

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

14 FEB 10 PM

MOHAMMAD HAMED, by his )  
authorized agent WALEED HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
vs. )  
 )  
FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )  
 )  
vs. )  
 )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, )  
 )  
Additional Counterclaim Defendants. )  
 )  
\_\_\_\_\_ )

CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

DEFENDANTS' OPPOSITION  
TO PLAINTIFF'S MOTION TO COMPEL  
DEFENDANTS TO COMPLY  
WITH THE PRELIMINARY INJUNCTION

I. SUMMARY

Defendants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants") have fully complied with this Court's Order of April 25, 2013 granting Plaintiff Mohamed Hamed ("Hamed") a preliminary injunction (the "Preliminary Injunction") relating to the continued operations of the three Plaza Extra Supermarkets ("Plaza Extra Stores"). Likewise, Defendants have complied with the clarifying order entered on May 31, 2013 ("Clarifying Order"), which was issued in response to *Defendants'* request for the Court's guidance to insure proper compliance and to address specific areas of concern.

At present, the Plaza Extra Stores are running and operating despite the pending litigation and claims between the parties. Vendors and suppliers are being paid timely. The accounting operations have been updated and properly automated thanks to the efforts of the comptroller hired by United, John Gaffney. The transactions of the Plaza Extra Stores are fully transparent to members of both the Hamed and Yusuf families. And both members of the Hamed and Yusuf families have access to the Plaza Extra Stores' operating accounts at Scotia Bank and Banco Popular.

That said, the parties are involved in litigation on multiple fronts and there exists a high level of distrust between them. Because the Hamed employees realize they cannot be unilaterally terminated after the Preliminary Injunction, as they could have been before April 25, 2013, they have taken advantage of the situation by using the Preliminary Injunction as a shield. Specifically, Waleed Hamed fails to show up for work or otherwise do the work customarily performed in the past. Hence, when the issue of discretionary payments for bonuses and vacation pay arose, Yusuf objected. As a result, no bonuses or vacation pay were paid to either the Hamed or Yusuf managers, even though the Yusuf managers are actively engaged in the business and regularly appear for work. Hence, the burden of Yusuf's objection was shared equally, as neither the Hamed nor the Yusuf family members received the discretionary bonus payments.<sup>1</sup> Such payments are not essential to the day-to-day operations of the Plaza Extra Stores and Hamed has shown no adverse impact as a result of the non-payment of these bonuses and vacation pay.

---

<sup>1</sup>By contrast, United bears all the detrimental effects of Hamed's refusal to allow the payment of rent to United even though Hamed does not even dispute that a very significant amount of rent is due and owing. The issue of United's entitlement to rent has been fully briefed and is awaiting a decision from this Court.

Access to the accounting information was provided pursuant to agreement between the parties in such a way as to not disrupt the continued orderly operations of the Plaza Extra Stores<sup>2</sup> and, yet, insure transparency. Likewise, access has been provided as to the bank accounts. As to United's suit against Wadda Charriez, while sufficient grounds exist for her termination, termination is not allowed under the Preliminary Injunction, since Hamed will not agree to this action. However, United is not prohibited by the Preliminary Injunction from pursuing its claims and is, in fact, obligated to pursue its claims for misappropriation of United's funds as it runs the risk of those claims being barred by the applicable statute of limitations, if not timely pursued. Furthermore, the filing and pursuit of the Charriez suit has had no adverse impact on the operations of the Plaza Extra Stores.

Nonetheless, on January 22, 2014, Hamed filed a Motion to Compel Defendants to Comply with the Preliminary Injunction and Clarifying Order (the "Motion"), citing four areas of alleged violations:

1. Yusuf's refusal to pay discretionary bonuses and vacation pay to either the Yusuf or Hamed managers was a violation of the Preliminary Injunction;
2. Despite having received regular monthly access to the Sage50 accounting system and enjoying complete transparency of the accounting of the Plaza Extra Stores' operations in a manner agreed by the parties for the last seven months, Yusuf violated the Clarifying Order (that Yusuf requested) by not providing Hamed or, more specifically, Waleed Hamed with "real time" access to the accounting system, even though he never

---

<sup>2</sup> Various members of the Hamed family face suits by United for their financial misdeeds and do not require real time access to the accounting system to perform their duties.

had such access before entry of the Preliminary Injunction and has no need for such access to accomplish his daily responsibilities;

3. United failed to sign the necessary documents to give Hamed access to all bank accounts and statements in violation of the Preliminary Injunction; and,

4. United should not have filed suit against one of its employees, Wadda Charriez, for falsifying her hours and misappropriating in excess of \$13,000 from United just for the fiscal year of 2012.

