

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

**MOHAMMAD HAMED, BY HIS  
AUTHORIZED AGENT WALEED 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.,**

COUNTERCLAIM DEFENDANTS.

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**WALEED HAMED, AS EXECUTOR OF THE  
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**MOHAMMAD HAMED,**

PLAINTIFF,

v.

**FATHI YUSUF,**

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and  
CONVERSION**

**ORDER**

**THIS MATTER** came before the Special Master (hereinafter “Master”) on Hamed’s motion as to Hamed Claim Nos. H-11 and H-12: one hundred shopping carts and two condensers. Yusuf filed an opposition and Hamed filed a reply thereafter. Subsequently, Yusuf filed a sur-response<sup>1</sup> and Hamed filed a reply thereto.

In his motion, Hamed argued that the Partnership should not have paid for the two condensers and the one hundred shopping carts purchased for the Plaza Extra-East store after the stipulation was approved and entered on January 27, 2015 (hereinafter “Stipulation”).<sup>2</sup> (Motion, p. 2) Hamed pointed out that, although Yusuf paid \$150,000.00 to the Partnership per the Stipulation to purchase the equipment at the Plaza Extra-East store, Yusuf subsequently used Partnership funds to purchase two new condensers for the Plaza Extra-East store in the total amount of \$59,867.02 (exclusive of shipping and installation) and one hundred shopping carts in the total amount of \$13,177.00. (Id., at p. 3-4) Hamed claimed that while the Master approved of these purchases, said approval was given without the Master being informed of Hamed’s objections or the application terms of the Stipulation. (Id., at p. 3) Hamed also claimed that “[o]nly after it was a completely ‘done deal’ did Yusuf’s counsel then inform Hamed’s counsel that the Master had approved the purchases.” (Id.) Thus, Hamed concluded that Yusuf should be required to bear the expenses for the two condensers and the one hundred shopping carts. (Id.) As such, Hamed’s motion requested the Master to find that the purchases of the two condensers and the one hundred shopping carts were improperly paid by the Partnership and sought to have Yusuf reimburse the Partnership in the total amount of

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<sup>1</sup> Yusuf filed a motion for leave to file a sur-response which included their sur-response. The Master will grant Yusuf’s motion for leave and consider both Yusuf’s sur-response and Hamed’s reply thereto.

<sup>2</sup> Pursuant to the Stipulation, the parties stipulate[d] to the evaluation of the equipment at its depreciated value in each of the three stores, as provided in items #1, #2 and #3 of Section 8 of the [Wind-Up] Plan, as follows:

Plaza East-\$150,000  
Plaza West-\$350,000  
Plaza Tutu Park-\$200,000

\$59,867.02, plus interest at the statutory rate from the date of payment of the two condensers to the date of reimbursement to the Partnership and in the total amount of \$13,177.00, plus interest at the statutory rate from the date of payment of the one hundred shopping carts to the date of reimbursement to the Partnership, or in the alternative, have the Partnership pay Hamed the equal value of the two condensers in the total amount of \$59,867.02 and the equal value of the one hundred shopping carts in the total amount of \$13,177.00.

In his opposition, Yusuf argued that, as the appointed Liquidating Partner, he had “exclusive right and obligation to wind up the Partnership pursuant to this [Wind-Up] Plan and the provisions of V.I. Code Ann. tit. 26, §173(c), under the supervision of the Master.” (Opp., p. 2) Yusuf pointed out that “[a]lthough the two condensers at issues were ordered on December 11, 2014, they were not invoiced until January 24, 2015.” (Id., at p. 3; Exhibit 5-Invoice for the Two Condensers, dated December 11, 2014) Yusuf further pointed out that, he “sent an email to the Master explaining why the invoice for the condensers should be paid by the Partnership over the objection of Hamed and the Master promptly approved the payment for these condensers.”<sup>3</sup> (Id.; Exhibit 6-Email Correspondences, dated February 4, 2015 and February 5, 2015, between the Master and Yusuf) Yusuf also pointed out that the purchase of the condensers was considered by him at the time of the Stipulation and the fact that Hamed never inquired what equipment was included in the \$150,000.00 figure provided by Yusuf on

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<sup>3</sup> In Yusuf’s February 4, 2015 email to the Master, Yusuf stated:

...  
Needless to say, Mr. Hamed claims that Mr. Yusuf should be required to pay for the condensers out of his own money since he will end up with East under the Wind Up Plan. Mr. Yusuf is unwilling to do so because this is clearly an appropriate partnership or wind up expense.

