

**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
Defendants/Counterclaimants,	)	JUDGMENT, AND
v.	)	PARTNERSHIP DISSOLUTION,
	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEEED 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 OPPOSITION TO
HAMED'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
CLAIM H-142 – THE HALF –ACRE ACCESS PARCEL AT TUTU

Fathi Yusuf (“Yusuf”) and United Corporation (“United”) through their undersigned attorneys, respectfully submit this Opposition to Hamed’s Motion for Partial Summary Judgment as to Claim H-142 – the Half-Acre Access Parcel at Tutu and show as follows:

I. FACTUAL BACKGROUND

The ownership of the half acre parcel near Tutu in St. Thomas (the “Tutu Half-Acre”) differs depending upon the time period. Hamed seeks to conflate the Periods.

A. Purchase Period

Yusuf and United have consistently maintained that when the Tutu Half-Acre was purchased (the “Purchase Period”), it was purchased by the Yusuf-Hamed Partnership (“Partnership”) utilizing the Partnership income from the Plaza Extra Stores and that the Partners initially elected to hold title to the Tutu Half-Acre in the name of their jointly owned corporation, Plessen Enterprises, Inc. (“Plessen”).

B. 2008-2011 Transfer Period

The next period is from 2008 to 2011 (the “2008-2011 Transfer Period”). In 2008, the Tutu Half-Acre was transferred from Plessen to United pursuant to a deed-in-lieu. For the purposes of this Motion, Yusuf and United concede that during the 2008-2011 Transfer Period when the Tutu Half-Acre was transferred from Plessen to United on October 23, 2008, pursuant to a deed-in-lieu, that it was a Partnership asset until 2011. However, the Tutu Half-Acre did not remain a Partnership asset after 2011.

C. 2011 to Dissolution Period

The final and only relevant time period for the purposes of the winding up of the Partnership affairs and division of assets is the period from 2011 to the time of dissolution (the

“2011 to Dissolution Period”). In 2011, the Partners agreed to reconcile a \$2,000,000 disparity, in which Yusuf discovered Hamed had misappropriated partnership assets.¹ As part of Hamed’s efforts to appease Yusuf following his discovery of this significant misappropriation, Hamed agreed to relinquish his interests to two Partnership properties: to wit, 1) one located in the district of Tabarbour in Jordan, and 2) property located in Tutu, St. Thomas including both a 9.3 acre tract titled in Plessen and the Tutu Half-Acre (titled, at the time, in United) so that Yusuf would then own these properties separate and apart from the Partnership. In exchange, Yusuf would forbear pursuit of Hamed for the \$2 million misappropriation of partnership assets.

D. Evidence of the Agreement and Partial Performance - Tutu Half-Acre No Longer a Partnership Asset after 2011

As partial performance of this agreement, Hamed relinquished his interests to the property in Jordan on July 18, 2011. As to the Tutu Half-Acre, because the record title to it was already in the name of United, an entity solely owed by Yusuf and his family, no further documentation was needed to “transfer” or document Hamed’s relinquishment of his partnership interests in the Tutu Half-Acre per the partners’ agreement. Hence, during the 2011 to Dissolution Period and, in particular, at the time of the dissolution, the Tutu Half-Acre was not a partnership asset, subject to division.

Yusuf identified the agreement with Hamed for relinquishment of his partnership interests in certain properties including the Tutu Half-Acre at the outset of the litigation. In his deposition on April 2, 2014, Yusuf explained in detail the agreement between himself and Hamed relating to the two properties:

¹ Yusuf discovered that Hamed had misappropriated \$2,000,000.00 which had been sent to Hamed from St. Maarten.

9 A. I [Yusuf]-- we met, and after I tell him [Mohammed] my story of what
10 I know at that time, he say, **What do you want? I say, I'll**
11 **take two property for what I discover so far.** He say,
12 Which? I give him the description of the property, **one in**
13 **Jordan and one at Tutu Park.** The one in Jordan, I pay one
14 million two, approximate. The one at Tutu Park, I paid
15 1 million for it. 1,000,350, I believe. **It's two pieces at**
16 **Tutu Park, but we call it one piece. One-half an acre as an**
17 **entrance, and 9.31 as the major piece of property.**
18 **He say, You can have it.**

See **Exhibit A**-Yusuf April 2, 2014 Depo, 78:9-18. Even before Yusuf's deposition, Mohammed Hamed first testified about this same agreement the day before. Through an interpreter, Hamed testified:

Interpreter:

He [Mohammed] says he – he begged Mr. Fathi Yusuf for them to find a way to settle this. And – and Mr. Fathi Yusuf accused him of stealing \$2 million. He told Fathi Yusuf –

See **Exhibit B**-Mohammed Hamed April 1, 2014 Depo; 148:1-4.

He [Mohammed] says he—he pleaded with Mr. Fathi Yusuf not to let this get bigger and get—go to court; that in the process of trying to settle this, that Mr. Fathi had asked for two pieces of property. He [Mohammed] had agreed to that.

Id. at 148:24 – 149:1.

Although there was some subsequent discussion about whether just one of the two properties would be sufficient to reconcile the \$2,000,000 misappropriation, the partners ultimately maintained their agreement to resolve that issue only (the \$2,000,000 misappropriation) with Hamed's relinquishment of his interests to the two properties; i.e. the

Jordanian property and the collective Tutu property, including both the 9.3 acre tract and the Tutu Half-Acre. *See* Exhibit A-Yusuf April 2, 2014 Depo; 78:18–79:18.

Yusuf also detailed the agreement in his initial Proposed Distribution and Accounting (“Yusuf’s Initial Accounting Claims”), noted that he was not seeking to claim the \$2,000,000 Hamed had misappropriated but rather simply sought to hold Hamed to the Agreement and detailed Hamed’s partial performance by transferring one of the two properties, the Jordanian property. *See* **Exhibit C**-Yusuf’s Initial Accounting Claims², p.13-14 and Exhibit O thereto, which was a copy of the July 18, 2011 agreement in Arabic conveying Hamed’s interests in the Jordan property to Yusuf. An English translation was provided to the Master and counsel as Exhibit S to Yusuf’s Amended Supplementation on December 12, 2016. *See* **Exhibit D**-English Translation of Agreement as to Jordan property. Therein, Hamed acknowledges he has half of the shares in the described property and that he provides his interest to Mr. Fathi Yusuf stating that Yusuf “has the right to dispose of my shares in full” and he further provides that:

I [Hamed] recommend my folks and legal heirs after me not to oppose Mr. Fathi in the said land due to his right in it and I have signed this declaration in three originals whilst enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surround the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

See Exhibit D. Again in Yusuf’s Amended Accounting Claims filed on October 31, 2017, Yusuf chronicled the agreement, his forbearance from recovering the \$2,000,000 from Hamed,

² Yusuf notes that the 9.3 acre parcel together with the Tutu Half-Acre were actually considered to be one property as per Yusuf’s deposition testimony. *See* Exhibit A. The description in Yusuf’s Initial Accounting Claims inadvertently misstates the 9.3 acre to be considered a third property. Yusuf clarified in his Supplemental Responses to Hamed’s Discovery filed on January 15, 2019. *See* **Exhibit G**–Yusuf’s Supplemental Responses to Hamed’s Discovery, January 15, 2019, p. 7-8 with Verification.

Hamed's partial performance with his transfer of the Jordanian property and noted that Hamed's sons were attempting to rescind Hamed's conveyance of his interest in the Jordanian parcel in their second amended complaint in *Hamed v. Yusuf*, Civil SX-12-CV-377 (the "377 Case"). See **Exhibit E**-Yusuf's Amended Accounting Claims, p. 17-18. Yusuf asked that the Court "bind Hamed's estate by the agreement signed by Hamed." *Id.*³

In the 377 Case, Hamed admits that "the Hamed family had transferred the property in Jordan...in reliance on Fathi Yusuf's representations that it, the transfer would stop all the slander and defamation and dissension between the families" following Yusuf's discovery of the \$2,000,000 misappropriation by Hamed. See **Exhibit F** -Third Amended Complaint in the 377 Case, ¶45, *inter alia*. It is undisputed that Hamed's transfer of the Jordanian property was undertaken in partial performance of the agreement between Hamed and Yusuf relating to the \$2,000,000 misappropriation. In the 377 Case, Hamed is arguing that Yusuf somehow did not cease with his accusations after the partial performance was made. *Id.* However, for the purposes of this motion, there is ample evidence that Hamed and Yusuf, as partners, entered into an agreement to transfer properties as a result of a dispute relating to Yusuf's accusation that Hamed misappropriated \$2,000,000. Hamed confirms that the transfer of the Jordanian property was made in reliance and as partial performance of that agreement and Hamed is suing Yusuf based upon that agreement and his allegation of Yusuf's failure to cease further disclosure of the

³ Yusuf's claims relating to the agreement remains pending and has been designated by the parties as Y-12. Furthermore, pursuant to the parties agreement in the Joint Discovery and Scheduling Plan that the Master Ordered on October 5, 2019, Yusuf's claims for Y-12 have been designated as a B-2 claim, the schedule for which requires additional discovery to take place from July 1, 2020 to discovery depositions to occur in 2021. Although Yusuf shows that there is sufficient evidence to demonstrate the existence of the partners' agreement as to Hamed's relinquishment of his interest in the properties described herein, including the Tutu Half-Acre, discovery on this claim is not complete.

misappropriations. *See* Exhibit F-Third Amended Complaint in the 377 Case⁴. Further, Hamed testified that he had agreed to the transfer of the two properties to resolve the \$2,000,000 issue. *See* Exhibit B, Mohammed Hamed April 1, 2014 Depo; 148:24–149:1. Hamed transferred the Jordanian Property because of, in reliance upon and as partial performance of the agreement between the partners made in 2011 as a means by which to resolve that issue. Hence, there is no doubt that an agreement existed between the partners for the exchange of partnership property in 2011 whereby Hamed would transfer and relinquish his interest in same so that Yusuf would own the properties separate and apart from the Partnership.

Hamed admits that he transferred the Jordanian property pursuant to the agreement between Hamed and Yusuf relating to the \$2,000,000 misappropriation so as to reconcile that issue. He now claims that the transfer was to end all claims and prohibit Yusuf from making further claims of misappropriations. On that basis, the Hameds seek to rescind the conveyance alleging that “Plaintiffs have suffered damages as alleged as well as loss of the property in Jordan that should be conveyed back to Plaintiff Mohammad Hamed.” *See* Exhibit F-Third Amended Complaint in the 377 Case, ¶145.

Yusuf explained the agreement for Hamed to relinquish his interests in the properties in detail in his Supplemental Responses to Hamed’s Discovery filed on January 15, 2019. *See* Exhibit G-Yusuf’s Supplemental Discovery Responses, p. 7-8 with Verification. Specifically, Yusuf stated:

⁴ Yusuf anticipates that Hamed will argue that the existence of this agreement for the transfer of the properties is unsupported. However, Yusuf shows that Hamed cannot use the agreement as both a sword and a shield. In the 377 Case, Hamed uses the agreement as a basis for his alleged detrimental reliance, that he made the transfer of the Jordanian property pursuant to the agreement and in reliance upon Yusuf’s forbearance of further accusations against Hamed of improperly removing partnership funds. Hamed cannot now contend that the agreement upon which he is basing his claims in the 377 Case does not exist for the purposes of this case.

After Yusuf's discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997, Mr. Yusuf agreed, in order to resolve that issue only, that Hamed would convey two properties. One of the properties was Property 3 described above [the property in Jordan] and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas.

The document reflecting Hamed's transfer of his interest in Property 3 [the property in Jordan] to Yusuf is Exhibit O and Exhibit S which is the English translation. Property 3 is Land Lot No. 310. On Bates page FY000272-9 of Exhibit O, the words "Lot 310" is located in the middle of a residential community of approximately one million in population. It is a very large plot in the middle of all the smaller plats. Hamed's allegations in the 377 case at Paragraphs 43, 44, 143, 153, 154 and 155 all relate to Property 3 and Hamed's transfer of it to Yusuf. The Hamed's value that piece of property – Property 3 at \$10,000,000.00. However, Mr. Yusuf estimates it is closer to only \$8,000,000.00. Therefore, the claims in the 377 case do, in fact, relate to the same piece of property ("Property 3") and any alleged claims that Hamed has relating to Property 3 is properly adjudicated in this proceeding.

Yusuf is seeking exactly what he set forth in his claims accounting that "[A]lthough Yusuf is not pursuing his claims regarding the misappropriation of 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in" Property 3 in the 377 case. Yusuf is seeking an order, which binds Hamed's estate by the agreement signed by Hamed at Exhibits O and S. In that agreement entitled "Written Declaration and Undertaking," Hamed confirms that he has the requisite mental faculties to convey his interests in Property 3 to Yusuf that he intends to give him all of his financial and other interest in the Property. Hamed also states that...[he has the requisite mental capacities to so declare and recommends my folks and legal heirs not oppose the transfer or Fathi's right to Property 3]... This was signed by Mohammed Hamed on July 18, 2011.