Defendants respectfully submit that Hamed has utterly failed to establish any clear violations of the Preliminary Injunction or subsequent Clarifying Order. The facts presented in the Motion are, at best, inaccurate. Even if the Court decides to accept these facts as true, none of the matters alleged show a clear violation of the Court's Preliminary Injunction or subsequent Clarifying Order.

## II. ARGUMENT

Although couched as a "Motion to Compel," in essence, Plaintiff contends there has been a violation of the Preliminary Injunction and the subsequent Clarifying Order akin to contempt. To make a civil contempt finding, it must be shown that a party "failed to comply with a clear and unambiguous court order." East End Taxi Services, Inc. v. Virgin Islands Taxi Association, Inc., 2008 U.S. Dist. LEXIS 9360, 47-48 (D.V.I. 2008). In considering such issues, much deference is given to "[t]he longstanding, salutary rule in contempt cases...that ambiguities and omissions in orders rebound to the benefit of the person charged with contempt." Id. Hence, a plaintiff "has a heavy burden to show a defendant guilty of civil contempt." Id. It must be done by "'clear and convincing evidence,' and where there is ground to doubt the wrongfulness of the

conduct, he should not be adjudged in contempt." *Id. citing Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994).

Here, there has been no violation of the Preliminary Injunction or the Clarifying Order. At best, the parties disagree as to the interpretation of whether their actions comport with the purpose of the Preliminary Injunction. However, the Defendants believe all their actions to be in compliance with not only the express language of the Preliminary Injunction and Clarifying Order but also with the purpose of these orders.

**A. The Preliminary Injunction and Subsequent Clarifying Order**

On April 25, 2013, this Court entered the Preliminary Injunction requiring both the Yusuf and Hamed parties to continue managing the Plaza Extra Stores as they allegedly have always done in the past. Specifically, the Preliminary Injunction ordered the following:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.

Hamed v. Yusuf, 58 V.I. 117, 138 (Sup. Ct. April 25, 2013).

Thereafter, Defendants sought clarification relating to the management as well the means by which to supply information necessary to comply with the Preliminary Injunction. In response to this request for clarification, on May 31, 2013, the Court issued its subsequent Clarifying Order. As to access to the financial information, the Clarifying Order provides "that only mutual access of all sensitive financial data, records and financial statements shall be permitted according to a process to be determined by the Parties." As discussed further

below, such a process was put into place between the parties over seven months ago and Defendants have complied by supplying financial information to Hamed each and every month. As to the other alleged infractions, none have merit.

**B. Access Was Provided as to the Bank Accounts.**

All Yusuf and Hamed managers have access to the operating bank accounts of Plaza Extra. As a matter of fact, Hamed served a copy of the Preliminary Injunction on each bank's manager to obtain access. To date, each check requires both signatures, and all parties have access to the Plaza Extra Stores' operating accounts. See Declaration of Maher Yusuf, attached as **Exhibit A**. In fact, the dual signature requirement is clearly known by the personnel at the impacted banks and they are mindful of the requirements of the Preliminary Injunction. This applies to both the operating accounts in **ScotiaBank** as well as **Banco Popular**. See Letter of Scotia Bank dated January, 2014, attached as **Exhibit B**. See Email to Attorney Sam Grey, attached as **Exhibit C**.<sup>3</sup> However, there is no dispute that Defendants have complied with the Preliminary Injunction in this regard and Hamed's accusations to the contrary are simply false.

**C. Access to Financial Information has been Provided.**

Similarly, Yusuf has provided Hamed access to the financial information. Hamed falsely alleges that he and his counsel have patiently waited for passwords to access the Sage50 information without response by Yusuf. This is patently untrue. Both parties agreed as early as July of 2013 that United's comptroller, John Gaffney, would provide a copy of all financial files every month on a hard drive to Hamed's counsel. Defendants, through John Gaffney, have provided Hamed backups of the Sage50 accounting system every month without exception. See

---

<sup>3</sup> While there appears to have been some confusion by counsel for Banco Popular, our clients understood from Banco Popular personnel the Hameds are signatories to the Plaza Extra's operating accounts.

Declaration of John Gaffney, attached as **Exhibit D**.

This arrangement arose out of the Clarifying Order, which provided that mutual access to financial information "shall be permitted according to a process to be determined by the Parties." Such access is actually greater access than had historically been provided to the Hamed family members and thus, exceeded the requirements of the Preliminary Injunction to maintain the *status quo*. Nevertheless, so as to be compliant with the Preliminary Injunction and subsequent Clarifying Order, such access was provided monthly without exception.

