



for Hamed<sup>2</sup> or his estate claim that they did not violate any directive of the Master because, in an *ex parte* conversation with the Master, they were given carte blanche to “proceed in whatever fashion we think appropriate.” See Opposition at p. 2, ¶ 7, and Exhibit 1 to the Opposition at ¶ 7. The unabashed arrogance displayed by counsel for Hamed in arguing that the Master’s directives are nothing more than suggestions that can be ignored within impunity calls for this Court to take prompt action to reign counsel in so that the authority of the Master and the Orders of this Court are not further undermined. Given the sheer audacity of Hamed’s arguments, which are premised entirely on an improper, *ex parte* conversation purportedly held with the Master, Yusuf feels compelled to remind the Court of the procedural background that reveals that contemptuous conduct that is the subject of the Motion to Strike.

### PROCEDURAL BACKGROUND

1. Pursuant to a stipulation regarding appointment of Master, Hamed and Yusuf stipulated to the appointment of the Honorable Edgar D. Ross as Master in this case. Further to that stipulation, this Court entered an “Order Appointing Master” on September 18, 2014 pursuant to which Judge Ross “was appointed to serve as judicial Master in this action, to direct and oversee the winding up of the Hamed-Yusuf Partnership.” That Order further provided that “in conjunction with the Master’s review, the Court will present to the parties a proposed plan for the winding up of the Partnership in advance of the status conference scheduled by this Order, and will solicit, comments, objections and recommendations.”

2. On October 7, 2014, this Court entered an “Order Soliciting Comments, Objections and Recommendations” in which the parties were “ordered to review the proposed

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document is “belated” under any rule or order of this Court, Yusuf will not waste time addressing this frivolous claim.

<sup>2</sup> Unless otherwise defined, capitalized terms have the same meaning as provided in Yusuf’s Motion to Strike Hamed’s Notice of Partnership Claims and Objections to Yusuf’s Post-January 1, 2012 Accounting (the “Motion to Strike”).

plan and present comments, objections and recommendations within the time periods provided below.” At p. 6 of that Order, the Court provided, in relevant part, as follows:

Step 6: Distribution Plan.

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expense Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf **shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** (Emphasis supplied)

Finally, that Order provided each party with fourteen days from the entry of the Order within which to submit their comments, objections and recommendations with respect to the proposed Plan and that each party may file a response to the filing of the other party within seven days after receipt of the other party’s filing.

3. On October 21, 2104, Hamed filed his “Comments Regarding Proposed Winding Up Order,” which included a proposed revised plan as Exhibit 4. Hamed’s proposed plan at §8, Step 6 (p. 13), provided as follows:

Within 45 days after the Master completes the liquidation of Partnership Assets, Hamed and Yusuf **shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** (Emphasis supplied)

No where in Hamed’s Comments Re Proposed Winding Up Order did he argue or even suggest that a jury should decide the competing accounting claims and distribution plans between the Partners as opposed to the Master making the initial determination by report and

recommendation for final determination by this Court. Indeed, the word “jury” did not appear any where in the body of Hamed’s documents.

4. In this Court’s January 7, 2015 Order Adopting Final Wind Up Plan (the “Wind Up Order”), which adopted the “Final Wind Up Plan of the Plaza Extra Partnership” attached to that Order (the “Plan”) the identical provisions quoted in paragraph 2 above can be found at p. 9 of the Wind Up Order and §9, Step 6, of the Plan.

5. Hamed never objected to any provisions of the Wind Up Order or the Plan to the extent they arguably interfered with any claimed entitlement to a jury trial. Indeed, when Hamed filed his “Motion to Clarify Order of Liquidation” on August 14, 2015, more than seven months after entry of the Wind Up Order and adoption of the Plan, he actually sought a modification of the Wind Up Order and Plan by significantly extending the time within which the Partners must each submit to the Master their competing accounting and distribution plans from 45 days to 120 days after the Liquidating Partner completes the liquidation of Partnership Assets. *See* Motion to Clarify Order of Liquidation at p. 4.

