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

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

FATHI YUSUF'S REPLY BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

INTRODUCTION

The Motion to Nullify the results of the April 30, 2014 special meeting of the board of directors of Plessen Enterprises, Inc. ("Plessen") brings squarely into focus the responsibilities of this Court to exercise its discretion and intervene amidst the warring factions of the Hamed family and Yusuf family and appoint a receiver for Plessen.

The purpose of a receiver is to bring order out of the chaos of continuing shareholder deadlock that this Court has already recognized as "persistent."[1] This deadlock, particularly in light of the Opinion, has deteriorated to the point that it now threatens the integrity of the

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[1] See Hamed v. Yusuf, 2014 V.I. LEXIS 52, * 22 (Super. Ct July 22, 2014) (the "Opinion").

underlying business and the protection of core assets of the company owned by all the shareholders, not just the Hamed interests.

The actions taken at the hurry-up April 30th meeting orchestrated by the Hamed faction show the deteriorated nature of the situation: the purported "ratification" of the previous removal by the Hamed interests of nearly half a million dollars in Plessen cash that was diverted for non-Plessen purposes, appointment of a new lawyer to do the bidding of the Hamed faction, awarding dividends sought by the Hamed interests to fund their other non-Plessen ventures, which only drains more cash out of the company, and, most disturbingly, presumptuously locking Plessen into a long-term lease with unfavorable and continuously shifting financial and business terms that ties up a significant part of Plessen's real estate for Hamed's future purposes at the very moment when the overall thrust of both sides of this shareholder deadlock is to divide up the company's assets and go their separate ways.

Condonation by this Court of the unilateral actions taken by two Hamed directors at the April 30th board meeting is not calculated to resolve this matter in the interest of all shareholders; nullifying the actions taken and putting the entire operations of Plessen into the hands of a court-monitored receiver, as requested by the Yusuf family, is the only rational option and all authorities from all jurisdictions agree on that mechanism when shareholder deadlock runs as deep as it does here.

Indeed, one of the chief defects in the Court's Opinion is that it overlooks both controlling authorities in this jurisdiction and persuasive authorities from other jurisdictions as to dealing with shareholder deadlock.

The Court's unwillingness to address the fundamental issues calling for the appointment of a receiver permits control of Plessen to remain indefinitely in the hands of a self-perpetuating

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board of directors that has not held a proper meeting during the 25 year history of the company. Although the Yusuf family owns 50% of the shares of Plessen, they are relegated to the status of bystanders: a perpetual minority status vis a vis the Hamad faction[2], making a mockery of shareholder rights that the Court effectively endorses by its refusal to nullify the actions taken at the April 30th meeting.

By not nullifying these renegade actions, the Court unfortunately promotes the wrongful subversion of shareholder rights and ownership and relegates one-half of Plessen's owners - the Yusuf family - to the status of minority shareholders with no effective remedy or recourse. Other courts in jurisdictions with better developed case law than we have in the Virgin Islands dealing with shareholder deadlock situations, have consistently used the device of appointing a receiver when the differing factions have manifested their inability to jointly manage the assets they own. And in the one controlling Virgin Islands case on shareholder deadlock, court intervention was recognized as being in the interest of justice where, as here, the shareholders were deadlocked and a receiver could resolve the impasse between the shareholders.

In citing various Delaware and Pennsylvania cases instead of controlling Virgin Islands precedent, this Court has recognized the value of these authorities from other jurisdictions but then inexplicably ignored the rationale used in those precedents, leading to the Court's overly tolerant acceptance of outrageous acts taken unilaterally by the Hamed interests to feather their own nest and to the Court's equally perplexing resistance to the appointment of a receiver that both controlling Virgin Islands case law and Delaware precedents support as the proper solution.

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[2] Indeed, even though it is undisputed that the shares of Plessen are equally divided between the Hamed and Yusuf families, this Court's discussion of the applicable law likened the Hameds to the "majority" or "controlling" shareholders and the Yusufs to "minority" shareholders. See Opinion at * 12.

