

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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants.

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

DEFENDANTS' MOTION TO
RECONSIDER AND TO MODIFY
PRELIMINARY INJUNCTION ORDER TO
TERMINATE EMPLOYEES MUFEED
HAMED, WALEED HAMED, AND WADDA
CHARRIEZ

**DEFENDANTS' MOTION TO RECONSIDER AND TO MODIFY PRELIMINARY
INJUNCTION TO TERMINATE EMPLOYEES MUFEED HAMED, WALEED HAMED,
AND WADDA CHARRIEZ**

Defendants respectfully file this Memorandum of Law in Support of their Motion to Modify the Court's April 25th, 2013 Order to terminate the employment of employees Mufeed Hamed, Waleed Hamed, and Wadda Charriez for insubordination, conversion, defalcation, and other employee misconduct.

INTRODUCTION

On April 25th, 2013, this Court issued a Preliminary Injunction Order, which provides, *inter alia*, other things:

ORDERED that the "operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representatives, and Yusuf, or his designated representatives, jointly managing each store, without unilateral action by either party, or representatives affecting the managing, **employees**, methods, procedures and operations.

Presumably, any action Defendants desire to undertake regarding the employment of any employee of Defendant United, including the termination of Waleed Hamed and Mufeed Hamed requires a Motion to Modify the April 25th, 2013 Preliminary Injunction Order. In this case, Defendants United and Yusuf seek the termination of the aforementioned employees as a result of various work related misconduct. Most importantly, the Court should reconsider its Preliminary Injunction Order because it is legally inconsistent and substitutes the Courts judgment for that of the Officers and Directors of United¹. See *Browne v. Ritchie*, 559 N.E.2d 808 (Ill. 1990), attached as EXHIBIT E. First, the Court makes the finding that the purported partnership between Plaintiff Hamed and Defendant Yusuf is an at-will partnership. Then the Court takes notice of a Dissolution Notice sent by Defendant Yusuf's counsel on March 13, 2012. Since the notice of dissolution legally terminates the Court's purported at-will partnership, the Court's Preliminary Injunction forcing the parties to continue to jointly manage a terminated partnership is legally invalid. *Id.*

Because of this legal inconsistency and in light of the facts outlined below, the court should grant this Motion and vacate its Preliminary Injunction order. Significantly, in its Findings of Facts & Conclusion of Law, the Court failed to discuss the effects of the dissolution notice upon the validity of the purported at-will partnership. Defendants submit that well-settled legal principles require that the Court vacate its Preliminary Injunction order, and amend its finding of facts and conclusion of law to reflect the real current status of the parties.

¹The Business Judgment rule “prevents the courts from “injecting themselves into a management role for which they were neither trained nor competent.” See, *Weiss v. Temporary Inv. Fund*, 692 F.2d 928, 941 (3d Cir.1982) (internal citation omitted)(quoting Duesenberg, *The Business Judgment Rule and Shareholder Derivative Suits: A View from Inside*, 60 Wash.U.L.Q. 311, 314 (1982)(“Duesenberg”)(emphasis added)).

I. BACKGROUND

A. Facts

1. On September 17th, 2012, Plaintiff Mohammed Hamed (“Hamed”) filed the instant civil action seeking to establish a partnership between Mohammed Hamed and Fathi Yusuf (“Yusuf”). In addition to the Amended Complaint, Plaintiff filed a Motion for Temporary Restraining Order/or Preliminary Injunction. Plaintiff renewed same on January 8th, 2013, citing the pending termination of employee Wadda Charriez.
2. Defendants argued that while Mohammed Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets pursuant to an oral agreement entered into in 1986 with Defendant Fathi Yusuf, United Corporation remained a separate legal entity and is owned by the Yusuf family in various percentage shares.
3. Plaintiff’s Amended Complaint never sought to pierce the corporate veil of Defendant United, nor has there been any testimony, evidence, or exhibits to demonstrate why Defendant United’s corporate structure should not be respected.
4. On April 25th, 2013, the Court granted Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction. The Court found a likelihood of Plaintiff prevailing on the merits concerning the existence of a partnership between Plaintiff Hamed and Defendant Yusuf. The Court further found that under Virgin Islands law, there is no distinction between a “joint venture” and a “partnership.” *Memorandum Opinion, Conclusions of Law* ¶ 8.
5. The Court then cited among others, a **dissolution notice** dated March 13, 2012 where Defendant Yusuf sought to dissolve the “partnership.” *Memorandum Opinion, Conclusions of Law* ¶10.

6. The Court judicially noticed Defendant Yusuf's intent to terminate the "partnership" in his March 13th, 2012 letter to Plaintiff Hamed as proof of the existence of a partnership, and its subsequent termination. *TRO Findings of Facts* ¶10.
7. Plaintiff Hamed testified that the party's intent under the profit sharing agreement was that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit B**.
8. Plaintiff Hamed testified that he "cannot do nothing" in the stores since 1996 because of his illness, and then subsequent retirement. *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit B**.
9. Despite Defendant's Dissolution Notice and termination of any purported partnership, the Court issued a Preliminary Injunction requiring the parties to continue to operate the terminated at-will partnership and jointly manage the operations of the Plaza Extra Stores.
10. Since March 4th, 2013, the closing date for the submission of briefs in the TRO matter, new facts arose making management of the Plaza Extra Operations impossible. The facts underlying each employee's misconduct are fully outlined below according to each of the employees covered herein.

Mufeed Hamed

11. Mufeed Hamed is one of Plaintiff Mohammed Hamed's sons, and has been employed by United Corporation as a co-manager at the Plaza Extra Supermarket – East store.
12. On March 27th, 2013 Mufeed Hamed, along with his brother Waleed Hamed, signed and executed a check in the amount of \$460,000 payable to Waleed Hamed drawn on

an account from Plessen Enterprise, Inc. ("Plessen"). See Check No. 376 attached as **Exhibit A.**

13. Plessen is a duly organized Virgin Islands real estate holding company, and is owned in equal shares between the Yusuf and Hamed families. The unauthorized check effectively reduced Plessen's operating account to almost zero as to cause Plessen to become unable to meet its immediate short term obligations, including but not limited to paying the property taxes immediately due for the year 2011.
14. This type of conduct not only is criminal but demonstrates employee Mufeed Hamed's lack of loyalty and diligence in matters relating to custody of funds. As such, an appropriate civil suit has been filed, captioned as *Yusuf Yusuf v. Waleed Hamed, Mufeed Hamed, et al., Case No. SX-13-CV-120* to vindicate Plessen's interest as well as those of its shareholders. The Complaint, ¶25 through ¶36 provides the following:

- ¶25 On or about March 27th, 2013 Plaintiff YUSUF paid with his personal credit card the 2011 property taxes of PLESSEN.
- ¶26 YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.
- ¶27 However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made payable YUSUF would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.
- ¶28 Specifically, on March 27, 2013, Defendant WALEED HAMED [and MUFEED HAMED], without authorization, issued check number 0376 on a PLESSEN checkbook, in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

- ¶29 Defendants WALEED HAMED [and MUFEED HAMED] endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in WALEED HAMED’s personal bank account.
- ¶30 Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

- ¶31 Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.
- ¶32 As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.
- ¶33 Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.
- ¶34 Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, which acts were not, and could not have been, the product of a good faith exercise of business judgment.
- ¶35 Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.
- ¶36 All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

See Complaint, *Yusuf v. Waleed Hamed, Mufeed Hamed, et al.*, attached as **Exhibit A**.

13. This action is currently pending before the Superior Court, St. Croix Division. As a shareholder of Plessen, Defendant Fathi Yusuf's position and interest in Plessen has been materially affected by the conduct of employee Mufeed Hamed.

