

**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 and Counterclaimants.

vs.

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

Counterclaim Defendants.

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,
vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**
JURY TRIAL DEMANDED

MOTION TO TERMINATE THE ROLE OF THE SPECIAL MASTER

On January 9, 2015, this Court appointed a Special Master as part of the "Wind Up" Order for the partnership. It is respectfully submitted that this role was for the specific purpose of supervising the dissolution, not to subsequently resolve the claims between the parties. For the reasons set forth herein, it is respectfully submitted that this Court should now declare that job complete and terminate the Special Master's role.

I. Factual Background

This case was filed in September of 2012 after Fathi Yusuf unilaterally declared himself the sole owner of the Plaza Extra stores and removed \$2.7 million from the Plaza Extra bank account. Over the next 20 months Yusuf repeatedly asserted he acted properly, over the Plaintiff's strong objections, arguing that the supermarket business was owned solely by his United Corporation. Yusuf only changed his position after losing a preliminary injunction, affirmed by the V.I. Supreme Court, which held that there was prima facie evidence that the supermarket business was a partnership.

Fathi Yusuf then conceded that Hamed was a 50% partner. Yusuf then immediately sought to dissolve the partnership by proposing to close the three partnership supermarkets at a cost of 600 jobs and millions of dollars of revenues to both the local economy and the V.I. Government. The Plaintiff again objected -- offering an alternate dissolution plan to avoid such a disaster. After another eight months of acrimonious interactions, this Court was finally able to implement a Wind Up Order allowing for the **smooth transition of the ownership of the three stores, preserving all jobs and providing the full economic benefit of the businesses to the Virgin Islands community and Government.**

Under the Wind Up Order there were just two tasks remaining—to transfer ownership of the three stores and to finalize the partnership accounting. All three stores were transferred by May 1, 2015.

While the transfer of the stores was highly successful **the accounting process has, like the original assertion that Hamed was not a partner, been a Yusuf-driven disaster.** Indeed, as noted in the attached declaration of counsel, the Plaintiff never had

a meaningful opportunity to either (1) scrutinize the *January 1, 2012 to present* financials or (2) obtain a full accounting of the partnership accounts from 1986 to 2012. See **Exhibit 1**. Even the Special Master noted how the disputes related to this accounting process was hindering it from being completed. **See Exhibit 2**.

In any event, on August 31, 2016, without the benefit of these needed *2012 to present* financial records, the Special Master directed the parties to submit their objections to the post-2012 financials **and their overall partnership claims** by September 30, 2016. See **Exhibit 3**. In response, the Plaintiff filed an *Objection* with this Court on September 30th (attached hereto as **Exhibit 4** without attachments), specifically pointing out that: (1) he had been denied key information regarding the *2012 to present* financials and (2) had not been provided a **RUPA-compliant final accounting of the partnership accounts of the partners.**¹ **In short, no 1986-present partnership accounting has ever been done for the partnership, no matter how many times or how loudly anyone claims otherwise.**²

Finally, Plaintiff's September 30th objections pointed out that while the partnership's accountant, John Gaffney, filed an accounting *as to the specific years 2012 through 2016, the Plaintiff never had an opportunity to address the accounting issues related to that filing*, despite his repeated efforts to do.

¹ The January 9, 2015, "Wind Up" Order had provided 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.*"

² In fact, no response has ever been filed by the Liquidating Partner denying the fact that no accurate accounting has ever been done for the entire time period that the partnership existed – or that it is actually even possible. As the Plaintiff has pointed out repeatedly, such an accounting is simply impossible.

II. The Special Master's role has concluded.

With the foregoing factual background in mind, it is appropriate to address the issues currently before this Court. As already noted, the Special Master's successful role in transferring the three supermarkets has concluded without the loss of value or jobs.

Regarding the accounting, the Special Master has always made a distinction between the partnership *claims* and the partnership *accounting*. See, e.g. **Exhibit 2** ("The liquidation of the partnership is a separate and distinct process than the civil litigations") and **Exhibit 3** (distinguishing between (1) objections to the accounting and (2) claims between the partners). Moreover, the Special Master has always noted that his decisions on the various issues are subject to review by the Court. See **Exhibit 2**.

Thus, Judge Ross made it very clear that when he approved a payment (by signing the check) or rejected a payment (by not signing the proffered check), he fulfilled his role in overseeing the post-2012 accounting process. As such, as the 2012-2016 financials for the dissolution have now been submitted to the Court, which includes the rulings of the Special Master, his role is now concluded.

Thus, this Court can now terminate the appointment of the Special Master, as this case is now ready to move on to the remaining claims that need to be litigated through the civil process, including discovery, before a trial is set.

III. It would not be proper for the Special Master to continue further.

Even if this Court finds that the Special Master's role has not been completed, it would be unduly prejudicial for this particular Special Master to assume a judicial role in resolving claims in which he has participated in that capacity. Moreover, the Plaintiff has

repeatedly noted that many of the accounting issues addressed by the Special Master are contested. For example:

- On January 28, 2016, Plaintiff's counsel noted his objection to the November 15, 2015, partnership accounting, which the Special Master approved, writing a check confirming his approval. See Group **Exhibit 6**.³
- On February 25, 2016, Plaintiff's counsel noted his objection to multiple checks approved by the Special Master. See **Exhibit 7**.
- Similarly, the Special Master approved the attorney's fees of Dudley, Topper and Feuerzeig despite the Plaintiff's objections,⁴ as well as the salaries of Fathi Yusuf and John Gaffney up until December 31, 2016, even though both had other companies to run and both had completed their liquidation tasks long ago. These fees and salaries, which are contested, exceed \$500,000.

Indeed, Plaintiff's counsel has likened these payments to Yusuf's pillaging the partnership and stealing from his (now deceased) partner.

These are just a few of the many items that will need to now be resolved in the claims process, as these are payments that have been approved and made. **In this regard, the Special Master has repeatedly stated that his decisions were *not presumptive*, that they could be challenged later to another, neutral trier of facts.**

As such, it is respectfully submitted that it is both unduly prejudicial to the Plaintiff for the Special Master to address issues for which he has, in his present capacity, already approved payment, not to mention being simply unrealistic. Indeed, it would be completely unfair to Plaintiff's counsel to have to argue about matters where those arguments were previously decided by the Special Master – especially where he has had to spend 90% of his time working closely with one of the two parties. To allow him

³ While the check was written to Mohammed Hamed, the declaration explains why it should have been much larger.

⁴ Indeed, a second invoice was approved which the Plaintiff never even knew about -- until this past week. See **Exhibit 8**.

to continue would like having a mediator later hear the appeal of the mediation.

Additionally, **Exhibit 1** is counsel's declaration describing the frustrations in trying to engage in the *2012 to present* financial process. As noted therein, the primary frustration involved the Special Master's inability to get Gaffney to provide the most basic requested information, despite repeated discussions and promises about those matters. A review of **Exhibit 1** confirms the tension between Plaintiff's counsel and the Special Master over his failure to compel Gaffney to provide this repeatedly promised information. While more could be said here, the point is clear.

