

Alternatively, Yusuf submits that the Court should appoint a Receiver to wind up the partnership business.

I. Hamed and Yusuf Agree That the Partnership is Dissolved.

In his Response, Hamed claims that Yusuf's concession that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores¹ and to share equally the net profits from the operation of the Plaza Extra Stores "was not done out of altruism, but for spite." See Response at p. 1-2. Yusuf's concession was neither made out of altruism nor spite. It was made simply because Yusuf acknowledged what should be crystal clear to anyone familiar with this case, namely, that the business relationship between Yusuf and Hamed has become so poisonous that whatever its form, the relationship must be concluded. As Hamed would have it, only he could dissolve the partnership because Yusuf's previous notices of dissolution in March of 2012 and in the Memorandum in support of the Motion were somehow ineffective because Hamed alleged in his First Amended Complaint that Yusuf "should be disassociated [sic] from the business, allowing Hamed to continue the Partnership's business without him pursuant to the provisions of 26 V.I.C. including §§ 122-123, 130 and what is now subchapter VII of Title 26." See First Amended Complaint at ¶ 42. As pointed out in a Yusuf's Memorandum in support of the Motion, Hamed's pleading and his Response show that he labors under the mistaken belief that the concept of dissociation can even be applied to a two person partnership. This incomprehensible position is encapsulated in the following argument and footnote from the Response:

Clearly, an election by a partner under § 173(a)^[2] [sic] to dissolve a partnership is only available to a partner who is not wrongfully disassociated [sic] from the partnership.³

¹ Capitalized terms not otherwise defined in this Reply shall have the same meaning as provided in the Memorandum in support of the Motion and the Yusuf Plan.

² Presumably, Hamed intended to refer to § 171(1) of title 26 rather than § 173(a).

³While Defendants may argue that Yusuf has not been dissociated from the Partnership *yet*, that is only because this issue has not been determined. Thus, any such motion by him would be premature. Clearly the intent of the statute allowing dissociation would be thwarted if a partner who engages in wrongful acts warranting dissociation could simply avoid liability by giving a belated notice of dissolution at the eleventh hour. Indeed, 26 V.I.C. § 175(a) prohibits such a partner from even proposing a dissolution plan.

See Response at p. 2 (emphasis in original).

In explaining the relatively modern concept of dissociation, the court in Corrales v. Corrales, 198 Cal. App. 4th 221 (Cal. Ct. App. 2011) said:

Dissociation was a new feature of the RUPA [California Revised Uniform Partnership Act], one not present in former law. Under former law, a partnership was a simply group of people; when a partner died, withdrew, or was expelled, the partnership automatically dissolved and had to be reconstituted, unless the partnership agreement specifically provided otherwise. Dissociation permits the remaining partners to carry on partnership business without the withdrawing partner and without having to start from scratch.

Id. at 227 (emphasis supplied).

Not only has Hamed ignored the provisions of V.I. Code Ann. tit. 26, § 122(b), which define “wrongful dissociation” in such a way as to make clear that the concept does not apply to the facts and circumstances of this case, he tortures the language of § 175(a) to equate a “statement of dissolution” with a dissolution plan. Understandably, Hamed also completely ignores the Corrales case, since it teaches that the concept of dissociation simply cannot apply to a two person partnership. As the Corrales court pointed out, “[t]he purpose of dissociation is to allow the partnership to continue with the remaining partners. When a partner withdraws from a two person partnership, however, the business cannot continue as before. One person cannot carry on a business as a partnership.” Id. at 228.

II. Yusuf's Plan Is Based On Reality And Follows The Law Whereas Hamed's Plan Does Not.

Although the Response claims that Yusuf's Plan is "fatally flawed," Hamed does not point this Court to a single provision of the Yusuf Plan that is inconsistent with the provisions of V.I. Code Ann. tit. 26, §§ 1-274, Uniform Partnership Act ("UPA"), which contemplates a prompt winding up of the partnership's business, settling and closing the partnership's business, disposition of the partnership's property, discharge of the partnership's liabilities, and distribution of the assets of the partnership in accordance with the UPA. See UPA at § 173(c).

It is important to note that both Hamed and Yusuf agree on what constitutes the existing partnership assets. See Yusuf Plan at § 8(B)(1) and Hamed Plan at § 8(B)(1), both of which rely on the same balance sheet for the Plaza Extra Stores attached as Exhibit B to the respective plans.³ Under Yusufs' Plan, since the partnership has no existing commercial lease for Plaza Extra – East and Plaza Extra – West and only a short term (less than 5 years) remaining on the lease for Plaza Extra - Tutu Park, liquidation of the Plaza Extra Stores was warranted because the stores could not reasonably be sold as a going concern. See § 8(a) of the Yusuf Plan.

