

process that it would be an ethical conflict if Yusuf's litigation counsel was paid from partnership funds during the liquidation process, stating in his October 21, 2014, filing as follows (see **Exhibit 1** at p. 9):

5. Yusuf's Counsel/Accounting Experts can receive no Extra Payments

The Court's final Order needs to clarify that Yusuf's litigation counsel . . . cannot not be paid at all from Plaza Extra funds. Beyond the ethical conflict—which would strictly prohibit this dual representation as counsel already represents the major claimant, United—if additional legal work . . . is necessary, it should be dealt with solely by unaligned counsel . . . responsive to the Master, not to a litigating party. Plaintiff asks that the final Order be *very clear* in this regard, which he believes Yusuf will agree to based on conversations to date.

In response, Yusuf (through DTF) specifically acknowledged this concern, but **agreed to avoid seeking any payment from the partnership for any legal services**, stating in part (see **Exhibit 2** at p. 13):

The Order needs no clarification because **it does not propose that Yusuf's counsel . . . would be paid with partnership funds . . .** (Emphasis added).

Thus, DTF was clearly warned about avoiding any ethical conflict and agreed it would not represent the partnership or be paid from partnership funds.

With this point in mind, Hamed will briefly address DTF's arguments, which require this Court to order disqualification based on the VI rules of attorney conduct, as emphasized by our Supreme Court.

I. The Liquidating Partner is not a separate legal entity

Despite its acknowledgement of this potential conflict, DTF now tries to justify **going back on its word to this Court** by arguing that it is just representing the Liquidating Partner, as opposed to partnership.

However, there is no support for the position that a liquidating partner is some other entity under the Revised Uniform Partnership Act, 26 V.I.C. § 1 *et seq.* To the contrary, those sections makes it absolutely clear that **there is no other such "entity"**

– **only one partner undertaking a liquidation.** See *e.g.*, §§ 171-177.

Indeed, this Court's order appointing Yusuf as the Liquidating Partner expressly gave him, simply as one of the two partners, the sole authority to act on behalf of the partnership, as opposed to creating some separate entity (see **Exhibit 3** at p.3):

No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise.

In short, there is no legal authority for DTF's assertion that the Liquidating Partner is a separate legal entity.

II. The conflict is real

Alternatively, DTF tries to downplay any conflict if one exists, but once this type of conflict exists, its stain can not be erased after the fact. The problem with the ownership of the disputed half-acre of property in St. Thomas, where DTF has been on every possible side, demonstrates this point to the tune of a half-million dollar asset alone.

In this regard, Yusuf can assert a claim for disputed partnership property for himself or his corporation, United---a right he has as a partner in the winding up process as well as being a Defendant in this case. However, DTF cannot represent Yusuf in asserting Yusuf's personal claim (or that of the United Corporation) to this property **while at the same time representing the partnership, filing pleadings (for which the partnership is being charged) claiming this disputed partnership property belongs to Yusuf and not the partnership.**

Thus, DTF has made representations in pleadings before this Court on behalf of the partnership that conflict with its interest. Instead, the partnership should have had independent representation if such pleadings were to be filed and paid for by the

partnership.

By way of another example, the partnership may also have malpractice claims against DTF for having done this and similar acts.

There is no need to belabor this list, as the point is clear--it is this **dual representation**, addressing issues on the merits, that creates the *incurable* conflict that requires DTF's disqualification from any further involvement in this case.¹

III. The conflict has not been waived

DTF is correct in noting that the undersigned pointed out to the Special Master that payment of these fees would raise this issue.² However, the acceptance of this payment for legal fees now confirms that DTF *has represented the partnership and made representations contrary to its interests*. At no time was this conflict waived prior to that representation, which DTF concedes. Indeed, neither Yusuf, United Corporation, Hamed nor Judge Ross has filed written waiver of this conflict.

Moreover, the fact that Judge Ross approved the payment does not mean he was fully informed of this conflict and waived it—it just means he acknowledged that legal work was done for the partnership so the bill could be paid from partnership funds.

