

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

**MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,**

Plaintiffs,

v.

**FATHI YUSUF and UNITED
CORPORATION,**

Defendants.

Case No.:SX-2012-cv-370

**ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**MOTION AND MEMORANDUM IN SUPPORT OF
REQUEST FOR ATTORNEY'S FEES RE APPEAL**

The Plaintiff moved for attorneys' fees in the Supreme Court pursuant to Supreme Court Rule 30(a) for fees incurred in successfully prosecuting the appeal. Pursuant to Supreme Court Rule 30(b), the Supreme Court denied the motion without prejudice and directed that the request be filed in this Court (**Exhibit 1**), as Rule 30(b) provides in part as follows:

However, if a party seeks attorney's fees as among the costs to be taxed, the amount of attorney's fees to be awarded—if any—shall be determined by the Superior Court on remand.

Thus, the Plaintiff hereby re-files that request for attorneys' fees incurred in prosecuting the appeal in this Court. As the request here is the same as the one filed in the Supreme Court, that motion is attached hereto as **Exhibit 2**. For the reasons set forth therein, it is respectfully submitted that the relief sought be granted, awarding \$68,996 in attorneys fees for successfully prosecuting the appeal.

Dated: October 23, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
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Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Unit L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2013, a true and accurate copy of the foregoing was served by hand on:

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

And by mail and email on:

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




EXHIBIT 1

October 15, 2013

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF and UNITED CORPORATION)	S. Ct. Civ. No. 2013-0040
Appellants/Defendants,)	Re: Super. Ct. Civ. No. 370/2012 (STX)
)	
v.)	
)	
MOHAMMED HAMED, by his authorized agent, WALEED HAMED,)	
Appellee/Plaintiff.)	

2013 OCT 15 PM 4:02

On Appeal from the Superior Court of the Virgin Islands


ORDER

THIS MATTER comes before the Court pursuant to Appellee's October 15, 2013 Motion for Costs & Attorney's Fees. However, pursuant to this Court's Rules of Appellate Procedure, "if a party seeks attorney's fees as among the costs to be taxed, the amount of attorney's fees to be awarded—if any—shall be determined by the Superior Court on remand." V.I.S.CT.R. 30(b). Therefore, since Appellee's motion requests attorney's fees, this Court shall deny the motion without prejudice, but permit Appellee to re-file it in the Superior Court, which will be permitted to award appellate costs and attorney's fees consistent with Rule 30(b). Accordingly, it is hereby

ORDERED that the motion for costs and attorney's fees is **DENIED WITHOUT PREJUDICE** to its re-filing in the Superior Court; and it is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this 15th day of October, 2013.


RHYS S. HODGE
Chief Justice



Yusuf v. Hamed
S. Ct. Civ. No. 2013-0040
Order
Page 2 of 2

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: 
Deputy Clerk

Dated: 10/15/2013

Copies to:
Justices of the Supreme Court
The Honorable Douglas A. Brady, Superior Court Judge
Joseph DiRuzzo III, Esq.
Joel H. Holt, Esq.
Carl J. Hartmann III, Esq.
K. Glenda Cameron, Esq.
Veronica J. Handy, Esq., Clerk of the Supreme Court
Venetia H. Velazquez, Esq., Clerk of the Superior Court
Supreme Court Secretaries
Supreme Court Law Clerks
Order Book

EXHIBIT 2

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 MOTION FOR FEES

Appellee, Mohammad Hamed, hereby requests attorneys' fees pursuant to V.I. Supreme Court Rule 30, which permits the award of fees to the Appellee if a decision is affirmed or affirmed in part but remanded for further proceedings on other issues. In this case, the decision below was affirmed as to all of the multiple issues raised on appeal except for one aspect of the appeal regarding the amount of the bond that the court below directed to be posted.

Thus, Appellee prevailed on the preliminary injunction issues of (1) success on the merits, (2) irreparable harm, (3) private interest and (4) public interest. Appellee also prevailed on the multiple legal issues the Appellants also raised such as the statute of frauds and the statute of limitation issues. While the Court remanded one issue for further consideration related to the bond, it should be noted that the primary challenge to the bond—that the court below erred in not holding a bond hearing--was rejected by this Court as well. Indeed, the remand order simply requires the court below to determine what, if any, further bond need be posted since it determined that the



escrowed profits could not be used since they were subject to a TRO issued by the District Court of the Virgin Islands.¹

In support of this motion, Appellee's counsel have submitted declarations as to the fees actually charged for the work done on this appeal. See **Exhibits 1 and 2**. As explained in Exhibit 1, the work that was done related to the bond issue was reduced by 50% since this issue was partially remanded. The time taken to prepare this motion was not included either. Finally, while the Appellee also was billed separately for paralegal time related to this appeal that cost is not being sought either.

