

**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

**PLAINTIFF HAMED'S OPPOSITION TO YUSUF'S STATEMENT OF UNDISPUTED
MATERIAL FACTS AND HAMED'S REVISED COUNTER STATEMENT OF FACTS
AS TO Y-14 – HALF OF THE VALUE OF THE CONTAINERS AT PLAZA EXTRA-
TUTU PARK**

I. Introduction

Pursuant to the Special Master's Order of May 13, 2019, on June 21, 2019 Yusuf filed his ***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.***

However, Yusuf's 'revised' Motion for Summary Judgment is almost exactly the same as his original Motion (February 25, 2019) – what was added was a Statement of Facts. *Accordingly, Hamed responds to Yusuf's new factual filings, provides a revised Hamed Counter Statement of Facts (as Exhibit A) and relies on his original Opposition filed on April 1, 2019.*

I. Hamed's Opposition to *United's Statement of Facts*

A. Hamed is in agreement with Yusuf regarding some of Yusuf's statement of facts

Hamed does not dispute the following Yusuf statement of facts ("YSOFs"): ¶¶ 9-10.

B. Hamed "disputes" the following Yusuf Statement of Facts

Hamed disputes the following YSOFs: ¶¶ 1-8 and 11.

YSOF ¶ 1

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.

Hamed Response:

Whether Yusuf asked what items would be included in the closed-bid auction for the Tutu Park Store is irrelevant. 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) Further, 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) The Orders are clear – all inventory, regardless of location on the property – was included in the auction.

The Special Master reiterated Hamed's understanding in a September 30, 2015 email when he stated that "I considered the subject of the sale to be anything on the premises" and "I therefore again reiterate my conclusion that the subject matter of the bidding process was the goods on the premises." (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. 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. (CSOF ¶ 4)

YSOF ¶ 2

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.*

Hamed Response:

Hamed disputes Yusuf's contention and incorporates his response to YSOF ¶ 1.

YSOF ¶ 3

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 consummated, Hamed or his agents took possession of the containers outside the Tutu Park store and the inventory stored inside them. Yusuf contends that Hamed recovered 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.

Hamed Response:

Hamed disputes Yusuf's contention and incorporates his response to YSOF ¶ 1.

YSOF ¶ 4

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.

Hamed Response:

Hamed disputes Yusuf's testimony. Yusuf stated in his deposition testimony that he did **not** know what inventory was in the containers (COSF ¶ 7):

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)(Emphasis added).

Willie Hamed testified that Fathi Yusuf and his sons had never been inside the containers (COSF ¶ 10). Yusuf could hardly be familiar with the inventory if he had never even been in the containers. Further, Willie Hamed testified that he was familiar with the contents of the containers because he did the ordering for the Tutu store. (COSF ¶ 11)

Willie Hamed testified:

I've worked them [the containers] with my hands. I've offloaded them. I've packed them. I did everything with them. I order for the store, they don't. (COSF ¶ 11)

YSOF ¶ 5

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.

Hamed Response:

Hamed disputes Yusuf's knowledge of what is stored in the containers and incorporates his response to YSOF ¶ 4.

YSOF ¶ 6

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.*

Hamed Response:

Hamed disputes Yusuf's knowledge of what is stored in the containers and incorporates his response to YSOF ¶ 4.

YSOF ¶ 7

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.

Hamed Response:

Hamed disputes Yusuf's calculation of the value of the inventory: 1) Yusuf had never been in the containers and therefore did not have personal knowledge of what was contained in them (COSF ¶ 10); 2) no inventory of the contents of the containers exists; and 3) Willie Hamed, who had personal knowledge of what inventory was in the containers, estimated the value of the contents at \$10,000 to \$15,000, an amount at great odds with Yusuf's calculation of \$403,409. (COSFs ¶¶ 8-9, 11)

YSOF ¶ 8

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.*

Hamed Response:

Hamed disputes Yusuf's knowledge of what is stored in the containers and its value and incorporates his response to YSOFs ¶¶ 4 and 7.

YSOF 11

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.

Hamed Response:

Hamed contends that Willie Hamed's off the "top of [his] head" estimation of the contents of the containers and their cost is far more accurate than Yusuf's wild, guessing speculation. In any event, this point is moot, as Judge Brady's January 9, 2015 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) Hamed incorporates his response to YSOF ¶ 1.

Dated: July 21, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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Special Master

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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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