

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

<b>MOHAMMAD HAMED,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>FATHI YUSUF,</b>  <b>Defendant.</b>	<b>Case No.: 2014-SX-CV-278</b>  <b>ACTION FOR DEBT AND CONVERSION</b>  <b><u>JURY TRIAL DEMANDED</u></b>
--	---

**PLAINTIFF HAMED'S MOTION AND MEMORANDUM  
IN SUPPORT FOR STAY OF DISCOVERY**

Plaintiff Hamed requests a stay of discovery where one party (Defendant Yusuf) has refused to provide its full discovery responses because it argues that necessary (or even fully dispositive) points may be decided in another, parallel action (*Hamed v. Yusuf*, SX-12-cv-370, V.I. Superior Court (Brady, J.)). Although Yusuf refused to fully comply with discovery here rather than seeking a protective order – Hamed agrees, but seeks a more formal stay. Yusuf stated the following in his *Response to Interrogatories* dated February 17, 2016 (**Exhibit 1**) (emphasis added).

1. Describe all claims and/or counterclaims you have or may have with regard to plaintiff for any type of relief, including but not limited to money damages, and for each such claim, describe all factual bases and all documents or other evidence which support the claim(s).

. . . .to the extent that the funds relating to the Y & S Corporation stock sale by Hisham Hamed and Nejah Yusuf could be considered partnership monies and subject to accounting, Yusuf shows that **a full accounting between the parties will be submitted as part of the Hamed v. Yusuf, et al, Civil No. SX -12-CV-370 (the "370 Case")** [hereinafter "the Main Case"].

This position is consistent with the fact that Yusuf has already admitted under oath, in deposition that the funds at issue are owed to Hamed, but that he will not pay the funds until the accounting that will occur in the Main Case. **Exhibit 2**, *Dep. of Fathi Yusuf*, April 2, 2014 at p. 100, ln. 19-20. In addition, in that same testimony at pp. 99-106, he discusses the handwritten note he authored that shows the calculation of the amount due to Hamed from the Dorthea sale at issue here. See **Exhibit 3** (handwritten note).

### **I. Legal Standard**

It is black letter law that “[t]he Federal Rules of Civil Procedure do not explicitly mention stays, either generally or in the context of discovery. Instead, judges cite either to a court’s ‘inherent authority’ to manage the cases before it or, in the context of stays of discovery, to the broad language of Rule 26(c), which authorizes ‘any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or undue burden or expense.’ Kevin J. Lynch, *When Staying Discovery Stays Justice: Analyzing Motions to Stay Discovery When a Motion to Dismiss is Pending*, 47 Wake Forest Law Review 71, 76-77 (2012) (footnotes omitted).

Courts have read the language of Rule 26(c) as enabling them to issue orders staying discovery upon a showing of “good cause” by the moving party or parties. Courts cite to one of these sources of authority, if anything, when issuing written decisions on motions to stay discovery. Stays of proceedings in federal court, including stays of discovery, are committed to the discretion of the trial court.

*Id.* at 77. (footnotes omitted).

It is clear that where a pending case will likely provide either a partial or full answer to major issues presented, a stay of discovery is warranted. *Munson v. Gaetz*, No. 3:11-CV-159-GPM-DGW, 2013 WL 5526659, at \*1 (S.D. Ill. Oct. 7, 2013)

("Defendants seek to stay discovery pending the outcome of a Central District case concerning soy in prisoners' diets. . . .To avoid unnecessary duplication and litigation of the same issues, the discovery in this matter is STAYED pending the outcome of *Harris, et al. v. Brown, et al.*"). See also *Gagan v. Monroe*, No. 2:87-CV-732, 2014 WL 5817560, at \*3 (N.D. Ind. Nov. 10, 2014).

## II. ARGUMENT

### A. Facts

This action is one of a slew of lawsuits surrounding the Yusuf family's failed attempt to simply *take* half of all of the assets of the three Plaza Extra Supermarkets from the Hamed family. Thus, a proper understanding of the facts of this action begins with the facts of the Main Case, *Hamed v. Yusuf*, Case No. SX-12-CV-370 and the larger universe of troubles between the Yusuf and Hamed families. Fortunately, Judge Brady has made a detailed fact record in the Main Case (**Exhibit 4**). *Hamed v. Yusuf*, 2013 WL 1846506 (V.I. Super. Ct. April 25, 2013) (*Memorandum and Order* following a two-day hearing at the end of January 2013, where there was extensive documentary and testimonial evidence concerning Fathi Yusuf's attempt to steal the Hamed half of the Plaza Extra Partnership. Since then, the Court has also entered summary judgment as to Hamed's 50% interest and divided the stores.)

Mohammad Hamed and Fathi Yusuf, both now well into their 70's, were close childhood friends [from the same village in Jordan]. *Id.* at 2. In 1986, Fathi Yusuf and Mohammad Hamed began a partnership that would spawn a very successful chain of three large supermarkets (the "Plaza Extra Supermarket Partnership") and a healthy portfolio of other mutually shared business and real property interests. *Id.* at 2-3. Far

beyond their business bond, the Hamed and Yusuf families were the closest of family friends. *Id.* at 2.

In or about 2011, trouble began between the families when Fathi Yusuf started to state that he owned all of the Plaza Extra Supermarket Partnership. In 2012 – despite the knowledge of the entire community that Fathi Yusuf and Mohammad Hamed together, built, operated and jointly owned the Plaza Extra Partnership – Fathi Yusuf declared that Mohammad Hamed was simply an illiterate, retired backroom worker and his sons were just employees of a corporation (“United Corporation”) solely owned by the Yusuf family. *Defendants’ Opposition to Plaintiff’s Motion to Compel Defendants to Comply with the Preliminary Injunction*, SX-12-cv-270 at 8 (**Exhibit 5**). Then, Fathi Yusuf and his son Maher (“Mike”) Yusuf moved \$2.7 million from the Plaza Extra partnership operating account on which both families had signatory power to a Yusuf-only account. *Hamed*, 2013 WL 1846506, at \*5. Fathi and Mike Yusufs’ unilateral taking of more than \$2.7 million of partnership funds triggered the commencement of the Main Case, where Mohammad Hamed sought, among other things, a declaration of the existence of the Plaza Extra Partnership and his ownership of 50%.

There is no dispute that Fathi Yusuf claimed that his United Corporation owned everything, Mohammad Hamed was just an illiterate backroom worker and Mohammad’s sons were just salaried employees. *Opp’n to Mot. to Compel*, at 8. There is no dispute that Fathi Yusuf called the police and tried to have the Hameds removed from the stores—threatening to close the stores if this was not done. *Hamed*, 2013 WL 1846506, at 6. There is no dispute that the Yusufs cashed a Plaza

Extra Supermarkets' operating account check (signed by Fathi Yusuf and Mike Yusuf) for \$2,784,706.25 and placed it into a Yusuf only account over the Hameds' multiple, written objections. *Id.* at 5. It is also a matter of record under oath that ***although they repeatedly told the Hameds (and Mike Yusuf testified to the Court) that the funds remained in United, this was not true.*** *Id.* at 5. Judge Brady found as follows concerning Mike Yusuf's lies and the Yusuf family's theft of more than \$2.7 million from the Plaza Extra Partnership:

35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son [Mike] Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family . . . .

36. On the first hearing day, [Mike] Yusuf, President of United Corporation, testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. **On the second hearing day, [Mike] Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United,** including a mattress business . . . . *Id.* at 5.

The issue present in both the Main Case and the present case involves the proceeds from the sale of property in Estate Dorthea on St. Thomas ("Dorthea property"), which was purchased by the Y & S Corporation and funded by the Hamed/Yusuf partnership. *Id.* at 5. Mr. Hamed's son, Hisham Hamed ("Shawn") and Mr. Yusuf's son, NejeH Yusuf ("NejeH") were provided partnership funds to allow each to own 25% of the stock in the Y & S Corporation (**Exhibit 6**). Shawn Hamed received all of his funds from his father and assigned all of his interest in the Y & S Corporation to his father, Mohammad Hamed. The Dorthea property was sold and the proceeds were given to Fathi Yusuf as the seller's nominee (**Exhibits 7**). Mr. Yusuf now refuses to

give Mr. Hamed his half of the proceeds. *Hamed*, 2013 WL 1846506, at 5.