In the face of the Hameds blatant misuse of the Plessen corporate machinery, the Yusuf shareholders cannot be expected to stand idly by on the sidelines, as the Hamed faction plunders Plessen's assets at the expense of the Yusuf faction. Appointment of a receiver to operate Plessen and supervise an orderly division or liquidation of assets to the two families by (i) a buyout of the ownership by one faction of the other or (ii) an auction of Plessen's assets to third parties is the inevitable solution and the solution proscribed by law. In that context, the Court's role is to recognize the alternative solutions and facilitate their implementation rather than promote further deadlock by effectively approving the Hamed faction's self-dealing actions taken at the April 30th meeting, which only serves to undermine the latitude a receiver would need to properly fulfill the function of maximizing shareholder value in ultimately disposing of Plessen's assets.

ARGUMENT

The Opposition filed by Mohammed Hamed ("Hamed") to the Motion for Reconsideration filed by Fahti Yusuf ("Yusuf") offers little or no response to most of the arguments that were made in Yusuf's reply brief in support of his Motion to Nullify, and reiterated in his Motion for Reconsideration. And the arguments he does make in response are strained, to say the least. Hamed, the President and a director of Plessen, argues that there is nothing wrong with his son, Waleed, who also serves as a director of Plessen, secretly taking $460,000 in corporate funds because, after his theft was discovered by a Yusuf shareholder, he took steps to return half of the amount taken.[3] It is hornbook law that a misappropriation of

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[3]To recapitulate the pertinent facts of this unauthorized taking of corporate money, Waleed Hamed misappropriated the $460,000 by means of writing a Plessen check (signed by him and Mufeed Hamed) made payable to himself on March 27, 2013. Yusuf's son learned about the theft when the bank indicated his Plessen check reimbursing him for paying Plessen's property taxes might be returned for insufficient funds. He promptly filed a derivative action on April 16, 2013, which, inter alia, alleged conversion and breach of fiduciary duty by Waleed Hamed. Within 3

money is not excused by the making of restitution of the stolen funds, especially if restitution is made after discovery of the theft. See, e.g., State of Washington v. Kastner, 2001 Wash. App. LEXIS 2095, p. *8 (Wash. App. 2001) (affirming trial court's rulings that a dishonest employee's repayment of part of the amount she misappropriated, after learning that she was being investigated, "does not alter the amount of the theft," and that "restitution is not a defense to a theft"). This rule has special application where, as here, the perpetrator has a fiduciary relationship with the victim of his or her misappropriation. A fiduciary who steals from the person to whom he owed his duty is not excused from the breach and its legal consequences by making restitution to the victim, even in situations involving the theft of far less money than $460,000. In Kentucky Bar Association v. Tucker, 535 S.W.2d 97 (Ky. App. 1975), a lawyer settled a personal injury claim for a client, paid the client $42,000 rather than the $42,550 owed, and converted the $550 difference. The Supreme Court of Kentucky rejected the lawyer's argument that the fact that he made restitution of the $550, after an ethics complaint was filed, changed the character of the misappropriation and warranted a penalty less than disbarment:

> The fact that restitution was made does not alter the initial dishonesty in misappropriating his client's funds. With respect to a client's funds in the hands of an attorney, he is the trustee of an express trust, and converting these funds to his own use is such reprehensible conduct as to make him unworthy of public confidence and unfit to discharge in a proper manner his obligations as an officer of a court.

Id. at 98.

As a director of Plessen, it is axiomatic that Waleed Hamed owes a fiduciary duty to the corporation and to the Yusuf family shareholders. See, e.g., In the Matter of Reading Company,

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days of the filing of that lawsuit, having been caught with his hand in the proverbial cookie jar, Waleed deposited $230,000 into the registry of the Court. See Hamed's April 19, 2013 Notice to Court filed in the derivative case; see also Exhibit L to Yusuf's Motion to Nullify, Verified Complaint in Derivative Action, pp. 4-5 at ¶¶ 25-29 (describing facts of misappropriation and its discovery).

711 F.2d 509, 517 (3d Cir. 1983) ("corporate directors stand in a fiduciary relationship to their corporation and its stockholders"). Waleed's attempt to make partial restitution, after discovery of his theft, does not alter the reprehensible nature of his acts and the egregious breach of trust they represent.

