

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED STATEMENT OF FACTS RE HAMED REVISED CLAIM H-1 – FATHI
YUSUF’S FAILURE TO PAY FUNDS RE SALE OF THE Y & S STOCK
RESULTING IN THE SALE OF THE DOROTHEA CONDOS AND LAND**

STATEMENT OF FACTS

1. On September 26, 1994, the Y & S Corporation, Inc. had its organizational meeting. It was being set up by the Yusuf and Hamed families in conjunction with a third person, Hakima Salem for the purchase of land and hurricane-damaged condos in Estate Dorothea. The signed minutes of the organizational meeting identified the following shareholders: Hakima Salem, 1000 shares, Najeh Yusuf, 500 shares, and Hisham Hamed, 500 shares. Fathi Yusuf was identified as president of the Y & S Corporation, Inc. (**Exhibit 1**)
2. On September 28, 1994, a special warranty deed was filed with the Recorder's Office for the District of St. Thomas and St. John, US Virgin Islands and signed by Spread Eagle Paradise Holdings, Inc. as Grantor to Y & S Corporation as Grantee to purchase property in Estate Dorothea, the "Dorothea Property" as described in Exhibit A of the special warranty deed (**Exhibit 2**)
3. On September 28, 1994, a special warranty deed was filed with the Recorder's Office for the District of St. Thomas and St. John, US Virgin Islands and signed by Spread Eagle Paradise Holdings, Inc. as Grantor to R & F Condominiums as Grantee to purchase real property described in Exhibit A to the warranty deed as a certain percentage of the common areas interest in the Dorothea Property. (**Exhibit 3**)
4. Thus, the Hamed/Yusuf portion of that Dorothea Property was jointly owned by Mr. Hamed and Mr. Yusuf, according to Fathi Yusuf, as he testified in his April 2, 2014 deposition:
 - A. [FATHI YUSUF] The transaction that we bought -- we was in

partnership with a third person, that we own 50 percent of the Dorothea real estate -- a real estate in Dorothea, and the other partner owned the other 50 percent. Finally, I come to this decision to sell it to my partner. He bought it at one-and-a-half million, and this number below, it was an idea to Mr. Hamed what would I -- I am counted for, up to the time I give it to him.

* * * *

Q. [Attorney Holt]. . .Dorothea is -- the 1.5 million were -- were monies paid that belonged to you and -- and Mr. Hamed?
Yes.

* * * *

Q. [Attorney Holt]. . .So you start with the 1.5 million, which is 50/50, and then you start adding --
A. One million and a half is absolutely 50/50. I'm not hiding anything. (**Exhibit 4**, pp. 99:12-19; 101:17-19; 105:4-7)

5. Fathi Yusuf stated that the Dorothea property consisted of about 51 acres of land and 23 damaged condos in his January 21, 2019 deposition.

A. [FATHI YUSUF] We bought from -- this property from the bank for myself and Mohammad Hamed and Salem.

* * * *

Q. (Mr. Hartmann). . .So when you and Mohammad Hamed bought it in the form of Y & S Corporation, did you -- did you get -- did you buy some property?

A. What we bought is about 51 acre of bare land and about 23 condo. (**Exhibit 13**, p. 12:4-5, 8-12)

6. On June 15, 2000, Fathi Yusuf resigned as a Director of the Y & S Corporation.

(**Exhibit 5**)

7. On that same day, June 15, 2000, Hisham "Shawn" Hamed and Najeh Yusuf agreed to sell their stock in the Y & S Corporation to Hakima Salem in a signed

Agreement of Sale of Stock. Key provisions of the Agreement of the Sale of Stock included the following:

1. Seller agrees to sell and transfer 1000 shares of common stock of Y & S Corporation, Inc. representing all of seller's stock ownership interest in that corporation, into escrow and after final payment, to register such transfer of shares upon the books of the corporation.

* * * *

3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. The first installment shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.

* * * *

6. Escrow: The stock sold under this agreement shall be endorsed by the sellers to the Buyer and such stock shall be held in Escrow by Robert L. King, Esq. until all payments due hereunder have been paid to the Seller's Nominee. Robert L. King, as escrow agent shall deliver the stock certificates sold hereunder to the Buyer within 30 days of receipt of written notice from seller that the entire purchase price has been paid in full. The corporation shall immediately thereafter cause the transfer of shares to be registered upon the books of the corporation. . . . **(Exhibit 6)**

8. Also, in the June 15, 2000 signed Agreement of Sale of Stock, Fathi Yusuf (who had resigned his director position to be allowed to do so) became solely a "nominee" agent for the parties -- and had no independent basis for making decisions for Y & S or personally retaining the funds under the Agreement.

2. In consideration of the transfer of its 1000 shares of Y & S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusef of 9-C Princess Hill, St. Croix. . . **(Exhibit 6)**

9. Fathi Yusuf testified in his January 21, 2019 deposition that he was the nominee who collected the money for the sale of the Y & S stock – and would eventually direct the release of the escrowed stock on payment.

Q. [Mr. Hartmann]. . . I'm now showing you a document labeled Claim H-1 Exhibit 6.

* * * *

Q. And you see Paragraph 2?

A. Paragraph 2?

* * * *

A. In consideration of the transfer of its 1000 share of Y & S Corporation, ... Buyer agree to pay seller nominee, Mr. Fathi Yusuf of 9-C Princess Hill. . . .

* * * *

Q. But you were going to collect the money for Y & S; is that correct?

A. Yes, yes. Okay.

* * * *

A. So we're back to square one. A million and a half. I will never deny that, the million and a half being collected. (**Exhibit 13**, pp. 16:16-17; 17:20-25; 18:5-6; 22:3-5)

10. On November 16, 2011, an email to Wael H. Abu Hazeema from Iyad F. Al-Madhoun showed that the Bank of America, N.A. transferred \$150,000 to the Bank of Palestine PLS as part of these funds for a “concrete factory.” (**Group Exhibit 14**).

11. Regarding the November 16, 2011 payment, Fathi Yusuf testified in his January 21, 2019 deposition that the purchaser of the Y & S stock, Mr. Salem, transferred \$150,000 as partial payment **of the Y & S stock purchase price**. Yusuf further

testified that **he directed** Mr. Salem to transfer the money directly and **Yusuf deducted the \$150,000 from the \$1.5 million Mr. Salem owed for the Y & S stock.**

A. [FATHI YUSUF] So we're back to square one. A million and a half. I will never deny that, the million and a half being collected.

Q. [Mr. Hartmann] And when did you collect the million and a half?

A. I collect by the way, one million three fifty.

The other one hundred and fifty, I told the Salem family to transfer it into a concrete batch plant, because 10 years earlier, Mohammad Hamed received that money to deliver it to the batch plant and he never did deliver it, so --

Q. [J]ust so I'm clear, you received money from Mr. Salem?

A. Yes.

Q. And when you received that money from him --

A. Yes.

Q. -- you sent that for the batch plant?

A. I did not receive the one hundred and fifty.

Q. You had him send it?

A. I direct them --

* * * *

A. -- to take it off of the bill and send it.

* * * *

Q. That one fifty was part of the 1.5 million?

Exactly.

* * * *

Q. But -- but the way you received it, you had Mr. Salem send it, the one fifty?

The one fifty, Mr. Salem sent it through a bank transfer.

* * * *

Q. . . . I've seen . . .
the transfer where Mr. Salem
transfers the money --

* * * *

Q. -- for the batch plant. And that's money under the -- Mr. Salem's original contract; is that correct? It's part of the total money?

A. It's part of the one and a half million. (**Exhibit 13**, pp. 22:3-20, 22, 25; 23:1, 4-7, 19-21, 23-25; 24:1)

12. Thus, Yusuf testified that he had taken in and then dispersed funds under the contract in 2011. (**Exhibit 13**)

13. In support of this, Fathi Yusuf also testified in his 2014 deposition that he received proceeds from the Y & S sale of the Dorothea property not more than three years earlier from the date of that April 2, 2014 deposition; totally consistent with the November 16, 2011 transfer of funds for final payment of the Y & S stock by Mr. Salem. (SOF ¶¶ 10, 11)

Q [Mr. Holt]. . . .Dorothea is -- the 1.5 million were -- were monies paid that belonged to you and -- and Mr. Hamed?

A. [FATHI YUSUF] Yes.

* * * *

A. One million and a half is absolutely 50/50. I'm not hiding anything.

Q. . . .And when did you get that money?

A. I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not three years. It's less than three years. . . . (**Exhibit 4**, pp. 101:17-19; 105:6-12)

14. Just prior to obtaining the Hamed signature to release the stock escrow in 2012, Yusuf showed Waheed "Willie" Hamed and Shawn Hamed a handwritten document that Yusuf prepared. The handwritten document contained the amount owed to Hamed from the sale of the Y & S stock (and by extension, the sale of the Dorothea property) and a loan Hamed paid on behalf of Yusuf. **Yusuf's**

handwritten calculations showed the total owed Hamed was \$802,966, and that in exchange for Shawn Hamed's signature, Yusuf would turn over the \$802,966 to Hamed, according to Fathi Yusuf's January 21, 2019 deposition testimony.

Q. [Mr. Hartmann]. . .And I'm also handing to you a second document, which is labeled Claim H-1 Exhibit 8, which is a handwritten document. And I'd ask you if you could look at both of those documents?

A. [FATHI YUSUF] Yeah, I recognize both of them.

* * * *

Q. So you think you may have given it [Claim H-1 Exhibit 8] to either Shawn

or --

A. One of the two, because one -- both of them, they was in St. Thomas.

Q. Okay. Either Shawn or Willie, is that what you're saying?

A. Yes.

* * * *

Q. [A]nd why did you give it to them? What were you --

A. Because they have the right to it. They own 50 percent of the million and a half.

Q. Okay. And -- and what is the eight -0- two nine six six?

A.. .but I remember the one -0- five nine thirty-two. This here was a loan to somebody. And I asked Mohammad Hamed to pay it. And this is what, 70,000 dinar, Jordanian dinar. I convert it into U.S. dollar. They came up one -0- five nine thirty-two. And then I brought the total. The total would be one -- one million six -0- five nine thirty-two. Half of that is 802,966. (**Exhibit 8** and **Exhibit 13**, pp. 19:10-14; 20:12-18, 20-25; 21:2-9)

15. Fathi Yusuf testified in his January 21, 2019 deposition, that he asked Shawn Hamed to sign the February 2012 release of the Y & S stock in escrow, allowing the remaining shares of Y & S to be released to the buyer, Hakima Salem.

Q. [Mr. Hartmann] Exhibit 7, that one. . . .

* * * *

Q. . . . So what I'm asking you is, when you got -- when you were talking to, you think, Willie and Shawn, you needed Willie or Shawn to do something, right?

A. [FATHI YUSUF] I want them to give the release, because the people ask for the release. They already paid the money long time, and **they requested the release, and I told Shawn to sign the release. (Exhibits 7 and 13, pp. 24:16, 23-25; 25:1-4)** (Emphasis added.)

16. Directing the signature of the release document in 2012 was an act under the contract by Fathi Yusuf as the Nominee of the parties. (**Exhibit 6**)

17. On February 19, 2012, Shawn Hamed and Nejeah Yusuf signed a Notice of Payment of Purchase Price and Authorization to Release Stock Certificates for the Y & S Corporation. The release authorized the escrow agent holding the stock under the contract to release it to Hakima Salem, the buyer. The Notice stated the following:

Pursuant to that certain agreement of Sale of Stock dated June 15th, 2000 by and between Hisham Hamed and Najah Yusef, as sellers, and Hakima Salem, as buyer, concerning [*sic*] the sellers' 1,000 shares of Y & S Corporation, a United States Virgin Islands corporation, the undersigned hereby gives you formal written notice that the purchase price has been paid in full on a timely basis and that you are authorized and directed to release the shares of stock that have been endorsed by the sellers to the buyer. . . . (**Exhibit 7**)

18. Fathi Yusuf then delivered the signed contract/escrow release to Attorney King, who release the Y & S stock to the Buyer pursuant to the contract. This was also an act under the contract. (**Exhibit 6** and **Exhibit 7**)
19. On September 17, 2012, this action was filed because of: (1) Yusuf's denial of all of Hamed's partnership rights, (2) Yusuf's unilateral taking of \$2.7 million from the Partnership and (3) Yusuf's refusal to pay over the \$802,966 described here as part of that effort. (**Exhibit 15**)
20. On October 4, 2012, Yusuf removed the action to the Federal District Court. (**Exhibit 16**)
21. The removal was improper. On November 16, 2012, the District Court remanded this action to this Court, stating, at 11, "Defendants have failed to establish that removal to the District Court of this partnership dispute between Virgin Islands residents is proper." (**Exhibit 17**)
22. Fathi Yusuf testified in his April 2, 2014 deposition that he had received, but kept, the \$1.5 million in payments for the Dorothea property.

Q. [Mr. Holt]. . . .So now the first line, Dorothea, 1.5 million, those were the funds that you received when the other partner bought you out or paid you off?

* * * *

Q. The first line, the 1.5 million on that line?

A. [FATHI YUSUF] Yeah, this is a fund I received -- I received from Dorothea.

Q. And is that actually technically YNH [sic] Investments, Inc.? Is that --

A. Yes.

Q. Okay. And -- and so those were funds that you received from them, is that correct?

A. I received for our half, but I kept it. I'm not

stealing it. We're going to account for it. (**Exhibit 4**, p. 100:7-9; 11-20)

23. On July 7, 2014, Mohammad Hamed filed a second complaint against Fathi Yusuf, more particularly alleging that certain property in St. Thomas, known as the Dorothea Property, was jointly owned by them (in the name of two entities known as Y & S and R & F) had been sold and that Yusuf had received the funds, but would reimburse Hamed for his half of the proceeds. (**Exhibit 9**)
24. On March 21, 2016, the parties filed a stipulation to consolidate the Dorothea Property claim with the current case. Counsel for Hamed and Yusuf signed a "stipulation Re: Consolidation" in which they stipulated "to substantively consolidate these cases, since the claims asserted in the more recently filed case, SX-2014-CY-278 the "278 Case" (assigned to Judge Molloy), may be treated as claims for resolution in the liquidation process of the older case, SX-2012-CV-370 [the "370 Case"] (assigned to Judge Brady)." See Stipulation attached as **Exhibit 10**, which was entered as an Order of the Court on October 13, 2016.
25. On September 30, 2016, Yusuf filed his Accounting Claims and Proposed Distribution Plan in the "370" case **which acknowledged this \$802,966 debt is owed:**

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. **One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Negeh Yusuf.** The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. **Yusuf has**

received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (*Hamed v. Yusuf*, Superior Court of St. Croix, SX-2014-CV-278), the parties stipulated to have these claims consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, **\$802,966 should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.** (Footnoted omitted. Emphasis added.) (**Exhibit 11**, p. 11) (Emphasis added.)

26. Additionally, in Yusuf's September 30, 2016 Accounting Claims and Proposed Distribution Plan, Yusuf stated that the report's Exhibit L, an email dated November 16, 2011, was evidence that a "payment was made on behalf of the purchaser of the Y & S and R & F stock and represented a portion of the proceeds of the sale of that stock." This transaction puts the payments for the Y & S stock (and by extension, the sale of the Dorothea property) squarely within the statute of limitations time period set by Judge Brady on July 21, 2017 in Memorandum Opinion and Order re Limitations on Accounting in *Hamed v Yusuf*, SX-12-CV-370. (**Group Exhibit 14**).

27. On October 30, 2017, Yusuf submitted his amended accounting claims which were limited to transactions occurring on or after September 17, 2006. Yusuf now contends that the proceeds from the sale of the Y & S and R & F stock are barred by Judge Brady's July 21, 2017 Order re Limitations on Accounting:

As a result of various adjustments. . . \$802,966.16 would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order. (**Exhibit 12**, pp. 14-15, footnote omitted)

28. Although Yusuf contended in his October 30, 2017 amended accounting claims that the proceeds from the sale of the Y & S and R & F stock were time barred by Judge Brady's July 21, 2017 Order re Limitations on Accounting, Yusuf states the opposite in another section of his amended accounting claims. Yusuf asserted that the email documenting a \$150,000 November 16, 2011 money transfer (Exhibit L) was made by the purchaser of the Y & S and R & F stock and the transfer represented a portion of the purchaser's payment for the stock. This puts the time frame for the receipt of payment for the Y & S stock directly in the post September 17, 2006 timeframe. (**Group Exhibit 14**)

Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation. See Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim [dated November 16, 2011].¹⁷

[Footnote 17]: This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock.

29. On May 15, 2018, Yusuf admitted in his response to Hamed's Fourth Request to Admit, *Hamed v Yusuf*, SX-12-CV-370, that a "balance of \$802,966.00 due to Hamed" and that acknowledgement was made after September 17, 2006.

Request to Admit 30 of 50:

* * *

Admit or Deny that on September 30, 2016, Yusuf's Accounting Claims and Proposed Distribution Plan, p. 3, as filed with the Court, Defendants acknowledged, as follows, in writing: a "balance of \$802,966.00 due to Hamed"-and that such acknowledgement was made after September 17, 2006.

b) an accounting of funds received by Yusuf for the sale of Y&S Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock **resulting in a balance of \$802,966.00 due to Hamed ...** (Emphasis added.)

Response:

Admitted that the words quoted above were set forth in Yusuf's Accounting Claims and Proposed Distribution Plan filed on September 30, 2016 without the emphasis added as to the boldfaced type and that such words were modified in Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2006 (at p. 4 and 14-15) as a result of the Court's July 21, 2017 Memorandum and Order Re Limitations on Actions. (**Exhibit 18**)

30. On December 18, 2018, Yusuf filed his supplemental responses to Hamed's discovery requests regarding the Dorothea property. He completely changed his version of events, now stating that the payments for the property occurred prior to 2006, that he had no physical records of the \$1.5 million in payments, and that interest was paid directly to a charity as part of the agreement to donate any interest.

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (**Exhibit 19**)

31. On January 7, 2019, the Special Master made the following finding of fact in his Order, *Hamed v Yusuf*, SX-12-CV-370:

[T]he Master finds that the following facts are undisputed: (1) Hamed and Yusuf each have 50% interest in the sale proceeds of Estate Dorothea; (2) Yusuf received the entire sale proceeds of Estate Dorothea; and (3) Hamed was never paid for his 50% interest in the sale proceeds. (**Exhibit 20**, pp. 5-6, footnotes omitted)

32. On January 15, 2019 in a supplemental interrogatory response, Yusuf revised his December 18, 2018 response and stated he could not recall for sure whether he received all of the Y & S loan payments prior to 2006.

1. I was to receive the proceeds under the sales contract for the sale of the Dorothea Condo.

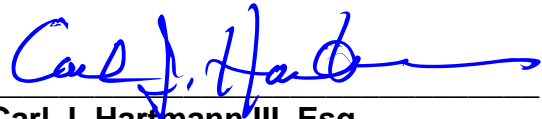
2. The full amount of \$1.5 million for the sale was received.

