

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, MUFEEED 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

PLAINTIFF'S MOTION FOR A REDUCTION OF PI BOND

On April 7, 2014, Defendants moved for the appointment of a Master to supervise the winding up of the **Partnership that Fathi Yusuf and United now both concede does exist after 20 months of litigation contesting this precise point.** See ¶ 7 of *Defendants Motion To Appoint Master*. Defendants' counsel followed up this judicial admission in an email unequivocally stating that the three Plaza Extra Stores had always been a partnership. See **Exhibit 1.**¹

¹ Based on this email, the parties filed for an extension to file a tax return and disbursed funds to each partner to pay their estimated taxes based on an accounting for 2013 that allocated all operating expenses of the three Plaza Extra Stores to the partnership. See **Exhibit 2.**

Thus, with this concession, there is no need for anything other than the original \$25,000 nominal bond to secure the Preliminary Injunction, as there is no chance of reversal at trial of this Court's finding that Plaintiff is likely to succeed on the merits that there is a partnership -- the only issue regarding bond.

Indeed, Defendants' arguments seeking a bond were all premised on United Corporation prevailing on this issue at trial. For example, Defendants argued in part as follows in its opposition to Plaintiff's initial motion to reduce the bond as follows:


Plaintiff's four sons (the "Hameds") are employees of United and are currently being paid \$347,000 each to serve as co-managers of the three supermarket stores.

Id. at 8. It thus sought a bond to reimburse it if it prevailed on its argument that there was no partnership so it should be reimbursed these funds. However, as Defendants now concede that these four Hamed managers are *employees of the Partnership and not United*, there is no reason that United needs a bond as it has no financial risk at all in this case.²

Thus, the bond should be returned to the original amount of \$25,000 with all of the remaining bond posted exonerated, as it has been stipulated that the partnership exists, obviating the need for the bond as posted. A proposed Order is attached.

² Indeed, these salaries were listed as part of the partnership expenses for 2013 in the accounting used to estimate the tax payments for the partnership. See **Exhibit 2**.

Dated: April 22, 2014



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Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

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

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

Gregory H. Hodges
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST.Thomas, VI00802
ghodges@dtflaw.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com



-----Original Message-----

From: George H.T. Dudley <gdudley@dtflaw.com>

To: 'Joseph DiRuzzo' <JDiRuzzo@fuerstlaw.com>; 'Joel Holt' <holtvi@aol.com>

Cc: Christopher David <cdavid@fuerstlaw.com>; Gregory H. Hodges <ghodges@dtflaw.com>;
dewoodlaw <dewoodlaw@gmail.com>; Charlotte Perrell <cperrell@dtflaw.com>; carl
<carl@carlhartmann.com>; rpa <rpa@abfmwb.com>; grhea <grhea@rpwb.com>; pamelalcolon
<pamelalcolon@msn.com>; Deborah Muller <DMuller@fuerstlaw.com>; 'K. Glenda Cameron'
<kglenda@cameronlawvi.com>

Sent: Tue, Apr 8, 2014 6:51 pm

Subject: RE: Plaza

Gentlemen,

Since United is not and has never been a partner in the Plaza Extra "partnership" between Fathi Yusuf and Mohammad Hamed, this discussion is misplaced. United's tax returns for 2013 and thereafter will not reflect anything having to do with the business of the "partnership" (except the rent owed to United as landlord of Plaza - East) and the two partners have to select an accountant to prepare the partnership income tax return and the related K-1s to be issued to each partner.

There also is the matter of applicable filings for the Department of Labor and other agencies for the employees and business of the Yusuf/Hamed "partnership" d/b/a Plaza Extra Supermarkets.

Joel, if you will confer with your client on suggested accountants, I will confer with my client on the same matter and perhaps we can agree on an accounting firm to prepare all relevant tax and other filings on behalf of the "partnership."

