

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

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

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

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

I. Background Facts

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

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

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

Yusuf has testified that he specifically asked what items would be included in the closed-bid auction for the Tutu Park Store before the bidding started. *See* Yusuf Statement of Material

Facts (“SOF”), ¶1. He asked if he was bidding only on what was underneath the roof of the store and nothing outside. SOF ¶2. Mr. Yusuf understood the response from Master Ross was that the bidding only was for those items underneath the roof of the store. *Id.* Specifically, Mr. Yusuf testified:

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

SOF ¶3. There were various containers located outside the Tutu Park store that contained inventory and were used for storage. These containers and the inventory they stored were not including in the bidding prices between the parties. However, after the bidding was closed and the transfer of the Tutu Park store consumated, Hamed or his agents took possession of the containers outside the Tutu Park store and the inventory stored inside them. Yusuf contends that Hamed recoved the containers and the value of the inventory inside without providing payment as those assets were not factored into the bidding. Yusuf is seeking half of the value of the containers and the inventory inside them. SOF ¶3.

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

Yusuf testified that he worked at the Tutu Park store for almost 22 years and is familiar with the containers at the Tutu Park store and with the types of products that would be stored in

the containers at that location. SOF ¶4. Yusuf explained that the types of items generally stored there were items:

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

SOF ¶5. The containers were used to store non-perishable items that were easy to store for long period, which could sustain prolonged periods of heat and whose packaging was durable. Yusuf also testified that because the containers were stationary and used as storage that they were not subject to weight limits imposed upon containers subject to highway travel. Hence, the containers could be filled to capacity, regardless of the weight. SOF ¶6.

Yusuf prepared a calculation of the value of the inventory of the nature stored in the five containers at the Tutu Park store and provided receipts to support his calculations. SOF ¶7. Yusuf calculated the value of the inventory in each of the containers to be \$80,682 per container for a total value of \$403,409 for the inventory. SOF ¶8. Yusuf then calculated the value of the containers themselves at \$2,500 each, multiplied by 5 (the number of containers), to arrive at a value for the containers of \$12,500.00. The total value offered by Yusuf for the inventory and value of the 5 containers at the Tutu Park store is: \$415,909 for which Mr. Yusuf seeks half of the value. *Id.*

Waheed (“Willie”) Hamed admitted there were four or five containers at the Tutu Park location that had product in them at the time of the auction. SOF ¶9. Hamed stipulated that there is no formal inventory, which exists that would specify the exact inventory in the containers at the Tutu Park location at the time of the closed-bid auction on April 30, 2015. SOF ¶10.

- Q. What I'm asking you is, is we -- you do not have access to an inventory as of the end of April of 2013 -- 15 for the containers in Tutu Park?
A. A. No, I don't, but I knew what was in them.
Q. ... There's no inventory, formal prepared inventory, correct?
A. I don't know.
Hartmann: We'll stipulate there wasn't.

Id. Although Willie Hamed claimed to know what was in the containers, he further admitted that he had not done an evaluation of the products in the containers and, at best, he was giving an estimation off “the top of [his] head.” SOF ¶11. Specifically, Willie Hamed testified:

- Q. So have you undertaken to determine a value for the containers that had product in them, the four to five containers that had product in them, as of April 30th, 2015?
A. No, ma'am, because why would I need to?

SOF ¶11.

- Q. ...other than what you've just stated today, nobody has undertaken to determine a full value of those four to five containers that had product; is that correct?
A. That's correct.

SOF ¶11.

In contrast, Yusuf provided testimony that he had worked at the Tutu Park location for 22 years and was familiar with the types of products that were typically stored in these containers, describing them as goods that would withstand heat and other harsh conditions. Yusuf provided

invoices as to the types of products that would be stored in the containers and calculated the amount and quantity based upon the size and load the containers could hold. Yusuf further explained that because the containers were used for storage, that weight restrictions were not a concern. SOF ¶¶4-8. Hence, Yusuf provided proof of the value of what was stored in the containers. This evidence is sufficient evidentiary proof of the value of the inventory and the containers as there does not exist any inventory for the containers as of the date of the April 30, 2015 closed-bid auction.

