

**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

**PLAINTIFF'S MOTION TO FILE A SURREPLY
RE THE PROPOSED DISSOLUTION PLANS**

Plaintiff, by counsel, hereby moves to file a surreply to Defendants' reply memorandum attacking Plaintiff's dissolution plan. Plaintiff's plan was in essence a cross motion, which first explained why Defendants' plan was faulty and then presented an alternate plan. Now that Defendants have had an opportunity to defend their own plan and attack Plaintiff's plan, it is respectfully submitted that Plaintiff should be permitted to defend his plan as well by filing a surreply. To aid the Court in addressing this request, as well as to expedite matters, the proposed surreply is being filed with this motion. A proposed Order is attached.

Dated: May 27, 2014



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CERTIFICATE OF SERVICE

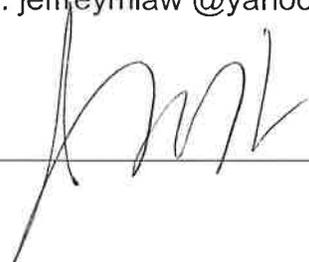
I hereby certify that on this 27th day of May, 2014, I served a copy of the foregoing Motion by email, as agreed by the parties, on:

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Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES
INJUNCTIVE RELIEF AND
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JURY TRIAL DEMANDED

PLAINTIFF'S SURREPLY RE DISSOLUTION PLANS

Defendants' proposed dissolution plan, which closes and liquidates the three stores, is not as reasonable as Plaintiff's suggested plan. Recognizing this fact, Defendants try to create confusion about Plaintiff's plan in order to then justify their alternate request for a receiver, which is just another version of Defendants' proposal to liquidate everything, as that is what a receiver does—liquidates an entity's assets.

However, even Defendants admit that the *VI Partnership Act* (based on the *Revised Uniform Partnership Act* or "RUPA") does not discuss the use of receivers.¹ More to the point, Plaintiff's plan provides for maximum recovery for all, while meeting the requirements of Title 26, so there is no need for a receiver to liquidate everything.

¹ See page 10 of Defendants' initial motion filed on April 4, 2014.

Indeed, it is amazing that *Defendants oppose a plan that benefits them more than their own plan without any valid reason for doing so.* With these general comments in mind, Plaintiff will address Defendant's specific objections to his plan.²

I. Fathi Yusuf cannot be the liquidating partner

United sends a rent statement each month to Hamed claiming a ridiculous, punitive rent of \$250,000 for the Plaza East location.³ Fathi Yusuf owns 100% of United with his wife and sons. Defendants' plan expressly noted that this amount, which continues to increase by \$250,000 each month, is still being sought in the dissolution process. (See footnote on Exhibit A of the Yusuf Plan). Indeed, Defendants have filed a motion pursuing this rent claim in this case, which it is not a "partnership accounting claim" as Yusuf tries to assert—it is a claim by United (a third party) that Yusuf is pursuing for United. This claim bars Yusuf from participating in the winding process based on the express language of 26 V.I.C. § 74(b)(2).⁴

Equally important, Defendants do not deny that it was Yusuf who (1) unilaterally removed \$2.7 million from the partnership that prompted this litigation, (2) then spent 20 months bitterly **denying the existence of the partnership**, requiring this Court to have to issue a preliminary injunction to keep the partnership intact and (3) tried to convert all

² While Defendants chastise Plaintiff for adopting much of its plan, claiming it is an "affront to this Court," the exact opposite is true. By using as much of Defendant's plan as possible, the differences between the two plans are minimized, helping to avoid disputes and expedite the dissolution process.

³ Indeed, a notice was sent *at the same time Defendants submitted their plan*, seeking rent for the last 30 months, which now exceeds **\$8 million**. See **Exhibit 1**.