* * * *

4. I believe that I provided the handwritten "Dorothea" 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. (**Exhibit 21**)

Dated: February 25, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
Special Master
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Carl J. Hadd

Exhibit 1

MINUTES OF
THE ORGANIZATION MEETING

OF
Y + S Corporation, Inc.



The organization meeting of incorporators was held at
Law Offices of Robert L. King
on *September 26* 1994 at *P. M.*

The following were present

Hakima Salem

Robert L. King - attorney

Rifat Salem

Fathi Yusuf

being all the incorporators of the corporation.

Robert L. King was appointed chairman of the meeting and *Hakima Salem* was appointed secretary.


The secretary then presented and read to the meeting the waiver of notice of the meeting, subscribed by all the persons named in the certificate of incorporation, and it was ordered that it be appended to the minutes of the meeting.

The secretary then presented and read to the meeting a copy of the certificate of incorporation and reported that on *Sept. 21* 1994 the original thereof was filed in the office of the Secretary of State of this State. The copy of the certificate of incorporation was ordered appended to the minutes of the meeting.

EXHIBIT

1

Claim H-1



The secretary then presented assignments executed by the subscribing stockholders as follows:

<u>from</u>	<u>to</u>	<u>number of shares</u>
Y+S Corporation	Hakima Salem	1000
Y+S Corporation	Najeh Yusuf	500
Y+S Corporation	Hisham Hamed	500

RESOLVED, that the assignments of subscription rights as stated above are hereby approved and it is ordered that the assignments as executed by the subscribing stockholders be appended to the minutes of this meeting.

~~The secretary then presented to the meeting the resignation of~~

none

~~as directors of the corporation.~~

~~RESOLVED that the resignation of directors listed above is hereby approved and accepted and the form of resignation as executed by said directors be appended to these minutes.~~

The secretary then presented a proposed form of by-laws prepared by

Robert L. King.

counsel to the corporation. The proposed by-laws were read to the meeting, considered and upon motion duly made, seconded and carried, were adopted as and for the by-laws of the corporation and ordered appended to the minutes of the meeting.

The chairman of the meeting then called for the election of officers of the corporation. The following persons were nominated to the office preceding their name:

president

Fathi Yusuf

vice-president

Rifat Salem

secretary

treasurer

Hakima Salem

No further nominations being made the nominations were closed and the directors proceeded to vote on the nominees. The chairman announced that the foregoing nominees were elected to the offices set before their respective names.

The secretary submitted to the meeting a seal proposed for use as the corporate seal, a specimen stock certificate proposed for use as the corporate certificate for stock, the corporate record book, and the stock transfer ledger. Upon motion duly made, seconded and carried, it was

RESOLVED, that the seal now presented at this meeting, an impression of which is directed to be made in the minutes of this meeting, be and the same hereby is adopted as the seal of the corporation, and further

RESOLVED, that the specimen stock certificate presented to this meeting be and hereby is adopted as the form of certificate of stock to be issued to represent shares in the corporation, and further



NUMBER

SHARES

INCORPORATED UNDER THE LAWS OF THE TERRITORY OF THE U.S. VIRGIN ISLANDS

Y&S CORPORATION, INC.

FOR OFFICIAL BUSINESS ONLY - NOT VALID FOR PAYMENT OF TAXES

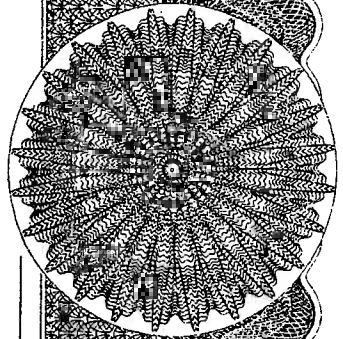
This Certificate shall

SPECIMEN

is the owner of _____ fully paid and non-assessable Shares of the above Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation, has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation.

Dated _____



RESOLVED, that the corporate record book, including the stock transfer ledger, be and hereby is adopted as the record book and stock transfer ledger of the corporation.

Upon motion duly made, seconded and carried, it was

RESOLVED, that the treasurer of the corporation be and hereby is authorized to pay all charges and expenses incident to or arising out of the organization of the corporation and to reimburse any person who has made any disbursement therefor.

Upon motion, duly made, seconded and carried, it was

RESOLVED, that an office of the corporation be established and maintained at
in the City of _____ State of _____
and that meetings of the board of directors from time to time may be held either at the principal office or at such other place as the board of directors shall from time to time order.

Upon motion, duly made, seconded and carried, it was

RESOLVED, that for the purpose of authorizing the corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for this corporation to transact business, the proper officers of this corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and, under the corporate seal, to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the corporation to transact business therein.

The chairman then stated that it was desirable to designate a depository for the funds of the corporation. Thereupon, on motion duly made, seconded and unanimously adopted, it was

RESOLVED, that the treasurer be and hereby is authorized to open a bank account in behalf of the corporation with
Bank of Nova Scotia
located at *Tutu Park Mall*
and a resolution for that purpose on the printed form of said bank was adopted and was ordered appended to the minutes of this meeting.

Upon motion duly made, seconded and carried, it was

RESOLVED, that the board of directors be and hereby is authorized to issue the unsubscribed capital stock of the corporation at such times and in such amounts as it shall determine, and to accept in payment thereof, cash, labor done, personal property, real property or leases thereof, or such other property as the board may deem necessary for the business of the corporation.

The secretary then presented to the meeting a written proposal from *Spread Eagle Holdings* dated *September 8 1994* and addressed to this corporation.

Upon motion duly made, seconded and carried, the said proposal was ordered filed with the secretary, and he was requested to append a copy of the proposal to the minutes.

The proposal was taken up for consideration and the following resolution was on motion unanimously adopted

WHEREAS, a written proposal has been made to this corporation which proposal has been appended to these minutes, and

WHEREAS, in the judgment of the board of directors the assets proposed to be transferred to the corporation are reasonably worth the amount of the consideration demanded therefor, and that it is in the best interests of this corporation to accept the said offer as set forth in said proposal,

NOW THEREFORE, IT IS RESOLVED that said offer, as set forth in said proposal, be and the same hereby is approved and accepted, and that in accordance with the terms thereof, this corporation shall as full payment for said property *in U.S. currency.* ~~issue to said offeror(s) or nominee(s)~~ fully paid and non-assessable shares of this corporation, and it is

FURTHER RESOLVED, that upon the delivery to this corporation of said assets and the execution and delivery of such proper instruments as may be necessary to transfer and convey the same to this corporation, the officers of this corporation are authorized and directed to ~~execute and deliver the certificate or certificates for such shares as are required to be issued and delivered on acceptance of said offer in accordance with the foregoing.~~ *to receive title in the name of the corporation.*

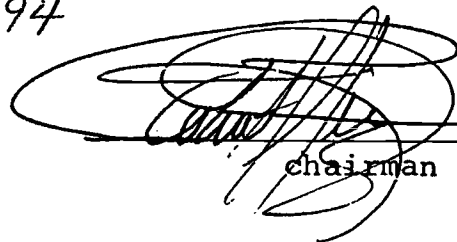
Upon motion duly made, seconded and carried, it was

RESOLVED, that the corporation proceed to carry on the business for which it was incorporated, and further

RESOLVED, that the signing of these minutes shall constitute full ratification thereof and waiver of notice of the meeting by the signatories.

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting was adjourned.

Dated: *September 26, 1994*


_____ chairman

Hakima Sol
_____ secretary

A true copy of each of the following papers referred to in the foregoing minutes is appended hereto:

Waiver of notice of the meeting
Certificate of incorporation
Assignments of subscription
Resignation of directors
By-laws
Specimen stock certificates
Resolution designating depository of funds
Proposal

WAIVER OF NOTICE
OF THE ORGANIZATION MEETING

OF
Y+S Corporation, Inc.

We, the undersigned, being all the incorporators named in the certificate of incorporation of the above corporation hereby agree and consent that the organization meeting thereof be held on the date and at the time and place stated below and hereby waive all notice of such meeting and of any adjournment thereof.

Place of meeting *Law Offices of Robert L. King*
Date of meeting *September 26, 1994*
Time of meeting *5:00 P.M.*

[Signature]

Hakima Saben

Rafiq Ali Selam

[Signature]

Dated: *September 26, 1994*

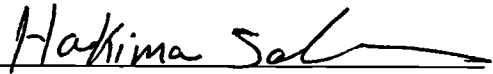
RATIFICATION OF ORGANIZATION MEETING

OF

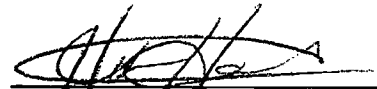
Y + S Corporation, Inc.

We, the undersigned stockholders, having read the minutes of the organization meeting of the corporation held on *Sept. 26* 1994 do hereby ratify, approve and confirm the actions taken and business transacted at said meeting as reported in the minutes of the meeting.

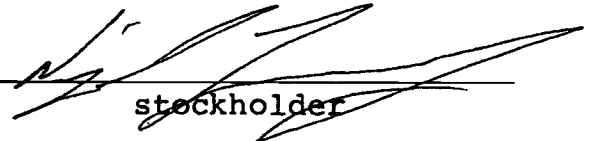
Dated: *Sept. 26, 1994*



stockholder



stockholder



stockholder

stockholder

ratification

HAMD601597

EXHIBIT H
CERTIFICATE OF NON-FOREIGN STATUS

M:\5000\41\PS.2

FIRPTA AFFIDAVIT

TERRITORY OF THE VIRGIN ISLANDS)
) ss:
JUDICIAL DIVISION OF ST. THOMAS & ST. JOHN)

Section 1445 of the Internal Revenue Code, as applied in the U.S. Virgin Islands, provides that a transferee of a Virgin Islands real property interest must withhold tax if the transferor is a foreign person. To inform the transferee, _____, that withholding of tax is not required upon the disposition of

Parcel Nos. 17-1, 17-2, 17-C, Remainder Parcel No. 17, Parcel No. 18-C, Remainder Parcel No. 18, Remainder Parcel No. 19, and Parcels No. 19-1 and 19-2 Estate Dorothea No. 6 Little Northside Quarter St. Thomas, U.S. Virgin Islands as shown on P.W.D. Nos. B9-488-T78 and B9-489-T78, dated April 17, 1978 and June 18, 1978, respectively, and P.W.D. No. B9-312-T70, dated December 8, 1970 together with all of the improvements located thereon and the appurtenances thereunto belonging including, without limitation, all of the Grantor's right, title and interest in and to the rights-of-way and estate roads shown on said P.W.D. Drawings; but excluding Parcel No. 17-2-A Estate Dorothea as shown on P.W.D. No. D9-3308-T86 and Parcel No. 18-C-1 Estate Dorothea as shown on P.W.D. No. D9-4092-T87 and Parcel No. 17-1-A Estate Dorothea as shown on O.L.G. Drawing No. _____; and including the following units and common area interests appurtenant thereto, of the condominium development known as Dorothea Beach Condominiums-Stage I, identified and described as such in a Declaration Establishing a Plan for Condominium Ownership of Parcel 17-2-A dated January 21, 1986 and filed for recording in the Office of the Recorder of Deeds for the District of St. Thomas and St. John, U.S. Virgin Islands on January 24, 1986 in Book 27-Y, Page 37, Document No. 40 and indexed in Auxiliary 21(G), Page 100, and located at Parcel No. 17-2-A Estate Dorothea, No. 6 Little Northside Quarter, St. Thomas, U.S. Virgin Islands: Unit Numbers A1-A, A2-A, A4-B, B1-A, B1-D, B1-E, B1-F, B1-G, B1-H, B2-A, B2-C, B2-D, B2-F, B2-G, B2-H, B3-A, B3-B, B3-C, B3-D, B3-E, B3-F, B3-G, B3-H, together with all of the rights privileges and appurtenances belonging thereto, including

but not limited to the units' respective percentages of common area interests attributable thereto as more fully set forth on Schedule A attached hereto and made a part hereof;

by _____, as President of SPREAD EAGLE PARADISE HOLDINGS, INC., a U.S. Virgin Islands Corporation, the undersigned hereby certifies the following on behalf of Spread Eagle Paradise Holdings, Inc.:

1. Spread Eagle Paradise Holdings, Inc. is not a foreign person (as that term is defined in the Internal Revenue Code and Income Tax Regulations as applied in the U.S. Virgin Islands).
2. The taxpayer identification number for Spread Eagle Paradise Holdings, Inc. is 66-0500675.
3. The address of Spread Eagle Paradise Holdings, Inc. is P.O. Box 6880, St. Thomas, U.S. Virgin Islands 00802.

Spread Eagle Paradise Holdings, Inc. understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief, believe it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Spread Eagle Paradise Holdings, Inc.

SPREAD EAGLE PARADISE HOLDINGS, INC.

By: _____,
_____, (title)

SWORN TO AND SUBSCRIBED THIS _____ DAY OF _____, 1994.

Notary Public

M:\5000\41\FIRP.2

HAMD601600

Exhibit 2

906.75

49/77 7340

332 ~~338~~

ATTY King

6408
1994

SPECIAL WARRANTY DEED

THIS INDENTURE is made this 21st day of September, 1994, by and between SPREAD EAGLE PARADISE HOLDINGS, INC., a U.S. Virgin Islands corporation, whose address is P.O. Box 6880, Charlotte Hallie, St. Thomas, U.S. Virgin Islands 00801 (hereinafter referred as the "Grantor"), and Y & S CORPORATION, INC., a U.S. Virgin Islands corporation (hereinafter referred to as the "Grantee"), whose mailing address is % Attorney Robert L. King, Edward Passage Hotel Courtyard, P.O. Box 9768, St. Thomas, VI 00801.

WITNESSETH:

NOW, THEREFORE, in consideration of NINE HUNDRED THOUSAND DOLLARS (\$900,000.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee, and to its successors and assigns, the real property described described in Exhibit A attached hereto and made a part hereof;

TO HAVE AND TO HOLD the real property conveyed hereby unto the Grantee, and its successors and assigns, in fee simple absolute forever;

SUBJECT, HOWEVER, to and with the benefit of U.S. Virgin Islands zoning regulations and declarations, covenants, restrictions and easements of record.

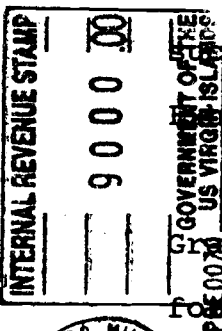
AND THE GRANTOR WARRANTS that the Grantor has not done anything, nor suffered anything to be done, whereby the premises have been encumbered in anyway except as set forth or referred to herein.

EXHIBIT
2

Claim H-1

185-0740

HAMD241705



IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

WITNESSES:

SPREAD EAGLE PARADISE HOLDINGS, INC.

[Handwritten signature]

By: *[Handwritten signature]* Vice President

[SEAL]

TERRITORY OF THE U.S. VIRGIN ISLANDS)
DISTRICT OF ST. THOMAS AND ST. JOHN) SS:

The foregoing instrument was acknowledged before me this 21st day of September, 1994, by Thomas J. O'Hara (Vice) President of Spread Eagle Paradise Holdings, Inc., a U.S. Virgin Islands corporation on behalf of said corporation.

[Handwritten signature]
NOTARY PUBLIC
OFFICE OF THE REGISTER OF DEEDS
ST. THOMAS, ST. JOHN, VI
01 SEP 27 PM 3:21

M:\5000\41\SWD.Y&S

NOTED IN THE CADASTRAL RECORDS FOR COUNTRY/TOWN PROPERTY, BOOK FOR ESTATE DOROTHEA, NO. 6 LITTLE NORTHSIDE QUARTER, ST. THOMAS, VIRGIN ISLANDS.

Cadastral Survey / Tax Assessor Offices
St. Thomas, V.I. Dated: Sept. 27, 1994.
Verne R. Callwood, Tax Assessor

[Handwritten signature]
Office of the Lieutenant Governor

RECORDED
IN THE RECORDER'S OFFICE FOR THE DISTRICT OF ST. JOHN, VIRGIN ISLANDS OF THE U.S.A. AND ENTERED IN THE PROPERTY REGISTER FOR (AUXILIARY)
PAGE 252
QUARTER NO. 6
DATE 09/27/94
REGISTERED

6408(A)
1994

EXHIBIT A

Parcel No. 17-1 as shown on P.W.D. Drawing No. B9-488-T78 (excluding, however, Parcel No. 17-1-A as shown on O.L.G. Drawing No. D9-5726-T94 consisting of .5 acre, more or less) and consisting of 10.518 acres, more or less;

Parcel No. 17-2 as shown on P.W.D. Drawing No. B9-489-T78 (excluding, however, Parcel No. 17-2-A as shown on P.W.D. Drawing No. D9-3308-T86 consisting of 1.9882 acres, more or less) and consisting of 2.5248 acres, more or less;

Parcel No. 18-C as shown on P.W.D. Drawing No. B9-488-T78 (excluding, however, Parcel No. 18-C-1 consisting of .5 acre, more or less, as shown on P.W.D Drawing No. D9-4092-T87) consisting of 1.6642 acres, more or less;

Remainder Parcel No. 18 consisting of 11.4485 acres, more or less, (Remainder of Parcel 18 consists of Parcel 18 as shown on P.W.D Drawing No. A3-8-T31 consisting of 16.5 acres, more or less, specifically excluding, however, Parcel Nos. 18A as shown on P.W.D. Drawing No. B9-354-T72 consisting of .7778 acre, more or less, Parcel Nos. 18B, 18B-1 and 18B-2 as shown on P.W.D Drawing No. G9-1961-T72 consisting of a total 1.1094 acres, more or less, Parcel No. 18C as shown on P.W.D Drawing No. B9-488-T78 consisting of 2.1643 acres, more or less, and portions of Parcel Nos. 16J and 16I as shown on P.W.D. Drawing No. D9-212-T59 and Parcel No. 16K-1 as shown on P.W.D. Drawing No. B9-354-T72, said portions consisting of a total of less than 1.0 acre); and

Parcel No. 19 as shown on P.W.D. Drawing No. A3-8-T31, consisting of 12.0 acres, more or less, (excluding Parcel No. 19-1, consisting of 2.1110 acres, more or less, and including Parcel No. 19-2, consisting of 3.501 acres, more or less, both as shown on P.W.D Drawing No. B9-489-T78)

Estate Dorothea
No. 6 Little Northside Quarter
St. Thomas, U.S. Virgin Islands
together with all of the improvements located
thereon and the appurtenances thereunto belonging
including, without limitation, all of the Grantor's
right, title and interest in and to the rights-of-
way and estate roads shown on said P.W.D. Drawings

m:\5000\41\exA.Y&S

ECA

94 SEP 28 PM 3:21

OFFICE OF THE RECORDER OF DEEDS
ST. THOMAS/ST. JOHN VI

RECORDED IN THE RECORDER'S OFFICE FOR THE DISTRICT
 OF ST. THOMAS AND ST. JOHN, VIRGIN ISLANDS OF THE U.S.A.
 BOOK 43 PAGE 332 SUB NO. 6408(A) ENTERED IN
 THE REAL (PERSONAL) PROPERTY REGISTER FOR
 _____ QUARTER NO. _____ (AUXILIARY)
 _____ PAGE 27
 DATE: Sept. 28 19 94
Maria T. Brown
 DISTRICT RECORDER OF DEEDS

185-0743

HAMD241708

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE. ST. THOMAS, V.I. 00001

DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH TITLE 28, V.I.C., SECTION 121 AS
AMENDED, THIS IS CERTIFICATION THAT THERE ARE NO REAL

PROPERTY TAXES OUTSTANDING FOR D. & C. DEV., INC.

