

**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,*

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

vs.

**UNITED CORPORATION,** *Defendant.*

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

vs.

**FATHI YUSUF,** *Defendant.*

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**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**

**PLAINTIFF HAMED'S OPPOSITION TO YUSUF'S MOTION FOR SUMMARY  
JUDGMENT AS TO REVISED CLAIM Y-14 –  
HALF THE VALUE OF CONTAINERS AT THE PLAZA EXTRA-TUTU STORE**

## I. Introduction

This is a claim for the contents of four or five storage containers which were located outside, at the Plaza Extra store at Tutu Park, at the time of the closed auction for the store. In his summary judgment motion, Yusuf claims the inventory was not included in the auction because

I told the Master, Judge Ross, I am bidding only what underneath this roof, nothing outside. And he said, Yes. I repeat it, three -- I believe, three time, I'm only bidding what underneath this roof. And he say, he admit, Yes. (CSOF ¶ 5)

Hamed asserts this claim is without merit for several reasons, which can be summarized by two basic points.

First, the inventory in the containers was included in the closed auction because both Judge Brady's Final Wind Up Plan and Special Master Ross's Order both state that the auction and sale "shall consist of. . . the inventory. . . ." of the store. (CSOF ¶¶ 1-2) No qualifier was present in either Wind Up Plan or Order as to where on the store's property the inventory had to be located.

Second, even if these Orders were not dispositive, it is clear that Fathi Yusuf has no actual evidence to support his claim for damages, as he has simply 'made up' the value of the inventory in the motion for summary judgment. No only does Yusuf admit that he has never personally been inside the containers

A. [WILLIE HAMED] No, no, I'm serious. And even -- even his evaluation of what he's [Fathi Yusuf] done, he has never opened the containers, nor him, nor his son. They have never worked those containers. They don't even know what it looks on the inside. (CSOF ¶ 10)

he also admits that he does not have any contemporaneous documentation, records or invoices in support of his "guess" as to the contents of the containers at the time of the close auction.

A. [FATHI YUSUF] What's in the container, I gave my lawyer the -- just the other day what's in the containers.

\* \* \* \*

A. **Not what's in container.** A similar load can be.

\* \* \* \*

A. **I don't know what's in the container.** . . .

Q. . . .So you don't know what was in the containers?

A. **No, I don't know.** (CSOF ¶ 7) (Emphasis added.)

Despite requests in both written and deposition discovery, Yusuf could produce no actual invoices, inventories or amounts – preferring to rely solely on his superior “understanding” of the operation for what would be in a “similar load”. (CSOF ¶ 5)

## II. Counter-statement of uncontested facts<sup>1</sup>

On January 9, 2015, Judge Brady issued his *Final Wind Up Plan* for the Plaza Extra Partnership. (CSOF ¶ 1) The Wind Up Plan stated that the closed auction for Plaza Extra – Tutu Park “shall consist of the leasehold interests, **the inventory**, equipment, and all leasehold improvements not a part of the real property.” (CSOF ¶ 1, p. 6)(Emphasis added.) The Wind Up Plan did not make a distinction regarding the location of the inventory, whether inside the building or in containers located at the store. (CSOF ¶ 1)

On April 28, 2015, Special Master Judge Ross issued the Master's order *Regarding Bidding Procedures for Ownership of Plaza Extra-Tutu Park, Hamed v Yusuf*, SX-12-CV-370. (CSOF ¶ 2) The order governed the process for the closed auction and the store's inventory was included in the closed auction. (CSOF ¶ 2) The Order did not make a distinction regarding the location of the inventory on the store's premises. (CSOF ¶ 2)

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<sup>1</sup> Pursuant to the Court's new rule, promulgated on March 1, 2019, the counter-statement of uncontested facts are numbered and incorporated as **Exhibit A**. They will be referred to as “CSOF ¶.”

