

**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,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants,

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

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

vs.

UNITED CORPORATION, *Defendant.*

Case No.: SX-2014-CV-287

Consolidated with

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

vs.

FATHI YUSUF, *Defendant.*

Case No.: SX-2014-CV-278

Consolidated with

FATHI YUSUF, *Plaintiff,*

vs.

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

Case No.: ST-17-CV-384

**HAMED'S REPLY RE SPECIAL MASTER ROSS' MAY 21ST ORDER
SEEKING THIS COURT'S ASSISTANCE AND DIRECTIONS**

The Special Master's referral (and Hamed's motion) sought instructions from this Court as to whether one partner enjoyed special benefits not available to the other. The Special Master addressed a specific example to explain why he needed such instructions—Yusuf's differential withdrawal of Partnership funds in 2013 to pay the non-partnership income taxes of his family members (the “tax claim” or “H-13”).

In his opposition, Yusuf simply ignores the general concern of the Special Master, arguing that the Special Master was “mistaken” in stating that Yusuf has sought “special benefits” in describing Yusuf's position regarding the *exemplar* “tax claim.” Yusuf then asserts that this Court could correct this “misunderstanding” by simply ruling on the merits of Hamed's “tax claim.” In essence, Yusuf is attempting to avoid the issue by seeking a ruling on the merits of a claim that is not even before this Court.¹

To try to divert this Court's attention from the very real issue for which the Special Master seeks guidance, Yusuf goes through a litany of irrelevant points, which can be summarized (and then ignored) as follows:

- As noted, the Special Master's Order (and Hamed's motion) *did not* place the *merits* of the “tax issue” raised in Hamed's Revised Claim H-13 before this Court, indeed Hamed has not even had the opportunity to file its reply because of the stay;²
- Yusuf's argument on page 2 that the Hameds are seeking recovery in part for claims that are barred by the Order of this Court, as a portion of those claims allegedly arose before 2007, is entirely incorrect. Both the Yusufs' and Hameds' post-criminal tax liability were assessed in 2013 by the VI IRB, the funds were withdrawn from the

¹ Yusuf does so by submitting his opposition to Hamed's Revised Claim H-13 as an attachment to his response without even submitting Hamed's well documented claim!

² Thus, Hamed will not respond to the multiple misstatements Yusuf makes in trying to convince this Court to rule on that claim.

Partnership account in 2013, and all of those taxes were paid in 2013. Because Yusuf refused to allow the settlement to *include* Willie and Wally Hamed, they were forced to pay their assessment at that time, giving rise to Hamed Claim H-13. Because the tax determination, withdrawal and payment all occurred in 2013, this Court's limitation on bringing claims for transactions occurring on or after September 17, 2006 is inapplicable. Put another way, this is a case where unequal funds were drawn from a Partnership account in 2013, not in the pre-2007 time period.

- Yusuf's assertion on page 4 that the \$6.5 million paid for United's taxes in June of 2013 was **not paid at a time when Yusuf claimed the Plaza Supermarkets were owned by United is completely false**. To support this misleading statement, Yusuf cites from the evidence submitted by Hamed to refute Yusuf's claim that the Plaza Supermarkets were owned by the Partnership. However, Yusuf disputed this evidence and adamantly denied there was a partnership throughout 2013, opposing Hamed's motion for summary judgment on this issue. See **Exhibit A**.³ It was not until April 7, 2014, a year after the \$6.5 million in United's taxes was paid, before Yusuf conceded that the Plaza Extra Stores were owned by the Partnership and Yusuf sought its dissolution. See **Exhibit C**.⁴
- Yusuf's assertion on page 5 that Hamed failed to file a claim as to Yusuf's use of Partnership funds to pay non-partnership taxes owed by him and his family members is simply wrong, as Hamed has filed two claims (H-151 and H-144) which

³ In fact, at that juncture, this Court found in late 2013 that there was a genuine issue of fact as to whether United or the Partnership owned these stores based on Yusuf's pleading. See **Exhibit B**.

⁴ Had Yusuf agreed the Plaza Extra stores were owned by the Partnership in 2013, there would have been no need for this Court's preliminary injunction issued on April 25, 2013, or the Supreme Court's decision affirming that Order on September 30, 2013.

seek both reimbursement to the Partnership of all funds used to pay non-partnership debts, including (1) the entire \$6.5 million of Partnership funds used to pay United’s taxes in the criminal case as well as (2) the estimated tax payment in April 2013, which was made for the United Corporation shareholders.

With these comments in mind, Hamed will address the issue before the Court.

I. The November 7, 2014 Summary Judgment

On November 12, 2012, just two months after this action began, Hamed filed his motion for partial summary judgment seeking a declaration of both (1) the existence of a oral partnership agreement that was entered into in 1986 (the "1986 Oral Partnership Agreement" or "Agreement") and (2) that the terms of that Agreement provided for equality in the *management of the business operations*:

. . . plaintiff seeks a finding of partial summary judgment as to **the existence of a partnership** between himself and Fathi Yusuf for the three Plaza Extra supermarkets (Sion Farm, Estate Plessen and St. Thomas) as well as a determination that as a result, he is entitled to a 50% interest in its profits **and the right to fully participate in the management of the business operations** of the three stores. (Emphasis added.)

Id. at 1-2. After vehemently denying the existence of such a partnership during the first two years of this litigation, Yusuf notified the Court in April of 2014 that he no longer contested the partnership’s rights, but now sought its dissolution. See **Exhibit C**. Soon after Yusuf conceded this issue at ¶7 of his April 7, 2014 *Motion To Appoint Master*, Hamed renewed his *Motion for Partial Summary Judgment* on May 8, 2014. On June 2, 2014, Yusuf and United filed a brief arguing that no actual summary judgment was necessary because they had conceded the issue and, thus, Hamed and Yusuf would "carry on as co-owners" (see **Exhibit D**):

6. In any event, there is no need for the declaration of the existence of the partnership since there is no longer any controversy regarding that subject given Yusuf’s concession in his Memorandum. . . .there is no longer any controversy that there was a partnership between Yusuf and Hamed **to carry**

on as co-owners the business of the Plaza Extra Stores. This position was also stated by counsel for Defendants on the record at the telephonic hearing held on May 29, 2014. (Emphasis added.)

