

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

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

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES
AND DECLARATORY RELIEF

MOHAMMAD HAMED,)
)
Plaintiff,)
v.)
FATHI YUSUF,)
)
Defendant.)

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT
AND CONVERSION

JURY TRIAL DEMANDED

LIQUIDATING PARTNER'S ELEVENTH BI-MONTHLY REPORT

Pursuant to this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner¹, respectfully submits this eleventh bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.

Pursuant to the Court's "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order"), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan "shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015."

On February 25, 2015, the Claims Reserve Account ("CRA") and the Liquidating Expense Account ("LEA") were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. John Gaffney, an accountant engaged by the Partnership, will provide the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows concerning these accounts from inception through October 31, 2016. Copies of the bank statements, ledgers, and a final reconciliation reflecting the inflows/outflows of the other bank accounts used jointly by the Partners in the operation of the three stores from May 1, 2015 through August 31, 2015 have previously been provided to the Master and Hamed.²

¹ Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

² These accounts used by all three stores remained open as an operational necessity with the consent of the Partners and the Master. Since these accounts were joint signatory accounts signed by representatives of both Partners, Hamed had uninterrupted, unfettered access to monitor these accounts. All checks drawn on these accounts have been signed by a representative of both Partners. All of these accounts, except one account at Scotiabank, were closed effective July 10, 2015 with all of the funds from those accounts transferred to the CRA.

On March 5, 2015, the Master issued his “Master’s Order Regarding Transfer of Ownership of Plaza Extra West.” On March 6, 2015, the Master issued his “Master’s Order Regarding Transfer of Ownership of Plaza Extra East.” An accounting reconciling the difference in the inventory and equipment values involved in the transfer of Plaza Extra East and Plaza Extra West has occurred resulting in the payment of \$1,211,267.01 to Yusuf in July 2015.

The closed auction for Plaza Extra Tutu Park took place on April 30, 2015, pursuant to the Master’s Order dated April 28, 2015. On April 30, 2015, the Master issued his “Master’s Order Regarding Transfer Of Ownership Of Plaza Extra Tutu Park” (the “April 30 Master’s Order”), pursuant to which that store was transferred to Hamed’s designee, KAC357, Inc., for the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation (collectively, the “Tutu Park Purchase Price”), which has been paid.³

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master’s Order (p.2), Hamed⁴ was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store premises as of May 1, 2015. On October 12, 2016, the required release was finally provided to Yusuf.

The one account was left open with a balance of \$1,000 for a few additional days because of pending document requests related to the 2014 Department of Justice review and Scotiabank needed an account to charge. After deducting fees, the \$895 balance in the account was transferred to the CRA.

³ Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.

⁴ On June 16, 2016, Hamed died. See Yusuf’s Statement Noting Death Of Mohammad Hamed filed on June 22, 2016. As a result of his death, any power of attorney given by Hamed to Waleed Hamed has been terminated. See V.I. Code Ann. tit. 15, § 1265(a). A Motion For Substitution of Waleed Hamed, as the Executor of the estate of Hamed, was filed on September 20, 2016. On October 3, 2016, Yusuf filed a Notice of No Objection to such motion.

The Liquidating Partner is also working to resolve issues involving claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner authorized the payment of the entire, allocable taxes for 2012 and 2013 in the amount of \$79,009.87 and for 2014 taxes in the amount of \$43,069.36. Checks for those amounts have been delivered to Tutu Park, Ltd. The property taxes for 2015 have not yet been billed, but reserves will be set aside to pay these taxes (estimated to be \$14,356.44 based on $4/12 \times \$43,069.36$)⁵, disputed federal unemployment (Form 940) taxes for 2014 and 2015 (approximately \$350,000)⁶, contemplated Master's fees (approximately \$150,000), and accounting fees (approximately \$30,000).

The Liquidating Partner's sixth bi-monthly report incorrectly stated (at p. 4) that Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 had been rejected when, in fact, that claim was paid on December 17, 2015 via CRA check no. 278 and a matching check was issued to Yusuf via CRA check no. 279. Copies of these checks were provided to Hamed and the Master with the submission of the sixth bi-monthly report.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner. Hamed's claims regarding the disposition of

⁵ If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when \$79,009.87 and \$43,069.36 in real property taxes were paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized matching payments of \$89,442.92 and \$46,990.48 to United based on this formula. Accordingly, in addition to creating a \$14,356.44 reserve for the 2015 pro-rated real property taxes, a reserve for the matching payment to United should be created in the amount of \$9,812.14.

⁶ The ninth bi-monthly report estimated these taxes at \$750,000. John Gaffney, an accountant engaged by the Partnership to deal with accounting and tax issues, has negotiated with the taxing authorities and partially addressed the taxes claimed for 2013, thereby reducing the estimated reserves. In any event, the Liquidating Partner does not believe that any such taxes are actually due and owing.

½ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002, have been addressed in prior bi-monthly reports.

