

**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
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.)	
	)	JURY TRIAL DEMANDED
)	

**PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO PARTIALLY
RECONSIDER/CLARIFY BOND ORDER**

Plaintiff requested this Court to reconsider/clarify certain aspects of its Bond Order. Defendants have now filed an opposition, admitting (1) they will not spend any funds in the criminal case due to the preliminary injunction and (2) that alternate security can be posted. Before responding, several preliminary comments are in order.

First, Defendants correctly note that Plaintiff failed to cite LRCi 7.3, which allows an order to be reconsidered, applicable here pursuant to Rule 7. Because the Bond Order was received late on December 10th (as noted in the initial motion), counsel overlooked this point in expediting the motion to reconsider/clarify the Bond Order. While Defendants *were* able to identify the sections of Rule 7.3 applicable here, Plaintiff will note them herein as well.

Second, while Defendants appear to believe the Bond Order is in effect even though a timely motion for reconsideration was filed, they did not cite any authority to support this assertion. However, as per Defendants' suggestion and in an abundance of caution, Plaintiff has now filed a notice of posting the bond for the uncontested portion

of the bond, as will be discussed further herein. Plaintiff also commits to promptly supplement the bond if necessary after this Court addresses this motion.

Finally, in light of Defendants' admission that annual bonuses and vacation pay will not be approved by the Yusufs, contrary to what they represented to the Court to obtain that Order, that aspect of the Bond Order also needs to be revisited as well. In short, since the salary figures Defendants supplied to the Court, which this Court relied upon in calculating the amount of the bond, have now been changed by Defendants' unilateral action, reconsideration of this computation is also warranted.

I. The Criminal Case

Defendants concede on page 4 of their opposition memorandum that they "are not seeking a bond in connection with any contemplated change of plea" in the criminal case.¹ That should end this issue. However, they still assert a \$100,000 bond is needed "to cover the anticipated expenses of seeking indemnity from the Plaintiff for . . . taxes and fines paid to date by United." However, Defendants' argument ignores this Court's Bond Order, which stated:

This Court notes that, in certain civil cases, legal fees can be awarded to a prevailing party following a final judgment on the merits. See 5 V.I.C. §541. Criminal cases, however, rarely offer the prevailing party an opportunity to recoup expended legal fees. In light of the additional recourse available to prevailing civil litigants and the considerations expressed above, **the Court will direct Plaintiff to post the sum of \$100,000 as security against Defendants' legal fees regarding the one criminal case.** (Emphasis added). *Id.* at pp.7-8.

¹ Defendants made this same acknowledgement in their opposition to the motion to reduce the bond, so that reconsideration is proper under LRCi 7.3(3) to correct clear error as well as manifest injustice, as it would be unfair to require a bond for an expense that Defendants initially asserted but have now admitted will never be incurred.

Thus, the \$100,000 bond requirement was solely for work associated with the criminal case, which Defendants now concede will not be incurred. Moreover, regarding the alleged indemnity claim, the Bond Order then further stated as follows:

Plaintiff is not responsible for Defendants litigating viable counterclaims. Additionally, legal fees can be awarded, under certain circumstances, to a prevailing party following a final judgment on the merits. See 5 V.I.C. §541. Therefore, unlike costs associated with Defendants' direct compliance with the injunction (which Defendants may not otherwise be able to recover if this injunction was entered in error), **legal fees associated with litigating new counterclaims regarding this action can potentially be recouped at a later date, and no additional security will be required concerning those potential costs.** (Emphasis added). *Id.* at 8.

Thus, the \$100,000 bond requirement was not established to cover the costs of pursuing alleged civil claims (such as claims for indemnity). See also, 11A *Wright, Miller & Kane, Federal Practice and Procedure*, § 2954 at p.326 (2103 edition) (security is only to cover costs directly attributable to improvidently issued injunction).

Indeed, Defendants have now filed their counterclaims against Plaintiff and did not include any asserted counterclaim for indemnity for these taxes and fines, confirming this claim (which would be a compulsory counterclaim) would be frivolous.