Instead of pointing out any actual flaw in Yusuf's Plan, Hamed hopes to convince this Court that only by adopting his plan can massive layoffs and erosion of the Government's tax base be avoided thereby preventing a Virgin Islands economic disaster. How does Hamed propose to save the Virgin Islands economy? He proposes to transfer ownership and operation of two of the Plaza Extra Stores (Plaza Extra - Tutu Park and Plaza Extra – West) from the partnership to a newly formed (April 22, 2014) entity, KAC357, Inc. (the "New Hamed Company"), wholly owned by three of Hamed's sons. See Hamed Plan at §§ 1.31 and 4 ("Option 2"). While it may be true that implementation of Yusuf's Plan may result in some temporary

³ Hamed altered Exhibit B in one respect - he deleted the accrued expenses due United for rent.

layoffs, Hamed's effort to paint a picture of doom and gloom if Yusuf's Plan is implemented, simply has no basis in fact. Obviously, Hamed assumes that the space currently occupied by the partnership will remain vacant or unused after the inventory and equipment of the Plaza Extra Stores is liquidated under the Yusuf Plan, an assumption that is wholly unrealistic. When the Plaza Extra Stores vacate the premises they occupy, Hamed provides this Court with no reason to doubt that the vacated premises will be occupied by another tenant providing job opportunities for Virgin Islanders and tax revenues for the Government. Indeed, as effectively conceded by Hamed by his failure to even address the disposition of the Plaza Extra – East store in his discussion of "Option 2" at § 4 of his plan, there is nothing to prevent United from continuing the operation of Plaza Extra – East, which employs approximately 220 people, after the wind up of the partnership.⁴

Hamed claims that Yusuf's Plan will result in "the entirely inexplicable wasting of valuable partnership assets that need not occur." See Response at p. 3(emphasis in original). This makes no sense. Hamed does not point this Court to a single asset that would be wasted by implementation of Yusuf's Plan.

Hamed next claims that Yusuf is precluded from being the liquidating partner or even participating in the winding up of the partnership by section 74(b)(2) of the UPA, which provides as follows:

A partner's duty of loyalty to the partnership and the other partners is limited to the following:

⁴ United is a company that has been in existence and doing business for 35 years. It has been the registered owner of the "Plaza Extra" trade name since 1986 and is the named lessee under the lease covering Plaza Extra- Tutu Park. As Hamed knows from prior negotiations, United and Yusuf were also prepared to "take over" the Plaza Extra – Tutu Park and Plaza Extra – West stores in the same manner, for the same consideration (or more), and under the same undertaking to provide continued employment as proposed by Hamed on behalf of the New Hamed Company. The reason no such proposal was contained in Yusuf's Plan is because Yusuf understood that neither Hamed nor this Court would ever seriously consider approving a plan involving the conveyance of partnership assets to an "insider," i.e., self-dealing. However, nothing prevents either partner from bidding to purchase the assets at a public auction.

* * *

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership[.]

Under Yusuf's Plan, during the wind up period, the partnership would pay rent to United at the same rate agreed upon by Hamed when \$5,408,806.74 was paid to United on February 7, 2012.⁵ Although Hamed does not dispute that rent is due, at least based on the formula that resulted in the payment of \$5.4 million dollars in February of 2012, under his plan, no rent is paid to United for the entire wind up period – which could last between six (6) and thirty (30) months. See Hamed Plan at § 8(B)(2) and Exhibit A (reflecting no rent expense for Plaza Extra - East and, inexplicably, no rent expense for Plaza Extra – Tutu Park after the third month). Since Hamed acknowledged under oath that it would not be fair for the partnership to occupy United's premises without paying rent, see Exhibit A⁶ at p. 117-19; 123-4, there is simply no good reason that rent should not be paid for the continued occupancy of the Plaza Extra - East premises during the wind up period based on the same rate Hamed accepted when the \$5.4 million check was paid to United. This is the same rental rate set forth in the budget, attached as Exhibit A to the Yusuf Plan. Accordingly, Yusuf will not have to "deal with" the partnership in the winding up of the partnership business on behalf of United with respect to any disputed issue, because all of the disputed rent, i.e., the rent claimed for periods before May 5, 2004 and for rent in an amount different from the formula that led to the \$5.4 million payment, will all be claims that are submitted to the Master as a part of each partner's accounting after the liquidation of the

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⁵ This paid the rent for the period May 5, 2004 to December 31, 2011. Despite Hameds' deposition testimony acknowledging that United was owed further rent, see Exhibit A at p. 86-87, United has received no rent for the period January 1, 2012 to date, not to mention the rent owed for the period from January 1, 1994 through May 4, 2004.

⁶ This exhibit will contain all of the relevant pages from the transcripts of Hamed's deposition on March 31, 2014 and April 1, 2014 cited in this Reply.

partnership assets. See Yusuf Plan at § 8(B)(3) and (Step 8: Distribution Plan) (“Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination.”). Since the Yusuf Plan simply provides for the payment of the agreed upon rent during the wind up process in an amount previously agreed to by the parties, with all remaining rent claims to be determined by the Master and/or this Court, Yusuf has no adversity of interest that would preclude his service as Liquidating Partner or his participation in the winding up of the partnership.

On the other hand, under his plan, Hamed is beset with palpable conflicts of interests because the Hamed Plan **requires** the transfer or assignment of all non-liquid assets of the Plaza Extra Stores to the New Hamed Company, wholly owned by his family.