⁴ That section bars a partner "from dealing with the partnership . . . **in the winding up of the partnership business . . . on behalf of a party [United] having an interest adverse to the partnership.**" (Emphasis added). Thus, Yusuf's own greed in trying to extort this amount from his own partnership for United bars him from being involved in the winding up process while he tries to collect this rent for United.

of the partnership's assets to United's accounts. Thus, Yusuf certainly is barred from being the liquidating partner based on these acts under 26 V.I.C. § 173(a) as well. See, e.g., *Moran v. Willensky*, 399 S.W. 651, 660 (Tn. 2010) (Under RUPA: "When one partner wrongfully dissociates from the partnership, that partner usually loses the right to participate in the winding up of the partnership").⁵

II. **Mohammad Hamed is an appropriate liquidating partner**

Pursuant to 26 V.I.C. §173(c), the winding up of the partnership is to be done by a "liquidating partner." Defendants state on page 9 of their reply that they have no objection to "Hamed's personal participation in the winding up. . ." yet they then claim he is somehow not "qualified" to be the liquidating partner. The only reason given, however, is that his English is "poor."

In determining whether Hamed is qualified to be the liquidating partner, this Court need not waste any time on yet another personal attack on Mr. Hamed. The proof of his ability to protect the partnership was demonstrated when he obtained the Preliminary Injunction one year ago. Since then, he has also demonstrated his ability to operate the partnership.⁶ Indeed, Defendants have not complained to this Court about one thing

⁵ Even if not disqualified by Title 26, Yusuf still would not make a good liquidating partner. While Yusuf claims he knows how to run the business, it is his own use of the corporate form of United to operate the partnership that has created major issues. Moreover, Yusuf admitted in his deposition that he lost almost \$20 million in partnership assets in risky options trading **after** promising Plaintiff he would stop speculating on these speculative "investments." See **Exhibit 2**. As he is otherwise disqualified, the Court need not address these issues.

⁶ Hamed's sons have participated in this endeavor, including Waleed Hamed, who has a power of attorney for his father. Yusuf has testified he recognized Hamed's power of attorney beginning in 1996. While Defendants now belatedly object to this power of attorney solely for tactical reasons, use of such powers of attorney in the winding of a partnership is clearly acceptable. See, e.g., *Fence Creek Cattle Co. v. U.S. Forest*

that Hamed has failed to do during this time period, as the only motion filed with this Court raising improper activity by a party was one by Hamed asking this Court to require *Defendants* to comply with the PI, which this Court granted in part.

Aside from this demonstrated competence of Hamed, his proposed plan shows his fairness, as he proposed in Option I to market all three stores so the partnership could maximize the value of its good will (which option Yusuf rejected).⁷ Hamed also agreed to keep the Yusufs as store managers while the stores are operating during the dissolution process. Likewise, he demonstrated his concern for interested third parties by coming up with a plan that preserves jobs for the employees while allowing the public the opportunity to still have competitive shopping, benefiting the economy and providing substantial tax revenues for the Government.

In short, the decision before the Court in appointing Hamed as the Liquidating Partner is straightforward. The VI Partnership Act provides for the winding up to be done by a liquidating partner. Defendants have not raised one valid objection to Mohammad Hamed being the liquidating partner, while Yusuf is clearly statutorily disqualified. As such, Hamed should be appointed as the liquidating partner to exercise the powers needed to wind up the partnership as set forth in 26 V.I.C. § 173(c).

Serv., 2008 WL 89622 (D. Or. Jan. 7, 2008) (“The court rejects defendants first objection and agrees with Judge Sullivan's finding that **the powers of attorney executed by the Agars were sufficient to authorize Williams and Smith to wind up the affairs of the partnership**”). Oregon adopted RUPA in 1997, prior to this decision. See Or. Laws 1997, ch. 775. (Emphasis added.)

⁷ In fact, he did not need to propose that the KAC357, Inc. lease even be part of the plan, as his sons can operate a grocery store under this lease even if this plan is not approved, as will be discussed further below.

III. Option II under Hamed's Plan is viable

As Defendants expressly rejected *Option I* in their reply, the only remaining issue is whether the Hamed's *Option II* is a viable plan. The thrust of Defendants' objections to the viability of this option center around the use of the current locations to the Plaza Extra supermarkets in St. Thomas and the west end of St. Croix. Each will be discussed separately, explaining why these objections are without merit.

A. St. Thomas

In "Step 6" of their plan, Defendants propose to close the St. Thomas store and then attempt to discharge the remaining rent obligations by negotiating with the landlord, using the current litigation to get the rent discharged "in whole or in part" in exchange for dismissing this litigation.

