

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

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

**REPLY TO OPPOSITION TO EMERGENCY MOTION
TO FURTHER EXTEND DISCOVERY DEADLINES**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned attorneys, respectfully submit this Reply to the “Opposition to July 30th Emergency Motion Re New Scheduling Order” (the “Opposition”) filed by plaintiff/counterclaim defendant Mohammad Hamed (“Hamed”). The Opposition does not dispute and, therefore, concedes the following:

1. Hamed agreed to an extension of the fact discovery period through August 8, 2014 and then reneged on that agreement.¹

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

¹ In footnote 1 of the Opposition, Hamed makes the unsupported claim that the counterclaim defendants have not agreed to ... the extension to August 8th as it appears from the moving papers.” Nothing in Defendants’ Emergency Motion suggests that the counterclaim defendants did not agree to the extension to August 8th. Notably, at least one counterclaim defendant, Waheed Hamed, noticed depositions for August 7 and August 8, 2014. Despite

2. A substantial portion of the DOJ documents² are currently unavailable to the parties because they have not yet been scanned and the current custodian of these documents estimates that it will take at least another month to complete the scanning project.

3. The parties have explored shipping the remaining, unscanned DOJ documents to a document processing service in Pennsylvania with a shorter turnaround time, but at an additional cost of approximately \$21,500.

4. Meaningful access to the DOJ documents should be available to all parties before depositions are concluded.

5. Hamed conditioned his agreement to a further extension of the discovery deadlines upon Defendants' agreement not to seek any further extension.

Defendants respectfully submit that these concessions alone establish "good cause" for extending the discovery period as sought in the proposed Fifth Amended Scheduling Order attached to the Emergency Motion.

Initially, Hamed claims the DOJ documents "have been fully and completely available to the Defendants since 2003, and available for copying since then..." See Opposition at p. 2.³

Hamed's position that "fact discovery...ended on July 11th," see Opposition at p.3, on August 1, 2014, he noticed his intent to serve a subpoena duces tecum

² Unless otherwise defined, capitalized terms shall have the same meaning as provided in the Emergency Motion.

³ While Hamed claims that the affidavits supporting this statement were submitted with his "June 20, 2014 statute of limitations motion," in fact, they were submitted, along with a number of other new exhibits, with his Reply to Defendants' Opposition to the motion. As Hamed pointed out in his motion to strike Defendants' June 16, 2014 plan for winding up the partnership, "it is clear that courts disfavor considering matters raised for the first time in a reply memorandum. Embroidery Workers Pension Fund v. Ryan, Beck & Co., 869 F. Supp. 278, 281 n. 1 (D.N.J. 1984); see also McLendon v. Continental Can Co., 908 F. 2d. 1171, 1183 (3rd Cir. 1990). The general policy consideration behind such rule is fairness. As the reply memorandum is the final written word a party has, it would be unfair to permit the moving party to interject a new issue to which the non-movant could not respond. McLendon, 908 F. 2d. at 1183." Since these affidavits were unfairly submitted with Hamed's reply brief, they should not be considered by the Court.

Hamed then goes on to suggest that Defendants could have reviewed the DOJ documents in the possession of the custodian whenever they felt like it. As Hamed well knows, the custodian does not provide ready access to the DOJ documents. In fact, she does not allow the documents to be reviewed independently. Rather, in order to review the documents, she must be present along with a representative of the opposing side. The protocol agreed upon by the parties and the custodian is as described in the Emergency Motion, which effectively precludes review of the documents until they are scanned and delivered to the parties. This somewhat cumbersome process is the very reason that co-counsel for Hamed suggested the institutional document processor located in Philadelphia as a more expeditious alternative. Despite the expense already incurred for the high speed scanner and storage facilities, Defendants are prepared to split the cost of sending the remaining, unscanned documents to the institutional vendor in Philadelphia in order to expedite the scanning process. If such “expensive review ... is a waste of time and resources,” as claimed at page 2 of the Opposition, why has Hamed agreed to split the cost of the scanning performed to date by the custodian and the scanning to be performed by the institutional vendor?

Hamed acknowledges that he agreed to an extension until September 4, 2014, as provided in Exhibit 1 to the Opposition. Hamed fails to inform the Court that he also agreed to a further one week extension. See email of July 22, 2014 attached as **Exhibit A**. What this shows is that the parties had essentially agreed upon the extended dates, with only minor differences, but that the agreement broke down because Hamed required Defendants to give up the right to seek any further extension. Because the issue of further modification of a scheduling order must always be left to the sound discretion of the Court and Hamed has effectively conceded a further

modification is appropriate, Defendants respectfully submit that the discovery period be extended as far into September as possible in order to provide sufficient time for the DOJ documents to be scanned so they can be effectively used at deposition. The proposed Fifth Amended Scheduling Order accomplishes this and Hamed has not set forth any reason why the dates set forth in the proposed order should not be adopted by the Court.

