

**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 ,)	
)	
Plaintiff/Counterclaim Defendant,)	ACTION FOR DAMAGES,
)	INJUNCTIVE RELIEF
vs.)	AND DECLARATORY RELIEF
)	
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.)	
_____)	

LIQUIDATING PARTNER'S SIXTH BI-MONTHLY REPORT

Pursuant to this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner¹, respectfully submits this sixth bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.

Pursuant to the Court's "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order"), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan "shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015."

On February 25, 2015, the Claims Reserve Account ("CRA") and the Liquidating Expense Account ("LEA") were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. The

¹ Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

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Liquidating Partner has provided the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows of these accounts from inception through December 31, 2015. Copies of the bank statements, ledgers, and reconciliations reflecting the inflows/outflows of the other bank accounts used jointly by the Partners in the operation of the three stores from May 1, 2015 through August 31, 2015 have previously been provided to the Master and Hamed.²

On March 5, 2015, the Master issued his “Master’s Order Regarding Transfer of Ownership of Plaza Extra West.” On March 6, 2015, the Master issued his “Master’s Order Regarding Transfer of Ownership of Plaza Extra East.” An accounting reconciling the difference in the inventory and equipment values involved in the transfer of Plaza Extra East and Plaza Extra West has occurred resulting in the payment of \$1,211,267.01 to Yusuf in July 2015.

The closed auction for Plaza Extra Tutu Park took place on April 30, 2015, pursuant to the Master’s Order dated April 28, 2015. On April 30, 2015, the Master issued his “Master’s Order Regarding Transfer Of Ownership Of Plaza Extra Tutu Park” (the “April 30 Master’s Order”), pursuant to which that store was transferred to Hamed’s designee, KAC357, Inc., for

² These accounts used by all three stores remained open as an operational necessity with the consent of the Partners and the Master. Since these accounts were joint signatory accounts signed by representatives of both Partners, Hamed had uninterrupted, unfettered access to monitor these accounts. All checks drawn on these accounts have been signed by a representative of both Partners. All of these accounts, except one account at Scotiabank, were closed effective July 10, 2015 with all of the funds from those accounts transferred to the CRA. One account was left open with a balance of \$1,000 for a few additional days because of pending document requests related to the 2014 Department of Justice review and Scotiabank needed an account to charge. After deducting fees, the \$895 balance in the account was transferred to the CRA.

the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation (collectively, the "Tutu Park Purchase Price"), which has been paid.³

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master's Order (p.2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition to the valid transfer of the Tutu Park store. In the absence of the prompt delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation.⁴ Given the passage of more than nine (9) months since the releases should have been delivered, the Liquidating Partner is requesting the Court's intervention regarding the final disposition of the Tutu Park store.

The Liquidating Partner is also working to resolve issues involving recent claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner and Master authorized the payment of the entire, allocable taxes for 2012 and 2013 in the amount of \$79,009.87 and a check for that amount has been delivered to Tutu Park, Ltd. The property taxes for 2014 and 2015 have not yet been billed, but reserves will be

³ Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.

⁴ At the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of 6 trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 trailers was indisputably Partnership property, the Liquidating Partner needs to determine what was contained in these trailers and the value of such content. Although Yusuf has claimed he is entitled to ½ of the value, the Master has rejected that claim.

set aside to pay these taxes.⁵ The Liquidating Partner rejected Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 because all parties concede that no percentage rents were due as of the effective transfer of the Tutu Park store.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.⁶ Hamed has inquired about the disposition of ½ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002 (the "Land"). Yusuf submits that the Land has been erroneously carried on the balance sheet of the Partnership, because the record owner of the Land, pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation jointly owned by the Hamed and Yusuf families. The Land was encumbered by a mortgage dated August 24, 2006 from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed the Land to United. Pursuant to a Release Of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering the Land.⁷ Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed.

⁵ If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged by formula to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when the \$79,009.87 was paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized the payment of \$89,442.92 to United based on that formula.

⁶ With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by Nejeih Yusuf in connection with his co-management of Plaza Extra Tutu Park was purchased by United on May 1, 2015 for the sum of \$5,000.

⁷ The fourth bi-monthly report contained dated information. After that report was filed, counsel for the Liquidating Partner learned of the subsequent conveyance of the Land to United.

Accordingly, the Liquidating Partner does not intend to pursue liquidation of the Land or the mortgage since the Partnership has no continuing interest in either.⁸

An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan. Combined balance sheets and income statements for the Partnership as of December 31, 2015 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. John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, has compiled the Financial Information, which the Liquidating Partner believes is generally reliable and historically accurate.⁹

The pending litigation identified in Exhibit C to the Plan was updated by the more detailed list attached as Exhibit C-1 to the first bi-monthly report. Since that updated Exhibit was prepared, the Allembert and Isaac claims have been settled. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation and any future litigation that may be filed within the two year statute of limitations period for personal injuries allegedly occurring prior to the transfer of the Plaza Extra Stores. Such reserves will be established out of the funds in the CRA.

⁸ On August 18, 2015, Hamed filed a “Notice of Objection to Liquidating Partners Bi-Monthly Reports” (the “Objection”), which raised the issue of the Land, among other issues, but acknowledged that these issues would be addressed in the “claims portion” of the liquidation process. On September 3, 2015, Yusuf filed his Response to the Objection.

⁹ The submission of the Financial Information by the Liquidating Partner is not intended to impair or otherwise affect the right of either Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

Section 9, Step 2, of the Plan requires the Liquidating Partner to “submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidated Expense Account.” That reconciliation was provided to the Master and Hamed with the third bi-monthly report. It reflected that the actual expenditures incurred through June 30, 2015 in winding up the Partnership and liquidating its assets were approximately \$4 million less than the projected expenses reflected in Exhibit A to the Plan. An updated reconciliation through August 31, 2015 was provided to the Master and Hamed with the filing of the fourth bi-monthly report reflecting a similar difference. An updated comparison through October 31, 2015 was provided to the Master and Hamed with the filing of fifth bi-monthly report. An updated comparison through December 31, 2015 was provided to the Master and Hamed with the filing of this report.

On October 15, 2015, the Master requested counsel for the Partners to submit a list of (a) any Partnership Assets other than the Plaza Extra Stores that require the attention of the Liquidating Partner or the Court for separation; and (b) any pending motions that affect the disposition of Partnership Assets. Counsel for the Partners submitted such lists to the Master on October 23, 2015 and reviewed such lists with the Master at a meeting on January 25, 2016, at which the parties discussed, among other issues, an invoice in the amount of \$57,605 presented by Dudley, Topper and Feuerzeig, LLP to the Liquidating Partner for services rendered after entry of the Wind Up Order through November 30, 2015 related to the

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Liquidating Partner's duties, pursuant to § 4 of the Plan. The Liquidating Partner and the Master have authorized the payment of those fees.

Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed with the Court on October 5, 2015 and "So Ordered" on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

Respectfully submitted this 1st day of February, 2016.

DUDLEY, TOPPER and FEUERZEIG, LLP

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2016, I caused the foregoing **Liquidating Partner's Sixth Bi-Monthly Report** to be served upon the following via e-mail:

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