Ultimately, Yusuf had agreed to resolve the misappropriation by the conveyance of Property 3 and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.32 acres in Tutu, St. Thomas. The 9.31 acres are currently titled

in Plessen but should be conveyed to Mr. Yusuf. Likewise, any claims that Hamed would have to the ½ acre entrance parcel should be extinguished.

See Exhibit G-Yusuf's Supplemental Response to Hamed's Discovery, p. 7-8 with Verification.

As to the identification of the Tutu Half-Acre on the books of United, Yusuf shows that he identified that it was erroneously carried on those books in the various Bi-Monthly Reports. In particular, the Ninth Bi-Monthly Report Yusuf notes that error. *See Exhibit H-Ninth Bi-Monthly Report, p. 5-6.*

II. YUSUF AND UNITED'S COUNTER STATEMENT OF FACTS

Under Rule 56, “a party opposing summary judgment may, if it elects to do so, state additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried” and “[t]he party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number.” V.I. R. CIV. P. 56(c)(2)(C). Yusuf states the following additional facts that he contends are disputed and material to Hamed's Motion for Summary Judgment as to H-142, which presents one or more genuine issues of material fact to be tried and precludes summary judgment:

1. In 2011, the Partners agreed to reconcile a \$2,000,000 disparity, which Yusuf discovered Hamed had misappropriated. *See Exhibit A-Yusuf April 2, 2014 Depo, 78:9-18; 78:18-79:18; Exhibit B-Mohammed Hamed April 1, 2014 Depo; 148:1-4; 148:24-149:1; Exhibit G-Yusuf's Supplemental Discovery Responses, p.7-8 with Verification .*

2. As part of Hamed's efforts to appease Yusuf following his discovery of this significant misappropriation of partnership funds, Hamed agreed to relinquish his interests to two Partnership properties: to wit, 1) one located in the district of Tabarbour in Jordan, and 2) property located in Tutu, St. Thomas including both a 9.3 acre tract titled in Plessen and the Tutu Half-Acre (titled, at the time, in United) so that Yusuf would then own these properties separate and apart from the Partnership and Yusuf would not pursue his claims against Hamed for the \$2,000,000 misappropriation. *See Exhibit A*-Yusuf April 2, 2014 Depo, 78:9-18; 78:18-79:18; *Exhibit B*-Mohammed Hamed April 1, 2014 Depo; 148:1-4; 148:24-149:1; *Exhibit G*-Yusuf's Supplemental Discovery Responses, p.7-8 with Verification; *Exhibit D*-English Translation of Agreement as to Jordanian property; *Exhibit F*-Third Amended Complaint in *Hamed v. Yusuf*, Civil SX-12-CV-377 as an admission against Hamed's interest as to the existence of his agreement to relinquish his interest in partnership property to Yusuf following his accusations of misappropriation and Hamed's pursuit of affirmative relief based upon that agreement.
3. The partners ultimately maintained their agreement to resolve only the issue of the \$2,000,000 misappropriation with Hamed's relinquishment of his interests to the two properties; i.e. the Jordanian property and the collective Tutu property, including both the 9.3 acre tract and the Tutu Half-Acre. *See Exhibit A*-Yusuf April 2, 2014 Depo; 78:18-79:18; *Exhibit B*-Mohammed Hamed April 1, 2014 Depo; 148:1-4;

148:24-149:1; **Exhibit G**-Yusuf's Supplemental Discovery Responses, p.7-8 with Verification.

4. The partners each engaged in performance of the agreement with Hamed transferring the Jordanian property and Yusuf not seeking to collect or pursue a claim against Hamed for the \$2,000,000 misappropriation. See **Exhibit C**-Yusuf's Initial Accounting Claims, p. 13-14 and Exhibit O thereto; **Exhibit D**-English Translation of Agreement as to Jordanian Property; **Exhibit G**-Yusuf's Supplemental Responses to Hamed's Discovery, January 15, 2019, p. 7-8 with Verification; **Exhibit F**-Third Amended Complaint in the 377 Case.
5. The parties' partial performance demonstrates assent to and the existence of the agreement in 2011 between the partners for Hamed to relinquish his interests in the Tutu Half-Acre along with the 9.3 acre tract in Tutu and the Jordanian property, which changes the ownership of the Tutu Half-Acre as of 2011 from a partnership asset to an asset of Yusuf's, owned by United, as a Yusuf entity separate and apart from the Partnership. See **Exhibits A thru G**.
6. After this agreement in 2011, suit was filed in September of 2012 and eventual dissolution of the Partnership proceeded thereafter. See **Exhibit I**-Complaint filed September 17, 2012.
7. At the time of the dissolution of the Partnership, the Tutu Half-Acre was not a partnership asset but rather was an asset of Yusuf, owned separately and independently from the Partnership. See **Exhibits A thru G and I**.

III. ARGUMENT

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) provides that “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56. The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008); *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *Rymer v. Kmart Corp.*, 68 V.I. 571, 575-76 (V.I. 2018) (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)).

A. A partner’s entitlement a settlement of his share of the partnership property is at the time of wind up and dissolution.

“Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.” § 177 Settlement of accounts and contributions among partners, 26 V.I.C. § 177. Further, a party is entitled to receive from his partner his share of the partnership property which is retained by that partner at dissolution. *Wise v. De Werd*, 358 F.2d 389, 5 V.I. 493, 1966 U.S. App. LEXIS 6624 (3d Cir. V.I. 1966). In this case, the dissolution and winding up of the Yusuf Hamed partnership did not occur until 2014, when dissolution was demanded and wind up plans were submitted. Hence, for the purposes of accounting and settling of partnership accounts, the relevant time period is the time of wind up and dissolution.

Hamed seeks “summary judgment” and has asked for a limited ruling that "the United" that has been in record title since 2008 is "United operating as the partnership". Hamed Brief, p. 1. Although Yusuf concedes that during the 2008 to 2011 Transfer Period, when United received title to the Tutu Half-Acre in 2008 that it was partnership asset, Yusuf disputes that it remained a partnership asset and, instead, has consistently maintained that Hamed agreed to relinquish any interest he had to the Tutu Half Acre in 2011 as part of a larger agreement with Yusuf and that no title change occurred, as it was already in the record title of United, an entity solely owed by Yusuf and his family. Consequently, as of the time of the wind up and dissolution, the Tutu Half-Acre was not a partnership asset.⁵

In essence, Hamed seeks summary judgment as to the first two periods set forth above. Yusuf shows that “summary judgment” is not the proper avenue because the timeframe that is relevant for the purposes of making a claim to an ownership interest in the Tutu Half-Acre is whether the Tutu Half-Acre was a partnership asset *at the time of the dissolution and wind up*. Yusuf has provided evidence that it was not. Hamed appears to contend that the ownership of the Tutu Half-Acre never changed character as a partnership asset. Hence, there is a genuine disputed issue of material fact as to whether the Tutu Half-Acre was a partnership asset at the time of the dissolution and wind up, which precludes summary judgment for Hamed as to his claims for ownership interests in the Tutu Half-Acre.

If Hamed is only seeking a determination that the Tutu Half-Acre was a partnership asset for the Purchase Period and during the 2008-2011 Transfer Period, then Hamed really only seeks

⁵ Even at the time that Hamed filed suit in September 17, 2012, in which he did not seek dissolution or a wind up of the partnership, the Tutu Half-Acre was not a partnership asset.

a finding of fact—not a summary judgment ruling and Yusuf has conceded as much. However, summary judgment cannot be had as to the ownership of the Tutu Half-Acre at the time of dissolution (in 2014 and in no event, earlier than the filing of the suit in 2012) as there existed an agreement in 2011, by the partners, to transfer Hamed's interests in two properties, including the Tutu Half-Acre to Yusuf to reconcile an earlier \$2,000,000 misappropriation by Hamed.

B. Hamed and Yusuf entered into a valid and enforceable agreement.

Although the Court is well versed in the requirements of a valid contract, the elements bear repeating to demonstrate that the partners' agreement constituted a valid contract.

The essential prerequisites for the creation of a valid contract is “a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.” *Univ. of the V.I. v. Petersen–Springer*, 232 F.Supp.2d 462, 469 (D.V.I.App.Div.2002); RESTATEMENT (SECOND) OF CONTRACTS § 17 (1979). Consideration requires a performance or a return promise that has been bargained for. *Id.* Where there is no mutual assent, or no meeting of the minds, there is no contract. *James v. Fitzpatrick*, 25 V.I. 124, 127 (Terr.Ct.1990). “The parties' objective manifestations control in deciding whether they formed a contract by mutual assent.” *HSM Constr. Servs., Inc. v. MDC Sys., Inc.*, 239 Fed. App'x 748, 751 (3d Cir.2007). Manifestations of assent may be made through either words or conduct. *See* RESTATEMENT (SECOND) OF CONTRACTS § 18, 19 (1979). The beginning or tender of performance may also operate as a manifestation of assent. RESTATEMENT (SECOND) OF CONTRACTS § 18 cmt. b (1979).

Sanghavi Jewels, Inc. v. Shalhout, 2012 WL 4462046, at *4 (D.Virgin Islands, 2012).

All parties have acknowledged in their testimony the existence of the agreement and their mutual assent to same. *See* Exhibits A, B and G. Hamed undertook partial performance by transferring the Jordanian property in July of 2011. Further Hamed is suing Yusuf on the basis of that agreement in the 377 Case, which further supports and acknowledges that the agreement

existed between the partners for the transfer of Hamed's partnership interest in properties to Yusuf in resolution of the alleged \$2,000,000 misappropriation. Likewise, Yusuf did not pursue his claims against Hamed for the \$2,000,000 misappropriation as the matter had been resolved as a result of the agreement for the transfer of the properties. *See* Exhibits C and E. Consequently, it is undisputed that in 2011, the agreement existed for Hamed to transfer and relinquish his partnership interests in the properties to Yusuf, in exchange for Yusuf's forbearance from pursuing Hamed for misappropriation of \$2,000,000 from the partnership, which precludes summary judgment as to whether the Tutu Half-Acre was a partnership asset at the time of the dissolution.

Even if Hamed disputes the contours of the agreement with Yusuf relating to the Tutu Half-Acre, that dispute simply creates a disputed issue of material fact as to whether the Tutu Half-Acre was a partnership asset after 2011, at the time of dissolution and wind up and therefore, summary judgment is precluded on that basis.

IV. RESPONSE TO HAMED STATEMENT UNDISPUTED FACTS

Yusuf shows that Hamed's Statement of Undisputed Facts all relate to the two earlier time periods – the Purchase Period and the 2008-2011 Transfer Period. Those facts do not address the relevant period – the 2011 to Dissolution Period, which determines whether the Tutu Half-Acre was a partnership asset at the time of dissolution and therefore, subject to division. Pursuant to V.I. Civ. Pro. R. 56(c)(2)(B)(i) and (ii), Yusuf responds as follows:

Hamed Statement No. 1:

1. The Partnership paid the full purchase price directly to the seller. (Purchase check.)

Yusuf's Response:

Undisputed.

Hamed Statement No. 2:

2. It paid the purchase price from store proceeds. (Yusuf response to RFA 22.)

Yusuf's Response:

Undisputed.

Hamed Statement No. 3:

3. It paid with a Partnership d/b/a Plaza Extra account check. (Purchase check.)

Yusuf's Response:

The Partnership paid for the purchase of the Tutu Half-Acre from the income of the Plaza Extra Stores. Yusuf notes that the account numbers on the checks referenced appear to be different account numbers. However, Yusuf is not disputing that Partnership funds were used to initially purchase the Tutu Half-Acre.

Hamed Statement No. 4:

4. Plessen did not contribute a single cent to the purchase from its account. (Check.)

Yusuf's Response:

Yusuf is unable to admit or deny if any amounts were paid by Plessen but is not disputing the issue that Partnership funds were used to purchase the Tutu Half-Acre.

Hamed Statement No. 5:

5. Yusuf's-United did not contribute to the purchase from its account. (Check.)

Yusuf's Response:

The Partnership paid for the purchase of the Tutu Half-Acre from the income of the Plaza Extra Stores. Yusuf is not disputing that Partnership funds were used to initially purchase the Tutu Half-Acre.

Hamed Statement No. 6:

6. Yusuf admits the Partners' intent at the time of purchase and mortgage was for 50/50 ownership of this parcel, not ownership by the 100% Yusuf-controlled entity. (Yusuf's deposition testimony, *supra*.)

Yusuf's Response:

Undisputed. Yusuf shows that subsequently the intent of the partners changed as demonstrated by their agreement for Hamed to relinquish his partnership interest in the Tutu Half-Acre in 2011 in exchange for Yusuf's agreement to forbear pursuit of his claims against Hamed for misappropriation of partnership funds. *See Exhibits A, B and G.*

Hamed Statement No. 7:

7. They then applied for a zoning change to build a Plaza Extra Supermarket on the 9 acre Major Parcel (Legislative documents and the Site Plan, supra.)

Yusuf's Response:

Yusuf does not dispute that efforts to change the zoning were made so as to allow commercial development of the 9 acre parcel.