Despite Yusuf's attempts to avoid a written order, on November 7, 2014, this Court entered summary judgment—expressly finding (1) a partnership was formed in 1986 by an **oral** agreement between Plaintiff and Defendant Yusuf, and that it (2) applied to both the ownership **and operation** of the three Plaza Extra Stores.

ORDERED that the Court finds and declares that **a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores**, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further. . . . (Emphasis added.)

Exhibit E. There was absolutely no finding that the Partnership was formed by 'implication' or that its terms are somehow based on a series of 'actions' which should be 'thought of as providing the Agreement's terms. To the contrary, the Court found an "*oral agreement*" expressly because Fathi Yusuf had testified in *great detail* as to when and how the 1986 *Oral Agreement* was entered into—and detailed its main terms.

Thus, there is no basis for allowing either partner any special benefits under this Court's November 7, 2014, Order (or under RUPA, codified in this jurisdiction in Title 26).

II. The “Tax Issue” example

As Lori Hendrickson, attorney for the US Department of Justice in the criminal case, explained to Judge Lewis at the sentencing hearing for United in *United States of America vs. United Corp. et. al.*, in the District Court of the Virgin Islands (St. Thomas Division), Docket No. 1:05-cr-00015:

I agree with Mr. Andreozzi that during those years the payments were made, based on copies of the requests for payment government sought and approved, and let the money be released, that it was money to pay the tax obligations of the Yusuf family members who were listed as shareholders in the record of the VIRB. And there was other income on some of their 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.

Exhibit F, Hr,g Tr. 67:20-68:9, Jul 16, 2013)(emphasis added). In fact, *Yusuf’s own statements* confirm that Yusuf and his sons had unrelated income in addition to the Plaza Extra grocery store income on which the Partnership paid the taxes:

Furthermore, unlike the Hameds, the **Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership.** (Emphasis added.)

Exhibit G. Similarly, Yusuf’s expert accountant, BDO, also noted that Yusuf and his sons had income unrelated to the Plaza Extra grocery store: “Yusuf’s family has testified that their source of income was not only related to the supermarket activities, but also from United’s rental and other businesses not related to the supermarket operation.” **Exhibit H**.

Thus, following a full briefing, the “tax issue” will have to be resolved by the Special Master either (1) requiring the Partnership to pay the taxes equally for the family members of each Partner, as Yusuf concedes he did for his family members, or (2) to require Yusuf to account for and pay back all such partnership funds used to pay such “non-partnership” taxes. In short, whichever way the Special Mater decides this, there must be equal treatment of how the Partnership disburses its payments to each Partner for these tax reimbursements and other disbursements.

III. Partner claims for “Special Benefits” not shared with the other Partner

In summary, there is no basis for giving either Partner a “special benefit” that is not afforded equally to the other Partner. As such, it is respectfully submitted that this Court should direct the Special Master accordingly.

Dated: June 25, 2018



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-867

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

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 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).



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

MOHAMMAD HAMED, by his
authorized agent, WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

**DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

~~COME NOW, Defendants Fathi Yusuf and United Corporation (collectively,~~
"Defendants"), pursuant to Federal Rule of Civil Procedure 56 and Local Rule of Civil Procedure
56.1, file the instant response in opposition to the Plaintiff's motion for partial summary judgment.
In support thereof the Defendants state as follows.

1. PROCEDURAL HISTORY

On or about September 17, 2012, Mohammad Hamed, by his self-appointed "authorized agent Waleed Hamed," filed this commercial dispute against Fathi Yusuf and United Corporation (collectively, "Defendants") regarding the existence of an alleged partnership between Fathi Yusuf and Mohammad Hamed dating back to the "1980's." (Complaint at ¶ 5). On October 10, 2012, Defendants moved to dismiss the Complaint or, alternatively, to strike certain portions therein and for a more definite statement. (D.V.I. Doc. # 11).

On October 19, 2012, prior to a resolution of Defendants' motion to dismiss, the Hameds filed their First Amended Complaint (D.V.I. Doc. # 15), which added a third count to the First Amended Complaint, and is the only pleading presently before this Court; and the Hameds filed a

Ex. A

~~or any business relationship with, i.e., United Corporation d/b/a, because a "court may only pierce the [corporate] veil in 'specific, unusual circumstances', lest it render the theory of limited liability useless." *American Bell, Inc. v. Federation of Tel. Workers*, 736 F.2d 879, 886 (3d Cir. 1984) (internal quotations omitted). See *Todi v. Stursberg*, 2001 U.S. Dist. LEXIS 11270 (E.D. Pa.) (denying request for preliminary injunction and to pierce the corporate veil because, *inter alia*, there was insufficient evidence to establish a complete failure to observe corporate formalities).~~

Here, as a matter of law, the Court cannot provide relief to the Plaintiff in respect for relief that he did neither plead nor requested. Further, the Plaintiff's statement of undisputed facts does *not* contain sufficient facts/evidence provided in the discovery, disclosure materials, and any affidavits, to "show that there is no genuine issue as to any material fact and that the [Plaintiff] is entitled to judgment as a matter of law." *Williams, v. United Corp., supra*. Accordingly, the Court should deny the motion in full to the extent that it has *any effect on United Corporation d/b/a Plaza Extra*.

B. PARTIAL SUMMARY JUDGMENT IS INAPPROPRIATE

The Defendants assert that there are material issues of fact that preclude the "drastic remedy" of the entry of summary judgment. The Defendants incorporate by reference their Response to Plaintiff's Statement of Material Facts & Defendants' Statement of Additional Facts in Opposition to Plaintiff's Motion for Partial Summary Judgment as if set forth herein. Further, the Defendants incorporate the testimony and exhibits entered into the record at the two-day evidentiary hearing this Court has already held. Additionally, the Defendants incorporate the recently executed declarations of Fathi Yusuf and Maher Yusuf, Exhibits A and B, respectively.

i. Legal Defenses

1. Statute of Frauds

In this context, where an unwritten agreement purports to provide a stated term of greater than one year, the Second Circuit Court of Appeals has clarified that:

Despite some sweeping pronouncements to the effect that the New York statute of frauds [] does not apply to joint ventures, these must mean only that a writing is not required simply because the transaction is a joint venture, and the statute must apply to joint ventures having a stated term of more than one year, as the plain language of [the statute] dictates.

