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

YUSUF YUSUF, derivatively on behalf of PLESSEN ENTERPRISES, INC.,	:	CASE No. SX-13-CV-120
Plaintiff,	:	CIVIL ACTION FOR DAMAGES AND INJUNCTIVE RELIEF
vs.	:	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and FIVE-H HOLDINGS, LLC.,	:	
Defendants,	:	
-and-	:	
PLESSEN ENTERPRISES, INC.,	:	
Nominal Defendant.	:	

YUSUF YUSUF'S JOINT REPLY BRIEF IN SUPPORT OF MOTION TO NULLIFY PLESSEN ENTERPRISES, INC.'S BOARD RESOLUTIONS, TO VOID ACTS TAKEN PURSUANT TO THOSE RESOLUTIONS, AND TO APPOINT RECEIVER

Introduction

The Mohammed Hamed ("Hamed") family interests and the Fathi Yusuf ("Yusuf") family interests are in a state of "deadlock" within the meaning of applicable law authorizing a Receiver, each family owning 50% of Plessen Enterprises, Inc. ("Plessen"), the nominal defendant. The papers submitted by defendants (Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed and Five-H Holdings, LLC, collectively, the "Hameds" or "Defendants") in opposition to this Motion to Nullify demonstrate the paralysis in functioning of the corporation that results from the deadlock. Shareholders are so divided and the internal dissension is so corrosive and complete at Plessen as to fully justify Yusuf's request for court intervention and the appointment of a Receiver to protect the shareholder interests of both

factions and bring to an end the reign of corporate terror foisted by the Hamed interests on the Yusuf interests.

The Declaration of Waleed Hamed, submitted in opposition to Yusuf's Motion to Nullify, and the principles articulated in the Virgin Islands case of Moran v. Edson, 493 F. d 400 (3d Cir. 1974), illustrate how vital it is that the Court intervene in this case under 13 V.I.C. §195. The Declaration also demonstrates the need for this Court to appoint a Receiver and nullify the actions taken at a renegade Special Meeting of the Board of Directors of Plessen on April 30, 2014, engineered by Waleed Hamed to perpetuate the control of Plessen by the Hamed family interest while disenfranchising the Yusuf family interests.

While the Declaration of Waleed Hamed actually shows the need for judicial intervention, the Hameds' brief in opposition to Yusuf's Motion to Nullify offers very little in the way of argument against judicial intervention. In this reply, Yusuf will address each of the purported actions of the Board *seriatim*.

Argument

I. The Lease

A. The Hameds Have the Burden to Demonstrate that the Lease Is Intrinsically Fair.

First, the Hameds argue that under article 11(e) of Plessen's articles of incorporation, interested-director transactions are "permissible if disclosed." Defendants' Brief, p. 4. But this assertion is a red herring. Yusuf's brief made it clear that he is not arguing that interested director transactions are per se voidable, and the modern common law would not support that argument. See Yusuf's Brief at p. 10. Instead, Yusuf argues that under the modern common law view, the interested party has the burden of showing that the transaction is intrinsically fair to the

corporation in order for it to stand. See id. at p. 11. Neither the Plessen article cited by the Hameds, nor any others, purport to alter the modern common law rules regarding when such transactions are voidable.[1]

The Delaware Supreme Court's decision in Sterling v. Mayflower Hotel Corp., 93 A.2d 107 (1952) forecloses any argument by the Hameds that the article 11(e) provision in the articles of incorporation alters their common law burden to prove the intrinsic fairness of the transaction. In that case, the articles of incorporation of Mayflower Hotel contained an article 13 that was very similar to Plessen's article 11(e). See id. at 117, n.3. Article 13 provided in pertinent part that "no contract or other transaction between this corporation and other corporation . . .shall be affected by the fact that any director or officer of this corporation is pecuniarily or otherwise interested in . . . such other corporation . . .." Id. at 117, n.3. It further provided that any interested director "may be counted in determining the existence of a quorum at any meeting of the Board of Directors of the Corporation for purpose of authorizing any such contract . . .." Id.

