

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

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

**RESPONSE TO NOTICE OF DEFENDANTS' NON-RESPONSE RE REQUEST  
TO STIPULATE TO EXISTENCE OF PARTNERSHIP**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), respectfully submit that this Court should ignore the “Notice of Defendants’ Non-Response Re Request to Stipulate to Existence of Partnership” (the “Notice”) because Plaintiff’s Motion for Partial Summary Judgment Regarding the Existence of the Partnership was completely unnecessary, as is the proposed stipulation.<sup>1</sup> In Defendants’ Opposition to the Motion for Partial Summary Judgment, after pointing out their concession of the partnership contained in pleadings filed with this Court, Defendants stated:

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 on May 29, 2014.

<sup>1</sup> Obviously, the proposed stipulation goes far beyond the mere stipulation as to the existence of a partnership.

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See Opposition at p. 3, ¶ 6. Accordingly, the statement in the Notice that “Apparently Defendants want the benefit of being able to move past the issue of dissolving their business relationship with Plaintiff without admitting there is a partnership” makes absolutely no sense.

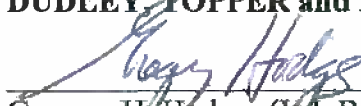
In the Notice, Hamed quotes from a single page (89) of Yusuf’s 229 page deposition transcript suggesting he is waffling on the existence of the partnership. Hamed conveniently ignores the extensive testimony from that deposition where Yusuf repeatedly acknowledges the existence of the partnership. See Exhibit 1 at p. 19, 24-6, 52-5, and 71.

Accordingly, because the existence of a partnership is not disputed, this Court should not waste its valuable time performing the completely unnecessary task of deciding an undisputed issue.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: July 2, 2014

By:

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of July 2014, I caused the foregoing Response To Notice Of Defendants' Non-Response Re Request To Stipulate To Existence Of Partnership 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 by His Authorized )  
Agent WALEED HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )  
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vs. ) Case No. SX-12-CV-370  
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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.

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Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
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**EXHIBIT**

1

tabbies

**FATHI YUSUF == DIRECT**

1           **Q.**    First of all, Item No. 2, My brother-in-law,  
2           Mohammad Hamed, and I have been full partners in the  
3           Plaza Extra Supermarket since 1984, while we were obtaining  
4           financing and constructing the store, which finally opened  
5           in 1986.

6                                Is that true?

7           **A.**    Yes.

8           **Q.**    No. 3, Mohammad -- Mohammad Hamed and I decided to  
9           open a St. Thomas Plaza Extra store, and used our own  
10          capital and later obtained financing to make the store ready  
11          for opening.

12                               Is that true?

13          **A.**    That's true.

14          **Q.**    No. 4, Mohammad Hamed gave his eldest son, Waleed  
15          a/k/a Wally, power of attorney to manage his interest for  
16          the family.

17                               Is that true?

18          **A.**    Hold on to No. 4, please.

19                               Yes, it -- I would say yes, but my  
20          understanding really of that time, the man give a power of  
21          attorney to his son.

22          **Q.**    Okay.

23          **A.**    I said here to -- to manage his affair? That's  
24          fine.

25          **Q.**    You had no problem with that?

**FATHI YUSUF -- DIRECT**

1           **A.**    Go ahead, sir.

2           **Q.**    All right.  Going just on that same document, Item  
3 No. 41.  And that's a short one, it says, The Hameds and I  
4 were able to turn the store around by the last part of 1994.

5                               Is that correct?

6           **A.**    Yes.

7                               (Deposition Exhibit No. 3 was  
8                               marked for identification.)

9           **Q.**    **(Mr. Holt)** All right.  Showing you Exhibit No. 3,  
10 these are interrogatories filed in the same case in  
11 St. Thomas.  If you look over on the last page, can you tell  
12 me, or second-to-last page, if that's your signature?

13           **A.**    I see two signature.  I see my son on top, and my  
14 signature below.

15           **Q.**    Okay.  And those are signed under oath, is that  
16 correct?

17           **A.**    Yes.

18           **Q.**    Okay.  Looking at this document, can you go to  
19 Interrogatory No. 2, which is on Page 4, and it has a  
20 sentence in it that says, Without waiving said objection,  
21 Mohammad Hamed?

