

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

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

OPPOSITION TO PLAINTIFF’S MOTION FOR RELEASE OF PI BOND

Defendants/counterclaimant Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Opposition to the “Motion and Memorandum For Release of PI Bond” (the “Motion For Release”) filed by plaintiff/counterclaim defendant Mohammad Hamed (“Hamed”). Unfortunately, the Motion For Release represents yet another of Hamed’s multiple efforts to limit and now completely avoid any potential damages resulting from the preliminary injunction that went into effect on April 25, 2013 and extended at the very least through January 9, 2015, the date this Court entered an Order Adopting “Final Wind Up Plan” (the “Plan”). For essentially the same reasons set forth in Defendants’ Opposition to Plaintiff’s Motion For A Reduction Of PI Bond filed on May 9, 2014 (“Defendants’ Opposition”), this Court should deny the Motion For Release.

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In support of his latest motion, Hamed relies heavily on a single footnote in the Supreme Court's per curiam opinion dismissing Yusuf's consolidated appeals for lack of appellate jurisdiction. *See Yusuf v. Hamed*, 2015 V.I. Supreme LEXIS 6, *8-9 n. 3 (V.I. Feb. 27, 2015) ("However, the clear purpose of that preliminary injunction was to maintain the status quo until the Superior Court was able to consider his claims on the merits, the first step of which occurred when it issued the "Final Wind Up Plan" to govern the wind up of the partnership. Thus, the "final wind up plan" cannot be considered a modification of the preliminary injunction, since the preliminary injunction expired by its own terms when the Superior Court issued its merits decision.") (Citations omitted). The Supreme Court's *dicta* did not identify whose claims this Court "was able to consider . . . on the merits" or identify any decision of this Court purportedly resolving the parties' claims on the merits. While it may be true that the "clear purpose of . . . [the] preliminary injunction was to maintain the status quo until the Superior Court was able to consider . . . [all] claims on the merits," it is also indisputable that this Court's consideration and resolution of all claims and counterclaims has not yet taken place. Clearly, the Plan does not resolve the merits of the parties' competing claims. Indeed, Section 9, Step 6 of the Plan expressly provides:

Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination.

Assuming arguendo that the preliminary injunction is deemed to have expired on January 9, 2017, Hamed has not cited a single authority to support his suggestion at page 2 of the Motion for Release that if the injunction no longer exists, the bond must be released. As the

authorities cited in the Defendants' Opposition clearly show, the injunction bond must be maintained to insure that Hamed pays any damages sustained by Defendants if it is ultimately found they were wrongfully enjoined or restrained during the almost two years that the preliminary injunction was in place. The preliminary injunction bond represents the only source of payment in the event this Court ultimately determines that any aspect of the preliminary injunction was entered in error. *See* 13 James Wm. Moore et al., Moore's Federal Practice ¶ 65.50[2] (3d ed. 2014) ("The sum posted in a bond is determinative of the limit that may be recovered by a wrongfully restrained party[.]"). Until this Court¹ determines that neither United nor Yusuf has suffered damage as a result of the preliminary injunction, the bond imposed by this Court as a condition of the preliminary injunction must remain in place.

As Hamed would have this Court conclude, the preliminary injunction was entered merely "to preserve the status quo as to the operation of the stores pending a final resolution as to whether the stores were owned by United Corporation or by a Hamed-Yusuf partnership. *See Hamed v. Yusuf*, 2013 WL 1846506 (V.I. Super. 2013)." *See* Motion For Release at p. 2. It is noteworthy that Hamed fails to cite any page of this Court's decision that supports that proposed conclusion. Hamed suggests that once this Court entered the November 7, 2014 Order declaring that a partnership was formed between Hamed and Yusuf, there was no further purpose for a preliminary injunction to preserve the status quo as to the operations of the Plaza Extra stores. That position is contradicted by the numerous show cause motions Hamed filed for alleged violations of the preliminary injunction. There can be no doubt, however, that if, for

¹ In "Plaintiff's Reply Re His Renewed Motion To Reduce The Bond," filed on May 15, 2014, Hamed noted: "Presumably Yusuf intends to ask the jury to find that this Court erred in granting the injunction, resulting in damages to the partnership for having to continue to employ the four Hamed Sons." *Id.* at n. 3. Yusuf has no intention to ask a jury for damages. On September 29, 2014, Defendants filed and served their Motion To Strike Jury Demand. To date, no party has bothered to oppose that motion, which should be treated as conceded.

example, Yusuf fired Waleed Hamed after November 7, 2014 for his consistent failure to show up for work, Hamed would have filed yet another of his serial motions to show cause why Yusuf should not be held in contempt for purportedly violating the preliminary injunction.