17-1 & 18C Dorothea,
Northside Qtr. (PARCEL NO. 1-01103-0105-00

_____).

RESEARCHED BY:

Stanley Harson
Stanley Harson

TITLE:

Enforcement Officer III

DATE:

September 23, 1994

VERIFIED BY:

Ianthe de Alomal
Ianthe de Alomal

TITLE:

Teller II

DATE:

September 23, 1994

COLLECTOR NO.

01

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE. ST. THOMAS, V.I. 00801

DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH TITLE 28, V.I.C., SECTION 121 AS
AMENDED, THIS IS CERTIFICATION THAT THERE ARE NO REAL

PROPERTY TAXES OUTSTANDING FOR D. & C. DEV., INC.

Rem. 17-2 Dorothea,
Northside Qtr. (PARCEL NO. 1-01103-0104-00

_____).

RESEARCHED BY:

Stanley Parson
Stanley Parson

TITLE:

Enforcement Officer III

DATE:

September 23, 1994

VERIFIED BY:

Ianthe de Alomal
Ianthe de Alomal

TITLE:

Teller II

DATE:

September 23, 1994

COLLECTOR NO.

01

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00001

DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH TITLE 28, V.I.C., SECTION 121 AS
AMENDED, THIS IS CERTIFICATION THAT THERE ARE NO REAL

PROPERTY TAXES OUTSTANDING FOR D. & C. DEV., INC.

18 Dorothea,
Northside Qtr. (PARCEL NO. 1-01103-0203-00

_____).

RESEARCHED BY: *Stanley Parson*
Stanley Parson

TITLE: Enforcement Officer III

DATE: September 23, 1994

VERIFIED BY: *Ianthe de Alomal*
Ianthe de Alomal

TITLE: Teller II

DATE: September 23, 1994

COLLECTOR NO. 01

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE. ST. THOMAS, V.I. 00801

DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH TITLE 28, V.I.C., SECTION 121 AS
AMENDED, THIS IS CERTIFICATION THAT THERE ARE NO REAL

PROPERTY TAXES OUTSTANDING FOR D. & C. DEV., INC.

Rem. 19 & 19-2 Dorothea,
Northside Qtr. (PARCEL NO. 1-01103-0201-00

_____).

RESEARCHED BY:

Stanley Parson
Stanley Parson

TITLE:

Enforcement Officer III

DATE:

September 23, 1994

VERIFIED BY:

Ianthe de Alomal
Ianthe de Alomal

TITLE:

Teller II

DATE:

September 23, 1994

COLLECTOR NO.

01

HAMD241713

DUDLEY, TOPPER AND FEUERZEIG ATTORNEYS AT LAW 1A FREDERIKSBERG GADE P.O. BOX 756, CHARLOTTE AMALIE ST. THOMAS, U.S. VIRGIN ISLANDS 00804 (809) 774-4422

Exhibit 3

107-

339-343

2/3/108 12:50

Atty King

1152
1994

SPECIAL WARRANTY DEED

THIS INDENTURE is made this 21st day of September, 1994, by and between SPREAD EAGLE PARADISE HOLDINGS, INC., a U.S. Virgin Islands corporation, whose address is P.O. Box 6880, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00801 (hereinafter referred to as the "Grantor"), and R & F CONDOMINIUMS, INC., a U.S. Virgin Islands corporation (hereinafter referred to as the "Grantee"), whose mailing address is c/o Attorney Robert L. King Windward Passage Hotel Courtyard, P.O. Box 97108, St. Thomas, VI 00801.

WITNESSETH:

NOW, THEREFORE, in consideration of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee, and to its successors and assigns, the real property described described in Exhibit A attached hereto and made a part hereof;

TO HAVE AND TO HOLD the real property conveyed hereby unto the Grantee, and its successors and assigns, in fee simple absolute forever;

SUBJECT, HOWEVER, to and with the benefit of U.S. Virgin Islands zoning regulations and declarations, covenants, restrictions and easements of record.

AND THE GRANTOR WARRANTS that the Grantor has not done anything, nor suffered anything to be done, whereby the premises have been encumbered in anyway except as set forth or referred to herein.

INTERNAL REVENUE STAMP
2000.00
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
PRE0070



EXHIBIT
3

HAMD241714

Claim H-1

185-0749

EXHIBIT A

The following units and common area interests appurtenant thereto, of the condominium development known as Dorothea Beach Condominiums-Stage I, identified and described as such in a Declaration Establishing a Plan for Condominium Ownership of Parcel 17-2-A dated January 21, 1986 and filed for recording in the Office of the Recorder of Deeds for the District of St. Thomas and St. John, U.S. Virgin Islands on January 24, 1986 in Book 27-Y, Page 37, Document No. 40 and indexed in Auxiliary 21(G), Page 100, and located at Parcel No. 17-2-A Estate Dorothea, No. 6 Little Northside Quarter, St. Thomas, U.S. Virgin Islands: Unit Numbers A1-A, A2-A, A4-B, B1-A, B1-D, B1-E, B1-F, B1-G, B1-H, B2-A, B2-C, B2-D, B2-F, B2-G, B2-H, B3-A, B3-B, B3-C, B3-D, B3-E, B3-F, B3-G, B3-H, together with all of the rights privileges and appurtenances belonging thereto, including but not limited to the units' respective percentages of common area interests attributable thereto as more fully set forth on Schedule A attached hereto and made a part hereof.

m:\5000\41\exa.r&f

154
339
1137
219
Sept 108
Marie T. [Signature]
94

OFFICE OF THE RECORDER OF DEEDS
ST. THOMAS, ST. JOHN VI

91 SEP 28 PM 3:22

(204)

SCHEDULE A

1152(B)
1994

<u>Unit No.</u>	<u>Percentage of Common Areas Interests</u>
A1-A	4.5454
A2-A	4.5454
A4-B	4.5454
B1-A	2.2727
B1-D	2.2727
B1-E	2.2727
B1-F	2.2727
B1-G	2.2727
B1-H	2.2727
B2-A	2.2727
B2-C	2.2727
B2-D	2.2727
B2-F	2.2727
B2-G	2.2727
B2-H	2.2727
B3-A	2.2727
B3-B	2.2727
B3-C	2.2727
B3-D	2.2727
B3-E	2.2727
B3-F	2.2727
B3-G	2.2727
B3-H	2.2727

m:\5000\41\sch.a

IN THE RECORDER'S OFFICE FOR THE DISTRICT OF
 COLUMBIA, VIRGIN ISLANDS OF THE U.S.A.
 SUB NO. 1152, AND ENTERED IN
 (AUXILIARY)
 QUARTER NO. 108
 DATE: 21(9) Sept. 28, 1994
 District Recorder of Deeds

OFFICE OF THE RECORDS & FEES
 ST. THOMAS, VI

94 SEP 28 PM 3:22

EAH

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE. ST. THOMAS, V.I. 00001

DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH TITLE 28, V.I.C., SECTION 121 AS
AMENDED, THIS IS CERTIFICATION THAT THERE ARE NO REAL

PROPERTY TAXES OUTSTANDING FOR D. & C. DEV., INC.
17-2-A Dorothea,
Northside Qtr. (PARCEL NO. 1-01103-0107-00
_____).

RESEARCHED BY:

Stanley Parson
Stanley Parson

TITLE:

Enforcement Officer III

DATE:

September 23, 1994

VERIFIED BY:

In de Alomal
Janthe de Alomal

TITLE:

Teller II

DATE:

September 23, 1994

COLLECTOR NO.

01

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

WITNESSES:

SPREAD EAGLE PARADISE HOLDINGS, INC.

[Signature]

By:

[Signature] Vice President

[SEAL]

TERRITORY OF THE U.S. VIRGIN ISLANDS)
DISTRICT OF ST. THOMAS AND ST. JOHN) SS:

The foregoing instrument was acknowledged before me this 21st day of September, 1994, by Thomas T. O'Hara, as (Vice) President of Spread Eagle Paradise Holdings, Inc., a U.S. Virgin Islands corporation on behalf of said corporation.

[Signature]

NOTARY PUBLIC

91 SEP 27 PM 3:21
OFFICE OF THE LIEUTENANT GOVERNOR
ST. THOMAS, ST. JOHN V.I.

M:\5000\41\SWD.y&s

NOTED IN THE CADASTRAL RECORDS FOR COUNTRY/TOWN PROPERTY, BOOK FOR DOROTHEA BEACH CONDOMINIUM, Located on ESTATE DOROTHEA, NO. 6 LITTLE NORTHSIDE QUARTER, ST. THOMAS, VIRGIN ISLANDS.

ATTEST:

It is hereby certified that the above mentioned property/s which, according to SPECIAL WARRANTY DEED dated September 21, 1994 belongs to: R & F CONDOMINIUMS, INC.,

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: Sept. 27, 1994.

[Signature]
Verne R. Callwood, Tax Assessor
Office of the Lieutenant Governor

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: Sept. 27, 1994.

[Signature]
Verne R. Callwood, Tax Assessor
Office of the Lieutenant Governor
2187#1473080

EOA

94 SEP 28 PM 3:22

OFFICE OF THE COMMISSIONER OF RECORDS
ST. THOMAS/ST. JOHN VI

RECORDED [REDACTED] IN THE RECORDER'S OFFICE FOR THE DISTRICT
 OF ST. THOMAS AND ST. JOHN, VIRGIN ISLANDS OF THE U.S.A.
 BOOK 437 339 SUB NO. 152 AND ENTERED IN
 THE PUBLIC OFFICE PROPERTY REGISTER FOR _____
 _____ QUARTER NO: _____ (AUXILIARY)
 DATE: 21 (9) Sept 28 19 94
Malcolm J. Smith
 DISTRICT RECORDER OF DEEDS

DUDLEY, TOPPER AND FEUERZEIG ATTORNEYS AT LAW 1A FREDERIKSBERG GADE P.O. BOX 756, CHARLOTTE AMALIE ST. THOMAS, U.S. VIRGIN ISLANDS 00804 (809) 774-4422

Exhibit 4

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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.) Case No. SX-12-CV-370
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED, MUFEED)
HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

EXHIBIT

4

Claim H-1

HAMD601298

APPEARANCES**A-P-P-E-A-R-A-N-C-E-S****For the Plaintiff/Counterclaim Defendant:**

Law Offices of
Joel H. Holt
2132 Company Street
Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Joel H. Holt

and

Law Offices of
Carl Hartmann, III
5000 Estate Coakley Bay, #L6
Christiansted, U.S. Virgin Islands 00820

By: Carl Hartmann, III

For the Defendant/Counterclaimants

Law Offices of
Dudley, Topper & Feuerzeig
P.O. Box 756
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

By: Gregory H. Hodges

and

Law Offices of
Nizar A. DeWood
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830

By: Nizar A. DeWood

Cheryl L. Haase
(340) 773-8161

HAMD601299

APPEARANCES1
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25**For Waleed Hamed:**

Law Offices of
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824

By: Mark W. Eckard

For Fathi Yusuf:

Law Offices of
K. Glenda Cameron
2006 Eastern Suburb, Suite 101
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: K. Glenda Cameron

Also Present:

Josiah Wynans, Videographer
Kim Japinga
Waleed Hamed
Hisham Hamed
Mufeed Hamed
Maher Yusuf

Cheryl L. Haase
(340) 773-8161

Pages 99-101

FATHI YUSUF -- DIRECT

1 (Deposition Exhibit No. 12 was
2 marked for identification.)

3 **Q. (Mr. Holt)** All right. All right. Showing you
4 Exhibit No. 12, can you tell me if you recognize that? Do
5 you recognize that document --

6 **A.** Yes, it's my handwriting.

7 **Q.** And at the top it has "Dorothia" written, is that
8 correct?

9 **A.** Yes.

10 **Q.** Can you tell me, what -- what -- what what does
11 this transaction mean?

12 **A.** The transaction that we bought -- we was in
13 partnership with a third person, that we own 50 percent of
14 the Dorothia real estate -- a real estate in Dorothia, and
15 the other partner owned the other 50 percent.

16 Finally, I come to this decision to sell it
17 to my partner. He bought it at one-and-a-half million, and
18 this number below, it was an idea to Mr. Hamed what would
19 I -- I am counted for, up to the time I give it to him. I

20 tell him what it is. By example, Jordan Fund, 75,000, it's
21 a checking account. This, I'm going to reclaim it back.

22 Because at that time I did it, I did it in the most honest
23 way, and we end up transferring property to myself. That
24 transfer the property cost me money, well, I have to put
25 that money out of my own pocket, even though the obligation

Cheryl L. Haase
(340) 773-8161

HAMD601396

FATHI YUSUF -- DIRECT

1 was on both of us.

2 And then I'm going to use whatever it cost me
3 to transfer that property into my name, at the expense of
4 both of us, even though we missing three, four property that
5 he never transferred it to me. It's still in his name. He
6 said no, but I can claim, I can prove, still in his name.

7 **Q.** Okay. So now the first line, Dorothisia,
8 1.5 million, those were the funds that you received when the
9 other partner bought you out or paid you off?

10 **A.** Excuse me, sir?

11 **Q.** The first line, the 1.5 million on that line?

12 **A.** Yeah, this is a fund I received -- I received from
13 Dorothisia.

14 **Q.** And is that actually technically YNH Investments,
15 Inc.? Is that --

16 **A.** Yes.

17 **Q.** Okay. And -- and so those were funds that you
18 received from them, is that correct?

19 **A.** I received for our half, but I kept it. I'm not
20 stealing it. We're going to account for it.

21 **Q.** Okay.

22 **A.** This is yours, this is mine.

23 Excuse me. I going back a little bit towards
24 the 251,000. That wasn't Mr. Hamed money. Mr. Hamed, I
25 were giving him \$150,000 to the batch plant, and I have

FATHI YUSUF -- DIRECT

1 proof I deposited it for him in St. Thomas. And up to now,
2 he denying that money. That money, I give him \$150,000 to
3 deliver to the batch plant, and he claim that the batch
4 plant is ours.

5 It's not ours. We put it just not to let the
6 town fight together.

7 **Q.** Okay. I am going to ask you about the batch
8 plant, but --

9 **A.** Oh, whenever you want.

10 **Q.** -- I want to try to stick on this document?

11 **A.** Yeah. But I want to show you why these people, I
12 believe they owe me a lot of money.

13 **Q.** I understand.

14 **A.** Why should I pay them? Let's sit down and say,
15 What is yours and what is mine.

16 **Q.** No problem. Let me go down this list.

17 Dorothia is -- the 1.5 million were -- were
18 monies paid that belonged to you and -- and Mr. Hamed?

19 **A.** Yes.

20 **Q.** And then the Jordan fund, it says 75,000 dinar. I
21 take it that, converted, that's 105,932 U.S. dollars?

22 **A.** Right.

23 **Q.** Okay. and those are funds that are to be split
24 between you and Mr. Hamed, as well?

25 **A.** I explained to you, sir.

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FATHI YUSUF -- DIRECT

1 Q. Which is another -- another item.

2 A. Definitely this was an expense. I brought that
3 money out.

4 Q. Okay. So you start with the 1.5 million, which is
5 50/50, and then you start adding --

6 A. One million and a half is absolutely 50/50. I'm
7 not hiding anything.

8 Q. Okay. And when did you get that money?

9 A. I get that money, I don't have a date. But I get
10 that money maybe, I can guarantee you, it's not three years.
11 It's less than three years. I sold this property many, many
12 years ago.

13 Q. Okay. So you got this money, would it be fair to
14 say you got it in 2012?

15 A. I don't know when.

16 Q. Okay.

17 A. I don't remember.

18 Q. Well, this lawsuit was filed in August of 2012.

19 Did you get the money before this lawsuit was filed?

20 MR. HODGES: September 2012.

21 A. Maybe. Look at the date. Go to the owner and
22 look at the date, or go to the public recorder office.
23 That's something that can be resolved.

24 Q. (Mr. Holt) Okay.

25 A. I don't remember.

CERTIFICATE**C-E-R-T-I-F-I-C-A-T-E**

1
2
3 I, CHERYL L. HAASE, a Registered Professional Reporter
4 and Notary Public No. NP-158-03 for the U.S. Virgin Islands,
5 Christiansted, St. Croix, do hereby certify that the above
6 and named witness, FATHI YUSUF, was first duly sworn to
7 testify the truth; that said witness did thereupon testify
8 as is set forth; that the answers of said witness to the
9 oral interrogatories propounded by counsel were taken by me
10 in Stenotype and thereafter reduced to typewriting under my
11 personal direction and supervision.

12 I further certify that the facts stated in the caption
13 hereto are true; and that all of the proceedings in the
14 course of the hearing of said deposition are correctly and
15 accurately set forth herein.

16 I further certify that I am not counsel, attorney or
17 relative of either party, nor financially or otherwise
18 interested in the event of this suit.

19 IN WITNESS WHEREOF, I have hereunto set my hand as such
20 Certified Court Reporter on this the 3rd day of May, 2014,
21 at Christiansted, St. Croix, United States Virgin Islands.

22 _____
23 Cheryl L. Haase, RPR
24 My Commission Expires 2/10/16
25

Exhibit 5

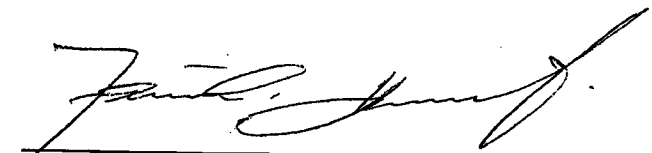
June 15, 2000

Directors:

I, Fathi Yusef, hereby tender my resignation as director of Y & S Corporation, Inc. to take effect immediately.

Dated:

Very truly yours,



Fathi Yusef

EXHIBIT

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Claim H-1

HAMD203531

Exhibit 6

AGREEMENT OF SALE OF STOCK

This Agreement is entered this *15th* day of June 2000, by and between Hisham Hamed and Najah Yusef of 9-C Princess Hill, St. Croix, United States Virgin Islands (hereinafter referred to as "Seller") and Hakima Salem of 2E & 2F Estate Annas Retreat, St. Thomas, United States, Virgin Islands (hereinafter referred to as "Buyer").