**B. Judicial Economy Warrants A Stay in Discovery Until Matters are Properly Disposed of in the Main Case, SX-12-cv-370**

Hamed filed this action because Yusuf goes back and forth as to which case the Dorothea proceeds properly belong. In his *First Amended Answer and Counterclaim* in the present case, Mr. Yusuf averred on August 27, 2014 (emphasis added):

39. The receipt and distribution of proceeds of the sale of the Dorothea property is a corporate issue, **not a partnership issue, and therefore should not be part of any partnership accounting.**

However, in the Main Case, on September 24, 2014, in *Fathi Yusuf's Objections and Responses to Plaintiff's Requests for Admissions*, Mr. Yusuf responded with the following (emphasis added):

3. ADMIT that the issue of the \$802,955 allegedly due to Hamed as set forth in SX.14-CV-278, **IS an issue presented in the instant action [the Main Case].**

RESPONSE:  
**Admitted.**

He has made similar statements going both ways in the present case. Mr. Yusuf avers in his *First Amended Answer and Counterclaim* that his partnership claims (including rent payments he has already received in the Main Case, as well as a finding that the removal of the \$2.7 million from partnership was proper) should be addressed *here* as a counterclaim despite the fact that all of these exact claims are already at issue in the Main Case pursuant to a Yusuf counterclaim there. Matters in the Main Case are well along. Indeed, on January 7, 2015, Judge Brady issued an *Order Adopting Final Wind Up Plan*. The Plaza Extra stores have been transferred out of the partnership and a final accounting is being completed now.

### III. Conclusion

Because of the extensive work that has already been done in the Main Case and the overlapping claims that the present case has with the Main Case, judicial economy warrants a stay of discovery until either the Main Case has been fully adjudicated or it has become clear that the claims here are (or are not) being adjudicated there. This will prevent duplicative discovery, reduce litigation costs and preserve judicial resources. For these reasons, Plaintiff Hamed respectfully requests a stay of discovery until the partnership issues in SX-12-cv-370 are more fully litigated.

Dated: February 26, 2016

  
\_\_\_\_\_  
**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709/holtvi@aol.com

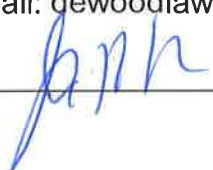
**Carl J. Hartmann III, Esq.**  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
(340) 719-8941  
carl@carlhartmann.com

### CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of February, 2016, I served a copy of the foregoing Notice by email, as agreed by the parties, on:

**GREGORY H. HODGES**  
Dudley, Topper and Feuerzeig, LLP  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804-0756  
(340) 715-4405  
Email: ghodges@dtflaw.com

**NIZAR A. DEWOOD**  
The Dewood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
(340) 773-3444  
Email: dewoodlaw@gmail.com

  
\_\_\_\_\_

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



MOHAMMAD HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

Case No.:SX-2014-CV-278

ACTION FOR DEBT AND  
CONVERSION

DEFENDANT FATHI YUSUF'S RESPONSE TO  
PLAINTIFF'S INTERROGATORIES

**DEFENDANT FATHI YUSUF'S OBJECTIONS AND  
RESPONSE TO PLAINTIFF'S  
FIRST INTERROGATORIES**

COMES NOW, Defendant Fathi Yusuf ("Yusuf") through counsel, hereby responds to Plaintiff's January 5, 2016 First Interrogatories to Defendant Fathi Yusuf and shows as follows:

1. Describe all claims and/or counterclaims you have or may have with regard to plaintiff for any type of relief, including but not limited to money damages, and for each such claim, describe all factual bases and all documents or other evidence which support the claim(s).

As set forth in his Answer and Counterclaim, (FAA), Yusuf shows that any monies which could be characterized as monies owned by the Yusuf and Hamed partnership and which were invested in Y & S Corporation had lost their status as partnership monies when the original purchase was made. (FAA, ¶6). Rather, the receipt and distribution of proceeds relating to the Dorthea Property and Y & S Corporation stock which is the subject of this litigation is a corporate issue and should not be part of any partnership accounting. (FAA, ¶39). Yusuf objects to this Request insofar as the premise of this suit involves the sale of Y & S stock by Hisham Hamed and Nejah Yusuf. To the extent that any claims exist relating to the sale of the Y & S stock, those claims would be Hisham Hamed's claims against Fathi Yusuf, as nominee and is not properly a claim of Mohammed Hamed. Hence, Mohammed Hamed has no standing to bring this claim. Subject to the above objections, to the extent that the funds relating to the Y & S Corporation stock sale by Hisham Hamed and Nejah Yusuf could be considered partnership monies and subject to accounting, Yusuf shows that a full accounting between the parties will be submitted as part of the Hamed v. Yusuf, et al, Civil No. SX -12-CV-370 (the "370 Case").



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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

vs. )

Case No. SX-12-CV-370

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

vs. )

WALEED HAMED, WAHEED HAMED, MUFEED )  
HAMED, HISHAM HAMED, and PLESSEN )  
ENTERPRISES, INC., )

Additional Counterclaim Defendants.)

**THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF**

was taken on the 2nd day of April, 2014, at the Law Offices  
of Adam Hoover, 2006 Eastern Suburb, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal  
Rules of Civil Procedure.

---

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

**FATHI YUSUF -- DIRECT**

1 (Deposition Exhibit No. 12 was  
2 marked for identification.)

3 **Q. (Mr. Holt)** All right. All right. Showing you  
4 Exhibit No. 12, can you tell me if you recognize that? Do  
5 you recognize that document --

6 **A.** Yes, it's my handwriting.

7 **Q.** And at the top it has "Dorothia" written, is that  
8 correct?

9 **A.** Yes.

10 **Q.** Can you tell me, what -- what -- what what does  
11 this transaction mean?

12 **A.** The transaction that we bought -- we was in  
13 partnership with a third person, that we own 50 percent of  
14 the Dorothia real estate -- a real estate in Dorothia, and  
15 the other partner owned the other 50 percent.

16 Finally, I come to this decision to sell it  
17 to my partner. He bought it at one-and-a-half million, and  
18 this number below, it was an idea to Mr. Hamed what would  
19 I -- I am counted for, up to the time I give it to him. I  
20 tell him what it is. By example, Jordan Fund, 75,000, it's  
21 a checking account. This, I'm going to reclaim it back.  
22 Because at that time I did it, I did it in the most honest  
23 way, and we end up transferring property to myself. That  
24 transfer the property cost me money, well, I have to put  
25 that money out of my own pocket, even though the obligation

**FATHI YUSUF -- DIRECT**

1 was on both of us.

2 And then I'm going to use whatever it cost me  
3 to transfer that property into my name, at the expense of  
4 both of us, even though we missing three, four property that  
5 he never transferred it to me. It's still in his name. He  
6 said no, but I can claim, I can prove, still in his name.

7 **Q.** Okay. So now the first line, Dorothia,  
8 1.5 million, those were the funds that you received when the  
9 other partner bought you out or paid you off?

10 **A.** Excuse me, sir?

11 **Q.** The first line, the 1.5 million on that line?

12 **A.** Yeah, this is a fund I received -- I received from  
13 Dorothia.

14 **Q.** And is that actually technically YNH Investments,  
15 Inc.? Is that --

16 **A.** Yes.

17 **Q.** Okay. And -- and so those were funds that you  
18 received from them, is that correct?

19 **A.** I received for our half, but I kept it. I'm not  
20 stealing it. We're going to account for it.

21 **Q.** Okay.

22 **A.** This is yours, this is mine.

