

**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

**OPPOSITION TO EMERGENCY MOTION
TO RE-DEPOSE MOHAMMAD HAMED**

Plaintiff hereby opposes Defendants' "emergency" motion to re-depose Mohammad Hamed, which is no longer an emergency since the parties have stipulated to the taking of depositions at a later date, including the retaking of any depositions if ordered by this Court. Indeed, the parties' stipulation also requests a brief conference with this Court to address all remaining discovery issues next week at which time Plaintiff expects this issue will be addressed also.

Defendants' motion seeks to re-depose Mohammad Hamed, despite the fact that he has already been deposed over a two-day period, extended in part by a suggestion of this Court to the parties. Of particular note, while Defendants complain about how the deposition took place, they fail to identify one single topic that they were unable to

cover during this two-day deposition. They also fail to explain why the objections of counsel, which they bitterly complain about, kept them from asking about any subject they wanted to cover or why any specific objection was improper.

In short, this is yet another wholly manufactured 'emergency' situation which the defendants hope will unduly tie up this Court in an effort to postpone the trial yet again.¹ As will be demonstrated, Defendants covered multiple subjects in Hamed's deposition and spent countless hours on issues totally irrelevant to this case. As such, for the reasons set forth herein, it is respectfully submitted that the motion to re-depose the Plaintiff, who was already deposed at length, be denied.

I. Mohammad's Deposition

A. Defendant's Failure To Show Any Need to Re-Depose Plaintiff

The two days of deposition transcripts have been submitted to the Court.² To assist the Court in analyzing the fact that Defendants do not need to re-depose Mr. Hamed, Plaintiff has outlined the categories of subjects covered (in the order they were asked), by page number. See **Exhibit 2**. As that list demonstrates, Defendants covered a very broad range of subjects. Thus, it is understandable why Defendants do not state why they want any more time to depose Plaintiff, as they have covered what they

¹ A perfect example of Defendants manufacturing facts to delay matters is their repeated representations to this Court that the documents seized in the criminal case will not be released by the Government until a Plea is finalized. This explanation was used to support their multiple requests to extend this Court's scheduling Order. Plaintiff repeatedly noted this "fact" was not true, as the Government has never withheld documents from any party. Sure enough, last week the Justice Department told the parties to please pick up all documents (See **Exhibit 1**) even though no Plea had been finalized. Crying "wolf" has been the order of the day for Defendants, which cries no longer have any credibility.

² At the time of this Opposition, all transcripts from that week are not yet available.

needed. Should Defendants decide to identify some new areas they allegedly need to cover in their reply, Plaintiff requests permission to address each of those items.

However, on this record, Defendants have failed to identify one reason why they need to continue this deposition any longer, so its motion can be summarily denied.

B. Defendant's Wasted Their Time Limits In Deposing Hamed

Aside from their failure to identify any reason for needing to re-depose Plaintiff, the questions asked demonstrate that Defendants really have no more relevant questions to ask, as they spent hours asking Mohammad Hamed about irrelevant matters. The fact that they wasted the time they did have demonstrates that re-deposing Plaintiff is just for harassment and gamesmanship.

The clearest example involves the questioning about a concrete "batch" plant in Jordan. During the morning of the second day, Defendants asked Plaintiff about a concrete plant built in Jordan from a donation made by himself and Fathi Yusuf. Of course that plant has absolutely nothing to do with this case, as Fathi Yusuf conceded in his (yet to be transcribed) deposition the next day. Incredibly, as the time to complete the deposition on Tuesday afternoon was approaching, Defendants then spent 40 pages (of a 200 page deposition) on this same irrelevant subject, from 3:38 to 5:13 PM.

The fact that Defendants used the last 90 minutes of the second day of the deposition on a *totally* irrelevant subject demonstrates why Defendants should not be allowed any further time to depose Plaintiff. Indeed, while the concrete plant is a good example, the transcript reveals that multiple other irrelevant matters were pursued at length, including the following:

- Questions were asked about the criminal case in which Mohammad Hamed was not involved, including absurd questions like why didn't he go tell the U.S.