In short, with Defendants' renewed admission that no fees or costs will be incurred in the criminal case as a result of the preliminary injunction, the request to reconsider this portion of the bond should be granted, reducing the bond by \$100,000.

II. Managers' Salaries

Defendants stated, and the Court incorporated, the fact that \$61,000 would be paid at Christmas in annual bonuses and vacation pay to each of the four Hamed managers as part of their annual salary. In anticipation of this payment that is now due, Plaintiff stated in his initial motion for reconsideration that part of the \$1,200,000 bond

would be secured by the deposit into the Court of this \$244,000 in annual bonuses and vacation pay for the four Hamed managers.

Defendants, however, now make it clear in their opposition memorandum that these payments will now not be agreed to by them and will not be paid, even though these payments have been made for years. See **Exhibit 1**.

In footnote 2 of the opposition -- Defendants chastise Plaintiff for not filing a motion to compel these payments if he believes non-payment violates the preliminary injunction, but at the time of filing the initial bond motion Plaintiff's counsel was still trying to resolve this issue. See **Exhibit 2**. However, now that it is clear these payments will not be voluntarily paid, rather than file a motion to compel their payment, Plaintiff simply asks the Court to recognize that Defendants' initial salary "calculations" are no longer applicable and adjust the bond accordingly.²

In this regard, it is undisputed that Defendants included this annual \$61,000 payment as part of each managers' salary of \$347,000 in seeking a bond to cover these payments. See ¶3 of Gaffney declaration attached as Exhibit 1 to Defendants' May 9th motion to amend bond, attached hereto as **Exhibit 3**. This Court then relied on these figures to establish the bond needed—4 times \$347,000=\$1,388,000, which was then cut in half to \$694,000 (rounded up to \$695,000).

If the correct salary figure is used without this payment (\$347,000 minus \$61,000=\$286,000), then the calculation for the annual salaries of the four Hamed

² Reconsideration of this calculation is also proper under LRCi 7.3(2) because of this new evidence, which just surfaced at the same time the Bond Order was issued. LRCi 7.3(3) is also applicable to correct clear error and prevent manifest injustice, as it would be unfair to require a bond for a portion of the salaries that Defendants have stated will not be paid despite its prior contrary representations to this Court.

managers would be: 4 times \$286,000=1,144,000, which when cut in half would be \$572,000 rather than \$695,000. Using this revised figure, the amount paid over the past 7 months would now be \$333,666.67 rather than \$405,000 as calculated in the Bond Order. Rounding both figure up, as this Court did, would put this total figure at \$910,000 (\$575,000 plus \$335,000) rather than \$1,100,000.

In short, if the annual bonuses and vacation pay are not being paid as represented to this Court, which the Court relied upon in making the salary computation, then the bond for these wages should be reduced from \$1,100,000 to \$910,000. Alternatively, these payments should be made (as they routinely have been in the past) so they can be pledged as part of the bond.

III. The Security Posted

Plaintiff also moved to clarify this Court's Bond Order to ascertain whether the security it intended to post (and has now posted) is acceptable to the Court. As noted in Plaintiff's opposition to Defendants' "emergency motion" to terminate injunction, the V.I. Supreme Court approved the use of property as security for a bond in *First Am. Dev. Group v. WESTLB, et al.*, 2012 WL 1526100 at *5 (V.I. April 30, 2012), holding in part:

Consequently, if First American wishes to effectuate the stay of the execution of the . . . Judgment, it must post a bond counter-signed by a qualified surety or **secured by unencumbered property of a value equal to or greater than the bond** with the Superior Court (Emphasis added).

