

07/08/2013

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**FATHI YUSUF AND UNITED
CORPORATION,****Appellants/Defendants,**

v.

**MOHAMMAD HAMED By His
Authorized Agent WALEED HAMED,****Appellee/Plaintiff.****S. Ct. Civ. No. 2013-CV-0040****Re. Super. Ct. Civ. No. 2012/370****APPELLEE'S OPPOSITION TO APPELLANTS' MOTION TO STRIKE WALEED
HAMED'S DECLARATION**

The Appellee ("Hamed") hereby opposes Appellants' motion to strike the declaration of Waleed ("Wally") Hamed. For the reasons set forth herein, it is respectfully submitted the motion should be denied.

At the outset, it should be noted that the declaration was filed in support of the opposition to the motion to stay, which not only permits but requires such sworn statements to be submitted pursuant to S. Ct. R. 8(b) if the facts are in dispute. Waleed Hamed's declaration was filed to address both the facts in dispute as well as to explain why the granting of the motion to stay would cause significant harm to the Appellee.

Despite the Appellants' venomous assault on Waleed Hamed's declaration, Appellee stands fully behind all of the statements in the declaration, as none are untrue. Indeed, Appellants' motion to strike did not address most of the facts asserted in the declaration, which are fully supported by the record in this case, reserving their attack for the IRB related issues discussed in ¶¶ 28-37 of the declaration.

Notwithstanding Appellants' objections, the representations made by Waleed Hamed regarding the status of his father's taxes are completely accurate. As noted by the attached declaration of counsel (**see Exhibit 1**):

- Hamed has been concerned since the outset of this litigation about the filing of true and accurate tax returns.
- Hamed's counsel has repeatedly raised this issue with Appellants' counsel, challenging them to explain why they would allow United Corporation to file tax returns claiming 100% of the income from the three Plaza Extra Supermarkets, when in fact they (and Fathi Yusuf) have repeatedly acknowledged that 50% of these profits belong to Hamed.
- When this matter remained unresolved with Appellants' counsel, this issue was addressed in detail with IRB representatives in April of 2013 (in writing and in person).
- Hamed then filed tax returns on May 16, 2013, for the years in which he had not previously filed tax returns, reporting 50% of the profits from the three Plaza Extra supermarkets as his income, along with a cover letter explaining in detail why the tax due in these profits had already been paid, with the exception of an amount still due for the years 2002-2012 as part of the closure of the criminal case.
- Counsel was present with Waleed Hamed when this last payment of \$6.5 million was being addressed as part of the closure of the criminal case in St. Thomas on June 19, 2013.
- When it was pointed out that the tax payment of \$6.5 million was being paid from an account in which Hamed had a 50% interest, which counsel believed required Hamed's consent before it could be released, the IRB promised and subsequently delivered letters confirming that Hamed's taxes were paid in full for the prior years in question, not just the 2002-2010 period.¹

The Appellants' dismay at this turn of events is evidenced by counsel's June 29th letter to the IRB, unbelievably threatening a variety of actions if (1) the letters to Hamed were not withdrawn and (2) a letter was not received confirming the \$6.5 million was only

¹ The documents referenced in the attached declaration are probably not needed to resolve the issues on appeal, but if the Court wishes to review them, they can all be submitted. If needed, it is requested that any documents submitted to the IRB be filed under seal.

used to cover the Appellants' taxes and not the taxes of any of the Hameds. See Exhibit C attached to Appellants' motion.

Of course, one has to ask--**why do the Appellants have any issue with Hamed's taxes being deemed paid if their taxes were deemed paid as well?** The answer is simple—Appellants want to use the payment of taxes to try to justify taking the entire \$37,000,000 that remains in escrowed profits as soon as the criminal case ends,² confirming the Hamed's assertions that staying the preliminary injunction will significantly harm him.

As for the other letters submitted by Appellants, the letter of the U.S. Attorney (Exhibit D) is disappointing, but understandable—she wants to end a criminal case in which Mohammad Hamed has no part.³ The letter submitted by IRB Director Watson-Anderson (Exhibit E) at first appears perplexing, but in reality it is quite ingenious. She managed to satisfy the parties in the criminal case yet kept the IRB's promise to Hamed, avoiding taking a side in this dispute (while getting 100% of the taxes owed on the profits generated by Plaza Extra). However, neither letter (which are unverified) contradicts the declaration of Waleed Hamed that (1) his father has filed his tax returns and (2) the IRB has acknowledged that his taxes have been paid in full for the years in question.

In short, Hamed's declaration should not be stricken—it is not inaccurate and it is relevant to the “stay” issues for which it was submitted.