Ebker v. Tan Jay Int'l, Ltd., 739 F.2d 812, 827 (2d Cir. 1984) (internal citation omitted). In *Ebker*, the Second Circuit found that “the statute of frauds renders unenforceable the oral joint venture agreement containing a stated term of [greater than one year] as found by the jury.” *Id.* at 828 (rejecting the argument that the “Statute of Frauds did not apply to joint ventures at all” and alternative argument that, even “if the statute applied, the five-year joint venture agreement would be treated as a partnership at will”).

Based on the testimony of Mohammad Hamed that the alleged partnership at issue was to continue “forever,” the statute of frauds renders the agreement unenforceable which should dispose of this action as a matter of law. *Ebker*, 739 F.2d at 828. See also *Fountain Valley Corp. v. Wells*, 98 F.R.D. 679, 683-65 (D.V.I. 1983) (holding that, under Virgin Islands law, “statute of frauds . . . bar[s] this Court from enforcing any alleged joint venture agreement” that “was to exist for more than one year”); *Rivkin v. Coleman*, 914 F. Supp. 76, 79 (S.D.N.Y. 1996) (holding that New York statute of frauds barred enforcement of alleged oral joint venture agreement where, as here, plaintiff testified that agreement was to continue “forever”). Accordingly, this Court should deny the motion.

2. Statute of Limitations

Plaintiff's purported “agent,” Waleed Hamed, testified to having a power of attorney that Plaintiff executed in either 1995 or 1996. 1.25.13 Hr. 46:1-8. Waleed Hamed also testified that he was aware in either 1999 or 2000 that Fathi Yusuf's ownership interest in United Corporation d/b/a

Plaza Extra, and thus the ownership of the supermarkets at issue in this case, was devolved to Fathi Yusuf's children. 1.25.13 Hr. 134:1-9. It is black letter law that notice of an action taken in derogation of the principal's rights to the agent (Waleed Hamed) is notice to the principal (Plaintiff). Restatement (Second) of Agency, § 275. Further, the longest statute of limitations that might apply in this action is, at most, 10 years. 5 V.I.C. § 31. Accordingly, as late as 2000, Plaintiff was aware that Fathi Yusuf had divested his ownership interests to his children. And, because the case below was brought at least 11 ½ years after Plaintiff was aware of the divestment, the action, irrespective of its merits, is clearly prohibited by the statute of limitations. Accordingly, this Court should deny the motion.

3. Retirement of Plaintiff

“When a partner retires . . . , the partnership is dissolved.” *Estate of Matteson v. Matteson*, 749 N.W.2d 557, 568 (Wis. 2008) (applying Wisconsin Uniform Partnership Act provisions) (citation omitted). “An existing partner has two primary options upon initiating a partnership dissolution[:] . . . (1) (continuation) to permit the business to continue and claim his or her interest in the dissolution value as a *creditor*, or (2) (wind-up) to force the dissolved business to wind up and take his or her part of the proceeds.” *Id.* (citation omitted) (emphasis added). Upon election of a continuation, when the remaining partner ultimately ends and dissolves the business, the retiring/exiting partner receives his elected sum of the partnership's dissolution value “as an *ordinary creditor*,’ with creditors of the dissolved partnership having priority over an existing partner's claims.” *Id.* at 572-73 (citing Wis. Stat. § 178.37) (emphasis added).

Here, it is undisputed that Plaintiff “retired” from the alleged partnership in or about 1996. 1.25.13 Hr. 202:10-13; 207:4-5; Ex A at ¶28. Accordingly, as simply an “ordinary creditor” of the

alleged partnership, Plaintiff cannot prevail as a matter of law on the partnership issues in this action. *Matteson*, 749 N.W.2d at 568. Accordingly, this Court should deny the motion.

ii. Material Issues of Fact - Disputed Facts

Plaintiff in support of his motion relies almost exclusively on Fathi Yusuf's decades-old deposition testimony in a different action, in which Plaintiff was not a party. This reliance was misplaced, as courts may not take judicial notice of either factual findings or the record of another case, including testimony, as substantive proof of the matters asserted. *See, e.g.*, 21B Wright, Miller & Cooper, Fed. Practice & Proc. § 5106.4 (2008) (a court "cannot take judicial notice of truth of facts found in another case"); *Wyatt v. Terhune*, 315 F. 3d 1108, 1114 & n.5 (9th Cir. 2003) ("a court may not take judicial notice of findings of fact from a different case for their truth") (collecting cases). At best, Fathi Yusuf's prior deposition testimony merely means that he "committed to a position at a particular point in time. It does not mean that the witness has made a judicial admission that formally and finally decides an issue." *W.R. Grace & Co. v. Viskase Corp.*, No. 90 C 5383, 1991 WL 211647, at *2 (N.D. Ill. Oct. 15, 1991); *see also AstenJohnson, Inc. v. Columbia Cas. Co.*, 562 F.3d 213 (3d Cir. 2009) (noting, in an analogous context, that a jury must resolve legal conclusions based on conflicting factual issues).

1. Intent of Fathi Yusuf

The record evidence reflects that both sides have historically characterized their relationship through the casual or slang use of the term "partner," including in contexts in which the law clearly would not ascribe any legal meaning to such casual reference. However, Fathi Yusuf's recent affidavit, Exhibit A, explicitly disavows that he is a "partner" with Plaintiff and explains that when he used the term "partner" in his deposition testimony he was not using it as an attorney would. Exhibit A at ¶¶6 and 8. Further, Fathi Yusuf's affidavit is clear – he did not intend to be a "partner"

with Mohammad Hamed. Exhibit A at ¶7. For this reason alone, and in conjunction with the other reasons stated herein, the Court cannot grant the Plaintiff the drastic remedy of summary judgment. That is because, a trial court is prohibited from weighing the evidence in respect to Rule 56 motions, *see Joseph v. Daily News Publishing Co., Inc., supra*, and given the submission of the non-conclusory affidavit of Fathi Yusuf, which is obviously based on personal knowledge, the Defendants have put forth material issues of fact are "sufficient to defeat summary judgment or judgment as a matter of law," *Burd, supra*. Indeed, this is remains true even if this Court wholly discounts Fathi Yusuf's affidavit as "self-serving" because it supports his position. *Id.* The Plaintiff's motion must be denied and the case presented to a finder of fact. Accordingly, this Court should deny the motion.