...  
(Id.; Exhibit 6-Email Correspondences, dated February 4, 2015 and February 5, 2015, between the Master and Yusuf)

January 20, 2015 “effectively waives any objection to the pre-Stipulation purchase of the condensers.” (Id., at p. 4-5) Moreover, Yusuf also argued in the opposition that, as the appointed Liquidating Partner, he advised the Master of his desire “to order 100 new carts so business will not be adversely affected during the liquidation/wind up” on February 2, 2015 and was promptly approved by the Master. (Opp., p. 5) Yusuf pointed out that “the Partners were encouraged to continue operating the Plaza Extra Stores in the ordinary course of business despite the liquidation and winding up of the Partnership” and that “having an adequate supply of shopping carts is simply a cost of doing business for any supermarket.” (Id.) Yusuf claimed that he did not gain a windfall by having the Partnership pay for the shopping carts because he had to throw out most of the Plaza Extra-East store’s equipment he purchased from the Partnership due to its bad condition as the result of “Hameds refus[al] to cosign checks to vendors who maintained and repaired the equipment of that store.” (Id., at p. 6) As such, Yusuf requested the Master to deny Hamed’s motion.

In his reply, Hamed reiterated his argument that the two condensers and the one hundred shopping carts were invoiced and paid after the Stipulation was entered and therefore, the Partnership should not have paid for them. (Reply, p. 1) Hamed pointed out that “[w]hile who should pay for these two items has been previously disputed, Yusuf pointed out that the Special Master has already stated: **If said purchase was not considered at the time of the stipulation, then an adjustment should be made; if considered, then no adjustment.**”<sup>4</sup> (Id., p. 2) (Emphasis in original) Hamed further pointed out that while Yusuf argued that Hamed “knew or should have known these items were needed for the store” when the \$150,000.00 valuation was being done, “Hameds were surprised by these two purchases and immediately objected to

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<sup>4</sup> See Yusuf’s Opp., Exhibit 7-Email Correspondence, dated February 9, 2015, from the Master to the parties and the Court.

them.” (Id.) (Emphasis omitted) Hamed also pointed out that it is unclear “why their knowing of needed repairs would change everything – as Yusuf certainly is not arguing that the Hameds could charge for post-split repairs even if previously needed at Tutu.” (Id., at p. 3) Moreover, Hamed noted that even if it is true that Plaza Extra-East store was in a terrible shape when the transfer took place, that fact is irrelevant, “as the controlling figure of what the store’s equipment was worth is what the parties agreed to (and the Court approved).” (Id.) (Emphasis omitted) Hamed also noted that Plaza Extra-West store “had to replace its condensers and purchase shopping carts after the stores were transferred” and they “were not paid for by the Partnership.” (Id.) (Emphasis omitted) In support of his assertions, Hamed submitted a declaration, dated January 19, 2018 (hereinafter “Hamed’s 2018 Declaration”).

In his sur-response, Yusuf argued that he did not have the opportunity to address Hamed’s 2018 Declaration in his opposition since it was not included in Hamed’s motion. (Sur-response, p. 2) Yusuf “submits that the entire declaration is simply irrelevant because Hamed does not dispute that neither he nor his counsel ever bothered to ask Yusuf what equipment was included in the \$150,000 valuation figure given to counsel for Hamed that was included in the stipulation.” (Id.)