The Hamed plan proposes the exact same resolution with several highly favorable changes. While Hamed will also use the current litigation to negotiate a release of the remaining rent obligations (and Yusuf's guarantee) under the lease, his plan provides (1) the existing employees with jobs (avoiding the plant closing expenses for the partnership), (2) the public and the government with the benefits of having the store open, and (3) for the inventory and equipment to be sold at their highest value.⁸

Defendants question whether the landlord will allow the Hameds to take over the lease. However, the Hameds' representatives discussed this scenario with the landlord's representatives before filing their plan and have full confidence that this can happen. Moreover, if those negotiations fail, that will be a problem for Hamed, not the partnership, *as the rent will be discharged by the dismissal of the lawsuits*, with the

⁸ The inventory and equipment will be sold at their current value listed in the partnership records, saving additional overhead and avoiding selling it at a fire sale.

partnership being paid for the inventory and equipment regardless of whether the landlord ultimately allows the Hameds to take over premises.

Moreover, while Defendants now suggest that they would like to “bid” on the remaining lease (contrary to what they stated in their initial plan), the lease does not allow it to be assigned without the landlord’s consent and requires the tenant to remain liable unless excused by the landlord, so this lease cannot be put up for “bid.” See **Exhibit 3**. In fact, based on the “prior negotiations” referenced in footnote 4 of its reply memorandum, Defendants already know that the *landlord will not agree to a new lease with them* (which is probably why they did not propose to take over the lease in their initial plan).

In any event, the Hamed plan has benefits that equal what Defendants offered—using the current litigation to get out of the lease obligations. Plaintiff’s plan then goes on to offer much more for the partners, the employees, the public and the government, so the objections to this aspect of the plan are without merit.

B. The West Store

Defendants propose to close this store. *Period*. Hamed's plan offers a much better alternative—an open store with jobs for all employees.

Defendants do not disagree that Plaintiff’s proposal is economically better for everyone. Instead, they argue that the lease executed between Plessen Enterprises, Inc. and KAC357, Inc. is invalid, so this aspect of Hamed's plan is not viable.

Contrary to Defendants’ assertions, the Plessen/KAC357 lease was entered into in full compliance with the Plessen articles of incorporation and by-laws. It was also executed so that Plessen, which received no rent from the partnership, now will receive

valuable, full "market" rent rather than have an empty building. This issue is more fully addressed in the response to the separate motion challenging this lease being filed with this response, which is incorporated herein by reference.

While the lease is valid for the reasons noted in the accompanying memorandum, this Court need not reach this issue, as the validity of the lease can be assumed for the purposes of approving Plaintiff's plan. If the lease is later declared invalid, the partnership will still receive **exactly what Defendants proposed**—no further liabilities associated with the store with all inventory and equipment having been purchased by KAC357 on the same terms as the St. Thomas store.⁹ Thus, Plaintiff's plan for the West store is the most viable one for the partnership.

One final comment is in order. Defendants state they would like to "bid" on the West store, but that is not possible as the partnership has no lease with the landlord to bid on, as noted in Section 8(a) of Defendants' plan (p. 6). Indeed, if this Court could force such a sale, it could also force a similar sale for the Plaza East store at Sion Farm. However, Defendants apparently forgot that they do not want to put the Sion Farm store up for sale. Absent Defendants consenting to do so, this Court has no more right to force a sale of the East Store than it does of the West store, since neither has a lease between the partnership and the landlord to put up for bid. As such, Defendants' argument that it would like to bid on the West lease is moot.

⁹ Likewise, this Court need not concern itself as to whether Plessen is a proper party in this case (both Plessen and Plaintiff have moved to dismiss Plessen), nor does it need to rule on the validity of a lease where the tenant is not a party, as all of these issues are irrelevant to the approval of Plaintiff's plan since the partnership will receive the same value as it would under Defendants' plan whether the lease is valid or not.

