HAMM LAW FIRM

DONOVAN M. HAMM, JR.
Virgin Islands & Maryland

ROBERT A. WALDMAN
Virgin Islands, Texas & Iowa

Of Counsel:
PAUL M. VETTORI
Maryland

JOHN H. WARREN
Virgin Islands

July 31, 2014

Joel H. Holt, Esquire
2132 Company Street
Christiansted, VI 00820

Re: Report of Donovan M. Hamm, Jr.
Hamed v. Yusuf and United Corporation
Case No. SX-12-CV-370

Dear Mr. Holt:

You have requested that I provide certain opinions about the above captioned case as an attorney who specializes in partnership law. At its core, the case involves the nature of the relationship between Fathi Yusuf ("Yusuf") and Mohammed Hamed ("Hamed"), and their respective duties to each other. Hamed has always taken the position that, since 1986, he and Yusuf have been equal partners in a partnership that now owns and operates three supermarkets, two on St. Croix and one on St. Thomas. Hamed asserts that, as a partner with Yusuf, he is entitled to an equal share of the profits of the partnership and an equal voice in its management. Yusuf initially denied that a partnership ever existed. However, beginning on April 7, 2014, he has admitted that he and Hamed were partners, but has refused to sign a stipulation regarding the existence of the partnership and the extent of its operations.

Taking into account the assumptions and qualifications described in more detail below, I am of the opinion that:

1. Yusuf and Hamed established a business relationship in or about 1986, which was legally a partnership (the "Partnership") under applicable Virgin Islands law;

2. at various times, Yusuf has engaged in conduct that breached his duty of loyalty to the Partnership and to Hamed;

3. at various times, Yusuf has breached his duty of care to the Partnership and to Hamed; and

4. Hamed's conduct would support a judicial dissociation from the Partnership.

5. Some of Yusuf's actions were so outrageous and intentional that an award punitive damages would be justified.

t: 340.773.6955 | f:340.773.3092
5030 Anchor Way | Christiansted | Virgin Islands | 00820
| www.hammlawvi.com |

INTRODUCTION

The purpose of my report is to provide assistance to the court and jury, not to make any findings of fact. Therefore, my opinions are, of necessity, based upon assumptions about what facts will ultimately be found to be true by others. You have furnished me with a copy of certain pleadings, discovery requests and responses, transcripts and other written material that has been developed in connection with this case. A list of the documents that you gave me is included as Appendix A.[1] Based on this information, I have made certain factual assumptions that I regard as reasonable based on this material. A list of those assumptions is set forth below.

In view of the fact that I have concluded that Yusuf and Hamed formed a partnership, and that certain of Yusuf's actions violated the applicable Virgin Islands partnership statute, it is important to discuss what law actually governed the actions of Yusuf and Hamed. When the Virgin Islands Code was enacted in 1957, it consolidated, organized and revised thousands of ordinances then in existence, including the 1921 Codes of St. Thomas and St. John, and St. Croix. The partnership provisions of the new Virgin Islands Code were based on the 1921 Codes, which had adopted a version of the Uniform Partnership Act (commonly referred to as the "UPA") originally promulgated by the Uniform Law Commission in 1914.[2] I have referred to that statute in this report as the "Old Partnership Act." The Old Partnership Act was replaced in 1999 by a newer version of the partnership act also proposed by the Uniform Law Commission and known as the Revised Uniform Partnership Act (commonly referred to in court decisions as the "RUPA" and referred to herein as the "New Partnership Act").

While the Old Partnership Act and the New Partnership Act share a vast number of similarities, they are different statutes. Therefore, I analyzed the facts surrounding the formation of the Partnership in 1986 in light of the provisions of the Old Partnership Act, because it was in force at that time. On the other hand, because most of Yusuf's actions that violate his duties to Hamed and the Partnership occurred after 2000, when the New Partnership Act became applicable, [3] I have reviewed those actions against the requirements of the new statute.

ASSUMPTIONS

1. Both Yusuf and Hamed came to the United States Virgin Islands as adults, having been born and raised on the West Bank of Jordan. Yusuf arrived in the Virgin Islands before Hamed.

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[1] Pursuant to the applicable rules of the court, I have also included a statement of my qualifications as Appendix B, a list of all other cases in which, during the previous 4 years, I have testified as an expert at trial or by deposition as Appendix C, and a statement of the compensation to be paid to me for my report and testimony in this case as Appendix D.

[2] Also known as the National Conference of Commissioners on Uniform State Laws. The UPA was adopted by every state except Louisiana.

[3] 26 V.I.C. §273. This provision, enacted in 1998, permitted a partnership voluntarily to elect to have the New Partnership Act apply for periods prior to January 1, 2000, pursuant to an existing provisions of the partnership agreement or pursuant to an amendment to that agreement. In this case, neither method was applicable, so for the Partnership the New Partnership Act had an effective date of January 1, 2000.

2. The wives of Yusuf and Hamed are sisters. Hamed and his wife, with the assistance of Yusuf and his family came to the Virgin Islands in 1973. Hamed made a living by selling merchandise, door to door, until he had saved enough money to open a small grocery store in Estate Carlton on St. Croix. He subsequently opened a second store in Estate Glynn, also on St. Croix.

3. In 1979, Yusuf formed United Corporation ("United") for the purpose of developing a shopping center ("United Plaza Shopping Center") on St. Croix. To fund construction costs Yusuf obtained money from his brother, Ahmad Yousef and, in return, issued to him 50% of the stock of United. Yusuf and his wife retained the other 50%.

4. Yusuf intended to construct a supermarket in United Shopping Plaza; however, the funds received from his brother were insufficient to complete construction, and Yusuf was unable to obtain financing for this purpose from any of the banks on St. Croix.

5. By 1984, Yusuf was out of money and found himself in desperate financial straits. Hamed began giving Yusuf funds from his savings and his grocery business profits to enable Yusuf to continue construction of United Shopping Plaza and the supermarket.

6. Yusuf told Hamed that if he was going to be a partner in the supermarket he would have to sell his competing grocery store business. Hamed did this and contributed all of the proceeds to the new venture. By that time his contributions totaled approximately $400,000.

7. Yusuf had also received funds from two nephews, unrelated to Hamed, *to* assist in the construction of the supermarket building and the plan was for each of Yusuf, Hamed and the two nephews to hold a 25% interest in the supermarket business. However, the two nephews decided to withdraw after Yusuf completed the construction of the supermarket but was still unable to obtain bank financing. Yusuf agreed to return their investment with interest and an additional "penalty" for not fulfilling his promises to them regarding financing.

8. At that point, Yusuf offered Hamed three alternatives (i) he could also withdraw and Yusuf would attempt to return his investment with interest and a penalty payment like the one he promised to pay the nephews or (ii) Hamed could stay in and receive his full share of net profits from the business with Yusuf bearing the complete burden of repaying the two nephews, in which case Hamed would remain a 25% partner or (iii) Hamed could let Yusuf use all of the net profits of the business to repay the nephews, in which case Yusuf and Hamed would go forward as 50%-50% partners. Hamed, at the recommendation of Yusuf, chose the last option.

9. The Plaza Extra – East store opened in 1986.

10. Yusuf and Hamed have always drawn a distinction between the operations of United Plaza Shopping Center (and other properties owned by United) and the operations of the supermarket businesses. The stockholders of United were the sole beneficiaries of the shopping center operations, and profits from other properties owned

by United. The Partnership between Yusuf and Hamed owned and benefited from the supermarket business.

11. From the beginning of the Partnership, Yusuf and Hamed agreed to an informal division of labor. Yusuf was to be primarily responsible for the administration of the business and Hamed would operate the warehouse for the new supermarket and make sure that the shelves were stocked.

12. The new supermarket ("Plaza Extra – East") was totally destroyed by a fire in 1992. The building was insured, and Yusuf and Hamed decided to rebuild the store.