At best, Hamed counters with an off the “top of his head” estimate made without any thought, calculation or consideration. Hence, Yusuf’s evidence demonstrates the value of the inventory and the containers sufficient to grant an award to Yusuf for half of the value.

II. Conclusion

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

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: June 21, 2019

By: /s/Charlotte K. Perrell
GREGORY H. HODGES (V.I. Bar No. 174)
CHARLOTTE K. PERRELL (V.I. Bar No. 1281)
1000 Frederiksberg Gade

Fathi Yusuf, et al. (adv. Hamed, et al.)
Case Nos.: SX-12-CV-370, SX-14-CV-287 and SX-14-CV-278
Motion for Summary Judgment as to Y-14 Half of the Value of
Containers at Plaza Extra-Tutu Park and Memorandum of Law in Support
Page 7 of 8

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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2019, I caused the foregoing **MOTION FOR SUMMARY JUDGMENT AS TO Y-14 HALF OF THE VALUE OF CONTAINERS AT PLAZA EXTRA-TUTU PARK AND MEMORANDUM OF LAW IN SUPPORT**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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/s/ Charlotte K. Perrell

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

WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff/Counterclaim Defendant,)	CIVIL NO. SX-12-CV-370
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FATHI YUSUF and UNITED CORPORATION,)	ACTION FOR INJUNCTIVE
)	RELIEF, DECLARATORY
)	JUDGMENT, AND
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<u>Additional Counterclaim Defendants.</u>)	Consolidated With
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Estate of MOHAMMAD HAMED,)	
)	
Plaintiff,)	CIVIL NO. SX-14-CV-287
v.)	
)	
UNITED CORPORATION,)	ACTION FOR DAMAGES AND
)	DECLARATORY JUDGMENT
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff,)	CIVIL NO. SX-14-CV-278
v.)	
)	
FATHI YUSUF,)	ACTION FOR DEBT AND
)	CONVERSION
)	
<u>Defendant.</u>)	

YUSUF'S STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF YUSUF'S MOTION FOR SUMMARY JUDGMENT AS TO Y-14 – RE
HALF OF THE VALUE OF THE CONTAINERS AT PLAZA EXTRA-TUTU PARK

Fathi Yusuf (“Yusuf”), through his undersigned attorneys, respectfully submits this Statement of Undisputed Material Facts in Support of Yusuf’s Motion for Summary Judgment as to Y-14 Regarding Half of the Value of the Containers at Plaza Extra-Tutu Park and shows as follows:

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

1. Yusuf has testified that he specifically asked what items would be included in the closed-bid auction for the Tutu Park Store before the bidding started. *See Exhibit A-Fathi Yusuf Depo., 59:6-60:5.*

2. Yusuf asked if he was bidding only on what was underneath the roof of the store and nothing outside. *Id.* Yusuf understood the response from Master Ross was that the bidding only was for those items underneath the roof of the store. *Id.*

3. Specifically, Yusuf testified:

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

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

assets were not factored into the bidding. Yusuf is seeking half of the value of the containers and the inventory inside them.

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

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

5. Yusuf explained that the types of items generally stored there were items:

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

Id. at 63:12-23.

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

7. Yusuf prepared a calculation of the value of the inventory of the nature stored in the five containers at the Tutu Park store and provided receipts to support his calculations. *Id.* at 62:9-17 and Exhibit 7 to Yusuf's Depo.

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

9. Waheed ("Willie") Hamed admitted there were four or five containers at the Tutu Park location that had product in them at the time of the auction. *See Yusuf Exhibit B-Willie Hamed Depo*, p. 43:25-44:3.

10. Hamed stipulated that there is no formal inventory, which exists that would specify the exact inventory in the containers at the Tutu Park location at the time of the closed-bid auction on April 30, 2015. *Id.* at 37:9-15 and 40:25-41:7.

Q. What I'm asking you is, is we -- you do not have access to an inventory as of the end of April of 2013 -- 15 for the containers in Tutu Park?

