

**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
FATHI YUSUF and)	DECLARATORY RELIEF
UNITED CORPORATION ,)	
)	
<i>Defendants/Counterclaimants</i> ,)	
)	
vs.)	JURY TRIAL DEMANDED
)	
WALEED HAMED, WAHEED)	
HAMED, MUFEEED HAMED,)	
HISHAM HAMED,)	
and PLESSEN ENTERPRISES, INC. ,)	
)	
<i>Counterclaim Defendants.</i>)	
)	

**OPPOSITION TO DEFENDANTS' MOTION TO APPOINT
JOYCE BAILEY AS MASTER**

Plaintiff respectfully opposes the appointment of Joyce Bailey as the Master pursuant to Fed.R.Civ.P, 53(a)(2):

(a) APPOINTMENT.

(2) *Disqualification.* A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. §455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

In this regard, attached as **Exhibit 1** is an email string whereby it was originally agreed by each of the two partners that Joyce Bailey, an accountant, would represent the two of them in completing their 2013 partnership tax return -- despite the fact that Ms. Bailey

was the selection of Mr. Yusuf.¹ As the Court is aware, such a representation involves not only communication of information to Ms. Bailey, but also the ability to assert privilege as to others and duties of confidentiality. *In short, at that juncture she had a professional relationship with both parties that would disqualify her under Rule 53(A)(2), absent their mutual consent.*

When the question subsequently arose of her also possibly serving as Master, in response to her inquiry regarding conflict, she was told by Plaintiff that he would not agree to her also being the Master, to which she responded "OK, that ends that discussion." See **Exhibit 2**. After that exchange, further work was done by her on the partners' 2013 tax return -- in conjunction with discussions with counsel for both partners. See, e.g., **Exhibit 3**.

To Plaintiff's huge disappointment and without any notice to him, Bailey apparently allowed Defendants to then petition this Court to appoint her as the Master. When asked why she would do the opposite of what she had said to a client, she asserted that it was because counsel for Defendants asked her to do so. The motion for appointment and Bailey's response prompted a further exchange of emails, resulting in Plaintiff withdrawing his agreement to have Bailey represent his partnership interests as the tax accountant for the partnership. See **Exhibit 4**.

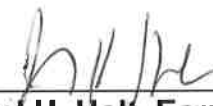
Thus, Ms. Bailey is now the former accountant of the Plaintiff involving the matters of that former client before the Court -- a professional whose representation of her client ended over a disagreement about these same matters.

¹ To demonstrate cooperation in moving this case along, Hamed also agreed to her acting as the custodian of records released to the parties despite the fact that she was the Yusuf pick for this rather than Hamed's. Thus, Yusuf now takes advantage of that effort at cooperation by once again overstepping.

As such, it would be a clear conflict, not to mention the unneeded distraction, for her to be appointed as the "neutral" Master. The standard under the Rule is clear--no judge would sit on a case in which he had represented a party in the same matter as prior counsel. Being discharged by Plaintiff only further taints any appearance of neutrality Bailey ever had. As such, it is respectfully submitted the motion must be denied, as Bailey is not a neutral party under the Rule.

One final comment is in order. Even if she did not have a conflict, her credentials do not support Defendants' assertion that she is qualified to be the Master, much less that she could do it on a full time basis (which is needed as reflected by the \$25,000 per month salary suggested by both parties). Indeed, an accountant is not needed for this task, as there is an entire in-house accounting staff already in place currently doing the partnership accounting that can provide the numbers.

Dated: June 23, 2014



Joel H. Holt, Esq.
Counsel for Mohammad Hamed
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com

Carl J. Hartmann III, Esq.
Counsel for Waheed Hamed
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2014, I served a copy of the foregoing by email, as agreed by the parties, on:

Nizar A. DeWood

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

Gregory H. Hodges

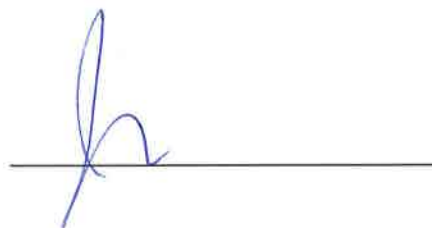
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST.Thomas,VI00802
ghodges@dtflaw.com

Mark W. Eckard

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

Jeffrey B. C. Moorhead

CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
email : jeffreymlaw @yahoo.com



From: Gregory H. Hodges <ghodges@dtflaw.com>

To: 'joycebailey@earthlink.net' <joycebailey@earthlink.net>

Cc: Kurt Petri <kpetri@dtflaw.com>; Joseph DiRuzzo (JDiRuzzo@fuerstlaw.com) <JDiRuzzo@fuerstlaw.com>; NIZAR DEWOOD (dewoodlaw@me.com) (dewoodlaw@me.com) <dewoodlaw@me.com>; John Gaffney (johngaffney@tampabay.rr.com) <johngaffney@tampabay.rr.com>; 'Joel Holt' <holtvi@aol.com>; George H.T. Dudley <gdudley@dtflaw.com>