Hamed Statement No. 8:

8. The Legislature first rejected the planned project. Then the smaller parcel was purchased. *Id.* Yusuf admits that the subject parcel's intended use was an "entrance" to the planned store's major, 9 acre parcel. (Yusuf deposition testimony and the Site Plan.) (*Id.*) Thereafter the project was approved. *Supra.*

Yusuf's Response:

Yusuf does not dispute that efforts to change the zoning were made so as to allow commercial development of the 9 acre parcel. Yusuf shows that these facts are not relevant to the issue at bar.

Hamed Statement No. 9:

9. Nejeah Yusuf admits that all of the rents from this parcel were deposited into the Partnership's store account, not into Yusuf's-United's Tenant Account—but that Yusuf unilaterally stopped these deposits for litigation. (Nejeah's deposition, supra.)

Yusuf's Response:

Consistent with Yusuf's position that Hamed relinquished his partnership interests in the Tutu Half-Acre in 2011 in exchange for Yusuf's agreement to forbear pursuit of his claims against Hamed for misappropriation, Yusuf does not dispute that he would then be entitled to the rents and therefore, was entitled to direct where the rents were deposited. *See Exhibit A, B and G.*

Hamed Statement No. 10:

10. Negeh Yusuf also testified that, acting on Fathi's instructions, even after he stopped putting the rents into the d/b/a Plaza Extra account, he did not deposit the funds into the Yusuf's-United Tenant account, he just held them. *Id.*

Yusuf's Response:

Consistent with Yusuf's position that Hamed relinquished his partnership interests in the Tutu Half-Acre in 2011 in exchange for Yusuf's agreement to forbear pursuit of his claims against Hamed for misappropriation, Yusuf does not dispute that he would then be entitled to the rents and therefore, was entitled to direct where the rents were deposited. *See Exhibit A, B and G.*

Hamed Statement No. 11:

11. Yusuf admitted, in the 4th bi-monthly report, that that the property had always been listed on the Partnership's balance sheet as a Partnership asset. (Hodges' letter on behalf of the LP, and the Fourth Bi-Monthly Report.)

Yusuf's Response:

Yusuf shows that the information contained on the 4th Bi-Monthly Report was dated and later modified to reflect the error. *See Exhibit H-Nineth Bi-Monthly Report.*

Hamed Statement No. 12:

12. Yusuf admitted, in the 4th bi-monthly report, that in 2015, he changed the parcel's "ownership" in the books from the Partnership to United. (Hodges' letter on behalf of the LP, and the Fourth Bi-Monthly Report.)

Yusuf's Response:

Yusuf shows that the information contained on the 4th Bi-Monthly Report was dated and later modified to reflect the error. *See Exhibit H-Ninth Bi-Monthly Report.*

Hamed Statement No. 13:

13. There is nothing on the face of the original note and mortgage that suggests an intent to have Yusuf's-United have a mortgage interest in the property as opposed to United as the Partnership Representative, which provided the funds. (Mortgage.)

Yusuf's Response:

Yusuf is unable to admit this statement as written. However, Yusuf admits that the Tutu Half-Acre was purchased with partnership funds and remained a partnership asset for the period of 2008-2011 Transfer Period when it was transferred to United from Plessen as a

result of the deed-in-lieu. However, the Tutu Half-Acre did not continue to remain a Partnership asset after 2011, when Hamed agreed to relinquish his interests to the Tutu Half-Acre as part of his agreement with Yusuf as reconciliation for an earlier misappropriation. *See Exhibits A thru I.*

Hamed Statement No. 14:

14. There is nothing in the 2008 Deed that suggests an intent to have Yusuf's-United take the property as opposed to United as the Partnership's representative. (Deed.)

Yusuf's Response:

Yusuf is unable to admit this statement as written. However, Yusuf admits that the Tutu Half-Acre was purchased with partnership funds and remained a partnership asset for the period of 2008-2011 Transfer Period when it was transferred to United from Plessen as a result of the deed-in-lieu. However, the Tutu Half-Acre did not continue to remain a Partnership asset after 2011, when Hamed agreed to relinquish his interests to the Tutu Half-Acre as part of his agreement with Yusuf as reconciliation for an earlier misappropriation. *See Exhibits A thru I.*

Hamed Statement No. 15:

15. Thus, as a matter of undisputed fact, nothing on the face of the title today even suggests that Yusuf's-United (which had absolutely no connection to the property) was intended by the Partners to be the beneficiary of the mortgage and 2008 Deed rather than United as the Partnership Representative.

Yusuf's Response:

Yusuf is unable to admit this statement as written. However, Yusuf admits that the Tutu Half-Acre was purchased with partnership funds and remained a partnership asset for the period of 2008-2011 Transfer Period it was transferred to United from Plessen as a result of the deed-in-lieu. However, the Tutu Half-Acre did not continue to remain a Partnership asset after 2011, when Hamed agreed to relinquish his interests to the Tutu Half-Acre as part of his agreement with Yusuf as reconciliation for an earlier misappropriation. *See Exhibits A thru I.*

II. Conclusion

For the foregoing reasons, there is sufficient evidence of the existence of an agreement in 2011 amongst the partners, prior to dissolution, in which Hamed agreed to relinquish his interests

to properties including the Tutu Half-Acre, in exchange for Yusuf's forbearance from pursuing his claims for misappropriation against Hamed for \$2,000,000.00, which precludes Hamed from securing summary judgment on his claim to still have a partnership interest in the Tutu Half-Acre. Yusuf respectfully requests that Hamed's motion be denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: December 20, 2019

By:



GREGORY H. HODGES (V.I. Bar No. 174)

CHARLOTTE K. PERRELL (V.I. Bar No. 1281)

P.O. Box 756

St. Thomas, VI 00804

Temporary Street Address:

The Tunick Building – Suite 101

1336 Beltjen Road

St. Thomas, VI 00802-4701

Telephone: (340) 774-4422

Facsimile: (340) 715-4400

E-Mail: ghodges@dnfvi.com

cperrell@dnfvi.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2019, I caused the foregoing **Yusuf's Opposition to Hamed's Motion Summary Judgment as to H-142 Half-Acre Tutu** 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

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

E-Mail: mark@markeckard.com

The Honorable Edgar D. Ross
E-Mail: 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

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: jeffreymlaw@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



INDEX OF EXHIBITS

Exhibit A-Yusuf April 2, 2014 Deposition excerpts

Exhibit B-Mohammed Hamed April 1, 2014 Deposition excerpts

Exhibit C-Yusuf's Initial Accounting Claims excerpts

Exhibit D-English Translation of Agreement as to Jordan property

Exhibit E-Yusuf's Amended Accounting Claims excerpts

Exhibit F -Third Amended Complaint in the 377 Case

Exhibit G-Yusuf's Supplemental Discovery Responses with Verification

Exhibit H-Ninth Bi-Monthly Report

Exhibit I-Complaint filed September 17, 2012

EXHIBIT A



The Oral Deposition of Fathi Yusuf

Mohammad Hamed v. Fathi Yusuf, et al

April 2, 2014

Cheryl L. Haase, RPR

Caribbean Scribes, Inc.

Phone: (340)773-8161

Fax: (340)773-6126

Email: cheryl@caribbeanscribes.com

Internet: www.caribbeanscribes.com

1 THE VIDEOGRAPHER: Going off record at 10:57.
 2 (Short recess taken.)
 3 THE VIDEOGRAPHER: Going back on record at
 4 11:12.
 5 Q. (Mr. Holt) Mr. Yusuf, I think you'd finished with
 6 your last answer.
 7 A. I think so, yes.
 8 Q. Okay. But if you recall something that you wanted
 9 to say, always feel free to say it. Okay?
 10 A. Thank you very much for the offer.
 11 Q. You know, I asked a question, but I asked it
 12 wrong, but didn't there come a time when you and Mohammad
 13 Hamed sat down within the last year and a half and tried to
 14 resolve things by -- he talked about it a little bit in his
 15 deposition about the giving of properties and things of that
 16 nature.
 17 Do you recall that?
 18 A. Much more than a year and a half.
 19 Q. Can you tell me about that?
 20 A. Can you come up with question, or you want to come
 21 up with a story?
 22 Q. I can -- I actually like the way you tell the
 23 story, but I'll tell you what I've -- what I've heard, and
 24 then you can correct what I've heard.
 25 That the two of you met to try to resolve all

1 But we kept talking.
 2 And when we kept talking, you know, whatever
 3 what he was saying, it doesn't add up. So I went to the
 4 store, I take a look, and I analyze the bank statement of
 5 what he was saying. I say, Man, after that, this man would
 6 not even tell me the truth, unfortunate? So immediately I
 7 told Wally, Do me a favor, Wally. You was present. Go back
 8 to your father and tell him, No, I wanted the two piece of
 9 property.
 10 That's the same day. Not even, as soon as we
 11 get to the store, it take me about half an hour to take a
 12 look of what he was talking about. Unfortunate, I have
 13 found it's impossible what he was talking about, it could be
 14 true. And I say, Come on, man. You know? And -- and he
 15 went home that night. He told his father. The next day he
 16 come to work, I say, Did you tell your father? He said,
 17 Yes. I said, Fine.
 18 That's it.
 19 Q. Okay. You done?
 20 A. Done.
 21 Q. Okay. On the property in Jordan, you say that
 22 there was 1.2 million paid for that. I take it that was
 23 purchased with the money, joint money from the supermarket?
 24 A. Money, yes. I own 50 percent, they own 50.
 25 Q. Okay. And did you ever get a deed to that

1 the differences between you and yourself, the Hamed family,
 2 and Wally in particular.
 3 A. Yes.
 4 Q. And that he offered two or three properties, and
 5 you agreed to take one or something like that. And, you
 6 know, I never really quite --
 7 A. I can comment on that.
 8 Q. Okay. Please.
 9 A. I -- we met, and after I tell him my story of what
 10 I know at that time, he say, What do you want? I say, I'll
 11 take two property for what I discover so far. He say,
 12 Which? I give him the description of the property, one in
 13 Jordan and one at Tutu Park. The one in Jordan, I pay one
 14 million two, approximate. The one at Tutu Park, I paid
 15 1 million for it. 1,000,350, I believe. It's two pieces at
 16 Tutu Park, but we call it one piece. One-half an acre as an
 17 entrance, and 9.31 as the major piece of property.
 18 He say, You can have it. And after they say
 19 it, the man come up front after I tell him my story, and he
 20 was very generous to say, You can have it. And we kept
 21 talking, as a family. After all, we are family, as you
 22 mentioned over and over in your correspondence. We are
 23 family at that time, and we have a very high respect for
 24 each other, even though, up to now we still have high
 25 respect to each other, and I told him, No, one is enough.

1 property?
 2 A. No. I have a contract.
 3 Q. So if I went over to Jordan and did a title
 4 search -- I don't even know if they do that -- it would show
 5 the property's still in both your names?
 6 A. Yes.
 7 Q. And the Tutu Park property, is that also called
 8 Ft. Milner, as well?
 9 A. Yeah, it's Ft. Milner or Tutu. It's Ft. Milner, I
 10 believe.
 11 Q. Okay. And one is a 9-acre parcel?
 12 A. 9.31.
 13 Q. Then the other one is like a half-acre parcel?
 14 A. It's about .53, if I recall.
 15 Q. Okay.
 16 A. Not too sure exactly.
 17 Q. And -- and both of those properties were supposed
 18 to belong 50 percent to you and 50 percent to Hamed?
 19 A. Up to the time he give me his word, it was 50/50.
 20 After that, I would assume all is mine.
 21 Q. Okay. So, and what I'm trying to get at is I know
 22 there's a half-acre piece in United, that's in the name of
 23 United?
 24 A. Yes.
 25 Q. But that was actually purchased with --

EXHIBIT B



The Oral Deposition of Mohammad Hamed

Mohammad Hamed v. Fathi Yusuf, et al

April 1, 2014
Vol. 2

Cheryl L. Haase, RPR

Caribbean Scribes, Inc.

Phone: (340)773-8161

Fax: (340)773-6126

Email: cheryl@caribbeanscribes.com

Internet: www.caribbeanscribes.com

1 translate this document for him?
 2 MR. HARTMANN: Object as to form.
 3 A. No.
 4 Q. (Mr. Hodges) Again, I would ask, if you didn't
 5 read it or no one ever translated it to you, why did you
 6 sign it?
 7 A. My son, he tell me (speaking in Arabic).
 8 THE INTERPRETER: My son told me to sign it,
 9 and I signed it.
 10 MR. HODGES: Okay. Thank you.
 11 Q. (Mr. Hodges) As I understand, Mr. Hamed, you
 12 don't understand any of the content of Exhibit No. 8, is
 13 that correct?
 14 MR. HARTMANN: Object. Mischaracterizes.
 15 You won't let it be translated to him. How can he
 16 understand it? He does not speak English.
 17 MR. HODGES: Will you answer my question?
 18 MS. JAPINGA: Read.
 19 MR. HARTMANN: He does not read English.
 20 THE INTERPRETER: That's correct. He does
 21 not understand.
 22 MR. HODGES: Okay.
 23
 24
 25

1 Q. (Mr. Hodges) Has anybody ever translated this
 2 document for you?
 3 MR. HARTMANN: Object as to form.
 4 THE INTERPRETER: No.
 5 Q. (Mr. Hodges) Again, like the previous two
 6 documents, if you didn't understand what was in the document
 7 and no one ever translated it for you, why did you sign it?
 8 A. My son, when he tell me to sign it, I sign it.
 9 Q. Mr. Hamed, did you authorize your son to file this
 10 lawsuit against Mr. Yusuf and United Corporation?
 11 A. Yes.
 12 Q. You authorized him to do it?
 13 A. Yeah.
 14 MR. HARTMANN: Object. Asked and answered.
 15 Q. (Mr. Hodges) Why?
 16 MR. HARTMANN: Object. Object. Invades the
 17 privilege between attorney and client.
 18 Q. (Mr. Hodges) Why did you authorize your son to
 19 file this lawsuit?
 20 MR. HARTMANN: Don't answer the question with
 21 regard to any discussions you had with your lawyer.
 22 Please translate that.
 23 THE INTERPRETER: I can --
 24 MR. HODGES: Yes.
 25 Q. (Mr. Hodges) Answer the question. Go ahead.