2. Representations in the Criminal Case

When the Government in the Criminal Action questioned whether the Plaza Extra supermarkets were being operated as a partnership, which is the same claim that Plaintiff has alleged in this action and was based upon the very same deposition testimony, the defendants in the Criminal Action, including Waleed Hamed and Waheed Hamed, never expressed the view that their father (the Plaintiff here) held any interest in the supermarket operations as a "partner" or otherwise. 1.25.13 Tr. 116:6-19, 125:8-13, 126:10-15. To the contrary, Plaintiff's supposed agent here, Waleed Hamed, actively represented to the Government and the District Court that the operations of the supermarkets by United Corporation was at all times as a *de jure* corporation, in which Mohammad Hamed held no interest or ownership whatsoever. 1.25.13 Tr. 16:6-10, 116:20-25, 222:14-18 *see also* DX 5, *passim* (transcript of July 9, 2009, hearing)).

Indeed, a jury could easily determine that the failure of the Plaintiff's "authorized agents" to assert that their father is a "partner in the Plaza Extra operations" is indicative that there was in fact

no partnership. Summary judgment is inappropriate under the circumstances given the disputed material facts. Accordingly, this Court should deny the motion.

3. Labels Cannot Control

More importantly, Plaintiff's heavy reliance on the parties' own designations is misplaced, as "the existence of a partnership is not determined by the parties' designation of their arrangement. Instead, it depends primarily upon the intention of the parties ascertained from the terms of any agreement, from the parties' acts and from the surrounding circumstances as a whole." *In re Lona*, 393 B.R. 1, *16 (Bankr. N.D. Cal. 2008) (citation omitted). *See also Byker v. Mannes*, 641 N.W.2d 210, 211, 216 (Mich. 2002) ("In determining whether a partnership exists, . . . it is unimportant whether the parties would have labeled themselves 'partners.'") ("The law must declare what is the legal import of [parties'] agreements, and names go for nothing when the substance of the arrangement shows them to be inapplicable."); *Cont'l Res., Inc. v. PXP Gulf Coast, Inc.*, No. CIV-04-1681-F, 2006 U.S. Dist. LEXIS 72870, at *54 (W.D. Okla. Oct. 5, 2006) ("the manner in which the written [or oral] agreements characterize or label the parties' relationship is not conclusive in determining whether a partnership [or a joint venture] has been created") (addressing Texas UPA).

The Court must submit this case to the trier of fact; the Court should deny the motion in full.

4. Plaintiff Never Had Management Rights and/or Control

Plaintiff—claiming to be a "partner" in an alleged partnership with Fathi Yusuf dating back to the 1980s—testified that, since the very beginning, Fathi Yusuf alone has been and "is in charge of everybody" and in charge of "all the three store[s]" 1.25.13 Tr. 201:4, 210:22-23. The attached affidavits also confirm the Plaintiff's lack of management rights. Exhibit B at ¶12; Exhibit A at ¶11. With the disputed facts that the Plaintiff never had management rights— one of the hallmarks of a

“partnership” – there is sufficient contested material facts that preclude the entry of summary judgment. Accordingly, this Court should deny the motion.

5. No Objective Evidence of a “Partnership” to Third Parties

Indeed, to the outside world, Plaintiff– generally, and to the tax authorities, specifically – has been a *total stranger* to the very partnership that he now claims has existed for the past 26 years.¹ Plaintiff himself testified that Fathi Yusuf alone obtained funding from Banco Popular and Scotia Bank. 1.25.13 T. 199:17-21, 205:24-25, 206:1, 207:6-21. And that he never signed any loan documents in respect to Plaza Extra. 1.25.13 Tr. 207:16-17 (Mohammad Hamed indicating that “I’m [sic] not sign nothing”).

Further, these facts (as far as the Defendants are concerned) are undisputed:

- United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶13.
- United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶14.
- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶15.
- United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit A at ¶16.

¹ See, e.g., *In re PCH Assocs.*, 949 F.2d 585, 602-03 (2d Cir. 1991) (“most important” “evidentiary fact[]” relating to partnership issues is “conduct of the parties . . . with respect to third parties”) (finding no joint venture relationship where, among other reasons, “nothing in the record indicated that any third parties that dealt with the [business or defendant] believed [the movant] to be a participant in the business or looked to [the movant]’s creditworthiness as a basis for doing business”).

- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit A at ¶17.
- United Corporation d/b/a Plaza Extra has never acquired property in the name of “United Corporation Partnership.” Exhibit A at ¶18.
- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never acquired property in the name of the “Fathi Yusuf & Mohammad Hamed partnership.” Exhibit A at ¶19.
- Fathi Yusuf has never acquired property on behalf of the purported “Fathi Yusuf & Mohammad Hamed partnership” by way of “Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands.” Exhibit A at ¶20.
- Fathi Yusuf has never acquired property on behalf of the purported “Fathi Yusuf & Mohammad Hamed partnership” by way of “Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership.” Exhibit A at ¶21.
- No property has ever been conveyed to “Fathi Yusuf, as a partner” in “Fathi Yusuf & Mohammad Hamed partnership.” Exhibit A at ¶22.
- No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership. Exhibit A at ¶23.
- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed a partnership income tax return. Exhibit A at ¶24.

At bottom, there is sufficient record evidence (as introduced at the two-day evidentiary hearing) and with the attached exhibits to establish that “there is a genuine issue for trial such that a

reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, *supra*. Rule 56 relief is inappropriate.