On April 30, 2015, a closed auction was held by the Special Master for the Plaza Extra – Tutu Park store. (CSOF ¶ 3) Hamed was the successful bidder. (CSOF ¶ 3)

On November 30, 2015, in an email to the parties, Special Master Judge Ross reiterated that all of the inventory, whether it was under the roof of the store or somewhere on the property, was included in the closed auction. (CSOF ¶ 4)

The Liquidating Partner insists that the bid process for the Tutu Plaza was flawed because he stated that the subject of the sale was the contents under the roof. As I previously indicated that while I heard his declaration, I considered the subject of the sale to be anything **on the premises**. (CSOF ¶ 4) (Emphasis added.)

Equally important is the fact that on January 21, 2019, Fathi Yusuf conceded in his deposition that he had no idea what inventory was located in the containers on the Plaza Extra – Tutu property at the time of the auction on April 30, 2015. (CSOF ¶ 7) Yusuf also admitted that the invoices documenting what was in the containers that he submitted were actually what “[a] **similar load can be**.” (CSOF ¶ 7)(Emphasis added.) Under further examination, Yusuf clarified that he didn't know exactly what was in the containers at the time of the auction. (CSOF ¶ 7)

Finally, on January 22, 2019, Waheed “Willie” Hamed testified that at the time of the Plaza Extra – Tutu Park closed auction, there were four or five 45-foot containers on the property and he actually was familiar with the contents of the containers. (CSOF ¶ 8) He estimated that the containers contained approximately \$10,000 to \$15,000 worth of merchandise. (CSOF ¶ 9) He also confirmed that neither Fathi Yusuf nor his sons had ever opened the containers or knew what the inside of the containers looked like. (CSOF ¶ 10)

### III. Argument

#### A. Under the Final Wind Up Plan of the Plaza Extra Partnership, that “inventory” was included in the closed auction for the Plaza Extra – Tutu Park store

Judge Brady's January 9, 2015 Final Wind Up Plan of the Plaza Extra Partnership stated that the closed auction for Plaza Extra – Tutu Park “shall consist of the leasehold interests, the inventory, equipment, and all leasehold improvements not a part of the real property.” (CSOF ¶ 1)

Nothing in Judge Brady's Final Wind Up Plan specified that inventory not under the main building roof of the Plaza Extra – Tutu Park store was not included in the closed auction. Quite the opposite is true – the Plan states the closed auction “shall consist of . . .the inventory. . . .” (CSOF ¶ 1) There is no dispute that this was the inventory of the Tutu Store. Judge Brady did not put any qualifier on where the inventory needed to be located.

#### B. Special Master Ross's Order Regarding Bidding Procedures for Ownership of Plaza Extra-Tutu Park said “inventory” is included in the closed auction

Special Master Ross's April 28, 2015 order governing the bidding procedures for the Plaza Extra – Tutu Park store stated

The closed auction between the Partners for one to purchase the other's one half interest in all of the Partnership Assets associated with the Plaza Extra-Tutu Park store including the leasehold interests, **the inventory**, equipment, the Tutu Park Litigation, and all leasehold improvements **not a part of the real property in their current "as is, where is" condition**, and \$50,000.00 in cash. (CSOF ¶ 2) (Emphasis added.)

Thus, Special Master Ross's Order is completely consistent with Judge Brady's Final Wind Up Plan. No qualifier was placed in either the Order or the Plan regarding where the store's inventory had to be located on the premises.

**C. Judge Ross confirmed all inventory, irrespective of its location, was included in the April 30, 2015 sale**

In response to Fathi Yusuf's contention that inventory not under the Plaza Extra-Tutu Park roof was not included in the closed auction, Judge Ross stated that all inventory, irrespective of its location, was included in the closed auction.

The Liquidating Partner insists that the bid process for the Tutu Plaza was flawed because he stated that the subject of the sale was the contents under the roof. As I previously indicated that while I heard his declaration, I considered the subject of the sale to be anything on the premises. (CSOF ¶ 4)

Thus, Special Master Ross has stated that at the time of the auction, he too considered all inventory covered by the closed auction. Thus, Yusuf's testimony that Judge Ross agreed with him is suspect.