Attorney there was a partnership;

- Extensive questions were re-asked about how the partnership was formed and its existence, which Plaintiff had already testified about at the Preliminary Injunction hearing. These almost identical, repeated questions were irrelevant, as *Defendants had already indicated that they planned to file a pleading the following week admitting to the existence of the partnership, which they did.*³
- Defendants asked numerous questions about legal pleadings (like the Amended Complaint) that Mohammad Hamed neither authored nor dealt with, as his son, Waleed Hamed, had dealt with these issues pursuant to the power of attorney given to him, wasting this time as well.⁴
- To demonstrate the harassing nature of the questioning, Defendants even asked who was paying Plaintiff's lawyer.

In short, the point is simple—Defendants had two days to depose Mohammad Hamed and chose to waste that opportunity by spending time on irrelevant and harassing matters, rather than attempting to complete the deposition within the time permitted. Plaintiff, who is 79 years old, should not be subjected to further abuse just because Defendants failed to take a proper deposition when they had the chance to do so.

Equally important, Defendants have now admitted there is a partnership with Fathi Yusuf, after 20 months of protracted litigation denying this fact. With this admission, the issues are now quite simplified. Thus, it is inconceivable that there is anything else relevant to ask Mohammad Hamed about (particularly legal documents written in English that he would need time to decipher) **that cannot be obtained from other sources**, such as at the deposition of Waleed Hamed.

³ Indeed, Fathi Yusuf admitted to its existence in his deposition the following day.

⁴ When it became clear that these questions should have been asked of Waleed Hamed, who was on-site on a day-to-day basis from 1996 on -- under a power of attorney -- Defendants still persisted in questioning Mohammad Hamed about them, apparently trying to embarrass him and delay this case. Indeed, it is clear that any ruling on re-deposing Mohammad Hamed should be deferred until Waleed Hamed is deposed, as that is the person with knowledge about those documents.

II. Counsel's Objections

As with virtually everything else related to this case, there are two completely and diametrically opposed versions of reality. Like the instant motion, half of this case has taken place in the fantastical "Fathi Yusuf Universe." In that universe -- *as represented in documents submitted by Defendants' lawyers to this Court*, Defendants averred to this Court that Hamed could only recover a small percentage of what he seeks because Fathi Yusuf only owns 7.5% of United, which is the entity that supposedly owned the three Plaza Extra Stores and the bank accounts:⁵

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammed Hamed would be entitled to is a fifty percent (50%) share of **Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks**. (Emphasis added.)

Though this was a *major, early defense* -- Mr. Yusuf, having been deposed, now admits (1) that he and his wife actually own 72% of United, (2) that United does not own the Plaza Extra stores and (3) that there is a 50-50 Partnership with Hamed that owns the stores and the bank accounts, among other Partnership assets.⁶

With this comment in mind, the "fantasy" with the sanctions sought in this motion begins with the suggestion that Plaintiff's counsel "sandbagged" Defendants about the need for an interpreter. The exact opposite is true. As noted in the email attached as **Exhibit 3**, Plaintiff's counsel raised this issue before the deposition. Attorney Hartman

⁵ See *Defendants Memorandum of Law in Support of Defendants' Renewed Motion to Dismiss, Motion for a More Definite Statement and Motion to Strike Exhibits "B" through "D" of the Amended Complaint*, Civil No. 12-CV-99 (DE 29).

⁶ Indeed, Yusuf concedes that other assets in United's name (like the St. Thomas lease, the Plaza Extra name and claims against third parties) as well as certain liabilities (like the lawsuits against it arising out of the supermarket operations) are actually Partnership assets and liabilities.

made it clear that an interpreter would be needed. A discussion between counsel ensued. Defendants' counsel elected not to use an interpreter, deciding to start the deposition without one, agreeing to use Nizar DeWood and Wally Hamed to translate as needed.

The Monday deposition of Hamed was fine on initial, simple, direct questions -- but progressed to a series of complex questions directed to an obviously uncomprehending witness, often repeated by interrupting the witness even when an answer was given. Several times Defendants' counsel was asked to not interrupt or talk over the witness. The witness repeatedly asked for an interpreter. Counsel then began to question the witness about long English language legal documents -- despite the fact that Defendants have made much in pleadings and testimony about Hamed being "illiterate." (In fact, Hamed testified that when he was a supervisor in the Kuwait water system -- he kept logs in Arabic. He is not illiterate -- he just does not read English well -- and certainly not long legal documents.)

