

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

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.	)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
v.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
UNITED CORPORATION,	)	
	)	
Defendant.	)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.	)	ACTION FOR DEBT AND CONVERSION
FATHI YUSUF,	)	
	)	
Defendant.	)	

**MOTION FOR SUMMARY JUDGMENT AS TO Y-14  
HALF OF THE VALUE OF CONTAINERS AT PLAZA EXTRA-TUTU PARK  
AND MEMORANDUM OF LAW IN SUPPORT**

Fathi Yusuf (“Yusuf”), through his undersigned attorneys, respectfully submits this Brief in Support of its Motion for Summary Judgment as to Y-14 Regarding Half of the Value of the Containers at Plaza Extra-Tutu Park.

### **I. Background Facts**

As reflected in the Liquidating Partner’s Sixth Bi-Monthly Report, n.4, at the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be including in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his disignee, KAC357, Inc. took possession of five (5) very large trailers of inventory located outside the covered premises. Since the inventory contained in these 5 containers was indisputably Partnership property as are the containers, Yusuf claims entitlement to half of the total value of such inventory and to the value of the containers. Yusuf is aware that the Master already rejected this claim at the time it was initially raised. Yusuf has re-asserted it in his Accounting Claims so as to preserve it.

Pursuant to the current scheduling order, this claim is ripe for dissolution by the Master. As with any of the claims submitted to the Master, should he find that there exists genuine issues of material fact precluding a summary dissolution of the claim, then Yusuf seeks an evidentiary hearing on the issue.

#### **A. The Containers at the Tutu Park Store and their Inventory were not included in the bidding process.**

Yusuf has testified that he specifically asked what items would be included in the closed-bid auction for the Tutu Park Store before the bidding started. *See Exhibit A-Fathi Yusuf Depo.*,

59:6-60:5. He asked if he was bidding only on what was underneath the roof of the store and nothing outside. *Id.* Mr. Yusuf understood the response from Master Ross was that the bidding only was for those items underneath the roof of the store. *Id.* Specifically, Mr. Yusuf testified:

- A. The thing is, when we do—when we—before we start to bid, I told Master, Judge Ross, I am bidding only what underneath this roof, nothing outside. And he said, Yes. I repeat it, three – I believe, three time. I’m only bidding what underneath this roof. And he say, he admit, Yes.

*Id.* at 59:8-13. There were various containers located outside the Tutu Park store that contained inventory and were used for storage. These containers and the inventory they stored were not including in the bidding prices between the parties. However, after the bidding was closed and the transfer of the Tutu Park store consumated, Hamed or his agents took possession of the containers outside the Tutu Park store and the inventory stored inside them. Yusuf contends that Hamed recoved the containers and the value of the inventory inside without providing payment as those assets were not factored into the bidding. Yusuf is seeking half of the value of the containers and the inventory inside them.

**B. The Value of the Containers and the Inventory Stored Inside the Containers**

Yusuf testified that he worked at the Tutu Park store for almost 22 years and is familiar with the containers at the Tutu Park store and with the types of products that would be stored in the containers at that location. *Id.* at 63:1-8. Yusuf explained that the types of items generally stored there were items:

- A. Nothing—something with a long expiration date. It's a dry container. There's no – no refrigerated item. And no—it have be pack in a strong vacuum package, its contain in a plastic container and that does not take load. Or Clorox, its too dangerous. You can't put water, you can't put Clorox. Yes, you could put tuna fish, sardine, paper towel, anything that does not break that easy or bust, you know, damage or leak, 'cause if you leak, it will damage everything. And the weight is not question ask, because the trailer's not on the highway, and filed to capacity.

*Id.* at 63:12-23. The containers were used to store non-perishable items that were easy to store for long period, which could sustain prolonged periods of heat and whose packaging was durable. Yusuf also testified that because the containers were stationary and used as storage that they were not subject to weight limits imposed upon containers subject to highway travel. Hence, the containers could be filled to capacity, regardless of the weight. *Id.*

Yusuf prepared a calculation of the value of the inventory of the nature stored in the five containers at the Tutu Park store and provided receipts to support his calculations. *Id.* at 62:9-17 and Exhibit 7 to Yusuf's Depo. Yusuf calculated the value of the inventory in each of the containers to be \$80,682 per container for a total value of \$403,409 for the inventory. *Id.* at 64:25-68:16 and Exhibit 7 to Yusuf's Depo. Yusuf then calculated the value of the containers themselves at \$2,500 each, multiplied by 5 (the number of containers), to arrive at a value for the containers of \$12,500.00. The total value offered by Yusuf for the inventory and value of the 5 containers at the Tutu Park store is: \$415,909 for which Mr. Yusuf seeks half of the value.

## II. Conclusion

Yusuf has provided evidence sufficient to demonstrate that the 5 containers outside of the Tutu Park store were not included in the bidding process but are in the possession of the Hameds. The value of the containers themselves and the inventory contained therein has been provided in the amount of \$414,909. Yusuf requests a ruling in his favor as to Y-14 awarding him one half of the value of the containers and inventory.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** February 25, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of February, 2019, I caused the foregoing **MOTION FOR SUMMARY JUDGMENT AS TO Y-14 HALF OF THE VALUE OF CONTAINERS AT PLAZA EXTRA-TUTU PARK AND MEMORANDUM OF LAW IN SUPPORT**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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