

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,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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 MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

**OPPOSITION TO HAMED'S MOTION AS TO HIS CLAIMS NOS. H-38 AND H-123:
PAYMENTS TO DUDLEY, TOPPER AND FEUERZEIG LAW FIRM**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel,
respectfully submits this Opposition to "Hamed's Motion As To His Claims Nos. H-38 and H-

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

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123: Payments to Dudley, Topper and Feuerzeig Law Firm” filed on January 9, 2018 (the “Motion”). The Motion should be summarily denied because it is premised on demonstrably false representations of fact, fails to engage in a line by line analysis of the detailed time entries in the invoices or billing records submitted by Dudley, Topper and Feuerzeig, LLP (“DTF”) to Yusuf, as the Liquidating Partner¹, and it ignores this Court’s Order denying Hamed’s Motion to Disqualify DTF, which concluded that “it is more appropriate to resolve billing issues following submission of the Master’s Report and Recommendation” See August 5, 2016 Order denying Hamed’s Motion to Disqualify DTF at p. 3-4, attached as Exhibit 3 to the Motion.

Incredibly, Hamed makes the following false statement to the Master:

It is also uncontested that, because of Hamed’s *expressly* stated concerns about Yusuf’s lawyer also representing the Partnership, to obtain that Order, DTF **explicitly represented** to the Court **prior** to the Court’s issuing its Final Wind Up Order, **that if Yusuf were appointed to be the Liquidating Partner, DTF would not be paid for any services provided with Partnership funds** (see **Exhibit 1** at p. 13).” (Emphasis in original).

See Motion at p. 2. Hamed can point to absolutely no such representation by Yusuf or DTF. In fact, this same misrepresentation was totally debunked almost two years ago in Yusuf’s Reply to Plaintiff’s Notice of Objection to Liquidating Partner’s Sixth Bi-Monthly Report filed on February 24, 2016. A copy of that Reply is attached as **Exhibit 1**. By reviewing pages 4-7 of that Reply and the exhibits identified on those pages, it is readily apparent that the foregoing representation

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¹ Unless otherwise defined in this Opposition, all capitalized terms shall have the same meaning as provided in this Court’s Final Wind Up Plan Of the Plaza Extra Partnership dated January 7, 2015 (the “Plan”).

is demonstrably false. Indeed, counsel for Hamed should be admonished for resurrecting and regurgitating the same misrepresentation made almost two years ago in this case.

Although counsel for Hamed represented to the Master in an email dated January 23, 2016, that “a line by line analysis of the [DTF] billing would have to be done if DTF could charge the partnership for such services,” he has never performed this line by line analysis to date. Attached as **Exhibit 2** is DTF’s Brief in Opposition to Hamed’s Motion to Disqualify Counsel filed on February 17, 2016. Counsel for Hamed’s January 23, 2016² email is attached to that Opposition as Exhibit A. In particular, *see* page 6-9 of the Opposition for a discussion of the propriety of DTF’s billing to the Liquidating Partner and the payment of that billing from Partnership funds.

In the Motion, Hamed eskews the line by line analysis that he claimed he was prepared to provide the Court for vague, conclusory assertions that all of the work done by DTF in connection with preparing bi-monthly reports, which the Plan required the Liquidating Partner to submit, should not be charged to the Partnership because the Liquidating Partner allegedly used these reports “as a tool . . . to allocate Partnership assets to Yusuf or to approve the disputed accounting entries in favor of Yusuf, to the direct, *specific disadvantage* of the Partnership.” *See* Motion at p. 3 (emphasis in original). The first example of this “tooling” involves the Liquidating Partner’s refusal to accede to Hamed’s quixotic claim that Parcel 2-4 Rem. Estate Charlotte Amalie somehow constitutes Partnership Assets despite the fact that since August of 2006, the record owner was Plessen Enterprises, Inc. and since March 24, 2009, the record owner has been United Corporation pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 signed by

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² In that Opposition, the email is incorrectly dated January 23, 2014 instead of January 23, 2016.

Mohammad Hamed as President of Plessen Enterprises, Inc. A copy of Deed In Lieu Of Foreclosure is attached as **Exhibit 3**.

Again, without providing any line by line analysis, Hamed attacks a “sampling of other similar Yusuf – only activities charged to the Partnership” including the “matching” payments identified in subparagraphs a and b at page 4 and 5 of the Motion. Hamed claims: “This type of reimbursement had not been done in the past and was made without documentation substantiating an agreement by the Partnership to pay Yusuf or the United Corporation for . . . [these items].” This is simply not true as shown in Defendant’s Motion to Strike Hamed Amended Claim Nos. 4, 5, and 6 filed on January 9, 2018, which is incorporated herein by this reference. That motion and its exhibits, particularly Yusuf’s declaration attached thereto as Exhibit 3, clearly show that these matching payments were completely consistent with the formula used by the Partners to determine the rent to be paid to United for the Partnership’s use and occupancy of Plaza Extra East from May 2004 forward. Under that formula, total rent payments including the real estate taxes made to the landlord for Plaza Extra Tutu Park for a given year are divided by sales for that year at that store to determine a percentage. That percentage is then applied to the sales at Plaza Extra East to determine the rent to be paid to United for that year. Accordingly, every time the landlord for Plaza Extra Tutu Park was paid additional amounts for rent, including real estate taxes, this formula needed to be applied to determine the “matching” payment due to United.³

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³ This formula for making matching payments to United was noted in the Liquidating Partner’s Fourth Bi-Monthly Report (at n. 4) filed on October 1, 2015, Fifth Bi-Monthly Report (at n. 4) filed on November 30, 2015, and Sixth Bi-Monthly Report (at n. 5) filed on February 1, 2016, without any response from Hamed until his Notice Of Objection To Liquidating Partner’s Sixth Bi-Monthly Report filed on February 8, 2016.

At subparagraph c of the Motion, Hamed suggests that DTF should be denied any fees concerning its preparation of the Sixth Bi-Monthly report due to its involvement in “[s]ubmitting financials accompanying the 6th Bi-Monthly Report, which indicated that \$186,819.33 was due/from to Yusuf, a figure which came out of thin air.” This unsupported claim simply makes no sense and shows that Hamed and his counsel do not understand the financial information provided by John Gaffney, which accompanied each of the Liquidating Partner’s bi-monthly reports. *See* the declaration of John Gaffney attached as **Exhibit 4**, particularly paragraphs 5-6.⁴

Section 5 of the Plan obligated the Liquidating Partner to report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts. Section 4 of the Plan authorized the Liquidating Partner to “engage legal, accounting and other professional services” Yusuf, as the Liquidating Partner, engaged DTF to, among other things, prepare the bi-monthly reports required by the Plan. Nothing that Hamed has shown the Master establishes that any amount included in the invoices paid by the Liquidating Partner was not properly charged to the Partnership. Hamed’s objection that the Liquidating Partner should have engaged “independent” or “outside” legal counsel, *see* Motion at n. 5, has already been overruled by this Court when it denied Hamed’s Motion to Disqualify DTF. Hamed’s conjecture that if Yusuf had hired counsel other than DTF, then his bi-monthly reports would have somehow been different is simply naked speculation. Nothing that Hamed has presented to the Master establishes that the Liquidating Partner’s decision to pay the disputed invoices in full was not reasonable under the circumstances.

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⁴ This same declaration was attached as Exhibit 6 to Yusuf’s Opposition to Motion to Remove Liquidating Partner filed on February 17, 2016.

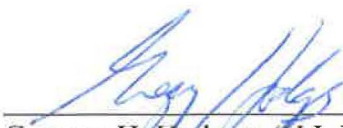
For all of the foregoing reasons, Yusuf respectfully requests the Master to deny the Motion and provide him with such further relief as is just and proper under the circumstances.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 17, 2018

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2018, I caused the foregoing **Opposition To Hamed's Motion As To His Claims Nos. H-38 And H-123: Payments To Dudley, Topper And Feuerzeig Law Firm**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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EXHIBIT 1

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Page 2

December 4, 2015, with accompanying calculation, attached as **Exhibit 1**. On the same date, TPM sent a letter to Mr. Yusuf seeking payment or reimbursement for the payment of real estate taxes. *See Exhibit 2*. Pursuant to an email dated December 9, 2015 to TPM's counsel, a copy of which is attached as **Exhibit 3**, TPM's claim that percentage rents were due from the Partnership or United was rejected, but the claim seeking reimbursement for the payment for real estate taxes was approved in full. *See* the second paragraph of the email dated December 9, 2015 (**Exhibit 3**) along with the email from John Gaffney to Judge Edgar Ross dated December 6, 2015, which was included as an attachment to the December 9, 2015 email.

As Yusuf has repeatedly pointed out, "[i]f the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra-East store was pegged to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015." *See* Liquidating Partner's Fifth Bi-Monthly Report filed on November 30, 2015 at n. 4. *See also*, the Liquidating Partner's Fourth Bi-Monthly Report filed on October 1, 2015 at n. 4. Hamed has never disputed that the rent for the Plaza Extra-East store was pegged by formula to the rent for the Plaza Extra-Tutu Park store. Although TPM's percentage rent claim was initially rejected, after further consultation with the Master, the claim was paid via a check dated December 17, 2015 co-signed by the Master and Yusuf. *See Exhibit 4*. Since the payment was effectively made on behalf of Hamed, a check to Yusuf dated December 17, 2015 in the same amount of

\$41,462.28 was also co-signed by the Master and Yusuf at the same time. *See* Exhibit 4.² Clearly, this matching payment was not a “unilateral withdrawal,” as claimed by Hamed, since it was approved and co-signed by the Master.

Hamed next lauds Yusuf for the prompt payment of the real property taxes for Plaza Extra-Tutu Park for 2012 and 2013 in the amount of \$79,009.87, but then professes outrage because “Yusuf then gave himself (presumably paid to United) a **larger distribution, which totaled \$89,443.92.**” *See* Objection at p. 2 (emphasis in original). In n. 1 to the Objection, Hamed suggests that the \$10,433.05 difference in the “matching” check was completely arbitrary. Yusuf submits that this is an intentional effort to mislead this Court since the exact amount of that difference was reflected in the calculations attached to John Gaffney’s December 6, 2015 email to Judge Ross, which was also provided to counsel for Hamed on December 9, 2015. *See* Exhibit 3. Attached as **Exhibits 5** and **6** are the checks dated December 8, 2015 in the amount of \$79,009.87 payable to TPM and \$89,442.92 payable to United. As usual, these checks were co-signed by the Master and Yusuf.

