

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

MOHAMMAD HAMED BY HIS  
AUTHORIZED AGENT WALEED  
HAMED  
VS. FATHI YUSUF AND UNITED  
CORPORATION

Case Number SX-2012-CV-0000370  
Action For DAMAGES

**NOTICE**  
**OF**  
**ENTRY OF ORDERS**

✓ JOEL HOLT, ESQ.  
NIZAR DEWOOD, ESQ.  
MARK ECKARD, ESQ.

GREGORY HODGES, ESQ.  
CARL HARTMANN III, ESQ.

Please take notice that on **3rd day of April, 2014** a(n) TWO ORDERS dated **April 2, 2014** was entered by this Court in the above-titled matter.

Dated: **3rd day of April, 2014**

ESTRELLA H. GEORGE  
Acting Clerk of the Court

By: IRIS D. CINTRON  
TITLE: COURT CLERK II

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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATON, )  
Defendants/Counterclaimants )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )  
Counterclaim Defendants. )

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CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**ORDER**

This matter is before the Court on Plaintiff's Motion and Memorandum in Support to Compel Defendants to Comply with the Preliminary Injunction ("Motion to Compel"), filed January 22, 2014; Plaintiff's Notice of Supplemental Exhibit to Motion to Compel re Yusuf's Refusal to Authorize Charriez Annual Bonus, filed January 24, 2014; Plaintiff's Notice of Filing Supplemental Declaration re Motion to Compel Compliance with Preliminary Injunction, filed January 28, 2014; Defendants' Opposition to Plaintiff's Motion to Compel Defendants to Comply with the Preliminary Injunction ("Opposition"), filed February 10, 2014; and Plaintiff's Reply re Plaintiff's Motion to Compel Compliance with PI ("Reply"), filed February 11, 2014. For the reasons that follow, Plaintiff's Motion to Compel will be granted in part and denied in part.

Plaintiff argues that Defendants' actions and inactions violate this Court's April 25, 2013 Preliminary Injunction ("PI") in five ways: First, Defendant Yusuf has refused to pay the

managers' annual bonuses and vacation pay. Second, Defendant United refuses to share the password for the Sage50 accounting system with Hamed. Third, Defendants will not execute the necessary documents giving Hamed access to certain bank accounts and statements of the business. Fourth, United has filed a lawsuit against employee Wadda Charriez. And finally, Yusuf has refused to pay Ms. Charriez her annual bonus. Plaintiff argues that these actions violate both the April 25, 2013 PI and the May 31, 2013 Clarifying Order.

**I. Defendant Yusuf's across-the-board refusal to consent to payment of discretionary bonuses to managers does not violate the Court's Orders.**

Plaintiff argues that Yusuf's refusal to pay the "routinely paid" annual sum of \$61,000 to the store managers violates that portion of the PI which requires that "the operations of the three... stores shall continue as they have throughout the years prior to this commencement of this litigation." *See* Motion to Compel, at 2.

Defendants argue that there is no contractual obligation of the businesses to pay bonuses and no contractual right of the managers to receive bonuses; they are purely discretionary. As all the managers (Hameds and Yusufs) have received no annual bonuses, there is no unilateral action by either party adversely affecting the other. *See* Opposition, at 10. While bonuses have historically been paid, under current circumstances the refusal of Defendant Yusuf to authorize discretionary bonuses cannot be seen to violate the PI, as long as that refusal is across-the-board as to all managers.

The fact that Defendants' comptroller factored anticipated bonuses into his review of prospective expenses in the context of Defendants' argument for a greater injunction bond is not relevant to the present issue. The Court's April 25, 2013 Order precluded unilateral actions by

either party and ordered continuous operations based on years prior. Without evidence that Hamed (or his representatives) historically controlled the determination as to whether to issue yearly bonuses, or that the denial of the present bonuses detrimentally affects only the Hamed managers, the Court declines to find that Defendant Yusuf's refusal to agree to authorize annual bonuses and vacation pay constitutes a violation of the April 25, 2013 Preliminary Injunction.

**II. The PI and Clarifying Order require that the Hamed managers have mutual access to financial data, records and statements, including the Sage5 accounting system.**

The May 31, 2013 Clarifying Order requires that "mutual access of all sensitive financial data, records and financial statements shall be permitted according to a process to be determined by the Parties." True to form, the parties remain unable or unwilling to jointly determine a process to provide such mutual access to financial data and records, and again require the Court's intervention.

Defendants' attempted compliance with their obligation to provide mutual access to financial information by supplying a backup copy containing last month's accounting records is patently inadequate. Defendants shall provide real-time access to Plaintiff (and representatives) to current data and records, including the Sage5 accounting system, in a manner that protects the security and integrity of the information provided. The parties shall mutually determine the means of providing such access, by shared password or newly issued password(s) or otherwise. Failure of the parties to devise a mutually acceptable workable process for providing access to required financial information may result in an assessment of costs or imposition of other sanctions against any party or counsel deemed responsible.

**III. Plaintiff Hamed shall have equal access to business operating accounts at Scotia Bank and Banco Popular.**

Plaintiff concedes that checks written on the businesses' operating accounts require the signatures of each party, yet contends that he has not been granted "mutual access" to bank statements and "online control" has been denied. *See* Reply, at 4. Defendants claim that Hamed managers "have access to the operating bank accounts of Plaza Extra" and that Hamed's assertions to the contrary "are simply false." *See* Opposition, at 6.

