

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 AS TO HAMED REVISED CLAIMS H-16—NEJEH
YUSUF'S USE OF PARTNERSHIP RESOURCES FOR NON-PARTNERSHIP
BUSINESSES AND H-34—RENTS COLLECTED, BUT NOT DEPOSITED IN
PARTNERSHIP ACCOUNTS**

STATEMENT OF FACTS

1. On September 17, 2012, this action was filed because of: (1) Yusuf's denial of all of Hamed's partnership rights in the Plaza Extra Supermarket Partnership (a/k/a Hamed/Yusuf Partnership), and (2) Yusuf's unilateral taking of \$2.7 million from the Partnership for other Yusuf business ventures. **(Exhibit 1)**
2. On October 4, 2012, Yusuf removed the action to the Federal District Court. **(Exhibit 2)**
3. 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 3)**
4. In late 2012, Nejeh Yusuf entered into a business arrangement with the Mansour brothers on St. Thomas, VI. Nejeh Yusuf testified in his deposition on January 22, 2019 that he was engaged in the following businesses with the Mansour brothers: Wala ice plants, Wala paintball, Sprint stores, Western Union, Wireless Tech, a restaurant, a Hookah bar and a kiosk in the mall.

Q. (Mr. Hartmann) Who's Mr. Mansour?

A. [NEJEH YUSUF] He's one of three brothers that I had some business relations with before.

Q. And could you describe those business relations?

A. We opened up a few stores in St. Thomas.

Q. And what stores were those?

A. We did Wala ice plants. Wala paintball. Some Sprint stores. A store in the mall. We did Western Union, and I joined them with a restaurant, a hookah bar.

* * * *

A. A kiosk in the mall.

Q. . . .And approximately what time periods were you in each of those businesses with him?

A. I think it started towards the end of 2012, maybe.

I believe that's when I have a document signed, 2012.

Q. Okay. And what form were those businesses? Were

they partnerships or corporations or LLCs?

A. I believe they were LLCs --

* * * *

A. -- mostly in their name. All of them in their names except the Sprint stores.

* * * *

A. Either myself or the Wireless Tech store in the mall, the electronic store in the mall.

Q. . . Which you owned with the Mansours?

A. I was -- I had an agreement with them. (**Exhibit 4**, pp. 15;12-20, 25; 16:1-7, 9-10; 22:19-22)

5. On February 15, 2016, Hamed sent John Gaffney, Plaza Extra controller, a query and request for documentation for Claim H-16 (formerly Item No. 253):

Please describe how PE resources used for Nejeh Yusuf's personal businesses were accounted. Please provide the canceled checks, invoices and any other back up documentation for the use of PE resources, such as shipping containers, for Nejeh Yusuf's personal businesses. (**Exhibit 5**)

6. In that same February 15, 2016 document, Hamed sent John Gaffney a query and request for documentation for Claim H-34 (formerly Item No. 340):

How were the amounts collected, as described in exhibit 340-a—Rent collected by Nejeh from Triumphant Church, accounted for on the 2014 -2015 general ledgers? (**Exhibit 5**)

7. On May 17, 2016, John Gaffney sent a letter to Hamed's attorney, Joel Holt, regarding the February 15, 2016 requests for information regarding the Plaza Extra accounting. Mr. Gaffney only responded to a few queries – H-16 and H-34 received no response. In his letter, Mr. Gaffney stated:

This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ) [Hamed's accountant]. At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. (**Exhibit 6**)

8. On January 22, 2019 in his deposition, Nejeh Yusuf testified that his business arrangements with the Mansour brothers was continuing as of the date of his deposition.

Q. [Mr. Hartmann] Right. And how long did it last?

A. [NEJEH YUSUF] I believe up to about 2016, or -- about 2015-16, when I moved over here, I was still partners with him, but I was not engaged in the -- in the business. I was not on island.

Q. But the business was still operational?

A. Yeah, most of them were still operational.

Q. And you were still partners with him?

A. Yes.

Q. Are you still partners with him?

A. On paper, yes. I am not partners, but I have an agreement with them on paper. (**Exhibit 4**, p. 17:11-22)

9. On January 22, 2019 in his deposition, Nejeh Yusuf testified that he used Plaza Extra resources to ship security cameras from Miami, Florida to St. Thomas, VI.

Q. [Mr. Hartmann]. . . Let's take the box of cameras, since everybody seems to agree that they exist.

The box of cameras were purchased by Plaza Extra or by you, personally?

A. [NEJEH YUSUF] I believe they were purchased by either me or Wireless Tech store in the mall from China.

Q. You or who?

A. Either myself or the Wireless Tech store in the mall, the electronic store in the mall.

Q.. . . Which you owned with the Mansours?

A. I was -- I had an agreement with them.

* * * *

A. They [cameras] got shipped to Plaza Extra, right. He paid the freight from China to Miami.

Q. Who paid the freight?

A. Wireless Tech paid the freight from China to Miami. And in return, I brought it from Miami down for a lower price. So he -- in China, you have to buy quantity to get the price.

* * * *

A. So I helped him by buying, because I needed

cameras.

Q. And when you said, "I had them shipped," you mean you, Najeh, had them shipped, or, you, Plaza Extra, had them shipped?