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[1]And even if the articles of incorporation provided that "the common law rules requiring that interested party transactions meet the intrinsic fairness test are hereby declared inapplicable," such a provision clearly would be void, because it would represent an attempt to alter a fundamental rule of corporate law that derives from a director's fiduciary duties to the corporation he or she serves. See Jones Apparel Group, Inc. v. Maxwell Shoe Company, Inc., 883 A.2d 837, 843 (Del. Ch. 2004) (an article of incorporation that "clashes with fundamental policy priorities that clearly emerge from the [state's corporation statute] or [the state's] common law of corporations" is "invalid"); see also 13 V.I.C. 2 (stating that articles of incorporation may contain "any provision, not inconsistent with this chapter, regulating the business and conduct of the affairs of the corporation and limiting its powers, and the power of its directors and stockholders, **not exempting them, however, from any obligation nor from the performance of any duty, imposed by law**") (emphasis added). The bylaws of a corporation are in this respect no different than the articles of incorporation; the corporation's bylaws, like its articles, must comport with the common and statutory law of corporations in order to be valid. See Frantz Manufacturing Company v. EAC Industries, Inc., 501 A.2d 401, 407 (Del. 1985) (stating that "[a] bylaw that is inconsistent with any statute or rule of common law . . . is void," but adding that courts will if possible construe bylaws "in a manner consistent with the law rather than strike down the bylaws").

at 117, n.3. In that case, Mayflower directors who were shareholders in a hotel company into which Mayflower was being merged were counted for purposes of determining a quorum at a meeting to authorize the merger, and then voted to approve the merger. See id. at 117. As the lower court explained, it was "conceded that there was no quorum unless at least some of the interested directors were counted." See Sterling v. Mayflower Hotel Corporation, 89 A.2d 862, 865 (Del. Ch. 1952).

The lower court acknowledged that an article of incorporation may permit an interested director to vote to approve the transaction in which he or she is interested, and the Delaware Supreme Court agreed. Significantly, the Supreme Court did not treat this provision as in any respect exempting the directors from the common law rule that where directors "stand on both sides of the transaction, they bear the burden of establishing its entire fairness." Sterling, supra, 93 A.2d at 110. The Delaware Supreme Court noted that an article allowing interested directors to be counted as a quorum "does no more than permit the directors to act as a board, leaving untouched questions of alleged unfairness or inequity that it is the duty of the courts in a proper case to resolve." Id. at 118. The Court added that while the prevention of director "conflict between duty and self-interest" is paramount, the "court deals with it . . .by placing the good faith and fairness burden on those espousing the transaction." Id. at 119. Accordingly, Sterling also makes irrelevant the Hameds' argument that article 11(e) of the Plessen articles expressly allows the interested director "to be counted as part of the quorum" of any director's meeting and to vote on any resolution approving such transaction. Defendants' Brief, p. 4.

In Marciano v. Nakash, 535 A. 2d 400 (Del. Supr. 1987), the Supreme Court of Delaware confirmed the role of the courts in applying the "intrinsic fairness test" in interested director transactions "where shareholder deadlock prevents ratification but also where shareholder

control by interested directors precludes independent review. Indeed, if an independent committee of the board . . . is unavailable, the sole forum for demonstrating intrinsic fairness may be a judicial one." (Emphasis added.) Quoting Weinberger v. UOP, Inc., 457 A.2d 700, 710 (1983), the Court confirmed the high standard required for an interested party transaction to meet the intrinsic fairness test: "When directors of a Delaware corporation are on both sides of a transaction, they are required to demonstrate their utmost good faith and most scrupulous inherent fairness of the bargain." (Emphasis added.)

In this case, the various actions taken by the Hamed family faction in the April 30, 2014 Special Meeting of the Board of Directors fail the intrinsic fairness test and, due to the shareholder deadlock, the sole forum to resolve the impasse between the two warring factions is judicial review by the Court.

B. Hamed Cannot Sustain *His* Burden to Demonstrate that the Lease Is Intrinsically Fair.

The interested director Lease transaction is the most brazen attempt by the Hamed family interests to plunder Plessen's assets and disadvantage the Yusuf family faction by concocting a rationale for an insider Lease (the "Hamed Lease") that financially benefits an entirely different Hamed family corporation, KAC357, Inc. (the "New Hamed Company") at the expense of the Yusuf family interests.

The site of the Hamed Lease is a core and strategic asset of Plessen where one of the three Plaza Extra Supermarkets is located and no action should be taken with respect to that site in the absence of the approval of both the Hamed and Yusuf interests.

The terms of the Lease transaction are so intrinsically unfair that even during the exchanges of these motion papers – a most inappropriate negotiating forum – the Hamed family

interests are offering further concessions to meet some but not all of the more obviously lopsided and unfair terms of the proposed insider Lease.