6. Pursuant to an Order dated November 13, 2015 (the “Stipulated Order”), this Court approved the Partners’ Further Stipulation Regarding Motion to Clarify Order of Liquidation, which provided in relevant part as follows:

2. The Partners will submit their proposed accounting and distribution plans required by §9, Step 6, of the Plan to each other and the Master by March 3, 2016[.]

A copy of the Stipulated Order is attached as **Exhibit 1** for the Court’s convenience.

7. Following his appointment by the Court, the Master has issued numerous orders and directives. For example, on March 5 and 6, 2015, the Master entered orders regarding the transfer of ownership of Plaza Extra-East and West. On April 28, 2015, the Master entered an

order regarding bidding procedures for ownership of Plaza Extra-Tutu Park. On April 30, 2015, the Master entered an order regarding transfer of ownership of Plaza Extra-Tutu Park. The Master has also issued numerous decisions or directives that have not been formalized like the orders mentioned above. All of these orders, decisions, and directives have been issued pursuant to the Master's authority "to direct and oversee the winding up of the Hamed-Yusuf Partnership." This authority to "direct and oversee" frequently has involved decisions one of the Partners did not agree to. For example, after the closed auction of Plaza Extra-Tutu Park, Yusuf claimed that six trailers of inventory located outside of the covered premises were not included in the auction and that he was accordingly entitled to one-half of the value of that inventory. *See, e.g.,* Liquidating Partners Fifth Bi-Monthly Report filed on November 30, 2015 at p. 3. The Master promptly notified counsel for the Partners via email that he rejected Yusuf's claim. Accordingly, the Liquidating Partner's Sixth Bi-Monthly Report noted the Master's rejection of that claim. *See* Liquidating Partner's Sixth Bi-Monthly Report at p. 3, n. 4. For another example, despite this Court's stay of discovery in October of 2014, counsel for Hamed was apparently authorized to issue two subpoenas to Banco Popular de Puerto Rico and the Bank of Nova Scotia in June of 2016 based entirely on *ex parte* communications with the Master. When counsel for Yusuf learned of the issuance of these subpoenas, he attempted to convince the Master to reconsider the *ex parte* authorization to engage in such unilateral discovery. After much back and forth between counsel for the Partners, the Master ultimately decided to allow the disputed subpoenas to remain in place. Yusuf stated that he "respectfully disagrees with your decision and will seek appropriate relief [from the Court".] *See* email exchange between the Master and counsel attached as **Exhibit 2**. Immediately thereafter, Yusuf filed an Emergency Motion to Quash Subpoenas, Stay Enforcement of or Limit the Scope of Subpoenas on June 29,

2016. A copy of that motion without exhibits is attached as **Exhibit 3** for the Court's convenience.<sup>3</sup>

8. It is undisputed that on September 22, 2016, the Master issued a directive to the parties "that the objections to and disagreements with the accounting and that the claims against or on behalf of the partnership should be filed with the Master and served on opposing counsel only." See Motion to Strike at ¶ 4 and Exhibit 4.

9. It is also undisputed that counsel for Hamed received the Master's email directive although he claims to have only seen it on September 27, 2016, three days before Hamed's Claims were due to be filed. See Motion to Strike at ¶ 5 and Exhibit 5.

10. Despite Yusuf's prior objections regarding improper *ex parte* communications with the Master, see Exhibit 3 at p. 3-4, and his stated opposition to any further *ex parte* discussions, see September 27, 2016 email attached as Exhibit 6 to the Motion to Strike, counsel for Hamed once again engaged in an *ex parte* conversation with the Master in which he claims the Master told him "that we should proceed in whatever fashion we think appropriate." See Exhibit 1 to Opposition at ¶ 7.

