

**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,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.)	
)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.)	
)	
FATHI YUSUF,	)	ACTION FOR DEBT AND
	)	CONVERSION
)	
<u>Defendant.</u>)	

**YUSUF'S OPPOSITION TO
HAMED'S MOTION IN LIMINE**

Fathi Yusuf (“Yusuf”) and United Corporation (“United”) through their undersigned attorneys, respectfully submit this Opposition to Hamed’s Motion In Limine and show as follows:

I. Uncertainty as to Hamed’s request for relief

A. Possible Avoidance of an Evidentiary Hearing as to H-142

It is unclear from Hamed’s Motion in Limine, what exactly he seeks to prohibit and why. First, Hamed explains that there is no need for an evidentiary hearing relating to his Motion for Summary Judgment as to H-142 and that the Court can determine the matter with the record before it. He further explains that videotaped depositions have been secured, so a hearing is unnecessary. However, the fact that videotaped depositions were taken does not obviate the need for an evidentiary hearing at a later date. Clearly, the depositions were not taken for purposes of preservation of testimony for trial but rather were discovery depositions. The procedure for summary judgment does not afford the Court the ability to weigh the evidence or determine factual issues but rather to determine whether a genuine issue of material fact exists such that summary judgment is precluded or, in the absence of such a genuine issue of fact, whether it should be granted. Yusuf has filed his Opposition to the Motion for Summary Judgment as to H-142 and believes there exists a genuine issue of material fact as to whether the Tutu Half Acre was a partnership asset after 2011, when an agreement was reached between Yusuf and Hamed for Hamed’s relinquishment of his right to same, along with the adjoining 9.3 acre tract and a property located in Jordan to compensate Yusuf for \$2 million in transgressions by the Hameds. *See Yusuf’s Opposition to Hamed’s Refiled Motion for Summary Judgment as to H-142.* If so, then an evidentiary hearing would be scheduled and already has been contemplated and

accommodated by the parties and the Mater in the most recent Scheduling Order. However, Hamed has not asked for specific relief from such an evidentiary hearing and so that issue is not before the Court at this juncture. Hence, it is unclear, exactly what relief Hamed seeks.

B. In his Motion for Summary Judgment as to H-142, Hamed Cited to the Affidavit He Purportedly Seeks to Exclude in this Motion.

Next, Hamed indicates that certain “described witnesses and their affidavits” should be excluded and thus will obviate the need for a “third round of testimony.” Ironically, it was Hamed, who introduced the statements in the Affidavit of Mohammad Hunnan as an exhibit in support of his Motion for Summary Judgment as to H-142. In Paragraphs 20 of his Statement of Undisputed Material Facts, Hamed cites to the Affidavit of Mohammad Hunnan and attaches same as Exhibit 4. He then argues that paragraphs 19 and 20 of the Affidavit support Hamed’s position that an agreement was never really reached and that there was simply a series of on-going negotiations. *See Exhibit A-Hamed’s Arguments and Supporting Affidavit of Hunnan in his Motion for Summary Judgment.* However, this completely contradicts the statement in his Motion in Limine that **“Hamed has never referred to these other mediations/settlement negotiations anywhere before the Court or Master, and thus, these have been neither word nor shield for Hamed.”** *See Hamed Motion in Limine Brief, p. 4 (emphasis original).*

As Hamed had attached the Affidavit of Hunnan and cited to it in his briefing, Yusuf pointed to the paragraph therein where Hunnan described that prior to his meetings, he understood that Hamed and Yusuf had already agreed to two property deal to resolve the issue of the \$2 million transgression. *See Hamed Exhibit 4, ¶18.* It is unclear, on what grounds Hamed can cite to an Affidavit on one hand and then seek to exclude it on the other.

C. Testimony of Witnesses with knowledge of parties and their dispute should be admissible.

Yusuf disputes that the discussions between himself and members of his community would be considered formal “mediation” discussions in the sense of a court sanctioned or prescribed mediation. As to Mr. Hunnan, he is Waleed’s Uncle and Yusuf’s brother-in-law, family members. See **Exhibit B** – Waleed Depo. p. 191 and 192. Counsel for Hamed belittled the group dubbing them to be “local poohbahs” who berated Waleed. *Id.* at 191. These were various members of the community, some family, who were present at differing points in time throughout the parties’ history. They discussed each other’s problems as friends, family members and elders in their community. There existed no formality as to keeping the issues and discussions confidential or privileged. So to attempt to couch these series of meetings as formal or official mediation sessions is stretching the bounds of fiction. While they were attempting to help family members in conflict, the discussions do not break the threshold of a mediation agreement to be protected by privilege. To do so would open the door to every discussion with a friend of family member in conflict into a mediation session or in anticipation of mediation, such that it is cloaked with privilege. To the extent that a party makes admissions against interest to third parties, he cannot then characterize their discussion as a mediation session to prohibit disclosure. Here, where numerous members of the community, including extended family, were openly discussing the problems that the Yusuf and Hamed families were having, those discussions are not necessarily worthy of protection and privilege.

D. Incorporation of Yusuf’s Opposition to Hamed’s Motion for Summary Judgment as to H-142.

A large percentage of Hamed's Motion in Limine is identical to Hamed's earlier filed Motion for Summary Judgment as to H-142. Consequently, Yusuf and United incorporate by reference as if fully set forth herein verbatim, their Opposition to Hamed's Motion for Summary Judgment as to H-142 as responsive to the Motion in Limine.

Conclusion

As it is unclear the relief sought by Hamed, Yusuf requests that the Motion be denied. Further, there is no basis to characterize the efforts of family members and friends in the community to assist the Yusuf and Hamed families as formal mediation sessions. To the extent that issues of admissibility of such individuals' testimony is pertinent to a matter before the Court during an evidentiary hearing, it can be addressed at that time. Finally, Hamed cannot use and then simultaneously seek to exclude Yusuf from citing to the same evidence. For these reasons, Hamed's Motion in Limine must be denied.

