

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED,	)	Case No. SX-12-CV-370
	)	
	)	
Plaintiff,	)	
vs.	)	JURY TRIAL DEMANDED
	)	
FATHI YUSUF	)	
UNITED CORPORATION,	)	
	)	
Defendants.	)	

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**PLAINTIFF HAMED'S RESPONSES  
TO DEFENDANT FATHI YUSUF'S FIRST SET OF INTERROGATORIES  
TO PLAINTIFF MOHAMMED HAMED**

Plaintiff Hamed, by and through its undersigned counsel, pursuant to Fed. R. Civ.

P. 33 and 34, hereby propounds and serves the following interrogatories responses:

1. Identify each person who assisted in answering these interrogatories, the accompanying requests for admission, or who provided documents in response to the accompanying requests for production, or provided any information whatsoever to assist with preparing your responses to the interrogatories, requests for admission and/or requests for production.

Object to the extent it seeks privileged communications with my counsel. My son Mufeed ("Mafi") Hamed helped me in understanding the English by translating the questions into Arabic. My son Waleed ("Wally") Hamed helped with all answers involving questions about events after 1997.

2. Please describe all of the monies you have contributed or paid to the alleged partnership and all of the monies you have received from either Fathi Yusuf and/or United as a result of your alleged oral partnership from 1986 through the present.

Plaintiff objects to this overly broad interrogatory, which includes vague terms, as well calling for information that has no relevance to this case and is not likely to lead to discoverable information.

Regarding contributions, I contributed the exact same amount as Fathi Yusuf both initially and through the life of the Plaza Extra Supermarkets. My contributions at the start were made from my life savings. The amounts later were reinvestments of profits and payoff of all loans from proceeds.

As this question relates to the Plaza Extra Supermarkets, including the length of time of this relationship, my duties and responsibilities, some preliminary information is in order first about my initial work on St. Croix.

My relationship with Fathi Yusuf began long ago when we were children in Palestine, where we grew up living next to each other. In 1973, I moved to the U.S. Virgin Islands with my family. Yusuf is my brother-in-law. However, the events leading up to my moving to St. Croix are irrelevant, so I will not dwell on this part of our relationship further.

When I arrived here I was initially a salesman, selling merchandise door-to-door. After I had saved some money, I opened a grocery store in Estate Carlton. I eventually opened a second grocery store in Glynn.

Sometime around 1979, Yusuf started to build a shopping center at Estate Sion Farm, St. Croix, in which he wanted to have a supermarket. Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, telling me "I owe the people money, I have to pay tomorrow and I don't have it."

Because of Yusuf's financial difficulties, I provided Yusuf with all of my life savings to allow him to complete the shopping center and open the supermarket. Yusuf testified in his 2000 deposition as follows:

When I was in the financial difficulty, when I was in financial difficulty, my brother-in-law, he knew. I shouldn't – he started to bring me money. Okay? He own a grocery, Mohammed Hamed, while I was building, and he have some cash. He knew I'm tight. He started bring me money. Bring me I think 5,000, 10,000. I took it. After that I say, Look we Family, we want to stay family. I can't take no money from you because I don't see how I could pay you back. So he insisted, Take the money. If you can afford to, maybe pay me. And if you can't, forget about it. Okay. He kept giving me. I tell him, Under this condition I will take it. I will take it. He kept giving me until \$200,000. Every dollar he make profit, he give it to me.

Yusuf was out of money and had no prior experience in the supermarket business. Despite the risk, I agreed to help because he was family.

Yusuf told me that he wanted me to be a partner in the Plaza Extra partnership, but that I would have to sell my two grocery stores and only work with Plaza Extra, which I did.

I gave the money from the sale of these two stores to Yusuf as his partner in the Plaza Extra supermarket and we would stay partners until we "winning or loss".

So I became a partner with Yusuf, along with Yusuf's two nephews in the Plaza Extra supermarket partnership. Yusuf correctly summarized what happened in his deposition testimony:

I [Yusuf] say, Brother-in-law [me], you want to be a partner too? He said, Why not? You know, as a family, we sit down. Says, How much more can you raise. Say, I could raise 200,000 more. I said, Okay. Sell your grocery. I'll take the two hundred, four hundred. You will become 25 percent partner. So we end up I'm 25 percent, my two nephew 25 each, and my brother-in-law, Mohammad Hamed, 25 percent. I don't recall the year, could be '83 or '84, but at least thanks God in the year that Sunshine Supermarket opened, because his supermarket is the one who carries these two young men and my brother to go into supermarket with me. So I have their money, I finish the building.

