

**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

**REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO DISMISS
PLESSEN ENTERPRISES, INC.**

Defendants' opposition to the motion to dismiss Plessen Enterprises, Inc. ("Plessen") as a counterclaim defendant is nothing more than a shotgun effort to save this totally groundless claim, as there is no real basis for allowing this claim to be part of this case. In short, the claim to dissolve Plessen (a corporation) is not a proper counterclaim, as it does not arise out of the same facts at issue here—a partnership dispute--nor does it implicate questions of law or fact related to the partnership issues raised in Plaintiff's Amended Complaint. Defendants' arguments will be addressed in the order raised.

I. Hamad's "Standing" To Move To Dismiss Plessen

The argument that Hamed has no standing to move to dismiss Plessen highlights the point being made here—the counterclaim seeking to dissolve

Plessen is entirely unrelated to the Amended Complaint and is thus barred under the provisions of Rule 13 and Rule 20. Moreover, this is a Rule 13 and Rule 20 motion. There is *nothing* in Rule 13 or Rule 20 preventing any party from raising the issue of whether another party is a proper counterclaim defendant. Otherwise, a party could join any unrelated party as a counterclaim defendant, such as Hovensa, and nothing could be done unless Hovensa raised the issue! Clearly Rule 13 and Rule 20 are not so restricted, so this “standing” argument can be summarily denied.¹

II. Plessen’s Default

In their April 14th opposition memorandum, Defendants disclose for the first time that Fathi Yusuf, a counterclaim plaintiff, has served himself as the registered agent of Plessen on February 11, 2014, so that Plessen (a counterclaim defendant) is supposedly now in default!² The logic here boggles the mind. Of course, even the Defendants do not have the audacity to file for a default on such fraudulent service.

In any event, the Board of Directors has rectified this problem by having a special board meeting and thereby hiring counsel (see **Exhibit 1**), who has now

¹ The argument about Plessen hiring its own counsel will be addressed in the next section.

² A person suing a corporation and then serving himself as its registered agent without then promptly notifying the other officers of the company about such service is nothing short of fraud. The fact that the Defendants would disclose such conduct to this Court as if there was nothing wrong with this conduct demonstrates its utter contempt for the legal process. It is, however, consistent with their cavalier attitude demonstrated throughout this case, such as arguing no partnership exists when they knew otherwise or suggesting this Court should just summarily lay-off 600 workers just because Fathi Yusuf wants to spite everyone.

entered an appearance for Plessen. Oddly, Fathi Yusuf, as the third of three Directors, voted against hiring counsel – presumably so that there would be such a default. Fortunately, however, there is no breakdown in Plessen’s management, which has three directors -- two of whom have also replaced Fathi Yusuf as the registered agent as a result of this attempt, as well.

In any event, Plessen has not been found to be in default, nor could it be on this record.

III. The Claim Against Plessen

The efforts to belatedly address the merits of this motion are equally feeble. The two arguments raised by Defendants in this regard are equally without merit.

First, Defendants argue that since Plessen is mentioned in the Amended Complaint, it is a proper party to be joined here. However, Plessen was identified in ¶20 of the Amended Complaint (along with several other corporations) to demonstrate that Yusuf and Hamed were partners because they used the supermarket profits to buy other assets on a 50/50 basis. The fact that the profits were shared equally is evidence in proving an element of a partnership, but it does not mean those entities are now proper parties for joinder in this case. Indeed, *Defendants now fully concede and admit the partnership exists* so that allegation in the Amended Complaint is a moot issue. In short, the argument that since Plessen is mentioned in the complaint makes it a proper party for joinder is frivolous.

To try to save this claim, Defendants now argue that Plessen is a necessary party because it owns the land where one of Plaza’s store is located. Of course, this has nothing to do with Defendants’ counterclaim against Plessen seeking to

dissolve it. To try to bolster this argument, Defendant argues that Plessen should be a party because of its flawed plan to dissolve the partnership. **However, that fact has nothing to do with the Count in the counterclaim seeking to dissolve Plessen.** Indeed, at the time the counterclaim was filed, the Defendants were alleging that there was no partnership, so the plan they have now submitted did not even exist when Defendants joined Plessen as a party, seeking to dissolve it.