WHEREAS, Hashim Hamed, Najah Yusef and Hakima Salem are the holders and registered owners of 100 % of the issued and outstanding shares of Y & S Corporation.; and


WHEREAS, Hisham Hamed and Najah Yusef, desire to sell and transfer all of their 1,000 shares of Y & S Corporation, to the Buyer pursuant to the obligations expressed in the shareholder agreement entered on September 20, 1994; and

WHEREAS, the Buyer is ready, willing and able to purchase the referenced stock pursuant to the terms of the shareholders agreement dated September 20, 1994 and in accord with the terms hereinafter provided;

EXHIBIT

6

Claim H-1



NOW, therefore, in consideration of the promises and conditions hereinafter set forth and heretofore and hereinafter expressed the seller and buyer agree as follows:

1. Seller agrees to sell and transfer 1000 shares of common stock of Y & S Corporation, Inc. representing all of seller's stock ownership interest in that corporation, into escrow and after final payment, to register such transfer of shares upon the books of the corporation.

2. In consideration of the transfer of its 1000 shares of Y & S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusef of 9-C Princess Hill, St. Croix the sum of Nine Hundred Thousand (\$ 900,000.00) Dollars.

3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. The first installment shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.

4. Interest: The installments due hereunder shall accrue interest on the outstanding balance at a rate of twelve percent (12%) per annum until the entire balance is paid in full. Payment of interest is waived provided payment of each installment due is made within 30 days of the due date for such installment. In the event that an installment is late, the interest payable or accruable to the date of the late payment shall be paid to the IQRA School in St. Croix, United States Virgin Islands. Further, in the event of default, as default is defined hereunder, all interest accruable under this agreement shall be payable to the IQRA School.

5. Default: It shall be a default under this agreement if Buyer shall fail to pay principal payments in the amount of Four Hundred Fifty Thousand (\$450,000.00) Dollars on or

before January 15,2002 and the grace period herein provided. It shall also be a default if Buyer shall fail to make timely payment of installments due on January 15, 2003 or January 15, 2004 within the allotted grace period. In the event that Buyer shall default as such term is defined herein, the seller may accelerate the remaining indebtedness, making the entire amount then outstanding, immediately due and payable. Upon acceleration and notice thereof, Buyer shall pay the entire principal balance then outstanding to the Seller's Nominee, Fathi Yusef and shall pay any and all accrued interest to the IQRA School.

6. Escrow: The stock sold under this agreement shall be endorsed by the sellers to the Buyer and such stock shall be held in Escrow by Robert L. King, Esq. until all payments due hereunder have been paid to the Seller's Nominee. Robert L. King, as escrow agent shall deliver the stock certificates sold hereunder to the Buyer within 30 days of receipt of written notice from seller that the entire purchase price has been paid in full. The corporation shall immediately thereafter cause the transfer of shares to be registered upon the books of the corporation. If Buyer shall default in making the payments as required by this agreement within the grace periods provided, and such default is not cured within 60 days after such default, then escrow agent may return said stock certificates to the seller or seller's nominee without recourse from either Buyer or Seller.

Both Buyer and Seller agree to hold escrow agent harmless from all manner of cost and liability as a result of escrow agent's attempt to perform his functions under this agreement.

In the event of a dispute over who should lawfully possess the stock certificates, escrow agent may, but is not required to, refuse to deliver the certificates to either Seller or Buyer and may hold the same pending a decision by an arbitrator. The arbitrator's decision shall be final and binding on the parties. Escrow agent shall act in accord with the

arbitrator's decision, notwithstanding any actual or proposed appeal by the non-prevailing party. Upon delivery of the stock certificates pursuant to arbitrator's decision or discretionary delivery to the seller, the escrow agent shall be discharged of his duties.

7. Arbitration. The Parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or at P.O. Box 50191, Minneapolis, Mn. 55405. This agreement shall be interpreted under the Federal Arbitration Act.

8. Buyer shall have the right from the date hereof to act, with respect to the certificates sold with all authority of the actual owner of such certificates except that the buyer may not sell such stock certificates unless the proceeds of such sale are first applied to reduce the indebtedness to the Seller.

9. Any and all bank accounts presently in the name of the corporation shall remain the property of the corporation and any claim of entitlement which could be made by seller to such accounts is hereby waived.

10. Any and all obligations of the corporation, including but not limited to, income tax; real property tax; condominium fees; insurance, employment taxes or social security shall remain the obligation of the corporation and buyer shall hold seller harmless from each and every such obligation. Buyer further agrees to hold seller harmless of and from

liability of every kind and nature which is related to or derived in whole or part from the existence of Y & S Corporation, Inc.

11. In the event that Buyer shall sell any of the assets of Y & S Corporation, Inc. before the entire balance has been paid in full, the amount so received shall be first applied to liquidate the balance to the seller.

DATED: June 15, 2000

Rufiq Ali Sal
WITNESS

HISHAM RAMEED
HISHAM RAMEED

Faiz Ahmad
WITNESS

NAJAH YUSUF
NAJAH YUSUF

WITNESS

WITNESS
WITNESS

HAKIMA SALEM
HAKIMA SALEM

Exhibit 7

**NOTICE OF PAYMENT OF PURCHASE PRICE AND
AUTHORIZATION TO RELEASE STOCK CERTIFICATES**

To: Robert L. King, Esq.

Pursuant to that certain agreement of Sale of Stock dated June 15th, 2000 by and between Hisham Hamed and Najah Yusef, as sellers, and Hakima Salem, as buyer, concerning the sellers' 1,000 shares of Y & S Corporation, a United States Virgin Islands corporation, the undersigned hereby gives you formal written notice that the purchase price has been paid in full on a timely basis and that you are authorized and directed to release the shares of stock that have been endorsed by the sellers to the buyer.

Buyer hereby authorizes and directs you to forward the endorsed shares of stock as well as the corporate minute book to:

Sellers

Hisham Hamed

Date: 2/18/12

Najah Yusef

Date: Feb. 19, 2012

Buyers

Hakima Salem

Date: _____

**EXHIBIT
7**

Claim H-1

Exhibit 8

Doroathia
Jordan Fund 75,000.-Dinar

1,500,000.00
105,932.00

1,605,932.00

Fatthi YUSUF.

← 617,000.00 ←

From Jordan " " "

← 105,932.00 ←

Balance for Fatthi yusuf

80,034.00.-

802,966.00

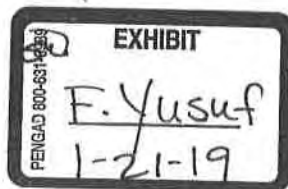
2
802,966.00

1,605,932.00

EXHIBIT

8

Claim H-1



HAMD583991

HAMD597792

Exhibit 9

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

MOHAMMAD HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

Case No.:2014-SX-CV- ____

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

COMPLAINT

Comes now Plaintiff, Mohammad Hamed, who files this Complaint against Fathi Yusuf alleging as follows:

1. This Court has jurisdiction over this matter pursuant to Title 4 V.I.C. §76(a).
2. Plaintiff, Mohammad Hamed ("Hamed") is a resident of St. Croix, United States Virgin Islands.
3. Defendant Fathi Yusuf ("Yusuf") is a resident of the St. Croix, United States Virgin Islands.
4. All acts and events described herein occurred within the Territory of the U.S. Virgin Islands.
5. Mohammad Hamed and Fathi Yusuf have been partners in Plaza Extra Supermarkets from 1986 to the present.
6. As part of that partnership the partners removed funds from the partnership and used them to invest in certain property on St. Thomas, in Estate Dorothea, using Y&S Corporation, Inc. as the vehicle for their investment.
7. Yusuf and Hamed agreed to liquidate the Estate Dorothea property.

**EXHIBIT
9**

Claim H-1

8. After Hamed provided the necessary Y&S corporation document to allow the sale, Yusuf informed Hamed that the sale had occurred and handwrote a document showing that the Dorothea property was liquidated for \$1,500,000, noting further that Hamed was owed \$802,955 as a result of this transaction and related offsets. **Exhibit 1.**
9. Fathi Yusuf received the funds and owes the funds to Hamed -- which Yusuf has admitted under oath. **Exhibit 2** (Deposition Testimony of Fathi Yusuf, April 2, 2014 at 99-105.)
10. Hamed is owed the \$802,955 and despite demands and Yusuf's agreement that it is owed to Hamed -- Hamed has not received the funds.

COUNT ONE: DEBT

11. Plaintiffs hereby incorporate the averments in the preceding paragraphs herein.
12. Defendant owes a debt to Plaintiff as a result of this transaction totaling \$802,955 plus prejudgment interest from the date the funds were made available to Yusuf.
13. Despite repeated demands, the funds have not been paid for the debt owing, so that Yusuf is liable to Hamed for this debt.
14. Plaintiff is injured in the deprivation of the funds and interest thereon.

COUNT II CONVERSION

15. Plaintiff hereby incorporates the averments in the preceding paragraphs herein.
16. Yusuf has converted the funds belonging to Hamed, treating them as his own.
17. As such, Yusuf is liable to Hamed for the conversion of the \$802,955.

18. Such willful misconduct constitutes conversion of these funds for which Yusuf is liable to Hamed.
19. Such willful and wanton conduct, amounting to theft of these funds, warrants an award of punitive damages as well.

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

- 1) An award of compensatory damages against the Defendant in the amount of \$802,955;
- 2) An award of prejudgment interest at the statutory rate of 9%;
- 3) An award of punitive damages against Defendant as determined by the trier of fact;
- 4) An award of attorney's fees and costs against Defendant; and
- 5) 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

Dated: July 7, 2014



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U.S. Virgin Islands 00820
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Carl J. Hartmann III, Esq.
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carl@carlhartmann.com

Exhibit 10

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 and Counterclaimants,

vs.

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

Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2012- CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

OFFICE OF THE
CLERK OF THE COURT
ST. CROIX, V.I.

16 MAR 21 P 4:40

Case No.: SX-2014- CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

STIPULATION RE: CONSOLIDATION

The parties in each of the above captioned matters, by counsel, hereby stipulate to substantively consolidate these cases, since the claims asserted in the more recently filed case, SX-2014-CV-278 (assigned to Judge Molloy), may be treated as claims for resolution in the liquidation process of the older case, SX-2012-CV-370 (assigned to Judge Brady). As SX-2012-CV-370 is the oldest case, it is respectfully submitted that SX-2014-CV-278 should be consolidated with it for final disposition and assigned to Judge Brady. A proposed Order is attached.

EXHIBIT

10

Claim H-1



HAMD639273

It is further stipulated that this stipulation renders moot the motion for stay of discovery filed by Mohammad Hamed on February 26, 2016 In Civil No. SX-2014-CV-278.

It is further stipulated that this stipulation shall be filed In Civil No. SX-2012-CV-370 and Civil No. SX-2014-CV-278.


Dated: March 11, 2016



Joel H. Holt, Esq.
Counsel for Plaintiff
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(340) 773-8709
holtvi@aol.com

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820

Dated: March 10, 2016



Gregory Hodges
Dudley, Topper and Feuerzeig, LLP
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St. Thomas, VI 00804
ghodges@dtflaw.com

Nizar A. DeWood
The Dewood Law Firm
Eastern Suburb, Suite 101
Christiansted, VI 00820
nizar@dewood-law.com

Dated: March 18, 2016



Mark W. Eckard
Hamm & Eckard, P.C.
5030 Anchor Way
Christiansted, VI 00820
meckard@hammeckard.com

Dated: March 18, 2016



Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
email : jeffreymlaw@yahoo.com

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 and Counterclaimants,
vs.

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

Counterclaim Defendants.

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

6 MAR 21 P 4:42
JUDGE
ST. CROIX

MOHAMMAD HAMED,

Plaintiff,
vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

ORDER

This matter is before the Court on the parties' Stipulation to Consolidate the above matters. Upon consideration of the matters before the Court, it is hereby

Ordered that Civil No. SX-2014-CV-278 is hereby consolidated with Civil No. SX-2012-CV-370 and assigned to the Honorable Judge Douglas A. Brady.

ORDER
Page 2

Dated:

HONORABLE ROBERT A. MOLLOY
Judge, Superior Court

ATTEST: ESTRELLA GEORGE
Acting Clerk of Court

By: _____

Deputy Clerk

Dist: Honorable Edgar Ross, Joel H. Holt, Carl Hartmann, Gregory Hodges, Nizar Dewood, Mark Eckard, Jeffrey Moorhead

HAMD639277

Exhibit 11

**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

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~~

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

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

(340) 774-4422

~~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.~~

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeih Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014-CV-278), the parties stipulated to have these claims¹³ consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966¹⁴ should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.

~~**VI. Foreign Accounts and Jordanian Properties**~~

~~As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to~~

¹³ Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf's sale of his 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf is prepared to include these proceeds in his accounting.

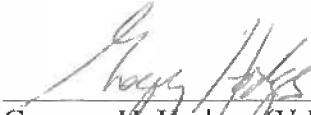
~~¹⁴ Interest was not included on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. See n. 11, above. There are additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. See also n. 15, below, regarding \$150,000 offset.~~

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: September 30, 2016

By:


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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I caused the foregoing **Yusuf's Accounting Claims and Proposed Distribution Plan** to be served upon the following via e-mail:

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YUSF237717

Exhibit 12

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,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSER ENTERPRISES, INC.,)
)

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

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

Consolidated With

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)
)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)
)

Plaintiff,)

v.)

FATHI YUSUF,)
)

Defendant.)

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND CONVERSION

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

DUDLEY, TOPPER AND FEUERZEIG, LLP
1000 Frederiksberg Gade
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(340) 774-4422

EXHIBIT
12

Claim H-1

HAMD652382

~~of these amended calculations, \$2,549,819.22 should be awarded to Yusuf to equalize the distributions between the Partners for the disparity in distributions from September 17, 2006 forward so that both Partners have equal distributions.~~

Disputed/Undisputed, Ripe for Determination or Discovery Needed: The various transactions identified and allocated by BDO are in dispute. While not every single allocation will be in dispute, Hamed will need to identify which specific allocations he disputes. It is Yusuf's position that further discovery is needed as to these claims as well as any accounting ~~claims that Hamed may assert involving transactions occurring on or after September 17, 2006.~~

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejah Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014-CV-278), these claims¹⁵ have been consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments

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¹⁵ Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf's sale of 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf included these proceeds in his accounting in the Original Claims.

reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966¹⁶ would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item is barred by the Accounting Order and no longer subject to determination by the Master.

~~VI. Foreign Accounts and Jordanian Properties~~

~~As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.~~

¹⁶ The Original Claims did not include interest on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. *See* n. 12, above. There were additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. *See also* n. 16, below, regarding \$150,000 offset. Because the Accounting Order now bars this claim, the issue of interest is no longer relevant.

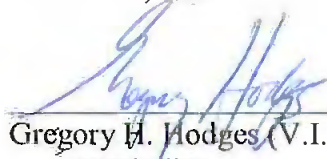
~~and distributions between the Partners adjusted to reflect the period from September 17, 2006 forward, both disclosed and undisclosed, still reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating further revisions to these calculations. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)²¹ is in serious doubt given the significant discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.~~

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: October 30, 2017

By:


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²¹ A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf has filed a complaint challenging such conveyance as fraudulent. A copy of that complaint is attached as **Exhibit U** since Yusuf's Amended Supplementation left off with Exhibit T.

HAMD652404

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017, I caused the foregoing **Yusuf's Amended Accounting Claims Limited to Those Claims Arising After September 17, 2012** to be served upon the following via e-mail:

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Exhibit 13

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

WALEED HAMED, as the Executor of)
the Estate of MOHAMMAD HAMED,)
)
Plaintiff/Counterclaim Deft.,)

vs.)

Case No. SX-2012-CV-370

FATHI YUSUF and UNITED)
CORPORATION,)
)
Defendants/Counterclaimants,)

vs.)

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)

vs.)

Consolidated with
Case No. SX-2014-CV-287

UNITED CORPORATION,)
)
Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)

vs.)

Consolidated with
Case No. SX-2014-CV-278

FATHI YUSUF,)
)
Defendant.)

**EXHIBIT
13**

Claim H-1

**VIDEOTAPED ORAL DEPOSITION OF
FATHI YUSUF**

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 21st day of January, 2019, at the Offices of Joel H. Holt, 2132 Company Street, Downstairs Conference Room, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 12:22 p.m. and 2:41 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
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U.S. Virgin Islands 00820
(340) 773-8161

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and

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By: Joel H. Holt

For the Defendants:

Law Offices of
Dudley, Topper & Feuerzeig
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Charlotte Amalie, St. Thomas
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By: Charlotte Perrell

Also Present: Maher Yusuf
Hisham, Mufeed, and Waheed Hamed
Michael Gelardi, Videographer

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Page 12

FATHI YUSUF -- DIRECT

1 **A.** What is that?

2 **MS. PERRELL:** You can finish your answer,
3 what you were saying.

4 **A.** We bought from -- this property from the bank for
5 myself and Mohammad Hamed and Salem.

6 **MS. PERRELL:** Your phone is --

7 **A.** Yeah. No, no, no. Time to go pray. Okay.

8 **Q.** **(Mr. Hartmann)** Okay. So when you and Mohammad
9 Hamed bought it in the form of Y & S Corporation, did you --
10 did you get -- did you buy some property?

11 **A.** What we bought is about 51 acre of bare land and
12 about 23 condo.

13 **Q.** Okay. And do you remember if that was -- you can
14 look at the document I just gave you. Do you remember if
15 that was transferred to Y & S Corporation on or about
16 September 21st, 1994?

17 **A.** I don't remember none of this.

18 **Q.** Okay. But looking at the deed now, does that
19 refresh your recollection as to when it bought the property?

20 **A.** I bought the property, yes.

21 **Q.** Okay. Do you think this is the deed that
22 transferred that property?

23 **A.** I believe so.

24 **Q.** Okay. I'm now showing you a document that's been
25 marked Claim H-1 Exhibit 3.

Pages 16-25

FATHI YUSUF -- DIRECT

1 corner?

2 **A.** The date?

3 **Q.** Yeah.

4 **A.** June 15, 2000.

5 **Q.** Okay. And do you see what you signed there, it
6 says, "I, Fathi Yusuf, hereby tender my resignation as
7 director of Y & S Corporation ... to take effect
8 immediately"?

9 **A.** Maybe, yes. If my signature is there, it's --
10 it's fact.

11 **Q.** Okay. So -- so that's -- that's a fact?

12 **A.** But I still don't remember when I signed this.

13 **Q.** You don't remember when you signed this?

14 **A.** I know it's my signature, but when, I remember
15 when I sign it, I don't know.

16 **Q.** Okay. I'm now showing you a document labeled
17 Claim H-1 Exhibit 6.

18 (Deposition Exhibit No. H-1 Exhibit 6 was
19 marked for identification.)

20 And I'd like you to take the time to look
21 through that whole document and see if you recall what it
22 is.

23 **A.** I don't recall none of this. This is lawyer work.
24 Lawyer, will tell him want we want and he'll write according
25 to law. And after that, he hand it to me and I signs it.