Attorney Hartmann occasionally did instruct the witness not to answer questions that were being answered before the objection was made, where the witness was being harassed or the witness was confused. In this regard, it is useful to understand what was happening, in context, by looking at the progression of the deposition, with the following exchange at p. 16 of the first day of the deposition:

Q: (Hodges) What languages do you speak?

A. Arabic.

Q. Okay. That's your primary language.

A. Yeah.

Q. All right. What -- what other languages do you speak?

A. Nothing.

Q. Well, you're speaking English right now.

A. Well, I -- I'm forty years now in the Virgin Islands.

This condescending attitude prevailed throughout the deposition of this 79 year old simple man, finally bringing him to tears at one point, so if the Defendants want this Court to review the video, Plaintiffs certainly do not object. What the Court will see is an attorney that, frustrated by not having taken the advice to have an interpreter, took out that frustration on the witness.

In any event, an analysis of several sample objections is in order to understand why the motion for sanctions is frivolous. The objections started on page 34 of the first day of the deposition when counsel started cutting off the witness before he answered:

MR. HARTMANN: Object. He gets to answer. Wait. He gets to answer. You asked him a question. Go ahead. Stop interrupting him.

The interruptions got sufficiently bad that even Attorney Holt asked Attorney Hodges to stop talking over the witness and rushing the incomprehensible questions:

A. Yeah. I'm not tell him how much I pay you. In case (inaudible), that's his son, no.

Q. You're not saying --

MR. HOLT: Wait a second. Did you finish that answer?

MR. HODGES: Again, for the record, I would object to two attorneys defending this deposition.

MR. HARTMANN: And I'd object to your cutting off the witness repeatedly.

Attorney Hodges then attempts to question the witness regarding the first of several English language legal pleadings. However, Attorney Hartmann again pointed out Hamed could not read English:

MR. HARTMANN: And how are you going to question him on this? He doesn't read English --

THE WITNESS: I don't read.

MR. HARTMANN: -- and you don't want a translator, so this is going to be kind of tough.

MR. HODGES: Are -- are -- are you finished commenting?

MR. HARTMANN: No, I'm just asking. Are you going to read to him?

THE WITNESS: I told him I wanted somebody in Arabic.

MR. HARTMANN: I understand you did. I thought we had an agreement to have someone read it to you in Arabic.

THE WITNESS: I don't know how to answer it.

MR. HARTMANN: That's okay. You can only answer what you can answer.

Thus, Attorney Hartmann's "blatant interruption" was to object to the questioning of a witness on a document *he could not even read*. Knowing this and again refusing what is now a direct request for translation -- Hodges questions on a document it had been established the witness cannot read:

Q. (Mr. Hodges) Mr. Yusuf -- I mean, Mr. Hamed, have you seen what has been marked as Plaintiff's Exhibit No. 1 in front of you?

A. No, I didn't look at it.

Q. Have you -- you've never seen that before?

A. I don't look at it.

Q. So the question to my answer -- the answer to my question is, yes, you've never seen it before?

How could a witness tell if he had seen a legal pleading that he could not even read?

In any event, after the lunch break the parties agreed to continue the deposition with an interpreter. Before "Day Two" began, the parties received an email from the Court disclosing an *ex parte* contact in which Defendants' counsel asked the Court to rule on its "emergency" motion for additional time with this specific witness. Had this Court not properly disclosed the *ex parte* email from Defendants' law firm by revealing its existence in an attachment, Plaintiff would have had no reason to know what was happening or why the Court seemed inclined to grant more time (7 hours) without actually knowing that Plaintiff's counsel had already agreed to this additional time. When asked about this, defense counsel initially stated that the *ex parte* was "no big thing" as "it was just an attempt to get a message to the Court which was closed." When asked why the communication from the defense to the court was not copied to

plaintiff's counsel, counsel said it was not necessary.

