

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

MOTION TO CLARIFY ORDER OF LIQUIDATION

The January 7, 2015, this Court entered the *Order Adopting Final Wind Up Plan* ("Liquidation Order"), which contained the following language in Step 4:

The Liquidating Partner shall promptly confer with the Master and Hamed to inventory all non-Plaza Extra Stores Partnership assets. All previous Partnership accountings are deemed preliminary. **Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and submit his findings to the Master.** The Liquidating Partner is ordered to submit an updated balance sheet to Hamed and to the Master without delay. (Emphasis added).

To assist in this process, Section 9, Step 2 of the Plan also provided in relevant part:

The Liquidating Partner shall submit to Hamed and the Master **each month** a reconciliation of actual expenditures against the projected expenses . . . (Emphasis added).

In order to be able to understand this very complicated accounting, Hamed retained the

services of an accounting firm from Miami, Vizcaino Zomerfeld, LLP. See **Exhibit 1**.

Two accountants from that firm traveled to St. Croix in late March to meet with the Liquidating Partner's in-house accountant, John Gaffney. However, as will be discussed below, Gaffney indicated he would be unable to provide any needed information for several more months, which was understandable in light of the complexity of the enormous accounting tasks he had to complete. The date for Hamed's accountant to gain access to these critical records in order to verify the accuracy of Gaffney's work was then moved back several more times at Mr. Gaffney's request. See **Exhibit 1**.

These delays concerned Hamed, who repeatedly discussed with Special Master Judge Ross why this delay created a problem for Hamed in verifying the accuracy of the accounting. However, as these delays were understandable, Hamed agreed to wait for this information to be provided so Gaffney could complete the multiple accounting tasks assigned to him. See **Exhibit 1**.

In July 17th, Gaffney submitted the first part of this detailed accounting to the Hamed's, which was voluminous. The materials provided resulted in Hamed's counsel speaking with Gaffney by telephone to understand the scope of what had been done as well as to express several specific, serious concerns counsel had about various accounting allocations that were apparently done. In short, these critical accounting decisions were all made without Hamed's input. See **Exhibit 1**.

On July 28th counsel for the Hamed's met with John Gaffney and Judge Ross to discuss this accounting. At that time, Gaffney presented a thumb drive with additional accounting records, which were also voluminous. Gaffney also stated he would not be

able to meet with the Florida accountants until late August at the earliest to provide access to the back-up records for this detailed accounting summary. That process is now set to begin in early September. See **Exhibit 1**.

In his July 31st report to this Court, the Liquidating Partner **admitted** on page 5 that he **“has not previously provided this [accounting] reconciliation”** as required by Section 9, Step 2, due to the size of the task and then stated further as follows:

The Liquidating Partner anticipates providing the Master and Hamed with the Partnership accounting required by § 5 of the Plan as part of the next and last bi-monthly report due on September 15, 2015.

Thus, while the accounting review will start in early September, Yusuf still intends to submit additional accounting information after that date. That information will, in turn, have to be reviewed.

Notwithstanding these problems and the Liquidating Partner's admission that he has not provided the accounting information as required by the Plan, in that same July 31st report the Liquidating Partner then concludes on page 5 as follows:

The submission of the Partnership accounting by the Liquidating Partner (on September 15] will serve as a trigger of the time within which the Partners may file their respective accounting and distribution plans contemplated by § 9, Step 6, of the Plan.

The time period in Step 6 of § 9 is 45 days, which is impossible for Hamed to meet due to the delays in getting this critical accounting information on a regular basis as was ordered and clearly contemplated by the Plan.

In short, while the delays in providing this critical and voluminous accounting information is understandable, which is why Hamed has not brought this matter to the Court's attention (as noted), the delays in getting this information has made it

impossible for Hamed to review and compile his own submission as ordered. Moreover, receiving all of this information in such a short time period has resulted in a “document dump” that requires an accounting firm to sort out. Hamed’s accountants believe it will take four months to review (through spot checks in part) the back-up for the materials submitted, assuming the Liquidating Partner and his accounting personnel fully cooperate in this process. See **Exhibit 1**.