See also, *Milligan v. Khodra*, 46 VI 305, 2004 WL 3383654 at *10 (D.V.I.App.Div. 2004) ("bond can be cash, property or surety bond"); *Marrero v. United Indus., Serv. Transp.*,

Profl & Gov't Workers of N. Am., 2012 WL 2865970 at *1 (D.V.I. July 12, 2012) ("Courts in this jurisdiction have permitted the posting of property bonds in lieu of a cash bond").³

With this applicable law in mind, it is clear that the motion to reconsider/clarify was a proper method of making sure this Court would approve Plaintiff using property as part of the bond pursuant to LRCi 7.3, which Defendants concede can be done, but which was unclear in the Bond Order. Moreover, contrary to Defendants' assertions, **Plaintiff is not trying to avoid posting the full bond**, as instead he is seeking clarification that the use of property is acceptable to this Court since the Bond Order was silent on this issue -- and posts the full bond as set forth below.

With this point in mind, it is respectfully requested that the Court grant the motion to reconsider/clarify the Bond Order by either (1) approving the bond as posted or (2) providing guidance as to what else, if anything, needs to be done to make sure the entire bond is in place. As such, an analysis of the bond posted is in order.

A. Real Property

As noted in the Notice of Posting Bond filed with the reply memorandum, Plaintiff has posted five parcels of unencumbered real property, which have a tax assessed value of \$636,000. In *Frank C. Pollara Grp., LLC v. Ocean View Inv. Holding*, 9-60, 2013 WL 5135690 (D.V.I. Sept. 13, 2013), the District Court, after noting it has discretion in the posting of security, just this year allowed real property to be posted as a bond -- **using the amount of the tax assessment of the property as its value**, as proposed by Plaintiff here.

³ While these cases deal with a supersedeas bond under Rule 62(c), both Rule 62(c) and Rule 65(c) use the term "security" so this distinction is moot.

Thus, it is respectfully submitted that this aspect of the Plaintiff's posting of the bond is proper, subject to the entry of an Order by this Court that can be recorded against these properties to secure the bond, which is being submitted with this reply.

B. Assignment of Rights to ByOrder Investments LLC

Plaintiff also pledged his \$223,000 interest in the funds held in escrow by Carl Beckstedt for his interest in ByOrder Investments LLC. Despite Defendants *argument* that these funds are encumbered, that is incorrect. The parties do not dispute that (1) cash funds are being held in escrow by Carl Beckstedt and (2) that Plaintiff is entitled to 31% of this money. See **Exhibit 2**. However, the parties have not been able to agree on how Carl Beckstedt is to release these funds. See **Exhibit 2**. Plaintiff executed a Pledge that resolves this problem if it is determined that the preliminary injunction is found to have been improper. See Plaintiff's Pledge of his interest in ByOrder, a copy of which is attached as **Exhibit 4**. Thus, these funds will belong to Defendants without any encumbrance in the event the bond is forfeited, as the Pledge of Plaintiff's interest insures that these funds are an equivalent of cash.

In short, these funds now totaling \$223,000, which increase at the rate of \$4,960 monthly, are unencumbered funds that will be instantly available in full to Defendants in the event the bond is forfeited. Again, to insure there is no issue as to the immediate availability of these funds to Defendants, the proposed order submitted by Plaintiff secures these funds for that purpose.

C. Cash

Finally, Plaintiff previously deposited \$25,000 with this Court when the preliminary injunction was first issued. An additional \$26,000 has now been deposited to

bring the total bond to \$910,000 (\$636,000 in real property plus \$223,000 in ByOrder and \$51,000 in cash) to cover the amount of the Bond Order for which Plaintiff has not sought reconsideration.

D. Alternative Proffers to Post Bond

Plaintiff proffers the following additional amounts to reach the \$1.2 million amount in the Bond Order if this Court denies the motion for reconsideration of the amount of the bond and/or finds that any aspect of the bond as proffered to the Clerk is not proper for use as part of the bond.