Finally, counsel has already submitted a declaration to this Court regarding his concern about the extent of contact and familiarity between the Special Master and the Liquidating partner. Since filing that declaration, counsel has obtained the billing records of the Special Master that further explain why it would create an appearance of impropriety for the Special Master to now rule on the claims presented by Fathi Yusuf. See **Exhibit 9**. Of course, this Court need not inquire further about the disparate time spent with Yusuf, as the taint of potential prejudice should be enough to conclude that the Special Master should not sit in judgment in deciding the credibility of Fathi Yusuf.

As such, even if this Court does not find that the Special Master's task has been completed, it is respectfully submitted that his involvement should be curtailed at this time for the sake of preserving the integrity of the process.

IV. Summary

For the reasons set forth herein, it is respectfully submitted that the time to end the role of the Special Master has arrived. Indeed, as noted in Section II, this should really just be a procedural matter, as opposed to being an adversarial one.

Dated: March 15, 2017



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
% edgarrossjudge@hotmail.com

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EXHIBIT 1

DECLARATION

I, JOEL H. HOLT, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

1. I am counsel of record to the Plaintiff and have personal knowledge of the facts set forth herein.
2. On January 9, 2015, the Court entered the partnership "Wind Up" Order that provided 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."
3. To accomplish this task, a number of actions were taken by my client:
 - a. A Virgin Islands Certified Public Accountant was retained who had experience in such matters.
 - b. A Florida firm with several Certified Public Accountants with specialized experience in such matters was also retained.
 - c. Access to the partnership accounting records was requested.
4. The accounting process was initially delayed due to the need to focus on the transfers of the three stores, along with the accounting needed to be done as part of that process by the partnership accountant, John Gaffney.
5. While some general accounting information had been provided by Gaffney, my client was finally allowed to seek specifically needed financial information as to the Partnership accounting records from Gaffney. The audit manager for the Florida CPA firm promptly sent a very standard request for information (**Exhibit A**) to Gaffney on September 21, 2015.¹
6. When nothing of substance had been received within a month, I sent a follow-up email (**Exhibit B**) on October 21, 2015, to Gaffney seeking some sort of timeframe.
7. This accounting process still did not move. By February of 2016, it was clear we would not be getting the needed accounting documents requested from Gaffney. Therefore, I asked for a meeting between Special Master Ross and the Florida CPAs -- to allow the CPAs to describe their inability to get either documents or answers to basic accounting questions.

¹ No attachments are included with any email referenced in this declaration, most of which are voluminous.



8. After listening to the presentation, Special Master Ross stated he would agree to have Gaffney answer a list of very specific questions as to accounting assumptions, procedures and information needed by the Florida CPAs.
9. On February 16, I sent the CPA's initial 81 questions, many answerable with very simple responses, to Special Master Ross -- with the request that he forward them to Gaffney as he had suggested. **Exhibit C.**²
10. Special Master Ross promptly forwarded the questions to Gaffney (**Exhibit D**) with the admonition: "For your attention and response. You're back on the payroll."
11. Gaffney clearly understood that Special Master Ross was directing him to respond to the questions without delay – as he immediately wrote back, requesting additional time for responses. **Exhibit E.** Special Master Ross responded on February 16, 2016: "What time frame is appropriate for responding given your present schedule and the May 2 deadline for concluding the objections by the Hameds?" **Exhibit F.**
12. However, no response was forthcoming. On April 12, 2016, frustrated with Gaffney's continuing unwillingness to respond – even to this substantially reduced information, I spoke with Special Master Ross. During that call, Special Master Ross told me that he had "informed Gaffney that no further payments would be made to Gaffney until he filed his responses to Hamed's 130 questions regarding the Plaza Extra general ledgers."
13. On May 17th, 2016, a partial response was received to just 11 of the 130 questions, which were incomplete even as to those 11 items. However, Gaffney stated that he was setting aside any further responses to the 130 questions for a month to "**to tend to other emergencies, many of which relate to the Partnership.**" He also suggested that Judge Ross no longer required him to answer the accounting questions I had sent.
14. I then wrote to Special Master Ross on May 23rd observing that it was clear that Gaffney would not or could not supply the documents and responses, stating in part (**Exhibit G**):

As you know, John is being paid on a full time basis, along with two assistants, by the Partnership, not by the Yusufs.

² The list was subsequently amended to 130 total questions after an updated accounting for 2015 was submitted by Gaffney which raised additional questions. The 130 questions were subsequently filed with the Court with the objection filed on September 30, 2016, which can be supplied again if requested by the Court.

While supplying supporting documents and explanations may be a time-consuming burden, our CPAs tell us that it is impossible for anyone to understand journal entries by just looking at them without explanation or backup. Indeed, to try to make this task easier, they met with the Hameds and their counsel over many weeks to eliminate hundreds of issues and questions -- and pared their questions down to a bare minimum 130 items regarding matters of accounting.

The questions are neither complex, nor should they require vast amounts of time. Most are answerable in a single paragraph.

15. In that same letter, I then suggested a way to simplify this process:

1. It is clear that many of the documents needed by our CPAs cannot be supplied by John, regardless of the "why" of this. We also understand John is taking 30 days for a leave of absence from this process. However, if you allow us in the interim to begin the process of issuing subpoenas for the necessary underlying documents from banks, vendors and others, we can begin to get the underlying documents that John has found to be too cumbersome (or impossible) to produce.

2. In the meantime, we will also modify the 11 partially-answered questions and 119 remaining questions to remove all document requests - which leaves just the direct questions that John can then easily answer. While we would prefer to not even ask John for this information at this point, our CPAs tell us that this information really cannot be gleaned from any other sources or documents - as they all go to his decisions and choices in constructing and documenting the financials. However, we will not send them to John until June 20th so John is not bothered during the next 30 days.

3. After we get John's responses to the revised questions as well as the documents responsive to the subpoenas, our CPAs will then meet with John to go over any remaining questions about the collected documents and his responses. This would involve nothing more than standard CPA questions about the basic accounting matters -- being asked of the person paid to provide this accounting, but discussion

at that juncture should be quick because of this new streamlined approach.

16. I was subsequently informed on June 21, 2016, by counsel for the Liquidating Partner that Gaffney would not answer these questions.
17. I promptly responded, pointing out that these 130 questions still had to be answered in order for my client to do his required accounting, with a copy of that email being sent to Special Master Ross, although the list was revised to make it even simpler as noted in that email. See **Exhibit H**.
18. Notwithstanding these revisions, Gaffney never answered the remaining 119 questions.
19. Despite repeated follow up requests to Special Master Ross for assistance, he was never able to get Gaffney to answer the 130 questions, even though he said he would have Gaffney answer them.
20. Instead, on August 31, 2016, the Special Master directed my client to file his "final accounting" (as well as his claims) by September 30, 2016.
21. As a result of this futile process in trying to submit an accounting as directed by this Court in its January 9, 2015, "Wind Up" Order, my client filed a formal objection on September 30, 2016, along with his unfinished accounting for the 2012-2016 time period.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 15, 2017



Joel H. Holt, Esq.