After reducing the bills by 50% of the amount of time spent on the bond issue, the amount of the fees expended to prosecute this appeal are \$54,600 and \$14,396 respectfully for the two counsel who worked on this appeal, or a total of \$68,996. Because the costs associated with the appeal are minimal, no further award is being sought for these costs.

This appeal was expedited and required immediate attention of counsel. It was successfully prosecuted by counsel. As such, the Appellee respectfully requests that this Court award him a total of \$68,996 as reimbursement of attorneys' fees incurred for this appeal.

Dated: October 15, 2013

/s/ Joel H. Holt
Joel H. Holt, Esq.
Counsel for Appellee/Plaintiff
2132 Company Street
St. Croix, VI 00820
Telephone: (340) 773-8709
Email: holtvi@aol.com

¹ The Appellee believes the cash bond of \$25,000 is more than sufficient to secure the preliminary injunction and will argue below that no further bond need be posted.

Carl J. Hartmann III, Esq.
Co-Counsel for Appellee/Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Telephone: 340-642-4422
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I certify that a copy of the above document was served through the Court's Electronic filing system on opposing counsel of record this 15th day of October, 2013:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
305-350-5690
Email: jdiruzzo@fuerstlaw.com

/s/ Joel H. Holt _____

EXHIBIT 1

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. Sup.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 am counsel of record for the Appellee in the above captioned appeal.
2. Attached are true copies of the two bills sent by me to my client for legal work related solely to this appeal. I have billed at least \$600 per hour for my hourly billing clients who have retained me since 2010 and have an agreement with my client in this case to bill him \$600 per hour in this case, which I have done.
3. I have reviewed those bills and have done a calculation to reduce the time billed for work done on the bond issue by 50% (deducting 3 hours, or \$1800). As noted from the attached bills, this work was primarily done on June 16, 2013. The opposition brief dedicated just over a page to the issue that was remanded and the argument in the brief was taken almost verbatim from the pleadings filed in the Superior Court (Plaintiff's Proposed Statement of Facts and Conclusions of Law and opposition to post-hearing motion to reconsider bond issue) after reviewing the cases cited by the Appellants in that section of their brief.
4. My total bill for services related to this appeal was \$56,400 (June and July combined-\$42,900 plus \$13,500). The balance of the legal fees incurred by my client after deduction of \$1,800 for the time related to the bond issue that was remanded is \$ 54,600.

5. While I am lead counsel on this appeal, I did have co-counsel, Carl Hartmann, who actively participated in the drafting and editing of the brief as well as researching various legal issues raised on appeal. As such, he has submitted a separate declaration regarding the time he billed the client for doing these tasks before the final opposition brief was submitted. The client has agreed to pay him \$295 per hour for his work on this case, which is reduced somewhat from the other cases in which I currently am involved where Carl Hartmann is co-counsel. While Carl Hartmann did some work as well in July of 2013 after the opposition brief was filed, it was decided not to submit that billing since it was not significant.
6. The client was also billed for some costs as well as the time expended by one paralegal who worked on the brief, but reimbursement of those items are not being sought.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of October, 2013.



JOEL H. HOLT

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tel. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

APPEAL BILLING STATEMENT JUNE 2013 / APPEAL - WALLY HAMED		
Date	Description of Services	Time
06/08/13	Email with opposing counsel re appeal issues and joint appendix.	.25
06/09/13	Emails with opposing counsel re Issues on Appeal and Joint Appendix/review list of items sent for inclusion in Joint appendix/email response re no more additions needed based on issues listed.	.75
06/12/13	Work on brief (set up draft response based on sections required to be included by Supreme Court/look at jurisdictional issue and cases for standard for review on anticipated issues based on Diruzzo email re Joint Appendix).	2.25
06/14/13	Work on brief (set up draft response based on sections required to be included by Supreme Court/look at jurisdictional issue and cases for standard for review on anticipated issues based on Diruzzo email re Joint Appendix).	2.25
06/15/13	Work on brief-(Review Appellants' Brief/redraft all sections re Jurisdiction/Statement of the Issues and Related Litigation/Statement of Case/Redraft Statement of Facts).	6.50
06/16/13	Work on brief-7.5 (First draft responses to Issues II, III and IV/Redraft Statements of Jurisdiction and Statement of the Case)-7.5	7.50
06/17/13	Work on brief-(First draft Summary of Argument and items raised in Issue I on Statute of Frauds, Statute of Limitations, Retirement, Admission of Settlement Documents/Research cases they cited in these sections/edit of entire brief).	6.00
06/18/13	Work on brief- (draft initial response to Issue I re success on the merits/research cases cited by Appellants in their brief on this issue/redraft entire section after addressing these cases).	6.25

