

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

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

**PLAINTIFF / COUNTERCLAIM DEFENDANT WALEED HAMED'S
RESPONSES TO FATHI YUSUF'S REQUESTS TO ADMIT 1-23 TO HAMED**

Responses to Requests to Admit:

Yusuf Claims RFA No. 1. Admit that Hamed family members removed money from the safes at the Plaza Extra Stores without creating a written record of the withdrawal.

Hamed Response: Denied.

Yusuf Claims RFA No. 2. Admit that Plaza Extra East occupied Bay 5 between May 1, 1994 and July 31, 2001 for storage of inventory belonging to the Partnership.

Hamed Response: Denied.

But admit that Plaza Extra East stored materials in a portion of Bay 5 for some limited periods of time when it that Bay was vacant, but it as intermittent, and not continuous, between May 1, 1994 and July 31, 2001.

Yusuf Claims RFA No. 3. Admit that the Partnership owes rent to United for its occupancy of Bay 5 for the period between May 1, 1994 and July 31, 2001.

Hamed Response: Denied.

Yusuf Claims RFA No. 4. Admit that the rent for Bay 5 was the square footage multiplied by \$12.00 per foot multiplied by the number of months the space was occupied by Plaza Extra East.

Hamed Response: Denied.

Yusuf Claims RFA No. 5. Admit that the total square footage for Bay 5 is 3,125 feet.

Hamed Response: Hamed cannot truthfully admit or deny. Therefore, pursuant to Rule 36(4)(4), Hamed hereby "states in detail why [he] cannot truthfully admit or deny it." He "assert[s] lack of knowledge or information as a reason for failing to admit or deny. . .[and] that [he] has made reasonable inquiry and that the information [he] knows or can readily obtain is insufficient to enable [him] to admit or deny" **to wit**, (1) he has reviewed available drawings and plans and cannot make the areas therein match the number given. Moreover, (2) he lacks access to the property and therefore cannot measure the premises.

Yusuf Claims RFA No. 6. Admit that the total rent due from the Partnership to United for Bay 5 which remains unpaid is \$271,875.00.

Hamed Response: Denied.

However, it should be noted that if rent had been due, it was waived when Hamed entered into a settlement agreement with regard to the Partnership's use of any of the premises used during such periods by the East Store. Said agreement references the use of whatever premises were used at the Sion Farm location -- and does not restrict its scope to just Bay 1. See, e.g., Check dated February 7, 2012 which states "Item to be Paid - Description: Rent - Sion Farm." Fathi Yusuf Deposition Exhibit 10, HAMD645495. See also, the appended calculation sheet, HAMD591991-HAMD592006, which references "Sion Farm" with no limitation to "Bay 1". Moreover, Hamed knows that Yusuf is in possession of pages from the United Accounts Receivable (labeled "A/R") ledger during that period showing (i) no rent due for the covered period and, more importantly, (ii) no "balance forward". See e.g., FBIX339272-FBIX339301. Both of these documents are "documentary evidence to refute that the total rent due from the Partnership to United for Bay 5 which remains unpaid is \$271,875.00."

Yusuf Claims RFA No. 7. Admit that you have no documentary evidence to refute that the total rent due from the Partnership to United for Bay 5 which remains unpaid is \$271,875.00.

Hamed Response: Denied.

Yusuf Claims RFA No. 8. Admit that Yusuf was in charge of coordinating all of the rent payments from the Partnership to United for use of space by the Partnership in the operation of the grocery store at Plaza Extra East.

Hamed Response: Denied.

Yusuf Claims RFA No. 9. Admit that Plaza Extra East occupied Bay 8 between May 1, 1994 and September 30, 2002 for storage of inventory belonging to the Partnership.

Hamed Response: Denied.

But admit that Plaza Extra East stored materials in a portion of Bay 5 for some limited periods of time when it that Bay was vacant, but it was intermittent, not continuous, between May 1, 1994 and July 31, 2001.

Yusuf Claims RFA No. 10. Admit that Plaza Extra East occupied Bay 8 between April 1, 2008 and May 30, 2013 for storage of inventory belonging to the Partnership.

Hamed Response: Denied.

But admit that Plaza Extra East stored materials in a portion of Bay 5 for some limited periods of time when it that Bay was vacant, but it was intermittent, and not continuous, between April 1, 2008 and May 30, 2013.

Yusuf Claims RFA No. 11. Admit that the rent for Bay 8 was the square footage multiplied by \$6.15 per foot multiplied by the number of months the space was occupied by Plaza Extra East.

Hamed Response: Denied.

Yusuf Claims RFA No. 12. Admit that the total square footage for Bay 8 is 6,250 feet.

