

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**PLAINTIFF'S REPLY TO YUSUF'S OPPOSITION TO MOTION
TO REMOVE HIM AS THE LIQUIDATING PARTNER**

The Plaintiff has requested this Court to remove Fathi Yusuf as the Liquidating Partner based upon certain improper acts, primarily those on the "Final Accounting" submitted by Yusuf on November 15, 2015, showing various credits between the two partners, Hamed and Yusuf, with a net balance due Hamed of \$183,381.91. Yusuf's opposition makes several erroneous factual statements regarding central points that need to be corrected at the outset of this response -- as follows:

- Contrary to Yusuf's suggestion that Hamed's cashing of the \$183,381.91 disbursement check waived any objection to the November 15th accounting submitted to him, this issue was addressed before the check was cashed and the *Special Master made it absolutely clear* that the cashing of the check was without prejudice to Hamed's right to challenge the accounting summarily presented to him by Yusuf. See **Exhibit 1**.

- Contrary to Yusuf's suggestion, the fact that the Special Master signed a check does not mean he approved any of the payments as being "final," as all such checks were signed simply to speed up the liquidation process and are subject to being challenged on the merits. See **Exhibit 2**.
- Finally, contrary to Yusuf's assertions of both law and fact, this Court did not bless any misconduct by Yusuf under 26 V.I.C. §74(b)(2) just because it appointed Yusuf as the Liquidating Partner over Hamed's objections, which included the potential abuse of powers under this section.

With these clarifications in mind, it is respectfully submitted that the November 15th accounting demonstrates two things:

- First, Yusuf's proposed accounting includes multiple entries that unilaterally benefited him, *or worse yet, a corporation he owns that is a non-partner claimant*, at the expense of the partnership and his partner, Mohammad Hamed; and
- Second, there is simply no further need for the Liquidating Partner's services, as the liquidation and wrap-up marshaling and liquidation of assets phase had ended, with the only remaining tasks being the resolution of the disputed partner claims.

Each will be discussed separately for the sake of clarity.

I. The Liquidating Partner's payments of rent to United.

The V.I. Code section that controls this issue is clear—as noted in 26 V.I.C. §74(b)(2), during the liquidation process a partner is required:

(2) to refrain from dealing with the partnership . . . **on behalf of a party having an interest adverse to the partnership.** (Emphasis added).

Thus, while there are multiple instances of misconduct cited by Hamed in his motion (as well as his subsequent February 8th Objection to the Liquidating Partner's Sixth Report), the most glaring are the ones where the Liquidating Partner continues to unilaterally pay hundreds of thousands of dollars in "back rent" to his own corporation, United Corporation, even though no such rent has ever been established as being owed. These payments for additional rent allegedly owed United include:

- **\$119,529.01** in funds allegedly paid by the partnership for United's gross receipts and insurance obligations, as noted in the initial motion.
- Reimbursement to United of **\$89,443.92** for 2013-2014 real property taxes supposedly paid by United that Yusuf claims the partnership should pay as "additional rent" for the Plaza East Store, as noted in the February 8th Sixth Objection.
- Reimbursement to United of **\$46,990.48** for 2014 real property taxes supposedly paid by United that Yusuf claims the partnership should pay as "additional rent" for the Plaza East Store, as noted in the February 8th Sixth Objection.

Yusuf does not dispute that he made these payments to United. Instead, he simply claims these amounts **are owed United** as additional rent, even though this Court has never authorized these payments. Indeed, this Court found that the rent due for this time period was \$58,791.38 (see **Exhibit 3**), which the Court noted in its opinion was based on Yusuf's own affidavit, attached as **Exhibit 4**.

Thus, Yusuf's decision to unilaterally amend this Court's order, paying United over \$200,000 in rent beyond what this Court has already determined was due for this time period, is certainly improper conduct in "**dealing with the partnership . . . on behalf of a party having an interest adverse to the partnership,**" expressly prohibited by 26 V.I.C. §74(b)(2).

In short, this Court need not go any further into the facts regarding this motion, as these payments to Yusuf's corporation for "disputed rent claims" are sufficient "self dealing acts" to warrant this Court removing Fathi Yusuf as the Liquidating Partner.

Finally, as the "disputed claims" process is beginning, Yusuf certainly should no longer be acting in any capacity other than as a partner advocating his own claims against the partnership, including his remaining claims that seek millions of dollars in additional rent from the partnership in addition to what he has already been paid.