As to the manner of providing the access, "live" access was not required by Preliminary Injunction or the Clarifying Order. Further, Defendants had voiced serious concerns about providing such "live" access to the Hameds because of a previous incident where a hard drive containing computer and financial data had been "lost" while in Waheed Hamed's possession. That loss could have resulted in nothing short of financial disaster were it not for an earlier backup created by John Gaffney which he prepared after his repeated requests for same were left unanswered. See Declaration of John Gaffney, **Exhibit D**. Similarly, "live" access to the accounting system, where it may be altered or wiped out either intentionally or inadvertently, puts the operations of the Plaza Extra Stores at risk. Much effort was taken to insure the integrity and accuracy of the information in the Sage50 accounting system, live access by those not in need of same compromises these efforts and the overall reliability of the information contained therein. Hence, neither the Yusufs nor the Hameds have live and immediate access to the accounting system. See Declaration of John Gaffney, **Exhibit D**. This is specifically designed to protect the integrity of the system, and to avoid the almost catastrophic problem that occurred in December of 2012. See Declaration of John Gaffney, **Exhibit D**. Moreover, there

exists no need for "live" access to the accounting systems by either Hamed, who is illiterate and retired, or Waleed Hamed, who is a manager, albeit an absentee manager, to perform any of his responsibilities in the daily operations of the Plaza Extra Stores. Rather, all accounting tasks for which "real time" access to the accounting system is needed are accomplished by Mr. Gaffney and members of his staff, who have access as needed. Also looming large in this agreement to timely provide all backup information was a fear of providing "live" access to financial information to Waleed Hamed, who was a defendant in a number of lawsuits alleging financial misconduct and embezzlement.

As a result, the parties agreed to a system whereby the Sage50 backup files were provided by John Gaffney (on Defendants' behalf) to the Hameds each and every month, without fail. See Exhibit D at ¶¶ 4, 7. Such information is a full and complete accounting of the financial operations and financial data and records maintained for the Plaza Extra Stores. Hence, it is disingenuous for Hamed to fail to mention this key fact in his Motion. Rather, the parties did confer regarding access to the Sage50 system and the pertinent information has been provided to Hamed every single month. Direct and unrestricted "live" access is not required. Rather, only "mutual access" is required. Given the parties' agreement and practice for the last seven months, the risks to the operations associated with "live" access to those other than the accounting personnel and especially with the concerns of financial misconduct by Hamed's sons, the access actually provided is appropriate and, most importantly, in compliance with the Clarifying Order.

If Hamed is contending that he was not in "agreement" with this arrangement and, therefore, had not reached an agreement regarding access to the Sage50 system, Hamed should have stated so much sooner. But to fail to acknowledge that he *has been* receiving the



accounting information each month and, therefore, has all the financial information, is disingenuous.

If the Court finds that the parties have not "agreed" to a process and that the process that has been in place over the last seven months is somehow inadequate, then Defendants respectfully request the Court to schedule a full hearing to provide the Court with a factual basis regarding Hamed's need for "live" access, which access is greater than he ever previously enjoyed and, if so, the proper controls and supervision of that access. However, in no event can Defendants' actions constitute a violation of the Clarifying Order which requires production in a manner to which the parties agree.

#### **D. Refusal To Pay Discretionary Bonuses**

As has always been the practice, none of United's employees operate under employment contracts and, thus, none have any contractual or other entitlement to bonuses. Rather, they are at-will employees. Hence, none of the employees are entitled to any bonuses by right. See Exhibit A at ¶ 2.

During the period that the Preliminary Injunction has been in place, Waleed Hamed has failed to regularly appear for work. Instead, believing that he is protected from termination by the Preliminary Injunction, Waleed Hamed appears randomly and fails to perform his customary work tasks. Waleed Hamed is also a defendant in suits between these parties stemming from his financial misdeeds. Hence, were it not for the Preliminary Injunction, Waleed Hamed could easily be terminated for cause.<sup>4</sup>

---

<sup>4</sup>In fact, as early as July 25, 2013, Defendants sought this Court's permission to terminate employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez for their various transgressions including failure to appear and financial misdeeds. Hence, Defendants have no intention to

Given the fact that bonuses are neither contractually required nor essential to the continued operations of the Plaza Extra Stores, Yusuf advised the Hamed managers that he would not agree to the payment of any discretionary bonuses to members of the Yusuf and Hamed families. Hence, the decision impacted the members of both the Yusuf and Hamed families equally. Further, the notice was provided sufficiently in advance and in writing so as not to operate as a surprise. Finally, the decision did not impact those employees otherwise unrelated to the dispute between the parties.