FATHI YUSUF -- DIRECT

1 Q. Okay.

2 A. That's all I know.

3 Q. Okay. No, you didn't -- you didn't sign this
4 document.

5 A. I don't know. If I signed it, I -- this is not my
6 signature.

7 Q. Right.

8 A. This is Hamed, Hisham and Najah and Hakima.

9 Q. Okay.

10 A. I signed as -- on the left as witness.

11 Q. Okay.

12 A. That's it.

13 Q. I'd ask you to turn to the second page of it.

14 A. Second page?

15 Q. Yep.

16 A. Okay.

17 Q. And you see the big arrow there on the second page
18 at the top?

19 A. Okay.

20 Q. And you see Paragraph 2?

21 A. Paragraph 2?

22 Q. Yeah.

23 A. In consideration of the transfer of its 1000 share
24 of Y & S Corporation, ... Buyer agree to pay seller nominee,
25 Mr. Fathi Yusuf of 9-C Princess Hill. Okay. And then the

FATHI YUSUF -- DIRECT

1 sum of 900,000.

2 Q. Okay. So you were no longer the -- a director or
3 the president of Y & S?

4 A. Um-hum.

5 Q. But you were going to collect the money for Y & S;
6 is that correct?

7 A. Yes, yes. Okay.

8 Q. And what -- do you remember what was going to
9 happen after you collected the money?

10 A. Do I remember what?

11 Q. You were going to get money --

12 A. Yes.

13 Q. -- from Mr. Salem, right?

14 A. Okay.

15 Q. And was Salem then going to get the -- the shares
16 of stock?

17 A. Yeah, okay.

18 Q. Do you remember that?

19 A. I'm sure. If it says that, --

20 Q. Okay.

21 A. -- I'm sure it's right.

22 Q. Okay.

23 A. I'm not denying I receive a million and a half.

24 Q. Okay.

25 (Respite.)

FATHI YUSUF -- DIRECT

1 I'm now going to hand you two documents, just
2 to make life complex.

3 (Deposition Exhibit No. H-1 Exhibit 7 was
4 marked for identification.)

5 (Deposition Exhibit No. H-1 Exhibit 8 was
6 marked for identification.)

7 The first one is labeled Claim H-1 Exhibit 7,
8 which is a notice of payment of pre-purchase price and
9 authorization to release stock certificates.

10 And I'm also handing to you a second
11 document, which is labeled Claim H-1 Exhibit 8, which is a
12 handwritten document. And I'd ask you if you could look at
13 both of those documents?

14 **A.** Yeah, I recognize both of them.

15 **Q.** Okay.

16 **A.** This one, I don't remember seeing. But this one
17 is my handwriting.

18 **Q.** Okay. So that's your handwriting, --

19 **A.** Yes.

20 **Q.** -- is that correct?

21 And do you remember when you wrote this?

22 **A.** I don't remember.

23 **Q.** You don't remember?

24 **A.** No.

25 **Q.** Do you remember giving it to Wally Hamed?

FATHI YUSUF -- DIRECT

1 **A.** I don't remember.

2 **Q.** Do you remember giving --

3 **A.** I never have to give it to Wally, because I hardly
4 see Wally.

5 **Q.** Okay. Do you remember giving it to Wally Hamed?

6 **A.** Maybe Willie.

7 **Q.** Okay.

8 **A.** Or maybe Hisham, one of the two. But Wally, I
9 don't have to give it to him. Wally is in different island.

10 **Q.** Okay.

11 **A.** I was always in St. Thomas.

12 **Q.** So you think you may have given it to either Shawn
13 or --

14 **A.** One of the two, because one -- both of them, they
15 was in St. Thomas.

16 **Q.** Okay. Either Shawn or Willie, is that what you're
17 saying?

18 **A.** Yes.

19 **Q.** Yes. Okay.

20 And why did you give it to them? What were
21 you --

22 **A.** Because they have the right to it. They own
23 50 percent of the million and a half.

24 **Q.** Okay. And -- and what is the eight -0- two nine
25 six six?


FATHI YUSUF -- DIRECT

1 **A.** This is -- I honestly don't remember what. This
2 is my -- I was doing something, but I remember the one -0-
3 five nine thirty-two. This here was a loan to somebody.
4 And I asked Mohammad Hamed to pay it. And this is what,
5 70,000 dinar, Jordanian dinar. I convert it into U.S.
6 dollar. They came up one -0- five nine thirty-two. And
7 then I brought the total. The total would be one -- one
8 million six -0- five nine thirty-two. Half of that is
9 802,966.

10 But, for the record, the one -0- five nine
11 thirty-two, I already give Mohammad Hamed share when I
12 collected that loan. I gave it to them in the city of
13 Zarqa, in his house, in front of his wife. So we're back to
14 one thousand -- one and a half million.

15 **Q.** Okay. So when you gave this to them, you were
16 saying to them, if I understand what you're saying, that
17 this is a calculation out of the Dorthea deal of how much
18 money you'll receive; is that right?

19 **A.** How much money I receive is one and a half
20 million. This one -0- five nine thirty-two, it was a
21 conversion currency from -- this is -- was since I told my
22 partner to go ahead and release this fund to a gentleman, he
23 wouldn't have receive it, but I felt I'm responsible,
24 because if it wasn't me, he would not make that release.
25 But as soon as I get that loan back, I make sure I give my

FATHI YUSUF -- DIRECT

1 partner his half.

2 Q. Okay.

3 A. So we're back to square one. A million and a
4 half. I will never deny that, the million and a half being
5 collected.

6 Q. And when did you collect the million and a half?

7 A. I collect by the way, one million three fifty.
8 The other one hundred and fifty, I told the Salem family to
9 transfer it into a concrete batch plant, because 10 years
10 earlier, Mohammad Hamed received that money to deliver it to
11 the batch plant and he never did deliver it, so --

12 Q. Okay. Just so -- just so -- just so I'm clear,
13 you received money from Mr. Salem?

14 A. Yes.

15 Q. And when you received that money from him --

16 A. Yes.

17 Q. -- you sent that for the batch plant?

18 A. I did not receive the one hundred and fifty.

19 Q. You had him send it?

20 A. I direct them --

21 Q. Okay.

22 A. -- to take it off of the bill and send it.

23 Q. So that -- just so I'm clear.

24 A. Yeah.

25 Q. That one fifty was part of the 1.5 million?

FATHI YUSUF -- DIRECT

1 **A.** Exactly.

2 **Q.** Oh, okay. And you received that in what year?

3 **A.** I don't remember, honestly.

4 **Q.** But -- but the way you received it, you had
5 Mr. Salem send it, the one fifty?

6 **A.** The one fifty, Mr. Salem sent it through a bank
7 transfer.

8 **Q.** And so whenever he sent it, that's -- that's when
9 you received it? That's when you got the payout from the --

10 **A.** Well, the man don't owe us any more money.

11 **Q.** Okay.

12 **A.** And Mohammad, by the way, do not owe us any money,
13 because when I give him, 10 years ago, 150,000, and
14 unfortunate, he never deliver it and he never say, I still
15 have it. So when I find out from the people in the batch
16 plant, I feel Mohammad Hamed obligated to pay what he
17 already take to deliver, but he never deliver the money.

18 **Q.** Okay. And I guess -- I guess what I -- I'm trying

19 to understand is this: I've seen the check that you're
20 describing where Mr. -- or the transfer where Mr. Salem
21 transfers the money --

22 **A.** Right.

23 **Q.** -- for the batch plant. And that's money under
24 the -- Mr. Salem's original contract; is that correct? It's
25 part of the total money?

FATHI YUSUF -- DIRECT

1 **A.** It's part of the one and a half million.

2 **Q.** Okay. It is.

3 And whenever he sent it, that's when you guys
4 received it?

5 **A.** I don't --

6 **Q.** Okay.


7 **A.** I don't remember.

8 **Q.** Okay.

9 **A.** When -- when I received the million and a half,
10 yes, it's the date I received the million -- they received
11 the -- they received the million and a half.

12 **Q.** Okay. So when you went to -- when you went to
13 looking at that other document that I showed you, the one
14 just before this.

15 **A.** You showed me document, Attorney --




16 **Q.** Exhibit 7, that one. Yeah, okay.

17 **A.** These document is --

18 **Q.** Do -- do you remember that you had to get -- I
19 know you may not remember.

20 **A.** Don't give me this things. This is lawyer work.

21 **Q.** Okay.



22 **A.** And you's a lawyer. You know how they work.

23 **Q.** Okay. So what I'm asking you is, when you got --
24 when you were talking to, you think, Willie and Shawn, you
25 needed Willie or Shawn to do something, right?

**FATHI YUSUF -- DIRECT**

1 **A.** I want them to give the release, because the
2 people ask for the release. They already paid the money
3 long time, and they requested the release, and I told Shawn
4 to sign the release.

5 **Q.** Okay.

6 **A.** Before he signed the release, he called his
7 brother, Wally.

8 **Q.** Okay. So --

9 **A.** And he tell him go ahead and sign the release.

10 **Q.** Okay. But you said, I need you to sign this
11 release and then I'm going to give you the money, was
12 that --

13 **A.** What's that? No, no, no, no, no, no. Arab
14 normally trust each other for years and years and years. We
15 don't have to sign for each other.

16 **Q.** Okay. But, coincidentally --

17 **A.** Not but, please.

18 **Q.** Okay.

19 **A.** They give each other for 20 years. They never
20 have to have signature. You owe me, you owe me.

21 **Q.** But you had to get this signed for Mr. Salem,
22 right?

23 **A.** Mr. Salem needed for some reason. He have all the
24 right to get it. Whether -- he already pays me, right? I
25 ask Hisham to go ahead and sign the release, because we

C-E-R-T-I-F-I-C-A-T-E

I, SUSAN C. NISSMAN, a Registered Merit Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witness, **FATHI YUSUF**, was first duly sworn to testify the truth; that said witness did thereupon testify as is set forth; that the answers of said witness to the oral interrogatories propounded by counsel were taken by me in stenotype and thereafter reduced to typewriting under my personal direction and supervision.

I further certify that the facts stated in the caption hereto are true; and that all of the proceedings in the course of the hearing of said deposition are correctly and accurately set forth herein.

I further certify that I am not counsel, attorney or relative of either party, nor financially or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand as such Registered Merit Reporter on this the 5th day of February, 2019, at Christiansted, St. Croix, United States Virgin Islands.

My Commission Expires:
July 18, 2019

Susan C. Nissman, RPR-RMR
NP-70-15

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

WALEED HAMED, as the Executor of)
the Estate of MOHAMMAD HAMED,)

Plaintiff/Counterclaim Deft.,)

vs.)

Case No. SX-2012-CV-370

FATHI YUSUF and UNITED)
CORPORATION,)

Defendants/Counterclaimants,)

vs.)

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

Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

vs.)

Consolidated with
Case No. SX-2014-CV-287

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

vs.)

Consolidated with
Case No. SX-2014-CV-278

FATHI YUSUF,)

Defendant.)

COPY

EXHIBITS TO THE DEPOSITIONS
TAKEN JANUARY 21-22, 2019

E-X-H-I-B-I-T-S

Exhibit	Description
1 -	Site Plan of the United Shopping Center
2 -	Letter dated August 27, 2001 from Thomas W. Luff to Fahti Yusuf
3 -	Declaration of Waleed Hamed dated August 24, 2014
4 -	Cairo Amman Bank Statement dated December 31, 2010
5 -	Check No. 64866 dated February 7, 2012
6 -	United Corporation dba Plaza Extra Calculations
7 -	Exhibit 1, FY 015045-015134
8 -	Declaration of Fathi Yusuf
9 -	Expert Report of Jackson, Vizcaino Zomerfeld, LLP, Exhibit 242-a
10 -	Expert Report of Jackson, Vizcaino Zomerfeld, LLP, Exhibit 221-a
11 -	Expert Report of Jackson, Vizcaino Zomerfeld, LLP, Exhibit 335-a
H-1 Exhibit 1	- Minutes of the Organization Meeting of Y & S Corporation, Inc. dated September 26, 1994
H-1 Exhibit 2	- Special Warranty Deed
H-1 Exhibit 3	- Special Warranty Deed
H-1 Exhibit 4	- Excerpt Transcript of Fathi Yusuf dated April 2, 2014
H-1 Exhibit 5	- Letter dated June 15, 2000



H-1 Exhibit 6 - Agreement of Sale of Stock

H-1 Exhibit 7 - Notice of Payment of Purchase
Price and Authorization to Release
Stock Certificates

H-1 Exhibit 8 - Handwritten Document

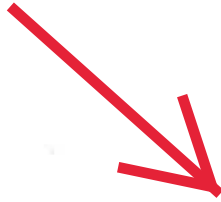
H-1 Exhibit 9 - Complaint

H-1 Exhibit 10 - Stipulation RE: Consolidation

H-1 Exhibit 11 - Yusuf's Accounting Claims and
Proposed Distribution Plan

H-1 Exhibit 12 - Yusuf's Amended Accounting
Claims Limited to Transactions
Occurring on or after September 17,
2006

Y-2 Exhibit 1 - Letter dated August 27, 2001 from
Thomas W. Luff to Fahti Yusuf



H-1 Ex-6



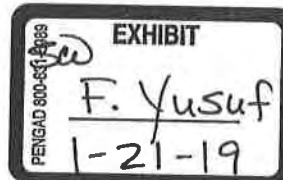
AGREEMENT OF SALE OF STOCK

This Agreement is entered this *15th* day of June 2000, by and between Hisham Hamed and Najah Yusef of 9-C Princess Hill, St. Croix, United States Virgin Islands (hereinafter referred to as "Seller") and Hakima Salem of 2E & 2F Estate Annas Retreat, St. Thomas, United States, Virgin Islands (hereinafter referred to as "Buyer").

WHEREAS, Hashim Hamed, Najah Yusef and Hakima Salem are the holders and registered owners of 100 % of the issued and outstanding shares of Y & S Corporation.; and

WHEREAS, Hisham Hamed and Najah Yusef, desire to sell and transfer all of their 1,000 shares of Y & S Corporation, to the Buyer pursuant to the obligations expressed in the shareholder agreement entered on September 20, 1994; and

WHEREAS, the Buyer is ready, willing and able to purchase the referenced stock pursuant to the terms of the shareholders agreement dated September 20, 1994 and in accord with the terms hereinafter provided;



NOW, therefore, in consideration of the promises and conditions hereinafter set forth and heretofore and hereinafter expressed the seller and buyer agree as follows:

1. Seller agrees to sell and transfer 1000 shares of common stock of Y & S Corporation, Inc. representing all of seller's stock ownership interest in that corporation, into escrow and after final payment, to register such transfer of shares upon the books of the corporation.

2. In consideration of the transfer of its 1000 shares of Y & S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusef of 9-C Princess Hill, St. Croix the sum of Nine Hundred Thousand (\$ 900,000.00) Dollars.

3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. The first installment shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.

4. Interest: The installments due hereunder shall accrue interest on the outstanding balance at a rate of twelve percent (12%) per annum until the entire balance is paid in full.

Payment of interest is waived provided payment of each installment due is made within 30 days of the due date for such installment. In the event that an installment is late, the interest payable or accruable to the date of the late payment shall be paid to the IQRA School in St. Croix, United States Virgin Islands. Further, in the event of default, as default is defined hereunder, all interest accruable under this agreement shall be payable to the IQRA School.

5. Default: It shall be a default under this agreement if Buyer shall fail to pay principal payments in the amount of Four Hundred Fifty Thousand (\$450,000.00) Dollars on or

before January 15, 2002 and the grace period herein provided. It shall also be a default if Buyer shall fail to make timely payment of installments due on January 15, 2003 or January 15, 2004 within the allotted grace period. In the event that Buyer shall default as such term is defined herein, the seller may accelerate the remaining indebtedness, making the entire amount then outstanding, immediately due and payable. Upon acceleration and notice thereof, Buyer shall pay the entire principal balance then outstanding to the Seller's Nominee, Fathi Yusef and shall pay any and all accrued interest to the IQRA School.

6. Escrow: The stock sold under this agreement shall be endorsed by the sellers to the Buyer and such stock shall be held in Escrow by Robert L. King, Esq. until all payments due hereunder have been paid to the Seller's Nominee. Robert L. King, as escrow agent shall deliver the stock certificates sold hereunder to the Buyer within 30 days of receipt of written notice from seller that the entire purchase price has been paid in full. The corporation shall immediately thereafter cause the transfer of shares to be registered upon the books of the corporation. If Buyer shall default in making the payments as required by this agreement within the grace periods provided, and such default is not cured within 60 days after such default, then escrow agent may return said stock certificates to the seller or seller's nominee without recourse from either Buyer or Seller.

Both Buyer and Seller agree to hold escrow agent harmless from all manner of cost and liability as a result of escrow agent's attempt to perform his functions under this agreement.

In the event of a dispute over who should lawfully possess the stock certificates, escrow agent may, but is not required to, refuse to deliver the certificates to either Seller or Buyer and may hold the same pending a decision by an arbitrator. The arbitrator's decision shall be final and binding on the parties. Escrow agent shall act in accord with the

arbitrator's decision, notwithstanding any actual or proposed appeal by the non-prevailing party. Upon delivery of the stock certificates pursuant to arbitrator's decision or discretionary delivery to the seller, the escrow agent shall be discharged of his duties.

7. Arbitration. The Parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or at P.O. Box 50191, Minneapolis, Mn. 55405. This agreement shall be interpreted under the Federal Arbitration Act.

8. Buyer shall have the right from the date hereof to act, with respect to the certificates sold with all authority of the actual owner of such certificates except that the buyer may not sell such stock certificates unless the proceeds of such sale are first applied to reduce the indebtedness to the Seller.

9. Any and all bank accounts presently in the name of the corporation shall remain the property of the corporation and any claim of entitlement which could be made by seller to such accounts is hereby waived.

10. Any and all obligations of the corporation, including but not limited to, income tax; real property tax; condominium fees; insurance, employment taxes or social security shall remain the obligation of the corporation and buyer shall hold seller harmless from each and every such obligation. Buyer further agrees to hold seller harmless of and from

liability of every kind and nature which is related to or derived in whole or part from the existence of Y & S Corporation, Inc.

11. In the event that Buyer shall sell any of the assets of Y & S Corporation, Inc. before the entire balance has been paid in full, the amount so received shall be first applied to liquidate the balance to the seller.

DATED: June 15, 2000

Rufiq Ali Saad
WITNESS

Hisham Hamed
HISHAM HAMED

Faiz Ahmad
WITNESS

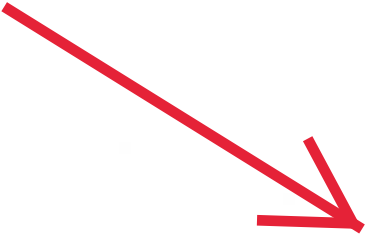
Najah Yusuf
NAJAH YUSUF

WITNESS

Abdul Karim Ahmad
WITNESS

Hakima Saad
HAKIMA SALEM

H-1 Ex-7




**NOTICE OF PAYMENT OF PURCHASE PRICE AND
AUTHORIZATION TO RELEASE STOCK CERTIFICATES**

To: Robert L. King, Esq.

