

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

WALEED HAMED, as Executor of the  
Estate of MOHAMMAD 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

**Consolidated With**

WALEED HAMED, as Executor of the  
Estate of MOHAMMAD HAMED,

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

WALEED HAMED, as Executor of the  
Estate of MOHMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION

**JURY TRIAL DEMANDED**

**OPPOSITION TO MOTION TO TERMINATE THE MASTER**

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

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

(340) 774-4422

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Opposition to the “Motion to Terminate the Role of the Special Master” (“Motion To Terminate”) dated March 15, 2017 filed by plaintiff/counterclaim defendant Waleed Hamed, as Executor of the Estate of Mohammad Hamed (“Hamed” or “Plaintiff”). Defendants submit that the Motion to Terminate should be summarily denied because the winding up of the Partnership<sup>1</sup> remains incomplete and, pursuant to several orders of this Court, the judicial supervision of the winding up process must be directed and overseen by the Master. Plaintiff’s unsupported claim that the Master’s job is “complete” or that even if the job is unfinished, “his involvement should be curtailed,” *see* Motion To Terminate at p. 6, is nothing more than a frivolous attempt to completely erase Plaintiff’s express consent to the appointment of the Master and to the Master’s role in considering the Partners’ competing accounting and distribution plans by way of a report and recommendation to this Court for its final determination.

### **Factual Background**

Although irrelevant to the relief sought in the Motion to Terminate, Plaintiff misrepresents the factual background to suggest that Yusuf never acknowledged Hamed’s 50% interest in the net profits of the Plaza Extra Stores until after this Court entered its preliminary injunction, which was affirmed in part and vacated in part by the Virgin Islands Supreme Court. That is untrue. Yusuf always acknowledged that he and Hamed shared equally in the net profits from the operations of the Plaza Extra Stores. In his Motion to Appoint Master for Judicial Supervision of Partnership Winding Up Or, In the Alternative, to Appoint Receiver to Wind Up Partnership filed on April 7,

---

<sup>1</sup> Unless otherwise defined, all capitalized terms have the same meaning provided for in the “Final Wind Up Plan Of The Plaza Extra Partnership” (the “Plan”) approved by this Court’s “Order Adopting Final Wind Up Plan” dated January 7, 2015 (the Wind Up Order”).

2014, Yusuf was simply the first person to formally seek dissolution of the Partnership and the appointment of a Master<sup>2</sup> to supervise the winding up of the Partnership.

On September 10, 2014, the Partners filed a stipulation for the appointment of Judge Edgar D. Ross as the Master in this case. Pursuant to that stipulation, on September 18, 2014, this Court entered an order appointing Judge Ross “to serve as judicial Master in this action, to direct and oversee the winding up of the Hamed-Yusuf Partnership.”

On October 7, 2014, this Court entered an “Order Soliciting Comments, Objections and Recommendations” in which the parties were “ordered to review the proposed plan and present comments, objections and recommendations within the time periods provided below.” At page 6 of that Order, the Court provided, in relevant part, as follows:

Step 6: Distribution Plan.

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. **Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** Nothing herein shall prevent the Partners from agreeing to distribution of Partnership assets between themselves rather than liquidating assets by sale and distributing proceeds. (Emphasis supplied)

That Order further provided each party 14 days within which to submit their comments, objections, and recommendations with respect to the Court’s proposed plan. On October 21, 2014, Plaintiff filed his “Comments Regarding Proposed Winding Up Order,” which included a proposed revised plan as Exhibit 4. Section 8, Step 6 (page 12-13), provided as follows:

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account.

---

<sup>2</sup> Although the first prayer for relief in Plaintiff’s First Amended Complaint filed on October 19, 2012 sought “[a] full and complete accounting to be conducted by a court-appointed Master,” Plaintiff never moved the Court to appoint a Master until April 30, 2014, when he responded to Yusuf’s April 7, 2014 motion.

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

Of course, this language is identical to the language from this Court's proposed plan, except it substituted "Master" for the "Liquidating Partner" as the person who completes the liquidation of the Partnership Assets. Nowhere in Plaintiff's Comments Re Proposed Winding Up Order did he argue or even suggest that a jury should decide the competing accounting and distribution plans between the Partners as opposed to the Master making the initial determination by report and recommendation for final determination by this Court. Indeed, the word "jury" did not appear anywhere in the body of any of Plaintiff's documents either proposing a wind up plan or commenting on Defendants' or the Court's proposed plans.

After considering the parties' comments, this Court entered the Wind Up Order approving the Plan. Of course, the language quoted above (p.3) from the Court's proposed plan was adopted *verbatim* in § 9, Step 6 of the Plan **because both Partners agreed to that language.**

Section 1.22 of the Plan provides: "Master" means Honorable Edgar D. Ross, appointed by the Court to serve as Master in the Case." Section 2 of the Plan provides that Judge Ross "shall serve as Master to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner." Section 3 of the Plan provides: "Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to this Plan and the provisions of the V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master." Section 3 further provides: "**All** acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to prior notification to and approval of the Master." (Emphasis supplied). Section 5 of the Plan concluded with this sentence:



Following payment of all Partnership Debts, any remaining funds shall continue to be held in the Claims Reserve Account pending distribution pursuant to agreement of the Partners or order of the Court following a full accounting and reconciliation of the Partners' capital accounts and earlier distributions.

On October 2, 2015, the parties stipulated that the "Partners will submit their proposed accounting and distribution plans required by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016[.]" This stipulation was "So Ordered" on November 13, 2015.<sup>3</sup>

### Argument

As Plaintiff would have this Court read the Plan, it only contemplated two tasks for the Master to oversee and supervise, namely, "to transfer ownership of the three stores and to finalize the partnership accounting." *See* Motion to Terminate at p. 2. Plaintiff's effort to reduce the Master's role to "act as the judicial supervision" of the Liquidating Partner's wind up efforts under the Plan, which provides for the winding up of a Partnership found by this Court to have been formed in 1986, which employed hundreds of people in three different stores and generated hundreds of millions of dollars in revenues, to these two tasks simply misrepresents the terms and intent of the Plan. The Plan not only provided for the liquidation of the Partnership Assets, it clearly required the Partners to submit their competing accounting and distribution plans for initial determination by the Master via report and recommendation to this Court, sitting without a jury, for its final determination.

The undisputed factual background that led to the entry of the Wind Up Order is set forth in Defendants' Supplemental Brief Regarding Three Motions Addressed at March 6-7, 2017 Hearings filed on March 21, 2017 (pages 7-11). Plaintiff has not and cannot dispute his close participation in both the development and approval of the Plan. More than two years after entry

---

<sup>3</sup> The March 3, 2016 deadline was later extended by the Master at Plaintiff's request until August 31, 2016, when the Master directed the Partners to submit any objection to John Gaffney's Partnership Accounting or any claims against the Partnership or the other Partner by September 30, 2016.

of the Wind Up Order, it is simply disingenuous for Plaintiff to now claim that the Master's "role was for the specific purpose of supervising the dissolution, not to subsequently resolve the claims between the parties." *See* second sentence of the Motion to Terminate. The Plan certainly did not appoint the Master to supervise the dissolution of the Partnership, an act that occurred not later than April 30, 2014, the date Mohammad Hamed gave notice of his purported dissolution of the Partnership. *See* Exhibit 1 to the Plaintiff's Response to Defendants' Motion to Appoint Master for Judicial Supervision of Partnership Winding Up Or, in the Alternative, to Appoint Receiver to Wind Up Partnership filed on April 30, 2014.

Clearly, the "judicial supervision" referenced in § 2 of the Plan (quoted above) is the same "judicial supervision of the winding up" contemplated by the V.I. Code Ann. tit. 26, § 173(a). Section 3 of the Plan provides: "Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to this Plan and the provisions of V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master." Section 173(c) provides, in pertinent part:

A person winding up a partnership's business may . . . prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 177 of this chapter, settle disputes by mediation or arbitration, and perform other necessary acts.

Section 177(a) provides:

In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

The first sentence of § 177(b) provides: “Each partner is entitled to a settlement of **all** partnership accounts upon winding up the partnership business.” (Emphasis supplied).

In this case, the winding up of the Partnership is most certainly incomplete so the Master’s role in supervising the wind up is likewise incomplete. As reflected in Exhibit 23 introduced by Plaintiff at the hearing on March 6, 2017, which is a copy of Exhibit A (Claim Distribution Summary) of Yusuf’s Accounting Claims and Proposed Distribution Plan submitted to the Master and Plaintiff on September 30, 2016, a copy of which is attached as **Exhibit A** for the Court’s convenience, there are approximately \$9,000,000 in Partnership Assets remaining after liquidation and potentially available for distribution by the Liquidating Partner under the supervision of the Master. Before those assets may be distributed to the Partners, the Debts of the Partnership must be determined and discharged. Moreover, a winding up of the Partnership cannot be complete until there has been “a settlement of all partnership accounts” as provided in § 177(b). This complex settlement of partnership accounts is a critical part of the winding up process that remains under the supervision of the Master. Section 9, Step 6 of the Plan provides that “Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination.” If the Master was not expected to report and recommend on the parties’ competing accounting claims and distribution plans for the Court’s final determination, Plaintiff provides this Court with no clue what subject the Master’s report and recommendation was supposed to address.

Plaintiff complains that the “**accounting process has . . . been a Yusuf-drive disaster.**” See Motion to Terminate at p. 2 (emphasis in original). Of course, the record reflects that Yusuf, as the Liquidating Partner, timely filed twelve bi-monthly reports, as provided in the Plan, along

with the updated financial information that accompanied each report, which was submitted only to the Master and Hamed. Pursuant to the Notice of Service of Partnership Accounting filed on November 16, 2015, Yusuf provided notice that the Partnership accounting required by § 5 of the Plan had been submitted to the Master and Hamed. Although Plaintiff claims that he “noted his objection” to this Partnership accounting, he cannot provide this Court with any citation to the record of any such objection. Plaintiff never objected to the Partnership accounting submitted by the Liquidating Partner on November 16, 2015. Indeed, at page 3 of Plaintiff’s Motion to Remove the Liquidating Partner filed on January 29, 2016, Plaintiff states: “On November 16, the Liquidating Partner submitted a final accounting, as required by § 5 of the Winding Up Plan.”

The only evidence that Plaintiff can muster that purportedly objects to Yusuf’s Partnership accounting is the self serving, January 28, 2016 declaration of Plaintiff’s counsel in support of the Motion to Remove Yusuf as Liquidating Partner. *See* Exhibit 6 to the Motion to Terminate. That declaration does not set forth any objection to the November 16, 2015 Partnership accounting but simply reflects counsel for Plaintiff’s misunderstanding and confusion regarding the content of that accounting, as clearly shown in the declaration of John Gaffney attached as Exhibit 6 to Yusuf’s Opposition to Motion to Remove the Liquidating Partner filed on February 17, 2016. A copy of that declaration is attached as **Exhibit B** for the Court’s convenience. Not surprisingly, Plaintiff made no effort to controvert Mr. Gaffney’s declaration in Plaintiff’s March 3, 2016 Reply. Incredibly, although Plaintiff acknowledges a check in the amount of \$183,381.91 was written by the Master and Yusuf, as Liquidating Partner, as a result of that Partnership accounting (and promptly cashed by Plaintiff), the Motion to Terminate falsely states that “the declaration explains why it [the check] should have been

much larger.” *See* Motion to Terminate at p. 5, n. 3. Needless to say, Plaintiff has submitted no declaration whatsoever explaining why the check should have been any larger.

Plaintiff complains that he “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.” Motion To Terminate at p. 2-3. To support this claim, Plaintiff once again relies upon the self-serving declaration of his counsel attached as Exhibit 1 to the Motion To Terminate. Both of these claims are frivolous based upon a review of the record.

**Plaintiff Had Unfettered Access “To View All Partnership Accounting Information From January 2012 to Present.”**

As previously pointed out by Yusuf, *see* Defendants’ November 14, 2016 Reply To Hamed’s Opposition To Motion To Strike Supplemental Claims at p. 7-8, in response to Plaintiff’s comments with respect to the Court’s proposed plan, the Court ultimately included the following language in § 9, Step 4 of the Plan:

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 to submit his findings to the Master.

As reflected in the declaration of John Gaffney, attached as **Exhibit C**, Plaintiff and his accountants have had unfettered access to the partnership financial information from January 2012 to the present and no one has prevented them from viewing that information.

Plaintiff makes no effort whatsoever to explain how he was not provided a meaningful opportunity to obtain a full accounting of the partnership accounts from 1986 to 2012. Notwithstanding the fact that §§ 4 and 9 (Step 6) of the Plan obligate each Partner to submit a full accounting, to date, Plaintiff has submitted no accounting whatsoever for any period of time. With respect to the period from 1986 to 2012, Plaintiff claims that any accounting is simply impossible notwithstanding the fact that ¶ 21 of his First Amended Complaint alleges that

“Hamed and Yusuf have also scrupulously maintained records of withdrawals from the United-held “supermarket” Partnership profit account to each of them (and their respective family members), to make certain there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members.” As the Court is well aware, Yusuf included a “Report of Historical Withdrawals and Distributions of the Partners and Proposed Allocation to Equalize Partnership Distributions” prepared by BDO, Puerto Rico, PSC as part of his Accounting Claims and Proposed Distribution Plan submitted to the Master and Plaintiff on September 30, 2016. That report addressed the Partners’ historical withdrawals through December 2012. From the period from January 2013 to date, Yusuf relied upon the Partnership accounting provided by Gaffney. Both of Plaintiff’s experts who testified at the March 6, 2017 hearing, namely, Lawrence Schoenbach and David Jackson, effectively conceded that it was not impossible to perform an accounting for this period. *See, e.g.*, Transcript at pages 199-200; 256-261; and 275-6, attached as **Exhibit D**. As Mr. Jackson testified, he was not even asked to perform the same time consuming, expensive undertaking performed by BDO and that if he had been asked to do so, he would have done so. Accordingly, notwithstanding the allegations in his own complaint and the testimony of his own experts, Plaintiff never even attempted to perform an accounting for the period through December 2012, choosing instead to attack the BDO report for doing what he now conveniently claims is impossible.

As also pointed out at the recent hearings, Plaintiff did not even submit an accounting for the period from January 2013 to date, choosing instead to submit a mélange of objections to and criticisms of Gaffney’s accounting. Ultimately, however, the whys and wherefores with respect to Plaintiff’s accountings or lack thereof have nothing to do with the two discreet issues raised in the Motion to Terminate, namely, whether the Master’s role as provided for in the Plan has

concluded and, if not, whether he should be terminated or replaced. The answer to both of these issues is a resounding “no.”

**The Master’s Role Has Not Concluded.**

If, as claimed by Plaintiff, the Master’s role under the Plan was limited to overseeing the transfer of the three Plaza Extra Stores and to finalize the Partnership accounting for the period from 2013 to date, then perhaps his claim that the Master’s role has concluded would have some merit. Plaintiffs can point to nothing in the Plan that so limits the Master’s role. In fact, the Plan expressly and unambiguously provides that the Master shall “oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner.” See § 2 of Plan. Section 3 of the Plan provides: “Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to this Plan and the provisions of V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master.” That section further provides: “All acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to prior notification to and approval of the Master.” (Emphasis supplied). It is simply beyond cavil that the wind up of the Partnership has not yet concluded. Accordingly, the Master’s supervision of the wind up is also unfinished. Yusuf, as the Liquidating Partner, is currently holding approximately \$9,000,000 in cash and securities that awaits distribution after the Master reports and recommends to this Court for its final determination concerning the Partners’ competing accounting and distribution plans.<sup>4</sup> Obviously, there is a considerable amount of work that remains to be done before the Partnership is wound up pursuant to the Plan and V.I. Code Ann. tit. 26, §§ 173 and 177.

---

<sup>4</sup> Although Yusuf submitted his Accounting Claims and Proposed Distribution Plan to the Master and Hamed on September 30, 2016, Hamed has never submitted any accounting or proposed distribution plan.