Despite just cause for their termination, United has never reduced or refused to pay the salaries of any the Hamed managers or Wadda Charriez. To the contrary, United has maintained their salaries just as in the past. However, bonuses are discretionary in nature and unlike salaries are not issued as a matter of right in the Plaza Extra Store's business operations. Hence, as the Preliminary Injunction requires both families to consent as to checks, Yusuf simply withheld his consent for bonus checks. Failure to pay such bonuses has not resulted in any detriment to the Plaza Extra Stores and there is no legal requirement that such discretionary bonuses be paid. Therefore, there is no violation of the Preliminary Injunction by Yusuf's objection to paying bonus checks to those subject to suits by United. Yusuf did not act in a manner only to prejudice the Hamed family, rather, his objection to the bonus/vacation checks was neutrally applied as his family members likewise did not receive such payments. If the Hameds believe there exists a legal obligation or requirement to pay these discretionary payments, then the Hamed family could file an appropriate motion for further clarification of the Preliminary Injunction<sup>5</sup>. Because

---

violate the Court's Preliminary Injunction and have sought the Court's permission to terminate these employees for the reasons outlined in the July 25, 2013 Motion, which remains pending.

<sup>5</sup> United has done just that in its Motion To Withdraw Rent which Motion has been fully briefed and is currently awaiting adjudication by this Court.

there is no obligation under the Preliminary Injunction or Clarifying Order to make such discretionary payments, Yusuf was justified in refusing to consent to such payments.

**E. The Charriez Lawsuit and Bonus**

Wadda Charriez has falsely reported her work hours and overtime and has been unjustly enriched as a result of her misrepresentations. Defendants have already filed a motion for permission to terminate her employment since it is clear that unilateral termination of an employee is prohibited by the Preliminary Injunction. A Motion to Terminate Employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez has already been filed, and is awaiting adjudication by this honorable court. Because of Wadda Charriez's documented misconduct, Defendants cannot possibly agree that she should receive a bonus.

While the Preliminary Injunction prohibits a unilateral termination, it contains no language regarding lawsuits for recoupment or restrictions on United's legal rights to recover for losses. To restrict United from access to the courts to vindicate its legal interests is beyond the scope of the Preliminary Injunction. Rather, the Preliminary Injunction was designed to maintain the *status quo* of the on-going supermarket operations. It does not restrict the substantive legal rights of any party or their ability to access the courts.

Moreover, the purpose of the Preliminary Injunction is to safeguard the asset to which the parties are claiming an interest. The rationale being that the asset and its value are to be preserved for the mutual benefit of both parties, whomever or however ownership and interests are ultimately determined. Therefore, any person whose actions operate to diminish or reduce the value of the asset as a result of theft or some other improper taking is a person which threatens or may undermine the value of the asset at issue. In order to maintain the value of the

very asset over which the parties are disputing, efforts must be taken to preserve the asset. Here, the only party with a proper legal interest in pursuing Wadda Charriez for her alleged wrong doing and who has suffered the loss is United, her employer. Hence, the filing and continuation of the Wadda Charriez case is not prohibited by the Preliminary Injunction and is in furtherance of protecting the value of the assets in dispute.

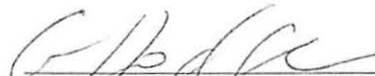
### III. CONCLUSION

Because Defendants have not violated the Preliminary Injunction or the Clarifying Order, the Court is respectfully requested to deny the Motion and provide Defendants with such further relief as is just and proper.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: February 10, 2014

By:

  
Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

and

**Nizar A. DeWood, Esq.** (V.I. Bar No. 1177)  
**The DeWood Law Firm**  
2006 Eastern Suburbs, Suite 101  
Christiansted, VI 00830  
Telephone: (340) 773-3444  
Telefax: (888) 398-8428  
Email: [info@dewood-law.com](mailto:info@dewood-law.com)

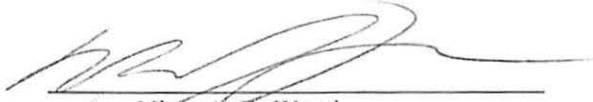
Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT on February 10, 2014 a true and exact copy of the foregoing was served via electronic mail on:

**Joel H. Holt, Esq. (V.I. Bar No. 6)**  
**Law Office of Joel H. Holt**  
2132 Company Street  
Christiansted, USVI 00820  
Email: holtvi@aol.com  
*Counsel for Plaintiff*

**Carl J. Hartmann III, Esq.**  
5000 Estate Coakley Bay  
Unit L-6  
Christiansted, USVI 00820  
Email: carl@carlhartmann.com  
*Co-Counsel for Plaintiff*



---

Nizar A. DeWood

Index of Exhibits

Exhibit A - Declaration of Maher Yusuf

Exhibit B – Letter of Scotia Bank Dated January, 2014

Exhibit C - Email to Attorney Sam Grey

Exhibit D – Declaration of John Gaffney, Controller for United Corporation

# EXHIBIT

## A

### **Declaration of Maher Yusuf**





3. As I understand the preliminary injunction issued by this Court on April 25, 2013 (the "Preliminary Injunction"), it does not require Defendants to agree with Plaintiff regarding bonuses as they are separate and apart from the salaries of the employees. Rather, the Preliminary Injunction simply enjoins "unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations" of the Plaza Extra Stores.