First, as noted in the initial motion to reconsider/clarity, Plaintiff has and hereby proffers the pledge of 50% interest the Hameds have in the stock of Plessen Enterprises as additional security, which currently has cash on hand of \$283,000 (increasing \$36,000 monthly) as well as hundreds of acres of land on both St. Croix and St. Thomas. See **Exhibit 1**. Plaintiff also has and proffers a pledge the 50% interest the Hameds have in the stock of Peter's Farm, Inc., which owns an equally large amount of land on both islands. See **Exhibit 1**. Finally, Plaintiff has and proffers his interest in the receivable from the Dorthea transaction discussed at the preliminary injunction hearing.

Second if this Court does not believe the security as posted (or proffered) is adequate, the bond can be reduced by the agreement of the four Hamed managers to reduce their salary in half (or alternatively now assign 50% of each week's future pay to the Clerk of Court). This reduction in their salaries (or posting of one half of the salaries as security into the Court's account) would negate the need for any bond to cover future expenses (or would provide security in exact proportion to the risk incurred if the

salaries are just deposited with the Clerk). In this regard, this Court's Bond Order determined that the following amounts needed to be posted as security:

- \$100,000 for fees anticipated in the criminal case.
- \$405,000 for salaries incurred to date to cover one-half of the salaries for the four Hamed managers (the amount in excess of a replacement managers).
- \$695,000 for salaries to be incurred **in the future** to trial to cover one-half of the salaries for the four Hamed managers.

Of these amounts, only \$405,000 has been incurred to date, which is amply protected by the bond posted, as the unencumbered real property alone exceeds this amount (which Plaintiff seeks to further reduce in this motion).

However, regardless of whether this Court reduces the bond as requested, if the four Hamed managers agree to reduce their salary in half (or alternatively pledge and then pay 50% of each week's pay to the Clerk of Court), the future portion of the bond is also secure. The four Hamed managers are willing to take such action if necessary to satisfy this Court that the appropriate bond needed has been posted. See **Exhibit 1**.

In short, using one of these alternative proffers, Plaintiff can and will post the full bond once the Court addresses the points raised in the motion to reconsider/clarify. In addition, Plaintiff is continuing to try to raise cash funds so he will have some additional cash if this Court denies part or all of the motion to reconsider/clarify. In short, Plaintiff believes he will be able to comply with any final bond order and he will execute any further undertaking the Court deems necessary.

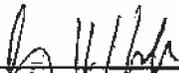
IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that the bond be reduced to \$910,000. It is further requested that this Court enter an order approving the

bond as posted. A proposed order has been submitted with this reply that allows the pledge of property in the posting of the bond to be secured by an Order from this Court.

Alternatively, Plaintiff seeks a hearing so it can be given further instructions on what further undertaking is necessary to transfer the proffered security with the Clerk, as discussed above in the section on Alternate Proffers to Post Bond.

Dated: December 27, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
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 this 27th 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:

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
dewoodlaw@gmail.com

Gregory H. Hodges
VI Bar No. 174
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST. Thomas, VI 00802
ghodges@dtflaw.com

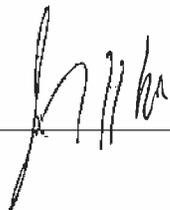


EXHIBIT 1

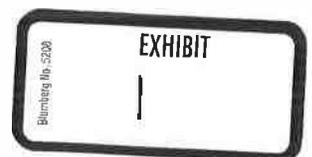
**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

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

DECLARATION OF WALEED HAMED

I, Waleed Hamed, declare, pursuant to 28 U.S.C. Section 1746, that I am over 18 years of age and have personal knowledge of the foregoing facts:

1. The annual bonuses and vacation pay totaling \$61,000 for each Hamed and Yusuf store manager have been paid at Christmas on a regular basis for years, as per the attached company records as previously submitted to this Court on December 23, 2013. Fathi Yusuf has now circulated a memo stating these payments will not be paid this year even though there are ample funds to pay these amounts.
2. If these payments are made, my three brothers (Willie, Mafi and Shawn) and myself have all agreed that we will allow our annual bonus and accrued vacation of \$61,000 due to each of us this month as Plaza Extra store managers (totaling \$244,000 in gross pay) to be deposited with the Court as part of the bond required to be posted in this case. We will all sign whatever documents are needed to insure that this payment is deposited to the Clerk.
3. My father and my brothers own 50% of the outstanding stock in Plessen Enterprises, Inc. We have agreed to assign our 50% interest in this unencumbered stock in Plessen Enterprises, Inc., which is \$283,002 in cash on hand. This amount increases monthly at the rate of \$36,000 per month, as rent is paid monthly, of which \$18,000 represents the Hamed portion. This corporation owns hundreds of acres on both St. Croix and St. Thomas. We will all sign whatever documents are needed to insure that this sum is secured by the Court's Order.
4. My father and my brothers own 50% of the outstanding stock in Peter's Farm, Inc. We have all agreed to assign our interest in this unencumbered stock in Peter's Farm, Inc. as part of the bond. This corporation owns three unencumbered parcels of land on St. Croix and St. Thomas. We will all sign whatever documents are needed to insure that this sum is secured by the Court's Order.



Declaration

Page 2

5. My three brothers and myself are also willing to reduce our current salaries in half (or alternatively assign 50% of each week's future pay to the Clerk of Court) if necessary to satisfy the Court that the appropriate bond has been posted with this Court.

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

Dated: December 27, 2013



Waleed Hamed

EXHIBIT 2

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

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

DECLARATION OF JOEL H. HOLT

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

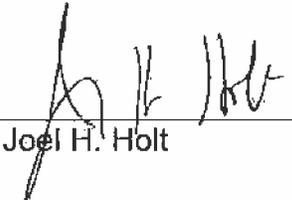
1. I am counsel of record for the Plaintiff and have personal knowledge of the foregoing facts.
2. At the time the initial motion to reconsider/clarify was filed, I was still trying to resolve the issue regarding the payment of the annual bonuses and vacation pay. Indeed, I even sent an email on this issue as late as December 20th. See Exhibit A attached.
3. Regarding ByOrder Investments, LLC, I was contacted by Nizar DeWood on behalf of his clients in late August to see if an agreement could be reached to disburse these funds held by Carl Beckstedt in his Trust Account. See Exhibit 2.
4. There was no dispute that the funds were being collected from payments made by the entity that had purchased the East End gas station from the Hamed and Yusuf families, nor was there any dispute that the funds belonged 31% to the Hamed and 69% to the Yusuf.
5. Attorney DeWood indicated that Yusuf wanted the funds disbursed to United Corporation first to then be redistributed to the parties on the agreed upon 31/69 split, while Hamed wanted the funds to be disbursed directly to each party from Beckstedt's Trust Account. Attorney DeWood requested a written agreement that was drafted with Carl Beckstedt's approval, as set forth in the email exchange. See Group Exhibit B.
6. While there was no dispute that the funds were to be split 31/69 between the parties, no agreement on how to disburse these funds were ever reached.



7. The declaration of Waleed Hamed attached to the motion to reconsider/clarity describes in ¶ 2 how these funds were generated, a copy of which is attached as Exhibit 4, which Defendants did not refute by any sworn declarations. That declaration confirms that a total of \$720,000 is now on hand, of which Plaintiff's 31% interest is \$223,000.

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

Dated: December 27, 2103



Joel H. Holt

EXHIBIT A

From: Joel Holt <holtvi@aol.com>

To: Nizar DeWood <dewoodlaw@gmail.com>

Subject: Bonuses

Date: Fri, Dec 20, 2013 8:24 am

You indicated you would get back to me on the annual bonus and vacation pay-did you talk to Fathi?

Sent from my iPhone



EXHIBIT B

From: Joel Holt <holtvi@aol.com>
To: Nizar A. DeWood, Esq. <dewoodlaw@gmail.com>
Subject: Re: ByOrder LLC
Date: Tue, Aug 27, 2013 1:55 pm

10:00 tomorrow?