23 Excuse me. I going back a little bit towards  
24 the 251,000. That wasn't Mr. Hamed money. Mr. Hamed, I  
25 were giving him \$150,000 to the batch plant, and I have

**FATHI YUSUF -- DIRECT**

1 proof I deposited it for him in St. Thomas. And up to now,  
2 he denying that money. That money, I give him \$150,000 to  
3 deliver to the batch plant, and he claim that the batch  
4 plant is ours.

5 It's not ours. We put it just not to let the  
6 town fight together.

7 Q. Okay. I am going to ask you about the batch  
8 plant, but --

9 A. Oh, whenever you want.

10 Q. -- I want to try to stick on this document?

11 A. Yeah. But I want to show you why these people, I  
12 believe they owe me a lot of money.

13 Q. I understand.

14 A. Why should I pay them? Let's sit down and say,  
15 What is yours and what is mine.

16 Q. No problem. Let me go down this list.

17 Dorothia is -- the 1.5 million were -- were  
18 monies paid that belonged to you and -- and Mr. Hamed?

19 A. Yes.

20 Q. And then the Jordan fund, it says 75,000 dinar. I  
21 take it that, converted, that's 105,932 U.S. dollars?

22 A. Right.

23 Q. Okay. and those are funds that are to be split  
24 between you and Mr. Hamed, as well?

25 A. I explained to you, sir.

## FATHI YUSUF -- DIRECT

1 Q. Yeah.

2 A. The 105 is by mistake. I end up transferring from  
3 his -- the property was mine and his.

4 Q. Right.

5 A. And I choose for some reason to put it in his  
6 name, because I trusted him.

7 Q. Right.

8 A. Now, when we decide to leave, we have to shake  
9 hands forever. I'm not looking back anymore. I need my  
10 half back, Mr. Mohammad.

11 Q. What is -- what is that plot number, the -- the  
12 one you're talking about?

13 A. Several. We have -- we have properties, too much.  
14 We have 1,200 or two -- 1,200 acre right here in the Virgin  
15 Islands.

16 Q. Okay.

17 A. Were owned between both of us.

18 Q. All right. So then the next line comes down and  
19 it says, 617,000 for Fathi Yusuf.

20 A. No. Yeah, this is -- I -- I don't know why I  
21 should give him that. This is my half. I went and bought  
22 the property with it.

23 Q. Okay. So you --

24 A. After I give him notice, I don't want to work with  
25 you no more.

**FATHI YUSUF -- DIRECT**

1           **Q.** So we -- tell you what, let's get to the bottom.  
2 At the bottom of this calculation is \$802,966.

3                           Do you see that?

4           **A.** Sir, it's a lot of -- this 8,200 (sic) I owe him  
5 on account.

6           **Q.** Okay.

7           **A.** We sit down, he give what I owe him to the  
8 accountant, I give what I believe he owe me to the  
9 accountant, and let's (indicating).

10          **Q.** Okay.

11          **A.** Let's, what do you call it, reconcile the account,  
12 and who owe who, we'll settle. I'm not running away.

13          **Q.** Okay. So one of the items that you owe them for,  
14 I understand there are items back and forth, but one of the  
15 items you owe him is the 802,960 --

16          **A.** Not 802, sir. I told you I already spent 105, or  
17 most of it, in a property where both of us is responsible to  
18 spend that money.

19          **Q.** Okay. So you would take the 105 off of this 802?

20          **A.** I might -- well, the others -- yeah, this -- that  
21 should go off.

22                           **MR. HARTMANN:** Half.

23          **Q.** (Mr. Holt) Half of that should go off?

24          **A.** Yeah, but I -- sir, thanks God, I -- I -- you  
25 know, I'm not speaking Arabic, not even one word up to now.

**FATHI YUSUF -- DIRECT**

1 Okay? They all English. I'm talking to you in plain  
2 English. Let's sit down and give this to an accountant and  
3 what is yours is yours, what is mine is mine. I have a  
4 check of 536,405, begging Mr. Wally to give me an answer for  
5 this check. This is written to your father, drawn on your  
6 account. Can you tell me what is this for?

7 Q. Okay.

8 A. All I'm getting, I'll get to the bottom of it.  
9 When this gentleman is going to reach the bottom?

10 Q. All right. So the sale of -- the money in  
11 Dorothea was 1.5 million, to be split between the two of  
12 you.

13 A. Yes, sir.

14 Q. Okay. And then you did some more accounting to  
15 come up with the fact --

16 A. Yeah, this will go, and we'll go through every  
17 little thing, right? Whatever is his is his, whatever is  
18 mine is mine.

19 Q. Okay.

20 A. I'm not denying anything.

21 Q. All right. And on that pile, is 802,966 is --

22 A. Yes, yes, but all of it is not his.

23 Q. All of this is not his.

24 A. Because there's an accountant. Some of it, I told  
25 you, by example, the bank statement.

**FATHI YUSUF -- DIRECT**

1 Q. Which is another -- another item.

2 A. Definitely this was an expense. I brought that  
3 money out.

4 Q. Okay. So you start with the 1.5 million, which is  
5 50/50, and then you start adding --

6 A. One million and a half is absolutely 50/50. I'm  
7 not hiding anything.

8 Q. Okay. And when did you get that money?

9 A. I get that money, I don't have a date. But I get  
10 that money maybe, I can guarantee you, it's not three years.  
11 It's less than three years. I sold this property many, many  
12 years ago.

13 Q. Okay. So you got this money, would it be fair to  
14 say you got it in 2012?

15 A. I don't know when.

16 Q. Okay.

17 A. I don't remember.

18 Q. Well, this lawsuit was filed in August of 2012.  
19 Did you get the money before this lawsuit was filed?

20 MR. HODGES: September 2012.

21 A. Maybe. Look at the date. Go to the owner and  
22 look at the date, or go to the public recorder office.  
23 That's something that can be resolved.

24 Q. (Mr. Holt) Okay.

25 A. I don't remember.



## FATHI YUSUF -- DIRECT

1 Q. So you don't remember when it was sold.

2 A. No. At least I'm not hiding anything, but I don't  
3 remember when I sold it.

4 Q. All right. Let's go back to the batch plant then.  
5 Explain to me, first of all, how -- how was the batch --  
6 batch plant first purchased? How did you -- how did that  
7 get -- where did the funds come from to buy that batch  
8 plant?

9 A. The batch plant, when we was selling the water and  
10 sending it back home to the poor people, --

11 Q. Uh-huh.

12 A. -- split between his family members -- I mean his  
13 family could be 2,000.

14 Q. Right.

15 A. I don't mean his brothers and sister, no. Mine,  
16 more or less the same.

17 Then every year, they start to ask, Where's  
18 the water money? I say, Mr. Hamed, look. We have to put an  
19 end to this. What do you think, we making our people lazy?  
20 They start to get free money. Why don't we try to give them  
21 something to do? After all, you came with nothing. I came  
22 with less than nothing. We poor. Our parents is poor.  
23 Very respectable parents, but they're poor. And now we made  
24 it. And you are a Muslim, and I am a Muslim.

