

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

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

OPPOSITION TO MOTION TO CLARIFY ORDER OF LIQUIDATION

Defendant/counterclaimant Fathi Yusuf (“Yusuf”), through his undersigned counsel, respectfully submits this opposition to the “Motion to Clarify Order of Liquidation (“Motion To Clarify”)” filed by plaintiff/counterclaim defendant Mohammad Hamed (“Hamed”) on August 14, 2015.¹ For the reasons set forth below, Yusuf submits that the Motion To Clarify should be denied.

Initially, it should be noted that the Motion To Clarify does not seek any clarification of the “Order Adopting Final Wind Up Plan” dated January 7, 2015 (the “Wind Up Order”). Rather, it simply seeks to modify the Wind Up Order by significantly extending the time within which the Partners² must each submit their proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account (“CRA”) from 45 days to 120 days after the Liquidating Partner completes the liquidation of Partnership Assets. *See* Motion To Clarify at

¹ Counsel for Yusuf and Hamed agreed that Yusuf may have until September 4, 2015 to respond to the Motion To Clarify.

² Capitalized terms not otherwise defined shall have the meaning provided for in the Final Wind Up Plan (the “Plan”) adopted by the Wind Up Order.

p. 4. Not only does the Wind Up Order and the Plan provide for 45 days to submit proposed accounting and distribution plans (see Wind Up Order at Step 6, page 9, and Plan at § 9, Step 6), but all of the competing plans submitted by the Partners prior to the entry of the Wind Up Order similarly provided that the accounting and distribution plans for the funds remaining in the CRA would be submitted within 45 days after completion of the liquidation of Partnership Assets. The very first plan submitted by Hamed as Exhibit 2 to his Response to Motion to Appoint Master For Partnership Wind Up filed on April 30, 2014 provided at § 8(B), Step 8 (p. 15) as follows:

Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, the Master shall present a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account.

On October 21, 2014, Hamed filed his “Comments Regarding Proposed Winding Up Order,” which included a proposed revised plan as Exhibit 4 providing in pertinent part at § 8, Step 6 (p. 13) as follows:

Within 45 days after the Master 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.

Hamed did not timely seek any reconsideration or modification of the Wind Up Order. His belated efforts to modify such order and the Plan more than seven months after their entry should be rejected.

Not only is Hamed’s request to modify the Wind Up Order untimely, the reasons he offers for the extraordinary extension are groundless. As Hamed would have this Court believe, Fathi Yusuf, as Liquidating Partner, failed to provide Hamed with the information required by the Wind Up Order until accounting information was provided on July 17 and 28, 2015. *See*

Motion To Clarify at p. 2 and supporting declaration of counsel at ¶¶ 9 and 11. Indeed, Hamed likens the receipt of the voluminous accounting information in such a short period of time as a “document dump” requiring an accounting expert to sort out. *See* Motion To Clarify at p. 4. Despite Hamed’s suggestion that he has not received accounting information in a timely manner as required by the Wind Up Order, he can point to no failure on the part of the Liquidating Partner to timely provide information required by the Wind Up Order or the Plan, with the sole exception of the reconciliation of actual expenditures against projected expenses set forth in Exhibit A to the Plan, as required in § 9, Step 2 of the Plan.

The Liquidating Partner’s second bi-monthly report (at p. 3-4) and his third bi-monthly report (at p. 5) acknowledge that this reconciliation was not timely provided because, as explained in the second bi-monthly report, “the accounting personnel available to . . . [the Liquidating Partner] have been overwhelmed with the myriad issues involved with the liquidation of the Partnership’s Assets and the transfer of the Plaza Extra Stores while they continued to operate.” As pointed out in the second bi-monthly report, however, “all of the actual expenditures through April 30, 2015 have been accurately reflected in the bank statements, ledgers, and reconciliations concerning the CRA, LEA [Liquidating Expense Account], and other operating accounts,” were timely provided to Hamed. Accordingly, the only thing that Hamed was not timely provided is the reconciliation of actual expenditures to a projection. That reconciliation, provided to Hamed prior to the filing of the third bi-monthly report, reflected that actual expenditures incurred through June 30, 2015 were approximately \$4,000,000 less than the projected expenses reflected in Exhibit A to the Plan. *See* Third Bi-Monthly Report at p. 5. In his Motion To Clarify, Hamed does not even suggest that his non-

receipt of the reconciliation of actual expenditures to projected expenses until July 2015 has created any complications or difficulties for his accountants.

