

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.,)	
)	
<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
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
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
	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED,)	
Waleed Hamed as Executor of the Estate of)	
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING)	
TRUST,)	
)	
Defendants.)	

**YUSUF'S MOTION FOR LEAVE TO FILE SURRESPONSE TO HAMED'S
REPLY REGARDING CLAIM H-142**

Fathi Yusuf and United Corporation (collectively, the 'Defendants'), through their attorneys, Dudley Newman Feuerzeig LLP, respectfully submits this Motion for Leave to File Surreponse to Hamed's Reply Regarding Claim H-142. In support of this Motion, Defendants state as follows:

1. On December 22, 2018, Hamed filed his reply ("Reply") in support of what he styled as his Motion For Partial Summary Judgment as to Claim H-142.
2. Hamed's Reply, consisting of 24 pages and attaching 9 additional exhibits including 2 never seen before (Exhibits 25 and 30), raises new arguments supported by new evidence.
3. Defendants submit that Hamed's new arguments muddy, rather than clarify the issues regarding Claim H-142, and that the Master would benefit from having a brief from Defendants, which addresses why Hamed's new arguments are without merit.

For these reasons, Defendants respectfully request the Master to grant their Motion for Leave to File Surreponse Regarding Claim H-142. A proposed Order and proposed Surreponse Regarding Claim H-142 are attached.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: January 6, 2020

By: 

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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2020, I caused the foregoing **YUSUF'S MOTION FOR LEAVE TO FILE SURRESPONSE TO HAMED'S REPLY REGARDING CLAIM H-142**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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**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,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)

Additional Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING)
TRUST,)

Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
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CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

YUSUF'S SURRESPONSE TO
HAMED'S REPLY TO
YUSUF'S OPPOSITION TO
HAMED'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
CLAIM H-142 – THE HALF –ACRE ACCESS PARCEL AT TUTU

Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned attorneys, respectfully submit this Surrespose to “Hamed’s Reply With Respect To His Motion For Partial Summary Judgment As To Claim H-142 – The Half-Acre Access Parcel At Tutu (the “Reply”).

I. SUMMARY OF ARGUMENT

Hamed’s Reply¹ makes a number of unsupported factual assertions, improper procedural arguments and incorrect legal arguments that require further response. First, Hamed argues that Yusuf has taken a *new* position as to the ownership of the half acre parcel near Tutu in St. Thomas (the “Tutu Half-Acre”). This is untrue—Yusuf has consistently maintained throughout the litigation that the Tutu Half-Acre is not a Partnership asset but is owned by United, separate and apart from the Partnership. That position has never changed. Second, Hamed has mischaracterized Yusuf’s testimony as to his settlement discussions with Waleed Hamed concerning the Tutu Half-Acre. Third, Yusuf has not attempted to file a “counter-motion” for summary judgment. Yusuf merely set forth additional facts as allowed by the applicable Rules of Civil Procedure to demonstrate that genuine issues of material fact exist, which preclude partial summary judgment for Hamed. Finally, Hamed’s reference to future motion practice is unclear and requires unraveling.

¹ In his motion to exceed the Rule 6.1(e)(2) word and page limitations filed concurrently with the Reply, Hamed sought leave to file his 24 page Reply along with 9 additional exhibits including two that had never been seen before, namely, a declaration of counsel (Exhibit 25) and Hamed’s response to Yusuf’s counter-statement of facts (Exhibit 30).

A. Yusuf has consistently maintained that the Tutu Half-Acre is not a Partnership Asset subject to division.

Hamed contends that Yusuf has taken a *new* position, which is somehow a departure from his prior positions as to the ownership of the Tutu Half-Acre. This is incorrect—there is nothing new. Yusuf has always maintained that the Tutu Half-Acre did not belong to the Partnership at the time of the dissolution. Furthermore, it is properly titled in the name of United, as an entity solely owned by Yusuf's family, as Hamed relinquished any claim to the Tutu Half-Acre in 2011 pursuant to an agreement between Yusuf and Hamed.

1. April 2, 2014 Deposition Testimony

Yusuf identified the agreement with Hamed for relinquishment of his partnership interests in certain properties including the Tutu Half-Acre at the outset of the litigation. In his deposition on April 2, 2014, Yusuf explained in detail the agreement between himself and Hamed:

9 A. I [Yusuf]-- we met, and after I tell him [Mohammad] my story of what
10 I know at that time, he say, **What do you want? I say, I'll**
11 **take two property for what I discover so far.** He say,
12 Which? I give him the description of the property, **one in**
13 **Jordan and one at Tutu Park.** The one in Jordan, I pay one
14 million two, approximate. The one at Tutu Park, I paid
15 1 million for it. 1,000,350, I believe. **It's two pieces at**
16 **Tutu Park, but we call it one piece. One-half an acre as an**
17 **entrance, and 9.31 as the major piece of property.**
18 **He say, You can have it.**

See Exhibit A²-Yusuf April 2, 2014 Depo, 78:9-18. Mohammad Hamed first testified about this same agreement the day before. Through an interpreter, Hamed testified:

Interpreter:

² All references to exhibits are to those attached to Yusuf's Opposition to Hamed's Motion for Partial Summary Judgment filed on December 20, 2019, unless otherwise indicated.

He [Mohammad] says he – he begged Mr. Fathi Yusuf for them to find a way to settle this. And – and Mr. Fathi Yusuf accused him of stealing \$2 million. He told Fathi Yusuf –

See Exhibit B-Mohammad Hamed April 1, 2014 Depo; 148:1-4.

He [Mohammad] says he—he pleaded with Mr. Fathi Yusuf not to let this get bigger and get—go to court; that in the process of trying to settle this, that Mr. Fathi had asked for two pieces of property. He [Mohammad] had agreed to that.

Id. at 148:24 – 149:1. Hence, as early as April of 2014, Yusuf has maintained that Hamed relinquished the Tutu Half-Acre and Hamed indicated the same.

