

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,
vs.

FATHI YUSUF and **UNITED CORPORATION**,

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants.

Case No.: SX-2012-cv-370

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

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,
vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

**REPLY TO DEFENDANTS' OPPOSITION TO MOTION
TO TERMINATE THE ROLE OF THE SPECIAL MASTER**

The Defendants have raised essentially two arguments in response to this motion. First, the Defendants argue that the January 9, 2015, "Wind Up" Order anticipated the Special Master ("Master") resolving all disputed claims between the parties. Second, the Defendants argue that absent a showing of misconduct, the Special Master should remain to address the disputed issues. Both arguments fail.

I. The Wind-Up Order did not contemplate the Master addressing claims.

A review of the different sections of Wind-Up Order confirms that it was **never** contemplated that the Special Master would resolve disputed claims:

- Section 1.10 defines what constitutes a "Disputed Claim." However, here is no section in the Order suggesting the Master would address such claims.¹
- Section 1.31 states that the *Liquidating Partner expects the winding up of the partnership to take six months*, which obviously meant the claims process would take place after the action mandated by the Wind Up Order was completed.²
- Section 1.33 provided for a Wind Up budget, with the anticipated expenses itemized in Exhibit A attached to the Order (also attached hereto as **Exhibit 1**), with a planned budget *for six months* to allow the wind up process to be completed. Nothing in that budget provided for expenses to cover a protracted claims process.
- Section 2 appointed Judge Ross as the Master "to oversee and act as the **judicial supervision of the wind up efforts of the Liquidating Partner.**" (Emphasis added).³

Thus, contrary to the Defendants assertions, there is no provision in the plan for him to do anything other than *supervise the Liquidating Partner* during the winding up of the partnership. The plan then continues to provide as follows:

- Section 6 provides for salary for the Liquidating Partner, stating in part "This compensation will be considered an expense of winding up the Partnership's business."

¹ That section stated: "'Disputed Claim' means any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed, which objection has not been withdrawn or determined by Final Order."

² That section states: "'Termination Date' means six months following the Effective Date, when the Liquidating Partner contemplates **completing the winding up of the Partnership.**" (Emphasis added).

³ That sections states: "The Honorable Edgar D. Ross, appointed by Order Appointing Master in the Case, entered September 18, 2015, shall serve as Master to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner." There is no mention here or anywhere in the Order of any adjudicatory role over claims.

As the Master has now **terminated this salary** (see Twelfth Liquidating Partner's Report), this confirms that **the Master considers the wind up process finished.**

Perhaps the most important language that confirms that claims were not to be addressed in the liquidation supervised by the Master is then found in Section 8 (1). That section first addresses the transfer of the Plaza East store and then specifically contemplates **claims** being addressed *after the Wind Up has been completed*, stating:

For purposes of winding up the Partnership, Plot 4-H Estate Sion Farm shall not be considered Partnership property and is not subject to division under this Plan, **without prejudice to any accounting claim that may be presented by Hamed.** (Emphasis added).

This section makes it clear that the claims process will be separate and distinct from the liquidation process under the Wind Up Order. In fact, the Master has always proceeded pursuant to this understanding. See **Exhibit 3** ("The liquidation of the partnership is a separate and distinct process than the civil litigations").

Section 9, Step 6 then states explains how the liquidation process will end after the assets have been liquidated, with the parties submitting a proposed accounting and distribution plan to the Master, who will then make a report and recommendation, *without any mention of the Master proceeding to determine any claims.*⁴

In short, nowhere in the Wind Up Order is there any reference to the Master adjudicating any of the disputed claims – as opposed to supervising the liquidation process. To the contrary, this Plan itself states in Section 8 (1) that any "accounting

⁴ That section states in relevant part: "Within forty-five 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.

claim" will be addressed **after** the liquidation process is completed, stating that the disputed plot of land at Plaza East is "**not subject to division under this Plan.**" To put it another way, the "accounting" related to the winding up process was limited to the liquidation of the assets and the payment of all debts -- as Gaffney did in the 2012-2016 financials related to the liquidation.

In summary, now that the respective objections and list of claims of each partner have now been submitted to the Master, his role under the Wind Up order has now been concluded, other than to submit a final report. Indeed, he can certainly report that that all three stores have been closed and the debts paid, with a set of detailed financials generated, even if Hamed still wants time to review them.⁵

Thus, as the purpose for appointing a Master has been achieved, this case is now ready to proceed with litigating the remaining claims between the parties (as well as between United and Hamed) through the normal trial process. This process includes discovery, that was stayed so that the liquidation process could be completed, as well as addressing motions on legal issues (like the SOL and Daubert), before a trial is set.

II. It would not be appropriate for the Master to now address claims.

Next is the issue of the Special Master addressing claims, which was clearly not anticipated in the Wind Up Order, as discussed above. Contrary to Defendants' assertions, Hamed has not argued that Judge Ross has violated any order or other rule.

⁵ As the parties were not able to agree on the liquidation accounting, as noted in Plaintiffs' initial motion, that dispute now becomes part of the claims process. As a result, the remaining funds should remain in escrow until the claims are resolved. While the Defendants assert the Plaintiff failed to timely object to Gaffney's accounting, the record is replete with such objections, including the one filed on September 30, 2016, which is the only time the Master set a deadline for such objections.

Notwithstanding this fact, the Master did obtain information and confidences about views and positions because of his ex parte contacts (which was heavily weighted towards Yusuf because he was the Liquidating Partner). He made it clear that such communications would be in confidence for the purpose of getting the liquidation completed. While this ex-parte involvement was not an issue, as it was needed as part of the liquidation process under the plan, the Master made it clear throughout the process that he was not the final "decider" of claims.