When the building was finished, the partnership sought a loan to begin operations, but the loan application was denied, causing the two nephews that were partners to request the return of their funds and to leave the partnership. As Yusuf noted in his deposition:

Then, but when I been denied [for loans], I have to tell my partner [me] what's going on. I been entrusted to handle the job perfect, and I am obligated to report to my partner to anything that happened. I told my nephews and I told my partner, Hey, I can't get a loan, but I'm not giving up. So two, three days later my two nephews split, say, We don't want to be with you no more, and we want our money. I say I don't have no money to pay you. . . .We come to an agreement, I pay them 12 percent on their money, and 150,000 default because I don't fulfill my commitment.

Yusuf offered to repay my \$400,000 investment and have me leave the partnership, as noted in his deposition:

We wait until my partner, which is my brother [me], came. He's an older man. And we came up to Mr. Mohammed Hamed, I say, You want to follow them? He say, Yeah, I will follow them, but do you have any money to give? I say, Look, Mr. Hamed, you know I don't have no money. It's in the building, and I put down payment in the refrigeration. But if you want to follow them, if you don't feel I'm doing the best I can, if you want to follow them, you're free to follow them. I'll pay you the same penalty, 75,000. I will give you 12 percent on your 400,000.

But Yusuf could not have bought me out then -- besides, he needed my help in the supermarkets and he was family -- so I agreed to stay as a partner with Yusuf, a fact Yusuf has acknowledged to me both the and later:

He [me] says, Hey. If you [Yusuf] don't have no money, it's no use for me to split. I'm going to stay with you.

All right. I say, Okay. You want to stay with me, fine.

....

And my partner only put in \$400,000. That's all he put in, and he will own the supermarket. I have no problem. . . .

They say, Mr. Yusuf, we knows each other. I trust you. I keep going. Okay. Now, I told him about the two partner left, Mr. Hamed. You know, these two guys, they left, my two nephew, they was your partner and my partner. I give you a choice. If you pay penalty with me and pay the interest with me, whatever they left is for me and you. But if I must pay them the one-fifty penalty and pay them 12 percent, then Plaza Extra Supermarket will stay three-quarter for Yusuf and only one-quarter for you.

He says, Do whatever you think is right. I tell him, You want my advice? I be honest with you. You better off take 50 percent. So he took the 50 percent." (Emphasis added).

Yusuf repeated this history of the partnership's formation in verified interrogatory answers filed in the *Idheileh* Case, stating in part in a verified response to interrogatories #2 and #6:

Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's. . . .with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yusuf, Mohamed Hamed, and Defendant Yusuf. By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners.

As a partner in the Plaza Extra Supermarkets, I was entitled to and have received 50 percent of the profits but was also fully liable for 50% of all payables, as well as being exposed to the loss of my initial partnership contribution.

Yusuf has acknowledged this fact under oath:

But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner. . . .But due to my honesty . . . my partner, he never have it in writing from me.

Yusuf and I agreed the partnership term would last as long as we had the money to stay in business. (Q: How long is your partnership with Mr. Yusuf supposed to last? When does it end? A: Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.)(*"I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000"*).

Yusuf always stated to other people that I was his partner. In 2000, he again stated that even before the supermarket, Plaza Extra, opened:

Every single Arab in the Virgin Islands knew that Mr. Mohammed Hamed is my partner, way before Plaza Extra was opened.

We (our partnership) opened a second Plaza Extra Supermarket in St. Thomas in 1992-93 with a third person. Litigation subsequently ensued with this third person in the St. Thomas Superior Court, in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997.

In that litigation, Yusuf signed an affidavit stating in ¶¶ 2-5, and 7 as follows:



My brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.

Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.

Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

We negotiated a lease for the St. Thomas store with Tutu Park Ltd. and executed the agreement on May 30, 1991.

Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.

In short, Yusuf and I agreed that Waleed Hamed a/k/a Wally Hamed, would act on my behalf as to my day-to day partnership rights and obligations pursuant to a power of attorney. I did not end my oversight of major partnership issues -- just the daily operations. For instance I was still consulted on the opening of the St. Thomas and West stores, as well as the rent issues surrounding East.

The opening of the St. Thomas store caused a strain on the business, as noted by United and Yusuf in their summary judgment pleading in the *Idheileh* Case, requiring the Hameds and Yusuf to have to work long hours, and to give personal guarantees to obtain additional credit;

The Hameds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.

Yusuf acknowledged that these joint efforts in my involvement with the St. Thomas store paid off, stating: "The Hameds and I were able to turn the store around by the last part of 1994." After the third person's interest in the St. Thomas Plaza Extra was bought out.

In 2000, the partnership opened a third Plaza Extra Supermarket on the west end of St. Croix, known as Plaza Extra West. I was consulted on this as well.