Regards,

George H.T. Dudley

Dudley, Topper and Feuerzeig, LLP

P.O. Box 756

St. Thomas, VI 00804

Phone: 340-715-4444 (direct)

Phone: 340-774-4422 (switchboard)

Fax: 340-715-4400

Email: gdudley@dtflaw.com



-----Original Message-----

From: George H.T. Dudley <gdudley@dtflaw.com>
To: 'John Gaffney' <johngaffney@tampabay.rr.com>; Mike Yusuf <mikefyusuf@yahoo.com>
Cc: Joel Holt (holtvi@aol.com) <holtvi@aol.com>; Gregory H. Hodges <ghodges@dtflaw.com>; NIZAR DEWOOD (dewoodlaw@me.com) (dewoodlaw@me.com) <dewoodlaw@me.com>; Kurt Petri <kpetri@dtflaw.com>; Joseph DiRuzzo (JDiRuzzo@fuerstlaw.com) <JDiRuzzo@fuerstlaw.com>; 'joycebailey@earthlink.net' <joycebailey@earthlink.net>
Sent: Sat, Apr 12, 2014 1:28 pm
Subject: RE: Plaza

Hi Mike,

Based on the preliminary pro forma income statement prepared by Gaffney (attached), in John's absence, please arrange to have checks for the amount of \$ [REDACTED] (representing 50% of the taxes due as shown on the attached statement) issued to both your father and Mohammad Hamed from a Plaza Extra account on Monday.

FYI, Joyce Bailey will be preparing the extension application for the 2013 income tax return for the Plaza Extra Partnership.

Regards, ghtd

From: John Gaffney [<mailto:johngaffney@tampabay.rr.com>]
Sent: Friday, April 11, 2014 6:12 PM
To: George H.T. Dudley
Cc: Mike Yusuf
Subject: RE: Plaza

George,

Attached is the income tax estimate using a marginal rate of [REDACTED] % for a total of \$ [REDACTED]. If you have any questions, please call.

Regards,

John Gaffney
(305)332-7 [REDACTED]

From: George H.T. Dudley [<mailto:gdudley@dtflaw.com>]
Sent: Friday, April 11, 2014 11:48 AM
To: 'Joel Holt'
Cc: Gregory H. Hodges; Kurt Petri; Joseph DiRuzzo (JDiRuzzo@fuerstlaw.com); NIZAR DEWOOD (dewoodlaw@me.com) (dewoodlaw@me.com); John Gaffney (johngaffney@tampabay.rr.com)
Subject: RE: Plaza

Joel,

Greg and I discussed the matter with DTF's tax lawyer (Kurt Petri) and also with Joe DiRuzzo. Because we now are treating Plaza Extra as a partnership, there must be a partnership filing and separate filings (and payments) must be made by the individual partners.

Greg has spoken to Joyce Bailey, and if you agree, she is willing to prepare and file the form seeking an extension on behalf of the partnership (using the EIN number you folks have obtained for the partnership). And assuming that the books are in decent shape, Joyce will work with John Gaffney to prepare the partnership tax return for 2013. Fathi Yusuf and Mohammad Hamed will have to separately file for their extensions and, ultimately, their individual tax returns.



With respect to the payments to be made with the filings for the extension, I have asked John Gaffney to prepare a preliminary income statement showing the profit for the supermarket partnership in 2013. Using that number, Gaffney will then divide the profit between Hamed and Yusuf and calculate the taxes for each using the highest marginal rate. That amount will then be distributed to each partner from the funds on hand and each partner will be responsible for filing their personal extension and paying the taxes due.

I think the foregoing addresses all of the immediate issues re taxes but if you have a different view, please advise ASAP. FYI, Gaffney leaves island tomorrow morning and will be out of the Territory for a couple of weeks.

I am available for a call on Monday at 8:30am; just send me the number that you would like for me to call.

