

**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 ANSWER TO FIRST AMENDED COUNTERCLAIM

Comes now the Plaintiff, Mohammed Hamed, by counsel and hereby answers the First Amended Counterclaim filed on January 13th as follows:

1. Admit.
2. Admit that Yusuf is a resident of the Virgin Islands (as well as Jordon), but deny as to his ownership of 36% of the stock of United on information and belief from prior filings of Yusuf stating he only owns 7.5%, so the exact amount of his ownership is unknown, although he controls 100% of United Corporation. Denied as to his being an officer of United based on a lack of information.
3. Admit that United is a USVI corporation. Denied that it acts as such a corporation -- but rather acts as the alter ego of Fathi Yusuf. Upon information and belief, Fathi Yusuf and family members own 100% of the stock and it is used as an alter ego of Fathi Yusuf.
4. Admit.
5. Admit that United leases retail space as alleged. Denied as to United being the sole owner of the "Plaza Extra" name/trademark.

6. Admit that Hamed is a citizen of Jordan and the United States, as is Fathi Yusuf, but deny that Hamed has resided in Jordan for the last 15 years, though he travels there for extended periods of time, as he is a resident of the Virgin Islands.

7-10. Admitted that Waleed Hamed ("Waleed"), Waheed Hamed ("Waheed"), Mufeed Hamed ("Mufeed") and Hisham Hamed ("Hisham") are sons of Hamed and citizens and residents of St. Croix, U.S. Virgin Islands, but deny they are "counterclaim defendants" as described in these allegations.

11. Admit except deny status as a "counterclaim defendant" as described in this allegation -- which is an assertion of law.

12. Paragraph 12 is a speech, not a proper averment. It is admitted that a partnership gives rise to various duties, but this allegation is otherwise denied.

13. It is admitted that the first of the three subject supermarkets, the Plaza Extra supermarket in Sion Farm, St. Croix ("Plaza Extra – East"), opened in 1986; and that eventually the partnership opened three supermarkets.

14. Admit that the second supermarket (Tutu Park, St. Thomas) was opened by the partnership in 1993, but deny that it was opened by United.

15. Admit that the third supermarket (West) was opened by the partnership in 2000, but deny that it was opened by United.

16. Admit.

17. Admit.

18. Admit.

19. Admit.

20. Deny.

21. Deny.

22. Deny.

23. Regarding the first sentence, admit that United has such officers and stockholders in name, but deny that United functions as a corporation, but rather is the alter ego of Fathi Yusuf and his wife and/or family members. Subject to the foregoing qualification, the second sentence is admitted.

24. Deny.

25. Deny.

26. Admit.

27. Admit a federal criminal prosecution took place for approximately 10 years, but deny all other remaining allegations.

28. Admit that serious criminal charges were filed against certain defendants which is public record, but deny the remaining allegations as worded.

29. Admit that Mohammad Hamed never made any representations in the criminal case in question, but deny the remaining allegations as worded.

30. Admit the first sentence. Deny the second sentence.

31. Admit a plea agreement was reached in the criminal case. Admit United filed tax returns, but deny it filed proper tax returns. Admit United paid taxes, in part by using Hamed's share of the proceeds from the partnership. Otherwise deny, as the share of the profits made from Plaza Extra due Mohammad Hamed have been reported by him to the IRB and all taxes due have been paid.

32. Admit Mohammad Hamed is a 50% partner in the three Plaza Extra Supermarket stores, as repeatedly admitted by Fathi Yusuf and his sons as well as his lawyers. Otherwise, the remainder of this allegation is denied.

33. Admit oral agreements were made regarding the partnership, but deny this allegation as worded.

34. This allegation is unintelligible as worded (i.e., "western legal meaning"), so it is denied. To the extent this allegation is intended to state that Mohammad Hamed and Fathi Yusuf have a partnership under the law of the Virgin Islands, it is admitted.

35. Deny.

36. The first sentence is admitted. All other remaining allegations are denied..

37. Deny.

38. Admit Yusuf is not a lawyer, but deny he has ever testified that he does not know what a partnership is. Indeed, he clearly understand that term, which he has repeatedly used under oath without any qualification as to its meaning. Moreover, his assertions of partnership were made in numerous and extensive documents drafted by and filed by his lawyers -- filed in a legal action where the existence of a USVI partnership was asserted as a matter of law.