Yusuf made admitted in this case that he and I entered into an oral agreement in 1986 to split the net profits of the Plaza Extra supermarkets 50/50;

In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets....Plaintiff Hamed received 50% of the net profits thereafter.

Yusuf and United repeated this admission in a subsequent filing in this case:

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store.

United made similar statements in a complaint in another matter recently filed in the VI Superior Court -- but alleged that it (United) actually is the partner with me -- and that Fathi was acting for United in forming the partnership, *United v. Waleed Hamed*, STX Civ. No. 2013/3, alleging:

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. . . . 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.

Over the years, Yusuf and I have jointly shared the profits and losses. Both before and after 1996, we shared profits from the Plaza Extra Supermarket operations in part by using them to purchase multiple properties throughout the Virgin Islands, including the real property where Plaza West is located, always splitting the ownership of these properties 50/50, with members of the each family owning 50% of each such corporation used to buy the properties. We also sent money to Jordan (through bank accounts in the names of Fahti, Wally and other family members) to be used to jointly purchase property there. This was always 50/50, even after I was not involved in daily operations in the late 1990's.

Yusuf and I have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family together manage each of the Plaza Extra Supermarkets; originally with me and Fathi Yusuf, and later with Mafi Hamed and Yusuf Yusuf managing the Sion Farm store along with Wally Hamed, Willie Hamed and Fathi Yusuf along with Nejah Yusuf operating the St. Thomas store and Shawn Hamed and Mike Yusuf managing the Plaza West store on St. Croix.

Yusuf told me at the outset that it would be best if my name was not on the bank loans, but it was my loan 50% and I was legally responsible to pay my half and the partnership owed it -- that I would be liable for 50% of the payments, which I agreed to pay as part of our taking out the loans. I agreed that Yusuf would "take care of the office" while I was "in charge of the warehouse so it's even." This deference to allowing Yusuf to take care of the office explains why United's name appeared on many governmental filings. I paid 50% of all loans back with proceeds from Plaza Extra Operations.

Yusuf admitted that we agreed to operate the partnership this way, using his and United's names, but that I was his 50/50 partner in Plaza Extra Supermarket even though my name is not part of United Corporation:

But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. . . . And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner. But due to my honesty . . . my partner, he never have it in writing from me."

Yusuf admitted under oath that the effect of this agreement is that whenever one is talking about Plaza Extra, its use, even if used along with the name "United Corporation" really means "me and Mr. Mohammed Hamed."

Yusuf stated in interrogatory response #6 in the *Idheileh* Case that Plaza Extra was a distinct partnership and that the "partners operated Plaza Extra under the corporate name of United Corp":

By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the

corporate name of United Corp., . . . .

The fact that the partnership between me and Yusuf is distinct from United Corporation is also demonstrated by the fact that United, which owns the shopping center, sends rent notices to me at the Plaza Extra Supermarket in Sion Farm which rent Plaza Extra, as tenant, I approve to pay to United, as landlord.

Indeed, Maher ("Mike") Yusuf, who is the President of United Corporation, submitted an affidavit, that states in paragraph 17 as follows:

More importantly, United has always charged rent for the use of part of its retail premises by the Plaza Extra Supermarket operation on Sion Farm, St. Croix. Mohammed Hamed has always understood that United would charge for the use of its retail space, and would deduct the value of such rent in arriving at the net profits of the Plaza Extra Supermarkets.

He testified that it did so because his father and I have a business agreement to share the profits of the Plaza Extra store 50/50.

Pursuant to this landlord-tenant relationship, in February 2012, Plaza Extra Supermarkets partnership paid United Corporation over \$5 million in back rents for the period 1/2004 through 12/2011 from the Plaza Extra supermarket accounts. I was then person who was asked to agree to this and did agree to it -- in my partnership capacity. Wally then carried it out.

The supermarket operations have always been referred to as "Plaza Extra." For example, the stores use the letterhead "Plaza Extra" with no mention of United, while United Corporation uses its own letterhead. As Yusuf Yusuf, one of Fathi Yusuf's sons who co-manages the Sion Farm store, explained;

Q Okay. And showing you Exhibit Number 15, which is the -- I think the last one. These are the rules and regulations that are dated July of 1997, is that correct?

A Yes.

Q And these are on the letterhead, Plaza Extra, is that correct?

A Correct.

Q And these are for the Plaza Extra store at Sion Farm?

A Correct.

. . . .

Q It doesn't say United Corporation, does it?

A No.

Q And who do you understand owns the Plaza Extra East store?

A My dad.

Q And he ever told you he has a partner?

A Yes.

Q And who is the partner in that store?

A Mohammad Hamed.