2. Liquidating Partner's Bi-Monthly Reports – Eighth and Ninth dated May 31, 2016 and August 1, 2016 respectively.

As to the identification of the Tutu Half-Acre on the “books,” Yusuf has already shown that it had been erroneously identified as a Partnership asset initially during the Wind-Up process.³ However, in the Eighth and Ninth Bi-Monthly Reports, Yusuf noted that error. *See Exhibit H-Ninth Bi-Monthly Report*, p. 5-6. Having previously testified in 2014 that the Tutu Half-Acre was part of an agreement prior to the suit, the correction to the Bi-Monthly Reports is consistent with Yusuf’s original testimony as well as Hamed’s.

3. September 2016 Initial Accounting Claims

Again, Yusuf detailed the agreement in his initial Proposed Distribution and Accounting (“Yusuf’s Initial Accounting Claims”), noted that he was not seeking to claim the \$2,000,000 Hamed had misappropriated but rather simply sought to hold Hamed to the agreement, and detailed Hamed’s partial performance by transferring one of the two properties, the Jordanian

³ In Hamed’s Exhibit 20, he attempts to demonstrate that a Balance Sheet ending on December 31, 2010 somehow supports his position that Yusuf considered the Tutu Half-Acre a Partnership asset. However, the Balance Sheet ending in 2010 is before the agreement reached with Hamed in 2011 and, therefore, does not rebut Yusuf’s position.

property and the Tutu Half-Acre. *See* Exhibit C-Yusuf's Initial Accounting Claims⁴, p.13-14 ("Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and **one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports.**")(emphasis added).

4. October 2017 Amended Accounting Claims

Again, in Yusuf's Amended Accounting Claims filed on October 31, 2017, Yusuf chronicled the agreement, his forbearance from recovering the \$2,000,000 from Hamed, Hamed's agreement to relinquish his interests to the Tutu Half-Acre parcel and his partial performance with his transfer of the Jordanian property, and noted that Hamed's sons were attempting to rescind Hamed's conveyance of his interest in the Jordanian parcel in their second amended complaint in *Hamed v. Yusuf*, Civil SX-12-CV-377 (the "377 Case"). *See* Exhibit E-Yusuf's Amended Accounting Claims, p. 17-18. Yusuf asked that the Court "bind Hamed's estate by the agreement signed by Hamed." *Id.*⁵

⁴ Yusuf notes that the 9.3 acre parcel together with the Tutu Half-Acre were actually considered to be one property as per Yusuf's deposition testimony. *See* Exhibit A. The description in Yusuf's Initial Accounting Claims inadvertently indicated that the 9.3 acre parcel should be considered a third property. Yusuf clarified this misstatement in his Supplemental Responses to Hamed's Discovery filed on January 15, 2019. *See* Exhibit G-Yusuf's Supplemental Responses to Hamed's Discovery, January 15, 2019, p. 7-8 with Verification. Furthermore, Hamed even noted and argued that "Yusuf also testified, not only was the parcel [the Tutu Half-Acre] intended to be *treated* as access in planning the supermarket, but it was *thought of* as 'one piece' when paired with the major parcel." Hamed Brief, p. 6.

⁵ Yusuf's claims relating to the agreement remain pending in what the parties have referred to as Y-12. Furthermore, pursuant to the parties' agreement in the Joint Discovery and Scheduling Plan that the Master Ordered on October 5, 2019, Yusuf's Y-12 claims have been designated as a B-2 claim, the schedule for which requires additional discovery to take place from July 1, 2020, with depositions to occur in 2021. Although Yusuf submits that there is sufficient evidence to demonstrate the existence of the partners' agreement as to Hamed's relinquishment of his interest in the properties described herein, including the Tutu Half-Acre, discovery on this claim is not complete.

5. *January 15, 2019 Supplemental Discovery Responses*

Yusuf explained the agreement for Hamed to relinquish his interests in the properties in detail in his Supplemental Responses to Hamed's Discovery filed on January 15, 2019. See Exhibit G-Yusuf's Supplemental Discovery Responses, p. 7-8 with Verification. Specifically, Yusuf stated:

After Yusuf's discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997, Mr. Yusuf agreed, in order to resolve that issue only, that Hamed would convey two properties. One of the properties was Property 3 described above [the property in Jordan] and **Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas.**

...
Ultimately, Yusuf had agreed to resolve the misappropriation by the conveyance of Property 3 and Hamed's **conveyance of his interest in a one half acre parcel and its adjacent 9.32 acres in Tutu, St. Thomas. The 9.31 acres are currently titled in Plessen but should be conveyed to Mr. Yusuf. Likewise, any claims that Hamed would have to the ½ acre entrance parcel should be extinguished.**

See Exhibit G-Yusuf's Supplemental Response to Hamed's Discovery, p. 7-8 with Verification (emphasis added).

6. *Affidavit of Bakkir Hussein filed in December 2017 also confirms Agreement*

In addition to the positions taken by Yusuf, the Affidavit of Bakkir Hussein previously produced on December 13, 2017 as Exhibit 1 to Yusuf's Bench Memorandum for Status Conference, Bates Number FY015024-26, reflects the Partners' agreement for Hamed to relinquish two properties to Yusuf in exchange for the misappropriations of which Yusuf was then aware.⁶

⁶ Likewise, others present for the negotiations were aware of the agreement between Hamed and Yusuf relating to the transfer of the two properties for those misappropriations by Hamed that Yusuf had discovered at that point. See **Exhibit I** – Second Supplemental Discovery Responses filed December 30, 2019 with Verification.

Hence, as to the Tutu Half-Acre (the subject of the current motion), Yusuf has *always* maintained that it is not a Partnership asset as a result of the agreement reached between himself and Hamed in 2011. To the extent that Hamed seeks to dispute that agreement as to the Tutu Half-Acre or the entire agreement as to the Jordanian parcel and the 9.31 tract in Tutu, Hamed is free to do so. However, his dispute merely demonstrates a material question of fact, which precludes the partial summary judgment he seeks as to the Tutu Half-Acre. Hamed's fixation and preoccupation with the ownership status of the Tutu Half-Acre at the time of purchase or even in 2008, does not change the fact that Yusuf has *always* maintained throughout this case that the Tutu Half-Acre is not a Partnership asset as of the time of dissolution. Accordingly, it is properly titled in United's name – not as a fictional “d/b/a” for the Partnership as Hamed would have the Master rule. Hamed's attempt to feign surprise at a position that has been repeatedly set forth is disingenuous. Moreover, Hamed's argument that the issue was not properly raised is, likewise, without merit. As demonstrated, it has been repeatedly raised and reaffirmed throughout the litigation. Hamed has been on notice of Yusuf's position and claims from the outset.