III. Hamed’s Plan Is An Affront To This Court.

When one considers the myriad problems, indeed illegalities, with Hamed’s Plan, only some of which will be discussed below, the fact that it was cut and pasted together from Yusuf’s Plan and submitted as a competing plan is nothing less than an affront to the dignity of this Court. While Hamed proclaims that his plan will result in the continued employment of most, if not all, of the 600 employees of the Plaza Extra Stores and the continued operation of at least two of those stores, the only way this can be accomplished is if this Court (a) ignores applicable provisions of the UPA, (b) approves the outrageous stunt attempted by Hamed and his son, Waleed, at an April 30, 2014 meeting of the Board of Directors Plessen Enterprises, Inc. (“Plessen”), called on one business day’s notice, to approve, among other self-dealing actions, a

lease from Plessen to the New Hamed Company, and (c) otherwise accepts the overreaching provisions of Hamed's Plan.

A. Hamed's Plan Improperly Gives Himself First Dibs On Partnership Assets.

One of the glaring illegalities of Hamed's Plan is that it proposes to pay Hamed \$17,000,000 of partnership funds before the first penny is applied to discharge the obligations of the partnership to its creditors. See Hamed Plan at § 6 ("Each partner shall receive \$2,000,000 from the existing Plaza Extra bank accounts for the stores upon approval of this Plan.") and § 7 ("Once released, \$30,000,000 will be distributed equally to the partners with the balance deposited into the Claims Reserve Account . . ."). Contrary to the law, Hamed's Plan puts his interest ahead of the interest of everyone else.⁷ Section 177(a) of the UPA provides:

In winding up a partnership's business, the assets of the partnership, including the contributions of the partner's required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors.

As Corrales and simple common sense dictate, upon dissolution, "[t]he partnership is wound up, its business is completed, and the partners make whatever adjustments are necessary to their own accounts **after paying the creditors.**" Corrales at 227 (emphasis supplied). Of course, Yusuf's Plan provides no such up front payments to partners and complies with the UPA by insuring that creditors of the partnership get paid first.

B. Hamed Is Not Qualified To Be the Liquidating Partner.

In light of Hamed's sworn testimony that he (i) cannot read English, (ii) cannot understand English well enough to testify at deposition without a translator, and (iii) has not been involved in the operations of the Plaza Extra Stores since 1996, Hamed simply is not qualified to serve as

⁷ The fact that his plan also proposes to illegally pay Yusuf an equal \$17,000,000 does not help Hamed. Upon dissolution, the partners are supposed to get paid last, not first.

Liquidating Partner. Even when Hamed was involved in the operations of the stores, his responsibility was limited to being the warehouse supervisor for Plaza Extra – East. On the other hand, Hamed has conceded that Yusuf has always been the partner with ultimate decision making authority for the business and in charge of everybody at all three stores. Unlike Hamed, Yusuf has never retired and has remained actively engaged in the business of the Plaza Extra Stores to date.

Hamed's Plan provides that he will not charge for his services as Liquidating Partner. See Hamed Plan at § 5. The simple reason for his "free" services is clear – he does not plan to do anything. Rather, he plans to have his son, Waleed, perform his functions as the proposed Liquidating Partner. This Hamed cannot do. In their Memorandum in support of the Motion, at p. 5, Defendants pointed out that Hamed has never provided this Court or the Supreme Court with a single authority that allows a "retiring" partner to effectively assign or delegate his role as partner to his son or any other person. The Response ignores this point and thus concedes it. While Yusuf has no objection to Hamed's personal participation in the winding up, he has objected to Hamed's delegation to his son of his rights and obligations as a partner in the winding up of the partnership. Id. at p. 8.

C. The "Replacement Lease" Given To The New Hamed Company Is Invalid.

The so called "Replacement Lease," defined at § 1.31 of Hamed's Plan, which serves as a linchpin of his plan, provides a worthless foundation since it must be invalidated as the product of an illegal meeting of the Board of Directors of Plessen called on one day's notice to approve the Replacement Lease, among other actions involving self-dealing by Hamed and his sons. A motion to invalidate this lease and to appoint a Receiver for Plessen has been filed in this action as well as the derivative action involving Plessen pending at Case No. SX-13-CV-120 on May 19,

2014. Defendants incorporate and rely upon the content of the brief supporting that motion. Because Hamed will not be able to carry his burden of proving the intrinsic fairness of the Replacement Lease, which was given to the New Hamed Company without the requisite shareholder approval, the Replacement Lease will be invalidated, thereby removing a foundational element of the Hamed Plan. The very fact that Hamed premised his plan on the validity of the Replacement Lease, which was in theory approved at a hastily called board meeting⁸ in violation of Plessen's bylaws and governing law, shows that the plan is not based on reality, but rather premised on "insider" transactions that are bound to be undone by this Court after being burdened with further litigation.

D. Option 1 Of the Hamed Plan Is Not A Viable Option, As Hamed Well Knows.

United will not agree to the long term lease contemplated in § 4 of the Hamed Plan describing "Option 1" and Hamed never had any realistic expectation that United would so agree. After all, why would a company that is owed millions of dollars in unpaid rent and was sued - even though Hamed acknowledged under oath that he had no claims against it, see Exhibit A at p. 43-4; 72 - provide additional value to Hamed in the form of half of the value of a long term lease? Obviously, there is no likelihood of United agreeing to this so there was never any risk that the New Hamed Company would have to assign the Replacement Lease to a third party buyer as contemplated under Option 1. Accordingly, the only "option" to consider under the Hamed Plan is "Option 2," where the New Hamed Company ends up with all of the non-liquid assets of the Plaza Extra Stores, except Option 2 is inexplicably silent regarding Plaza Extra - East. What happens to the inventory and equipment located at that store?

