

**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.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

REPLY TO OPPOSITION TO MOTION FOR RELEASE OF PI BOND

Despite Defendants' rambling response (even suggesting this Court should ignore the Supreme Court's opinion), it is undisputed that the April 25, 2013, preliminary injunction ("PI") has expired, with the Liquidating Partner now in charge of partnership operations. While Defendants argue that the bond should not yet be returned, a review of this Court's December 5, 2013, opinion explains why a bond was required:

The purpose of the injunction bond is to provide "a fund to use to compensate *incorrectly enjoined* defendants." *Id.* at p. 2 (citations omitted) (emphasis added).

As this Court noted in its PI opinion, the *sole issue* in dispute was whether the three Plaza Extra Supermarkets were owned by United Corporation or by a partnership between Hamed and Yusuf. *Hamed v. Yusuf*, 2013 WL 1846506 (Super Ct. April 25, 2014), *affirmed on appeal*, 2013 WL 5429498 (V.I. 2014). After reviewing the

evidence introduced at the PI hearing, this Court concluded that Hamed was likely to succeed on the merits of his claim, finding:

On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusuf with regard to the three Plaza Extra stores. *Id.* at *18 (¶ 15).

This Court then concluded as follows:

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. *Id.* at * 22.

As such, once it was established that a partnership existed (as finally *conceded* by the Defendants), there is no question that Defendants were not "incorrectly enjoined."

Thus, Yusuf's opposition to the release of the bond is nothing more than another obstructive filing designed to delay these proceedings, and to overburden this Court, rather than advance this litigation towards conclusion. Nevertheless, each argument will be briefly addressed.

Defendants first argue that Yusuf was improperly enjoined from firing Hamed's sons. Yusuf misunderstands why the injunction was issued, as both Defendants were enjoined from taking such unilateral action (like removing \$2.7 million from the bank account or firing Wadda Charriez), which they could have done **if the business were owned by United**. However, in the partnership these decisions required an agreement of both partners. Thus, the sole purpose of the preliminary injunction was to preserve the status quo of the business as a partnership, rather than allow it to function as a corporation. In short, once Yusuf agreed that the business was owned by the

partnership and its dissolution begun, there is no longer any viable argument that the PI was "incorrectly issued."¹

Defendants raise one other argument, claiming they are entitled to lost profits as they were prevented from taking back the Plaza East store earlier. In its December 5, 2013, opinion, this Court addressed every reason asserted by Defendants for setting the bond and this reason was never asserted by Defendants.² This belated issue—these alleged lost profits—is totally frivolous, as the only reason the transfer did not occur earlier is because Defendants insisted the store was owned by United, requiring the issuance of the PI. After Defendants dropped this claim and sought dissolution of the partnership, Hamed agreed, with dissolution then occurring. Thus, the PI did not delay this process once Defendants conceded the partnership issue.

One final comment is in order. If this Court believes there is any merit to *any* issue raised by Defendants, then an expedited hearing is requested now (before the Court or the Master), as the issue of the return of the bond is not one that has to await

¹ If Yusuf really believes the partnership paid unneeded salaries to the Hamed managers (as opposed to the Yusuf managers), he can assert that claim as part of the partnership accounting, but that is not a claim against the injunction bond that was required in case the PI had incorrectly enjoined the business from operating like a corporation rather than a partnership. As for Defendants comment that this should not be a jury proceeding, that issue need not be resolved in this motion.

² Indeed, the bond was established based on two claims, the Hamed salaries and a claim for expected fees in the criminal case due to the PI (that has now been abandoned). This fact alone should end this inquiry. As noted on page 3 of this Court's December 5, 2013, opinion setting the bond: "the amount of the bond 'is the limit of the damages the defendant can obtain for a wrongful injunction ... the bond can thus be viewed as a contract in which the court and plaintiff 'agree' to the bond amount as the 'price' of a wrongful injunction." Thus, as the bond amount did not include an allocation for this claim, it is outside of this "contract."

the outcome of the litigation once the PI is dissolved. As noted by the U.S. Supreme Court long ago in *Russell v. Farley*, 105 U.S. 433, 442, 1881 WL 19855 (1881):

Besides, the power to impose a condition implies the power to relieve from it. If, for example, it is deemed proper, upon an application for an injunction, to require, as a condition of granting or withholding it, that a sum of money should be paid into court, or that a deed or other document should be deposited with the register, and the developments of the case are afterwards such as to make it manifestly unjust to retain the fund or document and deprive the owner of its use, the court assuredly has the power (though, undoubtedly, to be exercised with caution) to order it to be delivered out to the party. When the pledge is no longer required for the purposes of justice, the court must have the power to release it, and leave the parties to the ordinary remedies given by the law to litigants *inter sese*. *Id.* at *6.

It is respectfully submitted that the bond in this case should be released forthwith based on the fact that the acknowledgment of the partnership's existence by Defendants makes it clear that the now expired PI was not incorrectly issued.

Dated: April 1, 2015



Joel H. Holt, Esq.

Counsel for Mohammad Hamed
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.

Counsel for Waheed Hamed
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2015, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
dewoodlaw@gmail.com

Gregory Hodges
Law House, 1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com