14. Defendant Yusuf, whether as a shareholder of United Corporation, or a purported partner in a partnership called the Hamed and Yusuf partnership has every right to terminate the employment of an employee who has signed without authorization a draft check for over \$460,000 from Plessen in collusion, be it an employee of United Corporation or the purported partnership of Hamed & Yusuf.

Waleed Hamed

15. Incorporating the above allegations, co-defendant Waleed Hamed has been equally culpable in the misconduct as outlined in the case of *Yusuf v. Waleed Hamed, et al.* However, the misconduct of Waleed Hamed goes much farther. In a separate civil action, *United Corporation v. Waleed Hamed, SX-13-CV-02*, Defendant United outlines disturbing facts of employee misconduct, defalcation, embezzlement, and other misconduct as demonstrated below in ¶¶18 to 28 of the Complaint:

¶18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- i. Tax Year 1992 (Stocks & Investments) ...\$ 408,572.00**
- ii. Tax Year 1993 (Stocks & Investments) ...\$7,587,483.00**

¶19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

¶20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

¶21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

¶22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

¶23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

¶24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

¶25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

¶26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

¶27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.
- c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

¶28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

See Complaint, *United v. Waleed Hamed*, attached as **Exhibit B**.

16. In response to the complaint, employee Waleed Hamed filed a motion to dismiss on grounds of statute of limitations. To date, employee Waleed Hamed has failed to provide Defendant United Corporation or Defendant Fathi Yusuf with an explanation concerning the funds listed in the foregoing complaint.

Wadda Charriez

17. Wadda Charriez commenced employment with United Corporation in 1998, and then was assigned the duties of office manager. On January 8th, 2013, after an investigation, United Corporation sought the termination of Wadda Charriez. The facts underlying the termination are as stated in the case of *United v. Wadda Charriez*, ¶¶8 through 22:

¶8. Plaintiff United is the employer of Wadda Charriez, who began her employment on January 5th, 1998 as a cashier. Thereafter, Defendant Charriez eventually became an office manager was assigned the duties of preparing and issuing payroll checks.

¶9. Plaintiff United utilizes a hand recognition payroll system where every employee must scan his or her right hand to "punch-in" and "punch-out" each day.

The system marks the entry and exit times for each employee, and tabulates the exact number of hours worked.

¶10. The system then automatically feeds the payroll system with time information obtained from each employee's hand scan.

¶11. Any print out or payroll report from the payroll system shows the date and time the hand was scanned. However, if an employee manually enters the entry and exit times, any printout of that employee's time sheets will show an asterisk next to the manually overridden time.

¶12. This time entry by way of hand recognition procedure is required for all hourly wage based employees. Of all the hourly based employees, Defendant Charriez, by virtue of her payroll responsibilities, has manually overridden the payroll system virtually every single time.

¶13. There is only one explanation as to why Defendant Charriez's timesheets would show consistent manual time entries: to report false hours and to cause the payroll system to issue overstated wage paychecks.

¶14. On April 29th, 2013, Plaintiff United Corporation terminated Defendant Wadda Charriez for reporting false hours causing Plaintiff United monetary losses of \$39,699 dollars.

¶15. Upon information, Defendant Charriez reported false hours for the years 2006 through 2009, the records of which are being collected and analyzed.

¶16. For the years 2010 through 2012, Defendant Charriez reported the following total false hours:

i. Year 2010	786 hours @ \$15.50 = \$12,969
ii. Year 2011	832 hours @ \$18.00 = \$14,976
iii. Year 2012	615 hours @ \$18.00 = <u>\$11,754</u>
	\$39,699

¶17. Plaintiff United warned Wadda Charriez on January 8th, 2013 of Plaintiff's [United's] intent to terminate her should she fail to explain why Defendant Charriez falsely reported such significant hours, and worse kept all of the proceeds she derived from her wages.

¶18. Plaintiff United provided Defendant Charriez over 120 days to explain her false reporting of work hours.

¶19. On April 29th, 2013, Defendant Charriez's employment was terminated. Employee Charriez never returned any of the monies she received as a result of her false hours, and never explained the reasons for her misconduct.

¶20. As an office manager, and an employee tasked with properly preparing, reporting, and issuing payroll checks for United's employee, Defendant Charriez violated her at-will employment agreement with United Corporation.

¶21. As an employee of Plaintiff United, Defendant violated her duties of loyalty and care owed to her employer Plaintiff United.

¶22. As a result of obtaining \$39,699 dollars in unauthorized and illegal compensation, Defendant Charriez caused Plaintiff United substantial monetary damages.

See Complaint, *United v. Charriez*, ¶¶8-22, attached as **Exhibit C**.

Defendants now move the Court for an Order permitting the termination of employees Mufeed Hamed, Waleed Hamed, and Wadda Charriez. Since this court in its Preliminary Injunction Order made a preliminary finding of the likelihood of the existence of a partnership, and has implicitly disregarded the corporate structure of United Corporation, Defendants file this Motion to Modify the April 25th, 2013 Preliminary Injunction Order. Because Defendants have good cause for the termination of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez, based on facts arising after the conclusion of the hearings and brief submissions on March 4th, 2013, the attached Motion should be granted.

II. ISSUES

1. Whether the Court should modify the April 25th, 2013 Temporary Restraining Order to permit the termination of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez?
2. Assuming the existence of the Hamed & Yusuf partnership, whether Defendant Fathi Yusuf as the managing partner has the right to terminate the employment of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez?

III. ARGUMENTS

A. The Court Should Reconsider its Preliminary Injunction Order Because the Dissolution Notice Provided to Mohammed Hamed Terminated the At-Will Partnership on March 13th, 2012, and by Operation of Well-Settled Principles of Law Preclude the Court from Ordering the Parties to Continue Co-Managing an Already Terminated Partnership-At-Will.

Before addressing Defendants' request to Modify the Preliminary Injunction, Defendants submit that the Court should reconsider and vacate its Order dated April 25th, 2013 Preliminary Injunction for the following reasons:

1. The Court noted that Defendant Fathi Yusuf provided a notice of dissolution on March 13th, 2012 to Plaintiff.
2. Plaintiff's counsel has repeatedly stated that the dissolution notice was evidence of a partnership; so much so that the Plaintiff virtually recites the terms of that notice in each pleading, motion, and correspondence to third parties. In effect, Plaintiff cites the specific provisions of the dissolution as proof of Defendant Fathi Yusuf's view that the "joint venture" is a partnership.

3. Since Plaintiff does not dispute receipt of such notice, the dissolution notice has effectively terminated the purported “at-will partnership” between Defendant Yusuf and Plaintiff Hamed. It is well established that a partnership-at-will ceases to exist upon notice by a partner of his intent to dissolve it. See, *Browne v. Ritchey*, 202 Ill.App.3d 137,141, 598 N.E.2d 808, 811 (1990), attached as *Exhibit E*. See also, *Smith v. Robson*, 286/96, 2001 WL 1464773 (Terr. V.I. June 26, 2001) (recognizing that under Virgin Islands law “Partnerships and joint ventures without fixed terms are deemed to be “at will” subject to dissolution by either partner at any time.”)
4. The *Browne* court dealt with an at-will-partnership which was properly terminated by defendant partner when he sent a telegram to plaintiff partner stating his intent to dissolve partnership. The *Browne* Court noted that since the defendant partner acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of preliminary injunction requiring him to continue in that relationship was an abuse of discretion. See, *Brown*, 202 Ill. App. 3d at.141, 598 N.E.2d at 811.
5. The State of Illinois which has adopted the Uniform Partnership Act, also recognizes the same Preliminary Injunction requirements in the Virgin Islands. In *Browne*, the Illinois Supreme Court, marrying the preliminary injunction requirements with the partnership law regarding dissolution arrived at the following precise and relevant holding:

With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships [] are subject to dissolution at any time by the express will of any partner. (*Maimom v.*

Telman (1968), 240 N.E.2d 652; 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving partner need do is give notice of his intent to dissolve the partnership to his co-partners. *Id.* (citations omitted).
See, *Brown*, 202 Ill. App. 3d at 141, 598 N.E.2d at 811.