From: James Patton [<mailto:james.patton@vz-cpa.com>]
Sent: Monday, September 21, 2015 5:37 PM
To: johngaffney@tampabay.rr.com
Cc: Beatriz Martin; Carl Hartmann; kim@japinga.com; Joel Holt; Wally Hamed
Subject: Plaza Extra Document request (update through 9.21.15)

John,

We have reviewed the information received from you to date and have attached an updated list of documents/information we will still need for our upcoming review and analysis of the company's accounts and records. Please provide the reports in an electronic format (MS Excel) whenever available.

We would like to begin as soon as possible. If you can send us a good amount of the items on the list, particularly those that are readily available, in the next week or so we could plan to come to your offices in the next 2 to 3 weeks to get started. We anticipate our first trip down will be for only a few days to meet in person and discuss how best to proceed. At that time, we would also like to review some of your controls and procedures as well as tour where all the accounting records and document support is maintained. We can then also determine the logistics and timing for a longer visit with the full team. Please let us know when do you think will be convenient for your schedule so we can begin planning the travel for the first visit.

Best Regards,
H. James Patton, CPA, CFF
Audit Manager

Vizcaino Zomerfeld, LLP
Certified Public Accountants
999 Ponce de Leon Boulevard, Suite 1045
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Tel: + 1 305 444 8288 | Fax: + 1 305 444 8280
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From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Wednesday, October 21, 2015 10:59 AM
To: johngaffney@tampabay.rr.com
Subject: Plaza/Plessen

John-please see the attached letter. My apologies, as I did not know you prepared the returns, nor did I recall our conversation. Had I realized this, I would have just called you, as opposed to sending a letter to Greg.

On another note, I know you have been busy, so I have not followed up on Hamed's need to have Betty Martin and Mr. Patton conduct their own due diligence on the partnership's records. However, as November is approaching, which is when I understand you will be done with finalizing the current partnership accounting deadline we need to revisit this issue again. Indeed, in light of the time constraints with which we have agreed to get this done, as well as because of the intervening holidays, we need to set a schedule now that works for everyone.

I should note before going further that we have reviewed the Kaufmann Rossin report, which we appreciate you sending. However, it only covers 2014, while we have tasked out accountants to look at the entire 2013-2015 time period – as per Judge Brady's order. Moreover, while our accountants are not conducting an audit, they cannot completely rely upon the work of other accountants, particularly accountants retained for a different purpose, as you know.

I want to assure you that I am not trying to make your life more complicated or create more work than absolutely necessary, but the Hameds need this documentation in order for our accountants to begin this process. I reviewed the accountant's request and I am sure that most of the items requested could be easily extracted from the accounting system and emailed without the need for extra manpower, such as items like the general ledgers, check registers and cash receipts. It would also be helpful to see items like the point of sales reports and accounting summary schedules that Kaufman utilized in their testing, although for the entire 2013-2015 time period.

I also think this process will move quickly once the initial work gets started, as it always harder to get started than anything else. Can you tell me how you want to proceed— emailing items first or having another meeting on St. Croix, with access to some of the records starting right after that meeting?

Give me a call after reviewing this email so we can make this as smooth as possible.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



From: Joel Holt <holtvi@aol.com>

Date: 02/16/2016 8:08 AM (GMT-04:00)

To: edgarrossjudge@hotmail.com

Cc:

Subject: Fwd: Action Please: List of questions & exhibits for Judge Ross by Tuesday, 2/16/16 deadline

Judge Ross—as you directed, attached are 81 specific questions relating ONLY to the financials Mr. Gaffney has supplied. Each has specific references to items from his accounting. There is one inquiry per page.

I will print this out if you prefer a hard copy, but I would recommend giving him the WORD file by forwarding this email, rather than printing out the 81 pages – as it has not only the questions, but also the references to his accounting and a place for him to fill in a response. Each one only requires a short, direct responses.

I cannot emphasize enough that these are not broad, general inquiries. They were composed by the two CPA's you met, who are familiar with these books (the item numbers relate to the CPAs' records and should not be changed).

Additionally, I also have exhibits that go along with a couple of the questions, which are attached and can also be forwarded. Please let me know if you prefer a hard copy of all of these attachments instead of just forwarding this (or you can do both—forward this and get a hard copy—probably best to see what John wants first).

After we see how this process works, we can decide whether there needs to be a partial lift of the discovery stay, as discussed last Friday. Thanks.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



From: Edgar Ross [<mailto:edgarrossjudge@hotmail.com>]

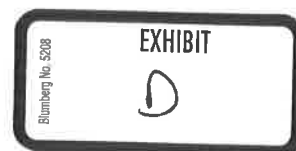
Sent: Tuesday, February 16, 2016 10:58 AM

To: John Gaffney

Subject: Fwd: Action Please: List of questions & exhibits for Judge Ross by Tuesday, 2/16/16 deadline

For your attention and response. You're back on the payroll.

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



From: John Gaffney <johngaffney@tampabay.rr.com>

Date: 02/16/2016 1:06 PM (GMT-04:00)

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

Cc:

Subject: RE: Action Please: List of questions & exhibits for Judge Ross by Tuesday, 2/16/16 deadline

Dear Judge Ross,

I see in the Subject a reference to "...2/16/16 deadline." I hope that isn't true for the items on the attached Word file. When people start asking for copies of items like "date-stamped Form 720VI.." for a period of three years, the time to respond is substantial.

You are correct about being back on the payroll. Unfortunately, I am scheduled to fly to Florida tomorrow due to required attendance at a trial on Feb 18th. Add to that an already planned trip on Friday the 19th through Sunday the 28th – and I'm in trouble.

Do you have any words of wisdom?

Regards...John



From: Edgar Ross <edgarrossjudge@hotmail.com>
To: John Gaffney <johngaffney@tampabay.rr.com>
Cc: JOEL HOLT <holtvi@aol.com>
Sent: Tue, Feb 16, 2016 1:14 pm

Subject: RE: Action Please: List of questions & exhibits for Judge Ross by
Tuesday, 2/16/16 deadline

What time frame is appropriate for responding given your present schedule and
the May 2 deadline for concluding the objections by the Hameds?

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



JOEL H. HOLT, ESQ. P.C.

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May 23, 2016

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

Re: Plaza Accounting

Dear Judge Ross:

I am in receipt of John Gaffney's emails and enclosures of last Tuesday, May 17th. Before making three brief suggestions as to where to go from here to simplify this and save everyone time and stress -- I have a couple of observations in response to some points he raised that we did not previously understand, although this letter is certainly not intended to be confrontational in any way, as we just want to complete this process.

John states he will be unable to provide most of the canceled checks, invoices to match payments and bank statements. Our CPAs did not understand this to be the case. Indeed, they have made it very clear that it would be impossible for any CPA to adequately review a partnership's financials without vendor invoices, the underlying checks and bank statements. They raised this exact point with you in our meeting on St. Croix -- although, as they said then, they are willing to pursue these independently as you suggested.