C. The East Store

Defendants now belatedly suggest they would like to keep this store open (contrary to their proposal). This proposal is fine with Plaintiff if Defendants can figure out a way to do so within the footprint of the United Shopping Center.¹⁰ Should they do so, Plaintiff has no problem with Defendants hiring the employees of those stores as well as purchasing the equipment and inventory on the same terms as proposed for the other two stores. Additionally, Plaintiff has no problem with Defendants using the name "Plaza Extra East" at this location if it does reopen it.¹¹

IV. Defendants' other objections are without merit

Once it is understood why Option II is the best alternative for the partnership dissolution, the remaining issues are easy to sort out as follows:

- Defendants complain that Plaintiff's budget is limited to two months. However, this dissolution is quite simple despite Defendants' efforts to muddy the waters. Since Fathi Yusuf refused to sell the entire operation as a going concern, the remaining portions of Plaintiff's plan can be quickly implemented. There is nothing to sell regarding the West store except inventory and equipment. The same is true for East and St. Thomas stores. The creditors will be paid. That ends everything except the damage claims between the partners, so that a two-month time frame is realistic. If the process takes longer, that budget can be expanded if necessary so that all on-going expenses, including rent, are paid.
- Defendants complain about the proposed cash distributions, suggesting the creditors may not be paid. This is untrue. In fact, there are not many creditors

¹⁰ Part of the existing East Store is on land bought with insurance proceeds after the fire in 1990, which proceeds United's President admitted in deposition belonged to the partnership and which Defendants also conceded at the PI hearing. See **Exhibit 4**. Thus, this partnership property has to be liquidated, but the rest of the store belongs to United, so it has space to reopen a store.

¹¹ The issue related to the stock of Associated Grocers ("AG") is a non-issue, as that is a supplier who presently supplies all three stores. To the extent the partnership's stock in AG has value, it already has a fixed price, so it is an asset that can be allocated and used by each side accordingly.

as there is no secured debt and all suppliers are paid regularly. Likewise, there is ample cash for the proposed initial distribution of \$2 million, which Defendants did not deny -- which will be used by Hamed to purchase the inventory and equipment, so the cash will simply return to the partnership in due course. As for the proposed distribution of the funds frozen by the criminal case, the TRO in that case is still in place, so this aspect of Plaintiff's plan will not take place as proposed and can be dealt with when that event occurs.¹²

- Regarding the criminal case, the Government will want to hear from all parties if the grocery sales that were the focus of that prosecution are being affected.
- While Defendants also asked for a Master, they now object to the Master's proposed role. However, the transfers in question will all be handled by the liquidating partner, as permitted by 26 V.I.C. §173(c)--which Defendants concede is proper. Thus, Defendants concerns about the Master "exceeding" his designated role are without merit. The Master's role is simply to assist this Court by providing a neutral third-party to assist in dealing with issues that may arise in the liquidation process -- issues which he or she can try to address before bringing them to the Court's attention if necessary, with a recommended course of action, if appropriate.
- Finally, Defendants discuss what damages the partners can (and cannot) seek from one another and the order in which such claims can be raised. **Those issues need not be addressed before implementing the liquidation plan.** However, it should be noted that Defendants are relying upon outdated law, as 26 V.I.C. §75(b) has now been adopted that expressly rejects this prior law. That section provides that "A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business." (Emphasis added). See, e.g., *Simpson v. Thorslund*, 151 Wash. App. 276, 278, 211 P.3d 469, 470-71, 2009 WL 2138990 (2009) ([Following adoption of RUPA] "A partnership accounting is no longer a precondition to an action between partners"). In any event, this is also a non-issue at this juncture.

In summary, when scrutinized, Defendants' shot-gun attack on *Option II* simply fails.

V. Conclusion

Defendants' reply asks this Court to ignore the fact that they attempted to convert all of the partnership's assets, to throw Hamed out and unilaterally "close all the stores."

¹² Indeed, Defendants have tried to coerce Plaintiff throughout this litigation into submission by denying him access to cash to fund this case. Because there is ample cash in the bank accounts, which Defendants do not dispute, the initial disbursement is reasonable and will assist in carrying out the plan.

Fathi Yusuf now expresses his desire to fully participate in the winding up -- and better yet, to get rid of Hamed again and turn the stores over to him *to close and liquidate them*. Alternatively, Yusuf argues that the animosity created by his failed efforts to deny the existence of the ~~partnership~~ warrants abandoning the winding up provisions of Title 26 in favor of a more drastic remedy -- a receiver--not even contemplated by Title 26.

