

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 Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

**WALEED HAMED, WAHEED HAMED, MUFEEED
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'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO CLAIM H-33— PARTNERSHIP FUNDS AT MERRILL LYNCH**

I. Introduction

a. A Brief statement of the Claim and Relief Sought

Hamed Claim H-33 involves Merrill Lynch investment accounts for holding stocks, bonds, options and similar property: ML-140-21722, ML-140-07884 and ML-140-07951. There is no dispute that millions of dollars of the investments were purchased with Partnership ‘store income’ funds—paid from the Partnership’s “d/b/a Plaza Extra” account.¹

Under RUPA §204(c),² it is presumed that such funds still in the accounts after September 17, 2006 are Partnership property.³ This motion for partial summary judgment seeks a very limited ruling based on that single, fundamental point of USVI partnership law. Hamed asks for a determination that, “because Partnership funds purchased the property in these accounts in full or part, the rebuttable presumption is that funds still in the accounts after September 17, 2006 are Partnership property, and Yusuf will bear the burden of proof as set forth in RUPA §204(c).”

¹ See, e.g., **Exhibit 1**, a microfiche reproduction of a two-million dollar Partnership check numbered ‘14985,’ which was obtained from Merrill Lynch by the FBI, and thereafter supplied to the parties here (see exhibit sticker at bottom of the page and appended letter.) It is provided as just one example, being the largest of many such checks written from the Partnership’s “d/b/a Plaza Extra” account for Hamdan’s direct deposit into one of the Merrill Lynch accounts. It is dated August 13, 2001—less than two months before the October 2001 FBI raid. On its face it bears the notation “For 140-07884” which is the account number for one of the three accounts at issue here—Merrill Lynch account 140-07884. The image of the back of the check demonstrates that it was negotiated into the *Merrill Lynch, Pierce, Fenner & Smith Incorporated* (“MLPF&S”) USVI trading account for the benefit of account 140-07884, on August 14, 2001.

² Section 204 of the 1997 RUPA was adopted, *verbatim*, by the USVI, in 1998—as 26 V.I.C. § 24 (“When property is partnership property”). Thus, the operative section here is actually section 26 V.I.C. § 24(c); *accord.*, V.I. Supreme Court in *Yusuf v. Hamed*, 59 V.I. 841 (2013)(“the Virgin Islands Code incorporates the Uniform Partnership Act of 1997. . .See 26 V.I.C. §§ 1-274.”) However, for clarity in making comparisons, reference is made in this motion to the identical RUPA section 204(c) because other Courts and jurisdictions, as well as the *Official Comments* to the Act cited herein, often refer to the uniform section number.

³ As Yusuf has refused discovery requests, it is possible that he or his relatives have looted the accounts post-litigation—despite Hamed’s efforts to prevent this. That is of no consequence, as RUPA provides that the claim can still be recovered by adjustment of his Partner’s Account.

b. A Brief Summary of the Procedural Posture

The Master may wonder why, procedurally, this partial summary judgment is necessary now, before any fact hearing. Hamed will attempt to answer the question as briefly as possible.

Yusuf has repeatedly refused *all* discovery requests regarding this claim, but has made an admission relevant to this motion in “objecting” to that discovery.⁴ On March 1, 2018, while Yusuf refused to provide account statements, other documents or answers in his discovery responses (see, e.g., **Exhibit 2**⁵) he admitted that “[t]o the extent that payments **were made** [from Partnership funds via the Partnership account] to Hamdan Diamond, **they were in repayment of loans.**” Thus, while these accounts are ‘titled’ in the name of Hamdan Diamond Corporation and/or Fathi Yusuf’s niece⁶—Yusuf’s characterization of the purchase funds as

⁴ This is definitely not just a roundabout means of obtaining discovery. To the contrary, as the burden (of showing that there were loans to the Partnership being repaid as he says) lies with Yusuf, if Yusuf wishes to continue his past practice, and provide not one scintilla of evidence as to this claim, that will suit Hamed. There are no such documents of record now.

⁵ *Yusuf’s Response to Hamed’s Request for the Production of Documents Pursuant to the Claims Discovery Plan of 1/29/2018, NOS. 1-5 of 50—as to. . .H-33 - Merrill Accounts Financed with Partnership Funds.*

⁶ On November 12, 1996, Attorney Moore, sent a letter on behalf of Yusuf to Mercedes Spatz at Merrill Lynch, regarding the Hamdan Diamond Corporation. He stated:

I am pleased to advise that the Hamdan Diamond Corporation is a duly organized company incorporated in Anguilla on May 16, 1996. The company is in good standing. . . .According to the documentation submitted for my review, Hamdan Diamond Corporation is authorized to buy and sell securities on both a WCMA cash and margin basis.

