

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

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, INC.,)

Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

**JOINT REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S
RULE 12(b)(6) MOTIONS TO DISMISS RE
WALEED HAMED, WAHEED HAMED, HISHAM HAMED AND MUFEED HAMED**

Defendants' filed three separate oppositions with regard to the three pending Rule 12(b)(6) motions to dismiss all four of these new "Counterclaim Defendants." However, as the issues are the same in each motion, one joint reply memorandum is being filed to simplify the remaining issues regarding these three motions.

Most importantly, it must be noted at the outset that the Defendants fail to even mention the fact that both United and Fathi Yusuf have now **conceded**, contemporaneously with the filing of their Oppositions to these motions, that Plaza Extra

Supermarkets *is a partnership* between Muhammad Hamed and Fathi Yusuf and that the partnership, not United or Fathi Yusuf, is employer of the Hamed Sons. See ¶ 7 of *Defendants Motion To Appoint Master For Judicial Supervision of Partnership Winding Up or, in the Alternative, to Appoint Receiver to Wind Up Partnership*, dated April 7, 2013.

This new concession, made 20 months after continuously contesting this issue, requires these counterclaims to be dismissed. (They should also be dismissed for the other issues previously raised in the Rule 12(b)(6) motions. Defendants' essentially concede that the counterclaims as alleged against Mufeed Hamed and Hisham Hamed contain no facts to support these two asserted claims, so even if Defendants had not made the new concessions that it did, these two motions should still be granted.)

Each point will be addressed separately for the sake of clarity. For the reasons before the Court, it is respectfully submitted that the Rule 12(b)(6) motion should be granted as to these four Counterclaim Defendants.

I. The Hamed Sons Must be Dismissed as Neither Fathi Yusuf nor United is a Party in Interest in a Plaza Extra Supermarkets' Claim

Regarding United's standing to assert any claims against the four Hamed sons, Having now admitted that admitted that Plaza Extra Supermarkets is a partnership so it is the employer of these Hamed sons, not United-- any alleged losses would be a claim for the partnership, not United. Thus, United's counterclaim certainly now must be dismissed, as it is simply a landlord with no claims against anyone for any alleged losses caused to the partnership.

As for the counterclaim raised by Fahti Yusuf against the four Hamed sons, this claim belongs to the partnership and cannot be asserted by him unilaterally. Moreover, the filing of the counterclaim took place well after this Court's April 25, 2013, Preliminary

Injunction was in place, which bars such unilateral action by one partner. Thus, Fathi Yusuf could not file these counterclaims against the four Hamed sons on behalf of the partnership without Mohammad Hamed's consent, which he did not obtain.

As such, the admission that there is a partnership now renders these four counterclaims subject to dismissal.

II. Arguments regarding United's Separate Action Against Waleed and Waheed Hamed Are Moot

In their respective motions to dismiss Waleed and Waheed Hamed, it was argued that there is already pending litigation in two other Superior Court cases filed by United against Waleed Hamed and Waleed Hamed. However, United's separate, independent actions against these two Hamed Sons are now subject to dismissal for the same reason- -United is not a real party in interest.

As such, motions are being filed in each of these cases to have them dismissed. Thus, these arguments will become moot once these dismissals are granted.

III. The *Twombly/Iqbal* Arguments

Additionally, both Mufeed Hamed and Hisham Hamed moved to dismiss the counterclaim asserted against them because the allegations **failed to contain any facts** regarding any wrongdoing on their part, as required by the applicable law. In their opposition to this motion, Defendants failed to identify even one such alleged fact of wrongdoing asserted in the counterclaim involving either Mufeed Hamed or Hisham Hamed. As such, Defendants concede they failed to meet the required pleading standard set forth in *Twombly* and *Iqbal*.

Recognizing this defect, Defendants argue in the alternative that they should be given leave to amend their improperly pled counterclaim. However, aside from lacking

standing to now assert these counterclaims, Defendants have waited too long to seek to plead new claims in this case for which discovery is almost complete. Mufeed Hamed and Hisham Hamed are entitled to know of the specific claims of wrongdoing being asserted against them so they can prepare a defense. The time to do so in this case has expired. As such, the belated request to amend these two counterclaims should be denied as well, as it would be unduly prejudicial to require these two counterclaim defendants to have to respond to new assertions at this stage of the litigation.

In short, even if Defendants had not admitted the existence of the partnership, the counterclaim asserted against Mufeed Hamed and Hisham Hamed require dismissal for failing to comply with the pleading standard set forth in *Twombly* and *Iqbal*.


IV. Conclusion

The counterclaims asserted against the four Hamed sons were nothing more than a vindictive litigation strategy, designed to delay and confuse this partnership case. Now that the existence of the partnership has been admitted, these counterclaims can be summarily dismissed.

Dated: April 22, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

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