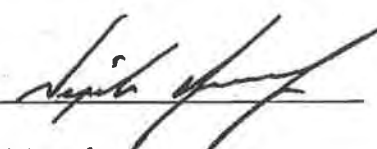
Pursuant to that certain agreement of Sale of Stock dated June 15th, 2000 by and between Hisham Hamed and Najah Yusef, as sellers, and Hakima Salem, as buyer, concerning the sellers' 1,000 shares of Y & S Corporation, a United States Virgin Islands corporation, the undersigned hereby gives you formal written notice that the purchase price has been paid in full on a timely basis and that you are authorized and directed to release the shares of stock that have been endorsed by the sellers to the buyer.

Buyer hereby authorizes and directs you to forward the endorsed shares of stock as well as the corporate minute book to:

Sellers


Hisham Hamed

Date: 2/18/12



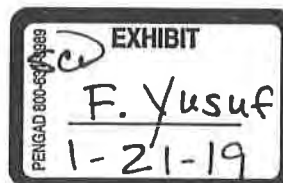
Najah Yusef

Date: Feb. 19, 2012

Buyers

Hakima Salem

Date: _____



Claim H-1

H-1 Ex-8



Doroathia	
Jordan Fund 75,000.-Dinar	1,500,000.00
	105,932.00
	<hr/>
	1,605,932.00
Fathi YUSUF	← 617,000.00 ←
From Jordan " " "	← 105,932.00 ←
Balance for Fathi Yusuf	80,034.00 ←
	<hr/>
	802,966.00

2 } 1,605,932.00

802,966.00

EXHIBIT
8

Claim H-1



PENGAD 800-831-889

EXHIBIT

F. Yusuf

1-21-19

EXHIBIT

DEPOSITION

EXHIBIT

12

Fathi Yusuf

DR

[Ex. 12-Fathi Yusuf's April 2, 2014 Depo]

HAMD583991

HAMD597792

Group Exhibit 14

EXHIBIT L

**[Exhibit L to Yusuf's September 30, 2016 Original Accounting Claims and
and His October 20, 2017 Amended Accounting Claims]**

Wael H. Abu Hazeema

NOV, 16, 2011

From: Iyad F. Al-Madhoun
Sent: 23 July, 2015 09:02 ص
To: Wael H. Abu Hazeema

----- Instance Type and Transmission -----
Original received from SWIFT
Priority : Normal
Message Output Reference : 1726 111107PALSPS22AXXX1978883961
Correspondent Input Reference : 1026 111107BOFAUS3NAXXX8600067040

----- Message Header -----
Swift Output : FIN 103
Sender : BOFAUS3NXXX
BANK OF AMERICA, N.A.
NEW YORK, NY 10001
NEW YORK, NY
UNITED STATES US
Receiver : PALSPS22XXX
BANK OF PALESTINE PLC
RAMALLAH
RAMALLAH
PALESTINIAN TERRITORY, OCCUPIED PS
MUR : 1111040259558-07

----- Message Text -----
:20:2011110400259558
:23B:CRED
:32A:111107USD150000,
:33B:USD150000,
:50K:/898046509528
MADHAT R SALEM
ITF MAGED R SALEM
8826 PHILLIPS BAY DR
ORLANDO FL 32836-5001
:52A:BOFAUS3N
:54A:CHASUS33
:59:/352325
MESSERS SILAT EL DAHER
JENIN PALESTINE
:70:/RFB/01111104007730NN
:71A:SHA
:72:/ACC/FOR DEVELOPMENT CO ME AMAR
//CONCRETE FACTORY

----- Message Trailer -----
{CHK:C7623EAD8ED6}

EXHIBIT
Group Ex 14

Claim H-1

FY 014956

YUSF237886

**Yusuf's Accounting Claims and
Proposed Distribution Plan
September 30, 2016**

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

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

Plaintiff/Counterclaim Defendant,

vs.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
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,

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES
AND DECLARATORY RELIEF

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

YUSF237698

Claim H-1

**EXHIBIT
Group Ex 14**

Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in **Exhibit K**;
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; *see* **Exhibit L**, Wire Transfer Information Supporting Claim.¹⁵

¹⁵ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should either be offset against the \$802,966 allocated to Hamed in § V, above, or it should be charged against Hamed's interest in the Partnership. Given Hamed's apparent negative balance in his Partnership account, Yusuf submits the \$150,000 should be offset against the \$802,966.

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade
P.O. Box 756

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



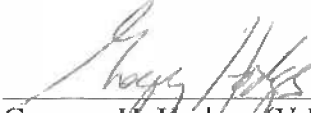
YUSF237709

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: September 30, 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

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I caused the foregoing **Yusuf's Accounting Claims and Proposed Distribution Plan** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI-00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI-00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

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

(340) 774-4422

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YUSF237717

**Yusuf's Amended Accounting Claims
October 30, 2017**

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,
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

**EXHIBIT
Group Ex 14**

Claim H-1

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in Exhibit K to the Original Claims. The parties will need to engage in discovery to determine what transactions occurred with respect to those accounts on or after September 17, 2006.
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation. *See* Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim.¹⁷
- 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 to the Original Claims.
- 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.

¹⁷ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should be charged against Hamed's interest in the Partnership.

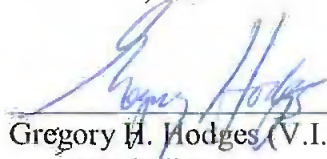
~~and distributions between the Partners adjusted to reflect the period from September 17, 2006~~
forward, both disclosed and undisclosed, still reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating further revisions to these calculations. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)²¹ is in serious doubt given the significant discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the ~~Partnership withdrawals.~~

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: October 30, 2017

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

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

²¹ A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf has filed a complaint challenging such conveyance as fraudulent. A copy of that complaint is attached as **Exhibit U** since Yusuf's Amended Supplementation left off with Exhibit T.

HAMD652404

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017, I caused the foregoing **Yusuf's Amended Accounting Claims Limited to Those Claims Arising After September 17, 2012** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, 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.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



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Exhibit 15

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)

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.

Claim H-1

EXHIBIT
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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

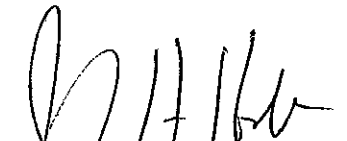
funds from any partnership bank accounts or brokerage accounts without the consent of Hamed;

- 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.
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(340) 773-8709
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Exhibit 16

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

MOHAMMAD HAMED, by his	)	Case No.1:12-cv-99
authorized agent, WALEED HAMED,)	
)	
Plaintiff,)	
)	
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.)	
_____)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that:

Defendants, FATHI YUSUF and UNITED CORPORATION (collectively, “Defendants”), pursuant to 28 U.S.C. §§ 1446, hereby give notice of the removal of this action from the Superior Court of the Virgin Islands, St. Croix Division, to the District Court of the Virgin Islands, St. Croix Division. In support of this Notice of Removal, Defendants state as follows:

1. On or about September 17, 2012, Plaintiff Mohammad Hamed (“Plaintiff”), by his authorized agent, filed a civil complaint (the “Complaint”) in the Superior Court of the Virgin Islands, St. Croix Division, styled *MOHAMMAD HAMED By His Authorized Agent WALEED HAMED v. FATHI YUSUF & UNITED CORPORATION*, Case No. SX-12-CV-370, which case was assigned to the Honorable Julio A. Brady (the “State Court Action”).

2. On or about September 18, 2012, Plaintiff also filed a Motion for a Temporary Restraining Order and/or a Preliminary Injunction and an accompanying Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction (collectively, the “TRO Motion”).

3. Defendants were served with Summonses and copies of the Complaint and TRO Motion on September 18, 2012.

**EXHIBIT
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4. Defendants promptly engaged the undersigned counsel and, on or about September 28, 2012, filed a Motion to Proceed on Plaintiff's Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a Motion for Preliminary Injunction and for Enlargement of Time to Respond to Same.

5. On or about October 2, 2012, Plaintiff filed his Reply to Defendant's Motion to proceed as a preliminary injunction.

6. No process, pleadings or orders have been filed in the State Court Action since Plaintiff's October 2, 2012 Reply.

7. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon Defendants in the State Court Action to date are separately attached hereto, namely:

- (a) Superior Court Summons dated September 17, 2012;
- (b) Superior Court Docketing Letter and Notice of Judge Assignment dated September 17, 2012;
- (c) Complaint dated September 17, 2012;
- (d) Motion for a Temporary Restraining Order and/or a Preliminary Injunction dated September 18, 2012;
- (e) Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction dated September 18, 2012;
- (f) Notice of Service of Motion for a Temporary Restraining Order and/or a Preliminary Injunction dated September 19, 2012;
- (g) Notice of Filing Proposed Order for Temporary Restraining Order and/or a Preliminary Injunction dated September 20, 2012;
- (h) Notice of Appearance by Joseph A. DiRuzzo, III dated September 21, 2012;

(i) Defendants' Motion to Proceed on Plaintiff's Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a Motion for Preliminary Injunction and for Enlargement of Time to Respond to Same dated September 28, 2012; and

(j) Plaintiff's Reply to Defendant's Motion for Enlargement of Time dated October 2, 2012.

8. This Notice of Removal is timely, as Defendants were served the Complaint on September 18, 2012. *See* 28 U.S.C. § 1446(b).

9. The underlying action, which is ostensibly brought pursuant to the partnership provisions of the Virgin Islands Code, Title 26, is premised on the naked assertion that, "[i]n the mid-1980's, Hamed and Yusef formed a partnership to operate" three commercial supermarket businesses, which are located on properties owned and/or operated by Defendant United Corporation. (Complaint ¶¶ 5-6).

10. Among other legal and factual defects, the Complaint does not attach or reference a single tax return, corporate declaration, or other public document supporting the existence of any partnership or partnership agreement.

11. Nevertheless, Plaintiff alleges that "Yusef has engaged in and continues to engage in numerous acts in breach of his obligations as [an alleged] partner in [the alleged] partnership with Hamed," including an alleged wrongful conversion of \$2.7 million from certain commercial accounts at issue. (Complaint ¶¶ 19-20).

12. Plaintiff seeks, "pursuant to 26 V.I.C. § 75, . . . legal and equitable relief as deemed appropriate to protect and preserve [his alleged] partnership rights," "including the return of funds to the partnership [allegedly] improperly taken or spent by Yusuf to date in violation of the agreement between the parties" and "compensatory damages for all [alleged] financial losses inflicted

by Yusuf on the partnership and/or his partnership interest as well as punitive damages against Yusuf for his [alleged] willful and wanton misconduct.” (Complaint ¶¶ 26-28).

13. Plaintiff also seeks “a judicial determination under 26 V.I.C. § 121(5) that it is not practicable to continue the [alleged] partnership . . .” (Complaint ¶ 31).

14. Significantly, the Complaint refers to a federal criminal action in the District Court of the Virgin Islands, St. Croix Division, styled *UNITED STATES OF AMERICA and GOVERNMENT OF THE VIRGIN ISLANDS v. FATHI YUSUF MOHAMAD YUSUF, WALEED MOHAMMAD HAMED, WAHEED MOHAMMAD, MAHER FATHI YUSUF, NEJEH FATHI YUSUF, ISAM YUSUF and UNITED CORPORATION*, Case No. 2005-15F/B, which case was assigned to and is currently pending before the Honorable Wilma A. Lewis (the “Federal Court Criminal Action”). (Complaint ¶¶ 8, 10).

15. As alleged in the Complaint, the “parties” are currently prohibited from removing funds from United Corporation’s accounts at issue pursuant to an Order entered in the Federal Court Criminal Action. (Complaint ¶¶ 8, 10).

16. Fathi Yusuf and United Corporation, who are the defendants in the present action, together with Waleed Hamed, who is the plaintiff’s “authorized agent” in this action, are co-defendants in the Federal Court Criminal Action.

17. Indeed, on or about February 26, 2010, in the Federal Court Criminal Action, United Corporation, its attorneys, the individual defendants in that action, the United States Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands entered into a Plea Agreement (the “Plea Agreement,” which is DE # 1248 in the Federal Court Criminal Action and is attached as Exhibit “A” hereto).

18. As reflected in the Plea Agreement, United Corporation agreed to plead guilty in the Federal Court Criminal Action to a violation of “Title 33, Virgin Islands Code, Section 1525(2)” relating to the filing of a corporate income tax return on Form 1120S for the year 2001 and the underreporting of gross income. (Plea Agreement at 2-4).

19. In turn, the “Government” (defined in the Plea Agreement collectively as “the Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands”) agreed, in relevant part, to “dismiss all counts of the Indictment with prejudice against [the individual defendants]” and “not to file any additional criminal charges against United [Corporation] or any of the individual defendants for conduct arising out of the facts alleged in the Indictment.” (Plea Agreement at 1-2).

20. The United States Department of Justice of the Virgin Islands also agreed in the Plea Agreement “that it will file no criminal charges against United [Corporation] or any of the individual defendants for any conduct arising out of the facts alleged in the Indictment.” (Plea Agreement at 2).

21. As a further condition of the Plea Agreement, the defendants in the Federal Court Criminal Action, including Plaintiff Mohammad Hamed’s authorized agent and Defendants Fathi Yusuf and United Corporation here, agreed, prior to sentencing, which has not occurred yet, to file “complete and accurate” corporate and individual income tax returns and reporting documents for the years 2002, 2003, 2004, 2005, 2006, 2007 and 2008, and to pay in full the amounts due upon the returns for those years. (Plea Agreement at 11).

22. Related to the filing of such tax returns, the Plea Agreement identifies “restitution numbers for tax loss” derived from United Corporation’s gross receipts for the years 1996-2001,

United Corporation's corporate income taxes for the years 1996-1998, and the individual income taxes of United Corporation's shareholders for the years 1999-2001. (Plea Agreement, Exhibit 1).

23. At bottom, the Plea Agreement is undisputedly based on the representations by the defendants in the Federal Court Criminal Action, and their counsel, to the Government that United Corporation exists and has always existed as a corporation, not a partnership; and that, related to the corporate and individual income tax returns at issue in that action, no partnership exists or ever existed during the relevant tax periods.

24. Among other important provisions, the Plea Agreement also contains a waiver of United Corporation's appellate rights and ability to "collaterally attack" any conviction and sentence in the Federal Court Criminal Action, an integration clause, and a "no oral modification" clause requiring that any modification of the Plea Agreement be signed in writing "by the Government, United [Corporation], the individual defendants, and [United Corporation]'s shareholders." (Plea Agreement at 10, 12).

25. At all times relevant to the allegations in the Complaint, Plaintiff, by his authorized agent and otherwise, was aware of the Federal Court Criminal Action, including the representations made therein and the execution of the Plea Agreement.

26. Clearly, the present allegations of a supposed "partnership" relating to United Corporation's ownership, operations and tax status, as alleged in the Complaint, are anathema to the Plea Agreement and seek to implode the Federal Court Criminal Action and otherwise turn it on its head.¹

¹ A meaningful review of the Complaint reveals that Plaintiff has manipulated his pleading to avoid presenting the obvious federal questions addressed in this Notice of Removal and thus avoid federal jurisdiction. Indeed, shortly before filing the Complaint, Plaintiff, through his counsel, transmitted to the United States Department of Justice a self-serving letter expressing "certain concerns" and claimed "confusion" regarding the representations made by certain defendants in the Federal Court

27. The present allegations, on their face, thus necessarily raise substantial and significant federal issues, which sensibly belong in federal court, including, at a minimum, the interpretation of the Internal Revenue Code, the Treasury Regulations thereunder, and the federal criminal statutes at issue in the Federal Court Criminal Action.

28. Accordingly, under 28 U.S.C. §§ 1331 and 1441, this Court has original jurisdiction over the present claims and the action is properly removed thereto. *See, e.g., Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005) (upholding federal jurisdiction in a state-law action turning on the interpretation of a federal tax law).

29. In addition, under the Supremacy Clause of the United States Constitution, the claims in this action are completely preempted by federal law, as the interpretation of federal tax law and federal criminal statutes are plainly federal in character and within the sole province of the federal courts. U.S.C.A. Const. Art. VI, cl. 2.

30. Indeed, because the allegations in the Complaint necessarily implicate the income tax laws applicable to the Virgin Islands, as the Government of the Virgin Islands is a party in the Federal Court Criminal Action and otherwise, this Court has exclusive jurisdiction over this action. *See* 48 U.S.C. § 1612(a) (providing that “[t]he District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands”); *see also Birdman v. Office of the Governor*, 677 F.3d 167 (3d

Criminal Action, and the defendants’ counsel, to the Government regarding the alleged “partnership” (or lack thereof) between “Mr. Yusuf and Mr. Hamed,” and indicating the representations were “misleading.” (*See* Aug. 31, 2012 Letter from Joel H. Holt, Esq., to Lori Hendrickson, Assistant United States Attorney (attached as Exhibit “B” hereto)). The August 31, 2012 letter demonstrates Plaintiff’s true intentions in bringing the Complaint in State court – *i.e.*, to attempt an end-run around the Federal court’s proper jurisdiction and thereby both, for his part, somehow evade the “misleading” representations and falsehoods Plaintiff directly and/or indirectly made to the Government and the court in the Federal Court Criminal Action and, on Defendant Fathi Yusuf’s and United Corporation’s part, somehow enjoin their actions and representations in that federal action. Plaintiff’s such tactics are disingenuous and disturbing.

Cir. 2012) (holding that the District Court of the Virgin Islands’ “exclusive jurisdiction” under 48 U.S.C. § 1612(a) over the “income tax laws applicable to the Virgin Islands” is vis-à-vis the court created under Virgin Islands local law, *i.e.*, the Virgin Islands Superior Court and Virgin Islands Supreme Court)).

31. An additional and separate basis for removal jurisdiction is the federal officer removal statute, 28 U.S.C § 1442, which allows removal when “[t]he United States or any agency thereof or any officer (*or any person acting under that officer*) of the United States or of any agency thereof, [is] sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.” 28 U.S.C. § 1442(a)(1) (emphasis added). *See also Jamison v. Wiley*, 14 F.3d 222, 238 (4th Cir. 1994) (observing that removal under § 1442 is not constrained by the well-pleaded complaint rule, but is appropriate “when [the defendant acting under a federal officer] can allege a colorable federal defense to [an] action”) (internal quotation marks omitted).

32. This statute applies to claims, as here, arising out of a private party’s “effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior.” *Watson v. Philip Morris Cos.*, 551 U.S. 142, 152 (2007) (original emphasis).

33. Specifically, Defendants Fathi Yusuf and United Corporation here, as co-defendants in the Federal Court Criminal Action, easily fall within § 1442(a)(1)’s scope, because they are subject to a binding agreement with the Government, *i.e.*, the Plea Agreement; they will be asserting colorable federal defenses based on that agreement, including under the waiver, integration and “no oral modification” clauses therein; and there is a causal nexus between Defendants’ actions as alleged in the Complaint, which actions were and are informed by the Government’s directions in

the Federal Court Criminal Action and the Plea Agreement, and Plaintiff's present claims. *See, e.g., Jamison*, 14 F.3d at 238-39 (finding that state-law tort action was properly removed under § 1442(a)(1) where defendant sufficiently alleged a colorable federal defense of immunity) (cautioning that a defendant need not prove that it will actually prevail on its colorable federal defense, and that “[n]othing in the federal removal statute authorizes the remand of a case that has been properly removed under § 1442(a)(1) on the ground that the [alleged colorable federal defense] is later rejected”) (citation omitted).