² That case is now tentatively set to end on July 16th. **See Exhibit 2.**

³ Her suggestion that the items discussed with the court should perhaps be kept confidential was actually one initially made by the undersigned counsel, which counsel for the Appellants rejected, obviously because he had hope to use the tax issue to his clients' advantage. **See Exhibit 1.**

Dated: July 8, 2013

/s/ Joel H. Holt
Joel H. Holt (Bar # 6)
Counsel for Appellee
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Christiansted, VI 00820

/s/ Carl J. Hartmann, III, Esq.
Carl J. Hartmann III (Bar # 48)
Co-Counsel for Appellee
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Christiansted, VI 00820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2013, I electronically filed the foregoing **APPELLEE'S OPPOSITION TO APPELLANTS' MOTION TO STRIKE WALEED HAMED'S DECLARATION** with the Clerk of the Court using the VISCEFS system, which will send a notification of such filing (NEF) and I caused two true and exact copies of the foregoing to be served by mail to:

Joseph A. DiRuzzo, III
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1001 Brickell Bay Drive, 32nd. Fl.
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305-350-5690
Email: jdiruzzo@fuerstlaw.com

Dated: July 8, 2013

/s/ Joel H. Holt

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**FATHI YUSUF AND UNITED
CORPORATION,**

Appellants/Defendants,

v.

**MOHAMMAD HAMED By His
Authorized Agent WALEED HAMED,**

Appellee/Plaintiff.

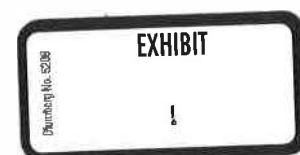
S. Ct. Civ. No. 2013-CV-0040

Re. Super. Ct. Civ. No. 2012/370

DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

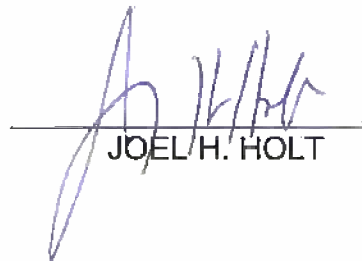
1. I represent Mohammad Hamed in this case.
2. I have direct personal knowledge of the facts set forth herein.
3. My client has been concerned since the outset of this litigation about the filing of true and accurate tax returns.
4. I have repeatedly raised this issue with Appellants' counsel in writing, sending multiple letters between October, 2012, and April, 2013, asking counsel to explain why they would allow United Corporation to file tax returns claiming 100% of the income from the three Plaza Extra Supermarkets, when in fact they (and Fathi Yusuf) have repeatedly acknowledged that 50% of these profits belong to Hamed.
5. When this matter remained unresolved with Appellants' counsel, I addressed this tax issue in detail with IRB representatives in April of 2013 (in writing and in person).
6. My client filed tax returns on May 16, 2013, for the years in which he had not previously filed tax returns, reporting 50% of the profits from the three Plaza Extra Supermarkets as his income, along with a cover letter explaining in detail why the tax due in these profits had already been paid except for a final amount still due for the time period 2002-2012 as part of the closure of the criminal case.



7. I was present with Waleed Hamed in St. Thomas on June 19, 2013, when this last payment of \$6.5 million in taxes was being addressed as part of the closure of the criminal case.
8. I initially suggested that all agreements be kept confidential, but counsel for the Appellants rejected that offer.
9. When I pointed out that the tax payment of \$6.5 million was being paid from an account in which Hamed had a 50% interest, which I believe required Hamed's consent before it could be released, the IRB promised and subsequently delivered letters confirming that Hamed's taxes were paid in full for the prior years in question, including the 2002-2010 period.

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

Dated: July 8, 2013


JOEL/H. HOLT

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

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

UNITED CORPORATION
d/b/a Plaza Extra,
Defendant.

CRIMINAL NO. 2005-015

JOINT MOTION TO SCHEDULE SENTENCING HEARING

The parties move the Court to schedule the sentencing hearing for United Corporation on Tuesday July 16, 2013.

Dated: 7/3/2013

s/Lori A. Hendrickson
LORI A. HENDRICKSON
Trial Attorney
U.S. Department of Justice

Dated: 7/3/2013

s/Joseph A. DiRuzzo, III¹
JOSEPH A. DIRUZZO, III
Attorney for Defendant United Corporation

¹ Joseph A. DiRuzzo, III has consented to his signature being represented as “s/Joseph A. DiRuzzo, III” as permitted by LRCi 5.4(h)(4)(ii).



CERTIFICATE OF SERVICE

I, Lori A. Hendrickson, certify that on July 3, 2013, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

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s/ Lori A. Hendrickson
Lori A. Hendrickson