13. While Plaza Extra-East was being rebuilt, Yusuf was approached by Ahmad Ideheileh who was interested in opening a supermarket on St. Thomas with Yusuf. Yusuf informed Ideheileh that he could not agree to proceed without the consent of his partner Hamed. He obtained Hamed's consent, and, in 1993, they opened a supermarket ("Plaza Extra – Tutu Park") in a leased building in Tutu Park Mall on St. Thomas. That operation was, technically, structured as a joint venture between United and Ideheileh, but Yusuf has testified that Hamed had an equal interest in the business with him and that United was being used as an operating agent of the Partnership. Ultimately, Ideheileh was bought out of his investment in Plaza Extra – Tuto Park, and Yusuf and Hamed continued as the only partners in the business.

14. Yusuf and Hamed distributed some of the accumulated net income from the Plaza Extra operations to capitalize other corporations that were owned equally by the Yusuf and Hamed families One of these corporations, Plessen Enterprises, Inc., acquired land near Grove Place on St. Croix on which a third supermarket ("Plaza Extra – West") was constructed and commenced operations in 2002.

15. In managing the "business" of the supermarkets, Yusuf chose to utilize United as the agent for and nominal titleholder of all of the assets. Multiple segregated United bank accounts were opened solely for the use of the three supermarkets ("Plaza Extra Accounts"). Hamed and certain of his family members had signatory authority over the Plaza Extra Accounts. None of them had any signatory authority over any other United bank accounts.

16. Yusuf and his sons have repeated referred to Hamed as the partner of Yusuf in the three Plaza Extra businesses. Yusuf and his sons have repeatedly acknowledged that Hamed was entitled to 50% of the profits from the operations of all three Plaza Extra stores and was responsible for the same share of any losses. Yusuf has testified that Hamed was liable to pay his share of any losses even though United or Yusuf may have been the only signatories on various obligations. Hamed has testified that this was the agreement between them.

17. Yusuf and Hamed both worked, personally, in the Plaza Extra – East store. As more stores were opened, an arrangement developed where there was at least one representative of the Yusuf family and at least one representative of the Hamed family assigned to manage each of the three stores.

18. Yusuf and his immediate family members[4] have been the sole stockholders of United since 1979. Neither Hamed, nor his immediate family members, have ever owned any stock in United.

19. It is unclear from the information furnished to me what tax returns were filed with respect to the operations of the grocery store businesses prior to 2002, but, based on subsequent events, it seems likely that no separate returns were, in fact filed for the supermarket business, and that the results of operations of the three grocery stores were included, in some manner, on United's tax returns.

20. In 2001, representatives of several Federal agencies raided the business premises of the grocery stores and the residences of Yusuf and several members of the Yusuf and Hamed families. Ultimately, United, Yusuf and certain family members of Yusuf and Hamed were indicted for tax fraud. As part of the prosecution of this case, the bank accounts of United, including the Plaza Extra Accounts were made subject to a restraining order and placed under the control of the United States Marshal's Service. Because of the restraining order, most of the net income of United has been accumulating, and now totals over $35,000,000.

21. A plea agreement was reached in 2010 pursuant to which, *inter alia*, United pled guilty to one count of tax evasion and all other counts, including all of the counts against the individual defendants were dismissed. From the time of the initial raids until a plea agreement was reached, all of the defendants made estimated tax payments but refused to file tax returns based on their rights under the Fifth Amendment. The plea agreement required United and all of the individual defendants to file all delinquent returns as a condition to the effectiveness of the plea agreement. United has now filed Form 1120S for tax years 2002 through 2012 and, using funds previously subject to the restraining order, paid the taxes calculated to be due. United incorrectly reported all of the items of income and expense from the operation of the three grocery stores as though it was the sole owner of the businesses.

22. Although the funds paid to the BIR to pay these tax obligations came from funds generated by the Partnership's activities, Yusuf disputed the BIR's determination that the payments would be deemed to satisfy the obligations of Hamed and his family as well those of Yusuf and his family. In fact, Yusuf's counsel threatened to seek a refund of payments made to the BIR if it did not change its position.

23. Beginning in 2012, Yusuf, unilaterally, changed the way the businesses were operated.

24. Even though, since at least 2010, there had been an agreement in place that all checks drawn on the Plaza Extra Accounts would require two signatures, one from a Yusuf family member and one from a Hamed family member, on April 15, 2012, Yusuf caused a check in the amount of $2,784,706.25 to be issued from one of the Plaza

[4] The term "immediate family members" when used with reference to Yusuf or Hamed is intended to refer to their respective spouses and issue. The term is used instead of "family members" to avoid the confusion that might arise from the fact that the children of each of them with their current spouses are the nephews and nieces of the other.

Extra Accounts payable to United Corporation. The check was signed by two Yusuf family members. By letter dated the next day, Yusuf announced this action to Hamed claiming that the amount taken represented a balance due to Yusuf based on some past transactions, including a balancing of chits. Hamed immediately responded that none of the calculations upon which the amount of the check had been based were accurate and that other amounts due to Hamed should have been taken into account. Despite this objection, and despite the fact that no Hamed family member had signed the check, it was deposited a few days later into a United Corporation account on which no Hamed family member had signatory authority.

25. At the hearing on the preliminary injunction in this case, a member of the Yusuf family initially testified that the funds had been used to purchase certain real property on St. Croix. It was later determined that a portion of the funds had been used by the Yusuf family to purchase a mattress company. No complete accounting for the rest of the funds has been forthcoming from Yusuf.

26. Beginning as early as October of 2012, and continuing until at least until April, 2013, Yusuf wrote a series of checks drawn on a Plaza Extra bank account to pay the fees of lawyers and accountants representing United and Yusuf. No prior discussion of these withdrawals was held with Hamed, nor were the checks signed by a member of the Hamed family. The checks discovered to date total in excess of $507,000.

27. Beginning in 2012, Yusuf has unilaterally attempted to fire employees without any consultation with Hamed or members of his family. Indeed, Yusuf has "fired" various members of the Hamed family during outbursts at the stores, some of which were in front of other store employees.

28. Beginning in 2012, Yusuf repeatedly threatened to close the grocery stores, again without any consultation with Hamed, which has resulted in considerable concern among employees.

29. There is no written lease between United and the Partnership with respect to the Plaza Extra - East store. Nevertheless, in February, 2012, after a negotiation between Yusuf and Hamed, it was agreed that the sum of $5,408,806.74 would be transferred from a Plaza Extra - East bank account to an unrelated United account to cover rent for the premises for the period from 2004 through 2011. The rent was based on the Plaza Extra – Tuto Mall store lease and amounted to approximately $56,000 per month. Despite this agreement on the rent payable by Plaza Extra East, Yusuf immediately began demanding a new monthly rent of $200,000 for January through March, 2012, increasing to $250,000 thereafter, and subject to further increases at the whim of Yusuf. United has sent a series of monthly rent demands continuing to at least June,2014, in which it sets forth the past due claimed rent, based on Yusuf's unilateral demands, increased by 1% per month, compounded monthly.

30. Yusuf has always claimed the responsibility to maintain the financial accounts and records of the businesses. In 2012, stating that the plea agreement required this action, Yusuf unilaterally hired two accountants to "clean up" the financial records of United and the supermarket businesses. One of the accountants, Frank Gaffney has testified that he found the books and records in terrible condition and that there was no

system of internal accounting controls whatsoever. He testified that, as of 2012, inventories were overstated. In his April 2014 deposition he stated that there was no comprehensive or coherent accounting for the supermarkets.

31. The Partnership's operations have been remarkably successful. Except for funds contributed during the initial startup of the first store, neither Yusuf nor Hamed has had to come out of pocket to pay any of the Partnership's obligations.

