

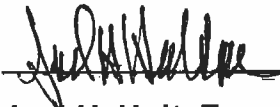
**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	
)	
Plaintiff,)	CIVIL NO. SX-12-CV-370
)	
v.)	ACTION FOR DAMAGES,
)	INJUNCTIVE AND
)	DECLARATORY RELIEF
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.)	JURY TRIAL DEMANDED

**PLAINTIFF HAMED'S
EMERGENCY MOTION FOR FURTHER CLARIFICATION**

COMES now the Plaintiff, Mohammad Hamed and seeks the Court's clarification of its Preliminary Injunction as to the scope of the current preliminary injunction order. The basis of the motion is set forth in the attached memorandum which is incorporated herein by reference. For the reason set forth herein it is respectfully requested that the relief sought be granted. A proposed order is attached.

Dated: July 12, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
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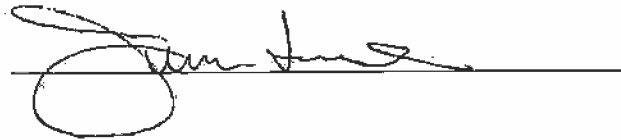
CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2013, a true and accurate copy of the foregoing was served by hand on:

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

And by mail and email on:

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

A handwritten signature in black ink, appearing to read "Joseph A. DiRuzzo, III", is written over a horizontal line.

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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Defendants.)	JURY TRIAL DEMANDED
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**MEMORANDUM IN SUPPORT OF PLAINTIFF HAMED'S
EMERGENCY MOTION FOR FURTHER CLARIFICATION**

As the Court will recall, the Defendants previously sought an “Emergency Clarification” of this Court’s preliminary injunction order as to which bank accounts it covered, which clarification was subsequently granted. The Plaintiff, Mohammad Hamed (“Hamed”), now seeks further clarification of the Court's order regarding the partnership accounts as well. Specifically, the Defendants apparently do not believe the account at Popular Securities is restrained from their unilateral withdrawal of funds from it.

In this regard, \$6.5 million was unilaterally withdrawn from this account by United Corporation without Hamed’s prior knowledge. See, e.g., **Exhibit 1**. When the Plaintiff subsequently learned of this withdrawal, it did not object because this withdrawal had been authorized by the U.S. Marshall overseeing this account. See **Exhibit 1**. At least one more similar withdrawal has occurred, with the Defendants requesting the release of funds and the U.S. Marshall approving the same. See **Exhibit 2**.

While Hamed has not objected to these withdrawals because they were approved

by the U.S. Marshall, the criminal case is now set to end on July 16, as sentencing has been set for that date. See **Exhibit 3**. Once this sentencing takes place, the Order entered in the criminal case that currently restrains the use of these funds at Popular Securities will be lifted.

Thus, clarification of this Court's April 25th Order is needed, as otherwise the Defendants believe they can apparently withdraw all of these funds. As the Court noted in part in its April 25th Memorandum (citations to the record omitted)(Emphasis added):

11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and **Hamed has remained a partner since that time.** (Footnote omitted.)

12. **As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit** and liable for fifty (50%) of the "payable" as well as loss of his contribution to the initial start-up funds.

....

25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee **the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill-Lynch. Those "profits" accounts remain at Banco Popular Securities to the present.** (Emphasis added).

....

32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use, however such withdrawals were always made with the knowledge and consent of the other partners.

....

37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securities brokerage account pending the conclusion of the Criminal Action or further order of that Court. The Criminal Action will remain pending until past tax

returns are filed. As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.

The Court then noted in the Conclusion section of the preliminary injunction opinion in part as follows:

1. 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 representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.
2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).

The Court's Order following this opinion then reiterated both of these two points.¹

Thus, the Plaintiff believes the Order entered by this Court made it clear that (1) the funds held by Popular Securities were profits of the partnership and (2) that these funds could not be withdrawn absent the mutual consent of the parties as has been the practice in the past. Of course, as this Court noted, it could not control the criminal action, which is why the withdrawals authorized by the U.S. Marshall would clearly be beyond this limitation.²

¹ Indeed, footnote 9 of this Court's opinion expressed this Court's concern about the unilateral withdrawal of funds by the Defendants:

With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence . . . AS such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

² The withdrawals to date have also benefited Hamed as the funds were used to clear up partnership obligations, including taxes owed on the partnership profits.

However, as the criminal case is set to end on July 16th, which would dissolve the restraining order in that proceeding, the Plaintiff seeks an order clarifying that this Court's April 25th Order prohibits the Defendants from unilaterally removing any funds from this account (or any other account holding partnership profits) once the Restraining Order in the District Court criminal proceedings is lifted (unless Hamed and Yusuf agree to the distribution). In short, this account holds the profits of the partnership operations.³ In this regard, this procedure has been the past practice as noted by this Court and is precisely what this Court stated in its Order in part as follows:

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 representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.

