

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 TO YUSUF'S OPPOSITION RE CLAIM H-3: \$504,591.03
IN ATTORNEYS' FEES YUSUF CONCEDED, PLUS CONTESTED INTEREST**

Yusuf has conceded that he used \$504,591.03 of Partnership funds to pay his private lawyers to try to prevent the Court from finding there was a partnership.¹ He does not discuss this further in his Opposition, thus the Order should grant Hamed Claim H-3.

In addition, Yusuf withdrew specific amounts to pay Attorney DiRuzzo's firm on specific dates. The Partnership has been without those amounts from those specific dates to the present. Yusuf has had use of the funds from those specific dates to the present. Thus, the dates each specific amount was taken in 2012 and 2013 are known and shown on the checks that are attachments to Exhibit B, so that the granting of interest in the Order should simply be stated as "interest at the statutory rate of interest (9%) shall run from the date of each check to Yusuf's law firm up to the date the amount is deducted from Yusuf's Partner Account in the final calculation/adjustment of accounts."

Despite these undisputed facts, Yusuf now opposes Hamed's request for interest for several reasons. A review of those "reasons" demonstrates that there really is no clear reason to deny the award of interest (as opposed to the payment) now on this claim.

First, Yusuf argues that the claim is just part of a partnership "true up," so interest can be determined once all claims are resolved. Interest WILL be calculated then, but should be granted now. Moreover, it is undisputed as to when these funds were removed for personal use, so **it would be a windfall to Yusuf to allow him the use of these Partnership funds for six years without having interest granted.**² To the extent Yusuf alleges interest that may offset the amount of interest owed on this

¹ Indeed, even the Court took note of this improper use of Partnership funds in the April 25, 2013, Order granting the request for a preliminary injunction. See **Exhibit A**.

² As it is, since the interest is repaid from Yusuf's Partner Account back to the Partnership, Yusuf is already receiving half of that interest -- so the amount actually repaid to Hamed will be about equal to investment returns.

claim, he can do what is always done in claims processing -- seek his claimed interest on each of those claims as they are decided.

Second, Yusuf argues that the Special Master can do this calculation later. Hamed agrees as to the actual calculation. However, ordering interest on this claim is obviously warranted now, when the claim is being decided--especially when it is a clear, simple matter of obtaining and holding Partnership funds. It will be a huge burden on everyone if, after 150 claims are decided, each must be revisited individually for interest determinations (as opposed to just calculations) at the end.

Third, Yusuf argues that the Court has already found that both parties have "unclean hands," so no interest should be awarded on this claim. However, **that finding dealt with the Court's decision to bar both sides' pre-2007 claims.** As for Yusuf's admitted diversion of \$504,591.03 in Partnership funds in 2012 and 2013 to pay his private lawyers to try to defeat the very existence of the partnership, this was *after the litigation began*. Yusuf is the one who has unclean hands on this claim. Hamed made the objection to this immediately and provided repeated and fair notices. Indeed, that diversion was one of the facts the Court relied upon in doing equity and granting the preliminary injunction to restore the operation of a partnership. See **Exhibit A**.

Fourth, Yusuf raises two arguments that he claims support a finding that the interest calculation 'formula' is incorrect, that it should run from when "Hamed amended" the claim rather than when the money was withdrawn. That argument is incorrect, as Hamed has always asserted this entire amount was improperly removed from the Partnership, raising the issue of these withdrawals in 2013 during the preliminary injunction proceedings. See, e.g., **Exhibit B**. Thus, the calculation of interest by applying the statutory rate from the date of the checks to the date the withdrawal from Yusuf's partner account occurs, is correct.

Finally, Yusuf argues that the interest calculation is still somehow “incorrect” because he admitted this sum was owing "simply to avoid the expense of litigation." **WHY Yusuf conceded the exact amount of the funds he wrongfully diverted from the Partnership is irrelevant** to the mathematical calculation of interest on this amount he now admits he owes (\$504,591.03). The claim has been 100% successful.

