

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

YUSUF YUSUF, FATHI YUSUF, FAWZIA YUSUF,)
NEJEH YUSUF, and ZAYED YUSUF, in their)
individual capacities and derivatively on behalf of)
PLESSEN ENTERPRISES, INC.,)

Plaintiffs,)

vs.)

MOHAMMAD HAMED, WALEED HAMED,)
WAHEED HAMED, MUFEED HAMED,)
HISHAM HAMED, FIVE-H HOLDINGS, INC., and)
KAC357, INC.,)

Defendants,)

-and-)

PLESSEN ENTERPRISES, INC.,)

Nominal Defendant.)
_____)

CASE NO. SX-13-CV-120

ACTION FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

**PLAINTIFF YUSUF YUSUF'S RULE 34
RESPONSE TO MUFEED HAMED'S SECOND
REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff, Yusuf Yusuf, through its attorneys, Dudley, Topper and Feuerzeig, LLP, hereby submits its Rule 34 Response to Defendant Mufeed Hamed's Second Request for Production of Documents. This Response is being submitted pursuant to Fed. R. Civ. P. 34, as applied to this Court by Superior Court Rule 7.

GENERAL OBJECTIONS

1. Yusuf Yusuf objects to each demand that uses the words "any" and "all" as being overbroad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Yusuf Yusuf objects to each demand that uses terms like "any," "all," "relate to," "regarding," and "pertaining to," with respect to general categories of documents on the grounds that the use of such terms makes the demand vague and overbroad.

3. Yusuf Yusuf objects to each demand to the extent it seeks the production of documents or information protected by the attorney-client, work product or other privileges. Only non-privileged documents, or portions thereof, will be produced.

4. Yusuf Yusuf objects to each demand to the extent that it uses terms or phrases that are vague, ambiguous, or undefined. Yusuf Yusuf's response to each such demand is based upon its understanding of the demand.

5. Yusuf Yusuf objects to each demand that asks for documents that fall outside the scope of this litigation. To the extent the demands seek production of such documents, the demands impose an undue burden and expense. Further, such documents are irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

6. Yusuf Yusuf objects to each demand to the extent it requires the production of documents outside of its possession, custody or control.

7. Yusuf Yusuf is continuing its efforts to identify non-privileged documents that are responsive to plaintiff's demand for production. Consequently, the documents produced may be supplemented.

8. Yusuf Yusuf objects to the production of any documents prior to the entry of a confidentiality agreement and order.

9. Each document Yusuf Yusuf produces is subject to all of the above general objections and all specific objections listed below. Inadvertent production of privileged documents shall not be deemed a waiver.

10. Yusuf Yusuf incorporates by reference its general and specific objections made to these document requests in its August 13, 2013 Objections to Plaintiff's Demand for Production of Documents.

**RESPONSE TO REQUESTS
FOR PRODUCTION OF DOCUMENTS**

1. Please provide all documents showing Plessen shareholder meeting notices from January 31, 1998 to present.

RESPONSE:

See Bates Stamped Documents – 120-YY-0004-224

2. Please provide all documents showing Plessen shareholder meetings that took place from January 31, 1998

RESPONSE:

See Bates Stamped Documents – 120-YY-0004-224

3. Please provide signed Plessen Enterprises, Inc. stock certificates showing that the Yusuf family owns 50% of the outstanding shares in Plessen.

RESPONSE:

See Bates Stamped Documents – 120-YY-0004-224; 155; 162-217.

4. Please provide all of the documents any Yusuf family member or Yusuf attorney submitted to the Virgin Islands Police Department personnel in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353.

RESPONSE:

Subject to the above-stated objections and without waiving any objections, shortly after March 27, 2013, when the \$460,000.00 check was cashed by Waleed Hamed and Mufeed Hamed, Yusuf Yusuf went to the Sunny Isle Branch of Scotia Bank in person and asked to speak with someone regarding information on a commercial account. Ms. Yvette Clendenen from Scotia Bank was called to speak with Yusuf Yusuf. During that conversation, Yusuf Yusuf inquired about Plessen account and the monies that had been removed. Ms. Clendenen showed Yusuf Yusuf the balance in the Plessen account, the monies which had been taken out and

provided him a photocopy of the \$460,000.00 check front and back. The next day, Yusuf Yusuf returned to the Sunny Isle Branch of Scotia Bank and asked for Ms. Clendenen. During this conversation, Yusuf Yusuf asked her for a copy documents in the bank's files as to the persons authorized to sign checks on behalf of Plessen. Ms. Clendenen provided a copy of the Intake Gathering Form from Scotia Bank's physical file. A true and correct copy of the documents received are attached hereto as Bates Stamped – 12-YY-0001-2;000273-281.

It is Mike Yusuf's recollection that in mid-to-late 2011 or early 2012, that it was determined that two signatures would be required, one Hamed and one Yusuf and that the Mike Yusuf and Waleed Hamed separately went into Scotia Bank and executed the documents with this requirement.

This change is also reflected in the signatures on the checks from the Plessen account. From September, 2011, all checks written bear one Hamed and on Yusuf signature. The exception to this is the \$460,000.00 check which bears two Hamed signatures. See Bates Stamped documents, 12-YY-00489-501, which are the checks written on the Plessen account each containing two signatures, one Hamed and one Yusuf after September of 2011.

