

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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	
)	
<i>Plaintiff/Counterclaim Defendant</i> ,)	CIVIL NO. SX-12-CV-370
)	
vs.)	ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF
)	
FATHI YUSUF and UNITED CORPORATION ,)	
)	
<i>Defendants/Counterclaimants</i> ,)	
)	
vs.)	JURY TRIAL DEMANDED
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC. ,)	
)	
<i>Counterclaim Defendants.</i>)	
)	

**PLAINTIFF'S REPLY TO
DEFENDANT'S OPPOSITION TO RENEWED MOTION FOR SUMMARY JUDGMENT**

The Plaintiff is mindful of this Court's comments at the May telephonic hearing questioning the need for this motion, as this case certainly does not need any more motions to rule on if it is not necessary that it do so. However, after reflecting on this matter, it is respectfully submitted that this motion does need to be addressed for several practical reason:

- The only order of record on this issue in this case is the December 3, 2013, Order finding that there is a genuine issue of fact regarding the existence of the partnership, which remains the law of the case unless a new order is entered;
- Third parties dealing with the three Plaza Extra stores have requested clarity on this issue beyond just the "say-so" of counsel, requesting an Order of the Court (See **Exhibit 1**);

- Even the Defendants' initial admission that a partnership exists, filed with its April 7th motion for dissolution, expressly stated on page 4 that the concession that a partnership existed was only for the "purposes of this case," which has been repeated in emails exchanged between counsel (which prompted this motion);
- Subsequent to the admission that a partnership exists for the purposes of this case, Defendants have still insisted on treating the partnership assets as assets of United, as exemplified most recently on the insistence that the insurance policy covering the three stores remain in the named of United Corporation (See **Exhibits 2 and 3**;
- A finding that there is a partnership is needed to approve the anticipated dissolution of the partnership.


With these points in mind, Plaintiff will briefly address the procedural objections raised to this motion, which can be summarily dismissed as follows:

- While Defendants complain there was not Rule 56.1 Statement of Facts filed with the motion, the current motion is captioned "Renewed" motion for summary judgment since a Rule 56 motion with the Rule 56.1 filing was previously filed in this case.
- Indeed, even if a new Rule 56.1 Statement of Facts had been required, the only "fact" being relied upon in the Renewed Rule 56 motion is the Defendants' admission that a partnership does exist, so any procedural error would be harmless error;
- While Defendant argues that Plaintiff never sought declaratory relief, that assertion is untrue. The caption states that it is an action for declaratory relief. The first paragraph invokes jurisdiction under 5 V.I.C. § 1261, which is the V.I. statutory provision authorizing such relief. Paragraphs 36 and 37 of Count I in the Amended Complaint specifically seek such declaratory relief. Finally, the prayer for relief seeks such declaratory relief, seeking in the very first request for **"Declaratory Relief against both defendants to establish Hamed's rights."**

In short, the motion is not procedurally flawed. Moreover, as noted, a finding that there is a partnership is needed. Indeed, resolution of this motion is not complicated.¹ As such, it is requested that the relief sought be granted.

¹ Simultaneously with the filing of this motion, Plaintiff has asked Defendants to execute a stipulation that would moot this motion. See **Exhibit 4**. If they will not do so, one has to ask why. Plaintiff will keep the Court advised as to the status of this request.

Dated: June 10, 2014



Joel H. Holt, Esq., VI BAR No. 6
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
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Email: holtvi@aol.com
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Carl J. Hartmann III, Esq.
Counsel for Waheed Hamed
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
(340) 719-8941
carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
dewoodlaw@gmail.com

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VI Bar No. 174
Law House, 10000 Frederiksberg Gade
P.O. Box 756
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ghodges@dtflaw.com

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P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

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Counsel for Plessen Enterprises, Inc.
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1132 King Street,
Christiansted, VI 00820
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BARRY T. SHEVLIN
ANDREW S. ATKINS*
THEODORE D'APUZZO
MICHAEL S. GREENBERG

June 4, 2014

*ADMITTED IN FL AND GA

VIA EMAIL ONLY: holtvi@aol.com
& U. S. MAIL

Joel H. Holt, Esq.
Attorney at Law
2132 Company Street, Suite 2
Christansted, St. Croix
US Virgin Islands 00820

**Re: Associated Grocers of Florida, Inc. adv. Plaza Extra Supermarkets
and United Corporation**

Dear Mr. Holt:

Please be advised that I represented Associated Grocers of Florida, Inc. in the above-referenced matter. Your June 2, 2014 and May 14, 2014 letters have been referred to my office for response. While I appreciate the contents of your letters, my client cannot take a position as to ownership of the shares in Associated Grocers of Florida, Inc., absent a certified Court Order signed by a Judge that has been duly authenticated and recorded in the public records of Broward County, Florida. Upon receipt of such a document from your office, I will gladly review same to determine its validity and enforceability.