The Plessen board resolution approving this misappropriation by a director as a dividend is an outlandish attempt to justify an obviously wrongful act. For that reason, as the Third Circuit stated in Moran v. Edson, 493 F.2d 400 (3d Cir. 1974), a misappropriation of this kind may only be ratified by unanimous shareholder approval, not by vote of the faction controlling the board who are aligned with the director who acted unlawfully. In making the conclusory assertion that the "$460,000 withdrawal, which did not harm anyone, was properly ratified [by the Hamed-controlled Board]," Opposition at p. 7, Hamed does not even try to surmount the holding of Moran, which is the controlling authority as to shareholder deadlock in the U.S. Virgin Islands.

The Court declined to address this critical issue in its ruling, apparently believing it is within the exclusive province of Judge Willocks, who is presiding over the related derivative case. That assumption overlooks the fact that in this case, unlike the derivative case, Yusuf seeks dissolution and appointment of a receiver for Plessen (in Count X of the First Amended Counterclaim). A director's misappropriation of corporate monies is plainly grounds for dissolution of a solvent company. See Zutrau v. Jansing, 2013 Del. Ch. LEXIS 71, p. 17 (Del. Ch. 2013) (allegation that a director withdrew "$250,000 from [corporation's] credit line and plac[ed] that money into his personal account" is the kind of misconduct that will justify appointment of a receiver for a solvent corporation). As such, the uncontroverted misappropriation by a Hamed director of $460,000 should have been considered by the Court in

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ruling on the motion seeking nullification of the April 30th board actions and appointment of a receiver.[4]

Another glaring omission in Hamed's Opposition is its failure to discuss in any meaningful way the Moran holding that deadlock at the shareholder level is a ground for dissolution and appointment of a receiver, especially when it is accompanied by entrenched and self-perpetuating control by a board of directors. What Hamed effectively argues is that because his family controls the Plessen board, there has been and can be no real impairment to the operation of Plessen, despite the irreconcilable and deep personal antagonism between the Yusuf and Hamed families.[5]

Hamed also fails to respond to the proposition that in the face of this shareholder deadlock, it would be intrinsically unfair to either the Hamed or the Yusuf ownership factions to allow the other faction to encumber a core asset of Plessen with their own long-term lease. The Court and Hamed are only able to reject this argument by misconstruing the intrinsic fairness

[4] As Yusuf pointed out in his Motion for Reconsideration, if anything, the first-to-file rule would mean that the Judge presiding in this case, rather than the Judge presiding in the derivative action, should decide the issue, because this action was brought before the derivative action was filed. See Yusuf's Motion for Reconsideration at p. 8 and n.7. Hamed's Opposition insists that what really matters for those purposes is not that this case preceded the derivative action, but rather that the derivative action was brought "before the counterclaim was filed in this case joining Plessen as a party. . .." Hamed's Opposition at p. 7. This argument misses the mark, because Hamed has already conceded in another motion filed in this case that Yusuf's and United Corporation's counterclaim "relates back to the time the original complaint was filed . . .." See Hamed's May 13, 2014 Memorandum in Support of Motion for Partial Summary Judgment, at p. 3.

[5] Hamed's cursory discussion of Moran badly mischaracterizes that decision. First, Hamed misquotes Moran when he argues that the test in Moran for appointment of a receiver is whether the corporation is able "to carry on its business to the advantage intended." Hamed's Opposition at 5. What Moran actually said is that a receiver should be appointed where the dissension between two groups of shareholders, each holding 50% of the shares, makes it "impossible to carry on the business with advantage to the parties interested, even though the corporation is solvent." 493 F.2d at 407. The actual standard articulated in Moran makes it clear that, where shareholders each owning 50% of the shares are in deadlock, and the business is being run to the disadvantage of one of the ownership factions, that is a sufficient grounds for appointment of a receiver. In addition, Hamed states that "Moran held that self-dealing in a corporation may be inevitable and acceptable," and that such self-dealing should only be prohibited if it confers "no benefit" to the corporation. Hamed's Opposition at 3. Moran nowhere states that a self-dealing transaction will be upheld so long as it confers at least some benefit on the corporation. Such a test would render the intrinsic fairness test a nullity.