⁸ As indicated in the opening paragraph of this Reply, Defendants agreed to give Hamed an extension of time until April 30, 2014 to respond to the Motion. Clearly, Hamed orchestrated the bogus board meeting to take place on the last day of the extension so the Replacement Lease, purportedly "approved" by the Plessen board of directors, could be served up in the Hamed Plan.

E. Option 2 Of The Hamed Plan Is Premised On The Assignment Of The Plaza Extra Tutu Park Lease And Related Litigation To The New Hamed Company, Which Ends Up With All Non-Liquid Assets Of The Plaza Extra Stores Except Plaza Extra - East.

Section 4 and 8(B)(3)(Step 5) of Hamed's Plan **requires** the Master to assign the Plaza Extra – Tutu Park lease and related litigation against Tutu Park, Limited to the New Hamed Company. What does the partnership get in return? According to the Hamed Plan, it gets “100% of full present market value of all inventory and partnership personal property therein within 60 days of that value being established.” See Hamed Plan at § 4. Who is going to establish this value, how will it be determined, and when will the 60 days start running? These are questions left unanswered by Hamed's Plan. On the other hand, Yusuf's Plan sets forth a definite plan for selling the very same property. Inventory is sold in the ordinary course and, after the inventory is liquidated, equipment is sold in a commercially reasonable manner - all within 120 days. See Yusuf Plan at § 8(B)(3)(Step 4). Although Hamed proclaims that his plan “provides more value to the Partnership than the Plan submitted by . . . Yusuf,” he fails to explain how his sale of the same inventory and equipment to the New Hamed Company under his vague plan will generate any more value than Yusuf's Plan.⁹

Although Hamed's Plan blithely provides for assignment of the Plaza Extra – Tutu Park lease to the New Hamed Company, no information is provided regarding the assignability of that lease, whether the landlord will consent to any such assignment given the ongoing litigation with the landlord, and what happens to Yusuf's personal guaranty of that lease.

While Yusuf's Plan provided that “the Liquidating Partner will seek to negotiate the termination of the Tutu Park Lease in exchange (in whole or in part) for dismissal of the Tutu

⁹ Under Hamed's Plan, the New Hamed Company only pays for the market value of the inventory and equipment of the partnership. Again, while United and Yusuf would be prepared to pay this value plus the fair market value of the remaining term of the Tutu Park lease at a public sale, they never made a proposal comparable to the one proposed in the Hamed Plan because Yusuf understood that neither Hamed nor this Court would approve such self-dealing.

Park Litigation,” see Yusuf Plan at § 8(B)(3)(Step 6), Hamed attempts to equate this with a concession that the litigation is not worth more than the exposure for rent during the remaining term of the lease (\$900,000 plus taxes and common area expenses). This is simply untrue and the Hamed Plan is nothing more than a brazen attempt to give the Tutu Park Litigation to the New Hamed Company for nothing.

F. Section 7 Of Hamed’s Plan Provides That A Representative Of Hamed, Who Is Not Even A Party In The Criminal Case, Must Be Involved In Meetings Between United and The DOJ.

Hamed’s Plan would give Hamed, who is not now and never has been a party to the Criminal Case, standing to insist on being involved in meetings between United and the U.S. Department of Justice. Neither Hamed nor the Court has the ability to interject themselves into a pending federal criminal case.

G. Section 4 And 8(B) Of Hamed’s Plan Contemplates The Master Being Involved In The Assignment, Sale Or Transfer Of Partnership Assets, The Negotiation Of Leases, And Even Requires The Master To Present A Proposed Accounting and Distribution Plan. Masters Don’t Do This, Partners or Receivers Do.

Both plans provide: “A Master shall be appointed to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner.” See § 2 of both plans. The Hamed Plan differs significantly from the Yusuf Plan in the scope of authority and duties given to the Master. The Hamed Plan, for instance, requires the Master to (a) “attempt to sell the three Plaza Extra Supermarkets . . . as a single going concern to a third party buyer not affiliated with the interests of either current partner at the best price obtainable . . .” (Hamed Plan at § 4, p. 7); (b) “assign the lease and any liabilities thereunder for the Plaza Extra – Tutu Park store to KAC 357, Inc. . . . , transfer possession of the Plaza Extra – West store to KAC357, Inc. and . . . transfer the name “Plaza Extra Supermarkets” to KAC357, Inc. and its membership in Associated Grocers” (Hamed Plan at § 4, p. 8); (c) “sell any and all non-liquid Partnership Assets

not transferred pursuant to Option 1 or Option 2 in Section 4 . . .” (Hamed Plan at § 8(b), p. 10); (d) “negotiate the leases as contemplated in Option 1 of Section 4” (Hamed Plan at § 8(B)(2)); and (e) “present a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account.” (Hamed Plan at § (B)(3) (Step 8). All of these duties are far beyond the scope contemplated by Fed. R. Civ. P. 53(a), made applicable to proceedings in this Court by Super. Ct. R. 7, and Yusuf does not consent to a Master performing duties that should be done by the Liquidating Partner or a Receiver.

