**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
|  vs.**FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*. vs. **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,* vs.  | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­**WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*  vs.  **FATHI YUSUF**, *Defendant.* | Consolidated with**Case No.: SX-2014-CV-278** |
| *­­­­­­*­­**FATHI YUSUF**, *Plaintiff*, vs. **MOHAMMAD A. HAMED TRUST***, et al,* *Defendants.* | Consolidated with**Case No.: ST-17-CV-384** |
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**HAMED'S MOTION AS TO HAMED CLAIM H-13:**

**2013 REFUSAL TO PAY 2002-2012 TAXES FOR WALEED AND WAHEED HAMED--**

**DESPITE HAVING PAID THE IDENTICAL TAXES FOR YUSUF FAMILY MEMBERS**

 Hamed has raised as one of his claims, designated as H-13, the non-reimbursement of $133,128. This is based on the 2013 payment of Yusuf individual taxes and refusal to pay Hamed taxes at the end of the related criminal case of *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-CR-15 (the "Criminal Case").

 Claim H-13 alleges that in 2013, Yusuf used his now-discredited claim that "Hamed is not a partner" to stop the Partnership from paying Waleed (“Wally”) and Waheed (“Willie”) Hamed's 2002-2012 taxes, despite the fact that there is *now* no dispute that the Partnership paid the *identical taxes for the identical periods* for Yusuf and his children. On April 20, 2018, Yusuf filed his "*Motion to Amend Order to Compel as to RFA #1*" in response to the Special Master's April 12, 2018 "*Order Granting Hamed Motion to Compel re Three Requests to Admit*." In Yusuf's new motion, he concedes the following:

the following matters are deemed admitted: (1) Fathi, Fawsi, Maher, Nejeh, Syaid, Zayed and Yusuf Yusuf’s income taxes **were paid with Partnership funds** for the years 2002-2012; and (2) Income taxes paid by Waleed Hamed and Waheed Hamed to the IRB for the tax years 2002 through 2012 **were not paid with Partnership funds**.

This non-payment of Wally and Willie's taxes was caused by Fathi Yusuf's 2013 refusal to allow that disbursement from the Partnership, despite the disbursement of the identical taxes for the identical time periods for his sons, as set forth below.

 As a result of a plea agreement in the Criminal Case, on May 24, 2013, the Virgin Islands Bureau of Internal Revenue (“VI BIR”) sent a letter stating that the Government of the USVI ("VI") was owed $6,586,132 in taxes for the period of the Criminal Case, 2002-2012. See **Exhibit 1**. On June 14, 2013, Maggie Doherty of the U.S. Marshal’s Service, authorized the release of $6,586,132 from the Partnership's Banco Popular Securities account for that tax payment to VI BIR. See **Exhibit 2**. (This authorization to release Partnership funds was necessary because, during the course of the Criminal Case involving United, Fathi, Maher and Yusuf, Waleed and Waheed Hamed, the U.S. Marshal’s Service had to sign off on any release of funds in excess of a certain amount from the Partnership’s banking and investment accounts). As part of that same series of tax payments, on June 20, 2013, Ms. Doherty also authorized the release of $315,747 from the Partnership's Banco Popular Securities account for the estimated income tax liabilities of Waleed and Waheed Hamed. See **Exhibit 3**. (The tax liability for both men subsequently was reduced from a total of $315,747 to $129,546 and $3,582 respectively.)

 As was the requirement following Judge Brady’s preliminary injunction order on April 25, 2013, one Hamed and one Yusuf had to sign checks jointly from the Partnership Accounts before any amount could be distributed.[[1]](#footnote-1) **But,** **Fathi Yusuf refused to sign a check for the Partnership to pay Waleed and Waheed’s taxes for 2002-2012**.[[2]](#footnote-2) To understand what was happening—that Yusuf was suddenly refusing to have the Partnership accounts pay these taxes because of his position that all of the Partnerships funds were his and that Hamed had no partnership interest in those funds—one need only read the June 29th letter from Fathi Yusuf’s attorney, Joseph DiRuzzo, to VI BIR in which he stated (to Tamika M. Archer, Esq., VI Office of the Attorney General, Tamarah Parson-Smalls, Esq., VI BIR, and Lori Hendrickson, Esq., DOJ) that the $6.5 million tax payment **didn't cover Mohammad Hamed or his sons**:

This is a material breach of the agreement that was reached in the mediation conducted before Judge Barnard. The Parties to the mediation explicitly agreed that the $6.5M tendered **was to satisfy only the Yusuf family members' tax liabilities for the years 2002 - 2010 and not for any tax liability of Mohammad Hamed (and by extension any of the Hamed family members).** We made clear that this term was non-negotiable. Everyone present agreed that Mohammed Hamed was not to be covered and under no circumstances would any portion of the $6.5M be credited/ transferred to the tax account or to satisfy any tax liability of another taxpayer (and in particular Mohammad Hamed or his family members).