On the other hand, Plaintiff offers a reasoned and fair plan—one that gives Defendants far more value than their own plan. It requires the Court to do nothing other than appoint the Master and allow that person and Hamed to wind up as described. The choices are clear, despite Defendants efforts to confuse the issues.

Dated: May 27, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2014, I served a copy of the foregoing Motion by email, as agreed by the parties, on:

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A handwritten signature in black ink, appearing to read "Jeffrey Moorhead", is written over a horizontal line. The signature is cursive and somewhat stylized.

EXHIBIT 1

EXHIBIT 2

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 FATHI YUSUF

was taken on the 2nd 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
9:17 a.m. and 4:16 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

FATHI YUSUF -- DIRECT

1 **THE WITNESS:** Have initial by a marshal.

2 **MR. HODGES:** Which one are you talking about?

3 **THE WITNESS:** Both of them.

4 **MR. HODGES:** Okay.

5 **THE WITNESS:** The 16062, October 21st, 2004,
6 written to Fa -- to NejeH Yusuf, 25,000, signed by Waheed
7 Hamed, Personal, initial by the marshal.

8 Check No. 16084, dated November 3rd, 2004,
9 name is NejeH Yusuf, amount 25,000. It marked personal,
10 signed by Waheed Hamed, initialed by the marshal.

11 **Q. (Mr. Holt)** Okay. Now, did you ever trade any
12 brokerage accounts using money from Plaza Extra?

13 **A.** Yeah.

14 **Q.** You did?

15 **A.** Yes.

16 **Q.** Okay.

17 **A.** But wait a minute, the question is, I did it for
18 whom?

19 **Q.** Who did you do it for?

20 **A.** For Plaza -- for United Corporation.

21 **Q.** Okay.

22 **A.** For the benefit of Plaza Extra.

23 **Q.** Okay. So you did have accounts where --

24 **A.** I do not have accounts, sir.

25 **Q.** Okay.

FATHI YUSUF -- DIRECT

1 **A.** United Corporation is the one who own the account.

2 **Q.** Okay. And did you actually trade options as part
3 of that?

4 **A.** Yes.

5 **Q.** And did you lose money trading options?

6 **A.** The company lose money. I didn't lose nothing.

7 **Q.** Okay. How much do you think the company lost?

8 **A.** I don't know.

9 **Q.** Millions?

10 **A.** Millions.

11 **Q.** Did there come a time that you were actually told
12 to stop trading options on the United account?

13 **A.** I think once, one time.

14 **Q.** And did you -- did you agree to stop trading the
15 options?

16 **A.** Yes.

17 **Q.** And did you, in fact, stop trading the options?

18 **A.** No.

19 **Q.** Why not?

20 **A.** Because I was told by the father in the presence
21 of Wally, and then later in about two, three weeks, one
22 month, I was able to convince Wally to resume trading,
23 hopefully that we will return back our loss. And he said he
24 have no problem. But the question is, Attorney Holt, I
25 hardly make any deposit to that account. All deposit being

FATHI YUSUF -- DIRECT

1 made by Wally Hamed. That's mean, with his absolute
2 approval. If I lose it, I'm sorry. That's bad luck.

3 Q. Okay. And, in fact, after you were asked by
4 Mohammad Hamed to stop trading options, didn't you lose
5 20 -- \$18 million in -- in --

6 A. Sir, whatever I lose, I did not make the deposit.
7 His son is the one -- his son is the one make the deposit.
8 His son is on the check to Merrill Lynch.

9 Q. So regardless of who made the deposit to Merrill
10 Lynch, after Mohammad Hamed told you to stop trading, you
11 lost 18 million trading options on the Plaza Extra account.

12 A. Sir, sir, --

13 Q. Isn't that correct?

14 A. -- when I bought property for about 25 million,
15 and worth now over a hundred million, I did not consult with
16 Mohammad Hamed. I'm willing to make a trade now. I'll give
17 him back his money plus 10-percent profit. He give me back
18 all the property I bought, and I don't need -- I mean, I'll
19 give him 10-percent profit in his investment, and deduct it
20 from the properties I bought.