H. Section 8(B)(3) (Step 1) Of Hamed’s Plan Does Not Provide For The Payment Of Agreed Upon Rent To United Or The Rent For Plaza Extra – Tutu Park.

Although Hamed’s Plan purports to include a Wind Up Budget that provides for the “costs for continued operations of the Plaza Extra Stores during the wind up . . . and the rent to be paid to the landlord of Plaza Extra – Tutu Park (until lease is terminated),” it fails to provide for any payment of rent to United during the entire wind up period and it only provides for the payment of rent for the Plaza Extra – Tutu Park store for three months. Hamed’s Plan provides no explanation whatsoever why this Court should allow United’s premises to be occupied rent free for another 6 to 30 months¹⁰ or why payment of Plaza Extra – Tutu Park rent will cease after only three months.

I. Section 8(B)(3) (Steps 2 and 3) Of Hamed’s Plan And The Budget Are Completely Unrealistic.

In addition to the failure of Hamed’s Plan and proposed Wind Up Budget¹¹ to realistically address the issue of rent, discussed above, they also fail to address a host of other important expenses. For example: (a) If Hamed proposes to pay the Master \$25,000 per month, why does

¹⁰ Since United has not been paid any rent for the period from January 1, 2012 to date, Hamed’s Plan would deprive United of rent for three years assuming the liquidation process only lasts 6 months.

¹¹ Hamed’s Wind Up Budget attached as Exhibit A to his plan should be compared with Yusuf’s Wind Up Budget attached as Exhibit A to his plan, from which Hamed’s budget was obviously taken.

his budget for professional fees drop from \$25,000 to \$5,000 in the third month and then eliminate all fees thereafter? (b) Why does Hamed's budget eliminate gross receipts tax expenses after the third month? (c) Why are electric utility expenses reduced so significantly in the third through sixth month? (d) If Hamed's Plan purports to provide for the continued employment of over 600 Virgin Islanders, why are wages significantly reduced after the third month? Hamed's Plan does not provide any clue to answer these questions.

J. Hamed Cannot Pursue Litigation Against United In Light Of His Testimony That He has No Claims Against United. Section 8(B)(3) (Step 6) Of Hamed's Plan Provides For Continued Litigation Between The Partners When Partners Ordinarily Cannot Sue Each Other For Damages Based On Partnership Business.

First, Hamed's Plan provides for continued litigation against United, despite Hamed's sworn testimony that he has no claims against United. See Exhibit A at p. 43-4; 72.

Secondly, as a general rule partners cannot sue each other for damages based on partnership business "at least not until there has been an action for dissolution and accounting." Corrales v. Corrales, 198 Cal. App. 4th 221, 228-229 (Cal. App. 4th Dist. 2011). See also, Stratavest Ltd. v. Rogers, 888 F. Supp. 35, 37 (S.D.N.Y. 1995) ("[O]ne partner may not sue another at law for damages relating to partnership affairs unless there has been a full accounting, prior settlement or adjustment of the partnership affairs. Cases or counts are dismissed which plead legal causes of actions between parties prior to an accounting.") (citations omitted). This principle also was explained in Arnold v. Burgess, 113 Idaho 786 (Idaho Ct. App. 1987) as follows:

Generally, the only action which will lie between partners regarding partnership business is an action for an accounting. An accounting is an equitable proceeding for comprehensive investigation of transactions and adjudication of the rights of the partners. Other actions are premature until the business is wound up and accounts settled. This rule is based upon the inconvenience to the parties, the fact that equitable relief may be necessary to protect the right of the parties, and the notion that only after a balance has

been struck can the relative rights of the parties be established. If partners are unable to settle their own affairs, an action in equity for an accounting is the appropriate, and sometimes exclusive, remedy to adjust and settle the affairs of a partnership.

The ultimate goal of an accounting is to ascertain the value of a plaintiff's interest in the partnership as of the date of dissolution and then to determine any profits attributable to the use of the plaintiff's right in the property of the dissolved partnership. A final account is the one great occasion for a comprehensive and effective settlement of all partnership affairs. All the claims and demands arising between the partners should be settled upon such an accounting. The decree in an accounting action should provide for a final adjustment of all controverted questions before the trial court with respect to a partnership accounting and distribution. Ordinarily, in any action to terminate a partnership the trial court will order liquidation of the partnership assets by sale, with application of the proceeds according to the priorities set forth in . . . [the statute].

Id. at p. 791 (citations and internal quotations omitted).

Hence, unless it can be shown that the erring partner wrongfully destroyed the partnership and converted to his own use its entire assets, no claim exists until a full accounting has occurred. Corrales, 198 Cal. App. 4th at 228. In this case, there is no evidence that Yusuf converted to his own use all the partnership assets or destroyed the partnership business. Therefore, the general rule applies that no claims can be sustained until such time as a full accounting takes place, which cannot occur until after liquidation of partnership assets and the discharge of all partnership obligations.

IV. Given Hamed's Recent Attempts To Hijack Plessen To Approve The Replacement Lease, This Court Should Consider Simply Appointing A Receiver For The Partnership And Plessen to Liquidate These Entities.