Equally important, neither the Liquidating Partner nor the Special Master can waive this conflict (much less do so *nunc pro tunc*) as far as Hamed's partnership claims in this lawsuit are concerned. Indeed, the VI Supreme Court has made this

¹ It is interesting that the motion is not filed on behalf of Yusuf or the partnership – but rather by DTF, which is clearly not a party. Thus, their very filing demonstrates the serious problem presented—on whose behalf is this filing being made?

² The problem is compounded by the fact that DTF has now revealed that its representation of the partnership began a year ago, in February of 2015, even though this fact was not disclosed to Hamed until this past December. Indeed, Yusuf had an obligation to present his bi-monthly reports and financial statements in a manner that would have disclosed this critical information much earlier, which was clearly, deliberately and improperly withheld.

clear, as noted in Hamed's initial motion, in *King v. Appleton*, 61 V.I. 339, 354, 2014 WL 4968290, at *6 (V.I. Oct. 6, 2014)(holding that each affected client must give informed consent in writing prior to such representation).

IV. Disqualification is required

Thus, as this matter proceeds on the merits, this Court must disqualify DTF from any further involvement in these proceedings, as this taint cannot be cured. As noted in Hamed's initial motion, pursuant to Model Rule of Professional Conduct 1.9(a):

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

This rule clearly applies here.

DTF must be disqualified from proceeding further in this case due to the conflict of interest that it created, despite being warned about this potential problem.

Dated: February 22, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2016, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

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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

PLAINTIFF HAMED'S COMMENTS RE PROPOSED WINDING UP ORDER

At the outset, it should be noted that the Plaintiff, Mohammad Hamed, appreciates this Court's efforts to resolve the issues related to this litigation by submitting its October 7th "Proposed Order" for comments. An agreement between the parties on the terms suggested in that proposal would probably be in the best interests of all parties, but based on preliminary discussions with the Master, that seems unlikely. Thus, as directed by the Court, Hamed hereby submits his comments regarding the Court's "Proposed Order." Before doing so, one preliminary observation is necessary.

In this regard, there is one important point that explains why Hamed believes the "Proposed Order" must be changed. Section 402 of the *Revised Uniform Partnership Act (RUPA)* and its *Official Comments* make it clear that a Court simply cannot force an



Again, Hamed will pay a substantial sum for this name and brand if not assigned to each store by the Court. If Yusuf wishes to pay for this name and brand instead, then the parties can bid-in amounts until one side relents.

4. The East Store Realty

The East store was rebuilt after a fire, a part of which is on new land which Yusuf admits was purchased with partnership funds, designated as Plot 4-H as per the attached drawing. See Exhibit 1. Thus, this plot is a partnership asset and cannot be summarily given to Yusuf.¹⁴ The division set forth in the "Proposed Order" is not possible without allowing a bidding process for this acre.¹⁵

5. Yusuf's Counsel/Accounting Experts can receive no Extra Payments

The Court's final Order needs to clarify that Yusuf's litigation counsel and expert witnesses (such as his accounting firm) cannot not be paid at all from Plaza Extra funds.¹⁶ Beyond the ethical conflict—which would strictly prohibit this dual representation as counsel already represents the major claimant, United—if additional legal work or accounting work is necessary, it should be dealt with solely by unaligned

¹⁴ 26 V.I.C. § 24(c) provides "[p]roperty is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership."

¹⁵ While Yusuf does not dispute that the property was purchased with Plaza Extra funds, he suggests he has a \$100,000 claim for improvements he made after this purchase. Fathi Yusuf's claim of \$100,000 towards improvements (which is disputed) has to be settled as an accounting claim as part of that process (to the extent he can prove he made this alleged payment.)

¹⁶ As above, this is why the statute does not allow a partner with adverse claims to be the liquidating partner, as Hamed may be asked to fund Defendants' litigation claims against him.

counsel and accountants responsive to the Master, not to a litigating party. Plaintiff asks that the final Order be *very clear* in this regard, which he believes Yusuf will agree to based on conversations to date.