**Plaintiff Has Provided This Court with Absolutely No Basis for Removing the Master.**

Without citing a single statute, rule, case or other authority, Plaintiff asks this Court to remove Judge Ross, who has served in this difficult case since this Court entered an Order on September 18, 2014 appointing him Master. What evidence does Plaintiff provide this Court as a basis for the extraordinary relief of removing the Master? Nothing other than self-serving declarations of Plaintiff's counsel describing (a) his frustration with the Master's refusal to force John Gaffney to waste his time, at Partnership expense, to spoon feed information to Plaintiff's accountants and to answer hundreds of their questions, and (b) his dismay because the Master allegedly spent roughly tenfold the amount of time with Yusuf, the Liquidating Partner the Master was charged with supervising, than he did with Plaintiff's counsel. *See* Exhibit 9 to the Motion to Terminate at ¶ 10.

V.I. Code Ann. tit. 4, § 28, entitled "Rules of conduct for justices," provides:

The Supreme Court shall make rules for the conduct of justices, both on and off the bench. In addition, the Supreme Court may adopt the relevant and applicable provisions of the American Bar Association Model Code of Judicial Conduct to govern the conduct of justices.

Pursuant to VISCR 209, "judge" is defined as "any lawyer who is a judicial officer of the Virgin Islands and who is eligible to perform judicial functions, including a justice of the Supreme Court or a judge or magistrate of the Superior Court, is a judge within the meaning of these Rules." Rule 209.1 establishes the Commission of Judicial Conduct (the "Commission") and provides: "The disciplinary authority of the Commission extends to every judge. These rules shall supersede all other rules purporting to govern judicial disciplinary enforcement in the Virgin Islands." Rule 209.2.2(1) provides that "The Commission has jurisdiction over judges regarding allegations that misconduct occurred before or during service as a judge . . . ." The grounds for discipline include "any conduct constituting a violation of the appropriate code of



judicial conduct, the rules of professional conduct governing attorneys in the Virgin Islands, or other applicable legal ethics codes[.]” VISCR 209.6.1(1)(a). Of course, Plaintiff does not bother to cite this Court to any provision of any applicable code of judicial conduct that the Master has purportedly violated. The Virgin Islands Model Code of Judicial Conduct (the “Code”), which was adopted from the ABA Model Code of Judicial Conduct, contains four canons and related rules. A “judge,” within the meaning of the Code, “is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.” *See* § I(B) of the Application Section of the Code.

Defendants respectfully submit that neither they nor this Court should be required to guess which of the four canons, numbered rules under each canon, or comments that follow and explain each rule Plaintiff might argue applies to this case. The mere fact that Plaintiff has not bothered to cite a single authority or to present any evidence other than the conclusory declarations of his counsel,<sup>5</sup> establishes that the Motion to Terminate is an utterly frivolous motion that should be summarily denied by this Court. None of Plaintiff’s arguments for removal of the Master hold any water.

Plaintiff argues that allowing the Master to continue would be “like having a mediator later hear the appeal of the mediation.” Motion To Terminate at p. 6. This is nonsensical if only because mediators have no authority to decide cases, much less issues, and there is no right to appeal from a mediation. To the extent either Partner feels aggrieved by a decision of the Master, he can always seek recourse from this Court. Disagreement with the Master’s

---

<sup>5</sup> One of the declarations (Exhibit 1 to the Motion to Terminate) merely purports to confirm the “tension” between Plaintiff’s counsel and the Master over his failure to compel Gaffney to spoon feed financial information to Plaintiff’s accountants. The other declaration (Exhibit 9 to the Motion to Terminate) merely shows that the Master spent far more time with Yusuf, the Liquidating Partner the Plan requires the Master to supervise, than counsel for Plaintiff.

preliminary rulings is not grounds for his removal nor is the possibility that those preliminary rulings may affect his report and recommendation with respect to the competing accounting claims given this Court's ability to accept or reject the Master's report and recommendation. The "tension between Plaintiff's counsel and the Master" over the Master's failure to compel Gaffney to answer a bunch of questions and the "familiarity between the Special Master and the Liquidating Partner" developed because of the oversight responsibilities imposed on the Master by his appointment Order, the Wind Up Order, and the Plan likewise provide absolutely no grounds for removing the Master.<sup>6</sup>

*Jackson v. Local Union 542, International Union of Operating Engineers*, 155 F.Supp 2d 332 (E.D Pa. 2001) is an instructive case. It addressed the plaintiffs' motion seeking the removal of the Special Master in that case or, alternatively, the clarification of his role. Plaintiffs asserted the Special Master was biased essentially because he never ruled against the defendant. *Id.* at 334-5. Just like Plaintiff's Motion to Terminate, "Plaintiffs' motion present[ed] no basis for the removal of the Special Master. First, Plaintiffs do not cite any statute, opinion, professional standard or other legal ground upon which they seek his removal." *Id.* at 335. The *Jackson* court concluded that because "[e]ach party that has been subjected to the Special Master's service had full rights under the law to appeal to this court all rulings and decisions that such a party believed adversely affected his position[.]" the Court denied the request for removal, which it characterized as "baseless." *Id.* at 336. This Court should likewise deny the Motion to Terminate because it is equally baseless.

DUDLEY, TOPPER  
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

---

<sup>6</sup> Even if Plaintiff had attempted to allege misconduct and could muster proof by clear and convincing evidence, as required by VISCR 209.7, which he clearly has not and cannot, VISCR 209.6.2(1) indicates that the Supreme Court, not this Court, would be the authority to remove the Master.

Essentially, Plaintiff seeks the removal of the Master because he authorized certain payments to United, Yusuf, and Dudley, Topper and Feuerzeig, LLP, and because the Master ultimately did not require Gaffney to answer all of the “130 very specific questions” propounded by Plaintiff’s accountants. The reason why this discovery was entirely improper was succinctly set forth in Yusuf’s Reply to Plaintiff’s Notice of Objection to Liquidating Partner’s Eighth Bi-Monthly Report filed on July 5, 2016, a copy of which is attached as **Exhibit E** for the Court’s convenience. At the time Plaintiff was asking the Master to force Gaffney to spend hundreds of hours answering a bunch of questions at the expense of the Partnership, Plaintiff had already convinced the Master, via *ex parte* communications, to authorize Plaintiff to issue extraordinarily broad subpoenas to Banco Popular and Scotia Bank despite the discovery stay in this case. After Yusuf unsuccessfully sought the Master to reconsider that authorization, Yusuf filed an emergency motion with this Court on June 29, 2016 seeking to quash those subpoenas.

If Plaintiff thought he needed discovery before he could submit his accounting and proposed distribution plan, this Court made it crystal clear at the October 7, 2014 telephone conference that discovery would be stayed “for the time being, subject to any party’s suggestion that there is a need to reopen discovery for any particular purpose, and we can do that, and also subject to the recommendation of the Master, who will hear any party who has a suggestion that a certain component of discovery needs to be addressed presently.” *See* Transcript at p. 6. If Plaintiff was aggrieved by the Master’s failure or refusal to require Gaffney to answer a bunch of questions, Plaintiff could have sought recourse from this Court, just like Defendants did when they unsuccessfully sought this Court to quash the subpoenas authorized by the Master. Plaintiff’s failure to seek available recourse from this Court regarding his purported need for discovery provides no basis whatsoever for the removal of the Master who has worked hundreds

of hours in this case to become intimately familiar with the pleadings, the financial information, and the competing claims at issue in this complicated case.

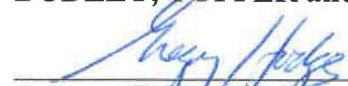
For all of the foregoing reasons, Defendants respectfully requests this Court to deny the Motion To Terminate and to provide such further relief to Defendants as is just and proper under the circumstances.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: April 3, 2017

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
Stefan B. Herpel (V.I. Bar No. 1019)  
Charlotte K. Perrell (V.I. Bar No. 1281)  
1000 Frederiksberg Gade- P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf  
and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of April, 2017, I served the foregoing **Opposition To Motion To Terminate Master** via e-mail addressed to:

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

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

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
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

  
\_\_\_\_\_

R:\DOCS\6254\1\DRFTPLDG\1762472.DOCX

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

EXHIBIT A

Claim Distribution Summary

I. Total Assets Remaining After Liquidation: <sup>1</sup>		\$8,957,168.54
II. Less Reserves:		
A. Tutu Park Rent:	\$ 887,203.26	
B. Tutu Park Property Taxes: <sup>2</sup>	\$ 14,356.44	
C. Matching Payment to United: <sup>3</sup>	\$ 9,812.14	
D. FUTA Taxes:	\$ 350,000.00	
E. Master's Fees <sup>4</sup> :	\$ 150,000.00	
F. Accounting Fees:	\$ 30,000.00	
G. Litigation Risks:	<u>\$1,320,777.00</u>	
Subtotal:	\$2,762,148.84	
	Balance Less Reserves:	\$6,195,019.70
III. Less Debts of the Partnership:		
A. Balance Sheet Liabilities <sup>5</sup>	\$ 176,267.97	
B. Add'l Rent for Bay 1:	\$ 6,974,063.10	
C. Interest on Bay 1 Rent Awarded:	\$ 881,955.08	
D. Rent for Bays 5 & 8:	\$ 793,984.34	
E. Interest on Unpaid Rent, Bays 5 & 8:	\$ 241,005.18	
F. Reimb. United for Gross Receipts Taxes	\$ 60,586.96	
G. Black Book Balance owed to United	\$ 49,997.00	
H. Ledger Balances owed to United	\$ 199,760.00	
I. Water Revenue Re: Plaza Extra-East	\$ 693,207.46	
J. Unreimbursed Transfers from United	<u>\$ 188,132.00</u>	
Subtotal:	\$10,258,959.09	
IV. Net Partnership Assets Available for Distribution After Debts and Reserves:		(\$4,063,939.39)
V. Past Partnership Withdrawals and Distribution Reconciliation:		
A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report - Net Due to Yusuf: <sup>6</sup>	\$ 9,670,675.36	

23

<sup>1</sup> See Partnership Balance Sheet as of August 31, 2016 provided by John Gaffney to the Master and counsel for the Partners on September 30, 2016.

<sup>2</sup> See ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

<sup>3</sup> See ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

<sup>4</sup> This is an estimated amount.

<sup>5</sup> See Total Liabilities shown on Balance Sheet provided by John Gaffney on September 30, 2016.

<sup>6</sup> See BDO Report at p. 63.



VI. Y&S Corporation and R&F Condominium, Inc. Stock Sale Proceeds Distribution:

A. Net Due to Hamed: \$802,966.00

VII. Foreign Accounts:

A. Net Due to Yusuf: \$TBD – Following add'l discovery

VIII. Loss of Going Concern Value of Plaza Extra-West

A. Net Due to Yusuf: \$4,385,000.00

IX. Half of Value of Six Containers

A. Approx. \$180,000 - \$210,000.00  
(Not included based on Master's initial determination)

Total Due to Yusuf: \$13,402,709.36\*

\*This amount represents the sum of \$9,670,675.36 from § V and \$4,385,000.00 from § VIII less \$652,966.00 (\$802,966.00 from § VI - \$150,000.00 from Claim n. 15). It represents the amount known as of September 30, 2016 based upon the information available, not including any punitive damages to which Yusuf may be entitled. It is subject to further revision following the reopening of discovery.

**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,**

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

**DECLARATION OF JOHN GAFFNEY**

I, John Gaffney, pursuant to 28 USC § 1746 and Super. Ct. R. 18, under the penalties of perjury, state and affirm that the following is true and correct:

1. I am the Senior Controller of United Corporation d/b/a Plaza Extra. As such, my duties include the collection, supervision and updating of accounting data and financial information concerning, among other things, the three supermarket stores known as Plaza Extra-East, Plaza Extra-Tutu Park, and Plaza Extra-West.

2. I have been shown a declaration of Joel H. Holt dated January 28, 2016 attached as Exhibit 8 to "Plaintiff's Motion and Memorandum In Support Thereof To Remove The Liquidating Partner" (the "Motion"). I prepared the "Summary of Remaining Partnership Items For the Period From Jan 1, 2013 to Sept 30, 2015" (the "Summary") that was included as a part of the Partnership accounting provided to the Partners, Mohammad Hamed and Fathi Yusuf,





and the Master on November 16, 2015 and which was attached as Exhibit 6 to the Motion. The purpose of the Summary was to explain the Partnership debits and credits for the period from January 1, 2013 to September 30, 2015 with respect to the three Plaza Extra stores. The Summary was delivered to Attorney Holt on or about November 16, 2015 when I delivered a check payable to Mr. Hamed in the amount of \$183,381.91 to Attorney Holt. While I did not provide the "back up" for the Summary at that time, I did inform Attorney Holt that I would do so in connection with the next bi-monthly report that was due at the end of November. Furthermore, I told him I would be happy to answer any questions and provide whatever support was needed immediately, if he so desired. Attorney Holt did not ask to meet with me until we met on January 25, 2016.

3. The \$119,529.01 entry reflected on the Summary represents the cumulative total of gross receipts taxes and insurance paid by the Partnership, through Plaza Extra-East, from January 1, 2013 through March 8, 2015 on behalf of the United Shopping Center. Mr. Yusuf has steadfastly objected to any effort to claim that United Corporation owed this to Plaza Extra-East because he contends his original agreement with Mr. Hamed was that Plaza Extra-East would pay all gross receipts taxes and insurance on behalf of the United Shopping Center. Since I began providing accounting services with respect to the Plaza Extra Stores, I have never found any evidence that the United Shopping Center ever previously paid or reimbursed Plaza Extra-East for such gross receipts taxes and insurance.

4. The \$72,984.02 "discrepancy" addressed in ¶ 4 of the declaration of Attorney Holt relates to two invoices in the amount of \$59,867.02 (for condensers ordered for Plaza Extra-East in 2014) and \$13,117 (for shopping carts ordered for Plaza Extra-East). At an initial meeting between Judge Ross, Attorney Holt, and me, I was instructed by Judge Ross to credit

the Partnership for these two invoices. While I informed Judge Ross that Mr. Yusuf would object, I did in fact credit the Partnership as instructed. Later, after much back and forth between the Partners and their representatives, at a meeting between Judge Ross, Mr. Yusuf and me on October 1, 2015, Judge Ross instructed me to take out the credits previously provided to the Partnership for the condensers and shopping carts. I informed Judge Ross that I would maintain visibility of this disputed transaction by simply posting offsetting charges.

5. When we met on January 25, 2016, Attorney Holt appeared to be confused over the \$186,819.33 entry reflected on the Summary. This entry is a stated liability from United Corporation to the shareholders on the books of Plaza Extra-Tutu Park. I did not say to Attorney Holt that I "had no idea why this amount was on this ledger." I know why it was reflected on the ledger because it was carried over from the previous books and records of the corporation. What I did say was that no audit trail exists to validate the transactions giving rise to this liability as they occurred many years ago. I went on to say that it is not uncommon for audit trails to disappear over long periods of time and accountants generally except the validity of such items since they are reported on tax returns, as was this entry. The accounting records of United Corporation originally reflected the account as "Due to/from Shareholders." After the retroactive establishment of the Partnership, I added an account called "Due to/from Hamed" and changed the "Shareholders" reference to Yusuf to avoid confusion over the shareholders versus partners.