Forty years ago, Circuit Judge Maris penned the opinion in Moran v. Edson, 493 F. 2d 400, 11 V.I. 166 (3d Cir 1974), which provides timeless lessons regarding deadlocked corporations. The Moran Court's summary of the situation applies with equal force in this case:

Thus, as can be seen, the two factions were in hopeless deadlock. The only matter upon which they did agree was that each would like to be released

from the relationship, but they obviously could not agree upon the procedure on the price whereby it could be accomplished.

Id. at 173.

Hamed cannot dispute that there have been no actual meetings of Plessen's shareholders and directors for more than twenty five (25) years before his hastily called special meeting of directors on April 30, 2014. The very fact that Hamed called this meeting to purportedly approve the Replacement Lease, among other self-dealing actions, shows that he understood there was a hopeless deadlock in Plessen's and, by extension, the partnership's business affairs. The sham meeting and the corrupted byproducts of that meeting, including the Replacement Lease that serves as a linchpin of the Hamed Plan, simply reveal the misguided lengths to which Hamed will go to break the deadlock.

While it may be argued that before a Receiver can be appointed for Plessen, this Court should first summarily order an election of directors, pursuant to V.I. Code Ann. tit. 13, § 193, and then appoint a Receiver, pursuant to V.I. Code Ann. tit. 13, § 195, only if the vote is equally divided at such election, Yusuf submits that such an election would be a complete waste of time because it is forgone conclusion that the shareholder vote would be equally divided along family lines.

As the Moran Court explained:

13 V.I.C. § 195 implements the general rule that a court of equity may appoint a receiver when there are such dissensions in the board of directors of a corporation or between two groups of its stockholders, each holding an equal number of shares, that it is impossible to carry on the business with advantage to the parties interested, even though the corporation is solvent. And in such a case the court may direct the sale of the corporate property for the protection of the creditors and benefit of the stockholders and order a dissolution of the corporation.


Id. at 179-180 (citations omitted).

Yusuf respectfully submits that this is just “such a case” and that the Court should, after nullifying the actions purportedly taken by Plessen’s board of directors on April 30, 2014, “direct the sale of the corporate property for the protection of the creditors and benefit of the stockholders and order dissolution of” Plessen. Given that the shareholders, officers, and directors of Plessen have demonstrated that they cannot agree on how to accomplish such dissolution and liquidation, the Court should appoint a Receiver to perform these acts. Yusuf further submits that such Receiver should also be appointed to liquidate the assets of the Plaza Extra Stores in the event the Court is not inclined to appoint a Master to supervise the winding up of the partnership between Hamed and Yusuf pursuant to the Yusuf Plan.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2014, I caused the foregoing **Defendants' Reply To Plaintiff's Response To Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up, Or, In The Alternative, To Appoint Receiver To Wind Up Partnership** of to be served upon the following via e-mail:

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

MOHAMMED 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.,)
)
Additional Counterclaim Defendants.)

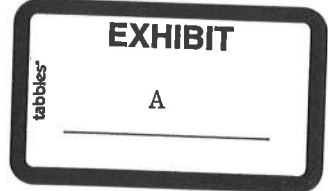
Case No. SX-12-CV-370
Volume I

THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED

was taken on the 31st day of March, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
10:05 a.m. and 2:03 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



MOHAMMAD HAMED -- DIRECT

1 you?

2 **A.** For who will tell? I'm not say that.

3 **Q.** If he doesn't want to be your partner anymore,
4 he's allowed to stop being your partner, right?

5 **A.** Yeah. I'm -- I'm a start with him with the first
6 step, and I tell him, I trust you. Whatever you did, you go
7 ahead. I back you up. And after that, they tell me, Your
8 kids getting a lot big, and my kids getting a lot. We have
9 to separate. Okay, and you separate it. Give me my own and
10 take your own, and that's it. We don't leave nothing.

11 **Q.** And -- and -- and that's all you're looking for in
12 this lawsuit, is to separate? Is -- is that what you're
13 saying?

14 **MR. HARTMANN:** Object to --

15 **A.** That's what he asked for to.

16 **MR. HARTMANN:** Excuse me. Wait, wait, wait.
17 Object to form.

18 **Q.** (Mr. Hodges) Go ahead.

19 **A.** That's what he asked for, too.

20 **Q.** Okay. Now, you're not a partner with United, are
21 you?

22 **A.** No.

23 **Q.** Why are you suing United?

24 **A.** I'm only Plaza Extra.

25 **Q.** No, my question is, why are you suing United?

MOHAMMAD HAMED -- DIRECT

1 **A.** I'm not go for United.

2 **Q.** So you're not -- you don't have any claim against
3 United?

4 **A.** No.

5 **MR. HARTMANN:** No, object. Mischaracterizes
6 testimony. Object as to form.

7 **Q.** **(Mr. Hodges)** What you're saying is you don't have
8 a claim against United, isn't that right?

9 **MR. HARTMANN:** Object.

10 **A.** I don't go for United. I'm going with the
11 Plaza Extra only.

12 **Q.** **(Mr. Hodges)** Okay.

13 **A.** Yeah.