The *Browne* court then held “there is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a *dissolution at the election of one of the partners* is not a breach of contract and the dissolving partner incurs no liability regardless of his motive or any injury to his co-partners “who neglected to protect themselves by an agreement to continue for a definite term.” *Id.* at 811.

Here, this Court made the following finding of fact:

“Thereafter, **discussion commenced** initiated by Yusuf’s counsel regarding the “**Dissolution of Partnership.**” *Pl. Ex. 10, 11, 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties’ relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl. Ex. 12.* Settlement discussion followed those communications but have not to date resulted in an agreement.

Memorandum Opinion, Findings of Facts, p.9, ¶30. (Emphasis Supplied).

Here, as in *Browne*, this Court specifically found that the termination of the “partnership” occurred on March 13th, 2012 by way of a “Dissolution Notice”; further, though unsigned, the Dissolution Notice contained an agreement as to the scope and terms of the “partnership.” This notice of dissolution effectively terminates any purported partnership the parties may have had. With the partnership terminated, the court cannot now issue a preliminary injunction order demanding that the parties maintain the same joint management of operations because there are no continuing operations to manage. Moreover, such an Order re-writes and expands the terms of the

purported partnership, because Mohammed Hamed testified that under the terms of the agreement as understood by him, he never had the right to co-manage the operations of the supermarkets.

Here, Plaintiff Hamed cannot have it both ways: Plaintiff Hamed cannot use a partnership dissolution notice as proof of the existence of an at-will partnership, and simultaneously ignore its terminative effect upon the partnership. Plaintiff's request for continued joint management seeks a remedy that is unavailable by operation of law, since the claimed "partnership" was effectively dissolved, continues only until the completion of the winding up of partnership affairs. See, e.g., *In re Hunt's Pier Associates*, 162 B.R. 442, 451-52 (E.D. Pa. 1993) aff'd, 31 F.3d 1171 (3d Cir. 1994) (under the Uniform Partnership Act, a partnership upon dissolution continues only for the limited purpose of the winding up of partnership affairs.)

Thus, any request for an injunction to maintain the continued joint management of a partnership or joint venture that has been terminated cannot be entertained at this point. The partnership has now entered a phase of dissolution, and the court must reconsider its Order as it is *void ab initio*.

B. Standard of Review: Modifying Preliminary Injunction Orders

A court can modify a preliminary injunction order for reasons of equity in light of changes in the facts or for any other good reason. *Loudner v. U.S.*, 200 F.Supp. 2nd 1146, 1148 (D. S.D. 2002). As the Ninth Circuit explained, "[a] district court has inherent authority to modify a preliminary injunction in consideration of new facts." *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir.2002) (citing *Sys. Fed'n No. 91, Ry. Employees' Dep't v. Wright*, 364 U.S. 642, 647-48, 81 S.Ct. 368, 5 L.Ed.2d 349 (1961); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir.1963)).

In the Third Circuit, modification of preliminary injunction is proper only when there has been change of circumstances between entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable....*Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000).

Because of changed factual circumstances, mainly the wrongful conduct of employees Mufeed Hamed, Waleed Hamed and Wadda Charriez, this court may conduct a hearing to determine if “change of circumstances” has occurred between the entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable.

C. Defendant Yusuf has the right to terminate any employee of the alleged “partnership” because under the undisputed terms of that agreement he is the managing partner, with ultimate decision-making authority.

The Uniform Partnership Act, pursuant to Title 26 of the Virgin Islands Code, states that, except as otherwise provided, the partnership agreement governs relations among the partners and between the partners and the partnership. Partners may agree, therefore, that one or more of them will have exclusive control over the management of the partnership business, so that a managing partner, a committee of managing partners, a designated number of named partners, senior partners, or voting partners can be given the exclusive control of the partnership business. It is well established that Defendant Fathi Yusuf is the person with final authority for all management decisions, including but not limited the hiring and termination of employees. During the January 25th, 2013 hearing, Plaintiff Mohammed Hamed testified that Defendant Fathi Yusuf was “in charge of all three stores” and that he is “in charge of everybody.” This was demonstrated by the following testimony:

A. Mr. Fathi the one. He in charge for it.

Q. What other stores is Mr. Fathi in charge of?

A. For all the three store.

Q. That's all I have, sir. Thank you.

A. You're welcome.

January 25th, 2013 TRO Hearing 210 21-24, attached as EXHIBIT B. (*Emphasis Supplied*).

Further, Plaintiff Mohammed Hamed testified that Defendant Fathi Yusuf was in charge of everyone as shown below:

Q. And who is your oldest son? Who is your oldest son?

A. Mr. Yusuf he is in charge for everybody.

January 25th, 2013 TRO Hearing p. 201:2-5, attached as EXHIBIT C. (*Emphasis Supplied*).

There can be no doubt that whatever entity the Court deems to exist at this stage, only Defendant Fathi Yusuf has full and final authority and power to manage every aspect of the Plaza Extra stores. This is the agreement that even Plaintiff Hamed concedes has always existed between the parties from the beginning. Therefore, consistent with his powers and duties of a purported general manager, Defendant Yusuf is entitled to have employees terminated at will, for cause or no cause, so long as the termination is not against public policy. Here, three employees have engaged in fraud, defalcation of funds, and conversion. Defendants are entitled to terminate their employees forthwith.

Last but not least, Plaintiff Hamed testified that he was incapable of managing the affairs of the partnership, forcing him to provide a Power of Attorney to his son Waleed Hamed as demonstrated by Mohammed Hamed's testimony below:

A. Yes. **I'm his partner, not my son.**

Q. And if Mr. -- If Fathi Yusuf has something to talk to you about the partnership, he is to talk to you, correct?

A. Yes.

Q. And nobody else?

A. Nobody else. If I die or I -- after I give my son the power of attorney, yes, he could because I'm not working. **I getting old. I can't do nothing.**

January 25th, 2013 TRO Hearing 210:1, attached as **Exhibit C**.

Mohammed Hamed testified that "*I getting old can't do anything*" in terms of managing the three plaza extra stores. This in turn creates a serious problem concerning the day to day management that the court ordered in its April 25th, Preliminary Injunction Order. At this point, there is a purported partner, Mohammed Hamed who can no longer do anything. Yet he places a designee whose **personal** interests are in direct conflict with Defendant Fathi Yusuf, whether as a purported partner or as the shareholder and treasurer of United Corporation. Plaintiff Hamed has been retired since 1996, and has indicated clearly that he "cannot do nothing." The power to manage a partnership is not a delegable power that a partner can simply assign to another person without the express consent of the other managing partner.

