

**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

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

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.*

FATHI YUSUF, *Plaintiff,*

vs.

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

I. Introduction and Agreement to Proposed Amended Order to Compel

Hamed's *Request For Admission* ("RFA") numbered 1 pertains to Hamed's *Revised Claim H-13*, regarding payment of individual taxes by the Partnership during the related criminal case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-CR-15). Claim H-13 alleges that despite an agreement with the taxing authorities and a written settlement in that criminal case, in 2013, Yusuf used his phony claim that "Hamed was not a partner" to make sure that the Partnership did not pay for Waleed ("Wally") and Waheed's ("Willy") 2002-2012 taxes, despite the fact that there is no dispute that the Partnership paid the *identical taxes for the identical periods* for Yusuf and his children.

This Court can save itself a good deal of time and effort if it just reads this short, introductory section—as, in it, Hamed agrees to the requested relief.¹

However, the size and wildly ranging scope of the Yusuf motion make it apparent that this motion is not really about Yusuf simply conceding the critical point by agreeing to this Proposed Amended Order. The motion is about telling yet another fantastical story of how, despite trying to steal all of Hamed's half of the Partnership to begin with, getting the Hamed's arrested and oppressing witnesses—Yusuf is a reasonable person whose thefts after this case started are all quite reasonable. And, as is inevitably the case, such imaginative, Yusuf-centric stories ALWAYS lack cites to the record and constraint to the facts.

¹ Hamed notes that he was not contacted regarding this motion, nor provided a draft of the proposed order—despite repeated communications with Yusuf's counsel in the days since the entry of the Order requiring compliance with discovery rules and Yusuf's efforts to remedy other discovery "insufficiencies". Had Yusuf's counsel simply asked, Hamed's answer would have been EXACTLY what it is here: **Hamed is more than pleased to have the Court enter the Proposed Amended Order as written—as if does precisely what Hamed has sought, and is fairly dispositive of the underlying issue.**

Thus, despite, his wholehearted agreement to the Proposed Amended Order, Hamed will provide the Special Master with what the record actually shows as to this claim: This is just to make sure that Yusuf's "explanations" do not become confused with the truth.

II. Facts

On May 24, 2013, the Virgin Islands Bureau of Internal Revenue ("VIBIR") sent a letter to Fathi Yusuf's personal attorney, Nizar DeWood, stating that "United and Related entities" owed the government \$6,586,132 in taxes for 2002-2012.²

On June 14, 2013, Maggie Doherty, for the US Marshal's Service, authorized the release of \$6,586,132 from the Partnership's Banco Popular Securities account for tax payments to VIBIR. (This was necessary because, during the course of the criminal case involving United, Fathi, Maher and Yusuf Yusuf and Waleed and Waheed Hamed, the US Marshal's Service had to authorize any release of funds in excess of a certain amount from the Partnership's banking and investment accounts). As part of that same series of tax payments, on June 20, 2013, Ms. Doherty also authorized the release of \$315,747 from the Partnership's Banco Popular Securities account for the estimated income tax liabilities for Waleed and Waheed Hamed (the tax liability for both men subsequently was revised to \$129,546 and \$3,582).

As was the requirement following Judge Brady's preliminary injunction order on April 25, 2013, one Hamed and one Yusuf had to sign a check jointly from the Partnership accounts before any amount could be distributed. **But, Fathi Yusuf refused to sign the check written to allow the Partnership to pay Waleed and Waheed's taxes for 2002-2012.**

² As Hamed has accepted the Yusuf concession in the Proposed Order, he will not attach the thick stack of supporting documents here -- but will do so when this claim is submitted to the Court -- although the RFA response appears to suggest Yusuf will concede that claim to avoid the facts below from being presented. Thus, this complete factual statement.

To understand what was happening, one need only read the June 29th letter from Fathi Yusuf's personal attorney, Joseph DiRuzzo, to VIBIR in which he claimed (to Tamika M. Archer, Esq., VI Office of the Attorney General, Tamarah Parson-Small, Esq., VIBIR, and Lori Hendrickson, Esq., DOJ) that the \$6.5 million tax payment agreed to during a mediation on the subject **was not to cover Mohammad Hamed or his sons:**

This is a material breach of the agreement that was reached in the mediation conducted before Judge Barnard. The Parties to the mediation explicitly agreed that the \$6.5M tendered **was to satisfy only the Yusuf family members' tax liabilities for the years 2002 - 2010 and not for any tax liability of Mohammad Hamed (and by extension any of the Hamed family members).** We made clear that this term was non-negotiable. Everyone present agreed that Mohammed Hamed was not to be covered and under no circumstances would any portion of the \$6.5M be credited/transferred to the tax account or to satisfy any tax liability of another taxpayer (and in particular Mohammad Hamed or his family members).

See HAMD594355-HAMD594356.pdf at p. HAMD594356 (emphasis added.) Attorney DiRuzzo then threatened to recoup the \$6.5 million payment from the government unless the VIRIB confirmed that the payment applied only to Yusuf and his children's taxes:

In order to cure the breach we demand (i) that the VIBIR retract the June 20th letters issued to Mohammad Hamed (and confirm in writing its withdrawal to us) and (ii) that the VIBIR issue us a letter confirming that the \$6.5M paid was used to satisfy only the tax liabilities of the Yusuf family members (as shareholders of United Corporation, as a Subchapter S-Corp under the Internal Revenue Code) and not to satisfy any tax liability of Mohammad Hamed or any other taxpayer (including but not limited to other Hamed family members).

