

**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

HAMED'S OPPOSITION TO MOTION FOR FRAUD ON THE COURT

On August 24, 2017, Fathi Yusuf filed a motion to set aside (once again) this Court's two prior Orders finding the Plessen/KAC lease (the "Lease") was fair.

Yusuf's motion this time is predicated on an alleged "fraud" on the Court by his deceased brother-in-law and former partner, Mohammad Hamed, **who apparently gets no peace even in his afterlife from Fathi Yusuf**. For the reasons set forth herein, it is respectfully submitted that the motion is without merit and should be summarily denied.

I. There was no fraud

Yusuf asserts that because Mohammad Hamed placed some of his assets in a **revocable** trust in 2012, this statement made to the Court by Waleed Hamed in 2014 as to Mohammad Hamed's guarantee of the Lease was false:¹

While Defendants argue that my father's guarantee is no good, he owns 50% of the Plaza Extra Supermarket partnership that has almost \$40,000,000 in after tax dollars in escrow. He owns one-half of the millions of dollars in the partnership operations accounts. He also has multiple other assets, including stock in Plessen as well as several other corporations jointly owned with the Yusufs.

What is untrue about this statement? Nothing. As noted:

- At the time the statement was made, the three Plaza Supermarket stores were open and operating with millions of dollars in the partnership accounts, which Yusuf did not dispute then as being true, nor does he now say this statement was false when made;
- At the time the statement was made, there was almost \$40,000,000 in after tax dollars in escrow in partnership funds, which Yusuf did not dispute then as being true, nor does he now say this statement was false when made;²
- At the time the statement was made, Mohammad Hamed also had multiple other assets, including stock in Plessen as well as several other corporations jointly owned with the Yusufs. **Indeed, as to these corporations, Yusuf knew exactly the amount of stock owned by Mohammad Hamed in each corporation, as he is an officer in every one of the corporations. See Exhibit 2.**³

As to this last item, Yusuf argues that because Mohammad Hamed had transferred stock to a trust, it was no longer an asset subject to attachment by Yusuf if there was a default under the lease. **However, the Trust was a revocable trust, as per section 1.04 of the Trust**, attached hereto with **Exhibit 2**. Thus, the stock was always subject to attachment if there was a default, as it is black letter law that creditors can reach the

¹ A copy of the declaration is attached as **Exhibit 1** to assist the Court.

² Over \$8 million is still in this escrowed partnership account. See **Exhibit 2**.

³ While the Court's order seemed to indicate that Mohammad Hamed owned 50% of the Plessen stock, Yusuf always knew otherwise, so this fact is not "new" to Yusuf and is not proper grounds for a motion for reconsideration now. See V.I. R. Civ. P. 6-4.

assets of a revocable trust, under both the common law and Restatement. As recently noted in *Pandy v. Independent Bank*, 2016 CO 49, ¶ 18, 372 P.3d 1047, 1050, 2016 WL 3390491 (Co. 2016):

Although this court does not appear to have addressed this question, **numerous other courts have done so, and they generally have concluded that the assets of a revocable trust are properly subject to the claims of the settlor's creditors.** See, e.g., *In re Kester*, 339 B.R. 749, 755 (10th Cir. BAP 2006), *aff'd*, 493 F.3d 1208 (10th Cir. 2007) (noting the general rule in Kansas that during a trust settlor's lifetime, the property of a revocable trust is subject to claims of the settlor's creditors); *In re Morgenstern*, 542 B.R. 650, 656 (Bankr. D.N.H. 2015) (noting that the New Hampshire Uniform Trust Code provides that during a settlor's lifetime, the property of a revocable trust is subject to claims of the settlor's creditors); *In re Nielsen*, 526 B.R. 351, 355 (Bankr. D. Haw. 2015) (“**The common law also treats the settlor of a revocable living trust as the owner of the trust res for purposes of creditors' rights.**”); *In re Bogetti*, 349 B.R. 14, 18 (Bankr. E.D. Cal. 2006) (“California law permits a creditor of a settlor of a revocable trust to satisfy a claim against the settlor from property held by the trust.”); see also *Restatement (Third) of Trusts § 25 cmt. e (2016)* (“**[P]roperty held in [a revocable] trust is subject to the claims of creditors of the settlor ... if the same property belonging to the settlor ... would be subject to the claims of the creditors....**”). See generally Scott & Ascher on Trusts § 15.4.2, at 960 (“The courts, as well as the legislatures, have concluded, in a variety of contexts, **that the assets of a revocable trust are, in fact, subject to the claims of the settlor's creditors, both during the settlor's lifetime and after the settlor's death....**”). (Emphasis added.)

In short, the Plessen stock was always and is now subject to attachment if the Landlord's rights under the Guarantee were invoked. The same would be true of any other asset placed in the Trust.

