

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.,)

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

**DUDLEY, TOPPER AND FEUERZEIG’S BRIEF
IN OPPOSITION TO MOTION TO DISQUALIFY COUNSEL**

INTRODUCTION

Plaintiff Mohammad Hamed (“Hamed”) seeks to disqualify the law firm of Dudley, Topper and Feuerzeig, LLP (“DTF”), because it provided legal services to Fathi Yusuf (“Yusuf”), in connection with his court-appointed position as Liquidating Partner,¹ and because the Master, Judge Edgar Ross, approved and paid DTF for those services, by signing (along with Yusuf) a check made payable to DTF. Hamed contends that by representing Yusuf in that capacity, DTF is also representing the Partnership, and that it cannot concurrently represent the

¹Unless otherwise defined in this brief, capitalized terms shall have the same meaning as provided in the Court’s “Final Wind Up Plan of the Plaza Extra Partnership” (the “Plan”) dated January 7, 2015.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

Partnership and Yusuf and United in this litigation. Hamed's argument is based on the demonstrably false conflation of the Partnership and the Liquidating Partner, which are plainly different entities. Moreover, in a January 23, 2016 email to Judge Ross not attached to Hamed's motion, his attorney, Joel H. Holt, admitted that so long as DTF was not being paid by the Partnership for any services it provided to the Liquidating Partner, there would be no basis for "ethical action" by Hamed. As such, it is clear that this motion is not about any supposed ethical conflicts at all, but is instead about whether Judge Ross should have approved and paid the DTF billing in full, or should have disapproved payment for some of the entries. DTF segregated its fees in such a way that the billing information presented to Judge Ross related solely to legal services performed for the Liquidating Partner, as opposed to legal services performed for Yusuf in this litigation. In any event, if Hamed wants to claim that any time entries in that invoice should not have been paid by Judge Ross and the Liquidating Partner, because some of the entries do not relate to Liquidating Partner matters, the proper way to challenge that is not by way of disqualification motion, but instead by submitting a claim against the Partnership fund on the date for presenting such claims.

ARGUMENT

A. The Motion Should be Denied Because DTF is Not Representing the Partnership.

Hamed's motion to disqualify is based on the untenable proposition, which is barely mentioned in his brief, that the Partnership and the Liquidating Partner are identical entities, and hence that representation of the latter by DTF entails an impermissible representation of the former. Nothing could be further from the truth. Hamed does not even try to elaborate this false equation of the Partnership and the Liquidating Partner, but simply assumes it to be the case in his motion. All that Hamed says on this point is that "DTF entered into representation of Fathi

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Yusuf in his role as Liquidating Partner of the Partnership so that DTF now also represents the partnership.” Motion at 1.

Hamed’s failure to even try to support the notion that that the Liquidating Partner *is* the Partnership is understandable, because that clearly is not the case. The Partnership between Hamed and Yusuf was a business organization formed by the two of them for operating three supermarkets on St. Thomas and St. Croix. The Liquidating Partner is a position created by the Court to facilitate the liquidation and winding up of the Partnership under judicial supervision. The court order creating this position carefully circumscribes the duties of the Liquidating Partner and makes the exercise of all of those duties subject to oversight by the Master, Judge Ross. The duties of the Liquidating Partner, as set forth in the Order creating that office, include the “power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners . . .” *See* Plan at § 4. The Liquidating Partner is required to “report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts,” to “prepare and file all required federal and territorial tax returns,” to “pay all just Partnership debts,” to place liquidation proceeds and any litigation recoveries into the “Claim Reserve Account,” which is to be held until there is a final accounting and reconciliation “of the Partners’ capital accounts and earlier distributions.” *Id.* at § 5. Under the Plan, every act undertaken by the Liquidating Partner is subject to oversight by and the judicial supervision of the Master, *id.* at § 2, which means, for example, that all checks paid from Partnership monies must be signed by both the Liquidating

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

Partner and the Master.² *See id.* at § 9. Judge Ross was appointed Master by a September 18, 2014 Order of the Court and Yusuf was appointed Liquidating Partner in the January 7, 2015 “Order Adopting Final Wind Up Plan” (the “Wind Up Order”).