Hamed has claimed that the Liquidating Partner has “fail[ed] to identify a significant partnership asset, a Merrill-Lynch account that has in excess of \$300,000 in it, all of which came from Plaza Extra funds.” *See, e.g.*, Motion To Remove The Liquidating Partner filed by Hamed on January 29, 2016 at p. 6.⁷ At page 3 of Yusuf’s September 3, 2015 Response to the Objection, Yusuf states:

At no time has Hamed provided the Liquidating Partner with any information establishing that a Merrill Lynch account in the name of a third party actually represents Partnership Assets. Hamed certainly does not explain why he only raised the prospect of such account 18 days after the filing of the third bi-monthly report. (Footnote omitted).

To date, the Liquidating Partner has been provided with no information whatsoever that even suggests the unidentified Merrill Lynch account was funded with Partnership money, contains any Partnership funds, or otherwise constitutes Partnership Assets.

An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan. Combined balance sheets and income statements for the Partnership as of October 31, 2016 and supporting financial information (collectively, the “Financial Information”) will be provided to the Master and Hamed with or shortly after this

⁷ Yusuf filed his Opposition to that motion on February 17, 2016.

report. John Gaffney has compiled the Financial Information, which the Liquidating Partner believes is generally reliable and historically accurate.⁸

The pending litigation identified in Exhibit C to the Plan was updated by the more detailed list attached as Exhibit C-1⁹ to the first bi-monthly report. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation and any future litigation that may be filed within the two year statute of limitations period for personal injuries allegedly occurring prior to the transfer of the Plaza Extra Stores. Such reserves will be established out of the funds in the CRA.

On March 17, 2016, Yusuf, as Liquidating Partner, filed motions to consolidate three cases pending in the Superior Court, namely, *United Corporation v. Waheed Hamed*, Civ. No. ST-13-CV-0000101, *United Corporation v. Waleed Hamed*, Civ. No. SX-13-CV-000003, and *United Corporation v. Wadda Charriez*, Civ. No. SX-13-CV-0000152, with this case since the claims asserted in these three cases “may be treated as claims for resolution in the liquidating process of the Partnership pursuant to the Plan adopted” in this case. For similar reasons, on March 21, 2016, the parties filed a stipulation to consolidate two cases pending in the Superior Court with this case, namely, *Hamed v. Yusuf*, Civ. No. SX-2014-CV-278, and *Hamed v. United Corporation*, Civ. No. SX-2014-CV-287.¹⁰

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⁸ The submission of the Financial Information by the Liquidating Partner is not intended to impair or otherwise affect the right of either Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

⁹ An updated, more detailed list of pending litigation (Exhibit C-2) was previously provided to the Master and counsel for Hamed. A calculation of the proposed litigation reserves is attached as Exhibit B to Yusuf’s Accounting Claims And Proposed Distribution Plan (the “Claim”), which was submitted to the Master and counsel for Hamed on September 30, 2016.

¹⁰ By Order dated April 15, 2016, Civ. No. SX-2014-CV-287 was consolidated with this case. By Order dated October 13, 2016, Civ. No. SX-2014-CV-278 was consolidated with this case.

Section 9, Step 2, of the Plan requires the Liquidating Partner to “submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidated Expense Account.” That reconciliation was provided to the Master and Hamed with the third bi-monthly report. It reflected that the actual expenditures incurred through June 30, 2015 in winding up the Partnership and liquidating its assets were approximately \$4 million less than the projected expenses reflected in Exhibit A to the Plan. Updated reconciliations or comparisons have been periodically provided to the Master and Hamed with the filing of the fourth through the ninth bi-monthly reports. An updated comparison through August 31, 2016 was provided by Gaffney on August 31, 2016 and updated on September 30, 2016.

Pursuant to a “Further Stipulation Regarding Motion to Clarify Order of Liquidation” filed with the Court on October 5, 2015 and “So Ordered” on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016. At the request of Hamed, the Master extended the date for submission of the Partners’ accounting and distribution plans until May 2, 2016. Subsequently, that deadline was further extended by the Master without a date certain until August 31, 2016, when he directed the Partners to submit by September 30, 2016 any objections to the Partnership accounting provided by Gaffney on August 31, 2016 and their

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accounting claims against each other or the Partnership.¹¹ While Yusuf submitted his Accounting Claims and Proposed Distribution Plan to the Master and counsel for Hamed on September 30, 2016, as required by § 9, Step 6, of the Plan, the November 13, 2015 Order, and the Master's directives, Hamed filed his objection and accounting claims with this Court on September 30, 2016 in direct violation of these Plan provisions, Orders, and directives. These improper filings are the subject of fully briefed motions to strike filed by Yusuf on October 14, 2016 and October 24, 2016.

Respectfully submitted this 5th day of December, 2016.

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By: 

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¹¹ On September 22, 2016, the Master sent the Partners' counsel an email clarifying his earlier directive by stating "that the objections to and disagreements with the accounting and that claims against or on behalf of the partnership should be filed with the Master and served on opposing counsel only."

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2016, I caused the foregoing **Supplemented Liquidating Partner's Eleventh Bi-Monthly Report** to be served upon the following via e-mail:

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