moreover, when the Superior Court finally located these closed files, Yusuf's sworn interrogatory answers were also located, which were promptly submitted to the Court. **See Exhibit 3.** Thus, the plaintiff acted as diligently as possible under the circumstances in filing this document.

Additionally, the defendants cannot claim surprise or prejudice, as these documents are Yusuf's verified statements submitted to the Superior Court in another case in which both United and Yusuf were defendants! While they argue they do not have an adequate opportunity to respond to these documents, their client knew of the documents and, in any case, have had over 10 days to consider them and respond. The lack of any response is clearly because there is no response to these damaging admissions made under oath. Indeed, to try to refute them would raise ethical issues, as these sworn statements were filed in this same Court in another case.

Finally, these verified documents are not "findings" or a "reference to witnesses testimony" in another case, as these are sworn statements against the interests of a party that are admissible in this case pursuant to Rule 801(d) of the Federal Rules of

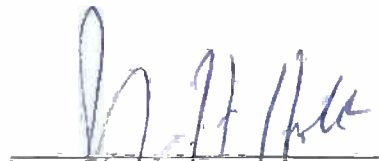
Evidence, which is applicable to this Court. *Virgin Islands v. Toussaint*, 2011 WL 3875802, at \*2 n.7 (V.I.Super. 2011); *Terrell v. Coral World*, S.Ct. No.2010-0058, at 7 n.7 (V.I. July 20, 2011) (“[T]he Federal Rules of Evidence ... have been recently adopted by the Legislature to replace the Uniform Rules of Evidence....”).

Thus, while it is understandable why the defendants would not want this Court to consider these damaging admissions, this Court has already agreed to permit the affidavit as it is one of the deposition exhibits. The defendant can hardly complain since they requested leave to submit another exhibit and did not object when the plaintiff asked to submit deposition exhibits that could be located.

As for Yusuf's verified interrogatory responses, they are not a surprise to the defendants (who submitted them to this Court in another case) and they are admissible in this case under FRE 801(d).

As such, it is respectfully submitted that these exhibits should be admitted into the hearing record, just like the supplemental filing of the criminal indictment submitted yesterday by the defendants..

Dated: March 5, 2013



**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
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340-642-4422

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of March, 2013, I served a copy of the foregoing Reply by hand on:

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

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

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

A handwritten signature in blue ink, appearing to read "JR", is written over a horizontal line.



Joseph A. DiRuzzo, III, Esq., CPA  
305.350.5690  
jdiruzzo@fuerstlaw.com

January 29, 2013

Via USPS and email: holtvi@aol.com

Joel H. Holt, Esq.  
Joel H. Holt, Esq., P.C.  
2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands, 00820

**Re: *Hamed v. Yusuf and United*, case no. SX-12-CV-370**

Dear Mr. Holt,

As you are aware, on the 25<sup>th</sup> the Court granted my *ore tenus* motion to supplement/expand the record to include the Joint Venture Agreement (Exhibit No. 7) to the deposition transcript of Fathi Yusuf, which you had admitted into evidence as Plaintiff's Exhibit No. 1.

Today I called Cheryl Haase of Caribbean Scribes and she told me that she did not have the Joint Venture Agreement referenced in the deposition transcript. I also looked up in the Virgin Island Bar Association membership directory the two attorneys that were present during Fathi Yusuf's deposition, to wit: Elmo A. Adams and Bethany J. Vazzana. However, I was unable to locate their respective contact information. Finally, I placed a call to the V.I. Superior Court, Division of St. Thomas & St. John, and requested the file of *Idheileh, v. United Corporation and Fathi Yusuf*, civil case no. 156/1997. The Clerk's Office informed that each Friday an employee goes to archives to pull old files, obviously this Friday is after the TRO hearing that is set for this Thursday, January 31, 2013. Accordingly, I am asking that you provide to us in advance of the hearing the Joint Venture Agreement (Exhibit No. 7) for us to supplement/expand the record. If you are unable or unwilling to do so, we will be moving to strike Plaintiff's Exhibit No. 1 as it violates the rule of completeness.

Please advise me as to your position as soon as possible.

Kind Regards,

Joseph A. DiRuzzo, III

cc: Carl J. Hartmann, III, Esq., via email only: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
N. DeWood, Esq., via email only: [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)  
K. Glenda Cameron, Esq., via email only: [KGlenda@Cameronlawvi.com](mailto:KGlenda@Cameronlawvi.com)



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	)
Plaintiff,	) ACTION FOR DAMAGES
	) INJUNCTIVE AND
v.	) DECLARATORY RELIEF
	)
FATHI YUSUF and UNITED CORPORATION,	)
	)
Defendants.	) JURY TRIAL DEMANDED

Thursday, January 31, 2013  
Kingshill, VI 00850

The above-entitled action came on for Hearing on a  
TRO, before the Honorable DOUGLAS A. BRADY, Judge, in  
Courtroom Number 211, commencing at approximately  
9:12 a.m.

SANDRA HALL  
REGISTERED PROFESSIONAL REPORTER  
OFFICIAL COURT REPORTER II  
(340) 778-9750 EXT. 6701

EXHIBIT  
2

1 recall.

2 MR. DIRUZZO: One more point, your  
3 Honor. Yesterday Mr. Holt was so kind as to provide  
4 Exhibit 7 to deposition transcript that we received and  
5 entered into evidence. And I made the mistake of  
6 forgetting to bring it today, so I'll just be filing it  
7 with the court.

8 THE COURT: I'm sorry. I didn't really  
9 follow that.

10 MR. DIRUZZO: The Exhibit 7 to  
11 Plaintiff's Exhibit 1, the deposition transcript had  
12 certain exhibits.

13 THE COURT: Oh, right, right, right.

14 MR. DIRUZZO: And Mr. Holt was so kind  
15 as to provide that document yesterday via e-mail and I  
16 just forgot to bring it out today, so I will just be  
17 filing it on paper with the court and get back to --

18 THE COURT: That's fine. That's the  
19 exhibit referenced in Plaintiff's Exhibit Number 1.  
20 The deposition transcript of Mr. Yusuf included Exhibit  
21 7 to that deposition.

22 MR. DIRUZZO: Exactly.

23 THE COURT: And that has been provided  
24 and will be added to the record and will be accepted as  
25 part of the evidence as a part of Exhibit 1.

1 MR. HOLT: And if we can find somebody  
2 to get those exhibits, can we just submit them as well?

3 MR. DIRUZZO: I have no problem with  
4 that.

5 THE COURT: That's fine. It's better to  
6 have a more complete record than not. Okay. If there  
7 is nothing else, then we will adjourn.

8 MR. HARTMANN: Thank you, your Honor.

9 MR. DAVID: Thank you.

10 MR. DIRUZZO: Thank you.

11 (Hearing concluded at approximately  
12 11:40 a.m.)

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 )  
\_\_\_\_\_ )

DECLARATION OF KIM JAPINGA

I, Kim Japinga, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have direct personal knowledge of the facts set forth herein.
2. After the plaintiff became aware of the fact that the Clerk's Office in St. Thomas might still have a closed file in *Idheileh v. United Corporation and Yusuf*, Superior Court of the Virgin Islands, St. Thomas Division, Civ. No. 156/1997, a request was made to review this file.
3. The St. Thomas Clerk's Office finally was able to make this file available on February 13, 2013, at which time I reviewed it in St. Thomas.
4. I requested that certified copies be provided that were received late in the day on February 14, 2013.
5. The request to take judicial notice was filed on February 19, 2013, after the President's Day holiday.

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

Dated: March 5, 2013

  
Kim Japinga