By way of another example, John states that he wanted the Hamed accountants present in his office so they "could discuss and make joint decisions" on accounting issues. No one ever made this (excellent) suggestion previously, as the only request was to provide someone to do some menial tasks, not participate in the accounting decisions. As you are well aware, the Hameds would have welcomed the chance to have their CPAs actively participate in accounting decisions about the partnership wind-up!

As you know, John is being paid on a full time basis, along with two assistants, by the Partnership, not by the Yusufs. While supplying supporting documents and explanations may be a time-consuming burden, our CPAs tell us that it is impossible for anyone to understand journal entries by just looking at them without explanation or backup. Indeed, to try to make this task easier, they met with the Hameds and their counsel over many weeks to eliminate hundreds of issues and questions -- and pared their questions down to a bare minimum 130 items regarding three years of accounting.

Blumberg No. 5206

EXHIBIT

G

The questions are neither complex, nor should they require vast amounts of time. Most are answerable in a single paragraph.

Finally, the level of the responses to the specific, numbered questions provided with John's letter were insufficient and still need to be supplemented. He responded to just 11 items out of the total 130 items sent to him – answering 2 in full, and the other 9 only partially. For example, here are our concerns about several of the inquiries:

- Item 3002 – no response was given to the question of what accounting basis is there for the Partnership paying the United Shopping Center's gross receipt taxes after 2013 when the clear dispute among the parties arose. An answer should be a paragraph.
- On Item 3006 – no response was given to the question of why the accounting reflects Partnership funds being used to pay Fathi Yusuf's personal legal fees and what is the accounting basis for this expenditure. Again, a response would take a paragraph or two.
- On Item 3007 – no response was given to understand how the accounting reflects or can be used to solve the alleged imbalance in credit card points between the Yusuf's and the Hamed's--- simply stating that "Included herein are copies of vendor reports for credit cards used at Plaza East. These reports reflect all activity since January 1, 2013," and then noting that "*Prior to 2013, it is impractical if not impossible to provide all credit card activity as vendor accounts for credit cards never reflected activity properly.*" (Emphasis added).

With these general comments in mind, to simplify and speed up this process, we suggest the following steps be followed:

1. It is clear that many of the documents needed by our CPAs cannot be supplied by John, regardless of the "why" of this. We also understand John is taking 30 days for a leave of absence from this process. However, if you allow us in the interim to begin the process of issuing subpoenas for the necessary underlying documents from banks, vendors and others, we can begin to get the underlying documents that John has found to be to cumbersome (or impossible) to produce.
2. In the meantime, we will also modify the 11 partially-answered questions and 119 remaining questions to remove all document requests – which leaves just the direct questions that John can then easily answer. While we would prefer to not even ask John for this information at this point, our CPAs tell us that this information really cannot be gleaned from any other sources or documents – as they all go to his decisions and choices in constructing and documenting the financials. However, we will not send them to John until June 20th so John is not bothered during the next 30 days.
3. After we get John's responses to the revised questions as well as the documents responsive to the subpoenas, our CPAs will then meet with John to go over any

remaining questions about the collected documents and his responses. This would involve nothing more than standard CPA questions about the basic accounting matters -- being asked of the person paid to provide this accounting, but discussion at that juncture should be quick because of this new streamlined approach.

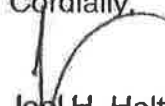
As noted, we understand John is taking a leave of absence for 30 days and certainly have no problem with that. We can start the subpoenas now to expedite this process and also have the revised questions ready for him when he returns.

This, along with our other suggestions, removes John from most of the remaining effort -- *and reduces the time he must spend to accomplish this court ordered process.*

I have not copied John (or anyone else) on this letter, as I thought I would seek your input first, as I want to keep the unneeded, adversarial acrimony to a minimum. If you want me to share this letter with anyone, please let me know.

Please let me know if these non-confrontational, time-saving suggestions are acceptable so we can proceed.

Cordially,


Joel H. Holt
JH/H/jf

From: Joel Holt [mailto:holtvi@aol.com]
Sent: Thursday, June 23, 2016 2:03 PM
To: Gregory H. Hodges
Cc: edgarrossjudge@hotmail.com; nizar@dewood-law.com;
carl@carlhartmann.com
Subject: Re: Subpoenas To BNS and BPPR

Several quick comments are in order to this email.

First, "access to partnership accounting information" is all we are seeking now, which we have been seeking since the beginning of this year, as you know.

Second, John never offered to let these accountants work side by side—I was there when he made a much more limited suggestion, asking if they would give him some manpower to do specific, needed accounting tasks he would assign to them to speed up his work. If your client wants to revise that offer and have VZ actually come into the Plaza offices to do general accounting work with John (not sure there is anything left to do), just let me know.

Third, the 130 questions still need to be answered in order to understand the accounting. However, we agreed to (1) revise the list to eliminate the request for documents (as we agreed to get the documents through the subpoena process) and (2) we agreed to wait 30 days before submitting the revised list, as John said he was taking 30 days off from the partnership accounting (a well deserved rest).

In this regard, the revised list is being sent now attached by separate email since that 30 day period just ended.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



EXHIBIT 2

From: Edgar Ross <edgarrossjudge@hotmail.com>
Date: June 27, 2016 at 5:34:43 PM AST
To: "Gregory H. Hodges" <ghodges@dtflaw.com>
Cc: JOEL HOLT <holtvi@aol.com>

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.

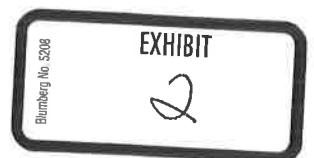


EXHIBIT 3

From: Edgar Ross <edgarrossjudge@hotmail.com>
Date: August 31, 2016 at 6:49:21 PM AST
To: GREGORY HODGES <ghodges@dtflaw.com>, JOEL HOLT <holtvi@aol.com>
Cc: "Douglas A. Brady" <Douglas.Brady@visuperiorcourt.org>, Fathi Yusuf <fathiyusuf@yahoo.com>, John Gaffney <johngaffney@tampabay.rr.com>
Subject: **Objections and Disagreements to the Partnership Accounting**

Now that the Partnership Accounting is more than 99% completed and have been distributed to the partners, I am giving the partners thirty (30) days, i.e., until September 30, 2016, to file any objection or disputes any item in the accounting. Failure to object or dispute the accounting within said time is a waiver of the right to object or dispute any item contained therein.

Additionally, any partner who has a monetary or property claim against the partnership or a partner must file such claim in writing on or before September 30, 2016. Each claim shall include the date of the activity giving rise to the claim, its factual and/or legal basis, and the relief requested. Failure to file a claim may result in a waiver of the right to make a claim.

The fact that a claim is the subject of a pending civil action does not excuse a partner from raising it in the liquidation process and the failure to raise it in the liquidating process may affect the outcome of the civil action.
EDR, Master.