Likewise, the three Plaza Extra Supermarkets maintain and account for operations separately -- with separate bank accounts distinct from United Shopping Center's bank account.

In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families, although the I was not indicted.

The federal government appointed a receiver in 2003 to run the Plaza Extra stores, depositing all profits in investment accounts at Banco Popular Securities and Merrill-Lynch, where they remain through the current date.

In 2011, United pled guilty to tax evasion arising out of information from that raid. Charges were dismissed against the other defendants.

The criminal proceeding against United is still pending, as the terms of the plea require further "complete and accurate" tax filings and payments, which is still not complete, as well as the adoption of certain accounting procedures for Plaza Extra.

Around the time of the plea agreement, it was agreed that all checks written on a Plaza Extra Supermarket account had to be signed by one member of the Hamed family and one member of the Yusuf family.

In February of 2012, Yusuf had his lawyer send a letter to me, which stated in part:

As it stands, the partnership has three major assets: Plaza Extra - West (Grove Place, including the real property), Plaza Extra - East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas).

Yusuf's lawyer then sent another letter on March 13, 2012, to me (referencing the February 12, 2012 letter) again listing these assets in part, which are not in dispute, as well as the terms of the partnership, which is also not in dispute:

WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

WHEREAS, the Partnership was formed for the purposes of operating Super Markets in the District of St. Croix, and St. Thomas; and

. . . .

WHEREAS, the Partners have shared profits, losses, deductions, credits, and cash of the Partnership;

. . . .

Section 1.1: Assets of the Partnership

1. PLAZA EXTRA EAST- Estate Sion Farm. St. Croix
2. PLAZA EXTRA WEST- Estate Grove, St. Croix (Super Market Business ONLY)
3. PLAZA EXTRA - Tutu Park. St. Thomas

The parties then began negotiations to dissolve and separate the partnership assets, though no agreement has yet been reached.

The witnesses who have knowledge of these facts are too numerous to identify. Indeed, Yusuf admitted that every Arab in the Virgin Islands knew I was his partner. In any event, the witnesses include Fathi Yusuf, his wife, myself, my wife, and all of our daughters and sons (Mufeed Hamed, Waheed Hamed, Hisham Hamed, Yusuf Yusuf, Nejeh Yusuf and Maher Yusuf). It also includes the many of the suppliers of the Plaza Extra Supermarkets.

The documents that support this interrogatory include the preliminary hearing transcripts as well as the hearing exhibits, particularly PEx 1 (with its exhibits), 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19, 28, 29 and DEx 2, 15.

3. Please describe any losses that you have suffered or understand that you are responsible for as a result of your alleged oral partnership which have occurred from 1986 through the present, indicating the nature of the losses, debt or outstanding exposure.

I have suffered the exact same losses and have been responsible for the payment of and have paid the exact same loans and payables as Fathi Yusuf. However, after the first store was opened, we did not have to put any new money into the partnership, as we used the partnership proceeds from the stores to pay all loans and debts.

As a partner in the Plaza Extra Supermarkets, I was entitled to and have received 50 percent of the profits but was (and am) also fully liable for 50% of all payables, as well as being exposed to the loss of my initial partnership contribution. Yusuf has acknowledged this fact under oath:

But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.

But due to my honesty . . . my partner, he never have it in writing from me.

Yusuf and I agreed the partnership term would last as long as we had the money to stay in business (Q: How long is your partnership with Mr. Yusuf supposed to last? When does it end? A: Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever."); ("I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000").

We (our partnership) opened a second Plaza Extra Supermarket in St. Thomas in 1992-93. Litigation subsequently ensued with this third person in the St. Thomas Superior Court, in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997. In that litigation, Yusuf signed an affidavit stating in ¶¶ 2-5, and 7 as follows:

My brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.

Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.

The opening of the St. Thomas store caused a strain on the business, as noted by United and Yusuf in their summary judgment pleading in the *Idheileh* Case, requiring the Hameds and Yusuf to have to work long hours, and to give personal guarantees to obtain additional credit:

The Hameds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.

In short, over the years, Yusuf and I have jointly shared the profits and losses. In fact, Yusuf's lawyer sent a document on March 13, 2012, to me stating in part:



WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

WHEREAS, the Partnership was formed for the purposes of operating Super Markets in the District of St. Croix, and St. Thomas; and

.....

WHEREAS, the Partners have shared profits, losses, deductions, credits, and cash of the Partnership;

Thus, it is undisputed that I was responsible for one half of any losses of the partnership that operated the three Plaza Extra Supermarkets as well as any obligations incurred by the partnership.

4. Please describe why you have not filed or requested any accounting information necessary for the filing of a partnership return or reporting of partnership profits or losses, either in the form of a K-1 or otherwise?