1 (Deposition Exhibit No. 9 was
 2 marked for identification.)
 3 MR. HARTMANN: Exhibit No. 9 is a document
 4 entitled General Durable Power of Attorney given by Mohammad
 5 Hamed as principal. In the lower left-hand corner, it has
 6 Bates Stamp HAMD592432. Continues in continuous serial
 7 Bates numbers to the last page, which is HMD -- HAMD592443.
 8 And it's Exhibit No. 9.
 9 Q. (Mr. Hodges) Mr. Hamed, if you would turn to the
 10 second-to-the-last page of this document, and tell me if you
 11 recognize any -- recognize your signature there?
 12 THE INTERPRETER: Yes.
 13 Q. (Mr. Hodges) That is your signature?
 14 THE INTERPRETER: Yes.
 15 Q. (Mr. Hodges) Do you recognize any of the
 16 signatures of the witnesses to this document?
 17 A. No.
 18 THE INTERPRETER: No.
 19 Q. (Mr. Hodges) Do you know what the purpose of this
 20 document is?
 21 MR. HARTMANN: I ask that you have the
 22 document translated. The witness doesn't read English, as
 23 we've established.
 24 Object as to form.
 25 THE INTERPRETER: No.

1 THE INTERPRETER: He says he -- he begged
 2 Mr. Fathi Yusuf for them to find a way to settle this.
 3 And -- and Mr. Fathi Yusuf accused him of stealing
 4 \$2 million. He told Mr. Fathi Yusuf --
 5 A. (Speaking in Arabic.)
 6 THE INTERPRETER: One second.
 7 A. (Speaking in Arabic.)
 8 THE INTERPRETER: Okay. Hold on a second.
 9 THE WITNESS: Okay.
 10 THE INTERPRETER: And he -- he offered --
 11 A. (Speaking in Arabic continuously.)
 12 MR. HODGES: Could -- can we break this up?
 13 A. (Speaking in Arabic continuously.)
 14 MR. HODGES: May we have an intermediate --
 15 THE INTERPRETER: It's hard. I mean, it's --
 16 A. (Speaking in Arabic continuously.)
 17 THE INTERPRETER: Okay. The question was,
 18 why did he allow this to go to court, correct?
 19 MR. HODGES: Yes.
 20 THE INTERPRETER: He -- and I'll do my best
 21 to remember everything, and I'll try to relate what he --
 22 what he said.
 23 He says he -- he pleaded with Mr. Fathi Yusuf
 24 not to let this get bigger and get -- go to court; that in
 25 the process of trying to settle this, Mr. Fathi had asked

Page 149

1 **for two pieces of property. He had agreed to that.**
 2 Mr. Fathi had then said one is enough, and then again
 3 changed his mind and said, No, he wants the two. And I
 4 understood that then he also asked for a third piece of
 5 property. That there was a back and forth trying to find a
 6 way to -- to reach settlement, and that he says he's been
 7 accused by Mr. Fathi of stealing, he and his son.
 8 He says, I have not stolen. My son has not
 9 stolen. We are honorable people. We have -- we go back a
 10 long ways. We have family, in the sense of, you know,
 11 they're related. They have sons -- some of his sons are
 12 married to Mr. Fathi Yusuf's daughters. They've been
 13 involved in business. It's been -- it's been a long time.
 14 He feels saddened by the, you know, the turn of events and
 15 how this has come to this point.
 16 That after his meetings with Mr. Fathi, his
 17 sons approached him and asked what happened. He explained
 18 what happened. His sons told them that the only way that
 19 this is going to be resolved is through court, and that's
 20 the only way that they feel would -- this -- this can be
 21 settled between them.
 22 And I think -- I think that pretty much
 23 summarizes, you know. If anybody -- I mean, it's impossible
 24 to -- it's emotional, he's emotional about it. That's the
 25 best, really, I can do. If someone feels I've missed

Page 150

1 anything, I'm happy to be reminded.
 2 **Q. (Mr. Hodges) Mr. Hamed, who pays for all of the**
 3 **legal expenses in connection with your cases involving the**
 4 **Yusuf family?**
 5 **A. I don't know.**
 6 **Q. You don't know?**
 7 **A. No.**
 8 **Q. Okay. So you don't pay for any of the expenses?**
 9 **A. I don't know. My sons, they don't tell me.**
 10 **Q. Okay. So you have no idea how -- whether or how**
 11 **the legal expenses are being paid?**
 12 THE INTERPRETER: He says, I have not paid
 13 not a -- a -- not a penny. I don't know.
 14 **Q. (Mr. Hodges) Okay. Mr. Hamed, do you know what**
 15 **the source of the \$351,900 in cash for the injunction bond**
 16 **in this case is?**
 17 THE INTERPRETER: Three hundred fifty --
 18 MR. HODGES: 51,900.
 19 **A. I don't know.**
 20 THE INTERPRETER: I don't know.
 21 **Q. (Mr. Hodges) You're familiar with the criminal**
 22 **proceedings that have taken place involving United**
 23 **Corporation, Mr. Yusuf, and his son and your sons, are you**
 24 **not?**
 25 **A. No. What criminal case?**

Page 151

1 **Q. You're not aware of the criminal case that was**
 2 **filed against United Corporation, Mr. Yusuf, his son**
 3 **Maher Yusuf, Waleed Yusuf, Waheed Yusuf -- excuse me --**
 4 **Waleed Hamed and Waheed Hamed?**
 5 MR. HARTMANN: Object as to form.
 6 **A. (Speaking in Arabic.) What mean that?**
 7 THE INTERPRETER: What -- what criminal case
 8 are you referring to? Can you explain, he says.
 9 **Q. (Mr. Hodges) Are you aware of a federal, United**
 10 **States federal case against United Corporation and its**
 11 **officer and shareholder, Mr. Yusuf, and the managers of**
 12 **Plaza Extra?**
 13 THE INTERPRETER: Okay. Right.
 14 MR. HARTMANN: Greg? Greg? Your witness has
 15 answered.
 16 THE INTERPRETER: He says, Yes, I'm aware. I
 17 knew -- I knew -- I know of it.
 18 **Q. (Mr. Hodges) Okay. And your awareness is through**
 19 **your sons, is that not correct?**
 20 THE INTERPRETER: Yes.
 21 **Q. (Mr. Hodges) Okay. Who -- who provides you with**
 22 **information about the criminal case?**
 23 MR. HARTMANN: Object. No. Object to the
 24 extent that it calls for any discussions with his attorney.
 25 In other words, he isn't to discuss any

Page 152

1 discussions about the criminal case that he's had with his
 2 lawyer. Okay?
 3 THE INTERPRETER: Okay.
 4 MR. HARTMANN: Tell him that first.
 5 THE INTERPRETER: (Speaking in Arabic.)
 6 MR. HODGES: No. Ask my question first, and
 7 then you can say his objection.
 8 THE INTERPRETER: Okay.
 9 He says, There's no appointed person
 10 responsible for relaying information. It could be any --
 11 any one of them.
 12 MR. HODGES: Okay. But does he feel like
 13 he's well informed of the status and progress of the case
 14 over the last ten years?
 15 THE INTERPRETER: No.
 16 MR. HODGES: He understands, though, that the
 17 criminal case involves the operation of Plaza Extra
 18 Supermarket stores?
 19 MR. HARTMANN: Object as to form.
 20 There's no pending question.
 21 MR. HODGES: That's what I'd call a leading
 22 question.
 23 MR. HARTMANN: It wasn't in the form of a
 24 question.
 25 MR. HODGES: He can answer it.

EXHIBIT C

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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED,	)	CIVIL NO. SX-12-CV-370
)	
Plaintiff/Counterclaim Defendant,	)	ACTION FOR DAMAGES,
	)	INJUNCTIVE RELIEF
vs.	)	AND DECLARATORY RELIEF
)	
FATHI YUSUF and UNITED CORPORATION ,)	
)	
Defendants/Counterclaimants,)	
)	
vs.)	
)	
WALEED HAMED, WAHEED HAMED, MUFEEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants.)	
	)	Consolidated With
)	
MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-287
)	
Plaintiff,	)	ACTION FOR DAMAGES
	)	AND DECLARATORY RELIEF
v.)	
)	
UNITED CORPORATION ,)	
)	
Defendant.)	
)	

YUSUF’S ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN

Pursuant to the “Final Wind Up Plan Of The Plaza Extra Partnership,” entered on January 9, 2015 (the “Plan”),¹ §9, Step 6, and the August 31, 2016 directive² of the Master, as clarified

¹ Unless otherwise defined, all capitalized terms have the same meaning as provided in the Plan.
² That directive required the Partners to submit any objection to the previously submitted Partnership Accounting and any claims against the Partnership or a Partner by September 30, 2016. It is undisputed that since the inception of the Partnership, the only Partners were Yusuf and Hamed, who died on June 16, 2016. On September 20, 2016, a Motion And Memorandum For Substitution Of Named Plaintiff was filed seeking an Order substituting Waleed M. Hamed, as Executor of the estate of Hamed, as Plaintiff.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

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

- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216; *see Exhibit M.*
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997; and
- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as **Exhibit N**. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels.

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as **Exhibit O**¹⁶. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels,

¹⁶ Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.

one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

VII. Loss of Going Concern Value of Plaza Extra-West

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the

EXHIBIT O

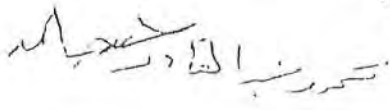


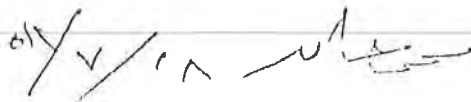
إقرار وتعهد خطي

أنا الموقع أدناه محمد عبد القادر اسعد حامد أردني الجنسية واحمل الرقم الوطني (٩٣٥١٠١١٩٧٥) وحيث أنني امتلك حصصاً مقدارها (٢٤١٢٠) حصة من أصل (٤٦٨٠٠) حصة إجمالي الحصص في قطعة الأرض رقم (٣١٠) حوض (٦) حويجر قرية طبربور من أراضي شرق عمان أقر وأنا بكامل قواي العقلية بأنني قد قبضت ثمن حصتي في قطعة الأرض المذكورة من السيد فتحي يوسف محمد يوسف أردني الجنسية ويحمل الرقم الوطني (٩٤١١٠١٣٤٦٠) وبذلك يحق للسيد فتحي يوسف المذكور بالتصرف بكامل حصصي تصرف المالك بملكه اعتباراً من تاريخ توقيع هذا الإقرار وأنني أتعهد بعدم إجراء أية تصرفات قانونية في حصصي المبيعة من إجارة و/أو رهن و/أو بيع و/أو أية تصرفات و/أو عقود منفعة مع الغير وأتعهد بنقل ملكية الحصة المبيعة لدى دائرة الأراضي المختصة بالسرعة الممكنة و/أو تحرير وكالة غير قابلة للعزل للسيد فتحي أو للغير الذي يراه السيد فتحي في حينه مناسباً وأتعهد كذلك بمراجعة المحاكم و/أو الدوائر الرسمية و/أو الأهلية بما يخدم مصلحة المشتري السيد فتحي وحسب ما يراه مناسباً وأن جميع الحقوق المالية و/أو التعويضات التي قد تنشأ عن الاستملاك الواقع على قطعة الأرض موضوع هذا الإقرار والذي قد تحكم به المحكمة هي حقاً مكتسباً لصالح السيد فتحي وأنني أوصي أهلي وورثتي الشرعيين من بعدي بعدم معارضة السيد فتحي في الأرض المذكورة وذلك لتعلق حقه بها وقد قمت بالتوقيع على هذا الإقرار على ثلاث نسخ أصلية وأنا بكامل قواي العقلية المعتمدة شرعاً وقانوناً واسقط حقي بالادعاء بكذب الإقرار و/أو الظروف التي أحاطت بتنظيم هذا الإقرار و/أو أي دفع ناشئ و/أو متعلق بهذا الإقرار و/أو تطبيقاته.

تحريراً بتاريخ ٢٠١١/٧/١٨.