**APPEAL BILLING STATEMENT
JUNE 2013 / APPEAL - WALLY HAMED**

06/20/13	Work on brief-(draft section on irreparable harm/review cases cited by Appellants in this section/work Brady conclusions into brief on this point/edit brief including redrafting of statement of facts and adding Rule 408 section to Issue I).	6.25
06/21/13	Work on brief-(re-read proposed findings of fact and conclusions of law to insert items missed in drafting of brief/add missed sections to the brief, including cites to the record/ work on "personal attack" on Hamed, redrafting this section).	4.75
06/22/13	Work on brief-(work on adding sections on tax issues and sections on use of the "corporate form" & Yusuf's control, redrafting Issue I to address these points).	2.50
06/23/13	Work on brief (research law on admissions under Rule 801(d)(2) and judicial admissions/redraft section on Issue I on admissions/redraft section on "Yusuf control" argument/edit entire brief to check case citations and references to the record).	4.25
06/24/13	Work on brief (edit draft to see space remaining/add additional arguments in Section one identifying Appellants' counter arguments and respond thereto/look at Third Circuit cases on irreparable harm cited by Appellants/research for additional Third Circuit cases on irreparable harm to work into brief if possible).	6.75
06/25/13	Work on brief (final edit/add in section on <i>Instant Air</i> /redo portion of "Yusuf authority" issue)/draft response to motion to stay/set up declaration for attaching to opposition to motion to stay/edit brief again.	6.50
06/26/13	Meet with Wally and work on declaration to add to motion to stay/edit brief on "misquote section"/edit opposition to stay motion.	4.75
06/27/13	Add footnote to brief re bond/edit opposition to motion to add sections on "misquote"/work with Wally on revised declaration/revise opposition to stay to get within page limits/proof all for filing/file.	4.00
	Total Time: 71.50 hrs x \$600/hr	\$42,900.00
	Costs:	\$-0-
	Total Fees and Cost:	\$42,900.00

JOEL H. HOLT, ESQ. P.C.

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E-mail: holtvi@aol.com

APPEAL BILLING STATEMENT JULY 2013 / APPEAL - WALLY HAMED		
Date	Description of Services	Time
07/05/13	Review of Rule 17 motion and motion to strike Waleed Hamed's declaration filed in the Supreme Court/calls to client and tax counsel.	.75
07/06/13	Draft of responses to Rule 17 motion and motion to strike as well as review of past correspondence in preparation to draft Holt declaration in support of response/call with client/draft of Holt declaration.	5.25
07/07/13	Edit of motion to strike and supporting declaration/meeting with clients/prep for oral argument before Supreme Court.	5.50
07/08/13	Receipt of appellant's reply brief and reply to Hamed's opposition to request to stay bond-review thereof/prep for oral argument.	5.25
07/09/13	Final prep for oral argument (pull several cases cited in Appellants' reply brief for review)/travel to STT/oral argument.	5.75
	Total Time: 22.50 hrs x \$600/hr	\$13,500.00
	Costs: Research: \$240.57 Brief Copies: \$220.00	\$460.57
	Total Fees and Cost :	\$13,960.57
	June Billing:	\$42,900.00
	Total Due:	\$56,860.57

EXHIBIT 2

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. Sup.Ct. Civ. No. 2012/370

DECLARATION OF CARL J. HARTMANN III

I, Carl J. Hartmann III, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am co-counsel of record for the Appellee in the above captioned appeal.
2. Attached are true copies of the bill sent by me to my client for legal work in June of 2013 related solely to this appeal.
3. I billed no time on the bond issue as Joel Holt worked on that exclusively. While I billed time in July, as it was *de minimus*, I have not included those amounts.
4. The balance of the legal fees incurred by my client is \$14,396.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of October, 2013.