Based on those assurances, including his **repeated acknowledgements that his earlier decisions would have no presumptive effect**, it would not be appropriate for him to now be in a position of deciding claims, which would be directly contrary to him simply supervising the process.

As such, it is respectfully submitted that even if this Court finds that the Master's task has not been completed, his role should not be extended to deciding claims.

III. Summary

Based on the record before the Court, it is respectfully submitted that this Court should now declare the winding up process to be over with, so that the litigation that was put on hold can proceed.

Dated: April 6, 2017



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CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of April, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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

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Plaza Extra Supermarkets
Liquidation Budget

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Operating Expenses						
Advertising & Promotion	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	0.00
Auto Expenses	250.00	250.00	250.00	200.00	200.00	0.00
Bad Debts Expense	0.00	0.00	0.00	0.00	0.00	10,000.00
Bank Charges	5,000.00	5,000.00	5,000.00	4,000.00	3,000.00	2,000.00
Cash Short (Over)	1,000.00	800.00	600.00	400.00	200.00	0.00
Charitable Contributions	500.00	0.00	0.00	0.00	0.00	0.00
Computer Supplies & Expense	3,000.00	2,500.00	2,000.00	1,500.00	1,000.00	0.00
Contract Labor Expense	5,000.00	3,000.00	2,000.00	1,000.00	500.00	500.00
Depreciation Expense	18,500.00	18,500.00	18,500.00	18,500.00	18,500.00	18,500.00
Insurance - Emp Health	23,000.00	23,000.00	23,000.00	23,000.00	20,000.00	15,000.00
Insurance - Gen Liability	27,000.00	27,000.00	27,000.00	27,000.00	27,000.00	27,000.00
Insurance - Property	17,000.00	17,000.00	17,000.00	17,000.00	17,000.00	17,000.00
Insurance - Workers' Comp	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	0.00
Professional Fees	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00
Merchant Fees - MC/Visa/Amex	65,000.00	60,000.00	50,000.00	40,000.00	30,000.00	5,000.00
Merchant Fees - Telecheck	2,000.00	2,000.00	2,000.00	1,000.00	750.00	500.00
NSF Checks Expense	500.00	500.00	500.00	500.00	0.00	0.00
Office Supplies & Expense	5,000.00	4,000.00	3,000.00	2,000.00	1,000.00	0.00
Postage & Overnight Delivery	500.00	500.00	500.00	500.00	500.00	500.00
Rent Expense - Tutu Park	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
Rent Expense - Sion Farm *	59,000.00	59,000.00	59,000.00	59,000.00	59,000.00	59,000.00
Repairs & Maintenance Expense	40,000.00	30,000.00	20,000.00	10,000.00	2,000.00	0.00
Security Expense	6,000.00	5,000.00	4,000.00	3,000.00	2,000.00	0.00
Court Appointed Master	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00
Taxes - Gross Receipts	367,000.00	245,000.00	163,000.00	82,000.00	41,000.00	0.00
Taxes - Emp FICA & Medicare	78,000.00	65,000.00	59,000.00	46,000.00	34,000.00	3,000.00
Taxes - Emp FUTA Expense	6,000.00	5,000.00	4,000.00	3,000.00	2,000.00	1,000.00
Taxes - Emp VI Unemp	10,000.00	9,000.00	8,000.00	6,000.00	4,000.00	1,000.00
Taxes - Licenses	500.00	500.00	500.00	500.00	500.00	0.00
Taxes - Property	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	0.00
Telephone Expense	4,500.00	4,000.00	4,000.00	4,000.00	3,000.00	2,000.00
Trash Removal	7,000.00	7,000.00	7,000.00	5,000.00	5,000.00	3,000.00
Travel & Hotels Expense	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Utilities - Electric	425,000.00	425,000.00	425,000.00	425,000.00	375,000.00	300,000.00
Utilities - Gas & Diesel	2,500.00	2,500.00	2,500.00	1,000.00	500.00	500.00
Utilities - Water	3,000.00	3,000.00	2,000.00	1,000.00	500.00	500.00
Wages - Liquidating Partner	27,500.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00
Wages - Officer Salaries	27,500.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00
Wages - Managers	185,000.00	176,000.00	176,000.00	150,000.00	150,000.00	150,000.00
Wages - Other	831,000.00	665,000.00	600,000.00	450,000.00	300,000.00	50,000.00
Total Operating Expenses	2,367,250.00	2,023,550.00	1,843,850.00	1,540,600.00	1,256,650.00	793,000.00
Cumulative Total	2,367,250.00	4,390,800.00	6,234,650.00	7,775,250.00	9,031,900.00	9,824,900.00

*This proposed budget is without prejudice to United Corporation's claim for increased rent effective January 1, 2012.

Forecast

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

Subject: RE: Subpoenas To BNS and BPPR

Atty Hodges :

I had not responded earlier because I hoped the Attorneys would reach an agreement but now I must. The liquidation of the partnership is a separate and distinct process than the civil litigations and is not governed by the procedural rulings of the civil suits.

I permitted the discovery as part of the fact-finding process to assist in resolution of some of the accounting questions that were becoming burdensome and too time consuming for the liquidating partner .

The issues you raise as to the scope of the subpoenas while valid as to the permitted scope is nonetheless going to be allowed as the requested documents pertain to anticipated claims that will be made in the near future. Hindering discovery will only prolong the liquidation process and incur unnecessary expenses. I will not stand on formalities in a process that should be speedy, just, fair and as simple as possible. At end of the process anyone may seek review of any matter with which they disagree.