Since the Liquidating Partner is a court-appointed position, whose discharge of the duties conferred on him is subject to the supervision of Judge Ross, it is impossible to equate the Liquidating Partner with the Partnership, as Plaintiff does in his Motion, and therefore impossible to show that by representing the Liquidating Partner, DTF has necessarily also been representing the Partnership.³ Hamed’s Motion to Disqualify should be denied on that basis alone.

B. Because the Court Has Already Rejected Arguments that Yusuf is Conflicted in Serving as Liquidating Partner, DTF Cannot Be Conflicted in Representing Him in that Capacity.

Prior to the Court’s appointment of Yusuf as Liquidating Partner, Hamed argued on no less than three different occasions that Yusuf had a conflict of interest which precluded him from being appointed to that role. *See* Hamed’s April 30, 2014 Response to Defendants’ Motion to Appoint Master, p. 3 (arguing that Yusuf “has an interest adverse to the partnership” which prevents him from acting as the Liquidating Partner); Hamed’s May 27, 2014 Sur-reply Re Dissolution Plans, pp. 2-3 (arguing that Yusuf “is barred from being the liquidating partner” because, *inter alia*, he allegedly “tried to convert all of the partnership assets to United’s accounts”); and Hamed’s October 21, 2014 Comments Re Proposed Winding Up Order, pp. 5-6

²Judge Ross was acting pursuant to this authority when he approved, and, together with the Liquidating Partner, signed the check paying the DTF billing submitted to him for his review and approval.

³ Hamed also argues that “the continued involvement of DTF on behalf of [United and Yusuf, individually] would result in it litigating against a former client, the partnership,” and hence that DTF cannot ethically continue representing Yusuf and United in this litigation. Motion at 5. Because DTF has not represented the Partnership, this argument should likewise be rejected.

(arguing that Yusuf is “prohibited from acting as the liquidating partner” because United’s rent claims against the Partnership mean that Yusuf “has conflicts that are inherently antithetical to the partnership” and arguing further that “the Court’s proposed remedy of having the Master ‘supervise’ Yusuf” cannot avoid the conflict). Hamed further argued in each of these three filings that he, Hamed, should instead be appointed Liquidating Partner.

In its Wind Up Order, this Court, by appointing Yusuf to serve as Liquidating Partner, subject to Judge Ross’s supervision, necessarily rejected Hamed’s repeated arguments, which shifted each time they were made, that Yusuf was impermissibly conflicted from serving in that role. Since the Court has concluded that Yusuf has no impermissible conflict, it necessarily follows that DTF could not have been conflicted in undertaking the representation of Yusuf in that capacity just because it also represents Yusuf in his individual capacity and his corporation, United.

Hamed’s notion that Yusuf as Liquidating Partner should have hired some other attorney outside of this litigation to represent him in that capacity makes no sense. Doing so would not only be unnecessary but would entail greater expense to the Partnership. As noted above, Yusuf as Liquidating Partner was given the authority to hire counsel in the Plan entered by the Court. It was eminently reasonable for Yusuf to retain DTF for representation in the discharge of his duties as Liquidating Partner, since the undersigned attorney and others in his firm had been involved in the formulation of the Plan and had acquired a comprehensive knowledge of the Partnership and matters relating to its wind-up. To hire another lawyer with no knowledge of the Partnership and the Plaza Extra Stores to represent the Liquidating Partner would have simply multiplied the legal costs to the Partnership. A lawyer not already involved in the case would

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

have incurred significant additional fees just to be brought up to speed on these matters before he or she could render meaningful advice.

In short, since the Court, by appointing Yusuf as Liquidating Partner, has already rejected Hamed's claim that Yusuf was impermissibly conflicted from acting in that role, his decision to retain DTF for those services was proper. Because the Court has established that Yusuf was not conflicted, DTF cannot be conflicted either.⁴

C. Hamed Has Effectively Conceded that his Real Complaint is About Judge Ross's Decision to Pay DTF, Not the Ethics of DTF's Representation.

