

IN THE SUPREME COURT OF THE VIRGIN ISLANDS



FATHI YUSUF,	)	
	)	<b>S. CT. CIV. NO. 2015-</b>
Appellant,	)	
	)	
v.	)	Re: Super. Ct. Civ. No. SX-12-CV-370
	)	
MOHAMMAD HAMED, WALEED	)	
HAMED, WAHEED HAMED, MUFEED	)	
HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
Appellees.	)	

**NOTICE OF APPEAL**

Notice is hereby given that Fathi Yusuf (“Yusuf”),<sup>1</sup> defendant in the above-referenced Superior Court action, pursuant to V.I. Code Ann. tit. 4, § 33(b)(1) and (2), and the collateral order doctrine recognized in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949) and explained in *Hard Rock Café v. Lee*, 54 V.I. 622, 628-30 (V.I. 2011), appeals the “Order Adopting Final Wind Up Plan” (the “Order”) entered by the Superior Court on January 9, 2015 for the liquidation and winding up of the partnership between Yusuf and Mohammad Hamed (“Hamed”) (collectively, the “Partners”) to the extent the Order (1) provides Hamed with the exclusive right to purchase significant assets of the partnership, namely, the building, improvements, inventory, and equipment of the Plaza Extra-West store; (2) requires the purchaser of the Plaza Extra-Tutu Park store to pay the non-purchasing partner 50% of the legal costs incurred in the “Tutu Park Litigation,” as defined at page 5 of the Order; and (3) requires Yusuf, as the Liquidating Partner under the Superior Court’s “Final Wind Up Plan” (the “Plan”) to continue paying the inflated salaries of Hamed’s four sons for 120 days following the Effective Date of the Plan.

<sup>1</sup> Pursuant to VISCR 4(c), the physical address and telephone number of Yusuf is care of the undersigned.

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



The issues to be presented on appeal include the following:

- (1) Whether the Court erred in applying the law and/or evaluating the evidence when it developed and approved the Plan by cobbling together provisions from the Partners' competing plans with provisions of its own instead of simply approving one of the Partners' plans or not approving any;
- (2) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which provides Hamed with the exclusive right to purchase the partnership assets associated with the Plaza Extra-West store;
- (3) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which unfairly provided Hamed with what the Superior Court referred to as the "lynchpin" to Hamed's competing liquidation plan, namely, the disputed lease between Plessen Enterprises, Inc. and KAC357, Inc., a company wholly owned by Hamed's sons, covering the Plaza Extra-West building and improvements constructed with millions of dollars in partnership funds;<sup>2</sup>
- (4) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which requires the purchaser of the Plaza Extra-Tutu Park store to pay the non-purchasing partner 50% of the legal costs incurred in the "Tutu Park Litigation," as defined at page 6 of the Plan;<sup>3</sup> and

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

<sup>2</sup> This is also an issue identified in Yusuf's Notice of Appeal filed on January 5, 2015 commencing S. Ct. Civ. No. 2015-0001.

<sup>3</sup> Pursuant to an Order approving a Stipulation between the Partners entered on January 27, 2015 (the "Order Modifying Plan"), the "Tutu Park Litigation" now includes another case entitled *United Corporation v. Tutu Park, Ltd.*, Civ. No. ST-97-CV-997.

(5) Whether the Superior Court erred in applying the law and/or record evidence when it approved the Plan, which requires Liquidating Partner under the Plan, to continue paying the inflated monthly salaries of Hamed's sons ( $\$23,815 \times 4 = \$95,260$  combined) for 120 days following the Effective Date<sup>4</sup> of the Plan regardless of the value, if any, of their services in the winding up of the partnership.

Respectfully Submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** January 28, 2015

By: /s/Gregory H. Hodges  
Gregory H. Hodges (VI Bar No. 174)  
Stefan B. Herpel (VI Bar No. 1019)  
Law House  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 774-4422  
Facsimile: (340) 715-4400  
E-Mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)  
[sherpel@dtflaw.com](mailto:sherpel@dtflaw.com)

and

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

Attorneys for Defendant/Appellant Fathi Yusuf

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

<sup>4</sup> Pursuant to the Order Modifying Plan, the Effective Date of the Plan is January 30, 2015.

**CERTIFICATE OF SERVICE**



I hereby certify that on January 28, 2015, I caused the foregoing **APPEAL** to be electronically filed with the Clerk of the Court using the V.I. Supreme Court e-filing system, and I caused a copy of same to be mailed to the following attorneys for the Plaintiff/ Appellee and Counterclaim Defendants/Appellees, via first class mail and email at the physical and email addresses shown below:

Joel H. Holt, Esq.  
Law Offices of Joel H. Holt  
2132 Company Street  
Christiansted, V.I. 00820  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Counsel for Plaintiff/Appellee  
Mohammad Hamed

Counsel for Counterclaim Defendant/Appellee  
Waheed Hamed

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

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

Counsel for Counterclaim Defendants/Appellees  
Waleed Hamed, Mufeed Hamed, and Hisham  
Hamed

Counsel for Counterclaim Defendant/Appellee  
Plessen Enterprises, Inc.

I further certify that on January 28, 2015, a copy of the foregoing **NOTICE OF APPEAL** was mailed to:

The Honorable Douglas A. Brady  
Judge of the Superior Court of the Virgin Islands  
Division of St. Croix  
R. H Amphlette Leader Justice Complex  
P.O. Box 929  
Christiansted, St. Croix 00821

/s/ Gregory H. Hodges

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1009 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

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