6. No Partnership Distributions

The affidavits of Maher Yusuf and Fathi Yusuf establish that Plaintiff has never received profits from the purported "Fathi Yusuf & Mohammad Hamed partnership" nor from Plaza Extra. See Exhibit A at ¶30; Exhibit B at ¶7. The fact that the Plaintiff has *never* received "partnership distributions" could easily lead a trier of fact to determine that there was never in fact a partnership agreement. This is especially true since (as the Plaintiff admits) "*receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business.*" Plaintiff's Rule 56 motion at p. 7 (emphasis added). Here there is a contested issue as to whether the Plaintiff ever received profits. The Defendants' position (in tandem with other arguments) is simple – no receipt of profits = no partnership. A rational jury could agree with the Defendants as to this point and, as such, this is a genuine issue of fact that precludes Rule 56 relief. Accordingly, this Court should deny the motion.

7. Rent Notices are not Dispositive

However, it is undisputed that United Corporation does business as "Plaza Extra." Thus, as John Gaffney (one of United Corporation d/b/a Plaza Extra's controllers) explained, the rent notices that United Corporation d/b/a Plaza Extra provided to the Plaza Extra East store were simply "intracompany" internal accounting transactions, *i.e.*, "an intra-company payable due to/from," which income is "offset by an expense" and thus is "washed" in the final analysis on United's tax returns. 1.31.13 Tr. 100:2-6, 101:4-7, 105:22-23, 106:1-6, 107:11-12. At best, the parties' dispute regarding this rent issue is a material issue of fact, as with all of their factual disputes concerning the alleged partnership, should be decided by the fact-finder, *i.e.*, a jury, at a trial on the merits and not by way of summary judgment. Accordingly, this Court should deny the motion.

4. CONCLUSION

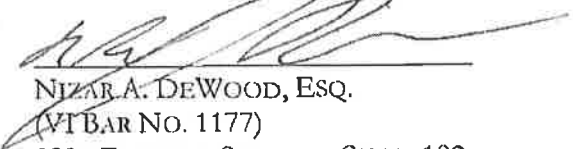
Since all that a non-movant needs to show is that there is more than a scintilla worth of evidence that there is a genuine issue for trial, here the Defendants clearly carried their low burden. The record evidence (or lack thereof) combined with the affidavits of Fathi Yusuf and Maher Yusuf provide ample support that there are material facts as to the establishment of a partnership between Mohammed Hamed and Fathi Yusuf. Further, this Court must view the facts in the light most favorable to the non-moving party, here the Defendants. Accordingly, since there is a genuine issue as to the formation and/or continued existence of a partnership, the Plaintiff's motion for partial summary judgment must be denied. *See Williams, supra.*

WHEREFORE, the Defendants pray that the Court deny the Plaintiff's motion in full.

Dated Sept. 16, 2013

DEWOOD LAW FIRM
ATTORNEYS FOR DEFENDANTS

BY:


NIZAR A. DEWOOD, ESQ.
(VT BAR NO. 1177)
2006 EASTERN SUBURBS, SUITE 102
CHRISTIANSTED, V.I. 00820
T. (340) 773-3444
F. (888) 398-8428

BY:

/s/ Joseph A. DiRuzzo, III
Joseph A. DiRuzzo, III, Esq.
USVI Bar #1114
FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 Brickell Bay Drive, 32nd Floor
Miami, Florida 33131
305.350.5692 (O)
305.371.8989 (F)
jdiruzzo@fuerstlaw.com
Attorneys for Defendants

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
) Plaintiff,) CIVIL NO. SX-12-CV-370
) v.) ACTION FOR DAMAGES, *et al.*
)
FATHI YUSUF and UNITED CORPORATON,)
)
) Defendants.)

ORDER DENYING PARTIAL SUMMARY JUDGMENT

~~This matter is before the Court on Plaintiff's Motion for Partial Summary Judgment; Plaintiff's Memorandum in Support of his Motion for Partial Summary Judgment (jointly "Plaintiff's Motion"); Plaintiff's Rule 56.1 Statement of Undisputed Facts in Support of Plaintiff's Motion for Partial Summary Judgment on Count I; ("Plaintiff's Undisputed Facts"), all filed November 12, 2012; and Defendants' Response in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Defendants' Response"); Defendants' Response to Plaintiff's Statement of Material Facts & Defendants' Statement of Additional Facts in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Defendants' Additional Facts"), both filed September 16, 2013; Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment, filed September 26, 2013 ("Plaintiff's Reply"); and Plaintiff's Motion to Supplement the Partial Summary Judgment Record, filed October 18, 2013.~~

Plaintiff's Motion to Supplement the Partial Summary Judgment Record will be granted. For the reasons that follow, Plaintiff's Motion for Partial Summary Judgment will be denied.

PROCEDURAL HISTORY

~~The Court has previously made extensive findings of fact (see Memorandum Opinion, April 25, 2013) that will not be repeated or revisited here. The Parties have been actively engaged in~~

EX. B

fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248.

Pursuant to LRCi 56.1, Plaintiff has submitted Plaintiff's Undisputed Facts to which Defendants have submitted Defendants' Response and Defendant's Additional Facts. In order to prevail on Plaintiff's Motion, he must prove that there is no genuine dispute as to any material facts relative to the assertions contained within Count I and that Plaintiff is entitled to judgment as a matter of law.

Count I of Plaintiff's First Amended Complaint alleges that "A partnership was formed between the two parties" (First Amended Complaint, ¶35). Plaintiff claims, among other things, that he is entitled to 50% of the Partnership profits, joint management of the Plaza Extra supermarkets, and joint control over the Partnership funds. As such, Plaintiff asks this Court to award him "legal and equitable relief... to protect and preserve his partnership rights" as well as "compensatory damages for all financial losses inflicted by Yusuf on the Partnership" (First Amended Complaint, ¶¶ 35-38).

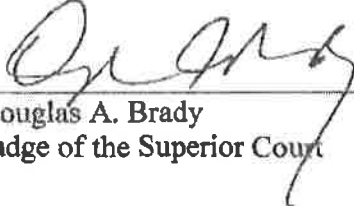
As to Count I, the Court finds that significant genuine issues of material fact exist that at this stage prevent granting the "drastic remedy" of summary judgment. "When reviewing the record, this Court must view the inferences to be drawn from the underlying facts in the light most favorable to the non-moving party, and we must take the non-moving party's conflicting allegations as true if supported by proper proofs." *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), internal quotation omitted.