On May 17, 2013, Attorney Nizar DeWood and Maher Yusuf met with VIPD Officer Mark Corneiro. During that meeting they conveyed to him orally the events which Officer Corneiro chronicles in his Affidavit. At that time, the documents provided were those listed in Officer Corneiro's Affidavit at page 3. Based upon Officer Mark Corneiro's Affidavit, it appears that he conducted his own independent investigation into the matter and he appears to have secured additional information directly from Scotia Bank, including the signature cards, reflecting "One Hamed and One Yusuf". Mike Yusuf recalls that there were a few calls between himself and Sergeant Corneiro but does not recall the dates. Sergeant Corneiro inquired about the name "Galleria" in Smith Bay which had arisen as part of his investigation into the funds that were deposited into Wally's account. Mike Yusuf explained that he understood that this related to the real property upon which a supermarket was being constructed in Red Hook, St. Thomas formerly known as Marina Market.

The V.I.P.D. investigation was later turned over to Attorney Kippy Roberson of the Attorney General's office. Attorney Roberson contacted Attorney Nizar DeWood and requested any information available. The exact date of this communication is unknown but on March 30, 2016, in response to Attorney Roberson's request, Yusuf Yusuf provided to Attorney DeWood a copy of the Intake Gathering Form with signatures and requirement for one Hamed and one Yusuf. See Bates Stamps 12-YY-000273-281. Attorney DeWood forwarded the information to Attorney Roberson as requested the same day. No further communication occurred between Attorney DeWood or any of the Yusuf's regarding this matter and Attorney Roberson.

It appears that the signature cards were not in possession of the Yusufs and were not provided to the VIPD or the Attorney General's office. Rather, the information provided to the VIPD is as listed in the Affidavit of Mark Affidavit at page 3. Subsequently, the Intake Gathering form was not provided until March of 2016 when requested by Attorney Roberson. The documents provided to Roberson were Bates Stamps 12-YY-000273-281.

5. Please provide all documents or communications present at or related to, all meetings, conferences *or* communications between any member of the Yusuf Family and the VI Daily News regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

There are no documents responsive to this request.

6. Please provide all documents or communications present at or related to, all meetings, conferences or communications between any member of the Yusuf Family and the VIPD regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

See response to RTP #4.

7. Please provide all documents or communications present at or related to, all meetings, conferences *or* communications between any member of the Yusuf Family and any VI Government official (excluding the VIPD) regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

See response to RTP #4.

8. Please provide all documents or communications present at or related to, all meetings, conferences *or* communications between any member of the Yusuf Family and Scotiabank regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

See response to RTP #4.

9. Please provide all document or communications present at or related to, all meetings, conferences *or* communications between any member of the Yusuf Family and vendors selling to the Hamed family business regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

Yusuf Yusuf is unaware of documents responsive to this request.

10. Please provide all documents evidencing a meeting of the Board of Directors for Plessen Enterprises, Inc. where the Board had voted to make Maher (Mike Yusuf a Plessen director.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf provides Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

11. Please provide all documents evidencing a meeting of the shareholders of Plessen Enterprises, Inc. where the shareholders had voted to make Maher (Mike) Yusuf a Plessen director.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf provides Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

12. Please provide all documents showing by a unanimous consent action of the Board of Directors for Plessen Enterprises, Inc. that Maher (Mike) Yusuf had been made a Plessen director.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf provides Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

13. Please provide all documents showing by a unanimous consent action of the Plessen Enterprises, Inc. shareholders and Maher (Mike) Yusuf had been made a Plessen director.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf shows that Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

14. Please provide all documents showing by a unanimous consent action of the Board of Directors for Plessen Enterprises Inc. that the size of the Plessen Board of Directors increased to more than three directors.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf shows that Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

15. Please provide all documents showing by a unanimous consent action of the shareholders for Plessen Enterprises Inc. that the size of the Plessen Board of Directors increased to more than three directors.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf shows that Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

16. Please provide all documents showing a vote by the Board of Directors for Plessen Enterprises, Inc. to increase the size of the Plessen Board of Directors to more than three directors.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf shows that Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

17. Please provide all documents showing a vote by the shareholders of Plessen Enterprises, Inc. to increase the size of the Plessen Board of Directors to more than three directors.

RESPONSE:

There are no documents responsive to this request. However, Yusuf Yusuf shows that Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

18. Please provide all of the documents any attorney on behalf of a Yusuf family member submitted to any VI Government official (excluding the VIPD) in connection with *People v. Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353.

RESPONSE:

See response to RTP #4.

Yusuf Yusuf, et al. (v. Mohammad Hamed, et al.)
Case No. SX-13-CV-120
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Second Request for Production of Documents
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DATED: February 15th, 2017

By:

DUDLEY, TOPPER AND FEUERZEIG, LLP


Charlotte K. Perrell (V.I. Bar #1281)

Law House

1000 Frederiksberg Gade - P.O. Box 756

St. Thomas, VI 00804-0756

Telephone: (340) 715-4422

Facsimile: (340) 715-4400

E-Mail: cperrell@dtflaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that on this _____ day of February, 2017, I caused a true and exact copy of the foregoing **PLAINTIFF YUSUF YUSUF'S RULE 34 RESPONSE TO MUFEED HAMED'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS** to be served upon the following via e-mail:

Mark W. Eckard, Esq.
HAMM & ECKARD, LLP
5030 Anchor Way – Suite 13
Christiansted, St. Croix
U.S. Virgin Islands 00820-4692
E-Mail: meckard@hammneckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymoorhead@yahoo.com