Exhibit 3. This was a corporation created for the Partners to ‘shelter’ store profits and in 1996 Fathi Yusuf and Wally Hamed were the only two directors—both fully authorized to give written or oral instructions on behalf of Hamdan Diamond Corporation to Merrill Lynch in relation to the subject accounts. **Exhibit 4**, see also **Exhibit 5**, a signed letter to Merrill Lynch from the straw man, Yusuf’s niece, Fathieh Yousef—describing Fathi Yusuf giving him “full authority...to manage the above account....he will direct any and all investment activity in this account.” That she was just a straw man is discussed in detail below in relation to Exhibit 7.

'loan repayments' is just an issue of competing evidence under RUPA, and subject to the 402(c) presumption.⁷

The partial summary judgment is important now because, despite millions of dollars of Partnership funds flowing into these accounts from the Partnership's account, Yusuf seemingly expects everyone to simply take his word at the hearing that none of this is true because:

(1) he cleverly "titled" the accounts in a third party's name, thus the Partnership has no legal rights (which is patently wrong under RUPA §204(c)), and

(2) he had written on some of the Partnership account checks into this account that the funds were "loan repayments."⁸

However, because there were many cash and other transfers from the Partnership to these accounts to buy the investments and no evidence of such underlying loans, it is important that this burden be fully understood before the final depositions and expert reports take place so that Yusuf has the opportunity to consider what evidence he needs to sustain his burden.

⁷ At that hearing, Hamed will prove that ML-140-07884 was set up in Anguilla, as a common, transactional Plaza Extra 'profits account'. It had Wally Hamed as the co-director with Yusuf—with both having full decision-making authority. Id. The fictions that Yusuf's brother or niece were actually involved in account transactions or that these weren't Partnership funds being 'sheltered' were just that. . .total fictions.

⁸ As set forth in the *Statement of Undisputed Material Facts*, below, there is absolutely no evidence of any actual underlying loan or funds provided to the Partnership from Yusuf's brother or his niece—of any actual 'incoming' funds flowing from either of them into the Partnership in such large amounts. This appears to simply be a scheme to remove pre-tax money from the supermarkets by labeling some checks as repayments.

b. A Brief Summary of Hamed's Legal Argument

Hamed has extensively briefed the legal principles behind RUPA section 204(c) in his motion regarding the half acre at Tutu.⁹ Property obtained in full or part with partnership funds is presumed to be Partnership property, with the burden shifting to the opposing party. This is the case even if the property is titled in the name of a third party. The definition of partnership property includes stocks, bonds, investment accounts, etc. Thus, Hamed seeks partial summary judgment that to the extent that property in the Merrill Lynch account was purchased with Partnership funds, the rebuttable presumption is triggered—Yusuf has the burden.

Moreover, Hamed has also briefed the RUPA concept that even if Yusuf tries to suggest his “commingling” of the Partnership funds with *bona fide* loan repayments was not due to an active intent to steal, where a partner commingles partnership assets with his own assets, the entire commingled mass is presumed to be partnership. Again, the burden shifts.

Where a fiduciary commingles partnership assets with personal assets, the entire commingled mass is treated as partnership property except so far as the fiduciary may be able to distinguish what is separately his. *Hurst*, 1 Ariz. App. at 607, 405 P.2d at 917. . . .and the commingling of partnership property with a partner's own property **gives rise to a presumption that the entire commingled mass is partnership property**. *Ohaco Sheep Co., Inc. v. Heirs of Ohaco*, 713 P.2d 343, 346 (1986); *Hurst*, 1 Ariz. App. at 606-07, 405 P.2d at 916-17. (Emphasis added.)

Shepard v. Patel, 2012 U.S. Dist. LEXIS 168102, at *11-12 (D. Ariz. Nov. 26, 2012). Again, Judge Brady's *Finding of Fact* No. 21, *Hamed v. Yusuf*, 2013 WL 184650 at *7 (April 25, 2013).

21,. In operating the "office," Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra....Despite the facts that the supermarket used the trade name "Plaza Extra" registered to United (Pl. Ex. 4, ¶14) and that the supermarket bank accounts are in the name of United (Pl. Ex's. 15. 16), "in talking about Plaza Extra...when it says United Corporation...[i]t's really meant me [Yusuf] and Mr. Mohammed Hamed." Pl. Ex. 1, p. 69:13 -21. (Emphasis added.)

⁹ See *Hamed's Motion for Partial Summary Judgement as to Claim H-142, Half-Acre Parcel at Tutu*, filed November 20, 2019.