21 Q. Okay.

22 A. There's a lot of property, you know. I bought
23 2,000 -- two -- two -- how much? 578 acre at two-and-a-half
24 million dollar, and now the same is worthing 25 million. I
25 bought Mandela Circle for 2 million. I been offerred by

FATHI YUSUF -- DIRECT

1 Q. If his son deposited \$18 million, and you traded
2 the options and the account went to zero, you would have
3 lost the \$18 million, right?

4 A. If I have it?

5 Q. No, no, not that you have it. That you traded the
6 options out of the Plaza Extra account from the deposit
7 Wally made, and lost all that money.

8 A. For Plaza Extra interest.

9 Q. Okay. So you lost \$18 million of Plaza Extra's
10 money trading options.

11 A. Uh-huh. Yeah. Give me back my -- give me -- I'll
12 give you, the property I bought, I'm willing to give you
13 back all your money. Turn the property to me. There's no
14 pick and choose here. Go to the judge, honorable judge,
15 he's going to tell you the same thing. I been in charge.
16 There's no guarantee I make money, I lose money.

17 Q. Okay. Are you still invested in Mattress Pile?

18 A. Hello?

19 Q. Do you still have an investment in Mattress Pile?

20 A. Yes. Yes, yes, yes, yes, yes. I have 33 stores
21 in eight month, and I'm going to push it up to six, 700
22 stores. And I'll be honest with you, if Wally was a
23 gentleman that, with the same respect I used to have for
24 him, he could have had the three stores. But now, I don't
25 see how could I reward him after he did me what he did.

EXHIBIT 3

May 30, 1991

LEASE

between

* * * * *

TUTU PARK LIMITED

LANDLORD

and

UNITED CORPORATION d/b/a PLAZA EXTRA

TENANT

* * * * *



FY126919

ARTICLE SIXTEEN

Right To Perform Other's Covenants

SECTION 16.01. The Tenant covenants and agrees that if it shall at any time fail to pay any Tax pursuant to the provisions of ARTICLE THREE hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in ARTICLE TEN hereof, or shall fail to make any other payment or perform any other act which the Tenant is obligated to make or perform under this Lease, then the Landlord may, but shall not be obligated so to do, after ten (10) business days notice to and demand upon the Tenant and without waiving, or releasing the Tenant from, any obligations of the Tenant in this Lease contained, pay any such Tax, effect any such insurance coverage and pay premiums therefor, and may make any other payment or perform any other act which the Tenant is obligated to perform under this Lease, in such manner and to such extent as shall be necessary and, in exercising any such rights, pay the necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys' fees. All sums so paid by the Landlord and all necessary and incidental costs and expenses in connection with the performance of any such act by the Landlord, together with interest thereon at the Lease Interest Rate from the date of the making of such expenditure by the Landlord, together with interest thereon at the Lease Interest Rate from the date of the making of such expenditure by the Landlord, shall be deemed additional rent hereunder and, except as otherwise in this Lease expressly provided, shall be payable to the Landlord on demand or at the option of the Landlord may be added to any rent then due or thereafter becoming due under this Lease, and the Tenant covenants to pay any such sum or sums with interest as aforesaid and the Landlord shall have (in addition to any other right or remedy of the Landlord) the same rights and remedies in the event of the non-payment thereof by the Tenant as in the case of default by the Tenant in the payment of the rent.

ARTICLE SEVENTEEN

Assignments and Subletting

SECTION 17.01. During the Demised Term Tenant may not, without first obtaining Landlord's consent, which Landlord agrees shall not be unreasonably withheld or delayed (but subject to the provisions of SECTION 17.02), assign this Lease in its entirety or sublet all or part or parts of the Leased Premises. Any permitted (or consented to) assignment or subletting shall be subject, in all respects, to the following conditions:


10-29-91


6-2-91

(a) Tenant shall remain primarily liable under this Lease;

(b) Any assignee of this Lease for the entire Leased Premises shall assume in writing the obligations of Tenant under the Lease;

(c) A copy of the effective instrument of assignment (and assumption, if applicable) or instrument of sublease shall be delivered to Landlord either prior to or immediately subsequent to the date of the subject assignment or subletting;

(d) Tenant shall not be in default in any material provision hereunder beyond the applicable notice and grace period at the time of any such assignment or subletting;

(e) All of the terms, provisions and conditions contained in this Lease (including without limitation, the permitted uses in SECTION 4.01) shall be binding on any assignee or sublessee.

