

**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, WIND UP, AND ACCOUNTING
v.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.	)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
	)	
Defendant.	)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.	)	
FATHI YUSUF,	)	ACTION FOR DEBT AND CONVERSION
	)	
Defendant.	)	

**YUSUF'S REPLY TO HAMED'S OPPOSITION TO  
YUSUF'S MOTION FOR SUMMARY JUDGMENT AS TO Y-14  
HALF OF THE VALUE OF CONTAINERS AT PLAZA EXTRA-TUTU PARK**

Fathi Yusuf ("Yusuf"), through his undersigned attorneys, respectfully submits this Reply Brief to Hamed's Opposition to Yusuf's Motion for Summary Judgment as to Y-14 Regarding Half of the Value of the Containers at Plaza Extra-Tutu Park.

**I. Reliance and Clarification as to the Items Sold at the Site and Time of the Auction**

Yusuf specifically asked Master Ross what items would be included in the bidding process before it began and there was clarification sought by Yusuf that it would only consist of items "under the roof" of the Tutu Park store. *See* Yusuf Statement of Facts ("SOF") ¶¶1-3, Exhibit A-Fathi Yusuf Depo., 59:6-60:5. Clearly, the containers were not "under the roof" of the Tutu Park store and, thus, were not taken into consideration by Yusuf when the bidding process took place. The net result is that Yusuf agreed to an amount for the sale of the items "under the roof" that was less than he would have required if the trailers and the items stored in them were also included. The amount not included is significant—\$413,900.00 (according to Yusuf's evaluation). The net result is an impermissible windfall to Hamed.

Hamed argues that the Wind Up Plan and Order from Master Ross prior to the sale did not specify the location of the inventory to be bid upon at the closed-bid auction. However, Yusuf clarified the items to be bid upon the day of the closed-bid auction, during the process and understood that the inventory did not include anything not "under the roof" of the store. Consistent with that understanding, Master Ross did not allow product that had been ordered but not received to be included as a part of the valuation. During the bidding process, Yusuf formulated his bids on this understanding and likewise, ultimately accepted the bid of Hamed with this understanding,

which was based upon a clarification made at the time and site of the auction itself. Given the significant value of the containers and the inventory, Yusuf requests half of the value of same be awarded to him as part of the claims resolution process.

## **II. Sufficient Proof of the Value of the Inventory and Containers**

Hamed admitted there were four or five containers at the Tutu Park location that had product in them at the time of the auction. *See Yusuf SOF ¶9 - Exhibit B-Willie Hamed Depo*, p. 43:25-44:3 and Hamed Counter Statement of Facts (“CSOF”) admitting to Yusuf SOF ¶¶9 and 10. Hamed stipulated that there is no formal inventory, which exists that would specify the exact inventory in the containers at the Tutu Park location at the time of the closed-bid auction on April 30, 2015. *See Yusuf SOF ¶10 - Exhibit B-Willie Hamed Depo*, p. 37:9-15 and 40:25-41:7, and Hamed CSOF admitting to Yusuf SOF ¶ 10.

- Q. What I'm asking you is, is we -- you do not have access to an inventory as of the end of April of 2013 -- 15 for the containers in Tutu Park?
- A. A. No, I don't, but I knew what was in them.
- Q. ...There's no inventory, formal prepared inventory, correct?
- A. I don't know.
- Hartmann: We'll stipulate there wasn't.

Although Willie Hamed claimed to know what was in the containers, he further admitted that he had not done an evaluation of the products in the containers and, at best, he was giving an estimation off “the top of [his] head.” *See Yusuf SOF ¶11 – Exhibit B-Willie Hamed Depo*, p. 44:4-8. Specifically, Willie Hamed testified:

- Q. So have you undertaken to determine a value for the containers that had product in them, the four to five containers that had product in them, as of April 30th, 2015?

A. No, ma'am, because why would I need to?

*See Yusuf SOF ¶11 – Exhibit B-Willie Hamed Depo, p. 42:25-43:4.*

Q. ...other than what you've just stated today, nobody has undertaken to determine a full value of those four to five containers that had product; is that correct?

A. That's correct.

*See Yusuf SOF ¶11 – Exhibit B-Willie Hamed Depo, p. 44:21-25.*

In contrast, Yusuf provided testimony that he had worked at the Tutu Park location for 22 years and was familiar with the types of products that were typically stored in these containers, describing them as goods that would withstand heat and other harsh conditions. Yusuf provided invoices as to the types of products that would be stored in the containers and calculated the amount and quantity based upon the size and load the containers could hold. Yusuf further explained that because the containers were used for storage, that weight restrictions were not a concern. *See Yusuf SOF ¶¶ 4-8 and Exhibit 7 thereto.* Further, Waheed Hamed admitted that there were four or five containers at the Tutu Park location with product in them at the time of the auction, this confirms a portion of Yusuf's calculations. *See Yusuf SOF ¶ 10 and Hamed CSOF admitting to Yusuf SOF ¶ 10.* Hence, Yusuf provided proof of the value of what was stored in the containers. This evidence is sufficient evidentiary proof of the value of the inventory and the containers as there does not exist any inventory for the containers as of the date of the April 30, 2015 closed-bid auction.

At best, Hamed counters with an off the "top of his head" estimate made without any thought, calculation or consideration. Hence, Yusuf's evidence demonstrates the value of the

inventory and the containers sufficient to grant an award to Yusuf for half of the value. Alternatively, Hamed's off-the-cuff estimation of value creates a contested issue of material fact precluding summary judgment and requiring a hearing on the issue of valuation of the containers and the inventory.

### **III. Conclusion**

Yusuf sought clarification at the time and site of the bid as to those items that were to be included in the bidding process. The containers and the value of the inventory stored in them were not calculated into the bid pricing. As a result, Hamed received the full value of the containers and the inventory without just compensation to Yusuf. Yusuf requests a ruling in his favor as to Y-14 awarding him one half of the value of the containers and inventory.

Yusuf has provided evidence sufficient to demonstrate the value of the containers themselves and the inventory contained therein to be \$414,909. Hamed has failed to conduct any valuation of the containers or the inventory. Hamed has admitted that no formal inventory exists as to the value of the containers and the inventory stored inside them as of April 30, 2015, the date of the closed-bid auction. Hence, Hamed has failed to offer sufficient evidence to create a genuine issue of fact as to the value offered by Yusuf. Alternatively, if Hamed's statements are deemed sufficient to constitute competent evidence of a valuation, then a question of fact as to the value of the containers and the inventory stored therein exists, requiring an evidentiary hearing.

Fathi Yusuf, et al. (adv. Hamed, et al.)

Case Nos.: SX-12-CV-370, SX-14-CV-287 and SX-14-CV-278

Yusuf's Reply to Hamed's Opposition to Yusuf's Motion for Summary Judgment as to Y-14 Half of the Value of Containers at Plaza Extra-Tutu Park

Page 6 of 7

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** August 22, 2019

By: /s/Charlotte K. Perrell  
**GREGORY H. HODGES** (V.I. Bar No. 174)  
**CHARLOTTE K. PERRELL** (V.I. Bar No. 1281)  
P.O. Box 756-0756  
St. Thomas, VI 00804  
Telephone: (340) 715-7750  
Facsimile: (340) 715-4400  
E-Mail: [ghodges@dnfvi.com](mailto:ghodges@dnfvi.com)  
[cperrell@dnfvi.com](mailto:cperrell@dnfvi.com)

Attorneys for Fathi Yusuf and United Corporation

Fathi Yusuf, et al. (adv. Hamed, et al.)

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Yusuf's Reply to Hamed's Opposition to Yusuf's Motion for Summary Judgment as to Y-14 Half of the Value of Containers at Plaza Extra-Tutu Park

Page 7 of 7

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of August, 2019, I caused the foregoing **YUSUF'S REPLY TO HAMED'S OPPOSITION TO YUSUF'S MOTION FOR SUMMARY JUDGMENT AS TO Y-14 HALF OF THE VALUE OF CONTAINERS AT PLAZA EXTRA-TUTU PARK AND MEMORANDUM OF LAW IN SUPPORT**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
Quinn House - Suite 2  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)

Mark W. Eckard, Esq.  
**ECKARD, P.C.**  
P.O. Box 24849  
Christiansted, St. Croix  
U.S. Virgin Islands 00824

E-Mail: [mark@markeckard.com](mailto:mark@markeckard.com)

The Honorable Edgar D. Ross  
E-Mail: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay – Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Jeffrey B.C. Moorhead, Esq.  
**JEFFREY B.C. MOORHEAD, P.C.**  
C.R.T. Brow Building – Suite 3  
1132 King Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [jeffreylaw@yahoo.com](mailto:jeffreylaw@yahoo.com)

and via U.S. Mail to:

The Honorable Edgar D. Ross  
Master  
P.O. Box 5119  
Kingshill, St. Croix  
U.S. Virgin Islands 00851

Alice Kuo  
5000 Estate Southgate  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

/s/ Charlotte K. Perrell