6. Attorney Holt's confusion over the balance of \$186,819.33 reported on the balance sheet of Plaza Extra-Tutu Park on December 31, 2012 appeared to be due, in part, to his comparison of the balance sheet of Plaza Extra-Tutu Park with the Combined balance sheets of all three stores. I told him not to compare the "St. Thomas" and "Combined" balance sheets

as it was tantamount to comparing balance sheets of different companies. The fact that the balance on the combined balance sheet was \$117,644.33 on December 31, 2013 was very clear to me, but unfortunately, not for Attorney Holt. The difference of \$69,175.00 is simply an offsetting amount on the Plaza Extra-West balance sheet. Even after I pointed out to Attorney Holt that the \$186,819.33 had not changed on the Plaza Extra-Tutu Park balance sheet, he remained confused. Attached as Exhibits A, B, and C are balance sheets I have produced for Plaza Extra-Tutu Park, Plaza Extra-West, and Combined. The \$69,175 shown on Plaza Extra-West balance sheet relates to money Mr. Yusuf owed to the Partnership for 2012 tax extension payments originally charged to shareholder distributions. If you look at the Summary (Exhibit 6 to the Motion), there is an "A/C 14000" settlement amount for Plaza Extra-West. By the reconciliation date in 2015, other transactions obscured the \$69,175 from the earlier year. One such transaction was the reporting of the ByOrder Investments series of transactions. When I started to explain this, it appeared that Attorney Holt was even further confused. I then asked him to allow me to explain it to Mr. Hamed's accountants to eliminate any confusion and resulting suspicion. Although Attorney Holt appeared to be satisfied with this suggestion, I have never been asked to provide any further explanation. The ByOrder monies were received in 2014 and 2015. With each cash receipt, Mr. Hamed was issued a check for his 31% interest, while Mr. Yusuf was not issued a check for his percentage interest. Therefore, the \$69,175 Mr. Yusuf originally owed to Plaza Extra-West eventually became the \$120,167.33 Plaza Extra-West owed to Mr. Yusuf, as reflected in the Summary.

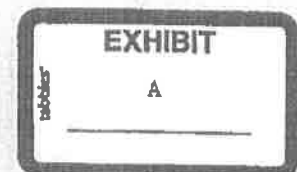
Dated: February 16, 2016

  
John Gaffney

**United Corporation STT (Pship)**  
**Balance Sheet**  
**As of December 31, 2013 and Prior Year**

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
10000 Cash - Petty	\$ 10,000.00	\$ 10,000.00
10100 Cash - Registers	5,000.00	5,000.00
10200 Cash - Safe	61,000.00	61,000.00
10300 Cash - Bank Op'g 2010	325,585.62	20,106.91
10350 Cash - Bank Payroll 0640	18,894.76	10,523.05
10400 Cash - Bank CC 6143	53,203.15	306,646.08
10500 Cash - Bank Telchk 6719	116,760.40	107,890.35
11000 Accounts Receivable - Trade	14,083.33	0.00
12000 Inventory	2,184,104.30	2,008,308.64
13100 Prepaid Insurance	119,989.70	63,398.58
14000 Due from (to) SH's Yusuf	(186,819.33)	(186,819.33)
14100 Due from (to) Plaza East	(126,480.79)	0.00
14300 Due from (to) Plaza West	117,689.46	0.00
	<hr/>	<hr/>
<b>Total Current Assets</b>	<b>2,713,010.60</b>	<b>2,406,054.28</b>
<b>Property and Equipment</b>		
16100 Leasehold Improvements	4,188,558.00	4,188,558.00
16200 Fixtures & Store Equipment	2,253,883.85	2,247,158.00
16400 Security Equipment	99,335.60	95,180.00
16500 Vehicles & Transport Equipment	25,800.00	25,800.00
16900 Accum Depreciation	(4,201,529.00)	(4,092,580.00)
	<hr/>	<hr/>
<b>Total Property and Equipment</b>	<b>2,366,048.45</b>	<b>2,464,116.00</b>
<b>Other Assets</b>		
17000 Land	330,000.00	330,000.00
19000 Deposits	37,962.40	37,962.40
	<hr/>	<hr/>
<b>Total Other Assets</b>	<b>367,962.40</b>	<b>367,962.40</b>
	<hr/>	<hr/>
<b>Total Assets</b>	<b>\$ 5,447,021.45</b>	<b>\$ 5,238,132.68</b>

Unaudited - For Management Purposes Only



United Corporation West (Pship)  
Balance Sheet  
As of December 31, 2013 and Prior Year

		<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>			
<b>Current Assets</b>			
10000	Cash - Petty	\$ 10,000.00	\$ 10,000.00
10100	Cash - Registers	14,435.00	14,435.00
10200	Cash - Safe	36,032.00	80,000.00
10300	Cash - Bank Op'g 6269	(672,207.87)	(613,302.06)
10400	Cash - Bank CC 3789	351,196.21	583,059.33
10500	Cash - Bank Telchik 2918	2,343,033.13	2,246,391.86
11000	Accounts Receivable - Trade	21,738.20	0.00
12000	Inventory	4,259,525.49	4,242,815.36
13100	Prepaid Insurance	83,679.76	73,059.38
13400	Due from Employees - Loans	62,561.39	0.00
14000	Due from (to) Yusuf	69,175.00	0.00
14100	Due from (to) Plaza East	(365,262.10)	0.00
14400	Due from (to) Plaza STT	(117,689.46)	0.00
14500	Due from (to) Shopping Ctr	900,000.00	0.00
15100	Marketable Securities - BPPR	37,767,429.03	43,069,015.83
15150	Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(3,778,720.41)
15200	Marketable Securities - ML	336,378.45	201,293.74
15250	Unrealized (Gain) Loss - ML	0.00	1,611,901.72
	<b>Total Current Assets</b>	<b>42,775,654.37</b>	<b>47,739,949.75</b>
<b>Property and Equipment</b>			
16000	Buildings	3,478,103.00	3,478,103.00
16200	Fixtures & Store Equipment	2,977,514.00	2,977,514.00
16400	Security Equipment	109,333.00	109,333.00
16900	Accum Depreciation	(4,272,215.00)	(4,183,036.00)
	<b>Total Property and Equipment</b>	<b>2,292,735.00</b>	<b>2,381,914.00</b>
<b>Other Assets</b>			
19000	Deposits	10,000.50	10,000.50
19200	Due from (to) Peter's Farm	1,598,689.00	1,527,708.00
19300	Due from (to) Plessen	5,004,610.00	5,089,018.00
19400	Due from (to) Sixteen Plus	140,719.62	87,004.26
19500	Due from (to) DAAS Corp	0.00	327,500.00
	<b>Total Other Assets</b>	<b>6,754,019.12</b>	<b>7,041,230.76</b>
	<b>Total Assets</b>	<b>\$ 51,822,408.49</b>	<b>\$ 57,163,094.51</b>

Unaudited - For Management Purposes Only



Plaza Extra Supermarkets  
 Combined Balance Sheet  
 As of December 31, 2013 and Prior Year

		<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>			
<b>Current Assets</b>			
10000	Cash - Petty	\$ 30,000.00	\$ 30,000.00
10100	Cash - Registers	33,870.00	33,870.00
10200	Cash - Safe	177,032.00	221,000.00
10300	Cash in Bank - Operating	(923,160.09)	(1,519,575.21)
10350	Cash in Bank - Payroll	18,894.76	10,523.05
10400	Cash in Bank - CC Deposit	932,533.54	1,454,852.93
10500	Cash in Bank - Telecheck	7,703,852.96	4,171,924.43
10900	Cash Clearing - Transfers	4,450.00	0.00
11000	Accounts Receivable - Trade	43,528.26	0.00
12000	Inventory	9,553,982.58	9,443,569.48
13100	Prepaid Insurance	278,216.83	200,320.86
13400	Due from Employees - Loans	75,006.39	(0.04)
14000	Due from (to) Shareholders	(117,644.33)	(186,819.33)
14100	Due from (to) Plaza East	(491,742.89)	0.00
14300	Due from (to) Plaza West	482,951.56	0.00
14400	Due from (to) Plaza STT	8,791.33	0.00
14500	Due from (to) Shopping Ctr	(391,409.69)	0.00
15100	Marketable Securities - BPPR	37,767,429.03	43,069,015.83
15150	Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(3,778,720.41)
15200	Marketable Securities - ML	336,378.45	201,293.74
15250	Unrealized (Gain) Loss - ML	0.00	1,611,901.72
	<b>Total Current Assets</b>	<b>53,198,590.83</b>	<b>54,963,157.05</b>
<b>Property and Equipment</b>			
16000	Buildings	3,478,103.00	3,478,103.00
16100	Leasehold Improvements	4,214,919.00	4,214,919.00
16200	Fixtures & Store Equipment	7,377,032.21	7,293,445.00
16400	Security Equipment	298,600.60	294,445.00
16500	Vehicles & Transport Equipment	57,050.50	57,050.50
16900	Accum Depreciation	(10,677,021.00)	(10,465,458.00)
	<b>Total Property and Equipment</b>	<b>4,748,684.31</b>	<b>4,872,504.50</b>
<b>Other Assets</b>			
17000	Land	330,000.00	330,000.00
19000	Deposits	57,963.40	57,963.40
19100	Investment - Laundromat	0.00	0.00
19150	Investment - Mattress Pal LLC	0.00	0.00
19200	Due from (to) Peter's Farm	1,598,689.00	1,527,708.00
19300	Due from (to) Plessen	5,004,610.00	5,089,018.00
19400	Due from (to) Sixteen Plus	140,719.62	87,004.26
19500	Due from (to) DAAS Corp	0.00	327,500.00
19600	Due from (to) Royal Furniture	0.00	0.00
	<b>Total Other Assets</b>	<b>7,131,982.02</b>	<b>7,419,193.66</b>
	<b>Total Assets</b>	<b>\$ 65,079,257.16</b>	<b>\$ 67,254,855.21</b>

Unaudited - For Management Purposes Only



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

WALEED HAMED, as Executor of the  
Estate of MOHAMMAD 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.

---

WALEED HAMED, as Executor of the  
Estate of MOHAMMAD HAMED,

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

---

WALEED HAMED, as Executor of the  
Estate of MOHMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**Consolidated With**

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION

**JURY TRIAL DEMANDED**

**DECLARATION OF JOHN GAFFNEY**

**EXHIBIT**

C

tabbles

I, John Gaffney, pursuant to 28 U.S.C. § 1746, Super. Ct. R. 18, and under the penalties of perjury, declare that the following is true and correct:

1. I am the accountant engaged by Fathi Yusuf, as the Liquidating Partner, to collect, supervise and update accounting data and financial information concerning the Partnership that is the subject of the "Final Wind Up Plan of the Plaza Extra Partnership" approved by the Order Adopting Final Wind Up Plan dated January 7, 2015.

2. I have been shown a Declaration of Attorney Joel H. Holt ("Holt") dated March 15, 2017 attached as Exhibit 1 to Plaintiff's Motion to Terminate the Role of the Special Master (the "Holt Declaration"). Paragraph 5 of the Holt Declaration states: "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." This statement incorrectly suggests that Holt's client had previously been denied access to Partnership accounting records. In addition to complete access to all physical records of the Partnership business, since 2013, Plaintiff or his representatives have had real time access to current data and records, including the Sage50 Accounting System, as well as unfettered access to the Partnership's bank account information.

3. In March of 2015, I met for the first time with CPAs from Vizcaino Zomerfeld, LLP ("VZ") at the offices of David Jackson, CPA. Present at that meeting were Armando Vizcaino (VZ Partner), Beatriz Martin (VZ Manager), and Abigail Adams (David Jackson's Associate). Although Holt and David Jackson were present at the outset of the meeting, they left the meeting shortly thereafter. Discussion topics included accounting controls and how accounting was being accomplished and reported for the Partnership. Subsequent correspondence and meetings with VZ personnel occurred throughout 2015 as they planned



their field work. Discussions always included what records we had verses what records we did not have. Discussions also included my recommendation that VZ start out by reviewing the extensive work already done by Kauffman Rosin CPAs ("KR") in connection with its 2014 Department of Justice review of the operations of the supermarkets. These documents were the result of hundreds of hours of work performed by personnel only available prior to the store ownership changes on March 8, 2015 (East and West) and April 30, 2015 (Tutu Park). Curiously, VZ ignored the suggestion to first review the 2014 records compiled for the KR review, insisting upon making their own document request.

4. Holt states at ¶ 5 of his declaration that the VZ Manager sent a "very standard request for information (Exhibit A) to Gaffney on September 21, 2015." The actual information request referenced in the letter of September 21, 2015, which was omitted from Exhibit A to the declaration, was not a "very standard" request for information. In fact, it was an extraordinarily broad request even for an audit, which VZ stated it was not performing. A copy of the request for information omitted from Exhibit A to the Holt Declaration is attached as Exhibit 1. Notably, the request sought information that VZ knew that I could not readily provide. For example, the request sought copies of cancelled checks and bank statements even though I had already informed VZ that beginning in 2013, Banco Popular stopped providing copies of cancelled checks and Scotia Bank had a long history of not providing cancelled checks or even monthly bank statements. By way of further example, the request sought extraordinarily detailed information for all three supermarket stores. In an email I sent to Beatriz Martin on August 18, 2015, I told her that after the Yusufs vacated Plaza West and St. Thomas, access to the records in those stores became very limited. Plaintiff's sons refused to allow anyone to retrieve information from the two stores controlled by Plaintiff after the stores

were split in March and April of 2015. A great deal of Partnership records were palletized and had been warehoused due to lack of space, often crammed into spaces that no one can get to without a forklift. The records that I personally had custody of were the daily sales journals for Plaza Extra West along with duplicate sales journals for Plaza Extra East. These records have always been available for review by VZ.

5. At ¶ 6 of the Holt Declaration, he refers to his email to me of October 21, 2015, attached as Exhibit B. That same day, I provided a response to Holt, a copy of which is attached as Exhibit 2.

6. At ¶ 13 of the Holt Declaration, he refers to a May 17, 2016 “partial response” and then quotes a single phrase from my more than two page letter to him of May 17, 2016. A copy of my May 17, 2016 email to Attorney Holt along with my letter to him, which Judge Ross reviewed and approved, is attached as Exhibit 3. I have never received a response to that letter. Attached as collective Exhibit 4 are a few examples of my responses to the VZ information requests that I provided the Master and counsel for the Partners on May 17, 2016.

7. At ¶ 17 of the Holt Declaration, he refers to his email to Attorney Hodges dated June 23, 2016, attached as Exhibit H to his declaration. I received Attorney Hodges’ response to that email, a copy of which is attached as Exhibit 5. In the second paragraph of Attorney Hodges’ June 23, 2016 email at 8:26 p.m., he refers to the offer set forth in my letter of May 17, 2016 as follows:

[I]f Hamed wanted access, he could send someone from VZ down “who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies.” In other words, if the VZ accountant cannot find the information on her own, John will be available to point her in the right direction to get the information herself.

This accurately set forth the offer made in my letter of May 17, 2016, which was approved by the Master and Mr. Yusuf, as the Liquidating Partner.

8. In the next paragraph of the June 23, 2016 email from Attorney Hodges at 8:26 p.m., he states the following:

Mr. Yusuf's experts never propounded a bunch of questions to John. In fact, I encourage you and Judge Ross to ask John how much time he has spent compiling information for or meeting with our experts compared with VZ. You will learn that it is a tiny fraction.

This statement is true. I would estimate that the amount of time I spent compiling information for or meeting with Plaintiff's CPAs was at least fifty times longer than the time I spent compiling information for or meeting with Defendants' CPAs.

9. On June 23, 2016, I received a copy of Attorney Hodges' email to Judge Ross, a copy of which is attached as **Exhibit 6**. I am also aware that on July 5, 2016, Mr. Yusuf, as Liquidating Partner, filed a Reply to Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report in which he elaborated on his position that the hundreds of questions or information requests VZ propounded were improper and that I had no obligation to respond to them.

10. After the June 23, 2016 email exchange between counsel and the Master, I received no directive from the Master to spend further time answering VZ's information requests.