Respectfully submitted,
DUDLEY NEWMAN FEUERZEIG LLP

DATED: March 9, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2020, I caused the foregoing **Yusuf's Opposition to Hamed's Motion In Limine** 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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INDEX OF EXHIBITS

Exhibit A-Hamed Motion for Summary Judgment Excerpts

Exhibit B-Mohammed Hamed April 1, 2014 Deposition excerpts

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

Exhibit A

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants/Counterclaimants.

vs.

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

Counterclaim Defendants,

WALEED HAMED, as 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.*

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

FATHI YUSUF, *Plaintiff,*

vs.

ESTATE OF MOHAMMAD A. HAMED,

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-18-CV-219

Consolidated with

Case No.: ST-17-CV-384

**HAMED'S [RE-FILED] MOTION FOR SUMMARY JUDGMENT
RE CLAIM H-142: HALF-ACRE ACCESS PARCEL AT TUTU**

located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

b. Yusuf Interrogatory Response 377. Exhibit 1, *supra*..:

When Responding Party [Yusuf] asked Waleed Hamed to proceed with the transfer of the Tutu Park property, it is at this point, several months later, that *Plaintiff Waleed "Wally" Hamed and Plaintiff Mohammed Hamed refused to transfer not only the second property [Tutu], but also the third property requested as a set-off for the unauthorized transactions. (Emphasis added.)*

18. The admission in the 377 interrogatory was made BEFORE the 2014 depositions, and the claims filing admission is from 2016—yet in the Prior Opposition, Yusuf attempts to make all of these additional renegotiations just “go away” in the same way he changed the “inadvertently misstated” rents and carrying the property in years of the “inadvertently misstated” Partnership financials go away—by making up an even newer, new story—tucked away in a footnote. See page 6, footnote 3. Seemingly forgetting the other places where he told the identical story, long BEFORE the “erroneous” 2016 claim:

The description in Yusuf’s Initial Accounting Claims inadvertently misstates the 9.3 acre to be considered a third property.

19. Yusuf’s testimony makes it clear that multiple attempts to increase this to two (and perhaps three) parcels failed because he told the Hameds starting the NEXT DAY, that he was trying to get this “extra” land in compensation for “other claims” he “might discover” in the future—which he described as ‘known or unknown’—for which he sought this additional land. Yusuf stated that Hamed rejected those proposal. *Id.* Again, Yusuf admitted the following:

Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, ***whether known or unknown***, Hamed would have to arrange for the conveyance to Yusuf or United of ***another*** approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.

20. *Affidavit of Mohammad Hannun*, April 21, 2014, (Ex. 4) he describes an identical incident in the subsequent (post August 2011) efforts to again settle this—where the Hameds actually did agree to a second parcel in return for the dropping of ALL such allegations by Yusuf, at ¶19, Exhibit 4:

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.** (Emphasis added.)

And at ¶21, yet another incident in these mediations—with the identical result:

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.

21. In fact, the negotiations never really stopped, and Fathi Yusuf testified that by the end of 2011, at yet another renegotiation meeting was held—and again there was no written

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

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

Exhibit B

1 for cancer again?

2 **A.** Yes, sir. Yes.

3 **Q.** And did he become so debilitated that he wasn't
4 eventually able to do things like this?

5 **A.** Yes, sir.

6 **Q.** Okay. And did he eventually die from that cancer?

7 **A.** Yes, sir.

8 **Q.** Okay. And so you went into a meeting and they
9 asked you stuff. And so finally after being berated by the
10 local pooh-bahs, you said, Okay. Fine. I'll give you the
11 second piece in Jordan; is that correct?

12 **A.** Yes, sir.

13 **Q.** Okay. And were you happy about that?

14 **A.** Definitely not, but there was so much pressure
15 exerted, and just to get it over with. My dad was sick.
16 We -- Fathi always threatening that we have nothing in our
17 names and he's going to take everything.

18 **Q.** Okay. So -- so at the end of that, you shook
19 hands. And now for the second time in 2011, you had a
20 two-parcel-in-Jordan deal; is that correct?

21 **A.** Yes.

22 **Q.** Okay. And you went home and you thought to
23 yourself, Thank God, this is all over, right?

24 **A.** Yes, sir.

25 **Q.** Okay. And then what happened?

WALEED "WALLY" HAMED -- REDIRECT

1 **A.** The flavor changed.

2 **Q.** Did the phone ring?

3 **A.** Yes, sir.

4 **Q.** And who was on the phone?

5 **A.** Mr. Hannun.

6 **Q.** And what did Mr. Hannun tell you?

7 **A.** That there's no deal. There's no deal. Fathi
8 wants this and Fathi wants that.

9 **Q.** And what, specifically, did Fathi want this time?

10 **A.** Fathi wants a third piece.

11 **Q.** Let me finish asking the question.

12 **A.** Fathi wants a third piece.

13 **Q.** And what third piece is that?

14 **A.** Oh, St. Thomas, Tutu.

15 **Q.** Okay. So now he wants a third piece, which is
16 St. Thomas, Tutu.

17 And what do you say to Mr. Hannun?

18 **A.** I told --

19 **Q.** Who is who? By the way, who is Mr. Hannun?

20 **A.** Mr. Hannun is my uncle and Mike's uncle.

21 **Q.** Okay.

22 **A.** He is Fathi's brother-in-law and my father's
23 brother-in-law.

24 **Q.** So he's -- he's a relative of both of you. He sat
25 in the meeting. He's watched you shake hands, right?