A. A. No, I don't, but I knew what was in them.

Q. ... There's no inventory, formal prepared inventory, correct?

A. I don't know.

Hartmann: We'll stipulate there wasn't.

Id. at 40:25-41:7.

11. Although Willie Hamed claimed to know what was in the containers, he further admitted that he had not done an evaluation of the products in the containers and, at best, he was giving an estimation off "the top of [his] head." *Id.* at 44:4-8. Specifically, Willie Hamed testified:

Q. So have you undertaken to determine a value for the containers that had product in them, the four to five containers that had product in them, as of April 30th, 2015?

A. No, ma'am, because why would I need to?

Id. at 42:25-43:4.

Q. ...other than what you've just stated today, nobody has undertaken to determine a full value of those four to five containers that had product; is that correct?

A. That's correct.

Id. at 44:21-25.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: June 21, 2019

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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2019, I caused the foregoing **YUSUF'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF YUSUF'S MOTION FOR SUMMARY JUDGMENT AS TO Y-14 – RE-HAVE OF THE VALUE OF THE CONTAINERS AT PLAZA EXTRA-TUTU PARK**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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s/Charlotte K. Perrell

EXHIBIT A

**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
FATHI YUSUF**

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

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

Reported by:

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

FATHI YUSUF -- REDIRECT

1 **A.** Excuse me?

2 **Q.** Half the value of six containers.

3 **A.** Um-hum.

4 **Q.** Do you know that claim?

5 **A.** Yes.

6 **Q.** Okay. Could you explain that claim to me? Just
7 in your own words.

8 **A.** The thing is, when we do -- when we -- before we
9 start to bid, I told the Master, Judge Ross, I am bidding
10 only what underneath this roof, nothing outside. And he
11 said, Yes. I repeat it, three -- I believe, three time, I'm
12 only bidding what underneath this roof. And he say, he
13 admit, Yes.

14 **Q.** Okay.

15 **A.** Go ahead and bid what underneath this roof.

16 And when I bid underneath that roof, we have
17 never bid -- and I'm sure the other party aware of it --
18 when we bid, we was bidding on product inventory
19 underneath -- inventory and equipment underneath the roof.

20 **Q.** Okay.

21 **A.** Okay.

22 **Q.** So you're saying that your understanding from
23 Judge Ross was that the things in containers and other
24 things like that were not included in the original sales
25 price, so you want to get the value of what's in those

FATHI YUSUF -- REDIRECT

1 containers?

2 **A.** This is -- is the answer. I mean, look, if the
3 bid was only what underneath this roof and something comes
4 up that I forget all about outside that roof, I honestly
5 strongly believe I'm entitled to my right.

6 **Q.** Okay. And -- and during the course of -- of
7 discovery in this case, Mr. Hamed's lawyers have asked your
8 lawyers to ask you for a list of all the items that were in
9 those containers.

10 Do -- do you remember being asked that
11 question in discovery?

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

13 **Q.** What's in the containers?

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

16 **Q.** So --

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

18 **Q.** Aww, okay. So let's talk about --

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

21 **Q.** Okay. So you don't know what was in the
22 containers?

23 **A.** No, I don't know.

24 **Q.** Okay. I have no further questions.

25 **A.** Store inventory for sale in Plaza Extra Tutu Park.

FATHI YUSUF -- RECROSS

1 **A.** Yes, hold on.

2 **Q.** Okay.

3 **A.** I'm trying to lock my phone. Okay.

4 **Q.** Okay. I'm going to hand you what's been marked as
5 Exhibit 1. This includes Bates Numbers FY --

6 **MR. HARTMANN:** You said Exhibit 1.

7 **Q.** **(Ms. Perrell)** I'm sorry, that's what it says on
8 the first page. Let me clarify.

9 I'm going to hand you what's been marked
10 Exhibit 7 in this deposition. There is some language above
11 that says Exhibit 1, but we're going to refer to it as
12 Exhibit 7 here. It is Bates Numbered FY 015045 through
13 0105134. And then ask you about this.

14 When you were asked to provide some
15 information as to the value of the claim, are these the
16 documents that you provided?

17 **A.** Yes.