### ARGUMENT

The submission of the Partners' competing accounting claims and distribution plans, as contemplated in ¶9, Step 6, of the Plan and ¶ 2 of the Stipulated Order, clearly involves the winding up of the Partnership for which this Court gave the Master authority to "direct and oversee." The Master issued an unambiguous directive that the competing claims must be submitted to him and opposing counsel only. Despite the terms of §9, Step 6, of the Plan, paragraph 2 of the Stipulated Order, and the Master's directive, counsel for Hamed not only

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<sup>3</sup> The Court's particular attention is drawn to §A (p. 3-5) addressing the improper *ex parte* process that resulted in the issuance of the disputed subpoenas. In an Order dated August 5, 2015, the motion was denied as moot.

chose to file Hamed's Claims with the Court, he published them for the world to see on his website. Why has counsel for Hamed chosen to violate Orders of this Court and the directive of the Master? The only explanation provided is a flimsy reference to the terse email from counsel for Hamed attached as Exhibit 5 to the Motion to Strike and Exhibit 1A to the Opposition, namely, "there has been no formal accounting under RUPA, there is a proper demand for a jury on issues triable by a jury and those documents need to be part of the record in case of an appeal of any such claims." *See* Opposition at p. 3. Although these "reasons" are either wrong (the Master determined that the Partnership Accounting is more than 99% completed" (*see* Exhibit 1 to the Motion to Strike)) or seriously disputed (*see* the Motion to Strike Jury Demand and Reply Memorandum In Further Support of Motion to Strike), they are ultimately irrelevant because the Master's September 22, 2016 directive provided: "If [the competing claims are] unresolved they may be forwarded and/or filed with the Court."

In the last month, counsel for Hamed have apparently taken up the position that the Master has no authority to issue the report and recommendation contemplated by the Plan and that this Court has no authority to issue a final determination upon the Master's report and recommendation because a jury should decide all these issues. They even suggest that the Master is powerless to make any determination "without the agreement of both partners." This, of course, flies in the face of multiple determinations previously made by the Master, examples of which were provided above. Without seeking any relief from the Wind Up Order, the Plan, the Stipulated Order, or the Master's directive, counsel for Hamed have chosen to simply disregard these Orders and directives by filing Hamed's Claims directly with this Court and publishing them on the internet. Even in the highly unlikely event that the Master told counsel

for Hamed that he could do whatever he wanted, the filing of Hamed's Claims directly with the Court violated §9, Step 6, of the Plan and paragraph 2 of the Stipulated Order.

Clearly, it is unfair to allow Hamed and his counsel to play by their own rules, while Yusuf scrupulously follows the Orders of this Court and the Master's directives. If Yusuf disagrees with a directive of the Master, he seeks relief from the Court. *See* Exhibit 3. If Hamed disagrees with a directive of the Master, he simply ignores it. Yusuf respectfully submits that this Court should take swift action to make sure that all parties are playing on the same, level playing field and following the same Orders of the Court and directives of the Master.

It is noteworthy that counsel for Hamed has acknowledged their clear violation of the rules of this Court by including personal data identifiers throughout Hamed's Claims. The Opposition concludes with a comment that Hamed "has filed two Rule 702 *Daubert* motions addressing the admissibility of two of the expert reports submitted by the Defendant. The Court, not the Special [sic] Master, needs to address these motions." Once again, counsel for Hamed have violated the Orders and rules of this Court and the directive of the Master by taking exhibits from Yusuf's Claims, which were only submitted to the Master and opposing counsel, and attaching them to a motion filed with this Court without any consideration whatsoever of the significant personal data identifiers contained throughout one of the expert reports (the BDO Report). Moreover, counsel for Hamed provide no authority whatsoever for their conclusion that this Court, rather than the Master, must address these motions in the first instance. Since these exhibits were submitted in support of Yusuf's Claims, pursuant to §9, Step 6, of the Plan, the Master has been given authority, in the first instance, to issue his report and recommendation regarding the competing claims. As counsel for Hamed would have it, this Court must address in piecemeal fashion any motion that concerns the parties competing claims. It is respectfully



submitted that this process would unduly extend the winding up of the Partnership and the Master must be allowed to make whatever decisions are necessary for him to complete his report and recommendation to the Court.