In order to determine whether the Liquidating Partner has complied with his reporting obligations under the Plan, it is appropriate to analyze the relevant provisions of the Plan. Section 5 of the Plan obligates the Liquidating Partner “to report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts.” Yusuf has done that by timely filing three bi-monthly reports on March 30, 2015, June 1, 2015, and July 31, 2015. Section 5 of the Plan also obligates the Liquidating Partner to “provide a partnership accounting.” The Plan does not specify when such accounting is to be provided. In his third bi-monthly report, Yusuf stated that he anticipates providing such accounting as a part of his next and last bi-monthly report due on September 30, 2015.³

As indicated above, § 9, Step 2 obligates the Liquidating Partner to submit to Hamed and the Master a monthly reconciliation of actual expenditures against the projected expenses set forth in Exhibit A to the Plan. While Yusuf acknowledges that this reconciliation was not provided until his third bi-monthly report, given the fact that he timely provided all of the information concerning actual expenditures, Hamed can show no prejudice whatsoever by such delay. As set forth in the second bi-monthly report, “no disbursements have been made from the CRA or LEA without the approval of the Master. The Liquidating Partner has provided the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows concerning these accounts from inception through April 30, 2015. Copies of the bank statements, ledgers, and reconciliations reflecting the inflows/outflows of the other

³ At page 3 of the Motion To Clarify, Hamed incorrectly states that this accounting and the next bi-monthly report will be provided on September 15, 2015.

bank accounts used jointly by the partners in the operation of Plaza Extra-East and Plaza Extra-West from March 1, 2015 through April 30, 2015 have been provided to the Master and Hamed.” (footnotes omitted). The Motion To Clarify fails to acknowledge the timely receipt of this information. The third bi-monthly report provides:

A combined balance sheet for the Plaza Extra Stores as of June 30, 2015, a balance sheet for each store as of June 30, 2015, a combined income statement for the Plaza Extra Stores from January 1, 2015 through June 30, 2015, income statements for each store for the same period, and supporting general ledger, cash reconciliation, accounts receivable aging and accounts payable aging information (collectively, the “Financial Information”) have been provided to the Master and Hamed with or prior to this report.

In the Motion To Clarify and the supporting declaration, Hamed acknowledges receiving this information. Further, updated information will be provided in connection with the next bi-monthly report. In sum, the Liquidating Partner has consistently provided Hamed with all the important financial information required by the Plan.

As indicated above, § 9, Step. 6 of the Plan provides, in pertinent part, that “[w]ithin forty-five (45) days after the Liquidating Partners 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.” As reflected in the third bi-monthly report, the Liquidating Partner does not contemplate liquidating any other Partnership Assets given the fact that the three stores have now been liquidated.⁴ Because § 9, Step 6 of the Plan does not clearly delineate when the 45 days begins to run and because the Liquidating Partner believes that the liquidation of Partnership Assets has been completed, in order to provide a start date for the 45 day period contemplated under § 9, Step 6 of the Plan for

⁴ Hamed filed a Notice of Objection to the Liquidating Partner’s bi-monthly reports on August 18, 2015 in which he suggests that there is a bank account and parcel of property owned by the Partnership that should be liquidated. Yusuf will respond to that objection separately.

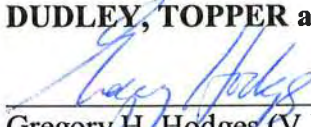
the Partners to submit proposed accounting and distribution plans for the remaining funds in the CRA, in his third bi-monthly report, the Liquidating Partner provided that the submission of the partnership accounting contemplated by § 5 of the Plan would trigger this 45 day period. While the Liquidating Partner may be amendable to a reasonable extension of the 45 day period,⁵ Hamed has provided no admissible evidence from his accountants or otherwise establishing why 4 months is required to submit an accounting and distribution plan for the funds remaining in the CRA.

For all of the foregoing reasons, Yusuf respectfully requests this Court to deny the Motion To Clarify and provide such further relief as is just and proper under the circumstances.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: September 3, 2015

By:



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⁵ Counsel for Yusuf will make a good faith effort to negotiate a stipulated extension with counsel for Hamed.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2015, I caused the foregoing **Opposition To Motion To Clarify Order Of Liquidation** to be served upon the following via e-mail:

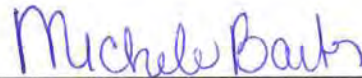
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