Finally, it is clear from Hamed's counsel's correspondence with Judge Ross is that his real complaint about DTF is not his contrived claim that the firm's representation of the Liquidating Partner is unethical. Instead, the issue for Hamed is whether some of the fees charged by DTF and approved and paid by Judge Ross did not relate to matters within the scope of the Liquidating Partner's work and should not have been paid out of Partnership monies. In a January 23, 2014 email to Judge Ross, Hamed, through his counsel, Attorney Holt, claimed that "a review of the [DTF] charges confirms that many of the items charged accrued to Mr. Yusuf's benefit and not to the benefit of the Partnership or Mr. Hamed." See **Exhibit A**, January 23,

⁴*King v. Appleton*, 61 V.I. 339, 353, n. 12 (2014), the case cited by Hamed, is inapposite for several reasons. First, unlike this case, in which Yusuf was appointed Liquidating Partner, over objections that this would create a conflict of interest, the trustee in the *King* case, Attorney Robert King, was not appointed by court order to that position. Nor was the trustee in *King* directed by court order to perform certain duties, subject to judicial supervision by a former Superior Court Judge. It is also important to note that the *King* Court did not disqualify Attorney King from concurrently serving as trustee of a trust and as an attorney for the settlor of the trust and the beneficiary. Instead, the Court simply suggested in *dicta* that Attorney King should get written consents from both of his two clients to concurrently serve as their attorney and as trustee. See *id.* at 354, n. 12. Thus, even if by some strained logic the *King dicta* were somehow applicable to this case, and it would therefore be preferable for DTF to obtain from Yusuf, individually, and United their consent to DTF's concurrent representation of each of them and Yusuf as Liquidating Partner, DTF will obtain those written consents.

2014 Email from Attorney Holt to Judge Ross. Attorney Holt goes on to say that “this request for fees should be denied as a matter of course, mooted the need for ethical action . . .,” and also mooted the need for a “motion to Judge Brady to disqualify [DTF] from any further work in this case.” *Id.* What Hamed (through his attorney) plainly communicated to Judge Ross is that so long as he does not authorize payment of any DTF billings for services performed for the Liquidating Partner, Hamed does not care if DTF continues to represent the Liquidating Partner. In the same vein, Hamed makes it clear, if necessary, he is prepared to engage in a “line by line analysis of the [DTF] billing” to determine what is properly chargeable to the Partnership and what is not. *See id.*

If Hamed truly believed that DTF was impermissibly conflicted in its representation of the Liquidating Partner, he would not have stated (through his counsel) that he would consent to the representation as long as DTF was not paid for its services. All of the talk about conflicts of interest is just a smokescreen for Hamed’s contention that Judge Ross erred by approving and paying DTF out of Partnership funds. A claim of this kind is properly addressed at the Partnership claim stage of this litigation, not by way of Motion to Disqualify. If Hamed is serious about his contention that the DTF billing should not have been approved and paid in full by Judge Ross, he may submit a claim that performs the “line by line analysis” referred to in his counsel’s email to the Master. If he has a legitimate basis for contesting any of the line items in the DTF billing, he can try to make that case in his claim, and can request that he be credited – and that Yusuf be debited – in whatever amount he contends should not have been approved. Yusuf will then respond to any such claim submitted by Hamed, and this Court can resolve it after receipt of the Master’s report and recommendation contemplated by Section 9, Step 6 of the Plan.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

While Hamed claims that “many of the items” for which DTF was paid accrued to Yusuf’s benefit rather than Hamed’s, his motion only identifies six time entries totaling 7.3 hours that he says should not have been paid for that reason. *See* Motion to Disqualify at 4. Even that narrow challenge to Judge Ross’s approval of the DTF billing misses the mark. Hamed can only make this argument by omitting language from the description of services and by mischaracterizing the services that DTF performed. The six time entries, shown in full and with the omitted language in italics, are as follows:

- 10/05/15 *Review email from Gaffney re course of action re payment of Tutu Park taxes; reply to 9/29 letter from Holt re partnership assets; email FY re same; teleconference with FY re draft reply to Holt. (1.60)*
- 10/20/15 Draft, review, and revise list of remaining partnership property to be liquidated and pending motions affecting partnership property. (1.50)
- 10/21/15 Review letter from Holt re disputed land; email FY re same; *review and revise draft list in response to Judge Ross directive; email client group re same. (1.30)*
- 11/17/15 Draft fifth bi-monthly report; conference with CKP re pending litigation and claims reserve. (1.60)
- 11/19/15 Review and revise fifth bi-monthly report; email to Gaffney and CKP re same. (.80)
- 11/23/15 Email to Gaffney re fifth bi-monthly report *and updated financial info needed; review Gaffney response. (.50)*