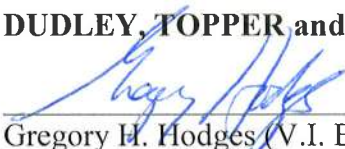
For all of the foregoing reasons, it is respectfully submitted that this Court should strike Hamed's Claims, order such claims to be removed from co-counsel for Hamed's website, and appropriately sanction counsel for Hamed for their contemptuous violation of the Orders and directives of this Court and the Master.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: October 20, 2016

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf  
and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of October, 2016, I served the foregoing **Reply to Plaintiff's Response to Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting** via e-mail addressed to:

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

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

Mark W. Eckard, Esq.  
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Email: mark@markeckard.com

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

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

Michelle Barber

R:\DOCS\6254\1\DRFTPLDG\16V8330.DOCX

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

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

(340) 774-4422

**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,  
MUFEEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.**,  
  
Additional Counterclaim Defendants.

---

**MOHAMMAD HAMED**,  
  
Plaintiff,  
  
v.  
  
**UNITED CORPORATION**,  
  
Defendant.

---

) CIVIL NO. SX-12-CV-370  
)  
) ACTION FOR DAMAGES,  
) INJUNCTIVE RELIEF  
) AND DECLARATORY RELIEF

) **Consolidated With**

) CIVIL NO. SX-14-CV-287  
)  
) ACTION FOR DAMAGES  
) AND DECLARATORY RELIEF

**EXHIBIT 1**

RECEIVED  
Nov 23 2015  
62541

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED BY HIS AUTH. AGENT WALEED HAMED	<b>Plaintiff</b>	)
		)
		)
	vs	)
FATHI YUSUF UNITED CORPORATION		)
		)

CASE NO. SX-12-CV-0000370

ACTION FOR: DAMAGES - CIVIL

**Defendant**

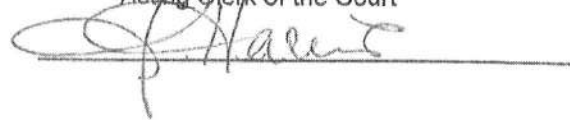
**NOTICE OF ENTRY OF ORDER**

TO: ~~JOEL H. HOLT, ESQ.~~  
GREGORY H. HODGES, ESQ

Please take notice that on November 16, 2015 a(n) ORDER dated November 13, 2015 was entered by the Clerk in the above-entitled matter.

Dated: November 16, 2015

Estrella H. George  
Acting Clerk of the Court



FIKISHA HARRIS  
COURT CLERK, II

DH

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

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

FURTHER STIPULATION REGARDING MOTION TO CLARIFY  
ORDER OF LIQUIDATION

Plaintiff/counterclaim defendant Mohammad Hamed ("Hamed") and defendant/counterclaimant Fathi Yusuf, through their undersigned counsel, hereby further stipulate to the resolution of Hamed's Motion to Clarify Order of Liquidation as follows:

1. The Liquidating Partner<sup>1</sup> will submit the Partnership accounting required by Section 5 of the Plan to the Master and Hamed on November 16, 2015 instead of September 30, 2015 as anticipated in the last paragraph of the Liquidating Partner's third bi-monthly report;

2. The Partners will submit their proposed accounting and distribution plans required by Section 9, Step 6, of the Plan to each other and the Master by March 3, 2016; and

<sup>1</sup> Capitalized terms shall have the meaning provided in this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan").

3. This Stipulation renders moot the Stipulation Regarding Motion To Clarify Order Of Liquidation filed with the Court on September 9, 2015.

Respectfully submitted,

Dated: October 2, 2015

**LAW OFFICES OF JOEL H. HOLT**

By: 

Joel H. Holt  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Telephone: (340) 773-8709  
Telefax: (340) 773-8677  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Attorneys for Plaintiff

Dated: October 2, 2015

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

By: 


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E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)  
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Email: [info@dewood-law.com](mailto:info@dewood-law.com)

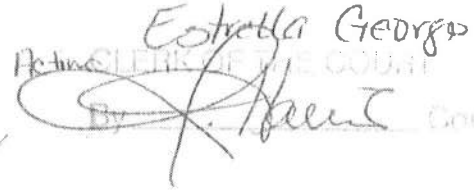

Attorneys for Fathi Yusuf and United Corporation

SO ORDERED this 13 <sup>November</sup> day of October, 2015.

