

including the statement that “all the claims asserted in Case 101 may be treated as claims for resolution in the liquidation process of the Partnership pursuant to the Plan adopted in Case 370.”

In describing the factual and procedural background of Case 101, the Virgin Islands Supreme Court stated:

United filed a complaint against Hamed in the Superior Court of the Virgin Islands on March 5, 2013. In its complaint, United alleged that in 1992, while Hamed was the manager of its Plaza Extra grocery store on St. Thomas, he used United’s inventory to secretly operate a competing business. United also alleged that in 1995, Hamed used \$70,000 of United’s funds for an unauthorized purpose through a cashiers check United’s complaint sought damages against Hamed for breach of fiduciary duties, conversion, and breach of contract, and a full accounting of the funds allegedly misappropriated by Hamed.

United Corporation v. Hamed, 2016 V.I. Supreme LEXIS 1-*2 (Jan. 12, 2016).

Waheed Hamed (“Waheed”) has myopically fixated on the fact that after Case 101 was filed, Yusuf conceded the existence of a Partnership with Mohammad Hamed and, pursuant to a summary judgment entered in Case 370 on November 7, 2014, the Court declared that a Partnership was formed in 1986 by the oral agreement between Hamed and Yusuf for the ownership and operation of the Plaza Extra Stores, with each partner having a 50% ownership interest in all of the Partnership assets and profits, and a 50% obligation as to all losses and liabilities.

The Supreme Court gave short shrift to Waheed’s argument “asserting that United lacks standing to bring this action in the first place because it never had an ownership interest in Plaza Extra.” *Id.* at *4. Of course, this is the same argument Waheed is now reserving in the motion

for summary judgment attached as an exhibit to his Opposition. The Supreme Court roundly criticized Waheed for making this argument:

However, Hamed cites none of this controlling authority [cited in the preceding paragraph] in making his standing argument, despite being required to do so under this Court's rules. V.I.S.C.T.R. 15(b) (“[I]n accordance with ethical standards, any attorney who . . . does not present otherwise controlling contrary law, will be subject to sanctions as the Court deems appropriate.”); *Hamed v. Hamed*, S.Ct. Civ. No. 2014-0008, _____ D.I. ____, 2015 V.I. Supreme LEXIS 21, at * 5 n. 7 (V.I. July 20, 2015); *Percival v. People*, 62 V.I. 477, 491 (V.I. 2015). And despite the fact that we denied the motion to dismiss on the ground that standing is not a jurisdictional doctrine in the Virgin Islands, Hamed reasserted his standing argument at oral arguments before this Court.

We, therefore, take this opportunity to reaffirm that “standing” – as that concept is understood in federal constitutional law – does not exist in any form in the Virgin Islands Courts.

Id. at * 7-8.

Waheed claims that Case 101 is already subject to a dispositive motion for summary judgment, attached as an exhibit to his Opposition, “in which the following issues are undisputed:

1. United admitted that never has been the owner of the Plaza Extra Stores.²
2. United admitted that a partnership between Hamed and Yusuf existed.
3. Thus, the only real party in interest is Fathi Yusuf – **already a party here.**
4. Thus, Yusuf's claims are **already before this Court without consolidation.”**

Opposition at p. 2 (emphasis in original).

² Neither the Opposition nor the motions for summary judgment attached as exhibits bother to point to any such admission.

Although Waheed may have attached copies of motions for summary judgment as exhibits to his Opposition, those motions are clearly noncompliant with LRCi 56.1(a)(1) in that they are devoid of a supporting brief, affidavits and a statement of material facts about which the movant contends there is no genuine issue. Since Waheed did not include the required separate statement of material facts, he also failed to comply with the requirement that he “affix to the statement copies of the precise portions of the record relied upon as evidence of each material fact.” *See* LRCi 56.1(a)(1). Even if Waheed’s summary judgment motion was compliant with LRCi. 56.1, it simply raises the same lack of standing argument already rejected by the trial court in Case 101 and twice rejected by the Supreme Court. Clearly, this half baked motion attached as an exhibit to the Opposition provides no impediment to consolidation.

Incredibly, Waheed claims that “the only real party in interest is Fathi Yusuf – **already a party here.**” Waheed’s claim that Yusuf is already a party to Case 101 is demonstrably false. *See* docket sheet attached as **Exhibit 1**. Accordingly, his additional claim that “Yusuf’s claims are **already before this Court without consolidation**” is also demonstrably false.