However, the Court need not dwell on this exchange here. While it is not practical to discuss each objection made during an all day deposition, a review of a sample of the objections raised on Day Two demonstrate that these objections were proper.

In the first 16 pages, Attorney Hodges re-asks questions answered already. Attorney Hartmann then objects "asked and answered" – a proper objection. Indeed, at p. 17, the witness even asks: "A. How many times he ask me this question?"

Again, at pp. 24-25 Hartmann objects to a mischaracterization of the prior testimony, a proper objection. Attorney Hartmann also occasionally objects to repetitious question as "asked and answered" where appropriate, again a proper objection. Then at p. 33 both Attorney Hodges states on the record:

MR. HODGES: I'm putting an objection on the record.

MR. HARTMANN: Objection to what?

MR. HODGES: To what's transpiring here. That we're not getting verbatim translations because of the difficulty created by back and forth from Arabic to English, and the time it takes him. If he was only listening to Arabic, he could probably translate it a little bit easier, but he's switching back and forth from English to Arabic, taking, making him think in English, Arabic, what do I translate, you know, it's making it impossible.

MR. HARTMANN: Okay. I don't know what an objection means in this context, but let me just tell you what I see. The translator answered that he didn't understand the question, and he told you that he didn't understand the question. You then continued. His answer was perfectly clear. He translated it perfectly clearly.

MR. HODGES: What was perfectly clear?

MR. HARTMANN: You asked him the question.

MR. HODGES: What -- what question are you talking about?

MR. HARTMANN: Your question to him was, who issued the check. He answered, The checks were issued to people who did work for the store. He said, I don't think that he understood it. That has nothing to do with his translation.

MR. HODGES: No, he --

MR. HARTMANN: That's exactly what happened, Greg.

MR. HODGES: Well, the record will --
MR. HARTMANN: You can ask the question again, until he understands your question. He said he didn't understand the question. He said it twice.
MR. HODGES: Well, then he needs to tell me that.
MR. HARTMANN: He did.
MR. HODGES: No, he didn't.
MR. HARTMANN: Do you want to read back? He did twice, Greg.
MR. HODGES: What question did he not understand? The question, who issued the checks.
MR. HARTMANN: Yes, that's the question he didn't understand. And the translator said that twice.
Q. (Mr. Hodges) What do you not understand about the question, Who issued the check?
MR. HARTMANN: He may not know what the word "issued" means, for instance. Most laymen don't.
MR. HODGES: Is that an -- an objection, or is that coaching?
MR. HARTMANN: No, we're having -- we're having a dialogue here. Do you want to stop the dialogue and go back to your question?
MR. HODGES: No, I don't -- yeah, I don't want your --
MR. HARTMANN: Okay.
MR. HODGES: -- your coaching to the witness.
MR. HARTMANN: I'm not coaching the witness, Greg. You made an objection. I am responding to your objection.
MR. HODGES: All right.
Q. (Mr. Hodges) What is difficult, in your mind, Mr. Hamed, to understand about the question, Who issued the check?

Thus, this "blatant interruption" was nothing more than correcting counsel's misunderstanding to the translated answer so the deposition could move forward.

At page 66, three and a half hours in, Hartmann gives a limited instruction to the witness on privilege:

Q. (Mr. Hodges) Mr. Hamed, I take it from your testimony that the -- the content of this letter has never been read to you?
MR. HARTMANN: Object. I'm instructing the witness not to answer as to any readings of the letter to you by your attorneys, or in the presence of your attorneys for the discussions involving this case.

Again, this is a perfectly proper objection, even though it resulted in an exchange about

what this privilege covers.⁷

These samples give the Court an idea of the type of objections raised, primarily involving questions that were asked and answered, mischaracterization of prior testimony or seeking privileged information. Some of the exchanges also involved how the translator was translating, as noted. Likewise, Attorney Hartmann properly objected to the use of improper documents that had not been previously produced, or worse, that had been altered from the time they had been provided. See, e.g., pp. 182, 189-190, 193-94, 196-97 of the Day Two transcript.