II. Statement of Material Facts Not in Dispute

1. Fathi Yusuf and Wally Hamed arranged the creation of Hamden Diamond Corporation in Antigua, and Yusuf paid the lawyer for its creation. *Supra.*, Exhibit 3.
2. When Hamden Diamond opened account ML-140-07884, the paperwork completed by Fathi Yusuf and Wally Hamed shows that those two men were the only directors of Hamdan Diamond. *Supra.*, Exhibit 3. They had full transactional authority.
3. After the death of Yusuf's brother, Merrill Lynch was instructed by the straw "owner"¹⁰ of Hamdan Diamond, Yusuf's niece, with regard to ML-140-07884, that: "Fathi Yusuf" has "full authority...to manage the above account. . . . he will direct any and all investment activity in this account. " *Supra.*, Exhibit 5. (Emphasis added.)
4. A \$2 million check and many other checks from the Partnership account were sent to Hamdan Diamond to fund these accounts. *Supra.*, Exhibit 1.
5. On March 1, 2018, Fathi Yusuf filed his response¹¹ to the document request for Claim H-33. *Supra.* In that filing, Yusuf made the claim that "ML-140-07884 and ML-140-07951 are accounts in the name of Hamdan Diamond and are not Yusuf's accounts. To the extent that payments were made to Hamdan Diamond, they were in repayment of loans." *Supra.* Exhibit 2.(Emphasis added.)
6. On May 15, 2018, Yusuf provided the following response to Hamed's Interrogatory Number 6 of 50. **Exhibit 6**, as follows:

¹⁰ See **Exhibit 7**, it is another (somewhat stunning) letter provided by the FBI to show that Hamdan Diamond was simply a money laundering vehicle in Yusuf's full control. It demonstrates that on May 16, 1997, Fathi Yusuf assigned Fathia Yousef her single share as a mechanism to allow Yusuf to control the Partnership funds hidden within. The letter, from counsel, also makes it clear that this was a sham which actually allowed Yusuf to "continue to control" the more than \$10 million secreted offshore.

We recommend that the original plan for the operation of the Company (i.e. that your brother be the sole shareholder and that when he should die, the process of probate would allow you as Executor to continue to control the funds invested in the Company by appointing a new shareholder,) be adhered to. Without the probating of the Will, a vesting of the shares in a new shareholder would be an impossibility as only the Executor of the Will after it has been probated would be competent to pass on the shares. My understanding from what you told me when we last met, is that the assets of the Company as invested, amount to some US\$10 million.

¹¹ See *Yusuf's Response to Hamed's Request for the Production of Documents Pursuant to the Claims Discovery Plan of 1/29/2018, NOS. 1-5 of 50—as to. . .H-33 - Merrill Accounts Financed with Partnership Funds.*

Describe in detail the purposes and use of Merrill Lynch accounts from 9/17/2006 through the present: ML 140-21722, ML 140-07884 and ML 140-07951. If any of these Merrill Lynch accounts have been closed, please identify the date the account was closed, who closed it, the amount remaining in the account at the time it was closed and who the money was given to at the time of closing. Identify any documents which support or relate to your response, and any witnesses who would have knowledge and what knowledge you believe they have.

YUSUF'S RESPONSE:

Defendants object to this Interrogatory as these accounts are not Defendants' or the Partnership's accounts and thus, "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii). ML-140-21722 is in the name of Fathieh Yousef, who is Yusuf's niece. ML-140-07884 and ML-140-07951 are accounts in the name of Hamdan Diamond. Hamed seeks information regarding the purposes, uses and closure of these account from September 17, 2006 to the present, he should be required to obtain that information from the account holders.

7. After litigation began, Hamed's lead counsel verified that there were remaining funds in one or more related accounts at Merrill Lynch. **Exhibit 8.**
8. There are no financial records or other documents that have been produced by Fathi Yusuf or United—other otherwise located by Hamed after extensive research, that reflect in any way or manner, any incoming funds for loans from Fathieh Yousef or her father; or loan documents were ever on the Partnership's books—other than notations on outgoing checks. **Exhibit 8.**
9. Nor is there any evidence of record of funds coming into the Partnership in such large amounts from "loans." **Exhibit 8.**

These facts are sufficient, with no additional inquiry or hearings, to resolve the limited legal issue before the Master.

III. Applicable Law

Section 204(c) of the *Revised Uniform Partnership Act* (“RUPA”) provides that all property¹² that was purchased with partnership funds is presumptively partnership property— notwithstanding that it was (1) “not acquired in the name of the partnership,” or (2) that the paper title of record is in the name of another entity. See RUPA §204(c).¹³

RUPA SECTION 204: WHEN PROPERTY IS PARTNERSHIP PROPERTY

* * * *

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners....