Sent from my iPhone

On Aug 27, 2013, at 1:33 PM, "Nizar A. DeWood, Esq." <dewoodlaw@gmail.com> wrote:

Joel,

When are you available to discuss the distributions in the ByOrder LLC matter?



Nizar A. DeWood, Esq.

DeWood Law Firm

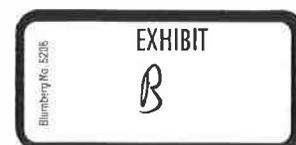
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f. (888) 398.8428

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From: Joel Holt <holtvi@aol.com>

To: carl <carl@beckstedtlaw.com>

Cc: wallyhstx <wallyhstx@yahoo.com>

Subject: Bubiyah

Date: Fri, Aug 30, 2013 3:11 pm

Attachments: ESCROW_AGRGEMENT_Hamed_Yusuf.doc (35K)

Carl-Nizar asked me for an agreement-here is what i will be sending unless you have changes. 
Thanks

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

From: Carl Beckstedt <Carl@beckstedtlaw.com>
To: Joel Holt <holtvi@aol.com>
Subject: RE: Bubiyan
Date: Fri, Aug 30, 2013 3:56 pm

Joel:



There appears to be a typo in Paragraph 2. Also, I think ByOrder Investments LLC needs to sign off as well.

From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Friday, August 30, 2013 3:12 PM
To: Carl Beckstedt
Cc: wallyhstx@yahoo.com
Subject: Bubiyan

Carl-Nizar asked me for an agreement-here is what i will be sending unless you have changes. Thanks

Joel H. Holt, Esq.

2132 Company Street

Christiansted, St. Croix

U.S. Virgin Islands 00820

(340) 773-8709

From: Joel Holt <holtvi@aol.com>

To: dewoodlaw <dewoodlaw@gmail.com>

Cc: jdiruzzo <jdiruzzo@fuerstlaw.com>; cdavid <cdavid@fuerstlaw.com>

Bcc: wallyhstx <wallyhstx@yahoo.com>; carl <carl@carlhartmann.com>

Subject: rent/Becksted

Date: Tue, Sep 3, 2013 8:11 am

Attachments: LEASE_AGREEMENT_Plaza_1.docx (100K), ESCROW_AGRGEMENT_Hamed_Yusuf.doc (35K)

Nizar-as we discussed last week, our clients need written agreements going forward so there is clarity in the relationship. The attached 2 documents (which are independent of one another) address the funds currently held by Carl Beckstedt as well as the rent issue you have repeatedly asked about. If these can be signed, we can move past these issues.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

ESCROW RELEASE AGREEMENT

Comes now Fathi Yusuf (“Yusuf”) and Mahammad Hamed (“Hamed”) and hereby agree to authorize Carl A. Beckstedt III to release the funds he is holding regarding the mortgage payments being made by Bubiyan LLC Enterprises d/b/a The East End Service Station as follows:

- 1) All funds currently being held will be disbursed 69% to Yusuf or his designee and 31% will be disbursed to Hamed or his designee.
- 2) It is agreed that Carl A. Beckstedt III shall continue to collect these payments and that he shall disburse them to the parties on the same percentages (69% to Yusuf or designee and 31% to Hamed or designee) at the beginning of each quarter, starting in 2014 (Jan 1, April 1, July 1 and Oct 1) and continuing until all funds have been collected and disbursed.

This is the only agreement between the parties regarding these escrowed funds. The agreement will be governed pursuant to the laws of the U.S. Virgin Islands.

Dated:

Fathi Yusuf

Dated:

Mohammad Hamed

At the request of Carl A. Beckstedt III, ByOrder LLC acknowledges that is is aware of this agreement and approves its terms.