Subject: RE: Plaza

Date: Sat, Apr 12, 2014 1:09 pm

Attachments: 1512154-EIN_Assignment.PDF (20K)

Good afternoon Joyce,

In our conversation yesterday, I asked if you would be willing to file an extension for the partnership and later a 2013 return, if both partners (Mohammad Hamed and Fathi Yusuf) agreed to engage you and the necessary books and records are in decent shape. You said you would be willing. Given my understanding that Joel Holt has agreed on behalf of Mr. Hamed to your engagement, I am providing you with the email chain below for some background to your proposed engagement. I also attach the EIN assignment obtained by Joel or his client.

If you need further information from our client, Mr. Yusuf, please contact George or me. If you need further information from Mr. Hamed, please contact Joel.

Regards,

Greg

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: (340) 715-4405

Fax: (340) 715-4400

Web: www.DTFLaw.com

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From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Friday, April 11, 2014 8:12 PM
To: George H.T. Dudley
Cc: Gregory H. Hodges; Kurt Petri; Joseph DiRuzzo (JDiRuzzo@fuerstlaw.com); NIZAR DEWOOD (dewoodlaw@me.com) (dewoodlaw@me.com); John Gaffney (johngaffney@tampabay.rr.com)
Subject: Re: Plaza

All sounds good-please call my cell on Monday as early as possible on Monday. 340-277-5393

Sent from my iPhone

On Apr 11, 2014, at 10:47 AM, "George H.T. Dudley" <gdudley@dtflaw.com> wrote:

Joel,

Greg and I discussed the matter with DTF's tax lawyer (Kurt Petri) and also with Joe DiRuzzo. Because we now are treating Plaza Extra as a partnership, there must be a partnership filing and separate filings (and payments) must be made by the individual partners.

Greg has spoken to Joyce Bailey, and if you agree, she is willing to prepare and file the form seeking an extension on behalf of the partnership (using the EIN number you folks have obtained for the partnership). And assuming that the books are in decent shape, Joyce will work with John Gaffney to prepare the partnership tax return for 2013. Fathi Yusuf and Mohammad Hamed will have to separately file for their extensions and, ultimately, their individual tax returns.

With respect to the payments to be made with the filings for the extension, I have asked John Gaffney to prepare a preliminary income statement showing the profit for the supermarket partnership in 2013. Using that number, Gaffney will then divide the profit between Hamed and Yusuf and calculate the taxes for each using the highest marginal rate. That amount will then be distributed to each partner from the funds on hand and each partner will be responsible for filing their personal extension and paying the taxes due.

I think the foregoing addresses all of the immediate issues re taxes but if you have a different view, please advise ASAP. FYI, Gaffney leaves island tomorrow morning and will be out of the Territory for a couple of

From: joycebailey <joycebailey@earthlink.net>

To: Joel Holt <holtvi@aol.com>

Cc: <carl@carlhartmann.com> <carl@carlhartmann.com>; <dewoodlaw@me.com> <dewoodlaw@me.com>; <gdudley@dtflaw.com> <gdudley@dtflaw.com>; <ghodges@dtflaw.com> <ghodges@dtflaw.com>; <JDiRuzzo@fuerstlaw.com> <JDiRuzzo@fuerstlaw.com>; <johngaffney@tampabay.rr.com> <johngaffney@tampabay.rr.com>; <kpetri@dtflaw.com> <kpetri@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>; Kim Japinga <kim@japinga.com>

Subject: Re: Special Master

Date: Sat, Jun 7, 2014 4:36 pm

Ok that ends that discussion.

Joyce Bailey
Sent from my iPhone
340-514-4897

On Jun 7, 2014, at 4:02 PM, Joel Holt <holtvi@aol.com> wrote:

My client will not agree to you being the accounting master.

Sent from my iPhone

On Jun 7, 2014, at 12:40 PM, "Joyce Bailey" <joycebailey@earthlink.net> wrote:

Per my discussion with Attorney Hodges yesterday requesting my proposal to serve as the accounting master in the litigation case; could someone provide me with a description of the work I will be performing and the type of reports you are expecting me to provide. I also need to know who will be the client in this matter.