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:  
  
Estrella George  
Acting Clerk of the Court

CERTIFIED TO BE A TRUE COPY  
This 10<sup>th</sup> day of NOV. 20 15

  
Acting CLERK OF THE COURT  
By:  COURT CLERK

By:   
11/16/15

CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of October, 2015, I caused the foregoing **FURTHER STIPULATION REGARDING MOTION TO CLARIFY ORDER OF LIQUIDATION** to be served upon the following via e-mail:

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
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Email: [mark@markeckard.com](mailto:mark@markeckard.com)

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

Jeffrey B.C. Moorhead, Esq.  
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1132 King Street  
Christiansted, VI 00820  
Email: [jeffreylaw@yahoo.com](mailto:jeffreylaw@yahoo.com)

The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

  
\_\_\_\_\_

**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,  
MUFEEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.**,  
  
Additional Counterclaim Defendants.

---

**MOHAMMAD HAMED**,  
  
Plaintiff,  
  
v.

**UNITED CORPORATION**,  
  
Defendant.

---

) CIVIL NO. SX-12-CV-370  
)  
) ACTION FOR DAMAGES,  
) INJUNCTIVE RELIEF  
) AND DECLARATORY RELIEF

) **Consolidated With**

) CIVIL NO. SX-14-CV-287  
)  
) ACTION FOR DAMAGES  
) AND DECLARATORY RELIEF

**EXHIBIT 2**



## Gregory H. Hodges

---

**From:** Edgar Ross <edgarrossjudge@hotmail.com>  
**Sent:** Wednesday, June 29, 2016 8:12 AM  
**To:** Gregory H. Hodges  
**Cc:** JOEL HOLT  
**Subject:** RE: Subpoenas To BNS and BPPR

Either party may engage in discovery as suggested and the Liquidating Partner is entitled to have the financial records. I therefore order the Hameds to turn over and/or return all the records identified in Atty Hodges' email posthaste.

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

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

From: "Gregory H. Hodges" <ghodges@dtflaw.com>  
Date:06/28/2016 6:24 PM (GMT-04:00)  
To: 'Edgar Ross' <edgarrossjudge@hotmail.com>  
Cc: JOEL HOLT <holtvi@aol.com>  
Subject: RE: Subpoenas To BNS and BPPR

Judge Ross,

Mr. Yusuf respectfully disagrees with your decision and will seek appropriate relief.

In my email from June 21 below, the following appears:

"In response to my argument that discovery should be a two way street, Joel states that his former client "has no problem with this," as long as it "is limited to financial and bank records from third parties that impinge on the accounting[.]" My argument that mutual discovery should also be allowed if it directly relates to Plan implementation was completely ignored. May the parties proceed to engage in discovery if it is limited, as proposed by Joel, as well as to issues concerning Plan implementation?" (Highlighting supplied) May we have your decision concerning this question as well? "

Finally, we have been seeking the Partnership accounting/financial information located at the Tutu Park store, which Waheed refused to turn over to Mr. Gaffney or the Liquidating Partner after the store transfer, and the 6 months of original records held by VZ for some time. Would you please consider ordering the prompt turn over of this Partnership information?

Regards,

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: (340) 715-4405

Fax: (340) 715-4400

Web: [www.DTFLaw.com](http://www.DTFLaw.com) <<http://www.dtflaw.com/>>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

From: Edgar Ross [mailto:[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)]  
Sent: Monday, June 27, 2016 5:35 PM  
To: Gregory H. Hodges  
Cc: JOEL HOLT  
Subject: RE: Subpoenas To BNS and BPPR

Atty Hodges :

I had not responded earlier because I hoped the Attorneys would reach an agreement but now I must. The liquidation of the partnership is a separate and distinct process than the civil litigations and is not governed by the procedural rulings of the civil suits.

I permitted the discovery as part of the fact-finding process to assist in resolution of some of the accounting questions that were becoming burdensome and too time consuming for the liquidating partner .