The Hamed Lease is unfair to Plessen because it is designed to encumber Plessen's property and lock it up for the New Hamed Company in a way that will make it less valuable to outside investors who may wish to purchase the property - when it is inevitably offered for sale by a receiver or other court-appointed custodian – and more valuable to the Hameds in whatever enterprise they are planning. For that reason alone, Hamed has failed to establish the intrinsic fairness of the Hamed Lease, and the Lease and its ratification by the vote of the self-interested directors of the Plessen board should be nullified.

Interestingly, the Hameds made no attempt to answer the more fundamental procedural point that the Hamed Lease is premature and cannot even commence under Section 2.34 until the concurrent litigation between Hamed and Yusuf that is before the Honorable Douglas A. Brady – (the "370 Litigation") is resolved. As such, the Hamed Lease is an empty and illusory transaction in addition to being unfair as to its terms. Since the Hameds concede that the lease would only "take effect upon the dissolution of the partnership," Defendants' Brief, p. 5, their argument that it would provide benefits to Plessen that the corporation is not receiving now, during the pre-dissolution period (and before it goes into effect), makes no sense.[2] See id. at p. 5.

[2]Defendants note that both Yusuf and Hamed have filed competing plans for dissolution of the partnership that operates the Plaza Extra-West store. They suggest that, upon dissolution, "Plaza West will become vacant (resulting in 200 employee lay-offs) and would be a liability to Plessen as a vacant building that still needs upkeep and security." Defendants' Brief, p. 5. That contention is inaccurate. While the Yusuf Plan filed on April 7, 2014 may have resulted in temporary lay-offs and closure, the United/Yusuf Plan filed on June 16, 2014 contemplates the continued operation of Plaza Extra – West by United. In any event, if the shareholders and

Turning to the business terms of the Hamed Lease, Defendants effectively admit, in part, that the lease's business terms are unfair. They have agreed to amend the Hamed Lease to (partially) cure two aspects of the lease terms that are prejudicial to Plessen, but it is clear that these concessions are insufficient to rectify the unfairness of the lease. First, Hamed has said in the brief filed in the main case that they will amend the Hamed Lease to provide that the insurance limits on the policy the New Hamed Company is required to procure will be increased from $5,000,000 to $7,000,000. At the same time, Defendants will not amend the clause that excludes windstorm (hurricane) coverage from the lessee's obligation to obtain insurance. Hamed said he will amend the Hamed Lease to provide his personal guaranty,[3] but offers no guaranty of the actual owners of the New Hamed Company, Waleed, Waheed and Mufeed Hamed. Providing only Hamed's personal guaranty is not sufficient. The absence of appropriate guaranties from each of the principals of the New Hamed Company and from Hamed not only impairs Plessen's ability to enforce its long-term rent obligation (or that of any assignee), but also impairs its ability to enforce the indemnity provision in the lease.

It is apparent that Hamed is unwilling to change the rent structure of the Hamed Lease or the assignment clause of the lease, and is unwilling to restructure the lease to make its term a single thirty-year term, rather than ten years with two ten-year options to renew. The Hameds' brief in opposition in this case does not mention the assignment clause, the ten-year term of the lease, or the rent structure of the lease. The Hameds do not even attempt to satisfy their burden of showing that these terms are intrinsically fair to Plessen. In short, the Hameds have failed to

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directors of Plessen are so deadlocked that they cannot agree on any occupancy of the premises, this is further proof that a Receiver should be appointed.

[3] The proposed guaranty only guarantees the payment of the rent, not the performance of all obligations of the New Hamed Company under the lease.

demonstrate that the Hamed Lease is intrinsically fair to Plessen and the board resolution authorizing the Lease should therefore be nullified.