22                               **MR. HODGES:** Hold on.  Hold on.

23           **Q.**    **(Mr. Holt)** See No. 2?

24           **A.**    Yeah, I see No. 2.  Yes, sir.

25           **Q.**    **(Mr. Holt)** It says, Without waiving said

**FATHI YUSUF -- DIRECT**

1 objection, Mohammad Hamed is a partner in Plaza Extra  
2 Supermarkets, and has been since the mid-1980s, is that  
3 correct?

4 **A.** Yes.

5 **Q.** And then over on Item No. 3, Interrogatory No. 3,  
6 on the next page, it says, Notwithstanding said objection,  
7 Waleed Hamed has been working for Plaza Extra on and off  
8 since 1986.

9 Is that correct?

10 **A.** Yes.

11 **Q.** Next sentence, From the time he worked at the  
12 St. Thomas Plaza Extra during the period of plaintiff's  
13 joint venture with United, which is the only relevant issue,  
14 he was a partner with general management duties, is that  
15 correct?

16 **A.** He's -- excuse me. Give me chance to let me read  
17 it, please.

18 **Q.** Sure.

19 **A.** He was general manager, sir, by the way, where?  
20 Wally was general manager where?

21 **Q.** I'm just reading the answer. It says he was --  
22 says, At the time he worked at the St. Thomas Plaza Extra  
23 during the period of plaintiff's joint venture with United,  
24 which is the only relevant issue, he was a partner with  
25 general management duties.

**FATHI YUSUF -- DIRECT**

1                   So I guess that would be the St. Thomas  
2 store?

3           **A.** Well, we weren't there, really. We weren't there  
4 for less than a month, I believe. We just helping out  
5 somebody, our partner, the one we -- we have a joint venture  
6 with, and he was supposed to do a one-third, one-third,  
7 one-third income or loss. It's fine. And we went there to  
8 help him. None of us was getting salaries. And that is, I  
9 think, a month to six weeks, no more.

10                   Wally were never in charge for Plaza Extra  
11 St. Thomas. He, yes, one of the management. I used to give  
12 him a lot of duty, a lot of responsibility.

13           **Q.** Okay. And then, so he wasn't a partner with the  
14 general management duties. He was just a manager.

15           **A.** He's not a partner.

16           **Q.** Okay.

17           **A.** He's never a partner. Wally never a partner.


18 Wally was employed as a manager. His father was my  
19 associate with a deal that I'll give him 50 percent of the  
20 profit of Plaza Extra store, whether it's one store or 300  
21 store.


22           **Q.** Okay. And then looking over at Item No. 4, and  
23 the only difference between 3 and 4 is instead of saying  
24 Waleed Hamed, it says Waheed Hamed. And my question was,  
25 was Waheed Hamed a partner with general management duties?



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1           **Q.** You agree, though, that Mr. Mohammad Hamed is your  
2 partner to the extent that he is sharing in 50 percent of  
3 the net profits of the three Plaza Extra stores.

4           **A.** He's my partner, sir, under a lot of conditions.   
5 There is a uniform law of a partnership, and there is  
6 individual agreement. If you want to call it in the -- in  
7 the category of partners, you may call it, but there is an  
8 agreement and commitment attached to that. It's not there  
9 is a loan at 20-percent interest, there is a loan at  
10 8-percent interest, and there is a loan, a friendship, at no  
11 interest at all, but we all call them loan. Isn't it?

12                           I have, with this gentleman, a shake-hand  
13 commitment, and I live up to it up to now, just to show you  
14 how clean I am and how decent I am, this man never have my   
15 signature as a partner, but I have never deny him as a  
16 partner in the profit. But there is a lot of condition, he  
17 have to live up to it.

18           **Q.** Okay. I'll get to the conditions in a second.

19           **A.** Okay.

20           **Q.** So you haven't denied that he's a partner in  
21 50 percent of the net profits in the three stores?

22           **A.** Yes. 

23           **Q.** And you've also agreed that he owns 50 percent of  
24 the inventory and equipment in the stores, the three stores,  
25 correct?

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1           **A.**    Yes.

2           **Q.**    Okay.  And that would include 50-percent interest  
3           in the net profits of any bank accounts, payables,  
4           receivables?

5           **A.**    Whatever is belong to Plaza is for me and him.