32. On April 7, 2014, Yusuf filed a motion requesting that the Court order that the affairs of the Partnership be wound up. In his memorandum in support of the motion, Yusuf conceded, for the first time, that the Partnership existed, but only "for the purposes of this case."

33. Subsequently, Hamed requested that Yusuf stipulate to the existence of the Partnership and to the ownership by the Partnership of the bank and investment accounts holding funds generated by the store operations and the equipment and inventory in all three stores. Yusuf has refused to do this.

34. Hamed has requested that the policies of casualty insurance covering all three stores be changed to indicate the existence of the Partnership. Yusuf has refused to do this.

35. Hamed has requested that Yusuf cause United Corporation to transfer the trade name "Plaza Extra" to the Partnership. Yusuf has refused to do this.

36. The Partnership has purchased substantial amounts of goods from Associated Grocers of Florida, Inc. ("AG Grocers"). As part of its marketing, AG Grocers has, over the years issued shares of its stock to its customers. At the present time, this stock is held in the name of United. Hamed has requested that Yusuf cause United to stipulate to a court order that this stock is owned by the Partnership. Yusuf has refused to do this.

I. YUSUF AND HAMED WERE PARTNERS IN THE PARTNERSHIP

In his initial response to the complaint filed in this case and, indeed, in all of the pleadings filed by him until a few months ago, Yusuf has consistently denied that the Partnership exists. As will be discussed later, this denial, in and of itself, constituted a breach of his fiduciary duties to the Partnership. On April 7, 2014, however, Yusuf filed a motion requesting that the Court order the winding up of the Partnership. In that motion, Yusuf conceded that "for the purposes of this case" the Partnership exists.

Yusuf is apparently willing to admit the existence of the Partnership for the limited purpose of disposing of it, but, apparently, not for any other purpose. Of course, the issue of whether the Partnership exists is important for several reasons. It lies at the heart of the question of who is entitled to the accumulated assets of the supermarket businesses and under what circumstances these businesses should continue. It also determines what duties Yusuf or Hamed owed to each other during the past several decades and whether the actions of either have been in violation of these duties. Finally, it determines the relief that the court may grant in this case.

Ultimately, the issue of whether the Partnership exists will be determined based on all of the facts and circumstances surrounding the formation and operation of the supermarket businesses. The general rule is well stated in *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979):

> The existence of a partnership is not governed by one conclusive criterion but by the facts and circumstances of each case. Certain elements or tests, however, are suggested within the statutory definition and are considered important, and even critical, to the existence of a partnership.[5]

The Old Partnership Act provided guidelines for determining the existence of a partnership. It defined a partnership as ". . . an association of two or more persons to carry on as co-owners a business for profit,"[6] and provided that "the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business . . ."[7] The Virgin Islands Superior Court, in granting a temporary restraining order in this case against Yusuf, applied the Old Partnership Act in reaching its conclusion that Hamed was likely to succeed in proving that the Partnership was formed in 1986.[8]

In this case, it seems clear beyond any reasonable dispute that Yusuf and Hamed agreed to contribute funds to getting the Plaza Extra –East store operational and in beginning the supermarket business. Fathi Yusuf manages the front office functions, Hamed the warehouse and receiving. Both agreed to share equally in the net profits of the business. And both of them repeatedly, over two and a half decades, declared themselves to be partners. No one seems to argue about any of these facts and, based on them, I have little difficulty in concluding that the Partnership has existed since at least 1986, and continues in existence today. As noted above, Yusuf now is willing to admit the existence of the Partnership for the limited purpose of disposing of it. However, prior to April 7, 2014, Yusuf made several arguments in support of his contention that no partnership existed.

First, Yusuf has argued that Yusuf and Hamed intended to form a joint venture, not a partnership. The term "joint venture" has been defined as "[a] legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit."[9] Thus, for example, when two previously unrelated parties submit a joint bid to construct a building, their relationship can, properly, be described as a joint

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[5] *Id.* at 579.
[6] Old Partnership Act §21(a)
[7] Id. §22(4), which also lists certain exceptions to this rule not relevant here.
[8] *Hamed v. Yusuf*, 2013 WL 1846506 (V.I.Super. Ct. 2013) 7. The New Partnership Act provides that "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership," 26 V.I.C. §22(a), and that "[a] person who receives a share of the profits of a business is presumed to be a partner in the business. . ." 26 V.I.C. §22(c)(3). While the sharing of profits is stated to be "prima facie" evidence that a partnership exists under the Old Partnership Act and to create a "presumption" that a person is a partner under the Current Partnership Act, the differences were not intended to be material. RUPA §202 cmt. 3.
[9] BLACK'S LAW DICTIONARY, 6th ed., citing *Tex-Co Grain Co. v. Happy Wheat Growers, Inc.*, 542 S.W. 2d, 934, 936 (Tex. Civ. App. 1976)

venture. As soon as the building is completed, they intend to part ways. There is no continuing business relationship. Neither Yusuf nor Hamed has ever suggested that this is a description of their relationship. To the contrary, both of them, and their respective family members, have stated that they were partners "forever."

Moreover, the real trouble with this argument is that a joint venture is simply a kind of partnership, one with a term limited, not temporally, but by the accomplishment of some defined goal. While it exists, a Virgin Islands joint venture would be subject to the application of the Act just like any other partnership. This was expressly noted by the Superior Court in *Hamed, supra*, where the court held that "[a] joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as a partnership."[10]

Second, Yusuf has argued that his use of the term "partner" should be interpreted by taking into account some, as yet not fully explained, concept of Islamic law. The problem with this argument is that courts have recognized that under both the Old Partnership Act and the New Partnership Act the existence of a partnership is determined not by reference to the subjective intent of the parties to be partners, but, rather, by their agreement to objective standards, i.e. did they, in fact, agree to engage in a business and share in net profits. If so, a partnership is presumed to exist and the parties are presumed to be partners for purposes of the statutes, whether or not they intended for the statutes to apply.

The New Partnership Act makes this absolutely clear when it states, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." [emphasis supplied][11]. As the Virgin Islands Supreme Court noted in affirming the grant of the temporary restraining order in this case:

> While a subjective intent to form a partnership is not required under the UPA, the parties must "inten[d] to do things that constitute a partnership." *Redland,* 288 P.2d at 1213; *see also Brown v. 1401 New York Ave., Inc.*, 25 A.3d 912, 913–14 (D.C.2011) ("While the manner in which the parties themselves characterize the relationship is probative of whether their relationship is a partnership, the question ultimately is an objective one: whether the parties intended to do the acts that in law constitute partnership.")[12]

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[10] 2013 WL 1846506 (V.I. Super.), 8, citing *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr. Ct. 1997)
[11] 26 V.I.C. §22(a)
[12] 2013 WL 5429498 (V.I.), 4. This point was also clearly set forth in the Comments to the RUPA, which contain the admonition:

> The addition of the phrase, "whether or not the persons intend to form a partnership," merely codifies the universal judicial construction of [the Old Partnership Act] that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be "partners." Indeed, they may inadvertently

Third, Yusuf has argued that he had complete control of the businesses and that Hamed and his family members were simply "employees," doing his bidding. This, of course, is belied by over two decades of experience where all major decisions required the approval of representatives of both families. The argument is most clearly contradicted by Yusuf's own testimony in the case with Idheileh where Yusuf stated in his deposition that, when Idheileh asked him to become a partner in the St. Thomas store venture, he responded that:

> I don't have the final word. I will check with my partner [Hamed].
>
> . . .
>
> Wait a minute. We have to go to the fact. You looking to find facts, and I am telling you the fact. The venture agreement can no way be done without the approval of Mr. Mohammed Hamed. And Mr. Idheileh know when he come to me, I tell him I cannot give you and answer, but I promise you I will convince my partner.[13]