United’s claims against Waheed in Case 101 were obviously asserted before any concession or determination regarding the Partnership’s ownership of the Plaza Extra Stores. The real party in interest now is the Partnership from which Waheed is alleged to have misappropriated funds and assets. Yusuf, as the Liquidating Partner of the Partnership “with the exclusive right and obligation to wind-up the Partnership pursuant to this Plan and the provisions of the V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master,” has determined that the Partnership’s “claims asserted in Case 101 may be treated as claims for resolution in the liquidation process of the Partnership pursuant to the Plan adopted in Case

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370.” Motion at ¶ 5. Nothing Waheed has presented to this Court in the Opposition or the exhibits to the Opposition establishes otherwise. Since Case 370 and Case 101 clearly “involve a common question of law or fact,” *see* Fed. R. Civ. P. 42(a), these cases are unquestionably suited for consolidation.

For all of the foregoing reasons, as well as the reasons set forth in the Motion, Yusuf respectfully requests this Court to consolidate Case 101 with Case 370 for final disposition.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: April 15, 2016

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016, I caused the foregoing **Reply To Opposition To Motion To Consolidate Cases** to be served upon the following via e-mail:

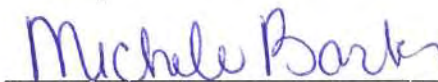
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SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
CIVIL DOCKET

UNITED CORPORATION		Plaintiff)
))
Vs.))
))
WAHEED HAMED (A/K/A WILLY, WILLY HAMED)		Defendant)

CASE NO: ST-2013-CV-0000101
FILING DATE: March 05, 2013
JUDGE: Hon. Michael C. Dunston
CASE TYPE: DAMAGES - CIVIL
SECONDARY null
PETITION

<u>PARTY NAME</u>	<u>LITIGANT</u>	<u>PARTY TYPE</u>
ECKARD, ESQ. , MARK W.	y000	ATTORNEY FOR DEFENDANT OR RESPONDENT
UNITED CORPORATION ,	P001	PLAINTIFF
DEWOOD , NIZAR A.	P001	ATTORNEY FOR PLAINTIFF OR PETITIONER
WAHEED HAMED (A/K/A WILLY, WILLY HAMED) ,	D001	DEFENDANT



DOCKETS ENTERED ON THIS CASE:

<u>DOCKET DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
04/01/2016	DEFENDANT WAHEED HAMED'S OPPOSITION TO PAINTIFF UNITED'S MOTION TO CONSOLIDATE WITH SX-12-CV-370 SUBMITTED BY CARL HARTMANN III, ESQ.	
03/23/2016	DEFENDANT WAHEED HAMED'S MOTION AND MEMORANDUM FOR SUMMARY JUDGMENT ALONG WITH EXHIBIT 1 AND 2	
03/23/2016	NOTICE OF FILING IN OTHER DIVISION BY MARK W. ECKARD, ESQ.	
03/18/2016	FEE RECEIVED RECEIPT # - 00154364	9.00
03/17/2016	MOTION TO CONSOLIDATE CASES FILED BY ATTY . GREGORY HODGES WITH PROPOSED ORDER	
02/05/2016	NOTICE OF APPEARANCE FOR DEFENDANT FILED BY MARCK ECKARD, ESQ.	
02/03/2016	SUPREME COURT'S MANDATE ENTERED	
01/12/2016	SUPREME COURT'S ORDER OF THE COURT AND OPINION OF THE COURT ENTERED RE: ORDERED THAT THE SUPERIOR COURT'S JUNE 24, 2013 ORDER IS REVERSED; ORDERED THAT THE SUPERIOR COURT'S SEPTEMBER 2, 2014 ORDER IS REVERSED. ORDERED THAT THIS CASE IS REMANDED TO THE SUPERIOR COURT OFR FURTHER PROCEEDINGS CONSISTENT WITH THE ACCOMPANYING OPINION .	
04/17/2015	FEE RECEIVED RECEIPT # - 00145098	103.00
04/13/2015	FEE RECEIVED RECEIPT # - 00144858	6.00
03/20/2015	PURSUANT TO SUPREME COURT'S SCHEDULING ORDER ENTERED MARCH 10, 2015 IN THE ABOVE NOTED CASE, WHICH REQUIRES THIS OFFICE TO FILE THE E-RECORD ON OR BEFORE MARCH 20, 2015	
03/20/2015	UPDATED CERTIFIED DOCKET FORWARDED TO SUPREME COURT	
03/10/2015	SUPREME COURT'S SCHEDULING ORDER ENTERED RE: ORDERED THAT PURSUANT TO SUPREME COURT RULES 11(b) AND 40.3(j) THE CLERK OF THE SUPERIOR COURT SHALL FILE THE E-RECORD ON OR BEFORE MARCH 20, 2015.	
02/26/2015	PURSUANT TO SUPREME COURT'S DOCKETING ORDER ENTERED FEBRUARY 24, 2015, PLEASE FIND INDEX WITH REQUIRED DOCUMENTS	
02/26/2015	CERTIFIED DOCKET FORWARDED TO SUPREME COURT	
02/25/2015	NOTICE OF FILING DOCUMENTS IN THE OTHER DIVISION, NOTICE OF FILING APPEAL SUBMITTED BY CARL HATMANN, III, ESQ.	
02/24/2015	NOTICE OF APPEAL FILED IN THE SUPREME COURT.	
02/24/2015	DOCKETING ORDER ENTERED RE: ORDERED THAT APPELLANT'S NOTICE OF APPEAL BE DOCKETED AS S . CT. CIV. NO. 2015-0021	