25 And Muslim religion have five pillar. The

Dorothia  
Jordan Fund 75,000 - Dinar

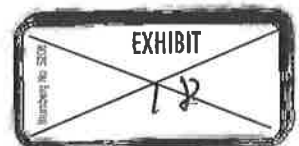
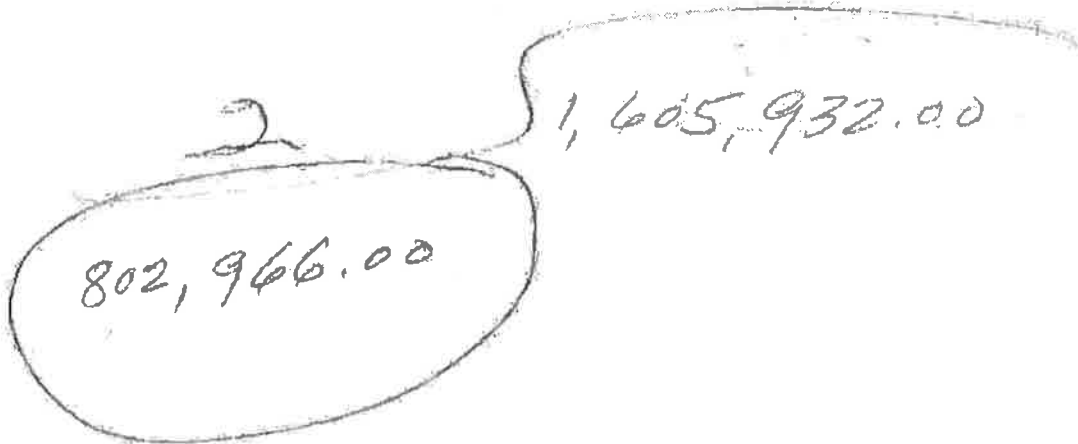
1,500,000.00  
105,932.00

Fathi YUSUF


From Jordan " " "  
Balance for Fathi YUSUF

1,605,932.00  
← 617,000.00 ←  
← 105,932.00 ←  
80,034.00. —

802,966.00





 KeyCite Red Flag - Severe Negative Treatment  
Affirmed in Part, Vacated in Part by Yusuf v. Hamed, V.I., September 30, 2013

2013 WL 1846506 (V.I.Super.)  
Superior Court of the Virgin Islands,  
Division of St. Croix.

Mohammed HAMED, by his authorized agent Waleed Hamed, Plaintiff,  
v.  
Fathi YUSUF and United Corporation, Defendants.

CIVIL NO. SX-12-CV-370

|  
April 25, 2013

ACTION FOR DAMAGES; PRELIMINARY AND PERMANENT INJUNCTION;  
DECLARATORY RELIEF  
JURY TRIAL DEMANDED

*MEMORANDUM OPINION*

Douglas A. Brady, Judge of the Superior Court

\*1 \*\*119 **THIS MATTER** is before the Court on Plaintiff's Emergency Motion and Memorandum to Renew Application for TRO ("Renewed Motion"), \*\*120 filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed.R.Civ.P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed.R.Civ.P. 52(a)(2), and GRANTS Plaintiff's Renewed Motion.

*JURISDICTION*

This Court has jurisdiction over this matter pursuant to 4 V.I.Code § 76(a), which grants the Superior Court "original jurisdiction in all civil actions regardless of the amount in controversy."

Likewise, under 5 V.I.Code § 1261, courts of record are empowered to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.... The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree,” A request for injunctive relief is addressed to the sound discretion of the Court. *Shire U.S. Inc. v. Barr Laboratories, Inc.*, 329 F.3d 348, 352 (3d Cir.2003). This Court may grant equitable (i.e. injunctive) relief as Plaintiff seeks in his Renewed Motion to enforce a partner's rights regarding partnership profits and management and conduct of the partnership business pursuant to 26 V.I.Code § 75(b).

### STANDARD

The Court must consider four factors when reviewing a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Petrus v. Queen Charlotte Hotel Corp.* 56 V.I. 548, 554 (2012), citing *Iles v. de Jongh*, 55 V.I. 1251, 1256 (3d Cir.2011), (quoting *McTernan v. City of New York*, 577 F.3d 521, 526 (3d Cir.2009)).

### \*\*121 STATEMENT OF ISSUES

By his Verified Complaint, Plaintiff alleges that Defendants, acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between Plaintiff and Defendant Fathi Yusuf (“Yusuf”) and established understandings and agreements among the parties. Plaintiff avers that those acts threaten the businesses and his interests in the businesses established by the partnership as a result of those agreements. Accordingly, Plaintiff demands injunctive and declaratory relief to determine the status of the parties' relationships and the framework under which they must conduct their business operations in light of those relationships. Upon review of the parties' case and controversy, submissions and presented evidence, the Court makes the following findings of fact.

### FINDINGS OF FACT

\*2 1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196–198*, hereinafter *Tr. 196–198, Jan. 25, 2013*.

2. In 1979, Fathi Yusuf incorporated United Corporation (“United”) in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*
  3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at 8, lines 1–14; hereinafter Pl.Ex. 1, p. 8.1–14.*<sup>1</sup>
- <sup>1</sup> The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as Pl. Ex. 1. See discussion at *Tr. 6–9, Jan. 25, 2013.*
4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed (“Hamed”) that he was unable to finance the **\*\*122** completion of the project. At Yusuf s request, Hamed provided funding to Yusuf s project from proceeds of Hamed's grocery business. *Pl.Ex. 1, p. 14:4–15:14.*
  5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St. Croix. *Tr. 197:5–199:13, Jan. 25, 2013.*
  6. Upon Yusuf s request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4–15. Jan. 25, 2013.*
  7. Hamed contributed to Yusuf s project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, “in the winning or loss.” *Tr.200:16–23, Jan. 25, 2013.*
  8. Hamed initially became a 25% partner of Yusuf, along with Yusuf s two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p. 15:2–14.*
  9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf s two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6–24.*
  10. With the withdrawal of Yusuf s nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems,

Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business. *Pl.Ex. 1, p. 17:24–19:10.*

11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl.Ex. 28.*<sup>2</sup>

2 Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, presenting proposed Plaintiff's Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff's Request was granted. Exhibit 28 is comprised of selected Defendants' Responses to Plaintiff's Second Set of Interrogatories to Defendants in that matter known as *Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John*

\*3 \*\*123 12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable” as well as loss of his contribution to the initial start-up funds. *Tr. 44:12–21; 200:16–23; 206:23–25, Jan. 25, 2013; Pl. Ex. 1, p. 18:16–23; p.23:18–25.*

13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl.Ex. 1, p. 18:18–23* (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); *Tr. 210:4–8, Jan. 25, 2013* (Q: “How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A: “Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.”)

14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *Pl. Ex. 1, p. 20:10–12.*

15. Yusuf has admitted in this case that he and Hamed “entered into an oral joint venture agreement” in 1986 by which Hamed provided a “loan” of \$225,000 and a cash payment of \$175,000 in exchange for which “Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets” in addition to the “loan” repayment. Yusuf states that the parties' agreement provided for “a 50/50 split of the profits of the Plaza Extra Supermarket stores.” *Pl.Ex. 2, p.3, 4.* Indeed, Yusuf confirms that “[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.” *Pl.Ex. 3, p. 11.*

16. In 1992–1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third “partner,” Ahmad Idheileh, who later withdrew leaving a “50/50” ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr.27:1–28:14, Jan. 25, 2013.*

**\*\*124** 17. At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas. *Tr.* 238:4–6, *Jan. 25, 2013*.

18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.” *Pl.Ex. 1, Affidavit of Fathi Yusuf Deposition Ex. 6*<sup>3</sup>.

3

At the conclusion of the second day of the hearing, counsel agreed to supplement the record to include exhibits to Plaintiffs Exhibit I, the February 2, 2000 deposition of Fathi Yusuf. *Tr.* 129–130, *Jan. 31, 2013*. Deposition Exhibits 6 and 7 were provided with Plaintiff's Notice of Filing Supplemental Deposition Exhibits, filed February 19, 2013.

19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr.* 26:11–19; 206:20–22, *Jan. 25, 2013*. Yusuf's management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I'm not sign no thing.... Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.” *Tr.* 207:16–21, *Jan. 25, 2013*.

**\*4** 20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have managed the Estate Sion Farm store along with Waleed Hamed. Waleed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr.* 31:6–35:11; 147:11–20; 160:10–22, *Jan. 25, 2013*, and *Tr.* 33:6–17, *Jan. 31, 2013*.

21. In operating the “office,” Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” *Pl.Ex. 1, p. 8:1–7*.

**\*\*125** Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United (*Pl.Ex. 4, ¶ 14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex's. 15, 16*), “in talking about Plaza Extra ... when it says United Corporation ... [i]t's really meant me [Yusuf] and Mr. Mohammed Hamed.” *Pl.Ex. 1, p. 69:13–21*.