14 **Q.** Now, let's go back to the -- the Plaza Extra, the
15 partnership that you're talking about, okay? The one that
16 you -- you want to end, is that right?

17 You want to end the partnership too, right?

18 **A.** I'm in.

19 **Q.** But you want to end it, don't you?

20 **MR. HARTMANN:** Object. Asked and answered.

21 You can tell him if he wants to ask it again
22 for the third time.

23 **A.** I'm in in Plaza Extra with Mr. Yusuf.

24 **Q.** **(Mr. Hodges)** And -- and want to end that
25 partnership, is that correct?

MOHAMMAD HAMED -- DIRECT

1 Q. I'm sorry?

2 A. What's the right? What's the right?

3 Q. United Corporation owned the whole supermarket,
4 did it not, sir?

5 MR. HARTMANN: Object. Mischaracterizes the
6 prior testimony.

7 A. I don't know.

8 Q. (Mr. Hodges) You don't know?

9 A. No.

10 Q. You've never known that?

11 A. Mr. Yusuf, he do make United Corporation. I'm
12 Plaza Extra, a partner to Mr. Yusuf. Not to the
13 United Corporation.

14 Q. I understand. You -- you don't claim any
15 ownership of the stock of United Corporation?

16 A. Nothing.

17 Q. You don't claim any ownership in --

18 A. Nothing.

19 Q. Hold on. Let me ask the question first.

20 You don't claim any ownership of any of the
21 assets that United owns, isn't that correct?

22 A. We don't own them, we don't build, we don't claim,
23 we don't do nothing to United Corporation.

24 Q. Okay. Now, the -- I'm going to read Paragraph 15
25 of your First Amended Complaint. Okay?

MOHAMMAD HAMED -- DIRECT

1 Arabic.)

2 MR. HARTMANN: Is that true?

3 THE WITNESS: Yeah.

4 MR. HARTMANN: Okay. That's true. Okay.

5 Q. (Mr. Hodges) All right. So then you under -- you
6 were involved in the decisions with respect to the payment
7 of rent, is that right?

8 A. Rent to who?

9 Q. The supermarket did not pay rent?

10 A. We pay rent. We talk, since we open, we talk
11 about it, and he, Mr. Yusuf the one, he put the rent. Up
12 from that time, we don't pay no rent. Still, we owe. We
13 owe Mr. Yusuf, the owner for the Plaza Extra, half of the --
14 I don't pay for half. Still we owe him some more.

15 Q. So I think what you're saying is you agree that
16 the partnership owes rent to United Corporation, is that
17 right?

18 A. Yeah, and to Mr. Yusuf, yes.

19 Q. Well, Mr. -- the United Corporation is the -- is
20 the company that you've been paying rent to for many years,
21 is that correct?

22 A. Yes, since we started.

23 Q. Okay. So rent would be one of the expenses that
24 the supermarket paid in order to get net profits, is that
25 right?

MOHAMMAD HAMED -- DIRECT

1 **MR. HARTMANN:** Yes.

2 **A.** We pay for the supermarket, rent for the
3 supermarket for monthly. We already give him
4 4 million-something half couple months ago for the when he
5 ask, we do pay him that.

6 **Q. (Mr. Hodges)** Okay. So what --

7 **A.** Yeah, we pay him that.

8 **Q.** The answer to my question --

9 **A.** We pay him that, and then still we owe him some
10 more.

11 **Q.** Okay. You -- you paid him some money a couple
12 months ago, you say, and you acknowledge that the
13 partnership still owes United rent?

14 **A.** Yeah. My own don't finish --

15 **Q.** Okay.

16 **A.** -- my rent one time.

17 **Q.** How much rent do you agree that the partnership
18 owes United?

19 **A.** I don't know. He don't agree they have a
20 between -- and ask him St. Thomas, and we told him it's as
21 to St. Thomas, we pay rent for St. Thomas own.

22 **Q.** Okay.

23 **A.** And we still, we don't pay, I believe.

24 **Q.** What about insurance? Was the partnership
25 required to -- to obtain and pay for insurance for the

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) Volume 2
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HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
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THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED

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St. Croix, U.S. Virgin Islands, between the hours of
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MOHAMMAD HAMED -- DIRECT

1 answered. Calls for a legal conclusion.

2 **A.** I don't know. (Speaking in Arabic.)

3 I don't see it. I don't look at it.

4 **Q.** (**Mr. Hodges**) Your answer -- your answer is, you
5 don't know?

6 **A.** I don't know. I don't check it. I don't see it.

7 **Q.** Okay.

8 **A.** Because I hear from my son, he say, We pay
9 Mr. Yusuf the rent for the one that's past.

10 **Q.** Did -- did -- did your son tell you that rent had
11 been paid for the period --

12 **A.** We pay, yeah.

13 **Q.** Wait a minute.

14 **A.** That's what he told me.

15 **Q.** Did your son tell you that rent had been paid by
16 Plaza Extra for the period from January 1, 1994 through
17 May 4, 2004?

18 **MR. HARTMANN:** Object. Asked and answered.

19 **THE INTERPRETER:** He did not tell me things.
20 He told me we paid such and such.