Furthermore, the fact that Yusuf may have been in charge of the "business" aspects of the Partnership is simply not dispositive. The partners in a partnership can agree that one of them will have control over the operations of the partnership's activities. The key question is whether each of them has the "right" to be involved in management, not how that right is exercised. It is common for partners to agree that primary control over the partnership's activities will be delegated to one or more managing partners.[14]

Fourth, Yusuf has argued that only he or United signed any of the loan documents required to obtain financing for the supermarket business and, therefore, Hamed was not exposed to any loss had the business ventures not proven successful. This, of course, is factually incorrect. Hamed invested $400,000 in the Partnership which was, without dispute, subject to being lost. Hamed testified that he understood that he was responsible for any losses incurred by the Partnership. Moreover, a number of cases have held that there is no requirement that partners affirmatively agree to share losses in order for a partnership to exist.[15]

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create a partnership despite their expressed subjective intention not to do so. The new language alerts readers to this possibility.
RUPA Section 202, cmt 1 *See Hillme V. Chastain*, 75 S.W. 3d 315 (Mo. App 2002)(The required intent necessary to find a partnership existed "is not the intent to form a partnership, but the intent to enter a relationship which in law constitutes a partnership.")(quoting from *Meyer v. Lofgren*, 949 S.W. 2d 80, 82(Mo App. 1997); *Ziegler v. Dahl*, 691 N.W.2d 271, (N.D 2005)

[13] *Idheileh v. United Corporation*, Civ. No. 1561997, Dep. of Fathi Yusuf, p. 21-24

[14] *See Moulin v. Der Zakarian*, 191 Cal. App. 2d 184, 12 Cal. Rptr. 572 (Cal. Ct. App. 1961); *Constans v. Ross*, 106 Cal. App. 2d 381, 388, 235 P.2d 113 (1951) (Apportionment of duties does not preclude the existence of a partnership. One partner may be given the right of management)

[15] *Sewing v. Bowman*, 371 S.W.3d 321(Tex. App. 2012), reh'g overruled (May 29, 2012), review dismissed (Jan. 4, 2013); *Hoss v. Alardin*, 338 S.W.3d 635 (Tex. App. 2011); *Temm v. Temm*, 354 Mo. 814, 191 S.W.2d 629(1945)

This argument is also somewhat circular because, in the event a partnership is found to exist, each partner, by law, is jointly and severally liable for the partnership's obligations, whether or not the partner had a subjective intention to share in losses.[16]

Perhaps most telling in this case is the fact that neither Yusuf nor Hamed ever had to come out of pocket to pay any of the obligations of the Partnership. Its operations generated sufficient cash flow to pay all of its debts.

There is one final issue concerning the existence of the Partnership that deserves particular attention. Yusuf has argued that since United has legal title to all of the business assets, there is no separate partnership property that can support that existence of the Partnership. This, of course, begs the question of what should be considered partnership property. It also represents a one hundred eighty degree turn from Yusuf's prior boasts regarding his personal integrity:

> But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. And that - - excuse me - - and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50%. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.
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> . . . .
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> My partner, he have never have it in writing from me.
>
> . . . .
>
> There is a confidence between me and my partner, my family. There is a very, very, very high confidence.[17]

While Yusuf's prior statements are helpful (and his position prior to April 7, 2014, disappointing), Hamed did not have to rely on Yusuf's state of mind. The Old Partnership Act provided that partnership property included "all property originally brought into the partnership stock . . ." [18] and that "[u]nless the contrary intention appears, property acquired with partnership funds is partnership property."[19] Under the New Partnership Act, property is also presumed to be partnership property if purchased with partnership assets, even if the property is not titled in the name of the partnership, and even if the instrument of conveyance does not make reference to the fact that the grantee is acting on behalf of the partnership.[20] Thus, all of the income earned by the Partnership since its formation, and all of the assets purchased with this income, are owned by the

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[16] 26 V.I.C. §46(a); Old Partnership Act §47;See *Madden Invest. Co. v. Stephenson's Apparel*, 2005-Ohio-3336, 162 Ohio App. 3d 51, 54, 832 N.E.2d 780 (The duty to share in losses is a product of statute, not the subjective expectations of the persons concerned. Whether a partnership exists must be otherwise determined)

[17] *Idheileh v. United Corporation*, Civ. No. 1561997, Dep. of Fathi Yusuf, p. 24-25

[18] Old Partnership Act §23(a)

[19] Id. §23(b)

[20] Id. §24(c)

Partnership, whether or not it is titled in the name of United Corporation, or held in a United Corporation bank account.

II YUSUF VIOLATED HIS DUTY OF LOYALTY

Because all of the acts complained of that constituted a violation of Yusuf's partnership duties occurred after January 1, 2000, they have been analyzed under the provisions of the New Partnership Act. It is worth noting that, according to some commentators, the New Partnership Act actually "watered down" some of the fiduciary obligations that several courts had held existed under the Old Partnership Act.[21] However, it did bring clarity to the nature of such duties. Under the New Partnership Act, each partner owes the partnership and each other partner a duty of loyalty that requires each partner:

> (1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
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> (2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
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> (3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.[22]

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[21] As Justice Masden noted in his concurring opinion in *J & J Celcom v. AT&T Wieless Servs., Inc.*, 162 Wash. 2d 102, 169 P.3d 823 (Wa 2007):

> RUPA represents a major overhaul in the nature of the fiduciary duties imposed on partners. There are two general views of the partnership relation: one emphasizes the fiduciary nature of the relationship and the other emphasizes the contractual nature of the relationship. The common law and UPA are based on the fiduciary view, the fundamental principle of which is that partners must subordinate their own interests to the collective interest, absent consent of all the partners. Thus, under the common law and UPA, the duty of loyalty prevented a partner from benefiting, directly or indirectly, from the partnership, more than any of the other partners. The broad approach from the Restatement of Agency, incorporated into partnership law, was that the duty of loyalty required a partner to act solely for the benefit of the partnership in all matters connected to the partnership. This required partners to disgorge any profits made without consent of the other partners. . . .
>
> RUPA represents a major shift away from the fiduciary view and toward the "libertarian" or "contractarian" view, by (a) expressly limiting fiduciary duties, (b) sanctioning a partner's pursuit of self-interest, and (c) allowing partners to waive most fiduciary duties by contract. RUPA was intended to bring the law of partnership into the "modern age," to make partnerships more rational, efficient, and stable business entities.

162 Wash. 2d at 109-10, 169 P.3d at 826. *See In re Jones*, 445 B.R. 677 (2011)(the intent of the drafters was to expunge from the law of partner-duties some of the broad "rhetoric" of prior case law); *Gupta v. E. Idaho Tumor Inst., Inc.*, 394 F. 3d 347(5th Cir. 2004)

[22] 26 V.I.C. §74(b)

The duty of loyalty cannot be waived in a partnership agreement, but the agreement may identify certain kinds of activities that will not be deemed to violate the duty, if not "manifestly unreasonable.[23] There is no written partnership agreement between Yusuf and Hamed and certainly Hamed has not orally agreed to waive any of the conduct on the part of Yusuf to which he objects. Yusuf's conduct must be measured against the plain language of the statute, and it simply does not measure up in several respects.[24]

To date, it is still not clear why Yusuf so vigorously resisted a finding that the Partnership exists. But, to the extent that it is based on an attempt to claim assets that are clearly Partnership assets as his own, Yusuf's actions violate the mandate of the statute. In particular, any claim that the Plaza Extra Accounts belong entirely to United or Yusuf would constitute a particularly egregious example of a violation of this duty.