As can be seen from analyzing these sample objections, sanctions are not warranted here, where counsel raised proper objections to the harassing questions posed by defense counsel. As noted in *Prosser v. Prosser*, 186 F.3d 403, 406 (3d Cir. 1999), sanctions are rarely justified:

A court cannot be motivated by vindictiveness or retribution when issuing sanctions. Indeed, courts must fight the temptation to find all losing arguments frivolous, and should only award sanctions in cases in which they are clearly justified.

Not only are the cases cited by Defendants distinguishable, Plaintiff's counsel in this case has repeatedly tried to take the high road, granting extensions and concessions as noted in the record to assist this Court in not having to address any more issues than necessary.

⁷ Indeed, defense counsel certainly did not understand what a privileged communication is when he instructed United's accountant two days later to not answer a series of questions about his conversation with a public official on the grounds that this conversation with an unrelated third party—a public official—was covered by the attorney-client privilege! See **Exhibit 4** at pp. 33-34, 67. While a review of those sections confirms that a motion for sanctions would be appropriate for these objections, this Court has enough work, so no such motion is planned unless this Court indicates that it wishes to spend time addressing tit-for-tat sanction motions in this case.

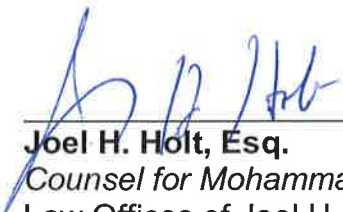
However, when it is the clear that the intent at the deposition was to keep a 79 year old man on the stand for **days**, asking compound, irrelevant questions, counsel has an even higher obligation to raise all appropriate objections, which was done here. In short, despite Defendants' repeated mantra that these objections were improper and that counsel should be sanctioned, no such action is warranted.

III. Conclusion

Defendants' motion should be denied, as it (1) failed to identify one single topic it still needs to cover and (2) it squandered its opportunity to finish Plaintiff's deposition even if it had more topics to cover by wasting the time allotted for the deposition by asking irrelevant (and harassing) questions. Indeed, at the very least, Defendants must attempt to obtain any further information first from other sources before this Court determines if there is a need to even re-depose Mohammad Hamed on any new topics. The recent developments in the case certainly have mooted most of the issues in this case.

Likewise, there is no need for sanctions as the objections raised were proper and made to protect an elderly witness from being disrespected and harassed. Indeed, the failed litigious actions of Defendants—which have now been conceded--have already taken up too much time of this Court's time without the further need to try to deal with complaints about opposing counsel.

Dated: April 28, 2014



Joel H. Holt, Esq.
Counsel for Mohammad Hamed
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com

Carl J. Hartmann III, Esq. (Bar No. 48)
Counsel for Waheed Hamed
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2014, I served a copy of the foregoing Memorandum 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 Eckard, Esq.
Eckard, PC
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'C. J. Hartmann III'.

From: Joyce Bailey <joycebailey@earthlink.net>

To: carl <carl@carlhartmann.com>; dewoodlaw <dewoodlaw@me.com>; gdudley <gdudley@dtflaw.com>; ghodges <ghodges@dtflaw.com>; JDiRuzzo <JDiRuzzo@fuerstlaw.com>; johngaffney <johngaffney@tampabay.rr.com>; kpetri <kpetri@dtflaw.com>; Joel Holt <holtvi@aol.com>

Subject: Documents Received from the FBI

Date: Fri, Apr 25, 2014 5:40 pm

Attachments: FBI_receipt_of_documents.pdf (4963K)

I have received all the boxes from the FBI and I have stored them in the storage area rented. Attached are the receipts for the documents. I would like to arrange a time for the respective parties to go through the documents with me and determine what needs to be scanned. I am going off island from Wednesday April 30th through Monday May 5th. I can be available on Tuesday April 29th at 9:30 or we can wait until I return. I think the process should take about 4-5 hours.

