

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

UNITED CORPORATON,

Plaintiff,

v.

WAHEED HAMED,

(a/k/a Willy, Willy Hamed)

Defendant.

Case No.:2013-CV-101


ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW the Defendant, Waheed Hamed, and hereby moves pursuant to Rule 12(c) for judgment on the pleadings. The basis of this motion is more fully set forth in the attached memorandum, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the relief sought should be granted and this case should be dismissed with prejudice. A proposed order is also being submitted with this motion.

Dated: April 15, 2013

  
Carl J. Hartmann III, Esq. (Bar No. 48)  
Counsel for the Defendant  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of April, 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



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

UNITED CORPORATON,

Plaintiff,

V<sub>gi</sub>

WAHEED HAMED,

(a/k/a Willy, Willy Hamed)

Defendant.

Case No.:2013-CV-101

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**ORDER**

This matter is before the Court on the Plaintiff's Motion for Judgment on the Pleadings. Upon consideration of the matters before the Court, the motion is granted and this Complaint is dismissed with prejudice.

**Dated:**

\_\_\_\_\_  
HON. MICHAEL C. DUNSTON  
JUDGE OF THE SUPERIOR COURT

**A T T E S T:** VENETIA VELAZQUEZ  
Clerk of the Court

**BY:** \_\_\_\_\_  
Deputy Clerk

**Dist.:** Nizar DeWood  
Carl Hartmann

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

**UNITED CORPORATION,**

**Plaintiff,**

v.

**WAHEED HAMED,  
(a/k/a Willy or Willie Hamed),**

**Defendant.**

**Case No.:2013-CV-101**

**ACTION FOR DAMAGES**

**JURY TRIAL DEMANDED**

**MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS**

The Defendant, Waheed Hamed, hereby moves for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), which provides in relevant part::

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

The pleadings are closed, so this matter is ripe for a Rule 12(c) motion.

While there are many defenses to plaintiff's complaint, the most obvious one is statute of limitations, which is properly raised by a Rule 12(c) motion. *See, 5C Wright and Miller, Federal Practice and Procedure (2004)*, §1367 at p. 211 (with cases cited in n.9).

In this regard, the allegations in the complaint allege two separate transactions to support the five counts.<sup>1</sup> The first act of alleged wrongdoing is set forth in Paragraph 14, alleging conversion of \$70,000 in cash in 1997. In paragraphs 15 to 19, it is further alleged that in 1992, defendant was involved in a competing grocery business. There are no other factual averments of any wrongdoing other than these two acts -- in 1992 and 1997.

---

<sup>1</sup> The complaint avers six counts, but Count V was omitted

**Memorandum in Support of Defendant's Rule 12(c) Motion**  
**Page 2**

Plaintiff seeks relief for breach of fiduciary duty, constructive trust/recoupment, conversion, breach of contract, conversion and accounting. The statute of limitations has expired on all five of these counts. Chapter 3 of Title 5 of the Virgin Islands Code provides that the longest statute of limitations period is 20 years, but that this provision it applies only to disputes related to real property. See 5 V.I.C. §31(1). The statutes of limitations for all other causes of action expire after 10 years or less pursuant to 5 V.I.C. §31, so this Court need not reach the issue of which specific limitations period applies to each cause of action (e.g., 6 years for contract, 2 years for conversion, etc.) as clearly more than 10 years have passed since the dates of the alleged wrongdoings in 1992 and 1997.

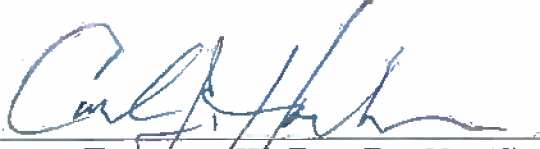
Likewise, regarding the equitable claims such as constructive trust/recoupment and accounting, 5 V.I.C. § 32(a) provides:

- (a) An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in this chapter.

Thus, since none of the counts involve claims related to real property, the equitable claims are also time barred since they are over 10 years old without the need to decide whether a more specific statute of limitations applies.

In summary, the factual basis for the five counts alleged in the complaint were in 1992 and 1997, so they are all time barred by the statute of limitations defense. As such, this matter should be dismissed with prejudice.

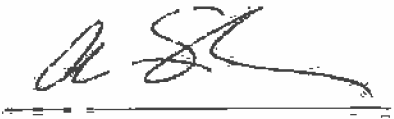
Dated: April 15, 2013

  
**Carl J. Hartmann III, Esq. (Bar No. 48)**  
*Counsel for the Defendant*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
(340) 719-8941  
carl@carlhartmann.com

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of April, 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



---