



and the propriety of a Plessen receivership may be revisited as may then be appropriate.

Moreover, the current motion is totally irrelevant to this action, as there is no pending claim in the Amended Counterclaim seeking such relief in this case.

In short, this case is about a partnership, not about shareholders of a separate corporation asking this Court to manage the internal goings-on of that corporation.<sup>1</sup> Before addressing the motion, a brief review of the relevant facts germane to this motion are in in order

## I. FACTUAL BACKGROUND

Plessen is a corporation whose only relationship to the Plaza Extra Supermarkets is that it is the landlord of one of the three Plaza Extra stores. Plessen has no part in the operation of the Plaza Extra Supermarkets partnership. Indeed, as previously noted, that corporation controls multiple properties in both islands, making a profit from its own separate business operations without any debt. See **Exhibit 1**.

Moreover, the portion of the Amended Counterclaim in this case that does deal with Plessen simply seeks dissolution, not involvement in any corporate board elections. **Indeed, not all of Plessen's shareholders are even parties in this case.**

Equally significant, Defendant Yusuf suggests in his moving papers (at p. 2 n. 1) that Plessen's By-Laws may not be valid, but then argues this point is irrelevant, stating:

[T]he validity of those bylaws is very much in doubt. For purposes of this motion, however, the Court may assume that the bylaws were promulgated by a valid resolution of the directors. (Emphasis added.)

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<sup>1</sup> In his Amended Counterclaim, Defendant only sought dissolution of Plessen -- and that was *on other grounds*. The concept of forcing a shareholders' meeting to elect new officers and directors was not part of any of the pleadings in this case.

It is unclear as to how that would work, as clearly the Court needs to make a determination as to what By-Laws govern Plessen before it can order an election of officers or directors pursuant to those By-Laws. Thus, this determination would have to be addressed first if this Court determined that the current "Summary" motion should be addressed now instead of later.<sup>2</sup>

Lastly, Yusuf Yusuf has brought an actual shareholders derivative action in another Court where such issue would be more properly addressed if it were ripe. See SX-13-CV-120, April 16, 2013.

With these relevant facts in mind, it is appropriate to address why the motion should be denied without prejudice, to be raised elsewhere if Defendant Yusuf still wishes to pursue this matter (preferably in the other proceeding forum where all shareholders can be joined). There are three arguments that warrant denying the motion in question, each of which will be addressed separately for the sake of clarity.

## **II. The Issue Is not properly before this Court**

Counts IX and X of the Amended Counterclaim in this action regarding Plessen seeks a dissolution of Plessen and an appointment of a Receiver. No relief was sought under Title 13 regarding the election of new officers and directors.

By the instant motion Defendant Yusuf now embarks on a totally new, unpled claim to try to create the statutorily required 'even' election. Then, assuming that it is an even vote, Yusuf will presumably make further motions, again which are not part of the pending action or related to it in any way. Thus, these new claims that Fathi Yusuf

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<sup>2</sup> Even if one cannot rely on those By-Laws -- the Articles clearly that state that there are three directors, who they are and that they serve until replaced by a properly called meeting. The Articles of Incorporation and By-Laws are already of record in the Court's file, but they can be resubmitted if requested.

seeks to introduce are not properly before this Court as they were never pled in the Amended Counterclaim.

Moreover, as this Court has now repeatedly noted, a parallel case has already been filed (SX-13-CV-120, April 16, 2013) in the Superior Court with regard to Plessen - which is a shareholder derivative action, where such claims would be more proper for resolution. In short, there is no pleading claim before this Court warranting consideration of the relief sought in this "Summary" motion, so it should be denied.

### III. Rule 20

As pointed out by Plaintiff previously in his motion to dismiss Plessen from this suit, Rule 20 provides in part as follows:

#### **Rule 20. Permissive Joinder of Parties**

##### **(a) Persons Who May Join or Be Joined.**

**(2) Defendants.** Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

**(A)** any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

**(B)** any question of law or fact common to all defendants will arise in the action.

Neither subsection (a)(2)(A) or (B) are met here.

First, seeking dissolution of corporation, which just happens to be jointly owned in part by some of the parties here, does not seek a right of relief against Hamed and Plessen "jointly" or "severally." Likewise, it does not seek relief "arising out of the same transaction, occurrence, or series of transactions or occurrences." Thus, the requirement of Rule 20(a)(2)(A) cannot be met.