Here, Waleed Hamed has been asked to explain how he acquired millions of dollars' worth of securities listed in detailed fashion in his 1992 and 1993 Tax Returns. Defendant Hamed not only refuses to provide an explanation to his employer, but has taken it upon himself to defend his position by filing procedural defenses. To expect a managing partner to co-manage an operation with someone he views as having defalcated substantial assets from the operations of the Plaza Extra Stores is untenable, and cannot be the subject of a preliminary injunction. Such an Order

constitutes a usurpation of the Management authority of an officer of an entity and “inject[s]” this Court “into a management role” which the business judgment rule, plainly prohibits. See, e.g., *Weiss v. Temporary Inv. Fund*, 692 F.2d 928, 941 (3d Cir.1982) (internal citation omitted)(quoting Duesenberg, *The Business Judgment Rule and Shareholder Derivative Suits: A View from Inside*, 60 Wash.U.L.Q. 311, 314 (1982)

D. CONCLUSION

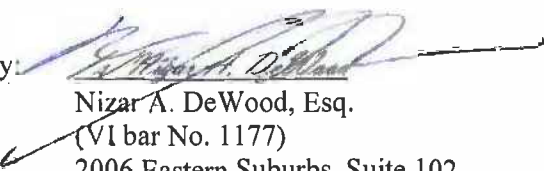
Defendant United may terminate employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez. The grounds for termination are set out clearly in each civil action before the court, and are therefore proper basis for termination. Even where this court makes the preliminary finding of a partnership, Defendant Fathi Yusuf still has the power and right to terminate employees who have engaged in misconduct. Plaintiff Mohammed has made clear that he “cannot do nothing” in reference to his ability to manage any of the affairs of the partnership or joint venture. This has been the case for the last 17 years. Plaintiff Mohammed Hamed’s proposed designees are now engaged in numerous civil actions with the Defendants. Because the Court is now forcing Defendant Fathi Yusuf to maintain a working relationship with Plaintiff Hamed’s proposed designees who have engaged in various misconduct, the Court should immediately reconsider its April 25th, 2013 Preliminary Injunction Order. As such, the Court should grant this Motion to Modify the Preliminary Injunction Order, and allow Defendant Yusuf to exercise his full rights, whether as the sole general managing “partner” or as a corporate officer of United Corporation.

Date: May 8th, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2013, I caused a true and exact copy of the foregoing Motion To Amend Judgment to Terminate Employees and Proposed Order to be served on counsel for the Plaintiff at the below address.

Joel H. Holt
Law Office of Joel H. Holt
2132 Company Street
Christiansted, VI 00820

/s/ Nizar A. DeWood

Nizar A. DeWood

EXHIBIT

A

Complaint

Yusuf v. Waleed Hamed, Mufeed Hamed

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

YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,

Plaintiff,

vs.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
FIVE-H HOLDINGS, INC.,

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

'13 116 1 21

CASE # SX-13-CV-_____

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff YUSUF YUSUF ("YUSUF"), by and through his undersigned counsel, derivatively on behalf of PLESSEN ENTERPRISES, INC. ("PLESSEN"), and as a shareholder of PLESSEN, hereby files this Verified Complaint against Defendants WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED (collectively, the "INDIVIDUAL DEFENDANTS"), and FIVE-H HOLDINGS, INC. ("FIVE-H"), and against Nominal Defendant PLESSEN, and alleges:

I. BACKGROUND

1. Plaintiff YUSUF brings this shareholder derivative action on behalf of PLESSEN against a member and officer of PLESSEN's Board of Directors (the "Board") and others, including certain shareholders of PLESSEN, to remedy, among other things, the fraudulent misappropriation of PLESSEN's assets, including the recent unauthorized transfer by WALEED HAMED of approximately \$460,000 from PLESSEN's bank accounts, representing approximately 99 percent

(99%) of the monies in those accounts, for the benefit of the INDIVIDUAL DEFENDANTS as well as FIVE-H; breach of fiduciary duties; corporate waste; conversion; unjust enrichment; civil conspiracy; and other relief, including the imposition of a constructive trust and an accounting, and other preliminary and permanent injunctive relief.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction over this action pursuant to 4 VIC § 76(a).
3. Venue is proper in this district pursuant to 4 VIC § 78(a).
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff YUSUF is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
6. Defendant WALEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
7. Defendant WAHEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
8. Defendant MUFEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
9. Defendant HISHAM HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
10. Defendant FIVE-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.
11. Nominal Defendant PLESSEN is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

PLESSEN

12. PLESSEN was formed in December 1988. A copy of PLESSEN's Articles of Incorporation is attached as Exhibit "A" hereto. PLESSEN adopted By-Laws on or about April 30, 1997, a copy of which is attached as Exhibit "B" hereto.

13. PLESSEN's original Board was comprised of the following individuals: Mohammed Hamed, Defendant WALEED HAMED and Fathi Yusuf. *See* Exhibit "A" at p. 3.

14. After PLESSEN's formation, an additional seat on the Board was created.

15. The current members of PLESSEN's Board are: Mohammed Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf. Attached as Exhibit "C" hereto is a report from the Virgin Islands Department of Licensing and Consumer Affairs that lists Maher Yusuf as a Director of PLESSEN.

16. PLESSEN's current Officers are: Mohammed Hamed (President), Defendant WALEED HAMED (Vice President) and Fathi Yusuf (Treasurer and Secretary). *See* Exhibit "A" at p. 3.

17. PLESSEN is owned in various shares by the following individuals: Plaintiff YUSUF, Fathi Yusuf, Mohammed Hamed, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, and Defendants WALEED HAMED, MUFEED HAMED, WAHEED HAMED, and HISHAM HAMED.

18. Plaintiff YUSUF is a shareholder of PLESSEN, was a shareholder of PLESSEN at the time of the wrongdoing alleged herein, has been a shareholder of PLESSEN continuously since that time, and will continue to be a shareholder of PLESSEN throughout the pendency of this action.

19. YUSUF, under Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, has standing to bring this action and will adequately and fairly represent the interests of PLESSEN and its shareholders in enforcing and prosecuting its rights.

FIVE-H

20. Upon information and belief, Defendant WALEED HAMED is the President of FIVE-H and one of its principal beneficial owners.

21. Upon information and belief, Defendant WAHEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

22. Upon information and belief, Defendant MUFEEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

23. Upon information and belief, Defendant HISHAM HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

24. Upon information and belief, FIVE-H, by and through the INDIVIDUAL DEFENDANTS, seeks to conduct business in the U.S. Virgin Islands.

WALEED HAMED's Misappropriation of \$460,000

25. On or about March 27th, 2013, Plaintiff YUSUF paid with his personal Banco Popular Visa credit card the 2011 property taxes of PLESSEN.

26. YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

27. However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made to pay Plaintiff YUSUF's Banco Popular Visa credit card account would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

28. It was then revealed that on March 27, 2013, Defendants WALEED HAMED & MUFEEED HAMED, without authorization, issued check number 0376 on a PLESSEN in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

29. Defendant WALEED HAMED then endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in Defendant WALEED HAMED’s personal bank account.

30. Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile.

31. Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

32. As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

33. Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

34. Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, and his acts were not, and could not have been, the product of a good faith exercise of business judgment.

35. Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

36. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – FRAUD/CONSTRUCTIVE TRUST (Against All Defendants)

37. Plaintiff YUSUF incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H conspired and fraudulently misappropriated, converted and/or received the benefits of PLESSEN'S funds of approximately \$460,000.

39. Such funds were, upon information and belief, used directly and indirectly to acquire personal and/or real property in the benefit of the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively.

40. Defendants' acts constitute a fraud, unconscionable conduct and/or questionable ethics resulting in unjust benefit to the wrongdoers, *i.e.*, Defendants.

41. To remedy such injustice, this Court should impose a constructive trust for the benefit of PLESSEN until the resolution of this action on all personal and/or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust:

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*, when Defendant WALEED HAMED, & MUFEEED HAMED without authorization, issued check number 0376 in the amount of \$460,000 from PLESSEN's Scotiabank account;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;

- iv. is superior to any creditor of the Defendants;
- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action, based on the notice provided herein regarding the wrongful misappropriation of PLESSEN's funds as alleged in this Complaint and otherwise.