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



EXHIBIT 4

**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 and Counterclaimants.

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S NOTICE OF PARTNERSHIP CLAIMS
AND OBJECTIONS TO YUSUF'S POST-JANUARY 1, 2012 ACCOUNTING**

On August 31, 2016, the Special Master notified the parties by email that by September 30, 2016, they must: (1) "file any objection or disputes any item in the [Yusuf post-2012] accounting" and that (2) "any partner who has a monetary or property claim against the partnership or a partner must file such claim in writing," stating:



Now that the Partnership Accounting is more than 99% completed and have been distributed to the partners, I am giving the partners thirty (30) days, i.e., until September 30, 2016, to [1] file any objection or disputes any item in the accounting. Failure to object or dispute the accounting within said time is a waiver of the right to object or dispute any item contained therein.

Additionally, [2] any partner who has a monetary or property claim against the partnership or a partner must file such claim in writing on or before September 30, 2016. Each claim shall include the date of the activity giving rise to the claim, its factual and/or legal basis, and the relief requested. Failure to file a claim may result in a waiver of the right to make a claim.

The fact that a claim is the subject of a pending civil action does not excuse a partner from raising it in the liquidation process and the failure to raise it in the liquidating process may affect the outcome of the civil action. EDR, Master.

Although Plaintiff objects to both of these directions at this time, the following attachments are submitted to comply with the Master's Order to the extent possible:

1. An itemized statement of pre-January 1, 2012 partnership claims (**Exhibit A**):
and
2. An itemized statement of accounting disputes or objections to the November 16, 2015, post-January 1, 2012 accounting (as supplemented by the bi-monthly reports) submitted by Yusuf (**Exhibit B**) along with Hamed claims for the period as to items not listed in the accounting.

However, Plaintiff has specific objections to (1) the requirement that all 1986 to January 1, 2012 partnership claims be filed now, and (2) the requirement that all accounting disputes or objections for Yusuf's post-January 1, 2012 accounting be filed now. Both objections will be first discussed so that the record is clear on these two points.

I. Objections to the requirement that all 1986-2012 partnership claims be filed now.

This case breaks neatly into two time periods based upon Step 4 of this Court's January 7, 2015, *Winding Up Order*,¹ as follows:

- The 1986 to January 1, 2012, time period – from the founding of the partnership to January 1, 2012 (for which no accounting at all has been submitted); and,
- the period from January 1, 2012 to the present (this being the only period for which an accounting, albeit insufficient, has been submitted).

While the Master ordered the parties to note their respective objections to "the Partnership Accounting," the only accounting that has been provided covers just the period from January 1, 2012, to the present. Thus, Plaintiff objects to having to detail all "partnership claims" from 1986 to 2012, *at this time*, for the following reasons:

1. As a *sine qua non* of final distribution of remaining partnership assets in dissolution, RUPA² first requires an accounting to which contests are then made. There has been no 1986-2012 accounting done yet. Thus, there has been no analysis of the value of the partnership shares with itemized statements of contributions, distribution and claims to which Hamed can respond. It is improper to make the non-accounting partner respond first or even simultaneously;

¹Step 4: Liquidation of Partnership Assets

The Liquidating Partner shall promptly confer with the Master and Hamed to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership. All previous Partnership accountings are deemed preliminary. Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and submit his findings to the Master. The Liquidating Partner is ordered to submit an updated balance sheet to Hamed and to the Master without delay. (Emphasis added.)

² *Revised Uniform Partnership Act* ("RUPA") as enacted at 26 V.I.C. §§ 1 *et seq.*

2. Discovery was halted by the Order of this Court before the Plaintiff could complete discovery on the 1986-2012 claims;³
3. No notice was previously given that the 1986-2012 claims would have to be submitted at this time, prior to a partnership accounting – as Hamed was simply required to respond to the post-2012 accounting that has been submitted or that the Master would be involved in those claims;⁴
4. Disputed partnership claims and any factual issues involving statutes of limitations must be decided by a jury under the VI Supreme Court's ruling in the related case of *United Corporation v. Waheed Hamed*, 2016 WL 154893, at *7 (Jan. 12, 2016),⁵ and cannot either be decided summarily, or left to the Master rather than the Court without an agreement of the parties. Indeed, the Plaintiff has filed several outstanding motions, including the critical motion as to the statute of limitations that would obviate all pre-2007 claims;⁶ and

³ The claims from 1987 to January 1, 2012 require payment of more than \$19 million to Hamed plus interest, as detailed in Exhibit A. In addition, 26 V.I.C. § 5 provides: "If an obligation to pay interest arises under this chapter [RUPA] and the rate is not specified, the rate is that specified in Title 11, section 951, Virgin Islands Code." If Yusuf does not contest those claims, then no additional discovery is necessary.

⁴ Indeed, *Step 4* of the Court's *Winding Up Order* (cited above) explicitly limited Hamed's ability to address this 2012-present time period, stating "Hamed's accountant shall be allowed to view all partnership accounting information **from January 2012 to present** and submit his findings to the Master." (Emphasis added.)

⁵ The V.I. Supreme Court has determined that any disputed statute of limitations issue that involves a question of fact, cannot be decided summarily – and *must* be heard by a jury:

. . . the nonmoving party cannot be required to definitively prove its case at summary judgment, or to even provide the most convincing evidence supporting its case. **Its only burden is to submit sufficient evidence to create a genuine issue of material fact for a jury to resolve.** (Emphasis added.)

⁶ On April 27, 2015, this Court issued an Order allowing the Liquidating Partner to distribute \$3,999,679.73 of the partnership's funds to the Liquidating Partner's corporation – United Corporation -- as back rent. This Order was predicated solely on factual determinations by the Court regarding the applicable V.I. statute of limitations. In light of the recent decision of the V.I. Supreme Court specifically prohibiting exactly this type of factual determinations regarding statutes of limitations, that must be submitted to a jury.

Plaintiff also has substantial claims related to the non-equitable, non-accounting issues such as breach of duty and wrongful dissolution of the partnership by Fathi. The attempt by Yusuf/United to convert all of the partnership was abject, unadulterated conversion – and additional, non-accounting monetary damages were pleaded. Hamed believes that these are *a priori* fact issues, and must be decided by a trier of fact before final distribution of the remaining assets can take place. The Amended Complaint lists a number of non-accounting damages – and specifically asked, at item 7 of relief, for “[a]n award of compensatory damages against the defendants.” Fees for the litigation occasioned by the breach of the partnership agreement and for wrongful dissolution are not accounting damages and require a jury. See, e.g., *Meyer v. Christie*, No. 07-2230-CM, 2009 WL 3294001, at *1 (D. Kan. Oct. 13, 2009); same on appeal *Meyer v. Christie*, 634 F.3d 1152, 1160–61, 2011 WL 873437 (10th Cir. 2011 same on remand *State Farm Fire & Cas. Co. v. Christie*, No. 10-CV-2699, 2015 WL 751808, at *3 (D. Kan. Feb. 23, 2015); see also *Cratte v. Estabrook*, No. 1 CA-CV 09-0239, 2010 WL 2773372, at *3 (Ariz. Ct. App. July 13, 2010); and *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 148 Idaho 479, 489, 224 P.3d 1068, 1078, 2009 WL 5252829 (2009). Paragraph 38 seeks these additional, non-accounting damages:

38. Mohammed Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf on the Partnership and /or his partnership interest. . . .

