

**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**,  
  
Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370  
  
ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF  
  
**JURY TRIAL DEMANDED**

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

Defendants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Opposition to “Plaintiff’s Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership” filed on May 8, 2014 (the “Motion”). The Motion should be summarily denied for the following reasons:

- 1. Plaintiff is by this motion seeking a partial summary judgment in the form of a declaratory judgment that there exists a partnership for the operation of the Plaza Extra stores. The Virgin Islands Declaratory Judgment Act is set forth at V.I. Code Ann. tit. 5, § 1261 et seq. Section 1271 of the Act provides that the act is to “so interpreted and construed as to . . . harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.” See also Estate of George v. George, 50 V.I. 268, 274 (V.I. 2008)

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

(citing and applying statutory requirement that VI declaratory judgment act be construed in accordance with the federal declaratory judgment act).

2. It is well-settled that federal district courts have broad discretion under the federal Declaratory Judgment Act to decide whether or not to grant relief on a declaratory judgment claim. Wilton v. Seven Falls Co., 515 U.S. 277, 288 (1995) (“In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.”); Reifer v. Westport Insurance Corporation, 2014 U.S. App. LEXIS 8014 (3d Cir. 2014). Consistent with federal practice, the Virgin Islands courts have long recognized that the decision whether or not to entertain a declaratory claim under local law is within the discretion of the Court. See, e.g., Flavo-Rich v. Quinn, 18 V.I. 530, 532 (D. V.I. 1981) (recognizing discretion to either entertain or not entertain declaratory judgment claim); Hill v. de Jongh, 2012 V.I. LEXIS 11, p. \*14 (Sup. Ct. 2012) (exercising discretion not to entertain a request for declaratory relief).

3. The Court should decline to entertain the request for partial summary judgment on Plaintiff’s claim for a declaration that a partnership exists for several reasons, as outlined below.

4. First, the Motion fails to follow the mandatory procedures set forth in LRCi 56.1, made applicable to proceedings in this Court by Super. Ct. Rule 7. In particular, LRCi 56.1(a)(1) provides:

Each summary judgment motion shall be accompanied by a brief, affidavits and/or other supporting documents, including a separate statement of the material facts about which the movant contends there is no genuine issue. Each fact paragraph shall be serially numbered and shall be supported by a specific citation to the record. The movant shall affix to the statement copies of the precise portions of the record relied upon as evidence of each material fact.

Contrary to the clear requirements of LRCI 56.1(a)(1), the Motion was not accompanied by a brief, affidavits, statement of material facts about which Plaintiff contends there is no genuine issue, or any supporting documents other than two unauthenticated emails, one of which did not even stand for the proposition for which it was cited.<sup>1</sup> Accordingly, the Motion should be summarily denied for its failure to comply with the applicable procedures regarding summary judgment motions.

5. Second, although Plaintiff claims that he “sought a declaration of the existence of the partnership pursuant to the Uniform Partnership Act,” see Motion at p. 2, no such relief was specifically sought in his First Amended Complaint. While Plaintiff may have sought “declaratory . . . relief as to his rights,” see ¶ 37 of the First Amended Complaint, he never requested a declaration of the existence of the partnership pursuant to the Uniform Partnership Act or any other partnership law that may apply.

6. In any event, there is no need for the declaration of the existence of the partnership since there is no longer any controversy regarding that subject given Yusuf’s concession in his Memorandum In Support Of Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership (the “Memorandum”) at ¶ 7 and the definition of “Partnership” set forth at § 1.23 of the Plan For Winding Up Partnership attached as Exhibit A to the Memorandum. Since April 7, 2014, there is no longer any controversy that there was a partnership between Yusuf and Hamed to carry on as co-owners the business of the Plaza Extra Stores. This position was also stated by counsel for Defendants on the record at the telephonic hearing held on May 29, 2014.

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<sup>1</sup> Plaintiff claims the email attached as Exhibit 1 “unequivocally stat[ed] that the three Plaza Extra stores had always been a partnership.” See Motion at p. 2. A simple reading of Exhibit 1 reveals no such unequivocal statement.

Accordingly, there was simply no need to file the Motion and this Court should not be further burdened with disposing of a completely unnecessary motion.

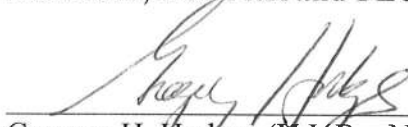
7. The needlessness of the Motion is further borne out by the proposed order submitted with it. Other than acknowledging the existence of a partnership, which has already been conceded, the proposed order does nothing more than to declare that Plaintiff "is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights." Such vague and generalized provisions simply have no force and effect whatsoever.

For all of the foregoing reasons, Defendants respectfully request this Court to deny the Motion and to provide them with such further relief as is just and proper under the circumstances.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: June 2, 2014

By:

  
Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)  
The DeWood Law Firm  
2006 Eastern Suburbs, Suite 101  
Christiansted, VI 00830  
Telephone: (340) 773-3444  
Telefax: (888) 398-8428  
Email: [info@dewood-law.com](mailto:info@dewood-law.com)

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of June 2014, I caused the foregoing **Opposition To Plaintiff's Renewed Motion For Partial Summary Judgment As To The Existence Of A Partnership** of to be served upon the following via e-mail:

Joel H. Holt, Esq.  
Law Offices of Joel H. Holt  
2132 Company Street  
Christiansted, V.I. 00820  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

Michelle Barber

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**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422