As such, Hamed requests this Court to clarify and amend Step 6 of § 9 of the Plan as follows:

Within one hundred and twenty (120) 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 Claim Reserve Account.

This additional time will allow Hamed to be able to review these voluminous materials and then be in a position to submit a proposed distribution plan.

As such, for the reasons set forth herein, it is respectfully requested that the January 7, 2015, Liquidation Order be amended as requested. A proposed Order is attached.

Counsel has spoken with the Master, Judge Ross, who stated that counsel can inform the Court that he has no objection to this request.

Dated: August 14, 2015



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2015, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
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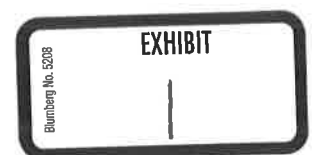
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DECLARATION OF JOEL H. HOLT

I, Joel Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am counsel of record for the Plaintiff and have personal knowledge of the facts set forth herein.
2. After this Court entered its Liquidation Order, the Liquidating Partner began the task of closing the partnership. This task included doing the inventory and then transferring three stores, the last one of which was not transferred until May 1, 2015.
3. The accounting needed to close the partnership has been done by John Gaffney. Needless to say, the task has been enormous.
4. Because of the extensive accounting issues undertaken by the Liquidating Partner who is hostile to the Plaintiff, the Plaintiff hired an accounting firm, Vizcaino Zomerfeld, LLP, to review all partnership accounting records.
5. In late March, two members of this firm flew to St. Croix and met with the Liquidating Partner's in-house accountant, John Gaffney, to arrange for the review of these accounting records.



6. Due to the enormous nature of the accounting tasks that John Gaffney was required to do as a result of the partnership liquidation, as well as to comply with certain accounting obligations in the criminal case, John Gaffney (understandably) indicated that he would not be able to provide access to these records until June 1, 2015.
7. The date for Hamed's accountant to gain access to these critical records in order to verify the accuracy of Gaffney's work was then moved back several more times.
8. These delays concerned Hamed, who repeatedly discussed with Special Master Judge Ross why this delay created a problem for Hamed in verifying the accuracy of the accounting. However, as these delays were understandable, Hamed agreed to wait for this information to be provided so Gaffney could complete the multiple accounting tasks assigned to him.
9. In July 17th, Gaffney submitted the first part of this detailed accounting to the Hamed's, which was voluminous.
10. The materials provided resulted in Hamed's counsel speaking with Gaffney by telephone to understand the scope of what had been done as well as to express several specific, serious concerns counsel had about various accounting allocations that were apparently done. In short, these critical accounting decisions were all made without Hamed's input.
11. On July 28th counsel for the Hamed's met with John Gaffney and Judge Ross to discuss this accounting. At that time, Gaffney presented a thumb drive with additional accounting records, which were also voluminous. Gaffney also stated he would not be able to meet with the Florida accountants until late August at the earliest to provide access to the back-up records for this detailed accounting summary. That process is now set to begin in early September.
12. According to the two accountants assigned to this task by Vizcaino Zomerfeld, LLP., his accounting task will take approximately four months, which is still relatively quick since the accounting being reviewed took seven months to complete by an accountant who was familiar with the partnership books and records.

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

Dated: August 14, 2015



Joel H. Holt

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ORDER

On January 7, 2015, this Court entered an *Order Adopting Final Wind Up Plan*. The Plaintiff has filed a motion requesting this Court to clarify and amend Step 6 of § 9 of that Plan. Upon consideration of the matters before the Court, it is hereby Ordered that the January 7th Order is amended as follows:

Within one hundred and twenty (120) 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 Claim Reserve Account.

Dated:

HONORABLE DOUGLAS A. BRADY
Judge, Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of Court

By: _____

Deputy Clerk

Dist: Honorable Edgar Ross, Joel H. Holt, Carl Hartmann, Gregory Hodges, Nizar Dewood, Mark Eckard, Jeffrey Moorhead