II. There is no further need for a Liquidating Partner, much less a need to pay one.

As the liquidation of the partnership property is complete, there is no need to keep Yusuf as the Liquidating Partner. Indeed, even in his response, Yusuf can only assert that he is still needed because of several third party lawsuits. However, those lawsuits are all being handled by counsel, paid by an insurance carrier. Thus, the estate does not need the burden, much less the expense, of the liquidating partner.

Moreover, as noted, the Special Master, who is also being paid, can assume these few remaining tasks, as permitted by 26 V.I.C. § 173(a), which allows judicial supervision as one alternative to having a liquidating partner. In short, it is respectfully submitted that the Master should now oversee the remaining aspects of the liquidation process.

III. Conclusion

For the reasons set forth herein, it is respectfully submitted that the relief sought be granted and that an order be entered removing Fathi Yusuf as the Liquidating Partner.

Dated: February 26, 2016



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CERTIFICATE OF SERVICE

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

Hon. Edgar Ross

Special Master
% edgarrossjudge@hotmail.com

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RE: Plaza

From **Edgar Ross** edgarrossjudge@hotmail.com hide details

Wed, Nov 18, 2015 10:29 am

To **Joel Holt** holtvi@aol.com

Your recital of our conversation is accurate.

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

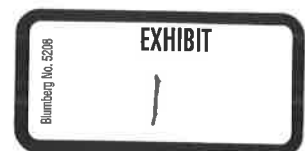
----- Original message -----

From: Joel Holt <holtvi@aol.com>
Date: 11/18/2015 7:46 AM (GMT-04:00)
To: edgarrossjudge@hotmail.com
Cc:
Subject: Plaza

Judge Ross-Pursuant to our conversation last night, I will tell my client that the October 1, 2015, check received from John Gaffney can be cashed without prejudice to the objections we will be filing to the accounting that was received on Monday. Let me know if you have any questions.

John did meet with our accountants and provided them with a lot of the information they requested, with the promise of continued cooperation. Thus, this review is actively on-going now. Thanks for your continued patience while we try to move all of this forward.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 772-8700



From: Edgar Ross <edgarrossjudge@hotmail.com>

To: Joel Holt <holtvi@aol.com>

Subject: RE: Plaza

Date: Thu, Feb 25, 2016 1:24 pm

There is no conclusive presumption of correctness . I indicated and hold firm to what I said to you about challenging any decision I make. I adopted this process to speed up payments and the liquifation process.Adjustments can be made to partners' draws at a later date if necessary. I do not consult with nor seek the approval of any attorney before I make a decision. You have the right to seek reconsideration of any decision I make.

Sent via the Samsung GALAXY S64, an AT&T 4G LTE smartphone

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

From: Joel Holt <holtvi@aol.com>

Date:02/25/2016 12:24 PM (GMT-04:00)

To: edgarrossjudge@hotmail.com

Cc:

Subject: Plaza

Judge Ross-yesterday I received the opposition to my objection to the Liquidating Partner's Six Bi-Monthly Report. That pleading contained several surprises that I want to raise with you.

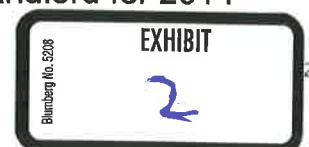
At the outset, I should note that their pleading included several checks that I had asked John Gaffney to produce weeks ago, but never received, The fact that those checks are readily accessible to Mr. Yusuf, but not my client, highlight the accounting problem we have discussed. However, that is not the point I want to address in this email, as I will discuss later it in response to your email sent yesterday.

The pleading as filed suggests that since you signed several specific checks, which I have attached to this email, these are resolved claims, not subject to further review. It was my understanding from conversations with you that this is not the case, but I guess I need clarification from you on this point.

For instance, there is a check for \$79,009.37 payable to the Tutu Park landlord for 2012 and 2013 real estate taxes that my client does not dispute. However, there is then a check for \$89,442.92 payable to United Corporation (marked #1) with an email from John Gaffney (also attached) **that I had never seen**, explaining that somehow this is additional rent owed United "Since Plaza East rent is based upon St. Thomas rent ...". Aside from the fact that I do not even understand the calculations attached to that email that supposedly explains how this "additional rent" was calculated, my client completely disagrees with the statement that the "Plaza East rent is based in the St. Thomas rent," thus warranting a new rent payment. Indeed, it is contrary to Judge Brady's April 27, 2015, opinion that determined the rent due for this time period and then ordered it to be paid, which did not include any such finding, which I am glad to send it you want to see it.

My first question is whether this payment of \$89,442.92 to United is now a resolved claim or is it still subject to my client's challenge that it is not due?