In short, interest is owed by Yusuf now that it has been confirmed that he had the \$504,591.03 in Partnership funds beginning on several specific dates in 2012 and 2013 and the Partnership did not. Moreover, he never returned it even when he was the Liquidating Partner. Such action is exactly why the concept of interest on such undisputed, fixed claims for 'monies held' exists—to compensate the person who did not have use of the funds and to make sure the person holding it is not rewarded with the free use of such funds—here, for over 5 years.

Dated: June 25, 2018



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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
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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).



FOR PUBLICATION

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

ACTION FOR DAMAGES; PRELIMINARY
AND PERMANENT INJUNCTION;
DECLARATORY RELIEF

FATHI YUSUF and UNITED CORPORATON,

Defendants.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff's Emergency Motion and Memorandum to Renew Application for TRO ("Renewed Motion"), filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 52(a)(2), and GRANTS Plaintiff's Renewed Motion.

JURISDICTION

~~This Court has jurisdiction over this matter pursuant to 4 V.I. Code § 76(a), which grants the Superior Court "original jurisdiction in all civil actions regardless of the amount in controversy." Likewise, under 5 V.I. Code § 1261, courts of record are empowered to "declare rights, status, and other legal relations whether or not further relief is or could be claimed . . .~~

Ex. A

~~37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securities brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr.* 41:15-42:18; 119:4-12, *Jan.* 25, 2013. The Criminal Action will remain pending until past tax returns are filed. *Tr.* 134:15-136:22; 242:16-245:5, *Jan.* 25, 2013. As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition;~~

38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr.* 76:5-82:9, *Jan.* 25, 2013; *Pl. Ex. 15, 16.*⁵

~~39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr.* 149:20-150:22; 158:18-159:12; 253:25-254:19, *Jan.* 25, 2013.~~

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor. *Tr.* 181:20-185:16, *Jan.* 25, 2013. Charriez had a "very critical job" with Plaza Extra (*Tr.* 179:17-19, *Jan.* 25, 2013),

⁵ Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.

JOEL H. HOLT, ESQ. P.C.

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May 7, 2013

Joseph A. DiRuzzo, III
Christopher David
Fuerst Littleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

By Email and Mail

Re: Plaza Extra

Dear Counsel:

As you know, your firm has been receiving payments from Plaza Extra Supermarket bank accounts. You have done so despite the fact that my client made it clear he had not authorized these payments. As was clear in the Court's opinion, this is a pre-1998 (pre-RUPA) non-entity partnership. You then proceeded at your own risk in depositing these checks. As noted in the opinion (¶38 at 11, including footnote 5):

38. Funds from supermarket accounts have also been utilized *unilaterally by Yusuf, without agreement of Hamed*, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.*⁵

[Footnote 5] Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, *drawn on a supermarket account by Defendants without Plaintiffs' consent*. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future. (Emphasis added.)

Ex. B

Letter dated May 7, 2013
Page 2

Thus, my client has directed me to demand that your firm immediately return all funds paid out of any of these partnership operating accounts (as listed in the parties pleadings), including the attached checks that were written on those accounts.

Please let me know if you have any questions or have any clarifications you would like to make.

Yours,



Joel H. Holt
JHH/jf
Enclosure

HAMD562337

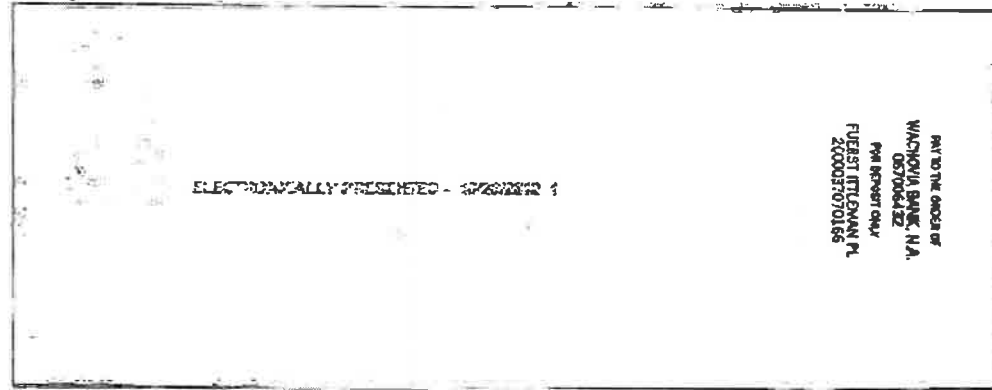
CHECK 3979


Dated: Friday, October 19, 2012

Amount: \$15,067.26

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL
Account Wachovia Bank N.A.
2000037070166