Dated: April 3, 2017

  
John Gaffney

PLAZA EXTRA  
DOCUMENTATION/INFORMATION REQUEST UPDATE  
AS OF 9/21/2015

Item #	Description	Status	Initial Request Date	Response Date	Comments
<b>General</b>					
1	All company procedural and/or internal control documents	Pending	8/17/2015		
2	Copy of employee handbook/manual	Pending	8/17/2015		
3	2013 Employee listing	Pending	8/17/2015		
4	2014 Employee listing	Pending	8/17/2015		
5	2015 Employee listing	Pending	9/21/2015		
6	Accounting personnel listing (including job titles and/or descriptions)	Pending	8/17/2015		
7	Organizational management chart	Pending	8/17/2015		
8	Any company management or ownership meeting minutes	Pending	8/17/2015		
9	List of any related parties that the company transacted with during 2013	Pending	8/17/2015		
10	List of any related parties that the company transacted with during 2014	Pending	8/17/2015		
11	List of any related parties that the company transacted with during 2015	Pending	9/21/2015		
<b>2013 Accounting (please provide items electronically in MS Excel or other data format, when possible):</b>					
1	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Combined all stores	Pending	8/17/2015		
2	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Plaza Extra East	Pending	8/17/2015		
3	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Plaza Extra West	Pending	8/17/2015		
4	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Plaza Extra St. Thomas	Pending	8/17/2015		
5	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Combined all stores	Pending	8/17/2015		
6	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Plaza Extra East	Pending	8/17/2015		
7	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Plaza Extra West	Pending	8/17/2015		
8	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Plaza Extra St. Thomas	Pending	8/17/2015		
9	General Ledger detail for the year ended December 31, 2013 - Combined all stores	Pending	8/17/2015		
10	General Ledger detail for the year ended December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
11	General Ledger detail for the year ended December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
12	General Ledger detail for the year ended December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
13	Accounts Receivable Aging detail as of December 31, 2013 - Combined all stores	Pending	8/17/2015		
14	Accounts Receivable Aging detail as of December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
15	Accounts Receivable Aging detail as of December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
16	Accounts Receivable Aging detail as of December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
17	Detailed Cash Receipts and Sales Journals for the year ended December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
18	Detailed Cash Receipts and Sales Journals for the year ended December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
19	Detailed Cash Receipts and Sales Journals for the year ended December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
20	Account Payable Aging detail as of December 31, 2013 - Combined all stores	Pending	8/17/2015		
21	Account Payable Aging detail as of December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
22	Account Payable Aging detail as of December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
23	Account Payable Aging detail as of December 31, 2013 - St. Thomas	Pending	8/17/2015		
24	Detailed Check or Disbursement Register for the year ended December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
25	Detailed Check or Disbursement Register for the year ended December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
26	Detailed Check or Disbursement Register for the year ended December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
27	Copies of December 2012 bank statements - All accounts	Pending	8/17/2015		
28	Copies of December 2012 bank reconciliations - All accounts	Pending	8/17/2015		
29	Copies of monthly bank statements for 2013 - All accounts	Pending	8/17/2015		
30	Copies of monthly bank reconciliations for 2013 - All accounts	Pending	8/17/2015		
31	All canceled checks and deposit slips for 2013	Pending	8/17/2015		
32	Copies of all monthly investment statements for 2013	Pending	8/17/2015		
33	Payroll journal for the year ended December 31, 2013	Pending	8/17/2015		
34	Payroll tax returns for the year ended December 31, 2013	Pending	8/17/2015		



35 Payroll reconciliation to tax returns for the year ended December 31, 2013  
 Pending 8/17/2015  
 36 All supporting documentation related to sales during the months of March, July and November 2013  
 Pending 9/21/2015  
 (including daily and monthly receipts, register logs, sales reports, etc.)

2014 Accounting (please provide items electronically in MS Excel or other data format, when possible):  
 1 Balance Sheet as of December 31, 2014 - Combined all stores Received 8/17/2015 8/18/2015  
 2 Balance Sheet as of December 31, 2014 - Plaza Extra East Received 8/17/2015 8/18/2015  
 3 Balance Sheet as of December 31, 2014 - Plaza Extra West Received 8/17/2015 8/18/2015  
 4 Balance Sheet as of December 31, 2014 - Plaza Extra St. Thomas Received 8/17/2015 8/18/2015  
 5 Income Statement for the year ended December 31, 2014 - Combined all stores Received 8/17/2015 8/18/2015  
 6 Income Statement for the year ended December 31, 2014 - Plaza Extra East Received 8/17/2015 8/18/2015  
 7 Income Statement for the year ended December 31, 2014 - Plaza Extra West Received 8/17/2015 8/18/2015  
 8 Income Statement for the year ended December 31, 2014 - Plaza Extra St. Thomas Received 8/17/2015 8/18/2015  
 9 General Ledger detail for the year ended December 31, 2014 - Combined all stores Pending 8/17/2015  
 10 General Ledger detail for the year ended December 31, 2014 - Plaza Extra East Received 8/17/2015 8/18/2015  
 11 General Ledger detail for the year ended December 31, 2014 - Plaza Extra West Received 8/17/2015 8/18/2015  
 12 General Ledger detail for the year ended December 31, 2014 - Plaza Extra St. Thomas Received 8/17/2015 8/18/2015  
 13 Accounts Receivable Aging detail as of December 31, 2014 - Combined all stores Pending 8/17/2015  
 14 Accounts Receivable Aging detail as of December 31, 2014 - Plaza Extra East Pending 8/17/2015  
 15 Accounts Receivable Aging detail as of December 31, 2014 - Plaza Extra West Pending 8/17/2015  
 16 Accounts Receivable Aging detail as of December 31, 2014 - Plaza Extra St. Thomas Pending 8/17/2015  
 17 Detailed Cash Receipts and Sales Journals for the year ended December 31, 2014 - Plaza Extra East Pending 8/17/2015  
 18 Detailed Cash Receipts and Sales Journals for the year ended December 31, 2014 - Plaza Extra West Pending 8/17/2015  
 19 Detailed Cash Receipts and Sales Journals for the year ended December 31, 2014 - Plaza Extra St. Thomas Pending 8/17/2015  
 20 Account Payable Aging detail as of December 31, 2014 - Combined all stores Pending 8/17/2015  
 21 Account Payable Aging detail as of December 31, 2014 - Plaza Extra East Pending 8/17/2015  
 22 Account Payable Aging detail as of December 31, 2014 - Plaza Extra West Pending 8/17/2015  
 23 Account Payable Aging detail as of December 31, 2014 - St. Thomas Pending 8/17/2015  
 24 Detailed Check or Disbursement Register for the year ended December 31, 2014 - Plaza Extra East Pending 8/17/2015  
 25 Detailed Check or Disbursement Register for the year ended December 31, 2014 - Plaza Extra West Pending 8/17/2015  
 26 Detailed Check or Disbursement Register for the year ended December 31, 2014 - Plaza Extra St. Thomas Pending 8/17/2015  
 27 Copies of monthly bank statements for 2014 - All accounts Pending 8/17/2015  
 28 Copies of monthly bank reconciliations for 2014 - All accounts Pending 8/17/2015  
 29 All canceled checks and deposit slips for 2014 Pending 8/17/2015  
 30 Copies of all monthly investment statements for 2014 Pending 8/17/2015  
 31 Payroll Journal for the year ended December 31, 2014 Pending 8/17/2015  
 32 Payroll tax returns for the year ended December 31, 2014 Pending 8/17/2015  
 33 Payroll reconciliation to tax returns for the year ended December 31, 2014 Pending 8/17/2015  
 34 All supporting documentation related to sales during the months of February, August and October 2014  
 Pending 9/21/2015  
 (including daily and monthly receipts, register logs, sales reports, etc.)

2015 Accounting (please provide items electronically in MS Excel or other data format, when possible):

1 Balance Sheet as of May 31, 2015 - Combined all stores Pending 9/21/2015  
 2 Balance Sheet as of May 31, 2015 - Plaza Extra East Pending 9/21/2015  
 3 Balance Sheet as of May 31, 2015 - Plaza Extra West Pending 9/21/2015  
 4 Balance Sheet as of May 31, 2015 - Plaza Extra St. Thomas Pending 9/21/2015  
 5 Income Statement for the 5 months ended May 31, 2015 - Combined all stores Pending 9/21/2015  
 6 Income Statement for the 5 months ended May 31, 2015 - Plaza Extra East Pending 9/21/2015  
 7 Income Statement for the 5 months ended May 31, 2015 - Plaza Extra West Pending 9/21/2015  
 8 Income Statement for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas Pending 9/21/2015  
 9 General Ledger detail for the 5 months ended May 31, 2015 - Combined all stores Pending 9/21/2015

PLAZA EXTRA  
DOCUMENTATION/INFORMATION REQUEST UPDATE  
AS OF 9/21/2015

10	General Ledger detail for the 5 months ended May 31, 2015 - Plaza Extra East	Pending	9/21/2015	
11	General Ledger detail for the 5 months ended May 31, 2015 - Plaza Extra West	Pending	9/21/2015	
12	General Ledger detail for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	
13	Accounts Receivable Aging detail as of May 31, 2015 - Combined all stores	Pending	9/21/2015	Only received for June 30, 2015
14	Accounts Receivable Aging detail as of May 31, 2015 - Plaza Extra East	Pending	9/21/2015	Only received for June 30, 2015
15	Accounts Receivable Aging detail as of May 31, 2015 - Plaza Extra West	Pending	9/21/2015	Only received for June 30, 2015
16	Accounts Receivable Aging detail as of May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	
17	Detailed Cash Receipts and Sales Journals for the 5 months ended May 31, 2015 - Plaza Extra East	Pending	9/21/2015	
18	Detailed Cash Receipts and Sales Journals for the 5 months ended May 31, 2015 - Plaza Extra West	Pending	9/21/2015	
19	Detailed Cash Receipts and Sales Journals for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	
20	Account Payable Aging detail as of May 31, 2015 - Combined all stores	Pending	9/21/2015	
21	Account Payable Aging detail as of May 31, 2015 - Plaza Extra East	Pending	9/21/2015	
22	Account Payable Aging detail as of May 31, 2015 - Plaza Extra West	Received	9/21/2015	Only received for June 30, 2015
23	Account Payable Aging detail as of May 31, 2015 - St. Thomas	Received	9/21/2015	Various
24	Detailed Check or Disbursement Register for the 5 months ended May 31, 2015 - Plaza Extra East	Pending	9/21/2015	Various
25	Detailed Check or Disbursement Register for the 5 months ended May 31, 2015 - Plaza Extra West	Pending	9/21/2015	Various
26	Detailed Check or Disbursement Register for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	Various
27	Copies of monthly bank statements for 2015 - All accounts	Pending	9/21/2015	Various
28	Copies of monthly bank reconciliations for 2015 - All accounts	Pending	9/21/2015	Various
29	All canceled checks and deposit slips for 2015	Pending	9/21/2015	Various
30	Copies of all monthly investment statements for 2015	Pending	9/21/2015	
31	Payroll journal for the 5 months ended May 31, 2015	Pending	9/21/2015	
32	Payroll tax returns for the 5 months ended May 31, 2015	Pending	9/21/2015	
33	Payroll reconciliation to tax returns for the 5 months ended May 31, 2015	Pending	9/21/2015	
34	All supporting documentation related to sales during the months of January and April 2015 (including daily and monthly receipts, register logs, sales reports, etc.)	Pending	9/21/2015	

Other Items

- 1 All documents related to the other CPA firm's analysis of the Partnership this year (reports and workpapers)
- 2 All records documenting the transfer and accounting of the Partnership assets to the partners in 2015

**Gregory H. Hodges**

---

**From:** John Gaffney [<mailto:johngaffney@tampabay.rr.com>]  
**Sent:** Wednesday, October 21, 2015 6:25 PM  
**To:** 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>  
**Subject:** RE: Plaza/Plessen

Hello Joel,

Sorry for the delay in responding. I just read your email a few moments ago. Our network went down earlier today and we had an IT support rep working on it all morning and afternoon. As if that wasn't enough, a decision was made to change the accounting server name while IP addresses were being changed. In the rush to do so, it was done while accounting updates were pending. The result was accounting system corruption that took several hours on a support call this afternoon to repair.

As mentioned in my last response, I currently have access to everything only for East. I no longer have such access at West and STT. That was lost in transition. What I do have is the detailed general ledgers which have already been provided. I also have the daily sales journals for West for all of 2013, 2014 and 2015 through March 8<sup>th</sup>. I tried to get the sales journals for St. Thomas from Willie after the sale, but was blocked from doing so.

What I suggest is that someone (Betty Martin or Mr. Patton) make a preliminary visit to actually see the records I do have. The sales journals are probably the most important records and are not something that are easily scanned. It took countless hours (weeks) to do that for Kaufman Rossin just for their selections in 2014. Fortunately, I do at least have the days records in 2014 for St. Thomas as they were done by Humphrey before the sale. I don't mind letting them have access to these original records rather than making copies for a blanket request. That's just too time consuming.

I think that once either Betty or Mr. Patton view the records I do have, their confidence will improve and they'll be able to work with what we have for East and West. Maybe they can secure the sales journals from St. Thomas once they see what they look like. The truth is the sales journals actually belong to United Corporation and really serve no purpose for KAC357.

Lastly, I'll be off island from Oct 28<sup>th</sup> through Nov 3<sup>rd</sup>. Any time after that can be arranged.

Regards...John

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Wednesday, October 21, 2015 10:59 AM



**To:** [john.gaffney@tampabay.rr.com](mailto:john.gaffney@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



## Gregory H. Hodges

---

**From:** John Gaffney <johngaffney@tampabay.rr.com>  
**Sent:** Tuesday, May 17, 2016 5:01 PM  
**To:** Joel Holt  
**Cc:** Edgar Ross; Gregory H. Hodges; Nizar A. DeWood, Esq.; 'Carl Hartmann'; fathiyusuf@yahoo.com  
**Subject:** Document Request from Vizcaino Zomerfeld  
**Attachments:** 0000 Gaffney Ltr to Holt 05.17.16.pdf

Joel,

This is the first of several emails related to document requests by Vizcaino Zomerfeld. Attached above is a letter to you with a recommendation that Judge Ross reviewed and approves of. The emails that follow will contain file attachments with specific responses to the document requests that have been completed so far. There will also be additional file attachments that show ongoing work related to the partnership.

Regards,

John Gaffney

(305)332-7094





P.O. Box 763  
Christiansted, VI 00821

May 17, 2016

Joel Holt, Esq. P.C.  
2132 Company Street, Suite 2  
Christiansted, VI 00820

Dear Joel,

This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ). At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. After reviewing my responses, you can decide yourself whether any of them serve in winding up the Partnership.

In our very first meeting with VZ in your office, I challenged the very extensive nature of the initial document request. Betty Martin, VZ Partner verbally backed off the initial request some. When I asked her about the scope of VZ's review, the answer was vague and you even questioned that scope in a later conversation with me in your office. We did establish that the scope did not include a full audit as I made it clear we did not have the resources for such work.

I suggested a less burdensome and more productive approach that Betty and her team thought could be implemented. The suggestion was to assign a junior level auditor who would work along with me. That was before the St. Thomas store auction. After the auction our challenge was overwhelming and would have likely crashed except for the assistance from Humphrey Caswell, former PE St. Thomas Controller.

Admittedly, there was a long gap between our initial meeting in March 2015 and beginning VZ field work in January 2016. During that gap, we completed the Kauffman Rossin DOJ review while I continued receiving extensive accounting record requests from VZ. But due to the extended time between the first and second meetings, I was able to provide most of the records. But doing so was so burdensome, time-consuming and expensive that I recommended again that I provide all accounting databases augmented with 6 month increments of original records. In other words, I would deliver 6 months of original records and upon review completion I would deliver the next 6 months and pick up the first 6 months.

To date the first 6 months of original records have not been returned nor have you requested the next 6 months. During our meeting in January 2016, I suggested again that someone be assigned to work closely with me, especially in response to VZ's request for detailed till stat reports. Instead of requesting the provision hundreds of detailed till stat reports, have someone from your team work with me to review a handful of such reports. Once done, I was confident VZ would conclude that reviewing hundreds was unnecessary just as Kauffman Rossin did during their review.

Keep in mind, the Hameds controlled the cash rooms and managed the cash registers in all three stores during my entire time with the company. The Yusufs were much less involved in this area and although I implemented the "sales journal" system, I had no indication that there were any weaknesses or other issues in the Hameds' management of the cash rooms and registers. Once someone from VZ duplicates the documents contained in the daily sales journals and the integrity therein, I'm confident they would see that a document request for hundreds of till statement detail reports is non-productive and unnecessarily time-consuming and expensive.

Similarly, the extensive requests for documents supporting expenditures including cancelled checks are questionable knowing that no payments were made without signatures from a member of each family. If the Hameds disputed an item, they simply refused to sign the check. Admittedly, we aren't able to provide many cancelled checks. Once you review my responses, you should clearly understand why. In view of the extent to which I've provided original bank records though, I question the intent behind continued requests for cancelled checks or bank statements that VZ knows we don't have, either because the Hameds retained possession or banks refused to provide them.