Joyce Bailey

joycebailey@earthlink.net

Phone: 340-777-6156 Cell: 340-514-4897 Fax: 866-257-5057

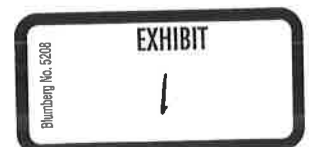


Exhibit 2

Day One

- 6 Voir Dire
- 13 Kuwait Job
- 16 Came to US
- 22 Went into Grocery business in Carleton
- 23 Opened Glynn Store
- 30 Gave money to Fathi
- 34 Became partner w Fathi
- 36 What is basis of suit?
- 48 Terms of Agreement
- 52 How much he gave Fathi
- 54 History of store start 1986
- 56 United Loan - not involved in mortgage
- 59 Calculation of Net Profits
- 62 Questions re the First Amend Complaint
- 65 Original Assets in 86
- 66 Fathi owns the building
- 67 Insurance proceeds for fire and purchase of extra land at East
- 73 Yusuf's use of United for his part of partnership and for filings
- 86 Payment of rent by partnership
- 95 Hamed's lessening of work in 96
- 96 How Net Profits Calculated



Day Two

- 12 Original store construction in 1986-- and which sons were there
- 15 1986 Loan
- 19 1996 vacations to Jordan after lessening day-to-day involvement
- 25 Fathi's role in the Partnership's business
- 30 STT and West stores opened
- 32 How profits were distributed (draws and RE purchases)
- 33 Mohammad's weekly paycheck amount
- 48 Getting cash draws
- 50 Setting up after the fire (balancing receipts)
- 51 Mohammad called it even even though Fathi owed more after fire
- 55 Can't recall Real Estate company details where profits shared
- 57 Land purchases in Jordan
- 60 Concrete plant / Bank Amman
- 63 \$2.7 million taken from Plaza and the Letter to Mohammad about it.
- 79 2001 raid
- 87 Removing money from safes and receipts therefore\
- 89 Receipts / Signature on receipts
- 91 Cairo Amman bank - Concrete Plant
- 101 Wally's Power of Atty - Did Mohammad know of letters Wally sent
- 102 Wally took care of \$2.7 million claim - Mohammad not informed
- 106 Rent claims and payment of \$5.4 million to settle past rent claims
- 124 Wally took Mohammad's place in 1996

- 130 Rent
- 133 \$2.7 million (again)
- 136 Rent - \$2.7 million
- 146 Wally's Power of Attorney
- 150 Who pays Mohammad's legal fees ?
- 159 Mohammad Hamed's bank accounts
- 161 Concrete Plant (again)/bank accounts related to that donation
- 202 Ends at 5:13

From: Joel Holt <holtvi@aol.com>

To: ghodges <ghodges@dtflaw.com>; dewoodlaw <dewoodlaw@gmail.com>

Subject: Plaza

Date: Wed, Mar 26, 2014 9:53 am

To make sure things go smoothly on Monday's deposition of Mohammed Hamed, I suggest that translator be on stand-by. Just a suggestion-Nizar, do you have a name?

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)

Plaintiff/Counterclaim Defendant,)

vs.)

Case No. SX-12-CV-370

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

WALEED HAMED, WAHEED HAMED, MUFEEED)

HAMED, HISHAM HAMED, and PLESSEN)

ENTERPRISES, INC.,)

Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF JOHN GAFFNEY

was taken on the 3rd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
3:14 p.m. and 4:41 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161



JOHN GAFFNEY -- DIRECT

1 JOHN GAFFNEY,

2 Called as a witness, having been first duly sworn,

3 Testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. HARTMANN:

6 Q. Good afternoon, sir. Could you state your full
7 name for the record?

8 A. John Gaffney.

9 Q. And could you spell your last name?

10 A. G-A double F-N-E-Y.

11 Q. And do you use any middle initial or name?

12 A. F for Francis.

13 Q. Okay. And are you a resident of the U.S. Virgin
14 Islands?

15 A. Yes.

16 Q. Okay. And are you currently employed?

17 A. Yes.

18 Q. Okay. Now, I'm going to ask you a series of
19 questions today. If there's anything that you don't
20 understand or you want me to repeat, please ask me.