Similarly, paragraph 41 alleges breach of duty – also a factual issue:

41. United was at the time of the formation of the Partnership, controlled by Yusuf, who, as the partner making such financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under an agreement or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds – which breaches the agreement and the duties due to the Partnership and his Partner.

Indeed, the critical issue here is that prior to the final distribution of remaining partnership assets, RUPA requires that an actual, detailed accounting for the period from 1986 to January 1, 2012 either be done.

Moreover, if that accounting is impossible, the presumptions with regard to any accounting deficiencies requires disputed issues in such an accounting be

decided for the benefit of the non-accounting partner. See, *Frett v. Benjamin*, 2 V.I. 516, 524, 187 F.2d 898, 901 (3d Cir. 1951) (decided when the *Uniform Partnership Act* was in effect here, that in a U.S. Virgin Islands partnership accounting “when accounts are so muddled as to defy straightening out, the court will have to resort to the best evidence available, and the partner to blame for the situation will be penalized by having discrepancies resolved against him”) and see, e.g., *Laurence v. Flashner Medical Partnership*, 206 Ill.App.3d 777 (1990).

Hamed believes it is clear that because of the state of the partnership records, Yusuf's acts and his failures to act, no such 1986-2012 accounting is even arguably possible.⁷ In *Laurence v. Flashner*, the court stated the general rule in rejecting an “accounting” similar to the one suggested by Yusuf here:

The Uniform Partnership Act provides that a partner has a right to have an accounting as to his interest when he leaves the partnership. (Ill.Rev.Stat.1987, ch. 106½, par. 43.) An accounting is a statement of receipts and disbursements which should show all of the detailed financial transactions of the business including a listing of the original contributions and current assets and liabilities of the partnership. [citations omitted]. . . .

The evidence in the instant case does not reveal or suggest that **defendants' production of documents was anything more than an invitation to rummage through selected files. The record fails to establish what the boxes” of documents actually contained. Whether those boxes contained a list of all receipts and disbursements made, the original vouchers, bills, cancelled checks, and a listing of original contributions and current assets and liabilities is not known.** The record does not reveal that defendants prepared or commissioned audits or otherwise explained or documented the manner and method by which

⁷ See, *Expert Report of Lawrence Schoenbach*, attached as **Exhibit C**. This is a report done pursuant to the Court's scheduling order – as was the *Expert Report of David Jackson* filed on August 1, 2014. See also the extensive averments of the parties and detailed findings of this Court of record as to Yusuf's exclusive control of the business accounting recited in that Expert Report at footnote 7, pages 8-9.

the value or allocation of plaintiffs' unit interests in the partnership were determined. **In an action for an accounting, the defendant has the burden to prove that he has been completely frank and honest with his partner, and has made full disclosure.** (Bakalis v. Bressler (1953), 1 Ill.2d 72, 115 N.E.2d 323.) Here, defendants argued and the circuit court [incorrectly] concluded that, since many boxes of documents were made available for inspection by plaintiffs, an accounting had been given. (Emphasis added.)

Id. at 565 N.E.2d 146, 1990 WL 186700 (App. Ct. 1990)

Thus, for the foregoing reasons, the Plaintiff objects to having to file the 1986-2012 "partnership claims" now as ordered by the Master.

II. Objections to the requirement that an itemized statement of all accounting disputes or objections to the post-2012 accounting be filed now.

As for the post-January 1, 2012 Yusuf accounting, Hamed objects to the requirement that he submit a full statement of disputes and objections to that accounting *at this time* for two simple reasons:

1. The Court's winding up order of January 7, 2015, required at Step 4, that:

All previous Partnership accountings are deemed preliminary. Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and submit his findings to the Master.

Notwithstanding this directive, the partnership's accountant was unwilling or unable to provide access to or supply "all partnership accounting information." Basic information such as vendor invoices, cancelled checks and accounting statements were not available. In a meeting with the Master, this was discussed and Hamed was given the opportunity to *attempt* to secure such information from the banks and vendors. Only 30% of this material has been supplied, and Yusuf's counsel has actively been involved in Hamed not getting information from banks and the vendor subpoenas have not been issued for that reason. See **Exhibit D** (Affidavit of Joel H. Holt with attached subpoenas and correspondence with bank), and;

2. The accountant being paid full-time for the partnership has refused to answer just 130 very specific questions posed by Hamed's CPA's, without which no accurate response to the proposed accounting can be completed. See **Exhibit B-2, Expert Report of Jackson Vizcaino Zomerfeld, LLP.**

Indeed, the failure to answer these 130 questions is not only contrary to the spirit of what this Court ordered so that Hamed could understand the "accounting" being submitted by the Liquidating Partner, it is also **required to be provided pursuant to 26 V.I.C. § 73(c), which provides that each partner is required to provide the other (or his estate) with all information related to the partnership affairs.**

Despite this inability to "view" many of the partnership's accounting, as ordered by this Court, Hamed *has* attempted to detail his disputes and claims as well as the failures of this 2012-present accounting as best as possible in Exhibit B. This list includes the accounting claims,⁸ but also lists *inter alia* several partnership assets in United's or third-parties' possession that Yusuf, as the Liquidating Partner, made no effort to recover, as it was not in his or United's interest to do so:

- The \$2.7 million and \$.5 million taken by United and Yusuf in 2012-13 from the partnership account (as documented in this Court's prior findings.)
- The half-million dollar withdrawals by Yusuf to pay his own civil lawyers during this case.
- Land in Estate Tutu, St. Thomas, purchased with partnership funds but titled in United's name; and
- Land located at and behind the Plaza East Store purchased with partnership funds

⁸ Hamed also has claims at law for monetary damages relating to conversion, breach of duty and wrongful dissociation which are not included in this list, as they are not accounting claims.

However, the Plaintiff must note his objection to having to submit this list of disputes and objections without the full benefit of being able to get answers that would have possibly made such a complete review possible.

III. Conclusion

As noted, attached as Exhibits A and B are the itemized, detailed statements that the Master directed to be filed, which are filed subject to the objections noted herein.

Dated: September 30, 2016



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
Special Master
% edgarrossjudge@hotmail.com

Gregory H. Hodges
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com

A handwritten signature in black ink, appearing to read "J B C Moorhead", is written over a horizontal line.

LIST OF EXHIBITS

- Exhibit A** Hamed's 1986 to January 1, 2012 claims
- Exhibit A-1** Spreadsheet of Hamed's 1986 to January 1, 2012 Claims w/ exhibits
- Exhibit B** Hamed's January 1, 2012 to present claims
- Exhibit B-1** Spreadsheet of Hamed's January 1, 2012 to present claims
- Exhibit B-2** Expert Report of Jackson Vizcaino Zomerfeld, LLP, a licensed Certified Public Accountant firm in the U.S. Virgin Islands
- Exhibit C** Expert Report of Lawrence Schoenbach, Esq.
- Exhibit D** Declaration of Joel H. Holt, Esq.