Hamed next complains about the \$46,990.48 check that was issued to United when TPM was paid \$43,069.36 for 2014 real property taxes. *See* checks dated October 6, 2015 in the amount of \$43,069.36 payable to TPM and in the amount of \$46,990.48 payable to United attached as **Exhibits 7** and **8**. Once again, these checks were co-signed by the Master and Yusuf. Once again, the reason the check to United is for a larger sum than the check to TPM is

² As pointed out in the Fourth, Fifth, and Sixth Bi-Monthly Reports of the Liquidating Partner, pursuant to the express provisions of the Wind Up Order (p. 5), the Plan (§ 8(2)), and the Master’s Order of April 30, 2015 (p. 2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to TPM when Hamed assumed sole ownership and control of the Tutu Park store as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition of the valid transfer of the Tutu Park store. Had those releases been timely provided, TPM no doubt would have sought payment of the percentage rents directly from Hamed.

the simple result of the application of the formula historically used to establish the rent for Plaza Extra-East. Since the revenues for Plaza Extra-East were higher than the revenues for Plaza Extra-Tutu Park in 2014, the percentage rent due United is necessarily higher. The Master clearly understood this formula and agreed that United was entitled to appropriate matching checks when TPM was paid additional rent in the form of real property taxes or percentage rents. There was no unilateral action on the part of Yusuf and certainly no looting, as claimed by Hamed without any evidence whatsoever.

II. Legal and Accounting Fees.

Hamed states that “[o]n December 17, 2015, the Liquidating Partner apparently paid his on personal lawyer, DTF, \$57,605 for work done supposedly for the partnership since **February of 2015** (without any notice or court approval).” See Objection at p. 3 (emphasis in original). In fact, Dudley, Topper and Feuerzeig, LLP (“DTF”) was paid by a check co-signed by the Master and Yusuf on December 29, 2015. See check attached as **Exhibit 9**. Hamed’s claim that DTF was paid without any notice to him is completely belied by Exhibit 1(B) to the Objection, which is an email from the Master to counsel for Hamed on December 24, 2015 forwarding counsel for Yusuf’s email of the same date requesting that fees totaling \$57,605 be paid to DTF from Partnership funds. Apparently, counsel for Hamed chose to wait approximately one month before first registering his objection to the payment of such fees. See Exhibit 1(C) to the Objection consisting of an email from Hamed’s counsel dated January 23, 2016 to the Master.

Hamed next suggests that the parties agreed “that their respective lawyers would not be paid from partnership funds” See Objection at p. 3. Nothing Hamed has shown the Court

establishes any such agreement. In his “Comments Re Proposed Winding Up Order” filed on October 21, 2014 and attached as Exhibit 2 to the Objection (the “Comments”), Hamed made the following observations:

The Court’s final Order needs to clarify that Yusuf’s litigation counsel and expert witnesses (such as his accounting firm) cannot not [sic] be paid at all from Plaza Extra funds. Beyond the ethical conflict - which would strictly prohibit this dual representation as counsel already represents the major claimant, United – if additional legal work or accounting work is necessary, it should be dealt with solely by unaligned counsel and accountants responsive to the Master, not to a litigating party. Plaintiff asks that the final Order be very clear in this regard, which he believes Yusuf will agree to based on conversations to date.

See Exhibit 2 to the Objection at p. 9-10 (emphasis in original).

Hamed suggests that Yusuf’s “Response to Hamed’s Comments Concerning the Court’s Proposed Wind-Up Plan” filed on October 28, 2014 (the “Response”), three pages of which are attached as Exhibit 3 to the Objection, reflects Yusuf’s agreement with counsel for Hamed’s comments quoted above. Yusuf’s Response does no such thing. Hamed merely quotes from a single sentence in the fifteen page Response as follows:

The Order needs no clarification because it does not propose that Yusuf’s counsel and accounting experts would be paid with partnership funds.

See Exhibit 3 to the Objection at p. 13. What Hamed fails to point out, however, is that the “Order” is defined in the first paragraph of the Response as “this Court’s Order [Soliciting Comments, Objections and Recommendations] dated October 7, 2014 (the “Order”),” which provided on its first page as follows:

In this presentation, the Court addresses only the portions of the competing plans of Plaintiff and Defendants where those proposed plans differ from each other. All components and terms of the

competing plans were the Parties do agree are not addressed in this proposed plan and should be considered as adopted in their agreed form in this proposed plan and tentatively approved by the Court.

A review of the Order reflects that it contains no provisions relating to § 4 of the Plan dealing with the “powers of the Liquidating Partner,” because that language in the Partners’ competing plans was not controversial and was effectively adopted by the Court. Indeed, § 4 is also not mentioned in this Court’s “Order Adopting Final Wind Up Plan” dated January 7, 2015 (the “Wind Up Order”). Section 4 of the Plan provides, in pertinent part, as follows:

Pursuant to the Act, the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnership assets, engage legal, accounting, and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle Debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners, pursuant to agreement of the Partners or by order of the Court.

Obviously, the Wind Up Order did not contain the “clarification” urged by Hamed in his Comments. Indeed, in Exhibit 3 to the Objection, Hamed conveniently omits page 14 of Yusuf’s Response. For the Court’s ready reference, the first and last three pages of Yusuf’s Response are attached as Exhibit 10. While Hamed seeks to focus this Court’s attention on the first sentence of the last paragraph on page 13 of Yusuf’s Response, Hamed also seeks to divert this Court’s attention from the remaining provisions of that paragraph by omitting page 14 from his Exhibit 3. The language of Yusuf’s Response that Hamed seeks to ignore is the following:

It should be pointed out, however, that Section 5 of Hamed’s “combined” order attached as Exhibit 3 to the Hamed Comments obligates the Liquidating Partner to “prepare and file all required federal and territorial tax returns . . . [and to] provide a Partnership accounting. **Complying with these obligations clearly would require professional assistance, which should be paid from**

partnership funds. Yusuf submits that the Liquidating Partner should not be obligated to provide a Partnership accounting since Step 6 of the Court's proposed plan requires Hamed and Yusuf to submit to the Master a proposed accounting and distribution plan within 45 days after the Liquidating Partner completes liquidation. (Emphasis supplied)³

Clearly, the Wind Up Order and Plan contemplated that some of the duties imposed on the Liquidating Partner would require professional assistance. The Plan expressly authorized the Liquidating Partner to "engage legal, accounting and other professional services . . . ," which should be paid from Partnership funds. Hamed's unsupported assertion that DTF is conflicted because it is purportedly representing Yusuf, United and the Partnership simultaneously is based on a false premise that representing Yusuf, as the Liquidating Partner, is the equivalent of representing the now dissolved Partnership. As Yusuf has explained in his Opposition to Hamed's Motion to Disqualify DTF, which is incorporated by this reference, Hamed's conflict assertion is baseless since DTF does not purport to represent the Partnership. Yusuf also refers this Court to his Opposition to Hamed's Motion to Remove Yusuf as Liquidating Partner, which explains, among other things, that while the disputed parcel of land may have been acquired with Partnership funds, it has not been a Partnership asset since the Partners chose to take title to the property in 2006 in the name of their jointly owned company, Plessen Enterprises, Inc.

Hamed next complains that Yusuf has "abused his position as the Liquidating Partner in paying John Gaffney." See Objection at p. 5. While it is true that the Partnership has paid 100% of Mr. Gaffney's salary, Hamed has utterly failed to establish the unfairness of this

³ Contrary to Yusuf's suggestion in his Response, the Plan left intact the Liquidating Partner's obligation to provide a Partnership accounting.

arrangement. Since January of 2015, Mr. Gaffney has easily worked 60- 70 hours per week on Partnership matters. While he may have worked to some extent on non-Partnership matters with respect to Plaza Extra-East, it is also undisputed that he has spent an extensive amount of time meeting with and compiling information for Hamed's accountants. All of the time spent with Hamed's accountants or compiling information in response to their 81 page request for information clearly benefits Hamed, as opposed to the Partnership, yet the Partnership pays for Mr. Gaffney's time in this regard. In any event, since January of 2015, Mr. Gaffney has effectively worked full time for the Partnership and should be paid 100% by the Partnership. Moreover, Hamed overlooks the fact that Mr. Gaffney's transportation expenses are paid by Plaza Extra-East, not the Partnership. Given the extraordinary amount of work that Mr. Gaffney has had to perform singlehandedly on behalf of the Partnership, when much of that work was formerly done by an accounting staff, it is truly remarkable that Hamed begrudges a \$3,000 bonus, which Yusuf, as Liquidating Partner, and the Master obviously thought Mr. Gaffney deserved when they co-signed a check for that amount on December 17, 2015. *See* Exhibit 4.

III. Conclusion

In his first of two "final comments," Hamed suggests that the delivery of voluminous "new accounting records" continues to impair his completion of an "accounting verification." The accounting records Hamed mentions are not "new" but rather simply updated information that Yusuf, as Liquidating Partner, has regularly provided in connection with his bi-monthly reports. While Yusuf argued that Hamed's requested extension of the stipulated deadline of March 3, 2016 for the Partners to submit their competing accounting and distribution plans is

too long, *see* email exchange attached as **Exhibit 11**, the Master has now decided to extend the deadline to May 2, 2016.

In his last "final comment", Hamed claims Yusuf has "looted" Partnership assets "now identified to be in excess of \$650,000 . . ." *See* Objection at p. 6. Of course, Hamed does not bother to explain how he arrived at a figure "in excess of \$650,000." More importantly, Hamed completely ignores that each and every disbursement about which he complains was approved and co-signed by the Master.

In short, Yusuf has properly performed all of the duties imposed on him as the Liquidating Partner under the Plan and he has properly accounted for all of his actions as the Liquidating Partner in his bi-monthly reports. Accordingly, Yusuf respectfully requests this Court to overrule Hamed's Objection and to provide such further relief as is just and proper under the circumstances.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: February 24, 2016

By: 

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Attorneys for Fathi Yusuf, the Liquidating Partner

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Page 10

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2016, I caused the foregoing **Response To Plaintiff's Notice Of Objection To Liquidating Partner's Sixth Bi-Monthly Report** to be served upon the following via e-mail:

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The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



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December 4, 2015

Mr. Fathi Yusuf
United Corporation s/b/a Plaza Extra
C/O Honorable Edgar J. Ross
St. Croix, USVI

RE: 2014-2015 Percentage Rent Billing

Dear Mr. Yusuf,

In accordance with Section 2.04 of the Lease Agreement dated October 29, 1991, attached please find an invoice for percentage rent due to Tutu Park, Ltd. for the period November 1, 2014 through October 31, 2015. This calculation was prepared based on the Management Statement provided to us for the period November 1, 2014 to April 30, 2015. A separate statement was provided to us for the period May 1, 2015 through October 31, 2015.