Hamed suggests that if this Court provides a further extension, it should require Yusuf to once again submit to being deposed⁴. Hamed is effectively asking this Court to let him “have his cake and eat it too.” Defendants were willing to allow Yusuf to be redeposed in consideration of Hamed’s stipulation to the extended discovery deadlines. See Exhibit A. Because Hamed refused to stipulate, Defendants were required to file an Emergency Motion. Hamed should not be rewarded for unnecessarily causing another motion to be filed that could have been avoided if he did not unreasonably require waiver of any further extensions. Since Hamed forced Defendants to file the Emergency Motion, Yusuf’s redeposition is no longer on the table. If, however, both Hamed and Yusuf are required to submit to further depositions, Defendants would not object and two pending motions could be removed from this Court’s docket.

While the Emergency Motion sought no adjustment of the trial date, it did note that it was unrealistic given what remains to be done before trial –appointment of a master, approval of a plan for winding up the partnership, liquidation of the partnership assets, presentation of accountings to the master, and a report and recommendation from the master to the Court. In response, Hamed appears to suggest that the mere fact he made a jury demand “by itself removes

⁴ Defendants filed an Opposition to Hamed’s Motion to Compel Defendants’ Attendance at Deposition Re Counterclaim on July 2, 2014.

the possibility of appointing a master under Rule 53(a)(1)(B).” See Opposition at p. 4. Apparently, Hamed has forgotten that he asked for the appointment of a master in the first paragraph of the prayer for relief in his Amended Complaint. Moreover, like all three competing plans for winding up the partnership, Hamed’s Plan is conditioned on the appointment of a master. See § 2 of Hamed’s Plan. Indeed, § 8(B)(3) (Step 8) of Hamed’s Plan provides that “the Master shall present a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination.” Since all of this work clearly must be done before trial, it makes no sense for Hamed to bury his head in the sand and suggest that a master is either superfluous or does not need to complete his or her work before the trial in this matter. Remarkably, Hamed cites Bennerson v Joseph, 583 F.2d 633, 642 (3d Cir. 1978) for the proposition that the “Master should not decide factual questions or have to apply legal principles to those facts.” See Opposition at p. 4. Nothing in Bennerson supports this proposition. The court in that case merely concluded that there were no exceptional circumstances warranting the appointment of a master since it was clear that the non-jury trial would be devoted “to simple factual matters turning on credibility,” not the “one thing that might have justified use of a master [-] an accounting....” Id. In this case, Hamed and Defendants have both sought an accounting and the appointment of a master in their pleadings and competing plans. The master will simply need sufficient time to perform his/her duties.

Defendants are not asking this Court to change anything in the Fourth Amended Scheduling Order other than the discovery deadlines. They too want this matter to come to conclusion promptly so the parties can go their separate ways. Because good cause has been

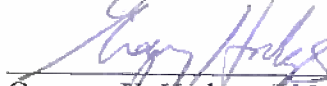
shown for extending the discovery deadlines and neither Hamed nor any other party has suggested that the dates set forth in the proposed Fifth Amended Scheduling Order are inappropriate, this Court is respectfully requested to enter the proposed Fifth Amended Scheduling Order and provide such further relief as the circumstances warrant.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

Dated: August 4, 2014

By:


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

and

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

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

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

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2014, I caused the foregoing **REPLY TO OPPOSITION TO EMERGENCY MOTION TO FURTHER EXTEND DISCOVERY DEADLINES** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

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

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

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



**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gate

P.O. Box 756

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

(340) 774-4422

Gregory H. Hodges

From: Joel Holt <holtvi@aol.com>
Sent: Tuesday, July 22, 2014 5:17 PM
To: Gregory H. Hodges
Cc: dewoodlaw@gmail.com; Charlotte Perrell; carl@carlhartmann.com; kimjapinga@gmail.com; mark@markeckard.com; jeffreymlaw@yahoo.com
Subject: Re: Plaza

Greg- I want to extend fact discovery back as far as possible, but I need to make sure I can respond to your client's counterclaims, to date unknown other than the rent claim. I also do not want to push back so far that Judge Brady cancels the trial date. If one more week helps, ok.

Sent from my iPhone

On Jul 22, 2014, at 12:06 PM, "Gregory H. Hodges" <ghodges@dtflaw.com> wrote:

Joel,

Once I hear back from you re the rationale for your proposed dates vs. our proposed dates, I think we should be able to agree. I will ask Charlotte to send you a redlined version of your proposed scheduling order that compares our proposed dates and shows my few other suggested edits. I propose to delete the last sentence of paragraph 1, because I can't agree that there will be no further extension requests. As you know, we are exploring moving the scanning job to the Philly vendor to speed things up. Although they are telling us they can complete the job more promptly than Joyce, there are no guaranties that it will be timely completed so that your September 4 proposed deadline is workable. If for any reason the scanning can't be completed before the fact discovery deadline closes, I need the option to seek more time. Obviously, you have the option to oppose any such request.