EXHIBIT 5

From: Edgar Ross <edgarrossjudge@hotmail.com>
To: Joel Holt <holtvi@aol.com>
Sent: Thu, Feb 25, 2016 1:24 pm
Subject: RE: Plaza

There is no conclusive presumption of correctness . I indicated and hold firm to what I said to you about challenging any decision I make. I adopted this process to speed up payments and the liquidation process. Adjustments can be made to partners' draws at a later date if necessary. I do not consult with nor seek the approval of any attorney before I make a decision. You have the right to seek reconsideration of any decision I make.



EXHIBIT 6

**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, MUFEED HAMED,
HISHAM HAMED,**
and **PLESSEN ENTERPRISES, INC.**,

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

DECLARATION OF JOEL H. HOLT

I, Joel Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am counsel of record for the Plaintiff and have personal knowledge of the facts set forth herein.
2. On January 25th I met with John Gaffney to go over the November 16th accounting submitted to my client.
3. Two entries on the accounting summary were for the same amount of \$119,529.01, which canceled each other out. To explain this entry, Mr. Gaffney produced a back up ledger showing that this amount was due the partnership by United, as the partnership had paid the gross receipts taxes and insurance premiums for the time period in question. However, Mr. Gaffney then canceled out this entry on the summary page, as Mr. Yusuf told him that the partnership had agreed to pay this sum as "additional rent" to United, even though Hamed never agreed to such a payment.
4. When I met with Mr. Gaffney, I saw a ledger that showed the amounts due Yusuf from the partnership that totaled. \$253,033.97. However, this sum




did not match up to the entry on the summary for this credit, which had a figure of \$326,017.99. When I asked Gaffney about this discrepancy, he indicated that Yusuf had insisted on adding the value of the condensers to this list.

5. The accounting summary also had another entry for an amount "Due Yusuf" with a figure of \$186,819.33. When asked about this figure, Mr. Gaffney said it was from an old accounting entry, which he produced. However, Mr. Gaffney said he had no idea why this amount was on this ledger.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 28, 2016



Joel H. Holt

**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,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.**,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

NOTICE OF SERVICE OF PARTNERSHIP ACCOUNTING

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 provides this notice that a Partnership accounting has been provided to the Master and Hamed concurrently with the filing of this Notice.

In support of this Notice, Yusuf respectfully represents that § 5 of the Plan provides in pertinent part: "The Liquidating Partner shall provide a Partnership accounting." Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed on October 5, 2015, the Partners agreed that the Liquidating Partner would submit the Partnership accounting required by § 5 of the Plan to the Master and Hamed on November 16, 2015 and that the

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

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.

The Partnership accounting provided to the Master and Hamed on this date was prepared by John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, which the Liquidating Partner believes is generally reliable and historically accurate.²

Respectfully submitted this 16th day of November, 2015.

DUDLEY TOPPER and FEUERZEIG, LLP

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

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf, Liquidating Partner

² The submission by the Liquidating Partner of the Partnership accounting prepared by Mr. Gaffney is without prejudice to his right as a Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2015, I caused the foregoing Notice Of Service Of Partnership Accounting to be served upon the following via e-mail:

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
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
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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 Bark

R:\DOCS\62541\DRFTPLDGM\681627.DOC

United Corporation West (Pship)
Summary of Remaining Partnership Items
For the Period From Jan 1, 2013 to Sep 30, 2015

<u>Location</u>	<u>A/C</u>	<u>A/C Description</u>	<u>Yusuf</u>	<u>Hamed</u>
East	10400	Cash - Banco CC 3307	(176,353.61)	-
East	14500	Due from/to Shopping Ctr	(119,529.01) ←	- } (1)
East	14500	Adjust Re Mtg on 10/01	119,529.01 ←	- } (1)
East	20000	Accounts Payable (@ 8/31/15)	326,017.99 ←	- (2)
East	25800	Deposit Error Suspense	193,649.63	-
			<u>343,314.01</u>	-
STT	14000	Due from/to Yusuf	186,819.33 ←	- (3)
STT	25800	Deposit Error Suspense	-	181,355.40
STT	Adjust	Paid to KAC357 in July 2015	-	(181,355.40)
STT	Adjust	Trop Shpg Pd for KAC357	-	(10,242.00)
			<u>186,819.33</u>	<u>(10,242.00)</u>
West	14000	Due from/to Yusuf	120,167.33	-
West	14500	Due from/to Shopping Ctr	(900,000.00)	-
West	14600	Due from/to Hamed	-	(24,700.00)
West	20000	Accounts Payable	(5,632.57)	2,780.41
West	25800	Deposit Error Suspense	-	(39,788.40)
			<u>(785,465.24)</u>	<u>(61,707.99)</u>
		Due from (to) Partnership	<u>(255,331.90)</u>	<u>(71,949.99)</u>
		Partnership Distribution	255,331.90	255,331.90
		Repmt fr NonCash Distrib	(255,331.90)	(71,949.99)
		Net Cash Payout	<u>-</u>	<u>183,381.91</u> ←

Total Pk

UNITED CORPORATION PARTNERSHIP
CLAIMS RESERVE ACCOUNT
PO BOX 763
CHRISTIANSTED, VI 00821

251
101-667/216

16/01/15

Date

CHECK ARMOR

Pay to the
Order of

Mohammed Hamed

\$ 183,381.91

One Hundred Eighty Three Thousand Three Hundred Eighty One ^{91/100} Dollars

Security Features Details on Back



BANCO POPULAR

BANCO POPULAR DE PUERTO RICO
Orange Grove Branch
Saint Croix, U.S. Virgin Islands

[Handwritten Signature]

For *Pro-Tata Sch...*

⑆021606674⑆ 190⑈199091⑈ 0251

EXHIBIT 7

From: Joel Holt <holtvi@aol.com>
Date:02/25/2016 12:24 PM (GMT-04:00)
To: edgarrossjudge@hotmail.com
Cc:
Subject: Plaza

Judge Ross-yesterday I received the opposition to my objection to the Liquidating Partner's Six Bi-Monthly Report. That pleading contained several surprises that I want to raise with you.

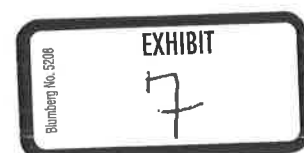
At the outset, I should note that their pleading included several checks that I had asked John Gaffney to produce weeks ago, but never received, The fact that those checks are readily accessible to Mr. Yusuf, but not my client, highlight the accounting problem we have discussed. However, that is not the point I want to address in this email, as I will discuss later it in response to your email sent yesterday.

The pleading as filed suggests that since you signed several specific checks, which I have attached to this email, these are resolved claims, not subject to further review. It was my understanding from conversations with you that this is not the case, but I guess I need clarification from you on this point.

For instance, there is a check for \$79,009.37 payable to the Tutu Park landlord for 2012 and 2013 real estate taxes that my client does not dispute. However, there is then a check for \$89,442.92 payable to United Corporation (marked #1) with an email from John Gaffney (also attached) **that I had never seen**, explaining that somehow this is additional rent owed United "Since Plaza East rent is based upon St. Thomas rent" Aside from the fact that I do not even understand the calculations attached to that email that supposedly explains how this "additional rent" was calculated, my client completely disagrees with the statement that the "Plaza East rent is based in the St. Thomas rent," thus warranting a new rent payment. Indeed, it is contrary to Judge Brady's April 27, 2015, opinion that determined the rent due for this time period and then ordered it to be paid, which did not include any such finding, which I am glad to send it you want to see it.