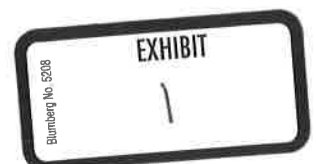
Once your ownership dispute has been resolved pursuant to a final non-appealable Court Order, at that point, the necessary documents will need to be prepared to adjust any ownership percentages pursuant to the Court Order. Please feel free to contact me with any questions.

Yours very truly,

SHEVLIN & ATKINS
Attorneys at Law

By:


Barry T. Shevlin, Esq.



JOEL H. HOLT, ESQ. P.C.

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May 14, 2014

Louis F. Moore
Executive Vice President/CFO
Associated Grocers
1141 SW 12TH Avenue
Pompano Beach, FL. 33069

Re: Plaza Extra Supermarkets and United Corporation

Dear Mr. Moore

Attached as Exhibit 1 is correspondence from you to Fathi Yusuf c/o United Corporation regarding certain agreements your company has had with the three Plaza Extra Supermarkets in the Virgin Islands. As you may know, certain litigation was filed here to determine whether these three stores were owned and operated by United or by a partnership between Fathi Yusuf and Mohammad Hamed. The court issued a preliminary injunction finding that Mr. Mohammad was likely to prevail on his claim that it was a partnership, which finding the Supreme Court of the Virgin Islands affirmed.

Fortunately this issue is not being litigated any longer as Fathi Yusuf and United Corporation recently filed pleadings with the Court agreeing that the three Plaza Extra Supermarkets are owned and operated by the partnership between Fathi Yusuf and Mohammad Hamed. Both Mr. Yusuf and his son, Maher Yusuf, who is the President of United Corporation, have also confirmed this fact under oath in their recent depositions, excerpts of which are attached as Exhibits 2 and 3. I am sure they will confirm all of this to you as well if you contact them.

As such, Associated Grocers needs to change its records to reflect this fact as well as re-issue the stock certificate (a copy of which is attached in Exhibit 1) to reflect that the partnership owns this stock and is the AG member, not United Corporation.

I have also copied United's counsel as well as Mr. Yusuf's counsel, George Dudley, on this letter so you can discuss this point with him as well if you would like to do so.

Please confirm you are making this change forthwith. If you have any questions, please feel free to contact me as well.

Cordially,



Joel H. Holt

JHH/jf

Enclosure

Cc: Jose Capellades, Executive vice President, AG Export Department
George Dudley, Counsel for United Corporation and Fathi Yusuf (340-774-4422)
Waleed "Wally" Hamed (pursuant to his POA for his father, Mohammad Hamed)

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June 2, 2014


Louis F. Moore
Executive Vice President/CFO
Associated Grocers
1141 SW 12TH Avenue.
Pompano Beach, FL. 33069

Re: Plaza Extra Supermarkets and United Corporation

Dear Mr. Moore

On May 14, 2014, I sent you the attached letter. To date I have not received a response. Can you please respond to this letter, as pleadings are now being submitted to the Court regarding your role in supplying the three Plaza Extra stores, so your response to the attached letter is needed.

Cordially,



Joel H. Holt
JHH/jf
Enclosure

Cc: Jose Capellades, Executive Vice President, AG Export Department
George Dudley, Counsel for United Corporation and Fathi Yusuf
Waleed "Wally" Hamed (pursuant to his POA for his father, Mohammad Hamed)



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
6/2/2014

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

AGENCY Inter Ocean Insurance Agency, Inc. 7B Peter's Rest Shopping Ctr. C'sted, St. Croix VI 00820		COMPANY Certain Underwriters at Lloyds 32 Lombard Street London UK EC3V 9BQ	
PHONE (A/C, No, Ext): (340) 773-4600		LOAN NUMBER	
FAX (A/C, No): (340) 773-4190		POLICY NUMBER P140016	
E-MAIL ADDRESS: infostx@interoceaninsura		EFFECTIVE DATE 6/1/2014	
CODE:		EXPIRATION DATE 6/1/2015	
AGENCY CUSTOMER ID #: 00004646		CONTINUED UNTIL TERMINATED IF CHECKED <input type="checkbox"/>	
INSURED United Corporation DbA United Shopping Center & United Shopping Center P.O. Box 763 - C'sted St. Croix VI 00821		THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION

LOCATION/DESCRIPTION
 Loc # 1 :Estate Plessen, F'sted
 Loc #2:Sion Farm, St Croix
 Loc #3: 26A Estate Charlotte Amalie, St. Thomas, USVI

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OR ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Building, Replacement Cost, Special form	7,000,000	25,000
Equipment, Replacement Cost, Special form	2,500,000	25,000
Inventory, Replacement Cost, Special form	3,000,000	25,000
Furniture & Fixtures, Replacement Cost, Special form	1,500,000	25,000