By our calculation, there is a total due in the amount of \$41,462.28, a significant decrease from the prior year of \$73,295.06.

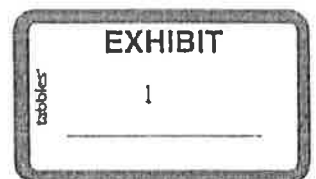
Please let me know what additional information and documentation you may need.

Yours very truly,

A handwritten signature in black ink, appearing to read "Donna Liska", is written over the typed name and title.

Donna Liska
General Manager

DWL/
Enclosure





4-Dec-15

United Corporation d/b/a Plaza Extra
PERCENTAGE RENT INVOICE

Calculated November 1, 2014 to October 31, 2015

	11/14-4/30/15	05/01/15-10/31/15	Total
Reported Sales	14,961,859.81	12,990,628.37	27,952,488.18
Less:			
Credit Card Merchant Fees	(114,963.24)	(73,372.61)	<u>(188,335.85)</u>
			27,764,152.33
Less:			
Sales Exclusion per Lease			<u>(25,000,000.00)</u>
Balance subject to Percentage Rent			2,764,152.33
			1.50%
Percentage Rent due to Tutu Park, Ltd.			<u>\$ 41,462.28</u>



December 4, 2015

Mr. Fathi Yusuf
United Corporation s/b/a Plaza Extra
C/O Honorable Edgar J. Ross
St. Croix, USVI

RE: Tutu Park Real Estate Taxes

Dear Mr. Yusuf,

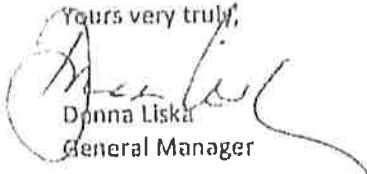
As we have previously advised, Tutu Park, Ltd. ("TPL") has enjoyed an exemption for the assessed value of the property for real estate taxes under their EDC exemption. This benefit has been passed along to our tenants and the real estate taxes paid have been limited to the underlying value of the land. As we communicated to tenants in the 2012 and 2013 Tax Recovery Reconciliations, the EDC exemption for the assessed values expired on December 31, 2011.

In August 2015, Tax Assessor retroactively billed TPL for the assessed value for 2012 and 2013. In November 2015, TPL entered in to an Installment agreement with the Office of the Lieutenant Governor for payment of the 2012 and 2013 real estate property tax. TPL paid a down payment of \$147,626.82 on the total outstanding bills of \$590,507.26. The balance of \$442,880.44 is payable over thirty-six (36) months commencing December 15, 2015 at the rate of \$12,302.23 per month. There is not interest or penalty included in the installment agreements.

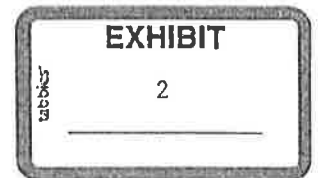
Attached is the calculation of the United Corporation portion of the down payment and the December 2015 installment amount that will be paid by December 15, 2015.

Tutu Park, Ltd. has filed a Tax Appeal with the Tax Assessor's Office and also filed a lawsuit to challenge the assessed values and will be seeking all possible remedies for the benefit of our tenants. We will keep you apprised of our progress and any reduction or refund of real estate taxes will be returned pro-rata to our Tenants. Please let me know what additional information and documentation you may need.

Yours very truly,


Donna Liska
General Manager

DWL/
Enclosure



16 FEB '01 11:23:37

Tutu Park Mall
**2012 and 2013 TAX RECOVERY
 TAX BILL**

Tenant: PLAZA EXTRA

Billing Date: December 4, 2015

The total demised premises of Tutu Park Mall is 456,601 square feet and the total square footage of Plaza Extra is 61,086 sq.ft. which would allocate 13.38% of the tax billing to Plaza Extra.

Real Estate Taxes	Down payment		<u>2012 & 2013</u>	<u>Paid</u> <u>Deposit</u>	<u>Due</u> <u>Monthly</u>
			590,507.26	147,626.82	12,302.23
<u>Mall Square Footage</u>					
Kmart	106,585				
Plaza Extra	61,086	13.38 %	<u>79,009.87</u>	<u>19,752.47</u>	<u>1,646.04</u>
Western Auto	22,400				
Merchant's Bank	12,000				
McDonald's	3,000				
Office Max Bldg.	63,500				
Mall	177,000				
My Brother's Workshop	11,030				
TOTAL	<u>456,601</u>				

Plaza Extra Share of deposit
 December 2015 installment

\$ 19,752.47
 1,646.04
\$ 21,398.51

Gregory H. Hodges

From: Gregory H. Hodges
Sent: Wednesday, December 09, 2015 4:11 PM
To: 'Steve Russell'
Cc: 'Edgar Ross'; Joel Holt; Fathi Yusuf; 'Daryl Dodson'
Subject: United Corp - Tutu Park location
Attachments: 2012-2013 prop tax recovery 12-4-15.pdf; 2014-5PercentRentInvoice.pdf; real estate taxes re: United store at Tutu Park Mall; FW: Add'l Rent Adjustment to Plaza East

Steve,

Please allow this email to serve as Mr. Yusuf's and United Corporation's response to your attached letters. As to the letter concerning the percentage rents claimed due, your supporting data clearly shows that as of April 30, 2015 the reported sales were only \$14,961,859, more than \$10M shy of the \$25M threshold before percentage rent becomes due. As you know from the Orders of Judge Brady and Judge Ross previously provided to you, after April 30, 2015, the Hameds and/or KAC357, Inc. have exercised exclusive possession and control of the leased premises. As stated in my attached email of 9/22/15, since 5/1/15, your client has been "leasing the premises formerly occupied by the Partnership to the Hameds or KAC357, Inc." under some occupancy agreement that neither your client nor Joel's clients have seen fit to share with us. In any event, if the sales generated by the Hameds or KAC357, Inc. after April 30, 2015 give rise to any claim of percentage rents due to your client, I submit your client must look to the Hameds or KAC357, Inc. for such additional rent. Mr. Yusuf, as the Liquidating Partner and an officer of United Corporation, rejects your client's claim that any percentage rents are due from the Partnership or United.

As to your attached letter seeking reimbursement for the payment of real estate taxes, as reflected in the attached email from John Gaffney to Judge Ross, Mr. Yusuf has authorized the payment of the entire allocation for 2012 and 2013 taxes (\$79,009.87), instead of paying installments over a 36 month period, since the Partnership wind up needs to be promptly concluded.

Although the failure of your client to deliver the releases required by Judge Brady's Order of 1/7/15, Section 8(2) of his Plan, and Judge Ross' Order of 4/30/15 has been a frequently raised issue, to date, there has been no discernable progress in the resolution of that issue. Would you please explain exactly what is holding up the delivery of the releases so that Mr. Yusuf's actions can be guided accordingly?

Regards,

Greg

Gregory H. Hodges

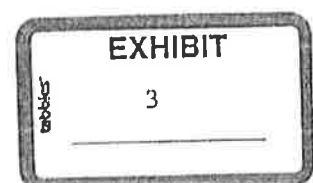
Dudley, Topper and Feuerzeig, LLP

Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802

Direct: (340) 715-4405

Fax: (340) 715-4400



Web: www.DTFLaw.com <<http://www.dflaw.com/>>

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From: Steve Russell [<mailto:steve@mdrvi.com> <<mailto:steve@mdrvi.com>>]
Sent: Friday, December 04, 2015 11:02 AM
To: Judge Edgar Ross; Joel Holt; Gregory H. Hodges
Cc: Daryl Dodson
Subject: United Corp - Tutu Park location

Good morning. Attached please find explanatory cover letters and invoices for 2012-2013 property tax charges, and percentage rent due for the period 11/1/14 to 10/31/15. All best, Steve

--
Charles S. Russell, Jr.

Moore Dodson & Russell, P.C.

P.O. Box 310

St. Thomas, VI 00804

Tel: (340) 777 5490

Fax: (340) 777-5498

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Gregory H. Hodges

From: Gregory H. Hodges
Sent: Monday, December 07, 2015 5:36 PM
To: Gregory H. Hodges
Subject: FW: Add'l Rent Adjustment to Plaza East
Attachments: 2015-1205 Analysis of Rent - East.pdf

From: John Gaffney (<mailto:johngaffney@tampabay.rr.com>)
Sent: Sunday, December 06, 2015 2:36 PM
To: Edgar Ross (edgarrossjudge@hotmail.com)
Cc: 'fathiyusuf@yahoo.com'; 'Mike Yusuf'
Subject: Add'l Rent Adjustment to Plaza East

Dear Judge Ross:

Mr. Yusuf requested that I send this file to you.

As you know the Tutu Park Mall invoiced United Corporation for their portion of real estate taxes attributable to years 2012 and 2013. Total taxes are \$590,507.26 of which the Mall paid \$147,626.82 up front. They entered into an installment loan agreement payable over a period of 36 months for the remainder of \$442,880.44.

The total allocation to United Corporation for 2012 and 2013 is \$79,009.87. St. Thomas revenues for the same period totaled \$61,696,473. Therefore the percentage of real estate taxes to revenues is 12.8%. Since Plaza East rent is based upon St. Thomas rents, the total due to United Corp for 2012 and 2013 is \$89,442.92.

Calculation details are included in the attached file. Since payment by United Corporation over the next 36 months is impractical, we propose to pay the entire amounts due.