II. The $460,000 Misappropriation Cannot Be Ratified As A Dividend.

With respect to the Plessen resolution treating the misappropriation by Waleed of $460,000 from Plessen in March 2013 as a "dividend," all that the Hameds are able to say is that the $460,000 represented "excess funds" which "were not needed by Plessen." Defendants' Brief, p. 6. This is incorrect. The removal of the $460,000.00 improperly depleted Plessen's account such that there were insufficient funds to reimburse for the 2011 property taxes. See Verified Complaint, ¶¶ 25-27. Further, no dividends have ever been paid in the entire twenty-five year history of the company. Hence, the funds were never intended to be a dividend when they were removed - this is simply the new-found label the Hameds use to camouflage that the removal was improper. In fact, Defendants do not dispute that these funds were misappropriated, and they do not even attempt to show how it can possibly be intrinsically fair to the corporation to have an unauthorized, secretive, and unlawful taking of that sum of money ratified as a "dividend." The Hameds likewise do not respond to Yusuf's citation to Moran v. Edson, 492 F.2d 400, 406 (3d Cir. 1974) for the proposition that this kind of misappropriation of corporate money by a director for his own benefit can only be validated by "unanimous ratification by the shareholders," something which has not happened and will not happen here. As such, the Plessen board's ratification of the $460,000 misappropriation of Plessen monies by the directors benefitting from it should be nullified, and the Hameds should be directed to return those monies to Plessen.

III. Appointment of Jeffrey Moorhead As Registered Agent and Attorney.

With respect to the appointment of Jeffrey Moorhead as registered agent, the Hameds fail entirely to respond to Yusuf's arguments that the statutory requirements for changing a registered agent were not satisfied. Contrary to the suggestions in the Hameds' brief, both of the Hamed directors had notice that Yusuf named and served Plessen as a counterclaim defendant in the 370 Litigation. Hamed's assertion that Yusuf "moved to default the company" in that case is also incorrect. Yusuf has never asked for entry of default as to Plessen. In any event, the Hameds are not above the law, and they must comply with statutory requirements regarding any change of the resident agent. If the shareholders cannot reach agreement on who should serve as resident agent, and the statutory requirements for effecting a change are therefore incapable of being met, that is just additional evidence of the corporate deadlock that afflicts Plessen.

The Hameds also fail to respond to any of the arguments that Jeffrey Moorhead is unsuited to be counsel for Plessen, including the argument that he attempted to negotiate a retainer check from Plessen a day before the Board had even authorized his retention. Defendants do not address Yusuf's argument that the bylaws permit the appointment of a General Counsel who "is to have dominion over all matters of legal import concerning the corporation."

Bylaw 7.3 is quite explicit: "it shall be the duty of the Officers and Director to consult from time to time with the general counsel (if one has been appointed), as legal matters arise." No such consultation with Plessen's general counsel was made as to the appointment of Jeffrey Moorhead either as resident agent or as outside counsel.

What the bylaw means is that, to the extent Plessen needs legal counsel, a General Counsel shall be appointed by the Board of Directors. That General Counsel would then either

represent the corporation in litigation or select another attorney to do so. The Board did not propose the hiring of an attorney who is qualified to serve as a General Counsel with "dominion" over all legal matters, including the selection of who will represent Plessen in litigation and whether a change is resident agent is needed. Instead, the Board circumvented that provision by simply retaining a litigation counsel on its own. That clearly is not what the bylaws contemplate.

It is clear that Attorney Moorhead in this case as in the 370 Litigation is acting for and on behalf of the Hamed interests by filing what he labeled as "Plessen Enterprises, Inc.'s Opposition to Plaintiff's Motion To Set Aside Plessen's Board Actions And Appoint Receiver." Attorney Moorhead's brief filed on behalf of Plessen in this case is a virtual copy of the brief filed by the Hameds in that case.[4] In the 370 Litigation, Attorney Moorhead simply joined and adopted the arguments raised by Hamed and represented that Plessen "agrees with the propriety of the actions of Plessen's Board of Directors" and that "there is no legal basis for dissolution or nullification of Plessen's Board of Directors who have always acted in the best interests of the company."[5] The fact that Attorney Moorhead is either cribbing or joining the briefs of the Hameds in these two cases further demonstrates the bias and impropriety of Attorney Moorhead's continued employment as counsel for Plessen. It is noteworthy that Attorney Moorhead did not bother to make any arguments of his own to justify the resolutions purporting to appoint him as resident agent and attorney for Plessen. Instead, his brief offered on behalf of

[4] Attorney Moorhead's brief on behalf of Plessen in this case differs from the Hamed's brief in the 370 Litigation only insofar as it substitutes "Plessen" for "Defendants." Otherwise, it is essentially a copy of that brief.