REMARKS (Including Special Conditions)

SUM INSURED \$41,900,000 ANY ONE LOSS OCCURRENCE AND IN THE ANNUAL AGGREGATE SEPARATELY IN RESPECT OF FLOOD AND EARTHQUAKE. DEDUCTIBLE: \$25,000 ANY ONE LOSS OCCURRENCE OTHER THAN IN RESPECT OF FLOOD AND EARTHQUAKE WHICH IS 2% OF THE TOTAL INSURED VALUED PER LOCATION, ANY ONE LOSS OCCURRENCE, BUT 5% OF TOTAL INSURED VALUE PER LOCATION ANY ONE LOSS OCCURRENCE IN RESPECT OF WIND/HAIL ST. THOMAS LOCATION ONLY. EXCLUDES WIND, WIND DRIVEN WATER AND HAIL IN RESPECT OF LOCATIONS 1 AND 2 ONLY. PERIOD OF INDEMNITY IN RESPECT OF BUSINESS INTERRUPTION: 12 MONTHS LIMITED TO 1/12 MONTHLY

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 15 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

TUTU PARK MALL LTD SUITE 254 25A CHARLOTE AMALIE ST. THOMAS, VI 00801	<input type="checkbox"/> MORTGAGEE	<input checked="" type="checkbox"/> ADDITIONAL INSURED
	<input type="checkbox"/> LOSS PAYEE	
LOAN #		
AUTHORIZED REPRESENTATIVE 		

Blumberg No. 5208
EXHIBIT
 2

ADDITIONAL COVERAGES

Ref #	Description	Coverage Code	Form No.	Edition Date
2	Sion Farm, Building, 10,000,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
10,000,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
2	Sion Farm, Equipment Equipment, 2,500,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
2,500,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
2	Sion Farm, Inventory , 2,500,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
2,500,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
2	Sion Farm, Furniture & Fixtures, 1,000,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
1,000,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
2	Sion Farm, Business Income- Ren, 500,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
500,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
3	Tutu Park Mall, Building , 4,500,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
4,500,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
3	Tutu Park Mall, Equipment , 2,500,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
2,500,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
3	Tutu Park Mall, Inventory , 3,000,000	SPECL		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
3,000,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
3	Tutu Park Mall, Furniture & Fixtures, 1,000,000	SPC		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
1,000,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
3	Tutu Park Mall, Loss of Rents, 400,000	SPC		
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
400,000			25,000	Flat
Premium				
Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

From: Joel Holt <holtvi@aol.com>

To: gdudley <gdudley@dtflaw.com>

Cc: dewoodlaw <dewoodlaw@gmail.com>; ghodges <ghodges@dtflaw.com>; cperrell <cperrell@dtflaw.com>; carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>

Subject: Re: Insurance Premiums

Date: Mon, Jun 2, 2014 7:19 am

The decidedly better course is to operate the business side of the three Plaza Extra stores like a partnership, as stated in your April 8th email:

Since United is not and has never been a partner in the Plaza Extra "partnership" between Fathi Yusuf and Mohammad Hamed, this discussion is misplaced. United's tax returns for 2013 and thereafter will not reflect anything having to do with the business of the "partnership" (except the rent owed to United as landlord of Plaza - East) and the two partners have to select an accountant to prepare the partnership income tax return and the related K-1s to be issued to each partner.

There also is the matter of applicable filings for the Department of Labor and other agencies for the employees and business of the Yusuf/Hamed "partnership" d/b/a Plaza Extra Supermarkets.

While the liquidation will moot some of these needs before they can be done, such a new business licenses, the insurance was easy, as there is no question that United's name is not on either of the two St. Croix stores. An insurance company who is asked to pay a claim that they find questionable to begin with will surely raise the issue that the named insured, United, has no insurable interest in either store.

Indeed, Gaffeny's apparent comment to Joyce Bailey that reporting the gross income of the three supermarkets as being that of the partnership may cause the IRB problems (since it did not file gross receipt forms in 2013) is typical of how the partnership accounting is not being thought out properly. Not only does the partnership have to use its new tax ID number for paying the gross receipts for the three supermarkets going forward, but the 2013 partnership tax return has to reflect the true and accurate gross income of the partnership regardless of the consequences, as untruthful tax returns have a worse consequence, as United has already found out.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

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

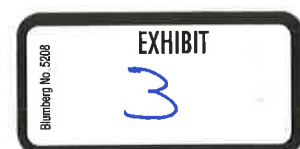
From: George H.T. Dudley <gdudley@dtflaw.com>

To: 'Joel Holt' <holtvi@aol.com>

Cc: dewoodlaw <dewoodlaw@gmail.com>; Gregory H. Hodges <ghodges@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>; carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>