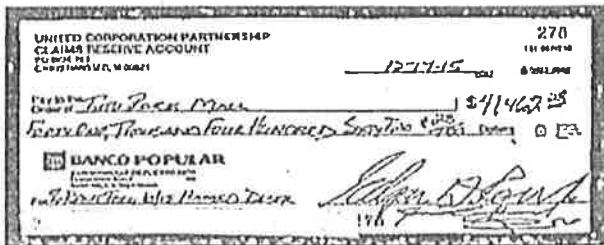
Regards,

John Gaffney

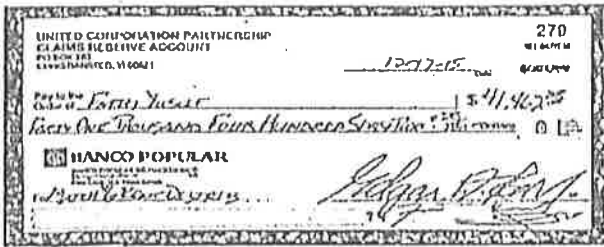
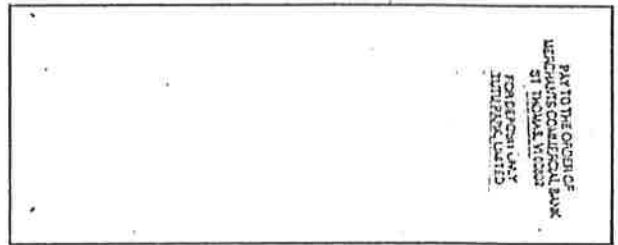
UNITED CORPORATION
 ANALYSIS OF RENT - PLAZA EAST
 12/5/2015

	<u>Total</u>	<u>Ratio</u>	<u>Allocation</u>
Tutu Park Mall:			
2012 & 2013 R/E Taxes	<u>590,507.26</u>	13.38%	<u>79,009.87</u>
 Plaza Extra St. Thomas:			
2012 Revenue	31,255,905.36		
2013 Revenue	<u>30,440,567.77</u>		
	<u>61,696,473.13</u>	0.128%	<u>79,009.87</u>
 Plaza Extra East:			
2012 Revenue	35,502,694.18		
2013 Revenue	<u>34,340,636.50</u>		
	<u>69,843,330.68</u>	0.128%	<u>89,442.92</u>

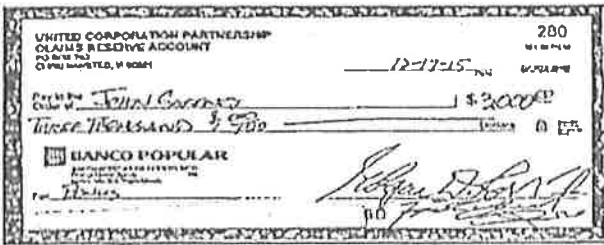
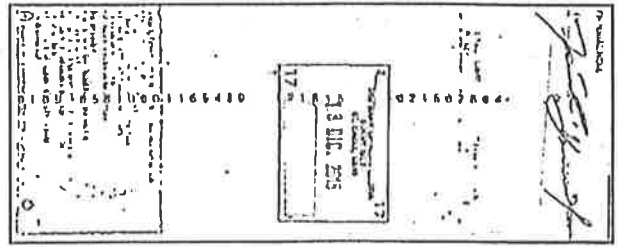
We certify that these are true copies of your checks and other items paid during this statement.



12/24/15 41,462.28



12/21/15 41,462.28



12/21/15 3,000.00

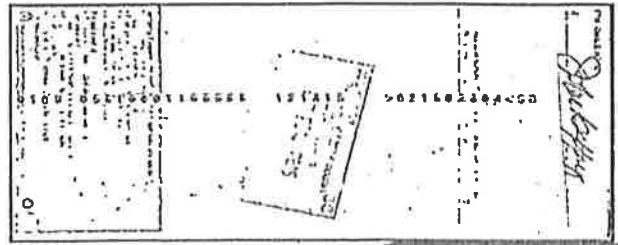


EXHIBIT
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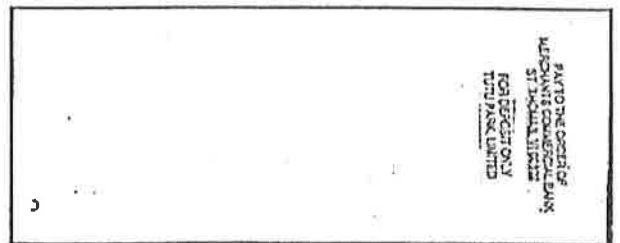
UNITED CORPORATION PARTNERSHIP

PAGE 3

We certify that these are true copies of your checks and other items paid during this statement.



12/14/15 79,009.87



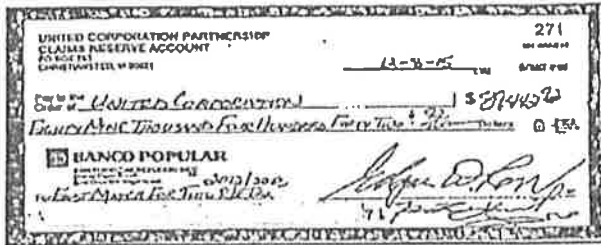
FOR DEPOSIT ONLY
MICR LINE
DO NOT WRITE
ON THIS CHECK

EXHIBIT

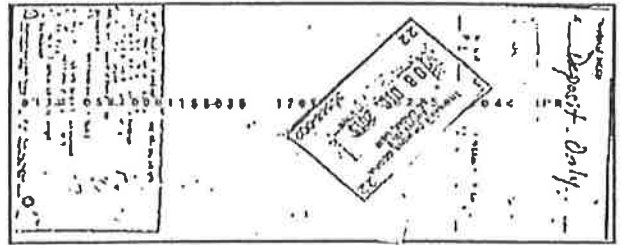
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12/09/15 89,442.92





UNITED CORPORATION PARTNERSHIP

PAGE 4

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10/13/15 43,069.36

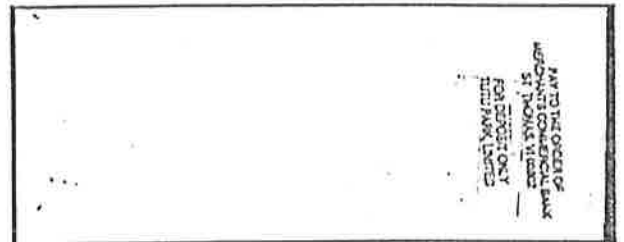


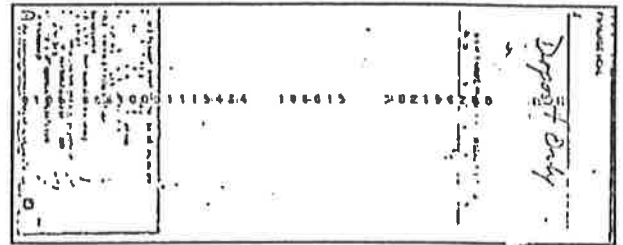
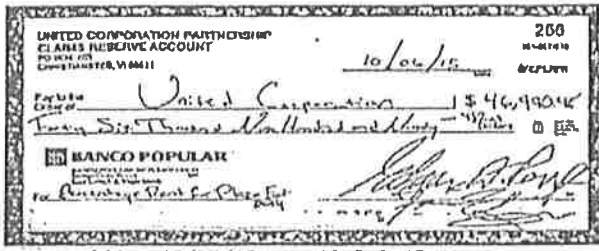
EXHIBIT
7

16 FEB 1957

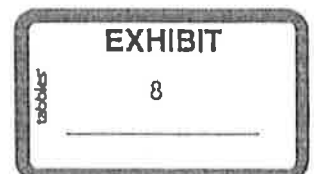


UNITED CORPORATION PARTNERSHIP

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10/07/15 46,990.48

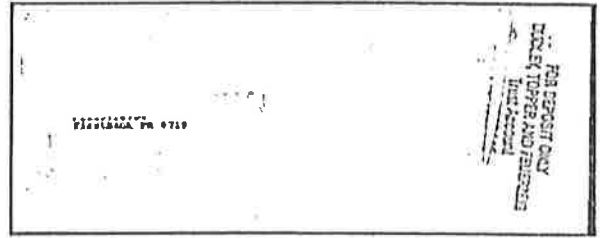




UNITED CORPORATION PARTNERSHIP

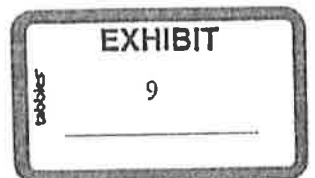
PAGE 3

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01/06/16 57,605.00

21



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

MOHAMMAD HAMED, by his
authorized agent WALEED HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

FATHI YUSUF'S RESPONSE TO HAMED'S COMMENTS CONCERNING THE
COURT'S PROPOSED WIND-UP PLAN

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits the following response to "Hamed's Comments Re Proposed Winding Up Order" ("Hamed Comments"), pursuant to this Court's Order dated October 7, 2014 (the "Order").

The Hamed Comments are very significant insofar as he concedes for the first time that bidding by Hamed and Yusuf is an appropriate method of liquidating the assets of the partnership. See Hamed Comments, p. 8-9 and Exhibit 4 to the Hamed Comments, Section 8(1), (2), (3), and (5). Although the Hamed Comments suggest that the use of bidding as a liquidation tool should be limited to the assets of Plaza Extra-Tutu Park and the Plaza Extra trade name, the logic of this position is that the bidding method of liquidation should be extended to cover all partnership assets, including Plaza Extra-West. Bidding by Hamed and Yusuf offers the best

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. VI. 00004-0756
(340) 774-4422

EXHIBIT

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See Declaration of Yusuf dated August 12, 2014, attached as Exhibit 3 to Defendants' Memorandum in Support of Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent. Hamed's sworn testimony is consistent with Yusuf's declaration that the reconciliation occurred at the end of 1993. Hamed testified that the reconciliation took place "sometime after the fire in the store." See page 51-2 of the transcript of Hamed's April 1, 2014 deposition attached as Exhibit 1.

While partnership funds may have been used to pay the insurance premiums for the applicable insurance policy, payment of the insurance premiums by the store has always been one of the terms of the partnership and Hamed has provided this Court with no evidence that Yusuf conceded that the additional acre was purchased with partnership funds. In any event, there is no dispute that the partners' accounts were fully reconciled as of December 31, 1993, that this acre has been titled in United's name for decades, and that rent for this acre was included in the \$5,408,806.74 paid on February 7, 2012 covering rent for the period from May 5, 2004 – December 31, 2011. Under these circumstances, Hamed should be estopped from asserting any legal or equitable title to this 1 acre parcel. In any event, Hamed's vague and unsupported claim should not be allowed to impede the disposition of Plaza Extra – East.

Payment of Yusuf's Counsel and Accounting Experts

The Order needs no clarification because it does not propose that Yusuf's counsel and accounting experts would be paid with partnership funds. It should be pointed out, however, that Section 5 of Hamed's "combined" order attached as Exhibit 3 to the Hamed Comments obligates the Liquidating Partner to "prepare and file all required federal and territorial tax returns . . . [and

to] provide a Partnership accounting.” Complying with these obligations clearly would require professional assistance, which should be paid from partnership funds. Yusuf submits that the Liquidating Partner should not be obligated to provide a Partnership accounting since Step 6 of the Court’s proposed plan requires Hamed and Yusuf to submit to the Master a proposed accounting and distribution plan within 45 days after the Liquidating Partner completes liquidation.