SECTION 17.02. Except in the case of an assignment or subletting provided for in SECTION 17.03 hereof, Tenant upon obtaining a proposed assignment or sublease on acceptable terms (including but not limited to the terms set forth in SECTION 17.01), shall submit to Landlord in writing;

(a) the name of the proposed assignee or subtenant;

(b) the terms of the proposed assignment, or sublease;

and
(c) the proposed assignment or sublease documents.

SECTION 17.03. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to assign this Lease or sublet the Leased Premises, without Landlord's consent, to a parent or subsidiary or affiliated corporation of Tenant (i.e., a corporation controlled by or controlling Tenant by a majority of the voting stock), or to any corporation with which Tenant may merge or consolidate, provided that any such assignee shall assume the obligations of Tenant under this lease and Tenant shall continue to remain primarily liable therefor. Further, Tenant may license or permit the use of up to 10% of the Leased Premises by unrelated licensees or concessionaires, provided such parties operate within the Store without separate entrance under the same name or guise of Tenant as a department or adjunct of Tenant's operation, and Landlord shall have no right of consent with respect to such licensing or permission unless said use is not of a type or nature as is typically found in a Supermarket Retail store. If said use is not of a Supermarket nature and the percentage use of all non supermarket uses exceeds ten

percent (10%), than a new rental amount of the entire Demised Premises shall be negotiated. Tenant will advise Landlord in writing of the name of any assignee or subtenant occupying all or part of the Store pursuant to this SECTION 17.03.

SECTION 17.04. If this Lease be assigned, or if the Leased Premises or any part thereof be sublet or occupied by anybody other than the Tenant, the Landlord may, after default by the Tenant, collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of the Tenant from the further performance by the Tenant of the terms, covenants and conditions of this Lease on the part of the Tenant to be performed. Any violation of any provision of this Lease, whether by act or omission, by an assignee, subtenant or similar occupant, shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto that the Tenant shall assume and be liable to the Landlord for any and all acts and omissions of any and all assignees, subtenants and similar occupants. The consent by the Landlord to an assignment or subletting shall not be construed in any wise to relieve the Tenant from obtaining the express consent in writing of the Landlord to any further assignment or subletting.

SECTION 17.05. If any assignment or subletting results in rental income or other lease charges greater than that set forth in this Lease, the excess belongs and shall be paid to Landlord as additional rent.

SECTION 17.06. Notwithstanding anything to the contrary contained herein, Tenant shall be released of all future liability under the Lease in the event of an assignment after the fifth Lease Year, provided the assignee shall have a net worth and financial condition at least equal to that of Tenant as of the date of this Lease, or as of the date of such assignment, whichever is greater.

ARTICLE EIGHTEEN

Excavations on Adjoining Property

SECTION 18.01. If any excavation or other building operation shall be about to be made or shall be made upon any adjoining premises or streets, the Tenant shall permit any third persons obligated by law to protect the Leased Premises, and their respective representatives, to enter upon the Leased Premises and shore the foundations and walls thereof and to do any other act or thing necessary for the safety or preservation of the Leased Premises; provided,

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conditions of the within Lease during the Term granted therein, on the part of said Tenant to be performed, the undersigned does hereby promise and agree to pay unto the within named Landlord, its successors and assigns, such sum or sums of money as will be sufficient to make up such deficiency of rental or other charges, and all damages that may accrue by reason of the violation or non-performance of any of the covenants and conditions of this Lease, without requiring demand of payment or notice of any such default.

This Guaranty is absolute and unconditional and shall be a continuing one, without in any way being affected by the bankruptcy or insolvency of Tenant, its successors or assigns, or by the disaffirmance or abandonment by a trustee or receiver of Tenant, its successors or assigns. Demand and notice of acceptance of this Guaranty are hereby expressly waived.

There shall be no duty on the part of the Landlord under said Lease, or its successors or assigns, to mitigate damages; and this unconditional and absolute guarantee shall not be affected by the failure of Landlord to take action pursuant to said lease, or any action taken, or by any extensions, indulgences or modifications of the Lease, or defaults by Landlord in enforcing any of the provisions thereof.