Hamed falsely implies that the six time entries reflect that DTF took one position regarding whether the Partnership owned undeveloped land in Fort Mylner, and then the opposite position later. *See* Hamed’s Motion to Disqualify at p. 4. Contrary to that implication, DTF has consistently taken the position that the land in question (owned initially by Plessen Enterprises, Inc. and later by United) is not Partnership property.⁵ Of the six time entries quoted in Hamed’s

⁵Attorney Hodges was initially unaware that the property had been transferred from Plessen to United in a Deed in Lieu of Foreclosure dated October 23, 2008 and recorded on March 24, 2009. But irrespective of whether the property is owned by United or Plessen, it never was and to this day is not Partnership property. At no time did Attorney Hodges ever suggest that this

Motion, only one of them, a 10/21 entry for 1.3 hours even references the issue of whether the Partnership owns that land, or whether United or Plessen owns it. Moreover, the full description of services for that date includes a line item which Hamed left out of his quotation of the billing entry. That line item, “review and revise draft list in response to Judge Ross directive,” is clearly work related to duties to be carried out by the Liquidating Partner.

A review of the remaining time entries – read in full and not in the selectively edited form that Hamed presents in his Motion – shows unmistakably that these entries relate to matters within the Liquidating Partner’s scope of work. The 11/17, 11/19, and 11/23 time entries relate generally to preparation of the “fifth bi-monthly report,” which is something the Liquidating Partner is given the responsibility to create by the Court’s Plan. The 10/5/15 entry concerns reading and responding to a September 29 letter from Attorney Holt regarding a number of “partnership assets,” and as such is something which is clearly related to the Liquidating Partner’s duties under the Plan. The 10/20/15 time entry regarding the compilation of a list of Partnership assets and pending motions regarding partnership property is likewise related to the Liquidating Partner’s duties under the Plan.

Finally, it is worth noting that DTF has been filing by-monthly reports, as counsel for the Liquidating Partner, since the first bi-monthly report was filed on March 30, 2015. The signature block for each of those reports unmistakably shows the law firm of Dudley, Topper and Feuerzeig, LLP as attorneys for the Liquidating Partner. Not once before Hamed’s Motion to Disqualify was filed on January 29, 2016 did he ever object to DTF’s representation as creating an unethical conflict. Indeed, in his “Notice of Objection to Liquidating Partner’s Bi-Monthly Reports” filed nearly six months ago, on August 18, 2015, after the submission of the third bi-

property, which has always been titled in the name of a corporation, was Partnership property. None of the six time entries indicates otherwise.

monthly report on July 31, 2015, Hamed did not raise any purported conflict of interest. Yusuf respectfully submits that this recently contrived claim should be roundly rejected.

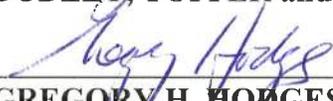
For all of the foregoing reasons, Hamed's Motion to Disqualify Dudley, Topper and Feuerzeig should be denied.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: February 17, 2016

By:



GREGORY H. HODGES (V.I. Bar No. 174)

Law House

1000 Frederiksberg Gade - P.O. Box 756

St. Thomas, VI 00804-0756

Telephone: (340) 715-4405

Facsimile: (340) 715-4400

E-Mail: ghodges@dtflaw.com

Attorneys for Liquidating Partner

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2016, I caused the foregoing **DUDLEY, TOPPER AND FEUERZEIG'S BRIEF IN OPPOSITION TO MOTION TO DISQUALIFY COUNSEL** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

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

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreylaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com

Michelle Barber

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**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

EXHIBIT A

Gregory H. Hodges

From: Edgar Ross <edgarrossjudge@hotmail.com>
Sent: Saturday, January 23, 2016 12:57 PM
To: Gregory H. Hodges
Subject: FW: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership
Attachments: 2015-03-27 SUPREME - Yusufs Opposition to Appellee's Motion for Fees.PDF; 2013-11-15 Yusuf-United OBJECTION TO BILL OF COSTS - for service.pdf

Sent from Mail for Windows 10

From: Joel Holt
Sent: Saturday, January 23, 2016 11:44 AM
To: edgarrossjudge@hotmail.com
Subject: Re: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership

Judge Ross-you sent me the email below on December 24th regarding fees being charged by DTF to the partnership. As you recall, you were kind enough to agree that it would not be paid until I had time after the Hovenssa transaction to review it with my client and respond. We have looked into this billing and have several serious problems it.