#### WADDA CHARRIEZ

4. United has always abided by the Preliminary Injunction. United has not demoted, fired, or otherwise affected the employment of Wadda Charriez, despite the fact that she has submitted false work hours. To date, she remains employed by United.
5. United filed suit seeking recoupment of wages paid to Wadda Charriez as a result of her falsely reported work hours. As I understand the Preliminary Injunction, it does not restrict United from filing any suits in court to vindicate its interests and legal rights.

#### ACCESS TO BANK ACCOUNTS

6. All Hamed and Yusuf managers have access to both the Scotia Bank and Banco Popular Plaza Extra operating accounts. There are no restrictions on accessing and viewing the accounts online. The allegation that United has refused to sign documents to enable the Hamed managers access is not true. Moreover, all checks must be signed by both a Hamed manager and a Yusuf manger. This co-signing imposed by the Preliminary Injunction has imposed considerable additional responsibilities upon the Banks in which the Plaza Extra Stores' accounts are maintained. See, e.g., correspondence from ScotiaBank to me attached as **Exhibit B**.

#### ACCESS TO UNITED'S FINANCIAL INFORMATION

7. Concerning access to United's financial information, I have instructed United's accountant, John Gaffney, to provide counsel for Plaintiff on a monthly basis with

backups of United's Sage50 files, which reflect all of the financial information relating to the Plaza Extra Stores. This information is provided to Attorney Carl Hartmann, co-counsel to Plaintiff.

8. Attorney Hartmann came to one of the Plaza Extra Stores in June of 2013 with Hisham Hamed and reached an agreement with United's attorney, Nizar DeWood, and John Gaffney, pursuant to which Attorney Hartmann would receive backup of all Sage50 files every month. This has been the agreement since June of 2013. Attorney Hartmann has been provided consistent backups of all information every single month.
9. The reason why we all entered into this agreement is to protect the financial information of United. Back in December of 2012, the entire hard drive in the possession of Waheed Hamed suddenly went missing for the first time in United's history. If it was not for a backup created by accountant John Gaffney, United would have lost virtually all of its financial information. Further, there is no need for "live" unrestricted access by Hamed or the Hamed managers to perform their daily responsibilities. Prior to April 25, 2013, the Hamed managers did not have "live," unrestricted access to the accounting system.
10. The Hameds have a true copy of all financial information United has. United is unwilling to provide Waleed Hamed "live," unrestricted access to the accounting system. Given that there is no need for "live," unrestricted access to perform his daily responsibilities and such access would be greater than Hamed or any Hamed manager had in the past, such access is simply unnecessary. Further, the fact that there are numerous lawsuits pending against Waleed Hamed, Mufeed Hamed, Waheed Hamed, and Hisham Hamed for accounting of funds belonging to United provided additional concern for allowing unrestricted "live" access.
11. The allegation that United is not providing access to financial information is false and is contrary to the agreement we all reached in June of 2013.

Date: 2-10-14

  
\_\_\_\_\_  
Maher Yusuf, President of United Corporation

# EXHIBIT

## B

**Letter of ScotiaBank**



Sunny Isle Branch  
4500 Estate Diamond  
P O Box 773, Christiansted, VI 00820  
Tel: (340) 778-5350 Fax: (340) 773-3225

January 29, 2014

Mr. Yusuf Yusuf  
United Corporation d/b/a Plaza Extra  
4605 Tutu Park Mall, Suite 200  
St. Thomas, VI 00802

Re: United Corporation d/b/a Plaza Extra,  
Yusuf Yusuf and Hisham Hamed

Dear Mr. Yusuf:

As requested, we furnish the following information for United Corporation d/b/a Plaza Extra which reflects the following individuals have full access to the accounts noted below.

<u>Account Number</u>	<u>Names of Signing Authorities to all accounts listed</u>	
044-55312010, 044-55356719,	Maher Yusuf	Waheed Hamed
044-96010640, 058-60086413,	Fathi Yusuf	Waleed Hamed
058-60092918	Yusuf Yusuf	Mufeed M. Hamed
	Najeh Yusuf	Hisham Hamed

**\*Please note, that "Any Two – One HAMED and One YUSUF ALWAYS to sign at all times".**

Please do not hesitate to contact the Maggie Burke, telephone: 340-774-0037 ext 247 or [maggie.burke@scotiabank.com](mailto:maggie.burke@scotiabank.com) if additional information is required.