The “Prefatory Notes” to the drafters’ *Official Comments* to RUPA, from the *National Conference of Commissioners on Uniform State Laws*, state, at 2: “The Revised Act enhances the entity treatment of partnerships to achieve simplicity for state law purposes, particularly in matters concerning title to partnership property.” More to the point, the *Official Comment* to Section 204, goes on to state that this RUPA Section was expressly revised¹⁴ for the specific

¹²The §204(c) term “property” is not limited to real property, it includes all types of property, such as stocks and other investment vehicles. See, e.g., *Finch v. Raymer*, No. W2012-00974-COA-R3-CV, 2013 Tenn. App. LEXIS 319, at *23 (Ct. App. May 6, 2013) (“The parties together accumulated certain personal property...All of the foregoing property was purchased from the sale of partnership property combined with Plaintiff’s income. The Court finds that a partnership existed between these parties and that all of the foregoing property was owned one-half undivided interest by the Plaintiff...and a one-half undivided interest by the Defendant....”)

¹³ Because the revised rules disfavor multiple filings of Exhibits, Hamed incorporates the references herein to the similar section in his *Motion for Partial Summary Judgement as to Claim H-142, Half-Acre Parcel at Tutu*, filed November 20, 2019.

¹⁴ In the pre-RUPA (pre-1997) version of the old *Uniform Partnership Act* (“UPA”), the definition of “partnership property” did not use the word “presumed” and was sometimes interpreted slightly differently, almost as if it *reversed* the burden. Compare RUPA §802(c) to original §8(2) of the UPA (prior 26 V.I.C. 23): which provided: **(2) Unless the contrary intention appears**, property acquired with partnership funds is partnership property....” (Emphasis added.)

purpose of making sure that such the initial title and any present paper “titling” of record is presumptively interpreted under RUPA 204(c), comment 3.

under subsection (c), property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held...^[15]

Such a RUPA presumption was triggered no matter what entity the property was originally purchased through, or where the title lies. *Mogensen v. Mogensen*, 273 Neb. 208, 215-19, 729 N.W.2d 44, 52-54 (2007)(Presumption applicable to third-parties.) Thus, instead of Yusuf/United being able to stonewall here because Hamed has the burden, RUPA presumes that these investments are Partnership property. The presumption applies “even when the partnership provides only a portion of the purchase price. And it can apply even though a third party who is not a partner to the firm holds title.” See quote from *Mogensen*, below.

As Hamed showed in his earlier motion, there is no minority position in any RUPA jurisdiction. Thus, the best rule for the USVI is the application of a rebuttable presumption that property is partnership property once it is shown that Partnership funds were used for the purchase, and the burden shifts to the putative, hostile title holder to rebut that ownership by proving that the intent of the Partners was otherwise. *In re Estate of Bolinger*, 1998 MT 303, ¶ 80, 292 Mont. 97, 116, 971 P.2d 767, 780 (1998)(“The presumption is rebuttable and may be overcome.”)

Once this presumption is triggered and the burden shifts, RUPA jurisdictions considering the resulting burden have looked to several factors—but in all cases, the single question that all of these factors are reviewed to answer is: “What did the Partners intend?” For example, in

¹⁵ *Emphasis added. Accord. Finch v. Raymer, id.* at *33 (“Simply put, “property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held.” Tenn. Code Ann. § 61-1-204 cmt. 3” [RUPA Section 204, Comment 3.]

Mogensen v. Mogensen, 273 Neb. 208, 215-19, 729 N.W.2d 44, 52-54 (2007) the Nebraska Supreme Court, interpreting its identical enactment of RUPA, *reversed the trial Court's refusal* to properly apply this presumption against a third party that had title of record.

Nebraska's Uniform Partnership Act of 1998 governs when property is considered partnership property. Section 67-412(3) of the act provides:

Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

* * * *

Further, the presumption can apply even when the partnership provides only a portion of the purchase price. And it can apply even though a third party who is not a partner to the firm holds title.

In determining whether a party has rebutted the presumption, no single factor or combination of factors is dispositive. Ultimately, the partners' intentions control. . . .

* * * *

The use of partnership funds in the purchase and the other evidence suggest that Opal owns DeWulf Place in name only. . . . **Once we acquire equity jurisdiction, we can adjudicate all matters properly presented and grant complete relief to the parties. . . .** (*Emphasis both original and added.*)

IV. Analysis

There is no profound analysis necessary here. Yusuf has responded under oath that funds went from the Partnership to purchase investments, but that those funds were actually repayment of a "loan" due to "his niece." After the presumption is invoked, Hamed welcomes Yusuf's proof at the hearing—of the original loan funds being received by the Partnership and how they were used at that time (by the Partnership as opposed to United). He also welcomes proof that the brother had millions to lend—and so trusted his beloved brother with the millions that he had absolute and total control over them. *But those are not the issues here.* Although Hamed will be interested to see whether Yusuf (as he did with the Tutu rents and parcel) has taken these funds after litigation, the only real legal issue here is that RUPA provides that with

regard to an active account being transacted on by Yusuf after 2006 “To the extent that Partnership funds were used in full or part to purchase the stocks and other instruments in the Merrill Lynch accounts, the presumption is that they are Partnership Property, even if held in the name of a third party.”