The Balance Sheet attached as Exhibit B to the Competing Plans

Since the Order did not refer to the Balance Sheet attached as Exhibit B to the competing plans, it is unclear why Hamed feels compelled to argue that the Balance Sheet should be deemed preliminary. In any event, an updated Balance Sheet is being prepared; consequently, Yusuf does not object to the previous Balance Sheet being deemed preliminary.

Hamed’s “Combined” Order Does Not Accurately Set Forth The Agreed Upon Portions Of The Plans.

Yusuf submits that the “combined” plan attached as Exhibit 3 to the Hamed Comments does not accurately set forth the “agreed upon” plan provisions, although it does accurately set forth the plan provisions proposed by this Court, with one minor exception noted.

Section 4. Powers of Liquidating Partner

Exhibit 3 improperly omits the first paragraph of Section 4 of all competing plans.

Section 5. Duties of Liquidating Partner

Exhibit 3 incorrectly strikes out the words “and the Master.”

Section 6. Salaries, Withdrawals

Because there was never any consensus regarding the terms of the competing plans, this section should be deleted except for the first two sentences.

Section 8: Plan of Liquidation Plan and Winding Up

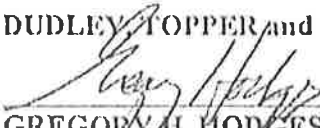
The lead in paragraph to Section 8(B)(1) of the competing plans should be added. Attached as **Exhibit 2** to this Response is the "combined" plan that Yusuf submits accurately sets forth the terms of the competing plans that the parties have not disputed and the provisions proposed by this Court. Yusuf's revised, proposed plan, which incorporates the Yusuf Comments and his foregoing comments in redlined fashion, is attached as **Exhibit 3** to this Response. Yusuf respectfully requests this Court to consider and approve the plan submitted as **Exhibit 3**.

Respectfully submitted,

DUDLEY TOPPER and FEUERZEIG, LLP

Dated: October 28, 2014

By:


GREGORY H. HODGES (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-Mail: ghodges@dtflaw.com
and

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

Attorneys for Fathi Yusuf and United Corporation

Gregory H. Hodges

From: Gregory H. Hodges
Sent: Wednesday, February 03, 2016 5:08 PM
To: 'Edgar A. Ross (edgarrossjudge@hotmail.com)'
Cc: 'Joel H. Holt (holtvi@aol.com)'
Subject: Memo re Accounting
Attachments: 1688611-Further Stipulation Re Motion to Clarify Order of Liquidation.PDF; 16D9013-Gaffney Response To 1 28 16 Memo.ffd.DOCX

Judge Ross,

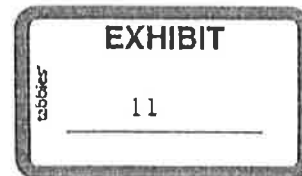
My apologies for the delayed response to Joel's email and memo. I was awaiting input from John Gaffney, who has been very occupied.

The attached stipulated Order provides that the "Partners will submit their proposed accounting and distribution plans required by Section 9, Step 6, of the Plan to each other and the Master by March 3, 2016 [.]". To the extent the requested 60 day extension of that stipulated deadline is premised on "delays in the accounting by the Liquidating Partner," as claimed on page 2 of Joel's memo, that claim is disputed. The Liquidating Partner has timely submitted the accounting required by paragraph 1 of the attached Order and all bi-monthly reports required by the Plan and the Order approving the Plan.

The only delays that exist are delays in providing information responsive to the extraordinarily broad information request set forth in Exhibit A to the memo. As that exhibit reflects, the "Initial Request Date" for the information ranged from 8/17/2015, at the earliest, to 11/16/2015, at the latest, even though the Order approving the Plan was entered on 1/9/2015. While we disagree that much of the information being sought is necessary for the "accounting and distribution plans required by Section 9, Step 6, of the Plan," we acknowledge that Section 9, Step 4, of the Plan provides that "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." Why, for example, should John Gaffney be required to produce timekeeping records for payrolls in 2013 or individual cashier till stats when summary till stats are included in the daily sales journal batch records, which Hamed's accountants, Vizcaino Zomerfeld ("VZ") already have? According to John, the accounting department has never printed detailed till stats by cashier, so they aren't in boxes stored in each location and certainly have not gone "missing," as the VZ email attached as Exhibit B to the memo suggests regarding the "West boxes." (As I understand from John, each cashier prints a summary slip and these are stored in boxes at each location. But the summary total is on the till stats report in each daily sales journal. He can certainly give VZ many boxes with those records for Plaza East. Since John has no need for them, they remain in each location). Such records, if necessary, could be printed from each store location going back to 2012, including West, which was able to restore the limited historical records removed upon the transfer of that store. These types of requests would be understandable if VZ was performing a standard audit for post-2012 years, but such audits are rarely done years after the fact for obvious reasons. John informed me that even Joel questioned the need for some of the requested information when they met last week to discuss accounting issues. In short, just because the Plan provides that Hamed's accountants are entitled to view all post-2012 accounting information does not mean they should, particularly given the limited accounting resources available to assemble VZ's long list of requested information.

John informs me that much of the accounting records sought by VZ are either kept or accessible at the store locations. He says, for example, that Willie should have the till reports for the Tutu Park store and, generally, has not been responsive to any information requests from John, particularly after 4/30/15. John can arrange for the production of the till reports for East. Regarding West, Joel states at page 2 of his memo: "As your Honor knows, all of the accounting record, computers and disks of the West store were removed by the Liquidating Partner" (emphasis supplied). While computers, disks, and 2013-2015 sales journals and accounts payable records may have been removed since John worked out of that store, which served as the accounting "hub," all the other accounting records remained on the premises. So, for example, if VZ wants employee time records concerning West, it needs to get them from the Hameds. If VZ wants the "critical" till status reports for each cash register at West, the Hameds can print them from the restored POS system.

Attached for your further information is a response I received today from John. Since he is the person most knowledgeable about these accounting issues, I encourage you to speak directly with him, if you have questions or need further information.



I respectfully submit that the requested 60 day extension from 3/3/16 (the current stipulated deadline) to 5/2/16 is too long. I propose a compromised extension of 32 days until 4/4/16. If Joel had simply asked for such an extension, I think we could have done a simple stipulation like we did the last time, without all this finger pointing. Please let us know your views or decision concerning this matter at your earliest convenience.

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

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From: Joel Holt [<mailto:holtvi@aol.com>]
Sent: Thursday, January 28, 2016 10:29 AM
To: edgarrossjudge@hotmail.com
Cc: Gregory H. Hodges
Subject: Memo re Accounting

Judge Ross-attached is the promised memo re the continued need for accounting documents, which will further delay the completion of the accounting by the current March 3rd date. Indeed, John Gaffney told me another accounting statement will be issued after Jan 31st. In the memo, I suggest w emote the date to submit objections to the accounting, as well as all other partner claims, back 60 days to May 2nd. I know you suggested this be discussed with opposing counsel, which comments I am requesting by copying his on this email.

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

Gaffney Response to Holt Memo to Judge Ross on January 28, 2016,

Exhibit A:

Yes, there are in fact missing records, many of which preceded me. Scotia bank records pertain mostly to St. Thomas. These are exactly the records I mentioned related to my request of Willie Hamed that Humphrey be allowed to secure sales journal records for 2013, 2014 and 2015. Willie specifically denied my request and as a result, I not only don't have some bank statements, I don't have any of the sales journals for St. Thomas which records include daily "Till Statistics."

We never received monthly bank statements from Scotia on the STT operating account. I spent weeks in early 2013 attempting to get Scotia to drop monthly statements (for operating a/c ***2010) and after listening to every lame excuse imaginable, the best they could do was daily (yes daily) bank statements. To make matters worse, they wouldn't mail them to me. So I had to pick them up periodically from the Scotia Red Hook branch. After dealing with repeated delays because of one or two missing days in a batch of records over a three week period of time, I found it easier to simply do screen prints online to reconcile cash. Humphrey picked up the same procedure when he started with us In March 2013. He too was intensely frustrated by Scotia's refusal to provide us with monthly statements on the most important Plaza account we had with them. He can certainly elaborate on this if needed.

Regarding Banco not providing copies of enclosures, there was an abrupt stoppage in August 2013 after the Hameds served Banco with the official court order requiring 2 signatures (one from each family) on all United Plaza accounts. Although dual signatures as indicated was already a well-established procedure, this action really put Banco on notice they would be liable in the event of a violation. Our ability to conduct business with Banco became very strained after that. Not only did they discontinue providing copies of enclosures (which is no doubt the direct result of the threatening nature of the Hameds' service) but we began regularly experiencing countless numbers of returned items for the simple reason Banco couldn't review each and every document presented. So they regularly returned items which caused an accounting and reconciling nightmare. Recall that we became precariously close to having all of our accounts closed at Scotia and Banco and Scotia has recently closed all of our accounts.

I can barely talk about the accounting problems resulting from the impasse over Mr. Yusuf's attempt to stop paying Wally Hamed's payroll after Wally was MIA for so long. In fact, I didn't know who Wally was for at least the first year I was here. But a thousand (all) payroll checks were cashed on premises that were held in lieu of being deposited in the normal course of business. Before payroll checks were finally co-signed (after Judge Ross' order that Mafi do so) and deposited, the outstanding checks list was about 25 pages long. But much more importantly, Plaza East was withholding cash from daily deposits once all previous cash had been depleted. There was no other way to meet the demand to pay payroll which resulted in severe accounting control issues.

It's impossible to respond to each and every line item in this exhibit. I spent weeks assembling what VZ does possess and they have yet to review most of what I have already provided. They were still reviewing the sales journals for the first 3 months of 2013 on Friday 1/22/16 – a full week after they

arrived. I was and am prepared to deliver sales journals for the remainder of 2013, all of 2014 and 2015. Again, each daily sales journal contains summary till statistics and the need for all detailed till statistics by cashier is not only highly suspect, it probably goes way beyond any reasonable need under any audit. Had we printed those reports we'd need another large warehouse to store them. And frankly, we simply have no need for them – never have and never will for the simple reason they are maintained forever in the POS system.