Your recent document requests and inquiries submitted last week appear to be legitimate as VZ has challenged or questioned some of my accounting decisions in winding up the Partnership. While I don't object to being challenged, I would like to say that I put off having to make some decisions as long as possible. I mentioned this in my meetings with VZ as well. The very request for VZ to assign someone to work with me was so we could discuss and make joint decisions on nominal issues.

For instance, after the March 8, 2015 East/West split there were employee loans that were extremely difficult to track and collect. Employees who owed money at PE East transferred to PE West and vice versa. While I offered to provide and may have even sent details to PE West, I assumed that some loans simply would not be collected. Or that if they were collected, I might not be informed of it as in the case of 3 payments by one employee at PE West who we followed up on a few months ago. Therefore, I made the decision to write them off with the plan of revisiting them when time allowed. There are adjustments (credits) however small that are due to the Partnership. But the time it takes to research these credits is being consumed in otherwise burdensome, time-consuming and expensive document requests.

With the provision of what I've done so far, I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership. Refer to my documents of ongoing PE challenges with taxing authorities which are being ignored due to VZ document requests.

Also, I request for VZ to return the original records consisting of the sales journals for PE East and West for the first 6 months of 2013 and after one month for VZ to assign someone who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies. As you know, Section 9, Step 4 of the Plan simply provides that "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to

present..." To date, no one has been denied access to original records that we possess. Under the pending VZ requests, instead of being "allowed to view" the relevant partnership accounting information, I am being effectively requested to gather and spoon feed that information to VZ. I respectfully submit that my proposal to have a VZ accountant work on premises with the original records is much more consistent with the information access contemplated by the Plan than the process of my responding to the myriad information requests submitted by VZ.

The Master has reviewed and approves the process I have recommended.

Sincerely,

  
John Gaffney

# Item No. 3002

**Description:** Plaza Extra (PE) partnership funds were used to pay for the gross receipt taxes (GRT) for the United Shopping Center.

**General Ledger-Store, Date, Entry No. & Description [as an example]** (if applicable):

East Store GL Acct #14500 – SJE23

West Store, 1/30/15, 9584, BANK OF AMERICA - Invoice: 002194 - VIBIR - GROSS TAX, \$4,346.59

**Question/Request for Info:**

Is there any reason or basis for using PE partnership funds to pay for the operational GRT of non-PE businesses operated by United Corporation?

Regardless of your answer, for *each* month in the years 2012-2015, please provide the following:

-Monthly Form 720VI stamped by the VIBIR

-Monthly "23100 Accrued GRT" calculation schedule used to prepare Form 720VI

-Supporting documentation (credit card receipts or canceled checks) showing payments of GRT for each month

**Response:**

Section 9, Step 4 of the Final Wind Up Plan approved by the Court ("Plan") provides: "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and to submit his findings to the Master." I object to this inquiry and all subsequent inquiries to the extent they request me to create information by answering questions as opposed to facilitating your review of existing partnership accounting information during the relevant period. Without waiving that objection, I refer you to my declaration dated 2/16/16 attached as an exhibit to Mr. Yusuf's opposition to remove him as Liquidating Partner, particularly paragraph 3.

This document request is excessive and appears to have the intent of overwhelming the resources of the Liquidating Partner. A standard audit selection is based upon a small ratio of items in a population. You were provided with all the records to make appropriate selections. Only exceptions should justify an expanded request. To date, there have been no exceptions. Also, you already have in your possession all of the original records for the first 6 months of 2013 that include copies of GRT returns and records you request herein. Original records were provided to avoid the time-consuming process of making copies and with the promise that you would receive the next 6 months' records with the return of the prior 6 months, which has not occurred.

Included herein are Forms 720VI (not date-stamped) prepared from January 2013 through April 2015 along with detailed "23100 Accrued GRT" calculation schedules. Scanning of date-stamped documents was not performed until 2015 due to equipment constraints. Vizcaino Zomerfeld LLP (VZ) has been repeatedly told that 2012 records were prepared and maintained in St. Thomas by the previous Controller and that Waheed Hamed prevented us from securing these and other records after the auction. For the record, there is evidence that the Hameds already possess the 2012 GRT returns and most of the returns you are being supplied herein. Again, original copies of date-stamped GRT returns for the first six months of 2013 are currently in Hamed's possession in conjunction with a previous document request by VZ.

Regarding supporting documentation (credit card receipts or cancelled checks) showing payments of GRT for each month, again a statistical sampling is appropriated. Keep in mind that ALL checks from 2012 through 2015 were signed by a member of each family. Also keep in mind that we do not receive cancelled checks and in fact beginning in August of 2013 Banco Popular stopped providing electronic images entirely due to the new burden of a court order requiring dual signatures from a member of each

family. ScotiaBank repeatedly refused supplying us with even monthly operating account statements.

**List of documents provided:**

2013 – 23100 Accrued GRT calculations for all months.  
2013 – Form 720VI for all months (not date stamped).  
2014 – 23100 Accrued GRT calculations for all months.  
2014 – Form 720VI for all months (not date-stamped). Includes some date-stamped amended returns.  
2015 – 23100 Accrued GRT calculations for January through April.  
2015 – Form 720VI for January through April (date stamped).

## Item No. 3003

**Description:** A WAPA deposit was established for each store.

**General Ledger-Store, Date, Entry No. & Description [as an example]** (if applicable):

STT – 12/31/14 – XJE31-02 – ADJUST DEPOSITS TO SCH FR WAPA \$25,592  
East store – 12/31/14 – ZJE05 – ADJUST DEPOSITS TO SCH FR WAPA \$30,799  
West store – 12/31/14 – XJE31-07 – ADJUST DEPOSITS TO SCH FR WAPA \$52,815

**Question/Request for Info:**

Please provide detail of all deposit transactions (deposits made and refunds of deposits) with WAPA from 2012-2015 for each store. If the WAPA deposit was credited to the account or refunded, please identify where on the general ledger this credit was recorded and details of the credit/refund.

**Response:**

In anticipation of receiving the liquidation orders in early March 2015, I requested the status of utility deposits with WAPA. We received WAPA statements dated 3/05/15 – see copies herein.

There was no audit trail nor previous outside documentation supporting the existing balances for STT and STX deposit balances in GL account 19000. The carryover balance from the prior accounting records showed a balance of \$37,962.40 for STT and a balance of \$20,001.00 for STX. In the conversion on January 1, 2013, I allocated 50% to each STX location. This was arbitrary in the absence of any other evidence. Upon receiving the outside statements from WAPA, I adjusted the deposit account balances to the principal retroactively on 12/31/14.

The disposition of deposits in each location was as follows:

1. Plaza East – since there was no refund or other event and since the deposits are in favor of United Corporation without change, the balance was treated as a capital distribution.
2. Plaza West – since the deposits are in the name of Plessen Enterprises, Inc. which is owned 50/50 consistent with Plaza ownership, these deposits were distributed to the partners consistent with the elimination of inter-company debt on 12/31/14. This adjustment was made after recognizing the accrued interest in the partnership.
3. Plaza STT – the deposits and accrued interest were offset against the final WAPA invoice.

I am unable to locate a copy of the final WAOA invoice in STT. However, see the screen print that recorded the final invoice on 5/31/15 and CRA check 241 dated 10/01/15 in payment of the balance due.

**List of documents provided:**

1. Prepaid Insurance Schedules from 2013 to 2015.
2. Copies of three PE East Banco a/c 8830 statements matching 3 payments made in 2013 and 2014 covering insurance through the store-split dates. Copies of cancelled checks are not available as these payments were made after the banks were threatened by liability and began refusing to supply copies of enclosures as of August 2013. Again, I have no copies of bank records for the STT operating accounts as those records were withheld by Willie Hamed after the STT auction. The Hameds obviously have copies of cancelled checks paying for insurance since the five checks included as Exhibit 8 to Yusuf's opposition to the motion to remove him as Liquidating Partner have Hamed Bates numbers. These checks date from July 2002 through May 2014 and all were signed by a Hamed.

## Item No. 3010

**Description:** Vendor rebates (e.g., West Indies, Frito Lay/Pepsico, BJs, Associated Grocers, Tropical Shipping, Bellows and Hunter Foods)

**General Ledger-Store, Date, Entry No. & Description [as an example]** (if applicable)

GL Acct #58000

**Question/Request for Info:**

See attached requested vendor rebates previously emailed to you on 1/21/16 by VZ (see last page for the list). Please provide statements or invoices from vendor for items in list.

**Response:**

See objection to Item No. 3002. Without waiving that objection, researching this list of vendor rebates was very tedious challenge that took two full days with very little to be gained. I made this point when you originally asked for these documents. I asked what your reason was for making the request and further informed you that any evidence of the vendor rebates was contained in the original sales journal records which you had in your possession. Furthermore, I described how the cash room clerks handle a tremendous volume of daily items and it is likely that even if details were given to them along with the check, they likely just discarded it. The greater likelihood is that they rarely go vendor rebate details as most checks were forwarded to them by management or whoever opened the daily mail – often the Hameds.

Our agreement was that when you returned the first 6 months of original sales journal records, I would deliver the next 6 months. At this date, you still have in your possession all of the sales journals from January 2013 through June 2013 for PE East and PE West.

In our last meeting in Joel Holt's office, you asked if you could take some of the files back to your office in Miami which I agreed to as long as the files were returned intact. When I inquired with Joel Holt last week (April 11, 2016) if I could get the sales journals back, he responded vaguely that he didn't have them. So I assumed you must have taken them back to Miami.

Having spent a considerable amount of time just fulfilling this one item out of the many requests I still have unfinished, it appears that a new budget might be needed to continue the process. Your very first request for documents was so broad that it was obvious to me as a seasoned auditor that it was nothing more than an attempt to overwhelm our resources. When I stated this, you backed off some and we struck a compromise.

In our first meeting in Joel Holt's office when I questioned the scope of your review, we established that it didn't include the issuance of audited financial statements. That was after I emphasized that I did not have the resources to either undergo a full audit or to provide every report in your initial request. I offered instead to install Sage 50 with complete data backups for years 2012 to present. I also suggested that rather than have you give me a 100 page list of requests, that you instead assign someone to me for a period of time who could request an item and have it fulfilled one request at a time. In this way, an auditor could better evaluate if lengthy document requests are really warranted.

This was exactly the case when Kauffman Rossin CPA's conducted their review of 2014. Although they too first requested considerable details of general ledgers, etc., they finally conducted their field work in such a way that they realized after examining 10 of 100 documents that the results were the same with no exceptions making it unnecessary to continue examining the remaining 90 documents. It's easy to pick up problem area starting with financial statements. Any issues were transparent just as I had promised.

Keep in mind there's a cost-benefit ration that affects the quality of accounting and the manner in which documents are stored. Unfortunately before I arrived in October 2012, Margie Soeffing was the only accounting professional in the company. She was persistently overwhelmed and the status of her accounting reflected that condition. Also realize that the company was doing approximately \$100 million in business and the accounting department prior to my arrival consisted of one Controller and roughly three clerks in each store.

Having said all of the above, included herein with Item 3010 are as many documents as I am able to provide at this time. But at this point I must challenge what possible benefit any of this has towards the end of winding up the Partnership.

**List of documents provided:**



## John Gaffney

---

**From:** Bracey Alexander <bracey.alexander@vz-cpa.com>  
**Sent:** Thursday, January 21, 2016 5:16 PM  
**To:** John Gaffney  
**Cc:** James Patton  
**Subject:** RE: Plaza Extra

Hi John,

Here a couple of things I hope you can get to me before we leave tomorrow:

- Scotia bank statements for 2013 (they were not included in the documents you provided today)
- Can you provide supporting documentation (invoice or statement from vendor) for the following vendor rebates:

Tropical Shipping	3/13/2013	West	163,172.88
Tropical Shipping	10/27/2015	West	293,614.74
Associated Grocers	4/6/2015	West	35,238.65
Associated Grocers	4/6/2015	West	35,238.65 (this was in the accounting twice for the sai
Associated Grocers	12/29/2014	West	35,238.65
Food Warehouse	7/8/2014	West	30,663.76
Tropical Shipping	3/6/2013	STT	153,803.70
Tropical Shipping	3/27/2014	STT	166,553.64
Tropical Shipping	3/31/2013	East	163,172.88
Associated Grocers	3/20/2013	East	35,319.51

- Also we noted a few entries in Sage in the vendor rebate account without detail of the vendor, labeled "Daily POS Entry". Can you please provide support for these as well so we can ensure these were really vendor rebates and not misclassified.

DAILY POS ENTRY	3/7/2013	West	79,982.38
DAILY POS ENTRY	2/2/2014	West	34,456.56
DAILY POS ENTRY	4/7/2014	West	36,368.16
DAILY POS ENTRY	4/15/2014	West	329,423.79
DAILY POS ENTRY	7/10/2014	East	22,754.00
DAILY POS ENTRY	10/23/2014	East	18,000.00
DAILY POS ENTRY	5/9/2013	STT	26,902.00

Please note, the store indicated above is the store which we extracted the information from the accounting, not necessarily the store which the rebate may have been for.

Thanks,

**Bracey Alexander, CPA**  
Audit Manager

*Vizeaino Zomerfeld, LLP*  
Certified Public Accountants

Confidentiality Note: This message (including any attachments) is intended for use only by the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and destroy the material in its entirety, whether electronic or hard copy. Thank you.

Pursuant to Treasury Department Circular 230, any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

---

**From:** James Patton  
**Sent:** Wednesday, January 20, 2016 11:44 AM  
**To:** John Gaffney  
**Cc:** Beatriz Martin; 'Joel Holt'; Bracey Alexander  
**Subject:** RE: Plaza Extra

John,

We are at Joel's office if you want to drop off the drive so we can test it out before our meeting on Friday.

Let me know when you plan to stop by as we are heading to the Plaza West later.

Regards,

**H. James Patton, CPA, CFF**  
Audit Manager



Vizcaino Zomerfeld, LLP  
Certified Public Accountants

**From:** John Gaffney [<mailto:johngaffney@tampabay.rr.com>]  
**Sent:** Tuesday, January 19, 2016 8:33 PM  
**To:** James Patton <[james.patton@vz-cpa.com](mailto:james.patton@vz-cpa.com)>  
**Cc:** Beatriz Martin <[betty.martin@vz-cpa.com](mailto:betty.martin@vz-cpa.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>; Bracey Alexander <[bracey.alexander@vz-cpa.com](mailto:bracey.alexander@vz-cpa.com)>  
**Subject:** RE: Plaza Extra

Hello James,

I sent you an email earlier today to suggest that we test restoring one or two backups before I spend the time making them. Since I didn't hear back, I went ahead this evening and made all the backups for all the stores and all the years. I also copied the bank statements, reconciliations, etc. for 2015 onto the same flash drive that I'd like to deliver to you.

My hope is that you are able to restore all the backups. That way you'll be able to print all bank reconciliations and all you'll need are the past years' bank statement to check them against. This will certainly save a lot of work for both of us.

Call me at your earliest convenience and I'll be happy to deliver the flash drive to you. My cell number is (305)332-7094.

Regards...John

---

**From:** James Patton [<mailto:james.patton@vz-cpa.com>]

**Sent:** Monday, January 18, 2016 6:32 PM

**To:** John Gaffney

**Cc:** Beatriz Martin; 'Joel Holt'; Bracey Alexander

**Subject:** RE: Plaza Extra

John,

The Sage backups from 2012 - 2015 will do fine, assuming we can restore the files this time. Please email those to us before Friday, if possible, so we can make sure we don't have any problems restoring them.

I understand you weren't there in 2012, but any information regarding the bank statements and reconciliations you can send us would be appreciated.

We will see you Friday morning.

Thank you for your assistance.