21 Also, if you wanted to take any time off for
22 a drink, to use the facilities or anything else, just let me
23 know.

24 A. Okay.

25 Q. All right. And where are you employed?

Cheryl L. Haase
(340) 773-8161

JOHN GAFFNEY -- DIRECT

1 A. I'm employed with United Corporation Plaza Extra.

2 Q. Okay. And are you a -- are you an employee of
3 United Corporation, or Plaza Extra Supermarkets?

4 A. It's the same thing.

5 Q. Okay. And -- and do you do the financial and
6 accounting work for Plaza Extra?

7 A. Yes, I do.

8 Q. Okay. And do you -- do you claim any privilege,
9 legal privilege, with regard to testimony about your
10 communications with -- with officials of Plaza Extra
11 corporation?

12 Plaza Extra Supermarkets? I'm sorry.

13 A. Would you repeat that?

14 Q. Yes. Will you allow me to examine you with regard
15 to your communications with, for instance, Mr. Fathi Yusuf,
16 the head of -- of Plaza Extra Supermarkets in the presence
17 of his counsel?

18 A. I'm going to say yes.

19 Q. Okay. Did -- did you and counsel for Plaza Extra
20 Supermarkets have a discussion today before you came here?

21 A. Not today.

22 Q. No?

23 A. No.

24 Q. You didn't --

25 A. I mean, there was talk next door, but there was no

JOHN GAFFNEY -- DIRECT

1 Q. Why is that?

2 A. Because there was no tax liability.

3 Q. Not even at the individual level?

4 A. ~~Not~~ even at the individual level.

5 Q. So on a hundred million dollars of gross sales,
6 there were no taxes paid?

7 A. Gross sales has nothing to do with income tax.

8 Q. No, I'm just asking the question?

9 A. That's right.

10 Q. You said there was a hundred million dollars of
11 gross sales, and no income taxes are due at the corporate
12 level, at the partnership level, or at the individual S
13 corporation shareholder level?

14 A. There were no estimated payments made as
15 distributions to the shareholder in the fourth quarter of
16 2013.

17 Q. How about in the third quarter?

18 A. Not in the third quarter or the second quarter.

19 Q. How about in the first quarter of 2014?

20 A. Yes, there were.

21 Q. Okay. And who made the determination that there
22 would be no federal estimated income tax payments made in
23 2000 -- the fourth quarter and third quarter in 2013?

24 A. Of course, I received copies of the tax returns,
25 and I also had privy to the estimated tax payments that were

JOHN GAFFNEY -- DIRECT

1 being made through distributions in the past, and I saw the
2 accumulation, and I questioned it, and a decision was made
3 to not make 'em.

4 Q. On your advice?

5 A. Uh --

6 MR. HODGES: Objection. Are you -- are you
7 talking about the tax returns, the --

8 MR. HARTMANN: Estimated federal income tax
9 returns, or estimated income tax returns for the third and
10 fourth quarter of 2013. I'm just asking him who made --

11 MR. HODGES: Of what?

12 MR. HARTMANN: Of 2013.

13 MR. HODGES: Of United Corporation?

14 MR. HARTMANN: Of United Corporation and S,
15 yes.

16 He said that none were paid from United
17 because it's an S. He said, normally United pays its
18 shareholders' income taxes. Normally it reports the
19 quarterly taxes. He said it wasn't done in the second and
20 third quarter of 2013, and I've now asked him, Who made that
21 decision?

22 Q. (Mr. Hartmann) You can answer.

23 A. Well, I was directed by -- by Joe DiRuzzo.

24 Q. By Joe DiRuzzo. And who was Joe DiRuzzo?

25 A. He's the attorney for the -- the Yusufs.

JOHN GAFFNEY -- DIRECT

1 **MR. HODGES:** I would object to any further
2 questions about attorney-client privilege, the tax returns
3 that have been filed, or quarterly tax returns that you are
4 mentioning.

5 **MR. HARTMANN:** What's the basis of the
6 privilege?

7 **MR. HODGES:** He's talking -- you're --
8 you're -- you've just elicited a communication between
9 DiRuzzo and Mr. Gaffney.

10 **MR. HARTMANN:** With regard to the Plaza Extra
11 Supermarket income. Mr. DiRuzzo -- a hundred million
12 dollars worth of income came into Plaza Extra?