[5]Notwithstanding Yusuf's argument that the resolution appointing Attorney Moorhead as counsel for Plessen in this and the 370 Litigation was improper, this brief serves as a joint reply as to both Defendants Opposition and the Opposition filed by Attorney Moorhead labeled "Plessen's Opposition to Plaintiff's Motion To Set Aside Plessen's Board Actions and Appoint Receiver."

Plessen simply recited the conclusory and incomplete arguments made by Hamed in the 370 Litigation regarding those resolutions.

IV. Improper Notice of Board Meeting.

With regard to the failure of the notice of the special meeting to be issued by the Secretary, as required by section 7.2 of the Plessen bylaws, the issuance of a Notice of the Special Meeting by Hamed is simply another illustration of the Hamed faction running roughshod over the Yusuf family interests. The Hameds rely on the bylaw provision that permits the President to issue the notice "[i]f the Secretary is absent or refused or neglects to act . . .." And yet the Hameds cannot and do not point to any evidence that Yusuf was asked to issue the notice and failed or refused to do so. All the Hameds can offer is speculation that the Secretary, Yusuf, "may not" have been able to serve the notice, or that he may have "refuse[d] to do so" if he had been asked. Defendants' Brief, p. 2. The notice therefore was defective and under the decision in Kings Wharf Enterprises, Inc. v. Rehlaender, 34 V.I. 23, 30-31 (V.I. Terr. Ct. 1996), all resolutions passed at the special meeting are null and void.

V. The Number of Members on the Board is Disputed.

Defendants insist that Plessen is not afflicted by corporate "deadlock" because "Plessen has three directors." Defendants' Brief in Opposition, p. 8. However, Mohammed Hamed acknowledged in interrogatory answers that "I am one of the four directors of Plessen...The other three directors and shareholder of the company, including Fathi Yusuf and his sons are all aware of this fact..." See **Exhibit A**, Hamed's Answer to Interrogatory No. 16. So at the very least both sides have for years been operating under the assumption that the Hameds and Yusufs, each of whom were indisputably 50% owners of Plessen, also had equal representation on the

Board. That is obviously why Waleed Hamed signed a Scotiabank Information Gathering Form right next to the signature of Maher Yusuf where the words "Director/Authorized Signatory" appear below both signatures. See Exhibit E to Yusuf's Brief in the 370 Litigation at p. "FY004501." If the parties failed to actually have the election that would implement equal representation on the Board, it was not because the two families intended and agreed to perpetual unequal representation. It simply was the result of a failure to give effect to their intentions regarding the management of Plessen by its board of directors.

VI. Deadlock Exists At the Shareholder Level, and a Self-Perpetuating Board of Directors Created 25 Years Ago Does Not Alleviate the Deadlock and the Need for a Receiver.

Assuming Plessen has only three directors, Hamed's view that the corporation can therefore not be regarded as deadlocked is artificially narrow and unsupported by the case law. First, deadlock can occur at the either the shareholder or director level, or both, and deadlock at the shareholder level cannot be alleviated by the expedient of having a self-perpetuating 3-director board. Moreover, the existence of deadlock at either level is sufficient ground for the equitable remedy of appointment of a receiver and dissolution. Moran v. Edson, 493 F.2d 400, 407 (3d Cir. 1973), a case arising out of the Virgin Islands which Yusuf relied on in his opening brief, but which the Hameds studiously avoid addressing in their brief, makes this absolutely clear. In Moran, the corporation, Desco Products Caribbean, Inc. was owned jointly, with Roger Moran and his wife owning 50% of the stock, and Marion Edson and his wife owning the remaining 50%. Id. at 401. The original agreement between the stockholders, which was entered in 1965, provided that there would be three directors of the corporation, Messrs. Moran

and Edson, and a third director to be elected by the shareholders. Id. at 402. Mrs. Edson was elected the third shareholder. Id. at 402.[6]

Over time, "[d]ifficulties and disagreements arose between Moran and Edson over the operation of Desco and their respective rights and obligations with respect to it," and the bringing of a suit by Moran in the District Court in 1968 showed the parties to be, in the Third Circuit's words, "in hopeless deadlock." Id. at 404. Moran claimed in the suit that Edson had used his majority on the board of directors to engage in a number of acts which Moran objected to and which benefitted the Edsons at the expense of the corporation. Among other things, Moran alleged that the Edson-controlled board had caused Desco's operations to be moved to space owned by a separate Edson corporation, and that they profited personally from this move by charging Desco a higher rent than the Edson corporation's actual costs of owning the space (i.e., its mortgage costs, taxes and maintenance costs). Id. at 402, 406-07. And he alleged that the Edsons had made unauthorized withdrawals of corporate monies to pay for a variety of personal expenses. Id. at 402-403.