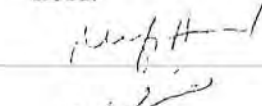
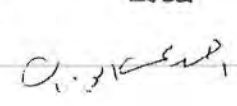
المقر بما فيه

الاسم الرباعي : 

التوقيع :  ٢٠١١/٧/١٨


شاهد

شاهد



المستشارون
للمحاماة والقانون
COUNCILORS
for Advocating and Law

المستشارون
للمحاماة والقانون
نظم أمامي ويمس رقتي تحريراً في
اليوم الثاني من شهر شوال عام الف وثمان مائة
المحامي 

المستند رقم ٧٨٧٧٧

46800 / 24120	39833	000	310	14	0	جوزيتر / 6	ظهير بون
المرجع	المساحة (2م)	رقم البناء	رقم المنطقة	رقم اللوحة	رقم الشارع	رقم الحوي	اسم القرية

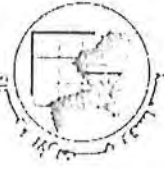
المرجع الوطني : *****

اسم الشارع : صحت من التنازل

المرجع الوطني : اراضي قرق مسان

التاريخ : 2011/07/11

الصفحة : 1 / 1



المساحة الوطنية الفلسطينية
والأراضي والبنية التحتية
والتنمية العمرانية والبنية التحتية
والتنمية العمرانية والبنية التحتية



وكالة خاصة

أنا / نحن الموقع ، إمضاء ، بديله ، مستشار الادارة / سيد حسام الدين محمد يوسف

قد وكلت / وكلتنا وأقدم مقام نفسي المحامي احمد محمود قاسم
مجتمعين ومنفردين لينوب عني / عينا بتقديم وإقامة الدعوى و المرافعة والمدافعة والمحكمة والمخاصمة في الدعوى المتكونة او التي
ستكون بين وبين

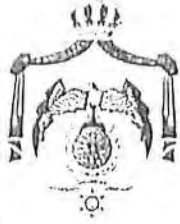
والتي موضوعها

وذلك أمام و / أية محاكم أو دوائر أو مجالس أو هيئات تحكيم أو أية جهات أخرى ذات اختصاص في الأردن والخارج على اختلاف انواعها ووظائفها ودرجاتها واعتراضها واستئنافا وتمييزا واعادة محاكمة وتصحيحا ومحكمة العدل العليا والمحاكم الادارية ولاخر درجات المحاكمة ، بما في ذلك تقديم الدعوى وتوقيع وتقديم كافة ما يختص بها من لوائح واستدعاءات وطلبات وادعاءات وأوراق ومستندات وادعاء بالحق الشخصي وليتوب عني بالتقيام بكافة الاجراءات الادارية والقضائية بالخصوص المؤكل به وفي الدعوى المتقابلة وفي دفع الرسوم والنفقات بما في ذلك توقيع وتقديم وملائمة أي ادعاء أو طلب أو استدعاء أو انذار عدلي أو أي مستند على الامتثال وما يلزم من أوراق ولوائح ومستندات مهما كان نوعها وتسمية البيعة وحصرها والظعن بينة الخصم وشهوده وبالتبلغ والتبليغ والكشف وانتخاب الخبراء وعزلهم والظعن بينهم ومنفرداتهم والموافقة على التحكيم وتعين المحكم والمحكمين والمميزين وعزلهم والمرافعة أمامهم وباعتراض الغير في الدخول في الدعوى كشخص ثالث و طلب ادخال أي شخص له علاقة بالدعوى كمدعي أو مدعى عليه أو كشخص ثالث وبطلب الحجز التحفظي و / أو التنفيذ وتعيينه وفكته واليمين ورد وبطلب نقل الدعوى ورد القضاة والمحكمين والخبراء وبالصلح والاقرار والبراء ومراجعة دوائر التنفيذ والمرافعة أمامها وبطلب إعلان الإفلاس والمرافعة على المصالحة والقيام بكل ما يتعلق بطابق الإفلاس دون تمديد وتفويض أي قرار أو أمر أو إتفاق يصدر أو يتفق عليه وقبول التسوية ورفضها وبطلب الحبس والتخليه واستئناف القرارات التي تصدر عن هذه الدوائر و بقبض و بادستلام ما يحكمه أو يقرر أو يجري الإتفاق عليه وبإعطاء وصولات نافذة وفعالة بذلك وبكل ما يجوز التوكيل به قانوناً ذكر أو لم يذكر ولو كان ذكوره مشروطاً وبتوكيل الغير بجميع ما وكل به أو ببعضه وعزل من يوكل المرة بعد المرة وكالة مفوضة لرايه وقوله وفعله.

تحريراً في هذا اليوم ١١ / ١١ / ٢٠١٨ من شهر تشرين الثاني سنة ١٤٣٩
اصادق على صحة التوكيل والتوقيع في

الموكل / الموكلون

المحامي



المملكة الأردنية الهاشمية
صورة قيد تسجيل الأموال غير المنقولة

رقم القيد : 2011-EA-17377

اسم الحوض : حويجر

نوع الأرض : ملك

المديرية : اراضي شرق عمان

القرية : طبربور

اسم الحر :

يحتوي هذا القيد على 1 (بفحة)

رقم القطعة : 310	رقم الحوض : 6	رقم الوثيقة : 000	القيمة التسجيلية : 65.844	رقم بيان التغيير : --
رقم الحسب : 0	رقم اللوحة : 14	مجموع الحصص : 46800	مقياس الرسم : 1/2500	
المساحة رقماً : 833.000 متر مربع 39 دوليم				
المساحة كتابية : تسعة وثلاثون دونم وثمانمائة وثلاثة وثلاثون مترمقط				
يوجد وثائق				
الرقم الوطني	اسم المالك	الجنسية	الحصص	
9411013460	فهي يوسف محمد يوسف	الأردنية	22680	*
	محمد عبدالقادر احمد حامد	الأردنية	24120	

إن الأموال غير المنقولة المبينة اعلاه مسجلة بأسماء المالكين المذكورين وقد اعطي هذا السند شهادة بذلك بتاريخ 2011/07/13 واستوفيت الترخيم بموجب الوفول رقم 864195 تاريخ 2011/05/23

مدير تسجيل : اراضي شرق عمان

* : المالك المشار اليه بإثماره (*) هو الشخص المعنى بهذا السند

ليساء نهاد فشموان

حاشي بالذكرة : 17377-YOKP6G
منظم سند التسجيل : لعياء نهاد حسين فشموان

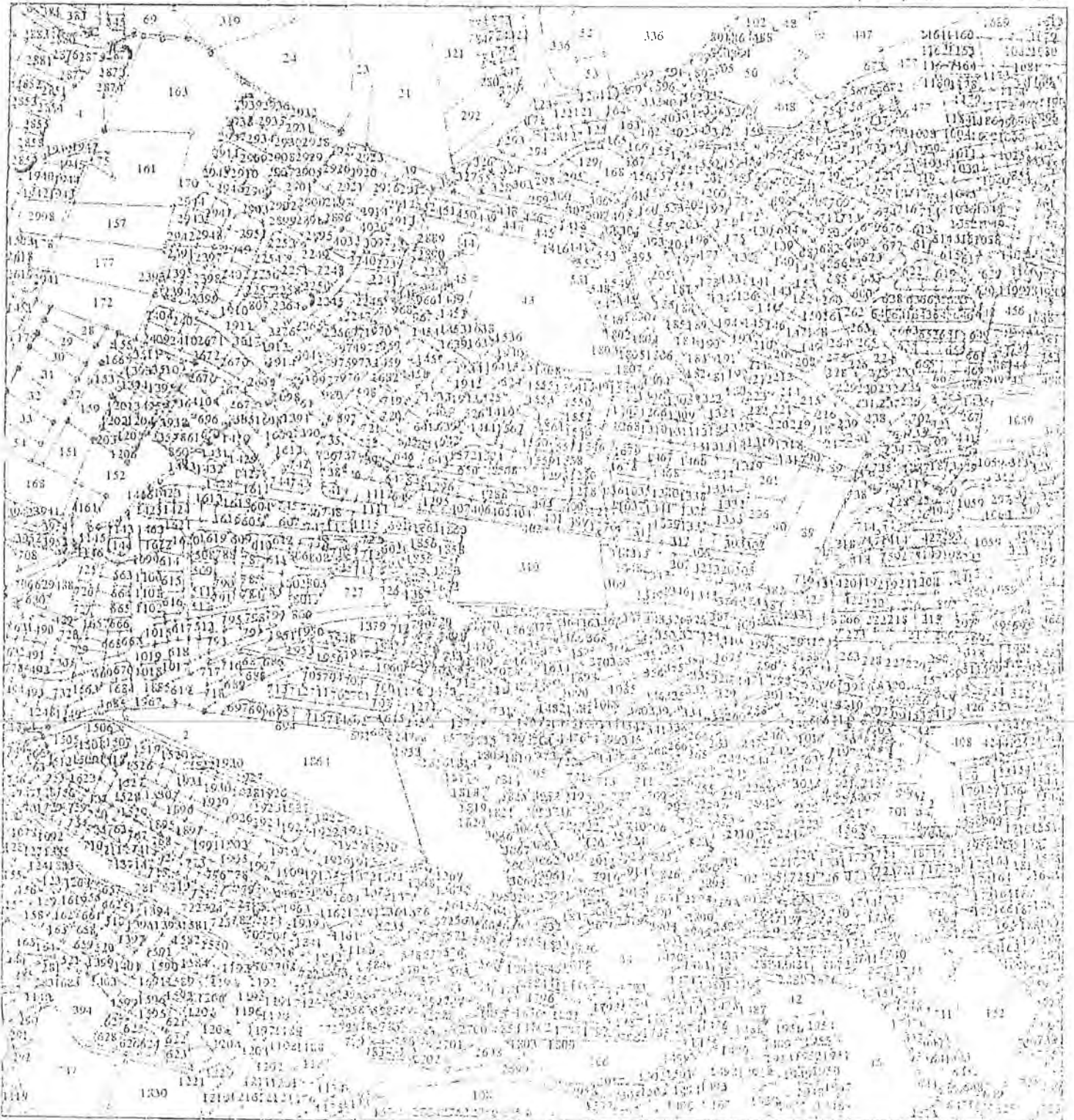
المملكة الأردنية الهاشمية
دائرة الأراضي والمساحة
مخطط أراضي



رقم الوصل: للعمل الرسمي
تاريخ الاصدار: 12-7-2011
تاريخ الوصل: 12-7-2011

الحوض: حريجر (6)
الحي: -
رقم القطعة: 310

محافظة العاصمة
اراضي شرق عمان
القرية: ظيبور (129)



الختم و التوقيع

EXHIBIT D

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

MOHAMMAD HAMED, by his)
authorized agent **WALEED HAMED**,)

Plaintiff/Counterclaim Defendant,)

vs.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.**,)

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

Consolidated With

MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES
AND DECLARATORY RELIEF

MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT
AND CONVERSION

JURY TRIAL DEMANDED

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

**AMENDED SUPPLEMENTATION OF YUSUF'S ACCOUNTING CLAIMS AND
PROPOSED DISTRIBUTION PLAN**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully amends the Supplementation of Yusuf's Accounting Claims and Proposed Distribution Plan filed on December 7, 2016 (the "Supplementation") by changing the penultimate sentence thereof to clarify that the \$50,521.29 Yusuf seeks to recover for expenses were incurred in conveying Hamed's interests in a number of Jordanian parcels not the one parcel identified in Exhibits O and S. Accordingly, as amended, the Supplementation should read as follows:

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits this Amended Supplementation of § VI of his Accounting Claims And Proposed Distribution Plan (the "Claim"), which was submitted to the Master and counsel for plaintiff/counterclaim defendant Mohammad Hamed ("Hamed") on September 30, 2016.¹ Yusuf supplements § VI of his Claim with the "payment analysis" attached as **Exhibit R**, an English translation of the Arabic version of the declaration and undertaking of Hamed (the original Arabic version was attached as Exhibit O to the Claim) attached as **Exhibit S**, and, among other things, the invoices identified in the payment analysis (Exhibit R) in both English and Arabic attached as collective **Exhibit T**. As reflected in Exhibit R, one-half of the value of the two parcels identified in the "Lands Value Estimation" attached as Exhibit N to the Claim (also included in Exhibit T) is \$384,400.08. As further reflected in Exhibit R, one-half of the expenses incurred by Yusuf in conveying Hamed's interests in various Jordanian parcels is \$50,521.29. Accordingly, Yusuf's supplemental claims totals US \$434,921.37.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: December 12, 2016

By:



Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf
and United Corporation

¹ Like the Claim, Yusuf is not filing this Amended Supplementation with the Court. Instead, he will file a Notice of Submission of Amended Supplementation with the Court.