Best Regards,

Maggie Burke  
Dual Role Manager

# **EXHIBIT**

## **C**

**Email to Sam Grey**

**Nizar DeWood, Esq.**

---

**From:** Nizar DeWood, Esq. <dewoodlaw@gmail.com>  
**Sent:** Wednesday, January 29, 2014 1:43 PM  
**To:** 'sgrey@nnldlaw.com'  
**Cc:** 'Joel Holt'; 'Gregory H. Hodges'; 'Charlotte Perrell'  
**Subject:** Banco Popular Authorizations

Sam,

Atty Holt filed a Motion in court where he alleged that the Hameds have no access to the Banco Popular (BP) accounts because our clients failed to sign the necessary documents.  
My clients checked with BP, and BP said that in fact all the Hameds are signatories, and have access to the accounts. BP then referred me to your office for further details. Can you please clarify the Hamed's access authority to Plaza Extra's operating accounts?

Thank you.

Nizar A. DeWood, Esq.

DeWood Law Firm  
2006 Eastern Suburb, Suite 102  
Christiansted, V.I. 00820  
t. (340) 773.3444  
f. (888) 398.8428

**CONFIDENTIALITY NOTICE:** The information contained in this transmission is covered by the Electronic Communication Privacy Act, U.S.C. Sec. 2510-2521, and may contain confidential information, and is intended only for the use of the person or persons to which it is addressed. Any dissemination, distribution, duplication, or forwarding of this communication is strictly prohibited. If you are not the intended recipient, or believe you may have received this communication in error, please notify the sender immediately, and destroy all copies of the original message. Thank you.

# EXHIBIT

## D

**Affidavit of John Gaffney**





overcome and on July 18, 2013, I provided the PDF files shown on Attachment A hereto to Hisham Hamed for Carl Hartman. Those documents consisted of:

2013-01 0000 Unadjusted Financial East  
2013-01 0000 Unadjusted Financials STT  
2013-01 0000 Unadjusted Financial West  
2013-05 10300 Cash Operating  
2013-05 10400 Cash Cr Card Deposits  
2013-05 10500 Cash Telecheck  
2013-06 0000 YTD General Ledger East  
2013-06 0000 YTD General Ledger STT  
2013-06 0000 YTD General Ledger West  
2013-06 11000 Accounts Receivable  
2013-06 20000 Accounts Payable

3. As the controller of United Corporation, I have implemented a comprehensive accounting system known as Sage50 (formerly Peachtree Accounting). A summary of the history of the Plaza Extra accounting system is as follows:
- a. The accounting function was performed in St. Thomas for many years. Just prior to my arrival, it was performed under the supervision of Ms. Soeffing, United's previous controller.
  - b. The outside reporting system was Peachtree Complete 2012 while Retail POS was in use internally in the supermarkets. There was no interface between the two. While the St. Thomas Peachtree accounting was performed so as to produce detailed audit trails of Plaza Extra there (with the exception of POS), such was not the case with the two St. Croix locations and the Sion Farm shopping center.
  - c. Under the previous system, monthly analysis of cash receipts and cash disbursements was performed and the results were entered into the accounting system through approximately 18 monthly journal entries. Payroll and accounts payable functions in St. Croix were in completely separate databases. For instance, Plaza West had a database for payroll and another database for accounts payable with no interface between them. Essentially, the accounting systems in St. Croix were being used as word processors for accounts payable and payroll. Monthly backups of the payroll systems were provided to St. Thomas, mostly to produce the monthly journal entries. At quarter-end and year-end, St. Thomas personnel did produce the necessary payroll returns, although typically with a number of errors.
  - d. Further, bank reconciliations were not performed. Although Ms. Soeffing often made reference to bank reconciliations, the action performed was simply a bank statement analysis from which she produced monthly journal entries. There was no formal procedure in place to reconcile the POS system to Peachtree.