The Virgin Islands District Court agreed that this conduct by the Edson-controlled board of directors was wrongful. With respect to the allegations regarding the self-dealing lease by the Edsons of space to Desco, the Third Circuit agreed with the District Court that, "as directors of Desco the Edsons were not entitled to realize a profit on this transaction, but merely to recover the cost to them of providing the space, in the absence of approval by the other stockholder,

[6] The Court in Moran stated that because "[t]here was no suggestion that either wife ever did or would cast a vote other than in conformity with her husband's vote," it would simply refer to the two ownership factions as "Moran" and "Edson." See id. at 404 n.1.

Moran." Id. at 406.[7] As for the withdrawals of corporate funds to pay for personal expenses, the Third Circuit stated that it was "in complete accord" with the district court's conclusion that

> Directors . . .are not free to appropriate assets in fraud of the stockholders, and any such actions taken for the exclusive benefit of favored principals are recoverable by the corporation. Nothing less than a unanimous ratification by the shareholders can validate such personal use of corporation's funds and property. (Emphasis added.)

Id. at 406. The Third Circuit agreed with the District Court that corporate monies appropriated by the Edsons for their personal use had to be returned to the corporation. Id. at 406.

The Third Circuit's holding in Moran makes it impossible for the Hamed-controlled board to justify their actions of last year and this year, including misappropriating $460,000, whitewashing that in a corporate resolution purporting to ratify that unauthorized withdrawal of corporate funds as a "dividend," and approving a lease with their own company which benefits the Hameds at the expense of the other shareholders and Plessen. Equally important, Moran makes it clear that deadlock can occur at either the shareholder or director level. The fact that one faction in Moran had retained control of the board on the basis of an agreement made years earlier was plainly irrelevant to the Third Circuit's conclusion that there was deadlock and its acknowledgement that the Court in these circumstances has the equitable power to appoint a receiver and dissolve the corporation. See id. at 407 (citing the "general rule that a court of equity may appoint a receiver when there [is] such dissension[] in the board of directors of a corporation **or** between two groups of its shareholders, 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") (emphasis added) (citation omitted) The Third Circuit in Moran

[7] The name of the Edson's corporation that entered the lease with Desco was General Services Corporation. See id. at 406. General Services Corporation was not joined as a party defendant to the case.

remanded to the District Court, inter alia, in order to give it the "full opportunity to consider whether, in the light of the situation as may then exist, it will be in the interest of justice to appoint a receiver and thereafter to take such further judicial action with respect to Desco and its property as may best be calculated to resolve the impasse between the stockholders of the corporation." Id. at 408.

Even apart from the holding in Moran, any notion that having an equally divided and deeply antagonistic ownership is inconsequential because three directors controlled by one faction who were named in the articles of incorporation twenty-five years ago will be in a position to impose their will on the other faction is fallacious. It overlooks the basic requirement of corporate governance under which directors are elected to 1-year terms and shareholders are given the opportunity to decide each year whether the existing slate of directors should be kept, replaced, or replaced in part. Self-perpetuating boards who ratify transactions for their own benefit are not consistent with any norm of corporate governance.

Waleed Hamed's sworn Declaration of May 19 is grossly misleading in stating the intention of Plessen's Articles of Incorporation was that the three directors named in the Articles "all serve until replaced." (Exhibit 1 to Defendants' Brief). That is not what the Plessen Articles of Incorporation and Bylaws say, and that is not the general corporation law of the Virgin Islands (or anywhere else for that matter). Article 1.1 of the Plessen bylaws provides that the Annual Meeting of Shareholders is "...for the purpose of electing Directors." In the same vein, Article 2.2 contemplates that Directors shall be elected each year at the Annual Meeting of the Shareholders. And Article 2.5 says that Annual Meetings of the board of directors shall be held immediately after the annual shareholder meeting at which a board is elected. The Plessen

Articles of Incorporation say that the initial director "shall hold office until their successors are elected and qualified," and that clearly did not mean twenty-five years.