Defendants' counsel contends that "the Hameds and Yusufs all have access" to Scotia Bank and Banco Popular operating accounts. "Access means access to statements, joint signatures on checks, online access, etc." *See* Reply, Exhibit 2. Plaintiff alleges, and communications from Banco Popular's counsel seem to confirm, that banking resolutions must be signed by the parties to provide mutual access to the Hamed managers. *Id.*

By their filings, the parties agree that the joint management and mutual access to all financial statements required by the PI and Clarifying Order include equal access to account information and statements, online and otherwise. However, it again appears that the parties lack the resolve to take such steps as are necessary to comply with Orders of the Court. As such, the parties shall be required to promptly execute such banking resolutions and other documentation and take such other action as may be necessary to assure that Plaintiff (and representatives) are granted mutual equal access to business bank accounts.

**IV. Defendant United's action against Wadda Charriez and Defendant Yusuf's refusal to pay a bonus to Wadda Charriez do not violate the PI.**

Plaintiff claims that Defendants are attempting to circumvent this Court's April 25, 2013 PI by suing Plaza Extra employee Wadda Charriez for, among other things, unjust enrichment.

*See* Motion to Compel, at 4. Plaintiff argues that because Defendants cannot unilaterally terminate Ms. Charriez they are attempting to “harass” her and “[deny] her regular Christmas bonus.” *See* Reply, at 5.

Defendants respond that the PI “contains no language regarding lawsuits for recoupment or restrictions on United’s legal rights to recover for losses.” Defendants are correct that the focus of the Court’s Orders was on “the operations of the three Plaza Extra Supermarket stores” and it is in the context of store operations that each party was enjoined from taking unilateral action affecting store employees. Plaintiff presents no allegations that Wadda Charriez has been terminated, directly or constructively, or that actions of Defendants have otherwise threatened or interfered with the employment of Ms. Charriez. Rather, Defendant United has sued Ms. Charriez to recoup monies allegedly misappropriated from the supermarket which, ironically, could benefit Plaintiff if he succeeds in this action.

Further, the Court questions whether it has the legal authority to dismiss or stay a lawsuit that is pending before another Superior Court judge. *See American Fidelity Fire Insurance Co. v. Construcciones Werl, Inc.* 13 V.I. 35 (D.V.I. 1976). In sum, the Court will deny Plaintiff’s request that the Court summarily dismiss or stay proceedings in United’s separate and distinct lawsuit against Ms. Charriez. (SX-2013-CV-154, now pending before Hon. Robert Molloy).

Lastly, the Court finds no violation of the PI in Defendant Yusuf’s refusal to agree to pay Ms. Charriez an annual bonus. Plaintiff argues that, because Ms. Charriez has received a bonus of \$4,500 every year since 2010, she is entitled to receive the same in 2013.

As with the Hamed managers, there is no suggestion that Ms. Charriez is contractually entitled to an annual bonus. The business circumstances of the supermarket operations have

changed over the past year from prior years when Ms. Charriez was paid an annual bonus. Presently, one co-manager believes that the employee has manipulated time records to the detriment of the business, and consequently refuses to consent to payment of a discretionary annual bonus. In this setting, the Court will not find that Defendant Yusuf's refusal to accede to a bonus for Ms. Charriez constitutes unilateral action affecting the operations of the business in violation of the PI. Therefore, Plaintiff's request for an order compelling Defendants to issue Ms. Charriez an annual bonus for 2013 will be denied.

Plaintiff's Motion to Compel and filings in support and Defendants' filings in opposition represent the latest in an ongoing series of demonstrations by the parties of their inability and unwillingness to engage in the productive communications required to comply with Orders of the Court and to move this litigation toward conclusion in a manner consistent with the substance and purpose of the applicable rules of procedure to secure the just, speedy, and inexpensive determination of every action and proceeding. Fed. R. Civ. P. 1. The parties are admonished to forthwith take such steps as are required to cooperate to complete discovery and to prosecute claims in an orderly and efficient manner to avoid placing unnecessary burdens on limited judicial resources (not to mention those of the parties themselves). The continued failure of the parties to manage the litigation without running to the Court at every whim may result in the imposition of costs or other sanctions to the parties and attorneys deemed responsible.

On the basis of the foregoing, it is hereby

ORDERED that Plaintiff's Motion to Compel is GRANTED in part, and DENIED in part. It is further

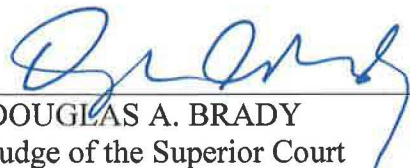
ORDERED that Defendants shall promptly take such steps as are necessary to provide secure real-time access to Plaintiff (and representatives) to current financial data, records and information, including the Sage5 accounting system, by means of providing shared or newly issued password(s) or otherwise. It is further

ORDERED that Defendants shall promptly execute all resolutions and other documents, and shall take such other steps as necessary to provide equal access to Plaintiff (and representatives) to all information pertaining to the Plaza Extra Supermarkets' joint operating accounts with Scotiabank and Banco Popular. It is further

ORDERED that the parties and counsel are required to cooperate to comply with this Order and prior Orders, failing which costs and/or sanctions may be imposed upon responsible parties and/or counsel. It is further

ORDERED that, except as set forth herein, Plaintiff's Motion to Compel is DENIED.

April 2, 2014

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor

4/3/14

CERTIFIED TO BE A TRUE COPY  
This 3rd day of April 2014

CLERK OF THE COURT

By:  Court Clerk 28