**H. James Patton, CPA, CFF**  
Audit Manager

  
= CPAs & CONSULTANTS

Vizenino Zomerfeld, LLP  
Certified Public Accountants

---

**From:** John Gaffney [<mailto:johngaffney@tampabay.rr.com>]

**Sent:** Monday, January 18, 2016 4:43 PM

**To:** James Patton <[james.patton@vz-cpa.com](mailto:james.patton@vz-cpa.com)>

**Cc:** Beatriz Martin <[betty.martin@vz-cpa.com](mailto:betty.martin@vz-cpa.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>; Bracey Alexander <[bracey.alexander@vz-cpa.com](mailto:bracey.alexander@vz-cpa.com)>

**Subject:** RE: Plaza Extra

Hello James,

Yes, Friday morning meeting is fine.

As for the 2012 general ledger, I haven't exported it to excel and that process was very time consuming when I did it for 2013, 2014 and 2015. Since I also just read your email requesting replacement backups, can you work with 2012 Sage backups as well? That'll save me some time.

More to your 2012 request, realize that year was before my time and all of the St. Croix store activity was rolled up into about 10 monthly journal entries. So the only transaction detail you'll find is for St. Thomas. I'll send the databases for East and West, but there's no value whatsoever to the GL output as the systems were being used like word processors to produce payroll checks and payments to vendors. I do have the binders from which the journal entries were prepared which also contain the bank statements for 2012. You can decide whether these qualify as bank reconciliations. I call them bank analyses.

non-payroll cancelled checks from July 1, 2012 through June 30, 2013? See paragraph 1 to Exhibit A of the BNS subpoena. Incredibly, paragraphs 2 and 3 of Exhibit A to the BNS subpoena essentially seek all other documents relating to the tenant account from inception through 2015. If it was so "critical [for Hamed] to look at these United bank accounts," why did Joel wait until March 31, 2016 to cause subpoenas to issue? I suspect you were not informed that similar subpoenas were issued more than two years ago on March 11, 2014 and subsequently withdrawn after we filed a motion to quash and for sanctions.

Joel attempts to justify his fishing expedition concerning United's tenant account by claiming that "all Plaza accounting records for this time period have been lost." Of course, he offers no proof in support of this claim. John Gaffney has informed Hamed's accountants, Vizcaino Zomerfeld ("VZ"), that he has the accounting records for this time period. As explained at length in John's letter to Joel dated May 17, 2016, attached as Exhibit 3 to the Liquidating Partner's Eighth Bi-Monthly Report, these records were part of the records that John suggested would be provided to VZ in 6 month increments so he did not have to spend time scanning and copying them. VZ chose to start with the first 6 months of 2013 and never requested the previous 6 months, presumably because they have not returned the 6 months of records they were given. Despite Mr. Yusuf's demand, these records still have not been returned. Nor has John received a response to his May 17 letter. Accordingly, this "lost records" justification for the subpoenas is clearly bogus.

Joel next attempts to justify his fishing expedition by claiming that the "Hameds were excluded from the stores for a large part of this time." The Hameds were never excluded from the stores for a single day and I challenge Joel to prove otherwise. The Hameds had unfettered access to every record in all the stores during this period, including check registers. They co-signed each and every check and regularly challenged expenditures. They were also the active managers in the cash rooms right up to the East/West split. This "exclusion" justification is also bogus. Accordingly, the subpoenas should be modified to omit any information concerning United's tenant account.

No justification has been provided for including Plessen's records in the subpoenas. Plessen is not even mentioned in the Plan approved by the Court and its financial records have no relation to the Partnership wind up. While Partnership funds may have been used to purchase the parcel in question, the Partners chose to take title to the property in the name of Plessen in 2006. From that point forward, the Partnership had nothing to do with the property. The fact that Plessen decided in 2008 to convey the property to United via a Deed In Lieu of Foreclosure (signed by Hamed as President) also has nothing to do with the Partnership. If the mere fact that Partnership funds may have been used to originally purchase the property somehow makes Plessen's financial records germane to an accounting of the Partnership, as argued by Joel, then the financial records of the other jointly owned companies (i.e. Peters Farm and Sixteen Plus) are no less germane since all of their assets were also purchased with Partnership funds. An accounting for the Partnership alone is already a broad ranging and difficult project. Neither the Plan nor the Order approving the Plan contemplate expanding that project as suggested by Joel below. Plessen should be removed from the subpoenas.

Finally, if you are going to allow Hamed to engage in discovery despite the flimsy justifications provided for lifting the discovery stay, Mr. Yusuf submits that he should likewise be allowed to do the same. There are a number of issues that directly relate to the Partnership accounting and Plan implementation that Mr. Yusuf would like to pursue, not the least of which is why, after more than a year, Hamed has failed to provide the releases required by the Plan and your Order transferring the Tutu Park store. If discovery is to be reopened for Hamed, it must be a two way street.  
Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

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

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Tuesday, June 14, 2016 11:15 AM  
**To:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com); Gregory H. Hodges  
**Subject:** Re: Subpoenas To BNS and BPPR

Dear Judge Ross:

I read the letter from Greg Hodges re his two specific objections to the subpoenas we have issued to Scotiabank and Banco Popular. I have a brief response.

As for his objection regarding the subpoena that includes United's "tenant account," there are multiple reasons why this "tenant account" is appropriate for my client to review. First, funds were transferred by the Yusufs from the Plaza Accounts to this United account without the Hameds' permission – a finding already made by Judge Brady—so these transfers from the Plaza account to United need to be reviewed, particularly during the last part of 2012 and the first six months of 2013, as all Plaza accounting records for this time period have been lost. As the Hameds were excluded from the stores for a large part of this time period, it is critical to look at these United bank accounts to see what funds were transferred from Plaza to United's accounts. Second, United has paid supermarket expenses from this account and then obtained reimbursement from the Plaza account—indeed, it is currently is paying for partnership expenses and then reimbursing itself with partnership funds, as noted the General Ledger submitted with the Liquidating Partner's Seventh and Eighth Bi-Monthly report shows. Third, it is critical to see if other amounts were similarly obtained or used, as well as understand what all of the partnership checks reimbursing United actually

cover. As you know, our accountants have stated that they need to be able to follow where the money came into and left the partnership in order to perform their audit, as well as review the underlying support for those expenditures. United is a party in this case so there is no prejudice to it.

As for the objection regarding the Lessen bank records, if you read the last bi-monthly report you will see that a \$500,000 piece of land that was purchased solely with supermarket proceeds now rests in United's name rather than in Plessen's name, which the Liquidating Partner will not even put it on the partnership's schedule, much less provide an accounting of those funds. Indeed, once again, the Yusufs and Plessen are already parties in this case, so this information is part of the accounting of that claim as well. Indeed, these records involving Plessen, who is a party here as well, are not voluminous.

Thus, I believe both objections raised by Attorney Hodges are without merit.

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

-----Original Message-----

From: Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
To: 'Edgar Ross' <[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)>  
Cc: Nizar DeWood <[nizar@dewood-law.com](mailto:nizar@dewood-law.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>;  
'[carl@carlhartmann.com](mailto:carl@carlhartmann.com)' <[carl@carlhartmann.com](mailto:carl@carlhartmann.com)>  
Sent: Mon, Jun 13, 2016 12:13 pm  
Subject: Subpoenas To BNS and BPPR

Dear Judge Ross,  
Please see the attached letter.  
Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE  
INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED  
AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED,  
CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER

## Gregory H. Hodges

---

**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:59 PM  
**To:** Fathi Yusuf; John Gaffney (johngaffney@tampabay.rr.com)  
**Cc:** 'Nizar Dewood'  
**Subject:** FW: Plaza  
**Attachments:** REVISED FINAL - All Request to J Gaffney re items.docx

FYI.

---

**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:55 PM  
**To:** 'Edgar Ross'  
**Cc:** 'Nizar DeWood, Esq.'; Joel Holt; [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** FW: Plaza

Dear Judge Ross,

For the reasons set forth in my email earlier this evening, we object to the attached discovery requests because they are propounded by an attorney who currently has no client, they are not authorized or contemplated under the Plan, and they violate the discovery stay.

Please do not allow Attorney Holt and his experts to waste any more of John Gaffney's time.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

---

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

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 2:18 PM  
**To:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** Gregory H. Hodges; [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com); [dewoodlaw@me.com](mailto:dewoodlaw@me.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Plaza



Dear Judge Ross:

As we have agreed, since we are independently pursuing the bank and vendor records, we have removed the document demands to Gaffney. Attached is a revised set of our CPA's questions which remove those demands. This will, hopefully, end the complaints about the burden on his time. The questions themselves should be answerable in under one week according to our CPA's and are necessary to their doing the review the Court has allowed. Please forward them to Mr. Gaffney and ask that he respond to them at his convenience, as he is being paid full-time to do such work for the Partnership.

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

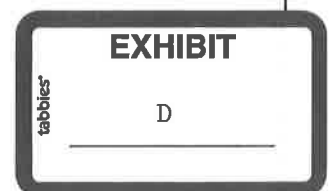
MOHAMMAD HAMED, by his	)	SX-12-CV-370
authorized agent WALHEED	)	
HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	
v.	)	
	)	
FATHI YUSUF and UNITED	)	
CORPORATION,	)	
	)	
Defendants/Counterclaimants,	)	
	)	
v.	)	
	)	
WALEED HAMED, WAHEED HAMED,	)	
MUFEEED HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.)	)	

**March 6, 2017**  
Kingshill, St. Croix

The above-entitled action came on for MOTIONS HEARING before the Honorable Douglas A. Brady, in Courtroom Number 211.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

TRACY BINDER, RPR  
Official Court Reporter  
(340) 778-9750 Ext. 7151



1     them, I agree that we're 1.6 million in the hole to you  
2     after reviewing these documents, and let's destroy them  
3     so that the Government doesn't find them, if somebody --  
4     if there was testimony that says, yes, I heard them  
5     agree, wouldn't that be evidence that could be relied on  
6     to recreate those documents?

7           A     No, I don't believe so. Because now you're  
8     relying on two dependent witnesses as opposed to an  
9     independent third party, such as a bank, financial  
10    statement, a bank statement, a wire transfer receipt, or  
11    some independent analysis. I mean, yes, of course, the  
12    parties could stipulate, and this is a civil proceeding,  
13    so I assume they could do that, but obviously that  
14    hasn't happened. So the only way to actually know what  
15    are the numbers is to have some kind of independent  
16    third-party analysis.

17          Q     Not -- and if those documents aren't  
18    available, you're saying it's simply impossible to  
19    account for?

20          A     It's very difficult, if not impossible.

21          Q     Okay. It's not impossible is what you're  
22    saying?

23          A     Nothing is impossible.

24          Q     Okay.

25          A     But to come up with a true accounting is

1     extraordinarily difficult, and I don't believe that the  
2     BDO report does that.

3             Q     Again, without having looked at any of the  
4     supporting information for their report.

5             A     I just read the report.

6             MR. HODGES:   Thank you, sir.

7                             REDIRECT EXAMINATION

8             MR. HOLT:    Could I have the witness shown  
9     Exhibit Number 11?

10            A     I believe I have it in front of me.

11     BY MR. HOLT:

12            Q     This is a defendant's supplemental Rule 26  
13     disclosure in the civil case.   Could you turn to page 2  
14     and see where the document says "disclosures," look at  
15     Item Number 2 and read that into the record?

16            A     "Draft Summary Schedules prepared by the  
17     government in the matter of United States versus Fathi  
18     Yusuf, et al, CR number 2003-147 and attached and  
19     designated FY 009991-010247."

20            Q     And this is filed by the Dudley Topper law  
21     firm, at the bottom, signature page?

22            A     Ah, it's filed by -- yes, Dudley Topper.

23            Q     And if that's referring to Exhibit Number 10,  
24     you have no doubt that was prepared by the Government?

25            A     I have no doubt it was -- I had no doubt

1           A     True.

2           Q     Okay. Exhibit 39 is your opinion.

3           A     Right.

4           Q     This is the opinion that you authored and  
5 addressed to Attorney Holt on August 1, 2014; correct?

6           A     Correct.

7           Q     And in this opinion, you essentially  
8 determined that because of the absence of partnership  
9 books and records, it's impossible to perform any  
10 true-up or accounting before 2012; isn't that correct?

11          A     That was part of the reason. The other part  
12 of the reason, that there was a criminal enterprise  
13 going on at that time and there was no way for me to do  
14 an accounting of that.

15          Q     Well, did you say that in your opinion?

16          A     I did. If you go to the bottom of page 5, and  
17 at the top, I talked about their usable or reliable  
18 accounting records do not exist for two reasons. If you  
19 go to the footnote, you'll see my remarks.

20          Q     Okay. So -- but as I understand your  
21 testimony, you have never independently determined what  
22 books and records are available to the partnership  
23 during this period; is that right?

24          A     I have determined what was presented to me by  
25 all parties, and that was it.

1 Q I never presented any information to you, did  
2 I?

3 A No, you didn't.

4 Q The only information that was presented to you  
5 was by Attorney Holt, in coming up with this opinion;  
6 isn't that right?

7 A That's correct, uh-huh.

8 Q So, again, you never made an independent  
9 determination of what books and records existed that  
10 would have enabled you to do any kind of true-up or  
11 partnership accounting, prior to 2012; isn't that  
12 right?

13 A True.

14 Q All right. And does it shock you that another  
15 accounting firm doesn't accept that it's impossible to  
16 do that and they undertook to perform what you claim was  
17 impossible?

18 A I don't believe that they did that.

19 Q No. But it's not shocking --

20 A This BDO report is not even an opinion.

21 Q Right.

22 A It's an agreed-upon procedure, which falls  
23 short of an opinion.

24 Q Okay. But it was not offered as an opinion,  
25 was it?

1           A     Ah, it was crafted like an opinion and it's  
2 being used as an opinion and it's making an assertion.

3           Q     It was submitted in support of a claim that  
4 was required to be filed by September 30, 2016; isn't  
5 that right?

6           A     Therefore, it's an agreed-upon procedure.  
7 Correct.

8           Q     Okay. Did you attempt to do any true-up or  
9 accounting for the partnership at all that would be  
10 submitted to the Court on September 30, 2016?

11          A     No, I did not.

12          Q     Okay. You weren't asked to?

13          A     I was not asked to.

14          Q     And as far as you know, nobody else on behalf  
15 of Mr. Hamed was ever asked to?

16          A     That's correct.

17          Q     Okay. Mr. Jackson, it's fair to say that it's  
18 not unusual for partnerships, particularly verbal  
19 partnerships that have lasted for decades, there will be  
20 gaps in the records and things like that? That doesn't  
21 surprise you, does it?

22          A     No.

23          Q     In fact, that would be expected.

24          A     Well, I would think that some gaps, maybe, if  
25 it's a true partnership.

1           Q     Now, on Exhibit 42, these are -- this is,  
2           again -- I assume this is another chart that you  
3           prepared with Kim Japinga?

4           A     No, I did not. Kim Japinga did this on her  
5           own.

6           Q     Okay. You didn't participate in it?

7           A     No.

8           Q     Then you don't know whether any of these  
9           accounts are mentioned in the BDO report.

10          A     Well, I didn't see them mentioned anywhere by  
11          reference.

12          Q     Well, have you, to this date, gone through the  
13          BDO report and determined that not one of these  
14          accounts --

15          A     I have not, no.

16          Q     -- is mentioned in the report? So when you  
17          testified a little bit earlier ago, you didn't have any  
18          personal knowledge regarding whether any of these  
19          accounts were mentioned or not; isn't that right?

20          A     Correct.

21          Q     Okay. And are you aware, Mr. Jackson, that  
22          the claim that it relates to the foreign accounts is not  
23          in the BDO report, but it's in Mr. Yusuf's claim that  
24          was actually submitted to the Court? Are you aware of  
25          that?

1           A     No.

2           Q     You've never seen the summary account that  
3 identifies our claim -- when I say "our", I mean  
4 Mr. Yusuf's claim -- and shows how he accounts for what  
5 I would call set-asides or reserves, payments of debts,  
6 then the partnership withdrawal distributions and  
7 comparisons and so forth? You've never seen that?  
8 Exhibit Number 23?

9           A     No. This is the first time I've seen this.

10          Q     You've never seen it? Okay.

11                   Well, just jump then, if you would -- this is  
12 an Exhibit A to the claim that my client filed on  
13 September 30, 2016, that was supported by, among other  
14 things, the BDO report that you have looked at. Okay?