34. Lastly, pursuant to the bases of original jurisdiction set forth above, this Court has supplemental jurisdiction over all the claims set forth in the Complaint, because the claims “are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a).

35. Upon filing this Notice of Removal, Defendants, by and through their undersigned counsel, will promptly give written notice thereof to Plaintiff, through his counsel, and will file a copy of this Notice of Removal with the Clerk of the Superior Court of the Virgin Islands, St. Croix Division. *See* 28 U.S.C. § 1446(d) (directing the State court, upon receipt of the notice, to “effect the removal and . . . proceed no further unless and until the case is remanded”).

WHEREFORE, Defendants Fathi Yusuf and United Corporation pray that this action proceed in this Court as an action properly removed thereto.

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Respectfully submitted,

Joseph A. DiRuzzo, III
USVI Bar # 1114; FL Bar # 0619175
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Dated October 4, 2012

CERTIFICATE OF SERVICE

I hereby certify that, on October 4, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

Joseph A. DiRuzzo, III

Exhibit 17

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED, by his authorized)
agent, WALEED HAMED,)
)
Plaintiff,)
)
v.)
)
FATHI YUSUF and UNITED)
CORPORATION,)
)
Defendants.)
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Civil Action No. 2012-099

Attorneys:

Carl J. Hartmann, III, Esq.,
Joel H. Holt, Esq.,
St. Croix, U.S.V.I.
For the Plaintiff

Joseph A. DiRuzzo, III, Esq.,
Miami, FL
Nizar A. Dewood, Esq.
St. Croix, U.S.V.I.
For the Defendants

MEMORANDUM OPINION

Lewis, District Judge

THIS MATTER is before the Court on Plaintiff’s Motion for Remand (Dkt. No. 13) and supporting memorandum (Dkt. No 14), Defendants’ opposition to the motion (Dkt. No. 19), and Plaintiff’s reply. (Dkt. No. 22). For the reasons discussed below, the Court will grant Plaintiff’s motion and remand the matter to the Superior Court of the Virgin Islands.

EXHIBIT
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Claim H-1

I. BACKGROUND

By complaint dated September 17, 2012 (Dkt. No. 1-3), Plaintiff Mohammad Hamed (“Plaintiff”) initiated a civil action against Defendants Fathi Yusuf and United Corporation (collectively, “Defendants”) in the Superior Court of the Virgin Islands alleging violations of a partnership agreement between Plaintiff and Defendant Yusuf regarding the operation of three Plaza Extra grocery stores located on St. Croix and St. Thomas, United States Virgin Islands.¹ The complaint raises two claims under Virgin Islands partnership law, codified at 26 V.I.C. §§ 1, *et seq.* Specifically, Count I alleges that Defendants violated Plaintiff’s partnership rights and the terms of the partnership agreement, thereby entitling Plaintiff to legal and equitable relief under 26 V.I.C. § 75. (Dkt. No. 1-3 at ¶¶ 25-26). In Count II, Plaintiff requests that—pursuant to 26 V.I.C. § 121(5)—the Superior Court: (1) determine that it is not practicable for Plaintiff to continue in the partnership with Defendant Yusuf; (2) disassociate Defendant Yusuf’s partnership interests from the Plaza Extra businesses; and (3) permit Plaintiff to continue conducting business after Defendant Yusuf’s disassociation. (Dkt. No. 1-3 at ¶¶ 30-31).

Invoking 28 U.S.C. §§ 1441(a) and 1442(a)(1), Defendants timely removed the action to this Court on October 4, 2012. (Dkt. No. 1). Plaintiff responded by filing the instant motion to remand (Dkt. Nos. 13, 14) on October 11, 2012, asserting that this Court lacks jurisdiction over this local dispute between residents of the Virgin Islands seeking relief under Virgin Islands partnership law. The motion has been fully briefed, with Defendants’ Opposition filed on

¹ As this Court recently explained, when ruling on a motion to remand premised on alleged jurisdictional defects, the district court must focus on the plaintiff’s complaint at the time the petition for removal was filed, and must assume as true all factual allegations of the complaint. *Rivera v. Hovenssa, LLC*, Nos. 11-cv-0052, 11-cv-0053, 2012 U.S. Dist. LEXIS 83977, *1-2 n.2 (D.V.I. June 18, 2012).

October 25, 2012 (Dkt. No. 19), and Plaintiff's Reply on October 30, 2012. (Dkt. No. 22). The matter is now ripe for consideration.

II. LEGAL STANDARD

“Pursuant to 28 U.S.C. § 1441(a), a defendant has the right to remove a civil action from state court if the case could have been brought originally in federal court.” *Rivera v. Hovensa, LLC*, Nos. 11-cv-0052, 11-cv-0053, 2012 U.S. Dist. LEXIS 83977, *8 (D.V.I. June 18, 2012) (quoting *In re Briscoe*, 448 F.3d 201, 215 (3d Cir. 2006)); *Danielson v. Innovative Commc'ns, Corp.*, 49 V.I. 1071, 1075 (D.V.I. 2008) (“An action may be removed to federal district court if the district court would have original jurisdiction over the matter.”). Further, under 28 U.S.C. § 1442(a)(1), a federal officer, or person acting under such an officer, may remove to federal court any action brought against him in state court for conduct performed under federal direction. *Feidt v. Owens Corning Fiberglas Corp.*, 153 F.3d 124, 127 (3d Cir. 1998)); *Piskanin v. United States*, 461 F. App'x 88, 89 (3d Cir. 2012). “A removed case will be remanded, however, ‘if at any time before final judgment, it appears that the district court lacked subject matter jurisdiction.’” *Danielson*, 49 V.I. at 1076 (quoting 28 U.S.C. § 1447(c)); *Rivera*, 2012 U.S. Dist. LEXIS 83977 at *8.

“The removal statutes ‘are to be strictly construed, with all doubts to be resolved in favor of remand.’” *Rivera*, 2012 U.S. Dist. LEXIS 83977 at *9 (quoting *Brown v. Jevic*, 575 F.3d 322, 326 (3d Cir. 2009)). “When considering a motion to remand, the removing party has the burden of establishing the propriety of the removal.” *Danielson*, 49 V.I. at 1077 (citations omitted); *Rivera*, 2012 U.S. Dist. LEXIS 83977 at *8 (“A party urging jurisdiction on a federal court bears the burden of proving that jurisdiction exists.”) (citing *Symczyk v. Genesis HealthCare Corp.*, 656 F.3d 189, 191 n.4 (3d Cir. 2011)).

III. DISCUSSION

Plaintiff claims that the Court lacks jurisdiction over this “purely local” dispute arising under Virgin Islands partnership law. (Dkt No. 14 at 1-2). Defendants contend that this Court has jurisdiction: (1) under 28 U.S.C. § 1331, because the complaint “raises substantial and significant federal issues”; (2) pursuant to 48 U.S.C. § 1612(a), as the complaint “necessarily implicates the income tax laws applicable to the Virgin Islands”; (3) under 28 U.S.C. § 1442(a)(1), as the case involves parties acting under an officer of the United States; and (4) over all claims pursuant to 28 U.S.C. § 1367(a). (Dkt. No. 1 at 7-10).

As discussed below, Defendants’ arguments are unpersuasive. The matter will be remanded to the Superior Court because this Court lacks subject matter jurisdiction.²

A. Federal Question Jurisdiction

As the United States Supreme Court explained:

Title 28 U.S.C. § 1331 vests in federal district courts “original jurisdiction” over “all civil actions arising under the Constitution, laws, or treaties of the United States.” A case “aris[es] under” federal law within the meaning of § 1331, this Court has said, if “a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 27-28, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983).

Empire HealthChoice Assur., Inc. v. McVeigh, 547 U.S. 677, 689-90 (2006). The mere fact that a federal issue may be implicated does not give rise to federal question jurisdiction—the issue

² Both parties spend considerable time in their filings arguing the merits of the underlying claims—*i.e.* attempting to establish or refute the existence of the alleged partnership. (*See, e.g.*, Dkt. No. 19 at 1-11; Dkt. No. 22 at 2-3). The Court will not address these arguments because “[i]t is well established that a federal court must satisfy itself of its jurisdiction over the subject matter before it considers the merits of the case.” *Rivera*, 2012 U.S. Dist. LEXIS 83977 at *7 (citations and internal quotation marks omitted).

must be a substantial one. *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313 (2005). The ultimate question is: “[D]oes a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Id.* at 314.

Here, Defendants argue that while the complaint concerns local partnership law, it nevertheless “raises substantial and significant federal issues,” which provide jurisdiction under 28 U.S.C. § 1331 and *Grable*. (Dkt. No. 1 at ¶¶ 26-28). In particular, Defendants claim that this suit implicates Defendants’ obligations under the terms of a plea agreement entered into in a criminal case before this Court for filing false tax returns. (*United States v. United Corp., et al.*, 1:05-cr-015, Dkt. No. 1248) (requiring that, *inter alia*, Defendant United Corporation file complete and accurate tax returns for the 2002-2008 tax years). Plaintiff, in turn, argues that jurisdiction is not proper under § 1331 because there is no federal question presented on the face of the complaint, and no provision of federal law is at issue in this case. (Dkt. No. 22 at 7-8).

In *Grable*, the Internal Revenue Service seized and sold real property to satisfy a tax delinquency. The original landowner subsequently brought a quiet title action in state court seeking to reclaim the property on the ground that the IRS had failed to follow the notice provisions of federal tax law before effectuating the seizure. 545 U.S. at 310-11. The case was removed, and the Supreme Court ultimately upheld the finding of federal jurisdiction over the state-law claim because a federal issue was substantial and disputed. Indeed, the interpretation of the federal tax notification statute was the “only legal or factual issue contested in the case.” *Id.* at 315.

Despite Defendants' arguments to the contrary, *Grable* does not support a finding of federal question jurisdiction in this case. While *Grable* was focused solely on the interpretation of a provision of federal tax law, this case turns on questions of Virgin Islands partnership law. Thus, unlike *Grable*, the contested issues in this case are grounded in state—not federal—law.

Defendants' second claim, that a plea agreement entered into in a separate federal criminal case will be impacted, also does not "raise a stated federal issue, actually disputed and substantial" in this case. *Id.* at 314. Defendants appear to argue that Plaintiff's position regarding the partnership status of the parties in the current litigation is inconsistent with representations made during the prior criminal proceeding, and would impede Defendants' ability to comply with the plea agreement entered into in resolving the criminal case.

This argument is an attempt to refute Plaintiff's allegations of the existence of a partnership; thus, it is a defense presented to the merits of Plaintiff's claims. It is well-settled, however, that a defense may not confer jurisdiction on this Court. The presence or absence of "arising under" jurisdiction pursuant to § 1331 is governed by "the rule of the 'well-pleaded complaint,' under which 'federal jurisdiction exists only when a federal question is presented on the face of plaintiff's properly pleaded complaint.'" *Gardiner v. St. Croix Dist. Governing Bd. of Dirs.*, 859 F. Supp. 2d 728, 732 (D.V.I. 2012) (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 391-92 (1987)); *Pascack Valley Hosp., Inc. v. Local 464A UFCW Welfare Reimbursement Plan*, 388 F.3d 393, 398 (3d Cir. 2004) ("Under the 'well-pleaded complaint' rule, the plaintiff is ordinarily entitled to remain in state court so long as its complaint does not, on its face, affirmatively allege a federal claim. To support removal, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action.") (internal quotation marks and citations omitted). Defenses to a

plaintiff's claim do not appear on the face of a well-pleaded complaint, and, therefore, do not confer arising under jurisdiction. *See Pascack Valley Hosp.*, 388 F.3d at 398; *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003) (“[A] defense that relies on the preclusive effect of a prior federal judgment or the pre-emptive effect of a federal statute will not provide a basis for removal. As a general rule, absent diversity jurisdiction, a case will not be removable if the complaint does not affirmatively allege a federal claim.”) (internal citations omitted).

Here, the face of Plaintiff's complaint does not present a federal question. Instead, it asserts claims arising under Virgin Islands partnership law, and makes no reference to federal rights or immunities. Defendants' proposed defense also does not provide a sufficient basis for removal. Accordingly, the Court finds that jurisdiction is not proper under 28 U.S.C. § 1331.

B. Implication of Virgin Islands Tax Law

Defendants argue that this Court has exclusive jurisdiction over this action pursuant to 48 U.S.C. § 1612(a) because the allegations in the complaint “necessarily implicate the income tax laws of the Virgin Islands.” (Dkt. No. 1 at ¶ 30).

Section 1612(a) provides in pertinent part that “[t]he District Court of the Virgin Islands shall have *exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands*, regardless of the degree of the offense or the amount involved” 48 U.S.C. § 1612(a) (emphasis added). The United States Court of Appeals for the Third Circuit examined this provision in *Birdman v. Office of the Governor*, 677 F.3d 167 (3d Cir. 2012), a case in which two married couples and their business entities sued the Virgin Islands and its Bureau of Internal Revenue seeking a determination of the source of certain income, and also sued the United States seeking tax refunds. *Id.* at 169. The Third Circuit addressed the “exclusive jurisdiction” language of the statute but did not address

what qualifies as a “proceeding[] . . . with respect to the income tax laws applicable to the Virgin Islands” within the meaning of § 1612(a). The parties simply agreed that the statutory provision was satisfied. *Id.* at 175.

Here, the Court finds that this case is not a “proceeding[] . . . with respect to the income tax laws applicable to the Virgin Islands” within the plain meaning of § 1612(a). As discussed above, the complaint at issue raises claims and seeks relief exclusively under Virgin Islands partnership law, not the Internal Revenue Code or other tax law. In fact, the complaint does not even mention, let alone invoke or seek relief under, the IRC or other tax provisions. (*See generally* Dkt. No. 3 at 1-11). This case—unlike *Birdman*—also does not involve claims against the Internal Revenue Service or the Virgin Islands Bureau of Internal Revenue. Instead, this is a dispute between private parties regarding their rights under an alleged partnership agreement. In short, this case is a proceeding with respect to the *partnership laws* of the Virgin Islands, not its *tax laws*. Defendants’ general assertions that tax laws will be implicated by the decision in this case, or that a defendant will not be able to comply with a plea agreement in a separate criminal action requiring it to file accurate tax returns, does not fundamentally alter the type of proceeding presently before the Court.

In sum, the Court has fulfilled its obligation to construe the complaint and has determined that the instant partnership dispute is not a proceeding with respect to the income tax laws applicable to the Virgin Islands. *Feidt*, 153 F.3d at 128 (“The district court’s authority, indeed obligation, to determine whether a removal petition properly invokes its removal jurisdiction necessarily includes the authority to construe the complaint upon which the court makes its determination.”). Therefore, 48 U.S.C. § 1612(a) does not provide this Court with subject matter jurisdiction.

C. Acting Under an Officer of the United States

Defendants argue that removal is appropriate under 28 U.S.C. § 1442(a)(1) because they are “acting under” the United States as a result of the plea agreement entered into in the separate criminal action. (Dkt. No. 1 at ¶¶ 31-33). More specifically, Defendants contend that Defendant United Corporation and its shareholders have been “subjected to the guidance or control of both the Federal Government and the Virgin Islands Government” pursuant to the criminal plea agreement and resulting conditions of probation, which collectively provide for “a periodic review of financial statements and returns of United [Corporation][,]” the filing of accurate returns for 2002-2008, and payment of any amounts due. (Dkt. No. 19 at 17). Defendants provide no case law supporting this construction of the federal officer removal provision of § 1442(a)(1), and the Supreme Court has previously rejected this line of argument.

In *Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007), the Supreme Court addressed when an individual or entity is “acting under” a federal official for the purpose of removal predicated on § 1442(a)(1). In that case, the Court held that a tobacco company, whose cigarette testing procedures were directed, supervised, and monitored in considerable detail by a federal regulatory agency, was not “acting under” an officer of the United States. *Id.* at 145. The Court explained that “precedent and statutory purpose make clear that the private person’s ‘acting under’ must involve an effort to assist, or to help carry out, the duties or tasks of the federal superior.” *Id.* at 152. The Court noted that “the help or assistance necessary to bring a private person within the scope of the statute does *not* include simply *complying* with the law.” *Id.* (original emphasis). By way of example, the Court explained that taxpayers who fill out “complex federal tax forms” are “compl[ying] with the law (or acquiesce[ing] to an order)[,]” not “acting under” a federal official who is giving an order or enforcing the law. *Id.*

Here, Defendants advance the same argument rejected by the Supreme Court in *Watson*—that by complying with tax law, they are somehow “acting under” a federal official. Accordingly, Defendants have failed to establish that removal is proper under § 1442(a)(1).

Defendants’ claim of compliance with a criminal plea agreement or supervision by the United States Probation Office does not alter the equation. *See e.g., Morgan v. Ford Motor Co.*, No. 06-1080 (JAP), 2007 U.S. Dist. LEXIS 52944, *19 (D.N.J. July 23, 2007) (relying on *Watson* in denying defendant’s argument that “because its conduct was governed by a series of administrative consent orders and it was doing exactly what the Environmental Protection Agency told it to do, it was thus acting under the direction of a federal officer”). Thus, Defendants’ reliance on 28 U.S.C. § 1442(a)(1) is fatally flawed.

D. Supplemental Jurisdiction

Citing 28 U.S.C. § 1367(a), Defendants also contend that this Court “has supplemental jurisdiction over *all* the claims set forth in the [c]omplaint” because the claims are so related to the claims in the action over which the Court has original jurisdiction. (Dkt. No. 1 at ¶ 34) (emphasis added). This contention is wholly without merit. The Court cannot exercise supplemental jurisdiction over *all* claims in an action; rather, the Court may exercise supplemental jurisdiction over those claims that are so related to claims over which the Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367(a).

Because the Court does not have original jurisdiction over any claims in this action, Defendants may not avail themselves of § 1367(a).



IV. CONCLUSION

For the reasons stated above, Defendants have failed to establish that removal to the District Court of this partnership dispute between Virgin Islands residents is proper.

Accordingly, the Court will grant Plaintiff's motion (Dkt. No. 13) and remand the matter to the Superior Court of the Virgin Islands. An appropriate Order accompanies this Memorandum Opinion.

Date: November 16, 2012

_____/s/_____
WILMA A. LEWIS
District Judge

Exhibit 18

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,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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

Additional Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING TRUST,)

Defendants.)

CIVIL NO. SX-12-CV-370

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

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

EXHIBIT

18

Claim H-1

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

**RESPONSE TO HAMED'S FOURTH REQUEST TO
ADMIT PURSUANT TO THE CLAIMS DISCOVERY
PLAN OF 1/29/2018, NO. 30-32 OF 50**

~~Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation~~
("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Hamed's Fourth Request to Admit Pursuant to the Claims Discovery Plan of 1/29/2018, Nos. 30-32 of 50 as to H-1 Reimbursement for Sale of the Dorthea Condo Y-10: Past Pship Withdrawals – Receipts.