On behalf of ByOrder, LLC

AGREED AND ACCEPTED:

Carl A. Beckstedt III

EXHIBIT 3

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

MOHAMMAD HAMED, by his
authorized agent, WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

EXHIBIT "A" – May 8, 2013 Declaration of John Gaffney

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary
Injunction Order and For Stay of Same Pending Posting of Adequate Bond)



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

MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,

Plaintiff,

CASE # SX-12-CV-370

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

DECLARATION OF JOHN GAFFNEY

I, John Gaffney, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by United Corporation d/b/a Plaza Extra in a controller capacity.

2. The statements in this declaration are based on my personal knowledge and my review of United Corporation d/b/a Plaza Extra's business records, as those records are kept and maintained in the regular course of business and upon which records I rely as part of my regular duties. If called as a witness, I could and would testify competently to the facts set forth in this declaration.

3. United Corporation d/b/a Plaza Extra presently employs, and pay salaries to, four members of the Hamed family in the supermarket stores at issue in this litigation as follows, in relevant part:

<u>Name</u>	<u>Store</u>	<u>Position</u>	<u>2012 Annual Earnings (Base Salary + Bonus + Vacation)</u>
Waleed Hamed	St. Croix East	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Mufeed Hamed	St. Croix East	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Hisham Hamed	St. Croix West	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Waheed Hamed	St. Thomas	Manager	\$347,000 (286,000 + 50,000 + 11,000)

4. United Corporation d/b/a Plaza Extra also employs and pays a salary to Wadda Charriez, who is an accounting supervisor at the St. Croix East store, as follows, in relevant part:

<u>Name</u>	<u>2012 Annual Earnings (Hourly @ \$12/hr + Overtime + Bonus + Vacation)</u>
Wadda Charriez	\$45,221 (24,960 + 14,864 + 4,500 + 897)

5. Assuming that a final judgment in this action on the merits will not be entered for another two years, *i.e.*, until May 2015, and assuming that the foregoing salaries remain constant

through that date, the combined salaries of Waleed Hamed, Mufeed Hamed, Hisham Hamed, Waheed Hamed and Wadda Charriez to be paid by United Corporation d/b/a Plaza Extra to those employees from May 2013 through May 2015 is \$2,866,442.

6. Plaintiff Mohammad Hamed's last rent payment to United Corporation d/b/a Plaza Extra for the lease at the Sion Farm Plaza Extra East supermarket was made on or about February 7, 2012, in the amount of \$5,408,806.74 for the period May 2004 through December 2011.

7. Additional rent for the Plaza Extra East store remains unpaid and is due and owing to United Corporation d/b/a Plaza Extra.

8. Specifically, with respect to the areas referred to by the parties as "Bay No. 1," "Bay No. 5," and "Bay No. 8" of the Plaza Extra East store:

- a. \$3,967,894.19 is owed for Bay No. 1 from January 1, 1994, through April 4, 2004;
- b. \$243,904.00 is owed for Bay No. 5 from May 1, 1994, through October 31, 2001; and
- c. \$381,250.00 is owed for Bay No. 8 from April 1, 2008, through May 30, 2013;

for a combined amount as of those dates of \$4,593,048.19

9. Separately, as of May 1, 2013, Plaintiff Mohammad Hamed owes to United Corporation d/b/a Plaza Extra \$4,419,711.31 in outstanding rent, including base rent and late fees, for the lease at the Sion Farm Plaza Extra supermarket from January 1, 2012, through May 1, 2013.

10. As of December 31, 2011, the net equity of United Corporation d/b/a Plaza Extra exceeds \$68 million.

I declare under penalty of perjury, on this 8th day of May, 2013, that the foregoing is true and correct.