18 **Q.** Okay. And can you explain to us what is the
19 calculation and how did you arrive at this valuation for
20 those six containers?

21 **A.** I remember I gave you these invoices --

22 **Q.** Okay.

23 **A.** -- as an example and --

24 **Q.** So Mr. Yusuf, --

25 **A.** Yes, go ahead.

FATHI YUSUF -- RECROSS

1 **Q.** -- you -- you worked at the St. Thomas store for
2 many, many years, correct?

3 **A.** Yes.

4 **Q.** Okay. And so during your time working in the
5 store in St. Thomas, were you familiar with the types of
6 products that you would store in the containers in
7 St. Thomas?

8 **A.** Yes.

9 **Q.** Okay. And can you tell us, generally speaking,
10 what kinds of product you stored in the containers outside
11 the store in St. Thomas?

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

24 **Q.** Okay.

25 **A.** If we need the room, we just fill to capacity.

FATHI YUSUF -- RECROSS

1 **Q.** Okay. And so how many years were you at the
2 St. Thomas store?

3 **A.** About 22 years.

4 **Q.** Okay. And so over those 22 years, you're familiar
5 with the kinds of things that you stored in those containers
6 in St. Thomas?

7 **A.** Yeah, I have a little experience, but the one that
8 is really familiar is the -- is the people that works, the
9 manager, you know. I'm -- I don't know what's in the
10 trailer, but I know something that -- water, we can't afford
11 to put it, because it will bust. It doesn't have any
12 strength. And the Clorox, no. You put paper towel. You
13 put rice. You put canned goods. That's what you put.

14 **Q.** Okay.

15 **A.** Something really hard. It could stand temperature
16 and strong.

17 **Q.** Okay. And the document that you provided, which
18 is this Exhibit 7, how did you calculate -- how many
19 trailers are there?

20 **A.** Here is three container I give you.

21 **Q.** Okay. What are their sizes?

22 **A.** 3,300 cubic foot and 40 -- 40 cubic foot and
23 20 cubic foot. I mean, 45-footer, 40-footer, and 20-footer,
24 and the cube.

25 **Q.** Okay. And then you -- how did you arrive at

FATHI YUSUF -- RECROSS

1 the -- the value that you arrived at here of 415,000?

2 **A.** I have give it to you. I don't know. I give it
3 to you on the paper. I don't know what it is.

4 **Q.** Okay.

5 **A.** But I -- what I did, I used standard high cube
6 container. It can never be more than 2,700 cube. That's
7 the largest, 40-footer or a 20-footer. But the -- the one
8 we have on -- on -- for storage purposes, it's a 45 in
9 length with 3,300 in cube.

10 **Q.** Okay.

11 **A.** And this, the 40 and the 20, it have restriction
12 on weight in the highway. And these 45, because it's not
13 traveling, it's not moving, is no restriction on it.

14 **Q.** Okay. So you're saying you could load these
15 down --

16 **A.** All the way up.

17 **Q.** -- because you won't have to put it on the
18 highway?

19 **A.** Yeah, because it's not moving.

20 **Q.** Okay.

21 **A.** It wouldn't break.

22 **Q.** All right. And then all of these receipts that
23 are behind this, what do those receipts represent?

24 **A.** I think this receipt is -- some represent
25 20-footer and some represent a 40-footer.

FATHI YUSUF -- RECROSS

1 **Q.** Okay. And did you use those receipts to do the
2 calculation as to --

3 **A.** Yes.

4 **Q.** -- the types of products that would have been
5 in -- in the container?

6 **A.** Yes.

7 **Q.** Okay. And that was based on your experience
8 knowing --

9 **A.** Yeah.

10 **Q.** -- what was stored there --

11 **A.** Yeah, I have --

12 **Q.** -- correct? Hang on. You got to --

13 **MR. HARTMANN:** Yeah, you also -- now you're
14 testifying. You can -- he's your witness. You can't lead
15 him like that. I mean, I don't mind if you lead, actually.
16 I'm just saying technically, you can't.

17 **MS. PERRELL:** Okay.

18 **MR. HARTMANN:** You got to ask him a question.