B. Yusuf's clarifies his testimony as to his discussion with Waleed Hamed.

Throughout Hamed's Reply, he attempts to mischaracterize the testimony of Yusuf in an effort to disprove that an agreement had been reached by Hamed and Yusuf. Specifically, Hamed now argues that Yusuf, who was frustrated and betrayed by Hamed's misappropriations, asked Waleed Hamed to communicate with his father, not to confirm the original agreement reached (i.e. to exchange two properties—the Jordanian property and the Tutu properties consisting of both the 9.31 acre tract and the Tutu Half-Acre) but to merely ask whether he spoke to his father. The argument is non-sensical. Yusuf would never simply ask *if* the conversation

took place; he would ask whether Mohammad Hamed agreed to the transfer as a result of the conversation. While Yusuf believes his prior deposition testimony is clear and his Supplemental Discovery Responses filed in January, 2019 were, likewise, clear; given Hamed's attempts to mischaracterize his testimony, Yusuf clarified his testimony as to his conversation with Waleed Hamed in his Second Supplemental Discovery Response to Interrogatory No. 21. Specifically, Yusuf testified:

Although not specifically responsive to this Interrogatory, out of an abundance of caution, Yusuf shows that as he stated throughout his Opposition to Hamed's Motion for Partial Summary Judgment as to H-142, Yusuf had reached an agreement with Hamed to reconcile \$2,000,000 in misappropriations by Hamed, wherein Hamed agreed to relinquish his interests to two properties purchased with Partnership funds: 1) one located in the district of Tababour in Jordan and 2) property located in Tutu, St. Thomas including both a 9.31 acre tract titled in Plessen and the Tutu Half-Acre so that Yusuf would then own these properties separate and apart from the Partnership or Plessen and Yusuf would forebear pursuit of Hamed for his \$2,000,000 misappropriation of Partnership assets. Yusuf further confirms that his deposition testimony of April 2, 2014 reflects that agreement. To clarify, when Yusuf spoke with Waleed Hamed and asked him whether he spoke with his father, Mohammad Hamed, and Waleed Hamed said "yes," Yusuf was asking whether Mohammad Hamed had agreed to the transfer and relinquishment of the two properties – the Jordan Property and the Estate Tutu property, consisting of both the 9.31 acre tract and the Tutu Half-Acre. Yusuf was not simply asking whether a conversation took place, without asking the substance of the discussion. To the contrary, Yusuf was asking Waleed whether his father had agreed to the original terms of the agreement reached the previous day, which was for the exchange of Hamed's interests in the two properties and Waleed confirmed that Mohammad Hamed agreed to it. The affidavits produced below further support the agreement reached during the meetings.

See Exhibit I – Second Supplemental Discovery Responses filed December 30, 2019, p. 3-4 with Verification.

C. Yusuf did not file a Counter-Motion for Summary Judgment.

Hamed contends in his Reply that Yusuf's assertion of counter-facts somehow qualifies as an attempt to file a counter-motion for summary judgment to which Hamed believes he is

compelled to respond. See Reply, p. 2, n. 4 and p. 3. To be clear, Yusuf does not and did not intend to file a counter-motion at this time. Rather, under Rule 56, “a party opposing summary judgment may, if it elects to do so, state additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried” and “[t]he party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number.” V.I. R. CIV. P. 56(c)(2)(C). Yusuf stated additional facts that he contends are disputed and material to Hamed’s Motion for Partial Summary Judgment as to H-142, which presents one or more genuine issues of material fact to be tried and precludes summary judgment. Yusuf’s claims relating to the agreement remain pending and has been designated by the parties as Y-12 and pursuant to the parties agreement in the Joint Discovery and Scheduling Plan that the Master Ordered on October 5, 2019, Yusuf’s Y-12 claims have been designated as a B-2 claim, the schedule for which requires additional discovery to take place from July 1, 2020, with depositions to occur in 2021. Hence, Yusuf will not seek to file a dispositive motion on the Partners’ agreement until 2021 when dispositive motions are required on such claims. See Scheduling Order entered October 5, 2019, p. 4. As a result, Yusuf has not filed a counter-motion and is not obligated to file any type of “reply” to Hamed’s improper counter-statement of facts (Exhibit 30 to the Reply).

D. Yusuf has preserved his claims as to the Agreement for Hamed to relinquish his interests to the property in Tutu consisting of the Tutu Half-Acre in the name of United and the 9.31 acre tract and the property in Jordan as Y-12.

Hamed contends that Yusuf has not preserved his claims as to the agreement as articulated throughout this litigation and chronicled above, and that it is not encompassed by Y-12. To that end, Hamed attempts to force a disjointed schedule or truncated process as to