Under common law principles that are now codified in many corporate statutes, the kind of self-perpetuated control of the board implemented by the Hameds, whereby an initial slate of directors controlled by them serves for twenty-five years and indefinitely into the future, is improper and by itself is a ground for appointing a receiver or other custodian. See, e.g., Bentas v. Haseotes, 769 A.2d 70, 74 (Del. Ch. 2000) (concluding that court has power to order appointment of a custodian "where the shareholders are so divided that they have failed to elect successors to directors whose terms have expired" and stating that this affords a "viable remedy for the injustices arising from a shareholder-deadlock which permits control of the corporation to remain indefinitely in the hands of a self-perpetuating board of directors") (citation and internal quotation marks omitted); Marciano v. Nakash, 1985 Del. Ch. LEXIS 483, p. *9 (Del. Ch. 1985) (noting power to appoint custodian "when the shareholders are so divided that, at any meeting held for the election of directors, they fail to elect successor directors").

Finally, Hamed argues that because the derivative complaint does not seek the remedy of appointment of a receiver in its prayer for relief, this Court has no power to order that relief. See Defendants' Brief, p. 8. That argument is legally incorrect. It is well-settled that "if the facts justify the appointment of a receiver to preserve or protect [corporate] property o[r] the fund in litigation, the trial court may on its own motion appoint the receiver without application by any party." 16 William Mead Fletcher et al., Fletcher Cyclopedia of the Law of Corporations, § 7671, at 38 (perm. ed., rev. vol. 1998). Here, the deadlock of Plessen shareholders has been amply demonstrated, and appointment of a receiver to make an orderly disposition of Plessen

assets is the only remedy to overcome that deadlock and a Hamed-controlled board that seeks to run the corporation in the service of their interests in perpetuity.

Conclusion

For all of the foregoing reasons, Yusuf respectfully requests this Court to grant his Motion to Nullify Plessen's Board Resolutions, to Void Acts Taken Pursuant to those Resolutions, and to Appoint Receiver.

Respectfully submitted,

The DeWood Law Firm, LLC

Dated: June 19, 2014 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2014, I caused the foregoing Yusuf **Yusuf's Reply Brief in Support of Motion to Nullify Plessen Enterprises, Inc.'s Board Resolutions, to Void Acts Taken Pursuant to Those Resolutions, and to Appoint Receiver** 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,	)	**Case No. SX-12-CV-370**
Plaintiff,	)	
vs.	)	JURY TRIAL DEMANDED
FATHI YUSUF and UNITED CORPORATION,	)	
Defendants.	)	

PLAINTIFF HAMED'S RESPONSE TO DEFENDANT UNITED CORPORATION'S FIRST SET OF INTERROGATORIES TO PLAINTIFF MOHAMMED HAMED

Plaintiff Hamed by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 33 and 34, hereby propounds and serves the following written responses to Interrogatories.

INTERROGATORIES

1. Identify each person who assisted in answering these interrogatories, the accompanying requests for admission, or who provided documents in response to the accompanying requests for production, or provided any information whatsoever to assist with preparing your responses to the interrogatories, requests for admission and/or requests for production.

Object as far as this seeks privileged communications with my counsel. My son Mufeed ("Mafi") Hamed helped me in understanding the English by translating the questions into Arabic. My son Waleed ("Wally") Hamed helped with all answers involving questions about events after 1997.

EXHIBIT

A

16. Describe your position with Plessen Enterprises, Inc., including but not limited to any corporate officer or board positions you have ever had at Plessen Enterprises, Inc. and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Object to as irrelevant and not likely to lead to relevant testimony. Subject to that objection, I am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the company, including Fathi Yusuf and his sons are all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations.

Plessen Enterprises, Inc. documents provided in response to question 16 of the Defendants' RFPDs (1st set) also support this interrogatory.

VERIFICATION

TERRITORY OF U.S. VIRGIN ISLANDS) **SS:**
)
DIVISION OF ST. CROIX)

I, MOHAMMED HAMED, after first being duly sworn, depose and state that I have carefully read Defendant United Corporation's First Set of Interrogatories to Plaintiff Mohammed Hamed and provided truthful answers under oath.

Dated: 12/23/13 By: _____
MOHAMMED HAMED

SUBSCRIBED AND SWORN TO BEFORE ME, this 23rd day of December 2013

_____
NOTARY PUBLIC

My Commission Expires: _____

NOTARY PUBLIC
JERRI FARRANTE
Commission Exp: August 26, 2015
NP 078-11