**D. Willie Hamed testified that Fathi Yusuf's number of containers and value of the inventory in the containers at the time of the closed auction was wrong**

Willie Hamed testified under oath at his deposition of January 22, 2019 that there were four or five containers with inventory in them on the day of the closed auction. (CSOF ¶ 8) He further stated that he estimated the contents of the containers to be between \$10,000 and \$15,000. (CSOF ¶ 9) Finally, *Hamed noted that neither Fathi Yusuf nor his sons had ever been inside or had even opened the containers.*

A. [WILLIE HAMED] No, no, I'm serious. And even -- even his evaluation of what he's [Fathi Yusuf] done, he has never opened the containers, nor him, nor his son. They have never worked those containers. They don't even know what it looks on the inside (CSOF ¶ 10)

Thus, there is no valid way for the Special Master to derive a value of the contents for the purpose of this motion.

**E. Fathi Yusuf does not know the actual value of the inventory that was held in the containers on the day of the closed auction**

Fathi Yusuf admitted in his deposition that he did not know the value of the contents of the containers on the date of the closed auction.

A. I don't know what's in the container. It's product for sale in -- in the supermarket.

Q.. . . So you don't know what was in the containers?

A. No, I don't know. (CSOF ¶ 7)

Further, he stated that the invoices he gathered don't match the actual inventory in the containers at the time of the auction, but that they are what "[a] similar load can be." (CSOF ¶ 7) This not only goes to the ability of the Yusufs to set a value – but implicates the discovery and deposition processes. Despite repeated efforts by the Hameds to obtain such information, none was available or can now be used regarding this motion in reply.

**IV. Conclusion**

Fathi Yusuf's request must fail for the following reasons:

1. Neither Judge Brady's Final Wind Up Plan or Special Master Ross's Order regarding the bidding procedures for the closed auction of the Plaza Extra – Tutu Park store required the inventory to be under the roof of the store. Rather the Plan and the Order said "the inventory" was included in the auction. No requirement for where the inventory had to be located to be considered a part of the auction was specified in either the Plan or the Order.
2. Judge Ross confirmed on November 30, 2015 that he ". . . considered the subject of the sale to be anything on the premises," thereby covering the inventory in the containers within the closed auction.

3. Willie Hamed estimated the contents of the containers at the time of the closed auction to be between \$10,000 and \$15,000. He also testified that he was familiar with the inventory in the containers at the time of the auction. Fathi Yusuf, on the other hand, pegs the estimate for the inventory at \$403,409 and tacks on \$12,500 for the cost of the containers themselves, even though he has never been inside the containers and does not have invoices of the actual content of the containers.
4. Any documentary evidence adduced in reply would be inadmissible as having been withheld in discovery and at deposition on the valuation issue.

Accordingly, Yusuf's motion for summary judgment should be denied because it is contrary to Judge Brady's Wind Up Plan and Special Master Ross's Order -- and Yusuf's estimates of the value of the contents cannot be substantiated.

**Dated:** April 1, 2019



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of April, 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



## INDEX OF EXHIBITS

### **Plaintiff Hamed's Opposition to Yusuf's Motion for Summary Judgment as to Revised Claim Y-14 – Half the Value of Containers at Plaza Extra-Tutu**

- |                       |   |
|-----------------------|---|
| <b>Y-14 Exhibit 1</b> | January 9, 2015 - Judge Brady's Order Adopting Final Wind Up Plan |
| <b>Y-14 Exhibit 2</b> | April 28, 2015 Special Master's Order re Bidding for Tutu         |
| <b>Y-14 Exhibit 3</b> | April 30, 2015 - Special Master's Order re PE Tutu Close Auction  |
| <b>Y-14 Exhibit 4</b> | November 30, 2015 Special Master's Email Re Containers            |
| <b>Y-14 Exhibit 5</b> | December 18, 2018 Yusuf's Supplemental Responses to Discovery     |
| <b>Y-14 Exhibit 6</b> | Fathi Yusuf Deposition - January 21, 2019                         |
| <b>Y-14 Exhibit 7</b> | Waheed "Willie" Hamed Deposition - January 22, 2019               |