Yusuf's Y-12 claims. First, the designation "Y-12" is a creation of Hamed. As noted, Hamed labeled everything as a "claim" even mere accounting questions which resulted in the lopsided number of claims for Hamed H-1 through H-165. Recall, that over a hundred "claims" raised by Hamed are merely accounting questions-not claims. Many have been resolved not because of compromise or concession on Hamed's part, but purely as a result of the fact that they were never really "claims" to begin with, they were just inquiries and requests for clarifications. Hence, the labeling system as to H-__ was an arbitrary system designed to simply identify the various open "questions" and potential distribution or allocation of assets and off-sets. Hence, Hamed imposed the "Y-__" designations on Yusuf's proposed Accounting Claims and Proposed Distributions. In so doing, Hamed has attempted to over-simplify the positions taken by Yusuf as to claims he makes and also attempts to arbitrarily limit resolution of "claims" in a vacuum when they may involve various interrelated issues. Yusuf concedes that the designation system "H-__" and "Y-__" has been useful as a tracking mechanism and to manage the process. However, Yusuf objects to Hamed's attempt to elevate form over substance and his attempts to superimpose a boundary as to Yusuf's "Y-12" claim limited to a title, when the full breath of the claim is found in the more detailed description (which notes the 2011 agreement and its contours) as well as the subsequent elaboration with testimony and discovery. Rather, the "claim" is akin to the notice pleading requirement of a complaint, which is subsequently fleshed out by evidence developed in the discovery process, the full scope of which is not set forth in an allegation. Accordingly, Hamed's attempt to limit and truncate Yusuf's ability to pursue his claims – dubbed by Hamed as Y-12 - should not be allowed and Yusuf is entitled to the full procedure agreed upon by the parties as set forth in the October 5, 2019 Scheduling Order.

II. Conclusion

For the foregoing reasons, there is sufficient evidence of the existence of an agreement in 2011 amongst the partners, prior to dissolution, in which Hamed agreed to relinquish his interests to properties including the Tutu Half-Acre, in exchange for Yusuf's forbearance from pursuing his claims for misappropriation against Hamed for \$2,000,000.00, which precludes Hamed from obtaining partial summary judgment on his claim to still have a partnership interest in the Tutu Half-Acre. Yusuf respectfully requests that Hamed's motion be denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: January 6, 2020

By:



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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2020, I caused the foregoing **Yusuf's Surreponse to Hamed's Repy to Yusuf's Opposition to Hamed's Motion Summary Judgment as to H-142 Half-Acre Tutu** 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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Fathi Yusuf, et al. (adv. Hamed, et al.)

Case Nos. SX-12-CV-370, SX-14-CV-287 and SX-14-CV-278

Yusuf's Sur-reply to Hamed's Reply to Yusuf's Opposition to Hamed's Motion for Partial Summary Judgment as to Claim H-142-The Half-Acre Access Parcel in Tutu

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INDEX OF EXHIBITS

Exhibit H-Ninth Bi-Monthly Report

Exhibit I-Second Supplemental Discovery Responses

EXHIBIT H

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

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



LIQUIDATING PARTNER'S NINTH 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 ninth 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."

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

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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 Liquidating Partner has provided the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows concerning these accounts from inception through April 30, 2016. Copies of the bank statements, ledgers, and a final reconciliation 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

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. The 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.

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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 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), Hamed⁴ 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 premises 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 delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation. Given the passage of more than fifteen (15) months since the releases should have been delivered, the Liquidating Partner is requesting the Court’s immediate intervention regarding Hamed’s failure to provide the required releases.⁵ The significant problems created by Hamed’s failure to obtain the required releases has been reported by the Liquidating Partner

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 On June 16, 2016, Hamed died. See Yusuf’s Statement Noting Death Of Mohammad Hamed filed on June 22, 2016. As a result of his death, any power of attorney given by Hamed to Waleed Hamed has been terminated. See V.I. Code Ann. tit. 15, § 1265(a). Since no motion for substitution of a representative of the estate of Hamed has been filed to date, it is unclear on whose behalf counsel for Hamed has been filing documents in this case since June 16, 2016.

⁵ In the absence of such releases, at a minimum, Yusuf submits that a reserve must be created for all rent, percentage rent, and real property taxes that may accrue during the remaining term of the lease with Tutu Park, Ltd. (28 months), plus any matching payment that would be due to Yusuf if Partnership funds are used to pay these obligations.

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beginning with his fourth bi-monthly report and in each of his succeeding reports. Although Hamed has filed multiple objections to the bi-monthly reports, he has never disputed his obligation to obtain the releases or his failure to do so. Although the Tutu Park Litigation was initially stayed after the auction of the Tutu Park store to provide Hamed an opportunity to negotiate a new lease with Tutu Park, Ltd. and obtain the required releases, after approximately a year of fruitless negotiations, that stay has now been lifted and the Tutu Park Litigation has been set for trial. Since the transfer of the Tutu Park store and Tutu Park Litigation was expressly conditioned upon the delivery of the required releases to United and Yusuf, Hamed and his counsel cannot be allowed to control that litigation unless they immediately produce the releases that should have been provided more than one year ago. On June 29, 2016, the Master asked counsel to "advise as to the status or whereabouts of the releases" and counsel responded that "[w]e understand the urgency and will get this done as soon as Wally returns." See June 29, 2016 email exchange attached as **Exhibit 1**. Despite the passage of more than a month since that email exchange, no releases have been produced to date. Accordingly, the issue involving the failure to provide the releases has now become critical requiring this Court's immediate attention.

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 authorized the payment of the entire, allocable taxes for 2012 and 2013 in

the amount of \$79,009.87 and for 2014 taxes in the amount of \$43,069.36. Checks for those amounts have been delivered to Tutu Park, Ltd. The property taxes for 2015 have not yet been billed, but reserves will be set aside to pay these taxes (estimated to be \$14,356.44 based on $4/12 \times \$43,069.36$)⁶, disputed federal unemployment (Form 940) taxes (approximately \$732,000)⁷, and contemplated accounting fees (approximately \$30,000).

The Liquidating Partner's sixth bi-monthly report incorrectly stated (at p. 4) that Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 had been rejected when, in fact, that claim was paid on December 17, 2015 via CRA check no. 278 and a matching check was issued to Yusuf via CRA check no. 279. Copies of these checks were provided to Hamed and the Master with the submission of the sixth bi-monthly report.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.⁸ 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

⁶ 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 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 \$79,009.87 and \$43,069.36 in real property taxes were paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized matching payments of \$89,442.92 and \$46,990.48 to United based on this formula. Accordingly, in addition to creating a \$14,356.44 reserve for the 2015 pro-rated real property taxes, a reserve for the matching payment to United should be created in the amount of \$9,812.14.

⁷ The Liquidating Partner does not believe that any such taxes are actually due and owing.