22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.” *Pl.Ex. 28, Response to Interrogatory 6*.

23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on

- behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex's. 7, 8, 9; Tr. 48:24–51:9; 212:18–214:15, Jan. 25, 2013.*
24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No.2005–15* (“the Criminal Action”). However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11–223:6; 134:15–23, Jan. 25, 2013.*
25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill–Lynch. Those “profits” accounts remain at Banco Popular Securities to the present. *Tr. 41:15–42:18; 137:13–138:19, Jan. 25, 2013.*
26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*
27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require “complete and accurate” tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting \*\*126 procedures for Plaza Extra have been adopted. *Tr. 241:23–245:12, Jan. 25, 2013; Tr. 90:4–16, Jan. 31, 2013; Def. Ex. 2.*
28. At some point between late 2009 and 2011, at Yusuf's suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11–16, 228:2–11, Jan. 25, 2013.*
29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business and threatening to close the store and to terminate the United Shopping Plaza lease. *Tr. 52:5–10, Jan. 31, 2013; Tr. 51:18–52:8, Jan. 25, 2013.*
- \*5 30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the “Dissolution of Partnership.” *Pl.Ex. 10, 11, 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl.Ex. 12.*<sup>4</sup> Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15–20, Jan. 25, 2013.*



- 4 These exhibits were admitted at hearing over Defendants' objection premised on Fed.R.Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiffs claims, but rather to put into context the history of the parties' relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.
31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24–48:2; 172:6–173:8; 202:18–25, Jan. 25, 2013; Pl.Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh. 6, ¶ 4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6–35:11, Jan. 25, 2013.*
- \*\*127** 32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl.Ex. 27*), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20–139:8, Jan. 25, 2013; Tr. 121:3–123:9, Jan. 31, 2013.*
33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr. 88:8–90:17, Jan. 25, 2013.*
34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:12–20; 36:22–38:25; 229:10–13, Jan. 25, 2013.*
35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr. 246:1–250:14, Jan. 25, 2013; Pl. Group Ex. 13.*
36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2–251:15, Jan. 25, 2013; Tr. 118:12–120:2, Jan. 31, 2013.*

\*6 37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds \*\*128 representing profits from the supermarkets that have been set aside in the Banco Popular Securities brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr.* 41:15–42:18; 119:4–12, *Jan. 25, 2013*. The Criminal Action will remain pending until past tax returns are filed. *Tr.* 134:15–136:22; 242:16–245:5, *Jan. 25, 2013*. As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9*. This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.

38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr.* 76:5–82:9, *Jan. 25, 2013*; *Pl. Ex. 15, 16*.<sup>5</sup>

5 Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.

39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr.* 149:20–150:22; 158:18–159:12; 253:25–254:19, *Jan. 25, 2013*.

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, *Tr.* 181:20–185:16, *Jan. 25, 2013*. Charriez had a “very critical job” with Plaza Extra (*Tr.* 179:17–19, *Jan. 25, 2013*), and the independent accountant retained by Yusuf agreed that she was “a very good worker” and that her work was “excellent.” *Tr.* 94:2–6, *Jan. 31, 2013*. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee's improper activity, Mafeed Hamed instructed Charriez to return to \*\*129 work the following day. *Tr.* 179:4–24; 185:17–186:8, *Jan. 25, 2013*. On Charriez' January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr.* 186:9–187:1, *Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr.* 93:5–94:15; 164:19–165:18; 187:5–188:8, *Jan. 25, 2013*. The incident that occurred on January 9, 2013, the same day that Plaintiff's Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. *Tr.* 141:25–142:18; 143:17–146:19; 166:21–167:8, *Jan. 25, 2013*.

41. “By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.” *Pl.Ex. 28, Response to Interrogatory 6*. Defendants now claim that Yusuf is the owner of only 7.5% of the shares of United (*Pl.Ex. 2, p. 11*), which could adversely affect Plaintiff’s ability to enforce his claims as to the partnership “operated [as] Plaza Extra under the corporate name of United Corp.”

### DISCUSSION

\*7 Although this matter is before the Court on Plaintiff’s Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed.R.Civ.P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, Plaintiff prevails as to each of the four factors recently delineated by the Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554. Only if the movant produces evidence sufficient to convince the Court that all four factors favor preliminary relief should the injunction issue. *Opticians Association of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir.1990).

\*\*130 The evidentiary record before the Court includes the testimony of witnesses and documentary exhibits. Those exhibits include prior filings of the parties in this case by which the parties are bound by virtue of the doctrine of judicial admissions. *Berckley Inv. Group, Ltd. V. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir.2006); *Partita v. IAP Worldwide Serv., VI, Inc.*, 368 F.3d 269, 275 (3d Cir.2004). Those exhibits also include filings in prior unrelated cases, which are admissible as admissions of such party against its interest, pursuant to Fed.R.Evid. 801(d).<sup>6</sup>

<sup>6</sup> On April 7, 2010, Act No. 7161 became law, section 15 of which established the Federal Rules of Evidence as applicable in this Court. See, *Chinnery v. People*, 55 V.I. 508, 525 (2011).

The Court will consider the four factors required for the issuance of a preliminary injunction *in seriatim*, and makes the following conclusions of law.

### CONCLUSIONS OF LAW

#### Probability of Movant's Success on the Merits.

1. Plaintiff seeks to establish that his business relationship with Yusuf of more than 25 years constitutes a Virgin Islands partnership, notwithstanding the lack of any written partnership

agreement and the failure of the business to file Virgin Islands partnership tax returns or to provide K-1 forms to report partners' distributive share of income, among other factors urged by Defendants. Whether the relationship will be characterized as a partnership is governed by the Uniform Partnership Act ("UPA"), adopted in 1998 as Title 26, Chapter 1 of the Virgin Islands Code.

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I.Code § 22(a). In the mid-1980's when the Hamed-Yusuf business relationship began, a Virgin Islands partnership was defined as "an association of two or more persons to carry on as co-owners a business for profit." *Former* 26 V.I.Code § 21(a).

3. Under the UPA, "A person who receives a share of the profits of a business is presumed to be a partner in the business ..." 26 V.I.Code § 22(c)(3). Under the former Code provisions, "the receipt by a person of \*\*131 a share of the profits of a business is prima facie evidence that he is a partner in the business ..." *Former* 26 V.I.Code § 22(4).<sup>7</sup>

<sup>7</sup> The Court applies the test in effect at the time the business relationship between the parties was formed (see *Harrison v. Bornn, Borrm & Handy*, 200 F.R.D. 509, 514 (D.V.I.2001)), and holds that a partnership is found to exist by the admitted sharing of profits of the business unless Defendants' evidence is sufficient to rebut that *prima facie* evidence. However, the distinction between the language in the former statute and the current is of no legal significance. Commentary of the National Conference of Commissioners of Uniform State Laws on the publication of the 1997 of the UPA notes that "no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof." Formation of Partnership, Unif. Partnership Act § 202, cmt. 3 (1997).

\*8 4. Evidence of "a fixed profit-sharing arrangement" and "evidence of business operation" are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Ad die v. Kjaer*, Civ. No.2004-135, 2011 WL 797402, at 3\* (D.V.I. Mar. 1, 2011).

5. "A partnership agreement is defined as the agreement, whether written, *oral*, or implied, among the partners concerning the partnership, including amendments to the partnership agreement." 26 V.I.Code § 2(7), *emphasis added*. A "partnership at will" exists where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking." 26 V.I.Code § 2(8).

6. Defendants protest that there is no written partnership agreement to memorialize the understanding between Yusuf and Hamed. However, as noted, the UPA does not require that such agreements be memorialized by a writing, and further sanctions "at will" agreements that have no definite term or duration, and are subject to dissolution by either partner at any time. As such, partnerships are not within the statute of frauds and need not be in writing. *Smith v. Robinson*, 44 V.I. 56, 61 (Terr.Ct.2001).

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I.2006), citations omitted.