V. Conclusion

To the extent that Partnership funds were used in full or part to purchase the stocks and other instruments in the Merrill Lynch accounts, the presumption is that they are Partnership Property, even if held in the name of a third party.

Dated: November 26, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2019, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross

Special Master
edgarrossjudge@hotmail.com

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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).
Counsel notes that this excludes the pages and words which contain the included Statement of Undisputed Facts” per the revised requirements as to such sections.



Merrill Lynch

Tracy Johnson
Third Party Processing
Litigation Department

Office Of General Counsel

370 Lexington Ave. 11th Floor
New York, NY 10017
212-309-4126
212-309-6703 Fax

October 18, 2001

Federal Bureau of Investigation
Al Cohen's Plaza Suite 610
St. Thomas VI 00802
Attn: Tom Petri

RE: Grand Jury Subpoena Number 01160
Merrill Lynch File Number 2001-15078

Dear Mr. Petri,

Pursuant to a subpoena received by Merrill Lynch, Pierce, Fenner & Smith regarding the above referenced matter, enclosed please find documents relating to the following:

Cash Management Account Number 140-07759
N/O United Corporation
• **Monthly Account Statements**
(May 1996 to Present)

Cash Management Account Number 140-07884
N/O Hamdan Diamond Corporation
• **Monthly Account Statements**
(May 1997 to Present)

Please be advised that checks written against the aforementioned account are not in the custody of Merrill Lynch, but rather in the custody of First Data Corporation. In order to retrieve copies of these checks, you should serve a subpoena on First Data Corporation at the following address:

First Data Corporation
4151 Executive Parkway, Suite 100
Westerville, OH 43801-0402
Attn: Donna Skeen



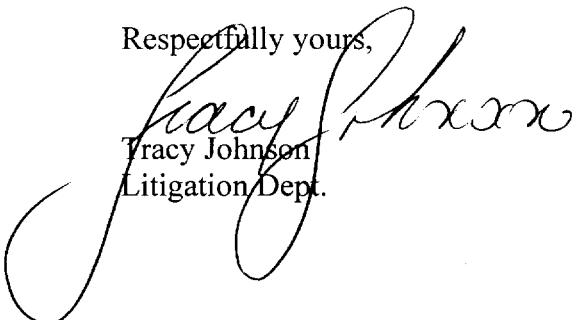
HAMD445537

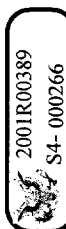
Likewise, the checks used to credit the aforementioned account are not in the custody of Merrill Lynch, but rather in the custody of that local bank used as a depository by that Merrill Lynch branch office which received the checks on the behalf of the customer. Should you need to obtain copies of these deposit items, please contact us so that we may provide you with the name(s) of the bank(s) on which you should serve a subpoena.

It is my understanding that the enclosed documents will suffice in lieu of a formal appearance by a Merrill Lynch representative.

Should you have any questions please call me at 212-309-4126.

Respectfully yours,


Tracy Johnson
Litigation Dept.



HAMD445537

knowledge any particular payment for expenses incurred on the Bank of America credit card held by Nejeih Yusuf, how reimbursement is documented and the items reflected in the April - May 2015 statement included as Exhibit 281 which document was provided by Hamed and, therefore, is unable to provide any information responsive to this Request.

Request for Production of Documents 2 of 50:

RFPDs number 2 of 50 relates to Claim H-33 (previously identified as 338) – described in the claims list as “Merrill Lynch accounts that still existed in 2012 (ML-140-21722, ML-140-07884 and ML-140-07951) financed with Partnership funds.”

Please provide all documents related to the following Merrill Lynch accounts from 9/17/2006 through the present: ML 140-21722, ML 140-07884 and ML 140-07951. Documents should include, but not be limited to, documents identifying the origins of the deposits into each Merrill Lynch account and the Merrill Lynch statements.

Response:

Yusuf objects to this Request at these accounts are not his accounts and thus, “the proposed discovery is not relevant to any party’s claim or defense.” V.I. R. Civ. P. 26(b)(2)(C)(iii). ML140-21722 is in the name of Fathieh Yousef, who is Yusuf’s niece. ML-140-07884 and ML-140-07951 are accounts in the name of Hamdan Diamond and are not Yusuf’s accounts. To the extent that payments were made to Hamdan Diamond, they were in repayment of loans. Partnership funds were deposited in to the United Merrill Lynch account ML-140-07759.

Request for the Production of Documents 5 of 50:

RFPD 5 of 50 relates to Claim H-162 (previously identified as Exhibit A-L) – described in the claims list as “Claims based on monitoring reports/accounting 2007-2012).”