If the VIBIR does not cure this breach immediately we will seek to recoup the \$6.5M that was tendered as it was obtained either (i) by mutual mistake, (ii) in bad faith, or (iii) by fraud. *Id.*

It is important to note, that (1) this was AFTER Judge Brady's decision finding the existence of the Partnership and putting the funds into mutual control, and (2) this was of absolutely no benefit to Yusuf at this point—as the government would have settled this all for the **same amount**. This was pure spite—solely to cause an additional cost to the Hameds.

As a result, on July 1, 2013, concerned that the VIBIR would lose the \$6.5 million tax payment, Claudette Watson-Anderson, CPA, VIBIR, sent a letter to Attorney DiRuzzo:

In response to your letter dated June 29, 2013, the Bureau hereby acknowledges that full payment of tax owed, in the amount of \$6,586,132, has been applied to the returns filed for the following taxpayers only:

Fathi & Fawzia Yusuf
Yusuf & Ala Yusuf
Zeyad Yusuf
Maher & Najat Yusuf
Nejah Yusuf
Zayed Yusuf

See HAMD594305-HAMD594305.pdf. Thus the withdrawal from Partnership funds to make the Yusuf tax payment **did not apply to the Hamed's**. To confirm that this is the case, on July 1, 2013, Lori Hendrickson, U.S. Department of Justice, stated that the \$6.5 million tax payment was not applicable to the Hamed family.

I am in receipt of your letter dated June 29, 2013 and the declaration of Waleed Hamed dated June 27, 2013. The statements from the declaration you quoted in your letter are not based on any representations or promises made by representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) or the United States. As we all agreed, the **\$6,586,132 was applied only to members of the Yusuf family for taxes owed for 2002 through 2010**. This is confirmed, as you requested, in the attached letter dated July 1, 2013 signed by the Director of the VIBIR. No one from the named family received any credit or benefit from that payment. (Emphasis added.)

See HAMD594304-HAMD594304.pdf.

Perhaps the clearest explanation can be found in the US DOJ's statement to the Court. On July 16, 2013, Lori Hendrickson, DOJ, confirmed to the court in the criminal tax case, that all members of the Yusuf family who were United shareholders (including those children who did not work in the Plaza Extra stores), had their taxes paid by the Partnership, and further, **if those shareholders owed for other income unrelated to Plaza Extra, such as income from investments, then the Partnership paid those taxes too:**

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

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

* * *

23 So to the extent there was additional money
24 paid, and I reviewed the tax returns, I agree
25 with Mr. Andreozzi's point, but I think it has

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

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

8 MS. HENDRICKSON: Yes.

* * *

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17 **The fact that the United *won't pay for the***
18 ***Hameds*, that is a separate issue. In February**
19 **of 2011, yes, they paid for everyone's. *Now,***
20 ***in June, July of 2013, United does not agree to***
21 ***pay*, but the Hameds, as taxpayers, are legally**
22 **obligated to report income and pay taxes**
whether or not they're part of a criminal case. (Emphasis added.)

Because of this, on March 30, 2014, Wally Hamed was forced to write a check for \$129,546.00 out of his personal Banco Popular account to the VIRIB for his 2002-2012.

See, JVZ-000868-JVZ-001730.pdf at p. JVZ-001172. Similarly, on December 9, 2013,

Willy Hamed wrote a check for \$3,582.00 out of his personal Banco Popular account to the VIRIB for his 2002-2012 taxes. See, JVZ-000868-JVZ-001730.pdf at p. JVZ-001174.

On September 28, 2016, Hamed's CPA reviewed the general ledgers from 2012 to present provided by John Gaffney for any reimbursements to Waleed and Waheed for these tax payments or payments of the taxes made by the Partnership directly to VIBIR for the same period. None were found. At a minimum, these amounts are, therefore, due to Hamed with 9% interest. See, JVZ-000001-JVZ-000867.pdf at p. JVZ-000039.³

Thus, the facts of record (and his concession in this Proposed Order) prove that Fathi Yusuf authorized the Partnership to pay the 2002-2012 taxes for himself, his wife, his three children who worked in the Plaza Extra stores and his two children who were shareholders of the United Corporation, but did *not* work for Plaza Extra. Further, Fathi Yusuf, with no benefit to himself, blocked the Partnership's payment of Wally and Willy Hamed's 2002-2012 taxes. That amount plus interest is due to the Hameds.⁴

III. Conclusion

Clearly, this is another instance of, as the Court opined in an earlier opinion about Fathi Yusuf's actions, "a transaction prohibited by law and tainted by a conflict of interest and self-dealing."

The final indignity, of course, is that **it has taken three separate discovery proceedings** and many extra hours of Hamed's attorneys' time here just to get Yusuf to admit the simplest facts in the most basic of discovery on this single, clear issue. **But as Yusuf's counsel have stated over and over and over throughout this action, "Fathi**

³ This response does not apply to the non-Plaza Extra taxes Yusuf paid for his children, or the fact that the entire \$6.5 million was withdrawn by Yusuf only.

⁴ Hamed also Argues that since the entire \$6.5 million was removed from the Partnership solely for the benefit of Yusuf, that amount is due to the Partnership -- without regard for what Hamed was able, independently to settle his tax liability for.

Yusuf is in charge of everything"—which includes their filing of these ridiculous, dilatory, vindictive discovery non-responses, motions, sur-replys and, now, motions for amended orders.

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CERTIFICATE OF SERVICE

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

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