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test. The Court and Hamed agreed with Yusuf's statement in his Motion to Nullify that Hamed has the burden of showing the intrinsic fairness of the lease and other disputed transactions. Where the Court and Hamed both go astray is in suggesting that the intrinsic fairness of the disputed Hamed Lease is only measured by its effects on Plessen, and not by its effects on the Yusuf shareholders.[6] In fact, the Delaware cases applying this test have consistently described it as requiring that the self-dealing transaction be intrinsically fair not only to the corporation, but also to the shareholders who are not parties to the transaction. See Sinclair Oil Corporation v. Levien, 280 A.2d 717, 723 (Del. 1971) (the party engaged in the self-dealing transaction "must prove that [it] was intrinsically fair to the minority shareholders"); Cascella v. GDV, Inc., 1979 Del. Ch. LEXIS 486, p. *3 (Del. Ch. 1979) (where one shareholder "stands on both sides of a transaction," that shareholder "has the burden of demonstrating the 'intrinsic fairness' of the transaction insofar as it affects the rights and interests of the minority shareholders"). Indeed, the case this Court appeared to rely heavily upon, Athos Steel, concluded that that the duty of loyalty owed by corporate officers and directors requires them to "devote themselves to the corporate affairs with a view to promote the common interests and not their own, and they cannot directly or indirectly, utilize their position to obtain any personal advantage other than that enjoyed also by their fellow shareholders." Athos Steel, 71 B.R. at 540 (emphasis supplied; citations omitted).

The Court's misunderstanding of this essential aspect of the intrinsic fairness test is the only way it can conclude that a core asset of Plessen should be tied up for as many as 30 years by

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[6] This Court stated that "Courts in the Third Circuit are less prone to examine the suspicious circumstances surrounding the transaction or the advantage conferred on the self-dealing party[,]" citing only to In re Athos Steel and Aluminum, Inc., 71 B.R. 525, 542 (Bankr. E.D. Pa. 1987). See Opinion at *13. Neither the Athos Steel case nor any other case Yusuf could find within the Third Circuit supports this proposition.

a sweetheart lease made with one ownership faction that is adamantly opposed by the other faction.

The Court also erred in concluding that when the intrinsic fairness of a corporate transaction is assessed, an important consideration is the "transaction's effect on the corporations' status quo following the implementation of the transaction." Opinion at * 12-13. A careful reading of the two cases cited by this Court for such proposition, Athos Steel and Reifsnyder v. Pittsburgh Outdoor Advertising Co., 396 Pa 320, 152 A.2d 894 (1959), shows they do not support the Court's conclusion at all. While the Athos Steel decision did make a passing notation that the disputed transaction "also accomplished, in effect, the maintenance of the status quo," see Athos Steel, 71 B.R. at 542, the Court never suggested that maintenance of the status quo was a factor to be considered in determining the intrinsic fairness of the disputed transaction. The Reifsynder case did not even identify, much less squarely address, the "intrinsic fairness" test and the words "status quo" do not appear in the opinion.

Even if maintenance of the status quo was a valid consideration in assessing the intrinsic fairness of disputed corporate transactions, and Yusuf has found no authorities pre-dating this Court's decision suggesting it is a valid consideration, it is respectfully submitted that this Court clearly erred in concluding that the disputed Hamed Lease "effectively maintains the status quo." Opinion at * 15. This Court myopically focused on a single provision of the disputed lease, which provided that it did not go into effect while the partnership between Hamed and Yusuf remained in possession of the premises, to reach the conclusion that the entire disputed lease somehow maintains the status quo. While the provision singled out by the Court may maintain the status quo with respect to the partnership's continued, rent free occupancy of the Plaza Extra – West premises, the entire Hamed Lease represents a radical departure from Plessen's status

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quo – a departure clearly designed to give Hamed an advantage in winding up the partnership.[7] Plessen's status prior to April 30th was one of overall neglect for 25 years. For over 14 years, the Hamed/Yusuf partnership had occupied the Plaza Extra – West premises without any formal agreement or payment of rent. This Court's ruling did not preserve Plessen's status quo, but rather endorsed a radical departure from the status quo that provides an extraordinary advantage to Hamed, by approving what Court described as the "'lynchpin' of Plaintiff's plan for winding-up the Hamed-Yusuf partnership," Opinion at * 12, while simultaneously saddling Plessen and the Yusuf shareholders with a lease that ties up Plessen's property for 30 years.