See **Exhibit 4**, at p. HAMD594356 (emphasis added.) Attorney DiRuzzo went on to actually threaten the VI BIR on behalf of Yusuf. He warned that Yusuf would file a lawsuit against the Government to recoup the $6.5 million payment unless the VI BIR confirmed that the payment applied *only* to Yusuf's and his children’s taxes, not Hamed's or his sons':

In order to cure the breach we demand (i) that the VIBIR retract the June 20th letters issued to Mohammad Hamed (and confirm in writing its withdrawal to us) and (ii) that the VIBIR issue us a letter confirming that the $6.5M paid was used to satisfy only the tax liabilities of the Yusuf family members (as shareholders of United Corporation, as an Subchapter S-Corp under the Internal Revenue Code) and not to satisfy any tax liability of Mohammad Hamed or any other taxpayer (including but not limited to other Hamed family members).

 If the VIBIR does not cure this breach immediately we will seek to recoup the $6.5M that was tendered as it was obtained either (i) by mutual mistake, (ii) in bad faith, or (iii) by fraud. *Id*.

**It is critical to note two things: (1) this refusal to have the Partnership pay these taxes was AFTER Judge Brady's April 25, 2013 decision as to the existence of the Partnership—stating these were mutually held funds, and (2) this was of *absolutely* no benefit to Yusuf—as the government was trying quite hard (as discussed below) to settle all tax claims of both sides for the same amount. This was pure, unadulterated *spite*—ugliness solely designed to cause additional cost to the Hameds, *and ultimately the Partnership,* *for not one additional cent of gain to Yusuf*.**

 As a result, on July 1, 2013, concerned that the VI BIR would lose the $6.5 million tax payment, Claudette Watson-Anderson, CPA, VI BIR, sent a letter to Attorney DiRuzzo:

In response to your letter dated June 29, 2013, the Bureau hereby acknowledges that full payment of tax owed, in the amount of $6,586,132, has been applied to the returns filed for the following taxpayers only: Fathi & Fawzia Yusuf, Yusuf & Ala Yusuf, Zeyad Yusuf, Maher & Najat Yusuf, Nejah Yusuf, [and] Zayed Yusuf

See **Exhibit 5**. Thus the withdrawal from Partnership funds to make the Yusuf tax payment **did not apply to the Hamed's**. To confirm that this was the case, on July 1, 2013, Lori Hendrickson, U.S. Department of Justice, was forced to send a letter stating that the $6.5 million tax payment was not applicable to the Hamed family. See **Exhibit 6:**

I am in receipt of your letter dated June 29, 2013 and the declaration of Waleed Hamed dated June 27, 2013. The statements from the declaration you quoted in your letter are not based on any representations or promises made by representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) or the United States. As we all agreed, the **$6,586,132 was applied only to members of the Yusuf family for taxes owed for 2002 through 2010**. This is confirmed, as you requested, in the attached letter dated July 1, 2013 signed by the Director of the VIBIR. No one from the named family received any credit or benefit from that payment. (Emphasis added.)

Perhaps the clearest explanation of why this had changed after (and because of) Yusuf initiation of his attempted theft of the Partnership's assets, is the somewhat stunned statement by the DOJ's counsel to Judge Lewis in the Criminal Case hearing. On July 16, 2013, Lori Hendrickson, DOJ, confirmed four critical points to Judge Lewis: (1) that up to this point in the Criminal Case (2013) taxes that had been paid for both the Hameds and Yusufs, (2) that all of a sudden in 2013 Yusuf was refusing to pay the Hameds' share, (3) that therefore, the Hameds still had to work out their own taxes with the VI BIR and (4) most astoundingly, it was revealed that not only had the Partnership funds been used to pay the taxes for Yusuf family members who did not work in the Plaza Extra stores—but that the Yusufs had, for the entire historical period, been taking Partnership funds to pay their taxes even on totally *unrelated* outside (i.e., non-Plaza Extra) earnings and income**.**

[p. 67] MS. HENDRICKSON: *And there was other income on some of their [the Yusuf Family members'] returns. So, if they had other investments and things like that*. **So I think that is a fair representation to say United paid for other taxes that the individual shareholders owed *on top of the flow through based on United's operations*.** \* \* \*So to the extent there was additional money paid, and I reviewed the tax returns, I agree with Mr. Andreozzi's point, but I think it has [p. 69] impact on the plea agreement itself, since the government's purpose was to get all the income reported and the taxes paid for the income of Plaza Extra. And with the payment of $6.5 million, that has occurred.

