

**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, **MUFEEED HAMED**,)
HISHAM HAMED,)
and **PLESSEN ENTERPRISES, INC.**,)
)
Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

**HAMED'S OPPOSITION TO YUSUF'S JANUARY 29TH MOTION TO STAY PART OF
THE LIQUIDATION ORDER PENDING APPEAL**

Mohammad Hamed ("Hamed") hereby opposes Yusuf's January 29th Motion To Stay certain parts of this Court's January 7, 2015, *Order Adopting Final Wind Up Plan* ("Liquidation Order") pending Yusuf's effort to appeal portions of that Liquidation Order to the V.I. Supreme Court. Several brief preliminary comments are in order before addressing the merits of the motion.

First, while Yusuf has filed a notice of appeal as to the Liquidation Order, it is respectfully submitted that there is no appellate jurisdiction to hear this appeal. While appellate jurisdiction is a matter for the V.I. Supreme Court to resolve, Hamed wants to make that point for the record before addressing Yusuf's Motion to Stay.

Second, the Motion to Stay attempts to carve out certain portions of the Liquidation Order from other portions, essentially trying to return the Liquidation Order to the modified Yusuf Plan this Court has already rejected. While Hamed does not believe a stay is warranted for the reasons set forth herein, if a stay is issued, it should stay the entire Liquidation Order and not just part of it, as will be discussed in more detail later in section VII of this memorandum.

Third, this response will initially just address the issues relating to the stay of the Plaza-West store, with the other two items (the manager salaries and St. Thomas legal fees) discussed in section VIII (the Conclusion). Once it is understood why a stay is not appropriate for this first issue, it is easy to understand why a stay as to these two other items is equally unwarranted.

With the foregoing initial comments in mind, Hamed will first briefly revisit the Liquidation Order and will then address the legal issues relevant to this motion.

I. The Final Wind Up Plan

After denying the existence of the partnership for 18 months, when confronted with no other way out, Yusuf abruptly changed his position, agreeing that there was a partnership. His motives were clearly not altruistic. His own self-interest was on display when he used that admission to immediately move to dissolve the partnership. Yusuf's initial proposed plan called for the closure and liquidation of all three of the Plaza Extra Supermarkets, leading to the lay-off of over 600 employees and the loss of substantial tax revenues for the Government. In response, Hamed suggested a plan that would keep all three stores open, while maximizing the return to the partnership.

This Court adopted neither plan, but entered a balanced plan that accommodated both partners while maximizing the return for the partnership in liquidating its assets. Under the Court's Plan, the partnership can immediately begin closing its business activities (stopping all purchasing and sales, cutting off new potential lawsuits by transferring the business, etc.), which then allows the accounting to be finalized and the dissolution to become final.

Yusuf objects to Hamed buying the inventory and equipment at the Plaza Extra West location because he does not believe the lease to KAC357, Inc. is valid. However, if that lease is deemed to not be valid on appeal, the Plaza West store will simply be closed, as the partnership does not have a lease for this location. Again, while the community and employees will suffer if that happens, the only monetary risk of this happening lies solely on Hamed, not the partnership.

Thus, as drafted, the Wind Up Plan keeps this West store open for now, pending the resolution of validity of the lease on appeal. The only other alternative that would permit a wind-up now would be to close the Plaza-West store now so the partnership can be dissolved. **That alternative makes no sense.** With this brief analysis in mind, Hamed will now discuss the legal issues as they relate to the Motion To Stay.

II. The Standard For Granting or Denying a Motion For Stay

The parties agree on the relevant standard applicable to this motion. As Yusuf notes, a court should grant a stay based upon the factors "identical to that which applies to a request for a preliminary -- as opposed to a permanent -- injunction." *Tip Top Construction Corporation v. Government of the Virgin Islands*, 2014 V.I. Supreme

LEXIS 15,*4 (V.I. 2014) (citing to *Yusuf v. Hamed*, 2013 V.I. Supreme LEXIS 87,*12, n.3 (V.I. 2013)). As noted in *Yusuf v. Hamed*, supra, at *9, those factors are:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the preliminary relief will be in the public interest.