Not only did this Court fail to properly apply the intrinsic fairness test, it effectively created a new test, namely, "whether the transaction was objectively in the corporation's best interest." Opinion at * 13. Although the Court failed to set forth the parameters of the "best interest" test, surely it would include considering whether the disputed transaction provided the highest value or return for the corporation and its shareholders. In this case, Hamed and his son, acting as a majority of the board of directors of Plessen, simply gave themselves, via a start-up Hamed family owned company, a 30 year lease covering the most valuable portion of Plessen's property. They did not deign to offer this valuable lease opportunity to Yusuf, who no doubt could have competed with Hamed over the lease terms. More importantly, Hamed did not bother to expose the opportunity to third-parties and the market place to establish market value. Clearly, this sweetheart, insider deal was not in Plessen's "best interest."

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[7] It should not be forgotten that April 30th was not only the date of the historic board of directors meeting, it was also the deadline for Hamed to respond to Yusuf's motion seeking the appointment of a master to supervise the implementation of his wind up plan. On April 30th, Hamed filed his competing plan as part of his opposition to Yusuf's motion, with the disputed lease serving as its lynchpin.

Besides the fact that any encumbrance of Plessen's assets by the disputed Hamed Lease is intrinsically unfair to the Yusuf shareholders, the specific terms of the lease also show it to be unfair in numerous respects. Among these are the absence of an adequate personal guaranty to back up the lease obligations and prevent them from being breached with impunity. Hamed does not respond at all to the argument that his guaranty, by itself, is inadequate, in light of his advanced age (79) and ill-health.[8] As for the argument that Hamed moved to Jordan in 1996, and that all of his assets could easily be placed out of reach of Plessen,[9] he responds (oddly through his son's declaration) by claiming that he lives on St. Croix at the present time. But the fact that Hamed left the Virgin Islands to reside in Jordan in 1996 is not in dispute. That he came back to the Virgin Islands when the dispute between the parties arose hardly alters the reality that his permanent home is in Jordan, and that he will surely return there at the conclusion of this litigation. It is also significant that in his Opposition, Hamed, once again, completely ignores the absence of any obligation by the New Hamed Company to maintain hurricane insurance under the disputed lease. It is impossible for anybody who has experienced the devastation of Hurricanes Hugo (in 1989) and Marilyn (in 1995) to imagine a more obvious shortcoming of the disputed lease. This Court did not even address this issue in the Opinion and order for which reconsideration is sought.

In addition to the key holding regarding shareholder deadlock in Moran, Hamed also avoids discussing the Delaware Supreme Court decision in Giurich v. Emtrol Corporation, 449

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[8] Hamed have never offered any explanation why the actual shareholders of the New Hamed Company (Waleed Hamed, Waheed Hamed and Mufeed Hamed) have not provided their personal guarantees as is customary in long term commercial lease transactions.

[9] Discovery has revealed that Hamed currently has assets in Jordan, including several Jordanian bank accounts and real property holdings, among which is a substantial residence.

A.2d 232 (Del. 1982), which elaborates on the key corporate law concepts addressed in Moran. In that case, the trial Court, the Delaware Court of Chancery, rejected a request for appointment of a custodian,[10] on the grounds that, the existence of shareholder deadlock had not caused an "injury to any vital interests of the [50% shareholder faction that was outnumbered on the board of directors], nor has [the corporation] suffered any apparent injury." Id. at 235. In Emtrol, as in Moran and this case, there was deadlock at the shareholder level between two groups of shareholders, each of whom owned 50% of the stock of the corporation. One faction had three directors on the five-member board based on the original corporate documents, and that faction later expanded the board to seven members, of whom five were aligned with it. See Emtrol, supra, 449 A.2d at 235. As in this case, disputes arose between the two factions over such things as "equal board representations, control and disbursement of corporate funds [and] corporate dividends . . . ." Id. at 235. The parties conceded that they were "unable to elect successors," thereby "perpetuating the control of the present directors." Id. at 235.