39. Deny, as no such testimony has been given to plaintiff's knowledge.

40. This is a statement of a conclusion of law, and is therefore denied.

41. Deny.

42. Admit that Hamed does have an oral agreement with Yusuf under which he receives "50% of the net profits of the Plaza Extra Stores which amounts varied

depending on the profitability of the business," but the remaining allegations are all denied as worded.

43. Deny.

44. Deny.

45. Deny.

46. Deny.

47. Admit Yusuf made this statement under oath.

48. Admit.

49. Admit Yusuf tried to borrow money from banks, but the remainder of this allegation is denied for lack of specific knowledge of the details of any such communications.

50. Admit.

51. Deny.

52. Deny.

53. Deny.

54. The first sentence is denied for lack of knowledge. Regarding the second sentence, it is admitted that Hamed gave \$225,000 to Yusuf, but this sentence is otherwise denied as worded. The third sentence is denied. The last two sentences are denied as worded, as Yusuf agreed with Hamed that they would become 50/50 partners in the Plaza Extra Supermarkets

55. Admit that on some occasions if Hamed took a share of the net profits, he would "coordinate with Yusuf and those funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to

Yusuf from these net profits" which is the same as when Yusuf took a share of the net profits, as he would coordinate with Hamed and those funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Hamed from these net profits. Otherwise this allegation is denied as worded.

56. Deny.

57. Admit that Hamed was at risk for the loss of his initial investment. Otherwise deny, as Hamed was also responsible for 50% of any "payables", losses or debts if they were not covered by the partnership proceeds.

58. Deny.

59. The first sentence is denied for lack of knowledge of these specific terms. Regarding the second sentence, Mohammad Hamed did contribute more funds as well as extensive non-paid hard work in order to complete and open the Plaza Extra supermarket at Sion Farm, but the remainder is denied as worded.

60. The first two sentences are denied for lack of knowledge of these specific terms. The third and fourth sentences are denied. Regarding the last sentence, admit that it was agreed that Hamed would become a 50/50 partner that would entitle him to receive 50% of the net profits of the Plaza Extra Supermarkets, but otherwise deny as worded.

61. This allegation is denied for lack of specific knowledge, except to admit that Mohammad Hamed did not sign any such loan agreement or note. To the extent any loan was obtained to purchase inventory or equipment for Plaza Extra, it was repaid from the Plaza Extra proceeds. Otherwise denied.

62. Deny as worded, as Mohammad Hamed did have assets as described in this allegation. Admit he did not pledge them as security for any bank loans obtained by United pursuant to his agreement with Yusuf on how their partnership would handle such matters, with Hamed still being liable for 50% of all such obligations if the partnership could not repay the loan.

63. Deny for lack of knowledge of any specific loan terms and use of any loan proceeds.

64. Admit it takes time to develop a business and that there were set-backs. Also admit that Yusuf, along with Mohammad Hamed (and later Wally Hamed) worked, unpaid, around the clock as the business developed to make the supermarkets profitable.

65. Admit.

66. Deny, as the policy premium was paid from the proceeds of the supermarket, so that Plaza Extra was the beneficial owner of this policy, whose proceeds were used to rebuild and repair the fire damage.

67. Deny as to Mohammad Hamed, who was obligated to help rebuild the supermarket. Otherwise, deny as to Yusuf's brother for lack of knowledge.

68-72. Deny.

73. Hamed managed the supermarket operations, as did Fathi Yusuf, on a daily basis until 1996 -- on exactly the same financial terms as Fathi Yusuf, but this allegation is denied as worded.

74. Deny.

75. As for the first sentence, admitted that Hamed received weekly checks (exactly like Fathi Yusuf), but deny the remainder of this sentence. The other three sentences of this allegation are admitted.

76. Admit the Hamed sons works for the supermarket operations, but otherwise this allegation is denied as worded.

77. Deny.

78. Deny.

79. Deny. Yusuf was in charge of the front office operations of Plaza Extra.

80. It is admitted that Mohammad Hamed did not guarantee any loans directly to any lender, but this allegation is otherwise denied.

81. The first two sentences of this allegation are assertions of law and are therefore denied as worded as not being complete statements of the law. The third sentence is admitted. The fourth and fifth sentences are denied for lack of knowledge. The sixth sentence is denied as worded, as Yusuf certainly expected to use Hamed's share of the partnership proceeds to pay the fees being incurred to defend the case as well as to pay all taxes and penalties determined to be due from the proceeds of the Plaza Extra Supermarkets, which were in fact used for these purposes. The remainder of this paragraph is denied

82. Deny.

83. Deny.

84. Deny.

85. Deny.

86. Admit that Hamed has never received any dividends from United, nor did anyone else to best of his knowledge. The remainder of this allegation is denied.