**\*\*132** 8. Defendants suggest that Hamed and Yusuf entered into a joint venture rather than a partnership. A joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as is a partnership. *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr.Ct.1997), citing *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I.1983).

9. Yusuf and Hamed, acting under the name “United Corporation,” entered into their relationship with Ahmad Idheileh “to open and operate a supermarket on St. Thomas” by means of a Joint Venture Agreement. *Pl.Ex. 1, Dep. Ex. 7*. This “business relationship created by agreement of the parties for the purpose of profit” was formed “for a single undertaking or transaction,” and was to “terminate at the conclusion of their stated purpose, by agreement, or at the will of the parties.” *C & C Manhattan v. Gov't of the V.I.*, 46 V.I. 377, 384 (D.V.I.2004), citations omitted. To the contrary, the self-described “partnership” of Hamed and Yusuf, formed for profit, with no set duration, involved the development of a business enterprise, including the three supermarkets and other business projects spanning two and a half decades.

10. The Court concludes that Defendants' recent claims that the parties have been engaged in a joint venture and not a partnership are not credible as they contradict the record before the Court and the long history prior to this litigation of admissions by Yusuf, who did not testify at the hearing, to the effect that he and Hamed are “50/50” partners. Those pre-litigation admissions of the existence of a partnership have been consistent over many years, including through his notice to Hamed of his dissolution of their partnership in the months prior to this litigation.

**\*9** 11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed's claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusuf's use of the Plaza Extra trade name registered to United, the use bank accounts in United's name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the stores was all set up in the context of Yusuf's partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to conduct various operations of the partnership. **\*\*133** *McDonald v. McDonald*, 192 N.W.2d 903, 908 (Wis. 1972). The fact that the partner conducting the business utilizes a corporate form does not

change the essential nature of the relationship of the parties. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir.1969).

12. Where, as here, the parties agree that one partner is designated to take charge of “the office” and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, \*7 (Cal.Ct.App.2004). Where one party actively pursues the partnership business, such business must be conducted in keeping with “fundamental characteristics of trust, fairness, honesty, and good faith that define the essence of the partners' relationship.” *Alpart v. Gen. Land Partners Inc.*, 574 F.Supp.2d 491, 500 (E.D.Pa.2008).

13. It is undisputed that Plaintiff and Yusuf agreed from the time prior to the opening of the first store to share profits from the business on a 50/50 basis and that they did so share profits. These elements of their business relationship present a *prima facie* case for the existence of a partnership under the former 26 V.I.Code § 22(4), applicable at the time of the formation of the partnership. Defendants have not presented evidence sufficient to overcome Plaintiff's *prima facie* proof of the partnership of the parties.<sup>8</sup>

<sup>8</sup> The analysis and the result are the same if the evidence is determined to give rise to the presumption of the existence of a partnership of the parties under the current 26 V.I.Code § 22(c)(3), the Virgin Islands UPA. Defendants' proofs are insufficient to rebut the presumption of the existence of a partnership.

14. Various other indicia of the existence of the formation of a partnership are present in the record, including the fact that the parties intended to and did associate with each other carry on as co-owners a business for profit (26 V.I.Code § 22(a)). The parties agreed to share the net profits of the business “50/50” (26 V.I.Code § 22(c)(3)). Each of the parties contributed money and services to commence the business \*\*134 operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

15. On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusuf with regard to the three Plaza Extra stores.

**Irreparable injury to Movant by denial of relief.**

\*10 16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including "an equal share of the partnership profits" and "equal rights in the management and conduct of the partnership business." 26 V.I.Code § 71(b) and (f).

17. Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I.Code § 75(b)(1) and (2)(i).

18. Yusuf forcefully contends that this case is solely about money damages, and any damage to Plaintiff is economic damage only, which can be remedied by an award of monetary damages. "[A] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages." *IDT Telecom, Inc. v CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir.2007), citations omitted. Although the alleged diversion of more than \$3,000,000 constitutes a primary focus of Plaintiff's claims for relief, he also seeks to remedy what he alleges to be usurpation by Yusuf of his "equal rights in the management and conduct of the partnership."

19. To establish irreparable harm, Plaintiff must show that his legal remedies (i.e. the potential award of a money judgment) are inadequate. If the plaintiff suffers a substantial injury that cannot be \*\*135 accurately measurable or adequately compensable by an award of money damages, irreparable harm may be found. *Ross-Simonsof Warwick, Inc. v. Baccarat*, 102 F.3d 12, 18–19 (1st Cir.1996). An award of monetary damages may not provide an adequate remedy where the amount of monetary loss alleged is not capable of ascertainment. *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir.1989).<sup>9</sup> Further, injunctive relief may be available where the movant can "demonstrate that there exists some cognizable danger of recurrent violation of its legal rights." *Anderson v. Davila*, 125 F.3d 148, 164 (3d Cir.1997), quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), internal quotations omitted.

<sup>9</sup> With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, Tr. 71:20–72:3; 75:11–21, Jan. 31, 2013.) As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

20. Plaintiff alleges recurring violations of his legal rights to equal participation in the management and conduct of the partnership business. In addition, Plaintiff claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future and diverted funds may be removed from the jurisdiction of the Court rendering a

monetary judgment ineffectual. See *Health and Body Store, LLC v. JustBrand Limited*, 2012 WL 4006041, at \*4–5 (E.D.Pa. Sept. 11, 2012).

\*11 21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶ 40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr. 166:21–167:8, Jan. 25, 2013*), that employees are fearful for their jobs (*Tr. 158:18–159:12, Jan. 25, 2013*), and that the tensions between Yusuf and the Hamed family have created a “hard situation” for employees (*Tr. 187:5–188:8*). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which \*\*136 constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir.1992).

22. Defendant's actions have deprived Plaintiff of his rights to equal participation in the management and conduct of the business. As such, the Court finds that Plaintiff has met his burden of establishing irreparable injury if injunctive relief is not granted.<sup>10</sup>

<sup>10</sup> Most troubling is the substance of Plaintiff's Motion to Supplement the Record, dated and filed April 23, 2013, after the Opinion was largely completed. Therein, Waleed Hamed states that the Hamed family has been denied access to the supermarket accounts and signature authorization to Hamed family members has been revoked by the depository banks based upon instructions from Yusuf. Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights not compensable by an award of monetary damages.

### **The balance of harms favors the Movant**

23. One of the goals of the preliminary injunction analysis is to maintain the status quo, defined as “the last, peaceable, noncontested status of the parties.” *Opticians Association of America, supra*, 920 F.2d at 197, citations omitted. For more than 25 years, the parties have been able to equally manage and control their very successful business enterprise. For reasons delineated above, that Plaintiff's rights to equal management and control have been infringed upon by the actions of Defendant. In considering the relief sought by Plaintiff, the Court must assure that granting injunctive relief will not harm Defendants more than denying relief would harm Plaintiff.

24. The remedy sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business. Rather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled. Neither party has the right to exclude the other from any part of the business. *Health and Body Store, LLC, supra*, 2012 WL 4006041, at \*5. The relief sought and granted to provide equal access to all aspects of the business will not harm Defendants more than the denial of such relief harms Plaintiff.



25. Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the partnership is \*\*137 maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

**Public interest favors injunctive relief.**

26. The public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement. Enforcement of statutory rights of the partners is best suited to accomplish that end.

\*12 27. The public interest is served by the continued employment of 600 Virgin Islanders and the continuity of this Virgin Island institution operated according to law and their agreement. “It is not only in the interest of [Plaintiff] that this court grant a preliminary injunction against [Defendants], but it is in the public interest to ensure that the management of [Plaza Extra Supermarkets] be properly maintained and the premises remain available for public use—they being an integral part of the St. Croix economy.” *Kings Wharf Island Enterprises, Inc. v. Rehlaender*, 34 V.I. 23, 29 (Terr.Ct.1996).

## CONCLUSION

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. The Court's Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 700 (2011), quoting Fed.R.Civ.P. 65(d)(1)(B) and (C).