Sent: Fri, May 30, 2014 6:25 pm

Subject: RE: Insurance Premiums



Joel,

Plaza Extra still is a registered trade name owned by United, the lease for Tutu Park still is in United's name as are the business licenses for each store. On that basis, irrespective of who might be the de jure owner of the stores, the fact remains that the more prudent course is to have the insurance continued in the name heretofore commonly recognized as the owner/insured. This decidedly is not about anyone cutting corners.

ghtd

From: Joel Holt [<mailto:holtvi@aol.com>]

Sent: Friday, May 30, 2014 6:01 PM

To: George H.T. Dudley

Cc: dewoodlaw@gmail.com; Gregory H. Hodges; Charlotte Perrell; carl@carlhartmann.com; kimjapinga@gmail.com

Subject: Re: Insurance Premiums

Of course Wally did the right thing to protect the partnership. Your email still does not address the wrong name of the insured being used. Likewise, two checks would help the accounting while preserving everyone's rights as the partnership cannot deduct the insurance premium for a shopping center it does not own. I do not understand why you do not want these issues straightened out other than it being easier to continue to cut corners than explaining to your client why the accounting needs to be done properly

Sent from my iPhone

On May 30, 2014, at 3:55 PM, "George H.T. Dudley" <gdudley@dtflaw.com> wrote:

Joel,

While the parties continue to work out resolution of the competing plans for the liquidation of the partnership, I think that the more appropriate course is to leave in place the court's order maintaining the status quo. Consequently, the insurance should be paid as it has been in the past; i.e., as a single check out of the Plaza Extra Operating Account.

To your point about preserving claims between the partners vis a vis United expenses vs. expenses of the partnership, the insurance policy breaks out the components of the risks insured and the associated premium, consequently, the claims between the partners are preserved.

Finally, I am told that the insurance needs to be paid today and I urge you to have your client work with the Yusufs to get the premiums paid.

Regards, ghtd

From: Joel Holt [<mailto:holtvi@aol.com>]

Sent: Wednesday, May 28, 2014 5:33 PM

To: dewoodlaw@gmail.com

Cc: Gregory H. Hodges; Charlotte Perrell; George H.T. Dudley; carl@carlhartmann.com;

kimjapinga@gmail.com

Subject: Re: Insurance Premiums

All-based on Nizar's response, I have told my client to contact the insurance carrier and change the name of the named insured on the three stores a the partnership. As for the payment, I have no problem with doing two checks, one for the coverage for United's property (the shopping center) and one for the partnership interests, the three stores. I am also willing for the two checks to come out of the partnership accounts so long as the payment of the United portion is without prejudice to my client's position that this is a United obligation (and without prejudice to your position that this is a payment that the partnership should pay for whatever reason). If acceptable, please let me know and please have two checks prepared.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

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

From: Nizar DeWood <dewoodlaw@gmail.com>
To: Joel Holt <holtvi@aol.com>
Cc: ghodges <ghodges@dtflaw.com>; cperrell <cperrell@dtflaw.com>; gdudley <gdudley@dtflaw.com>; carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>
Sent: Tue, May 27, 2014 5:55 pm
Subject: Re: Insurance Premiums

Great. Let the partnership pay the premiums like it always has.

Sent from my iPhone

On May 27, 2014, at 5:31 PM, Joel Holt <holtvi@aol.com> wrote:

All-I sent an email about this on May 21st-the policy for the stores has to be in the name of the partnership and the shopping center is United's problem. Why is that problem?

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

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

From: NIZAR DEWOOD <dewoodlaw@gmail.com>
To: Joel Holt <holtvi@aol.com>
Cc: Gregory H. Hodges <ghodges@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>
Sent: Tue, May 27, 2014 4:57 pm
Subject: Insurance Premiums

There's a \$335k check that needs to be signed for the insurance premiums (the policy covers all stores). Wally has refused to sign it, despite the fact that such has been practice for the last 30 years.

The insurance on all stores will expires May 31st, 2014. Please advise.

Nizar A. DeWood, Esq.

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JOEL H. HOLT, ESQ. P.C.

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June 10, 2014

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Gregory H. Hodges
VI Bar No. 174
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST. Thomas, VI 00802


Via Email

Re: Partnership Stipulation

Dear Counsel:

Please let me know if the attached stipulation is acceptable. If so, please sign and return and I will withdraw the pending motion for partial summary judgment. Thank you.

Cordially,


Joel H. Holt
JHH/jf
Enclosure



Dated: June 10, 2014

By the Plaintiff:

Joel H. Holt, Esq., VI BAR No. 6

Counsel for Plaintiff

Law Offices of Joel H. Holt

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(340) 719-8941

carl@carlhartmann.com

Dated: June _____, 2014

By the Defendants:

Nizar A. DeWood

Counsel for Defendants

The DeWood Law Firm

2006 Eastern Suburb, Suite 101

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Gregory H. Hodges

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