It's obvious to me that VZ feels the need to justify their lack of progress toward a known goal. They expressed no interest in seeing the electronic documentation provided to and by the Kauffman Rossin (KR) 2014 review. We did in fact print cashier till statistics for KR for Plaza East and Plaza St. Thomas because we still had access to both stores. Although Plaza West POS history had been removed on March 8th it has since been restored which I only recently found out about.

It was clear that Kaufman Rossin realized after some review of 2014 cashier till stats, the need for those records was questionable – even to them. A big difference is KR selected every 6th day to test unlike VZ whose requests are blanket requests for "all" documents. If I were to print and provide all of the records they requested, I'd easily need a 40 foot container to deliver it in. That's exactly why I suggested providing and did provide them with Sage backups and having them pick (either randomly or subjectively) items for review on a sample basis.

We now have only two clerks at Plaza East who handle accounts payable and payroll. I need another person to handle receivables, reconciliations, etc. and preferably someone with a knowledge of debits and credits. This was a \$100 million company before the dissolution with millions of sales transactions annually, over 36,000 payroll transactions annually, and over 20,000 produce/service purchases that are paid for throughout the year. This is a company that is normally run with at least a dozen people in the accounting department. The swap of accounting personnel after the split exacerbated the challenge requiring a settling down period, but more importantly left me with very low level accounting personnel. In other words, I'm the "only one."

16 FEB 1957

EXHIBIT 2

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

16 FEB 17 9:11

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)
 PLESSSEN ENTERPRISES, INC.,)
)
 Additional Counterclaim Defendants.)
)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

DUDLEY, TOPPER AND FEUERZEIG'S BRIEF
IN OPPOSITION TO MOTION TO DISQUALIFY COUNSEL

INTRODUCTION

Plaintiff Mohammad Hamed ("Hamed") seeks to disqualify the law firm of Dudley, Topper and Feuerzeig, LLP ("DTF"), because it provided legal services to Fathi Yusuf ("Yusuf"), in connection with his court-appointed position as Liquidating Partner,¹ and because the Master, Judge Edgar Ross, approved and paid DTF for those services, by signing (along with Yusuf) a check made payable to DTF. Hamed contends that by representing Yusuf in that capacity, DTF is also representing the Partnership, and that it cannot concurrently represent the

DUDLEY, TOPPER
 AND FEUERZEIG, LLP
 1000 Frederiksborg Circle
 P.O. Box 758
 St. Thomas, U.S. VI 00804-0758
 (340) 774-4422

¹Unless otherwise defined in this brief, capitalized terms shall have the same meaning as provided in the Court's "Final Wind Up Plan of the Plaza Extra Partnership" (the "Plan") dated January 7, 2015.

Partnership and Yusuf and United in this litigation. Hamed's argument is based on the demonstrably false conflation of the Partnership and the Liquidating Partner, which are plainly different entities. Moreover, in a January 23, 2016 email to Judge Ross not attached to Hamed's motion, his attorney, Joel H. Holt, admitted that so long as DTF was not being paid by the Partnership for any services it provided to the Liquidating Partner, there would be no basis for "ethical action" by Hamed. As such, it is clear that this motion is not about any supposed ethical conflicts at all, but is instead about whether Judge Ross should have approved and paid the DTF billing in full, or should have disapproved payment for some of the entries. DTF segregated its fees in such a way that the billing information presented to Judge Ross related solely to legal services performed for the Liquidating Partner, as opposed to legal services performed for Yusuf in this litigation. In any event, if Hamed wants to claim that any time entries in that invoice should not have been paid by Judge Ross and the Liquidating Partner, because some of the entries do not relate to Liquidating Partner matters, the proper way to challenge that is not by way of disqualification motion, but instead by submitting a claim against the Partnership fund on the date for presenting such claims.

ARGUMENT

A. The Motion Should be Denied Because DTF is Not Representing the Partnership.

Hamed's motion to disqualify is based on the untenable proposition, which is barely mentioned in his brief, that the Partnership and the Liquidating Partner are identical entities, and hence that representation of the latter by DTF entails an impermissible representation of the former. Nothing could be further from the truth. Hamed does not even try to elaborate this false equation of the Partnership and the Liquidating Partner, but simply assumes it to be the case in his motion. All that Hamed says on this point is that "DTF entered into representation of Fathi

Yusuf in his role as Liquidating Partner of the Partnership so that DTF now also represents the partnership.” Motion at 1.

Hamed’s failure to even try to support the notion that that the Liquidating Partner *is* the Partnership is understandable, because that clearly is not the case. The Partnership between Hamed and Yusuf was a business organization formed by the two of them for operating three supermarkets on St. Thomas and St. Croix. The Liquidating Partner is a position created by the Court to facilitate the liquidation and winding up of the Partnership under judicial supervision. The court order creating this position carefully circumscribes the duties of the Liquidating Partner and makes the exercise of all of those duties subject to oversight by the Master, Judge Ross. The duties of the Liquidating Partner, as set forth in the Order creating that office, include the “power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners . . .” *See* Plan at § 4. The Liquidating Partner is required to “report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts,” to “prepare and file all required federal and territorial tax returns,” to “pay all just Partnership debts,” to place liquidation proceeds and any litigation recoveries into the “Claim Reserve Account,” which is to be held until there is a final accounting and reconciliation “of the Partners’ capital accounts and earlier distributions.” *Id.* at § 5. Under the Plan, every act undertaken by the Liquidating Partner is subject to oversight by and the judicial supervision of the Master, *id.* at § 2, which means, for example, that all checks paid from Partnership monies must be signed by both the Liquidating

Partner and the Master.² *See id.* at § 9. Judge Ross was appointed Master by a September 18, 2014 Order of the Court and Yusuf was appointed Liquidating Partner in the January 7, 2015 “Order Adopting Final Wind Up Plan” (the “Wind Up Order”).

Since the Liquidating Partner is a court-appointed position, whose discharge of the duties conferred on him is subject to the supervision of Judge Ross, it is impossible to equate the Liquidating Partner with the Partnership, as Plaintiff does in his Motion, and therefore impossible to show that by representing the Liquidating Partner, DTF has necessarily also been representing the Partnership.³ Hamed's Motion to Disqualify should be denied on that basis alone.

B. Because the Court Has Already Rejected Arguments that Yusuf is Conflicted in Serving as Liquidating Partner, DTF Cannot Be Conflicted in Representing Him in that Capacity.

Prior to the Court's appointment of Yusuf as Liquidating Partner, Hamed argued on no less than three different occasions that Yusuf had a conflict of interest which precluded him from being appointed to that role. *See* Hamed's April 30, 2014 Response to Defendants' Motion to Appoint Master, p. 3 (arguing that Yusuf “has an interest adverse to the partnership” which prevents him from acting as the Liquidating Partner); Hamed's May 27, 2014 Sur-reply Re Dissolution Plans, pp. 2-3 (arguing that Yusuf “is barred from being the liquidating partner” because, *inter alia*, he allegedly “tried to convert all of the partnership assets to United's accounts”); and Hamed's October 21, 2014 Comments Re Proposed Winding Up Order, pp. 5-6

²Judge Ross was acting pursuant to this authority when he approved, and, together with the Liquidating Partner, signed the check paying the DTF billing submitted to him for his review and approval.

³ Hamed also argues that “the continued involvement of DTF on behalf of [United and Yusuf, individually] would result in it litigating against a former client, the partnership,” and hence that DTF cannot ethically continue representing Yusuf and United in this litigation. Motion at 5. Because DTF has not represented the Partnership, this argument should likewise be rejected.

(arguing that Yusuf is “prohibited from acting as the liquidating partner” because United’s rent claims against the Partnership mean that Yusuf “has conflicts that are inherently antithetical to the partnership” and arguing further that “the Court’s proposed remedy of having the Master ‘supervise’ Yusuf” cannot avoid the conflict). Hamed further argued in each of these three filings that he, Hamed, should instead be appointed Liquidating Partner.

In its Wind Up Order, this Court, by appointing Yusuf to serve as Liquidating Partner, subject to Judge Ross’s supervision, necessarily rejected Hamed’s repeated arguments, which shifted each time they were made, that Yusuf was impermissibly conflicted from serving in that role. Since the Court has concluded that Yusuf has no impermissible conflict, it necessarily follows that DTF could not have been conflicted in undertaking the representation of Yusuf in that capacity just because it also represents Yusuf in his individual capacity and his corporation, United.

Hamed’s notion that Yusuf as Liquidating Partner should have hired some other attorney outside of this litigation to represent him in that capacity makes no sense. Doing so would not only be unnecessary but would entail greater expense to the Partnership. As noted above, Yusuf as Liquidating Partner was given the authority to hire counsel in the Plan entered by the Court. It was eminently reasonable for Yusuf to retain DTF for representation in the discharge of his duties as Liquidating Partner, since the undersigned attorney and others in his firm had been involved in the formulation of the Plan and had acquired a comprehensive knowledge of the Partnership and matters relating to its wind-up. To hire another lawyer with no knowledge of the Partnership and the Plaza Extra Stores to represent the Liquidating Partner would have simply multiplied the legal costs to the Partnership. A lawyer not already involved in the case would

have incurred significant additional fees just to be brought up to speed on these matters before he or she could render meaningful advice.

In short, since the Court, by appointing Yusuf as Liquidating Partner, has already rejected Hamed's claim that Yusuf was impermissibly conflicted from acting in that role, his decision to retain DTF for those services was proper. Because the Court has established that Yusuf was not conflicted, DTF cannot be conflicted either.⁴

C. Hamed Has Effectively Conceded that his Real Complaint is About Judge Ross's Decision to Pay DTF, Not the Ethics of DTF's Representation.

Finally, it is clear from Hamed's counsel's correspondence with Judge Ross is that his real complaint about DTF is not his contrived claim that the firm's representation of the Liquidating Partner is unethical. Instead, the issue for Hamed is whether some of the fees charged by DTF and approved and paid by Judge Ross did not relate to matters within the scope of the Liquidating Partner's work and should not have been paid out of Partnership monies. In a January 23, 2014 email to Judge Ross, Hamed, through his counsel, Attorney Holt, claimed that "a review of the [DTF] charges confirms that many of the items charged accrued to Mr. Yusuf's benefit and not to the benefit of the Partnership or Mr. Hamed." *See Exhibit A*, January 23,

⁴*King v. Appleton*, 61 V.I. 339, 353, n. 12 (2014), the case cited by Hamed, is inapposite for several reasons. First, unlike this case, in which Yusuf was appointed Liquidating Partner, over objections that this would create a conflict of interest, the trustee in the *King* case, Attorney Robert King, was not appointed by court order to that position. Nor was the trustee in *King* directed by court order to perform certain duties, subject to judicial supervision by a former Superior Court Judge. It is also important to note that the *King* Court did not disqualify Attorney King from concurrently serving as trustee of a trust and as an attorney for the settlor of the trust and the beneficiary. Instead, the Court simply suggested in *dicta* that Attorney King should get written consents from both of his two clients to concurrently serve as their attorney and as trustee. *See id.* at 354, n. 12. Thus, even if by some strained logic the *King dicta* were somehow applicable to this case, and it would therefore be preferable for DTF to obtain from Yusuf, individually, and United their consent to DTF's concurrent representation of each of them and Yusuf as Liquidating Partner, DTF will obtain those written consents.