On the basis of the foregoing, it is hereby

ORDERED Plaintiff's Motion to Supplement the Partial Summary Judgment Record is
GRANTED. It is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED.

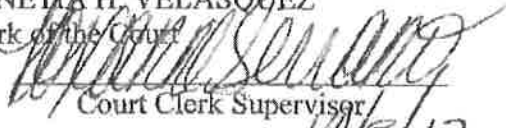
December 5, 2013



Douglas A. Brady
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ
Clerk of the Court

By: 

Court Clerk Supervisor


12/5/13

CERTIFIED TO BE A TRUE COPY
This 5th day of Dec 20 13

VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By 

Court Clerk



relationship whatsoever with Hamed, Yusuf now concedes for the purposes of this case that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores and to share equally the net profits from the operation of the Plaza Extra Stores.

ARGUMENT

~~I. THE PARTNERSHIP HAS BEEN DISSOLVED AND ITS BUSINESS MUST BE WOUND UP.~~

As provided in the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1-274

("UPA"):

A partnership is dissolved, and its business must be wound up, only upon the occurrence of the following events:

- (1) in a partnership at will, the partnership's having notice from a partner other than a partner who is dissociated under Section 121, subsections (2) through (10) of this chapter, of that partner's express will to withdraw as a partner, or on a later date specified by the partner[.]

UPA § 171(1).

Here, the partnership has either already been dissolved or is dissolved by virtue of this filing. Therefore, assuming *arguendo* that Hamed's retirement from the partnership in 1996 or counsel for Yusuf's March 12, 2012 notice of intent to end the partnership did not dissolve the partnership by operation of law, then clearly paragraph 7, above, sets forth Yusuf's "express will to withdraw as a partner," thus dissolving the partnership, if it had not already been dissolved.

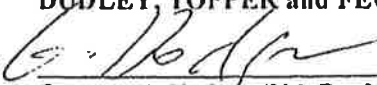
Pursuant to UPA § 172(a):

Subject to subsection (b) of this section, a partnership continues after dissolution *only* for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

Hamed v. Yusuf, et al.
Civil No. STX-12-cv-370
Page 11 of 12

the partnership pursuant to the Plan or appointing a Receiver to effect the wind up and requiring the parties to promptly submit proposed Receiver candidates for the Court to consider along with a brief addressing the Receiver's proposed powers and compensation, and providing such further relief as is just and proper under the circumstances.

Dated: April 7, 2014

DUDLEY, TOPPER and FEUERZEIG, LLP
By: 
Gregory H. Hodges (V.I. Bar No. 174)
Law House
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
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

**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,)
MUFEEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES,)

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

**OPPOSITION TO PLAINTIFF'S RENEWED MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO THE EXISTENCE OF A PARTNERSHIP**

~~Defendants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), through their undersigned counsel, respectfully submit this Opposition to "Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership" filed on May 8, 2014 (the "Motion"). The Motion should be summarily denied for the following reasons:~~

1. Plaintiff is by this motion seeking a partial summary judgment in the form of a declaratory judgment that there exists a partnership for the operation of the Plaza Extra stores. The Virgin Islands Declaratory Judgment Act is set forth at V.I. Code Ann. tit. 5, § 1261 et seq. Section 1271 of the Act provides that the act is to "so interpreted and construed as to... harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees." ~~See also Estate of George v. George, 50 V.I. 268, 274 (V.I. 2008)~~

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederikeberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

EX. D

~~Contrary to the clear requirements of LRCL 56.1(a)(1), the Motion was not accompanied by a brief, affidavits, statement of material facts about which Plaintiff contends there is no genuine issue, or any supporting documents other than two unauthenticated emails, one of which did not even stand for the proposition for which it was cited.¹ Accordingly, the Motion should be summarily denied for its failure to comply with the applicable procedures regarding summary judgment motions.~~

5. Second, although Plaintiff claims that he “sought a declaration of the existence of the partnership pursuant to the Uniform Partnership Act,” see Motion at p. 2, no such relief was specifically sought in his First Amended Complaint. While Plaintiff may have sought “declaratory . . . relief as to his rights,” see ¶ 37 of the First Amended Complaint, he never requested a declaration of the existence of the partnership pursuant to the Uniform Partnership Act or any other partnership law that may apply.

6. In any event, there is no need for the declaration of the existence of the partnership since there is no longer any controversy regarding that subject given Yusuf’s concession in his Memorandum In Support Of Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership (the “Memorandum”) at ¶ 7 and the definition of “Partnership” set forth at § 1.23 of the Plan For Winding Up Partnership attached as Exhibit A to the Memorandum. Since April 7, 2014, there is no longer any controversy that there was a partnership between Yusuf and Hamed to carry on as co-owners the business of the Plaza Extra Stores. This position was also stated by counsel for Defendants on the record at the telephonic hearing held on May 29, 2014.

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksborg Gate
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

¹ Plaintiff claims the email attached as Exhibit 1 “unequivocally stat[ed] that the three Plaza Extra stores had always been a partnership.” See Motion at p. 2. A simple reading of Exhibit 1 reveals no such unequivocal statement.

~~Accordingly, there was simply no need to file the Motion and this Court should not be further~~
burdened with disposing of a completely unnecessary motion.


7. The needlessness of the Motion is further borne out by the proposed order submitted with it. Other than acknowledging the existence of a partnership, which has already been conceded, the proposed order does nothing more than to declare that Plaintiff "is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights." Such vague and generalized provisions simply have no force and effect whatsoever.