Thus, Yusuf simply misunderstands the most basic features of trust law. There were no false statements made to the Court, as asserted by Yusuf, so the motion can be summarily denied.⁴

II. There is no risk going forward

The lease has been in place since March of 2015, with all payments of rent, taxes and sewer usage being promptly paid, totaling well in excess of \$1.5 million to

⁴ Moreover, contrary to Yusuf's claim, the guaranty was signed. See **Exhibit 2**.

date. See **Exhibit 2**. All casualty and liability insurance has been in place at all times as well. See **Exhibit 2**. Thus, the suggestion that the Landlord, Plessen Enterprises, Inc., has been exposed to any risk that would impinge on the guaranty is false. Nor is there any basis for alleging that a proper remedy here would be ex post facto voiding of the lease.

Moreover, while the guaranty remains an obligation of Mohammad Hamed's estate under the applicable law, to avoid such concerns, the three shareholders of KAC will agree to **replace** Mohammad's guarantee with their own personal guarantees if the Court so directs.

III. Conclusion

For the reasons set forth herein, it is respectfully submitted the motion be denied.

Dated: August 29, 2017



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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).



CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of August, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
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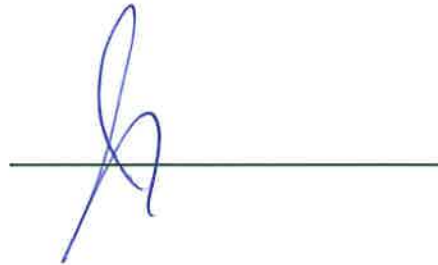
A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to be the initials 'J.M.' or similar.

EXHIBIT 1

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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HAMED, MUFEED HAMED,
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CIVIL NO. SX-12-CV-370

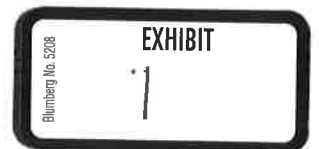
**ACTION FOR DAMAGES
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

DECLARATION OF WALEED HAMED

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an officer, director and shareholder in Plessen Enterprises, Inc. ("Plessen").
3. Plessen owns two properties on St. Thomas located at Ft. Milner and Mandela Circle as well as two properties on St. Croix at Estate Diamond and Estate Plessen.
4. Plessen is a real estate holding and leasing entity whose day-to-day




operations remain unaffected by the partnership dispute between my father, Mohammad Hamed, and Fathi Yusuf regarding the Plaza Extra Supermarkets.

5. Plessen collects substantial rent from its tenant in St. Thomas (\$36,000 monthly) and pays its bills without any problem. It has no need for excess cash and currently has over \$300,000 in excess cash in its account now.
6. The only other business opportunity currently being considered by the Board is a lease for Tibbar Energy USVI, LLC on the 140 acre Estate Diamond property on St. Croix, which the Hamed's have repeatedly told the Yusuf's is something they will agree to (or not) as the Yusuf's decide. See Group Exhibit A attached. In fact, the Yusuf's (through United Corporation) have already leased a large tract of land adjacent to Plessen's property in Estate Diamond to Tibbar.
7. Likewise, the Hamed and Yusuf shareholders in Plessen continue to agree that the Plaza West Supermarket located on Plessen's property need not pay rent.
8. The Hamed's and Yusuf's also continue to agree that the funds generated by Plessen's St. Thomas tenant can be used to pay the real property taxes for two other jointly owned corporations (Peter's Farm, Inc. and Sixteen Plus, Inc.) which do not have tenants on their own unimproved real property.

9. In fact, the Hameds have now agreed to having all checks signed by one member of each family and have executed signature cards at the bank reflecting this agreed upon requirement even though there is no court order directing such a change,
10. The Plaza West store is located on less than 5 acres of a 115 acre parcel owned by Plessen in Estate Plessen on St. Croix.
11. I promptly tendered \$230,000 of the \$460,000 removed from Plessen's account to the Court. Pursuant to the April 30th Board Resolution ratifying this withdrawal as a dividend, I have made sure the Yusuf shareholders received a stipulation so they can withdraw these funds from the Court at any time. See Exhibit B attached. Thus, 50% of all funds withdrawn to date are equally available to the Yusufs.
12. Despite the withdrawal of the \$460,000, Plessen still currently has \$300,000 in its bank account, well in excess of the amount it needs to operate.
13. While Defendants argue that my father's guarantee is no good, he owns 50% of the Plaza Extra Supermarket partnership that has almost \$40,000,000 in after tax dollars in escrow. He owns one-half of the millions of dollars in the partnership operations accounts. He also has multiple other assets, including stock in Plessen as well as several other corporations jointly owned with the Yusuf's. My father lives here in Estate Carlton, St. Croix, not in Jordan, as Defendants claim.