# **EXHIBIT A**

SUPERIOR COURT OF THE VIRGIN ISLANDS  
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EXHIBIT A

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**Case No.: ST-18-CV-219**

**HAMED COUNTER-STATEMENT OF FACTS AS TO REVISED CLAIM  
Y-14 – HALF THE VALUE OF CONTAINERS AT PLAZA EXTRA-TUTU**

## COUNTER-STATEMENT OF FACTS

1. On January 9, 2015, Judge Brady issued his Final Wind Up Plan of the Plaza Extra Partnership. The Wind Up Plan stated that the closed auction for Plaza Extra – Tutu Park “. . . shall consist of the leasehold interests, the inventory, equipment, and all leasehold improvements not a part of the real property.” The inventory, without regard to where it was located, was included in the closed auction.

\* \* \* \*

### 2) Plaza Extra -Tutu Park

The Partners will be allowed to bid on Plaza Extra -Tutu Park at a closed auction supervised by the Master. The auction shall take no more than one day and should not cause any delay in implementing this Plan or disrupt the business operations of any Plaza Extra store. The Partners may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.

The Partnership assets sold in connection with Plaza Extra -Tutu Park shall consist of the leasehold interests, the inventory, equipment, and all leasehold improvements not a part of the real property. The value of such assets shall be determined by a qualified appraiser selected by the Master prior to the auction. . . . (Y-14 Exhibit 1, p. 6)

2. On April 28, 2015, Special Master Judge Ross issued the Master's Order Regarding Bidding Procedures for Ownership of Plaza Extra-Tutu Park, *Hamed v Yusuf*, SX-12-CV-370 (footnote omitted). The order governed the process for the closed auction and what was included in the auction. The inventory, without regard to where it was located, was included in the closed auction.

The closed auction between the Partners for one to purchase the other's one half interest in all of the Partnership Assets associated with the Plaza Extra-Tutu Park store including the leasehold interests, the inventory, equipment, the Tutu Park Litigation, and all leasehold improvements not a part of the real property in their current "as is, where is" condition, and \$50,000.00 in cash. . . (Y-14 Exhibit 2, p. 1)

3. On April 30, 2015 a closed auction for the sale of the Plaza Extra – Tutu Park grocery store was held. The Hameds were the successful bidders (**Y-14 Exhibit 3**)
4. On November 30, 2015, Special Master Judge Ross stated in an email to the parties in *Hamed v Yusuf*, SX-12-CV-370, that the six containers on the Plaza Extra – Tutu Park property were included in the sale of Plaza on April 30, 2015.

The Liquidating Partner insists that the bid process for the Tutu Plaza was flawed because he stated that the subject of the sale was the contents under the roof. As I previously indicated that while I heard his declaration, I considered the subject of the sale to be anything on the premises. The Liquidating Partner examined the contents of a trailer not under the roof prior to the bids but obviously overlooked the other six trailers obviously not likewise under the roof but on the premises. Moreover, the Liquidating Partner has not indicated his oversight affected the outcome of the bidding process. And, taking into consideration all circumstances of the process, I can find no prejudice to the Liquidating Partner caused by his oversight or his unjustified reliance on a view not supported by his conduct nor the circumstances. I therefore again reiterate my conclusion that the subject matter of the bidding process was the goods on the premises. Incidentally, the Liquidating Partner benefited from such ruling when his objections to paying for goods ordered but not delivered prior to the bidding process were sustained. (**Y-14 Exhibit 4**)

5. On December 18, 2018, Fathi Yusuf filed his supplemental responses to Hamed's discovery requests. Yusuf did not have any invoices reflecting the actual inventory present in the containers on April 30, 2015, the date of the sale of the Plaza Extra-Tutu store.