2014 Email from Attorney Holt to Judge Ross. Attorney Holt goes on to say that “this request for fees should be denied as a matter of course, mooted the need for ethical action . . .,” and also mooted the need for a “motion to Judge Brady to disqualify [DTF] from any further work in this case.” *Id.* What Hamed (through his attorney) plainly communicated to Judge Ross is that so long as he does not authorize payment of any DTF billings for services performed for the Liquidating Partner, Hamed does not care if DTF continues to represent the Liquidating Partner. In the same vein, Hamed makes it clear, if necessary, he is prepared to engage in a “line by line analysis of the [DTF] billing” to determine what is properly chargeable to the Partnership and what is not. *See id.*

If Hamed truly believed that DTF was impermissibly conflicted in its representation of the Liquidating Partner, he would not have stated (through his counsel) that he would consent to the representation as long as DTF was not paid for its services. All of the talk about conflicts of interest is just a smokescreen for Hamed’s contention that Judge Ross erred by approving and paying DTF out of Partnership funds. A claim of this kind is properly addressed at the Partnership claim stage of this litigation, not by way of Motion to Disqualify. If Hamed is serious about his contention that the DTF billing should not have been approved and paid in full by Judge Ross, he may submit a claim that performs the “line by line analysis” referred to in his counsel’s email to the Master. If he has a legitimate basis for contesting any of the line items in the DTF billing, he can try to make that case in his claim, and can request that he be credited – and that Yusuf be debited – in whatever amount he contends should not have been approved. Yusuf will then respond to any such claim submitted by Hamed, and this Court can resolve it after receipt of the Master’s report and recommendation contemplated by Section 9, Step 6 of the Plan.

While Hamed claims that “many of the items” for which DTF was paid accrued to Yusuf’s benefit rather than Hamed’s, his motion only identifies six time entries totaling 7.3 hours that he says should not have been paid for that reason. *See* Motion to Disqualify at 4. Even that narrow challenge to Judge Ross’s approval of the DTF billing misses the mark. Hamed can only make this argument by omitting language from the description of services and by mischaracterizing the services that DTF performed. The six time entries, shown in full and with the omitted language in italics, are as follows:

- 10/05/15 *Review email from Gaffney re course of action re payment of Tutu Park taxes; reply to 9/29 letter from Holt re partnership assets; email FY re same; teleconference with FY re draft reply to Holt. (1.60)*
- 10/20/15 Draft, review, and revise list of remaining partnership property to be liquidated and pending motions affecting partnership property. (1.50)
- 10/21/15 Review letter from Holt re disputed land; email FY re same; *review and revise draft list in response to Judge Ross directive; email client group re same. (1.30)*
- 11/17/15 Draft fifth bi-monthly report; conference with CKP re pending litigation and claims reserve. (1.60)
- 11/19/15 Review and revise fifth bi-monthly report; email to Gaffney and CKP re same. (.80)
- 11/23/15 Email to Gaffney re fifth bi-monthly report *and updated financial info needed; review Gaffney response. (.50)*

Hamed falsely implies that the six time entries reflect that DTF took one position regarding whether the Partnership owned undeveloped land in Fort Mylner, and then the opposite position later. *See* Hamed’s Motion to Disqualify at p. 4. Contrary to that implication, DTF has consistently taken the position that the land in question (owned initially by Plessen Enterprises, Inc. and later by United) is not Partnership property.⁵ Of the six time entries quoted in Hamed’s

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⁵Attorney Hodges was initially unaware that the property had been transferred from Plessen to United in a Deed in Lieu of Foreclosure dated October 23, 2008 and recorded on March 24, 2009. But irrespective of whether the property is owned by United or Plessen, it never was and to this day is not Partnership property. At no time did Attorney Hodges ever suggest that this

Motion, only one of them, a 10/21 entry for 1.3 hours even references the issue of whether the Partnership owns that land, or whether United or Plessen owns it. Moreover, the full description of services for that date includes a line item which Hamed left out of his quotation of the billing entry. That line item, “review and revise draft list in response to Judge Ross directive,” is clearly work related to duties to be carried out by the Liquidating Partner.

A review of the remaining time entries – read in full and not in the selectively edited form that Hamed presents in his Motion – shows unmistakably that these entries relate to matters within the Liquidating Partner’s scope of work. The 11/17, 11/19, and 11/23 time entries relate generally to preparation of the “fifth bi-monthly report,” which is something the Liquidating Partner is given the responsibility to create by the Court’s Plan. The 10/5/15 entry concerns reading and responding to a September 29 letter from Attorney Holt regarding a number of “partnership assets,” and as such is something which is clearly related to the Liquidating Partner’s duties under the Plan. The 10/20/15 time entry regarding the compilation of a list of Partnership assets and pending motions regarding partnership property is likewise related to the Liquidating Partner’s duties under the Plan.

Finally, it is worth noting that DTF has been filing by-monthly reports, as counsel for the Liquidating Partner, since the first bi-monthly report was filed on March 30, 2015. The signature block for each of those reports unmistakably shows the law firm of Dudley, Topper and Feuerzeig, LLP as attorneys for the Liquidating Partner. Not once before Hamed’s Motion to Disqualify was filed on January 29, 2016 did he ever object to DTF’s representation as creating an unethical conflict. Indeed, in his “Notice of Objection to Liquidating Partner’s Bi-Monthly Reports” filed nearly six months ago, on August 18, 2015, after the submission of the third bi-

property, which has always been titled in the name of a corporation, was Partnership property. None of the six time entries indicates otherwise.

monthly report on July 31, 2015, Hamed did not raise any purported conflict of interest. Yusuf respectfully submits that this recently contrived claim should be roundly rejected.

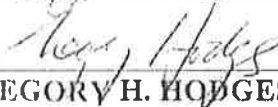
For all of the foregoing reasons, Hamed's Motion to Disqualify Dudley, Topper and Feuerzeig should be denied.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: February 17, 2016

By:



GREGORY H. HODGES (V.I. Bar No. 174)
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Attorneys for Liquidating Partner

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2016, I caused the foregoing **DUDLEY, TOPPER AND FEUERZEIG'S BRIEF IN OPPOSITION TO MOTION TO DISQUALIFY COUNSEL** to be served upon the following via e-mail:

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

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
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The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com

Michelle Baur

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EXHIBIT A

Gregory H. Hodges

From: Edgar Ross <edgarrossjudge@hotmail.com>
Sent: Saturday, January 23, 2016 12:57 PM
To: Gregory H. Hodges
Subject: FW: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership
Attachments: 2015-03-27 SUPREME - Yusufs Opposition to Appellee's Motion for Fees.PDF;
2013-11-15 Yusuf-United OBJECTION TO BILL OF COSTS - for service.pdf

Sent from Mail for Windows 10

From: Joel Holt
Sent: Saturday, January 23, 2016 11:44 AM
To: edgarrossjudge@hotmail.com
Subject: Re: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership

Judge Ross-you sent me the email below on December 24th regarding fees being charged by DTF to the partnership. As you recall, you were kind enough to agree that it would not be paid until I had time after the Hovensa transaction to review it with my client and respond. We have looked into this billing and have several serious problems it.

At the outset, DTF could never represent the partnership, as it would be a clear conflict of interests since they represent both Mr. Yusuf personally and United Corporation. In short, such representation would be both unethical and a violation of the VI rules applicable to the professional responsibilities of lawyers. Indeed, Mr. Hamed was never informed about this matter and has not waived this glaring conflict. If the Partnership needed counsel, Yusuf (as the Liquidating Partner) should retained an independent lawyer to avoid this situation, but it is too late to now try to make DTF counsel for the partnership.

In fact, a review of the charges confirms that many of the items charged accrued to Mr. Yusuf's benefit and not to the benefit of the Partnership or Mr. Hamed. For example, one monthly accounting had real property titled in the name of United, but admittedly owned by United, not being transferred to the partnership. Clearly DTF, who signed this filing, was acting for the benefit of Mr. Yusuf and United, not the partnership. There are multiple other examples, several of which were brought to the Court's attention when I filed an objection to Mr. Yusuf "feathering" his own nest with the various accountings he filed with the Court, which I am glad to put into more detail if you want me to so so.

Thus, this request for fees should be denied as a matter of course, mooting the need for ethical action that will be required if DTF claims they represented the partnership at the same time they

represented Yusuf and United. It will also result in a motion to Judge Brady to disqualify them from any further work in this case.

Finally, I should note that many of the charges violate the precise objections that DTF raised to the two requests for fees filed by Hamed, both as to the amount that can be charged as well as the services for which multiple lawyers in a firm can charge. A copy of those objections are attached for your reference. Thus, a line by line analysis of the billing would have to be done if DTF could charge the partnership for such services, which it cannot do.

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

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

From: Edgar Ross <edgarrossjudge@hotmail.com>
To: JOEL HOLT <holtvi@aol.com>
Sent: Thu, Dec 24, 2015 12:01 pm
Subject: Fwd: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership

Sent via the Samsung GALAXY S5610 an AT&T 4G LTE smartphone

----- Original message -----

From: "Gregory H. Hodges" <ghodges@dtflaw.com>
Date: 12/24/2015 10:47 AM (GMT-04:00)
To: 'Edgar Ross' <edgarrossjudge@hotmail.com>
Cc: Fathi Yusuf <fathiyusuf@yahoo.com>, 'Nizar DeWood' <nizar@dewood-law.com>
Subject: RE: Attorneys' Fees Charged To Fathi Yusuf That Should Be Reimbursed By The Partnership

Season's Greetings Judge Ross,

In the course of performing his duties as Liquidating Partner, Mr. Yusuf has incurred attorneys' fees charged by Dudley, Topper and Feuerzeig, LLP ("DTF"). As you know, pursuant to section 4 of the "Final Wind Up Plan of the Plaza Extra Partnership" (the "Plan"), the "Liquidating Partner shall have ... full power and authority to ... engage legal, accounting and other professional services...." Since the entry of the Order approving the Plan in early January of this year, DTF has billed Mr. Yusuf for services related to his duties as Liquidating Partner. Attached is DTF's Matter Ledger Report in which the DTF services rendered in connection with Mr. Yusuf's Liquidating Partner duties have been segregated from the DTF services generally provided to Mr. Yusuf in the pending litigation against the Hameds. As reflected in the attached Matter Ledger Report, the DTF fees through 11/30/15 that relate to the Liquidating Partner's duties total \$57,605. As Liquidating Partner, Mr. Yusuf submits that the Partnership should pay this amount to DTF.