Dated: August 12, 2014



Waleed Hamed a/k/a Wally Hamed

EXHIBIT 2

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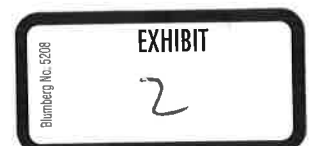
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DECLARATION OF WALEED HAMED

I, Waleed Hamed, declare, pursuant to V.I. R. CIV. P. 84, as follows:

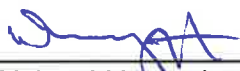
1. I am personally familiar with the facts set forth herein.
2. Fathi Yusuf has always known exactly the amount of stock owned by my father, Mohammad Hamed, in Plessen Enterprises, Sixteen Plus and Peter's Farm, as he is an officer in every one of these corporations.
3. My father's Trust was a revocable trust, as per section 1.04 of the Trust. See **Exhibit A** attached.



4. My father signed the personal guarantee of the lease. See **Exhibit B** attached.
5. According to the records filed by John Gaffney, there is over \$8 million still in this escrowed partnership account.
6. The lease has been in place since March of 2015, with all payments of rent, taxes and sewer usage being promptly paid, totaling well in excess of \$1.5 million to date. Insurance has been maintained as well.

I declare under penalty of perjury that the foregoing is true and correct, executed on this

28 day of August, 2017.



Waleed Hamed

THE MOHAMMAD A. HAMED LIVING TRUST

September 12, 2012



M-H

Section 1.04 Powers Reserved by Me as Grantor

As Grantor, I retain the powers set forth in this Section in addition to any powers that I reserve in other provisions of this agreement.

Mohammad A. Hamed Living Trust
1-2

M-H



(a) Action on Behalf of the Trust

Whenever I am serving as Trustee, I may act for and conduct business on behalf of the trust without the consent of any other Trustee.

(b) Amendment, Restatement, or Revocation

I may amend, restate, or revoke this agreement, in whole or in part, for any purpose. Any amendment, restatement, or revocation must be made in writing and delivered to the then-serving Trustee.

An agent acting under a power of attorney may exercise the powers in this subsection to the extent the power of attorney so authorized. The agent's good-faith acts or omissions are conclusive on all persons interested in the trust and the agent will not be liable for the consequences.

(c) Addition or Removal of Trust Property

I may add property to the trust and may remove any property from the trust at any time. Community property removed from the trust will retain its character as community property.

(d) Control of Income and Principal Distributions

I retain the right to control the distribution of income and principal from the trust. I may direct the Trustee to distribute as much of the net income and principal of the trust property as I deem advisable to me or to other persons or entities. The Trustee may distribute the net income and principal to me or for my unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of the trust.

(e) Approval of Investment Decisions

I reserve the absolute right to review and change the Trustee's investment decisions; however, the Trustee is not required to seek my approval before making investment decisions.

FIRST AMENDMENT TO LEASE

WHEREAS, the undersigned parties to that COMMERCIAL LEASE ("Lease") between Plessen Enterprises, Inc. and KAC357, Inc., executed by Mohammad Hamad on April 30, 2014, wish, pursuant to Paragraph 33.0(f) thereof, to amend that Lease, said lease is hereby amended on this 11th day of June, 2014, as follows:

1. **Personal Guarantee Added.** With regard to Paragraph 2.3.4, it is hereby amended to add a final sentence (underlined) as follows:

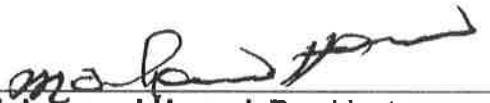
2.3.4 Commencement of Possession and. Payment of Rent: The Parties recognize that there is currently a partnership between Fathi Yusuf and Mohammad Hamed operating a grocery business in the Demised Premises. The Tenant shall not be granted possession of the Premises so long as this partnership is in possession of the Premises. Likewise, rent shall not be due until the Tenant has possession of the Premises. If for any reason said rent is not paid by KAC357, Inc. and remains unpaid 60 days after written demand, KAC357, Inc. has arranged for the undersigned Mohammad Hamed, as a personal guarantor, and he shall personally pay the rent, and shall be personally liable for any and all unpaid rents hereunder.

2. **Insurance Increased.** With regard to Paragraph 16.1.2, it is hereby amended as follows:


16.1.2 All Risks of Physical Loss or Damage Insurance ("Property Insurance") on the Improvements on the Premises to insure against loss or damage by fire, earthquakes and against other risks now embraced by so called "ALL RISKS" coverage, in amounts sufficient to prevent Landlord or Tenant from becoming a co-insurer of any partial loss under the terms of the applicable policies, but in no event less than \$7,000,000.00. Said amount shall be increased as needed in the future to comply with the need to avoid the landlord or the tenant from becoming a co-insurer. Notwithstanding the forgoing, the Tenant shall not be required to maintain coverage for the peril of windstorm.

3. All other terms, provisions and covenants will remain unchanged.

4. The amendments herein shall be effective forthwith, subject to the provisions of Paragraph 2.3.4 of the lease.



Mohammad Hamed, President
for Plessen Enterprises, Inc.



Waleed Hamed
for KAC357, Inc.

I do hereby undertake and agree to the personal guarantee of the rent due under the lease as set forth in the above amendment.



Mohammad Hamed
as Guarantor