A. I can't remember, but I agreed with him that it can come to Miami and I can ship it in my container.

* * * *

A. And when it gets there, I get the lower price. I get the cost of the -- of the units.

Q. Okay. So now the cameras have been shipped from Miami and they're sitting in the Plaza Extra store. Who do they belong to?

A. They belong to myself and Wireless Tech.

Q. And who is Wireless Tech?

A. The two Mansour brothers.

* * * *

A. We bought the cameras. I can't remember how it's situated, if it's in my name or Wireless Tech's name. To think about it now, it could have even been in Plaza Extra's name, because Willie was aware of it, that we were getting cameras from him, and we were paying roughly 30 bucks or 40 bucks a camera, versus \$169-\$170 a camera. So cameras came in. I made a deal with the guy, you pay it to Miami. Miami comes down in my container to Plaza St. Thomas. I take what's my share. I don't know if -- how it was taken. If it was delivered. If he picked it up. If it went -- if it went, you know, in the store, landed like right at the receiving inside and we opened it up, I opened it up and separated mine's, but the cameras came in. I bought it for the purpose of Plaza Extra saving funds, because we were buying it for over \$150 a camera from the local people. (**Exhibit 4**, pp. 22:12-22; 23:2-8,10-16,18-25; 27:2-17)

10. On January 22, 2019, Willie Hamed testified that Nejeh Yusuf took security cameras, a laptop, a computer, a monitor and a TV belonging to Plaza Extra-Tutu shortly before the sale of the Tutu store. Willie Hamed said that only Nejeh Yusuf could have taken the items because no one else in the store had access to the items other than Yusuf and himself. He also stated

that Fadi Mansour related his conversation with Nejeh Yusuf where Yusuf told him that he had stolen the cameras. Finally, when these missing items were brought to Special Master Ross's attention on the day of the Plaza Extra-Tutu store auction, he told Willie Hamed to put a claim in for the missing items.

A. [WILLIE HAMED] Well, we -- before the store was -- went up for bid, Nejeh went and took a lot of equipment, a lot of items that belonged to the store and sold them. . . . He took everything out of his office that was belonging to Plaza Extra Tutu, whether it's a computer, whether it's the laptop, whether it's the monitor, whether it's the TV, whether it's numerous things

* * * *

A. I know there's equipment that was taken out of the store.

Q. [Ms. Perrell] What?

A. I can't recall in detail what it is. I know there was cameras, like a box of surveillance cameras. DVRs.

* * * *

Q.. . . Did you see those things being removed by Nejeh?

A. No, but they were in his possession --

* * * *

A. -- at all times.

* * * *

A. Then when we were getting with our bidding process, all of a sudden, they disappeared.

* * * *

Q. [Ms. Perrell] If you didn't see him take the, let's take the box of cameras, how do you know it was him that took the box of cameras?

A. Because Fadi confirmed it.

* * * *

A. Mansour confirmed it.

* * * *

Q. [Mr. Hartmann]. . .If you didn't see, actually physically see Nejeh take that stuff, how do you know it was him that took it, as opposed to Bob Smith, the guy who works in the bakery?

A. [WILLIE HAMED] Because Bob Smith does not have access.

* * * *

A. The only people who have access is myself and him.

Q.. . .So what you're saying is, one day the stuff was there, the next day the stuff was gone, and you inferred from that, that Nejeh took it?

A. I actually mentioned it in front of Joel, my brother, and Judge Ross, the day that we made the bid, and in front of Yusuf, saying, Hey, some of the stuff was in his office and it's now gone. That was Plaza Extra property.

* * * *

A.. . .Then the judge stated, All right. Just put in a claim for it. (**Exhibit 7**, pp. 60:9-11, 14-17; 65:5-9, 13-20; 79:2-9, 14-25; 80:1-5)

11. On January 22, 2019 in his deposition, Nejeh Yusuf testified that he took a pressure washer that belonged to Plaza Extra Tutu and did not return it to the store.

A.[NEJEH YUSUF]. . .There was a -- a issue with a pressure washer that was at my house that I borrowed before the -- the split, and the manager called me, Johnny Gumbs, and says, We want the pressure washer back. I said, It's at my house. You want it, you can come get it. I'm not bringing it.

* * * *

Q.. . .And where's the pressure washer now?

A. I think it's still there probably rotten.

Q. At your house?

A. Probably. (**Exhibit 4**, p. 30:1-4; 15-18)

12. On January 22, 2019 in his deposition, Nejeh Yusuf testified that the rents from the Triumphant Church and an auto body shop belonged to Plaza Extra, but his father, Fathi Yusuf, told him to stop depositing the rents into the Plaza Extra account towards the end of the Partnership. At that point, Nejeh Yusuf stated he simply kept the rent payments. He said prior to his father's directive, the renters would come to the service desk at Plaza Extra to pay the rent, the service desk would call Nejeh to the desk, Nejeh would then write a receipt for the renter showing the rent was paid and then he would deposit the funds into the Plaza Extra account.

A.[Mr. Hartmann]. . . Were the three businesses that you collected, you and Willie also collected rents from on a monthly basis?

A. [NEJEH YUSUF] The rents wasn't coming in monthly.

Q. Well, did you collect the rents for them?

A. Yeah, we collected the rents from them.

Q. And what were the three businesses?

A. It was the -- well, it's mainly two businesses:

It was the church and the auto body shop.

* * * *

Q.. . . So just tell me about how the collection of the rents worked?