42. As noted above, "the date upon which a constructive trust is legally deemed to arise relates back in time to when the facts giving rise to such fraud or wrong occur," *i.e.*, March 27, 2013 in this action. *In re: Pitchford*, 410 B.R. 416, 420 (Bankr. W.D. Pa. 2009); *see also Osmond Kean, Inc. v. First Penn. Bank, N.A.*, 22 V.I. 71, 76 (Terr. Ct. 1986) ("The creditors of the constructive trustee are not bona fide purchasers.' Moreover, 'where a person holds property subject to a constructive trust, his creditors are not purchasers for value and are subject to the constructive trust. . . . So also, a creditor who attaches the property . . . is not a bona fide purchaser, although he had no notice of the constructive trust.'") (quoting Restatement of Restitution §§ 160 and 173); *Francois v. Francois*, 599 F.2d 1286 (3d Cir. 1979) (affirming trial court's "equitable power" to impose constructive trust to prevent unjust enrichment).

COUNT II – CONVERSION
(Against WALEED HAMED & MUFEED HAMED)

43. Plaintiff YUSUF incorporates paragraphs 1 through 42 above as if fully set forth herein.

44. As alleged in detail herein, Defendants WALEED HAMED & MUFEED HAMED wrongfully, and without the knowledge, consent or authorization of PLESSEN, misappropriated funds belonging to PLESSEN for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H.

45. Defendant WALEED HAMED obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H with the intent to permanently deprive PLESSEN of its lawful rights to those funds.

46. Accordingly, Defendants WALEED HAMED & MUFEED HAMED are liable for conversion.

**COUNT III – BREACH OF FIDUCIARY DUTIES
(Against WALEED HAMED)**

47. Plaintiff YUSUF incorporates paragraphs 1 through 46 above as if fully set forth herein.

48. Defendant WALEED HAMED, as an agent and officer of PLESSEN, owes PLESSEN's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

49. Further, Defendant WALEED HAMED is, and at all relevant times was, required to use his utmost ability to control and manage PLESSEN in a fair, just, honest and equitable manner; to act in furtherance of the best interests of PLESSEN and its shareholders so as to benefit all shareholders equally and not in furtherance of his personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of PLESSEN and in the use and preservation of its property and asserts.

50. By virtue of the foregoing duties, Defendant WALEED HAMED was required to, among other things:

- i. exercise good faith in ensuring that the affairs of PLESSEN were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting PLESSEN's assets;
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of PLESSEN;

- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and
- vi. properly disclose to PLESSEN's shareholders all material information regarding the company.

51. However, by virtue of his position as Director and Officer of PLESSEN, and his exercise of control over the business and corporate affairs of PLESSEN, Defendant WALEED HAMED has, and at all relevant times had, the power to control and influence – and did control and influence – PLESSEN to engage in the wrongdoings alleged herein.

52. Specifically, as alleged in detail herein, Defendant WALEED HAMED breached his fiduciary duties by, among other things, unlawfully obtaining approximately \$460,000 of PLESSEN's funds; knowingly failing to inform PLESSEN regarding all material information related to such taking prior to the subject withdrawals; and otherwise knowingly failing to adhere to PLESSEN's corporate formalities, policies and procedures.

53. As a direct and proximate result of the foregoing breaches, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

COUNT IV – WASTE OF CORPORATE ASSETS (Against WALEED HAMED)

54. Plaintiff YUSUF incorporates paragraphs 1 through 53 above as if fully set forth herein.

55. As alleged in detail herein, Defendant WALEED HAMED, an agent and officer of PLESSEN, knowingly withdrew approximately \$460,000 of PLESSEN's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that PLESSEN received adequate consideration.

56. As a direct and proximate result of the foregoing waste of corporate assets, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT V – UNJUST ENRICHMENT
(Against All Defendants)**

57. Plaintiff YUSUF incorporates paragraphs 1 through 56 above as if fully set forth herein.

58. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H individually and collectively were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of PLESSEN's assets.

59. It would be unconscionable to allow the INDIVIDUAL DEFENDANTS and FIVE-H individually or collectively to retain the benefits thereof.

**COUNT VI – CIVIL CONSPIRACY
(Against All Defendants)**

60. Plaintiff YUSUF incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, *i.e.*, to, among other things, unlawfully defalcate or misappropriate the funds of PLESSEN.

62. The INDIVIDUAL DEFENDANTS and FIVE-H knowingly performed overt acts and took action to further or carry out the unlawful purposes of the subject conspiracy, including, but not limited to, Defendant WALEED HAMED's issuing and cashing of check number 0376 to the conspirators' benefit and PLESSEN's detriment.

63. As a direct and proximate result of the foregoing civil conspiracy, PLESSEN has sustained damages, including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and lack of control of PLESSEN's management and corporate affairs.

**COUNT VII – ACCOUNTING
(Against All Defendants)**

64. Plaintiff YUSUF incorporates paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H unlawfully benefited from and/or misappropriated PLESSEN's funds.

66. Further, at all times relevant, Defendant WALEED HAMED, as an agent and officer of PLESSEN, owed to PLESSEN a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

67. At all times relevant, the INDIVIDUAL DEFENDANTS and/or FIVE-H held the exclusive possession and/or control over documentation that would establish the funds unlawfully taken from PLESSEN.

68. Absent such documentation, PLESSEN is without the means to determine, among other things, if funds are owned to it and, if yes, how much; and if its misappropriated funds were used to purchase any real or personal property, in which case it has an ownership interest in such property.

69. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds as set forth herein.

70. Accordingly, a full accounting is warranted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff YUSUF prays for a Final Judgment against Defendants, jointly and severally, as follows:

A. Determining that YUSUF may maintain this action on behalf of PLESSEN and that YUSUF is an adequate representative of PLESSEN;

B. Determining that this action is a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;

C. Awarding to PLESSEN the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;

D. Awarding to PLESSEN punitive damages justified by the acts set forth herein, which damages will be determined at trial;

E. Ordering the disgorgement to PLESSEN of all funds that were unlawfully misappropriated from its possession;

F. Enjoining, preliminarily and permanently, the Defendants' benefit, use or enjoyment of PLESSEN's misappropriated funds;

G. Imposing a constructive trust for the benefit of PLESSEN on all personal or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;
- iv. is superior to any creditor of the Defendants;

- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action;

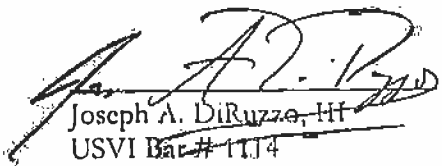
H. Awarding a full accounting of all monies, funds and assets that the Defendants received from PLESSEN;

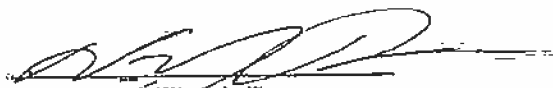
I. Awarding to PLESSEN the costs and disbursements of this action, including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;

J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law; and,

K. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated April 16, 2013


Joseph A. DiRuzzo, III
USVI Bar # 1114
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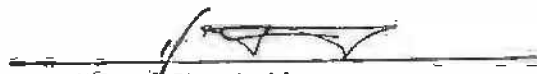

Nizar A. DeWood, Esq.
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VERIFICATION

I, *Yusuf Yusuf*, hereby verify that I have authorized the filing of the foregoing Verified Shareholder Derivative Complaint; that I have reviewed the Complaint; and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury pursuant to 28 U.S.C. section 1746, that the foregoing is true and correct.

DATE: 4/16/2013


Yusuf Yusuf, Shareholder
Plessen Enterprises, Inc.

EXHIBIT

B

January 25th, 2013 TRO Hearing 210:21-24

EXHIBIT B

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.