Hamed Response: Hamed cannot truthfully admit or deny. Therefore, pursuant to Rule 36(4)(4), Hamed hereby "states in detail why [he] cannot truthfully admit or deny it." He "assert[s] lack of knowledge or information as a reason for failing to admit or deny. . .[and] that [he] has made reasonable inquiry and that the information [he] knows or can readily obtain is insufficient to enable [him] to admit or deny" **to wit**, (1) he has reviewed available drawings and plans and cannot make the areas therein match the number given. Moreover, (2) he lacks access to the property and therefore cannot measure the premises.

Yusuf Claims RFA No. 13. Admit that the total rent due from the Partnership to United for Bay 8 which remains unpaid is \$323,515.63 for the period of May 1, 1994 to September 30, 2002 and \$198,593.75 for the period of April 1, 2008 to May 30, 2013.

Hamed Response: Denied.

Yusuf Claims RFA No. 14. Admit that you have no documentary evidence to refute that the total rent due from the Partnership to United for Bay 8 which remains unpaid is \$323,515.63 for the period of May 1, 1994 to September 30, 2002 and \$198,593.75 for the period of April 1, 2008 to May 30, 2013.

Hamed Response: Denied.

It should be noted and Hamed admits that if rent had been due, it was waived when Hamed entered into a settlement agreement with regard to the Partnership's use of any of the premises used during such periods by the East Store. Said agreement references the use of whatever premises were used at the Sion Farm location -- and does not restrict its scope to just Bay 1. Moreover, Hamed knows that Yusuf is in possession of pages from the United Accounts Receivable ledger (labeled "A/R") during that period showing (i) no rent due for the covered period and, more importantly, (ii) no "balance forward". See e.g., FBIX339272-FBIX339301. Both of these documents are "documentary evidence to refute that the total rent due from the Partnership to United for Bay 5 which remains unpaid is \$271,875.00."

Yusuf Claims RFA No. 15. Admit that the Partners agreed when the Partnership was formed that income taxes of the United shareholders were to be paid from the grocery store operations.

Hamed Response: Denied.

The Partners agreed when the Partnership was formed that all income taxes of the United shareholders *ascribable to partnership operation, but not those of unrelated United businesses*, were to be paid from the grocery store operations

Yusuf Claims RFA No. 16. Admit that the Partners agreed when the Partnership was formed that United's gross receipts taxes were to be paid by the Partnership.

Hamed Response: Denied

Hamed admits that the Partners agreed when the Partnership was formed that all gross receipts of United *ascribable to partnership operation, but not those of unrelated United businesses* were to be paid from the grocery store operations.

Yusuf Claims RFA No. 17. Admit that a black book ledger was kept to record amounts due to United, the Partnership, and between the Partners.

Hamed Response: Denied.

Hamed admits that:

1. Prior to September 17, 2006, ledgers, receipts and other forms of notation were kept, differently at different locations -- for those different locations, to record amounts due from and to the Partners. Many of these were lost or intentionally destroyed.

2. No such record amounts were kept after September 17, 2006.

Yusuf Claims RFA No. 18. Admit that Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed and Mufeed Hamed received financial benefit from the failure to report income from the grocery store operations on United's taxes.

Hamed Response: Denied with regard to all dates after September 17, 2006.

Hamed objects to inquiry into all dates prior to September 17, 2006 for the following reasons. (1) Judge Brady entered a protective order as to all PARTNERSHIP transactions prior to September 17, 2006. (2) this inquiry asks about income from "from the grocery

store operations". (3) This relates solely to a partnership claim, United has made no claim for repayment of any such taxes.

Notwithstanding this objection, Hamed admits the following:

1. The listed Hameds did receive income from "grocery store operations" of the partnership. The Court has determined and Yusuf/United have stipulated, this was income from the Partnership which ran the stores, not from United.

2. The listed Hameds did not report "grocery store operations" income on United tax returns.

3. In addition, the Yusufs did not report some income from "grocery store operations" on contemporaneous tax returns.

4. The listed Hameds eventually settled these claims and agreed to pay amounts in lieu of those taxes for those periods as the result of a settlement with the government.

5. At least two of the listed Hameds were not reimbursed for such payments from partnership funds as were all of the Yusufs.

6. The partnership did not pay any individual taxes for Hamed non-partnership income, but did so for Yusuf and his children.

Yusuf Claims RFA No. 19. Admit that Hamed knew that monies generated from the grocery store operations were not being reported to the taxing authorities and nonetheless continued to receive financial gain from the under-reported income.