UNITED CORPORATION DBA PLAZA EXTRA (340) 718-1870 PO BOX 3649 ST CROIX, VI 00851		BANCO POPULAR DE PUERTO RICO 101-667216	3979 MICROFILM
		DATE	Oct 19, 2012
		AMOUNT	\$ 15,067.26
PAY TO THE ORDER OF:	Fifteen Thousand Sixty-Seven and 26/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:			
		 AUTHORIZED SIGNATURE	
⑈003979⑈ ⑆021606674⑆ 1910256269⑈			

Details on back

HAMID562338

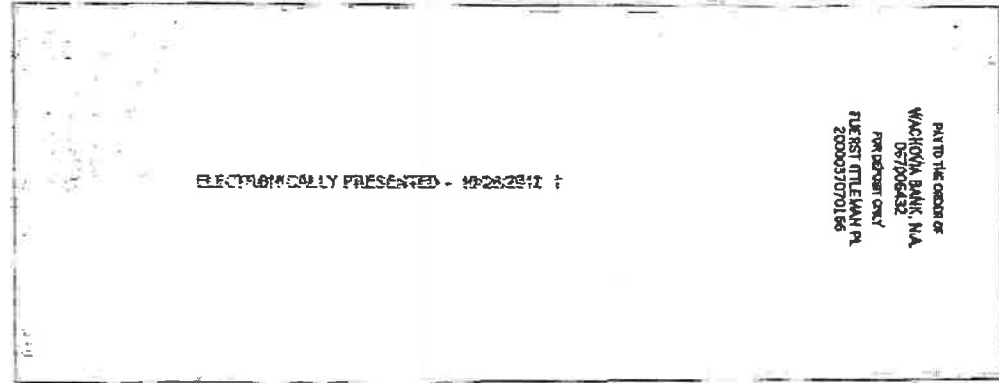
CHECK 3977

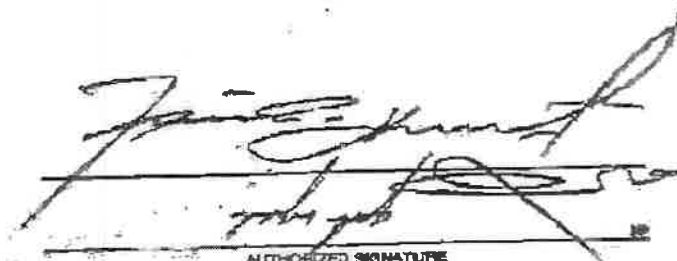
Dated: Friday, October 19, 2012

Amount: \$99,254.45

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL
Account Wachovia Bank N.A.
2000037070166



UNITED CORPORATION DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851		BANCO POPULAR DE PUERTO RICO 101.687216	3977 CHECK NUMBER
		DATE	Oct 19, 2012
		AMOUNT	\$ 329,011.50
PAY TO THE ORDER OF:	Twenty-Nine Thousand Eleven and 50/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:			
		 AUTHORIZED SIGNATURE	
⑆003977⑆ ⑆0216066740⑆ 1910256269⑆			

