

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 EMERGENCY MOTION FOR AN EXPEDITED ORDER TO COMPEL
AS TO INTERROGATORY 21—RE CLAIM H-142 ('ACCESS' HALF ACRE IN TUTU)**

1. Introduction

A. The single March 2018 Interrogatory at Issue, and the Yusuf July 19th Non-Response

This motion concerns a single, short interrogatory related to Claim H-142. In March 2018, Hamed propounded the following interrogatory to Yusuf, and the response was due *in April*.

As discussed below, in April, Yusuf requested additional time to answer—until May 15th. After Hamed granted this, on May 15th Yusuf improperly refused to respond to interrogatory 21 based on a pending motion. After that motion was decided on July 12th, Hamed again made repeated efforts to obtain a response, but, on July 19th, was provided only with the following “Supplemental Response” *which is an abject refusal to answer*.

Interrogatory 21 of 50 [of March 2018]:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

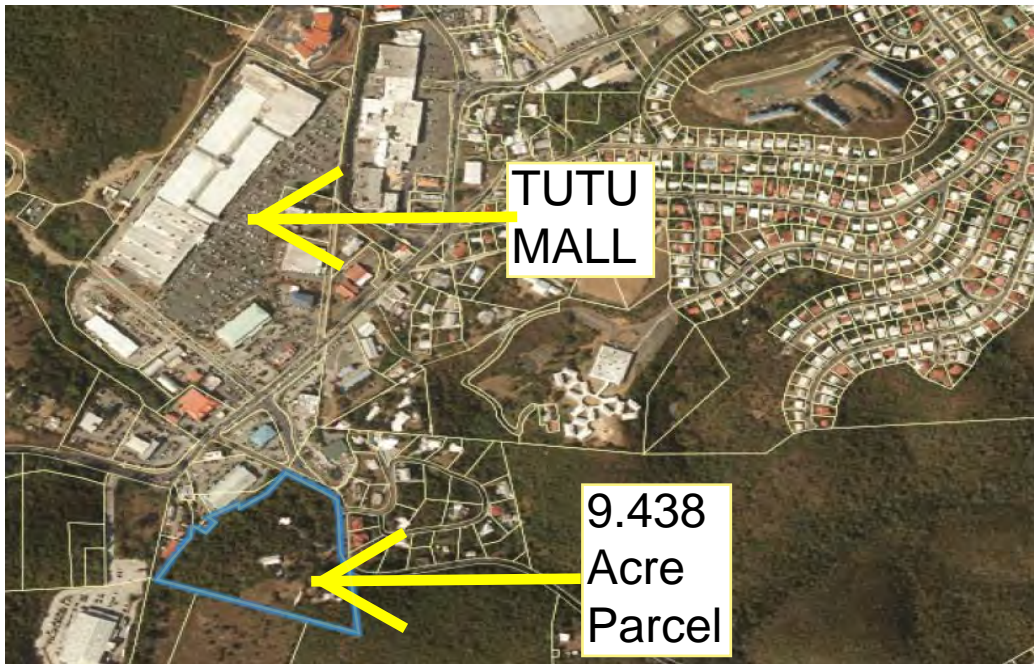
Yusuf's Supplemental Response [of July 19th]:

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.

Thus, in light of the Court's order that discovery on this matter be completed in three weeks, Hamed asks the Special Master to require an immediate and detailed response to Interrogatory 21.

2. The Issue Presented

On May 17, 2002, the amount of \$900,000 from the Plaza Extra Grocery Stores receipts was used by Fathi Yusuf and Mohammad Hamed to purchase a large, 9.438 acre tract of land on St. Thomas, near the Tutu Mall.¹ **Exhibit 1** is the deed from the owner to the 50/50 Hamed/Yusuf corporation, Plessen Enterprises, Inc.² Yusuf and Hamed purchased this land to build a Plaza Extra grocery store on the property—to avoid paying rent to the Tutu Store landlord. **Exhibit 2** at ¶ 8. A map showing the location of the property in relation to the existing Tutu Store, attached as **Exhibit 3** shows:



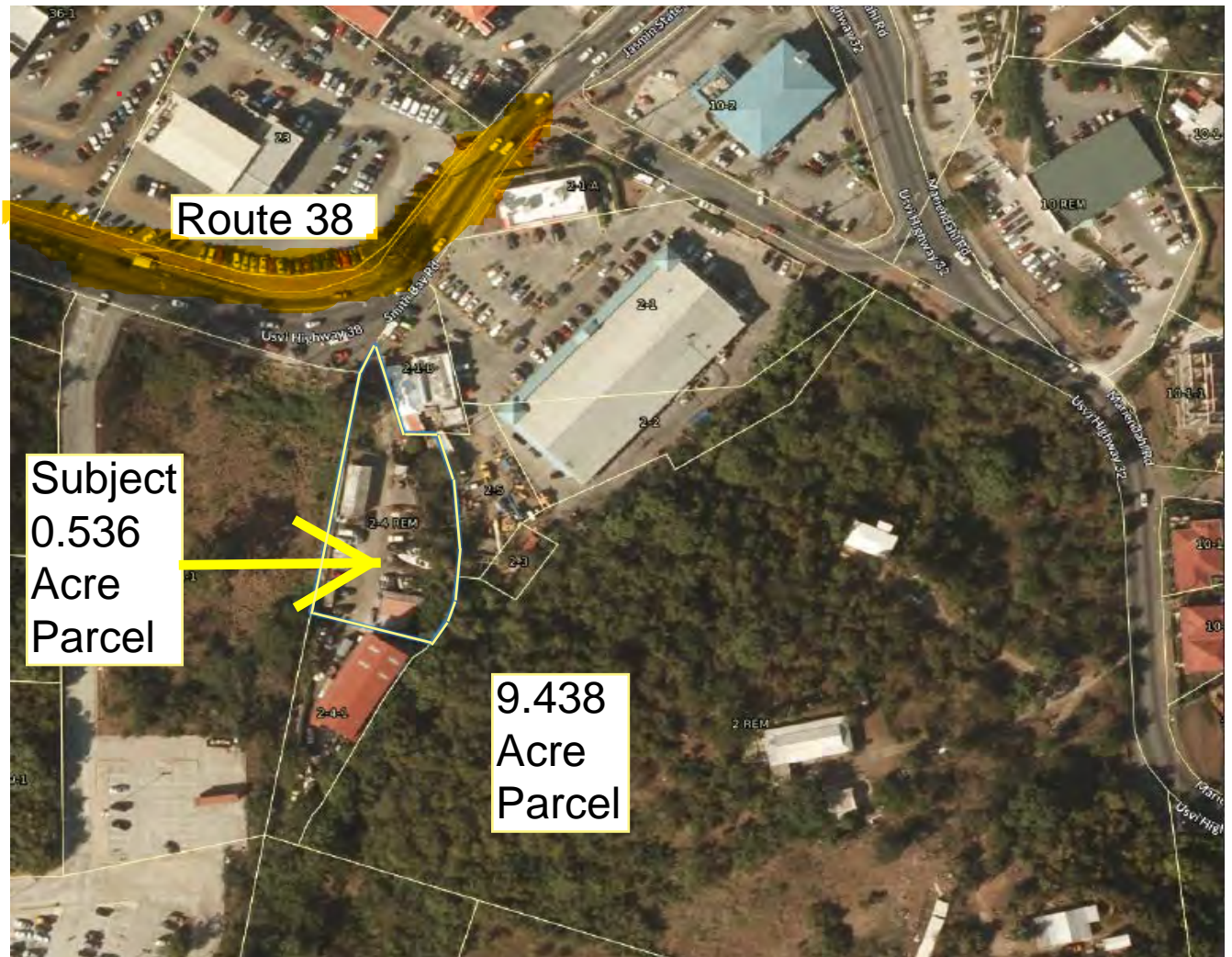
¹ Described as:

Parcel No. 2-Remainder
Estate Charlotte Amalie
No. 3 New Quarter
St. Thomas, U.S. Virgin Islands, consisting of 9.438 acres,
more or less, as shown on P.W.D. No. A9-582-T002

being the same premises conveyed from the Estate of Amalia Mylner, deceased, to Jean Mylner Wolz by Adjudication dated November 21, 2001, recorded at the Office of the Recorder of Deeds for St. Thomas and St. John on November 27, 2001, at Doc. No. 6208.

² Property ID is 105604031800. 2 REM.CHARLOTTE AMAILIE No.3 NEW QTR.

Unfortunately, access to that parcel from the main road (Highway 38 / Smith Bay Road) was blocked by a single parcel. See survey at **Exhibit 4**. Therefore, on July 26, 2006, Hamed and Yusuf again used ONLY Partnership/grocery store funds to purchase this parcel that connects the large parcel directly to Route 38—for \$330,000—which they 'protected' by a mortgage, with no actual underlying note, to United. Ex. 2 at ¶ 11. This photo shows how this plot is key to access between Rte. 38 and the other parcel:



Yusuf has recently *admitted* that “the Partnership (or Hamed and Yusuf) did provide the funds for the purchase of this land . . . by using income from the Plaza Extra stores.” He did so in his July 19, 2018, *Supplemental Response to RFA #22 (Exhibit 5)* which stated:

Request to Admit 22 of 50:

Requesting to admit number 22 of 50 relates to Claim H-142 (old Claim No. 490) as described in Hamed's November 16, 2011 Motion for a Hearing Before Special Master as "Half acre in Estate Tutu."