⁸ With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by NejeH 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.

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.⁹ Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed. 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.¹⁰

Hamed has claimed that the Liquidating Partner has "fail[ed] to identify a significant partnership asset, a Merrill-Lynch account that has in excess of \$300,000 in it, all of which came from Plaza Extra funds." *See, e.g.,* Motion To Remove The Liquidating Partner filed by Hamed on January 29, 2016 at p. 6.¹¹ At page 3 of Yusuf's September 3, 2015 Response to the Objection, Yusuf states:

⁹ 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.

¹⁰ 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. On February 8, 2016, Hamed filed his "Notice of Objection to Liquidating Partner's Sixth Bi-Monthly Report," to which Yusuf replied on February 24, 2016.

¹¹ Yusuf filed his Opposition to that motion on February 17, 2016.

At no time has Hamed provided the Liquidating Partner with any information establishing that a Merrill Lynch account in the name of a third party actually represents Partnership Assets. Hamed certainly does not explain why he only raised the prospect of such account 18 days after the filing of the third bi-monthly report. (footnote omitted).

To date, the Liquidating Partner has been provided with no information whatsoever that even suggests the unidentified Merrill Lynch account was funded with Partnership money, contains any Partnership funds, or otherwise constitutes Partnership Assets.

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 June 30, 2016 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 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.¹²

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. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation¹³ and any future litigation

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¹² 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.

¹³ An updated, more detailed list of pending litigation (Exhibit C-2) was previously provided to the Master and counsel for Hamed.

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.

On March 17, 2016, Yusuf, as Liquidating Partner, filed motions to consolidate three cases pending in the Superior Court, namely, *United Corporation v. Waheed Hamed*, Civ. No. ST-13-CV-0000101, *United Corporation v. Waleed Hamed*, Civ. No. SX-13-CV-000003, and *United Corporation v. Wadda Charriez*, Civ. No. SX-13-CV-0000152, with this case since the claims asserted in these three cases “may be treated as claims for resolution in the liquidating process of the Partnership pursuant to the Plan adopted” in this case. For similar reasons, on March 21, 2016, the parties filed a stipulation to consolidate two cases pending in the Superior Court with this case, namely, *Hamed v. Yusuf*, Civ. No. SX-2014-CV-278, and *Hamed v. United Corporation*, Civ. No. SX-2014-CV-287.¹⁴

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,

¹⁴ By Order dated April 15, 2016, Civ. No. SX-2014-CV-287 was consolidated with this case.

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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 the sixth report, an updated comparison through February 29, 2016 was provided with the filing of the seventh report, an updated comparison through April 30, 2016 was provided with the filing of the eighth report, and an updated comparison through June 30, 2016 was provided with the filing of this report.

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. At the request of Hamed, the Master extended the date for submission of the Partners' accounting and distribution plans until May 2, 2016. Subsequently, that deadline was further extended by the Master without a date certain.

Section 9, Step 4 of the Plan provides, in pertinent part, as follows: "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and to submit his findings to the Master." Yusuf submits that Hamed's accountants

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have not been prevented from viewing any Partnership accounting information for the relevant period. Instead of accepting John Gaffney's March 2015 proposal to have one of Hamed's accountants work alongside him to facilitate their ability to review the relevant accounting information, Hamed's accountants submitted 81 "Questions/Requests for Info" to Yusuf, and those requests were recently expanded even further to "130 very specific questions." As reflected in his Reply to Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report (page 2-4), Yusuf objects to these discovery requests to the extent they seek to interrogate Yusuf, through Mr. Gaffney, as opposed to simply seeking Mr. Gaffney's assistance in accessing or reviewing partnership accounting information.

Respectfully submitted this 1st day of August, 2016.

DUDLEY, TOPPER and FEUERZEIG, LLP

By: 

Gregory M. Hodges (V.I. Bar No. 174)
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CERTIFICATE OF SERVICE

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

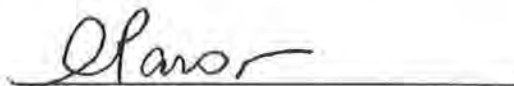
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The Honorable Edgar A. Ross
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Gregory H. Hodges

From: Joel Holt <holtvi@aol.com>
Sent: Wednesday, June 29, 2016 1:21 PM
To: Edgar Ross
Cc: Gregory H. Hodges
Subject: Re: Tutu Park Plaza Releases

The final meeting to resolve this issue was set for today, but was canceled because Wally is in the Middle East due to his father's death. We understand the urgency and will get this done as soon as Wally returns

Joel H Holt
2132 Company St.
Christiansted, VI 00820
340-773-8709

On Jun 29, 2016, at 12:54 PM, Edgar Ross <edgarrossjudge@hotmail.com> wrote:

More than a year has elapsed since the Hameds were to obtain releases from the Lessor of the Tutu Park Plaza for the benefit of United Corp. and Fathi Yusuf. Please advise as to the status or whereabouts of the releases.

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone



EXHIBIT I

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

)

**SECOND SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY AS TO
INTERROGATORY NO. 21
AND REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley Newman Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's Interrogatory No. 21 and Request for Production of Documents No. 13 (collectively the "Discovery") as follows:

SECOND SUPPLEMENTAL RESPONSES TO DISCOVERY

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

Second Supplemental Response:

Defendants incorporate their prior responses and discovery produced as well as their recently filed Opposition to Motion for Partial Summary Judgment as to H-142 filed on

December 20, 2019 and documents attached thereto as responsive to this interrogatory and also supplement their response as follows:

1. "State in detail how this half acre in Estate Tutu was purchased" - The Half-Acre in Tutu was purchased from Winsor E. Daniel and Juel Daniel on or about August 6, 2006 to provide an entrance parcel for the 9.31 acre tract in Estate Tutu. I am unable to recall all of the discussions surrounding the purchase of this property. However, I conducted the negotiations and it was my idea to purchase the parcel. Documents reflecting the purchase are already in the possession of Hamed and are found at HAMED596589-690.
2. "What funds were used and the source of those funds" - Funds used were from income from the grocery store operations and were Yusuf-Hamed Partnership funds. I am unable to recall all of the discussions surrounding the purchase of this property. Documents reflecting the purchase are already in the possession of Hamed and are found at HAMED596589-690.
3. "Any discussions or agreements about the funds or the purchase" – I am unable to recall all of the discussions surrounding the purchase of this property. The discussions were simply to purchase the property as an access parcel to the 9.31 acres in Estate Tutu and to title it in the name of Plessen Enterprises with a mortgage to United. The documents executed reflect that understanding. Such documents are already in the possession of Hamed and are found at HAMED596589-690.
4. Although not specifically responsive to this Interrogatory, out of an abundance of caution, Yusuf shows that as he stated throughout his Opposition to Hamed's Motion for Partial Summary Judgment as to H-142, Yusuf had reached an agreement with

Hamed to reconcile \$2,000,000 in misappropriations by Hamed, wherein Hamed agreed to relinquish his interests to two properties purchased with Partnership funds: 1) one located in the district of Tababour in Jordan and 2) property located in Tutu, St. Thomas including both a 9.31 acre tract titled in Plessen and the Tutu Half-Acre so that Yusuf would then own these properties separate and apart from the Partnership or Plessen and Yusuf would forebear pursuit of Hamed for his \$2,000,000 misappropriation of Partnership assets. Yusuf further confirms that his deposition testimony of April 2, 2014 reflects that agreement. To clarify, when Yusuf spoke with Waleed Hamed and asked him whether he spoke with his father, Mohammad Hamed, and Waleed Hamed said "yes," Yusuf was asking whether Mohammad Hamed had agreed to the transfer and relinquishment of the two properties – the Jordan Property and the Estate Tutu property, consisting of both the 9.31 acre tract and the Tutu Half-Acre. Yusuf was not simply asking whether a conversation took place, without asking the substance of the discussion. To the contrary, Yusuf was asking Waleed whether his father had agreed to the original terms of the agreement reached the previous day, which was for the exchange of Hamed's interests in the two properties and Waleed confirmed that Mohammad Hamed agreed to it. The affidavits produced below further support the agreement reached during the meetings.

RFPDs 13 of 50:

Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry – particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores.

Supplemental Response:

Defendants incorporate their prior responses and discovery produced as well as their recently filed Opposition to Motion for Partial Summary Judgment as to H-142 filed on December 20, 2019 and documents attached thereto as responsive to this request and also supplement their response as follows:

In addition to the documents previously produced, Defendants shows that any other documents responsive to this request are already in the possession of Hamed and are found at HAMED596589-690.

Finally, although Yusuf does not deem these documents specifically responsive to the Request, in light of the Master's recent Order and out of an abundance of caution, Yusuf produces the following documents which relate to the subsequent agreement to transfer two properties in 2011, including property located in Jordan and property located in Tutu, St. Thomas including both a 9.31 acre tract titled in Plessen and the Tutu Half-Acre. *See* Bates Number FY015024-26 – Affidavit of Bakir Hussein (previously produced on December 13, 2017 as Exhibit 1 to Bench Memorandum for Status Conference), and Bates Number FY015034-39 — Affidavit of Mohammad Hunnun—and Bates Number FY015040-43—Affidavit of Suleiman Khaled.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: December 30, 2019

By: /s/Charlotte K. Perrell
GREGORY H. HODGES (V.I. Bar No. 174)
CHARLOTTE K. PERRELL (V.I. Bar No. 1281)
P.O. Box 756
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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

It is hereby certified that on this 30th day of December, 2019, I served a true and correct copy of the foregoing **SECOND SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY AS TO INTERROGATORY NO. 21 AND REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13**, which complies with the page and word limitations set forth in Rule 6-1(e), via email addressed to:

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E-Mail: jeffreymlaw@yahoo.com

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: DEC., 30th, 2019

Faith Jones Attesting Individual

TERRITORY OF THE UNITED STATES VIRGIN ISLANDS
DISTRICT OF ST. Croix) ss

On this, the 30 day of DECEMBER, 2019, before me, the undersigned officer, personally appeared the signor known to me (or satisfactorily proven to be) the person whose name is subscribed to the within document and acknowledged that he/she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

BN NP-49.17 Notary Public

BERNARD W. LIBURD
NOTARY PUBLIC 49-17
MY COMM EXP 6/6/2021
ST. CROIX, US VIRGIN ISLANDS

*Second Supplemental Response to Hamed's Interrogatory No. 21,
and Request for Production of Documents No. 13
Waleed Hamed et al. vs. Fathi Yusuf et al.
Case No.: STX-2012-CV-370
Page 7*

/s/Charlotte K. Perrell

- without Mr. Yusuf's knowledge. The second dispute concerned the issue of excess funds that were withdrawn by the Hameds for which the Yusufs did not take in matching withdrawals.
7. As to the first dispute, Mr. Yusuf, Waleed Hamed, and Mohammed Hamed agreed that Mr. Yusuf would receive title to two properties in satisfaction of Waleed Hamed's unauthorized withdrawals. The first property is an 8 acre property located in Jordan, and the second property was a 9-10 acre property in Tutu Park.
 8. To my knowledge the first property was transferred to Mr. Yusuf, however to date the second property was not transferred.
 9. In several open meetings, Mr. Yusuf said that the Hameds took \$1.6 million more than the Yusufs. Waleed Hamed admitted that he took the excess \$1.6 million dollars, which is the difference between the \$2.9 Million taken by the Hameds and the \$1.3 Million taken by the Yusufs. In addition to the \$1.6 million dollars which I heard Waleed Hamed admit to, both Waleed Hamed and Fathi Yusuf both agreed to additional withdrawals by the Yusufs provided that the Yusufs produced receipts to show proof of the additional withdrawals.
 10. I personally heard Waleed Hamed admitting to owing \$1.6 million dollars to the Yusufs as a result of excess withdrawals by the Hameds, and that the receipts for that amount were not available because they were destroyed prior to the raid by the U.S. Government.
 11. In addition, Mr. Yusuf and Waleed Hamed discussed the unpaid rent on the Plaza Extra – East store that has been pending for many years. Specifically, Waleed Hamed agreed to pay the rent for the rental period prior to 2004.
 12. At one point, there was an agreement in place between the Hameds and Fathi Yusuf that the Hameds would transfer two (2) properties to Mr. Yusuf for what he had discovered so far.
 12. Despite meeting with both sides, individually and together on a number of occasions, two issues began to stand out as the sticking points.
 13. First, Fathi Yusuf stated that the Hameds were not being straight with him when the Hameds refused to transfer the second property, as agreed for the transactions he had discovered so far. On the other hand, Waleed Hamed said that he did not believe that Fathi would not stop with his final request for the third property for everything. At the end, the parties could not agree to the transfer of the third piece of land to satisfy Mr. Yusuf's claims regarding the unauthorized monies taken by the Hameds. The parties also could not agree on how to divide up the business and go their separate ways.