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

Yusuf has prepared a detailed analysis of the value of the containers attached hereto as Exhibit 1. To support the calculations as to the value of the items stored in the containers, Yusuf submits various

**invoices for the types of items stored** therein at Bate Numbers FY 015045 -015134 attached hereto. **(Y-14 Exhibit 5)**(Emphasis added.)

6. On January 21, 2019, Fathi Yusuf testified that Judge Ross told him that he was only bidding on what was under the roof of the store at the closed auction for Plaza Extra – Tutu Park on April 30, 2015.

[Mr. Hartmann] I'm going to the container. That's Y-14. I'm sorry. Half the value of six containers. (58:23-25)

\* \* \* \*

A. [FATHI YUSUF] The thing is, when we do -- when we -- before we start to bid, I told the Master, Judge Ross, I am bidding only what underneath this roof, nothing outside. And he said, Yes. I repeat it, three -- I believe, three time, I'm only bidding what underneath this roof. And he say, he admit, Yes. (59:8-13)

\* \* \* \*

Go ahead and bid what underneath this roof. And when I bid underneath that roof, we have never bid -- and I'm sure the other party aware of it -- when we bid, we was bidding on product inventory underneath -- inventory and equipment underneath the roof. **(Y-14 Exhibit 6, 58:23-25; 59:8-13,15-19)**

7. Fathi Yusuf testified on January 21, 2019 that he did not know what inventory was in the containers at the time of the April 28, 2015 auction. Rather, he gave his lawyers invoices showing what inventory “[a] similar load can be.”

A. What's in the container, I gave my lawyer the -- just the other day what's in the containers. (60:14-15)

\* \* \* \*

A. Not what's in container. A similar load can be.(60:17)

\* \* \* \*

A. I don't know what's in the container. It's product for sale in -- in the supermarket.

Q.. . . So you don't know what was in the containers?

A. No, I don't know. (**Y-14 Exhibit 6**, 60:14-15, 17, 19-23)

8. On January 22, 2019 in deposition testimony, Waheed "Willie" Hamed stated that at the time of the Plaza Extra – Tutu Park closed auction, there were four or five 45- foot containers on the property and he was familiar with the contents of the containers.

[Ms. Perrell] How many containers were in St. Thomas that were utilized for storage at the time of the bidding and the split?

A. [WILLIE HAMED] That had product in them?

Q. That were used for storage?

A. About four.

Q. Okay. Was one of the containers a 45-foot container?

A. They're all 45-footers. (33:17-25)

\* \* \* \*

Q.. . . And were those four -- well, let me ask you this: Are you familiar with what was in those four 45-foot containers at the time of -- end of April, 2015?

A. Yes, ma'am. (34:14-17)

\* \* \* \*

A. [WILLIE HAMED] And I already stated that; I said about four or five of them --

Q. Okay.

A. -- have product in them, the others, no. (**Y-14 Exhibit 7**, p. 33:17-25; 34:14-17; 42:9-10, 12)



9. In his January 22, 2019 deposition, Willie Hamed estimated that the value of the containers on the Plaza Extra-Tutu Park property at the time of the closed auction in April 2015 was between \$10,000-\$15,000.

Q. . . .And my question to you is, is do you know the value of the product that was in there? There's clearly value in there.

A. It's -- my estimation right now, if I look at it top of my head, no more than maybe \$10,000-\$15,000. (Y-14 Exhibit 7, 44:4-8)

10. Willie Hamed testified that neither Fathi Yusuf nor his sons had ever accessed the containers on the Plaza Extra-Tutu Park property.

A. [WILLIE HAMED] No, no, I'm serious. And even -- even his evaluation of what he's [Fathi Yusuf] done, he has never opened the containers, nor him, nor his son. They have never worked those containers. They don't even know what it looks on the inside. (Y-14 Exhibit 7, 43:6-10)

**Dated:** April 1, 2019



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