This question contains erroneous assumptions, as I have repeatedly had my lawyers ask for accounting information, some of which has been provided. Likewise, my lawyers have repeatedly requested Yusuf's lawyers to file proper tax returns as well, as documented in the letters sent to Defendants' counsel. When those requests were rejected, I had an accountant use the financial information I was able to obtain to file tax returns for 1997 to 2012, using substitute K-1's as permitted by the tax code to show my partnership income from the Plaza Extra operations. All partnership tax liabilities have been reported by me and the BIR has confirmed in writing that taxes for these years have been deemed paid in full.

As for tax returns prior to 1997, while I have not been able to locate most of them, I have filed tax documents in the past that show income from partnership management fees.

5. Please describe how you have jointly managed the alleged oral partnership and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

The Court correctly described the joint management, and references the operative documents, which I hereby adopt as follows (with the references to documents and testimony used by the Court removed to footnotes):

Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship.<sup>1</sup> In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands.<sup>2</sup> United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center.<sup>3</sup> Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business.<sup>4</sup>

Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St. Croix.<sup>5</sup> Upon Yusuf's request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra.<sup>6</sup> Hamed contributed to Yusuf's project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, "in the winning or loss."<sup>7</sup> Hamed initially became a 25% partner of

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<sup>1</sup> *January 25, 2013 Evidentiary Hearing Transcript, at 196–198, hereinafter Tr. 196–198, Jan. 25, 2013.*

<sup>2</sup> *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*

<sup>3</sup> *Plaintiff's Evidentiary Hearing Exhibit, no. 1 Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John., at 8, lines 1–14; hereinafter Pl.Ex. 1, p. 8.1–14.*

<sup>4</sup> *Pl.Ex. 1, p. 14:4–15:14.*

<sup>5</sup> *Tr. 197:5–199:13, Jan. 25, 2013. 6.*

<sup>6</sup> *Tr. 200:4–15. Jan. 25, 2013.*

<sup>7</sup> *Tr. 200:16–23, Jan. 25, 2013.*

Yusuf, along with Yusuf's two nephews who each also had a 25% interest in the Plaza Extra Supermarket business.<sup>8</sup> Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf's two nephews requested to have their funds returned and to leave the partnership.<sup>9</sup> With the withdrawal of Yusuf's nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business.<sup>10</sup>

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. *Pl. Ex. 28*. 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.<sup>11</sup>

Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term.<sup>12</sup> ("I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000.");<sup>13</sup> (Q: "How long is your partnership with Mr. Yusuf supposed to last? When does it end?" A: "Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.")

Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened.<sup>14</sup> Yusuf has admitted in this case that he and Hamed "entered into an oral joint venture agreement" in 1986 by which Hamed provided a "loan" of \$225,000 and a cash payment of \$175,000 in exchange for which "Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets" in addition to the "loan" repayment. Yusuf states that the parties' agreement provided for "a 50/50 split of the

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<sup>8</sup> *Pl. Ex. 1*, p. 15:2–14.

<sup>9</sup> *Pl. Ex. 1*, p. 17:6–24.

<sup>10</sup> *Pl. Ex. 1*, p. 17:24–19:10.

<sup>11</sup> *Tr. 44:12–21; 200:16–23; 206:23–25, Jan. 25, 2013; Pl. Ex. 1*, p. 18:16–23; p.23:18–25.

<sup>12</sup> *Pl. Ex. 1*, p. 18:18–23.

<sup>13</sup> *Tr. 210:4–8, Jan. 25, 2013*.

<sup>14</sup> *Pl. Ex. 1*, p. 20:10–12.

profits of the Plaza Extra Supermarket stores.”<sup>15</sup> Indeed, Yusuf confirms that “[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.”<sup>16</sup> In 1992–1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third “partner,” Ahmad Idheileh, who later withdrew leaving a “50/50” ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed.<sup>17</sup> At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas.<sup>18</sup>

In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were **obtaining financing and constructing the store**, which finally opened in 1986.”<sup>19</sup>

Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office.<sup>20</sup> Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I’m not sign no thing.... Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.”<sup>21</sup> During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have managed the Estate Sion Farm store along with Waleed Hamed. Waleed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix.<sup>22</sup>

In operating the “office,” Yusuf did not clearly delineate the separation between United

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<sup>15</sup> *Pl.Ex. 2, p.3, 4.*