At the outset, DTF could never represent the partnership, as it would be a clear conflict of interests since they represent both Mr. Yusuf personally and United Corporation. In short, such representation would be both unethical and a violation of the VI rules applicable to the professional responsibilities of lawyers. Indeed, Mr. Hamed was never informed about this matter and has not waived this glaring conflict. If the Partnership needed counsel, Yusuf (as the Liquidating Partner) should retained an independent lawyer to avoid this situation, but it is too late to now try to make DTF counsel for the partnership.

In fact, a review of the charges confirms that many of the items charged accrued to Mr. Yusuf's benefit and not to the benefit of the Partnership or Mr. Hamed. For example, one monthly accounting had real property titled in the name of United, but admittedly owned by United, not being transferred to the partnership. Clearly DTF, who signed this filing, was acting for the benefit of Mr. Yusuf and United, not the partnership. There are multiple other examples, several of which were brought to the Court's attention when I filed an objection to Mr. Yusuf "feathering" his own nest with the various accountings he filed with the Court, which I am glad to put into more detail if you want me to so so.

Thus, this request for fees should be denied as a matter of course, mooted the need for ethical action that will be required if DTF claims they represented the partnership at the same time they

represented Yusuf and United. It will also result in a motion to Judge Brady to disqualify them from any further work in this case.

Finally, I should note that many of the charges violate the precise objections that DTF raised to the two requests for fees filed by Hamed, both as to the amount that can be charged as well as the services for which multiple lawyers in a firm can charge. A copy of those objections are attached for your reference. Thus, a line by line analysis of the billing would have to be done if DTF could charge the partnership for such services, which it cannot do.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

-----Original Message-----

From: Edgar Ross <edgarrossjudge@hotmail.com>
To: JOEL HOLT <holtvi@aol.com>
Sent: Thu, Dec 24, 2015 12:01 pm
Subject: Fwd: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership

Sent via the Samsung GALAXY S4, an AT&T 4G LTE smartphone

----- Original message -----

From: "Gregory H. Hodges" <ghodges@dtflaw.com>
Date: 12/24/2015 10:47 AM (GMT-04:00)
To: 'Edgar Ross' <edgarrossjudge@hotmail.com>
Cc: Fathi Yusuf <fathiyusuf@yahoo.com>, 'Nizar DeWood' <nizar@dewood-law.com>
Subject: RE: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership

Season's Greetings Judge Ross,

In the course of performing his duties as Liquidating Partner, Mr. Yusuf has incurred attorneys' fees charged by Dudley, Topper and Feuerzeig, LLP ("DTF"). As you know, pursuant to section 4 of the "Final Wind Up Plan of the Plaza Extra Partnership" (the "Plan"), the "Liquidating Partner shall have ... full power and authority to ... engage legal, accounting and other professional services...." Since the entry of the Order approving the Plan in early January of this year, DTF has billed Mr. Yusuf for services related to his duties as Liquidating Partner. Attached is DTF's Matter Ledger Report in which the DTF services rendered in connection with Mr. Yusuf's Liquidating Partner duties have been segregated from the DTF services generally provided to Mr. Yusuf in the pending litigation against the Hameds. As reflected in the attached Matter Ledger Report, the DTF fees through 11/30/15 that relate to the Liquidating Partner's duties total \$57,605. As Liquidating Partner, Mr. Yusuf submits that the Partnership should pay this amount to DTF.

If you have any questions or would like any further information concerning this request, please let me know.
Regards,
Greg

Gregory H. Hodges
Dudley, Topper and Feuerzeig, LLP
Law House, 1000 Frederiksberg Gade
St. Thomas, VI 00802
Direct: (340) 715-4405
Fax: (340) 715-4400