For all of the foregoing reasons, Defendants respectfully request this Court to deny the Motion and to provide them with such further relief as is just and proper under the ~~circumstances~~.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: June 2, 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
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

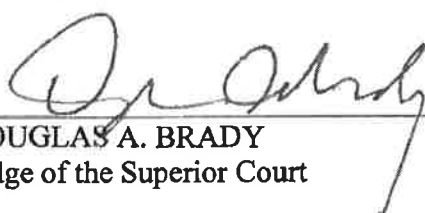
Partnership Act, as codified in the V.I. Code. Finally, contrary to Defendants' argument, the declaration by the Court of the legal relationship of the parties, disputed in the pleadings but undisputed in fact, brings clarity to the record and conforms the law of the case to the undisputed facts upon which the parties agree. The formal declaration of the existence of a partnership is a necessary prerequisite to the dissolution and winding-up of the partnership, the process upon which the parties have embarked. In light of the foregoing, it is hereby

ORDERED that Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership is GRANTED; and it is further

ORDERED that the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further

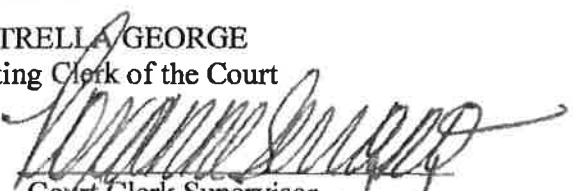
ORDERED that Plaintiff may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act.

Dated: November 7, 2014


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

11/7/14

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,

Plaintiffs,

v.

FATHI YUSUF MOHAMAD YUSUF,

aka Fahti Yusuf

WALEED MOHAMMAD HAMED,

aka Wally Hamed

WAHEED MOHOMMAD HAMED,

aka Willie Hamed

MAHER FATHI YUSUF,

aka Mike Yusuf

NEJEH FATHI YUSUF, ISAM YUSUF, and

UNITED CORPORATION,

dba Plaza Extra,

Defendants.

Criminal No. 2005-15

July 16, 2013

3:20 p.m.

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE DISTRICT JUDGE

WILMA A. LEWIS

EX. F

1 APPEARANCES:

2 LORI A. HENDRICKSON, ESQ.,

3 FOR THE GOVERNMENT

4

5 RANDALL P. ANDREOZZI, ESQ.,

6

7 FOR DEFENDANT WALEED HAMED

8

9 PAMELA COLON, ESQ.,

10

11 FOR DEFENDANT WAHEED HAMED

12 JOSEPH DIRUZZO, ESQ.,

13 FOR UNITED CORPORATION

14 NIZAR DEWOOD, ESQ.,

15 FOR FAHTI YUSUF

16 VALERIE LAWRENCE, RPR
17 OFFICIAL COURT REPORTER

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1 ~~for the agreement the same income, same type of~~
2 outside income of the other individuals, Waleed
3 and Waheed Hamed. And so to suggest that that
4 money only went to pay those incomes, I don't
5 believe is accurate.

6 Miss Hendrickson, if she can confirm that
7 with the tax returns with VIBIR. But my
8 understanding, that that went to pay the other
9 individuals' total liability, and should also
10 go to pay the total liability of the individual
11 defendants, Waleed and Waheed Hamed.

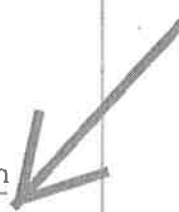
12 THE COURT: Meaning the additional
13 \$315,000?

14 MR. ANDREOZZI: Yes. Yes. If the others
15 got their taxes paid with these deposits,
16 payments, et cetera, then, so too should the
17 other individual defendants.

18 THE COURT: Attorney Hendrickson, do you
19 want to respond?

20 MS. HENDRICKSON: Yes, to clarify. I
21 agree with Mr. Andreozzi that during those
22 years the payments were made, based on copies
23 of the requests for payment government sought
24 and approved, and let the money be released,
25 that it was money to pay the tax obligations of

1 the Yusuf family members who were listed as
2 shareholders in the record of the VIBIR. And
3 there was other income on some of their
4 returns. So, if they had other investments and
5 things like that. So I think that is a fair
6 representation to say United paid for other
7 taxes that the individual shareholders owed on
8 top of the flow through based on United's
9 operations.



10 The government's point is, the whole
11 purpose of the plea agreement was to make sure
12 the VIBIR got a hundred percent of the money
13 paid or owed based on the operations of Plaza
14 Extra. That has occurred.

15 Now, to the extent whether they would have
16 been paid before, and not now, because of the
17 civil lawsuit, that's not a term of the plea
18 agreement. An understanding about who was
19 going to pay back then.

20 Now, I think in light of the civil
21 litigation, that Mr. DiRuzzo can address that,
22 but that's not a part of the plea agreement.
23 So to the extent there was additional money
24 paid, and I reviewed the tax returns, I agree
25 with Mr. Andreozzi's point, but I think it has

1 no impact on the plea agreement itself, since
2 the government's purpose was to get all the
3 income reported and the taxes paid for the
4 income of Plaza Extra. And with the payment of
5 \$6.5 million, that has occurred.

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

8 MS. HENDRICKSON: Yes.

9 THE COURT: And the question of whether or
10 not the Hameds are entitled to similar
11 treatment from United, that is, paying
12 additional taxes that don't represent the flow
13 through, is an issue for the Hameds and United
14 to resolve, but is not an issue that bears on
15 the plea agreement here before the Court?

16 MS. HENDRICKSON: Yes, Your Honor.

17 THE COURT: Attorney DiRuzzo.

18 MR. DIRUZZO: Thank you, Your Honor. Let
19 me start with the \$315,000. I think we all can
20 agree that every tax payer, like every
21 individual, has a personal responsibility to
22 pay their own taxes, responsible to the
23 government. They have to do what they're
24 obliged to do with the Internal Revenue Code.

25 ~~I think we all can agree, when you're an~~

CERTIFICATE

1

2

C-E-R-T-I-F-I-C-A-T-E

3

4 I, Valerie Lawrence, certify that the foregoing is a
5 correct transcript from the record of proceedings in
6 the above-entitled matter this 27th day of August,
7 2013.

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Valerie Lawrence

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Valerie

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Lawrence

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Digitally signed by Valerie Lawrence
DN: cn=Valerie Lawrence, o=St.
Croix Divison, ou=U.S. District Court,
email=valerie_lawrence@vid.uscourts.gov, c=US
Date: 2013.08.28 11:21:02 -04'00'

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.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING TRUST)

Defendants.)