6. The Present Accounting of Plaza (Plan Ex. B) Should be Deemed Preliminary

The Court has not specifically referred to *Plan Exhibit B*—the "balance sheet" or present partnership accounting. It is undisputed that this balance sheet (a copy of which is attached here as **Exhibit 2** for the Court's convenience) was done by Yusuf and Controllers strictly under his control.¹⁷ As the Court knows, Yusuf held control of this system away from Hamed for more than two years and Hamed made it very clear in his own filings regarding dissolution that accounting needed to be verified, stating on page 10:

1. Current Financial Profile of Partnership.

. . . the balance sheet for the Plaza Extra Stores attached as Exhibit B, which information is being submitted without prejudice to Hamed's further review of this information.

For example, as noted by the question marks placed on **Exhibit 2**, most of the account balances are outdated. Likewise, Hamed is unclear as to what the more than \$7 million in "buildings" and "leasehold improvements" refers to, as indeed there is no such "real" value since the partnership has no leases other than the St. Thomas store. Similarly, there appear to be large intercompany accounts to Yusuf, Plessen and other entities. In short, the attached accounting and partnerships books must be reviewed and verified

¹⁷ These are the same Yusuf-hired/controlled Controllers who, *inter alia*, supported Yusuf's initial claim that there was no partnership and have continued with such biased conduct throughout this litigation. Indeed, Hamed was provided access to the critical accounting records only after a court order was entered in this litigation to enforce the PI. More recently, one Controller, John Gaffney, removed Wally Hamed from the payroll at Yusuf's direction in direct violation of the Preliminary Injunction.

revised Order is then redlined and attached as **Exhibit 4**. Either order can be submitted in word if requested by the Court. For the reasons set forth herein, it is respectfully submitted that the order attached as **Exhibit 4** be approved.

Dated: October 21, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2014, I served a copy of the foregoing by email, as agreed by the parties, on:

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

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

**FATHI YUSUF'S RESPONSE TO HAMED'S COMMENTS CONCERNING THE
COURT'S PROPOSED WIND-UP PLAN**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits the following response to "Hamed's Comments Re Proposed Winding Up Order" ("Hamed Comments"), pursuant to this Court's Order dated October 7, 2014 (the "Order").

The Hamed Comments are very significant insofar as he concedes for the first time that bidding by Hamed and Yusuf is an appropriate method of liquidating the assets of the partnership. See Hamed Comments, p. 8-9 and Exhibit 4 to the Hamed Comments, Section 8(1), (2), (3), and (5). Although the Hamed Comments suggest that the use of bidding as a liquidation tool should be limited to the assets of Plaza Extra-Tutu Park and the Plaza Extra trade name, the logic of this position is that the bidding method of liquidation should be extended to cover all partnership assets, including Plaza Extra-West. Bidding by Hamed and Yusuf offers the best

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EXHIBIT
2

Blumberg No. 5208

See Declaration of Yusuf dated August 12, 2014, attached as Exhibit 3 to Defendants' Memorandum in Support of Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent. Hamed's sworn testimony is consistent with Yusuf's declaration that the reconciliation occurred at the end of 1993. Hamed testified that the reconciliation took place "sometime after the fire in the store." See page 51-2 of the transcript of Hamed's April 1, 2014 deposition attached as Exhibit 1.

While partnership funds may have been used to pay the insurance premiums for the applicable insurance policy, payment of the insurance premiums by the store has always been one of the terms of the partnership and Hamed has provided this Court with no evidence that Yusuf conceded that the additional acre was purchased with partnership funds. In any event, there is no dispute that the partners' accounts were fully reconciled as of December 31, 1993, that this acre has been titled in United's name for decades, and that rent for this acre was included in the \$5,408,806.74 paid on February 7, 2012 covering rent for the period from May 5, 2004 – December 31, 2011. Under these circumstances, Hamed should be estopped from asserting any legal or equitable title to this 1 acre parcel. In any event, Hamed's vague and unsupported claim should not be allowed to impede the disposition of Plaza Extra – East.

Payment of Yusuf's Counsel and Accounting Experts

The Order needs no clarification because it does not propose that Yusuf's counsel and accounting experts would be paid with partnership funds. It should be pointed out, however, that Section 5 of Hamed's "combined" order attached as Exhibit 3 to the Hamed Comments obligates the Liquidating Partner to "prepare and file all required federal and territorial tax returns . . . [and

Because there was never any consensus regarding the terms of the competing plans, this section should be deleted except for the first two sentences.

