**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**MOHAMMAD HAMED, )**

 **) CIVIL NO. SX-14-CV-278**

Plaintiff, **)**

**v. )**

 **) ACTION FOR DAMAGES,**

**FATHI YUSUF, ) AND DECLARATORY RELIEF**

**)**

Defendants. **) JURY TRIAL DEMANDED**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )**

**HAMED’S MOTION AND MEMORANDUM FOR PARTIAL SUMMARY JUDGMENT**

On July 7, 2014, the Plaintiff filed a complaint against Yusuf alleging that certain property in St. Thomas, known as the “Dorothea Property,” that was jointly owned by them (in the name of two entities known as Y&S and R&F) had been sold and that Yusuf had received the funds, but would not turn Hamed’s half of the funds over. The amount owed Hamed from the sale had been reduced to a handwritten document, written by Yusuf and given to Hamed, showing the total owed Hamed was $802,955. See **Exhibit 1**.

 On March 22, 2016, the parties entered into a stipulation to consolidate this matter with another pending action (see **Exhibit 2**), which will be referenced herein as the “370” action. While this Court indicated the two cases would probably be consolidated after Judge Brady was consulted, to date no consolidation Order has been entered.

However, since the stipulation for consolidation was filed, certain events have occurred which render this matter ripe for summary judgment.

 In this regard, on September 30, 2016, Yusuf filed a pleading in the “370” case which admitted this debt is owed, conceding the liability for the $802,955 (see excerpt attached as **Exhibit 3** at p. 11):

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate, One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeh Yusuf. The two sons sold their stock for $900,000, pursuant to an agreement dated January 15,2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather

periodically and often late. **Yusuf has received all of the proceeds from the sale of the stock**, Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014-CY-278), the parties stipulated to have these claims consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, **$802,966 should be allocated to Hamed** to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. (Footnoted omitted. Emphasis added.)

 Thus, Yusuf has conceded that the $802,966 is: (1) in his possession and (2) is due and owing to Hamed. There being no dispute as to this, judgment should be entered in that amount plus statutory interest.

In short, all necessary facts are sent forth in Yusuf’s admission above:

1. The two parties owned the stock of two corporations
2. By mutual agreement the stock was sold.
3. By mutual agreement, Yusuf collected the funds.
4. By mutual agreement, 50% of those funds totaling $802,966, were to be distributed to Hamed.
5. Yusuf has those funds in his possession.
6. Yusuf concedes those funds are due to Hamed

In short, Yusuf has admitted to converting these funds which he now concedes are owed to the Plaintiff. As such, Judgment in the amount of $802,966, plus statutory interest[[1]](#footnote-1) at the rate of 9% pursuant to 11 V.I.C. §951(a), should be entered in favor of the Plaintiff on the basis of the admissions by Yusuf and the applicable law.

**Dated:** November 17, 2016

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**CERTIFICATE OF SERVICE**

 I hereby certify that on this 17th day of November, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

**Gregory H. Hodges**

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1. In his April 2, 2014 deposition in Mohammad Hamed v. Fathi Yusuf and United Corporation, SX-12-CV-370, Yusuf admits that he had received all of the funds by the date of the deposition – but states he cannot recall when he received them. See **Exhibit 4**. To simplify calculations, Hamed will accept interest from the date of the deposition. [↑](#footnote-ref-1)