Regards, ghtd

George H.T. Dudley
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St. Thomas, VI 00804

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Phone: 340-774-4422 (switchboard)
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Plaza Extra Supermarkets
Income Statement
For the Twelve Months Ending December 31, 2013

		Year to Date <u>This Year</u>	Year to Date <u>Last Year</u>
Revenues			
40000	Revenue - Sales	\$ 99,478,367.33	\$ 101,611,306.52
40800	Revenue - Less Pharmacy Sales	(969,036.88)	(775,211.14)
41000	Revenue - Net Lotto Sales	34,574.76	0.00
42000	Revenue - Net Phone Card Sales	29,439.00	0.00
47000	Revenue - Miscellaneous Sales	79,234.58	25,108.23
48000	Revenue - Sales Discounts	(1,386,528.13)	0.00
49000	Revenue - Rental Income	<u>35,000.00</u>	<u>5,868,646.70</u>
	Total Revenues	<u>97,301,050.66</u>	<u>106,729,850.31</u>
Cost of Sales			
50000	COS - Purchases	62,533,506.55	66,977,544.37
50900	COS - Inventory Adjustments	(110,413.09)	0.00
51000	COS - Freight Expense	3,759,191.85	3,785,343.74
52000	COS - Excise Tax Expense	391,829.09	268,902.13
52200	COS - US Customs Expense	438,399.64	196,214.35
52400	COS - Broker Fees	2,298.40	288,941.60
54000	COS - Supplies	76,266.66	0.00
58000	COS - Less Vendor Rebates	<u>(881,923.45)</u>	<u>(505,147.68)</u>
	Total Cost of Sales	<u>66,209,155.65</u>	<u>71,011,798.51</u>
	Gross Profit	<u>31,091,895.01</u>	<u>35,718,051.80</u>
Operating Expenses			
60000	Accounting Fees	24,087.69	19,137.50
60100	Advertising & Promotion	207,036.80	231,290.49
60500	Auto Expenses	4,642.58	11,814.77
60700	Bad Debts Expense	1,172.99	0.00
60800	Bank Charges	46,123.27	44,041.68
61000	Cash Short (Over)	(23,123.31)	1,622.20
61050	CC Batch (Over) Short	5,399.26	0.00
61100	Charitable Contributions	49,983.93	1,796.24
61200	Computer Supplies & Expense	16,453.06	0.00
61300	Contract Labor Expense	49,225.63	35,600.86
61800	Depreciation Expense	212,369.03	254,634.00
62100	Education - Safety Training	9,007.00	4,200.00
62300	Employee Benefits Expense	34,558.00	19,960.00
63000	Insurance - Emp Health	260,583.52	339,482.15
63200	Insurance - Gen Liability	341,157.30	0.00
63400	Insurance - Property	272,249.71	651,897.99
63600	Insurance - Workers' Comp	82,598.32	89,598.98
63900	Interest Expense	789.95	0.00
64500	Legal Fees Expense	661,001.24	1,176,906.68
64900	Meals & Entertainment Expense	2,839.27	1,200.47
65100	Merchant Fees - MC/Visa/Amex	689,541.53	636,361.78
65200	Merchant Fees - Telecheck	21,873.10	34,654.03
65300	NSF Checks Expense	36,750.40	135.00
65500	Office Supplies & Expense	68,204.46	50,648.40
65700	Postage & Overnight Delivery	6,797.20	5,335.81
65900	Physical Inventory Expense	97,359.98	102,427.27
66000	Rent Expense - Buildings	333,953.08	5,945,495.74
66400	Rent Expense - Other	12,102.15	10,500.00
66700	Repairs & Maintenance Expense	1,007,243.92	555,946.16
66900	Security Expense	67,671.83	67,152.45
67000	Taxes - Gross Receipts	4,864,263.72	4,261,505.81

Unaudited - For Management Purposes Only

Plaza Extra Supermarkets
Income Statement
For the Twelve Months Ending December 31, 2013