Hamed Response: Hamed cannot truthfully admit or deny. Therefore, pursuant to Rule 36(4)(4), Hamed hereby "states in detail why [he] cannot truthfully admit or deny it." He "assert[s] lack of knowledge or information as a reason for failing to admit or deny. . .[and] that [he] has made reasonable inquiry and that the information [he] knows or can readily obtain is insufficient to enable [him] to admit or deny" **to wit**, (1) Mohammad Hamed is deceased and cannot be asked and (2) when Yusuf and United deposed Hamed they

knew he was in failing health, could have inquired into this, did not inquire into this, and no other deposition or other testimony is known to Hamed on this subject.

Notwithstanding the foregoing statements, to clarify Hamed notes the following.

1. Hamed will not dispute that "monies generated from the grocery store operations were not being reported to the taxing authorities" and that both Yusuf's and Hamed's sons "receive[d] financial gain from the under-reported income."

Yusuf Claims RFA No. 20. Admit that Hamed did not report income he received as a partner in the grocery store operations to the taxing authorities.

Hamed Response: Hamed cannot truthfully admit or deny. Therefore, pursuant to Rule 36(4)(4), Hamed hereby "states in detail why [he] cannot truthfully admit or deny it." He "assert[s] lack of knowledge or information as a reason for failing to admit or deny. . .[and] that [he] has made reasonable inquiry and that the information [he] knows or can readily obtain is insufficient to enable [him] to admit or deny" **to wit**, (1) Mohammad Hamed is deceased and cannot be asked, and (2) when Yusuf and United deposed Hamed they knew he was in failing health, could have inquired into this, did not inquire into this, and no other deposition or other testimony is known to Hamed on this subject.

Notwithstanding the foregoing statements, to clarify, Hamed admits the following.

1. Hamed will not dispute that "members of the Hamed family who are defendants here did not report [all] income [they] received [from Hamed's share of] grocery store operations to the taxing authorities.

Yusuf Claims RFA No. 21. Admit that the Partnership operated under the umbrella of United for the duration of the Partnership.

Hamed Response: Denied.

Hamed admits the following.

1. There is no legal definition of the term "operated under the umbrella" and that term was never used by Hamed or Yusuf to describe the Partnership or how the Partnership utilized United.

2. The Court has found these facts and entered summary judgment: Hamed was a partner. Yusuf was a partner. United was Yusuf's corporation. Yusuf used United as his agent to perform some of the operations of the partnership. Similarly, Hamed used his son Waleed as his agent to perform some of the operations of the partnership. This did not make United or Waleed in any way an owner or principal of the Partnership. United was just provided by Yusuf in this capacity -- as a shell -- a use provided by one of the Partners.

The Court has also found exactly what Yusuf has stated repeatedly--Yusuf put it perfectly: "But I want you please to be aware that my **partner's** with me since 1984, and up to now **his name is not in my corporation**. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that **whatever Plaza Extra [the Partnership] owns in assets, in receivable or payable, we have a 50 percent partner.**"

Thus, the partners' original agreement was to carry out the purpose of the partnership agreement with Yusuf, as one of the partners, agreeing to utilize his corporation to do some things for the Partnership as his agent. He could have contributed these facilities otherwise, but did so via United. See e.g. *Sheridan Healthcorp, Inc. v. Amko*, 993 So.2d 167, 170-171 (Fla.App. 4 Dist. 2008).

The trial court determined that the breach of fiduciary duty claim failed because the joint venture had accomplished its purpose, namely to create a corporation to be the legal entity to contract with NBHD to provide emergency room surgery services. Both the court and Dr. Amko rely on the statements in Dr. Triana's complaint and various pleadings to support the notion that the common purpose was to create the corporation. However, a review of the complaint, as well as the other filings, shows that Dr. Triana contends that

the joint venture was formed to provide emergency room surgical services to NBHD and to do it through a corporation and related contracts with that corporation.

This is not a distinction without a difference. A joint venture is similar to a partnership and is, in fact, "governed by the principles which constitute and control the law of partnership." *Kislak v. Kreedian*, 95 So.2d 510, 515 (Fla.1957) (quoting *Proctor v. Hearne*, 100 Fla. 1180, 131 So. 173, 176 (1930)). A joint venture terminates when the objects of its creation have been accomplished. *Id.* at 514. As explained by our supreme court in *Donahue v. Davis*, 68 So.2d 163, 171 (Fla.1953): "**The fact that joint adventurers may determine to carry out the purpose of the agreement through the medium of a corporation does not change the essential nature of the relationship.**" (Emphasis supplied).