If you have any questions or would like any further information concerning this request, please let me know.

Regards,
Greg

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

16 FEB 17 P2:17

EXHIBIT 3

03/24/2009 1:26PM
Official Records of
ST THOMAS/ST JOHN
WILMA G. HART SMITH
RECORDER OF DEEDS

DEED IN LIEU OF FORECLOSURE

THIS INDENTURE made this 23 day of October, 2008, between PLESSEN ENTERPRISES, INC., a Virgin Islands corporation (herein "Grantor") and UNITED CORPORATION, a Virgin Islands corporation, P.O. Box 763, Christiansted St. Croix, VI 00821 (herein "Grantee");

WITNESSETH: That the Grantor, in consideration of the release and cancellation by Grantee of all of Grantor's obligations under a First Priority Mortgage and Note dated 08/24/06, which Mortgage was recorded on 08/24/06, as Document No. 2006008542, in the Office of the Recorder of Deeds for St. Thomas and St. John, Virgin Islands, does hereby grant, convey and release unto the Grantee, its successors and assigns, in fee simple absolute, forever, all that certain parcel of land situate, lying and being in St. Thomas, U.S. Virgin Islands, described as follows:

**Parcel No. 2-4 Rem. Estate Charlotte Amalie
No. 3 New Quarter
St. Thomas, U.S. Virgin Islands
consisting of 0.536 acre, more or less
as shown on OLG Map No. D9-7044-T002, dated April 10, 2002**

TOGETHER with the improvements thereon and the rights, privileges and appurtenances belonging thereto, or in anywise appertaining.

SUBJECT, HOWEVER, to all easements, restrictions, agreements, covenants and declarations of record and to Virgin Islands zoning regulations.

TO HAVE AND TO HOLD the premises conveyed hereby, with all privileges and appurtenances thereof, unto the Grantee, its successors and assigns, in fee simple absolute forever; subject to the conditions and reservations set forth herein.

GRANTOR covenants that it has the right to convey title in fee simple and that the property is free from every encumbrances suffered or created by acts of Grantor, except as aforesaid, and Grantor warrants and will defend the title to the above granted property against all persons lawfully claiming the same from, through or under the Grantor.

BOOK 2009001504

IN WITNESS WHEREOF, the Grantor has duly executed this Deed in Lieu of Foreclosure as of the date first above written.

Witnesses:

PLESSEN ENTERPRISES, INC.

[Signature]

[Signature]
By: Mohammad Hamed, President

[Signature]

Attest: *[Signature]*
Fathi Yusuf, Secretary

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) ss:

The foregoing instrument was acknowledged before me this 23rd day of October, 2008, by Mohammad Hamed, as President of Plessen Enterprises, Inc., a Virgin Islands corporation, on behalf of the corporation.

[Signature]

Notary Public

My commission expires: April 12, 2012

My commission number: NP039-08



NOTED IN THE CADASTRAL RECORDS
FOR COUNTRY/TOWN PROPERTY, BOOK FOR

ESTATE CHARLOTTE AMALIE

NO. 3 NEW QUARTER

ST. THOMAS, U.S. VIRGIN ISLANDS

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: October 31, 2008

Phyllis Harrigan
Phyllis Harrigan, Special Assistant
to the Tax Assessor for Surveys
Office of the Lieutenant Governor

WITNESSETH

It is hereby certified that the above
mentioned property/s which, according
to DEED IN LIEU OF FORECLOSURE dated October 23, 2008

belongs to: UNITED CORPORATION
(GRANTEE)

has not, according to the Records of
this office, undergone any changes as to
boundaries and area.

Cadastral Survey/Tax Assessor Offices

St. Thomas, V.I. Dated: October 31, 2008

Phyllis Harrigan
Phyllis Harrigan, Special Assistant
to the Tax Assessor for Surveys
Office of the Lieutenant Governor

MOBILE
A.S. IN JORDS TS, SLEPOTVARDEN
60-00000-11000 Y0
STOR, ST. JORNS BORG

Doc# 200900198
Pages 5
03/24/2009 1:26PM
Official Records of
ST THOMAS/ST JOHN
WILNA G. HART SMITH
RECORDER OF DEEDS
Fees \$347.00



Deed in Lieu of Foreclosure
Pcl. 2-4 Rem! Charlotte Amalie
Page - 3 -

AFFIDAVIT OF EXEMPTION

Mohammad Hamed, being duly sworn, deposes and states:

1. I am the President of Plessen Enterprises, Inc., Grantor herein;
2. This transfer is exempt from tax stamps pursuant to Title 33 Virgin Islands Code, Section 128 (2), as it is given solely in order to release security for an obligation.
3. The Government's assessed value for recording cost purposes is \$330,000.00.



Mohammad Hamed, President of
Plessen Enterprises, Inc.

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) ss:

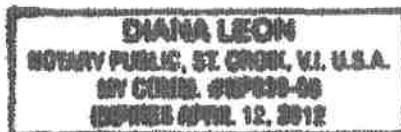
Subscribed and sworn to before me this 23rd day of October, 2008 by Mohammad Hamed,
as President of Plessen Enterprises, Inc., a Virgin Islands corporation, on behalf of the corporation.



Notary Public

My commission expires: April 12, 2012

My commission number: NPO39-08





GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00802

—0—

Office of the Lieutenant Governor

TAX CLEARANCE LETTER

TO: THE RECORDER OF DEEDS

FROM: OFFICE OF THE TAX COLLECTOR

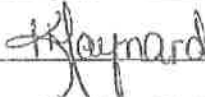
IN ACCORDANCE WITH Title 28, SECTION 121 AS AMENDED, THIS IS
CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES
OUTSTANDING FOR PARCEL NO. 1-05603-0214-00
LEGAL DESCRIPTION CHARLOTTE AMALIE 2-4, NEW QTR.
OWNER'S NAME DANIEL, WINSOR E.

TAXES RESEARCHED UP TO AND INCLUDING 2005.

RESEARCHED BY:

Karen Maynard, Tax Collector I

SIGNATURE:



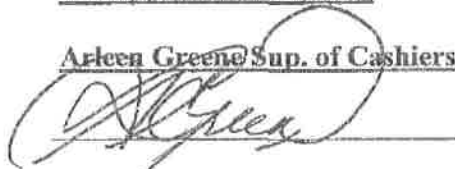
DATE:

Friday, October 31, 2008

VERIFIED BY:

Arleen Greene Sup. of Cashiers STT/STJ

SIGNATURE:



DATE:

Friday, October 31, 2008

Doc# 2009081984

EXHIBIT 4

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

MOHAMMAD HAMED, by his
authorized agent WALEED HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

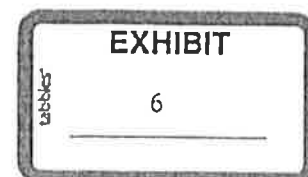
ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

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

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

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.

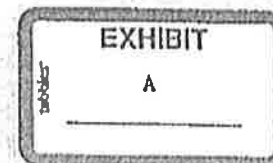
Dated: February 16, 2016


John Gaffney

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

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
ASSETS		
Current Assets		
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 Telehk 6719	116,760.40	107,890.33
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
Total Current Assets	2,713,010.60	2,406,054.28
Property and Equipment		
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)
Total Property and Equipment	2,366,048.45	2,464,116.00
Other Assets		
17000 Land	330,000.00	330,000.00
19000 Deposits	37,962.40	37,962.40
Total Other Assets	367,962.40	367,962.40
Total Assets	\$ 5,447,021.45	\$ 5,238,132.68

Unaudited - For Management Purposes Only



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

		<u>As of 12/31/13</u>		<u>As of 12/31/12</u>
ASSETS				
Current Assets				
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)		(613,302.86)
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
	Total Current Assets	42,775,654.37		47,739,949.75
Property and Equipment				
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)
	Total Property and Equipment	2,292,735.00		2,381,914.00
Other Assets				
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
	Total Other Assets	6,754,019.12		7,041,230.76
	Total Assets	\$ 51,822,408.49	\$	57,163,094.51

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>
ASSETS		
Current Assets		
10000	\$ 30,000.00	\$ 30,000.00
10100	33,870.00	33,870.00
10200	177,032.00	221,000.00
10300	(923,160.09)	(1,519,575.21)
10350	18,894.76	10,523.05
10400	932,533.54	1,454,852.93
10500	7,703,852.96	4,171,924.43
10900	4,450.00	0.00
11000	43,528.26	0.00
12000	9,553,982.58	9,443,569.48
13100	278,216.83	200,320.86
13400	75,006.39	(0.04)
14000	(117,644.33)	(186,819.33)
14100	(491,742.89)	0.00
14300	482,951.56	0.00
14400	8,791.33	0.00
14500	(391,409.69)	0.00
15100	37,767,429.03	43,069,015.83
15150	(2,324,369.86)	(3,778,720.41)
15200	336,378.45	201,293.74
15250	0.00	1,611,901.72
	53,198,590.83	54,963,157.05
Property and Equipment		
16000	3,478,103.00	3,478,103.00
16100	4,214,919.00	4,214,919.00
16200	7,377,032.21	7,293,445.00
16400	298,600.60	294,445.00
16500	57,050.50	57,050.50
16900	(10,677,021.00)	(10,465,458.00)
	4,748,684.31	4,872,504.50
Other Assets		
17000	330,000.00	330,000.00
19000	57,963.40	57,963.40
19100	0.00	0.00
19150	0.00	0.00
19200	1,598,689.00	1,527,708.00
19300	5,004,610.00	5,089,018.00
19400	140,719.62	87,004.26
19500	0.00	327,500.00
19600	0.00	0.00
	7,131,982.02	7,419,193.66
	\$ 65,079,257.16	\$ 67,254,855.21

Unaudited - For Management Purposes Only