Joyce Bailey

joycebailey@earthlink.net

Phone: 340-777-6156 Cell: 340-514-4897 Fax: 866-257-5057



From: Gregory H. Hodges <ghodges@dtflaw.com>

To: 'Joyce Bailey' <joycebailey@earthlink.net>; 'Joel Holt' <holtvi@aol.com>

Cc: carl <carl@carlhartmann.com>; dewoodlaw <dewoodlaw@me.com>; George H.T. Dudley <gdudley@dtflaw.com>; JDiRuzzo <JDiRuzzo@fuerstlaw.com>; johngaffney <johngaffney@tampabay.rr.com>; Kurt Petri <kpetri@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>; kim <kim@japinga.com>

Subject: RE: Plaza

Date: Mon, Jun 9, 2014 3:55 pm

You call in.

From: Joyce Bailey [<mailto:joycebailey@earthlink.net>]

Sent: Monday, June 09, 2014 3:43 PM

To: 'Joel Holt'; Gregory H. Hodges

Cc: carl@carlhartmann.com; dewoodlaw@me.com; George H.T. Dudley; JDiRuzzo@fuerstlaw.com; johngaffney@tampabay.rr.com; Kurt Petri; Charlotte Perrell; kim@japinga.com

Subject: RE: Plaza

Are we to call into the # provided or are you going to call us?

Joyce Bailey

joycebailey@earthlink.net

Phone: 340-777-6156 Cell: 340-514-4897 Fax: 866-257-5057

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

Sent: Monday, June 09, 2014 3:09 PM

To: ghodges@dtflaw.com; joycebailey@earthlink.net

Cc: carl@carlhartmann.com; dewoodlaw@me.com; gdudley@dtflaw.com; JDiRuzzo@fuerstlaw.com; johngaffney@tampabay.rr.com; kpetri@dtflaw.com; cperrell@dtflaw.com; kim@japinga.com

Subject: Re: Plaza

I have cleared my schedule so 11 works-will call this conference number unless I hear otherwise from anyone-thanks

Joel H. Holt, Esq.

2132 Company Street

Christiansted, St. Croix

U.S. Virgin Islands 00820

(340) 773-8709

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

From: Gregory H. Hodges <ghodges@dtflaw.com>
To: 'Joyce Bailey' <joycebailey@earthlink.net>; 'Joel Holt' <holtvi@aol.com>
Cc: carl <carl@carlhartmann.com>; dewoodlaw <dewoodlaw@me.com>; George H.T. Dudley <gdudley@dtflaw.com>;
JDiRuzzo <JDiRuzzo@fuerstlaw.com>; johngaffney <johngaffney@tampabay.rr.com>; Kurt Petri <kpetri@dtflaw.com>;
Charlotte Perrell <cperrell@dtflaw.com>; kim <kim@japinga.com>
Sent: Mon, Jun 9, 2014 10:32 am
Subject: RE: Plaza

We can host the conference call on our number—715-4408. We are available at 11 tomorrow.

From: Joyce Bailey [<mailto:joycebailey@earthlink.net>]
Sent: Monday, June 09, 2014 10:18 AM
To: 'Joel Holt'
Cc: carl@carlhartmann.com; dewoodlaw@me.com; George H.T. Dudley; Gregory H. Hodges; JDiRuzzo@fuerstlaw.com;
johngaffney@tampabay.rr.com; Kurt Petri; Charlotte Perrell; kim@japinga.com
Subject: RE: Plaza

My office is in my home and it isn't big enough to accommodate all the parties. I thought our meeting was going to be a conference call to discuss the preparation of the tax return. I think it would also be a good time to go through the organizer and make some decisions as to who is responsible for providing the information I need to prepare the 2013 Partnership return. Let me know if we are having a conference call at 11:00 tomorrow or at some other time.

Joyce Bailey

joycebailey@earthlink.net

Phone: 340-777-6156 Cell: 340-514-4897 Fax: 866-257-5057

From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Monday, June 09, 2014 8:02 AM
To: joycebailey@earthlink.net
Cc: carl@carlhartmann.com; dewoodlaw@me.com; gdudley@dtflaw.com; ghodges@dtflaw.com;
JDiRuzzo@fuerstlaw.com; johngaffney@tampabay.rr.com; kpetri@dtflaw.com; cperrell@dtflaw.com; kim@japinga.com
Subject: Re: Plaza

I will need to get back to you as I will need to rearrange a few things-where is your office in STT?

Joel H. Holt, Esq.

2132 Company Street

Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

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From: joycebailey <joycebailey@earthlink.net>
To: Joel Holt <holtvi@aol.com>
Cc: <carl@carlhartmann.com> <carl@carlhartmann.com>; <dewoodlaw@me.com> <dewoodlaw@me.com>;
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<JDiRuzzo@fuerstlaw.com> <JDiRuzzo@fuerstlaw.com>; <johngaffney@tampabay.rr.com>
<johngaffney@tampabay.rr.com>; <kpetri@dtflaw.com> <kpetri@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>;
Kim Japinga <kim@japinga.com>
Sent: Mon, Jun 9, 2014 5:03 am
Subject: Re: Plaza

I can't make 9:30 how about 11:00 on Tuesday?