15          A     Uh-huh.

16          Q     Take a look at page 2, Item Number Roman  
17 Numeral VII, foreign accounts. Net due to Yusuf, it  
18 says "TBD", to be determined, "following additional  
19 discovery"?

20          A     I see that.

21          Q     Okay. So the fact that BDO did not include a  
22 foreign account analysis is not relevant; right? They  
23 weren't asked to do that.

24          A     Not relevant how?

25          Q     Well, if they weren't asked to do something,



1 should they be faulted for not including an analysis of  
2 something they weren't asked to do?

3 A No, I -- it's an agreed-upon procedure, as I  
4 said before. You know, they're just doing what they  
5 agreed to do.

6 Q Okay. All right. And you weren't asked to do  
7 a true-up or an accounting for the period from 2001 to  
8 date, were you, by Mr. Holt or Mr. Hamed?

9 A No, I was not.

10 Q Okay. If they had asked you to do that  
11 true-up, you would have at least attempted to do it,  
12 wouldn't you?

13 A Yes.

14 Q Exhibit 30 and 31.

15 A (Perusing documents.)

16 Q I believe you testified -- correct me if I'm  
17 wrong, Mr. Jackson -- that the \$160,000 check was never  
18 cashed; is that right?

19 A That's correct.

20 Q Have you examined bank statements for the Bank  
21 of Nova Scotia account that's referenced here?

22 A 2000? I have not, no.

23 Q So you don't know from personal knowledge  
24 whether this check has been cashed or not, do you?

25 A I do not. My understanding is they were in a

1 Q Yes.

2 A Um, they disclaim it in several places, yeah,  
3 so I assume that's correct.

4 Q That they disclaim that they have had an  
5 opportunity to review any discovery or deposition  
6 testimony from Mr. Wally Hamed or any of his brothers;  
7 correct?

8 A Correct.

9 Q And you know as a fact that there's been a  
10 stay of discovery in this case altogether since October  
11 of 2014.

12 A I wasn't aware of that, but okay.

13 Q Okay. So in other words, if BDO filed a  
14 report that had -- that included gaps in information,  
15 and maybe even errors, as you've discussed, the fact  
16 that it was done without a large segment of discovery  
17 that remains to be done, would it surprise you that  
18 there would be a few errors in it, or that there would  
19 be gaps?

20 A It wouldn't surprise me if there's gaps, but  
21 some of the errors are pretty glaring.

22 Q Okay. But, again, you were never asked to do  
23 the same thing that they were asked to do.

24 A That's correct.

25 Q And would you agree with me that what they

1 attempted to do was an extraordinary undertaking?

2 A Certainly different, yeah.

3 Q Well, I mean extraordinary in the sense --

4 A I'm sure it was expensive, too.

5 Q Okay. It was an extremely time-consuming and  
6 expensive process; would you agree with that?

7 A Yes.

8 MR. HODGES: Okay. Thank you, sir.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. HOLT:

12 Q I want you to look at Exhibit Number 2, the  
13 tax return.

14 A Okay.

15 Q And go to the fourth page, there's a section  
16 called "Capital Gains and Losses." Do you see that?

17 A Yes.

18 Q Okay. And on this fourth page we write down  
19 stock that we sold, how many shares, the date of the  
20 sale, the amount of the sale; is that correct?

21 A That's correct.

22 Q And just to make it easy, the third line item  
23 down is 20,000 shares of AALR, and it has the date and  
24 the amount; is that correct?

25 A That's correct.

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

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

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

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

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



REPLY TO PLAINTIFF'S NOTICE OF OBJECTION TO LIQUIDATING  
PARTNER'S EIGHTH BI-MONTHLY REPORT

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner,<sup>1</sup> through his undersigned counsel, respectfully submits this Reply to "Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report" filed by plaintiff/counterclaim defendant Mohammad Hamed ("Hamed") on June 17, 2016<sup>2</sup> (the "Objection").

The Objection concludes with the following paragraph:

While the partnership's accountant, Mr. Gaffney, is no longer being asked for more documents, despite being paid to assist the Partnership on a full time basis, Hamed's CPA's have withdrawn the request for documents at this time and simply asked him to answer 130 very

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1020 Frederiksborg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

<sup>1</sup> Unless otherwise defined in this Reply, capitalized terms shall have the meaning provided for in this Court's "Final Wind Up Plan of the Plaza Extra Partnership" dated January 7, 2015 and entered on January 9, 2015 (the "Plan").

<sup>2</sup> On June 16, 2016, Hamed died. See Yusuf's Statement Noting Death of Mohammad Hamed filed on June 22, 2016. As a result of his death, any power of attorney given by Hamed to Waleed Hamed is terminated. See V.I. Code Ann. tit. 15, § 1265(a). Since no motion for substitution of a representative of the estate of Hamed has been filed to date, it is unclear on whose behalf counsel for Hamed is filing documents.



Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 2

specific questions about the accounting methods and decisions. These (reduced) questions are required for a fundamental understanding of what decisions were made in generating the financials. It is estimated by the CPA's that these will take less than 40 hours (of the 160 + hours per month Mr. Gaffney is being paid by the Partnership) since the questions no longer have any extensive document requests.

Although counsel for Hamed sent the Master an email on June 23, 2016, one full week after his client's death,<sup>3</sup> requesting the Master to forward these "130 very specific questions" to Mr. Gaffney along with an instruction that he respond to them at his convenience, *see* email attached as Exhibit 1, the Master has not yet forwarded them to Mr. Gaffney with the requested instruction. For the reasons set forth in this Reply, Yusuf submits these unauthorized discovery requests are entirely improper.

To the extent that the Master chooses to forward these discovery requests as sought by counsel for Hamed, Yusuf objects to each and every one of them to the extent that they clearly seek to interrogate Yusuf, through Mr. Gaffney, as opposed to simply seeking Mr. Gaffney's assistance in accessing and reviewing the existing Partnership information from January 2012 to date. As this Court is well aware, discovery has been stayed in this case and Hamed should not be allowed to use his "130 very specific questions" to essentially propound interrogatories on Yusuf, through Mr. Gaffney.

The Plan merely gave Hamed's accountants a right of access "to view all Partnership accounting information from January 2012 to present." *See* § 9, Step 4 of the Plan. It did not

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1000 Frederiksborg Gate  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

<sup>3</sup> Notwithstanding the death of his client, counsel continues to proceed as if his client has not died or as if a representative has already been appointed for the estate of his deceased client and that representative has been substituted in this case. Yusuf strongly objects to counsel's continued prosecution of this matter when he currently has no client to prosecute the matter.

Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 3

give Hamed's accountants the right to propound "130 very specific questions" or to conduct such inquiries as they set fit to gain "a fundamental understanding of what decisions were made in generating the financials." In March of 2015, John Gaffney proposed to provide the access contemplated by the Plan by allowing Hamed's accountants to work on the premises with him and the original documents. See letter dated May 17, 2016 from John Gaffney to Joel Holt attached as Exhibit 3 to the Liquidating Partner's Eighth Bi-Monthly Report. Instead of accepting that proffered access, Hamed's accountants first propounded 81 "questions/request for info," which has now grown to "130 very specific questions." Mr. Gaffney's letter to Attorney Holt concludes with the sentence: "The Master has reviewed and approves the process I have recommended." That process -- to have one of Hamed's accountants work on premises with Mr. Gaffney and the original records - is inconsistent with the process contemplated by the "130 very specific questions," which is another example of counsel for Hamed engaging in unauthorized discovery.

Moreover, the 130 questions do not "need" to be answered in order for Hamed's accountants to be "allowed to view all Partnership accounting information from January 2012 to present." Yusuf's experts never propounded any such questions to Mr. Gaffney. In fact, the amount of time Mr. Gaffney has spent compiling information for and answering questions from Yusuf's experts represents only a tiny fraction of the amount of time he has spent doing the same for Hamed's accountants. The Plan merely provides Hamed's accountants with a right of access, not inquisition rights. That access was offered to Hamed's accountants more than 15 months ago and they have squandered that opportunity. If Hamed's accountants claim

Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 4

a need to review accounting information during the applicable period, they should be ordered to immediately accept the offer of access made more than one year ago or be foreclosed from further demands on the limited resources of the Liquidating Partner.

For all of the foregoing reasons, Yusuf respectfully requests this Court to overrule Hamed's Objection to the eighth bi-monthly report and provide such further relief as is just and proper under the circumstances.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: July 1, 2016

By: 

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

Attorneys for Fathi Yusuf, the Liquidating Partner

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 5

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of July, 2016, I caused the foregoing Reply To Plaintiff's Notice Of Objection To Liquidating Partner's Eight Bi-Monthly Report 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](mailto:holtvi@aol.com)

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

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)

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

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

Michelle Barkin

R:\DOCS\6254\1\DRFTPLDG\1601302.DOC



**Michele Barber**

---

**From:** Joel Holt <holtvi@aol.com>  
**Sent:** Thursday, June 23, 2016 2:18 PM  
**To:** edgarrossjudge@hotmail.com  
**Cc:** Gregory H. Hodges; dewoodlaw@gmail.com; dewoodlaw@me.com; carl@carlhartmann.com  
**Subject:** Plaza  
**Attachments:** REVISED FINAL - All Request to J Gaffney re items.docx; 242-a--Expenditures by NejeH from large STT safe-2.pdf; 340-a--Rent collected by NejeH from Triumphant Church-2.pdf; 358-a--Gift certificates from STT Tutu-2.pdf

Dear Judge Ross:

As we have agreed, since we are independently pursuing the bank and vendor records, we have removed the document demands to Gaffney. Attached is a revised set of our CPA's questions which remove those demands. This will, hopefully, end the complaints about the burden on his time. The questions themselves should be answerable in under one week according to our CPA's and are necessary to their doing the review the Court has allowed. Please forward them to Mr. Gaffney and ask that he respond to them at his convenience, as he is being paid full-time to do such work for the Partnership.

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



By the way, all 2011 and prior years' records including journal entries and bank statements remain in St. Thomas.

I'll make the Sage backups you requested including 2012 if you approve.

Regards...John

---

**From:** James Patton [<mailto:james.patton@vz-cpa.com>]  
**Sent:** Monday, January 18, 2016 3:51 PM  
**To:** John Gaffney  
**Cc:** Beatriz Martin; Joel Holt ([holtvi@aol.com](mailto:holtvi@aol.com)); Bracey Alexander  
**Subject:** Plaza Extra

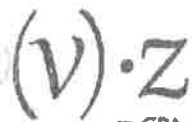
John,

As you know we're back in St. Croix this week. We would like to meet with you again while we are here to go over a few things. Are you available to meet with us Friday morning?

Also, can you provide us with the general ledger for all stores for 2012 as well as the monthly bank statements and reconciliations for all accounts for the year.

Thank you,

***H. James Patton, CPA, CFF***  
**Audit Manager**



≡ CPAs & CONSULTANTS

Vizcaino Zomerfeld, LLP  
*Certified Public Accountants*  
999 Ponce de Leon Boulevard, Suite 1045  
Coral Gables, Florida 33134  
Tel: + 1 305 444 8288 | Fax: + 1 305 444 8280  
[james.patton@vz-cpa.com](mailto:james.patton@vz-cpa.com) | [www.vz-cpa.com](http://www.vz-cpa.com)

**An Independent Member of Geneva Group International**

Please consider the environment before printing.

Any accounting, business, or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Vizcaino Zomerfeld, LLP would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.

This communication and any accompanying documents are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited. Moreover, any such disclosure shall not compromise or waive the attorney-client, accountant-client, or other privileges as to this communication or otherwise.

## Gregory H. Hodges

---

**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:38 PM  
**To:** Fathi Yusuf; John Gaffney (johngaffney@tampabay.rr.com)  
**Cc:** 'Nizar Dewood'  
**Subject:** FW: Subpoenas To BNS and BPPR

FYI.

---

**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:37 PM  
**To:** 'Joel Holt'  
**Cc:** edgarrossjudge@hotmail.com; nizar@dewood-law.com; carl@carlhartmann.com  
**Subject:** RE: Subpoenas To BNS and BPPR

Stock response for someone who can't answer the hard questions.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

---

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

---

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 8:35 PM  
**To:** Gregory H. Hodges  
**Cc:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com); [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

If there is nothing to hide, why not just let this process get done?

Joel H Holt  
2132 Company St.  
Christiansted, VI 00820



On Jun 23, 2016, at 8:26 PM, Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)> wrote:

You say "access to partnership accounting information is all we are seeking now." Who is "we"? The right to access or view existing information does not give you, an attorney currently without a client, the right to propound "130 very specific questions" to John Gaffney or anyone else.

The offer John made, with Mr. Yusuf's permission, is memorialized in his letter to you of May 17 (Exhibit 3 to the last bi-monthly report). As far as I am aware, you have never responded to that letter. Despite your effort to mangle the terms of the offer, I think it was clear, if Hamed wanted access, he could send someone from VZ down "who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies." In other words, if the VZ accountant cannot find the information on her own, John will be available to point her in the right direction to get the information herself.

The 130 questions do not "need" to be answered in order for VZ to be "allowed to view all partnership accounting information from January 2012 to present." Mr. Yusuf's experts never propounded a bunch of questions to John. In fact, I encourage you and Judge Ross to ask John how much time he has spent compiling information for or meeting with our experts compared with VZ. You will learn that it is a tiny fraction. The Plan does not say that Hamed's accountants "shall be allowed to conduct such inquires as they see fit to reach an understanding of the partnership accounting." Rather, it simply provides that they "shall be allowed to view" the partnership accounting information for a specific period. That access was offered to VZ long ago and it has squandered the opportunity.

Finally, John did not say he was "taking 30 days off from the partnership accounting." His May 17 letter said "I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership."

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

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

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 2:03 PM  
**To:** Gregory H. Hodges  
**Cc:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com); [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto: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

-----Original Message-----

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

To: 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>

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

Sent: Thu, Jun 23, 2016 11:08 am

Subject: RE: Subpoenas To BNS and BPPR

Good morning,

I will be equally brief. The Plan most certainly did not give your former client a "right to a full accounting." Rather, it gave his accountants a right of access "to view all partnership accounting information from January 2012 to present." (Plan, § 9, Step 4) In March 2015, John Gaffney proposed to provide that access by allowing a VZ accountant to work on the premises with him and the original documents. See Exhibit 3 to the last bi-monthly report. Instead of accepting that proffered access, VZ first propounded 81 "Questions/Requests for Info," which has now grown to "130 very specific questions." These unauthorized discovery requests would not only require John to answer a host of questions, but gather and spoon feed information to VZ. Now, without moving for or obtaining relief from the discovery stay, you have issued 2 subpoenas that seek far more than "partnership accounting information from January 2012 to present." If the subpoenas are not limited as requested, they should be quashed altogether. If VZ still claims a need to review accounting information during the applicable 4 ½ year period, it should be ordered to immediately accept the offer of access made 15 months ago or be foreclosed from further access.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

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

---

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 10:03 AM  
**To:** Gregory H. Hodges  
**Cc:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com); [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

I am not sure that a long response to this email is really needed. The liquidation order gave my client right to a full accounting. That process began, but was stalled for reasons already documented. The request to issue subpoenas was made after trying to get the requested information from Mr. Gaffney. In short, how we got here in no mystery. We hope this process, which is now taking place, can be completed in short order.

Joel H Holt  
2132 Company St.  
Christiansted, VI 00820  
340-773-8709

On Jun 21, 2016, at 6:59 PM, Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)> wrote:

Dear Judge Ross,

Before addressing the responses below, as I suspect you already know, Mohammad Hamed died in Jordan on June 16<sup>th</sup>. Since the POA given to Waleed Hamed does not survive his father's death, it appears that Joel does not have a client in this matter for the time being.