HAMID562339

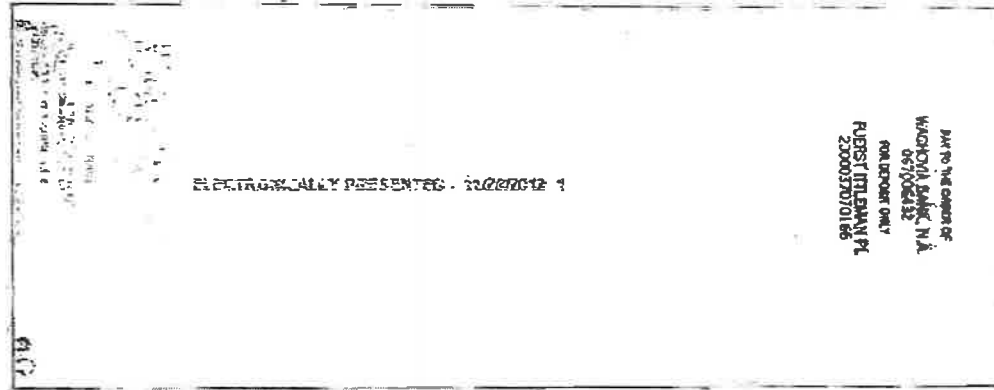
CHECK 4195

Dated: Friday, November 16, 2012

Amount: \$99,254.45

Cleared: Sunday, November 25, 2012

Depository: Fuerst Ittleman PL
Account Wachovia Bank N.A.
2000037070166



UNITED CORPORATION DBA PLAZA EXTRA (240) 718-1870 PO BOX 3049 ST CROIX, VI 00851	BANCO POPULAR DE PUERTO RICO 101-667218	4195 4195 DATE Nov 16, 2012
		AMOUNT \$ 99,254.45
PAY TO THE ORDER OF:		
Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:		
004195 0021606674* 191-256269*		
		 AUTHORIZED SIGNATURE

FUERST ITTLEMAN DAVID & JOSEPH PL

Check Number: 4642
Check Date: Jan 21, 2013

Check Amount: \$111,660.24

Item to be Paid - Description	Discount Taker	Amount Paid
9652		31,765.28
9653		79,894.96

BANCO POPULAR DE PUERTO RICO
101-057218

4642
CHECK NO.

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO. BOX 3849
ST CROIX, VI 00851

DATE
Jan 21, 2013

AMOUNT
\$ ***\$111,660.24

One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

THE
PER
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

⑈004642⑈ ⑆021806674⑆ 191⑈256289⑈

AUTHORIZED SIGNATURE

UNITED CORPORATION DBA PLAZA EXTRA

4642

FUERST ITTLEMAN DAVID & JOSEPH

Check Number: 4819
Check Date: Feb 13, 2013

Check Amount: \$112,383.32
Discount Taker Amount Paid

Item to be Paid - Description	Amount Paid
09738	7,500.00
09740	104,883.32



UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00081

BANCO POPULAR DE PUERTO RICO
101-67219

4819
DATE:
Feb 13, 2013

AMOUNT:
\$ 112,383.32

One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

THE
DEPT
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

[Handwritten Signature]
AUTOCHECK SIGNATURE

⑈004819⑈ ⑆021606874⑆ 191⑈256269⑈



UNITED CORPORATION DBA PLAZA EXTRA

4819

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

5005
CHECK ONE


DATE
Mar 6, 2013

AMOUNT
\$ ****\$82,274.87

PAY Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars

TO THE ORDER OF: FUERST LITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:


AUTHORIZED SIGNATURE

⑈005005⑈ ⑆021606674⑆ 191⑈256269⑈

Details on Bank



Security Features Included

HAMD562342

UNITED CORPORATION DBA PLAZA EXTRA
FUERST ITTELMAN DAVID & JOSEPH FL

5193

Check Number: 5193
Check Date: Apr 3, 2013

Check Amount: \$54,938.89

Item to be Paid Description

Item to be Paid Description	Amount Paid
0291	17,524.50
0293	2,500.00
0294	14,914.39

UNITED CORPORATION DBA PLAZA EXTRA (340) 719-1870 PO BOX 9948 ST CROIX, VI 00661	BANCO POPULAR DE PUERTO RICO 101-667218	5193 <small>4/3/2013</small>
		DATE Apr 3, 2013
		AMOUNT \$ ****\$54,938.89
PAY TO THE ORDER OF: Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars		
FUERST ITTELMAN DAVID & JOSEPH FL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:		
⑈005193⑈ ⑈021606674⑈ 191-256269⑈		
UNITED CORPORATION DBA PLAZA EXTRA		5193

UNPWR MP CHECK



HAMD562343