Admit or deny that the Partnership (or Hamed and Yusuf) did provide the funds for the purchase of this land referenced Claim H-142, "Half acre in Estate Tutu," by using income from the Plaza Extra stores.

Supplemental Response:

Admit.

Thus, **at the time of Judge Brady's "bar date", Hamed and Yusuf owned the property jointly (via Plessen.)** That joint ownership by them on the bar date, arising solely from grocery store proceeds, answers the issue before the Special Master. The subsequent "no consideration" transfer of the property to United by a *deed in lieu of foreclosure* in 2008, after the September 17, 2006 bar date, is of no effect, as there was no actual Note or obligation. Hamed/ Yusuf routinely put such joint assets "in United's name" during the time period-- and many other such "United" assets and accounts are being disbursed by the Court.

3. Facts

Prior to the bar date, United placed a "no consideration" mortgage on the property with **NO UNDERLYING NOTE** (attached to the motion as **Exhibit 6**) as part of Yusuf and Hamed's efforts to protect the property during the pendency of the criminal proceedings. Exhibit 2 at ¶¶ 13-16. But at the time, that mortgage was really for the Partnership's interest, not United's--but no Partnership was yet being described separately. *Id.* The intent was to secure it 50/50 to reflect the funds coming out of the grocery store operation. *Id.* United contributed **no** "solely United" funds from other, non-grocery store income. *Id.* Thus, the partners were not compensated by United in any way. *Id.* The lack of any Promissory Note or other actual, underlying document reflecting indebtedness demonstrates this.

Long after the bar date had passed, title was transferred from Plessen to United on October 23, **2008**, in the form of a “Deed in Lieu of Foreclosure”. **Exhibit 7**. Again, United did not give any consideration or transfer funds to obtain this deed, and the partners were not compensated in any way. Exhibit 2 at ¶ 17. Moreover, although the Mortgage recites an underlying Note, there really was none to foreclose on. Ex. 6.

Thereafter, as part of the transactions in this case, Hamed purchased the lease in the Plaza Extra store at Tutu (also in United's name for the identical reason). The main parcel remains an asset of Plessen. See Exhibit 2 at ¶ 18.

B. Applicable Law

1. Applicable Order

On July 12, 2018, the Special Master:

ORDERED that Parties may continue with discovery in connection with Hamed Claim No. H-142. **Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018.** . . . (Emphasis added.)

2. Applicable Court Rules

Rule 26. Duty to Disclose; General Provisions Governing Discovery (b) Discovery Scope and Limits.

(1) Scope in General. Unless otherwise limited by court order, **the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added).

Rule 37(d) - Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General. (A) Motion; Grounds for Sanctions. The court may, on motion, order sanctions if:

- (i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or
- (ii) **a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34,**

fails to serve its answers, objections, or written response.

(2) * * * *

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

C. Argument

1. Hamed has attempted to fulfill the requirements of Rule 37.1, but the time limits of the Order and Yusuf's refusal to respond has made this impossible

Yusuf has repeatedly failed to provide his interrogatory response as to the only interrogatory relevant to this Claim.

On January 29, 2018, the parties stipulated to, and the Special Master entered the *Joint Discovery And Scheduling Plan* ("Plan"). Part B ("B. Remaining Claims of Both Parties") required that:

7. Written interrogatories, requests for production of documents, and requests for admissions shall be propounded no later than March 31, 2018.

Pursuant to that requirement, in March of 2018 Hamed served three discovery items on Yusuf which directly addressed Claim H-142: Interrogatory 21, RFA 22 and RFPD 13. Copies of these are attached (with the Yusuf Responses) as **Exhibits 8, 9 and 10**. These were due by the end of April.

In response to an email request by Attorney Charlotte Perrell of DTF, Hamed agreed to enlarge the time for Yusuf's responses to May 15, 2018. On that date, Yusuf filed various discovery responses. However, in the May 15th documents, the **Yusuf responses as to the three listed inquiries were not provided**—based on the assertion of a pending motion—the motion that resulted in the July 11th Order set forth above. Hamed informed Yusuf that the pendency of a motion did relieve Yusuf of

the requirement to respond to discovery absent a protective order. Yusuf did not supply responses at that time.

On July 12th, immediately following the issuance of the Special Master's July 11th Order, with its requirement that discovery in H-142 be completed in 30 days, Hamed sent Yusuf's counsel an email which stated that the motion was no longer pending, and thus, the responses that had been withheld previously were due:

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Thursday, July 12, 2018 11:19 AM
To: 'Stefan Herpel' <sherpel@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Gregory Hodges' <Ghodges@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: Yusuf Discovery Due re H-142 - Tutu Land

Stephan:

Pursuant to Judge Ross' Order today, the discovery that Yusuf incorrectly withheld as to H-142 (based on the pendency of the motion decided in that order) is past due.

Can we get the Yusuf/United responses by EOD tomorrow so that we can make whatever motions are necessary within the short time period allowed by the Order?

Thank you, Carl

This was followed by a more specific update listing the three requests involved:

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Thursday, July 12, 2018 11:22 AM
To: 'Stefan Herpel' <sherpel@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Gregory Hodges' <Ghodges@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: Ps.....RE: Yusuf Discovery Due re H-142 - Tutu Land

I'm sorry...I should have listed them to save you having to hunt through our discovery:

Interrogatory 21
RFA 22
RFPD 13

In addition, Hamed inquired as to whether Stefan Herpel or Charlotte Perrell was now responsible for responding to such inquiries— as Hamed had been informed that Attorney

Perrell would, but that she had been away and Attorney Herpel would fill in for her—but that Attorney Perrell was now back:

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Thursday, July 12, 2018 11:52 AM
To: 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: Outstanding Rule 37 question
Charlotte:
Am I dealing with you or Stefan on the several outstanding Rule 37 issues?
Carl

On Friday the 13th, Greg Hodges sent an email to Hamed's counsel in which he stated:

From: Gregory Hodges <Ghodges@dtflaw.com>
Sent: Friday, July 13, 2018 3:25 PM
To: Carl@hartmann.attorney
Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>; Charlotte Perrell <Cperrell@dtflaw.com>; Stefan Herpel <sherpel@dtflaw.com>
Subject: RE: Ps.....RE: Yusuf Discovery Due re H-142 - Tutu Land

Carl,

As I believe you are aware, Charlotte has been primarily responsible for our discovery responses to date. From the end of last week through this week, she has been tied up in preliminary injunction hearings and related emergency motions. Accordingly, **she will not be able to provide the responses you seek by the end of the day. She will get back to you promptly next week.**

I disagree with your assertion that our discovery responses are “past due.” I would also note that Hamed’s response to our RFP 24 is deficient since it neither references nor produces any documents concerning H-142.

Gregory H. Hodges (Emphasis added.)

An email was sent by Hamed less than an hour later that day, to Attorney Perrell, in which it was pointed out that Yusuf’s RFP 24 was **NOT** in any way an equivalency to the three listed items as it was just a general inquiry as to all extra documents—and that the three listed items had to be provided immediately.

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Friday, July 13, 2018 4:52 PM
To: 'Charlotte Perrell' <Cperrell@dtflaw.com>
Cc: 'Stefan Herpel' <sherpel@dtflaw.com>; 'Kim Japinga' <kim@japinga.com>; 'Joel Holt' <holtvi@aol.com>
Subject: Rule 37 Responses
Charlotte:
There are two different issues.

First, your responses are late. Hamed's responses are not. The response to your RFPD is not specific to H-142, it is a general "what will you use is all defense" – which we do not know, and is not yet due yet.

RFPD 24. Please produce all documents upon which you intend to rely either in the defense of the Yusuf Claims as set forth in Exhibit 6 or in support of the Hamed Claims.

Response: Hamed objects to this request as overly broad. Subject to that objection, he states that he has not determined which documents will be used in defense of the Yusuf claims or in support of the Hamed claims. He will supplement this response when that decision is ultimately made.

However, as an accommodation to you, we will endeavor to make such a determination as to this issue on receipt of your responses and thus, answer within the new discovery period set by Judge Ross.

But, this is not equivalent. Your responses, were due, are due and are late. Please, I do not want to discuss your late responses and a timetable – just receive them immediately.

Second, as you know there are several other Rule 37 matters outstanding. As soon as we have received your responses above, we would then like to have a conference. As part of that, I would like to get the stip you stated previously would be forthcoming and which I have written to inquire about before.

Carl

This (finally) produced the filing of Yusuf's ALLEGED responses on Thursday, July 19, 2018. The "response" as to interrogatory 21 was, as shown above, no response at all:

Yusuf's Supplemental Response:

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.

No facts, no statements as to what happened, no:

detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase,

This included Yusuf's counsel's statement that no responses were even possible until after the time limit set in the Order had passed. ("Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time.")

In response, on July 16, 2018, Hamed's counsel Joel Holt sent a long, detailed letter to Yusuf – recounting this history, and requesting a proper response. **Exhibit 11**. When this did not result in a proper answer, Carl Hartmann sent a longer, even more detailed second request (**Exhibit 12**) for an expedited Rule 37.1 hearing. Due to the lack of time remaining, he requested a conference on Friday, July 20, 2018. Instead of responding on the substance of the request, later on Thursday, Charlotte Perrell sent a one line email asking that Greg Hodges be copied on the email (despite Hodges' earlier email requesting that communication on this be directed to Attorney Perrell.) A copy was sent to Hodges on Friday morning. There was no response from DTF on Friday, though Hamed's counsel remained available until the end of the day.

Thus, because of the very, very short time remaining for discovery, Hamed filed a notice of Deposition after business hours on Friday, July 20th –setting a deposition date two days before the end of the time period set in the Order–on August 8th. **Exhibit 13**. Hamed will be forced to depose United's 30(b)(6) witness without the ability to get (or have the benefit of any time to research) Yusuf's responses to this interrogatory if this motion is not granted. That is contrary to the original *Plan and Scheduling Order*, and the civil rules of the Court. This is unfair, and is occurring ONLY because Yusuf has repeatedly refused to answer this interrogatory both in April, then May and now in July.

For the same reason it is impossible to comply with Rule 37.1's requirement that a mutually scheduled discovery conference be held before the filing here.

2. Yusuf's refusal to answer goes to the heart of the claim.

(1) Yusuf admits that Partnership / grocery store proceeds were used to buy this land, (2) that on the bar date, the property was held by Yusuf and Hamed jointly in Plessen, (3) that the transfer to United occurred after the bar date, and (4) was for no consideration. Hamed wishes to obtain Yusuf's interrogatory response as to how and why a deed in lieu of foreclosure was issued with regard to a mortgage (with **no underlying "Note"**) that was done with no consideration for strategic reasons relating to the criminal case. He also wishes to get information regarding the intent that this land be used for access between the larger parcel and Route 38, which Yusuf has since denied. He also wishes to take the deposition of United, and be prepared for that deposition by having the response to an interrogatory served in MARCH OF 2018.

Dated: July 21, 2018



Carl J. Hartmann III, Esq (Bar #48)
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
T: (340) 642-4422/F: (212) 202-3733

Joel H. Holt, Esq. (Bar #6) *Counsel for Plaintiff*
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
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 WORD/PAGE COUNT

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



HAMED EXHIBIT 1

WARRANTY DEED

THIS INDENTURE, made the 17th day of MAY, 2002, by and between

JEAN MYLNER WOLZ, an individual, whose address is 2643 Brookside Court, Maitland, Florida 32751 (hereinafter "Grantor") and PLESSEN ENTERPRISES, INC. a corporation, whose address is Post Office Box 503358, St. Thomas, U.S. Virgin Islands 00805 (hereinafter "Grantee"),

WITNESSETH

That the Grantor for and in consideration of the sum of NINE HUNDRED THOUSAND DOLLARS (\$900,000.00) paid by the Grantee, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does hereby grant, sell and convey unto the Grantee, its heirs and assigns that certain lot, plot, piece of parcel of land, situate, lying and being in St. Thomas, Virgin Islands, as described as follows:

Parcel No. 2-Remainder
Estate Charlotte Amalie
No. 3 New Quarter
St. Thomas, U.S. Virgin Islands, consisting of 9.438 acres,
more or less, as shown on P.W.D. No. A9-582-T002

being the same premises conveyed from the Estate of Amalia Mylner, Deceased to Jean Mylner Wolz by Adjudication dated November 21, 2001, recorded at the Office of the Recorder of Deeds for St. Thomas and St. John on November 27, 2001, at Doc. No. 6208.

TOGETHER with any improvements thereon and the rights, privileges and appurtenances belonging thereto;

TO HAVE AND TO HOLD the same unto the Grantees, the heirs and assigns of the Grantees forever, as herein set forth.

TO HAVE AND TO HOLD the premises conveyed in fee simple forever;

EXHIBIT 1

06/20/2002 03:02:52 PM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILMA O. HART SMITH
RECORDER OF DEEDS

THIS IS TO CERTIFY THAT THIS WARRANTY DEED
WAS RECEIVED IN THE U.S VIRGIN ISLANDS ON
MAY 22, 2002.

Doc: 2002003235

Warranty Deed
Page 2

06/20/2002 03:02:52 PM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILMA O. HART SMITH
RECORDER OF DEEDS

SUBJECT HOWEVER, to zoning regulations and all covenants, easements, restrictions, and encumbrances as of record may appear.

AND THE GRANTOR WARRANTS that she is seized of the said premises in fee simple and has a good right to convey the premises; that the Grantee shall quietly enjoy the premises; that the premises are free from encumbrances except as set forth or referred to herein; that the Grantor will execute or procure any further necessary assurance of the title to the premises; and that the Grantor will forever warrant and defend title to the premises.

IN WITNESS WHEREOF, the Grantor has duly executed this Warranty Deed the day and year first above written.

WITNESSES:

Jama A. Larson

Jean Mylner Wolz
JEAN MYLNER WOLZ
FLD- W420-473-33-669-C

[Signature]

STATE OF Florida)
COUNTY OF Seminole)

ss:



Vicky Lynn Newcom
Commission # CC 918129
Expires March 13, 2004
Bonded Thru
Atlantis Bonding Co., Inc.

The foregoing instrument was acknowledged this 17th day of May, 2002, by Jean Mylner Wolz.

Vicky Lynn Newcom
Notary Public

ENDORSEMENT

It is hereby certified that for stamp tax purposes, the value of the within conveyed interest does not exceed the sum of \$900,000.00.

Jean Mylner Wolz
JEAN MYLNER WOLZ

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

06/20/2002 03:02:52 PM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILMA B. HART SMITH
RECORDER OF DEEDS

W.B.S.

W.B.S.

W.B.S.

W.B.S.

NOTED IN THE CADASTRAL RECORDS
FOR COUNTRY/TOWN PROPERTY, BOOK FOR
ESTATE CHARLOTTE AMALIE, NO. 3 NEW

QUARTER, ST. THOMAS, VIRGIN ISLANDS.

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: June 7, 2002
Phyllis Harrigan, Special Assistant to the
Tax Assessor for Surveys
Office of the Lieutenant Governor

ATTEST:

It is hereby certified that the above
mentioned property/s which, according
to WARRANTY DEED dated May 17, 2002

belongs to: PLESSEN ENTERPRISES, INC.,
(GRANTEE)

has not, according to the Records of
this office, undergone any changes as to
boundaries and area.

Cadastral Survey/Tax Assessor Offices

Phyllis Harrigan
St. Thomas, V.I. Dated: June 7, 2002
Phyllis Harrigan, Special Assistant to the
Tax Assessor for Surveys
Office of the Lieutenant Governor

**GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801**

-----0-----

**DEPARTMENT OF FINANCE
TREASURY DIVISION**

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMEMDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR S & AMALIA MYLNER

#2 Estate Charlotte Amalie,
New Quarter (PARCEL NO.) 1-05604-0318-00

_____).
TAXES RESEARCHED UP TO AND INCLUDING 2000.

RESEARCHED BY: *Cedric Swan, Jr.*
Conchita Benjamin

TITLE: Chief, Enforcement

DATE: May 23, 2002

VERIFIED BY: *Ianthe M. de Alomal*
Ianthe M. de Alomal

TITLE: Teller II

DATE: May 23, 2002

COLLECTOR NO. 8501

HAMED EXHIBIT 2

**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

EXHIBIT 2

**DECLARATION OF WALEED HAMED IN SUPPORT OF
HAMED'S EMERGENCY MOTION FOR EXPEDITED MOTION TO COMPEL
AS TO INTERROGATORY 21—RE CLAIM H-142 ('ACCESS' HALF ACRE IN TUTU)**

Pursuant to the V.I. Rules of Civil Procedure, I state the following to be true and accurate to the best of my knowledge upon my oath:

1. I am an adult resident of St. Croix, USVI, and am a party in this action
2. I have personal knowledge of the matters set forth herein.
3. In March 2018, at my direction, Hamed's counsel propounded interrogatory 21 to Yusuf, and the response was due *in April*.
4. In April 2018, I was informed that Yusuf requested additional time to respond—until May 15th. I directed counsel to agree to this extension.
5. After we granted this, on May 15th, I reviewed documents showing that Yusuf improperly refused to respond to interrogatory 21 based on a pending motion.
6. After that motion was decided on July 12th, I directed repeated efforts to obtain a response, but, on July 19th, Hamed's counsel was provided only with the following "Supplemental Response".

Interrogatory 21 of 50 [of March 2018]:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

Yusuf's Supplemental Response [of July 19th]:

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.

7. On May 17, 2002, the amount of \$900,000 taken from the Plaza Extra Grocery Stores receipts by Fathi Yusuf and Mohammad Hamed were used to purchase a large, 9.438 acre tract of land on St. Thomas, near the Tutu Mall.¹ **Exhibit 1** to the Motion is the deed from the owner to the Hamed/Yusuf corporation, Plessen Enterprises, Inc.²
8. Yusuf and Hamed purchased this land with the intent of building a Plaza Extra grocery store on the property – to avoid paying rent to the Tutu store landlord.
9. A map showing the location of the property in relation to the existing Tutu Store is attached to the Motion as **Exhibit 3**.
10. Access to that parcel from the main road (Highway 38 / Smith Bay Road) was blocked by a single parcel. **Exhibit 4** to the motion shows this.
11. Therefore, on July 26, 2006, Hamed and Yusuf again used Partnership/grocery store funds to purchase this parcel that connects the large parcel directly to Route 38—for \$330,000.
12. At the time of Judge Brady’s “bar date”, Hamed and Yusuf owned the property jointly through Plessen. That continued title ownership by them came into being solely from grocery store proceeds.

¹ Described as:

Parcel No. 2-Remainder
Estate Charlotte Amalie
No. 3 New Quarter
St. Thomas, U.S. Virgin Islands, consisting of 9.438 acres,
more or less, as shown on P.W.D. No. A9-582-T002

being the same premises conveyed from the Estate of Amalia Mylner, deceased to Jean Mylner Wolz by Adjudication dated November 21, 2001, recorded at the Office of the Recorder of Deeds for St. Thomas and St. John on November 27, 2001, at Doc. No. 6208.

² Property ID is 105604031800. 2 REM.CHARLOTTE AMAILIE No.3 NEW QTR.

13. Prior to the bar date, United did obtain a “no consideration” mortgage on the property (attached to the motion as **Exhibit 6**) as part of Yusuf and Hamed’s efforts to protect the property during the pendency of the criminal proceedings. But at the time, that mortgage was really for the Partnership’s interest, not United’s – but no Partnership was yet being described separately.
14. There was intent to secure it 50/50 to reflect the funds coming out of the grocery store operation 50/50.
15. United contributed no “solely United” funds from other, non-grocery store income.
16. The partners were not compensated from United in any way.
17. Long after the bar date had passed, on October 23, 2008, title was transferred from Plessen to United in the form of a “Deed in Lieu of Foreclosure” attached to the Motion as Exhibit 7. Again, United did not give any consideration or transfer funds to obtain this deed, and the partners were not compensated in any way. This was just a continuation of protecting the property for the Partners.
18. Thereafter, as part of the transactions in this case, Hamed purchased the lease and all Partnership rights in the Plaza Extra store.
19. It would seem likely that whoever buys the parcel from Plessen will need the access parcel. That large, main parcel remains an asset of Plessen.

I state the above under oath:



Waleed Hamed

7/21/18

Dated

HAMED EXHIBIT 3

Large Plessen Parcel at Tutu



Property Information

Property ID 105604031800
Location 2.REM.CHARLOTTE AMAILIE No.3 NEW QTR.
Owner PLESSEN ENTERPRISES INC



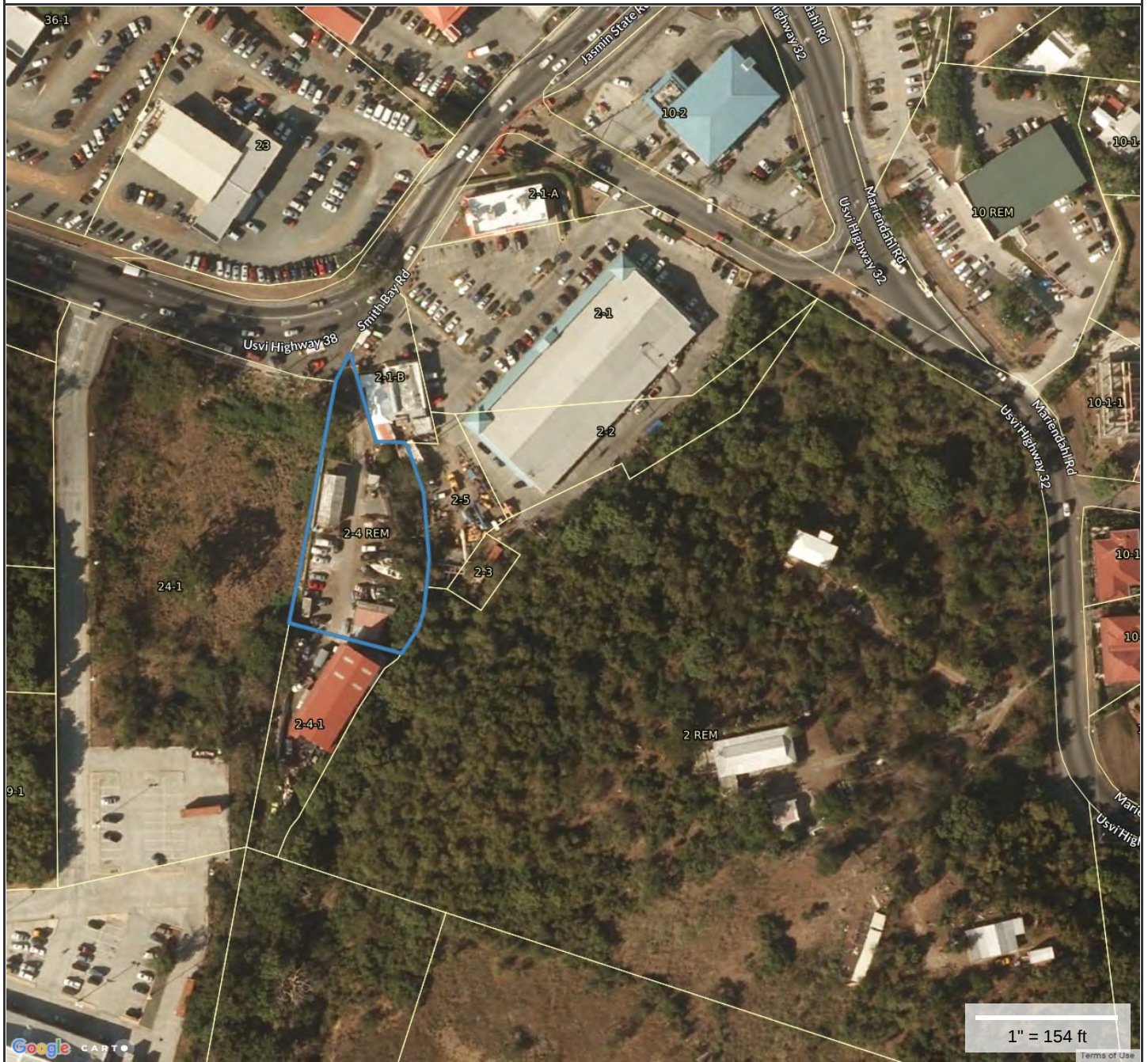
**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

US Virgin Islands makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 06/2018
Properties updated 06/2018

HAMED EXHIBIT 4

.536 Acre Access Parcel at Tutu



Property Information

Property ID 105603021400
Location CHARLOTTE AMALIE 2-4 NEW QTR.
Owner UNITED CORPORATION



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

US Virgin Islands makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 06/2018
 Properties updated 06/2018

HAMED EXHIBIT 5

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,	)	CIVIL NO. SX-12-CV-370
v.)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
)	
Defendant.)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
FATHI YUSUF,)	
)	
)	
Defendant.)	
FATHI YUSUF and UNITED CORPORATION,	)	CIVIL NO. ST-17-CV-384
)	
)	
Plaintiffs,	)	ACTION TO SET ASIDE
v.	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
)	
Defendants.)	
)	
)	

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY AS TO
INTERROGATORY NO. 21,
REQUEST TO ADMIT NO. 22 AND
REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's Interrogatory No. 21, Request to Admit No. 22 and Request for Production of Documents No. 13 (collectively the "Discovery") as follows:

GENERAL OBJECTIONS

Defendants incorporate by reference as if fully set forth herein verbatim their General Objections as set forth in their initial Responses and Objections to the Discovery filed on May 15, 2018.

SUPPLEMENTAL RESPONSES TO DISCOVERY

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the

funds or the purchase, with reference to all applicable documents, communications and witnesses.

Supplemental Response:

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.

Request to Admit 22 of 50:

Requesting to admit number 22 of 50 relates to Claim H-142 (old Claim No. 490) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Half acre in Estate Tutu."

Admit or deny that the Partnership (or Hamed and Yusuf) did provide the funds for the purchase of this land referenced Claim H-142, "Half acre in Estate Tutu," by using income from the Plaza Extra stores.

Supplemental Response:

Admit.

RFPDs 13 of 50:

Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry – particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores.

Supplemental Response:

Defendants show that all documents in their possession, custody or control have already been produced (warranty deed, first priority mortgage and deed in lieu of foreclosure with accompanying tax clearance letter from Mohammad Hamed). Further responding, Defendants show that there are no documents responsive to this request to the extent it seeks documents reflecting sources of funds for the purchase other than income from the stores.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: July 19th, 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

CERTIFICATE OF SERVICE

It is hereby certified that on this 19th day of July, 2018, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S INTERROGATORY NO. 21, REQUEST TO ADMIT NO. 22 AND REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13** to be served upon the following via Case Anywhere docketing system:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company, V.I. 00820
Email: joelholtpc@gmail.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
HAMM & ECKARD, LLP
5030 Anchor Way – Suite 13
Christiansted, St. Croix
U.S. Virgin Islands 00820-4692
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymlaw@yahoo.com



HAMED EXHIBIT 6

08/24/2006 2:56PM
Official Records of
ST THOMAS/ST JOHN
WILMA D. HART SMITH
RECORDER OF DEEDS

FIRST PRIORITY MORTGAGE

THIS FIRST PRIORITY MORTGAGE made as of this 24th day of August 2006, between PLESSEN ENTERPRISES, INC., a Virgin Islands Corporation, of P. O. Box 503358, St. Thomas, Virgin Islands 00805, as Mortgagor, and UNITED CORPORATION, as Mortgagee.

WITNESSETH: That to secure the payment of an indebtedness in the principal amount of THREE HUNDRED THIRTY THOUSAND and 00/100 DOLLARS (\$330,000.00), and interest thereon, payable in accordance with the terms of a Mortgage Note evidencing such indebtedness dated the date hereof, and further to secure the performance of all of the terms and provisions hereof, the Mortgagor hereby mortgages to the Mortgagee:

Parcel No. 2-4 Rem. Estate Charlotte Amalie
No. 3 New Quarter
St. Thomas, U. S. Virgin Islands
as shown on OLG Map No. D9-7044-T002

TOGETHER WITH the improvements thereon and hereafter made thereto, the rights, privileges and appurtenances belonging thereto and all easements appurtenant thereto;

TOGETHER WITH all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

TOGETHER WITH all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including, but not limited to indoor and outdoor furniture, boilers, piping, plumbing and bathroom fixtures, lighting fixtures, refrigeration, air conditioning and sprinkler systems, washtubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, washers and dryers, appliances, refrigerators, kitchen cabinets, incinerators, plants and shrubbery, swimming pool equipment and accessories, and all other equipment and machinery, appliances, built in furniture or cabinets, fittings and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and additions thereto;

TOGETHER WITH all awards heretofore and hereafter made to the Mortgagor for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the Mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and

Doc# 2006080542

EXHIBIT 6

other instruments sufficient for the purpose of assigning said awards to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

AND the Mortgagor covenants with the Mortgagee as follows:

1. That the Mortgagor will pay the indebtedness and interest as provided in the Note secured hereby.
2. Mortgagor is prohibited from conveying or further encumbering or transferring the Mortgaged Property without the Mortgagee's consent. If Mortgagor sells, encumbers or transfers the Mortgaged Property, then Mortgagee shall declare all indebtedness secured hereby to be accelerated and immediately due and payable, unless Mortgagee consents in writing to the sale, second mortgage or transfer, and unless the transferee or grantee assumes the indebtedness secured hereby in a form satisfactory to Mortgagee and without in any way discharging or reducing Mortgagor's liability for Mortgagor's obligations secured hereby.
3. That the Mortgagor will keep the buildings now existing or hereafter erected on the premises insured in such amounts as Mortgagee may reasonably require, but in no event in an amount less than the amount still owed to Mortgagee, under insurance policies providing fire, extended coverage, and earthquake coverage, naming Mortgagee as an insured as Mortgagee's interest may appear; will assign and deliver the policies or certificates therefor to the Mortgagee; and will reimburse the Mortgagee for any premiums paid for insurance made by the Mortgagee on the Mortgagor's default in so insuring the buildings or in so assigning and delivering the policies or certificates therefor. All such policies and renewals shall provide that all proceeds wherefrom in the case of loss shall be payable to the Mortgagee for application pursuant to the terms hereof. If all or any part of the of the Mortgaged Property is destroyed or damaged at any time by any cause whatsoever, the Mortgagor shall give immediate notice to Mortgagee of such loss or damage and Mortgagee, in its absolute discretion, may apply the proceeds of any insurance policy covering the Mortgaged Property to the reduction or satisfaction of the indebtedness secured by this Mortgage in such manner as the Mortgagee may elect, and such application shall be without prejudice to any other right or remedy provided herein.
4. That no buildings now existing or hereafter placed on the premises shall be substantially altered or removed or demolished without the consent of the Mortgagee, and such buildings will be maintained by Mortgagor in good order and repair.
5. The holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. The Mortgagor will pay all real estate taxes, liens, assessments, and other charges for which provision has been made herein, and, if requested, furnish proof of payment of same within 30 days, and in default thereof the Mortgagee may pay the same. In the event that Mortgagor fails to pay said taxes or other assessments on or before the

due date, Mortgagee, at its sole option, may, but is not obligated to, pay said charges after first giving Mortgagor ten (10) days advance written notice of its intention to pay same, in which event Mortgagor shall immediately become liable to Mortgagee for said amount together with interest at the rate of ten per cent (10%) per annum.

7. In the event of default in the terms of the Note or this Mortgage, the rents and profits, and all the leases of all or any portions of the Mortgaged Property, whether now executed or executed after the date hereof, are hereby assigned to Mortgagee as further security for the payment of the indebtedness and Mortgagor will execute whatever other documents may be required by Mortgagee to effectuate such assignment and the collection by Mortgagee of all rents due hereunder.

8. The Mortgagor shall keep the Mortgaged Property in reasonably good repair, working order and condition and shall make all such needful and proper repairs, renewals and replacements thereto as in the reasonable judgment of the Mortgagee may be necessary; and Mortgagor will comply with all laws, regulations, permitting and licensing requirements, and ordinances as the same are in force and effect from time to time.

9. In the event the Mortgaged Property is sold under foreclosure and the proceeds are insufficient to pay the total indebtedness evidenced and secured by the Mortgage, including, but not by way of limitation, principal, interest, attorneys' fees, costs and all expenses and charges, the Mortgagor agrees to pay any such balance and the Mortgagee shall be entitled to a deficiency judgment.

10. In the event of legal proceedings being commenced to foreclose this Mortgage, it is agreed that there be claimed, by Mortgagee, and as part of the judgment allowed, all costs incident thereto including reasonable attorneys' fees, together with interest at the rate provided in the Note.

11. Any notice, demand, request or other communication required or permitted to be given to either party hereunder shall be in writing and shall be deemed given either (a) when delivered in person or (b) on the received date shown on the return receipt after depositing in the United States mail by certified mail, postage prepaid, and addressed to the respective address shown on this Mortgage or to such other address as either party may in writing furnish the other.

12. The rights and remedies of Mortgagee as provided herein, or in the Note, and the warranties therein contained, shall be cumulative and concurrent, and may be pursued singly, successively or together at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

13. If Mortgagor complies with the provisions of this Mortgage and pays to Mortgagee said principal sum and all other sums payable by Mortgagor to Mortgagee as are hereby secured, in accordance with the provisions of the Note and this Mortgage, and

in the manner and at the time therein set forth, without deduction, fraud or delay, then and from thenceforth this Mortgage, and the estate hereby granted, shall cease and become void, anything hereinbefore contained to the contrary notwithstanding.

14. Mortgagor within twenty (20) days upon request by mail will furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the mortgage debt.

15. If any action or proceeding be commenced (except an action to foreclose this Mortgage or to collect the debt secured thereby), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable counsel fees) shall be paid by the Mortgagor together with interest thereon at the rate of five percent (5%) per annum, and any such sum and the interest thereon shall be a lien on said Property, prior to any right, or title to, interest in or claim upon said Property attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering costs, disbursements and all allowances shall prevail unaffected by this covenant.

16. That in case one or more of the following "events of default" shall happen and shall not have been remedied, the Mortgagee, at its option, may declare the whole of the principal sum and interest at the rate of five per cent (5%) per annum from the date of default as evidenced by the Note and secured by the Mortgage to become immediately due and payable, and upon any such declaration the same shall become immediately due and payable; said "events of default" are as follows:

- a. Any default under the aforescribed Note shall also constitute a default under this Mortgage;
- b. Any default in the payment of any tax or assessment when the same shall become due and payable and such default shall continue for a period of thirty (30) days after written notice and demand;
- c. Any default in the performance of any of the other covenants hereof within the time, if any, provided for such performance in said covenants, respectively, and such default or defaults shall continue for a period of thirty (30) days after written notice and demand;
- d. If any proceeding is filed under bankruptcy or similar law seeking an order adjudging the Mortgagor a bankrupt or insolvent, for the winding up or liquidation of the Mortgagor's affairs or for the appointment of a receiver, liquidator, or trustee in bankruptcy or insolvency of the Mortgagor's, and any such order is entered and remains undischarged or unstayed for thirty

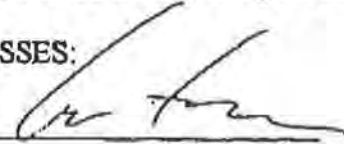
(30) days, unless by law a longer period is required; or if the Mortgagor institutes any such proceeding, consents to any such filing, order, or appointment, makes an assignment for the benefit of any creditor, or admits in writing the Mortgagor's inability to pay debts generally as they become due.

17. Mortgagor waives any right to trial by jury in any proceeding brought to enforce the terms of this Mortgage and the Note.

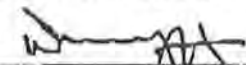
18. This Mortgage may not be changed or terminated orally. The covenants contained in this Mortgage shall run with the land and bind Mortgagor, its successors and assigns, and all subsequent owners, encumbrancers, tenants and subtenants of the Property, and shall inure to the benefit of the Mortgagee, its successors and assigns, and all subsequent holders of this Mortgage.

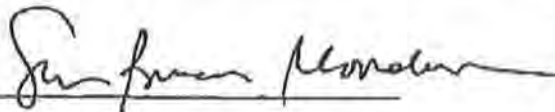
IN WITNESS WHEREOF this Mortgage has been duly executed by the Mortgagor as of the day and year first above written.

WITNESSES:



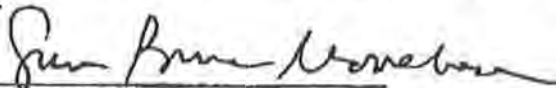
PLESSEN ENTERPRISES, INC.


By: Waleed Hamed, Vice President



TERRITORY OF THE U.S. VIRGIN ISLANDS)
DISTRICT OF ST. THOMAS & ST. JOHN) ss:

The foregoing was acknowledged before me this 24th day of August, 2006, by Waleed Hamed, as Vice-President of Plessen Enterprises, Inc., a Virgin Islands corporation, on behalf of the corporation.


NOTARY PUBLIC
My commission expires: _____

SUSAN BRUCH MOOREHEAD, NOTARY PUBLIC
P.O. BOX 1498
ST. THOMAS, USVI 00804
COMMISSION EXPIRES: 03/26/2010
COMMISSION NUMBER: LNP-004-06

Doc# 2006008542

HAMED EXHIBIT 7

DEED IN LIEU OF FORECLOSURE

THIS INDENTURE made this 23 day of October, 2008, between **PLESSEN ENTERPRISES, INC.**, a Virgin Islands corporation (herein "Grantor") and **UNITED CORPORATION**, a Virgin Islands corporation, P.O. Box 763, Christiansted St. Croix, VI 00821 (herein "Grantee");

WITNESSETH: That the Grantor, in consideration of the release and cancellation by Grantee of all of Grantor's obligations under a First Priority Mortgage and Note dated 08/24/06, which Mortgage was recorded on 08/24/06, as Document No. 2006008542, in the Office of the Recorder of Deeds for St. Thomas and St. John, Virgin Islands, does hereby grant, convey and release unto the Grantee, its successors and assign, in fee simple absolute, forever, all that certain parcel of land situate, lying and being in St. Thomas, U.S. Virgin Islands, described as follows:

**Parcel No. 2-4 Rem. Estate Charlotte Amalie
No. 3 New Quarter
St. Thomas, U.S. Virgin Islands
consisting of 0.536 acre, more or less
as shown on OLG Map No. D9-7044-T002, dated April 10, 2002**

TOGETHER with the improvements thereon and the rights, privileges and appurtenances belonging thereto, or in anywise appertaining.

SUBJECT, HOWEVER, to all easements, restrictions, agreements, covenants and declarations of record and to Virgin Islands zoning regulations.

TO HAVE AND TO HOLD the premises conveyed hereby, with all privileges and appurtenances thereof, unto the Grantee, its successors and assigns, in fee simple absolute forever; subject to the conditions and reservations set forth herein.

GRANTOR covenants that it has the right to convey title in fee simple and that the property is free from every encumbrances suffered or created by acts of Grantor, except as aforesaid, and Grantor warrants and will defend the title to the above granted property against all persons lawfully claiming the same from, through or under the Grantor.


Doc# 2009001984

IN WITNESS WHEREOF, the Grantor has duly executed this Deed in Lieu of Foreclosure as of the date first above written.

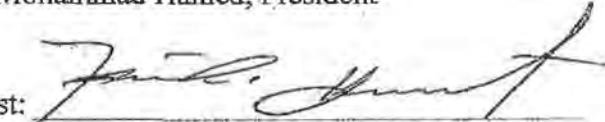
Witnesses:

PLESSEN ENTERPRISES, INC.



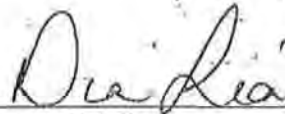

By: Mohammad Hamed, President



Attest: 
Fathi Yusuf, Secretary

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) ss:

The foregoing instrument was acknowledged before me this 23rd day of October, 2008, by Mohammad Hamed, as President of Plessen Enterprises, Inc., a Virgin Islands corporation, on behalf of the corporation.



Notary Public

My commission expires: April 12, 2012

My commission number: NP039-08



NOTED IN THE CADASTRAL RECORDS
FOR COUNTRY/TOWN PROPERTY, BOOK FOR

ESTATE CHARLOTTE AMALIE

NO. 3 NEW QUARTER

ST. THOMAS, U.S. VIRGIN ISLANDS

Cadastral Survey/Tax Assessor Offices

St. Thomas, V.I. Dated: October 31, 2008

Phyllis Harrigan
Phyllis Harrigan, Special Assistant
to the Tax Assessor for Surveys
Office of the Lieutenant Governor

ATTEST:

It is hereby certified that the above
mentioned property/s which, according

to DEED IN LIEU OF FORECLOSURE dated October 23, 2008

belongs to: UNITED CORPORATION

(GRANTEE)

has not, according to the Records of
this office, undergone any changes as to
boundaries and area.

Cadastral Survey/Tax Assessor Offices

St. Thomas, V.I. Dated: October 31, 2008

Phyllis Harrigan
Phyllis Harrigan, Special Assistant
to the Tax Assessor for Surveys
Office of the Lieutenant Governor



Doc# 200900198
Pages 5
03/24/2009 1:26PM
Official Records of
ST THOMAS/ST JOHN
WILMA G. HART SMITH
RECORDER OF DEEDS
Fees \$347.00




Deed in Lieu of Foreclosure
Pcl. 2-4 Reml Charlotte Amalie
Page - 3 -

AFFIDAVIT OF EXEMPTION

Mohammad Hamed, being duly sworn, deposes and states:

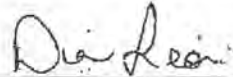
1. I am the President of Plessen Enterprises, Inc., Grantor herein;
2. This transfer is exempt from tax stamps pursuant to Title 33 Virgin Islands Code, Section 128 (2), as it is given solely in order to release security for an obligation.
3. The Government's assessed value for recording cost purposes is \$330,000.00.



Mohammad Hamed, President of
Plessen Enterprises, Inc.

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) ss:

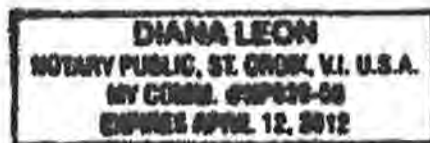
Subscribed and sworn to before me this 23rd day of October, 2008 by Mohammad Hamed,
as President of Plessen Enterprises, Inc., a Virgin Islands corporation, on behalf of the corporation.



Notary Public

My commission expires: April 12, 2012

My commission number: NP039-08





GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00802

---0---

Office of the Lieutenant Governor

TAX CLEARANCE LETTER

TO: THE RECORDER OF DEEDS

FROM: OFFICE OF THE TAX COLLECTOR

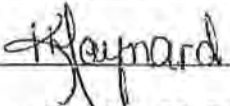
IN ACCORDANCE WITH Title 28, SECTION 121 AS AMENDED, THIS IS
CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES
OUTSTANDING FOR PARCEL NO. 1-05603-0214-00
LEGAL DESCRIPTION CHARLOTTE AMALIE 2-4, NEW QTR.
OWNER'S NAME DANIEL, WINSOR E.

TAXES RESEARCHED UP TO AND INCLUDING 2005.

RESEARCHED BY:

Karen Maynard, Tax Collector I

SIGNATURE:



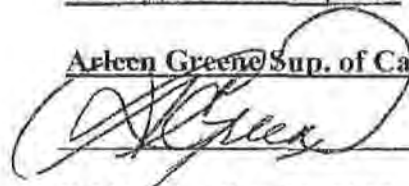
DATE:

Friday, October 31, 2008

VERIFIED BY:

Aileen Greene Sup. of Cashiers STT/STJ

SIGNATURE:



DATE:

Friday, October 31, 2008

Doc# 2008001904

HAMED EXHIBIT 8

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

Response:

Defendants object to this Interrogatory because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if

Response to Hamed's Fourth Set of Interrogatories
Waleed Hamed et al. vs. Fathi Yusuf et al.
Case No.: STX-2012-CV-370
Page 13

fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

HAMED EXHIBIT 9

Yusuf further objects on the grounds set forth in his Motion to Strike seeking to strike Hamed Claim 39. Yusuf incorporates by reference his Motion to Strike as if fully set forth herein verbatim and submits that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

Request to Admit 21 of 50:

Request to admit number 21 of 50 relates to Claim H-40 (old Claim No. 360) as described in Hamed's November 16, 2017 Motion for Hearing Before Special Master as "Approximately \$18 in "purged" (*i.e.*, missing) transactions in 2013."

Admit or deny that not all of the original 2013 bookkeeping transactions that were in the computer accounting system are in the Sage 50 2013 transaction provided to Hamed.

Response:

Denied.

Request to Admit 22 of 50:

Requesting to admit number 22 of 50 relates to Claim H-142 (old Claim No. 490) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Half acre in Estate Tutu."

Admit or deny that the Partnership (or Hamed and Yusuf) did provide the funds for the purchase of this land referenced Claim H-142, "Half acre in Estate Tutu," by using income from the Plaza Extra stores.

Response:

Yusuf objects to this Request because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the partnership accounting to only those transactions that occurred on

or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Yusuf has no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Yusuf's Motion to Strike Hamed's Amended Claim Nos. 142 and 143 seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order.

Request to Admit 23 of 50:

Request to admit number 23 of 50 relates to Claim H-146 (old Claim No. 3007) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Imbalance in credit card points."

Admit or Deny that the Partnership's management and accountant did not keep adequate records to allow the Partnership to now calculate and state with specificity what credit card points were earned by paying for purchases/expenses incurred on behalf of the Partnership on the personal credit cards of the Hameds and Yusufs, and thus, whether these points were split evenly between Partners.

Response:

Denied.

Request to Admit 24 of 50:

Request to admit number 24 of 50 relates to Claim H-147 (old Claim No. 3010) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Vendor rebates."

HAMED EXHIBIT 10

attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

RFPDs 13 of 50:

Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry – particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores.

Response:

EXHIBIT 10

Defendants object to this Request for Production because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

RFPDs 14 of 50:

Request for the Production of Documents, 14 of 50, relates to H-148 (old Claim No. 3011): "Excessive travel and entertainment expenses,"

If the answer to the request to admit as to H-148 is "deny," please provide the backup documentation for all travel expenses for the members of the Yusuf family from 2007 to 2014 that exceed \$1000, as it relates to H-148.

Response:

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade
P.O. Box 756

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

HAMED EXHIBIT 11



2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820
Tel. (340) 773-8709 / Fax (340) 773-8677
Website: joelholt.com

Joel H. Holt, Esq.
Licensed in USVI, DC, VA (inactive)
joelholtpc@gmail.com

Robin P. Seila, Esq.
Licensed in USVI, MA
robin.joelholtpc@gmail.com

July 17, 2018

Charlotte Perrell, Esq.
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802

By Email & USPS

Stefan Herpel, Esq.
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802

RE: Emergency Motion for Discovery Responses - Hamed Claim H-142 (Tutu Land)

Dear Stefan and Charlotte:

This is notice, pursuant to Rule 37.1, that Hamed will be filing an emergency motion to compel Yusuf's responses to three discovery requests that were due on May 15, 2018.

1. Procedural Posture

On July 11, 2018, Special Master Ross issued an order with regard to Hamed Claim H-142 (Tutu Land), in which he ordered the following at page 11:

ORDERED that Yusuf's motion to strike as to Hamed Claim No. H-142 is DENIED.

It is further:

ORDERED that Parties may continue with discovery in connection with Hamed Claim No. H-142. **Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018.** (Emphasis added.)

EXHIBIT 11

2. History of This Discovery re H-142

On January 29, 2018, the parties stipulated to, and the Special Master entered the *Joint Discovery And Scheduling Plan* ("Plan"). Part B ("B. Remaining Claims of Both Parties") required that:

7, Written interrogatories, requests for production of documents, and requests for admissions shall be propounded no later than March 31, 2018.

Pursuant to that requirement Hamed served three items of discovery on Yusuf directly addressing Claim H-142: Interrogatory 21, RFA 22 and RFPD 13. Copies of which are attached (with the Yusuf Responses) as Exhibits 1, 2 and 3. These were due by the end of April.

In response to a request by Charlotte, Hamed agreed to enlarge the time for Yusuf's responses to May 15, 2018, on which date, Yusuf filed various discovery responses.

However, the Yusuf responses as to the three listed inquiries were not provided -- based on the assertion of a pending motion -- the motion that resulted in the July 11th Order set forth in Section 1 above. At the time, we informed you that the pendency of such a motion did not relieve you of the requirement to respond to discovery absent an order.

On July 12th, immediately following the issuance of Special Master Ross' July 11th Order's requirement that discovery in H-142 be completed in 30 days, we sent you an email which stated:

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Thursday, July 12, 2018 11:19 AM
To: 'Stefan Herpel' <sherpel@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Gregory Hodges' <Ghodges@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: Yusuf Discovery Due re H-142 - Tutu Land

Stephan:

Pursuant to Judge Ross' Order today, the discovery that Yusuf incorrectly withheld as to H-142 (based on the pendency of the motion decided in that order) is past due.

Can we get the Yusuf/United responses by EOD tomorrow so that we can make whatever motions are necessary within the short time period allowed by the Order?

Thank you, Carl

This was followed by a more specific update:

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Thursday, July 12, 2018 11:22 AM
To: 'Stefan Herpel' <sherpel@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Gregory Hodges' <Ghodes@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: Ps.....RE: Yusuf Discovery Due re H-142 - Tutu Land

I'm sorry... I should have listed them to save you having to hunt through our discovery:

Interrogatory 21
RFA 22
RFPD 13

In addition, we inquired as to whether Stefan or Charlotte was no responsible for responding to such inquiries -- as we had been informed that Charlotte would, but that she had been away and Stefan would, but that Charlotte was back:

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Thursday, July 12, 2018 11:52 AM
To: 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: Outstanding Rule 37 question

Charlotte:

Am I dealing with you or Stefan on the several outstanding Rule 37 issues?
Carl

On Friday the 13th, sent the last email from DTF received to date, in which he stated:

From: Gregory Hodges <Ghodes@dtflaw.com>
Sent: Friday, July 13, 2018 3:25 PM
To: Carl@hartmann.attorney
Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>; Charlotte Perrell <Cperrell@dtflaw.com>; Stefan Herpel <sherpel@dtflaw.com>
Subject: RE: Ps.....RE: Yusuf Discovery Due re H-142 - Tutu Land

Carl,

As I believe you are aware, Charlotte has been primarily responsible for our discovery responses to date. From the end of last week through this week, she has been tied up in preliminary injunction hearings and related emergency motions. Accordingly, she will not be able to provide the responses you seek by the end of the day. She will get back to you promptly next week.

I disagree with your assertion that our discovery responses are “past due.” I would also note that Hamed’s response to our RFP 24 is deficient since it neither references nor produces any documents concerning H-142.

Gregory H. Hodges

An email was sent less than an hour later that day, to Charlotte, in which it was pointed out that Yusuf RFP 24 was **NOT** in any way an equivalency to the three listed items -- and that the three listed items had to be provided immediately.

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Friday, July 13, 2018 4:52 PM
To: 'Charlotte Perrell' <Cperrell@dtflaw.com>
Cc: 'Stefan Herpel' <sherpel@dtflaw.com>; 'Kim Japinga' <kim@japinga.com>; 'Joel Holt' <holtvi@aol.com>
Subject: Rule 37 Responses

Charlotte:

There are two different issues.

First, your responses are late. Hamed’s responses are not. The response to your RFPD is not specific to H-142, it is a general “what will you use is all defense” – which we do not know, and is not yet due yet.

RFPD 24. Please produce all documents upon which you intend to rely either in the defense of the Yusuf Claims as set forth in Exhibit 6 or in support of the Hamed Claims.

Response: Hamed objects to this request as overly broad. Subject to that objection, he states that he has not determined which documents will be used in defense of the Yusuf claims or in support of the Hamed claims. He will supplement this response when that decision is ultimately made.

However, as an accommodation to you, we will endeavor to make such a determination as to this issue on receipt of your responses and thus, answer within the new discovery period set by Judge Ross.

But, this is not equivalent. Your responses, were due, are due and are late. Please, I do not want to discuss your late responses and a timetable – just receive them immediately.

Second, as you know there are several other Rule 37 matters outstanding. As soon as we have received your responses above, we would then like to have a conference. As part of that, I would like to get the stip you stated previously would be forthcoming and which I have written to inquire about before.

Carl

Since then the responses have not been forthcoming.

3. Conclusion

Yusuf's responses are late. In addition, it has been several additional days after we requested the already late responses and no further communications or documents have been received. We have a very short period in which to complete discovery. Thus, if they are not supplied by 4:00 pm on Thursday, July 19th, Hamed will file this letter along with the emergency motion.

Cordially,



Joel H. Holt
JHH/jf

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

Response:

Defendants object to this Interrogatory because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if

Response to Hamed's Fourth Set of Interrogatories
Waleed Hamed et al. vs. Fathi Yusuf et al.
Case No.: STX-2012-CV-370
Page 13

fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

Yusuf further objects on the grounds set forth in his Motion to Strike seeking to strike Hamed Claim 39. Yusuf incorporates by reference his Motion to Strike as if fully set forth herein verbatim and submits that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

Request to Admit 21 of 50:

Request to admit number 21 of 50 relates to Claim H-40 (old Claim No. 360) as described in Hamed's November 16, 2017 Motion for Hearing Before Special Master as "Approximately \$18 in "purged" (*i.e.*, missing) transactions in 2013."

Admit or deny that not **all** of the original 2013 bookkeeping transactions that were in the computer accounting system are in the Sage 50 2013 transaction provided to Hamed.

Response:

Denied.

Request to Admit 22 of 50:

Requesting to admit number 22 of 50 relates to Claim H-142 (old Claim No. 490) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Half acre in Estate Tutu."

Admit or deny that the Partnership (or Hamed and Yusuf) did provide the funds for the purchase of this land referenced Claim H-142, "Half acre in Estate Tutu," by using income from the Plaza Extra stores.

Response:

Yusuf objects to this Request because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the partnership accounting to only those transactions that occurred on

or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Yusuf has no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Yusuf's Motion to Strike Hamed's Amended Claim Nos. 142 and 143 seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order.

Request to Admit 23 of 50:

Request to admit number 23 of 50 relates to Claim H-146 (old Claim No. 3007) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Imbalance in credit card points."

Admit or Deny that the Partnership's management and accountant did not keep adequate records to allow the Partnership to now calculate and state with specificity what credit card points were earned by paying for purchases/expenses incurred on behalf of the Partnership on the personal credit cards of the Hameds and Yusufs, and thus, whether these points were split evenly between Partners.

Response:

Denied.

Request to Admit 24 of 50:

Request to admit number 24 of 50 relates to Claim H-147 (old Claim No. 3010) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Vendor rebates."

attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

RFPDs 13 of 50:

Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry – particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores.

Response:

Defendants object to this Request for Production because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

RFPDs 14 of 50:

Request for the Production of Documents, 14 of 50, relates to H-148 (old Claim No. 3011): "Excessive travel and entertainment expenses,"

If the answer to the request to admit as to H-148 is "deny," please provide the backup documentation for all travel expenses for the members of the Yusuf family from 2007 to 2014 that exceed \$1000, as it relates to H-148.

Response:

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

HAMED EXHIBIT 12

CARL J. HARTMANN III
ATTORNEY-AT-LAW
5000 ESTATE COAKLEY BAY, L-6
CHRISTIANSTED, VI 00820

TELEPHONE
(340) 719-8941

EMAIL
CARL@CARLHARTMANN.COM

ADMITTED: USVI, NM & DC

July 19, 2018

Charlotte Perrell, Esq.
DTF
Law House
St. Thomas, VI 00820

By Email Only

RE: Request for Rule 37.1 Conference re Interrogatory 21 of 50 (re H-142 Tutu Land)

Dear Attorney Perrell:

I write regarding one of the Yusuf/United supplemental claims discovery responses served on July 19, 2018. It is Hamed's intention to file an emergency motion to compel directed to the Special Master. Pursuant to Rule 37.1, I request an immediate conference to discuss the basis of the proposed motion and seek amendment to the Yusuf response. Because out time is limited to three more weeks, I would appreciate a time convenient for you or your co-counsel tomorrow (Friday 7/20). The item at issue is: Interrogatory 21 of 50 which relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu,"

ANALYSIS OF DEFICIENCIES IN THIS INTERROGATORY

1. The discovery request and response

The original Interrogatory 12, and Yusuf's response are set forth below:

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the

EXHIBIT 12

purchase, with reference to all applicable documents, communications and witnesses.

Supplemental Response:

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.

2. Parsing the “objections”

Below, Hamed sets out each of the Yusuf objections *verbatim*. Only emphasis and headings have been added.

a. Yusuf Objection #1 of 2 – Mr. Yusuf is away until August 18th

c. Yusuf Objection #2 of 2 – So no facts are supplied now --
or will be supplied until then

If your client is away and you cannot respond within the time set by the Court, the burden is on you to obtain a protective order – as you will be in contempt of the Special Master’s Order dated July 12, 2018.

Even if this were not the case, Yusuf has given no facts whatsoever in response to the request, in interrogatory 21, that Yusuf:

state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase

3. Applicable Law

Applicable Order

ORDERED that Parties may continue with discovery in connection with Hamed Claim No. H-142. **Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018. . . .**
(Emphasis added.)

Applicable Rules

Rule 37(d) - Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General. (A) Motion; Grounds for Sanctions. The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(2) * * * *

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

Rule 26. Duty to Disclose; General Provisions Governing Discovery (b) Discovery Scope and Limits.

(1) Scope in General. Unless otherwise limited by court order, **the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable (emphasis added).

(2) Limitations on Frequency and Extent.

* * * *

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is not relevant to any party's claim or defense.

(D) Duplicative discovery. Duplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has already been made available to the discovery party, the responding party may, for its response, state specifically how and in what form such prior disclosure has been made. Where only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.

* * * *

(c) Protective Orders.

(1) In General. **A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending** — or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. **The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action** (emphasis added). The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses in motions relating to protective orders.

* * * *

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay

the reasonable expenses, including attorney's fees, caused by the violation.

In addition, the revision notes provide:

NOTE. Rule 26 is the foundational provision regarding mandatory early disclosures and the scope of discoverable information throughout the action.

* * * *

Subpart (b) is the general "scope" provision governing discovery in the Virgin Islands. It defines discoverable materials as "any nonprivileged matter that is relevant to any party's claim or defense."

Rule 33 controls as to interrogatories (emphasis added).

Rule 33. Interrogatories to Parties

(a) In General.

* * * *

(2) Scope. An interrogatory **may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact. . . .**

* * * *

(b) Answers and Objections.

(1) Responding Party. The interrogatories **must be answered:**

(A) by the party to whom they are directed; or

3. Application of the Law to Yusuf's Objections

Yusuf provided no written answer. That violated Rule 37(d).

Yusuf stated that he will be unable to answer within the time given – but has not sought a protective order. That violates Rule 26(c) as well as Rule 37(d).

The entire response violates Rule 26(b)(1), as it does not address a valid inquiry.

I will await your response with dates/times.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carl J. Hartmann". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Carl J. Hartmann

HAMED EXHIBIT 13

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,

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.

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

**ACTION FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

NOTICE OF VIDEOTAPED DEPOSITION

EXHIBIT 13

PLEASE TAKE NOTICE that pursuant to the *Order* of the Special Master dated July 12, 2018, on August 8, 2018 at 11 a.m., pursuant to V.I.R. Civ. P. 30(b)(6), Plaintiff's counsel will take the limited videotaped deposition of a designated representative of Defendant United Corporation with regard to the topics set forth in "**Exhibit A**" -- solely as to Hamed's Claim H-142 -- at his offices on 2132 Company Street, Christiansted, VI. Hamed understands and stipulates that the time spent in this deposition will be deducted from the total deposition time of this Defendant allowed pursuant to 'Part B' of the January 29, 2018, *Plan and Scheduling Order*.

Dated: July 20, 2018



Carl J. Hartmann III, Esq (Bar #48)
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941
Fax: (212) 202-3733

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

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2018, I served a copy of the foregoing by email (Via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

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 WORD/PAGE COUNT

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



EXHIBIT A

DEPOSITION TOPICS

1. Hamed Claim H-142 (Tutu Land)

A. The funds used to purchase the land described as:

Parcel No. 2-4 Rem. Estate Charlotte Amalie
No. 3 New Quarter, *St. Thomas*, U.S. Virgin Islands
consisting of 0.536 acre, more or less, as shown on
OLG Map No. D9-7044-T002, dated April 10, 2002

hereinafter referred to as the "Land".

- i. The source and how the funds were generated, and taxes paid on those funds
- ii. The methods and means used to skim funds to avoid taxes
- iii. The methods and means used to purchase other property with skimmed funds.
- iv. The methods and means used to transfer the funds used to purchase the Land
- v. The persons directing the obtaining, use and payment of these funds.
- vi. Negotiations surrounding the purchase of the Land.
- vii. The offer for the Land.
- viii. The acceptance of the offer for the Land
- ix. The preparation of documents for the transfer of the Land.
- x. The Closing on the Land.
- xi. The documents relating to the Land.

B. The purchase of the large adjacent parcel of the Land. ("Large Adjacent Parcel")

- i. The source and how the funds were generated, and taxes paid on those funds
- ii. The methods and means used to transfer the funds used to purchase the Large Adjacent Parcel
- iii. The persons directing the obtaining, use and payment of these funds.
- iv. Negotiations surrounding the purchase of the Large Adjacent Parcel.
- v. The offer for the Large Adjacent Parcel.
- vi. The acceptance of the offer for the Large Adjacent Parcel
- vii. The preparation of documents for the transfer of the Large Adjacent Parcel.
- viii. The Closing on the Large Adjacent Parcel.
- ix. The documents relating to the Large Adjacent Parcel.

C. The Mortgage and Note in Favor of United Corporation on the Land (the "Mortgage")

- i. The source and how the funds were generated for United to loan or pay consideration to the Partnership or Plessen for the Note and Mortgage, and taxes paid on those funds
- ii. The methods and means used to transfer the funds used to purchase the Mortgage
- iii. The persons directing the obtaining, use and payment of these funds.
- iv. Negotiations surrounding the Mortgage.
- v. The offer for the Mortgage.
- vi. The acceptance of the offer for the Mortgage

- vii. The preparation of documents for the Mortgage and Note.
- D. The Deed in Lieu in Favor of United Corporation on the Land (the "Mortgage")
- viii. The source and how the funds were generated for United to loan or pay consideration to the Partnership or Plessen for the Note and Deed in Lieu, and taxes paid on those funds
 - ix. The methods and means used to transfer the funds used to purchase the Deed in Lieu
 - x. The persons directing the obtaining, use and payment of these funds.
 - xi. Negotiations surrounding the Deed in Lieu.
 - xii. The offer for the Deed in Lieu.
 - xiii. The acceptance of the offer for the Deed in Lieu
 - xiv. The preparation of documents for the Deed in Lieu and Note.
- E. The intended use of the Land and Large Adjacent Parcel
- F. The Criminal Action and its Effects
- i. On the use of the Land
 - ii. On the funds available
 - iii. On the transferring of interests in property
 - iv. On United
 - v. On Plessen
 - vi. On the grocery stores
 - vii. On the Tutu Store
- G. The involvement of individuals on the purchase of the Land, mortgage and Deed in Lieu
- i. Fathi Yusuf
 - ii. Mohammad Hamed

- iii. Waleed Hamed
 - iv. Mike Yusuf
 - v. Counsel
 - vi. CPA's and Accountants
 - vii. Title Searchers
 - viii. Title Insurance Providers
- H. Plessen Enterprises. Inc. at the time of the purchase of the Land, mortgage and Deed in Lieu
- I. United Corporation at the time of the purchase of the Land, mortgage and Deed in Lieu
- J. The Partnership at the time of the purchase of the Land, mortgage and Deed in Lieu
- K. Accounting Practices at the time of the purchase of the Land, mortgage and Deed in Lieu
- L. Banking Practices at the time of the purchase of the Land, mortgage and Deed in Lieu
- M. Legal work being done at the time of the purchase of the Land, mortgage and Deed in Lieu
- N. The practices surrounding Fathi Yusuf being "in charge" of the office, finances and decision-making at the time of the purchase of the Land, mortgage and Deed in Lieu
- O. The practices surrounding Fathi Yusuf being "in charge" of the office, finances and decision-making regarding the Land