11/07/2014 REPLY TO BRIEF IN SUPPORT OF UNITED CORPORATIONS'S MOTION FOR RECONSIDERATION FILED BY NIZAR A. DEWOOD, ESQ

10/16/2014 DEFENDANT WAHEED ("WILLIE") HAMED'S OPPOSITION TO PLAINTIFF UNITED'S MOTION FOR RECONSDIERATION FILED BY CARL J. HARTMANN, III, ESQUIRE LETTER ATTACHED

10/10/2014 PLAINTIFF UNITED'S MOTION TO STAY FILING OF RESPONSES TO DEFENDANT'S BILL OF COSTS FILED BY NIZAR A. DEWOOD, ESQ PROPOSED ORDER ATTACH

10/06/2014 NOTICE OF ENTRY OF ORDER
10/05/2014
CARL J. HARTMANN, ESQUIRE (STX)
NIZAR A. DEWOOD, ESQUIRE (STX)

10/06/2014 AMENDED CERTIFICATE OF SERVICE RECEIVED SUBMITTED BY NIZAR DEWOOD, ESQ.

10/05/2014 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON, THAT DEFENDANT SHALL RESOND TO THE MOTION BY OCTOBER 27, 2014, AND PLAINTIFF MAY REPLY BY NOVEMBER 7, 2014.

09/29/2014 PLAINTIFF'S RULE 59(E) MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND JUDGEMENT FILED BY NIZAR A. DEWOOD, ESQ UNITED'S BRIEF IN SUPPORT OF ITS RULE 59(E) MOTION ATTACH

09/24/2014 MOTION AND MEMORANDUM AS TO BILL OF COST AND ATTORNEYS FEES FILED BY CARL J. HARMANN III, ESQ PROPOSED ORDER ATTACH

09/18/2014 MOTION & MEMORANDUM AS TO BILL OF COST AND ATTORNEYS FEES FILED BY CARL HARTMAN, ESQ.

09/04/2014 NOTICE OF ENTRY OF MEMORANDUM OPINION AND ORDER
09/02/2014
CARL J. HARTMANN III, ESQUIRE (STX)
NIZAR A. DEWOOD, ESQUIRE (STX)

09/02/2014 MEMORANDUM OPINION SIGNED BY JUDGE MICHAEL C. DUNSTON.

09/02/2014 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON, THAT PLAILNTIFF'S AMENDED COMPLAINT IS DISMISSED WITH PREJUDICE IN ITS ENTIRELY. ORDERED THAT DEFENDAT;S APRIL 28, 2014, MOTION TO DISMISS FOR LACK OF STANDING IS DENIED AS MOOT.

05/13/2014 NOTICE OF ENTRY OF ORDER
05/12/2014
CARL J. HARTMANN, III, ESQ.
NIZAR DEWOOD, ESQ.

05/12/2014 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON

04/29/2014 NOTICE OF ENTRY OF ORDER
04/25/2014
NIZAR DEWOOD, ESQ.
CARL J. HARTMANN, III, ESQ.

04/28/2014 DEFENDANT WAHEED HAMED'S RULE 12(c) MOTION TO DISMISS FOR LACK OF STANDING FILED BY CARL J. HARTMANN, III, ESQ.

04/25/2014 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON

04/23/2014 DEFENDANT WAHEED HAMED'S REPLY WITH REGARD TO HIS MOTION FOR SUMMARY JUDGMENT FILED BY CARL J. HARTMANN III, ESQ.