The issues you raise as to the scope of the subpoenas while valid as to the permitted scope is nonetheless going to be allowed as the requested documents pertain to anticipated claims that will be made in the near future. Hindering discovery will only prolong the liquidation process and incur unnecessary expenses. I will not stand on formalities in a process that should be speedy, just, fair and as simple as possible. At end of the process anyone may seek review of any matter with which they disagree.

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

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

From: "Gregory H. Hodges" <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>

Date:06/27/2016 3:04 PM (GMT-04:00)

To: 'Edgar Ross' <edgarrossjudge@hotmail.com>

Cc: Joel Holt <holtvi@aol.com>, carl@carlhartmann.com, ""Nizar DeWood, Esq."" <nizar@dewood-law.com>

Subject: Subpoenas To BNS and BPPR

Good afternoon Judge Ross,

This is just a reminder that the subpoenas that prompted my letter to you of June 13 and this email chain were served on June 1 and are returnable on June 30. We were hoping that your guidance would obviate the need for motion practice.

Regards,

Gregory H. Hodges

Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: (340) 715-4405

Fax: (340) 715-4400

Web: [www.DTFLaw.com](http://www.DTFLaw.com) <<http://www.dtflaw.com/>>

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

From: Gregory H. Hodges

Sent: Thursday, June 23, 2016 8:37 PM

To: 'Joel Holt'

Cc: edgarrossjudge@hotmail.com; nizar@dewood-law.com; carl@carlhartmann.com <<mailto:carl@carlhartmann.com>>

Subject: RE: Subpoenas To BNS and BPPR

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

**MOHAMMAD HAMED**, by his  
authorized agent **WALEED HAMED**,  
  
Plaintiff/Counterclaim Defendant,  
  
vs.

CIVIL NO. SX-12-CV-370  
  
ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**FATHI YUSUF and UNITED CORPORATION**,  
  
Defendants/Counterclaimants,  
  
vs.

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

**Consolidated With**

---

**MOHAMMAD HAMED**,  
  
Plaintiff,  
  
v.  
  
**UNITED CORPORATION**,  
  
Defendant.

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CIVIL NO. SX-14-CV-287  
  
ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

**EXHIBIT 3**



2. The Court advised that the stay of discovery would allow the parties to “focus on working on the details of the plan” for winding up the Partnership. *See Exhibit A – October 7, 2014 Hearing Transcript; 6:16-17.* The Court acknowledged that discovery may be needed at some later point, after the initial liquidation process was put in place. The Court explained its hope that “perhaps some of the issues that are deemed important now, and some of the discovery that’s deemed necessary now, may turn out not to be necessary.” *See Exhibit A, 11:10-12.* Likewise, the Court acknowledged that there were a number of pending motions that the Court was holding in abeyance pending the parties’ efforts to proceed with the liquidation process that will be addressed at a later point assuming they, too, are not otherwise rendered moot.

3. The Court also held that if the parties deemed discovery to be necessary in the interim, then, in that event, the process would be to file a motion explaining why a stay was counterproductive and to explain the “need to reopen discovery for any particular purpose” upon which the Court could then rule, following a recommendation by the Master. *See Exhibit A, 6:18-19 and 11:13-19.*

4. At no point has Hamed ever filed such a motion explaining the need for any specific discovery or requesting the Court to re-open discovery for any “particular purpose.”

5. Instead, Hamed has circumvented the stay imposed by the Court by serving the subpoenas, attached as **Exhibit B**, upon the Bank of Nova Scotia and Banco Popular de Puerto Rico (collectively, the “Subpoenas”). The Subpoenas seek, among an extraordinarily broad range of information, documents relating to United’s tenant accounts as well as information relating to Plessen Enterprises, Inc. (“Plessen”), neither of which are related to the Partnership or

its liquidation. The Subpoenas also seek information to which Hamed has already had access for years and seeks information dating back decades.