GENERAL OBJECTIONS

Defendants make the following general objections to the Requests to Admit. These general objections apply to all or many of the Requests to Admit, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Request to Admit. The assertion of the same, similar, or additional objections in the individual responses to the Requests to Admit, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

(1) Defendants object to these Requests to Admit to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Requests to Admit to the extent that they use the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

~~prejudice to their right to make any use of, or proffer at any hearing or at trial evidence later~~
discovered, and are based only upon information presently available. If any additional, non-privileged, responsive information is discovered, these Requests to Admit will be supplemented to the extent that supplementation may be required by the Virgin Islands Rules of Civil Procedure.

(8) Defendants object to these Requests to Admit to the extent that they are compound and not a single Request. Hence, these Requests to Admit should be counted as more than a single Request such that when all of the subparts are included together with other Requests to Admit they exceed the 50 Requests to Admit established in the Joint Discovery and Scheduling Plan.

RESPONSES TO REQUESTS TO ADMIT



Request to Admit 30 of 50:

Request to admit number 30 of 50 relates to Claim H-1 (old Claim No. 201) – as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Reimbursement for sale of the Dorthea condo."

Admit or Deny that on September 30, 2016, *Yusuf's Accounting Claims and Proposed Distribution Plan*, p. 3, as filed with the Court, Defendants acknowledged, as follows, in writing: a "balance of \$802,966.00 due to Hamed"—and that such acknowledgement was made after September 17, 2006.

- b) an accounting of funds received by Yusuf for the sale of Y&S Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock **resulting in a balance of \$802,966.00 due to Hamed ...** (Emphasis added.)

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade
P.O. Box 756

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

HAMD660379

Response:

Admitted that the words quoted above were set forth in Yusuf's Accounting Claims and Proposed Distribution Plan filed on September 30, 2016 without the emphasis added as to the boldfaced type and that such words were modified in Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2006 (at p. 4 and 14-15) as a result of the Court's July 21, 2017 Memorandum and Order Re Limitations on Actions.

Request to Admit 31 of 50:

Request to admit number 31 of 50 relates to Claim Y-10, - as described in Hamed's November 16, 2017 Motion for a Hearing Before Special as "Past Pship Withdrawals-Receipts." Admit or Deny that on July 1, 2011 Fathi Yusuf and Fawzia Yusuf, under notarized signatures, each signed a letter acknowledging a gift to Hisham Hamed that stated "I expect no repayment of this gift" and was funded by monies Yusuf obtained from the Plaza Extra Stores:

This correspondence will acknowledge and memorialize my conveyance today of a **gift** in the amount of \$750,000 to you. I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. **I expect no repayment of this gift from me**, whether in the form of cash, property, or future services. (Emphasis added.)

Response:

Admitted that letters were signed and that the statements set forth above were included in the letters, without the boldfaced type.

Request to Admit 32 of 50:

Request to admit number 32 of 50 relates to Claim Y- 10, as described in Hamed's ~~November 16, 2017 Motion for a Hearing Before Special "Past Pship Withdrawals - Receipts."~~

~~Admit or Deny that on July 1, 2011 Fathi Yusuf and Fawzia Yusuf, under notarized signatures,~~
each signed a \$750,000 gift letter to Mufeed Hamed that stated "I expect no repayment of this
gift" and was funded by monies Yusuf obtained from the Plaza Extra Stores:

I am giving you the unrestricted right to the immediate use of this money for whatever purpose
you desire. **I expect no repayment of this gift from me**, whether in the form of cash, property,
or future services.

Response:

~~Admitted that letters were signed and that the statements set forth above were included in
the letters, without the boldfaced type.~~

DATED: May 15th, 2018

By:

DUDLEY, TOPPER AND FEUERZEIG, LLP


CHARLOTTE K. PERRELL

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HAMD660381

Exhibit 19

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

EXHIBIT
19

Claim H-1

**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 Responses¹ to Hamed's Discovery pursuant to discussion and various letters alleging deficiencies, as follows:

1. Yusuf Claim Y-2 (for Rent for Bay 5&8), Hamed RTP 21, 34, Interrog. 29:

There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant's Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.

2. Yusuf Claim Y-14 (Half of the value of the containers at Plaza Extra-Tutu Park), Hamed RFPD 27:

Yusuf has prepared a detailed analysis of the value of the containers attached hereto as Exhibit 1. To support the calculations as to the value of the items stored in the containers, Yusuf submits various invoices for the types of items stored therein at Bate Numbers FY 015045 – 015134 attached hereto.

3. Hamed Claim H-1 (Reimbursement for sale of Dorthea Condo), Hamed Interrog. 3:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.

¹Yusuf provides these supplemental responses relating to the claims, which remain in the Part B claim schedule. Yusuf will further supplement any other responses as to claims, which were shifted to the Part A schedule.

~~Consequently, Yusuf reaffirms that this claim is barred by the Limitations Order of Judge
Brady.~~

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: December 18, 2018

By:



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*Attorneys for Fathi Yusuf and United
Corporation*

Exhibit 20

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

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

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

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

COUNTERCLAIM DEFENDANTS.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

EXHIBIT

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Claim H-1

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s expedited motion to compel responses to discovery served in connection with Hamed Claim No. H-1:¹ Hamed’s 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966.² Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed alleged that it is undisputed that “Partnership funds of more than \$1.6 million were used to create a corporation (Y&S) and to have that corporation buy real property (Condos) in Estate Dorothea,” that “Fathi Yusuf was named as the ‘Agent’ for the collection of those funds – for 50/50 disbursement to the 2 families – the ‘Nominee’” and that “Fathi Yusuf collected the funds.” (Motion, p. 2) Hamed claimed that “[i]n 2012 Fathi requested that the Hamed representative cause the transfer of that Y&S stock completing the contract, and that by Yusuf’s own written calculation, Hamed is owed \$802,966 for his 50%” and that “this transfer by the Hamed representative as directed by Yusuf as the agent took place in 2012, at which time the \$802,966 was to be paid by Yusuf to Hamed [yet] [i]t was not paid.” (Id.) Hamed further claimed that “Yusuf has repeatedly...refused to answer 1 simple interrogatory and 1 simple document request” served in connection with Hamed Claim No. H-1. (Id.) On December 18, 2018, after a Rule 37 conference was held, Yusuf supplemented his response with: “Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was

¹ In Hamed’s motion, Hamed described Hamed Claim No. H-1:

a. Description of this Claim

Certain property in St. Thomas, known as the "Dorothea Property," was jointly purchased with Partnership funds by Fathi Yusuf and Mohammad Hamed (in the name of two entities known as Y&S and R&F). This property was sold and Yusuf received the funds, but did not return Hamed's half of the funds. The amount owed Hamed from the sale had been reduced to a handwritten document, written by Yusuf and given to Hamed, showing the total owed Hamed was \$802,966. In 2012, Yusuf, as agent, directed the release of escrow. (Motion, p. 8)

² The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s instant motion to compel falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-1 is an alleged debt owed by the Partnership to Hamed.

paid directly to a charity as part of the agreement to donate any interest.” (Id., at p. 3) Hamed explained that, as a result, another Rule 37 conference was set but “Yusuf’s counsel did not appear and did not provide any prior written or other notice of non-appearance (but did send an email more than an hour later requesting a change of date).” (Id.) Hamed argued that “[i]t is impossible for Hamed to proceed without getting the following answers [to Interrogatory 3], at a minimum, from Fathi Yusuf” and thus, requested the Master to compel Yusuf to respond to discovery served in connection with Hamed Claim No. H-1. (Id., at p. 13)

In his opposition, Yusuf argued that his supplemental response “is sufficient and consistent with prior testimony and discovery.” (Opp., p. 2) Yusuf further argued that he has “consistently maintained that claims relating to the Dorothea property/sale of Y&S stock occurred prior to September 17, 2006—the deadline imposed by the Court in the Limitations Order” and “[h]ence, Yusuf has consistently maintained that Hamed’s Claim H-1 should no longer remain as an active and open claim but is barred by the Limitations Order...” (Id.) Yusuf also argued that “regardless of whether these claims survive, Yusuf provided information that there was no written documentation as to the payments he received and that those payments, in fact, were made before 2006.” (Id.) Yusuf pointed out that “[w]hether this claim survives a dispositive motion is not at issue in this Motion to Compel” and instead, “[t]he issue is the sufficiency of Yusuf’s response.” (Id., at p. 3) To which Yusuf further pointed out that “Yusuf’s response is sufficient and reflects the timing of the payments he received and that Yusuf has no documentation as to the receipt of the payments” and “[h]ence, Yusuf shows that there is no basis to compel further response to the discovery.”³ (Id.)

³ Yusuf noted in his opposition that Yusuf’s counsel did not ignore the last Rule 37 conference as Hamed alleged, but had missed it due to the following reasons: (i) “[c]ounsel for Yusuf did not anticipate that the meeting would be considered a Rule 37 conference, but instead, understood it to be another weekly meeting”; and (ii) “[c]ounsel for Yusuf mis-calendared the meeting and understood it to be on the following day... and upon learning of the issue, communicated the error in scheduling and offered to meet again.” (Opp., p. 4) Thus, Yusuf clarified

In his reply, Hamed pointed out that Yusuf “states (without declaration, evidentiary support or a properly signed interrogatory response) that [Yusuf’s] new story should be accepted without discovery—that he didn’t receive the final payment in or around 2012 (within three years of his deposition) when he requested the escrowed deed be released” and that “he has absolutely no documents despite having received more than \$1.5 million – and having a duty to document the transactions as the nominee/agent.” (Reply, p. 2) Hamed also pointed out that Yusuf “ignores the fact that Hamed is allowed to obtain discovery based on the several legal theories in the motion to compel.” (Id.) Hamed reiterated in his reply that Yusuf “must be made to answer [Interrogatory 3] and sign off on it [as required by Rule 33(b)(5) of the Virgin Islands Rules of Civil Procedure].”⁴ (Id.)

DISCUSSION⁵

that “[t]he failure to attend the meeting was a function of a calendaring error, not avoidance and is not a reflection of a failure to cooperate or a need to be compelled to otherwise further respond.” (Id., at p. 5)

⁴ Hamed noted in his reply that he finds it odd that Yusuf’s counsel explained that they missed the Rule 37 conference due to scheduling error. (Reply, p. 6) Instead, Hamed speculated that the “[n]on-attendance was not slopping—it was a misplaced effort to protect [their client].” (Id., at p. 7). At this time, Hamed stated that he “does not wish to pursue this further, but if Yusuf objects to these comments, an evidentiary hearing should be held.” (Id., at p. 8)

⁵ The Master must note at the outset that Hamed and Yusuf appears to treat the sale of Estate Dorothea and the sale of the Y&S Corporation, Inc.’s stock as they are one and the same. For example, in Hamed’s motion, in support for his claim for 50% interest in the sale proceeds of Estate Dorothea in the total amount of \$802,966, Hamed claimed that “[i]n 2012 Fathi requested that the Hamed representative cause the transfer of that Y&S stock completing the contract, and that by Yusuf’s own written calculation, Hamed is owed \$802,966 for his 50%” and that “this transfer by the Hamed representative as directed by Yusuf as the agent took place in 2012, at which time the \$802,966 was to be paid by Yusuf to Hamed [yet] [i]t was not paid.” And in Yusuf’s original accounting claims, filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), Yusuf stated:

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate, One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeih Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock, Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014-CY-278), the parties stipulated to have these claims consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966 should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. (Yusuf’s Accounting Claims, p. 11)

Based on a review of the record before the Master, the Master finds that the following facts are undisputed: (1) Hamed and Yusuf each have 50% interest in the sale proceeds of

And in Yusuf's amended accounting claims, filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims"), Yusuf essentially made the same statement except revised the end to state:

... As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966 would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y & S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order. (Yusuf's Amended Accounting Claims, p. 14-15)

However, neither Hamed nor Yusuf provided the Master with any explanation or documentation as to why the Master should treat the sale of Estate Dorothea and the sale of the Y&S Corporation, Inc.'s stock as they are one and the same. Nevertheless, for the purpose of this Order, the Master need not delve into the intricacies of the sale of Estate Dorothea and the sale of the Y&S Corporation, Inc.'s stock. At this juncture, it is sufficient that the Master finds that the facts stated below are undisputed.

Estate Dorothea;⁶ (2) Yusuf received the entire sale proceeds of Estate Dorothea;⁷ and (3) Hamed was never paid for his 50% interest in the sale proceeds.⁸

⁶ In his motion, Hamed stated that “[the Dorothea Property] was sold and Yusuf received the funds, but did not return Hamed’s half of the funds.” (Motion, p. 8)

Yusuf testified to the following at his April 2, 2014 deposition:

Q. (Mr. Holt) All right. All right. Showing you Exhibit No. 12, can you tell me if you recognize that? Do you recognize that document –

A. Yes, it’s my handwriting.

Q. And at the top it has “Dorothia” written, is that correct?

A. Yes.

Q. Can you tell me, what – what – what what does this transaction mean?

A. The transaction that we bought – we was in partnership with a third person, **that we own 50 percent of the Dorothea real estate – a real estate in Dorothea**, and the other partner owned the other 50 percent.

Finally, I come to this decision to sell it to my partner. He bought it at one-and-half million, and this number below, it was an idea to Mr. Hamed what would I – I am counted for, up to the time I give it to him. I tell him what it is. ... That transfer the property cost me money, well, I have to put that money out of my pocket, even though the obligation was on both of us.

...

...

Q. No problem. Let me go down this list.

Dorothea is – the 1.5 million were – were monies paid that belonged to you and – and Mr. Hamed?

A. Yes.

...

...

Q. So we – tell you what, let’s get to the bottom. At the bottom of this calculation is \$802,966.

Do you see that?

A. Sir, it’s a lot of – this \$8,200 (sic) I owe him on account.

Q. Okay.

...

...

Q. Okay. So one of the items that you owe them for, I understand there are items back and forth, but one of the items you owe him is the 802,960 --

A. Not 802, sir. I told you I already spent 105, or most of it, in a property where both of us is responsible to spend that money.

Q. Okay. So you would take the 105 off this 802?

A. I might – well, the others – yeah, this – that should go off.

...

...

Q. All right. So the sale of – the money in Dorothea was 1.5 million, to be split between the two of you.

A. Yes, sir.

...

...

Q. Okay. So you start with the 1.5 million, which is 50/50, and then you start adding –

A. One million and half is absolutely 50/50. I am not hiding anything.

What is disputed, however, is whether Hamed’s claim for his 50% interest in the sales proceeds of Estate Dorothea—Hamed Claim No. H-1—is barred by the Limitation Order.⁹ Hamed argued that Hamed Claim No. H-1 is not barred by the Limitation Order, and thus, he is entitled to discovery thereto. On the other hand, Yusuf argued that Hamed Claim No. H-1 is barred by the Limitation Order, and thus, Hamed is not entitled to discovery thereto. Ultimately, the issue of whether Hamed Claim No. H-1 is barred by the Limitation Order is not to be determined by the parties, but to be determined by the Master. Thus, at this juncture, the Master will permit discovery as to Hamed Claim No. H-1.

1. Motion to Compel

Rule 37 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37”) governs the scope and procedure of motion for an order compelling disclosure or discovery. Rule 37

Q. Okay. And when did you get that money?

A. I get that money, I don’t have a date. But I get that money maybe, I can guarantee you, it’s not three years. It’s less than three years. I sold this property many, many years ago. (Motion, Exhibit 4-Deposition Transcript of Yusuf’s April 2, 2014, pp. 99-106) (Emphasis added)

⁷ This is essentially the crux of Hamed Claim No. H-1 and Hamed’s complaint in Case No. SX-2014-CV-278. See *supra* footnote 1.

In his supplemental response to Hamed’s discovery as to Hamed Claim No. H-1, Yusuf stated:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (Motion, p. 3) (Opp., p. 2) (Emphasis added)

⁸ This is essentially the crux of Hamed Claim No. H-1 and Hamed’s complaint in Case No. SX-2014-CV-278. See *supra* footnote 1.

In his April 2, 2014 deposition, Yusuf admitted that Hamed has 50% interest in the sale proceeds of Estate Dorothea. Nevertheless, Yusuf argued in his opposition to Hamed’s motion that Hamed’s claim for his 50% interest in the sale proceeds of Estate Dorothea is barred by the Limitation Order:

Yusuf has consistently maintained that claims relating to the Dorothea property/sale of Y&S stock occurred prior to September 17, 2006—the deadline imposed by the Court in the Limitations Order. Hence, Yusuf has consistently maintained that [Hamed Claim No.] H-1 should no longer remain as an active and open claim... However, regardless of whether these claims survive, Yusuf provided information that there was no written documentation as to the payments he received and that those payments, in fact, were made before 2006. (Opp., p. 2) (Emphasis added)

⁹ In a memorandum opinion and order dated July 21, 2017, the Court ordered, *inter alia*, that “the accounting in this matter, to which each partner is entitled under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006” (hereinafter “Limitation Order”). *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017).

provides that “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection...if (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34. V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv). Rule 37 also provides that “[f]or purposes of this subpart (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4).

A. Hamed’s Interrogatory

Hamed’s Interrogatory 3, relates to Hamed Claim No. H-1:

Describe **what was sold and to whom**, as well as **each payment received** for the sale of that stock -- with particularity. For each such payment, this will include but not be limited to payor, receiving party, amount, where deposited, present location of funds and what amount, if any, of this was given to any member of the Hamed family. Identify any documents which support or relate to your response, **and any witnesses who would have knowledge and what knowledge you believe they have**. (Motion, pp. 2-3) (Emphasis in original.)

Yusuf’s Response:¹⁰

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (Motion, p. 3)

The Master finds that Yusuf’s response to Hamed’s Interrogatory 3 is deficient and that Yusuf failed to produce the requested documents. Under Rule 37(a)(4), “an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4). Thus, the Master will grant Hamed’s motion to compel.¹¹

CONCLUSION

Based on the foregoing, the Master will grant Hamed’s motion to compel. Accordingly, it is hereby:

¹⁰ According to Hamed’s motion, “Yusuf’s initial response was a complete refusal to answer [to Interrogatory 3]” but subsequently filed a supplemental response thereto on December 18, 2018.


¹¹ If the issue of whether Hamed Claim No. H-1 is barred by the Limitation Order remains in dispute after discovery, then either party may file a motion requesting the Master to make a determination thereto.

ORDERED that Hamed's motion to compel is **GRANTED**. It is further:

ORDERED that, **within seven (7) days from the date of entry of this order**, Yusuf shall file supplemental responses to Hamed's Interrogatory 3. **And** it is further:

ORDERED that Yusuf's supplemental responses shall be in compliance with Rules 33 and 34 of the Virgin Islands Rule of Civil Procedure.

DONE and so ORDERED this 7th day of January, 2019.



EDGAR D. ROSS
Special Master

Exhibit 21

**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>)	
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,)	
)	
Defendants.)	
)	

<p>EXHIBIT</p> <p>21</p> <p>Claim H-1</p>

**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.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 15, 2019

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