19 **Q.** **(Ms. Perrell)** So these receipts --

20 **A.** Now I notice what I wrote. It's right here.

21 **Q.** Okay.

22 **A.** The 40-footer, I give you several invoices and
23 estimate 35,000 -- worth \$35,000 in cargo.

24 If I put that into the 40-footer, it will end
25 up being \$79,545. The 20-footer, it came up to \$18,000 in

FATHI YUSUF -- RECROSS

1 value. And if I puts it in the 45-footer, it will be -- end
2 up 81,818.

3 Q. Okay.

4 A. Now I -- I see it, Attorney Hartmann, where my
5 writing is. And I -- I don't need her, with her respect, I
6 don't need her information. It's already here.

7 Q. Okay. And so this Exhibit Number 7 is a
8 calculation that you have made and --

9 A. Yes.

10 Q. -- you believe it's a fair and accurate --

11 A. This is very fair. Wally and his brother is here.
12 They could tell you it's 45-foot -- 40-footer is 35,000.
13 It's a fair average cargo --

14 Q. Okay.

15 A. -- because you cannot -- most of the trailer we
16 receive, 40-footer. We never receive it full, because it
17 hit maximum weight allows in the state highway. So I think
18 the law's about 44 or 46,000 pound, where there is no limit
19 on that 45-footer.

20 Q. So what you're saying is, is you've made these
21 calculations based upon what is --

22 A. Based on the equipment that we on the site.

23 Q. Okay. And these receipts support the numbers
24 that -- of the types of materials -- let me finish -- the
25 types of product that would be in those containers in

FATHI YUSUF -- REDIRECT

1 St. Thomas?

2 **A.** Yes, 35,000 for the average 40.

3 **Q.** Okay.

4 **A.** 18,000 for the average 20.

5 **Q.** Okay.

6 **A.** But I did make calculation based on the 45,
7 because it's unlimited weight and you can -- and the trailer
8 is stationed. It does not move.

9 **Q.** Right.

10 **A.** When something doesn't move, it does not have the
11 force of moment to break it.

12 **Q.** Okay. So my question to you is, this calculation
13 that you did is a fair and accurate representation of the
14 average amounts of product that would be in those containers
15 and their value as stored on the St. Thomas store?

16 **A.** I would say yes.

17 **MS. PERRELL:** Okay. All right. No more
18 questions to that.

19 **REDIRECT EXAMINATION**

20 **BY MR. HARTMANN:**

21 **Q.** I have two questions.

22 **A.** Yes, sir.

23 **Q.** You said these were examples, right?

24 **A.** Yes.

25 **Q.** This had nothing to do what was actually in there?

EXHIBIT B

**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**

WAHEED "WILLIE" HAMED -- DIRECT

1 for the containers that had product in them, the four to
2 five containers that had product in them, as of April 30th,
3 2015?

4 **A.** No, ma'am, because why would I need to?

5 **Q.** Okay. I'm just asking if you've done it?

6 **A.** No, no, I'm serious. And even -- even his
7 evaluation of what he's done, he has never opened the
8 containers, nor him, nor his son. They have never worked
9 those containers. They don't even know what it looks on the
10 inside.

11 **Q.** Okay.

12 **A.** I've worked them with my hands. I've offloaded
13 them. I've packed them. I did everything with them. I
14 order for the store, they don't.

15 **Q.** Okay. So of those products that you've just
16 described, do you have any valuation or any basis to contest
17 his valuation of the \$415,000?

18 **A.** I contest all of it.

19 **Q.** Okay. You don't have an alternative value?

20 **A.** The valuation shouldn't even be considered because
21 when we bid -- when I made the bid for the store, Judge Ross
22 was there and he told him that was part of the deal. The
23 forklifts was part of the deal. The only thing that Judge
24 Ross gave him was the car, which they still had to pay for.

25 **Q.** Okay. I'm just asking you, do you admit that

WAHEED "WILLIE" HAMED -- DIRECT

1 there were four to five containers that had product in them
2 at the time of the bidding?

3 **A.** Yes.