87. It is admitted that Mohammad Hamed is not a shareholder of United. This allegation is otherwise denied.

88. Deny.

89. It is denied that United paid its taxes from its inception as evidenced by the criminal case and plea. It is also denied United filed proper tax returns at any time, including since the plea was entered. As for the remainder of this allegation, Plaintiff lacks sufficient information as to this averment, so it is denied.

90. It is denied that no "properties" were ever acquired in a partnership name, but admitted that no real property was ever acquired in a partnership name. It is admitted that with regard to real estate purchases or investments made from the 50/50 distribution of partnership net profits, that they were titled 50/50 in both Hamed and Yusuf's joint names or purchased in the of name a corporation which they each owned jointly (or 50/50 in the name of their respective family members), except for Parcel 2-4 Rem. Estate Charlotte Amalie, St. Thomas, USVI, which Yusuf put in the name of United even though 50% belongs to me.

91. Deny as worded, though it is admitted that the net profits were always split 50/50 and the subsequent investments were always made jointly. Admitted that the statements regarding ownership in (i) thorough (iv) are some (but not all) of those subsequent investments of the 50/50 net profits.

92. Admit.

93. Admit Hamed was never indicted, but otherwise deny.

94. Admit.

95. Admit that a joint defense agreement was entered into by the defendants in the criminal case, but otherwise deny.

96. Admit.

97. Admit that Plaintiff never asked the government to charge him with a felony, but denied as to "intervention" as that is a civil concept and has no meaning in a criminal proceeding.

98. Admit that a plea agreement was entered into, which speaks for itself, but otherwise deny.

99. Deny. Both referenced sons have repeatedly asserted that Mohammad Hamed is a partner in Plaza Extra. To the extent this allegation was intended to pertain to the criminal proceedings, this allegation is unintelligible, as defendants in a criminal case have no legal duty to raise any issue, so this allegation is denied for this reason as well.

100. The first sentence is admitted. The second sentence is denied.

101. Regarding the first sentence, this allegation is denied, as Mohammad Hamed is unaware of any representations made to the U.S. Justice Department by his sons. The second sentence is denied as there is substantial evidence that predates the filing of this case about the existence of the partnership (e.g., in court filings by Fathi Yusuf in the Superior Court, correspondence from Fathi Yusuf's counsel, etc.).

102.-105. It is unknown what records Yusuf received from the FBI, so these allegations are denied.

106. Deny.

107. Deny.

108. Deny for lack of knowledge of the specific details of this account.

109. As for the first sentence, deny for lack of knowledge of the specific details of this account. Regarding the second sentence, admit that funds were sent to the West Bank to build a concrete plant which employed workers, but otherwise deny as worded.

110. Admit Yusuf met with the managers at the plant from time to time, but otherwise deny as worded.

111. Deny.

112. Deny.

113. Deny.

114. Deny.

115. Deny.

116. Deny.

117. Deny as no such request has ever been received.

118. Admit the first sentence. Regarding the next two sentences, they are denied as Mohammad Hamed does have an interest in some of these other investments, including but not limited to (1) Parcel 2-4 Rem. Estate Charlotte Amalie, St. Thomas, USVI, which Yusuf put in the name of United even though 50% belongs to Mohammad Hamed and (2) certain properties and/or investments purchased in United's name using partnership funds, such as those purchased with the \$2.7 million improperly removed in August of 2012.

119. Deny as worded as "United's other operations" is not specifically defined.

120. Admit that "that the parties engaged in a course of conduct and possessed certain understandings as to how monies for the Alleged Partnership were accounted for and to be paid." Otherwise, deny.

121. Admit that "Hamed, as a partner owes certain fiduciary duties to the Partnership and to Yusuf as his partner (just as Fathi Yusuf owes the same fiduciary duties to Mohammad Hamed and the partnership). Those duties, among other things, include duties of loyalty and to act in the best interests of the Partnership." Otherwise deny.