14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

EXHIBIT C

Check No. 376

EXHIBIT C

TRB - Web Page 00000000

Document Information

Document Type:	Cheque Image	Date Processed:	03/27/2013
Transit Number:	30585	Cheque Serial Number:	0000376
Account Number:	45012	Amount:	(\$460,000.00)

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PLESSEN ENTERPRISES, INC
P.O. BOX 763
C STED, VI 00821

0376
101-600-218

30585-002 045

PAY TO THE ORDER OF Waleed Hamed 3/27/13

four hundred sixty thousand MAR 27 2013 \$ 460,000.00

Scotiabank THE BANK OF NOVA SCOTIA

FOR [Redacted] [Signature] [Signature]

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Local intranet

Current Balance
Transact

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Document Information

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Ben de la Cruz

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EXHIBIT

D

United v. Waleed Hamed

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

UNITED CORPORATION,	)	CIVIL NO. SX-13-CV- <u> </u>
)	
Plaintiff	)	CIVIL ACTION
)	
Vs.	)	ACTION FOR DAMAGES, ACCOUNTING,
	)	BREACH OF CONTRACT, & EQUITABLE
WALEED HAMED	)	RELIEF
<i>(a/k/a Wally, Wally Hamed)</i>)	
	)	COMPLAINT
JOHN DOE (1-10))	
)	
Defendants	)	JURY TRIAL DEMANDED
<u> </u>)	
= <u> </u> =)	

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 Hamed, an employee and former agent of Plaintiff United. This complaint includes causes of action against Defendant 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 Sion Farm, St. Croix, as well as other locations. Further, this civil action names John Doe 1-10 as persons who have worked knowingly, and jointly with Waleed 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. Croix because all of the parties are residents of the District of St. Croix, U.S. Virgin Islands, and the cause(s) 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 Yusuf, hereinafter collectively referred to as the “Yusuf Family”.

7. Defendant Waleed Hamed is a natural person and is a resident of the U.S. Virgin Islands. Defendant Hamed is *sui juris*. At all times relevant to this action, Defendant Hamed has been an employee and agent 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 Waleed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Does 1 to 10 are natural persons and are each *sui juris*.

IV. FACTS

9. Plaintiff United was organized and authorized to conduct business in the U.S. Virgin Islands on January 15th, 1979 by its then shareholders Fathi Yusuf and his family. Plaintiff United has always been owned wholly in various percentage shares by the various members of the Yusuf family.

10. The Corporate officers of Plaintiff United have always been members of the Yusuf family.

11. Sometime in 1986, Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business.

12. As a result of this oral agreement, Plaintiff United agreed to rent a portion of its real property, United Shopping Plaza, to this supermarket joint venture.

13. United Shopping Plaza is located on the Island of St. Croix, U.S. Virgin Islands.

14. In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix.

15. In 1986, Plaintiff United hired Waleed Hamed as an employee, and assigned him managerial duties at the Plaza Extra supermarket located in Sion Farm, St. Croix, 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.

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

17. 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 2011 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct.

Defendant's Acquisition of Substantial Securities through Defalcation of Plaintiff's Assets

18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- a. **Tax Year 1992 (Stocks & Investments)\$ 408,572.00**
- b. **Tax Year 1993 (Stocks & Investments)\$7,587,483.00**

19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.

c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF FIDUCIARY DUTIES

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

30. As an agent and employee of Plaintiff United, a corporate entity, Defendant Hamed owes fiduciary duties to the entity. Included in the fiduciary duty is the duty of loyalty. Not only is it Defendant Waleed 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.

31. Defendant Waleed 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**

32. Plaintiff incorporates paragraphs 1 through 31 as if fully set forth verbatim herein.
33. 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.
34. Defendant Hamed has engaged in systemic 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.
35. 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**

36. Plaintiff re-incorporates paragraphs 1 through 35 inclusive as if fully set forth verbatim herein.

37. Defendant Waleed 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**

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

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

40. 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.

41. 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**

42. Plaintiff incorporates paragraphs 1 through 41 inclusive as if fully set forth verbatim herein.

43. 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.

44. 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.

45. 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 Hamed from contacting any business associates of Plaintiff United;
- v. Preclude Defendant 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. Attorneys fees, court costs, and any other relief the court deems equitable.

Date: January 8, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

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EXHIBIT

E

Browne v. Ritchey

202 Ill.App.3d 137
Appellate Court of Illinois,
First District, Third Division.

William BROWNE, Individually and as President
of Nationwide Truck Driving School, Inc.,
Plaintiffs–Appellees,

v.

William E. RITCHEY, Individually and as
President of Federal Truck Driving School of San
Diego, Inc., Defendants–Appellants.

No. 1–90–0578. | Aug. 8, 1990.

Plaintiff **partner** brought action against defendant **partner** seeking **preliminary injunction** requiring defendant to **continue** in the relationship. The Circuit Court, Cook County, Monica D. Reynolds, J., granted **preliminary injunctive** relief. Defendant appealed. The Appellate Court, Freeman, J., held that partnership was one at will which was properly terminated by defendant; therefore, grant of **preliminary injunction** requiring defendant to **continue** in the relationship was an abuse of discretion.

Reversed.

West Headnotes (6)

- ^[1] **Injunction**
↔ Grounds in general; multiple factors
Injunction
↔ Preponderance of evidence

To obtain **preliminary injunctive** relief, plaintiff must show, by preponderance of the evidence, that he has a clearly ascertainable right in need of protection; he will suffer irreparable harm without relief requested; he has no adequate remedy at law; and there is likelihood of success on merits.

- ^[2] **Partnership**
↔ Partnership at will

Partnerships formed without reference to any term are “partnerships at will.”

- ^[3] **Partnership**
↔ Partnership at will

Partnerships at will are subject to dissolution at any time by express will of any **partner**.

- ^[4] **Partnership**
↔ Partnership at will

All that **partner** needs to do to dissolve partnership at will is give notice to copartners of intent to dissolve partnership.

- ^[5] **Partnership**
↔ Partnership at will

As to partnerships at will, dissolution at election of one **partner** is not a breach of contract and dissolving **partner** incurs no personal liability regardless of his motive for any injury to copartners who neglected to protect themselves by agreement to **continue** for definite term.

- ^[6] **Injunction**
↔ Partnerships

Partnership

Partnership at will

Partnership was a "partnership at will" which was properly terminated by defendant **partner** when he sent telegram to plaintiff **partner** stating his intent to dissolve partnership where oral partnership agreement between parties did not include any agreement as to duration of partnership; therefore, as defendant **partner** acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, **grant of preliminary injunction** requiring him to **continue** in that relationship was an abuse of discretion.

Attorneys and Law Firms

****809 *138 ***469** Donald G. Mulack, Anthony J. Smith of Keck, Mahin & Cate, Chicago, for defendants-appellants.

Nicholas J. Motherway, Robert J. Napleton of Motherway & Glenn, P.C., Chicago, for plaintiffs-appellees.

Opinion

Justice FREEMAN delivered the opinion of the court.

Plaintiff, William Browne, individually and as president of Nationwide Truck Driving School, Inc. (hereinafter Nationwide), filed a complaint to enjoin Defendant, William Ritchey, individually and as president of Federal Truck Driving School of San Diego, Inc. (hereinafter Federal), from breaching an agreement between the parties. Under the agreement, Nationwide was to operate a truck driving school in Chicago as a branch of Federal and to divide any profits realized equally with Federal in exchange for utilization of Federal's accreditation. Federal held its accreditation from the Accrediting Counsel for **Continuing** Education and Training (hereinafter ACCET). Plaintiff alleged that defendant had breached the agreement by closing its Chicago branch and removing the accreditation contracted for by Nationwide. After an evidentiary hearing, the trial court granted plaintiff a mandatory **preliminary injunction** ordering defendant to,

inter alia, restore to plaintiff's use the accreditation granted defendant by ACCET. Defendant appeals from that order.