Consistent with this Court's Findings of Fact and Conclusions of Law a separate Order of even date will accompany this Memorandum Opinion, directing the parties as follows:

1. The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.

\*\*138 2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).

3. All checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.
4. A copy of the Order accompanying this Opinion will be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.
5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

### **ORDER**

The Court having issued its Memorandum Opinion of this date, it is hereby

**ORDERED** that Plaintiff's Emergency Motion to Renew Application for TRO, filed January 9, 2013, seeking entry of a temporary restraining order or, in the alternative, preliminary injunction is **GRANTED**, as follows:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations. It is further

**ORDERED** that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)). It is further

**ORDERED** that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf. It is further

**\*13 ORDERED** that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held. It is further

**ORDERED** that Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to

Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

### All Citations

2013 WL 1846506, 58 V.I. 117

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

14 FEB 10 PM

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

**DEFENDANTS' OPPOSITION  
TO PLAINTIFF'S MOTION TO COMPEL  
DEFENDANTS TO COMPLY  
WITH THE PRELIMINARY INJUNCTION**

**I. SUMMARY**

Defendants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants") have fully complied with this Court's Order of April 25, 2013 granting Plaintiff Mohamed Hamed ("Hamed") a preliminary injunction (the "Preliminary Injunction") relating to the continued operations of the three Plaza Extra Supermarkets ("Plaza Extra Stores"). Likewise, Defendants have complied with the clarifying order entered on May 31, 2013 ("Clarifying Order"), which was issued in response to *Defendants'* request for the Court's guidance to insure proper compliance and to address specific areas of concern.

exists no need for "live" access to the accounting systems by either Hamed, who is illiterate and retired, or Waleed Hamed, who is a manager, albeit an absentee manager, to perform any of his responsibilities in the daily operations of the Plaza Extra Stores. Rather, all accounting tasks for which "real time" access to the accounting system is needed are accomplished by Mr. Gaffney and members of his staff, who have access as needed. Also looming large in this agreement to timely provide all backup information was a fear of providing "live" access to financial information to Waleed Hamed, who was a defendant in a number of lawsuits alleging financial misconduct and embezzlement.

As a result, the parties agreed to a system whereby the Sage50 backup files were provided by John Gaffney (on Defendants' behalf) to the Hameds each and every month, without fail. See Exhibit D at ¶¶ 4, 7. Such information is a full and complete accounting of the financial operations and financial data and records maintained for the Plaza Extra Stores. Hence, it is disingenuous for Hamed to fail to mention this key fact in his Motion. Rather, the parties did confer regarding access to the Sage50 system and the pertinent information has been provided to Hamed every single month. Direct and unrestricted "live" access is not required. Rather, only "mutual access" is required. Given the parties' agreement and practice for the last seven months, the risks to the operations associated with "live" access to those other than the accounting personnel and especially with the concerns of financial misconduct by Hamed's sons, the access actually provided is appropriate and, most importantly, in compliance with the Clarifying Order.

If Hamed is contending that he was not in "agreement" with this arrangement and, therefore, had not reached an agreement regarding access to the Sage50 system, Hamed should have stated so much sooner. But to fail to acknowledge that he *has been* receiving the

MINUTES OF  
THE ORGANIZATION MEETING

OF  
*Y + S Corporation, Inc.*

The organization meeting of incorporators was held at  
*Law Offices of Robert L. King*  
on *September 26* 1994 at *P. M.*

The following were present

*Hakima Salem*

*Robert L. King - attorney*

*Rifat Salem*

*Fathi Yusuf*

being all the incorporators of the corporation.

*Robert L. King* was appointed chairman of the  
meeting and *Hakima Salem* was appointed secretary.

The secretary then presented and read to the meeting  
the waiver of notice of the meeting, subscribed by all the  
persons named in the certificate of incorporation, and it  
was ordered that it be appended to the minutes of the meeting.

The secretary then presented and read to the meeting a  
copy of the certificate of incorporation and reported that on  
*Sept. 21* 1994 the original thereof was filed in  
the office of the Secretary of State of this State. The copy  
of the certificate of incorporation was ordered appended to  
the minutes of the meeting.

The secretary then presented assignments executed by the subscribing stockholders as follows:

<u>from</u>	<u>to</u>	<u>number of shares</u>
Y+S Corporation	Hakima Salem	1000
Y+S Corporation	Najeh Yusuf	500
Y+S Corporation	Hisham Hamed	500

RESOLVED, that the assignments of subscription rights as stated above are hereby approved and it is ordered that the assignments as executed by the subscribing stockholders be appended to the minutes of this meeting.

~~The secretary then presented to the meeting the resignation of~~

*None*

~~as directors of the corporation.~~

~~RESOLVED that the resignation of directors listed above is hereby approved and accepted and the form of resignation as executed by said directors be appended to these minutes.~~

The secretary then presented a proposed form of by-laws prepared by

*Robert L. King.*

counsel to the corporation. The proposed by-laws were read to the meeting, considered and upon motion duly made, seconded and carried, were adopted as and for the by-laws of the corporation and ordered appended to the minutes of the meeting.

The chairman of the meeting then called for the election of officers of the corporation. The following persons were nominated to the office preceding their name:

president *Fathi Yusuf*  
vice-president *Rifat Salem*  
secretary  
treasurer } *Hakima Salem*

No further nominations being made the nominations were closed and the directors proceeded to vote on the nominees. The chairman announced that the foregoing nominees were elected to the offices set before their respective names.

The secretary submitted to the meeting a seal proposed for use as the corporate seal, a specimen stock certificate proposed for use as the corporate certificate for stock, the corporate record book, and the stock transfer ledger. Upon motion duly made, seconded and carried, it was

RESOLVED, that the seal now presented at this meeting, an impression of which is directed to be made in the minutes of this meeting, be and the same hereby is adopted as the seal of the corporation, and further

RESOLVED, that the specimen stock certificate presented to this meeting be and hereby is adopted as the form of certificate of stock to be issued to represent shares in the corporation, and further



RESOLVED, that the corporate record book, including the stock transfer ledger, be and hereby is adopted as the record book and stock transfer ledger of the corporation.

Upon motion duly made, seconded and carried, it was

RESOLVED, that the treasurer of the corporation be and hereby is authorized to pay all charges and expenses incident to or arising out of the organization of the corporation and to reimburse any person who has made any disbursement therefor.

Upon motion, duly made, seconded and carried, it was

RESOLVED, that an office of the corporation be established and maintained at  
in the City of \_\_\_\_\_ State of \_\_\_\_\_  
and that meetings of the board of directors from time to time may be held either at the principal office or at such other place as the board of directors shall from time to time order.

Upon motion, duly made, seconded and carried, it was

RESOLVED, that for the purpose of authorizing the corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for this corporation to transact business, the proper officers of this corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and, under the corporate seal, to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the corporation to transact business therein.

The chairman then stated that it was desirable to designate a depository for the funds of the corporation. Thereupon, on motion duly made, seconded and unanimously adopted, it was

RESOLVED, that the treasurer be and hereby is authorized to open a bank account in behalf of the corporation with  
*Bank of Nova Scotia*  
located at *Tutu Park Mall*  
and a resolution for that purpose on the printed form of said bank was adopted and was ordered appended to the minutes of this meeting.

Upon motion duly made, seconded and carried, it was

RESOLVED, that the board of directors be and hereby is authorized to issue the unsubscribed capital stock of the corporation at such times and in such amounts as it shall determine, and to accept in payment thereof, cash, labor done, personal property, real property or leases thereof, or such other property as the board may deem necessary for the business of the corporation.

The secretary then presented to the meeting a written proposal from *Spread Eagle Holdings* dated *September 8 1994* and addressed to this corporation.

Upon motion duly made, seconded and carried, the said proposal was ordered filed with the secretary, and he was requested to append a copy of the proposal to the minutes.