Please provide all documents to and/or from the United States or the United States Virgin Islands government or monitors from 9/17/2006 to present related to monitoring or monitoring reports prepared in connection with the *US v United et al.* criminal case 2005-15- (D.V.I.).

Response:

Yusuf shows that he is unaware of all of the information provided to the monitors over the years as it was provided by various individuals as requested. To the extent that reports are available Yusuf shows that they have previously been provided to Hamed but attaches them again to this production. Further, Yusuf shows that as members of the Hamed family were defendants in the criminal action, they or their criminal counsel should have access to such information and that the burden of obtaining such information is equal as if provided by Yusuf. Moreover, Waleed Hamed was operating and in charge of the Plaza Extra East store until the split and, therefore, would have knowledge or information responsive to this request.

DATED: March 1, 2018

By:

DUDLEY, TOPPER AND FEUERZEIG, LLP


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(V.I. Bar #1281)

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EXHIBIT
3

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WEST PALM BEACH, FLORIDA 33401

TELEPHONE (561) 833-9000
FAX (301) 823-7880

November 12, 1996

Fax: (303) 987-5783

Ms. Mercedes Spatz
Merrill Lynch/Client Account Services
3900 S. Teller Street
Lakewood, Colorado 80235

Re: Hamdan Diamond Corporation
Account No. 140-07884

Dear Ms. Spatz:

This is in response to your request dated November 8, 1996, received today, for an opinion relative to Hamdan Diamond Corporation.

I am pleased to advise that Hamdan Diamond Corporation is a duly organized company incorporated in Anguilla on May 16, 1996. The company is in good standing.

According to the documentation submitted for my review, Hamdan Diamond Corporation is authorized to buy and sell securities on both a WCMA cash and margin basis.

According to the documentation submitted, Fathi Yusuf and Wally Hamed are authorized, individually, to give written or oral instructions on behalf of Hamdan Diamond Corporation to Merrill Lynch in relation to the subject account.

I do note that the subject corporation is not correctly named under paragraph 11 of the WCMA Account Corporation Resolutions form, since the company name is shown as Hamdan Diamond Corporation Ltd. rather than correctly as Hamdan Diamond Corporation. The same error also occurs on the WCMA Check and Card Instructions form and on the final page of the Merrill Lynch WCMA Account Agreement form.

It is a pleasure to be of service. My statement accompanies.

Sincerely yours,

George C. J. Moore

GCJM/pp
(Total fax: 2 pages)

cc: Michelle Williams, Legal Advisory

2011 R00389
S- 000226

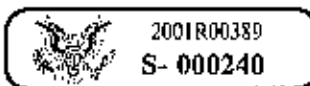
C:\WP\HND\DOCS\M\L\ANGUILLAW\HAMDAN.DIA\SPATZ.FAX

Admitted to the Bar

ENGLAND (BARRISTER), FLORIDA, U.S. SUPREME COURT, AND COMMONWEALTH CARIBBEAN;
ANTIGUA, BRITISH VIRGIN ISLANDS, GRENADA, JAMAICA, MONTERRAT, ST. LUCIA, AND TURKS & CAICOS ISLANDS

Confidential

HAMD488714



ANGUILLA

INTERNATIONAL BUSINESS COMPANIES ORDINANCE, 1994

CERTIFICATE OF INCORPORATION (Section 9)

I hereby certify that the Articles of Incorporation of

HAMDAN DIAMOND CORPORATION

having this day been registered

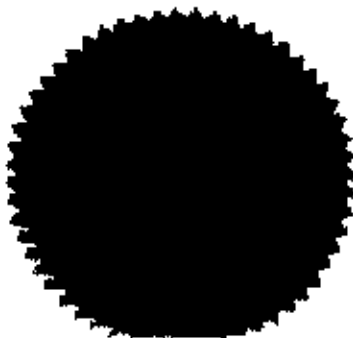
HAMDAN DIAMOND CORPORATION

is hereby incorporated

DATED THE 16th DAY OF May 1996



NO. 332

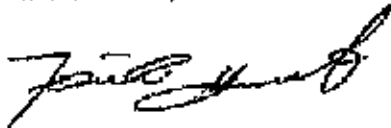


1995 AUG -6 P 2:28

HAMDAN DIAMOND CORPORATION

ON THIS DAY 5th OF August, 1996, THE BOARD
OF DIRECTORS DETERMINED TO OPEN A MARGIN ACCOUNT WITH MERRILL
LYNCH AND INSTITUTED THE CORPORATE OFFICERS TO DO SO.