Plaintiff testified to the following at the evidentiary hearing. Plaintiff had operated a truck driving school in Chicago for about 14 years as of 1989. From December 1985 to about June 1987, plaintiff's school had been accredited. Accreditation was important to a school because it was a ****810 ***470** prerequisite for Federal financial aid to its students. Plaintiff approached defendant in the fall of 1987 to explore the idea of a partnership in Chicago. In April 1988, the parties reached an agreement to open a truck driving school in Chicago and to split the profits equally. Additional terms of the parties' agreement were that: the school would be accredited by becoming a branch of Federal; the school would be named "Federal Truck Driving School d/b/a Nationwide Truck Driving School, Inc."; plaintiff was to run the school and pay its expenses; defendant was to receive 100% of the stock of Nationwide; and, plaintiff was to have an option to repurchase 49% of the stock after six months. Plaintiff operated the Chicago school under Federal's existing accreditation from May to August 1, 1988. On ***139** August 1, 1988, defendant notified plaintiff that he was closing Federal's Chicago branch and that the school could no longer use Federal's accreditation. At that time there were approximately 135 students with unfulfilled contracts to attend the school. Plaintiff believed that if the Chicago school did not fulfill its obligation to train these students it would risk losing its license from the Illinois Secretary of State. It would also risk being unable to obtain accreditation from ACCET on its own. Defendant did not receive Nationwide's stock because he never asked for it and plaintiff was "holding it in abeyance." Plaintiff's agreement with defendant did not depend on their execution of a written agreement, prepared by plaintiff's attorney, containing the terms to which they had otherwise agreed. If denied the use of Federal's accreditation, it would take the Chicago school about a year to obtain its own accreditation, which would not be in sufficient time to allow plaintiff to fulfill its student contracts.

On cross-examination, plaintiff testified as follows. Defendant had asked for Nationwide's stock on one occasion but plaintiff did not tender it to him at that time. It was not part of the parties' agreement that independent accreditation would be sought for Nationwide separate and apart from Federal's accreditation for its Chicago branch. Paragraph 6 of the written agreement, which the parties had included in their oral agreement had nothing to do with obtaining that independent accreditation. Plaintiff never intended to obtain such accreditation. Nor did plaintiff

want to run the school separately from Federal.

Defendant, called as a witness by plaintiff, testified as follows. He and plaintiff reached an oral agreement to operate a school in Chicago, the terms of which were the same as those contained in the unexecuted written agreement drafted by plaintiff's attorney. Although he never gained actual possession of Nationwide's stock, defendant considered himself the owner of the Chicago school. Defendant's failure to gain possession of the stock had nothing to do with his decision to close the Chicago school. On cross-examination, defendant testified that he did not execute the written agreement because he never received the Nationwide stock.

On his own behalf, defendant testified as follows. The oral agreement that he had with plaintiff was that they would operate a branch of Federal in Chicago and seek independent accreditation for Nationwide. Because, under Federal regulations, an accredited school cannot loan its accreditation to a nonaccredited school and in order to protect Federal's accreditation. Defendant made sure that the Chicago school was accredited as a branch of Federal. In order to apply for and obtain *140 independent accreditation for Nationwide, pursuant to the agreement with plaintiff, defendant was required by ACCET to own at least 51% of Nationwide's stock. Defendant never received the Nationwide stock. Paragraph six of the unexecuted written agreement provided, with respect to the independent accreditation that defendant was to obtain for Nationwide, that Nationwide's stock was to be sold to Federal. Plaintiff's failure to tender the Nationwide stock to defendant made it impossible for him to seek independent accreditation for Nationwide. Defendant did not execute the written agreement because he did not agree with two of its provisions. Defendant treated plaintiff as an employee upon plaintiff's failure to transfer the Nationwide stock to him and defendant's failure to sign the written agreement. Neither an **811 ***471 applicant for enrollment in a Federal school nor Federal are bound if the applicant does not pay any tuition.

In granting plaintiff a **preliminary injunction**, the trial court found that the parties entered into an oral agreement whereby plaintiff was to be the **manager** of a Chicago branch of Federal. It further found that despite plaintiff's failure to tender the Nationwide stock to defendant the parties operated as **partners** for nine months. The trial court further concluded that the oral agreement was a legally enforceable contract because there was mutual assent to it and that irreparable injury would result, without the injunction, because refusing accreditation "destroys the

school."

OPINION

^[1] Preliminarily we must note that, in order to obtain **preliminary injunctive** relief, a plaintiff must show, by a preponderance of the evidence that: (1) he has a clearly ascertainable right in need of protection; (2) he will suffer irreparable harm without the relief requested; (3) he has no adequate remedy at law; and (4) there is a likelihood of success on the merits. (*Service Systems Corp. v. Van Bortel* (1988), 174 Ill.App.3d 412, 123 Ill.Dec. 833, 528 N.E.2d 378.) On appeal, defendant relies upon several grounds to argue that the trial court erred in entering the **preliminary injunction** for plaintiff. In view of our conclusion that plaintiff lacks a clearly ascertainable right entitled to protection, we need only address defendant's contention that his partnership with plaintiff was a partnership at will and thus terminable at any time.

^[2] ^[3] ^[4] ^[5] With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships *141 are subject to dissolution at any time by the express will of any **partner**. (*Maimom v. Telman* (1968), 40 Ill.2d 535, 538, 240 N.E.2d 652; *Blake v. Sweeting* (1887), 121 Ill. 67, 70, 12 N.E. 67; *Sjo v. Cooper* (1975), 29 Ill.App.3d 1016, 1017, 331 N.E.2d 206; *Salter v. Condon* (1925), 236 Ill.App. 17, 25; Ill.Rev.Stat.1987, ch. 106 ½, par. 31(1)(b); 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving **partner** need do is give notice of his intent to dissolve the partnership to his **co-partners**. (*Blake*; *Sjo*; *Salter*; 59A Am.Jur.2d Partnership § 820 (1987).) There is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a dissolution at the election of one of the **partners** is not a breach of contract and the dissolving **partner** incurs no liability regardless of his motive or any injury to his co-**partners** "who neglected to protect themselves by an agreement to **continue** for a definite term." 59A Am.Jur.2d Partnership § 819, at 641 (1987) citing, *inter alia*, *Thanos v. Thanos* (1924), 313 Ill. 499, 145 N.E. 250.¹

^[6] The record in this case reveals that the oral partnership agreement between the parties did not include any agreement as to the duration of their partnership. Moreover, plaintiff does not so allege on appeal. Therefore, the agreement and the parties' rights thereunder were governed by the foregoing rules. Defendant had the right

to dissolve his partnership at will with plaintiff at any time as long as he gave notice of his intent to do so. Defendant's telegram to plaintiff on August 1, 1989 stating that he was closing the Chicago branch of Federal satisfied his notice obligation. As defendant acted within his rights under the parties' agreement and partnership law in terminating his relationship with plaintiff, the grant of a **preliminary injunction** requiring him to **continue** in that relationship was an abuse of discretion.

Plaintiff concedes the general validity of the foregoing rules of partnership law. However, he argues that defendant cannot ****812 ***472** evade the specific performance of their oral contract by claiming that the partnership created thereby was terminable at will. Plaintiff so reasons ***142** based on: (1) the rule that partnerships are contractual relationships to which principles of contract law are fully applicable; (2) the contract law principle that an essential element for the formation of a contract is the parties' mutual assent to its terms; and (3) the rule that the existence of a partnership depends upon the parties' intent. Applying these principles here, plaintiff concludes that the trial court, having found that he and defendant had agreed to operate as **partners**, properly exercised its equitable powers.