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

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

EXHIBIT
G

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. VI 00004-0756
(340) 774-1422

**RESPONSE TO HAMED'S FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS
NOS. 28-36 OF 50 PURSUANT TO THE CLAIMS DISCOVERY PLAN**

~~Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")~~(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Hamed's Fifth Request for Production of Documents Pursuant to the Claims Discovery Plan of 1/29/2018.

GENERAL OBJECTIONS

Defendants make the following general objections to the Requests for Production. These general objections apply to all or many of the Requests for Production, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Requests for Production. The assertion of the same, similar, or additional objections in the individual responses to the Requests for Production, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

(1) Defendants object to these Requests for Production to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Requests for Production to the extent that they use the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Defendants object to these Requests for Production to the extent they seek ~~information which is protected by the attorney-client privilege or work-product doctrine,~~

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gate
P.O. Box 756

St. Thomas, U.S. V.I. 00804 0756
(340) 774-4422

~~non-privileged, responsive information is discovered, these Requests for Production will be~~
supplemented to the extent that supplementation may be required by the Virgin Islands Rules of
Civil Procedure.

(8) Defendants object to these Requests for Production to the extent that they
are compound and not a single Request. Hence, these Requests for Production should be
counted as more than a single Request such that when all of the subparts are included together
with other Requests for Production they exceed the 50 Requests for Production established in the
~~Joint Discovery and Scheduling Plan.~~

RESPONSES TO REQUESTS FOR PRODUCTION

RFPDs 28 of 50:

SUBSTANTIALLY THE SAME AS YUSUF RFPD 2. Please produce any and all financial
statements or applications for financing for United, as well as Fathi, Mike, Nejeh and Yusuf
Yusuf or any company controlled more that 49%, submitted to any person or institution from
September 17, 2006 to present.

Response:

Defendants object to this Request for Production as vague, ambiguous, and compound
such that the total number of Requests for Production together with their sub parts and other
discovery exceeds the maximum allowable number of Requests for Production under the JDSP
and violates both the spirit and the terms of the JDSP limiting the number of Requests for
Production.

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1009 Frederiksborg Gate

P.O. Box 756

St Thomas, U.S. VI 00804-0756

(340) 774-4422

Defendants further object to this Request for Production because it seeks personal financial information concerning Yusuf's sons, who are not parties to this case.

Defendants further object to this Request for Production because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

RFPDs 29 of 50:

SUBSTANTIALLY THE SAME AS YUSUF RFPD 4. Please produce copies of any accountings prepared by or on behalf of United or any member of the Hamed or Yusuf families in the Criminal Case to demonstrate the Partnership's or United's income.

Response:

Defendants object on the grounds that the Partnership was not an acknowledged or separate legal entity at the time of the Criminal Case and, therefore, no accountings were undertaken to demonstrate income of the Partnership.

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Fredericksburg Gate

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

HAMD660387

~~Defendants further object to this Request for Production because it seeks personal financial information concerning Yusuf's sons, who are not parties to this case.~~

Defendants further object to this Request for Production because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 5th, 2018

By:



CHARLOTTE K. PERRELL

(V.I. Bar #1281)

Law House

1000 Frederiksberg Gade - P.O. Box 756

St. Thomas, VI 00804-0756

Telephone: (340) 715-4422

Facsimile: (340) 715-4400

E-Mail: cperrell@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

HAMD660393

TO: DUDLEY, TOPPER AND FEUERZEIG, LLP

RE: MOHAMMAD HAMED V FATHI YUSUF AND UNITED CORPORATION CIVIL NO. SX-12-CV-370

REPORT OF HISTORICAL WITHDRAWALS AND DISTRIBUTIONS OF THE PARTNERS AND PROPOSED ALLOCATION TO EQUALIZE PARTNERSHIP DISTRIBUTIONS

AUGUST 31, 2016

**EXHIBIT
H**

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EXHIBITS

~~Tickets/receipts signed by third parties were observed acknowledging the receipt of money as a result of a loan; these tickets/receipts were also signed by Partners, family members and/or their agents who authorized the loan. Available tickets/receipts of the repayment of loans were also observed, signed by Partners, family members and/or their agents. If both tickets/receipts were identified, loan originated and loan repayment, we proceeded to adjust the amounts. However, if only one ticket/receipt was observed, said amounts were considered as partnership distributions.~~

Payments to attorneys with partnership's funds

~~During our examination a number of payments for legal services issued by either Partners, family members and/or their agents were analyzed and deemed not related to Partnership benefits or agreed upon. As a result, such payments were considered partnership distributions.~~

Funds withdrawn by cashier's checks

~~In order to identify any additional monies withdrawn, not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to either Partners, family members and/or their agents. Furthermore, we also reviewed any available supporting documentation related to such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.~~

4.1.2 Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

~~Our examination was aimed to identify all other income received by the Partners, family members and/or their agents that could be construed to be partnership distributions, which otherwise had not been disclosed as a withdrawal. Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986.²⁴ Therefore, any excess of monies identified over the known sources of income during the period analyzed was assumed to be partnership distributions and/or partnership withdrawals.~~

➔ Yusuf's family has testified that their source of income was not only related to the supermarket activities, but also from United's rental and other businesses not related to the supermarket operation. Any unidentified deposit was considered a withdrawal from the Partnership.

~~Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available. This method considers the person's spending patterns in~~

²⁴ Refer to Case No. SX-12-CV370. Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

8. SIGNATURE

This report has been prepared under the direction of Fernando Scherrer, CPA, CIRA, CA, MBA, Managing Shareholder of BDO Puerto Rico, P.S.C. Neither the professionals who worked on this engagement, nor the shareholders of BDO Puerto Rico, P.S.C. have any present or contemplated future interest in the Partnership, as herein defined, or in reference to the owner, nor any personal interest with respect to the parties involved, nor any other interest that might prevent us from performing an unbiased analysis. Our compensation is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of this report.

This report was prepared for the specific purpose described above and is not to be copied or made available to unrelated parties without the express written consent of BDO Puerto Rico, P.S.C. We did not use the work of one or more outside specialists to assist during this engagement. We have no obligation to update this report for information that comes to our attention after the date of this report.

BDO PUERTO RICO, P.S.C.



Fernando Scherrer, CPA, CIRA, CA, MBA