122. This calls for a legal conclusion regarding the scope of an agent's authority and hence is denied

123. Deny.

124. Admit.

125. Admit.

126. Regarding the first sentence, it is denied as worded, as United has never referenced any "internal accounting" expense. Regarding the second sentence, admit the referenced motion is pending as alleged. The remainder of this allegation is a statement of the relief allegedly being sought, which allegations are denied to the extent it suggests such relief is warranted or appropriate as a counterclaim in this case since the partnership has not been joined as a party.

127. Deny.

128. Admit the first sentence. Admit the second sentence to the extent it states rent has been paid in full, but otherwise deny to the extent it alleges rent is owed by Mohammad Hamed.

129. Admit that such a demand was made after the initiation of this action, but deny any such rents due.

130. The first sentence is admitted, but the second sentence is denied as worded. As for the remaining allegations, admit that the rent for the Plaza Extra Supermarket at Sion Farm is based on the calculations of rent for the St. Thomas store, but otherwise deny as worded.

131. Admit.

132. Deny.

133. Admit a demand for rent was made, but otherwise deny.

134. Deny.

135. Deny.

136. Admit that United issued a notice to the Partnership, sent to Hamed, on or about January 1, 2012, but otherwise deny.

137. Admit, but deny the partnership ever agreed to pay this amount of rent.

138. Deny.

139. Admit that the partnership still occupies the premises at Sion Farm where one of its Plaza Extra Supermarket is located, but otherwise deny as worded.

140. Deny.

141. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

142. Deny as worded, as defendants have admitted that such a partnership exists.

143. Admit that United now asserts such a claim. Otherwise deny this allegation.

144. Deny.

145. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

146. Deny as worded, as defendants have admitted that such a partnership exists.

147. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

148. Deny.

149. Deny.

150. Deny.

151. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

152. Admit the first sentence. Regarding the second sentence, admit that a partner has a statutory right to an accounting as set forth in the USVI UPA, but otherwise deny as worded

153. Deny.

154. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

155. Deny.

156. Deny.

157. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

158. Deny.

159. Deny.

160. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

161. Admit.

162. Deny.

163. Deny.

164. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

165. Deny any dissolution notice has ever been given, nor does Yusuf have any such rights, as Yusuf has forfeited any partnership rights, including dissolution, in light of his violation of the UPA.

166. Deny

167. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

168. Deny.

169. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

170. Deny.

171. Deny.

172. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

173. Deny.

175. Deny.

176. Deny as worded, as the square footage is incorrect and rent is only owed by the partnership.

177. Deny.

178. Deny.

179. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

180.-184. All of these allegations are denied.

185. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

186. Deny.

187. Deny.

188. Plaintiff incorporates each and every response to the included paragraphs as though restated herein.

189. Deny.

190. Deny.

191. Deny as worded, as all partnership obligations have been paid from the partnership operations of the Plaza Extra Supermarkets, which is responsible for reimbursing all partnership expenses and has the funds to do so.

AFFIRMATIVE DEFENSES

Counterclaim Defendant Mohammad Hamed raises the following affirmative defenses to the counterclaim asserted against him:

1. The statutory limitation period with regard to the alleged bases of relief have passed these claims are barred by the statute of limitations defense.

2. Counterclaim Plaintiffs have failed to state a claim upon which relief can be granted.

3. Counterclaim Plaintiffs have failed to join a party under Rule 19, or file a proper Third Party Action under Rule 14.

4. Counterclaim Plaintiffs have unclean hands and are therefore not entitled to recover.

5. Counterclaim Plaintiffs are not the real parties in interest.

6. Counterclaim Defendant asserts the affirmative defense of accord and satisfaction.

7. Counterclaim Defendant asserts the affirmative defense of estoppel.

8. Counterclaim Defendant asserts the affirmative defense of fraud (as an equitable defense.)

9. Counterclaim Defendant asserts the affirmative defense of laches.

10. Counterclaim Defendant asserts the affirmative defense of release.

11. Counterclaim Defendant asserts the affirmative defense of failure to mitigate damages or, alternatively mitigation of damages.

12. Counterclaim Defendant asserts the affirmative defense of offset.

13. Counterclaim Defendant asserts the affirmative defense of indemnity.

14. Counterclaim Defendant asserts the affirmative defense of unconscionability.

15. Counterclaim Defendant asserts the affirmative defense of ratification.

16. Counterclaim Defendant asserts the affirmative defense of the failure of consideration.

17. Counterclaim Defendant asserts the affirmative defense of payment.

Dated: January 16, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2014, 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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