A. They would come into the service desk and they would drop off the payment. And then I would, in turn, give it to the girls upstairs to deposit in the account.

* * * *

Q. Okay. And did you ever -- any of the -- the money that came in for rent, did it ever go through your hands or did it always go through the desk?

A. They always called me. I handled it with the folks. I wrote them a receipt from the store. And I had it deposited in the accounts up until my dad told me stop depositing those funds in the -- in the store's account.

Q. And when did he tell you that?

A. Towards the end of the partnership.

Q. Okay. And from that point on, where did the rents go?

A. I just held onto it. It went -- either I held onto it or it went into the -- I think I held onto it, mainly. He said not to deposit into the account. . . .
(**Exhibit 4**, pp. 37:4-11; 18-22; 38:5-18)

13. Receipts left at the Plaza Extra-Tutu store showed that the Triumphant Church was paying rent of \$300 per month. A document summarizing the payments receipt showed the last collection date for the rent was April 2015. (**Exhibit 8**)

14. On January 22, 2019, Waheed "Willie" Hamed testified that Nejeh Yusuf continued to collect rents from the Triumphant Church, the body shop and a plastics cistern business after the store was sold to the Hamed's on May 1, 2015.

A. [WILLIE HAMED]. . . there were three businesses there: The church, a body shop, Cliff's Body Shop, and a guy that sells plastic containers for like septic and cisterns. And they were all paying rent. I've collected the rent twice and I gave it to Nejeh. I wrote a receipt for that amount and I gave it to Nejeh.

* * * *

Q. [Ms. Perrell]. . . Was there a point in time in which the rents were no longer collected on behalf of the partnership?

A. They were still collected, even after -- after we -- after we bought the store, they came by and they were saying, Hey, we're looking for Nejeh, we need to pay the rent.

* * * *

Q. . . . So there was, in your mind, never a point in time in which the rents from these three entities should not still be collected by the partnership?

A. They should still be collected by the partnership. (p. 70, lines 8-11)
(**Exhibit 7**, 68:10-14, 69:20-25; 70:8-11)

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, as agreed by the parties, on:

Hon. Edgar Ross

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Carl J. Haddad

CERTIFICATE OF WORD/PAGE COUNT

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Carl J. Haddad

Exhibit 1

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.

Claims H-16 and H-34

EXHIBIT

1

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:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Payroll Acct:	04xxxxxxxxxx	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:	05xxxxxxxxxx	Bank of Nova Scotia (BNS)

St. Croix Plaza Extra – EAST

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

9. United has always had separate accounting records and separate bank accounts for its shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Hamed does not have access to these separate bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.

10. At all times relative hereto, the Hamed and Yusuf partnership profits from the Plaza Extra stores have always been held in banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Hamed and Yusuf partnership are in United's name as well. The parties are currently prohibited from removing funds from these accounts because of the same Order

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

Popular Securities

PSx-xxxx22
PSx-xxxx63
PSx-xxxx60
PSx-xxxx79
PSx-xxxx01
PSx-xxxx10
PSx-xxxx28
PSx-xxxx36

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

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

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

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

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

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

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

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

That document then described the partnership assets as follows:

Section 1.1: Assets of the Partnership

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

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

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

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

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

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

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

COUNT I

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

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

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

COUNT II

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

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

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

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

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

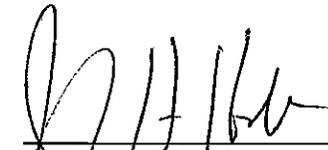
funds from any partnership bank accounts or brokerage accounts without the consent of Hamed;

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

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

**Complaint
Page 11**

Dated: September 17, 2012



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

Exhibit 2

**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
2

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 3

**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.)
_____)

Civil Action No. 2012-099

Attorneys:

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For the Plaintiff

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Miami, FL
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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
3

Claims H-16 and H-34

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 4

**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.)

**VIDEOTAPED ORAL DEPOSITION OF
NAJEH YUSUF**

EXHIBIT

4

THE VIDEOTAPED ORAL DEPOSITION OF NAJEH YUSUF

was taken on the 22nd 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 12:24 p.m. and 1:30 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161

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

Law Offices of
Carl Hartmann, III
5000 Estate Coakley Bay, L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Carl Hartmann, III
Kimberly Japinga

For the Defendants:

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

By: Charlotte Perrell

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

Pages 15-17

NAJEH YUSUF -- DIRECT

1 Q. Okay.

2 A. I walked out there and she was always in a
3 discussion with Mr. Yusuf, and I stood on the side and I
4 listened to what they talking about.

5 Q. Okay. And what were they talking about?

6 MS. PERRELL: Okay. That would be
7 privileged, and that has nothing to do with --

8 MR. HARTMANN: I'm not -- I'm not going to do
9 this anymore, okay? I'm going to examine the witness and
10 we'll deal with this as another issue.

11 MS. PERRELL: Okay.

12 Q. (Mr. Hartmann) Who's Mr. Mansour?

13 A. He's one of three brothers that I had some
14 business relations with before.

15 Q. And could you describe those business relations?

16 A. We opened up a few stores in St. Thomas.

17 Q. And what stores were those?

18 A. We did Wala ice plants. Wala paintball. Some
19 Sprint stores. A store in the mall. We did Western Union,
20 and I joined them with a restaurant, a hookah bar.