The undersigned does further covenant and agree to and with Landlord and its successors and assigns that the undersigned may be joined in any action against said Tenant or its successors and assigns in connection with said Lease, and that recovery may be had against the undersigned in such action or in any independent action or proceeding against it, without first exhausting any remedy or claim against Tenant.

GUARANTOR:

BY: [Signature]

BY: _____

~~NOTARY~~
STATE OF VIRGIN ISLANDS
COUNTY OF ST. JOHN
District

ss.

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, Felix Yusuf and [Signature] known to me to be the ~~Person~~ President and [Signature] Secretary, respectively, of [Signature] the corporation which executed the foregoing document, who acknowledged that they did sign and seal the foregoing document for and on behalf of said corporation, being thereunto duly authorized by its Board of Directors; that

[Signature]

Handwritten initials

~~the same is their free act and deed as such officers and the
free act and deed of said corporation.~~

IN TESTIMONY WHEREOF, I have hereunto set my hand and
official seal at ST. CROIX this 29 day of
October, 1990.

My commission expires:

April 12, 1993

Handwritten signature of Notary Public
Notary Public

Handwritten initials

EXHIBIT 4

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

| | |
|------------------------------------|--------------------------|
| MOHAMMED HAMED By His Authorized) |) |
| Agent WALEED HAMED,) |) |
| |) CIVIL No. SX-12-CV-370 |
| Plaintiff,) |) |
| |) ACTION FOR DAMAGES |
| vs.) |) INJUNCTIVE AND |
| |) DECLARATORY RELIEF |
| FATHI YUSUF and UNITED) |) JURY TRIAL DEMANDED |
| CORPORATION,) |) |
| |) |
| Defendants.) |) |

CERTIFIED TRANSCRIPT

The Hearing in the above-entitled action was heard before the HONORABLE DOUGLAS A. BRADY, JUDGE, in Courtroom No. 211, Kingshill, St. Croix, on Friday, January, 25th, 2013, at approximately 10:30 a.m.

SUZANNE A. OTWAY-MILLER
REGISTERED PROFESSIONAL REPORTER
SUPERIOR COURT OF THE VIRGIN ISLANDS
KINGSHILL, ST. CROIX, U.S.V.I.
(340) 778-9750

Blumberg No. 5208
EXHIBIT
4

1 MR. HOLT: No objection.

2 THE COURT: Okay. So that's --

3 MR. DiRUZZO: Tender the witness, Your Honor.

4 THE COURT: -- number 9. Number 8 was already
5 admitted. Number 10, number 11, number 12.

6 This is cross examination.

7 **(Defendants' Exhibit 9, 10, 11 and 12 received**
8 **into evidence.)**

9 CROSS-EXAMINATION

10 BY MR. HOLT:

11 Q Yes. You testified briefly about the fire
12 burning down the supermarkets in what, 1990?

13 A 1990, yes.

14 Q Did it burn down any other part of the shopping
15 center?

16 A Yes, it did.

17 Q And you talked about the insurance proceeds were
18 paid to rebuild everything?

19 A Yes.

20 Q Okay. And where did the money come from that
21 generated the premiums to pay for the insurance?

22 A From the grocery store.

23 ~~Q Okay. And then you talked about a \$10 million~~
24 ~~payment or \$11 million, you weren't quite sure, to the~~
25 ~~federal government's part of the plea agreement?~~

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

MOHAMMAD HAMED, by his)
authorized agent **WALEED HAMED**,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.)
)
FATHI YUSUF and)
UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, **WAHEED**)
HAMED, **MUFEEED HAMED**,)
HISHAM HAMED,)
and **PLESSEN ENTERPRISES, INC.**,)
)
Counterclaim Defendants.)
_____)

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**ORDER RE PLAINTIFF'S REQUEST TO FILE SURREPLY
RE PLAINTIFF'S DISSOLUTION PLAN**

This matter is before this Court on Plaintiff's motion to file a surreply re his dissolution plan. Upon consideration of the matters before me, it is hereby ordered that the motion is GRANTED. The proposed surreply is deemed filed as submitted.

Entered this ____ day of _____, 2014.

Douglas A. Brady
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE
Acting Clerk of the Court

By: _____
Deputy Clerk

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