The case of *Hoffman v. Prutzman*[25] is very illustrative. In that case, the plaintiff, Donna Hoffman, beginning in 1981, had operated a hair solon known as the Hair Connection with Roxanne Prutzman and Donna Grimshaw under a written joint venture agreement. That agreement expired by its own terms in 1991, but the three women continued the business without any written agreement. When, in 2007, Hoffman announced that she wanted to retire, Prutzman and Grimshaw effectively froze her out of the business and refused to pay her anything for her interest. Instead, they formed a new limited liability company in which they were the only members and continued to operate the hair solon under that company.

The court had little trouble determining that the defendants had violated their duties to the plaintiff as a partner in the business. In awarding both compensatory and punitive damages the court held:

> The acts of the defendants amount to a conversion of the partnership property of The Hair Connection. First, the defendants, without notifying plaintiff or gaining her consent, removed all of the funds of the partnership's savings and checking account and used these funds to capitalize their limited liability company, The Hair Connection LLC. Second, the defendants, again without plaintiff's consent or knowledge, used the trade fixtures of The Hair Connection to carry on the business of their limited liability company. In forming and operating the limited liability company, the defendants used partnership property to their benefit and to the detriment of their partner, the plaintiff. Defendants had no right to remove funds from the partnership accounts or utilize the fixtures of the

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[23] Id. §4(b)(3)(i).

[24] The Revised Uniform Limited Partnership Act ("RLUPA") which has been enacted in the Virgin Islands, contains a word for word analog to the language of the New Partnership Act when describing the duty of loyalty that a general partner owes to the limited partnership and the limited partners. Therefore, I have relied upon several court decisions involving limited partnerships and the RLUPA in my analysis.

[25] 2010 WL 2841234, 12 Pa. D. & C. 5th 141 (2010)

> partnership for their own benefit without gaining the consent of the plaintiff.[26]

Regardless of his intentions with respect to the other assets of the Partnership, Yusuf's 2012 unilateral withdrawal of over $2.7 Million of the Partnership's funds and his of these funds for his own purposes, over the objections of Hamed, constitutes a violation of his duty to "hold as a trustee" partnership funds.[27]

It is also true that Yusuf's use of Plaza Extra Account funds to pay his own lawyers and accountants for matters that were not related to the business of the supermarkets would be a violation of his duty of loyalty to the Partnership. Hamed did not agree to any of these payments, learning of them long after they had been made. In violation of the agreement that had been put into place between Yusuf and Hamed, the checks were not signed by a Hamed family member.

The duty of loyalty also prohibits Yusuf from "dealing with the [P]artnership in the conduct . . . of the partnership business as a party having an interest adverse to the partnership."[28] Yusuf, as the owner of United, has suddenly demanded that the Partnership begin paying rent at a rate that is over 3 ½ times that previously agreed to, and has threatened to raise the rent further, all in an announced effort to evict the Partnership's Plaza Extra – East store from United Shopping Plaza.[29] This action is obviously inconsistent with a partner's duty not to act adversely to his partnership. It is a similar situation to that presented when a partner acquires a debt of the partnership and attempts to foreclose on it.

> [S] such conduct is a breach of fiduciary duty. (*Thomas v. Schmelzer* (App.1990) 118 Idaho 353, 359–360, 796 P.2d 1026, 1032–1033; *Ebest v. Bruce* (Mo.App.1987) 734 S.W.2d 915, 922; *cf. Dean Operations, Inc. v. One Seventy Associates* (1995) 257 Kan. 676, 689–692 [896 P.2d 1012, 1021–1022].) A general partner that acquires a partnership obligation cannot foreclose on partnership assets. (*Dean Operations, Inc. v. One Seventy Associates, supra*, 896 P.2d 1012.)[30]

Yusuf clearly has the right to engage in investments or businesses on his own. He owes no duty to the Partnership or to Hamed to abstain from all other ventures. However, he is not free to use partnership assets to pursue them. Similarly, while Hamed has agreed that Yusuf my charge a fair rental to the Partnership for the use of space in the United

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[26] Id. See *Hansen v. Hansen*, 2010 WL 5657047 (PA D. & C 5h 2010); Green V. McAllister, 14 P.3d 795, 103 Wash. App. 452 (Wa App 3d 2000)

[27] *Carey v. Carey*, 101 A.D.3d 787, 791, 957 N.Y.S.2d 140, 144 (2012); *In re Selenske*, 103 B.R. 200 (1989); *In re Guy*, 101 B.R. 961 (1988)

[28] 26 V.I.C. §74(b)(2)

[29] Although this may be relevant only as to the question of punitive damages, there is obviously no clear business reason for this attempted eviction, leaving as the only logical conclusion a determination that Yusuf has taken this action in an attempt to punish Hamed financially, even as he suffers himself from his own actions.

[30] *BT-I v. Equitable Life Assurance Soc'y of the United States*, 75 Cal. App. 4th 1406, 1411, 89 Cal. Rptr. 2d 811, 815-16 (1999). This case was decided under the UPA on which the Old Partnership Act was based, but no change in this duty was intended in the RUPA.

Shopping Plaza just like any other tenant, Yusuf is not free to take advantage of the fact that there is no written lease by raising rents to artificially high levels thereby acting in a way that is truly adverse to the Partnership.

III YUSUF VIOLATED HIS DUTY OF CARE

The New Partnership Act provided that every partner owes the partnership and the other partners a duty of care, which "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."[31] Another way of saying this is that the courts will not ordinarily second guess the decisions made by partners unless they are so lacking in judgment as to demonstrate a wilful disregard for the consequences or unless they show malfeasance, i.e. knowing wrongdoing.

On balance, the statute imposes a very limited obligation on partners when it comes to their actions with respect to a partnership. However, it is clear that Yusuf has failed to meet even this low expectation.

While it seems clear that Yusuf is responsible for the filing of numerous inaccurate tax returns over the years, it is beyond dispute that he caused United to file a fraudulent tax return for 2001. This is admitted in the Plea Agreement reached in the criminal case. This pattern of improper tax filings resulted in the indictment of United, Yusuf, members of Yusuf's family and members of Hamed's family. It also resulted in the "freezing" of the Plaza Extra Bank Accounts, a restraint that continues to this day and has had an unquestionably deleterious impact on the Partnership if for no other reason than as a huge opportunity cost.

United pleaded guilty to criminal tax fraud in 2010, and, as a part of the Plea Agreement, it undertook to file all of its tax returns for 2002 through 2012. Remarkably, instead of separating the operations of the Partnership from its own independent business transactions, United filed a Form 1120S for each of these years on which it has included all of the Partnership's items of income and expense. Yusuf caused United to deliver a form K-1 to each of its shareholders, all members of Yusuf's family, but did not send Hamed anything for these tax years.

Following the acquisition of the Virgin Islands from Denmark in 1917, an act of Congress provided that all local laws regarding taxation would continue in effect "until Congress shall otherwise provide . . . ." [32] Five years later, as part of the Naval Appropriations Act of 1922, Congress declared that the income tax laws of the United States "shall be held likewise to be in force in the Virgin Islands . . . ." [33] Thus, although "[t]he United States and the Virgin Islands are two separate and distinct taxing authorities . . . ," [34] the Code was adopted as the income tax code of the Virgin Islands.[35] As the court

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[31] 26 V.I.C. § 74(c)
[32] 48 U.S.C. §1395
[33] *Id.* §1397
[34] *Vitco, Inc. v. Gov't of the Virgin Islands*, 560 F.2d 180, 182 (1978)
[35] 48 U.S.C. §1397.

in *HMW Industries, Inc. v. Wheatley* noted, "[t]he effect of the . . . . [statute] was to create a separate taxing structure for the Virgin Islands 'mirroring' the provisions of the federal tax code except as to those provisions which are incompatible with such a separate tax structure."[36] The Virgin Islands income tax statute is, therefore, often referred to as a "mirror code," (the "Mirror Code").