6. In addition to the stay, the process set forth in the Final Wind-Up Plan provides that following the liquidation of the Partnership assets, the Partners will each submit their proposed accounting and distribution plan for those funds remaining in the Claims Reserve Account. *See Exhibit C – Final Wind-Up Plan, §9, Step 6.* These filings will govern the remainder of the case as they will define the scope of the remaining claims and areas of continued dispute for which discovery may be needed. As the Court had hoped, certain areas of discovery that were needed prior to the liquidation process may no longer be relevant and, thus, will have been eliminated as a result of the issues being narrowed in the proposed accountings and distribution plans. As expected, other areas will remain in dispute and discovery will be required after these submissions.

#### ARGUMENT

**A. THE SUBPOENAS CONSTITUTE AN IMPROPER ATTEMPT TO CONDUCT DISCOVERY IN CIRCUMVENTION OF THE COURT IMPOSED STAY.**

Super. Ct. R. 11(c) provides: "The Judge, on motion made promptly, may quash or modify the subpoena if compliance would be unreasonable or oppressive." Here, the Subpoenas are not only extraordinarily overbroad, they clearly violate the discovery stay imposed by the Court and represent an attempt to circumvent the Court's earlier ruling by failing to establish a need for this particular discovery or allowing the opposing party the opportunity to weigh in with any pre-issuance objections. Instead, Hamed, on an *ex parte* basis, approached the Master about issuing the Subpoenas. No showing of need was made before the Subpoenas were issued, at

least no showing that was shared with Defendants.

Upon discovering the Subpoenas had been issued, counsel for Yusuf attempted to lodge his objections with the Master, both as to the improper procedural manner in which the Subpoenas were issued as well as to the overbreadth of the information sought, which is irrelevant to issues relating to Partnership liquidation and wind up. These objections were essentially ignored. In particular, Judge Ross noted “[T]he issues you raise as to the scope of the subpoenas while valid as to the permitted scope is nonetheless going to be allowed as the requested documents pertain to anticipated claims that will be made in the near future.” See Exhibit D – Email correspondence between counsel and Judge Ross. No explanation regarding these “anticipated claims” was provided.

Counsel for Yusuf also suggested that a modification of the information sought could have eliminated the need for a motion to quash, despite the breach in the procedural protocol. Likewise, this effort was ignored. See Exhibit D.

The Court imposed a stay of discovery to allow the parties the opportunity to focus on the liquidation process. To the extent that any particular discovery would be needed, the parties were allowed the opportunity to file a motion explaining the need for such discovery, allowing objections by the opposing party, and then, upon the recommendation of the Master, present the issue for the Court to determine if such limited discovery would be allowed. Rather than following this procedure, counsel for Hamed engaged in an *ex parte* process culminating in the unilateral issuance of the Subpoenas thereby forcing Yusuf to either acquiesce to the overbroad discovery or resort to motion practice. Given this procedural aberration, the Defendants submit that the Subpoenas should be quashed so that a proper showing of the need for the information



can be offered, if possible, to demonstrate why, at this stage, additional discovery is needed before a representative of Hamed's estate can submit an accounting and proposed distribution plan. Only after a properly supported motion and response will this Court be in a position to determine if an adequate showing has been made.

**B. THE INFORMATION SOUGHT IS OVERBROAD AND UNRELATED TO THE PARTNERSHIP LIQUIDATION AND WIND-UP.**

After being challenged, counsel for Hamed apparently contends that the information sought in the Subpoenas is somehow needed to assist with his submissions under Final Wind-Up Plan, §9, Steps 4 and 6. Step 4 provides that "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and submit his findings to the Master." Hamed has been provided access to this information since the Court's May 31, 2013 and April 2, 2014 Orders, including the Sage5 accounting system. Therefore, to request information at this stage, to which Hamed already has had access, demonstrates that such arguments are a pre-text. Seeking information which stretches back to 1998 is beyond what was contemplated in the Final Wind-up Plan and, therefore, is overbroad.