See also *Granik v. Perry*, 418 F.2d 832, 836-837 (C.A.Fla. 1969) ("The fact that joint adventurers may determine to carry out the purpose of the agreement through the medium of a corporation does not change the essential nature of the relationship"); *Jolin v. Oster*, 44 Wis.2d 623, 172 N.W.2d 12 (1970) (corporation was vehicle for conducting the business of a continuing partnership -- and could be used as a means of conducting business of joint venture) and *McDonald v. McDonald*, 53 Wis.2d 371, 379-381, 192 N.W.2d 903, 907 - 908 (Wis. 1972).

We find no basis for applying the doctrine of estoppel or laches. There was nothing inconsistent in the action of Chester, Jr., in partaking of the activities of the corporation over the years which would now foreclose him from asserting the corporation was an instrumentality by which the partnership carried on part of its *381 business. If the corporation is to be an instrumentality, it should be operated like a corporation but it must promote the partnership purposes. The record shows much more could have been done to operate the corporation as a corporation should be operated, especially in the lifetime of McDonald, Sr. This failure is some evidence of the intent of the parties, although complete compliance with corporate laws would not necessarily mean the corporation was not the formal instrumentality of the partnership.

Yusuf Claims RFA No. 22. Admit that in 2013, Mohammad Hamed acknowledged, under oath, that he and his family owed \$1.6 million to Yusuf as a result of a partial true-up between the Hamed and Yusuf families and that said amount remained outstanding as of September 17, 2006?

Hamed Response: Denied.

Hamed admits and accurately stated in Plaintiff's Response to Defendant United's First Set of Interrogatories to Plaintiff Hamed, December 23, 2013, *Hamed v Yusuf*, 12-SX-CV-370, as follows:

Describe in detail what objections you have to the accounting provided to you by Fathi Yusuf regarding the \$2.7 million dollars amount that was withdrawn by United Corporation in August of 2013 as an offset to your previous withdrawals and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Hamed Response: There are multiple problems with this accounting, which was recently supplied to my lawyers after repeated requests that it be provided. While this investigation and review continues, which will be the subject of an expert accounting report, several problems have already been noted.

First, it states that \$1.6 million was due and owing at the time of the removal of the \$2.7 million. That claim is time barred. Moreover, while it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm grocery store profits, showing \$1.6 million was due to the Yusufs to "true up" the differences in the 50/50 profit withdrawals at that time for that store, **there are other off-sets to that amount. For example, there were amounts to "true up" form the other stores as well.** Likewise, after that time, Fathi Yusuf and his sons took funds that were required to be offset against that amount, as he well knows. . . .(Emphasis added.)

What Mohammad Hamed stated, at page 102-103 of his 3/31-4/1, **2014** deposition was:

In.9 Q. (Mr. Hodges) And as I understand it, as of today,
In.10 you -- you are still not aware of the facts and
In.11 circumstances surrounding the \$1.6 million that's referenced
In.12 in Exhibit No. 3, is that right?
In.13 MR. HARTMANN: Object. Asked and answered.
In.14 MR. HODGES: Show him the letter while
In.15 you're --
In.16 THE INTERPRETER: This one?
In.17 MR. HODGES: No, the 1.6.
In.18 THE INTERPRETER: Right.
In.19 MR. HODGES: You want me to ask the question
In.20 again?
In.21 THE INTERPRETER: Please.
* * *

In.3 Q. (Mr. Hodges) Okay. If you would point out the
In.4 1.6 million on Exhibit 3? And the -- the words to the
In.5 left -- left of it, Past confirmed withdrawal?
In.6 **Okay. So, Mr. Hamed, as -- as you're sitting**
In.7 **here today, you are not aware of any of the facts**
In.8 **surrounding the, quote, Past confirmed withdrawals of**
In.9 **\$1.6 million, is that correct?**
In.10 MR. HARTMANN: Object. Asked and answered.
In.11 THE INTERPRETER: Okay.
In.12 **He says no.**
In.13 MR. HODGES: Okay. I guess that's a good
In.14 time to break, then. (Emphasis added.)

This was just one small part of the relationship between the parties was partially accounted at one time -- it was incomplete. Mike Yusuf testified at length that this was \$1.6 million number NOT all of the stores at that time, and not all of the accounts. It was just one facet of various claims between the Yusufs (not United) and the Hameds at that time. **To get what was "owed" as an effect of ALL ACCOUNTS at that time, one would have to know the similar amounts from the other operations at the same time.**

Yusuf Claims RFA No. 23. Admit that members of the Hamed family held assets for Mohammad Hamed which were part of his distributions from the Partnership?

Hamed Response: Denied.

Dated: May 15, 2018



Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 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)
Special Master
% edgarrossjudge@hotmail.com

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com



CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