<sup>16</sup> *Pl.Ex. 3, p. 11.*

<sup>17</sup> *Tr.27:1–28:14, Jan. 25, 2013.*

<sup>18</sup> *Tr. 238:4–6, Jan. 25, 2013.*

<sup>19</sup> *Pl.Ex. 1, Affidavit of Fathi Yusuf Deposition Ex. 6.*

<sup>20</sup> *Tr. 26:11–19; 206:20–22, Jan. 25, 2013.*

<sup>21</sup> *Tr. 207:16–21, Jan. 25, 2013.*

<sup>22</sup> *Tr. 31:6–35:11; 147:11–20; 160:10–22, Jan. 25, 2013, and Tr. 33:6–17, Jan. 31, 2013.*

“who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.”<sup>23</sup> Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United<sup>24</sup> and that the supermarket bank accounts are in the name of United<sup>25</sup>, “in talking about Plaza Extra ... when it says United Corporation ... [i]t’s really meant me [Yusuf] and Mr. Mohammed Hamed.”<sup>26</sup> Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.”<sup>27</sup> The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged.<sup>28</sup>

Although Plaintiff ceased working in the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff.<sup>29</sup> Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores.<sup>30</sup>

Where, as here, the parties agree that one partner is designated to take charge of “the office” and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. Where one party actively pursues the partnership business, such business must be conducted in keeping with “fundamental characteristics of trust, fairness, honesty, and

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<sup>23</sup> *Pl.Ex. 1, p. 8:1–7.*

<sup>24</sup> *Pl.Ex. 4, ¶ 14 .*

<sup>25</sup> *Pl. Ex’s. 15, 16 .*

<sup>26</sup> *Pl.Ex. 1, p. 69:13–21.*

<sup>27</sup> *Pl.Ex. 28, Response to Interrogatory 6.*

<sup>28</sup> *Pl. Ex’s. 7, 8, 9; Tr. 48:24–51:9; 212:18–214:15, Jan. 25, 2013.*

<sup>29</sup> *Tr. 45:24–48:2; 172:6–173:8; 202:18–25, Jan. 25, 2013; Pl.Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh. 6, ¶ 4.*

<sup>30</sup> *Tr. 31:6–35:11, Jan. 25, 2013.*



good faith that define the essence of the partners' relationship.”

The parties agreed to share the net profits of the business “50/50”<sup>31</sup>. Each of the parties contributed money and services to commence the business operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

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<sup>31</sup> 26 V.I.Code § 22c.3.

6. Please describe in detail the manner in which you have represented to the public and declared in any form, including tax filings, correspondence, or other governmental filings, that you are in a partnership with Fathi Yusuf as you have alleged.

Fathi Yusuf has testified that every Arab in the Virgin Islands knew we were partners. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with me even before the Plaza Extra supermarket opened. This is because we both told them this verbally and in court filings defending the partnership. Prior discovery responses by Yusuf/United have identified many such members of the community who knew of the partnership and attempted to assist in it.

My communications with the public include those contained in the pleadings filed (1) in this case in the Superior Court, (2) in this case when it was pending in the District Court before removal, and (3) in the appeal before the VI Supreme Court. The communications with the BIR include the tax filings with the VI BIR as well as a memo I submitted to the BIR earlier this year.

7. Please identify any and all tax records indicating your alleged partnership with Fathi Yusuf.

As for tax returns prior to 1997, these were prepared for me by Pablo O'Neill under Fathi Yusuf's direction. As for tax returns prior to 1997, while I have not been able to locate many of them, I have filed tax documents in the past that show income from partnership management fees.

As for tax returns filed after 1997, the tax returns for 1997-2012 all include this partnership information, as noted in the returns included in the document response.

All tax returns I have located are attached to the document requests filed in this case.

8. Please describe how, when and why, Waleed Hamed was designated as your agent with regard to acting on your behalf in the alleged partnership and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Object to as calling for a legal conclusion. I gave my son, Waleed "Wally" powers of attorney in 1997, 2012 and 2013. They are all included in the document production. In this regard, at some point in 1997, we (Fathi, Wally and me) all turn my day to day responsibilities over to my son, Waleed, which was agreed to by Yusuf. Several years later, when litigation ensued with this third person in the St. Thomas Superior Court, in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997, Yusuf signed an affidavit correctly describing what happened -- stating in ¶¶ 2-4, as follows:

- My brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.
- Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.
- Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

In short, Yusuf agreed that my son, Waleed Hamed a/k/a Wally Hamed, would act on my behalf as to Hamed's partnership rights and obligations pursuant to a power of attorney, which he has recognized to date, including in sending correspondence to me such as the proposed dissolution notices.