21 **Q.** (**Mr. Hodges**) If -- if it -- if it -- if rent was
22 not paid from January 1, 1994 through May 4, 2004, would you
23 agree that rent should be paid?

24 **MR. HARTMANN:** Object. Asked and answered.

25 **THE INTERPRETER:** It should be paid.

MOHAMMAD HAMED -- DIRECT

1 **Q. (Mr. Hodges)** Okay. Regardless of how long it
2 took to make a demand for payment?

3 **MR. HARTMANN:** Object. Calls for a legal
4 conclusion.

5 **THE INTERPRETER:** He says, If it hasn't been
6 paid, it should be paid. And he's never -- he's never
7 objected to it being paid. Mr. Yusuf is the one who used to
8 decide whether to collect rent or not collect rent.

9 **Q. (Mr. Hodges)** Okay. Has your son given you any
10 reason for not paying the rent for the period from
11 January 1, 1994 through May 4, 2004?

12 **MR. HARTMANN:** Object. Mischaracterizes
13 prior evidence. Object to form, calls for speculation.
14 Object. Assumes facts not in evidence.

15 Go ahead.

16 **THE INTERPRETER:** He did not tell me.

17 **Q. (Mr. Hodges)** But you would agree with me, sir,
18 that it would not be fair to occupy somebody's property
19 without paying rent?

20 **MR. HARTMANN:** Object. Asked and answered.
21 Calls for speculation.

22 **THE INTERPRETER:** We do not have anything,
23 any location, but the supermarket. They pay half, and we
24 pay half.

25 **MR. HODGES:** My question is, would, in his

MOHAMMAD HAMED -- DIRECT

1 mind, would it be fair for the -- the supermarket to occupy
2 the premises at Plaza Extra East for more than ten years
3 without paying the rent that was agreed upon with Mr. Yusuf?

4 **MR. HARTMANN:** Object. Calls for
5 speculation. Object to form. Asked and answered.

6 **THE INTERPRETER:** The first response is no.
7 In other words, it's not fair, but this was controlled by
8 Mr. Yusuf. I never objected to the payments of rent. I --
9 I -- (shrugs shoulders). In other words, he did not object
10 and he understood that Mr. Yusuf could -- could charge for
11 the rent and collect the rent.

12 **MR. HODGES:** Okay.

13 **THE INTERPRETER:** This is tougher than I
14 thought.

15 **MR. HARTMANN:** Excuse me. Could we go off
16 the record? Could we go off the record?

17 **A.** (Speaking in Arabic.)

18 (Discussion held off the record.)

19 **THE VIDEOGRAPHER:** Going off the record at
20 2:03.

21 (Respite.)

22 **THE VIDEOGRAPHER:** Going back on record at
23 2:05.

24 **Q. (Mr. Hodges)** Mr. Hamed, did there come a time
25 that Mr. Yusuf gave notice to you that he wanted the -- the

MOHAMMAD HAMED -- DIRECT

1 Okay. I heard "la," which means no.

2 He's saying, Yes, it is.

3 Q. (Mr. Hodges) Okay. So you agree with me, I just
4 want to.

5 THE INTERPRETER: He says, I'm not denying
6 what he owns. I -- I -- I -- I will never deny that. I
7 just want my rights.

8 MR. HODGES: Okay.

9 Q. (Mr. Hodges) The rent that Plaza East or Sion
10 Farm paid to United over the years is because United owns
11 that property, not Plaza East, isn't that right?

12 THE INTERPRETER: Yes.

13 Q. (Mr. Hodges) Okay. Now, if -- do you know
14 whether rent has been paid by Plaza East to United since
15 December 31, 2012?

16 A. No.

17 THE INTERPRETER: No.

18 Q. (Mr. Hodges) If rent has not been paid by
19 Plaza Extra East since December 31, 2011, would you agree
20 that that's not right?

21 MR. HARTMANN: Object as to form. Object to
22 calling for a legal conclusion.

23 THE INTERPRETER: If we owe it, then it
24 should be paid.

25 Q. (Mr. Hodges) You would agree with me, it's not

MOHAMMAD HAMED -- DIRECT

1 fair to occupy somebody's property as a tenant without
2 paying rent?

3 **MR. HARTMANN:** Object. It's calling for a
4 legal conclusion. Object as to form.

5 **THE INTERPRETER:** I've -- I've already
6 responded yes.

7 **Q. (Mr. Hodges)** Okay.

8 **A.** How many times do you want I repeat it?

9 **Q.** Now, you testified earlier that you were in charge
10 of the warehouse at -- at Plaza East, right?

11 **THE INTERPRETER:** He said, I was in charge of
12 the receiving at the warehouse.

13 He told me -- and I understand it to refer to
14 Mr. Fathi Yusuf -- He told me I should control this area,
15 guard this -- this receiving area, and I will guard the
16 front, the office.

17 **Q. (Mr. Hodges)** Okay. And when you retired in 1996,
18 Mr. Hamed, were -- were those responsibilities of yours
19 turned over to your son Wally?

20 **MR. HARTMANN:** Object. Mischaracterizes
21 previous testimony.

22 **A.** I give him power of attorney for that.

23 **THE INTERPRETER:** He says, Yes, I gave him
24 power of attorney for that.

25 **A.** He is my place.