I attest that the above facts are true.

Date: 08-16-2014


Bakir Hussein

SUBSCRIBED AND SWORN TO before me
On this 10th day of Aug., 2014.


NOTARY PUBLIC

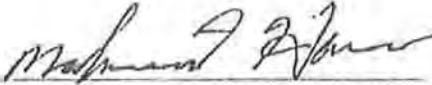


8. Fathi Yusef worked night and day to get the supermarket off the ground and was struggling to get a loan to get the supermarket loan. Fathi Yusuf mortgaged everything he owned to get the supermarket off the ground. I know that Fathi Yusuf was going to open the store without a dairy department. Just before he opened, friends of him took a tour of the store, saw that he had no dairy and offered him the money to buy the dairy. I know that they made this loan to Fathi Yusuf, just on his word alone.
9. Waleed Hamed came home from college, and started to work in the Supermarket with Mr. Yusuf, and he became Fathi's right hand person once the business got off the ground. Mike was in college at the time. Everyone knew that if you needed something from Fathi, and he wasn't around that you could ask Waleed Hamed, but that Fathi had the last word. Fathi Yusuf would treat Waleed better than his own son, and gave Waleed more authority than he gave his own son, Mike. Everyone in the whole community knew that when it come to the Supermarket, it was Fathi Yusuf, first and Waleed Hamed, second.
10. When the supermarket was being built, Mohammad Hamed was renting his house in Estate Carlton had no property to put up, he did not own any property. However, as the supermarket business became more profitable, Mohammad Hamed was able to buy the ~~place he was renting in Estate Carlton.~~ Mohammad Hamed now owns three (3) homes that I know about: 1) the house in Estate Carlton; 2) A house in the Westbank; and 3) a house in Irbid, Jordan, where my niece who married Mohammad Hamad's nephew lives. The house in Jordan he bought as a 2-story house then he added an additional level to make it three stories. I have been to all three homes.
11. I was surprised that Fathi Yusuf wanted to sell, when both families were doing well with the supermarket business. For example, Mohammad Hamed was later able to buy an Olive Farm in the Westbank, about 5 acres. That Olive Farm is fully planted with olive trees that were producing Olive Oil.
12. I know the supermarket was doing well for both families for the Hameds were able to open stock and operate the Five (5) Corners Mini-Mart store. I know that store was operated by Mohammad Hamed's nephews, Frankie Asad and Mike Abukais Quayyas.
13. I know the supermarket was doing well because all the Hamed sons now have their own homes. The Hameds only work at the Supermarket so the Supermarket business had to be doing well because I know that Waleed Hamed had brought a land overlooking the Estate Rattan and Estate Princess area, to build his home, but later brought a home on the East End, in Estate Southgate.
14. I know the Hameds also brought a duplex and property in Estate Carlton. The duplex was brought with two apartments and then they added three (3) other buildings with two (2) apartments each.

15. It was because I know the supermarket business was so doing well that I was really surprised to learn that Fathi wanted to sell the business. I asked Fathi Yusuf several times, "Fathi you doing well in the business, why do you want to sell" and he repeatedly told me that it was time to split up, because the families were getting too big.
16. It was not until I was asked to help settle a dispute between Waleed and, that I realized that there was a money problem between the families. At first all I knew was that Fathi was asking Waleed to explain about some money, and he was not getting an answer from Waleed.
17. I along with other family members, and close business' friends were asked to mediate a serious dispute Fathi Yusuf had with Waleed Hamed and Mohammed Hamed regarding monies taken from the business without his knowledge.
18. By the time of the first meeting to mediate, it was my understanding that the Hameds had agreed to turn-over two (2) properties to Mr. Yusuf, for what he had discovered so far: \$1.4 million, for the \$2 million transfer, including the \$700K that Mohammad Hamed agreed he received for the Batch Plant, and to cover what was spent on Waleed's gambling habit.
19. We called Waleed after Mr. Yusuf had agreed to settle the dispute for the two properties for what he had discovered, we called Waleed who came in and we told him of the agreement and we shook hands, and everyone left. Later that night, before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no the agreement covers everything, even what he doesn't know about right now, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement.
20. There were other meetings to discuss splitting up the business, and there were discussions about the Yusuf family drawing \$1.3 million and the Hamed family drawing \$2.9 million. In trying to put together a settlement, Baker and Khaled Ali stated that Waleed had agreed that he owed Mr. Yusuf \$1.6, and that he was going to pay that money.
21. Finally, at one the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about.
22. Mr. Yusuf said he cannot work with the Hameds and that they still had to sell business and to divide up the business and go their separate ways

Yusuf, Fathi et. al., v. Waleed Homed et. al.
Civil No. SX-12-CV-370
Affidavit

Date: 4/21/14


MOHAMMAD HANNUN

SUBSCRIBED AND SWORN TO before me

on this 21st day of April 2014.