Under the Mirror Code, "[t]he existence of a partnership for [VI] income tax purposes is a question of Federal law and does not depend on whether an enterprise is recognized as a partnership under local law.[37] A partnership for income tax purposes, is "a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not . . . a trust or estate or a corporation"[38] As stated in the Treasury Regulations, a business entity with two or more members is either a corporation or a partnership.[39] The only way that Yusuf could have failed to file a partnership tax return for the Partnership for years 2002 through 2012 without knowingly violating the law would be if the relationship with Hamed established no business entity at all. Even Yusuf has not claimed this to be true.

Moreover, this was not an oversight. Hamed's counsel had, in writing, demanded that a correct partnership return, Form 1065, be filed for each of these years and that a correct Form K-1 be delivered to Hamed for use in preparing his own income tax returns. This demand was ignored by Yusuf. It resulted in Hamed having to prepare a "substitute" Form K-1 for each year for inclusion with his return.

Given the fact that Yusuf was aware of the issue, his pre-April 7, 2014 refusal to comply with the requirements of the VI tax law is the kind of intentional misconduct and knowing violation of the law that the Current Partnership Act proscribes.

IV YUSUF COULD BE JUDICIALLY DISSOCIATED FROM THE PARTNERSHIP

The New Partnership Act introduced the concept of "dissociation" to Virgin Islands partnership law.[40] Under the prior act, the withdrawal of a partner, for any reason, automatically triggered the dissolution of the partnership. This was due to the fact that the old statute treated partnerships as an aggregate of the partners, not as a separate entity. Thus, the death or other withdrawal of a partner automatically dissolved any existing partnership and, if the surviving partners continued the business, created a new partnership.[41]

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[36] 504 F. 2d 146, 150 (3d Cir. 1974)
[37] *Holdner v. C.I.R.*, 100 T.C.M. (CCH) 108 (T.C. 2010) *aff'd*, 483 F. App'x 383 (9th Cir. 2012), citing *Commissioner v. Culbertson*, 337 U.S. 733, 741, 69 S.Ct. 1210, 93 L.Ed. 1659 (1949); *Commissioner v. Tower*, 327 U.S. 280, 287–288, 66 S.Ct. 532, 90 L.Ed. 670 (1946); see also *Bergford v. Commissioner*, 12 F.3d 166, 169 (9th Cir.1993), affg. *Alhouse v. Commissioner*, T.C. Memo.1991–652; *Frazell v. Commissioner*, 88 T.C. 1405, 1412, 1987 WL 49334 (1987)
[38] Mirror Code §7701(a)(2)
[39] Treas. Regs. §301.7701-2
[40] 26 V.I.C. §121
[41] *See e.g. Fairway Development Co. v. Title Insurance Co.*, 621 F. Supp. 120 (N.D. Ohio 1985)("new" partnership resulting from a partner's death did not have standing to enforce a title insurance policy issued to the "old"

Under the Current Partnership Act, a partnership is treated as an entity distinct from its members.[42] Therefore, the dissociation of a partner does not automatically cause the dissolution of the partnership.[43] There are a number of ways that a partner can become dissociated from a partnership. Of relevance here, is the dissociation of a partner "by judicial determination because:"

> (i) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;
>
> (ii) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 74 of this chapter; or
>
> (iii) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner.[44]

Yusuf's judicial dissociation from the Partnership under all three subsections of this provision of the Current Partnership Act would be justified. As will become obvious from the discussion that follows, conduct that rises to the level of justifying dissociation under one subsection may often also subject a partner to dissociation under another, or both, of the remaining subsections.

For example, some of Yusuf's violations of his duties of loyalty and care, described above, which warrant a judicial determination that he should be dissociated under subsection (ii), also constituted "wrongful conduct" that adversely affected the Partnership under subsection (i). His attempts to unilaterally fire personnel, including Hamed's family members, his threats to shut down the stores and his demands for confiscatory rent violate subsections (i) and (ii).

Finally, his repeated and continuing conduct, taken as a whole, also makes it "not reasonably practicable to carry on the business" with Yusuf as a partner, as described in subsection (iii). Under remarkably similar circumstances, a court has required the dissociation of a partner who made accusations of wrongdoing, attempted to take over the business of a partnership and failed to reveal all of the fact concerning his past conviction of tax fraud or to accept the seriousness of the conviction.

> With respect to the second issue, the court granted the application of . . .[defendants] to expel the plaintiff from the partnership under . . [§121(5)(iii)], and therefore did not consider whether dissociation was warranted under the other subparagraphs alleged. Among the evidence that the trial court relied on was the plaintiff's 1989 federal felony conviction for tax fraud. Because of the plaintiff's lack of candor with his partners about the basis for the conviction, his unwillingness before the court in the present action to recognize the depth and significance of his past

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partnership)
[42] 26 V.I.C. §21(a)
[43] *Id.* §171
[44] *Id.* §121(5)

> wrongdoing, and his recent actions and acrimony toward the partners, including an unfounded accusation of insurance fraud, the court found that . . . [the defendants] reasonably no longer felt that they could trust the plaintiff. In sum, the court concluded that, because the plaintiff no longer could do business with . . . [the defendants] and vice versa, the appropriate remedy was dissociation of the plaintiff pursuant to . . . [§121(5)(iii)].[45]

The court noted that the language of the statute providing grounds for the dissociation of a partner by judicial determination was identical to the language in another section of the statute describing the grounds for dissolution of the partnership. The Current Partnership Act provides that a partner is entitled to a judicial determination that a partnership be dissolved, regardless of the terms of any partnership agreement, in the event that:

> . . .
>
> another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner . . .[46]

In other words, in the event that one partner, by his conduct, makes it impossible for the business to be carried on with his remaining as a partner, then, the remaining partners have two options: (i) a judicial determination that the partnership should be dissolved or (ii) a judicial determination that the offending partner should be dissociated, with the partnership continuing. The grounds for the judicial determinations should be identical in either case.

> Under the partnership act, a partnership now has a choice, either to dissolve the partnership or to seek the dissociation of a partner who has made it not reasonably practicable to carry on the partnership with him. The new remedy of dissociation permits a financially viable partnership to remain intact without dissolving the partnership and reconstituting it. As the commentary to the revised partnership act notes: "[The revised partnership act] dramatically changes the law governing partnership breakups and dissolution. An entirely new concept, 'dissociation,' is used in lieu of the [partnership act] term 'dissolution' to denote the change in the relationship caused by a partner's ceasing to be associated in the carrying on of the business." Rev. Unif. Partnership Act of 1997, § 601, comment (1), 6 U.L.A., Pt. 1, p. 164 (2001); see id., comment (6) (noting that conduct that satisfies ground at issue in this case also may satisfy same ground under dissolution provision).[47]

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[45] *Brennan v. Brennan Associates*, 293 Conn. 60, 70, 977 A.2d 107, 114 (2009)

[46] 26 V.I.C.§171(5)(ii)

[47] *Brennan supra*, 293 Conn. at 84, 977 A.2d at 122, citing *Bertolla v. Bill*, 774 So.2d 497, 503 (Ala.1999) (Citing the following evidence when concluding that the trial court properly ordered dissolution on the ground that "it was 'not reasonably practicable' for them to remain in partnership.... Every witness who was asked whether [the partners] could continue in partnership with each other answered that they could not. It is well settled that partners who cannot interact with each other should not have to remain bound

V. YUSUF'S CONDUCT WOULD SUPPORT AN AWARD OF PUNITIVE DAMAGES

In the Virgin Islands punitive damages can be awarded in the case of conduct that is "outrageous, done with evil motive or reckless indifference to the [plaintiff's] rights." *Thomas Hyll Funeral Home, Inc. v. Bradford*, 233 F. Supp. 704, 713 (VI App Div 2002) (quoting *In re Tutu Water Wells Contamination Litigation*, 78 F. Supp. 2d 436, 445 (D.