In his reply to Yusuf’s sur-response, Hamed argued that, “[w]hat is dispositive here, as Yusuf also conceded, is that the Special Master has already held: **If said purchase was not considered at the time of the stipulation, then an adjustment should be made; if considered, then no adjustment.**”<sup>5</sup> (Sur-response, p. 2) (Emphasis in original) Thus, Hamed concluded that an adjustment is warranted since he did not consider these purchases at the time of the Stipulation. (Id.)

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<sup>5</sup> Id.

## DISCUSSION<sup>6</sup>

The Master finds Hamed's arguments to be unpersuasive. As for the two condensers, Hamed never addressed the December 11, 2014 invoice for the two condensers and never directly disputed that the purchase was made on December 11, 2014. Instead, Hamed essentially argued that the two condensers were "purchased" when it was invoiced and paid, which was after the Stipulation was entered. However, in the email that Hamed referenced and quoted in both of his replies, the Master clearly stated that "[t]he documents in support of the request for payment indicated that the purchase was made in December 2014, prior to the stipulation." (Yusuf's Opp., Exhibit 7-Email Correspondence, dated February 9, 2015, from the Master to the parties and the Court) Thus, the Master will deny Hamed's motion to find that the purchase of the two condensers was improperly paid by the Partnership and to have Yusuf reimburse the Partnership in the total amount of \$59,867.02 plus interest, or in the alternative, have the Partnership pay Hamed in the total amount of \$59,867.02.

As for the one hundred shopping carts, Yusuf, as the Liquidating Partner, approved the use of Partnership fund to purchase one hundred shopping carts in the total amount of \$13,177.00. Under Section 3 of the Final Wind Up Plan, Yusuf's rights and obligations, as the Liquidating Partner, relative to the winding up, is subject to the review of the Master, and that "[a]ll acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to the prior notification to and approval of the Master." (January 7, 2015 order: Final Wind Up Plan) As such, this determination was within Yusuf's discretionary authority as the Liquidating Partner. In fact, in the email that Hamed referenced and quoted in both of his replies, the Master clearly stated that "[t]he liquidation partner is solely responsible for operational decisions such as the need

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<sup>6</sup> It is not in dispute that the condensers and the shopping carts are "equipment."

for equipment, subject to the Master's concurrence-especially when there is a dispute or difference of opinion." (Yusuf's Opp., Exhibit 7-Email Correspondence, dated February 9, 2015, from the Master to the parties and the Court) Moreover, the Court Ordered the two managing partners( one Hamed and One Yusuf) to continue to operate the business as a going concern and the Master finds that the purchases herein challenged are matters that should have been addressed as an ongoing concern. The record indicates that the managing partners discussed both purchases as early as December 2014 and could not agree on the purchases. Thus, the Master will similarly deny Hamed's motion to find that the purchase of the one hundred shopping carts was improperly paid by the Partnership and to have Yusuf reimburse the Partnership in the total amount of \$13,177.00 plus interest, or in the alternative, have the Partnership pay Hamed in the total amount of \$13,177.00. Both purchases were necessary to continue the operation of the business and are proper expenditures of the partnership.

#### **CONCLUSION**

Based on the foregoing, the Master will deny Hamed's motion. Accordingly, it is hereby:

**ORDERED** that Yusuf's motion for leave to file a sur-response, dated January 25, 2018, is **GRANTED**. Both Yusuf's sur-response and Hamed's reply thereto was considered herein. **And** it is further:

**ORDERED** that Hamed's motion to find that the purchase of two condensers and one hundred shopping carts was improperly paid by the Partnership and to have Yusuf reimburse the Partnership in the total amount of \$59,867.02 plus interest and \$13,177.00 plus interest, or in the alternative, have the Partnership pay Hamed in the total amount of \$59,867.02 and \$13,177.00 is **DENIED WITH PREJUDICE**.

**DONE** and so **ORDERED** this 30<sup>th</sup> day of March, 2018.



EDGAR D. ROSS  
Special Master