21 Q. And were those the only businesses you were in
22 with them?

23 A. That I can remember.

24 Q. Okay.

25 A. A kiosk in the mall.

NAJEH YUSUF -- DIRECT

1 **Q.** Okay. And approximately what time periods were
2 you in each of those businesses with him?

3 **A.** I think it started towards the end of 2012, maybe.
4 I believe that's when I have a document signed, 2012.

5 **Q.** Okay. And what form were those businesses? Were
6 they partnerships or corporations or LLCs?

7 **A.** I believe they were LLCs --

8 **Q.** Okay.

9 **A.** -- mostly in their name. All of them in their
10 names except the Sprint stores.

11 **Q.** Okay. And what was your relative relationship
12 with Mr. Mansour -- first of all, how do you spell
13 Mr. Mansour's name?

14 **A.** His first name is F-A-D-I, and then M-A-N-S-O-U-R.

15 **Q.** Okay. And -- and what was your relationship in
16 each of those? Take each of the businesses separately.

17 **A.** Well, I had -- I had did an agreement with Mansour
18 initially in the beginning. And because he seemed to have a
19 lot of bad reputation on the island, I went into the -- the
20 business, knowing that if I went in, he would have to leave
21 the island. He would have to get off the island and leave
22 in order for me to -- to be in business with these -- with
23 his brothers, his two other brothers.

24 **Q.** Okay. But what I mean, the relationship, I
25 mean --

NAJEH YUSUF -- DIRECT

1 **A.** There's no relationship.

2 **Q.** Who is the -- who is the president? Who was the
3 general manager?

4 **A.** It's mostly his two other brothers.

5 **Q.** His two other brothers?

6 **A.** Right.

7 **Q.** Okay. So -- and how long were you in business
8 with Mr. Mansour?

9 **A.** Like I said, it started around 20 -- the ending
10 2012.

11 **Q.** Right. And how long did it last?

12 **A.** I believe up to about 2016, or -- about 2015-16,
13 when I moved over here, I was still partners with him, but I
14 was not engaged in the -- in the business. I was not on
15 island.

16 **Q.** But the business was still operational?

17 **A.** Yeah, most of them were still operational.

18 **Q.** And you were still partners with him?

19 **A.** Yes.

20 **Q.** Are you still partners with him?

21 **A.** On paper, yes. I am not partners, but I have an
22 agreement with them on paper.

23 **Q.** And what kind of an agreement is it?

24 **A.** I got --

25 **Q.** If it's not a partnership, it's a LLC or a

Pages 22-23

NAJEH YUSUF -- DIRECT

1 had -- we had some cameras that we ordered just because the
2 price was way cheaper than what he were buying for locally,
3 and I purchased some for the store. In exchange for the
4 price, I had him ship it to Miami and I -- I paid the
5 shipping from Miami to -- to St. Thomas in our container. I
6 got maybe, I don't know, two boxes, maybe three boxes, and
7 the rest of it went to him in exchange for the lower price,
8 and we -- we saved over \$2,000 in just that one deal.

9 Q. Okay. I'm sorry, --

10 A. So --

11 Q. -- I lost the track.

12 Let's take the box of cameras, since
13 everybody seems to agree that they exist.

14 The box of cameras were purchased by Plaza
15 Extra or by you, personally?

16 A. I believe they were purchased by either me or
17 Wireless Tech store in the mall from China.

18 Q. You or who?

19 A. Either myself or the Wireless Tech store in the
20 mall, the electronic store in the mall.

21 Q. Okay. Which you owned with the Mansours?

22 A. I was -- I had an agreement with them.

23 Q. Okay.

24 A. They own it.

25 Q. Okay. So what you're saying -- but those got

NAJEH YUSUF -- DIRECT

1 shipped to the Plaza Extra store?

2 **A.** They got shipped to Plaza Extra, right. He paid
3 the freight from China to Miami.

4 **Q.** Who paid the freight?

5 **A.** Wireless Tech paid the freight from China to
6 Miami. And in return, I brought it from Miami down for a
7 lower price. So he -- in China, you have to buy quantity to
8 get the price.

9 **Q.** Okay.

10 **A.** So I helped him by buying, because I needed
11 cameras.

12 **Q.** And when you said, "I had them shipped," you mean
13 you, Najeh, had them shipped, or, you, Plaza Extra, had them
14 shipped?

15 **A.** I can't remember, but I agreed with him that it
16 can come to Miami and I can ship it in my container.

17 **Q.** Okay.

18 **A.** And when it gets there, I get the lower price. I
19 get the cost of the -- of the units.

20 **Q.** Okay. So now the cameras have been shipped from
21 Miami and they're sitting in the Plaza Extra store.

22 Who do they belong to?

23 **A.** They belong to myself and Wireless Tech.

24 **Q.** And who is Wireless Tech?

25 **A.** The two Mansour brothers.

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NAJEH YUSUF -- DIRECT

1 Q. Okay. I'm sorry.

2 A. We bought the cameras. I can't remember how it's
3 situated, if it's in my name or Wireless Tech's name. To
4 think about it now, it could have even been in Plaza Extra's
5 name, because Willie was aware of it, that we were getting
6 cameras from him, and we were paying roughly 30 bucks or 40
7 bucks a camera, versus \$169-\$170 a camera.