Each factor will be discussed separately, but it should be noted that based on the Liquidation Plan, the “success on the merits” factor *is probably the least significant*. Moreover, the “harm to the nonmoving partner (Hamed)” is probably the only one that raises a legitimate concern based on the facts before the Court.

In this regard, if the Supreme Court finds the lease not to be valid, the only result would be to close the Plaza-West store since the partnership has no leasehold interest there to do anything else. Thus, “success on the merits” as to this issue is irrelevant to proceeding with the full implementation of the entire Plan now, as the Plan would really be unchanged even if the lease were declared invalid.

On the other hand, a partial stay would place Hamed in a situation where his new competitor, Plaza East, was owned solely by Yusuf while Yusuf ran his store as the Liquidating Partner! This point will be discussed further in Sections V and VII.

III. Success on the Merits

This Court went to great lengths to address the merits of the lease as well as the propriety of the April 30th Plessen Board Meeting. This Court entered two lengthy

opinions, carefully analyzing Yusuf's arguments before rejecting them. As this Court is intimately familiar with each of these arguments, Hamed will not re-argue them here. However, it is clear that this Court's opinions are well supported by the applicable law and relevant facts, so that there is **no reasonable probability** that this Court's ruling will be overturned on appeal. To put it succinctly, the lease is intrinsically fair to Plessen (as well as its shareholders) and was approved at a Plessen Board meeting held in full compliance with all of Plessen's governing corporate documents.¹

In his motion, Yusuf argues that the court erred because it (1) forces him to deal with Hamed for the next 30 years as a co-owner of Plessen and (2) it encumbers Plessen with a lease that prevents a "closed auction for the Plaza Extra West business." Both arguments are without merit. First, Yusuf and Hamed own many other properties and companies together, both here and abroad. They will still be in business together after this case no matter what this Court does. Indeed, Plessen also owns multiple other properties on St. Croix and St. Thomas that are leased for long terms, as noted by the record. Thus, the argument that Yusuf is being forced to continue dealing with Hamed on non-partnership issues is both absurd and irrelevant here.

Second, as the Plaza Extra Partnership did not have a lease on the Plaza West location, there is no legal basis for arguing that this Court could have held a "closed auction" for the sale of this business. As such, while Yusuf argues that the Court's plan will deprive it of "millions of dollars" of value in the buildings and its improvements, this

¹ Yusuf's new submission of a computer-generated form does not change anything—indeed, it has Mohammad Hamed's birthdate as 2011. It is not signed and is nothing other than a hearsay, computed-generated filing. See Exhibit 1.

Court expressly deleted these items (leasehold improvements) from the Wind Up Plan for the same reason it did so on the Plaza Extra East location—the partnership had no lease, so it did not own these leasehold improvements (which belong to the fee owners, United and Plessen).

In short, there is very little likelihood of success on the merits. More importantly, as noted, a ruling invalidating the lease would not alter the current Liquidation Plan anyway, as the Plaza West store would just close. Thus, this factor is essentially irrelevant to whether a stay is appropriate.

IV. Irreparable Harm To Yusuf

Yusuf argues that he will be irreparably harmed if his “property interest” in the Plaza-West store is “allowed to be transferred.” However, *there is no such transfer of reality*, as all that is being transferred under the Liquidation Order is personal property, the value of which is its landed cost (just like the transfer of inventory at Plaza East).² In short, the transfer of personal property (inventory and equipment) does not constitute “irreparable harm,” as the value of these tangible items is easy to ascertain.

In short, what Yusuf is objecting to---the *alleged* transfer of real property---is not happening. There is no lease in the partnership's name for this Court to transfer---and hence, no leasehold improvements owned by the partnership either. This is just as true at the Plaza West location as it is at the Plaza East location. Thus, once understood, there is no “irreparable harm” to Yusuf.