6           **Q.**    Okay.  Now, you mentioned some conditions.  What  
7           conditions are there?

8                         Are there some other conditions to this  
9           partnership agreement?

10          **A.**    No.  The condition is, I have the final word.  
11          It's I am obligated to consult with him, if I see it's  
12          important for me to consult.  I was suppose to be, after  
13          1993, I was supposed to have an office within the  
14          supermarket free of charge.  I was -- he was supposed to,  
15          the Plaza Extra was supposed to pay all the gross receipt  
16          from January 1st, 1994 up to present, and it was covering in  
17          the building, the entire building of United Shopping Plaza.

18                         My duty was, is to go and commit the same  
19          thing we ensure, to bring money to Mr. Hamed an extent,  
20          which cost him nothing.  It cost me personal guarantee, and  
21          it costing me everything I own except my children and my  
22          wife.

23          **Q.**    Okay.  And so I'm going to go back in reverse  
24          order a little bit.

25          **A.**    Yes.

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1           **Q.** When you say one of the conditions was -- was he  
2 agreed to cover United, you're talking about insurance  
3 coverage, is that what you're talking about?

4           **A.** No, including the insurance.

5           **Q.** Okay. So the Plaza Extra stores would pay for  
6 insurance on the whole shopping center?

7           **A.** Yes.

8           **Q.** And the Plaza Extra Supermarket would pay the  
9 gross receipts, not just on the grocery store profits, but  
10 on the rent?

11          **A.** Yes.

12          **Q.** Okay.

13          **A.** Excuse me. One more item. The United Shopping  
14 Plaza was using the entire shopping center value  
15 depreciation to offset any income tax, which that, in  
16 return, it will give you greater saving than the insurance  
17 and the gross receipt.

18          **Q.** So there's a tradeoff you're giving them --

19          **A.** It's a tradeoff, yes.

20          **Q.** You're giving them depreciation; they're paying  
21 gross receipts and insurance?

22          **A.** Yes. Yes, sir.

23          **Q.** Okay. And then you said that something about an  
24 office that --

25          **A.** No, I have -- you see, I have an office in the --

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1 for our shopping center manager, within the supermarket.  
2 It's on the second floor. And by the way, I'm not charging  
3 for the second floor.

4 Q. Okay. And then you also said that one of the  
5 conditions was that you would have the final word, but that  
6 you --

7 A. Excuse me.

8 Q. You said that one of the conditions was that you  
9 would have the final word, --

10 A. Oh, yes.

11 Q. -- but that you did have an obligation to consult  
12 with him?

13 A. An absolute obligation, yes.

14 Q. Okay. All right.

15 Now, I want to go back to this -- to this  
16 deposition, because this ties a little bit into it.

17 A. Yeah, okay.

18 Q. Okay. It says, I see Mr. Idheileh come knock on  
19 my door, come on in, shake hand, I offer him coffee. I -- I  
20 don't remember whether he took it or not.

21 MR. HODGES: Pardon me. What page are you  
22 reading from?

23 THE WITNESS: This is --

24 MR. HOLT: Page 21, the top, about halfway  
25 down, which says, I see Mr. Idheileh come knock on my door.

**FATHI YUSUF -- DIRECT**

1           **A.**    Yes.

2           **Q.**    Is that true?

3           **A.**    Yes, sir.

4           **Q.**    Okay.  The partnership was formed for the purpose  
5 of operating supermarkets in the district of St. Croix and  
6 St. Thomas.

7                                Is that true?

8           **A.**    Yes, sir.  It's true.

9           **Q.**    Okay.  And then the next one says, where, A  
10 serious dispute and disagreement between the partners --

11          **A.**    Where -- where are you reading, sir?

12          **Q.**    The third one down where, A serious dispute  
13 between the partners related to financial matters resulting  
14 in the partners being unable to continue.

15                                Do you see that one?  That's the third one  
16 down?

17                                **THE WITNESS:**  Which one?  Which one?  Right  
18 here?

19                                **MR. HODGES:**  Yeah.

20          **A.**    Yeah, whatever it is.

21          **Q.**    **(Mr. Holt)**  Okay.  What -- what were the disputes  
22 and disagreements?

23          **A.**    What dispute?

24          **Q.**    It says, Serious disputes and disagreements have  
25 arisen between the partners.