8 So cameras came in. I made a deal with the
9 guy, you pay it to Miami. Miami comes down in my container
10 to Plaza St. Thomas. I take what's my share. I don't know
11 if -- how it was taken. If it was delivered. If he picked
12 it up. If it went -- if it went, you know, in the store,
13 landed like right at the receiving inside and we opened it
14 up, I opened it up and separated mine's, but the cameras
15 came in. I bought it for the purpose of Plaza Extra saving
16 funds, because we were buying it for over \$150 a camera from
17 the local people. I used to install the cameras myself. I

18 bought it for 30 or 40 bucks a camera. I mean, you do the
19 math. It's a huge savings when we're doing over 40 cameras
20 in a big store like that.

21 Q. Okay. And -- and I don't know if he's going to
22 testify to this, and I haven't heard Mr. Mansour's
23 testimony, but if Mr. Mansour said that you took Plaza Extra
24 cameras out of the Plaza Extra store and then sold them
25 either through Wireless Tech or gave them to Wireless Tech

Page 30

NAJEH YUSUF -- DIRECT

1 There was a -- a issue with a pressure washer
2 that was at my house that I borrowed before the -- the
3 split, and the manager called me, Johnny Gumbs, and says, We
4 want the pressure washer back. I said, It's at my house.
5 You want it, you can come get it. I'm not bringing it.

6 **Q.** Okay. And did they ever get that back?

7 **A.** So if you think that's considered a compressor,
8 which it's not, it's a pressure washer --

9 **Q.** Okay.

10 **A.** -- then that is what was at my house. And I guess
11 when you looked for it, he remembered that I had it at my
12 house. He asked me for it, 'cause I figured Willie told
13 him, Call Najeh and get the pressure washer back. I tell
14 him, you want it, you come get it.

15 **Q.** Okay. And where's the pressure washer now?

16 **A.** I think it's still there probably rotten.

17 **Q.** At your house?

18 **A.** Probably.

19 **Q.** Okay.

20 **A.** I -- I have to check in the pump room.

21 **Q.** And how about actual merchandise from the store?

22 Did you sell any of the merchandise from the store after the
23 sale?

24 **A.** Sell the merchandise from the store after the
25 sale?

Pages 37-38

NAJEH YUSUF -- DIRECT

1 Q. Okay. Thank you.

2 And now let's talk about the collection of
3 the rents from the three businesses, the Triumphant -- well,

4 I'll ask you: Were the three businesses that you collected,
5 you and Willie also collected rents from on a monthly basis?

6 A. The rents wasn't coming in monthly.

7 Q. Well, did you collect the rents for them?

8 A. Yeah, we collected the rents from them.

9 Q. And what were the three businesses?

10 A. It was the -- well, it's mainly two businesses:
11 It was the church and the auto body shop.

12 Q. Wasn't there a plastic --

13 A. Plastic, but he -- he hasn't been there. I tried
14 to get the rent out of him, I haven't. I couldn't catch up
15 to him. He's hardly there. He's not there. He has a
16 wooden stand there, but to my knowledge, he hasn't paid
17 anything.

18 Q. Okay. So just tell me about how the collection of
19 the rents worked?

20 A. They would come into the service desk and they
21 would drop off the payment. And then I would, in turn, give
22 it to the girls upstairs to deposit in the account.

23 Q. Okay. So then there would be a ledger sheet that
24 showed all those deposits?

25 A. There would be a ledger sheet there. The lady --

NAJEH YUSUF -- DIRECT



1 the church didn't come in monthly as planned, or as they
2 should. And the auto body shop didn't come in as planned.
3 He paid in lump sums, I guess, mainly by check, from what I
4 could remember.

5 Q. Okay. And did you ever -- any of the -- the money
6 that came in for rent, did it ever go through your hands or
7 did it always go through the desk?

8 A. They always called me. I handled it with the
9 folks. I wrote them a receipt from the store. And I had it
10 deposited in the accounts up until my dad told me stop
11 depositing those funds in the -- in the store's account.

12 Q. And when did he tell you that?

13 A. Towards the end of the partnership.

14 Q. Okay. And from that point on, where did the rents
15 go?

16 A. I just held onto it. It went -- either I held
17 onto it or it went into the -- I think I held onto it,
18 mainly. He said not to deposit into the account. We had

19 gone through it and I paid bills with it or whatever it was.

20 Q. Okay. Also there's been discussion about
21 withdrawals, cash withdrawals, from the safe.

22 A. Um-hum.

23 Q. And I understand there are a series of different
24 safes. There's a petty cash safe and there's a larger safe,
25 but are you aware that there's a controversy that says -- a

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, **NAJEH 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 8th 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

Exhibit 5

Item No. 253

Description: NejeH Yusuf used PE resources, such as shipping containers, for his own personal businesses.

General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable): None

Question/Request for Info: Please describe how PE resources used for NejeH Yusuf's personal businesses were accounted.

Please provide the canceled checks, invoices and any other back up documentation for the use of PE resources, such as shipping containers, for NejeH Yusuf's personal businesses.

Response:

List of documents provided:

**EXHIBIT
5**

Claims H-16 and H-34

Item No. 340

Description: NejeH Yusuf's collection of rents from Triumphant church.

General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable): N/A

Question/Request for Info: How were the amounts collected, as described in exhibit 340-a--Rent collected by NejeH from Triumphant Church, accounted for on the 2014-2015 general ledgers?