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

7 **A.** It's -- my estimation right now, if I look at it
8 top of my head, no more than maybe \$10,000-\$15,000.

9 **Q.** All right. And you've not undertaken any effort
10 to try to actually determine those values, correct?
11 Besides, just you said, off the top of your head?

12 **A.** Yeah, because I work it. I mean, you're an
13 attorney. You know how you can judge a case. Well, I can
14 judge my work by knowing what inventory I have.

15 **Q.** All right.

16 **A.** But you're in a profession, I'm in a profession.

17 **Q.** So your review of these various invoices and so
18 forth, are you contending that these are representative of
19 the kinds of things that were in there?

20 **A.** Of course.

21 **Q.** All right. And other than that, no -- other than
22 what you've just stated today, nobody has undertaken to
23 determine a full value of those four to five containers that
24 had product; is that correct?

25 **A.** That's correct.

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

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

16 FEB -1 A 2:44
 SUP. COURT
 ST. CROIX

LIQUIDATING PARTNER’S SIXTH BI-MONTHLY REPORT

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

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

On February 25, 2015, the Claims Reserve Account (“CRA”) and the Liquidating Expense Account (“LEA”) were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. The

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

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AND FEUERZEIG, LLP
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Liquidating Partner has provided the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows of these accounts from inception through December 31, 2015. Copies of the bank statements, ledgers, and reconciliations reflecting the inflows/outflows of the other bank accounts used jointly by the Partners in the operation of the three stores from May 1, 2015 through August 31, 2015 have previously been provided to the Master and Hamed.²

On March 5, 2015, the Master issued his "Master's Order Regarding Transfer of Ownership of Plaza Extra West." On March 6, 2015, the Master issued his "Master's Order Regarding Transfer of Ownership of Plaza Extra East." An accounting reconciling the difference in the inventory and equipment values involved in the transfer of Plaza Extra East and Plaza Extra West has occurred resulting in the payment of \$1,211,267.01 to Yusuf in July 2015.

The closed auction for Plaza Extra Tutu Park took place on April 30, 2015, pursuant to the Master's Order dated April 28, 2015. On April 30, 2015, the Master issued his "Master's Order Regarding Transfer Of Ownership Of Plaza Extra Tutu Park" (the "April 30 Master's Order"), pursuant to which that store was transferred to Hamed's designee, KAC357, Inc., for

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² These accounts used by all three stores remained open as an operational necessity with the consent of the Partners and the Master. Since these accounts were joint signatory accounts signed by representatives of both Partners, Hamed had uninterrupted, unfettered access to monitor these accounts. All checks drawn on these accounts have been signed by a representative of both Partners. All of these accounts, except one account at Scotiabank, were closed effective July 10, 2015 with all of the funds from those accounts transferred to the CRA. One account was left open with a balance of \$1,000 for a few additional days because of pending document requests related to the 2014 Department of Justice review and Scotiabank needed an account to charge. After deducting fees, the \$895 balance in the account was transferred to the CRA.

the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation (collectively, the “Tutu Park Purchase Price”), which has been paid.³

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master’s Order (p.2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition to the valid transfer of the Tutu Park store. In the absence of the prompt delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation.⁴ Given the passage of more than nine (9) months since the releases should have been delivered, the Liquidating Partner is requesting the Court’s intervention regarding the final disposition of the Tutu Park store.

The Liquidating Partner is also working to resolve issues involving recent claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner and Master authorized the payment of the entire, allocable taxes for 2012 and 2013 in the amount of \$79,009.87 and a check for that amount has been delivered to Tutu Park, Ltd. The property taxes for 2014 and 2015 have not yet been billed, but reserves will be

³ Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.

⁴ At the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of 6 trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 trailers was indisputably Partnership property, the Liquidating Partner needs to determine what was contained in these trailers and the value of such content. Although Yusuf has claimed he is entitled to ½ of the value, the Master has rejected that claim.

set aside to pay these taxes.⁵ The Liquidating Partner rejected Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 because all parties concede that no percentage rents were due as of the effective transfer of the Tutu Park store.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.⁶ Hamed has inquired about the disposition of ½ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002 (the "Land"). Yusuf submits that the Land has been erroneously carried on the balance sheet of the Partnership, because the record owner of the Land, pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation jointly owned by the Hamed and Yusuf families. The Land was encumbered by a mortgage dated August 24, 2006 from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed the Land to United. Pursuant to a Release Of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering the Land.⁷ Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed.