Jabal Al-Husam
Sukayna Commercial Complex
Eastern Entrance, 1st Floor,
Office No. 10
Telefax (+ 962-6) 5689459
Tel. (+ 962-6) 5658604
(For Correspondence Only)
P. O. B. 343 Zarka 13110 Jordan)
E-Mail:translationh@nets.com.jo

دار الترجمة

TRANSLATION HOUSE

DAR UTTARJAMA

جبل الحسين - مجمع سكيנה التجاري
المدخل الشرقي - الطابق الاول
مكتب رقم ١٠
تلفاكس ٥٦٨٩٤٥٩ (+٩٦٢-٦)
تلفون ٥٦٥٨٦٠٤ (+٩٦٢-٦)
(للمراسلات فقط ص.ب ٣٤٣ الزرقاء ١٣١١٠ الاردن)
البريد الالكتروني: translationh@nets.com.jo

Counselors For Advocating and Law

Wasfi Al- Tal Str., Youbeel Circle,
Al-Kafjy Complex, 2nd Entrance, 3rd Floor
Tel. : 009626 5535464/5535414
Fax : 5535965, P.O.B. 2323 code 11910 Jordan

Written Declaration and Undertaking

I, the undersigned Mohammad Abdel Qader Asad Hamed, Jordanian nationality, holder of National No. (0933101975), whereas I own 24120 shares out of 46800 shares of the total shares in piece of land No. (310), basin 6, Huwaijer, Tabarbour Village, of east Amman lands, declare, while in full sound mental powers, that I received the price of my share in the mentioned land from Mr. Fathi Yusuf Mohamad Yusuf, Jordanian nationality, holder of National No. (9411 01 3460), hence the said Mr. Fathi has the right to dispose of my shares in full similar to the acts of owner's disposal of his property as of the date of signing this declaration and I undertake not to make any legal disposals in my sold shares such as lease and/or mortgage and/or sale, and and/or any acts and or benefit contracts with third parties and undertake to transfer the ownership of the sold share at the competent Lands Department as soon as possible or execute an irrevocable power of attorney to Mr. Fathi or third parties as deemed appropriate in due course and undertake also to appear before the courts and/or official departments and/or official and/or national departments so as to serve the interest of the buyer Mr. Fathi and as he deems fit and that all the financial rights and/or compensations which may rise out of the expropriation imposed on the piece of land subject of this declaration and which may be adjudged by the court are an acquired right in favour of Mr. Fathi and I recommend my folks and legal heirs after me not to oppose Mr. Fathi in the said land due to his right in it and I have signed this declaration in three originals whilst enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surrounding the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

Executed on 18/7/2011.

Witness
(Signed)

Witness
(Signed)

Declarant,
Quadruple Name: Mohammad Abdel Qader Asad Hamed
Signature : (Signed)

(Counselors for Advocating & Law organized before me
and with my knowledge. Executed on: the twelveth of
July in the year of two thousand and eleven)
Lawyer : (Signed)

Seal of Counselors for
Advocating and Law

EXHIBIT

S



إقرار وتعهد خطي

أنا الموقع أدناه محمد عبد القادر اسعد حامد أردني الجنسية واحمل الرقم الوطني (٩٣٥١٠١١٩٧٥ و) وحيث أنني امتلك حصصاً مقدارها (٢٤١٢٠) حصة من أصل (٤٦٨٠٠) حصة إجمالي الحصص في قطعة الأرض رقم (٣١٠) حوض (٦) حويجر قرية طبربور من أراضي شرق عمان أقر وأنا بكامل قواي العقلية بأنني قد قبضت ثمن حصتي في قطعة الأرض المذكورة من السيد فتحي يوسف محمد يوسف أردني الجنسية ويحمل الرقم الوطني (٩٤١١٠١٣٤٦٠) وبذلك يحق للسيد فتحي يوسف المذكور بالتصرف بكامل حصصي تصرف المالك بملكه اعتباراً من تاريخ توقيع هذا الإقرار وأني أتعهد بعدم إجراء أية تصرفات قانونية في حصصي المبيعة من إجارة و/أو رهن و/أو بيع و/أو أية تصرفات و/أو عقود منفعة مع الغير وأتعهد بنقل ملكية الحصة المبيعة لدى دائرة الأراضي المختصة بالسرعة الممكنة و/أو تحرير وكالة غير قابلة للعزل للسيد فتحي أو للغير الذي يراه السيد فتحي في حينه مناسباً وأتعهد كذلك بمراجعة المحاكم و/أو الدوائر الرسمية و/أو الأهلية بما يخدم مصلحة المشتري السيد فتحي وحسب ما يراه مناسباً وأن جميع الحقوق المالية و/أو التعويضات التي قد تنشأ عن الاستملاك الواقع على قطعة الأرض موضوع هذا الإقرار والذي قد تحكم به المحكمة هي حقاً مكتسباً لصالح السيد فتحي وأني أوصي أهلي وورثتي الشرعيين من بعدي بعدم معارضة السيد فتحي في الأرض المذكورة وذلك لتعلق حقه بها وقد قمت بالتوقيع على هذا الإقرار على ثلاث نسخ أصلية وأنا بكامل قواي العقلية المعتمدة شرعاً وقانوناً واسقط حقي بالادعاء بكذب الإقرار و/أو الظروف التي أحاطت بتنظيم هذا الإقرار و/أو أي دفع ناشئ و/أو متعلق بهذا الإقرار و/أو تطبيقاته.

تحريراً بتاريخ ٢٠١١/٧/١٨.

المقر بما فيه

الاسم الرباعي : محمد القادر اسعد

التوقيع : محمد القادر اسعد ٢٠١١/٧/١٨

شاهد

محمد القادر اسعد

شاهد

محمد القادر اسعد



المستشارون
للمحاماة والقانون
COUNSILORS
for Advocating and Law

المستشارون
للمحاماة والقانون



نظم أمامي وبمصرفتي تحريراً في

اليوم التاسع من شهر محرم لعام القادر

المحامي محمد القادر اسعد

EXHIBIT E

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.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	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,)	
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-278
Plaintiff,)	
v.	)	ACTION FOR DEBT AND
	)	CONVERSION
FATHI YUSUF,)	
)	
<u>Defendant.</u>)	

**YUSUF'S AMENDED ACCOUNTING CLAIMS
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006**

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report. Items (c) – (e) would appear to be barred by the Accounting Order.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as Exhibit N to the Original Claims. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels and to recover the \$434,921.37 reflected in Exhibit R to Yusuf's Amended Supplementation Of Accounting Claims submitted to the Master and counsel on December 12, 2016, (the "Amended Supplementation").

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims¹⁸. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is

¹⁸ An English translation was provided to the Master and counsel as Exhibit S to the Amended Supplementation on December 12, 2016.

addressed in a number of the Liquidating Partner's Bi-Monthly Reports. *See Ninth Bi-Monthly Report* at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N of the Original Claims in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that these items are disputed and additional discovery is necessary. Furthermore, some of these claims relate to post – September 17, 2006 transactions or agreements between the Partners and therefore have not been eliminated by the Accounting Order.

VII. Loss of Going Concern Value of Plaza Extra-West

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

EXHIBIT F

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

THE ESTATE OF MOHAMMED
HAMED, through its executor, WALEED
"WALLY" HAMED, WALEED "WALLY"
HAMED, individually, WAHEED "WILLY"
HAMED, MUFEED "MAFI" HAMED,
AND HISHAM "SHAWN" HAMED,

Plaintiffs,

v.

FATHI YUSUF, YUSUF YUSUF,
MAHER (MIKE) YUSUF, NEJEH
YUSUF,

Defendants.

CIVIL NO. 377/2012

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

Plaintiffs, by and through undersigned counsel and file their Third Amended this Complaint against Defendants and allege the following:

1. This Court has subject matter jurisdiction pursuant to 4 V.I.C. § 76.
2. Plaintiff, Waleed "Wally" Hamed, individually and in his capacity as executor of the Estate of Mohammad Hamed¹, is a resident of St. Croix, U.S. Virgin Islands. He is the son of the deceased Mohammad Hamed and the brother of the remaining Plaintiffs.
3. Plaintiff, Waheed "Willy" Hamed, is a resident of St. Croix, U.S. Virgin Islands and is the son of deceased Mohammad Hamed and the brother of the remaining

¹ Mohammad Hamed, during the pendency of this action died and this action is being pursued by his Estate through "Wally Hamed", executor of the Estate of Mohammed Hamed. He was the father of the remaining Plaintiffs.



the "thefts" known at that time and not the ones now discovered, even though the new false allegations were from the same time period.

45. During the same period of time in 2011, Defendant Fathi Yusuf began to falsely inform various vendors that the Hamed family did not have an ownership interest in the Plaza Extra stores and to falsely claim that they were only employees who were going to be discharged.
46. Defendant Fathi Yusuf beginning in mid-2011 to the present has falsely informed vendors and the employees at the Plaza Extra stores that the Hamed family members are being fired for stealing funds.
47. In a further effort at extortion and coercion, Defendant Fathi Yusuf continued to threaten the Hamed family that he would continue to smear their good name, falsely call them thieves, falsely accuse them of stealing millions of dollars, try to kick them out of the business and have the Plaintiffs murdered unless the Hamed family agreed to transfer to Fathi Yusuf property in Jordan worth in excess of 40 million dollars.
48. In approximately September, 2011, Defendant Fathi Yusuf began to falsely claim that in 1993 Plaintiffs had taken and hidden money from United Corporation in the amount of four million dollars and had lost \$600,000.00 making Merrill Lynch trades. He made those false representations in associates in Jordan and America and to other in the public.
49. Investigation revealed that those trades had actually been made, by Fathi Yusuf's brother's account that Fathi Yusuf used. Defendant Fathi Yusuf acknowledged he was in error and indicated all Wally Hamed had to have done was fax those

to continue into the foreseeable future.

COUNT I

139. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 138 above and incorporate same as if more fully set out herein.

140. The actions of the Defendants constitute defamation per se.

141. As a result the Plaintiffs have been damaged as set out herein.

COUNT II

142. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 141 above and incorporate same as if more fully set out herein.

143. The actions of Defendant, Fathi Yusuf, constitute misrepresentation, tortuous misrepresentation, fraudulent misrepresentation and fraud and coercion to include but not be limited to; Defendant Fathi Yusuf had no intention of stopping his threats and defamation if the Jordan property was transferred to him and the Plaintiff, Mohammad Hamed, transferred the property to Fathi Yusuf to stop the defamation and threats to kill him and his sons.

144. Plaintiffs relied in good faith on the representations of the Defendant.

145. As a result Plaintiffs have suffered damages as alleged as well as loss of the property in Jordan that should be conveyed back to Plaintiff Mohammad Hamed.

COUNT III

146. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 145 above and incorporate same as if more fully set out herein.

EXHIBIT G

**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.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	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,)	
)	
<u>Defendant.</u>)	
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,)	
<u>Defendant.</u>)	
FATHI YUSUF and UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE
	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
<u>Defendants.</u>)	

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

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 Discovery as follows:

1. Interrogatory No 3 – Relating to H-1, Dorthea Condo

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached is the document that reflects that payment (FY015136). The breakdown is: \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his 1/2 of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed's portion).
4. I believe that I provided the handwritten "Dorothia" document to Willy but I do not recall when.
5. It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure.

**2. Interrogatory No. 29 and Requests for Production of Documents No.s 21 and 34
– Relating to Y-2 and 4 relating to rent for Bays 5 and 8**

Yusuf and United provide the following supplemental response to Interrogatory #29 and Requests for Production of Documents #21 and #34:

United has made a claim for past due rent for Bays 5 and 8 which were leased by Plaza Extra East at various points in time and utilized as extra storage. Yusuf set forth in his Declaration dated August 12, 2014 the square footage of each Bay, the period of the rental and the price per square foot. Again, Yusuf incorporates his August 12, 2014 Declaration together with the attached Chart as responsive to Interrogatory #29. In addition, attached is a floor plan of the United Shopping Center reflecting the location of Plaza Extra East and the other commercial/retail storefronts referred to as Bays (FY015135).

A. Bay 5 – Period May 1, 1994 through July 31, 2001

Bay 5 is close to the entrance of Plaza Extra East and is one of the most desirable storefronts in the United Shopping Center given its location and visibility. From 1987 to the time of the fire in 1992, Bay 5 was rented to a pharmacy. There is no copy of the lease for this period as it was destroyed in the fire. During this 1987-1992 timeframe, Plaza Extra East was utilizing a series of trailers as warehouse space to provide additional storage for inventory. There were eight trailers, four on the bottom and four on top. However, this storage system of trailers was very cumbersome and inefficient to access and effectively utilize. As Plaza Extra East was being rebuilt and then reopening, it needed additional space for storage which was easier to access.