Response:

List of documents provided:

Exhibit 6



P.O. Box 763
Christiansted, VI 00821

May 17, 2016

Joel Holt, Esq. P.C.
2132 Company Street, Suite 2
Christiansted, VI 00820

Dear Joel,

 This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ). At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. ~~After reviewing my responses, you can decide yourself whether any of them serve in winding up the Partnership.~~

In our very first meeting with VZ in your office, I challenged the very extensive nature of the initial document request. Betty Martin, VZ Partner verbally backed off the initial request some. When I asked her about the scope of VZ's review, the answer was vague and you even questioned that scope in a later conversation with me in your office. We did establish that the scope did not include a full audit as I made it clear we did not have the resources for such work.

I suggested a less burdensome and more productive approach that Betty and her team thought could be implemented. The suggestion was to assign a junior level auditor who would work along with me. That was before the St. Thomas store auction. After the auction our challenge was overwhelming and would have likely crashed except for the assistance from Humphrey Caswell, former PE St. Thomas Controller.

Admittedly, there was a long gap between our initial meeting in March 2015 and beginning VZ field work in January 2016. During that gap, we completed the Kauffman Rossin DOJ review while I continued receiving extensive accounting record requests from VZ. But due to the extended time between the first and second meetings, I was able to provide most of the records. But doing so was so burdensome, time-consuming and expensive that I recommended again that I provide all accounting databases augmented with 6 month increments of original records. In other words, I would deliver 6 months of original records and upon review completion I would deliver the next 6 months and pick up the first 6 months.

To date the first 6 months of original records have not been returned nor have you requested the next 6 months. During our meeting in January 2016, I suggested again that someone be assigned to work closely with me, especially in response to VZ's request for detailed till stat reports. Instead of requesting the provision hundreds of detailed till stat reports, have someone from your team work with me to review a handful of such reports. Once done, I was confident VZ would conclude that reviewing hundreds was unnecessary just as Kauffman Rossin did during their review.

Claims H-16 and H-34

EXHIBIT
6

YUSF238182

~~Keep in mind, the Hameds controlled the cash rooms and managed the cash registers in all three stores during my entire time with the company. The Yusufs were much less involved in this area and although I implemented the "sales journal" system, I had no indication that there were any weaknesses or other issues in the Hameds' management of the cash rooms and registers. Once someone from VZ duplicates the documents contained in the daily sales journals and the integrity therein, I'm confident they would see that a document request for hundreds of till stat detail reports is non-productive and unnecessarily time-consuming and expensive.~~

Similarly, the extensive requests for documents supporting expenditures including cancelled checks are questionable knowing that no payments were made without signatures from a member of each family. If the Hameds disputed an item, they simply refused to sign the check. Admittedly, we aren't able to provide many cancelled checks. Once you review my responses, you should clearly understand why. In view of the extent to which I've provided original bank records though, I question the intent behind continued requests for cancelled checks or bank statements that VZ knows we don't have, either because the Hameds retained possession or banks refused to provide them.

Your recent document requests and inquiries submitted last week appear to be legitimate as VZ has challenged or questioned some of my accounting decisions in winding up the Partnership. While I don't object to being challenged, I would like to say that I put off having to make some decisions as long as possible. I mentioned this in my meetings with VZ as well. The very request for VZ to assign someone to work with me was so we could discuss and make joint decisions on nominal issues.

For instance, after the March 8, 2015 East/West split there were employee loans that were extremely difficult to track and collect. Employees who owed money at PE East transferred to PE West and vice versa. While I offered to provide and may have even sent details to PE West, I assumed that some loans simply would not be collected. Or that if they were collected, I might not be informed of it as in the case of 3 payments by one employee at PE West who we followed up on a few months ago. Therefore, I made the decision to write them off with the plan of revisiting them when time allowed. There are adjustments (credits) however small that are due to the Partnership. But the time it takes to research these credits is being consumed in otherwise burdensome, time-consuming and expensive document requests.

With the provision of what I've done so far, I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership. Refer to my documents of ongoing PE challenges with taxing authorities which are being ignored due to VZ document requests.

Also, I request for VZ to return the original records consisting of the sales journals for PE East and West for the first 6 months of 2013 and after one month for VZ to assign someone who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies. As you know, Section 9, Step 4 of the Plan simply provides that "Hamed's ~~accountant shall be allowed to view all partnership accounting information from January 2012 to~~

~~present...” To date, no one has been denied access to original records that we possess. Under the pending VZ requests, instead of being “allowed to view” the relevant partnership accounting information, I am being effectively requested to gather and spoon-feed that information to VZ. I respectfully submit that my proposal to have a VZ accountant work on premises with the original records is much more consistent with the information access contemplated by the Plan than the process of my responding to the myriad information requests submitted by VZ.~~

~~The Master has reviewed and approves the process I have recommended.~~

Sincerely,


John Gaffney

Exhibit 7

**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.)

**VIDEOTAPED ORAL DEPOSITION OF
WAHEED "WILLIE" HAMED**

EXHIBIT

7

THE VIDEOTAPED ORAL DEPOSITION OF WAHEED "WILLIE" HAMED

was taken on the 22nd 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 10:25 a.m. and 12:09 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161

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

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By: Carl Hartmann, III
Kimberly Japinga

For the Defendants:

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

By: Charlotte Perrell

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

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WAHEED "WILLIE" HAMED -- DIRECT

1 find the claim.