⁵ If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged by formula to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when the \$79,009.87 was paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized the payment of \$89,442.92 to United based on that formula.

⁶ With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by Nejeih Yusuf in connection with his co-management of Plaza Extra Tutu Park was purchased by United on May 1, 2015 for the sum of \$5,000.

⁷ The fourth bi-monthly report contained dated information. After that report was filed, counsel for the Liquidating Partner learned of the subsequent conveyance of the Land to United.

Accordingly, the Liquidating Partner does not intend to pursue liquidation of the Land or the mortgage since the Partnership has no continuing interest in either.⁸

An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan. Combined balance sheets and income statements for the Partnership as of December 31, 2015 and supporting general ledger, cash reconciliation, accounts receivable aging, and accounts payable aging information (collectively, the “Financial Information”) have been provided to the Master and Hamed with or prior to this report. John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, has compiled the Financial Information, which the Liquidating Partner believes is generally reliable and historically accurate.⁹

The pending litigation identified in Exhibit C to the Plan was updated by the more detailed list attached as Exhibit C-1 to the first bi-monthly report. Since that updated Exhibit was prepared, the Allembert and Isaac claims have been settled. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation and any future litigation that may be filed within the two year statute of limitations period for personal injuries allegedly occurring prior to the transfer of the Plaza Extra Stores. Such reserves will be established out of the funds in the CRA.

⁸ On August 18, 2015, Hamed filed a “Notice of Objection to Liquidating Partners Bi-Monthly Reports” (the “Objection”), which raised the issue of the Land, among other issues, but acknowledged that these issues would be addressed in the “claims portion” of the liquidation process. On September 3, 2015, Yusuf filed his Response to the Objection.

⁹ The submission of the Financial Information by the Liquidating Partner is not intended to impair or otherwise affect the right of either Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

Section 9, Step 2, of the Plan requires the Liquidating Partner to “submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidated Expense Account.” That reconciliation was provided to the Master and Hamed with the third bi-monthly report. It reflected that the actual expenditures incurred through June 30, 2015 in winding up the Partnership and liquidating its assets were approximately \$4 million less than the projected expenses reflected in Exhibit A to the Plan. An updated reconciliation through August 31, 2015 was provided to the Master and Hamed with the filing of the fourth bi-monthly report reflecting a similar difference. An updated comparison through October 31, 2015 was provided to the Master and Hamed with the filing of fifth bi-monthly report. An updated comparison through December 31, 2015 was provided to the Master and Hamed with the filing of this report.

On October 15, 2015, the Master requested counsel for the Partners to submit a list of (a) any Partnership Assets other than the Plaza Extra Stores that require the attention of the Liquidating Partner or the Court for separation; and (b) any pending motions that affect the disposition of Partnership Assets. Counsel for the Partners submitted such lists to the Master on October 23, 2015 and reviewed such lists with the Master at a meeting on January 25, 2016, at which the parties discussed, among other issues, an invoice in the amount of \$57,605 presented by Dudley, Topper and Feuerzeig, LLP to the Liquidating Partner for services rendered after entry of the Wind Up Order through November 30, 2015 related to the

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Civil No. SX-12-CV-370
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Liquidating Partner's duties, pursuant to § 4 of the Plan. The Liquidating Partner and the Master have authorized the payment of those fees.

Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed with the Court on October 5, 2015 and "So Ordered" on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

Respectfully submitted this 1st day of February, 2016.

DUDLEY, TOPPER and FEUERZEIG, LLP

By: 

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Attorneys for the Liquidating Partner

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2016, I caused the foregoing Liquidating Partner's Sixth Bi-Monthly Report to be served upon the following via e-mail:

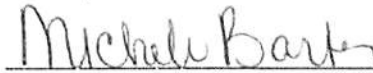
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