As another example, there is a check for \$43,069.56 payable to the Tutu Park landlord for 2014



real estate taxes that my client does not dispute. However, there is then a check for \$46,990.45 payable to United Corporation (marked #2). This one does not have an email from John Gaffney explaining this payment, but presumably it is also being claimed as additional rent owed United for 2014, which my client also completely disagrees with.

My second question is whether this payment of \$46,990.92 to United is also now a resolved claim or is it still subject to my client's challenge that it is not due?

Likewise, there is a check for \$41,462.28 payable to the Tutu Park landlord for 2014-2015 percentage rent, that my client does not dispute, even though the partnership only owed 50% of this amount. However, there is then a check for \$41,462.28 payable to Fahti Yusuf (marked #3). This one does not have an email from John Gaffney explaining this payment, so I am not sure what the justification is for this check.

My third question is whether this payment of \$41,462.28 to United is also now a resolved claim or is it still subject to my client's challenge that it is not due?

Finally, there is a check to DTF for \$57,605. As you know, you sent me this bill on December 24th. We then discussed this bill. My understanding was that this bill would not be paid until I had time to respond to it, which understanding is set forth in my January 23rd email to you, which begins with me thanking you for giving me time to respond to this issue. I then question the bill, **including the reasonableness of the amount of the bill**. However, I apparently misunderstood you, as I now see this check (marked #4) was paid to DTF on January 6th.

My fourth question is whether the amount of this payment to DTF is also now a resolved claim or is the amount still subject to my client's challenge?

In summary, are claims you allowed to be paid now "FINAL" – or are they still subject to being challenged in the claims process without any presumption of correctness being created by your signing the checks?

Joel H. Holt, Esq.
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED
Plaintiff)

CASE NO. SX-12-CV-370

ACTION FOR: DAMAGES; ET AL

Vs.)

FATHI YUSUF and UNITED)
CORPORATION, ET AL Defendant)

NOTICE
OF
ENTRY OF JUDGMENT/ORDER

TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire HON. EDGAR ROSS (edgarrossjudge@hotmail.com)
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire JUDGES AND MAGISTRATES OF THE SUPERIOR COURT
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire LAW CLERKS; LAW LIBRARY; IT; RECORD BOOK

Please take notice that on APRIL 27, 2015 Memorandum Order was

entered by this Court in the above-entitled matter.

Dated: April 27, 2015

ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court



By: IRIS D. CINTRON

COURT CLERK II

EXHIBIT
3
Bumberg No. 5208

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATON,)
Defendants/Counterclaimants)

v.)

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

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

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant United Corporation's Motion to Withdraw Rent and Memorandum of Law in Support of United's Motion ("Motion"), filed September 9, 2013; Plaintiff's Response, filed September 16, 2013; United's Reply, filed September 27, 2013; Plaintiff's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006 (Plaintiff's "Summary Judgment Motion"), filed May 13, 2014; and Defendant's Brief in Opposition ("Opposition"), filed June 6, 2014. For the reasons that follow, United's Motion will be granted and Plaintiff's Summary Judgment Motion will be denied, in part.

3. Defendant United is also entitled to rent from 2012 to 2013 in the amount of \$58,791.38 per month.

Plaintiff does not argue that the Partnership is exempt from paying rent to United. “[I]t is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012.” Response, 1. Rather, Plaintiff claims that United itself has created a dispute regarding rents from January 2012 by issuing rent notices seeking increased rent in the amount of \$250,000.00 per month, rather than the \$58,791.38 per month set out in Yusuf’s affidavit. Response, 4. The proof before the Court is clear as to United’s claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013, when United’s Motion was filed.⁴

As the fee simple owner and landlord of Bay No. 1 United Shopping Plaza, United is entitled to rents from the Partnership for its continued use of Bay No. 1 for the operations of Plaza Extra - East. Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra – East.

On the basis of the foregoing, it is hereby

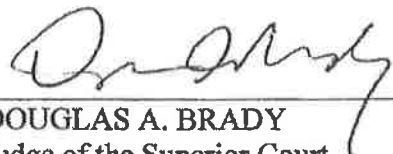
ORDERED that Defendant United Corporation’s Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

⁴ It is acknowledged that United delivered notices to the Partnership following the April 2013 Preliminary Injunction, seeking to collect an increased rent sum of \$250,000.00. United presents in its Motion and proofs no numerical or factual justification for such claims, which are not considered in this Order.

from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra – East. It is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED, in part, as to Plaintiff's claims that the statute of limitations precludes Defendant United's claims for past due rent.