2 The nature of the claim is that the
3 partnership -- your family is contending that the
4 partnership resources, such as a compressor, shipping
5 containers, personnel, and trucks were used by NejeH for his
6 personal business expenses.

7 Do you have any knowledge relating to any of
8 these allegations?

9 **A.** Well, we -- before the store was -- went up for
10 bid, NejeH went and took a lot of equipment, a lot of items
11 that belonged to the store and sold them. And I have a
12 witness that's willing to come out and testify of what he
13 did with those items that he took out of the store.

14 He took everything out of his office that was
15 belonging to Plaza Extra Tutu, whether it's a computer,
16 whether it's the laptop, whether it's the monitor, whether
17 it's the TV, whether it's numerous things, I have employees
18 telling me and showing me of him taking pallets and pallets
19 of product out of the store.

20 I have customers telling me that NejeH was
21 selling them product out of the store, and that was never
22 rung into the store.

23 **Q.** Who are the names of these employees?

24 **A.** I will get you them.

25 **Q.** I need them now.

Page 65

WAHEED "WILLIE" HAMED -- DIRECT

1 break it down.

2 Do you have any knowledge relating to a
3 compressor that you believe that Fathi -- that Nejeah Yusuf
4 misappropriated?

5 **A.** I know there's equipment that was taken out of the
6 store.

7 **Q.** What?

8 **A.** I can't recall in detail what it is. I know there
9 was cameras, like a box of surveillance cameras. DVRs.

10 **Q.** Okay.

11 **A.** I'm -- I'm trying to remember the list now. A
12 compressor. I -- I think so.

13 **Q.** Okay. Did you see those things being removed by
14 Nejeah?

15 **A.** No, but they were in his possession --

16 **Q.** Okay.

17 **A.** -- at all times.

18 **Q.** Okay.

19 **A.** Then when we were getting with our bidding
20 process, all of a sudden, they disappeared.

21 **Q.** Okay. Other than those items that you just
22 mentioned, you indicated that -- here, that there were
23 certain partnership resources that were also utilized, and
24 you also indicated personnel were utilized by Nejeah.

25 What information do you have about that?

Pages 68-70

WAHEED "WILLIE" HAMED -- DIRECT

1 **Q.** With regard to -- do you know anything relating to
2 rents from an entity called the Triumphant Church?

3 **A.** Yes, ma'am.

4 **Q.** Okay. What -- the claim that is being made here
5 is for \$3,900.

6 Do you know anything about that?

7 **A.** Yes, ma'am.

8 **Q.** What do you know?

9 **A.** Well, we were collecting rent for -- actually,

10 there were three businesses there: The church, a body shop,
11 Cliff's Body Shop, and a guy that sells plastic containers
12 for like septic and cisterns. And they were all paying
13 rent. I've collected the rent twice and I gave it to Nejeh.
14 I wrote a receipt for that amount and I gave it to Nejeh.

15 **Q.** Okay. And so the nature of the claim is that --
16 what is -- what is the nature of the claim?

17 **A.** Our portion.

18 **Q.** Okay. And how much was that rent?

19 **A.** I don't know, because he never documented it. He
20 put in what he wanted to put in. When we took over the
21 store, we had about maybe couple thousand dollars in -- in a
22 pouch with receipts, but they were missing. They were not
23 corresponding. And they only had the Triumphant Church.
24 What about Cliff's rent? What about the plastic guy's rent?
25 Where's all that?

WAHEED "WILLIE" HAMED -- DIRECT

1 When I received it both times, I gave it to
2 him and I gave him a receipt, because I signed the receipt.
3 So where's our portion of that?

4 **Q.** Okay. From Cliff, do you have any idea what the
5 amount of rent was for him on a monthly basis?

6 **A.** I could -- no, I don't. I don't know it off the
7 top of my head, no.

8 **Q.** All right. And with regard to the other business,
9 which was a cistern business, what was the rent --

10 **A.** I don't.

11 **Q.** -- for them?

12 **A.** I don't know.

13 **Q.** Okay. All right. Was there a point in time when
14 you understood that there was no longer rents to be
15 collected from this particular property and deposited into
16 the Plaza Extra --

17 **A.** It was --

18 **Q.** -- stores?

19 **A.** -- never deposited. It was all held in the safe.

20 **Q.** Okay. Was there a point in time in which the
21 rents were no longer collected on behalf of the partnership?

22 **A.** They were still collected, even after -- after
23 we -- after we bought the sore, they came by and they were
24 saying, Hey, we're looking for Negeh, we need to pay the
25 rent.

WAHEED "WILLIE" HAMED -- DIRECT

1 **Q.** Okay.

2 **A.** And I gave them Nejeh's number.

3 **Q.** Okay. So after you -- so that's what I'm trying
4 to understand. What is the nature of the claim? Are you
5 saying that you still should be receiving those rents, or
6 no?

7 **A.** Yes.

8 **Q.** Okay. So there was, in your mind, never a point
9 in time in which the rents from these three entities should
10 not still be collected by the partnership?

11 **A.** They should still be collected by the partnership.

12 **MS. PERRELL:** Okay. All right. Just for a
13 moment, to go into the reasons why the Yusufs believe that
14 rents should no longer be connected -- collected, would be
15 to go into our account, Jordanian property issues, so I'm
16 going to reserve follow-up questions on that issue until we
17 hit that, because otherwise, I think it's going to open up
18 all of those other issues for now.