My first question is whether this payment of \$89,442.92 to United is now a resolved claim or is it still subject to my client's challenge that it is not due?

As another example, there is a check for \$43,069.56 payable to the Tutu Park landlord for 2014 real estate taxes that my client does not dispute. However, there is then a



check for \$46,990.45 payable to United Corporation (marked #2). This one does not have an email from John Gaffney explaining this payment, but presumably it is also being claimed as additional rent owed United for 2014, which my client also completely disagrees with.

My second question is whether this payment of \$46,990.92 to United is also now a resolved claim or is it still subject to my client's challenge that it is not due?

Likewise, there is a check for \$41,462.28 payable to the Tutu Park landlord for 2014-2015 percentage rent, that my client does not dispute, even though the partnership only owed 50% of this amount. However, there is then a check for \$41,462.28 payable to Fahti Yusuf (marked #3). This one does not have an email from John Gaffney explaining this payment, so I am not sure what the justification is for this check.

My third question is whether this payment of \$41,462.28 to United is also now a resolved claim or is it still subject to my client's challenge that it is not due?

Finally, there is a check to DTF for \$57,605. As you know, you sent me this bill on December 24th. We then discussed this bill. My understanding was that this bill would not be paid until I had time to respond to it, which understanding is set forth in my January 23rd email to you, which begins with me thanking you for giving me time to respond to this issue. I then question the bill, **including the reasonableness of the amount of the bill.** However, I apparently misunderstood you, as I now see this check (marked #4) was paid to DTF on January 6th.

My fourth question is whether the amount of this payment to DTF is also now a resolved claim or is the amount still subject to my client's challenge?

In summary, are claims you allowed to be paid now "FINAL" – or are they still subject to being challenged in the claims process without any presumption of correctness being created by your signing the checks?

Joel H. Holt, Esq.
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Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

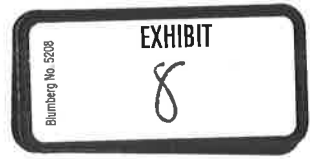
EXHIBIT 8

United Corp West (Pship)
Vendor Ledgers
For the Period From Jan 1, 2015 to Feb 28, 2017

Known b. lings

Vendor ID	Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	12/17/15	281	CDJ		57,605.00	57,605.00	0.00
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	3/1/16	167848	PJ	*		3,280.00	3,280.00
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	3/1/16	168038	PJ	*		6,400.00	9,680.00
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	4/2/16	305	CDJ		9,680.00		0.00
Report Total						67,285.00	67,285.00	0.00

new b. lings



UNITED CORPORATION PARTNERSHIP
CLAIMS RESERVE ACCOUNT
PO BOX 783
CHRISTIANSTED, VI 00821

281
101-567/216

12-29-15 Date

CHECK NUMBER

Pay to the Order of DANIEL TOPPER - FEUERZEIG LLP | \$ 57605⁰⁰

FIFTY SEVEN THOUSAND SIX HUNDRED FIVE & ⁰⁰/₁₀₀ Dollars

Security Features: Includes a small icon of a padlock and the text 'Security Features: Includes a...'.

BANCO POPULAR

BANCO POPULAR DE PLERTEI RUCED
Orange Grove Branch
Saint Croix, U.S. Virgin Islands

For 1-9-15 THRU 11-30-15

Edgar W. Long

⑆021606674⑆ 190⑈199091⑈ 0281

UNITED CORPORATION PARTNERSHIP
CLAIMS RESERVE ACCOUNT
PO BOX 763
CHRISTIANSTED, VI 00821

305

101-667215

4-2-16

CHECK # 305

Pay to the
Order of

DUDLEY, TOPPER & FEUERZIG

\$9,680⁰⁰

NINE THOUSAND SIX HUNDRED EIGHTY ⁰⁰/₁₀₀ DOLLARS



BANCO POPULAR

BANCO POPULAR DE PUERTO RICO
Ocean Grove Branch
Saint John, U.S. Virgin Islands

For LNV # 168038

Edgar D. Law
Feuerzig

⑆021606674⑆ 190⑆ 199091⑆ 0305

POSTED

EXHIBIT 9

REVISED DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am counsel for the Plaintiff and am personally familiar with the facts set forth herein.
2. I filed a declaration on March 6, 2017, regarding Special Master Ross. Since that date, I have received additional billing records submitted by him as well as by counsel to the Liquidating Partner. As such, I wish to supplement that declaration.
3. This Court appointed Hon. Edgar Ross as the master to oversee the wind-up of the partnership being liquidated in this case, allowing him to charge \$400 per hour.
4. The partnership accounting through May 28, 2016, shows payments totaling \$173,850 to him. To date I have not been supplied with any subsequent billing information, although I have requested it from the Liquidating Partner.
5. The Liquidating Partner did submit an estimated reserve of \$150,000 for additional billings expected from Special Master Ross. I have asked for a breakdown of how this estimate was reached, without any response to date.
6. The specific billings for Special Master Ross that I received for the first time on March 10, 2017, extend only through May 12, 2017. Those billings can best be understood by the attached chart (**Exhibit A**).



7. As for the specific billings, I understand the billings through May 1, 2015, as the three Plaza Extra stores were transferred prior to this date, with the last one being sold at an auction just before May 1st.
8. Once the stores were sold, the only remaining task was to complete the partnership accounting. I have prepared a separate declaration discussing that process, which is being filed with this declaration.
9. In looking at the billing for Special Master Ross after May 1, 2015, it is not possible to completely break his time down, as he billed time on certain days for multiple items, with no specific allocation to each one. For example, he billed 4 hours on March 30 as conferences with Fathi Yusuf, the Court and myself, even though not such group conference ever took place, confirming each conference was separate.
10. However, eliminating time spent reviewing documents, meetings with the Court and conferences with all counsel present, Special Master Ross spent a total of 97.5 hours with just Fathi Yusuf between May 11, 2015, and May 12, 2016, (totaling almost \$40,000) compared to just 10 hours with me (totaling just \$4,000).
11. As no billings have been submitted for any date after May 12, 2016, no further analysis is possible.
12. As the billings do not reflect the content of any conference, it is unknown what was discussed.
13. While such ex parte communications were permitted, it is clear that my client would be prejudiced by his appointment as a Master under Rule 53, as the gross

disparity of hours of time spent with the opposing party and his accountant, both of whom will be critical witnesses in any proceedings going forward, clearly would create undue and unfair prejudice to my client.

14. Indeed, many of the issues being contested involve payments he approved, as noted in the pleadings already on file with this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 15, 2017



JOEL H. HOLT

Insufficient Detail	Yusuf / Hodges Only	All / Both	Hamed / Holt Only	Court Only
219.25	108.50	68.50	18.75	13.25

Ross Hours Invoiced