Equally important, the Plaintiff believes this account at Popular Securities was also an account that this Court directed to be frozen unless the partners both agreed to a withdrawal of profits, as he served a copy of this Order on Popular Securities. Indeed, the Order states further:

ORDERED that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).

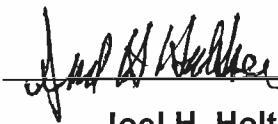
³ Indeed, it is clear this Court did not expect unilateral withdrawals from this account, as it was used by this Court as part of the bond in this case in Conclusion #5:

5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. **(Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)** (Emphasis added).

The Order then goes on to describe how funds can be withdrawn from specific accounts, clearly confirming that this account at Popular Securities was also intended to be part of the above order freezing all withdrawals.

As such, the Plaintiff respectfully requests this Court to clarify its Order and confirm that once this account (or any other account with partnership profits like Merrill Lynch) was and is subject to the restrictions set forth in this Court's April 25th Order.

Dated: July 12, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
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Christiansted, VI 00820

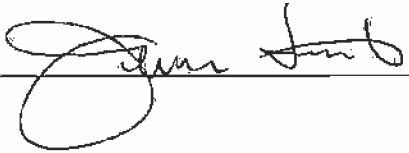
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And by mail and email on:

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



A handwritten signature in black ink, appearing to read "Chris David", is written over a horizontal line.



U.S. Department of Justice
United States Marshals Service
Asset Forfeiture Division

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
FILED

07/05/2013

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Alexandria, VA 22301-1025

June 14, 2013

EXHIBIT

1

Joseph DiRuzzo
Fuerst Ittleman David and Joseph PL
1001 Brickell Bay Dr
32nd Floor
Miami, FL 33131

Dear Mr. DiRuzzo:

Per your letter dated May 24, 2013, the United States Marshals Service authorizes you to request the release of \$6,586,132 from the Banco Popular Securities account so that payment of taxes due to the Virgin Islands may be remitted.

If you have any questions please feel free to contact me at Maggie.Doherty@usdoj.gov and by phone at (202).353.8333.

Sincerely,

Maggie Doherty
Case Manager
Complex Assets Unit
Asset Forfeiture Division



U.S. Department of Justice
United States Marshals Service
Asset Forfeiture Division

EXHIBIT
2

Alexandria, VA 22301-1025

June 25, 2013

Joseph DiRuzzo
Fuerst Ittleman David and Joseph PL
1001 Brickell Bay Dr.
32nd Floor
Miami, FL 33131

Dear Mr. DiRuzzo:

Per the Court Order issued by U.S. Magistrate Judge G. Barnard (Docket entry 1368) regarding United States, et al., v. United Corp., et al, case no. 1:05-cr-15 (D.V.I). the United States Marshals Service authorizes you to request two (2) certified checks (one in the amount of \$1M, the second in the amount of \$5,000) both made payable to the Clerk, District Court of the Virgin Islands be issue by Banco Popular from the United Corporation account at Banco Popular.

If you have any questions please feel free to contact me at Maggie.Doherty@usdoj.gov and by phone at (202).353.8333.

Sincerely,

Maggie Doherty
Case Manager
Complex Assets Unit
Asset Forfeiture Division

HAMD588296

From: <dcecf_nef@vid.uscourts.gov>

Date: July 11, 2013, 8:48:42 PM EDT

To: <dcecf_nef@vid.uscourts.gov>

Subject: Activity in Case 1:05-cr-00015-RLF-GWB USA v. MOHAMAD YUSUF, FATHI YUSUF et al Order

EXHIBIT

3

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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District Court of the Virgin Islands

District of the Virgin Islands

Notice of Electronic Filing

The following transaction was entered on 7/11/2013 at 8:48 PM AST and filed on 7/11/2013

Case Name: USA v. MOHAMAD YUSUF, FATHI YUSUF et al

Case Number: 1:05-cr-00015-RLF-GWB

Filer:

Document Number: 1375(No document attached)

Docket Text:

ORDER (WAL) dated 7-11-13. UPON CONSIDERATION of the parties' Joint Motion to Schedule Sentencing Hearing (Dkt. No. 1374), it is hereby ORDERED that the Motion is GRANTED. The Sentencing Hearing in this matter is scheduled for July 16, 2013 at 3:00 p.m. in STX Courtroom 1 before District Judge Wilma A Lewis. (DGP)

1:05-cr-00015-RLF-GWB-1 Notice has been electronically mailed to:

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