I look forward to hearing back from you so that we can finalize these scheduling issues.

Greg

Sent from my iPad

On Jul 21, 2014, at 9:51 AM, "Gregory H. Hodges" <ghodges@dtflaw.com> wrote:

Joel,

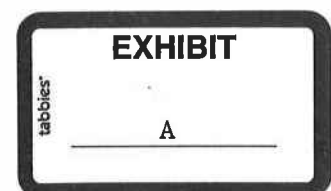
I am traveling today and will respond tomorrow. Why is your side unwilling to push the discovery dates further back as proposed?

I will speak with my folks re the bond issue and get back.

If you have suggestions re an accountant, please share. We are running low on ideas.

Sent from my iPhone

On Jul 20, 2014, at 2:33 PM, "Joel Holt" <holtvi@aol.com> wrote:



Greg-here is our response with revised dates and some modified language. It is also contingent on the agreement that you will allow us to re-depose Fathi Yusuf as stated with your proposal. Let me know if it is acceptable.

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: 'Joel Holt' <holtvi@aol.com>
Cc: Nizar A. DeWood (dewoodlaw@gmail.com) <dewoodlaw@gmail.com>; Charlotte Perrell <cperrell@dtflaw.com>
Sent: Thu, Jul 17, 2014 5:38 pm
Subject: RE: Plaza

Attached is a draft stipulation and proposed scheduling order for discussion. I am providing it subject to confirmation from our experts that they can accommodate the compressed expert discovery schedule.

As you can see, I have also addressed your desire to change the timing of expert reports so it is tied to the party with the burden of proof.

If we go through with this stipulation, can you get Carl to withdraw his deposition notice for Mike, since his "individual" deposition is a waste of time if you can re-depose Fathi?

Please note this communication is a compromise offer subject to Fed.R.Evid. 408.

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 <<http://www.dtflaw.com/>>

<image001.jpg>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

From: Joel Holt [mailto:holtvi@aol.com <mailto:holtvi@aol.com?>]
Sent: Thursday, July 17, 2014 9:16 AM
To: Gregory H. Hodges
Subject: Re: Plaza

Not willing to do that-sorry
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: Joel Holt <holtvi@aol.com>
Sent: Wed, Jul 16, 2014 4:09 pm
Subject: RE: Plaza

Based on your logic below, can we agree to Mohammad's further deposition, so we can remove 2 motions from the Judge's plate?

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 <<http://www.dtflaw.com/>>

<image001.jpg>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

From: Gregory H. Hodges
Sent: Wednesday, July 16, 2014 2:55 PM
To: 'Joel Holt'
Subject: RE: Plaza

Yes.

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 <<http://www.dtflaw.com/>>

<image001.jpg>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

From: Joel Holt [mailto:holtvi@aol.com <mailto:holtvi@aol.com?>]
Sent: Wednesday, July 16, 2014 2:10 PM
To: Gregory H. Hodges
Subject: Re: Plaza

trial date? This could work-can you draft the stip you think accomplishes this purpose and yet keeps the

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: 'Joel Holt' <holtvi@aol.com>
Sent: Wed, Jul 16, 2014 1:34 pm
Subject: RE: Plaza

I want more time to review the new materials in order to understand the facts so I can intelligently examine witnesses at deposition. If the information also bolsters our counterclaim, that will be a bonus. For whatever reason, you chose to depose defendants before the new information became available and without asking much about our counterclaims. I think we have a strong argument why you should be stuck with that choice. We want to further extend the schedule because all the new information clearly won't be useable by 8/8/14. Although I think we can show good cause for a further extension of the schedule, I would prefer to avoid filing another motion. I am not surprised that you would object to further extending the schedule under the circumstances without getting something in return. If I agree that Fathi can be deposed on the new information and counterclaim issues, will you (Carl and Mark) agree to a realistic extension of fact depositions?

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 <<http://www.dtflaw.com/>>

<image001.jpg>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

From: Joel Holt [mailto:holtvi@aol.com <mailto:holtvi@aol.com?>]]
Sent: Wednesday, July 16, 2014 12:12 PM
To: Gregory H. Hodges
Subject: Plaza

You seem confused about my responses this morning--as I understand it, you want more time to review materials in order to develop your counterclaims even though you will not let me depose your clients on whatever is developed. I do not understand why you are surprised that I would object to that one-way arrangement.

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

<JHH_edits-Fifth_Amended_Scheduling_Order.ffd.docx>