	Year to Date <u>This Year</u>	Year to Date <u>Last Year</u>	
67200	Taxes - Empr FICA & Medicare	660,877.31	665,907.17
67400	Taxes - Empr FUTA Expense	25,109.46	87,823.25
67500	Taxes - Empr VI Unemp	118,153.02	35,890.58
67600	Taxes - Licenses	8,556.00	4,024.59
67800	Taxes - Property	11,551.81	54,196.94
67900	Taxes - Penalties	2,325.00	3,624.14
68000	Telephone Expense	51,859.79	49,087.19
68100	Trash Removal	72,775.00	79,845.50
68200	Travel & Hotels Expense	33,946.47	4,145.70
68400	Utilities - Electric	5,302,604.21	4,494,844.41
68600	Utilities - Gas & Diesel	41,680.89	116,277.94
68800	Utilities - Water	27,924.23	31,282.34
69000	Wages - Officer Salaries	572,000.00	303,000.00
69200	Wages - Managers	2,276,397.83	1,765,735.41
69300	Wages - Other	6,730,561.21	7,790,961.01
69400	Wages - Bonuses	144,550.00	365,701.15
69500	Wages - Vacation	199,268.17	178,873.58
	<u>Total Operating Expenses</u>	<u>25,744,057.01</u>	<u>30,584,567.36</u>
	<u>Net Operating Income</u>	<u>5,347,838.00</u>	<u>5,133,484.44</u>
Other Income (Expense)			
80000	Other Income (Expense)	198,995.75	(1,730.00)
80100	Interest Income - Taxable	11,398.94	181,737.65
80150	Interest Income - Nontaxable	872,531.85	809,055.03
80200	Dividend Income	281,811.01	454,226.04
80400	Foreign Taxes Paid	(5,888.43)	(18,803.95)
80500	Interest Expense - Margin A/C	(7.17)	0.00
80800	Broker & Account Mgt Fees	(270,697.66)	(130,535.55)
81100	Proceeds from Securities Sold	31,577,825.17	826,078.68
81200	Cost of Securities Sold	(30,364,270.73)	0.00
81300	Basis Adj's Securities Sold	(389,264.81)	0.00
83100	ST Cap Gain Distrib's - BPPR	42,310.13	6,781.41
83200	LT Cap Gain Distrib's - BPPR	518,614.40	159,617.20
89200	Settlements & Fines Paid	(1,016,850.00)	0.00
	<u>Total Other Income (Expense)</u>	<u>1,456,508.45</u>	<u>2,286,426.51</u>
	<u>Net Income</u>	<u>\$ 6,804,346.45</u>	<u>\$ 7,419,910.95</u>
	Settlements & Fines Paid	1,016,850.00	
	Interest Income - Nontaxable	(872,531.85)	
	<u>Est'd Pass-Through Taxable Income</u>	<u>\$ 6,948,664.60</u>	
	<u>Highest Marginal Tax Rate</u>	<u>39.6%</u>	
	<u>Maximum Tax Estimate</u>	<u>\$ 2,751,671.00</u>	

**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, MUFEEED 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

**ORDER
RE PLAINTIFF'S MOTION FOR A REDUCTION OF PI BOND
AND RELEASE OF PROPERTY SECURING SAID BOND**

The Plaintiff has moved to reduce the bond to \$25,000 based on the Defendants' judicial admission conceding that a partnership exists between Fathi Yusuf and Mohammad Hamed regarding the ownership and operations of the three Plaza Extra Supermarkets. Upon consideration of the matters before the Court regarding this significant change of circumstances, the Court finds that the reasons establishing the bond at \$1,200,000 to protect United as originally requested are no longer valid, warranting a reduction in the bond as requested. As

such, the bond is reduced to \$25,000, which shall be a cash bond.

The Clerk of Court is directed to return all excess funds to the Plaintiff. Additionally, the following properties are hereby discharged as part of the bond so that this Order can ~~be~~ recorded against those properties discharging them from any lien of this Court's prior bond Order:

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.

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.

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.

Plot 100 Estate Eliza's Retreat, East End Quarter "A", consisting of 0.542 U.S. acre more or less, as shown on OLG Drawing No. 4328, dated July 9, 1986, revised May 4, 1989.

Finally, the pending motions to require the Plaintiff to substitute the property pledged by Hisham Hamed as part of the bond are denied and moot.

Dated:

Honorable Douglas A. Brady
Judge, Superior Court

ATTEST:

ESTRELLA GEORGE
Clerk of Court

By: _____
Deputy Clerk

Dist: Joel H. Holt
Carl Hartmann
Gregory Hodges
Nizar Dewood
Mark Eckard