In short, Defendants fail to address the Rule 13 and Rule 20 legal issues raised in the motion to dismiss—does the Count seeking to dissolve Plessen arise out of the same facts giving rise to the partnership dispute? Of course not, as the dissolution of a separate legal entity has nothing to do with the partnership issues in this case. Likewise, does the claim seeking to dissolve a corporation implicate questions of law or fact related to the partnership issues raised in Plaintiff's Amended Complaint? The clear answer is “no” as well, as that claim involves corporate law and facts related to the operation of that corporation pursuant to its own articles of incorporation and by-laws.

In short, the arguments raised in response to the merits of the motion to dismiss Plessen address irrelevant facts rather than the legal issue before the Court. As such, it is clear Plessen is not a proper counterclaim defendant under the applicable court rules, as the claim to dissolve Plessen is a totally separate matter from the partnership issues pending before this Court.

IV. The Derivative Suit

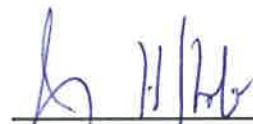
As Plessen is not a proper party under Rule 13 and 20, this argument need not even be addressed. Whether the derivative suit addresses the same issue is

really irrelevant to the issue here—the issue is whether the claim to dissolve Plessen is a proper counterclaim in this proceeding, which it is not for the reasons noted.

V. Conclusion

In summary, the claim to dissolve Plessen (a corporation) is not a proper counterclaim, as it does not arise out of the same facts at issue here—a partnership dispute--nor does it implicate questions of law or fact related to the partnership issues raised in Plaintiff's Amended Complaint. As such, it is respectfully submitted that the counterclaim against Plessen should be dismissed pursuant to Rules 13 and 20.

Dated: May 1, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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A handwritten signature in blue ink is positioned above a horizontal line. The signature is stylized and appears to consist of two parts: a large, looped initial on the left and a more complex, cursive-like signature on the right.

**PLESSEN ENTERPRISES, INC.
RESOLUTIONS OF THE BOARD OF DIRECTORS**

WHEREAS, Plessen Enterprises, Inc. ("Plessen"), did conduct a special meeting of the Board of Directors on April 30, 2014, at its offices and

WHEREAS, the Board did consider the following five RESOLUTIONS, and

WHEREAS, two Directors did vote for each of the RESOLUTIONS;

NOW, THEREFORE, the undersigned, being the President of the Corporation takes the following action as authorized under the Articles of Incorporation, the By-Laws and the laws of the Virgin Islands,

RESOLVED, that any and all actions of Waleed Hameed to remove and distribute funds in May of 2013 in the amount of \$460,000 as dividends is ratified and approved,

RESOLVED, that the President of the Corporation is hereby authorized to take any and all action necessary, proper or desirable to enter into a lease agreement with KAC357, Inc. for the Premises (the "Lease") of the building and adjoining improvements located at the corporation's property located at L4 Estate Plessen, St. Croix, where the current Plaza Extra Supermarket is located, and pursuant to such provisions as such officer or officers deem in the best interests of the Corporation;

NOTED, that Waleed Hamed, a director in Plessen Enterprises, Inc., has disclosed to the entire Board that he has a financial interest in KAC357, Inc. as a 33.33% shareholder in said company and may act as an officer and/or director in the company in the future;

RESOLVED, that Jeffrey Moorhead, be retained by the President to represent the corporation in the pending litigation filed against Plessen Enterprises, Inc. by (1) United Corporation and Fathi Yusuf, Case No. STX -L2-CV-370, and (2) the lawsuit naming Plessen Enterprises, Inc. as a party defendant in Yusuf Yusuf v. Waleed Hamed et al..


RESOLVED, that the President of the Corporation is hereby authorized to take any and all action necessary, proper or desirable to issue additional dividends up to \$200,000 from the company's bank account to the shareholders.



RESOLVED, That Fathi Yusuf is removed as the Registered Agent of the Corporation, and that the President shall report to the USVI Government that henceforth, Jeffrey Moorhead shall be the Registered Agent.

DATED this 30th day of April, 2014.

DIRECTORS VOTING AGREED:



MOHAMMAD HAMED

Director



WALEED HAMED

Director

FATHI YUSUF

Director