² The parties have already agreed on the value of the equipment being transferred.

V. Harm To Hamed

Yusuf's argument that Hamed will not be harmed by staying the portion of the Liquidation Order dealing with the Plaza West location is completely inaccurate.

In this regard, the Liquidation Order is designed to wind up the entire partnership business as contemplated by 26 V.I.C. §173(c). If a partial stay were entered then a **final accounting could not take place, since part of the partnership would still be operating until the appeal is completed.** In short, a partial stay would require (among other things):

- The partnership to continue purchasing inventory;
- The partnership to continue maintaining equipment;
- The partnership to continue employing employees and paying their benefits;
- The partnership to continue to be exposed to new lawsuits filed due to store activities (i.e, slip and falls, etc.);
- The partnership to continue to purchase insurance.
- The partnership to continue filing tax returns.

While all of these activities would be limited to the Plaza West store under the Motion To Stay as filed by Yusuf, the point is the same---the partnership will not be able to do a final accounting and dissolve so long as Plaza West is kept open by a stay.

Moreover, a partial stay as requested would *significantly* impede Hamed's ability to compete with Yusuf in their respective new stores, as Yusuf would have sole control over the Plaza East location while being the sole Liquidating Partner in the Plaza West store. As there is no scenario where the partnership will ever be able to operate the Plaza West store since it has no lease, a conflict of interest arises in Yusuf having any

say in the management of the Plaza West store while Hamed has no say in the operation of the Plaza East store. Other, similar issues will arise, as follows:

- Plaza West will have to operate without the purchasing power of all three stores;
- Plaza West will have to find a new accountant since it would not want to use the accountant doing the books for its new competitor—Plaza East;
- If Yusuf discharges key employees (like Wadda Charriez) from the Plaza East location, Hamed would be unable to hire them to work in the Plaza West store so long as there is joint management of the Plaza West store.

These are just a few of the examples of the problems created by a partial stay in the continued operation of the Plaza West store if the rest of the Liquidation Order is allowed to go forward, all of which would severally jeopardize Hamed's efforts to make this store successful in light of the obvious competition that will result once the Plaza East store is turned over to Yusuf.

Thus, contrary to Yusuf's assertions, **Hamed will be severely harmed** if he has to incur the continued expense and burden of the partnership for another year or so, rather than closing and dissolving the partnership now.

VI. Public Interest

Yusuf objects to Hamed being able to buy the inventory and equipment at the Plaza Extra West location because he does not believe the lease to KAC357, Inc. is valid. However, if it is not valid, the store will simply be closed, as the partnership has no lease on this location, with Hamed taking the loss of having purchased the personal property currently located there.

Thus, while Yusuf argues in footnote 3 of his memorandum that this Court should have ordered "the sale of the land and buildings on which this store is located," there is

no legal basis for doing so, as the partnership had no lease for the premises. Indeed, if such an order could be entered, then this Court could have done the same for the Plaza Extra East (Sion Farm) location. However, just as this Court could not impose a lease on the Plaza East location, it could not impose a lease on the Plaza West location.

In short, the Wind Up Plan as issued keeps this store open for now, pending the resolution of validity of the lease on appeal. **Otherwise, the store would have to be closed now in order to have a Final Wind Up Plan in place, as previously noted.** The Court has previously found that keeping the stores open is in the best interests of the public, so this factor warrants a denial of the motion to stay as well.

VII. A Partial Stay would defeat the purpose of the Liquidation Order

Yusuf states on page 1 of his memorandum that he will appeal the entire Liquidation Order, so by filing a partial motion to stay it is clear he is trying to receive the full benefits of the Plan for himself without any of the burdens. Indeed, as noted, it would give him an unfair advantage in being able to compete with Plaza West, as he will have sole control over the Plaza East store while he will still have a Yusuf designated manager in the Plaza West location. Indeed, as the liquidating partner, he actually might have full control over this location, as noted.