Furthermore, any argument that the information sought relates to the liquidation or wind-up of the Partnership is also disproved by the fact that information has been sought from Plessen as well as United's "tenant account." Plessen is not a part of the Partnership and is not even mentioned in the Final Wind-Up Plan. Therefore, information relating to Plessen is outside the scope of the Partnership liquidation/wind-up process. Consequently, information relating to Plessen is beyond any efforts to obtain partnership accounting and financial information and should be quashed or the Subpoenas should be modified to exclude such information.

Similarly, the information sought relating to United's "tenant account" is beyond the scope of information relating to the Partnership liquidation/wind-up. The parties have consistently acknowledged from the outset that United's operations as a landlord and its profits from the ownership of real estate are not Partnership matters. Hamed acknowledged as much at paragraph 17 of his First Amended Complaint. Therefore, nothing in United's tenant account records is the proper subject of the Subpoenas. Therefore, at a minimum, the Subpoenas should be modified to remove information concerning United's tenant account.

Under the Final Wind-Up Plan, §9, Step 6, the Partners are each to submit a proposed accounting and distribution plan. This submission has been delayed because Hamed has claimed he needed further information in order to do so. Despite being offered physical access to all the financial information available to the Liquidating Partner for over 15 months, Hamed has sought to require the Liquidating Partner, through the Partnership's accountant, John Gaffney, to assemble and produce myriad documents and to answer extensive written questions concerning the Partnership's financial affairs. Yusuf has consistently argued that these demands to be spoon fed documents and answer discovery requests go far beyond the simple access to "view all partnership accounting information from January 2012 to present" contemplated in § 9, Step 4 of the Plan. *See, e.g.*, Liquidating Partner's Eighth Bi-Monthly Report at p. 10.

To the extent that there are disputes after the Partners submit their competing accountings and distribution plans, then, as was contemplated, discovery as to the disputed issues and claims can be allowed. When the Partners see each others accounting and distribution plans, they will be able to focus discovery on the areas where there is disagreement. Until one party knows how another party has accounted for a particular transaction or matter, it is unknown whether there

are areas of agreement or disagreement. Further, discovery was stayed before depositions were taken of the various Hamed family members. Discovery will be needed as to certain financial transactions involving their distributions, both those disclosed and those which Yusuf claims were undisclosed. However, this is a process that will need to occur following the submission of the parties' proposed accountings and distribution plans. To open discovery at this phase will likely result in a piecemeal process, as the parties know that discovery will be needed after the submission of the proposed accounting and distribution plans by each side. However, following these submissions, discovery will be properly focused and limited to those issues in dispute. At this point, Hamed has unreasonably delayed the submission of the distribution plans despite having had access to all of the Partnership financial information for over a year. Therefore, rather than speed the process, piecemeal discovery at this juncture hinders the process and prolongs it. As a result, the Subpoenas should be quashed to allow the more orderly process contemplated by the Court in October of 2014.

**C. AS A RESULT OF HAMED'S DEATH, THE SUBPOENAS SHOULD BE QUASHED AS THERE IS NO PARTY PLAINTIFF UNTIL A SUBSTITUTION IS MADE.**

As Hamed has recently died, a substitution must be formally made. *See* Fed.R.Civ.P. 25(a)(1) and V.I. Code Ann. tit. 5, §78. Although Yusuf anticipates that a substitution will ultimately occur, at this stage, there is no actual party plaintiff in the case. The Subpoenas, therefore, should be quashed and the Court should consider staying this case until the substitution takes place.

**CONCLUSION**

For all the foregoing reasons, Defendants respectfully request this Court to enter an order quashing the Subpoenas entirely. In the alternative, the Defendants request that the Subpoenas be modified to limit the information sought to only that information directly relating to Partnership liquidation and wind-up, which does not include information relating to Plessen or United's tenant account.

Dated: June 29, 2016

By:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of June, 2016, I caused the foregoing **EMERGENCY MOTION TO QUASH SUBPOENAS, STAY ENFORCEMENT OF OR LIMIT THE SCOPE OF SUBPOENAS** to be served upon the following via e-mail:

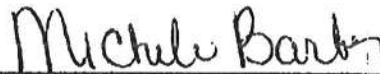
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