SINCERELY,



FATHI YUSUF
DIRECTOR



2001R00389
S- 000217

Private Client Group
Client Account Services
3900 South Teller Street
Lakewood, Colorado 80235
November 8, 1996

Merrill Lynch
George C.J. Moore
Citizens Building
106 S. Narcissus Ave, Ste. 812
West Palm Beach, FL 33401

EXHIBIT
4

Re: Hamdan Diamond Corporation
Acct: 140-07884
Attn: George C.J. Moore

Dear Mr. Moore:

Enclosed is a copy of the file for the above referenced account. This account will be maintained in accordance with the instructions of the persons listed below:

Fathi Yusuf Wally Hamed



It is proposed that the account:
(X) buy and sell securities on a WCMA cash basis
(X) buy and sell securities on a WCMA margin basis

Please provide your written opinion as soon as possible with respect to the adequacy of these documents for the purpose. Please telefax your opinion to my attention at (303) 987-5783. Please address any written correspondence to:

Merrill Lynch/Client Account Services
Attn: Mercedes Spatz
3900 S. Teller Street
Lakewood, CO 80235 (USA)

If you require additional information or documents, please let me know. My direct number is (303) 987-5163 should you need it. Your prompt response is always appreciated. Thank you for your attention to this matter.

Sincerely,

Mercedes Spatz
Account Service Representative

740-07884

CERTIFICATE OF INCUMBENCY
FOR

HAMDAN DIAMOND CORPORATION

I, MOHAMAD HAMDAN, THE UNDERSIGNED, REPRESENTING HAMDAN DIAMOND CORPORATION, DO HEREBY CERTIFY THAT THE FOLLOWING PERSONS ARE AT THE DATE HEREOF THE DIRECTOR/OFFICER OF THE COMPANY.

DIRECTOR: HAMDAN DIAMOND CORPROATION
OFFICERS: FATHI YUSUF OFFICER
WALLY HAMED OFFICER



IN WITNESS WHEREOF I HAVE SET MY HAND THIS 11TH DAY OF OCTOBER, 1996.

FOR AND ON BEHALF OF
HAMDAN DIAMOND CORPROATION

MOHAMAD HAMDAN

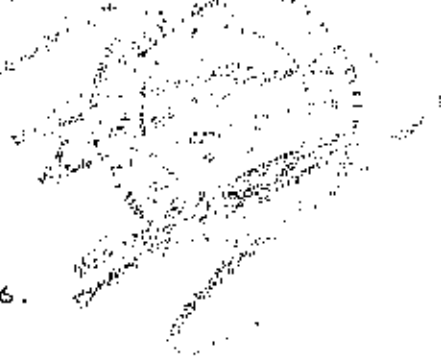
WE HEREBY VERIFY THAT ACCORDING TO THE RECORDS OF THE COMPANY AVAILABLE AT ITS REGISTERED OFFICE, MOHAMAD HAMDAN IS A REPRESENTATIVE OF THE HAMDAN DIAMOND CORPORATION.

FOR AND ON BEHALF OF
MITCHELL'S CHAMBERS
BARRISTERS AT LAW AND SOLICITORS
REGISTERED AGENT

I. D. MITCHELL

IAN DONALDSON MITCHELL
NOTARY PUBLIC
CHAMBERS
P.O. BOX 174
THE VALLEY, ANGUILLA
BRITISH WEST INDIES

RAISED SEAL



DATED: THIS 11TH DAY OF OCTOBER, 1996.

21 May 1997

Merrill Lynch Pierce Fenner & Smith

Re : Hamdan Diamond Corporation

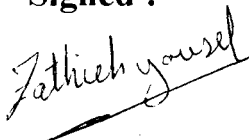
Account # 140 - 07884

To whom it may concern

Please be advised that I , Fathia Yousef, sole shareholder of Hamdan Diamond Corporation, give full authority to the director Fathi Yusuf to manage the above account.

I am fully knowledgeable and aware that the he will direct any and all investment activity in this account.

Signed :



Fathia Yousef

Date : *21 May 1997*

**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
Defendants/Counterclaimants,	)	JUDGMENT, AND
v.	)	PARTNERSHIP DISSOLUTION,
	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
UNITED CORPORATION,	)	DECLARATORY JUDGMENT
)	
Defendant.)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
FATHI YUSUF,)	
Defendant.)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE
THE ESTATE OF MOHAMMAD HAMED,	)	FRAUDULENT TRANSFERS
Waleed Hamed as Executor of the Estate of)	
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING TRUST,)	
Defendants.)	

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Interrogatory 6 of 50 – New Claim Number H-033-- Old Claim #: 338

Merrill Lynch accounts that still existed in 2012 (ML 140-21722, ML 140-07884, and ML 140-07951) financed with Partnership funds.

Describe in detail the purposes and use of Merrill Lynch accounts from 9/17/2006 through the present: ML 140-21722, ML 140-07884 and ML 140-07951. If any of these Merrill Lynch accounts have been closed, please identify the date the account was closed, who closed it, the amount remaining in the account at the time it was closed and who the money was given to at the time of closing. Identify any documents which support or relate to your response, and any witnesses who would have knowledge and what knowledge you believe they have.