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together in partnership." [Citation omitted.]); *Tembrina v. Simos*, 208 Ill.App.3d 652, 658, 153 Ill.Dec. 578, 567 N.E.2d 536 (concluding that dissolution was proper in light of findings that "animosity existed between the partners and that they were unwilling to cooperate with each other" and "actions of one of the partners in causing the partnership property to be conveyed into his individual name, the partners' failure to pay their share of real estate taxes, and one partner's action in absenting himself from the country"), appeal denied, 139 Ill.2d 605, 159 Ill.Dec. 117, 575 N.E.2d 924 (1991); *Ferrick v. Barry*, 320 Mass. 217, 222, 68 N.E.2d 690 (1946) (Dissolution was proper on the ground that a partner " 'conducts himself in matters relating to the partnership business [and] that it is not reasonably practicable to carry on the business in partnership with him' " when: "The conduct of [the plaintiff partner] had brought about a situation in which the business could no longer be carried on jointly in the manner contemplated by the articles of copartnership. The other partners were not required to submit to [the plaintiff's] domination or to continue in an atmosphere of non-cooperation, suspicion, and distrust, even though [the plaintiff] was not actually dishonest, and even though substantial profits were being made. An enterprise organized on the principle of equality in proprietorship and management cannot be expected to realize its aims under such conditions."); *Nupetco Associates v. Jenkins*, 669 P.2d 877, 883 (Utah 1983) (concluding that trial court properly concluded that neither party had breached partnership agreement despite determination that remedy of dissolution was warranted in light of facts that partners disagreed as to method of managing partnership affairs and lacked confidence in each other such that "[i]t is not reasonably practicable for the parties to carry on the partnership business because of the dissension between the partners" [internal quotation marks omitted]); see also *Cobin v. Rice*, 823 F.Supp. 1419, 1426 (N.D.Ind.1993) (Finding that the partnership should be dissolved on the general equitable ground when "[t]he plaintiffs have presented sufficient evidence of ill-will, dissension, and antagonism between the partners to prove that the partners are unable to carry on the [p]artnership business to their mutual advantage.... Accordingly, as the [p]artnership business requires cooperation and harmony between the partners, which is clearly lacking, equitable dissolution of the [p]artnership is appropriate."); *Owen v. Cohen*, 19 Cal.2d 147, 152, 119 P.2d 713 (1941) ("[C]ourts of equity may order the dissolution of a partnership where there are quarrels and disagreements of such a nature and to such extent that all confidence and cooperation between the parties has been destroyed or where one of the parties by his misbehavior materially hinders a proper conduct of the partnership business. It is not only large affairs which produce trouble. The continuance of overbearing and vexatious petty treatment of one partner by another frequently is more serious in its disruptive character than would be larger differences which would be discussed and settled. For the purpose of demonstrating his own preeminence in the business one partner cannot constantly minimize and deprecate the importance of the other without undermining the basic status upon which a successful partnership rests. In our opinion the court in the instant case was warranted in finding from the evidence that there was very bitter, antagonistic feeling between the parties; that under the arrangement made by the parties for the handling of the partnership business, the duties of these parties required cooperation, coordination and harmony; and that under the existent conditions the parties were incapable of carrying on the business to their mutual advantage."); *Clement v. Clement*, 436 Pa. 466, 468, 260 A.2d 728 (1970) ("One should not have to deal with his partner as though he were the opposite party in an arms-length transaction. One should be allowed to trust his partner, to expect that he is pursuing a common goal and not working at cross-purposes."); *Warnick v. Warnick*, 76 P.3d 316, 322 (Wyo.2003) (concluding that dissociation was proper remedy when, inter alia, partner who was dissociating had conceded that reconciliation among partners was not realistic possibility).

VI 1999, quoting *Justin v. Guardian Ins. Co.*, 670 F. Supp., 614, 617 (D. VI 1987)). *See Powell v. Chi-Co's Distributing, Inc.*, 2014 WL 1394183 (V.I. Super. 2014).

It is clear that a number of the actions taken by Yusuf were intentional and motivated by an intent to cause harm to Hamed or the Partnership. These include:

- Yusuf's unilateral decision to withdraw over $2.7 Million Dollars from the Plaza Extra checking account.
- Yusuf's threats to close down the supermarkets businesses
- Yusuf's attempts to fire key employees and members of the Hamed family
- Yusuf's increase in the rent charged for the Plaza East Store location to a level that was clearly intended to harm the business
- Yusuf's use of the Partnership's funds to pay his own legal counsel
- Yusuf's causing his counsel to threaten the BIR with a refund claim if it credited any portion of the payment made from the Partnership's funds toward the satisfaction of the Hamed family's tax liabilities event though such crediting would have no adverse impact on Yusuf or his family.

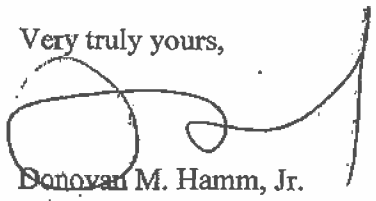
In addition, Yusuf's filing of fraudulent tax returns on behalf of United, which include the results of the supermarket operations is an action that, by admission in the plea agreement, was intentional.

The law is very clear and consistent in holding that a breach of the duties owed by one partner to other partners or the partnership will justify the imposition of punitive damages where there is intentional or malicious action. *Hoffman, supra; Caparos v. Morton*, 845 N.E. 2d 773 (Il App. 2006); *Bardis v. Oates*, 14 Cal. Rptr. 3d 89 (Ct. App. 2004)(nine to one ratio of punitive to compensatory damages warranted); *Smith v. Fairfax Realty, Inc.*, 82 P. 3d 1064 (Utah 2003)(strict ratio of punitive damages to defendant partner's wealth or actual damages not appropriate -- $5.5 Million punitive damage award approved); *Kline v. Keystar One, LLC*, 2002 WL 681237 (Iowa 2002)(actual damages not necessary for award of punitive damages against general partner); *Levy v. Dishar*oon, 749 P.2d 84 (NM 1988)(each partner has a right to have his co-partner exercise good faith in all partnership matters and breach supports award of punitive damages) *Cf. Froming v. Gate City Federal Sav. and Loan Ass'n*, 822 F. 2d 723 (8th Cir. 1987)

Although the amount of punitive damages is a matter left to the discretion of the fact finder, in this case Yusuf obviously could be held liable for such an award based on his conduct.[48]

[48] The "elephant in the room" in this case is the likelihood that the fact finder could easily conclude from the actions taken by Yusuf (including, specifically, the positions taken in this litigation) that Yusuf intended to convert all of the Partnership's property to his own benefit, or, failing in this attempt, destroy the Partnership's value purely to harm Hamed. Because this is a conclusion that only the ultimate fact finder can make, I have not based any part of my opinion on such a finding.

Very truly yours,



Donovan M. Hamm, Jr.