13 **A.** Let me tell you what account they went in.

14 **Q. (Mr. Hartmann)** All I'm asking about is whether
15 income tax was paid on that?

16 **A.** The money is deposited into accounts that all
17 read, every one of them reads, United Corporation d/b/a
18 Plaza Extra.

19 **Q.** I understand that. I'm simply -- I'm not
20 asking --

21 **A.** So it's not Plaza Extra. It's United Corporation
22 that --

23 **Q.** I'm not asking with anything with regard --

24 **A.** Nothing's changed.

25 **Q.** -- to income that United Corporation makes from

JOHN GAFFNEY -- DIRECT

1 its tenant accounts, or any other rental accounts or
2 anything like that. I'm only asking about the hundred
3 million dollars of income that Plaza Extra Supermarkets
4 bring in, okay? On which you said is no income taxes paid,
5 and you said Mr. DiRuzzo advised you not to do it.

6 Did Mr. DiRuzzo -- strike that.

7 Did you personally, as the comptroller --
8 controller, excuse me -- ever have any discussions with the
9 Bureau of Internal Revenue about the fact that -- that, on a
10 hundred million dollars of income, no estimated quarterly
11 income tax was being paid?

12 **MR. HODGES:** Objection to answering that
13 question based on attorney-client/work product privilege.

14 **MR. HARTMANN:** Only asking him whether he had
15 a direct communication with BIR.

16 **MR. HODGES:** He -- Mr. -- he was engaged by
17 counsel, or he -- his company was engaged by counsel. He
18 was an employee working under the direction of Mr. DiRuzzo.
19 This is attorney-client/work product privilege, and he will
20 not answer.

21 **MR. HARTMANN:** I'm not -- I'm not asking
22 about that.

23 **MR. HODGES:** I'm not going to engage in a
24 debate with you.

25 **MR. HARTMANN:** I'm asking whether he had a

JOHN GAFFNEY -- DIRECT

1 going to other personnel and dogging them about something
2 and sending them off on a wild goose chase.

3 Q. But that isn't affecting the financ -- the actual
4 accounting.

5 A. Yes, it is. It prevents the work from being done.
6 We had a tremend -- this is a hundred million dollar
7 company, in case you want to know.

8 Q. No, it's not.

9 A. And -- and you know what? It's a --

10 Q. It's not making any money.

11 A. It's a hundred million dollar operation.

12 Q. No, no, no.

13 A. It's a hundred million dollar operation.

14 Q. It's not going to make a cent.

15 A. And let me tell you something --

16 THE REPORTER: Wait, wait, wait, wait.

17 A. It normally takes a team of people to do it.

18 THE REPORTER: Just a minute. Just a minute.

19 If I have my hands off the machine, don't
20 talk.

21 THE WITNESS: Okay.

22 MR. HARTMANN: Excuse me for one second.

23 (Respite.)

24 MR. HARTMANN: Let's go back to Exhibit 6.
25 and even though these are the tax returns for the years 2002

JOHN GAFFNEY --- DIRECT

1 through 2012, when were they filed in actuality?

2 A. Well, they're date stamped February 11th, 2013.

3 Q. (Mr. Hartmann) Okay. And were you with -- you
4 were there on February, on that date?

5 A. Yes, I was.

6 Q. Okay. And did you participate in the completion
7 of these documents?

8 MR. HODGES: Objection.

9 A. I had --

10 MR. HODGES: Attorney-client privilege/work
11 product. Instruct him not to answer.

12 MR. HARTMANN: I'm only asking whether he --

13 MR. HODGES: I'm not going to argue with you
14 about that.

15 MR. HARTMANN: Okay.

16 MR. HODGES: You can ask another question.

17 MR. HARTMANN: That's fine.

18 Q. (Mr. Hartmann) You're not going to answer?

19 A. Right.

20 Q. Okay. Did you supply any of the data that went
21 into doing the tax returns?

22 MR. HODGES: Objection. Attorney-client/work
23 product privilege. Instruct him not to answer.

24 Q. (Mr. Hartmann) Okay. Did you see these tax
25 returns after they were filed?