

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

CIVIL NO. SX-12-CV-370

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

**WALEED HAMED, WAHEED
HAMED, MUFEED HAMED,
HISHAM HAMED,
and PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

JURY TRIAL DEMANDED

**PLAINTIFF HAMED'S RESPONSE TO
DEFENDANT'S COMMENTS RE PROPOSED WINDING UP ORDER**

Plaintiff Mohammad Hamed hereby responds to Fathi Yusuf's October 21st "comments, objections, etc." to the Court's October 7th "*Proposed Plan*." Hamed's responses are set forth in the order raised by Yusuf starting on page 4 of his filing, as follows:

1. **Liquidating Partner**-Hamed addressed the statutory requirements at length in his October 21st filing. Nothing further is needed at this time except to note the continuing saga regarding Yusuf's contempt for the Court and ignoring warnings from the Master as to the payroll, single signor checks and undeposited/unaccounted cash being used at Plaza Extra East, all of which (again) confirms why Yusuf should not be the Liquidating Partner.

2. **Plaza Extra East**-Hamed has two comments here:

- *Plot 4-H* is undeniably partnership property. It was purchased with partnership funds, so by statute it must be auctioned off as noted in Hamed's initial filing. Moreover, the partnership has not paid rent on this one acre parcel, as argued by Yusuf, as only a portion of the store is on this acre (as the plot map submitted with Hamed's initial filing shows). As for the portion of the store that is on this plot, every filing by Hamed related to the rent due for the store has contested the actual square footage of the Plaza East store based on the portion of the store on this plot (which is why there is a factual dispute as to the rent owed for 2013 and 2014 even under the rent formula Hamed believes applies to this store).
- With regard to the *equipment*, Hamed notes that Yusuf's refusal to pay whatever value is assessed by the Master for the equipment and inventory in the East store poses a problem that needs to be addressed. Hamed suggests that if Yusuf is not willing to agree pay for it once its value is assessed, the equipment be sold at a public auction and then removed by Marshal's Order if Yusuf is not the high bidder.

3. **Plaza Extra Tutu Park**-Yusuf now fully agrees this store has a lease that is a partnership asset and needs to be sold. Thus, the parties are in full agreement regarding this store. Hamed also agrees with Yusuf's point that whoever buys the store should receive the rights to the pending litigation with the landlord, so that point is mooted by agreement as well. Finally, Hamed also agrees that if he is the successful bidder for this asset, then he needs to make sure Yusuf and United are removed from

any further leasehold obligations and guarantees. Thus, the only thing left to do with this asset is to set up a bidding process.

4. **Plaza Extra West**-Yusuf's proposal to put this store up for bid with a lease *imposed* on the landlord, Plessen Enterprises, is not allowed under the code, as noted in Hamed's initial filing. Hamed will agree to pay for the inventory and equipment by assessment.¹ In short, there is an existing lease between the landlord and KAC357, Inc., so that the proposed plan to allow Hamed to buy the inventory and equipment so the operation of that store will not be interrupted is allowed under the code and makes common sense.² **Moreover, Yusuf's threats to slow the process by appeal of the lease issue should be ignored by this Court, as the rulings made by this Court are made based on the law. Indeed, either side can appeal the order at some point, so a party advancing a position which the Court accepts must always be ready to defend that position on appeal.**

5. **Plaza Extra Name**- The parties appear to agree that whomever ends up with the Plaza Tutu Park store should be able to use the Plaza Extra name there. That can be allowed *by agreement*. However, the parties appear to disagree as to the value and use of this name on the two existing St. Croix locations or any future stores, so this asset needs to be put up for bid as to the use of this name on any location other than the Tutu Park store.

¹ Indeed, if this Court has the authority to order a landlord to give a lease in-kind, then the Court should order Yusuf to give an identical lease for the Plaza East location and put that store up for bid as well.

² Unlike Yusuf, Hamed will pay the value of the equipment as determined by the Master, so this will not be an issue.

6. **Continued Employment of Employees**-Clearly it is in the interest of the employees to remain employed in any of the three stores where a current partner is to remain as the owner of that store, so the Court's suggestion as to this point should remain undisturbed. However, it is agreed that once any partner assumes sole control of one of the three stores as part of the liquidation process, then the sons of the other partner will no longer be employees there. This should be done by agreement of the partners, with each having their respective sons resign from employment as the store operations are transferred.

7. **Liquidation of Partnership Assets**-This point is one of concern to Hamed, as noted in his initial filing, as the contents of the balance sheet attached as Exhibit B to the Yusuf proposed Plan needs to be audited. Thus, no final authority to liquidate "non-store" assets should proceed without full disclosure to Hamed and the Master, which no sale to take place absent the final consent of the Master.

8. **New paragraph**-Hamed agrees that the addition of the new paragraph contained on page 14 of Yusuf's filing is appropriate in the final liquidation order

Dated: October 28, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2014, I served a copy of the foregoing by email, as agreed by the parties, on:

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