9. Please describe how Waleed was to operate both as your designated agent exercising ownership control over the operations of the alleged partnership and, at the same time, act as an employee for United. Also, please describe when and how this arrangement for Waleed to act as your agent was communicated to Fathi Yusuf and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Object to as calling for a legal conclusion. Notwithstanding this objection, with Yusuf's knowledge and agreement, I gave my son Waleed Hamed a power of attorney in 1996 to represent my interests in the day-to-day parts of partnership operations, all of which was described in the requested detail in the preceding interrogatory. I remained active in larger partnership determinations such as adding a store of payment of large lease amounts. At the same time, it was agreed he would manage a store in addition to his partnership matters, just as Fathi Yusuf did. Since that time, this arrangement has continued with Yusuf's full knowledge and agreement, as evidenced by the continued notices Yusuf has sent to my son on my behalf. For example, when, several years after Fathi Yusuf described this agreement, we were deciding whether to open a West store, I participated in the decisions. Similarly, with the payment of unusual rent payments to United and the negotiations regarding the United lease at East.

The documents include the power of attorneys included in the document response as well as the exhibits marked at the preliminary injunction hearing (PEX 6 and 28) and the notices sent by Yusuf since the Injunction was issued in this case, all of which are also included in the document response.

10.State whether as a partner of the purported partnership of Yusuf and Hamed, you are personally responsible for the acts of your designated agent Waleed Hamed as they relate to your agent's management of any/all of the Plaza Extra Stores .

Objection, calls for a legal conclusion. Subject to that objection, I am responsible for his acts within the scope of the power of attorney as any other principal would be. If there were ultra vires acts or other wrongful acts, which I have no knowledge and do not believe occurred, I would not be responsible for those acts.



11. Detail the list of all lawsuits currently pending against United Corporation d/b/a Plaza Extra and what decisions you have made relating thereto as well as any financial arrangements you have made as a partner in the event of an adverse judgment in which you would be held jointly and severally liable for any judgment or obligations that may arise out of suits against United Corporation.

Other than this litigation in which I am the plaintiff, which I assume you are not asking about, as a partner in the Plaza Extra Partnership, I have equal control over all such litigation -- the current list of which can be obtained from defense counsel, Carl Beckstedt. The cost of the defense as well as any settlements and/or judgments in these cases are paid from the partnership accounts, as has always been done.

12. Describe in detail the amounts and source of funds your son and agent Waleed Hamed used to fund his gambling activities, the purchase and renovation of Waleed Hamed's home, and the purchase of real estate in Estate Carleton and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Object to as calling for information that is neither relevant nor likely to lead to discoverable information. Additionally, this interrogatory is overbroad and unduly burdensome in scope.

13. Describe in detail what obligations and duties Fathi Yusuf breached as alleged in Paragraph 28 of the Amended Complaint. Provide the date, locations, and name of witnesses supporting same allegations and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

This information is still be reviewed, so it will be supplemented, but includes the following:

- He improperly removed more than \$2.7 million from the partnership account, which both Yusuf and our sons know about, as evidenced by the exchange of correspondence marked as exhibits at the preliminary injunction hearing.
- He then used these partnership funds to buy a tract of land on St. Croix as well as to invest in a mattress company, which both Yusuf and our sons know about, as evidenced by the deed marked as an exhibit at the preliminary injunction hearing as well as the testimony of Maher Yusuf at the second day of the preliminary injunction hearing. Mike Yusuf then lied, as the President of United, to the Court about the taking and use of the funds.
- He then tried to justify the improper removal of the \$2.7 million by submitting a belated accounting that was fraudulent.
- He improperly removed funds from the partnership account to pay his lawyers as well as pay his sons taxes, which both Yusuf and our sons know about as evidenced by the checks marked as exhibits at the preliminary injunction hearing as well as in the subsequent court filings.
- He attempted to have United impose excessive rent obligations on the partnership store located at Sion Farm, St. Croix, in an effort to try to close down the Sion store as well as improperly dilute part of my 50% partnership profits, which both Yusuf and our sons know about, as evidenced by the rent notices sent since January, 2012, some of which were marked as exhibits at the preliminary injunction hearing and which continue to be sent monthly.
- He has denied the existence of the partnership by filing tax papers designed to negate the existence of the partnership so he can try to claim all of the partnerships assets for himself or United. This fact is evidenced by his refusal to file proper tax returns, despite the specific requests made by my lawyers that he do so, instead claiming 100% of the partnership income as United's income, as noted in the tax returns filed this year for the years 2002 to 2012, all signed by him. It is also evidence by the correspondence his lawyers sent to my lawyers asserting that I was a tax cheat and not entitled to claim my partnership rights because I supposedly had not filed taxes, which is false. That correspondence is being produced with the document production.
- He has attempted to unilaterally change how the stores have operated by threatening to impose new and unilateral restrictions on the operations of these three stores, calling the police to try to remove my sons from the stores, all of which is aimed at undermining my partnership interest in the three stores.
- He has refused to pay valid obligations owed by the Partnership in an effort to undermine the Partnership's operations including the recent attempt to not pay annual bonuses and vacation pay.