In reversing the trial court's refusal to appoint a custodian, the Supreme Court of Delaware ruled that "[t]he plaintiffs have made an undisputed showing of utter disagreement between the two 50% stockholder factions on a number of serious issues." Id. at 240. It added that "[t]here is no indication that this shareholder deadlock will be resolved in the foreseeable future, absent judicial intervention," and that without that intervention, the "defendants appear to be assured of perpetual control." Id. at 240. The Delaware Supreme Court concluded, without any equivocation, that "[t]he Courts of this State will not allow "the wrongful subversion of corporate democracy by manipulation of the corporate machinery or by machinations under the

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[10]The custodian under the applicable Delaware statute, 8 Del. C. § 226, has, inter alia, "'standby' powers of a receiver." See Emtrol, 449 A.2d at 237.

cloak of Delaware law." Id. at 239. It held that "it was an abuse of discretion and error of law for the Trial Judge to deny the petition for the appointment of a custodian under § 226(a)(1), despite a conceded shareholder deadlock of indefinite duration which would, in effect, leave the existing directors in perpetual control of the corporate entity, and would relegate the one-half owners of the corporation to a perpetual minority status without remedy or recourse." Id. at 240.[11]

In his Opposition, Hamed opposes appointment of a receiver because he claims that "Plessen's day-to-day operations remain unaffected by the partnership dispute," insofar as the corporation is collecting rent and depositing it into an account and paying all of its bills. See Hamed's Opposition at p. 4. But much the same could be said of the effect of the partnership dispute on the daily business of the three grocery stores. That dispute did not interfere with ordering grocery shipments, keeping stores shelved, and selling groceries, and yet both parties (and the Court) agree that appointment of a master to wind up that business is necessary. Nor is it accurate to say that Plessen's operations have been unaffected by Hamed's breaches of fiduciary duty. Plessen has very few bills to pay, but one that must be paid each year is property taxes. As alleged in the verified complaint in the derivative action, Waleed Hamed's misappropriation of the $460,000 depleted most of the funds in Plessen's bank account, rendering the Plessen check written to Yusuf's son reimbursing him for paying taxes subject to being returned for insufficient funds. Moreover, on the important matters regarding Plessen,

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[11] In reversing the trial court, the Delaware stressed that no showing of "irreparable harm" to the corporation was required in order to justify the appointment of a custodian in the shareholder deadlock situation. Id. at 238. Instead, the Supreme Court said, the "injustices arising from a shareholder-deadlock which permits control of a corporation to remain indefinitely in the hands of a self-perpetuating board of directors," are enough to justify appointment of a custodian, even where there is no palpable harm to the corporation or "gross unfairness" to the shareholders who did not control the Board. Id. at 239. The Delaware Supreme Court contrasted modern law on this point with the law of an earlier era, which "made the [a shareholder's request for] appointment of a receiver for a solvent corporation almost hopeless . . .." Id. at 239.

there plainly is no agreement by the Hamed and Yusuf factions, as evidenced by Yusuf's Motion to Nullify. Hamed knows this, which is why he and his son scheduled the special meeting of the Board on extremely short notice and used his faction's majority on the Board to ram through corporate resolutions concerning important matters with millions of dollars at stake that the Yusuf side adamantly opposed. In this regard, Yusuf respectfully disagrees with the Court's description of the Plessen disputes as "relatively modest." Opinion at * 22. The propriety of a 30-year commercial lease implicating millions of dollars, which also served as the "lynchpin" of Hamed's wind-up plan, and a $460,000 misappropriation later whitewashed as a dividend are hardly modest issues. By failing to scrutinize at all the misappropriation and the board resolution approving it, and by failing to properly apply the intrinsic fairness test to these disputed corporate transactions, the Court effectively endorses and perpetuates the very conduct that it said "doesn't look good . . . [and] doesn't smell good . . . ." See Transcript of May 29, 2014 hearing at p. 32-3, attached as **Exhibit A**.