RESPONSE:

Defendants object to this Interrogatory as these accounts are not Defendants' or the Partnership's accounts and thus, "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii). ML140-21722 is in the name of Fathieh Yousef, who is Yusuf's niece. ML-140-07884 and ML-140-07951 are accounts in the name of Hamdan Diamond. Hamed seeks information regarding the purposes, uses and closure of these account from September 17, 2006 to the present, he should be required to obtain that information from the account holders.

undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 15th, 2018

By: 
CHARLOTTE K. PERRELL

(V.I. Bar #1281)
Law House
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804-0756
Telephone: (340) 715-4422
Facsimile: (340) 715-4400
E-Mail: cperrell@dtflaw.com

*Attorneys for Fathi Yusuf and United
Corporation*

MITCHELL'S CHAMBERS

Barristers at Law and Solicitors
of the Eastern Caribbean Supreme Court
Trade Mark and Patent Agents
Commissioners for Oaths
Notary Public

I D MITCHELL, QC
of the Inner Temple

Associates:

M E B STEPHENSON, LLB (Hons)(UWI)
J A G GUMBS, LLB (Hons)(UWI)

R W LUCIE-SMITH (1915-1992)
of the Middle Temple

P O Box 174
The Valley
Anguilla
British West Indies

Telephone: (809) 497 2391

Telefax: (809) 497 2050

e-mail: mitchellm@candw.com.ai

16 April 1997

Mr Fathi Yusuf
United Corporation Plaza Extra Supermarket
26 A Tutu Park Mall
P O Box 503358
St Thomas
USVI 00805

Dear Mr Yusuf

Re: Hamdan Diamond Corporation

I have given the matters raised with me some more thought.

We recommend that the original plan for the operation of the Company (i.e. that your brother be the sole shareholder and that when he should die, the process of probate would allow you as Executor to continue to control the funds invested in the Company by appointing a new shareholder,) be adhered to. Without the probating of the Will, a vesting of the shares in a new shareholder would be an impossibility as only the Executor of the Will **after it has been probated** would be competent to pass on the shares.

My understanding from what you told me when we last met, is that the assets of the Company as invested, amount to some US\$10 million. I had indicated to you that under the Anguillian Non-Contentious Probate Rules, Bar Association approved minimum fees in a matter such as this is 1% minimum. As this is an offshore matter, we are prepared to compromise our fee and charge a flat minimum of US\$10,000.00:-

- (a) To act as Administrator with Will annexed and to prepare all documents leading up to the Grant of Probate;

MITCHELL'S CHAMBERS

Mr Fathi Yusuf

16 April 1997

Page 2

-
- (b) Supervise and assist in the vesting of the shares in such new shareholder as you the Executor shall direct; and
- (c) Such other matters ancillary to the Grant of Probate and vesting of the shares as may be necessary.

I must advise you again that without the probate of the Will there is no one alive or competent to appoint a new director, although I would draw to your attention the provision at By-law 12.1 which allows you to appoint such officers as you deem necessary. Similarly there is a provision in our laws which would allow you to appoint an alternate director but he can only act in your absence.


Please note, however, that this would not solve the problem of there being no shareholder of the Company, which is a legal necessity.

If you are still of the view that the fee we are charging (which in our view given the complexity of this matter and the responsibilities to be undertaken, and the substantial amount of assets involved amounts only to a token fee) then you must not hesitate to consider whether another law firm might not meet your purposes.

We await your further instructions.

Yours sincerely

MITCHELL'S CHAMBERS


for Josephine A G Gumbs
Solicitor

JAGG/hs/17.04.97

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

EXHIBIT

8

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, MUFEEED
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

DECLARATION IN SUPPORT OF
HAMED'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO CLAIM H-33— PARTNERSHIP FUNDS AT MERRILL LYNCH

1. The undersigned is an attorney admitted to the practice of law in the USVI, Bar No. 48.
2. This Declaration is true and accurate to the best of my knowledge, and is made under oath.
3. The statements herein are provided in support Hamed's motion.
4. After litigation began, Hamed's lead counsel verified that there were funds in one or more related accounts at Merrill Lynch.
5. There are no financial records or other documents that have been produced by Fathi Yusuf or United—other otherwise located by Hamed after extensive research, that reflect in any way or manner, any incoming funds for loans to Fathieh Yousef or her father, or loan documents were ever on the Partnership's books—other than notations on outgoing checks.
6. Nor is there any evidence of record of funds coming into the Partnership in such large amounts from "loans."

Dated: November 26, 2019

A handwritten signature in blue ink, reading "Carl J. Hartmann III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941