As we understand it, plaintiff's argument is that, having once manifested an intent to form and conduct a partnership with him, defendant could not thereafter withdraw from that partnership as he pleased or chose. The problem with plaintiff's argument, however, is that neither the principles upon which he relies for that conclusion nor

the case from which they are cited, *Allen v Amber Manor Apartments Partnership* (1981), 95 Ill.App.3d 541, 51 Ill.Dec. 26, 420 N.E.2d 440, provide any support for it. *Allen* did not involve the question here presented. More importantly, that partnerships are subject to contract law principles is of no avail to plaintiff absent citation to any such principle requiring a conclusion contrary to that which we have reached in this case. That mutual assent is required for the formation of a contract and that the existence of partnership depends on the parties' intent are not such principles. Rather, those rules have nothing whatsoever to do with a **partner's** exercise of his right to withdraw from a partnership at will. Plaintiff's arguments are without merit.

For the foregoing reasons, we reverse the order granting a **preliminary injunction** against defendant.

REVERSED.

CERDA, P.J., and WHITE, J., concur

Parallel Citations

202 Ill.App.3d 137, 559 N.E.2d 808

Footnotes

¶ It could be argued, based on defendant's testimony that he and plaintiff agreed to obtain independent accreditation for Nationwide, that the parties formed a partnership for a particular undertaking and that it was thus not terminable at will. (See, generally, Ill.Rev.Stat.1987, ch. 106 ½, par. 31(1)(b).) However, plaintiff's denial of this intent at the evidentiary hearing as a part of their agreement precludes a finding of mutual assent to that term and reliance thereon to reach a conclusion contrary to that which we reach in this case.

EXHIBIT

F

January 25th, 2013 TRO Hearing p. 201:2-5

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

EXHIBIT

G

Complaint, *United v. Charriez*

Superior Court of the Virgin Islands
Division of St. Croix



OFFICE OF THE CLERK
(340) 778-9750

Date: May 6, 2013

Plaintiff s/Attorney's name NIZAR A. DEWOOD, ESQ.

Address 2006 EASTERN SUBURB, STE. 101 C'STED VI 00820

Address _____

DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT

Dear ATTORNEY DEWOOD

The Court is in receipt of your CIVIL / CRIMINAL / FAMILY / PROBATE filing,
which was docketed on MAY 6, 2013 and assigned Case Number
SX-13-CV-152

The Judge / Magistrate Assigned to your case is the Honorable
JUDGE HAROLD WILLOCKS

If there is a fee associated with your filing, such fee must be filed along with your
petition/complaint, or within five (5) days thereafter. Failure to pay the required fee may
result in your petition / complaint being dismissed for failure to prosecute.

If you have any questions or concerns, you may contact the Office of the Clerk of the
Court at (340) 778-9750 (St. Croix) or 774-6680 (St. Thomas-St. John).

Sincerely,
Venetia Velazquez, Esq.
Clerk of the Court


BY: TAMARA N. ALLEN, COURT CLERK II

Cc: WADDA CHARRIEZ, Defendant
Case File

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

13 NOV 5 1 49

UNITED CORPORATION,	)	CIVIL NO. SX-13-CV- <u>152</u>
)	
)	
Plaintiff	)	CIVIL ACTION
)	
Vs.	)	ACTION FOR DAMAGES
	)	& RECOUPMENT
WADDA CHARRIEZ)	
	)	COMPLAINT
)	
Defendant	)	JURY TRIAL DEMAND\
_____)	

COMPLAINT

Plaintiff United Corporation (“United”), and by and through its undersigned counsel files this action for damages and alleges as follows:

I. BACKGROUND

1. This is a civil action for damages, compensatory and punitive, arising out of Defendant Charriez for fraud, breach of contract, breach of fiduciary duties, and conversion.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

- 2. This Court has jurisdiction pursuant to 4 VIC §76.
- 3. Venue is proper in the District of St. Croix because all of the parties are residents of the District of St. Croix, and the cause(s) 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. Defendant Wadda Charriez is a natural person and is a resident of the U.S. Virgin Islands. Defendant Charriez is *sui juris*. At all times relevant to this action, Defendant Charriez has been an at-will employee of Plaintiff United.

IV. FACTS

7. Plaintiff United operates three supermarket stores throughout St. Croix and St. Thomas under the trademark of "Plaza Extra" located in 4C & 4D Estate Sion Farm, St. Croix, 14 Estate Plessen, St. Croix and 4605 Tutu Park Mall, Suite 200, St. Thomas.

8. Plaintiff United is the employer of Wadda Charriez, who began her employment on January 5th, 1998 as a cashier. Thereafter, Defendant Charriez eventually became an office manager was assigned the duties of preparing and issuing payroll checks.

9. United utilizes a hand recognition payroll system where every employee must scan his or her right hand to "punch-in" and "punch-out"

10. The system then automatically feeds the payroll system with time information obtained from each employee's hand scan.

11. Any print out from the payroll system would then show the date and time the hand was scanned. However, if an employee manually enters the entry and exit times, any printout of that employee's time sheets will show an asterisk next to the manually overridden time.

12. This punch-in and punch-out hand recognition procedure is required for all hourly wage based employees. Of all the hourly based employees, Defendant Charriez and by virtue payroll responsibilities has manually overridden the payroll system virtually every single time.

13. There is only one explanation as to why Defendant Charriez's timesheets would show consistent manual time entries: to report false hours and to cause the payroll system to issue overstated wages.

14. On April 29th, 2013, Plaintiff United Corporation terminated Defendant Wadda Charriez for reporting false hours causing Plaintiff United monetary losses of \$40,878 dollars.

15. Upon information, Defendant Charriez reported false hours for the years 2006 through 2009, the records of which are being collected and analyzed.

16. For the years 2010 through 2012, Defendant Charriez reported the following total false hours:

- i. Year 2010 786 hours @ \$18.00 = \$14,148
 - ii. Year 2011 832 hours @ \$18.00 = \$14,976
 - iii. Year 2012 615 hours @ \$18.00 = \$11,754
- \$40,878

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION FRAUD

23. Plaintiff incorporates paragraphs 1 through 22 inclusive as if fully set forth verbatim herein.
24. Defendant Charriez fraudulently reported hours of work to Plaintiff United during the period of January 1st, 2010 through December 15th, 2012, causing Plaintiff losses of \$40,878 dollars.
25. Plaintiff United materially relied on the representations of Defendant Charriez, and as a result issued numerous checks for overstated amounts to Defendant Charriez.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

26. Plaintiff incorporates paragraphs 1 through 25 inclusive as if fully set forth verbatim herein.
27. Defendant Charriez is an employee of Plaintiff United; as such Defendant owes Plaintiff various duties, including duty of loyalty and duty of care.
28. Defendant Charriez's reporting of false hours to gain for her personal benefit in the amount of \$40,878 is a breach of each of these duties. Defendant Charriez is therefore liable to Plaintiff for all damages sustained by Plaintiff United as a result of Defendant Charriez' breach of their duties.

THIRD CAUSE OF ACTION

CONVERSION/RECOUPMENT

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

30. Defendant obtained and received \$40,878 in unauthorized and fraudulent compensation from Plaintiff United. Defendant is liable to Plaintiff for the conversion of said funds to her benefit.

31. As such, Plaintiff United is entitled to full recoupment of these funds including but not limited to a constructive trust in favor of Plaintiff United.

VI. RELIEF REQUESTED

Wherefore, Plaintiff United Corporation, respectfully prays for the following relief:

- i. Compensatory damages in the amount of \$40,878 dollars.
- ii. Punitive damages in an amount to be determined at trial.
- iii. Attorney's fees and court costs for filing the Action
- iv. Any other relief the court deems equitable.

Date: May 3, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

By: 

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