If issuing two subpoenas is not re-opening discovery, why did Joel go to you on an *ex parte* basis for permission to issue the subpoenas instead of working out a stipulation, as proposed by me, that would apply equally to all parties? Everyone has known for years about BNS' failure/refusal to provide cancelled check images for the STT operating account ending in #2010 or to provide monthly bank statements, and that this caused the accounting department to resort to using online activity printouts that were not saved to PDF files until 2015. (VZ has been repeatedly told by John Gaffney that these activity printouts for account #2010 exist only in the monthly work files located at the Tutu Park store, which Waheed has refused to turn over to the Liquidating Partner to date.) Likewise, everyone has known that BPPR stopped providing cancelled check images in July 2013 shortly after the Hameds served it with the Order requiring dual signatories. Although everyone would no doubt prefer to have the check images from the outset,

there is nothing to support Joel's claim that "no credible accounting could be done without them." According to John, one can readily trace general ledger entries to items cleared in the bank statements. A simple test selection could then be used by VZ to test the validity of the accounting. It must be kept in mind that the Hameds co-signed every check from 2013 forward, so the absence of check images is hardly a big deal.

Despite the fact this case has been pending almost 4 years, the \$2.7M transfer is the only "unauthorized" transfer identified in Hamed's pleadings, and the inability to identify **any** other "unauthorized" transfers, Joel suggests his former client should be allowed to rummage through the United tenant account, which everyone has always acknowledged has nothing to do with the Partnership. Mere curiosity cannot serve as a valid basis for exposing United's tenant account to discovery for the first time in this case.

John Gaffney categorically denies that he ever stated that he guessed at the accounting for 2012 or that the "2012 accounting is a bunch of guesswork," as claimed below. The accounting for 2012 was done by Margie Soeffing for the most part from bank analysis. According to John, VZ already has all the bank statements for all months except 2012. As explained below and in John's letter to Joel attached as Exhibit 3 to the last bi-monthly report, the information for 2012 is in binders that John suggested VZ get in 6 month increments as they return each previously provided 6 month set of original documents. VZ chose the original documents for the first 6 months of 2013, which were provided in January 2016. There is no dispute that these documents have never been returned by VZ or that VZ never asked for the next 6 month increment of 2012 documents, so I am at a loss to understand what Joel claims is "utter nonsense." There has certainly been no effort to explain why the baseless "lost records" claim justifies discovery with respect to United's tenant account.

Although Joel understandably backs off his original claim that the "Hameds were excluded from the stores for a large part of the time," he now claims that they "**were** excluded from the accounting, access to bank accounts and the accounting system. That is the information we are seeking-not premises access." (Emphasis supplied) Although Mr. Yusuf disputes that Hamed was ever denied access to Partnership bank accounts and financial information, there is simply no question that since Judge Brady's May 31, 2013 and April 2, 2014 Orders, the Hameds have had unfettered access to all Partnership financial data and records, including the Sage5 accounting system. Since Joel must effectively concede complete access for years, how does an earlier, disputed denial of access possibly justify the contemplated fishing expedition now, particularly with respect to the United tenant account?

My arguments why Plessen should be removed from the subpoenas have been completely ignored. I stand on those arguments.

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

As you know, in the untimely Objection to the Liquidating Partner's Eighth Bi-Monthly Report, the following is stated: "Hamed's CPA's have withdrawn the request for documents [presumably the 81 "Questions/Requests for Info" addressed at page 10 of that bi-monthly report] at this time and simply asked him [John Gaffney] to answer 130 very specific questions about the accounting methods and decisions." Although I have yet to see these "130 very specific questions" and Mr. Yusuf intends to file a timely Reply to the Objection in which he will object to this new process, it underscores the need to address the timing of the parties' submission of their competing accountings and distribution plans. John's letter to Joel, attached as Exhibit 3 to the last report, concludes with the sentence: "The Master has reviewed and approves the process I have recommended." That process-to have a VZ accountant work on premises with John and the original records- appears at odds with the process contemplated by the "130 very

specific questions." While Mr. Hamed's death will no doubt involve some delays in this matter, I respectfully submit that it is important for the parties to understand what the process (and related timing) will be that results in the submission of the accountings and distribution plans. I suggest that we convene a conference call to discuss these issues.

Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

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

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 16, 2016 9:02 AM  
**To:** Gregory H. Hodges; [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

Judge Ross-here are my brief responses to these new comments sent by Greg Hodges:

1. Attorney Hodges says:  
"Instead, he apparently chose to approach you to get informal relief from the discovery stay for his client alone."

This has nothing to do with re-opening discovery. In a meeting with our CPAs, you were told that it looked like there were almost no underlying checks or invoices – and that no credible accounting could be done without them. Instead of further pestering Gaffney for this, we suggested we could just get them from the source. That is what this is.

2. Attorney Hodges says:



"There is only one transfer from the Partnership accounts to the United "tenant account" that occurred without Hamed's permission, namely, a check in the amount of \$2,784,706.25 issued in August 2012 and deposited into the tenant account."

and,

"Again, there is only one disputed transfer at issue. Why does this acknowledged transfer "need to be reviewed.""

How can we possibly know that? This is what Yusuf says. A review of the tenant account and other United Corp. accounts at that time will show any "unexpected" or unexplained deposits prior to the Hameds challenging what was going on.

3. Attorney Hodges says:

"Please note that Hamed alleged the following in his first amended complaint (paragraph 17): "United has always had completely separate accounting records and separate bank accounts for its operations of the 'non-supermarket' shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate 'non-supermarket' United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.""

This is exactly the problem. Those accounts were suppose to be separate – but as we know, they were not. United had accounts that the Hameds cannot see. Did large amounts go into them in either cash or partnership funds beyond the \$2.7 million? The only way to determine that is to look at the accounts.

4. Attorney Hodges says:

"Why did Joel wait until March 31, 2016 to cause subpoenas to issue?"

As you know, we were repeatedly told that we would be getting all of the information in time for a May report to the Court. As it turns out, when the CPAs finally were able to look and discuss this stuff, there are almost **no underlying checks, no underlying invoices**, and no real accounting for 2012 (even Gaffney says he pretty much guessed at all of that.) We are being asked to reconstruct what was supposed to be used for accounting but is not there. **We are now sending subpoenas because the information cannot be supplied.**

5. Attorney Hodges says:

"Joel attempts to justify his fishing expedition concerning United's tenant account by claiming that "all Plaza

accounting records for this time period have been lost." Of course, he offers no proof in support of this claim. John Gaffney has informed Hamed's accountants, Vizcaino Zomerfeld ("VZ), that he has the accounting records for this time period."

Utter nonsense. The Gaffney openly states that any 2012 accounting is a bunch of guesswork with no underlying documents at all. As for all of the rest, post-2012, there are no cancelled checks or invoices for almost all of these accounts.

6. Attorney Hodges says:

"Joel next attempts to justify his fishing expedition by claiming that the "Hameds were excluded from the stores for a large part of this time...."

They were excluded from the accounting, access to bank accounts and the accounting system. That is the information we are seeking – not premises access. That is why we had to file several motions in 2013 to open that access back up. That is why the Court ordered the Yusuf to stop blocking the Hameds' access.

7. Attorney Hodges says:

"No justification has been provided for including Plessen's records in the subpoenas. Plessen is not even mentioned in the Plan approved by the Court and its financial records have no relation to the Partnership wind up. While Partnership funds may have been used to purchase the parcel in question, the Partners chose to take title to the property in the name of Plessen in 2006. From that point forward, the Partnership had nothing to do with the property."

Attorney Hodges starts out with the statement "Partnership funds may have been used to purchase the parcel in question". Then they refuse to even put it on the schedule of contested assets. That's certainly enough for us to look at Plessen's own bank records.

8. Attorney Hodges says:

"Finally, if your are going to allow Hamed to engage in discovery despite the flimsy justifications provided for lifting the discovery stay, Mr. Yusuf submits that he should likewise be allowed to do the same. There are a number of issues that directly relate to the Partnership accounting and Plan implementation that Mr. Yusuf would like to pursue."

As long as any new discovery filed by the Yusufs is limited to financial and bank records from third parties that impinge on the accounting, Hamed has no problem with this.

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

-----Original Message-----

From: Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
To: edgarrossjudge <[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)>  
Cc: nizar <[nizar@dewood-law.com](mailto:nizar@dewood-law.com)>; carl <[carl@carlhartmann.com](mailto:carl@carlhartmann.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>  
Sent: Wed, Jun 15, 2016 4:40 pm  
Subject: RE: Subpoenas To BNS and BPPR

Dear Judge Ross,

While Joel addresses two of the three specific objections identified at page two of my letter, he ignores the third objection (i.e., the information gathering process involved with the subpoenas should not be allowed to delay the submission of the Partners' accounting and distribution plans per Section 9, Step 6 of the Plan) and the general objection concerning the *ex parte* and unauthorized process that led to the issuance of the subpoenas in the first place. You should be aware that on March 9, 2016, I emailed Joel suggesting that "after the competing accountings and distribution plans are submitted on May 2, 2016, we stipulate to the lifting of the discovery stay in the consolidated cases and to a discovery schedule on all remaining claims." Although Joel said he would get back to me, he never did. Instead, he apparently chose to approach you to get informal relief from the discovery stay for his client alone.

There is only one transfer from the Partnership accounts to the United "tenant account" that occurred without Hamed's permission, namely, a check in the amount of \$2,784,706.25 issued in August 2012 and deposited into the tenant account. As explained in his letter dated 8/15/12 to Hamed, Mr. Yusuf claimed that he was entitled to these funds in order to match previous withdrawals by Hamed and his sons. Hamed obviously disagrees and will claim that this amount must be charged against Mr. Yusuf in the Partnership accounting. Joel claims: "so these transfers from the Plaza account to United need to be reviewed, particularly during the last part of 2012 and the first six months of 2013, as all Plaza accounting records for this time period have been lost. As the Hameds were excluded from the stores for a large part of this time period, it is critical to look at these United bank accounts to see what funds were transferred from Plaza to United's accounts." Please note that Hamed alleged the following in his first amended complaint (paragraph 17): "United has always had completely separate accounting records and separate bank accounts for its operations of the 'non-supermarket' shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate 'non-supermarket' United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets." In your email of March 31, 2016 to Joel, the scope of discovery was limited to the "financial information relating to the Plaza partnership." In his own pleading, Hamed effectively concedes United's tenant account has nothing to do with the Partnership.

Again, there is only one disputed transfer at issue. Why does this acknowledged transfer "need to be reviewed" at all, as Joel claims, much less serve as a basis for reviewing all

non-payroll cancelled checks from July 1, 2012 through June 30, 2013? See paragraph 1 to Exhibit A of the BNS subpoena. Incredibly, paragraphs 2 and 3 of Exhibit A to the BNS subpoena essentially seek all other documents relating to the tenant account from inception through 2015. If it was so "critical [for Hamed] to look at these United bank accounts," why did Joel wait until March 31, 2016 to cause subpoenas to issue? I suspect you were not informed that similar subpoenas were issued more than two years ago on March 11, 2014 and subsequently withdrawn after we filed a motion to quash and for sanctions.

Joel attempts to justify his fishing expedition concerning United's tenant account by claiming that "all Plaza accounting records for this time period have been lost." Of course, he offers no proof in support of this claim. John Gaffney has informed Hamed's accountants, Vizcaino Zomerfeld ("VZ"), that he has the accounting records for this time period. As explained at length in John's letter to Joel dated May 17, 2016, attached as Exhibit 3 to the Liquidating Partner's Eighth Bi-Monthly Report, these records were part of the records that John suggested would be provided to VZ in 6 month increments so he did not have to spend time scanning and copying them. VZ chose to start with the first 6 months of 2013 and never requested the previous 6 months, presumably because they have not returned the 6 months of records they were given. Despite Mr. Yusuf's demand, these records still have not been returned. Nor has John received a response to his May 17 letter. Accordingly, this "lost records" justification for the subpoenas is clearly bogus.

Joel next attempts to justify his fishing expedition by claiming that the "Hameds were excluded from the stores for a large part of this time." The Hameds were never excluded from the stores for a single day and I challenge Joel to prove otherwise. The Hameds had unfettered access to every record in all the stores during this period, including check registers. They co-signed each and every check and regularly challenged expenditures. They were also the active managers in the cash rooms right up to the East/West split. This "exclusion" justification is also bogus. Accordingly, the subpoenas should be modified to omit any information concerning United's tenant account.

No justification has been provided for including Plessen's records in the subpoenas. Plessen is not even mentioned in the Plan approved by the Court and its financial records have no relation to the Partnership wind up. While Partnership funds may have been used to purchase the parcel in question, the Partners chose to take title to the property in the name of Plessen in 2006. From that point forward, the Partnership had nothing to do with the property. The fact that Plessen decided in 2008 to convey the property to United via a Deed In Lieu of Foreclosure (signed by Hamed as President) also has nothing to do with the Partnership. If the mere fact that Partnership funds may have been used to originally purchase the property somehow makes Plessen's financial records germane to an accounting of the Partnership, as argued by Joel, then the financial records of the other jointly owned companies (i.e. Peters Farm and Sixteen Plus) are no less germane since all of their assets were also purchased with Partnership funds. An accounting for the Partnership alone is already a broad ranging and difficult project. Neither the Plan nor the Order approving the Plan contemplate expanding that project as suggested by Joel below. Plessen should be removed from the subpoenas.

Finally, if you are going to allow Hamed to engage in discovery despite the flimsy justifications provided for lifting the discovery stay, Mr. Yusuf submits that he should likewise be allowed to do the same. There are a number of issues that directly relate to the Partnership accounting and Plan implementation that Mr. Yusuf would like to pursue, not the least of which is why, after more than a year, Hamed has failed to provide the releases required by the Plan and your Order transferring the Tutu Park store. If discovery is to be reopened for Hamed, it must be a two way street.  
Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

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

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Tuesday, June 14, 2016 11:15 AM  
**To:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com); Gregory H. Hodges  
**Subject:** Re: Subpoenas To BNS and BPPR

Dear Judge Ross:

I read the letter from Greg Hodges re his two specific objections to the subpoenas we have issued to Scotiabank and Banco Popular. I have a brief response.

As for his objection regarding the subpoena that includes United's "tenant account," there are multiple reasons why this "tenant account" is appropriate for my client to review. First, funds were transferred by the Yusufs from the Plaza Accounts to this United account without the Hameds' permission – a finding already made by Judge Brady—so these transfers from the Plaza account to United need to be reviewed, particularly during the last part of 2012 and the first six months of 2013, as all Plaza accounting records for this time period have been lost. As the Hameds were excluded from the stores for a large part of this time period, it is critical to look at these United bank accounts to see what funds were transferred from Plaza to United's accounts. Second, United has paid supermarket expenses from this account and then obtained reimbursement from the Plaza account—indeed, it is currently is paying for partnership expenses and then reimbursing itself with partnership funds, as noted the General Ledger submitted with the Liquidating Partner's Seventh and Eighth Bi-Monthly report shows. Third, it is critical to see if other amounts were similarly obtained or used, as well as understand what all of the partnership checks reimbursing United actually

cover. As you know, our accountants have stated that they need to be able to follow where the money came into and left the partnership in order to perform their audit, as well as review the underlying support for those expenditures. United is a party in this case so there is no prejudice to it.

As for the objection regarding the Lessen bank records, if you read the last bi-monthly report you will see that a \$500,000 piece of land that was purchased solely with supermarket proceeds now rests in United's name rather than in Plessen's name, which the Liquidating Partner will not even put it on the partnership's schedule, much less provide an accounting of those funds. Indeed, once again, the Yusufs and Plessen are already parties in this case, so this information is part of the accounting of that claim as well. Indeed, these records involving Plessen, who is a party here as well, are not voluminous.

Thus, I believe both objections raised by Attorney Hodges are without merit.

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

-----Original Message-----

From: Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
To: 'Edgar Ross' <[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)>  
Cc: Nizar DeWood <[nizar@dewood-law.com](mailto:nizar@dewood-law.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>;  
'[carl@carlhartmann.com](mailto:carl@carlhartmann.com)' <[carl@carlhartmann.com](mailto:carl@carlhartmann.com)>  
Sent: Mon, Jun 13, 2016 12:13 pm  
Subject: Subpoenas To BNS and BPPR

Dear Judge Ross,  
Please see the attached letter.  
Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

---

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE  
INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED  
AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED,  
CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER