

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

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, PARTNERSHIP
DISSOLUTION, WIND UP, and
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Yusuf and United’s Motion to Strike Hamed’s Claim Nos. H-4: reimbursement of payment made to United¹ in connection with 2012-2013 real property taxes for Plaza Extra Tutu Park, in the total amount of \$89,443.92; H-5: reimbursement of payment made to United² in connection with 2014 real property taxes for Plaza Extra Tutu Park, in the total amount of \$46,990.48; and H-6: reimbursement of payment made to Yusuf in connection with Plaza Extra Tutu Park’s rent for the period November 1, 2014 through October 31, 2015,³ in the total amount of \$41,462.28.⁴ Yusuf filed an opposition and Hamed filed a reply thereafter.

According to Hamed’s submission of his suggestions as to the further handling of the remaining claims per the Master’s directions of August 24, 2017, filed on October 30, 2017, Hamed stated the following for Hamed Claim Nos. H-4, H-5 and H-6:

Hamed Claim No. H-4: On December 4, 2015, the Landlord for the Plaza Tutu Store in St. Thomas sent the real property tax assessment for that store for 2012 and 2013 (totaling \$79,009.87), which are the real property taxes reimbursed to the landlord by the tenant (the Yusuf/Hamed partnership in 2012 and 2013) under the written lease for the STT premises. These tax bills were submitted to the Liquidating Partner, who promptly paid them. However, when this tax payment was reimbursed to the STT landlord by the Partnership, Yusuf then gave himself a larger distribution without any court order, which totaled \$89,443.92, as noted on the January 1, 2015-December 31, 2015 Plaza Extra-West general ledger submitted to the Hameds by John Gaffney on February 1, 2016.

¹ There is a discrepancy as to whether the distribution claimed in Hamed Claim No. H-4 was made to United or Yusuf. According to Yusuf and United’s motion, the distribution was made to United. According to Hamed’s submission of his suggestions as to the further handling of the remaining claims per the Master’s directions of August 24, 2017, filed on October 30, 2017, the distribution was made to Yusuf.

² There is a discrepancy as to whether the distribution claimed in Hamed Claim No. H-5 was made to United or Yusuf. According to Yusuf and United’s motion, the distribution was made to United. According to Hamed’s submission of his suggestions as to the further handling of the remaining claims per the Master’s directions of August 24, 2017, filed on October 30, 2017, the distribution was made to Yusuf.

³ This was the time period provided in Yusuf and United’s motion.

⁴ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed Claim Nos. H-4, H-5 and H-6 fall within the scope of the Master’s report and recommendation given that Hamed Claim Nos. H-4, H-5 and H-6 are alleged debts owed by United/Yusuf to the Partnership (or in other words, potential Partnership Assets).

Hamed Claim No. H-5: Yusuf also apparently repeated this procedure for the 2014 taxes owed for the STT store, paying the STT landlord \$43,069.38 for this tax bill, while then paying United, his corporation, \$46,990.48 for the Plaza East store, as identified on the January 1, 2015-December 31, 2015 Plaza Extra-West general ledger submitted to the Hameds by John Gaffney on February 1, 2016.

Hamed Claim No. H-6: The Landlord for the Plaza Tutu Store in St. Thomas sent the annual percentage rent calculation for that store, seeking a total payment of \$41,462.28. Because that store was owned by the partnership for 6 months of this time period and by Hameds' new company, KAC357, Inc. ("KAC"), for the last 6 months of the time period, KAC asked the partnership to pay half of this amount, or \$20,731.14. In the January 1, 2015-December 31, 2015 Plaza Extra-West general ledger submitted to the Hameds by John Gaffney on February 1, 2016, Yusuf decided to pay the entire amount from the Partnership funds (even though only half was owed by the partnership), and then paid himself an equal amount as a partnership distribution of \$41,462.28.

In his motion, Yusuf and United argued that "[t]here is simply no dispute that the formula for calculating the rent for Plaza Extra East from May 2004 forward is based on a percentage of sales formula that uses the yearly sales of Plaza Extra Tutu Park" and that "[u]nder this formula, total rent payments including real estate taxes, total rent payments including real estate taxes made to Tutu Park, Ltd., the landlord for Plaza Extra Tutu Park, for a given year are divided by sales for the same year at that store to determine a percentage [and] [t]hat percentage is then applied to the sales at Plaza Extra East to determine the rent to be paid by Plaza Extra East to United for that year." (Motion, p. 2) Yusuf and United further argued that "Hamed has never disputed that this percentage rent formula determined the rents due for Plaza Extra East." (Id.) In support of the validity of this calculation, Yusuf and United pointed to: (1) Waleed Hamed signed a check in the amount of \$5,408,806.74 on February 7, 2012 paying the rent from May 5, 2004 to December 31, 2011 based on this percentage formula; and (2) in an order dated April 27, 2015, the Court granted United's motion to withdraw rent and accepted Yusuf's calculation of the rents due from January 1, 2012 going forward. (Id., at p. 3) Furthermore, as to Hamed Claim No. H-6, Yusuf and United argued that "Yusuf chose to pay Tutu Park, Ltd. for its percentage rent invoice [for the period from November 1, 2014

through October 31, 2015] even though it was an obligation of Hamed or his family's company" and that "[b]ecause this payment effectively represented a partnership distribution to Hamed, Yusuf made an identical distribution to himself." (Id., at p. 4) Yusuf and United pointed out that both checks were signed off by the Master. As such, Yusuf and United requested the Master to find Hamed Claim Nos. H-4, H-5 and H-6 invalid and strike them. (Id.)

In his opposition, Hamed argued that Yusuf and United falsely asserted that "United is entitled to an 'extra' rent payment for the Plaza East store every time the landlord in St. Thomas is due an agreed upon amount for taxes, water and insurance in addition to the base rent" and that "[t]o date United has withdrawn \$177,896 based on this totally fabricated position." (Opp., p. 2) (Emphasis omitted) Hamed clarified that what Parties had previously agreed to was the rent for Plaza Extra East was \$58,791.31 per month "without any reference to any additional amounts for additional 'taxes, water and insurance' being due, as now claimed." (Id., at p. 3) Thus, Hamed argued that Yusuf and Hamed's motion is "nothing more than a motion for reconsideration" of the Court's April 27, 2015 order, and should be denied for being untimely. Hamed also argued that "if the rent for the [Plaza Extra East] store was to be based on the rent at the [Plaza Extra Tutu Park] store, the rent would have fluctuated each year, as the total sales for that store varied each year, as noted in the calculations that took an average over the eight-year period between 2004 and 2012 to calculate this 'fixed rent'" (Id., at p. 4) As to Hamed Claim No. H-6, Hamed pointed out that "Yusuf never sought payment for these amounts until KAC 357, Inc. sought the tax and insurance payment for the [Plaza Extra Tutu Park] store for the time period they took possession" and that Yusuf initially objected to these payments but ultimately paid with the following distribution: "[e]ach payment for the St. Thomas items came 50/50 from each partner's funds, while Yusuf then got 100 percent of the same amount for each

withdrawal he took.” (Id.) As such, Hamed requested the Master to order Yusuf and United to reimburse the Partnership in the total amount of \$177,896.00, plus interest. (Id.)

In their reply, Yusuf and United disputed Hamed’s claim that the rent for Plaza Extra East was a fixed rate. (Reply, pp. 1-6) Furthermore, Yusuf and United pointed out that “[w]hile it is true that Yusuf, as the Liquidating Partner, initially rejected Tutu Park, Ltd.’s claim for percentage rents, given the fact that Hamed had failed to obtain United’s and Yusuf’s release of liability under the Tutu Park, Ltd. Lease as he was obligated to do under the Plan and Master’s Order of April 30, 2015, Yusuf chose to pay Tutu Park, Ltd.’s percentage rent invoice on behalf of Hamed” and treated that payment as a “partnership distribution to Hamed for which Yusuf was entitled to an identical distribution.” (Id., at p. 6)

DISCUSSION

The Master must note at the outset that Parties’ arguments regarding Hamed Claim Nos. H-4 and H-5 were extremely convoluted. Hamed described Hamed Claim Nos. H-4 and H-5 as claims for reimbursement of the distribution to United (or Yusuf)⁵ from the Partnership in the total amount of \$89,443.92 and \$43,990.48, respectively, made in connection with the real property taxes the Partnership paid for Plaza Extra Tutu Park for 2012 to 2013 and 2014, respectively; there was no mention of rent for Plaza Extra East. However, in their respective briefs, Yusuf and United and Hamed argued over the percentage rent formula used to determine the rent for Plaza Extra East and whether the rent for Plaza Extra East was a fixed rate. Instead of focusing on Parties’ briefs here, the Master will look to his order regarding the transfer of ownership of Plaza Extra Tutu Park, dated May 4, 2015 (hereinafter “May 4, 2015 Order”). The May 4, 2015 Order provided that:

WHEREAS, on January 9, 2015, the Court issued its Order Adopting Final Wind Up Plan (“Wind Up Order”) providing, inter alia, for the sale of the business

⁵ See *Supra*, fn. 1 and fn. 2.

known as Plaza Extra Tutu Park, St. Thomas, to wit, the leasehold interests, the inventory, equipment, all leasehold improvements not a part of the real property, \$50,000.00 cash, all existing rights and obligations to the pending litigations with the landlord in the Superior Court of the Virgin Islands, Division of St. Thomas and St. John, Civ. No [sic] ST-01-CV-361 and Civ. No. ST-97-997 [sic] (the Tutu Park Litigation), the obligation to reimburse the non-prevailing partner \$220,000.00 for costs and attorneys fees attributable to the Tutu Park Litigation, and the obligation to obtain releases or otherwise remove any continuing or further leasehold obligations and guarantees of the Partnership or the non-prevailing partner, and the trade name Plaza Tutu Park;

WHEREAS, the bid auction was conducted as ordered by the Court and Hamed was the successful purchaser;

WHEREAS, Hamed has fully complied with and satisfied the foregoing directive of the Wind Up Order such that as of 12:01 AM on May 1, 2015, Hamed will lawfully has sole right, title interest, ownership and control of the business known as Plaza Extra Tutu Park, St. Thomas to the exclusion of all other persons and entities that may have previously been involved in the operation of Plaza Extra Tutu Park, St. Thomas; (May, 4, 2015 Order, pp. 1-2)

As such, the Master declared that:

- A. Recognition of Hameds Full and Sole Ownership of Plaza Extra Tutu Park, St. Thomas
 1. Hamed as of 12:01 AM, May 1, 2015 has lawfully and rightfully assumed full and sole ownership and control of Plaza Extra Tutu Park, St. Thomas and may continue to operate Plaza Extra Tutu Park without any further involvement of any other person or entity, using the trade name “Plaza Extra Tutu Park.” (Id., p. 4)

Thus, on the day of the transfer of ownership of Plaza Extra Tutu Park, only accounts then due and payable were the obligation of the Partnership. All other obligations that became due and payable thereafter was solely the responsibility of the purchaser—Hamed. When the tax bills for Plaza Extra Tutu Park were sent to the Liquidating Partner, Yusuf, as the Liquidating Partner, approved the use of Partnership fund to pay for Plaza Extra Tutu Park’s tax bills. Since the Partnership paid the questioned obligations that were not its own, the expenditures were treated as a Partnership distribution for the purchaser of Plaza Extra Tutu Park—Hamed. Therefore, Yusuf was entitled to a like sum Partnership distribution. Under Section 3 of the

Final Wind Up Plan, Yusuf's rights and obligations, as the Liquidating Partner, relative to the winding up, is subject to the review of the Master, and that "[a]ll acts of the Liquidating Partner, except those customarily undertaken in the ordinarily course of the ongoing business operations of the Partnership, are subject to the prior notification to and approval of the Master." (January 7, 2015 order: Final Wind Up Plan) As such, these determinations were within Yusuf's discretionary authority as the Liquidating Partner. Thus, the Master will grant Yusuf and United's motion to strike as to Hamed Claim Nos. H-4 and H-5.


As to Hamed Claim No. H-6, Yusuf, as the Liquidating Partner, approved the use of Partnership fund to pay for the full amount of rent for the Plaza Extra Tutu Park store in St. Thomas that both the Partnership and KAC were responsible for, rather than limiting the payment to the portion of rent that the Partnership was responsible for. Since the Partnership paid the questioned obligations that were not its own, the expenditures were treated as a Partnership distribution for the purchaser of Plaza Extra Tutu Park—Hamed. Thus, similarly, Yusuf was entitled to a like sum Partnership distribution. Again, these determinations were within Yusuf's discretionary authority as the Liquidating Partner. Thus, the Master will grant Yusuf and United's motion to strike as to Hamed Claim No. H-6.

CONCLUSION

Based on the foregoing, the Master grant Yusuf and United's motion to strike Hamed Claim Nos. H-4, H-5 and H-6. Accordingly, it is hereby:

ORDERED that Yusuf and United's motion to strike as to Hamed Claim Nos. H-4, H-5 and H-6 is **GRANTED**. Hamed Claim Nos. H-4, H-5 and H-6 shall be and is hereby **STRICKEN**.

DONE and so ORDERED this 5th day of September, 2018.


EDGAR D. ROSS
Special Master