Dated: April 27, 2015



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

CERTIFIED TO BE A TRUE COPY
This 27th day of April 2015

By:


Court Clerk Supervisor
4/27/15

CLERK OF THE COURT

By  Court Clerk II

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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

DEFENDANT UNITED'S REPLY TO
PLAINTIFF'S RESPONSE (in opposition) TO
UNITED'S MOTION TO WITHDRAW
RENTS

**UNITED'S REPLY TO PLAINTIFF'S OPPOSITION RESPONSE TO UNITED'S
MOTION TO WITHDRAW RENTS**



Defendant United Corporation, through counsel, respectfully files this Reply in Opposition to Plaintiff's Response (in opposition) to United's Motion to Withdraw Rents. On September 9th, 2013, Defendant United Corporation filed a Motion to Withdraw Rent after repeated demands from Plaintiff Hamed to permit the withdrawal of the rental value of the retail space currently occupied and used by the Plaza Extra Supermarket – East. The total amount of rent due is \$5,234,298.71 for the following spaces and time periods:

1. Bay No. 1: (69,680 Sq. Ft. of Retail Space @ current monthly rate of \$58,791.38) for the **period of January 1st, 2012 through September 1, 2013** for a total of \$1,234,618.98.
2. Bay No. 1 (69,680 Sq. Ft. of Retail Space @ \$5.55 sq. ft.) for the **period of January 1st, 1994 through May 4th, 2004** (10 Years & 125 days) for a total of \$3,999,679.73.



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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370



CIVIL ACTION

ACTION FOR DAMAGES

AFFIDAVIT OF FATHI YUSUF

AFFIDAVIT OF FATHI YUSUF

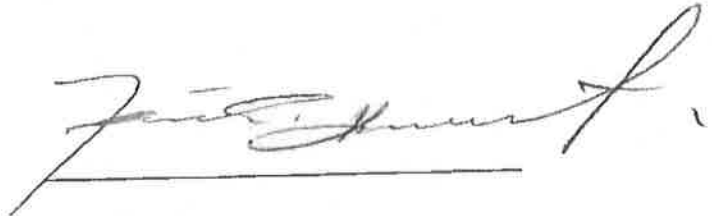
I, Fathi Yusuf, pursuant to 28 USC §1746, declare under oath that:

1. I am an adult of sound mind, and I am the treasurer and secretary of United Corporation, as such I am aware of the facts herein.
2. I have made repeated demands for rent outstanding to Plaintiff Hamed regarding the current rent obligations owed to United.
3. United Shopping Plaza is divided into various sized retail spaces. Each retail space is referred to as a "Bay." Since 1986, Bay 1, a 69,680 Sq. Ft. (approx.) retail space has been occupied by the Plaza Extra Supermarket in Sion Farm, St. Croix.
4. For the period of January 1st, 2012 through September 1, 2013 there is rent outstanding and due in the amount of \$1,234,618.98. 
5. The period of January 1st, 2012 through September 1, 2013 reflects a 21 month rental period at a monthly rate of \$58,791.38 for a total of \$1,234,618.98. The monthly rate is calculated based on the sales of the Plaza Extra Store in St. Thomas. 
6. This rate has been agreed upon by myself and Mohammed Hamed and was used to calculate the rent for the period of May 5th, 2004 through December 31st, 2011. The

attached Exhibit C shows how the calculations have been done, and to which everyone agreed to by issuing a check in the amount of \$5,408,806.74. Therefore, the monthly rate of \$58,791.38 is what the current monthly rent is.

7. For the period of January 1, 1994 through May 4th, 2004, there is rent outstanding in the amount of \$3,999,679.73 (69,680 Sq. Ft. of Retail Space @ \$5.55 sq. ft.). This reflects a rental period of 10 Years & 125 days. The rate of \$5.55 sq. ft. has always been significantly below market value.
8. United did not make a demand for the rent for the period of January 1, 1994 through May 4th, 2004 because records concerning the exact months that rental period began and ended were in the possession of the Federal government. Plaintiff knows well these records are in the possession of the federal government, and has never made any objections or denied that no agreement existed regarding the payment of rents.
9. It is respectfully requested that an Order permitting United withdraw the back rent of \$5,234,298.71 the value of all rents due for Bay 1.
10. As the fee simple owner of United Shopping Plaza, Defendant United is also entitled to repossess the premises immediately as a result of Plaintiff's bad faith refusal to allow United to withdraw rents at a rate that has already been agreed on.
11. Whether the court declares this to be partnership, a business agreement, or any other legal entity, the rent due must be paid, and there can be no excuse for failure to pay any rent.

Date: 9-9-2013



Fathi Yusuf