CARL J. HARTMANN III

CARL J. HARTMANN III
ATTORNEY-AT-LAW
5000 ESTATE COAKLEY BAY, L-6
CHRISTIANSTED, VI 00820

ADMITTED:
NM & USVI

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(340) 719-8941

EMAIL
CARL@CARLHARTMANN.COM

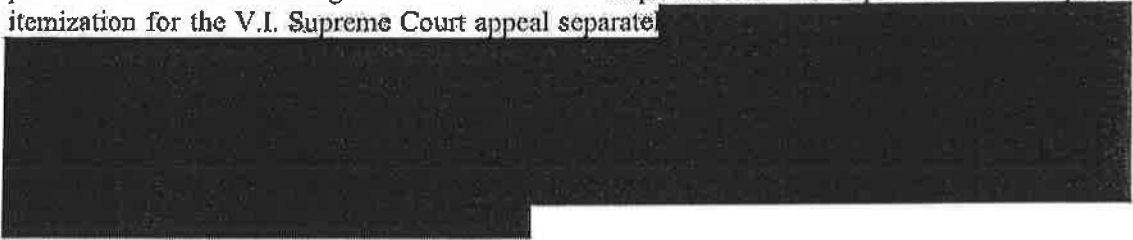
July 3, 2013

Joel H. Holt
Law Offices of Joel H. Holt
For the Attn of: Mohammad Hamed
Quin House
2132 Company Street
Christiansted, VI 00820

RE: Billing for Hamed v. Yusuf - Invoice 5055
May 1, 2013 through May 31, 2012

Dear Attorney Holt and Mr. Hamed:

Attached is a bill and invoice for work provided to Mohammad Hamed for the referenced period in his action with regard to the Plaza Extra Supermarkets. As requested I have kept the itemization for the V.I. Supreme Court appeal separate.



	Hartmann (Attorney)	Japinga (Paralegal)
Hours charged	48.8	
Rate per Hour	\$ 295/hr	\$ [REDACTED]
Expenses	\$ 0	\$ 0
Sub-Total	\$ 14,396	\$ [REDACTED]
Total Due for this Month	\$ [REDACTED]	

Sincerely,

Carl J. Hartmann III

CURRENT CHARGES

Date	Description of Work	Hours	Per Hr.
		48.8	295
	Sub-Total		\$14,396
4 June	Review documents for Joint Appendix and email to Atty. DiRuzzo re same; Additional research on a fraudulent transfer section for Opp. Brief	3.2	
7 June	Document review and analysis for upcoming arguments; abstract prior pleadings for same	3.6	
10 June		0.0	
	Review Mot for Excess pages and order (N/C)		
14 June	Review and analysis of Appellants' Supreme Court Brief; legal research on cases cited esp. Hoxworth v. Blinder and Mead Johnson	6.8	
15 June	Review and analysis of Appellants' Supreme Court Brief as to Statute of Frauds/Limitations; legal research on those cases cited; Attempts to identify missing references and documents in Joint Appendix; email to opposing counsel re same.	8.8	
16 June	Legal research on 65(E)(1) and drafting of Opposition; Rule 408	6.3	
17 June	Legal research and drafting of Opposition on Irreparable Harm and claim that this is Damages Case	7.3	
18 June	Legal research and drafting of Opposition; esp. argument re retirement of Hamed and no partnership distributions; additional document research re same and tax points related	6.8	
19 June	Legal research and drafting on authority related to competing inferences (SJ standard v. PI) fact burdens; weight of PI fact finding; additional drafting of fact section	6.0	
20 June	Legal research and drafting re issues of additional security in form of escrow as legal error; standard for same; also labor law	7.2	
21 June	Legal research and drafting on challenge to admission of 408 docs for different purpose; not admitted for security	6.5	
22 June	Revisions of draft of Opposition and additional research re same	7.0	
24 June	Proofing and revision of draft of Opposition	4.2	
26 June	Legal analysis, research and drafting of opposition to motion of to stay	6.2	
27 June	Legal analysis, research and drafting of opposition to motion of to stay	7.0	

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

MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,

Plaintiffs,

v.

FATHI YUSUF and UNITED
CORPORATION,

Defendants.

Case No.:SX-2012-cv-370

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

ORDER

This matter is before the Court on behalf of the plaintiff's motion for attorney's fees and costs. Upon consideration of the matters before the Court, it is hereby;

ORDERED that the motion is **GRANTED** and the defendant United Corporation is hereby directed to pay Mohammad Hamed the sum of \$ _____ as reimbursement of attorney's fees regarding the appeal filed and resolved on September 30, 2013 by the Supreme Court of the Virgin Islands.

SO ORDERED this ____ day of _____, 2013.

Dated: October _____, 2013

Hon. DOUGLAS BRADY
Judge, Superior Court

Attested By: VENETIA VELAZQUEZ
Clerk of Court

By: Deputy Clerk

Dist.

cc: Joel H. Holt
Nizar A. DeWood
Joseph A. DiRuzzo, III
Christopher David