

**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**

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**PLAINTIFF'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT  
AS TO THE EXISTENCE OF A PARTNERSHIP**

Plaintiff renews its motion to the Court for partial Summary Judgment as to the existence of a Partnership between Fathi Yusuf and Mohammad Hamed with regard to the three Plaza Extra Supermarket stores. He does so because 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**.<sup>1</sup>

On October 19, 2012, Plaintiff filed an Amended Complaint in which he pled the existence of the Partnership and sought declaratory relief:

#### **COUNT I**

35. A partnership was formed between the two parties. The Partnership has as its terms, by oral agreement: 50/50 sharing of profits, 50/50 sharing of losses. . . .The foregoing acts by Yusuf all violate the Partnership rights of Mohammed Hamed as well as the terms of the partnership agreement between Yusuf and Mohammad Hamed.

36. As such, pursuant to 26 V.I.C., including § 75, Mohammad Hamed is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights.

37. In this regard Mohammad Hamed is entitled to declaratory and equitable relief as to his rights as well as injunctive relief to protect those rights, including the return of funds or creation of a trust as to the Partnership funds improperly taken or spent by Yusuf. . . .

As equitable relief therefore, Plaintiff sought a declaration of the existence of the Partnership pursuant to the Uniform Partnership Act.


Defendants have conceded the existence of this partnership in the referenced filing and document. Thus, Plaintiff has prevailed as to his allegations in Count I of the Amended Complaint and asks that the Court enter partial summary judgment with a declaration of the existence of the Partnership pursuant to the Uniform Partnership Act.

A Proposed Order is attached.

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<sup>1</sup> 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**.

**Dated:** May 8, 2014



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**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.**  
*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 8th day of May, 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**  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: mark@markeckard.com

**Jeffrey B. C. Moorhead**  
1132 King Street  
Christiansted, VI 00820  
email : jeffreymlaw @yahoo.com  
(340) 773-2539 (tele)

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

From: George H.T. Dudley <[gdudley@dtflaw.com](mailto:gdudley@dtflaw.com)>

To: 'Joseph DiRuzzo' <[JDiRuzzo@fuerstlaw.com](mailto:JDiRuzzo@fuerstlaw.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>

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

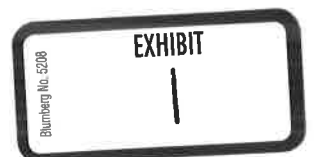
St. Thomas, VI 00804

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Phone: 340-774-4422 (switchboard)

Fax: 340-715-4400

Email: [gdudley@dtflaw.com](mailto:gdudley@dtflaw.com)



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

From: George H.T. Dudley <[gdudley@dtflaw.com](mailto:gdudley@dtflaw.com)>  
To: 'John Gaffney' <[johngaffney@tampabay.rr.com](mailto:johngaffney@tampabay.rr.com)>; Mike Yusuf <[mikefyusuf@yahoo.com](mailto:mikefyusuf@yahoo.com)>  
Cc: Joel Holt ([holtvi@aol.com](mailto:holtvi@aol.com)) <[holtvi@aol.com](mailto:holtvi@aol.com)>; Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>; NIZAR DEWOOD ([dewoodlaw@me.com](mailto:dewoodlaw@me.com)) ([dewoodlaw@me.com](mailto:dewoodlaw@me.com)) <[dewoodlaw@me.com](mailto:dewoodlaw@me.com)>; Kurt Petri <[kpetri@dtflaw.com](mailto:kpetri@dtflaw.com)>; Joseph DiRuzzo ([JDiRuzzo@fuerstlaw.com](mailto:JDiRuzzo@fuerstlaw.com)) <[JDiRuzzo@fuerstlaw.com](mailto:JDiRuzzo@fuerstlaw.com)>; 'joycebailey@earthlink.net' <[joycebailey@earthlink.net](mailto: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,

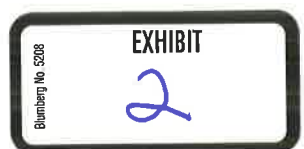
John Gaffney  
(305)332-7 [REDACTED]

**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](mailto:JDiRuzzo@fuerstlaw.com)); NIZAR DEWOOD ([dewoodlaw@me.com](mailto:dewoodlaw@me.com)) ([dewoodlaw@me.com](mailto:dewoodlaw@me.com)); John Gaffney ([johngaffney@tampabay.rr.com](mailto: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*  
Dudley, Topper and Feuerzeig, LLP  
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Email: [gdudley@dtflaw.com](mailto:gdudley@dtflaw.com)

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>
<b>Revenues</b>			
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>
	<b>Total Revenues</b>	<u>97,301,050.66</u>	<u>106,729,850.31</u>
<b>Cost of Sales</b>			
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>
	<b>Total Cost of Sales</b>	<u>66,209,155.65</u>	<u>71,011,798.51</u>
	<b>Gross Profit</b>	<u>31,091,895.01</u>	<u>35,718,051.80</u>
<b>Operating Expenses</b>			
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	Year to Date
		<u>This Year</u>	<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>25,744,057.01</u>	<u>30,584,567.36</u>
	Total Operating Expenses		
	Net Operating Income	<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>1,456,508.45</u>	<u>2,286,426.51</u>
	Total Other Income (Expense)		
	Net Income	\$ 6,804,346.45	<u>\$ 7,419,910.95</u>
	Settlements & Fines Paid	1,016,850.00	
	Interest Income - Nontaxable	<u>(872,531.85)</u>	
	Est'd Pass-Through Taxable Income	\$ 6,948,664.60	
	Highest Marginal Tax Rate	<u>39.6%</u>	
	Maximum Tax Estimate	<u>\$ 2,751,671.00</u>	





Entered this \_\_\_\_ day of May, 2014.

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**Douglas A. Brady**  
Judge of the Superior Court

**A T T E S T:**

**Estrella George**  
Acting Clerk of the Court

By: \_\_\_\_\_  
**Deputy Clerk**

cc: Nizar A. DeWood, Esq.  
Mark W. Eckard, Esq.  
Carl J. Hartmann III, Esq.  
Gregory H. Hodges, Esq.  
Joel H. Holt, Esq.