As described more fully below, Plaza Extra East began utilizing Bay 8 for storage upon reopening in May, 1994. However, additional space was still needed. Mike Yusuf and Waleed Hamed broke through a cement block wall between Bay 4 and 5 to utilize the space in Bay 5 for sodas. They made an opening big enough for the forklift to go through. Their efforts demonstrate knowledge by Hamed that the space was being used. The space was utilized by Plaza Extra East from May 1, 1994 through July 31, 2001 for storage and primarily for the storage of sodas. Mr. Yusuf was not happy to discover that this particular Bay was needed for storage space because he would have preferred the space to be used as a retail store. In a conversation with Waleed Hamed, Mr. Yusuf explained that he would prefer to use the space to lease to retail but that if Plaza Extra East was going to use it for storage and needed the space, then it would have to pay rent, to which Waleed Hamed responded that he agreed. As Yusuf was in charge of setting the price and collecting the rent, he set the price at the same amount as other commercial tenants for that space. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

At some point in the first half of 2001, Mr. Yusuf explained that Plaza Extra East cannot keep using Bay 5 for warehouse space as it is better utilized as retail space. It was helpful to the partnership to have other retail stores in the United Shopping Center which drives more customers to the area and then into Plaza Extra East. However, using such visible space for storage did not help increase the traffic to the center and by extension to Plaza Extra East. As Bay 5 is a highly visible space, the better use of the space was for retail. Beginning on September 1, 2001, United leased Bay 5 to a retail tenant operating as "Diamond Girl." A copy of the lease is attached to demonstrate the end of the period that Plaza Extra East was utilizing Bay 5. (Bates FY015138-75). The lease with Diamond Girl was for ten years. In December 2011, Diamond Girl entered into another lease with United and expanded their space to use Bay 4 in addition to Bay 5. A copy of that lease is also attached. (Bates FY015176-211). These leases reflect the price charged for the space and the ending time period of Plaza Extra East's occupancy of Bay 5. There is no written lease for Plaza Extra East's use of the Bays 5 or 8, just as there was no written lease for the use of space to house the Plaza Extra East store. Waleed Hamed agreed to this arrangement. The total amount due for the period of rent for Bay 5 is as set forth in Yusuf's August 12, 2014 Declaration for \$271,875.00.

B. Bay 8 – May 1, 1994 through September 30, 2002 ("First Bay 8 Rent")

Bay 8 is located in the corner of the shopping center and is a double bay. It is a less desirable location as a retail store given the limited storefront and lack of visibility being in the corner of the center.

From 1987 to the time of the fire in 1992, Bay 8 was rented to Ali's Hardware. Ultimately, United had to evict Ali Hardware at some point prior to the fire. Mike Yusuf recalls the scenario where the renter threw the keys to Mike as they were rebuilding the store after he had been evicted. The eviction was handled by Carl Beckstedt. Attached is an unsigned "Satisfaction of Judgment" reflecting the action brought against Ali Hardware for the collection of back rent demonstrating the date the suit was filed as 1993. (Bates FY01537). As described above, the storage system of stacked trailers used by Plaza Extra East at this time was inefficient. As Plaza Extra East was being rebuilt, it needed the additional space for storage.

Following the fire, Plaza Extra East reopened in May 1994 and began utilizing Bay 8 for additional storage. Given its less desirable location as a retail store, its large size and easy access to the back of the bay with a roll-down door, it was suitable and more feasible to use as a warehouse. Bay 8 was occupied by Plaza Extra East from May 1, 1994 through September 30, 2002. As the space had previously been rented to a third party but was now being utilized by Plaza Extra East, Mr. Yusuf discussed with Waleed Hamed that Plaza Extra East would need to pay rent for the use of this additional space and he agreed. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

From October 1, 2002 to April 1, 2008, the space was then rented to an entity called Riverdale which is a food wholesaler who was not interested in utilizing the space as retail operation. A copy of the lease for Bay 8 is attached to reflect when the First Bay 8 Rent period ended and the amount charged for this space. (Bates FY015212-247). The total amount due to United for the First Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$323,515.63.

C. April 1, 2008 through May 30, 2013 ("Second Bay 8 Rent")

When the lease with Riverdale ended, Plaza Extra East began using the space for storage. As with the earlier period of use and the use of Bay 5, Yusuf discussed with Waleed Hamed that Plaza Extra East would pay rent on the same terms as before and Waleed Hamed Agreed. The total amount due to United for the Second Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$198,593.44. As before, United allowed the rent for this period to accrue rather than demanding payment so as to allow the partnership greater liquidity.

After May 30, 2013, United again rented Bay 8 to Riverdale or a relative of the individual who rented as Riverdale from that point forward.

There are no written leases between Plaza Extra East and United as to renting Bay 5 and Bay 8. At the time, the stores were all operating as United. However, as described above Mr. Yusuf discussed the matter with Waleed Hamed and he agreed to pay rent for the space utilized. Collection of the rent was deferred for Bays 5 and 8, just as it was deferred for the Plaza Extra East Store. *See* Yusuf Declaration of August 12, 2014, ¶8.

As to the period after this lawsuit was filed, United shows that Plaza Extra East continued to occupy the space until it was rented to the tenant associated with Riverdale. Mr. Yusuf considered the partial rent payments made by the partnership as to Bay 1 as a partial payment of the total rent debt due which included the rent for Bays 5 and 8. When Plaza Extra East was using either Bay 5 or 8, their use and occupancy was continuous during that period of time.

3. Interrogatory No. 30 – Relating to Y-12 Jordanian Property and Accounts

Yusuf supplements his responses to Interrogatory No. 30:

Over the course of time, Mr. Yusuf, on behalf of the partnership, purchased five different properties in Jordan (the “Initial Five Properties”) and put in joint names of Hamed and Yusuf. Two of these properties are still owned by them jointly, two others were sold with the proceeds reinvested in a larger number (approximately 40 residential properties) and one Hamed transferred his interests to Mr. Yusuf pursuant to an agreement which also required the transfer of property in St. Thomas.

A. Original Five Properties in Joint Name of Yusuf and Hamed

Property 1: One of the Initial Five Properties was purchased for approximately 3 million Jordanian pounds around 1999 (“Property 1”). It was titled jointly in both Yusuf and Hamed’s name. The parties still own it. It is now worth approximately at least 30 million. There is no dispute relating to this property and it is not the subject of Yusuf’s Claim Y-12.

Property 2: Another of the Initial Five Properties was purchased for approximately 240,000.00 Jordanian pounds (“Property 2”). It was also titled in jointly in both names. Property 2 was later sold for 1 million Jordanian pounds. The proceeds from the sale of Property 2 and another of the Initial Five Properties were used to purchase additional properties more fully described below. Property 2 is not in dispute and is no longer owned by the partners.

Property 3: Another of the Initial Five Properties was purchased for 858,000.00 Jordanian pounds (“Property 3”). It was also titled jointly in both names. Subsequently after Mr. Yusuf determined that the Hamed’s had removed funds without disclosing their receipt, Mr. Yusuf and Mr. Hamed entered into an agreement where Mr. Hamed agreed to provide his half of this property to Mr. Yusuf dated July 18, 2011, Exhibits O and S are the documents that reflects that transfer and agreement.

Property 4: Another of the Initial Five Properties was purchased for 520,000.00 Jordanian pounds. As with all of the Initial Five Properties, it was put in both names. Property 4 is located near an airport. At some point, a portion of Property 4 was needed for the roadway near the airport and the appropriate governmental entity procured the property under an eminent domain basis and ultimately paid 2 million Jordanian pounds. The remainder of the property was sold for 3.3 million Jordanian pounds. The proceeds from these transfers of Property 4 in combination with the proceeds from the transfer of

Property 2 were combined and used to purchase a larger number of residential properties more fully described below.

Property 5: Another one of the Initial Five Properties was purchased in the early 1990's for approximately 1 million Jordanian pounds. It too was in the joint names. The parties still own this particular property. Property 5 remains jointly owned and is not the subject of Yusuf's Claim Y-12.

B. Sale of Properties 2 and 4 and Reinvestment into 40+ Residential Properties

With the sale of Properties 2 and 4 for a total of approximately 6.3 million Jordanian pounds, the parties purchased approximately 40 pieces of residential real estate ("40+Properties"). They 40+ Properties are not contiguous properties but are located in the Ahman area and all of the purchases were done during a single trip Mr. Yusuf took to Jordan. Although jointly owned, the 40+ Properties were put in Mohammad Hamed's name solely. However, the parties understood and agreed that Mr. Yusuf had a one-half interest in these properties. This timeframe would have been around 2008.

Sometime in 2011, Mr. Yusuf requested that the 40+ Properties now be titled to reflect his one-half interest. During a trip to Jordan, Hamed and Yusuf coordinated to transfer most but not all of these 40+ Properties to reflect their joint ownership. As described in Yusuf's accounting claim "[A]ll but two of these properties were jointly titled in the names of Hamed and Yusuf." Yusuf is not looking to liquidate these properties but rather "respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these [two remaining] parcels and to recover the \$434,921.37" in costs incurred relating to these 40+ Properties. The costs are set forth in Exhibit R to Yusuf's Original Claims Accounting.

C. Transfer of Property from Hamed to Yusuf Per Agreement

After Yusuf's discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997, Mr. Yusuf agreed, in order to resolve that issue only, that Hamed would convey to him two properties. One of the properties was Property 3 described above and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas.

The document reflecting Hamed's transfer of his interest in Property 3 to Yusuf is Exhibit O and Exhibit S which is the English translation. Property 3 is Land Lot No. 310. On Bates page FY000272-9 of Exhibit O, the words "Lot 310" is located in the middle of a residential community of approximately one million in population. It is a very large plot in the middle of all the smaller plots. Hamed's allegations in the 377 case at Paragraphs 43, 44, 143, 145, 153, 154 and 155 all relate to Property 3 and Hamed's transfer of it

to Yusuf. The Hamed's value that piece of property – Property 3 at \$10,000,000.00. However, Mr. Yusuf estimates it is closer to only \$8,000,000.00. Therefore, the claims in the 377 case do, in fact, relate to the same piece of property (“Property 3”) and any alleged claims that Hamed has relating to Property 3 is properly adjudicated in this proceeding.

Yusuf is seeking exactly what he set forth in his claims accounting that “[A]lthough Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in” Property 3 in the 377 case. Yusuf is seeking an order, which binds Hamed's estate by the agreement signed by Hamed at Exhibits O and S. In that agreement entitled “Written Declaration and Undertaking,” Hamed confirms that he has the requisite mental faculties to convey his interests in Property 3 to Yusuf, that he intends to give him all of his financial and other interests in the property. Hamed also states that:

...I recommend my folks and legal heirs after me not to oppose Mr. Fathi [Yusuf] in the said land due to his right in it and I have signed this declaration in three originals while enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surrounding the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

This was signed by Mohammed Hamed on July 18, 2011.

Ultimately, Yusuf had agreed to resolve the misappropriation by the conveyance of Property 3 and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas. The 9.31 acres are currently titled in Plessen but should be conveyed to Mr. Yusuf. Likewise, any claims that Hamed would have to the ½ acre entrance parcel should be extinguished.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 15, 2019

By: s/Charlotte K. Perrell
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 15th day of January, 2019, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** 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

s/Charlotte K. Perrell

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: Jan., 15th, 2019

Fathi YUSOF Attesting Individual
Fathi YUSOF

TERRITORY OF THE UNITED STATES VIRGIN ISLANDS
DISTRICT OF ST. Croix) ss.

On this, the 15 day of JANUARY, 2019, before me, the undersigned officer, personally appeared the signor known to me (or satisfactorily proven to be) the person whose name is subscribed to the within document and acknowledged that he/she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



NP-49-17 Notary Public
ETP-06/16/2021

EXHIBIT 1

FY 015045 – 015134

EXHIBIT H

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED



LIQUIDATING PARTNER'S NINTH BI-MONTHLY REPORT

Pursuant to this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner¹, respectfully submits this ninth bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.

Pursuant to the Court's "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order"), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan "shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015."

¹ Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

the amount of \$79,009.87 and for 2014 taxes in the amount of \$43,069.36. Checks for those amounts have been delivered to Tutu Park, Ltd. The property taxes for 2015 have not yet been billed, but reserves will be set aside to pay these taxes (estimated to be \$14,356.44 based on $4/12 \times \$43,069.36$)⁶, disputed federal unemployment (Form 940) taxes (approximately \$732,000)⁷, and contemplated accounting fees (approximately \$30,000).

The Liquidating Partner's sixth bi-monthly report incorrectly stated (at p. 4) that Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 had been rejected when, in fact, that claim was paid on December 17, 2015 via CRA check no. 278 and a matching check was issued to Yusuf via CRA check no. 279. Copies of these checks were provided to Hamed and the Master with the submission of the sixth bi-monthly report.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.⁸ Hamed has inquired about the disposition of ½ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002 (the "Land"). Yusuf submits

⁶ If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when \$79,009.87 and \$43,069.36 in real property taxes were paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized matching payments of \$89,442.92 and \$46,990.48 to United based on this formula. Accordingly, in addition to creating a \$14,356.44 reserve for the 2015 pro-rated real property taxes, a reserve for the matching payment to United should be created in the amount of \$9,812.14.

⁷ The Liquidating Partner does not believe that any such taxes are actually due and owing.

⁸ With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by NejeH Yusuf in connection with his co-management of Plaza Extra Tutu Park was purchased by United on May 1, 2015 for the sum of \$5,000.

that the Land has been erroneously carried on the balance sheet of the Partnership, because the record owner of the Land, pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation jointly owned by the Hamed and Yusuf families. The Land was encumbered by a mortgage dated August 24, 2006 from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed the Land to United. Pursuant to a Release Of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering the Land.⁹ Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed. Accordingly, the Liquidating Partner does not intend to pursue liquidation of the Land or the mortgage since the Partnership has no continuing interest in either.¹⁰

Hamed has claimed that the Liquidating Partner has "fail[ed] to identify a significant partnership asset, a Merrill-Lynch account that has in excess of \$300,000 in it, all of which came from Plaza Extra funds." *See, e.g.*, Motion To Remove The Liquidating Partner filed by Hamed on January 29, 2016 at p. 6.¹¹ At page 3 of Yusuf's September 3, 2015 Response to the Objection, Yusuf states:

⁹ The fourth bi-monthly report contained dated information. After that report was filed, counsel for the Liquidating Partner learned of the subsequent conveyance of the Land to United.