04/07/2014 MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FILED BY NIZAR A. DEWOOD, ESQ.

03/12/2014 NOTICE OF ENTRY OF ORDER
03/07/2014
NIZAR DEWOOD, ESQ.
CARL J. HARTMANN, III, ESQ.

03/12/2014 NOTICE OF SERVICE OF DEFENDANT HAMED'S INTERROGATORY RESPONSES,
RESPONSES TO REQUEST FOR PRODUCTION AND REQUESTS TO ADMIT FILED BY
CARL J. HARTMANN III, ESQ.

03/07/2014 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON

03/06/2014 PLAINTIFF UNITED'S MOTION TO EXTEND TIME TO FILE TIS RESPONSE IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FILED BY NIZAR
A. DEWOOD, ESQ.

02/12/2014 NOTICE OF ENTRY OF ORDER
02/11/2014
NIZAR A. DEWOOD, ESQ.
CARL J. HARTMANN, II, ESQ.

02/11/2014 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON

02/05/2014 DEFENDANT HAMED'S MOTION FOR SUMMARY JUDGMENT FILED BY CARL J.
HARTMANN,III, ESQ.
DEFENDANT HAMED'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AS TO THE SOLE REMAINING CLAIM FILED CARL J. HARTMANN,
III, ESQ.

12/16/2013 JOINT STIPULATION FOR ENLARGEMENT OF TIME AS TO DISCOVERY FILED BY
NLZAR A. DEWOOD, ESQ.

10/10/2013 NOTICE OF SERVICE OF PLAINTIFF UNITED CORPORATION'S ANSWER TO
DEFENDANT'S (CORRECTED) FIRST SET OF INTERROGATORIES
SUBMITTED BY NIZAR DEWOOD, ESQ.

10/10/2013 NOTICE OF SERVICE OF PLAINTIFF UNITED CORPORATION'S RESPONSES TO
DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
SUBMITTED BY NIZAR DEWOOD, ESQ.

10/08/2013 NOTICE OF SERVICE OF PLAINIFF UNITED CORPORATION'S RESPONSES TO
DEFENDANT'S (CORRECTED) FIRST REQUEST FOR ADMISSIONS
SUBMITTED BY NIZAR DEWOOD, ESQ.

09/12/2013 DEFENDANT WAHEED HAMED'S {CORRECTED} FIRST INTERROGATORIES TO
PLAINTIFF UNITED FILED BY CARL J. HARTMANN, III, ESQUIRE...

09/12/2013 DEFENDANT WAHEED HAMED'S [CORRECTED] FIRST REQUESTS FOR ADMISSIONS
TO PLAINTIFF UNITED FILED BY CARL HARTMANN, III, ESQUIRE...

09/09/2013 DEFENDANT WAHEED HAMED'S FIRST INTERROGATORIES TO PLAINTIFF UNITED
FILED BY CARL J. HARTMANN III, ESQUIRE.

09/09/2013 DEFENDANT WAHEED HAMED'S FIRST REQUESTS FOR ADMISSIONS TO PLAINTIFF
UNTIED FILED BY CARL HARTMANN III, ESQUIRE.

09/09/2013 DEFENDANT WAHEED HAMED'S FIRST REQUEST FOR THE PRODUCTION OF
DOCUMENTS TO PLAINTIFF UNITED FILED BY CARL HARTMANN III, ESQUIRE.

08/23/2013 LETTER ADDRESSED TO OFFICE OF THE CLERK FILED BY CARL J. HARTMANN
SELF-DISCLOSURES PURSUANT TO RULE 26 ATTACHED

08/23/2013 SELF-DISCLOSURES PURSUANT TO RULE 26 FILED BY ATTY. CARL HARTMANN

07/30/2013 ANSWER TO FIRST AMENDED COMPLAINT
FILED BY CARL J. HARTMANN III, ESQUIRE.

07/30/2013 ANSWER TO FIRST AMENDED COMPLAINT AND LETTER
FILED BY CARL J. HARTMANN III, ESQUIRE.

07/18/2013 SCHEDULING AND MEDIATION ORDER SIGNED AND ENTERED BY JUDGE DDUNSTON

07/18/2013 NOTICE OF ENTRY OF ORDER DATED
7/18/2013
NIZAR DEWOOD, ESQUIRE
CARL HARTMANN, 111, ESQUIRE

07/17/2013 FILE FORWARDED TO JUDGE'S CHAMBER

07/16/2013 PROPOSED STIPULATED SCHEDULING ORDER RECEIVED, FILED BY CARL
HARTMANN, ESQ.