JOHN GAFFNEY

EXHIBIT 4

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

MOHAMMAD HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

)
) CIVIL NO. SX-12-CV-370

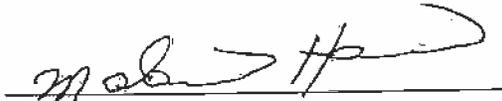
)
) ACTION FOR DAMAGES,
) INJUNCTIVE AND
) DECLARATORY RELIEF

)
) JURY TRIAL DEMANDED
)

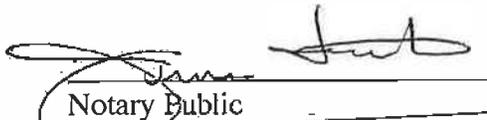
**PLEDGE OF INTEREST IN BYORDER INVESTMENT, LLC BY MOHAMMAD HAMED
AS SECURITY FOR BOND REQUIRED BY DECEMBER 5, 2013, BOND ORDER**

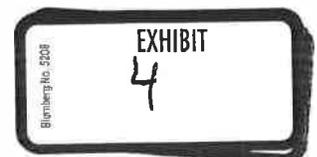
I, Mohammad Hamed, hereby pledge my 31% interest in the money collected and held by Carl Beckstedt on behalf of ByOrder Investments, LLC, to secure in part the bond that Plaintiff needs to post pursuant to this Court's December 5, 2013, Bond Order. The interest being pledged is unencumbered and is currently worth \$223,000. Carl Beckstedt is hereby authorized to release said funds directly to Fathi Yusuf and/or United Corporation (as instructed by them) if the preliminary injunction entered in this case is deemed to have been improperly entered. I remain available to execute any further documents this Court deems appropriate to secure the bond in part by the pledge of this property.

Dated: December 23, 2013


Mohammad Hamed

Sworn to and Subscribed Before Me
this 23 day of December, 2013.


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



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

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

ORDER OF ENCUMBRANCE

Plaintiff has caused certain Pledges of property to be filed with the Clerk of Court to secure the bond for the preliminary injunction. In order to perfect this lien, the Court hereby directs Plaintiff's counsel to promptly record this Order with the Recorder of Deeds on St. Croix as well as to serve a copy on Carl Beckstedt in order to put on record that the following properties are now encumbered by the Bond Order entered in this case on December 5, 2013, until further notice of this Court:

1. Plot 6-F and Plot 6-H of Estate Carlton owned by Mohammad Hamed, more fully described as:

Plot 6F (consisting of 0.560 U.S. acre) and Plot 6H (consisting of 0.566 U.S. acre) of Estate Carlton, West End Quarter, as more fully described on Public Works Drawing No. 1775, dated May 6, 1965, revised March 7, 1972.

2. Plot 100-E, 100-F &100-G, Estate Princesse owned by Mohammad Hamed, more fully described as:

Plot No. 100-E of Estate La Grande Princesse, Company Quarter, consisting of 1.199 U.S. Acre, as more fully shown and described on Department of Public Works Drawing No. 2570 dated February 5, 1969;

Plot No. 100-F of Estate La Grande Princesse, Company Quarter, consisting of 0.558 U.S. Acre, as more fully shown and described on Department of Public Works Drawing No. 2570 dated February 5, 1969;

Road Plot No. 100-G of Estate La Grande Princesse, Company Quarter, consisting of 0.237 U.S. Acre, as more fully shown and described on Department of Public Works Drawing No. 2570 dated February 5, 1969;

3. Plot 6-C of Estate Carlton owned by Waleed Hamed, more fully described as:

Plot No. 6C, consisting of 1.002 U.S. Acres, more or less, of Estate Carlton, West End Quarter, Frederiksted, St. Croix, as more fully shown in P.W.D. Drawing No. 1775 dated May 6, 1965 as revised May 10, 1966.

4. All interest Mohammad Hamed has in the funds held in trust by Carl Beckstedt for ByOrder Investments, Inc. which shall not be disbursed absent further order of this Court unless it is determined that the preliminary injunction was improperly entered, at which ~~time~~ said funds can be promptly disbursed to the Defendants.

Plaintiff's counsel shall file a notice of compliance once this Order is recorded and served on Carl Beckstedt.

Dated:

Honorable Douglas A. Brady
Judge, Superior Court

ATTEST:
VENETIA H. VALESQUEZ
Clerk of Court

By: _____
Deputy Clerk