19 **MR. HARTMANN:** That's fine.

20 **MS. PERRELL:** Just making a note on the
21 record.

22 **Q.** **(Ms. Perrell)** All right. Let me ask you, the
23 Hameds are making a claim for United's corporate franchise
24 taxes and annual fees.

25 Do you have any information relating to that?

Pages 79-80

WAHEED "WILLIE" HAMED -- CROSS



1 **A.** Okay.

2 **Q.** If you didn't see him take the, let's take the box
3 of cameras, how do you know it was him that took the box of
4 cameras?

5 **A.** Because Fadi confirmed it.

6 **Q.** Fathi confirmed?

7 **A.** Fadi. Fadi.

8 **Q.** Oh, Fadi.

9 **A.** Mansour confirmed it.

10 **Q.** Okay. But -- but I don't think Fadi went through
11 the list of all the things that --



12 **A.** No.

13 **Q.** -- you think he took.

14 If you didn't see, actually physically see
15 Nejah take that stuff, how do you know it was him that took
16 it, as opposed to Bob Smith, the guy who works in the
17 bakery?

18 **A.** Because Bob Smith does not have access.

19 **Q.** Okay.

20 **A.** The only people who have access is myself and him.

21 **Q.** Okay. So what you're saying is, one day the stuff
22 was there, the next day the stuff was gone, and you inferred
23 from that, that Nejah took it?

24 **A.** I actually mentioned it in front of Joel, my
25 brother, and Judge Ross, the day that we made the bid, and

WAHEED "WILLIE" HAMED -- CROSS

1 in front of Yusuf, saying, Hey, some of the stuff was in his
2 office and it's now gone. That was Plaza Extra property.

3 Q. Okay.

4 A. And then -- I'm sorry. Then the judge stated, All
5 right. Just put in a claim for it.

6 Q. Okay. You said that --

7 A. He -- he -- can you please stop staring at me?
8 Giving me like -- no, I'm serious, because this guy pulled a
9 gun on me, and I'm not going to tolerate this.

10 Q. I understand.

11 A. Okay.

12 Q. Look -- just look at me. Don't look around the
13 room. We've got five more questions.

14 A. Sure.

15 Q. Just let me ask my five questions.

16 A. No problem.

17 Q. Okay. You said that you worked in the trailers at
18 the Plaza Extra store around the period when it was sold,
19 right?

20 A. Yes, sir.

21 Q. You said that neither Mr. Yusuf nor Nejeh ever
22 worked in those trailers?

23 A. Yes, sir.

24 Q. Okay. And -- and based on your knowledge --
25 yesterday in his deposition, Mr. Yusuf said that the

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, **WAHEED "WILLIE" HAMED**, 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

Exhibit 8

RENT FOR TRIUMPHNAT CHURCH

APRIL	2014	\$300.00
MAY	2014	\$300.00
JUNE	2014	\$300.00
JULY	2014	\$300.00
AUGUST	2014	\$300.00
SEPTEMBER	2014	\$300.00
OCTOBER	2014	\$300.00
NOVEMBER	2014	\$300.00
DECEMBER	2014	\$300.00
JANUARY	2015	\$300.00
FEBRUARY	2015	\$300.00
MARCH	2015	\$300.00
APRIL	2015	\$300.00

\$3900.00

EXHIBIT

8

Claims H-16 and H-34

~~Exhibit: 340-a~~

JVZ-001369

PLAZA EXTRA SUPERMARKET

4605 Tutu Park Mall, Suite 200
 St. Thomas VI 00802
 Phone 340-775-5646 Fax 340-775-5766
 www.plazaextra.com

CUSTOMERS ORDER NO.	PHONE	DATE 4-13-15
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NAME Triumphant Church
 ADDRESS _____

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RET'N	PAID OUT
---------	------	--------	--------	----------	------------	----------

QTY	DESCRIPTION	PRICE	AMOUNT
	Triumphant Church		
	LAND RENT FOR		
	NEJEA APRIL 2015		
	\$ 300.00 CASH		
	Veronica Hazel		
	<i>Veronica Hazel</i>		
RECEIVED BY		TAX	
		TOTAL	

All claims and returned goods must be accompanied by this bill.

1122

THANK YOU

Sept. 8, 2014

RECEIVE \$300.00 from Triumphant
Church For Rent.

Jenny Lake
Church

8-8-2014

RECEIVED FROM TRIUMPHANT CHURCH
FOR RENT \$ 300.00

Franklin based FRANKLIN HAZEL

PLAZA EXTRA SUPERMARKET

4605 Tutu Park Mall, Suite 200
 St. Thomas, VI 00802
 Phone 340-775-5646 Fax 340-775-5766
 www.plazaextra.com

CUSTOMER'S ORDER NO.	PHONE	DATE 5-8-2014
NAME TriumphANT Church		
ADDRESS		

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT
---------	------	--------	--------	----------	--------------	----------

QTY.	DESCRIPTION	PRICE	AMOUNT
	RENT MAY 2014		300 00
	PAID CASH		
	Veronica Hazel		

RECEIVED BY Veronica Hazel	TAX	
	TOTAL	300 00

PRODUCT 6107 All claims and returned goods must be accompanied by this bill.

3980 **THANK YOU**