NOTARY PUBLIC

K. Glenda Cameron
Commission Number LNP 010-09
Expiration Date: May 26, 2017

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U.S. DEPARTMENT OF STATE
OFFICE OF THE INSPECTOR GENERAL
200 WOODLAND AVENUE, N.W.
WASHINGTON, D.C. 20540

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

TERRITORY OF THE VIRGIN ISLANDS)
)SS.
DIVISION OF ST. CROIX)

AFFIDAVIT OF SULEIMAN KHALED

I, SULEIMAN KHALED, being first duly sworn, declare under penalty of perjury that the foregoing is true and correct.

1. I make this affidavit of my own personal knowledge and information.
2. I am an adult of sound mind, and a resident of St. Croix, Virgin Islands; I personally know Fathi Yusuf, Waleed Hamed, and Mohammed Hamed.
3. I have been involved in several meetings and discussions with all three gentlemen, together and separately, and as such, I am aware of the facts in this Affidavit.
4. Sometime in the late summer of 2010, while I was in Jordan, I asked Fathi Yusuf about a rumor that the families were splitting up and Fathi Yusuf confirmed to me that the families (the Hameds and the Yusuf s) were getting too big, and that it was time for the families to go their separate ways.
5. Several months later, I learned there was more to the families splitting up, when I, along with other family members, and close business friends were asked to mediate a serious dispute Fathi Yusuf had with Waleed Hamed and Mohammed Hamed regarding unauthorized monies taken from the business without his knowledge.
6. By the time of the first meeting to mediate, there was an agreement in place between the Hameds and Fathi Yusuf that the Hameds would tum-over two (2) properties to Mr. Yusuf for what he had discovered so far.
7. In discussing his side of the matter, Mr. Yusuf stated that he was hurt, disappointed and upset that "Waleed was not being straight with him". Mr. Yusuf explained that there were numerous differences between him and Waleed Hamed. For example, one of the disputes was about unexplained monies taken by Waleed Hamed and sent to Mohammed Hamed. Mr. Yusuf explained that he had made repeated requests for explanations of the transactions from Waleed, and although promising for several months, since mid-2010, to get to the bottom of it, Waleed Hamed had never provided any explanations for the transactions. Mr. Yusuf stated that he felt that he was betrayed and lied to by Waleed Hamed and later Mohammad Hamed.

8. In an effort to resolve their disputes privately, I along with Mohammed K. Hannun sat with Waleed Hamed in my store--Food Town. Only Waleed Hamed, from the Hamed side of the family, appeared at that meeting.
9. At that meeting, I informed Waleed Hamed of Mr. Yusuf s concerns regarding the unauthorized monies that were taken. Waleed Hamed responded that he "would pay what he owes." Waleed also said that the Bank made a mistake and Mr. Yusuf needed to prove these allegations. At the meeting in Food Town, I also learned from Waleed Hamed that Mr. Yusuf and Mohammed Hamed had already discussed the families splitting up and ending doing business together.
10. The agreement that had been reached with Mohammad Hamed was that Fathi Yusuf would accept two pieces of land as settlement for the unauthorized monies taken. However, Mr. Yusuf position was that those two pieces of land would cover only the amounts of money Mr. Yusuf found out about thus far.
11. Shortly thereafter, I was part of several discussions with Mr. Yusuf and others about settling the ongoing dispute. Mr. Yusuf described additional unauthorized monies he found out about, ~~for example the casino gambling. Mr. Yusuf then stated that he would be~~ willing to settle regarding the unauthorized monies taken, once and for all, in exchange for a third piece of land that he and Mohammed Hamed owned. I learned from Waleed that Mr. Yusuf had offered to accept a third piece of land to settle all claims of unauthorized money taken by Waleed Hamed and his father Mohammed Hamed, but Waleed's response was "how do I know that would be the end of it -and he won't ask for more."
12. After meeting with both sides, individually and together on a number of occasions, two issues began to stand out as the sticking points: One, Fathi Yusuf [stated] that the Hameds were not being straight with him when the Hameds refused to transfer the second property, as agreed for the transactions he had discovered so far. On the other hand, Waleed Hamed said that he did not believe that Fathi would not stop with his final request for the third property for everything.
13. Another dispute concerned the issue of the funds that were withdrawn by the Hameds for which the Yusufs did not take in matching withdrawals. In several open meetings, Mr. Yusuf said that the Hameds took \$1.6 million more than the Yusufs. Waleed Hamed admitted that he took \$1.6 million dollars, which is the difference between the \$2.9 Million taken by the Hameds and the \$1.3 Million taken by the Yusufs.

Affidavit of Suleiman Khaled

14. Mr. Yusuf and Waleed Hamed and Mohammed Hamed met at other meetings, but unfortunately they could not agree regarding the transfer of the third piece of land in satisfaction of Mr. Yusuf's claims regarding the unauthorized monies taken, or how to divide up the business and go their separate ways.

I attest that above is true.

Date: 5/31/14

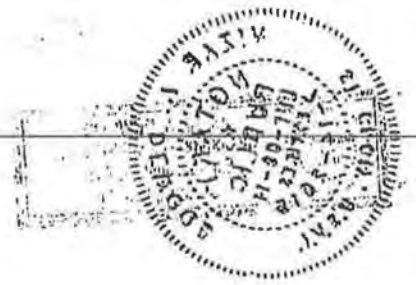

Suleiman Khaled

SUBSCRIBED AND SWORN TO before me
On this 31st day of May, 2014.


NOTARY PUBLIC



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Expiration Date: Jan 01, 2013
Commission Number: 115-010-02
@ Ganda Chirion

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

ORDER

THIS MATTER having come before the Master on Fathi Yusuf's and United Corporation's Motion for Leave to File a Surreponse to Hamed's Reply Regarding Claim H-142 (the "Motion"), and the Master being otherwise fully advised in the premises, it is hereby

ORDERED that the Motion is **GRANTED**, and it is further

ORDERED that the proposed Surreponse to Hamed's Reply as to Hamed Claim H-142, which is attached to the Motion, is hereby deemed filed.

ENTERED this _____ day of _____, 2020.

Edgar D. Ross
Master

A T T E S T:

Estrella George
Clerk of the Court

By: _____
Deputy Clerk