Finally, even if this Court were to deny most of the relief sought in Yusuf's Motion for Reconsideration, the Court should at the very least make clear that its denial of the Motion to Nullify is without prejudice to any future nullification of the Hamed Lease, which would be necessary if it adopts the Yusuf/United plan for wind-up submitted on June 16, 2014. Hamed makes no cogent argument against this alternative relief. He claims that because the Yusuf/United wind-up plan post-dated the briefing of the Motion to Nullify, it has no relevance to the Motion for Reconsideration of the Court's July 22 ruling. But if the Court were unaware of the June 16 plan, and if its ruling a month later might have been different had it known of the plan, then the existence of these new facts is a classic ground for a motion for reconsideration. See LRCi 7.3(2).

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For all the foregoing reasons, Yusuf respectfully requests this Court to reconsider and vacate its July 22, 2014 order, grant Yusuf's Motion to Nullify and Appoint Receiver, and provide such further relief as is just and proper.

Respectfully submitted,

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Dated: August 29, 2014 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2014, I caused the foregoing **Fathi Yusuf's Reply Brief in Support of Motion for Reconsideration** to be served upon the following via e-mail:

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SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

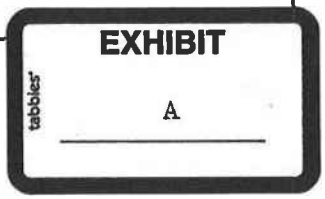
MOHAMMAD HAMED, by his authorized agent WALEED HAMED,	CASE NO.:
PLAINTIFF/COUNTERCLAIM DEFENDANT,	SX-2012-CV-0370
V.	
FATHI YUSUF and UNITED CORPORATION,	
DEFENDANTS/COUNTERCLAIMANTS,	
V.	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	
COUNTERCLAIM DEFENDANTS.	

Thursday, May 29, 2014

R.H. Amphlett Leader Justice Center
RR1 9000
Kingshill, St. Croix
U.S. Virgin Islands 00850

The above-entitled matter came on for a telephonic **CIVIL STATUS CONFERENCE**, a hearing before the Honorable Douglas A. Brady, Judge, in Courtroom Number 211, commencing at 10:06 a.m.

Randall Jon Belsvik, FCRR
Official Court Reporter
(340) 778-9750, Ext. 7152



that their plan is, by force and effect, one partner's going to end up with everything. Why can't Mr. Yusuf have the same thing that they are proposing for themselves?

MR. HOLT: Because --

AN ATTORNEY: We didn't propose that because we knew that the Court would never approve such obvious self-dealing.

MR. HOLT: That's not what happened. Mr. Yusuf (indiscernible) east store so he can try to open his new store. That's been his plan all around. He's already bought a piece of property out west and he wants to open up a new store, and that's what he talked about in his deposition. He's never intended to use the Plessen property. He knows from negotiations with the landlord in St. Thomas that they will not give him a new lease, so this idea that he would have done all that is incorrect.

THE COURT: All right. Let me just -- a couple of things: First of all, on the -- I'm not going to get into the Plessen issues at this point, but I agree that those present serious concerns going forward. Although we've only scratched the surface, and there doesn't seem to be Virgin Islands law in place, the Third Circuit, looking at Delaware and perhaps Pennsylvania, has cited and utilized what they call the intrinsic fairness test as to that kind of -- in analyzing the results of those close corporation, potentially conflict transactions.

The way the whole thing was put together, it -- of course, it doesn't look good, it doesn't smell good, but perhaps if, as Attorney Holt says, it's in compliance with the letter of the bylaws and the articles, then perhaps it passes.

And perhaps if the end result of what occurred is not intrinsically unfair, then perhaps Plessen can succeed, and they can all stay in place, but I agree with Attorney Hodges that it certainly probably isn't going to end up that way for an extended period of time, given the fact that these matters are now in litigation and we've got more coming concerning all of that -- that particular meeting and the result of that meeting.

So --

AN ATTORNEY: Your Honor?

MR. HARTMANN: Your Honor --

THE COURT: Yes.

MR. HARTMANN: -- this is Attorney Hartmann. I'd like to clarify one thing so that -- to see if everybody agrees on this. Maybe it will streamline it.

You asked the question about whether the Court has to be concerned with value or with community purposes. The -- and Attorney Hodges responded that you'd dispose of it in a commercially reasonable way.

If -- leaving aside all community values and