¹⁰ On August 18, 2015, Hamed filed a "Notice of Objection to Liquidating Partners Bi-Monthly Reports" (the "Objection"), which raised the issue of the Land, among other issues, but acknowledged that these issues would be addressed in the "claims portion" of the liquidation process. On September 3, 2015, Yusuf filed his Response to the Objection. On February 8, 2016, Hamed filed his "Notice of Objection to Liquidating Partner's Sixth Bi-Monthly Report," to which Yusuf replied on February 24, 2016.

¹¹ Yusuf filed his Opposition to that motion on February 17, 2016.

EXHIBIT I

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

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED

12) SEP 17 A10 :22

Plaintiff,

v.

FATHI YUSUF AND UNITED CORPORATION

Defendant.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF
JURY TRIAL DEMANDED

COMPLAINT

Comes now, the Plaintiff, Mohammad Hamed, by his authorized agent, Waleed Hamed, and hereby files this Complaint against Fathi Yusuf and the United Corporation, alleging as follows:

1. This Court has jurisdiction over this matter pursuant to Title 4 V.I.C. §76(a) and 5 V.I.C. §1261.
2. Plaintiff, Mohammad Hamed ("Hamed") and his authorized agent Waleed Hamed (a/k/a Wally Hamed) are both adult residents of St. Croix, United States Virgin Islands. The acts referenced herein attributable to Mohammad Hamed are to acts done either directly by Mohammad Hamed or through his family members acting as his authorized agent, hereinafter collectively referred to as "Hamed."
3. Defendant Fathi Yusuf is a resident of the St. Croix, United States Virgin Islands. The acts referenced herein attributable to Fathi Yusuf are to acts done either directly by Fathi Yusuf or through his family members acting as his authorized agent, hereinafter collectively referred to as "Yusuf."
4. The defendant, United Corporation ("United") is a Virgin Islands Corporation.

5. In the mid-1980's, Hamed and Yusuf formed a partnership to operate a grocery supermarket on the east side of St. Croix, named Plaza Extra, which was located in a shopping center operated by United.
6. The partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end to St. Croix and one in St. Thomas, both of which also operated under the name Plaza Extra. The partners generally refer to these three stores as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plesson/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas). The Plaza supermarkets have grown in size, currently employing in excess of 600 employees in the three stores.
7. At all times relative hereto, the three Plaza Extra supermarkets have been managed jointly by Hamed and Yusuf, operating as a partnership with separate accounting records and separate bank accounts for each store, even though the partnership utilized the corporate entity of United for the reporting of tax obligations.
8. The bank accounts for the three Plaza Extra supermarkets have always been accessible equally to Hamed and Yusuf, with the parties agreeing that one family member from each of the Hamed and Yusuf families will sign each check written on these bank accounts. The parties are currently prohibited from removing funds from these accounts other than to operate the three Plaza supermarkets because of an Order entered by the District Court of the Virgin Islands in the

criminal matter entitled, *USA v. United Corporation et al.*, District Court Criminal No. 2005-15. The current bank accounts for each of the three Plaza stores are:

St. Thomas Plaza Extra Store:

Operating Acct:	04xxxxxxxxx	Bank of Nova Scotia (BNS)
Payroll Acct:	04xxxxxxxxx	Bank of Nova Scotia (BNS)
Telecheck Acct:	04xxxxxxx	Bank of Nova Scotia (BNS)
Credit Card Acct:	1xxxxxxx	Banco Popular

St. Croix Plaza Extra – WEST

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
TeleCheck Acct:	05xxxxxxxxx	Bank of Nova Scotia (BNS)

St. Croix Plaza Extra – EAST

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
Telecheck Acct:	58xxxxxxxxx	Bank of Nova Scotia (BNS)

9. United has always had separate accounting records and separate bank accounts for its shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Hamed does not have access to these separate bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.
10. At all times relative hereto, the Hamed and Yusuf partnership profits from the Plaza Extra stores have always been held in banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Hamed and Yusuf partnership are in United's name as well. The parties are currently prohibited from removing funds from these accounts because of the same Order

entered by the District Court of the Virgin Islands in *USA v. United Corporation et al.*, District Court Criminal No. 2005-15. The current brokerage accounts holding these profits are:

Popular Securities

PSx-xxxx22

PSx-xxxx63

PSx-xxxx60

PSx-xxxx79

PSx-xxxx01

PSx-xxxx10

PSx-xxxx28

PSx-xxxx36

11. At all times relative hereto, Hamed and Yusuf have equally shared the profits distributed from the three Plaza supermarkets.
12. From time to time, Hamed and Yusuf have used these profits to buy other businesses and real property, always owning these jointly held assets on a 50/50 basis.
13. In this regard, Hamed and Yusuf have also maintained records of withdrawals from the partnership account to each of them (and their respective family members), to make sure there would always be an equal (50/50) amount of these withdrawals for each partner's family members.
14. Yusuf has repeatedly confirmed the existence of this partnership between himself and Hamed, including statements made under oath.
15. On February 10, 2012, Yusuf's attorney, Nizar DeWood ("DeWood"), informed Hamed (through his agent Wally Hamed) that Yusuf wanted to dissolve the partnership. **See Exhibit A.**

16. On February 12, 2012, (**See Exhibit B**) DeWood sent a letter on Yusuf's behalf to Hamed announcing that Yusuf was ready to proceed with dissolving the partnership, describing the partnership assets to be divided as follows:

As it stands, the partnership has three major assets: Plaza Extra - West (Grove Place, including the real property), Plaza Extra - East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas).

17. DeWood then sent a proposed partnership dissolution agreement on behalf of Yusuf on March 13, 2012, to Wally Hamed, regarding the proposed dissolution of the partnership. That document (**See Exhibit C**) then went on to state in part as follows:

WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

WHEREAS, the Partnership was formed for the purposes of operating Super Markets in the District of St. Croix, and St. Thomas; and

.
WHEREAS, the Partners have shared profits, losses, deductions, credits, and cash of the Partnership;

WHEREAS, the Partners have certain rights and responsibilities under the Virgin Islands Revised Uniform Partnership Act ("Act") governing dissolution of partnerships, and hereby desire to vary or confirm by the terms of this Agreement;

That document then described the partnership assets as follows:

Section 1.1: Assets of the Partnership

1. PLAZA EXTRA EAST- Estate Sion Farm. St. Croix
2. PLAZA EXTRA WEST- Estate Grove, St. Croix (Super Market Business ONLY)
3. PLAZA EXTRA - Tutu Park. St. Thomas

18. The parties thereafter met on numerous occasions to try to address the division of the partnership assets, including the three Plaza Extra Stores and the

partnership profits held in the various bank and brokerage accounts. However, to date no agreement has been reached regarding the division of these partnership assets.

19. In the interim time period, Yusuf has engaged in and continues to engage in numerous acts in breach of his obligations as a partner in his partnership with Hamed, all of which are designed to undermine the partnership's operations and success, including but not limited to the following acts:

- a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;
- b) Threatening to have United evict the Plaza Extra store located in the United shopping center on the east side of St. Croix (**See Group Exhibit D**), including the threat of using self help to remove the partnership from the premises without using judicial process;
- c) Attempting to have United impose excessive rent obligations on this store (**See Group Exhibit D**);
- d) Failing to recognize Plaza Extra's rights in the premises where its Plaza store in the United Shopping Center is located, as the store was damaged by fire in 1992 and was rebuilt entirely with insurance funds from the Plaza supermarket and not from United, including using said partnership funds for the purchase of additional adjacent land for use by the supermarket;

- e) Attempting to discredit the operations of these three stores by making defamatory statements about Hamed and his family members to third parties, including suppliers for the three stores, which are completely untrue;
- f) Attempting to unilaterally change how the stores have operated by threatening to impose new and unreasonable restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.
- g) Refusing to pay valid obligations owed by the partnership, including but not limited to attorney's fees incurred in litigation in the pending District Court criminal case, in an effort to undermine the partnership's operations;
- h) Threatening to close down the Plaza Supermarkets;
- i) Threatening the Hamed family members working in the Plaza supermarkets with physical harm, trying to intimidate them into leaving the stores;
- j) Giving false information to third parties, including suppliers of the three Plaza Supermarkets, regarding its future operations, jeopardizing the good will of the Three Plaza supermarkets;
- k) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza supermarkets; and
- l) Spending funds from the bank accounts of the three Plaza supermarkets to support his other personal business interests unrelated to the three Plaza supermarkets.

20. Finally, on or about August 20, 2012, Yusuf unilaterally and wrongfully converted \$2.7 million from the Plaza Extra supermarket accounts used to operate the partnership's three stores, placing the funds in a separate United account controlled only by him. Said conversion was a willful and wanton breach of the partnership agreement between Hamed and Yusuf.
21. Despite repeated demands, he has not returned these funds to the Plaza Extra bank accounts from which they were withdrawn, which not only violates the partnership agreement, but also threatens the financial viability of these three Plaza supermarkets and the employment of its 600 employees.
22. Upon information and belief, Yusuf has used these funds to purchase other assets in United's name, such as real property on St. Croix recently purchased for \$1.7 million. **See Exhibit E.**
23. The acts in question were designed in part to take advantage of Hamed's failing health to force him out of the partnership and deny him his rightful partnership assets and profits.

COUNT I

24. All preceding allegations are realleged and incorporated herein by reference.
25. The foregoing acts all violate the partnership rights of Hamed as well as the terms of the partnership agreement between Yusuf and Hamed.
26. As such, pursuant to 26 V.I.C. § 75, Hamed is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights.

27. In this regard Hamed is entitled to declaratory relief as to his rights as well as injunctive relief to protect those rights, including the return of funds to the partnership improperly taken or spent by Yusuf to date in violation of the agreement between the parties.

28. Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf on the partnership and/or his partnership interest as well as punitive damages against Yusuf for his willful and wanton misconduct.

COUNT II

29. All preceding allegations are realleged and incorporated herein by reference.

30. The foregoing acts by Yusuf also constitute intentional misconduct, or reckless and grossly negligent conduct, which has adversely and materially affected the partnership between Hamed and Yusuf regarding the three Plaza supermarkets.

31. As such, Hamed is also entitled to a judicial determination under 26 V.I.C. § 121(5) that it is not practicable to continue the partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the partnership business without him pursuant to the provisions of 26 V.I.C. §§ 122-123 and Subchapter VII of Title 26.

WHEREFORE, the Plaintiff seeks the following relief from this Court as follows:

- 1) Declaratory Relief against both defendants to establish Hamed's rights under his partnership with Yusuf, including his rights regarding the operation of the three Plaza Extra supermarkets and the withdrawal of funds from the partnership accounts associated with these three Plaza supermarkets;
- 2) Injunctive Relief enjoining the defendants from interfering with Hamed's partnership rights, including enjoining Yusuf from interfering with the operations of the three Plaza Extra supermarkets and enjoining Yusuf from withdrawing any

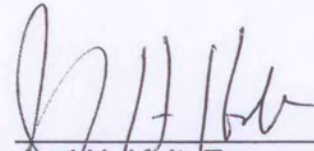
funds from any partnership bank accounts or brokerage accounts without the consent of Hamed;

- 3) Declaratory Relief and Injunctive Relief against both defendants requiring the immediate return of of all funds improperly withdrawn from the bank accounts of the three Plaza supermarket accounts by Yusuf, including but not limited to the \$2.7 million recently removed by Yusuf to an account to which Hamed does not have access;
- 4) Declaratory Relief and Injunctive Relief against both defendants regarding the property rights of the Plaza Extra store located at the United Shopping Center on the east side of St. Croix.
- 5) Declaratory Relief as to the partnership's rights in any businesses and/or assets purchased by United using partnership assets or obtained without providing the partnership the opportunity to participate in the ownership of these newly acquired businesses and/or assets;
- 6) An award of compensatory damages against the defendants, jointly and severally, as determined by the trier of fact;
- 7) A judicial determination under 26 V.I.C. § 121(5) that it is not practicable to continue the partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the partnership business without him pursuant to the provisions of 26 V.I.C. §§ 122-123 and Subchapter VII of Title 26.
- 8) An award of prejudgment interest at the statutory rate of 9%;
- 9) An award of punitive damages against Yusuf as determined by the trier of fact;
- 10) An award of attorney's fees and costs against both defendants; and
- 11) Any other relief the Court deems appropriate as warranted by the facts and the applicable law.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES TRIABLE BY A JURY

Complaint
Page 11

Dated: September 17, 2012



Joel H. Holt, Esq.
2132 Company Street
St. Croix, VI 00820
(340) 773-8709
holtvi@aol.com

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