Section 8: Plan of Liquidation Plan and Winding Up

The lead in paragraph to Section 8(B)(1) of the competing plans should be added. Attached as **Exhibit 2** to this Response is the "combined" plan that Yusuf submits accurately sets forth the terms of the competing plans that the parties have not disputed and the provisions proposed by this Court. Yusuf's revised, proposed plan, which incorporates the Yusuf Comments and his foregoing comments in redlined fashion, is attached as **Exhibit 3** to this Response. Yusuf respectfully requests this Court to consider and approve the plan submitted as **Exhibit 3**.

Respectfully submitted,

DUDLEY TOPPER and FEUERZEIG, LLP

Dated: October 28, 2014

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2014, I caused the foregoing **Fathi Yusuf's Response To Hamed's Comments Concerning The Court's Proposed Wind-Up Plan** to be served upon the following via e-mail:

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
Plaintiff/Counterclaim Defendant,)
v.)
FATHI YUSUF and UNITED CORPORATON,)
Defendants/Counterclaimants)
v.)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.)
Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES, etc.

ORDER ADOPTING FINAL WIND UP PLAN

By Order Soliciting Comments, Objections and Recommendations, entered October 7, 2014, the Court ordered the parties to review the Proposed Wind Up Plan (“Proposed Plan”) presented therewith relative to the Hamed-Yusuf (Plaza Extra) Partnership and to present comments, objections and recommendations. Plaintiff Mohammed Hamed submitted his Comments re Proposed Winding Up Order (filed October 21, 2014); Defendant Fathi Yusuf submitted his Comments, Objections and Recommendations Concerning the Court’s Proposed Plan (filed October 21, 2014). The Parties each then responded to the filing of the other: Plaintiff filed his Response to Defendant’s Comments re Proposed Winding Up Order on October 28, 2014; and Defendant Yusuf filed his Response to Hamed’s Comments Concerning the Court’s Proposed Wind-Up Plan on October 29, 2014.

Upon consideration of the Parties' submissions, the Court enters this Order Adopting Final Wind Up Plan of the Plaza Extra Partnership ("Order"). A complete copy of the Final Wind Up Plan of the Plaza Extra Partnership ("Final Plan") adopted by this Order is submitted with and constitutes a part of this Order. The Final Plan incorporates certain modifications to the Proposed Plan, as noted below, with revised provisions in italics, and excluded provisions stricken. These modifications, together with the provisions to which the Parties have jointly agreed, which are accepted and incorporated, are adopted by the Court and shall constitute the Final Plan. For the Parties' ease of reference, provisions of the Proposed Plan are modified by the terms of this Order and incorporated into the Final Plan, as follows:

~~PROPOSED-FINAL WIND UP PLAN~~

Section 1: Definitions

1.18 "Liquidating Partner" means Yusuf.

Section 3: Liquidating Partner

Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the partnership pursuant to this Plan *and the provisions of the V.I. Code Ann. tit. 26, § 173(c)*, under the supervision of the Master. No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise. ~~The Liquidation Partner's rights and obligations relative to the winding up, subject to the review and supervision of the Master, shall be deemed to have commenced as of April 25, 2013, the date of the issuance of the Preliminary~~

- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as part of the Claims Reserve Account.
- e) Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

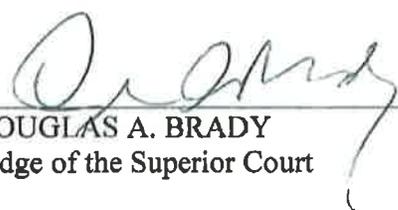
On the basis of the foregoing, it is hereby

ORDERED that the foregoing modifications of the Proposed Plan shall be incorporated into and form a part of the Final Wind Up Plan of the Plaza Extra Partnership, submitted herewith, which Final Plan is ADOPTED by this Order. It is further

ORDERED that the Parties shall meet and confer with the Master FORTHWITH relative to the implementation of the Final Plan, which will be deemed final and effective ten (10) business days following the date of the entry of this Order.

Dated:

January 7, 2015


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor 117215

CERTIFIED TO BE A TRUE COPY
This 9th day of Jan 2015

CLERK OF THE COURT

By  Court Clerk 11