THE COURT: If that included **other than the flow through**, so be it?

MS. HENDRICKSON: Yes.

\* \* \*

 [p. 123] **The fact that the United won't pay for the Hameds, that is a separate issue.** **In February of 2011, yes, they paid for everyone's.** ***Now, in June, July of 2013, United does not agree to pay*, but the Hameds, as taxpayers, are legally obligated to report income and pay taxes. . . .**

(Emphasis added.) The thing that had changed from 2011 when the partnership account "paid for everyone's" taxes and 2013 when Yusuf/United "did not agree to pay"—was Yusuf's attempt in September 2012 to steal Hamed's half of the Plaza Extra Stores and claim Hamed was just an "illiterate employee"—which began with the late-2012 theft of the $2.7 million and Hamed's responsive legal action.

 Because of Yusuf's refusal, in direct contravention of Judge Brady's April 25, 2013 decision (and contrary to that order's provisions regarding joint control of funds) on March 30, 2014, Wally Hamed was forced to write a check for $129,546.00 out of his personal Banco Popular account to the VI BIR for 2002-2012. See **Exhibit 7**, at p. JVZ-001172. Similarly, on December 9, 2013, Willie Hamed wrote a check for $3,582.00 out of his personal Banco Popular account to the VI BIR for his 2002-2012 taxes. See **Exhibit 8**, at p. JVZ-001174.

 On September 28, 2016, Hamed's CPA reviewed the general ledgers from 2012 to present, as provided by John Gaffney, for any reimbursements to Waleed and Waheed for these tax payments or payments of the taxes made by the Partnership directly to VI BIR for the same period. None were found. **Exhibit 9**. Because this was a payment of an unbalanced amount for the benefit of the Yusufs and a 2013 refusal to reimburse the same taxes for Hamed, it was listed as an accounting exception—and was subsequently made a *Revised Claim* here Unlike United's claims for past taxes and other amounts Yusuf alleges the Partnership "agreed to" or that they were part of the "Partnership Agreement," this has nothing to do with what anyone agreed to. It is simply a vanilla, unbalanced use of Partnership funds: In 2013, Yusuf taxes were paid, but identical Hamed taxes were not. At a minimum, these amounts are, therefore, due to Hamed with 9% interest.

**Conclusion**

 Thus, the facts of record (and the concession in Yusuf's motion regarding RFA #1) prove that Fathi Yusuf authorized the Partnership to pay the 2002-2012 taxes for himself, his wife, his three children who worked in the Plaza Extra stores and his two children who were shareholders of the United Corporation, but did *not* work for Plaza Extra. Further, Fathi Yusuf, with no benefit to himself and at the potential loss to the Partnership of having to later pay these taxes, blocked the Partnership’s payment of Wally and Willie Hamed’s 2002-2012 taxes. Wally and Willie were forced to pay these amounts and have not been reimbursed to date. That amount plus interest is due to the Hameds from the Partnership.

 This was a blatant, aggravated and spiteful transaction prohibited by court order, tainted by a conflict of interest/self-dealing and directly against the future financial interest of the Partnership. It was further exacerbated by evasive discovery responses which attempted to mask the (eventually uncontested) basic, simple facts. Finally, had the Court not entered its order compelling a straight response to RFA #1, this would have had to proceed through further discovery and filings.

**Dated:** April 27, 2018 A

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**CERTIFICATE OF SERVICE**

 I hereby certify that on this 27th day of April, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross** (w/ 2 Mailed Copies)

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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

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

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1. This is among the accounts that Judge Brady and the parties refer to as the "Partnership Accounts" as opposed to another United-titled account to which the Hameds and the Partnership did not have access, which is referred to as the "United Tenant Account". [↑](#footnote-ref-1)
2. H-13 relates only to these 2 Hamed tax claims. H-151 deals, in part, with the $6.5 million. [↑](#footnote-ref-2)