Second, even if subsection (A) could be satisfied, the requirements of Rule

20(a)(2)(B) cannot be met, as the claim for corporate dissolution governed by 13 V.I.C. § 283, which is clearly not a "question of law or fact common to all defendants" named in the Amended Counterclaim. In *Glasser v. Government of the Virgin Islands*, 853 F. Supp. 852 (DVI 1994), the District Court addressed a similar issue of whether the facts raised in the counterclaim arose out of the same facts as the basic controversy between the parties. In that case, the plaintiff sued the Government for allegedly violating the federal Veteran's Reemployment Rights Act. The Government filed a counterclaim against the plaintiff for allegedly incurring unauthorized expenses on a government issued credit card. In striking the counterclaim, the Court held in part:

Because we cannot find that the two claims either involve the same factual issues or are offshoots of the same basic controversy, and because the legal issues are clearly dissimilar, we must grant plaintiff's motion to dismiss the counterclaim. *Id.* at 859.

Thus, Rule 20(a)(2)(B) requires the same result as that reached in *Glasser*, as there are no common facts or issues of law related to the other claims between the parties and the "Summary" relief being now sought, warranting a denial of this motion for this reason as well.

#### **IV. There are missing parties necessary to the relief being sought**

Finally, not all of the shareholders in Plessen Enterprises are parties to this litigation, as several members of the Yusuf family who own stock in Plessen have not been named as parties in this case.<sup>3</sup> Indeed, had the "Summary" claim in question been pled in the Amended Counterclaim, this issue would have been raised in the answer to it, which is one reason why new issues should not be injected outside of the pleadings (particularly at this late stage of this case).

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<sup>3</sup> This information is also in the Court's record, but can be supplied again if requested.

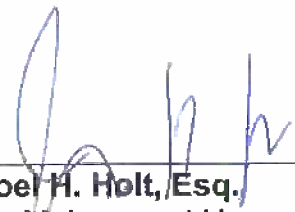
Moreover, this fact distinguishes the holding in *Moran v Edsen*, 493 F. 2d 400 (3<sup>rd</sup> Cir. 1974), which is repeatedly cited by Defendant. In this regard, all of the shareholders in that corporation had been joined as parties in *Moran*, which is not the case here.

Again, there is another forum where this issue can be addressed, but this issue is not properly before this Court since not all shareholders are parties here. As such, this motion should be denied for this reason as well.

**V. Conclusion**

For the reasons set forth herein, it is respectfully requested that the 'Summary' relief sought by Defendant Yusuf be denied.

**Dated:** September 22, 2014



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### CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of September, 2014, I served a copy of the foregoing Motion by email, as agreed by the parties, on:

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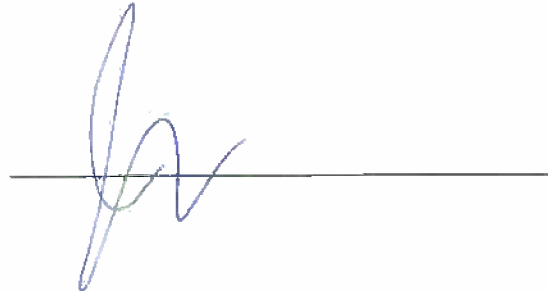
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A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the initials 'J.M.' or similar.

**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, INC.**,  
  
*Counterclaim Defendants.*

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**CIVIL NO. SX-12-CV-370**

**ACTION FOR DAMAGES  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**DECLARATION OF WALEED HAMED**

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an officer, director and shareholder in Plessen Enterprises, Inc. ("Plessen").
3. Plessen owns two properties on St. Thomas located at Ft. Milner and Mandela Circle as well as two properties on St. Croix at Estate Diamond and Estate Plessen.
4. Plessen is a real estate holding and leasing entity whose day-to-day



operations remain unaffected by the partnership dispute between my father, Mohammad Hamed, and Fathi Yusuf regarding the Plaza Extra Supermarkets.

5. Plessen collects substantial rent from its tenant in St. Thomas (\$36,000 monthly) and pays its bills without any problem. It has no need for excess cash and currently has over \$300,000 in excess cash in its account now.

**Dated:** September 22, 2014

  
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**Waleed Hamed a/k/a Wally Hamed**