This Court has previously noted that Defendants “contend that the preliminary injunction has prevented Defendants from terminating Plaintiff’s four sons, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed [the “Hamed Sons”],” which “will cost Defendants a total of \$1,388,000 per year (as each Hamed Son earns \$347,000 per year as a manager of the Plaza Extra supermarkets).” *See* December 5, 2013 Order Re-Setting Injunction Bond at p. 3-4. This Court then held that it “is persuaded that the annual salaries paid to Plaintiff’s sons do not necessarily reflect the value of their contribution to the businesses.” *Id.* at p. 4. In determining the amount of the bond, the Court explained “[f]or purposes of setting the injunction bond, seeking to provide the enjoined party with sufficient relief in the event that the injunction were determined to have been entered in error, the Court will set the amount of one half of the salaries of these four individuals as an expense that could constitute financial loss to Defendants.” *Id.*

Although the Motion For Release claims that this Court’s November 7, 2014 Order “confirms that the preliminary injunction was not erroneously issued,” a simple reading of that Order shows it does no such thing. Since entry of the November 7, 2014 Order, nothing has changed that would impact the need for the bond at the same level previously set by the Court. The preliminary injunction prohibited the Hamed Sons’ employment from being terminated. This Court recognized that the salaries paid to the Hamed Sons were inflated and exceed the value they contributed to the business. Hence, the injunction prohibited Yusuf from cutting or eliminating the inflated salaries thereby requiring unnecessary costs to be incurred. These costs

harmed Yusuf, at least with respect to one half of the salaries paid during the course of the preliminary injunction.²

Assuming, without conceding, that the preliminary injunction expired effective January 9, 2015, that injunction prevented the termination of the Hamed Sons for approximately 21 months. According to this Court's own calculations set forth in the Order Re-Setting Injunction Bond, the salaries paid to the Hamed Sons over that 21 months period exceeded \$2.4 million dollars. One half of that amount corresponds to the \$1.2 million dollar bond currently in place. Accordingly, the potential damage suffered by Yusuf in the form of unnecessary salary expense alone justifies the continuation of the \$1.2 million bond.

The preliminary injunction also prohibited Yusuf and United from taking unilateral action with respect to the possession and occupancy of Plaza Extra-East. In his February 4, 2015 Opposition to Yusuf's January 29th Motion to Stay Part of the Liquidation Order Pending Appeal, Hamed relied upon the Declaration of Waleed Hamed, attached as Exhibit 1, which declared, among other things, that "[w]hen 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)." If Hamed argues that these profit margins should apply with respect to Plaza Extra-West, the same would apply with even greater force with respect to Plaza Extra-East, the store that has historically generated the most profits. Accordingly, based upon the evidence presented by Hamed himself, United and Yusuf have been damaged over \$5,000,000 by being

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² Although the Supreme Court's decision cited above included *dicta* that the "preliminary injunction expired by its own terms when the Superior Court issued its merits decision," it is entirely unclear what "merits decision" the Supreme Court had in mind. In any event, it is this Court, in the first instance, which should determine whether its preliminary injunction has expired and, if so, the consequences of such expiration.

forced to continue the operations of Plaza Extra-East under the management regime imposed by the preliminary injunction for almost two years.


For all the foregoing reasons, Defendants respectfully request this Court to deny the Motion For Release and to provide such further relief as is just and proper.

Respectfully submitted,

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Dated: March 30, 2015

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2015, I caused the foregoing **Opposition To Plaintiff's Motion For Release Of PI Bond** to be served upon the following via e-mail:

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