- e. After review of the systems in place and their gaps and weaknesses, I recommended that United convert their accounting to the Sage50 accounting system which would provide a better and more comprehensive means of tracking the business operations. The Sage50 system consisted of:
  - 1. A new chart of accounts;
  - 2. Control established between Peachtree and POS;
  - 3. All cash receipts and disbursements posted daily so that true cash reconciliation could be done;
  - 4. Monthly close procedures including reconciliation of all balance sheet accounts in process.
- f. A conversion date of January 1, 2013 was established.
- g. The conversion got off to a rough start. On October 15, 2012, Ms. Soeffing resigned after receiving another job offer from an EDC company in St. Thomas. She only provided two weeks notice. However, she did agree to complete the 2012 accounting and W-2 reporting in the evenings on a contract basis.
- h. I had made persistent requests that Ms. Soeffing send me backups. I made these requests for over thirty (30) days without receiving the backups requested. At the same time, I understood that Waheed (Willie) Hamed was reported as questioning my need for the backups.
- i. As a result of my failed efforts to receive backups, on December 11, 2012, late in the evening, I guided Nejeih Yusuf through the steps for making a system backup.
- j. On December 17, 2012, the system crashed while I was away in Florida.
- k. Had we not had this backup that I created after my requests for same were ignored, it would have been a catastrophe.
- l. Willie Hamed took charge of getting the hard drive (which had crashed) replaced.
- m. I had an expert technician, who was confident he could salvage data from the hard drive regardless of its condition and we needed it to restore the information from December 11, 2012 through the date of the crash on December 17, 2012.
- n. Through Ms. Soeffing, I requested that Willie Hamed provide me the hard drive so that I could have the technician undertake efforts to extract data from it and restore the week that was lost. Margie then advised me that Willie had thrown out the old hard drive.
- o. Thereafter, on January 26, 2013, Chericia Joseph-Blyden, the payroll clerk resigned with only three (3) days notice. Conversion efforts were delayed while immediate issues of payroll functions were addressed following Ms. Joseph-Blyden's departure. In addition, other accounting personnel were needed to make up for these losses. They had had to be hired and then trained, causing further delays in the conversion.
- p. The conversion efforts were not fully complete until July, 2013.
- q. To protect the integrity of financial data, neither the Yusufs nor the Hameds have live and immediate access to the system. This is specifically designed to protect

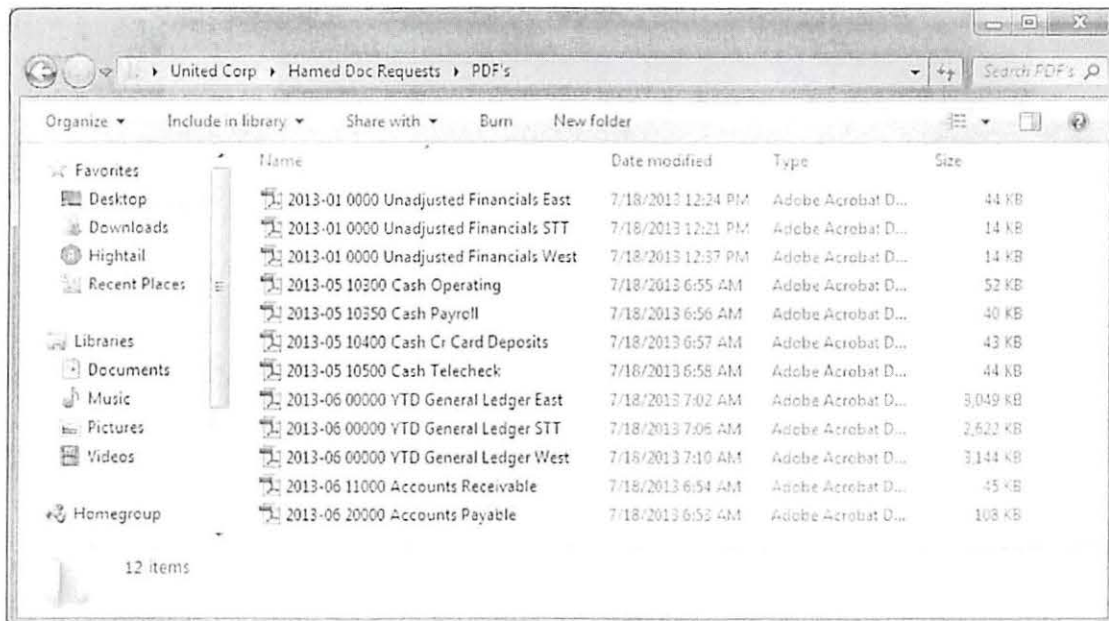
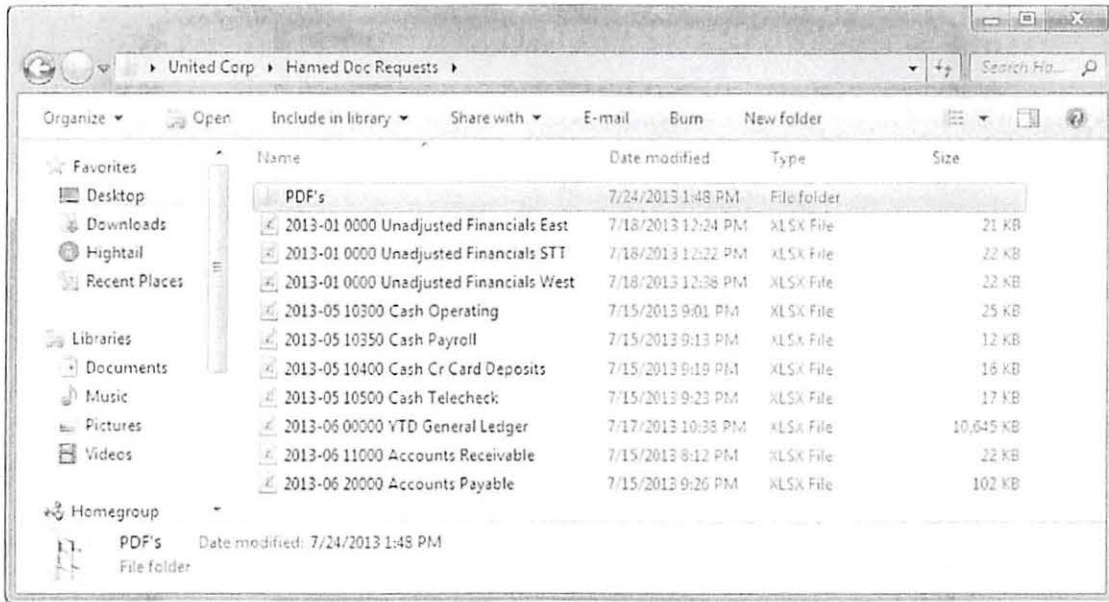
the integrity of the system, and to avoid the almost catastrophic problem United experienced in December of 2012.