07/15/2013 AMENDED COMPLAINT FILED BY NIZAR A. DEWOOD, ESQUIRE

06/25/2013 NOTICE OF ENTRY OF MEMORANDUM AND ORDER
06/24/2013
NIZAR DEWOOD, ESQ.
CARL HARTMANN, III, ESQ.

06/25/2013 NOTICE OF ENTRY OF ORDER
06/24/2013
NIZAR DEWOOD, ESQ.
CARL HARTMANN, III, ESQ.

06/24/2013 MEMORANDUM OPINION AND ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON;
IT IS ORDERED THAT DEFENDANT'S APRIL 15, 2013 MOTION FOR JUDGMENT ON
THE PLEADINGS IS GRANTED IN PART AND DENIED IN PART WITHOUT
PREJUDICE; AND IT IS ORDERED THAT THE PORTION OF PLAINTIFF'S
COMPLAINT RELATED TO AN ALLEGED CERTIFIED CHECK FOR SEVENTY
THOUSAND DOLLARS IS DISMISSED WITH PREJUDICE; ETC.

06/24/2013 ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON; IT IS ORDERED THAT BY
JULY 12, 2013, THE PARTIES SHALL CONDUCT A SCHEDULING CONFERENCE
PURSUANT TO RULE 26(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND
SHALL SUBMIT TO THE COURT BY JUNE 19, 2013 A WRITTEN REPORT SETTING
FORTH A PROPOSED DISCOVERY PLAN AND PROPOSED SCHEDULING ORDER
APPROVING THE SAME AND ADOPTING IT AS THE SCHEDULING ORDER IN THIS
CASE;

06/12/2013 FILE FORWARDED TO JUDGE'S CHAMBER

06/04/2013 DEFENDANT HAMED'S REPLY TO PLAINTIFF'S OPPOSITION TO THE MOTION FOR
JUDGMENT ON THE PLEADINGS RECEIVED, FILED BY CARL J. HARTMANN, III,
ESQ.

05/22/2013 AMENDED CERTIFICATE OF SERVICE RECEIVED
SUBMITTED BY NIZAR DEWOOD, ESQ.

05/13/2013 FILE RETURNED TO THE CLERK'S OFFICE

05/09/2013 FILE FORWARDED TO JUDGE'S CHAMBERS

05/01/2013 PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS FILED BY NIZAR DEWOOD, ESQUIRE.

04/30/2013 FILE RETURNED TO THE CLERKS OFFICE

04/30/2013 NOTICE OF ENTRY OF ORDER DATED:
04/29/2013
CARL HARTMANN, ESQUIRE via EMAIL: carl@carlhartman.com
NIZAR A. DEWOOD, ESQUIRE 888-398-84289(FAX)

04/29/2013	ORDER SIGNED BY JUDGE MICHAEL C. DUNSTON--ORDERED THAT PLAINTIFF SHALL RESPOND TO THE MOTION BY MAY 13, 2013, AND DEFENDANT MAY REPLY BY MAY 24, 2013.	
04/24/2013	FILE FORWARDED TO JUDGE'S CHAMBER	
04/23/2013	NOTICE OF APPEARANCE RECEIVED FROM JOSEPH DIRUZZO, ESQUIRE.	
04/15/2013	MOTION FOR JUDGMENT ON THE PLEADINGS, MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS AND ORDER SUBMITTED BY CARL HARTMANN, ESQ.	
03/20/2013	ANSWER FILED BY CARL HARTMANN, ESQUIRE	
03/07/2013	CASE SENT FROM NON-JURY TO JURY	
03/06/2013	FEE RECEIVED RECEIPT # - 00128993	75.00
03/06/2013	RETURN OF SERVICE FOR 20 DAY SUMMONS FOR WAHEED HAMED RETURNED SERVED ON 3/5/13.	
03/05/2013	DIRECT JUDGE ASSIGNMENT Hon. Michael C. Dunston MCD	
03/05/2013	COMPLAINT AND SUMMONS FILED BY NIZAR A. DEWOOD, ESQ.	
03/05/2013	FILING FEE ASSESSED	
03/05/2013	CIVIL LITIGANT PERSONAL DATA FORMS FILED BY NIZAR A. DEWOOD, ESQ.	
03/05/2013	20 DAY SUMMONS ISSUED	
03/05/2013	DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT PROCESSED BY CLERK	

TOTAL NUMBER OF ENTRIES: 88

PREPARED BY: TENISHA LOWRY

*****END OF REPORT*****