Moreover, if a Partial Stay is entered, the purpose of the Plan would be defeated, as the Liquidation Plan is designed to dissolve the partnership, which in fact could not take place until all appeals are resolved if a Partial Stay is entered. In researching this issue, counsel could not locate any cases that allowed a partial stay of a winding-up

plan, which actually defeats the purpose of such a plan, which is designed to terminate the partnership business.

Thus, while Hamed does not believe a stay is warranted for the reasons set forth herein, if a stay is issued, it should stay the entire Liquidation Order and not just part of it. Alternatively, it should at least also stay the transfer of the Plaza East store (the new competitor for the Plaza West store) as well as the portion of the Liquidation Order making Yusuf the Liquidating Partner for that business if a stay is entered.

In short, either the entire plan should proceed or the entire plan should be held in abeyance since the purpose of a Wind Up Order is to completely dissolve the partnership at one time.

VIII. The Bond

Finally, if a stay is entered, a bond is needed that fully protects Hamed on appeal. While Yusuf suggests a nominal bond of \$25,000 is sufficient, he bases his argument on the assertion that Hamed will still get his 50% of the profits while the stay is in place. However, without a stay, Hamed and his family would get 100% of those profits. Moreover, they would get to operate the store without the current interference from the Yusufs that exists, as Yusuf has a co-manager in that store.

When that store was fully functional without the current management issues, it made a profit of \$250,000 a month (before income taxes). See **Exhibit 1**. As the appeal can be expected to take about one year, a bond of \$3,000,000 is needed to protect the Hamed interests. Thus, while Hamed does not believe a stay is needed, if the Court does issue one, the bond should be set at \$3,000,000 to protect Hamed's interests.

IX. Conclusion

Once the issues related to the Plaza West store are understood, it is clear that a stay is not warranted. Moreover, the same analysis applies to the other two issues for which a stay is also sought (the manager salaries and the St. Thomas litigation legal fees), particularly since those issues only involve monetary issues that are easily quantifiable.

In summary, the likelihood of success on the merits of the validity of the lease is really irrelevant, since the Plaza West store will just close if that lease is nullified for any reason. There is no irreparable harm to Yusuf since only personal property is changing hands. On the other hand, there is significant harm to Hamed if a stay is entered (particularly a partial stay). Likewise, the public interest lies in keeping the store open while the lease is being litigated on appeal.

Thus, for the reasons set forth herein, it is respectfully submitted that the Motion To Stay should be denied in all respects. Alternatively, if a stay is to be issued, it is respectfully submitted that the stay should be to the entire Liquidation Order and not just the parts that Yusuf does not like.

Dated: February 4, 2015



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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2015, I served a copy of the foregoing by email, as agreed by the parties, on:

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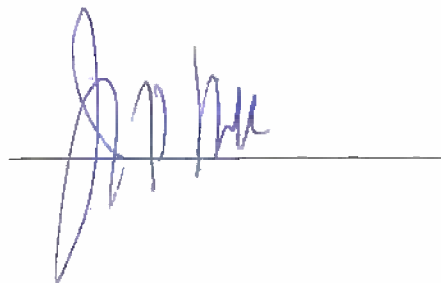
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Plaintiff/Counterclaim Defendant,

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HISHAM HAMED,
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Counterclaim Defendants.

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. The document attached as Exhibit 2 to the Motion To Stay is a computer generated document that was not created or filed by my father, Mohammad Hamed, or any of his sons listed in the above caption who are Counterclaim Defendants herein.
3. Indeed, this unsigned document lists my father's birthdate as February 17, 2011, demonstrating that this document is an inaccurate computer generated document without any substantive review of the accuracy of the facts set forth therein.
4. When the Plaza West store was fully functional, without the current management issues, it regularly made a profit of \$250,000 a month (before income taxes).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 3, 2015



Waleed Hamed a/k/a Wally Hamed