4. After discussions, Hisham through his attorney Carl Hartmann, and United's counsel Nizar DeWood, came to an agreement where I would provide monthly backups to Attorney Carl Hartmann on a drive as "live" access was not needed or required and providing same would compromise the integrity of the accounting system.
5. Attorney Hartmann's allegation that management by use of "old backups is time consuming, inaccurate, and wholly insufficient" is false and dishonest. Attorney Hartmann never complained to me or anyone in my staff about any information being "altered" or "insufficient". As a matter of fact, Attorney Hartmann has expressed appreciation for the backups he was receiving.
6. The allegation that the data in the backup provided to Attorney Hartmann is "old, and is a duplicate of the information on the system that I utilize and supervise. Both the Hameds and Yusufs can request financial data at any time, and backups of the information should anyone desire to view the actual accounting information on their own computers.
7. Copies of each backup is delivered to Attorney Hartmann upon request through Hisham.
8. The allegation that it would take an absurd amount of time to reconstitute the data is false. Any backup can be restored in seconds, and all financial statements can be printed.
9. If any Hamed questions the integrity of the backup, anyone is more than welcome to compare the information on the current live system with the backup. This can be done easily by simply bringing in a laptop computer and restoring the data from a backup and comparing it to any of the information on the system "live" with proper supervision.
10. The agreement was entered into by the parties because of the near loss of all financial information of United Corporation in December of 2012. At the time, that information was in the custody of Waheed Hamed, the Hamed manager of the St. Thomas store.
11. I was advised by Waheed Hamed that the drive had "crashed." When I asked him to give me the physical drive so I can send it to an IT expert to attempt to restore any data from it, I was told that the drive was thrown away.
12. Fortunately, I had created a backup of all information two weeks prior to the hard drive's crash. I was able to restore, implement, and design an effective accounting system for United Corporation whereby any interested party can obtain financial statements, and copies of the actual Sage50 drive.

13. I have provided Attorney Hartmann with monthly copies of the Sage50 files for his review. This again was the agreement between the parties, and I have done so for the last five months without exception.
14. The Sage50 system is currently accessed by myself and authorized staff. No one from the Yusuf or Hamed family has live access to the system. Giving live access to the system can result in inadvertent or intentional destruction of critical financial data.
15. I have never been advised by neither Hisham nor Attorney Hartmann why immediate and unrestricted live access is necessary, especially considering the level of distrust between the parties, and the pending lawsuits against several of the Hamed's for financial misconduct.
16. Allegation that copies of all financial information of the Plaza Extra Operations have not been provided to the Hamed's is simply false.
17. I am attaching various email communications with Carl Hartmann to demonstrate the level of cooperation. At no point did United ever restrict the Hameds access to information.

Date: 2/10/14

  
\_\_\_\_\_  
John Gaffney



ATTACHMENT

-A-