14. Detail what partnership rights you contend you are entitled to in the leasehold of the premises where the Plaza Extra Store is located according to paragraph 28(d) of the Complaint and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

The partnership has a leasehold interest on St. Croix for Plaza East, in which I have an interest as a partner in Plaza Extra Supermarkets partnership. The lease for the East store is supposed to follow the terms of the lease for the St. Thomas store.

The persons having knowledge of the leasehold interest in the Sion Farm store on St. Croix would be myself, Fathi Yusuf and my son, Waleed Hamed.

The documents which support this claim are the monthly rent notices and the calculation of rent sent by Fathi Yusuf to me, as well as the payment of rent in 2012, all of which was introduced at the PI hearing as PEx 7-9. The rent notices have continued even after these exhibits were introduced and are all included in the document response.

15. Provide a detailed factual and legal basis to support your allegations of paragraph 28 (e) of the Amended Complaint and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

This conduct ceased after the Amended Complaint was filed and the TRO entered, mooting this concern, so any relief that was claimed with regard to this allegation is withdrawn.

16. Detail how Fathi Yusuf "verbally discredited" the operations of the partnership as alleged in Paragraph 28(f) of the Amended Complaint. Specify the nature and dates of these verbal acts and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Object to this question, as there is no such allegation in paragraph 28(f) of the Amended Complaint.



17. Provide a detailed factual basis for the allegations of paragraph 29(g) of the Amended Complaint concerning the refusal of defendants to pay the valid obligations owed by the partnership. Specifically state when and how these alleged refusals undermined the partnership's operations and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

These matters leading to this initial allegation ceased after the Amended Complaint was filed and are now moot. This allegation would have been withdrawn, except Yusuf has since sent written statements that he will not pay bonuses and accrued leave to all seven store managers and one accounting employee, Wadda Charriez. The documents which support these facts are included in the documents produced.

18. Provide a detailed factual basis for the allegations of paragraph 29(h), (j), (k), and (l) of the amended complaint as they relate to defendants' "threat to close down the Plaza Extra Supermarkets," "threats to the Hamed family members with "physical harm," and "giving false information to third parties, including suppliers of the three Plaza Extra Supermarkets, regarding its future operations" and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

The specific acts referenced in these allegations are known to various employees as well as Yusuf's sons. For example, on January 9, 2013, Yusuf was in the Sion Farm store. He started screaming at an employee, Wadda Charriez, telling her to leave or he would call the police.

Yusuf also told the two Hamed sons who jointly manage the Plaza Extra Sion Farm store that they both they were "fired" and that they must leave the store at once.

Yusuf then called the police to the store.

When Charriez and the Hamed sons would not leave the store, Yusuf demanded that the police officers "immediately arrest" them and remove them from the store.

Yusuf stated that if the officers did not do so, he would immediately "close the Plaza Supermarket store".

No witness contradicted this testimony about what Yusuf said on January 9<sup>th</sup>.

Indeed, Mike Yusuf, who was present, acknowledged hearing his father threaten to close the store, which his father had also said he would do on other occasions as well.

The Hamed manager in the St. Thomas store, Waheed Hamed, also testified that Yusuf would yell in front of store employees that he was firing the Hamed brothers and closing the store, causing these employees to become afraid of losing their jobs.

Another Plaza Extra Supermarket employee who works in the St. Thomas store, Kareema Dorsett, also testified that Yusuf has told her he may close the store, which she reported to the Hamed manager because she was worried about losing her job that she needed to support her family.

19. Provide a detailed list of all loans (personal or business) you (or any of your agents or designees) made to anyone for the period of 1990 through 2009, including the source of these funds and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Object to as calling for information that is neither relevant nor likely to lead to discoverable information. Additionally, this interrogatory is overbroad and unduly burdensome in scope.

**VERIFICATION**

**TERRITORY OF U.S. VIRGIN ISLANDS            ) SS:**  
**)**  
**DIVISION OF ST. CROIX                            )**

I, **MOHAMMED HAMED**, after first being duly sworn, depose and state that I have carefully read Defendants' First Set of Interrogatories to Plaintiff Mohammed Hamed and provided truthful answers under oath.

Dated: 12/23/13

By:   
**MOHAMMED HAMED**

**SUBSCRIBED AND SWORN TO**  
**BEFORE ME**, this 23<sup>rd</sup> day  
of December 2013

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC  
**JERRI FARRANTE**  
Commission Exp: August 26, 2015  
NP 078-11

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of December, 2013, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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