APPENDIX A
DOCUMENTS REVIEWED

1. First Amended Complaint.
2. First Amended Counterclaim.
3. Answer to First Amended Counterclaim.
4. Plaintiff's Answers to Interrogatories from United Corporation.
5. Plaintiff's Answers to Interrogatories from Fathi Yusuf.
6. United Corporation's Answers to Interrogatories.
7. Fathi Yusuf's Answers to Interrogatories.
8. Appellants/Defendants' Brief in the Supreme Court of the Virgin Islands.
9. Appellee/Plaintiff's Brief in the Supreme Court of the Virgin Islands.
10. Appellants/Defendants' Reply Brief in the Supreme Court of the Virgin Islands.
11. Transcript of Proceedings before Judge Brady on January 25, 2013.
12. Plaintiff's Exhibits in connection with Proceedings before Judge Brady.
13. Defendants' Exhibits in connection with Proceedings before Judge Brady.
14. Transcript of Proceedings before Judge Brady on January 31, 2013.
15. Plaintiff's post hearing evidentiary filings in TRO case before Judge Brady.
16. Plaintiff's Proposed Findings of Fact and Conclusions of Law.
17. Defendants' Proposed Findings of Fact and Conclusions of Law.
18. Memorandum Opinion dated April 25, 2013 from Judge Brady
19. Opposition to Appellants' Motion to Stay Preliminary Injunction Pending Appeal (with attachments).
20. Appellee's Opposition to Appellants' Motion to Strike Waleed Hamed's Declaration
21. Opinion of Virgin Islands Supreme Court dated September 30, 2013.
22. United's Motion to Release Funds to pay Taxes.
23. United's Motion to Withdraw Rent.
24. Plaintiff's Response to Motion to Withdraw Rent..
25. United's Reply to Plaintiff's Opposition Response to Motion to Withdraw Rent.
26. Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment.
27. Defendants' Response to Plaintiff's Motion for Partial Summary Judgment.
28. Memorandum and Order Denying Partial Summary Judgment.

29. Memorandum and Order Denying Motion to Dismiss.
30. Four Excel Spreadsheets regarding chits.
31. Memorandum describing chit system.
32. August 15, 2012 Letter from Yusuf to Hamed regarding $2,784,706.25 check.
33. August 16, 2012 Letter from Waleed Hamed to Yusuf regarding $2,784,706.25 check.
34. August 22, 2012 Letter from Yusuf to Hamed regarding $2,784,706.25 check.
35. Copy of $2,784,706.25 check drawn on Plaza Extra Account.
36. Handwritten calculations regarding proceeds from Dorothia property sale.
37. Copies of chits.
38. January 12, 2012 Letter from Yusuf to Hamed regarding rent increase.
39. January 19, 2012 Letter from Yusuf to Hamed regarding rent increase and inspection of premises.
40. April 4, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
41. May 4, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
42. June 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
43. July 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
44. August 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
45. September 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
46. October 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
47. November 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
48. December 1, 2012 Letter from Yusuf to Hamed regarding rent increase and rent due.
49. January 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.
50. February 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.
51. March 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.
52. April 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.
53. May 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.
54. May 17, 2013 Letter from Nizar DeWood to Joel Holt regarding rent due.
55. May 22, 2013 Letter from Joel Holt to Nizar DeWood regarding rent due.

56. June 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.

57. July 1, 2013 Letter from Yusuf to Hamed regarding rent increase and rent due.

58. August 1, 2013 Letter from Maher Yusuf to Hamed regarding rent increase and rent due.

59. Second August 1, 2013 Letter from Maher Yusuf to Hamed regarding rent increase and rent due.

60. October 1, 2013 Letter from Maher Yusuf to Hamed regarding rent increase and rent due.

61. November 1, 2013 Letter from Maher Yusuf to Hamed regarding rent increase and rent due.

62. April 1, 2014 Letter from United to Yusuf and Hamed regarding rent due.

63. May 1, 2014 Letter from United to Yusuf and Hamed regarding rent due.

64. Junel, 2014 Letter from United to Yusuf and Hamed regarding rent due.

65. Undated calculation of rent due showing total of $5,408,806.74.

66. Copy of check in amount of $5,408,806.74 drawn on Plaza Extra Account.

67. March 19, 2013 Letter from Joseph DiRuzzo III to Joel Holt regarding tax returns.

68. Copy of $390,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Fathi Yusuf 2008 4th quarter estimated taxes.

69. Copy of $390,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Fawzia Yusuf 2008 4th quarter estimated taxes.

70. Copy of $84,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Syaid Yusuf 2008 4th quarter estimated taxes.

71. Copy of $84,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Zayed Yusuf 2008 4th quarter estimated taxes.

72. Copy of $84,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Yusuf Yusuf 2008 4th quarter estimated taxes.

73. Copy of $84,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Maher Yusuf 2008 4th quarter estimated taxes.

74. Copy of $84,000 Check dated February 13, 2009, drawn on Plaza Extra Account for Nejeh Yusuf 2008 4th quarter estimated taxes.

75. June 20, 2013 Letter from Claudette Watson-Anderson to Hameds acknowledging payment of taxes for years 2002 – 2010.

76. June 20, 2013 Letter from Claudette Watson-Anderson to Hameds acknowledging payment of taxes for years 1997 – 2001.

77. Copy of $15,067.26 Check drawn on Plaza Extra Account dated October 19, 2012 payable to Fuerst Ittlemean Davd & Joseph

78. Copy of $29,011.50 Check drawn on Plaza Extra Account dated October 19, 2012 payable to Fuerst Ittlemean Davd & Joseph

79. Copy of $99,254.45 Check drawn on Plaza Extra Account dated Nov. 15, 2012 payable to Fuerst Ittlemean Davd & Joseph

80. Copy of $3,395.00 Check drawn on Plaza Extra Account dated January 3, 2013 payable to Fuerst Ittlemean Davd & Joseph

81. Copy of $111,660.24 Check drawn on Plaza Extra Account dated January 21, 2013 payable to Fuerst Ittlemean Davd & Joseph

82. Copy of $112,383.32 Check drawn on Plaza Extra Account dated February 12, 2013 payable to Fuerst Ittlemean Davd & Joseph

83. Copy of $82,274.87 Check drawn on Plaza Extra Account dated March 6, 2013 payable to Fuerst Ittlemean Davd & Joseph

84. Copy of $54,938.89 Check drawn on Plaza Extra Account dated April 3, 2013 payable to Fuerst Ittlemean Davd & Joseph

85. Copy of 17,500.00 Check drawn on Plaza Extra Account dated Mar 11, 2013, payable to O'Neill & Associates, together with invoice from O'Neill & Associates.

86. Copy of $3,395 Check drawn on Plaza Extra Account dated January 3, 2013 payable to Smock & Moorehead together with invoice from Smock & Moorehead.

87. United's Income Tax Return Forms 1120S for years 2002 through 2012.

APPENDIX B
QUALIFICATIONS

I received a BA degree from The Johns Hopkins University in 1966 and a JD Degree from the University of Maryland in 1999, where I served as an Associated Editor of the Maryland Law Review and graduated as a member of the Order of the Coif.

From 1970 until 1975 I was an associate with the firm of Frank, Bernstein, Conaway & Goldman in Baltimore, Maryland, becoming a partner of the firm in 1975. I was head of the Securities Department and became a member of the Management Committee of the Firm. A substantial portion of my time was spent dealing in the area of oil and gas drilling and real estate partnership syndications. I became Chairman of the Section Council of the Section of Real Property Planning and Zoning of the Maryland Bar Association and served as a member of the Governor's Commission on Condominiums, Cooperatives and Homeowners' Associations. I was one of the original lecturers for the Maryland Institute for Continuing Professional Education of Lawyers, Inc., a lecturer at the Maryland Judicial Institute, and an adjunct professor of law at the University of Baltimore School of Law.

In 1984, I left the law firm to become President of The Townsend Company, a Baltimore investment company specializing in the syndication of real estate partnerships. During my tenure, I was directly involved in the acquisition, financing and refinancing of properties, all owned by partnerships, involving more than $600,000,000.

In 1992, I returned to the full time practice of law on St. Croix. I have specialized in the areas of taxation, real estate, partnerships and estate planning for the past 22 years.

APPENDIX C
STATEMENT OF APPEARANCES AS EXPERT

I testified at trial as an expert witness on limited liability companies in the District Court of the Virgin Islands case of Frank C. Pollara Group, L.L.C., et al v. Ocean View Investment Holding, LLC, et. al., Civ. No. 1:09-cv-60

APPENDIX D
STATEMENT OF COMPENSATION

For my services in this case I am being compensated at my regular hourly rate of $450.00.