The proposal was taken up for consideration and the following resolution was on motion unanimously adopted

WHEREAS, a written proposal has been made to this corporation which proposal has been appended to these minutes, and

WHEREAS, in the judgment of the board of directors the assets proposed to be transferred to the corporation are reasonably worth the amount of the consideration demanded therefor, and that it is in the best interests of this corporation to accept the said offer as set forth in said proposal,

NOW THEREFORE, IT IS RESOLVED that said offer, as set forth in said proposal, be and the same hereby is approved and accepted, and that in accordance with the terms thereof, this corporation shall as full payment for said property *in U.S. currency,* ~~issue to said offeror(s) or nominee(s)~~ fully paid and non-assessable shares of this corporation, and it is

FURTHER RESOLVED, that upon the delivery to this corporation of said assets and the execution and delivery of such proper instruments as may be necessary to transfer and convey the same to this corporation, the officers of this corporation are authorized and directed to ~~execute and deliver the certificate or certificates for such shares as are required to be issued and delivered on acceptance of said offer in accordance with the foregoing.~~ *to receive title in the name of the corporation.*

Upon motion duly made, seconded and carried, it was

RESOLVED, that the corporation proceed to carry on the business for which it was incorporated, and further

RESOLVED; that the signing of these minutes shall constitute full ratification thereof and waiver of notice of the meeting by the signatories.

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting was adjourned.

Dated: *September 26, 1994*

  
\_\_\_\_\_ chairman

*Hakima Sol*  
\_\_\_\_\_ secretary

A true copy of each of the following papers referred to in the foregoing minutes is appended hereto:

Waiver of notice of the meeting  
Certificate of incorporation  
Assignments of subscription  
Resignation of directors  
By-laws  
Specimen stock certificates  
Resolution designating depository of funds  
Proposal

**AGREEMENT OF SALE OF STOCK**

This Agreement is entered this *15<sup>th</sup>* day of June 2000, by and between Hisham Hamed and Najah Yusef of 9-C Princess Hill, St. Croix, United States Virgin Islands (hereinafter referred to as "Seller") and Hakima Salem of 2E & 2F Estate Annas Retreat, St. Thomas, United States, Virgin Islands (hereinafter referred to as "Buyer" ).

**WHEREAS**, Hashim Hamed, Najah Yusef and Hakima Salem are the holders and registered owners of 100 % of the issued and outstanding shares of Y & S Corporation.; and

**WHEREAS**, Hisham Hamed and Najah Yusef, desire to sell and transfer all of their 1,000 shares of Y & S Corporation, to the Buyer pursuant to the obligations expressed in the shareholder agreement entered on September 20, 1994; and

**WHEREAS**, the Buyer is ready, willing and able to purchase the referenced stock pursuant to the terms of the shareholders agreement dated September 20, 1994 and in accord with the terms hereinafter provided;

**NOW, therefore, in consideration of the promises and conditions hereinafter set forth and heretofore and hereinafter expressed the seller and buyer agree as follows:**

**1. Seller agrees to sell and transfer 1000 shares of common stock of Y & S Corporation, Inc. representing all of seller's stock ownership interest in that corporation, into escrow and after final payment, to register such transfer of shares upon the books of the corporation.**

**2. In consideration of the transfer of its 1000 shares of Y & S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusef of 9-C Princess Hill, St. Croix the sum of Nine Hundred Thousand (\$ 900,000.00) Dollars.**

**3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. The first installment shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.**

**4. Interest: The installments due hereunder shall accrue interest on the outstanding balance at a rate of twelve percent (12%) per annum until the entire balance is paid in full. Payment of interest is waived provided payment of each installment due is made within 30 days of the due date for such installment. In the event that an installment is late, the interest payable or accruable to the date of the late payment shall be paid to the IQRA School in St. Croix, United States Virgin Islands. Further, in the event of default, as default is defined hereunder, all interest accruable under this agreement shall be payable to the IQRA School.**

**5. Default: It shall be a default under this agreement if Buyer shall fail to pay principal payments in the amount of Four Hundred Fifty Thousand (\$450,000.00) Dollars on or**

before January 15, 2002 and the grace period herein provided. It shall also be a default if Buyer shall fail to make timely payment of installments due on January 15, 2003 or January 15, 2004 within the allotted grace period. In the event that Buyer shall default as such term is defined herein, the seller may accelerate the remaining indebtedness, making the entire amount then outstanding, immediately due and payable. Upon acceleration and notice thereof, Buyer shall pay the entire principal balance then outstanding to the Seller's Nominee, Fathi Yusef and shall pay any and all accrued interest to the IQRA School.

6. Escrow: The stock sold under this agreement shall be endorsed by the sellers to the Buyer and such stock shall be held in Escrow by Robert L. King, Esq. until all payments due hereunder have been paid to the Seller's Nominee. Robert L. King, as escrow agent shall deliver the stock certificates sold hereunder to the Buyer within 30 days of receipt of written notice from seller that the entire purchase price has been paid in full. The corporation shall immediately thereafter cause the transfer of shares to be registered upon the books of the corporation. If Buyer shall default in making the payments as required by this agreement within the grace periods provided, and such default is not cured within 60 days after such default, then escrow agent may return said stock certificates to the seller or seller's nominee without recourse from either Buyer or Seller. Both Buyer and Seller agree to hold escrow agent harmless from all manner of cost and liability as a result of escrow agent's attempt to perform his functions under this agreement. In the event of a dispute over who should lawfully possess the stock certificates, escrow agent may, but is not required to, refuse to deliver the certificates to either Seller or Buyer and may hold the same pending a decision by an arbitrator. The arbitrator's decision shall be final and binding on the parties. Escrow agent shall act in accord with the

arbitrator's decision, notwithstanding any actual or proposed appeal by the non-prevailing party. Upon delivery of the stock certificates pursuant to arbitrator's decision or discretionary delivery to the seller, the escrow agent shall be discharged of his duties.

7. **Arbitration.** The Parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or at P.O. Box 50191, Minneapolis, Mn. 55405. This agreement shall be interpreted under the Federal Arbitration Act.

8. Buyer shall have the right from the date hereof to act, with respect to the certificates sold with all authority of the actual owner of such certificates except that the buyer may not sell such stock certificates unless the proceeds of such sale are first applied to reduce the indebtedness to the Seller.

9. Any and all bank accounts presently in the name of the corporation shall remain the property of the corporation and any claim of entitlement which could be made by seller to such accounts is hereby waived.

10. Any and all obligations of the corporation, including but not limited to, income tax; real property tax; condominium fees; insurance, employment taxes or social security shall remain the obligation of the corporation and buyer shall hold seller harmless from each and every such obligation. Buyer further agrees to hold seller harmless of and from



liability of every kind and nature which is related to or derived in whole or part from the existence of Y & S Corporation, Inc.

11. In the event that Buyer shall sell any of the assets of Y & S Corporation, Inc. before the entire balance has been paid in full, the amount so received shall be first applied to liquidate the balance to the seller.

DATED: June 15, 2000

Rufiq Ali Sal  
WITNESS

HISHAM RAMED  
HISHAM RAMED

WITNESS

NAJAH YUSUF  
NAJAH YUSUF

WITNESS

WITNESS

HAKIMA SALEM  
HAKIMA SALEM

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

MOHAMMAD HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

Case No.: 2014-SX-CV- 278

ACTION FOR DEBT AND  
CONVERSION

JURY TRIAL DEMANDED

ORDER

This matter is before the Court on the Plaintiff's Motion to Stay this case pending the resolution of this claim in the companion case, *Hamed v. Yusuf*, STX CIV NO. 2012-370. Upon consideration of the matters before me, said Motion is hereby **Granted**. This case is stayed for a period of 6 months. The parties shall report the status of this claim in that case on or before August 15, 2016.

Dated:

\_\_\_\_\_  
**ROBERT A. MOLLOY**  
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE  
Acting Clerk of the Court

By: \_\_\_\_\_  
Court Clerk Supervisor

**DIST:** Joel H. Holt  
Carl J. Hartmann, III  
Gregory Hodges  
Nizar DeWood