Joyce Bailey

Sent from my iPhone

340-514-4897

On Jun 8, 2014, at 9:21 PM, Joel Holt <holtvi@aol.com> wrote:

The return is a partnership return so while John Gaffney may be providing info, he is not the sole contact, as there are accounting issues that need input from my client. Is 9:30 on Tuesday a good time to talk?

In the meantime, as you indicated to John, he needs to copy both sides on his communications with you.
Thanks

Sent from my iPhone

On Jun 8, 2014, at 11:43 AM, "Joyce Bailey" <joycebailey@earthlink.net> wrote:

Per your request, I have attached all the emails received. Please confirm that John Gaffney is my contact for preparing the tax return. It would be helpful if the tax organizer was completed.

Joyce Bailey

joycebailey@earthlink.net

Phone: 340-777-6156 Cell: 340-514-4897 Fax: 866-257-5057

From: Joel Holt <holtvi@aol.com>

To: joycebailey <joycebailey@earthlink.net>

Cc: dewoodlaw <dewoodlaw@me.com>; gdudley <gdudley@dtflaw.com>; ghodges <ghodges@dtflaw.com>; cperrell <cperrell@dtflaw.com>

Subject: Re: Special Master

Date: Fri, Jun 20, 2014 4:47 pm

Your response is very disappointing, particularly in light of our email exchange on June 7th where you represented you would not go forward on this issue (after asking for my client's input on the matter). Your unilateral change in position after a communication with opposing counsel, who will most likely advocate positions adverse to ours before a Master, raises the question of your neutrality, giving the appearance of an unacceptable conflict (particularly since my client made his wishes clear on June 7th, which you have now ignored).

Under the circumstances, my client is not comfortable with the situation, as he wants an accountant who will address the required tax matters without also taking a position that has a significantly different role regarding his interests. As such, he has decided he is no longer confident in your preparing the partnership tax return and hereby withdraws his authorization for you to proceed with preparing the 2013 partnership return. Please do nothing further on it.

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

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From: Joyce Bailey <joycebailey@earthlink.net>

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

Cc: dewoodlaw <dewoodlaw@me.com>; gdudley <gdudley@dtflaw.com>; ghodges <ghodges@dtflaw.com>; cperrell <cperrell@dtflaw.com>

Sent: Fri, Jun 20, 2014 2:31 pm

Subject: RE: Special Master

Joel,

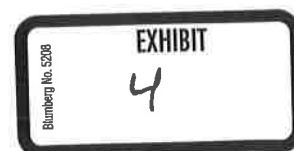
Attorney Hodges asked if I would be willing to serve as Master, he stated it was the court's decision and he would like to propose my name. I told him I would accept if the court decided. I'm sure if the court feels it will conflict with my role as the tax preparer and custodian of the documents, it will select another master. I personally don't see a conflict in the roles, since each role requires me to act impartially.

Joyce Bailey
joycebailey@earthlink.net
Phone: 340-777-6156 Cell: 340-514-4897 Fax: 866-257-5057

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

Sent: Friday, June 20, 2014 11:32 AM

To: joycebailey@earthlink.net



Cc: dewoodlaw@me.com; gdudley@dtflaw.com; ghodges@dtflaw.com; cperrell@dtflaw.com

Subject: Re: Special Master

Joyce-while we exchanged the emails below on June 7th, which I thought resolved this matter in light of your response, yesterday the Defendants filed the attached motion asking the Court to appoint you as the Master For Winding Up. As I indicated to you in my email on June 7th, my client (and actually your client as well) does not want you to be the Master, as he believes it will conflict with the role you now have as the accountant for preparing the 2013 tax return and may impact your role as the person coordinating the review of FBI files. Before proceeding further, please advise me as to whether you have agreed to be the Master and, if so, whether you will withdraw your name from consideration in light of the our mutual client's position on this matter.

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

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From: joycebailey <joycebailey@earthlink.net>

To: Joel Holt <holtvi@aol.com>

Cc: <carl@carlhartmann.com> <carl@carlhartmann.com>; <dewoodlaw@me.com> <dewoodlaw@me.com>; <gdudley@dtflaw.com> <gdudley@dtflaw.com>; <ghodges@dtflaw.com> <ghodges@dtflaw.com>;

<JDiuRuzzo@fuerstlaw.com> <JDiuRuzzo@fuerstlaw.com>; <johngaffney@tampabay.rr.com>

<johngaffney@tampabay.rr.com>; <kpetri@dtflaw.com> <kpetri@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>;

Kim Japinga <kim@japinga.com>

Sent: Sat, Jun 7, 2014 4:36 pm

Subject: Re: Special Master

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Sent from my iPhone

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